



HM Government

Review of the Balance of Competences between the United Kingdom and the European Union Fisheries Report

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United Kingdom and the
European Union
Fisheries Report

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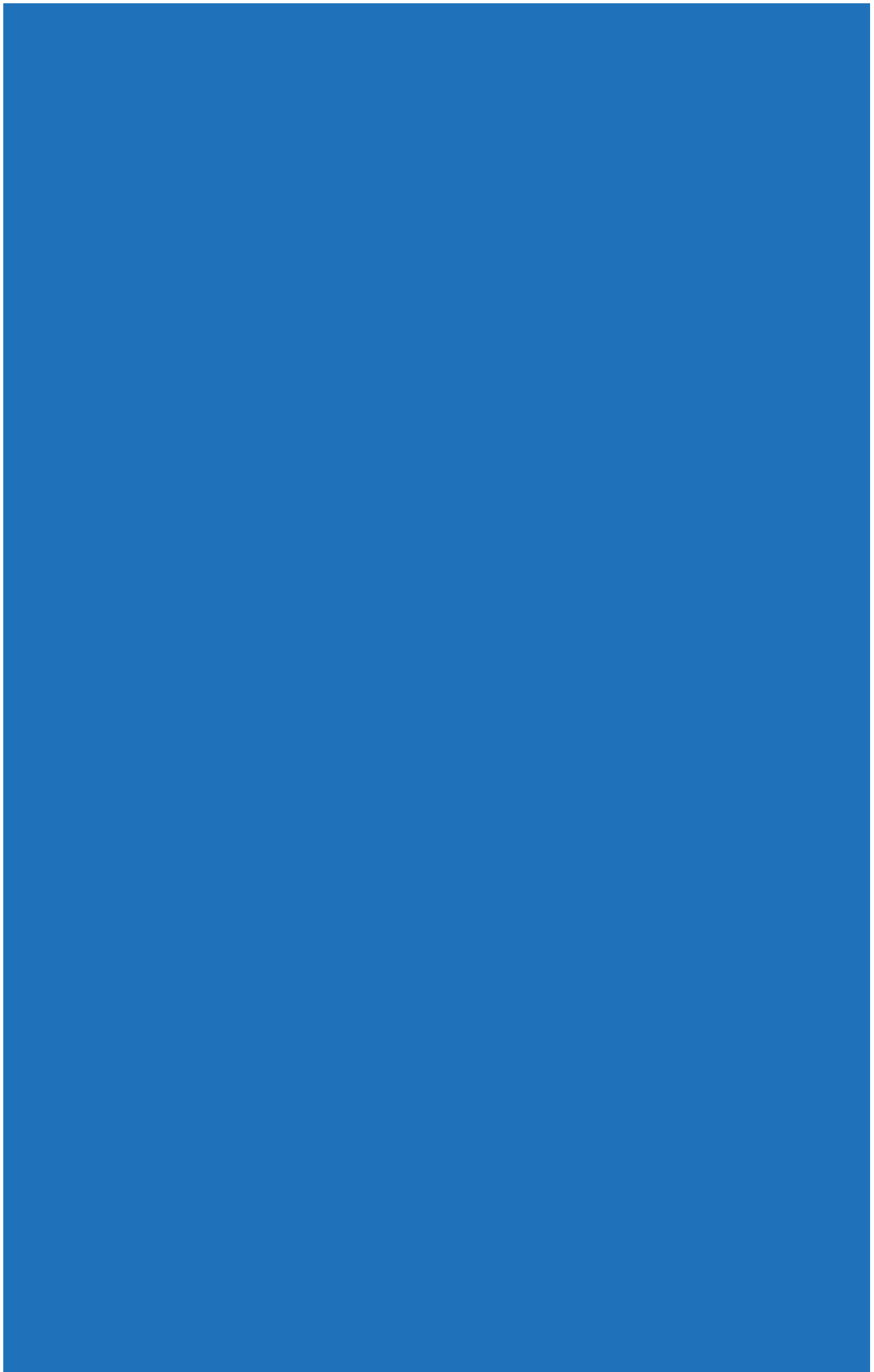
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Executive Summary

This report examines the balance of competences between the European Union and the United Kingdom in the area of Fisheries and is led by the Department for Environment, Food and Rural Affairs. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, business, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

Respondents to the call for evidence overwhelmingly considered that the Common Fisheries Policy (CFP) had failed in the past to achieve key objectives, namely to successfully maintain fish stocks or provide an economically sustainable basis for the industry. Over the last ten years these failings have opened this policy up to significant debate on how well the UK's national interest is served by the EU's management of fisheries. The recent reforms, for which the UK Government pressed, are considered by many to have taken major steps to address the policy's fundamental problems.

The majority of respondents, though not all, supported some form of supranational management of fisheries due to the transboundary nature of fish stocks. This included those that felt that EU-level management was appropriate, those that felt fisheries management should be coordinated above Member State level and those that preferred regional management.

In addition many respondents highlighted the opportunities presented by the new regionalisation process under the reform of the CFP agreed in 2013. This provides a mechanism for Member States with an interest in the fishery to come together to identify appropriate measures for those they share, bringing decision-making closer to the fishery within the existing competence arrangements. Many respondents thought devolving more decisions to the regional level would enable more responsive fisheries management.

The report is divided into four chapters.

Chapter One

The opening chapter outlines the development of the CFP from a market measure to a wider policy that manages the conservation of marine species of economic importance, including the latest reforms in 2013. It also sets out the origins, development and scope of EU competence on fisheries. It explains how the current powers and objectives in relation to fisheries do not differ greatly from those in the Treaty of Rome establishing the European Economic Community (EEC), though the substance of the policy has changed significantly.

Chapter Two

This chapter considers the evidence provided as well as relevant published literature on the impact of current competence arrangements on the UK's national interest. It is divided into three main sections.

2.1 The Impact of EU Competence for Fisheries on Fisheries Management and the Economy in the UK

Respondents from across the sectors provided the view that the CFP had negatively impacted on the UK, both in terms of the conservation of its fish stocks but also economically. Evidence submitted showed declines in fish stock levels and, as a result, landings since the UK's accession to the EU and CFP. There was also evidence showing decreasing numbers of vessels and fishermen in line with the trends seen across the EU, though to what extent this reflects more effective fishing techniques and technology was not commented on. The social implications that were raised, included the fact that a loss of jobs at sea impacted both support industries on land and the coastal communities that depend on fisheries.

However other evidence submitted argued that the declining trend preceded UK accession to the EU and was a global phenomenon. Countries outside of the CFP had seen similar declines in vessel numbers.

2.2 How Well Does the Current Power to Act Work at International, EU and Member State Level?

In the main, respondents thought that supranational-level action, such as through the EU, was appropriate for fisheries given their shared and migratory nature. Benefits such as driving improvements in sustainability, a level playing field across shared fisheries preventing the actions of one Member State impacting many, access to the world's second largest seafood market and the collective negotiating power with third countries were all cited.

A large amount of evidence was submitted on the role of the EU in international negotiations and agreements and the associated advantages and disadvantages for the UK. Most respondents on this topic set out the economic benefits for the UK from agreements with countries such as Norway and the Faroe Islands. The literature suggested the UK could reap benefits in the region of £17m per annum from the Norway Agreement. Other agreements, while of less direct economic benefit to the UK, were considered by the environmental non-governmental organisations (NGOs) to have important social and developmental benefits.

The new regionalisation process elicited a significant number of positive responses, with respondents hopeful it would end micromanagement, decentralise decision making and allow more responsive fisheries management yet still offer the benefits of central EU coordination.

A limited number of respondents commented on shellfisheries, aquaculture and fisheries for species such as salmon and eels. Those responding provided a view on the impact of current areas of shared competence in fisheries. They supported shared competence as the appropriate means to manage common resources across the EU.

A small number of respondents supported a role for more Member State-level decision-making, where the impact on other States was limited, to give fishermen a greater sense of ownership in decision making. A few respondents suggested devolving more decisions could significantly improve fisheries management. This was most notable in discussions on the management of the inshore (0-12 nautical mile) area. Devolution of fisheries management in the UK was also discussed.

2.3 Does EU Decision Making Work?

The evidence examined outlined the challenges of operating within the EU framework. These included the slow pace of decision making with the involvement of 28 Member States and the European Parliament, and the difficulties of ensuring consistent interpretation and enforcement of EU legislation.

Chapter Three

This chapter considers the alternative models of competence for fisheries, with a small number of responses but across the range of sectors, advocating greater Member State competence to manage fisheries outside the CFP framework.

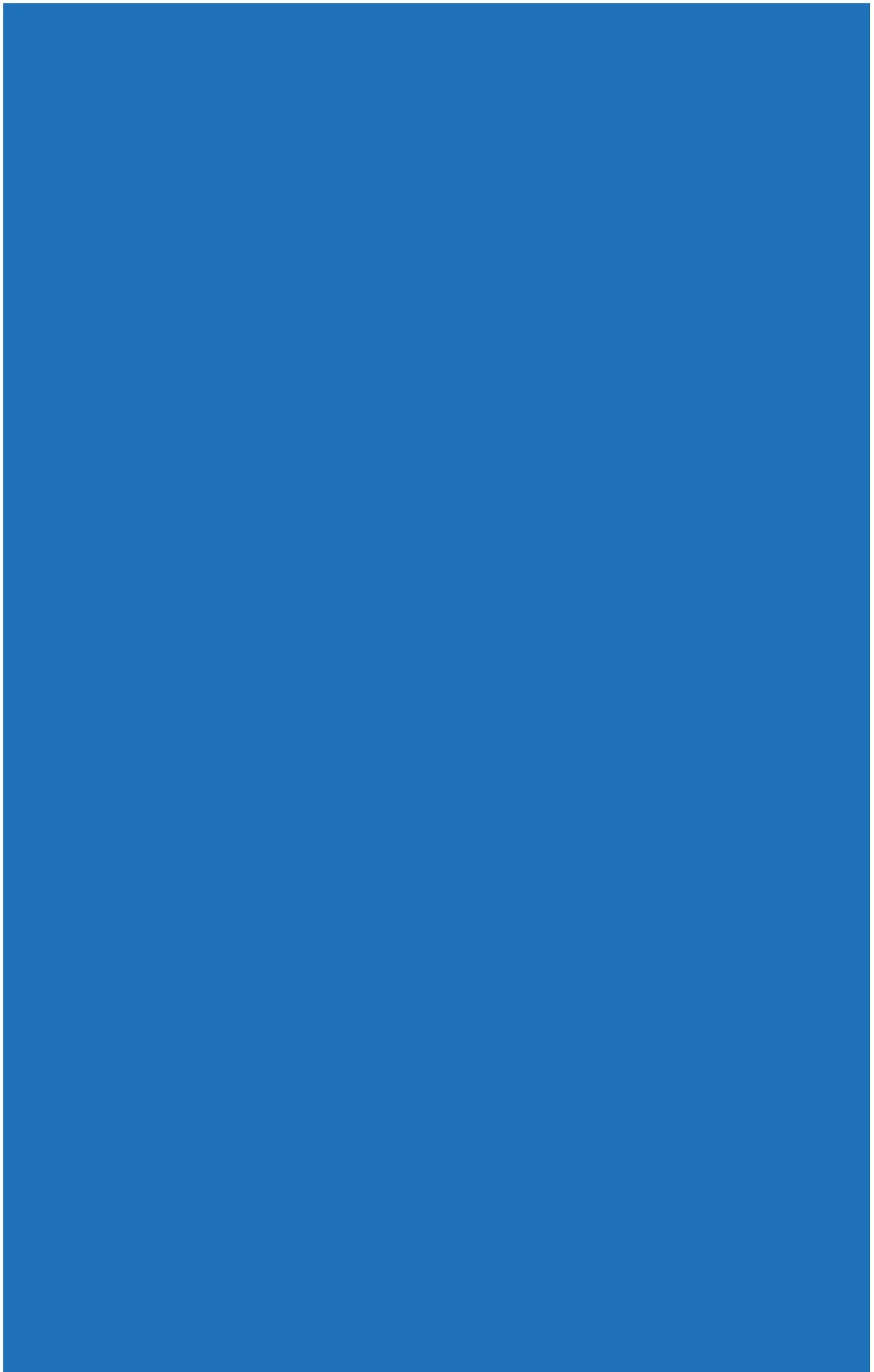
Possible benefits from greater access to the high quality fishing grounds surrounding the UK were suggested. Environmental NGOs and other experts in the field questioned how achievable these benefits would be given the shared nature of fisheries and the potential reduced strength of the UK's negotiating position.

Chapter Four

This focuses on the challenges and opportunities for the future highlighted in responses. These centred on the opportunities presented by the 2013 reform, particularly in relation to regionalisation and ending discards.

Respondents commented that the reform had gone a long way to address the CFP's failings and provided a constructive framework for future fisheries management. However, it was noted that the measures introduced are as yet unproven. While many respondents from a range of sectors were positive about the opportunities available, they emphasised the importance of implementing the policy effectively. Several responses saw use of the regionalisation process as key in making fisheries management decisions that met local and regional needs. Respondents hoped regionalisation would allow greater input from stakeholders with knowledge of the fishery and reduce micromanagement.

Respondents commented on the benefits of working toward sustainable fisheries and the potential for this to help meet the wider goals of the CFP, though the challenges of managing a dynamic marine environment in the context of climate change, when the legal framework is considered to be rigid, was also raised.



Introduction

Terms of Reference

This report is one of 32 reports being produced as part of the Balance of Competences Review. The Foreign Secretary launched the Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. It will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and to provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It has not been tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The Review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between 2012 and 2014.

Scope

This report on fisheries considers EU competence to the extent that it impacts on fisheries and their management. This includes the Common Fisheries Policy (CFP) and its related structural fund and common market provisions. Fisheries in this context include freshwater and migratory fisheries, aquaculture and any domestic management measures affecting fisheries, such as UK enforcement or quota allocation.

This is a complex area which covers a wide range of issues, most of which are interlinked and subject to EU competence. This report only considers these topics in relation to fisheries specific issues, while the wider issues are considered in the other reports as outlined below:

- The *Animal Health and Welfare and Food Safety* report, published in July 2013, examined the health and welfare of farmed animals, food safety, food labelling and food quality and compositional standards. This includes the impact of labelling requirements on businesses accessing the Single Market;
- The *Environment and Climate Change* report, published in February 2014, covered the impacts of environment legislation including those impacting on the marine environment. This report also considered other fisheries related issues such as the environmental impact on shipping;

- The *Single Market: Free Movement of Goods* report, published in February 2014, considered issues like product regulation and standards, and the Customs Union;
- The *Trade and Investment* report, published in February 2014, examined the impact of the EU's Common Commercial Policy, including EU free trade agreements which include trade in fish and seafood products between the EU and third countries;
- The *EU Budget* report, published at the same time as this report, considers areas of EU spending at the level of the Multi-Annual Financial Framework (MFF) Regulation;
- The *Development, Cooperation and Humanitarian Aid* report, published in July 2013, covered the broad issues relating to international development.

More information can be found on the review, including a complete list and timetable of semesters and reports to be published in the period up to the end of 2014, at www.gov.uk/review-of-the-balance-of-competences.

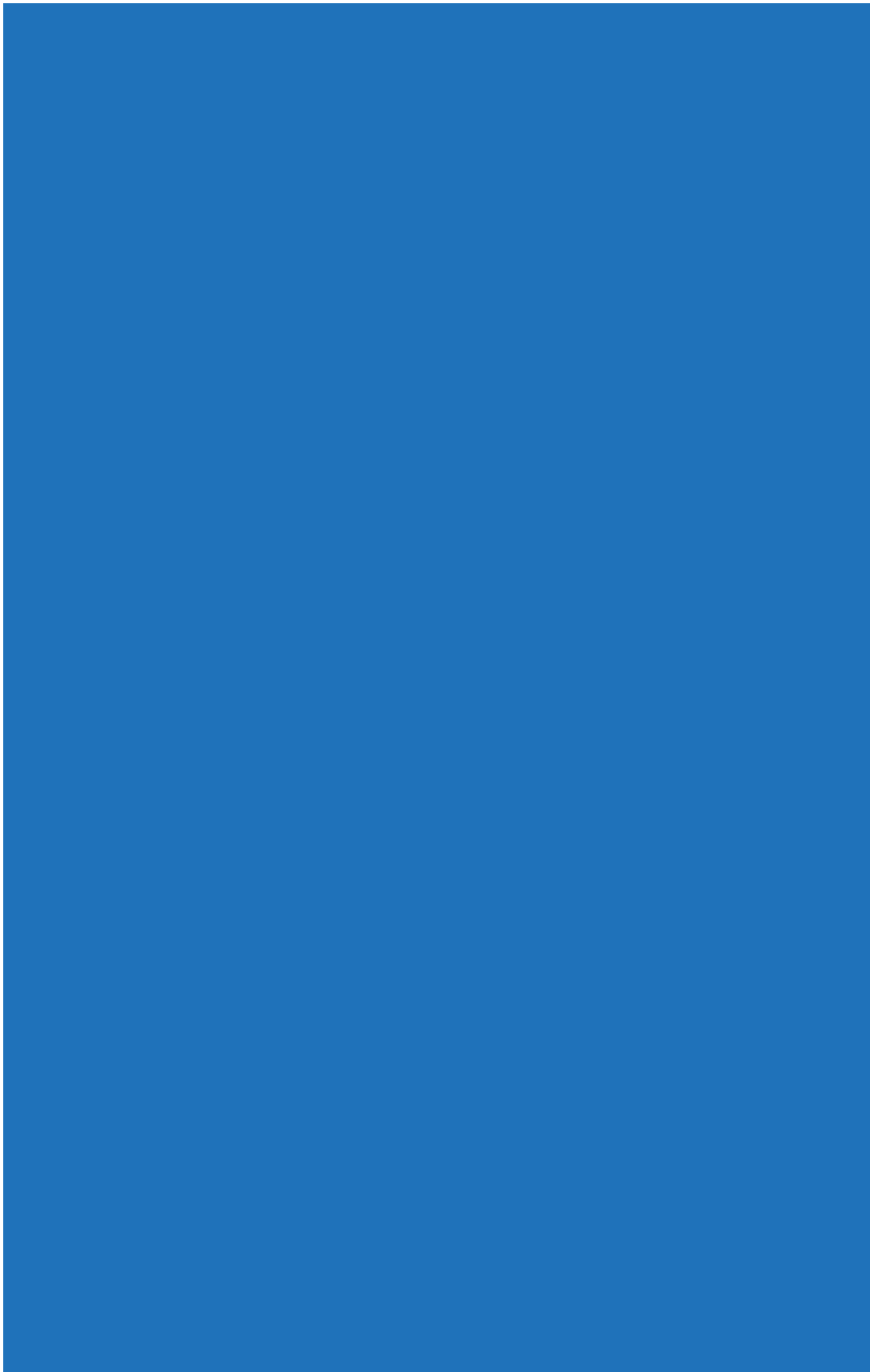
Engagement with Interested Parties

The analysis in this report is based on 51 submissions of evidence received in response to a Call for Evidence by Defra from October 2013 to January 2014. It draws on notes of workshops, further bilateral discussions and existing material, such as select committee reports and other publically available material. It also takes account of evidence submitted to Calls for Evidence from other published Balance of Competence Review reports where fisheries related issues were raised.

A programme of direct engagement was undertaken. The Call for Evidence was distributed widely in the UK and to other EU Member States and non-EU third countries. Organisations and individuals with an interest in fisheries and the marine environment were encouraged to respond. They consisted of trade bodies or groups representing other interested parties, such as civil society organisations and NGOs from throughout the UK. A significant number of individual businesses were invited to respond. Governments in Scotland, Wales and Northern Ireland, Members of the European Parliament (MEPs), parliamentary committees and government agencies were also invited to contribute.

Seven workshops were held, three in London, two in Scotland, one in Wales and one in Brussels, to collect evidence. Social media was used to raise awareness of the Call for Evidence with messages regularly put out via Twitter.

A list of those respondents who submitted evidence can be found in Annex A; details of those who participated in the various workshops in Annex B; a list of acronyms used in Annex C and a list of material from existing literature used to inform the report in Annex D.



Chapter 1: Development and Current State of Competence

This chapter examines the EU's current competence to make rules in relation to fisheries and trade in fisheries products and considers briefly how that competence has developed.

History of the CFP

- 1.1 The Treaty of Rome which established the European Economic Community (EEC) in 1958 did not contain a specific reference to the CFP, but its provisions governing agriculture, under which the Common Agricultural Policy (CAP) was developed, defined relevant 'agricultural products' as 'the products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products'.^{1 2 3}
- 1.2 As specific rules on fisheries were developed during the 1970s and early 1980s, a distinct CFP was put in place, separate from the CAP.
- 1.3 At the time of opening of negotiations in 1970 on the accession of the UK, Denmark, Ireland and Norway, (countries with significant fishing interests), the six founding Member States of the EEC adopted a series of pieces of legislation on fisheries.⁴ Among other things, these established the 'Equal Access Principle' under which each Member State has equal access to all other Member States' waters. As part of their accession agreements the candidate Member States, including the UK, negotiated a derogation for ten years from this principle for their existing six nautical mile fishing limits. The UK acceded to the EEC on 1 January 1973.

¹ The original Member States of the EEC were: Belgium; France; Italy; Luxembourg; the Netherlands; and West Germany.

² Articles 38-47 of the Treaty of Rome, now Articles 38-44 Treaty on the Functioning of the European Union (TFEU).

³ Article 38(1) of the Treaty of Rome.

⁴ In the event Norway did not join the EEC.

- 1.4 The first Common Organisation of the Market (CMO) in fishery products was also adopted in 1970.⁵ The main elements of the CMO are common marketing and product labelling standards, support for producer organisations and inter-branch organisations, and rules in relation to prices and interventions and trade with third countries.^{6 7 8 9}
- 1.5 In the 1970s, many coastal states throughout the world, prompted by the negotiation of the United Nations Convention on the Law of the Sea (UNCLOS), declared 200 nautical miles Exclusive Economic Zones (EEZ). Iceland's declaration of such a zone in 1975 was a central cause of the 'Third Cod War' provoked by clashes between UK and Icelandic vessels over fishing rights. In November 1976, the Council adopted a resolution agreeing that Member States should extend their fishing limits from 12 nautical miles to 200 nautical miles off their North Sea and North Atlantic coasts.
- 1.6 In 1983, the first CFP Regulation was adopted. This established measures governing where fishing was prohibited or restricted, the standard of fishing gear used, the minimum size of fish that could be landed and limits on the level of fishing. Limits on Total Allowable Catches (TACs), agreed each year by the Fisheries Council, which is composed of ministers from the Member States, set the level of fishing permitted for each species in different waters. The derogation from the equal access principle was rolled over for a further ten years in a zone which was extended to 12 nautical miles, except where Member States had historic access. This derogation has since been renewed a number of times, most recently until the end of 2022 as part of the reformed CFP agreed in 2013.
- 1.7 The total catch was divided among Member States based on a principle of 'Relative Stability'. This was introduced alongside TACs as an allocation key to share out fishing opportunities between Member States. It took account of historic catches, the loss of opportunities for some Member States as a result of the general extension of 200 nautical mile limits in 1976; and the need to protect particular regions where local populations were especially reliant on the fishing industry. This Relative Stability share has remained constant over time, meaning that, as the total level of fishing increases or decreases in any given year fishing, Member States always receive the same percentage share.¹⁰

⁵ Regulation 2142/70/EEC on the Common Organisation of the Market in Fishery Products, 1970. The most recent CMO is established by Regulation 1379/2013 on the Common Organisation of the Markets in Fishery and Aquaculture Products, which largely came into force on 1 January 2014.

⁶ Producer Organisations were set up to improve the organisation of the production and supply of fish, to stabilise prices and to encourage fishing methods which support sustainable fishing. In the UK, Producer Organisations play a significant role in the management of quota.

⁷ Member States may recognise inter-branch organisations made up of a mixture of producers and traders and/or processors of fisheries products. Certain activities of inter-branch organisation are exempt from general EU competition rules.

⁸ Producer Organisations can fix a withdrawal price below which they will not sell fisheries products supplied by their members. The Council, acting by qualified majority voting (QMV) on a proposal from the Commission, must also fix an annual guide price for certain fisheries products. Member States must grant financial compensation to Producer Organisations carrying out withdrawals.

⁹ The CMO makes provision for reference prices and safeguard measures in relation to trade in fisheries products with third countries.

¹⁰ This arrangement is only qualified by the existence of 'Hague Preference', established in 1976, under which some Member States can receive increased quotas for certain key stocks which support communities that are particularly dependent on fishing. The UK and Ireland have historically benefitted from this, ensuring minimum levels of critical fishing opportunities are maintained even when overall stocks are low.

- 1.8 In 1992, the original CFP Regulation was replaced by one which emphasised the conservation of fish stocks. To achieve this, the second CFP Regulation introduced requirements to license vessels and moved to a multi-year approach for setting TACs on some key stocks.¹¹
- 1.9 A third CFP Regulation was adopted in 2002 following a green paper from the European Commission which suggested that the previous policy had not been effective and that, while there had not been a crash in stocks as elsewhere in the world, EU stocks were not in a healthy state.^{12 13} In the revised CFP, further emphasis was placed on minimising the effect of fishing on stock levels. Additional regulations were also put in place relating to:
- Conservation of juvenile fish;
 - Limits on the time fishermen could spend at sea;
 - Effective enforcement;
 - Introduction of long term management plans for important stocks, most notably the Cod Recovery Plan;
 - Measures to tackle illegal, unreported and unregulated fishing; and
 - The establishment of seven Regional Advisory Councils (RACs) to provide a forum for stakeholders with an interest in the effective management of EU fisheries to input to the European Commission's policy development.
- 1.10 In order to support the fishing industry in its application of the CFP and CMO Regulations, the EU provides financial support through a relatively small structural fund known as the European Fisheries Fund (EFF). This was worth £108m (€138m) to the UK in 2007-13, out of a total EU budget of €4.3bn. This includes funding for initiatives that benefit fisheries and their management, and has to be matched by funding from Member State governments or the fishing industry. In order to access this European funding, Member States need to agree an operational programme with the European Commission, which sets out how the funding will be used.
- 1.11 Previous EU fisheries support has covered a wide range of measures, some of which have had a positive impact, such as payments for scientific evaluations of stocks, innovations in fishing gear (such as new types of net) and safety on board. Those which have been less successful are other measures such as payments to replace engines or paying fishermen to tie up their boats and not fish. The EU Court of Auditors in their report *Have EU Measures Contributed to Adapting the Capacity of the Fishing Fleets to Available Fishing Opportunities?* gave examples which showed that, in some cases subsidised investment for fishing vessels, contrary to their objectives, may in practice increase their ability to catch fish.¹⁴

¹¹ Regulation 3760/92/EEC Establishing a Community System for Fisheries and Aquaculture, 1992.

¹² Regulation 2371/2002/EC on the Conservation and Sustainable Exploitation of Fisheries Resources Under the Common Fisheries Policy, 2002.

¹³ European Commission, Green Paper, *The Future of the Common Fisheries Policy* (2001).

¹⁴ European Court of Auditors, *Have EU Measures Contributed to Adapting the Capacity of the Fishing Fleets to Available Fishing Opportunities?* (2011).

- 1.12 In 2013, an agreement was reached between the Council and the European Parliament on a new CFP Regulation which is intended to bring into effect fundamental changes.¹⁵ A new CMO Regulation was also agreed as part of the same package.¹⁶ These new Regulations came into force on 1 January 2014. Political Agreement between the EU institutions on a new European Maritime and Fisheries Fund (EMFF) to replace the current EFF has been reached. The new Regulation was published in May 2014.

Fisheries Terms Glossary

Landings	Fish caught and landed on shore. Prior to the 2013 reforms the controls on the amount of fish that could be sold into the market were based on the amount of fish that was landed.
Total Allowable Catch (TAC) also known as Quota	The limits on what can be caught and sold into the market. These are set each December at EU level, based on scientific advice on the fish populations by geographic area and then allocated to each Member State based on Relative Stability shares.
Equal Access Principle	This allows vessels registered in any Member State to access waters of other Member States and to fish, subject to criteria laid down under the CFP.
Discarding	The wasteful practice of returning fish that have been caught, and potentially are already dead, to the sea.
By-catch	An animal, bird or fish that is caught during the course of a vessel's fishing for another species.
Straddling stocks	Stocks that migrate or move through a number of countries' waters, requiring a joined up approach to maintain fish populations, for example mackerel.

Competence

- 1.13 Competence for fisheries was originally conferred by the Treaty of Rome which established the EEC in 1958, and to which the UK acceded in 1973. These powers have been preserved essentially unchanged in scope during the evolution of the EEC into the EU. However, since 2009 the role of the European Parliament has been greatly increased by the Treaty of Lisbon.

The EU Treaties

EU competence is set out in the EU Treaties, which have been revised several times since the 1957. The Treaty of Rome established the EEC in 1958. Following the Treaty of Lisbon, which came into force in 2009, the current Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) prescribe the structures of the EU institutions and when the EU and Member States can take action.

¹⁵ Regulation 1380/2013/EU of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, 2013.

¹⁶ Regulation 1379/2013/EU of the European Parliament and of the Council of 11 December 2013 on the Common Organisation of the Markets in Fishery and Aquaculture Products, 2013.

- 1.14 The EU Treaties provide that the EU must act within the limits of competence conferred on it by the Member States. They set out the categories of exclusive, shared and supporting competences into which EU policies and actions fall.
- 1.15 In the areas where it has competence, the EU can only act as permitted by the specific powers conferred on it by the EU Treaties. In the case of fisheries, the EU's powers are currently set out in Articles 38 to 44 TFEU, which do not differ significantly in scope from their original versions in the Treaty of Rome. These Articles, which also apply to agriculture and agricultural products more generally, now provide that the EU must implement a CFP which extends the Single Market to fisheries and trade in fisheries products, subject to special rules which do not apply to other non-agricultural products.¹⁷
- 1.16 The EU's policy on fisheries must also take into account the over-arching principles expressed in the EU Treaties in relation to the protection of the environment and sustainable development and respect for animal welfare.¹⁸ EU environmental legislation such as the Habitats Directive may also impose requirements on action by Member States in relation to marine or freshwater fisheries issues.¹⁹
- 1.17 Following the Treaty of Lisbon, much of the EU's power to make laws in relation to fisheries is now subject to the Ordinary Legislative Procedure (OLP), which requires legislation to be agreed by both the Council and the European Parliament.²⁰ Previously, the European Parliament only had a right to be consulted on proposals for new legislation. However, the European Parliament still does not have a role in the making of measures fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities; this remains the prerogative of the Council.²¹ The Council reaches its decisions by Qualified Majority Voting (QMV) where a specified majority of votes is required and the share of votes of each Member State reflects its population size.

Exclusive Competence

- 1.18 The scope of the CFP includes the conservation of 'marine biological resources'. This falls within exclusive EU competence.²² This means that only the EU can legislate in this area and Member States can only act to the extent that the rules adopted by the EU authorise them to.²³
- 1.19 The meaning of 'conservation of marine biological resources' is not defined in the EU Treaties, and there is therefore room for debate about which species it covers. Article 38 TFEU gives some indication of what this term must mean by providing for an internal market in fisheries products. The products listed include fish, crustaceans and molluscs, the fats and oil of fish and marine mammals and preparations of meat, fish, crustaceans and molluscs.

¹⁷ These special rules are brought into force by the CMO.

¹⁸ Articles 11 and 13 TFEU.

¹⁹ Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora, 1992

²⁰ Article 43(2) TFEU.

²¹ Article 43(3) TFEU.

²² Article 3(1)(d) TFEU.

²³ Article 2(1) TFEU.

- 1.20 The new CFP Regulation defines marine biological resources as ‘available and accessible living marine aquatic species, including anadromous and catadromous species during their marine life’ (Article 4(2)).²⁴ The species this applies to include fish, including sharks, and creatures such as octopuses, crustaceans and molluscs. However, cetaceans, including dolphins and whales, are currently only covered by the CFP as by-catch. Otherwise, EU legislation on cetaceans has to date only relied on the EU’s environmental powers.
- 1.21 The EU has exclusive competence to enter into international agreements with third countries, that is non-EU countries, in some circumstances, including in relation to the fisheries matters covered by the CFP.²⁵ For these agreements the European Commission negotiates with third countries on behalf of the EU on access to EU waters by non-EU vessels and on access to non-EU fishing grounds by EU vessels.²⁶
- 1.22 The EU also has exclusive competence in relation to agreements with third countries concerning international trade in fisheries products.²⁷ Such trade is subject to the relevant rules of the World Trade Organisation (WTO).

The Role of the European Court of Justice (ECJ)

Decisions of the ECJ have played an important part in establishing the extent of the EU’s powers in relation to fisheries. In the 1976 case of *Kramer* (Joined Cases 3, 4 and 6/76), the ECJ established the EEC’s authority to enter into international agreements relating to the conservation of the biological resources of the sea, while in 1981 in *European Commission v UK*, the ECJ ruled that the EEC had exclusive competence to adopt fisheries conservation measures in Member States’ waters (Case 804/79).^{27 28}

- 1.23 The EU has concluded bilateral Treaties with several North Atlantic States (Norway, Iceland and Russia) and territories (the Faroe Islands and Greenland) as well as numerous Fisheries Partnership Agreements (FPAs) with developing States. The EU has also become a party to most of the Regional Fisheries Management Organisations (RFMOs) which regulate fishing on the high seas.³⁰
- 1.24 This means that the EU is responsible for representing Member States’ interests in negotiations with third countries on international agreements concerning fisheries and at RFMOs. In these negotiations, procedures are put in place to develop an EU position which represents a compromise between Member States’ priorities. EU legislation is then adopted to implement into EU law the contents of the agreements reached.³¹

²⁴ Anadromous species migrate from salt water to spawn in fresh water and catadromous species migrate from fresh water to spawn in the sea.

²⁵ Article 3(2) TFEU.

²⁶ Regulation 1026/2012 (made under Articles 43(2) and 207 TFEU) provides for the EU to impose certain sanctions in relation to countries allowing non-sustainable fishing. This power was exercised in 2013 in respect of the Faroe Islands (Regulation 793/2013) and the Atlanto-Scandian herring (ASH) stocks.

²⁷ Article 3(1)(e) TFEU.

²⁸ *Cornelis, Kramer and Others*, Joined Cases 3, 4 and 6-76, [1976].

²⁹ *European Commission v. the UK*, Case C-804/79, [1981].

³⁰ Examples of RFMOs are: the North East Atlantic Fisheries Commission (NEAFC) and the International Commission for the Conservation of Atlantic Tunas (ICCAT).

³¹ The EU Treaties lay down detailed procedures governing the negotiation and adoption of international agreements by the EU which establish the respective roles of the Commission, the European Parliament and the Council (Article 207(3) and 218 TFEU).

- 1.25 United Nations Convention on the Law of the Sea is the main international agreement governing the world's oceans and seas. It gives legal recognition to the right of a coastal State to jurisdiction over its EEZ. The coastal State has the right to exploit, develop, manage and conserve all the resources (such as fish, oil and gas and minerals) which are found in the waters of the EEZ, and on the ocean floor and in the subsoil of their continental shelves. The Convention also establishes the International Tribunal of the Sea as a forum for resolution of maritime disputes between States. The EU and all its Member States are Parties to UNCLOS. In matters relating to the conservation of marine biological resources, where the EU has exclusive competence, the EU exercises the voting rights on behalf of the Member States.

Sustainable FPAs

Following the 2013 reforms, the principles behind the EU's FPAs with third countries have changed. In future, sustainable FPAs will require the same principles of sustainability as applied outside EU waters as within, with transparency in assessments of agreements, improvement in scientific data, and ensuring only genuine surplus is fished under partnership agreements. In this way the agreements should contribute more to the economies of developing countries. The reform also placed greater emphasis on effective engagement with global fisheries management organisations.

Shared Competence

- 1.26 All marine fisheries issues which do not relate to the conservation of marine biological resources are matters of shared competence between the Member States and the EU.³² This means that both the EU and the Member States can legislate on these issues, which include aquaculture and freshwater fisheries. However, where the EU has adopted rules the Member States can generally only act in accordance with those rules.³³
- 1.27 EU policies on aquaculture and management of freshwater fisheries, including freshwater stages of the lifecycle of fish that spend part of their lives at sea, are subject to shared competence because they do not relate to the conservation of marine biological resources. EU requirements affect these fisheries in relation to marine and freshwater environmental legislation or the Single Market in fisheries products.
- 1.28 In relation to freshwater fisheries, EU action has focussed on particular species such as Atlantic salmon. The EU has also introduced legislation aimed at addressing the decline in European eel levels since the 1980s; this requires Member States to produce Eel Management Plans.³⁴
- 1.29 Limited EU measures have been introduced on aquaculture through the recent CFP reform, such as multi-annual national plans to encourage a more strategic approach for this sector across the EU. Specific EU legislation has been introduced for aquaculture on the basis of related issues such as animal health, welfare and food safety which are being considered in detail in other reviews.³⁵

³² Article 4(2)(d) TFEU.

³³ Article 2(2) TFEU.

³⁴ Council Regulation 1100/2007/EC Establishing Measures for the Recovery of the Stock of European Eel, 2007.

³⁵ Directive 2006/88/EC on Animal Health Requirements for Aquaculture Animals and Products Thereof, and on the Prevention and Control of Certain Diseases in Aquatic Animals, 2006. This sets out animal health requirements in respect of placing aquaculture animals on the market, importing them and moving them. It also sets out minimum control measures to be applied to prevent disease and in the event of disease outbreak. This Directive applies to virtually all aquaculture animals which are in inland waters or fisheries, not just to freshwater fish.

Member State Powers and Responsibilities

- 1.30 Under EU law, Member States retain the ability to adopt laws in their own territories in relation to a limited number of fisheries matters which do not fall within the ambit of the EU legislation, or in relation to matters where the EU legislation authorises Member States to act.
- 1.31 The UK, along with other Member States, has some powers to implement its own fisheries management measures; in some cases to choose how it delivers against CFP objectives, or to put in place measures that are not provided for in the CFP framework.
- 1.32 Under the terms of the UK's accession to the EEC, only some elements of EU fisheries rules apply to the Isle of Man and the Bailiwicks of Guernsey and Jersey (the Crown Dependencies), as described in the text box below. The CFP also does not apply to the waters of Gibraltar or the UK's Overseas Countries and Territories.^{36 37}

Crown Dependencies

The Crown Dependencies are not members of the EU, but certain aspects of EU law relating, in particular, to trade in goods and the Customs Union apply to the Crown Dependencies, as set out in Protocol 3 to the UK's Treaty of Accession. The more detailed rules setting out conditions with respect to trade in agricultural products, including fisheries products, are set out in Regulation 706/73. Crown Dependency vessels are British flagged and are treated as EU vessels when they land fish in an EU Member State (but only for that purpose).

EU fisheries conservation measures do not apply directly to the Crown Dependencies under Protocol 3. However, under the Fisheries Management Agreements (FMAs) that each has with the UK, each Crown Dependency has agreed to comply with the UK's EU obligations under the CFP for its extended territorial sea. Under the terms of the FMAs, fish stocks to which the EU's TAC rules apply, which are caught by any fishing vessel registered in the relevant Crown Dependency count against quota allocated to the UK under the CFP. The Crown Dependencies do not pay into or receive money from the EU, or UK, budget, including the EFF (to be replaced in 2014, by the EMFF).

- 1.33 Under the CFP, Member States may introduce measures to help manage fisheries provided that minimum EU conditions are met. This allows the UK to apply technical measures to its own vessels, regardless of where they are fishing. For example, the Scallop Fishing (England) Order 2012 restricts the fishing gear for scallops that can be used in English waters.³⁸ Such measures can also be agreed after consultation with other Member States that have historic access within the 6-12 nautical mile zone and are liable to be affected, subject to assessment by the European Commission that the measures are 'non-discriminatory'. The UK cannot otherwise require vessels from other Member States to comply with any technical measures it applies to UK vessels.

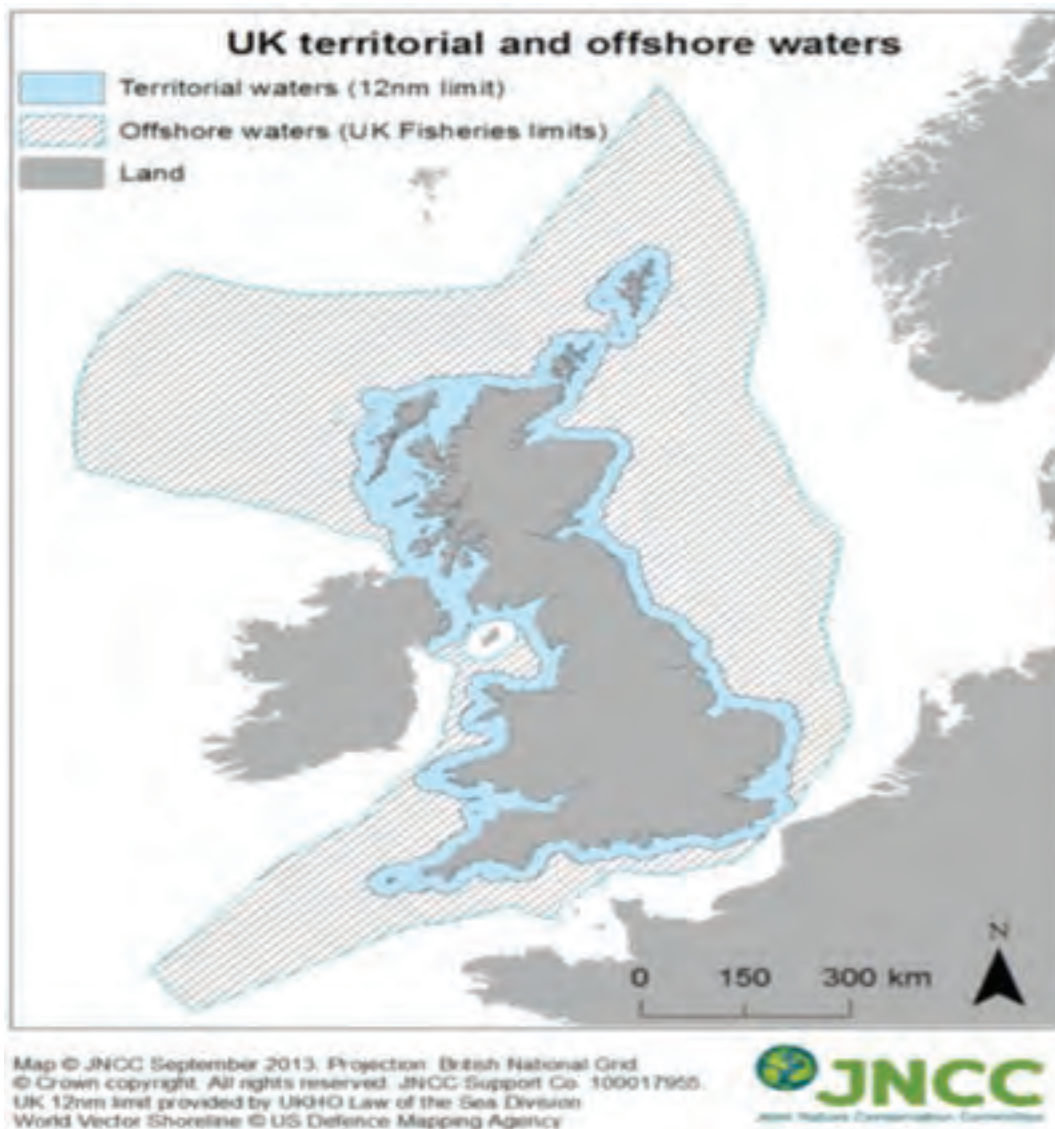
³⁶ The UK's Act of Accession provides that the CFP does not apply to Gibraltar, although under Article 355(3) TFEU the Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible.

³⁷ Article 4(1) of Regulation 1380/2013 on the Common Fisheries Policy, 2013, defines 'Union waters' as the waters under the sovereignty or jurisdiction of the Member States, with the exception of the waters adjacent to the territories listed in Annex II to the Treaty; the territories listed in that Annex include the UK's Overseas Countries and Territories.

³⁸ Scallop Fishing (England) Order 2283, 2012.

- 1.34 In the 0-6 nautical mile zone around the English coast, Inshore Fisheries and Conservation Authorities (IFCAs) can put in place bylaws to address local conservation issues, providing greater protection than provided at EU level. The Devolved Administrations have differing arrangements for providing this function primarily through management by the Administrations themselves. Figure One and Table One illustrate the different zones of the waters around the UK and the access and competence arrangements within them.

Figure One: Zones of the Waters around the UK



Source of data: British National Grid world vector shoreline/US Defence Mapping Agency

Table One: Access and Competence Arrangements in the Zones of the Waters around the UK

	0-6 nautical miles	6-12 nautical miles	12-200 nautical miles
	Inshore zone		
Access	<ul style="list-style-type: none"> • UK vessels only. 	<ul style="list-style-type: none"> • UK vessels. • Vessels from Member States with historic access. 	<ul style="list-style-type: none"> • Free access principle for all Member States. • Agreed access for third countries such as Norway.
Who has powers to enact measures	<ul style="list-style-type: none"> • UK Fisheries Administrations and, in England, IFCA's. 	<ul style="list-style-type: none"> • Member States through a rolling derogation under the CFP. Subject to criteria. 	<ul style="list-style-type: none"> • EU.

1.35 The level of catch is fixed at the EU level each year for fish stocks subject to quota, but the mechanisms for allocation and management of quotas are decided by individual Member States. Each year the UK publishes quota management rules which are agreed by the four UK national administrations in England, Scotland, Wales and Northern Ireland, which also publish their own rules. The UK is able to determine what measures it takes to manage the size of its fishing fleet and also how it distributes fishing quotas across the different fleet segments. The UK Government can also enter into swaps with other Member States to obtain additional fishing quota.

Factortame³⁸

In 1988, the UK Parliament passed the Merchant Shipping Act 1988 to impose nationality requirements on vessels seeking to benefit from the quota limits granted to the UK under the CFP. This was intended to prevent fishermen from other Member State from so benefiting by setting up UK companies to buy fishing vessels ('quota-hopping'). A series of legal challenges were brought by fishermen unable to satisfy those requirements, including by Factortame Ltd.

In *Factortame I*, the ECJ upheld the principle of the supremacy of EU law and ordered the UK to suspend the application of the nationality requirements laid down in the relevant sections of the 1988 Act. The Court's judgment confirmed its view that, as a matter of EU law, where there is a conflict between EU law and UK law, including an Act of Parliament, then EU law prevails.

The implications of the *Factortame* cases have been the subject of continuing consideration in national courts including in cases such as *Thoburn v Sunderland City Council*, known as the 'Metric Martyrs' case.³⁹ In that case attempts were made, but rejected, to run the proposition that the legislative and judicial institutions of the EU may set limits to the power of Parliament to make laws which regulate the legal relationship between the EU and the UK. Although EU Treaties and judgments of the EU Courts provide that certain provisions of the Treaties, legal instruments made under them, and judgments of the EU Courts have direct application or effect in the domestic law of all of the Member States, such EU law is enforceable in the UK only because domestic legislation, and in particular the European Communities Act 1972, makes express provision for this. In his judgement, Lord Justice Laws said 'there is nothing in the European Communities Act 1972 which allows the ECJ, or any other institutions of the EU, to touch or qualify the conditions of Parliament's legislative supremacy in the UK'.⁴⁰

³⁹ *R (Factortame Ltd) v Secretary of State for Transport*, Case C-213/89, [1992].

⁴⁰ *Thoburn v Sunderland*, Case EWHC 195, [2002].

⁴¹ Paragraph 59 [2002] EWHC 195 Admin.

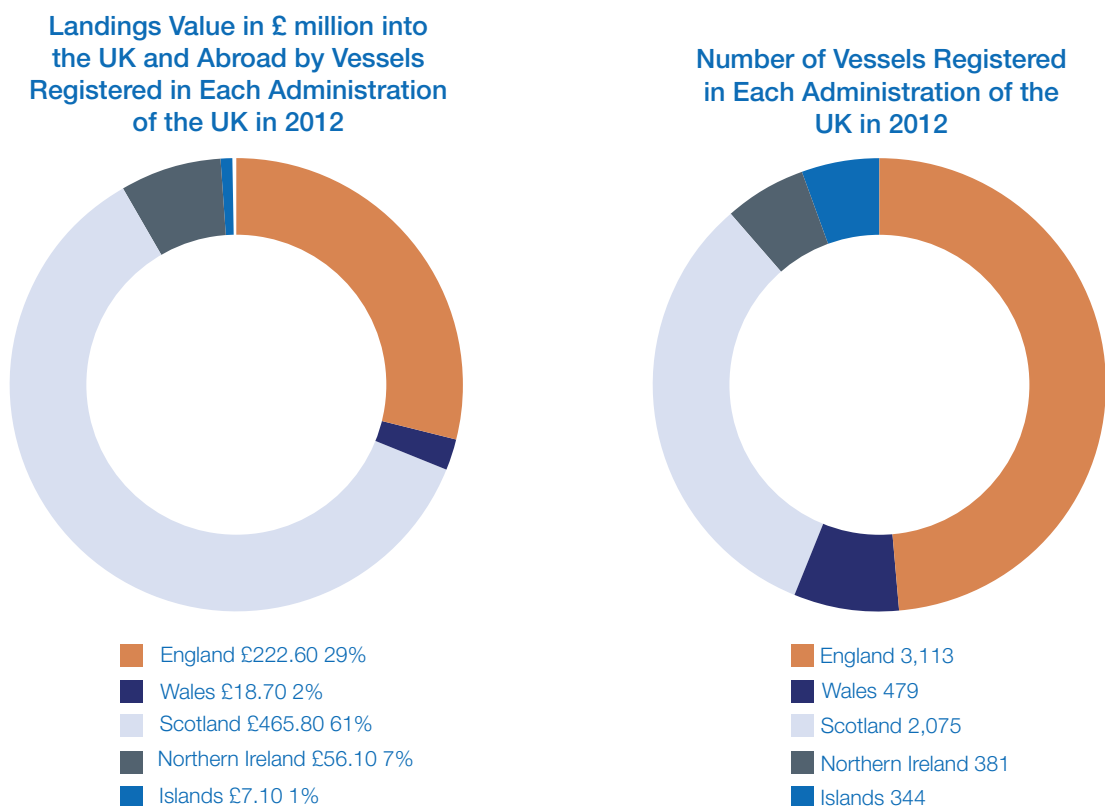
Section 18 of the European Union Act 2011 confirms that directly applicable or directly effective EU law falls to be recognised and available in law in the UK only by virtue of the European Communities Act 1972 or where it is required to be recognised and available in law by virtue of any other Act of Parliament. The words ‘by virtue of any other Act’ cover other Acts of Parliament; UK subordinate legislation made under Acts; and Acts and measures of the devolved legislatures in exercise of the powers conferred on them by the relevant UK primary legislation.

- 1.36 Decisions on allocation of funding under the EU structural funds are taken at Member State level, subject to the criteria of the funds themselves. This includes decisions on which priorities attract funding, and on co-financing, where government (or industry) contribute to match EU funds. EU State aid rules do not apply to payments made under and which comply with, an individual structural fund, such as EMFF, rules.⁴²

Devolved Administrations

- 1.37 The Government in Westminster retains responsibility for acting as the Member State on behalf of the UK in the EU, reflecting the needs of all parts of the UK in negotiations. Devolved Administrations have a significant interest in fisheries and therefore an important role in developing the UK position for EU negotiations so as to represent the interests of the UK as a whole in fisheries policy. Figures Two and Three show the importance of the fishing industry to the Devolved Administrations of the UK.

Figures Two and Three: Value of Landings and the Distribution of Vessels by Administration in the UK



Islands include Guernsey, Jersey and the Isle of Man

Source of data: Marine Management Organisation, *UK Sea Fisheries Statistics 2012* (2013).

⁴² Outside of the structural funds, the UK is, however, allowed to grant aid of up to €30,000 over a three-year period to any beneficiary in the fisheries sector using national/exchequer funding under the *de minimis* clause in the EU State aid rules. Please see Articles 107-109 TFEU.

- 1.38 Scotland also has an interest in aquaculture as currently the largest producer of farmed Atlantic salmon in the EU and third largest globally. In 2011, Scotland produced fish with an estimated value of £584.7m.⁴³
- 1.39 While the Westminster Government represents the UK in EU negotiations, fisheries management itself is a devolved matter. Each Devolved Administration has control over the management of their own commercial fishing fleets, within a UK wide system. This arrangement is detailed in a Concordat between the UK administrations.⁴⁴
- 1.40 The four UK fisheries administrations issue licences to fish commercially. These control UK fishing opportunities, through limits on quota and on the days vessels can spend fishing (effort limits), with licensing conditions used to ensure sustainable fishing practices. Each fisheries administration can impose its own licence conditions. Through the licensing regimes the UK fisheries administrations also manage species that are not subject to quota or effort restrictions, including commercially important stocks in the UK such as bass.
- 1.41 Enforcement of the CFP is a Member State competence. The UK fisheries administrations make their own operational decisions on enforcement, choosing methodologies and prioritising resources as they consider appropriate. This flexibility has allowed the UK to trial new technologies, such as CCTV monitoring, and has allowed Devolved Administrations to target their efforts in different ways that reflect the UK's diverse fisheries. Penalties for non-compliance are also decided upon at Member State level. European Commission inspectors monitor the enforcement activities of Member States but have no police or enforcement powers and cannot carry out an inspection without assistance from Member State inspectors if the party to be inspected objects.

Recent Reforms

- 1.42 As the history of the CFP section explains the policy began as market measures under the CAP managing the market for fish and fish products along with providing access to the Single Market. Over the years its objectives have evolved to cover fisheries management and links to other EU policies.
- 1.43 Successive UK Governments have called for fundamental reform of the CFP. The current Government considered the CFP a 'broken' policy ahead of the recent reforms and this view was shared more widely by the fishing industry, environmental interest groups and the European Parliament. The European Commission also recognised the CFP's failures in their green paper to initiate the reform process. This highlighted overfishing, fleet overcapacity, heavy subsidies, low economic resilience and decline in the volume of fish caught by European fishermen as issues to be addressed through the reforms.⁴⁵ To the general public, the spectacle of fish being thrown overboard dead or dying was a totemic sign of the CFP's failure to manage fisheries sustainably, and the failure of the EU political process to agree credible rules.⁴⁶

⁴³ Scientific, Technical and Economic Committee for Fisheries (STECF), *Summary of the 2013 Economic Performance Report on the EU Aquaculture Sector* (2013).

⁴⁴ Department for Environment, Food and Rural Affairs, *A Subject Specific Concordat between The Department for Environment, Food and Rural Affairs, Marine Scotland, The Welsh Government and The Department of Agriculture and Rural Development (Northern Ireland) ("the Administrations") On Management Arrangements for Fishing Opportunities and Fishing Vessel Licensing In the United Kingdom* (2012).

⁴⁵ European Commission, Green Paper, *Reform of the Common Fisheries Policy* (2009).

⁴⁶ 870,000 individuals responded to Fishfight's e-petition on discards. Fishfight, 'The Fishfight Story' (2014). Available at: www.fishfight.net/story.html, accessed on 12 March 2014.

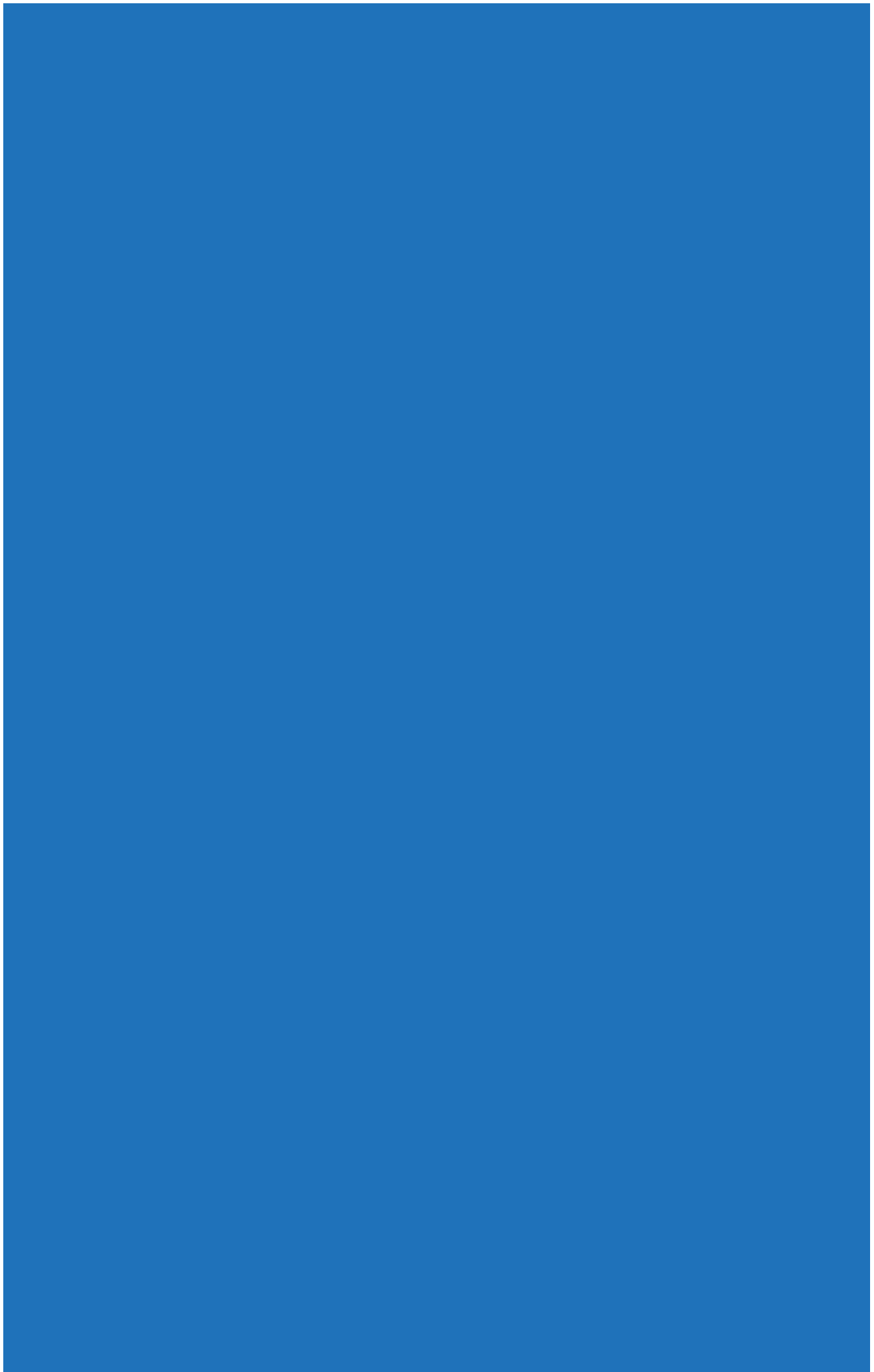
- 1.44 Over the years, a very complex set of requirements had developed, aimed at controlling fishing in the EU, and trying to keep pace with technological changes and fishing behaviour. Basic rules on quota levels for each sector of the fishing industry had proliferated into a cumbersome body of technical regulations, with this micromanagement at EU level often considered a key failing of the CFP and a barrier to sustainable fisheries. Maria Damanaki, EU Fisheries Commissioner, in a recent speech said ‘when I took office, I found a policy that was cumbersome and outdated. A policy that tried to prescribe everything top down, starting from the mesh size Mr. Smith needs to use when he fishes for Dover sole off the coast of Cornwall’.⁴⁷
- 1.45 The new CFP is intended to address the failings of the past. As a result of intensive negotiations, in which the UK played a lead role, a package of reforms has been agreed that the Government believes can start to put the CFP on the right track. These include:
- A greater emphasis on fishing sustainably for the long term, with legally binding commitments to set fishing rates at sustainable levels;
 - A ban on discarding of fish, progressively implemented from 2015 (pelagic fisheries in 2015, other fisheries from 2016), with practical measures to implement this and support behaviour change;
 - A new form of regional governance, with decision making by Member States that share fisheries at a sea basin level, and a new process to enact these decisions in EU or national law;
 - Agreement on a central set of principles for operating outside EU waters, applying the same principles of sustainability outside EU waters as within; and
 - A greater integration of fisheries obligations with existing obligations under environmental legislation.
- 1.46 The new form of regional governance provides a process for Member States to come together to identify measures that are appropriate and effective for the fisheries they share. EU competence for fisheries however remains unchanged.
- 1.47 Under the revised CMO, provisions were agreed that phase out intervention measures, apart from Storage Aid, by 2019, and bring mandatory labelling requirements more in line with other EU labelling legislation. A political agreement has been reached between the institutions on the EMFF, which will replace the existing structural fund. This has focused on ensuring that the structural fund supports the objectives of the reformed CFP, particularly on fishing sustainability and ending discards.

⁴⁷ M Damanaki, *Reform in Europe is Possible! The Lesson of EU Fisheries: Speech Presented at Pan-European Conference for EU Reform* (2014).

1.48 Deputy Prime Minister Nick Clegg, has said of the reforms ‘for years people said the Common Fisheries Policy was beyond reform. In Britain we have seen our fish stocks depleted and profits diminished, while our fishermen have been tied up in bureaucratic knots. Yet in June we led the way on a historic agreement that will transform fishing practices across Europe, and end micro-management from Brussels, massively benefiting our fishing industry and our marine environment too.’⁴⁸ Minister for Europe, David Lidington, has also said of the reforms ‘this negotiation has shown how the UK can work successfully with European partners to deliver significant reforms that benefit our country’.⁴⁹

⁴⁸ Nick Clegg, *Britain in Europe: Speech Presented at Buhler Group* (2013).

⁴⁹ Foreign and Commonwealth Office, ‘UK Secures Improvements to EU Fishing Policy’ (2012). Available at: blogs.fco.gov.uk/davidlidington/2012/06/20/uk-secures-improvements-to-eu-fishing-policy/, accessed on 3 April 2014.



Chapter 2: Impact on the National Interest – Summary of Responses

This chapter draws from the evidence submitted, as well as already published and documented material on the impact of competence for fisheries management. We do not seek to comment on the evidence as stated but simply present it to demonstrate how EU action on fisheries management impacts the UK.

This chapter summarises views on:

- The impact EU competence for fisheries has on fisheries management and the economy in the UK (section 2.1);
- The most appropriate level to make decisions and take action on different aspects of fisheries management (section 2.2); and
- The way that EU policy is made and how the EU institutions function (section 2.3).

2.1 The Impact of EU Competence for Fisheries on Fisheries Management and the Economy in the UK

- 2.1 There was acceptance amongst most respondents that the CFP had failed to deliver its objectives to protect fish stocks and provide an economically sustainable basis for the industry.¹
- 2.2 Discarding, the throwing back of fish into the sea, and its impact on the conservation of stocks has been an issue of concern to interested parties across the EU and was raised by some respondents as an example of the failure of the CFP.² Maria Damanaki, EU Commissioner for Fisheries and Maritime Affairs, when speaking in the UK, claimed recently that British fishermen had discarded more than £1bn worth of cod in the past 50 years.³
- 2.3 The Angling Trust argued that the UK's inability under EU law to apply technical measures for the conservation of stocks, to non-UK vessels in its waters, worked against the national interest.

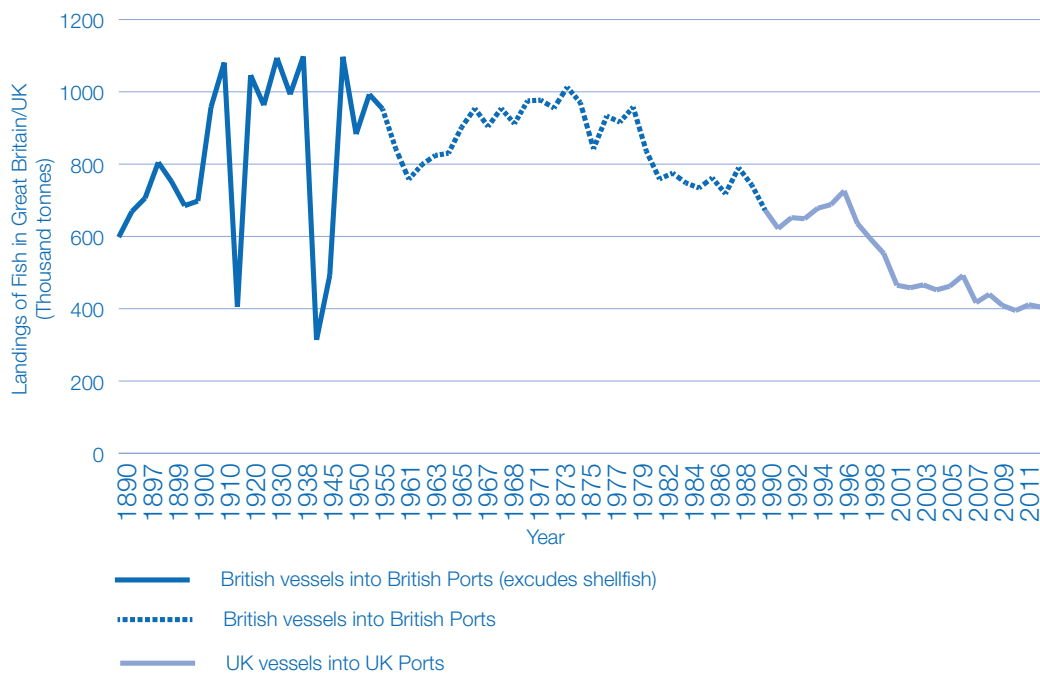
¹ Examples include: Angling Trust; Chris Leftwich of the Fishmongers' Company; European Movement, Fishermen's Association Limited; Food and Drink Federation; Marinet; Paul Worham; Scottish Government; Scottish Seafood Association; and WWF, *submissions of evidence*.

² Examples include: Chris Davies MEP on behalf of Liberal Democrat MEPs and David Campbell Bannerman MEP, *submissions of evidence*.

³ M. Damanaki, *Reform in Europe is Possible!*

2.4 Some fishing industry respondents and some environmental NGOs highlighted the negative impacts of the CFP giving rise to declining stock levels and associated decline in landings.⁴ Figure Four shows the landings of fish in Great Britain since 1890. The New Under Ten Fishermen's Association (NUTFA), Marinet, an environmental organisation, and the Scottish Seafood Association noted the decline in landings and considered it to be a failing of the CFP. However, others, for example MEP Chris Davies on behalf of Liberal Democrat MEPs and individual respondent Michael Heylin, considered the decline to be part of a wider trend and not wholly the result of the UK's accession to the EU and the CFP. The Taxpayers' Alliance, an NGO, in its report *The Price of Fish: Costing the Common Fisheries Policy* argued that while there had been a global decline in fish stocks because of overfishing, the CFP was a 'massive contributor to the regional decline'.⁵

Figure Four: Landings of Fish in Great Britain/UK, 1890-2011 (thousand tonnes)



Source of data: House of Commons Library, *Sea Fisheries Statistics* (2013) and Marine Management Organisation, *UK Sea Fisheries Statistics*, various years from 1890-2011.

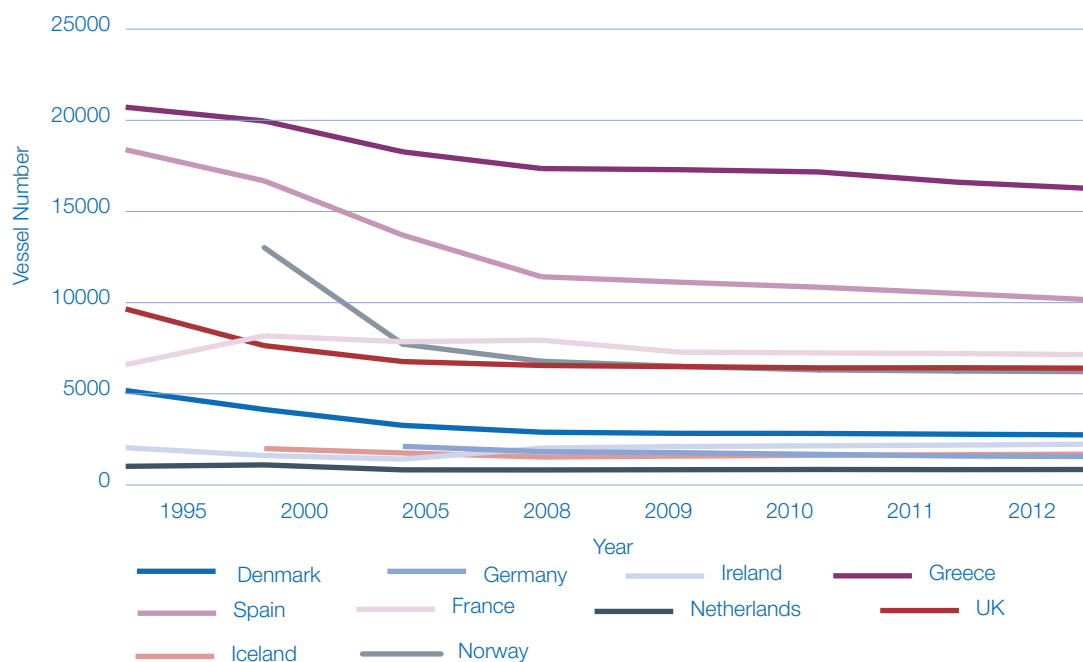
2.5 It was noted by the Fishermen's Association Limited (FAL) and individual respondent Carole Coppard who gave evidence to the Agriculture Report, that under the CFP the UK fishing industry had reduced in size in terms of both fishermen and vessels.⁶ Statistics from the Marine Management Organisation (MMO) showed the number of vessels had reduced from 10,295 in 1994 to 6,406 in 2012, with a reduction in fishermen from 20,751 to 12,450 in the same period.⁷ A similar trend in fleet reduction had been seen in other European countries, both in and out of the CFP; Figure Five illustrates this.

⁴ Examples include: Angling Trust; Chris Leftwich of Fishmongers Company; Paul Worham; and Scottish Seafood Association, *submissions of evidence*.

⁵ TaxPayers' Alliance, *The Price of Fish: Costing the Common Fisheries Policy* (2009).

⁶ HMG, *The Balance of Competences between the UK and the EU: Agriculture Report* (2014).

⁷ Marine Management Organisation, *UK Sea Fisheries Statistics 2012* (2013). Ministry of Agriculture Fisheries and Food, *UK Sea Fisheries Statistics 1994* (1994).

Figure Five: Vessel Numbers over Time in Different European Fishing Fleets

From 1997 the French data includes vessels in the French Overseas Departments

Source of data: Table 7.51 of Eurostat of the European Commission, *Agriculture and Fisheries Statistics, Main results 2009-10* (2011) and Table 8.1 of Eurostat of the European Commission, *Agriculture, Forestry and Fisheries Statistics* (2013).

- 2.6 NUTFA and the Scottish Seafood Association linked the decline in landings to the decline of small coastal communities as a result of the increased unemployment in the sector. FAL named a number of declining coastal communities in Scotland, including Buckie, Lossiemouth, Oban and Ayr, as illustrative of the damage caused by the CFP. *The Price of Fish* report found that of the top ten key ports of the 1970s only two continued to make the top ten list over 30 years later.⁸
- 2.7 The 'Equal Access Principle' was raised numerous times with many asserting that it disadvantaged the UK.⁹ Reasons for this varied with the North Western Inshore Fisheries and Conservation Authority (North Western IFCA) highlighting the reduced control over the 0-12 nautical miles zone while others such as FAL raising the increased competition from other EU fleets for a finite resource. The Scottish Seafood Association commented that allocation of fishing opportunities under this system had resulted in 'Thousands of jobs being lost both on and offshore'.¹⁰
- 2.8 Conservative MEP Struan Stevenson, Angling Trust and the Food and Drink Federation (FDF) stressed the UK industry's dependence on access to an EU market of around 500m consumers. The UK exported 466,000 tonnes of fish, excluding fish products, in 2012, worth £1.3bn.¹¹ EU countries were the largest recipients of this fish, and this market is of significant importance to the UK industries and therefore the UK economy. However, while this may be significant for fisheries Conservative MEP David Campbell Bannerman considered that as only 8% of the British economy as a whole traded with the EU, the

⁸ TaxPayers' Alliance, *The Price of Fish*.

⁹ Examples include: Dr Lee Rotherham; Fishermen's Association Limited; New Under Ten Fishermen's Association; North Western Inshore Fisheries Conservation Authority; South Western Fish Producers Organisation Ltd; and Welsh Federation of Sea Anglers, *submissions of evidence*.

¹⁰ Scottish Seafood Association, *submission of evidence*.

¹¹ Marine Management Organisation, *UK Sea Fisheries Statistics 2012* (2013).

benefits of the Single Market were limited. The Centre for European Reform (CER), in their report *The Great British trade-off: The Impact of Leaving the EU on the UK's Trade and Investment* suggested 'the EU buys half of [all] Britain's exports'.¹² The wider advantages and disadvantages of the Single Market for trade were explored in the Single Market Report in Semester One.¹³

- 2.9 The CMO was also discussed, Struan Stevenson MEP considered there to be benefits in terms of reduced prices, and Department of Agriculture and Rural Development in Northern Ireland (DARDNI) considered that it removed conflicting standards. However Chris Leftwich, Chief Inspector at the Fishmongers Company, flagged concerns that Member States still enforced their own importing rules.
- 2.10 *The Price of Fish* report and the Freedom Association report *A Lesson for Great Britain: The Success of Norway's Fishing Industry Outside of the EU* have attempted to quantify the costs of the CFP to Britain.¹⁴ They estimated costs of £2.81bn and £4.7bn per annum respectively.¹⁵ ¹⁶ *The Price of Fish* report includes estimates of the unemployment in the fleet and support industries, the grant aid funded by the UK to other Member States, the loss of access to home waters and higher food prices factored into social security payments. However, there is no analysis of the benefits of the CFP. The Freedom Association report does not explain its calculation.

2.2 How Well Does the Current Power to Act Work at International, EU or Member State level?

- 2.11 Respondents had differing views on where competence should lie for fisheries management. This section, using the evidence submitted, considers the advantages and disadvantages of the current competence arrangements as outlined in Chapter One.
- 2.12 The Institute for European Environment Policy (IEEP) highlighted the importance of separating whether decisions made in the past have been successful from whether the level of competence is correct. At the National Federation of Fishermen's Organisations (NFFO) members' discussion they had similar concerns, stating that unsuccessful policies of the past may not be a direct result of competence level but perhaps the implementation of those policies.¹⁷ To illustrate this, in their evidence, Marinnet provided examples of where both the EU and UK had failed in the implementation of the CFP's objectives.
- 2.13 There was a widespread view that for fisheries management to be effective it requires some form of supranational approach, which in the European context can often mean through EU law. This is because, as acknowledged by numerous respondents, including the Scottish Fishermen's Federation (SFF) and some participants at the NFFO members' discussion, fish by their very nature are transboundary, migrating through a number

¹² Centre for European Reform (CER), *The Great British trade-off: The Impact of Leaving the EU on the UK's Trade and Investment*, (2014).

¹³ HMG, *The Balance of Competences between the UK and the EU: Single Market Report* (2013).

¹⁴ Freedom Association, *A Lesson for Great Britain: The Success of Norway's Fishing Industry Outside of the EU* (2011). Available at: www.tfa.net/2011/08/17/a-lesson-for-great-britain-the-success-of-norways-fishing-industry-outside-of-the-eu/, accessed on 7 May 2014.

¹⁵ TaxPayers' Alliance, *The Price of Fish*.

¹⁶ Freedom Association, *A Lesson for Great Britain*.

¹⁷ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion*.

of countries waters.¹⁸ ¹⁹ Furthermore, as the Scottish Government stressed, to secure a healthy marine environment and productive fish stocks, some form of co-ordinated action is needed ‘by all countries that share an interest’ in order to effectively manage the fishery.²⁰ As The Wildlife Trusts highlighted, irresponsible fisheries practices in another country could have a significant impact on the health of marine ecosystems around the UK. Responses from the Senior European Experts Group (SEEG), and Green MEPs Jean Lambert and Keith Taylor in giving evidence to the Environment and Climate Change Report argued that it is in the UK’s interest to work with its European neighbours to ensure strong and enforceable EU-wide policy in this crucial area.²¹

- 2.14 A few respondents, however, sought greater control at Member State level, claiming it was in the national interest to manage our own fisheries, which is discussed further in Chapter Three.²² This was a concept IEEP felt was problematic since the UK’s national interest cannot easily be distinguished from neighbouring Member States’ interests.
- 2.15 The MMO and the NFFO members’ discussion suggested that any allocation of competence would give rise to winners and losers.²³ MMO gave the example, that if competence was altered an individual operator could gain from the removal of technical measures but lose access to waters of another country.²⁴
- 2.16 The MMO thought that no matter the level at which competence is operated, there are potential benefits and disadvantages at each level that apply and influence decision making. UK vessels continue to compete with vessels from other EU and third countries with whom fisheries are shared but who may be operating on different terms.²⁵
- 2.17 The following sections focus on the debate in the evidence on where decisions on the different elements of fisheries management should be made.

2.2.1 International Level

- 2.18 Some respondents expressed the view that as the marine environment is international in nature, its standards should be set at an international level.²⁶ This view was apparent in responses to the Environment & Climate Change Report in Semester Two.²⁷
- 2.19 SFF and The Wildlife Trusts considered there could be justification, given fish are transboundary, for the need to manage fisheries within the wider United Nations (UN) framework. This view was reflected in the Conservative Party green paper which argued that where stocks migrate through countries waters there is a need for close cooperation between the States with an interest in the fishery, although in its view this would not

¹⁸ Idem.

¹⁹ Examples include: Angling Trust; European Movement; Food and Drink Federation; Nick Murphy; RSPB; Senior European Experts Group; The Rivers Trust; Welsh Government; The Wildlife Trusts; and WWF, *submissions of evidence*.

²⁰ Scottish Government, *submission of evidence*.

²¹ HMG, *The Balance of Competences between the UK and the EU: Environment and Climate Change Report* (2014).

²² Examples include: Dr Lee Rotherham; Fishermen’s Association Limited; Paul Worham; Scottish Seafood Association; and South Western Fish Producer’s Organisation Ltd., *submissions of evidence*.

²³ *Record of 9 January 2014 Marine Management Organisation Discussion and 17 December 2013 National Federation of Fishermen’s Organisations Members’ Discussion*.

²⁴ *Record of 9 January 2014 Marine Management Organisation Discussion*.

²⁵ Idem.

²⁶ Examples include: Academics’ Roundtable and The Rivers Trust, *submission of evidence*.

²⁷ HMG, *The Balance of Competences between the UK and the EU: Environment and Climate Change Report*.

necessarily be through the EU and its institutions.²⁸ However, the recent dispute between the EU, Norway, Iceland and the Faroe Islands on mackerel was an example cited by several respondents as demonstrating the importance of the EU's role within that system.²⁹ This is considered further in the text box below. DARDNI and IEEP in particular felt this illustrated the lack of priority given to sustainability in bi-lateral agreements.

- 2.20 Another issue raised here was the role the EU has in representing the interests of Member States in agreements with third countries and in RFMOs. Participants at the Consumers' Roundtable felt this meant the UK had less say at international forums than non-EU countries. This was seen as a disadvantage when it relates to important issues or markets for the UK.³⁰

The Mackerel and Herring Disputes

Mackerel is economically the most important stock for the UK, worth approximately £150m to £250m per year. Due to historic migratory and catching patterns, the available fishing opportunities have traditionally been split between the EU and Norway, with small shares going to Iceland and the Faroe Islands. The total level of catch for the stock is annually informed by scientific advice from the International Council for the Exploration of the Sea (ICES).

In recent years the distribution of mackerel during their migration has changed due in large part to a growing and expanding stock. This resulted in Iceland and the Faroe Islands autonomously increasing their quota to reflect that the fish were thought to be more prevalent in their waters than previously. As a consequence the stock has in recent years been exploited at higher levels than the scientifically recommended level. Similar issues have occurred regarding Atlanto-Scandian Herring (ASH) stocks, where there has also been a dispute over quota shares.

Negotiations took place in March 2014 between the coastal States on shares of these stocks for the next few years in light of new scientific advice and an agreement on mackerel was reached between the EU, Norway and the Faroe Islands. There is a provisional allocation for Iceland should they decide to join the agreement.

However, sanctions from the EU remain in place on herring and mackerel caught under the control of the Faroe Islands due to their unsustainable fishing of herring in recent years. Denmark on behalf of the Faroe Islands has launched disputes in relation to herring through UNCLOS and WTO regarding these sanctions.

These disputes demonstrate a weakness in the process of agreeing sustainable management measures between the coastal States. Under the current system one State in disagreement can bring about a stalemate in the negotiation process.

²⁸ Conservative Party, *A Conservative Party Green Paper: Consultation on a National Policy on Fisheries Management in UK Waters* (2005).

²⁹ Examples include: Angling Trust; National Federation of Fishermen's Organisations Members' Discussion; and The Wildlife Trusts, *submissions of evidence*.

³⁰ *Record of 18 December 2013 Consumers' Roundtable*.

2.2.2 EU Level

- 2.21 As noted earlier, many respondents, including environmental NGOs, Devolved Administrations and SEEG considered the EU to be the appropriate level for effective fisheries management of European fisheries. However, there were many opinions expressed as to what worked well or otherwise within the current competence system; these views are summarised below.
- 2.22 It should be noted that the CFP, while made up of a number of different parts – control and enforcement, conservation objectives and fishing opportunities. These combine to form an interconnected policy. Changes in competence can only be considered for the policy as a whole. However, for ease of reporting the views of respondents to the Call for Evidence we have presented them under the different parts of the CFP.

Conservation of Fish Stocks

- 2.23 Many respondents considered it essential there is a central coordinator to set conservation objectives for all countries with an interest in a fishery. MEPs Jean Lambert and Keith Taylor in giving evidence to the Environment and Climate Change Report in Semester Two, as well as participants at the Brussels Workshop, considered it was not possible for one Member State to achieve sustainable fisheries if another continues unsustainable practices. The potential progress of the first State is cancelled out by the second.^{31 32} The Scottish Government considered it important ‘that there is coherent management of stocks across their entire geographical distribution’.³³
- 2.24 European Commissioner, Damanaki, set out the case for a regionalised yet central EU policy ‘because fish don’t belong to any single nation; they are [a] common good. This is why we need common rules applying to all’.³⁴
- 2.25 Participants at the Academics’ Roundtable noted that making stock conservation decisions at an EU level provides the opportunity to raise standards for fisheries management over a wider geographic area than the UK acting alone.³⁵ Improvements in the number of stocks being fished sustainably, was felt by IEEP to be an example where the EU incentivised Member States to act sustainably and forgo short-term economic gain. With RSPB highlighting the need for standards to create a level playing field. However, other respondents such as WWF were concerned that in setting common standards there was the risk of Member States taking the ‘lowest common denominator’ approach when agreeing rules.³⁶
- 2.26 London Workshop participants and NFFO members’ discussion also considered a central mediator and coordinator, such as the EU, to be essential to resolve tensions that arise from the need for Member States to manage and utilise fisheries resources in collaboration.³⁷

³¹ HMG, *The Balance of Competences between the UK and the EU: Environment and Climate Change Report*.

³² *Record of 26 November 2013 Brussels Workshop*.

³³ Scottish Government, *submission of evidence*.

³⁴ M Damanaki: *Reform in Europe is Possible!*

³⁵ *Record of 11 December 2013 Academics’ Roundtable*.

³⁶ WWF, *submission of evidence*.

³⁷ *Record of 28 November 2013 and 17 December 2013 London Workshop and National Federation of Fishermen’s Organisations Members’ Discussion*.

2.27 Management of fisheries should be considered in the wider context of marine environmental objectives. The Environment and Climate Change Report in Semester Two summarised responses that considered there were tensions between the environmental and economic objectives of EU policies developed by the European Commission.³⁸ By contrast within fisheries policy, respondents commented that there was good integration between environmental objectives set through measures such as Marine Strategy Framework Directive (MSFD) and the Habitats and Birds Directives and the objectives of the CFP.^{39 40 41} A range of respondents including RSPB and The Wildlife Trusts indicated that the achievement of marine environment objectives is integrated into fisheries policy so that one set of actions achieves the goals of both policies. Though the Institute for Archaeologists criticised the CFP for failing to address the management and protection of the marine historic environment in the way that the CAP does on land. Seafish highlighted that EU directives including MSFD and the Habitats Directive would still have to be transcribed into national legislation even if the UK were to withdraw from the CFP.

Fishing Opportunities

- 2.28 Establishing the share of quota to be received by Member States was an area where Struan Stevenson MEP and the Welsh Federation of Sea Anglers, supported a role for the EU, as it was of shared interest to many parties.
- 2.29 SEEG and ClientEarth argued that the EU's competence on quota allocation and exercising the Relative Stability principle in determining the allocation between Member States has removed a source of uncertainty for fishermen. SEEG considered this to have added benefits in minimising the potential for conflict between countries. Furthermore, they felt that the settlement had helped safeguard UK fishermen's competitive position when other fleets entered the Union.
- 2.30 IEEP felt that the Relative Stability principle and annual negotiations had led to political compromises which neither manage nor reflect the nature of mixed and multispecies fisheries. Participants in the Brussels Workshop highlighted the CFP's historical failure to maintain stocks.⁴² The Anglo Northern Irish Fish Producers Organisation (ANIFPO) provided an example of council negotiations that highlighted concerns that countries without fisheries interests input into fisheries management decisions at Council. This creates a climate where decisions are not solely focused on what is best for the fishery. As a result, IEEP felt Relative Stability may be exacerbating fisheries management problems.
- 2.31 The Cornish Fish Producers Organisation (CFPO) acknowledged that, although real problems are associated with the quotas system, 'It is very far from clear if any superior alternative is available'.⁴³

³⁸ HMG, *The Balance of Competences between the UK and the EU: Environment and Climate Change Report* (2014).

³⁹ Directive 2008/56/EC of the European Parliament and of the Council Establishing a Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Framework Directive), 2008.

⁴⁰ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, 1992.

⁴¹ Directive 2009/147/EC of the European Parliament and of the Council on the Conservation of Wild Birds, 2009.

⁴² *Record of 26 November 2013 Brussels Workshop*.

⁴³ Cornish Fish Producers Organisation (CFPO), *CFPO Response to Reform of Common Fisheries Policy* (2011). Available at: www.cfpo.org.uk/news/11-cfpo-response-to-green-paper-on-reform-of-the-common-fisheries-policy.html, accessed on 12 March 2014.

Technical Measures

- 2.32 It was a widely held view among respondents as well as by European Commissioner Damanaki, that the EU has micromanaged fisheries.^{44 45} The Conservative Party green paper argued that there is an ‘absurd bureaucratic inflexibility’ in the CFP system, referring to the discarding of immature plaice that could have been avoided if fishermen were not penalised for using larger mesh to prevent catching them.⁴⁶ SFF argued that fisheries management had ‘developed into increasingly more complex control from the EU centre. There are close to a thousand separate pieces of legislation covering every aspect of the industry’.⁴⁷ Responses from the Scottish Government and the NFFO members’ discussion reflected arguments in Ocean 2012’s *Ensure Good Governance* paper that such micromanagement had been a key driver in the perceived failure of the unreformed CFP.^{48 49} IEEP felt that the technical conservation measures had been ‘too complex and difficult to understand, control and enforce’.⁵⁰
- 2.33 On this basis, IEEP and WWF argued that decisions on technical measures should be made at a more local level by the Member States affected. IEEP noted that previous unsuccessful implementation of technical measures had proven that one technical solution is not necessarily applicable in all sub-regions.
- 2.34 Ocean 2012, in their paper *Regional Governance: Making it Work for Fisheries and the Environment*, highlighted that the current arrangements for technical conservation regulations were difficult to adapt to local needs.⁵¹ IEEP cited literature that suggested where technical measures had failed to gain acceptance from the industry, this had led them to be less effectively implemented.⁵² The Wildlife Trusts commented that until recently, technology has been mainly used to improve efficiency of catch in terms of time and cost rather than reducing impact and by-catch; all contrary to the CFP objectives of sustainability.
- 2.35 Witnesses at the Environment, Food and Rural Affairs (EFRA) Committee Inquiry on CFP reform considered the EU approach to technical rules had exacerbated discards, suggesting that the specification of nets through decisions made in Brussels had meant that fishermen had caught fish that were outside their quotas.⁵³ The Conservative Party green paper argued that the CFP ‘actively discouraged’ innovation to reduce discards.⁵⁴ The practice of discarding was raised by David Campbell Bannerman MEP, as a totemic example of the failure of EU fisheries management. He suggested that countries such as Norway have benefited from ending this practice earlier.

⁴⁴ Examples include: Marine Conservation Society; New Under Ten Fishermen’s Association; Struan Stevenson MEP; and WWF, *submission of evidence*.

⁴⁵ M. Damanaki, *Reform in Europe is Possible!*

⁴⁶ Conservative Party, *A Conservative Party Green Paper*.

⁴⁷ Scottish Fishermen’s Federation, *submission of evidence*.

⁴⁸ Ocean 2012, *Ensure Good Governance* (2013).

⁴⁹ *Record of 17 December 2013 National Federation of Fishermen’s Organisations Members’ Discussion*.

⁵⁰ Institute of European Environmental Policy (IEEP), *submission of evidence*.

⁵¹ Ocean 2012, *Regional Governance: Making it Work for Fisheries and the Environment* (2012).

⁵² IEEP, in their submission cited the following paper: Suuronen, P. and F. Sardà, ‘The Role of Technical Measures in European Fisheries Management and How to Make Them Work Better’, *ICES Journal of Marine Science*, Volume 64, (2007) p751–756.

⁵³ House of Commons, Environment, Food and Rural Affairs Committee, *EU Proposals for Reform of the Common Fisheries Policy, Twelfth Report 2010–2012, Volume Two* (2012).

⁵⁴ Conservative Party, *A Conservative Party Green Paper*.

Control and Enforcement

- 2.36 The issue of a level playing field was a recurring theme in responses.⁵⁵ With the Scottish Government highlighting the importance of a level playing field for fishermen across the EU in terms of compliance. SEEG stated that as EU fisheries management measures are enforced through a single legal framework this gives some confidence that other countries and their fishermen are observing common rules and will be penalised if they contravene those rules. The Welsh Government suggested this ensures a level playing field among Member States. By contrast, some participants in the NFFO members' discussion felt it was unlikely that a genuine level playing field existed because of the lack of consistency of implementation across Member States.⁵⁶
- 2.37 ClientEarth in their report *CFP Reform Proposal: Transparency and Compliance* considered the 'low level of compliance' with the CFP as 'one of the major obstacles to achieving its objectives'.⁵⁷ To tackle this, they suggested the European Commission could increase its efforts to ensure greater compliance. Currently, competence for enforcement of EU measures lies with Member States. While no respondent specifically suggested that the EU should have competence to act in this area, some Brussels Workshop participants suggested that there was insufficient competence at an EU level to ensure that Member States and their vessels were compliant with the rules, in order to maintain a level playing field amongst Member States.⁵⁸ They felt the threat of infraction procedures may provide insufficient incentive to comply as they can take a long time to take effect.⁵⁹
- 2.38 The Association of Inshore Fisheries and Conservation Authorities (AIFCA) commented that moving responsibility for enforcement to an EU level was an option, but would only be effective if there was the political will to enforce the measures equally on all Member States.⁶⁰
- 2.39 ClientEarth considered that there was a role for the EU to set high-level objectives for enforcement, which Michael Heylin supported, but also suggested that the EU should ensure Member States apply enforcement policy effectively. He suggested that enforcement should be serious and the consequences of breaking the law should be serious enough to act as a deterrent. MMO argued the current system provided a good balance of competence between the EU and Member States but could be improved, supported by greater guidance on interpretation of EU requirements.⁶¹
- 2.40 Michael Heylin considered that 'too much regulation, without enforcement in many Member States is unfair to those countries which do regulate and enforce. It costs industry profits, the workforce jobs and stops the market working effectively'.⁶² RSPB argued there was a potential under these circumstances for a country to be at a competitive deficit. The NFFO members' discussion suggested that the UK is thought

⁵⁵ Examples include: ClientEarth; RSPB; Welsh Government; and WWF, *submissions of evidence*.

⁵⁶ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion*.

⁵⁷ ClientEarth, *CFP Technical Briefing Series: Briefing 6 November 2011 (rev) CFP proposal: Transparency and Compliance (2011)*.

⁵⁸ *Record of 26 November 2013 Brussels Workshop*.

⁵⁹ Infraction proceedings allow the Commission (under Article 258 TFEU) or, more rarely, another Member State (Article 259 TFEU) to bring an action before the ECJ to require a Member State to comply with the requirements of EU law.

⁶⁰ *Record of 8 January 2014 Association of Inshore Fisheries and Conservation Authorities Discussion*.

⁶¹ *Record of 9 January 2014 Marine Management Organisation Discussion*.

⁶² Michael Heylin, *submission of evidence*.

by some to enforce EU legislation to a greater extent than other Member States.⁶³ This view was echoed by the Eastern Inshore Fisheries and Conservation Authority (Eastern IFCA) and AIFCA, the latter argued the importance of a level playing field in enforcement to create a culture of compliance across all fleets.⁶⁴ The Consumers' Roundtable also argued that the perception of ineffective enforcement by other countries does not incentivise compliance and best practice in the fishing industry.⁶⁵ The MMO commented that while there may be this perception, this is difficult to verify despite effective coordination between Member States at a local level, as it is hard to make comparisons between approaches.⁶⁶

Third Country Agreements

- 2.41 As described in chapter one, the EU has exclusive competence to negotiate with third countries on behalf of all EU Member States in relation to the fisheries matters covered by the CFP and trade in fisheries products.
- 2.42 Dr Lee Rotherham thought that some international fisheries agreements lacked value for money for the UK taxpayer, due to the perceived failure of the agreements.⁶⁷ This led him to suggest competence for the negotiation of international fisheries agreements should be returned to Member States. Some participants at the NFFO members' discussion and Chris Leftwich were also sceptical of whether the EU should have competence on this issue.⁶⁸
- 2.43 NUTFA considered that EU activities in external waters were a 'shameful indictment of former policies'.⁶⁹ Angling Trust raised concerns that the failure of the EU to properly oversee agreements with third countries such as Somalia had been attributed to contributing towards the rise in piracy in the Indian Ocean. Those who engaged with the Development, Cooperation and Humanitarian Aid Report in Semester One felt that since the EU is a substantial trading partner for most developing countries, it has indirect influence on their development through its fisheries agreements.⁷⁰
- 2.44 Brussels Workshop participants and WWF recognised the problems with international fisheries agreements in the past but argued that as the EU represents 28 countries it is a powerful negotiator and therefore able to negotiate more benefits than if the countries acted alone. The MMO considered that if a Member State were acting alone, third countries could possibly require more stringent conditions in order to gain access to their fishing grounds.⁷¹ It suggested that under the current competence arrangements the EU is able to resist such measures in the negotiation.
- 2.45 The Wildlife Trusts highlighted the importance of effective relationships with third countries when managing straddling stocks such as mackerel, recognising the need to set the TAC for all fishing and divide that catch between parties in an equitable manner.

⁶³ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

⁶⁴ *Record of 8 January 2014 Association of Inshore Fisheries and Conservation Authorities Discussion.*

⁶⁵ *Record of 18 December 2013 Consumers' Roundtable.*

⁶⁶ *Record of 9 January 2014 Marine Management Organisation Discussion.*

⁶⁷ *Record of 18 December 2013 Bi-lateral Discussion with Dr Lee Rotherham, TaxPayers' Alliance.*

⁶⁸ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

⁶⁹ New Under Ten Fishermen's Association (NUTFA), *submission of evidence.*

⁷⁰ HMG, *The Balance of Competences Review between the UK and the EU: Development Cooperation and Humanitarian Aid Report* (2013).

⁷¹ *Record of 9 January 2014 Marine Management Organisation Discussion.*

Reciprocal Fisheries Agreements

- 2.46 Most respondents including SEEG and the Marine Conservation Society (MCS) pointed out that EU competence on reciprocal EU fisheries agreements with Norway and the Faroe Islands has created positive benefits for the UK. By contrast, Chris Leftwich felt there may not be much gained for the UK from the EU negotiating international fisheries agreements with third countries on behalf of Member States.
- 2.47 The UK is the largest net beneficiary of the EU-Norway agreement. SEEG highlighted that the agreement between the EU and Norway yields access and quota for the UK to the profitable Arctic-Norwegian cod stock. The UK Government estimated the net benefit to UK vessels from the EU-Norway agreement was around £17m in 2012.⁷² SEEG argued that access to this resource is compensated for using quota for species of interest to Norway, often provided by other Member States that may not benefit from the agreement directly.

FPAAs

- 2.48 As recognised by SEEG and WWF the UK has relatively few fishing interests in external fishing agreements such as FPAs. FDF and MCS considered the UK should have an interest in these agreements in relation to the human rights, economic and social development of the partner country. WWF suggested the UK had been vigilant in checking that sustainability and value for money criteria are met in agreements.
- 2.49 The CER and Trade Union Congress (TUC), in responding to the Development Cooperation and Humanitarian Aid Report in Semester One, said that EU subsidies given to EU-registered fishing fleets under the CFP encouraged fishing in developing countries' waters, which subsequently damaged local livelihoods by raising the price of fish and reducing employment.⁷³ Michael Heylin felt that external agreements with southern countries were over-exploiting the fish stocks, negatively impacting the local people, and keeping 'them in poverty and potential hunger'.⁷⁴ Angling Trust suggested that the increase in Somali pirate activity could be attributed to the failure of the EU to properly oversee agreements with third countries. They believed this has a 'very negative impact on the UK's national interest in terms of shipping, fishing, public safety and national security'.⁷⁵
- 2.50 These issues led respondents such as the Academics' Roundtable and *The Price of Fish* report to argue against EU competence in this area.⁷⁶ With the report suggesting that agreements in the past had too great a focus on accessing additional fishing opportunities without consideration of the impacts.⁷⁷
- 2.51 SEEG and Academics' Roundtable participants argued that exercising this competence at the EU level can be beneficial if it enables the EU to align its development goals with CFP objectives.⁷⁸

⁷² HMG, *The Balance of Competence between the UK and the EU, Fisheries Call for Evidence* (2013).

⁷³ HMG, *The Balance of Competences between the UK and the EU: Development Cooperation and Humanitarian Aid Report* (2013).

⁷⁴ Michael Heylin, *submission of evidence*.

⁷⁵ The Angling Trust, *submission of evidence*.

⁷⁶ *Record of 11 December 2013 Academics' Roundtable*.

⁷⁷ TaxPayers' Alliance, *The Price of Fish*.

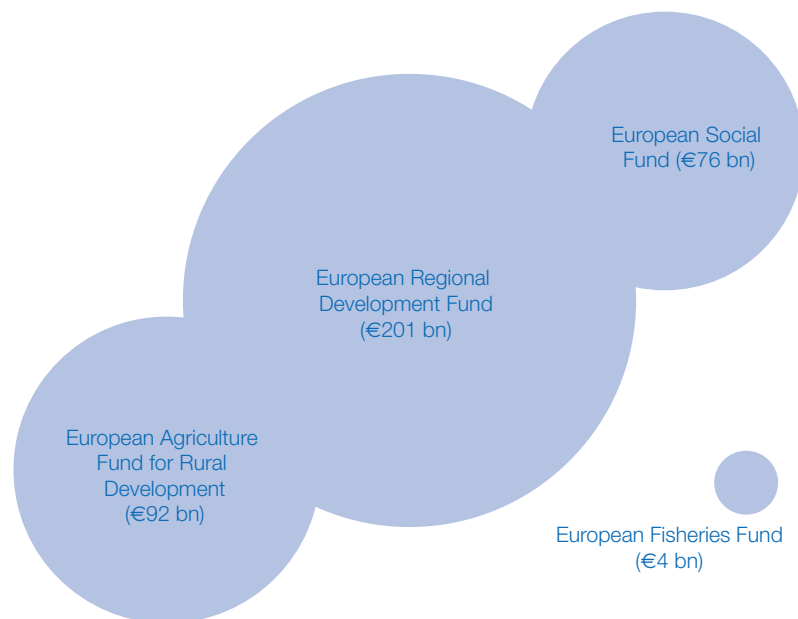
⁷⁸ *Record of 11 December 2013 Academics' Roundtable*.

2.52 The European Commission has sought to address the concerns with the agreements as part of the CFP reform negotiations.⁷⁹ A key priority for the UK during the reform negotiations was to ensure the agreements were based on suitable principles. This was achieved so that future agreements will be focused on sustainability, good governance, democracy and human rights. Participants in the Brussels Workshop considered that the 2013 reforms provided a framework to work with third countries.⁸⁰ This was supported by the Coalition for Fair Fisheries Arrangements whose response suggested that the EU is applying these types of agreements more appropriately as seen, in its view, by the improvement to the Mauritania agreement.

EU Structural Funds

2.53 Figure Six illustrates the scale of the EFF. The majority of respondents commenting on structural funding did not comment on where competence on this issue should lie. There were many views expressed regarding the current management of the fund, with respondents feeling that the EFF did not help achieve CFP goals.⁸¹ These are discussed below.

Figure Six: Diagrammatical Representation of the Scale of the Fisheries Structural Fund Compared to other EU Funds that Support Regional Development 2007 – 2013



Source of data: European Commission. Available at: ec.europa.eu/regional_policy/thefunds/funding/index_en.cfm, ec.europa.eu/fisheries/cfp/eff/index_en.htm and ec.europa.eu/agriculture/faq/index_en.htm, accessed on 21 May 2014.

2.54 A few environmental NGOs, FDF and some participants at the Brussels Workshop agreed that the use of funds to renovate vessels had been detrimental to achieving conservation objectives.^{82 83} This was supported in a joint NGO paper on EU fisheries subsidies and the EU Court of Auditors report on the effectiveness of decommissioning schemes in the EU, which suggested that in some cases subsidised investment for

⁷⁹ European Commission, Green Paper, *Reform of the Common Fisheries Policy* (2009).

⁸⁰ *Record of 26 November 2013 Brussels Workshop*.

⁸¹ Examples include: *Brussels Workshop* and ClientEarth, *submission of evidence*.

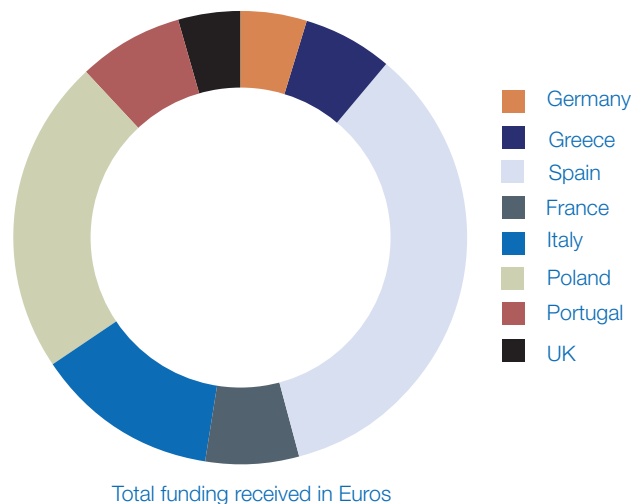
⁸² *Record of 26 November 2013 Brussels Workshop*.

⁸³ Examples include: Angling Trust; ClientEarth; and Marinet, *submissions of evidence*.

fishing vessels may in practice increase their ability to catch fish.^{84 85} ClientEarth's response also highlighted literature that suggested subsidies under the EFF have had a negative impact on fish stocks and industry profits in at least some EU waters.⁸⁶

2.55 Some Brussels Workshop participants and Civitas in its report *EU Renegotiation: Fight for a Flexible Union* echoed the minority view expressed in *The Price of Fish* report that the EU should return this competence to the UK.^{87 88 89} Civitas commented that other EU Member States who actively use these funds which the UK as a net contributor has subsidised, place the UK at a competitive disadvantage. The report used European Commission figures to support its argument. Under the EFF, 'Spain received €1.13bn between January 2007 and December 2013; Poland €734m; Italy €424m; Portugal €246m; France €216m; Greece €207.8m; and Germany just under €156m. By contrast, the UK received just under €138m, making it the 9th largest recipient of funds'.⁹⁰ Figure Seven illustrates this information. TaxPayers' Alliance in their report said that the UK has previously funded £64m in EU grants to support foreign fishing fleets. It considered that returning the money to the UK Government would be a better outcome for the taxpayer.⁹¹

Figure Seven: Total European Fisheries Funds in Euros Received by a Number of Member States (2007-13)



Source of data: European Commission, *European Fisheries Fund, Fact Sheet* (2013).

2.56 Other respondents, for example Struan Stevenson MEP asked to what extent the UK contribution of funding for fisheries under the CFP would remain available to UK fisheries initiatives if the UK acted outside the CFP, given the UK Government's wider funding priorities.

⁸⁴ Greenpeace, WWF, Oceana, Birdlife International and Ocean 2012, *Fisheries Subsidies Should Support Implementation of the Common Fisheries Policy* (2013).

⁸⁵ European Court of Auditors, *Have EU Measures Contributed to Adapting the Capacity of the Fishing Fleets to Available Fishing Opportunities?* (2011). Available at: www.eca.europa.eu/Lists/ECADocuments/SR11_12/SR11_12_EN.PDF, accessed on 2 May 2014.

⁸⁶ ClientEarth in their submission cited the following paper: J. J. Heyman, S. Mackinson, U. R. Sumaila, A. Dyck, A. Little, (2011), 'The Impact of Subsidies on the Ecological Sustainability and Future Profits from North Sea Fisheries', *PLoS ONE*.

⁸⁷ *Record of 26 November 2013 Brussels Workshop*.

⁸⁸ Civitas, *EU Renegotiation: Fighting for a Flexible Union* (2013).

⁸⁹ TaxPayers' Alliance, *The Price of Fish*.

⁹⁰ Civitas, *EU Renegotiation*.

⁹¹ TaxPayers' Alliance, *The Price of Fish*.

- 2.57 DARDNI, the MMO and the British Ports Association recognised the benefits that can be secured from EU funding to support sustainable fishing, improving local port infrastructure and improving the efficiency, safety and working conditions of fishing vessels.⁹² EU funding is also currently used to support enforcement activities and data collection worth approximately €6m a year.
- 2.58 The Shellfish Association of Great Britain (SAGB) and DARDNI in their responses flagged the difficulty in accessing funding for some sectors due to the level of administration required. ClientEarth highlighted what it saw as a missed opportunity during the CFP reform negotiations to make access to funding conditional upon compliance with the EU fisheries and marine environment regulations as an incentive for improved compliance.
- 2.59 A few respondents countered that the reform of the fund will address these issues. The EMFF will replace the EFF in 2014. The Welsh Government, RSPB and WWF suggested the changes currently under negotiation will ensure the fund supports the objectives of the reformed CFP, providing better value money for the taxpayer.

The Single Market

- 2.60 The importance of accessing the EU market for UK businesses was highlighted by a number of respondents including the Angling Trust, Struan Stevenson MEP and the Welsh Government. FDF highlighted literature sources in their evidence that argued around two-thirds of supplies are imported into the EU from third countries, rising to around 90% for the main commercial whitefish species.⁹³ Struan Stevenson MEP, in terms of food security, considered it unrealistic to think any nation acting independently could meet the demands of its own consumers by operating within its own territorial waters.
- 2.61 As regions within the EU have different consumption patterns, respondents including FDF and Chris Davies MEP on behalf of Liberal Democrat MEPs thought the Single Market was able to match supply and demand for particular types of fish product. Both mentioned that the UK catching sector benefits from supplying their catch to continental businesses where there is greater demand.
- 2.62 Both Struan Stevenson MEP and the Angling Trust expressed the view that consumers benefit from a greater choice of products, and reduced costs, as a result of competition from cheaper products. FDF felt that the Single Market has encouraged growth and innovation due to competition from other countries in Europe.
- 2.63 The Wildlife Trusts expressed the view that the economic size of the EU and the size of its markets for other goods gave it considerable bargaining power in negotiations with third countries. Some London Workshop participants felt that this provided an opportunity to utilise EU sourcing policies to incentivise those exporting to the UK to meet EU fisheries principles.⁹⁴ However, Seafish, in responding to the Animal Health and Welfare and Food Safety Report, raised concerns that EU-wide requirements for third country trade diminish the UK's ability to promote goods on the basis of traditional UK methods or reputation, reducing opportunities to promote the UK's brand.⁹⁵

⁹² Record of 9 January 2014 Marine Management Organisation Discussion.

⁹³ Food and Drink Federation in their submission cited the following paper: AIPCE – CEP, *Finfish Study 2013* (2013). Available at: aipcecep.drupalgardens.com/sites/g/files/g402611/f/201312/FinFish%20Study%202013.pdf, accessed on 12 February 2014.

⁹⁴ Record of 28 November 2013 London Workshop.

⁹⁵ HMG, *The Balance of Competences between the UK and the EU: Animal Health and Welfare and Food Safety Report* (2013).

- 2.64 Respondents did note that accessing the Single Market is not without costs. SAGB felt that sometimes Member States applied different interpretations of legislation affecting the EU Single Market creating additional burdens. The British Ports Association said ‘ports have raised concerns over issues such as the Compulsory Weighing of Fish Regulations and the CMO Regulation which have introduced extra costs and over burdensome requirements for labelling and information for consumers’.^{96 97} As a result, Chris Leftwich felt that those who comply with the strict requirements of EU legislation have their costs increased and are disadvantaged as the costs are passed onto the market. DARDNI by contrast felt there was no evidence that existing arrangements or those incorporated into the reformed CFP and CMO Regulations did not provide a level playing field.
- 2.65 FDF elaborated their view that, although the EU rules impose costs on businesses, those costs would be higher if Member States set their own standards. In DARDNI’s view the EU reduces the costs to businesses as potentially discriminatory standards are removed from a large market.
- 2.66 Dr Lee Rotherham commented that while the Single Market has benefits, the UK does not necessarily have to be part of the EU to access it. He noted that a number of models exist for relationships with the EU, from our current position as full members to the relationships Norway or Switzerland have with the EU.⁹⁸ Alternative models are discussed further in chapter three.

Regionalisation

- 2.67 As noted in chapter one, the new basic CFP Regulation came into force on 1 January 2014. While the competence arrangements have not been altered, the 2013 reforms have brought a new form of regional governance, with decisions to be made by Member States that share fisheries at a sea basin level, and a new process to enact these decisions in EU or national law.
- 2.68 The UK has an interest in decision making for the North Sea, with Belgium, Denmark, France, Germany, the Netherlands and Sweden, and in the North West waters, with Belgium, France, Ireland, the Netherlands and Spain. Regional groups have been set up for these two areas to identify measures that are appropriate and effective for the shared fisheries. This allows decision makers to take account of the different ecosystems in EU fisheries, which range from the Mediterranean to the Arctic, as well as factoring in the knowledge and experience of local stakeholders. Regions in which the UK has no direct interest are the Baltic, South West Waters and the Mediterranean.
- 2.69 In considering where decisions should be made, the majority of respondents reacted positively to the new CFP regionalisation process.⁹⁹ Some hoping it would decentralise decision making and thus improve fisheries management decisions, yet still offer the benefits of central EU coordination.¹⁰⁰ London Workshop participants and witnesses at the EFRA Committee on CFP reform thought regionalisation would provide the opportunity for the EU to hold the overall vision for the CFP.^{101 102} The Scottish

⁹⁶ British Ports Association, *submission of evidence*.

⁹⁷ Regulation 1379/13 on the Common Organisation of the Markets, 2013, establishes the CMO; marketing standards are also prescribed in Regulations 3703/85, 2136/89, 1536/92 and 2406/96.

⁹⁸ *Record of 18 December 2013 Bi-lateral Discussion with Dr Lee Rotherham, TaxPayers’ Alliance*.

⁹⁹ Examples include: ClientEarth; *London Workshop*; RSPB; and Struan Stevenson MEP, *submissions of evidence*.

¹⁰⁰ Examples include: RSPB and Struan Stevenson MEP, *submissions of evidence*.

¹⁰¹ *Record of 28 November 2013 London Workshop*.

¹⁰² House of Commons, Environment, Food and Rural Affairs Select Committee, *EU Proposals for Reform of the Common Fisheries Policy, Twelfth Report 2010-2012, Volume Two* (2012).

Government said, in support of regionalisation, that ‘fisheries management decisions are better made by those with practical experience and understanding of the fishery’ but there remains a role for the EU in ‘providing high-level objectives, the equality of a level playing field and a strong voice in international negotiations’.¹⁰³

- 2.70 The EFRA committee in their 2012 report commented that ‘the essential first step to improve the CFP’s governance is through a more ambitious programme of decentralisation’, also suggesting that ‘this could deliver an effective “locally as possible” approach to fisheries management’.¹⁰⁴ This view was echoed by others. The *Conservative Party Green Paper* argued that issues should be handled at a local level unless national or international coordination is needed.¹⁰⁵ FDF argued that fish stocks do not respect national boundaries or administrative divisions. They need to be managed and decisions taken at the most appropriate level for the stocks concerned. This will frequently be at a regional or sea basin level. This was echoed by responses from environmental NGOs and political perspectives which considered that regionalisation allowed more appropriate conservation and management measures to be adapted to the needs of the fisheries.¹⁰⁶
- 2.71 The Regent’s University report *The UK and Europe: Costs, Benefits, Options* commented that regionalisation would be a departure from the unreformed CFP. It suggested previous micromanagement had disempowered fishermen and often set them at odds with enforcement authorities, removing the incentive to prioritise stock conservation over short term gains.¹⁰⁷ Liberal Democrat President Tim Farron stated that this change ‘will ensure that our children and grandchildren will still be able to eat locally sourced fish. They will make sure that we are building a stronger economy for the long term for our fishing communities and giving them back a future’.¹⁰⁸
- 2.72 Respondents including the Scottish Government, Struan Stevenson MEP and DARDNI as well as NGOs thought devolving more responsibility to Member States through the reformed CFP may deliver greater flexibility and make policy-making more responsive. DARDNI considered an additional benefit was that common management plans and conservation measures would apply to waters shared by many Member States ensuring that fishing fleets from those States are treated equally.
- 2.73 However, respondents mentioned that there were challenges in delivering a regionalised approach for CFP decisions. For example, Brussels Workshop participants and NUTFA mentioned the need to balance tailored decisions to each ecosystem against ensuring a level-playing field.¹⁰⁹

¹⁰³ Scottish Government, *submission of evidence*.

¹⁰⁴ House of Commons, Environment, Food and Rural Affairs Select Committee, *EU Proposals for the reform of the Common Fisheries Policy, Twelfth Report 2011-2012, Volume One* (2012).

¹⁰⁵ Conservative Party, *A Conservative Party Green Paper*.

¹⁰⁶ Examples include: *Brussels Workshop*; Department of Agriculture and Rural Development Northern Ireland; *London Workshop*; Marine Conservation Society; Scottish Government; and Struan Stevenson MEP.

¹⁰⁷ The Regent’s University London, *The UK and Europe: Costs, Benefits and Options* (2013).

¹⁰⁸ T. Farron, *European Fisheries Vote Shows that EU can be Reformed*, (2013). Available at: www.libdemvoice.org/liblnk-tim-farron-european-fisheries-vote-shows-that-eu-can-be-reformed-37470.html, accessed on: 24 February 2014.

¹⁰⁹ *Record of 26 November 2013 Brussels Workshop*.

- 2.74 There were also still concerns that the European system is slow to respond with too great a focus on the share of fishing quotas rather than the management of the system. Witnesses at the EFRA Committee on CFP reform suggested there were concerns that regionalisation would add another layer of bureaucracy and cost.¹¹⁰
- 2.75 There were a few responses supporting the possibility of utilising regionalisation to its maximum. The Scottish Government thought the progress made to date was simply the first step towards greater decentralisation. Others, such as SFF, considered the CFP could become a shared competence. The Scottish Government noted in their response that as a shared competence EU action is subject to the principle of subsidiarity.¹¹¹ It suggested that the ‘principle of subsidiarity ensures that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at Union level is justified’.^{112 113}
- 2.76 SFF and the Shetland Fishermen’s Association believe that the EU’s exclusive competence for the conservation of marine biological resources has proved to be a barrier to effective delegation. However, the SFF noted that any change would require a change in Treaties and recognised this would be difficult to achieve.

2.2.3 Shared Competence

- 2.77 For an area under shared competence either the EU or Member States may act, but the Member States may be prevented from acting once the EU has done so. Recreational fisheries, aquaculture and to some extent shellfisheries and freshwater migratory fisheries are all areas managed under shared competence. Nine responses were received on these areas.¹¹⁴
- 2.78 Respondents were broadly content with the existing competence arrangements largely because EU action in these areas has, to date, been minimal. There were areas highlighted for improvement which is explored below.

Recreational Fisheries

- 2.79 Responses from the Angling Trust and AIFCA highlighted the importance of recreational angling to the UK economy.¹¹⁵ The sector is estimated to generate a total annual spend of £2.1bn and supports 24,000 jobs.¹¹⁶ Both responses noted that EU legislation gives little consideration to the role of recreational angling with the potential for measures to be introduced without fully considering the impact. However, the Angling Trust response stated that ‘there would be no benefit from being included in the current, failing, system’.¹¹⁷ It argued that the UK’s recreational fishing sector benefits from not being subject to the CFP’s TAC and quota system allowing stocks to be managed at a Member State level.

¹¹⁰ House of Commons, Environment, Food and Rural Affairs Committee, *EU Proposals for Reform of the Common Fisheries Policy, Twelfth Report 2010-2012, Volume Two* (2012).

¹¹¹ Under Article 5(3) TEU.

¹¹² Scottish Government, *submission of evidence*.

¹¹³ The issue of subsidiarity is further considered in the report: HMG, *The Balance of Competences between the UK and the EU: Subsidiarity and Proportionality Report*, to be published in Semester Four.

¹¹⁴ Examples include: Angling Trust; Association of Inshore Fisheries Conservation Authorities; Atlantic Salmon Trust; British Trout Association; Chris Leftwich; RSPB; Salmon and Trout Association; Scottish Government; Seafish and Shellfish Association of Great Britain, *submissions of evidence*.

¹¹⁵ *Record of 8 January 2014 Association of Inshore Fisheries and Conservation Authorities Discussion*.

¹¹⁶ Marine Management Organisation, *Sea Angling 2012 – A Survey of Recreational Sea Angling Activity and Economic Value in England* (2013).

¹¹⁷ Angling Trust, *submission of evidence*.

Aquaculture

- 2.80 The European Commission, in their strategy paper on aquaculture accompanying the proposal for CFP reform, highlighted the importance of expanding the aquaculture sector as part of the EU's food security strategy.¹¹⁸ The Scottish Liberal Democrats' Manifesto stated that 'salmon alone contributes £300m' to Scotland's economy and is a 'major Scottish export'.¹¹⁹ Responses from Chris Leftwich and the RSPB recognised the potential opportunities for growth in this industry, with simplification of regulation and appropriate funding identified as tools to support its development.
- 2.81 The recent CFP reforms have introduced an Aquaculture Advisory Council and national multi-annual plans to encourage a more strategic approach for this sector across the EU. Specific legislation has been introduced for aquaculture on the basis of related issues such as animal health, welfare and food safety which were considered in detail in the Animal Health and Welfare and Food Safety Report in Semester One.¹²⁰
- 2.82 It was noted by London Workshop participants that the current approach has yet to be fully applied following the recent reforms to the CFP but a toolbox approach from the European Commission would be appropriate so that management can be tailored to local circumstances.¹²¹ The British Trout Association highlighted the diverse nature of EU aquaculture in terms of species farmed, production methods and geographical location and therefore, the importance of applying rules in a flexible way to reflect this.
- 2.83 Greater central EU intervention was not felt to be necessary by some London Workshop participants reflecting comments made by the British Trout Association arguing that aquaculture is not the management of a wild resource but a planned production sector, where the production and marketing are highly integrated to reflect market needs.¹²²

Shellfish

- 2.84 While respondents did not seek to alter the balance of competence in relation to shellfisheries, there was recognition that the industry would benefit from a simpler legal system and more tools to manage these resources effectively.
- 2.85 Respondents were broadly content with the EU acting to set overarching objectives that helped to achieve key aims in the inshore such as sustainable harvesting of stocks. Both Seafish and SAGB welcomed the CFP's commitments to fishing more sustainably in line with Maximum Sustainable Yield (MSY) as this reflected existing management aims and the inshore shellfisheries were thought to have insufficient protection under current national provisions.
- 2.86 Concerns were raised on the different interpretations of EU legislation by Member States and the impacts on the level playing field. SAGB provided the example of the Pacific oyster, a non-native species that has been widely cultivated in the EU since the 1950s, which is considered to have naturalised in France while the UK continues to treat it as a non-native species thus creating additional regulatory requirements.

¹¹⁸ European Commission, *Building a Sustainable Future for Aquaculture; A New Impetus for the Strategy of Sustainable Development of European Aquaculture* (2009).

¹¹⁹ Scottish Liberal Democrats, *Scottish Liberal Democrats Manifesto 2011* (2011).

¹²⁰ HMG, *The Balance of Competences between the UK and the EU: Animal Health and Welfare and Food Safety Report* (2013).

¹²¹ *Record of 28 November 2013 London Workshop*.

¹²² *Idem*.

- 2.87 SAGB provided examples illustrating the disadvantages of EU management of shellfisheries including the introduction of what they considered as overly-precautionary measures such as Nephrops TACs and measures lacking a scientific basis such as the EU Western Waters Effort Regime for scallops, brown crab and spider crab fisheries.¹²³

Freshwater and Migratory Fisheries

- 2.88 The Atlantic Salmon Trust and the Salmon and Trout Association supported the current balance of competence for diadromous fisheries such as salmon, sea trout and eels.¹²⁴ These species spend parts of their life cycle in the marine environment, and during those periods are covered by exclusive EU competence. The migratory, and therefore shared, nature of these fisheries makes coordinated management necessary to preserve the stock for all. A number of examples were provided including the management of the European eel stocks and the EU wide ban on fishing for salmon and sea trout outside coastal waters.¹²⁵
- 2.89 It was noted by the respondents above that management of the Atlantic salmon species is geographically wider than the EU, with international coordination achieved at the North Atlantic Salmon Conservation Organisation (NASCO) to provide the protection necessary over a wider geographic range. However, others responding to the Environment and Climate Change Report in Semester Two, including RWE and the Association of Drainage Authorities, said that a similar approach taken regarding the EU Eel Regulation had costs to business and implications for other policy priorities: this was linked to the interpretation of the requirements at Member State level.^{126 127}

2.2.4 Member State Level

- 2.90 Chapter one outlined the current areas of competence at Member State level. This section presents the evidence received regarding those areas. In the context of the failings of the CFP some respondents felt certain aspects of fisheries management policy under EU competence should now lie with the Member State. The Welsh Perspective Workshop commented that the decline of British fleets and profits of the fishing industry has made greater UK competence appealing. This reflected their view that fishermen needed a greater sense of ownership in fisheries decision making.¹²⁸ The potential for changes to the balance and alternative models of competence are considered in chapter three.

¹²³ Regulation 1954/2003 sets out the Framework for the Regime with Regulation 1415/2004 setting the overall limits on certain type of fishing effort that the larger vessels in Member States fleets (those over 15 metres) can exert in the western areas of sea around Scotland, Wales, England including the Channel and south west towards France and Spain.

¹²⁴ Diadromous: Species that spend parts of their lives in freshwater and parts of their lives at sea.

¹²⁵ Council Regulation 850/98 for the Conservation of Fishery Resources through Technical Measures for the Protection of Juveniles of Marine Organisms, 1998.

¹²⁶ HMG, *The Balance of Competences between the UK and the EU: Environment and Climate Change Report* (2014).

¹²⁷ Council Regulation 1100/2007 Establishing Measures for the Recovery For the Stock of the European Eel, 2007, implemented in England and Wales by the Eels (England & Wales) Regulations 2009 (SI 2009/3344).

¹²⁸ *Record of 3 December 2013 Welsh Perspective Workshop*.

Inshore waters – Access and Stock Conservation Measures

- 2.91 Under the CFP, the EU exercises exclusive competence in relation to conservation measures in Member States' waters. Member States have negotiated a derogation of powers back from the EU in relation to their inshore waters, out to 12 nautical miles from the coastline, allowing Member States to take independent measures in these waters, provided these measures are non-discriminatory and consistent with the CFP. This includes allowing access to other Member States where they have had historic access.
- 2.92 A few respondents expressed views on the implications of the current access arrangements. NUTFA flagged that the derogation, while having been in place for 30 years, was still impermanent. AIFCA would prefer this arrangement to be made permanent to remove uncertainty.¹²⁹
- 2.93 Several respondents including AIFCA and the Angling Trust commented that because the current access arrangements within the UK inshore area allow non-UK flagged vessels to ignore UK rules, UK vessels are disadvantaged.¹³⁰ The Welsh Government's response echoed this stating that historic access to the 6-12 nautical mile area around the Welsh Coast limited their ability to manage fisheries through additional controls as they would only be applicable to UK vessels.

Pair trawling in the Channel

In 2004, the UK introduced a ban on pair trawling in the Western English Channel within the 12 nautical mile zone due to high levels of cetacean by-catch in the bass fishery. Under EU law the ban could not be applied, without agreement, to non-UK vessels that have access within the 6-12 nautical mile zone, nor was a bid to the Commission to ask it to apply the ban in EU legislation to the whole Western Channel successful. Angling Trust felt that UK vessels were disadvantaged in the 6-12 nautical mile zone and protection measures for cetaceans were being undermined by non-UK vessels which continued to pair trawl.

Based on evidence submitted by: AIFCA, Angling Trust and NUTFA.

- 2.94 Fresh Start Project argued that the current access arrangements may be more detrimental to the UK than to other Member States, noting that French vessels have the right to access at least 15 different geographical areas within the UK's coastal waters, whilst the UK can only access one around France.¹³¹ David Campbell Bannerman MEP claimed that 85% of the value of EU catches was caught in British waters, but only 12% of that was by UK vessels.
- 2.95 Chris Leftwich and The Wildlife Trusts suggested that it may be time to consider historic access again in order to give Member States greater scope to manage the 0-12 nautical mile zone. They considered that the original intention of protecting the livelihoods of those that have historically fished in this area may no longer be as relevant, given changes in techniques and fishing patterns.
- 2.96 Responses from the Angling Trust, The Rivers Trust and Welsh Federation of Sea Anglers all highlighted an important role for Member States in managing issues that impact the inshore. The Shetland Fishermen's Association added that the ecosystems involved are so complex and variable that 'almost any management measure proposed at EU

¹²⁹ Record of 8 January 2014 Association of Inshore Fisheries and Conservation Authorities Discussion.

¹³⁰ Idem.

¹³¹ Fresh Start Project, *Manifesto for Change: A New Vision for Europe* (2013).

level is bound to be inappropriate in one sea basin or another'.¹³² Struan Stevenson MEP suggested that decisions appropriate to be taken at the national level included managing territorial waters. CFPO thought that 'effective and coherent management of the inshore fisheries can only really be done at Member State level or sub-Member State scale' and therefore, favoured 'giving Member States authority to set the terms of the management regime out to 12 nautical miles, subject to clear mechanisms to filter out discriminatory measures'.¹³³

- 2.97 In this respect the North Western IFCA suggested that the EU should 'devolve decision making to States for inshore out to median lines or edge of shelf with checks to ensure policy at regional area levels is effective, working and sustainable'.¹³⁴
- 2.98 By contrast, DARDNI felt this should take place within the EU framework. They felt there was a significant risk that individual Member States who introduced measures and plans could gain competitive advantage over another State. In addition, they raised concerns that fish stocks may be put at risk if plans and measures in one area are inadequate to maintain stock levels. This was echoed by the MCS who felt there was 'a strong possibility that decisions made solely at the Member State level could result in a mixed bag of outcomes.' It argued that 'some Member States [would be] setting ambitious, long-term targets to the benefit of the fish and fishermen [...], while others barely putting into place the legally required legislation'.¹³⁵ DARDNI predicted that at best the fishing industry could face additional costs through having to comply with a multitude of local regulations as a vessel passes from one jurisdiction to the next.

Quota Allocations

- 2.99 In his evidence Chris Davies MEP, on behalf of Liberal Democrat MEPs, highlighted that while the UK's TAC is decided at the EU level the allocation of quota to vessels is a matter for Member States and, in the UK, is the responsibility of Defra and the Devolved Administrations. He suggested that those, such as Greenpeace and NUTFA, who consider that small scale fishermen are treated unfairly regarding quota allocation, should recognise it is within the power of the Member State to address this.¹³⁶
- 2.100 A small number of respondents considered the question of the benefit to the UK from the national resource of quota. The point was raised by the British Ports Association and NUTFA, that as a result of EU trade and investment rules, foreign interests can own UK registered fishing vessels and thereby gain access to UK quota, leading to what they saw as a continuing danger that UK coastal communities, fishing ports and the connected fish processing sector miss out on income if UK-caught fish is landed on the continent. On this point the South Western Fish Producers Organisation Ltd (SWFPO) raised the Factortame case outlined in chapter one on page 22, where the ECJ found the nationality requirements imposed by the UK on fishing vessels infringed the right of free establishment set out in the EU Treaties.¹³⁷

¹³² Shetland Fishermen's Association, *submission of evidence*.

¹³³ Cornish Fish Producers Organisation (CFPO), *CFPO Response to the Reform of the Common Fisheries Policy*, (2011). Available at: www.cfpo.org.uk/news/11-cfpo-response-to-green-paper-on-reform-of-the-common-fisheries-policy.html, accessed on 12 March 2014.

¹³⁴ North Western Inshore Fisheries and Conservation Authority, *submission of evidence*.

¹³⁵ Marine Conservation Society, *submission of evidence*.

¹³⁶ Greenpeace, *Championing Small Scale Fishermen in Court Battle for Fairer Quotas* (2013). Available at: greenpeace.org.uk/blog/oceans/greenpeace-champions-small-boats-court-battle-fairer-quotas-20130501, accessed on 12 February 2014.

¹³⁷ See Articles 49 to 55 TFEU.

2.101 The Government, following the Factortame decision, put in place constraints on who can benefit from UK quota, most notably by requiring vessels to demonstrate an economic link with the UK through means such as the residency of the crew employed or where the catch is landed.

Devolution

- 2.102 In the UK, fisheries management is devolved. The Scottish Government in their evidence sought further devolution of fisheries management decisions most notably for management of licensing and fleet capacity, quota and effort management and access to the inshore zone as well as greater representation in international negotiations. This reflects its argument that fisheries management decisions are better made by those with practical experience and understanding of the fishery. It considers that full devolution of these functions would have a beneficial impact on Scottish fisheries.
- 2.103 Struan Stevenson MEP argued for greater coordination between the UK Government and the Devolved Administrations of Scotland, Wales and Northern Ireland to enhance the UK's strength in future fisheries negotiations and underline the importance of genuine regionalisation. He suggested that devolving more responsibility to Member States through the reformed CFP, and by extension Devolved Administrations in the UK, may deliver greater flexibility and opportunities for local stakeholders to operate based on local circumstances. This reflects the view of others in support of regionalisation. The Welsh Government argued that regionalisation provides opportunities to make more responsive decisions, with DARDNI agreeing decisions being more adapted to regional fisheries and fishing fleets is beneficial.

2.3 Does EU Decision Making Work?

2.104 This section discusses evidence considering how the current competence at EU level works in practice and the challenges and opportunities this provides.

Development of EU Policy

2.105 Several respondents commented on the process of policy making by the EU and how this could be improved. SWFPO felt that the decision making process was too hurried resulting in greater ECJ intervention to clarify the law. It suggested that 'proper consideration in bilateral or multilateral negotiations' would improve the quality of decisions made.¹³⁸ In the literature Paul Trebilcock of the NFFO gave an example of a restricted area that was introduced in 2001 covering a large part of the North Sea as an emergency measure to protect cod stocks. The scientific evaluation afterwards showed that 'this did next to nothing for the fish but displaced fishing fleets into immature haddock areas and onto pristine areas of the seabed that had never been fished before'.¹³⁹ He felt this demonstrated 'what can happen with a rushed process driven by political pressure'.¹⁴⁰

¹³⁸ South Western Fish Producers Organisation Ltd, *submission of evidence*.

¹³⁹ Anglo Northern Irish Fish Producers Organisation, *Anglo Northern Irish Fish Producers Organisation (ANIFPO), Fishing Industry Urges Care Over Marine Protected Areas* (2013). Available at: www.anifpo.com/press-releases.html, accessed on 23 February 2014.

¹⁴⁰ *Idem*.

- 2.106 Respondents expressed concerns about the impact on policy issues from the introduction, by the Treaty of Lisbon, of greater powers for the European Parliament in the EU decision making process.¹⁴¹
- 2.107 In their report *Regional Governance: Making it Work for Fisheries and the Environment*, Ocean 2012 and WWF were concerned that the increased role for the European Parliament may exacerbate EU management bodies' micromanagement of fisheries.¹⁴²
- 2.108 IEEP felt that the current stalling of the long term management plans showed that the institutional arrangements were 'highly politicised and not sufficiently attuned to very technical and scientific debates'.¹⁴³ However, they also questioned whether such delays and issues were an unintended but necessary outcome of the increased power given to the European Parliament. They argued that the benefits of increased 'transparency and accountability' to the decision-making procedure as a result of the European Parliament's role should not be overlooked.¹⁴⁴

EU Institutional Impasse

While Article 43(2) TFEU provides for the use of the Ordinary Legislative Procedure by the European Parliament and the Council to establish the 'provisions necessary for the pursuit of the objectives of the Common Fisheries Policy', Article 43(3) provides for the Council alone to decide on certain measures including the fixing and allocation of fishing opportunities.

The relationship between these Articles is important for the future regulation of fisheries management under the reformed CFP. This is because the CFP calls for the establishment of multi-annual plans which should include targets for reaching MSY in a certain time frame.

There is debate between Member States and the EU institutions as to which targets can be adopted via Ordinary Legislative Procedure. This has resulted in a legal impasse between the Council on one side and the European Parliament and Commission on the other. This has been referred to the ECJ.

As the legal impasse has yet to be resolved, progress on amending existing MAPs and drafting new MAPs has been slow, hampering the full implementation of the reformed CFP. The Scottish Government pointed out that, until a solution is found, current MAPs such as the Cod Recovery Plan will not be revised, which could be detrimental to the fisheries and fishermen.

In April, however, an EU Inter-Institutional Task Force on Multi-annual Plans (IITF) agreed a report identifying ways forward on MAPs. This centred on the potential for co-decided plans to set MSY targets as ranges, which would provide scope for the Council to decide on specific fishing opportunities, in accordance with Article 43 TFEU. The UK and others have welcomed the report as reopening the door to develop MAPs, though it remains for the different EU institutions to take a view on the IITF's proposals and their implications for the ECJ case.

Based on evidence submitted by the Scottish Government and information supplied by the UK Government.

¹⁴¹ Examples include: Food and Drink Federation, IEEP, National Federation of Fishermen's Organisations Members Discussion, *submissions of evidence*.

¹⁴² Ocean 2012 and WWF, *Regional Governance: Making it Work for Fisheries and the Environment* (2009).

¹⁴³ IEEP, *submission of evidence*.

¹⁴⁴ *Idem*.

2.109 CFP Reform Watch questioned whether increasing democracy in the decision making process with the involvement of 28 Member States and the European Parliament through the Ordinary Legislative Procedure was sufficiently responsive to potential impacts on the marine environment.¹⁴⁵ The Shetland Fishermen’s Association highlighted concerns with the responsiveness of measures and gave the example of the Cod Recovery Plan where despite consensus amongst interested parties that the plan is flawed and unfit for purpose it remains in place. Several respondents including the Welsh Government felt the EU is too bureaucratic.¹⁴⁶ The Scottish Government went further to suggest that the diverse interests amongst Member States and within the European Parliament lead to political deal making and delays in putting in place legislation.

The Importance of Transparency and Democracy

- 2.110 AIFCA highlighted the importance of transparency in decision making as a driver for compliance.¹⁴⁷ IEEP felt that the sharing of decision making between the Council and the European Parliament under the Ordinary Legislative Procedure had brought more transparency. By contrast, the FDF had concerns over the lack of transparency in the final stages of the negotiation process between the European Parliament, the Council and the European Commission which it felt led to provisions being adopted that had not been subject to scrutiny at earlier stages in the process.
- 2.111 Some respondents raised the importance of democracy within fisheries management. The European Movement stated that ‘long years of experience tell us that the best way to protect common interests is through shared and democratic institutions’.¹⁴⁸ Chris Davies MEP on behalf of Liberal Democrat MEPs, commented that the recent reforms demonstrated how the UK can secure improvements in EU policy through negotiation.
- 2.112 The Consumers’ Roundtable and NFFO members’ discussion argued that the EU voting system creates a climate where land-locked Member States can influence the decision on a fishery on the basis of wider political concerns rather than having informed decisions based on local needs.¹⁴⁹ In ANIFPO’s view this risks other Member States having a greater say in fisheries management in the waters surrounding the UK than the UK Government. The Brussels Workshop participants felt that an advantage of regionalisation was reducing the potential for this situation to continue.¹⁵⁰
- 2.113 NUTFA also raised the need for Advisory Councils (ACs) to be representative allowing a wide range of interested parties to meaningfully participate in their functions. Participants at the NFFO members’ discussion flagged that there have been changes to fisheries management seen during the negotiation of the 2013 reforms as a result of the greater role of the European Parliament in the EU decision making process.¹⁵¹

¹⁴⁵ CFP Reform Watch, *CFP Reform Watch, Decision Making* (2013). Available at: www.cfp-reformwatch.eu/2009/12/decision-making/, accessed on 12 February 2014.

¹⁴⁶ Examples include: *Brussels Workshop*; Chris Leftwich; New Under Ten Fishermen’s Association; and *Welsh Perspective Workshop*.

¹⁴⁷ *Record of 8 January 2014 Association of Inshore Fisheries and Conservation Authorities Discussion*.

¹⁴⁸ European Movement, *submission of evidence*.

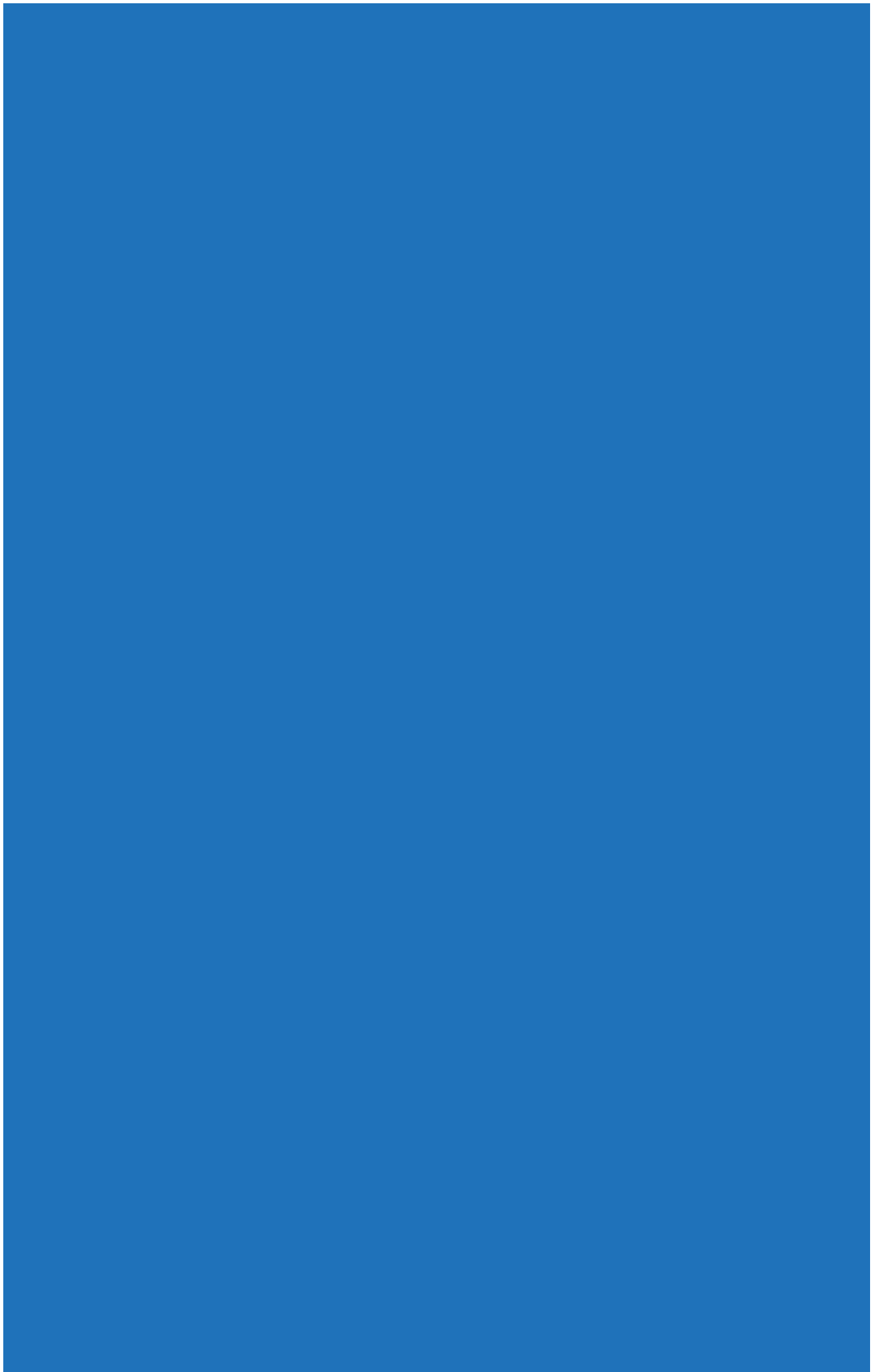
¹⁴⁹ *Record of 17 and 18 December 2013 National Federation of Fishermen’s Organisations Members’ Discussion and Consumers’ Roundtable*.

¹⁵⁰ *Record of 26 November 2013 Brussels Workshop*.

¹⁵¹ *Record of 17 December 2013 National Federation of Fishermen’s Organisations Members’ Discussion*.

2.114 While the increased democracy in decision making was acknowledged it was highlighted by a few respondents such as the NFFO members' discussion that this adds an additional dimension to the negotiation process. They were concerned that there was potential for a highly technical area being too greatly simplified in order to allow the general public to engage. The example given was of the recent Deep Sea proposal where there was an attempt to ban bottom trawling which had not taken into account existing practices. The key message from respondents was the need to have informed decision making with full awareness of the potential impacts on the ground.¹⁵²

¹⁵² *Idem.*



Chapter 3: Alternative Models for Competence

A small number of respondents considered the potential to achieve fisheries management goals through different models of competence. These models were seeking greater control of the UK EEZ and working outside the CFP framework. The arguments for these models are explored in the chapter below.

- 3.1 One argument made by Fresh Start Project in their report *Manifesto for Change: A New Vision for Europe* and a few respondents such as FAL, was that Member States such as the UK should have competence for fisheries management, providing greater control over their own waters.¹ The Conservative Party green paper, the TaxPayers' Alliance report *Terms of Endearment: What Powers Would David Cameron Need to Repatriate to Make EU Association Work* and the Bruges Group's paper *Plan B for Europe, Lost Opportunities in the EU Constitution Debate*, supported this view suggesting that UK fisheries should revert to exclusive UK control.^{2,3,4} Fresh Start Project argued that the 'government must look towards a totally new fishing policy run by Member States and in that way Britain could have much more control of fishing in our own waters'.⁵ This view was reflected in responses from David Campbell Bannerman MEP, FAL, individual respondent Paul Worham and SWFPO, who considered that current arrangements were not in the national interest, in light of the failure of the CFP to achieve its core objectives in the past. These groups suggested that the UK would be best served by managing fisheries outside the CFP framework.
- 3.2 It was argued by FAL and David Campbell Bannerman MEP that current arrangements limit control of territorial waters and access to the high quality fishing grounds surrounding the UK. The United Kingdom Independence Party (UKIP) claimed that the resource would be worth £2.5bn per year.⁶ *The Price of Fish* report advocated a similar line, suggesting that loss of access to the EEZ disadvantaged UK fishing vessels.⁷

¹ Fresh Start Project, *Manifesto for change: A new vision for Europe* (2013).

² Conservative Party, *A Conservative Party Green Paper: Consultation on a National Policy on Fisheries Management in UK Waters* (2005).

³ TaxPayers' Alliance, *Term of Endearment: What Powers Would David Cameron Need to Repatriate to Make EU Association Work* (2011).

⁴ Bruges Group, *Plan B for Europe, Lost Opportunities in the EU Constitution Debate* (2005).

⁵ Fresh Start Project, *Manifesto for Change: A New Vision for Europe* (2013).

⁶ United Kingdom Independence Party, *United Kingdom Independence Party (UKIP), Mini Manifesto* (2010). Available at: www.southcambsupkip.org.uk/ukip_mini_manifesto_201004_v01.html, accessed on 28 March 2014.

⁷ TaxPayers' Alliance, *The Price of Fish*.

- 3.3 Paul Worham felt that returning control to the UK would be beneficial in order to protect and manage stocks for the long term sustainability of the industry. Arguments were also made by Dr Lee Rotherham that the Commission is still moving toward greater management of the seas and centralisation of decision making through measures such as marine coastal planning.⁸ This long-term ambition was felt by him to be the wrong direction and management at a local level was preferred. He recognised that the reform has improved the situation with the move towards more power being exercised at a regional level but concerns over the approach to management remained.
- 3.4 Participants at the NFFO members' discussion highlighted that any assessment of the benefits of working outside the CFP must appreciate the complexity of the 'interacting variables' in fisheries management.⁹ SEEG felt that the assertion that the UK would be better off ignores the need to coordinate with other countries including those from other EU countries who currently share access to stocks straddling the UK EEZ. SEEG also felt that the UK could not mount a credible case for any increase in quota shares at the expense of other countries, given that the current shares have been operating unchanged for over 30 years and are themselves based on historic fishing activity, including in waters now within the UK's fisheries limits. The Parliamentary briefing paper *Leaving the EU* and the Regent's report suggested that there was a possibility of UK fishermen being excluded from areas outside the UK EEZ in which they currently have fishing rights including for the profitable Arctic-Norwegian cod.^{10 11}
- 3.5 Angling Trust highlighted that figures in the literature predicted that if the UK continues to enjoy access to healthy waters of other EU States it could benefit by £11bn – £19bn over the next 50 years.¹² SEEG also raised concerns that reduced coordination with neighbouring Member States could only be pursued at severe risk to the health of the stocks concerned with the potential to impact future fishing opportunities for UK fishermen.
- 3.6 Fresh Start Project suggested that reserving Member State competence on access would allow greater flexibility to reserve waters for the small-scale fleets that they view are currently disadvantaged by the access arrangements.¹³ IEEP commented that under the counterfactual Member States could set their own fisheries objectives for waters under their control, in line with their own economic agenda. The Conservative Party green paper highlights some of the areas that could be considered under Member States management namely, provision for temporary closures of fisheries, promotion of selective gear and technical controls and rigorous definition of minimum commercial sizes.¹⁴

⁸ Record of 18 December 2013 Bi-lateral Discussion with Dr Lee Rotherham, TaxPayers' Alliance.

⁹ Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.

¹⁰ House of Commons Library, *Parliamentary Briefing paper, Leaving the EU* (2013).

¹¹ Regent's University London, *The UK and Europe: Costs, Benefits and Options* (2013).

¹² Angling Trust in their evidence cited the following paper: Cabinet Office, Prime Minister's Strategy Unit, *Net Benefits, A Sustainable and Profitable Future for UK Fishing* (2004).

¹³ Fresh Start Project, *Manifesto for Change: A New Vision for Europe* (2013).

¹⁴ Conservative Party, *A Conservative Party Green Paper*.

- 3.7 Concerns were raised by participants at the London Workshop that if all Member States followed the principle of fisheries management returning to Member State competence, it would prove to be too resource intensive to have bilateral arrangements with all the countries who share fisheries.¹⁵ IEEP felt the problem with this approach was demonstrated by the difficulties in agreeing quota shares for the mackerel stock as mentioned in section 2.2.1.
- 3.8 Consideration was given to the approaches adopted by other countries. The NFFO members' discussion highlighted Norway's approach as an example of good practice in relation to fisheries management.¹⁶ It was felt that they focus efforts on getting the basics right so that fisheries management worked effectively. Some London Workshop participants commented that Norway benefits from being in the European Economic Area (EEA) but not in EU, as they are able to manage their own fisheries while accessing trading links.¹⁷ Norwegian Fisheries Minister Elizabeth Aspaker, in a speech to their industry said 'nearly 60% of exports, measured both in value and in quantity, go to the EU, which is also one of our main contracting parties in the management of fish stocks'.¹⁸
- 3.9 Chris Leftwich, the NFFO members' discussion and the Bruges Group's paper *The Norway Option* argued that countries such as Norway and Iceland have an advantage in negotiations of being one versus many.^{19 20} Participants at the NFFO members' discussion suggested that this enabled them to react quickly.²¹ David Campbell Bannerman MEP suggest Greenland's approach enabled them to gain financially from limiting access to EU vessels within certain quotas in return for €15.1m annually, plus €2.7m to develop fisheries policy locally.
- 3.10 The Brussels Workshop participants argued that if the UK was acting outside the EU or the CFP, it would not be involved in the fisheries or trade rules decisions taken by EU institutions, to the disadvantage of the UK fleet.²² A Parliamentary briefing paper also acknowledged the UK would have less power to influence the management of fisheries in the seas immediately adjacent to the EEZ and could see barriers to trade forming between the EU and UK.²³ The Regent's report outlined the possibility that exports of UK fishery products could become subject to the EU's common external tariff, as applied to Norway's exports.²⁴ A Parliamentary briefing paper suggested the UK would have to comply with EU import conditions and certification requirements to export fishery products to the EU, while having little influence over those requirements.²⁵ The NFFO members' discussion highlighted the experience of Norway in relation to this.²⁶ These situations could hinder the export of fish products to the EU and have implications for the value of the fisheries.

¹⁵ *Record of 28 November 2013 London Workshop.*

¹⁶ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

¹⁷ *Record of the 28th November 2013, London Workshop.*

¹⁸ E. Aspaker: *Speech presented at the Congress of Norwegian Fishermen's Association, Norway* (2013).

¹⁹ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

²⁰ The Bruges Group, *The Norway Option* (2013).

²¹ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

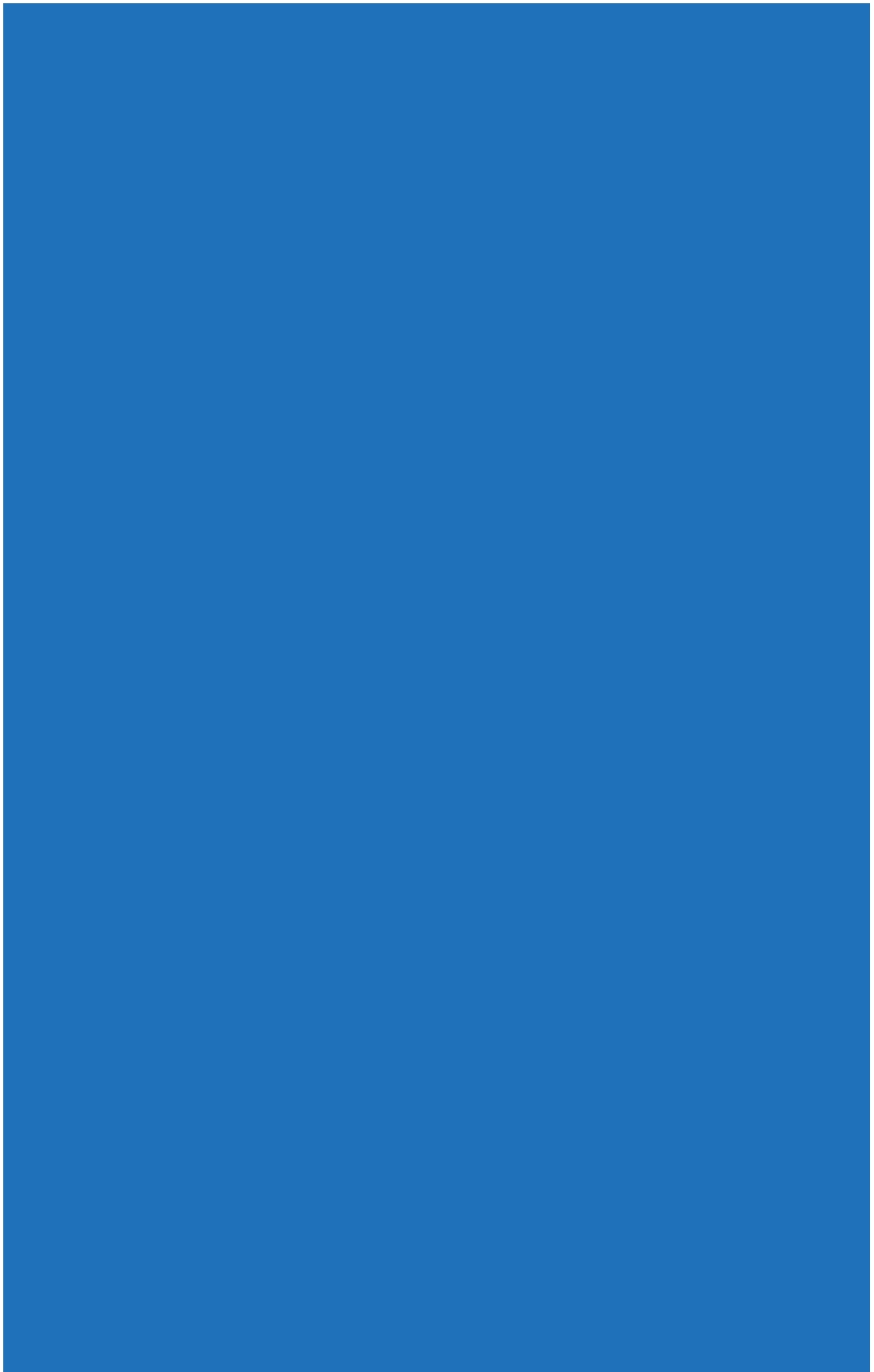
²² *Record of 26 November 2013 Brussels Workshop.*

²³ House of Commons Library, *Parliamentary Briefing paper, Leaving the EU* (2013).

²⁴ The Regent's University London, *The UK and Europe.*

²⁵ House of Commons Library, *Parliamentary Briefing paper, Leaving the EU.*

²⁶ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*



Chapter 4: Future Opportunities and Challenges

Respondents identified a number of major policy challenges and considered how EU competence could best be deployed, or not deployed, to address these in the UK's national interest.

The evidence pointed to the need to consider three areas:

- The implementation of the reformed CFP;
- Economic & environmental sustainability; and
- Climate change.

Implementation of CFP Reform

- 4.1 Brussels Workshop participants considered the changes brought by the 2013 reforms, reflecting comments from Barrie Deas of the NFFO that the reform of the CFP was the biggest single change to fisheries management in the last 20 years.^{1 2} FDF commented that the reforms were designed to provide a constructive framework for future fisheries management. Eastern IFCA and SEEG argued the reform had gone a long way to address specific failures including introducing MSY into decision making on fishing opportunities.
- 4.2 The UK Government has welcomed the 2013 reforms. Its view is that the new CFP will enable the progressive end to discarding over the next few years. Decentralising decision making away from Brussels represents an important step away from the one size fits all approach of the past. The UK Government views the new commitment to set fishing rates at sustainable levels as a way to ensure an end to overfishing. All of this is expected to form a foundation to achieve fisheries management goals of healthy stocks, a prosperous fishing industry and a healthy marine environment.
- 4.3 The UK played a key role in pressing for reform of the system. SEEG commented that the UK has a powerful influence on decisions within the EU. Chris Davies MEP on behalf of Liberal Democrat MEPs highlighted in his evidence that the UK Government, when decisions had to be taken in Council, had positioned itself as a leader amongst the reformers.

¹ *Record of 26 November 2013 Brussels Workshop.*

² Barrie Deas from the National Federation of Fishermen's Organisations in providing evidence to the House of Lords Select Committee on the European Union: Agriculture, Fisheries, Environment and Energy (Sub Committee D), *Inquiry on Reform of the Common Fisheries Policy: Implementation of the Discards Ban* (2013).

4.4 However, responses from a range of sectors acknowledged that the value of the reforms is as yet unproven with the full impact of these changes still to take effect.³ Chris Davies MEP on behalf of Liberal Democrat MEPs and SEEG highlighted the importance of implementation and ensuring effective enforcement of the new requirements by all Member States throughout the EU. Some respondents from the political, industry and environmental NGO sectors indicated nonetheless that there was scope for optimism; that the reformed fisheries management structures would improve the approach and provide the tools needed to manage fisheries more effectively in the future.⁴

Regionalisation

4.5 A common theme from respondents was an emphasis on the opportunity now provided by the reforms. This primarily related to comments on the regionalisation process and the potential to make decisions closer to the fishery.⁵ EFRA in their enquiry on the reform said 'Defra has a once in a decade opportunity to reform the European Union's CFP to ensure that it delivers for the fish, the fishermen, and the coastal communities that depend on them'.⁶ Responses from Struan Stevenson MEP, DARDNI, Shetland Fishermen's Association, the Welsh Government and WWF welcomed the move from top down decision making. The hope being that the new process would facilitate development of fisheries management measures that show a greater understanding of local needs through a role for stakeholders.

4.6 NUTFA highlighted in their response that 'the regionalisation of management should in theory provide a more proactive and dynamic approach to meeting local and regional needs'.⁷ ClientEarth highlighted that this would allow the UK a greater role in decisions that affect their fisheries. NUTFA suggested that local needs will need to be balanced with ensuring a level playing field at regional, as well as EU level. This view is shared by others such as IEEP who commented that the outcome of regionalisation could lead to 'more informed and regional or locally appropriate solutions to fisheries management, while facilitating the harmonisation of objectives and enforcement'.⁸ Others such as the Institute for Marine Resources and Ecosystem Studies (IMARES) highlighted the challenges ahead in reaching agreements on future policies. A response from the Eastern IFCA stressed the importance of ongoing and effective feedback and support between those 'on the ground' and those driving and managing the change.⁹

4.7 Some Brussels Workshop participants suggested that the reform was an opportunity to demonstrate to the EU that regionalisation can deliver fisheries management objectives effectively.¹⁰ MEPs, Struan Stevenson and Chris Davies on behalf of Liberal Democrat MEPs, who were actively involved in the reform negotiations, and the Welsh Government echoed this in their responses, suggesting that it represents an opportunity for Member States to develop this in practice. The response from the Shetland Fishermen's

³ Examples include: Food and Drink Federation; IEEP, and Senior European Experts Group, *submissions of evidence*.

⁴ Examples include: Chris Davies MEP on behalf of Liberal Democrat MEPs; New Under Ten Fishermen's Association; Struan Stevenson MEP; and The Wildlife Trusts, *submissions of evidence*.

⁵ ClientEarth; Department for Agriculture and Rural Development Northern Ireland; and Struan Stevenson MEP, *submissions of evidence*.

⁶ House of Commons, Environment, Food and Rural Affairs Select Committee, *EU Proposals for Reform of the Common Fisheries Policy, Volume One* (2012).

⁷ New Under Ten Fishermen's Association, *submission of evidence*.

⁸ IEEP, *submission of evidence*.

⁹ Eastern Inshore Fisheries and Conservation Authority, *submission of evidence*.

¹⁰ *Record of 26 November 2013 Brussels Workshop*.

Association highlighted the importance of allowing regionalisation to develop to fully meet the needs of unique ecosystems.

- 4.8 Others saw regionalisation as a way to address some aspects of the system that could be further improved. MMO thought regionalisation could assist in more outcome based enforcement and urged greater consideration of enforcement at a sea-basin level as technical measures are developed.¹¹ IEEP considered that it remained to be seen whether this regional approach would achieve the outcome of effective technical conservation measures, but it felt it clearly presented an opportunity to achieve more informed and locally appropriate decisions.
- 4.9 FAL and Marinet were more sceptical of the opportunities reform could offer, and were concerned that the failings of the past have not yet been fully addressed. Responses from across the range of interested parties highlighted that further work would be needed to build on the success achieved to date in the negotiations in order to implement the new requirements effectively.¹² MMO believed that there is a need to ensure a common understanding of the requirements across EU Member States.¹³

Elimination of Discards and Opportunities for Innovation

- 4.10 The importance of effective implementation and enforcement was stressed in several responses, in particular in relation to the discards ban. The House of Lords EU Sub-Committee D enquiry commented on the practical steps needed to turn the vision of a discard ban into a reality.¹⁴ It commented on the complexity of applying landing obligation requirements across EU fisheries and the need to support further work on the appropriate use of the technical exemptions. The complexity of the new obligations was also reflected in the response from IMARES.
- 4.11 Chris Davies MEP on behalf of Liberal Democrat MEPs, welcomed the shift in emphasis to landing all catches while actively managing what is caught. The MCS and The Wildlife Trusts suggested that selectivity and gear improvements would help deliver the discards ban but also had a role in achieving wider environmental objectives by minimising the negative impacts of fishing on the marine ecosystem. A view from the MCS was that there was a need to make good practice the most attractive option for the fishermen.

Economic & Environmental Sustainability

- 4.12 A large number of respondents considered the EU's ability to address and achieve environmental sustainability to be an important goal under the reform of the CFP.¹⁵
- 4.13 Whilst praise has been given for the commitments made in the reforms to fish more sustainably in future against targets for achieving MSY, interested parties highlighted that environmental sustainability of EU fisheries and achieving MSY are important challenges for the future.¹⁶

¹¹ *Record of 9 January 2014 Marine Management Organisation Discussion.*

¹² Examples include: Brussels Workshop; Chris Davies MEP on behalf of Liberal Democrat MEPs; Senior European Experts Group; and WWF, *submissions of evidence.*

¹³ *Record of 9 January 2014 Marine Management Organisation Discussion.*

¹⁴ The House of Lords Select Committee on the European Union: Agriculture, Fisheries, Environment and Energy (Sub Committee D), *Inquiry on Reform of the Common Fisheries Policy: Implementation of the Discards Ban* (2013).

¹⁵ Examples include: Angling Trust, Chris Davies MEP on behalf of Liberal Democrat MEPs, Senior European Experts Group, Shellfish Association Great Britain and WWF, *submissions of evidence.*

¹⁶ Examples include: Marine Conservation Society, Seafish and Shellfish Association of Great Britain, *submissions of evidence.*

- 4.14 Responses including from Chris Davies MEP on behalf of Liberal Democrat MEPs, SAGB and WWF highlighted the importance of harvesting fish in line with scientific advice including using MSY. SWFPO expressed concerns over the impact that meeting MSY targets might have on the industry, specifically in terms of the need to reduce fishing pressure in the short term and the impact on jobs and vessels.
- 4.15 Some literature sources however see an unbreakable link between economic and environmental sustainability and argue that this is best served by restoring depleted stocks and catching fish more efficiently.¹⁷ Ocean 2012 in its report *How to Transform European Fisheries Policy* highlighted the importance of achieving healthy stocks in order to achieve the wider economic and social aims of the CFP.¹⁸ This was also reflected in the response from the WWF. The New Economics Foundation study *Jobs Lost at Sea* suggested that the UK stands to gain £403m per annum (€470m) from improved stocks. The study also estimates that restoring European fish stocks to a condition capable of producing MSY would deliver an extra 3.5 million tonnes of fish: enough fish to feed an additional 155 million EU citizens, and create an extra 100,000 jobs.¹⁹
- 4.16 NUTFA recognised this in its response highlighting that the reformed CFP provides ‘significant opportunities for the more sustainable exploitation of fish stocks and the resultant improvement in profitability for the fishing sector within the UK’.²⁰
- 4.17 The challenge is achieving this objective. Dr Lee Rotherham noted that it would take some time for the negative impacts of the CFP’s past to be reversed and for stocks to recover.²¹ NUTFA predicted that economic and environmental sustainability will only be achieved if the new CFP is ‘implemented pragmatically and in a timely manner’.²²

Climate Change

- 4.18 A major future challenge identified by a few of the respondents was the ability for fisheries managers to adapt the CFP’s rules to address changes in the marine environment.²³ The Scottish Government and participants in the London Workshop and Academics’ Roundtable, all highlighted the lack of flexibility in the CFP’s rules.²⁴ London Workshop and Academics’ Roundtable were of the view this not only reduces the ability to adapt the rules to local needs, and to adopt a risk based approach to implementation but also reduces the scope to respond to longer term changes in the marine environment.²⁵

¹⁷ Rashid Sumaila of LSE, *Rebuilding EU Fish Stocks Could Generate Substantial Financial Resources for the European Economy* (2013). Available at: www.blogs.lse.ac.uk/europpblog/2013/02/07/eu-common-fisheries-policy-fish-stocks/, accessed on 12 February 2014.

¹⁸ Ocean 2012, *How to Transform European Fisheries Policy*. Available at: ocean2012.eu/publications/3-how-to-transform-european-fisheries-policy, accessed on 12 February 2014.

¹⁹ New Economics Foundation, *Jobs Lost at Sea* (2012).

²⁰ New Under Ten Fishermen’s Association, *submission of evidence*.

²¹ *Record of 18 December 2013 Bi-lateral Discussion with Dr Lee Rotherham, TaxPayers’ Alliance*.

²² New Under Ten Fishermen’s Association, *submission of evidence*.

²³ Examples include: *London Workshop*; Marine Management Organisation, and the *Welsh Perspective Workshop*, *submission of evidence*.

²⁴ *Record of 28 November 2013 and 11 December 2013 Academics’ Roundtable and London Workshop*.

²⁵ *Idem*.

- 4.19 Relative Stability was mentioned by London Workshop participants as an example of rigid EU rules reducing the adaptability of the EU system.²⁶ They commented that in ensuring a stable percentage of the available fishing opportunities for Member States year on year, flexibility is lost to respond to larger scale changes such as climate change that could alter the geographic location of migratory species. RSPB and European Movement said that the system needs to be considered in this context so that changes in fish migratory patterns are reflected in the available fishing opportunities for Member States.
- 4.20 The negotiation on mackerel was an example used by numerous respondents, including the NFFO members' discussion, to highlight the importance of coordination in order to effectively manage fisheries.^{27 28} Full details on this are outlined in a text box in section 2.2.1. Angling Trust commented that this demonstrates that changes in migratory patterns of a stock happen and regardless of the cause, can have significant implications for the UK fishing industry. For example, Welsh Water, in responding to the Environment and Climate Change Report in Semester Two, mentioned that there is evidence that migratory salmon have shown a northward trend towards cooler waters. It was felt by participants at the Brussels Workshop that alternatives needed to be considered to ensure fisheries are being managed in the best way possible.²⁹
- 4.21 The Angling Trust and Welsh Government in their responses pointed out the important role of science in supporting future fisheries management decisions. Angling Trust also highlighted the importance of EU funded modelling examining potential changes in sea temperature and their impacts. This will enable fisheries managers to react most effectively if changes occur. Dr Lee Rotherham commented on the need to have strong relationships between fishermen and scientists in the future. While he noted that relationships between these two groups had improved in recent years, it was felt that efforts in this area should continue. He suggested better relationships allow fishermen and fisheries managers to have early warning of the need to adapt to changing environmental conditions.³⁰ This view was also reflected in the evidence collected in the House of Lords EU Sub Committee D enquiry on discards where use of fishing vessels as data platforms was seen as providing an opportunity for the future.³¹
- 4.22 Angling Trust suggested that greater EU funding to model potential scenarios could better equip the UK to adapt to climate change impacts, such as sea temperature changes, in the future.

²⁶ *Record of 28 November 2013 London Workshop.*

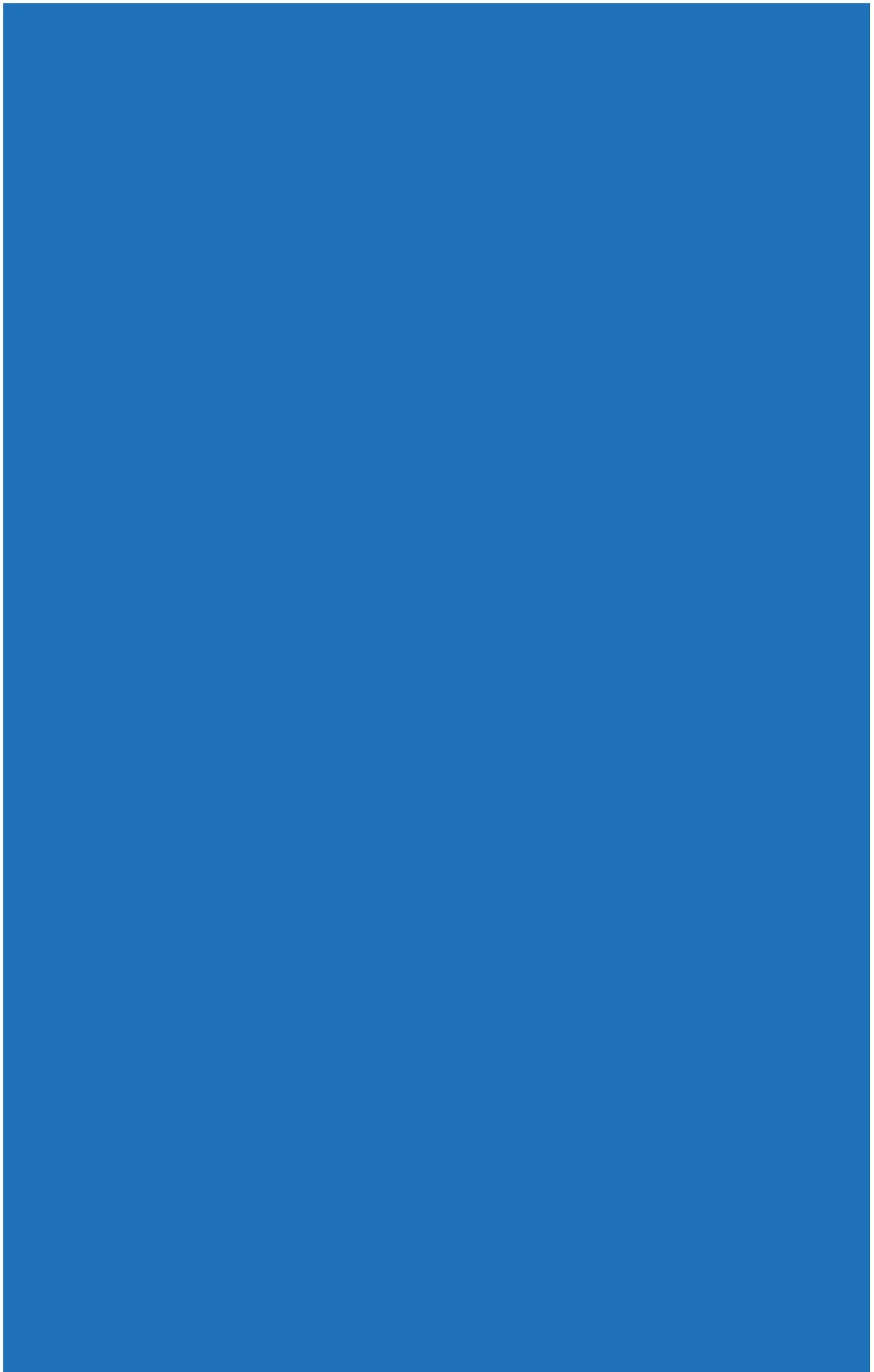
²⁷ *Record of 17 December 2013 National Federation of Fishermen's Organisations Members' Discussion.*

²⁸ Examples include: Department of Agriculture Rural Development Northern Ireland; IEEP; and Welsh Federation of Sea Anglers, *submissions of evidence.*

²⁹ *Record of 26 November 2013 Brussels Workshop.*

³⁰ *Record of 18 December 2013 Bi-lateral Discussion with Dr Lee Rotherham, TaxPayers' Alliance.*

³¹ The House of Lords Select Committee on the European Union – Agriculture, Fisheries, Environment and Energy (Sub Committee D), *Inquiry on Reform of the Common Fisheries Policy* (2013).



Annex A: List of Evidence

Angling Trust

Anglo Northern Irish Fish Producers' Organisation

Atlantic Salmon Trust

British Ports Association

British Trout Association

Campbell Bannerman, David MEP

ClientEarth

Coalition for Fair Fisheries Arrangements

Davies, Chris MEP on behalf of Liberal Democrat MEPs

Department of Agriculture and Rural Development, Northern Ireland

Eastern Inshore Fisheries and Conservation Authority

European Movement

Food and Drink Federation

Fresh Start Project

Heylin, Michael – Individual

Institute for Archaeologists

Institute for European Environmental Policy

Institute for Marine Resources and Ecosystem Studies

Leftwich, Chris – Chief Inspector at the Fishmongers Company

Marine Conservation Society

Marinet

Murphy, Nick – Individual

National Federation of Fishermen's Organisations

New Under Ten Fishermen's Association

North Western Inshore Fisheries and Conservation Authority

RSPB

Salmon and Trout Association

Scottish Fishermen's Federation

Scottish Government

Scottish Seafood Association

Seafish

Senior European Experts Group

Shellfish Association of Great Britain

Shetland Fishermen's Association

South Western Fish Producers' Organisation

Stevenson, Struan MEP

TaxPayers' Alliance

The Fishermen's Association Limited

The Rivers Trust

The Wildlife Trusts

Welsh Federation of Sea Anglers

Welsh Government

Worham, Paul – Individual

WWF

Workshop and Bi-Lateral Meeting Notes

Academics' Roundtable

Bilateral Meeting with Association of Inshore Fisheries and Conservation Authorities

Bilateral Meeting with Dr Lee Rotherham – TaxPayers' Alliance

Bilateral Meeting with Marine Management Organisation

Brussels Workshop

Consumers' Roundtable

London Workshop

National Federation of Fishermen's Organisations Members' Discussion

Welsh Perspective Workshop

Any references to MEPs reflect their status at the time of the Call for Evidence period.

Annex B: List of Organisations that Attended Workshops and Bi-lateral Meetings

Academics' Roundtable (London)

Attendees:

CEMARE/University of Portsmouth
University of Reading
Warwick University

Association of Inshore Fisheries and Conservation Authorities (London)

Attendees:

Kent and Essex IFCA
North West IFCA
Devon and Severn IFCA
Eastern IFCA
Northumberland IFCA
Southern IFCA
Sussex IFCA
Isles of Scilly IFCA
Cornwall IFCA
Association of IFCA's

Bilateral with Dr Lee Rotherham of the TaxPayer's Alliance (London)

Bilateral with Marine Management Organisation (London)

Brussels Workshop (Brussels)

Attendees:

Brown, Anthony – *European Freedom and Democracy (EFD) Group Adviser*
Davies, Chris MEP
Girling, Julie MEP
Hazlewood, Richard – *European Conservatives and Reformists (ECR) Group Adviser*
Hudghton, Ian MEP
Lindebo, Erik – *European Parliament Fisheries Secretariat*
Muir, Lachlan – *Greens/European Free Alliance Group Adviser*
Ocean 2012
Office of Struan Stevenson MEP
Office of Chris Davies MEP
Office of Julie Girling MEP
Pew Trust
Scottish Government – *Brussels Office*
Telejbo, Bartlomiej – *European Conservatives and Reformists (ECR) Group Adviser*
UKRep
Welsh Assembly Government – *Brussels Office*

Consumers' Roundtable (London)

Attendees:

Burrington, Tessa – *Individual*
Coleman, Kevin – *Individual*
Compassion in World Farming
European Movement
Institute of Food Science & Technology
TaxPayers' Alliance

Edinburgh Launch Event (no record taken)

Attendees:

Aberdeen Fish Producers Organisation
Agrifood and Biosciences Institute
Angling Trust
Anglo Northern Irish Fish Producers Organisation
Centre for Environment Fisheries and Aquaculture Science
Food & Drink Federation
Joint Nature Conservation Committee
Lunar Fish Producer Organisation
Marine Stewardship Council
National Federation of Fishermen's Organisations
New Under Ten Fisheries Association
Northern Ireland Fish Producers Organisation
Northern Producers Organisation
Ocean Blue Quota Company
Peter & J Johnstone
RSPB Scotland
Scottish Fishermen's Federation
Scottish White Fish Producers Association
Seafish
South and West Wales Fishing Communities
South Western Fish Producers Organisation
The Fishermen's Association Limited
The Scampi Processors Association of Northern Ireland
Wales and West Coast Fish Producers Organisation
Welsh Fishermen's Association
West of Scotland Fish Producers Organisation

London Workshop

Attendees:

British Trout Association
ClientEarth
European Commission to the UK
Environmental Defense Fund
Food and Drink Federation
Institute for European Environmental Policy
National Federation of Fish Friers
RSPB

NFFO Members' Discussion (Brussels)

Attendees:

Anglo Northern Irish Fish Producers Organisation
Cornish Fish Producers Organisation
East of England Fish Producers Organisation
National Federation of Fishermen's Organisations
National Federation of Fishermen's Organisation's South East Chairman and NFFO
Chairman-elect
North Atlantic Fish Producers Organisation

Welsh Perspective Workshop (Cardiff)

Attendees:

Chairman of the Welsh Federation of Sea Anglers
Dawn Meats
Farmers' Union of Wales
Hybu Cig Cymru
Institute for Archaeologists
National Assembly for Wales
Natural Resources Wales
PLANED
RICS Wales
RSPB
Welsh Government
Welsh Local Government Association

Annex C: List of Acronyms

AC	Advisory Council
AIFCA	Association of Inshore Fisheries and Conservation Authorities
ANIFPO	Anglo Northern Irish Fish Producers' Organisation
ASH	Atlanto – Scandian Herring
CAP	Common Agricultural Policy
CER	Centre for European Reform
CFP	Common Fisheries Policy
CFPO	Cornish Fish Producers Organisation
CMO	Common Organisation of the Markets in Fishery and Aquaculture Products
DARDNI	Department of Agriculture and Rural Development Northern Ireland
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFF	European Fisheries Fund
EFRA Committee	Environment, Food and Rural Affairs Committee
EMFF	European Maritime and Fisheries Fund
EU	European Union
FAL	The Fishermen's Association Limited
FDF	Food and Drink Federation
FMA	Fisheries Management Agreements
FPA	Fisheries Partnership Agreement

ICCAT	International European Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IEEP	Institute for European Environmental Policy
IFCA	Inshore Fisheries and Conservation Authority
IITF	Inter-Institutional Task Force on Multi-annual Plans
IMARES	Institute for Marine Resources and Ecosystem Studies
MSY	Maximum Sustainable Yield
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission
NFFO	National Federation of Fishermen's Organisations
NGO	Non-Governmental Organisation
NUTFA	New Under Ten Fishermen's Association
MAPs	Multi-Annual Plans
MCS	Marine Conservation Society
MEP	Member of the European Parliament
MMO	Marine Management Organisation
MSFD	Marine Strategy Framework Directive
QMV	Qualified Majority Voting
RAC	Regional Advisory Council
RFMO	Regional Fisheries Management Organisation
SAGB	Shellfish Association of Great Britain
SEEG	Senior European Experts Group
SFF	Scottish Fishermen's Federation
SFPA	Sustainable Fisheries Partnership Agreements
SWFPO	South Western Fish Producers' Organisation
TAC	Total Allowable Catch
TEU	Treaty on European Union
TUC	Trade Union Congress
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
WTO	World Trade Organisation

Annex D: List of Literature Informing the Fisheries Report

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