

13 May 2025: UK Government Advice on the Management of Sandeel in English Waters of The North Sea

This document contains advice that informed the UK Government decision regarding the management of sandeel in English Waters of the North Sea. The text has been taken from Ministerial submissions and formatted appropriately for readability.

Background

1. Defra Ministers agreed to close English waters of the North Sea to fishing for sandeel on 19 December 2023, following a PO-PO write round with DESNZ, FCDO and No10. This decision was publicly announced on 31 January 2024. On 8 February 2024, the UK notified the EU pursuant to Article 496(3) of the TCA. The closure came into effect on 26 March 2024. On 16 April 2024, the EU requested consultations with the UK concerning the decision, pursuant to Article 738 of the TCA. These consultations took place in Brussels in May 2024, concluding without a mutually agreed solution. Consequently, on 25 October 2024, the EU requested the establishment of an Arbitration Tribunal under Article 739 of the TCA. The Arbitration Tribunal hearing was held from 28 to 30 January 2025, in the Hague at the Permanent Court of Arbitration. On 27 March 2025, the Arbitration Tribunal delivered its Interim Report to the Parties with the final ruling delivered to the Parties on 28 April 2025.
2. The UK must notify the EU within 30 days of receiving the final ruling of the measures we are taking, or which the UK envisages taking, in order to come into compliance with the relevant provisions of the TCA (in accordance with Article 746(2) of the TCA). The last date to notify the EU is 28 May 2025.
3. Sandeel are a small forage fish which play a critical role in the North Sea ecosystem. A large diversity of predators consume sandeel, including larger fish, marine mammals and seabirds. Internationally important UK breeding colonies of sandeel-dependent seabirds have been acutely impacted by Highly Pathogenic Avian Influenza (HPAI) in recent years. Many of these species are vulnerable or endangered.
4. The driver for taking action on sandeel management is the UK Marine Strategy Regulations 2010. These require the UK to take necessary measures to achieve or maintain Good Environmental Status (GES) through the development of a UK Marine Strategy. GES is a shared objective by the UK and EU, and this target has not been met for seabirds and marine mammals. Defra is currently under investigation by the Office for Environmental Protection for failing to meet GES commitments.

5. The objective of the measure is to support GES by improving the abundance and resilience of sandeel so as to improve the abundance and resilience of their predators within the North Sea ecosystem, including larger fish, marine mammals, and seabirds.
6. This objective is pursued in accordance with our domestic and international commitments under the Marine Strategy Regulations 2010, OSPAR North-East Atlantic Environment Strategy 2030, the Environment Act 2021, the Fisheries Act 2020, the Joint Fisheries Statement, and the TCA. Each of these is relevant as follows:
 - a. Under the Marine Strategy Regulations 2010, the UK is required to have a strategy which assesses the state of UK seas and sets targets to achieve GES. The UK is required to update on progress towards these targets every 6 years. We do this through the UK Marine Strategy. As our submission on 1 May advised, it is a statutory duty of the regulations to consult publicly on any update to the UKMS. Since our latest published assessment in 2019 our assessment of progress on which we will shortly be consulting suggests that, of relevance to this decision, GES has not been achieved for marine birds, benthic habitats and food webs.
 - b. The OSPAR North-East Atlantic Environment Strategy 2030 sets specific strategic objectives which contribute to the achievement of the UN 2030 agenda for Sustainable Development and its Sustainable Development Goals. Relevant objectives include but are not limited to, strategic objective 5: to protect and conserve marine biodiversity, ecosystems and their services to achieve good status of species and habitats and thereby maintain and strengthen ecosystem resilience; and operational objective S5.04: by 2025 at the latest OSPAR will take appropriate actions to prevent or reduce pressures to enable the recovery of marine species and benthic and pelagic habitats in order to reach and maintain good environmental status as reflected in relevant OSPAR status assessments, with action by 2023 to halt the decline of marine birds.
 - c. The Environment Act 2021 requires that policy makers consider the impact of policy on the environment and that this may include identifying opportunities for protection.
 - d. The Fisheries Act 2020, under the 'ecosystem objective' requires that 'fish and aquaculture activity is managed using an ecosystem-based approach so as to ensure that any negative impacts on marine ecosystems are minimised and, where possible reversed'. The 2020 Act defines an ecosystems-based approach as one which 'ensures that the collective pressure of human

activities is kept within levels compatible with the achievement of GES and does not compromise the capacity of marine ecosystems to respond to human-induced changes'. Other relevant objectives include the sustainability objective and the scientific evidence objective.

- e. The Joint Fisheries Statement requires that 'the fisheries policy authorities will achieve, or contribute to the achievement of, the ecosystem objective and GES through management regimes which maintain or, where required, recover, protect and improve the health of marine ecosystems. Such management approaches will be designed to minimise the impacts of fishing on the environment beyond individual stocks'.
 - f. The TCA requires under Article 496(1) that when deciding on any fisheries management measures the Parties must do so in pursuit of the objectives in Article 494(1) and (2) and having regard to the principles set out in Article 494(3) of the TCA. The principles in Article 494(3) of particular relevance to this decision are: (a) to promote the long-term sustainability (environmental, social and economic) and optimum utilisation of shared stocks; (c) to base conservation and management decisions on the best available scientific advice, principally that provided by ICES, (e) to take due account of and minimise harmful impacts of fishing on the marine ecosystem and take due account of the need to preserve marine biological diversity; and (f) to apply proportionate and non-discriminatory measures for the conservation of marine living resources, while preserving the regulatory autonomy of the Parties. The TCA also makes provision for an adjustment period (until 30 June 2026) in Annex 38 to the TCA, which provides for full access for the UK and EU to fish in their respective waters. There is reference in the preamble to Annex 38 that notes 'the social and economic benefits of a further period of stability', which is also a relevant consideration. There is the possibility for the UK or EU to take fisheries management measures during that time in compliance with Article 496(1) and (2) of the TCA.
7. The Arbitration Tribunal found that the EU and the UK agree on the objectives of the measure.

Consideration of the impact on the rights and interests of the EU during the adjustment period

8. In accordance with the TCA, we must balance the relevant benefits and costs of the measure, including the rights of full access of the EU and its related interests in stability during the adjustment period and the UK's regulatory autonomy within the prescribed limits of Article 496.

9. A starting point for considering these issues is that Annex 38 of the TCA provides for a period of stability for both the UK and the EU as Parties to the TCA. Sandeel is a jointly managed stock between the UK and the EU. The TCA sets out the requirements for the joint management and TAC setting for sandeel in light of ICES advice and following in-year annual consultations. We recognise that shares of the sandeel stock are much greater for the EU with a 96.89% share in 2024 compared to 3.11% for the UK, meaning that closure will have a significant impact on certain parts of the EU fleet during the adjustment period. There is also a specific impact on the Danish fleet and the processing sector more widely as detailed in paragraph 25 of this submission.
10. Whilst recognising the stability provided by the adjustment period and the rights and interests of the EU during that period, we consider that there are compelling reasons why there is a need for this measure now, during the adjustment period. It is possible under Article 496(1) and (2) to take fisheries management measures in order to achieve the relevant objectives and principles set out in that Article. We have reflected on whether the position has changed since the measure was first introduced and our view remains that urgent action is still needed to protect the marine ecosystem. This urgency is underscored by the declining overall health of the North Sea, and other pressures, particularly the Highly Pathogenic Avian Influenza which Defra and APHA currently assess as at 'high risk'¹. We consider that this justifies taking action now, rather than waiting until the end of the adjustment period. This is discussed further below.
11. To make this new decision, the body of evidence which informs the recommendation was considered. First, the evidence which was used to support the original decision and, second, analysis of evidence which has emerged since the original decision was taken. The Arbitration Tribunal concluded that the evidence used by the UK was the best available scientific advice in accordance with the TCA. It is for that reason that we have only expanded our analysis to include evidence which has developed since the decision was made, alongside the original evidence.
12. The evidence which informs this recommendation is, in order of publication: the 2021 Call for Evidence², the 2023 Natural England (NE)/JNCC/Cefas scientific report³, the 2023⁴ De Minimis Assessment (DMA) (uploaded with this document),

¹ [HPAI in Great Britain and Europe - March 2025](#)

² [Summary of responses - GOV.UK](#)

³ [What are the ecosystem risks and benefits of full prohibition of industrial Sandeel fishing in the UK waters of the North Sea \(ICES Area IV\)?](#)

⁴ Date of assessment 2023, signed off on 08/01/2024

the 2023 Defra consultation⁵, the 2023 ICES Technical Service⁶ and subsequent NE/JNCC/Cefas review of the Technical Service (Annex 4), the 2023 OSPAR Quality Service Report (QSR)⁷, the 2025 DMA update (uploaded with this document) and the 2025 scientific evidence update (uploaded with this document). These are linked in footnotes where referring to published documents or otherwise appended to this advice and their findings are discussed in the weighing and balancing section below. The advice provided in the original decision should also be considered, this was an exhibit in the Tribunal process ([Exhibit R-0077](#))

Weighing and balancing of issues in order to have regard to applying a proportionate measure

13. The Arbitration Tribunal noted that it is important to first ascertain what factors are to be weighed against each other and then how that weighing exercise is to be carried out. We consider that the factors to be weighed are the relative costs and benefits relating to specific aspects of environmental, economic and social impacts, together with the rights of the EU during the adjustment period. We consider these alongside alternative options. The Arbitration Tribunal noted that both qualitative and quantitative factors are relevant and can be considered (as in this instance). The Arbitration Tribunal also highlighted the difficulties of weighing and balancing different factors due to ‘the lack of a common metric, problems of commensurability, and the interplay of value judgements’ as to the weight ascribed to the different factors. It is also necessary to consider as part of the weighing exercise how likely it is that the measure will contribute to the desired objective.

14. Environmental impacts

- a. The scientific evidence shows the critical role of sandeel in the North Sea ecosystem as a keystone species. There are nonetheless challenges to fully quantifying the impact of sandeel removals on the North Sea ecosystem. ICES advice shows a decline in available catches for sandeel in recent years. This decline cannot be wholly explained by the regular fluctuations of the short-lived species. It is likely, as the advice suggests, that other factors such as climate change are impacting sandeel availability. As prey becomes more scarce, there is a noticeable decline in predator species. In their 2023 Technical Service, ICES advised that predator needs are not fully accounted for in their annual advice, and that management to support ecosystem functions should occur at the level of national regulation.

⁵ [Summary of responses - GOV.UK](#)

⁶ [EU-UK request on ecosystem considerations in the provision of single stock advice for forage fish species](#)

⁷ [Synthesis Report - OSPAR-OAP \(Prod\)](#)

- b. The 2023 NE/JNCC/Cefas report considered the ecosystem risks and benefits of a reduction in sandeel fishing in UK waters of the North Sea. This report found that a full prohibition of sandeel fishing could lead to a modest increase in seabird biomass as well as delivering benefits to other fish species and marine mammals. New studies, which are detailed in the 2025 NE/JNCC/Cefas Evidence Update, support the findings of the 2023 report and draw attention to the increasing vulnerability of sandeel to pressures such as fishing and environmental change due to declining prey quality and body size.
- c. The only mechanism to directly control sandeel populations that the UK Government has within its gift is the management of fisheries. Sandeel fisheries are a significant source of removal of sandeel in the North Sea. Although there are uncertainties in the predictions of benefits to the ecosystem, the scientific advice provides a sound basis on which to take measures aimed at benefiting the ecosystem as a whole in line with our legislative and international commitments. Closing the sandeel fishery increases the likelihood of long-term marine ecosystem benefits and therefore also contributes to 'clean, healthy, productive and biologically diverse seas and oceans'. Furthermore, in line with these commitments, we are required not only to maintain, but also to restore populations. These commitments are not unique to the UK. In 2024, the EU implemented a regulation on Nature Restoration that sets time-bound requirements for the recovery of protected species which include those that are sandeel dependent.
- d. Despite the increasing body of evidence demonstrating the importance of forage fish within the ecosystem, as illustrated in the evidence outlined above, quantifying the ecological impacts of forage fisheries remains incredibly challenging. The UK, in line with its legislative commitments including the TCA, is required to take a precautionary approach to fisheries management. In this case, there is sufficient scientific justification as confirmed by the Tribunal to support the recommended full closure. To the extent that there is uncertainty, it derives principally not from the state of the evidence or data – which has only increased since the original decision was taken – but from the high degree of variability in the system compounded by multiple interacting large scale environmental processes such as climate change.
- e. We consider that it is necessary to take the measure now, during the adjustment period provided for in Annex 38 to the TCA, in light of the following urgent factors:

- i. Our marine ecosystem is under pressure with a number of components in decline or classed as under threat. The forthcoming UKMS 2024 summary of progress suggests that for benthic habitats, despite some improvements, the overall picture is still one of deterioration. Similarly, the food webs indicator shows that food web targets have not been met across the marine strategy area. The findings for birds similarly suggest that there has been continued decline since the 2019 assessment.
- ii. These findings are informed by the OSPAR 2023 QSR which suggests that most marine birds are assessed to not be in a good status. Additionally, the report suggests that some colonies of harbour seal (a sandeel dependent predator) are shrinking and while reasons for this are currently unknown, pressure on their food supplies may be a contributing factor. The UK has international commitments to meet GES, as discussed above. It is also important to note that Defra is presently under investigation, by the Office for Environmental Protection (OEP), for failing to meet GES commitments⁸. It is essential that we take action to address these issues now. Given the current status of marine birds, food webs, benthic habitats as discussed above, it would not be appropriate to wait until after the adjustment period to take action. Any delay is likely to exacerbate the declining state.
- iii. Since the measure was initially agreed in 2023, the UK continues to experience the largest outbreak of HPAI ever seen in this country. The effect of this outbreak continues to cause acute pressure on seabird resilience meaning that populations are critically vulnerable. Given the current state of seabird resilience, it is essential that action is taken now and any delay (or waiting until the end of the adjustment period) would be likely to make seabird populations even more vulnerable.
- iv. The 2023 NE/JNCC/Cefas report, suggests that environmental variation which impacts sandeel recruitment, and therefore prey availability, is likely to worsen under climate change, with negative impacts for dependent predators. The effects of climate change are likely to increase in time. It is important that steps are taken now

⁸ [OEP launches investigation into a suspected failure by Defra to take the necessary measures to achieve Good Environmental Status \(GES\) of marine waters | Office for Environmental Protection](#)

rather than delaying the measure, to limit the adverse impacts as much as possible.

- f. In conclusion, due to the importance of sandeel within the North Sea marine ecosystem, the management necessary to protect them is likely to deliver important ecological benefits. We note the view of the EU, in consultation responses and correspondence prior to the 2023 decision as well as during the hearing, that the benefits on sandeel populations are not definitive. However, for the reasons stated above, we consider this measure to be urgent and that taking essential action the taking of which is warranted during the adjustment period of the TCA. Delaying implementation of the measure (or waiting until the end of the adjustment period) at such a critical time is likely to contribute to the further weakening of resilience for the wider North Sea ecosystem. The measure would have the optimum impact if it is kept in place now. There is a risk that delaying the measure would reduce the extent and success of its impact as an appropriate measure to take in this instance. Consequently, the overall objectives of the measure would have a more limited chance of success.

15. Economic impacts

- a. The financial burden of the full closure of English waters falls predominantly on the EU, particularly Denmark, through potential revenue foregone from lost catches and potential knock-on impacts to on-shore businesses processing sandeels. (2023 DMA, and 2025 DMA update and responses from the EU to the 2021 Call for Evidence and 2023 Defra Consultation). The main benefits are to the wider ecosystem.
- b. The measure will continue to apply equally to all vessels and therefore does not discriminate on the basis of nationality. The Arbitration Tribunal agreed that the UK had regard to the principle of applying a non-discriminatory measure. Costs to UK vessels are negligible, as the UK has not allocated its share of the sandeel TAC to UK fishing vessels since 2021 due to concerns regarding the importance of the species to the ecosystem. In 2022, the owners of the only UK vessel engaged in sandeel fishing brought an unsuccessful challenge to the Government's decision not to allocate the TAC. Furthermore, the impact will be primarily felt by the EU because they hold 96% of the TAC share, with over half of landings estimated to be caught within English waters (2017 – 2019 average).
- c. In a worst case scenario, assuming that all sandeel landings from English waters will be lost, EU vessels may lose a predicted c.£30M per year in revenue (based on 2015 to 2023 landing averages, 2025 DMA update) if they

were unable to catch an equivalent amount of sandeel from within EU waters or of other species, whether in UK, EU or other waters. This revenue estimate is broadly in the middle of evidence provided during consultation and correspondence by the Danish government to Defra (£13M) and the 2023 DMA (£40M).

- d. It is important to note these costs are based on values of landed fish, rather than operating profit. This means costs such as fuel and labour are included in the revenue lost estimates. The costs to EU vessels are therefore considerably overestimated as the costs are based solely on revenue. For illustrative purposes, the average net profit margin for EU vessels is 12.60%⁹. Furthermore, as per UK vessels, non-UK vessels are likely to offset some of their lost revenue by fishing in other areas or catching other species.
- e. As per UK vessels, non-UK vessels are likely to offset some of their lost revenue by displacing their activity onto other species and/or areas of the North Sea which remain open to fishing. Last year, the first year of the closure coming into place, the EU fished ~60% of its sandeel quota and Danish landings were similar to 2021 and 2022 volumes when there were limited catch opportunities due to low biomass. Despite this implying there are viable sandeel fisheries for the EU fleet outside UK waters, the closure in UK waters likely still limited the quota uptake and revenue potential for the EU fleet (2025 DMA update).
- f. There are knock-on costs to the processing sector from reduced sandeel landings, as the catch is typically processed into fishmeal and fish oil used in agriculture. These will mostly be in the EU as landings into UK ports average just £0.2M each year (2019 – 2023 average, 2025 DMA update). There will be indirect costs to international fish processing businesses as 66% (£31 million) of average annual Danish export value of fishmeal and fish oil, made from sandeels, is estimated to be from sandeels caught in UK waters (2016 – 2020, 2021 Call for Evidence). These businesses also directly employ ~500 workers in coastal communities. In the Arbitration, Danish fishmeal and fish oil producers reported up to a 48% decrease in their 2024 production compared to the pre-closure historic average which gives some sense of the impact. There is however not definitive evidence that the sandeel closure alone caused this. As mentioned above, the level of sandeel caught in 2024 is similar to previous years of low catch limits. Furthermore, catch fluctuations in

⁹ 2016 – 2021 annual average, excluding 2020 as Covid was an anomaly year. Figures sources from [STECF's annual economic reports on the EU fishing fleet](#).

other species which are used to make fishmeal, such as Norway Pout, may have impacted production.

- g. The rights and interests of the EU during the adjustment period and their importance in securing stability for the Parties is a separate consideration that has systemic significance under the TCA. In light of that, it is necessary to consider whether it is appropriate to take the measure prohibiting sandeel fishing in English waters of the North Sea within that period. The TCA allows for the Parties to take fisheries management measures within the adjustment period if there is a need to do so. There is an urgent need for the benefits of the measure to be realised as soon as possible and that this justifies continuing the measure now rather than waiting until the end of the adjustment period.
- h. The main benefits are improvements to the wider ecosystem, as evidenced in para.24 of this submission. An economic valuation of these is challenging. For illustrative purposes, the UK marine natural capital assets for which we can estimate a value have an asset value of £211bn¹⁰. This estimate includes different components of the UK marine natural capital for which data exists such as recreation, tourism, carbon sequestration and fish capture. For many services derived from the UK marine natural capital, there is not yet reliable quantifiable data which can be applied in the policy context – this includes regulating lifecycle and habitat services.
- i. There will be indirect benefits from improving the marine ecosystem, such as boosting tourism through visits to coastal areas to visit wildlife (as raised in responses to the Call for Evidence 2021 and 2023 Defra Consultation), and a possible increase in fishing opportunities for other commercial species (2023 NE/JNCC/Cefas advice).
- j. In conclusion, the expected economic costs of foregone catches to the EU are important, as are the rights of full access of the EU and its related interests in stability during the adjustment period. These economic interests need to be weighed against the ecological benefits of long-term marine ecosystems and consequently the industries that depend on them. Similarly, the rights and interest of the EU in the adjustment period need to be weighed against the benefits of taking action now as a matter of urgency, given the declining overall health of the North Sea, and other pressures, in particular HPAI.

¹⁰ [Marine accounts, natural capital, UK - Office for National Statistics](#)

16. Social impacts

- a. Public support for sandeel protections to benefit the marine environment is strong, with over 95% of respondents to the 2023 Consultation favouring restrictions on sandeel fishing in English waters of the North Sea. Many emphasised the importance of ecological impacts of a closure 'providing a life line for marine life across the North Sea'. EU environmental stakeholders and over 33,000 RSPB supporters also backed the proposed restrictions. Additionally, the 2024 Survey of Attitudes to the Environment (8,000 respondents) ranked "habitats for fish, birds, plants, and mammals" as the public's top priority among marine benefits.
- b. Conversely, EU fishers have fished for sandeels in UK waters for over 50 years and stopping this may have social implications for traditional fishing communities and industries if EU fishers are unable to catch sufficient amounts of their quota in their own, rather than English waters (Call for Evidence 2021, 2023 consultation responses, Danish Fishers Producer Organisation Amicus submission). The adjustment period under Annex 38 to the TCA is also relevant to social interests, the importance of taking action before the end of the adjustment period is discussed above.
- c. To conclude, the wider public's inferred social value towards a healthy marine environment achieved through sandeel protections needs to be weighed against the tradition and historical importance fishers put on accessing UK waters.

17. Partial closures.

- a. Partial closure has been considered at several stages throughout the process of policy development, including in the 2023 consultation. It was concluded that partial closure would not achieve the policy objectives for several key reasons and this remains our position:
 - i. Partial closure would decrease environmental benefits, thereby not achieving the policy objectives. It would also be difficult to define the spatial parameters of a partial closure. Firstly, there is a high interannual variation in offshore foraging dispersion in relation to seabirds. Secondly it may be unlikely that the area of a partial closure would in practice be a smaller area than a full closure. For example, one of the possible factors that could be used as a basis for a partial closure could be the foraging ranges of chick rearing seabirds, however, in spatial terms it is likely to be an area very

similar to the full closure. That would also only meet one of the policy aims of the measure.

- ii. To achieve policy objectives the areas would need to cover areas of significant sandeel activity which will relate to those with the most economic benefit. Therefore, it is uncertain whether partial closure would generate any increased economic benefit in comparison to the impacts of a full closure.
 - iii. Practically, partial closure would also be challenging to monitor and enforce. Creating a bespoke monitoring project risks generating single-purpose data and creates additional pressures for the MMO which is not provided for in the monitoring of other similar closures.
 - iv. This option would require significant additional scientific analysis, budget, and time to assess the validity of partial closure. In 2023, it was concluded that such efforts were not proportionate and could not be achieved expeditiously. This has not changed.
 - v. Partial closure would also risk displacing effort within the UK potentially resulting in over exploitation in concentrated areas.
 - vi. Finally, partial closure would lead to an inconsistent application of policy with Scottish Government whose closures remain in place across all Scottish Waters, potentially resulting in increased issues with enforcement and vessels 'fishing the line' of the closure.
- b. Partial closure may have the benefit of being more acceptable to the EU as a measure by continuing to enable some level of sandeel fishing activity in UK waters. We anticipate that this option would cause significant push-back from environmental NGOs who may seek domestic legal challenge against this decision the risks of which are explored in the legal considerations section below. In any case, to achieve policy objectives, partial closure would necessarily limit activity in sandeel habitats which overlap with the areas of high concentrations of fishing activity. It is therefore possible that the impacts on EU vessels would be comparable to those of the full recommended closure. We do not recommend partial closure.
- c. In order to be compliant with the Tribunal's ruling we would be required to notify the EU of measures that we intend to take to apply partial closure, rather than coming into compliance by 28 May. That is because of the time it will take to identify partial closure areas whilst still meeting policy objectives. We would need to agree with the EU a reasonable time period to comply (if it

is not possible to agree the Tribunal would decide what is a reasonable time period - see Article 747 of the TCA).

18. Remove the closure.

- a. This would not meet the policy objectives. For reasons consistent with partial closure discussed above, removing the closure would be inconsistent with the scientific evidence which supports the closure being in place and therefore would not achieve our policy objectives. It would also be inconsistent with the findings of the Tribunal on all other aspects and would not be a proportionate response to their ruling. Such a decision would risk significant domestic legal challenge.

19. Temporarily re-open access to vessels to fish for sandeel in English waters and implement a full closure from July 2026 onwards, after the expiry of the adjustment period provided for in Annex 38 to the TCA.

- a. This option would effectively prioritise the rights and the interests of the EU as a Party to the TCA and the stability envisaged by the adjustment period over and above the other factors we need to consider. However, in order to have regard to applying a proportionate measure, we need to balance the rights and interests of the EU in relation to the need for urgent action during the adjustment period, in light of the overarching policy objectives, the best available scientific advice and the potential costs and benefits of delaying the measure. We also need to have regard to other principles in Art 494(3) that support taking action now, including basing conservation and management decisions on the best available scientific advice and minimising harmful impacts of fishing on the marine ecosystem and taking due account of the need to preserve marine biological diversity.
- b. The fishing season for sandeel lasts from April to July. Temporarily re-opening would mean that fishing could potentially continue for the last part of the current fishing season and the next fishing season before we would then seek to close it after the adjustment period ends. The adjustment period ends on 30 June 2026, therefore in both this season and the next, the available economic benefits of re-opening the fishery would be reduced by fishing not being open for the complete season both this year and next. Re-opening the fishery for a limited period, and any potential economic benefits of this for the EU, need to be balanced against the adverse environmental impact of re-opening access to fishing, the reasons against which we set out in Option A. Our view is that any delay to the implementation of the measure would have an adverse impact on achieving our objectives as set out in para 24.e where

we consider the urgency of the measure, and that it is necessary to implement it during the adjustment period.

- c. Pursuing this option is likely to increase the risk of domestic legal challenge to a decision to delay implementing a full closure in light of their support for the measure to date. The legal considerations section below includes more detail on this point.
- d. The benefits to the EU of temporarily re-opening the closures do not in our view outweigh the environmental impacts, and would not meet the overall aim of the measure and there is also an increased risk of domestic legal challenge.

Conclusion

20. This advice considers the impacts and benefits set out above, including on the EU's rights of full access and related interests in stability during the adjustment period. We consider that the benefits of maintaining the closure, in meeting our legislative objectives is justified and proportionate and would be in compliance with our obligations under the TCA.

21. As noted in the weighing and balancing section above, the benefits and costs of the measure cannot be measured across a common metric. The arbitration tribunal explicitly recognises this difficulty in para 625 of the final ruling and notes that 'different costs and benefits may to a certain extent be incommensurable'.

22. We have weighed and balanced the aspects discussed above and in the appended documents and we conclude that the increased prospect of realising the environmental benefits and delivering our domestic policy commitments outweigh the economic costs and the rights and interests of the EU to stability in the adjustment period, whilst recognising and taking seriously the importance of these considerations. We conclude that the particular context of the North Sea, with increasing pressures from wider industries and processes, and the acute risks applied by the ongoing outbreak of HPAI necessitate urgent action within the adjustment period of the TCA to support the conservation of marine living resources now.

23. We have had regard to applying a proportionate and non-discriminatory measure (in accordance with Article 494(3)(f)) and this recommendation is consistent with the UK's domestic policy goals. By explicitly considering, weighing and balancing the particular aspects identified as lacking by the Arbitration Tribunal, in particular the rights and interests of the EU during the adjustment period, we advise that a new decision to prohibit sandeel fishing in English waters of the North Sea would be compliant with the TCA. The Tribunal has already found that the UK's decision to

close English waters to sandeel fishing was not inconsistent with the requirement in Art 496, read together with Art 494(3)(f) of the TCA, to have regard to the principle of applying non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources.

24. The measure was taken after a significant period of consultation, and open and transparent communication with the EU. This communication included sharing of evidence, and indications of direction of travel since the UK left the EU. We took into account the issues raised in correspondence and in meetings with officials in the EU and Danish Ministers as noted throughout the weighing and balancing sections above and in the original decision.