



Department
for Environment
Food & Rural Affairs

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Call for Evidence

Fisheries

October 2013

*Review of the
Balance of Competences*

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CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Fisheries Report

Opening date: 21 October 2013

Closing date: 13 January 2014

Introduction

1. The Foreign Secretary launched the Balance of Competences 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 (EU). The review 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 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 will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.
2. The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Devolved administrations, foreign governments, including our EU partners and the EU institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.

What is competence?

For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States without needing any further action by the EU Institutions.

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the internal market, environment and energy, either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so. In areas of supporting competence, such as culture, tourism and education, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.

The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

Call for evidence

3. This public call for evidence sets out the scope of the review of the balance of competences in the area of fisheries. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.
4. Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it to be included. Please base your response on the questions listed at the end of this Call for Evidence and indicate clearly the subject area(s) you are referring to.

Please send your evidence to BalanceofCompetence.Fish@Defra.gsi.gov.uk by 13 January 2014. The same email address should be used for any related enquiries. Please submit your evidence as a Word document rather than in pdf format.

Scope of this report

5. The review will consider EU competence to the extent that it impacts on fisheries and their management. Some closely related areas will be considered under other reports in the review, and these are detailed below. The Fisheries report will only consider these topics in relation to fisheries specific issues, while the wider issues will be considered in the other reports.

Semester 1

- The **Internal Market Synopsis** report provided an overview of the internal market, but detail on the Common Market Organisation (CMO) for fisheries will be dealt with in this report.
- The **Animal Health and Welfare and Food Safety** report covered issues associated with protecting animal health, animal welfare, food safety and food labelling. This included the generic effect on fish labelling, the opportunities available in the free market for food and the issue of animal health in shellfish. The Fisheries report will restrict consideration to the marketing requirements in the CMO and the EU rules for shellfish in relation to effort and technical conservation measures.
- The **Development, Cooperation and Humanitarian Aid** report covered the broad issues relating to the impact of sustainable fisheries partnership agreements with third countries on international development. The Fisheries report considers the fisheries partnership agreements as part of the external dimension of the CFP.

Semester 2

- The **Internal Market: Free Movement of Goods** report will cover general intra-EU trade in goods. This report will cover the impact of the CMO legislation on intra-EU trade in fisheries commodities.
- The **Internal Market: Free Movement of Persons** report will cover the impact of EU free movement of persons on employment in the fisheries sector.
- The **Environment and Climate Change** report will cover the wider impact of marine environment issues; including marine planning, habitats and biodiversity, conservation and management of the marine ecosystem, and whaling.

Semester 3

- The **EU Budget** report will consider areas of spend at the level of the Multi-Annual Financial Framework regulation (top level budget allocation comparative to other headings and national flexibility to spend through budget) while this report discusses financing under the fisheries structural fund.

Defra's role

6. The Department for Environment Food and Rural Affairs (Defra) is leading on the Fisheries review. The department plays an active role in managing fisheries around our coast and UK fishing interests internationally through the EU framework. Defra's work domestically and in Europe aims to achieve healthy fish stocks, a prosperous fishing industry and a healthy marine environment.

7. Our aim is to optimise the balance between fishing sustainably and an economic return for the UK fishing industry now and in the future. We recognise the importance of the fishing tradition to the UK and our coastal communities. We also have a role in maintaining access to the internal market and shaping marketing rules to ensure a level playing field that supports a profitable export market for UK fish and fish products.

Devolution

8. This call for evidence is directed at all interested parties throughout the UK. Many elements of fisheries management are devolved matters, with administrations in Scotland, Wales and Northern Ireland responsible for implementing EU legislation and achieving domestic aims. 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. We welcome input from stakeholders from across the UK and devolved administrations into the review.

Fisheries Policy in the EU

9. Competence for fisheries was originally conferred by the Treaty of Rome which established the European Economic Community (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, although from 2009 the role of the European Parliament was greatly increased by the Treaty of Lisbon.
10. This Treaty provides that the EU must act within the limits of competence conferred on it by the Member States, and sets out the categories of exclusive, shared and supporting competencies into which EU policies and actions fall. In the majority of areas, competence is shared between the EU and Member States. The conservation of marine biological resources under the CFP is covered by exclusive EU competence. The EU also has exclusive competence in relation to agreements with third countries (that is non-EU countries) on the conservation of marine biological resources, and the Commission negotiates with third countries on behalf of Member States on access to EU waters by non-EU vessels and on access to non-EU fishing grounds by EU vessels. The other remaining areas of competence for fisheries are shared between Member States and the EU.
11. 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, which requires legislation to be agreed by both the European Council (which is composed of ministers from each Member State) and the European Parliament. 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 fixing and allocation of fishing opportunities. The Council reaches its decisions by qualified majority voting, where only a specified majority of votes is required and the share of votes of each member state reflects its population size. The legal annex sets out in more detail the basis of EU competence in relation to fisheries.

The Common Fisheries Policy (CFP)

History of the CFP

12. Since the EU's inception in the Treaty of Rome, its internal market has covered agricultural products including fish, crustaceans and molluscs. The original Member States of the EEC (Belgium, France, Italy, Luxembourg, Netherlands and West Germany) developed a Common Agricultural Policy (CAP) which also applied to fisheries products. As specific rules on fisheries were developed during the 1970s and early 1980s, a distinct CFP was put in place, separate from the CAP.
13. At the time of opening of negotiations in 1970 on the accession of the UK, along with Denmark, Ireland and Norway (all with significant fishing interests), the original Member States of the EEC adopted a series of pieces of legislation on fisheries. Council Regulation 2141/70 established the 'equal access principle' so that a Member State had equal access to other Member States' waters. In 1974 as part of accession agreements the candidate Member States, including the UK, negotiated a derogation for 10 years from the equal access principle for their existing 6 nautical mile fishing limits.
14. In the 1970s many coastal states throughout the world, prompted by the negotiation of the UN Convention on the Law of the Sea (UNCLOS), declared 200 nautical mile Exclusive Economic Zones. In November 1976 the Council adopted the Hague Resolution¹ 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.
15. In 1981 the European Court of Justice ruled that the EEC had exclusive competence to adopt fisheries conservation measures in Member States' waters².
16. In 1983, the first full system for the management of fish stocks was established in the EEC. The derogation from the equal access principle was rolled over for a further 10 years in a zone which was extended to 12 nautical miles except where Member States had historic access. This derogation has been renewed a number of times, most recently as part of the reformed CFP agreed during 2013.
17. The agreement in 1983 also included the first basic CFP Regulation which established measures on 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 each area.

¹ OJ 1981 C105/1.

² Case 804/79 *Commission v UK*.

18. The total catch is 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 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 for any given year’s fishing, Member States always receive the same percentage share.
19. This is only qualified by the existence of “Hague Preference”, established in 1976 and 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.
20. In 1992 the CFP Regulation was reviewed and a second CFP Regulation replaced the original. The emphasis of the second CFP moved to conservation of fish stocks. To achieve this, the new regulation introduced requirements to license vessels and moved to a multi-year approach for setting TACs on some key stocks.
21. In 2002, the third CFP Regulation was adopted following a green paper from the Commission the previous year which suggested that the policy was not effective. While a crash in stocks seen elsewhere in the world had been prevented, EU stocks were not in a healthy state and management measures were having a significant impact on fishers. Concern over stocks and the effectiveness of the policy led to an extension of the scope of the measures. Further emphasis was placed on minimising the effect of fishing on stock levels. Additional regulations were 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
 - 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 Commission’s policy development.

External dimension

22. In the global context, the EU’s competence in fisheries under the EU Treaties must be considered within the wider UN framework of common agreements for managing fish stocks. These set out fundamental principles to be respected when negotiating between countries through Regional Fisheries Management Organisations (RFMOs).

23. Since the 1970s the Commission has negotiated fisheries agreements with countries outside the EU. These govern fishing by EU member state vessels in their waters and by their vessels in EU waters. The European Court of Justice confirmed in 1976 that the EU has exclusive competence in relation to such agreements and the Treaties now expressly reflect this³. In practice this means that the EU is responsible for representing Member States' interests at RFMOs (for example the North East Atlantic Fisheries Commission (NEAFC) and the International Commission for the Conservation of Atlantic Tunas (ICCAT)), in negotiating reciprocal agreements with the EU's neighbours such as Norway, and in Fisheries Partnership Agreements with countries such as Mauritania.
24. In all of these cases procedures are 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 through these organisations and with other countries.

UK responsibilities

25. While most fisheries policy is subject to exclusive EU competence, under the CFP Member States retain a range of responsibilities and powers for fisheries management. The UK, along with other Member States, has 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 through the CFP framework.
26. Under the access arrangements, the UK can apply spatial measures to help manage fisheries in the 0-12 nautical mile zone, and to achieve environmental objectives. The CFP allows Member States to introduce such measures so long as minimum EU conditions are met. This recognises that while a level playing field is needed for some measures, adjustments to reflect local needs may be appropriate, provided these do not discriminate against other Member States. This allows the UK to apply technical measures to our own vessels, regardless of where they are fishing. Such measures can also be agreed with other Member States who share our fisheries, with voluntary agreements to deliver shared aims.
27. In the 0-6 nautical mile zone around the English coast, Inshore and Fisheries Conservation Authorities (IFCAs) can put in place bylaws to address local conservation issues, providing greater protection than provided at EU level. This domestic approach also applies for shellfish where, for example, the Scallops Order restricts the fishing gear for scallops that can be used in UK waters. Further details on the shellfish requirements are provided in paragraph 63 to paragraph 65.
28. Although the level of catches is fixed at EU level each year for quota stocks, the

³ See Joined Cases 3, 4 and 9/76 *Kramer* and Article 3(2) TFEU.

mechanisms for allocation and management of quotas are decided by individual Member States. Each year the UK publishes its own quota management rules which are agreed by the four UK national administrations. 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 to optimise how quota is used. The UK government has the ability to enter into swaps with other Member States to obtain additional fishing quota.

29. Member States also have responsibility for setting total catch levels for stocks that they alone fish, with the UK able to set catch levels for the Clyde, Thames Estuary and Blackwater herring stocks.
30. Member States have responsibility to manage the total fishing capacity in their fleets, submitting annual reports to the EU on their catching capacity. Under the recent CFP reform the reporting provisions have been strengthened, with requirements to introduce action plans where capacity and fishing opportunities are not aligned.
31. The four UK fisheries administrations issue licences to fish commercially. These control UK fishing opportunities, with licensing conditions used to ensure sustainable fishing practices. The details and operation of the licensing system are determined domestically and we are currently reviewing the licensing rules with a view to simplification.
32. The UK fisheries administrations also 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.
33. 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.
34. The UK is also responsible for managing species that are not subject to quota or effort restrictions, including commercially important stocks in the UK such as bass. The UK manages these fisheries through its own licensing regimes.

Recent reforms

35. Successive UK Governments have called for fundamental reform of the CFP. The 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 EU Commission also recognised the CFP's failures in their green paper to initiate the reform process. The Commission acknowledged that the CFP had not been successful in either maintaining fish stocks or in providing an

economically sustainable basis for the industry. 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.

36. 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 micro-management at EU level often considered a key failing of the CFP and a barrier to sustainable fisheries.
37. On 13 July 2011, the Commission published its proposals for a significant reform of the CFP. These were accompanied by two further proposals, for a new CMO and European Maritime and Fisheries Fund (EMFF) which will replace the current European Fisheries Fund (EFF).
38. All three proposals have been considered under the ordinary legislative procedure, with both the Council and the European Parliament having a say in shaping the new requirements. This summer an agreement was reached between the institutions on a new basic CFP regulation (and CMO) which would bring into effect fundamental changes. These agreements are expected to be ratified and to come into force for 2014. Negotiations on the EMFF are continuing. The new CFP will significantly overhaul fisheries management over the next decade.
39. The UK played a lead role in securing an ambitious outcome that will lead to fundamental reform. Working with our allies, we successfully fought off attempts to water down the detail or to delay the process.

Key elements of the reform

The new CFP Regulation 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 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 from 2015, other fisheries beginning 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. This provides a process for Member States to come together to identify measures that are appropriate and effective for the fisheries they share.

- Agreement on a central set of principles for operating outside EU waters, applying the same principles of sustainability outside EU waters as within.
- Integration of the new CFP with existing obligations under environmental legislation, with provision to bring forward conservation measures such as protected areas, linking with existing work in the UK.
- Derogation from the equal access principle renewed for the next 10 years, maintaining the existing restrictions on restricted access to the UK's 0-12 nautical miles zone.
- Strengthening the role of the Regional Advisory Councils, renamed as Advisory Councils. New councils established for the markets, aquaculture and the Black Sea.

Similarly on the CMO, provisions were agreed that:

- Phase out intervention measures, apart from storage aid, by 2019.
- Harmonise minimum marketing sizes with minimum conservation sizes.
- Bring mandatory labelling requirements more in line with other labelling legislation.

Work to implement the rules of the reformed CFP is already underway. This will be developed in partnership with the fishing industry and other stakeholders.

Negotiations on the EMFF are ongoing. The priorities for the negotiation are:

- Ensuring the EMFF fully supports the reformed CFP.
- For the new EMFF to offer greater flexibility, and be more streamlined, with reduced complexity and bureaucracy.
- EMFF is by far the smallest of the European Structural and Investment funds. It is important to focus it on a few key priorities where it can have the greatest impact.

Fisheries Policy in the UK

40. The UK industry has a high level of diversity in the fleet, with 5032⁴ small vessels under 10 metres in length (reduced from 7195 in 1994⁵). There are 1374⁶ larger vessels over 10 metres (reduced from 3100 in 1994⁷) and a total of 12,450⁸ fishermen in the UK (reduced from 20,751 in 1994⁹). The structure of fishing businesses is similarly diverse,

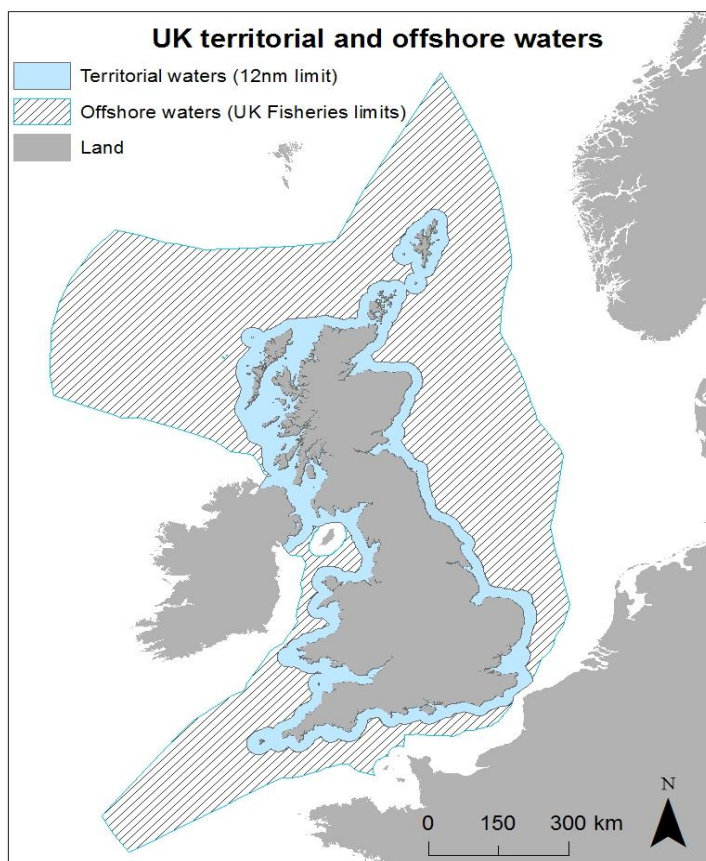
⁴ Marine Management Organisation. (2013) *UK Sea Fisheries Statistics 2012*. Report dated September 2013.

⁵ Ministry of Agriculture Fisheries and Food. (1994) *UK Sea Fisheries Statistics 1994*. Report dated 1995.

⁶ Marine Management Organisation. (2013) *UK Sea Fisheries Statistics 2012*. Report dated September 2013.

⁷ Ministry of Agriculture Fisheries and Food. (1994) *UK Sea Fisheries Statistics 1994*. Report dated 1995.

Figure 1: UK Territorial and Offshore waters¹⁰.



Map © JNCC September 2013. Projection: British National Grid.
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 UK 12nm limit provided by UKHO Law of the Sea Division.
 World Vector Shoreline © US Defence Mapping Agency



ranging from family-owned “day boat” operations to large corporations. Vessels must be registered in the UK to benefit from UK quota. However, under EU rules investment in these businesses may come from abroad. (see “UK quota & eligibility” text box).

41. Fisheries management must therefore take into account the UK’s diverse fleet as well as the diversity of fish stocks around the UK, with around 330¹¹ species of fish exploited commercially, across many forms of fishing including recreational sea angling.

42. The UK’s rich seafaring history has ensured that our fisheries carry greater importance than their estimated £479 million¹² annual contribution to the economy. Despite changes in the structure of the fishing industry over the last

century many coastal communities are still partly defined by fishing. Wider economic activity around the UK’s coastline, for example in food processing or tourism, is closely connected to the catching sector.

43. In recent decades, pressure on fish stocks has led to reductions in fishing opportunities in UK fisheries, at the same time as operating costs are increasing. The regulatory burden has increased with both domestic and EU legislation impacting on the day to day running of fishing businesses.

⁸ Marine Management Organisation. (2013) *UK Sea Fisheries Statistics 2012*. Report dated September 2013.

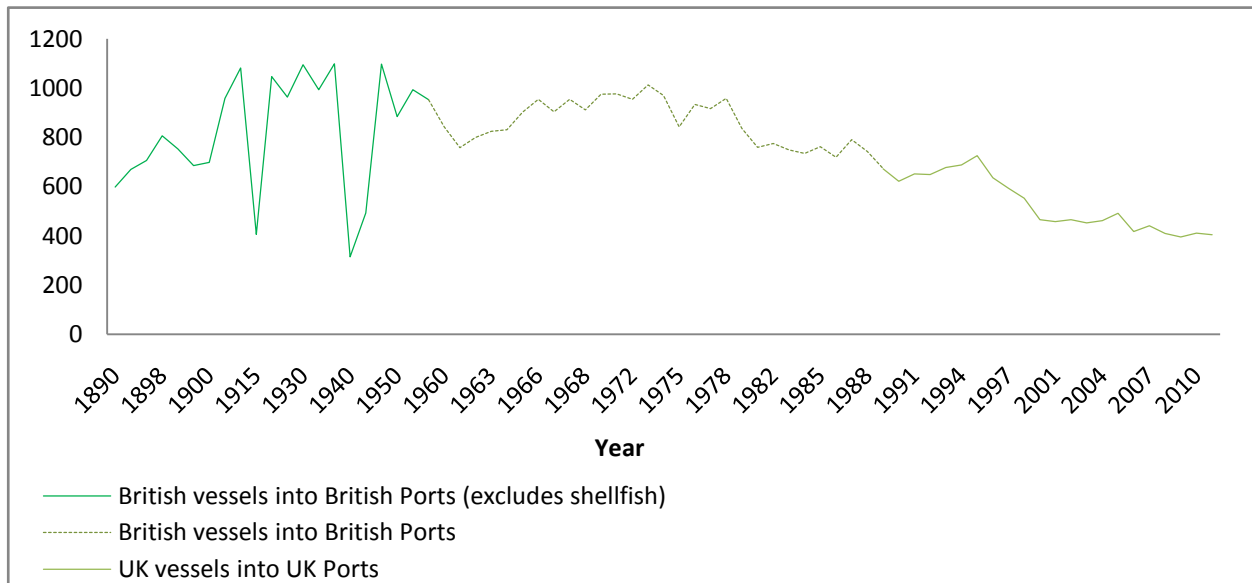
⁹ Ministry of Agriculture Fisheries and Food. (1994) *UK Sea Fisheries Statistical Tables 1994*. Report dated 1995.

¹⁰ JNCC, 2013. *UK Territorial and Offshore Waters*, 1cm:150km. Peterborough:JNCC

¹¹ Defra. (2010) *Charting Progress 2*. Report dated 2010.

¹² Figure is the GVA for fishing. Marine Management Organisation. (2013) *UK Sea Fisheries Statistics 2012*. Report dated September 2013.

Figure 2: Landings of fish in Great Britain / UK, 1890-2011 in Thousand Tonnes¹³.



44. The impact of the current approach on fishing businesses and coastal communities has highlighted the need for radical improvements in fisheries management. The fishing industry in the UK have led the way in showing how discards can be driven down and collaborative working between fishermen, scientists and policymakers has shown how decision making under the CFP could be more responsive. We must also consider fisheries in the wider context of the contribution they provide to consumers' healthy diets and our food security in the UK. A sustainable supply of fish from our own waters may prove particularly important in the context of rising world demand for protein. At EU level in 2011 89% of the wild caught white fish consumed were from imported sources¹⁴. The extent

State of stocks important to the UK

The state of stocks important to the UK, is closely monitored, with scientific advice informing decisions on catches each year.

Trends differ by sea area and species. However, broadly, there has been a gradual decrease in stock levels since the Second World War, which continued as the UK joined the EU and into the last decade. In recent years, many stocks have seen gradual improvements, with increases as a result of active management measures to protect key stocks. In considering these trends, we need to take account of the mixed nature of UK fisheries, where reduced fishing pressure on one species can lead to increased predation of another.

¹³ Based on data from Hawkins, O. March 2013, *Sea Fisheries Statistics* [Standard note] SN.SG/2788, House of Commons Library, London.

¹⁴ AIPCE- CEP. (2012) *Finfish study 2012*. Report dated 2012.

to which we depend on imports from other countries may also change as a changing climate impacts on the marine environment and fish stocks.

Fisheries policy areas

45. This section describes in more detail a number of individual fisheries policy areas where the EU has exercised its competence.

Access

46. Controlling access to fishing grounds is a key element of fisheries management that impacts on the fishing industry and the marine environment. Member States' sovereignty over fishing rights extends out to 200 miles from the coast or to a median line with another country (see figure 1 page 14, showing the extent UK fishery limits). Under EU rules Member States are given equal access to all EU waters subject to the derogation which allows Member States to restrict access in the 0-12 nautical mile zone, subject to any historic rights for Member States that have traditionally fished in parts of this zone. The UK benefits from these arrangements in gaining access to waters off the coast of Ireland, France, Germany and the Netherlands. In return limited access is given to the 6-12 nautical mile zone around the UK for vessels from France, Ireland, Germany, the Netherlands and Belgium.

Fishing Levels

47. Overfishing is a concern of fisheries managers throughout the world. According to a Food and Agriculture Organization (FAO) estimate over 70% of the world's fish species are either fully exploited or depleted¹⁵. Recent EU Commission assessments suggest that at present 39% of EU stocks in the North East Atlantic¹⁶ are being over-fished. To address this, international commitments have been agreed, such as fishing in line with maximum sustainable yield by 2015, where possible. The commitments in the reformed CFP take this further, creating a legally binding commitment to ensure levels of fishing in the EU are set on a sustainable basis.

48. Levels of stocks important to the UK are improving, with recent reform of the CFP intended to maintain this trend into the future. In the North East Atlantic and nearby

¹⁵ *10 stories the World should hear more about: Overfishing: a threat to marine biodiversity*. 2013. [online]. [Accessed 10 September 2013]. Available from the World Wide Web: www.un.org/events/tenstories/06/story.asp?storyID=800

¹⁶ European Commission. 2013. *Fishing opportunities for 2014: further phase out of overfishing*. Press release, issued 30 May 2013

seas overfished stocks fell from 95% in 2005 to 39% of stocks in 2012¹⁷.

49. Independent scientific advice on the level of fishing that stocks can support is provided by the International Council for the Exploration of the Sea (ICES), an independent scientific organisation. ICES recommendations identify the level of fishing that a stock can support and the total catch available for all countries operating in the fishery. This advice applies to countries operating both inside and outside the EU for fisheries in which the UK is active.

Quota Shares (Fishing Opportunities)

50. The allocation of well-defined fishing opportunities is a fundamental building block of fisheries management. Despite free access to waters in the EU, opportunities to fish are controlled through mechanisms such as quota shares (for example expressed in tonnages of catches or landings for specific species), or fishing effort (where the time spent at sea is limited).

51. The Council of Ministers agree annually the “Total Allowable Catch” for around 130 commercial species. These are based on ICES advice. A concordat sets out the basis on which UK government and devolved administrations manage the UK allocation each year.

UK quota & eligibility

With freedom of investment in the EU, UK fishing businesses are not always wholly owned by UK nationals, even where vessels carry a UK flag. Some constraints have been placed on who benefits from UK quota, for example requiring businesses to be registered in the UK and to demonstrate an “economic link” with the UK.

Court cases since the UK joined the CFP have upheld fundamental EU principles to maintain freedom of investment across the EU, including the right for businesses from other countries to invest in UK fishing businesses.

Technical Conservation Measures

52. A number of tools are available to manage fishing pressure, irrespective of the level at which competence is applied. These include restrictions on the time spent at sea, restrictions on the amount of fish that can be harvested from the sea by all vessels in the area and specific technical requirements, for example to protect juveniles.

53. EU technical measures sit alongside catch limits and can be quite restrictive in some fisheries. These measures include rules on the type of fishing gear that can be used,

¹⁷ European Commission. 2013. *Fishing opportunities for 2014: further phase out of overfishing*. Press release, issued 30 May 2013

levels of permitted catch composition, and specific spatial measures, such as closures of certain grounds.

54. These EU measures are aimed at managing fishing behaviour, for example disincentivising the discarding of fish, and minimising the impact on the environment of fishing activity, particularly in complex mixed fisheries, of which the UK has many.

Multiannual Plans

55. In recent years long term management plans for a stock or an area have been employed with mixed success. Some plans, such as the Cod Recovery Plan achieved long term stock recovery objectives, but at the cost of significant impacts on fishers. Others have been more successful, such as the long term plan for cod in the Baltic Sea where fishermen have benefited from measures increasing stock levels.
56. Flexible and responsive long term (multiannual) plans are at the heart of the recent reform of the CFP, with the aim of setting objectives for each fishery that transcend short term political considerations. We expect to see fisheries increasingly managed on this basis in future, with plans agreed between those who share a fishery.

External dimension

57. The UK currently benefits from EU fisheries agreements with a number of third countries. These include profitable fisheries in the North Sea and North East Atlantic that are shared with Norway, Iceland, Russian Federation and the Faroes, as well as opportunities to fish in other countries' waters elsewhere in the world. By far the most important to the UK in fishing and economic terms is the agreement with Norway.
58. Agreements with developing countries outside Europe also link to our development goals. In the past concerns have been raised by the Government and NGOs that the terms of these agreements can disadvantage local fishing communities who may not be able to compete with EU vessels for the fish on which they depend. The new

EU – Third Country Bi-lateral agreements

Under the terms of the EU - Norway agreement the UK benefits from access to North Sea stocks in both EU and Norwegian waters as well as stocks at North Norway. The UK is the major EU beneficiary from the agreement and the latest estimate is that the net benefit to UK vessels was around £17 million in 2012.

Negotiations with other countries have often been less successful in recent years. Negotiations are ongoing on how to resolve disputes over mackerel and herring fishing opportunities with other countries that have increased their catches of these stocks in recent years.

CFP has strengthened the guiding principles for these agreements.

Internal market and labelling

59. Fish processing and fish product manufacture are important industries for the UK with the industry supporting almost 119,000 jobs¹⁸. Total purchases of seafood in the UK were worth around £5.6 billion in 2012¹⁹.

60. With limited diversity in domestic consumption and a wide range of species harvested from our mixed fisheries, the seafood export market is an important element of UK operations. 466,000 tonnes of fish (excluding fish products) were exported in 2012, worth £1.3 billion²⁰. EU countries are the largest recipients of our exported fish. In this context, access to the internal market and a level playing field for operators in the EU have become important considerations.

61. In terms of domestic consumption, the UK imported seafood to the value of £2.6 billion in 2012 from other European Union countries or from non-EU countries²¹. The table below indicates the import tariffs for paid by countries who import fish into the EU. These costs will also contribute to the price paid by consumers for fish and fish products.

Species	Import duty into the EU (in %) ²²		
	Fresh or chilled fish excluding fillets (category 0302)	Fresh or chilled fillets (category 0304)	Frozen fillets (category 0304)
Cod	12.0	18.0	7.50
Haddock	7.50	18.0	7.50
Sole	15.0	18.0	15.0
Plaice	7.50	18.0	7.50
Mackerel	20.0	18.0	15.0

62. The EU has shared competence to act in relation to the marketing and labelling of fish, and acts under the CFP through the CMO in fishery and aquaculture products. The recently agreed new CMO has strengthened the role of producer organisations to allow

¹⁸ Seafish (2012) *The economic impacts of the UK sea fishing and fish processing sectors: An input-output analysis*. Report dated 2006

¹⁹ Seafish Market Summary. 2013.[online]. [Accessed 11 October 2013] Available from the World Wide Web: www.seafish.org/research--economics/market-insight/market-summary#retail-sector

²⁰ Marine Management Organisation. (2013) *UK Sea Fisheries Statistics 2012*. Report dated September 2013

²¹ *Seafish Import guidance*. 2013. [online]. [Accessed 27 September 2013] Available from the World Wide Web: www.seafish.org/industry-support/legislation/import-and-export/import-guidance

²² Based on data from *Online UK tariff Tool*. 2013. [online]. [Accessed 27 September 2013] Available from the World Wide Web: www.gov.uk/trade-tariff/

them greater responsibility for managing the supply and marketing of fish. CMO requirements also provide for mandatory information to be shown to consumers, establishing a level playing field for operators operating in the EU and wider trading markets. These rules are developed within the international framework of food labelling standards²³.

Shellfish

63. Nephrops (sometimes known as Langoustine and often used to make scampi) are subject to EU quota rules like other quota species. In contrast, fewer requirements are set in Brussels for other UK shellfish fisheries. These are limited to restrictions on the number of days that can be spent at sea and technical rules for Crabs and Lobsters on how fishing for those species is conducted.
64. European Council Regulations set a Minimum Landing Size (MLS) for both crabs and lobsters and restrict the number of crab claws that can be landed. European Union size limits are superseded by more restrictive UK national legislation in the Western Channel and part of the Celtic Sea stipulating a higher MLS in order to improve conservation of stocks. UK legislation also prohibits the landing of certain categories of lobsters and the landing of soft shelled or egg-bearing crabs. In England, Inshore Fisheries and Conservation Authorities (IFCAs) also have a number of byelaws in place managing shellfish fisheries within their districts.
65. The EU Western Waters Regime applies days-at-sea effort limits for vessels over 15 metres in length prosecuting crab or scallop fisheries in Western Waters. For some crab and scallop fisheries the UK fully utilises its effort allocation. Therefore, for these fisheries a UK management regime is in place to ensure compliance. For the scallop fishery this currently takes the form of quarterly effort allocations to vessels whilst in the crab fishery a voluntary agreement is in place to reduce effort uptake.

Aquaculture and freshwater fisheries

66. 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.
67. Aquaculture remains largely under national control. Limited measures have been introduced through the recent CFP reform, such as Multiannual National Plans to encourage a more strategic approach for this sector across the EU. Specific legislation

²³The impact of labelling requirements on the national interest was examined under the Animal Health and Welfare and Food Safety Review in semester one.

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.

68. In relation to freshwater fisheries, EU action has focussed on specified EU species such as Atlantic salmon. The EU has also introduced the Eels Regulation 1100/2007 in an attempt to address the significant decline in European eel levels since the 1980s. This regulation requires Member States to produce Eel Management Plans.

Financial support - Fisheries structural funds

69. The EU provides financial support to the fishing sector through a relatively small structural fund, the EFF, which was worth £108m (€138m) to the UK in the funding period 2007-2013, 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 Commission, which sets out how the funding will be used. Proposed measures need to comply with regulatory requirements and are subject to rigorous audit procedures to ensure that payments have been made in line with the relevant rules.

70. The EFF is due to be replaced by the EMFF in 2014. 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. Other measures have been less successful, such as payments to replace engines or paying fishermen to tie up their boats and not fish.

71. Negotiations on a new framework for the fund are ongoing but it is clear that the priorities identified in the new regulation should focus use of the fund on supporting the objectives of the reformed CFP and thereby provide better value for money for tax payers. For example, the new fund should aim to help the fishing industry adjust to a “land-all” policy under the forthcoming discard bans.

72. The Commission’s budget overall for managing EU fisheries and associated market measures in 2013 is €930 million²⁴. This includes both the EFF budget and the cost of fisheries partnership agreements with third countries. Fisheries also forms part of the €1.3 billion EU research budget for 2013.

Role of science

73. Since its inception, the CFP’s objectives and decisions on catches have been based on scientific advice. While some money is provided from EU funds to support data collection and scientific work, Member States also have obligations to provide the data needed to underpin fisheries management decisions.

²⁴ European Commission. (2013) *EU Budget 2013 : Investing in Growth and Jobs*. Report dated 2013.

74. Drawing on this data, independent scientific advice on the state of fish stocks and advice on catch limits is provided to the EU Commission and Member States by ICES.

Control and enforcement

75. EU legislation provides for a consistent approach to managing compliance and enforcing fisheries management rules while allowing some flexibility at the national level on how compliance with CFP rules is assured. The UK is responsible for ensuring that vessels comply with the CFP in UK waters and that UK flagged vessels comply with relevant restrictions anywhere in the world. In addition the EU acts to prevent illegal, unreported and unregulated fishing internationally by ensuring only legally caught fish can be imported into the EU. There are also some areas where the UK is free to determine how certain segments of the fleet record their fishing activities. An example of this is the Registered Buyers and Sellers (RBS) Regulations whereby all vessels that are under 10 metres in length are required to retain sales notes where the fish that they sell is over a particular amount. Other Member States use different methods such as the retention of logbooks.

76. The Commission's Food and Veterinary Office act as an inspectorate for fisheries auditing Member States' enforcement regimes to ensure the EU regulations are being applied consistently across EU countries. Penalties, including infraction proceedings before the European Court of Justice, can result if measures are found not to be implemented appropriately.

77. Regular coordination meetings between Member States assist in sharing best practice and maintaining a level playing field for operators across EU waters. Each administration in the UK will make operational decisions on how to prioritise enforcement activity, and on the type of enforcement action that is appropriate to deal with non-compliance. In the UK we have introduced our own system of administrative penalties, which is offered as an alternative to a criminal prosecution in certain circumstances when a fishing offence is committed.

Horizontal issues

78. A number of the issues that are likely to be raised during this review are more cross-cutting in nature, affecting more than one of these individual policy areas. These include the following points, but there may well be other issues that respondents will wish to raise.

At what level should decisions on fisheries management be made?

79. Notwithstanding the level at which competence is applied, fish stocks do not respect jurisdictional boundaries. To effectively manage stocks and ecosystems that straddle international boundaries it is inevitable that multilateral agreements with other

countries are needed in order to achieve fisheries management objectives for shared stocks.

Tensions between the pursuit of economic growth and safeguarding or improving the environment

80. In fisheries management there are always tensions between the potential for short term economic benefits and the long term sustainability of fish stocks. Achieving the appropriate balance is essential as a profitable fishing industry will depend on sustainable exploitation of fish stocks in the long term. A healthy marine environment and prosperous fishing businesses need not be mutually exclusive, yet the CFP has historically achieved neither.

Regionalisation

Historically, all decision making on fisheries has been done at EU level meaning both overarching objectives and detailed technical measures have been decided in Brussels.

The reform of the CFP provides a new “regionalisation” process, moving decision making closer to the fisheries, with opportunities for those affected to input through advisory councils.

This improvement creates scope for Member States in areas such as the North Sea to work together to agree locally appropriate measures. (See further details in box on page 12).

The need for a level playing field

81. UK fishing businesses compete with those of other countries operating in shared waters for markets. A consistent approach to fisheries management and enforcement in different European countries provides a level playing field enabling businesses to compete on the same basis. This is currently achieved through a single EU wide CFP.

Access to the internal market

82. Although internal market issues have been addressed in Semester 2 of the Balance of Competences Review, respondents may wish to comment on the advantages and disadvantages to the UK catching and processing sectors of access to EU markets for fish products and on the impact of the free movement of persons on employment in the fisheries sector.

Future challenges and opportunities?

83. As we look to the future we see a changing landscape for fisheries and their management. In the short term, significant changes will come from the reformed CFP package which provides opportunities to put fisheries on a sustainable footing and include more regionalised decision making.

84. Looking more widely, challenges may also arise from other factors. The EU continues to look to expand and this could bring more Member States with interest and involvement in fisheries management decisions.
85. We must also consider climate change and changes in the biological conditions that drive the level and location of fish stocks as they may change over time. This impacts on our food security when we consider the dependence on imported fish to supply the UK market, as well as the importance of exports to the UK fishing sector. As the marine environment changes we will need to ensure we can respond rapidly to the changing state of our seas and consider the right management structures to facilitate this. Other challenges and opportunities will come with the further development of measures to protect and exploit the marine environment. In both cases, the impact on EU and UK fisheries will need to be a part of the decision making process. The demands from the consumer may also change the market for seafood and the techniques used. Seafood is already a global trade and as markets open up and pressure on food resources increases, this could affect markets providing opportunities for growth.

Call for evidence – questions

Where possible please provide quantitative and/or qualitative evidence (for example published research) to support your answers. Where this is not possible, please use and describe your knowledge or experience. Please see definition of competence on page 4.

Where should decisions be made?

- At what level should decisions on fisheries management be made and what evidence is there for the benefits or disadvantages of acting at the EU level, regionally, or at Member State level?

Advantages and disadvantages

- How does the EU approach to fisheries management, including recent reforms to the CFP, benefit the national interest, or act against the national interest?
- How does the access to fisheries provided for under the EU treaties and the allocation of fishing opportunities in the EU, affect UK's national interest?

The external dimension

- Agreements with non-EU countries play a significant role in UK fisheries. How do these agreements and the EU's role in negotiating them help or hinder the UK's national interest?

Current legislation

- How successful are current arrangements in striking the right balance between the goal of a level playing field for operators competing for the same markets and the flexibility to meet local and regional needs?

Internal market and economic growth

- How does access to EU markets and adherence to common standards on fisheries products benefit or hinder UK businesses, both domestically and when exporting abroad?

Funding

- What evidence is there that rules around support for the fishing industry through EU funds help or hinder the UK in meeting its management objectives, or the wider goals of the CFP?

Future challenges and opportunities

- Bearing in mind current EU arrangements and forthcoming reforms, what future changes would benefit the UK or help the UK to capitalise on future opportunities, while achieving our wider goals for fisheries management?

Legal Annex

Introduction

1. The Treaty on the European Economic Community (EEC Treaty) was signed in Rome on 25 March 1957 and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 there has been a series of Treaties extending the objectives of what is now the European Union (EU) beyond the economic sphere. The amending Treaties (with the dates on which they came into force) are:
 - the Single European Act (1 July 1987), which provided for the completion of the single market by 1992;
 - the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and
 - the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.
2. Following these changes, there are now two main Treaties which set out the competences of the EU:
 - the Treaty on European Union (TEU); and
 - the Treaty on the Functioning of the European Union (TFEU).
3. The EU must act within the limits of competence conferred on it by the Member States. Articles 3 to 6 TFEU set out the categories of exclusive, shared and supporting competencies into which EU policies and actions fall.
4. In the majority of contexts, competence is shared between the EU and Member States. This means that to the extent that the EU has enacted legislation, the UK generally does not have competence to act other than in accord with that legislation. The effect of EU harmonising legislation is that Member States must enact domestic legislation to give effect to it and remove national legislation that is inconsistent with it. However, there are certain areas where the EU has only a supporting competence and limited situations where its competence is exclusive.

EU competence in relation to fisheries

5. Article 2(1) TFEU provides that the EU has exclusive competence in several areas. These are set out in Article 3(1) TFEU and include:

“(d) the conservation of marine biological resources under the common fisheries policy”²⁵.

6. Article 3(2) TFEU also specifies the circumstances in which the EU has exclusive competence for the conclusion of an international agreement. This will be the case where conclusion of the international agreement is provided for in a legislative act of the EU or is necessary to enable the EU to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope. The EU has entered into a large number of fisheries agreements with third countries; more information about these is given in the section below on fisheries management in international waters.
7. Article 2(2) TFEU provides that in areas of shared competence the Member States may exercise their competence to the extent that the EU has not exercised its competence. The areas of shared competence are set out in Article 4(2) TFEU and include:

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

It follows that fisheries matters which do not relate to the conservation of marine biological resources are subject to shared competence.

8. The scope of the Common Fisheries Policy (CFP) is broad and the EU has now exercised competence in relation to most marine fisheries matters including in Regulations on the Common Market Organisation of Fish and Fish Products (CMO). Member States have, however, largely retained competence in relation to freshwater fish. Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the CFP (the current Basic CFP Regulation) recognises this by defining “marine biological resources” as “including anadromous and catadromous species *during their marine life*” (italics added). Anadromous fish, such as salmon, spend most of their lives in the sea and migrate to fresh water to breed. Catadromous fish such as eels spend most of their lives in fresh water and migrate to the sea to breed²⁶.
9. Member States have also negotiated a delegation of powers back from the EU in relation to their inshore waters (out to 12 nautical miles from the coastline). The

²⁵ The inclusion of the words “under the common fisheries policy” here might suggest that there is a residual competence for Member States in relation to the conservation of marine biological resources when the common fisheries policy does not apply. However, this is not supported by the wording of Article 4(2) TFEU, which sets out areas where competence is shared and which provides simply that there is shared competence in relation to “fisheries, excluding the conservation of marine biological resources” without an equivalent reference to the common fisheries policy.

²⁶ See, for example, Council Regulation 1100/2007 establishing measures for the recovery of the stock of European eel, which lays down requirements in relation to protection and management of eels. The UK Government’s position is that there is shared competence in relation to the freshwater part of an eel’s lifespan.

current Basic CFP Regulation allows Member States to take independent measures in their inshore waters, provided these measures are non-discriminatory and consistent with the Common Fisheries Policy²⁷.

10. Member States can also introduce measures which apply to their own vessels wherever they fish if such measures are consistent with and no less stringent than the CFP. The UK only introduces such measures where they are necessary for conservation reasons. Under the new CFP Regulation, Member States will be able to introduce such measures alone or with other Member States through a regionalised approach to ensure compliance with EU environmental legislation as well as to conserve fish stocks.

Fisheries and other EU principles

11. The EU's policy on fisheries must also take into account the over-arching principles expressed in the Treaties, most obviously in relation to sustainable development and protection of the environment:

“The Union . . . shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. . . . In its relations with the wider world, the Union . . . shall contribute to . . . the sustainable development of the Earth . . .” (Article 3(3) and (5) TEU)

“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.” (Article 11 TFEU)

12. Animal welfare considerations should now also be a consideration in EU fisheries policy:

“In formulating and implementing the Union's agriculture, *fisheries* . . . policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.” (Article 13 TFEU, emphasis added)

The EU legislative process

13. EU legal acts such as Regulations and Directives are generally adopted by what, after the Treaty of Lisbon, is known as the 'ordinary legislative procedure' (formerly known as the 'co-decision procedure'). In most cases, only the European Commission can propose a new legal act. But it cannot become law unless it is jointly adopted by the Council (which is composed of ministers from each Member State) and the European Parliament. Under this procedure, the Council acts on the basis of qualified majority

²⁷ Article 9 of Council Regulation 2371/2002.

voting (QMV), where only a specified majority of votes is required and the share of votes of each Member State reflects its population size. The Treaties also set out a small number of cases where EU legal acts are adopted under different procedures (referred to as 'special legislative procedures').

14. Some Treaty Articles, such as those promoting free movement or prohibiting anti-competitive practices within the EU, are of direct effect in themselves. Other Articles provide the legal base on which secondary EU legislation (Regulations and Directives) made by the European Parliament and Council can be founded. Secondary legislation may delegate power to the Commission to make further legislation (see Articles 288 to 290 TFEU). Since the Treaty of Lisbon, EU tertiary legislation must be in the form of either delegated acts or implementing acts.
15. Delegated acts supplement or amend non-essential elements of secondary legislation. Controls over the Commission are provided through powers of the Council or European Parliament to revoke or object to particular delegated acts.
16. There are several types of procedure for the other type of tertiary legislation, implementing acts, but the most common is where the Commission can act with control provided by Member States in the form of an expert committee. In this case there are two mechanisms for adoption of an implementing act – the advisory procedure and the examination procedure. The advisory procedure gives minimal member state control over the Commission; the examination procedure gives greater control to Member States and includes the use of an appeals committee if a QMV by Member States delivers a negative opinion on the Commission's proposals. If under the examination procedure the committee of Member States gives no opinion (that is there is no QMV for or against the proposal) then the Commission can choose to adopt the measure (subject to certain constraints). This can work in a Member State's interest if it is in a minority in favour of a proposal, but equally works against a Member State if it is in the minority against.
17. Most EU legislation concerning the CFP takes the form of Regulations, which generally give Member States little or no discretion in relation to implementation except in relation to enforcement and sanctions. Member States do, however, retain some discretion in relation to how to allocate fishing quota and in relation to the regulation of vessels in their inshore waters.

Development of competence

18. EEC competence on fisheries was initially established by Articles 38 to 46 of the Treaty of Rome. There was no express reference in that Treaty to a CFP; instead Article 38 EEC provided that:
 - “1. The common market shall extend to agriculture and trade in agricultural products. “Agricultural products” means the products of the soil, of stockfarming *and of fisheries* and products of first-stage processing directly related to these products. . . .
 3. The products subject to the provisions of Articles 39 to 46 are listed in Annex II to this Treaty. . . .”

19. The products listed in Annex II include “Fish, crustaceans and molluscs”, “Fats and oils, of fish and marine mammals, whether or not refined, but not further prepared” and “Preparations of meat, of fish, of crustaceans or molluscs”.

20. The objectives of the CAP were set out in Article 39(1) EEC:

“The objectives of the common agricultural policy shall be:

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.”

Article 40(2) EEC further provided that

“In order to attain the objectives set out in Article 39, a common organisation of agricultural markets shall be established”²⁸.

21. Under Article 43 EEC measures implementing the CAP (including the CFP developed under the same Treaty powers) were adopted by the Council, acting on a proposal from the Commission and after consulting what became (following Single European Act of 1986) the European Parliament. The Council adopted CAP measures by QMV.

22. No significant changes were made to the provisions concerning agriculture in the original EEC Treaty until the Treaty of Lisbon, which came into force in 2009²⁹.

Current state of competence

23. The main change in relation to fisheries brought about by the Treaty of Lisbon was to increase the role of the European Parliament, by making much of the power to make secondary legislation in this area subject to the ordinary legislative procedure:

“The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.” (Article 43(2) TFEU)

²⁸ These provisions are preserved unchanged in Articles 39(1) and 40(1) TFEU.

²⁹ The Treaty of Amsterdam renumbered Articles 38 to 46 EEC as Articles 32 to 46 EC, a change which was reversed by the Treaty of Lisbon.

24. However, the European Parliament still does not have a role in the making of measures setting quotas:

“The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.” (Article 43(3) TFEU)

25. Under both procedures the Council adopts measures by Qualified Majority Voting.

26. The Treaty of Lisbon also added several explicit references to fisheries into what is now Article 38 TFEU:

“1. The Union shall define and implement a common agriculture *and fisheries* policy.

The internal market shall extend to agriculture, *fisheries* and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. *References to the common agricultural policy or to agriculture, and the use of the term ‘agricultural’, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.*” (Article 38(1) TFEU - italics added)

Geographical scope

27. Article 52 TEU provides that the Treaties shall apply to the Member States³⁰. More details of the territorial scope of the Treaties as regards Gibraltar, the Channel Islands and the Isle of Man, and the Overseas Countries and Territories are specified in Article 355 TFEU.

Gibraltar

28. As a matter of international law, Gibraltar does not form part of the UK. Under Article 355(3) TFEU, the Treaties apply to Gibraltar as a European territory for whose external relations a Member State (the UK) is responsible, but because of the UK’s Act of Accession certain significant Treaty provisions do not apply to Gibraltar. These include Articles 28 to 37 TFEU, which guarantee the free movement of goods, together with Directives adopted under Article 114 TFEU which have as their objective the removal of barriers to free movement of goods; the CAP and the CFP. Gibraltar is also outside the common customs territory (and, in consequence, EU rules on customs).

The Channel Islands and the Isle of Man

29. Under Article 355(5)(c) TFEU, the Treaties apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the UK’s Act of Accession. Protocol No 3 to the Act of Accession sets out which EU rules apply to the Channel Islands and the Isle of Man; these include rules in relation to trade in “agricultural products” (a term which has the

³⁰ This reference must be understood as covering both the land and sea territories of Member States.

same meaning as in Article 38(1) EEC, and which covers the products of fisheries) and “products processed therefrom”. It further provides that the Council, acting by qualified majority on a proposal from the Commission, shall determine the conditions under which the EU rules on agricultural products shall apply to the Isle of Man and the Channel Islands (Article 1 paragraph 2)³¹.

Overseas Countries and Territories

30. The CFP does not apply to the waters of the UK’s Overseas Countries and Territories. Thus Article 3(b) of Council Regulation 2371/2002 defines the term “Community waters” as “the waters under the sovereignty or jurisdiction of the Member States with the exception of waters adjacent to the territories mentioned in Annex II to the Treaty”. The territories listed in Annex II to the TFEU include the Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, the British Indian Ocean Territory, the Turks and Caicos Islands, the British Virgin Islands and Bermuda.

Common Fisheries Policy (CFP)

31. Council Regulation 2371/2002 (the current Basic CFP Regulation) states that:

“The scope of the Common Fisheries Policy extends to conservation, management and exploitation of living aquatic resources and aquaculture, as well as to the processing and marketing of fishery and aquaculture products, where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or nationals of Member States . . .” (recital (2))

32. In brief, the CFP:

- regulates how and when fish can be caught in EU waters through restrictions on fishing gear, the quotas available to fishermen and the number of days they can spend fishing;
- provides for fisheries agreements between the EU and third countries;
- sets rules on the common market organisation of fish and fish products;
- provides for payments to be made to fishermen from the European Fisheries Fund; and
- regulates aquaculture in the EU.

Fisheries management in EU waters

³¹ Council Regulation 706/73 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products provides that the EU rules applicable to the UK for trade in agricultural products apply to those Islands (with the exception of rules on refunds and on compensatory amounts granted on exports by the UK) and for the purpose of applying those rules the UK and the islands shall be treated as a single Member State.

33. In Case 804/79 *Commission v UK*³² the European Court of Justice held that the EEC had exclusive competence to adopt fisheries conservation measures in Member States' waters. In reaching its decision the ECJ relied on Article 102 of the UK's 1972 Treaty of Accession, which provided that:

“From the sixth year after Accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.”

34. The ECJ's ruling is now reflected in the exclusive competence conferred on the EU in the area of the conservation of marine biological resources under the CFP by Article 3(1)(d) TFEU.

35. In 1983 a full system of EEC fisheries management was established. Central to this was Council Regulation 170/83³³ (the first CFP Regulation), which set out the procedures for determining measures for each species or group of species of fish governing:

“(a) the establishment of zones where fishing is prohibited or restricted to certain periods, types of vessel, fishing gear or certain end-uses;

(b) the setting of standards as regards fishing gear;

Factortame

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 Spanish fishermen 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* (Case C-213/89) the ECJ upheld the principle of the supremacy of EU law and ruled that UK courts must be able to grant interim relief in cases where there was an arguable case that national law breached EU law. The President of the ECJ ordered the UK to suspend the application of the nationality requirements laid down in the relevant sections of the 1988 Act. In *Factortame II* (Case C-221/89) the ECJ found that the nationality requirements imposed by the UK on fishing vessels infringed the right of free establishment set out in what are now Articles 49 to 55 TFEU. Following further litigation the UK Government paid damages to Factortame Ltd and other claimants for losses suffered by them as a result of the passing of the Act.

³² [1981] ECR 1045.

³³ Council Regulation 170/83 establishing a Community system for the conservation and management of fishery resources.

- (c) the setting of a minimum fish size or weight per species;
- (d) the restriction of fishing effort, in particular by limits on catches.” (Article 2(2))

36. It also provided for the annual setting of “Total Allowable Catch” (TAC) limits for each stock or group of stocks (Article 3), to be distributed between the Member States as quotas (Article 4). The Commission was authorised to set up what is now the Scientific, Technical and Economic Committee for Fisheries (STECF) to provide it with scientific advice on fisheries including on TACs (Article 12).

37. These measures were to be adopted by the Council acting by a qualified majority on a proposal from the Commission (Article 11). In practice, the levels for TACs set by the Council frequently exceeded the levels proposed by the Commission on the advice of the STECF.

38. The Council adopted several other measures in 1983 providing financial aid to restructure the EEC fishing industry, intended to align its capacity more with the available resources. These included funding for modernizing or scrapping vessels and for developing aquaculture³⁴.

The first Basic CFP Regulation was replaced in 1992 by a second Basic CFP Regulation³⁵ which required each Member State to establish a national system of fishing licences and all Community vessels to have licences. It also stated that the Council, acting on a proposal from the Commission, should where appropriate determine TACs on a multi-annual basis. This was in turn replaced by Council Regulation 2371/2002³⁶ (the current CFP ‘Basic Regulation’) which is still in force. It provides that:“(2) The Common Fisheries Policy shall provide for coherent measures concerning:

- (a) conservation, management and exploitation of living aquatic resources,
- (b) limitation of the environmental impact of fishing,
- (c) conditions of access to waters and resources,
- (d) structural policy and the management of the fleet capacity,
- (e) control and enforcement,
- (f) aquaculture,
- (g) common organisation of the markets, and

³⁴ See, for example, Council Regulation 2908/83 on a common measure for restructuring, modernising and developing the fishing industry and for developing aquaculture and Council Regulation 2909/83 on measures to encourage exploratory fishing and cooperation through joint ventures in the fishing sector.

³⁵ Council Regulation 3760/92 establishing a Community system for fisheries and aquaculture.

³⁶ Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

(h) international relations.” (Article 1((2)).

39. Seven Regional Advisory Councils (RACs) were set up in 2004 to advise the Commission on matters of fisheries management in certain areas or fishing zones³⁷. Five represent the different maritime areas of Europe; one represents the pelagic sector; and one represents the long-distance fleet which fishes outside European waters.

40. Article 8 of the current Basic CFP Regulation provides for Member States to take emergency measures in certain circumstances, subject to the prior approval of the Commission:

“(1) If there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities, in waters falling under the sovereignty or jurisdiction of a Member State where any undue delay would result in damage that would be difficult to repair, that Member State may take emergency measures, the duration of which shall not exceed three months.

(2) Member States intending to take emergency measures shall notify their intention to the Commission, the other Member States and the Regional Advisory Councils concerned by sending a draft of those measures, together with an explanatory memorandum, before adopting them.”

41. In 2005 the UK proposed “the extension of a domestic ban on pair trawling for bass within the 12 miles limit off the south-west coast of England to vessels of other Member States having fishing access to this area, with a view to reducing the by-catch of cetaceans”³⁸. This was rejected by the Commission following representations by France and Belgium, on the grounds that “according to the scientific information available the proposed measure is not likely to contribute to that objective”³⁹.

³⁷ See Articles 31 and 32 of the current Basic Regulation.

³⁸ Commission Decision 2005/322/EC on the request presented by the UK pursuant to Article 9 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, recital (1).

³⁹ Recital (6). In recital (5) the Commission set out its reasoning: “The issue of cetacean by-catch in pelagic pair trawling is a complex one and was specifically addressed as part of the comprehensive scientific review and advice given by the International Council for the Exploration of the Sea (ICES) on cetacean by-catch in fisheries. ICES indicated that “other fisheries than pair trawling for bass also catch dolphins” and that “there is a need for a comprehensive monitoring of the numerous trawl fisheries active in this region before we can be precise about mitigation requirements”. ICES considered in particular that a “ban on pelagic pair trawling for bass” would be an “arbitrary measure, unlikely to achieve the desired goal”. A prohibition on the use of pair trawls to target sea bass in the United Kingdom inshore waters in the Western Channel is likely to result in a redistribution of fishing effort into adjacent areas, without necessarily reducing the by-catch of common dolphins.”

42. Enforcement of the CFP by inspectors appointed by Member States is co-ordinated by what is now the European Fisheries Control Agency, which was established in 2005⁴⁰. Commission inspectors monitor the enforcement activities of Member States; under Article 27 of the current Basic CFP Regulation, Commission inspectors have no police and enforcement powers and cannot carry out an inspection without assistance from Member State inspectors if the party to be inspected objects.
43. Details of current EU and UK legislation concerning sea fisheries can be found at www.marinemanagement.org.uk/fisheries/monitoring/regulations_bluebook.htm The relevant EU legislation includes:
- Council Regulation 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (which includes provisions on the fishing gear which can be used);
 - Annual Regulations made by the Council under Article 43(3) TFEU fixing quota levels and the number of days which vessels can fish for certain stocks (the current Regulation being Council Regulation 39/2013);
 - Regulation 1224/2009 of the European Parliament and the Council establishing a Community control system for ensuring compliance with the rules of the CFP (which sets out the EU enforcement regime and which is supplemented by Commission Implementing Regulation 404/2011);
 - Council Regulation 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. This sets out an enforcement regime whose aim is to ensure that no products derived from illegal, unreported or unregulated fishing appear on the EU market or on markets supplied from the EU. It is supplemented by Commission Implementing Regulation 1010/2009;
 - Multi-annual plans for fish stocks. These are Council Regulations whose aim is the maintenance or recovery of fish stocks over a period of years and they include Council Regulation 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks;
 - Regulations whose aim is to minimise the impact of fishing on marine ecosystems. These include Council Regulation 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries;
 - Council Regulation 1198/2006 on the European Fisheries Fund (which provides grants to help the fishing industry become more sustainable and to remain profitable).

Fisheries management in international waters

44. The CFP also covers:

⁴⁰ By Council Regulation 786/2005 establishing a Communities Fisheries Control Agency.

- fishing by vessels from Member States in waters outside the territory of the EU, in the Exclusive Economic Zones of third states, the Faroe Islands and Greenland, and on the high seas; and
- fishing by third country vessels in EU waters.

45. The European Court of Justice established the EEC's authority to enter into international agreements relating to the conservation of the biological resources of the sea in the 1976 case of *Kramer*⁴¹:

“the Community has at its disposal, on the internal level, the power to take any measures for the conservation of the biological resources of the sea, measures which include the fixing of catch quotas and their allocation between the different Member States. . . . it follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea” (paragraphs 30/33).

46. The EU's power to enter treaties is now expressly set out in the Treaties:

“The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.” (Article 216(1) TFEU)

The EU has concluded bilateral treaties with North Atlantic states (currently with Norway, Iceland and Russia) and territories (that is the Faroe Islands and Greenland) as well as numerous fisheries partnership agreements with developing states which permit access by EU vessels to their fisheries.

The EU has also become a party to most of the regional fisheries management organisations (RFMOs) which regulate fishing on the high seas, including:

- the Northwest Atlantic Fisheries Organization (NAFO) since 1978;
- the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) since 1981;
- the North-East Atlantic Fisheries Commission (NEAFC) since 1981;
- the North Atlantic Salmon Conservation Organisation (NASCO) since 1982;
- the Indian Ocean Tuna Commission (IOTC) since 1995;

⁴¹ Joined Cases 3.4 and 6/76 [1976] ECR 1279. This followed the principle established by the Court in the 1971 *AETR* case (Case 22/70 *Commission v Council* [1971] ECR 263) that the EEC had an implied external competence to enter into an international agreement which was capable of affecting internal EU rules.

- the International Commission for the Conservation of Atlantic Tuna (ICCAT) since 1997 (the UK has also been a member since 1998 on behalf of its overseas territories not covered by the EU Treaties);
- the General Fisheries Commission for the Mediterranean (GFCM) since 1998;
- the South East Atlantic Fisheries Organisation (SEAFO) since 2003;
- the Western and Central Pacific Fisheries Commission (WCPFC) since 2004;
- the Southern Indian Ocean Fisheries Agreement (SIOFA) since 2008;

47. The EU has also been a 'Co-operating Non Party' to the Inter-American Tropical Tuna Commission (IATTC) since 2005 and a 'co-operating Non-Member' of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) since 2006.

48. The EU also has a co-operation agreement with the International Council for the Exploration of the Seas (ICES) under which ICES provides scientific advice to the Commission. The UK is one of twenty member countries of ICES.

49. The European Economic Area Agreement (between the EU and Iceland, Liechtenstein and Norway) does not extend to the CAP and the CFP, although it does contain provisions on various aspects of trade in agricultural and fish products⁴².

The Common Organisation of the Market in fishery products

50. The first legislation to establish the common organisation of the market in fishery products provided for in Article 40(2) of the Treaty of Rome was Council Regulation 2142/70. Its most recent successor is Council Regulation 104/2000 on the common organisation of the markets in fishery and aquaculture products.

51. Regulation 104/2000 states that the common organisation of the markets in fisheries products comprises "a price and trading system and common rules on competition" which applies to "fisheries products", defined as covering both products caught at sea or in inland waters and various listed products of aquaculture (Article 1).

52. The main elements of the common organisation of the market are:

- Common marketing standards - covering, for example, classification by quality, size or weight, packing, presentation and labelling. When standards have been established the products to which they apply cannot be marketed unless they conform (Article 2);
- Consumer information – a requirement for products to be accompanied by labelling showing the name of the species, the production method (caught at sea or in inland waters or farmed) and the catch area (Article 4);
- Producer Organisations – organisations set up by groups of producers to improve the organisation of the production and supply of fish, to stabilise

⁴² See in particular Protocol 9 on trade in fish and other marine products.

prices and to encourage fishing methods which support sustainable fishing (Article 5). These organisations, which are recognised by Member States (Article 6), can set the rules which apply to fishing, production and marketing in their respective areas. The rules must also be followed by non-members (Article 7). Detailed provisions govern the payment of aids to producer organisations by Member States. In the UK, Producer Organisations play a significant role in the management of quota ;

- Interbranch organisations – Member States may recognise interbranch organisations made up of a mixture of producers and traders and/or processors of fisheries products (Article 13). Certain activities of interbranch organisation are exempt from general EU competition rules (Article 14);
- Prices and interventions – producer organisations can fix a withdrawal price below which they will not sell fisheries products supplied by their members (Article 17). The Council, acting by qualified majority voting on a proposal from the Commission, must also fix an annual guide price for certain fisheries products (Article 18). Member States must grant financial compensation to producer organisations carrying out withdrawals (Article 21).
- Trade with third countries – there are provisions for reference prices and safeguard measures in relation to trade in fisheries products with third countries (Article 29 and 30)

Aquaculture

53. Council Directive 2006/88⁴³ 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, made under what is now Article 43 TFEU, applies to virtually all aquaculture animals which are in inland waters or fisheries, not just to freshwater fish.

54. Council Directive 92/43/EEC on the conservation of natural habits and of wild fauna and flora (the Habitats Directive, made under what is now Article 192 TFEU) also makes provision, among other things, in relation to the conservation of inland freshwater fish stocks.

European Fisheries Fund

55. EU financial support to the fisheries sector is governed the European Fisheries Fund (EFF) as established by Regulation 1198/2006⁴⁴. The EFF authorises the giving of support for a wide range of activities. The support includes the financing of the

⁴³ 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.

⁴⁴ Council Regulation 1198/2006 on the European Fisheries Fund. This repealed and replaced Council Regulation 1263/1999 on the Financial Instrument for Fisheries Guidance.

permanent and temporary cessation of fishing activities (Articles 24 and 25), the financing of modernisation of fishing vessels (Article 26), support for aquaculture production (Article 28), and aid to producer organisations (Article 37(n)).

Reform of the Common Fisheries Policy

56. New Regulations, agreed in the summer of 2013, are due to come into force at the start of 2014 replacing the current basic CFP Regulation, and the Regulation on the common organisation of the markets in fishery and aquaculture products. A new Regulation on the European Maritime and Fisheries Fund is currently under negotiation and is expected to come into force in April 2014.