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Fisheries Bill Position Paper

The Fisheries Bill: A Cheat's Charter?

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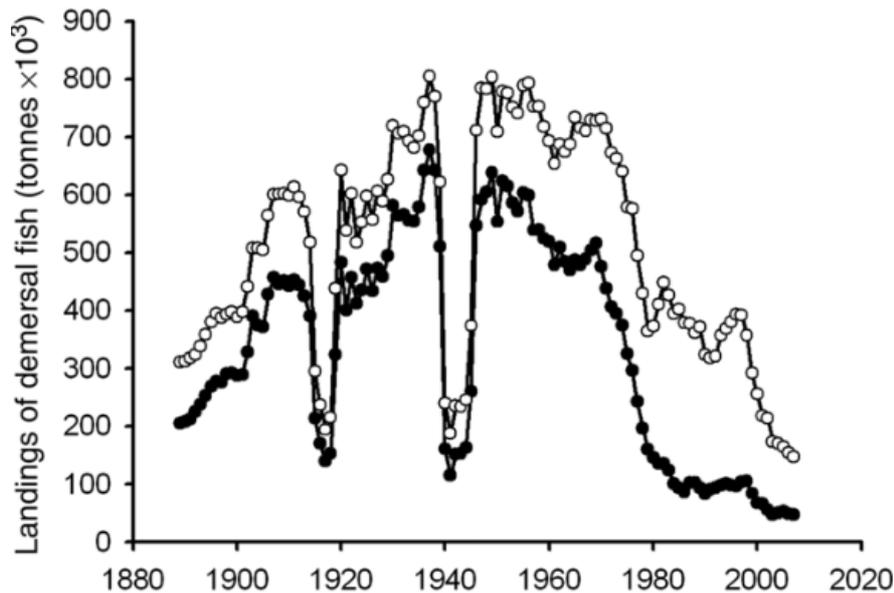


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The Fisheries Bill: A Cheat's Charter?

The Fisheries Bill is likely to be the only piece of legislation for some time to impact significantly on how we fish, where we fish, what we fish for and who benefits from those activities. So it is essential that we get this legislation right. Indeed, this is the first major change in UK fisheries legislation since the 1960s and even that was based on laws from the 1880s. Fish were traditionally an important part of the UK's food production and opinions over the UK fishery played a huge role in Brexit. But, in reality, years of mismanagement since the Second World War, has left the seas empty, the seabed denuded and our stocks depleted. For example, the availability of bottom-dwelling fish for the fleet fell by 94 per cent between 1899 and 2007 and the European Common Fisheries Policy (CFP), while stopping the downward trend, has done little to reverse it. Whatever your political beliefs on Europe, when viewed objectively, the CFP has been a failure. A radical rethink is needed. This is likely to be the only chance in our generation of legislators that we will have that opportunity and we cannot let it slip by.

Changes in landings of bottom-dwelling fish 1889 – 2007



Key: open circles are UK registered vessels, closed circles are English and Welsh vessels.

Source: *Nature Communications*¹

¹ Thurstan, R., Brockington, S. & Roberts, C. The effects of 118 years of industrial fishing on UK bottom trawl fisheries. *Nat Commun* 1, 15 (2010). <https://doi.org/10.1038/ncomms1013>



The Bill navigates a difficult legislative path between escaping the rigidity of the EU's CFP and ensuring that the devolution settlement is maintained. But even so, it lacks ambition, is poorly worded and stops well short of good precedent in other common law jurisdictions such as Australia.² This has been amply demonstrated in the House of Lords, where peers highlighted fundamental weaknesses at the heart of the Bill with regards to: sustainability, ownership of the fishery, the distribution of fishing rights to fishing businesses and the adequacy of controls.

We recommend, that whatever party you are from, these were sensible and informed amendments and should be carried through to the final form of the Bill. We may not see another Fisheries Bill for 50 years. The Fisheries Act needs to strike the right balance between empowering the government of the day to make decisions, but also providing appropriate duties to ensure it can be held to account. As it is drafted the Bill has many powers but few duties; some may call it a cheat's charter.

Sustainability

The Bill proposes a rather complex framework of objectives, statements and fisheries management plans (ss 1-11). These may be justified to appreciate the nuances of devolution, but in doing so there is a danger that the public of all four nations are short-changed. If the Bill is to achieve anything there needs to be a firm duty on all the administrations of the UK, that they may never again allocate stocks beyond levels that can replenish themselves. Indeed we are now working on some stocks which represent six per cent of the availability of those stocks of a century ago. We should be bolder, and put a duty on fisheries managers to restore stocks to their 19th century levels. Instead what we saw in the Bill as first introduced, was a complex array of often contradictory objectives, which set society and economics (s1(9)) against sustainability s1(2)). Something we all know in our heart of hearts to be completely absurd.

The House of Lords voted by a majority of 310 to 251 for an amendment that placed sustainability as a primary objective.³

Despite the headlines in the *Evening Standard*⁴ we, at Blue Marine Foundation (BLUE), know that the Commons can do better and that it should be common cause among ***all MPs*** that their duty is to rebuild stocks. There is no place for building a bewildering bureaucratic hall of mirrors around fisheries management; the objective needs to be simple and ambitious. Coastal communities and the UK's long-term food security must be safeguarded.

² See <https://www.afma.gov.au/about/legislation-regulation>, then compare it to the antiquated, muddled, and evasive wording in our own Bill. It is embarrassing.

³ See: <https://votes.parliament.uk/Votes/Lords/Division/2271>

⁴ <https://www.standard.co.uk/news/uk/government-heavy-defeat-brexite-fishing-a4476746.html>



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Ownership

Successive UK Governments have lost control of the ownership of the UK fishery: it has been squatted,⁵ not by those in need, but a combination of high-net-worth individuals⁶ and foreign interests.⁷ If you ask the Government: “How long will the current quota allocation last?” or “How much do these large commercial companies pay for access to this publicly owned British resource?” you will hear nonsensical answers.

And yet, Lord Gardiner, said on behalf of the Government: “The Government are clear that there is a public right to these fish. Indeed, lawyers have advised me that UK case law recognises that fish are a public asset, held by the Crown for the benefit of the public.” So, the question the Government has to answer is this: *Where is the public benefit in allocating the UK fishery free to some of the worst fishing practices imaginable?*⁸ If the resource is to be allocated free of charge, there must be some identifiable community or environmental benefit. BLUE are calling for a commitment from Government to reform the current Fixed Quota Allocation system and replace it with a more socially and environmentally equitable distribution mechanism.

The House of Lords, recognising the disparity, voted for an amendment to support new entrants in England.⁹

No statutory basis for quota allocation

There also seems to be a legal flaw in the current legislation, with important ramifications. Although the fishing rights vest in the Crown, there is no clear legislative pathway, which permits Ministers to dispose of the fishery on the Crown’s behalf. Ministers are therefore potentially acting beyond the powers granted to them by Parliament. This is important because there are none of the usual commensurate duties on Ministers to obtain a proper value for the disposal of a public asset, undertake good management or account for the disposal of the asset.¹⁰ Clause 27 purports to do this for England, by allowing for charging, but contains none of the usual duties, and the Government have informed us this section will not be the basis for allocation across the entire fleet. Furthermore it only applies in England, and so the rest of the UK’s fishery allocation may have no proper statutory basis, either the error needs to be rectified in this Bill or there should be appropriate legislation by devolved administrations.

⁵ Appleby, T., Cardwell, E., & Pettipher, J. (2018). [Fishing rights, property rights, human rights: The problem of legal lock-in in UK fisheries](https://doi.org/10.1525/elementa.295). *Elementa*: 6(1), 40. <https://doi.org/10.1525/elementa.295>. Available from <https://uwe-repository.worktribe.com/output/867992>

⁶ See: <https://www.greenpeace.org.uk/news/uncovered-rich-list-codfathers-dominating-uks-fishing-industry/>

⁷ See: <https://www.bbc.co.uk/news/52420116>

⁸ See, for instance: <https://www.youtube.com/watch?v=HahFTZPsvmY> or *Prawn Wars*: https://www.youtube.com/watch?v=el_KeMDgB5Q

⁹ See: <https://votes.parliament.uk/Votes/Lords/Division/2278>

¹⁰ See for instance: s1, Crown Estate Act 1961.



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Controls

Abattoirs are recorded with CCTV¹¹ for animal welfare and heavy goods vehicles are monitored to ensure safety for drivers and the public. Despite fishing being the most dangerous industrial activity by a factor of ten¹² and there being significant temptation to misdescribe fish, discard low value catch, and falsify records¹³ there are few monitoring requirements on fishing vessels, beyond reporting their location. This needs to change.

The House of Lords voted 289 over 230¹⁴ for an amendment proposed by Greener UK to require better monitoring of larger fishing vessels.

Conclusion

This is a muddled and over-complicated piece of legislation, which falls short of establishing the right powers and duties on government to enact the fundamental reforms the fishing industry, the UK marine environment and coastal communities so desperately need.

These are the key areas where we expect concerns to be raised by members across all Parties.

If you are able to attend the Second Reading and would like some additional advice on interventions or a speech, please get in touch with us and we are happy to assist.

Best wishes,

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About Blue Marine Foundation (BLUE)

Blue Marine Foundation (BLUE) is a charity dedicated to restoring the ocean to health by addressing overfishing, one of the world's biggest environmental problems. We work using a combination of top-down intervention to improve governance of our seas and bottom-up project delivery to help local communities who are at the front line of ocean conservation.

For more information about us see: <https://www.bluemarinefoundation.com/>

¹¹See: <https://www.gov.uk/government/news/cctv-becomes-mandatory-in-all-abattoirs-in-england>

¹² See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817106/2019-AnnualReport2018.pdf, pg 2.

¹³ See for instance: <https://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-17153085>

¹⁴ See: <https://votes.parliament.uk/Votes/Lords/Division/2279>