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20 November 2024

Consultation on the proposed amendments to Annex A of the Joint Fisheries Statement

1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the Department of Environment, Food and Rural Affairs' (DEFRA) consultation on proposals to amend Annex A of the Joint Fisheries Statement with regard to delivery of Fisheries Management Plans (FMPs). ESS has responded to specific questions of this consultation, set out below.
2. ESS is a non-ministerial office directly accountable to Scottish Parliament. Since 1 October 2021, it has been a component of the system of environmental governance in Scotland following the UK's exit from the European Union and the end of oversight of implementation of European Union environmental law by the European Commission and the European Court of Justice. ESS' remit is to:
 - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law
 - monitor and take action to improve the effectiveness of environmental law and its implementation.

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3. In this letter we aim to primarily address proposals and the relevant consultation questions that are pertinent to FMPs in Scottish waters and where Scottish Ministers are the coordinating authority.

Question 2 - Do you agree with the proposed new publication deadlines for the FMPs set out in Table 1 in this consultation document?

4. ESS has considered the information provided in this consultation and disagrees with the proposed new publication deadlines. ESS is primarily concerned about the blanket extension of the publication deadline of all FMPs where Scottish Government is the Coordinating Authority to 2026. There is also a need for greater information to determine if the proposed FMP deadlines are achievable and timely.
5. ESS acknowledges that the delivery of FMPs is complex and supports the approach set out in this consultation regarding the need for more time to ensure that valuable lessons from the first five published FMPs are used to develop other FMPs. However, this raises several concerns for ESS given the limited progress seen to date in developing the 22 Scottish-led FMPs within the original timeline (2022-2024) set out in the Joint Fisheries Statement (JFS) with all FMPs expected to be published by the end of 2024.
6. The proposal lacks detailed information regarding the progress made to date in the development of Scotland's 22 FMPs. Whereas there has been significant progress made by DEFRA in the delivery of the 15 FMPs it is leading on, with six (40%) FMPs published and five (33.3%) FMPs currently open for public consultation. ESS is currently unable to support the proposed extensions, to do so would require clarification on how current progress in the development of Scotland's FMPs is reflected in the new proposed publication deadline of 2026. For example, ESS would expect publication of the North Sea and West Coast of Scotland Nephrops FMPs before the proposed deadline given the public progress made on these in comparison to other Scottish FMPs. Given this, ESS is asking for Scottish Ministers to provide a workplan detailing progress to date, steps still to be undertaken and expected publication date for each of the 22 FMPs to provide reassurance that these will be delivered within the new proposed deadline.

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7. Similarly, ESS is seeking assurance that the proposal to extend the FMPs publication deadline by two years is sufficient to ensure publication of Scotland's 22 FMPs within the deadline. Since the establishment of the existing statutory deadline, new scientific advice has led to the proposal to merge the North Sea and West of Scotland Cod FMPs. It is not clear from the consultation paper what processes and checks have been put in place to allow for any further updates or changes to science advice within the new deadline. Scottish Ministers must also ensure that the proposed deadline allows for any changes to be made to FMPs following public consultation, as seen in DEFRA's approach, and ensures adequate engagement with stakeholders during FMP development.
8. ESS recognises that external circumstances, such as the UK general election, have contributed to delays in the delivery of UK-wide FMPs. However, ESS would have expected the Scottish Government to have accounted for such contingencies given the existing timetable and to ensure it could deliver Scotland's FMPs within the statutory deadline. ESS makes comparison to progress made by DEFRA detailed above in the delivery of 11 of the 15 English FMPs despite the same delays referenced in the proposal. It is essential that any foreseeable future external events, such as the Scottish Parliament Election expected in May 2026, are accounted for in the new proposed deadline for FMP publication.
9. The Office for Environmental Protection highlighted several concerns regarding the first six 'frontrunner' DEFRA-led FMPs that would need to be addressed if the finalised FMPs were to deliver the Government's objectives set out in the JFS. This includes clearer identification of policies and tangible actions that comply with the requirement for fishing authorities to set out policies designed to restore, or maintain, Maximum Sustainable Yield, and taking a precautionary approach to fisheries management. ESS recommends that Scottish Ministers incorporate 'lessons learnt' from the first forerunner FMPs to ensure that FMPs are compliant with the objectives set out in the JFS and legislative requirements set out under the UK Fisheries Act 2020.

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Question 5 - Do you agree with the proposal that Welsh Ministers should only remain as an authority responsible for the preparation and publication of those FMPs that extend to the Welsh zone?

10. ESS makes no specific comments to the proposed changes to authorities responsible for FMP delivery; however, any changes made to FMPs in which Scottish Ministers are the coordinating authority should not impact the delivery and publication of such FMPs.

Additional comments on the proposed amendments to Annex A made in this consultation.

11. ESS acknowledges that considerations have been taken regarding the Narrative Impact Assessment (NIA) undertaken for policies set out in the JFS and that originally identified impacts in the NIA are not anticipated to change. Section 2 of the NIA summarises the main anticipated impacts of policies set out in the JFS and concerns fisheries policy authorities' commitments to:

- Wider international engagement - this includes promoting the sustainable use and protection of stocks, and facilitating international cooperation to tackle climate change, to support achievement of the sustainability, precautionary, and climate change objectives
- Fishing capacity - the national fisheries authorities will ensure the fishing capacity of fleets is appropriately balanced between maintaining economic viability and maintaining stock health
- Illegal, unreported and unregulated fishing – the national fisheries authorities' contribution in the global fight against illegal, unreported, and unregulated (IUU) fishing practices. The national fisheries authorities will rigorously enforce their respective IUU Regulations
- Reducing bycatch and minimising catches of sensitive species - the national fisheries authorities to work in partnership with stakeholders to develop a range of management measures that support fishers to avoid unwanted catches of quota species to reduce unnecessary fish mortality and discarding of fish.

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12. As detailed in section 1.4.14 of the JFS, FMPs will set out policies for specific fisheries or stocks to contribute to delivering the fisheries objectives of the UK Fisheries Act 2020. ESS has concerns that a proposed delay of up to two years in the delivery of policies set to be achieved by Scotland's FMPs may have an inherent impact on the delivery and achievement of such policies they are designed to fulfil as the original impacts considered may be worse or environmental conditions worsened. Given this, further consideration is needed regarding the decision to not update the NIA and the wider potential impacts of the proposed amendments to Annex A of the JFS.

Yours sincerely,

Handwritten signature of M. S. Roberts in black ink.

Mark Roberts
Chief Executive

Copies to:

Scottish Government Marine Directorate
The Scottish Parliament's Net Zero, Energy and Transport Committee

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