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Chair of Climate Change, Environment & Rural Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

*Sent via email*

*CC: Constitutional & Legislative Affairs Committee; External Affairs & Additional Legislation Committee*

18<sup>th</sup> January 2019

Dear Mr Hedges,

**RE: Further evidence on Maximum Sustainable Yield (MSY)**

Further to our oral evidence to the CCERA Committee on Wednesday 16<sup>th</sup> January for the [Fisheries Bill LCM inquiry](#), we are writing to express our continued concern regarding the wording within the UK Fisheries Bill on MSY.

[Greener UK and Wales Environment Link](#) have been calling for this Bill to ensure that fishing limits cannot be set above maximum sustainable yield, to ensure stocks can be restored to healthy biomass levels. This is crucial to ensure the sustainable management of natural resources.

Despite the laudable objective on the face of the Bill to restore stocks above levels capable of producing MSY – which WEL and Greener UK strongly advocate – we remain extremely concerned about the absence of strong duties to ensure that attainment of this goal is not vulnerable to short-term political pressures to overfish in any given fishing year. We have outlined, in the Annex attached to this letter, some of the concerns raised during both MPs' and AMs' scrutiny of the Bill, and hope that the explanations demonstrate the necessity of including a stronger duty for MSY. [[See further evidence from Greener UK in this regard at the link](#)].

We thank you again for the opportunity to input into the Committee's inquiry on the Legislative Consent Memorandum for the UK Fisheries Bill.

Yours sincerely,

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## Annex 1: Briefing on concerns raised over stronger MSY duties through Fisheries Bill's inquiries

### 1. Getting Maximum Sustainable Yield (MSY) duties right

The UK Fisheries Bill includes the commitment to restore stocks to Biomass MSY (BMSY).<sup>1</sup>

The language in the Bill differs significantly from Article 2(2) of the CFP by omitting the second part of the CFP text. The first part of Article 2(2) is an objective to restore biomass, defined in terms of maximum sustainable yield. However, at the time of the reforms it was felt that it was very difficult to make a biomass objective binding, because fishing pressures are not the only impact on fish stocks. Therefore, ascribing a hard deadline to this biomass objective would be holding Ministers to account for factors not fully within their control.

The biomass objective was necessarily seen as more aspirational but supplemented with a second clause relating to exploitation rates – this is the more important objective as it pertains to the factor (fishing limits) that are within the control of Fisheries Ministers. It is a binding clause requiring that, by 2015 where possible and by 2020 in any event, fishing limits should be set to ensure exploitation rates are in line with scientific advice on MSY.

The Bill currently includes the broader aspirational objective to ensure that all harvested stocks are recovered to, or maintained at, a biomass above that capable of producing MSY. This mirrors the ambition included in the first element of Article 2(2) of the CFP.

However, the Bill places no duty on authorities to ensure that fishing pressures – one of the few things managers can control directly – is managed in order to deliver this objective. There is no duty on the relevant authority to ensure that fishing opportunities are set no higher than fishing mortality consistent with MSY (FMSY), for example. It is analogous with a long-term objective of restoring forests, but providing no limitation on the number of trees that can be cut down. This contrasts with the stronger ambition set out in the preceding White Paper, and the UK's existing international commitments under UN agreements and EU law.

The absence of this second, crucial, element is both conspicuous and deeply concerning. The most successful fisheries management regimes in the world – including the USA, Australia, New Zealand and many others – place a duty to ensure that fishing mortality is not set above the FMSY level and some restrict fishing mortality to lower levels.

### 2. Binding fishing targets are needed

This Bill has been described as framework legislation. It includes the objective to achieve BMSY. The Joint Fisheries and Secretary of States' Fisheries Statements are to outline in greater detail the actions taken to achieving the objective.

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<sup>1</sup> BMSY - a stock's status expressed as the ratio between its population biomass (B)--live weight in the ocean-- and the biomass that can produce MSY. [More information here.](#)

It has been suggested that the requirement to limit catches at or below FMSY is implicit within the Bill's overall BMSY objective. We remain concerned, however, that there is nothing to prevent fishing limits being set above the scientifically recommended MSY level in the short term, or even to prevent 'joint fisheries statements' allowing such flexibility. Leaving this intention implicit could allow future governments to claim that they are still committed to restoring stocks in theory, but instead a little further down the line, while setting limits too high in the short term.

Creating no target for what we can control (fishing mortality / catch removals) and no immediate duty on fisheries managers to deliver on the objective by a deadline (currently 2020 under the CFP), by deferring to secondary legislation, or simply to the trust of managers, creates a completely insufficient shield against short-term political pressure to overfish.

This is not a hypothetical scenario. Difficult decisions to reduce catches where necessary, in order to allow stocks to recover, have consistently been opposed during the implementation of the CFP, leading to political short-termism rather than science-based decisions. EU fisheries ministers have made progress in heeding science, but still set 44% of fishing limits for 2018 higher than the scientific advice.

Indeed, [DEFRA's publication of the responses to the Fisheries White Paper](#) demonstrates that this pressure for further delay and counter-productive flexibility persists:

*"The majority of respondents were supportive of the objective to fish at or below levels that can produce and sustain MSY of fish stocks. However, some respondents from the fishing industry expressed concern that the CFP target to achieve MSY for all stocks by 2020 was unachievable. Industry responses in particular suggested that a more general commitment to work towards achieving MSY in line with the United Nations Convention on the Law of the Sea (UNCLOS) would be preferable."*

The lessons from international best practice, and recent European history, point to exactly the opposite conclusion: binding and automatic limits to prevent overfishing, with more precise legal constraints, are a necessary prerequisite of good management. Aiming lower than this longstanding commitment risks destroying the sustainability improvements and economic gains made in the last decade or two, sowing doubt about the sustainability of UK seafood in the minds of processors, retailers and consumers.

### **3. Deadlines must be set for fishing limits to be set at sustainable levels**

This Bill would eliminate the need to match the CFP deadline of setting fishing limits in line with FMSY by 2020 as this Bill, subject to a transition period, will not come in to effect until after this date.

We recognise that the uncertainty as to when the Bill will come in to effect poses as challenge. However, the inclusion of the principle to abide by the scientifically recommended levels to achieve FMSY does not need to be affixed to a date. The UK has committed to MSY exploitation rates by 2020 in its international agreements beyond the CFP, and in every scenario for the UK's exit from the EU it should in any event be using this approach in late 2019 as the UK negotiates fishing limits for 2020, and thereafter.

### **4. Fishing limits for shared stocks cannot be set above MSY**

The Fisheries Bill does not make any firm commitments on how shared stocks will be sustainably managed with EU Members States to achieve MSY. This is particularly important as the UK shares over 100 fish stocks with other countries. In the EU, following seven years of staggered implementation after the reform of the

CFP in 2013, EU Member States will be legally bound to fish all harvested stocks at FMSY by 2020. When negotiating fishing opportunities with countries outside the EU, the UK needs to adhere to scientific advice.

MSY by 2020 is no longer a distant aspirational aim – in 2018, for stocks with MSY advice the percentage of limits not exceeding that advice was about 72%<sup>2</sup>. Other international examples of world leading fisheries management demonstrate that fishing at MSY is a practical and achievable goal – the 2017 NOAA Fisheries report to the US Congress<sup>3</sup> highlighted how 91% of stocks were fished in line with MSY, with detailed plans on how the remaining 9% could be brought in line.

The EU and UK have made progress on this requirement, with stocks and revenue for fishing businesses moving in the right direction as a result. The important thing now is not to go backwards or send a signal that UK will undercut EU ambition.

## **5. The best metric and objective for fisheries management is MSY**

The UK remains committed to sustainability and some stakeholders have suggested that there are other metrics than MSY that we could use.

But fisheries managers cannot put fish in the sea. All they can do is to manage exploitation with a suitable level of precaution to ensure stocks can be resilient if they face other pressures.

The concept of MSY is primarily an economic one – more precautionary alternatives exist if reducing ecological risk was the primary objective. Fishing at MSY levels will produce the highest catches in the long term, provide stability/profitability for fishing businesses, while safeguarding fish stocks. This is why MSY has generally become the key management objective for international fisheries.

Taking one of the UK's most difficult management challenges as an example, MSY itself is not necessarily even a limiting factor. The zero catch advice for cod in the West of Scotland in 2019 – making it a potential “choke species” – stems from that stock's perilous state. Technically the MSY exploitation rate for that stock would allow 498 tonnes of catches, but it is the other principles of sensible, rational fisheries management – such as the precautionary approach used by the International Council for the Exploration of the Sea – that quite rightly leads to advice for 0 tonnes, rather than MSY.

**To conclude, in calling for MSY, we are advocating a high-yield, highly profitable, highly economically stable approach that is consistent with the kind of world leading fisheries management frameworks the UK is seeking to emulate. It is win-win for the environment and for the bottom line of fishing businesses.**

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<sup>2</sup> 27 TACs (60% of 45 TACs) were set by the Council not exceeding the FMSY advice. [See more information here.](#)

<sup>3</sup> National Oceanic and Atmospheric Administration, 2017. [2017 Report to Congress on the Status of U.S. Fisheries.](#)