
STATES OF JERSEY



INCLUSION OF THE BAILIWICK OF JERSEY IN THE UK-EU TRADE AND CO-OPERATION AGREEMENT: FISHERIES (S.R.5/2021): RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

**Presented to the States on 6th April 2021
by the Minister for the Environment**

STATES GREFFE

INCLUSION OF THE BAILIWICK OF JERSEY IN THE UK-EU TRADE AND CO-OPERATION AGREEMENT: FISHERIES(S.R.5/2021): RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

Ministerial Response to:	S.R.5/2021
Review title:	Inclusion of the Bailiwick of Jersey in the UK-EU Trade and Co-operation Agreement: Fisheries
Scrutiny Panel:	Environment, Housing and Infrastructure Scrutiny Panel

FINDINGS

	Findings	Comments
1	The TCA supersedes the Granville Bay Agreement, although this does not affect the delineation of the maritime boundary between Jersey and France. The Maritime Boundary Agreement is distinct from the GBA as it establishes definitive international maritime borders between the UK and France in the GBA area for all purposes and not just fisheries access.	Agree.
2	It is felt by Jersey's Fishermen's Association that under the terms of the Granville Bay Agreement, unfair and inequitable access arrangements allowed French vessels to fish within 3nm of Jersey's offshore reefs and islets without a reciprocal agreement for Jersey vessels fishing off French sovereign territories. There are concerns that should this inequity continue to go unaddressed then this will continue to disadvantage Jersey's fishing industry.	Under the GBA Jersey vessels could fish up to the A-K line and in zone E and F which are up to 3 miles from the French coast. However, it is acknowledged that more French vessels access waters close to Jersey than vice versa.
3	Jersey's inclusion in the TCA will mean that the management of its waters would now no longer be done jointly, as was previously the position under the GBA. Instead, Jersey will be entitled to manage its waters as it sees	Agree.

	Findings	Comments
	fit, within the general principles of Article FISH 4. This will include the ability to impose non-discriminatory management restrictions, on a scientifically justified basis.	
4	Jersey's inclusion in the TCA represents an opportunity to better manage fishing activity in Jersey's waters in terms of developing an ecologically and economically sustainable approach.	Agree, and this must be on the basis of non-discrimination.
5	Establishing environmental agreements over shared fishing grounds has previously been difficult and required careful negotiation to ensure buy-in from all stakeholders.	Marine resource management measures in general have been difficult and required careful, and often lengthy negotiation.
6	The TCA does not affect Jersey's sovereignty over its offshore reefs and islets, but there remains some scope through the new licensing regime, to apply conditions on access to these areas in a non-discriminatory way to ensure they are managed in a sustainable way that will benefit Jersey's fishing industry in the medium to long term.	Agree.
7	The new procedures and processes have created additional administration and handling charges, such as the States Vet inspecting and producing export health certificates. This work is creating extra costs and fishermen, merchants and aquaculture businesses will be under pressure to absorb these costs, which is likely to have an impact on their profitability in the short to medium term.	This is an inevitable consequence of BREXIT assuming that businesses wish to carry on doing the same things in the same way. The Veterinary section is only involved in the inspection and production of export health certificates in relation to aquaculture and not wild caught.
8	A lack of resources at the Veterinary Department to inspect exports and award health certificates is partly responsible for the delays being experienced by shellfish exporters under new trade rules.	The contention is misplaced – there have been no delays in the production of veterinary health certificates. [There are however plans to increase resources to improve the resilience of service delivery].

	Findings	Comments
9	Government is not actively considering or pursuing the possibility of a dedicated post to support the fishing industry. Instead, support is proposed to be drawn upon from existing teams, despite the fact that it is widely acknowledged that these teams are already under-resourced.	Industry support is not part of the Minister's portfolio. The Minister agrees that these teams are under-resourced and business cases have been submitted to augment sections such as Marine Resources and the Vet to address this.
10	Developing alternative markets for export to reduce the historic reliance on trade to France and Southern Europe should be a key medium-to-long-term objective for the fishing industry, but this will require significant investment in infrastructure and marketing.	Agree, however, much of this would fall under the Minister for Economic Development, Tourism, Sport and Culture. The Minister fully endorses IHE officers working with ED colleagues.
11	In order to future-proof Jersey's fishing industry, steps must be taken to identify new export markets and look into market diversification such as exporting frozen processed shellfish.	Agree. See above.
12	Apart from the Covid-19 emergency financial support scheme, the fishing industry has not yet been offered a support package to help mitigate the financial impact of the new processes and procedures under the TCA.	The TCA has been in operation since 1 January 2021. Its impact on local fisheries (and especially exports) are being quantified but remain subject to change. Appropriate financial support will take into account the impact of the TCA on the fishing industry.
13	The TCA replaces existing fishing access arrangements with a regime based on EU vessels being required to demonstrate a 'track record' of fishing activity in Jersey's waters, in order to be issued a licence to enable these vessels to continue to fish Jersey's waters.	Agree.
14	It will not be possible to definitively assess the full effect on provisions for fisheries within the first 90 days, particularly in relation to the amount of boats that will be able to fish in Jersey's waters or the conditions under which fishing activities may take place. It will be important for Jersey's Government to adopt a methodical and evidence-based approach to assessing	The methodology for assessment of TCA criteria was established between the UK and EU, and Jersey has been consulted on this.

	Findings	Comments
	track record to ensure that the criteria set out in Article FISH 10 are applied.	
15	The process of collecting and evaluating evidence for EU vessels to demonstrate suitable track record is challenging and complex. Once evidence of track record has been received from vessels it will be important for Jersey's Government to apply the criteria in Article FISH 10(1) precisely.	Agree.
16	The transitional amnesty with regards to issuing licenses to EU vessels between January – May 2021 has caused deep concern amongst stakeholders about the fairness of licensing processes after May 1st.	Transition period has no impact on licensing process, which is set out in the TCA. At the end of the transition period only those vessels issued a license under the TCA will be able to fish in Jersey Waters.
17	The conditions around meeting licensing requirements represent a significant financial obligation for Jersey's local fleet, who (unlike the EU fleet) do not receive Government subsidies to support local fishing interests.	The licensing requirements under the TCA are the same for both Jersey and French vessels to fish in each other's waters. The cost of a fishing vessel license is not related to the TCA.
18	Appointing Jersey as the licensing authority represents a positive opportunity to preserve and enhance the marine environment and address access and management issues around shared fishing waters that were not sufficiently resolved through the Granville Bay Agreement.	Agree, and this must be on the basis of non-discrimination.
19	Historically, it has been difficult to enforce and collect data about the type and quantity of fishing activity taking place by EU vessels in shared waters, which has impeded the proper management and cultivation of fisheries. It may be challenging for EU vessels to be able to completely or accurately demonstrate the historic extent and nature of non-VMS vessel activity in accordance with new licensing conditions.	The data and evidence to demonstrate a track record for non-VMS vessels are available and can be assembled. Although 99% of Jersey vessels do not have VMS, the island has nonetheless been able to produce track record evidence for vessels applying for a French licence.

	Findings	Comments
20	Whilst Jersey fishing licence holders are by their nature linked to Jersey's economy, the same is not necessarily the case for French licence holders.	The TCA does not require an economic link as part of its licencing and management framework.
21	Jersey's fishing industry currently receives no financial support from the Government with regard to licensing fees, safety equipment and vessel upgrades, unlike EU fishing fleets. Whilst the Minister for the Environment has confirmed that a support package is being looked at, the Panel considers that this is not being expedited fast enough.	Agree, however, as mentioned previously, much of this would fall under the Minister for Economic Development, Tourism, Sport and Culture. The Minister fully endorses IHE officers working with ED colleagues.
22	It is recognised by the Minister for the Environment that "more effort" will be required to ensure Jersey is adequately equipped to take enforcement action where unlicensed fishing vessels may attempt to operate in Jersey's waters. It is also recognised that more efforts will need to be concentrated on marine science, monitoring and ensuring Jersey achieves what is required in order to have a sustainable fishery.	Notwithstanding the HR resource issue, Marine Resources have the equipment, skills, and expertise to deliver both the compliance and science regimes.
23	France is also responsible for ensuring that French fishing vessels have the appropriate licences required as they must ensure that French vessels fishing in third countries' waters, such as Jersey's, have a licence, which is then followed up by a further licence from the country of the boat called a S.M.E.F.F. (Sustainable Management of External Fishing Fleets) licence.	Agree.
24	The Minister for the Environment has concerns that the Marine Resources team is not adequately resourced in terms of manpower at present. It is anticipated that a further Government Plan bid will be made in the hope of securing added human resources to bolster the team's manpower.	A business case has been submitted for this year and a Government Plan bid will follow.
25	Suitable enforcement measures are likely to be resource intensive and	Fishing effort in Jersey waters is not seasonal but occurs all year round. The additional roles will

	Findings	Comments
	seasonal and so the recruitment for additional posts to this role would need to take into account what other duties could be carried out when fishing fleets are not in operation.	nonetheless require the postholders to undertake a full range of duties.
26	If Jersey took the decision to withdraw from the TCA it would have no formal relationship with the E.U. in relation to goods and customs. Tariffs would be imposed on all goods from Jersey into the E.U. There is also a perceived risk that Jersey (including its fishing industry) would find it more difficult to access European markets.	Agree, if Jersey were to withdraw from the TCA, Jersey fishers and exporters would still be required to meet all the IUU, NEAFC and SPS requirements as these apply to third countries. In addition, they would require a longer prior notification period which would make direct landings difficult if not impossible as through the TCA this has been reduced. Tariffs would also apply.
27	Jersey's withdrawal from the TCA within the first 90 days of the TCA would see a return to the Granville Bay Agreement, which would remove the rights of the Minister for the Environment to issue licences to vessels to fish in Jersey's waters. Jersey would not be party to the Partnership Council and there would be no mechanism to deal with any difficulties with fisheries matters or other trade matters.	Under the terms of the TCA, withdrawal would reinstate the GBA which includes a fixed access permit framework. The GBA has provision for joint-management and dispute resolution between Jersey France and the UK.
28	The full legal text of the TCA is broadly aligned to what was outlined and understood to be the case in the summary contained in the Minister's Report on P170/2020. Specifically, both goods and fisheries are inseparably linked in the agreement and which is reflective of what the summary text asserted.	Agree.
29	There is provision for termination of Jersey's participation in the TCA after the 90-day cooling off period, albeit this provision is subject to a three-year notice period.	Agree.
30	If Jersey terminated its inclusion in the TCA, it would need to address the concerns that exist around the Granville Bay Agreement and this would most likely require Jersey's	The immediate implication of TCA termination would be the return of the GBA joint-management framework and access permits. Longer term options would need to be considered in negotiation with France and the EU.

	Findings	Comments
	Government to commence negotiations on a new fishing arrangement with the EU. The outcome of this would be uncertain for Jersey.	

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Minister for the Environment should ensure that evidence is evaluated carefully in line with the criteria in Article FISH 10 of the TCA before determining which EU vessels are licenced to fish after 1st May. This is essential in order to ensure Jersey's fishing interests are protected.	ME NV	Accept	It is a requirement of the TCA.	30 April.
2	The Minister for the Environment should consider what measures can be taken to exercise powers under the TCA for the benefit of sustainable fisheries management and conservation.	ME NV	Accept	Consideration of non-discriminatory measures ongoing.	Ongoing.
3	The Minister for the Environment, Marine Resources Department and key stakeholders should work together to develop an ecologically and economically sustainable Marine Resources Strategy to underpin sustainable fisheries management, including the data and	ME NV	Accept	Whilst this timetable is extremely challenging, now is a good time to move this forward. Marine Resources have been putting the pillars of a strategy together and a framework for consultation could be established by the end of the year.	Ongoing.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	reporting requirements that might be imposed upon all fishermen, and the means to balance short-term losses against long-term growth. A Strategy should be developed and brought forward for States debate before the end of 2021.				
4	Following the 90-day cooling off period, the Government of Jersey should help facilitate industry-level discussion between French and Jersey fishermen to address any key concerns or issues arising from the new regime and access arrangements.	ME NV	Accept	Dialogue between stakeholders is very important and will be supported and encouraged.	Ongoing.
5	The Minister for the Environment should, as a matter of urgency, seek to address the inadequate resourcing for the inspection of shellfish exports and issuing of health certificates. This should seek to be resolved as speedily as possible.	ME NV	Reject	Please refer to response to point 8: The contention is misplaced – there have been no delays in the production of veterinary health certificates. [There are however plans to increase resources to improve the resilience of service delivery].	N/A
6	The Minister for the Environment should prepare a business case for a new, dedicated government post to assist the fishing industry with matters such as landing and export paperwork and identifying new export markets for Jersey-caught fish. The business case should be	ME NV	Reject	This is specific industry support and is under the portfolio of the Minister for Economic Development, Tourism, Sport and Culture.	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	prepared and provided to the Panel without further delay.				
7	The Minister for the Environment, together with the Minister for External Relations should ensure that the short-term, priority focus must be on easing the flow of goods into France, especially at key ports such as Granville.	ME NV & ME R	Accept	Agree.	Ongoing.
8	The Minister for the Environment should ensure that, in consultation with industry, a new Marine Resources Strategy includes a strategic economic framework for market diversification which encompasses new thinking on trade and export routes for Jersey-caught fish and suitable investment in infrastructure to support this.	ME NV	Accept	Economic Development is the remit of Minister for Economic, Development, Tourism, Sport and Culture, and it is understood it is already underway. Agree that this needs to be part of Marine Resources strategy. This work will need to be undertaken jointly with the Minister for Economic Development, Tourism, Sport and Culture who has oversight of any economic diversification strategies. The Environment Minister supports this work, which it is understood is already underway. It is agreed that this will also form a key part of a Marine Resources Strategy.	N/A
9	The Minister for the Environment should seek to reassure the fishing industry that licensing procedures from May 1st will be non-discriminatory towards the Jersey fleet, with the same requirements applying to both Jersey and EU vessels in terms of conditions around catch, data collection and	ME NV	Accept	Accept principle of non-discriminatory approach to licensing but will take longer than May for this to be delivered (e.g. quota arrangements will be different).	Ongoing.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	any other rules and regulations.				
10	In developing fair and equitable licensing conditions, the Minister for the Environment should be mindful to avoid discriminating against local fishermen by creating prohibitively expensive hurdles to attaining a license and seek to ensure the system is financially viable for Jersey fishermen. Consideration should be given to developing an appropriate grant system for the Jersey fleet.	ME NV	Accept	Licensing conditions cannot be discriminatory under the TCA.	N/A
11	The Minister for the Environment should give careful consideration to various conditions that should be attached to licences which would represent a step change in improved fisheries management and increased opportunities for Jersey's relatively low impact fleet.	ME NV	Accept	Agree.	N/A
12	The Minister for the Environment should exercise caution when defining what evidence will be required to determine the 'extent and nature' of fishing activity that is undertaken. The evidence required should not unnecessarily restrict fishing activity or trade and but should ensure licensing is robust and	ME NV	Accept	Licensing of vessels will be undertaken as set out in the TCA.	Ongoing.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	promote sustainable ecological and economic management of the fisheries through the imposition of appropriate conditions.				
13	The Minister for the Environment and the Minister for Economic Development, Tourism, Sport and Culture should consider creating an economic link as a licence condition for all vessels fishing in Jersey waters, along the lines of those imposed in other jurisdictions (for example, a % of a vessel's catch being landed in Jersey or vessels being crewed by Jersey residents).	ME NV & ME DT SC	Reject	An economic link of this nature is not appropriate at this time. However, ensuring that Jersey accrues benefits, including economically, from its marine resources must be part of the future strategy.	N/A
14	The Minister for the Environment should work jointly with the Minister for Economic Development, Tourism, Sport and Culture to expedite, without delay, what financial support can be made available to assist Jersey's fishing industry in the immediate short-term.	ME NV & ME DT SC	Accept	Agree.	Ongoing.
15	Government should work as expeditiously as possible to ensure Jersey is fully equipped to manage any issues of enforcement which might arise following the transition period. The Panel requests that the	ME NV	Accept	Agree, however, we would be in a position to present an update by the end of April 2021.	End of April 2021.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	Minister for the Environment provide the Panel with a further update before 31st March 2021 on progress made on the recruitment of additional enforcement officer post(s) and how these post(s) will be structured in order to ensure other duties can be undertaken out of season.				
16	In the event that Jersey continues to participate in the TCA, The Minister for the Environment should provide quarterly reports to the States Assembly culminating in a final main report in May 2022 outlining how, in relation to fisheries, Jersey's participation in the TCA has developed in the first twelve months. These reports should include detail of how the licensing regime is working in practice, as well as any other operational effects of Jersey's inclusion in the TCA. They should incorporate any stakeholder engagement and feedback and clearly note any successes or challenges faced.	ME NV	Accept	Agree	Q3 2021 Q4 2021 Q1 2022 May 2022

CONCLUSION

The Minister thanks the Panel's for their review of the TCA and agrees that Government must continue to support industry as appropriate and manage Jersey's waters within the realm of the TCA.