



Neutral Citation Number: [2025] EWHC 734 (Admin)

Case No: AC-2024-LON-000979

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 March 2025

Before :

MRS JUSTICE LANG DBE

Between :

THE KING

Claimant

on the application of

BLUE MARINE FOUNDATION

- and -

**SECRETARY OF STATE FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS**

Defendant

(1) WELSH MINISTERS

Interested Parties

(2) SCOTTISH MINISTERS

(3) DEPARTMENT OF AGRICULTURE,

**ENVIRONMENT AND RURAL AFFAIRS FOR
NORTHERN IRELAND**

David Wolfe KC and Brendon Moorhouse (instructed by **Richard Buxton Solicitors**) for the
Claimant

Ned Westaway and Claire Nevin (instructed by the **Government Legal Department**) for the
Defendant

Julia Smyth (instructed by the **Government Legal Department**) for the **Third Interested
Party**

The First and Second Interested Parties did not appear and were not represented

Hearing date: 5 March 2025

Approved Judgment

This judgment was handed down remotely at 10.30 am on 28 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

Mrs Justice Lang :

1. The Claimant seeks judicial review of the Defendant’s “determination of fishing opportunities for British fishing boats” (“the Determination”), which was made and published pursuant to sections 23 and 24 of the Fisheries Act 2020 (“FA 2020”), on 22 December 2023.
2. The Claimant is a charity which aims to combat overfishing and destruction of biodiversity through the creation of large-scale marine reserves and new models of sustainable fishing.
3. The Claimant’s grounds of challenge may be summarised as follows:
 - i) The Defendant acted irrationally in failing to:
 - a) take into account relevant scientific evidence from the International Council for the Exploration of the Sea (“ICES”), or
 - b) give that advice sufficient weight; or
 - c) give cogent reasons for departing from it.
 - ii) The Defendant failed to act in accordance with the policies in the Joint Fisheries Statement (“JFS”) in relation to the fisheries objectives in section 1 FA 2020 (in particular, the sustainability, precautionary, ecosystem, scientific evidence objective and bycatch objectives).
 - iii) The Defendant unlawfully fettered his discretion, and misdirected himself as to the nature of the power under section 23(1) FA 2020, by “slavishly” treating the outcome of the total allowable catches (“TACs”) negotiations as levels for the Determination.
 - iv) The Claimant’s overarching submission was that the Defendant failed to exercise his powers lawfully under section 23(1) FA 2020 because he did not personally consider the content of the international negotiations, the scientific advice as to what was sustainable and the reasons (including any evidence) for departing from the scientific advice, and the application of the policies in the JFS. These matters were only considered by officials.
4. Permission to apply for judicial review was granted on the papers by Bright J. on 27 September 2024.

An overview of fisheries management

5. The United Kingdom (“UK”) is subject to the requirements of the United Nations Convention on the Law of the Sea (“UNCLOS”), which obliges coastal States to manage the living resources in their exclusive economic zone in a sustainable manner, and to cooperate with other coastal States on fish stocks that occur jointly in their respective zones (see in particular Articles 63 and 64 of UNCLOS).

6. The UK cooperates with other coastal States to manage fish stocks through annual consultations underpinned by international agreements, in particular:
 - i) bilateral negotiations between the UK and the European Union (“EU”). Article 498 of the Trade and Cooperation Agreement (“TCA”) between the UK and the EU requires the UK and the EU to hold negotiations every year in respect of the 76 shared stocks set out in Annex 35 of the TCA.
 - ii) bilateral negotiations between the UK and Norway and bilateral negotiations between the UK and Faroe Islands. The UK has Fisheries Framework Agreements with both Norway and the Faroe Islands, which require annual consultations on issues such as quota exchanges and access to waters.
 - iii) trilateral negotiations between the UK, the EU and Norway on North Sea stocks of cod, haddock, saithe, whiting, plaice and herring.
 - iv) multilateral negotiations with coastal States around the Northeast Atlantic on stocks of mackerel, herring and blue whiting.

7. Mr Mike Dowell, Deputy Director for Quota Policy and EU Negotiations at the Department for Environment, Food and Rural Affairs (“Defra”), describes the processes in his witness statement, as follows:

“Fisheries management

7. Fisheries management is based around fish stocks. A fish stock is a defined population of a particular species. For example, cod is a species found in waters around the UK. However, there are different populations of cod in the Celtic Sea and the North Sea. These are referred to as different stocks. In broad terms, we can make management decisions about these stocks independently of each other because how we manage one does not directly affect the other, despite them being the same species.

8. Many stocks are shared between the UK and other coastal States because the stocks straddle the Exclusive Economic Zone (“EEZ”) of the UK and other coastal States. The International Council for the Exploration of the Sea (“ICES”) provides scientific advice to the UK and other coastal States about these stocks. This includes defining the boundaries for these stocks based on the distribution of the fish populations across different sea basins. We refer to these as stock areas or assessment areas. These stock areas are sometimes but not always used for the management of these stocks. Instead, the UK and other coastal States can define management units which use different boundaries. The boundaries for these management units do not always have a scientific or biological basis. They can be based on political, historical or other factors which make management more convenient.

9. ICES also provides advice each year about the Total Allowable Catch (“TAC”) for each stock. This is the total catch that all coastal States fishing that stock may cumulatively take. This advice is used to inform the negotiations (sometimes referred to as consultations) between the UK and other coastal States where the TACs are decided. These TACs are set based on management units rather than stock areas. There are around 100 stocks in UK waters which are subject to TACs each year and that are fished commercially.

10. For most stocks, there are sharing arrangements in place between the UK and other coastal States. These arrangements set out how the TACs are shared between these different parties. For example, the TCA sets out how stocks shared between the UK and the EU are to be shared. Sometimes the UK will agree to transfer quotas to or from another State during negotiations. These are referred to as quota exchanges or annual exchanges.

11. Negotiations usually occur towards the end of the calendar year. The TACs agreed will then normally be in place for the following calendar year. However, there are some stocks which follow different timings.

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Process for setting TACs

13. The Fisheries Act 2020 (“FA 2020”) and wider legal framework sets out multiple objectives which the UK needs to balance when setting TACs. As is noted in section 2.2.6 of the Joint Fisheries Statement (“JFS”), “without the sustainable management of our stocks, we would not have a seafood sector which supports jobs and coastal communities for the future.”

14. In striking this balance, ministers take account of evidence including scientific advice, stakeholder views and economic advice.

Scientific advice

15. The scientific advice on fishing opportunities from ICES generally represents the best available scientific advice for most fish stocks in the Northeast Atlantic and therefore forms the basis of TAC setting. ICES advice is published in several stages throughout the year, although the bulk is provided in June.

16. The ICES advice is based on what ICES have defined to be the stock areas or assessment areas. This does not always align with the management units that the UK and other coastal States use for TAC setting. This means that ICES advice has to be interpreted and translated before it can be applied. In the UK,

this is done by the Centre for Environment, Fisheries and Aquaculture Science (“Cefas”), an executive agency of Defra. Each year, Cefas provides the ‘Chief Fisheries Science Advisor’s (CFSA) table’. This independently translated advice then represents Defra’s best available scientific advice at the TAC level.

17. The need to maintain or improve the number of stocks set consistent with scientific advice is important because ICES advice indicates how Maximum Sustainable Yield (“MSY”) can be achieved. MSY is the maximum average long-term yield which can be provided by a stock while maintaining its productivity. If all stocks were fished at MSY, this would, theoretically, offer the maximum sustainable economic outcome. In other words, fishing within ICES advice delivers both the sustainability and economic outcomes of the JFS.

18. However, since many stocks are below sustainable levels, a precautionary approach, from an environmental perspective, is also relevant. ‘Sustainable levels’ in this context means a “level of that stock above biomass levels capable of producing maximum sustainable yield” (section 52 of the FA 2020). This makes it particularly important to balance decisions based on scientific advice with obligations to contribute to economic, social and employment aspects of the sustainability objective in the FA 2020.

19. This balance becomes most acute in the case of mixed fisheries where different stocks are often caught together, often including vulnerable stocks, making it impossible to achieve MSY for all stocks simultaneously without resulting in ‘choke’ or curtailing the availability of economic opportunities.

20. As a result, although the default position is that stocks will be set at ICES advice where possible, officials indicate to Ministers where there may be a need to deviate from scientific advice and set catch limits higher than the scientific advice for vulnerable stocks and/or lower than advice for target, valuable stocks in order to strike a balance between sustainability and providing the catch sector with fishing opportunities that allow it to operate profitably. These stocks are highlighted in the relevant submissions to Ministers.

Stakeholder views

21. To be able to identify to Ministers where it may be appropriate to deviate from ICES advice, Defra officials first engage with stakeholders to understand the impact of adopting ICES advice.

22. This process usually begins with the UK Fisheries Science Advisory Panel (“UKFSAP”) which includes representatives from each of the four UK administrations, communicating the scientific advice to stakeholders in a series of briefings that follow each stage of the ICES advice publication.

23. Representations from stakeholders are then gathered through a series of meetings with policy officials, usually held in August and September, where stakeholders are invited to offer their views on where either economic or environmental objectives may be difficult to achieve or may have significant short- or long-term impacts.

24. Defra officials also seek views from the Devolved Administrations on similar issues. Devolved Administrations are consulted on views and preferences, but international negotiations are a reserved matter for the UK Government and thus decisions on positions and outcomes are made by the Secretary of State in accordance with the principles set out in the JFS.

Economic advice

25. We are guided by the objectives and principles in the FA 2020 and the JFS. The JFS sets out that, whilst increasing the overall number of stocks fished sustainably, officials should ensure that stock-building initiatives account for social and economic considerations and provide certainty and profitable outcomes for industry. To consider short- and long-term economic impacts, Defra consider the available data and evidence on the UK fleet and landings into UK ports alongside information from stakeholders and scientists.

26. Assessment for given stocks is undertaken on a case-by-case basis. Analysis of economic data considers the size, performance, and historic landing patterns of the UK fleet and landings into UK ports. We also engage extensively with the UK fishing industry, Devolved Administrations and environmental NGOs to understand the environmental and economic impacts of different possible TAC scenarios. This helps us identify which stocks are important to specific groups, such as UK ports, fleet segments and producer organisations, and whether they would be disproportionately and negatively impacted by a change in the available quota.

27. These economic impacts are also considered in the context of the whole negotiation and across negotiating forums to aim for a balanced and fair deal between coastal States. For example, in the Norway bilateral deal, Defra officials negotiate to receive quota of similar value to the quota the UK would transfer out.

Agreeing mandates

28. In advance of annual negotiations, a series of submissions are sent to Ministers to seek their agreement to the approach for negotiations. In recent years, this process has started with a submission seeking to establish the high-level principles and objectives that will apply across the various autumn negotiations. Where necessary, cross-Government approval for the UK approach is also sought at this stage, and/or interested Departments are informed.

29. The agreed cross-cutting principles, together with the scientific advice, economic analysis and stakeholder insight described above then inform more detailed advice to Ministers on positions and priorities for each negotiation.

Annual negotiations

30. Annual negotiations generally take place between October and December. While the specific logistics will slightly differ in each forum, in principle each negotiation involves an exchange of opening positions followed by discussions on points of difference and potential areas of compromise within agreed mandates. At this stage, individual stock priorities need to be balanced against each other, and against the overall economic value and sustainability considerations. There is inevitably compromise on all sides to reach overall agreement. Sometimes it can be difficult to achieve particular outcomes for specific stocks if one of the other parties has reason to oppose that position.

31. While the various negotiations proceed separately to some extent, there is interplay between them. For example, the Northern Shelf anglerfish TACs are agreed between the UK and the EU but sometimes a transfer of anglerfish quota will then be agreed in the bilateral negotiation between the UK and Norway.

32. The outcome of annual consultations is documented in something variously referred to as a written record or agreed record. These records set out agreed TACs and any constraints and conditions on how this TAC can be used. There is also narrative text which summarises key areas of discussion between the parties and the broader priorities for management of shared stocks. These are all published on www.gov.uk.

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Sustainability reporting

34. In 2020, Defra commissioned an expert panel to “provide an agreed methodology which enables fisheries managers to

determine whether a quota (TAC) was set at a sustainable level and communicate this information effectively.” This work was done in 2021

35. Each year, Defra publishes a transparent and scientifically robust assessment of the sustainability outcomes of annual fisheries negotiations. The assessment is conducted independently by Cefas using the expert methodology from the 2021 review.

36. This assessment follows a two-stage process. Stage 1 looks at whether the total catch limit has been set at or below the best available scientific advice (i.e. the advice from ICES). Stage 2 takes into account wider factors that affect the management of the TAC. This stage 2 assessment is a more holistic assessment of whether a TAC is set in line with the science. TACs must pass both stages to “pass” the sustainability assessment and be considered as having been set in line with the advice.

37. The wider factors that can lead to a stage 2 fail are varied and complex. They include, but are not limited to:

- When the TAC management area does not align with the ICES advice assessment area.
- When third countries fish a stock but are not subject to the negotiated TAC because they are outside the scope of the international agreement.
- Whether the total international catches exceeded the ICES advice two or more times in the previous three years for which data were available.

38. This means the assessment is not a simple pass or fail test. It could even be that we meet all our obligations around sustainable fisheries management but still fail the stage 2 assessment due to wider factors.

Economic outcome reporting

39. Alongside the sustainability reporting, Defra publishes an economic report detailing the tonnage and value of the fishing opportunities available to the UK fleet as a result of agreements made in the annual negotiations.....

The Secretary of State’s determination

40. Under section 23 of the FA 2020, the Secretary of State may determine for each year (i) the maximum quantity of sea fish that may be caught by British fishing boats; and (ii) the maximum days that British fishing boats may spend at sea. In practice, the

determination almost invariably accords with the position agreed in international negotiations. The main exception is where fishing opportunities are determined on a provisional basis. Before making a determination, the Secretary of State must consult with the Devolved Administrations, including the Scottish Ministers. This follows close working between Defra and the Devolved Administration officials before and during negotiations.

41. As soon as reasonably practicable, the Secretary of State must publish a notice stating that the determination has been made. This is done by the publication and laying before Parliament of a document we refer to as the Secretary of State's determination. This sets out catch quotas for most stocks and these quotas limit the quantity of fish that can be taken from that stock by UK vessels each year. The determination is also published online.

42. In general, the 'fishing year' runs from 1 January to 31 December each year. Most quotas are set for this period. As such, the Secretary of State's determination for a given year is usually published in late December so that the UK share is clear to all from 1 January – the first day of the following fishing year.

43. We seek to include all stocks for which the UK has quota in the Secretary of State's determination. This ensures transparency. It does not imply that this quota will inevitably be apportioned or allocated.

44. The Secretary of State's determination only includes the UK share of the quota. It cannot and does not provide quotas for other States or set quota for foreign vessels.

Apportionment and allocation

46. Once the Secretary of State's determination has been made, the UK quota can then be apportioned and allocated within the UK.

47. Apportionment refers to the sharing of quotas by the Secretary of State between England (including the Crown Dependencies), Northern Ireland, Scotland and Wales. The UK Quota Management Rules set out how apportionment will take place.

48. Allocation (also known as distribution) refers to the subsequent sharing of quotas between industry. This is governed by section 25 of the FA 2020 and is a devolved responsibility. The Secretary of State is responsible for setting policy for the English share of the quota, and this is executed by the Marine Management Organisation ("MMO"). Scottish Ministers are

responsible for setting policy for the Scottish share of the quota. Each part of the UK publishes quota management rules which set out how allocation will take place. For example, the Quota Management Rules for England and the Crown Dependencies are published by Defra and the MMO.”

The 2023 determination

8. The following account of the 2023 determination is drawn from Mr Dowell’s witness statement and the documents adduced in evidence in the proceedings.
9. In June 2023, following the release of the ICES advice for 2024, Defra officials and the UK Fisheries Science Advisory Panel convened annual science briefings on the advice for 2024. In July 2023, five briefings were held over two days with stakeholders across the UK including environmental Non-Governmental Organisations (“NGO”) and industry representatives. Representatives of the Claimant were among those invited to the sessions and copies of the papers were shared with them afterwards. The purpose of the briefings, which addressed the latest ICES advice on a stock-by-stock basis, was to inform all stakeholders of the latest ICES advice ahead of the negotiations.
10. In accordance with usual practice, the Defendant delegated decision-making functions for the purposes of the negotiations and the approach to determining UK fishing opportunities to the then Minister of State for Food, Farming and Fisheries, Mr Mark Spencer MP (“the Minister”).
11. Extensive negotiations on fishing opportunities took place, guided by the Ministerial submissions and the Ministerial steers. They are summarised in Mr Dowell’s witness statement at paragraph 59.
12. Throughout the negotiation period, Defra officials attended weekly meetings with the Minister to provide updates on the progress of the negotiations. During these meetings, updates were provided on how the negotiations packages were developing and in particular, where deviation from the UK mandate/opening positions was expected to be required in order to secure overall agreement. The Defendant’s Private Secretary also attended these meetings, with a view to keeping the Secretary of State apprised as necessary.
13. At a meeting with officials on 5 September 2023, the Minister was briefed on the upcoming annual negotiations as context for the sequence of mandate submissions that he would be receiving.
14. Ahead of the negotiations, the Minister approved a submission dated 15 September 2023 which had been sent to both the Minister and the Defendant on the relevant overarching principles that would frame the negotiations. Key principles, set out in full in the 15 September 2023 submission, included: (a) seeking to ensure sustainable exploitation of stocks, led by the best available scientific evidence, notably maximising the overall number of stocks fished within the maximum sustainable yield (“MSY”); and (b) supporting the fishing industry in the short and long term by providing it with catching opportunities and making sure that stock rebuilding initiatives took

appropriate account of socio-economic considerations, where these are well-evidenced. It was confirmed on 12 October 2023 that the submission had been approved.

15. By a 4 October 2023 submission, officials sought Ministerial approval to negotiate TACs with North-East Atlantic coastal States for mackerel, Atlanto-Scandian herring, and blue whiting. The Ministerial submission recommended following ICES scientific advice for these stocks. It noted that lack of quota sharing arrangements and subsequent unilateral setting of quotas by coastal States leads to cumulative overfishing. However, to mitigate this, the submission stated that work would continue in the parallel negotiations to reach comprehensive sharing arrangements. The submission was approved by the Minister on 9 October 2023.
16. By a 17 October 2023 submission, officials sought Ministerial approval for the following: principles for TAC setting (recalling the broad principles set out in the earlier submission); the proposed opening position for UK-EU negotiations resulting from those principles; setting TACs above ICES advice for six identified stocks based on available analysis of the short-term economic impact on the UK fleet of accepting advice; and the proposed negotiating approach to non-quota stocks (“NQS”) and other access and horizontal issues in the UK-EU negotiations. The submission clarified that the default position is not to exceed ICES advice unless the short-term economic consequences for affected sectors of the UK fleet outweigh the longer-term environmental and socio-economic benefits. It was confirmed on 6 November 2023 that the submission had been approved by the Minister.
17. By a 2 November 2023 submission, officials sought Ministerial approval to seek an agreement with the EU and Norway on the six North Sea stocks that are jointly managed with those Parties; cod, herring, plaice, whiting, saithe, and haddock. This submission also sought agreement to further the UK’s ambitions for additional stocks to be moved into trilateral management, such as anglerfish and hake, as part of a wider strategy to bring about better management of the stocks. It was confirmed on 6 November 2023 that the submission had been approved by the Minister.
18. By a further 2 November 2023 submission, officials sought Ministerial approval to seek an agreement with Norway for 2024. Specific Ministerial agreement was sought to: prioritise inward quota transfers from Norway of anglerfish and North-East Arctic cod, in exchange for western ling, Greenland halibut and cod in Division 3M of the Northwest Atlantic Fisheries Organization (“NAFO”) Regulatory Area (if not going to be fished by the quota holder); and to roll over access arrangements for 2024 from 2023 and explore a potential ‘access for quota’ arrangement whereby officials could increase Norwegian access to UK waters to fish North Sea herring in return for more quota in priority stocks. A Ministerial steer was sought on whether officials should explore offering Norway stocks other than those officials traditionally use as payment; for example, blue whiting. The submission was approved by the Minister on 8 November 2023 and the Minister agreed that officials should explore offering Norway such stocks.
19. On 24 November 2023, Mr Dowell sent an email to the Private Secretaries to the Minister and the Defendant, as well as to civil servants, informing them that an agreement in principle had been reached in Brussels. He said that a “more detailed breakdown of the agreement will be provided next week and we can talk the Minister through the shape of the deal at next week’s ‘weekly fish’ meeting”. He summarised the nature of the agreement and added:

“In terms of sustainability, an initial estimate suggests the number of UK-EU TACs that align with scientific advice from the ICES has increased slightly this year. If Cefas confirm this is the case, we will have superseded our high ambition objective of non-regression as set out in the mandate below.”

20. By a 30 November 2023 submission, officials sought Ministerial approval on prioritising stocks for inward quota transfers from the Faroes for 2024, in the UK-Faroes bilateral negotiation, against the availability of stocks officials could offer to them as outward quota transfers in exchange. The submission was approved by the Minister on 5 December 2023.
21. On 4 December 2023, officials sought Ministerial approval to conclude a fisheries agreement with Norway for 2024. The submission outlined the sustainability, economic and legal risks on quota transfers. The submission was approved by the Minister on 6 December 2023.
22. On 6 December 2023, Ms Grace Rosinski, the Deputy Head of EU Fisheries Negotiations at Defra, sent an email to the Private Secretaries of the Minister and the Secretary of State, and to civil servants, which stated:

“I’m pleased to attach a fully signed version of the UK-EU Written Record on fishing opportunities for 2024, dated today.

I’ve also attached a summary of how this agreement fulfils the original mandate that we put to Minister Spencer in October. The summary is the same as what we told the Minister in Weekly Fish last week, but included for the record here....”

The “summary” referred to had been presented to the Minister at the regular weekly meeting. It read as follows:

“Final Update on UK-EU Negotiations on Fishing Opportunities in 2024

In October, you gave us a mandate to negotiate 2024 fishing opportunities with the EU. Those negotiations covered Total Allowable Catches (TACs) for 68 stocks, monitoring arrangements for non-quota stocks (NQS), as well as other arrangements on e.g. sea bass and albacore. We are pleased to confirm that negotiations with the EU have concluded and we have delivered an outcome consistent with that mandate. The Written Record was signed on Wednesday 6 December.

Our initial assessment is that this deal provides the UK with fishing opportunities of more than 125,000 tonnes, worth around £340 million based on historic landing prices. That is a 7% tonnage decrease and 6% value decrease compared to 2023 opportunities, largely driven by declining scientific advice on sustainable catch levels. We originally advised you that, given this declining scientific advice and an increased number of zero-

advice stocks, a high-ambition outcome in terms of the number of stocks set in line with ICES advice would be non-regression compared to 2023. Our initial assessment is that the number of UK-EU TACs that align with ICES advice has increased slightly this year. This will be fully assessed by Cefas in the coming months, prior to the publication of their annual sustainability assessment covering all TACs set in international negotiations.

We reached agreement on 66 TACs, in line with the principles for TAC setting that you agreed. Two TACs that are covered by the UK-EU agreement rely on outcomes in the UK-EU-Norway trilateral, which has not yet concluded. This includes an estimated 27 TACs set consistent with scientific advice and 12 TACs that received zero catch advice where we have agreed a bycatch TAC to avoid choking other stocks caught in the same fishery.

We originally identified 6 TACs where you agreed we could seek outcomes above ICES advice to mitigate significant short-term economic risks. As proposed, we secured a roll-over of the 2023 TAC for the North Sea and West of Scotland anglerfish TACs, avoiding an estimated £3m loss in UK landings value. We avoided a -21% cut on the Rockall cod TAC, thereby mitigating choke on the valuable Rockall haddock fishery. We secured a smaller cut on the Western Channel sole TAC, avoiding an estimated £1.4m loss on 2023, primarily for the South West fleet.

We had also sought your agreement to seek above-advice outcomes on the witch component of the Lemon Sole & Witch TAC, to avoid a shortfall in quota choking the North Sea demersal fishery. However, it became clear in negotiations that we would need to sacrifice other UK priorities to secure this. We reflected again with industry representatives, who agreed that witch was a lower priority compared to other stocks, so we judged that it was acceptable to set the TAC in line with ICES advice. We are exploring domestic options, including the banking of quota from 2023, to help mitigate any choke risk. Similarly, we had identified the need to explore unprecedented and novel solutions for Pollack 7, which received zero-advice for the first time this year. In line with our wider approach to zero-advice stocks, we did secure a bycatch TAC for Pollack 7 to avoid a choke on related fisheries in the South West (e.g. sole). However, a bycatch TAC does nothing for vessels who target pollack (i.e. handliners). We explored the possibility of a targeted TAC with the EU, but they had no mandate to agree it given constraints in their legal framework.

You are aware that we are exploring domestic mitigation options to support the South West fleet, and are in close contact with industry.

Finally, for non-quota stocks (NQS), we agreed a roll-over of access arrangements for 2024 to ensure continued access to fish NQS in EU waters, with these UK fleet landings worth around £30 million in previous years. We have also rolled over measures on sea bass and albacore access and achieved greater transparency of EU landings data.”

23. On 7 December 2023, officials sent an email to the Private Secretaries to the Defendant and the Minister, setting out the proposed content of the determination, for approval. It explained that the determination takes the outcomes from annual fisheries negotiations and is the domestic legal instrument to enable UK fishing quotas to be set for the year.
24. On 11 December 2023, officials sought Ministerial approval and signature of consultation letters on the proposed determination to be sent to devolved administrations and the Chief Executive Officer of the Marine Management Organisation (“MMO”). This was part of the formal process ahead of making the determination. The Defendant’s Private Office confirmed that the letters could be sent out in the Minister’s name. On 15 December 2023, signed letters of consultation were duly sent.
25. The Determination stated:
 - “1. This determination sets fishing opportunities for British fishing boats for certain fish stocks and groups of fish stocks. These include:
 - a) the maximum quantity of sea fish (quota) that may be caught by British fishing boats; and
 - b) the maximum number of days that British fishing boats may spend at sea.
 2. This determination sets fishing opportunities for British fishing boats that may be caught in United Kingdom (“UK”), European Union, Norwegian, Svalbard, and international waters.
 3. The Secretary of State makes this determination under section 23 of the Fisheries Act 2020 (except for Clyde herring and Blackwater herring) for the purpose of complying with the UK’s international obligations to determine the UK’s fishing opportunities, including under the United Nations Convention on the Law of the Sea.
 4. Unless otherwise stated, this determination sets British fishing opportunities from 1 January 2024 to 31 December 2024 inclusive. This withdraws and revokes any fishing opportunities that have previously been determined for British fishing boats and which have not otherwise expired.”

There followed some 60 pages of Annexes containing data on fish stock quota tonnages and conditions.

26. On 22 December 2023, the Defendant’s Determination was laid before Parliament and published. On 18 March 2024, a revised determination was laid before Parliament and published following the conclusion of negotiations with the Faroe Islands. On 16 August 2024, a revised Defendant’s determination was laid before Parliament and published following the conclusion of further negotiations. This determination also set quotas for two herring stocks which are entirely in UK waters and not subject to negotiation.
27. For 2024, the UK secured 750,000 tonnes of quota across three key negotiating fora (UK-EU, UK-EU-Norway and coastal States) worth approximately £970m based on historic landing prices.
28. On 23 January 2024, the Minister gave oral evidence on the outcome of the negotiations to the Environment, Food and Rural Affairs Committee. Among other things the Minister noted that “initial assessments of the total allowable catches align with ICES advice and our impression is that they are slightly better than they were last year, although we are waiting for CEFAS to do its formal announcement ... We have managed on a number of those species to set TACs that are directly aligned with scientific advice, although in some cases better than the advice that was given ... We follow that scientific advice wherever we can ”
29. The Cefas report was published on 10 April 2024. The main outcomes were set out in the Executive Summary as follows:

“In order to provide a consistent suite of TACs which can be reported across multiple years, a set of 79 ‘baseline’ TACs have been identified (see section 4).

For 2024, 36 of the 79 baseline TACs were consistent with ICES advice (46%), compared to 32 TACs (40%) in 2023. This represents an additional 6% in the number of baseline TACs which were set in line with the ICES advice compared to 2023. Once again, 2 baseline TACs could not be scored.

Breaking this down to the advice type (MSY or PA), 29 out of 56 TACs (52%) based on MSY advice were set in line with the advice and 7 out of 21 (33%) TACs based on PA advice were set in line with the advice.

The total number of baseline TACs passing the assessment has increased annually since 2021. There was an increase of 4 more baseline TACs passing the assessment between 2023 and 2024.

	2020	2021	2022	2023	2024
Total number of baseline TACS passing the assessment”	27	26	27	32	36

Defra officials concluded from the report that the 2024 negotiated outcomes represented the most sustainable set of outcomes since the UK became an independent coastal State.

For 2024, 46% of TACs were found to be consistent with ICES advice, compared to 40% in 2023.

The Claimant's evidence

30. Mr Charles Clover, co-founder of the Claimant, is an author, reporter and commentator on marine conservation and fisheries. In his witness statement, he expressed his concern that fishery is being depleted by excessive quotas for European fleets, in excess of scientific advice. He considers that there has been a catastrophic collapse in stocks which has been echoed by a collapse in commercial fishing. He complains that no information was published with the determination to explain why a decision to depart from scientific advice was taken in relation to individual stock, for example, any economic reasons for doing so. The evidence before the Defendant was not disclosed, and no explanation was given as to how the various environmental, social, economic and other objectives were weighed and balanced. The process lacks transparency.
31. Mr Jeremy Percy, who has been involved with the fishing industry for 50 years in many different capacities, states in his witness statement that approximately 79% of the UK fishing fleet is represented by vessels under 10 metres in length. However, the socio-economic, employment and environmental contributions of small-scale fishing have been consistently neglected and the sector is highly fragile. As a result of successive UK governments determining fishing opportunities above the level recommended by scientific advice, many fish stocks have dramatically declined. The lack of stock puts the livelihood of fishermen at risk.
32. Mr Jonathan Hughes, senior policy manager at the Claimant, states in his witness statement that he has in the past attended meetings with Defra and European Commission officials regarding the setting of the TAC, but he complains that he has not been provided with details of the UK's negotiating position/s, despite requests, which makes it "impossible" to assess how the UK has applied the objectives in the FA 2020. He has compared the publicly available Written Record of the negotiations between the UK and the EU with the Determination and concluded that the figures matched, other than in nine cases. At paragraph 12 of his witness statement, Mr Hughes comments on the submissions on negotiations submitted to the Minister, and disclosed by Mr Dowell at Exhibit MD1 pages 132 to 176, criticising them for not giving adequate consideration to economic, social and environmental factors and the consequences of harmful fishing methods.
33. The Claimant made a post-permission application to rely on expert evidence, namely, a witness statement by Dr Quaas, Professor of Biodiversity Economics at Leipzig University. Dr Quaas exhibits an article published in "Ecological Economics" in August 2012, which he co-authored. The abstract summarises its contents, as follows:

"ABSTRACT

Fish stocks can be considered as natural capital stocks providing harvestable fish. Fishing at low stock sizes means borrowing from the natural asset. While fishing a particular quantity generates immediate profits and income, an interest rate has to be paid in terms of foregone future fishing income, as the fish

stock's reproductive capacity remains low and fishing costs stay high. In this paper we propose to apply the concept of shadow interest rate to quantify the degree of overfishing. It incorporates the relevant biological and economic information and compares across fish stocks. We calculate the shadow interest rates for 13 major European fish stocks and find these rates to range from 10% to more than 200%. The concept of the shadow interest rate can be used to make the economic consequences of overfishing transparent and to evaluate the profitability of short-term catch reductions as investments in natural capital stocks.”

34. The test for the admission of expert evidence was set out in *R (Law Society) v The Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, per Leggatt LJ and Carr J., at [36] – [43]. It is conveniently summarised in the *Administrative Court Judicial Review Guide 2024* at 23.2. Expert evidence is rarely admissible in judicial review claims because the focus is on the material that was reasonably available to the decision-maker when the decision was made. It may be admissible to explain technical matters needed to enable the Court to understand the reasons relied on in making the decision in the context of an irrationality challenge; or where it is alleged that the challenged decision was reached by a process which involved a serious and incontrovertible technical error which is not obvious to a lay person but can be demonstrated by a person with the relevant technical expertise. However, if the alleged technical error is not incontrovertible but is a matter on which there is room for reasonable differences of expert opinion, an irrationality argument cannot succeed and so the justification for admitting the expert evidence falls away.
35. Cavanagh J. granted the Claimant permission to rely upon Dr Quaas’ statement, in an interlocutory order made on the papers dated 24 February 2025. Cavanagh J. stated in the reasons for the order:

“The Defendant ...objects to the statement of Dr Quass, on the basis that it is not necessary in order for the court to resolve the claim. The Defendant says that it consists of contentious theories about the economics of fisheries and fishery policy which do not help elucidate matters that the Court needs to understand, and which do not relate to matters that were before the decision maker. There may well be force in this, but it should be for the judge who deals with the substantive hearing to decide whether, and, if so, to what extent, the contents of Dr Quass’s statement are of any relevance or assistance. It is only 3 pages long. Accordingly, I grant leave to the Claimant to rely on it.”
36. Having regard to Cavanagh J.’s order, which left it to the judge at the substantive hearing to determine whether the evidence was relevant or of assistance, it is my view that the expert evidence of Dr Quaas is not of assistance as it is based upon a contentious theory of the economics of fisheries, based on “the concept of a shadow interest rate” which is not “incontrovertible” and which has no relevance to the issues that the Court has to decide.

Claimant's fish stock examples

37. The Claimant, in its pre-action letter dated 24 January 2024, gave examples of four fish stocks which illustrated issues of concern. They were Celtic Sea cod, Irish Sea whiting, anglerfish and mackerel. They were considered by Mr Clover at paragraphs 32 to 73 of his witness statement, and Mr Matthew McFeeley, the Claimant's solicitor, provided a table showing a timeline of the negotiating process in relation to these four stocks.
38. The issues were helpfully summarised in the Amended Statement of Facts and Grounds, at paragraph 36:

“The examples raised by the Claimant

36. In PAP correspondence, the Claimant provided four (explicitly non-exhaustive examples) of particular fish stocks, illustrating different issues of concern in relation to the approach which (as far as it could infer from the publicly available documents) had been taken by the Minister.

Anglerfish (Lophiidae spp.)

The SoS Determination set a total figure of 8,180 tonnes, and the negotiated joint UK- EU TAC is 11,293 tonnes. ICES advice for the year is 9,881 tonnes [CB/220]. Thus the Determination represents an exceedance of ICES advice by approximately 15%. Given the shares agreed under the Trade and Cooperation Agreement (with its attendant sustainability aims), the UK has considerable responsibility for this stock (88.8% in area ANF/2AC4-C and 43.4% in area ANF/56-14, for 2024).

Celtic Sea Cod (Gadus morhua)

The SoS Determination set a figure of 65 tonnes with a combined UK-EU TAC 644 tonnes [CB/399], representing over 99% of the entire spawning stock biomass of 645 tonnes. ICES advice was zero.

These cod stocks have only recently collapsed. The SoS Determination has set cod stocks on a course for destruction, rather than following the JFS requirement to set a trajectory towards sustainable biomass levels and not to jeopardise the long-term recovery of the stock. There were scientific alternatives available which could have secured a future for the stock and were in excess of zero quota, thus permitting the continuation of a commercial fishery for other stocks.

Irish Sea Whiting (Merlangius merlangus)

The SoS Determination sets a figure of 435 tonnes. ICES advice is zero (due to the severely depleted nature of the stock) and ICES advice includes provision for by-catch so any additional

TAC agreed exceeds its advice. The negotiated joint UK-EU TAC is 721 tonnes. Given the shares agreed under the Trade and Cooperation Agreement (with its attendant sustainability aims), the UK has considerable responsibility for this stock (60.3% of the joint TAC for 2024). Since 1993, spawning stock biomass has been below the threshold whereby, for ICES, the stock is at risk of impaired reproductive capacity. Furthermore, UK TAC has been set above scientific advice consistently. This too is traditionally a commercial stock and would not normally be considered as a “by-catch” stock, but the consistent pattern of making determinations to allow fishing opportunities in excess of scientific advice have placed the stock in serious jeopardy.

The by-catch quota determination in excess of scientific advice relates almost entirely to the decision to allow the continuation of the destructive nephrops fishery at the expense of the whiting fishery.

Mackerel (Scomber scombrus)

The SoS Determination set a total figure of 142,247 tonnes. Mackerel opportunities are negotiated through the Coastal States process. For 2024, the UK had agreed with the other coastal states an overall TAC of 739,386 tonnes (the ICES advice figure) for mackerel in the North-East Atlantic. However, given that each State is free to set its own TAC unilaterally in the absence of a sharing agreement, there remained a clear danger of overfishing, and ICES records show that this has happened consistently in the past. The Witness Statement of Mr Clover shows that the mackerel catch has exceeded scientific advice by on average 44% since 2010, and that despite the negotiated TAC having been set at the level of ICES advice for each of the prior three years, the catch remains much higher because countries collectively grant themselves TAC significantly in excess of advice. The issue illustrated is the failure to meet FA objectives, in jointly established international policy for a stock where, as a result of no agreed sharing mechanism, it is clear that overfishing will occur.

37. Accordingly, in each case, the Secretary of State reached a determination which materially departed from one arising from the applicable scientific advice.”

39. On behalf of the Defendant, Mr Dowell responded to the issues raised at paragraphs 65 to 95 of his witness statement. The Defendant’s response was helpfully summarised in the Detailed Grounds of Defence, at paragraphs 40 – 52:

“40. Celtic Sea cod: the position approved for the negotiations was to set a catch limit higher than the ICES advice (of zero) as it was part of a mixed fishery caught only as bycatch. This was on account of the issues caused by ‘choke’ stocks, where a

decision to set catch quotas at zero for cod would have resulted in the closure of multiple target fisheries, leading to a significant loss of income. The recommendation was accordingly to strike a balance between sustainability and providing the catch sector with fishing opportunities. This is recorded in the 17 October 2023 submission [MD1/06/143-150] and informed the negotiated outcome and the ultimate determination. See [MD/70-74].

41. In addition, consideration was given as part of the negotiations to technical measures to reduce the impacts on cod bycatch: see the Written Record section 11b) [CB/3/177].

42. It is worth underscoring that an analogous approach to TACs of cod bycatch by EU fishermen was endorsed by the CJEU in Case C-330/22 Friends of the Irish Environment (above).

43. It cannot sensibly be said that the Secretary of State's 2023 determination for 2024 "has set cod stocks on a course for destruction" (SFG/36), especially as the determination relates to only 65 tonnes of the UK-EU quota of 644 tonnes. It is acknowledged that cod has historically been overfished, the issue is not new. However, based on the June 2023 ICES advice [CB/3/230-237], the current TAC of 644 tonnes is forecast to result in a spawning stock biomass increase of at least 53% by 2025.

44. SFG/45(b) wrongly states that there is no evidence that the Secretary of State considered the impacts from mixed fishery considerations. Such considerations were explained in the relevant Ministerial submission and the "phenomenon of 'choke species'" and the need to "strike the right balance between socio-economic considerations and the need to achieve a good biological status for those stocks, taking into account mixed fishery considerations" is spelled out in section 1g) of the Written Record.

45. Irish Sea whiting: the considerations for this stock were very similar to Celtic Sea cod and were addressed in the same way. SFG/45(c) argues that there is a difference in that the bycatch is predominantly from nephrops (Norwegian lobster) fishery. However, the point only underscores the principle: i.e. that the Secretary of State wishes to avoid 'choking' such a high value fishery (see [MD1/06/143-150]).

46. The same points are regards technical measures and Case C-330/22 Friends of the Irish Environment apply to Irish Sea whiting too. As does the need for context; based on the June 2023 ICES advice [CB/238-245], the current TAC of 721 tonnes is forecast to result in a spawning stock biomass increase of around 34% by 2025.

47. Northern Shelf anglerfish: anglerfish was identified in advice that was provided to the Secretary of State and Minister Spencer as a stock where economic analysis and engagement with stakeholders indicated that accepting ICES advice would bring significant short-term economic risks [MD1/06/143-150]. The UK therefore did not follow the advice in its negotiating position.

48. The economic rationale for setting a TAC for anglerfish above ICES advice was that anglerfish is a high-value stock, particularly in remote communities in Scotland. In parallel with this, discussions were taking place in bilateral UK-Norway negotiations involving the inward transfer of quotas from Norway of anglerfish. This led to a reduced transfer of 700 tonnes for 2024 compared to 1,075 tonnes for 2023.

49. As noted above, additional specific consideration was given to the departure from ICES advice for anglerfish in accordance with Article 4(8) of the North Sea MAP.

50. SFG/45(a) does not dispute that the Secretary of State was in principle entitled to depart from ICES advice on anglerfish, but complains that “no evidence has been provided” to show the beneficial effects of the departure. However, the Secretary of State has set out the basis for the approach taken, which is further reflected in the Change of Circumstances Document dated 26 March 2024. Therefore, it cannot sensibly be said to be irrational, or otherwise unlawful, even if the Claimant might disagree with it.

51. Mackerel: the UK position – and subsequent determination – on mackerel was to follow the ICES advice, allowing for a 5% decrease on the 2023 catch for 2024 [MD1/05/138-142]. The issue here, as set out at [MD/92], is not the UK’s failure to follow scientific advice, but the unilateral actions of other coastal States and the absence of international agreement. As is set out at [MD/94-95], there has been some recent progress in this regard.

52. Overall, Mr Dowell’s witness statement and the accompanying submissions clearly demonstrate that the ICES advice was central to the UK’s negotiating position and, therefore, to the agreed outcomes and the subsequent section 23 determination.”

Statutory and policy framework

FA 2020

40. Section 1 FA 2020 provides:

“The fisheries objectives are—

- (a) the sustainability objective,
- (b) the precautionary objective,
- (c) the ecosystem objective,
- (d) the scientific evidence objective,
- (e) the bycatch objective,
- (f) the equal access objective,
- (g) the national benefit objective, and
- (h) the climate change objective.”

41. These objectives are described in section 1(2) – (10) FA 2020. The Claimant particularly draws attention to the descriptions set out below:

“(2) The “sustainability objective” is that—

(a) fish and aquaculture activities are—

(i) environmentally sustainable in the long term, and

(ii) managed so as to achieve economic, social and employment benefits and contribute to the availability of food supplies, and

(b) the fishing capacity of fleets is such that fleets are economically viable but do not overexploit marine stocks.

(3) The “precautionary objective” is that—

(a) the precautionary approach to fisheries management is applied, and

(b) exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.

....

(5) The “scientific evidence objective” is that—

(a) scientific data relevant to the management of fish and aquaculture activities is collected,

(b) where appropriate, the fisheries policy authorities work together on the collection of, and share, such scientific data, and

(c) the management of fish and aquaculture activities is based on the best available scientific advice.”

42. Section 2(1) FA 2020 requires the preparation and publication of a JFS that, among other things, sets out the policies of the fisheries policy authorities for achieving or contributing to the achievement of the fisheries objectives. The Defendant is a fisheries policy authority (section 52 FA 2020).
43. By section 2(3) FA 2020, the JFS must specify the fishery management plans that are in force, or are proposed, and the reasons for deciding which stocks of sea fish, types of fishing and geographical areas should be subject to fisheries management plans and which should not.
44. By section 2(6) FA 2020, a “fisheries management plan” means “a document, prepared and published under this Act, that sets out policies designed to restore one or more stocks of sea fish to, or maintain them at, sustainable levels”.
45. Section 10 FA 2020 provides:

“Effect of fisheries statements and fisheries management plans

(1) A national fisheries authority¹ must exercise its functions relating to fisheries, fishing or aquaculture in accordance with the policies contained in a JFS, SSFS or fisheries management plan that are applicable to the authority, unless a relevant change in circumstances indicates otherwise.

(2) If, in view of a relevant change of circumstances, a national fisheries authority takes a decision in the exercise of its functions relating to fisheries, fishing or aquaculture otherwise than in accordance with the policies contained in a JFS, SSFS or fisheries management plan that are applicable to the authority, the authority must prepare and publish a document-

(a) describing the decision and the relevant change of circumstances, and

(b) explaining how the relevant change in circumstances affected the decision.”

46. Section 23(1) FA 2020 provides:

“The Secretary of State may determine, for such year or other period as may be specified in the determination—

(a) the maximum quantity of sea fish that may be caught by British fishing boats;

¹ The Defendant is a National Fisheries Authority by section 10(5) FA 2020.

(b) the maximum number of days that British fishing boats may spend at sea.”

47. Section 23(2) FA 2020 provides:

“A determination under subsection (1) may be made only for the purpose of complying with an international obligation of the United Kingdom to determine the fishing opportunities of the United Kingdom.”

48. Section 23(3) FA 2020 provides:

“Different maxima may be determined under subsection (1) —

(a) for, or for fishing boats fishing for, different descriptions of sea fish,

(b) for different areas of sea, or

(c) (subject to subsection (4)) for different descriptions of fishing boat.”

49. Section 23(6) FA 2020 provides:

“The Secretary of State may—

(a) exercise a power in subsection (1) so as to—

(i) determine a maximum quantity of sea fish, or maximum number of days at sea, of zero, or

(ii) make a determination replacing a determination already made;

(b) withdraw a determination already made.”

50. Section 24 FA 2020 provides:

“(1) Before making or withdrawing a determination under section 23, the Secretary of State must consult—

(a) the Scottish Ministers,

(b) the Welsh Ministers,

(c) the Northern Ireland department, and

(d) the Marine Management Organisation.

(2) As soon as reasonably practicable after making or withdrawing a determination under section 23, the Secretary of State must—

- (a) publish, in such manner as the Secretary of State considers appropriate, a notice stating that the determination has been made or (as the case may be) withdrawn,
- (b) lay a copy of that notice before Parliament, and
- (c) send a copy of that notice to the Scottish Ministers, the Welsh Ministers and the Northern Ireland department.”

Multiannual Plans

51. The management of some stocks remains subject to Multiannual Plans (“MAPs”). MAPs were adopted by the EU under the Common Fisheries Policy. Two MAPs were retained in UK law following EU exit, so are now assimilated law under the Retained EU Law (Revocation and Reform) Act 2023. These are the North Sea MAP (Regulation 2018/973) and the Western Waters MAP (Regulation 2019/472).

The JFS

52. The JFS which was published in November 2022, sets out the policies of the fisheries policy authorities for achieving or contributing to the eight fisheries objectives in the FA 2020. It defines how those objectives have been understood and how they will be applied. It ensures a co-ordinated approach in circumstances where the management of fishing in the UK is largely a devolved matter.
53. Section 2 is titled “**The Fisheries Objectives**”.
54. The introduction states that the fisheries objectives “provide the basis for the policies set out in the JFS”, and “collectively define sustainable fishing and are designed to help the fisheries policy authorities balance the achievement of a thriving, profitable seafood sector with a healthy and resilient marine environment in the long term”.
55. On applying the fisheries objectives, the JFS notes that the fisheries policy authorities will “strive” to make significant progress (paragraph 2.2.1) and will “adopt a balanced and proportionate approach to achieving, or contributing to the achievement of, the fisheries objectives ...” (paragraph 2.2.2). The JFS acknowledges that it may at times “be necessary to prioritise one fisheries objective over another in the short term” (paragraph 2.2.7).
56. Section 3 is titled “**Delivering the JFS**”.
57. Paragraph 3.1.1 states:
- “The national fisheries authorities will deliver the policies in the JFS through the exercise of their functions and in line with the fisheries objectives. The use of best available evidence and scientific advice, transparent decision making and partnership working, will be core principles that underpin delivery. This is in addition to the principles of simplification and coherent

regulations, as well as collaboration between fisheries enforcement authorities.”

58. Paragraph 3.1.3 states:

“The fisheries policy authorities will have regard to the fisheries objectives, where appropriate, in future policy development, and will set out further policies in their respective areas of competence to support the achievement of the objectives.”

59. Paragraph 3.2.2 states:

“In line with the scientific evidence objective, the UK will take an evidence-based approach to fisheries and aquaculture management, making full use of the best available scientific evidence, supporting the UK in continuing to meet its international obligations. This will be underpinned by a wide-ranging and coordinated monitoring programme and advisory framework, which will be further enhanced by research.”

60. Section 4 is titled “**Delivering sustainable management of fisheries**”.

61. The JFS is clear that it applies to both domestic and international work. Paragraph 4.1.9 states:

“Domestically, this will include when taking decisions on allocating fishing opportunities and when developing future fisheries management policies and measures. Through fisheries negotiations with other coastal States and in international fisheries fora, the UK will actively seek to achieve, or contribute to the achievement of, the fisheries objectives.”

62. Paragraph 4.1.11 states:

“The fisheries policy authorities will also take a precautionary approach to fisheries management in accordance with the precautionary objective and will aim to fish within sustainable limits based on the best available scientific advice, including MSY or using suitable proxies where sufficient scientific data are available, as well as considering evidence on mixed fisheries interactions where appropriate, which is in line with the scientific evidence objective. Where data are not available, this will not be used as a reason for not taking appropriate pre-emptive steps to manage or address the risk either to stocks or the marine environment.”

63. Section 4.2 is titled “**Achieving the fisheries objectives through our policies**”.

64. Paragraph 4.2.1 sets out how fishing opportunities are determined, apportioned and distributed. On determinations, the JFS includes discussion of international negotiations which it notes are “one of the key mechanisms for achieving our objectives

relating to sustainable fisheries management, and provide the opportunity to influence the management of stocks beyond our Exclusive Economic Zone”: see paragraph 4.2.1.3.

65. Paragraph 4.2.1.4 explains:

“The determination of UK fishing opportunities for these stocks will normally follow international negotiations and will reflect any agreements from those negotiations. These negotiations are conducted by UK Government and supported by expertise from across the fisheries policy authorities”.

66. The main exception is where fishing opportunities are determined on a provisional basis: see paragraph 4.2.1.5.

67. To underscore the close connection between international negotiations and the determination of fishing opportunities, the sub-heading above paragraph 4.2.1.11 is **“Determining fishing opportunities through international negotiations”**.

68. Paragraphs 4.2.1.11 to 4.2.1.13 provide:

“4.2.1.11 As a coastal State, the UK is subject to the requirements of UNCLOS, which obliges coastal States to manage the living resources in their EEZ in a sustainable manner. This includes cooperating with other coastal States on fish stocks that occur jointly in their respective EEZs.

4.2.1.12 It is critical that we work in partnership with our neighbouring coastal States. This will promote the sustainable use of stocks and responsible management of our respective waters.

4.2.1.13 The principal way in which we do this is through formal annual consultations underpinned by international agreements such as the TCA, and our fisheries framework agreements with Norway and the Faroe Islands. And in respect of highly migratory and straddling fish stocks, through engagement with coastal States or other relevant States, and in the relevant RFMOs.”

69. Paragraph 4.2.1.14 sets out principles that will apply to international fisheries negotiations, through which the UK will seek to achieve or contribute to the fisheries objectives. The objectives include “increas[ing] the overall number of stocks fished at MSY consistent with the best available scientific advice”.

70. Paragraph 4.2.1.15 states:

“4.2.1.15 Establishing TACs is a key aspect of the negotiations between coastal States. TACs, alongside agreements on quota shares, are necessary to ensure that collectively coastal States remain within catch limits. ”

Fisheries management plans

71. Fisheries management plans, as defined at section 2(6) FA 2020, are prepared by one or more fisheries policy authorities and inform a wide range of management actions. They are considered in section 5 of the JFS. The introduction states that they play a key role in the commitment to sustainable fishing, and will focus on the sustainable management of stocks. Their scope may also be extended to cover wider issues, covering environmental, social and economic concerns.
72. Section 6(3) FA 2020 requires fisheries management plans to set out policies contributing to maintaining or restoring stocks to MSY where evidence is available. Fisheries management plans must comply with proposals in the JFS (section 6 FA 2020) unless specific reasons are given for any departure (section 7 FA 2020).
73. According to Mr Dowell, the first five fisheries management plans were published on 14 December 2023. The Southern North Sea and Eastern Channel mixed flatfish fisheries management plan was published on 10 October 2024. As at the date of his statement, there was an ongoing consultation on the next five draft fisheries management plans.

Grounds of challenge

The Claimant's overarching submission

Claimant's submission

74. The Claimant's overarching submission was that the Defendant failed to exercise his powers lawfully under section 23(1) FA 2020 because he did not personally consider the content of the international negotiations, the scientific advice as to what was sustainable and the reasons (including any evidence) for departing from the scientific advice, and the application of the policies in the JFS. The Defendant had to have a proper understanding of the JFS and grapple with the relevant policies and fisheries objectives. Instead, these matters were only considered by officials.
75. The Claimant referred to the judgment of Holgate J. in *R (Friends of the Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin), as follows:

“198 The relevant principles were laid down by the Court of Appeal in *R(National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154; *The Times*, 9 March 2005 and by the High Court of Australia in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24. These decisions were analysed in *Transport Action Network Ltd* [2022] PTSR 31, paras 60-73, and *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2022] PTSR 74, paras 62—65. That analysis need not be repeated here.

199 A minister only takes into account matters of which he has personal knowledge or which are drawn to his attention in briefing material. He is not deemed to know everything of which his officials are aware. But a minister cannot be expected to read for himself all the material in his department relevant to the matter. It is reasonable for him to rely upon briefing material. Part of the function of officials is to prepare an analysis, evaluation and precis of material to which the minister is either legally obliged to have regard, or to which he may wish to have regard.

200 But it is only if the briefing omits something which a minister was legally obliged to take into account, and which was not insignificant, that he will have failed to take it into account a material consideration, so that his decision was unlawful....”

Conclusions

76. In my judgment, the Defendant lawfully delegated responsibility for directing the UK’s negotiating position on TACs and the consultation functions to the appropriate responsible Minister, in accordance with usual practice. The Minister was entitled to stand in the shoes of the Defendant in that regard. There is nothing in the FA 2020, or at common law, to prevent such delegation.
77. As demonstrated by the account given at paragraphs 10 to 24 above, the Minister worked closely with officials, receiving Ministerial submissions, and approving them as appropriate. The Defendant was kept informed as he was copied into emails sent to the Minister, via his Private Secretary.
78. Defra officials attended weekly meetings with the Minister to provide updates on the progress of the negotiations. During these meetings, updates were provided on how the negotiations packages were developing and in particular, where deviation from the UK mandate/opening positions was expected to be required in order to secure overall agreement. The Secretary of State’s Private Secretary also attended these meetings, with a view to keeping the Secretary of State apprised as necessary.
79. It is apparent from Mr Dowell’s witness statement that experienced senior civil servants played an important role in considering the relevant issues and policies, advising the Minister, and latterly the Defendant, and undertaking negotiations. In my view, the support provided by civil servants to the Minister and the Defendant was beneficial. It would not have been practicable for the Minister or the Defendant to undertake this major task without support from officials, particularly bearing in mind the volume of other work in Defra. However, it is clear from the evidence that decisions of any significance were taken by the Minister and at the final stage, the Defendant, not by officials.
80. Therefore, the Claimant’s overriding submission does not succeed.

Ground 3

81. The parties addressed Ground 3 first, and so I have followed their approach.

Claimant's submissions

82. The Claimant submits that the Defendant unlawfully fettered his discretion, and misdirected himself as to the nature of the power under section 23(1) FA 2020, by “slavishly” treating the outcome of the TAC negotiations as levels for the Determination.

83. The Claimant submits that the international negotiations were a separate prior process which should not have determined the content of the Determination. The outcome of the negotiations set an outer limit on the extent of fishing of each stock by UK boats. The question whether or not all that allocation should be taken up domestically was a separate statutory question, engaging the Fisheries Objectives and the JFS policies. The Defendant was not required by section 23(2) FA 2020 to make the Determination only for the purpose of complying with the outcome of the UK's international negotiations. International law permits setting of a national fishing limit lower than the internationally negotiated figure: see UNCLOS Article 61. The UK enjoys national regulatory autonomy.

84. The Defendant unlawfully fettered his discretion under section 23(1) FA 2020 by following the outcome of the international negotiations. A decision-maker must not adopt a policy that precludes a lawful exercise of statutory discretion: see *R v Secretary of State for the Home Department, ex parte Venables* [1998] AC 407, per Lord Browne-Wilkinson, at 496G-497C; *R (Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin), per Singh J. at [68] – [73], [77].

Conclusions

85. I accept the Defendant's submission that the discretion conferred on the Defendant by section 23(1) FA 2020 is not free-standing as the Claimant alleges.

86. On my interpretation of the provisions, the power to make a determination under section 23(1) FA 2020 only arises if section 23(2) applies. Section 23(2) provides:

“A determination under subsection (1) may be made only for the purpose of complying with an international obligation of the United Kingdom to determine the fishing opportunities of the United Kingdom.”

87. The international context – including international negotiations and agreements – is therefore fundamental to the section 23(1) FA 2020 exercise. The section 23(1) determinations at issue do not just relate to UK waters, but also to international waters over which the UK would not normally have jurisdiction. They also relate to agreed TACs that will allow EU vessels to fish in UK waters. There is limited control on where UK or EU vessels actually undertake the fishing of those TACs – i.e. whether it be in UK or EU waters – provided that they stay within the cap. In those circumstances it

would be very surprising if the section 23(1) determination did not follow the negotiated outcome.

88. The Explanatory Notes to FA 2020 assist with a proper understanding of section 23 FA 2020, with regard to the devolution context:

“153. Subsection (1) provides that the Secretary of State may determine for a specified period the maximum quantity of sea fish that may be caught by British fishing boats and the maximum number of days that British fishing boats may spend at sea.

154. Subsection (2) requires that a determination under subsection (1) may only be made for the purpose of complying with an international obligation of the UK to determine the fishing opportunities of the UK. The purpose of this subsection is to ensure that the power to determine fishing opportunities relates to limited matters within the Secretary of State’s reserved competence.”

89. The fisheries policy authorities (i.e. the Defendant, Scottish Ministers, Welsh Ministers, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland) are responsible for managing fisheries within their waters. The Defendant’s responsibility is limited to England. The Devolved Administrations are consulted ahead of international negotiations. However, international negotiations are a reserved matter for the UK Government. The wording of section 23(1) and (2) FA 2020 is intended to ensure that the competencies of the Devolved Administrations are respected, and that the Defendant does not make a determination which goes beyond the limited matters within his reserved competence for international negotiations.

90. I do not consider that the use of the word “may” in section 23(1) FA 2020 casts any doubt on this interpretation. In my view, it indicates that Parliament has conferred on the Defendant a statutory power, not a statutory duty, to make a determination where necessary to comply with international obligation.

91. The JFS policy or guidance supports this approach at paragraph 4.2.1.4 which states:

“The determination of UK fishing opportunities for these stocks will normally follow international negotiations and will reflect any agreements from those negotiations. These negotiations are conducted by UK Government and supported by expertise from across the fisheries policy authorities”.

92. In *Sunbeam Fishing Ltd v SSEFRA* [2023] CSOH 16, 2023 SLT 369, which concerned a human rights challenge to a determination that UK registered fishing vessels were not permitted to catch sandeels, the Court of Session, per Lord Sandison, summarised the regulatory process at [6]-[8], saying *inter alia*:

“.....the UK Government determines in terms of s.23 of the Fisheries Act 2020 whether, and if so to what extent, any of the UK share of the TAC for any fish stock is to be made available

for apportionment in the exercise of prerogative powers to the various domestic fisheries authorities and possible onward allocation to industry....”

I do not consider that this passage assists the Claimant since the Court of Session was not asked to address the question raised by Ground 3 in this claim, and so did not consider it.

93. The Defendant applied for permission to refer to ministerial statements in *Hansard* concerning section 23 FA 2020. Mr Westaway accepts that the conditions in *Pepper v Hart* [1993] AC 593 are not met as section 23 FA 2020 is not ambiguous or obscure, nor does it lead to an absurdity. He relies on *Jackson v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262 which confirms that ministerial statements may be used as “an interpretive aid, perhaps especially as a confirmatory aid” (per Lord Nicholls at [65]-[66]) or “to identify the mischief at which legislation was directed” (per Lord Steyn at [97]). I refuse the application as I am not persuaded that this is a case in which the Court needs to refer to ministerial statements to identify the mischief at which the legislation was aimed, nor that it would be assisted by doing so, as the parties would then enter into a dispute about the proper interpretation of the ministerial statements, rather than focusing on the meaning of section 23 FA 2020 in its statutory context.
94. For these reasons, Ground 3 does not succeed.

Ground 1

Claimant’s submissions

95. The Claimant submits that the Defendant acted irrationally in failing to take into account relevant scientific evidence from the ICES. Alternatively, he failed to give that advice sufficient weight, or give cogent reasons for departing from it.
96. It follows from the obligations in the FA 2020 and the JFS to apply the fisheries objectives, including the scientific objective, and the requirement to use the best available evidence and scientific advice to deliver policies (paragraph 3.1.1 of the JFS), the Defendant was required to give the scientific evidence significant weight. The Claimant referred to *Wyatt v Fareham* [2022] EWCA Civ 983, at [9(4)].
97. Any departure from the scientific advice needed to be based on proper evidence: see *R (Association of Independent Meat Suppliers) v Food Standards Agency* [2019] PTSR 1443, at [8]. It also had to be rational and logically follow from the evidence: see *Wells v Parole Board* [2019] EWHC 2710 (Admin), at [33].
98. The Defendant made the Determination contrary to clear scientific advice from ICES without providing reasons for doing so. No counter technical or scientific information was identified.

Conclusions

99. There is ample evidence that the Defendant had proper regard to scientific advice from ICES prior to and during the international negotiations which led to the Determination: see paragraphs 9, 14, 15- 20, 21-23, 28-29 of Mr Dowell’s witness statement, and paragraphs 9, 14, 16, 19 and 22 above.
100. The Claimant’s critique of the Defendant’s treatment of four fish stocks, by way of example, is summarised at paragraph 37 above and referred to in Mr Clover’s witness statement at paragraphs 32 to 73. Mr Dowell’s evidence in respect of the Claimant’s four examples of fish stocks explained the reasons why and to what extent there was a departure from the starting point of the ICES scientific advice in three of them (Celtic Sea cod, Irish Sea whiting and anglerfish): see paragraph 39 above and Mr Dowell’s witness statement at paragraphs 65 to 95. In my view, the decisions and the reasons for them demonstrate a carefully considered balance of competing factors which does not reach the high threshold of irrationality.
101. As noted in the Government’s 8 December 2023 press release on fishing opportunities: “[a]dvice from scientists at the International Council for the Exploration of the Sea (ICES) is the starting point for the UK’s approach and, where possible, catch limits have been set at or within these advised levels”.
102. The Cefas 2024 Report found that an increased number of the baseline TACs were set at levels consistent with the ICES advice: see paragraphs 28 and 29 above.
103. I accept the Defendant’s submission that there is no statutory or common law obligation on the Defendant to give reasons when making a determination under section 23(1) FA 2020. The duty in section 24 FA 2020 is simply to publish the determination.
104. In contrast, a duty to provide reasons arises under section 10(2) FA 2020 where a change of circumstances must be described, and how they affected the decision explained, if a national fisheries authority takes a decision otherwise than in accordance with the policies contained in a JFS or fisheries management plan (see also section 7(2) FA 2020 that relates to fisheries management plans that depart from the JFS). The duty to provide reasons for changes of circumstances also applies to not following scientific advice in certain circumstances for certain stocks: see North Sea MAP Article 4 and Western Waters MAP Article 4. In the light of these provisions, it would be surprising for there to be a general duty to give reasons wherever scientific advice is not followed. It is legitimate to infer that, if Parliament intended to impose an overarching duty on the Defendant to publish reasons in respect of a determination under section 23(1) FA 2020, it would have expressly provided for it.
105. In my judgment, an appropriate degree of transparency is achieved by briefings to stakeholders (including the Claimant: see paragraph 9 above); public disclosure of the UK-EU Written Record on fishing opportunities; consultation with the Devolved Authorities prior to making the Determination; public disclosure of the detailed Annexes in the Determination which is laid before Parliament; and the Cefas annual report. Apportionment of the quota is made pursuant to published Quota Management Rules, and the national fisheries authorities distribute fishing opportunities pursuant to section 25(1) FA 2020 using criteria that must be “transparent and objective”.

106. For these reasons, Ground 1 does not succeed.

Ground 2

Claimant's submissions

107. The Claimant submits that the Defendant failed to act in accordance with the policies in the JFS in relation to the fisheries objectives in section 1 FA 2020 (in particular, the sustainability, precautionary, ecosystem, scientific evidence objective and bycatch objectives).
108. There is no evidence that the Defendant considered, let alone applied, the precautionary approach objective, especially (but not only) with regard to anglerfish where the Defendant acknowledges that there was possibly an unexplained departure from the North Sea MAP, and with regard to Celtic Sea cod where the Determination represents a decision to allow as much as 99% of the “spawning stock biomass” (a measure of the adult population of the stock) to be caught. It may be noted that the Defendant produced a “change of circumstances” document for anglerfish on 26 March 2024, after this claim was served.
109. In relation to the ecosystem and bycatch objectives the Defendant has failed to have proper regard to the requirement to ensure that negative impacts on marine ecosystems are minimised and, where possible, reversed, and that the catching of fish below minimum conservation reference size and other bycatch is avoided or reduced. The management of fishing activities has not been based on the best available scientific advice.
110. The Defendant's response emphasises that the JFS policies would allow him to prioritise one fishery objective over another in the short term. But, while correct, that is no answer here because, while the JFS did require the Defendant to balance different factors, he was not provided with any relevant information to do that exercise (see the overarching submission that he must consider such matters personally), nor did he consider such matters in making the Determination because of the approach challenged under Ground 3.

Conclusions

111. It is axiomatic that in considering matters of economic, environmental and social policy that the Defendant should be afforded a wide margin of discretion. In *R (Transport Action Network Ltd) v Secretary of State for Transport* [2021] EWHC 2095 (Admin), [2022] PTSR 31, which considered a decision on a substantial public investment in a road network, Holgate J. reiterated that “on matters of political and economic judgment a claimant for judicial review bears a heavy evidential onus to establish that a decision was irrational, absent bad faith or manifest absurdity” (at [57]).
112. These principles were recognised in the specific context of fish quotas in *Case C-330/22 Friends of the Irish Environment CLG v Minister for Agriculture, Food and the Marine* which concerned a challenge to the decision to set TACs for cod and whiting bycatch only in excess of ICES' zero catch advice for those stocks. At [65], the CJEU

recognised that the MAP must be interpreted in the light of the competing objectives to ensure that fisheries activities remain both environmentally and economically sustainable. Addressing the question of ‘choke’ species, the CJEU held at [71] that the MAP must be read as taking account of “the difficulty, in the context of mixed fisheries, of achieving an MSY exploitation rate for all stocks exploited at the same time” where it cannot be avoided. In light of that, the CJEU held that the Council had discretion to set TACs for the bycatch stocks (at [75]), and the Council had not exceeded the bounds of this discretion because “the TACs at issue were set, on the basis of the best available scientific advice, at a level which is not manifestly inappropriate for reconciling the objective of continuing mixed fisheries with that of achieving a good biological status for the stocks concerned” (at [92]).

113. In *R (Greenpeace Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2016] EWHC 55 (Admin), [2016] PTSR 851, Andrews J. recognised that EU member states enjoyed a wide discretion in the allocation of fishing opportunities (at [31]) and that the “weight to be given to the various criteria in what is obviously a complex balancing exercise is a matter for each member state” (at [90]).
114. As under Ground 1, there is ample evidence that the Defendant had proper regard to the JFS, in particular, the fisheries objectives: see paragraphs 13 – 20, 23, 25-27, 30 of Mr Dowell’s witness statement, and paragraphs 14 – 22 above. The Minister was clearly aware of the fisheries objectives and had regard to them, whether or not they were expressly mentioned: see *Sea Land Power & Energy Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 1419, at [58].
115. Mr Dowell’s evidence in respect of the Claimant’s four examples of fish stocks set out the assessments for each one: see paragraphs 65 to 95 of his witness statement, and the summary from the Detailed Grounds of Defence, set out at paragraph 39 above.
116. Mr Dowell gave the following evidence in his witness statement in relation to anglerfish:

“80. The biological stock for Northern Shelf anglerfish extends over the North Sea, Rockall and West of Scotland, Skagerrak and Kattegat (ICES subareas 4 and 6 and in Division 3.a). Anglerfish is also known as monkfish, particularly in Scotland.

81. Scientific advice for anglerfish in these areas was published by ICES on 28 October 2022. This was then revised on 6 December 2022 with a -30% reduction in the advice for 2023 and 2024 compared to the advice issued for 2022 [CB/03/220-229]. ICES advice was provided for two years due to limitations in the data for this stock at the time of publication. It followed consecutive reductions in advice over several years and represented a change in advice from 2020 of -55%.

82. Northern Shelf anglerfish is managed between the UK and the EU through two management TACs that are established under the TCA. One is a TAC set for anglerfish in the North Sea which is defined as United Kingdom and European Union waters of ICES Area 4; and United Kingdom waters of ICES Area 2a.

The other is a TAC set for anglerfish in the West of Scotland which is defined as ICES Area 6; United Kingdom and international waters of ICES Area 5b; international waters of 12 and 14. In 2022, 2023, and 2024, the UK set a third TAC to manage the incoming quota which was agreed to be transferred to the UK from Norway as part of the bilateral agreement. Area 3a (Skagerrak and Kattegat) which is also included within ICES advice, is not subject to a TAC. In recognition of the misalignment of TAC management areas and ICES advice, the Minister agreed to the outlining of future ambitions to move the management of anglerfish from being a bilaterally managed stock between the UK and the EU to a trilaterally managed stock by involving Norway [MD1/07/151-159]. The UK noted the importance of this work in the trilateral Agreed Record for 2024 as progress towards long-term sustainable management of the stock [MD1/14/238-262].

83. The above TACs were set for 2023 and 2024 as follows; 7,211t for the North Sea (6,408t UK quota), 4,082t for the West of Scotland (1,772t UK quota), and, in 2024, 700t was transferred to the UK from Norway. This is less than the 1,075t which were transferred in 2023. The UK reduced the transfer in 2024 in response to ICES advice for this stock. This resulted in a total TAC for 2024 of 11,993t.

84. The Minister agreed that the approach for the 2023 and 2024 fishing years for both the EU-UK and the UK-Norway agreement, was to limit the reduction in total quota and to prevent substantial variation in the fishing opportunities over a short period of time. It was noted to the Minister that this would enable businesses to adapt to a change in circumstance, while continuing to reduce catch as advised by ICES [MD1/10/171-176].

85. The Minister agreed to this recommended TAC after considering both the scientific advice and the economic impact on the fleet of reducing the UK quota by the recommended amount. In particular, the Minister considered analysis showing that revenue from landings of anglerfish made up about one quarter of income at three fishing ports located in remoter communities of Scotland. Around 20 offshore vessels operating from these areas would have seen a revenue reduction of 10%-30% if the advised reduction had been implemented in full. This would equate to a loss of £2.7 million to Scottish vessels with anglerfish making up more than 10% of their revenue relative to 2022 over the two years. The Minister decided to mitigate the environmental impacts of this decision by seeking a reduced inward transfer of quota from Norway from the previous year. This was in order to balance the environmental and socio-economic impacts of an otherwise significant reduction in quota

for a species of high economic importance for the UK [MD1/10/171-176], [MD1/15/263-267].

86. It is also relevant to bear in mind Article 4 of Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018. In establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, and specifying details of the implementation of the landing obligation in the North Sea (“the North Sea MAP”), it requires that the anglerfish TACs be set within ICES advised lower MSY limits (but in certain circumstances permits TACs to be set in the upper MSY limits), save where there is a “relevant change of circumstances” [MD1/16/268-318]. Acknowledging this, the Minister was informed of the potential need for a change of circumstances document under Article 4(8) of the North Sea MAP. This was approved and on 26 March 2024, the UK Government published a change of circumstance document explaining its decision to set the 2024 Northern Shelf anglerfish TAC above the ICES advice range [MD1/15/263-267].

87. Two other developments of potential relevance may also be noted. First, an FMP is currently being developed which will outline policy and management proposals for Northern Shelf anglerfish in line with requirements in the FA 2020 and the JFS.

88. Second, Northern Shelf anglerfish was subject to a benchmark by ICES scientists in 2024. The ICES benchmark is a review of the scientific process and data which goes into producing annual catch advice. A benchmark is completed regularly for the large majority of stocks in the Northeast Atlantic which ICES provide advice on. The 2024 benchmark disclosed that the stock is in a much healthier condition than the advice produced in 2022 for 2023 and 2024 had suggested. Consequently, the ICES advice for 2025 is for 30,726t compared with 9,881t for 2024 (a +211% increase before adjustments). This benchmark saw the improvement of the stock from ICES category 3, data limited, to category 1, the highest category of data availability.”

117. In my judgment, this evidence demonstrates a thorough and careful assessment of the issues relating to anglerfish, which balanced the competing factors and the fisheries objectives. It was an exercise of discretionary judgment which does not disclose any unlawfulness. There was no unexplained departure from the ICES advice. The change of circumstances document explained the possible departure from ICES advice and it has not been challenged by the Claimant in this claim.
118. The Claimant appears to treat certain of the fisheries objectives (the sustainability objective, the precautionary objective, the ecosystem objective, the scientific evidence objective and the bycatch objective) as if they were free-standing policies, ignoring the fact that the JFS provides that “regard” should be had to them (paragraph 3.1.3); that the policies set out in the JFS are to be “read as a package designed to meet all of the

fisheries objectives” (paragraph 2.2.3); and that it may at times “be necessary to prioritise one fisheries objective over another in the short term” (paragraph 2.2.7).

119. In my judgment, the Claimant has failed to establish any failure to have proper regard to JFS policies. The weight to be given to the policies and the competing factors required a complex balancing exercise. These were matters for the decision-maker to determine, in the exercise of his discretionary judgment, and the Claimant’s disagreement with the decisions made is not a sufficient basis for a legal challenge.
120. For these reasons, Ground 2 does not succeed.

Final conclusion

121. The claim for judicial review is dismissed.