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Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
Scottish Parliament

13 May 2025

Dear Finlay,

Sandeel fishery closure dispute: update to Committee

I am writing to provide you with an update on dispute resolution proceedings between the UK and the EU under the Trade and Cooperation Agreement (TCA), regarding decisions made by the Scottish Government and UK Government to prohibit fishing for sandeel in UK waters.

On 26 March 2024, the Sandeel (Prohibition Of Fishing) (Scotland) Order 2024 came into force, which closed all Scottish waters to fishing for sandeel, for all vessels. In parallel, the UK Government closed English waters of the North Sea for sandeel fishing through a licence condition.

On 16 April 2024, the EU initiated the TCA dispute resolution procedure by requesting consultations with the UK under article 738 of the TCA, challenging both closures as it claimed they were in breach of the TCA. The TCA mechanism for resolving disputes has three stages: 1. Consultations, 2. Arbitration, and 3. Compliance.

Consultations meetings (stage 1) took place between the EU and UK on 21 and 22 May 2024. No mutually agreed solution was reached during consultations. The EU then requested the establishment of an arbitration tribunal to examine the sandeel closures in both Scottish and English waters. This triggered arbitration proceedings (stage 2), and as part of this an oral hearing took place before the arbitration tribunal from 28-30 January 2025. Following deliberations the arbitration tribunal issued its ruling on 28 April 2025 and this was published on 02 May 2025 by the Permanent Court of Arbitration.

I am pleased to confirm that the Tribunal found no breach of the TCA in relation to the EU's challenge of the closure in Scottish waters. As such, the Sandeel (Prohibition Of Fishing) (Scotland) Order 2024 remains in place.

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In relation to the closure in English waters, the Tribunal identified a breach of the TCA relating to a procedural error in the decision-making process to close English waters to sandeel fishing. As a result, ruled that the UK did not have sufficient regard to the principle of proportionality, as required by the TCA. Consequentially, there was also found to be a breach of the EU's right of full access to waters to fish for sandeel arising from Annex 38 of the TCA. Defra will consider in good faith how to come into compliance with the Tribunal's ruling, and the English closure will remain in place while this process is carried out.

This is an extremely positive ruling, especially with respect to the closure in Scottish waters, where all claims were successfully defended.

The prohibition of sandeel fishing in all Scottish waters has the potential to provide long term sustainability and resilience to the marine ecosystem, as well as bringing about potential benefits to sandeel, seabirds, marine mammals and other fish species.

Robust evidence plays an invaluable role in robust decision making. The outcome of the sandeel dispute with respect to Scottish waters reflects the strong, evidence-based and transparent public consultation and processes that the Scottish Government has in place.

Protecting our marine ecosystem is vital to Scotland's environment, and to the people and communities who rely on it. The ruling reaffirms the appropriateness of the actions taken last year to do just that.



MAIRI GOUGEON

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