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31 January 2020

Dear Stakeholder,

We are writing to you as we understand that you may directly land live bivalve molluscs (LBMs), live gastropod molluscs, live tunicates or live echinoderms into the EU or Northern Ireland (NI) and want to highlight that EU importation rules may prevent you doing this. We understand this will be unwelcome news and that there is very little notice. The very late notice of the deal meant we could not confirm this until now.

The importing country or trading block (in this case, the EU or NI) determines the requirements exporters need to meet and we recommend you discuss the requirements for direct landings of live LBMs, gastropod molluscs, tunicates and echinoderms with your importer and any EU or NI ports into which you intend to land. You may also wish to seek legal advice.

The UK has agreed a Trade and Co-operation Agreement with the EU (the TCA)<sup>1</sup>. Under the TCA, exports of live animals and products of animal origin (POAO) from Great Britain to the EU (including Northern Ireland) will be treated as coming from a third country and will be subject to the EU's regime for sanitary and phytosanitary (SPS) checks on third country imports. The TCA does not remove the need for GB exporters to follow EU SPS processes. This will result in new requirements for Scottish vessels landing into EU ports (including ports in Northern Ireland). The Protocol on Ireland/Northern Ireland<sup>2</sup> (the Protocol) requires NI to follow EU SPS rules, so landings into NI ports are treated as landings into EU ports. The TCA and the relevant parts of the Protocol apply from 11pm on 31 December 2020.

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<sup>1</sup> [Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/agreements/uk-eu-trade-co-operation-agreement) Accessed on 31/12/2020

<sup>2</sup> [Revised Protocol to the Withdrawal Agreement.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/531112/Revised-Protocol-to-the-Withdrawal-Agreement.pdf) Accessed on 31/12/2020

Direct landings into EU ports is governed by EU law. Our understanding of the relevant legislation is that from 11pm on 31 December 2020, Scottish vessels will be third country vessels under EU law and need to follow procedures for imports from third countries (non-Member States), which did not apply when the UK was a Member State, or during the transition period.

All POAO from Scotland will require an Export Health Certificate (EHC) in order to be exported to the EU and Northern Ireland. Seafood that is exported as direct landings cannot follow the usual EHC process whereby the EHC is signed by a certifying officer prior to the product leaving Great Britain.

Fresh fishery products<sup>3</sup> meeting SPS requirements should not be prevented from landing into EU and NI ports because such products directly landed by third country fishing vessels into the EU are exempt from official controls at border control posts (BCPs)<sup>4</sup>, provided the official controls are performed by competent authorities in EU ports designated by Member States<sup>5</sup>.

However, live bivalve molluscs, including scallops, gastropod molluscs, live tunicates and live echinoderms are not “fresh fishery products” under EU law. This means that an EHC and associated SPS processes would be required for direct landings of these groups and that landing would need to occur at an EU BCP or NI Point of Entry which is also a designated BCP for these product categories. Marine Scotland is not currently aware of any EHCs, or EHC process, which would facilitate vessels directly landing these groups into the EU or NI to fulfil these requirements. Without such EHCs or SPS processes, live bivalve molluscs, including scallops, gastropod molluscs, live tunicates and live echinoderms cannot be directly landed into the EU or NI ports.

For frozen fishery products directly landed into the EU by a reefer, freezer or factory vessel, the Captain’s Certificate can be used<sup>6</sup>, and therefore the products landed into EU/NI appropriately designated ports.

Whilst the above reflects Marine Scotland’s understanding of the relevant EU legislation, it is up to the importing country or trading block (in this case the EU or NI) to determine which products can be directly landed and we strongly recommend that you contact your importer in the EU, and the ports you plan on landing in to in order to understand their expectations for EHC provision for direct landings of LBMs including scallops, live gastropod molluscs and live tunicates and live echinoderms.

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<sup>3</sup> Fresh fishery products’ means unprocessed fishery products, whether whole or prepared, including products packaged under vacuum or in a modified atmosphere, that have not undergone any treatment to ensure preservation other than chilling. Regulation (EC) No 853/2004, Annex I, Point 3.5. ‘Fishery products’ means all seawater or freshwater animals (except for live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods, and all mammals, reptiles and frogs) whether wild or farmed and including all edible forms, parts and products of such animals. Regulation (EC) No 853/2004, Annex I, Point 3.1.

<sup>4</sup> See Article 4 of the EU law version of Commission Delegated Regulation (EU) 2019/2126

<sup>5</sup> See Article 5(1) of the EU law version of Regulation (EC) No 1005/2008

<sup>6</sup> Certificate to be signed by the captain accompanying frozen fishery products when entering the EU or Northern Ireland for placing on the market directly from a reefer, freezer or factory vessel: certificate 8344 - GOV.UK (www.gov.uk)

We will update you further when more information is available.

Kind Regards

Marine Scotland