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# Brexit and Fisheries

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*This paper was originally submitted as a response by the Institute for European Environmental Policy (IEEP) to the call for evidence for the inquiry by the House of Lords EU Energy and Environment Sub-Committee exploring the future of fisheries following the vote by the UK to leave the European Union.*





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### **THE REPORT SHOULD BE CITED AS FOLLOWS**

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*Both leading up to and after the referendum on June 23<sup>rd</sup>, IEEP has been working with environmental stakeholders in the UK to identify the risks and opportunities arising from a UK departure from the EU, including in our earlier reports for [UK NGOs](#) and for the [All-Party Parliamentary Group on the Environment](#). IEEP will be continuing to work in the UK and across the EU to improve public understanding and awareness of the challenges the UK's departure poses for environmental policy.*

*Within the scope of the House of Lords EU Energy and Environment Sub-Committee's inquiry, IEEP urges that the following points are important to consider.*

### **Objectives for future UK fisheries**

The precise future relationship between the UK and the EU is currently unknown and it is possible that that relationship will have unique aspects. However, for the purposes of this evidence, we assume that the UK after leaving the EU will no longer apply the Common Fisheries Policy (CFP).

As a result, an immediate priority will be to adopt domestic *objectives for UK fisheries and a policy/legal framework to deliver these*, replacing the objectives currently driving policy development and fisheries management measures in EU Member States as stipulated in the CFP. Outside the CFP, the UK will have full responsibility for management of the marine environment and resources not only of its territorial waters, but also of the UK Exclusive Economic Zone (EEZ)<sup>1</sup>. The over-arching objective in the best interests of the UK, and in line with its commitments to the UN Sustainable Development Goals, is therefore to protect these resources in the long term from further destruction and overexploitation.

### **Key management concepts and principles**

Combined with a clearly stipulated objective for UK fisheries management, a number of key management concepts and principles need to be formally adopted in the new domestic legislation. We see no reason for abandoning the *concepts* of Maximum Sustainable Yield (MSY), Total Allowable Catches (TACs) or quota allocations. These are well-established management concepts both in the industry, and among management authorities and policy makers, and replacing them could create confusion and significant uncertainty for many years. It is difficult to see any other suitable alternatives. These concepts are also widely adopted internationally and will continue to guide EU fisheries policy. Cooperation between the UK and other states and regions will be essential, and will be much easier if key concepts common to our neighbours and partners are retained.

It will also be important to ensure that a future UK policy framework retains key *principles*, including a precautionary, adaptive and ecosystem-based approach to fisheries management.

### **Access rights**

Equal access within EU EEZs will no longer apply to British waters and agreements between the EU and other states will probably no longer be valid for the UK. The UK will therefore need to renegotiate

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<sup>1</sup> Coastal states' exclusive economic zone extends 200 nautical miles from the shore, in which the state has special rights and responsibilities related to, for instance, exploration, exploitation, conservation and management of natural resources. The concept was established in the 1982 UN Convention on the Law of the Sea (UNCLOS).

and/or establish new bilateral agreements on fishing rights with states whose waters are of interest to UK fishermen and vice versa. We find it difficult to imagine a scenario where the UK could restrict access for all foreign vessels, both due to historical agreements that may still apply, the regional political reality and need for compromise in the exit negotiations.

If the UK were to enter the European Economic Area (EEA) or adopt any similar arrangement with the EU involving freedom of establishment for firms and individuals within the single market, which then allows them to acquire fishing vessels and apply for quota in that state, 'quota-hopping' would also continue to some degree<sup>2</sup>. Further, the National Federation of Fishermen's Organisations (NFFO) has said that it is essential that the UK negotiates access to EU markets as part of the exit agreement (NFFO, 2016). If the UK were to retain access to the single market (either as a member of the EEA or through a new bilateral arrangement) it might also mean some level of access for EU vessels to British waters. Leaving the single market would, on the other hand, be likely to result in the reintroduction of trade-tariffs (Kleinjans, 2016), although it depends on the details of trade deals established post-Brexit. Further, if UK companies wish to keep selling their fish and seafood to the EU market, they may still have to comply with, for instance, the EU rules on illegal, unreported and unregulated fishing (Barnes and Rosello, 2016).

### Regional cooperation

It is in the best interest of the UK to cooperate with states with which it shares stocks and/or has bordering EEZs. From a stock perspective, some stocks important to UK fishermen either migrate across borders over the course of their life stages or simply roam habitats stretching across more than one nation's EEZ. Coordinated management of fishing pressure is therefore essential. Regional cooperation is also a prerequisite to achieving healthy oceans overall, as marine space is by definition interconnected. The health of marine ecosystems in and around UK waters will directly impact the state of commercially targeted stocks located therein.

### *Process for negotiating Total Allowable Catch (TAC) and TAC allocations*

The UK should continue to co-ordinate TACs with the EU and other neighbouring countries with whom it shares stocks. Firstly, the rationale behind TACs is to set a total limit for annual catches according to the latest scientific advice for individual stocks and at levels that equate to MSY. Were the UK to set its own catch limits in parallel to the EU or other states fishing the same stocks, the total fishing pressure on individual stocks would be likely to increase. This could result in less sustainable fisheries in the region and would therefore not be in the best interest of the UK. Secondly, international law requires states to set catch limits within their EEZ and to collaborate regionally to this end<sup>3</sup>.

Importantly, it is not known at this point what post-Brexit TAC negotiations would look like or whether new fora for such negotiations will need to be established. For stocks shared between the UK and the EU, there are likely to be bilateral negotiations similar to those between the EU and Norway, or the EU and Iceland. For stocks shared between the UK and non-EU countries<sup>4</sup>, negotiations will probably take place through the North East Atlantic Fisheries Commission (NEAFC). Importantly, however, the UK may need to re-establish its NEAFC membership as a single state, a process which is far from

<sup>2</sup> See, e.g. rulings in the Factortame cases, Case C-213/89.

<sup>3</sup> United Nations Convention of the Law of the Sea (UNCLOS), 1982, 1833 UNTS 3 art 136. Article 61.

<sup>4</sup> Many UK fisheries (notably the most economically important) are in the North-East Atlantic. NEAFC is the organisation responsible for recommending fisheries management measures for the international waters of the North East Atlantic to its Contracting Parties, and for fisheries in EEZs when this has been requested by the relevant Member Countries.

straight-forward<sup>5</sup>. It would seem most efficient and least destructive to aim to continue regional cooperation within already existing frameworks, if possible. If no new international arrangements have been established for how to negotiate and allocate TACs when the UK effectively leaves the EU, it will probably need to adopt a temporary domestic scheme for autonomously establishing catch limits and allocating quota.

In negotiations with EU and other states, it is important that the UK continues to commit to setting TACs based on scientific advice<sup>6</sup>. This approach was formally adopted in the latest reform of the CFP, but is yet to solidify in practice. Should the UK backtrack on this commitment post-Brexit and allow continued influence of short-term economic interests on the setting of catch limits, long-awaited and important progress in terms of achieving sustainable fisheries would be at risk. Therefore, the long-term sustainability of the UK fishing industry would also be placed at risk.

### ***Monitoring and reporting***

Regional and international collaboration is crucial also for monitoring. For example, information from monitoring and reporting of fishing activities is important in the TAC assessment and negotiation process, in order to evaluate the pressures imposed on fish stocks and marine ecosystems from fishing activities, but also to be able to adopt appropriate policy responses. The new CFP requires EU Member States to cooperate with third countries regarding data collection. Neighbouring EU states would therefore seek cooperation in this regard with the UK. The CFP also requires EU Member States to cooperate with third countries and international organisations for the purpose of improving compliance with international measures, including combating illegal, unreported and unregulated fishing (IUU).

### ***Quota allocation***

In terms of national quota and the relative stability key applied among EU Member States, we find it hard to see that the remaining Member States would agree to renegotiate, especially considering that the UK already has received special consideration and an advantageous allocation. Nevertheless, the relative stability key is likely to be one of the primary potential areas for trade-offs in the exit negotiations, e.g. against certain aspects of market access.

Allocation of quota to individual fishing companies is a Member State competence under the CFP and will therefore not be directly affected by Brexit.

While our evidence does not address in detail the additional complexity arising from responsibility for fisheries policy being devolved to the Governments and administrations in Scotland, Wales and Northern Ireland, it is worth noting that this situation potentially affects the UK's credibility and reliability as a negotiator in bilateral fisheries discussions. Fisheries policy is thus one of a number of areas where the additional scope for policy-making associated with an exit from the EU could require renegotiation or redefinition of the current devolution settlement.

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<sup>5</sup> Fishing opportunities for new members of NEAFC are often limited to stocks that are not currently allocated, as existing members want to maintain their quota. NEAFC states that 'new Contracting Parties who were previously Cooperating Non Contracting Parties may request an allocation of a part of the relevant Co-operative quota. Such allocations will be done on a case by case basis' (NEAFC, 2016).

<sup>6</sup> It is likely that the UK will continue to rely on the scientific advice of the International Council for the Exploration of the Sea (ICES). The UK's subscription to ICES (currently paid for by Defra) could possibly increase, however.

## Sustainable fisheries management in international law – key points

Despite Brexit, the UK will still have to abide by its international commitments to sustainable management of fisheries under the Convention on Biological Diversity (CBD), UNCLOS and the UN Fish Stocks Agreement (FSA)<sup>7</sup>. This includes UNCLOS' call on States to cooperate, or at the very least to negotiate, with respect to the management and conservation of all categories of shared stocks. However, international law is weaker concerning the sustainability of fisheries than the CFP (e.g. UNCLOS states that best scientific knowledge 'should be taken into account' compared to the CFP's 'shall be based on'). Parties of UNCLOS have often been shown to disregard these provisions (Birnie et al., 2009). NEAFC recommendations must also be based on best scientific evidence, apply a precautionary approach and take 'due account' of impacts of fisheries on marine ecosystems and of conservation of marine biodiversity<sup>8</sup>. However, similar to most international law, there are no means to ensure compliance as there is in the EU. In fact, RFMOs (such as NEAFC) have been criticised for, e.g., deficiencies in terms of implementation, monitoring and sanctioning (see e.g. Ceo et al., 2012).

Although there might be a political temptation for some to push for higher TACs in order to deliver on the promises made to fishermen in the referendum campaign, this seems unlikely and would be strongly resisted by e.g. the NGO community. Considering how the UK has negotiated previously<sup>9</sup>, this could further delay the practical application of MSY and other principles. A larger number of single negotiators with a strong stake in the issue can also create stalemate, illustrated for example by the lengthy disputes over mackerel catches in the north-east Atlantic (HM Government, 2014).

Moreover, international law does not have the enforcement power of EU law, for example to hold states accountable for management and conservation of fish stocks. In fact it is common that flag states fail to enforce control of their ships within their EEZ (Birnie et al., 2009). Importantly, the compulsory dispute settlement mechanism in UNCLOS does not apply to EEZ waters. Meanwhile, other pieces of international soft law, such as FAO measures, are not legally binding. The UK will, therefore, need to establish a clear monitoring and enforcement plan to replace existing structures.

## A sustainable future UK fisheries regime

Brexit is also, theoretically, a chance for the British government to adopt a more ambitious approach to environmentally and economically sustainable fisheries. For example, the new legislative framework on fisheries could be integrated with nature conservation policy and the Marine and Coastal Access Act (MCAA) and Marine (Scotland) Act 2010 to try to achieve a healthy ocean overall. The UK could aim to link local economic regeneration investment in communities where fishing is an important activity more closely to a commitment to sustainable fisheries management, and the value added that could potentially be derived from it. Achieving sustainable UK fisheries and rebuilding key North East Atlantic stocks would furthermore make the UK entirely self-sufficient in fish (NEF, 2016). By achieving more sustainable British fish and seafood production and consumption systems, there might also be room to tap into a niche market of supplying safe and ethical products domestically. This would require British consumers to be willing to pay a price premium for such products, and the

<sup>7</sup> The FSA is important since it operationalises the precautionary and ecosystem approaches, although it applies only to straddling and highly migratory on the high seas. Moreover, poor implementation has largely restricted its impact (Young, 2010).

<sup>8</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, 1982.

<sup>9</sup> The New Economics Foundation (NEF) has recently shown that the UK has one of the highest average tonnages above scientific advice among the studied cohort of 15 Member States. In the 2014 TAC negotiations – the first time that the new stricter CFP rules applied – UK representatives negotiated, for example, for a considerable reduction of the quota cuts for Celtic Sea cod advised by scientists. The scientific proposal to cut quotas by 64% to allow the population to recover was reduced to a 26% cut (NEF, 2015). Both these stocks have previously been severely overfished and still need time to recover (ICES, 2015).

UK to be able to police fisheries effectively in its waters, and, ultimately, to be able to influence EU decisions under the CFP on waters which have an effect on fish stocks around the UK<sup>10</sup>.

### Final remarks

Perhaps the greatest risk for fish stocks is if negotiations are prolonged without a new deal and the UK falls into a default scenario for several years. Fisheries policy is thus among a number of areas which are particularly vulnerable in the event of a “hard” exit, without a negotiated arrangement with the EU-27. Key aspects in the exit process are, from a sustainable fisheries perspective, how the UK will cooperate regionally and how access to waters, fishing rights and TACs will be established and allocated. The following aspects are examples of what needs to be addressed in the subsequent development of domestic policy. Their outcome can have significant impact on the sustainability of future British and European fisheries:

- Formally commit to MSY, best scientific advice, precautionary, ecosystem-based management.
- Formally commit to phasing out discarding of catches, coupled with results-based management.
- Identify what will be required in terms of monitoring and control, and how to secure resources for successful enforcement. Establish a new scheme for international cooperation on monitoring and adopt the more ecosystem-based model of the proposed new EU Data Collection Framework, which also commits to monitoring the ecosystem impacts of fisheries.
- Commit to providing the same reporting to ICES as the UK currently does as an EU Member State.
- Ensure that any continued funding for the fishing industry is directed towards improving its sustainability, and coordinated closely with economic regeneration investment.

The history of policy in this area does not suggest that drastic reform in favour of sustainable fisheries and ecosystem-based fisheries management in the UK would be more likely outside the CFP. Governing industrial-scale fisheries is complex and those nations that have achieved a relatively sustainable fisheries management (for instance New Zealand, Australia and the US) have spent 20–40 years testing different approaches. They have also generally had sole jurisdiction of their EEZs and are relatively isolated in relation to other nations’ waters. These conditions do not apply to the UK. Instead, the British Government might be tempted to relax environmental credentials of commercial fisheries post-Brexit.

The UK should avoid back-tracking by all means and rather aim to ‘cherry-pick’ and continue to improve, based on British conditions, the policy interventions in the EU that are delivering positive results in terms of reducing the environmental burden imposed by industrial-scale fishing. The CFP has, rightly, been criticised over many years for failure to deliver sustainable fisheries, but it has made important steps forward across a range of issues. Criticism of the CFP in political debate and in the context of Brexit negotiations should not lead to a devaluation of these positive steps but, instead, the UK should use the opportunity of Brexit to identify how to build on these to produce more sustainable UK fisheries. Such an approach could have a positive influence on the future development of EU policy (while, in contrast, a failure to adopt objectives such as Maximum Sustainable Yield and take the decisions required to deliver them would weaken the prospects for successful reform of the CFP in the EU-27). An ambitious sustainable approach will require strong political will in a direction conflicting to the one currently embarked on, especially on enforcement and collaboration with neighbouring countries.

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<sup>10</sup> Notably, some UK fisheries of straddling stocks currently awarded Marine Stewardship Council (MSC) certification could be at risk of losing their certification (Walmsley, 2016).

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