

FISHING IN TRANSITION

**An update on Brexit negotiations and likely
outcomes for the fishing and seafood sectors**

Fishmongers' Hall, London | 23 April 2018





ABOUT THE SEMINAR

Blue Marine Foundation, a charity that partners with fishermen to establish more sustainable methods of fishing, shares with a number of fishing organisations a view that the UK government could have done a better job of managing the expectations of the fishing industry since the 2016 EU referendum result.

British fishermen were promised many things by the Leave campaign, for example; that the entire UK EEZ would be brought under exclusive UK jurisdiction from Brexit day and that UK fishers would see huge increases in quota allocation.

Key figures in Theresa May's government have continued to repeat and even heighten these expectations after the referendum result, despite there being scant evidence of UK negotiators giving fishing any priority during negotiations.

As a result, when the UK-EU transition agreement was secured in December 2017 the UK fishing community felt betrayed by an agreement that extends the Common Fisheries Policy status quo in UK waters for nearly two years after Brexit day, despite the UK no longer having any representation in the EU institutions.

Blue Marine Foundation, with its partners on the steering committee of this seminar, felt that it would be helpful for the UK fishing industry to hear a realistic independent assessment of the current status of fishing in the Brexit negotiations, and the likely outcomes for the industry to balance any unrealistic government spin.

Partnering with the Worshipful Company of Fishmongers and a number of fisheries representative organisations (listed on page 22), we invited a wide range of inshore and offshore fishermen to listen to a variety of expert speakers discuss the politics, trade and legal aspects of the Brexit negotiations. This report is a summary of these presentations.

You can see recordings of all the presentations at blumarinefoundation.com/films

SUMMARY POINTS



POLITICS

- The UK's overall negotiating position against the EU is not strong
- Fishing is one of the few cards the UK has to play
- It is unlikely that the UK Government will use the UK's fishing card to win greater concessions for the fishing industry
- Fishing will likely be traded by the UK for a win elsewhere in the negotiations
- EU will not allow the UK to pick the parts of the EU it likes and discard the bits it doesn't like
- Neither the EU nor UK are being honest regarding the length of transition period, which will have to be much longer than to December 2020
- Extreme outcomes are now very unlikely: UK is highly unlikely to remain in the EU. UK is also highly unlikely to leave without a deal, as UK has not made requisite preparations to allow no-deal without severe economic damage
- If the UK sticks to current red-lines ('money, laws and borders') then the only likely outcome is a Canada style free trade agreement (FTA). If UK red lines change, EU deal options increase
- It is impossible to reconcile more than two of UK's three current demands re Northern Ireland: No hard border, no border in Irish sea, UK Customs Unions exit. One of these will have to be dropped
- This uncertainty around Northern Ireland needs to be resolved before the Withdrawal and Transition Agreements can be agreed by October 2018



TRADE

- It is expected that there will be zero tariffs on all fish products under a UK/EU agreement, even a basic FTA
- 'Rules of Origin' will still prove a significant challenge for UK seafood processing industry in any scenario outside a customs union
- Leaving the 'regulatory union' of the single market will be a significant challenge for fishermen, as all animal products entering the single market can only pass through specific border inspection posts (BIPs)
- Neither Calais nor Eurotunnel have BIP facilities to accept fish from non-EU (or non-EEA) countries
- Dunkirk only has capacity for 15 inspections a day
- All UK fish exports to EU would have to be re-routed to Rotterdam or another BIP-ready port until the ports regularly used for UK fish imports are upgraded
- 21 month transition is necessary to put this BIP infrastructure in place
- UK leaving with no deal would impose these requirements overnight from 30 March 2019
- UK could negotiate a 'Norway+' style EEA relationship with customs union and fisheries agreement, which would put UK outside of CFP but keep seafood trading rules roughly as they are now

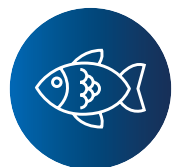
SUMMARY POINTS

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DEVOLUTION

- The EU currently has competence over 153 policy areas which, outside the EU, will fall under devolved administrations
- UK Government has said that, of the 153 competencies, 24 will require London replacing Brussels as the central regulatory authority.
- 'Fisheries management and support' is one of these 24 areas where London has expressed a preference for greater centralised control.
- This may provoke conflict with the Scottish Government in particular



SEAFOOD

- UK exports most of what we catch and import most of what we eat
- 80% UK fish (by value) exported to EU. Imports are mostly from outside of EU
- This means an imbalance in negotiating leverage: EU can significantly damage UK's fish exports, UK unable to do same to EU's fish exports.
- Michel Barnier has been clear that if EU vessels lose access to UK waters, UK exporters will lose access to EU markets
- Outside the Customs Union the UK could liberalise access to fish imports from other countries



LAW

- All EU laws will be transferred from EU to UK statute book and then gradually amended or repealed
- It could take around 20 years to unpick all EU legislation from UK law
- Total Allowable Catch and quota for shared stocks will continue to be negotiated annually, as they currently are with non-CFP members
- It will take many years to reduce EU vessel access to UK waters – it may not be possible to reduce EU access at all
- Abolishing 'flagships' and introducing nationality requirements for vessel ownership is unlikely
- Quota holding is a quasi property right and any attempt to withdraw it will likely require compensation
- Options for fairer quota allocation include replacing 'Relative Stability' with geographically based 'Zonal Attachment' (not currently operating within the CFP)
- An effort based system (like 'Days at Sea') is considered less likely given EU/EEA preferences for quota based systems
- Relative Stability will remain in place throughout the transition period
- Neighbourhood or 'voisinage' agreements (0-6 miles) and the London Convention (6-12 miles) have both been superseded by CFP and UNCLOS
- London Convention therefore unlikely to be of use to UK
- Voisinage agreements will need to be continued, but will be negotiated between UK and EU as a whole, whereas currently negotiated between UK with each member state bilaterally

PROFILES OF SPEAKERS



CHARLES GRANT
CENTRE FOR EUROPEAN REFORM

Charles is widely considered to be one of the best-informed commentators on Brexit in the UK. He was a founder of the Centre for European Reform (CER), a think tank, in 1996 and in January 1998 he left The Economist to become the CER's first director. He is the author of numerous CER publications, including Russia, China and global governance (2012) and How to build a modern European Union (2013).

Charles joined Euromoney, the financial magazine, in London in 1981. He moved to The Economist in 1986, where he wrote about the City. In 1989 The Economist posted Charles to Brussels, to cover the European Community.

In 1993 Charles returned to The Economist's London office, soon becoming defence editor. His biography of Commission President Jacques Delors (Delors: Inside the House that Jacques Built) appeared in 1994.

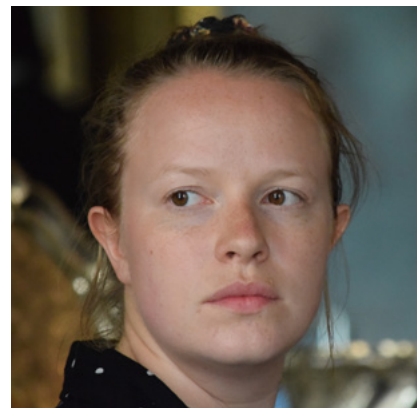


SAM LOWE
CENTRE FOR EUROPEAN REFORM

Sam Lowe is a research fellow at the Centre for European Reform. He works on trade issues, with a focus on Brexit, customs and regulatory barriers. Prior to joining the CER, he led work on trade, Brexit and environmental issues for Friends of the Earth and is a co-founder of the UK Trade Forum.

He is a visiting research fellow at The Policy Institute, King's College London, and holds an MA in Conflict, Governance and International Development from the University of East Anglia.

Sam comments regularly on trade issues in the print and broadcast media, including the Financial Times, The Times, The Guardian and BBC Newsnight. He has given oral evidence to UK Parliament's Brexit, International Trade and Environmental Audit select committees and the European Parliament's trade committee.



MADDY THIMONT JACK
INSTITUTE FOR GOVERNMENT

Maddy Thimont Jack specialises on devolution at the Institute for Government, a think tank that works to make government more effective. As part of the Brexit team she has continued to work on the implications of Brexit for devolution, as well as the role of Parliament in the Brexit process.

She is the lead author of the recent IfG publication Devolution after Brexit: Managing the environment, agriculture and fisheries.



ANDREW OLIVER
ANDREW JACKSON SOLICITORS

Andrew is a Hull based solicitor and is a recognised expert in the field of commercial fisheries both nationally and internationally. He acts for vessel owners in the sale, purchase and financing of vessels, licences, fishing quota and fishing effort.

Andrew also acts for UK, European and International banks in connection with the funding of the purchase of vessels and licences. He regularly represents owners and skippers in connection with the breaches of fisheries legislation as well as in breaches of merchant shipping rules.

Andrew advises on marine environmental matters including pollution, environmental protection and marine spatial planning. He is also an expert in connection with Fisheries and Regulating Orders, the Marine Coastal Access Act 2009 and Marine Consenting procedures.



ANDREW KUYK
UK SEAFOOD INDUSTRY ALLIANCE

Andrew is Director General of the Provision Trade Federation (PTF), a leading UK food trade association, where he also heads fisheries work on behalf of the UK Seafood Industry Alliance. Andrew is the UK Board member of AIPCE-CEP, the European Fish Processors and Traders Association, and chairs Working Group 2 (Markets and Trade) of the EU Market Advisory Council (MAC).

Andrew has extensive experience of EU affairs during a lengthy UK Civil Service career dealing with a range of food, farming, fisheries, trade and environmental issues, including diplomatic postings in Brussels and Paris. He was First Secretary (Fisheries) in the UK Permanent Representation to the EU at the time of the original Common Fisheries Policy negotiations. Prior to his current role, Andrew was Director of Sustainability at the Food and Drink Federation.



RICHARD BARNES
UNIVERSITY OF HULL

Professor Barnes is an internationally-recognised expert in international law and law of the sea. He has been invited to give advice to government bodies in the UK and overseas, NGOs and the private sector on a wide range of marine law matters.

His views on current issues, such as Brexit and fisheries law, have been sought by international media, including the BBC, the Wall Street Journal and the New York Times.

Professor Barnes has given papers at leading universities and institutions, such as the Lincoln Institute (Cambridge, US), BIICL, and the Stockholm Resilience Centre.

A POLITICAL UPDATE ON BREXIT NEGOTIATIONS

Charles Grant of the Centre for European Reform delivered a factual update on the Brexit negotiations so far, and his political assessment of them. The following summarises his remarks and in some cases expands upon his themes and adds a further range of perspectives.



The first point Charles made is that very few people in either London or Brussels are talking about fish. This is partly because fishing represents well under 0.5% of the UK's GDP, and the issue has so far been eclipsed by broader economic concerns.

Nevertheless, some officials and commentators have proposed fisheries as a 'card to play' in the negotiations, in the sense that the UK has something the EU wants: access to British waters and fish stocks. **While the EU wants access to UK fish, the UK wants access to EU markets** – which somewhat neuters the UK's leverage. Second – and more bluntly – **the fisheries card would almost certainly not be deployed to win greater concessions for the UK fishing industry**, still less to coax or force the EU into accepting the UK negotiating position.

Rather, it is a card that would be traded for something the UK government considered to be more valuable.

In general, the negotiations are following a familiar pattern, which is that the EU takes a strong position, the UK firmly resists it, and then at the last minute the UK concedes. Fisheries are a case in point: Environment Secretary Michael Gove promised the industry that the UK would depart the Common Fisheries Policy (CFP) on Brexit day in March 2019, even though the EU guidelines have been clear for many months that a standstill transition would require the UK to remain in all existing instruments (but without voting rights). Gove duly raised the hopes of UK fishers and their supporters, only to disappoint them when the government conceded that we would adhere to the CFP in full until the end of the transition.

Some commentators, including Charles Grant, believe that the EU must be careful not to push the UK too hard. **The EU must, in Charles Grant's words, avoid a "Versailles Brexit", in which the stronger negotiating partner humiliates the weaker.** This would not provide the positive basis needed for building a close partnership between the EU and UK in the future.

But few EU Member States share this view and most believe that the UK should be treated robustly. Grant identifies both 'high principle' and 'low politics' in the EU's approach. France and Germany, in particular, firmly believe that the **EU must safeguard its principles**, which means that the UK cannot cherry-pick the elements of the EU that it likes. But Grant and others also detect an **appetite for 'punishment'**, whereby the EU does not want the UK to fail, but does not want it to flourish either. This is not for vindictive reasons per se, but to ensure that other member states do not see a country doing better outside the EU than inside. In any event, the EU, like the UK, is driven by politics more than economics, and many in Brussels are prepared to take an economic hit in order to stop the UK having its cake and eating it. **In terms of the immediate future, both the UK and the EU are misleading people about the transition.** That is, both sides have stated that the transition will end on 31 December 2020 (the UK initially wanted March 2021), but in reality it will have to continue for much longer than that. Alternatively, it will end and a lengthy 'implementation' period will then begin, in which we will still adhere to EU rules and regulations while the final deal is being agreed. The reasons for this are clear: even the EU's basic free trade agreements (FTAs) have taken around five years to conclude, and the UK's new customs and immigration infrastructure will in any event take at least that long to implement. The UK denies this because it wants to avoid upsetting Brexiters who want out as soon as possible; the EU, meanwhile, wishes to pretend that it can begin a new multi-annual financial framework in 2021 without any UK involvement.

In terms of the final deal, Grant rules out 'extreme outcomes'. That is, **we are very unlikely to remain in the EU, or to crash out with no deal at all.** That effectively limits us to either a 'Norway' solution (in the single market but out of the customs union), or a 'Norway-plus' (in both the single market and the customs union), or a more separate relationship via a 'Canada'-style free trade deal, which would see the UK outside of both the EU single market and customs union.

If the UK sticks to its current red lines (in particular, ending free movement of people, leaving the jurisdiction of the European Court of Justice (ECJ) and having the freedom to diverge from EU rules) **then the only option is a Canada-style deal**, which would likely preserve tariff-free trade in all goods but impose significant restrictions on services – in particular financial services. The EU will also ensure it has mechanisms to sanction the UK if it undercuts the EU on, for example, environmental standards or state aid. Both sides may seek to add a security agreement to the deal.

Some key uncertainties remain. In particular, the Irish government is pressing the EU to hold the UK firmly to its commitment not to necessitate a hard border. As Grant notes, **the UK demands three outcomes: no hard border, no border in the Irish Sea, and a customs union exit – but only two of those are possible.** A majority of commentators (and most people in Brussels) therefore believe that the whole of the UK will have to remain in a customs union with the EU after the transition. This could spell political turmoil in the UK, with potential for Cabinet resignations (unless the situation can be fudged yet again).

MORE THAN JUST TARIFFS : EXPORTING TO THE EU AFTER BREXIT

Sam Lowe of the Centre for European Reform presented an analysis of the Brexit negotiations and what it might mean for fishing.



Sam Lowe opened with the observation that in the UK we export the majority of the fish we catch and import the majority of the fish we eat. It is vital, therefore, that the UK fishing industry retains as tariff and regulation-free access as possible to the EU market, both for British catches and British-processed fish. This will especially be the case if companies cannot persuade more British people to buy domestic fish. **The UK fishing industry consequently has more priorities than simply quota allocations.**

Because exports are so vital, the final Brexit outcome is key. Given the economic and political damage of a no-deal scenario, we must assume that at the bare minimum, the UK and EU agree a **Canada-style FTA**. **In this scenario, direct tariffs are not a problem.** CETA (the Canada-EU deal) has eliminated tariffs on the vast majority of fish trade between the UK and EU, while other tariffs will be gradually phased out. **The EU has in addition already proposed that a UK-EU agreement could provide for zero tariffs**

on all agricultural and fish produce (a rarity in FTAs, where many of these products are still protected).

Nevertheless, the elimination of tariffs does not mean that tariffs cease to be a problem altogether. If the UK government succeeds in its endeavour to leave the customs union (thus freeing up the possibility of tariff-based trade deals with third countries), the fishing industry will face a new problem of rules of origin. Any trade deal has to include rules-of-origin requirements to ensure that the goods being traded really do come from the agreement's member states. If the UK and EU had no such requirements, a third country which had an agreement with the EU but not the UK could divert its UK-bound goods via the EU, thus avoiding UK tax. In terms of fisheries, fish caught and landed in the UK would be relatively easy to prove as originating here; a company would only require a form costing around £30. But processed products would face a more complicated process: Given that processing companies frequently import their fish,

they may find themselves unable to re-export it if those goods were considered insufficiently British. This could represent a significant barrier to trade.

An even more challenging problem would be the UK's exit from the single market. (As with the customs union, the Irish border issue may ultimately ensure that we remain in a single market for goods, which obviates the following problems, but at the moment this remains uncertain.) Withdrawal from the single market creates additional barriers to trade - not with tariffs, but regulations and hygiene checks.

All animal products entering the single market (that is, the EEA, which includes Norway, Iceland and Liechtenstein) **can only pass through specific border inspection posts (BIPs)**. Calais and Eurotunnel currently have no BIP facilities. Dunkerque currently only has capacity for 15 checks per day. Fish could be re-routed to Rotterdam, but that would add considerable expense and the port is currently operating at capacity.

The difficulty is not even that all fish products will need be checked; New Zealand and Canada, for example, have agreements with the EU that lead to fewer inspections. Rather, it is the case that fish products will have to pass through border inspection posts along with other imported goods. Given that many of these other products will also face entirely new checks on arrival at the EU border, **perishable goods such as fresh fish will likely get stuck in inspection tailbacks** even if they themselves are not checked. This will pose a considerable challenge to UK seafood exporters who need to deliver their products as speedily and freshly as possible.¹

No significant physical, human or IT infrastructure preparations have yet begun on the UK side, despite it being the UK's policy since January 2017 to leave the single market and customs union. Nor has new infrastructure yet been built on the continent to receive UK fish exports through additional or expanded border inspection posts.

Given these uncertainties, despite the unpopularity of the transition period amongst the fishing industry, **the 21 months of stability and continuity after Brexit day that the transition guarantees is in fact essential for the UK fishing industry** if the UK and EU are to put the requisite infrastructure in place to ensure economically damaging transit delays are minimised.

The alternative to a transition, meanwhile, is no deal at all, which would impose overnight tariff and non-tariff barriers on UK fish exports (and imports), causing considerable financial damage to the industry. Some fishing industry advocates should keep this economic reality in mind before encouraging the UK Government to walk away with no deal.

A Norway-plus arrangement, which offered an EEA-type relationship with an added fisheries agreement and customs union, would put the UK outside the CFP but would likely keep Britain's fish trading rules roughly as they are now.

¹ See, for example: Lisa O'Carroll, 'Calais after Brexit 'could be 10 times worse than Irish border', Guardian, 9 March 2018: <https://www.theguardian.com/world/2018/mar/08/customs-checks-will-cause-huge-tailbacks-warns-calais-port-boss>

DEVOLUTION AND FISHERIES AFTER BREXIT

Maddy Thimont Jack of the Institute for Government explored the current devolution settlement, and specifically how fisheries might be affected by current and future disputes between the UK government and devolved administrations.



The devolved administrations were established in the UK around 20 years ago. While the levels of devolution differ between Scotland, Wales and Northern Ireland all three nations, control their own fisheries policies, while the UK Government controls that of England. Of course, for as long as devolution has existed, we have also been a member of the EU, which has meant a limited capacity for divergence between the constituent parts of the UK. One of the purposes of the single market, for instance, is ensuring harmonisation and the ease of doing business throughout the EU. Now, supposing the UK leaves the CFP (and indeed the single market), there must be a UK framework to replace the EU one.

According to the government, the **EU currently has competence over 153 policy areas which are devolved.**² After Brexit, these powers could all be transferred immediately to the devolved

administrations. This could bring certain advantages, such as genuinely localised and tailored policy-making. Nevertheless, it could also bring the four nations into direct competition with one another, and also risk the possibility of under-cutting on regulations and a general race to the bottom. It could also effectively impose internal barriers and compromise the ability of businesses to trade easily inside the UK, particularly if they must follow different regulatory frameworks.

When these powers return to the UK, it appears that only a limited number of the 153 policy areas will require legislative action in Westminster: **The UK Government's analysis suggests that legislation will be necessary for 24 of them.**

82 will require looser political commitments (such as memoranda of understanding), while the remaining 49 can return directly to the devolved capitals. However this is all still up for discussion with the devolved administrations. **The government has deemed 'fisheries management and support' to be one of the 24 areas requiring a centralised approach. This may provoke additional conflict with the Scottish government,** which is keen to protect, promote and where it sees fit, diverge on fishing. **60% of UK fishing waters belong to Scotland,** and fishing plays a proportionally larger role in the Scottish economy, and 'way of life', than the UK as a whole – which explains the concerted criticism of Scottish Conservative MPs over the UK's fisheries concession for the Brexit transition.

It is already the case that the four nations occasionally diverge on fishing, specifically with regards to vessel licensing and quota allocations. The 2012 Concordat on fishing between the UK nations has resolved some of the difficulties, but tensions over quota allocations point to potential future difficulties. This centres on the policies for distributing quotas. **In January 2014, the Scottish government notified the other governments that it would no longer permit the distribution of its share of the UK quota to other administrations.** The other three nations moved to retaliate in 2016 by suspending sales of their quotas to Scottish vessels – although this revision to the Concordat has not been formally adopted. **This issue is still unresolved and raises the issue that there may be limited legal remedy (or enforcement mechanisms) in future disputes, and those disputes,** could also create far more divergence – and tension – between the UK's constituent nations.

For the time being, the Scottish and UK governments are still disputing the mechanisms for repatriating competences. Edinburgh has argued that all devolved policy areas should come under its supervision immediately. Nicola Sturgeon has suggested that otherwise, the UK government could, for example,

lower its environmental standards without Scotland's consent.³ **The governments do, on the other hand, agree about the basis of a UK single market with certain harmonised regulations.** The delay of the UK government's fisheries white paper has perhaps not helped to build confidence or allay uncertainty. Northern Irish fishers, in addition, continue to suffer from the lack of a government in Belfast and therefore a lack of meaningful advocacy.

Although the Welsh Government has reached agreement with the UK Government over the EU Withdrawal Bill, the Scottish Parliament has refused consent. As we await the Supreme Court's judgement on Scotland's 'continuity bill', the row between the two governments is intensifying. This dispute does not bode well for future inter-governmental relationships.

² UK Government, 'UK government publishes analysis on returning EU powers', 9 March 2018: <https://www.gov.uk/government/news/uk-government-publishes-analysis-on-returning-eu-powers>

THE PRACTICALITIES OF IMPLEMENTING NEW UK FISHERIES LAWS AFTER BREXIT

Andrew Oliver from Andrew Jackson solicitors in Hull offered his assessment on Brexit's domestic legal implications for fishing.



The most pressing concern in the Brexit debate on fisheries is to divorce pragmatic realities from what Andrew Oliver terms the 'emotional issue of sovereignty that fisheries creates'. Fishing is seen by many as a 'romantic' pursuit that benefits the nation's idea of itself and its traditions, rather than a going economic concern that affects thousands of livelihoods. Certainly, the issue was hijacked, in Oliver's view, by many on the Brexit side who understood its emotional appeal. Some commentators have observed that fishermen were sold down the river on entering the EU and look set to be sold down it again on leaving.

Much of the UK's fishing law depends on international law, in particular the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This permits states to declare a 200-nautical mile Exclusive Economic Zone (EEZ) around their territories – although notably the UK's EEZ was only formalised in the 2009 Marine and Coastal Access Act.

The EEZ begins 12 miles from the shore; between that 12-mile point and the coast the UK has total control over its waters.

Articles 61–63 of **UNCLOS** are especially relevant. Article 62 focuses on the utilisation of living resources, and **specifically compels states to "give other States access to the surplus of the allowable catch"**. Notably, **states can take into account the effect of fishing on their economy and "other national interests", and to protect their domestic fishing communities**. Arguably UNCLOS thus limits the UK's fishing autonomy post-Brexit while also allowing it to protect its waters and fishing heritage. Oliver concludes that UNCLOS is not the 'big stick' that some UK fishers imagine.

In the UK sphere, fishing is principally governed by the Fisheries Act 1981. Section 30 links it directly to the EU and provides for the domestic enforcement of 'enforceable Community restrictions' – which itself refers to the 1972 European Communities Act (ECA) that provided for our EEC (subsequently EU) membership. Breaches of EU fisheries law (such as landing undersized fish) are therefore prosecuted as matters of UK law in domestic courts. With the repeal of the ECA, then – which is the intended result of the government's Withdrawal Bill – no EU fisheries law will technically be applicable or enforceable any longer.

In reality, of course, the truth is somewhat different. **The Withdrawal Bill effectively replaces the ECA so all EU laws will be transferred onto the UK statute book, to be repealed or amended as Parliament (or in some cases ministers) sees fit, over the period of a few years.** Some popular EU laws – perhaps the ban on fishing discards – could well be retained. The Withdrawal Bill will also enable the government to retain and enforce laws following on from a UK-EU agreement which requires them.

Oliver sees the problem not in theory but practice; the civil service lacks resources, and after 45 years of EU membership, has no experience of making laws currently under EU competence. He estimates **that it could take around 20 years to unpick all EU legislation. It thus seems likely that EU fisheries laws will only be amended very slowly, if at all.** In the meantime, the CFP will continue for the duration of the post-Brexit transition period. The UK will duly be consulted on the 2020 quotas at the December 2019 fisheries meeting, although debate continues regarding how meaningful that consultation will be.

Following the transition, it is possible that the UK will be free to interpret the EU laws now transposed onto the domestic statute book, without recourse to the ECJ. Certainly courts will be free to consult ECJ judgements, but there could be a divergence on interpretation. **Fisheries arrangements will have to form part of the final Brexit deal, so it can be made clear how EU vessels will negotiate access to UK waters and vice versa.** All negotiations must in any event take place under the aegis of UNCLOS. **Although the total allowable catches (TACs) and quotas for shared stocks will be negotiated annually** – as they are currently with non-CFP members Iceland and Norway – **it could take many years to reduce EU access to UK waters. Indeed, it may not be possible to reduce EU access at all.**

Expect a lively debate on whether the UK and EU should conduct negotiations on the basis of 'relative stability', or move to an alternative assessment method. (Relative stability is based largely on historic catches, and is widely unpopular with UK fishermen who, with good evidence, feel that the UK Government struck a poor deal for its fishing industry when acceding to the EC in 1973).

A proposed alternative to relative stability is 'zonal attachment', assessed on the location of stocks. (This method is not without its own complications,

as many fish stocks grow, migrate and breed across multiple EEZs). **If the UK were to pursue zonal attachment that could also affect fisheries management within the UK, with new potential conflicts between the four nations adding to those conflicts related to our EU membership.**

A further post-Brexit debate may occur on the issue of 'flagships'. The 1988 Merchant Shipping Act was initially intended to tighten restrictions on the ownership of UK vessels, specifying UK registered vessels had to be 75% UK owned, but in the Factortame case the ECJ over-ruled the British government. **There has been some speculation that flagships could be abolished after Brexit and nationality requirements finally introduced, but Andrew Oliver considers this unlikely.** Quota-holding is a property right under the European Convention on Human Rights and its court, a Strasbourg body entirely unrelated to the EU, and to which the UK will remain a party after Brexit. **Any attempt to withdraw quota rights will necessitate compensation.** The UK government may be unwilling to pursue such a policy – although it could demand more UK economic links from the flagships' owners.

One final item to consider is a return to fishing regulations as they existed before the UK joined the EU. As the UK did not claim sovereignty over its 200 nautical mile EEZ until many years after it had joined the EC in 1973 it is something of a misnomer to argue that the UK should 'take back control' of its 200 NM EEZ upon leaving the EU.

The government has already informed partners of its intended withdrawal from the **1964 London Convention. In reality, the Convention has already been subsumed into the CFP and is of little use.** Negotiations on access for EU vessels in UK waters (and vice versa) are likelier to take place as a part of the broader EU/UK relationship, not unilaterally from the UK.

WHAT MIGHT NOT BE FREE OR FRICTIONLESS IN A FREE TRADE AGREEMENT?

Andrew Kuyk of the UK Seafood Industry Alliance offered his thoughts on the impact of Brexit on fish processors.



Andrew Kuyk's central focus was on seafood as a consumer product, as sold in a shop or served in a restaurant.

The UK is a large deficit market for fish, as is the EU overall. We import, for example, 90% of our cod from outside the EU. It is vital, therefore, that irrespective of the vessels doing the fishing, existing trade and supply chains are maintained. This is partly because of pressure on the industry's market share: consumers are no longer seeking fish specifically but increasingly shop for convenient items or 'meal solutions', placing fish in direct competition with chicken, red meat and vegetable proteins. Fish must therefore remain competitive and attractive, for the sake of processors and fishers alike.

The key problem for the UK fishing and processing industry is what Andrew Kuyk terms the 'supply paradox': we export most of what we catch and import most of what we eat.

This is partly because of a 'species mismatch', whereby plentiful UK fish such as herring can only find significant markets (and superior prices) abroad. **80% of UK-caught fish is exported, mostly to the EU. Imports, conversely, originate mostly from outside the EU.** This creates asymmetric trade, in which a simple like-for-like import-export deal will prove inadequate. Arguably it also hands the EU even more leverage, as it has the capacity to damage the UK's export flows but the UK cannot do the same to EU fish exports.

Tariffs are not a big issue for fish trade as they are mostly quite low, and the expectation remains that tariff-free trade would continue under an FTA. Tariff-rate quotas should also be surmountable under the terms of a trade deal. **Far more serious are the non-tariff barriers that come from leaving the single market;** in addition to the issues outlined by Sam Lowe, exporters may have to issue notifications of shipments in advance, and ensure that they conform to EU rules on, for example, food labelling

and consumer information. Non-EU catches also require illegal, unreported and unregulated (IUU) certificates, which could place an additional burden on exporters.

European Commission negotiator Michel Barnier has already made it clear that if EU vessels lose access to UK fish, UK fish will lose access to EU markets. Indeed, it seems likely that the EU will refuse to sign any Brexit deal which reduces their access to UK waters. Despite the best efforts of the industry, ultimately fishing may still prove to be a bargaining chip.

New trade opportunities outside the EU are limited. Even if the UK were to increase catches and sustainability, it would be unlikely to be able to create a domestic market much beyond that which already exists. The UK could try to increase the amount of fish it processes, but that would require significant investment, and would also depend on current trade remaining free and frictionless. **Outside the customs union, however, the UK could liberalise access for fish from third countries,** and potentially alter the non-tariff conditions of that trade.

Ultimately the question of seafood trade will be answered by politics and goodwill, with a mutual pragmatism required to enable business to continue to trade on current terms. Unlike fishing, which is necessarily centred on location, processing can occur anywhere – and if the trade conditions are not favourable, there is no reason why it should take place in the UK rather than another jurisdiction. Britain's processing industry also requires a stream of labour. Many of the 14,000 people it currently employs are non-UK EU citizens. If the government clamps down on EU migration or EU citizens decide to leave, the industry could find itself exposed to labour shortages.

APPLYING INTERNATIONAL, EU AND UK FISHERIES LAW TO BREXIT

Prof Richard Barnes of the University of Hull considered Brexit's international legal dimensions in the context of fisheries.



Brexit offers both opportunities and challenges for fishing. The first key opportunity lies in **the possibility of a future tailored fisheries management regime after leaving the CFP**, which has, with good reason, often been described as unwieldy, overly centralised, complex and slow to adapt. The UK could, in theory, develop a leaner and nimbler system – but details are currently thin, and there are no guarantees it would in fact prove superior to the CFP. Many of the challenges of adapting to complex natural systems and ensuring compliance will remain.

The second key opportunity arises from **improvements to allocations of quotas**—echoing Theresa May's demand for a "fairer allocation of fishing opportunities" in her March 2018 Mansion House speech.⁴ **Allocation of UK quota has always been in the UK's own national gift.** This, ultimately, remains a political question. It is possible that where stocks are mostly in UK waters, allocations can be improved for UK fleets. Shared stocks on the other hand will depend on an ongoing system of

cooperation and negotiation, which is politicised and frequently relies on bargaining. Moving to allocations based upon zonal attachment is possible, but this is not supported by the CFP and would have to be determined and negotiated with other States/EU.

The third opportunity is innovative management options, including rights-based systems and effort-based systems or days at sea. Barnes concludes, that the latter are unlikely for shared stocks, given the EU and Norway's favouring of a quota-based system. Moreover, these alternative systems have appeared less successful than hoped when attempted elsewhere.

Barnes considers a lack of a common approach across the UK fishing sector to be a key challenge. He identifies the need for 'clear allocation principles' as a necessary first stage to precede what will be complex intra-UK discussions.

There are three limbs to quota allocation: between states, between sectors, and within sectors.

The key Brexit challenge is in inter-state allocation. While there is no international obligation to set quotas at all (UNCLOS establishes it as a discretionary tool), quotas are generally preferred. This also requires mechanisms within a state to distribute them. Given that changes to allocation frequently result in conflict (and legal action), and that states are also obliged under international law to cooperate on quotas and access to resources, **the potential for post-Brexit disharmony between the UK and EU is significant.** The key focus of divergence may come from the rival frameworks of zonal attachment and relative stability.

Relative stability governs the EU's overall fishing framework. Importantly, it is an inter-state mechanism, so individual fishers do not derive rights from it. **As part of the EU acquis, relative stability will necessarily form part of the Brexit transition.** Whether it continues into the post-transition EU/UK relationship remains to be negotiated.

Zonal attachment is based on the quantity of stocks in a state's waters, and the length of time spent there, and consequently depends more on scientific data. It also depends on the human geography of states, which ignores the ways in which fish stocks migrate, and fluctuate in number. It is highly susceptible to changes in the distribution of stocks as a result of climate change and pressure on stocks from fishing. Norway and the EU had a dispute in the 1980s after herring stock migrated in significant numbers to Norway, but the EU offered Norway quota based on the herring's previous location: the figure was consequently too low.

Other criteria can also be used in determining quotas, such as the 'conservation credits' currently used in Scotland. **International law offers no clear guidance, so the UK and EU will have to negotiate this politically, without legal recourse.**

The UK and EU fundamentally require a shared framework to resolve questions of access to replace the role currently provided by the European Court of Justice. For example, under Article 62 of UNCLOS, in the event of a surplus of stock, a state is compelled to "give other States access to the surplus of the allowable catch". In such an event the UK might seek to develop its fleet capacity in order to catch more of the Total Allowable Catch (TAC), though this is understandably difficult within a short time frame. Alternatively, the UK could set the TAC at the maximum level it is able to exploit, which would be met with resistance from Brussels and complaints of bad faith. The most likely outcome is that the UK, under Article 62, would sell access to the surplus stocks on commercial terms.

Barnes identifies further friction points as emerging from territorial zones, in particular **the 6-12 mile limit covered formerly by the London Convention, and the bilateral neighbourhood or 'voisinage' agreements that govern fishing between 0-6 miles** – particularly important in the case of Ireland and Northern Ireland. **Although both sets of agreements pre-date the CFP, the CFP has accommodated them, and UNCLOS has also superseded some of their provisions.** The London Convention, therefore, is unlikely to be of use to the government as a fall-back option even if it ultimately decides not to withdraw from it. Perhaps more important will be the need to continue the voisinage agreements or replacement bilateral fisheries access arrangements. As a third country the UK will instead have to negotiate neighbourhood agreements with the EU as a whole. **In any event, the UK is likely to take more than 10 years, in Barnes's opinion, to fully unpick itself from the CFP and become an 'independent' coastal state.**

⁴ UK Government, 'PM speech on our future economic partnership with the European Union', 2 March 2018: <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union>

CONCLUSION

As John Goodlad noted, in concluding on behalf of Fishmongers' Hall, UK fishermen are looking for quota while UK processors are looking for market access. They both, however, belong to the fishing industry and the government must try to look after the needs of both.

It is possible to achieve this, for example by entering into a Norway-plus style agreement that allows fishermen to leave the CFP, but still preserves barrier-free access to EU markets.

It seems the UK fishing industry must also prepare for the likelihood that EU fishermen's access to UK waters is unlikely to decline in the short or even long term, even if the rules that govern their access and management do change.

This report is a summary of the speeches presented at a seminar at Fishmongers' Hall, London, April 23 2018. It was written by the Blue Marine Foundation, with Jonathan Lis.

The opinions expressed in this report are those of the speakers, not of the Blue Marine Foundation, Fishmongers' Hall nor any of our partner organisations.

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