

Brexit & Fisheries Briefing - Coastal Futures 2017

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Background to the conference session

The session conference had presentations from Dale Rodmell, Helen McLachlan, Gordon Friend, Daniel Owen and chaired by Jerry Percy. They have had input to this briefing; Daniel Owen's input to this document is limited to the 'Legal framework' section. The aim of this session was to brief the audience on potential effects and opportunities of Brexit for fisheries, and facilitate their input. This document provides a summary of key points from the session briefing, session presentations, discussion and conference feedback from delegates, together with links to other documents for further details.

The Coastal Futures conference session presentations can be found at <http://coastal-futures.net/archive>.

Introduction & Background:

- The fisheries sector is important to the UK: the seafood sector employs 35,000 people; the fisheries sector contributes £1.3 billion to the UK economy (0.08% of GDP); and the processing sector contributes £0.7 billion. 58% of the catch from UK waters is taken by other EU states (<https://www.nafc.uhi.ac.uk/research/statistics/eez-landings/landings-uk-eez>).
- Fisheries and the Common Fisheries Policy (CFP) were iconic issues in the referendum. Leaving the EU opens up the possibility of the UK subsequently leaving the CFP, raising a range of questions on the legal framework, policy objectives, governance and regulation of fisheries.
- Prior to the Coastal Futures session taking place, the House of Lords EU Energy and Environment Sub-Committee published its report on Brexit and Fisheries, which provides a lot of useful information and expert opinion: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/news-parliament-2015/brexit-fish-rpt/>

Policy objectives:

- The Minister has said Brexit is an opportunity to review fisheries management. UK was involved in the CFP reform and remains committed to implementing the discard ban. Contributors felt that the positive aspects of the CFP should be maintained in UK policy/legislation (MSY objective, landings obligation), and care needs to be taken not to water down sustainability commitments, to ensure the UK is established as a world leader in sustainable fisheries.
- There are various high-level objectives that the UK subscribes to, which could provide guidance for UK policy objectives in fisheries, e.g. UNCLOS; Sustainable Development Goals; the Defra vision of clean, healthy, safe, productive and biologically diverse oceans and seas; natural capital; and ecosystem approach principles. Specific to fisheries, management should be underpinned by science; potential for considering multi-species assessments.
- Fisheries policy objectives also need to be considered in relation to Defra's 25-year plans for food and farming (including fisheries) and for the natural environment.

Legal framework:

- Daniel Owen (Fenners Chambers) provided a 5-minute high-level overview of EU law, UK law and UNCLOS in relation to fisheries.

- EU law: The EU law comprising the CFP is almost entirely in the form of EU Regulations. These are 'directly applicable' to the UK and so, as a general rule, their provisions are not on the UK's statute book. So any saving of their effect by the Great Repeal Bill, pending the establishment of a home-grown fisheries policy, would entail importing that effect into UK law from EU law. There are technical and political complexities regarding precisely what effect is imported.
- UK law: The legal framework for UK home-grown policies commonly consists of Acts of Parliament (APs) and statutory instruments (SIs). For fisheries, some APs and SIs already exist. So, for establishing a home-grown fisheries policy, the question is where the balance should lie between using these as a basis and starting drafting from scratch. In any event, a fisheries policy would need to cover, amongst other things: research; data; fisheries conservation; environmental protection; and enforcement.
- UNCLOS: The UK is a party to UNCLOS. When the UK leaves the EU, the UK will have the rights and obligations of a coastal state under UNCLOS. Regarding fisheries conservation and management in the EEZ, some key UNCLOS provisions include:
 - Articles 61–62 (general):
 - Article 61 provides a broad discretion to coastal states in determining the allowable catch and in setting population targets relative to MSY. But coastal states must ensure that the maintenance of living resources is 'not endangered by over-exploitation';
 - Article 62 relates to 'surplus', i.e. where the coastal state's catching capacity (there is also discretion in how this is established) is not sufficient to harvest the entire allowable catch. If a surplus exists, there is a duty to provide other states with access to it. The coastal state can charge a fee for this access. The access is subject to the coastal state's (UNCLOS-consistent) fisheries conservation and management regime.
 - Articles 63–67 (specific stock types or species):
 - Article 63(1) relates to stocks shared between EEZs, and places an obligation on coastal states to seek to agree upon the measures necessary to coordinate and ensure conservation and development of these stocks. The International Tribunal for the Law of the Sea (ITLOS), in Case No.21, has recently interpreted this obligation.
- Dispute resolution is covered in Part XV of UNCLOS. A party to UNCLOS can be taken to an international court or tribunal by another party. But there is an important exception in relation to fisheries in the EEZ: for details see Article 297(3)(a). Where that exception applies, conciliation (although not entailing binding decisions) is still available: for details see Article 297(3)(b).

UK and devolved administrations:

- Fisheries is a devolved issue: input of the devolved administrations will be important in determining the overall UK position on the future relationship with the EU and CFP.
- Devolved nature of UK fisheries means there is the potential for differences in policy and approach within the UK after Brexit.

Access to waters:

- Equal access to UK waters will lapse when the UK leaves the CFP. Industry want a balanced and proportionate approach to access, maintaining UK access to Norwegian and Irish waters. Contributors suggested the potential to include other requirements for access e.g. in relation to environmental criteria.
- Historical rights in the 6-12nm zone predate the CFP and were originally agreed under the London Convention, and subsequently incorporated into the CFP. The House of Lords report and transcripts (see link above) includes information on this, in particular inputs from R. Churchill and R. Barnes.

- The future of ‘quota-hopping’ vessels (foreign-owned, UK-flagged vessels that access UK quota) needs to be considered. If this continues, there should be a transparent process establishing and assessing the economic link, and it should be clear that the benefits that accrue to the UK do so at the right level.

Quota distribution:

- Under the CFP, quotas are distributed among Member States according to Relative Stability (based on historical reported landings). Under UNCLOS, national shares should reflect the resources located in the EEZ. Industry want the UK’s quota share to reflect the resource in our waters. A document from the European Parliament setting out its priorities for fisheries indicate that changes to access to waters and the division of quota will be a key issues in the negotiations (<http://nffo.org.uk/news/the-european-parliament-and-the-future-of-fisheries.html>).
- Distribution of quota among UK fleet is a national issue, either within or outside of the CFP. Many feel that Brexit offers an opportunity to reconsider and address such national issues as: priority between commercial and recreational fisheries; access to sufficient quota for inshore boats; use of environmental sustainability criteria in allocating quota among fleet segments/vessels.

Fisheries management framework and technical measures/regulations:

- Shared management of stocks will continue to be required for the majority of the 93 species managed under Total Allowable Catches. It will be important to ensure that shared management works, and sustainable targets for F are upheld.
- Potential for national management arrangements to be more tailored to the UK context and responsive, with results-based approaches allowing decisions to be taken in the wheel house (see also environmental aspects below).
- Effective monitoring, control and enforcement is important – ensure compliance, avoid illegal, unreported and unregulated fishing. This is important for the reputation of UK seafood, which in turn is important for supply chains.
- The change in management framework is likely to require re-assessment/re-scoring of the management principle for MSC-certified shared stocks.

Governance and institutions:

- Clear processes for engagement of stakeholders in the management process (and Brexit process) is needed, including the engagement of the wider public (outside of the fisheries sector).
- Opportunity to review the institutions involved in fisheries management within the UK (see below for international aspects) and their responsibilities and resources, potential for regulation to be further devolved to local level (e.g. to IFCAs in England), review of arrangements in devolved administrations.

International cooperation:

- The UK is committed to continued cooperation with other countries over the management of shared stocks. The need for cooperation was highlighted as a key recommendation in the House of Lords report (see link above).
- The UK will need to become a member of the North-East Atlantic Fisheries Commission, and negotiate quota shares with the EU.
- The UK will cease to be a voice in the Advisory Councils under the CFP; structures for capturing stakeholder input on shared fish stocks therefore need to be re-considered, this could involve UK, EU and Norway.
- Additional resources will be needed for the UK to participate in international negotiations and Regional Fisheries Management Organisations.
- ICES are likely to continue to have a key role in informing the scientific basis for management.

Environmental aspects:

- Potential changes in environmental regulations could also affect fisheries. The existing environmental safeguards established under EU legislation should be maintained. Key habitats need to be protected, the Essential Fish Habitat (EFH) approach of the US Magnuson-Stevens Act could be considered.
- Right to fish should be associated with the responsibility for achieving environmental and conservation targets. This could also include contribution by fishers to monitoring the marine environment.

Trade aspects:

- EU is an important trading partner. 67% of exports (by value) are to the EU, and 31% of imports.
- Tariff-free trade is an issue that has been raised as an important issue in Defra's consultations with stakeholders. Industry (NFFO) want an arrangement that provides access to EU markets.
- The UK will need to continue to meet EU requirements to be able to export to them. This may include EU phytosanitary standards, environmental protection standards, and illegal, unreported and unregulated (IUU) regulations.
- Brexit may provide an opportunity to consider the potential to improve the domestic market as an alternative to increasing carbon emissions from exporting to more distant markets.

Funding:

- Adequate financial support to the fisheries sector is needed, to manage the transition and structural change.
- Funding needs to be sufficient to support key management measures and enforcement.

Outcomes for coastal communities:

- Fishing has the potential to play a central role in the renaissance of the UK's coastal communities. Doing so will help provide a viable future for the UK's rich marine and coastal area and the industries and communities that depend upon it.