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# 'A sea of troubles': Brexit and the fisheries question

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## Abstract

Brexit poses a major challenge to the stability of European fisheries management. Until now, neighbouring EU Member States have shared the bounty of the living resources of the seas around Britain. Taking full responsibility for the regulation of fisheries within the UK's Exclusive Economic Zone will cut across longstanding relationships, potentially putting at risk recent recovery and future sustainability of shared fish stocks. The paper considers the meaning of Brexit in relation to fisheries and the issues that will need to be resolved in any rebalancing of fishing opportunities within the UK EEZ. It examines the longer term implications for the governance of fisheries and the likely restructuring of institutional and regulatory arrangements, emphasising the prior need for a shared vision and robust *modus operandi* for collaboration between the UK and EU to ensure the sustainability of resources, viability of fishing activity and the health of marine ecosystems.

Key words: Brexit; Governance; Common Fisheries Policy; Exclusive Economic Zone; Total Allowable Catch; Access; Future cooperation.

## 1. Introduction

Brexit poses a major challenge to the stability of European fisheries management, with potential to profoundly alter the political geography of fisheries and the governing systems that regulate fishing activity in west European waters. Until now neighbouring EU coastal states have shared 'equal access' to the bounty of the living resources of the seas around Britain. Membership of the EU and its Common Fisheries Policy (CFP) has assured a collective responsibility for those living resources. When the UK finally withdraws from the EU a very different situation will prevail: a new political boundary will be created and responsibility for managing those resources will be divided between the EU and the UK. As a result, 'taking back control' of the fisheries within the UK's Exclusive Economic Zone (EEZ)

will cut across longstanding relationships, potentially putting at risk the recent recovery and future sustainability of shared fish stocks and the slow but steady progress towards an integrated sea basin approach to the management of areas like the North Sea.

The UK's EU referendum outcome in June 2016 chimes with a long history of antipathy to the CFP shared by a significant but unknown proportion of active fishers in the UK and promulgated by a sequence of campaigning organisations viz Save Britain's Fish (1990-1996), Fishermen's Association Ltd, more commonly referred to as FAL (1996-2016) and latterly, Fishing for Leave (2016-). They now have high expectations of a Brexit dividend that will uplift fishing opportunities for the UK industry, overhaul numerous historic access agreements, and expunge memories of the CFP. In practice it is difficult to judge how far the catching sector exerted influence on the overall Brexit campaign and referendum outcome; it is a small constituency both nationally and regionally but resonating locally in certain parts of the remoter, rural fringes and coastal towns in Scotland, where it ran counter to the national Scottish trend; and in the SW peninsula of England where it was much more in tune with national/regional perspectives. It is unclear to what extent the catching sector's opinion was shared by post-harvest links in the value chain – merchants, processors and retailers - given that the UK is heavily reliant on imported fish/fish products and exports of high value catches into continental European markets.

Over a year on from the referendum and there remains uncertainty as to when and how negotiations on the fisheries question will unfold, let alone their likely outcomes. Whereas the UK government has stated its intentions for the Brexit negotiations as a whole – a clean Brexit without participation in the single market or the European Customs Union but with a benevolent trade agreement between the EU and UK, there is little indication of whether it will follow a similar 'hard' course in relation to fisheries or, with an eye to longer term concerns for resource sustainability, pursue a softer, more conciliatory approach.

By contrast, detailed plans for a post-Brexit future that realises the UK fishing industry's aspiration for significantly increased fishing opportunities are already being drawn up (Fishing for Leave, 2017) while European institutions are demonstrating their determination to protect existing access rights and quota entitlements for Europe's fishermen (Fishing News, 2017a). Despite the possibility that negotiations may resolve themselves into debate over who gets what and where, it is incumbent on the negotiators to remain focused on achieving a solution that guarantees long term sustainability for both the fish stocks and the marine ecosystems that nurture them.

In essence, the fisheries question is not solely a political issue. It is a highly complex legal and technical problem focusing on the management of, and access to, a range of important shared stocks that make up a significant proportion of the total catch in the seas around the UK. Shared (or transboundary) stocks are true European migrants, moving between different jurisdictions at different stages in their life cycles, which cannot therefore be said to belong exclusively to the waters in which as mature fish they are at greatest risk of capture.

There is, however, a danger that the negotiations will become politicised, either in the sense of pursuing a full 'nationalisation' of the living resources in the UK's EEZ or a repeat of the situation in the 1970s when UK fishing interests were allegedly sacrificed in achieving a more favourable settlement of the UK's accession to the European Community. This left a deep sense of grievance within the UK's catching sector over their small share of the Total Allowable Catches (TACs) relative to the extent of the UK EEZ.

Failure to reach a mutually acceptable solution to the fisheries question would have far reaching implications for the effective governance of fisheries in the seas that are to be shared between the UK, EU and other parties in the future. The aim of the paper is neither to offer a critique of the existing CFP nor to provide a detailed outline of future UK fishing policy but rather, at this early stage in the Brexit process, to identify key issues likely to occur at different phases in the process. To do this it is necessary first to sort out the limited available evidence as to the meaning of Brexit in relation to fisheries management and then describe the issues that will need to be resolved through negotiation. Finally, looking beyond these uncertainties, the paper will explore the broad steps needed to rebuild a well integrated regional approach to fisheries and marine environmental management for the seas around the UK, starting with a new domestic management regime for the UK fishing zone, bilateral management agreements with third parties for shared stocks and a new *modus operandi* for regional cooperation.

## **2. The fisheries question: the facts and issues surrounding Brexit**

### *2.1 Establishing the facts*

Already there is a fairly clear idea of what Brexit means in legal terms for the future conduct of fisheries in the seas around the UK and some understanding of the issues involved but no clear view as to *how* these issues will be resolved nor *where* in the schedule of Brexit negotiations the fisheries question will be located. The timing could be significant in determining whether the fisheries question will be dealt with as an entirely separate technical issue or become embroiled in the wider, more political debate. At what point in the overall Brexit negotiations will the issue of fisheries be raised? Early on after the withdrawal settlement is agreed? Or at some later stage in negotiations when the broad shape of the Brexit settlement is already visible? Or, as some in the UK catching sector have argued, only when the Brexit negotiations are concluded and the UK's independent jurisdiction over fisheries in the EEZ has become law? Nor is there indication as to whether the negotiating parties will seek a single, clean break or a phased implementation of the solution.

What is clear, is that the action of leaving the EU will immediately give effect to the UK (and its devolved administrations) taking full responsibility for all aspects of fishing activity and management within the sovereign national 200 mile EEZ according to UNCLOS III (1982) and independently of the EU's CFP. As a result, all fishing activity within the EEZ whether carried out by UK or non-UK vessels will be subject to UK regulations. A new UK Fisheries Bill, expected early in 2018, will set out the legal framework for controlling access to fisheries and fisheries management. To prevent a legal deficit, the UK is also repealing the European Communities Act 1972 and temporarily transferring all EU laws, including those relating to the CFP, into UK law, preparatory to later amendment to suit the new reality.

Analysis by Napier (2017) makes clear the extent to which fishing within UK waters favours non-UK fishing interests, providing an insight into the overall significance of the seas around Britain to the EU's fishing economy as a whole. In 2014 over two thirds (68%) of fish and shellfish by weight, and over half (54%) by value, landed from within the UK EEZ was taken by non-UK boats from the rest of the EU, Norway or the Faeroes. Belgium's fishing fleet relied most heavily on access to UK waters with almost half its total landings sourced therein, whereas the Netherlands, Germany, Denmark and Ireland each caught around one third or more of their total landings within the UK fishing zone (Napier, 2016).

By way of partial compensation, UK vessel landings of 92000t of fish and shellfish, worth £110 million, were taken annually in EU waters outside the UK EEZ; this represents about 14% of UK catch. Non-UK EU fishing boats therefore landed seven times more fish and shellfish by weight, and five times by value, from the UK EEZ, than UK boats caught from other areas of the EU EEZ (Napier, 2017).

## 2.2 Defining the issues

The UK fishing industry is therefore eyeing the opportunity presented by Brexit to rebalance the distribution of fishing opportunities within the UK's fishing zone that will cease to be part of the EU's 'common pond' on completion of the UK's withdrawal from the EU. Not surprisingly, such a proposition is provoking consternation among the EU's fishing industries. What Napier's coarse grained analysis reveals is just how much potential damage could be done to the fishing economies of neighbouring EU Member States by a hard line approach to the rebalancing of fishing opportunities within UK waters and the importance of transitional arrangements to spread the impact of even modest changes to the overall pattern of fishing opportunities.

Taking control of the EEZ does not wipe the slate clean. The UK fishing industry will still be guided by evidence based recommendations of ICES concerning the management of common property resources (shared stocks) occupying 'European' waters like the North Sea, Irish Sea, NW and SW waters which the UK exploits in common with EU Member States (mainly issued in the form of recommended annual TACs). Nor will Brexit allow the UK fishing industry to escape precautionary constraints regarding fishing effort in ensuring sustainable fish stocks on which UK industry depends. Furthermore, the UN's Convention of the Law of the Sea establishing the legality of EEZs (UNCLOS III, 1982) grants the coastal state certain rights, responsibilities and *obligations* in respect of managing the resources and distributing fishing opportunities within its EEZ (see Box 1).

### Box 1: UNCLOS III: Exclusive Economic Zones

Rules governing rights, responsibilities and obligations of coastal states (CS) in respect of fisheries management within Exclusive Economic Zones (EEZs) are set out in UNCLOS III (1982) Articles 55-75. Of key relevance for Brexit negotiations are:

- The CS has sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources of the waters superadjacent to the seabed and of the seabed and its subsoil ... (Article 56)
- The CS shall determine the allowable catch of the living resources ... ensure maintenance of those resources is not endangered by overexploitation [and] maintain or restore status of harvested stocks at levels of maximum sustainable yield (Article 61)
- Requires the CS to promote the objective of optimum utilisation of the resources ... determine its capacity to harvest the resources ... afford other states access to surplus allowable catch ... taking into account to the need to minimise economic dislocation in states whose nations have fished in the area ... nationals of other states fishing the EEZ shall comply with conservation measures ... [and] regulations of the CS relating to licensing of fishing vessels, fixing of quotas and observance of technical conservation measures ... [Article 62)
- Where stocks occur within the EEZs of two or more CS those states shall seek ... to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks (Article 63)

Source: *United Nations Convention on the Law of the Sea (UNCLOS III), 1982*

The responsibilities and obligations of UNCLOS III therefore give rise to a number of issues to be resolved through negotiation. The outcome will have important implications for effective future governance of fisheries and will depend on how far the UK is prepared to press the argument for rebalancing the allocation of TACs and curtailing foreign access rights

to UK waters and how much the EU (acting on behalf of Member States which have fishing interests in the seas surrounding the UK) will willingly concede. The primary issues are fourfold and relate to coastal state capacities, recalculation of TACs, defining access arrangements, and future terms of trade:

*(i) Coastal state capacities:* Brexit negotiations will need to confront questions relating to the capacity of the fishing industry and regulatory system to cope with any increase in fishing opportunities. Downsizing of the fishing industry especially in Scotland has taken its toll in terms of harvesting capacity, markets, available skill sets, labour and local environmental knowledge that cannot quickly be restored. Fewer young people in coastal communities look to the fishing industry to provide long term employment. Today migrant workers from Europe and beyond fill a quarter of crew places aboard Scotland's offshore fishing vessels (Marine Scotland Science, 2016). Consideration must also be given to the capacities of existing national and local enforcement agencies in the light of greatly increased responsibilities.

*(ii) Recalculating Total Allowable Catches:* The recalculation of TACs adhering to UK and EU EEZs will be a complicated exercise bearing in mind the widespread presence of shared stocks and the UK catching sector's distaste for relative stability based on historic catch records from the late 1970s that left it with lower fixed shares of TACs for major commercial fisheries in waters around its coasts relative to its share of over 60% of the EC9's fishing zone. Zonal attachment, a concept long favoured by UK fishing interests (SFF and NFFO, 2000), is likely to be the UK's preferred option. However, finding a mutually acceptable formula for apportioning shares of the TAC between the UK and EU will be difficult. Much as it might suit the UK fishing industry, basing zonal attachment on existing catch data may be insufficient, given that many of the targeted species caught within the UK EEZ are migratory trans-boundary stocks whose life cycles have involved time spent in EU waters as spawning stocks or juveniles before recruitment to adult stocks in UK waters where they are at greatest risk of capture. A further complication is the uneven configuration of the UK's EEZ. Generous in its proportions to the north, with Scotland accounting for 61% of the total area, it becomes much narrower along the Welsh coast and south east coast of England averaging 30 or 40 miles and at some points less than 15 miles. In the Irish Sea and English Channel, with their complex geography, smaller EEZs, and where species-mix, historic access arrangements, and interested parties are more numerous, solutions may be much harder to come by. Here the concept of zonal attachment becomes less viable and the equitable allocation of shares in the TAC difficult and potentially even more complicated to calculate.

*(iii) Defining future access agreements:* Determining arrangements for allowing EU vessels to fish UK waters (and vice versa) will be central, but could prove acrimonious. It may be unlikely that the UK would insist on exclusion of all EU vessels from its EEZ as this would automatically trigger reciprocal exclusion of UK vessels from the EU fishing zone. What will certainly change is that EU vessels with access rights to fish within the UK EEZ will do so under UK regulations. The crucial question of access has two separate dimensions. The first relates to the UK's declared intention of terminating historic access agreements under the London Convention 1964 that permit designated signatory states to fish for specified species within the 6-12 nm limits of other designated coastal states. The reciprocal benefits of such agreements have become distorted over time and the London Convention now appears anomalous in the context of a 200 mile exclusive fishing zone. Some EU states, notably France and Belgium, will be disadvantaged by this move.

The second, more fundamental issue, concerns the extent to which EU Member States will be granted access to customary fishing grounds within the UK's fishing zone in accordance with Article 62 of UNCLOS III (see Box 1). Pressure from the UK fishing industry is for a substantial reallocation of fishing stocks within the EEZ. As Napier's findings indicate this could have severe repercussions for all neighbouring EU coastal states. Resolving this dilemma calls for a fine balance to be struck between satisfying the UK industry's expectation of increased fishing rights and ensuring that EU Member States continue to enjoy sufficient access to waters they have legally fished over many generations. An added complication is the existence of so-called 'flag vessels' – UK registered vessels mainly crewed by UK nationals and landing most of their catches into UK ports but owned by non-UK fishing interests. A considerable share of English quota entitlements is in foreign hands (Greenpeace, 2014) – a situation that has arisen not as a consequence of the CFP but from the UK's own quota management approach that encourages transferable fishing rights and UK vessel owners who, on retirement, chose to sell their assets to the highest bidder. Resolving this anomaly could prove financially very costly.

(iv) *Agreeing future terms of trade for fish and fish products:* As a simple rule of thumb, the UK imports most of the fish it processes or consumes and exports most of the fish it catches. Most of the imports come from outside the EU, with a high dependency among processors on supplies of frozen fish blocks and fillets from Norway, Iceland and Canada. A third of imports by volume, and four of the top ten UK seafood import sources, are from within the EU (Seafish 2017). By contrast the UK exports up to 80% of the fish it catches, and 66% of these exports by volume are to EU markets (representing roughly half of domestic production) (House of Lords, 2017), including higher end shellfish markets in France and Spain. Thus seven of the top ten export destinations for UK seafood are within the EU (Seafish 2017). At present, therefore, most of the trade either takes place within the European single market, incurring no tariff costs to the industry, or with third countries with whom the EU has agreed preferential trade relations. However, the likelihood of the UK acquiring tariff free access for its exports and imports of fish/fish products post Brexit is diminished by its stated intent of not seeking to remain within the single market and could be further prejudiced if it presses claims for significant reductions in access to fishing opportunities within the UK fishing zone. Seafood processors are stressing the importance of maintaining competitive and equivalent market access to raw materials and effective standards and regulations to uphold food integrity and quality in the eyes of consumers (Seafish, 2016). It remains a moot point as to how far supply chains, patterns of consumer demand, market access and fishing fleets can adapt, reset and diversify to satisfy new market opportunities post- Brexit.

### *2.3 Alternative outcomes*

It is not intended at this stage to predict the outcome of the negotiations on these issues or the extent to which there will be a significant restructuring of relations between the UK and EU. Instead two feasible scenarios are posited, differentiated by the extent to which the UK seeks to rescind existing access rights for foreign vessels fishing within the EEZ and increase its own share of TACs for different fisheries (see Box 2).

*Box 2: Brexit: contrasting approaches*

(i) *'Bad neighbour'* where the UK seeks to 'nationalise' the resource with the aim of building up harvesting capacity over the next 10 years at which time access and fishing opportunities within the EEZ are denied to all non-UK fishing vessels; this is a poor negotiating position as it invites a response of no tariff-free access to EU markets, leaving the UK with limited outlets for its prime fresh fish and shellfish catch; not only would exports (and imports) of fish products be impeded by the imposition of tariff and non-tariff barriers but the willingness to cooperate over the management of shared stocks would be reduced; there are also risks concerning the retention of UK fish processing capacity;

(ii) *'Good neighbour'* where UK, adopting a 'softer' approach looks to achieve a more modest rebalancing of fishing opportunities within the EEZ over a longer transitional period and to offer long term guarantees of access and fishing entitlements to neighbouring coastal states; access would, however, be subject to UK (rather than EU) regulation that could involve a closer specification of where fishing may take place; this more conciliatory approach could lessen the risk of tariff and non-tariff barriers being imposed on UK/EU trade and improve the prospects of future cooperation over shared management obligations.

The two scenarios reflect a choice confronting the UK government with the possibility that its decision could eventually be swayed by what happens elsewhere in the Brexit negotiations. On the one hand, there are those who argue for unilateralism and abrupt termination of all foreign rights in the EEZ. In the view of some industry representatives there is a strong case to be made for righting previous injustices in the original allocation of national shares in TACs. On the other hand, there are those who acknowledge that it will be necessary to make provision for access and quota allocation for non-UK fishing interests, if only in recognition of shared stocks and a desire for future harmony. Both positions were clearly evident in the consultation responses to the House of Lords Brexit Inquiry early in 2017 (House of Lords, 2017).

For its part the House of Lord's report, although seemingly predicated on assumptions of major changes to the political and economic geographies of the seas around the UK, tends to emphasise the difficulties standing in the way of achieving such changes and so reduces expectations of a triumphant outcome. *"From the day of withdrawal from the EU the UK will need to have in place arrangements with the EU and third countries with which the EU has fisheries agreements, so that shared stocks can be managed, access arrangements for UK vessels fishing outside UK waters can be negotiated to the mutual satisfaction of the parties, and trade in fish products can continue"* (p 2). Neither withholding of access to the EEZ nor threatening to walk away was widely endorsed as a negotiating tactic. On the latter, the report concludes that *"Walking away would, by leading to unilateral management of shared stocks, risk undermining the sustainability of fish stocks. It would also invite retaliation in other areas, including trade. Consequently, walking away should be a last resort"* (§144).

Publication of the UK's Brexit White Paper in January 2017 (HM Government, 2017) raised further questions over whether assumptions concerning a rebalancing of existing fishing opportunities within the UK's EEZ had any validity. The text reads:

*"8.15. In 2015, EU vessels caught 683,000t (£484m revenue) in UK waters and UK vessels caught 111,000t (£114 m revenue) in Member States' waters. Given the heavy reliance on UK waters of the EU fishing industry and the importance of EU waters to the UK, it is in both our interests to reach a mutually beneficial deal that works for the UK and the EU's fishing communities. Following EU exit, we will want to ensure a sustainable and profitable seafood sector and deliver a cleaner, healthier and more productive marine environment"* (HM Government, 2017).

The UK White Paper alludes to the ‘imbalance’ between existing fishing opportunities for non-UK vessels fishing in UK waters and the extent to which UK vessels exploit fishing opportunities in non-UK EU waters but gives no indication of the UK’s intentions to alter this situation. This may read more like a statement for the ‘status quo’ than for any significant restructuring of relations between UK and the EU. This possibility is further reinforced by a leaked European Parliament report in February 2017 (Fishing News, 2017a) which suggested that ‘there will be no increase in the UK’s share of fishing opportunities for jointly fished stocks-maintaining the existing quota distribution in UK and EU waters’ and that “granting of access to the EU domestic market to the UK post-Brexit should be conditional on Britain continuing to respect the rights and obligations of the CFP”. Fisheries negotiations could therefore easily resolve into a trade-off between rebalancing fishing opportunities and market access. Recent ministerial statements seem to reflect the ‘constructive ambiguity’ of Britain’s approach to Brexit negotiations with Environment Secretary Michael Gove reassuring Danish fishers ‘plenty of access’ to UK waters (Fishing News, 2017c) and Fisheries Minister George Eustice stressing his intention ‘to secure quota shares for the UK fleet that reflect resources located in UK waters’ (Fishing News, 2017b).

### **3. A new governing structure**

#### *3.1 A new governing structure: a layered approach*

Just as the system to be governed will be significantly altered in its geographical definition and jurisdiction, so too will the governing systems require substantial modification. Already there are concerns (House of Lords, 2017) over the ability of divided responsibility to maintain effective management of the living resources of the sea that has prevailed during years of the CFP. The nature of the final solution will have a bearing on the ease with which it is possible to create new cooperative structures that will help formulate a shared vision and common strategies for sustainable fish stocks, viable fishing industries and healthy marine ecosystems.

Brexit presents an opportunity to develop better integrated, more flexible marine governance in UK waters in place of the systemic rigidities of the CFP (see Sissenwine and Symes, 2007 and Commission of the European Communities, 2009). These systemic rigidities go a long way to explaining UK fishing interests’ deep hostility towards the CFP (and thus to EU membership) – identified not only in the slow pace of fundamental reform but also embodied in relative stability. The concept has undergone a mutation from an antidote to equal access and an assurance that expansion of the EU would not prejudice the status of national fishing interests to a mechanism perceived by the catching sector as perpetuating the injustices of the original allocation of fishing opportunities some 35 years ago.

A key reason for the criticism of relative stability as a basic principle of modern fisheries development is that it fosters a static, conservative approach to management of a highly diverse and dynamic resource, making the governing system less able to cope with periodic or transformational change; the fishing industry itself becomes less resilient, incapable of adapting to changes in the size and distribution of particular fish stocks resulting from climate change or overexploitation and fishing induced regime change.

A new system of governance is required that will provide for effective but flexible management within the UK EEZ, a degree of compatibility with neighbouring regimes; and

the scope for meaningful cooperation over present and future management of the wider regional seas. What is proposed below is a layered approach starting with the new UK Sea Fisheries Act replacing a range of legislation dating from the 1960s and the common rules of the CFP.

### 3.2 *Domestic arrangements*

By March 2021 at the end of a proposed two year implementation period, the UK government will need a clear vision as to the future development of the fishing industry and to have in place a legislative framework to facilitate its realisation. The enactment of a new Fisheries Bill outlining the new legal structures, rights and responsibilities will provide a first step. However, the more substantive, detailed task is in the framing of a new Sea Fisheries Act that will not only define the mechanisms by which the UK fishing industry will be regulated but also set out a regulatory framework that will govern all fishing activity within the EEZ. Brexit creates a completely new situation for UK fisheries: there is no *status quo ante* to which the newly independent governance system can return. Deliberations will no doubt build on recent developments in devolved governance within the UK but there are some fundamental questions relating to both governance and regulation in need of careful consideration before a sound, well balanced and relevant Sea Fisheries Act can be brought into being.

Foremost among these considerations are those relating to the allocation of responsibilities for fisheries management between the UK, national administrations (England, Scotland, Wales and Northern Ireland) and regional or local institutions and the implications for a coherent and consistent system of regulation covering both domestic and foreign fishing activity. Fishing is presently a partially devolved area of decision making in the UK. In the period leading up to the 2016 referendum, at a time when a remain verdict was expected, there were whispers of further extensions to devolved powers. Post-Brexit pressure for the further transfer of powers is unlikely to diminish especially in Scotland where a SNP led administration seems certain to demand something approaching full autonomy (see Fishing News, 2017d). Here the possibility of a second independence referendum continues to cast a shadow of uncertainty over the future political geography of the seas around Britain.

Other prior concerns relate to the provisions for inclusive and participative governance so evidently lacking in the CFP and the post-Brexit mechanism for distributing fishing entitlements, involving a choice between staying with output restrictions (quota) or opting for a change to effort limitations in the form of days at sea allocations. Consideration must be given to the balance of objectives and principles that will drive the UK's approach to fisheries management, including the definition and interplay of economic, social and environmental objectives (Symes and Phillipson, 2011). What changes, if any, should be made to the existing quota management system based on privatisation and transferability of entitlements that fuel processes of concentration and economies of scale? To what extent will any additional fishing opportunities be used to stimulate the creation of new fishing enterprises and/or improve the viability of small scale fisheries? In short, who is intended to benefit under the new order? These are intensely 'political' questions and the answers will need to reflect an overall vision for the future of the UK industry.

There is pressure from within the fishing industry to look elsewhere for alternative governance models. While reviewing best practice would be a useful exercise, it is vital that the chosen system is designed primarily to suit the specific conditions of post-Brexit UK

fisheries. Close examination of Norwegian, Icelandic and Faeroese fisheries management – the most frequently cited exemplars – may reveal few similarities with the relatively confined spaces that make up the UK's fishing zone where shared stocks and mixed fisheries are likely to prove the dominant issues for fisheries management.

### *3.3 Bilateral and multilateral approach*

Despite strong catching sector rhetoric in favour of 'no negotiation' (Fishing for Leave) and 'complete control in own waters' (Scottish Fishermen's Federation), there is widespread acceptance of the reality that fisheries management cannot be carried out in isolation in circumstances where transboundary stocks make up a sizeable proportion of the fisheries and where those stocks have been historically exploited by several coastal states. The House of Lords (2017) report offers a timely reminder of the UK's geographical position within the European seas that will require a new cooperative partnership for managing shared stocks. Defining TACs, allocating fishing opportunities and deciding who, where, when and how to fish the stocks will require negotiation, agreement and cooperation with other coastal states. It will be necessary, therefore, to translate the existing bilateral EU/Norway Framework Agreement into a trilateral agreement with the UK as a separate party. There is also the possibility of creating multilateral agreements relating to shared access in 'confined waters' like the Irish Sea where several parties (Ireland, UK, Isle of Man and other licensed interests) are involved and similarly in the southern North Sea and eastern English Channel. It is also likely that the UK will claim membership of the North East Atlantic Fisheries Commission as an independent coastal state.

### *3.4 Wider cooperation*

Possibly the most serious setback arising from Brexit is the halting of the positive but somewhat reluctant progress towards an integrated regional, sea basin approach to both marine environmental and fisheries management (Raakjaer and Hegland, 2012). Brexit punches a hole in the spatial integrity of Europe's western seas, sufficient perhaps to scuttle a coherent regional approach, and along with it deliberations concerning the handling of 'mixed fisheries' and shared stocks. These ambitions may be more difficult to achieve in circumstances where two autonomous bodies are engaged in fisheries management with potentially different interpretations of approaches to sustainable management. A significant slice of what is the 'European pond' will be removed from direct control and jurisdiction of EU institutions – significant because of its location, contribution and political complexity that require a unified approach to tackle overexploitation of marine resources.

For the EU the immediate task will be to identify and repair any damage to its strategic approach to the development of the CFP and to the basic mechanism of and process for achieving an integrated approach. Maintaining progress in regional cooperation will prove more or less difficult according to the emotional fallout from the forthcoming negotiations. A soft Brexit in fishing terms is more likely to be conducive to the building of wider, informal cooperative structures; by contrast, a hard Brexit, provoking a dichotomy between 'winners' and 'losers' and causing feelings of resentment and injustice will make future cooperation much more difficult.

It will be necessary to find a means of keeping doors open for exchange of views and information on matters of common interest. The impact of Brexit will be felt most acutely at the level of formal government where the UK will no longer be represented on EU governing

bodies. There is, however, no reason why the UK government should not continue to collaborate with neighbouring coastal states over common technical conservation measures as presently encouraged under Framework Regulation 1380/2013 (OJEU 2013). The weakening of formal, governmental relationships makes it even more essential for fisheries scientists to strengthen their institutional links through ICES and for the fishing industries to retain their links with regional counterparts through the relevant Advisory Councils (with the UK seeking observer status), Europeche and EAFPO.

Reenergising the momentum towards a genuine regional/sea basin approach to marine management will be by far the greatest test, with the need for such collaboration amplified by the presence of two jurisdictions sharing the same stocks if not quite the same space. Building a strong sense of mutual interest, dependency and trust between the EU and UK is essential; the willingness to listen, freely discuss and learn from initiatives proposed by either party is necessary. Future management of the seas around the UK will require shared intelligence, mutual understanding and collaborative action. The UK should not, for example, automatically dismiss the EU proposal (CEC, 2016) concerning the intractable problem of North Sea mixed fisheries. It seeks to moderate existing issues of choke species and premature closure of the fisheries that are indigenous to management systems based on single species assessments, TACs and quota by substituting rigid target fishing mortalities for each of the seven species involved by a softer range of values that should defer decisions to close the fishery but still ensure MSY. Such a proposal could, in principle, work effectively within the EU EEZ. It could work more effectively with complementary action by the UK but its efficacy would be damaged were the UK to adopt a significantly different approach within its own EEZ.

#### **4. Conclusions**

Of all the tasks facing the Brexit negotiators, one of the most complex and contentious is likely to concern access to fisheries resources and repatriation of responsibility for regulation of all fishing activity within the UK's 200 mile EEZ. How this is achieved will be central to balancing sustainable development of marine ecosystems and support for fishery dependent livelihoods. Negotiations over the fisheries question posed by Brexit, that will shape the future of fisheries management in the waters off western Europe, may have their work cut out to achieve a result that 'works for all', teasing out the anomalies covering access and entitlements within the UK fishing zone, while keeping 'gains' and 'losses' to an acceptable minimum. Otherwise the prospects for 'peace, prosperity and harmony' in the post-Brexit fisheries landscape seem rather remote.

Whatever the outcome, looking beyond the negotiations *per se*, the future governance of confined spaces like the North and Irish Seas will require a coming together of UK and EU management approaches through a shared vision, common strategy and compatible – though not necessarily identical – regulatory systems. Unilateralism and a failure to provide effective governance that will secure the sustainability of the renewable but fragile living resources of the sea would be too high a price to pay for solving the fisheries question.

This paper has, perforce, taken a UK centred view of the issues and implications raised by Brexit, focusing almost exclusively on the catching sector. There would clearly be a high price to be paid by certain Member States for a 'hard' outcome to the fisheries question and there is an urgent need to develop a broader, more balanced picture of the likely impacts of Brexit on fisheries related livelihoods across the catching, processing and distribution sectors and throughout the affected regions. It is not too late to set up an 'observatory' comprising

academics and stakeholders in policy making and the fishing industry, from those countries most affected to monitor and respond to the progress of negotiations concerning the vital fisheries question.

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