



## BRIEFING PAPER

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# Fisheries: Brexit Negotiations

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Following Brexit, the UK will no longer be part of the [EU Common Fisheries Policy \(CFP\)](#). It will become an [independent coastal state](#) and be fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of 200 miles. This will include setting total allowable catches (TACs), distributing quotas and determining who has access to fisheries.<sup>1</sup> However, access for EU vessels to UK waters and vice versa is likely to be part of any agreement reached with the EU, as part of a future relationship.

The UK will continue to be bound by the requirements of the UN Convention on the Law of the Sea ([UNCLOS](#)) and how they relate to the management of fisheries in any Brexit outcome. UNCLOS requires coastal States to give other States access to the surplus of the allowable catch in its EEZ and emphasises the need to minimise economic dislocation in States whose nationals have habitually fished in the zone. It also provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species.<sup>2</sup>

The [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published in July 2018, set out the Government's intention to continue to co-operate closely with the EU and other coastal states on the sustainable management of fish stocks that cross borders,

<sup>1</sup> Article 61(1) of the [UN Convention on the Law of the Sea \(UNCLOS\)](#) states that: "The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone."

<sup>2</sup> [UN Convention on the Law of the Sea \(UNCLOS\)](#)

and states that “any decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway, will then be a matter for negotiation”.<sup>3</sup>

Setting the system for quota distribution to individual fishing vessels is already the responsibility of Member States and therefore largely unaffected by any Brexit agreement. However, the White Paper makes clear that the Government is considering some changes to how fishing effort is set post-Brexit, particularly for smaller and inshore fishing vessels.<sup>4</sup> A Fisheries Bill is expected by the end of 2018.<sup>5</sup> In addition, the Government will have to legislate to replace a number of [EU regulations](#) on fisheries under *the [EU Withdrawal Act 2018](#)*.

This brief covers the fisheries and the Brexit negotiations, setting out the main areas of that need be addressed, what has been agreed so far together with the Government’s aims for the negotiations, and finally the implications of a no deal for fisheries. For further information of the UK’s current approach to fisheries management within the context of the Common Fisheries Policy please see the POST note on [UK Fisheries Management](#). For further detail of the Brexit negotiations as whole please see [Commons Briefing Papers](#) on Brexit.

# 1. Negotiating priorities

The fisheries sector is very diverse in the UK, with both a significant inshore and offshore fleet. There are also differences in the size and type fishing vessels across the devolved administrations.<sup>6</sup> Both EU quota species and non-quota species are important for different parts of the sector.<sup>7</sup> Non-quota species do not fall under the CFP and include most shellfish, which is often high value and exported from the UK. The UK also has significant processing and aquaculture industries. This results in a diversity of views on priorities for the sector, as was noted in the White Paper:

A full range of views have been expressed across a very wide range of issues and there is no consensus. Different sectors within the fishing industry (catching, processing, and trading) have different priorities. Within each of those sectors, there is a range of views.<sup>8</sup>

The House of Lords Committee on the European Union 2016 report, [Brexit: Fisheries](#), set out some of the potential concerns and priorities for fisheries going into the Brexit negotiation. The report recognised that whilst the fishing industry represents “a very small part of the UK’s GDP” it is of great importance to many coastal communities and that opportunities exist for the UK in leaving the CFP. It also noted that the majority of fish caught in the UK are exported to the EU and that the UK currently imports most of the fish it consumes.

The report highlighted concerns about the potential impact on the fishing industry of a lack of agreement during the Brexit negotiations on access, quotas and trade. The conclusions on access and quota included the following:

20. Unilateral restriction on access to fishing in the UK EEZ would almost certainly lead to reciprocal restrictions being placed on UK vessels fishing in the EU EEZ. This would

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<sup>3</sup> Defra, [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published July 2018

<sup>4</sup> Defra, [Fisheries White Paper](#), 4 July 2018

<sup>5</sup> EFRA Select Committee [Evidence Session](#), 17 July 2018, Fisheries, Q385

<sup>6</sup> MMO, [UK Sea Fisheries Statistics 2016](#), 28 September 2017

<sup>7</sup> MMO, [UK Sea Fisheries Statistics 2016](#), 28 September 2017

<sup>8</sup> Defra, [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published July 2018

also have a profound effect both on the fishing industry in the EU and on the UK fleet that relies on fishing outside the UK EEZ. Some form of mutual access arrangements must therefore be negotiated.

21. The historic reluctance of Member States to renegotiate the relative stability key suggests that negotiating new quota allocations after Brexit will be difficult. Such difficulty will be accentuated if these negotiations overlap with the wider negotiations on EU withdrawal. The Government could use access to fishing within the UK EEZ as a lever for achieving a better allocation of quotas but must also bear in mind that co-operation will be crucial for the long-term sustainability of stocks.

22. As an independent coastal state the UK will in principle be able to 'walk away' from negotiations with other coastal states if the compromises reached on TACs or quota shares are not aligned to UK interests. 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.<sup>9</sup>

And on fisheries and trade:

23. Trade in fish and seafood is essential to the wider seafood industry, which relies heavily on importing raw goods at reduced or zero tariffs for domestic consumption, and on exporting domestic catches and production. Any disruptions to the current trading patterns could have profound effects on both the catching and processing sectors.

24. Trade with the EU in fish products will be a key factor to the future success of the UK fishing industry and fish processors. We therefore urge that the fish sector should be included in the Government's consideration of priorities for a future trading relationship with the EU.<sup>10</sup>

The Fisheries Minister, George Eustice, gave evidence to the Lords Energy and Environment Sub Committee on 21 February 2018. In his evidence, he provided detail of the Government's expectations for fisheries and access to the UK's EEZ. With regards to co-operating with neighbours on shared stocks he stated that the UK "absolutely intend to do that".<sup>11</sup> He also referred to introducing changes to quota allocations for neighbouring countries and the "need to do that over time".<sup>12</sup> The Minister also raised the issue of the [North East Atlantic Fisheries Commission](#), which requires notice to join and which the UK will not technically be allowed to do until it leaves the EU.<sup>13</sup>

More recently, in his statement on the publication of the [Fisheries White Paper](#) on 4 July 2018 the Secretary of State for Environment Food and Rural Affairs, Michael Gove set out the Government's proposals for the UK relationship with the EU for fisheries after Brexit:

Today's White Paper outlines how, as an independent coastal state, under international law, we will be in control of the seas that make up our exclusive economic zone—the waters up to 200 nautical miles out from our coastline or halfway between our nation and others. We will determine, in annual negotiations with our neighbours, who has access to our waters. We will also ensure that any additional fishing opportunities then available to our vessels are allocated fairly and thoughtfully to help support vessels of all sizes and communities across the UK. Fisheries will be a separate strand of our future relationship with the EU from the future economic partnership. Through the fisheries strand there will be a separate process, whereby the EU and the UK, as an independent coastal state, will negotiate on access to waters and fishing opportunities on an annual basis.<sup>14</sup>

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<sup>9</sup> House of Lords Committee on the European Union, [Brexit: Fisheries](#), December 2016

<sup>10</sup> House of Lords Committee on the European Union, [Brexit: Fisheries](#), December 2016

<sup>11</sup> House of Lords Select Committee on the European Union, Energy and Environment Sub-Committee, [Oral evidence](#), Minister of State for Agriculture, Fisheries and Food, Wednesday 21 February 2018, Q2

<sup>12</sup> HM Government, [Draft Text for Discussion: Implementation Period](#), 28 February 2018

<sup>13</sup> Ibid, Q6

<sup>14</sup> HC Deb [4 July 2018 c338](#)

The Minister provided further detail in an evidence session to the Environment Food and Rural Affairs on 17 July 2018 as to how fishing effort would be redistributed over time. The Government proposal is for an increase in the amount of fishing quota that will be retained year on year by the UK during annual exchanges of quota with the EU and other neighbouring countries.<sup>15</sup>

## 2. EU Draft Withdrawal Agreement

We do not yet know the nature of the relationship the UK will have with the EU after Brexit as discussions are ongoing. The UK and EU have provisionally agreed there will be a transition or implementation period which will last from 30 March 2019 to 31 December 2020, during which the UK and EU have agreed that the UK will continue to be bound by EU law as if it were still a member state.<sup>16</sup> This transition period is dependent on the Withdrawal Agreement being agreed before March 2019.

During withdrawal negotiations the EU position has been that fisheries should form part of any transition agreement, with the UK complying fully with the CFP until any transition period ends.<sup>17</sup> Under the CFP the TACs are set on a calendar year basis. The proposed 21-month transition period coincides with the 2020 quota year end and would remove the need for reaching agreement on how to set TACs for the first three months of 2021.

The focus of the discussions between the UK and the EU has been to what extent the UK would have any input in setting quotas during the transition period. The Commission's first [draft withdrawal agreement](#) in February 2018, included a reference to consulting the UK on setting UK fisheries opportunities during any transition:

### **Article 125 Specific arrangements relating to fisheries policy**

As regards the fixing of fishing opportunities within the meaning of Article 43 TFEU for any period prior to the end of the transition period, the United Kingdom shall be consulted by the Commission during the decision-making process within the Council and during international negotiations in respect of the fishing opportunities related to the United Kingdom.<sup>18</sup>

The UK Government [response](#) proposed agreement with the EU, rather than consultation, with regard to negotiations on quotas for 2020. It also proposed the UK "shall participate alongside the EU and other coastal States in international fisheries negotiations."<sup>19</sup>

The [second EU draft of the withdrawal agreement](#) included significant amendments, setting out in detail how the EU it intends to consult the UK when setting fishing quotas in December 2019 for 2020. It also set out that the EU may "exceptionally" invite the UK to be part of the EU delegation at international negotiations. It also made clear the intention to maintain quota allocation based on the relative stability principle:<sup>20</sup>

### **Article 125 Specific arrangements relating to fishing opportunities**

1. As regards the fixing of fishing opportunities within the meaning of Article 43(3) TFEU for any period falling within the transition period, the United Kingdom shall be consulted in respect of the fishing opportunities related to the United Kingdom,

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<sup>15</sup> EFRA Select Committee [Evidence Session](#), 17 July 2018, Fisheries, Q363

<sup>16</sup> European Commission, [Draft Withdrawal Agreement](#), 19 March 2018, Part 4, Articles 121 and 122

<sup>17</sup> The Guardian, [EU to hold Britain to fishing quotas during Brexit transition](#), 11 January 2018

<sup>18</sup> EU Commission, [Position paper "Transitional Arrangements in the Withdrawal Agreement" TF50 \(2018\) 30 – Commission to EU 27](#), 7 February 2018

<sup>19</sup> HM Government, [Draft Text for Discussion: Implementation Period](#), 21 February 2018.

<sup>20</sup> Relative stability allocates a fixed percentage of total allowable catches (TACs) to Member States based mainly on their agreed historic fishing activity

including in the context of the preparation of relevant international consultations and negotiations.

2. For the purpose of paragraph 1, the Union shall offer the opportunity to the United Kingdom to provide comments on the Commission Annual Communication on fishing opportunities, the scientific advice from the relevant scientific bodies and the Commission proposals for fishing opportunities for any period falling within the transition period.

3. Notwithstanding Article 124(2)(b), with a view to allowing the United Kingdom to prepare its future membership in relevant international fora, the Union may exceptionally invite the United Kingdom to attend, as part of the Union delegation, international consultations and negotiations referred to in paragraph 1 of this Article, to the extent allowed for Member States and permitted by the specific forum.

4. Without prejudice to Article 122(1), the relative stability keys for the allocation of fishing opportunities referred to in paragraph 1 of this Article shall be maintained.<sup>21</sup>

The above text remained unchanged in the [third](#) EU withdrawal draft agreement published on 19 March 2018 by the EU Commission, with the UK Government accepting that the UK will comply with the CFP until the end of the transition period.<sup>22</sup> In the draft agreement document the section on fisheries was flagged as falling under the category of agreed at negotiators' level, subject to technical legal revisions. Michael Gove [explained](#) the outcome in response to an urgent question in the House of Commons as follows:

I think people not just in Buckie and Portsoy but across the north-east of Scotland—indeed, across the United Kingdom—will be disappointed that the proposal we sought to ensure would apply for 2019 does not apply for that year. However, it is important to recognise that this is a 12-month additional extension to the maintenance of the EU acquis and that we accept that the greater prize, which my hon. Friend is quite right to remind the House of, is available only if we ensure that we leave the common fisheries policy, take back control and make it absolutely clear to other countries that access and quotas will be in our hands.

Stakeholders were unhappy with the outcome. The [National Federation of Fishermen's Organisations](#) (NFFO) set out its view:

Just over three weeks ago, in her Mansion House speech, the Prime Minister couldn't have been clearer on fishing. As the UK leaves the EU on 29th March next year, the UK would leave the Common Fisheries Policy. Quota shares would be rebalanced.

It is still the case that in March next year under international law the UK will become a coastal state, separate from the EU; but the transition arrangement agreed in Brussels last week will ensure that we will be far from independent during the transition

And:

There is no escaping [...] that the transitional agreement is a reverse and a humiliation for the UK on fishing. Annual decisions on quotas will be made next year by the EU with only a notional obligation to consult the UK, although much of the fish will be caught in UK waters and the UK is, by far, the largest net contributor to the pot of resources. Decisions made with the UK outside the room will apply to the UK, in their entirety, for the period of the transition.

However, an article in *The Conversation* discussing the agreement warned that there may be further disappointment for UK fishermen in a future trade deal:

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<sup>21</sup> EU Commission, [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 \(2018\) 33/2](#), 15 March 2018

<sup>22</sup> EU Commission, [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 \(2018\) 35](#) 19 March 2018

The transition deal always had an air of inevitability about it. Despite all the promises made by government ministers, the impact that fishing has on the UK's GDP relative to other member states has meant that it was always likely to be a card that could be traded off for a better deal elsewhere.

As for the ultimate end goal for the UK government on fisheries, independent coastal state status will come the UK's way eventually. It is just not going to be as quickly as some would have hoped.

The government should be wary of making further promises to the fishing industry which cannot be guaranteed. The terms and conditions that the UK accepts for the relationship with the EU after the transition period may represent further disappointment for the UK fishing industry.<sup>23</sup>

### 2.1 Article 130

The arrangements for the transition period regarding fisheries are set out in Article 130 of the [Withdrawal Agreement](#) that was reached on 25 November 2018. These are the identical to the details included in the March 2018 draft.

As the [Government explainer](#) on the agreement sets, during the transition period the UK will not be able to take part in quota negotiations, but its share of quota will not be reduced. In addition, it has been agreed the UK will be allowed to take part in the 2020 negotiations, for setting its own fishing opportunities in 2021:

Specific arrangements are also made in relation to fishing opportunities, to enable a smooth transition to the new relationship between the UK and the EU. During the implementation period the UK's fisheries rules will be aligned with those of the EU and the UK's share of catch cannot be reduced. During the last year of the implementation period, the UK will be able to negotiate its own fishing opportunities for the following year.

The UK and the EU intend to conclude a new fisheries agreement in time to determine fishing opportunities for the first year after the Implementation Period, in preparation for which during the Implementation Period the UK can be invited to form part of the EU's delegation in international negotiations.<sup>24</sup>

### 2.2 The backstop

The details of the proposed backstop arrangements for Ireland/Northern Ireland include a reference to fisheries and trade. The UK will no longer be part of the CFP after the end of the transition period. However, Article 6 of Protocol on Ireland/Northern Ireland sets out that the free movement of fishery and aquaculture products would not be included in any backstop customs arrangements for the whole of the UK "unless an agreement on access to waters and fishing opportunities is applicable between the Union and the United Kingdom"<sup>25</sup>.

The Government summarises the agreement as follows:

The rules governing the single customs territory do not automatically apply in respect of fishery and aquaculture products. These products would be included when a UK-EU Fisheries Agreement has been reached that includes arrangements on access to waters and fishing opportunities. Nothing in this Protocol prescribes the content of

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<sup>23</sup> The Conversation, [How the Brexit transition deal let the UK's fishing industry down](#), 21 March 2018

<sup>24</sup> HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018

<sup>25</sup> HM Government, [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 14 November 2018

that fisheries agreement, and the UK as a whole will not be part of the Common Fisheries Policy.<sup>26</sup>

The EU summarised the agreement on Ireland/Northern Ireland and whether fisheries and would form part of the single customs territory as follows:

**Will fisheries be included in the “Single Customs Territory”?**

Arrangements on fisheries will be negotiated as part of the overall future partnership. The EU and the UK will use their best endeavours to agree on a fisheries and aquaculture agreement by 1 July 2020. An essential condition for this single customs territory to cover fisheries and aquaculture products will be to agree between the Union and the UK on access to waters and fishing opportunities. We have shared objectives to ensure fishing at sustainable levels and promote resource conservation'.<sup>27</sup>

The [Political Declaration](#) sets out that any fisheries agreement should be in place for the first year after the transition period and included target date for ratifying any fisheries agreement of 1 July 2020. However, the fishing industry has expressed concerns that “the transition period will be extended beyond the agreed 20 months”.<sup>28</sup> It is not clear if any extension of the transition date would include an extension of the UK’s inclusion in the CFP.

### 3. Fisheries in a future trade deal

Beyond the transition period, the maintenance of current arrangements for sharing fisheries resources after Brexit was referred to in the European Council’s [draft negotiating guidelines for a future trade deal](#). This linked continued existing reciprocal access to fisheries to the proposal for a zero-tariff trade agreement:

Trade in goods, with the aim of covering all sectors, which should be subject to zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. In this context, existing reciprocal access to fishing waters and resources should be maintained.<sup>29</sup>

A zero-tariff trade agreement would be important to the UK fish processing industry and exports, as noted by the House of Lords European Union Select Committee report [Brexit: Fisheries](#), and referred to in Section 1 above.<sup>30</sup>

And indication of the EU’s aims for a future agreement were set out in its [summary](#) of preparatory discussions on fisheries published in January 2018 by the Commission:

- ensure continued reciprocal access to waters, resources and markets
- define modalities on determining fishing
- opportunities, having regard to historic fishing patterns and past records of activity
- establish modalities for cooperation on joint management of transboundary stocks

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<sup>26</sup> HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018

<sup>27</sup> EU Commission, [Fact Sheet: Protocol on Ireland and Northern Ireland](#), 14 November 2018

<sup>28</sup> Fishing News, [Brexit deal betrays fishing](#), 22 June 2018.

<sup>29</sup> European Council, [European Council \(Art.50\) \(23 March 2018\) Draft guidelines](#), XT 21022/18, 7 March 2017

<sup>30</sup> House of Lords, EU Committee, [Brexit: Fisheries](#), 17 December 2016 - HL Paper 78

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- seek the highest level of convergence in management regimes.<sup>31</sup>

The European Parliament resolution on the framework set out its view that a novel form of third party agreement was required which allowed for a “high level of cooperation, coherence and convergence”:

Considers, with respect to fisheries, that a novel form of third country-type of bilateral partnership agreement should be negotiated with the aim of maintaining a high level of cooperation, coherence and convergence, ensuring stable and continued mutual access to waters and resources in accordance with common fisheries policy principles and governance provisions, and sustainable management of shared stocks in order to restore and maintain populations of these stocks above levels which can produce the maximum sustainable yield; underlines that the common management of shared stocks requires the continuation of the UK’s contribution to the scientific assessment of those stocks; stresses, however, that reciprocal market access for fishery products has to be negotiated as part of the future agreement, and that the access to the EU domestic market must be conditional on the access for EU vessels to the UK fishing grounds and their resources, as well as on the level of cooperation in the management of shared stocks;<sup>32</sup>

The European Parliament also referred to the importance of preparing EU business trading in fisheries products, amongst others, to having to deal with extra customs and labelling procedures when exporting to the UK.<sup>33</sup>

Griffin Carpenter from the New Economics Foundation, set out the implications for the UK fishing and processing sector of a free trade agreement and fishing access being linked in the negotiations in a March 2018 article:

In the months since the Brexit vote, it has become clear that the twin issues of catching and selling fish are bound up in the minds of EU negotiators just as they are bound up in the financial prospects for the UK fishing industry.

Most UK-produced seafood is exported, and most of that ends up in supermarkets and restaurants in the EU. This is why, at the same time as fishermen would like more quota, they have also been clear that a “no deal” Brexit disrupting trade to the EU would be a disaster.

This prospect is particularly alarming for small fishing communities that specialise in shellfish rather than quota species (these rights are mostly owned by large trawlers) but do sell their catches to the EU market. This was one of the key findings from my economic impact assessment of Brexit scenarios for UK fisheries.

To deliver the largest quota gains possible while keeping tariffs as low as possible will not be straightforward. Walking away from negotiations will deliver neither. On tariffs, the UK would default to higher World Trade Organisation rates as well as face the worrying prospect of non-tariff barriers at EU ports.

On quota, the UK going it alone and setting a higher level only works in the longer term if the EU agrees to a lower share. The reality is that over 100 fish stocks will be shared, post-Brexit, and both sides deciding their own quota limit will inevitably harm fish stocks and the communities that rely on them. A good deal for the fishing industry requires co-operation.<sup>34</sup>

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<sup>31</sup> EU Commission, [Internal EU27 preparatory discussions on the framework for the future relationship: "Fisheries", TF50 \(2018\) 23 - Commission to EU 27](#), 17 January 2018

<sup>32</sup> European Parliament, [Resolution of 14 March 2018 on the framework of the future EU-UK relationship \(2018/2573\(RSP\)\)](#)

<sup>33</sup> European Parliament, [Resolution of 14 March 2018 on the framework of the future EU-UK relationship \(2018/2573\(RSP\)\)](#)

<sup>34</sup> The Guardian, [Rees-Mogg's hard Brexit won't do anything for fishing communities](#), 21 March 2018

## Separating trade and access

The UK Government published the [Fisheries White Paper](#) in July 2018. In this it rejected the EU's position that access to fisheries should be linked to any trade agreement, referring to the latter as "a separate question":

Access to markets for fisheries products will be agreed as part of our future economic partnership, just as with other goods and food products. This is separate to the question of fishing opportunities and access to waters, which consequently will be addressed separately, founded on the UK's legal status as an independent coastal state. This is consistent with fisheries agreements internationally, and with EU-third country precedents. Both the EU and UK have an interest in continued trade for the fisheries and wider seafood sector.<sup>35</sup>

Some commentators have [highlighted](#) that this is not something the EU has signalled it is willing to consider and MPs [expressed reservations](#) about how achievable this would be, during the discussion on the White Paper in the Commons.<sup>36</sup> However, the NFFO was relatively confident that the UK Government's approach would be successful:

On the big-ticket issues, the White Paper is clear and confident. To be sure, the EU27 will seek at every turn to blunt its application but in truth the EU only has one weapon in its armoury and that is the nuclear option of denying the UK a free trade deal unless the UK caves in on fisheries. That would hurt many businesses in the supply chain in the EU - at least as many as in the UK. Politically, such is the parliamentary arithmetic, that the UK government could not agree to a capitulation on fisheries and survive.<sup>37</sup>

The White Paper on the [Future relationship between the United Kingdom and the European Union](#) published on 12 July 2018 included a section on fisheries. This reiterated the UK's intention to separate negotiations on trade and access to fisheries. With regards to negotiations on access it stated:

59. At present, under the CFP's principle of 'Relative Stability', the UK receives a fixed share of fishing opportunities based on historical fishing patterns in 1973-1978. On average, between 2012 and 2016, UK vessels landed approximately 90,000 tonnes of fish each year caught in other Member States' waters, and other Member States' vessels caught in the region of 760,000 tonnes of fish each year in UK waters.

60. As an independent coastal state, the UK will have control over access to its waters from the end of the implementation period. Any decisions about giving access to UK waters for vessels from the EU, or any other coastal states will be a matter for negotiation.

61. The UK, the EU and coastal states should agree to annual negotiations on access rights and fishing opportunities for UK, EU and coastal state fleets. This could include multi-annual agreements for appropriate stocks.<sup>38</sup>

During his statement to Parliament on the Fisheries White Paper, Michael Gove also referred to the Government's position on trade and fisheries negotiations:

The hon. Lady referred to the fact that 70% of the fish that we catch is exported, and of course it is, because, as I mentioned in my statement, it is high-quality fish caught by the brave men and women who go to sea. We will of course ensure through our future economic partnership, which is being negotiated separately, that we continue to have as-frictionless-as-possible access to European markets. Michel Barnier,

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<sup>35</sup> Defra, [Fisheries White Paper](#), 4 July 2018

<sup>36</sup> [HC Deb c338 4 July 2018](#)

<sup>37</sup> NFFO, [White paper](#), 4 July 2018

<sup>38</sup> White Paper on the [Future relationship between the United Kingdom and the European Union](#), 12 July 2018

someone whom I hugely admire, has himself pointed out that he wants to ensure that the free trade agreement that is concluded between the UK and the EU has neither quotas nor tariffs, so we can look forward to a bright future there, as well.<sup>39</sup>

### 3.1 The political declaration

The [Political Declaration setting out the Framework on the Future Relationship](#) of 25 November 2018 includes a reference to a future agreement on access and quotas. It links any agreement on fisheries to the overall economic partnership, instead of setting it out as a requirement for any agreement on trade:

Within the context of the overall economic partnership, establishment of a new fisheries agreement on, *inter alia*, access to waters and quota share.

The Parties will use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period.<sup>40</sup>

The date for ratifying any fisheries agreement of 1 July 2020, which is before any trade agreement would come into force, was not included in the first draft of 14 November 2018.

The declaration also calls for “cooperation bilaterally and internationally to ensure fishing at sustainable levels” and refers to preserving regulatory autonomy when managing fisheries.

Fisheries, including fishing enterprises and coastal communities, were also referred to in the [minuted declaration from the European Council](#) on the withdrawal agreement and political declaration from 25 November 2018:

On the basis of its successive guidelines of 29 April 2017, 15 December 2017 and 23 March 2018, the European Council will demonstrate particular vigilance as regards safeguarding the rights and interests of citizens, the necessity to maintain ambitious level playing field conditions and to protect fishing enterprises and coastal communities.

This will apply both when assessing the implementation of the Withdrawal Agreement, if the backstop is to be operationalized, and when considering the future relationship, in particular in the field of environment regarding the alignment to European standards.

As recalled in the Withdrawal Agreement, a fisheries agreement is a matter of priority, and should build on, *inter alia*, existing reciprocal access and quota shares. Such an agreement should be negotiated well before the end of the transition period.<sup>41</sup>

The fishing industry has expressed concern following the publication of the declaration, that despite the UK Government’s stated position, and that the UK is acknowledged to be an independent coastal state, access to fisheries and trade continue to be linked in the document, as reported in Fishing News:

But it has a severe downside in that it appears to link access rights of EU vessels to trade negotiations – something the industry is adamantly against – and commits the UK to remain in a customs union with the EU for at least the transition period, and possibly for much longer.

[...]

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<sup>39</sup> [HC Deb 4 July 2018 c341](#)

<sup>40</sup> HM Government, [Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), 25 November 2018

<sup>41</sup> European Council, [Special meeting of the European Council \(Art. 50\) \(25 November 2018\) - Statements for the minutes](#), 25 November 2018

SFF chief executive Bertie Armstrong said that unless all of the prime minister's commitments to the fishing industry were fulfilled, 'no deal' would be 'a more attractive option' than the agreed deal.

The NFFO said that in the next stage of talks, UK negotiators will need to be 'tough, astute and hard-nosed' to secure the benefits of Brexit.

NUTFA said the situation 'is a farce of epic proportions' and that businesses were 'desperate for some clarity'.<sup>42</sup>

There have also been concerns raised following a reported statement by President Macron of France, reflecting on what was agreed by the European Council, linking agreement on various areas including fisheries to the use of the backstop plan:

"We as 27 have a clear position on fair competition, on fish, and on the subject of the EU's regulatory autonomy, and that forms part of our position for the future relationship talks," he said.

The president implied that without sufficient progress on trade, the backstop plan to avoid a hard border in Ireland would have to be implemented, including a temporary customs union for the whole of the UK.

"It is a lever because it is in our mutual interest to have this future relationship," Mr Macron said.

"I can't imagine that the desire of Theresa May or her supporters is to remain for the long term in a customs union, but (instead) to define a proper future relationship that resolves this problem."<sup>43</sup>

A spokesperson for 10 Downing Street responded to this point specifically, as reported by the Guardian on 26 November:

"If the EU were not willing to engage in a genuine negotiation to replace the backstop with the future relationship or alternative arrangements, for example if it had closed its mind from the outset to the UK position on fisheries, that would put it in breach of its duty of good faith under the agreement, and we can refer this to independent arbitration," the spokesman said at a briefing for journalists.<sup>44</sup>

The French Minister of Agriculture, Didier Guillaume, also commented on the French position regarding fisheries on the same day:

The government is fully aware that the stakes of this negotiation for French fishing are high. It will be fully mobilized within the European framework and will be vigilant in defending the interests of French fishermen.<sup>45</sup>

## 4. Fisheries and 'no deal'

The Fisheries White Paper did not include any detail on the Government's position on fisheries in the event of no deal on Brexit. However, as already referred to an enabling Fisheries Bill is expected before the end of the year and the [EU Withdrawal Act 2018](#) includes provision for transposing existing EU fisheries regulations into UK legislation.

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<sup>42</sup> Fishing News, [Brussels links fisheries access to trade](#), 22 November 2018

<sup>43</sup> BBC News, [Analysis: Macron's blunt Brexit warning to UK over fishing](#), 25 November 2018

<sup>44</sup> The Guardian, [Downing Street hits back at Macron threat over Brexit fishing deal](#), 26 November 2018

<sup>45</sup> The Local Fr, [France vows to fight for French fishermen after London hits back at Macron](#), 26 November 2018

## Access to fishing grounds

A no deal Brexit, in which there was no transitional agreement on fisheries until the end of 2020, would mean that the UK would become an independent coastal state from March 2019 taking over responsibility for its EEZ. The UK would no longer be bound by the Common Fisheries Policy and could deny access to EU Member States' vessels. Likewise, UK vessels which currently fish in other Member States' waters could be denied access by the EU. Although, under international legislation ([UNCLOS](#)), there is an emphasis on the need for States to minimise economic dislocation for other States whose nationals have habitually fished in a zone.

In the event of a no deal, should the Government decide to introduce any immediate changes to access to fisheries, the impacts for the different parts of the fishing industry would depend what changes are made. As yet, there has been no indication from the Government if any changes would be made immediately, or rather whether the current quota allocations and access arrangements would be maintained in the first instance. However, [UK in a Changing Europe](#) noted in its briefing [Cost of a No Deal Revisited](#) that, unlike in other areas, maintaining the current approach could be difficult for the Government:

The government's mitigation strategy in key policy areas has been to manage disruption through unilaterally retaining the status quo. However, this approach seems unsustainable in the case of fish. Maintaining current levels of EU access to UK waters would be politically problematic in the event of no deal; the pressure on the government to reclaim control of UK waters would be substantial.<sup>46</sup>

After Brexit the UK Government will have to reach agreement on a common framework for fisheries with the devolved administrations. In the case of a no deal scenario UK in [Changing Europe](#) notes that this will have to be "resolved as a matter of urgency".<sup>47</sup> In the longer term, as set out in the [White Paper](#), the Government plans to maintain the system for the existing quota while exploring new ways to allocate any additional fishing opportunities that arise as a result of leaving the CFP.

TACs are agreed on a yearly basis at the EU [Agriculture and Fisheries Council](#) meeting every December for the following calendar year, starting in January. The implications of the UK leaving the CFP part way through the year on the 2019 TACs agreements are unclear, as is how agreements with non-EU countries on shared stocks would be managed by all parties for the remainder of 2019.

## Tariffs and Trade

In 2017, UK exports in fish and related products to the EU were worth £1.3 billion and comprised 70% of all UK fish exports from the UK by value. Fish imports from the EU were worth £1.1 billion (34% of all fish imports to the UK by value).<sup>48</sup>

The impact of a no deal Brexit on the fisheries industry's ability to export and trade are likely to be felt across the sector. With no agreement, as in other areas, trade in fisheries products would default to WTO tariffs. Generally, tariffs are higher on the most processed fish products. Defra set out, in evidence to the House of Lords Select Committee on Europe in 2016, examples of the level of tariffs that the EU currently applies to Most Favoured Nations (MFN) under WTO rules:

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<sup>46</sup> UK in a Changing Europe, [Cost of a No Deal Revisited](#), 3 September

<sup>47</sup> UK in a Changing Europe, [Cost of a No Deal Revisited](#), 3 September

<sup>48</sup> [UK Trade Info database](#), downloaded in April 2018, using product code SITC 03 – 'Fish, crustaceans, molluscs & aq. inverts & preps thereof'

The EU's MFN tariffs on fisheries products range from 0% (e.g. on imports of fresh eels) to up to 25% (e.g. on fillets on processed mackerel). Generally, tariffs are higher on highly processed products compared to lightly or unprocessed products – for example, the EU's MFN tariff on unprocessed salmon is 2%, while the tariff on prepared salmon is 5.5%. The EU's MFN tariff for the UK's five products lines with the largest exports to the EU are shown below, with their HS product code:

- Fresh, whole Atlantic Salmon, exports to the EU worth £168m in 2014 (HS 03021400): 2%
- Live, fresh or chilled scallops, exports worth £62m in 2014 (HS 03072100): 8%
- Frozen unsmoked Norway Lobsters (Nephrops), exports worth £56m in 2014 (HS 03061590): 12%
- Not frozen and unsmoked Norway Lobsters (Nephrops), exports worth £45m in 2014 (HS 03061590): 12%
- Frozen whole mackerel, exports worth £44m worth £44m in 2014 (HS 03035410): 20%.<sup>49</sup>

In its evidence, Defra also highlighted the EU would also face tariffs on fish exports to the UK and that “such an arrangement is unlikely to be attractive to the EU”.<sup>50</sup>

In addition to tariffs, fisheries products, as all perishable products, could be impacted by any increased delays at borders resulting from greater custom controls. Box 1 below sets out concerns expressed by the UK shellfish sector on the impacts of a no deal scenario.

### Box 1: Shellfish Sector

The shellfish sector does not fall under the CFP quota system, other than for Norway lobster and northern prawn in certain areas, and therefore fishing opportunities would be unlikely to change significantly as a result of the UK being outside the CFP.

However, a report commissioned by Shellfish Association, NFFO and SFF, published in July 2018 and [reported by Fishing News](#), highlighted the impact of a no-deal on an industry that relies on “smooth unimpeded trade”:

Businesses throughout the shellfish supply chain in the UK and in the EU are reliant on smooth, unimpeded trade. We are dependent on the European market, but likewise there is heavy dependence on our products on the continent. We have undertaken this study to identify the issues to ensure that, as far as possible, no part of our industry will be disadvantaged. The study makes clear that both in terms of the tariff regime but also non-tariff barriers, there is a great deal at stake.<sup>51</sup>

The article goes on to highlight the conclusion that “the possibility of replacing EU markets with alternative high-value markets is challenged not only by the difficulty of reproducing such traditions through marketing, but also by the global production and trade of most shellfish types” The article refers to an estimated cost of EU tariffs to the sector of £41m per year, in the event of no deal.

## EU Regulations

The EU Commission published a [preparedness notice to stakeholders on Fisheries and Aquaculture](#) in April 2018, setting out how UK withdrawal would impact both the UK and EU sectors in the absence of any kind of withdrawal agreement. It sets out that under [Regulation \(EU\) 2017/2403](#) on the sustainable management of external fishing fleets, EU

<sup>49</sup> House of Lords Committee on the European Union, [Brexit: Fisheries](#), December 2016, [Defra written evidence](#)

<sup>50</sup> House of Lords Committee on the European Union, [Brexit: Fisheries](#), December 2016, [Defra written evidence](#)

<sup>51</sup> Fishing News, [Brexit shellfish threat: No deal Brexit shellfish warning](#), 30 July 2018

flagged vessels would need to obtain authorisation from both the UK and EU to fish in UK waters, and that UK vessels would have to obtain EU authorisation to fish in EU waters.

With regards to landings, as the third country the UK would only be able to land or transfer fish at [designated EU ports](#) as set out in [Regulation 1005/2008](#). The Regulation also requires third country vessels arriving at EU ports are inspected to ensure they comply with requirements on illegal, unreported and unregulated fishing (IUU). In addition, under the Regulations the UK would be required to send a flag notification to the EU to be able to export fish products to the EU:

In order to export fishery products caught by third country flagged fishing vessels to the EU, the Commission has to have received a notification from the flag State. As of the withdrawal date, this applies to the United Kingdom.<sup>52</sup>

UK exports to the EU, together with EU exports to the UK, would also require to be accompanied by a catch certification from the relevant competent authority:

The catch certificate to be validated by the United Kingdom must certify that the catches concerned have been made in accordance with applicable laws, regulations and international conservation and management measures. The catch certificate must have been validated by the United Kingdom competent authority.<sup>53</sup>

### **Certification of organic aquaculture products**

As set out in the [Commission's notice](#), EU regulations require organic aquaculture products sold in its markets to be certified as such and that "a no-deal scenario would make UK issued certificates invalid".

The Government preparedness note [Producing and processing organic food if there's no Brexit deal](#), explains that businesses could experience delays of up to 9 months after a no deal Brexit. This is because UK organic control bodies offering the necessary certification for export to the EU would need to seek approval by the EU. The Government has stated it is hoping to find ways to speed this process up.<sup>54</sup>

### **Funding for fishing communities**

The EU provides funding for fishing communities through the [European Marine and Fisheries Fund](#), which is part of the CFP, and runs to 2020. The UK has an allocation of [€243m](#) for the period 2014-2020. The EMFF falls under the 2014-20 Multiannual Financial Framework allocation for structural and investment funds and as the Government made clear in the notice on [The government's guarantee for EU-funded programmes if there's no Brexit deal](#), it has guaranteed its funding until 2020.

### **Longer term impacts**

The [New Economics Foundation](#) published a report on the impact of various Brexit scenarios on fisheries, [Not in the same Boat](#) in November 2017. In a modelled no deal scenario, where there was agreement with the EU on shared fish stocks which increased UK share of stock, WTO tariffs were applied on trade and EU vessels were excluded from UK waters, there was an overall increase in catch and profitability for the sector. However, this was not evenly distributed, with the benefit mainly accruing to UK flagged vessels, fishing offshore, that fish quota species that currently fall under the CFP:

This divide in quota ownership is one of the contributing factors to a sharp divide in current economic performance, with the large-scale fleet recording profit margins of 19% and the small-scale fleet operating at a profit margin of 0%. As the gains from

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<sup>52</sup> EU Commission, [Preparedness notice to stakeholders on Fisheries and Aquaculture](#), 9 April 2018

<sup>53</sup> EU Commission, [Preparedness notice to stakeholders on Fisheries and Aquaculture](#), 9 April 2018

<sup>54</sup> Defra, [Producing and processing organic food if there's no Brexit deal](#), 23 August 2018

quota increases accrue to those who hold the quota rights, these gains further entrench the 'haves and have nots' of UK fisheries. Small-scale vessels also see little benefit from exclusive access out to 200 nautical miles, as they fish exclusively in inshore waters.<sup>55</sup>

It should be noted that the study did not include in its no deal model any new obstacles to trade with the EU, although it did highlight the potential negative of impact of these for fisheries trade:

New obstacles to selling to the EU market – such as product standards and port inspections – are also a significant concern for the future economic performance of the UK fishing fleet. Fortunately, the UK is starting from a good position: current product standards are harmonised. However, to avoid border delays and inspections, there will need to be a continued close relationship between the EU and the UK on fisheries and the avoidance of an adversarial relationship that could ultimately force the EU to retaliate with a strong and obstructive hand.<sup>56</sup>

A study, [Impact of hard Brexit on European fisheries](#), published by the Wageningen University and Research in April 2018, modelled the impact for the EU as a whole of loss of a mutual access to waters, together with the application of non-tariff measures (NTM) and the cost of measures required to facilitate trade. The study covered fisheries, aquaculture and fish processing. The authors concluded that a hard Brexit would lead to reduced fish prices in the UK and noted that the fish processing and aquaculture sectors could decline due to the impact of trade measures:

If the United Kingdom (UK) would completely close its marine areas, the UK, Ireland, the Netherlands and Belgium would be affected the most. For the UK aquaculture and fish processing production will decline due to trade measures. For the other three countries production of all fish producing sectors will decline. Also, because of a higher production volume of wild fisheries in the UK, the price of fish in this country will go down, resulting in lower production value and thus income of the sector. In the whole of Europe fish prices will rise. Especially Irish consumers will have to dig deep into their pockets: fish prices can increase up to 8%.<sup>57</sup>

[Fishing for Leave](#) criticised the study, particularly the conclusion that a no deal would lead to an increased UK fish production of only 15%.<sup>58</sup> It responded by highlighting the large potential increase in available catches to UK flagged vessels that could follow if other vessels were excluded from UK waters:

Currently the EU catches 675,000 tons in UK waters – 60% of the fish caught in the UK sector – whilst the UK only catches 88,000 tons or 16% of the fish taken in EU waters.<sup>59</sup>

The [Wageningen report](#) does refer to an increase in fisheries access having the potential to increasing fisheries landings in the UK by up to 60%.<sup>60</sup> However, it concluded that for this to be realised would require no trade measures being put in place by the EU, and that this would be unlikely:

Gains of \$400m could be expected if UK gains back its fishing territories and there are no trade protectionism measures. However, under NTMs and MFN [most favoured

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<sup>55</sup> NEF, [Not in the same Boat](#), November 2017, p4

<sup>56</sup> NEF, [Not in the same Boat](#), November 2017, p73

<sup>57</sup> Wageningen University and Research, [European consumers pay the price for fish when hard brexit occurs](#), 24 April 2018

<sup>58</sup> Wageningen University and Research [Impact of hard Brexit on European fisheries](#), April 2018, p11

<sup>59</sup> Fishing for Leave, [Flawed Fisheries Report Brings Serious Questions Over Economists Analyses](#), 27 April 2019

<sup>60</sup> Wageningen University and Research [Impact of hard Brexit on European fisheries](#), April 2018, p5

nation] tariffs, which is the more likely scenario, most of these gains are faded away and there is a zero sum.<sup>61</sup>

## 4.1 Technical note on commercial fishing if there's no Brexit deal

The Government published a [technical note on commercial fisheries](#) on 15 October 2018. The note covered access to UK and EU waters, access to UK and EU ports, import and export of fisheries products, labelling and funding.

- **Access to waters**

In the event of a no deal the note makes clear that “non-UK-registered vessels will no longer enjoy automatic access to UK waters”, or UK-registered vessels to EU waters. The note does not provide information as to whether there is any intention to grant any level of access in UK waters to EU registered vessels, in the immediate aftermath of no deal.

- **Quotas**

The intention is for the quota system to remain unchanged, with the UK Fisheries Administrations<sup>62</sup> allocating quotas as usual for 2019. However, with regard to quota exchanges that often take place between different Member States there will be “no automatic access” to these.

- **Access to ports**

UK vessels will no longer have any automatic right to land fish in EU ports, other than in [EU designated ports](#). To do this fishing vessels will have to have all the required documentation and could be subject to inspections. This is also set out in the [EU preparedness note on fisheries](#). The same rules will apply to EU vessels landing fish in the UK.

- **Access to fisheries managed by Regional Fisheries Management Organisations (RFMOs)**

According to the [Commission website](#) the EU, represented by the Commission, plays an active role in a number of RFMOs.<sup>63</sup> The technical note makes clear that if the UK leaves the EU it will have to apply for membership of the relevant conventions as independent member state. This process could take up to six months and during this time “UK vessels may not be able to fish international waters covered by RMFOs” during that time. The RMFOs include the [North-East Atlantic Fisheries Commission](#) (NEAFC) which extends into the Atlantic beyond EU EEZs. For a map of the area covered by NEAFC see [here](#). The NEAFC guidelines, from 2003, on [becoming a contracting party](#) are available on their website. It is not clear how or if these will be applied to the UK, who will be leaving and then rejoining as an independent member.

Other RMFOs that cover the North Atlantic include the [Northwest Atlantic Fisheries Organization](#) (NAFO) and the [North Atlantic Salmon Conservation Organisation](#) (NASCO).

- **Trade in fisheries products**

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<sup>61</sup> Wageningen University and Research [Impact of hard Brexit on European fisheries](#), April 2018, p11

<sup>62</sup> These are: [Marine Management Organisation](#) in England; [Marine Scotland](#) in Scotland; [Welsh Government](#) in Wales and [Department of Agriculture, Environment and Rural Affairs](#) in Northern Ireland.

<sup>63</sup> 11 non-tuna RFMOs and 6 tuna RFMOs

Export of UK-caught fish and fisheries products to the EU will require a [catch certificate](#) with each product or consignment, setting out where, when and how much fish has been caught, and (if rules remain the same) include accurate weights of the fish actually exported, an accurate description of the fish, and an EU tariff product code of 6 digits. Product from multiple vessels will require a Multiple Vessel Schedule.

The note explains that UK Fisheries Authorities are in the process of developing an IT database to “facilitate the increase in export catch certificates” that will be required to be issued and verified.

Imports from the EU will also require catch certificates and will have to be submitted 3 days in advance to be checked by UK authorities. There is no reference in the document to how far in advance UK exporters will have to submit catch certificates to the Fisheries Authorities in Member States.

- **European Maritime Fisheries Fund**

The note confirms all EMFF projects approved before 31 December 2020 will be fully funded.

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