'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.

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 [3] while European institutions are demonstrating their determination to protect existing access rights and quota entitlements for Europe’s fisheremen [4]. 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 enmeshed 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 [21] 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 [13] 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 [12].

By way of partial compensation, UK vessel landings of 92,000 t 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 [13].

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, [21]) 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).

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 curtailting 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 four-fold and relate to coastal state capacities, recalculating 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 [11]. Consideration must
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