



Brexit and Fisheries: An International Fisheries Law Perspective

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22 March 2017

Overview presentation

- Applicable Legal Framework for Brexit Negotiations
- Cooperation on Transboundary Fish Stocks
- Allocation of Fishing Opportunities
- Fisheries Access
- Conclusions



Applicable Legal Framework for Brexit Negotiations

- Once withdrawal from EU has been set in motion, and no withdrawal agreement has been agreed, the UK will no longer be an EU Member State
- Relationship EU and UK post-Brexit governed exclusively by international law, and not by EU law, including the Common Fisheries Policy (CFP)
 - Arrangements on allocation of fishing opportunities (relative stability) and fisheries access (equal access) no longer apply
- International fisheries law, in particular:
 - 1982 United Nations Convention on the Law of the Sea (UNCLOS)
 - 1995 Fish Stocks Agreement (UNFSA)
 - EU and UK party to both



Cooperation on Transboundary Fish Stocks

- EU and UK bound to obligations to cooperate on transboundary fish stocks under UNCLOS and UNFSA: avoid over-exploitation, as part of precautionary and ecosystem approaches to fisheries management
 - Shared fish stocks: within EEZs (Art. 63(1) UNCLOS)
 - Also involving Norway and perhaps others
 - Straddling fish stocks: within EEZs and high seas (Art. 63(2) UNCLOS; UNFSA)
 - Also involving other North-East Atlantic coastal States, and North-East Atlantic Fisheries Commission (NEAFC)
 - Highly migratory fish stocks: tuna (Art. 64 UNCLOS; UNFSA)
 - Through the International Commission for the Conservation of Atlantic Tunas (ICCAT)



Allocation of Fishing Opportunities

- Allocation of fishing opportunities among EU Member States enshrined in relative stability, which is primarily based on historic catches
 - No role whatsoever for 'zonal attachment' (extent of occurrence of fish stocks in maritime zones)
 - Arguably: as UK never objected to this prior to 23 June 2016 ('critical date'), UK continues to be bound to the primary reliance on historic catches
- UNCLOS and UNFSA provide only minimal guidance; do not accord zonal attachment more weight than historic catches
- Special nature of Union waters (equal access)
 - Historic catches by non-UK vessels in UK waters should not be attributed to UK
 - Changes to existing allocation arrangements should be gradually phased-in to minimize economic dislocation



Fisheries Access

- Coastal States that cannot fish entire total allowable catch (TAC) must give other States access to the surplus (Art. 62(2) UNCLOS)
 - Coastal States have wide authority and discretion
- Underlying UNCLOS scenario (from high seas to EEZs) is fundamentally different from Brexit scenario (from Union waters with equal access to UK and Union waters), therefore
 - Preferential access to EU Member States
 - Changes to equal access arrangement must be gradually phased-in to minimize economic dislocation (Art. 62(3) UNCLOS)



Conclusions

1. Relationship EU and UK post-Brexit will be governed by international fisheries law
2. EU and UK bound to obligations to cooperate on transboundary fish stocks under UNCLOS and UNFSA
3. Future allocations of fishing opportunities between EU and UK must be based primarily on historic catches, in view of UK's non-objection to relative stability & special nature Union waters (equal access)
4. As UNCLOS fisheries access regime was not designed for Brexit scenario, UK must give EU Member States preferential access
5. Changes must be gradually phased-in
6. Legal arguments will be used together with bargaining chips





Thanks!

Questions?



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