



The Implications of Brexit for Fisheries in the North Sea

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Introduction

- Fisheries arrangements and Brexit
- Relative stability v zonal attachment
- Shared stocks and the law of the sea
- Position of current fishers
- Charting future courses: the upcoming election and beyond
- Conclusions



Fisheries and Brexit



Brexit + fisheries = confusion?



"It is important to note that the outcomes will in large part depend on the nature of the UK's withdrawal and the negotiations that will take place.

There is significant uncertainty."

*Brexit: What Next for UK Fisheries? Commons Library Briefing,
27 July 2016*



Or maybe not...

- Withdrawal package and attendant negotiations are uncertain, as is the future trajectory of domestic regulation
- International fisheries obligations and use by states of ocean space remains relatively clear
- Assumption that all national fisheries will be exclusively reserved for UK use is largely misguided
- International conventions establish a clear framework for fisheries management, based on multilateral cooperation
- “Closure” of the UK seas remains something of a theoretical exercise – rights of access to third states enshrined in international law; splendid isolation self-defeating given UK fisheries interests



UK's Brexit benefits?



- Relatively limited in practice
- Discrete stocks may be solely regulated by UK
- Valuable stray fish may be caught and processed – e.g. Bluefin tuna
- Certain aspects of CFP may be jettisoned – examples of idiosyncratic application of particular measures
- Able to participate in RFMOs in own right (rather than for overseas territories)
- No longer takes management advice from EU – but in practice likely to work with ICES (which advises the EU)
- In principle, control over access by foreign vessels to quotas – in practice, this will depend on negotiations and other Brexit-related interests

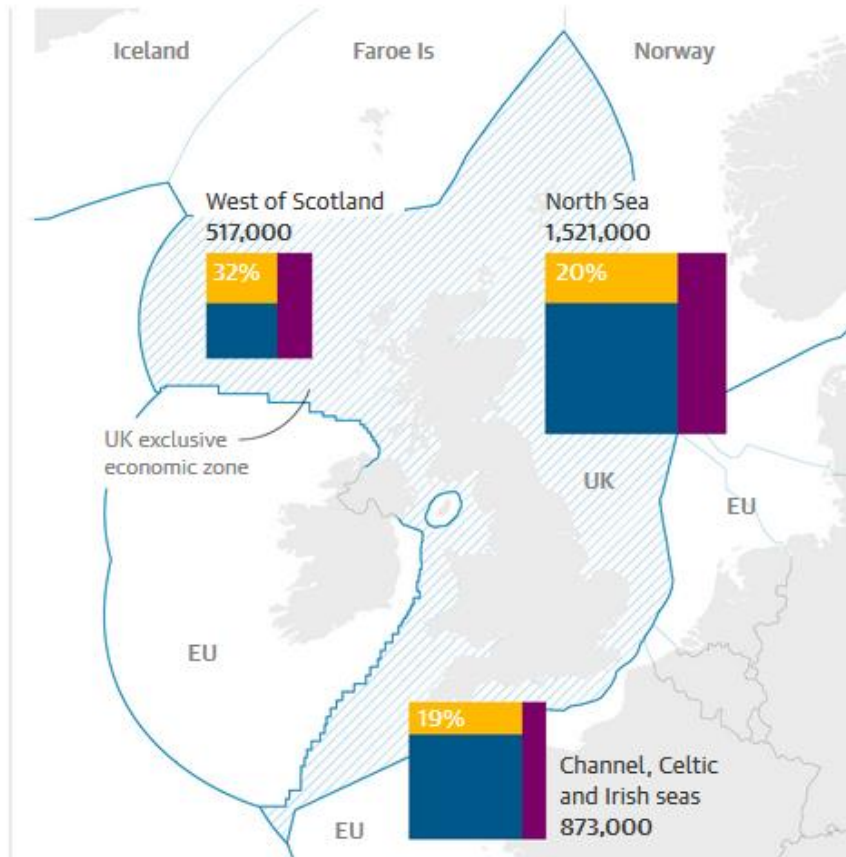


Importance of UK fishing grounds

Estimated landings from UK waters

Annual average landings of all fish 2012 to 2014, tonnes

■ UK
■ EU
■ Other



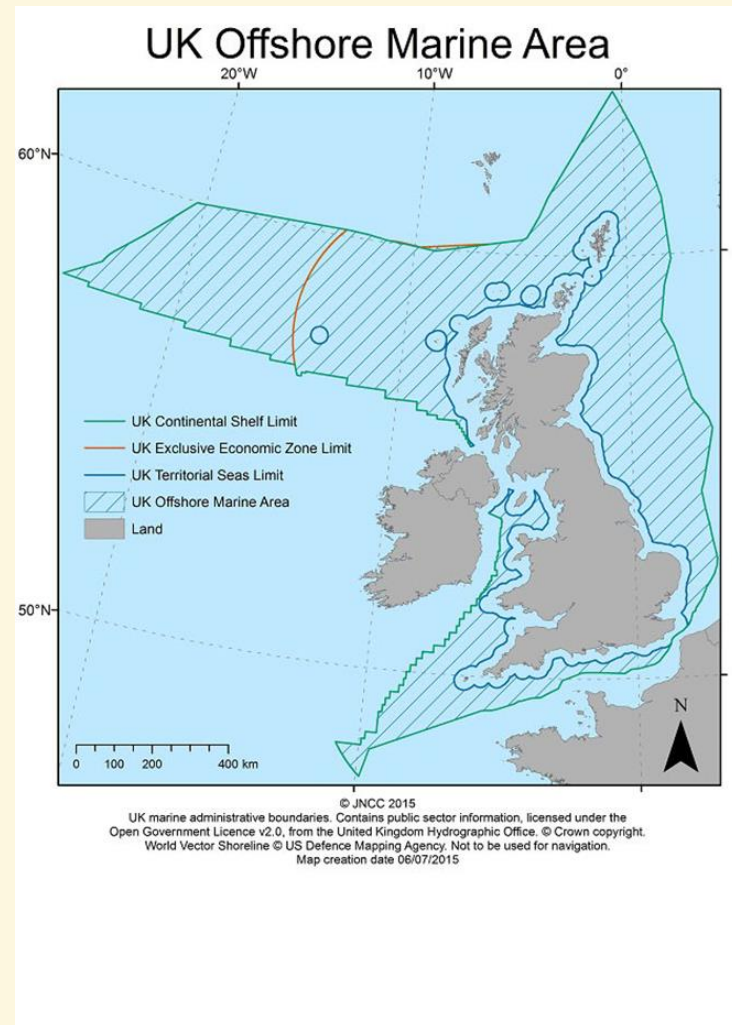
Guardian graphic | Source: House of Lords, NAFC Marine Centre, University of the Highlands and Islands



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The UK: A fisheries jurisdiction of fisheries jurisdictions

- Mixed jurisdictional input due to devolution settlement
- Classical EEZ not established until 31 March 2014
- Fisheries beyond 12nm regulated under CFP until full withdrawal
- Significant fishing by EU Member States in these waters
- Predictability of quotas provided under EU law through the principle of "relative stability" – prevents the need for constant revision and updating of entitlements
- ... until now?



Current arrangements

- Concept of “relative stability” introduced in 1983 Basic Regulation – proposed re-evaluation failed to garner support
- Established as a means of providing certainty for precarious economic areas (recitals 35-37, Basic Regulation)
- Article 16 BR: “Fishing opportunities allocated to Member States shall ensure relative stability of fishing activities”
- Fishing opportunities based in historical catches, Hague Preferences and “jurisdictional losses” – largely based on Cod Wars. Allocation keys not substantively amended
- Zonal attachment not used as a basis for negotiations
- RS provides a fixed percentage of fish – joined cases C-87/03 & C-100/03



Relative stability and the UK

- UK seeking to rely on zonal attachment – argument that adjustments to RS would have been pursued in event of Brexain
- Long attachment to historical fishing – especially in Cod Wars
- Evidence suggests that UK considered it would have perpetual access to North Atlantic stocks when negotiating EEC accession; power of Humberside in negotiations
- Sought to incorporate preferential treatment in Hague Preferences for “northern parts” of UK and Ireland



Core obligations and entitlements

- Stocks in UK EEZ primarily shared
- Article 61: coastal state determines TAC in its EEZ and ensures, through the “best scientific advice” that the stock is not compromised through over-exploitation
- Article 62: coastal state determines its capacity to fish the TAC and is charged with allocating rights to the surplus
- However, Article 62(3): must avoid economic dislocation in states whose nationals have traditionally fished in these waters or invested in research/identification of stocks
- Article 63 – obligation to cooperate in respect of shared stocks (those between EEZ of 2 or more states, or between EEZ and high seas)



- UNFSA 1995 elaborates these obligations further for transboundary stocks
- Obligations of cooperation (Article 10)
- Collection/dissemination of research (Article 14)
- Transparency (Article 12)
- Rights of new participants (Article 11)
- Current framework seeks to minimise scope for unilateralism of shared resources; discrete stocks addressed more in the national interest (little relevance to make-up of current UK fisheries)



Implications for EU fishers



Potential basis for continued access?

- Can EU Member States be considered to have traditionally fished or invested in UK waters?
- Legitimate expectation of continued open access pre-Brexit
- Legal case tenable that some degree of transitional preference be given to EU Member States
- More likely to turn on political considerations, however
- Weapons in reserve? Denmark threatening potential ICJ action if fully excluded from UK waters (seems somewhat unlikely)



Historical rights

- A complicated issue in current discussions – and wider international law (South China Sea case)
- Seemingly no access rights claimed on basis of neighbourhood relations with UK territorial sea
- Little historical fishing in UK, aside from a re-discovery of cultural heritage
- UK traditionally relied on historical catches in fisheries relations, but acquiesced to relative stability in joining EEC
- Number of EU Member States arguing historical entitlements in UK waters, although seemingly limited legal basis for this
- Historical catches in European waters primarily addressed under CFP and previously by 1964 London Convention



1964 Fisheries Convention

- Precedes CFP and addresses “belt” of 6-12 miles from baseline
- Fishing vessels of parties may not conduct fishing “substantially different from those which they have habitually exploited”
- Open to granting reciprocal – but not necessarily equal - rights of access to other contracting parties
- Withdrawal under Art 15 – 2 years’ notice: likely UK action
- Codified within CFP Basic Regulation, which supersedes 1964 Convention (although latter still in force)
- CFP jurisprudence considers that 1964 Convention not applicable, but no ruling from CJEU that it has been terminated



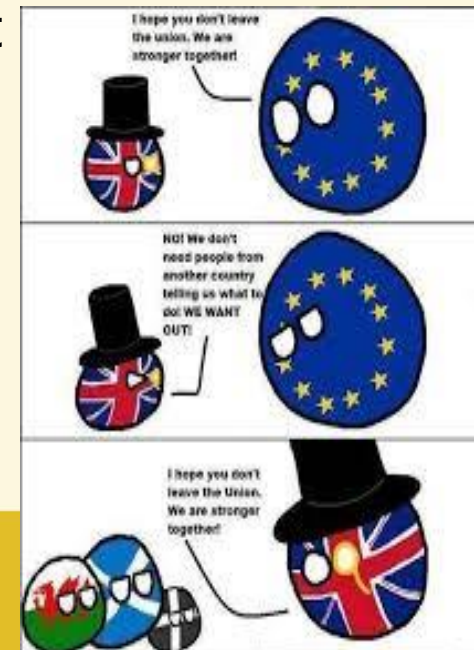
House of Lords consideration

- December 2016: HL issues report on Brexit and fisheries
- Brexit has raised expectations of fisheries that may be “hard to deliver”
- Stocks are predominantly shared, hence subject to obligations of cooperation – a “crucial” element of future fisheries management
- Zonal attachment a “welcome” approach; UK allocations (politically?) insufficient under present models
- Bilateral arrangement similar to EU-Norway endorsed
- Similar arrangement to Skagerrak/Kattegat Seas for Eire
- UK membership of NEAFC “must be established”



Future issues

- UK is a fishing jurisdiction comprised of fishing jurisdictions
- Devolution issues likely to be highly complex and a degree of internal devolved politics may influence UK negotiating position
- HL considers allied approaches between administrations to be vital; revised Concordat currently under consideration
- Scottish independence a resurrected prospect
- Channel Islands also problematic



Regulatory possibilities

- Restriction of quota-hopping? HL considers strengthening linkage requirements, although no clear current proposal
- A return to *Factortame*?
- MSA 1995 s9 – registration requirements established by SI; can be swiftly amended
- MS (Registration of Ships) Regs 1993 considers dispensation in view of length of time resident in UK and “involved in the fishing industry” – any changes need careful drafting
- Legitimate expectation and pre-existing quota: complex internal process and lack of proprietary interests
- Utilised quota cannot be reallocated without compensation: *UKAFPO* case



Election 2017: fishy business?

- Conservative pledge – withdraw from 1964 Convention
- Labour pledge – silent on CFP and London Convention; aims to develop small-scale fisheries and preserve migrant fisheries workers' rights
- Lib Dem pledge – not allow fisheries access to be traded away lightly
- UKIP – abolish CFP (bit difficult if not in EU and Farage does not attend CFP meetings...)
- Little consistency between major parties and fisheries marginalised in election so far (apart from key industry constituencies)



Conclusions: plus ca change?

- Profound expectations of Brexit among fisheries sector, but Brexiteers likely to be disappointed
- Most commercially valuable stocks are shared stocks and governed under LOSC and UNFSA – obligation to cooperate
- Cooperation recognised as “crucial” by HL
- Regulatory thinking towards a Norwegian-style arrangement; withdrawal from 1964 Convention likely
- Likely to receive scientific advice from same quarters and act through NEAFC in the long-term
- Little change to practices and regulation in mid-term: UK continues to prioritise “the sector” and has resisted judicial review of this position (albeit based on CFP); Blue Book too unwieldy to swiftly expunge



- Legal arguments based on “economic dislocation” under Art 62(3) LOSC tenable – and seemingly expected by UK
- UK favours use of zonal attachment over relative stability and (appears) committed to pursuing it
- Historical rights could be a potential bone of contention – possible ICJ action (appears remote)
- Loss of UK as an effective voice in CFP reform
- Ultimately political considerations will be more significant than legal argumentation – June 9 will be revelatory as to the power of the fisheries lobby
- Difficult balancing act ahead in addressing the position of the various UK fishing *industries*



Thank you!!

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