

UK Fisheries Policy Post-Brexit

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27th January 2017

Published by UK 2020 Limited
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Introduction

The Common Fisheries Policy has been a biological, environmental, economic and social disaster; it is beyond reform. It is a system that has forced fishermen to throw back more fish dead into the sea than they have landed. It has caused substantial degradation of the marine environment. It has destroyed much of the fishing industry, with compulsory scrapping of modern vessels. It has devastated fishing communities.

In 1995, 9,200 British fishing vessels landed 912,000 tons of fish; by 2002 there were 7,003 vessels landing 686,000 tons. This 25 per cent decline in just seven years meant the loss of on average one fishing vessel per day. In that same period landings dropped from over 900,000 to just 627,000 tonnes annually, with a value of only £770 million.

This decline is all too apparent with an analysis of the UK's fishing imports. By 2015, by which time there were just 6,187 British fishing vessels at work, UK imports reached 680,800 tonnes of fish and 92,500 tonnes of fish products, with a combined value of at £2.784 billion, of which just under a third came from our EU neighbours. To make matters a great deal worse, much of that harvest was caught in British waters, meaning that we are buying back our own fish.

Leaving the European Union will naturally mean abandoning this disastrous policy, and rejuvenating British fishing with a new, bespoke approach to support the country's 12,000 fishermen and the communities which depend upon them. The first step towards a new policy must be to nationalise the entire *acquis communautaire* purely as an interim measure to ensure full continuity during the transition followed by a process of amendment. The Government must then perform a full study of all the relevant legislation and consider all of the overarching global conventions which have been historically misinterpreted by the EU. The crucial outcome, however, must be that Parliament regains its full control to repeal, amend, or strengthen the existing body of law such that the transition from the CFP to a successful independent policy is as smooth and effective as possible. A replacement UK Fisheries Bill should be prepared so that there are no undue delays in the transition.

The fundamental flaw in the CFP has always been that fisheries cannot be managed successfully on a continental scale; they need local control. Issues should be tackled on an international basis only when justified, at a national level when appropriate and otherwise locally.

A UK policy needs to be based on the following principles:

- Effort control based on "Days at Sea" instead of fixed quotas
- Flexible Catch Compositions to avoid a race to fish whilst ending discards
- Conservation Credits to award Days for selectivity and spatial measures
- A ban on discarding commercial species
- Provision for temporary closures of fisheries
- Promotion of selective gear and technical controls
- Rigorous definition of minimum commercial sizes
- A ban on industrial fishing
- Provision for permanent closed areas for conservation
- A prohibition of production subsidies
- Zoning of fisheries
- Registration of fishing vessels, skippers and senior crew members
- Measures to promote profitability rather than volume
- Effective and fair enforcement

However, simply exchanging a bureaucratic system run from Brussels for one run by bureaucrats in London and national centres is no panacea. It must be accompanied by a local management system, which has the confidence and trust of the nation and the fishermen who work within it.

Properly managed, with carefully devised and targeted controls, our natural resources can be constantly renewed. Efforts to rebuild stock can proceed alongside sensible commercial exploitation. Fishing can provide a good living for fishermen and the communities which support them and rely upon them, while satisfying the entirely valid demands of all those who care for the environment.

As an independent fishing nation we can now join the North East Atlantic Fisheries Commission, along with Norway, Iceland, Russia, Greenland, the Faroes and the European Union, cutting out the middle man. The UK can also retake a full seat on the world bodies that determine global regulation. These include the WTO, the World Organisation for Animal Health (OIE) and the Codex Alimentarius Commission. We will thus be well placed to give global leadership to ensure a viable and sustainable environmental future.

Our policy should be to manage the sea fisheries in UK waters in such a manner as to safeguard the natural environment. We need to rebuild and preserve our fish stocks and marine wildlife, maximise the economic value of exploitable stocks, both in the short and the long term, and create a stable, fair framework within which the fishing industry can operate.

Effective policy can only be developed with the full co-operation and assent of fishermen, guided by good science, and up to date local knowledge and flexibility. The essence of our policy should thus be national and local control. National government will set the strategic framework in which the priorities will be the restoration of the marine environment and rebuilding the fishing industry; new local bodies will take day-to-day responsibility for managing their fisheries.

Trade after leaving the Customs Union

As for agricultural products, the Common External Tariff imposes high barriers on imported fish and fish products from the rest of the world. Applied tariffs average 11.8%, with the maximum being 26%, are notably higher than those in other fisheries sectors, with the equivalent Japanese figures being 5.7% and 15%. As for other food products, therefore, leaving the Customs Union will bring about an appreciable reduction in food prices for all consumers, and be of particular benefit to poorer households, for whom a greater proportion of expenditure is on food. Likewise, since the UK is not self-sufficient in all species of fish, there is great merit in reducing tariffs on the range of fish commonly consumed, but not caught, in the UK.

Outside of the European tariff wall, the UK will obtain the ability to work with nations across the world, and particularly with African, Caribbean and Pacific countries. This opportunity can represent a crucial facet of the UK's development policy, since fish and fish products are a critical industry for developing economies. Fishery exports from such economies in 2014 were valued at \$80 billion, with their net export revenues giving \$42 billion. These figures are greater than those for other agricultural commodities – including meat, rice, sugar and tobacco – combined, and could be significantly enhanced by free-trading with an independent UK. The present system, which allows these countries tariff-free access for raw materials but places heavy burdens on processed goods, could also be abandoned, promoting further economical and infrastructural investment in developing economies.

British exports, too, stand to benefit from free trade. Tariff-free access to the EU market would naturally be preferable but, according to Fishing for Leave, even without this arrangement there would be no cause for alarm. The group suggests that British exports, currently valued around £1 billion, would more than double if the UK were to regain the 60% of Total Allowable Catches currently assigned to other member states by the EU and taken in British waters. They note, also, that Norway, Iceland, Greenland and the Faroes are all outside the EU yet export fish products in far greater quantities to it than the UK without difficulty. British seafood is a world renowned product, and there is great cause for optimism for its capacity to diversify into global markets. British exports of nephrops, monkfish, mackerel and herring are particularly profitable, and ought to be similarly promoted to the market at home.

Access to UK waters

The 1982 Law of the Sea Convention permits a nation to define areas which come under its sovereign control and in which it can claim certain rights. These include the territorial waters extending 12 miles from the maritime baseline; an Exclusive Economic Zone (EEZ), “an area beyond and adjacent to the territorial sea” extending 200 miles from the coastal state's maritime baseline (or to a median line equidistant from it and any neighbouring coastal state less than 400 miles away). The UK has some rights over the High Seas zone beyond the limits of national EEZs.

Given the UK's proximity to a number of other EU states, the issue of overlapping EEZs will have to be addressed as part of bilateral discussions with the countries concerned. Article 15 of the 1982 Convention provides that “where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.” It also states that the provision does not apply if an historic right to a contested area can be proven. It must be clearly stated in any negotiations that according to international and domestic law – UNCLOS 3, the Fishery Limits Act 1976 and the subsequent 2009 Act – the UK takes full control of the EEZ and all its resources on the day of withdrawal from the EU.

The acquired rights of foreign states to UK waters were consolidated first by the London Convention 1964 and the current CFP regime, but the Article 50 process provides an opportunity to renegotiate these arrangements. The UK is well placed to establish new arrangements for reciprocal access, since we hold the preponderance of the waters.

In addition, the UK will need to work closely with Norway, the Faroes and Iceland to enter into a non-binding, co-operative framework to ensure the husbanding of the colossal resources within one another's waters. Norway manages vast areas of the ocean but co-operates on stocks which straddle waters managed by the EU, Faroes, Greenland, Iceland and Russia. A detailed study must be performed into the Norwegian and Greenlandic arrangements over foreign vessels, with a view to ensuring full national ownership of the resource and the control of its exploitation. The Government must also consult fishermen to assess its priorities ahead of the negotiations.

The legal framework under which all of these countries operate is the United Nations Fish Agreement (UNFA), adopted in 1995. It is known as "the conservation and management of straddling fish stocks and highly migratory fish stocks" agreement. It has an enforcement and dispute settlement mechanism and some important conservation obligations. The UK is already a signatory and we can build on it as a basis for managing relations with international partners, including EU member states.

International relations with specific partners can be managed through the North East Atlantic Fisheries Commission (NEAFC) of which the Russian Federation, Norway, Iceland, Denmark (representing the Faroe Islands and Greenland) and the European Union are parties. As for a number of international organisations, the UK taking up a full seat on the NEAFC must be a crucial part of the withdrawal process.

As far as the UK is concerned, the fish and other sea creatures within the UK EEZ are the property of the nation as a whole. Custody of that resource lies with the central and devolved governments. Fishermen have no inherent rights to the fish and other aquatic creatures in these waters and no inherent rights to the property so gained. There is, however, a distinction between inherent rights and acquired rights. Some fishermen have gained acquired rights, which in most respects are as firm as if they are inherent.

Inherent rights are vested in the Crown and under certain, well-defined circumstances (which relate to conservation issues) acquired rights can be withdrawn or modified, in accordance with relevant legal provisions. In effect, fishermen permitted to exploit the maritime resource would do so under some form of licence.

Registration of vessels and crews

A register of fishing vessels, skippers and senior crew members with the Secretary of State ought to be enforced before any permission is granted to exploit UK waters, effectively and fairly enforced using the latest technology. It is anticipated that vessels will be categorised by size, tonnage, horsepower and type of gear used.

Such a system would limit acceptance on to the register to those vessels which conform to high UK standards for seaworthiness, command, crewing and other standards as appropriate. Registration, in itself, would not confer any right, per se, to exploit any particular fishery. It would simply be a necessary condition, before any vessels could apply for permission to exploit any fishery under the control of local Fisheries Management Authorities. The registers would include all vessels, including those registered under foreign flags, the operators of which either have historic rights or otherwise are seeking rights to fish in UK waters. Registration should be subject to payment of a fee, sufficient to cover the costs of the registration authority.

Much in the way that the agricultural sector will need access to skilled, seasonal and non-seasonal labour from across the world, provision must be made for fishermen and crews who rely upon foreign workers. A 2014 study by Seafish suggests that some 13% of those working in British fishing are from the EU, 9% are from outside the EEA and 1% from inside the EEA. Of those from outside the EEA, 34% are Filipino, 34% are Peruvian and 9% are Indonesian. It is vital that the UK continues to attract and welcome workers from across the globe.

Recreational fishing

Recreational fishing is of enormous social and economic value to the UK, with 1 million fishermen generating £1 billion of economic activity. Examples from abroad suggest that its potential as a sector, properly-managed, is huge. In the USA, for instance, more than 45 million Americans make at least one fishing trip each year, with recreational anglers generating over \$40 billion in retail sales.

For this potential to be fully realised, the recreational sector must be deeply involved in the management structure, overseen by local Fisheries Management Authorities. Full provision must be made to accommodate recreational interests where it can be demonstrated that they have significant economic value in any specific fishery. Fisheries Management Authorities will have the authority even to limit commercial fishing activity if necessary, to ensure that those needs are met.

As for commercial fishing, adequate local licensing or registration regimes must be adopted, with charges imposed for rod licences. These charges would be used to cover administration costs for the necessary enforcement activity to ensure that recreational interests were properly safeguarded.

Discards and conservation

After 46 years of the CFP, some 80 per cent of European fish stocks are over-fished, compared to 25 per cent in the rest of the world, and a Union controlling 25 million square kilometres of exclusive fishing grounds now depends on imports for two-thirds of its fish. This is ecological, as well as economic, folly.

In some fisheries, substantially more fish are thrown back into the sea dead than are landed, with CFP rules forcing fishermen to dump billions of dead fish because they are too small or the wrong species. An estimated million tonnes of fish a year are thrown back as discards, up to a quarter of all fish caught according to some estimates, with even higher rates in some parts. These discards are worth some £1.6 billion annually, or the equivalent of 2 billion fish suppers.

It must, therefore, be a priority that the management of sea fisheries in UK waters is carried out so as to safeguard the natural environment. Fish stocks and marine wildlife must be rebuilt and preserved, maximising the economic value of exploitable stocks both in the short and the long term. The ban on industrial fishing must be maintained and a ban on production subsidies must be ordered.

Perhaps the most crucial aspect of a new policy, however, must be to take measures to prevent discarding. An EU discard ban has been attempted, but has proven unworkable as it simply banned the symptom, without addressing it as being the inevitable cause of quotas. Instead, the practical effect is that discards are simply dumped on land rather than at sea, with some going into landfill. Under such a ban, when a vessel runs out of one species it must stop fishing, even if it has adequate quota for others. This has potentially ruinous economic effects as vessels will be forced to tie up upon exhausting their smallest allocation – the so-called “choke species”.

Days at Sea

Discards are an inevitable consequence of quotas, so the present fixed-quota system must be converted to one based upon effort control, which prioritises accurate and timely data collection. The system which most effectively achieves this is known as “Days at Sea”, with the latest technology carefully managing and tracking data in real time. Mandatory landing of all catches must be strictly enforced.

The immediate effect of adopting an “effort control” system in order to conserve fish stocks is that government bodies, scientists and fishermen are relieved of having to administer the labour intensive and unpopular quota system. In terms of transition, the basis of the allocation would be one of maintaining the status quo, for whatever time it takes to introduce the new, fully-working system. This would involve converting existing Fixed Quota Allocation entitlements into their equivalent within a Days at Sea system in the form of flexible catch composition percentages. Five-year track records of species landed should provide the basis of the percentage catches per species. Once quotas have been converted to Days at Sea and attached to licences, it will be necessary to review the catch composition percentages annually as real, accurate catch data are revealed with mandatory landing.

In order to allow fishermen under this system to reduce or increase their activity, their Days should be transferable between active, working vessels within a similar grouping, on which basis they will doubtless attract a significant monetary value. All details of transfers will be publicly available, including names of vendors, prices paid, purchasers, and the vessels to which they are reallocated.

Flexible catch compositions would provide financial and investment stability, whilst avoiding embroiling the Government in a lengthy dispute over investments made in Fixed Quota Allocation entitlements. They also provide a degree of individual species control, since they discourage any sort of “free for all” on a particular species with time penalties for exceeding the percentage. This system is to be preferred over the current quota regime since, rather than promoting discarding, it still allows the fisherman to land everything he catches, in exchange for sacrificing time at sea.

Accurate, real-time information is vital for the success of an effort control system, and technological advances make provision for the rapid temporary closure of fisheries in response to risks of excessive commercial catches. Imposing mandatory reporting of all landings further ensures that data collection is as accurate and up-to-date as possible. Thus, Days at Sea is a system which works with the operation of a vessel rather than against it, and is the only applicable system for the UK’s rich mixed fisheries. Technical improvements have made the enforcement of such a system much more effective.

Examples of the success of such systems abound. The Fisheries Minister in the Faroe Islands, where it is mandatory to land everything, summarised the pragmatism of the approach by saying: “We might not like what we find, but we know exactly what is going on.” In contrast, the EU fisheries policy is based on information which is guaranteed to be inaccurate by at least 50%, and probably six months out of date.

Likewise, in the Falkland Islands, accurate figures are transmitted to senior scientists in London overnight, and any vessel taking too much by-catch is told to steam on. In Iceland, vessels are told to move if they are catching too much of a certain species at an hour's notice. This sort of control can now be given to local fishermen and those with an interest in the local marine environment.

The Falklands example is, in fact, an archetype for national control bringing stability and prosperity to a once chaotic fishery. Until 1986, there were no proper controls for the Spanish and Asian fishing fleets, but the Spanish have since become the largest purchasers of fishing licences, and the most significant investors in joint ventures in the Falklands fisheries.

In addition to the temporary closures and real-time movements, we should allow for the establishment of a system of permanent conservation zones, defined as absolute "no-take" areas. These would tend to be spawning and nursery areas which are so biologically sensitive that any damage done by commercial fishing would be unacceptable. They may have special biological or other significance such as in areas where there are cold water coral reefs, or where commercial fishing would be undesirable. Permanent closure must, however, be properly considered; used unwisely, it can have the effect of simply displacing fishing effort into other areas, with the resultant reduction in fish mortality leading to an overpopulation and the eventual starvation of the fish in the area.

A Days at Sea trial

Ahead of the adoption of a new system, a trial of Days at Sea should be conducted to examine and improve the scheme as an alternative to fixed quotas. The trial should be performed on a national basis, involving each major fisheries area, with two or three vessels in each gear category and each sector taking part. Each vessel would be given exemption from quotas and the associated legislation, and given licences allocating them the number of days which they are permitted to fish, and the gear which they are permitted to use.

As part of the trial, each vessel should document two trips at sea. The first would be its trip under the Days at Sea scheme, recording the overall stock mortality, the proportion and composition of the retained catch, and the overall expenses of the trip. The second log would record a theoretical trip under the quota system to act as a comparison. The Government should look to instigate such a trial immediately in order to consider the full applicability of Days at Sea as a replacement for the CFP upon our withdrawal.

Devolution and local control

The consequences of devolution will have to be carefully borne in mind in the drafting of legislation for a new policy. The arrangements for Northern Ireland and Scotland devolve all matters except for a lengthy list of “reserve powers”. Thus, while the Scotland Act 1998 provides that Scotland has to abide by EU law, EU policy areas were not specifically prescribed as reserved, and will fall by default under the scope of the devolved administrations. Powers and policy areas which Westminster wishes to retain will have to be provided for explicitly by legislation, with amendments to the Scotland Act in the Repeal Bill process.

Fisheries are among the policy areas which would fall to the devolved administrations without preventative legislation. If the UK is to be able to sign trade agreements and abide by WTO commitments, however, a single, overarching national fisheries policy must be sought, with HM Government replacing the EU as the ultimate authority.

There are, however, marked regional contrasts in the way that fishing is conducted across the UK, in response to the variety of fish available, and the implementation of the policy must be co-ordinated with the devolved administrations to reflect that. Fishing in the north, for instance, is characterised by larger boats catching high volumes of cheaper fish, such as mackerel and herring, while that in the south is typically carried out by smaller boats catching lower volumes of more expensive fish and shellfish. It would thus be wise to delineate convenient Fisheries Management Areas – even more local than the devolved administrations – based on ecological divisions of habitats and distinct populations of fish species such that, as far as possible, the aim for fisheries can be local control, within an overall framework of national law and regulation.

Conclusions

- The Customs Union applies an average tariff of 11.8% on fish products. Leaving will thus bring about an appreciable reduction in food prices, to the particular benefit of poorer households.
- Global free trade can also become a cornerstone of development policy, since fishing exports are a critical industry in developing countries, and investment can be encouraged not only in the export of raw materials, but in manufacturing and refinement processes.
- The priority for fisheries management must be to ensure that fish stocks and marine wildlife are rebuilt and preserved, maximising the economic value of exploitable stocks both in the short and the long term. The ban on industrial fishing must be maintained and a ban on production subsidies must be ordered.
- Measures must be developed to prevent discarding, with the discard of commercial species banned entirely. Mandatory landing of all catches must be strictly enforced.
- Since discards are an inevitable consequence of quotas, the Common Fisheries Policy's fixed-quota system must be replaced by an effort control system based upon "Days at Sea", with days transferrable between active vessels as part of their licences.
- Existing quota entitlements should be transposed into Days at Sea by means of flexible catch composition percentages, based on a five-year track record of species landed.
- A thorough Days at Sea trial should be commissioned immediately to establish alternative future UK policy upon withdrawal.
- The UK will re-establish territorial waters extending 12 miles from the maritime baseline and an Exclusive Economic Zone (EEZ), extending 200 miles from the maritime baseline or to a median line equidistant from the neighbouring coastal states. Under international and domestic law, the UK retakes full control of the EEZ and its resources on the day of leaving the EU.
- The UK is in a strong position to establish new arrangements for reciprocal access, since we hold the preponderance of the waters. A detailed study of the Norwegian, Icelandic, Faroes and Greenlandic arrangements should be prepared with a view to ensuring full national control of the resource and its exploitation.
- All fishing vessels, skippers and senior crew will have to register with the Secretary of State or the Scottish Executive before any permission will be granted to exploit UK waters, such that standards for seaworthiness, command, crewing and so on are maintained. A registration fee will cover the administrative costs of the scheme.
- Technological developments provide for the rapid temporary closures of fisheries in response to excessive catches. Accurate, real-time information, with a mandatory reporting of all landings, is vital for a successful programme.
- Allied to these temporary measures will be the establishment of a system of permanent conservation zones, defined as absolute "no-take" areas. These would tend to be spawning and nursery areas which are so biologically sensitive that any damage done by commercial fishing would be unacceptable.
- Delineate convenient Fisheries Management Areas, overseen by local Fisheries Management Authorities whose structures involve both commercial and recreational interests.
- As far as possible, the aim for fisheries should be local control, within an overall framework of national law and regulation.

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