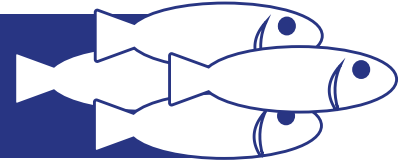


Fisheries and Brexit



The **UK** in a
Changing Europe

Foreword



Brexit has been a steep learning curve for all of us. It has forced us to wrap our heads around a number of issues – Article 50, statutory instruments, rules of origin, business motions in the House of Commons and the rest – with which we were, at best, only vaguely familiar. Fish and fisheries is another such issue. Absurd though it may seem, as the formal Brexit process reaches its endgame, fisheries might yet be the issue that determines whether the negotiations succeed or fail.

Consequently, we at the UK in a Changing Europe have put together this short report to try to explain the basics about a sector that is frequently referred to yet rarely properly understood. The aim of what follows is to explain, as clearly and accessibly as possible, what is at stake in the negotiations over fisheries, what is being negotiated and what the implications of these talks might be for the sector.

The report is the product of the hard work of a number of individuals. I'd like to express my thanks to Craig McAngus, who had the initial idea for the report, and to Chris Huggins, who oversaw the whole process and dealt with a huge number of questions and queries from us with alacrity and remarkable good humour. Catherine Barnard, Richard Barnes, Bryce Beukers-Stewart, Matthew Bevington, Griffin Carpenter, John Connolly and Arno Van Der Zwet all contributed key sections and I am grateful to them for taking the time to do so. Jill Rutter read and commented on innumerable drafts, while Aron Cheung again helped produce some wonderful graphics. As ever, Navyjot Lehl coordinated the whole process with cheerful efficiency.

The UK in A Changing Europe exists to make the best social science research available and accessible to as wide an audience as possible. I very much hope that what follows helps clarify a key yet frequently misunderstood part of the Brexit saga. I'd welcome any comments you may have on it.

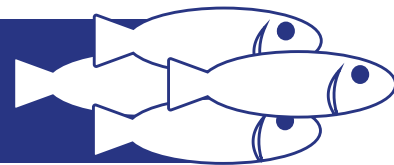
Professor Anand Menon, Director, The UK in a Changing Europe

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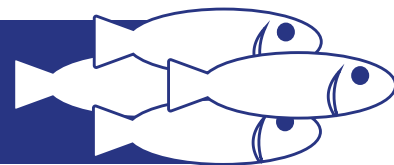
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Introduction



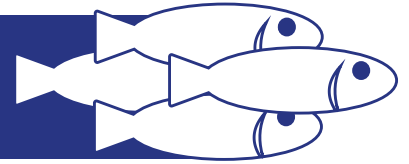
Liberation from the EU's common fisheries policy (CFP) was one of the most touted and prized benefits of Brexit. Fishing communities were among the most vocal supporters of Leave in the referendum. Yet sea fishing – even after the addition of fish processing – accounts for a negligible proportion of UK GDP and is heavily dependent on easy access to European markets, whereas UK consumers prefer fish that is imported from Europe.

That economic insignificance combined with mutual dependence suggests that a deal on fishing should be easy for both sides to agree. However, the EU has made a trade deal with the UK conditional on continued access to UK waters after Brexit, demanding an agreement on fishing rights that replicates the status quo. It has been mooted that the EU will delay a deal giving the UK's financial services sector access to its market if there is no agreement on fishing rights. The UK, meanwhile, is asserting its post-Brexit right to become a sovereign fishing power – an independent coastal state – and is offering the EU annual negotiations over access. This stand-off has the potential to derail the entire talks.

During the Covid-19 pandemic, the industry has suffered badly in its key markets: the closure of restaurants in the UK and the shutdown of valuable seafood exports to continental Europe. Specific compensation schemes to support fishers through the crisis have been introduced across the UK, but it is still not clear what will be left of the industry once business returns to something more like normal.

In this short report, we look at the economic and political significance of the fishing industry for the UK and the EU, how fishing features in the Brexit negotiations and the longer-term implications of Brexit for the future of the fishing industry.

The economics and politics of fish in the UK and the EU



The economic and political significance of the UK fishing industry

From a purely economic perspective, the fishing industry is not a significant economic activity in the UK. Only around 0.1% of gross value added (GVA) in the UK economy comes from the catching sector. This is less than the fish-processing sector, which is a larger economic sector by both GVA (£794 million versus £505 million) and employment (19,191 full-time employees versus 11,961 fishers).

The numbers of people and vessels engaged in the fishing industry have been in decline since the 1970s in the UK, as has been the case in other [significant](#) European fishing nations such as Spain, France and Norway. But there have been recent signs of an upturn in the UK fleet's economic performance. The value of UK fish landings is increasing, and fishing profits are at their highest since records began. This performance is down to an increase in productivity as crew numbers decline. As skippers reach retirement age, their vessels are increasingly replaced by bigger boats and an increasing proportion of migrant labour is employed in UK crews.

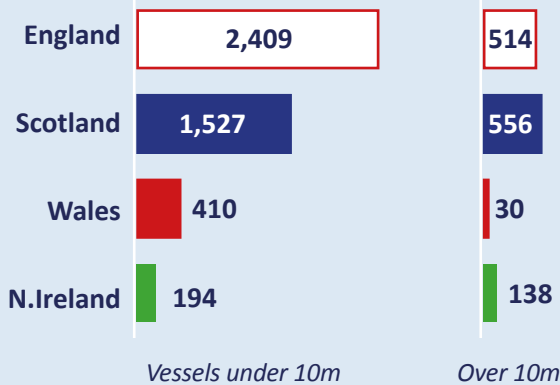
However, this transformation and increasing economic performance is not uniform across the whole industry. Vessels under 10 metres in length still constitute 80% of the fleet and often use traditional methods and earn low incomes.

Although we have talked so far of this as a UK industry, activity is very unevenly distributed around the UK. In terms of the tonnage and value of fish landed, most of the UK's fishing activity takes place in Scotland. England has more fishing vessels than Scotland, but Scottish vessels are on average much larger. The chart below shows the share of the fishing industry in the different UK nations, which demonstrates how fisheries has more of a bearing on Scotland. Sixty percent of the total value of fish landed in the UK occurs in Scotland, and fisheries policy really matters for Scottish politics. Fishing is also relatively more significant in Northern Ireland than most other forms of economic activity compared to England. Northern Ireland's economy is only around 3% of the UK economy but its total fleet capacity is just under 25% of the English fleet.

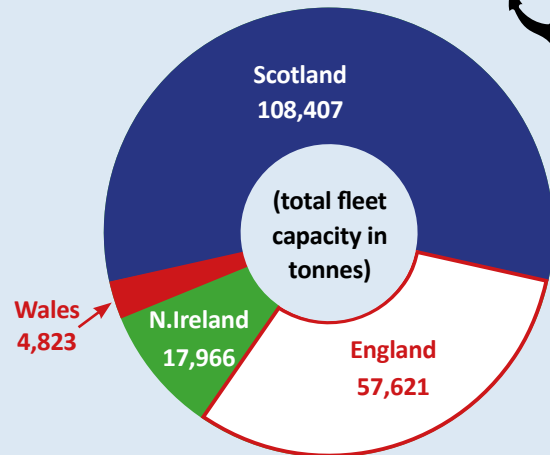
UK fishing industry by nation, 2018



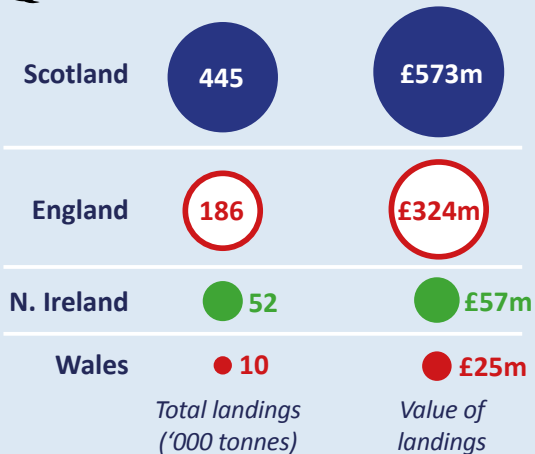
England has the largest number of fishing vessels...



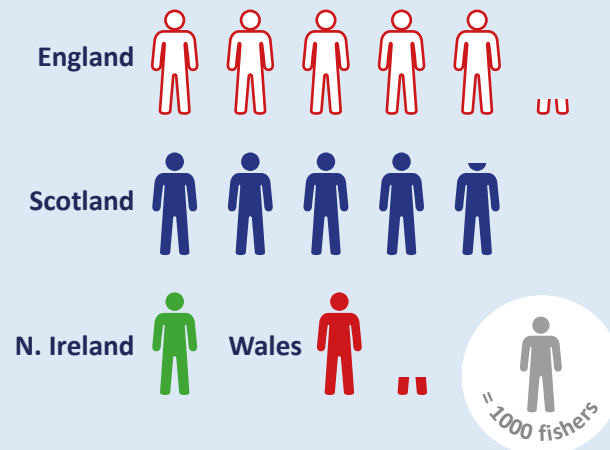
... but overall fleet capacity is high in Scotland



Scotland accounts for over half the fish caught...



... however there are more fishers living in England



Source: Marine Management Organisation, UK Sea Fisheries Statistics 2018.

The largest and most valuable fish landings are in the north-east of Scotland, where large and sometimes multi-million pound trawlers bring in [species](#) such as mackerel, cod, haddock and monkfish. The predominance of these pelagic and demersal fisheries in Scotland (and to some extent Northern Ireland) means that, should the UK gain extra quota after Brexit, it will likely benefit the most.

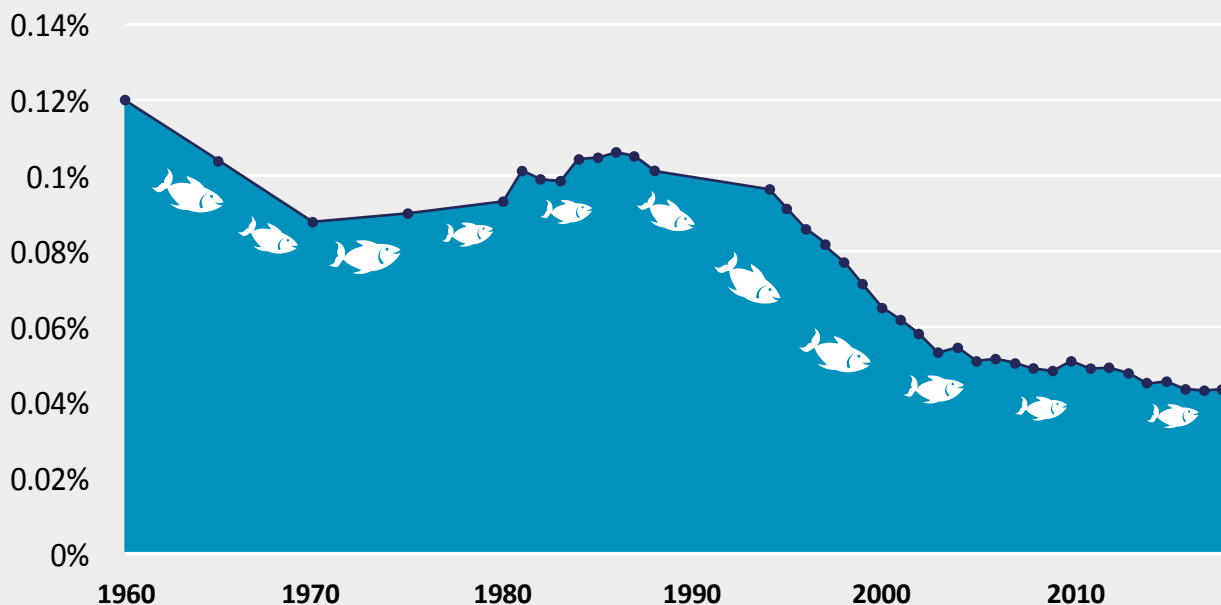
However, in England and Wales, and in smaller communities along the west coast of Scotland, fishing is dominated by the shellfish sector. This is led by smaller vessels and is particularly important for remote communities with limited employment opportunities.

Although fishing is an important employer in particular communities, in the UK as a whole it accounts for a tiny proportion of jobs. Even at its modern peak fishing accounted for just above 0.1% of UK employment. In 2018, this was down to around 0.04%. The number of jobs in the industry has fallen substantially, from around 28,000 in 1960 to about 12,000 in 2018. This figure only reflects the number of fishers and not jobs in supporting industries, such as processing and packing. Industry [data](#) suggest there are at least as many jobs in processing as fishing itself.

Fishing has declined as a share of UK employment



Number of UK fishers as a percentage of total UK employment, 1960 to 2018.



Source: Marine Management Organisation, UK Sea Fisheries Statistics 2018; Office for National Statistics, Long-term trends in UK employment: 1861 to 2018.

In all the nations of the UK, fishing has a political salience that far outweighs its economic significance. The first reason for this is geography. The fishing industry (including processing) is heavily concentrated in coastal communities, which have higher levels of deprivation and lower levels of income and education.

Second, people whose livelihoods depend on fishing have low financial resilience (i.e. highly variable income) and face significant problems finding either alternative employment or financing retirement.

The third reason is simply the cultural resonance attached to the history of the UK as a seafaring maritime nation, which makes fishing something of an iconic industry. This imagery can be seen in everyday symbols: in Scotland, mackerel takes the place of Winston Churchill on the Royal Bank of Scotland five-pound note.

Trade: the great fish swap

The UK fishing industry may be able to pull at patriotic heartstrings but it has found it much harder to persuade British consumers to eat its catch.

Around 80% of UK fish landings are exported. The main markets for these catches are France, the US, Spain and Ireland, and the most popular species include nephrops (sold as langoustine or scampi), scallops, mackerel and crab. Salmon is also a large export product but is produced by fish farms rather than being caught in rivers. A rapidly growing market exists for British whelks in the South Korean market. The amount of whelks alone exported from Wales, for example, is a similar size to exports of all other species combined.

These high levels of exports are not because UK consumers do not eat seafood – the UK is a net importer of seafood – rather it is the kind of fish and the price that British consumers will pay that matters. The result is that a great ‘fish swap’ takes place: most of the seafood consumed in the UK (approximately 70%) is imported.

UK consumers are extremely conservative in their seafood tastes and this trend is increasing over time. The market share of the ‘big five’ species – salmon, cod, shrimp, tuna, and haddock – is 80%. Even if the UK were to take all the fishing quota for cod in the North Sea, the amount caught would still not be large enough to meet the demand from UK chip shops and retailers without imports from the Icelandic and the Barents Seas. Indeed, the UK’s taste for cod may reflect a time when UK boats could fish in Icelandic waters.

Familiarity and convenience are also key for UK consumers: 80% of seafood in the UK is purchased pre-packaged (93% of supermarket sales, which comprise 88% of the market).

Many commentators note that if UK consumers switched to fresh, local fish then the proportion of pre-packaged sales of the big five species consumed and of UK landings exported – all currently 80% – would fall. The industry is well aware of this fact and campaigns have been run to try to persuade consumers to buy more British fish, but without any noticeable success.

Where consumer campaigns have failed, Brexit may succeed. New tariff and non-tariff barriers could disrupt UK trade in fish, both making it harder to export and potentially also more expensive to import. Such disruption could force more UK consumption of UK catches, but that would only happen if UK consumers were prepared to pay a higher price than they do now for UK fish, which are currently exported.

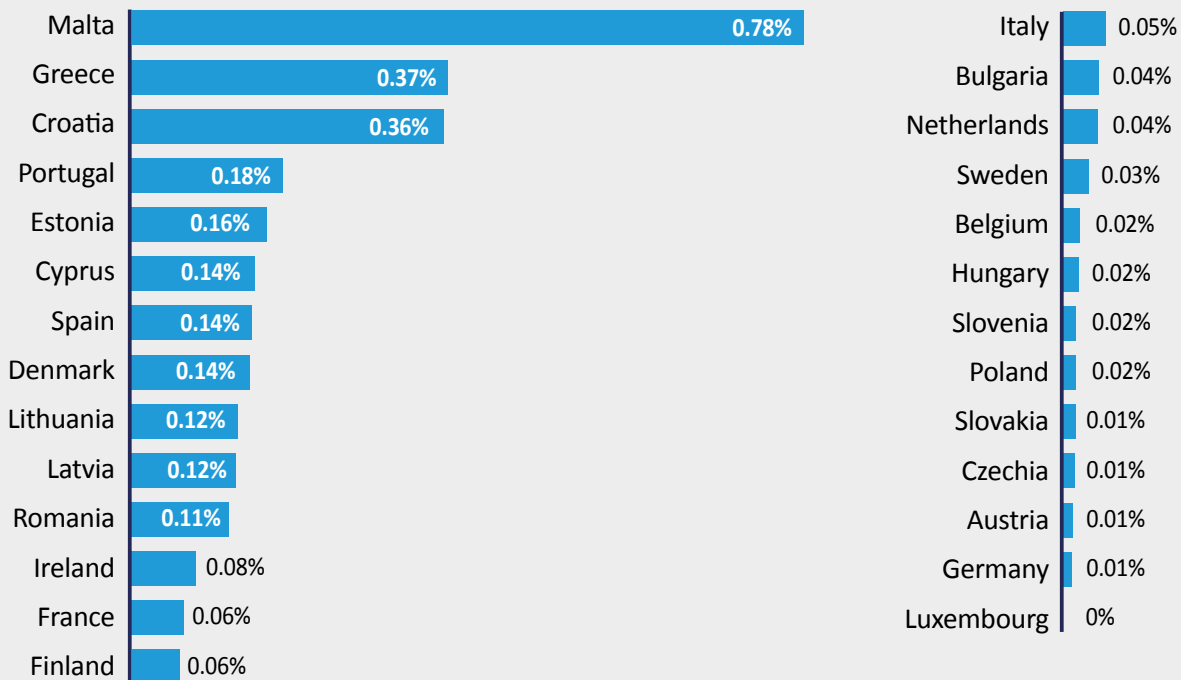
The other side of the Channel: fishing in the EU

The EU is a small player in the global fisheries industry. It [accounts](#) for just 4% of fish production and 6% of global trade. As in the UK, fisheries constitute a tiny proportion of EU economies. Malta is the most economically reliant on fishing, but the sector still amounts to less than 0.8% of its economy. For most member states, fishing (including farmed fish) amounts to 0.1% or less of their economic output and just 0.1% of total employment – only 170,000 jobs overall.

Fishing is only a very small part of most EU economies



Fishing as a percentage of EU economies, 2017.



Source: Eurostat (ec.europa.eu/eurostat/web/national-accounts/data/database).

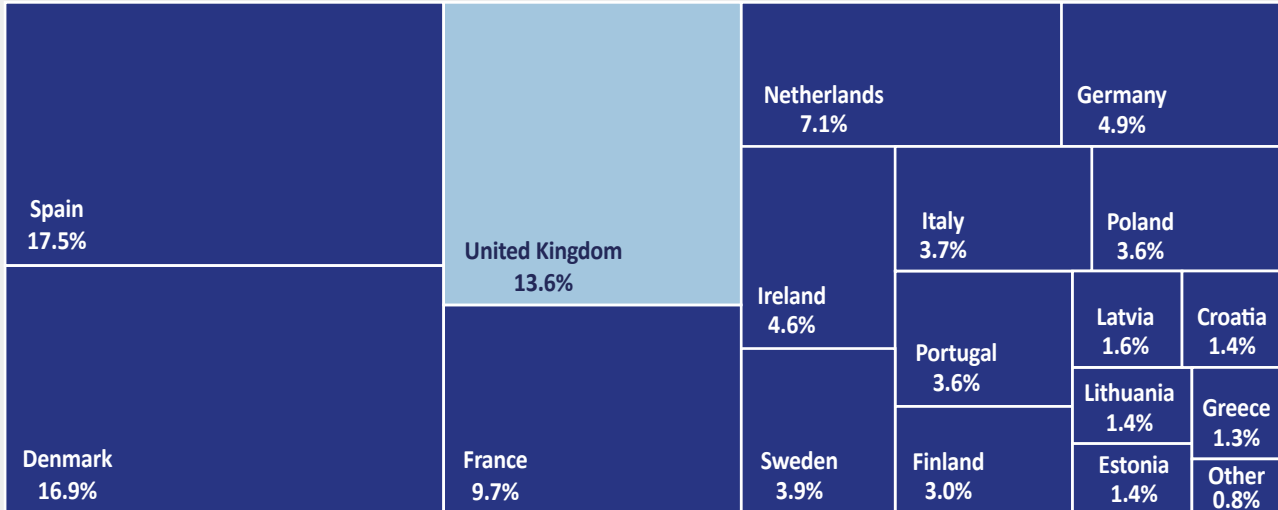
Note: Includes aquaculture.

Nevertheless, most EU countries have at least some sea fishing activity, with the exception of its five landlocked members (Austria, Czechia, Hungary, Luxembourg and Slovakia). The EU 27 catch is widely distributed but Spain, Denmark and France account for over half the total catch. The graphic below shows that when the UK was an EU member it ranked between Denmark and France, landing 13.6% of the total EU28 catch in 2017.

Three countries account for over half of EU fishing



Breakdown of fish landed by EU vessels by weight by country, 2017.



Source: Eurostat (ec.europa.eu/eurostat/web/national-accounts/data/database).

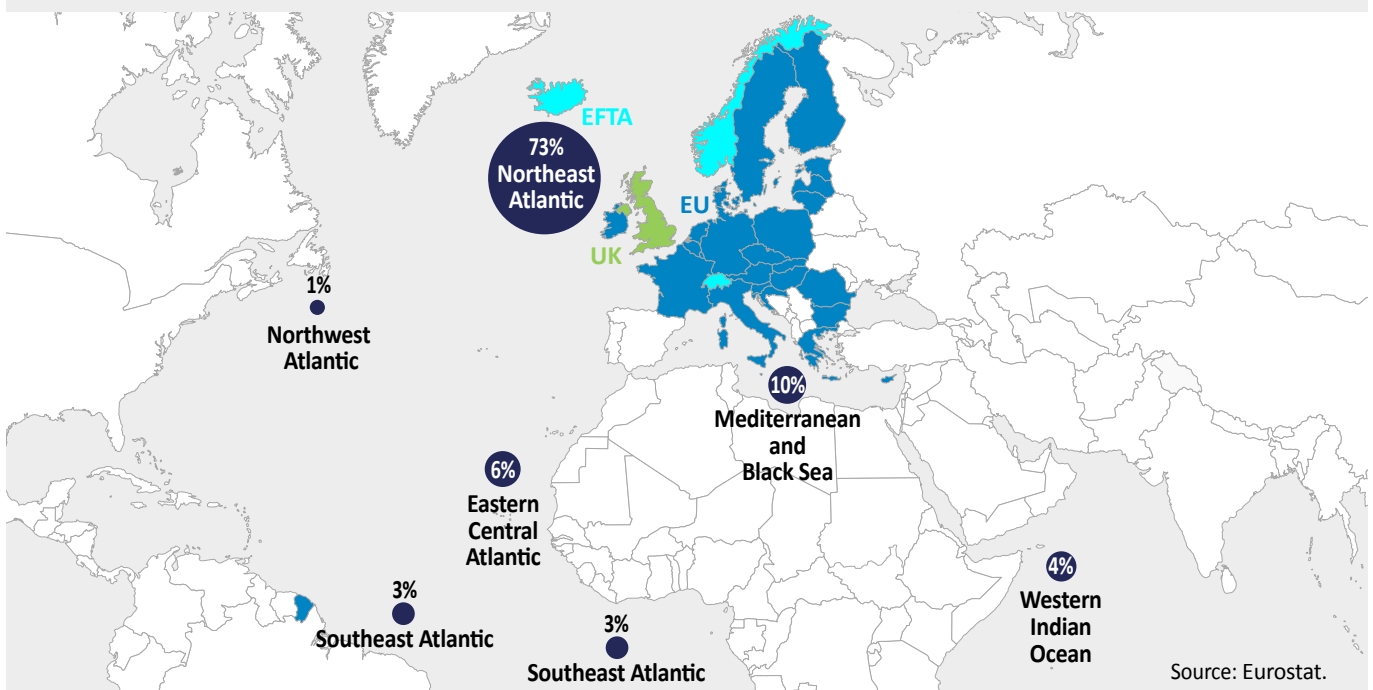
Note: Spain, Denmark and France accounted for more than half the fish caught by EU countries in 2017 when the UK is excluded from the EU total.

EU fishers are heavily reliant on the north-east Atlantic, which includes British waters. According to the UK [government](#), in 2017 some 35% of fish landed by EU vessels from the north Atlantic came from UK waters. By contrast, only 13% of fish landed by UK vessels came from EU waters.

EU fishing is heavily reliant on the Northeast Atlantic



Breakdown of fish landed by EU vessels by ocean or sea, 2017.



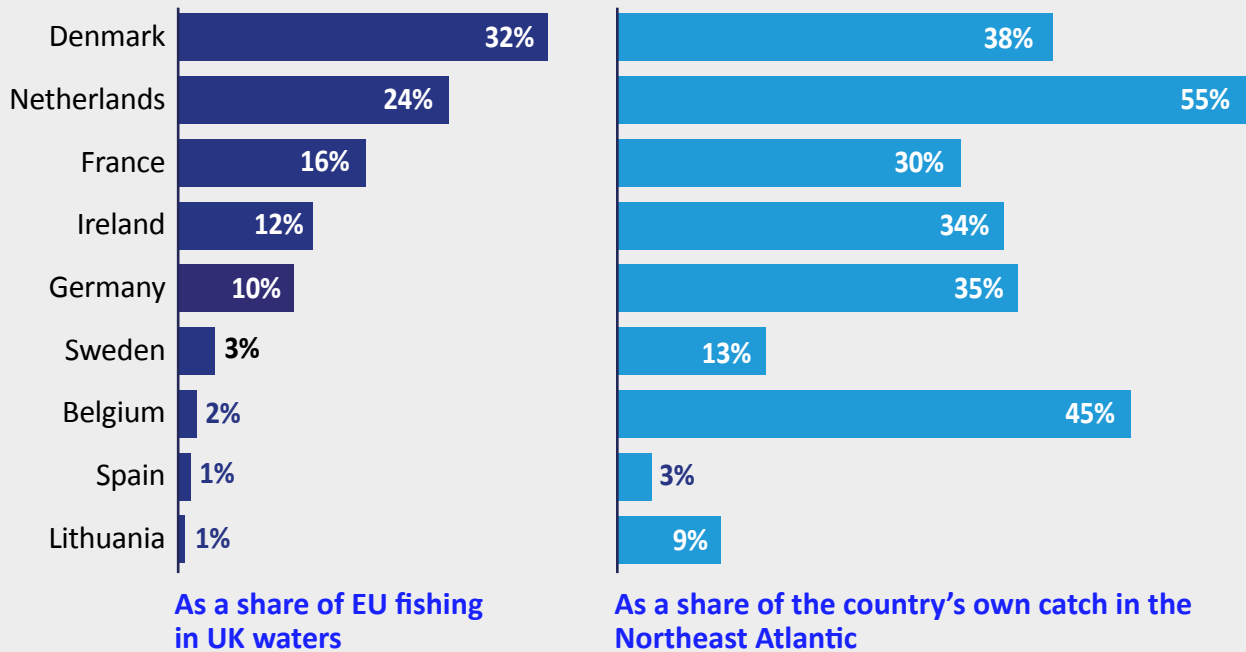
Source: Eurostat.

Although some southern EU member states – such as Italy and Greece – also have substantial fishing interests, they depend almost entirely on the Mediterranean for their catch; equally Romania and Bulgaria rely entirely on the Black Sea. Therefore, despite Italy and Greece having the second- and third-highest levels of employment in the sector in the EU, a future UK–EU fisheries agreement has little direct relevance to them. Five member states account for over 90% of EU [catch](#) in UK waters: Denmark (32%), the Netherlands (24%), France (16%), Ireland (12%) and Germany (10%). For each of these countries, UK waters represent around a third or more of their total catch in the North-East Atlantic, and for the Netherlands it is more than half. Despite Spain accounting for the largest share of the EU’s overall catch, it relies very little on UK waters.

Three countries account for almost three-quarters of EU fishing in UK waters



EU fishing catch in UK waters by weight, 2012 to 2016.



Source: Marine Management Organisation, United Kingdom commercial sea fisheries landings by Exclusive Economic Zone of capture: 2012 - 2018

Employment in fish processing may be hit by any adverse decision in the negotiations. In France, for instance, employment in processing is almost [double](#) that in fishing itself. In Spain, a third of fishing jobs are in the processing sector, and in Germany, it accounts for 85% of jobs in the sector.

In terms of species caught, member states have varied [interests](#). In 2017, for instance, Danish vessels caught almost 90% of all North Sea sprats (also called whitebait), whereas Dutch ships landed almost 80% of North Sea sole, as well as the largest share of plaice. French vessels caught the largest share of monkfish, hake and whiting, and Irish ships the largest share of horse mackerel. Meanwhile British ships caught more than 90% of North Sea haddock, three-quarters of North Sea nephrops (such as lobsters) and just over 60% of North Sea cod.

It is not just access to UK waters that is important for EU countries. Many rely on the supply of UK fish both for consumption and processing. The UK's largest export markets are France (19%), the Netherlands (15%), Spain (10%) and Ireland (8%). In 2017, for instance, just under two-thirds of UK mackerel was exported – the vast majority to the EU, and more than a third to the Netherlands alone.

The largest fish [consumers](#) in the EU are Portugal (at 57kg per person per year) and Spain (46kg) – well above the EU average of 24kg. The most popular sea-caught species are tuna, cod and pollock, although consumption is widely spread across species. In Spain, for instance, hake and sardines are the most commonly consumed fish, while in France it is salmon and cod.

As in the agricultural sector, there are a large number of geographical indications (GI) – to protect product names with strong geographical origins – and designations of origin, which protect products produced using recognised methods in particular geographical areas.

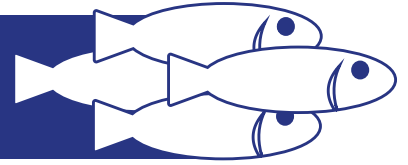
There are 50 such [protections](#) in place for fish species in the EU – seven held by Germany, and five each by France, Italy and Spain. As a member state, the UK had by far the most, at 14, with four applying to salmon alone. Whether these continue to be mutually recognised will be subject to negotiations on the future UK–EU relationship. Maintaining geographical indications is one of the EU's demands. Any UK concessions on GIs could complicate other trade negotiations, such as with the US, who regard this as EU protectionism (see our report on trading on [WTO terms](#)).

However, being a non-member state and outside the CFP does not necessarily impede access to the EU market. Norway is not part of the CFP, is an independent coastal state and is by far the single most important source of fish imports for the EU27, accounting for more than a quarter of all fish by value, mostly of cod and salmon. Norwegian production of the latter exceeds the EU's entire production, including the UK. However, Norway follows EU rules on fish health and welfare, and faces no or low [tariffs](#) on unprocessed fish, which account for the bulk of its exports to the EU.

The political importance of fisheries far outweighs its economic value in many other EU countries, just as it does in the UK. This was demonstrated recently by the temporary [disruption](#) of access for French vessels to the waters around Guernsey in the Channel Islands. The disruption [reportedly](#) affected only 30 vessels, yet garnered international media attention and drew the ire of a number of French politicians.

Fisheries is one of the few areas in negotiations with the UK where the EU feels it has less leverage. Most EU fish comes from the north-east Atlantic, and a large proportion from UK waters, and fishing industries in some key countries would suffer if they lost access after Brexit. The UK is also an important source of fish for EU consumers and manufacturers, so any future disruption to UK supply could have damaging knock-on effects. But other member states have different or no vested interest in the outcome. The EU will itself face some difficult trade-offs if the UK refuses to countenance a deal that comes close to preserving the status quo.

Fishing in the Brexit negotiations



The role of fishing in the broader Brexit debate has presented somewhat of a paradox: fishing represents only a small part of the UK's economy, but fishing has received a disproportionate amount of media coverage during Brexit and the UK's future relationships with the EU. Why, then, is this the case?

One aspect of this is the strength of feeling within the fishing industry itself. Support for Leave among the fishing industry was not universal. Nevertheless, a study conducted before the 2016 referendum with Scottish skippers working on vessels over 10 metres in length found that they overwhelmingly backed Brexit, with 93% intending to [vote](#) to leave. Fishers backing Brexit were driven by a perception that leaving the EU's CFP would right long-standing historic wrongs – an initial unfair allocation of quotas and increasing numbers of EU boats operating in UK waters. They regarded 'taking back control' as a chance to increase their industry's [fortunes](#), increase the amount of fish they were able to catch and would, by and large, have no effect on their ability trade fish. These potential benefits made the fishing industry a powerful symbol of Brexit, and the sight of fishing vessels sailing up the River Thames in 2016 became one of the defining images of the referendum campaign.

Debates since the referendum have highlighted that the industry depends on more than just what and how much it catches. Trade and domestic consumption of the fish caught are, as we have seen, key factors which need to be considered in any Brexit outcome. This is particularly the case for the shellfish sector, which, in terms of value, represents the largest part of the UK's catch and is also the most [exposed](#) to disruptions in trade due to the perishable nature of the products they export.

The ending of freedom of movement is also an important issue for the sector. Some skippers employ migrant workers to crew their vessels and nearly [half](#) the workers in the seafood processing sector are EU or EEA nationals. Those employees may struggle to meet the salary threshold now envisaged in the government's points-based migration system.

Although the fishing industry only accounts for a small proportion of the UK's economic activity, this activity tends to be concentrated in coastal communities where fishing is an important source of jobs for the local economy. Moreover, although many of these communities may not be exclusively dependent on the fisheries sector in [economic](#) terms, [studies](#) have shown how local cultural identity is defined by the presence (or historical presence) of the local fishing industry. During the Brexit debate, many of these communities found strong advocates for their local fishing industry in their local MPs, and it has been argued that strong support for leaving the CFP was key to the success of a number of Scottish Conservative MPs in recent elections.

A recent [study](#) found that media coverage of fishing has significantly increased in light of Brexit. However there is a risk that this gives a distorted view of the industry's take on Brexit: coverage seems to be heavily weighted towards larger fishing enterprises and well-resourced fishing associations such as the Scottish Fishermen's Federation at the expense of the representatives of the smaller fishing vessels, which account for 79% of the UK's fishing fleet. [Research](#) at the University of York has revealed that certain priorities – namely, sustainability and well-enforced governance – are common across the fishing industry. Both small (less than 10m) and large (greater than 10m) sectors of the industry would like to see an increase in quota and an exclusive zone inside 12 nautical miles for UK vessels. In contrast, frictionless [trade](#) with the EU is a much higher priority for the processing sector and for smaller vessels, targeting shellfish, than for the larger boats.

An alternative way of understanding the different interests in the fishing negotiation is by looking at the likely impact of additional quota. The largest and most valuable fish landings are in the north-east of Scotland, where large and sometimes multi-million pound trawlers bring in pelagic and demersal quota [species](#), such as mackerel, cod, haddock and monkfish. Should the UK gain extra quota after Brexit, this region will likely benefit the most. Fishing is also important for remote communities with limited other employment opportunities, such as along the west coast of Scotland and Wales. However, the vessels are generally smaller day boats, predominately targeting non-quota shellfish species. At present, these vessels appear unlikely to gain extra quota after Brexit because the UK government is not planning to change the way that it allocates quotas among the UK fleet. However, if [access](#) to the EU market is reduced, this could be catastrophic for them whether because of tariff or non-tariff barriers, as it is the main market for their catches.

Can the UK negotiate a deal that satisfies the competing interests of its own fishing industry and the EU, which wants as little change as possible?

Will it be possible to reach an agreement on fish?

Negotiations over access to UK waters will not be easy. The aspiration expressed in the (non-legally binding) Political Declaration agreed in October 2019 by the UK and the EU, that the '[p]arties 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' looks demanding.

A future fisheries agreement should include provisions for access to waters, for maximum catch limits per fish stock and for quota allocation, as well as basic rules on how fishing is regulated and enforced, and how disputes are to be resolved. There are big differences in approach: the EU wants an agreement on fisheries linked to the wider economic partnership, whereas the UK wants a discrete fisheries agreement. The EU wants a permanent framework, with enduring quota allocations, whereas the UK wants an agreement that provides for annual negotiations about

fishing opportunities. The EU wants fishing quotas to be shared as they were under the CFP, whereas the UK wants more quota that more closely reflects the location of stocks in UK waters, so-called 'zonal attachment'.

The EU has always identified fisheries as a key issue for the [negotiations](#). In its 2018 [guidelines](#), the European Council said that it would 'work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field (LPF).' This agreement would address 'trade in goods, with the aim of covering all sectors and seeking to maintain zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin'. It then added that '[i]n the overall context of the FTA, existing reciprocal access to fishing waters and resources should be maintained'.

By the time of its [declaration](#) regarding the Withdrawal Agreement and the Political Declaration in November 2019, the European Council noted its 'particular vigilance' as regards citizens' rights, ambitious LPF conditions and 'to protect fishing enterprises and coastal communities'. It added that 'a fisheries agreement is a matter of priority' which should be 'negotiated well before the end of the transition period'.

The Political Declaration spelled out some of the details for the agreement: 'Within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, *inter alia*, access to waters and quota shares'.

So what can we learn from this collection of documents? First, that the EU considers fish to be a priority; second, a deal on fish would be an integral part of any future economic partnership; and third the negotiation should be concluded by 1 July 2020. The UK has also made getting a better deal for its fishermen one of its five key negotiating [principles](#) with the EU.

The negotiations have started, but there is yet no sign that either will make the move necessary to reach a compromise. In its [White Paper](#) on the Future Relationship with the EU published in February 2020, before the first negotiating round, the UK argued for a separate agreement on fisheries, not including it in a comprehensive agreement with the EU, although market access would be covered in the FTA. This is reflected in the separate draft [agreement](#) on the framework for fisheries that the UK published as part of its suite of draft agreements in May 2020. The critical point for the UK is that it wants to assert its position as an 'independent coastal state' that negotiates annually with the EU. It rejects the idea that allocations should be based on the agreed levels set in the CFP (referred to as the 'relative stability mechanism'), which is outdated, based on historical fishing activity from the 1970s. This means that future fishing opportunities should be based on the principle of zonal attachment, which better reflects where the fish live, and is the basis for the EU's fisheries agreement with Norway.

The UK has said that it wants to follow the example of the EU-Norway Fisheries Agreement. This provides for reciprocal access, sets fishing opportunities based on zonal attachment (i.e. the share of a stock located in a country's coastal waters) and provides a mechanism for agreeing catch levels for a dozen species. However, this agreement took years to agree and covers only a dozen stocks, whereas shared UK-EU stocks are far more extensive. The EU-Norway Agreement was also negotiated independently of a wider trade deal between Norway and the EU. Even though it provides a model of what the UK-EU Agreement could look like, there is no guarantee that it will be adopted. A UK-EU agreement would need to reflect the differences in fish stocks, the state of the industry, and the wider social, political and economic forces that will influence the negotiations.

In contrast, the EU set out in the first draft of the Commission's negotiating [mandate](#) that its,

‘aim [is] to avoid economic dislocation for Union fishermen that have traditionally fished in the United Kingdom waters. To reach this objective, the provisions on fisheries should *build on* existing reciprocal access conditions, *quota shares* and the traditional activity of the Union fleet [emphasis added].’

It went on to say that the new agreement should ‘define stable quota shares, which can only be adjusted with the consent of both Parties’. However, that position was toughened after EU member states reviewed the negotiating [mandate](#). ‘Build on’ has been replaced by ‘uphold’ and instead of defining potentially new ‘quota shares’, the Commission is now instructed to ‘uphold stable quota shares’. In essence, the EU is looking to replicate the access that it has under the CFP.

The EU recognises that fish is an area in which it has less leverage than the UK. In February, Ireland's Taoiseach, Leo Varadkar, summed up the [thinking](#) behind the EU approach:

“The UK has a lot of waters and a lot of fish is taken out of your waters by boats from other countries. But bear in mind that 70% of the fish you sell, you sell into Europe. That's an area where you are in a strong position. An area where you're in a very weak position is one of the most valuable parts of the British economy – financial services. You may have to make concessions in areas like fishing in order to get concessions from us in areas like financial services. That's why things tend to be all in the one package.”

Key elements of potential agreement:

- A duty to cooperate in the management of shared stocks or stocks of shared interest.
- Recognition that each party sets the maximum fishing opportunities in their own waters.
- Each party establishes conservation and management measures for their own waters.
- Once national quota allocations are agreed by the parties, then these can be distributed by national authorities to individual vessels.
- Each party polices its own waters, but with scope for some cooperative enforcement operations and information exchange.
- Common fishing standards/rules or a requirement that any such rules are compatible.
- A requirement to ensure a degree of certainty in fishing opportunities over time.
- Some form of dispute settlement mechanisms – either by diplomatic means or resort to court proceedings.

After four rounds of negotiations, neither side appears to think that a deal will happen by the end of June. In his formal statement at the end of the negotiations, EU Chief negotiator Michel [Barnier said](#) “On fisheries, the United Kingdom did not show any real willingness to explore other approaches than zonal attachment on quota sharing. It also continues to condition access to its waters to an annual negotiation – which is technically impossible for us. Whereas the EU wants to build a more stable economic partnership.” In answer to questions he suggested he wanted negotiators to be able to explore the space “in between”. UK negotiators have also reportedly indicated a willingness to take account of the impact on EU fishing communities in the annual negotiations. Ultimately a deal will depend on both sides being prepared to move off what Barnier described at the end of the third round as “maximalist” opening positions. But when he discussed with fisheries ministers before the latest round from the most affected member states they refused to authorise additional flexibility.

What if there is no deal?

The clock is ticking on negotiations and the agreement needs to be in place by the end of the transition period at the end of 2020. However, the Political Declaration sets 1 July 2020 as the date by which the two sides should have used their ‘best endeavours’ to conclude an agreement on fisheries. This date coincides with the deadline for securing an extension of the transition period – a single period of extension can be requested for up to two years.

The time frame for reaching an agreement on fisheries was always an ambitious one, and it is likely that only a basic framework agreement could have been reached that contains rules on access and fishing entitlements for priority stocks. However, given the current distance between the two sides, even that looks unlikely.

The commitment to agree a deal by 1 July is a political one. A deal could be done later, which would suit the UK. It does not want to settle fishing before securing other aspects of the FTA. But there is still a high risk that there will be no deal in place before the end of the transition period.

In this event, the UK and the EU would continue to be bound by international law. More specifically, the United Nations Convention on the Law of the Sea (UNCLOS) requires cooperation and efforts to agree rules on access to waters, as well as setting catch limits and standards on conservation and management of marine resources. The UK and the EU are required to listen to scientific advice on catch levels, ensure stocks are not over-fished and to maintain fish stocks at sustainable levels. However, there will be no automatic access to each other’s fishing grounds. In the absence of practical rules on access, quota and fishing for shared stocks, there is a risk of dispute between UK and EU fishers.

Deal or no deal, the UK will be an independent coastal state. As such, the UK will have exclusive authority to regulate fishing in its coastal waters out to a maximum of 200 nautical miles. This means that the UK can unilaterally exclude access to its waters, set the total allowable catch for fish stocks, and establish fishing quotas and other rules for fishing for stocks located exclusively in UK waters.

The UK does not have to provide access or fishing rights to foreign fishing vessels. The EU might raise a claim for continued access based on historic fishing rights. However, the legal case for this is quite weak because it runs counter to more recent rules governing access under UNCLOS.

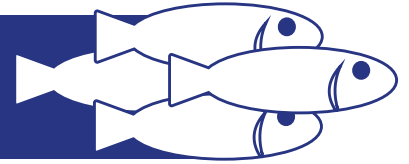
However, UNCLOS still requires the UK to maximise the fishing opportunities from stocks in UK waters. This means that should the UK not have the capacity to harvest the entire allowable catch, then the UK will have to give, through agreements or other arrangements, other states access to the surplus of fishing opportunities. This access can be on commercial terms (i.e. paid access), although it could also be part of a quid pro quo for something else, such as preferential market access for goods and services. Access is discretionary, but when granting it the UK is obliged to take

into account the significance of the living resources in the sea to its own economy and interests, and the need to minimise economic dislocation in states whose nationals have habitually fished in UK waters or that have made substantial efforts in research and identification of stocks. This is important because although the UK has liberated itself from the CFP international rules on utilising fishery resources, alongside the ‘carrots’ of trade deals and market access, will be used by the EU to leverage continued access to UK waters for its fleet.

In the event of a no deal, the greatest risk of disputes or overfishing is in respect of shared fish stocks. Fish are not great respecters of international borders and many important fish stocks swim between UK and EU waters. In such cases, international law obliges coastal states to cooperate in their management. The form and extent of cooperation is not specified in great detail. But in practical terms cooperation should result in agreed maximum catch levels, quota allocations and some common standards on the conduct of fishing. In the event that no agreement is reached, the EU and the UK could unilaterally set their own catch limits and quotas, but without common agreement there is a significant risk that each side will set catch levels according to their own interests – the EU maintaining catch levels in line with those set under the CFP (referred to as ‘relative stability’) and the UK set catch levels according to the size of the stocks located in its waters (referred to as ‘zonal attachment’). With both sides seeking to maintain or increase fishing levels, this could result in overfishing and precipitate the collapse of [stocks](#). A failure to agree fishing limits has been the frequent cause of stock collapses in the past. This is a danger if the UK and the EU fail to reach agreement.

Although international law still requires cooperation between the UK and EU, it is no substitute for a more detailed agreement without which the risk of unsustainable fishing practices and disputes is high. If this happens, then everyone will lose in the long run from uncertainty, conflict or overfishing.

Managing fisheries after Brexit



Regulating fisheries

It is clear that fisheries need regulating, and the UK can now decide how it wants to regulate them. Despite that change of control, there will be no immediate change in how fisheries are regulated. The Fisheries Bill proceeding through Parliament provides the basis to change the regulatory regime for fish over time, once the UK and the devolved administrations decide how they want to regulate fishing in the future.

Under the CFP, much of the structure and content of fisheries law in the UK was derived from EU law and was not part of domestic law. The UK carried over the provisions of the CFP under the EU Withdrawal Act 2018 into domestic law.

While some additional legislation has since been put in place, fundamentally the technical regulations that govern how, when and where fishing can take place continue post-Brexit. The main difference is that they are derived from UK legislation rather than EU legislation. The wrapper is different, but the content remains the same. This makes for a complex regulatory regime.

The future legal framework for fisheries will have two dimensions: domestic and international.

When the Fisheries Bill comes into force, it will provide a framework for domestic fisheries management. It establishes basic objectives, allocates legal competences and creates a process for the development of more detailed rules and regulations through secondary legislation and devolved powers. The legislation will apply UK wide, although provision is made for the exercise of powers within this framework by the devolved administrations. Final agreement on the extent of those powers has yet to be reached (see the discussion below). This bill needs to complete its passage through Parliament and enter into force in time for the end of the transition period. Otherwise, the fisheries administrations in the UK will lack some of the necessary powers to regulate fisheries effectively after Brexit.

The Fisheries Bill sets out general objectives that will be used to shape the content of more detailed laws. These objectives require fishing to be sustainable and bring social or economic benefits to the UK. Policy must be based on scientific evidence, take account of the impacts of fishing on the wider marine environment, be sensitive to the impacts of climate change and to adopt a precautionary approach.

Fisheries administrations must set out how these objectives will be achieved in fisheries plans. Indeed, the fisheries administrations have a duty to act in accordance with these objectives and could be held to account for this. As with many laws, the devil is in the detail, and the success of the new domestic regime will depend on how well fisheries administrations exercise licensing powers, set catch limits and other restrictions on fishing, and how well they enforce these rules.

At the international level, much will remain the same: the UK is bound by a series of agreements (including UNCLOS), which require the UK to protect the marine environment, to establish fisheries conservation measures and to cooperate with other states to do the same for shared fish stocks.

Protecting the marine environment

[Sustainable](#) fisheries depend on a healthy marine environment, but the fate of environmental legislation has played surprisingly little part in the fisheries and Brexit debate so far. Of particular relevance to the health of the marine environment are the European Marine Strategy Framework Directive, the Birds Directive, the Habitats Directive, the Bathing Waters Directive and the Water Framework Directive.

There is strong evidence that European environmental legislation has often been more [effective](#) than national measures for conserving marine habitats and species. For example, under DEFRA's revised approach to managing fisheries in European Marine Sites (Special Areas of Conservation) considerable areas of the seabed have been [protected](#) from bottom-towed fishing gear. An important facet of such European legislation is that enforcement has been [upheld](#) by the Court of Justice of the European Union (CJEU). Much current EU environmental legislation is being transferred into UK law and the UK government says that it will continue to strive for the ambitions of these European directives because of its own international commitments on biodiversity [protection](#). However, there are concerns that, without an enforcement body as independent and effective as the CJEU, some environmental legislation may be [weakened](#).

On a more positive note, Brexit could provide an opportunity to improve the management of marine protected areas in the UK offshore zone (12-200 miles from the coast). In the past, management of these areas had to be agreed with other EU states, which has often resulted in slow progress and weak measures. The UK government has just published a review it commissioned from the former fisheries minister Richard Benyon which makes proposal for upgrading some of the existing Marine Protected Areas into [Highly Protected Marine Areas](#) as part of the government's 25 year environment strategy to allow recovery of marine ecosystems.

Lessons from other independent coastal states on fisheries management

Brexit presents the potential for the UK to tailor its fisheries policy to suit its needs. But it also presents the UK and the devolved governments with the challenge of designing a new governance framework for fishing. The UK may want to learn from how other non-EU countries in north-west Europe (notably Iceland, Norway and the Faroe Islands) govern their fisheries policy.

A common theme among all three countries is the use of quota systems, which specify limits on the amount of fish in specific species that can be caught. In this way, the general approach that these countries adopt to managing fisheries through quotas is similar to that of the EU's CFP, although specific rules around how quotas are allocated and the extent to which they can be traded or exchanged between vessels varies from country to country.

There has been some speculation that after leaving the CFP the UK could move away from a quota system to a 'days-at-sea' model, where restrictions on fishing are expressed in the amount of time vessels are allowed to fish, rather than in the weight of fish they catch. Such a model would be popular in some quarters of the fishing industry. However, the Faroe Islands' experience of this system provides some notes of caution. Despite its popularity with the local fishing industry, the system led to overfishing and a poor international reputation for sustainability. In December 2017, the Faroe Islands moved away from a days-at-sea approach in favour of quotas.

The varied use of quota systems in the three countries and their long experience in managing fisheries suggest other lessons.

The first is that the key principles guiding any future fisheries policy should be enshrined in law. Norway's [Marine Resources Act](#) is a potential model here, and sets out how all marine resources, including fish, should be used in a sustainable and economically profitable way. The proposed Fisheries Bill currently before Parliament goes some way to legislating such key principles, although these will need to be backed by strong monitoring and enforcement.

The second lesson is to ensure that effective institutional structures are put in place for decision making. A 'three pillar' structure has been adopted by both Iceland and Norway. This comprises a government ministry taking political responsibility, a marine research institute providing scientific evidence and an arms-length executive agency, or directorate, undertaking day-to-day implementation and monitoring. The aim of such a structure is to ensure clear lines of accountability. Both a clear institutional structure and clear lines of accountability in decision making are crucial in the context of the UK's system of devolution, where multiple levels of government will be responsible for fisheries decisions. The pillared approach also ensures the independence of scientific advice, free from industry and political pressure. This allows fisheries decisions to be based on neutral scientific evidence, which is respected by governments and the industry.

Active stakeholder engagement and transparency is the fourth lesson. Existing research stresses the need to involve industry stakeholders in decisions. This is backed up by both Iceland and Norway's experience. Here good working relationships have been built between government, the fishing industry and the scientific community, leading to broad consensus around the policies and regulations put in place. In the case of Norway, these relationships have been formalised as part of an annual decision-making cycle, during which industry representatives, local authorities and environmental interests are actively brought into discussions on future regulation. This fosters a sense of transparency that builds trust in the policies put in place.

The final lesson is to ensure benefits for local communities. In all three countries the implementation of fisheries reforms had consequences for communities, some unintended. This is likely to happen in the UK too, as local fishing industries have adapted to life under the CFP, and highlights the need to consider a wider policy package to support local communities. The three non-EU coastal states have put in place a range of policies to tackle some of these issues. Examples include Norway's strict licensing and ownership rules to ensure fishing rights are held by Norwegian citizens (or companies that are majority owned by Norwegian citizens), and Iceland and the Faroes targeting quota to communities with high unemployment.

Implications for devolution

Leaving the CFP and developing a new approach to fisheries policy presents challenges for the UK's devolved settlement.

Fisheries policy is a devolved competence, meaning in Scotland, Northern Ireland and Wales it is up to the national administrations to decide on policies and how to enforce them. However, successful fisheries policy requires administrations to engage in international negotiations on shared fish stocks with neighbouring countries and international trade. These functions are not devolved and power in these areas remains firmly within the UK government's control. As an EU member state, the CFP provided a general framework within which fisheries could be devolved, and leaving the CFP removes this common reference point. As the UK seeks to develop its own approach to fisheries, there is the potential for it to expose tensions in the relationship between the UK government and the devolved administrations. If the UK is to develop a successful post-Brexit fisheries policy, these barriers will need to be overcome.

As noted at the start of this report, the fishing industry varies in scale in each of the nations of the UK and has very different interests. On the one hand, this variation highlights the limits to a 'one-size-fits-all' approach to future fisheries policy. But the need to engage in areas outside of the devolved nations' competence, along with the fact that UK fishing vessels can fish anywhere in UK waters regardless of where they originate, also highlights the need for cooperation across the UK.

To achieve this, the government has proposed that fisheries be subject to a 'common framework'. The Fisheries Bill proposes to achieve this through Joint Fisheries Statements, in which the UK fisheries administrations jointly set out their policies for achieving key objectives. The bill also sets out powers for the devolved administrations in a number of areas, including licensing and marine conservation. Yet the proposed legislation also sets out that fishing opportunities will be decided at the UK level (albeit in consultation with the devolved administrations). An effective UK government veto over what is decided at the international level has also been criticised: it has been a point of tension with the devolved administrations, particularly with Scotland. As the dominant player in the UK's fishing industry, Scotland has called for a greater say in how UK fisheries policy is made and for a seat at the table in negotiations with neighbouring coastal states.

Overall, while there is common agreement on the need to work together on fisheries policy, the process involved and who should have influence remains contested. As the UK government handles English UK fisheries directly, there is a worry in some quarters that UK fisheries policy may become dominated by English interests. While the size of the Scottish fishing industry should protect it, there is a fear that the relatively small size of the Northern Irish and Welsh fishing industries will see their interests lose out. The Conservatives have been able to appeal to fishing interests in the devolved nations, particularly in Scotland, where it is argued that their stance on fishing has helped them to win a number of coastal constituencies, but their voters will want to see their promises delivered on.

The implications for devolution go beyond territorial politics. Even with cooperation, it will be up to the devolved administrations to implement and administer policy. Scotland has invested significantly in its ability to govern fisheries policy. Marine Scotland has significant policy making and scientific capacity in this area. However, this scale of investment is not matched in Northern Ireland or Wales, where administrative and scientific capacity is much smaller. Transferring policy-making powers from Brussels to these devolved administrations will need to be backed by the necessary resources. A long period without a devolved government in Stormont has also led to Northern Ireland's voice and interests to be largely overlooked. The situation in Northern Ireland is further complicated by the question of the border, or in the case of fisheries the lack of an agreed maritime border between Ireland and Northern Ireland.

Whatever happens, once the future regime is settled, all four governments will need to work together. Fisheries has become a disproportionately 'loud' area of policy dispute since the 2016 referendum, which has seeped into constitutional politics. This has put the day-to-day working relationships of officials at the devolved and UK levels (particularly between Marine Scotland and DEFRA) under considerable strain and led to a lack of communication and cooperation at the political level. For any post-Brexit settlement to work, those functioning relationships need to be re-established to allow effective cooperation.



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