



The
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**Fishing for Freedom:
Lessons for Britain from
Iceland's fisheries experience**

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The frontpage photo depicts small fishing boats in Reykjavík harbour. At the centre is the Icelandic Coast Guard vessel Týr which participated in the last cod war (1975-1976) and is still in active service.

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Introduction

Fishing has been an important part of human life and consumption for millennia and still remains one of the most important food production sectors on the planet. Furthermore the importance of fishing is likely to increase significantly in the future due to growing demand for protein rich food and food in general. Consequently it is absolutely vital for countries in possession of fishing grounds, not to mention rich fishing grounds, to ensure more than ever that they are being harvested in a sustainable and prosperous way for generations to come.

The United Kingdom has one of the largest exclusive economic zones (EEZs) in the world even if the waters around the Crown Dependencies and the British Overseas Territories are not included. For the last 44 years British fishing grounds around Britain have, however, not been governed by the British government and legislated by the British Parliament but by the European Union, and prior to that the European Economic Community, through the bloc's Common Fisheries Policy. Yet this is set to fundamentally change as Britain is currently in the process of leaving the EU.

The British government triggered Article 50 of the Lisbon Treaty at the end of March 2017 after gaining approval from both Houses of Parliament, but at the time of writing this paper formal negotiations between Britain and the EU have not yet begun. One of the major issues which will need to be discussed is whether, and in what way, EU fishing vessels will have access to British waters.

Over the last decades British fishing grounds have to a very large extent been harvested by fishermen from other EU/EEC members states. During that same period of time Britain's fishing industry and fishing grounds have, however, experienced increased and serious decline.

Meanwhile neighbouring countries, who have refused to join the EU and have significant interests when it comes to the utilisation of their fishing grounds such as Iceland and Norway, have had the very opposite experience. Their fisheries industries are on a solid ground and form a very important part of the Icelandic and Norwegian economies. Not the least in the case of Iceland where the industry has been run entirely in the absence of state subsidies.

The purpose of this paper is to examine why Britain's experience has been so different and to suggest, based on especially the experience of Iceland, what fundamental issues Britain needs to address to ensure the British fishing sector will enjoy similar success in the future.

Britain and the Common Fisheries Policy

The European Union has managed Britain's fisheries ever since the Common Fisheries Policy was first introduced in the 1970s, following the accession of the country to the then European Economic Community along with Ireland and Denmark. Such policy had then already been anticipated with the Treaty of Rome which was signed in 1957 and marked the founding of the EEC which later became the EU we know today. Before that, the EEC did not have a joint fishing policy, but with the prospect of those three countries joining the bloc, invented one. Fisheries was rather hastily incorporated into the common agriculture policy. Later an independent fisheries policy was introduced.

Before going further it is important to highlight certain core issues regarding the CFP. The stated aim of the common policy has been to ensure sustainable fishing for the benefit of fishing communities or as it says on the EU website: "The CFP aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities."¹ The reality has, however, been quite different. Especially for British fishermen and communities who have been dependent on the sector for centuries.

The EU has today exclusive competence when it comes to the conservation of marine biological resources under the CFP according to the Lisbon Treaty and shared competence with the member states regarding fisheries excluding the conservation part. However, the EU has in fact all the cards as the Lisbon Treaty also states that the member states are only allowed to exercise their shared competence where the EU has ceased exercising its competence or chosen not to do so.² Consequently the actual decision-making within the EU is entirely in the hands of Brussels. The distribution of fishing quotas is in the hands of the Council of the European Union which uses the so-called principle of relative stability which is based on historical fishing experience.

There is little or anything to suggest that this is likely to change. The EU is not exactly known for returning powers once it has acquired them, at least not in anything that matters, as then Prime Minister David Cameron experienced when he attempted to renegotiate Britain's membership of the bloc in 2015-2016. Renegotiating Britain's involvement in the CFP was not even attempted after consultations with EU leaders before the talks were formally launched on what was considered likely to deliver a success. This was despite prominent voices within the Conservative Party calling for that.³

The core of the CFP is the general rule that fishing vessels, registered in the EU fishing fleet register, have equal access to all the EU waters and resources managed under the policy.⁴ Fish stocks within the EU are considered to be a common resource and the exclusive economic zones of the member states are defined commonly as European waters. In the case of Britain this has among other things resulted in the majority of the fish caught in British waters being landed by fishing vessels from other EU member states. According to a study by the University of the Highlands and Islands' NAFC Marine

¹"The Common Fisheries Policy (CFP)", Europa.eu. https://ec.europa.eu/fisheries/cfp_en

² See Articles 1 to 4 of the Lisbon Treaty (TFEU). From Article 2: "The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence."

³See for example: Daniel Hannan MEP: "Here's what David Cameron should demand from EU leaders", Telegraph.co.uk 16 October 2015. <http://www.telegraph.co.uk/news/newstoppers/eureferendum/11937395/Heres-what-David-Cameron-should-demand-from-EU-leaders-in-Brussels.html>

⁴"Access to waters", Europa.eu. https://ec.europa.eu/fisheries/cfp/fishing_rules/access-to-waters_en

Centre (January 2017) less than half of the fish and shellfish landed from the Britain's exclusive economic zone by EU fishing boats between 2011-2015, or 43% by weight, was caught by British boats. It also found that if landings by non-EU fishing boats, from Norway and the Faroe Islands, are included, then British boats' share of the total landings falls to less than a third - or 32%.

Furthermore, the study found that fishing vessels from other EU member states landed around 700,000 tons of fish and shellfish worth almost 530 million pounds from British waters on average each year between 2011-2015. At the same time British boats landed only 92,000 tons of fish, worth 110 million pounds, on average from the waters of other EU countries. Which means boats from other EU member states landed almost eight times more fish and shellfish from British waters than British boats landed from other parts of the EU exclusive economic zone or of almost five times more value.⁵ Meanwhile the EU's fisheries management through the CFP has been a disaster.

The CFP has been plagued from the beginning by serious overfishing and depletion of fishing stocks. Not the least in British waters. The EU has repeatedly over the years pledged to reform the policy and put an end to this but without any significant success or even success at all. At current trends the environment organisation Oceana expects overfishing in EU waters to continue until the year 2034.⁶ But based on past experience that may easily prove to be a very optimistic estimate. The EU has been notorious for more or less ignoring scientific advice in this field for years and the CFP has been widely regarded as a complete failure including by the British government.

Addressing this, the British government's 2014 *Review of the Balance of Competences between the United Kingdom and the European Union* says: "Respondents to the call for evidence overwhelmingly considered that the Common Fisheries Policy (CFP) had failed in the past to achieve key objectives, namely to successfully maintain fish stocks or provide an economically sustainable basis for the industry. Over the last ten years these failings have opened this policy up to significant debate on how well the UK's national interest is served by the EU's management of fisheries."⁷

For the last decade or so Brussels has finally admitted that the CFP has failed to meet its stated objectives and pledged to reform the policy after having previously more or less ignored such criticism.⁸ However, to this day those attempts have not delivered sufficient results and usually only led to more centralisation of powers. Brussels' solution tends to be the same in such circumstances: More integration and consequently more erosion of national sovereignty.

When Britain joined the EU's predecessor back in 1973 the then British government decided to sacrifice the British fishing industry to make that possible. Due to that decision the sector was doomed to the decline and foreign exploitation it has suffered since under the CFP. Cameron was urged to make amend for this in his renegotiation, but as previously mentioned that was not considered a possibility after consultations with other EU leaders prior to the formal talks.

⁵ "Fish Landings from the UK Exclusive Economic Zone and UK Landings from the EU EEZ", Nafc.uhi.ac.uk.

<https://www.nafc.uhi.ac.uk/research/statistics/eez-landings/landings-uk-eez-4>

⁶ "EU overfishing to continue until 2034 at current trend", Euobserver.com 27 December 2016.

<https://euobserver.com/environment/136410>

⁷ "Review of the Balance of Competences between the United Kingdom and the European Union", Gov.uk.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335033/fisheries-final-report.pdf

⁸ "European Commission admits failure of fishing policy", Telegraph.co.uk 22 April 2009.

<http://www.telegraph.co.uk/news/worldnews/europe/eu/5201241/European-Commission-admits-failure-of-fishing-policy.html>

Fishing disputes and EU applications

The failure to renegotiate Britain's membership of the EU shouldn't really come as much surprise. Both considering the fact that the EU has not been very keen on giving powers back to the member states, and also because this is the precise experience of countries with great fisheries interests who have applied for EU membership. Norway is a rather good example of this having filed an application to join the EU and its predecessor at least three times.⁹

Despite these several attempts to get Norway into the EU and its predecessor none of them resulted in an actual membership, and the last two were killed off through a rejection by the majority of the Norwegian people in referendums. First in 1972 and again in 1994. The fisheries were a significant reason why EU membership was rejected by Norwegian voters. Especially in the second referendum which saw the Norwegian government putting great emphasis on trying to secure an acceptable conclusion on the issue knowing it would be decisive for the outcome of the referendum.

However, despite serious attempts to guarantee Norway's interests, including by highlighting the great significance of the fishing industry for a number of Norwegian coastal communities, especially in the north part of the country, the government was only offered a limited transition period after which the Norwegian fishing sector would have been governed entirely by the EU through the CFP. The transition period offered would have expired as early as in 1998.¹⁰

Like Cameron's attempt to renegotiate Britain's membership of the EU, the last attempt by Norwegian politicians to negotiate an accession treaty, which would guarantee their country's fisheries interests, failed. Therefore it should not surprise anyone that Norwegian voters rejected becoming part of the EU regardless of everything else which comes with membership of the bloc. Just like Norwegian voters refused to join the EU based on what their government brought back from the negotiation table it's only logical that Britain should be leaving the EU after the failed renegotiation.

While Iceland applied for EU membership in 2009, the fisheries were never formally discussed during the accession talks. The issue was repeatedly postponed by the EU and when Iceland eventually withdrew its candidacy six years later Brussels had never even delivered its screening report to the Icelandic government which was necessary to open the fisheries chapter of the talks. Senior government ministers had called for the fisheries chapter to be addressed early on, but quite to the contrary it was repeatedly postponed by the EU and eventually never opened. This can only be explained as a reluctance in Brussels to confirm what was already known, namely that Icelanders would eventually have had to accept EU supranational authority over their fisheries just as in the case of Norway and EU member states' with access to the sea such as Britain.

Historically it can perhaps be said that Britain is in a way finding itself today in a somewhat similar situation as Iceland during the so-called Cod Wars in the latter half of the 20th century. These were waged between the two countries and initiated by Iceland's decision to expand its exclusive

⁹ The first time Norway applied to join the then European EEC was in 1962 along with Britain, Ireland and Denmark. When Britain's application was vetoed by France the other applications were also suspended due to close economic ties. This happened again in 1967. "Norway and the EU", Norway.no. <https://www.norway.no/en/missions/eu/areas-of-cooperation/historical-overview/>

¹⁰ Stefánsson, Stefán Már and Óttar Pálsson (2003). "Fiskveiðireglur Íslands og Evrópusambandsins. Þróun samanburður og staða Íslands".

economic zone to eventually reach 200 nautical miles. Iceland's stated objective was to preserve its waters for Icelandic fishermen, referring to an economic reliance on fisheries and the need to avoid the danger of overexploitation. This is indeed also what is considered important in Britain now the country is set on leaving the EU. The EU has already demanded that its fishermen should be allowed to continue fishing in British waters as before after Britain has left the bloc.

However, there is a fundamental difference between Britain's circumstances now and the situation of Iceland when the Cod Wars were waged. During the Cod Wars, the 200 miles exclusive economic zones had not been internationally recognised as they are today. That recognition came some years after the last cod war, which lasted from 1975 to 1976, with the United Nations' Convention on the Law of the Sea which was signed in 1982 and became effective in 1994.¹¹ Before the Cod Wars fishing in Iceland's waters outside 4 miles was in fact not subject to any coordinated management.

While fishing in British waters has been subject to management by the EU through the CFP over the past decades, it has in fact had quite the opposite results for the British fishing industry than Iceland was aiming for when expanding its own exclusive economic zone. Therefore Britain does not only have strong conservation arguments on its side, like Iceland back in the 20th century, but also the fact that the 200 miles exclusive economic zones are today internationally recognised, although the British people have not themselves been able to enjoy that for decades as a consequence of their EU membership.

When the last cod war came to an end, Iceland and Britain negotiated an agreement which included a temporary transition period of six months for a limited number of British trawlers.¹² While this could perhaps serve as an example of what Britain could negotiate with the EU, such temporary solutions can of course be very risky. Or as the late Milton Friedman put it: "Nothing is so permanent as a temporary government programme." There is always a very real possibility that what is only meant to be temporary is extended until it becomes a permanent arrangement.

A more recent fishing dispute, which involved both Iceland and Britain, is also quite interesting in this context. This is the so-called 'mackerel dispute' on how to distribute quotas in the shared mackerel stock in the Northeast Atlantic. Apart from the actual fisheries issue, the dispute sheds an interesting light on the issue of sovereignty. While both Britain and Ireland had great interests in the dispute, neither had a seat at the negotiations table. The governments of Iceland, Norway and the Faroe Islands meanwhile were dealing with the European Commission which Britain and Ireland then tried to lobby. While the Faroe Islands, who have home rule but are not a sovereign country, were a direct party to the dispute, Britain was not. In other words when it comes to their fisheries, the Faroe Islands are quite obviously at present more sovereign than Britain.

While there are probably varied opinions on who was right and wrong in the mackerel dispute, as is usually the case in such circumstances, what is beyond argument is the fact that due to their sovereignty Icelanders were able to defend their fisheries interests as they saw fit. And the people of

¹¹ The United Nations Convention on the Law of the Sea (UNCLOS) was concluded in 1982 and was the result of the third UN Conference on the Law of the Sea which took place between 1973 and 1982. The convention defines the rights and responsibilities of nations when it comes to their use of the world's oceans. See:

http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

¹² Jóhannesson, Guðni Th. "Sjálfstæðisbarátta til sjávar. Yfirlit um sögu landhelgismálsins og þorskastríðanna, 1948-1976", Gudnith.is. http://gudnith.is/efni/sjalfstaeðisbaratta_til_sjavar_fylgirit_morgunblaðsins_31_maí_2006

the Faroe Islands could even defend their rights despite not being a sovereign country as through their devolved systems they, unlike Britain and other EU members, run their own fisheries policy.

Why have Iceland's fisheries been a success?

The core reason why Iceland has been able to manage its fish industry with the success it has is indeed the fact that the country has had the ability to defend its interests as a sovereign country. The fisheries are a symbol of Iceland's independence in the minds of the Icelandic people. The Cod Wars have traditionally been seen as a continuation of Iceland's independence struggle. Having been under foreign rule for over 650 years, first Norwegian and then Danish, Iceland became a sovereign country in 1918. The Republic of Iceland was then founded in 1944.

While of paramount importance, the recipe for the success of Iceland's fisheries, however, is not only the country's sovereignty. Sovereignty, which can also be simply referred to as the freedom to govern yourself, naturally needs to be coupled with a sensible fisheries management. That means the fisheries must be sustainable and those in power need to make decisions based on long-term considerations. Sovereignty entails the power to take fundamental decisions on how much can be caught, what species can be caught, where, how, when and by whom. A sensible management system will make sure this will be done in a sustainable and responsible way.

This was the very reason why Iceland gradually extended its exclusive economic zone which led to the Cod Wars. The fact that Norway and Iceland both have sovereignty over their fisheries and strong fisheries sectors while using what are in many ways different management systems quite well highlights the importance of the sovereignty, which is the main common factor. Sovereignty has made it possible for the two countries to make decisions based primarily on their own national interests, and they have also both developed management systems which are truly based on sustainability and long-term considerations contrary to the failed CFP.

While the Icelandic and Norwegian systems have created a motivation among fishermen to sustain fishing stocks, the CFP has rather encouraged a race to the bottom. Poor fisheries management in this case among other things promotes the attitude of trying to secure as much fishing quota as possible in the Council of the European Union before others will. This in turn leads to even worse management. In other words it is a vicious circle which is the consequence of distrust in the management system itself, and for a good reason given its record over the years.

What has also been missing is the sense of certain collective identity: the sense of belonging to a group through close ties with common interests. While Icelandic laws state that allocation of fishing quotas "does not create a right of ownership or irrevocable control of fishing quotas by individual parties"¹³ the management system nevertheless entails that those who have previously been granted quotas or have bought them from others will be granted the same percentage from individual stocks next fishing year. The quotas can therefore be bought and sold as well as rented. This has created a sense of ownership which has been considered vital for the success of the management system.

¹³ "Lög um stjórn fiskveiða", Althingi.is. <http://www.althingi.is/lagas/140a/2006116.html>

The Icelandic management system has had its share of criticism like any other human endeavour and the system has been in constant review. This criticism has mainly been focused on how to distribute the quotas rather than the success of the system when it comes to conservation. One of the changes to the system that has been introduced through the years in order to reform the system and address criticism is the introduction of a resource tax which the fishing companies pay for being able to harvest the fishing stocks in Icelandic waters. How high this tax should be has also been a matter of some debate. However, despite some criticism according to opinion polls most Icelanders believe the Icelandic management system has been more successful than those operated by other countries. The last poll asking that question was produced by MMR and had roughly 72% of that opinion while about 17% disagreed.¹⁴ While based on personal opinion the poll shows a widespread public acknowledgement in Iceland of the success of the Icelandic fisheries system.

The Icelandic fisheries management system traces its origins back to 1983 and was introduced with the stated main purpose of protecting fishing stocks around Iceland from overfishing. Fishing companies allowed to fish in the waters around Iceland must be in Icelandic ownership, naturally excluding foreign vessels that operate within the Icelandic EEZ on grounds of mutual fisheries agreements. Mainly regarding shared fish stocks such as mackerel and herring. Furthermore, no single fisheries company or individual (including related companies or individuals) are allowed to harvest more than a certain percentage of each stock ranging from 12% (cod) to 35% (redfish).¹⁵

Moreover only registered vessels with a fishing licence can engage in commercial fishing. A central fishing vessel registry is maintained in order to monitor this. Before a fishing trip those who operate a fishing vessel must ensure that it has quota registered that is sufficient for the expected catch. Each vessel's catch quotas are recorded by the Directorate of Fisheries (Fiskistofa) which is stored in a central database and accessible to all, thus ensuring transparency. Catches must be landed in officially designated harbours where it is weighed by accredited officials by species and recorded in the central database. Landed catch is then subtracted from the vessels quota. Fishing must stop when quota has been used up unless the vessel's owner can acquire additional quotas. Fishing without sufficient quota results in the fishing vessel in question losing its fishing licence.

A simplifying element contrasting with Norway as a comparison is that most fish stocks around Iceland are confined to Icelandic waters while large part of fish stocks in British waters are straddling stocks. But that does not limit the validity of using Iceland's management practice as a comparison. Iceland's Marine Research Institute (Hafrannsóknastofnun) conducts research on the main species stocks and then provides scientific advice on the total allowable catch for each fishing year, which lasts from September to August, with the objecting of sustainability. The International Council for the Exploration of the Sea (ICES) also provides advice on a number of stocks. The Ministry of Industries and Innovation is responsible for the political policy making, issuing of regulations, long-term planning in fisheries and deciding the TAC for each species, while the Directorate of Fisheries takes care of the day-to-day administration.

Meanwhile discarding of commercial species is forbidden by law. Extensive area closures to fishing are used to protect juvenile fish while large nursery areas can be closed on long term basis.

¹⁴ "Um 72% telja stjórnkerfi fiskveiða á Íslandi betra en í öðrum löndum", Mbl.is 3 December 2012.

http://www.mbl.is/frettir/innlent/2012/12/03/um_72_prosent_telja_islenska_kvotakerfid_betra_en_i/

¹⁵ "Lög um stjórn fiskveiða", Althingi.is. <http://www.althingi.is/lagas/140a/2006116.html>

Furthermore temporary real time closures are also enforced when necessary. The system moreover allows for a variety of flexibility provisions in order to both facilitate matching of the species composition of the catch and the quota of individual fishing vessels or companies and to reduce incentives for discard such as allowing the use of catch quota for one species to count against a limited catch amount of another. It is also permitted to land a small fraction of the year's catches despite having no quota for that. That catch is then auctioned and the amount paid for it goes to a public fund which is used to support oceanic research.

What is also permitted is for the catch each year to exceed the year's quota by 5% in some species with the excess then being deducted from the next year's quota. Moreover, what is also allowed is to postpone fishing part of the current year's quota and transfer up to 15% of it to the next year, which is considered beneficial to the growth of long-term fish stocks. Finally, catches when fishing vessels catch undersized fish (for example cod less than 50 cm) can in some cases only count as half their weight against quota, which is meant to discourage discards.¹⁶ This is very much more flexible than the EU system which is closer to political barter.

Taking back control of Britain's waters

Fisheries is one of the major issues that will be discussed in the negotiations between the British Government and the EU regarding Britain's exit from the bloc. British fishermen were among the most vocal supporters of leaving the EU in the run up to the EU referendum. There has been fear among them that the UK's fisheries will again be sacrificed in a similar way as when Britain joined the bloc back in 1973. What British fishermen want is to restore Britain's sovereignty over the country's waters, to be rid of the CFP and for EU trawlers to leave British fishing grounds.

While Britain's fisheries interests were not mentioned directly in Prime Minister Theresa May's Lancaster House speech in January (2017) on her vision for how Britain will leave the EU¹⁷ the British government's white paper on the issue, published shortly after May's speech says that in light of "the heavy reliance on UK waters of the EU fishing industry and the importance of EU waters to the UK, it is in both our interests to reach a mutually beneficial deal that works for the UK and the EU's fishing communities. Following EU exit, we will want to ensure a sustainable and profitable seafood sector and deliver a cleaner, healthier and more productive marine environment."¹⁸

Meanwhile in a letter to the Scottish Fishermen's Federation in early May 2017 Environment Secretary Andrea Leadsom said that the government was looking to ensure "full control over UK waters" after leaving the EU and to "disapply key elements" of the CFP. However, no decision had been made to what extent the CFP would be incorporated into British law.¹⁹ The Conservative Party

¹⁶ "The Fisheries Management System in Iceland", Responsiblefisheries.is. <http://www.responsiblefisheries.is/seafood-industry/management-and-control-system/>

¹⁷"Theresa May's Brexit speech in full", Telegraph.co.uk 17 January 2017.

<http://www.telegraph.co.uk/news/2017/01/17/theresa-mays-brexit-speech-full/>

¹⁸"The United Kingdom's exit from and new partnership with the European Union", Gov.uk.https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf

¹⁹ "Scottish fishermen given Brexit assurance", Bbc.com 10 May 2017. <http://www.bbc.com/news/uk-scotland-scotland-politics-39873321>

manifesto published later that month says that after leaving the EU and the CFP Britain will be fully responsible for the management of the waters where Britain has "historically exercised sovereign control."²⁰ While there was initially no mention of a 200 miles EEZ, which has led to some concerns,²¹ Fisheries Minister George Eustice has stressed that leaving the EU will mean full control over British waters.²²

The Conservative manifesto stated that Britain will "introduce a new regime for commercial fishing that will preserve and increase fish stocks" and "provide complete legal certainty to our neighbours and clarity" during the Brexit negotiations with the EU by withdrawing from the 1964 London Convention on Fisheries. This commitment is important: it allows certain fishing vessels from European countries, who are signatories to the agreement, to access waters 6 to 12 nautical miles measured from each other shores. The signatories were the governments of Austria, Belgium, Denmark, France, Germany (then West Germany), Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Ireland and Britain. However, the agreement is limited to fishing vessels which habitually fished in the area between 6 and 12 miles of the waters in question between 1 January 1953 and 31 December 1962.

The 1964 agreement has in fact little relevance today although if still in force after Britain leaves the EU it will maintain the signatory countries' right to continue fishing in British waters between 6 and 12 miles under its terms. When the agreement was signed no country had more extensive exclusive economic zone than 12 miles. At that time the first cod war (1958-1961) had recently been concluded with Iceland extending its waters to 12 miles. Later Iceland would extend its EEZ to 50 miles in the beginning of the 70s and then eventually to 200 miles. The 1964 agreement has not been reviewed to take notice of this development. Furthermore countries such as Iceland and Norway are not involved. The agreement can be terminated with two years notice (article 15) after twenty years have passed from the signing.²³

The EU has already demanded to keep fishing as before in British waters after Brexit as mentioned before. A leaked document from the European Parliament last autumn says that a provision should be included in the proposed Brexit agreement that there would be no increase in Britain's share of fishing quotas in jointly fished stocks. Furthermore it was claimed that it is difficult to see any alternative to the continued application of the CFP in order to maintain sustainable fishing.²⁴

Then earlier this year, the European Parliament's fisheries committee said tariff free access to the EU inner market for British fish products should go hand in hand with "free access" of EU fishing vessels

²⁰ "The Conservative and Unionist Party Manifesto 2017", Conservatives.com. <https://www.conservatives.com/manifesto>

²¹ "Theresa May could waive rights to 95 per cent of British waters after Brexit, fishermen fear", Telegraph.co.uk 19 May 2017. <http://www.telegraph.co.uk/news/2017/05/19/theresa-may-could-waive-rights-95-per-cent-british-waters-brexit/>

²² "Fisheries Minister slaps down those peddling 'soft Brexit' fishing fears", Brexitcentral.com 19 May 2017.

<http://brexitcentral.com/fisheries-minister-slaps-peddling-soft-brexit-fishing-fears/>

²³ "Fisheries Convention - London, 9 March/IO April 1964".

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269708/Fisheries_Conv_March-April_1964.pdf

²⁴ "UK fishermen may not win waters back after Brexit, EU memo reveals", Guardian.co.uk 15 February 2017.

<https://www.theguardian.com/environment/2017/feb/15/uk-fishermen-may-not-win-waters-back-after-brexit-eu-memo-reveals>

to British fishing grounds and ports.²⁵ EU governments, such as Denmark, have reportedly also demanded the same, referring to "traditional rights" of adjacent neighbouring countries. The Danish government is also referring to historical rights saying Danes have caught fish in British waters for centuries.²⁶²⁷ While the official negotiating position of the EU when it comes to this issue has not yet been made public it can be expected to be somewhere along these lines.

Fisheries will therefore be discussed alongside talks on a post-Brexit trade agreement. The EU has not demanded access to fishing grounds in negotiations with other countries before when it comes to regular free trade deals. Brussels, however, has a number of fishing agreement with non-EU countries which are not related to trade agreements, like Iceland and Norway. When Greenland left the then-EEC back in 1985 it was negotiated that the EEC would keep its fishing rights in Greenlandic waters while Greenland kept financial contributions from the EEC.²⁸ The Greenland Treaty, which defines Greenland as a special case, also gives the country tariff free access to the EU inner market as long as a satisfactory fisheries agreement is in existence.²⁹

When the EEA Agreement was negotiated, the EU also wanted access to fishing waters of non-EU countries involved in the talks. The result was that there was a mutually beneficial exchange of quotas. In the case of Iceland, EU trawlers can catch 3 thousand tonnes of redfish within a limited area in Icelandic waters while Iceland can catch 30 thousand tons of capelin from EU quotas in Greenlandic waters. Through the EEA Agreement, which Iceland is a member of through EFTA along with Norway and Liechtenstein, the country is a part of the EU inner market.

Neither of these agreements is, however, comparable to Britain leaving the EU.

When it comes to the Greenland Treaty it is first of all defined as a special case; secondly Greenland was not an EU member state; and third the country did not, and still doesn't, possess a fleet capable of harvesting its vast exclusive economic zone.

With regards to the EEA Agreement, that is not a regular free trade pact. On the contrary, the EEA Agreement is an agreement on membership of the EU inner market which the British government has already rejected.

What comes closest to be considered as a precedent are actual free trade agreements which the EU has concluded with other countries, such as with Canada. Or regular fisheries agreements might be reviewed on fair distribution of shared stocks, mainly based on the time they spend in national waters. But even if the Greenland Treaty and the EEA Agreement would be considered as precedents that does not support a demand that access to a country's waters should equal access to the EU market. On both these occasions the EU had to offer something considered of equal value instead.

²⁵"Fury over European Parliament threat: 'No free trade on seafood without access to British waters'", Telegraph.co.uk 1 March 2017. <http://www.telegraph.co.uk/news/2017/03/01/fury-european-parliament-threat-no-free-trade-seafood-without/>

²⁶"Denmark to contest UK efforts to 'take back control' of fisheries," *Guardian*, 18 April 2017.

<https://www.theguardian.com/politics/2017/apr/18/denmark-to-contest-uk-efforts-to-take-back-control-of-fisheries>

²⁷"EU fishing fleet urges post-Brexit access to UK seas", Ft.com 22 March 2017. <https://www.ft.com/content/958c7e28-0f1c-11e7-b030-768954394623>

²⁸ Greenland was not a member of EU's predecessor but became part of the bloc through Denmark in 1973. When Greenland later gained home rule, a referendum was held resulting in a majority for leaving the EEC - mainly in order to reclaim authority over the country's fishing grounds.

²⁹"The Greenland Treaty of 1985", Naalakkersuisut.gl.<http://naalakkersuisut.gl/en/Naalakkersuisut/Greenland-Representation-to-the-EU/European-Union-and-Greenland/The-Greenland-Treaty-of-1985>

This meant either continued financial contribution (Greenland) or a quota swap (the EEA Agreement).

While the UN Convention on the Law of the Sea speaks of "traditional fishing rights" in article 51, as the Danish government and other EU countries reportedly intend to refer to in order to get Britain to continue allowing their fishermen to fish in British waters, that only covers archipelagic states which Britain by definition is not. The British Isles are certainly defined geographically as an archipelago but only five countries are defined as archipelagic sovereign states under UNCLOS; the Philippines, Indonesia, Papua New Guinea, Fiji and the Bahamas. Article 51 reads as follows:

"Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them."³⁰

The same goes for article 47 which speaks of traditional interests applying, but only in the case of a part of archipelagic waters of an archipelagic state which lies between two parts of an immediately adjacent neighbouring state. But even if Britain was defined as an archipelagic state the country is obviously not between the two parts of a neighbouring state. While the EU has already many characteristics of a single state it is nevertheless not recognised as one. Furthermore article 51 states clearly that any recognition of traditional rights is dependent on bilateral agreements. For all these reasons, 'grandfather rights' rules under UNCLOS do not apply.

There is a reason why the EU aims to discuss the fisheries alongside talks on a proposed free trade agreement rather than during the negotiations on Britain leaving the EU, and also why reportedly the Danish government does not wish to take this issue to international courts.³¹ The EU and the rest of its member states simply have absolutely no right to fish in British waters after Brexit. They could at most refer to article 63 which gives instructions to seek "to agree upon the measures necessary to coordinate and ensure the conservation and development" of stocks of associated species which occur within the exclusive economic zones of two or more coastal states.³² Still this is also dependent on the countries in question reaching a bilateral agreement regardless of any traditional fishing rights which may or may not exist. Furthermore after Brexit, the United Kingdom will not be bound by EU rules such as the so-called principle on relative stability unless the British government chooses to be.

The EU is therefore more likely to resort to sanctions against Britain, such as preventing British fishing vessels from landing in EU ports, than taking the matter to the courts if they will not get what they consider acceptable. The likelihood of this so escalating, and happening over a commodity sought by continental consumers, is, however, a matter of conjecture.

³⁰ "United Nations Convention on the Law of the Sea", Un.org.

http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

³¹ "Denmark to contest UK efforts to 'take back control' of fisheries", Guardian.co.uk 18 April 2017.

<https://www.theguardian.com/politics/2017/apr/18/denmark-to-contest-uk-efforts-to-take-back-control-of-fisheries>

³² "United Nations Convention on the Law of the Sea", Un.org.

http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

But the only acceptable conclusion for a sovereign country is to have full authority over its waters and to conclude bilateral mutually beneficial agreements when it comes to shared fish stocks, as article 63 of UNCLOS instructs coastal states to attempt. When the British government therefore says Britain is committed to cooperation with other countries over management of shared stocks they are simply speaking in accordance with UNCLOS. Meanwhile the only scenario where Britain might not get those results is where the British government would make a political decision that the interests of the British fisheries were again expendable.

When the political decision was made to sacrifice the interests of Britain's fish industry back in the early 70s it was widely expected that British fishermen would be able to continue fishing in waters such as outside Iceland's then 12 miles EEZ. The sacrifice was therefore not considered as enormous as was later better appreciated. Britain signed the accession treaty to join the EEC on 22 January 1972. The second cod war began in September that same year when Iceland expanded its waters to 50 miles and ended in November the year after. Furthermore the UK's EEC referendum took place on 5 June 1975. The third cod war began in November that year, with Iceland expanding its waters to 200 miles, and ended during the summer of 1976. Today the only waters British fishermen in fact have to harvest are the waters around Britain. Therefore, should Britain's fish industry be sacrificed again now it would arguably be even worse than over forty years ago.

A House of Lords report from last December says the British fishing industry will need continued rights to sell fish to the EU market with zero tariffs. That will, however, come with a price according to the report. The EU will, as it has, probably demand retaining direct access to British waters. The report moreover stresses that the vast majority of British fish is exported while significant proportion of the fish that consumers in Britain eat is imported -often from other EU countries. Moreover, most of the commercial fish stocks in question are shared with other EU coastal states.³³

While this may be the present situation, a different one would emerge should there be no agreement with the EU. Tariffs on imported EU-sourced fish might easily result in consumers in Britain shifting to British fish which would by then probably be cheaper. While the absence of a free trade agreement with the EU would obviously not be an ideal situation it would be the consequence of Brussels rejecting free trade and not the other way around. But if fish stocks are to be jointly managed, they should be managed through bilateral agreements as in the case of non-EU countries such as Iceland and Norway in accordance with UNCLOS; and failing that, a sovereign Britain would have the right to issue unilateral quotas.

Should the situation arise where there is no agreement on the fisheries between Britain and the EU following a breakdown in the Brexit negotiations, the EU might resort to sanctions while knowing it has no legal ground to stand on. The British government naturally needs to be prepared for that possibility by including fish products in the free trade agreements which are being prepared with countries around the world, and using the time until Britain formally leaves the EU to promote the British fish industry, its products and its future prospects under a new more responsible and sustainable domestic management. This would be pursued mainly abroad but also at home. This is something Britain should in fact do regardless of whether the talks with the EU break down or not.

³³ "Brexit: Fisheries", Parliament.uk 17 December 2016.
<https://www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/78/78.pdf>

The reality is after all that while the EU will remain an important market, it is at the same time faced with a relative long term decline. A key element in this is due to demographical reasons. The populations of many EU member states are both aging and diminishing in numbers. The future markets will be elsewhere, particularly in Asia in countries such as China and India. EU Commission President Jean-Claude Juncker has even conceded this. In a speech in Madrid in October 2015, when it was still widely expected that Britain would probably remain in the EU, Juncker said that economically the end of the EU's glorious years was in sight compared with what others were doing. He furthermore noted that the EU's share of global output was falling and would soon represent just 15% of worldwide GDP while 80% of the growth was emerging from countries outside the bloc.³⁴ This is even more the reality now when Britain is leaving the EU.

Britain's EU membership has made the country too dependent on the bloc's inner market (although trade between the two has been decreasing³⁵). Not the least when it comes to fish products. After all most of Britain's fish has for years been caught by fishermen who were not from the UK. This poses a great risk both economically and politically: economically as it makes Britain in this case too vulnerable to EU market and sectoral failures, and politically as it offers Brussels a tool which it is now trying to use mainly to punish Britain for leaving the bloc and also as an example to deter others. Not being too dependent on one market is therefore important to strengthen national sovereignty and it is also in line with the good old saying: Don't put all your eggs in one basket. The key is diverse exports and access to diverse markets all over the world.

The European Parliament said last autumn that it was "difficult to see any alternative to the continued application of the CFP in British waters in order to maintain sustainable fishing." However, as must be obvious to anyone the CFP has rather proven to be the opposite of sustainable fishing than the common denominator of that. Also there is obviously no lack of alternatives, especially north of Britain in Iceland and Norway. It is on the contrary difficult to see why Britain should continue to apply a fisheries management system, whether wholly, partly or even just temporarily, which has been so widely criticised and which has been a principal factor in dooming Britain's fishing sector to the decline and foreign exploitation it has suffered for decades.

The UK now has the opportunity and the precedent to cut loose and to save what remains of its fishing industry, its coastal communities, and its stocks.

³⁴ "Europe's glory days at an end, warns Juncker", Telegraph.co.uk 22 October 2015.

<http://www.telegraph.co.uk/news/worldnews/europe/eu/11949038/Europes-glory-days-at-an-end-warns-Juncker.html>

³⁵ "The EU's dwindling importance to UK trade in three charts", 26 June 2015.

<http://www.telegraph.co.uk/finance/economics/11700443/The-EUs-dwindling-importance-to-UK-trade-in-three-charts.html>

Conclusion

The way the British fishing industry was sacrificed when Britain joined the EU's predecessor in 1973 has for decades cast a dark shadow on the country's membership of the bloc. Therefore, how the fisheries issue will be dealt with in negotiations between the British government and the EU will without much doubt play a significant role when history reviews how successful leaving the EU really was. Considering their unfair treatment in the past suspicion among British fishermen and others is understandable. Hopefully that will turn out to be entirely unfounded.

Fear remains that Britain's fishing sector may be sacrificed again during negotiations with Brussels. This is possibly through being used as a bargaining chip to gain better access to the EU's inner market. This, as we have suggested, would arguably be even worse this time round. However, regardless of the treatment British fishermen experienced before, it is simply the responsible and sensible thing to do to create the necessary conditions for the British fishing sector to succeed in a similar way as Britain's neighbours in the north. The UK has every means to do just that once it will again manage its own fisheries and be able to run them in a responsible way with British interests at the forefront.

What is important in that context is not to focus on the current condition of the British fishing sector, after decades of foreign exploitation and poor management by the EU, but what it may gradually become in both the near and distant future through sensible and truly sustainable management by the British themselves after being freed from the shackles of the CFP. And furthermore what it might have been today if it hadn't been for Britain's EU membership. This is fundamentally a question of whether the UK wants to have a strong fisheries sector in the future or not - or whether the British government wants things to carry on in a similar way as they have under the CFP.

The United Kingdom will, as a sovereign country, have an absolute and undisputed right to a 200 miles EEZ or the median line under UNCLOS. No traditional fishing rights, real or purported, of other countries can override that, otherwise no country would ever risk allowing fishing vessels from other countries to fish in its waters. Britain therefore does not have to allow foreign fishing vessels into its waters although UNCLOS does instruct coastal states to seek to agree upon the measures necessary to ensure the conservation and development of shared stocks. That is, however, entirely based on whether the coastal states in question manage to find common ground.

Consequently the EU and its member states have no legal arguments for demands to continue fishing in British waters as before. And they are very well aware of that. Which is why they would rather like to deal with a possible dispute politically than to have international courts settle it. Britain's case is very strong. The British people both have strong conservation arguments on their side, like Iceland during the Cod Wars in the latter half of the 20th century, due to the failures of the CFP but also the sovereign right to a 200 miles EEZ which is today guaranteed by international law.

Should Britain therefore decide to allow EU fishing vessels into British waters post Brexit to a greater extent than can be justified on grounds of mutual agreements on shared stocks it will be because the British government chooses to but not because it is obliged to. What Britain can learn from the experience of Iceland and Norway in short is the importance of having full authority over the fishing sector, the importance of sustainable and responsible management and of keeping the domestic fishing grounds as a general rule for local fishermen for the benefit of the whole country.

While the British Government seems determined to reclaim full control over Britain's 200 miles EEZ how it intends to govern the British fisheries in the future is more of a question. Leaving the EU offers the British government a once-in-a-lifetime opportunity to fundamentally rethink the way British fisheries are managed, with a long term view of how the sector may prosper in the future, taking note of the best practices of other countries and ensuring sustainability and the creation of valuable British jobs. This applies both directly in fisheries and in other connected areas.

The United Kingdom should not retain anything from the CFP unless it's the best practice available. After all there is a widespread view that the CFP is generally speaking a disaster – as the bitter joke goes, not much that is Common, not much to do with Fisheries, and not much of a Policy either. It is not just British fishermen who are of that opinion, but environment organisations as well and the British government. And even the EU itself. Despite numerous pledges as well as attempts to correct the disastrous nature of the CFP Brussels has not been able to deliver on that to this day and is highly unlikely to do so in the future. What Britain should do is look to those who have succeeded in this line of business rather than those who have failed over and over again.

The author



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