The Red Cell

Net Worth: Putting the EU Fisheries Negotiations into Context

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Introduction

Negotiations around the future shape of the UK's fishing grounds, within its regained territorial waters, are ongoing. The declared objective is to settle them by June, meaning the deal will be reached several months ahead of the main UK-EU free trade treaty. Even if fisheries talks are delayed by Coronavirus (which is far from certain), they will remain important both in their own right and also as a key outlier to the future shape of the main talks. Consequently, the negotiations need to be pursued on the UK side with aplomb.

Under international law, these waters default to direct UK control unless a new EU treaty stops that happening. The UK position however appears to be to embrace the default; some access to EU fleets may be allowed, but on an annually negotiated basis and using Norway as a model. By contrast, the EU position is driven by the objective of retaining its current extremely privileged access, a status conceded in the 1970s by Ted Heath's negotiators who did not place the same premium on the industry as other countries have (most notably Spain).

The problem for UK fishermen is that their interests have historically been badly represented by Whitehall and by politicians, most of whom saw it as a lost cause.

So how did we get here, and will the cynical betrayal finally now end?

To answer this, this paper reviews the situation in three parts.

In How we got here;

John Ashworth, one of the foremost campaigners, provides a synopsis of the many historic faultlines. He reflects in particular on quotas, the damage they have done, and why that approach should not be replicated in any new system.

Austin Mitchell has also for many been synonymous with the campaign, and not just in his role as an MP for a great port – he briefly even became "Mr Haddock" by deed poll to get his message across. Here, he recaps the problems with past policy to frame the solutions now needed.

Patrick Nicholls explains, for the first time, the remarkable story behind the Conservative Party's brief revolution over fisheries policy twenty years ago. As the party's spokesman, he introduced an unmatched boldness which now needs to be rediscovered by Conservative policy makers, if they are to avoid repeating the same mistakes of the past.

In The practicalities;

Professor Peter Örebech as an academic and legal expert approaches the subject from a Norwegian perspective. The EEA's terms provide a complex halfway house which are better than the Common Fisheries Policy (CFP) but are not without problems of their own. The context is important; they were the result of a compromised political move to join the EU in full. He cautions any negotiator looking at Norway as a precedent to be aware of these aspects.

Hjörtur J. Guðmundsson, who has previously written for the Red Cell on fisheries, reviews it from Iceland's experience. He returns to the subject here to draw some lessons from a vantage point where the sector was preserved despite the ambitions of EU negotiators.

In The route ahead;

Fishing For Leave is the successor campaign to Save Britain's Fish. **Aaron Brown** returns to the industry's perspective to reflect on what the next steps should strategically be. The starting point lies in not gifting the EU's negotiators a head start by accepting the flaws in the Political Declaration at face value, when the default under international law is so much better.

Rear Admiral Roger Lane-Nott revisits past research by Veterans for Britain, and draws from it important conclusions on what physical preparation needs to be done to take back control of UK waters. There is time remaining to set these in motion, but it is now getting tight.

Finally, **Dimitri de Vismes** from the French UPR party reflects on the end of access from a Frexiteer vantage point. Importantly, he notes there is a level of traditional access whose history goes back beyond 1973. He recommends a return to fair reciprocal access, and supporting communities rather than supertrawlers. As EU policy caused the mess, the EU budget should pick up the bill where fishermen with only recent CFP rights now lose out.

Collectively, these contributions challenge the Government to continue on their path to deliver a robust and fair policy. The time has come to break with a past riven by decades of deceit and political betrayal.

How we got here

John Ashworth was one of the driving forces behind Save Britain's Fish, the campaign that put and kept the CFP on the political agenda. His history of EU Fisheries Policy remains the definitive reference document. Before retirement, he used to work in the industry supplying British trawlers, and at sea.

A track record of failure

Since the 1970s, the fundamentally flawed EU Common Fisheries Policy (CFP) was the cause of over-fishing and bad management. These failures resulted in decommissioning schemes which scrapped 60% of the British fleet, ripping the heart out of communities.

The failing CFP has driven continual cuts and a scramble to survive with continual consolidation to last man standing. Family community fishing is driven out of a livelihood, and ever-increasing monies are spent leasing and buying quota to merely remain stagnant and survive – it is a circus that fails fish and fishermen.

Contrary to Europhiles' assertions, the EU did not save stocks but caused the problems - ones which it still fails to address. The EU caused overfishing through "equal access to a common resource", which stopped Britain exercising her rights to manage her waters and address increasing vessel technology and power. The EU gave grants to build more powerful boats and incentivised overfishing with minimum market prices which stopped market gluts and low prices halting over supply.

The EUs caused a problem and then implemented quotas which DO NOT work in mixed fisheries.

Fishermen cannot determine what mix of species they catch. Quotas led to illegal landings or mass discarding. Quotas forced fishermen to OVERFISH and catch MORE than necessary to find what they could keep.

Quotas caused inaccurate science and exacerbated the fleet over-capacity already caused by the EU. To add insult to injury, when quotas were set under EU 'relative stability shares', the UK only received 25% of the resources although British waters contributed half the seas and catches.

As the system failed, the EU heaped on more rules and bureaucracy to try to make a bad system work.

To add insult to injury, when quotas were set under EU 'relative stability shares' the UK only received 25% of the resources although British waters contributed half the sea areas and catches.

This deprivation of our own management and resources, coupled with EU-funded over capacity and a failed quota system, is what killed over half the British fleet.

Some say this is accidental; others think it a deliberate series of pretexts to cull the British fleet to make way for an EU fleet ruled by an EU policy.

Not only do EU member states directly take 60% of the resources from British waters under 'relative stability shares', but EU 'freedom of establishment' laws allowed EU-owned but UK-registered flagship companies to buy out family-owned British fishermen struggling under EU rules.

These EU flagships now own around HALF of the 40% slither of our own fish the UK receives as part of the EU. Their legal challenge in the Factortame case overturned and forced the Government to allow this to happen, proving the British parliament and courts no longer sovereign.

There is even worse. The 2019 discard ban addressed the discard symptom not the quota cause. Under the new system, when vessels exhaust their meagrest quota they must stop fishing and tie up for the rest of the year.

This final drive into a 30 year cul-de-sac of failed management will ruin around another 60% of what's left of the British fleet. This is why we must escape the failed CFP as soon as possible, and avoid any extension to the transition period.

It is why post-Brexit the Government cannot replicate the same failed EU quota policies to appease a minority of powerful vested interests who wish to keep the failed system, and hope to be the last man standing.

We must have new mixed fishery management based on limiting time at sea in exchange for allowing fishermen to land and record everything they catch, in a time at sea/quota hybrid.

This would result in catching less but landing more, and generate accurate stock data and management response – currently we are forced to do the opposite of all these.

In addition to this the Government should keep the British Fixed Quota Allocation (FQA) entitlement system to retain the investment vessels were driven to make in order to survive.

These FQAs should be converted from being an entitlement to arbitrary weight-based quotas that force fishermen to discard, to Flexible Catch Compositions (FCCs) that set percentages of species fishermen should aim to catch.

If fishermen exceed their FCCs which are based on their track record of catches and investment, then they don't need to discard or tie up but can swap a value of time equivalent to the value of the "wrong" fish caught.

This means there is no financial incentive to Race-to-Fish for high value species, or for species the vessel did not traditionally have entitlement to catch. Instead it means there is the flexibility to land all catches.

The loss of time is paid for by the value of the "wrong" fish, meaning fishermen can make a living but needn't work on catching more fish.

This system would preserve large scale investment in FQAs whilst allowing the flexibility for all fishermen to prosper across all sizes and sectors to rebuild coastal communities. Crucially fishermen would be catching fewer fish with no discards and a limit on time at sea, whilst generating real time data which allows real time management responding to natural fluctuations.

This would give Britain a unique, world-leading discard-free management system, allowing Britain to husband her resources sustainably in a system that allows all fishermen and communities to prosper.

We cannot continue with a system that has failed for forty years

What crushed British fishing is fourfold. The surrender; mismanagement; corporatisation and penetration of a national resources in what many in the fishing industry believe was a slow series of contrived steps.

The EU established 'equal access' to what became common EU waters/resources at the inception of the CFP in the knowledge that Britain, with rich fisheries, would join. This is what Ted Heath sold out too, despite being made well aware of the consequences – the famous response was British fishermen and coastal communities were "expendable".

Equal Access allowed the EU to claim after 10 years things were going a bit sideways with stocks. A marauding EU fleet combined with technical advances Britain couldn't curb with her own policy had denuded stocks. This led to the introduction of an EU system of quotas.

Conveniently the EU fleets declared a huge track record of fish landed. This resulted in them on average having 75% of the quotas under a system of 'Relative Stability Shares' between member states, yet Britain provides 50% of the waters and 60% of the catches in EU waters of the North East Atlantic.

Therefore, initially, due to this surrender and carve up, the EU made off with half the resources that should have been British had Britain been like Norway with independent fisheries. Thereafter, to divide out the small quota share Britain did receive, the government initiated a system called FQA units.

These FQA units entitle those who hold them to a particular proportion of the quota pie regardless of the annual tonnage that year (i.e. if there's 1000 units nationally and you hold 100 then you get 10% of whatever tonnage is available that year.) This corporatised a national resource as the government allowed these FQA units to become tradeable.

As the quota system doesn't work in a mixed fishery (and as our waters were over exploited by a herd of EU boats) we were subject to ever harsher quota cuts based on dodgy data the quotas generated.

This paucity of data is caused because fishermen can't land everything they catch – only those species they have quota for. Anything over quota is dumped dead into the sea. Fishermen have to therefore catch twice the fish to find what they can keep. Critically science is left with an erroneous picture of actual stock levels.

This, combined with the initial loss of our resources when quotas were introduced, pushed a lot of smaller family concerns to the wall as the industry consolidated to last man standing – those with the bigger cheque books who could buy ever more FQA units that were needed just to maintain the parity of the same tonnage of fish to catch to pay loans.

For example, initially 10 FQA units got you one ton. Quota halved so 10 FQA units = 500 kg. To get one ton you now need 20 FQA units. And so on.

To add insult to injury, not only was it bigger British operations who could buy these FQA units, EU laws on freedom of establishment allowed any EU citizen to register a 'British' fishing company.

This allowed EU operations (which were traditionally big companies) to set up in Britain and muscle out British family fishing struggling under EU rules. The Thatcher Government tried to stop these EU 'Flagships' but were overruled by the European Court of Justice (ECJ) in the Factortame case.

Was all of the above a series of incidental coincidences or something deliberately planned to allow the transfer of all Britain's resources into EU hands with only a few big compliant British operators who felt 'we're alright chuck'?

Consequently, it is the direct consequence of EU membership that has facilitated the loss of over half of our nation's resources, and for EU 'Flagships' to now own half of what little Britain does get.

Were we an independent nation – based on fish distribution under the international principle of Zonal Attachment – Britain should get 60% of the internationally agreed Total Allowable Catches (TACs). Currently, we only get 25% of which around half is in EU flagship hands. This means the indigenous British fishermen is operating on around 12% of internationally agreed TACs when, under international law as an independent nation, it should be 60% – we're running on a fifth!

Is it any wonder British coastal communities have been so denuded of wealth? A clean Brexit – where we don't re-obey all EU law post-Brexit – means we become an independent nation under international law (UNCLOS).

This automatically repatriates all our waters and resources as the EU Common Fisheries Policy (CFP) of 'equal access', 'Relative Stability Shares' and EU quotas, ceases to apply – along with all EU law – as the EU has agreed under Article 50. We then revert onto our own domestic legislation.

We will have our waters and resources back. But the Government must assert this under Zonal Attachment internationally, so the EU doesn't try to fish unsustainably with grossly-inflated catch shares based on the half we have removed from the common pot.

This is vital to make sure we have our resources and for sustainability. The government mustn't start from a subservient point letting the EU continue to use our credit card.

FQA units and the corporatisation of a national resource to a few is a British system and will still exist. Fishing for Leave have always said that horse has bolted. Right or wrong people invested heavily in the bad system they had to play with. This should be respected. HOWEVER, what CANNOT happen is the repatriated resource are shovelled into the same bad system.

They must be distributed to all fishermen large or small in all communities to facilitate rejuvenation. This is the most fair and equitable way to do it. Auctioning or giving repatriated resources through FQAs would continue the bad system of consolidation to last man standing we need to stop.

We must also legislate to stop Flagships. Those here will remain as 'British' businesses, but they must be made to be genuinely British – not fishing tourists: 60% British ownership, 60% British Crew and 60% of their catch landed, sold and processed in Britain. This means they too can help rebuild British coastal communities whilst still retaining their businesses.

It means we aren't against foreign investment and partnerships, but they must deliver economically for Britain. Doing this would allow a reconciliation and avoid an open-door stampede of foreign investors trying to buy out a revitalising British industry.

Those are the problems and that is how we got here, along with how to solve them. Remainers shouldn't gloat – as though three quarters of your nation's resources being appropriated under political skull doggery and then under duress is their countrymen's fault.

Our politicians who were complicit in allowing it all to happen should be jailed for what they have down to hundreds of thousands of people – it was treasonous neglect of whole communities.

Brexit provides a wonderful opportunity to right it quickly. Extended transitions and Backstops keep us bound to the CFP and allow the EU to smash what's left of Britain's industry with detrimental laws before/if we escape from such arrangements.

That is why we need to *Walk Away to a Clean Brexit* immediately, to repatriate a potential £6-8bn industry that can rejuvenate whole regions whilst selling into a hungry EU market, just as Norway and Iceland did when they took back control of their waters in the 1970s.

It's a huge prize the political class should not surrender but grasp the opportunity - or be un-electable in coastal constituencies for a blatant second sell-out against their democratic instruction.

Austin Mitchell reported for television on the Cod Wars with Iceland. As Labour MP for Grimsby, he became Chair of the All Party Fisheries Group, and led an enquiry into the industry by a sub-committee of the Environment Select Committee. In the course of his work for Grimsby and fishing he has visited most British fishing ports as well as ports in Denmark, Spain, New Zealand and Iceland. He was awarded the Icelandic Order of the Falcon for his work for fishing and fishermen.

He retired from Parliament in 2015 and since then has devoted himself to fighting for Brexit, writing books about politics and his fellow Yorkshireman, J.B.Priestley, and grumbling at large.

Fishing for Freedom

Fishing is a small industry creating an enormous problem. The Common Fisheries policy which made fish a common resource was cobbled together as Britain and Norway began negotiations to enter the Common Market. The intention behind it was to get access to British and Norwegian waters. Norway rejected the proposal, but Ted Heath agreed to it in his desperation to get into the Market, assuming that British waters weren't important because most of our catch then came from Iceland.

Big mistake. Within four years we'd lost Iceland to find that we couldn't follow the rest of the world in taking our own 200 mile limits because the CFP made us part of a "European pool" to which we contributed around three quarters of the catch but got the right to catch less than a third.

The inevitable result was overfishing. The Commission doled out paper fish to please everyone. European vessels caught more of our own fish than we were allowed - 683,000 tonnes compared to 111000 in 2016. Policing to stop cheating and over-catching was inadequate but more importantly we couldn't rebuild our fishing industry within our own waters as other nations were doing because British waters weren't ours. So, both the industry and its processing side shrank, particularly in England because Scotland got a slightly better deal.

Here was a major scandal: a power grab turned into a basic EU policy, with a British industry, small in economic terms but enormous in symbolic ones, treated as disposable by our own government. In subsequent negotiations other issues were always more important than any fight to get a better deal on fishing. Overfishing by other members was largely unchecked, and huge factory ships like the Dutch owned, Lithuanian registered "Margiris" could wander in for a few days' looting. British boats were laid up, or forced to limit effort by days at sea, properly called days of enforced idleness. Coastal communities suffered. The family ties which had brought sons of fishermen into fishing were cut. The remaining fleet aged, the associated engineering, building and processing. industries shrank. I investment largely stopped.

As Chair of the All-Party Fisheries Group I watched a succession of Fishing Ministers set off for the annual quota negotiations vowing to get a better deal only to come back full of excuses after accepting cuts. These cuts then increased wasteful discards because in mixed fisheries any reduction in quota allocations means vessels must throw back any by catches, they're not allowed to land, meaning vessels were throwing back almost as much as we landed. In the face of this folly the EU decided that all catching should be landed but has been unable to enforce its own policy.

Folly turned into farce as the EU court's Factortame decision allowed foreigners to buy up British vessels and their quotas. As a result, two fifths of the English quota goes to foreign fishermen and

one massive Dutch vessel the “Cornelius Vrilijk” catches a quarter of the English quota. Foreign incursions, like the destruction of Yorkshire lobster pots by French fishermen went unpunished because there was no effective EU inspection at their ports of landing. Indeed, when I spent a week on a fisheries protection vessel, I found it rigorous in inspecting British vessels, but foreigners simply escaped beyond the median line.

We Brits were tough only on our own industry. Government wouldn’t provide the supplementary funding necessary to tap CFP funds for new build or restructuring, so competitors got new vessels at our expense while our fleet aged. Even worse HMG refused to pay compensation to British fishermen made redundant until they were forced to do so by the courts and a campaign by Grimsby and Hull.

Fishing struggled on but 80% of the fish Britain needed now came from abroad, particularly Iceland and Norway both of which had sensibly refused to go into the EU because of the CFP. As MP for Grimsby I had to watch the port’s decline, the collapse of fishing’s engineering, the shrinking of processing and the loss of Grimsby college’s fishing courses as our fleet dwindled from 500 vessels to a score. From that low point only Brexit gives us any prospect of rebuilding our own fishing industry in our own waters.

The paradox is that a clean break on fishing is apparently simple but politically difficult. Once we pull out only a fifth of the crucial stocks are left in the “common” pool. That’s a crucial problem for France whose fishermen are prone to turn to violence, blockade ports, poach and generally make trouble for a French government already threatened by internal unrest. So, France pushes the EU to play hardball, even though most other members have no interest in fishing round Britain.

The first effort was to threaten import bans on British fish unless EU vessels got access to British waters. That looks potent since three quarters of our catches do go to the EU but in fact tariffs can hardly go higher than the minimum levels imposed on Iceland and Norway and will in any case be paid by the consumer. Endless red tape on perishable goods would be more difficult, but if the French state can’t control its own trade other states will take it.

So, the next tactic is to insist that unless fishing access is agreed there can be no further negotiations, and no access for our valuable financial services. Such bullying will hardly appeal to other EU members and is in any case chronologically difficult since Britain leaves the EU at the end of this transitional year and then becomes an independent coastal state controlling its own waters under the UN law of the sea. The CFP then has no jurisdiction.

That will reduce the EUs claim to a simple demand for access It will be pitched unacceptably high but is negotiable. Until the British fishing industry is rebuilt and reorganised there is fishing capacity to spare, as long as access is on a reducing scale and decided on an annual basis. We can regulate fishing in the same way as they do in Norway which allows some EU access on the basis of an annual review of sustainable catch levels based on scientific advice. Supervised access to EU vessels is then agreed in return for swops in British waters.

British fishing could be run on the same basis with either swop arrangements or licence fees, a more substantial fishery protection effort to stop illegalities and cheating and a gradual phasing out of foreign fishing as the British industry builds up. That would create the certainty which investment requires, something the CFP has disastrously failed to do.

The alternative is a new cod war with an EU acting illegally and in defiance of the law of the sea. Right and the law would be on our side though neither side would want such an outcome. The way to avoid it is for the British Government to be absolutely firm on British control over British waters, to stand by fishing in a way none of its predecessors has done and refuse any concessions to win other arguments in the battle of Brexit.

Brexit means that we control our own waters for our own purposes. This would recognise that only the nation state has an interest in conserving its sustainable fish stocks to hand on to future generations. For fifty years British fishing has suffered the consequences of Ted Heath's failure to understand that. Now we can do so before it's too late.

Patrick Nicholls was the Member of Parliament for Teignbridge, in the South West of England from 1983 to 2001. He served Prime Minister Margaret Thatcher as an Employment Minister and an Environment Minister. He was a Vice-Chairman of the Conservative Party under Prime Minister John Major and served as a Shadow Minister under the Leader of the Opposition, William Hague. Patrick writes and lectures extensively in the UK, Europe and the USA. He is a Freeman of the City of London and a Member of the Chartered Institute of Journalists. His wife Bridget is also a lawyer. They have three children.

As EU negotiators set out their demands for a trade deal in ever more bellicose terms, it is difficult to know whether one should admire their chutzpah, or just condemn their stupidity. Here is an institution where the departure of the UK will have same effect on the EU as if their lowest ranking 19 nations had left, but which nevertheless insists on pretending, as do its apologists in the UK, that the UK has no choice but to accept any demand which they care to make. If that really is the first and last negotiating position of the EU, then the sooner we get to December this year when we can leave without any deal at all, the better.

And yet there should be a deal because a deal that is acceptable to both sides, by which I mean one that is fair to both sides and in which both sides acknowledge and, insofar as they can, accommodate the fears and concerns of the other side, would surely be better than no deal at all. To achieve that, however, there will have to be compromises and it is in the nature of compromise that some will like it less than others a and a few will cry “Treason!” It's called politics and that is how in a fallen world we have to conduct our affairs.

So what might the UK offer which would get the EU off the hook of its own intransigent weakness and begin to encourage the sort of dialogue that might just lead to a deal acceptable to all. Well right on cue, Michel Barnier flags up an area which has just the right ingredients: one where compromise by us would cause us no great economic loss, but one which would confer much benefit on what is left, for the time being, of the EU.

Put briefly, it’s fish for finance. The initial 'kite' suggested that the present arrangements should last for 25 years, but now something more aggressive is suggested, with some EU countries, most notably France, Belgium, Ireland and the Netherlands, demanding that that Michel Barnier must “uphold” existing reciprocal access to fishing grounds, Arrogant of course, but then nothing new there, but also an arrogance borne out of weakness. After all, if fisheries matter more to the EU than they do to us and if the deal is that the City of London will be allowed to continue to pursue our country's interests unhindered, if we give the EU a generous deal on fisheries, then what's not to like?

If it was just a matter of money, and if the UK's motive for leaving he EU was based simply on perceived economic advantage, whereas in reality it was based on the desire that we should once again be allowed to govern our own affairs, without kow-towing to the EU, then it is an approach which has much to commend it.

At first glance, that is a 'no-brainer.' Britain’s fishing industry is miniscule. It represents just 0.1pc of GDP. And no wonder. Since Edward Heath signed away our fishing grounds to the EU to compensate

them for the fact they had all but fished out their own waters, our share of the allowable catch in UK waters has decreased to just 25%. The remaining 75% is taken by the EU.

By contrast, our finance industry is vast. It amounts for more than 10pc of GDP, creating in the process literally millions of well-paid jobs. The tax revenue it generates is vast. So if the Brexit project were just about money, 'fish for finance' it could indeed be a desal-breaker. But it is not about that and it never was. It's about restoring morality to politics. It's about restoring to the British people the right to govern themselves by electing and dismissing the politicians who govern their lives. How did they ever lose that right? How was it that in 1975, when granted a referendum on membership of the European Union, or rather the Common Market as it was then, they seemingly surrendered that right?

And the answer is that the British people were systematically lied to about the nature of the Union they were joining and they were lied to specifically about what had been surrendered in the matter of fishing policy. The perpetrators of that lie were none other than Edward Heath and his Cabinet, In short, the British people were betrayed by the Conservative leadership of the day,

That is why Boris Johnson must get this right and to his great credit he has never sought to suggest that stuffing what is left of the British fishing industry is just a 'cruel necessity,' an unfortunate but unavoidable exercise in realpolitik. We need to be clear here. It is not that Boris Johnson or any of today's Conservative leaders are themselves guilty of what their forebears did. The Prime Minister was only 8 years old when we entered the Common Market in 1972. No guilt can attach to him or any of today's Conservative leaders for what their forebears did, unless by betraying the fishing industry a second time they choose to endorse and embrace that guilt. I see no indication that the Prime Minister is preparing to go down that road,

I voted in the 1975 Referendum on membership. I would like to say that I remember how I voted. I hope with a wisdom beyond my years, that I realised that far from entering a trading block we were in fact embarking on an enterprise to submerge our own country into a new country called Europe, but I cannot be sure. What I do know is that in the years that followed I was struck by a growing realisation that 'Europe' was becoming a very different beast than a mere trading block. It had changed its name to the European Economic Community and then to the EU. It had its own National Anthem and its own Parliament. It was for ever extending its tentacles into every nook and cranny of the UK's national life and it looked forward to the creation of a Common Foreign Policy and even a single European currency.

All this seemed to me to be European chicanery of the worst order; they had encouraged us to join a trading block and then switched it to a federalist agenda for which they expected us to pay. Even before I entered Parliament in 1983, I was making speeches about the inherent dishonesty of our so-called partners. What had been known merely as the Common Market when we joined it in 1973 was by the time I entered government in 1987 already morphing into what was to become the European Union in 1993.

My belief that it was 'Europe' not Great Britain that had arbitrarily changed the rules was shattered when one evening at short notice because another minister had been taken ill, I found myself on a plane to Paris to deliver a speech at some 'European ' event. The speech itself was both unexciting and straightforward, but by way of some background my officials had put a copy of the Treaty of Rome in my Red Box. I had never read it before. Why would I? The Conservative Prime Minister of

the day had assured the country that the Treaty of Rome was all about entering a trading block, but then I read the Treaty and saw the truth. The Common Market was not the last step in the march to a free trade block, but the first step towards a United States of Europe. Some two years or so later under the '30 years rule,' the government revealed correspondence between Edward Heath, then President of the Board of Trade and then minister in charge of Britain's unsuccessful 1961 bid to join the Common Market, and the Lord Chancellor, Lord Kilmuir, in which he had specifically warned Heath that, doubtless unintentionally, he had mislead the country when he had said that accession to the Treaty of Rome had no constitutional implications.

Warming to this theme Lord Kilmuir continued

> "I must emphasise that in my view the surrenders of sovereignty involved are serious ones and I think that as a matter of practical politics it will not be easy to persuade Parliament, or the British public, to accept them. I am sure that it would be a great mistake to underestimate the force of the objections to them. But these objections should be brought out into the open now because if we attempt to gloss them over at this stage, those who are opposed to the whole idea of joining the community will certainly seize on them with more damaging effect later on."

Needless to say, as far as to 'bringing these objections out into the open' was concerned, Heath did no such thing.

Heath always refused to be drawn on that correspondence, but Geoffrey Rippon, when asked by the late Hugo Young if that later Cabinet in which he had served had been aware of Lord Kilmuir's earlier advice he conceded that it had. When pressed by Young as to why, as the Lord Chancellor had suggested, the public had not been informed, Rippon simply said that if the advice had been known the public would never have worn it.

On Sunday, 12th December 1971, Geoffrey Rippon, by then Heath's Chief Negotiator on the Common Market, concluded the negotiations on fisheries. The following day, he addressed the House of Commons, as follows;

> "First it is clear that we retain full jurisdiction over the whole of our coastal waters up to 12 miles. Secondly, access to our coastal waters within six miles from our baseline is limited exclusively to British vessels. Next, in areas between six and 12 miles where the baselines are not in themselves a sufficient safeguard, or where the stocks are already fully exploited, the fishing will also be limited to British vessels and to those with existing rights to fish there for certain species of fish."

What Rippon did not tell the House was that this 'derogation' was, in 'EU speak.' merely an exception limited to 10 years, but he then proceeded to compound the evasion with a lie. "Here I must emphasise," he declared, "that these are not just transitional arrangements which automatically lapse at the end of a fixed period."

The implication was that the British had a veto on the final outcome. In fact at the end of the 10 year period Britain, which was contributing between 65% and 75% of the marine resource of the EEC, ended up with just 37%.

Thus the betrayal was complete, but a subsequent generation of Conservative MPs, armed with the growing realisation of what had been done to our fishing communities by Heath and his henchmen, were determined to seek redress. It was not simply the unfairness of the quotas, but the fact that the CFP had become a conservation disaster, with British fishermen required by law to 'discard,' i.e throw overboard, perfectly viable fish, if they had swum into nets in excess of their quota.

In the summer of 1998, I was moved to the Shadow Agriculture team. By then, as the extent to which Britain's fishermen had been betrayed in the run up to accession became ever more widely known. the Conservative parliamentary party was becoming increasingly concerned at the inadequacy of the Party's approach on the CFP. The occasion for venting their concerns was the annual 'set piece' debate on fisheries, which took place each December where the Minister would seek the support of the House of Commons for 'the Government's intentions to negotiate the best possible fishing opportunities for British fishermen based on sustainable fisheries management, effective enforcement and the need to ensure that regional differences of fisheries are fully recognized.'

The Conservative Opposition, compromised by the fact that it was a previous Conservative government that had devised the system, had for a number of years been reduced to saying in these debates that whatever the Minister suggested was just not good enough. To the inevitable taunt, “Well-OK-big-boy-what-would-you-do?” the unfortunate Conservative Shadow Minister would have nothing to say. It was a vacuous, spineless and morally threadbare position and by 1998, the party had had enough of it.

As a result, on my appointment, the then Shadow Secretary of State gave me the fisheries brief and told me to go away and work up something more imaginative before the next debate in December 1998.

There was a growing awareness that the CFP was both morally and environmentally indefensible. After considerable research, I came to the view that only repudiating the CFP or, as I chose to phrase it, 'repatriating' fisheries policy in UK waters to the UK Parliament' was the only way forward.

As a lawyer, it seemed to me that the legal mechanism to achieve that end was clear enough. We had not been co-opted into the Common Market: we had joined it by passing the European Communities Act 1972. What Parliament had done Parliament could undo, either in whole or in part, by amending the Act

I approached a lecturer friend in the European Faculty of a leading 'Russell Group' university and asked her to advise me as to whether my assumption was correct. She found the 'brief' an exciting one and agreed to take it on. Some weeks later, however. when her work was well advanced, she told me that her efforts had come to the attention of the Head of Faculty and she been told to stop work forthwith on the basis that such a policy could lead to our withdrawal from the EU which would be legally, morally and politically unacceptable.

I then approached a Magic Circle firm of solicitors, who agreed to advise me pro bono. and I briefed them as the 'ancients' consulted the Oracle at Delphi; I ensured that the way I put the question would allow no ambiguity in reply. Sure enough, the response I received agreed that what I had suggested was legally feasible and that advise was subsequently confirmed in writing.

I was, however, summonsed to a meeting at the firm at which I was told that while I was indeed right in law, what I had suggested was 'against the grain of history and public policy generally.' In reality, the 1972 Act should be regarded as both irrevocable and irreversible.

On the morning of the Fisheries debate on 15th December 1998, I briefed the shadow ministerial team in general terms as to what I had in mind. I emphasised that I would suggest including fisheries policy in a broader programme of 'repatriation of powers,' which was the buzz-phrase of the moment, designed to keep the lid on Eurosceptic objections to the whole EU project. I did not go into the detail of the history, or the delivery mechanism, namely the unilateral amendment of the 1972 Act, which would mean, in effect, a repudiation of the CFP. I was told in so many words to get on with it.

What was usually a fairly boring debate, proved to be anything but. As I responded to the Minster's opening remarks and it became obvious that what I was proposing was nothing less than the unilateral amendment of the 1972 Act, the atmosphere became increasingly bad-tempered and fractious. Those on my side who agreed with me were both surprised and delighted, but the Opposition by contrast were outraged. For the first time since Britain's accession to the CFP, the Conservative Party had not just criticised the government but had actually proposed a solution that went to the root of the problem. The noise level soared; in fact it went through the roof, and that combined with the interventions I had taken and the heckling from the minister considerably slowed down my delivery.

As a result, for the first and only time in my parliamentary career, the 'chair' had to come to my assistance, with Mr Speaker Martin shouting above the din, “Order Order. There is far too much background noise in the Chamber which is unfair to the Honourable Gentleman who is addressing the House.”

I therefore had to abandon much of my speech to keep within the time constraints. The material I discarded referred to the events December 1971. Such was the reaction of Conservative europhiles after the debate, I have no doubt that if I had placed that material on the record I would have been dismissed before the evening was out and my speech repudiated in its entirety. As it was, it was still a 'close-run thing,' but in the end the support of eurosceptic MPs, many of whom had been in the Chamber, was enough to save me.

William Hague, who at the time was Leader of the Opposition, proved most enthusiastic about this change in approach, telling some months later that every time he mentioned this change at a party meeting it was greeted with rapturous applause!

It was not to last. In 2000, I resigned from the Shadow team, as I had told William Hague I would when he first appointed me, to concentrate on trying to save my seat, where in 1997 my previous majority of 8,58I had shrunk to just 281. It didn't work and in 2001 I lost my seat,

The process of 'nuancing' i.e backing off the policy, started almost as soon as I resigned from the agriculture team and under David Cameron, as I understand it, it was finally shelved. Orthodoxy was thus restored; on the CFP, as on all matters European, it was the EU that was to have the first and last say; there could be no going back. The march towards European integration was deemed irreversible.

The debate of 15th December 1998 may seem in retrospect to merit little more than a footnote in some future doctoral thesis. In fact it was far more important than that. For the first time, the Conservative Party had offered an honest diagnosis of the problem, at least as far as fisheries were concerned, and in so doing had pointed the way towards our eventual withdrawal from the European Union. It loudly proclaimed A. V. Dicey's dictum that no Parliament could bind its successor; what Parliament does, Parliament can undo. All that was required was an expression of the people's will and a Prime Minister with the determination to give it effect.

Righting the historic wrong of what was done to our fishing industry may prove the first real test of Boris Johnson's resolution and I for one do not think for one moment that he will prove unequal to the task.

The practicalities

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"Britain sees Norway as a model. Oslo holds annual negotiations with the EU on access to waters, management of shared stocks and exchanges of quota rights. In theory, EU access to Norwegian waters would lapse if the annual talks collapsed."

Financial Times, 28 January 2020

Norway was applicant country in both 1972 and 1994, but due to referenda that twice voted against accession, it failed to become a Member State. This was largely due to fisheries concerns. As a substitute, the Norway-EU inter-state connection is, since 1994, regulated by the European Economic Area Agreement (EEA)[1] – an association pact – which brings fisheries partly inside, and partly outside the agreement.

This raises the following questions. Firstly, what are the basics of the EU-Norway EEA Fisheries arrangement? Secondly, did the EU during EEA-talks honour the Norwegian positions or claims?

The EEA as second best?

The EU negotiation strategy with third countries – both under the multilateral EEA-Agreement and other treaties (developing countries mostly) – is to obtain "give-and-take agreement" on the *Market-and Waters access,* hereunder exchanging quota rights in EU- and Norway exclusive economic zones.[2] Norway strongly rejects that such exchange agreements are settled, and claim that the EU cod fishing rights in Norwegian waters is – measured in value – equivalent to Norwegian fishing rights in the EU-waters.

The EU tariffs on fish products protect the "Inner Market" to obtain a legally harmonized arena for "equal footing trade". This can be compared with "the objective of establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition" (from the EEA preamble). Thus, the goal is a dynamic market that meets all requirements whether these are investment or establishment, the free flow of commodities or services as well as workers. Since Norway remains a non-Member State, new Member States' imports are subject to contingent custom tariffs arranged for under the (amended) EEA Agreement of 2 May 1992, Protocol 9, Articles 1 and 2, Annex I (cf. GATT legislation).[3] However, since GATT

[1] Agreement on the European Economic Area of 2 May 1992.
[2] Innst.S.nr.248 (1991-1992) on the EEA. Members of the Parliament claimed, «The EFTA-countries rejected that market-access for EFTA fishing products should be paid for by giving EU-fleet access in Icelandic and Norwegian waters. Resources cooperation is not part of the EEA".
[3] From 1 January 1987: "Harmonized Commodity Description and Coding System and Harmonized Tariff Schedule."

Article XXIV(9) guarantees that previous free trade arrangements with new EU-member states remain intact, only increased importation to the EU falls under EU-bound GATT tariffs and autonomous customs schemes.[4] All tariffs establish ceilings, but are otherwise autonomous. Thus, the EU is free to forego duties whenever raw fish is needed for human consumption or industrial purposes.[5] As Robin Churchill verifies, such dispensation is frequently invoked.[6] Since this topic is beyond the core of the CFP, I skip further comments here.

Contrast this with what happens with full membership of the EU

To understand the EEA system one needs to know that the objective is to get as closely as possible to a full-blown membership. Norwegian attempts to retain exclusive legislative power in Norwegian waters during EU-membership exemplify this. The EU blatantly refused to accept the Norwegian position. "[T]here is no question of agreeing to Applicant Member States managing access to waters and resources . . . outside the CFP."[7] Obviously, Norway – by its membership application – intended to transfer all national regulatory powers to the EU. Article 49 of the 1994 Act of Accession re. the Total Allowable Catch (TAC) exemplifies this: "[t]he full integration of the management of those resources into the Common Fisheries Policy". Moreover, under the Joint Declaration on Management of Fisheries Resources in Waters North of 62°N: "[T]he contracting Parties . . . agree . . . upon the integration of these waters into the common fisheries policy."[8] This however failed due to the 'No' in the referendum.

What difference does it make to sign an association agreement instead of converting to full membership? EEA regulates the Norway-EU and member states' relations, which at the outset excludes the CFP from directing Norwegian exclusive management of fisheries resources and fishing activities. As envisaged in the extension some exceptions exist, which mainly relate to the right to establish purchasing facilities, i.e. Producers Organizations are obliged to welcome foreign vessels to own fishing harbors. If EEA member states such as Norway claim exceptions from general EU rules it is that country's obligation to acquire the necessary dispensation to the EEA-main principles. These predominantly are;

1. **Equal access to ports:** The Member State cannot require vessels to land catches in its own ports. According to the EEA Agreement, Article 5 of Protocol 9, fishing vessels flying the flag of other contracting parties enjoy equal access to ports and first-stage marketing installations together with all associated equipment and technical installations.[9]

2. **Quota allocation and utilization as evidence of economic link:** In determining the detailed rules for the utilization of the quotas allocated to it (see paragraph 10-11 below) a Member State may not require vessels flying its flag to land catches or a proportion of them in its

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[4] P. Ørebech, *GATT-rett, EØS-rett eller EF-rett?* (*GATT law, EEA law or EU law?*) (Oslo,1992), § 53, para. 5.
[5] Council Reg. No. 104/2000 of 17 December 1999 on the Common Organization of the Markets in Fishery and Aquaculture Products, Preamble §§ 32–33.
[6] R.R. Churchill, *EEC Fisheries Law* (Martinus Nijhoff, Dordrecht/Boston/Lancaster, 1987), p. 262.
[7] Eurofish Report, 20 January 1994, BB1.
[8] Negotiations on Accession of Austria, Finland, Norway and Sweden to the European Union, Brussels, 12 April 1994 (AA-AFNS6, final), p. 11.
[9] R. Churchill and P. Ørebech, "The European Economic Area and Fisheries," (1993) 8 IJMCL 453-470, at p. 464.

own ports, as prescribed by EEA Agreement, Article 5 of Protocol 9. Thus, the evidence of the vessel's necessary linkage to "national ports" may not be limited to the landing of catches in those ports.[10] The Member State's only out is for the flag state's landing to qualify as evidence of the "necessary economic link", which is clearly restricted.

3. **The right to transit:** In principle, the *free transit* right is also part of the EEA. This means that all the states who are EU-members enjoy the freedom to land and transit fish in Norway. Although the EEA agreed upon this right,[11] it failed to come into effect before 2003, which can be compared with "the settlement of the issue of allowing for transit of fish and fisheries products, landed in Norway by Community vessels, through Norway to the Community".[12]

Some comparative remarks: EU membership contra EEA

Under the membership regime, Norway had to transfer all its national legislative powers to the EU. An example is the statement under Article 49 of the 1994 Act of Accession, concerning the total allowable catch (TAC): "[t]he full integration of the management of those resources into the Common Fisheries Policy". [13] Moreover, under the Joint Declaration on Management of Fisheries Resources in Waters North of 62°N: "[T]he contracting Parties . . . agree . . . upon the integration of these waters into the common fisheries policy (CFP)." [14]

Norway – in its 1994-membership application – classified EU-fishing boats as third-country participants. As Norway claimed, these vessels are subject to fishing rights only if Norway allocated quota rights.[15]

The EU candidly rejected the Norwegian Position: "Norway's demands that there be no increase in fishing effort for non-quota stocks cannot be accepted."[16] In practice, this meant "open doors policy" inviting all EU vessels to enter Norway's EEZ in search of non-quota regulated species.

Norway was however forced to accept the CFP solution: "As from the date of accession and until the date of application of the Community fishing permit system, all provisions concerning fishing . . . shall be identical to those applicable immediately prior to entry into force of the Accession Treaty."[17] Accordingly, at the end of transitional period the CFP came into play and ended the third-country status of EU vessels, opening all national seas to foreign EU Member States' fleets.

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[10] Case 216/87, R v Ministry of Agriculture, Fisheries and Food ex p. Jaderow [1991] ECR 4509; [1991] 2 CMLR 556, paras. 35–37.
[11] Cf. R. Churchill and P. Ørebech, "The European Economic Area and Fisheries," (1993) 8 IJMCL 453-470, at p. 465.
[12]See Additional Protocol in Annex on Special Provisions referred to in the 2003 Enlargement Agreement, Art. 2, para. 3.
[13] Norwegian Position Paper on Fisheries (12 November 1993, Section 2.2
[14] Negotiations on Accession of Austria, Finland, Norway and Sweden to the European Union, Brussels, 12 April 1994 (AA-AFNS6, final), p. 11.
[15] Norwegian Position Paper on Fisheries, p. 5.
[16] Eurofish Report, 20 January 1994, BB1.
[17] 1994 Act of Accession, Art. 45.

We also need to consider the EU's ability to compromise during the EEA 1992 negotiations. Norway applied for an associated membership of the EU inner market without fully adapting to EU provisions. At the onset, the EU rejected the Norwegian position. Membership required that Norwegian legislation harmonized with the EU inner market provisions: "[T]here is no question of agreeing to Applicant Member States managing access to waters and resources . . . outside the CFP."[18] Obviously, there was no way around the matter. However as envisaged in the extension, the EU acquiesced with the Norwegian position on some few points.

The CFP directs EU-vessels harvesting, inside or outside EU waters. The EU enjoys the sovereign right of entering into agreements with third countries. The four freedoms – investment, establishment, trade in commodities or services and the free float of labours – is the general platform. Exceptions need a clear, joint declaration handled by the parties during negotiations,

What about the issue of entering into agreements with other countries? Let us start with the obvious.

The Law of the Sea Convention of 1982 (LOSC) Article 63 obliges coastal state sharing fish stocks with other countries "to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks". With regard to the North Sea, the UK and Norway are obliged to enter into agreement on stocks like cod, mackerel, herring, etc. For the southern part of the North Sea, the Channel etc., the EU is the negotiation partner.

Fisheries regulations

Since the UK is now longer a member of the EU, the UK is unilaterally responsible for the management of its fisheries stocks (LOSC Article 56).

This include *inter alia* quotas, mesh size, minimum fish size, closed areas, closed seasons, etc.

These provisions address all participants both those flying the "Union Jack" as well as foreign vessels.

Dividing straddling fish stock needs a waterproof system. While the *relative stability* is the CFP-method, the appropriate principle of international law is *zonal distribution*.[19] The North East Fisheries Convention (NEAFC) is responsible for the TAC allocation between participating states, today i.e. UK, EU and Norway in the case of the North Sea.

Quota hopping

First, let's consider the EU treaties and foreign investment. Purchasing Norwegian fishing vessels, registering foreign vessels in Norway Shipping registers and hiring foreign crews are among the freedoms applicable under the EU treaties and for Member States citizens. The EU is promoting a harmonized inner market; so is the EEA.

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[18] Eurofish Report, 20 January 1994, BB1

[19] Peter Ørebech, The "Lost Mackerel" of the North East Atlantic— The Flawed System of Trilateral and Bilateral Decision-making, *The International Journal of Marine and Coastal Law 28 (2013).*

The implication is that Norway cannot prohibit such freedoms if not otherwise decided by the EEA. The *Jaderow*[20] and *Factortame* cases[21] are illustrations. Without an explicit EU-derogation regime, entitling Member States to reserve national shipping registry and subsequent quota rights to UK-citizens foreigners, such derogation was non-existent.

Such derogation was never agreed upon.

Secondly, there is the comparative issue of the EEA and Norwegian vessels**.** Movement of liberalized capital already falls under the association agreements. Articles 40 *et seq.* of the EEA Agreement provides for the free movement of capital between EU and EFTA states. Therefore, an EU or EFTA-based company may invest in the fishing industry of any other EU or EFTA state. A similar derogation took place during the transitional process of the Applicant Member States.[22] One illustration of an exception to the EU free investment rules is found in the EEA Agreement, Annex XII, paragraph 1(h).

> "(h) Notwithstanding Article 40 of the Agreement and the provisions of this Annex, Norway may continue to apply restrictions existing on the date of signature of the Agreement, on ownership by non-nationals of fishing vessels.
>
> These restrictions shall not prevent investments by non-nationals in land-based fish processing or in companies, which are only indirectly engaged in fishing operations. National authorities shall have the right to oblige companies which have been wholly or partly acquired by non-nationals to divest themselves of any investments in fishing vessels".

Thus, under the EEA-regime there are no exceptions to the freedom of investment in fish-processing or export. However, Norway was allowed to maintain national legislation "as is" also after signing the EEA Agreement.[23]

What of the EEA's rules over the establishment of fishing companies? Article 31 of the EEA guarantees that a "nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States". The EEA Annex VIII paragraph 10 however limit foreigners right to establishment:

> "Notwithstanding Articles 31 to 35 of the Agreement and the provisions of this Annex, Norway may continue to apply restrictions existing on the date of signature of the Agreement on establishment of non-nationals in fishing operations or companies owning or operating fishing vessels".

Norway maintained its existing restrictions at the date of signature of the EEA both on fish exploitation by non-national enterprises and foreign ship-owners.[24]

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[20] [1989] ECR 4509, para. 24.
[21] Case 213 and 221/89, R v Secretary of State for Transport ex p. Factortame (1991) 3 CMLR
[22] See National Programme for the Adoption of the Acquis (NPAA). Available at http://europa.
[23] Churchill and Ørebech, note 14 above, p. 468.
[24] Churchill and Ørebech, note 14 above, p. 466.

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Strong British fisheries sector or continued decline?

What is an absolute key issue when it comes to Britain's fisheries sector after leaving the European Union is not to focus on its current condition, after decades of foreign exploitation and poor management by Brussels, but what it has every possibility of becoming through a sensible and truly sustainable management by the British themselves after being freed from the shackles of the disastrous Common Fisheries Policy. This is essentially a question of whether the British Government wants Britain to have a strong fisheries sector after leaving the EU or whether it wants the sector to continue declining as before Brexit.

Fishing remains as one of the most important food production sectors on the planet. Moreover, its importance 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, such as Britain, to ensure more than ever that they are being harvested in a sustainable and responsible way for generations to come. The emphasis which EU fishing nations are putting on being able to continue fishing in British waters as before only serves to underlines what an important resource this is.

Fear of fisheries betrayal remains in place

The British Government has made a number of clear statements rejecting demands from Brussels for continued access to British waters for EU fishermen in exchange for a trade agreement. Prime Minister Boris Johnson has repeatedly said this is out of the question and hopefully his government will not concede to any discount from the position of taking back control over Britain's fishing grounds and keeping them as a general rule for local fishermen for the benefit of the whole country by creating both valuable British jobs and products which can both be sold domestically and exported to markets around the world.

However, despite the positive statements made by the British Government, fear nevertheless remains among British fishermen and many others that Britain's fishing sector may yet again be sold down the river during the ongoing trade talks with Brussels as happened when the country joined the EEC in 1973. Doing so would arguably be even worse this time round and without much doubt have some very serious consequences both when it comes to support for the Conservative Party, not the least the party's recently gained support in Scotland and Northern England, and British democracy in general.

Here it is important to keep in mind the role the fisheries sector has played through the decades in the opposition to Britain's membership of the EU. The way British fishermen were betrayed by the Heath government has been a constant token of why, in addition to many other issues, the country should never have joined the EU in the first place and why consequently it needed to regain its freedom. Hopefully the way the British fisheries sector will be treated this time round will not become a token of the failure of the Johnson government to grab the opportunities created by Brexit while dealing with Brussels.

The British people have a very strong case

The United Kingdom has, as a sovereign country, an absolute and undisputed right to a 200 miles EEZ, or the median line, under the United Nations Convention on the Law of the Sea (UNCLOS). No traditional fishing rights, real or purported, of other countries can override that. Otherwise no country would obviously ever risk allowing fishing vessels from other countries to fish in its waters for example through agreements on shared stocks. 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 a subject to whether the coastal states in question manage to find common ground.

Consequently, the EU and its member states have absolutely no legal ground for their demands to continue fishing in British waters as before. What is more, they are naturally very well aware of that which is why for example the Danish government doesn't seems to be making the absurd suggestion any longer that fishermen from Denmark have a historical right to fish in the waters around Britain. The British people's case is very strong as I argue in my 2017 paper "Fishing for Freedom: Lessons for Britain from Iceland's fisheries experience".[25] They both have strong conservation arguments on their side due to the failures of the CFP but also the sovereign right to a 200 miles EEZ guaranteed by international law.

Must be equally beneficial for British fishermen

The British Government should keep negotiations with the EU on trade and fishing separated as it seems determined to do. It is vital for Britain to enjoy full freedom to negotiate with its neighbours, such as Iceland and Norway, on shared fish stocks instead of having its options limited as a consequence of a trade agreement with the EU. What is also vital is to make certain that nothing is negotiated unless it is equally beneficial for British fishermen. After all, fishing vessels from EU member states have for decades landed most of the fish caught in the waters around Britain. According to a study by the University of the Highlands and Islands' NAFC Marine Centre (January 2017) only 32% by weight of the fish and shellfish caught in British waters between 2011 and 2015 was caught by British boats.

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

[25] http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/fishing_for_freedom.pdf

each year during that same period. 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.

The message from Prime Minister Johnson to the EU has not only been that trading access to the waters around Britain for a trade agreement is out of the question but also that insufficient progress in the trade talks might lead to his government being ready to walk away from the table and start preparing to exit the current transition period without an agreement. This is a real possibility and for obvious reasons it must remain so until and if a favourable and an acceptable agreement has been signed.

How will Brussels make up for the lost catch?

Should there be no trade agreement between Britain and the EU once the transition period comes to an end export of seafood from both sides will be subject to tariffs. This means British caught fish is likely to become less expensive than imported fish from the EU. Most of the fish consumed in Britain is imported and often from EU countries. Keeping Britain's EEZ as a general rule for British fishermen apart from negotiated agreements on shared stocks will mean greatly increased catch for them. Some have suggested that prices for British fish will also increase significantly as a result of more supply. However, with tariffs on imported fish from the EU the demand for locally caught fish is likely to grow as well.

This scenario could furthermore quite possibly have positive impact on Britain's balance of trade with the EU when it comes to seafood. Instead of importing most of the fish consumed in Britain it would under these circumstances be caught and consumed domestically. In many cases the fish, which has for the past decades been caught by EU fishermen in British waters, landed in EU ports and then imported to Britain would now be caught by British fishermen, landed in Britain and then sold to British consumers.

What is more of a question is how the EU intends to make up for the fish its fishermen will no longer be able to catch in British waters? The EU is also dependent on imported fish like Britain. This means the EU will become even more dependent on imported fish while Britain will have the opportunity to catch much more fish from its own waters than before. It is hard to see other countries, like Iceland and Norway, being able to fill that gap. On top of this the EU is a declining market compared to how many other markets are doing, as EU leaders such a former EU Commission president Jean-Claude Juncker have publicly recognised. The future markets will be elsewhere, particularly in Asia in countries such as China and India, which is why the British government must decide how much it is willing to sacrifice for a better access to a relatively declining market. Consequently, Britain needs to make sure seafood is included in free trade agreements with other countries.

History will judge how successful Brexit was

While Boris Johnson and his 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. After leaving the EU Britain has a once-in-a-lifetime opportunity to fundamentally rethink the way British fisheries are managed, with a long term view of how the sector can prosper in the future, taking note of the best practices of countries who have succeeded in this area such as my home country Iceland as well as Norway. While those two countries both have a successful fisheries sector they have developed very different management systems. What they have mainly in common is national sovereignty which has made it possible for them to make decisions based primarily on national interests.

The only acceptable conclusion for a sovereign country is to have full authority over its waters and to conclude bilateral mutually beneficial agreements regarding shared fish stocks, as UNCLOS instructs coastal states to attempt. Therefore, 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 fishing industry were again expendable

The way the British fishing industry was sacrificed back in 1973 was cast a dark shadow on the country’s membership of the EU and was one of the main reasons the British people voted to leave in the 2016 referendum. How the fisheries issue will eventually be addressed in the ongoing trade negotiations with Brussels will without much doubt be at the forefront when history reviews how successful leaving the EU really was.

The route ahead

Aaron Brown is the founder and head of Fishing for Leave, the successor campaign to Save Britain's Fish. It has continued to play a core role in political opposition to the Common Fisheries Policy, in the context now of delivering on the Brexit referendum. He works in the fishing industry.

We are finally fast approaching the critical juncture that's loomed on the horizon since 2016 – will the Government ensure the UK genuinely 'takes back control' of our waters to be a sovereign, independent coastal state no different to Norway, Iceland or Faroe?

Or will the government cave to EU demands on fishing where we have a continuation of the current unlimited access and disproportionately exploitative quota shares so loaded against the UK? All wrapped up in CFP associate membership.

It is unarguable that British fishing was sacrificed to join the EEC/EU; that the EU making off with up to 90% of quotas on many species (when on average 60% of catches are from UK waters) is little short of robbery; and that the CFP has been inept at safeguarding the environment, fish or fishermen.

47 years of hurt for British coastal communities can begin to be rectified this year with the clean break from the CFP which is provided by leaving the EU, when the treaties, policies and regulations automatically "cease to apply" as per Article 50.

There is huge public expectation to see what has become the "acid test" of Brexit delivered upon. This Conservative government has the chance to exorcise the ghost of Edward Heath that has haunted them for half a century.

Boris Johnson has vocally stuck to 'fishing won't be traded away as part of a wider deal', saying that would be "a reprehensible thing to do". With the proof of the pudding fast approaching, whether fishing is saved or surrendered will make or break the Conservatives in a host of coastal constituencies.

EU demands

The EUs continuation of its self-entitled and belligerent demand to continue its fleet's unhindered exploitation of British waters is to be expected but must be squashed.

Sadly, this has been made more difficult than needs be by fishing remaining in the terms of the Political Declaration – terms which the Withdrawal Agreement obliges the UK to ratify as the basis of any Future Trade Deal.

These state (Para.73) that the UK must "establish a new fisheries agreement on access to waters and quota shares…within the context of the overall economic partnership" – effectively linking fishing with trade – something HMG says it will not do…?

It says any fishing arrangement should based on "non-discrimination" (Para.72) and on a "level playing field" (Para.21). It also prohibits the curtailing of EU freedom of establishment (Para.29),

which has allowed EU owned but UK registered “Flagships” to predominate – where they now hold half of the meagre fishing opportunities the UK does get under the CFP.

The Political Declaration also makes provision for the UK to be enmeshed in “associate” membership of EU policies (Para.120) and may “establish specific governance arrangements” (Para.118) to do so.

We may not be in ‘the’ CFP, and may well in name be an independent coastal state (as every minister likes to emphasise), but if future arrangements see the UK hidebound to mimic EU rules to ensure a regulatory “level playing field”; if “non-discrimination” results in a continuation of unfettered equal access (as the EU clearly intends/hopes it to mean), then the government can use what names and semantics it wants. If it walks like a CFP and quacks like a CFP, it is ‘a’ CFP if not ‘the CFP.

Some may say this is the harshest interpretation of the wording but, in 30 years of membership – and in the 3+ years since the vote – Save Britain’s Fish and Fishing for Leave haven’t misinterpreted the true meaning of the EUs wording yet.

It’s clearly where the subservient efforts of Mrs May were intended to take us – the Withdrawal Agreement and its Political Declaration and Transition period are her Frankenstein. Mr Johnson achieved the bare minimum of changes but it’s still a dire deal and regrettably the totemic fishing industry wasn’t exempted. This leaves many nervous.

The colossal juncture we’ve now hit is will we genuinely take back control, and, if so, how does the government square the circle of what it has legally signed up to with the EU painting us towards its corner vs what it has promised to deliver – a free and independent coastal state with fishing not bartered as part of any wider deal?

Where now?

Fishing may be hanging on a thread, but it’s not over yet if the government stands firm on a British interpretation of the Political Declaration wording.

First, the government can tell the EU to get stuffed on linking fishing to trade – after all doing so wouldn’t impinge on the obligation to “establish a new fisheries agreement on access to waters and quota shares as part of the wider economic partnership”. We’d be establishing a new fisheries agreement as part of the wider deal sadly for the EU it should be a short discussion – no, nie, non!

Second, following from the first, the new fisheries agreement on access & quotas can be very limited. The Political Declaration doesn’t specify the amount of access or quota, nor over what time frame. The government MUST legislate and ensure that ANY swap of access or quota ONLY happen when the UK receives a reciprocal value of opportunities in return, AND are on a STRICTLY annual basis – no different to how the other independent coastal states of the NE Atlantic interact with the EU and one another.

Third, the government must not falter from safeguarding the UKs rightful resources under UNCLOS. The entire CFP and all its access and quota shares “cease to apply” to the UK on exit. The UK will AUTOMATICALLY be an independent coastal state with complete exclusive sovereign rights over all waters and resources within its Exclusive Economic Zone (EEZ) as we revert to international law

under UNCLOS – the Withdrawal Agreement Transition period till 31st December 2020 sadly negates this for a year as we have agreed to re-obey the CFP after exit until this date.

The key point is the EU has no legal right to fish in British waters after 2020, nor to claim inflated quotas for resources that are predominantly in British waters. The EU will have to cut its cloth to reflect the loss of British waters from the common EU pot in order to comply with UNCLOS obligations to fish its waters sustainably. The EU has no right or legal standing to claim 90% of channel Cod, Haddock and Whiting quota nor North Sea Herring when 60-90% of catches are in British waters.

All other nations work on the international principle of 'Zonal Attachment' – where a nation has shares of resources based on the predominance of species in its waters.

The UK must not falter from the insistence that any access or quota swaps is predicated on the EU cutting its cloth and recognising the UKs rightful share of resources under the international principle of Zonal Attachment as is the case with independent coastal states.

Fourth, the UK must ensure that "non-discrimination" means what it is meant to under the EUs treaties – that there is no differentiation between the nationals of different member states. The key is that since the UK is no longer a member state, this doesn't apply to the UK in the sense the EU hopes to contort it to – that there is no discrimination between EU vessels and UK vessels in accessing one another's waters. This is a non-starter! "Non-discrimination" must only mean that the UK will apply any limited annual access the EU is granted equally to all EU vessels regardless of their member state origin.

Fifth, and most importantly for the ability to rectify the damage to our marine environment caused by the ineptitude of the CFP – so we can husband our waters using the best management and science available as UNCLOS obliges – there must be no adherence to the CFP or its rules in any form under the guise of a "level playing field". This provision that seeks regulatory alignment MUST NOT be applied to fishing. To genuinely deliver being an independent coastal state as often promised we must be entirely free to exercise exclusive sovereignty over all our waters and resources so as to be able to implement bespoke British policy unimpeded by the CFP.

Lastly, the government must tell the EU to get stuffed and not yield to the EU's hollow threats on market access for either UK seafood or financial services in return for the ability to continue the EU fleets plunder of UK waters. British seafood exports are in high demand in EU markets, the loss of ability of the EU fleet to plunder 60% of Britain's resources (representing 1/3rd of their NE Atlantic catches) will make those markets even more dependent on British exports.

They need British seafood as a diet staple with many species not readily found elsewhere. The EU and Eurozone also has a critical dependency on the might of British financial markets and the City of London as one of the world's pre-eminent financial centres. The idea that the EU is going to spite either its financial or seafood necessity on British suppliers to keep their fishing fleet in our waters is a hollow piece of brinkmanship.

Tariffs are not punitive – as recognised by the EU itself. Indeed currency fluctuations offset them – a weaker Pound has already benefited exporters hugely far offsetting tariffs. The other Nordic countries export huge volumes of seafood despite tariffs, having chosen these rather than sacrifice their fishing independence.

Any threats by EU fishermen to cause channel port disruption should also not be yielded to as Steve Barclay suggested to the EU exit committee in June 2019. Any blockades will be short term, any British Government should never yield to short term ransom demands, and there are alternative routes around French ports seafood hauliers are preparing to use.

Multi billion Pound opportunity with political deliverance

It's as simple as this. Brexit's the chance to take back control and rewrite policy to one that works with our marine environment. Policy which will husband our greatest natural resource for generations to come.

Repatriating our rightful resources sees a worth of some £6-8bn in processed value, this is before ancillary industries are accounted for. It's a huge prize to rural coastal communities, and the economy as a whole.

Britain has the full weight of international law on her side and the EUs own Article 50 entirely abrogates the CFP and all access right and quota shares. We don't require or need to grant access and should only do so on a limited annual basis and only when a fair reciprocal swap of fishing opportunities is received in return.

Their seafood and financial markets need us more than we need them – seafood and capital flows globally to hungry purchasers worldwide. Immediate port disruption is a short-term inconvenience when weighted against the colossal opportunity of taking back control.

Politically it exorcises the ghost of Heath hats a millstone round Conservative necks. Conversely a second deliberate sacrifice of British fishing which is totemic in the public's mind will hammer and haunt the Conservatives for decades.

Britain and the Government has everything to gain and it can only be lost through weakness and ineptitude. The acid test has arrived. The Johnson government will be judged on it and must deliver for their sake and ours.

Will 2020 be the year of delivery? We hope so and wish everyone all the best for what we hope is the beginning of a bright future.

Rear Admiral Roger Lane-Nott, CB (@mrrogerln) was Commanding Officer of the submarine HMS Walrus, of HMS Swiftsure, and HMS Splendid during the Falklands War. He went on to be Commander of the 3rd Submarine Squadron, Assistant Director of Defence Concepts at the Ministry of Defence, and Commanding Officer of the frigate HMS Coventry as well as Captain of the 1st Frigate Squadron in 1990. He subsequently became Chief of Staff, Submarines and Commander Operations and Flag Officer Submarines.

In January 2018, Veterans for Britain put out an important paper.[26] I was one of three co-authors, alongside Sheryll Murray, an MP grounded in the industry who represents a fishing seat, and Dr Lee Rotherham, who advised the Conservative front bench on fisheries matters (having previously worked for the anti-CFP rebel Sir Richard Body).

Our paper covered preparations needed for taking back control of the UK's waters. As that moment draws closer, its findings remain valid today. Happily some of its recommendations have already been followed, not least over providing a stay of execution over three of four patrol vessels that would otherwise have been taken out of service during the transition phase. But more needs to be done - as my colleague at Veterans for Britain, Professor Gwythian Prins, has latterly drawn out in an important piece for *Briefings for Brexit*.[27]

The reality is that the UK will need to police its fisheries after Brexit. DEFRA and the MoD, the lead departments, can do this more easily if they deter rather than chase. It correspondingly makes sense to demonstrate to potential law breakers in advance that policy and capacity coincide, in order to discourage non-UK skippers from testing the will of the UK authorities by fishing illegally.

The recent BBC Two series "Cornwall – This Fishing Life" demonstrated clearly the issue that faces the UK Government and as many have said – "Fishing is the acid test of Brexit."

Fisheries management

Fisheries management consists in effect of three main pillars;

- Territorial oversight, ie observing to see if vessels are in waters they are not supposed to be through visual or by electronic reporting;
- Physical checks, ie boarding or alongside checks on illegal nets or unlogged catch, which may also take place at port (assuming landings are made in the UK);
- Administrative checks, for instance checking log books.

Thus illegal fishing does not necessarily only get uncovered by a vessel being boarded at sea, though in terms of securing convictions being caught red-handed is optimal. Clearly, there are limits to what can be achieved if any of those pillars are only partial. A vessel 'tagged' as being present in the wrong waters but not observed fishing, or able to be boarded and checked for drift nets, pulse

[26] http://veteransforbritain.uk/maritimebrexit/
[27] https://briefingsforbritain.co.uk/we-shall-have-a-fishie-on-a-little-dishie-fisheries-and-deterrence/

fishing or black (illegally-caught and hidden) fish, and landing its catch overseas, is not being effectively policed. In turn that reduces the deterrent factor.

Consequently, we have suggested that an effective transition from EU-managed waters to ones where the UK assumes primacy requires certain preconditions to be met. Examples of issues to be addressed will likely include;

- Current mechanisms for electronic 'tagging' of vessels need to be retained, and data shared between the UK and counterparts both within the European Commission and at EU member state level.
- Counterpart systems need to be able to share data effectively.
- Agencies need to be able to communicate internationally where a suspect vessel crosses sovereign boundaries, to ensure port authorities are able to conduct a search when it docks.
- Formats for logging activity need to be retained, to facilitate UK and counterparts being able to effectively pursue illegal actions.
- Agreement needs to be reached on basic principles on primacy over pursuing prosecutions.

These are certainly not unsurmountable administrative points and in the main will likely be accommodated by simple Memoranda of Understanding, with referencing to various existing bilateral agreements made with counterparts from the Faroes, Greenland, and Norway. France, Spain, Belgium and the Netherlands will pose a challenge.

Coastal policing

The UK has assets to police its waters. But they are finite.

Maritime protection falls mainly in the purview of the Royal Navy and the Royal Air Force. Both are constrained by functionality. Assets that are nominally available may not be configured to fulfil the role, or may be associated with a particular deployment (for instance, those vessels permanently assigned to Faslane or to Gibraltar.

Certain survey vessels may be re-roleable (at risk to expensive equipment) since as part of their activities they do provide overwatch to activities of other vessels, including potential illegal fishing. But in any event, re-tasking generates risk elsewhere as the UK's Fleet is increasingly overstretched. Additionally, a portion of the Fleet at any time is not at sea for obvious reasons of maintenance, leave and vessel refitting, a reality whose timing might be partially mitigated against if dockside scheduling is factored into Brexit surge demands well in advance. All this provides a lesson for the next Defence Review.

There is a further complication. DEFRA itself is not directly responsible for policing UK territorial fisheries, for two reasons. Firstly, the issue is a devolved matter; and secondly even in England, responsibility is passed down to local areas. England is administratively divided into ten Inshore Fisheries and Conservation Authorities (IFCA). Each is responsible for managing inshore waters, and has a budget and certain assets to facilitate this. However, these for obvious reasons are heavily orientated towards coastal policing rather than coping with the extended UK EEZ; some vessels are

not designed to face down an aggressive trawler; and some are not designated just to patrol fisheries but also monitor protected sites and in some cases waterways.

Self-evidently, the RAF has a limited capability to directly intervene where illegal fishing is identified, and it would be primarily engaged in general surveillance duties, ideally in partnered oversight with intervention assets in the water. Happily, the long-awaited replacements to Nimrod are now appearing on scene in the form of the P-8A airframes based in Lossiemouth.

The armed forces do have other surveillance assets, but their suitability for remote assessment of territorial encroachment remains open to serious question. More logical given range and loiter time than using helicopters or fast jets might be to re-task multi-seat prop airframes held by the Army Air Corps, since these models have in fact been deployed by Mauritius in a maritime patrol capability.

DEFRA's predecessor, MAFF, used to operate its own maritime surveillance wing, understood to consist of five aircraft. This asset was privatised. A commercial company now operates aerial surveillance on behalf of all UK fisheries. The private sector may correspondingly operate as a useful safety valve in providing a ready mechanism potentially to surge support through existing commercial sector channels.

Aerial surveillance within English and Welsh zones is undertaken by a private company (Directflight Ltd) which is contracted to DEFRA. Activity is directed from an operational centre in London.

Aerial surveillance in Scotland is meanwhile directed by SFPA HQ Operations in Edinburgh. The SFPA own two aircraft operated under contract also by DirectFlight, and operate out of various Scottish airfields depending on tasking requirements. One of the aircraft is fitted with a visible light and infra-red video camera. This camera also has a laser illuminator which aids vessel identification in low and no light conditions.

Asset Shortfalls

Taken together, the risk correspondingly emerges that a UK maritime patrol capability, currently tailored for monitoring present requirements, may at this moment in time be insufficient to act as a credibly robust deterrent. Planners should focus their work on the need for surge capability covering perhaps a three to six month window after the UK reasserts control over its EEZ, and individual boat owners test the resolve of the UK. This increased capacity, and the effect upon law breakers, would also need to be publicised.

Such prep will need to cover not just physical assets, but also contingency training, and rules of engagement. A two-pronged diplomatic approach will need to accompany it. An information campaign will need to be deployed in advance, to warn of the consequences and to inform potential trespassers. At the same time, the authorities of countries whose fishermen have demonstrated physical violence in the past will need to be reassured that policing will be fair and just rather than escalatory; but that the UK will display necessary force commensurate with its rights under international law (thus taking a leaf out of the victorious Icelanders' book from the Cod War).

Two cases demonstrate that the UK will need to be prepared. In 1963, well before the advent of EU membership, Bruges resident Victor Depaepe went out of his way to test the modern validity of seventeenth century treaty terms allowing a number of his fellow townspeople to fish in UK waters.

The question as to whether those rights arguably still exist are less relevant to this paper than the fact that the principle was tested at sea.

A similar incident happened in 1983, when Danish skipper Kent Kirk entered the UK's twelve mile limit in the wake of a failure to extend the CFP derogation retaining those waters as British. The Luxembourg Court supported his claims but the derogation was hastily extended to plug the gap.

Add to this the ongoing contention relating to UK rights around Rockall, plus some resentment over the Irish Box (albeit more directed against Iberian skippers), and there are a number of potential flash points where an angry EU skipper may seek to test international law in person. Of particular relevance are areas of past tension over sovereign waters delineation near the Channel Islands, and Gibraltar.

Or they may simply ignore legal niceties, aim by *force majeure* to take the law into their own hands, seek to fish regardless of any actual right, and aim to land the fish either openly or illegally as black fish in a non-UK port. In any eventuality (and that prospect is perhaps the most likely to be escalatory), the UK's maritime agencies will need to be prepared.

There are a number of measures that could be pursued to mitigate surveillance gaps and, if publicised in advance, reduce the risk of confrontation at sea;

- Agree a clear definition in advance of Brexit which limited vessels do have grandfather rights to access UK waters under UK law from pre-1973 days (this should be considered a negotiable UK concession, not a given);
- Confirm the intention to cooperate positively with European Commission fisheries officials on stock data, GPS vessel locations, discoveries of illegal net use by named vessels, and other such matters;
- Ensure that parties involved in the Dover Channel Navigation Information Service and associated maritime mechanisms continue to talk to one another (there is no obvious legal, technical or practical reason why they should not);
- Plug immediate asset gaps by hiring, over the short term, "Brexit Sloops" from the private sector to be manned by RN personnel and in particular Royal Marines;
- Develop robust rules of engagement on boarding, checking, and confiscating vessels engaged in illegal fishing (to include a review of existing law and fine scales). Publicise this policy in advance – the primary objective is to act as a *deterrent*. Deploy firmly but courteously;
- Retask existing RN assets, in particular those supporting University Royal Navy Units (URNU);
- Declare an intent well in advance that there will need to be a temporary asset relocation for RN vessels tasked with North East Atlantic duties – this will involve coordinating in particular with US, Canadian and Norwegian partners at NATO;

- Liaise with Norway, Canada and Iceland, including to generate 'lessons learned' from their own blue water fisheries policing experience;
- Revisit the archives held by Whitehall on the Cod War experience;
- Establish clarity with our continental counterparts that the UK will be even-handed in ensuring compliance with its fisheries management policies under international rules;
- Plug any remaining gaps post-Nimrod (this may require considering the relative value of tasking Astor or RN Type 45s, review of maritime uses of UAVs, or more likely involve the transitional hiring of civilian prop aircraft);
- Determine the role to be played by satellites.

BUT, despite these areas above it is essential that there needs to be clear investment in Fishery Protection Vessels if we are to have any chance of policing UK waters.

Further Considerations

Taking back control of national waters is not simply a matter of patrolling them. A range of other issues will also need to be considered.

Ensuring that there are enough platforms in the air and at sea to provide a visible and active surge deterrent will not be enough. To secure a successful three-pillar strategy, broader policing will also be required including checks at landing locations. This will need some consideration for staffing planning, even perhaps to the point of temporarily reassigning back-office staff in support (such as has happened in recent years to cope with passport and border controls manning shortfalls). But staff will also need to be briefed to ensure that checks are done applying common sense. Focus should be on informing skippers, providing a visible deterrent to illegal landings, and baseline checks rather than officiously checking to see if landings are a couple of kilos over a half tonne limit.

This is without even considering what precisely will define the UK's new waters. International law allows for states to declare "contiguous waters". As at November 2014, ie before the referendum vote, there were no plans to declare a contiguous zone. A working group of government officials, led by the National Crime Agency, was set up to start considering the case for introducing the domestic powers which would be required before any contiguous zone could be enforced. Quite where this has got to is yet unclear. But with the establishment of national EEZ rights, such planning should be accelerated, allowing for some additional control over vessels relating to customs, monetary, immigration or sanitary laws and regulations and extending out up to 24 nm.

Beyond national waters, international organisations hold some sway. The UK will have an opportunity now to reclaim fully its place in fisheries management organisations covering the North Atlantic. These organisations will primarily be ICCAT, NAFO, NASCO and NEAFC; but also UN programmes and offshoots such as FIDP, FIDF, FIP, FIPI, FIPS, FIPM, FIR, FIRA, FIRO, FIRF and so on. Without going into the detail we simply note that the UK has an opportunity to engage either more directly or more fully with policy development covering waters that are not its own even after Brexit, but where the EU institutionally has increasingly played the dominant or even sole role operating on

behalf of the EU states. Correspondingly, Whitehall should start to reflect on what policies it wants to recommend.

Conclusion

The UK, together with its Dependant Overseas Territories, has the fifth largest collective EEZ in the world, running at just short of 2 million square nm. Its coastline is 7,700 (land) miles. The UK's global commitments to policing these waters, international shipping lanes, and in support of allies around the world will limit what can be achieved using what are already stretched assets.

Currently, assets are already heavily engaged. The Royal Navy Fisheries Protection Squadron boarded 278 vessels within British fishery limits in 2016/17. While this trend was downwards, we must assume it will significantly rise in the near future: indeed, a key reason underpinning the drop has been because of unit re-tasking since 2012/3 when more duties were handed over to civil marine counterparts as RN vessels have been needed elsewhere. The Squadron's activity over the last reporting period, hardly a 'hot' period, resulted in six convictions.

Policing the EEZ against the risk of foreign trawler owners intent on provoking an international incident is best achieved by having capable assets in play, with robust Rules of Interception, by people who are properly trained and equipped. Past track record has seen (in 1993) UK fisheries inspectors taken captive; while in other EU waters, fishing disputes have escalated into fatalities. Such risks need to be guarded against through proper drills and capability.

Successful transition will require considerable forethought in terms of asset relocation, manpower planning, and capacity rental. The first three to six months of Brexit are likely to be the critical ones. Cooperation with fisheries protection counterparts and law enforcement authorities in other countries will be important to ensure no concept of 'safe haven' abuse develops, with the resulting likely increase in public ill will towards transgressing states (as witnessed in the 'Turbot War' between Canada and Spain).

Although, it is too late now to build blue water naval assets to assert our naval rights in time for transition. That does not mean that they may not be rented. In particular – and providing they are on review found to be seaworthy – there are two surplus foreign coastal patrol vessels that have been reported idling in UK ports looking for new owners. But if Fishing is to be the 'acid test of Brexit and taking back control' then there needs to be clear investment in Fishery Protection Vessels if we are to have any chance of policing UK waters.

Meanwhile, notwithstanding the UK's global commitments, that does not prevent the Navy from gridding with its NATO and other partners a period where particular UK assets may be concentrated in home waters and their role is temporarily taken up by others. By the same measure, deployment timings, dockyard slots and leave periods should already be gridded to allow for the maximum units to be at sea as possible – noting in particular how the key fisheries catches change seasonally, which may impact on port basing plans. Meanwhile, facilities will need to be prepped to allow for rebasing of aviation assets as needs develop.

Increased EEZ responsibilities may encourage the MoD to reconsider past policy of employing limited numbers of expensive platforms and generating more of the cheaper platforms to provide

increased simple physical presence – as it were, a shift back towards maritime beat policing. As part of that process, that would logically include considering where such assets might also usefully be deployed in escort roles against fast boat threats, particularly in the Persian Gulf. In turn, that means thinking about wider issues of design flexibility. Historical archives might usefully be trawled to draw out forgotten lessons on process and strategy from the period where the UK did deploy riverine and coastal craft globally in defence of its interests.

Grappling with the Fisheries conundrum turns out to open up a series of unexpected policy boxes…

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Brexit and Fisheries: A French View

'From 2021, Britons will eat home-caught mackerel instead of prawns and tuna which are mainly imported from the EU.' This scenario could *theoretically* happen if the British Government fails to secure a deal on Britain's Fisheries by the end of 2020. But is this a full picture?

In order to understand the main issues around Fishing and Brexit, we need to have a look at some figures first. Then we can make some parallels between France and the UK and outline possible solutions that would satisfy both parties, whilst keeping Brexit alive.

Everything starts with the Exclusive Economic Zone (EEZ), which gives exclusive jurisdiction to the coastal state which owns it. As the United Nations Convention on the Law of the Sea declares,

> "The EEZ is an area of sea beyond and adjacent to the territorial sea that extends up to 200 nautical miles from a country's coast. […] Within the EEZ a coastal state has the sovereign rights for the purpose of exploring and exploiting, conserving and managing the living natural resources."

The UK has the fifth largest exclusive economic zone in the world (approximately 6.8m square kilometres) and the EEZ surrounding the United Kingdom represents 11% of the total surface, with some 774,000 square kilometres (the rest being EEZs in Crown dependencies or British Overseas Territories). Putting aside Norway which is outside of EU marine management, the UK EEZ is the greatest "shared" EEZ operating under the Common Fisheries Policy (CFP) in Northern Europe. By comparison, France's EEZ in Continental Europe represents about half the size of the United Kingdom's EEZ, with approx. 335,000 square kilometres, despite France having the second largest EEZ zone in the world – approximately 10.2m square kilometres – because of its numerous territories and overseas departments on all the oceans. UK waters are also particularly rich of seafood resource, as 40% of the total EU catches take place in the UK's EEZ but mainly exploited by UK's neighbour countries.[28]

Because of these factors, and the geographical proximity between the two countries, France's fishing industry is now heavily dependent on UK waters. In fact, out of the three main traditional fishing regions: Normandy, Brittany and Hauts-de-France – which all together represent 75% of the French fishing industry - two of them (Brittany and Hauts-de-France) rely on the UK waters for more than 50% of their catches.[29] Overall, it is estimated that France receives approximately 30% of its catches in the UK's EEZ. This explains why the absence of a good fishing agreement post-Brexit could

[28] *Les Echos*, 20 Nov 2018
[29] Ibid, 23 Sep 2017

be very damaging for French fishermen (as it would also be for Belgium, Netherlands, Ireland, Spain, Sweden and Germany which are all fishing in UK waters).

Similarly, the UK would suffer if the EU decided to restrict access to the Single Market post-Brexit, or impose tariffs on the UK fishing exports. About 75% of the fish caught by the UK is exported, of which the majority is for the EU. On the other hand, Britons import most of the fish they eat as 30% of these importations come from the EU. The discrepancy between imports/exports is due to the consumption habits of Britons who do not usually eat the species they catch in their territorial waters, but prefer other fish varieties (tuna, cod, prawns…). Regardless of how beneficial any future post-Brexit agreement will be for the UK, European regulations on fish would still apply to British fishermen and as a result British seafood products could be rejected at the EU customs if no certificate is presented by fishermen. It is unlikely that the UK would introduce such paperwork for imports, and so our opening comment about eating mackerel doesn't apply to British consumers. But the situation is potentially more complicated for exporters, at least initially until consumer demand impacts upon the market.

But if the fishing opportunities that are allocated to individual fishing vessels in the UK will remain unaffected by Brexit (because it is within the UK's competence rather than the CFP), the quota rules of the CFP will however not apply anymore to the UK. The country will recover entire freedom to set its own rules on how fishing is carried out in its territorial waters and it will be able to decide on the fish stocks and volumes. The CFP won't any more limit British fishing in British waters. This would be a massive win for the UK fishermen who are currently the third biggest fish catchers in the EU waters (with 723,000 tons in caught 2017, mostly in the UK's EEZ) after Denmark and Spain (but before France: 529,000 tons caught in 2017). This is in fact how things should have been since the beginning of the Brexit discussions, because fishing grounds are naturally part of the consequences of being a sovereign state in the modern era. Greater openness on the European Commission side would have helped here.

We could reasonably argue that the question of a mutual administration and exploitation of a European EEZ makes sense if:

> a. There is a major fishing ecological impact which justifies having an international set of rules in place that countries must abide by to protect endangered species or prevent over-fishing at a global level. But some International Treaties already exist (eg. the UN Convention on the Law of the Sea)
>
> b. It is the only way to encourage a considerably better/more sustainable management/use of the seafood resource for a given maritime area. This is precisely the given "Raison d'Etre" of the EU running a CFP.

But, after a number of years of existence we now have evidence that the CFP is not working. In 2003, the Royal Society in London already warned the EU that "unless a real action to retrain fishing is taken now, there could be nothing left to fish in the future".[30] This is mainly due to the recurring disputes between the EU members over the quotas; countries have a privileged access to specific seafood resource in their respective EEZ, but also have different consumption habits, hence leading

[30] *The Suicide of Europe*, Ingrid Detter de Frankopan

to divergent interests and recurring disputes. But it is also due to the lobbying of the corporate fishing industry.

As a result, instead of granting subsidies to local fishermen to encourage a more traditional and sustainable way of fishing, the CFP pushed the development of short term sea resource exploitation through generous financial support to fishing companies which then used it to buy bigger boats with better gear. The regime of quota is also not ideal because the Member States collectively agree TACs (Total Allowable Catches) for most commercial fish stocks and barely come to an agreement which satisfies them all. Again, a bad compromise is preferred between for all instead of an individual and bespoke sustainable solution for everyone.

In the end, the CFP mirrors exactly what the EU failed to implement at any levels (the CAP is another good example): a unity between the member states of the EU and a collaboration to defend a – supposed – common interest for the greater benefit of all stakeholders.

Regarding the prejudice caused to traditional and familial French fishing from losing access to UK waters, it would be fair to come to a bilateral agreement for families which used to fish in UK waters before 1973. This provides for real grandfather rights for communities that had historic access before the EU got in the way and broke the system. Negotiations involving areas, particularly shellfish, where UK fishermen themselves have centuries-old access to French waters could then be discussed on a quid pro quo basis. It could be part of a good resource management deal, focusing on smaller more eco-friendly boats, traditional access, sensible environmentalism, and supporting families rather than sponsoring supertrawlers. In the same way, policy makers need to revisit what happened in the aftermath of the London Fisheries Convention signed in 1964 between UK, France, Belgium, Germany, Netherlands and Ireland. The UK gave the two year notice that it was ending this treaty in 2017. Reviewing the original impact from that deal might usefully feature as part of those retrospective calculations, which might help inform those discussing future quotas over where the vessels for particular stocks are historically, and therefore more naturally, based.

There are winners and losers from any change, and in this instance French fishermen will be amongst those who will lose out. Those who lose out because they are more recent arrivals should get significant compensation from the EU budget, because it would be the EU's direct responsibility to redress the imbalance. The EU caused it, after all.

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