

SPICe Briefing

Implications of Leaving the EU - Fisheries

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This briefing examines Scottish sea fisheries in the light of the UK's decision to leave the European Union. Statistics are provided on the sea fishing sector and catches in the Scottish Exclusive Economic Zone. The Common Fisheries Policy and other elements of the current regulatory regime whilst the UK is in the EU is set out. International law of the seas will become the legal baseline, once the UK leaves the EU. Two issues are considered in detail - access to UK seas and quotas.



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EXECUTIVE SUMMARY

In 2015, Scottish registered vessels landed a total of 440,000 tonnes of sea fish and shellfish, with a value of £437 million. Across Scotland, fishing makes a relatively small contribution to GDP. However, in the locations where wild capture fishing is based, there is a very significant local economic and social impact.

£592.3 million of fish and shellfish are landed on average per year in Scottish waters (the Scottish part of the UK EEZ). The Scottish fleet lands 56% of this (by value), the rest of the UK fleet lands 8%, and the non-UK EU fleet lands 35%. However, this differs significantly when broken down to particular species.

Whilst in the EU, UK (and Scottish) sea fisheries are governed by the Common Fisheries Policy (CFP). The CFP is a set of rules for managing fishing fleets and conserving fish stocks. Its main components relate to fisheries management, organisation of markets, international negotiations, import tariffs and the European Maritime and Fisheries Fund.

Once the UK leaves the EU it also leaves the CFP. The UK becomes a coastal state in its own right under the UN Convention on the Law of the Sea (UNCLOS).

Whilst there are many rules and regulations applicable under the CFP and UNCLOS, this briefing focusses on two issues: access to UK waters, and fishing quotas.

Under the CFP EU vessels have equal access to the EU waters. EU waters comprise Member States' combined sea out to 200 nautical miles. Therefore non-UK EU vessels can fish in the UK exclusive economic zone (EEZ) as long as they have quota, and vice versa. Whilst in the EU, fishing by non-UK vessels in the 6-12 nautical mile area, is restricted to those with historic rights, subject to quota.

Once the UK leaves the EU, the UK will assume control of its waters out to 200 nautical miles, and be able to control access. UK vessels will no longer have automatic access to EU waters. In the 6-12 nautical mile zone those with historic rights to fish *may* retain those rights.

The EU sets quotas, known as total allowable catches (TACs) for those stocks which are solely in its waters, or where there are no joint management plans. It also co-operates with non-EU countries via the Northern Agreements and Coastal States Agreements to manage shared stock with countries such as Norway, Faroe Islands and Iceland. A share of TACs are allocated to the UK. This quota is then allocated to UK fishers via a domestic process.

Under the UN Convention on the Law of the Sea (UNCLOS), the United Kingdom, as a coastal state in its own right, will be required to manage the living resources and fishing activities within its EEZ in a sustainable way. It will be for the UK Government, and Devolved Administrations, to develop and implement fisheries policy after withdrawal from the EU. The UK will be required to co-operate with other coastal states to manage shared stocks. It is likely that some kind of quota system will be used to minimise the risk of over-fishing.

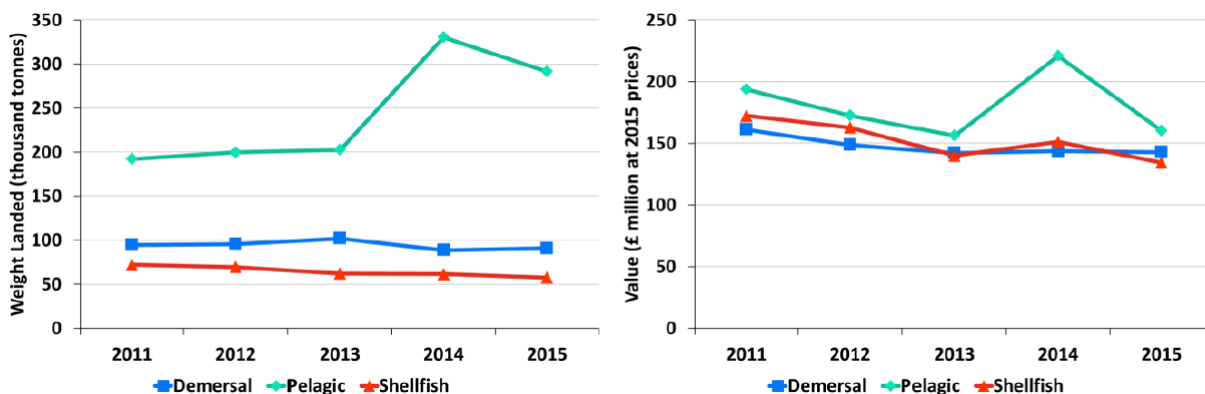
SEA FISHING IN SCOTLAND

In 2015, Scottish registered vessels landed a total of 440,000 tonnes of sea fish and shellfish, with a value of £437 million (see Figure 1). Mackerel is the most valuable stock to the Scottish fleet, with 30% of the total value of Scottish landings. Nephrops (or Langoustine) are the most valuable shellfish species to the Scottish fishing industry, worth £61 million in 2015, 14% of the total value of all Scottish landings ([Scottish Government, 2016](#)).

The Scottish fishing fleet is diverse with respect to the size of the vessels, the stocks targeted, the type of fishing gear used, and the size and profitability of individual businesses. Target species can be broadly categorised as ([Donnelly, 2014](#)):

- Benthic – those that live on the sea bottom (e.g. flatfish, Nephrops– the Norway lobster)
- Demersal – those living close to the sea bottom (e.g. cod, haddock, whiting) and
- Pelagic – species living in the mid water (e.g. herring, mackerel).

Figure 1. Quantity and value of landings by Scottish vessels by species type, 2011-15



Source: [Scottish Government, 2016, p6](#)

The nature of each stock largely determines the fishing methods used, as well as the sizes and capabilities of the vessels required to capture them. There were 2,015 active Scottish registered vessels in 2015, employing 4,823 fishermen at the end of 2015.

The fleet is dominated by vessels of 10 metres in length and under (1,449 vessels or 72% in 2015) mainly using creels for shellfish. The larger vessels over 10 metres account for 78% of the total power of the Scottish fleet. Of the 566 vessels larger than 10m, 64% are shellfish vessels, and 32% target demersal species. There are 20 pelagic vessels – 95% over 40 metres in length ([Scottish Government, 2016](#)).

SEA FISHING IN SCOTTISH WATERS

A coastal state has rights and responsibilities over their Exclusive Economic Zone (EEZ). This is the area of sea out to 200 nautical miles (more on this below). Under the CFP EU vessels have equal access to EU waters. EU waters comprise Member States' combined sea out to 200 nautical miles. Figure 3 shows the UK EEZ.

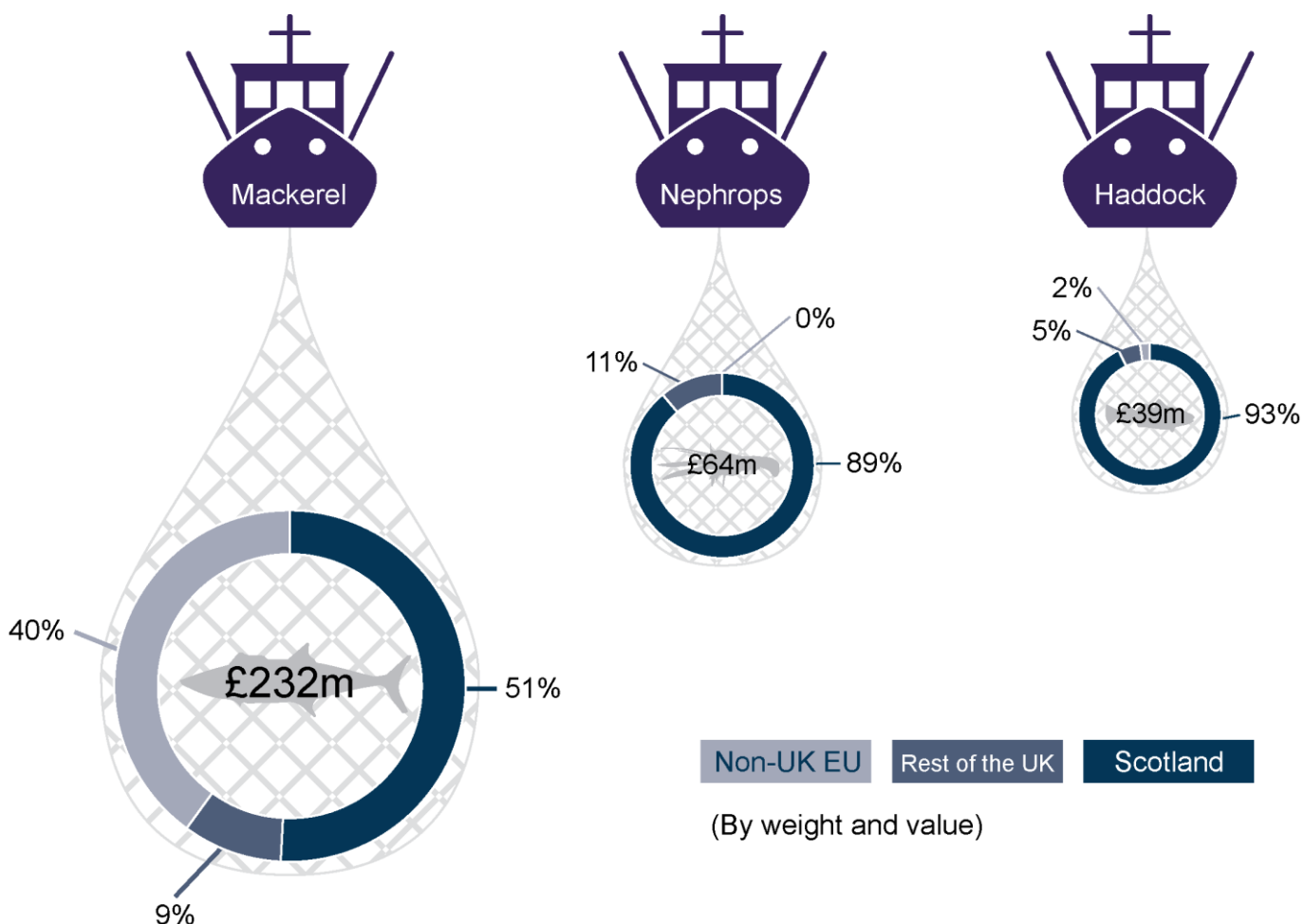
Napier ([2016](#)) has analysed landings of fish and shellfish from different EEZs, by fleets, per year (based on 2012-14 figures). He finds, of all fish and shellfish (worth £592.3 million) landed from the Scottish part of the EEZ –

- the Scottish fleet lands 41% by weight, which is 56% by value (£334.4 million)

- the rest of the UK fleet lands 8%, which is 8% by value (£47.7 million)
- the non-UK EU fleet lands 51% by weight, which is 35% by value (£210.2 million)

However, this differs significantly when broken down to particular species, which are caught by different types of vessels in different locations.

Figure 2. The value and weight of Mackerel, Nephrops and Haddock landed from the Scottish part of the EEZ by different fishing fleets, per year (average)



Source: SPICe, based on figures in [Napier, 2016](#)

The Scottish fleet does not catch the majority of all species within the Scottish part of the UK EEZ. The non-UK EU fishing fleet catches the following in the Scottish part of the UK EEZ

- 65% of the Saithe worth £16.3 million
- 70% of the Herring worth £47.8 million
- 100% of the Norway pout worth £0.9 million (Napier, 2016)

Fish and shellfish landed by the Scottish fishing fleet

On average between 2012-2014 the Scottish Fleet landed £470 million of fish and shellfish ([Scottish Sea Fisheries Statistics](#) 2013, 2014 and 2015). The Scottish fleet catches £334.4 million in the Scottish part of the UK EEZ, 4% by weight of all fish and shellfish from the English, Welsh and Northern Irish part of the UK EEZ, worth £22.1 million (Napier, 2016). This implies

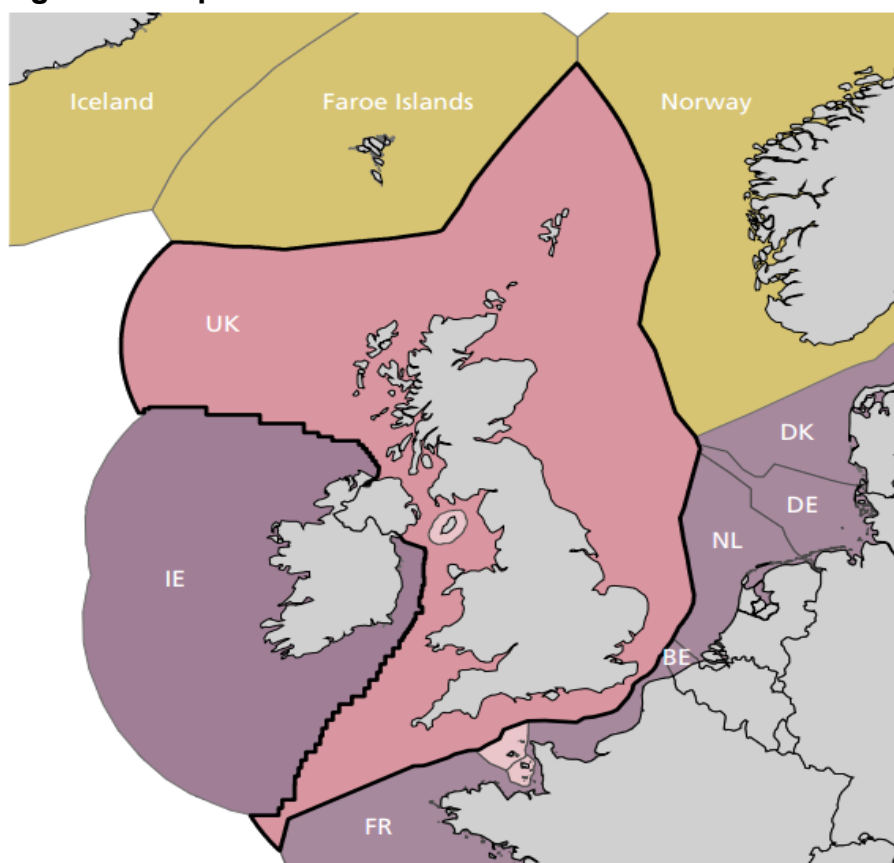
that around £113.5 million¹ (approx. 24%) is caught by the Scottish fleet in the Non UK part of the EU EEZ, and non EU countries with which the EU has agreements. Although estimates by Napier shown in Table 1 (pers.comm.) suggest a lower proportion caught outside the UK EEZ by the Scottish fleet (especially of value). The difference in the figures may reflect the different time periods used.

Table 1. Scottish Fleet (Annual Average, 2009 – 2014)

	Wt ('000 tonnes)	£ m
UK EEZ	302	£384
EU EEZ	52	£52
Elsewhere	32	£28
TOTAL	386	£465

Source: Napier, 2017 (pers comm)

Figure 3. Map of the UK Exclusive Economic Zone



Source: [House of Lords, 2016](#), p 10

¹ Total landed (£470m) minus landings from Scottish part of the UK EEZ (£334.4 million) minus landings in the English, Welsh and Northern Irish part of the UK EEZ, worth (£22.1 million).

CURRENT MANAGEMENT OF SEA FISHING IN THE UK

Whilst in the EU, the CFP provides the governance framework for UK sea fisheries. Via the CFP, Northern Fisheries Agreements and the North-East Atlantic Fisheries Commission (NEAFC) fish stocks are managed as required by international law.

COMMON FISHERIES POLICY

The CFP is a set of rules for managing fishing fleets and conserving fish stocks ([European Commission, Undated](#)). It covers a number of policy areas (Figure 4).

Equal access to the EU waters

Under the CFP EU vessels have equal access to EU waters. EU waters comprise Member States combined sea out to 200 nautical miles. Seas out to 200 nautical miles from a coastal state is known as that states Exclusive Economic Zone (EEZ). Under the CFP, non-UK EU vessels can fish in the UK EEZ as long as they have quota, and vice versa. (Regulation (EU) No 1380/2013 Article 5(1)).

CFP exemptions restricted fishing by non-UK vessels in the 6-12 nautical mile area to those with historic rights, as long as they have quota, and vice versa (Regulation (EU) No 1380/2013, Article 5 (2))

Figure 4. Main components of the Common Fisheries Policy

<p>Fisheries Management</p> <ul style="list-style-type: none"> - ensuring that fish are caught within their maximum sustainable yield - determining and allocating fishing quotas to member states - technical regulations on what kinds of gear can be used - the landing obligation which prohibits discard of fish - control and enforcement 	<p>European Maritime and Fisheries Fund</p> <p>The EMFF supports sustainable fishing and helps coastal communities. Between 2014-2020 Scotland has been allocated €107.7 million, 44% of the UK fund</p> <table border="1"> <thead> <tr> <th>Region</th> <th>Allocation (€m)</th> </tr> </thead> <tbody> <tr> <td>Scotland</td> <td>108</td> </tr> <tr> <td>England</td> <td>92</td> </tr> <tr> <td>N. Ireland</td> <td>24</td> </tr> <tr> <td>Wales</td> <td>20</td> </tr> <tr> <td>Total</td> <td>244</td> </tr> </tbody> </table>	Region	Allocation (€m)	Scotland	108	England	92	N. Ireland	24	Wales	20	Total	244
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<p>Common Organization of Markets</p> <ul style="list-style-type: none"> - common marketing standards - common consumer information rules and competition rules - market intelligence 	<p>Import tariffs</p> <p>CFP allows import tariff reductions for certain fish and fish products from outside the EU. This helps increase supply at times when EU supply cannot meet the demand of fish processors</p>												

Source: [House of Commons Library, 2017](#) and [GOV.UK, 2016](#)

EU FISHING QUOTAS

Most fish stocks are managed according to a quota system. Typically, annual total allowable catches (TACs) for quota regulated species are set, as illustrated by the EU process in Box 1. TACs are then allocated between countries involved in the process, and then shared within countries to the catching sector.

Box 1: The EU process for determining TACs and allocating quota

1. The European Commission prepares proposals for overall TACs, based on scientific advice from [ICES](#)
2. Final TACs are decided following political negotiations at the Council of Fisheries Ministers
3. For stocks that are shared and jointly managed with non-EU countries, TACs are agreed with those (groups of) non-EU countries
4. TACs are shared between countries, based on the “relative stability” key. This allocates each Member State a fixed percentage of quota for each fish stock
5. EU countries can exchange quotas with other EU countries
6. Members States are responsible for ensuring that the quotas are not overfished

Source: [European Commission, Undated](#)

The House of Lords report (2016) explains that the relative stability key... “was established in 1983 on the basis of historic catches, the loss of opportunities for some Member States as a result of the general extension of 200 nautical mile limits in 1976; and the need to protect particular regions where local populations were especially reliant on the fishing industry. The relative stability share has remained constant over time.” It is widely considered to be out dated because of “changing economic dynamics, climatic shifts northward, changes to target stocks by different industries and the pressures of the landing obligation in a mixed fishery” ([NEF, 2016](#))

Allocation of the quota within the UK

Once fish quota has been allocated to the UK, allocation within the UK is a domestic process. The UK Government apportions quotas amongst the devolved administrations, who become responsible for fisheries management thereafter ([Scottish Government, undated](#)).

Quota hopping

EU fishing vessels can obtain UK quota via this domestic process through “quota hopping”. This where fishers from other Member States benefit from UK quotas by setting up UK companies to buy UK fishing vessels and thereby quotas. This is possible through EU freedom of establishment rules, not CFP rules. They allow EU nationals to establish businesses freely in other Member States – including to purchase UK fishing vessels and their UK quotas (House of Lords, 2016, p18).

NORTHERN FISHERIES AGREEMENTS

EU fishing activities in the North Sea and north-east Atlantic are closely linked to Norway, Iceland and the Faroe Islands. Under the Northern Fisheries Agreements, the EU has joint management of fish stocks shared with these countries and quotas are exchanged ([European Commission, Undated](#)). Since the late 1970s the EU has had fisheries agreements with Norway and the Faroe Islands, and since the early 1990s with Iceland.

The agreement with Norway provides for the joint management of shared stocks via agreements on total allowable catches and quotas in the North Sea and Skagerrak areas. It includes an annual reciprocal exchange of fishing possibilities guaranteeing continuation of traditional fishing patterns ([European Commission, 2016](#)). The arrangement originates from historic fishing patterns and the exchange is intended to maintain a balance in the fishing opportunities available and ensure a sustainable fisheries. The cooperation also involves development of long-term management plans for certain joint stocks such as cod, haddock, saithe and herring ([Norwegian Government, undated](#)).

The current agreement between the EU and Norway provides that quotas are shared on the basis of 'zonal attachment'. This is the extent to which a stock is distributed in an area over time ([House of Commons Library, 2017](#)).

The agreements with the Faroe Islands and Iceland are based solely on the annual reciprocal exchange of fishing possibilities in each other's waters, although no exchange of quotas has taken place with Iceland since the 2008 fishing season ([European Commission, 2016](#)).

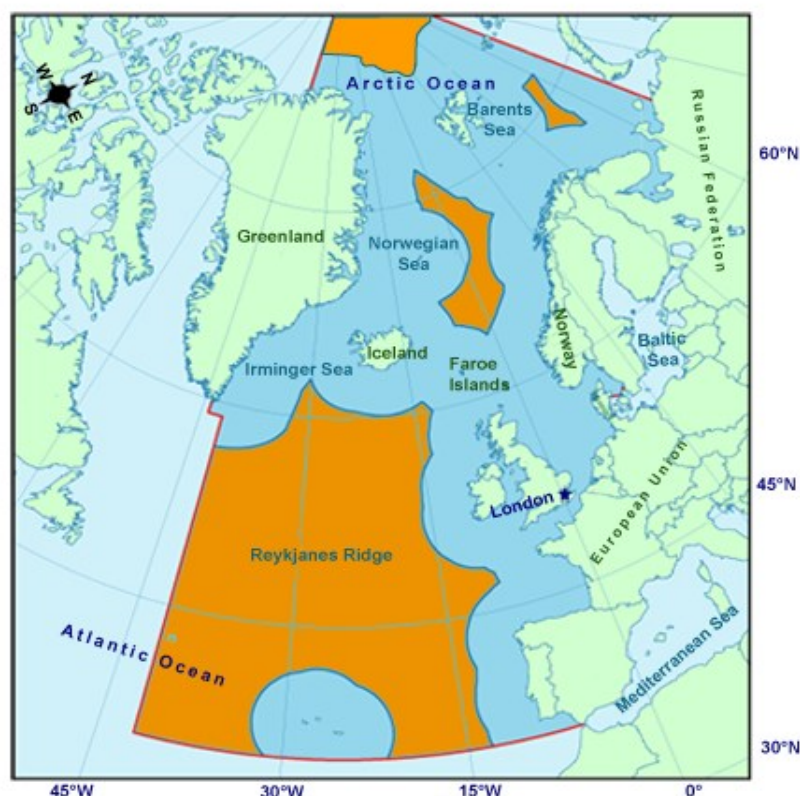
NORTH-EAST ATLANTIC FISHERIES COMMISSION (NEAFC)

The Commission on Multilateral Cooperation in North East Atlantic Fisheries (which entered into force on 1982) is a Regional Management Organisation (RMO) which manages many of the stocks relevant to Scotland, beyond 200 miles (i.e. the high seas). These include mackerel, haddock, herring (Norwegian Spring- Spawning Atlanto-Scandian) and blue whiting. The contracting parties of the Commission are Denmark (in respect of the Faroe Islands and Greenland) EU, Iceland, Norway and Russian Federation.

NEAFC's objective "is to ensure the long-term conservation and optimum utilisation of the fishery resources in the Convention Area, providing sustainable economic, environmental and social benefits". It therefore has management powers to set catch and fishing effort limits, technical measures, and control obligations for mackerel, haddock, herring and blue whiting in in the [NEAFC Convention Area](#).

INTERNATIONAL LAW

Once the UK leaves the EU, the UK will leave the CFP. The UN Convention of the Law of the Sea will apply to the UK as a coastal state in its own right. This means that –



“As an independent coastal state under the UN Convention on the Law of the Sea, the United Kingdom will be required to manage the living resources and fishing activities within its Exclusive Economic Zone in a sustainable way. Consequently it will be for the

UK Government, and the Devolved Administrations, to develop and implement a domestic fisheries policy after withdrawal from the EU.

The UK will also be required to co-operate with adjacent coastal states to manage those stocks which are shared with neighbours as well as straddling stocks to minimise the risk of over-fishing.” (House of Lords, 2016, p 14)

THE UNITED NATION CONVENTION ON THE LAW OF THE SEA (UNCLOS)

UNCLOS was adopted in 1982 and regulates activities at sea, including sea fisheries ([UN website, undated](#)). It includes rules about areas of seas and their management. It defines the **200 nautical mile, exclusive economic zone (EEZ)** that coastal states have rights and responsibilities over. Box 2 highlights UNCLOS articles relevant to fisheries. Within their EEZ coastal states have -

- the right to exploit, develop, manage and conserve all resources e.g. fish, oil, gas etc.
- the responsibilities and obligations to prevent and limit pollution and to facilitate marine scientific research. And jurisdiction for the protection and preservation of the marine environment.

Box 2. UNCLOS articles relevant to sea fishing

Article 61(1) The coastal State shall determine the allowable catch of the living resources in its EEZ

Article 61(2) A coastal state shall take into account the best scientific advice available, and prevent over-exploitation of living resources, via conservation and management measures

Article 61(3) conservation and management measures should maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield

Article 62(1) The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to Article 61

Article 62(2) Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements ... give other States access to the surplus of the allowable catch (see comments below)

Article 62(3) requires coastal states to “minimize economic dislocation in States whose nationals have habitually fished in the zone” when giving access to the EEZ

Article 63 (1) Provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species

The House of Lords report notes that current practice differs from what is said in UNCLOS Article 62 on surplus stocks. In theory, if the UK cannot catch its full TAC, the surplus should be given to states who have habitually fished in the UK EEZ. In written evidence, NEF argues that EU Member States are likely to draw on this to claim continued access to the UK EEZ, should the UK close off access completely (House of Lords, 2016, p15).

LONDON FISHERIES CONVENTION 1964

The [Fisheries Convention 1964](#) allows access to the 6-12 mile zone of a coastal state if another state's fishing fleet has traditionally fished there. In the UK, vessels from France, Ireland, Germany, Netherlands and Belgium have this access. UK vessels have access to waters in France, Germany and Netherlands ([Article 5\(2\) CFP Regulation, Annex 1](#)). Member States are restricted in some cases as to what species they can fish where, and they can only fish for species if they have the relevant quota.

In written evidence to the House of Lords, [Dr Thomas Appleby](#) (2016) stated "The European Fisheries Convention of 1964 would also persist for access in the 6 to 12 nautical mile limit unless revoked." In oral evidence at the same inquiry Prof Robin Churchill stated –

“...will these rights from 1964 suddenly revive after 40 years? I am rather sceptical about that, but, even if they do... the UK could cover itself and withdraw from that.”

Article 15 of the Convention states “...any Contracting Party may denounce the Convention by giving two years' notice in writing...” This has prompted Fishing for Leave on 23 February 2017 to state that if the Convention is “...not denounced within the next 4 weeks it will allow continued access for EU vessels to fish between 6 and 12 nautical miles after Brexit.” ([FFL, 2017](#))

WHAT DOES LEAVING THE EU MEAN FOR ACCESS TO SCOTTISH SEAS?

Foreign vessels do not have access to the 0-6 nm area now or once the UK leaves the EU.

6-12 Nautical Miles

- Whilst in the EU, fishing by non-UK vessels is restricted to those with historic rights, subject to quota, under CFP exemptions (Regulation (EU) No 1380/2013, Article 5 (2))
- Once the UK leaves the EU, these rights *may* remain under the London Convention 1964

12-200 Nautical Miles

- Whilst in the EU, EU vessels and vessels from countries with which the EU has agreements², have access subject to quota (Regulation (EU) No 1380/2013, Article 5 (1))³
- Once the UK leaves the EU, the UK will assume control of its EEZ, and be able to control access. UK vessels' access to EU waters will depend on negotiations.

² access for third country vessels with whom the EU has agreements is limited. So it may be that such vessels can fish X tonnes of Y species in area IV of EU waters.

³ National jurisdiction over the 0-12 mile zone is an exception to principle of equal and open access to all waters of Member States. This exception has been rolled over with each reform of the CFP.

WHAT DOES LEAVING THE EU MEAN FOR FISH QUOTAS?

Once the UK leaves the EU, the UK will be a coastal state in its own right, and will be responsible for co-operating with other coastal states to manage shared fish stocks.

“Some sort of quota system” will be maintained

According to Professor Robin Churchill, University of Dundee “most of the fish stocks found in the waters of the UK are actually shared with our neighbours, be it the EU, Norway, the Faroe Islands or, in some cases, all three. If the stocks are to be properly managed, and this is true of all the North Sea stocks, there will have to be some form of co-operative management regime between the EU, the UK and Norway in the North Sea...” (House of Lords, 2016).

According to Ntona (2016) “There is a general consensus among commentators that, should the UK cease to be a Member of the EU, quotas would be maintained as the principal mechanism for allocating fishery resources”.

The House of Lords report (2016) notes the UK Minister for Fisheries is committed to maintaining “some sort of quota system” (para 65) and “cooperating with other European countries, whether they are in or out of the European Union will continue to be very important” for stocks that migrate and are shared (para 91).

Whether quota hopping will remain will depend on whether freedom of establishment rules are maintained within the fisheries sector, and how those rules operate.

Commercial incentives to co-operate with neighbouring states

There are commercial incentives to co-operate with neighbouring states. Ntona (2016) cites the ‘mackerel wars’. In 2010 Iceland and the Faroe Islands argued they should receive higher shares of the TAC for mackerel, due to the increased abundance of the stock in their EEZs. The EU and Norway were unwilling to reduce their quotas and as a result, Iceland and the Faroe Islands set unilateral quotas for the shared stock (HoL, 2016, p31). Ntona (2016) states -

“The breakdown of TAC-setting and quota allocation arrangements during the mackerel wars ...eventually led to the suspension of the certification that had been awarded to the stock by the Marine Stewardship Council (MSC). This dimension of the quota system is bound to be exceptionally significant for Scotland’s fisheries, since a remarkable 90% of the Scottish pelagic industry has already been certified by the MSC.”

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