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*Published in:*  
Ocean Yearbook Online

*DOI:*  
[10.1163/9789004426214\\_003](https://doi.org/10.1163/9789004426214_003)

Published: 04/06/2020

*Document Version*  
Peer reviewed version

[Link to publication on the UWS Academic Portal](#)

*Citation for published version (APA):*

Huggins, C., Connolly, J., McAngus, C., & van der Zwet, A. (2020). Brexit and the uncertain future of fisheries policy in the United Kingdom: political and governance challenges. *Ocean Yearbook Online*, 34(1), 20-42. [https://doi.org/10.1163/9789004426214\\_003](https://doi.org/10.1163/9789004426214_003)

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**Brexit and the Uncertain Future of Fisheries Policy in the United Kingdom:  
Political and Governance Challenges**

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**NOTES OF ACKNOWLEDGEMENT**

This research was supported by the Economic and Social Research Council under the UK in a Changing Europe initiative, grant number ES/R001952/1.

**This is an accepted version of an article accepted for publication in *Ocean Yearbook*, published by Brill (date of acceptance: 26 August 2019).**

## INTRODUCTION

In June 2016, the United Kingdom (UK) voted to leave the European Union (EU) by a slight 51.9 per cent majority.<sup>1</sup> While only representing a small proportion of the UK's total economic output, at around 0.04 per cent of GVA,<sup>2</sup> fisheries is an important political issue in the Brexit debate.

The prospect of leaving the EU's Common Fisheries Policy (CFP) has been broadly, though not universally, welcomed by UK fishers.<sup>3</sup> However, the fisheries issue is inherently complex and has become bound to a range of wider political and policy concerns in the Brexit debate, including environmental policy, international trade, international relations and devolution. With these concerns in mind, the implications of Brexit for UK fisheries policy are inherently political,<sup>4</sup> and go far beyond fisheries management. A range of legal issues serve to complicate the implementation of any post-Brexit fisheries policy, both in terms of managing constitutional relationships between the UK government and the devolved

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<sup>1</sup> The Electoral Commission, *Results and turnout at the EU referendum* (2016), available online: <<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum>>.

<sup>2</sup> Office for National Statistics, *Nominal and real regional gross value added (balanced) by industry* (2018), available online: <<https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalandrealregionalgrossvalueaddedbalancedbyindustry>>.

<sup>3</sup> C. McAngus, *Report on initial analysis of a survey of UK fishermen ahead of the referendum on the UK's membership of the EU* (2016), available online: <<https://www.dropbox.com/s/aozg6tzd13jn1d1/Fishermen%20Survey%20-%20Report.pdf?dl=0>>.

<sup>4</sup> C. McAngus, C. Huggins, J. Connolly and A. van der Zwet, "The politics and governance of UK fisheries after Brexit," *Political Insight* 9, no. 3 (2018): 8–11.

administrations, which have responsibility for fisheries policy, and managing the UK's relationships with neighbouring coastal states.<sup>5</sup> Overall, the UK's withdrawal from the EU's well-established and complex array of fisheries and broader marine and environmental regulation and governance is fraught with difficulty<sup>6</sup>, and threatens to disrupt the UK's relationships with its neighbours and recent efforts to protect the marine environment and ensure the recovery of fish stocks.<sup>7</sup>

While the outcome of the Brexit process remains uncertain at the point of writing, this paper aims to provide an overview of the underlying challenges facing the UK as it seeks to withdraw from the EU's Common Fisheries Policy. Given the complexity of this issue, the focus here is limited to political and governance challenges. While the UK will have to address a range of other legal, environmental and diplomatic challenges,<sup>8</sup> addressing these political and

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<sup>5</sup> T. Appleby and J. Harrison, "Brexit and the Future of Scottish Fisheries: Key Legal Issues in a Changing Regulatory Landscape," *Journal of Water Law* 25, no. 3 (2017): 124–132; V. J. Schatz, "The International Legal Framework for Post-Brexit EEZ Fisheries Access between the United Kingdom and the European Union," *The International Journal of Marine and Coastal Law* 35 (2019): 1–30.

<sup>6</sup> S. J. Boyes and M. Elliott, "Brexit: The marine governance horrendogram just got more horrendous!" *Marine Pollution Bulletin* 111 (2016): 41–44; C. Burns, V. Gravey, A. Jordan and A. Zito, "De-Europeanising or disengaging? EU environmental policy and Brexit," *Environmental Politics* 28, no. 2 (2019): 271–292.

<sup>7</sup> J. Phillipson and D. Symes, "'A sea of troubles': Brexit and the fisheries question," *Marine Policy* 90 (2018): 168–173.

<sup>8</sup> These legal, environmental and diplomatic challenges fall outside the scope of this paper, but are covered elsewhere. On the legal challenges see for example: T. Appleby and J. Harrison, "Brexit and the Future of Scottish Fisheries: Key Legal Issues in a Changing Regulatory Landscape," *Journal of Water Law* 25, no. 3 (2017): 124–132. On the wider environmental challenges see for example: C. Burns, V. Gravey, A. Jordan and A. Zito, "De-Europeanising or disengaging? EU environmental policy and Brexit," *Environmental Politics* 28, no. 2 (2019): 271–292; C. Hilson, "The Impact of Brexit on the Environment: Exploring the Dynamics of a Complex Relationship," *Transnational Environmental Law* 7, no. 1 (2018): 89–113. On the diplomatic challenges and future relationships with neighbouring coastal states see for example: V. J. Schatz, "The International Legal

governance challenges will be central to ensuring the concerns of fishers, who predominantly voted to leave the EU,<sup>9</sup> while simultaneously delivering on the government's commitment to a 'green Brexit',<sup>10</sup> meeting international obligations, balancing the varying interests of a diverse industry and carefully managing intergovernmental relationships both within and beyond the UK. However, three years on from the referendum, many of these issues remain unaddressed, reflecting both the political impasse characterizing the Brexit process in general and a lack of governance capacity within the UK. Irrespective of the outcome of the current Brexit negotiations, a lack of progress in tackling these underlying political and governance issues is leading to an uncertain future for fisheries policy in the UK.

The paper proceeds as follows. First, it discusses how fisheries policy became an important political issue during the 2016 EU referendum campaign. Second, it surveys three groups of inherent political challenges facing the UK government and the various fisheries administrations as they seek to develop a new approach to fisheries policy. The paper then provides an overview of the current state of post-Brexit fisheries policy development, and considers the implications of two possible outcomes from the current Brexit negotiations for the future of UK fisheries policy: an orderly Brexit along the lines of the withdrawal agreement negotiated between

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Framework for Post-Brexit EEZ Fisheries Access between the United Kingdom and the European Union," *The International Journal of Marine and Coastal Law* 35 (2019): 1–30.

<sup>9</sup> C. McAngus, *Report on initial analysis of a survey of UK fishermen ahead of the referendum on the UK's membership of the EU* (2016), available online: <<https://www.dropbox.com/s/aozg6tzd13jn1d1/Fishermen%20Survey%20Report.pdf?dl=0>>.

<sup>10</sup> HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018), available online: <<https://www.gov.uk/government/publications/25-year-environment-plan>>.

the UK and EU, and a disorderly ‘no deal’ Brexit. The paper concludes by arguing that whatever the outcome of the Brexit process, a lack of capacity within the UK government together with stalled political decision-making, which has characterised much of the Brexit negotiation process, leaves the future of UK fisheries policy uncertain.

## **FISHING AND BREXIT**

The fishing industry accounts for only small proportion of the UK’s economic activity. Fishing is estimated to contribute around 0.04 per cent of UK gross value added (GVA),<sup>11</sup> and out of a workforce of over 32 million, there were only 11,692 registered fishers in 2017.<sup>12</sup> Similarly, fish products only account for around 0.6 per cent of the UK’s exports.<sup>13</sup> Nevertheless, fishing, and the industries which support it, play an important part in the economic and social wellbeing of several UK coastal communities. Indeed, fishing is a major part of the local economy in many coastal communities in the UK, and several define themselves, in both economic and cultural terms, based on their “fisheries-dependence”.<sup>14</sup>

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<sup>11</sup> Office for National Statistics, *Nominal and real regional gross value added (balanced) by industry* (2018), available online: <<https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalandrealregionalgrossvalueaddedbalancedbyindustry>>.

<sup>12</sup> Marine Management Organisation, *UK Sea Fisheries Statistics 2017* (2018), available online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742793/UK\\_Sea\\_Fisheries\\_Statistics\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742793/UK_Sea_Fisheries_Statistics_2017.pdf)>.

<sup>13</sup> M. Gasiorek and S. Walmsley, *Fishing in Deep Waters* (2018), available online: <<http://blogs.sussex.ac.uk/uktpo/publications/fishing-in-deep-waters/>>.

<sup>14</sup> K. Brookfield, T. Gray and J. Hatchard, “The concept of fisheries-dependent communities: A comparative analysis of four UK case studies: Shetland, Peterhead, North Shields and Lowestoft,” *Fisheries Research* 72, no. 1 (2005): 55–69.

As an EU member state, the UK participates in the CFP, the broad set of rules which are used to promote the sustainability of fish stocks in EU member states' waters and manage the activities of EU fishing vessels. While the CFP has a large remit, two elements in particular feature heavily in the Brexit debate. The first of these relates to the CFP's principle of equal access, whereby all EU fishing vessels can access the exclusive economic zones (EEZ) of all EU member states. The second relates to fishing opportunities (for species subject to quotas), which are managed through a system of total allowable catches (TACs) whereby each member state is allocated a proportion of that TAC according to the principle of relative stability – effectively determining allocations on a baseline of fishing activity from a five year period in the 1970s.

The CFP has attracted much criticism for failing to ensure the sustainability of stocks, TACs being set above scientific advice and for the political, and often untransparent, political horse-trading of fishing opportunities between EU member states.<sup>15</sup> Successive reforms of the CFP have sought to address these concerns with varying degrees of success.<sup>16</sup> Nevertheless, the CFP remains unpopular among UK

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<sup>15</sup> See: G. Carpenter, R. Kleinjans, S. Villasante and B. C. O'Leary, "Landing the blame: The influence of EU Member States on quota setting," *Marine Policy* 64 (2016): 9–15; T. Daw and T. Gray, "Fisheries science and sustainability in international policy: A study of failure in the European Union's common fisheries policy," *Marine Policy* 29, no. 3 (2005): 189–197; S. Khalilian, R. Froese, A. Proelss and T. Requate, "Designed for failure: A critique of the common fisheries policy of the European Union," *Marine Policy* 34, no. 6 (2010): 1178–1182.

<sup>16</sup> See: T. Gray and J. Hatchard, "The 2002 reform of the Common Fisheries Policy's system of governance—rhetoric or reality?," *Marine Policy* 27, no. 6 (2003): 545–554; M. Salomon, T. Markus and M. Dross, "Masterstroke or paper tiger – The reform of the EU's Common Fisheries Policy," *Marine Policy* 47 (2014): 76–84.

fishers, in particular for the way in which the equal access principle and the division of TACs under relative stability are seen to disproportionately favour non-UK fishing fleets. Indeed, an analysis of landings between 2011 and 2015, estimated that 54 per cent of landings from the UK's EEZ by EU vessels were landed by non-UK vessels. This increases to 68 per cent when non-EU vessels from Norway and the Faroe Islands are taken into account.<sup>17</sup>

It is in this context that fishing became a politically salient issue during the 2016 EU referendum campaign, and the perceived failings of the CFP together with the opportunity to “take back control” (as the official Vote Leave campaign put it) of UK waters became a key feature of the campaign to leave the EU. Indeed, this message resonated with many disaffected fishers, with a survey conducted before the 2016 referendum estimating that around 93 per cent of Scottish fishers working vessels over ten metres intended to vote to leave the EU.<sup>18</sup> 93 per cent of fishers felt that leaving the EU would increase the fortunes of their industry, with 77 per cent believing that Brexit would be an opportunity to catch more fish.<sup>19</sup>

## **BALANCING INTERESTS**

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<sup>17</sup> I. Napier, *Fish Landings from the UK Exclusive Economic Zone and UK Landings from the EU EEZ* (2017), available online: <<https://www.nafc.uhi.ac.uk/t4-media/one-web/nafc/research/document/eez-reports/eez-report-4-2017-01-31.pdf>>.

<sup>18</sup> C. McAngus, “A survey of Scottish fishermen ahead of Brexit: political, social and constitutional attitudes,” *Maritime Studies* 17 (2018): 41–54.

<sup>19</sup> C. McAngus, *Report on initial analysis of a survey of UK fishermen ahead of the referendum on the UK's membership of the EU* (2016), available online: <<https://www.dropbox.com/s/aozg6tzd13jn1d1/Fishermen%20Survey%20-%20Report.pdf?dl=0>>.

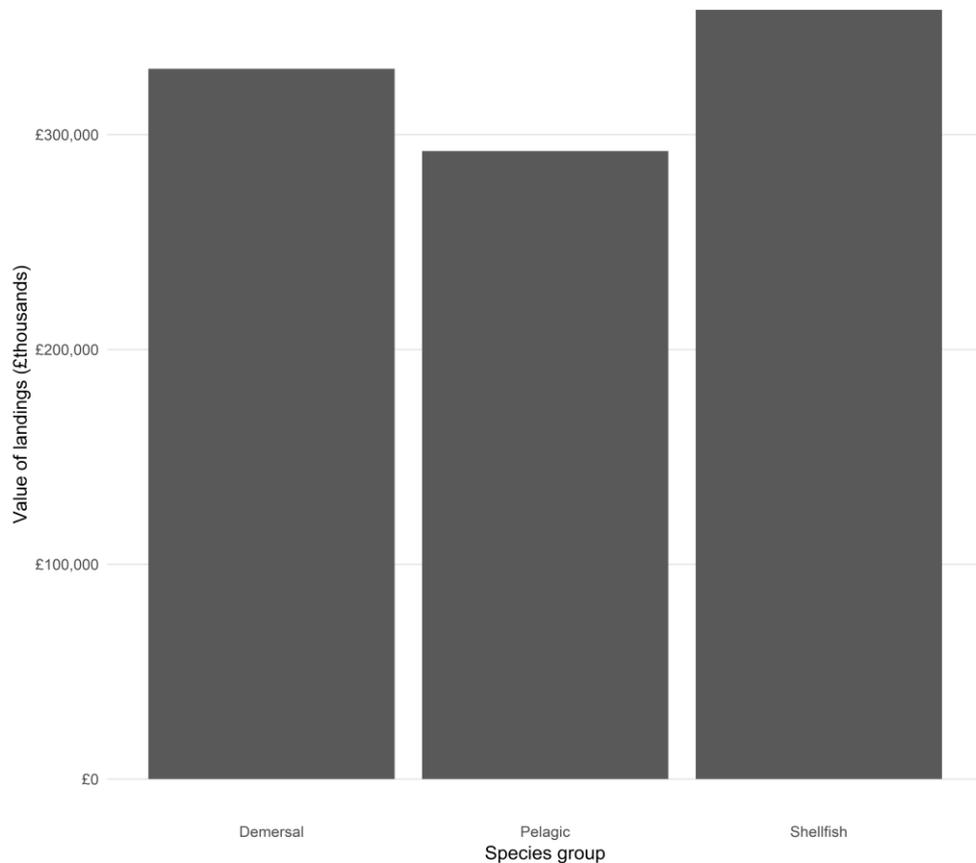
This narrative around “take back control” and the predominant focus on the potential for redistributing quota during the referendum campaign masked a diversity within the UK’s fishing industry and several complicating factors which will need to be carefully balanced post-Brexit.

### **Varying interests within the industry**

While often discussed as a single entity, the UK’s fishing industry is in fact incredibly diverse. Indeed, there are several sectoral divides and each part of the industry has different interests and different requirements from any post-Brexit future.

The first of these divisions relates to species group caught (see figure 1). Much of the referendum campaign, on the leave side, focused on the concerns of the pelagic and demersal fleet which argued UK vessels received an unfair allocation of fishing opportunities under the CFP’s relative stability principle. Repatriation of fisheries policy, it was argued, would offer an opportunity to allocate a fairer (larger) share of fishing opportunities in the UK’s EEZ to UK vessels. In this sense, those fishing quota species potentially stand to gain from Brexit provided the UK chooses to redistribute more quota within its EEZ to UK vessels.

Value of fish landed by UK vessels



Data: Marine Management Organisation  
<https://www.gov.uk/government/collections/monthly-uk-sea-fisheries-statistics>

However, shellfish represents the largest of the three species groups caught. With the exception of nephrops, the majority of the UK's shellfish catch is not subject to EU quotas.<sup>20</sup> In addition, much of the market for UK shellfish is found abroad, making this sector highly dependent upon exports, with 85 per cent of those exports going to the EU.<sup>21</sup> The potential for Brexit to cause trade barriers, including

<sup>20</sup> G. Carpenter, *Not in the Same Boat: The Economic Impact of Brexit Across UK Fishing Fleets* (2017), available online: <<https://neweconomics.org/2017/11/not-in-the-same-boat/>>.

<sup>21</sup> Fishing News, *Brexit Shellfish Threat: No Deal Brexit Shellfish Warning* (2018), available online: <<https://fishingnews.co.uk/news/brexit-shellfish-threat-no-deal-brexit-shellfish-warning/>>.

tariffs and, even more so in the case of live shellfish exports, non-tariff barriers and customs checks, is a concern for this sector. Consequently, most of the shellfish sector, and the smaller coastal communities where it dominates, will not stand to benefit from any potential redistribution of fishing opportunities Brexit may entail, and it concurrently risks losing out on the frictionless trade currently facilitated by EU membership.<sup>22</sup>

A further important divide exists between the small-scale ten metre and under fleet (U10), and the over ten metre fleet. Vessels in the U10 category represent 78 per cent of the UK fishing fleet (see figure 2), however they are only estimated to have access to four per cent of UK fishing quota.<sup>23</sup> This is largely a result of the UK's fixed quota allocation (FQA) system, which has effectively privatised fishing opportunities by allowing the sale of quota to the highest bidder. This has had the effect of consolidating much of the UK's quota as smaller enterprises do not have the capacity to out-bid larger enterprises.<sup>24</sup> Indeed, a recent analysis by Greenpeace found that over two-thirds of the UK's fishing quota is concentrated among just 25 businesses.<sup>25</sup>

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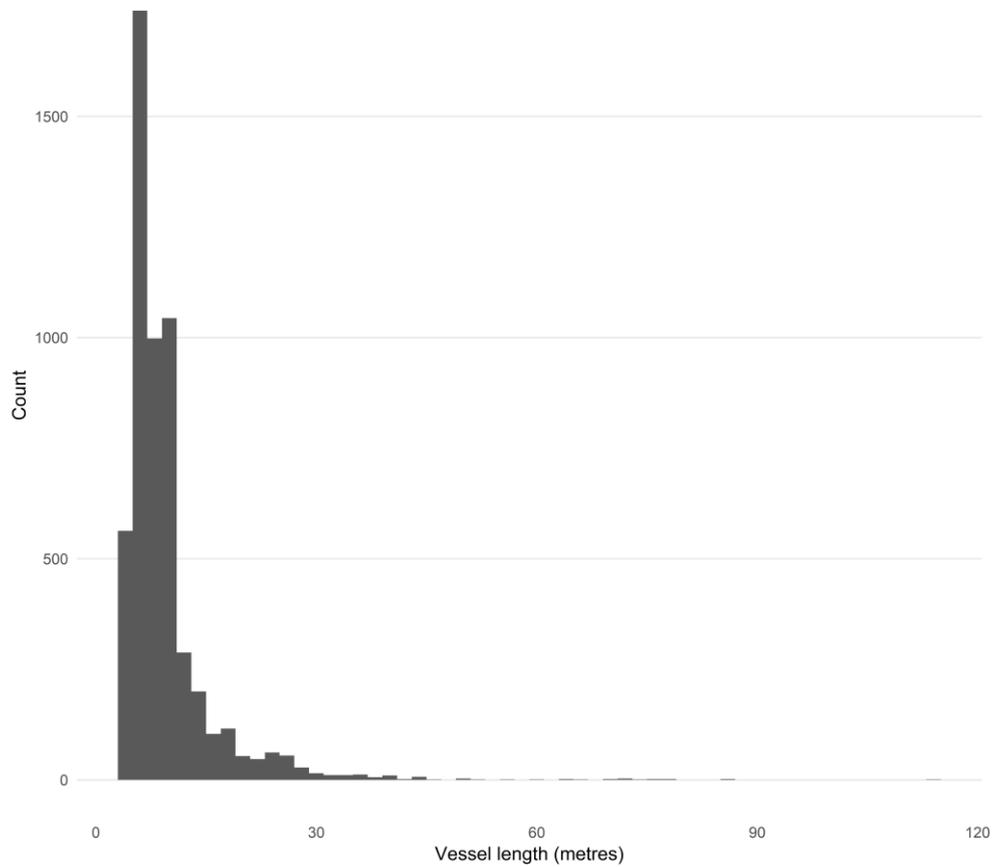
<sup>22</sup> G. Carpenter, *Not in the Same Boat: The Economic Impact of Brexit Across UK Fishing Fleets* (2017), available online: <<https://neweconomics.org/2017/11/not-in-the-same-boat/>>; D. Symes and J. Phillipson, "A sea of troubles' (2): Brexit and the UK seafood supply chain," *Marine Policy* 102 (2019): 5–9.

<sup>23</sup> C. Dowler, *Revealed: the millionaires hoarding UK fishing rights* (2018), available online: <<https://unearthed.greenpeace.org/2018/10/11/fishing-quota-uk-defra-michael-gove/>>.

<sup>24</sup> E. Cardwell, *Selling off the sea: how our fish lost their freedom to market forces* (2015), available online: <<https://www.newstatesman.com/politics/2015/07/selling-sea-how-our-fish-lost-their-freedom-market-forces>>.

<sup>25</sup> C. Dowler, *Revealed: the millionaires hoarding UK fishing rights* (2018), available online: <<https://unearthed.greenpeace.org/2018/10/11/fishing-quota-uk-defra-michael-gove/>>.

UK fishing fleet by length of vessel (June 2018)



Data: Marine Management Organisation  
<https://www.gov.uk/government/collections/uk-vessel-lists>

For many in the under 10 metre fleet, Brexit was seen as an opportunity to address this imbalance (even though it was always within the UK's gift to address).

However, current government policy, as outlined in the fisheries white paper, favours maintaining the current FQA system post-Brexit, with any redistribution of

fishing opportunities only arising from any additional quota achieved as (which is far from a certainty).<sup>26</sup>

While much of the focus has been on the catching sector of the fishing industry, the fortunes of seafood processors are also important. Indeed, when taking the fishing industry as a whole, it is the processing sector which contributes most in terms of revenue and employment.<sup>27</sup> Here again, trade and the ability to easily export products is a key concern, especially given processed seafood usually attracts higher tariffs of up to 20 per cent.<sup>28</sup> Furthermore, this sector of the industry is highly dependent upon migrant labour, with a recent survey finding that 49 per cent of workers are from other EU or European Economic Area countries.<sup>29</sup> In this way seafood processors are highly exposed to any form of Brexit which impedes frictionless trade with the rest of the EU and places limits on migrant labour.

Overall, this section has illustrated the variety within the UK's fishing industry and how different sectors have varying interests when it comes to fishing opportunities, trade and employment. There is a particular tension between the industry's desire for increased fishing opportunities and the need to account for trade issues. Indeed,

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<sup>26</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

<sup>27</sup> D. Symes and J. Phillipson, "'A sea of troubles' (2): Brexit and the UK seafood supply chain," *Marine Policy* 102 (2019): 5–9.

<sup>28</sup> E. Ares, *Fisheries and Brexit* (2018), available online: <<http://researchbriefings.files.parliament.uk/documents/CBP-8396/CBP-8396.pdf>>.

<sup>29</sup> H. Curtis, L. Cowie, A. Witteveen, A. Motova and M. M. Quintana, *UK seafood processing sector labour report 2018* (2018), available online: <[https://www.seafish.org/media/2018\\_seafood\\_processing\\_sector\\_labour\\_report.pdf](https://www.seafish.org/media/2018_seafood_processing_sector_labour_report.pdf)>.

recent modelling of a number of Brexit scenarios found that in all cases while the UK may gain access to more quota, trade with the rest of the EU would be significantly hampered and lead to decreased economic output which cannot be compensated by establishing new trading relationships with non-EU countries.<sup>30</sup> While increased opportunities may be beneficial to those catching quota species and larger enterprises which can absorb the economic impact of changing trade patterns, smaller fishing enterprises, focusing on non-quota species for which there is little domestic demand and so rely on exports, stand to suffer negative consequences.

Comparisons with other non-EU coastal states suggest any successful post-Brexit fisheries policy will require careful balancing these diverse interests, and that communication with and the active involvement of a range of stakeholders in fisheries policy-making will be essential.<sup>31</sup> However, evidence suggests and that those in the industry are far from assured they are being listened to, and sectoral divides between different parts of the industry remain conflictual<sup>32</sup>, as have relations between political administrations in the UK. This is where the paper will now turn.

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<sup>30</sup> M. Gasiorek and S. Walmsley, *Fishing in Deep Waters* (2018), available online: <<http://blogs.sussex.ac.uk/uktpo/publications/fishing-in-deep-waters/>>.

<sup>31</sup> C. Huggins, J. Connolly, C. McAngus and A. van der Zwet, "Brexit and the future of UK fisheries governance: learning lessons from Iceland, Norway and the Faroe Islands," *Contemporary Social Science* 14, no. 2 (2019): 327–340; C. McAngus, C. Huggins, A. van der Zwet and J. Connolly, *Governing UK fisheries after Brexit — lessons from Iceland, Norway and the Faroe Islands* (2018), available online: <<https://ukandeu.ac.uk/research-papers/governing-uk-fisheries-after-brexit-lessons-from-iceland-norway-and-the-faroe-islands/>>.

<sup>32</sup> G. Agnisola, S. Wier and K. Johnson, "The voices that matter: A narrative approach to understanding Scottish Fishers' perspectives of Brexit," *Marine Policy* (In Press).

## **Managing relations between the UK and devolved governments**

Fisheries policy in the UK operates in a multilevel context, where policy-making and implementation capacities are formally devolved to administrations in Northern Ireland, Scotland and Wales (and remain under the control of the central UK government in England where there are no devolved institutions). This raises two issues.

The first is a question of formal competences and powers. While fisheries is a devolved policy area, and the devolved administrations have developed extensive experience and capacity in implementing fisheries management policies, this neat division of competences does not reflect the complex reality fisheries policy operates in. For example, the UK has international obligations under the UN Convention on the Law of the Sea (UNCLOS)<sup>33</sup> and given the UK's geography and nature of its fishery, which includes several shared stocks, negotiations with neighbouring coastal states and through regional fisheries management organisations will be crucial (see below). Furthermore, as already noted above, trade is essential to the fortunes of the UK fishing industry.

Fisheries policy cannot, therefore, operate in isolation from international relations and international trade. Yet while fisheries policy is devolved, international

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<sup>33</sup> United Nations, *United Nations Convention on the Law of the Sea* (1982), available online: <[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)>.

relations and trade are reserved UK government competences. These overlaps between formally devolved and reserved competences raises the scope for tension between the UK and devolved governments.<sup>34</sup>

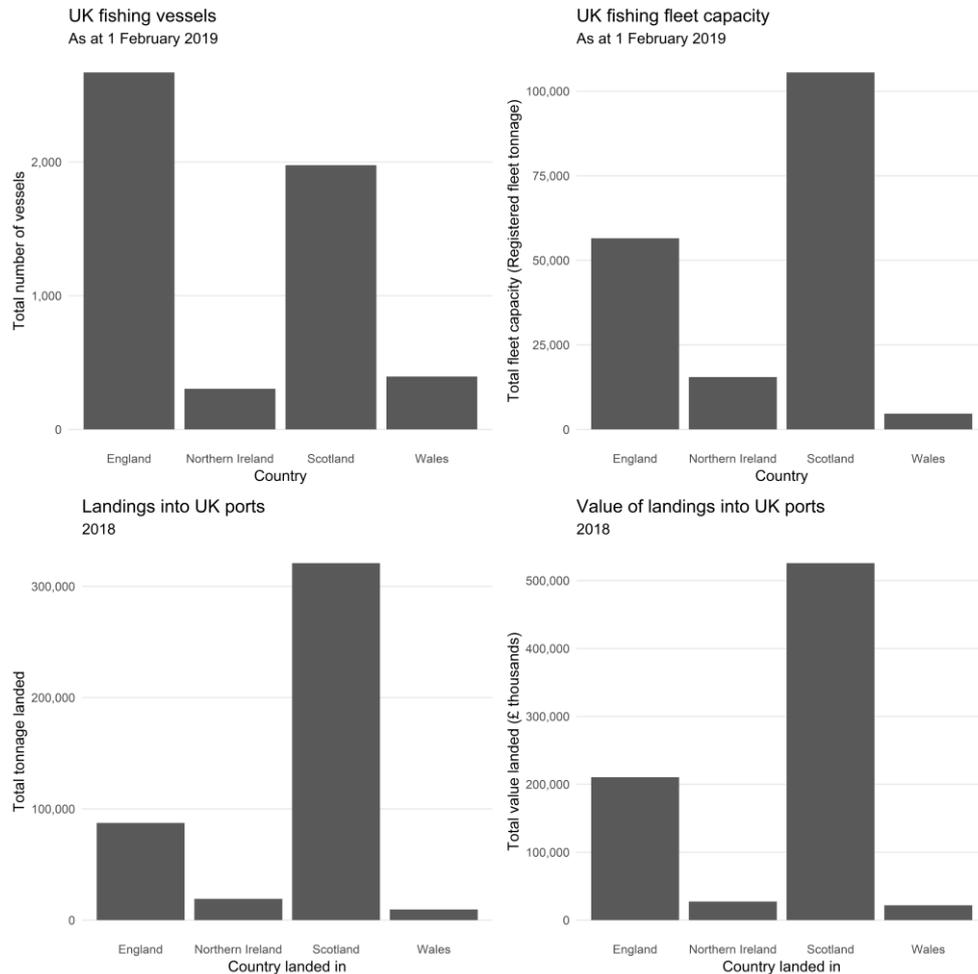
The second issue relates to how fishing activity is spread across the UK. In terms of fleet capacity, tonnage of fish landed and value of fish landed, most of the UK's fishing activity takes place in Scotland. But there are also crucial differences in the fishing industry across the UK. In Northern Ireland and Scotland pelagic and demersal fisheries make up the majority of landings, whereas in England and Wales it is shellfish that dominates.<sup>35</sup> England has more fishing vessels than in Scotland, but Scottish vessels are on average much larger (see figure 3).<sup>36</sup>

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<sup>34</sup> C. T. Reid, "Brexit and the devolution dynamics," *Environmental Law Review* 19, no. 1 (2017): 3–5.

<sup>35</sup> C. Huggins, *Infographics: Post-Brexit fisheries policy and devolution* (2018), available online: <[https://christopherhuggins.uk/post/20180726\\_fisheriesdevoinfographics/](https://christopherhuggins.uk/post/20180726_fisheriesdevoinfographics/)>.

<sup>36</sup> C. Huggins, *Infographics: Post-Brexit fisheries policy and devolution* (2018), available online: <[https://christopherhuggins.uk/post/20180726\\_fisheriesdevoinfographics/](https://christopherhuggins.uk/post/20180726_fisheriesdevoinfographics/)>.



From a fisheries management point of view, this serves to highlight how a ‘one size fits all’ approach to fisheries policy would not necessarily suit the UK. On the one hand, devolution allows different parts of the UK to adapt their approach to fisheries management to suit local need. But this also risks divergence to the point where the UK could operate four separate, and potentially conflicting, fisheries policies. This is currently kept in check by through participation in the CFP, which effectively acts as a common point of reference and places constraints on the devolved administrations’ ability to diverge.

However, fisheries policy and the governance of it has become tied to the territorial politics of devolution, especially in Scotland. There the Scottish National Party (SNP) Government's *raison d'être*, in constitutional terms, is for Scotland to become an independent nation, with Scotland remaining as a member of the EU. The SNP continue to push for independence for Scotland, having failed to convince the Scottish electorate in an independence referendum 2014. Brexit presents a renewed opportunity for the SNP to push for independence again given the majority of Scottish voters wanted to remain within the EU. Much of the politics surrounding the SNP's position is that by campaigning to remain within the EU it could be seen (as it has been by many fishing industry stakeholders) as the SNP seeking to remain a member of the CFP by default. Yet, as part of ongoing Brexit negotiations, the SNP have called for fundamental reform of the CFP, although the details on what this means in practice are unclear.<sup>37</sup> In the post-Brexit context, the position of the SNP is for fisheries policy to be fully devolved to Scotland.<sup>38</sup> This is perhaps unsurprising given the aforementioned *raison d'être* of the SNP, but is also backed up with survey evidence among Scottish people, with 62 per cent believing all fisheries decisions should be made solely by the Scottish Government post-Brexit.<sup>39</sup>

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<sup>37</sup> Scottish National Party, *How do the SNP plan to ensure that Scotland's fishermen get a fair deal in Europe?* (n.d.), available online: <<https://www.snp.org/policies/pb-how-do-the-snp-plan-to-ensure-that-scotland-s-fishermen-get-a-fair-deal-in-europe/>>.

<sup>38</sup> Scottish National Party, *How do the SNP plan to ensure that Scotland's fishermen get a fair deal in Europe?* (n.d.), available online: <<https://www.snp.org/policies/pb-how-do-the-snp-plan-to-ensure-that-scotland-s-fishermen-get-a-fair-deal-in-europe/>>.

<sup>39</sup> J. Curtice, *Just 15 Months To Go: What Scotland Is Making of Brexit* (2018), available online: <<http://www.natcen.ac.uk/media/1528078/NatCen-What-Scotland-Makes-Of-Brexit.pdf>>.

The current proposal by the UK government, however, is that the post-Brexit context will require ‘common frameworks’ for the governance of policy areas which intersect with devolved powers, with fisheries being one area where this would be required.<sup>40</sup> The need for a common framework is broadly accepted, and to some extent already reflects how the four fisheries administrations across the UK co-operate via an existing Fisheries Concordat, which sets out broad principles in areas such as quota allocation and vessel licensing (although a revised version of the concordat has already been subject to delay).<sup>41</sup> However there remain big debates about the underlying process in developing a post-Brexit common framework for fisheries policy. The details around what the common frameworks would mean for Scotland in practice remain to be seen. The UK government’s position is that there is a need for UK-wide cooperation and that common frameworks, amongst other things, to facilitate the effective functioning of the so-called of UK internal market and to ensure compliance with international obligations.<sup>42</sup>

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<sup>40</sup> Institute for Government, *Common frameworks, devolution and Brexit* (2019), available online: <<https://www.instituteforgovernment.org.uk/explainers/common-frameworks-devolution-and-brexit>>.

<sup>41</sup> Department for Environment, Food and Rural Affairs, *Concordat on management arrangements for fishing quotas and licensing in the UK* (2012), available online: <<https://www.gov.uk/government/publications/concordat-on-management-arrangements-for-fishing-quotas-and-licensing-in-the-uk>>;

<sup>42</sup> Institute for Government, *Common frameworks, devolution and Brexit* (2019), available online: <<https://www.instituteforgovernment.org.uk/explainers/common-frameworks-devolution-and-brexit>>.

From a political point of view, it could be argued that the UK government's approach to handling intergovernmental relations with Scotland has been marked by an inadequate level of consultation and communication on the part of the UK government.<sup>43</sup> The Joint Ministerial Committee (JMC), a multilateral forum providing an institutionalized space for dialogue between the UK and devolved governments,<sup>44</sup> has been the main forum for high-level discussion between the UK government and the devolved administrations on matters relating to Brexit.<sup>45</sup> Nevertheless, there have been concerns expressed by the Scottish and Welsh administrations about the discussions that have taken place at the JMC and the apparent lack of engagement in the JMC shown by the UK government.<sup>46</sup> It is important to mention Northern Ireland as part of this discussion, but Northern Ireland has not had an executive for most of the time since the 2016 Brexit referendum, which means that they have not had their voice heard at JMC meetings. Jeremy Miles, the Brexit Minister for the Welsh government, expressed concern as recently as May 2019 about the need for the devolved administrations to have a role in agreeing positions which affect competences of the devolved

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<sup>43</sup> C. Reid, C. Burns, N. Carter, R. Cowell, P. Eckersley, F. Farstad, V. Gravey, A. Jordan and B. Moore, *Scotland: Challenges and opportunities for post-Brexit environmental governance* (2018), available online <<https://www.brexitenvironment.co.uk/wp-content/uploads/2018/10/BrexitEnvScotlandReport.pdf>>.

<sup>44</sup> N. McEwen, "Still better together? Purpose and power in intergovernmental councils in the UK," *Regional and Federal Studies* 27, no. 5 (2017): 667–690.

<sup>45</sup> Institute for Government, *Devolution and the Joint Ministerial Committee* (2018), available online: <<https://www.instituteforgovernment.org.uk/explainers/brexit-devolution-joint-ministerial-committee>>.

<sup>46</sup> Scottish Government, *Scottish and Welsh Governments write to Brexit Secretary David Davis* (2017), available online: <<https://news.gov.scot/news/scottish-and-welsh-governments-writes-to-brexit-secretary-david-davis>>.

administrations as a matter of ‘constitutional necessity’<sup>47</sup>. The positions of the Welsh and Scottish administrations on the level of ineffectiveness of the JMC discussions are very similar. However, it has been argued that there is a more positive dialogue in policy discussions between officials (rather than politicians) about potential proposals surrounding common frameworks, which could help to build familiarity and trust across the administrations<sup>48</sup>. This is perhaps an overly optimistic view based on broader discussions between civil servants across the administrations of the UK. Our research, however, has indicated that the Brexit discussions at a sectoral level, in this case fisheries, has led to a reduction in communication channels between the Scottish and UK officials within the civil service, even between those who have developed close working relations over many years, and at least since devolution in 1999. In short, policy relationships have been affected negatively by Brexit across the UK and the level of improvement in relations will very much depend on the role of the devolved administrations in future negotiations and the nature of policy and constitutional outcomes resulting from Brexit.

### **Managing international relations and relationships with neighbouring coastal states**

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<sup>47</sup> J. Miles, *Written Statement: Joint Ministerial Committee (European Negotiations)* (2019), available online: <<https://gov.wales/written-statement-joint-ministerial-committee-european-negotiations-0>>.

<sup>48</sup> N. McEwen, *Towards a devolution backstop?* (2019), available online: <<https://ukandeu.ac.uk/towards-a-devolution-backstop/>>.

As noted earlier in this paper, exclusive control over fisheries within the UK's EEZ was a central pillar of the leave campaign during the referendum and remains the expectation of many within the industry. However, while the UNCLOS offers the UK extensive rights to exploit the resources (including fish) in its EEZ it also places obligations on coastal states.<sup>49</sup> In particular, the UK will still be obliged to ensure the sustainability of fish stocks within its EEZ and to avoid over-exploitation of stocks.<sup>50</sup> There are also obligations to allow access to foreign fishing vessels where there is a surplus of fish stocks which cannot be caught by UK vessels.<sup>51</sup> Furthermore, given the nature and geography of the UK's fishery, and the fact many fish stocks straddle international maritime boundaries, there are obligations to co-operate with neighbouring coastal states on the management of these stocks to ensure their long-term sustainability.<sup>52</sup>

In short, while Brexit will give the UK greater control over its EEZ, it will still not be able to operate in isolation in fisheries policy terms, and, to meet its international obligations and ensure the sustainability of fish stocks, it will be

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<sup>49</sup> United Nations, *United Nations Convention on the Law of the Sea* (1982), available online: <[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)>.

<sup>50</sup> United Nations, *United Nations Convention on the Law of the Sea* (1982), available online: <[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)>.

<sup>51</sup> United Nations, *United Nations Convention on the Law of the Sea* (1982), available online: <[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)>.

<sup>52</sup> United Nations, *United Nations Convention on the Law of the Sea* (1982), available online: <[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)>; United Nations, *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (1995), available online:

<[https://www.un.org/depts/los/convention\\_agreements/texts/fish\\_stocks\\_agreement/CONF164\\_37.htm](https://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm)>.

required to co-operate with neighbouring coastal states including the rest of the EU, Norway and the Faroe Islands,<sup>53</sup> and through the North East Atlantic Fisheries Commission (NEAFC).<sup>54</sup>

Maintaining good relationships with the UK's international neighbours is also in the interest of the UK's fishing industry. As already noted, international trade, particularly with the rest of the EU, is particularly important. Furthermore, while much attention has been focused on the importance of accessing the UK's EEZ for non-UK vessels, the UK fishing industry similarly relies on access to non-UK waters. Indeed, in 2017, UK vessels caught 94,000 tonnes of fish worth £88 million in the EEZs of other EU member states.<sup>55</sup>

Brexit will change the dynamic of many of the relationships established in the region and is likely to lead to a restructuring of institutional and regulatory requirements. To this end Brexit presents a potential major challenge to the stability of European fisheries management. For example, by 'losing' the UK, the EU's influence in the North Sea and North Atlantic will be greatly reduced and Norway, Iceland and Faroe Islands will share fewer sea borders and fish stocks

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<sup>53</sup> The Faroe Islands are an autonomous country as part of the Kingdom of Denmark. While not a fully independent state, the Islands are completely autonomous in terms of fisheries management and fisheries policy development.

<sup>54</sup> T. Appleby and J. Harrison, "Brexit and the Future of Scottish Fisheries: Key Legal Issues in a Changing Regulatory Landscape," *Journal of Water Law* 25, no. 3 (2017): 124–132.

<sup>55</sup> Marine Management Organisation, *United Kingdom commercial sea fisheries landings by Exclusive Economic Zone of capture: 2012 - 2017* (2018), available online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/743847/Exclusive\\_Economic\\_Zone\\_Analysis\\_UK\\_commercial\\_sea\\_fisheries\\_landings\\_by\\_EEZ\\_of\\_capture\\_2012\\_to\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/743847/Exclusive_Economic_Zone_Analysis_UK_commercial_sea_fisheries_landings_by_EEZ_of_capture_2012_to_2017.pdf)>.

with the EU. By no longer being part of the EU, the UK also becomes an additional autonomous veto player, adding to political complexity in the region. To this end, some scholars, such as Phillipson and Symes, have commented that that ‘Brexit punches a hole in the spatial integrity of Europe’s western seas, sufficient perhaps to scuttle a coherent regional approach, and, along with it, deliberations concerning the handling of ‘mixed fisheries’ and shared stocks’.<sup>56</sup>

Nevertheless, there is a perception among third countries, including Norway, Iceland and the Faroe Islands, that good relations with the UK will be maintained. As one interviewee noted for our study:

we are so far been very confident that the UK will continue responsible management of their resources in their waters, which will facilitate a good cooperation between Norway and the UK in the future in the North Sea for example.<sup>57</sup>

In some cases, there is even optimism that fisheries management in the north Atlantic and North Sea will be simplified. As the EU’s negotiating position diminishes due to the loss of territorial waters, the often complex internal trade-offs between its member states will be less of an issue for third countries and facilitate negotiations. Furthermore, a new coastal state offers other third countries the opportunity to address old grievances:

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<sup>56</sup> J. Phillipson and D. Symes, “‘A sea of troubles’: Brexit and the fisheries question,” *Marine Policy* 90 (2018): 168–173.

<sup>57</sup> Official, Norwegian Mission to the European Union, pers. comm. (19 January 2018).

a new coastal state around the table for me would offer challenges but obviously opportunities as well ... We would like to enter into a discussion in such a way that there would be no tariff on fish [between the UK and Iceland].<sup>58</sup>

Indeed, although much of the leave campaign was focused around taking back control over territorial waters, there is widespread recognition that management and control of fish stocks requires a multi-lateral approach.<sup>59</sup> Therefore, tri-lateral agreements between the UK, Norway and the EU are desirable. In general, the way in which Norway engages and negotiates with the EU can be regarded as a successful model for the UK and is also largely in line with expectations of those in the industry with that of the Scottish Fishermen's Federation Bernie Armstrong stating that: "The fact that the EU-Norway model exists where shared stocks are discussed and arrangements are made means that that model is suitable for an EU-UK-Norway model".<sup>60</sup> There is also broad agreement that the UK should become a full member of NEAFC.

However, while many in the UK regard Brexit and its status as an independent coastal state as an opportunity to change quota allocations, this will be much more complicated to achieve in the context of international relations. The UK

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<sup>58</sup> Official, Icelandic Mission to the European Union, pers. comm. (17 January 2018).

<sup>59</sup> J. Phillipson and D. Symes, "A sea of troubles': Brexit and the fisheries question," *Marine Policy* 90 (2018): 168–173.

<sup>60</sup> House of Lords European Union Committee, *Brexit: fisheries* (2017), available online: <<https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/78/7802.htm>>.

government will still be required adhere to international agreements. If there were increases in quotas, even in some areas, that would still need to be part of a negotiated process, which could be protracted. Opportunities for the UK as an independent coastal state would come from more policy autonomy to own bilateral arrangements and it can negotiate inward transfers of quota in the short term in exchange for access or other quotas, therefore it is a question of having policy and negotiation levers than was available in the pre-Brexit context. A 2016 report by the European Union Committee of the House of Lords concluded the following after taking evidence by academics, policy officials, and industry representatives about Brexit:

- Catch statistics suggest that EU vessels have a clear interest in preserving access to the UK EEZ, and give support to the minister's view that there is an imbalance between the benefits derived by EU vessels fishing in the UK EEZ and those derived by UK vessels fishing in the EU.
- Unilateral restriction on access to fishing in the UK EEZ would almost certainly lead to reciprocal restrictions being placed on UK vessels fishing in the EU EEZ. This would also have a profound effect both on the fishing industry in the EU and on the UK fleet that relies on fishing outside the UK EEZ. Some form of mutual access arrangements must therefore be negotiated.
- The historic reluctance of member states to renegotiate the relative stability key suggests that negotiating new quota allocations after Brexit will be difficult. Such difficulty will be accentuated if these negotiations overlap

with the wider negotiations on EU withdrawal. The government could use access to fishing within the UK EEZ as a lever for achieving a better allocation of quotas, but must also bear in mind the need for co-operation in ensuring the long-term sustainability of stocks.<sup>61</sup>

These points highlight how post-Brexit autonomy for the governance of fisheries is inextricably relative and highlight how political posturing about ‘taking back control’ is contingent upon the maintenance of international political and industry relations.

In recent months there has been progress towards preparing post-Brexit partnerships in North West Europe. Trade continuity agreements between UK Norway and Iceland as well as between the UK and Faroe Islands have respectively been signed on 2 April 2019 and 31 January 2019. The Norway and Iceland continuity agreement covers trade in goods and will only be used in a no deal scenario in which the same level of tariffs on goods traded between the UK, Iceland and Norway will be maintained.<sup>62</sup> The trade continuity agreement with the Faroe Islands replicates existing arrangements as far as possible and comes into effect in the case of a no deal Brexit or after the implementation period. This is particularly important to the Faroese for whom the UK represents a £200 million

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<sup>61</sup> House of Lords European Union Committee, *Brexit: fisheries* (2017), available online: <<https://publications.parliament.uk/pa/ld201617/ldselect/ldEUcom/78/7802.htm>>.

<sup>62</sup> HM Revenue and Customs, *Agreement between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway on Trade in Goods* (2019), available online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/795291/MS\\_17.2019\\_Iceland\\_Norway\\_Trade.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795291/MS_17.2019_Iceland_Norway_Trade.pdf)>.

fish export market.<sup>63</sup> The agreement will allow imports to continue tariff-free and enable businesses to trade freely.<sup>64</sup> However, while these agreements address important trade issues, there remains significant uncertainty regarding future co-operation on fisheries management.

## **DEVELOPING A POST-BREXIT FISHERIES POLICY**

The challenges outlined above demonstrate how the UK's attempts to develop a new post-Brexit fisheries policy need to address concerns well beyond fisheries management, and how political and economic factors will need to be accounted for. The task facing the UK government and the UK's fisheries administrations is therefore not easy. Given that the majority of current UK fisheries regulation and policy implementation is derived from the EU, one of the key concerns has been to avoid a so-called 'governance gap',<sup>65</sup> whereby an absence of the UK's own independent fisheries policy, together with a lack of clarity over how it would relate to international systems of governance, would significantly weaken the UK's capacity to develop, and crucially enforce, fisheries policy.

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<sup>63</sup> HM Revenue and Customs, UK and Faroe Islands sign trade continuity agreement (2019), available online: <<https://www.gov.uk/government/news/uk-and-faroe-islands-sign-trade-continuity-agreement>>.

<sup>64</sup> HM Revenue and Customs, UK and Faroe Islands sign trade continuity agreement (2019), available online: <<https://www.gov.uk/government/news/uk-and-faroe-islands-sign-trade-continuity-agreement>>.

<sup>65</sup> V. Gravey, A. Jordan and C. Burns, *Environmental policy after Brexit: mind the governance gap* (2016), available online: <<https://ukandeu.ac.uk/environmental-policy-after-brexit-mind-the-governance-gap/>>.

The 2018 EU Withdrawal Act aims to address this by essentially rolling over existing EU legislation and regulation into UK law under the category of ‘retained EU law’.<sup>66</sup> Here all the provisions of the EU’s CFP would automatically become part of UK law at the point of EU exit, and could be repealed, amended or replaced thereafter.<sup>67</sup> However, simply rolling over the provisions of the CFP would do little to signal to the industry that Brexit will lead to policy change. Furthermore, in the case of fisheries, primary legislation is also required to provide a legal framework to allow the UK to exercise control over its EEZ. Developing a new fisheries policy is therefore crucial to avoid the potential for a governance gap while ensuring the challenges outlined in the previous section are adequately tackled.

The UK government’s 25 year environment plan (25 YEP), published in January 2018, outlined some general aspirations on fisheries management.<sup>68</sup> These included commitments to base fisheries management on the principles of maximum sustainable yield and the ecosystem approach, rooting decisions in scientific evidence and actively consulting industry stakeholders and the devolved administrations in policy-making.<sup>69</sup> Yet the 25 YEP was also criticised for its lack

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<sup>66</sup> UK Parliament, *European Union (Withdrawal) Act* (2018), available online: <<http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>>.

<sup>67</sup> E. Hancox, *Amending Retained EU Law after Brexit* (2018), available online: <<https://www.europeanfutures.ed.ac.uk/article-7270>>.

<sup>68</sup> HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018), available online: <<https://www.gov.uk/government/publications/25-year-environment-plan>>.

<sup>69</sup> HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018), available online: <<https://www.gov.uk/government/publications/25-year-environment-plan>>.

of detail and use of vague and language.<sup>70</sup> The 25 YEP's aspirations were to be set out in more detail in the government's fisheries white paper which, after significant delay, was published in July 2018.<sup>71</sup>

As well as restating the commitments to sustainability set out in the 25 YEP, the white paper's key headline is an intention to move away from the current system of relative stability for sharing fishing opportunities. While what will replace it is not explicitly set out, a system of zonal attachment receives some discussion. While this makes it clear the government's approach will be focused on rebalancing fishing opportunities in UK waters to provide a 'fairer' deal for UK fishers, the white paper nevertheless acknowledges that reciprocal access to waters is important.<sup>72</sup> To this end, and given the UK's obligations under UNCLOS regarding the management of shared fish stocks and importance of maintaining good relationships in the region, the white paper sets out the government's intention to develop multi-annual agreements with the EU and other neighbouring coastal states.<sup>73</sup> On negotiations with the EU, the white paper sets out the government's view

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<sup>70</sup> C. Burns, *25 year environment plan: 'Global gold standard' or green wash?* (2018), available online: <<https://www.brexitenvironment.co.uk/2018/01/11/25-year-environment-plan/>>.

<sup>71</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

<sup>72</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

<sup>73</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

that fishing opportunities and reciprocal access to waters should be kept separate from the question of the UK's future trading relationship with the EU.<sup>74</sup>

The white paper was cautiously welcomed by the fishing industry,<sup>75</sup> but was also criticized in some quarters for its vague and non-committal nature.<sup>76</sup> For example, while the white paper recognizes the value of partnership working and drawing on the industry for the co-production of policy, there is little explanation about how this would be achieved or how industry and other stakeholders' interests will be formally incorporated into the policy process. Furthermore, while the National Federation of Fishermen's Organisations and the Scottish Fishermen's Federation, the two largest catching sector representative groups, had broadly welcomed the white paper,<sup>77</sup> there is a sense that the concerns of the small-scale fishing fleet have been ignored and there was disappointment that the white paper set out the government's intention not to redistribute existing allocations of UK quota.<sup>78</sup> On devolution, the white paper sets out the long-standing aspiration to work with the devolved governments to develop a UK-wide common fisheries framework, and a

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<sup>74</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

<sup>75</sup> National Federation of Fishermen's Organisations, *White Paper* (2018), available online: <<https://nffo.org.uk/news/white-paper.html>>.

<sup>76</sup> C. Williams, *Fisheries White Paper: Who is this for?* (2018), available online: <<https://neweconomics.org/2018/07/who-is-this-for>>.

<sup>77</sup> National Federation of Fishermen's Organisations, *White Paper* (2018), available online: <<https://nffo.org.uk/news/white-paper.html>>; Scottish Fishermen's Federation, *SFF welcomes UK Government White Paper on fisheries* (2018), available online: <<https://www.sff.co.uk/sff-welcomes-uk-government-white-paper-fisheries/>>.

<sup>78</sup> C. Williams, *Fisheries White Paper: Who is this for?* (2018), available online: <<https://neweconomics.org/2018/07/who-is-this-for>>.

promise to involve representatives from the devolved governments in international negotiations, albeit with the UK government retaining a final say.<sup>79</sup> But beyond this there is little about at what level specific decisions will be made and how working within a common framework would work in practice. Indeed, the Scottish government was quick to criticize the white paper and for the UK government's apparently lack of engagement with them.<sup>80</sup>

The government introduced a Fisheries Bill to parliament in October 2018.<sup>81</sup> This was designed to provide the legal framework necessary to enforce fisheries regulations in the EEZ and codify earlier policy commitments and relations with the devolved administrations would work. In particular the Bill sets out six "fisheries objectives" around sustainability, the precautionary principle, a ecosystem-based approach, the use of scientific evidence, avoiding discards and ensuring equal access for UK vessels in UK waters.<sup>82</sup> In terms of managing fisheries policy across the UK and the four fisheries administrations, the Bill proposes that a 'joint fisheries statement', which is jointly prepared by the fisheries

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<sup>79</sup> Department for Environment, Food and Rural Affairs, *Sustainable fisheries for future generations* (2018), available online: <<https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>>.

<sup>80</sup> F. Ewing, *Response to draft fisheries White Paper* (2018), available online: <<http://www.fergusewing.com/response-to-draft-fisheries-white-paper/>>.

<sup>81</sup> UK Parliament, *Fisheries Bill (HC Bill 305)* (2019), available online: <[https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill\\_2017-20190305\\_en\\_1.htm](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill_2017-20190305_en_1.htm)>.

<sup>82</sup> UK Parliament, *Fisheries Bill (HC Bill 305)* (2019), available online: <[https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill\\_2017-20190305\\_en\\_1.htm](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill_2017-20190305_en_1.htm)>.

administrations, codifies how the fisheries objectives are to be achieved.<sup>83</sup> The Bill also contains a range of provisions on fishing vessel access to UK waters, licensing, the determination of fishing opportunities and financial support.<sup>84</sup> However, as of August 2019, the bill remains at an early stage of the legislative process there has been no progress on it since December 2018.<sup>85</sup>

Overall, then, while the UK has established some overarching principles to guide future fisheries management, and a Fisheries Bill is currently before parliament, it still lacks a new fisheries policy, much of the legal framework to enforce it and the necessary working relationships with the devolved administrations. In effect the risk of a governance gap remains.

In addition to this, the UK lacks the necessary administrative capacity to tackle the task of unpicking existing EU fisheries policy and regulations and develop new UK specific ones. The Department for Environment, Food and Rural Affairs (Defra), the government ministry responsible for fisheries policy, saw its staffing levels cut by a third in the decade preceding 2016.<sup>86</sup> While new staff have been recruited to work on Brexit preparations since, a National Audit Office investigation found that

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<sup>83</sup> UK Parliament, *Fisheries Bill (HC Bill 305)* (2019), available online: <[https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill\\_2017-20190305\\_en\\_1.htm](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill_2017-20190305_en_1.htm)>.

<sup>84</sup> UK Parliament, *Fisheries Bill (HC Bill 305)* (2019), available online: <[https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill\\_2017-20190305\\_en\\_1.htm](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/cbill_2017-20190305_en_1.htm)>.

<sup>85</sup> UK Parliament, *Bill stages — Fisheries Bill 2017-19* (2019), available online: <<https://services.parliament.uk/Bills/2017-19/fisheries/stages.html>>.

<sup>86</sup> Institute for Government, *Civil service staff numbers* (2019), available online: <<https://www.instituteforgovernment.org.uk/explainers/civil-service-staff-numbers>>.

Defra currently lacks the necessary capacity to enforce fisheries regulations out at sea, and is particularly ill-equipped to deliver on its responsibilities in the event of a no deal Brexit.<sup>87</sup>

This lack of clear policy development and limited capacity has implications for the type of EU withdrawal the UK is heading for. The Withdrawal Agreement negotiated between the UK and the rest of the EU<sup>88</sup> sees the UK effectively remain in the CFP until the end of 2020 as a transitional arrangement, even though it is no longer an EU member state. This has attracted much criticism from those in the fishing industry who argued that such a delay in leaving the CFP is unacceptable.<sup>89</sup> However, one reason this transition period exists is because it gives the UK and its devolved administrations time and space to fully develop their own approach to fisheries policy which meets the diverse needs of the fishing industry and addresses the challenges set out above. Indeed, the fact that parliament is still yet to pass the Fisheries Bill, and that the government's policy aspirations for fisheries remain vague suggests that the UK is not yet ready to apply its own policy arrangements.

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<sup>87</sup> National Audit Office, *Department for Environment, Food and Rural Affairs: Progress in Implementing EU Exit* (2018), available online: <<https://www.nao.org.uk/report/department-for-environment-food-and-rural-affairs-progress-in-implementing-eu-exit/>>.

<sup>88</sup> European Council, *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (2019), available online: <[https://ec.europa.eu/commission/publications/withdrawal-agreement-and-political-declaration-official-journal-european-union-19-february-2019\\_en](https://ec.europa.eu/commission/publications/withdrawal-agreement-and-political-declaration-official-journal-european-union-19-february-2019_en)>.

<sup>89</sup> C. McAngus and C. Huggins, *How the Brexit transition deal let the UK's fishing industry down* (2018), available online: <<https://theconversation.com/how-the-brexit-transition-deal-let-the-uks-fishing-industry-down-93701>>.

As of July 2019, the Withdrawal Agreement has been rejected by the UK Parliament three times, and has triggered a leadership contest within the governing Conservative Party. In this context, the prospect of a disorderly ‘no deal’ Brexit, which would come into effect should a withdrawal agreement not be ratified or another extension of the Article 50 withdrawal process from the EU is not forthcoming, has risen up the agenda. A no deal Brexit is widely acknowledged to lead to significant short-term disruption and uncertainty,<sup>90</sup> and fishing would not be excluded from this.

Under this no deal scenario there would be no transitional arrangements.

Furthermore, the government’s fisheries no deal preparation note highlights a range of risks facing the industry under this scenario. This includes disruptions to exports as tariffs and non-tariff barriers come into effect, the loss of access to fishing grounds in the waters of other EU member states, restrictions on which ports landings can be made and a significant administrative burden placed on skippers and seafood exporters who will have to produce catch certificates and additional paperwork.<sup>91</sup>

In policy terms, a no deal Brexit offers two potential paths for the future of UK fisheries policy. On the one hand, in the absence of a new fisheries policy being developed, the status quo will continue to apply. All the rules and regulations of the

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<sup>90</sup> The UK in a Changing Europe, *The Cost of No Deal Revisited* (2018), available online <<https://ukandeu.ac.uk/research-papers/cost-of-no-deal-revisited/>>.

<sup>91</sup> Department for Environment, Food and Rural Affairs, *The fisheries sector and preparing for Brexit* (2018), available online: <<https://www.gov.uk/guidance/the-fisheries-sector-and-preparing-for-eu-exit>>.

CFP will effectively remain in place having been rolled over by the EU Withdrawal Act. Furthermore, the extent to which the UK fisheries policy has become ‘Europeanised’ together with a lack of governmental capacity to develop, establish, implement and enforce a new approach to fisheries management, in the short term at least, places limits on the extent to which the UK could diverge from existing EU policy.<sup>92</sup>

On the other hand, the UK may choose to signal its departure from the EU and its new-found independent coastal state status by making swift and extensive changes to current fisheries arrangements. This approach to policy design may satisfy those in the industry calling for wholesale change, but would leave little room for wider engagement with stakeholders. This would do little to address the concerns of those in the industry who feel current policy-making arrangements are remote and fail to take into account their views,<sup>93</sup> and potentially lead to a policy which fails to work in the interests of the diverse fishing industry. Sudden changes to quota distribution and access to UK waters will also affect the UK’s international standing.

## **CONCLUDING REMARKS**

In the context of the UK’s vote to leave the EU in 2016, and the ongoing Brexit negotiations since, this paper sought to outline the political and governance

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<sup>92</sup> C. Burns, V. Gravey, A. Jordan and A. Zito, “De-Europeanising or disengaging? EU environmental policy and Brexit,” *Environmental Politics* 28, no. 2 (2019): 271–292.

<sup>93</sup> G. Agnisola, S. Wier and K. Johnson, “The voices that matter: A narrative approach to understanding Scottish Fishers’ perspectives of Brexit,” *Marine Policy* (In Press).

challenges facing the UK as it seeks to withdraw from the EU's CFP. Overall, Brexit has instituted significant uncertainty in UK governance and politics, and the future of UK fisheries policy is no exception to this. Many fishers voted to leave the EU based on their perception that the EU's CFP and a narrative of 'taking back control' of UK waters dominated the campaign. However, Brexit has also highlighted the significant variations and competing interests within the UK's fishing industry, and the importance of building good working relationships between the various fisheries administrations within the UK and with international partners. Any post-Brexit fisheries policy will need to carefully navigate these challenges and balance the diverse interests at play to ensure that the expectations of fishers are met, while simultaneously delivering on commitments made to ensure sustainability, balancing the varying interests of a diverse industry and carefully managing intergovernmental relationships both within and beyond the UK.

However, three years on from the referendum progress in developing a new UK fisheries policy remains aspirational at best. Political impasse within Westminster, compounded with poor working relationships between the UK government and devolved administrations and a lack of governance capacity have stalled progress. Looking beyond Brexit, the UK case serves to highlight how fisheries management cannot be isolated from political and governance issues, and also how administrative capacity is a key factor in successful policy change. Indeed, irrespective of the outcome of the Brexit negotiations, addressing the political

challenges outlined in this paper will be central to ensuring effective future fisheries management in the UK.

The future of UK fisheries policy therefore remains uncertain and there is a risk that this uncertainty will not only have a detrimental impact on the sustainability of fish stocks and the marine environment in UK waters and the wider region, but will also have a long-standing effect on constitutional politics within the UK and working relationships with the UK's neighbouring coastal states. Much of the shape of post-Brexit fisheries policy and its impact will depend on the type of exit from the EU the UK is heading for. Coming to a withdrawal agreement with the EU will give the UK the necessary space to develop a new fisheries policy, although the scope of the task is still significant. However, in a context marked by political impasse and a fundamental lack of administrative capacity, the prospect of a no deal Brexit presents the most risk to future efforts to secure the sustainability of fish stocks, the fortunes of the fishing industry and trust between the UK and its international partners.