

The background of the entire page is a photograph of a brown fishing net draped over a wooden structure, with blue water visible in the background. A large red circle is overlaid on the top left portion of the image.

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Opportunities for Britain's fishing
industry post-Brexit

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Glossary

ACMD	Anti-Competitive Market Distortion
CET	Common External Tariff
CF	Cohesion Fund
CFP	Common Fisheries Policy
EAFRD	European Agriculture Fund for Rural Development
EC	European Commission
EEZ	Exclusive Economic Zone
EMFF	European Maritime and Fisheries Fund
ERDF	European Regional Development Fund
ESF	European Social Fund
ESIF	European Structural and Investment Funds
FAO	Food and Agricultural Organization of the United Nations
FQA	Fixed Quota Allocation
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreements on Trade in Services
GVA	Gross Value Added
ICES	International Council for the Exploration of the Seas

MFF	Multi-Annual Financial Framework
MFN	Most Favoured Nation
MMO	Marine Management Organisation
MSY	Maximum Sustainable Yield
NEAFC	North East Atlantic Fisheries Commission
PO	Producer Organisation
RAC	Regional Advisory Council
RFMO	Regional Fisheries Management Organisation
SFPA	Sustainable Fishing Practice Agreement
SPS	Sanitary and Phytosanitary
STECF	Scientific, Technical and Economic Committee for Fisheries
TAC	Total Allowable Catch
TBT	Technical Barriers to Trade
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
UKFP	United Kingdom Fisheries Policy
WTO	World Trade Organization

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Summary

HMG released a fisheries white paper on the 4th of July 2018. This paper contains our ideas on what a UK fisheries policy might look like, if the UK is able to execute an independent trade and regulatory policy.

HMG requested comments from interested parties in the following areas:

- Section 1 – Setting our course
- Section 2 – Pursuing sustainable management
- Section 3 – Resourcing the new approach
- Section 4 – Partnership working

This paper contains our views on these and other areas.

The primary objective of a UK fisheries policy should be to balance the goals of ensuring a viable future for commercial fishing in UK waters, ensuring sustainability, and enabling UK consumers to have access to cheaper fish and fish products. This should be based on a framework of minimising restrictions on trade and competition so that policies and regulations developed are least trade restrictive, least market distorting, based on sound science and consistent with clearly expressed regulatory and sustainability goals.

It is important to clearly state this overall objective at the outset, as much work in this area assumes that the objective is solely conservation, or to preserve a particular way of life or culture; similarly, no viable or sustainable industry can exist in the long-term without thoughtful conservation efforts. We consider that it is in the UK's broader commercial interest to have a successful fishing industry.

Part 1 of this paper sets out the context for a UK fisheries policy; Part 2 describes the framework for policy reform and recommendations for specific key aspects of UK fisheries policy.

The ability of UK fisheries to thrive outside the European Union will depend upon:

1. The demarcation of the UK's territorial waters and exclusive economic zone;
2. The protection and fair division of fishing stocks that are shared between the UK/EU/Norwegian/Faroese/Icelandic waters;
3. The tariff and regulatory measures imposed on UK fisheries products sold into the EU and other major markets;
4. The ability of the UK government to negotiate expanded access for UK fisheries products into third-country markets;
5. Development of an effective fisheries management system that addresses UK-specific challenges, such as incumbency and barriers created by the domestic quota system; and
6. Embracing innovative types of production, notably aquaculture.

The UK should begin negotiations, as a matter of urgency, on reciprocal access to exclusive economic zones with the EU, Norway, Iceland and Faroe Islands, as well as the approach to negotiating total allowable catch allocations of shared fish stocks. These should come into effect at the conclusion of the implementation period, on December 2020. However given that the implementation period is only applicable if the Withdrawal Agreement is approved by both sides, we strongly advise the UK government to prepare as if it will be fully out of the EU, March, 2019. This means expediting the negotiations.

Domestically, the UK can start developing its own fisheries management system, such as a days at sea system, which would address the specific challenges of demersal mixed fisheries in UK waters. The system should be further designed in such a way as to address the other challenges with the current quota allocation system, such as the benefits provided to incumbents. An effective and successful fisheries management system would have to be designed with stakeholder consultation, including the

fishing industry, scientists and local coastal communities. The UK can begin on this process and start trialling and refining a new fisheries management system now, subject to EU national quotas and regulatory constraints, while still within the CFP, as the management and enforcement of national quotas is still a UK competence.

With the withdrawal from the EU and the Common Fisheries Policy, there is a singular opportunity to reshape Britain's fisheries policy which brings with it the responsibility for the government and key stakeholders to answer this question: what should British fishing look like in twenty-five years?

Key findings and proposals

1. *Opportunity to develop a UK Fisheries Policy*

1.1. The UK has the opportunity to develop its own UK Fisheries Policy, once it withdraws from the EU and the CFP.

1.2. Policymakers should define clearly the objectives of a future UK fisheries policy, and design measures to achieve these effectively. The primary objective of a UK fisheries policy should be to balance the goals of ensuring a viable future for commercial fishing in UK waters, while ensuring sustainability, and enabling UK consumers to have access to cheaper fish and fish products.

1.3. In order to limit unnecessary costs for both producers and consumers, future UK fisheries policy should be as least trade-distortive as possible, consistent with regulatory goals.

1.4. In order to provide lower prices, better value and more choice, future UK fisheries policy should be as least anti-competitive as possible consistent with regulatory goals.

1.5. Any future UK fisheries policy will need to be set in the context of the international framework for fisheries, in particular UNCLOS and UNFSA.

1.6. The UKFP should learn from the development of the CFP, and undertake cost-benefit analysis of various regulations to determine their applicability within a UKFP. Some elements could be retained initially for continuity, such as specific technical measures. Others, such as access to waters and SPS/TBT issues, should be adapted immediately upon withdrawal from the CFP.

1.7. In order to support a fisheries policy, the UK should enhance its existing scientific advisory body and actively engage in ICES.

2. *Access to waters and management of quotas*

2.1. Within the international framework, the UK should seek to join the NEAFC and consider what other RFMOs are relevant for the UK fisheries industry so that it can take part in international negotiations on the total allowable catch for various fish stocks, to ensure sustainability internationally.

2.2. The UK should prioritise negotiating bilateral agreements with the EU, Norway, Iceland and the Faroe Islands on access to respective EEZs and management of fish stocks as a matter of urgency. These negotiations should be in conjunction with negotiations with these countries on the process and methodology for determining TACs for shared and straddling fish stocks.

2.3. The relatively lower needs of the UK for access to other countries' EEZs strengthens its position when negotiating TACs, and the UK should ensure that it properly uses this leverage and that its TAC allocations are equitable.

2.4. The UK should consider what other SFPAs it should seek to replicate to provide support for developing countries, whilst also benefitting from access to more fish stocks for UK fishermen.

3. *Fisheries management*

3.1. The UKFP should address the barriers to entry for new fishermen created by the FQA system, which favours incumbents, and instead have a system that maximises competition and trade liberalisation. The UK should consider the development of a fair and transparent allocation mechanism for fishing rights, such as through auctions, in order to eliminate the worst effects of incumbency.

3.2. The current domestic system of FQAs and quotas also does not effectively address the challenges of mixed fisheries in the UK.

3.3. The UKFP should have specific mechanisms to support fishermen to avoid discards caused by lack of quotas, such as the introduction of risk pools or quota bundles, to enable quick and effective transfers of quotas as required.

3.4. Policymakers should also conduct a "days at sea" trial with effort control, supported by with appropriate mechanisms to prevent overfishing. It should take into consideration the limited effectiveness of previous attempts due to lack of technology.

4. *Funding and government support*

4.1. Subsidies to fishermen should be phased out as these may support inefficient production and limit competition and incentives for improved productivity.

4.2. The Government may need to provide interim support to transition to the new UKFP, such as for transitional costs in fitting new monitoring systems. Any such support should be directed and time limited.

4.3. A mechanism should be put in place to enable fishermen to seek remedies against imports that benefit from an unfair government distortion, in order to level the playing field and enable effective competition.

4.4. The UK should investigate the creation of markets for insurance products, so as to guard against the impact of fluctuating stocks.

5. *Trade in fisheries products*

5.1. The UK is a net importer of fish, and tends to import what it eats, while exporting what it catches. Therefore there is a unique opportunity to support consumer and producer interests simultaneously.

5.2. The UK is generally not self-sufficient in the seafood it consumes, and currently imposes relatively high tariffs on imports under the Common External Tariff. A reduction in tariffs for the seafood consumed, but not commonly caught, in the UK would benefit consumers, with minimal damaging impact on domestic fishing.

5.3. The UK should sign a zero tariff agreement with Norway, which currently faces significant EU tariffs.

5.4. The UK should set regulatory barriers to the level that is consistent with the regulatory goal of promoting human, and animal health, but which is the least trade and market distortive, consistent with that goal, and should be based on scientific evidence.

5.5. The UK-EU Free Trade Agreement should include a comprehensive fisheries chapter, which will have to include a range of provisions, including on the mutual recognition of standards and application of import conditions, with a mechanism to manage any divergence in standards once the UK leaves the EU.¹

¹ Such divergence may well be quite limited, for instance there is little reason to diverge on standards for Shellfish & Lobsters, many of which are traded to the other EU 27.

5.6. The UK should join the Friends of Fish group within the WTO; and it should actively advocate in Geneva for the addition of a fisheries schedule to the WTO and for the successful conclusion of negotiations on fisheries subsidies.

5.7. The UK should recognise for the purposes of International Development that fisheries exports are much greater than all other agriculture for developing nations.

6. *Aquaculture*

6.1. Aquaculture has the potential to support employment in the industry, be a guard against price shocks for UK consumers, and be a method by which the UK could more responsibly steward the resources of its territorial waters.

6.2. The Government can play a key role to support the further development of the industry through appropriate spatial management, streamlining aquaculture planning processes, ensuring efficiency in the licence allocation system, and incentivising the development of advanced techniques while limiting negative externalities.

7. *Devolution*

7.1. The distribution of powers within the current devolved settlements should be considered in the context within which they were initially agreed, i.e. accepting that the EU had central authority over certain aspects of policy, and the UK Government could not devolve powers that it did not itself have. This means that even though aspects of fisheries policies are already devolved to the four countries, it does not necessarily mean that other areas which the EU currently determines will automatically be devolved, once decision-making powers in these areas are repatriated to the UK.

7.2. Any devolution of aspects of fisheries management that currently sit with the EU, such as negotiations of TACs and access to the UK's EEZ, would create fragmentation within the UK, and create significant challenges in international negotiations on access to EEZs, TACs and fisheries trade.

8. *Implementation Period*

8.1 The EU has a duty of good faith to cause no damage to any exiting member states, including during any sort of implementation period, which the UK should expect it to uphold.

8.2 Where the EU appears to have failed to uphold this duty, the UK should be prepared to act to protect its interests, including in beginning or expediting negotiations with third countries.

Part 1: The context for UK fisheries

Summary:

- Current EU fisheries policy has thwarted ordinary competitive forces, while at the same time not enabling successful conservation of fish stocks.
- This current policy has damaged UK fishermen, UK fish stocks and sustainability, and consumers, as well as rural fishermen in some of the poorest countries in the world.
- The UK has the opportunity to develop its own UK Fisheries Policy once it withdraws from the EU and the Common Fisheries Policy.

1.1 *Current UK fisheries practice and policy*

The fisheries industry is a source of food and income for the UK. The gross value added (GVA) of the industry was around £682 million in 2016.² The GVA for the industry increased 12% from the previous year, and by around 47% over the previous ten years. While relatively small, the fisheries industry plays a significant role in coastal communities around the country.

² Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647482/UK_Sea_Fisheries_Statistics_2016_Full_report.pdf

UK fishing is often broken down into three categories:

- Demersal species, which are bottom-feeders and include cod, hake, haddock, flounder, halibut, and sole. These fish command relatively high prices, and represent some of the most heavily consumed seafood in the UK, particularly cod.
- Pelagic species, which occupy the “open column” of the ocean and include tuna, herring, shark, billfish, sardine, anchovy, and mackerel. These fish are often, though not always, the cheapest (as prices tend to be higher for bigger fish) and can be harvested in the most plentiful numbers. Around half of fish caught in the Atlantic Ocean consists of pelagic fish.
- Shellfish, which is a broad category comprising all fresh and saltwater-dwelling invertebrates, including squid, octopus, bivalves (clams and oysters), scallops, lobster, crab, and shrimp. This is the most expensive variety of seafood available to UK fishermen.

Shellfish and demersal fishing comprise the highest value catch in the UK. Key species for UK vessels include, but are not limited to, cod, haddock, hake, monkfish or angler, herring, mackerel, nephrops, crabs, and scallops.

England administers the largest number of fishing vessels, closely followed by Scotland. However, Scottish vessels have higher capacity, and land greater quantity and value of fish than in England. Further details on the structure of the industry are provided in Appendix A.1.

There has been a lack of innovation and opportunity in the UK fisheries industry, with a decline in the number of UK fishermen since the 1990s, that has had a severe impact on coastal communities. Fishermen are concerned about the viability of the UK fishing industry going forward as fewer people are attracted to it as a livelihood, which ultimately will impact on UK consumers as well as coastal communities. Factors contributing to limited opportunities include the quota system (with quotas held concentrated amongst a relatively small share of the industry), and limited allocation of UK fish to UK fishermen. Reform can help to revive the competitive and innovative spirit of UK fishermen; and this would go a long way to improving the conditions in certain coastal communities.

As a member state of the European Union (EU), the UK's fisheries industry is currently under the remit of the EU's Common Fisheries Policy (CFP), which determines fisheries management policies, international policy, market and trade policy, and funding of the CFP. The UK has the opportunity to define its own fisheries policy once it leaves the EU and the CFP. A Fisheries Bill was included in the Queen's Speech on 21 June 2017 which sets out the Government's legislative proposals, the purpose of which will be to "enable the UK to control access to its waters and set UK fishing quotas once it has left the EU".³

Withdrawing from the EU and the CFP provides a unique opportunity to develop policies that reflect UK-specific requirements, promote competition, are equitable, and are designed to support the industry alongside conservation efforts. Further, the UK can set trade policy that benefits UK consumers, as well as supporting fishermen from less developed countries.

³ The Queen's Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf

2 The international framework for fisheries management

Summary:

- Any future UK fisheries policy will need to be set in the context of the international framework for fisheries, in particular the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA).
- The UK will need to consider replicating international agreements that are currently held at the EU level, including:
 - Which Regional Fisheries Management Organisations (RFMOs) are relevant for the UK fisheries industry, including the North-East Atlantic Fisheries Commission (NEAFC).
 - Bilateral agreements with Norway, Iceland and the Faroe Islands on access and management of fish stocks.
 - Which Sustainable Fisheries Partnership Agreements (SFPAs) it should seek to replicate.
- The UK will need to strengthen its own scientific body and participate more fully with International Council for the Exploration of the Seas (ICES).

The UK Fisheries Policy (UKFP) will have to involve a set of multilateral, regional and bilateral agreements and arrangements that substitute for the existing arrangements currently applicable to the UK as an EU member. This is in addition to establishing a bilateral fisheries agreement with the EU. This section outlines the major international considerations for a future UK fisheries policy.

2.1 Multilateral framework

The UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA) together provide the multilateral framework for governing the maintenance of fish stocks, along with regional / bilateral agreements and organisations.

UNCLOS was passed in 1984 and put into force in 1992. It codifies international rights and responsibilities for the use and protection of the world's oceans. Its key provisions include the following (with further details in Appendix A.2):

- The territorial sea is defined as the area extending 12 nautical miles from a nation's coast (Article 3);
- The Exclusive Economic Zone (EEZ) is defined as the area beyond the territorial sea and extending 200 nautical miles from the baseline (Article 57);
- A coastal state has the right to explore, exploit, conserve and manage the natural resources within its EEZ, alongside other obligations (Article 56);
- The coastal state determines the allowable catch of the living resources in its EEZ, and has the obligation to prevent overexploitation and maintenance of harvested species at the maximum sustainable yield (MSY), taking into account relevant environmental and economic factors. The coastal state should use the best scientific evidence available to it and proper conservation and management measures (Article 61);
- The coastal state should promote the optimum utilisation of living resources in its EEZ (Article 62); and
- States should coordinate on the management and conservation of fish stocks that occur in both their EEZs, either directly or through sub-regional or regional organisations (Article 63) and also with respect to highly migratory species (Article 64).

The UN Fish Stocks Agreement (UNFSA),⁴ ratified in 1995 and put into force in 2001, which addresses the particular case of highly migratory or straddling fish stocks to ensure optimal utilisation both within and outside countries' waters.

The agreement outlines principles for the conservation and management of these fish stocks, establishing that management must be based on the

precautionary approach and the best scientific information available to create minimum international standards. It states that jurisdictions should cooperate to ensure conservation, promoting optimum fisheries utilisation within and beyond EEZs.

2.2 Regional Fisheries Management Organisations

Regional Fisheries Management Organisations (RFMOs) are international organisations, formed by countries with fishing interests in a geographical area. The RFMOs may have a purely advisory role, but typically have management powers to set catch and fishing effort limits, technical measures, and control obligations. Some RFMOs set the Total Allowable Catch (TAC) for fish stocks within their remit through negotiations, which set the total quota on how much of those stocks can be caught within a given area by the different member countries. RFMOs may manage all the fish stocks within a specific area, or focus on highly migratory species over a larger area.

The EU plays an active role in 17 different RFMOs, one of the most important of which for the UK is the North-East Atlantic Fisheries Commission (NEAFC). The NEAFC is the RFMO for the North East Atlantic, and sets the TACs and other management measures for various fish stocks in that area. Contracting parties to the NEAFC include the EU, Denmark (in respect of the Faroe Islands and Greenland), Iceland, Norway and the Russian Federation.

2.3 Bilateral agreements

The EU has two types of fishing agreements with non-EU countries: northern agreements and sustainable fisheries partnership agreements (SFPAs).

The EU has “northern agreements” that cover the joint management of shared stocks, including setting and exchanging of quotas, with Norway, Iceland and the Faroe Islands in the North Sea and northeast Atlantic. These enable activities to be coordinated as many of the targeted fish stocks are shared across boundaries. Some of the shared stocks are managed through the NEAFC, while others are managed through agreements between the different countries.

The EU has 13 active sustainable fisheries partnership agreements, negotiated by the European Commission (EC), through which the EU

4 Formally The 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.

provides financial and technical support in exchange for fishing rights. These agreements allow EU vessels to fish for surplus stocks in the partner country's EEZ, in a legally regulated environment.

Nine of these are “tuna agreements”: with Cape Verde, Ivory Coast, São Tomé and Príncipe, Madagascar, Senegal, Liberia, the Seychelles, the Cook Islands and Mauritius. These allow EU vessels to pursue migrating tuna stocks.

Four are “mixed agreements”, with Mauritania, Morocco, Greenland and Guinea Bissau. These provide access to a wide range of fish stocks within the respective countries' EEZs.

Under these agreements, the EU makes two distinct financial contributions: first, for EU access to the EEZ (for either migrating tuna stocks or a range of fish stocks); and second, as “sectorial support” to “[strengthen] administrative and scientific capacity through a focus on sustainable fisheries management, monitoring, control and surveillance”.⁵

2.4 Current role of scientific advisory bodies

The International Council for the Exploration of the Seas (ICES) is an intergovernmental scientific advisory body founded in 1902 that conducts and coordinates research on the marine ecosystem, and provides advice to governments and RFMOs. The UK is already a member of this council in its own right.

The Scientific, Technical and Economic Committee for Fisheries (STECF) was set up in 1993 by the EC to provide advice on fisheries management.

The UK has the Centre for Environment, Fisheries and Aquaculture Science, which participates as a member of STECF, alongside other UK organisations such as Marine Scotland Science and Sea Fish Industry Authority.⁶

The UK should take immediate steps to strengthen its own scientific body.

5 European Commission, Bilateral agreements with countries outside the EU, 2018, https://ec.europa.eu/fisheries/cfp/international/agreements_en

6 See Centre for Environment, Fisheries and Aquaculture Science, Research at Cefas, 2017, <https://www.gov.uk/government/organisations/centre-for-environment-fisheries-and-aquaculture-science/about/research>

3 The development of the Common Fisheries Policy

Summary:

- The Common Fisheries Policy (CFP) began as part of the Common Agricultural Policy (CAP), with a separate body for fisheries policy established after 1970.
- Current UK fisheries policy is determined primarily by the Common Fisheries Policy.
- The components of the CFP that are relevant to the UK's future fishing policy are:
 - Rules on access to waters and setting of national quotas;
 - Trade policy, including tariffs and regulations, as well as associated Sanitary and Phytosanitary measures and Technical Barriers to Trade; and
 - Funding of fishing policy.
- Some reforms for sustainability have been made to the CFP, but have not yet been able to seriously address the issue of overfishing

4 Formally The 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.

The EU's CFP primarily determines current UK fisheries policy. The CFP's stated aim is to enable fair competition in the fish market, while respecting sustainability by ensuring the preservation of oceans and fish stocks. There are four main policy areas of the CFP:

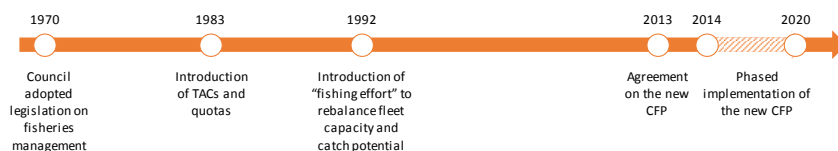
- Fisheries management, including rules on access to waters, fishing effort controls, and technical measures, rules on discards and landing obligations;
- Funding of the policy;
- International policy, relating to tariffs and quotas, and associated Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT);
- Market and trade policy, including marketing standards and rules on consumer information.

The CFP has been reformed numerous times since its creation, most recently in 2013, with phased implementation of the latest reforms to take place over the period 2014 to 2020.⁷ This section provides a brief overview and history of the CFP; and subsequent sections cover the implications of each of the main aspects of the CFP on future UK fisheries policy.

3.1 Origins

The CFP began as part of the Common Agricultural Policy, and subsequently became a separate set of guidelines on fisheries policy.⁸ In 1970, the Council adopted legislation to establish a common organisation for the fish products markets and put in place a Community structural policy for fisheries.

Figure 1: Key regulatory reforms in EU fisheries policy



⁷ European Commission, The Common Fisheries Policy (CFP): Management of EU Fisheries, 2017, ec.europa.eu/fisheries/cfp_en

⁸ European Parliament, The Common Fisheries Policy: Origins and Development, 2017, www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.3.1.html

The first set of reforms in 1983 enshrined the commitment to EEZs, and developed the concept of relative stability and conservation management measures, with the introduction of quotas and TACs. The TAC is the catch limit for a particular fish stock within a defined area, typically set for a year or fishing season, (every two years for deep sea stocks). These were established with the objective of respecting the EEZs of member states in order to maintain balance in fisheries production and trade. TACs are an internationally accepted control measure, and form the basis of negotiations with third countries on how to share common fish stocks. Changes to the Community, prompted by Spain and Portugal joining in 1986 and by the exit of Greenland in 1985, required a constant modification of both TACs and EEZs.

Relative stability key

The relative stability key is the fixed allocation percentage for each EU member state that is applied in sharing the EU TAC. It is based on factors such as:

- historic catch;
- loss of opportunities for some member states from extension of three nautical mile limits; and
- need to protect particular regions.

The relative stability key was originally established in 1983, and has remained constant over time since then.

In 1991, the Court of Justice of the European Union (CJEU) effectively permitted “quota-hopping”, a method of circumventing national quotas by registering a boat in another member state to benefit from that member state’s quotas. This decision was handed down in *Factortame I*, where the UK Merchant Shipping Act of 1988 (which required boats using UK fishing quotas to be at least 75% UK-owned) was found to be incompatible with EU law.⁹

⁹ The Queen v Secretary of State for Transport, ex parte: *Factortame Ltd and others*. Case C-213/89, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61989CJ0213>

3.2 Sustainability

In 1992, the EC focused on reducing the “fishing effort” of member states to prevent overfishing, and restore and maintain balanced fleet capacity and catch potential. The regulation provided for access to resources through an effective licensing system. As a result of this focus on fishing effort, the UK was required to downsize its fleet.¹⁰

In 2002, reforms were made to ensure the development of more long-term sustainable policies, and included:

- Changes in the management of fisheries, with preparation measures involving multiannual recovery and management plans;
- The introduction of Regional Advisory Councils (RACs), to increase the involvement of stakeholders;
- A “fleet policy” that required fleets to minimise their capacity; and
- Tougher penalties imposed on those who broke the limits set by the fishing effort established in 1992.¹¹

These reforms were only partially successful. The EC launched a consultation in 2009, noting that the objectives agreed in 2002 to achieve sustainable fisheries had not been met.¹² It found that:

- 88% of fish stocks were being fished beyond Maximum Sustainable Yield (MSY), a benchmark for what marine biologists considered to be dangerous to conservation of fish stocks;
- Most of Europe’s fishing fleets had low or no profitability;
- There was heavy financial support that artificially maintained excess fishing capacity; and
- The fishing industry, unlike other industries, benefits from free access to the natural resource it exploits and does not have to contribute to the public management costs associated with its activities.

10 House of Lords, European Union – Twenty-First Report, 2008, <https://publications.parliament.uk/pa/ld200708/ldselect/ldcom/146/14602.htm>

11 House of Lords, European Union – Twenty-First Report, 2008, <https://publications.parliament.uk/pa/ld200708/ldselect/ldcom/146/14602.htm>

12 Commission of the European Communities, Reform of the Common Fisheries Policy, Green Paper, 2009, eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF

Structural failings of the system were also exposed, such as:

- A deep-rooted problem of fleet overcapacity;
- Imprecise policy objectives;
- A decision-making process system that encourages a short-term focus;
- A framework that does not give sufficient responsibility to the industry; and
- Poor compliance.

3.3 Further reforms

A new fisheries regime was agreed in 2013, which is based on the new CFP, the common organisation of markets in fishery and aquaculture products, and the new European Maritime and Fisheries Fund (EMFF). The key features of the reforms include:

- Multiannual ecosystem-based management in the regional framework of the European geographical areas;
- Set the MSY, which is the largest long-term average catch that can be taken for a particular fish stock under current conditions without harming future yields, as the main target for all fisheries, and by 2015 if possible, and 2020 at the latest, set the fishing mortality at the level of catches of a given stock that produces the MSY;
- Phase out the discard of regulated species and introduce flanking measures to implement the ban, with all EU fisheries required to implement the discard ban by 2019;
- Member states to adjust their fleet capacity through national plans in line with their fishing opportunities, with recommendations to member states to allocate more quotas to small-scale fisheries;
- National plans to remove administrative barriers to sustainable aquaculture;
- Member states to increase the collection of data and sharing of information on stocks, fleets, and the impact of fishing activities;
- Decentralisation in governance with EU legislators defining the general framework, and member states developing implementation measures;

- Revision of technical measures;
- Greater role for producer organisations in collective management, monitoring and control;
- New marketing standards for labelling, quality and traceability to provide more information on sustainability; and
- The new EMFF to support the implementation of the new CFP and the common organisation of the market for fisheries and aquaculture products.

Discards and the landing obligation

Discarding is the practice of catching fish, and then having to throw dead or dying fish back into the sea. This may occur for several reasons, including because the fisherman has no quota for the particular fish stock. This is specifically a challenge in UK's mixed demersal fisheries where it is more difficult to be selective about the species caught. It may additionally occur because:

- the fish are undersized;
- there is no market demand for the fish; or
- the fish was above (or below) the maximum (or minimum) share of catch allowed under catch composition rules, which sets the share of total catch by gear type for different species to prevent vessels from using inappropriate gear.

The 2013 CFP reforms aimed to address this wasteful practice by introducing the landing obligation. The landing obligation requires all catches of regulated commercial species on-board to be landed and counted against quota. This includes species with TACs and those with a minimum landing size. Undersized fish cannot be marketed for direct human consumption purposes and prohibited species must be returned to the sea, but will have to be recorded.

There are some exemptions to the landing obligation:

- the de minimis exemptions allow operators to discard a small percentage of catches in those fisheries where increasing selectivity on what species are caught, such as through equipment used, is either too difficult or too expensive; and
- the survivability exemptions temporarily allow operators to throw back species that have a high chance of surviving, pending new scientific information.

The landing obligation is being phased in from 2015 through to 2019 across fisheries and species. The phased implementation is determined by member states.

In the UK, the discard ban for pelagic species was introduced in January 2015, and the ban for demersal species started to be phased in from January 2016. Fishermen are supported through this process with increased quotas and funding for more innovative, selective gear and to develop new markets for previously discarded fish. The complete ban of all quota species will be effective from 2019.

4 Access to waters, quotas and funding

Summary

- Under the CFP, the EU determines the access to member states' EEZs, and sits on various RFMOs (including the NEAFC), and agrees the Total Allowable Catch for the EU, which is then distributed to member states.
- Once it withdraws from the CFP, the UK will need to negotiate in the relevant RFMOs its own Total Allowable Catch (TAC) for different fish stocks.
- As part of its new fisheries policy, the UK will need to develop a policy for access to its EEZ and territorial waters.
- The UK should conduct bilateral negotiations with the EU-27, Norway, Iceland and Faroe Islands on access to respective EEZs, and agree the process and methodology for determining TACs for shared and straddling fish stocks as soon as possible.
- The UK will need to consider if and how it should provide support and funding to the fishing industry, consistent with the governing principle that the UK should regulate in ways that are least trade distortive and least market distortive as possible, consistent with the regulatory goal.

As set out in UNCLOS, all countries have an EEZ, over which they have rights to control access. The CFP currently determines access to the UK's EEZ by non-UK fishing vessels. The current rules allow access for many EU-27 fishermen to UK waters. In addition, the UK has agreed access to non-EU fishermen, such as those from Iceland, Norway and the Faroe Islands.

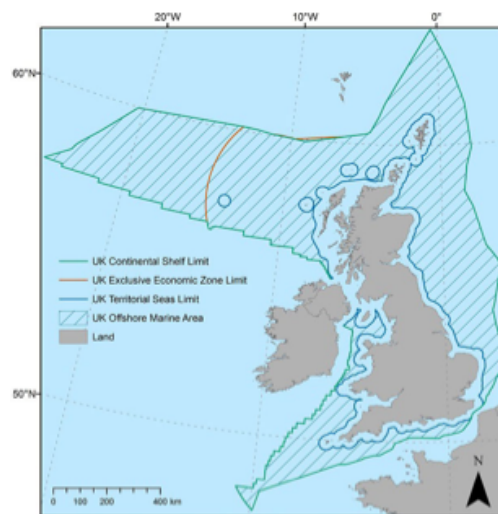
As the UK leaves the CFP, these access provisions must be renegotiated. The Fisheries Bill to be introduced will “enable the UK to control access to its waters and set UK fishing quotas once it has left the EU”.¹³ This means that the UK will determine who has access to fish in the EEZ, what the TACs are for various fish stocks within its EEZ, and how will they be allocated within the UK and internationally.

The CFP also sets the TACs for fish stocks, and the national quotas allocated to member states. The UK will also have to determine such quotas for its own fish stocks, and negotiate quotas for shared and straddling fish stocks

4.1 Access to waters, quotas and funding

The UK's territorial sea extends up to 12 nautical miles from its coastline, while the EEZ ranges from 12 to 200 nautical miles.

Figure 2: UK offshore marine area



¹³ Queen's Speech, June 2017.

The CFP treats member states' EEZs as a common resource – EU waters – and provides all EU fishing fleets equal access to EU waters and fishing grounds.¹⁴ EU fishing vessels have equal access to waters and resources in all “Union waters”, defined as the waters under the sovereignty or jurisdiction of the member states. Member states can, until 31 December 2022, restrict fishing in its territorial waters to fishing vessels that traditionally fish in those waters from ports on the adjacent coast. This however does not extend to limiting historic rights of access for certain countries to the territorial waters between 6 to 12 nautical miles for specified species in specific locations. The London Fisheries Convention also provides for historic rights to fish in the UK's territorial waters between 6 to 12 nautical miles. The question of whether such rights would continue to exist even after the withdrawal from the CFP appear to have been resolved after DEFRA announced that the UK is no longer a member of the London Fisheries Convention (see below).

After withdrawing from the EU and the CFP, the UK will be responsible for management of its EEZ and access by other countries. EU member states will no longer have automatic access to the UK's EEZ; and the UK will not have access to EU member states' EEZs.

On 2 July 2017, the Government also announced that it will officially begin the two-year withdrawal process from the London Fisheries Convention; and so, the UK will not be bound by any existing access arrangements and will be able to determine access to its territorial waters from July 2019.¹⁵ This will put the UK in a position to conduct access negotiations with other countries, subject to the agreement of the EU on the scope of the implementation period being negotiated. While access negotiations may start, the CFP will continue to apply during the Implementation Period (i.e. until December 2020) if a Withdrawal Agreement is agreed and ratified by both Parties.

14 REGULATION (EU) No 1380/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1380#ntr4-L_2013354EN.01002201-E0004

15 DEFRA, UK takes key step towards fair new fishing policy after Brexit, Press Release, 2 July 2017, <https://www.gov.uk/government/news/uk-takes-key-step-towards-fair-new-fishing-policy-after-brex-it>

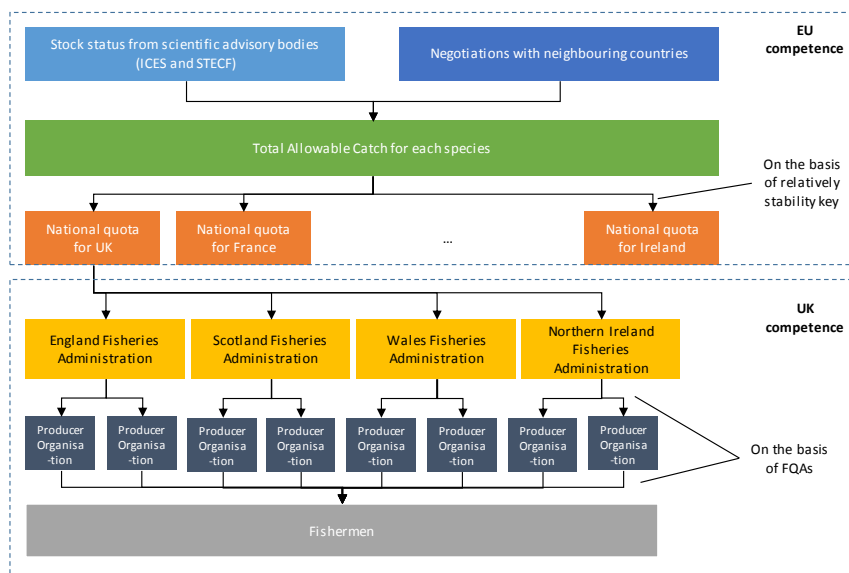
4.2 Member state quotas

The CFP sets output controls for most commercial fish stocks, which limit the catch at the national level. This is the Total Allowable Catch (TAC), expressed in tonnes or numbers, for each species.

The EU Council of Ministers decides the TAC for each member state and species found in EU waters. The Council prepares the proposed TACs, based on scientific advice on the stock status from scientific advisory bodies, including the ICES and STECF. The TACs for fish stocks that are shared and jointly managed with non-EU countries are negotiated and agreed with those non-EU countries, either bilaterally or through RFMOs.

TACs are set annually for most stocks, and every two years for deep-sea stocks. TACs are then shared between the EU countries as national quotas, which are determined for each fish stock by applying a different allocation percentage, known as the Relative Stability Key, for each EU member state. The relative stability key for allocation has remained constant over time and is based on a number of factors including historic catches, loss of opportunities for some member states from extension of the nautical mile limits, and the need to protect particular regions.

While the level of catch allowable by each member state – the national quota – is set by the EU, member states are responsible for the allocation and management of quotas. Each member state then has to use transparent and objective criteria to distribute the national quota amongst their fishermen. The UK national quotas are distributed amongst the four fisheries administrations of England, Northern Ireland, Wales and Scotland on the basis of the Fixed Quota Allocation units (FQAs) held within those administrations, and distributed primarily through producer organisations (POs). Figure 3 illustrates the process for setting and allocating TACs.

Figure 3: Allocation of quotas for fishing

Once the UK leaves the EU and CFP, it will no longer be bound by TAC allocations determined by the EU. Instead, the UK will have to determine the level of TAC for fish stocks solely within its own EEZ. The UK will have to engage in annual negotiations within the NEAFC and other RFMOs on the levels and allocation of TAC for shared fish stocks. Such negotiations are common practice in international fisheries management.

4.3 Bilateral agreements

Currently, the EU also negotiates the bilateral agreements with third countries on access to the parties' respective EEZs. The TACs for stocks that are shared and jointly managed with non-EU countries are set based on negotiations between the parties. These negotiations with non-EU countries on shared fish stocks take place before the EU Council of Ministers' annual December meeting. They are conducted with Norway (concerning North Sea stocks of cod, haddock, whiting, saithe and plaice), the Coastal States (comprised of Norway, Iceland, the Faroe Islands and Russia, concerning stocks of mackerel, herring and blue whiting), and the Faroe Islands (largely concerning whitefish). The results of these negotiations determine the EU's share of shared stocks available for exploitation by EU member states.¹⁶

16 Scottish Government, Negotiations & Total Allowable Catch, 2017, <http://www.gov.scot/Topics/marine/Sea-Fisheries/19213/TAC>

Given the UK's close proximity to a number of EU and EFTA countries (Ireland, France, the Netherlands, Belgium, Iceland, Norway, and Denmark), there will be overlapping EEZs and shared/straddling fish stocks with a number of different countries. This will have to be addressed in negotiations with the affected countries, either through bilateral agreements or through RFMOs, as described in sections 2.2 and 2.3.

4.4 UK fishing patterns

The most important area for fishing by UK vessels is the Northern North Sea, followed by the West of Scotland, the English Channel and the Central North Sea.¹⁷ Throughout the shared areas in which the UK has fishing rights at present (much of which falls within the UK's EEZ), the UK has the highest shares of TACs in some species, and, in most cases, uses the majority of those quotas.¹⁸ In 2016, the UK landed 93% of all North Sea haddock and 71% of all North Sea nephrops, while Danish vessels landed 91% of all North Sea sprats and Dutch vessels landed 75% of all North Sea sole. The majority of UK fish quotas by weight are in species such as mackerel, herring, haddock, blue whiting and plaice. Of the 107 different quotas (across species and areas), the UK has an uptake of over 90% in 45 quotas.

The majority of fish landed by the UK are caught from within its own EEZ. In 2016, around 81% of the fish landed by UK vessels were caught within the UK's EEZ.¹⁹ The top three most valuable species landed by UK vessels from the UK's EEZ were mackerel, nephrops and king scallops.

Other EU member states also currently have significant access to the UK's EEZ. Of the fish caught from the UK's EEZ, UK vessels landed 571,000 tonnes valued at £774 million, while other member states are estimated to have caught an annual average of 749,000 tonnes of fish, worth £575 million per year from the UK's EEZ over the period 2013 – 2015.²⁰ That is, the UK's share of fish from within the UK EEZ comprised around 43% by weight and around 59% by value.

17 Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647482/UK_Sea_

18 Ibid.

19 Marine Management Organisation, United Kingdom commercial sea fisheries landings by Exclusive Economic Zone of capture: 2012-2016, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647579/United_Kingdom_commercial_sea_fisheries_landings_by_Exclusive_Economic_Zone_of_capture_2012___2016.pdf

20 Ibid.

Of the total fish caught by UK vessels within UK and other EEZs, 64% were landed in the UK by weight (74% by value). UK vessels accounted for 89% of all fish landed in the UK.

It should be noted that many foreign entities have investment in UK fishing and thus benefit from fishing in UK waters.

21 Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647482/UK_Sea_Fisheries_Statistics_2016_Full_report.pdf

5 Fisheries management, funding and government support

Summary

- The CFP sets national quotas for fish stocks, and various technical and regulatory measures, while the UK is responsible for allocation of the national quotas, and does so through the Fixed Quota Allocation (FQA) system.
- The CFP has focused financial support to improvements in safety, working conditions, product quality, and measures that support conservation in fishing.

5.1 Fisheries management

While the CFP sets the national quotas for fish stocks, each member state determines how such quotas are allocated amongst their domestic industry. Under the current arrangements, the Marine Management Organisation (MMO) currently acts as the central authority in the distribution and transferral of the national quota that the UK receives from the EU.

The four UK fisheries administrations of England, Northern Ireland, Wales and Scotland issue licences to fish commercially. These control UK fishing opportunities, through limits on quotas and fishing effort, with licensing conditions used to ensure sustainable fishing practices. Each fisheries administration can impose its own licence conditions. Through the licensing regimes, the UK fisheries administrations also manage species that are not subject to quota or effort restrictions, including commercially important stocks in the UK, such as bass.

The national quotas are presently distributed within the fisheries administrations principally through producer organisations (POs) based on the holdings of FQAs. POs are officially recognised membership bodies set up by fishery or aquaculture producers. Their roles, as set out in EC regulations, include:

- Supporting in marketing of fish and fishery products;
- Implementing measures that promote the concentration of supply;
- Stabilising prices; and
- Managing quotas, such as through swapping and leasing arrangements.²²

These POs have much greater control over demersal and pelagic fishing (respectively fishing near the bottom of the seas, and in the open sea nearer the surface) than shellfish, much of which is caught outside the auspices of a PO and managed individually.

22 Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R0104:EN:HTML>

The UK's quota system

The UK's national quota is distributed amongst the fisheries administrations of England, Scotland, Wales and Northern Ireland on the basis of Fixed Quota Allocation units (FQAs).

FQAs themselves are abstract units of measurement, but form the basis of the allocation of the national quotas for different fish stocks. Each FQA gives the holder access to a share of the national quota for particular fish stocks. FQAs were introduced in 1999 and allocated to fishing organisations on the basis of historic fishing activity between 1994 – 1996. There have been no changes to holdings, apart from transactions between fishermen themselves. As the majority of fishing cannot be conducted without holding quotas, the current FQA system limits the ability of new entrants into the industry and provides an advantage to existing fishermen who benefitted from the FQA allocation nearly two decades ago.

The quota system itself has also been criticised for being inappropriate for the UK mixed fisheries as quotas could potentially cause discards in situations where the fishermen do not have the right quotas for fish that they inadvertently catch.

The CFP also sets specific technical and regulatory measures, such as:

- Specification for design and use of gears, with requirements of selective gears to reduce unwanted catch;
- Minimum fish sizes for landing;
- Minimum mesh sizes for nets;
- Closure of specific fishing grounds for conservation; Catch composition and by-catch rules on unwanted or non-target species; and
- Enforcement mechanisms.

5.2 Funding and government support

Member states of the EU do provide government funding to their fishing industries. The EU's current Multi-Annual Financial Framework (MFF) runs from 2014 – 2020 and contains several programmes that are used to fund fisheries subsidies, including the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD), and the EMFF. Together, these funds are known as the European Structural and Investment Funds (ESIF).²³

The funds can be used to promote:

- Energy efficiency, and knowledge transfer;
- Advisory services that give counsel on business and marketing strategies as well as on environmental sustainability;
- Partnerships between fishermen and scientists; and
- Diversifying and improving safety and working conditions on fishing vessels.
- Allowed forms of support include:
 - Providing seed, start-up, and expansion capital;
 - Offering capital for strengthening the company or for new projects; and
 - Helping companies enter new markets, within the framework of EU state aid rules.²⁴

23 European Commission, Guidance for Beneficiaries of European Structural and Investment Funds and Related EU Instruments, 2014, ec.europa.eu/regional_policy/sources/docgener/guides/synergy/synergies_beneficiaries.pdf

24 Ibid.

All direct payments are made under the aegis of the EMFF and fall under the categories described above. They are therefore exempted from the application of European state aid laws.

Since 2005, all EU financial support has been provided only to support improvements in safety, working conditions and product quality, switching to more selective fishing techniques, or to equip vessels with satellite vessel monitoring systems to balance fleet capacity and actual fishing possibilities. The EU provides subsidies to fishermen for boat and gear improvements (e.g. refrigeration upgrades, nets and machinery). The subsidies are limited in size and frequency (only one is allowed per category per boat for each given fisheries policy “period”, which lasts five years), and the fishermen are required to match the funds given.

6 Trade in fisheries products

Summary:

The UK will need to decide on the future of its independent trade policy in this area:

- **Tariff levels.** The CFP tariffs for fish products are relatively high.
- **Regulation and non-tariff barriers.** The trading environment is covered not only by tariffs, but also regulation. The area is covered by Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures, which will guide any future system of regulation the UK decides to build. The UK will need to analyse the scientific basis for SPS measures regarding fisheries products as well as technical barriers.
- **The UK's role in scientific bodies.** Consistent with sound science, the UK should decide on a new and significant role in the scientific bodies responsible for the development of standards.
- **WTO rules for fisheries trade.** The UK may also decide to push for certain aspects of fisheries trade, in particular fisheries subsidies, to be specifically addressed by WTO rules.

As is the case for trade in other goods, trade in fisheries products is governed by the WTO. Unlike agricultural products, however, there is no specific agreement for fisheries that aim to reduce tariff barriers and limit subsidies. Tariffs on imports to the UK are currently set under the EU's Common External Tariff. The EU also sets the technical barriers to trade and sanitary and phytosanitary measures, which are designed to protect animal, plant and human health. The UK, under the EU Common External Tariff, imposes relatively high tariffs on fish products; and trade with third countries is subject to a number of regulatory measures.

As the UK leaves the EU, it will need to establish its own trade policy for fisheries, both with the EU and third-party countries.

6.1 *EU Common External Tariff*

As with other food products, there are tariff barriers for fish and fish products from the rest of the world in place, and these escalate up the value chain (e.g. canned tuna carries a higher tariff rate than chilled, raw tuna). EU Most Favoured Nation applied tariffs under the Common External Tariff (CET) for fish and fish products range from 0% to up to 25%. The EU also has tariff quotas for certain products from specific countries.

Table 1 illustrates the CET rates for fish products commonly traded and consumed by the UK. These are the same tariffs that the UK would face when exporting to the EU market post-Brexit without a successful agreement on tariffs.

Table 1: Examples of CET rates on fisheries products

	Fresh or Chilled	Frozen
Cod	12%	12%
Herring	15% (Jan-Feb, Jun-Dec) and 0% (Feb-Jun)	15% (Jan-Feb, Jun-Dec) and 0% (Feb-Jun)
Mackerel	20% (Jan-Feb, Jun-Dec) and 0% (Feb-Jun)	20% (Jan-Feb, Jun-Dec) and 0% (Feb-Jun)
Salmon	2%	2%
Crabs	7.5%	7.5%
Shrimps & Prawns	12%-18%	12%-18%
Plaice	7.5%	15%
Hake	15%	15%
Sole	15%	7.5%
Blue Whiting	7.5%	7.5%
Nephrops	12%	12%
Tuna	22%	20-22%
Haddock	7.5%	7.5%

Source: Official Journal of the European Union, Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, 2015

The EU average tariff rates are higher than in Japan and the US for raw fish and intermediate products, but lower than the US for processed fish, which typically attract higher tariffs than unprocessed products,²⁵ as illustrated below.

25 Liam Campling, Strengthening the Global Trade System: Tariff Escalation and Preferences in International Fish Production and Trade, International Centre for Trade and Sustainable Development, 2015, [e15initiative.org/wp-content/uploads/2015/03/E15_Fisheries_Campling_FINAL.pdf](https://www.e15initiative.org/wp-content/uploads/2015/03/E15_Fisheries_Campling_FINAL.pdf)

Table 2: CET rates at different levels of processing

Level of Processing	EU	JAPAN	US
Raw Fish	10.3	4.3	0.6
Intermediate fish products	4.0	2.0	1.0
Processed fish	16.3	9.0	20.0

Source: Liam Campling, Strengthening the Global Trade System: Tariff Escalation and Preferences in International Fish Production and Trade, 2015

The UK will have authority to set its own tariff rates once it has control of its tariff schedules. The UK, in setting its tariff rates, should be mindful to ensure that developing countries have as much real access to UK markets as possible. This is not just a tariff issue, as most fish from developing countries are banned by the EU's regulatory system.

6.2 Regulatory measures

In addition to tariff measures, fisheries products are subject to a number of sanitary and phyto-sanitary (SPS) and technical barriers to trade (TBT) measures.

Countries apply a number of regulations with respect to fisheries products under the World Trade Organisation (WTO) Agreements on Sanitary and Phytosanitary measures (SPS Agreement) and Technical Barriers to Trade (TBT Agreement). EU import conditions for fisheries products include:

- Countries of origin must be on a positive list of eligible countries for the specific product;
- Exporting countries must have a competent authority responsible for official controls throughout the production chain to certify products destined for the EU, which the EC recognises;
- Products must comply with certain animal health standards, hygiene and public health requirements;
- Imports are authorised only from approved vessels and establishments, with catch certificates proving that international conservation and management rules were respected;

- There are further conditions for specific products, such as molluscs, which must come from listed and approved production areas;²⁶
- Import consignments are subject to systematic documentary checks, identity checks, and physical checks as required; and
- Products must meet marketing and labelling requirements, including specific requirements for certain products, such as production area and catch method for certain types of shrimp.

The UK will need to analyse the scientific basis for SPS measures regarding fisheries products as well as technical barriers to trade.

The application of SPS and TBT measures to the UK and management of any divergence in standards or regulatory systems once the UK leaves the EU will need to be included within the terms of a UK-EU agreement. It should be noted that none of these barriers can be addressed in the Government's model if it harmonizes fisheries regulations to the EU system (The Chequers model harmonises UK regulations to EU *acquis* in industrial goods and agrifood).

The UK should use SPS measures which are based on sound science and are the least trade restrictive and anti-competitive as possible.

6.3 Science as basis for standards

The Codex Alimentarius, which is a collection of internationally recognised standards, has a code of practice for fish and fishery products.²⁷

These cover the production, storage and handling of fish and fishery products on board fishing vessels and on shore, as well as the distribution and retail display of fish and fishery products.

While the EU is a member of the Codex committee, its regulations are frequently not harmonised with Codex codes of practice. For example, the EU has mandatory labelling requirements for all fishery and aquaculture products for sale at retailers, to specify the commercial name of the species, the production method, the fishing gear, and the catch area. These are more stringent than requirements under the Codex. Further, the level of detail required for export certification goes beyond Codex guidance that seeks to limit certification to minimum information required to ensure product safety.

26 European Commission, EU import conditions for seafood and other fishery products, https://ec.europa.eu/food/sites/food/files/safety/docs/ia_trade_import-cond-fish_en.pdf

27 FAO, Code of Practice for Fish and Fishery Products: First Edition, 2009, <http://www.fao.org/docrep/011/a1553e/a1553e00.htm>

The UK should fully utilise and develop its own scientific bodies so that it can (a) fully contribute to the work of the Codex and (b) it can formulate standards based on sound science.

6.4 WTO rules on distortions

WTO members have started to address the issue of distortions to the process of competition in the market and in trade in a number its trade agreements, at least in an initial manner. The obligation of minimising market distortions and developing least trade restrictive policies is a part of many of the existing WTO agreements, as described in:

- The most favoured nation (MFN) and national treatment clauses in the General Agreement on Tariffs and Trade (GATT) prohibit discrimination between member countries normally (with certain exceptions, such as for free trade agreements and preferences for developing countries) and discrimination between domestically produced and imported goods, once these have entered the market (Articles I and III of GATT). These principles are also reflected in the General Agreement on Trade in Services (GATS) (Articles 2 and 17 of GATS);
- The TBT Agreement stipulates that technical regulations cannot discriminate between domestic and imported products (Article 2.1 of TBT Agreement); and similarly the SPS Agreement states that SPS measures cannot be used to arbitrarily or unjustifiably discriminate between member states where similar conditions prevail, and cannot be applied as a disguised restriction on trade (Article 2.3 of SPS Agreement);
- Any restrictions on trade have to be for legitimate objectives, such as protection of human life or health, conservation of exhaustible natural resources, etc.; and such measures cannot be used as disguised protectionism or applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail (Article XX of GATT);
- Technical regulations cannot be used to erect unnecessary obstacles to international trade, and cannot be more trade-restrictive than necessary to fulfil a legitimate objective (Article 2.2 of TBT Agreement);
- SPS measures have to be applied only to the extent necessary to protect human, animal or plant life or health, based on scientific evidence (Article 2.2 of SPS Agreement);

- Measures relating to qualification requirements and procedures, technical standards and licensing requirements cannot constitute unnecessary barriers to trade in services, have to be based on objective and transparent criteria, cannot be more burdensome than necessary and cannot be a restriction on supply of the service (Article VI.4 of GATS).

As the UK crafts its regulatory system for fisheries trade, it should ensure that its regulatory measures in the SPS/TBT area do not unnecessarily restrict trade and competition.

6.5 WTO rules for fisheries trade

Fish products are covered under the general WTO Agreements, unlike agricultural products that are covered under a specific agreement, but there has been little progress in reducing tariffs or addressing subsidies.

The WTO Doha Ministerial Conference in 2001 launched the negotiations to clarify and improve WTO disciplines on fisheries subsidies. The Hong Kong Ministerial Conference in 2005 saw agreement on strengthening those disciplines, including through a prohibition on certain forms of subsidies that contribute to overcapacity and overfishing, although little progress was made. The Friends of Fish group in the WTO was set up with the aim of significantly reducing fisheries subsidies, and the coalition presently includes Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru, and the US.

More recently, WTO members had agreed to move to the next phase of negotiations on fisheries subsidies and had aimed to reach a decision at the Ministerial Conference in December 2017 (MC11). However, members of the WTO failed to agree the inclusion of disciplines on fish subsidies in the WTO; but this is an on-going project, and it is anticipated that this will occur at some point in the future.

7 Devolution

Summary:

- Fisheries policy is an integral part of trade policy, which must be set by Westminster, just as it is now set by Brussels.
- Those areas that might be devolved can cover only areas that will not implicate international trade policy.
- Access to the EEZ, the setting of the TAC, the tariff and the regulatory rules that the UK will apply cannot be devolved without disrupting the integrity of the UK single market.
- But the precise mechanisms used within the TAC could be different in devolved administrations and might lead to precisely the kind of competition that is beneficial.
- For example, trials of different systems could be conducted in different devolved administrations.

It is clearly impossible to properly consider potential UK fisheries policy without considering the impact of devolution.

Historically, much fishing and more widely agriculture policy has been devolved to England, Wales, Scotland and Northern Ireland, under their respective devolution settlements²⁸ and the concordant agreed between the different administrations.²⁹ The division of competencies are based on reserved matters, i.e. any areas of policy that are not expressly reserved

for the UK Parliament are within the competencies of the devolved administrations.

In practice though, fisheries policy has been in the control of the EU through the CFP, which has been set in Brussels. Importantly therefore, the powers that have been devolved are those powers that the UK Parliament was actually in a position to devolve, i.e. those with respect to areas not covered by the CFP; and the devolution settlements prohibit the devolved administrations from legislating contrary to EU law. Policy areas currently under the remit of the CFP include fisheries management, international policy, market and trade policy, and funding of the policy.

Withdrawal from the EU, and the transfer of powers back to Westminster from Brussels, raises the issue of where effective control will be for various aspects of fisheries policy. The draft Withdrawal Bill is intended to bring back all powers currently exercised by the EU to the UK Parliament, with review following to determine which specific policy areas should sit with the devolved administrations.

It is axiomatic that one cannot devolve what power one does not have; and so, matters that are related to trade policy issues, or where decisions have trade policy implications, will necessarily be reserved to the UK government, as to do otherwise will defeat the integrity of the UK single market. This includes tariff, regulatory and matters associated with the allocation of the catch and the negotiations with other countries on access to the UK EEZ. However, it is possible that other areas may be devolved, such as trials of new policies, and the administration of areas once the TAC has been decided.

Other areas that might be devolved might include tax policy (e.g. the granting of tax-breaks for industry etc).

28 Scotland Act 1998 (as amended by the Scotland Act 2012), Northern Ireland Act 1998, Government of Wales Act 2006

29 Department for Environment, Food and Rural Affairs, A Subject Specific Concordat between The Department for Environment, Food and Rural Affairs, Marine Scotland, The Welsh Government and The Department of Agriculture and Rural Development (Northern Ireland) ("the Administrations") On Management Arrangements for Fishing Opportunities and Fishing Vessel Licensing In the United Kingdom, 2012, https://consult.defra.gov.uk/fisheries/consultation-on-revised-fisheries-concordat-and-mo/supporting_documents/SIGNED%20CONCORDAT%20MAY%202012.pdf

8 Key areas for consideration

As the UK regains control over its fisheries policy, the Government faces challenges and opportunities. This first part of the paper sets out the major areas in which decisions need to be taken. They include:

- The demarcation of the UK's territorial waters and EEZ, and negotiations on reciprocal access to EEZs;
- The approach to negotiating TAC allocations, both with the EU and neighbouring coastal countries;
- Development of an effective fisheries management system, as well as funding and any government support considerations;
- The tariff and regulatory measures, as part of a fisheries trade policy agreed with the EU and other major markets; and
- Other steps to support the development of sustainable fisheries.

The following second part discusses the decisions in more detail, and evaluates the options available to the Government.

Part 2: Recommendations for UK fisheries policy

9 Framework for policy developmet

Summary:

- The primary objective of a UK fisheries policy should be to strike a balance between three goals of: ensuring a viable future for commercial fishing in UK waters, ensuring sustainability, and enabling UK consumers to have access to cheaper fish and fish products.
- This should be based on a framework of minimising restrictions on trade and competition so that policies and regulations developed are least distortive on the markets for both producers and consumers, while achieving clearly expressed regulatory and sustainability goals. This draws on the principles already set out in WTO agreements and the OECD Competition Assessment Toolkit.
- Current fisheries policy has thwarted ordinary competitive forces, while at the same time not satisfying conservation goals; it has favoured incumbents over new entrants.
- The UK needs to consider the economic, social and cultural significance of the fishing industry to local economies, and the impact of any regulations on the economic sustainability of the industry, alongside ecological sustainability. This consideration needs to be reflected in the final UK-EU agreement and any future international agreements on access to UK's waters and quotas on catch.
- The UKFP will have to operate within the context of the international framework (e.g. UNCLOS and UNFSA), which will mean that certain approaches, such as TACs, will need to be maintained. The UK should take the opportunity to assert its role on the international stage and renegotiate access and TACs on terms that are equitable for UK fisheries.

- In order to support a fisheries policy, the UK should strengthen the work of its own scientific advisory body and actively engage in ICES.
- The UKFP should learn from the development of the CFP and undertake cost-benefit analysis of various regulations to determine their applicability within a UKFP.
 - Some elements could be retained initially for continuity, such as specific technical measures;
 - Others, such as access to waters, should be adapted immediately upon withdrawal from the CFP.

9.1 Achieving the objectives of UK fisheries policy

The primary objective of a UK fisheries policy should be to strike a balance between three goals: ensuring a viable future for commercial fishing in UK waters, ensuring sustainability, and enabling UK consumers to have access to cheaper fish and fish products.

In order to manage the inherent tension between these goals, UK policymakers will have to make normative choices in the following areas:

- Ensuring a viable future for commercial fishing in UK waters for UK fishermen, including supporting the sustainability of the industry and also ensuring the viability of coastal communities;
- Ensuring that consumers can have access to cheaper and better products; and
- Ensuring sustainability of fish stocks and target maximum sustainable yield (MSY) for each species.

For instance, focussing on commercial viability for the domestic industry may imply high barriers to imports, but this would result in higher prices for products that consumers want. These goals are also related. For example, profitability considerations in the short term may lead to overfishing and impact environmental sustainability, but ultimately this will also reduce the viability of the industry in the long term.

As we have noted in Part 1, the Common Fisheries Policy has resulted in suboptimal results across all three goals. The efforts on reducing fishing effort in the early 1990s had a dramatic impact on fishermen, with significant

downsizing of the fishing fleet. Recent reform efforts are attempting to more effectively achieve sustainability of fish stocks. The high tariff and non-tariff barriers on imported fish products continue to impact on consumer welfare.

A successful Fisheries Policy should minimise restrictions on trade and competition for both producers and consumers, while achieving clearly-expressed regulatory and sustainability goals, in particular implementing fisheries management that is science led.

9.2 The UK needs to consider the economic, social and cultural significance of the fishing industry to local economies

In designing measures to achieve these goals, it is crucial that the interests of the UK fisheries industry and its coastal communities are appropriately considered, including in the final UK-EU agreement and any future international agreements on access to UK's waters and quotas on catch.

The UK needs to consider the economic, social and cultural significance of the fishing industry to local economies; the impact of any regulations on the economic sustainability of the industry, and ecological sustainability.

This will be critical in the development of a sustainable, profitable and thriving industry that contributes to coastal communities and the national economy.

9.3 The UK fisheries policy should aim for as few restrictions on trade and competition as possible

The more that trade and competition is open and unrestricted, the more wealth can be created in the economy, and the more people will be lifted out of poverty and into prosperity.

Competition improves economic and consumer welfare by providing greater choice, lower prices and higher quality. Competition promotes innovation and increased efficiency by producers, leading to higher economic growth. Conversely, distortions to this process can hinder welfare. Such distortions can include: policies that limit the number of participants, such as by increasing barriers to entry; those that limit the ability or incentives for participants to compete, such as by artificially reducing the costs for specific participants, and those that limit the choices available to consumers, including through reduced information.³⁰

Within the context of the UK fisheries industry, the existing process for allocating national quotas is a distortion that limits the ability of fishermen

30 OECD, Competition Assessment Toolkit: Principles, 2016, <http://www.oecd.org/daf/competition/46193173.pdf>

to access the market. National quotas are allocated on the basis of holdings of FQAs granted in 1999 based on historical fishing, but have not been updated since. The process creates a barrier to entry and provides the existing holders of FQAs with an incumbency advantage.

The trajectory of WTO obligations is to ensure measures consistent with regulatory goals (e.g. Article 2.2 of TBT Agreement), and in the case of SPS measures, that these are based on sound science (Article 2.2 of SPS Agreement).

The OECD's Competition Assessment Toolkit also promotes development of policies that are least restrictive while still achieving government objectives and that remove unnecessary restraints on competition in the market.³¹ The application of the precautionary principle for food products by the EU, for example, has been considered to be unnecessarily restrictive. While the OECD provisions are not binding legal agreements per se, they are important indications of a direction of travel among all member countries and so there ought to be consensus among partners like the EU and UK.

These principles should be applied in the development of the UKFP to ensure that policies and regulations achieve the overall objectives of the UKFP, without unnecessarily restricting competition in the market, or disrupting trade, in order to maximise consumer welfare and achieve the regulatory and sustainability goals.

This will require amending the domestic fisheries management approach (particularly in allocating quotas), liberalising trade, developing regulation (including SPS/TBT measures) on sound science, and renegotiating access and TACs for UK fishermen.

9.4 The UKFP will have to be in the context of the international framework for fisheries

Policies, particularly on access, quotas and conservation will have to be guided by the UN Convention on the Law of the Sea (UNCLOS) and UN Fish Stocks Agreement (UNFSA). These together provide the multilateral framework governing the maintenance of fish stocks, along with regional/bilateral agreements and organisations. These set out rights over EEZs and territorial waters, as well as obligations on conservation and cooperation amongst states.

This means, for example, that at a high level, the TAC system setting the total allowable catch for different fish stocks would still need to be maintained.

31 <http://www.oecd.org/competition/assessment-toolkit.htm>

This is the currency used on the international stage. Determination of the allowable catch is required under UNCLOS and it would be required for negotiations with third countries. However, the UK will be in a position to negotiate higher TACs for itself in bilateral negotiations and through RFMOs, including the NEAFC.

9.5 The UKFP should be based on sound science

It is axiomatic in international trade policy that regulations are also likely to be trade barriers or damage competition if they are not based on sound science. Using a scientific basis for policies can support the minimisation of market distortions by ensuring that rules are based on objective criteria, such as maximum sustainable yield for fish stocks, rather than as arbitrary and discriminatory measures, such as using SPS measures as disguised protectionism.

The UK will have to actively engage with scientific bodies such as ICES on conservation, and use science as the basis for the setting and negotiations of fish stock quotas. On leaving the EU, the UK should invest in and enhance its own scientific advisory body to provide it with the advice and technical support comparable to the STECF that provides the EU advice on fisheries management. UK organisations such as Cefas), Marine Scotland Science and Sea Fish Industry Authority are already currently members of STECF and their roles and contributions would need to be further developed.

The UK should seek to properly take into account appropriate advice to ensure sustainability of fish stocks. Scientific assessments of current levels are based on flawed data, this may be because of mis-reporting incentivised by the quota system, as suggested during interviews with stakeholders from the industry. The UK should encourage technological solutions, such as electronic monitoring systems, to help with the better collection of data over time, and seek advice from both the scientific and the fishing industry on sustainability across different fish species.

The UK will also have to work with international standards bodies such as Codex, on developing standards for fish and fishery products. Any SPS measures that the UK intends to apply should be based on sound science. Article 3 of the SPS Agreement exhorts member states to rely on international standards as the basis of domestic regulation where possible and appropriate.

EU regulations on labelling requirements and export certification requirements go beyond what is required under the Codex. For example, an EC regulation on the use of the trade description “sardines” on imports from Peru was challenged by Peru within the WTO dispute settlement body as being

inconsistent with the description set out in Codex and therefore in breach of the TBT Agreement. Peru was successful, leading to an amendment in the EU regulation.³²

9.6 The UKFP will have to address and balance any tensions between the fundamental objectives for producers, consumers and the environment

Good regulatory policy will have to reconcile these tensions. A framework of minimising market distortions to enhance consumer welfare can help to achieve this. In particular, the following areas of fisheries policy need to be reviewed as the UK leaves the CFP to ensure that regulations are least distortive and maximise consumer welfare:

- **Access to UK waters.** The negotiations around this can have wider implications for market access and the UK's role on the international stage;
- **Distribution of TAC and the UK's national quotas.** This will directly impact on the fishing industry's profitability;
- **Fisheries management.** The distribution of national quotas between fishermen, in particular, impacts on competition in the market;
- **Subsidies and government support.** This can impact on competition and incentives to improve **productivity**;
- **International trade policy.** This includes both tariffs, as well as how SPS / TBT measures are applied and directly drives the range, quality and price of products consumed;
- **Aquaculture.** This can support the commercial viability and sustainability of the industry; and
- **Devolution.** This will impact on the coherence of UK policy, both internationally and domestically.

Getting this right can result in better outcomes for consumers, greater choice of quality products at lower prices. It can also support the productivity and sustainability of the UK fisheries industry. The following sections set out proposed approaches to these issues within the framework of minimising distortions.

32 European Parliament, The Impact of WTO and Other Trade Negotiations on Fisheries Study, 2009, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419119/IPOL-PECH_ET\(2009\)419119_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419119/IPOL-PECH_ET(2009)419119_EN.pdf)

10 Negotiating access to waters and quotas

Summary:

- The international framework sets TACs as the basis for determination of the total allowable catch of fish stocks, and for negotiations between states on access to fishing.
- The relatively lower needs of the UK for access to other countries' EEZs strengthens its position when negotiating TACs, and the UK should ensure that it properly uses this leverage and that its TAC allocations are equitable.
- Within the international framework, the UK should seek to join the NEAFC and consider what other RFMOs are relevant for the UK fisheries industry.
- The UK should prioritise negotiating bilateral agreements with the EU, Norway, Iceland and the Faroe Islands on access to respective EEZs and management of fish stocks.
 - These negotiations should be in conjunction with negotiations on the process and methodology for determining TACs for shared and straddling fish stocks.
- The UK should consider what other SFPAs it should seek to replicate.

10.1 Access to UK waters

As powers transfer back to the UK, it will need to establish rules and agreements on access to UK waters -its Exclusive Economic Zone. Any access to territorial waters following the withdrawal from the London Fisheries Convention will also have to be negotiated. In addition, the UK will need to negotiate for access to third countries' EEZs by UK fishermen. This is closely tied to negotiations on TACs for fish stocks in respective EEZs.

In conducting such negotiations, the government should take a holistic view of implications for the UK fishing industry, both in terms of access to fish stocks, but also taking into account access to export markets. The UK should seek an approach that is equitable and consistent with its international obligations.

The negotiating dynamics will be determined by the extent to which countries have access to the UK EEZ now, and how much UK fishermen fish in the EEZs of other countries. The less UK fishermen fish in foreign waters, the stronger the UK's negotiating hand will be in terms of granting access to its own EEZ.

The majority (81%) of fish landed by the UK are caught from within its own EEZ, while other member states have significant access to the UK's EEZ (accounting for around 40% of the value of the fish caught within UK's EEZ).

The relatively lower needs of the UK for access to other countries' EEZs strengthens its position when negotiating TACs. The UK should ensure that it properly uses this leverage and that its TAC allocations are equitable (discussed further below). Access negotiations should be conducted in conjunction with negotiations on determining the TACs and quotas for shared fish stocks that straddle two or more EEZs.

Some have suggested that the UK should deny access to foreign fishermen in its EEZ once it is out of the CFP. However, no country restricts access to its EEZ by foreign vessels in such a way, and so if the UK were to do this, it would be the first country to do so. There would be major repercussions and such activity would not be consistent with an economic system that is as least trade distortive as possible consistent with regulatory goals. It is strongly recommended that foreign fishermen rights are not denied, but instead that there are negotiations on access terms in UK and other countries' EEZs on behalf of UK fishermen.

There are additionally a number of political and economic reasons for not denying access rights:

- First, this may alienate third countries and impact on wider trade negotiations;
- Second, the EU could retaliate by imposing tariffs on UK fish imports and as noted previously, the UK typically exports what it catches and around 70% goes to the EU;
- Third, the UK would also want to seek reciprocal access to other countries' waters; and
- Finally, Article 62 of UNCLOS could be interpreted as requiring the UK to provide access to other countries where it is not able to fully exploit the TAC in its EEZ, and in doing so, to take into account the need to minimise dislocation of those who have habitually fished in the zone. It should be noted though that there are challenges to its interpretation and application, such as how to define capacity and over what time period.³³

Further, even if the decision were to be taken to exclude foreign vessels from British waters, "quota-hoppers" (British - flagged vessels who are allocated a portion of the UK national quota but whose profits are expatriated) may well exist beyond Brexit, depending on the broader negotiations about freedom of establishment.

In the absence of reciprocal access agreements between the UK and neighbouring third countries, the fishing industries for all parties will have to adjust to the differing conditions within their own EEZs. The scale and cost of any adjustments required would need to be considered in consultation with the industry before restricting access to EEZs.

10.2 The UK will have to negotiate TACs for shared fish stocks with neighbouring countries

Once the UK leaves the EU and CFP, it will no longer be bound by TAC allocations determined by the EU. Instead, the UK will have to determine the level of TAC for fish stocks solely within its own territorial waters and EEZs, and engage in annual negotiations on the levels and allocation of TAC for shared fish stocks. Such negotiations are common practice in international fisheries management.

³³ Article 62 of UNCLOS requires that "where the coastal State does not have the capacity to harvest the entire allowable catch, it shall ... give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein".

With overlapping EEZs, the UK will have shared fish stocks that move across the various EEZs. As such, it will be important to agree TACs with the EU and other European coastal states.

Article 63 of UNCLOS stipulates that “where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate sub-regional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part”. This could be achieved by the UK joining relevant RFMOs, including NEAFC, and negotiating bilateral agreements with neighbouring countries.

ICES annually recommend TACs by species/area (e.g., haddock in the North Sea), and this could be used as a starting point for TAC allocation negotiations. Negotiations with the EU will potentially be more challenging than negotiations with other third countries:

- First, the EU typically tends to set TAC levels higher than that recommended by ICES,³⁴ and the UK will have to decide to what extent it will adhere to their recommendations; and
- Second, while within the EU, the TAC allocation for the UK is determined by the Relative Stability Key (as discussed in section 3.1), the relative stability measure is not necessarily equitable, as it is based on historic fishing activity, rather than reflecting fish stocks within respective EEZs and has not been updated since it was originally established in 1983. It is important that this is no longer used as the basis for negotiating an allocation between the UK and EU.

34 Marinet, EU Fishing in Crisis: Politicians are wilfully breaking the law, 2015, <http://www.marinet.org.uk/campaign-article/eu-fishing-in-crisis-politicians-are-wilfully-breaking-the-law>

35 This is used to determine the allocation of TACs between Norway and the EU, see House of Lords, Brexit: Fisheries, European Union Committee, 8th Report of Session 2016-17, 2016, <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/78/78.pdf>

We recommend that the relative stability key is no longer used as an allocation mechanism, and instead a new allocation mechanism should consider the following factors:

- How fish stocks migrate between EEZs and their spatial distribution over time and life cycles, i.e. zonal attachment;³⁵
- Current fishing activity and priorities for respective countries' industries; and
- Equity with respect to relative value of different fish stocks.

The new allocation mechanism should be updated frequently to reflect developments in the industry, while ensuring as much certainty for fishermen as possible.

Failing successful TAC negotiations, the UK could choose (as Iceland and the Faroe Islands have done at various points) to set their TACs higher than ICES recommendations or EU and other third country proposals. However, we do not recommend such an approach. This is because unilaterally setting quotas higher than those accepted by other countries could result in bans or prohibitively high import tariffs on British fish products, as occurred with the Faroe Islands' treatment of mackerel stocks in 2013.³⁶ It could also result in the loss of MSC certification for British fish stocks. Finally, it would violate the Government's commitment to sustainable fishing practices and damage the long-term profitability and viability of the fishing and processing industries

36 International Centre for Trade and Sustainable Development, EU lifts fish sanctions on Faroe Islands, WTO dispute closed, 2014, <http://www.ictsd.org/bridges-news/biores/news/eu-lifts-fish-sanctions-on-faroe-islands-wto-dispute-closed>

11 Fisheries management within the UK

Summary:

- The current system of Fixed Quota Allocations (FQA) does not meet the criteria of being least trade distortive and least anti-competitive, as it creates barriers to entry and favours incumbents.
- Further, the current FQA system and quotas do not effectively address the challenges of mixed fisheries in the UK.
- The UKFP should have mechanisms to support fishermen to avoid discards caused by lack of quotas, such as the introduction of risk pools or quota bundles, to enable quick and effective transfers of quotas as required.
- The UKFP should address the barriers to entry created by the FQA system, which favours incumbents, and consider the development of a fair and transparent allocation mechanism for fishing rights.
- Any policy decisions should be supported by stakeholder consultation, including the fishing industry, local communities and scientists, as well as up-to-date and robust data on fish stocks and catch.
- Policymakers could potentially also trial an effort control-based system of days at sea with appropriate mechanisms to prevent overfishing.

The UK has the opportunity to reform its approach to fisheries management in a way that enables the British people to become more prosperous. In developing the UKFP, policymakers can learn from the evolution of the CFP. The CFP to date has not achieved its stated objectives of sustainable fisheries. In particular, any reform of the CFP has taken time; the UK should seek to adopt a more agile and flexible system of fisheries management.

Fisheries management presents a classic example of the “tragedy of the commons”—that is, a system in which a shared resource is overused or destroyed entirely by independent actors using the resource according to their own self-interest, rather than according to the collective need or the stewardship needs of the resource, thus ultimately harming their own commercial interests.

Because of the necessity of shared international waters and the natural overlap, which occurs between the sovereign waters of nations, there is very limited incentive for fisherman to steward the resource. Because no one owns the oceans, no one has a vested interest in ensuring that the oceans continue to be well functioning and productive decades or centuries from now.

Any fisheries management system should be designed to achieve the objectives set out earlier. Elinor Ostrom’s Nobel Prize-winning work in this field suggests that any fisheries management system should ideally have in-built property rights (and therefore responsibilities). As Ostrom suggests, such a system would need to be governed by the relevant industries or even local communities themselves, with mechanisms in place to punish rule-breakers and dispense arbitral decisions.³⁷

While it is recognised that fish movements make the analogy with property rights in other contexts imperfect, moving more closely towards a property rights-based system would be a way of achieving the objectives of UK fishing presented in this paper.

11.1 The current allocation system for fishing rights is flawed and this should be addressed in any change to the fisheries management system

The UK’s FQA system is based on Individual Transferable Quotas (ITQ). The advantage of the ITQ system is that by allowing quotas to be traded, more competition is introduced into the market thereby ensuring greater efficiency, as the quota can, in theory, be purchased by the operator who values it the most. However, the way that the UK’s FQA system has been set up is anti-competitive and inconsistent with the objectives of being least trade- and market-distortive. New mechanisms, such as auctioning, are needed to create a level playing field.

37 Elinor Ostrom, *Governing the Commons*, Cambridge University Press, 1990

The current system favours incumbents who already have access to FQAs and creates barriers to entry. The number of FQAs allocated to a vessel has not changed since it was first introduced in 1999, save for any transactions arising between fishermen, and the original allocation for vessels over 10 metres was based on historic landings between 1994 – 1996,³⁸ with similar calculations on track records of vessels that were 10 metres and under determining their FQAs.³⁹ **The system has been criticised for disadvantaging small-scale fisheries.**⁴⁰ **Currently, of the 967 distinct holders of FQAs, five companies (0.5%) hold around 23% of all FQAs.**⁴¹ This prevents new and smaller entrants from succeeding, and therefore limits poverty alleviation and prosperity creation.

The consolidation of the industry may generate benefits such as economies of scale. However, the cultural and economic sustainability of coastal regions are negatively impacted if small-scale fishermen are not able to compete, particularly when the FQA system is not competitive and is distorted through barriers to entry and support for incumbents.

As has been noted frequently, competition policy is designed to promote the process of competition and not individual competitors. While it is tempting to use the regulatory system to favour smaller players, this temptation should be resisted as doing so often distorts markets by reducing competition, ultimately leading to reduction in supply or increase in price. Instead, the better approach is to identify the elements of existing policy that favours incumbents (such as the existing quota holders in the FQA system).

The quota system has further been criticised by some in the industry for:

- Incentivising discards as fishermen would be inclined to throw out species that they inadvertently catch but for which they do not have quotas;
- Being inappropriate for demersal mixed fisheries; and
- Being based on scientific advice that may not reflect actual fish stocks.

38 DEFRA, Fixed Quota Allocation Register, 2017, <https://www.fqaregister.service.gov.uk/>

39 Marine Management Organisation, Consultation on the distribution of fixed quota allocation (FQA) units for certain quota stocks, 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492934/Consultation_on_Distribution_of_FQAs_for_Certain_Stocks.pdf

40 Greenpeace, Investigation: Big Fish quota barons squeeze out small scale fishermen, 2016, <http://energydesk.greenpeace.org/2016/05/15/investigation-big-fish-quota-barons-squeeze-out-small-scale-fishermen/>

41 Analysis of Fixed Quota Allocation Register data, available at DEFRA, Fixed Quota Allocation Register, 2017, <https://www.fqaregister.service.gov.uk/>

The issue of discards is particularly a challenge for demersal fishing, as it is more difficult to be selective in catches for mixed fisheries, highlighted in discussions with stakeholders. With the discard ban coming into effect, this could become more challenging for fishermen and impact on their catch and profitability.

11.2 The UK should consider the process for allocating fishing rights, and the form this, takes in order to design a system for fisheries management that would address the specific challenges of UK mixed fisheries

There are a number of different rights-based fisheries management systems. We set these out in the table below.⁴²

Table 3: OECD typology of rights-based mangament systems

Type	Key Features
Territorial Use Rights (TURFs)	Allocation of a certain area of the ocean to a single user, usually a group, who then undertakes fishing by allocating rights to users within the group.
Community-based catch quotas (CQ)	Catch quotas are attributed to a 'fishing community' with decisions on allocation of rights within the community taken on a cooperative basis.
Vessel Catch Limits (VC)	Restrict the amount of catch that each vessel can land for a given period of time (week, month, or year) or per trip.
Individual Non-Transferable Quotas (IQ)	Provide a right to catch a given quantity of fish from a particular stock, or, more usually, a percentage of the TAC.
Individual Transferable Quotas (ITQ)	Provide a right to catch a given quantity of fish from a particular stock, or, more usually, a percentage of a TAC, which is then transferable (sale, leasing, loan).
Limited Non-Transferable Licences (LL)	These licences can be attached to a vessel, to the owner, or to both and have to be limited in number and applied to a specific stock or fishery to be considered as market-like.

⁴² OECD typology, as set out in Norden Nordic Council of Ministers, Nordic experience of fisheries management: Seen in relation to the reform of the EU Common Fisheries Policy, 2009

Limited Transferable Licences (LTL)	By making limited licences transferable, fishers are provided with an increased incentive to adjust capacity and effort over the short to long term in response to natural and economic conditions.
Individual Non-Transferable Effort Quotas (IE)	Rights are attached to the quantity of effort unit that a fisher can employ for a given period of time.
Individual Transferable Effort Quotas (ITE)	Transferability makes short- and long-term adjustment easier and allows for a better use of fishing capacities.

The UK should consider options within the quota system, such as risk pools or quota bundling, or a more drastic shift to an effort control system. There are options to address these challenges within the current quota system. For example, there could be “risk pools” between fishermen, or potentially even producer organisations, where fishing quotas are pooled together to manage the risk of catching non-targeted species for which the fisherman may not have quotas and therefore be incentivised to discard. Individual fishermen can mitigate their risk of catching fish for which they have no quotas through access to the wider pool. This approach has been adopted in California for example, which reports having led to reducing bycatch of overfished species, increasing target species harvest, and improving the tracking and sharing of fishing information.⁴³

Another option could be adapting FQAs into “quota bundles” across different species that reflect the composition of fish species within specific areas. For such policies to operate effectively, there has to be a mechanism for fishermen to be able to trade quotas quickly and effectively.

If a new quota system is pursued, it will be critical to ensure that the current acquired rights do not create an in-built anti-competitive starting point that would permanently favour large incumbent fishermen.

The specific features of the system should be determined in consultation with relevant stakeholders, including the fishing industry as well as scientists.

43 The Nature Conservancy, California Risk Pool: A co-management model to advance fisheries resource stewardship, <https://www.conservationgateway.org/ConservationPractices/Marine/Documents/California%20Risk%20Pool%20-%20Labrum%20FISH4.pdf>

We recommend the following (non-exhaustive) features for the overall fisheries management system:

- **Transparent allocation mechanism of fishing rights.** The current system of FQAs favours incumbents and acts as a barrier to entry. Rights should instead be allocated in a transparent and fair manner.
- **Multi-year system of fishing rights.** FQAs are currently granted indefinitely, and the system acts as a barrier to entry for new entrants. This does not necessarily optimise their most efficient utilisation or reflect changing market dynamics. A multi-year system of rights should be designed to support access for new and young fishermen while also incentivising investment.
- **Transferability of fishing rights.** An effective mechanism for quick and easy transfer of rights can support their optimum utilisation.

In line with good policy design, the following features should also be incorporated in implementation:

- **Regular update of quotas/days at sea associated with fishing rights.** The actual allowable catch or effort associated with specific fishing rights would have to be regularly updated to reflect changing fish stocks and more up to date information.
- **Data collection.** There needs to be timely and robust data on fish stocks and catch to enable their effective management, and systems should be put in place to support this. Current data is poor, and this may skew TACs and national quotas.
- **Stakeholder engagement.** There should be a clear process of consultation with the fishing industry and other relevant stakeholders such as scientists and local communities to contribute to policy design and any subsequent amendments.
- **Refinement over time.** The system should have flexibility to be refined over time to respond to feedback on the system design, as well as to account for changes in the industry and environment.

Appendix A.3 describes these features in more detail, with specific reference to application under a days at sea system. These would need to be accompanied by specific technical and regulatory measures, such as specification for design and use of gears, with requirements of selective gears to reduce unwanted catch; minimum fish sizes for landing; minimum

mesh sizes for nets; closure of specific fishing grounds for conservation; catch composition and by-catch rules on unwanted or non-target species; and enforcement mechanisms.

Initially, maintaining the CFP rules in these areas will support continuity. However, over time, they should be assessed for suitability within the UKFP, with cost-benefit analysis, alongside any potential changes to industry organisation and governance necessary to achieve UKFP objectives. These should be agreed in consultation with industry.

11.3 A “days at sea” system could be trialled now while still within the CFP

Another, more radical option, that has been proposed to address the discards issue, and the specific mixed fishery in UK waters, is the “days at sea” approach used in the Faroe Islands. Under a days at sea system, fishermen would be allocated a certain number of days for which they can fish, rather than specific quotas for different fish stocks, addressing the selectivity challenge for mixed fisheries.⁴⁴ This approach has been advocated by certain fishermen, who consider that quotas create perverse incentives leading to discards and misreporting of catch.

The Faroese Economic Council has noted that their system of days at sea is not necessarily highly self-regulating. Such a system alone would incentivise overfishing as fishermen seek to maximise their catch within their allocated days. In particular, days at sea alone cannot be used to regulate catch of different fish stocks. There is the risk of more expensive species being decimated early on. The current Faroese system is noted to be experiencing high fishing mortality for certain stocks, as the system is unable to adjust the fishing intensity to natural resources available. There is also poor profitability within the fishing industry, due also to the poor state of many important fish stocks caused by high intensity and effort.⁴⁵

While the principles of a days at sea system to reduce discards can still apply, further refinements to the system would be needed for the UK. The days at sea measure would instead replace current FQAs. The overall number of days at sea available for allocation would have to be based on analysis of the total allowable catch and fishing capacity for different vessels.

44 Simulation analysis found that effort regulation through the days at sea system in the Faroe Islands could be effective for demersal fishing, in Dirk Zeller and Jakup Reinert Modelling special closures and fishing effort restrictions in the Faroe Islands marine ecosystem, *Ecological Modelling* 172, 2004, p 403–420

45 Faroese Economic Council, Economic Report, Autumn 2012

A days at sea trial

The UK should trial a days at sea system at a smaller scale to determine the merits of such a system. This can be run now to test the approach and refine the features of such a system ahead of implementation of the UKFP. While the TAC is set at the EU level, the national allocation of quotas is a matter of UK competence, as is enforcement. As such, the UK could choose to trial the days at sea system with a limited number of fishing vessels. The trial would still be subject to EU technical and regulatory measures.

Stakeholders within the fishing industry have expressed willingness to self-fund the costs of implementing electronic monitoring systems to track the operation of the days at sea system. There are new, relatively inexpensive and innovative technological solutions available that can be used for monitoring purposes.

To undertake such a trial, the UK government would need to:

- Identify willing participants for the trial. Ideally, these would be across the country and different vessel types focusing on different types of fishing to reflect the diversity across the industry. The scale of the trial should also be allowed to increase as more participants are identified over time;
- Identify an equivalent control group;
- Agree on the key features of the system to be trialled;
- Define the criteria for success, e.g. reductions in discards, cost effectiveness (that would tie in the overall objective of supporting the growth of the industry), amongst others; Convert current FQAs into days at sea equivalents to maintain rights; and

- Collect and monitor data on volume and type of catch, discards, utilisation of days at sea, costs, etc. to evaluate performance against the criteria set, identify elements that did / did not work, and further technical and regulatory measures that may be needed.

Following the trial, detailed evaluation and wider scale consultation must be undertaken before finalising the design and implementation of the system.

12 Funding and government support

Summary:

- Subsidies should be phased out in favour of other mechanisms to support competition and the industry.
- The Government may need to provide interim support to transition to the new UKFP, such as for transitional costs in fitting new monitoring systems. Any such support should be directed and time limited.
- A mechanism should be put in place to enable fishermen to seek remedies against imports, which benefit from an unfair government distortion.
- The UK should consider developing a market for insurance products to guard against the impact of fluctuating stocks.

12.1 Subsidies should be phased out in favour of other mechanisms to support competition and the industry

Subsidies can distort markets by reducing the costs of some products, and therefore damaging the ordinary process of competition. They may reduce efficiency by enabling less productive and competitive businesses to continue operating while penalising new entrants. In addition, less developed countries which cannot afford to subsidise their industries are severely impacted by a larger, more developed country's ability to subsidise. While favoured by some in the industry, subsidies, including marketing subsidies, are highly distortionary.

Subsidies decrease the long-term competitiveness of the UK fishing industry on the global market.⁴⁶ Their elimination would incentivise the industry to become more competitive. The end of the current CFP funding period in 2020 would be a good opportunity to phase out subsidies to the industry entirely.

However, some interim support may be required, as the UK moves to any new fisheries management system. In such a case, support may be provided, in particular to small-scale fisheries, for transitional costs, for example in fitting new electronic monitoring systems. Such support should be clearly defined over a limited period of time and directly relate to transitional costs, rather than general equipment maintenance or upgrades, and so on. The phasing out of subsidies would be consistent with overall WTO objectives.

12.2 A mechanism should be available for those UK fishermen subject to unfair foreign competition

A mechanism should be put in place to enable fishermen to seek remedies against imports that benefit from an unfair government distortion.⁴⁷ This mechanism would help to address concerns about the potential for “dumping” cheap fish subsidised by foreign governments into the UK market. This would be in the context of the wider UK trade policy, with similar mechanisms proposed in other sectors as well.

12.3 The UK should consider other non-financial forms of support, including an insurance mechanism

Insurance already plays an important role in risk management in the fisheries sector, through insurance for damage to vessels and equipment, and protection and indemnity insurance. Insurance systems could be enhanced to manage risk associated with availability of fish stocks. An insurance scheme for fishermen could mitigate against the impact of natural disasters and major unanticipated fluctuations in fish stocks. Such a system could stabilise fishing income, encourage good risk management practices, and dis-incentivise overfishing.

46 See World Trade Organization, World Trade Report 2006, 2006, https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr06-2c_e.pdf

47 For the methodology and practical application of such ACMD mechanisms, see Shanker A. Singham and A. Molly Kiniry, Trade Tools for the 21st Century, Legatum Institute, 2016, www.li.com/activities/publications/trade-tools-for-the-21st-century

Insurance against losses to catch is currently available in Japan under their Fisheries Mutual Insurance Schemes. These are designed to promote sustainable fishing and aquaculture, with the scheme covering:

- Production costs in the cases of poor catch or harvest and unforeseen natural disasters, making it possible for fishermen to continue operations despite immediate losses;
- Protection of production assets, through coverage for unrecoverable costs, so that fishermen do not have to go out when conditions impose unacceptable risks; and
- Finance for re-initiating a fishing business, such that indemnities yet to be received can be used as collateral for loans from financial institutions.

The Japanese Government plays a key role in the market through subsidising premiums for small-scale fishing vessels, providing backup insurance, and providing administrative assistance.

Such broader insurance products could be considered in the UK. Key considerations include:

- **Role of private sector and government.** The Japanese insurance approach has significant government involvement; the UK Government could consider providing support through subsidisation of premiums, or coverage of specific risks. There is precedent for government and private sector collaboration in the development of an insurance product, such as Flood Re for flood insurance coverage. However, this is in the context of the Government already having provided support previously. Direct government support would not be recommended, as it could impact on production costs and market incentives. Any government involvement in the development of a private market should also consider capacity constraints, noting that the Flood Re product required significant time for development, and any impacts on barriers to innovation and competition. There is also a risk that any government support might crowd out private sector activity in a nascent market.
- **Defining the risk.** We need to define the risk that is being insured clearly. Risks include risk to fish stocks from natural disasters, or from climate change. We also need to ensure that the mechanism cannot be easily “gamed”. One way of doing this is through parametric insurance design, where payment is only triggered by the occurrence

of some event, such as a natural disaster for example, rather than just by the occurrence of the loss.

- **Demand for insurance.** Historically, there has been a reluctance in the UK for farmers and fishermen to insure against risks, but this could also reflect the direct support already provided by government, particularly in agriculture. As support decreases, we expect the market demand for insurance to grow.
- **Affordability.** If premium payments are too high, this will prevent a proper market from developing. A market-based system, without distortions, is more likely to deliver an affordable price. Insurers have to be able to price effectively, manage their exposure and have reinsurance solutions.
- **Availability of sufficient and robust data.** Robust and accurate data on risks and risk management processes is a pre-requisite to a functioning market.
- **Regulatory requirements.** Regulatory requirements should not be so burdensome that the product does not have a chance to properly develop.

The Government could engage with the industry to understand the need and demand for such insurance products, and consider if and how they could support the development of new insurance products.

13 Trade in fisheries products

Summary:

- The UK is a net importer of fish, and tends to import what it eats and export what it catches.
- The UK is generally not self-sufficient in the seafood it consumes, and imposes relatively high tariffs on imports. A reduction in tariffs for the seafood consumed, but not commonly caught, in the UK would benefit consumers.
- The UK should set regulatory barriers to the level that is consistent with the regulatory goal of promoting human, and animal health, but which is the least trade and market distortive, consistent with that goal, and should be based on scientific evidence
- The UK-EU Free Trade Agreement should include a comprehensive fisheries chapter, which will have to include a range of provisions, including on the mutual recognition of standards and application of import conditions, with a mechanism to manage any divergence in standards once the UK leaves the EU.
- The UK should join the Friends of Fish group within the WTO and actively advocate in Geneva for the addition of a fisheries schedule to the WTO, and for the resumption of negotiations on fisheries subsidies.

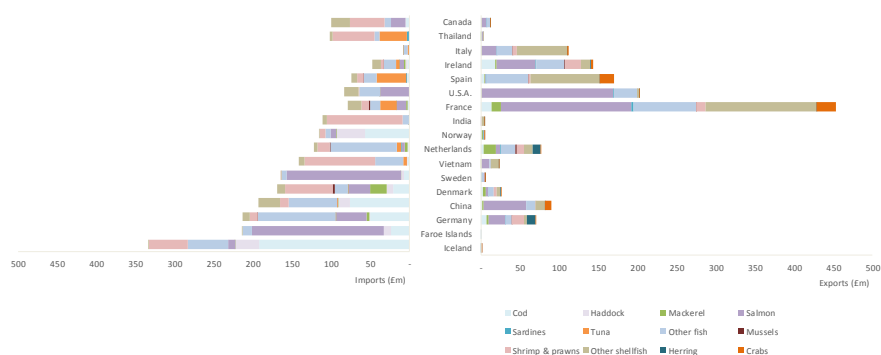
13.1 The UK is a net importer of fish

In 2016, the UK imported 730,000 tonnes of fish (valued at £3,073 million), and exported 441,000 tonnes.⁴⁹ The highest imported by weight was tuna, followed by cod, salmon, shrimps and prawns. The highest exported product was salmon, followed by mackerel and herring.

By weight, the UK imported the largest amount from Iceland and China, followed by Germany, Denmark, Faroe Islands and Norway. The UK exported the largest amount to France, Netherlands, Spain, the USA and Ireland.

Figure 4 illustrates the trade values for major partner countries and key species. Exports to EU countries represent 71% of the value of all exports, while imports from EU countries comprised around 34% of all imports.

Figure 4: Major UK imports and exports by partner country and product, 2016



Source: Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017

Import/export ratios were highest for haddock, bass, tuna, pollack, whiting, cod, and shrimps/prawns, reflecting the maxim that, generally, the UK exports what it catches and imports what it eats. This is important to consider when developing policies on both the future of UK fisheries rights and territorial waters, and the future of UK trade flows in fish products.

49 Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647482/UK_Sea_Fisheries_Statistics_2016_Full_report.pdf

50 Seafish, Seafood Consumption (2016 update), 2016, http://www.seafish.org/media/publications/seafood_consumption_2016_update.pdf

The most commonly consumed seafood in the UK are salmon, cod, tuna, prawns and haddock.⁵⁰ With some exceptions, such as mackerel, the UK is typically not self-sufficient in the seafood it consumes. As such, a reduction (through FTA processes) in tariffs for the other fish commonly consumed, but not commonly caught, in the UK, would benefit UK consumers.

Table 4: UK production and trade by species, 2016

	Landings by UK vessels into the UK ('000 tonnes)	Imports ('000 tonnes)	Exports ('000 tonnes)	Total available for dome- stic use ('000 tonnes)	Self suffic- iency (%)	MFN tariff	Tariff quota ('000 tonnes) / quota duty*
Cod	16.0	120.6	17.2	119.4	13.4%	12%	75/0%
Tuna	0.00	122.7	5.9	116.8	0.0%	20% - 22%	25/0% (applies only for pro- cess- ing)
Shrimp & Prawns	0.8	81.8	12.6%	70.0	1.1%	12% - 18%	123.5 / 0%- 4.2%
Haddock	29.1	44.9	1.2	72.8	40%	7.5%	5 / 2.6%

Source: Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017 and Official Journal of the European Union, Council Regulation (EU) 2015/2265 of 7 December 2015 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2016-2018, 2015

* Includes both processed and unprocessed fish

13.2 Regulatory measures

Regulatory measures should be designed to achieve the goals of ensuring safe and quality products for consumers, in a way that minimises anti-competitive distortions to the market, and does not distort trade. This requires that regulatory measures, such as standards or labelling requirements, do not create additional barriers or costs beyond the minimum necessary to achieve the regulatory goals, safeguarding consumer health.

While many of the EU's SPS / TBT measures are seemingly designed to protect consumer interests, a report of the European Parliament⁵¹ recognises that some aspects of EU regulations and/or implementation are criticised for the following:

- The use of the precautionary principle is **arbitrary in many instances**, and import restrictions on the basis of animal health in exporting countries are not always based on scientific evidence. Some measures are not proportionate to the supposed threat;
- The lack of established methodology for determining equivalence may lead to countries finding it hard to establish the equivalence of their standards; and
- There may be discrepancies in the procedures applied at different ports of entry across member states.

A mechanism to manage divergence in standards once the UK leaves the EU has to be included within the terms of an UK-EU agreement. The UK's own standards should be based on robust scientific evidence, comply with international standards where appropriate and possible, and aim to be as least trade and market-distortive while still achieving the regulatory goals.

13.3 The UK-EU Free Trade Agreement should include a comprehensive fisheries chapter

Any fisheries chapter in the UK-EU FTA should include provisions on the following, which will help to limit the disruptions to current trading patterns, minimise costs incurred by both producers and consumers, whilst also rebalancing access and quotas to be more equitable for UK fisheries:

- The mutual recognition of competent authorities, and health and safety standards;
- Waiver for certificates by a competent authority for UK exports entering the EU;
- Zero-tariff access to the EU market for UK fish (and vice versa);
- The potential for application of countervailing duties, special safeguards, and a mechanism for disciplining distortions in the EU that could damage UK fishing;

51 European Parliament, The Impact of WTO and Other Trade Negotiations on Fisheries Study, 2009, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419119/IPOL-PECH_ET\(2009\)419119_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419119/IPOL-PECH_ET(2009)419119_EN.pdf)

- Access to respective EEZs for fishing rights; and
- Equitable approach to negotiating TAC allocations for shared fish stocks.

13.4 The UK can play an active role in the WTO and support development through its trade policy

Outside the CFP and the Common External Tariff, the UK will have the opportunity to engage with the African, Caribbean and Pacific Group of States (ACP countries) at an unprecedented level. The UK Fisheries Policy, if it is open to the exports of developing nations could be a far more effective development tool than conventional aid programmes.

The preamble to UNCLOS⁵² lays out a goal, which should form the basis of any future UK fisheries policy:

[T]he realisation of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole.

As noted by the FAO,⁵³ fish and fish products represent critically important industry for developing economies (emphasis our own):

[Their] exports represented just 37% of world trade in 1976 ... [and] 54% of total fishery export value and 60% of the quantity (live weight) by 2014. Fishery trade represents a significant source of foreign currency earnings for many developing countries, in addition to its important role in income generation, employment, food security and nutrition. **In 2014, fishery exports from developing countries were valued at US\$80 billion, and their fishery net export revenues (exports minus imports) reached US\$42 billion, higher than other major agricultural commodities (such as meat, tobacco, rice and sugar) combined.**

Under a sensible, sovereign fisheries policy, the UK will be able to pioneer a true “trade as development” policy with developing countries. This has been impossible under the protectionist CFP which limits tariff and non-tariff barriers for exporters from developing countries incentivises them to move up the value chain.

52 United Nations Convention on the Law of the Sea, www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

53 Food and Agriculture Organization, The State of World Fisheries and Aquaculture 2016: Contributing to Food Security and Nutrition for All, 2016, www.fao.org/3/a-i5555e.pdf

Developing countries trade more to the developed world in fisheries products than all other agriculture combined. However, currently fish landing from developing countries in the EU is limited, because of the regulatory measures discussed earlier. Developing countries do benefit from the preference system within the WTO, whereby certain developing countries are subject to limited or zero tariffs on their exports. However, this provides only a temporary remedy for tariff escalation. The preference system provides low or no tariffs for raw/unprocessed products, but maintains high tariffs for processed goods. Further, countries are disadvantaged by losing these preferences. As they graduate from least developing country status, such as the Maldives, they have to mitigate and manage the process to ensure that export volumes are not significantly impacted.

If the UK were to be more liberalising across both tariffs and regulatory measures, then developing countries would have better access to the UK than they currently do across the entire value chain. Liberalised trading with major markets would represent a greater boon to these countries and allow fishermen to rise up the value chain. Removing preferences, but being open to the exports of other countries, is a much fairer system.

However, there could also be preference erosion, i.e. the value of the preference provided to developing countries will lessen, as other countries will also face lower barriers to the UK market. The UK will have to find ways of dealing with this by using funding to help developing economies in transition. Preference erosion should not take away from the more important development opportunity if the UK were to become more open to the products of developing countries. **This would be a win-win for fishermen in developing countries and poorer consumers in the UK.**

It is critical that in liberalising trade for all, there will also need to be a level playing field for all. Third countries that benefit from government policies that provide them with an unfair competitive advantage, will have to be subject to a mechanism that mitigates this, as described in section 12.2.

Further, the UK should join the Friends of Fish group within the WTO and actively advocate in Geneva for the addition of a fisheries schedule to the WTO Agreement, and for decisive action from the current negotiations on fisheries subsidies.⁵⁴ At the WTO Ministerial Conference in December 2017, members failed to agree disciplines on fisheries subsidies in the WTO. As the UK will have left the EU before MC12, it can argue for inclusion of fish subsidies in WTO disciplines; this would be very important for development.

54 World Trade Organization coalition which aims to significantly reduce fisheries subsidies; it presently includes Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru, and the US

14 Aquaculture

Summary:

- Aquaculture could support employment in the industry, be a guard against price shocks for UK consumers, and be a method by which the UK could more responsibly steward the resources of its territorial waters.
- The Government can play a key role to support the further development of the industry through appropriate site planning, streamlining aquaculture planning processes, ensuring efficiency in the licence allocation system, and incentivising the development of advanced techniques while limiting environmental impacts.

Aquaculture is the farming (breeding, rearing and harvesting) of aquatic organisms including fish, molluscs, crustaceans and aquatic plants. Aquaculture production includes cultivation of both marine and freshwater species in marine and inland waters, and sea tanks. Examples include salmon and mackerel farming in Scotland; lobster farming is being trialled in the south of England.

14.1 Developing a vibrant UK aquaculture industry could support sustainable access to fish products

Globally, aquaculture in 2014 produced 73.8 million tonnes of fish, “with an estimated first-sale value of US\$160.2 billion, consisting of 49.8 million tonnes of finfish (US\$99.2 billion), 16.1 million tonnes of molluscs (US\$19

55 Food and Agriculture Organization, The State of World Fisheries and Aquaculture and the Progress in the Implementation of the Code of Conduct for Responsible Fisheries and Related Instruments, 2016, www.fao.org/3/a-mq663e.pdf

billion), 6.9 million tonnes of crustaceans (US\$36.2 billion), and 7.3 million tonnes of other aquatic animals including amphibians (US\$3.7 billion)".⁵⁵ Asian producers account for 89% of this market, and Chinese producers alone account for more than 60%. In less developed Asian countries, this industry grew dramatically because of a lack of subsidisation of traditional fishing, and the availability of cheap labour.

While aquaculture production is on the rise in Europe, it still does not enjoy the same success found in Asia. Total UK aquaculture production (tonnes) is only about 0.3% of that of China, the largest aquaculture producer, and about 1.4% of the total production by Indonesia, the second largest producer.⁵⁶

At present, domestic aquaculture production contributes £26 million per annum in direct value added to the British economy and roughly 1,000 jobs, most of which are located in southeast, and north of England (although there is also contribution in Northern Ireland).⁵⁷ With little competition from other European nations, the UK could lead on aquaculture research and development post-Brexit.

Aquaculture could support employment in the industry, be a guard against price shocks for UK consumers, and a method by which the UK could steward more responsibly the resources of its territorial waters. Aquaculture could also be used to enhance the viability of traditional marine capture fisheries. Fundamentally, aquaculture and traditional fishing methods should not be viewed as either-or options, but as part of the same growth strategy for British fishing.

14.2 The Government can play a key role to support the further development of the industry

Aquaculture in the UK is constrained by:

- Lack of access to appropriate farming sites;
- Regulatory red tape relating to licencing and SPS/TBT measures;
- The ever-present threats of disease and environmental damage; and

56 Food and Agriculture Organization, The State of World Fisheries and Aquaculture 2016: Contributing to Food Security and Nutrition for All, 2016, www.fao.org/3/a-i5555e.pdf

57 J. Hambrey and S. Evans, Aquaculture in England, Wales and Northern Ireland: An Analysis of the Economic Contribution and Value of the Major Sub-Sectors and the Most Important Farmed Species, 2016, http://www.seafish.org/media/publications/FINALISED_Aquaculture_in_EWNI_FINALISED_-_Sept_2016.pdf

- Global competition with extremely low-cost and high-volume imports, which makes it more difficult to recoup the initial high investment costs required to enter the industry.

Coastal aquaculture systems can produce those species of finfish and shellfish that thrive naturally in UK waters. There are a variety of methods used, including cages/pens for finfish (modelled on North Sea oil rigs) and ropes/racks for shellfish. There are presently coastal operations in England, Wales and Northern Ireland farming oysters, mussels, and some lobster farming in Southern England; clam and scallop farming has potential for expansion in the south. Further development of coastal systems is constrained by access to seed and suitable sites (Category A shellfish waters suitable for farming are in short supply).

Onshore aquaculture systems can produce a variety of species in virtually any environment; the major species farmed in the UK are turbot, seabass, tilapia, salmon, and prawns. Since large, heated tanks are needed for fish in the case of onshore aquaculture, energy cost and planning permission are potential barriers. Energy cost is significantly higher in the UK than in other parts of the world.

Additionally, in any onshore system, the high volume of fish in an enclosed space increases the likelihood of disease; a single incident can be very costly to deal with because of the relevant UK regulations for responding to an outbreak of disease on a British fish farm. Further, there may be environmental impacts on marine fisheries through increased demand for wild fish for feed. The UK government should therefore ensure that the relevant regulations are proportionate to risks and potential costs.

The OECD has identified the following factors as key in the development of the aquaculture sector: market demand, environment, infrastructure, technical capability, investment, human resources, and institutional system.⁵⁸

However, there are concerns about the negative externalities of aquaculture. Particularly environmental impacts, water pollution, and disease outbreaks. The OECD has also identified a number of options for the green growth of aquaculture.⁵⁹ These include:

58 James F. Muir et al, Growing the wealth of aquaculture, in OECD, Advancing the Aquaculture Agenda: Workshop Proceedings, 2010, http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/advancing-the-aquaculture-agenda/growing-the-wealth-of-aquaculture_9789264088726-7-en#page15

59 OECD, Green Growth in Fisheries and Aquaculture, 2015, http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/green-growth-in-fisheries-and-aquaculture_9789264232143-en#page88

- The use of cap-and-trade permit systems;
- Taxes or charges on pollution or exploitation of natural resources;
- Taxes or charges on a proxy (input or output of aquaculture);
- Subsidies (although this would not be recommended);
- Command and control performance standards;
- Command and control technology standards;
- Active technology support policies; and
- Voluntary approaches to management by the industry.

The Government should support the development of the aquaculture industry through:

- Appropriate site planning,
- Streamlining planning processes,
- Ensuring efficiency in the licence allocation system; and
- Incentivising the development of advanced techniques while limiting the environmental impacts.

The development of an aquaculture sector could lead to job creation and positive consumer effects for the British people, for it to succeed, barriers such as energy cost, planning requirements and disproportionate regulation can be lowered.

15 Devolution

Summary:

- The distribution of powers within the current devolved settlements should be considered in the context within which they were initially agreed, i.e. where the EU had authority over fisheries policy, and the UK Government could not at the time devolve powers that it did not itself have.
- When the EU powers are repatriated to Westminster, devolving trade-related powers could fragment the UK single market, and create significant challenges in international negotiations on access to EEZs, TACs and fisheries trade.

The fisheries industry varies across the different regions of the UK, a reality which must be considered when developing any new set of policies for fisheries management in the UK. For example, historically, Scotland has been more willing to engage in subsidisation (the only two agricultural production subsidies in the UK are both in Scotland– Voluntary Coupled Support for beef and lamb). Although UK fisheries subsidies are low and mostly for gear, it is possible that Scotland will take a different view from England.

The countries may also differ on issues such as negotiating access to the EEZ; but it is very important that these are negotiated by the UK as a whole. The allocation of quotas nationally may also create challenges, so the process should be based on transparent and fair allocation mechanisms. However, devolving decision-making powers on such issues risk fragmenting the UK single market.

The distribution of powers within the current devolved settlements has to be considered in the context within which they were initially agreed, i.e. accepting that the EU would have central authority over certain aspects of policy, and the UK Government could not at the time devolve powers that it did not itself have.

If access to any devolved administration's EEZ is deemed to be a devolved competency, it would risk fragmenting the UK single market, and should not be considered. The negotiation of TACs at the international level would also fall within the remit of the UK Parliament's reserved powers.

International trade policy with respect to tariffs and quotas should remain with the UK Parliament. Accompanying these are SPS/TBT measures, which form a critical part of any nation's trade policy.

The MMO could continue to be responsible for the distribution of TACs that the UK negotiates for itself.

Given that international relations and trade is a reserved power for the UK Parliament, any devolution of this risks creating artificial barriers to trade within the UK, as well as prejudicing external trade policy.

Any changes to the allocation and form of fishing rights, such as moving to a "days at sea" system could also pose challenges. Devolved administrations could ask for a rebalancing of FQAs, and therefore quotas, such that they are more aligned to the stocks within their respective EEZs.

We propose updating the current allocation system such that it is fairer and more transparent; and this revision should be applied nationally.

Restricting access to fishing rights across the devolved administrations would create artificial barriers the UK, e.g. restricting rights of 'Welsh' vessels from obtaining 'Scottish' fishing rights, and again fragment the single market.

Similarly, devolution with respect to other aspects of fisheries management that currently sit with the EU could create further fragmentation within the UK. For example, divergence in the development of technical measures or rules on discards and landing obligations would have implications for sustainability across the UK and impact on competitiveness.

There should be co-ordination between the different administrations to develop common, agreed policies, with substantial input from the devolved administrations.

See Appendix A.4 for a discussion specifically with respect to Scotland.

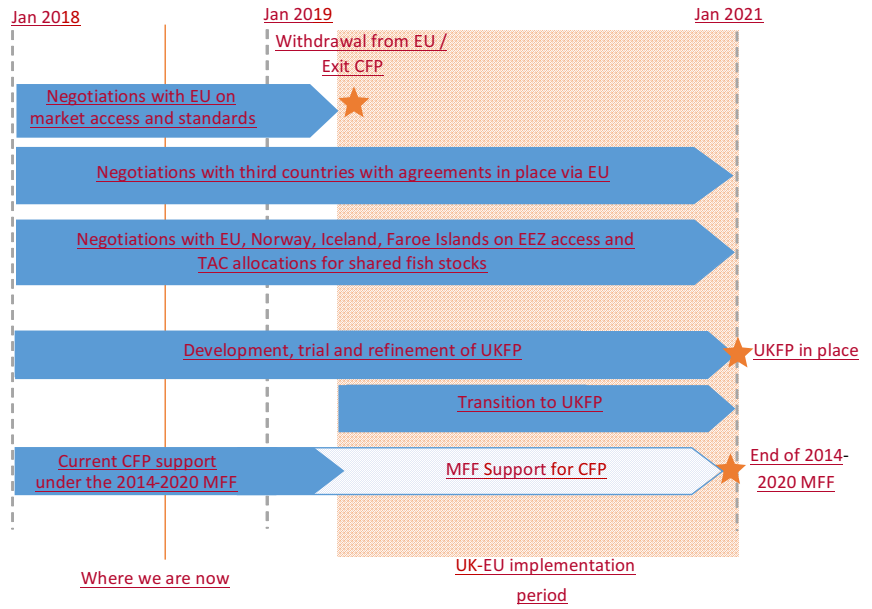
16 Pathway to a UKFP

The financial support provided to UK fishermen under the CFP is currently linked to the EU 2014 – 2020 MFF. Whether payments will continue under that framework or will instead be covered by the UK will depend on the outcome of the negotiations on the withdrawal agreement from the EU. If there is a withdrawal agreement with the Implementation Period lasting until this point/time, the CFP will continue to apply until December 2020, and the MFF will finance it until this point. The UK will be applying its own TAC only after this period has expired.

Nevertheless, the UK can still commence development of its own fisheries policy, and trialling of a days at sea system, while still adhering to EU-allocated quotas. Such a system will not necessarily be tested and refined for implementation by the date of exit from the EU, but the UK can develop a transition pathway, including with respect to TAC allocations.

The UK should begin negotiations with the EU and other countries with shared EEZs, namely Norway, Iceland and Faroe Islands, on reciprocal access to EEZs and process for negotiating TAC allocations for shared fish stocks. However, the UK should still begin the negotiation process prior to the December 2020 deadline. In fact, the UK can take the position that preferential access and TAC allocations (subject to the needs of UK fishermen) will be provided to those that engage earlier in negotiations. We recommend this approach and the figure below illustrates the high-level timelines for activities going forward.

Figure 5: Pathway to a UK fisheries policy



It is crucial that the UK government does not wait until the end of the Implementation Period (December 2020) to begin negotiations on access and TAC allocations, and development of a UKFP.

17 Concluding comments

Leaving the EU and the CFP presents an unprecedented opportunity for the UK to develop a modern and successful UK fisheries policy that ensures a viable commercial industry, ensures sustainable fisheries for the future, benefits UK consumers and enables prosperity for developing countries, many of whose major exports are fish and fisheries products.

As the UK regains control over its fisheries policy, the Government has to begin negotiations on reciprocal access to EEZs and the approach to negotiating TAC allocations, both with the EU and neighbouring coastal countries.

The second and perhaps more important stage will come in changes to the UK's overall fisheries policy. The UK has the opportunity to develop a new fisheries management policy that addresses the unique UK circumstances and improves on the challenges of the current FQA system. This policy has to be designed with the objective of being as least trade and market distortive, whilst achieving the goals of a vibrant, sustainable industry, benefiting UK consumers. Regulatory measures should be based on sound science. Further research on the potential economic and ecological benefits of aquaculture development in the UK is well merited and should be supported by the Government as part of a broader industrial strategy.

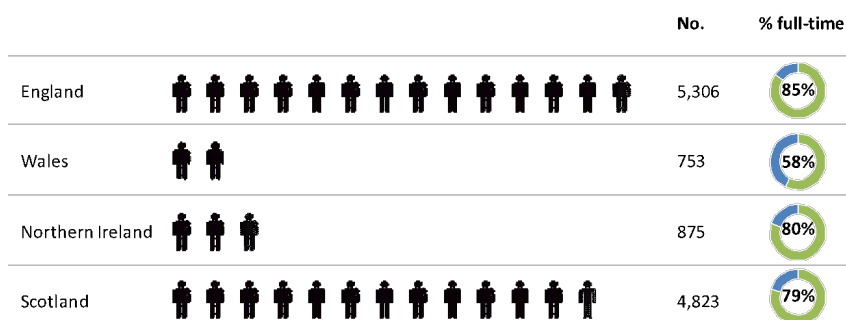
The Government should maintain an open line of communication with the industry in developing the UKFP. This will help to ensure mutual understanding on the ultimate goal of the UK asserting its own fisheries policy once more: a UK fisheries policy which balances the maximisation of commercial opportunities for UK fishing; access by UK consumers to cheap and quality products; and the sustainability of UK fisheries.

Appendix

A.1 The UK fisheries industry

UK fisheries at a glance

In 2016, there were around 11,757 fishermen, with the majority in England and Scotland.



There were around 6,191 fishing vessels, mostly 10m and under. The highest proportion of vessels are administered in England, followed by Scotland.

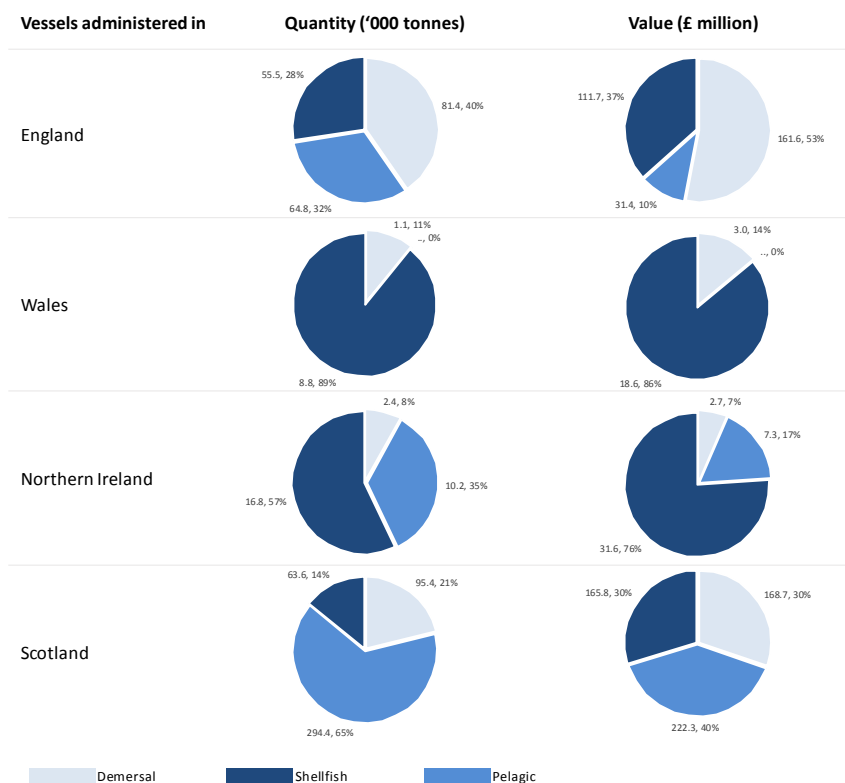


Source: Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017

UK fisheries at a glance cont...

In 2016, UK vessels landed 701,000 tonnes of fish in the UK and abroad, valued at £936 million. Scottish vessels accounted for 65% of weight, and 59% of value, while English vessels accounted for 29% of the weight and 33% of the value.

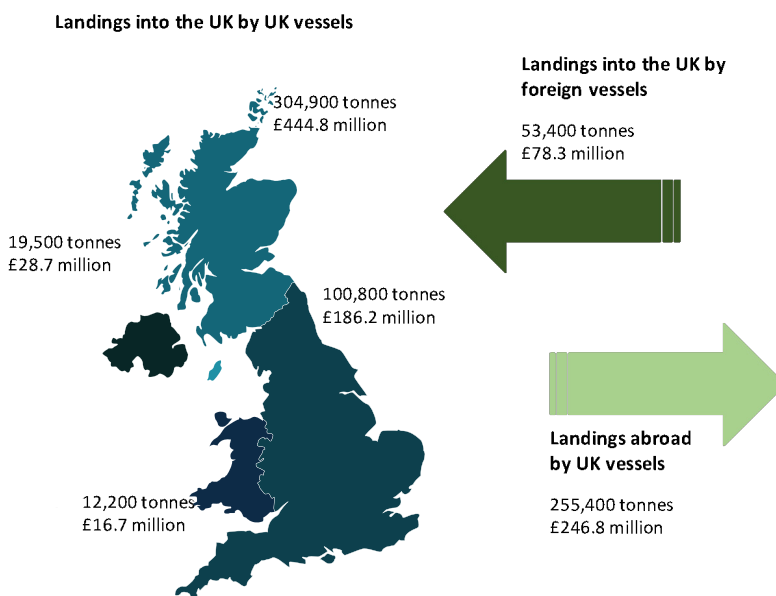
The type of fish caught by UK vessels and landed in the UK and abroad varied across the different regions. Vessels administered in England had higher shares of demersal fish, while vessels administered in Wales and Northern Ireland landed mostly shellfish. Vessels administered in Scotland landed mostly pelagic fish by weight.



Source: Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017

UK fisheries at a glance cont...

In 2016, 64% of fish caught by UK vessels were landed in the UK, comprising 74% of total value. The UK fleet accounted for 89% of all fish landed in the UK.



Around 33% of landings into UK ports by UK vessels are into Peterhead (Scotland), comprising around 23% of value. The second most important port is Lerwick (Scotland), with 11% of the quantity and 8% of the value of fish landed there.

Of the landings into the UK by foreign vessels, the majority (85% by weight and 88% by value) is by vessels from the EU, with France and Denmark comprising the largest shares. Landings by Norwegian vessels account for 12% of weight and 10% of value, while landings by vessels from the Faroe Islands account for 3% of weight and 2% of value.

Of the fish landed abroad by UK vessels, around 51% by weight and 54% by value is into other EU countries, with around half of this landed into the Netherlands. Around 48% of fish landed abroad is into Norway, comprising 44% of value.

Source: Marine Management Organisation, UK Sea Fisheries Statistics 2016, 2017

A.2 The international framework

Key UNCLOS provisions

Article 3: Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles.

Article 56: Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

Article 57: Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 61: Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62: Utilization of the living resources

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.
2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

Key UNCLOS provisions continued

Article 62 cont...

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following

(a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

(b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

(c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

(d) fixing the age and size of fish and other species that may be caught;

(e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

(f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

(g) the placing of observers or trainees on board such vessels by the coastal State;

(h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;

(i) terms and conditions relating to joint ventures or other cooperative arrangements;

(j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations.

Article 63: Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Article 64: Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species

listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

A.3 Potential features of a new UK fisheries management system

The following table presents the potential key features of a new UK fisheries management system and how these could apply in the context of a days at sea system.

Table 5: Potential key features of a new fisheries management system

	Description	Rationale
Transparent allocation mechanism of fishing rights	<ul style="list-style-type: none"> • There needs to be a fair and transparent allocation mechanism of the initial fishing rights, in the form of auctions or licences (for a fee) • The allocation mechanism needs to go beyond historic fishing activity but could take this into account, such as through discounts • Discounts or different pricing structures could also be used to support small-scale fisheries and new entrants into the industry 	<ul style="list-style-type: none"> • Auctions and licences are used in the allocation of other finite resources, e.g. spectrum • As the UK population are ultimately the owners of marine resources, they should receive the economic rent associated with it through the auction price / licence payments, rather than owners of quotas from leasing out their quotas. The Faroese Economic Council has noted the importance of considering how to fully utilise this resource through either charging or allocating rights through the market.

Multi-year system of fishing rights	<ul style="list-style-type: none"> • The fishing rights granted would be for multiple years, e.g. 3 or 5 years • At the end of this period, fishermen would have to obtain the rights again if they wish to do so 	<ul style="list-style-type: none"> • A multi-year system of rights rather than permanent rights would mean that genuine fishermen have access to rights rather than incumbent owners being able to exploit these • A period of more than a year would help with stability and certainty and provide incentives for owners to invest, while guarding against naturally fluctuating stock levels
Transferability of fishing rights	<ul style="list-style-type: none"> • Any fishing rights should be allowed to be transferred, subject to any conditions attached to them, with an adjustment for capacity for transfers between different vessel types 	<ul style="list-style-type: none"> • Transferability would allow the rights to be exhausted rather than remaining unused where the owners are unable to use them
Regular update of days at sea allocation	<ul style="list-style-type: none"> • There would be an allocation of fishing rights. Days at sea would be distributed based on the holdings of such rights, and updated regularly. The overall number of days at sea available for allocation would have to be based on 	<ul style="list-style-type: none"> • The days at sea allocations would have to set over a specific reference period. This would be based on the ease of communicating updates to fishermen, the uncertainty that very frequent updates

	<p>TAC and fishing capacity, and would be set per specific reference period, i.e. days at sea per month, per quarter, per year, etc.</p> <ul style="list-style-type: none">• The calculation of the overall days at sea should take into account the relative TAC for each fish stock and how they exist within mixed fisheries, i.e. the overall calculation should not be based per each fish stock but rather the overall ecosystem• The fishing rights would be granted in the form of a percentage share, so while the share would be fixed over the period over which they have the rights, the actual number of days at sea over which they can be at sea will vary over that course	<p>to fishermen, the uncertainty that very frequent updates may create, how frequently data on fish stocks and catch can be updated to allow for meaningful changes, and the risk to sustainability of fish stocks if the allocation is not updated in time to curtail fishing of diminishing stocks</p> <ul style="list-style-type: none">• The reference period itself will probably need to be adjusted over time to refine the system after implementation• This also allows for the system to evolve, e.g. as technology develops, average and distribution of vessel capacity could also change. As such, the total days calculation by vessel would need to be updated to reflect the change in vessel types and capacity.
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		<p>This could be captured through a review of assumptions around the fishing capacity used in the calculations, as well as an automatic adjustment to reflect productivity improvements in between detailed reviews. Adjusting for technological developments will not necessarily disincentive efficiency improvements as improved efficiency will result in cost reductions as well</p>
Days at sea by vessel type	<ul style="list-style-type: none"> • The total number of days available for allocation should be determined by vessel type and allocated on this basis, i.e. the days allocation would be tied to particular vessel types 	<ul style="list-style-type: none"> • This approach would reflect the different fishing capacity of different types of vessels • This could be used to support small-scale fisheries, e.g. by allocating more days to them, which have a lower ecological impact

No discards	<ul style="list-style-type: none">• Discards should not be allowed except in specific, defined circumstances, e.g. based on survivability of the species when returned to the water	<ul style="list-style-type: none">• Discards are wasteful• Under a days at sea policy, the incentives for discards should be minimised to an extent as fishermen will no longer have to discard catch for which they have no quotas. There is some evidence in the literature that the Faroe Islands have one of the most effective methods of dealing with discards as a result of not using the quota system• However, there would still be an incentive to discard relatively lower value and smaller catch, although arguably given the time constraints, this incentive may be limited as they would not be guaranteed to be able to obtain a relatively higher value catch within the allotted time
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Data collection	<ul style="list-style-type: none"> • Systems should be put in place to ensure robust and timely collection of data used for TAC negotiations and days at sea allocations • These systems could include both electronic monitoring and reporting systems, as well as obligations on fishermen to produce accurate reports 	<ul style="list-style-type: none"> • Accurate and timely data is important in setting a system that enables utilisation of fishing resources while not risking sustainability of fish stocks • Discussions with stakeholders have indicated how even scientific advice on TACs may be unreliable as the data they are relying on are out of date and inaccurate, and the perverse incentives for mis-reporting given the quota system
Stakeholder engagement	<ul style="list-style-type: none"> • There should be a clear process of consultation and opportunity for all stakeholders (fishermen, scientists, local communities, etc.) to contribute to the policy design and subsequent amendments 	<ul style="list-style-type: none"> • Stakeholder engagement is crucial in designing a system that is fit for purpose

Refinement over time	<ul style="list-style-type: none">• The system will have to have flexibility for refinement over time	<ul style="list-style-type: none">• Such a flexibility is required as the fishing industry adjusts to the significant structural change from leaving the CFP, renegotiation of access and TACs with international partners and the domestic fisheries management system• The TAC allocations by the CFP have played a role in shaping UK coastal communities and these may change once the UK leaves the CFP and defines its own fisheries policy
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A.4 Devolution and Scotland

The Scotland Act of 1998 determines the split of legislative competences between Westminster and Holyrood. At present, trade/industry and foreign relations are reserved to the UK, while agriculture, fisheries, and forestry are devolved to Scotland. The devolved settlement with Scotland specifies “sea fishing” as a reserved matter for the UK Parliament, but defines this to be “regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats)”. The Scottish zone includes the 200 nautical miles beyond Scotland. As such, it could be argued that access to Scotland’s EEZ would be a devolved competency. However, this could create significant challenges in international negotiations on access to EEZs and fisheries trade and undermine the integrity of the UK’s single market.

The Scottish Agriculture, Food and Rural Communities Directorate (AFRCD) oversees the payment of subsidies and grants, inspects land/livestock, and monitors animal health and welfare. It oversees the implementation of the Scottish Rural Development Programme 2014 – 2020, which was approved by the EC in May 2016, involves ongoing budgetary commitments through 2020 by both the Scottish Government and the European Agricultural Fund for Rural Development. Those budgetary commitments do not include direct payments made to farmers as supplemental income, which is paid entirely through the European Agricultural Fund.

According to a report commissioned by the Scottish Parliament after the vote to leave the European Union, “in the absence of any amendment to the Scotland Act 1998, the UK’s withdrawal from the EU would not affect the distribution of legislative competences between the UK and Scottish Parliaments: the distribution would remain as set out in the Scotland Act 1998, as amended by the Scotland Acts 2012 and 2016.” In terms of agriculture and fisheries policy, such an interpretation of the scope of devolved powers would likely lead to wide divergence between the policies

pursued in England/Wales and Scotland, and disturb the integrity of the UK single market.

Scottish competence over matters of fisheries and agriculture policy was agreed against the background of EU trade competence. Where that power has shifted from the EU to the UK, then fisheries policy cannot be fully devolved, primarily because it has a necessary trade dimension, which will no longer be handled by the EC. However, there are additional mechanisms whereby the Scottish parliament can give consent for Westminster to legislate on a devolved matter. Specifically, the Scottish Parliament can allow Westminster to legislate on matters, which would otherwise be devolved to Holyrood, with some advisory input into the process, through legislative consent motions (LCMs); and Westminster can use Scotland Act Orders (SAOs) to make amendments to UK legislation which specifically affects Scotland.

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