

SWFPO Position for Itechmer Lorient 19th October 2017.

The Legal Framework:

The UK is a maritime nation. Fishing and fisheries have played a large role in shaping our nation's history and culture.

92% of UK fishermen backed the "Leave" campaign. Reasons given were the excessive bureaucracy of the "centralized", Brussels-based CFP and the unfairness of 1983 Relative Stability fish quota shares.

Some say that the 2002 reforms of the CFP were not given the time to work and that the EU Fisheries Commission was unwise to implement further reforms in 2013, such as the Landing Obligation (discards ban) without giving more time to assess the impacts of the earlier reforms. Maybe UK fishermen would have been less angry and anti-CFP if only reforms had stopped at those of the 2002 CFP?

Maybe not! The damaging effects of 40 years under EEC and CFP regimes have been felt in many UK fishing communities. Time has not been a healer of deep wounds.

Now the fish stocks are rising, with better, more informed management regimes that acknowledge the nature of mixed-species fisheries as never before.

Regional fisheries management would be in prospect, if only the EC Commission, the European Council and the European Parliament would relinquish some powers to the ACs.

But the Lisbon Treaty specifically forbids that!

EU Exit is the only way that power can be taken from the centre and be delivered into the democratic hands of the nation state.

Brexit offers the opportunity to re-think governance, to improve transparency, to respond better to stakeholders and to strengthen environmental protection.

Post-Brexit in March 2019 the UK will become an independent coastal state under UNCLOS.

The UK will be obliged to manage her fisheries sustainably within the EEZ.

Under UNCLOS, coastal states and the competent international organisations (EU) are required to cooperate on the conservation and development of living resources in the high seas and in jurisdictional waters adjacent to them. This requirement is even stronger in the case of shared or associated species. Negotiations must be held with a view to taking the necessary measures for the conservation of such living resources.

UK's EU Exit does not exempt it from the obligation to cooperate with countries with adjacent waters and to regulate its relations with them. That will involve negotiating not only with the EU, but also with the other coastal states with neighbouring waters and with those states with which the EU already has fisheries agreements that the UK will cease to be party to following its withdrawal from the EU.

Through UNCLOS and the UN Fish Stocks Agreement, the UK will be responsible for co-operating with neighbouring states to sustainably manage shared and trans-boundary stocks.

However, EEZs were adopted in 1982, before the Relative Stability shares of January 1983 were agreed, so the UK has no legal obligation to recognise those shares under UNCLOS.

The UK legal case for claiming exclusive fishing rights in its EEZ appears robust.

The potential UK catch arising from post-Brexit exclusion of EU vessels from UK waters could increase by as much as 671,000 tonnes (representing a gain of 90% of current catches worth £6.3Bn).

As the EU has agreed through Article 50 that "*the treaties shall cease to apply*", the EU Common Fisheries Policy and all its laws also will cease.

The UK reverting to international law will see the end of the CFP of 'equal access to a common resource' and the 'relative stability Quota system' that divides up resources and causes mass discarding of fish".

The UK has invoked withdrawal from the London Fisheries Convention that will establish an exclusive fishing zone within the 12 miles zones of the UK coasts.

This will mean that when the UK leaves the EU it will have full control over access to UK waters. Negotiations with the EU27 will start with a “clean slate” to secure the best possible deal for UK fisheries.

There is no legal basis or obligation under international law to allow any access to British waters post Brexit and the only way we can lose our waters and resources is if the government gives them away again.

With regard to the legal framework for governance between the EU and the UK in the area of fisheries, the review of the few precedents of withdrawal from the EU and of various preferential agreements concluded by the EU showed that all of these agreements exclude the CFP and refer to fisheries only from the perspective of trade in fishery products.

The Market:

The market in fisheries products is also important Post-Brexit and is now being considered.

The main expected consequences of Brexit in relation with trade and related economic issues will be the impact on:

the 2-way trade on fish and fisheries products;

the UK leaving the Customs Union.

The CFP is already excluded from the main EU trade agreements.

This will most likely be the case with the post-Brexit UK as well.

That will mean that, even if aspects related to the free movement of fishery products, or even the free movement of workers, are regulated in the future post-withdrawal agreement, access to waters and resources will not be and will thus require a specific legal framework, i.e. a new international fisheries agreement.

The UK exports fish and fisheries products to the EU, or via the EU the majority of the fish produced.

UK consumers rely upon imports of fish and fisheries products that are either from the EU or arrive via the EU.

The UK exports approximately 80% of its wild caught seafood, with 66% going to the EU27, so UK fishers have a strong interest in maintaining tariff-free access to the EU27 market.

SWFPO is aware of the headline UK positions about Brexit. The UK will leave the single market and the customs union. The UK will leave the jurisdiction of the ECJ. The UK will take back control of immigration. The UK will do our own trade deals with third countries. However, the UK still wants the freest possible terms of trade with the EU27 and beyond.

SWFPO also would like negotiators to ensure that the trade in UK fish and fisheries products remains free, if possible, from tariff and non-tariff barriers to the customers within the EU27 and to the customers in non-EU countries.

Fish is a perishable commodity and great economic damage could be done to businesses and to reputations if products are spoiled on the routes to destinations because of unnecessary levels of post-Brexit bureaucracy.

However, fish trade is, of course a 2-way business, so it should not be difficult to ensure imports to the UK from the EU27 are treated to the same (zero) tariff and non-tariff barriers.

Raw materials imported into the UK should continue to be tariff-free to ensure the viability of the UK seafood processing industry, supported by a skilled and willing labour force moving freely to and from the EU and overseas.

The EU will most likely seek quota and access to fish in the UK zone in return for tariff-free access to markets (as they did with Norway, in negotiating the EEA Treaty, and Greenland on its own exit in 1985).

Indeed, the EU has made it clear in their communications that there will be no separating of access to fishing waters and access to markets for fish products. For the EU, this whole discussion is not a moot point.

For UK fishermen to have a better deal under Brexit, UK negotiators must ensure that access to waters and resources are issues to be considered separately from access to markets and to labour.

Restructuring:

The UK fishing fleet is elderly and depleted through 40 years of damaging and destructive CFP fleet structural policies.

Infrastructure in UK fishing ports is also elderly or has been scrapped. Ship-build and ship-repair yards will take years to restore to working conditions.

Despite the antipathy of the UK towards the CFP, fishermen in Spain and Holland considered it a good investment to register vessels in the UK to obtain even better access to quotas than their home fleets enjoy. Half of the Area 7 fleet is Anglo-Spanish and all of the N Sea fleet of Beam trawlers are Anglo-Dutch.

Spain and Holland also had to obey CFP fleet re-structuring rules. However, instead of scrapping boats as was required, they instead “flagged” many to the UK Register. The famous 1992 “Factortame” case of the European Court of Justice established the right to ownership of the British flag.

UK vessels owned by residents of EU27 nations caught at least 59,000 tons of various fish products in 2015. In the case of the Anglo-Spanish boats, much of that fish was caught in EU27 waters west of Ireland and to which the UK may not have the same access post-Brexit.

The SWFPO position on “Quota-hopping” is that present incentives promoting foreign ownership of UK Registered fishing vessels should be examined very carefully in the run-up to Brexit and in the wake of UK departure from the EU.

All economic benefits from UK living resources within the 200 miles / median line EEZ can and should derive to the UK in a post-Brexit Coastal State.

UK “Quotas” no longer would be those of an EU Member State under “Relative Stability” and fishing vessels flying the UK “Flag of Convenience” could be repatriated to the Flag State of beneficial ownership without UK infringing CFP rules or incurring further sanctions of the European Court of Justice.

The UK should insist on genuine economic linkage to the Flag State. Fishing licenses and quotas may be restored to the home fleet and “flagging” should become a subject only in history books.

Finally:

It is true that fisheries managers in the UK have had 40 years of EU CFP regulations and have no experience of devising rules at home. They will seek to find nuggets of success from among the decades of CFP detritus.

It is likely that the UK “Great Repeal” Bill will be that in name only.

Most if not all of the 1,000+ rules of the CFP and of marine environment protection will likely be embodied into domestic legislation for later amendment or repeal.

In the UK we have 4 devolved Administrations looking after fisheries matters and there are also the “Island” jurisdictions.

Legislation for a post-Brexit world is complicated. Nobody said it was going to be easy, but Brexit offers unique opportunities for greater ambitions for our fishing industry to be realised.

Jim Portus

Lorient October 19th 2017.

ENDS.