

## UK-EU Trade and Cooperation Agreement – Fisheries

### Executive Summary

- i. The Agreement is not a good deal for UK fisheries, especially for the English demersal fishing industry. It falls well short of what Ministers led the industry to expect. Except for relatively small groups of vessel owners in the pelagic sector, the benefits are marginal and in some cases illusory.

### *Context*

- ii. The UK has become responsible, as independent sovereign state, for jointly managing about 100 shared fish stocks with the EU. This is unprecedented and unique internationally. Additionally, the UK will be negotiating access directly with Norway and The Faroes, and has signed continuity agreements with both countries.
- iii. More than two thirds of UK fisheries production is exported to the EU, while most domestically consumed fish in the UK arrive from non-EU countries such as Iceland, Norway, Indonesia, India and Ghana, or from other parts of the world via processing plants in the EU. Exports to the EU will remain tariff free, but there are new non-tariff barriers such as catch certificates, export health certificates and the need for goods to go through Border Control Posts. Neither the UK Government nor industry were fully prepared for 1<sup>st</sup> January 2021; clarification is still required from the Government in a number of areas and systems have yet to bed down. There could be consequential difficulties for businesses through the supply chain over the coming months, and there are potentially long-term ramifications for the future structure of the industry. In the short term, government officials are hoping that the EU and member states will show some leniency whilst the new arrangements settle down, but Defra and its agencies appear to be blind or obdurate to the longer term implications.

### *Main features of the Agreement*

- iv. The Agreement provides for:
  - The UK to have a larger share of the quotas for about 100 stocks it shares with the EU. UK vessels will be able to catch more fish and EU vessels fewer fish in UK waters.
  - The increases will be phased in over five years from 2021. The government has calculated that the total additional value to the UK at the end of this period will be £146m.
  - The Agreement contains detailed arrangements for setting annually the total allowable catch (TAC) of each of the shared fish stocks subject to quota. In many respects the process is similar to what happened when the UK was

within the Common Fisheries Policy, except the UK will be negotiating with the EU as a third country.

- Until June 2026 (the ‘adjustment period’), the EU and UK will have reciprocal rights of access to catch the allowable quotas, after which there will be annual negotiations on access.
- EU vessels that have a historic track record will be able to continue to fish in the 6nm to 12nm zone of parts of the UK’s territorial waters – almost exclusively in English waters.
- The UK has reclaimed considerably more policy and regulatory autonomy. But, this is not unfettered. It has to act in accordance with the objectives and principles and follow the processes set out in the Agreement.
- In common with other areas of trade and services, there is to be a joint UK-EU specialised committee that will be able to consider and agree fisheries management issues, data sharing, etc. The committee will be co-chaired by the UK and EU with a joint secretariate.
- If the UK deviates from the access or quota available to EU vessels under the terms of Agreement, in the event of dispute, the EU can require the UK to pay compensation and can introduce tariffs not just on fish products but also other goods and services imported into the EU by the UK. The EC has made it clear that it will seek to protect EU fishing communities.

### *Commentary*

- v. Prior to the Agreement, the economic value of fisheries in UK waters for EU vessels represented £565m a year. The UK caught £98 million a year of landings in the EU’s exclusive economic zone.<sup>1</sup> After five and a half years there will still be a substantial imbalance. The £146m of additional quota in the government figures also overstates the real value to the UK industry, because no allowance has been made for actual catch levels by EU vessels (which in some cases have been below the quota ceilings) and does not take into account other opportunities that previously existed for the UK to increase fishing opportunities.
- vi. Since the Brexit referendum, Ministers have made great play of the UK moving towards a fairer distribution of fishing opportunities based on zonal attachment (the special distribution of fish stocks). There is no provision for this and the recalibrated quotas do not come close to previous exemplifications of zonal attachment allocations.
- vii. The changes to the UK’s overall share of quota vary enormously across the UK and between species. Substantial economic gains are likely to be enjoyed by relatively

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<sup>1</sup> Reference: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2532](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2532)

small groups of vessel owners in the pelagic sector. The gains in the South West will mostly be only marginal (see annex A) and, in particular, it is difficult to see the under 10m fleet (i.e. the majority of the boats) securing any worthwhile benefit. The extra bureaucracy will outweigh, for many, any slim uplift in quota; the fishing opportunities for the shellfish boats remain unchanged whilst exporting to the EU now involves a lot more paperwork.

- viii. The Government will need to reconsider its plans for the future allocation of quota, on which Plymouth Council commented in November, as the uplift under the terms of the Agreement provides insufficient headroom. It seems likely that, any changes in the way quota is allocated in England, will be modest in 2021 and for some years later.
- ix. Meeting the obligations of the landing obligation in mixed fisheries, such as those in the south west, has been a challenge. There was a hope that rebalancing the EU and UK quota shares might assist. The additional quota will not be of much help and, dependent upon how the government responds, the situation could become more difficult.
- x. Ministers repeatedly confirmed that a primary aim of the Government was to secure the UK's territorial waters for the exclusive use of UK vessels. This was one of the most important elements of the negotiations, for the catching sector. The Agreement allows EU vessels continued access around the English coast, which is a bitter blow to the UK industry.
- xi. At the end of five and a half years, the presumption in the Agreement is that nothing will change unless by mutual agreement. UK is locked in unless the government of the day is prepared to accept compensatory measures by the EU, which could include tariffs and withdrawing other parts of the Agreement, not just on fisheries but also affecting other business sectors. The prospect of a UK government being willing to do this are slim.
- xii. Changes to the export rules affecting one sector in another part of the UK could have an adverse ripple effect elsewhere, including the south west, which are difficult to anticipate and mitigate.
- xiii. On a more positive note, the UK has reclaimed considerably more policy and regulatory autonomy. There could be useful opportunities for the UK Fisheries Administrations to improve transparency and to develop and introduce policies more suited to the unique nature of UK fisheries. However, the UK does not have a completely free hand and only time will tell the extent to which the UK will be able to take unilateral action. The Government has announced that it has banned pulse trawling by English and EU vessels (Scotland still has one vessel licenced to use this technique). This might turn into a test case if the Netherlands or the EC raise objections.
- xiv. The role of the specialised committee on fisheries, as a forum for considering and agreeing various fisheries management issues, and how this will play to the ambitions

of the Fisheries Act 2020 is not yet clear. For example, the extent to which the Joint Fisheries Statement and Fisheries Management Plans will be independent of agreement within the specialised committee on fisheries.

- xv. This paper covers only the Fisheries specific sections of the Agreement. As implementation begins to take effect we might find that aspects concerning trade, subsidies and regulatory autonomy will be affected by other provisions in the Agreement.

#### *What next?*

- xvi. There will understandably be considerable disappointment and frustration within the fishing industry. However, in any situation, there are opportunities. Steps can be taken to seek greater clarity about the government's intentions and to make representations on behalf of the local industry and the communities served. Plymouth City Council has been a strong supporter of the local industry and will want to ensure, as far as possible, that future government policies and regulatory systems recognise the contribution made by the industry and its needs.
- xvii. The Government has indicated that a funding package of £100m will be available. It will be important that these funds are effectively targeted – which will require fresh thinking and not just recycling processes and policies already found wanting. The industry will need assistance to recover, rebuild and modernise.

## UK-EU Trade and Cooperation Agreement – Fisheries

### Introduction

1. The UK-EU Trade and Cooperation Agreement is a long and complex document. Although it contains a considerable volume of detail there are many areas, at this stage, where there is uncertainty about interpretation and practical implementation. This paper, therefore, discusses the generalities of the principal issues affecting fisheries

### Regulatory autonomy

2. This was one of the key pillars of the Brexit campaign – ‘taking back control of our waters’. The UK will have more autonomy, but it is not unfettered. The Agreement provides for each party (the UK and the EU) to be able to introduce management measures independently, subject to the measures being in accordance with the list of fisheries objectives and principles in the Agreement. These broadly accord with the objectives in the Fisheries Act, but the Agreement also specifies that they must be proportionate and non-discriminatory. The UK and the EU cannot apply measures to the vessels of the other Party in its waters unless it also applies the same measures to its own vessels. There might be wrangles in the future about what constitutes proportionate and non-discriminatory.
3. Each Party is required to notify the other Party of new measures that are likely to affect the vessels of the other Party before those measures are applied, allowing sufficient time for the other Party to provide comments or seek clarification. The UK Government announced on 31<sup>st</sup> December that it has banned pulse trawling by English and EU vessels. Although to be applauded, it will be interesting to see whether this becomes a test case as to whether this measure satisfies the terms of the Agreement relating to non-discrimination and adequate notification.

### Fairer shares of fishing opportunities?

#### Quota

#### *Relative stability*

4. The Government were promising, *“we will no longer be bound by the EU’s outdated method for sharing fishing opportunities. We are committed to moving away from relative stability to a fairer share of fishing opportunities for our fishing industry*

*across the British Isles.*<sup>2</sup> This was to be based upon the “*scientific principle of zonal attachment*”.<sup>3</sup>

5. The Government’s rhetoric has changed. All reference to zonal attachment has disappeared. The Press Notice and the summary document published by the UK Government points to “*...a significant uplift in quota for UK fishers, equal to 25% of the value the EU catch in UK waters. This is worth £146m for the UK fleet phased in over five years. It ends the dependence of the UK fleet on the unfair ‘relative stability’ mechanism enshrined in the EU’s Common Fisheries Policy, and increases the share of the total catch taken in UK waters taken by UK vessels to circa two thirds.*”
6. It is a moot point as to whether the UK has departed from relative stability, since all the adjustments are based on the relative stability formula. Essentially they are recalibrated percentages for individual stocks within the relative stability calculation (which was always a political divvy up loosely based on historic track record). The quota changes are phased over five years to 2025 and rolled over into 2026.

*How valuable are the quota increases to the UK?*

7. The value of the uplift appears to have been arrived at by aggregating the average first sale value of the individual stocks. However, when seeking to assess the potential benefit to the UK and, in particular, to specific coastal areas, it is important to look at:
  - The changes to the UK’s share of individual stocks;
  - The extent to which the increased shares of the Total Allowable Catch represent real additional fishing opportunities;
  - How the UK Government will distribute any increases in quota.
8. Also, the two thirds equation in the government statement includes only the UK and EU, not Norway, which also has vessels catching fish in UK waters. Negotiations with Norway and the Faroes have not been completed, and the value of the fish the UK catches in its own EEZ seems unlikely to increase beyond about 60% overall.

*Quota changes in the south west*

9. Taking the individual quota first, if we look at the main stocks in the south west most of the changes are marginal. These are shown in Annex A. Quota is allocated according to species and by reference to ICES (International Council for Exploration of the Seas) areas. A map showing the areas is at Annex B.
10. When we reported to the Council in October on the results of the survey to assess the priorities of the fleet that lands to Plymouth, as part of formulating a response

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<sup>2</sup> Defra, Fisheries: Quota allocation and management in 2021 and beyond: England and the Crown Dependencies, October 2021

<sup>3</sup> Victoria Prentice, Fisheries Minister, House of Commons debate, 23<sup>rd</sup> October 2020.

to the government's consultation on allocating and managing quota in England we found the following:

- a. There were broadly consistent messages from all respondents about quota species priorities next year. Sole, skates and rays, anglerfish and plaice were consistently ranked high when asked what additional stocks were most important. Cod and pollack were also included in this category by static gear vessels, whilst whiting and haddock were prioritised by towed gear respondents.
  - b. At the other end of the scale, sprats, herring, horse mackerel, hake and megrim scored as least important across most gear types and vessel sizes. Megrim and hake are usually caught to the far west of the region. It is likely that these were included in this category as they are not present on the local grounds fished by most vessels that land to Plymouth. But nevertheless they are important commercial species and, given the opportunity, vessels landing to Plymouth would be able to prosecute those fisheries successfully.
11. It is a mixed picture when comparing Annex A to these relative priorities. Valuable and species important to Plymouth, such as sole have increased very little. Haddock which was prioritised by towed gears has increased from 10% to 20%, but whiting has remained unchanged. Pollack has increased from 17% to 25%, but cod has hardly changed (and Eastern Channel cod has not changed at all). The tonnages of fish that can be caught when the TACs are set and the effect on fish prices from, for example, the new non-tariff barriers to EU exports will have more bearing, in many instances, on the value of the stocks to the local industry than the quota changes.

#### *National quota changes*

12. It is a similar picture nationally. Attached at Annex C is the table in the Agreement showing the changes by individual stocks between 2021 and 2026 onwards (a more meaningful comparison would be between 2020 and 2026). There are material increases across the five years for the UK for some stocks, such as hake in the North Sea (the UK's share increasing from 39% to 53%, rising from 18% in 2020), horse mackerel in the southern North Sea and Eastern channel (29% to 40%, rising from 11% in 2020), Celtic Sea Haddock (16% to 20%, rising from 10% in 2020), North Sea sole (12% to 17%, rising from 4% in 2020), Megrim in ICES area 7 (19% to 22% rising from 14% in 2020), and Nephrops in ICES area 7 (38% to 42%, rising from 33% in 2020).
13. On the other hand, some stocks important to the UK catching sector - especially in England - have seen only marginal increases. For example, sole in area 7e only rises from 61% to 62% (59% in 2020), sole in area 7fg rises from 31% to 32% (28% in 2020), cod in the Eastern Channel stays at 9%, plaice in area 7fg goes up from 25% to 26% (23% in 2020), and Monkfish in area 7 rises 21% to 23% (18% in 2020).

14. As in the south west, to better understand the real value of the additional quota gained, it is necessary to look at tonnage and the relative value of the fishery. For example, the largest increases in volume are the pelagic species, Atlantic mackerel, North Sea herring and Norway pout, which together account for over a third of the estimated value of the UK's additional quota shares.
15. Almost without exception the UK's share of quota for individual stocks is very substantially below the quantities that would be available under zonal attachment.

*All is not what it seems when it comes to headline quota allocations*

16. The initial annual quota allocations within the CFP were in many instances the starting point. During the year it was customary for there to be quota swaps between the UK and other member states, which facilitated access to additional quota for stocks important to the UK in exchange for quota likely to be under-used. It is not clear whether or how this might be replaced under the terms of the Agreement. Exchanges of quota will be possible during the EU-UK annual negotiations and there is provision for the specialised committee on fisheries to set up a mechanism for in-year transfers of fishing opportunities, but there is no further detail.
17. TACs are upper limits and quotas – even with swaps – are not always fully utilised. A proportion of the quotas ceded by the EU were not caught by EU vessels. These are sometimes referred to as 'paper fish'. The Scottish Government have claimed that because of this and the uncertainty about swaps, when comparing landings to quota, there will be a reduction in fishing opportunities in a number of instances for the Scottish whitefish fleet. The same applies, for example, with North Sea sole and plaice and, domestically, the pool of quotas managed by the Marine Management Organisation (MMO) is commonly under-utilised. To state the obvious, additional quota is only of value if the fish are there to be caught.
18. Another factor when making comparisons is the Hague preference mechanism. This entitled the UK and the Republic of Ireland to claim additional shares of quota on top of relative stability for certain stocks. Invoking the Hague Preference was discretionary on the part of the UK and Ireland and it was selectively deployed by the UK to increase quota for certain stocks, at the expense of other member states, to assist fishing communities in northern England and Scotland. It was also part of the UK's broader negotiating toolkit within the CFP. The quota shares negotiated under the Trade and Cooperation Agreement do not take the Hague Preference into account and, therefore, overstate the gain in fishing opportunities.

### **Distribution of quotas within the UK**

19. The UK Government issued three consultation papers in October last year concerning the distribution of quota within the UK. It is evident that there will have to be a rethink about how additional quota might be employed. The impact of the



proposed change to the 'economic link' will also need to be looked at again, in the light of the terms of the Agreement.

### **Non-quota**

20. UK and EU vessels are able to fish for non-quota stocks in each other's waters at a level that equates to the average tonnage fished during the period 2012-2016.

### **Access**

21. It was very important to the UK catching sector, throughout the Brexit negotiations, that foreign vessels should no longer be permitted to fish in the UK's territorial waters. Assurances were given by Ministers, *"the Government have been clear throughout that access to the UK's territorial seas is out of scope for any fisheries framework agreement with the EU. Any access negotiated with the EU will cover only the UK's exclusive economic zone, and not the 0 to 12-mile zone."*<sup>4</sup>
22. In the event, this red line was crossed. The Agreement provides for EU vessels with historic track record to be able to continue to fish in the 6nm to 12nm zone in ICES divisions 4c and 7d-g, provided the vessels had access on 31 December 2020 and at least four years between 2012 and 2016. There is a reciprocal arrangement for UK registered vessels being able to fish in EU waters in the same ICES divisions.

### **There will be annual negotiations with the EU on TACs**

23. Although the framework has changed, there will be annual fisheries negotiations which will have familiar characteristics to the CFP processes. The Agreement expects the UK and the EU to agree TACs for each stock by 10<sup>th</sup> December following a process similar up to now. It sets out in some detail the process to be followed. If agreement cannot be reached the UK and the EU will set a provisional TAC corresponding to the level advised by ICES, with each Party's share being as set out in the Agreement, until agreement can be reached.
24. The annual negotiations will, as within the CFP, be *"on the basis of the best available scientific advice, as well as other relevant factors, including socio-economic aspects."* The negotiations can also include transfers of shares of TACs between the UK and the EU, and cover fisheries management measures.

### **Fish exports to the EU remain tariff free**

25. Tariffs will not be applied, but there is more paper work, for example, catch certificates, export health certificates, and other documentation, and goods will need to go through Border Control Points. It remains to be seen how these non-tariff barriers affect exports and the UK fishing industry. There have already been some glitches and further difficulties can be anticipated. The potential ramifications

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<sup>4</sup> Victoria Prentis, Fisheries Minister, House of Commons debate, Fisheries Bill, 13<sup>th</sup> October 2020

for day boats landing small quantities of high quality fish could be serious, as the UK's internal control systems make it more complicated and arduous when purchasing and exporting from small boats.

### **The south west could be affected by changes elsewhere**

26. Changes to the export rules or quota distribution in one part of the UK could have a ripple effect on another area. An example, could be the new ban on importing crab claws from the UK into the EU. This mostly directly affects the Scottish industry, but if exports are no longer possible alternative markets will need to be found. This in turn could affect the crab businesses in the south west and other parts of England.

### **Monitoring and enforcement**

27. Effective at sea monitoring and surveillance by the UK will become even more important, since we may not be able to rely upon the same level of cooperation by EU member states. But, this could be difficult to achieve, as it is not hard to imagine government departments' budgets being squeezed and the MMO reverting to previous low levels of monitoring activity in the offshore area.

### **Specialised Fisheries Committee**

28. The agreement provides for a Specialised Committee on Fisheries. The Committee is empowered to consider and agree, inter alia, a range of matters of shared interest including measures for fisheries management and conservation, data collection and sharing, and joint control, monitoring and surveillance programmes.

### **New Fisheries Grant**

29. Ministers have indicated that there is to be a new fisheries grant regime. The Cabinet Office Minister, Michael Gove, said that £100m would be available "in the near future to help the industry to take full advantage of Brexit". Until we see the details it is not possible to know how useful the grant will prove to be, but £100m spread across the entire UK and possibly over 4 years – in replacement of EMFF - will not go far.

### **What happens after five and a half years?**

30. The Agreement carries the expectation that the UK quota shares will continue to remain at the 2025 level from 2026 onwards. Although the access arrangements can be varied during or at the end of the adjustment period by agreement, if there is dispute, either side can apply compensation measures including imposing tariffs on fisheries and other non-fisheries products or suspending other parts of the Trade and Economic Agreement. It is very unlikely that any UK Government will choose to go down that road. The EU have already made it clear that they will seek to

protect the livelihoods of EU fishing communities reliant upon access to the fishing resources in the Agreement.

31. If, before 2026, either the UK or the EU chooses to change the fishing opportunities of the other there are compensation arrangements and an arbitration procedure. Again, it seems unlikely that the UK Government would want to incur costs and risk having to pay compensation of face retaliatory measures by the EU.

## **Conclusion**

32. Most of the UK fishing industry, with justification, will view this as a poor deal. The negative effects will probably impact disproportionately on the under 10m fleet. The most immediate risk is that Defra and the MMO will adopt defensive positions and revert to command and control, whilst most people in the industry will conclude that there is little purpose in co-operating with Government. They will be bitter about the outcome and have a strong sense of betrayal.
33. However, now is the time for engagement. The Government could use its new found regulatory freedoms to improve the lot of the industry, to introduce a modern and more effective grants regime and to work collaboratively with local authorities and LEPs to strengthen coastal communities. The fishing industry is used to adversity and despite the problems caused by the pandemic has kept going. With appropriate encouragement and support pragmatism will come into play, and there is scope for Plymouth to build on its existing work and achievements in this area.

## Annex A

South West Fisheries		UK share		
Species	ICES areas	2020	2021	2025
Anglerfish	VII	17.98%	21.22%	23.38%
Cod	VII e-k	7.88%	9.30%	10.24%
Haddock	VII, VIII, IX, X, Cefac 34.1.1	10.00%	16.00%	20.00%
Hake	VI & VII; Vb of XII & XIV	17.97%	19.67%	20.80%
Herring	VIIe and VIIf	50.00%	50.00%	50.00%
Herring	VIIg,h,j,k	0.12%	0.12%	0.12%
Megrims	VII	14.34%	18.63%	21.50%
Nephrops	VII	32.80%	38.32%	42.00%
Plaice	VIIa	51.12%	51.11%	51.11%
Plaice	VII d,e	29.08%	29.64%	30.00%
Plaice	VII f,g	23.44%	25.14%	26.26%
Plaice	VII h,j,k	12.60%	15.75%	17.91%
Pollack	VII	17.44%	21.97%	25.00%
Saithe	VII, VIII, IX, X, Cefac 34.1.1	13.66%	15.00%	15.00%
Skates and rays	VIa-b & VIIa-c, e-k	25.85%	28.94%	31.01%
Common Sole	VII d	19.23%	19.69%	20.00%
Common Sole	VII e	58.73%	61.03%	62.50%
Common Sole	VII f,g	28.10%	30.65%	32.33%
Common Sole	VII h,j,k	16.67%	16.67%	16.67%
Sprat	VII d,e	52.50%	71.40%	84.00%
Whiting	VII b,c,d,e,f,h,k	10.73%	11.05%	11.27%

