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**Plenty of Fish in the Sea? Brexit and the Irish Seafood  
Sector**

Thesis presented by

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for the degree of

**Masters of Commerce**

**University College Cork**

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## Abbreviations

BBC	British Broadcasting Corporation
BIM	Bord Iascaigh Mhara
CAP	Common Agriculture Policy
CCP	Common Commercial Policy
CFP	Common Fisheries Policy
DAFM	Department of Agriculture, Food & the Marine
DUP	Democratic Unionist Party
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFCA	European Fisheries Control Agency
EFTA	European Free Trade Association
EMFF	European Maritime and Fisheries Fund
EU	European Union
EUFA	European Fisheries Alliance
FAO	Food and Agriculture Organisation of the United Nations
FHC	Fishery Harbour Centre
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GT	Gross Tonnes
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IUU	Illegal, Unreported and Unregulated
KFO	Killybegs Fisherman's Organisation

KW	Kilowatts
MI	Marine Institute
MSY	Maximum Sustainable Yield
NAFO	Northwest Atlantic Fisheries Organisation
NASCO	North Atlantic Salmon Conservation Organisation
NDPB	Non-Departmental Public Body
NEAFC	North East Atlantic Fisheries Commission
NM	Nautical Miles
NWWAC	North Western Waters Advisory Council
RAC	Regional Advisory Council
RFMO	Regional Fishery Management Organisation
SFPA	Sea Fisheries Protection Authority
SPS	Sanitary and Phytosanitary
TAC	Total Allowable Catch
TEU	Treaty on European Union
UK	United Kingdom
UNCLOS	United National Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
USA	United States of America
WTO	World Trade Organisation
YOY	Year on Year

## Submission Statement

This is to certify that the work I am submitting is my own and has not been submitted for another degree, either at University College Cork or elsewhere. All external references and sources are clearly acknowledged and identified within the contents. I have read and understood the regulations of University College Cork concerning plagiarism.

Signed: 

Date: 27<sup>th</sup> September 2019

## Introduction

When the United Kingdom electorate voted by a majority of 52% to leave the European Union on 23<sup>rd</sup> June 2016 a shockwave was felt throughout the EU. Few had predicted the result not least the British Prime Minister David Cameron who had called the election and campaigned for a no vote. He resigned from his role as Prime Minister but the shockwaves continued to spread through the UK and around the world as the potential train crash Mr. Cameron had put in front of the UK became obvious. Nowhere did the shock resonate as much as in Dublin (O'Brennan, 2019). The impacts of Brexit would likely be significant for Ireland in a number of sectors – not least the fishing sector.

Ireland's original decision to join the EU was heavily influenced by the UK's decision to seek membership. Irish reliance on UK markets meant that EU membership was imperative in order to safeguard Ireland's economy. EU membership, however, was also seen as a means for Ireland to diversify its trade relations and so to lessen its economic dependency on the UK (Murphy, 2018a). Now the east/west economic relationship with the UK was threatened by the prospect of Brexit, while the fragile north/south relationship on the island of Ireland and the progress made under the 1998 Good Friday Agreement would be jeopardised.

Brexit, however, was not solely a UK crisis. The remaining 27 member states and European institutions were determined that Brexit would not have a domino effect leading to the disintegration of the Union (Laffan, 2019). Ireland, more than any other member state, stands to be deeply and profoundly impacted by UK departure from the EU. The crisis which Ireland faces is multi-dimensional: economic and political, constitutional and existential in nature (Murphy, forthcoming 2019). The Brexit referendum and the ensuing difficulties experienced by Ireland as a result of British indifference to the existential impact on the island of Ireland was the catalyst for a hugely significant diplomatic effort on the part of the Permanent Representation in Brussels and the Irish government to educate EU leaders about the dangers presented

by Brexit for Ireland (O'Brennan, Forthcoming 2020). The Irish fishing sector, already facing significant challenges brought about by climate change and Common Fisheries Policy (CFP) reforms as drivers of change, were quick off the blocks to express concerns about the referendum result. This is understandable given Irish and UK interdependence on fisheries issues and close interactions on many aspects of Irish and UK fisheries. Almost immediately, seafood industry leaders made statements expressing their reservations about the referendum result and the potential effects on the Irish seafood sector. A planning process was initiated by the Irish government to mitigate, in so far as possible, the negative effects that would surely be felt from Brexit.

At the time of writing, the political situation in the UK is particularly volatile. Prime Minister Boris Johnson has stated his position as wanting the UK to leave the EU on 31st October 2019, either with or without a deal. He gained the Queen's consent to prorogue the UK parliament for a month, with a new session to commence with a Queen's speech on 14<sup>th</sup> October 2019. The proroguing was viewed by opposition parties and some Tory party rebels as an attempt to stifle debate on Brexit and was countered with a Bill to force the UK government to ask for a three month extension from the EU if there is no agreed exit deal by 19<sup>th</sup> October 2019. Boris Johnson counteroffered the Bill with a proposal to hold a general election on 15<sup>th</sup> October, but his motion was rejected by the House of Commons as it didn't attain the two thirds majority as required under the Fixed Term Parliaments Act 2011. The opposition parties indicated they would be agreeable to a general election if the date for Brexit were moved to 31<sup>st</sup> January 2020. Johnson's proroguing of parliament was referred to the UK Supreme Court and on 24<sup>th</sup> September 2019, the 11 judges unanimously found that Boris Johnson's decision to suspend Parliament for five weeks was unlawful. The House reconvened on 25<sup>th</sup> September 2019 to some farcical rhetoric and goading of the opposition by Johnson, as he invited them to set down a motion of no confidence in the Government (BBC News, 2019). The opposition did not table such a motion as it might have precipitated a hard Brexit by default. As it currently stands, the UK will leave the EU on or before the 31<sup>st</sup> October 2019 either under the terms of the

Withdrawal Agreement or with no deal, unless the UK and the EU agree to extend or revoke the Article 50 procedure. Boris Johnson is legally obliged to request an extension of Article 50 from the EU if a deal has not been agreed by 19<sup>th</sup> October 2019, but he is adamant that he will not do so.

A solution must be found to Brexit and in arriving at that solution many sectors, including the seafood sector, will require specific sectoral solutions. The European Union Common Fisheries Policy (CFP) has developed over the last 30 years with the aim of ensuring that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. The goal of the CFP is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities. It is important to underpin the policy and maintain the ground that has been hard won in successive reforms of the policy over the last thirty years. The requirement for protein from the marine environment to feed the growing world population is increasing with global seafood consumption having more than doubled in the past 50 years to over 20 kg per capita per year in 2014 (Joint Research Centre, EU Commission, 2018). As demand for seafood rises, production output from aquaculture and the sustainability of fish stock come sharply into focus. For millennia, the exploitation of wild fish stocks to sustain global populations has been practiced. However, in addition to climate change, modern technology and fishing methods have posed a threat to the sustainability of fish stocks. There are plenty of fish in the sea but prudent resource management, like that currently implemented under the CFP, is essential if we are to take enough from the sea to satisfy our food requirements, while also ensuring we manage the outtake in a manner that guarantees an everlasting resource for current and future generations.

It is important for Ireland that any post-Brexit solution protects the Irish seafood sector and fosters the goals of the European Union's CFP when the UK exits the EU. This thesis examines the development of the CFP, the structure of the Irish fishing fleet and fishing opportunities, Brexit and its impact on the seafood sector, and fisheries in the

International context. In particular, it will ask if there is an optimal post-Brexit solution from an Irish seafood perspective. To answer this question, it presents an analysis of literature, analyses primary and secondary information sources, and develops scenarios. The scenarios are analysed and ranked in order of suitability as an optimal solution that protects the Irish seafood sector and fosters the goals of the European Union's CFP.

*Chapter 1* tracks the genesis and development, including reforms, of the CFP. Consideration is also given to other influential drivers of change, including climate change and the inevitable change in the way the EU will conduct its business in the future.

*Chapter 2* profiles the Irish fishing fleet, how fish resources are managed at a national level and where the Irish fleet catch and land their fish.

*Chapter 3* presents analysis on the profile and fishing patterns of the UK fishing fleet. North/south and east/west relations are strained by the Brexit process, and that has spilled over into north/south fishing arrangements and disputed fishing grounds. The effects of a hard Brexit on the fishing sector are set out and the significant impact on trade flows are analysed.

*Chapter 4* sets the international context for fisheries including trade, international fisheries management, prevention of illegal, unreported and unregulated fishing, and current international fisheries agreements, with a particular emphasis on the EU Norway agreement. Scenarios for fisheries matched to the potential Brexit scenarios are developed, analysed and ranked on suitability from an Irish seafood perspective. The criteria used to evaluate suitable solutions for the Irish seafood sector for each scenario are:

- access for Irish and other EU member states' fishing vessels to fish in UK waters;
- access to similar levels of fish stocks as heretofore;

- tariff-free trading arrangements between Irish and UK seafood markets (east/west and north/south);
- avoidance of displacement of other EU Member States fishing fleets from UK waters into the Irish fishing zone.

The core goal of the thesis is to establish if there is an optimum post-Brexit solution that fosters the principles of the CFP and protects our seafood sector. It is a principal concern that any solution protects the fabric of coastal communities, protects the environment and fish stocks, and supports a thriving seafood sector in Ireland.

# Chapter 1: Development of a Common Fisheries Policy

## Introduction

This chapter will provide an overview of the development of the Common Fisheries Policy. An understanding of the genesis of policy parameters at European, national and international levels is important to set a baseline for analysis of the options open to the Irish Government in the post-Brexit era in seeking an optimal solution that protects the Irish seafood sector and fosters the goals of the European Union's CFP

The era of animals ranging wild over the land in Europe is all but gone, and agricultural activity is, in the main, carried out on parcels of land in private or shared ownership. The landowner's ambition is usually to extract short-term benefit from that parcel of land by working it or renting it to a third party to work it. Fisheries are a shared, and often migratory, resource. That resource has to be environmentally, economically and socially sustained for the benefit of everyone sharing in the resource. The EU CFP has been developed to achieve those aims and provide a source of healthy food for EU citizens while also providing a fair standard of living for fishing communities. If the resource is correctly managed with long-term sustainability at its heart, it will continue to provide an endless source of protein.

In more recent years, and in the face of diminishing wild fish stocks, aquaculture (fish farming) has become an ever increasingly important seafood protein source not just in Europe but worldwide. Aquaculture is more akin to terrestrial farming and is generally carried out on the foreshore, in lakes or in man-made closed systems with recirculating water. On examination of the current CFP (EU Common Fisheries Policy, 2013) and its associated funding programme, the European Maritime and Fisheries Fund (EMFF) (European Maritime & Fisheries Fund, 2014), it is clear to see that in addition to wild fisheries, a strong emphasis is also placed on developing aquaculture by the European Union institutions. While the negative effects of Brexit will undoubtedly also be

experienced by the aquaculture sector in areas including market access and trade, this thesis will focus principally on wild fisheries which face many additional challenges.

## The Treaties of the European Union

Fisheries did not come up for a specific mention in the 1957 Treaty of Rome which came into force on 1<sup>st</sup> January 1958 (European Union, 1958). At that time, in post war Europe, the original six European Coal & Steel Community members had a relatively small proportion of fish in their diet and development of a more productive fishing sector was therefore not a priority. The original six Member States had little interest in fish stock conservation (Holden, 1994) and more emphasis was placed on agricultural produce with fisheries included under the agriculture umbrella. The treaty contained a clear legal basis for the establishment of a Common Agriculture Policy (CAP) and Article 38(1) of the treaty states:

*“The internal market shall extend to agriculture, fisheries and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term ‘agricultural’, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.”*

Whereas fisheries are presented as a subset of agriculture, Articles 38-44 of the Treaty of Rome provide a legal basis for the Common Fisheries Policy (CFP).

The objectives set for agriculture in Article 39 of the Treaty of Rome which applied to agriculture & fisheries products are:

- a) *to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;*

- b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;*
- c) to stabilise markets;*
- d) to assure the availability of supplies;*
- e) to ensure that supplies reach consumers at reasonable prices.*

The 1992 Maastricht Treaty (European Union , 1993) came into force on 1st November 1993 and provides a basis for a CFP separately to the CAP. The Maastricht Treaty also introduced the overall concept of subsidiarity which paved the way for the EU Commission to manage fisheries for the benefit of all EU member states. The objectives (a to e above) were reiterated in the 2007 Lisbon Treaty which came into force on 1<sup>st</sup> December 2009 (European Union, 2009) and indeed have remained practically unchanged for agriculture and fisheries to the present day, although the associated policies (CAP and the CFP) have seen some divergence from each other over that period. Article 3 of the Treaty on the Functioning of the European Union (TFEU) as revised by the Lisbon Treaty identified the conservation and management of marine biological resources as an exclusive EU competence. Co-decision (the European Parliament or the Council may not adopt legislation without the other's assent) was established as the ordinary legislative procedure (standard procedure for all EU decision making) for most areas of the CFP. It is noteworthy that one of the areas of competence excluded from co-decision and which remains a competence of the Council is the setting of fishing opportunities. Ministers and their officials often meet in marathon, through-the-night sessions at the December Council of Fisheries Minister's to set fishing opportunities for the following year.

## **Territorial Waters**

At the London Fisheries Convention of 1964, territorial waters of participating states (12 in total) was agreed to be 12 nautical miles (NM) and later ratified in the London

Fisheries Convention Treaty Series 1966 No1 (London Fisheries Convention Treaty Series 1966 No.1, 1964). In addition, the traditional fishing rights of certain states within the 12 NM zone of others was recognized and formalised within the document agreed at the convention. This *inter alia* formalised Ireland's right to fish within UK territorial waters. Access arrangements set at the London Fisheries Convention were later recognized in Annex 1 of the CFP regulation (Regulation (EU) No 1380/2013 of the European Parliament, 2013) rendering the London Fisheries Convention and the associated treaty somewhat redundant on this point as all the signatories were also EU Member States. In 2017 the UK became concerned that in a post-Brexit scenario, where the CFP would no longer apply and the UK could exclude non-UK fishing vessels, signatories to the treaty could claim access to certain UK territorial waters on the basis of the London Fisheries Convention. On 3rd July 2017 the UK Government gave formal notice of withdrawal from the London Fisheries Convention agreement. A notice period of two years was required and that notice period was intended to dovetail with the triggering of Article 50 (see Chapter 3). Whereas the Article 50 withdrawal period has since been extended, the UK London Fisheries Convention notice period expired on 3rd July 2019 and the UK automatically withdrew from the London Fisheries Convention on that date. However, the UK withdrawal from the London Fisheries Convention will have no implications while the UK remains an EU member state.

From 1972 through to 1983, the landscape for Irish fisheries changed significantly. Initiatives that were implemented for Irish fisheries over the previous two decades had started to pay dividends. In addition to private investment in larger fishing vessels, the Irish government offered financial supports for the introduction of new and/or replacement fishing vessels into the fishing fleet.

Immediately prior to, and following, Ireland's accession to the EEC in 1973 work on a CFP was progressed. However, even during this time, fish stocks were not considered a real shared resource that merited management at a European level and national fisheries management was considered an adequate measure. It is therefore not

surprising that it took a further ten years of work and negotiation before the common fisheries policy was finally agreed on the 25th January 1983 (Lado, 2016). Later, in 1976, Ireland and most other coastal EU member states extended their EEZs to 200 miles.

## Equal Access to Community Waters

Following applications for membership of the EEC from Ireland, UK, Norway and Denmark, the question of jurisdiction over fishing areas arose. The rich fishing grounds surrounding the UK and Ireland had been a traditional source of a large proportion of the catch of the six existing community members. An estimated 90% of the fish landed by the six had been caught outside of their own territorial waters. By Article 2.1 of Regulation 2141/70 (Regulation (EEC) No 2141/70 of the Council, 1970) it was established

*Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment of other Member States.*

*Member States shall ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.*

This subsequently became a constituent part of the *Acquis Communautaire* (the accumulated legislation, legal acts and court decisions that constitute the body of European Union law) that all candidate countries had to adopt to achieve membership of the EEC. The regulation came into effect just hours before accession negotiations with Ireland, UK, Norway and Denmark commenced and it has remained in place to the present day. It is often seen as a bone of contention by Irish fishermen who accuse

Ireland's accession negotiators of turning their backs on the Irish fishing industry in favor of agriculture and structural funds. Their argument is that Ireland's rich fishing waters would have been more valuable in the long-term, but the reality is that it was enshrined in the *acquis* and a candidate country either accepts the *acquis* in full or does not join. Another reality is that Irish fishermen did not keep adequate historical catch records and official data records relatively low catches by the then underdeveloped Irish fishing fleet (Ireland had no deep sea fishing fleet at that time). 'The Sea Around Us' project conducted at the University of British Columbia (Sea Around Us, 2016) allows the reconstruction of Irish fisheries data from 1950 to present day (currently available up to 2014). These data include official reported data and adjustments for underreporting. Examination of these data for Ireland's pre and post EEC accession years clearly shows that Ireland did not lose out on fishing opportunities to other EU Member States after joining the EEC in 1973.

Although it may be little consolation to the naysayers, and often ignored by them, the accession negotiators did secure a deal to reserve access to the 12 NM zone for Irish fishing vessels and foreign fishing vessels with a history of traditionally fishing in those areas (those allowed under the London Fisheries Convention<sup>1</sup> which also recognized neighborhood or *Voisinage* arrangements) (Farnell & Elles, 1984). This arrangement, which was initially introduced for a period of ten years, has since been renewed on a rolling basis and remains in force today. In the absence of this arrangement, fishing vessels from other member states could fish up to the Irish coastline. This is noteworthy in the context of Brexit and will be revisited later.

EU Regulation 170/83 (Council Regulation (EEC) No 170/83, 1983) sets out, in the EU context, the conclusions of the 1964 London Fisheries Convention to establish exclusive 6 and 12 nm zones and set out entitlements of other Member States to fish in these

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<sup>1</sup> Spain which was entitled to fish in the Irish 12nm zone on the basis of traditional fishing patterns and following the London Fisheries Convention later gave up that entitlement as part of Spain's EU accession negotiations.

zones on the basis of established traditional fishing patterns. In the context of the pre 1973 absence of a deep sea fishing fleet in Ireland, it is noteworthy that, in general, Irish fishermen fished only in Irish waters and arrangements within the 12 NM zones of other countries were of little value or interest to Irish fishermen. EU Regulation 170/83 made provision for Irish vessels to fish in the UK 12 NM zone while it underpinned access for France, UK, Netherlands, Germany and Belgium to fish in the Irish 6-12 NM zone. These arrangements continue to be in place to the present day.

Between 12 NM and 200 NM, all EU member states were afforded rights to fish in each other's zones but despite the earlier investment, Irish fishing vessels were generally small and incapable of prosecuting off shore sea fisheries.

### **Access to Third Country Waters**

During the mid-1970s many countries, including European countries, made declarations to extend the territorial limits to 200 NM. This led to difficulties for some European countries that had traditionally fished in third country waters, and in some cases led to disputes on the fishing grounds (for example the Icelandic cod wars were a series of confrontations between the UK and Iceland related to access by UK fishing vessels to rich cod fishing grounds around Iceland which ultimately resulted in the UK losing access to the grounds that UK fishermen had fished since the 1500s) (Jóhannesson, 2004).

Negotiations on access arrangements to third country waters, including Norway which by now had decided to remain outside of the EEC, were carried out by the EU Commission on behalf of EU Member States. This topic is relevant in the context of Brexit and will be revisited later.

## Fair Distribution of Scarce Resources Between Competing Users

During CFP negotiations it became apparent that a system for the fair distribution of fishery resources among competing EU member states would have to be devised.

Allocation of fishing resources was to be by means of Total Allowable Catch (TAC). TACs were set on the basis of traditional fishing activities and official records of outtakes were used as a basis to establish distribution keys and the concept of *Relative Stability* was thus enshrined in the process (Morin, 2000). Under relative stability a fixed percentage of the Total Allowable Catch for each fish stock is allocated to each member state based on that member state's fishing track record of that particular stock in that particular geographical area. Whereas it is possible for relative stability keys to be amended, the norm is that relative stability does not change from year to year other than if the *Hague Preferences* (see below) are invoked.

For relative stability reference years, Ireland's official fish landing data displayed low records of fishing activities in Irish waters and little or no history of fishing activities in third country waters. Official recording of landings seem to have been somewhat unreliable in the 1960s, 1970s, and 1980s with anecdotal evidence that fishermen were keen to hide the true picture of their fishing operations from the Irish tax authorities. Accordingly, when the initial allocation of stocks was made in 1983 Ireland's allocation was low when compared to other member states which, in turn, led to low relative stability keys for Ireland in many fish stocks. To put this in context for important Irish fisheries, for example, the initial Irish allocations of pelagic fish (mackerel and herring) in Irish waters was 23% of the TAC and the initial allocations of demersal fish (cod, haddock, saithe, whiting, hake, plaice and sole) in Irish waters was 18%.

**The Hague Preferences** often arise in the context of discussion and negotiation at the December Council of European Fisheries Ministers. In 1975, Ireland, the UK and Greenland had voiced concerns about the calculation of relative stability at the pre CFP

negotiation phase. In Ireland's case, the issues related to the under development of the fishing fleet in the reference years and the substantial burden placed on Ireland to control the fishing activity of all member states fishing fleets operating in the Irish EEZ (Farnell & Elles, 1984).

Ireland made a robust case to be allowed scope to develop its fishing fleet (in particular the pelagic fleet which target Atlantic mackerel, herring, horse mackerel, etc.). Irish negotiators pitched to compensate for an underdeveloped fishing fleet in the reference years, given Irish dependence on fishing grounds close to the Irish coast at that time, by facilitating development of the Irish fishing fleet and the introduction of larger fishing vessels that could fish further from the Irish coast.

Dr. Garrett Fitzgerald was the Irish Foreign Minister of the day. His ability, affability, appetite for hard work, and genuine idealism, reinforced by his fluency in French, made a startling impact on European foreign ministers and officials, unaccustomed to Irish performers of his calibre (Lee, 1989). He had succeeded in obtaining cast-iron assurances that the development of the Irish fishing industry would be dealt with sympathetically (Farnell & Elles, 1984). In recognition of the issues presented by Ireland, and similar issues presented by UK and Greenland, an agreement was made in the Hague which guaranteed those member states a minimum quota of certain fish stocks if the TAC calculation fell below an agreed trigger point. Greenland has had self-rule since 1979 and has not been a member of the EU since 1985. As a third country, it cannot now avail of the Hague Preferences.

The Hague Preferences currently permit Ireland and/or the UK to invoke a system that results in additional quota, over and above that which Ireland would be entitled to under its relative stability key, being allocated if the TAC drops below a certain threshold. The Hague Preferences constitute an integral part of relative stability (Lado, 2016) but TAC allocation is a zero-sum equation, so any increase granted under

the Hague Preferences has to be ceded by other EU member states (Germany, France, Belgium and the Netherlands). It is therefore understandable that invoking of the Hague Preferences is often met with resistance from the member states that have to give up quota, and invocation is often met with proposals to eliminate the Hague Preferences as a tool available to Ireland and UK. Detail on the calculation of relative stability keys and metrics for the application of Hague Preferences are beyond the scope of this thesis but can be found in Holden (1994).

Post-Brexit, as it currently stands, the UK will not be able to rely on the Hague Preferences. This situation is, of course, subject to change as an element of Brexit/post-Brexit negotiations. The UK is Ireland's most important ally within the European Council and Council of Ministers in Brussels (O'Brennan, 2019) but in a post-Brexit scenario, Ireland will have to fight alone to keep the Hague Preferences in place. This merits further attention later.

## **Conservation and Management of Fishery Resources**

Measures to manage fish stocks, including capping fishing effort and setting technical measures (such as defining the fishing net mesh size deployed to target certain species in particular areas), protection for juvenile fish (by introducing minimum landing sizes for fish and designating areas that are closed to fishing on a permanent or temporary basis) were, and continue to be, negotiated and agreed. Such measures are cornerstones in the implementation of the CFP today (Lado, 2016).

To measure the achievement of CFP conservation goals, performance metrics are required. These include assessment of the potential fishing effort that can be deployed (by measuring the capacity of the EU fishing fleet at a national level), recording outtakes of fish and implementing a control and enforcement regime to oversee implementation of CFP measures. The balance between fishing capacity and fishing opportunities later became, and remains, a key metric and member states are obliged

to maintain a balance between the size of their fishing fleet and the fishing opportunities available to that fleet. In the event of an imbalance the member state is obliged to implement a remediation plan to restore the fleet/opportunities balance. That remediation plan may include the removal of fleet capacity with public aid (decommissioning) provided under the CFP funding programmes. Implementation of these measures is underpinned by two legal instruments. EU Regulation 170/83, also referenced earlier in the context of establishing exclusive 6 and 12 mile zones, broadly included the principles for the conservation and management of a common fishery resource while the other, EU Regulation 172/83 (Council Regulation (EEC) No 172/83, 1983), sets out technical measures for the conservation of fishery resources.

## Reforms of the Common Fisheries Policy

From 1983 to date the CFP has seen a number of reforms at approximately ten year intervals (1992, 2002 and 2013). These reforms have occurred synchronously with CAP reforms underpinning the close links between the two policies. The principles at the core of the CFP have survived through the reforms, albeit with some adjustment.

**The 1992 reform** was limited in its ambition and conservative in approach and although some problems with the CFP had already been identified it did little to address those problems opting instead for the preservation of the *status quo* (Lado, 2016). The 1992 basic regulation's (Regulation (EEC) No 3760/92, 1992) principle goal was to address the imbalance between fishing fleet capacity and the fishing opportunities available. The regulation introduced the concept of 'fishing effort' and access to resources through a licensing system. This was significant to Ireland as, while a shipping register for large ships (including large fishing vessels) was maintained in Ireland up to that point, there was no register of all fishing vessels. Ireland would have to regularise its entire fishing fleet and record characteristics for each vessel.

**The 2002 reform** was delivered in December 2002 with three regulations (Council Regulation (EC) No 2371/2002, 2002) (Corrigendum to Council Regulation (EC) No 2369/2002, 2002) (Council Regulation (EC) No 2370/2002, 2002) establishing measures to address depleting fish stock resulting from overfishing and providing for a reduction in the EU fishing fleet by means of a funded decommissioning (scrapping) scheme.

The principle goal of the 2002 reform, and one of the founding principles of the CFP, was to underpin a sustainable future for the fisheries sector and secure adequate incomes and jobs for fishermen (Lado, 2016). The reform also aspired to preserve the balance of marine biological resources and ecosystems while also introducing the long-term approach to fisheries management that we know and still use today, including multiannual recovery plans (for stocks outside safe biological limits) and multiannual management plans (for other stocks).

At the same time, the 2002 reform also established the European Fisheries Control Agency (EFCA) whose role would be to control fishing activities and oversee enforcement of compliance with the CFP and Regional Advisory Councils (RACs) comprised of various marine stakeholders to allow those stakeholders, including fishermen, to have input into the development of future policy. Another key impact of this reform was that it put an end to the policy of grant aiding new fishing vessels to enter the EU fishing fleet.

**The 2013 reform** was a significant reform and was based on three pillars:

- The new CFP (Regulation (EU) No 1380/2013 of the European Parliament, 2013)
- The common organisation of the markets in fishery and aquaculture products (Regulation (EU) No 1379/2013 of the European Parliament and of the Council, 2013)
- The European Maritime and Fisheries Fund (EMFF) (European Maritime & Fisheries Fund, 2014)

The 2013 reform introduced multiannual ecosystem-based management, to complement the concept of multiannual plans that were introduced in the 2002 reform, with multi-species and fisheries plans in the European geographical areas. It introduced a unique structure, within the EU context, of regional decision making in association with stakeholders and advisory bodies. (e.g. the North Western Waters Advisory Council) with the aim of bringing the decision-making process closer to the fishing grounds. This is a good example of practical application of the EU policy of subsidiarity.

Following a very effective 2010 political campaign (Fish Fight) initiated by TV celebrity chef Hugh Fearnley-Whittingstall, widespread reforms to the policy of discarding fish were introduced and the landing obligation (which requires fishermen to land all fish and cease the practice of discarding by 2019) was tabled for introduction on a phased basis. The concept of setting targets at Maximum Sustainable Yield (MSY) for each stock and all fisheries by 2020 was also introduced.

The reform obliges member states to adjust their fishing fleet capacity so that they are in balance with their fishing opportunities and small scale fisheries were identified for special favourable attention under the reformed policy. In addition, the exclusion of other fishing fleets (other than those with established traditional fishing rights) from the 12 NM zone of a member state was extended under Regulation (EU) No 1380/2013 until 2022.

To underpin the above measures, additional data collection, sharing of information (relating to fish stocks, fishing fleets and the impact of fishing activities) and control and enforcement obligations were placed on member states.

The common organisation of the markets in fishery and aquaculture products was introduced with the intention of encouraging producers to provide the right product for the right market at the right time and achieve the best available price for that product. As a result of the reform, the European consumer can now expect to see common marketing standards with uniform characteristics for seafood sold in the EU.

The financial instrument in support of the CFP reform (the European Maritime and Fisheries Fund 2014-2020) provides supports for the transition to sustainable fishing. It includes supports for coastal communities diversification effort, supports creation of new jobs in the sector, strives to improve quality of life in coastal communities, supports sustainable aquaculture developments and improves the common organisation of the markets for fishery and aquaculture products through the provision of funding to producer organisations.

## Climate Change

Climate change is drastically altering how the EU does its business in the fisheries policy area. Fluctuation in both the range and distribution of fish stocks in our oceans has been attributed to climate change. In Ireland, a team in the Marine Institute (MI) in Galway (led by Dr. Paul Connolly) is conducting ongoing assessment of the likely impacts of climate change on the seafood sector.

In chapter 5 of the Food and Agriculture Organisation of the United Nations (FAO) Fisheries and Aquaculture Technical Paper 627 (Food and Agriculture Organisation of the United Nations, 2018) Peck and Pinnegar detail the impact of climate change on North Atlantic and Atlantic Arctic marine fisheries and identify, *inter alia*, changes in ocean temperatures leading to changing distribution of fish stocks with impacts on recruitment and productivity of fish stocks. Increasing acidification of the oceans and alteration in zooplankton distribution is already having negative effects in the oceans. Climate change is expected to have grave geopolitical and economic consequences

alongside with a probable threat to food security. Increasing world population growth is also expected to put pressure on fish markets and lead to higher fish prices.

Projections suggest that if the current trend in climate change continues, more than 800 species of marine fish and invertebrates are expected to shift towards the poles 65% faster than if the low-emission target of two degrees celsius is achieved (Gattuso, et al., 2015). Some of these effects are already evident in Europe and a shift in distribution of marine species has occurred. ICES provided advice to the European Commission in 2017 detailing that 16 out of 21 fish species examined have shown changes in their distribution across the north east Atlantic since 1985. The drivers of change in distribution are linked to environmental conditions - mainly sea temperature - but fishing also played a role for some species. Hake, mackerel, anchovy, cod, herring, horse mackerel, plaice and common sole have shifted their relative distribution between different management areas or into areas not currently covered by TAC's. Continued monitoring of the spatial distribution of fish stocks is essential to support future management. With the shift in stock distribution comes an expectation that the states with new stocks now appearing off their coasts should get a share in that fishery. This has been evident in the annual Coastal States North Atlantic mackerel negotiations. The EU often struggle to apply available policy and fisheries governance instruments to handle this change effectively (Harte, et al., 2019).

## **A Change in How the EU Does Business**

The EU has faced a series of serious issues in recent years, including the economic crises, the refugee crises, strengthening the Schengen system and differing views on EU enlargement. The EU responses to the Euro and migration crises may have alleviated the immediate danger facing the EU, but the political fallout from the polycrisis, in the form of populism, Euroscepticism, and deep public dissatisfaction, remains acute (Dinan, 2019). The EU's capacity to absorb shocks had strengthened as the EU had been tested and contested through crises (Laffan, 2018). The way the EU carries out its

business has also been tested and stressed. The Community method *modus operandi* of conducting business at EU level (including advances made in the development of the CFP) has, until relatively recently, been based on qualified majority voting and, in the main, on consensus agreements made between member states usually negotiated by officials in the first instance and later formally agreed at Ministerial councils. This process has always involved some give and take and willingness to compromise. The multilateral bargaining forum facilitated both functional and normative adaptations by the member states (O'Brennan, 2019). This *modus operandi* now faces a danger of being eroded as Brexit puts additional strain on the system. There is a marked shift away from the Community method (which includes a role for supranational institutions and non-state actors (Jensen, 2016)) towards intergovernmentalism which sees decision making moving away from supranational organisations and a more central role being taken by national governments (Cini, 2016). A move towards intergovernmentalism, and possible zero-sum agreements seems to herald a retrospective step in terms of developing the EU project.

In the Brexit negotiations we have witnessed that the theories of international relations and political economy: realism, liberalism and constructivism will come into play. The EU 27 has negotiated as one unit despite the best efforts of the UK to divide and conquer and the particular UK ploy to isolate Ireland with accusations of obstructing progress by insisting on retaining the backstop while the reality was that the UK failed to propose any alternative to the backstop.

Liberalism views international relations as driven by global economic interdependence (Hix & Hoyland, 2011). Liberalists are not concerned about where the geographical borders of a state lie, but rather how the states can co-operate to enhance the economic return to the collective. To achieve this economic goal, liberalists are willing to see closer co-operation and the formation of international institutions between states e.g. set standards and enforce trade rules to enhance the economic viability of

the collective. The EU/UK Brexit negotiations have seen the EU 27 bond strengthened and close cooperation is evident and is paying dividends. It is conceivable that a union which was in danger of disintegration at the commencement of Brexit leverages the adage of “what doesn’t kill you makes you stronger” to build a closer future bond.

Realism sees international relationships between states as a continuous struggle for power and domination between states in a system of anarchy (Hix & Hoyland, 2011) with each state predicting how others are likely to behave. Realism also sees close cooperation between states as difficult in some areas (e.g. security) and sovereign governments continue to make their own decisions on the difficult issues. The neorealist approach that Boris Johnson has adopted to Brexit is a working example of the issues that can arise. The Intergovernmental theory of EU politics has relied on this model to date, with sovereign states often opting out of EU wide arrangements (e.g. Ireland and the UK opting out of the Schengen Area).

Neorealism presents many challenges in advancing the EU project and EU policy development, including CFP development, becomes almost impossible in a structure where co-decision has been adopted as the ordinary legislative procedure and neorealist positions are adopted by member states.

## **Conclusion**

The CFP had its genesis in the Common Agricultural Policy and still shares some common goals. Both aim to provide an environmentally, economically and socially sustainable source of healthy food for EU citizens, while supporting a reasonable living standard for the fishermen and farmers of Europe. The EU treaties provide the overarching framework for the CFP. The treaties also provide a platform for the sharing of resources among EU member states, and empowering the European institutions to make decisions pertaining to the 200 NM waters of member states pooled to form EU Community waters and systems that have been developed to underpin the fair

distribution of resources in Community waters and in third country waters. The CFP has been reformed, and will be further reformed, to bolster the conservation and management of aquatic resources.

Reform of the CFP has ensured the guiding principles of the policy have been maintained while the key priorities are identified as ensuring that EU fishing and aquaculture sectors are environmentally, economically and socially sustainable, marine biological resources are protected and exploited at maximum sustainable yield and the discarding of fish is discontinued.

The CFP is not without its detractors but it must be acknowledged as a successful policy to date. Climate change is a challenge to the CFP and adaptation and mitigation measures must be included as an integral part of the CFP going forward. Brexit, however, poses a threat to the way the EU operates and the development of policies including the CFP.

## **Chapter 2: Outline of the Irish Seafood Sector**

### **Introduction**

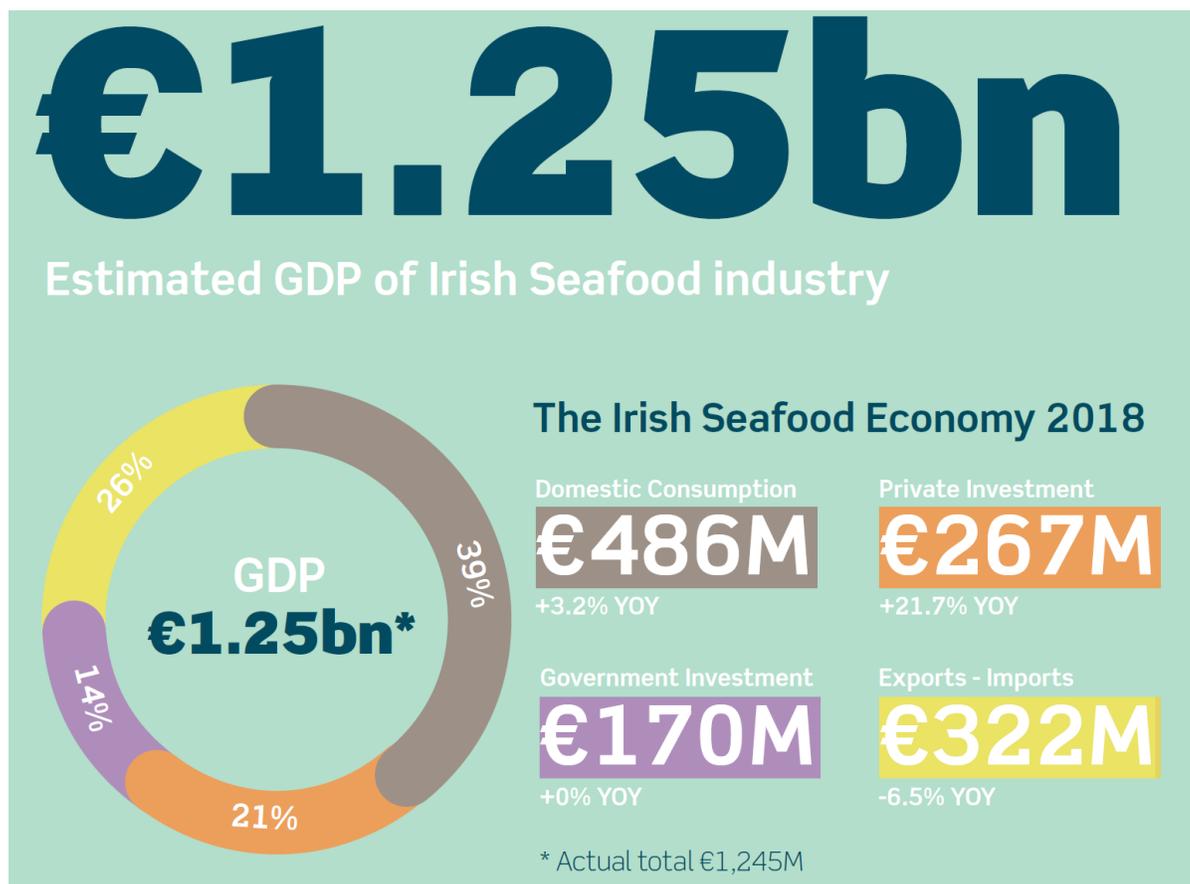
This chapter presents an overview of the structure and management of the Irish Sea-fishing fleet, the fishing grounds prosecuted by the Irish fishing fleet and the fleets of other EU member states that fish in the Irish Exclusive Economic Zone (EEZ). Arrangements for allocating fishing quotas to individual Irish sea-fishing boats are discussed with particular reference to how the landings from those vessels are recorded to ensure that Ireland remains within the Total Allowable Catches (TACs) allocated by the EU Commission on foot of decisions made at the December Council of Fisheries Ministers annual quota meeting. Key statistics on catching patterns, landings, employment in the seafood sector (including inshore fisheries, aquaculture activities and seafood processing) as well as the value of the sector are presented. Trade in seafood (imports and exports) is addressed and the fisheries support infrastructure provided through the state-owned and operated Fishery Harbour Centres located around the Irish coast is described. An understanding of these baselines is crucial to the analysis of the effects of Brexit.

### **The Sector at a Glance**

#### **Financial Overview**

The Irish Seafood sector plays a significant role in the Irish food industry with a value of €1.25 billion in 2018 while sea fisheries are worth €401 million per annum on fish landings from both Irish and non-Irish fishing vessels into Irish ports and harbours. Government investment in the sector amounted to €170m in 2018 while private investment was €267m in 2018 which was up 22% on 2017 (Bord Iascaigh Mhara, 2018).

Figure 2.1 Irish Seafood Sector 2018 Financial Overview



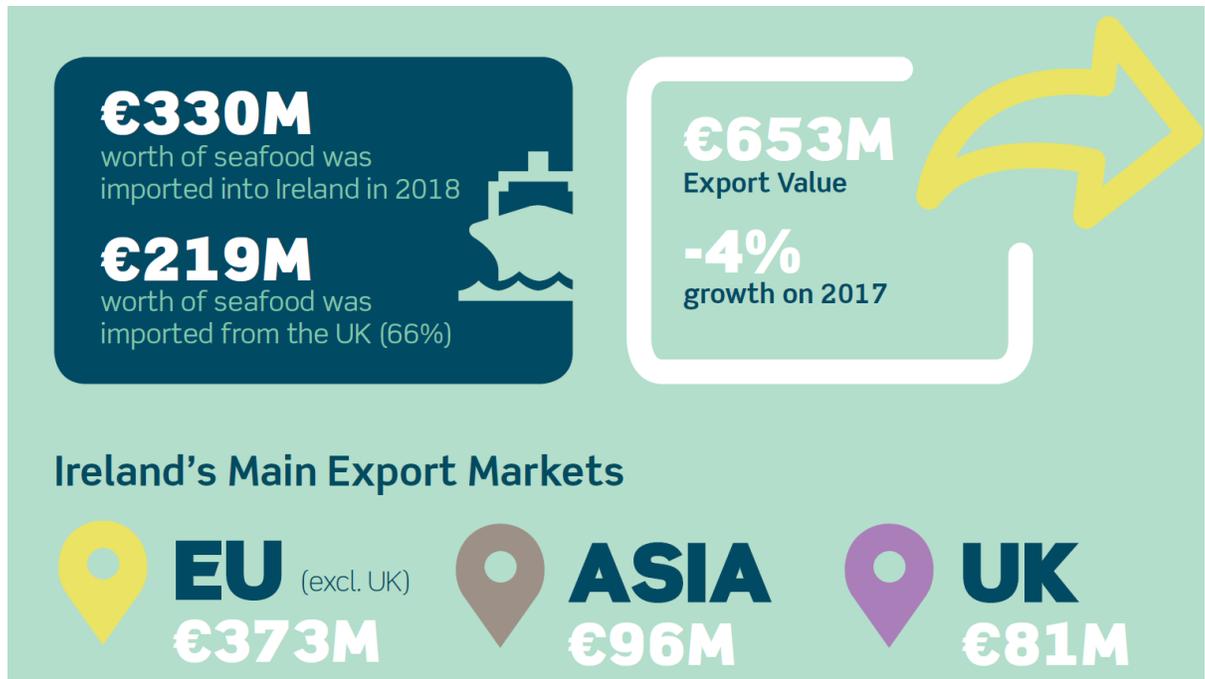
Source: (Bord Iascaigh Mhara, 2018)

### Trade

Exports of Irish seafood in 2018 reduced by 4% on the previous year to €653M. This dip in the trend is due to a number of challenges across the seafood category but a particular challenge was noted in salmon farming which declined by 36% as the industry struggled to overcome limits on production capacity (Bord Bia, 2019). The Asian market has become an increasingly important market for Irish Seafood, with strong demand for shellfish (Razor Clams, Crab, Lobster, Whelk, etc.). Seafood exports to Asia continued to grow with an increase of 52% in value in 2018. Exports to Nigeria increased to €35m in 2018 which was a 50% increase on 2017.

Imports of seafood into Ireland reduced by 2% to €330m and amounted to 143,800 tonnes.

*Figure 2.2 Irish Seafood Trade 2018*



Source: (Bord Iascaigh Mhara, 2018)

Irish seafood exports account for 5% of the total food and drink exports from Ireland. Bord Bia shows that seafood exports have experienced the largest increase in export value (Figure 2.3) in the food and drink sector over the period 2009 to 2016 with an 89% increase in value and a 37% increase in volume over the same period (Figure 2.4). However that growth trend was reversed somewhat in 2018 with a 4% decrease in value. Seafood exports to the UK in 2018 were valued at €81m or 12.4% of total seafood exports from Ireland. Seafood imports from the UK to Ireland were valued at €219m in 2018 or 66% of total Irish seafood imports (Board Iascaigh Mhara, 2018). In the context of Brexit, the UK remains a significant seafood trading partner. Seafood imports from the UK are important as a source of raw material for Irish seafood processors. Ports like Grimbsy in the UK are recognised seafood hubs for third country seafood imports to the EU. It is likely, that in the event of a hard Brexit, alternative routes may be established to allow such third country trade continue without the

double imposition of tariffs. That aside, the UK is a significant seafood trading partner and account must be taken of this when considering the effects of Brexit on the Irish seafood sector.

*Figure 2.3 Growth in Value (€) of Irish Seafood Exports 2009 to 2017*



Source: (Bord Bia, 2019)

*Figure 2.4 Growth in Volume of Irish Seafood Exports 2009 to 2017*



Source: (Bord Bia, 2019)

## Employment

The Irish Seafood sector provides direct and indirect employment for 14,359 people around the coast of Ireland, with total direct employment of 9,048 and 5,311 indirectly employed in the seafood sector. Of the 9,048 direct employees, 3,231 were employed in fisheries, 1,925 in aquaculture and 3,892 in seafood processing.

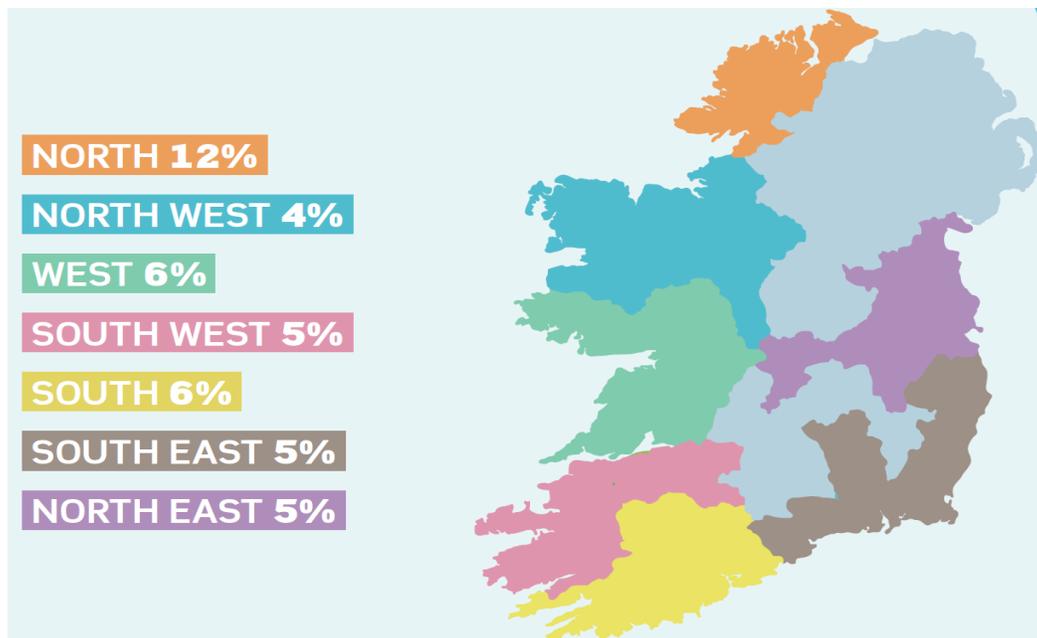
*Figure 2.5 Irish Seafood Employment 2018*



Source: (Bord Iascaigh Mhara, 2018)

Coastal communities in Ireland are highly dependent on the seafood sector as an employer and for generation of economic activity. In the North West 12% of total employment is provided by the seafood sector. In Killybegs, the principal fishing port in the North West, the seafood sector accounts for 82% of economic activity (GDP).

*Figure 2.6 Dependence on Employment in the Seafood Sector by Region*



Source: (Bord Iascaigh Mhara, 2018)

## The Irish Sea-fishing Fleet

According to the Licensing Authority for Sea-fishing Boats, there were 2005 (including aquaculture work boats) registered sea-fishing vessels in the Irish sea-fishing fleet on 31<sup>st</sup> December 2018 (Licensing Authority for Sea-Fishing Boats, 2018). The total capacity of the Irish sea-fishing fleet expressed in Gross Tons (GT) (measure of volume of a sea-fishing vessel) and Kilowatts (Kw) (measure of engine power of a sea-fishing vessel) was 63,914 GT and 188559 Kw on 31 December 2018 (Licensing Authority for Sea-Fishing Boats, 2018). Regulation (EU) No 1380/2013 sets Ireland's Fishing Capacity Ceiling in terms of gross tonnes (GT) and Kilowatts (kW) for the fishing fleet. Ireland's fishing fleet capacity ceiling was calculated by taking Ireland's Reference Level, established on 1 January 2003 by EU Council Regulation 2371/2002, and adding increases in tonnage granted under the "safety tonnage" provisions that applied to 31 December 2013, and subtracting any exits from the fleet financed by public aid, i.e. through the Decommissioning Schemes. Taking into account these adjustments Ireland's fleet ceiling stood at 77,568 GTs and 210,083 Kw on 31<sup>st</sup> December 2018 (Licensing Authority for Sea-Fishing Boats, 2018).

Fleet ceilings were set for each EU member state's fishing fleet to cap the maximum fishing effort by EU sea-fishing vessels in EU waters. Ireland (and all other EU member states) is obliged to ensure that the fishing capacity of its fleet does not exceed the fishing capacity ceiling set. Entries into, and exits from, the Irish sea-fishing fleet are carefully managed by the Registrar General for Sea-fishing Boats (head of the licensing authority for sea-fishing boats). At 31<sup>st</sup> December 2018 there was 14,337 GTs and 12,265 Kw held "off register" and therefore not assigned to active sea-fishing boats (Licensing Authority for Sea-Fishing Boats, 2018).

The Licensing Authority for Sea-fishing Boats was established under the Fisheries (Amendment) Act 2003 (Government of Ireland, 2003). The licensing authority is independent in the exercise of performing the role of licensing sea-fishing boats and is

subject to domestic and EU law and policy directives given in writing and laid before the Houses of the Oireachtas by the Minister.

### **Irish Sea-fishing Fleet Segmentation**

The Irish sea-fishing fleet is divided into five segments (two of the five segments have further sub-segments) with transfer of capacity between segments and between sub-segments prohibited. Accordingly, a sea-fishing boat being introduced into a fleet segment must be compensated by the withdrawal of at least the same amount of capacity from the same segment/sub-segment (the Aquaculture segment is not subject to the entry/exit regime). Figure 2.7 shows the segments and sub-segments that are subject to the entry/exit regime along with the number of vessels in each segment at 31<sup>st</sup> December 2018. Restrictions apply to capacity in some of the segments and sub-segments below (e.g. capacity in the Polyvalent Potting sub-segment cannot be sold or traded but it can be passed on to an immediate family relative to continue a tradition of fishing by means of pots only).

### **Ireland’s Sea-fishing Fleet by Segment and Sub-segment**

*Figure 2.7 Irish Sea-fishing Fleet Segments*

<b>Segment</b>	<b>Sub-segment</b>	<b>No of Vessels</b>
Refrigerated Seawater (RSW)		23
Beam Trawler Segment		10
Polyvalent Segment		1,721
	vessels under 18m in length overall	
	vessels equal to or over 18m in length	

	overall	
	Scallop sub-segment	
	Potting sub-segment	
Specific Segment		153
	Scallop sub-segment	
	Specific general sub-segment	
Aquaculture Segment		98
<b>Total</b>		<b>2005</b>

Source: (Licensing Authority for Sea-Fishing Boats, 2018)

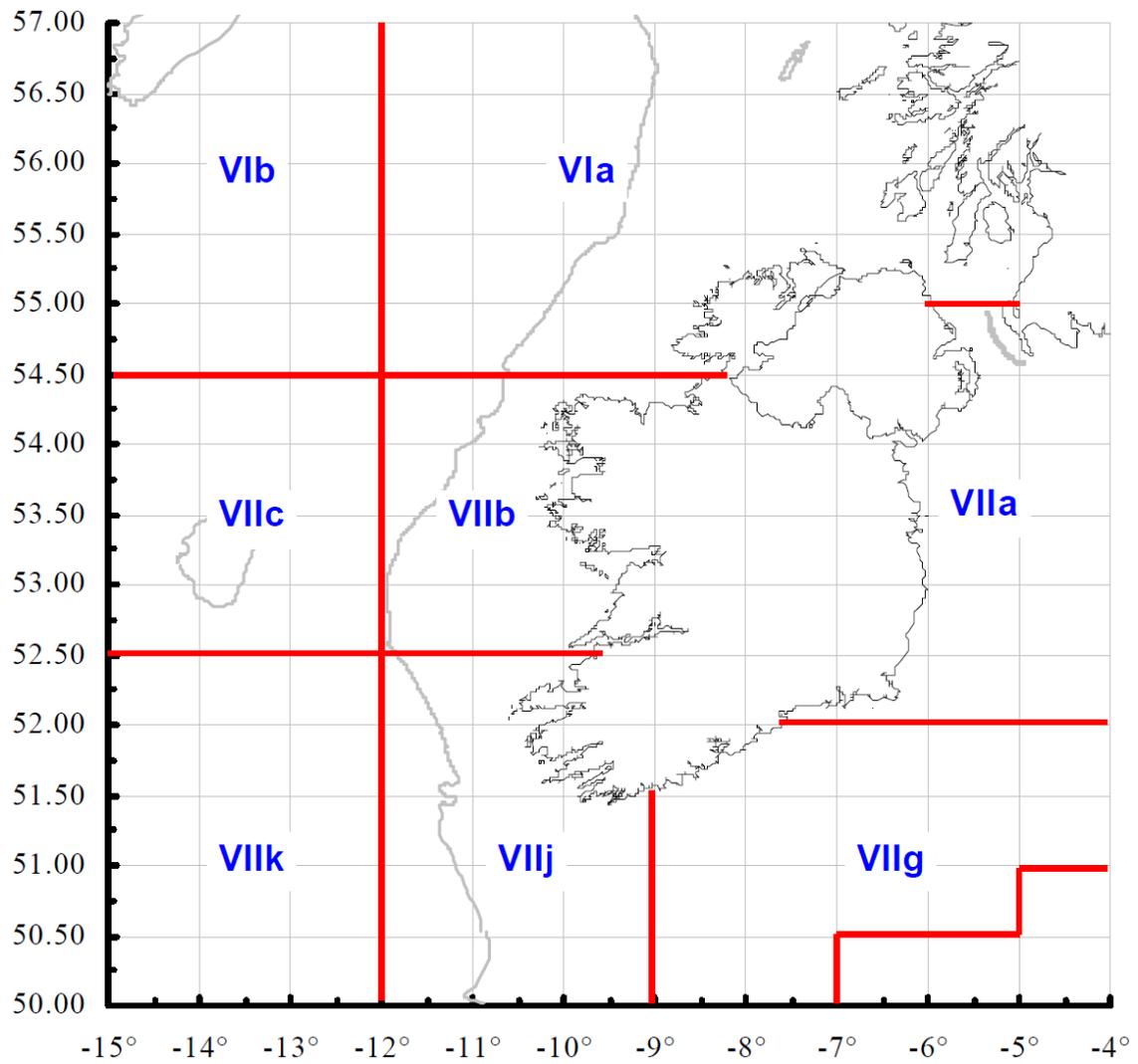
Approximately 1,500 of the 2,005 vessels could be considered inshore fishing vessels. These are small vessels that fish close to the coast and generally return to port at the end of the fishing day. While inshore vessels have access to quota species, they predominantly target non-quota species such as Lobster, Crab, Razor Clams, Whelk, etc. Sea Fisheries Protection Authority (SFPA) landing data for the Irish fishing fleet (Sea Fisheries Protection Authority, 2018) show that the 400 larger vessels account for the bulk of fish landings by Irish sea-fishing boats. These 400 sea-fishing boats generally fish further off shore, undertake fishing trips that last a number of days and have the capacity to fish and land large volumes of fish. The remainder of this chapter will concentrate on the activities of these 400 larger sea-fishing boats.

## The Fishing Grounds

The waters of the EU are mapped and referenced with management blocks devised by the International Council for the Exploration of the Sea (ICES) (International Council for the Exploration of the Sea , n.d.). The ICES divisions around Ireland are shown in Figure 2.8. Restrictions often apply to TACs based on these ICES divisions, for example

separate TACs apply to the area east of the 4° line of longitude and west of that line. A TAC cannot be transferred across the 4° line or for example fishing for certain species may be prohibited in a particular functional unit based on scientific data showing a recovery requirement for that stock in that particular functional unit. Subject to any restrictions imposed it is open to EU fishing vessels to take their catch from EU waters. In the share out of fishing opportunities, Ireland receives TACs for over 40 commercial fish stocks.

*Figure 2.8 Map of ICES Divisions around the Irish coast*



Source: BIM

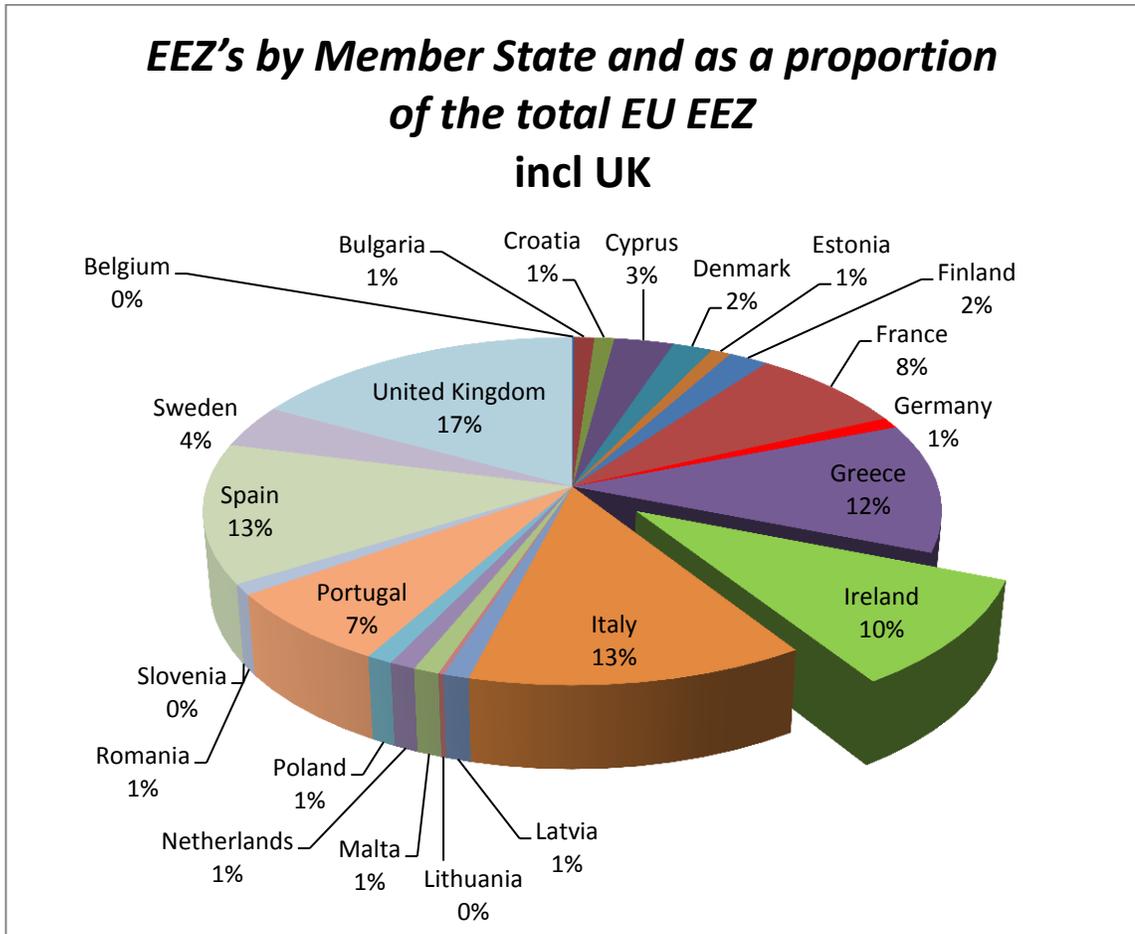
## What are European Union Waters?

EU waters are the composite waters out to 200 NM from the baselines of each EU member state. Under Article 5 of EU Regulation 1380/2013 on the CFP (EU Common Fisheries Policy, 2013) member states are authorised, until 2022, to restrict fishing within the 6 NM to 12 NM zone of their coast to vessels that traditionally fished those waters and are listed in Annex 1 of the regulation. Member states have national competence over waters in the 0 NM to 6 NM Zone although Ireland has a neighbourhood arrangement (recognised within the CFP) with Northern Ireland to allow reciprocal access to each other's 0-6 NM zone. It is noteworthy that the operation of this "Voisinage" arrangement was found not to have a basis in Irish Statute in a Supreme Court judgment in 2016 and the arrangement was suspended in the Irish 0-6 NM zone pending the commencement of the Sea Fisheries (Amendment) Act 2019. This is significant in the context of Brexit and will be covered in detail in chapter 3.

## The European Union Exclusive Economic Zone

The European Union's EEZ currently stands at 4,371,100 km<sup>2</sup> taking the product of individual member states EEZ's (including the North East Atlantic, Mediterranean, Baltic and North Seas but excluding overseas territories). Ireland's EEZ is 437,500 km<sup>2</sup> which currently accounts for 10% of the overall EU area. That percentage would of course change in the event of a UK withdrawal as a member of the EU. Figure 2.9, which has been produced using data from the EU Commission, shows the percentage of each EEZ as part of the total EU EEZ.

*Figure 2.9 EEZ's by EU member state and as a Proportion of the Total EU EEZ Including UK*



Source: (Department of Agriculture, Food and the Marine, 2018)

The Irish EEZ contains some of the richest fishing grounds in Europe which is clearly the reason that other EU member states fishing fleets carry out a significant amount of fishing in our EEZ.

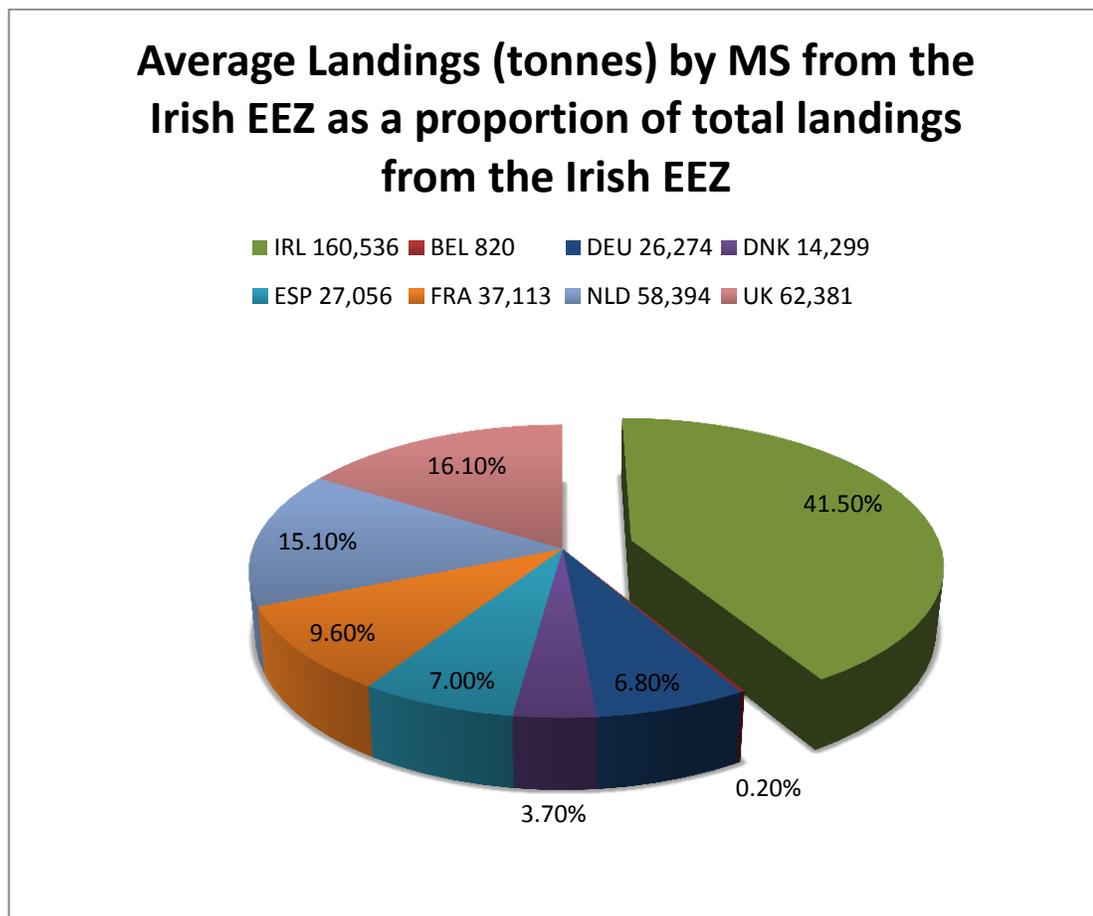
The Department of Agriculture, Food & the Marine (DAFM) in conjunction with the Marine Institute analyses data on landings from the Irish EEZ, but as fish landings are recorded by the SFPFA with reference to ICES statistical areas rather than for the EEZ

there is a considerable amount of analysis required to compile exact fish landing figures for the Irish EEZ.

The Marine Institute, in looking at the landings (TAC species only) exclusively from the Irish EEZ, established that the average landings of all species from the Irish EEZ over the period 2011-2015 amounted to just under 387,000 tonnes with an approximate value of €444 million.

The Marine Institute analysis also established that Irish registered sea-fishing boats accounted for 42% of those landings by weight with UK sea-fishing boats accounting for 16%, Dutch 15%, French 10% and Spanish 7%.

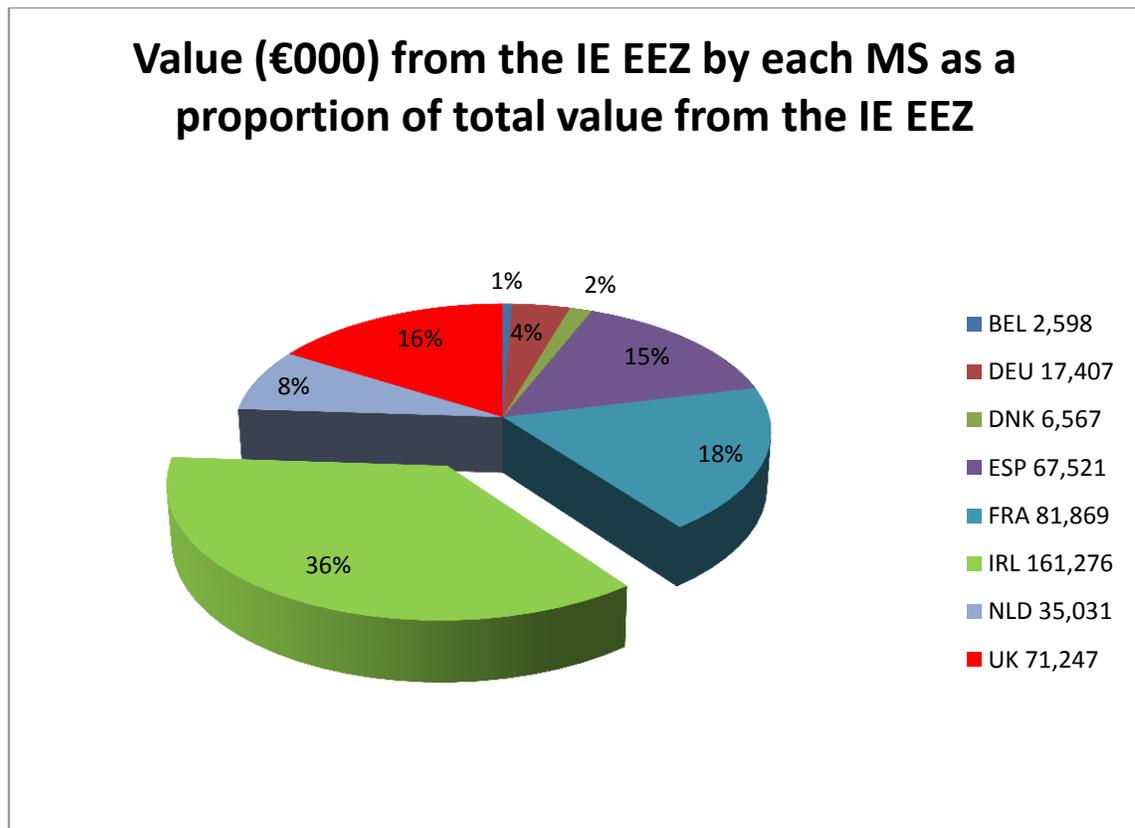
*Figure 2.10 Average Landings by EU member state from the Ireland's EEZ*



Source: (Department of Agriculture, Food and the Marine, 2018)

Looking at the value of landings, Ireland accounts for 36% of the average value of landings from the Irish EEZ followed by France (18%), the UK (16%), Spain (15%) and the Netherlands (8%).

*Figure 2.11 Value of fish landed from Ireland's EEZ by EU member state*



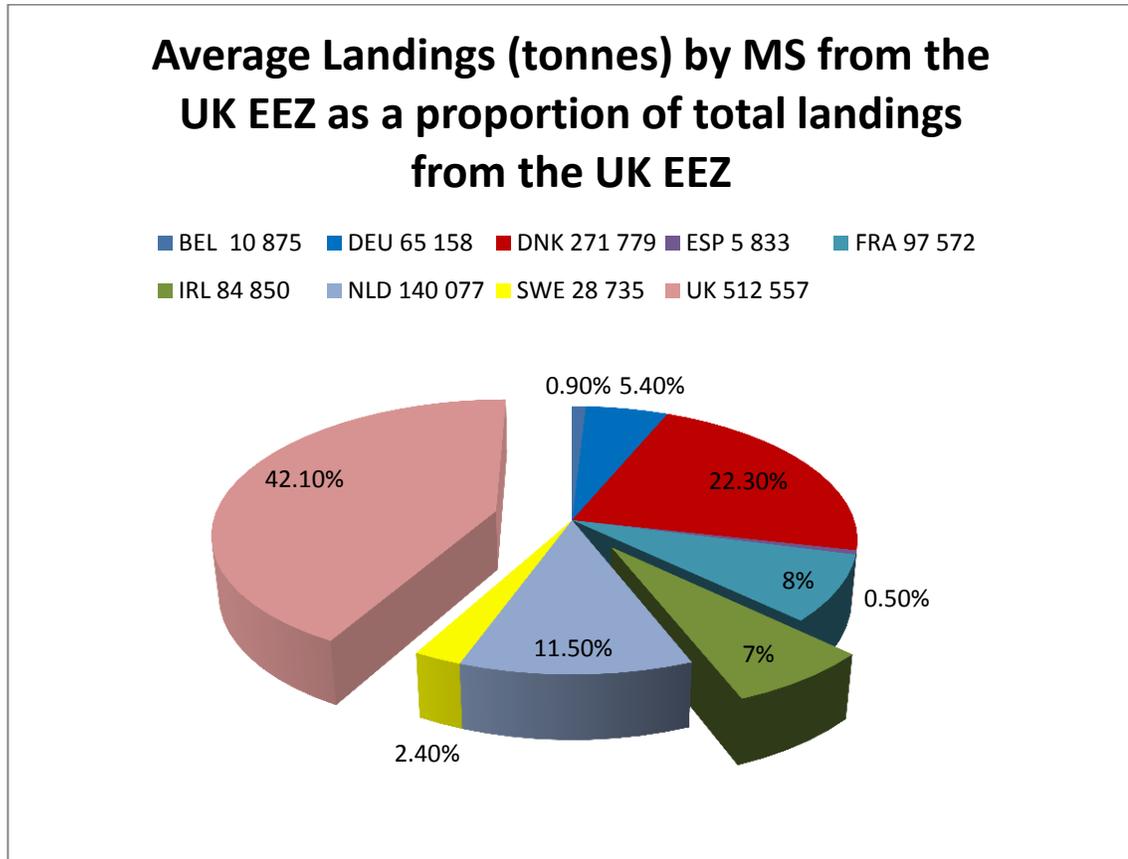
Source: (Department of Agriculture, Food and the Marine, 2018)

So where does the Irish fishing fleet catch the remainder of TAC species?

Analysis carried out by the Marine Institute shows that Irish fishing vessels catch a significant proportion of total catch in the UK EEZ (e.g. of the two most valuable Irish fisheries mackerel and nephrops (Dublin Bay Prawns) Ireland catches 60% of mackerel and 40% of nephrops in the UK EEZ. On average 34% of the landings by Irish sea-fishing boats over the years 2011 to 2015 were taken from UK waters and this trend has not changed in recent years. The Marine Institute estimates that Irish sea-fishing boats land on average 12,000 tonnes of fish into UK ports per annum.

Many other EU member states also fish in the UK EEZ. Figure 2.12 shows recorded fish landings by volume from the UK EEZ by member state as a proportion of overall landings from the UK EEZ

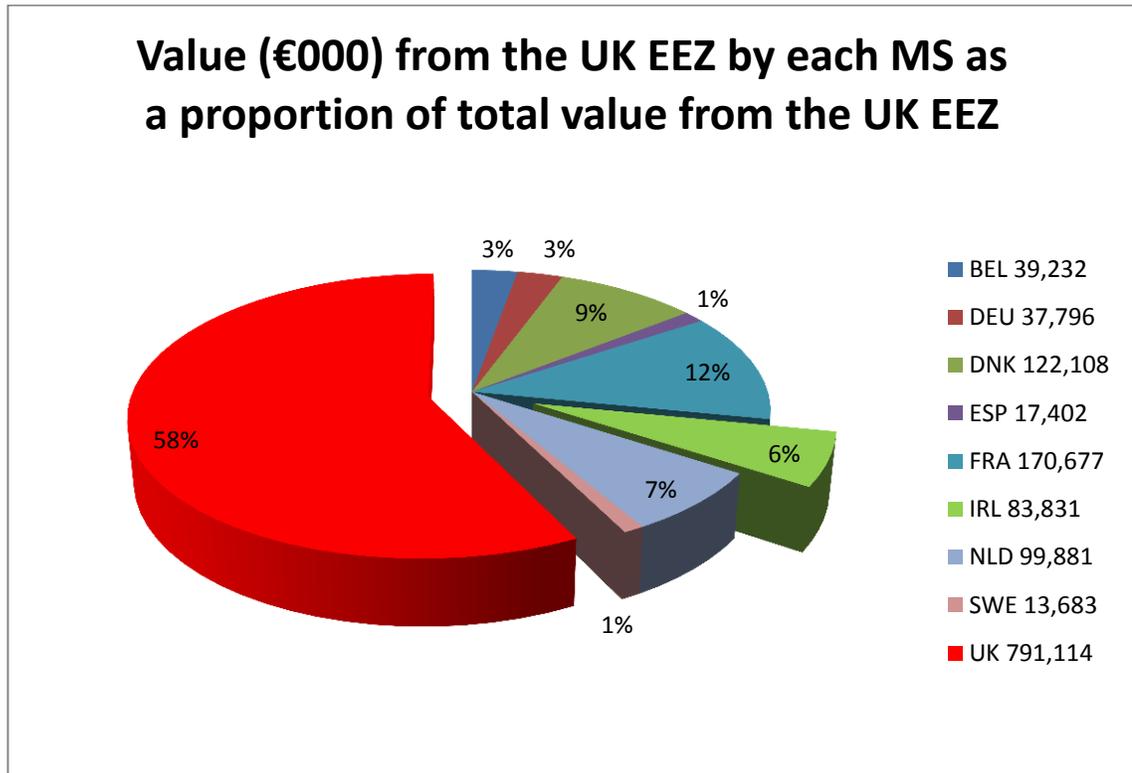
*Figure 2.12 Average Landings by EU member state from the UK EEZ*



Source: (Department of Agriculture, Food and the Marine, 2018)

Figure 2.13 shows landings by value as a proportion of total value of landings from the UK EEZ.

Figure 2.13 Value from the UK EEZ by each EU member state



Source: (Department of Agriculture, Food and the Marine, 2018)

Irish vessels catch a small proportion of TAC in other EU member states EEZ but the bulk of the Irish TAC, for the forty commercial stocks that are of interest to the Irish fishing industry, are captured in the Irish and UK EEZs.

Ireland has the majority of its fishing opportunities in ICES areas 6 and ICES area 7 (covering Ireland's EEZ as well as part of the UK & French EEZs). The fishing opportunities for 2017 for stocks to which the Irish fleet had access amounted to 1.3 million tonnes of fish with a landing value of €1.44 billion (available to Ireland and other member states). Ireland's total share of these fishing opportunities in 2017 amounted to 234,493 tonnes with a value of €226 million (excluding valuable inshore fisheries such as Crab and Lobster, Whelk, Razor Clam, etc. which are not managed under the TAC system).

## **Resource Management**

Following consultation, the Council of Fisheries Ministers sets the Total Allowable Catch (TAC) by species for each EU member state for the following year at the December meeting. The meeting is followed by an EU Regulation setting out, for each member state, the total tonnage of catch and the geographical area (ICES area) where the catch can be taken. It is the responsibility of each member state to manage their fisheries within these TACs. Ireland distributes the TAC by setting quotas for individual fishing vessels which may not be transferred, sold or leased to another fishing vessel. In many other member states quotas are owned and administered by the fishing industry, but in Ireland fish quota is a public resource and is managed by the Minister for Agriculture, Food & the Marine. The Minister decides on the management of fish quotas following consultation and, where possible, taking into account the views expressed by industry representatives. However, the Minister often has to make decisions in the national interest and often in the absence of a unanimously agreed industry position. Any unused quota is redistributed to other fishing vessels with a view to maximising the fishing opportunities available to the Irish fishing sector.

## **Common Fisheries Policy Control & Enforcement**

The Sea-Fisheries Protection Authority (SFPA) is responsible for both sea-fisheries control and enforcement and consumer seafood safety in Ireland. Control and enforcement is a key pillar of the CFP and each member state is responsible for ensuring compliance with EU regulations by all fishing vessels operating within its EEZ. In Ireland, with an EEZ that is ten times as large as our land mass, control and enforcement can be challenging. At sea fisheries inspections within Ireland's Exclusive Fisheries Zone (200 NM) are conducted by the Irish Naval Service working under a service level agreement with the SFPA. The SFPA is independent from the Minister and the Department of Agriculture, Food & the Marine and in accordance with the Sea Fisheries and Maritime Jurisdiction Act, 2006 (Government of Ireland, 2006), all

operational issues of sea fisheries control and enforcement are exclusively a matter for the Sea Fisheries Protection Authority (SFPA) and the Irish Naval Service. The Minister can set policy for the SFPA but is precluded from involvement in operational matters and fisheries control activities.

The EU Control Regulation 1224/2009 (EU Common Fisheries Control Regulation, 2013) establishes a Community Control System for ensuring compliance with the rules of the CFP. The EU Commission has commenced a review of the policy and it is likely the review process will bring forward some changes to the policy.

### **Fishery Harbour Centres**

Ireland has six designated Fishery Harbour Centres (FHCs), which are owned and operated by the Department of Agriculture, Food & the Marine. The FHCs specialise in facilitating fish landings and are located in Killybegs, Castletownbere, Dingle, Ros an Mhíl, Howth and Dunmore East. Users of the FHCs are charged for the use of the facilities and any income from the Harbours is held in the Fisheries Harbour Centre Fund. This fund, which is ring-fenced under statute, pays for the day-to-day operational running costs in the Fishery Harbour Centres but the level of charges levied is not adequate to support the significant capital infrastructure development costs in the Fishery Harbour Centres.

### **Conclusion**

Key statistics provide a snapshot of the Irish seafood sector. It is important to understand how the Irish fishing fleet is structured and how the measurement of the Irish fishing fleet feeds into the EU wide mechanism for capping EU fishing effort to avoid overexploiting fish stocks. The Irish EEZ out to 200 NM is EU water and the entire area is mapped in ICES rectangles that are used as functional units to return scientific advice and manage fish stocks when setting TACs. Fleet segmentation is a domestic

tool to differentiate categories of fishing vessels and provide a structure to distribute Ireland's TAC to fishing vessels in a fair manner using the quota system. Robust control and enforcement measures are essential to promote compliance and ensure the CFP is embraced by all fishing vessels operating in our EEZ. Seafood is a significant employer in Ireland and seafood trade is important to the coastal economy in Ireland and the lifeblood of coastal communities. Ireland has world class fish landing infrastructure for use by Irish and non-Irish fishing vessels. In terms of international trade, the UK is a significant seafood trading partner for Ireland and the outline of the seafood sector presented in this chapter sets context for some of the issues that will inevitably unfold in the context of Brexit. In the next chapter, Brexit and some of the potential impacts on the Irish seafood sector are examined.

## Chapter 3: Brexit and the Seafood Sector

### Introduction

On the 29<sup>th</sup> March 2017, the UK Government notified the European Union that it was invoking Article 50 of the Treaty on European Union (TEU) (European Union, 2009). The decision to invoke Article 50 followed from the 52% majority decision in the 23<sup>rd</sup> June 2016 UK referendum to leave the EU. The process of the UK quitting the EU had become nicknamed BREXIT (with the name being attributed, by the Oxford English Dictionary, to Peter Wilding). Article 50 of the Treaty on European Union (European Union, 1993) enacted by the Treaty of Lisbon (European Union, 2009) gives any EU member state the right to quit the EU unilaterally. On 1<sup>st</sup> February 2017, the UK passed the European Union Bill (UK Government, 2017) which sets a two year timetable for the UK to officially leave the EU. That date was set to be 29<sup>th</sup> March 2019.

It was anticipated that in the intervening two year period a withdrawal agreement would be reached between the UK and the EU. At the time it was thought that the Article 50 notification could not be stopped or reversed but further clarifications and events have proved this not to be the case. Following formal notification, the EU and the UK entered into negotiations on reaching a withdrawal agreement.

It was also anticipated the agreement would be in place prior to the proposed Brexit date on the 29<sup>th</sup> March 2019. The EU and UK provisionally agreed there would be a transition period from 30<sup>th</sup> March 2019 to 31 December 2020 during which the UK would continue to be bound by EU law and the *status quo* would prevail as if the UK was still a member state. During that period the future relationship between the EU and the UK on all matters, including fisheries, would be negotiated. In the case of fisheries it was agreed that the UK would continue to fully comply with the CFP for the duration of the transitional arrangements.

Under the CFP, TACs are set on a calendar year basis and the UK would be bound by the TACs up until the end of 2020. In addition during the transition arrangements access arrangements for fishing grounds would remain unaltered and future access arrangements would be negotiated as part of the future relationship negotiations.

During negotiation on the withdrawal agreement it became apparent that difficulties were arising in the process. A particular sticking point was the commitment that the UK Government had given to avoid reinstating a hard border on the island of Ireland, known as the Backstop arrangement (an element in the negotiated, but unratified, EU/UK withdrawal agreement that would keep Northern Ireland in the customs union and single market until a solution is found to prevent a hard border on the island of Ireland). Relations between the UK and Ireland deteriorated in an environment where the EU was supporting the position of protecting the 1998 Good Friday Agreement and avoiding the reinstatement of a hard border in Ireland. The main reason for the dramatic deterioration in relations was that the Irish border had become the primary obstacle to the UK completing a successful Article 50 withdrawal agreement with the EU (O'Brennan, 2019). The British government and Brexiteers have refashioned the border problem as one of EU and Irish making (Murphy, 2019). In the intervening period a general election in the UK had led to a government being formed by the Conservative Party but dependent on the Democratic Unionist Party (DUP – a unionist political party in Northern Ireland with a strong British Identity and supportive of Northern Ireland remaining in the UK which was founded by Rev Ian Paisley in 1971). The DUP currently has 10 of the 650 British House of Commons seats (UK Parliament, 2019) and supports the minority Conservative Party government through a Confidence and Supply arrangement. One of the suggested solutions to satisfy the Backstop arrangement was for Northern Ireland to remain in the EU customs union. However, the DUP was not willing to have Northern Ireland treated any differently to the rest of the UK and an impasse on the Backstop arrangement ensued.

Prime Minister Theresa May's attempts to have the agreement she had reached with the EU ratified by the House of Commons failed and the prospect of the UK leaving the European Union without a deal (crash-out Brexit) became more of a concern. On 20<sup>th</sup> March 2019, the UK requested an extension to Article 50 to 30<sup>th</sup> June 2019. On 21<sup>st</sup> March 2019, the EU agreed to grant an extension up to 12<sup>th</sup> April 2019, should the Withdrawal Agreement not be approved by the House of Commons or up to 22<sup>nd</sup> May 2019 should the Withdrawal Agreement be approved by the House of Commons.

Brexit risk mitigation plans were progressed in every Irish Government Department. The risk of a crash-out Brexit was postponed with an application by the UK Government to the EU on 2<sup>nd</sup> April 2019 for a further extension of the Article 50 withdrawal agreement period. The EU responded on 10<sup>th</sup> April 2019 with an agreement to extend the deadline up to 31<sup>st</sup> October 2019 with the possibility that if the House of Commons ratified the Withdrawal Agreement before the revised deadline, then the UK would be able to leave the EU earlier. The revised Brexit date afforded the EU, and particularly Ireland, an opportunity to hone Brexit crash-out contingency plans while still maintaining a desire that a negotiated withdrawal agreement would be agreed.

## **The UK Fishing Industry**

In 2014 the UK fishing industry employed 11,845 fishermen and fisherwomen (Marine Management Organisation, 2015) and was worth £426 million to UK Gross Domestic Product (GDP) (House of Commons Library, 2016). This amounted to less than 0.5% of UK GDP (New Economics Foundation, 2016).

Fisheries have a much broader cultural, social and historic value in the UK and fisheries are of vital importance to the many coastal communities that depend on fisheries and aquaculture as their main industry. UK Fisheries was a prominent topic in the Brexit referendum campaign. On 15<sup>th</sup> June 2016 Nigel Farage boarded a flotilla of fishing boats on the Thames in London and traded insults on the water with Sir Bob Geldof

who was pointing out the folly of Brexit. Mr. Farage’s strapline on the day was “take back control of British waters”. This was a recurring theme from pro-Brexit supporters and UK fishing industry representatives including Mr. Bertie Armstrong (Scottish Fishermen’s Federation). Given the relative low value of fisheries to the overall UK economy, leaders in the UK fishing industry feared their industry would be gazumped in negotiations in favour of more strategically and economically important goals and that fear has continued throughout the withdrawal negotiation process (See Figure 3.1) despite reassurances from the UK Government.

*Figure 3.1 Photo of ‘Fishing for Leave’ Banner*



Source: Robin Millard-AFP-Getty Images (The Guardian, 2019)

Fisheries in the UK are managed on a devolved basis by the devolved administrations in Scotland, Wales and Northern Ireland, although many of the overarching policy decisions continue to be made centrally in London. The profile of the fishing industry differs significantly between the administrative areas in Scotland, Wales, England and Northern Ireland. For example, the Scottish fishing fleet has relatively fewer, but

generally larger, vessels but these vessels land the most fish (in terms of both volume and value) (Fergus Ewing MSP, 2016) while England, Wales and Northern Ireland have more fishermen and fisherwomen and more fishing vessels, but land less volume than Scotland (Ares, 2019).

Fish stocks have to be proactively managed to ensure sustainability and the majority of the main species fished commercially by UK fleets (e.g. mackerel, herring, haddock, cod, and plaice) are highly mobile (Stewart, 2016). Connelly (2018) asks the question “Is there such a thing as a British fish?” But, of course, fish know nothing of political borders and many species move freely between national territorial waters throughout their life cycles (UK Parliament, 2016). Fish do not respect political borders and are free to move between the EEZs of sovereign states. If the UK leaves the EU, and the CFP no longer applies, proper management of fish stocks will continue to be necessary. The UK will continue to have obligations under the United Nations Convention on the Law of the Sea (UNCLOS) (United Nations, 1982) to manage stocks sustainably, on the basis of scientific advice, and to arrange access for neighbouring states to surplus stocks. Furthermore, under UNCLOS there is an obligation to prevent illegal, unreported and unregulated (IUU) fishing. In addition the EU currently is a member of the North East Atlantic Fisheries Commission (NEAFC) on behalf of all EU member states. This organisation deals, *inter alia*, with management of migratory fish stocks in the North East Atlantic. Post-Brexit the UK will have to join this organisation as a third country (the application for membership cannot be made while the UK is an EU member state). In a post-Brexit scenario the UK will be obliged to fulfil its obligations under international fisheries laws as a third country. This will inevitably necessitate co-operative management of stocks that are shared by two or more countries.

Many UK fishermen believe the EU CFP has not always been successful in achieving the objectives of managing a mobile and renewable resource sustainably and that the application of EU-adopted technical measures is unfair on the UK. It is ironic then that the UK fishing industry claim credit for recent reform of the CFP and initiatives

including the move towards regional management, maximum sustainable yield and the banning of discards. Highlighting the issues around the discarding of fish can indeed, in the first instance, be attributed to a UK citizen, celebrity chef Hugh Fearnley-Whittingstall who recruited other celebrities (including Jamie Oliver), to influence the politicians and demand an end to the practice of discarding (throwing overboard at sea) fish that were already dead in the fishing nets but for which the fishing vessel did not have adequate quota.

A UK withdrawal from the European Union will mean a UK withdrawal from the CFP. Some among the UK fishing industry believe that withdrawing from the CFP will give the UK the opportunity to develop a better fisheries management regime that is tailored to the conditions of UK waters and its fleet. It is interesting to note that Stewart (2016) is at variance with this view and his analysis concludes that the UK's continued membership of the EU would likely be the best long-term option for UK fisheries. Carpenter (2016) whose research focuses on the environmental, social, and economic impacts of transitioning to sustainable management of natural resources is of the view that the CFP has helped, not harmed, UK fisheries. A Fernandes (2015) fact check shows that in 2015, the UK was allocated 30% of the EU quota for fishing ground stocks which occur in UK waters. The UK Government believes that, once outside the EU, it will be able to renegotiate its TACs for stocks that are shared with the EU and other neighbouring countries. The UK Government also believes that, once outside the EU, the UK can represent its own interests at international fisheries negotiations with neighbouring states and that, post-Brexit, the UK will be able to control access by foreign vessels to UK waters. It is likely that the UK will attempt to use access arrangements as a bargaining chip to negotiate new allocations of TACs for the sustainable exploitation of shared stocks. However, fish stock management is a complicated business which becomes even more complicated in an international context. For example, species of fish may spend different stages of their life cycles in different EEZs, their spawning grounds may be in a different region from where they

are mature. In addition, mature fish may be more valuable to catch at a particular point in their lifecycle and accordingly it may be more beneficial to catch them in a neighbouring EEZ rather than one's own EEZ. From a practical point of view, the UK fishing fleet is comparatively small both in terms of number of vessels and size of vessels. Accordingly, if the UK was to exclude EU fishing vessels, the UK fishing fleet would need to expand significantly to fully avail of the fishing opportunities freed up by the exit of EU vessels from UK fishing grounds. Such an expansion would require major capital investment and, even if adequate funding was available, would likely take a number of years to achieve.

Seafish (Non-Departmental Public Body (NDPB) set up to support the UK seafood industry) values the UK seafood industry at £10b. In the year to August 2017, the total landings by UK fishing vessels was 701,000 tonnes while seafood exports from the UK in the same period were 446,500 tonnes (Seafish, 2018). 68% by value and 53% by volume of the seafood consumed in the UK in the year ending August 2017 was imported (Seafish, 2018). The large EU market for seafood is important to the UK but equally the UK market is important for EU countries, not least Ireland. Continued access to tariff-free trade is important to the UK seafood industry and seafood consumers. While the UK negotiators have made efforts to separate fisheries from the wider trade negotiations, the EU negotiators have not, to date, acceded to these efforts. Ireland remains strong among the EU member states that support the continued linkage of fisheries and other trade aspects.

Divorcing UK fisheries from the EU will be challenging. Following UK withdrawal from the EU, the UK will have to implement arrangements with the EU and other third countries to manage shared fish stocks and appropriate access arrangements for fishing vessels into each other's EEZs in addition to a suitable seafood trade deal. This will be explored in more detail later.

Despite the rhetoric around UK fisheries during the Brexit referendum campaign, it has subsequently become clear to many in the fishing industry that Brexit presents particular issues for the UK fishing industry that are not easily solved.

## **Negotiating a Withdrawal Agreement**

Many in the Irish fishing industry have an underlying belief they were abandoned by the Irish EEC accession negotiators in the early 1970s. However, critics who held that accession would amount to the sale of the national birth-right for a mess of common agricultural pottage, and that the jewel of Irish sovereignty was a pearl of too great a price to be bartered for the flesh pots of Brussels, were bluntly told that Ireland could not lose what it had not got (Lee, 1989). In the context of Brexit, and a now more developed Irish fishing industry with much to lose, perhaps there is more reason to fear being jettisoned in favour of some of the bigger issues to be considered in negotiating a withdrawal agreement. One of the larger Irish fisheries Producer Organisations, the Killybegs Fisherman's Organisation (KFO), joined with EU sister organisations from Belgium, Denmark, Germany, France, Poland, Spain, Sweden and the Netherlands (18,000 fishermen and 3,500 fishing vessels with a combined annual turnover of €20.7 billion) in the European Fisheries Alliance (EUFA) (European Fisheries Alliance, 2019) to promote a united front of European fishermen in the face of Brexit negotiations.

As part of the negotiated withdrawal agreement, a transition period from 29<sup>th</sup> March 2019 to 31<sup>st</sup> December 2020 was included in the draft agreement. For fisheries, the transition period would mean relative stability could be maintained, protecting sustainability of fish stocks would continue and access to waters would remain unchanged for the period. The transition period would enable EU and UK fishermen to maintain economic competitiveness and underpin existing business models until the end of 2020, allowing scope to negotiate a post-Brexit deal for fisheries.

However, the draft withdrawal agreement would have to, in the first instance, be ratified by the UK Houses of Parliament and then by the parliaments of all remaining 27 EU member states. Former Prime Minister Theresa May's successive attempts to steer the UK out of the EU were met with both internal and cross-party contestation and deepening public frustration (Murphy, forthcoming 2019). In a series of votes in the House of Commons she failed to gain the votes required as the 29<sup>th</sup> March 2019 drew close. At that point a number of scenarios seemed possible:

- The deal would be ratified by UK and EU27 parliaments and the transition period would commence.
- The deal would be renegotiated and a new deal would be ratified by UK and EU27 parliaments and the transition period would commence.
- The UK would “crash-out” of the EU without an agreed deal and become a third country with immediate effect.
- The UK would withdraw the Article 50 notice and remain an EU member state (this may require a fresh referendum, a general election or both).
- The UK would seek, and the EU would accede to extend the Article 50 notice period beyond 29<sup>th</sup> March 2019.

In the event, as we now know, the UK applied for an extension and the EU acceded to, what became known as the flexextension up until 31<sup>st</sup> October 2019. The above scenarios remain possible at the time of writing. While, at this time, a crash out seems less likely following the passage of the Benn Bill it cannot be discounted given Boris Johnson's stated position.

## **North – South Relations**

Murphy (2018b) outlines Brexit in the context of Northern Ireland and explores the complicated relationship between Northern Ireland, the United Kingdom, the European Union and Ireland. In any Brexit situation it is likely that fisheries-related

issues, and particularly access to waters and cross-border trade, will further test that complicated relationship.

The Voisinage Arrangements, which were the subject of an exchange of letters between officials in Northern Ireland and Ireland in the 1960s, are long-standing reciprocal arrangements which allow fishing boats from Northern Ireland access to fish within the 0 to 6 NM zone of the territorial waters of the Irish State and *vice versa*. The Voisinage Arrangements have operated under the auspices of the London Fisheries Convention since at least 1965 and have operated to allow reciprocal access to territorial waters for all species of fish.

The London Convention which culminated in Treaty Series 1966 No.1 (London Fisheries Convention, 1964) allowed that each Coastal State could assert exclusive fishing rights within 6 NM from its baselines (Article 2) but also provided for Voisinage or neighbourhood arrangements (Article 9) for contracting parties to allow those fishermen from another coastal state who had habitually fished within that belt to continue to do so. The Convention also grants rights to neighbouring countries to fish in each other's 6 to 12 NM fishing zones based on historic fishing activity. The extent of the application of the London Fisheries Convention is limited to 12 NM. On the basis of the Convention, an exchange of letters in the 1960s between the UK/Northern Ireland and Ireland allowed for vessels from Northern Ireland to continue to fish within Ireland's 6 NM zone and *vice versa*.

However, High Court judgment in *Barlow & Ors v. Minister for Agriculture, Food and Marine & Ors* (High Court of Ireland Decisions, 2014) taken against the State by four mussel seed fishermen and subsequently a Supreme Court judgment in *Barlow & Ors v. Minister for Agriculture, Food and Marine & Ors* (Supreme Court of Ireland Decisions, 2016) found that fishing by Northern Ireland vessels within the 0 to 6 NM zone of the

territorial waters of the State under the Voisinage arrangements was not provided for in domestic law.

Notably, both Justice Bermingham in the High Court and Justice O’ Donnell in the Supreme Court opine that these letters are evidence of a pre-existing arrangement between the jurisdictions. Justice Birmingham finds that the Government’s maintenance of this ‘informal attitude’ is evidence that “the all-Ireland dimension to fishing is long established and at this stage deeply entrenched”.

It is important to note that the Supreme Court upheld the High Court finding that the Voisinage arrangements were not invalid but that, as it stood, there was insufficient provision in domestic law for them. The Supreme Court in fact noted that the arrangements were a sensible recognition at official level of practice and tradition, where fishing boats traditionally fished neighbouring waters.

To remedy the situation, the Irish Government approved the publication of the Sea-Fisheries (Amendment) Bill to address the issues raised by the Supreme Court judgment of 27 October 2016, and the Bill was published on 13 February 2017.

While the Bill proposed to restore access to Northern Ireland boats to fish, under the terms of the Voisinage arrangements, this access would be subject to the same conditions that apply to Irish sea-fishing boats. The Bill itself did not apply the specific conditions. The objective was that the appropriate measures would come into effect at the same time as commencement order for the Bill. Together, the Bill and the associated measures would re-establish the *status quo* for fishing access that existed under the Voisinage arrangements before the Supreme Court's judgment on 27 October 2016. The only difference would be that the Voisinage arrangements would be provided for within a legislative framework. The access arrangements for Northern Ireland boats would not change as a result of the Bill, Northern Ireland boats would

simply regain fishing access they had previously enjoyed for decades under the Voisinage arrangements in the 0-6 NM zone of the territorial waters of the State. They would also continue to be subject to the same measures that apply to Irish-registered fishing boats.

While the CFP allows for the continuation of existing neighbourhood arrangements, it does not cater for the creation of new arrangements. On departure from the EU, access to fisheries in UK waters as a third country would be a matter for the EU to negotiate on Ireland's behalf. To guarantee EU recognition of the Voisinage arrangements, it was important for the arrangements to be operational at the time of Brexit. In such circumstances, it is likely that the EU would recognise the arrangements as pre-existing and bilateral. However, if the Bill had not completed the legislative process before the UK departure it would most likely have been within the EU's competence to consider whether or not to agree the arrangements as part of a future relationship with the UK.

Fishing industry representatives and the opposition parties were briefed on the Bill and the associated measures. However, the Bill met with strong opposition when the Minister for Agriculture, Food & the Marine introduced it into Seanad Éireann in February 2017. Those who opposed the Bill (including some fishing Industry representative organisations and opposition politicians who had been subjected to very effective lobbying by a small minority of fishermen), expressed a view that in the context of the uncertainty facing the Irish fishing industry with Brexit looming, the Voisinage Arrangements should not be restored by Ireland but rather used as a bargaining chip in any Brexit negotiations. To make matters more complicated the then UK Environment Secretary Michael Gove, wishing to close all access for non-UK fishing vessels to UK waters (if required) announced on 2<sup>nd</sup> July 2017 that the United Kingdom had decided to trigger its withdrawal from the 1964 London Fisheries Convention. There were no immediate implications for the Irish fishing fleet as the withdrawal

process from the London Fisheries Convention takes two years. In any case the access arrangements had been restated in Annex 1 of the CFP Regulation (Regulation (EU) No 1380/2013 of the European Parliament, 2013) (with the exception of the zone around Northern Ireland which is catered for by UK domestic legislation only) and so would remain in force while the UK remained an EU member state but access will cease if the UK leaves the EU and is no longer bound by the CFP. Under current arrangements, the Irish fishing fleet has access to parts of the UK 6-12 NM zone, as has the UK fleet to parts of the Irish 6-12 NM zone. The London Fisheries Convention deals primarily with the 6-12 NM zone, and the Irish fleet is not significantly dependent on this access as Irish fishing effort in the UK 6-12 NM zone is low other than small amounts of Haddock in the 6-12 NM zone north of Co Derry (Cape grounds) where there is also a very small Scallop fishery.

Since announcing departure from the convention, the UK has also stated it wishes to maintain the Voisinage arrangements with Ireland and that the UK Government remains committed to the principles behind the Voisinage Arrangement and to protecting and supporting continued cooperation between Northern Ireland and Ireland. The UK also noted that they had continued to honour the agreement by allowing Irish fishing vessels continued access to the Northern Irish 0-6 NM zone but stated that situation could not be continued indefinitely if access to the Irish 0-6 NM zone was not restored for Northern Irish fishing vessels (UK Parliament, 2018).

In light of strong cross-party opposition the Bill failed to make any progress in Seanad Éireann between 2016 and 2019. Then on 26<sup>th</sup> February 2019 two Northern Irish-registered fishing boats (The Amity and The Boy Joseph) were arrested by the Irish Naval Service for fishing illegally in Dundalk Bay. The arrests highlighted the unequable legal situation where Northern Irish fishing vessels could not fish in the Irish 0-6 NM zone. Some Northern Ireland fishing industry representatives levied an accusation that Ireland was strongly opposing a hard border on the island of Ireland by insisting on the

Backstop arrangement in Brexit negotiations while, at the same time, creating a hard border in the sea by preventing Northern Irish fishing boats accessing the Southern Irish 0 to 6 NM zone and arresting any fishing vessels that accessed that zone. This was a significant development in the context of Brexit, but it was particularly significant as it occurred at a delicate point in the EU/ UK Brexit negotiation process with Theresa May attempting to win the support of the Democratic Unionist Party to carry her withdrawal agreement in the House of Commons. Taoiseach Leo Varadkar issued a statement that appropriate legislation to restore the reciprocal access (previously enjoyed by fishermen north and south to each other's 0-6 NM zones) would be put on the Irish statute books. With cross-party support (the Bill was opposed by some independent TDs) the Bill passed all stages in Seanad Éireann and Dáil Éireann and the Sea-Fisheries (Amendment) Act 2019 was commenced by the Minister for Agriculture, Food and the Marine on 23<sup>rd</sup> April 2019.

The Act provides for legislative amendments to the Sea-Fisheries and Maritime Jurisdiction Act 2006 (Government of Ireland, 2006) in order to address the Supreme Court October 2016 finding. The passage of and commencement of the Act provides legal clarity which was found wanting by the Irish Supreme Court.

The restoration of the Voisinage Arrangements by the enactment of the Sea-Fisheries (Amendment) Act 2019 was important for north/south relations in the context of the sensitive political climate in Northern Ireland and a recognition that good relations will have to be re-established once the dust settles on Brexit. Regular Anglo-Irish elite contact at the European level has in difficult times helped to maintain positive all-island relations (Harris, 2001). Post-Brexit these contacts are likely to be less available. Brexit has damaged British-Irish relations and that damage will take some considerable time to repair. It will require strong political leadership, mutual respect, and a shared purpose (Murphy, 2019).

## Disputed Fishing Grounds

Access to fishing grounds will be significant in the context of Brexit, however in advance of Brexit some fishing grounds are already disputed. One such dispute arises in relation to Rockall. Rockall is an uninhabited granite rock in the North Atlantic which lies within the EEZ of the UK and is claimed by the UK as a part of Scotland. As Rockall cannot sustain human life, it cannot have an attendant EEZ. However, the Scottish Government has claimed the establishment of a 12 NM territorial sea around Rockall. Ireland recognises that Rockall is in the UK EEZ but does not accept that a 12 NM territorial sea can be unilaterally declared around Rockall by the Scottish Government. The Irish position is that Rockall is currently in European waters while the UK is an EU member state with all authorised EU vessels entitled to fish in the area of the rock. The issue of access for EU fishing vessels within 12 NM of Rockall was first raised in 2017 following the Brexit referendum. It now appears that in a pre-emptive Brexit measure Scotland is attempting to assert sovereignty of Rockall.

Rockall is significant in a fisheries context as its surrounding waters have traditionally provided good fishing grounds for species such as Haddock and Squid. For decades the Irish fishing fleet has prosecuted fisheries within the now disputed 12 NM zone of Rockall. In a press statement issued jointly by the Tánaiste and Minister for Foreign Affairs and the Minister for Agriculture, Food and the Marine on 7<sup>th</sup> June 2019 (Minister for Foreign Affairs & Trade and Minister for Agriculture, Food & the Marine, 2019) it was revealed that a formal letter of notice had been received from the Scottish Cabinet Secretary for External Affairs, Fiona Hyslop MSP, stating that Scotland would deploy vessels in the Rockall area to take enforcement action against Irish vessels found fishing within 12 miles of Rockall from 7<sup>th</sup> June 2019 onwards. At the time of writing, Irish fishing vessels are continuing to fish the waters around Rockall with no arrests made to date. However, it can be anticipated that Rockall will become an issue again in the Brexit process in the context of a negotiated withdrawal, or negotiations following a hard Brexit or even if the Brexit process is reversed.

This is just one example of the complexities that Brexit and, in particular a hard Brexit, is likely to raise in the short-to-medium timeframe. Despite the negotiation of a withdrawal agreement, the House of Commons has failed to ratify it. While Boris Johnson appears to be purposefully steering directly into a crash-out/hard Brexit, opposition MPs and some rebel Tory MP's are attempting to prevent it. The successful passage of the European Union (Withdrawal) (No. 2) Act 2019 in the UK Parliament forces Boris Johnson to apply to the EU for an extension if a deal cannot be agreed by 19<sup>th</sup> October 2019. However, Johnson has said he will not apply for an extension. So, if it was to happen, what does a hard Brexit mean for the Irish fishing industry?

## **Hard Brexit**

### **Immediate Threats**

A hard Brexit, if it were to occur, would present all sectors in Ireland with immediate difficulties. In the case of the seafood sector, some of the particular difficulties would include:

- Loss of access to UK waters for Irish sea-fishing vessels.
- Displacement from UK waters to Irish waters of sea-fishing vessels from other EU member states.
- Potential conflict between sea-fishing vessels on the fishing grounds.
- Seafood trade issues.
- Access to market issues.

Each of these potential consequences for the seafood sector in the event of a hard Brexit is explored in the following sections. The analysis that follows draws on reports from DAFM, MI and the SFPA.

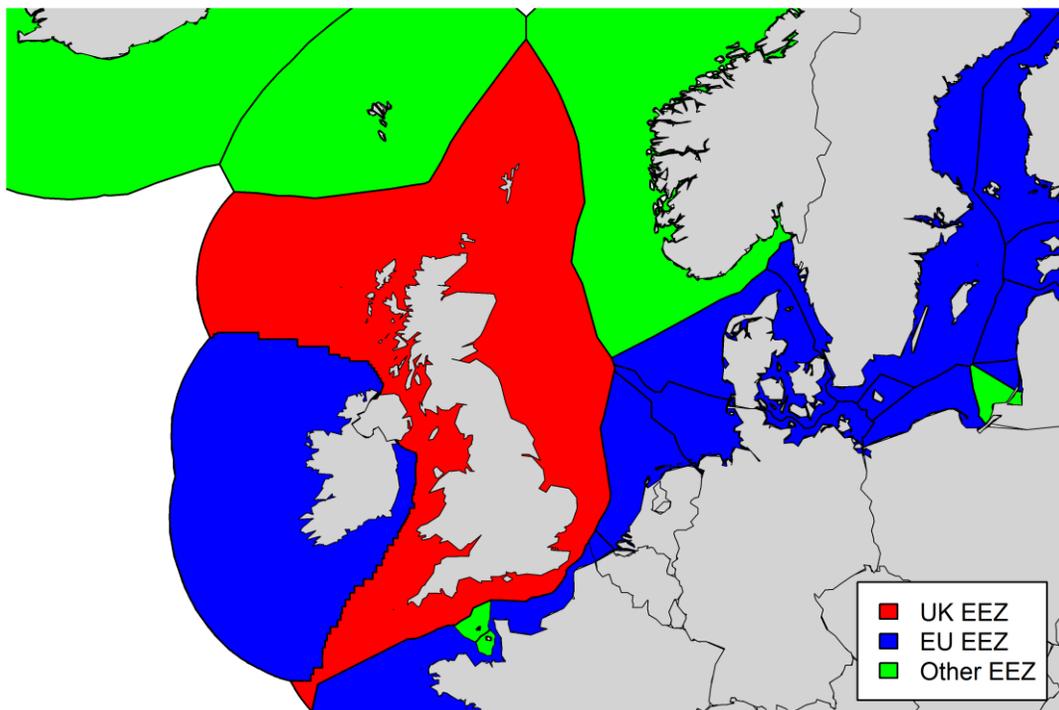
## Loss of Access

A hard Brexit would likely lead to an immediate loss of access for Irish fishing vessels to the UK zone. As it stands 34% (by weight) of total fish landed by Irish fishing vessels is caught in the UK zone. For some of the most important stocks of mackerel and nephrops (Dublin Bay Prawns) the outtake, by weight, from the UK EEZ is 64% and 42% respectively. The value lost to Irish fishing boats if they were excluded from the UK EEZ is estimated at €83.8m or almost 50% of the total value of Irish quota for these two species.

While 58% of all landings from the UK Zone are taken by non-UK vessels, the UK takes less than 20% of all its landings from outside the UK Zone (including Norwegian waters). In balancing this equation, the inevitable conclusion is that the UK is much less dependent on access to EU waters than vice versa.

## UK Exclusive Economic Zone

*Figure 3.2 UK EEZ, EU EEZ, Third Country EEZ*



Source: (Fernandes, 2015)

## Displacement

In a crash-out Brexit there is a likelihood that the UK would exclude all non-UK fishing vessels from UK waters. In this scenario, all the Irish fishing fleet and the rest of the EU fishing fleet would be restricted inside the remaining EU waters. Ireland's 200 mile zone would then be a significant and attractive portion of the available EU fishing grounds and this would likely lead to a large influx of EU27 fishing vessels. As fishing vessels would not have other suitable fishing grounds in which they could target the TACs they had been allocated a transfer of fishing activity from the UK zone to the Irish fishing zone by the fishing fleets of France, Belgium, Spain, Germany and the Netherlands would likely occur. The annual TAC would, of course, have been decided at the previous December Fisheries Council of Ministers based on the scientific advice available at that time for the European seas – not the reduced area of EU maritime territory post-Brexit. The increased fishing activity in the Irish EEZ would likely lead to serious over-exploitation of fish stocks in the Irish zone. The fisheries science would lag any overfishing and it is likely irreparable damage to stocks would occur. This would undermine one of the key CFP principles of managing fish stocks and preventing fishing beyond maximum sustainable yield. In years to follow, remedial action would likely lead to substantial cuts in TACs for Irish waters which could potentially tip some Irish fishing vessels beyond the delicate balance of economic viability.

An example is as follows: France currently catches large proportions of its whitefish TAC in the UK zone of the Celtic Sea. If France was locked out of the UK zone a considerable shift into the Irish zone of the Celtic Sea would, for many, be their only option. This could increase fishing effort in the Irish zone leading to considerable pressure on stocks and quickly leading to lower TAC.

## Conflict on the Fishing Grounds

Following from the likely influx of vessels into the Irish EEZ and the risk of overfishing, there is a definite risk that Irish fishermen will attempt to underpin the sustainability of fish stocks in the Irish EEZ by entering into conflict at sea with fishing vessels from other EU member states fishing, legally, within the Irish EEZ. History presents us with examples of conflict at sea from the past e.g. the Icelandic cod wars (which concluded in 1976) and the more recent, August 2018, conflict between UK and French fishing boats off the coast of Normandy coast when French fishing boats prevented the UK fishing boats from fishing for Scallop in the Bay of Seine (see Fig 3.3). Scallop fishing in the Bay of Seine had been closed to the French fishermen at the time for conservation purposes but the closure did not extend to the UK Fishing boats which were entitled to target Scallop there. Emotions often run high on the fishing grounds and the risk of physical conflict in these circumstances cannot be ruled out.

*Figure 3.3 Photo of French & UK Fishing Vessels Jostling in Bay of Seine*



Source: Scallop war: French and British boats clash in Channel (BBC News, 2018)

## Trade Restrictions and Non-tariff Barriers to Trade with the EU27

Ireland's trade in seafood with the UK is significant and a hard Brexit is likely to have a serious effect on that trade. In the case of seafood imports 65% of Irish imports, in value, come from the UK (41.7% by volume). Ireland is the second largest of the UK's EU markets by value and third by volume. Much of the seafood that Ireland imports from the UK originates in third countries and is shipped through the UK to Ireland. Alternative sources and/or routes for seafood imports to Ireland could of course be found and in such circumstances a reduction in the value of seafood imports from the UK in the first post-Brexit year would be expected.

### Access to Market

Much of Ireland's exports to other EU member states are transported via land bridge through the UK as it is currently the fastest and most economical route to mainland European markets. Seafood is a highly perishable product and a timely route to market is of vital importance. In the event of a hard Brexit and the UK becoming a third country and exiting the customs union, an obligation to implement additional import/export controls and Sanitary and Phytosanitary (SPS) checks immediately occurs. In addition, for seafood imports/exports national authorities are required to certify consignments as compliant with Illegal, Unreported and Unregulated (IUU) fishing regulations. There is a risk that the additional border controls required could lead to significant delays for Irish exports using the land bridge route to the UK and in the case of seafood such delays could compromise the product. The SFPA has estimated that following a hard Brexit additional seafood export certifications could increase by 18,000.

*Figure 3.4 Seafood Trade Routes*



Source: Sea Fisheries Protection Authority (SFPA)

### **European Commission Co-ordination to a Crash-out Brexit - Fisheries**

On 10<sup>th</sup> April 2019 the European Commission published a document setting out the European Union's coordinated approach to fishing activities in case of a withdrawal of the United Kingdom from the Union without a deal (European Commission, 2019). This was one of a number of sectoral documents issued by the European Commission at that time. The document recognises the foregoing problems and sets out some mitigation measures.

### **Access to UK Waters**

The EU Commission recognises that after a hard Brexit access to UK waters will be governed by UK legislation in accordance with international law and in particular UNCLOS. In advance of the 29<sup>th</sup> March 2019 Brexit deadline, the EU Commission offered a position of continuing to allow access for UK fishing vessels in EU waters up until 31<sup>st</sup> December 2019 on the basis that access for EU fishing vessels to UK waters is reciprocated by the UK. The contingent Regulation provides the legal framework for this measure which allows for the continuation of fishing operations with the least

disruption possible up until 31 December 2019. The EU Commission has indicated a willingness to extend the measure up until 31<sup>st</sup> December 2020. This measure is subject to EU/UK agreed arrangements which, at this point in time, seem unlikely in the harsh world of a hard Brexit.

### **Displacement from UK Waters and Potential Conflict Between Sea-fishing Vessels on the Fishing Grounds**

In the event that access to each other's waters did not prove possible and keeping in mind the possible impacts outlined above, it is clear that other mitigation measures would be necessary. In preparation, the EU Commission made amendments to the EMFF regulation to allow member states to implement compensation measures for temporary tie-up of their fishing vessels. This measure could be used as a complementary measure to other tools already available within the EMFF. With prudent use of these tools, protection from the risk of irreversibly depleting fish stocks could be mitigated. In addition, the principles enshrined in the CFP would be preserved and the risk of conflict at sea on overcrowded fishing grounds would be greatly reduced.

This would also require a high level of coordination between member states as, for example, if one member state supported part of its fishing fleet to tie-up for a period and temporarily cease fishing on a particular fishing stock only to find that another member state prosecutes that stock in that particular area with the same (or higher) fishing effort, the potential benefits from the temporary tie-up scheme would not be achieved and indeed the potential for conflict between those tied-up and those fishing would increase. The EU Commission, in its paper, outlines its role as coordinator between member states for mitigation measures and to ensure a level playing field for EU fishermen. The EU Commission has not yet identified any additional funding for this measure and a number of member states have expressed a view that diverting funds already allocated for other purposes within the EMFF programme could not be made

available for a tie-up scheme. It is likely, therefore, that an EU Brexit mitigation package will have to be established to fund such initiatives.

### **Seafood Trade and Access to Market**

The EU Commission paper is silent on issues associated with Seafood trade and access to market as these issues are best dealt with under the terms associated with all other movements of goods into and out of the European Union.

### **Conclusion**

The UK parliament has, to date, failed to ratify the withdrawal agreement negotiated between the EU and the UK. That agreement allowed for the continuation of the *status quo* for fisheries and seafood trade for a two year period while permanent arrangements are being negotiated. A poll conducted by a team from the University of Aberdeen led by Dr Craig McAngus found that 92% of those involved in the UK fishing industry voted to leave the EU. The principal reasons cited were concerns about the CFP, and a belief of significant benefit for the UK seafood sector outside of the CFP in a post-Brexit UK. However, the post-Brexit arrangements are yet to be negotiated and it remains to be seen if those arrangements will be more favourable for the UK fishing industry. In the meantime, east/west British-Irish and north/south relations on the island of Ireland remain strained. The exclusion of Northern Irish fishing vessels from the Irish 0-6 NM zone (as a result of an Irish Supreme Court judgment) and the subsequent arrest of two Northern Irish fishing vessels in the South added fuel to a political fire. This resulted in the Irish Government moving quickly to restore the reciprocal Voisinage Arrangements for Northern Irish fishing vessels. Other disputed fishing grounds, including the surrounds of Rockall, have also been brought to the fore in the context of Brexit.

Despite the extension to Article 50 withdrawal until 31<sup>st</sup> October 2019, the risk of a hard Brexit has increased and the consequences of that type of Brexit for the Irish seafood sector have been brought into sharp focus nationally and within the EU institutions. The EU Commission published a document on 10<sup>th</sup> April 2019 setting out an EU coordinated approach to fishing activities in case of a hard Brexit. The consequences of a hard Brexit are significant for the Irish seafood sector and it is now clear that Brexit is the biggest threat the seafood sector has ever faced.

Following Theresa May's failure to obtain agreement in the House of Commons for the withdrawal agreement, she resigned as Conservative Party leader and prime minister on 7<sup>th</sup> June 2019 leaving the way open for a leadership contest in the Conservative Party. On 24<sup>th</sup> July 2019 Boris Johnson succeeded Theresa May and immediately hardened the rhetoric around Brexit. Johnson called for a renegotiation of the Northern Ireland Backstop and committed to a UK exit on the 31<sup>st</sup> October 2019, either with or without a deal. He proffered a view that he would rather be "dead in a ditch" (BBC News, 2019) than ask Brussels for a further extension. In the fisheries context, Johnson reconfirmed that the UK would exit the CFP and become a coastal state on 31<sup>st</sup> October 2019. Boris Johnson's proposal to prorogue parliament precipitated the proposal of a Bill by Hilary Benn designed to stop Johnson taking the UK out of the EU on 31 October 2019 without a Brexit agreement. The Bill following its passage through parliament became the European Union (Withdrawal) (No. 2) Act 2019 and it places a legal obligation on Johnson to seek a further Article 50 extension to 31<sup>st</sup> January 2020 if a withdrawal agreement is not agreed by 19<sup>th</sup> October 2019. Johnson proposed a motion for an early UK general election but that motion failed to achieve the required two thirds majority. At the time of writing, and in this ever changing political environment, the Queen gave the Bill royal assent and the European Union (Withdrawal) (No. 2) Act 2019 is now on the statute books. The UK Parliament was prorogued until 14<sup>th</sup> October 2019 but recalled on 25<sup>th</sup> September following the Supreme Court decision that found Johnson's proroguing to be unlawful. Johnson's

view was that passage of the Bill undermined his ability to negotiate a deal and he proposed an early general election but the House of Commons opted against Johnson's proposal to precipitate a general election.

The next chapter examines fisheries in an international context and existing coastal state arrangements. The five scenarios outlined include: ratification of withdrawal agreement; renegotiation of withdrawal agreement; crash-out Brexit; no Brexit; and extension of Article 50 withdrawal period. These will be analysed in the next chapter.

## Chapter 4: The International Context and Analysis

### Introduction

Irrespective of the type of Brexit we encounter, including a no deal Brexit, it is clear that a dialogue on the future relationship between the EU and the UK will be necessary. A two year negotiating period has been proposed in the orderly withdrawal agreement while, in the case of a no Brexit (the withdrawal of Article 50 notification by the UK), the *status quo* will pertain. In such circumstances, negotiation will be necessary to find a solution where the UK can back down in a politically graceful manner and subsequently negotiate a future relationship with the EU where all member states can be satisfied with the structures going forward.

In the event of a hard (crash-out) Brexit, while it is likely the situation will be more difficult, it will nonetheless be a priority for both the EU and the UK to find a suitable future relationship at the earliest juncture. Fisheries is a relatively small sector when compared to others at an EU level, and while many sectors will undoubtedly be considered in any Brexit negotiations, it is likely that fisheries will be among the areas that will present particular difficulties. In such circumstances access to UK waters, access to fish, avoidance of displacement of other EU fishing vessels into the Irish EEZ, and trade in seafood will be of paramount importance and interest to the Irish seafood industry. This chapter examines existing relationships between the EU and a selection of international organisations and third countries that have seafood interests with a view to exploring the optimum solution for the Irish seafood industry in a post-Brexit world.

## Trade with Third Countries

Official statistics published by Eurostat, the EU statistical service, show the trading statistics with trading partners. The EU is the world's largest market and its two largest trading partners are China and the USA. The EU imports most goods from China, with the value of imports from China increasing by 84% between 2008 and 2018. Most of the imports from China in 2018 (97%) were manufactured goods. Figure 4.1 shows the value of trade in 2018 for the EU's largest trading partners.

*Figure 4.1: EU Trading Partners in 2018*

Trading partner	Imports to EU €Billion	Exports from EU	Trading surplus+/deficit-
China (Eurostat, 2019)	€395bn	€215bn	-€185bn
USA (Eurostat, 2019)	€267bn	€406bn	+€139bn
Russia (Eurostat, 2019)	€168bn	€85bn	-€83bn
Switzerland (Eurostat, 2019)	€109bn	€157bn	+€48bn
Norway (Eurostat, 2019)	€85bn	€54bn	-€30bn

Source: Eurostat

Relying on the benefits achieved under the CAP and the CFP the EU, albeit in the face of increasing populations, is near to self-sufficient in agricultural products. The EU exports almost as much food and beverages as it imports. However demand for seafood in Europe outstrips production and demand for seafood continues to grow. The EU Fish Market report (European Commission, 2018) shows that in 2015 the average EU consumption of Seafood increased to 24.33Kg per capita, and in 2017 imports of seafood into the EU reached a record high of €25.3b. While exports from the EU are principally finished products, the EU is heavily dependent on external

sources of energy and raw materials for manufacturing. Of particular note is the importation of gas and oil from Russia and Norway and the substantial trading deficit that the EU runs with both of these countries. This is significant in the context of the relationship that Russia and Norway have with the EU and the potential effect this relationship may have on fisheries and trade in seafood. While the UK was an exporter of energy in 2004 when oil and gas fields were at peak production, that situation has now reversed and in 2017 the UK imported 36% of the energy it used (Department for Business, Energy & Industrial Strategy, 2018). Accordingly, the UK cannot be directly compared to Norway or Russia in this context.

The EU has a single external trade policy: the Common Commercial Policy (CCP). Under the CCP, member states delegate authority, within defined parameters, to the European Commission to negotiate their external trade relations with the aim of leveraging the combined bargaining power of the EU in negotiating trade agreements. The goals of the CCP are to promote and develop world trade, to progressively abolish restrictions on international trade and to lower customs barriers. Without a CCP a common Customs Union would not be possible and Single Market and Monetary Union would not be possible. Member states are prohibited from entering into trade relationships with third countries on a unilateral basis unless such negotiations are carried out in the context of the CCP. This area, in particular, was problematic for the UK and it is likely to become an issue in any future post-Brexit negotiations in the context of the Northern Ireland Backstop as well as general trade discussions. Within the CCP there are a number of instruments including:

- *Common External Tariff*: Each member state agrees to apply the same tariffs on imports entering the State from outside the EU.
- *Import quotas*: Member states agree to impose EU level quotas on certain products being imported into the EU. Due to the single market

and the free movement of goods and services, import quotas could not be monitored on a State level. Products being imported into the EU have to be imported through a Border Inspection Post which has been approved by the European Commission for the importation of that particular product.

- *Anti-dumping measures:* The European Commission has the power to impose minimum price levels and import tariffs if the price of a product entering the EU is set at a level that is likely to harm internal EU producers.
  
- *Voluntary Export Restraints:* The European Commission and the importing/exporting third country agree to limit the volume of goods imported/exported. This measure is usually agreed in a context where anti-dumping measures are likely to be imposed in the absence of such an agreement.

Other minor measures used to restrict free trade include: export promoting measures (trade fairs, etc.), countervailing duties (in response to export subsidies in exporting third countries), safeguarding clauses (allow World Trade Organisation (WTO) members to suspend normal rules in certain circumstances) and rules of origin (which set out the proportion of a product that must be added locally to qualify the product as originating within the EU or in a state with a EU preferential trading agreement).

The EU Commission holds responsibility for proposing the legislation underpinning the Common Commercial Policy which must be adopted by Council and the European Parliament. The EU Commission is the sole competent authority for managing the policy and negotiating all trade agreements under the policy. Any external negotiations are conducted within the mandate given by the Council and must be formally adopted

by Council and the European Parliament before becoming law. Unusually, the EU Commission holds a power of executive decree in relation to actions taken under the policy but any actions taken by the EU Commission under the power of executive decree can be reviewed by Council and the European Parliament. Such vesting of powers in the EU structures is a working example of neo-functionalism in the fashion envisioned by Jean Monnet.

The General Agreement on Tariffs and Trade (GATT) is a legal agreement between many world countries and has similar goals to those in the EU Common Commercial Policy. The EU, as the world's largest trading block, can make significant gains from a liberalisation of world trade and has been a key player in the negotiation of GATT agreements. Under the Uruguay round of GATT, the World Trade Organisation (WTO) was established on 1 January 1995. While the WTO is the successor to GATT, the agreements reached at GATT are still in effect under the WTO regime. GATT and WTO have successfully reduced tariffs over the years since GATT was first set up in 1947. The Doha round of negotiations covering tariffs, non-tariff measures, agriculture, labour standards, environment, competition, investment, transparency and patents commenced in November 2001 and has not yet concluded.

The world financial crisis forced a significant number of WTO members to adopt a more protectionist approach to protect their state interests and, in particular, the United States came under such pressure. Recent trade restriction manoeuvres by US President Donald Trump's administration has stressed GATT relations to unprecedented levels. It seems likely that the introduction of tariffs and counter measures will continue to escalate putting advances made by the WTO in jeopardy.

It should be noted that in default of an agreement between the EU and the UK, the GATT/WTO tariff regime automatically applies. In the event of a hard (crash-out) Brexit this regime will automatically apply from Brexit date.

The EU, as a trading body, has many bilateral preferential trade agreements. These agreements are more likely to come into focus to find a possible post-Brexit trading solution. The agreements grant various levels of access to the EU Single Market and are listed in Figure 4.2 in order of most advantageous for the trading partner to least.

*Figure 4.2 EU Agreements With Third Country Trading Partners*

<b>Arrangement</b>	<b>Third country trading partner</b>
European Economic Area (EEA)	Norway, Iceland and Liechtenstein
Stabilisation and association agreements	Balkan States
Free trade agreements	Canada, Switzerland, Turkey, Egypt, Jordan, Morocco, Tunisia, Algeria, Lebanon, South Korea
Partnership agreements	African, Caribbean and Pacific former colonies of European countries
Generalised System of Preferences which gives privileged access for certain products	Developing countries
Mutual recognition agreement	USA
Partnership and Cooperation Agreements	Ten members of the Commonwealth of Independent States
Inter-Regional Association Agreements	Andean Pact, Mercosur, Central American Customs Union, Gulf Cooperation Council, Association of Southeast Asian Nations
Various other trade agreements	others including China, Australia, New Zealand, South Africa, Argentina, Brazil, India, Pakistan and Mexico

Source: EU Commission

## **International Fisheries and the Regional Fisheries Management Organisations**

The EU is a global player in the development of world fisheries and a key player in the development of international fisheries law and the governance of international fisheries. The EU also has direct fishing activity or economic interests in many

international fisheries. Furthermore the EU is the largest world market for seafood. These are factors which underpin the EU, currently representing 28 member states, as a significant player on the world fisheries stage.

Prior to the adoption of UNCLOS international fisheries governance was effectively almost non-existent, and many examples can be found of confrontation between conflicting nations on fisheries matters in international waters. Although UNCLOS was not finally adopted until 1982, on 1 January 1977 many coastal states declared EEZs of 200 miles. UNCLOS provides a platform to settle international maritime disputes but also imposes obligations on coastal states in relation to the management of fisheries and, in particular, fisheries that are shared by neighbouring coastal states. UNCLOS, which had been in negotiation since 1958, was the first significant international marine law development since the London Fisheries Convention of 1964 which, *inter alia*, introduced the 12 NM territorial seas (see chapter 3). In most cases the rights of coastal states to exploit the resources in their area of jurisdiction have been well consolidated and by and large are widely respected. UNCLOS was followed in 1995 by the United Nations Fish Stocks Agreement (UNFSA). These two significant pieces of legislation provide the cornerstone for international fisheries management. While most countries have ratified UNCLOS and UNFSA, it should be noted that UNCLOS has still not been ratified by some coastal states including the USA – this however may be due to other areas of UNCLOS rather than fisheries as the USA has ratified UNFSA. From an international fisheries perspective, one significant element of the UNFSA is the reliance on Regional Fishery Management Organisations (RFMOs) to turn the principles of the UNFSA into working management solutions. A second is the importance placed on developing countries and on ensuring that developing countries can avail of their rightful share under the UNFSA.

There are a number of situations where, in addition to the European Commission, EU member states also have individual membership and robust debate is ongoing as to

whether the EU should have one vote at RFMOs or if each constituent EU state should have a vote. This question remains unresolved at a general level, but in the majority of cases (and in particular RFMOs that deal exclusively with fisheries management) the EU, represented by the European Commission, has one vote. The EU is currently a contracting party to 14 RFMOs. Some of the more notable for this thesis include: the International Commission for the conservation of Atlantic Tunas (ICCAT), the North East Atlantic Fisheries Commission (NEAFC) and the Northwest Atlantic Fisheries Organisation (NAFO). In these three organisations, the EU Commission represents all member states, the Commission has one vote, and no individual EU member state has an individual membership. The exclusive competence of the EU on the conservation and management of fish resources implies that international cooperation for the purpose of managing shared fishery resources is the responsibility of the Union and not of individual member states. While EU fishing vessels currently operate in fisheries governed by each of these three organisations it is also important that the EU, as a global player in fisheries governance, be an active participant in all RFMOs including those where EU fishing vessels do not currently operate.

Development of policy within the RFMOs has, in many cases, been closely linked with the development of the EU CFP. These links are bi-directional with many important initiatives being developed by one or the other and subsequently adopted by both. Membership of the EU, rather than individual EU member states, has been an important factor in achieving this dovetailing of policy development. There are many examples of policy initiatives that were initiated in the RFMOs and that are currently features of the CFP e.g. the Atlantic Swordfish recovery plan adopted by ICCAT in 1998 was a precedent for CFP long term stock recovery plans such as the hake recovery plan.

### **Illegal, Unreported and Unregulated fishing**

Measures to prevent Illegal, Unreported and Unregulated fishing (IUU) are conceivably the single most important initiative that has been implemented. These measures,

which were initially established by ICCAT long before the EU adopted them, provide a process to initiate implementation of international seafood trade sanctions against states that are not complying with the agreed anti-IUU measures and have been “blacklisted”. The EU assumes responsibility for compliance of all member states with appropriate measures included in the CFP (e.g. EU operators who fish illegally anywhere in the world face substantial penalties and/or fines linked to the value of their catch). Third countries are obliged to certify fishing operations and maintain records for their own fishing vessels. Measures to prevent IUU fishing are important in the context of Brexit, and particularly so if the UK becomes a third country as certification processes are more stringent for third countries and have the potential to inhibit trade arrangements.

While ICES provides scientific advice on fisheries to the European Commission, many of the RFMOs have their own scientific advisors. Some, including NEAFC and the North Atlantic Salmon Conservation Organisation (NASCO), also use ICES for scientific advice. It is important, whatever the source, that the scientific advice from different sources is aligned to underpin accurate calculation of fishing opportunities for particular fish stocks. In this context there is long-standing co-operation among the organisations providing fisheries scientific advice.

Another area where close co-operation is required is enforcement for breaches of fisheries regulations. One of the criticisms levied on the RFMOs is a lack of capacity to enforce regulations. However, the RFMOs use the control authorities of all members, including the EU to undertake the control functions at sea while, as mentioned above, the RFMOs have other strong tools available such as the ability to recommend imposition of trade sanctions for significant breaches of IUU regulations.

Operationally some RFMOs are more advanced than others. Strategic goals of RFMOs are similar to the CFP (biologically, economically and socially sustainable fisheries and

fishing communities) but some are better structured than others to advance these goals<sup>2</sup>.

One success story that is particularly worthy of mention is the Bluefin Tuna, the stock which is managed on an international basis by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and a Total Allowable Catch (TAC), for the stock is calculated on the basis of scientific advice on the status of the stock. The EU portion of that TAC is divided among EU member states on the basis of relative stability keys. However, Ireland could not show any official record of landings of Bluefin Tuna for the relevant reference period, and accordingly, Ireland has a zero TAC<sup>3</sup>. This is particularly irksome for Irish fishermen who can observe their fellow European fishermen fishing Bluefin Tuna and catching fish worth in excess of €1,000 each within sight of the Irish coastline, while the Irish fisherman is prohibited from targeting or landing that species. It is not long ago that the Bluefin Tuna stock was scientifically assessed and identified as depleted and requiring special conservation measures. ICCAT successfully implemented a recovery plan for Bluefin tuna, but now Irish commercial fishermen are calling for a cull of Bluefin Tuna on the basis that Bluefin are voraciously preying on commercial species in Irish waters<sup>4</sup>.

Some RFMOs have been criticised for not actively and effectively pursuing these goals. In the case of NEAFC, negotiations on North Atlantic mackerel share-out are carried out by the Coastal States group. The Coastal States group (EU, Norway, Faroe Islands, Iceland, Greenland and Russia), unlike the NEAFC, does not have formal arrangements and often experience difficulties in reaching an informal agreed position. When an

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<sup>2</sup> For example NAFO is recognised for its success in actively managing stocks and implementing recovery plans for stocks including Greenland halibut, cod and yellowtail flounder.

<sup>3</sup> Italy found itself in a similar position and challenged the calculation of relative stability keys for Bluefin Tuna in the EUCJ with judgment (delivered on 25 October 2001) upholding the allocation keys as decided by the Council.

<sup>4</sup> It is difficult to fathom that such a request could be accommodated in light of the immense effort expended on recovering the stock. Noteworthy is a pilot tag and release fishery to gather scientific information on Bluefin Tuna that Ireland has recently implemented. The ICCAT approved scheme is open to a limited number of trained skippers of registered angling charter boats on the West coast of Ireland.

informal agreed position is established it then has to be ratified by NEAFC and put forward to the December EU fisheries Council of Ministers to be considered in the context of setting the EU TAC for North Atlantic mackerel. The NEAFC has been criticised for its passive approach to management. This criticism was particularly sharp when NEAFC failed to take any action when Iceland declared a unilateral TAC for 2009 of 112,000 tonnes for North Atlantic mackerel and the Faroe Islands declared a unilateral TAC of 105,000 tonnes for herring (Bjorndal & Nils-Arne, 2014). NEAFC inactivity on the declarations undermined the protection of the fisheries and flew in the face of scientific advice. It was left to EU fisheries commissioner of the day Maria Damanaki to step in and threaten sanctions on Iceland and the Faroe Islands following their unilateral declarations.

The informal Coastal States group dynamically alters membership based on the distribution and biomass of the migratory (and often high value) fish stocks under discussion. NEAFC, unlike for example ICCAT or NAFO abdicates its decision-making role to the Coastal States group. Post-Brexit the UK will become a third country and, most likely, also a member of the Coastal States group. It is reasonable to expect that the hard to reach agreements will become even more difficult to achieve in a post-Brexit environment, and there is a case for considering whether it is now timely for NEAFC to alter its decision-making process to align it more closely with, for example, NAFO or ICCAT.

Allocating fishing quotas among EU member states is a challenging operation, but when quotas have to be allocated on an international basis the problem becomes much more complex. Lado (2016) outlines the fundamental challenge of allocating fishing rights particularly for highly migratory resources with a precondition of good multilateral management and striving to find a balance between the rights of developing states in their own waters and highly developed states with a tradition to fish in those waters. Developing states lack the capital, tradition, technology and

expertise to prosecute fisheries which may lie adjacent to their coastline and need assistance with all these areas. In addition, if such assistance is provided then those developing countries will need to find suitable export markets within which to sell their fish. The EU has the expertise and is the largest world market for seafood. While the EU is sometimes criticised for exploiting fisheries in developing third countries, there are examples, such as Namibia, where thriving indigenous fishing industries have been developed. UK fisheries cannot be considered as developing and accordingly this thesis will not dwell on relationships that have been implemented for developing countries other than recognising the significant role that RFMOs play.

## **International Fisheries Agreements**

Bilateral international fisheries agreements have been a feature of the CFP since the early days, and in a number of cases these types of agreements predate the CFP but are now recognised within the structures (e.g. the Voisinage arrangement allowing reciprocal access to Irish and Northern Irish 0 to 6 NM zones). International Fisheries agreements can be broadly classified under four distinct headings and whereas not all are likely to be important in the context of Brexit, it is likely that any future arrangements between the EU and UK will draw on some of these bilateral arrangements when searching for an acceptable formula and accordingly merit exploration.

**Mutual access agreement** became necessary following the declaration of 200 mile EEZs. Areas of the sea and fishing grounds that had been shared by countries became part of sovereign states and the prospect of being excluded from traditional fishing grounds became a reality for EU and non-EU states. To solve this issue it was necessary to agree arrangements with neighbouring countries on the management and exploitation of shared resources in each other's waters. Arrangements were agreed, *inter alia*, with Norway, Iceland and the Faroe Islands and these arrangements merit closer consideration as they may become

particularly relevant in the context of Brexit. The principle of mutual access agreements is simply to allow each State to fish in the waters of the other. Inevitably, in practice, the agreements are often based on complicated criteria.

**Trade concession agreements** were more popular in the past but are rarely seen in the modern era as other trade agreements have often superseded them. One of the more notable trade concession agreements was made between the EU and Canada in 1977. Canada was given access to the EU market to sell its fish in return for allowing EU fishing vessels to prosecute fisheries in the Canadian EEZ. Another example was an agreement made between the EU and Argentina in 1993 which afforded tariff concessions on Argentinian hake entering the EU market. The development of WTO (and GATT) rules set a level playing field for tariffs for all countries and now any concession offered to one has to be made available to all. This measure has effectively made the use of trade concession agreements all but redundant as implementation would require a realignment of WTO rules.

**Financial Compensation agreements** have been used, and continue to be used, by the EU to guarantee access by EU fishing vessels to the traditionally fished grounds of third countries (e.g. EU/Mauritania and EU/Morocco agreements). The continuation of these agreements over time has always been contentious (Lado, 2016) with the belief that the provision of financial compensation packages to third countries is immoral and promotes pillage of their fish stocks for low compensation. It is argued that assistance to promote indigenous fishing and provision of technical assistance and education on stock management would be more advantageous to those third countries. The use of public funds to pay compensation packages, that benefit private operators is hard to justify (Farnell & Elles, 1984). Often following agreement and payment of a compensation package the opportunities purchased are subsequently not exploited in full

(Lado, 2016). This type of agreement is less likely to come into the reckoning in Brexit negotiations.

**Private partnerships** have been growing in popularity in recent years. The EU fishing sector, which is well developed technically and financially, has been seeking opportunities to enter partnerships with private sector or public sector operations in developing countries. With careful management, some third countries have benefitted from these arrangements with technical knowledge transfer to the indigenous population and capital investment in fishing vessels and seafood processing companies. In such arrangements the revenue is usually generated by charging a licence fee to the EU fishing vessel.

## EU Norway

The EU has three fisheries agreements with Norway (European Union Commission, 2019):

- bilateral agreement (the North Sea and the Atlantic).
- trilateral (Skagerrak and Kattegat (Denmark, Sweden and Norway)).
- neighbouring agreements (Swedish fishery in Norwegian waters of the North Sea).

Among all EU agreements with third countries, the EU Norway bilateral agreement, while it is politically sensitive, is by far the most important, and perhaps also one of the oldest with the current agreement dating back to 1993. In financial terms the EU-Norway agreement relates to quotas worth over €2 billion (European Union Commission, 2019) and annual consultations take place to agree management arrangements for stocks that straddle both EEZs, while another strand of the annual consultation framework is negotiation on exchange of fishing opportunities in each other's EEZs. The agreements reached at these consultations are usually implemented

through the setting of Total Allowable Catches (TACs), quota exchanges and, in certain circumstances, technical measures which are set out in regulations. Many of the shared stocks occur in the North Sea.

The EU/Norway relationship has been important and generally beneficial for both the EU and Norway (some commentators see the arrangement as more favourable for Norway than the EU). Some of the pillars that the CFP are built on were adopted due to their success in Norway<sup>5</sup>. In addition, the reliance on scientific advice to set TACs has now become standard practice in the EU and in Norway leading to the concept of adjusting fish outtakes to Maximum Sustainable Yield (MSY) to optimise the level of biomass that can be removed from a stock without endangering the future viability of that stock.

Interestingly in the initial phases of seeking EU/Norway agreement, the EU proposed to base the Norwegian outtake on historical fishing catch records. However, Norway argued that many important stocks spent the early stages of their life in Norwegian waters before moving to EU waters as mature fish and accordingly, and so Norway should have increased access to the mature fish. The EU does not accept this concept, but it is conceivable that UK negotiators will use a similar argument in an attempt to undermine the continued use of relative stability in a post-Brexit world. It is also conceivable that alternatives to relative stability could be examined in future reforms of the CFP.

The EU/Norway agreement includes, in some cases, long term management measures for the management of certain stocks (management plans). The exchange of fishing opportunities occurs for a number of different stocks of varying importance and value. In order to level the playing field across those stocks, a system of “cod-equivalent

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<sup>5</sup> e.g. technical measures, the focused targeting of particular stocks in mixed fisheries and the avoidance of bycatch and juveniles

value” was implemented. In summary, the EU/Norway agreement is important in a fisheries context as it:

- Allows access to fish stocks in Norwegian waters for EU fleets.
- Influences how other EU stocks are managed.
- Influences, by association, other bilateral negotiations (e.g. Greenland, Faroe Islands).
- Influences, by association, NEAFC and associated Coastal States negotiations.
- Is likely to be relied on, at least in part, by the UK in Brexit/ Post-Brexit negotiations.

### **Is there an Alternative to Relative Stability?**

To ensure the greatest possible stability for over 30 years, the allocation of EU fishing opportunities to member states has been based on a predictable share of the stocks for each member state (Sobrino & Sobrido, 2017). Relative stability has worked reasonably well up to this point. While some criticism has been levied that the system is somewhat inflexible member states have continued to take a view that continuing to embrace relative stability is more attractive, and bears less risk, than opening negotiations on a new mechanism that could deliver unpredictable results, with winners and losers, in what is essentially a zero-sum game.

When the reformed CFP was adopted in 2013 (EU Common Fisheries Policy, 2013) relative stability was retained as the mechanism for allocating fishing opportunities to EU member states. However, the same regulation also introduces a progressive discards ban (2015 to 2019) and obliges fishermen to land all fish caught at sea (the landing obligation). The landing obligation presents a major challenge for fishermen, particularly in mixed fisheries where, despite the development of more selective fishing gear, unwanted catches of a non-targeted species are a feature with every haul of the nets. Under the landing obligation, all fish in the nets must be landed and all fish

are recorded and balanced against the national quota of the member state. In some circumstances there is a possibility that the member state may exhaust the quota for one species in a mixed fishery and in these circumstances the member state is obliged to close a mixed fishery where there is a possibility of catching a species where quota has been exhausted (the choke species) even if there is adequate quota for the other species in the mixed fishery. This scenario is a real possibility in the whitefish fisheries (cod, haddock, whiting, saithe, etc.) in Ireland. There are a number of possible solutions to this problem but some of the potential solutions conflict with the principle of relative stability and accordingly raise a question around the compatibility of relative stability with the landing obligation.

There are a number of mechanisms within the CFP that are used to good effect in smoothing some of the ripples created, in part, by relative stability and it is feasible that further use of these mechanisms could offer potential short term solutions and enhance the operation of relative stability (while it is likely the extension of these solutions would buy some time it is unlikely they would stave off the necessity for a major revamp of the fisheries management regime). Four of the currently used tools that could be considered for enhanced use include:

- Quota swaps: member states exchange quota with other member states.
- Quota transfers: may only be agreed as part of EU TAC & Quota Regulation and has only been allowed when applied to all member states with quota and where it applies to a stock that straddles two ICES management areas.
- Quota uplift provisions under Article 16 (EU Common Fisheries Policy, 2013): an increase in quota to take account of unwanted catch that was previously discarded but now has to be landed under the CFP Regulation.

- Flexibility mechanisms under Article 15 (EU Common Fisheries Policy, 2013): for stocks subject to the landing obligation member states may apply up to 10% flexibility on fish landings from one year into the next.

## Drivers of Change

Changes in fisheries governance are urgently required for a number of reasons but the primary topical drivers are:

- Climate Change and in particular the changing distribution of fish stocks due to climate change.
- Brexit – the UK exit from the EU.
- Potential incompatibility between the Landing Obligation/Discards Ban and relative stability.

The UK is the EU's third largest fishing nation and there is little doubt that the effect of Brexit will be nothing short of the remaking of fisheries management and governance in the Northeast Atlantic in general, and for the EU specifically (Harte, et al., 2019). To date changes to the CFP have been difficult to negotiate and have taken significant time periods to introduce (Stynes, 2012). In light of the current policy drivers, the luxury of time is unlikely to be available if stocks are to be protected and the principles of the CFP are to prevail. Brexit will likely require a renegotiation of the long-standing quota agreements and will fundamentally change the way in which fisheries in the Northeast Atlantic are governed. The EU may be facing a post-Brexit situation where the much smaller size of its remaining fisheries may undermine the stability of the CFP (Harte, et al., 2019). The next planned reform of the CFP is scheduled post 2020 and it is possible that a new radical, comprehensive and adaptable fisheries management regime is possible within that reform process spurred on by the significant issues

outlined above. While all these drivers are significant, it is clear that Brexit is by far the most immediate threat. It is possible that threat may be turned into an opportunity for the EU, but when considering the Irish context it is important to understand the risks and strive for an optimum solution for the Irish seafood industry and the country as a whole.

Change in EU fishing governance is inevitable. Reform of the fisheries and aquaculture sectors is overdue and discussion on the CFP has been delayed in light of the questions that Brexit is raising. It is likely that the next iteration of the CFP will be shaped significantly by Brexit: Whether that is no Brexit, negotiation following a hard Brexit, or a future relationship negotiated during the two year transition period envisaged in an orderly Brexit. In any case, negotiation will be required. In a hard Brexit it seems reasonable to conjecture that the default position of the UK (the current stated position) will be to exclude all non-UK fishing vessels from the UK EEZ and in response UK vessels will be excluded from EU waters.

### **Examining Fisheries Sector Post-Brexit Scenarios**

While a hard Brexit would be a detrimental blow to the Irish seafood sector, it is clear that, in any circumstances of Brexit, a negotiated future arrangement will be necessary. In the rapidly and ever changing landscape of Brexit a comprehensive analysis of the impacts of Brexit on the Irish seafood sector has not been possible. This thesis draws on the available literature and primary and secondary sources of information to develop scenarios, and analyse and rank those scenarios with a view to identifying an optimum solution for the Irish seafood sector in a post-Brexit world. With reference to the possible Brexit outcomes set out earlier possible solutions will be examined by posing the following questions which are the basis for this thesis:

- Will the solution allow Irish fishing vessels access to fish in UK waters?

- Will the solution provide continued tariff-free access between Irish (EU by definition as Ireland is a member of the Single Market) and UK seafood markets (east/west and north/south)?
- Will the solution continue to provide, at a minimum, a similar level of access to fish stocks as heretofore?
- Will the impact of the solution lead to displacement of other EU member states fishing fleets from UK waters into the Irish fishing zone at unacceptable levels?
- Is the solution suitable from an Irish seafood sector perspective?

### **Scenario 1 – The Status Quo**

This scenario could apply if the UK withdrew the Article 50 notice and remained an EU member state. It could also apply for the full transition period if the deal was ratified by UK and EU27 parliaments or for any period of extension of the Article 50 notice period agreed by the EU and the UK. Under this arrangement, the UK would continue to operate under the EU CFP and continue to have access to the single European market.

**Access to waters:** EU fishing vessels and third countries with appropriate arrangements with the EU would have access to waters in the UK EEZ, and UK fishing vessels would continue to have access to the EEZ of EU member states – European waters.

**Access to markets:** It is important to the UK to retain access to a suitable market for its seafood produce given that the UK is a net exporter of seafood. Under this scenario the UK would have continued access to the EU market without the imposition of tariffs or other trade barriers. It is also significant that, under this arrangement, seafood could be exported from the UK to the EU under existing single market rules, and therefore without a requirement to provide sanitary and phytosanitary (SPS) certification or IUU catch certificates. Existing EU food safety and food labelling regulations would continue

to apply. Under this scenario Ireland would continue to have access to the UK seafood market. In common with some of the other scenarios, Ireland's seafood trade with the UK is important in the context of east/west trade but it is of particular importance in the context of north/south trade.

**Access to fish:** Quotas for fish, as agreed and adopted under the CFP at the December Council of Fisheries Ministers, would continue to be available to the UK and to Ireland. The UK, as a member state, would continue to participate in TAC and quota negotiation.

**Displacement into Irish EEZ:** Under this scenario it is unlikely there would be any displacement of EU fishing vessels from UK waters into the Irish EEZ as all the EU member states would retain the access they currently enjoy. Fishing fleets are slow to alter their fishing habits without good reason and the additional fuel and time required to steam from a European fishing port to the west coast of Ireland may not prove economically advantageous to other member states fishing fleets.

**Suitability of solution from an Irish Perspective:** Whereas this would be an acceptable solution from an Irish perspective, it is unlikely that this arrangement could remain unchanged going forward, particularly in light of the requirement to reengage with overdue reform of the CFP. Aspects that are beneficial to Ireland under current arrangements (e.g. the Hague Preferences) would come under scrutiny in the course of any reform, with an associated risk that Ireland might lose some of the benefits it currently enjoys.

## **Scenario 2 - United Kingdom Exclude All Non-UK Fishing Vessels**

This scenario could apply if the UK crashed out of the EU without an agreed deal and become a third country. The UK would make a clean break with the EU and reciprocal

access to markets would cease. This is the default position in a hard (crash-out) Brexit situation from the effective date of the hard Brexit up until a negotiated settlement is arrived at.

**Access to waters:** Under this arrangement the UK would prohibit fishing vessels from all other countries from fishing in its EEZ and UK fishing vessels would be prohibited from fishing in EU waters. Access to fish in international waters would continue to be available. Enhanced certification (SPS, IUU, etc.) would be required for UK seafood imports coming into Ireland. Fishing vessels could only land fish into Ireland through specifically designated third country landing ports (Castletownbere and Killybegs Fishery Harbour Centres are the only currently designated third country landing ports), while direct landings of frozen fish from UK fishing vessels could only occur at a designated EU Border Inspection Post (Dublin is currently the only sea port with a designated BIP for fish in Ireland). Under current Irish legislation (Government of Ireland, 2019), sea-fishing vessels owned and operated within Northern Ireland would continue to have access to fish in Ireland's 0-6 NM zone.

**Access to markets:** Following a hard Brexit the UK would no longer have open access to EU markets and consequently Ireland would not have open access to the east/west or north/south UK market. In default of other arrangements, the WTO tariff arrangements would apply to seafood moving in both directions. In the case of fish being transported across the Irish north/south border for processing, packaging, sale, etc. the tariff would apply each time the fish crossed the border. This would, almost certainly, make the sale of such fish economically uncompetitive and undoubtedly lead to job losses and strain on fishermen, aqua culturists and seafood processors.

**Access to fish:** Setting of TACs for shared stocks would likely be hugely contentious and could result in the EU setting autonomous TACs and taking the full share currently available to the EU27. The UK approach is unknown but the UK could decide to set

autonomous TACs based on its assessment of what it considers its rightful share. Ireland would continue to avail of the quotas allocated at the December Council of Fisheries Ministers but would be unable to catch any of that quota in the UK EEZ. While this would create a particular problem for our two most valuable fisheries (Atlantic mackerel and nephrops) it would be felt to some extent in most fisheries prosecuted by Irish fishing vessels. Fishing effort would likely be targeted within the Irish EEZ leading to concerns about sustainability as well as a risk of not catching the entire quota or catching the quota with fish that are not at peak value (e.g. low fat content).

**Displacement into Irish EEZ:** Exclusion from the UK EEZ will also apply to all other EU member states. However, not all those member states can relocate to fishing grounds within their own EEZs to replace catches heretofore harvested from the UK EEZ. In such circumstances, it is inevitable that some of these fishing vessels will target the rich fishing grounds in Ireland's EEZ. Together with the displaced Irish fishing fleet these additional fishing vessels will deplete fish stocks and potentially lead to conflicts at sea. On the run up to the previous Brexit date of 29<sup>th</sup> March 2019, the European Commission consulted with member states to find a regionally-based solution. One of the measures proposed was to ease the pressure on fishing grounds by introducing payments to fishing vessels to tie-up in port rather than fish. It is likely that under this scenario the tie-up scheme will be activated and perhaps some additional measures will also be considered.

**Suitability of solution from an Irish Perspective:** This is the default position in a hard Brexit situation from the effective date of the hard Brexit up until a negotiated settlement is arrived at. The Irish fishing fleet currently catches over 40% of its fish in the UK EEZ and accordingly this scenario would have a serious impact on the Irish seafood sector and would be unfavourable from an Irish perspective. Even if this situation only pertained for a short period of time it would likely cause significant and possibly irreparable damage to the Irish Seafood sector.

### Scenario 3 – Mutual Access Agreement

This scenario could apply if a Brexit deal (new or existing) could be ratified by UK and EU27 parliaments and the transition period commenced, or through the negotiation that would have to follow a hard Brexit. This is the current arrangement in place for EU/Norway fisheries (European Union Commission, 2019) and also for other third countries including Iceland and the Faroe Islands. Under the agreement with Norway, consultations on management of joint stocks and the exchange of fishing opportunities in each other's waters are held on an annual basis.

**Access to waters:** Current arrangements between the EU and third countries cater for a licensing arrangement for EU fishing vessels that wish to fish in the third country EEZ and vice versa. The numbers licensed are limited to the agreed level, and obligations are imposed on the fishing vessel via the licence (e.g. obligation to report catch for the day by midnight of that same day). The visiting fishing vessel is subject to control and enforcement by the host authorities. The licence can be withdrawn for breaches of the agreement. Under EU/Norway arrangements, access levels are restricted on both sides and are very different to the open access regime within the EU.

**Access to markets:** Norway is part of the EU's single market as it is a member of the European Economic Area (EEA) and the European Free Trade Association (EFTA), but it is not part of the customs union and accordingly it can set its own tariffs on goods imported from outside the single market. Goods are imported tariff-free from Norway into the EU, with exceptions for farm produce and fish which have special arrangements. The UK could adopt a similar approach, however, this would necessitate making an application for UK membership of the European Economic Area and would necessitate the UK effectively adopting EU regulations without having any input into the formulation of those regulations. One advantage for the UK would be access to the significant EU market for seafood.

**Access to fish:** Similar negotiations to EU/Norway negotiations could be conducted between the UK and the EU on an annual basis to agree the management of shared stocks and to set fishing opportunities in each other's waters for the following year. The share out of the TACs under this arrangement would likely open up discussion on the current relative stability model that the EU wants retained. In a post-Brexit world, it is likely this arrangement would result in a cut back on the EU share of impacted stocks. Under current arrangements with Norway the agreement reached is brought forward to the Council of European Fisheries Ministers to inform the setting of annual quotas for member states. The negotiations would take account of the scientific advice on fish stocks to set a sustainable outtake limit. Under this scenario the UK could not participate as a member state in setting EU quotas in future years, and accordingly an appropriate mechanism would have to be implemented to agree TACs. UK fishing fleet would have negotiated access to Irish fishing grounds as part of EU waters. This option carries a risk of igniting the debate around relative stability, firstly between the EU and UK and subsequently internally between EU member states. It also risks highlighting, and bringing into focus, the Hague Preferences that are such an important safety net for Ireland.

**Displacement into Irish EEZ:** It is likely under this scenario that some EU fishing vessels currently operating in the UK EEZ would be accommodated to continue fishing in the UK EEZ, but it is unlikely that all vessels from the EU27 would be accommodated resulting in displacement for the remaining vessels into the Irish EEZ. In a zero-sum equation and taking account of the rich fishing grounds surrounding the UK, the EU could not offer the UK equivalent access and this model could alter the sharing arrangement to the detriment of the EU.

**Suitability of solution from an Irish Perspective:** This solution carries high risk for Ireland as it would likely significantly reduce the level of access for Irish vessels to the

grounds they have traditionally fished in UK EEZ while also diminishing the Irish share of quotas.

#### **Scenario 4 – Trade Concession Agreement**

This scenario could apply if a Brexit deal (new or existing) could be ratified by UK and EU27 parliaments and a future trading arrangement could be negotiated and agreed during the transition period, or through the negotiation that would have to follow a hard Brexit. Under this arrangement the UK would exit the EU, including the single market, customs union and CFP and negotiate a trading agreement with the EU.

**Access to waters:** UK waters would be available only to UK fishing vessels. In such circumstances, a fishing vessel departing from the Irish fishing port of Greencastle could no longer turn to starboard when exiting Lough Foyle and on the East coast the Irish nephrops fishing fleet would be excluded from the fishing grounds traditionally fished that are in the UK EEZ – the only fishing grounds available would be in European waters.

**Access to markets:** Access to the EU seafood market could be allowed at concession rates but it is unlikely that this access would be reciprocal. This would be highly significant for an Irish seafood sector that is currently selling into the UK market as tariffs would apply to seafood moving to the UK either on the east/west trade route or crossing the border into Northern Ireland. This would lead to significant problems within the Irish seafood sector. The World Trade Organisation does not favour the use of agreements with trade concessions and WTO rules state that if favourable terms are given to one trading partner the same terms must be made available to all trading partners. Accordingly, use of the arrangement may prove impossible. In addition, the GATT/WTO policy is, where possible, to abolish trade restrictions and to promote world trade.

**Access to fish:** Under this scenario the UK would not grant access to its EEZ for EU fishing vessels and the EU would be unlikely to open its EEZs to UK fishing vessels.

**Displacement into Irish EEZ:** This scenario would likely result in significant displacement of EU fishing vessels into the Irish EEZ. The problems associated with this displacement and the mitigation steps being planned by the EU are outlined above (see scenario 2).

**Suitability of solution from an Irish Perspective:** This scenario would not be suitable from an Irish perspective as the negatives far outweigh the positives for the Irish sector. It is likely this scenario would cause significant difficulties for many areas of the Irish seafood sector.

#### **Scenario 5 – Access to EU Market is Traded for Access to UK Waters and Quota Share**

This scenario could apply if a Brexit deal (new or existing) could be ratified by UK and EU27 parliaments and a future trading arrangement could be negotiated and agreed during the transition period or through the negotiation that would have to follow a hard Brexit. This hybrid solution is based on scenario 3 (mutual access agreement) and scenario 4 (trade concession agreement) and sees a new relationship between EU and UK where UK grants access to its waters and quota share for EU27 vessels at the levels currently enjoyed in exchange for tariff-free access to the EU market. This solution might require a realignment of WTO rules

Access granted to Norway under scenario 3 above is based on the concept of economic balance. Any increased access or increased TAC for EU vessels in Norwegian waters has to be compensated for by transfer of quotas to Norway (e.g. increased access for

Norwegian vessels to Blue Whiting). In assessing the overall economic relationship between the EU and Norway, the balance of trade and Norway's capacity to provide a supply of fossil fuels to the EU have to be kept in mind.

The UK has extensive and rich fishing grounds and in any scenario (other than the *status quo*) would have a surplus of seafood after satisfying the UK domestic market, while the EU has the largest world market for seafood with €56.6b spent on seafood by consumers in 2017. It is, however, important to consider trade at a higher level than just seafood. The UK will need tariff-free access to EU markets for many sectors and any negotiations on seafood should be conducted in the context of the future trade agreement. One of the bargaining chips that the UK can bring to the negotiating table is the rich fishing grounds within the UK EEZ.

**Access to waters:** Mutual access arrangements have been used, in the main, in preparing for EU enlargement. From 1977 to 1985, the European Economic Community of the time agreed the allocation with Spain of a number of licences to allow access for Spanish fishing vessels to European Economic Community waters on the basis that it was a candidate for accession (Lado, 2016). Norway availed of, and continues to avail of, mutual access arrangements on the basis of economic balance. In a post-Brexit situation, the UK could licence EU27 fishing vessels to fish in its EEZ. The EU has already indicated that in such circumstances reciprocal arrangements would be made for UK fishing vessels that wished to fish in EU waters.

**Access to markets:** This scenario would facilitate UK access to the EU seafood market and a mechanism for EU access to the UK seafood market based on the UK trading access and quota share for market access. EU access to UK markets would be of particular importance for north/south trade in Ireland as fish currently crosses over and back between both jurisdictions freely and in some circumstances the same fish

can traverse the border more than once. Also, much of the food for organic finfish aquaculture in Ireland is currently sourced in Scotland.

**Access to fish:** The UK fishing fleet is currently not capable of harvesting the entire outtake from the UK EEZ. An expansion of the UK fishing fleet, of the order required, would take significant investment in new vessels and a number of years to achieve. In addition without tariff-free access to the European market, the UK would have to replace the EU market with an alternative within which to sell its surplus seafood. Accordingly, although inconsistent with the Brexit position of “keeping British fish for Britain”, allowing continued access for EU fishing vessels to the UK EEZ would suit both parties.

Quota sharing arrangements would also be required and could be negotiated by reference to the economic balance achieved with the UK trading quota share for EU market access.

**Displacement into Irish EEZ:** In circumstances where the entire EU fishing fleet that is currently operating in the UK EEZ could continue to operate there, licensed under the negotiated agreement, displacement into the Irish EEZ should not occur.

**Suitability of solution from an Irish Perspective:** If the *status quo* is not available as a solution, then this solution is the most favourable from an Irish perspective. This solution would allow continued access for Irish fishing vessels in the UK EEZ, ensure quotas for Irish vessels at a similar proportion of TAC as currently available, facilitate access to the UK markets for Irish seafood without the imposition of tariffs and support cross-border trade on the island of Ireland. The solution also mitigates the risk of displacement of fishing vessels from other EU member states into the Irish EEZ.

## Summary of Scenarios and Ranking

Figure 5.1 offers a summary, in tabular form of the five scenarios and adds a ranking assigned by the author on the basis of suitability (on a scale of 1-5 with 1 being most suitable and 5 being least suitable solution) of the solution from an Irish perspective.

*Figure 5.1 Summary of Scenarios and Ranking*

<b>Scenario No.</b>	<b>Access to UK Waters for Irish FVs?</b>	<b>Tariff-free access to UK Markets for Irish Seafood</b>	<b>Access to Fish for Irish FVs?</b>	<b>Displacement into Irish EEZ?</b>	<b>Suitability from an Irish perspective</b>	<b>Ranking from an Irish perspective</b>
1	Yes	Yes	Yes	No	Yes	1
2	No	No	No	Yes	No	5
3	Partial	Possible	Partial	Yes	No	4
4	No	Possible	No	Yes	No	3
5	Yes	Yes	Yes	No	Yes	2

## Conclusion

It is inevitable that dialogue and negotiation will be required to agree a future relationship between the EU and the UK. At the time of writing, it is not yet clear whether that dialogue will be with a backdrop of an orderly Brexit, a hard Brexit, or a reversal of Brexit. It will undoubtedly be a high stakes game in which we are likely to see considerations of international structures and organisations and international trade coming into play. In particular, consideration of WTO rules, the EU Common Commercial Policy, the preservation of the single market and the customs union will be core issues, and while fisheries is a relatively small part of the jigsaw, it is likely to be an area that attracts much attention. Cognisance will have to be taken of the international context of fisheries and the existing governance arrangements. The imposition of tariffs is likely to be a difficult area and the automatic imposition of tariffs by default in

the absence of an agreement will influence the dialogue timetable. Existing arrangements will be examined in the context of finding a fisheries solution with particular reference to the EU-Norway model likely. In addition, the heretofore sacrosanct EU fisheries touchstone of relative stability is likely to come under scrutiny. Furthermore, these issues and potential solutions will have to be considered in the context of climate change and the necessary adaptation and mitigation measures.

Of the solutions currently within focus, the most favourable, from an Irish seafood sector perspective, is maintaining the *status quo*. In the event that *status quo* is not possible, the next best option, from an Irish perspective, is a hybrid solution based on mutual access and trade concessions where the UK trades access to UK waters and quota share for access to the EU market.

## Chapter 5: Conclusion

The 23<sup>rd</sup> June 2016 Brexit referendum result to leave the EU by a majority of 52% was a major shock to then British Prime Minister David Cameron, to other EU member states and of course to Ireland. Of all the EU 27 member states, it is clear that Ireland has most to lose when the UK exits the EU, and while the effects of Brexit will impact on many sectors it is likely to have a very significant impact on the Irish seafood sector. At the time of writing, the shape of Brexit is not yet clear and options range from a crash-out Brexit, to a negotiated withdrawal agreement, to a reversal of Brexit (withdrawal of the UK article 50 notice) and perhaps some other options that are not yet evident. While the DUP were kingmakers and held the political balance in the House of Commons, negotiating an alternative to the Northern Ireland backstop proved fruitless. Following loss of the whip by some dissenting Tory MPs and by-elections that the Tory party failed to win, the DUP is not in the strong position they held heretofore. Progress on the impasse on border arrangements between the EU and UK (in particular the Backstop arrangement) may now be possible but Johnson would have to be certain he no longer needs DUP support in the House of Commons before throwing them under the bus.

On commencing research for this thesis in October 2017 it could not have been anticipated that Brexit would have taken such a circuitous path, and that two years on there would be still no obvious solution in sight. Research for this thesis was challenging due to the ever changing nature of the Brexit debate and a lag in the availability of academic material particularly on fisheries aspects of Brexit.

Climate change, CFP reform and Brexit are all significant drivers of change for the seafood sector, but there is little doubt that Brexit offers the most immediate threat for the Irish seafood sector. It is clear that regardless of the flavour of Brexit, or indeed in the event of a reversal of Brexit, a huge challenge faces the EU and the UK to find a

suitable future working relationship. The seafood sector is likely to be one of the sectors that will require careful consideration when crafting that future working relationship and finding a balance that suits the EU and the UK. Some of that consideration may be in the context of centralised trade and market access negotiations which are, of course, very important for the seafood sector, but specific arrangements will be necessary for access to waters, access to fish, and limiting risk of displacement of fishing vessels from other EU member states into the Irish EEZ. Any solution for the seafood sector must, of course, be considered in the context of the CFP and international governance structures.

It is vitally important that any post-Brexit solution protects the Irish seafood sector as well as fostering the goals of the CFP. This thesis examined the development of the CFP, the structure of the Irish fishing fleet and fishing opportunities, Brexit and its impact on the seafood sector, and fisheries in the international context. Following analysis of the policies, structures, constraints and issues this thesis developed, outlined, examined and assessed possible scenarios with a view to identifying the optimum solution for the Irish seafood sector, but cognisant that any solution also has to foster the goals of the CFP.

The core goal of this thesis is to establish if there is an optimum post Brexit solution that fosters the principles of the CFP and protects the Irish seafood sector while protecting the fabric of coastal communities, the environment and fish stocks.

At this point in time, much remains unclear about Brexit and the impacts of Brexit on fisheries and, in particular, the Irish seafood sector – we now stand in the calm before the storm of the greatest challenge the sector has ever faced while also grappling with the realities of climate change and a requirement for continued CFP reform. Despite the Brexit preparations that are being made, there are risks, known and unknown, lurking at every turn and the only conclusion that can be drawn is that there is no

certainty of an optimal solution that protects the Irish seafood sector and fosters the goals of the European Union's CFP at this point in time.

From an Irish perspective, and cognisant of the continued fostering of the CFP goals, the optimal current solution is the *status quo*. This can, of course, only be achieved if the UK withdraws Article 50 notification and remains an EU member state. In what now seems the unlikely prospect of withdrawal of Article 50, it should be noted that the *status quo* does not provide a risk free long-term solution from the perspective of the Irish seafood sector for the reasons outlined above. Even in the most benign of scenarios, the *status quo*, the Irish seafood sector should prepare for a push to alter the relative stability model and attempts to renegotiate the Hague Preferences.

It is possible that further options will come into play as the shape of Brexit becomes clearer. However, pending further clarity in the Brexit process, it is not possible to include further possible options in the analysis.

Hope remains that as we progress towards some negotiated solution, the options will become more focused and common sense, and perhaps some creative thinking will prevail so that the principles of the CFP can continue to underpin the protection of coastal communities, the environment, seafood sector and fish stocks for the benefit of future generations. We have to strive to ensure that we always have plenty of fish in the sea.

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