



**HOUSE OF LORDS**  
European Union Committee

House of Lords  
London  
SW1A 0PW

Tel: 020 7219 4579  
Fax: 020 7219 6715  
euclords@parliament.uk  
www.parliament.uk/lords

13 March 2020

George Eustice MP  
Secretary of State  
Department for Environment, Food and Rural Affairs  
Seacole Block  
2 Marsham Street  
London, SW1P 4DF

Dear George,

### **Access to UK fisheries post-Brexit**

Thank you for appearing before the Committee on 4 March to discuss your views on access to UK fisheries post-Brexit. Given the ongoing negotiations regarding the future UK-EU fisheries agreement, we would like to draw the key findings from our inquiry to your attention.

#### *Negotiating aims*

When speaking with us you argued that the Government has brought a new “clarity of purpose” to the fisheries negotiations with the EU.<sup>1</sup> Your ambition for the UK to be “like Norway”<sup>2</sup> is in accordance with the preferences expressed to us by Elspeth Macdonald, Chief Executive Officer of the Scottish Fishermen’s Federation and Barrie Deas, Chief Executive of the National Federation of Fishermen’s Organisations.<sup>3</sup> We also appreciate your intention to approach the negotiations in a “neighbourly” fashion: as noted by Dr Christopher Huggins, Senior Lecturer in Politics at the University of Suffolk, “You cannot manage [fisheries] successfully unless you have good working relationships with neighbouring coastal states.”<sup>4</sup>

We do, however, have concerns about the time available for the negotiations. According to the *Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom*,<sup>5</sup> you are seeking to conclude and ratify a fisheries agreement

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<sup>1</sup> [Q 29](#) (All quotes from the evidence session on 4 March 2020 are provisional at the time of writing.)

<sup>2</sup> [Q 27](#)

<sup>3</sup> [Q 10](#)

<sup>4</sup> [Q 2](#)

<sup>5</sup> Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (19 October 2019):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840656/Politica](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Politica)

with the EU by 1 July this year. Professor Richard Barnes, Associate Dean for Research at Hull University, argued that “to get through the domestic process, we are probably looking at an agreement by the start of June”.<sup>6</sup>

In addition, we note that there are significant differences between the Government’s opening position as set out in its Command Paper *The Future Relationship with the EU: The UK’s Approach to Negotiations*,<sup>7</sup> and the EU’s opening position as set out in its negotiating directives,<sup>8</sup> particularly regarding the allocation of quota and the frequency of negotiations.

**We welcome your clear statement of the UK’s goals in the fisheries negotiations with the EU, and the close alignment between the Government’s position and that of the UK’s fishing industry. We note, however, that those negotiations will take place within a challenging timeline, and there are substantive disagreements with the EU to overcome.**

### *Reducing access*

As you are aware, the United Nations Convention on the Law of the Sea (UNCLOS) grants states the sovereign right to govern their respective Exclusive Economic Zones (EEZs),<sup>9</sup> and much has been made of the opportunity this provides the UK to ‘take back control’ of its waters after the transition period. Nonetheless, Barrie Deas told us: “Very few people consider that all EU vessels would be expelled from UK waters, full stop. What we are looking at is ... access arrangements that are fair, balanced and proportionate.”<sup>10</sup>

Chris Davies, ex-Chair of the European Parliament’s Fisheries Committee, told us that “European boats have always fished around the UK ... There is a sense of unfairness on the European side that it is being pushed out”.<sup>11</sup> Richard Barnes stated that having fished in UK waters historically will not give Member States the right to do so after the transition period, but went on to note “an obligation under UNCLOS to ensure that the UK, when giving access to any surplus, takes into account states that have traditionally fished in those waters”.<sup>12</sup> You also stated that the UK should “have some regard for historic access that there might have been, but it is not a right”.<sup>13</sup>

The legal situation is clearer when it comes to the UK’s territorial waters. The London Fisheries Convention, signed in 1964, used to allow vessels from some EU countries to fish within 6-12 nautical miles of the UK’s coastline. The UK has now withdrawn from the

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[1\\_Declaration\\_setting\\_out\\_the\\_framework\\_for\\_the\\_future\\_relationship\\_between\\_the\\_European\\_Union\\_and\\_the\\_United\\_Kingdom.pdf](#) [accessed 6 March 2020]

<sup>6</sup> [Q 2](#)

<sup>7</sup> HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 6 March 2020]

<sup>8</sup> Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#)

<sup>9</sup> UNCLOS, 10 December 1982: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/UNCLOS-TOC.htm](https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm) [accessed 6 March 2020]

<sup>10</sup> [Q 11](#)

<sup>11</sup> [Q 20](#)

<sup>12</sup> [Q 3](#)

<sup>13</sup> [Q 29](#)

convention, which Jeremy Percy, Chief Executive of the New Under Ten Fishermen's Association, called "a significant step forward in drawing a line in the sand".<sup>14</sup> Richard Barnes and Andrew Oliver, Partner at Andrew Jackson, agreed that the UK's withdrawal from the Convention means historic rights do not apply in these waters.<sup>15</sup> This allows the UK to restrict access by non-UK vessels more fully. Andrew Oliver argued that "the 12-mile limit is where potentially the big win is for the UK inshore fleet, which has been under the most strain and pressure over the last few years on its fishing activities".<sup>16</sup>

You told us that, within this overall legal context, it is your intention to reduce foreign access to UK waters, particularly in the 6-12 miles zone, which should be "reserved predominantly for our own vessels".<sup>17</sup>

**The UK's departure from the EU, and its withdrawal from the London Fisheries Convention, provide the legal right to decide which countries may and may not access its fishing waters. Contrary to public rhetoric on this issue, the fishing industry is not seeking entirely to exclude EU vessels from the UK EEZ after the transition period. There are, however, significant potential benefits for the inshore fleet to be gained from significantly reducing non-UK access to the 6-12 mile zone, and we welcome your recognition of this.**

#### *Quota rebalancing*

The EU's negotiating directives, as adopted and published on 25 February, state that they will be seeking to "uphold existing reciprocal access" to UK waters, as well as existing quota shares.<sup>18</sup> Elspeth Macdonald told us that, in her view, the ability to control foreign access was most useful as a means to secure a larger proportion of the quota for stocks found in UK waters: "Control of access is the ace in the pack; it is the greatest lever we have."<sup>19</sup>

Jeremy Percy told us that UK vessels "take only 32% of the fish available in our waters".<sup>20</sup> Asked what an appropriate quota balance would be, Elspeth Macdonald answered: "There are good comparator figures for other countries. I believe that the figure that the Norwegian industry catches in its own waters is in the region of 85%, and for Iceland it is higher, over 90%, I think."<sup>21</sup> Jeremy Percy was more blunt: "I hesitate to put a specific percentage, but it wants to be a damn sight more than we currently have."<sup>22</sup>

The issue of quota sharing is made more complicated by the fact that a substantial proportion of UK quota is assigned to UK-flagged vessels that are nonetheless foreign-owned, so-called 'quota hopping'. You informed us that, after the transition period, "any foreign company that wanted to buy vessels in the UK might well be able to", but that you are seeking to strengthen

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<sup>14</sup> [Q 13](#)

<sup>15</sup> [Q 3](#)

<sup>16</sup> [Q 3](#)

<sup>17</sup> [Q 30](#)

<sup>18</sup> Paragraph 89, Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#)

<sup>19</sup> [Q 13](#)

<sup>20</sup> [Q 11](#)

<sup>21</sup> [Q 11](#)

<sup>22</sup> [Q 11](#)

economic link provisions to ensure that foreign-owned vessels “are required to leave more of their catch in UK ports and return more economic benefit to the UK”.<sup>23</sup> We welcome this as being in accordance with one of the recommendations from our *Brexit: fisheries* report.<sup>24</sup>

On 4 March you stated that you are determined to allocate quota on the basis of zonal attachment rather than the existing system of relative stability, on the grounds that there is a stronger scientific justification for zonal attachment.<sup>25</sup> During our 2016 inquiry *Brexit: fisheries*, we heard that relative stability was “unfair and disadvantaged the UK”,<sup>26</sup> and during our present inquiry industry representatives supported moving towards zonal attachment as an alternative quota allocation mechanism.<sup>27</sup>

Neil Hornby, Defra’s Director of Marine and Fisheries, stated that Defra had been researching zonal attachment since 2016 and was confident in both the methodology and the data.<sup>28</sup> Christopher Huggins, however, argued: “You need an awful lot of data to come to that assessment. I imagine that for some species a lot of research has been done and that data is present, but for other species the data is thinner on the ground.”<sup>29</sup> In addition, Richard Barnes noted that “one of the challenges with zonal attachment is that it will have to be much more rigorously updated”.<sup>30</sup>

There are also political challenges to using zonal attachment to allocate quota. You noted that the EU supported a zonal attachment approach for pelagic stocks in the North Sea in the past, but changed their position after the EU referendum.<sup>31</sup> It is also clear from the EU’s negotiating directives that they will be seeking to maintain their current share of fishing quotas,<sup>32</sup> so are unlikely to support a move towards zonal attachment.

**We welcome your intention to pursue a zonal attachment approach to quota allocation, both on the basis of its scientific justification and because it would result in a fairer allocation of quota to UK fishers. To be viable this approach must be both transparent and sufficiently funded, and we urge you to set out how you will ensure those principles are upheld.**

**We note, however, that a zonal attachment approach is likely to be resisted by the EU.**

**The practice of ‘quota hopping’ remains a potential drain on the UK’s quota allocation, but we welcome the steps you are taking to ensure the UK secures more economic benefit from those foreign-owned vessels.**

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<sup>23</sup> [Q 30](#)

<sup>24</sup> Paragraph 50: European Union Committee, *Brexit: fisheries* (8<sup>th</sup> report, Session 2016-17, HL Paper 78)

<sup>25</sup> [Q 34](#). Relative stability is an allocation key established in 1983 on the basis of historic catches that has not been adjusted in the interim; a zonal attachment mechanism would be based on the spatial distribution of stocks over time and their various life stages, as informed by research survey data.

<sup>26</sup> European Union Committee, *Brexit: fisheries* (8<sup>th</sup> report, Session 2016-17, HL Paper 78)

<sup>27</sup> [Q 11-12](#) (Elspeth Macdonald, Barrie Deas)

<sup>28</sup> [Q 34](#)

<sup>29</sup> [Q 5](#)

<sup>30</sup> [Q 5](#)

<sup>31</sup> [Q 34](#)

<sup>32</sup> Paragraph 89, Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#)

## Trade

When speaking with us on 4 March you were firm that the fishing agreement and the trade deal will be separate strands of the negotiations with the EU.<sup>33</sup> However, it is clear from the EU's negotiating directives that they do not intend the two to be separate: "The terms on access to waters and quota shares shall guide the conditions set out in regard of other aspects of the economic part of the envisaged partnership, in particular of access conditions under the free trade area".<sup>34</sup>

You acknowledged that the UK exports a lot of shellfish to the EU.<sup>35</sup> Richard Barnes told us: "I think [Government] have to ensure that there is some form of access to markets for the seafood sector as a whole."<sup>36</sup> However, in our evidence session with you Lord Kerr raised a concern that, if the UK reduces access to UK waters for EU fleets, the EU may reduce access to its markets for UK fish products.<sup>37</sup> This could occur through tariff and non-tariff barriers, as well as unilateral action by fishers. Jeremy Percy raised that very concern: "If the Government do not get the balance right, and especially if the French effort in our waters is significantly reduced, you can forget all about the legal side and everything else; the French fishermen will simply close down the ports overnight. They have done it before, and they are more than capable of doing it again."<sup>38</sup> Similarly, Chris Davies said: "I went to the port of Boulogne in the summer. Not only is it the largest fishing port in France, it is also the main distribution centre for British fish being exported into the European Union market ... The possibility of disruption by angry French fishermen is obvious."<sup>39</sup>

Chris Davies told us: "We have the right to exclude all EU vessels from those waters, but there will be an economic price to pay for doing so. There is no question about that."<sup>40</sup> Andrew Kuyk, Director General of the UK Seafood Industry Alliance, agreed: "The law is clearly on our side, and that is a strong lever, but there is a different lever on the other side, which is to do with market access ... While we can say, yes, we have a very strong lever with access, that is only part of the story behind the negotiation."<sup>41</sup> You noted that there are many Member States which do not rely on access to UK fisheries, and "it would be quite a big ask of countries such as Italy and Germany, which do not benefit from access to UK waters, to say we are going to jeopardise a trade deal on all those important industrial goods that for which they do seek access to the UK market".<sup>42</sup>

We asked Chris Davies what the UK should seek to achieve in the fishing negotiations, and he answered, "They should be aiming to get a good deal for the chemicals industry, the car industry and the pharmaceutical industry. The reality is that ... a lot of political attention is

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<sup>33</sup> [Q 29](#)

<sup>34</sup> Paragraph 90, Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#)

<sup>35</sup> [Q 29](#)

<sup>36</sup> [Q 1](#)

<sup>37</sup> [Q 30](#)

<sup>38</sup> [Q 15](#)

<sup>39</sup> [Q 22](#)

<sup>40</sup> [Q 21](#)

<sup>41</sup> [Q 13](#)

<sup>42</sup> [Q 30](#)

being paid to fishing, but the chemicals sector in this country is worth eight times more than the fishing sector.”<sup>43</sup>

**We remain unconvinced that a ‘divide and rule’ approach will achieve the separation of fishing and trade in the negotiations; and even if your negotiations are successful, there could be repercussions at sea and port if elements of the fishing industry are dissatisfied with the quota settlement. Regardless of the absence of precedent, it is clear that the UK will come under pressure to make concessions in negotiations on fisheries, in order to secure a trade agreement. The Government must give serious consideration to the economic impact of its negotiating positions on both the fishing industry and the wider UK economy.**

### *Enforcement*

Neil Hornby explained that, after the transition period, vessels fishing in UK waters will require a licence, adding: “Those licences will have a number of conditions attached to them, which is one of the ways we could require other vessels to comply with certain rules that we might want. That provides something to enforce against if vessels are picked up for not following those conditions. It is a method that we use now for our own vessels but one we can extend to other vessels coming into our waters.”<sup>44</sup> Barrie Deas viewed this development as key to the effective enforcement of any agreement on fishing access: “Eligibility to fish in the UK zone will depend on whether the vessel list includes the name and number of particular vessels. Any vessel fishing illegally after the UK becomes an independent coastal state would jeopardise ... its future access to fish in UK waters. That is a much more powerful tool than discussing the various hardware available or not available to us.”<sup>45</sup>

Other witnesses highlighted the importance of continued data sharing to enable effective enforcement and fisheries management: “If all the information about what you are catching is out in the open, it is another incentive to abide by the rules and create the culture of trust without which you cannot do effective fisheries management.”<sup>46</sup> Neil Hornby stated that “a key part of that agreement will be sharing that sort of information and data, and having co-operation on enforcement issues”.<sup>47</sup> Andrew Oliver emphasised the particular need for data compatibility: “At the moment, all the vessels operating in the EU fleet use VMS technology.”<sup>48</sup> We need to ensure as part of the negotiations that VMS technology carries over. In January, we do not want the European fleet to go dark on us so that we do not know where it is. It is essential that we maintain the VMS technology so that we can track their vessels and they can track ours.”<sup>49</sup>

You informed us that the Government has “significantly increased” its enforcement capabilities in anticipation of becoming an independent coastal state, including extra vessels and

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<sup>43</sup> [Q 21](#)

<sup>44</sup> [Q 32](#)

<sup>45</sup> [Q 14](#)

<sup>46</sup> [Q 7](#) (Dr Christopher Huggins)

<sup>47</sup> [Q 33](#)

<sup>48</sup> The vessel monitoring system (VMS) is a satellite-based monitoring system which provides data to fisheries authorities on the location, course and speed of vessels.

<sup>49</sup> [Q 7](#)

personnel.<sup>50</sup> You also stated that this increased capacity was funded by the EU Exit fund, and that “some new, additional costs will need to be reflected in the baseline on an ongoing basis”, but this funding had not yet been secured.<sup>51</sup>

**We welcome the introduction of a licensing regime as a new, effective tool for the enforcement of the future UK-EU fisheries agreement. We also welcome your willingness to establish data sharing arrangements with the EU to support enforcement, and encourage you to ensure the vessel monitoring system is still available for UK fishing authorities after the transition period. We are concerned, however, that the funding necessary for the long-term effective enforcement of an agreement on access to UK waters may not be available. It is vital that sufficient resources are available beyond the initial EU Exit period.**

### *Devolution*

Christopher Huggins highlighted the inherent conflict of inter-UK discussions regarding access to UK waters: “International relations, external relations and negotiations on trade are an exclusive UK Government competence, whereas fisheries policy, which you cannot effectively do without engaging in international trade and international relations, is a devolved competence. There is an imperative for the devolved administrations and the UK Government to work together.”<sup>52</sup> You stated that “there will be close engagement with all the devolved administrations on developing the future partnership agreement, or free trade agreement, and the fisheries agreement”, but added that the negotiation of international agreements is a reserved matter, and therefore the devolved administrations will not be in the room when the agreement is negotiated.<sup>53</sup> We understand from bilateral conversations with colleagues in the devolved nations that they expect to be ‘in the room’ for negotiations.

**While we acknowledge that the negotiation of the UK-EU fisheries agreement is a reserved matter, we do not believe that the Government can simply ignore the reality that legislative responsibility for fisheries policy has been devolved. It would be an appropriate acknowledgement of the importance of the fishing industry to the devolved nations to ensure that the devolved administrations are directly involved in the negotiations themselves; we expect their representatives to be in the room. Such a step also be in the spirit of the inter-UK cooperation that will be necessary to ensure the effective and sustainable management of UK waters.**

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<sup>50</sup> [Q 32-3](#)

<sup>51</sup> [Q 32](#)

<sup>52</sup> [Q 6](#)

<sup>53</sup> [Q 35](#)

## *Annual negotiations*

In its Command Paper the Government set out its position that the UK-EU fisheries agreement should allow for “annual negotiations on access to the parties’ exclusive economic zones and fishing opportunities”.<sup>54</sup> You argued that this is a reasonable approach because similar annual negotiations already take place between the EU and Norway.<sup>55</sup> However Michel Barnier, speaking on 5 March 2020 after the first round of negotiations on the future relationship, identified this as one of the key points of disagreement: he described the UK’s proposal as “totally impractical”, adding “there’s a hundred species or so. What we can do with Norway on five species simply isn’t possible for 100 species”.<sup>56</sup>

Several of our witnesses noted that, despite the annual negotiations, the EU-Norway agreements are relatively stable with regard to access and quota shares. Barrie Deas told us that “after the initial adjustments are made to quota shares, that sort of thing settles down; the access arrangements settle down. There is not a revolution every year”.<sup>57</sup> Chris Davies said that, although they could in theory be negotiated annually, “my understanding is that the quotas are very stable; Norway does not seem to want to touch them on an annual basis. There has been no discussion about redistributing the share of the quota for at least several years”.<sup>58</sup>

You told us: “There always have to be annual agreements on fisheries, simply because one of the key determinants in setting the total allowable catch for any given stock is up-to-date science ... The question becomes how possible it would be to have a multiannual agreement spanning several years that would lead to joint management plans for a particular stock in the longer term. There are precedents for that, so that may develop. It may not be possible to agree and ascertain that as quickly as July but it is possible that it could evolve at some point afterwards.”<sup>59</sup>

**The question of whether fisheries negotiations should be annual is, on the face of it, a key disagreement between the UK and EU. It seems, however, that there may be some room for agreement. As the EU’s primary objection to annual negotiations on quota shares appears to be the logistical challenge of considering so many stocks, a commitment to agreeing multiannual plans by a defined date, which would stabilise quota shares after an initial period of adjustment, may be a way forward.**

## *Sustainability*

The total allowable catches (TACs) and quota shares agreed between the EU and other coastal states have, historically, been set significantly in excess of the levels recommended by scientific

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<sup>54</sup> HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 6 March 2020]

<sup>55</sup> [Q 28](#)

<sup>56</sup> <https://www.bbc.co.uk/news/uk-politics-51755843>

<sup>57</sup> [Q 11](#)

<sup>58</sup> [Q 20](#)

<sup>59</sup> [Q 28](#)

advice.<sup>60</sup> In that context, we note that in the Fisheries Bill you commit to establish a management plan for each stock, and that you will “look to attach conditions around sustainable fishing” in fisheries negotiations.<sup>61</sup>

In addition, as you will be aware from our 2019 reports on the implementation and enforcement of the EU landing obligation,<sup>62</sup> we believe that the rollout of Remote Electronic Monitoring (REM) is crucial for ensuring sustainable fishing, and have stated that the UK should commit to mandating the use of REM on all vessels fishing in UK waters after it leaves the EU. When we raised this on 4 March, you acknowledged that “remote electronic monitoring is the most effective way to monitor what is happening with catches”, and stated that you would want to “work it up with the devolved administrations” and signal in advance at the annual negotiations that the UK is “likely to require this as a condition of access, to give other countries time to adjust and invest in whatever technology they would need”.<sup>63</sup>

**Withdrawal from the EU gives the UK an opportunity to become a global leader in sustainable fishing. We welcome the steps you outlined in order to protect fish stocks, particularly your commitment to include sustainability provisions in fishing agreements. We urge you to be still more ambitious regarding Remote Electronic Monitoring, and to publicly commit to a deadline by which all vessels fishing in UK waters will have to have the technology in use.**

We wish you well for the forthcoming negotiations, and look forward to a reply to this letter by 31 March.

Yours sincerely,



Lord Teverson  
Chair of the EU Energy and Environment Sub-Committee

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<sup>60</sup>See, for example, letter dated 4 September 2019 from Lord Boswell, Chair of the European Select Committee to George Eustice MP: <https://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/scrutiny-2017-19/CFP-2020-fishing/10186-19-LB-to-GE-CFP-and-2020-fishing-opportunities-040919.pdf> [accessed 6 March 2020]

<sup>61</sup> [Q 36](#)

<sup>62</sup> European Union Committee, *Fisheries: implementation and enforcement of the EU landing obligation* (26<sup>th</sup> Report, Session 2017-19, HL Paper 276; European Union Committee, *The EU fisheries landing obligation: six months on* (43<sup>rd</sup> Report, session 2017-19, HL Paper 395

<sup>63</sup> [Q 31](#)