



Select Committee on the European Union

Energy and Environment Sub-Committee

Corrected oral evidence: Access to UK fisheries

Wednesday 12 February 2020

10.40 am

Watch the meeting

Members present: Lord Teverson (The Chair); Lord Addington; Lord Arbuthnot of Edrom; Baroness Byford; Lord Kerr of Kinlochard; Lord Maxton; Baroness McIntosh of Pickering; The Duke of Montrose; Lord Young of Norwood Green.

Evidence Session No. 1

Heard in Public

Questions 1 - 9

Witnesses

[I](#): Professor Richard Barnes, Associate Dean for Research, Hull University; Dr Christopher Huggins, Senior Lecturer in Politics, University of Suffolk; Andrew Oliver, Partner, Andrew Jackson.

Examination of witnesses

Professor Richard Barnes, Dr Christopher Huggins and Andrew Oliver.

Q1 **The Chair:** I welcome our witnesses to the first evidence session of our short inquiry into access to UK fisheries and waters. I remind Members that they should make any declaration of interest the first time they speak, if they have any. I remind everybody that this is a recorded public session.

In anticipation of what our witnesses are going to say, if there is anything additional you would like to say, you are very welcome to give written evidence to our clerk, Jennifer Mills, afterwards. We will send you a transcript of the session. If there is anything that you think has been recorded incorrectly, please come back to us.

As I said outside, we have a number of questions of which you are aware. Please do not feel that all of you have to answer every question. If one of your colleagues does it quite adequately, that is good enough for us. I ask both Members and witnesses to keep questions and answers to the point. As this is a public session, could I first ask you briefly to introduce yourselves?

Professor Richard Barnes: I am a professor of law at the University of Hull specialising in the law of the sea.

Dr Christopher Huggins: I am from the University of Suffolk. My main interest is in territorial politics. I have just completed a project looking at the governance of fisheries after Brexit.

The Chair: That sounds good.

Andrew Oliver: I am a partner with a law firm in Hull, Andrew Jackson. I am a specialist fishery lawyer and have practised in fisheries law for about 30 years.

The Chair: Thank you very much indeed. I will start the session with quite a general question, so perhaps I could ask you not to get into the detail of the subsequent questions. This is an opportunity to paint a broad canvas, if you like. What should the Government be aiming for in their negotiations on post-Brexit access to UK fisheries?

Professor Richard Barnes: There are probably a few things. One is delivering on the Government's manifesto pledge to get a good deal for the British fishing industry, and that probably means some degree of uplift in quota. More specifically, there needs to be an agreement reached with the EU on what its future fishing relationship is going to be. Secondly, I think they have to ensure that there is some form of access to markets for the seafood sector as a whole. The next point is that they have to demonstrate a commitment to some form of sustainable fisheries management within those agreements.

Dr Christopher Huggins: To add to what Richard said, I would go one step further and say that, in addition to getting some sort of agreement

with the European Union, they will need to have agreements in place with other coastal states around the UK, particularly the Faroe Islands and Norway. You need to give consideration to how you will co-operate not only on a bilateral basis with the European Union and Norway but as a sort of triologue.

Andrew Oliver: First, as a coastal state we must comply with UNCLOS. We need to include in the negotiations an effective monitoring regime for both sides. Part of the negotiations will be about UK vessel access to EU waters, which obviously is important for certain sectors of the industry.

Not going too far off the point, in negotiating, the Government should use industry knowledge. Fishermen and the industry are the people who know how it works, and in negotiating they should use industry knowledge and experience, because I do not think access will be the same across the piece. The requirements of fishermen to have access on the south coast and the channel and the requirements of the Europeans may be different from those of, say, the Dutch for access to the North Sea by beam trawl fleets. There will be different access requirements; it will not be a one size fits all, and the best people to advise on that are the fishers.

Importantly, any access discussions and negotiations should somehow result in some form of benefit to the UK fishing industry, potentially in support for artisanal fishers, et cetera. The issues in the UK fishing fleet are on the inshore side, so that has to be part of the mix—but otherwise I agree entirely with my two colleagues.

The Chair: It is good to get that human factor in, with the stakeholders. Is it just the fishers and the fleets themselves, or does the broader industry have to be involved?

Andrew Oliver: It is the broader industry because, as we know, the fish we catch are exported predominantly to the EU. We tend not to eat a lot of the fish we catch in our waters; we tend to eat fish we import from outside the EU. Account has to be taken of the processing industry and the sale of the fish. In a sense, that is inextricably linked with trade, so it is a difficulty.

Personally, I do not think that in the short term having requirements as part of access for foreign or EU vessels to land fish in the UK will assist, because all it will do is what we see at the moment: freezer and chiller wagons on the quayside taking fish back to Europe. Where we actually sell our fish is a much broader picture. There is no point in giving ourselves more chance of catching fish if we have nowhere to sell it.

The Chair: That is probably true, and we will come to that issue later.

Q2 **Baroness McIntosh of Pickering:** From the answers you have given, if you were to advise us what the UK and the EU need to do to negotiate to reach an agreement by 1 July, presumably you would wish to link access to markets, but an unknown is the trade agreements that will be negotiated later. How would you advise the Government and the EU to

proceed to ensure the best possible outcome? If it is related to quota shares, what is the timetable for those being agreed?

Professor Richard Barnes: I am aware that the indicative timetable was 1 July, but that is for the treaty or agreement to be ratified. To get through the domestic process, we are probably looking at an agreement by the start of June. Possibly, we have a three or four-month window to get the negotiations done, so it is an important challenge.

On the agreement itself, it is fairly common knowledge that there are very different opinions between the UK and the EU about how that negotiation should take place, and if there is to be a successful negotiation it probably requires the parties to give ground to some extent. The challenge during negotiations is that, if one party gives ground, it sends a signal about how they may conduct the rest of the negotiations, so it has to be very carefully done.

I suspect that in practice we will be forced, in a sense, to try to negotiate the fisheries deal first. It is possibly of less overall importance to the national economy, but I am not saying that it is not important. If we have to negotiate fisheries first, there will have to be some compromises. That might be possible through a very carefully drafted framework agreement where you accommodate mechanisms that allow quota swap arrangements; set broad parameters for access to waters and quota allocations, without pinning down the detail; establish the principles that would govern things such as the allocation of quota; and establish dispute settlement mechanisms. As a starter, by establishing those principles we have a framework in place, and then there is the possibility of fleshing out some of the details later when we have more time.

Dr Christopher Huggins: There will be a lot of push from the EU side for the two areas to be linked and a lot of push from the British Government side for them not to be linked. There is a wider diplomatic issue to bear in mind, which is that the conduct of both sides in any negotiation is observed, whether or not they are formally linked. How the British Government behave in a negotiation will be looked upon by other countries that the UK might want to negotiate with; how the EU negotiates might set the tone for any further negotiations with the British Government after that. There are wider diplomatic considerations to bear in mind in addition to the more pertinent fisheries access issues and the issues around trade.

In effect, this is an international negotiation. We are no longer negotiating within the framework of the EU; we are negotiating as a country in its own right, so that factor will have to play into it as well. As Professor Barnes says, there will be a need on both sides to give ground in order to show willingness to engage in international co-operation, particularly in an area such as fisheries, which you cannot manage successfully unless you have good working relationships with neighbouring coastal states.

Andrew Oliver: I do not think I have much to add to what Richard said about the negotiations. There will have to be some sort of basic framework that is agreed but then fleshed out at a later date.

Baroness McIntosh of Pickering: As a supplementary to what you said about the Government having to comply with UNCLOS and assume their responsibilities in international co-operation as a coastal state, is there enough evidence that the Government are prepared to do that and will fulfil those obligations that, as a coastal state, will be more than we have had in the past?

Andrew Oliver: At the moment, the Fisheries Bill points towards that, but it is far too early to say that there is positive evidence as such. Nothing has led me to believe that the requirements will not be fulfilled. The issue for me is that maybe some of the UK fishing industry has not fully appreciated the terms of UNCLOS and what it says about setting maximum sustainable yield, and about the need to consider the historical track records of vessels that have fished in our areas and the economic dislocation that may be caused. My warning to the industry is to look at that very carefully, because it has not been emphasised in all that has gone before in the debate on fishing.

Lord Kerr of Kinlochard: How would a framework agreement work? The devil will lie in the detail and in the numbers filled in on the blanks in the framework. How would our European friends be brought to settle for something that did not have numbers in it? If the idea is to do it by June to be clear about the fishing opportunities for 2021, that would have to be determined separately if you had only a framework agreement. How does it work?

Professor Richard Barnes: The models we are looking at now are the Norway agreement, the Greenland agreement and other fisheries partnership agreements. There is a basic framework with an annexe or a protocol that contains the details of what the specific allocations and decisions would be. The first step is to get that basic agreement in place, but you are correct that there has to be some detail on what the quota allocations would be.

The challenge is about the structure of the agreements. The EU is seeking an agreement that is enduring or permanent, whereas the UK would prefer an agreement that is limited in time and builds in capacity for annual quota renegotiations. That is a first step before you get to the detail of what the actual quota allocations would be.

Baroness McIntosh of Pickering: What about the obligations under UNCLOS?

Professor Richard Barnes: The broad obligation under UNCLOS is to co-operate in respect of shared or common stocks. The nature of that co-operation is not dictated, but it is expected that there would be an agreement; so that is an obligation on both sides. What is absolutely critical is that, in the event that an agreement is not reached, both states

still remain under an obligation to ensure that they do not set catch levels or conduct fishing activities in a way that results in the overexploitation of stock. That baseline has to be respected by both parties. That is quite important because it can be used as a driver of the content of the fisheries agreement.

The Chair: Dr Huggins, did you want to come back on Lord Kerr's point?

Dr Christopher Huggins: I think Professor Barnes has dealt with the point.

Q3 **Lord Arbuthnot of Edrom:** This is a legal question. The UK will want to restrict to one extent or another the EU's access either to the Exclusive Economic Zone or to our coastal waters. What are the legal constraints on that?

Professor Richard Barnes: There are three, maybe four, broad areas where there are constraints. The first is general international law: whether or not there is any international agreement in place that requires access to that. There has been the termination of the London Convention, so that no longer is the case, but if there is any fisheries agreement it would open up access.¹

There are the transition arrangements. For however long the transition agreements endure, there will be access under them. In addition, there is a potential claim of historic rights, although I do not think it is a particularly strong legal argument. In a nutshell, it is a claim that for a long period of time European vessels have fished in waters around the UK and because of that they have established an entitlement for those rights to continue. In legal terms, that is no longer applicable in the Exclusive Economic Zone. We have the decision of the South China Sea tribunal that confirmed that, with the creation of the EEZ, historic rights no longer exist, although it left open the question of whether historic rights could exist within territorial seas.

There is a challenge to making that argument, because most of the rights that are now exercised by foreign vessels are effectively treaty rights or rights under EU law. Fishing rights have been reduced, as it were, from private-type or historic rights to treaty rights, and they have always been at the discretion of the United Kingdom, so I think those arguments based on historic rights are weak.

Other than that, and perhaps 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, I think that is the only real restriction.

¹ Prof Barnes subsequently clarified that the UK's withdrawal from the London Convention means there is no longer an access agreement in place; but if a fisheries agreement were negotiated with the EU (or other states) it is likely that it would establish access rights.

Andrew Oliver: I pretty much agree with Richard. The situation in the EEZ is now established with the South China Sea case. The crux of EU access will be the 12-mile limit. Because rights have been exercised under the London Convention with the ribbon chart, et cetera, I do not think there is the historic right to fish. 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, its quota and the Government being able to provide it with quota. That is where the big win is, and I do not see a huge legal challenge there.

Lord Arbuthnot of Edrom: You say that the historic rights do not survive the London Fisheries Convention.

Andrew Oliver: I do not think they will.

Baroness Byford: I have no interests to declare. Can I take you up on the smaller inshore fishing fleet that you have just referred to? It is a tiny proportion of the whole. Do you think it still has enough force behind it to do what you are suggesting?

Andrew Oliver: You say it is a tiny proportion of the whole, but there are a large number of vessels, so economically—

Baroness Byford: I beg your pardon; I meant economically.

Andrew Oliver: Proportionately, it is very important to coastal communities. That fleet has been under real pressure on quota, and Brexit, if it brings a benefit, will potentially bring the greatest benefit to that fleet to allow it to increase its quota and rebuild. That is why the 12-mile limit, which is where those vessels fish, is the big win that may come out of all of this.

Baroness McIntosh of Pickering: The inshore fishermen are coming in afterwards. I represented Filey for five years. The big question now is not access to quota, which could have been resolved outside the CFP; it is the by-catch of salmon that they have to land as a discard. As the discard objective is now no longer an issue but the by-catch is, I do not see how that is an advantage. We got a very fuzzy answer in a briefing. Will they benefit from being able to land the by-catch?

Andrew Oliver: There is potential for that because the European discards ban will not apply. However, the Government have made it clear that the discards ban will survive. I am not sure that that issue will be resolved at all in any shape or form by Brexit or access to waters. It is an entirely separate issue that affects a large part of the inshore fleet, certainly on the Yorkshire and Holderness coast.

Lord Maxton: Can I go back to access to the market? I have nothing to declare financially, but I have a house on the Isle of Arran. I know that 90% of the west coast take of fishing goes to Europe, in particular Spain. If you have a prawn cocktail in Spain, it is likely to have been caught off the west coast of Scotland. Has the EU in the past threatened to impose

extortionate or prohibitive tariffs on something when it is doing a trade deal?

Andrew Oliver: That may be more a matter for Richard.

Professor Richard Barnes: This is a unique situation. No other state has left the European Union. Greenland left when it became semi-autonomous. It had to negotiate a fisheries deal with the EU, but it remains an autonomous region of Denmark and benefits from still being within the market. This is entirely unique.

The EU has negotiated 20 or so agreements with other states for access to waters. Basically, it has paid for access to those waters, or it has done it through reciprocal quota arrangements. There is no precedent for this.

Dr Christopher Huggins: To emphasise the point, the position we are in is unique in so far as the UK will be the first member state effectively to leave the European Union. That is why a lot of the negotiation objectives on the EU's and the UK's part are being seen as disproportionate or not in accordance with established traditions. That is because the situation we are in with Brexit is unique. That leads to unique negotiating objectives and, by extension, unique outcomes or agreements.

Andrew Oliver: The closest are the sustainable southern partnership fishery agreements with Africa. They are quite different in some respects, but they linked economics and fisheries. If you will pardon the expression, we are in uncharted waters.

Q4 **The Chair:** We have a couple of situations to deal with. We are going to end the transition period on 31 December, but we have a deadline of 30 June for fisheries. Can you give us a flavour of how that might tie into the fact that there is dependency both ways to a degree on the market side? Is that leverage going to be used by the EU strongly on access?

The trade negotiators are pretty hard-nosed; there is not a lot of sentiment. From my knowledge, even if there is an agreement, it does not mean that on the other side of the channel, with all the phytosanitary controls and everything else, they will let them into the market, even if it is politically agreed. There are lots of pressures. The French population do not necessarily take any notice of what Paris says, do they?

Dr Christopher Huggins: The broader point is that there is now a political imperative for the UK Government to get a deal done, and we will be out of the transition period by the end of this year. The European Union will be very acutely aware of that as well. The UK Government are keen to have a separate deal between fisheries and other trade and economic issues. At the same time, the UK Government are working to an incredibly tight timetable and the European Union knows that. The UK Government also have the political imperative that they will try to pursue this by the end of the year. As a result, it is possible to see how something could give in the linkage between the two issues.

Andrew Oliver: We should not underestimate the pressure that will be on the Dutch, the Belgian and possibly the German fleets to get a result or a negotiated settlement. With no disrespect to my French colleagues, they hold a lot of power in the European fisheries market and fisheries industry, and certainly the Dutch fleet would be severely restricted if it were not granted access to UK waters. While we want to sell our fish and they have some leverage on us, there is certainly leverage on the Dutch and Belgian fleets the opposite way. That would dictate a sensible agreement eventually. I do not think we are in a weak position. Both parties are in an equally strong position, and common sense would dictate that a resolution is arrived at.

The Chair: Do you think there will be pressure on British flagged vessels that are effectively owned through Dutch and Spanish organisations?

Andrew Oliver: No. The so-called flagged ships will be a separate issue. I do not think it will be linked.

Q5 **The Duke of Montrose:** First, I declare an interest. My family has a partial interest in freshwater salmon fishing, but the EU is not directly involved.

Is it technically feasible for the Government to negotiate quota on the basis of zonal attachment rather than relative stability? Does the necessary data exist?

Dr Christopher Huggins: Yes, it is possible. Does the data exist? It would depend on which specific species you are looking at. To do data analysis for zonal attachment you need a lot of data, because the whole idea of zonal attachment is that you look at the whole life cycle of fish and where they live at any particular given point in time. 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. It is possible, but you need the data behind it, and that will vary depending on the species.

The Duke of Montrose: That is a very positive answer. I am slightly puzzled. When the Minister was winding up our debate yesterday, he said that the MMO would be in charge of issuing licences and quota to EU vessels, but if the returning quota is divided up between the devolved authorities, what role do they have in allocating quota to EU vessels?

Dr Christopher Huggins: That is a good question. It will be for the devolved administrations to divide their quota. The real point of contention is how the UK quota is divided between the different Administrations. Effectively, it will then be up to however each devolved administration wants to divide up that quota. There are bigger questions about how you marry that together, because effectively there are three devolved administrations, plus Defra acting on behalf of England.

The Chair: We will come to devolution specifically in the next question.

Dr Christopher Huggins: Essentially, it is complex.

Professor Richard Barnes: Zonal attachment is used as the basis for Norway-EU negotiations, at least in part. Legally speaking, there is no reason why you cannot use it; effectively, it is a negotiating position.

The only requirement under the Law of the Sea Convention is that you have to use the best available scientific evidence. The question is whether we have that quality of evidence at the moment. As my colleague Chris mentioned, one of the challenges with zonal attachment is that it will have to be much more rigorously updated, because of the nature of the activity and what is being measured, so potentially that makes future negotiations more complex and more vulnerable. As stocks move and migrate, potentially you 'lose' the stocks if they move out of your waters. There are some particular challenges that have to be addressed in the negotiations.

The reference points for zonal attachment have not been mentioned. At the moment, we only have data periods calculated by Cefas for a window of 2012 to 2016, but it will have to be continually refreshed, and that will be a point of contention.

The Chair: Who would do that research? Would it have to be done by ICES? Cefas's figures might be seen as slightly biased in a negotiation. Would Cefas do it?

Professor Richard Barnes: We provide part of the data to ICES, collectively from Europe. Data on stock distribution, conditions, bathymetry, trade and things like that is available. How we use it would have to be done in-house because it is a negotiating position that we want to use, hence the drive to try to create models on zonal attachment over the last couple of years. It ultimately comes down to whether you can persuade others during the negotiations that it would be a more sustainable way of managing stocks.

The Chair: You are saying that zonal attachment has a track record in the Norwegian agreement.

Professor Richard Barnes: I do not know the details; I just know that that basis is factored into the negotiations.

The Chair: Is there a definition of it? Is it fairly clear what it means?

Professor Richard Barnes: There is no legal definition of zonal attachment. Scientists would probably view it as something to do with the biomass located in a particular body of water over a particular period of time. For sustainable management, what is critical is that it measures catch at the time it is caught, or able to be caught,² because obviously you do not want to catch fish that are undersize or juvenile.

² Prof Barnes subsequently clarified that zonal attachment assessments must relate to a stock at the point when it is acceptable to harvest.

Andrew Oliver: You would have to do the research internally with Cefas, but I stress that the industry should play a part in gathering that information and the information for zonal attachment, because at the end of the day, when industry has got involved in management, especially scallop management and so on, it has been shown to be a great success. If you can bring industry stakeholders on board in the research, they can have a greater say and involvement, and have ownership of it. It should not simply be scientific number-crunching or reliance on Cefas. There is a role for the industry to play in data gathering.

The Chair: Thank you for that point. Obviously, the scientist versus the industry has a long history.

Q6 **Lord Young of Norwood Green:** We have touched on bits of this question already. UK fishers, as you know, have different target stocks, trading partners and supply chain considerations, depending on where they are based. Pelagic fishers in Scotland have a global market, and the coastal ones rely on exporting live produce to France, so they have different priorities when considering potential trade-offs.

After the transition period, the UK Government, the Scottish Government and the Welsh Government have agreed that it will be necessary to maintain a UK-wide approach, which is what we call a common framework. What would need to be addressed by a common framework on fisheries adequately to co-ordinate policy on access to UK waters?

Dr Christopher Huggins: The need for a common framework is recognised, understood and agreed. What you need to have in place is a mechanism for how decisions within that common framework are agreed. Part of the Fisheries Bill, for example, includes how you come up with joint ministerial statements, but where will the buck stop at the end of the day, effectively? Who takes the final decision over a matter? How will decisions be made on fish stocks that may be only in Scottish waters? Will that decision be given to the Scottish Government, for example, or will it still have to form part of the common framework? How will discussions between the four fisheries administrations and the UK happen and be codified?

The overall desire for a common framework is there. Most of the contention lies in the nitty-gritty detail of how to put it into practice. That is where a lot of the political contention comes from, because each of the fisheries administrations will want to secure something from the common framework that is beneficial to them. They will be pushing to ensure that their voice is heard in any common framework and that they are a stakeholder rather than simply a consultee in any decisions that are made. One of the key things that is needed is an idea about how decisions are going to be made and how they are going to be institutionalised.

Lord Young of Norwood Green: It sounds quite complicated. What sort of timeframe do you think we need to do that?

Andrew Oliver: To follow on from what my colleague said, I tend to end up dealing with the practical aspects of life. Part of the framework has to be common policies on such things as technical measures. At the moment, we do not have a common framework on technical measures. For example, a fisherman who catches scallops off the north coast of Devon and wants to land them at a processor in, say, Liverpool cannot transit through Welsh waters as he would be committing an offence with his scallops because there is a difference in size as between England and Wales.

A current problem is new legislation that says that it is illegal to land a berried lobster in England, but a Scottish fisherman can go into Northumberland waters, catch it and land it in Scotland, which defeats the object. As part of any framework, there have to be common or harmonious technical measures that remove red tape and bureaucracy and create certainty for the fishing fleet. I come from a practical angle rather than a political or academic one.

Lord Young of Norwood Green: In what sort of timeframe do you envisage that this requires to be done?

Professor Richard Barnes: At the moment, everything is governed by the CFP, so to an extent everything has to be compatible because we are all bound by the same rules. Despite that, we can have some problems with implementation. At the moment, the only mechanism we have is the fisheries concordat, but that does not deal with the alignment of technical rules, so the only mechanism will be the Fisheries Bill.

Once that comes into force, there is an obligation in it for a Joint Fisheries Statement to be agreed. I think it has to be done within 18 months. The Statement will set out the broad framework for the management of stocks, but it will be quite high level, and the challenge is that the devolved administrations and the English Government still have power under the law to adopt their own technical regulations. There is no mechanism, as I see it, in the Fisheries Bill to make sure those are properly aligned. That is something that needs to be scrutinised in the passage of the Fisheries Bill.

Lord Maxton: What proportion of fishermen are Scottish, English, Welsh or from regions of England and Wales? It makes a difference. For instance, Mr Oliver, you are a legal man. You cannot operate in Scotland, can you?

Andrew Oliver: There are difficulties at the moment with regard to English operators in Scotland, and the other way, under the protocol in respect of the transfer of quota from Scotland to England.

To go back to the timescale, at the moment we are under the CFP rules and we are applying them. I am not sure where we go come 1 January. That is a date we have to bear in mind as regards whether we roll over CFP rules or technical measures, or whether we will have had guidance under the Fisheries Bill by then.

The Chair: I do not want to go too far into future UK domestic policy on technical regulations, because we are looking at access issues primarily.

Lord Kerr of Kinlochard: Does the right timescale relate to the Bill? I agree that the Bill creates legal requirements, but surely the right timescale relates to the negotiation with the 27. Is this not a classic case for the joint ministerial committee structure that has not been fully used up to now? In this particularly sensitive area between the devolved administrations and central government, which is highly relevant to the negotiation, and with a tight timescale for the negotiation, is it not a classic case for getting that structure working straightaway?

Professor Richard Barnes: The key issue is that the Secretary of State has authority to deal with international relations and negotiations. That power exists within Westminster at the moment, so that would be a way of moving forward in securing the UK position.

Lord Kerr of Kinlochard: If it is left to the Secretary of State in London to decide on the export interests of, say, inshore scallop fishermen, or whatever, versus the wider defence of our waters interest, is not whatever they come up with bound to be rejected in Edinburgh and in Cardiff?

Dr Christopher Huggins: That is where the bone of contention lies at the moment with aspects of the proposed Bill. As Professor Barnes said, 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. Of course, the Secretary of State has the final say on any matters pertaining to international agreements to do with fisheries.

At the same time, if you are looking at effectively managing fisheries on a UK-wide basis and ensuring that you have co-operation not only in all the technical areas but in some of the broader, more political, areas, it would not work for the Secretary of State to go into a negotiation and say, "I'm going to call all the shots on this". There has to be at least some consultation with the different devolved administrations. The Joint Ministerial Council might be a venue or forum in which that could be formalised and take place, but that has several of its own issues in how effective it is seen to be by some of the devolved administrations.

There is a need for the UK Government to build a good working relationship and trust with the devolved administrations. What sometimes used to happen under the EU is that Scottish Government or Welsh Government officials would be part of negotiating teams when it came to the Fisheries Council and things like that. That might be an option going forward, but there is still little idea about what the intention is for those sorts of arrangements.

The Chair: Mr Oliver, do you want to come in?

Andrew Oliver: No.

Q7 **Lord Kerr of Kinlochard:** Can we talk about enforcement? I am not sure how it works. I am not sure what vessels we have that will do the job if we are suspicious of a particular vessel. Who is going to go out there?

I remember the first and second cod wars. I remember the minesweeper squadron at Rosyth. I remember five frigates being in Icelandic waters with eight minesweepers and various auxiliaries. That does not exist. We have five vessels based in Portsmouth, due to increase to eight vessels in all, but that is not enough for moving in on a trawler off Shetland, or wherever. Physically, how is enforcement going to work? What will be the rules of the game?

Up to now, of course, we could board a French trawler to look at its nets or its catch. We were enforcing the CFP, but when we are no longer part of the CFP and are enforcing what we see as the correct interpretation of whatever agreement we have, or defending our waters in the absence of any agreement, will we be boarding a French trawler and under what legal authority, and what do you expect will happen in the port of Boulogne when we are known to have boarded a trawler? What sort of changes are needed in our approach to enforcement when we are enforcing from outside the CFP, and have we the physical resources to go about it?

Andrew Oliver: Perhaps I could lead on that, because I tend to be at the sharp end when that happens. Under UNCLOS, there are clear powers to allow us to make legislation with regard to inspection and enforcement, so we have that right under international law. I anticipate that, through statutory instruments and secondary legislation under the Fisheries Bill and existing legislation, we will have powers to board, et cetera, which we already have under measures such as the Marine and Coastal Access Act. I do not think that in our powers to do these things anything will substantially change; we will not see anything particularly different.

On the mechanisms for enforcement, you asked what would happen if somebody was off Shetland. The Scottish devolved administration have their own fisheries apparatus with their fishery patrol vessels. In the past, we have used the Royal Navy fishery protection squadron, and I think that will continue to be the case. The MMO has chartered civilian vessels and is using other assets or organisations. I am aware of boardings having taken place at sea from Border Force vessels, and of the use of IFCA vessels—the inshore fisheries and conservation authorities—harbour tugs and other vessels. Other vessels can be used as long as they fly the fisheries pennant. We have aerial surveillance by coastguard and Border Force aircraft. There are assets.

There is one issue on enforcement that we need as part of the negotiations. At the moment, all the vessels operating in the EU fleet use VMS technology. 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.

We may need to review the procedures introduced under the Marine and Coastal Access Act for the detention of foreign vessels. Prior to that Act, vessels tended to be detained in UK ports, and I used to be dispatched to various places around the country to represent them. Under the Marine and Coastal Access Act, there is a procedure to put bonds in place, so vessels could be released against a bond. My experience of that is that it has not worked, merely from a practical viewpoint. We did not have the mechanics to use the bond system. We might see a return to the detention of vessels in UK ports for enforcement purposes. That is nothing new; it has happened for years. I am not quite sure what the fishermen in Boulogne will make of it, but I have had plenty of my clients' vessels detained in French ports, so I think that is the way it will go.

One thing we will have in our favour, which I think will be an improvement in enforcement, is that if an EU vessel is fishing in UK waters, it will be doing so under a UK licence. At present, if a French vessel is fishing in our waters, it is doing so under a French licence, but if it is doing so under a UK-issued licence we will have additional powers, presumably, either to suspend or possibly even to revoke that licence. We will have greater administrative power over those vessels, which we would not have had previously. That will be a large disincentive to infringement of the rules.

Professor Richard Barnes: I agree that the powers exist and could be enhanced. Enforcement is not just about at-sea enforcement, and possibly that should be a last resort. It is expensive and practically challenging. There are some other things that have to be considered: ensuring that there are proper controls in ports when vessels are landing catch; and monitoring and gathering data that allows you to construct models to target enforcement activities. Increased use of remote electronic monitoring and satellite monitoring is important.

Underlying everything, there has to be a culture of compliance. If you have legitimate, fair rules that the stakeholders are buying into, they will have less reason to try to circumvent those rules, so you try to prevent, rather than cure through at-sea enforcement.

Dr Christopher Huggins: You have had two very comprehensive answers, so I will leave it there.

Baroness Byford: As you know, yesterday we had Second Reading and several of us who are in the room particularly wanted remote electronic monitoring on all vessels, not just UK vessels. As you said, they will have to get a licence to be able to fish. Should it not be part of the licence agreement? In other words, they will not get a licence to fish in UK waters in the future unless they carry that monitoring. Presumably, that would bring benefits, or will it not?

Professor Richard Barnes: In short, yes. Any conditions like that could be attached to a licence. Interestingly, in most of the fisheries partnership agreements, certainly the northern waters ones, there is a requirement for non-discrimination, which means that you apply the same standards and approaches to vessels of different nationalities. A consequence of that would be an extension to foreign vessels of the CatchApp, for example, but that power exists and it should be utilised.

Baroness Byford: It is not in the Bill at the moment. Does it need to be more clearly defined?

Professor Richard Barnes: The licensing powers would be done within the scope of the Bill itself. It could be included, but in practical terms I am not sure why licensing authorities would not want to include those terms and conditions, because they are effective not just against foreign vessels but any vessel.

Lord Young of Norwood Green: I was going to ask about REM, but you have dealt with that. I take the point you made about changing the culture. One hopes that the common interest ought to be to ensure that the stocks are sustainable, but there is a balance to be struck, is there not? Do you see potential for drone technology to be used?

Professor Richard Barnes: That is probably outside my expertise, but I would have thought that any model that can generate data and monitor activities at sea could be used. I guess there would be questions of jurisdiction, safety at sea and whether or not it is technologically feasible. I have heard of recourse to things like watching where albatross go because they follow vessels that are catching and discarding.

Andrew Oliver: I cannot see a legal reason why drone technology could not be used. How practical it is may be a different matter. I am not sure what information a drone would gather that satellite monitoring would not, unless it had evidence-gathering facilities to show whether a vessel was engaged in fishing. That is quite often the issue. You can prove where a vessel is, but can you prove that it is actually fishing? In addition, what is the definition of fishing? That has not quite been resolved yet.

Lord Young of Norwood Green: You cannot do that by satellite.

Andrew Oliver: You certainly cannot do it by satellite. It depends on whether a drone would have sufficient technology to do that, but in principle I do not see why drone data could not be used. Indeed, some of the IFCA's, and certainly the police, are using drone evidence in courts. I do not see why it could not be used as an enforcement technique.

The Chair: We can have drones, Royal Navy gunboats and that sort of stuff out there, but, in reality, most enforcement takes place at the quayside at the moment. For example, we give a Dutch vessel a licence to fish in our waters, and it goes back to a Dutch port. How do we sort that out now that we are no longer brethren or within the sisterhood of

the European Union? How do we ensure that checks take place properly over there and have confidence that that happens? Confidence is one of the big issues at the moment with the Common Fisheries Policy when vessels fishing in British waters land back at their home ports.

Lord Kerr of Kinlochard: If I may add to that, would we be happy to see a Dutch inspector at Peterhead or Grimsby? Does the Norwegian framework agreement, which I think says something about enforcement, permit the Norwegians to be on the quayside in the European Union?

Professor Richard Barnes: I do not recall whether or not in the Norwegian agreements there is detail about that level of enforcement presence, although it may be within the scope of the agreement. In principle, there is nothing to stop that being included in agreements. It is not dissimilar to the health and phytosanitary inspections that will probably be required for the export of goods, and the mutual recognition of standards in that way. It would probably be a very good idea to include that in the agreements, but how effective it is on the ground would be a separate issue.

The Chair: That is interesting and raises some questions.

The Duke of Montrose: This may be for a general point of view. In respect of monitoring the use of quota and the availability of remaining quota, I do not know that the Bill mentions a central register. Does the MMO require returns from vessels?

Dr Christopher Huggins: What we do not have at the moment, which some other coastal states have—Iceland is one—is live real-time data of who has quota and who is catching what. We do not have that at the moment. In industry relationships with government in Iceland, that has increased trust between the two parties, and within parts of the fishing industry. All the information is out there; you do not get hearsay stories about so and so having tons and tons of stuff and so and so cannot catch anything else.

To go back to the very first question, we would like to see openness of data and information included in any sort of access agreement, or any fisheries policy. That is also potentially one way to deal with enforcement, because, 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.

Q8 **Baroness Byford:** We have talked about the Norwegian agreement. Do you think that model is one of the best ways and that we should look at it? What are its advantages? Equally, are there disadvantages?

Professor Richard Barnes: I have a couple of general observations. It is not the only model. There is the Greenland model and there are the FPAs, but it is probably the one that is most commonly used as a potential framework. It could be used, but it would have to be adapted, because the complexity of fisheries mixes in the waters of the UK and the EU will require different consideration.

As my colleague mentioned, we need to bear in mind the third-state dimension. It is not just the UK and the EU; it is also the UK and Norway, so there will have to be an agreement in place there. Then you have to think about the interface between those. We have to think about the priorities. Is it more important for us to secure an agreement with the EU or with Norway in relation to the stocks we want to catch?

Those general remarks aside, there are key issues of duration. We need to think carefully about what the duration of any such agreement would be, whether it is set for a fixed period—five or six years—or is ongoing. We will probably want something similar to the Norway model, which is renewable after six years but has annual quota negotiations attached to it.

Dr Christopher Huggins: I agree with Richard's answer; it is quite comprehensive.

Andrew Oliver: Likewise. We are in a unique position. Therefore, we cannot use any other model directly. What we can do is look at the good bits. Because we are in that unique situation, it has to be a bespoke resolution.

Dr Christopher Huggins: I emphasise the point Richard made about how diverse the UK waters are, with the sheer level of the different stocks and the complexity of the geography. Geography is part of the issue as well, given the nature of the UK's Exclusive Economic Zone and those it borders against. Those are all factors that need to be taken into account in that unique, bespoke package.

Q9 **The Chair:** As a final question, if we all come back here in 12 months' time—you can put it in your diaries if you like—are we going to ask, "Why were we all worrying about this? It has all worked out. We have had a sensible, rational deal. Not everybody has won every point, but we have got there", or is it going to be pretty grim, with a bit of a grudge match that ends in bad will and any agreement not working particularly well? In one sentence, which of those scenarios do you think it is going to be?

Dr Christopher Huggins: I am not in the habit of gambling that much. My colleague on my left made a good point earlier, which is that there are incentives on both sides. Both the EU and the UK are in similar positions on what they want to get out of it, given the strength of their respective positions. One would hope—I emphasise "hope"—that a common-sense approach would prevail.

At the end of the day, there are requirements on all sides to engage in sustainable fisheries management. We have shared stocks not only with the European Union but with other coastal states around us, and they need to be carefully managed. Everyone agrees with those general principles. One would hope that provides the driving force in light of all the rhetoric and politics that goes on around it.

The Chair: I will take that as a thumbs up.

Andrew Oliver: My views are already on record, so I had better stick to the same story. If I looked at an AIS map of the North Sea or British fisheries limits today and looked at the same AIS chart this day next year, there would not be much difference in the vessels fishing there. However, the UK will have taken back control and will have greater say and influence, as I have said, with licensing, et cetera, but my prediction is that we will still see pretty much the same vessels fishing in the same places.

The Chair: There will be some sort of agreement that we will work out.

Andrew Oliver: There will be an agreement—

The Chair: It is work in progress. That is fine.

Andrew Oliver: In the short term.

Professor Richard Barnes: I think it will be something similar to the status quo with minor tweaks around the edges. Whether we are fishing under a provisional or permanent agreement, fishing will be happening. It will happen regardless of the political and legal arrangements around it.

The Chair: Is the industry going to be happy with that?

Professor Richard Barnes: If those in the industry are not worse off than they are at the moment, they will probably accept it, but you can ask them next.

The Chair: I do not want to go on too long. We allow supplementaries on our side, so I have to allow you a supplementary.

Andrew Oliver: If I was looking at the AIS chart this time next year, I hope that for the 12-mile limit it is different and that we see there UK vessels and no foreign vessels. That is the win for the UK from this.

Dr Christopher Huggins: If I am permitted to make one final comment, there is not much time to do a radical overhaul and a radical shift of access arrangements, so anything that is put in place will naturally have to take time to implement. I do not perceive that there will be much difference. If there are to be radical changes, they will happen over a period of time. That would be my prediction.

The Chair: Thank you very much indeed, Professor Barnes, Dr Huggins and Mr Oliver. It has been very enlightening. I have a feeling we shall hear from the industry fairly soon. I bring this public session to an end.