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Northern Ireland Affairs Committee

Brexit and Northern Ireland: fisheries

Fourth Report of Session 2017–19

Report, together with formal minutes relating to the report

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Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Evidence relating to this report is published on the inquiry publications page of the Committee’s website.

Committee staff

Margaret McKinnon (Clerk), Matthew Congreve (Second Clerk), Elektra Garvie-Adams and George James (Committee Specialists), John Hitchcock (Senior Committee Assistant), Kelly Tunnicliffe (Committee Assistant) and George Perry (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Northern Ireland Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2173; the Committee’s email address is northircom@parliament.uk.
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Summary

On leaving the EU, the UK will become an independent coastal state responsible for managing its own marine resources for the first time in over 40 years. The Committee launched this inquiry in January 2018 to examine how the interests of the Northern Ireland fishing industry should be reflected in the Government’s new domestic fisheries policy and the wider negotiations on the UK’s exit from the EU. As part of the inquiry, we travelled to the fishing village of Portavogie. We visited the harbour, fish processing facilities and met with local industry stakeholders. We also took evidence from local fishermen to discuss the challenges they face and their hopes for the future. The Northern Ireland fishing industry has enormous potential, post-Brexit, to generate more jobs and greater economic benefit for coastal communities, as well as contribute further to the wider Northern Ireland economy. To realise these benefits, the Government must act to secure the best Brexit deal, address the governance gap created by suspension of devolved government and address long running structural problems such as crewing shortages and harbour infrastructure.

Securing the best Brexit deal

As an independent coastal state, the UK will have sovereign rights under international law to conserve, manage and exploit the marine resources within its territorial waters. Fishermen told us that the current allocation of fishing opportunity under the EU’s Common Fisheries Policy (CFP) is unfair because it permits EU fishing boats too much access to fish in UK waters. The Government’s White Paper describes the EU’s allocation method, known as relative stability, as outdated. The Government proposed a gradual, cautious and negotiated move towards a new method of zonal attachment, based on scientific data about the extent to which fish reside within a country’s territorial waters. It remains unclear how allocation of fishing opportunity under this new system will change access to fish for the Northern Ireland fleet or the level of access EU boats will have to UK waters. We recommend that the Government clarify how it intends to exercise its rights under international law to secure a significant redistribution of fishing opportunity in UK waters. We further recommend that the Government explains how quota allocation based on zonal attachment will differ from the status quo for the Northern Ireland fleet, and the criteria that will be used to permit access by foreign vessels to fishing opportunity in UK waters after Brexit.

Negotiating a good deal for the Northern Ireland fishing industry is not just about attaining increased quota but also securing continued access for Norther Ireland’s fisheries products to EU markets. The EU is an important export market for the Northern Ireland fishing sector and represents 36% of the total value of its sales. As negotiations are ongoing, it remains unclear whether tariffs or additional regulatory checks will be required for trade in fisheries produce with the EU in future. Fishermen in Northern Ireland who catch shellfish species, which are not subject to catch limits set by the EU, may face the prospect of increased costs without receiving the benefits of increased fishing opportunity.

The Government should secure an agreement with the EU on both future fisheries management and wider UK-EU relations that enables Northern Ireland to capitalise on the opportunities presented by Brexit. In a no-deal scenario, in which trade in
fisheries products is subject to the EU’s common external tariff, the gains implied by
the exclusion of EU fishermen from the UK waters could be offset to an extent that is
both unclear and uneven across the sector.

Risks during the implementation period

The Draft Withdrawal Agreement established that the UK will remain in the CFP
during the implementation period (should there be one) up to 31 December 2020. However, the UK, as a non-member state, will not have a place at the negotiating
table for the annual fisheries negotiations in December 2019, and its influence on EU
fisheries governance bodies will be reduced. The absence of UK representation around
the table at the December 2019 Fisheries Council, and in other fisheries governance
bodies that influence the Commission’s decisions, could result in disadvantage to the
UK fishing industry. The vague language and general terms which sufficed for the Draft
Agreement will not be acceptable in the final text. We recommend that the final text of
the Withdrawal Agreement, or accompanying documentation, clarify: how the UK will
be able to influence important fisheries governance bodies during the implementation
period and what action the UK can take if it believes the EU is not acting in good
faith. The Government must set out how it will make clear to the EU that opportunism
would not be tolerated, that its good faith would be on trial and that failure would have
consequences.

Suspension of the Voisinage Arrangement

The Voisinage Arrangement is an informal agreement which allows Ireland and
Northern Ireland vessels reciprocal access to fish in the 0–6 nautical mile zone of each
other’s territorial waters. Ireland suspended access for Northern Ireland vessels under
the terms of Voisinage following a decision of its Supreme Court in October 2016. The
Irish Government has attempted to introduce legislation to reinstate Voisinage but its
Bill received heavy criticism in the Irish Parliament. It has remained at committee stage
since March 2017. As a result, while Irish fishermen have access to waters in Northern
Ireland, fishermen in Northern Ireland have suffered hardship through exclusion
from their habitual fishing grounds. This needs to be resolved. The Government must
structure talks with the Irish Government to establish the future of reciprocal access
for Northern Irish vessels under the Voisinage Arrangement. If the Irish Government
does not give a clear commitment to pass, within 6 months of publication of this report,
legislation which restores reciprocal access, the Government must discontinue access to
UK waters for Irish vessels from 30 March 2019.

Life after the CFP: domestic fisheries policy in Northern Ireland

The Government’s CFP White Paper contains a number of proposals, such as changes to
how fishing opportunity is shared between the UK fleet, which refer only to England.
Fisheries is a devolved matter in the UK. However, in the absence of a Northern Ireland
Executive and Assembly, there is no capacity for Northern Ireland to take decisions on
its future fisheries policy. If the Executive is not restored by the end of the year, the UK
Government must be prepared to take such decisions and prevent Northern Ireland
from falling behind the other devolved administrations in preparing their fishing fleets
for Brexit.
The Government’s White Paper is silent with regards to two long running structural problems for the Northern Ireland fishing industry: crewing shortages and infrastructure investment. The Committee heard that crushing manpower shortages, exacerbated by the UK’s current immigration rules, pose an existential threat to fishing businesses in Northern Ireland. Access to crew will become even more essential if the fleet is to take advantage of increased quota dividends and grow the industry after Brexit. In the short term, we recommend the Government grant a time-limited immigration concession for non-EU/EEA crew to help sustain and develop the fishing industry in Northern Ireland. In the longer term, we recommend the Government creates a visa pathway for fishermen which allows crewing of boats by EU/EEA and non-EU/EEA workers from the 6-nautical mile limit in recognition of the topography of the coast lines surrounding Northern Ireland.

The Committee heard that lack of investment in Northern Ireland’s harbours has resulted in the loss of vital repair services and reduced the economic benefit that local communities receive from the fish caught by the fleet. The Government’s White Paper does not make any clear commitment to continued funding for the fishing industry after the December 2020, nor does it mention infrastructure. We recommend that the Government make a clear commitment to invest in infrastructure at Northern Ireland’s ports to ensure fishermen can bring home the benefits of renegotiated quota to their local communities.

**Lough Neagh Eels**

For over 40 years, fishermen at Lough Neagh have employed conservation measures such as daily quotas and restocking to ensure both the long-term sustainability of their industry and the European eel population. The European eel is subject to trade restrictions under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). When the UK leaves the EU, Lough Neagh will no longer benefit from an intra-EU exception for trade in European eels and will require a Non-Detriment Finding (NDF) to secure the 80% of its trade which goes to markets in the EU. An NDF finding on the sustainability of Lough Neagh eels could also open the possibility of legal expansion into lucrative Asian eel markets. We recommend that the Government set out, in its response to this report, what steps it has taken to secure a Non-Detriment Finding in advance of the UK’s exit from the EU in March.

The Government should secure an agreement with the EU on both future fisheries management and wider UK-EU relations that enables Northern Ireland’s fishing industry to capitalise on the opportunities presented by Brexit. Providing support for the industry at this important time of change will mean the Government can ensure the benefits of increased fishing opportunity is felt by Northern Ireland’s coastal communities.
Introduction

1. Since the 1970s, membership of the European Union (EU) has shaped almost every aspect of the UK fishing industry. Rules set at an EU level govern the amount and type of fish UK fishermen can catch and how financial support for the industry is spent. EU rules set out the labelling and marketing standards and the tariffs that apply to the UK’s fisheries imports and exports. On leaving the EU, the UK will become an independent coastal state responsible for managing its own marine resources. This report considers how the interests of the Northern Ireland fishing industry should be reflected in the Government’s new domestic fisheries policy, and looks at the implications of the wider negotiations on the UK’s exit from the EU for the Northern Ireland fishing sector.

The Northern Ireland fishing industry

2. In 2016, there were 327 Northern Ireland registered fishing vessels which employed 700 full-time workers and 175 part-time workers. The Northern Ireland fleet landed fish worth approximately £42 million into UK ports and abroad, representing 4.4% of the total value of fish landed by UK vessels. The 14 businesses which make up Northern Ireland’s fish processing sector employ a further 371 full-time workers and had a turnover of £84 million in 2014.

3. The vast majority of landings by UK vessels into Northern Ireland occur in three County Down fishing villages; Ardglass, Kilkeel and Portavogie, which feature in the UK’s top 20 ports by value of fish landed. In recent years, nephrops (known colloquially as Dublin Bay prawn) have been the main catch for the Northern Ireland fleet with 72 vessels dedicated exclusively to this fish species and a further 30 vessels targeting nephrops alongside other species. In 2016, nephrops accounted for 48% of the total value of fish caught by the NI fleet, herring and mackerel made up 17.5% and white fish species, haddock and cod, only 6.5%. These fish species are subject to catch limits set by the EU. Shellfish species (excluding nephrops), which are not subject to EU catch limits, are also financially significant to the Northern Ireland industry. In 2016, scallops and crabs represented 21% of the total value of fish landed by the NI fleet.

4. Approximately half of the marine fishermen in Northern Ireland are members of a Producer Organisation (PO), which are responsible for managing fish quota and improving the market for their members’ catches. There are currently 24 POs across the UK; 11 in England, 10 in Scotland, two in Northern Ireland and one in Wales. The two POs in Northern Ireland are the Anglo-North Irish Fish Producer Organisation (ANIFPO) and the Northern Ireland Fish Producer Organisation (NIFPO). In 2016, 86% of the fish landed by the UK fleet was caught by vessels in a Producer Organisation. However, over a third of UK vessels over 10 metres in length are not members of a PO.

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1 Department of Agriculture, Environment and Rural Affairs (FSH0010), Seafish (FSH0011)
2 Department of Agriculture, Environment and Rural Affairs (FSH0010)
3 Seafish (FSH0011) (latest figures available)
5 Department of Agriculture, Environment and Rural Affairs (FSH0010)
6 Department of Agriculture, Environment and Rural Affairs (FSH0010)
7 Seafish (FSH0011)
UK and Northern Ireland fish stocks

5. EU and international rules for fisheries management have been set in the context of the long-term sustainability of fish stocks. From the late 18th century onwards, technological advancements—such as the transition from sail to steam and diesel-powered vessels, and the advent of on-board refrigeration—have enabled significant increases in the amount of fish caught. More intensive fishing of some species has resulted in some fish populations being unable to reproduce as quickly as they are being harvested, leading to a decline in fish stocks.\textsuperscript{10} In 2003, the European Commission published a report which found that 94% of the fish stocks it assessed in the waters around the UK (North East Atlantic, Baltic Sea and North Sea) were being overfished.\textsuperscript{11} The sustainability of fish stocks is assessed each year by the International Council for the Exploration of the Sea (ICES), which created Figure 1 below to illustrate changes in the status of commercial UK fish stocks between 2006 and 2016:

**Figure 1: ICES assessments of main UK fish stocks**

![ICES assessments of main UK fish stocks](image)


\textsuperscript{10} Griffin Carpenter, Don’t blame the EU for the decline in some British fishing ports, Mike Mitchell of Young’s Seafood, Can lessons from the past give us hope for the future?, Guest blog on Seafood, 12 November 2015, BBC, \textsuperscript{11} “Profound” decline in fish stocks shown in UK records, 4 May 2010

Tom Pickerill, Technical Director at Seafish, Fish stocks: over half full or under half empty? 27 June 2014,
6. The latest scientific advice from ICES shows that conservation measures have been effective at building fish stocks to sustainable levels in the Irish Sea.\(^6\) At the 2017 EU Fisheries Council,\(^7\) positive stock assessments resulted in a 376\% increase in the total allowable catch (TAC) for Irish Sea cod and a 70\% increase for herring (both starting from a historically low baseline), a 23\% increase for haddock and a 15\% increase for nephrops.\(^8\) These catch increases have the potential to mean an additional several million pounds for the Northern Ireland fleet and represent the highest catch limits for some species in almost 20 years.\(^9\) Pietor-Jan Schon, Head of Fisheries and Aquatic Ecosystems, Agri-Food and Biosciences Institute, told the Committee:

> When we look at the stocks that are most important to the Northern Ireland industry, which are nephrops, haddock and herring, in terms of the population size and exploitable size, those spawning stock biomasses are the highest they have been since the late 1980s, in most cases, and they are being fished sustainably.\(^{10}\)

### The Common Fisheries Policy

7. The Common Fisheries Policy (CFP) is a set of rules established by the EU aimed at managing the fishing efforts of the European fleet. It has four main policy areas; fisheries management, international cooperation with non-EU states, trade policy and funding for fishing communities.\(^{11}\) Under the CFP, the waters of each Member State, known as the Exclusive Economic Zone (EEZ),\(^{12}\) are amalgamated into one European fishing area, the biggest marine territory in the world.\(^{13}\)

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12 Agri-Food and Biosciences Institute (AFBI) (FSH0009)
13 The EU Fisheries Council comprises Ministers from each of the 28 EU Member States
14 Council agreement on 2018 fishing quotas in the Atlantic and North Sea, 13 December 2017
15 2017 Council Overview, National Federation of Fishermen’s Organisations, 15 December 2017, Whilst boats from Northern Ireland can, and do fish further afield, providing they have quota to do so, the greatest concentration of current effort is in the Irish Sea followed by the West of Scotland and the North Sea.
16 Q3
17 The Common Fisheries Policy, European Commission
18 The term EEZ derives from the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which granted coastal states legal jurisdiction up to 200 nautical miles from the shore or to the median line with a neighbouring coastal state. For more info, see: European Commission, Access to Waters
19 Common Fisheries Policy, Institute for Government, 20 March 2018, The EU and international ocean governance, European Commission,
In principle, all vessels in the EU fishing fleet have equal access to all the waters within 12–200 nautical miles from the coast in the combined EU EEZ.\textsuperscript{20}

8. The main aim of the current iteration of the CFP is to secure “high long-term yields of fish stocks” where possible by 2015, and “at the latest” by 2020.\textsuperscript{21} The CFP adheres to the globally recognised measure of Maximum Sustainable Yield (MSY) when assessing the sustainability of fish stocks.\textsuperscript{22} This measure determines the largest average catch that can be removed from a fish stock population over time, under existing environmental conditions, without threatening future yields.\textsuperscript{23} The CFP employs a number of different strategies to achieve MSY:

- **Catch limits and quotas**: The International Council of the Exploration of the Sea (ICES), in conjunction with national and EU fisheries experts, provides scientific data on fish stocks which is used to set a Total Allowable Catch (TAC) in line with MSY. The TAC is then divided between Member States as quotas

\textsuperscript{20} European Commission, *Access to Waters*

\textsuperscript{21} European Commission, *Managing Fisheries*

\textsuperscript{22} NI Marine Task Force (FSH0003), Defra (FSH0004), Seafish, *Industry Guidance Note on Maximum Sustainable Yield (MSY)*, March 2011, European Commission, *Managing Fisheries*

\textsuperscript{23} Northern Ireland Marine Task Force (FSH0012), *Fish stock assessment models and ICES reference points fact sheet*, Seafish
to prevent fishermen catching more fish than the MSY.\textsuperscript{24} Where fish stocks are shared with non-EU states, such as Norway or Iceland, the TACs are negotiated and shared on the basis of international negotiations.\textsuperscript{25}

- **The landing obligation**: A policy mechanism intended to reduce the amount of fish discarded at sea because fishermen have exhausted their quota or captured fish which are too undersized to be marketable. The landing obligation, phased in between 2015–2019, requires all catches of commercial fish species subject to quota to be landed and counted against quota.\textsuperscript{26}

- **Technical measures and effort control**: Policy tools which are used to limit fishing capacity and regulate where, when and how fishermen catch fish. Examples include; seasonal closures of fishing grounds, restrictions on days at sea, requiring fishermen to use specific fishing gear or minimum mesh sizes for fishing nets.\textsuperscript{27}

### Our inquiry

9. The Committee launched this inquiry on 9 January 2018 in anticipation of publication of the Fisheries White Paper and Bill and with the Stormont institutions in abeyance. The aim was to ensure that the interests of the Northern Ireland fisheries sector are fully represented in UK-wide fisheries policy. Our recommendations are intended to influence the Government’s thinking on the future fisheries Bill and wider EU exit negotiations.

10. We took evidence from a variety of organisations and people involved in the fisheries sector including academics, the Northern Ireland Fish Producer Organisations, regulatory bodies, environmental groups and local fishermen. We took evidence in Newtownards and in the fishing village of Portavogie where we met with representatives of the Northern Ireland Fishery Harbour Authority, visited fish processing facilities and met with local skippers to discuss the challenges they face. Our work was also informed by interviews with Northern Ireland fishermen, conducted by the Select Committee Engagement Team (a dedicated team that works with communities across the UK to increase engagement with select committees), which visited the fishing village of Kilkeel to interview local fishermen about the challenges and opportunities facing the industry. The video of these interviews can be found on our website.

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\textsuperscript{24} European Commission, *Fishing quotas*, Parliamentary Office of Science and Technology Note on UK Fisheries Management, Number 572, February 2018

\textsuperscript{25} European Commission, *Fishing quotas*, Parliamentary Office of Science and Technology Note on UK Fisheries Management, Number 572, February 2018

\textsuperscript{26} European Commission, *Discarding and the landing obligation*, Library of the European Parliament, Discarding fish under the Common Fisheries Policy, 13 May 2013

\textsuperscript{27} Parliamentary Office of Science and Technology Note on UK Fisheries Management, Number 572, February 2018, European Commission, *Fishing Effort*, European Commission, *technical measures*
Chapter 1: Securing the best Brexit deal

11. When the UK leaves the EU and the Common Fisheries Policy, it will become an independent coastal state responsible for managing the marine resources within its Exclusive Economic Zone (EEZ). The UK will leave the EU on 29 March 2019. It has been agreed in principle that a 21-month implementation period will follow before a new EU-UK relationship takes effect from 1 January 2021. It is expected that the Common Fisheries Policy will continue to apply to the UK during this implementation period. The UK Government has set out its vision for post-Brexit fisheries policy in its Fisheries White Paper. Proposals for continued trade in fisheries products are set out in the UK Government’s ‘Future Relationship’ paper, and arrangements for the implementation period are contained in the Draft Withdrawal Agreement.

12. In this Chapter, we will examine the UK Government’s priorities for the future UK-EU relationship, in terms of access to fishing opportunity and trade, and consider how it can secure the best Brexit deal for the Northern Ireland fishing industry. We then look at the possibility of a no deal scenario and what must be done to prepare for this scenario. Finally, we examine problems which might arise during the implementation period, and consider how these can be addressed.

Negotiating a new deal for the fishing industry

13. A central feature of the debate around the implications of Brexit for the fishing sector is that withdrawal from the EU will enable the UK to manage access to fish in its territorial waters. Many fishermen we spoke to described the UK’s current allocation of fishing opportunity under the CFP as unfair. Alan McCulla, CEO of ANIFPO, told us that 92% of fishermen voted to leave the EU because they do not believe the CFP delivers respect, equality or fairness for their industry.

Current access to fishing opportunity in the UK’s Exclusive Economic Zone

14. Under the CFP, all EU registered fishing vessels have equal access to the waters that form part of the EU’s EEZ, made up of the amalgamated EEZs of all the 28 Member States (see Figure 2). The principle of relative stability, based on historical fishing patterns during 1973–1978, sets the fixed amount of fishing opportunity available to each Member State. At an annual Fisheries Council, the European Commission proposes a Total Allowable
Catch (TAC) for each species of fish, divided where necessary between regions and sub-regions, which is then shared between EU countries in the form of national quotas. Each Member State can decide how its share of the fishing opportunities (TAC) are allocated domestically between vessels flying its flag (see Chapter 3).  

15. TACs are determined on the basis of scientific advice about sustainable stock levels and aim to set catch limits which respect the principle of MSY. Although the TAC for a species may change annually due to evolving scientific advice, the percentage share a Member State receives for each stock is fixed under relative stability. In practice, the fishing rights of an individual vessel are determined by the fishing quota it holds. The quota grants access for the vessel to catch a limited quantity of a specific fish stock, within a specified area of sea. These quota allocations can be sold and traded between POs and individual vessels.

16. In 2015, the total EU quota for 73 different fish stocks living in UK waters was 1,920,915 tonnes, of which 585,211 tonnes (30%) was allocated to the UK. During the period 2012–2016, vessels registered in other EU Member States caught fish worth on average £540 million annually in UK waters. UK vessels landed fish worth approximately £110 million from other Member States waters, per year, in the same period. Alan McCulla described how Ireland’s quota for key species in the UK EEZ compares to that of Northern Ireland vessels in Irish waters:

Ireland takes something like 52% of its cod catch from UK waters. Nephrops, langoustines, Dublin Bay prawns, whatever you want to call them, are the most economically important catch to fishermen in Northern Ireland. I believe that Ireland catches something like 40% of its entire catch of langoustines from UK waters. In terms of Northern Ireland, in terms of volume and value we take around 17% of our catch from Irish waters.

17. In 2015, 32% of the total value of fish landed by the Irish fleet, comprising 77,000 tonnes worth approximately 87 million euros, came from the UK’s EEZ. However, during this period the value of fish landed in the UK EEZ by the Netherlands, Denmark and France was almost double this. Harry Wick, CEO of NIFPO, told us:

France and Spain combined claim a total of 25% of our nephrops. Brussels, which is 500 miles away from Belfast, is claiming a share of the haddock caught five miles off the Belfast coast. It is not just Ireland that is the problem.

Similarly, Northern Ireland fishermen Jimmy Kelly said:

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36 Article 16 of EU Regulation 1380/2013  
37 The Conversation, Fact Check: is 80% of UK fish given away to the rest of Europe? 14 April 2015  
38 Defra, Sustainable fisheries for future generations, July 2018,  
41 Irish Fish producer Organisation Presentation to the Seafood Sectoral Civic Dialogue on Brexit, 1st February 2018.  
42 Q102
If you look at the radar it is Portuguese, Spanish, Faroes, Norwegian in our waters taking our fish. If you go around Donegal and speak to the Killybegs, they are tied up with no quota but yet the Dutch and the Portuguese are fishing 12 miles off the shore. Something needs to change.\textsuperscript{43}

18. The Government’s Fisheries White Paper addresses some of these concerns, describing the model used to calculate the UK share of fish, relative stability, as “outdated.” The White Paper argues that it does not “accurately reflect the resources in UK waters.”\textsuperscript{44} From 1973–78, the period when relative stability was initially calculated from vessel catch data, the UK fishing fleet concentrated much of its effort on fishing in the waters around Iceland.\textsuperscript{45} In 1977, UK vessels were expelled from Icelandic waters when fisheries limits were extended to 200 nautical miles but were unable to expel fishermen from other EU states from UK waters.\textsuperscript{46}

**The UK: an independent coastal state**

19. On leaving the EU, the UK will become an independent coastal state, responsible under international law for managing the marine resources within its territorial waters.\textsuperscript{47} The White Paper states:

> As an independent coastal state for the first time in over 40 years, access to UK waters will be on our terms, under our control and for the benefit of UK fishermen.\textsuperscript{48}

20. International agreements, such as the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the 1992 United Nations Fish Stock Agreement (UNFSA), set out the rights and responsibilities of coastal states for fish stocks within their Exclusive Economic Zone (EEZ). UNCLOS grants coastal states sovereign rights for “exploiting, conserving and managing” their natural resources and enables states to decide how fish stocks may be harvested, and by whom, within their EEZ.\textsuperscript{49}

\textsuperscript{43} Q334  
\textsuperscript{44} Defra, *Sustainable fisheries for future generations*, July 2018,  
\textsuperscript{46} *Fishery Limits Act 1976*  
\textsuperscript{47} Defra, *Sustainable fisheries for future generations*, July 2018,  
\textsuperscript{48} Defra, *Sustainable fisheries for future generations*, July 2018,  
\textsuperscript{49} Article 56, 62(4) UNCLOS, 10 December 1982, House of Lords, European Union Committee, *Brexit: fisheries*, 6 December 2016, Professor Richard Barnes (*FSH008*).
The UK will be responsible for determining the Total Allowable Catch (TAC) of the fisheries resources within its EEZ, making use of the best scientific advice available, and ensuring fish stocks can produce Maximum Sustainable Yield (MSY).\textsuperscript{51} For shared fish stocks, which occur in the EEZ of two or more coastal states, UNCLOS places an obligation on these coastal states to agree coordinated conservation measures.\textsuperscript{52} UNFSA builds on this obligation by providing a framework for cooperation between coastal states for the conservation of shared and highly migratory stocks.\textsuperscript{53} The Government acknowledges that “virtually all stocks fished by the UK” are highly migratory species whose conservation and management will require cooperation with other coastal states.\textsuperscript{54}

21. UNCLOS also requires coastal states to provide access for other states to any surplus TAC—fish stocks a state does not have the capacity to harvest. When granting access to surplus, a coastal state is required to take into account minimising economic dislocation to states whose nationals have habitually fished in the area.\textsuperscript{55} Richard Barnes, Professor of

\begin{itemize}
  \item \textsuperscript{50} The map was adapted from the House of Lords European Union Committee, \textit{8th Report of Session 2016–17, Inquiry into Brexit: fisheries}, published 17 December 2016 and based on a Joint Nature Conservation Committee Map; \textit{map showing relationship between different boundaries used under national and international obligations at a UK scale (2014)}.
  \item \textsuperscript{51} \texttt{Article 61 UNCLOS}, 10 December 1982
  \item \textsuperscript{52} \texttt{Article 63 UNCLOS}, 10 December 1982
  \item \textsuperscript{53} \texttt{1995 United Nations Fish Stock Agreement}
  \item \textsuperscript{54} Defra, \textit{Sustainable fisheries for future generations}, July 2018
  \item \textsuperscript{55} \texttt{Article 62 UNCLOS}, 10 December 1982,
\end{itemize}
International Law, University of Hull, told us that under UNCLOS other states have “no right to access waters to fish for anything other than a surplus”, and any access to fish is determined through agreement.\textsuperscript{56} He added:

The reference to habitual fishing might entitle those states with long standing fishing interests to make a stronger claim to any surplus, but this is only a claim weighed vis a vis any other state seeking access. It is not support of a claim of access per se.\textsuperscript{57}

22. The Government’s White Paper reflects this position, stating that, as an independent coastal state, the “UK will have control over access to its waters” and any decisions about giving access to vessels from the EU, or any other coastal states, “will be a matter for negotiation.”\textsuperscript{58} Similarly, the European Commission has acknowledged that the consequences of UK withdrawal will be “full control over territorial waters” and a “duty to cooperate on shared stock management.”\textsuperscript{59}

\textbf{Negotiation of fishing opportunity post-2020}

23. At the end of the implementation period at the latest, the UK will be able to negotiate fishing opportunity as an independent coastal state and control access by foreign vessels to its territorial waters.\textsuperscript{60} Fishermen in Northern Ireland were clear that they hoped Brexit will mean increased quota for the Northern Ireland fleet. Andrew Orr, a Northern Ireland fisherman, told us:

We would like to bring more fish back to our factories and we would like to build the whole industry back up to what it used to be. [ … ] A great opportunity if properly managed and I would say the general opinion about the British Isles as a whole, both north and south, is all quota brought back into the pot.\textsuperscript{61}

Harry Wick, CEO of NIFPO, told us that Northern Ireland got a “grossly unfair” deal when the CFP was originally negotiated.\textsuperscript{62} He said it was their “heartfelt desire that the balance is redressed in these negotiations and we do not make the same mistake twice.”\textsuperscript{63}

24. The Government’s White Paper states that increased fishing quota will be secured through a process of “annual exchanges” with the EU and other coastal states, including Norway and the Faroe Islands.\textsuperscript{64} George Eustice MP, Minister of State for Agriculture, Fisheries and Food, described the three key variables for fisheries negotiations:

\begin{itemize}
  \item determining the TAC (the size of the cake);
\end{itemize}

\textsuperscript{56} Professor Richard Barnes (FSH0008)
\textsuperscript{57} Professor Richard Barnes (FSH0008)
\textsuperscript{58} Defra, Sustainable fisheries for future generations, July 2018
\textsuperscript{59} TF50 - Commission to EU 27, Internal EU27 preparatory discussions on the framework for the future relationship: “Fisheries”, 17 January 2018
\textsuperscript{60} Defra, Sustainable fisheries for future generations, July 2018
\textsuperscript{61} Q327, Q335
\textsuperscript{62} Q102
\textsuperscript{63} Q102
\textsuperscript{64} Defra, Sustainable fisheries for future generations, July 2018, Commission, European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 March 2018
• negotiating allocations (who gets what share of the cake); and
• controlling access to waters, which he has referred to as the “trump card”.65

After Brexit, the UK will determine the TAC for fish in the UK EEZ on the basis of scientific advice provided by domestic fisheries bodies such as the Centre for Environment, Fisheries and Aquaculture Science (CEFAS), in collaboration with ICES.66 The sections below examine the Government’s proposals for determining quota share and access to UK waters after Brexit.

Fishing opportunity for the UK fleet

25. The UK Government has indicated that it wants to replace relative stability with zonal attachment. Minister Eustice told the Environment, Food and Rural Affairs Committee that, while relative stability would be the “starting point” in December 2020, “zonal attachment is the objective”.67 Zonal attachment is a different method of allocating quota which is based on an assessment of the extent to which a fish stock resides within a country’s EEZ. There is no single agreed definition of how zonal attachment should be measured but a version of zonal attachment is used to determine quota share for 6 key stocks in the EU-Norway fisheries agreement.68 The White Paper presents preliminary research on zonal attachment using the following data to evaluate whether a fish stock resides in the UK EEZ:

• The percentage of a given stock that was caught and landed from within the UK’s EEZ (landings);
• The percentage of a given stock’s total habitable area that lies within the UK’s EEZ (bathymetry); and
• The percentage of a given stock that lies within the UK’s EEZ based on scientific trawl survey data (swept-area biomass).69

This data is used to draw comparisons between the UK’s 2018 quota share under relative stability and the zonal attachment measures. For example:

Figure 4: The zonal attachment measure for Celtic Sea Cod

<table>
<thead>
<tr>
<th>Zonal Attachment Measures</th>
<th>2018 Quota</th>
<th>Landings</th>
<th>Bathymetry</th>
<th>Swept-area Biomass</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK Share</td>
<td>7%</td>
<td>51%</td>
<td>38%25</td>
<td>43%</td>
</tr>
</tbody>
</table>

Source: Annexe C: Zonal Attachment, Sustainable fisheries for future generations, DEFRA, July 2018

65 Q363 (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489, Q32-33, George Eustice MP oral evidence to joint sessions with European Scrutiny Committee and Environment, Food and Rural Affairs Committee, 8 March 2017,
66 Defra, Sustainable fisheries for future generations, July 2018, Q2
67 Q366 (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
68 Agreed Record of Fisheries Consultations between Norway and the European Union for 2018, Bergen 1 December 2017, LSE Blog, Brexit and fishing: How can the UK deliver a ‘successful’ fisheries policy after Brexit? By Richard Barnes, Chris Williams, Bryce Stewart, Bethan O’Leary, Thomas Appleby and Griffin Carpenter,
69 Defra, Sustainable fisheries for future generations, July 2018
26. In January 2017, the University of Aberdeen published a paper that modelled how zonal attachment might change quota shares for fish stocks in the North Sea and West of Scotland. It concluded that “for most stocks the percentage TAC allocated to the UK is much lower than the estimated average percentage of the spatial distribution in the UK”. The study found two stocks where the UK’s TAC allocation is in excess of spatial distribution (North Sea anglerfish and Rockall haddock), three stocks where the UK’s TAC allocation is in line with spatial distribution (North Sea and West of Scotland Haddock and Mackerel) but, for all other stocks assessed, the UK’s current TAC was “less than minimum estimates of spatial distribution”.

27. The Committee heard that for the main species landed into Northern Ireland, over 80% by value and volume is captured within the UK EEZ. Whilst vessels from Northern Ireland can, and do—providing they have quota to do so—fish further afield, the greatest concentration of current effort is in the Irish Sea, West of Scotland and North Sea. The POs highlighted that although around 70% of the Irish Sea is within UK waters, the UK’s share of many of the key demersal TAC (species such as cod and haddock) is less than 50%. The Government has committed to publish further data on the zonal attachment measure for fish stocks in UK waters later in the year. Minister Eustice has also set out his expectations for the pace of change from relative stability:

We will not get there overnight. We have been clear about that, but we want to see year-on-year gains from the moment we negotiate as an independent coastal state. In some stocks, it may be possible to get faster progress than in others, depending on what we agree.

It is not clear from this how the Government’s apparently cautious, gradual and negotiated intended move towards zonal attachment will change the quota allocation for Great Britain or Northern Ireland after December 2020 or how long it will take to reach steady state.

28. The National Federation of Fishermen’s Organisations (NFFO) has said that the White Paper “aligns quite closely with what the fishing industry wants and expects.” However, the New Economics Foundation highlighted that the White Paper is peppered with terms like ‘seek to’, ‘intend to’ and ‘will consider’, which suggest that policy change

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70 The Aberdeen University Study used different data sets when assessing spatial distribution of fish stocks to the research carried out by the Marine Management Organisation which is cited in the Government’s White Paper. The study focussed on waters in the North Sea and West of Scotland which are of particular interest to the Scottish fleet. The Spatial Distribution of Commercial Fish Stocks of Interest to Scotland in UK Waters, University of Aberdeen in partnership with the Scottish Fishermen’s Federation, January 2017
71 The Spatial Distribution of Commercial Fish Stocks of Interest to Scotland in UK Waters, University of Aberdeen in partnership with the Scottish Fishermen’s Federation, January 2017
72 The Spatial Distribution of Commercial Fish Stocks of Interest to Scotland in UK Waters, University of Aberdeen in partnership with the Scottish Fishermen’s Federation, January 2017
73 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002)
74 SeaFish (FSH0011), Northern Ireland’s fisheries sectors – background and possible ‘Brexit’ considerations, Northern Ireland Assembly Research and Information Service, 8 September 2016
75 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), Defra, Sustainable fisheries for future generations, July 2018
76 Defra, Sustainable fisheries for future generations, July 2018
77 Q363, (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
78 NFFO, White Paper, 4 July 2018
is “conditional on certain Brexit outcomes” in the negotiations.\textsuperscript{79} It is notable that in an earlier version of the White Paper, leaked to Politico, the Government’s stated aim for quota shares was simply described as “to update relative stability”.\textsuperscript{80}

29. The White Paper states clearly that any decisions about giving vessels from the EU, or any other coastal states, access to UK waters will be a matter for negotiation.\textsuperscript{81} However, there is no detail on the criteria that will be used to determine access or the extent to which access will change after Brexit. On this point, the fisheries Minister said:

What we cannot say is that we will have an exclusion zone and that no-one can come into our waters. There will be a sense of saying that we will grant some access, but it might not be the same sort of access that they are used to [ … ] There may be some trading of access in order to get a fairer share, for instance.\textsuperscript{82}

The Prime Minister has indicated that the Government will ensure “we don’t see our fishermen unfairly denied access to other waters” as a consequence of taking back control of UK waters.\textsuperscript{83} For example, the UK currently benefits from access to Norwegian waters to fish for arctic cod in exchange for granting Norway access to blue whiting in the UK EEZ.\textsuperscript{84} Access agreements such as this often require the balancing of differing interests within the UK fleet. In this example, the English fleet tends to benefit from access to arctic cod while the Scottish fleet loses access to blue whiting.\textsuperscript{85}

30. Material published by the European Commission shows that securing “continued reciprocal access to waters, resources and markets” is a key priority for the EU.\textsuperscript{86} Donald Tusk, European Council President, has explicitly linked tariff-free access to the single market with maintaining existing access for EU boats in UK waters.\textsuperscript{87} The European Council’s draft negotiating guidelines for a future trade deal state:

Trade in goods, with the aim of covering all sectors, which should be subject to zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. In the overall context of the FTA (free trade agreement), existing reciprocal access to fishing waters and resources should be maintained.\textsuperscript{88}

George Eustice has said that the UK is “equally explicit that this is unacceptable and we want to move to a zonal attachment methodology”.\textsuperscript{89} The NFFO describe the EU’s attempts

\textsuperscript{79} New Economics Foundation, \textit{Fisheries White Paper: Who is this for?}, 4July 2018
\textsuperscript{80} Leaked Draft Fisheries White Paper, Politico, 3 May 2018
\textsuperscript{81} Defra, \textit{Sustainable fisheries for future generations}, July 2018
\textsuperscript{82} Q32–33, (George Eustice) Oral evidence to a joint session held by the European Scrutiny Committee and the Environment, Food and Rural Affairs Committee, 8 March 2017
\textsuperscript{83} Government publishes plan for an independent fisheries policy, Press Release, 4 July 2018
\textsuperscript{84} Q409, (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
\textsuperscript{85} Q396, (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
\textsuperscript{86} Internal EU27 preparatory discussions on the framework for the future relationship: “Fisheries”, 17 January 2018
\textsuperscript{87} Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK, 7 March 2018
\textsuperscript{88} European Council, European Council (Art.50) (23 March 2018) Draft guidelines, 23 March 2018
\textsuperscript{89} Q410, (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
to make market access conditional on fisheries access as a “nuclear option” to which the UK government must not capitulate.\textsuperscript{90} We discuss trade aspects in greater detail in the next section.

31. The Committee supports the Government’s commitment to move away from the current inequitable allocation of fishing opportunity under relative stability and welcomes its publication of evidence in support of the zonal attachment measure. However, the White Paper does not say whether the Government intends to negotiate quota increases in line with these projections. Nor does it set out the criteria on which the UK will determine access for foreign vessels to UK waters after Brexit. We recommend that the Government clarify, in its response to this report, how it intends to exercise its rights under international law to secure a significant redistribution of fishing opportunity in UK waters. We further recommend that the Government sets out its projections for how quota allocation based on zonal attachment will differ from that of relative stability for the Northern Ireland fleet and the criteria that will be used to permit access by foreign vessels to fishing opportunity in UK waters after Brexit.

\section*{Access to the Single Market}

32. The future EU-UK trading relationship is important for the fishing industry because the UK exports a large proportion of the fish it catches to the EU and imports the majority of what is consumed domestically.\textsuperscript{91} Under current arrangements, there are no tariffs on intra-EU trade in fish or fish products. The UK’s membership of the single market also means that the level of non-tariff, or ‘regulatory barriers’, to trade is “very low".\textsuperscript{92} Non-tariff barriers can restrict trade by requiring exported products to meet certain conditions such as; the requirement to provide proof of origin, the imposition of quotas to limit the amount which can be sold in a market or restrictions on how a product is marketed.\textsuperscript{93}

33. During 2014–2016, Northern Ireland exported on average £45 million worth of fish while importing £16.9 million, creating a trade surplus of £28 million. Trade with the EU made up 94% of Northern Ireland’s international fish exports and 82% of its international fish imports during this period.\textsuperscript{94} The domestic market is also crucial for the Northern Ireland fleet, with NI and GB representing the market for over 60% of the fish landed by the NI fleet. The latest figures available for 2016 show that the NI fishing industry had a turnover of £79.7 million of which:

- £12.8 million was sold to the NI market (16%);
- £35.8 million to the GB market (45%);
- £28 million to the EU (36%) of which £6.5 million (8%) went to Ireland; and
- £3.1 million (4%) to the rest of the world.\textsuperscript{95}

\begin{flushright}
\textsuperscript{90} NFFO, \textit{White Paper}, 4 July 2018 \\
\textsuperscript{92} UK Trade Policy Observatory, \textit{Briefing paper: fishing in Deep Waters}, 21–23 July 2018 \\
\textsuperscript{93} Explainer: Non-tariff barriers, Institute for Government \\
\textsuperscript{94} Defra (FSH0004) \\
\textsuperscript{95} Department for Agriculture, Environment and Rural Affairs, Table 10b, \textit{Size and Performance of the Northern Ireland Food and Drinks Processing Sector}, Subsector Statistics 2016
\end{flushright}
34. It is important to note that the Northern Ireland fleet also lands fish into ports outside the UK. In 2016, the Northern Ireland fleet landed fish worth £5.1 million into ports in Ireland, in addition to the £28 million exported from Northern Ireland, creating a total of £33.1 million in 2016.\footnote{2012–2016 UK fleet landings and foreign fleet landings into the UK port, UK sea fisheries annual statistics report 2016, Marine Management Organisation} Alan McCulla told us that the catch landed into Ireland is mostly “mackerel and herring” which is brought to Killybegs for processing. He said:

We do not want to lose those markets, but neither do the processors in Killybegs want to lose that fish. It becomes an important component of their industry that is, further down the supply chain, classified as an Irish export, when in fact it was fish caught by UK fishermen.\footnote{Q159, Q137}

35. Harry Wick underlined the importance of Great Britain as a market for NI fish, and told us that disruption to trade between Northern Ireland and Great Britain had the potential to “cripple” the industry:

A lot has been said about the north-south border and the threat that might pose, but in actual fact, the main threat is an east-west border. If we look at the numbers, £47 million of our product goes directly to the UK; £6 million of our product crosses the north-south border. In my opinion, it is imperative that we safeguard the larger proportion of that money.\footnote{Q76, Q137}

36. The Government’s ‘Future Relationship’ paper proposes that the UK and EU establish a free trade area for goods which would eliminate tariffs, prevent customs or regulatory checks at the border and apply a “common rule book” for agriculture, food and fisheries products.\footnote{HM Government, The future relationship between the United Kingdom and the European Union, July 2018} Donald Tusk has proposed “a trade agreement covering all sectors” with “zero tariffs on goods.” However, this offer was explicitly linked to the UK maintaining existing access for EU vessels in UK waters.\footnote{Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK, 7 March 2018} Richard Barnes, Professor of International Law at the University of Hull, told us that the EU “will maintain pressure” on the UK to permit access to UK waters for the EU fleet as part of a wider deal on access to EU markets.\footnote{Professor Richard Barnes (FSH0008)} Similarly, Dr Appleby, Associate Professor at the University of the West of England, described negotiations on access to fish as an “entirely political question”.\footnote{Dr Thomas Appleby (FSH0007)} He told us:

It depends on the relative bargaining strengths of both parties and the good will between them. The EU negotiators have made it plain that access for EU vessels to UK waters is required for access to the EU market, but it is equally possible that access to UK waters will be negotiated for anything from the EU data market to its space programme. It is important to recognise that the UK did not vote to leave the CFP (where it has theoretical advantages in negotiations) but the whole of the EU (where those advantages are not as clear).\footnote{Ibid}
37. Conversely, the Government has repeatedly argued that access to the single market and access to fishing opportunity in the UK EEZ are separate and distinct matters.104 George Eustice said:

You will be aware that the EU has said only one thing on fisheries so far. There have not been detailed discussions on fisheries to date. They have made a very simple statement: that they would like to link a trade deal with access to fishing. That is a position we disagree with, and we have been absolutely explicit that we disagree with it in the White Paper.105

Negotiations between the EU and UK are ongoing and consequently it remains unclear how the UK’s trade in fisheries products with the EU will change after Brexit. Here we consider how the imposition of tariffs and increases in regulatory trade barriers could affect the Northern Ireland industry.

The imposition of tariffs

38. The level of tariffs that will be applied to fish products will depend on the outcome of the EU-UK negotiation on future trade relations. The EU currently operates a variety of different tariff models for trade in fisheries products with other countries:

- Zero tariffs for trade in fisheries products with EU-28 Member States in the single market and customs union;
- Tariffs on trade with European Economic Area (EEA) countries Norway, Iceland and Lichtenstein are greatly reduced or eliminated by agreement;
- Bilateral trade agreements with countries such as Algeria, Chile, Mexico, Morocco and South Africa also eliminate or significantly reduce tariffs;
- The EU Autonomous Tariff Quota (ATQ) regulation covers a number of specific fishery products for which the tariff has been suspended or reduced. Once the quota is used up on a first-come-first-serve basis, the tariff reverts to the full tariff (or, if applicable, the tariff as defined by an alternative arrangement);
- Full tariff under World Trade Organisation rules.106

In assessing the impact of different Brexit scenarios for the NI fishing fleet, the value of any redistribution of quota share for UK fishermen should be balanced against the cost implications of tariffs and regulatory barriers to trade.

39. Trade with the EU is significant for the fisheries sector in Northern Ireland. In 2016, Northern Ireland exported fish worth £33.1 million to the EU and imported £13.8 million from the EU.107 Despite having a reduced tariff rate, Norway—which has the closest trade

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104 Fisheries white paper: sustainable fisheries for future generations, Defra, 4 July 2018, HM Government, The future relationship between the United Kingdom and the European Union, July 2018
105 Q403 (Minister George Eustice), Oral Evidence to the Environment, Food and Rural Affairs Committee on 17 July 2018, HC489
106 Tariffs on seafood imported into the EU, Sea Fish, March 2017, Professor Richard Barnes (FSH0008)
107 Defra (FSH0004), Department for Agriculture, Environment and Rural Affairs, Table 10b, Size and Performance of the Northern Ireland Food and Drinks Processing Sector, Subsector Statistics 2016 and 2012–2016 UK fleet landings and foreign fleet landings into the UK port, UK sea fisheries annual statistics report 2016, Marine Management Organisation
relationship with the EU for fish products—still pays tariffs on 70% of fish sent to the EU market, totalling 1 billion Norwegian kroner (£91.5 million) a year. Northern Ireland’s POs told us they want “the freest possible trade with Europe” and that the imposition of tariffs could carry “significant consequences” for the industry. They said:

The Government should seek the trade arrangements with the lowest tariff barriers and impediments to trade possible: but not at the cost of undermining the UK’s standing as an independent coastal state.

40. It is also notable that many shellfish species are not subject to EU quotas and so fishermen who target this catch could face losing income as a result of the imposition of tariffs whilst gaining no benefit from increased quotas. In 2016, non-quota species such as crab and scallops represented 21% of the total value of fish landed by the NI fleet. While there has not been a specific assessment of the impact of different outcomes on the NI fishing sector, a study which modelled different Brexit outcomes, commissioned by Marine Scotland, found that:

Fleet sectors targeting non-quota species (crab and scallop) and the salmon aquaculture industry, which do not stand to gain from zonal attachment quota increases, suffer the negative impacts of higher tariffs and NTMs [non-tariff measures] without the benefits of an increase in production. Therefore, they experience a contraction in output value with the imposition of EU-Norway type tariffs (and non-tariff measures), and a greater contraction with MFN [most-favoured nation - WTO] tariffs and non-tariff measures.

The New Economics Foundation noted:

Tariffs would impact every fleet segment, as the majority of UK fish is exported (76%) and the majority of that is destined for the EU (75%). For fishers holding quota, quota gains can offset the application of tariffs in terms of overall economic performance, but not for those fishers—including the majority of the small-scale fleet—who do not hold quota.

41. Finally, a no deal scenario would mean that the UK is no longer bound by the CFP and that UK-EU trade would be subject to World Trade Organisation (WTO) rules. Harry Wick told us that “while no deal is not a disastrous situation, having a good deal is much, much better.” Figure 5 (below) shows the EU’s tariff rates for trade in fish and fisheries products with countries who do not have a preferential trade agreement (full tariff under World Trade Organisation MFN rules).
The UK Trade Policy Observatory, an independent expert group, modelled possible economic outcomes for the UK fishing industry under different deal and no deal scenarios. The study claimed that the imposition of WTO tariffs would have “non-negligible effects” for UK exports and that “a no deal Brexit leads to the biggest negative impacts” for UK exports. With regards to the redistribution of quota share, it highlighted that implementing a zonal attachment measure could have a substantial impact on the EU fishing industry which might see its exports reduce by 13%. It concluded:

If the UK chooses to act unilaterally, it would almost certainly lead to EU retaliation of some sort, either within fisheries or in other policy areas such as trade or market access. The potential gains for the UK are substantial, but there is a need to balance the gains and the potential impacts across the different parts of the industry and it will need to be mindful of the implications not just for fishing and fisheries, but also the UK’s broader relations with the EU.

Professor Barnes told us:

In terms of a no deal, the biggest impact would be access to markets. We are potentially looking at the imposition of customs duties, which depend on the particular species. We have mentioned prawn, at a tariff of about 16% or 18%. [...] There is a degree to which the fishing industry could absorb the costs of that. There is a high demand for fish products, which may result in the increase in costs being defrayed across the industry as a whole. They may be able to withstand that in the larger sectors of the economy, rather than the smaller-scale processors. That is potentially a problem for Northern Ireland, where the processing is very small and most of the businesses are under 25 (employees). You have cash flow issues there. If you then start to generate increased costs without being able to adapt, you are at risk of going under. The larger operators are better able to deal with that.
Non-tariff barriers to trade

42. The EU also enforces a range of regulatory and administrative controls on the import of fish from non-member states which, depending on the terms of the UK-EU relationship, could apply to UK fisheries exports after Brexit. Regulatory controls could include:

- **Health and quality controls**: checks to ensure that imported fisheries products meet EU food safety and hygiene standards;
- **Catch certification**: fish products imported from non-member states must be accompanied by a catch certificate which attests the fish was caught sustainably; and
- **Consumer information, labelling and marketing requirements**: fishery products placed on the EU market are subject to specific requirements with regards to consumer information, presentation, catch method and limits on sale of fish below minimum sizes.\(^{121}\)

43. Euan Beaton, President of MacDuff Shellfish, a large shellfish processing business, explained how non-tariff barriers could affect trade:

> When I started the business with my mum and dad, we were a very small business, we needed a health certificate with every consignment we dispatched. We had to run all over the county trying to get this piece of paper and get the vet to sign and stamp it. It was really difficult. God forbid that we go back to that set of circumstances again. We also do not want to be holding fresh fish up in Calais or Dover.\(^{122}\)

Jimmy Kelly told us:

> My whelks go to the Republic. We will need a vet’s certificate to get them across the border because they are shellfish. It is the same with certain other types of shellfish. We are going to have to take that pain on the chin, but if the Government support us, allow the quota and start reinvesting in their industry.\(^{123}\)

44. Dr Lynn Gilmore, Northern Ireland Manager at Sea Fish, a non-departmental public body set up to improve efficiency and raise standards in the fisheries industry, also raised concerns about delays at the border:

> Non-financial tariffs are a great fear of the industry, because with seafood you are dealing with a fresh product. It is in even sharper focus when you look at the aquaculture and eels sectors, which in many cases are exporting a live product. Any friction at borders is a huge concern to the industry, both in terms of the additional cost and access to market, and in terms of the ruination of stocks through hold-ups at borders.\(^{124}\)

\(^{121}\) Professor Richard Barnes (FSH0008), UK Trade Policy Observatory, *Briefing paper: fishing in Deep Waters*, 21–23 July 2018, Department of Agriculture, Environment and Rural Affairs (FSH0010)

\(^{122}\) Q284 (Euan Beaton) Oral Evidence to the Environment, Food and Rural Affairs Select Committee inquiry into Fisheries, 13 December 2017, HC489

\(^{123}\) Q339

\(^{124}\) Qq41–42
Andrew Kuyk, Director General of the UK Seafood Industry Alliance, highlighted the importance of goodwill in the future EU-UK relationship to help solve these potential problems:

There is port health, border inspection posts. Again, at the moment, for intra-EU trade those are not necessary, but if we become a third country we may need to have those. The point you made, Chair, is that it is not just what the rules say on paper; it is the spirit in which they are implemented and enforced. If there is mutual co-operation, that is quite different. If people are going to insist on a much higher level of physical checking, or if the stamp is in the wrong place.\footnote{Q351 Oral Evidence to the Environment, Food and Rural Affairs Select Committee inquiry into Fisheries, 13 December 2017, HC489}

45. The Government’s ‘Future Relationship’ paper proposes a common rule book for agriculture, food and fisheries products which covers “only those rules necessary to provide for frictionless trade at the border”.\footnote{Policy paper: The future relationship between the United Kingdom and the European Union, HM Government, 12 July 2018} To obviate the need for checks, under the common rule book the UK would “make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules”.\footnote{Ibid} However, it is not clear from the paper which of the many EU rules which govern trade in fish and fish products will be within the remit of the common rule book. For wider food policy questions, such as marketing and labelling, the paper states:

It is not necessary to check these rules are met at the border, because they do not govern the way in which products are produced, but instead determine how they are presented to consumers. These rules are most effectively enforced on the market, and as such it is not necessary to incorporate them into the common rulebook. [ … ] For these rules, there are existing precedents of equivalence agreements covering testing and approval procedures. For example, the EU has reciprocal equivalence arrangements or agreements for organic production rules and control systems with a number of countries: Canada, Chile, Israel, Japan, the Republic of Korea, Tunisia, the US and New Zealand.\footnote{Policy paper: The future relationship between the United Kingdom and the European Union, HM Government, 12 July 2018}

The EU has yet to make a formal response to the UK’s ‘future relationship’ proposals. However, EU chief negotiator Michel Barnier has questioned the idea that a common rule book, under which the UK only aligns with those standards that are checked at the border, provides a basis for allowing for free movement of goods.\footnote{Press statement by Michel Barnier following the July 2018 General Affairs Council (Article 50), Brussels, 20 July 2018}

46. The UK and EU have also agreed that, if it is not possible through the wider UK-EU deal, a “backstop arrangement” will be put in place to protect North-South cooperation and avoid a hard border between Ireland and Northern Ireland.\footnote{Paragraph 49, Joint Report on progress during phase 1 of the Article 50 negotiations on the UK’s withdrawal from the EU, 8 December 2017, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 March 2018}
that this would require “a common regulatory area,” comprising the EU and Northern Ireland, in which the EU rules for health, safety, production and marketing would apply to Northern Ireland fisheries. The UK has not accepted the EU’s proposals for a backstop, and has instead suggested a temporary customs arrangement. The UK’s proposal does not address regulatory standards. The UK Government has been clear that its preferred option is for trade on the island of Ireland to be covered by the wider UK-EU trade deal.

47. The EU is an important export market for the Northern Ireland fishing sector. Negotiating a good deal for the Northern Ireland fishing industry is therefore not just about attaining increased quota but also securing continued access for Northern Ireland’s fisheries products to EU markets. Any future agreement with the EU should secure reciprocal tariff-free trade in fish and fisheries products, mutual recognition of standards, and a streamlined export process for perishable fisheries goods. The consequences of high tariffs will be particularly acute for those fishermen in Northern Ireland who catch non-quota shellfish species. These fishermen stand to incur the costs associated with increased tariff and non-tariff barriers without gaining the benefits of renegotiated quota. We recommend the Government set out, in its response to this report, which rules pertaining to fisheries trade would be included within the common rulebook.

48. In a no deal scenario, in which trade in fisheries products is subject to the EU’s common external tariff, the gains implied by the exclusion of EU fishermen from the UK’s EEZ would be offset to an extent that is both unclear and uneven across the sector.

Preparing for a no deal scenario

49. As set out in paragraphs 32–48, the best outcome for the Northern Ireland fishing industry would be for the Government to secure a deal with the EU that prevents the imposition of tariffs and costly administrative barriers to trade. However, recent statements made by political leaders in the UK and the EU demonstrate that no deal remains a possible outcome of the UK’s negotiations with the EU. On 12 July 2018, Secretary of State for Exiting the EU Dominic Raab said that in the Government’s view “no deal would be better than a bad deal” although the Government is aiming for the “very best deal”. He also confirmed that the Government had decided to “step up” its planning for a no deal scenario. In a similar speech on the 11 July 2018, EU chief negotiator Michel Barnier told businesses that they should “prepare for the worst-case scenario of a no deal which would result in tariffs under WTO rules”.

50. Minister Eustice set out three possible outcomes from the ongoing Brexit negotiations:

The scenario we are aiming for, obviously, is that we get a withdrawal agreement and heads of terms on a future economic partnership by the autumn, which Parliament can then endorse, and everyone is happy. One variation on that might be that people would agree the withdrawal agreement, but that a future economic partnership remains elusive, and

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131  Article 3, Article 5, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 March 2018
132  Technical note on temporary customs arrangement, HM Government, 7 June 2018
133  Hansard, Volume 622, 12 July 2018
134  Hansard, Volume 622, 12 July 2018
135  Speech by Michel Barnier at the European American Chamber of Commerce, New York, 10 July 2018
therefore there is a transition period but then something akin to no-deal Brexit at the end of that. The third option would be that there is no deal at all, so there is not even an agreement on the withdrawal agreement, and in that situation, yes, we would need to have all the powers in place in a fisheries Bill by the end of March next year.  

51. The European Union (Withdrawal) Act 2018 converts around 100 pieces of EU legislation, which make up the CFP, into “retained EU law” on the domestic statute book. Over time, the Government intends to replace retained EU law with domestic legislation such as the fisheries Bill. George Eustice said that the fisheries Bill will be introduced “towards the end of this year” but acknowledged that if there is no implementation period “we would obviously have to advance it”. In the event of no deal, an expedited fisheries Bill would need to take effect from 30 March 2019. However, as discussed in paragraphs 24–31, the Government’s White Paper on the fisheries Bill contains little detail on how the UK intends to control access for foreign boats in UK waters or how quota share will be redistributed. When we asked the Minister about contingency planning for no deal, he told us:

> We have had the MMO working on issues such as enforcement, and working out what day one capacity would need to be in such a scenario. It has done a lot of work around what additional capacity it might need to process more catch certificates for our exports. It has also done work on other IT systems and other resourcing that we would need to consider.

52. We consider below the steps the Government must take to prepare the industry for a no-deal scenario, should it prove unavoidable.

**Catch certificates for UK fisheries exports**

53. As a non-member state, the UK will be required to provide catch certificates in order to trade fisheries products with the EU. Any country wishing to trade with the EU must have its fisheries management system approved by the EU and any fish imported into the EU must be accompanied by a catch certificate. A catch certificate is a document which certifies that a fish has been caught legally and is being sold in accordance with applicable laws, regulations and international conservation measures. We heard that currently the UK has to produce relatively few catch certificates as the majority of its export trade is with the EU.
54. In the event of a no deal Brexit, the UK would have to dramatically increase production of catch certificates to cover all fisheries imports and exports with the EU. In 2016, the UK exported £1.17 billion of seafood to the EU and imported £1.04 billion from the EU. The Department for Agriculture, Environment and Rural Affairs (DAERA) told us: There will also be the need to process more import catch certificates. This will be a significant issue for Northern Ireland given that the factories source a high percentage of their inputs from ports all over Ireland. Nephrops represent a large proportion of those imports.

55. On 19 January 2018, the Department for Environment, Food and Rural Affairs (DEFRA) secured £16 million in special funding from the Treasury to finance six projects which support the UK’s “day 1 readiness for exiting the EU”. Development of a new IT system for processing catch certificates was one the six projects listed. Claire Moriarty, Permanent Secretary at DEFRA, described providing catch certificates as a top priority project which is “constantly front of mind” because it carries large risks. She added that representatives from DEFRA had met with fisheries stakeholders to explain what would happen in a no deal scenario, and the “maximum additional work for the sector”.

56. In May 2018, the Public Accounts Committee reviewed DEFRA’s preparations for Brexit and concluded that “in light of DEFRA’s poor track record in implementing new IT systems” there are “substantial risks” around delivery of the IT projects. The European Commission has notified its fisheries stakeholders about the requirement to provide catch certificates in the event of a no deal Brexit. Trade with the EU made up 94% of Northern Ireland’s fish exports and 82% of its fish imports during the period 2014–2016, and ensuring these exports are not disrupted by requirements for catch certificates could therefore be a key priority for the sector.

57. In the event of no deal, catch certificates will be required for Northern Ireland’s fisheries imports and exports trade with the EU. The Government must be in a position to process catch certificates for all of Northern Ireland’s trade with the EU by 30th March 2019. We recommend the Government set out, in its response to this report, DEFRA’s timetable for piloting and delivering a new IT system capable of providing catch certificate for all UK fisheries trade with the EU in the event of a no deal scenario.

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144 Q58, Claire Moriarty, Oral evidence to the Public Accounts Committee, Implementing the UK’s exit from the EU: the Department for Environment, Food and Rural Affairs, HC 736, 7 March 2018
145 Fisheries white paper: sustainable fisheries for future generations, Defra, 4 July 2018
146 Department of Agriculture, Environment and Rural Affairs (FSH0010)
147 Defra perm sec seeks ministerial direction to approve Brexit spending, Civil Service World, 19 January 2018
148 Defra perm sec seeks ministerial direction to approve Brexit spending, Civil Service World, 19 January 2018
149 Q3 Claire Moriarty, Oral evidence to the Public Accounts Committee, Implementing the UK’s exit from the EU: the Department for Environment, Food and Rural Affairs, HC 736, 7 March 2018
150 Q60 Claire Moriarty, Oral evidence to the Public Accounts Committee, Implementing the UK’s exit from the EU: the Department for Environment, Food and Rural Affairs, HC 736, 7 March 2018
151 Public Accounts Committee, Exiting the European Union: The Department for Environment, Food and Rural Affairs, HC699, 25 April 2018
152 European Commission, Notice to stakeholders on UK withdrawal and EU rules on fisheries and aquaculture, 9 April 2018
153 Defra (FSH0004)
Enforcement of the UK’s EEZ

58. The UK has around 11,000 miles of coastline and an EEZ which is approximately 300,000 square miles. If the UK withdraws fishing rights for non-UK vessels—which is most likely under a no deal scenario—it must be capable of preventing illegal fishing within its EEZ. Minister Eustice described the current arrangements for enforcement of the UK’s EEZ in the following terms:

We have the fisheries protection fleet, which has three vessels. The Inshore Fisheries Conservations Authorities do a lot of inshore work on policing. There are several dozen vessels available to them. We have things like coastguard vessels. We also do a huge amount these days by remote vessel monitoring. [ … ] if they see suspicious behaviour or a vessel in a place it should not be, they alert the fisheries protection fleet.\(^{155}\)

59. Control and enforcement of fisheries legislation is currently a devolved matter. Lord Gardiner of Kimble, Parliamentary Under-Secretary of State, DEFRA has said that “it is for each Devolved Administration to decide how best to develop an enforcement solution to prevent unauthorised fishing”.\(^{156}\) In Northern Ireland, the Sea Fisheries Inspectorate (SFI) is responsible. It has three Port Offices based in the three main fishing ports of Ardglass, Kilkeel and Portavogie and mobile fishery officers.\(^{157}\) DAERA told us:

Sea going ability is provided through an inshore Fisheries Protection Vessel, based in Bangor County Down, and a large Rigid Inflatable Boat which can be transported anywhere round the coast when it is required. The SFI does not presently avail of the services of the Royal Navy, nor does it currently use aerial surveillance.\(^{158}\)

Oversight of control and enforcement activities within the UK is provided by the UK Fisheries Enforcement and Control Group that comprises policy leads from each Fisheries Administration.\(^{159}\) Further support is afforded by the European Fisheries Control Agency, with which the Government has said it will consider cooperation post-Brexit.\(^{160}\)

60. The Committee heard concerns that the UK does not currently have the capacity to police its waters.\(^{161}\) Former head of the Royal Navy, Lord West of Spithead, said that a lack of vessels will “create a crisis post-Brexit unless something is done urgently”.\(^{162}\) Alan McCulla, CEO of the ANIFPO, told us that although the UK’s satellite surveillance

\(^{154}\) Lord Gardiner of Kimble, \textit{Hansard Volume 785}, 6 November 2017, Written Questions answered by Lord Gardiner of Kimble (HL3705)

\(^{155}\) Q272

\(^{156}\) Written Questions answered by Lord Gardiner of Kimble (HL3010)

\(^{157}\) Department of Agriculture, Environment and Rural Affairs (FSH0010), Written Questions answered by Lord Gardiner of Kimble (HL3010)

\(^{158}\) Department of Agriculture, Environment and Rural Affairs (FSH0010)

\(^{159}\) Department of Agriculture, Environment and Rural Affairs (FSH0010)

\(^{160}\) Letter from George Eustice MP to Sir William Cash (Chairman of the House of Commons European Scrutiny Committee), dated 8 January 2018.

\(^{161}\) Q369, Q163

\(^{162}\) UK Territorial Seas: Incidents, \textit{Hansard Volume 791}, 14 June 2018
systems are impressive there is a “lack of assets within the UK” which can be deployed to do a “proper policing job.” Mike Cohen, Chairman of the NFFFO, said that there is “no doubt” we would need more funding and resources for enforcement.

61. Lord Gardiner of Kimble said the Government was undertaking an assessment of the scale and volume of sea-based patrol capability which will be required after the UK leaves the EU. The results from this assessment have yet to be published. In March 2018, the Royal Navy received the first of five new patrol vessels with the next four vessels expected to be delivered “at around six-month intervals” over the next few years. The Government has also set up the Joint Maritime Operations Co-ordination Centre (JMOCC) to manage cross-agency patrol capabilities, information sharing and aerial surveillance. However, the JMOCC is described as a “coordinating authority” which relies on deploying existing vessels.

62. In the event of no deal, the UK must have sufficient assets in place to prevent illegal fishing within its EEZ by 30 March 2019. We recommend that the Government publish its assessment of the assets required to police the UK’s EEZ after the UK leaves the EU and provide details of the amount of funding and number of ships available to the Joint Maritime Operations Coordination Centre to prevent illegal fishing in UK waters.

The implementation period

63. The Draft Withdrawal Agreement, endorsed by the European Council on 23 March 2018, established that the UK will remain in the CFP during the implementation period up to 31 December 2020. Under the terms of the Draft Withdrawal Agreement, the UK, as a non-member state, will not have a place at the negotiating table for the annual fisheries negotiations in December 2019, and its influence on EU fisheries governance bodies will be reduced. Article 125 of the Draft Withdrawal Agreement details special arrangements for fisheries during the implementation period:

- the United Kingdom shall be consulted in respect of the fishing opportunities related to the United Kingdom, including in the context of the preparation of relevant international consultations and negotiations;
- the Union shall offer the opportunity to the United Kingdom to provide comments on the Commission Annual Communication on fishing opportunities, the scientific advice from the relevant scientific bodies and the Commission proposals for fishing opportunities for any period falling within the transition period;
- relative stability shares for fishing opportunities will be maintained; and
• the Draft Withdrawal Agreement also places an obligation on the parties to act in good faith in all areas.\textsuperscript{171}

64. Although relative stability quota share will be maintained during the implementation period, the process for setting annual TACs is complex, with many layers of consultation and decision-making which provide opportunity for influence and negotiation. The European Commission seeks scientific advice from several different bodies when formulating new fisheries regulations and proposing TACs for the annual fisheries negotiations:

• The International Council for the Exploration of the Sea (ICES): provides marine research and advice to several governments and regional fisheries management organisations, including the EU.\textsuperscript{172} Its advice on TACs provides the “starting point” for the annual fisheries negotiations.\textsuperscript{173}

• The Scientific, Technical and Economic Committee for Fisheries (STECF): an EU institution established in 1993 whose members are appointed by the Commission based on their scientific expertise.\textsuperscript{174} 3 out of 32 of the current members of the STECF are from the UK.\textsuperscript{175}

• The Fishery Advisory Councils: stakeholder-led regional sea organisations composed of representatives from the relevant Member States’ fishing industries and other interest groups.\textsuperscript{176}

• Fisheries and Aquaculture Expert group: comprising representatives of the Member States who assist the Commission in the implementation of the Common Markets Organisation and in trade issues related to fishery and aquaculture products.\textsuperscript{177}

65. Stakeholders expressed concern that the terms of the Draft Withdrawal Agreement, and the UK’s absence from the December 2019 Fisheries Council, could leave UK fishing interests open to disadvantage during the implementation period. Harry Wick said the UK would be “very, very vulnerable” because it won’t have “any influence or control” over decisions made by the EU which affect the UK fishing industry.\textsuperscript{178} He told us:

We do not know what “consulted” means. Does “consulted” mean we are being told it is happening or does it mean we have a say in what is happening? We need some granularity in that definition of “consulted”.\textsuperscript{179}

66. The Northern Ireland PO’s used the following example to illustrate why a state’s presence at the Annual Negotiations to advocate on behalf of its fleet is important. At the
2017 Fisheries Council, the POs presented evidence that stopped the introduction of a European Commission proposal to increase the size of the holes in nets used by nephrops fishermen. Alan McCulla explained:

When we presented that evidence, the Commission backed off. That does not mean to say that specific proposal went away. In fact, I know it is still lurking in the background. When we leave the European Union at the end of March next year, we are concerned that this process will continue. The detail still has to be explained to me as to what influence the UK team will have with the Commission to try to make sure that meaningful measures, and not just cosmetic measures, are introduced for fisheries in the Irish Sea.  

67. Northern Ireland’s POs also expressed concern that it is “in the EU’s interests” to damage UK catching capacity as much as possible to ensure greater surplus stock in the UK EEZ after Brexit. As discussed in paragraph 21, UNCLOS places an obligation on coastal states to provide access to other nations with regards to surplus fish stocks which it lacks the capacity to harvest. Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP, has emphasised that “any attempts by the EU to operate in a way that harmed the UK fishing industry” would breach the obligation of good faith in the Draft Withdrawal Agreement. Steve Peers, Professor of EU and Human Rights Law at the University of Essex, has said that the UK proposed the addition of a good faith clause because it is “concerned about being bound by EU legislation adopted during the transition period without its involvement”.

68. The European Scrutiny Committee noted that “significant caveats apply to the good faith provision” and there is no detail about how it will operate in practice. We asked Minister Eustice to explain how the UK can utilise the good faith obligation, he told us:

This is a common feature. I know some people would say, “Does that mean anything?”, but such clauses are a common feature of international agreements, and there is a good faith clause there that we would be able to fall back on, should the EU take an action clearly done in bad faith, calculated to attack our interests.

69. Minister Eustice told the Committee that “in practice, not much will change” during the implementation period because the UK has agreed to abide by “a carbon copy” of the CFP. The UK will continue to send experts to advise the Commission on the scientific basis for setting TACs and “take part in other forums” which influence the Commission’s
Brexit and Northern Ireland: fisheries

Nigel Gooding, DEFRA Deputy Director, said the UK will be involved in discussions and able to influence decisions “right up until the last point”, it just won’t be present in the Council chamber.

**Representation on fisheries governance bodies**

The European Scrutiny Committee highlighted that the Draft Withdrawal Agreement makes no provision for the continued role of UK representatives in EU fisheries forums and asked Minister Eustice to clarify the following points:

- Whether the UK would be invited to relevant meetings of the STECF and the Fisheries and Aquaculture Expert Group and, if so, how the UK would assess whether it was being invited to all of the appropriate meetings and for all of the appropriate agenda points.

The Minister responded that UK experts provide valuable advice on STECF and “there is a strong case for continued UK participation.” The Government said it is in discussion with the EU to secure “a clear process” for how UK engagement on these bodies will work. However, the European Commission has announced that UK stakeholders will no longer be eligible for membership of the fisheries advisory councils during the implementation period. British members will instead attend meetings as “active observers”, which means the Advisory Council advice will formally reflect the views of only EU 27 Member States during the implementation period.

**Absence from the December 2019 Fisheries Council**

The annual EU Fisheries Council, usually held in December, is where Fisheries Ministers from across the EU come together to decide the Total Allowable Catch (TAC) for each commercial fish species in EU waters. Scientific assessments of fish populations are used to determine how much fish can be harvested sustainably without affecting the supply of fish in the future. However, scientific stock data is not the only factor under consideration at the negotiations. The Government describes the process as follows:

At these meetings the latest scientific advice is used as a starting point and considered alongside other relevant factors such as the economic impact on the EU fishing industry of any decision, relevant conservation factors and new technical measures. Some key factors in recent years have been things like the phased introduction of the landings obligation, where the change in the patterns of activity of fishing vessels through the use of more selective fishing gears and fishing behaviours have been taken into account in the final decisions on the levels of quotas for the following year.

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188 Q255
189 Q258
190 European Scrutiny Committee Report, Adoption of detailed EU fishing rules, 18 April 2018
191 Correspondence: Minister George Eustice to Sir William Cash, Chairman of the European Scrutiny Committee, 16 May 2018
192 Correspondence: Minister George Eustice to Sir William Cash, Chairman of the European Scrutiny Committee, 16 May 2018
193 NFFO, UK to be ejected from advisory councils during the transition period, 22 June 2018
194 NFFO, UK to be ejected from advisory councils during the transition period, 22 June 2018
195 How fish quotas for 2018 are set, Marine Management Organisation
196 How fish quotas for 2018 are set, Marine Management Organisation
72. The NFFO consider negotiations at the December Fisheries Council as the “end point of a process which takes most of the year.”\footnote{The December Council remains (for the time being) an important date in the fishing calendar, NFFO, 7 December 2016} In anticipation of the 2017 Fisheries Council, the NFFO discussed its use of the following strategies to influence the Commissions’ decisions on TAC: challenging the data contained in the ICES recommendations, proposing different approaches for TAC decisions and making alliances with fisheries representatives in other Member States with shared interests.\footnote{The December Council remains (for the time being) an important date in the fishing calendar, NFFO, 7 December 2016} The final decision on TACs is taken by Fisheries Ministers on the basis of scientific advice and in consideration of factors such as the need to balance mixed fisheries, avoid discards and manage socio-economic concerns.\footnote{The December Council remains (for the time being) an important date in the fishing calendar, NFFO, 7 December 2016} Analysis undertaken by the New Economics Foundation, comparing ICES recommendations with the final decisions on TACs taken by Fisheries Ministers, found:

Our historical analysis of agreed TACs for all EU waters between 2001 and 2016 shows that, on average, 7 out of every 10 TACs were set above scientific advice. Whilst the percentage by which TACs were set above advice declined throughout this period (from 42% to 12%), the proportion of TACs set above advice did not.\footnote{Fishing limits vs scientific advice, New Economics Foundation, 2017}

73. Minister Eustice has acknowledged the political nature of the negotiations at the Fisheries Council:

Under the current CFP, the EU has a legal obligation to follow maximum sustainable yield as the guide when setting TACs. It therefore starts out with the position that ICES has set out. The science tends to dominate the allocations, but that is not to say that there is not also political discussion around that table, and the EU will obviously try to achieve a consensus.\footnote{Q261}

74. While informed by scientific advice, the decisions which determine Total Allowable Catch at the annual Fisheries Council are inherently political. The agreed Total Allowable Catches represent the culmination of a year’s worth of research and careful negotiation from interested parties across the EU. The absence of UK representation around the table at the December 2019 Fisheries Council, and in other fisheries governance bodies which influence the Commission’s decisions, could result in disadvantage to the UK fishing industry.

75. The Committee welcomes the commitments, contained within the Draft Withdrawal Agreement, on protecting British interests during the implementation period. However, the vague language and general terms which sufficed for the Draft Agreement will not be acceptable in the final text. We recommend that the final text of the Withdrawal Agreement, or accompanying documentation, clarify:

- How the UK will be able to influence the Fisheries Advisory Councils, the Fisheries and Aquaculture Expert Group and the Science, Technical and Economic Committee for Fisheries during the implementation period;

\footnote{The December Council remains (for the time being) an important date in the fishing calendar, NFFO, 7 December 2016}
• **How the UK’s right to consultation will operate in practice;**

• **What action the UK can take if it believes the EU is not acting in good faith;** and

• **How it will make clear to the EU that opportunism would not be tolerated, that its good faith would be on trial and that failure would have consequences.**
Chapter 2: Territorial waters

76. In this chapter, we examine how two maritime border disputes between the governments of Ireland and the UK have had an impact on the fishing community in Northern Ireland. Firstly, how suspension of the Voisinage Arrangement has affected Northern Ireland vessels’ access to historic fishing grounds in Irish waters. Then, the obstacles to achieving sustainable oyster farming in cross-border Lough Foyle and coherent environmental protection across both Lough Foyle and Carlingford Lough.

The Voisinage Arrangement

77. The Voisinage Arrangement is an informal agreement which allows Ireland and Northern Ireland vessels reciprocal access to fish in the 0–6 nautical mile zone of each other’s territorial waters. The Arrangement predates Ireland and the UK joining the EU and was evidenced by an exchange of letters in 1964–65 between senior civil servants; Mr O’Sullivan in Dublin and Mr Bateman in Belfast. The letters are informal but indicate agreement on reciprocal access for vessels under 75ft (23 metres) and suggest that access should be limited to those vessels owned and operated by persons who reside permanently in Northern Ireland and Ireland. No legislative provisions were specifically adopted for the Voisinage Arrangement by either government.

78. On the 27 October 2016, four Irish fishermen brought a case before the Irish Supreme Court which challenged the legality of Northern Ireland vessels fishing for seed mussel in Irish territorial waters under Voisinage. The Supreme Court concluded that the Voisinage Arrangement was an informal gentlemen’s agreement which is insufficient to legally grant access to fish by foreign vessels in Irish waters. Mr Justice O’Donnell found that fishing constitutes exploitation of a natural resource under Article 10 of the Irish Constitution and therefore it must be provided for “by law, which must mean public legislation”. However, he also made clear that “there is no insuperable constitutional objection to making provision by law for such fishing”. As a result of the Supreme Court’s decision, Northern Ireland vessels are no longer allowed to fish in the 0–6 nautical mile zone in Irish waters. Irish fishing vessels continue to benefit from access to fish in British waters under the terms of Voisinage.

79. Following the judgement, the Irish Government gave assurances that it would bring forward primary legislation to reinstate the Voisinage Arrangement. On 9 February 2017, the Irish Minister for the Environment, Food and the Marine, Michael Creed TD, introduced the Sea-Fisheries (Amendment) Bill 2017 to provide a legislative basis for the Voisinage Arrangement. The Explanatory Memorandum for the Bill states that the legislation “explicitly provides for access to fish by sea-fishing boats owned and operated in Northern Ireland within 0 - 6 nautical miles”.

202 Under the CFP, 0–6 nautical miles is exclusively national access (the Voisinage Arrangement is an exception to that), and so is 6–12 nautical miles with some exceptions set out in Annex 1 of the CFP Regulation. These allow specific Member States access to specific parts of a Member State’s waters.
203 Defra (FSH0004)
204 Professor Richard Barnes (FSH0008), Discussion in the Joint Committee on Agriculture, Food and the Marine Debate, 20 June 2017, Houses of Oireachtas.
205 Barlow and others v Minister for Agriculture, Food and the Marine and others [27 October 2016] IESC 62
206 Defra (FSH0004)
207 Bill 19 of 2017, Sea-Fisheries (Amendment) Bill 2017, Seanad Éireann
208 Explanatory Memorandum, Sea-Fisheries (Amendment) Bill 2017, 10 February 2017
committee stage, the Bill received heavy criticism over the absence of pre-legislative scrutiny or consultation with the Irish fishing industry.\textsuperscript{209} It was also criticised for the absence of conditions about vessel size and Northern Ireland vessel designation.\textsuperscript{210} Consequently, the Bill was submitted for further scrutiny by the Joint Oireachtas Committee on Agriculture, Food and the Marine on the 20 June 2017. Oral evidence to that Committee from Francis O’Donnell, CEO of the Irish Fish Producers Organisation, encapsulates opposition to the Bill:

If this Bill is passed, any vessel registered in the UK, whether owned by an individual or conglomerate from any EU member state, can avail of access inside our exclusive six-mile limit. The Bill, as presented, is devoid of any safeguards. There are no length or engine power restrictions. [ ... ] The Seanad was correct to reject the Bill as it is fraught with uncertainties and lacks the preciseness required to avoid future legal challenges or abuses by those availing of it. [ ... ] National self-interest is an important concept. The UK is promoting its own agenda to put Britain first. As a state, it is more than entitled to do so. It is equally the case for Ireland.\textsuperscript{211}

The Bill has remained at committee stage since 22 March 2017. Minister Creed has since acknowledged that “there is considerable political opposition” to the Bill which, in the context of a minority government, “raises the question of whether the Bill can pass.”\textsuperscript{212}

80. Vessels in Northern Ireland have been unable to access habitual fishing grounds in Irish waters under the Voisinage Arrangement since 27 October 2016. The Committee heard that this has led to “economic hardship” for between a dozen and twenty smaller vessels in Northern Ireland, which have been unable to replace these fishing opportunities.\textsuperscript{213} Andrew Orr, a Northern Ireland fisherman, told us:

I had a small boat and I had to sell it because we could not fish down there. A lot of young, smaller boats are under pressure because of the Voisinage.\textsuperscript{214}

Northern Ireland fisherman Jimmy Kelly said:

If it was not for the whelk fishery, the small boats this year would have had a very poor year. Some are finding it extremely tough especially, as Andrew has been saying, in Kilkeel where basically half their traditional fishing area has been taken from them. Basically, that means that the (lobster) pots that they would have been putting up along the coast is now on the County Down shore, which is creating possibly a bit of a tight squeeze in places.\textsuperscript{215}

We asked Northern Ireland’s fish Producer Organisations what action the UK Government should take, for example suspending Voisinage arrangements for Irish fishermen. Alan McCulla, CEO of ANIFPO, told us:

\textsuperscript{209} \textit{Sea-Fisheries (Amendment) Bill 2017: Second Stage}, Seanad Éireann debate, 8 March 2017
\textsuperscript{210} \textit{Sea-Fisheries (Amendment) Bill 2017: Committee Stage}, Seanad Éireann debate, 22 March 2017
\textsuperscript{211} \textit{Transcript from Joint Committee on Agriculture, Food and the Marine debate - Tuesday, 20 June 2017}
\textsuperscript{212} \textit{Dáil Éireann debate}, 3 Oct 2017
\textsuperscript{213} Q92, Anglo-North Irish Fish Producers Organisation Ltd (FSH0002)
\textsuperscript{214} Q329
\textsuperscript{215} Q333
In many ways, I am with the UK Government in maintaining the moral high ground on these issues, but the question arises: how long does the UK keep the moral high ground before it has to review the situation? [...] I get regular visits and regular phone calls from my members who have been expelled from the inshore waters of the Irish Republic. Their first question is: is this issue going to be resolved?216

81. When questioned on when the problem would be resolved, Minister Eustice told us it was “raised regularly” with the Irish Government and cited meetings in July 2017, November 2017 and June 2018.217 We subsequently wrote to the Secretary of State for Environment Food and Rural Affairs, Michael Gove MP, to establish what actions have been taken by the Government to restore access for Northern Ireland vessels. Minister Eustice, replying on the Secretary of State’s behalf, informed the Committee that he had recently written to Minister Creed to voice his concern, and emphasised that the UK “will not accept unequal application of the agreement indefinitely”.218 The UK Government has defended its decision to continue with asymmetric application of the Voisinage Arrangement because of assurances from the Irish Government that it would bring forward primary legislation to restore reciprocity.219

82. We are disappointed that the Voisinage Arrangement has been unilaterally suspended in Ireland. While Irish fishermen have access to waters in Northern Ireland, fishermen in Northern Ireland have suffered hardship through exclusion from their habitual fishing grounds. This needs to be resolved as a matter of urgency. We recommend the Government structures talks with the Irish Government to establish the future of reciprocal access for Northern Irish vessels under the Voisinage Arrangement. If the Irish Government does not give a clear commitment to pass, within 6 months of publication of this report, legislation which restores reciprocal access, the Government must discontinue access to UK waters for Irish vessels from 30 March 2019. If the Irish Government does pass legislation to reinstate the Voisinage Arrangement, then the UK Government should consider whether the arrangement should also be put on statutory footing in UK law.

Marine boundaries in Lough Foyle

83. There is a long running dispute between the UK and Irish Governments over the delimitation of maritime borders in cross-border Loughs Foyle and Carlingford.220 Loughs are lakes connected to the wider river system that supports native fish species such as salmon, trout, eel and mussels.221 The two governments disagree over ownership of Lough Foyle and, to a lesser extent, Carlingford Lough. The UK Government considers that “the whole of Lough Foyle is within the UK”.222 However, the Irish Government has never accepted the UK’s claim to the whole of Lough Foyle.223 Regulation of activities in

216 Q87, Q91, Q234, Q303
217 Correspondence from George Eustice MP, Minister of State for Agriculture, Fisheries and Food to Dr Andrew Murrison, 9 June 2018
218 Q243, Q249, Q299, Q303, Q305
219 House of Commons written question: answered by Secretary of State for Northern Ireland, James Brokenshire MP, 11 November 2016 (S2620)
220 Miss Mcllveen (Miss Mcllveen) Hansard, Page 19, Volume 122, 3–9 December 2016, Northern Ireland Assembly,
221 The freshwater habitats of the Foyle and Carlingford, The Loughs Agency
222 The Irish Times, Stanton says Ireland never accepted UK claim to all Lough Foyle, 30 November 2016
223 The Irish Times, Stanton says Ireland never accepted UK claim to all Lough Foyle, 30 November 2016
the Loughs is the responsibility of the Loughs Agency, a North-South Implementation Body constituted under the Belfast/Good Friday Agreement. The Agency is a unique institution that has been engaged in cross-border fisheries management since the Foyle Fisheries Act was passed in 1952, long before the creation of the European Union. The Agency aims to provide sustainable, economic and environmental benefits through the effective management of marine resources within its jurisdiction.

84. In Lough Foyle, the Agency has been prevented from exercising statutory powers over marine aquaculture licensing because of the boundary dispute between the two governments. The number of unlicensed oyster trestles in Lough Foyle has grown from around 2,500 in 2010–11 to around 50,000 today. The Agency described the proliferation of oyster trestles as a “free-for-all” which is creating navigational hazards for boats and sustainability concerns for the native oyster population. It is also introducing the risk of disease into the food chain and damaging the market reputation of Irish oysters. The Agency estimates that if oyster farming was properly licensed it would be a “huge economic driver” for the Lough Foyle area with a potential worth of £20 million. We heard that Lough Foyle has “untapped potential” for aquaculture production and that the absence of regulation is impeding economic development of the sector. In particular, a lack of legal protection for fish stocks and the failure of businesses to diversify sustainably by landing other species and using new management techniques.

Sharon McMahon, Designated Officer at the Lough’s Agency, told us:

The economic value is unregulated. There are no licence fees paid, and there is no encouragement to allow people to come into the industry to set up a farm of their own and run it sustainably, but we would be there to help with that. We are even looking at putting in a brood stock project of our own in the Foyle that will help the commercial fishermen on the Foyle with the native oyster.

85. The Agency was granted the powers to regulate and license aquaculture in the Foyle and Carlingford Fisheries Order 2007 but the dispute between the Irish and UK Governments over ownership of the Lough has prevented its implementation. Sharon McMahon told us:

In 2007 we were told that by 2010 we would have this regime rolled out. Then it was 2012 and now it is at a stalemate—there is nothing. We keep bringing it up at our North-South Ministerial Committee meetings and with our sponsor branch.
86. In contrast, voluntary agreement of a median line in Carlingford Lough has enabled the relevant statutory bodies to designate Marine Protected Areas and implement licensing.\textsuperscript{235} The territorial issue is a reserved matter for negotiation between the Irish Department of Foreign Affairs and Trade (DFT) and the UK Foreign and Commonwealth Office (FCO).\textsuperscript{236} Sharon McMahon told the Committee that the issue could be resolved by the Governments reaching a “management agreement”, as in the case of Carlingford Lough.\textsuperscript{237} The management agreement would be entirely separate from the wider jurisdictional issue but would allow the Agency to utilise its 2007 statutory powers. Ms McMahon stated:

> The provision of a Management Agreement between the Department of Agriculture, Food and Marine and the Crown Estates Commission for Lough Foyle and Carlingford Lough is required, in order to confer the authority to the Agency to regulate and manage new and existing aquaculture licences. Once this is in place all other legislative processes can move forward to allow full implementation.\textsuperscript{238}

87. The Minister told us that whilst there are “no current discussions” with Ireland on marine borders in the Loughs there are “ongoing discussions” about the management of aquaculture activities.\textsuperscript{239} Minister Creed has said that management of aquaculture in Lough Foyle “gives rise to legal and jurisdictional complexities” which are the responsibility of the Irish DFT.\textsuperscript{240} On 16 July 2018, Sir Alan Duncan, Minister of State at the FCO, responded to a written question about negotiations on a management agreement for Lough Foyle by stating that:

> British and Irish officials last met in October 2017 when a number of issues were discussed including the Loughs, and the management of aquaculture in them, and they have been in regular contact since.\textsuperscript{241}

88. Sharon McMahon also expressed concern that, in the event a management agreement is reached, the Agency could face challenges removing the existing unregulated oyster trestles:

> It would be nice to be starting with a clean slate, but obviously there are these oyster trestles there that are increasing all the time. We have talked about that; we would need to go in even with force, maybe. To remove them you would need some back-up to go in and do that. There would definitely be a lot of legal challenges ahead because you are going in there and people already have land and have established an aquaculture situation on it.\textsuperscript{242}

89. The dispute over maritime boundaries has resulted in environmental damage and economic disadvantage to the Lough Foyle area. The cause of the current crisis is the

\begin{itemize}
  \item \textsuperscript{235} Ni Marine Task Force (FSH0005), \textit{Correspondence from George Eustice MP, Minister of State for Agriculture, Fisheries and Food to Dr Andrew Murrison}, 9 June 2018
  \item \textsuperscript{236} Correspondence from George Eustice MP, Minister of State for Agriculture, Fisheries and Food to Dr Andrew Murrison, 9 June 2018, Q349
  \item \textsuperscript{237} Q354
  \item \textsuperscript{238} Loughs Agency (FSH0013)
  \item \textsuperscript{239} Correspondence From George Eustice MP, Minister of State for Agriculture, Fisheries and Food to Dr Andrew Murrison, 9 June 2018
  \item \textsuperscript{240} Dáil Éireann Debate, 13 February 2018, question from Deputy Thomas Pringle to the Minister for Agriculture, Food and the Marine [7135/18]
  \item \textsuperscript{241} House of Commons, 18 July 2018, written question (164298)
  \item \textsuperscript{242} Q371
\end{itemize}
failure of the Irish and UK Governments to either resolve the jurisdictional issue or reach a management agreement for Lough Foyle. We recommend that the Foreign and Commonwealth Office concludes a management agreement with the Irish Government, within the next 12 months, that enables the Lough’s Agency to fully implement the 2007 Foyle and Carlingford Fisheries Order. We further recommend that the Agency be given the extra resources necessary to remove existing unlicensed oyster trestles.

Divergence of environmental regulation

90. The Loughs Agency has responsibility for a cross-border territory which includes over 3,600km of rivers in the Foyle and Carlingford catchment areas, two loughs and a section of inshore coastal waters. The Committee heard that “fish, poachers and pollution don’t recognise borders” and so inter-governmental cooperation between Ireland and Northern Ireland ensures management is effective across the entirety of the Agency’s catchment area (see Figure 6).²⁴³

Figure 6: Loughs Agency areas of responsibility

The Agency has two government sponsor departments, the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland and the Department of Communications, Climate Action and Environment (DCCAE) in Ireland. It operates on a 50:50 funding model with staff employed in both jurisdictions.

91. The Agency has the power to propose regulations within its jurisdiction to; make environmental adjustments, react to the most up to date science, make changes that arise from court cases and respond to stakeholder experience. When designing or amending regulations, the Agency must balance the regulatory ambitions of DAERA, DCCAE and Inland Fisheries Ireland, the organisation responsible for inland fisheries in Ireland.²⁴⁴ Loughs Agency regulations are approved by both governments and implemented

²⁴³ Loughs Agency (FSH0013)
²⁴⁴ Loughs Agency (FSH0013)
simultaneously through the North-South Ministerial Council. The Agency is also able to pursue changes to primary legislation through its two sponsor departments. When asked about the potential impact of Brexit, Sharon McMahon, designated officer at the Loughs Agency, told us:

We depend on the relationship of our sponsor departments here in the north and in the south. They work quite closely with us and through the North-South Ministerial Council. For us, it is paramount that the relationships are maintained and, to be honest, I don't see any sign of that relationship breaking down because we have been working so well cross-border for years. It is not something new to us. We are amazed when people ask about Brexit in particular because we do it day to day and have been for years and think nothing of it.²⁴⁵

The Agency has expressed some concern that, once the UK has left the EU, amendments to EU or UK law may mean the regulatory regimes in Ireland and the UK will “fall out of sync”.²⁴⁶ In the short term, however, the Agency has been clear there will be little change to the status quo. The Agency told us:

One of the issues that seem to cause confusion is that people are under the illusion that, on Brexit, all the existing regulations would be rescinded. As it stands, management of salmon netting or the management of no salmon netting, as it is at the moment, is enshrined in regulations [...]. They are part of domestic legislation in Northern Ireland. Unless they are brought before the [NI Assembly] Committee and rescinded, those regulations will stand.²⁴⁷

In the longer term, different environmental standards could develop between the parts of the Agency’s catchment which remain within the EU (areas in Ireland) and those in the UK. For example, the EU Water Framework Directive currently applies in both jurisdictions, which means the same interpretation and criteria are used to measure “good ecological status” in cross-border river basins.²⁴⁸ If the interpretation of this criteria were to evolve, in either UK or EU law, it is possible that different ecological standards could apply across a single cross-border river system. Sharon McMahon told us:

There is a risk in that when the UK leaves the EU that over time, different standards will develop. Techniques for assessing standards will drift apart with differing interpretations [...]. Considerable work has been completed on inter-calibration between EU countries to try and ensure that we are all assessing the same thing to the same standards, and that interpretations are broadly similar. What is unsure is how this inter-calibration will be affected, and will the UK still take part in this process after Brexit?²⁴⁹

²⁴⁴ [Q342]
²⁴⁵ Loughs Agency (FSH0013)
²⁴⁶ (John McCartney of the Lough’s Agency) Oral Evidence to Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs, 17 November 2016
²⁴⁷ Loughs Agency (FSH0013)
²⁴⁸ Loughs Agency (FSH0013)
²⁴⁹ Loughs Agency (FSH0013)
94. The Agency has responded to this challenge by proposing that its unique management model should be considered as a template for administering natural resources which straddle the border. The Agency said:

Given the considerable experience and knowledge the Agency has of implementing legislation on a cross jurisdictional basis, it could act as a facilitator for cross border co-operation, helping both jurisdictions to overcome wider potential jurisdictional issues in relation to environmental and fisheries management, in the cross-border region. The potential for the Agency as a vehicle to deliver cross border funding initiatives, environmental legislation and many other projects which will bring benefit to the cross border region after 29 March 2019 should not be ignored nor should it be underestimated.\(^{250}\)

95. The Foyle Fisheries Act and the Belfast/Good Friday Agreement conferred a unique set of functions and powers on the Agency to manage, conserve and protect the area within its catchment. To ensure it fulfils its statutory objectives, the Agency constantly monitors the regulations in force within its catchment and proposes additional regulations and amendments where appropriate.\(^{251}\) Sharon McMahon told us that the Agency “must reserve the right” to seek amendments to relevant legislation pending greater detail about the outcome in the final Brexit Agreement.\(^{252}\)

96. A key problem currently facing the Agency is that absence of a functioning Assembly is preventing it from bringing forward legislative changes. Power normally flows from the Northern Ireland Assembly to a department, subject to Ministerial direction and control.\(^{253}\) The collapse of devolved government in January 2017, means that civil servants, rather than Ministers, are currently running government departments. Without Ministers, Permanent Secretaries can implement previous Ministerial decisions, but they cannot take new decisions or introduce legislation. David Sterling, Head of the Northern Ireland Civil Service said:

Where it is clear that a new decision that is needed would be in line with the decisions of the previous Executive or Ministers [we can proceed]. If something different needs to be done, we do not have the power to do that. Indeed, we would be open to the risk of challenge if we tried to introduce new policies.\(^{254}\)

97. On 6 July 2018, the Court of Appeal ruled that Northern Ireland civil servants who had granted planning permission for a waste incinerator had acted unlawfully. The judges found that it would be contrary to the letter and spirit of the (Good Friday) Agreement and the 1998 (Northern Ireland) Act “for such decisions to be made by departments in the absence of a minister.”\(^{255}\) The ruling has exposed a gap, created by the absence of Ministerial authority, in decision-making in Northern Ireland. The Northern Ireland Loughs Agency (FSH0013)  
251 Loughs Agency (FSH0013)  
252 Loughs Agency (FSH0013)  
253 Q10 [David Sterling] Q38 [Hugh Widdis], Oral Evidence to the Northern Ireland Affairs Committee inquiry into Devolution and Democracy - dealing with the deficit, on 24 January 2018, HC613  
254 O66 [David Sterling], Oral Evidence to the Northern Ireland Affairs Committee inquiry into Devolution and Democracy - dealing with the deficit, on 24 January 2018, HC613  
255 Arc21: Court dismisses incinerator appeal, BBC, 6 July 2018
Assembly and Executive have been absent for over 19 months and it is unclear when these institutions will be back in place to pass legislation and make ministerial decisions. Sharon McMahon told us:

The Loughs Agency has an ever increasing necessity for a number of legislative and regulatory changes to be introduced in the Foyle and Carlingford areas over the period from 2018 to 2020. We currently have a number of proposed secondary legislation awaiting Departmental Solicitors approval, and in addition the Agency has agreed changes to our primary legislation with our Sponsor Departments. In order for all changes to legislation to progress a functioning Assembly must be in place.256

The Agency has proposed changes to primary legislation which would introduce fixed penalties for fisheries offences such as angling for salmon during the closed season and possession of untagged wild sea trout.257 It is also developing secondary legislation which would; designate certain areas as rainbow trout fisheries, introduce a three day coarse fishing license and create an electronic carcass tagging system.258 Sharon McMahon described how delays in bringing forward secondary legislation can be damaging for the fisheries it manages:

In regulation, the Agency could still be challenged to issue 25 carcass tags per angler, as opposed to the 10 we currently issue–if we issued 25 the fishery would become unsustainable.259

The Loughs Agency, as a cross-border body, is ideally placed to manage the regulations that govern management of the river systems and loughs along the border. The Agency may face difficulties if it is required to balance two increasingly divergent sets of environmental regulations within its catchment area and so should be given the power to make sensible decisions on regulations itself. We recommend that the Loughs Agency be given the power, with the assistance and the oversight of the North-South Ministerial Council, to select the most appropriate environmental management strategy to regulate the areas under its jurisdiction and commensurate financial support and human resources to implement its decisions.

It is disappointing that the collapse of devolved government in Northern Ireland is preventing the passage of legislation recommended by the Loughs Agency for the protection of the natural environment within its jurisdiction. In light of the Court decision on the limit of civil service decision-making powers in Northern Ireland, we recommend that the Government establish a new mechanism to ensure regulatory decisions proposed by the Loughs Agency and approved by the North South Ministerial Council can be implemented.
Chapter 3: The future of Northern Ireland fisheries

101. The Government’s Fisheries White Paper sets out the broad principles that will underpin UK fisheries management once the UK leaves the EU. The White Paper makes clear that, in line with its international commitments, the UK will maintain much of the CFP’s core fisheries framework; using Maximum Sustainable Yield (MSY) to determine Total Allowable Catch (TAC), a quota system to allocate fishing opportunity and implementation of the discard ban. The EU Withdrawal Bill will convert “around 100 pieces” of fisheries legislation from the CFP into domestic law which the Government can then amend through primary and secondary legislation.260 The White Paper also proposes changes to the mechanisms for allocating quota and funding fishing communities. In this Chapter, we consider whether the Government’s proposals for allocating its quota and proposals for funding meet the needs of the Northern Ireland fishing industry. We then examine two key challenges facing the Northern Ireland industry—crewing and infrastructure—which are not provided for in the Government’s White Paper.

Quota allocation between UK vessels

102. There are two dimensions to the Government’s proposals for allocating quota after the UK leaves the EU. In chapter one, we discussed the Government’s proposals to replace relative stability with zonal attachment to increase the amount of fishing opportunity for UK fishermen in UK waters. We examine below the Government’s proposals for sharing UK quota between UK flagged vessels.

103. Under the current allocation system, the Government apportions the UK’s TAC amongst the four UK fisheries administrations (England, Wales, Scotland, Northern Ireland) in the form of Fixed Quota Allocation (FQA) units. Each FQA gives the holder access to a share of the UK’s quota for that fishing stock. The “value” in quota terms of an FQA cannot itself be fixed from year to year because it depends on the amount of quota allocated by the EU to the UK and any adjustments applied by the Fisheries Administrations. The current FQA allocation mechanism was introduced in 1999. The number of FQA units allocated to each over 10 metre vessel was initially calculated based on each vessel’s share of landings in 1994–1996. The number of units allocated to a vessel has only changed thereafter to reflect quota transactions between fishermen. There are over 8 million FQAs in circulation.261

104. The fisheries administrations apportion FQA units to fish Producer Organisations (PO) and vessels which are not members of a PO (known as non-sector vessels). In 2016, 86% of all landings by the UK fleet were landed by vessels in a PO. However, over a third of UK vessels over 10 metres in length are not members of a PO. Non-sector vessels typically have limited access to fishing quota and primarily target shellfish species, which are mostly non-quota stocks.262 Boats under 10 metres in length make up 77% of the UK fishing fleet but hold only 1.5% of quota.263

260 Defra, Sustainable fisheries for future generations, July 2018
261 The FQA Register, Department for Environment, Food and Rural Affairs
263 ‘Not in the same boat’, New Economics Foundation
Brexit and Northern Ireland: fisheries

105. DAERA is the fisheries administration responsible for apportioning FQA units to vessels licensed in Northern Ireland. It apportions quota to the two Producer Organisations, ANIFPO and NIFPO, and non-sector vessels. DAERA is the fisheries administration responsible for apportioning FQA units to vessels licensed in Northern Ireland. It apportions quota to the two Producer Organisations, ANIFPO and NIFPO, and non-sector vessels. Once the POs receive their quota allocation it is fully within their control to decide how this is shared between their membership. In 2016, ANIFPO had 36 vessels in its membership which landed fish worth £11.2 million into the UK and abroad. NIFPO had 124 vessels in its membership which landed fish worth £34 million into ports in the UK and abroad. In 2016, approximately 50% of the 327 vessels licensed in Northern Ireland were members of either NIFPO or ANIFPO. The two Northern Ireland PO’s told us that the 160 vessels which make up their membership represent “practically all of the commercial fishing fleet based in Northern Ireland”.

106. The FQA system described above has been criticised for the following reasons:

- Fishermen who were not vessel owners during the period 1994–96 have been automatically disenfranchised;
- The quota system acts as a barrier to new entrants; and
- The commercial sale of quota has resulted in quota concentration in fewer and fewer hands. An investigation by Greenpeace found that three companies control 61% of all fishing quota in England.

The experience of Northern Ireland fisherman Jimmy Kelly, skipper of a 7-metre crab vessel, illustrates some of these problems. He told us that small vessels in Northern Ireland have struggled to get quota because they lack a historic catch record. This has left them with little option but to concentrate on non-quota species such as shellfish. He explained:

I have left the industry commercially for about 20 years and I can’t come back. It was not possible for me to finance a vessel and a licence and get a quota to fish. I would have needed over £500,000. What bank is going to give that to you after the experiences they have had in the past? Going to the crab fishery was the only option left to me.

107. The Minister told the committee that the FQA allocation method “is not a particularly satisfactory way to run a quota regime” and that the Government wants to replace it with better allocation methods over time. The Fisheries White paper states that the Government will continue to use the current methodology for existing quota because “we recognise that fishermen have invested in FQAs”. For any additional quota, negotiated by virtue of the UK’s new status as an independent coastal state, the White Paper states:

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264 Department of Agriculture, Environment and Rural Affairs (FSH0010)
265 MMO UK Sea Fisheries statistics 2016
266 MMO UK Sea Fisheries statistics 2016
267 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002)
268 A working paper on the management of the UK’s public fishery: a large squatting claim?, Dr Thomas Appleby, Ytzen van der werf, Chris Williams, 2016 ‘Not in the same boat’, New Economics Foundation
269 A working paper on the management of the UK’s public fishery: a large squatting claim?, Dr Thomas Appleby, Ytzen van der werf, Chris Williams, 2016 ‘Not in the same boat’, New Economics Foundation
270 Big Fish quota barons squeeze out small scale fishermen, Unearthed, 14 May 2016
271 Q333
272 Q333
273 Q332
274 Defra, Sustainable fisheries for future generations, July 2018
Defra intends to begin a conversation with the Devolved Administrations and stakeholders to allocate these on a different basis. A new methodology will to be in place in time for the allocation of any additional opportunities agreed from December 2020 onwards.\textsuperscript{275}

The White Paper then proposes, explicitly for England only (on the basis that fisheries is a devolved matter in Scotland, Wales and Northern Ireland), to use additional quota to create a reserve quota pool which could be allocated in accordance with new criteria to meet the future needs of the industry. It suggests the reserve quota could be used in the following ways;

- To trial allocating some fishing opportunity through a tendering or auctioning system;
- To underpin a new approach to tackle the problem of choke species;\textsuperscript{276}
- To allocate fishing opportunities in ways which incentivise the reduction of discards.\textsuperscript{277}

The New Economics Foundation, a British think tank, highlighted that these proposals do not address the distribution of quota between large and small vessels as the existing quota ownership system will remain in place.\textsuperscript{278} Open Seas, a charity which promotes sustainable fishing, commented:

\textquote{Despite a fair amount of pressure, the White Paper has not proposed a change to the current system when it comes to the existing quota -but it does propose a system which may allow for a different approach for the bonus, specifically in England.}\textsuperscript{279}

108. Fisheries policy is devolved but currently operates under an EU framework through the CFP. The four fisheries administrations can exercise decision-making powers but the CFP, and a voluntary agreement known as the UK fisheries concordat, ensures a commonality of approach across the UK.\textsuperscript{280} In October 2017, the UK, Scottish and Welsh Governments reached agreement on the principles which will underpin how common frameworks operate post-Brexit. In the absence of Ministers, Northern Ireland was represented by a senior civil servant.\textsuperscript{281} Shared policy frameworks will be established across the UK in the following instances:

- to enable the functioning of the UK internal market, while acknowledging policy divergence;
- to ensure compliance with international obligations;

\begin{footnotesize} 
\textsuperscript{275} Defra, \textit{Sustainable fisheries for future generations}, July 2018  
\textsuperscript{276} Choke species is a term used to describe a low volume quota species which, if reached, would lead to vessels having to tie up even if they still had quota for other species. (see Seafish blog \textit{Addressing the issue of choke species in a mixed fishery}, 24 January 2014)  
\textsuperscript{277} Defra, \textit{Sustainable fisheries for future generations}, July 2018  
\textsuperscript{278} Fisheries White paper: who is this for?, New Economics Foundation, 4 July 2018  
\textsuperscript{279} UK Government Fisheries White paper, Open Seas, 6 July 2018  
\textsuperscript{280} Defra, \textit{Sustainable fisheries for future generations}, July 2018, UK Fisheries  
\textsuperscript{281} Joint Ministerial Committee (EU Negotiations), 16 October 2017 \end{footnotesize}
to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;

• to enable the management of common resources;

• to administer and provide access to justice in cases with a cross-border element; and

• to safeguard the security of the UK.  

109. The Fisheries White Paper does not provide further details on how common frameworks for fisheries policy will operate after Brexit. It states:

The composition and scope of the framework has not yet been agreed and work continues with the Devolved Administrations [ … ] The scope of the different provisions proposed for the new Fisheries Bill will vary depending on what powers already exist in different areas and what is agreed between the Administrations: some will have UK-wide extent; others will apply to England only, or to England and the Devolved Administrations that wish to adopt them.

110. As discussed in paragraphs 96–97, the collapse of devolution means that in Northern Ireland, civil servants are running government departments but unable to take new policy decisions. The Northern Ireland Assembly and Executive have been absent for over 19 months and it is unclear when these institutions will be restored. Consequently, the White Paper’s “England only” approach to developing new quota allocation methodologies could result in a governance gap for Northern Ireland, where civil servants are unable to develop equivalent policies for Northern Ireland. The Centre for Constitutional Change provided the following analysis:

Given the importance of devolution to fisheries, there are several important questions which need addressing. What input will the devolved administrations have into the development of a common framework—through consultation or consent? What key principles in fisheries management will apply UK wide, and which areas will be left to the devolved administrations? There was much expectation that the fisheries white paper would address some of these. However, in many respects the white paper is a missed opportunity and highlights a significant amount of work left to do in developing intergovernmental relations in fisheries policy.

Similarly, a group of academics published a report on environmental governance in Northern Ireland that concluded:

The Welsh and Scottish governments are publishing plans to prepare for Brexit and both the Assembly for Wales and the Scottish Parliament are conducting inquiries on how best to address Brexit challenges and seize
opportunities [ … ] Without an operational Executive, Northern Ireland cannot undertake urgently needed reforms, develop policy or push for either its own solutions or tailored versions of English or UK-wide proposals for environmental governance post-Brexit.286

111. In the absence of a Northern Ireland Executive, there is no capacity in Northern Ireland to take decisions on future fisheries policy, particularly on the allocation of quota. This means that Northern Ireland, unlike the other devolved administrations, is unable to put forward its own management proposals or adopt the proposals the UK Government has developed for England. The Fisheries White Paper does not acknowledge this impediment and sets out a future fisheries policy for England only. We recommend that, in order to prevent a governance gap, the Government, in legislation proposed for October 2018, should set out how decisions on fishing policy in Northern Ireland will be taken in the continuing absence of an Executive. Any decisions should be amendable by a future Northern Ireland Executive, once it is established.

Funding for fishing communities

112. The main source of public financial support for the UK fishing industry is the European Maritime and Fisheries Fund (EMFF), which supports delivery and implementation of EU fisheries policy across EU Member States. EMFF funding is designed to help fishermen in the transition to sustainable fishing, support coastal communities in diversifying their economies, finance projects that create new jobs and improve quality of life along European coasts.287

113. The total UK EMFF allocation over the period 2014 to 2020 is £190 million (a co-funding model with 78% EU contribution, 22% UK national contribution known as match funding).288 National match funding is determined by each devolved administration based on policy considerations such as the availability of other funding sources.289 As of 31 March 2018, Northern Ireland’s EMFF allocation was £20.6 million.290 The Northern Ireland allocation is around 10% of the UK’s entire allocation, which is consistent with the size of Northern Ireland’s fleet (landings and vessel numbers), the number of processing plants and employment figures when compared to the overall UK industry.291 In Northern Ireland, the fund is administered by the Department of Agriculture, Environment and Rural Affairs (DAERA) which grants funding based on a three pillar model:

- Core funding: industry support, coastal community support and marine environment projects in support of CFP objectives (62%);
- Data collection: surveys and fish stock assessment (25%);
- Control and enforcement: vessel monitoring systems and IT systems (13%).292

286 What is the future of environmental governance in Northern Ireland?, Green Alliance Blog, 6 August 2018
287 European Maritime and Fisheries Fund, Sea Fish
288 European Maritime and Fisheries Fund, UK Fact Sheet, European Commission,
289 European Maritime and Fisheries Fund: Written question - 143757, 14 May 2018
290 Department of Agriculture, Environment and Rural Affairs (F5H0010)
291 European Maritime and Fisheries Fund 2014–2020, DAERA
292 Defra (F5H0004), Department of Agriculture, Environment and Rural Affairs (F5H0010)
In the period up to 31 December 2017, £4.2 million was committed to 89 projects in Northern Ireland.\(^\text{293}\) Recent flagship projects funded through EMFF include a £175,000 programme of safety training for fishermen, a £350,000 project aimed at improving the selectivity of fishing nets and £775,000 of investment in harbour facilities.\(^\text{294}\)

114. Dr Lynn Gilmore, Northern Ireland Manager at Sea Fish, told the Committee that funding has played a “really important” role in supporting fishermen, fishing communities, processors and the industry supply chain as a whole.\(^\text{295}\) She said:

> The EU considers a fisheries-dependent village as somewhere where 5% of the population are dependent on fishing. In Portavogie, you are talking about 39%. The considerable investment through the European Fisheries Fund (EFF was the EU funding scheme prior to the EMFF) and now EMFF has been absolutely crucial. Another thing that needs to be at the forefront is how we replace those funding streams once we come out of Europe, because EMFF and its predecessor EFF have been so important for those infrastructure developments in the harbour, which have allowed industry to keep going and flourishing. It is essential.\(^\text{296}\)

She described how an EMFF funded project to provide life jackets to crew members had saved a local fisherman’s life when his boat sank.\(^\text{297}\) The Northern Ireland Marine Task Force told us EMFF has been “instrumental” to securing the transition towards sustainable fishing practices and advocated retaining the conservation elements of EMFF in any future UK fund.\(^\text{298}\) Alan McCulla, CEO of ANIFPO, told us:

> Europe is already consulting on its successor to EMFF. As you quite rightly point out, we will not be privy to that in the future. Nevertheless, be it in the Irish Sea or in any part of UK waters, the probability is that UK fishermen will still be operating alongside and competing with their colleagues from the rest of Europe. In that sense, we believe there clearly is an obligation for a targeted scheme that will assist this industry in making sure that the vessels we have are fit for purpose, that we have infrastructure there that can handle the possibilities that Brexit presents, and that we have processing capacity that can avail of the tremendous opportunities that Brexit offers.\(^\text{299}\)

115. Professor Barnes told us that funding “has been important, and will continue to be important” to assist in restructuring the fishing industry. He emphasised that small-scale fisheries, with less financial resource, may require assistance to respond to future changes in fisheries management.\(^\text{300}\) He said:

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\(^{293}\) Defra (FSH0004)

\(^{294}\) Defra (FSH0004)

\(^{295}\) Q11, Q13

\(^{296}\) Q11

\(^{297}\) Q13

\(^{298}\) NI Marine Task Force (FSH0005)

\(^{299}\) Q112, Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), EU Commission, Questions and answers on the new European Maritime and Fisheries Fund 2021–2027, 12 June 2018

\(^{300}\) Professor Richard Barnes (FSH0008)
If you look at the fishing industry, it is geared and structured in a particular way. To take advantage of these opportunities may require new modified vessels, different skills and different facilities to leverage them.\(^\text{301}\)

Northern Ireland fisherman Jimmy Kelly, highlighted that both Scotland and Ireland have funds available to support young fishermen to buy boats and enter the industry.\(^\text{302}\) He told us he would like to see funding directed at getting young people into fishing:

[The Government] do give bursaries for teacher training, nursing and things like that. Why can we not have some type of bursary, like the Slater Fund, for example, for fishing? [ … ] we need to put an education programme in place so that there is training available for fishing, the wheelhouse, the deck department and the engine department. We need to look at the broad spectrum.\(^\text{303}\)

116. Harry Wick, CEO of NIFPO, said the industry would like to be “less dependent” on funding post-Brexit and that his hope was that increased fish quotas will mean that the industry can become self-sustaining.\(^\text{304}\) Northern Ireland’s POs propose that the UK’s replacement for EMFF should focus on initiatives that maximise the economic value of UK catches, support implementation of international safety requirements and address crewing shortages.\(^\text{305}\) DEFRA has criticised the current EMFF model on the basis that smaller businesses struggle with receiving funds in arrears and the application process, which requires detailed guidance, is too complex.\(^\text{306}\)

117. The Government’s White Paper states that the UK “will consider whether and how to replace the EMFF” and states that the fisheries Bill will contain powers to “replace, broaden and modernise” existing grant-making powers in the Fisheries Act 1981.\(^\text{307}\) The Minister told the Committee that the Government is “working on a successor scheme” to EMFF but has yet to decide whether this funding will form part of the UK Shared Prosperity Fund or require the creation of a separate fund.\(^\text{308}\)

118. The Government has yet to make any clear commitment to fisheries funding post December 2020. Investment in the industry at this critical period of change will be essential to ensure Northern Ireland’s fishermen can seize the opportunities presented by Brexit and adapt to new requirements. We recommend that the Government commit to continued funding for the fisheries industry, at comparable levels to EMFF, after December 2020. The Government should, in the fisheries Bill, set out priorities for funding which are based on experience of successful investments under EMFF such as harbour infrastructure and safety measures.
Investing in Northern Ireland fisheries

119. We examine below two key challenges currently facing the Northern Ireland fleet—crewing shortages and infrastructure investment—which are not addressed in the Government’s White Paper on Fisheries.

Crewing shortages

120. Throughout this inquiry, the Committee heard that securing crew for vessels in Northern Ireland was becoming increasingly difficult. The fish Producer Organisations told us that crewing for Northern Ireland’s fishing fleet is at a “critical juncture”, with crewing problems leading directly to the sale of nine trawlers in 2017.309 Harry Wick told the Committee that membership of his PO had shrunk by 15% in 2017 and that the “biggest problem” cited by people who had to sell their vessels was “the difficulty in obtaining a reliable crew”.310

121. We heard that local crew are “very difficult to attract” into the fishing industry due to the physically demanding nature of the work, the levels of pay and the requisite time away from family and friends aboard vessels.311 In 2016, fisheries was the sub-sector, within the Northern Ireland food and drink sector, with the lowest average wages and salaries cost per employee, £19,004.312 A pilot survey undertaken by Seafish in October 2017 found that just over 53% of all jobs on Northern Ireland registered vessels are filled by non-UK citizens, with non-EU/EEA workers making up 29% of the non-UK group. The data also showed that 59% of workers on Northern Ireland registered vessels are over the age 40, which is “around double the figure for other home nations”.313 Local fisherman Andrew Orr summed up the problem:

We can get all the quota, all the boats, all the grants and all the money, but if you can’t have an environment where you have crew for the boats, the boats and the quota are worthless. You need crew. We have two boats relying on Filipinos. We had other boats we had to sell because we just could not get crews.314

122. All the fishermen we spoke to wanted to see local people working in the industry and wanted new measures to encourage young people to start out in fishing.315 However, the POs described the difficulties they have encountered trying to recruit local fishermen:

Over a six-week period during September/October 2017, the Department of Communities in Northern Ireland ran a recruitment drive for 150 crew for local fishing vessels. This campaign spanned Northern Ireland and the EU. There were 30 expressions of interest in the positions from across Europe. Some 19 candidates (including 7 from the EU) were invited to interview. Of

309 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002)
310 Q83
311 Q83, Response by the Fishing Industry to the July 2017 Migration Advisory Committee Commission, Q338
312 Size and Performance of the Northern Ireland Food and Drinks Processing Sector, Subsector Statistics 2016, Department for Agriculture, Environment and Rural Affairs.
313 Seafish (FSH0011)
314 Q338
315 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), Q338
this 6 attended for interview. Subject to their successful completion of sea survival training 5 of the candidates will be offered positions on Northern Ireland fishing vessels.\footnote{316}

123. Research conducted by the POs found that the Northern Ireland industry now has a “clear preference” for hiring non-EU/EEA crew.\footnote{317} Survey respondents described non-EU/EEA crew as “more reliable, better trained and more professional”.\footnote{318} Alan McCulla told us that fishermen recruited from non-EU/EEA countries, compared to EU crew, were qualified, experienced and had been through at least the statutory courses on fishing.\footnote{319} On the Committee’s visit to Portavogie we were told by two skippers that crew from Ghana, Sri Lanka and the Philippines were particularly desirable due to the added skill and safety their experience brought to vessels.

You can watch interviews with fishermen discussing crewing shortages and other key issues on our website \url{here}.

124. Non-EU/EEA nationals have no automatic legal entitlement to work in the UK, including in territorial waters between 0–12 nautical miles from shore, and are subject to the rules of the UK's points-based system for immigration. The Tier 2 (General) visa is the main visa category for bringing non-EU/EEA workers to the UK, and is restricted to skilled workers. Immigration Rules sets out the skill level and appropriate salary rate for those jobs under Tier 2. Despite the demands of the difficult and often dangerous work, fishing vessel crew members are not deemed to be sufficiently skilled to fall under the ambit of Tier 2. This type of work (and that of many other industries) is therefore

\footnotesize{\textsuperscript{316} Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), \textsuperscript{Q83} \textsuperscript{317} Anglo-North Irish Fish Producers Organisation Ltd (FSH0002) \textsuperscript{318} Anglo-North Irish Fish Producers Organisation Ltd (FSH0002) \textsuperscript{319} Q93}
considered ‘lower-skilled’ work for the purposes of UK immigration. In addition to the skills requirement, Tier 2 visas are restricted to jobs paying a minimum salary of £30,000 a year, which is in excess of the average salary for a Northern Ireland fisherman. The Migration Advisory Committee gives the following explanation for the absence of a visa entry for low skilled workers from outside the EU:

Currently, the UK migration system does not have an explicit work route for lower-skilled workers from outside the EEA, because the view has been taken that free movement ensures a sufficient supply from within the EEA.  

Consequently, UK Immigration rules only permit non-EU/EEA crew to be engaged on fishing vessels operating outside the 12 nautical mile limit (UK territorial waters). Fishing outside UK territorial waters means that non-EU/EEA crew only require a transit visa to enter the country and join their ship, rather than permission to work in the UK.

DAERA acknowledged that not being able to recruit non-EU/EEA crew to fish within the 0–12 nautical mile limit is particularly problematic for the Northern Ireland fleet because much of its fishing grounds are inside this area. Local fisherman Jimmy Kelly described how the topography of the Northern Ireland coast line exacerbates the problem:

This is the Irish Sea we are fishing and 12 miles from Portavogie, you are near enough in Manx waters. There are 26 miles between the places. Let’s be realistic, a wee bit of common sense, take an even-handed approach to employment of all seafarers within the UK but vet them properly.

We heard that the restriction on using non-EU/EEA crew in territorial waters has rendered some areas of sea “no-go areas” for boats using these crew. Andrew Orr told the Committee:

There have been a lot of boats sold in Northern Ireland this last while, mainly down to not getting crew. The same thing has happened in the Clyde where, because it is enclosed, you cannot get outside the 12-mile limit. The west coast of Scotland is the same. The boats that have Filipino crew cannot go and fish there because they are all frightened of the Border Force pouncing on them and lifting their crew. Now they are forced to fish in places that are not as productive as long as they are outside the 12 miles. They cannot go to the places that are productive, where they traditionally used to go, because they are frightened of losing their crew. It is not a very good situation, the way it is at the moment.

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Northern Ireland’s POs have highlighted the issue of crewing shortages, contributing to the fishing industry’s submission to the Migration Advisory Committee inquiry into future immigration arrangements. They have also presented proposals aimed at

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321 Section 8, Immigration Act 1971.
322 Seafish, Working on UK fishing vessels: the legal framework and support for fishers, November 2017
323 Department of Agriculture, Environment and Rural Affairs (FSH0010)
324 Q390
325 Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), Q390
326 Q390
327 Call for Evidence; a response by the Fishing Industry, July 2017 Migration Advisory Committee Commission
addressing these issues to the Home Office. They advocate introducing a time-limited visa concession for non-EEA crew in the short term and, in the longer term, finding a better regulatory mechanism for assessing the activity of vessels with non-EU/EEA crew than simply “the extent a vessel operates in territorial waters.”

The first proposal derives from a decision by the Government, in March 2010, to allow a temporary concession for 1,500 non-EEA fishers to work inside UK territorial waters. The concession, which experienced relatively low take-up at the time, came with strict conditions and was intended to give the industry “sufficient time to transition to using local labour for such jobs.”

128. The Home Office is currently operating a similar concession, introduced in 15 June 2017, for seamen working on wind farms in UK territorial waters. The concession allows workers to enter the UK until 21 April 2019 for the purpose of joining a vessel engaged in the construction and maintenance of a wind farm within UK territorial waters.

129. When questioned about crewing shortages, Minister Eustice said “the truth is that, at the moment, we have fishermen who want to catch more fish than they are able to”. He told us there had been a recent recruitment drive which brought 500 new fishermen into the industry and that, although some foreign labour would be needed, “we should not buy into the idea that we just need foreign crews”. Caroline Nokes MP, the Immigration Minister at the Home Office, admitted that the Northern Ireland and Scottish fleets have a “heavy reliance on overseas workers, predominantly from outside the EU” but insisted that the Government would wait for the advice of the Migration Advisory Committee, which is expected to publish its report in September 2018, before taking action. However, the Scottish White Fish Producer Organisation has said it will take 10 to 15 years to develop enough local employment to fully crew ships. We heard that, vessels which operate with skeleton crews due to shortages of available workforce are adding extra risk to an already dangerous employment.

130. Manpower shortages encouraged by current rules pose an existential threat to fishing businesses. Crewing fishing vessels is a skilled job, and experienced and qualified crew are required simply to maintain the current Northern Ireland fleet. Access to crew will become even more essential if the fleet is to take advantage of increased quota dividends and grow the industry after Brexit. In the short term, we recommend the Government grant a time-limited immigration concession for non-EU/EEA crew, as it did in March 2010, to help sustain and develop the fishing industry in Northern Ireland. In the longer term, we recommend the Government creates a visa pathway for fishermen which allows crewing of boats by EU/EEA and non-EU/EEA workers from the 6-nautical mile limit in recognition of the topography of the coast lines surrounding Northern Ireland.
**Infrastructure investment**

131. The Committee heard that strategic investment in infrastructure at Northern Ireland’s ports would enable fishermen to deliver increased economic prosperity for the industry, coastal communities and the wider Northern Ireland economy.\(^{336}\) Alan McCulla told us investment would ensure the UK could take advantage of the “tremendous opportunities” presented by Brexit because the fleet would be able to “take, land and process” its future share of catches within the UK.\(^{337}\) We heard that lack of investment had contributed to a decline in the availability of boat building and repair services. On the Committee’s visit to Portavogie, we saw that issues with the size and availability of boat repair slipways mean vessels regularly travel to Bangor or Fleetwood for repairs. The shortage of appropriate slipways in Portavogie and Ardglass also means larger vessels are unable to dock safely for emergency repairs.\(^{338}\) Northern Ireland fisherman Jimmy Kelly, told the Committee:

> If you go round Ireland as a whole, you will see that investment has been put into Killybegs, Fenit, Castletownbere, every other major port on the west coast. Northern Ireland investment has been very limited lately. Every small jetty in Ireland has a 5-tonne crane. As a safety measure too, if a small cradle boat hits the rocks and gets a hole he can get into the harbour, get a strap around him and lift it out. As it stands in Portavogie, we have no means. We have one slip now.\(^{339}\)

132. Local fisherman Andrew Orr told us that there is nowhere, on the whole of the east coast of the island of Ireland, with a dry dock big enough to repair his largest vessel. Although it is possible at Harland and Wolff in Belfast, they are often busy and so he travels to Fraserburgh in Scotland for repairs. He suggested that building a dry dock in Kilkeel, Ardglass or Portavogie would attract passing trade.\(^{340}\) ‘The Ardglass Harbour Development group is seeking investment to deepen their harbour so large pelagic vessels can dock locally, rather than travelling to Belfast, and to open a boat repair facility.\(^{341}\)

133. We heard that insufficient processing capacity at ports in the UK means that fishermen from Northern Ireland often land their catches abroad into ports with appropriate facilities.\(^{342}\) Alan McCulla told us:

> Two-thirds of the catch that is made by the Northern Ireland fleet is landed outside Northern Ireland. A large part of that is what we call pelagic species. That is mackerel and herring. To go back to the trade issue, you find that over 12,000 tonnes of pelagic species are landed into Killybegs in County Donegal. We want to bring a proportion of that catch home. We have plans in place to provide the infrastructure. We have plans to provide the processing capacity and work collaboratively in Northern Ireland with the existing processors to be able to handle that fish. In doing so, of course, that will add value to the entire Northern Ireland economy and it will create jobs.\(^{343}\)

\(^{336}\) Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), Q36, Q81–82

\(^{337}\) Anglo-North Irish Fish Producers Organisation Ltd (FSH0002), Q36, Q81–82

\(^{338}\) Investment required for Ardglass harbour - Chris Hazzard,

\(^{339}\) Q384

\(^{340}\) Q386, Q384

\(^{341}\) Down News, New Call for Major Improvements at Ardglass Harbour, 10 October 2017

\(^{342}\) Q81, Q159

\(^{343}\) Q82
134. The Northern Ireland Fishery Harbour Authority (NIFHA) is the executive body responsible for managing Northern Ireland’s three main harbours of Kilkeel, Ardglass and Portavogie. The main sources of revenue for the Authority are a levy on the value of fish landings, revenues generated from services provided at the harbours (e.g. ice sales and the provision of slipway services) and rentals from land leases. The Authority uses its surplus to fund minor infrastructure projects but its revenue surplus is affected by factors such as restrictions on fishing activity. Consequently, DAERA told us that NIFHA is “dependent” on EMFF funding for major harbour improvement work.

135. Between 2014–2020, €3.3 million in EMFF funds was earmarked for port development in Northern Ireland. The British Ports Association, which represents nearly all of the top 50 UK Fishing Ports, highlighted that 72% of ports rely on EMFF funding to create new services and 94% have used it in the past to fund expansion. As discussed in paragraph X, the Fisheries White Paper states that the Government will “consider whether and how” to replace EMFF funding after the UK leaves the EU but makes no commitment to continued funding for infrastructure. The British Ports Association gave the following critique of proposals in the Government’s White paper on this issue:

We remain concerned at the lack of focus on fishing ports, which are a crucial part of the journey from sea to plate. There is not a single reference to infrastructure in any of the 60 pages […] Whilst there is a provision to enable Ministers to create a domestic successor to the European Maritime and Fisheries Fund (EMFF), we are very disappointed that there is no firm commitment to do this and no details on its size or what it might look like.

136. The Committee also heard that a £35 million project for the expansion of the outer harbour at Kilkeel has been “held up” for over 16 months due to the lack of an Executive and Assembly in Northern Ireland. The project, which has been approved by the Strategic Investment Board, aims to make Kilkeel a major hub in the UK’s marine economy with reclaimed land being used to create space for larger boats, new businesses and processing units and a maritime skills training college. Alan McCulla told us:

Even before we started talking about Brexit, the numbers stacked up. […] a large proportion, the majority, of fish and shellfish caught by the Northern Ireland fleet is landed outside Northern Ireland, and we want to bring that home. While the concrete for that project is based around Kilkeel, it is not a project designed purely to benefit Kilkeel. This is for the whole of County Down.
Andrew Orr told us that a new harbour would bring in more ships for repair, fish for the market and “create a hub” which would attract business to the fishing industry.\(^{354}\) Lynn Gilmore of Seafish noted that the harbour extension would enable a huge new vessel, the Voyager, to land its catch into Kilkeel with corresponding benefits for local employment and the processing sector.\(^{355}\) The £30 million trawler, purchased in September 2017, is too big to land its catch into Northern Ireland and so it operates from nearby Killybegs in Ireland.\(^{356}\)

137. The Kilkeel Strategic Partnership has been working in conjunction with local councils, DAERA and Invest NI to progress the project which is scheduled to complete environmental and engineering impact assessments by December 2019.\(^{357}\) However, in the absence of devolved government in Northern Ireland, it remains unclear how the project can progress from the development stage.\(^{358}\) Alan McCulla said:

> It’s hugely disappointing that this essential investment is being delayed by current political difficulties. It’s ironic and very disappointing that the fishing and seafood industry here, which universally supports Brexit, will see opportunities to benefit from greater freedom outside EU quota restrictions undermined by Northern Ireland’s current political problems.\(^{359}\)

138. Lack of investment in Northern Ireland’s harbours has resulted in the loss of vital repair services and reduced the economic benefit that local communities receive from the fish caught by the Northern Ireland fleet. We recommend that the Government make a clear commitment to invest in infrastructure at Northern Ireland’s ports to ensure fishermen can bring home the benefits of renegotiated quota to their local communities.

139. It is deeply disappointing that absence of an Executive and Assembly in Northern Ireland is preventing progress on a valuable infrastructure project at Kilkeel. Important opportunities for economic development must not be kept on hold due to the collapse of Stormont. In the continued absence of devolved government, and in light of the Court of Appeal’s ruling on the limit of civil servant’s decision-making powers, we recommend that the UK Government create a new mechanism to enable decisions on infrastructure investment at Kilkeel.

**The Lough Neagh Wild Eel fishery**

140. Lough Neagh, the largest freshwater lake in the UK, is home to the largest wild eel fishery in Europe. It is managed by the Lough Neagh Fishermen’s Co-operative Society (the Society) and supports 250 fishermen who catch between 300–350 tonnes of eels annually whilst also implementing strict conservation measures.\(^{360}\) The sale of wild eels from Lough Neagh contributes approximately £3.2 million per annum to the local economy, which means that eels can be more valuable than any other fin fish landed in Northern Ireland.\(^{361}\) The Society exports approximately 80% of its eels as a premium smoked product to

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\(^{354}\) Q384  
\(^{355}\) Q58  
\(^{356}\) New £30m trawler for fishing fleet, BBC, 28 September 2017  
\(^{357}\) Newry, Mourne and Down Local Development Plan 2030, Preferred Options Paper, June 2018  
\(^{358}\) Q84  
\(^{359}\) Fears Stormont impasse could scuttle £36m Kilkeel port expansion, Belfast Telegraph, 27 September 2017  
\(^{360}\) Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)  
\(^{361}\) Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003), Department of Agriculture, Environment and Rural Affairs (FSH0010)
mainland Europe for sale in the Netherlands, Germany and Belgium. The remaining 20% are sold within the UK as a jellied eel product through London’s Billingsgate Fish Market. The Society told us that an EU-UK deal which maintains trade with European markets, where there is a strong tradition of eel consumption, is “imperative” for the Lough Neagh fishery.\textsuperscript{362}

141. Since 2007, the European eel has been listed as an endangered species under Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).\textsuperscript{363} Appendix II is for species which, although not necessarily immediately threatened with extinction, may become so unless trade in specimens is subject to strict regulation.\textsuperscript{364} The CITES listing permits trade in eels domestically within a country or between Member States of the EU but prohibits any other international trade unless a CITES permit is granted.\textsuperscript{365}

142. For over 40 years, and before the CITES listing, fishermen at Lough Neagh employed conservation measures such as daily quotas and licensing restrictions to ensure the long term sustainability of their industry.\textsuperscript{366} Crucially, the Society’s flagship restocking programme released 110 million supplementary juvenile eels into the river system over a 25 year period at a cost of approximately £4.8 million.\textsuperscript{367} When EU regulations were introduced in 2009 to protect the European eel, they were modelled on the management regime at Lough Neagh and the Society has subsequently been deemed fully compliant at each review.\textsuperscript{368} Since 2009, the Society has benefitted from EMFF funding for the restocking programme but its own net contribution to restocking exceeds £3.6 million.\textsuperscript{369} The conservation measures undertaken by the Society enable it to run a commercial fishery whilst also being a net contributor to the European eel species across Europe.\textsuperscript{370} Pat Close, CEO of the Society, highlighted that the restocking programme is a long-term investment as eels can take up to 25 years to reach maturity and there is no guarantee that juvenile eels will return to Lough Neagh after spawning.\textsuperscript{371}

\textit{Trade in eels post-Brexit}

143. When the UK leaves the EU, Lough Neagh will no longer benefit from the intra-EU exception for trade in European eels under CITES.\textsuperscript{372} Both the UK and the EU are signatories to CITES so, consequently, to continue its trade with European markets, the Society will require a non-detriment finding (NDF).\textsuperscript{373} An NDF is a scientific assessment of eel stocks which results in a finding that the export or import of the eels will not be

\begin{thebibliography}{99}
\bibitem{362} Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
\bibitem{363} 14th meeting of the CITES Conference of Parties, Proposals for amendment of Appendices, 2007
\bibitem{364} EU request on criteria for CITES non-detriment finding for European eel (Anguilla anguilla), 30 April 2015
\bibitem{365} Department of Agriculture, Environment and Rural Affairs (FSH0010),
\bibitem{366} Q320, Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
\bibitem{367} Q364, Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
\bibitem{368} Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
\bibitem{369} Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
\bibitem{370} Q326
\bibitem{371} Q325
\bibitem{372} Q320, Non Detriment Finding for the European eel - the Swedish Case, 2008
\bibitem{373} List of contracting parties, CITES, Q320, Non Detriment Finding for the European eel - the Swedish Case, 2008, EU request on criteria for CITES non-detriment finding for European eel (Anguilla anguilla), 30 April 2015
\end{thebibliography}
detrimental to the survival of the species. Pat Close told us that his business is facing a “cliff edge” on 29 March 2019 unless CITES issues an NDF for trade in European eels. He told us:

My concern with it is that we are not being advised of, for example, what an NDF should contain, what it looks like, what we need to prove to make that workable. [ … ] We have met CITES representatives and all of these people on a few occasions now I don’t think anybody, including the Department, is clear about whether an NDF is even possible.

144. In December 2010, the EU CITES Scientific Review Group examined the status of European eel stocks and decided it was not possible to make an NDF for the eels at European Union level. In 2015, ICES provided advice on the criteria that may be required to make a non-detriment finding for the European eel as there are currently “no hard rules” on the NDF assessment procedure. Pat Close told us that if the NDF stock assessment was held at river basin district level, rather than across Europe as a whole, it might be possible. However, he added:

We may very well tick all the boxes in Lough Neagh, but because it is a single stock, the scientists at this point in time are not minded to say that there is sufficient indications of a recovery in the stocks across Europe as a whole to allow [ … ] that as the way forward for the species as a whole.

145. When questioned, the Minister acknowledged the potential problem but said that securing an NDF will become an issue at the end of the transition period, should there be one, rather than in March 2019. He told us:

Obviously, we would be very keen to argue that nothing has changed, in the sense that this is still a sustainable fishery managed in a sustainable way and, although the process is slightly more difficult to get that permit outside of the European Union, we are looking at ways to ensure we can.

146. The 2009 export ban on eels from Europe has also had an impact on traditional markets for eels in Asia. In Japan, eels are part of a traditional dish and shortages in the local stock (Japonica eel) have greatly increased the value of imported eels and created an illegal market in smuggling eels. Europol believes that during the 2017 season alone, 100 tonnes of eels have been smuggled between the EU and China. Demand is such that eels are valued at around EUR 1,000/kg on the black market. In 2018, an eel smuggling ring was found to have made over 37 million euros from illegal exports to Asia. Pat Close told us that he had received interest from Asian sources and that, if the current

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374 Report of the Workshop on Eel and CITES (WKEELCITES), March 2015
375 Q320
376 Q323
377 Q331
378 Q362
379 Q426 (Minister Eustice) Oral Evidence to the Northern Ireland Affairs Committee Committee inquiry into Agriculture, 18 July 2018
380 Illegal eel: black market continues to taint Europe’s eel fishery, Guardian, 9 February 2016
381 European Commission, Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, 26 February 2016
382 Glass Eel Traffickers earned more than 37 million from illegal exports to Asia, Operation Elvers, Europol, 6 April 2018
ban on exports under CITES were lifted, such trade would be possible. In 2011, the Lough Neagh Eel was the first Northern Ireland product to be awarded with protected geographical indication (PGI) status and joined an exclusive club of regional products alongside feta, champagne and Parma ham. An NDF finding on the sustainability of the Lough Neagh wild eel fishery could open the possibility of legal expansion into lucrative Asian eel markets and ensure continued trade with EU.

The Lough Neagh Fishermen’s Cooperative Society plays a vital role in bringing economic prosperity to the Lough Neagh area and conserving the wild European eel for future generations. The long-term future of the Lough Neagh wild eel fishery depends on securing a Non-Detriment Finding under CITES and maintaining financial support for the restocking project. We recommend that the Government set out, in its response to this report, what steps it has taken to secure a Non-Detriment Finding in advance of the UK’s exit from the EU in March 2019 and whether it intends to continue the current levels of EMFF support for the restocking of eels into Lough Neagh.
Conclusion

148. The Northern Ireland fishing industry has enormous potential, post-Brexit, to generate more jobs and greater economic benefit for coastal communities, as well as contribute further to the wider Northern Ireland economy. The UK’s decision to leave the EU offers the chance for the commercial catching sector in Northern Ireland to benefit from new fishing opportunity in UK waters. However, for the processing sector and those fishermen reliant on non-quota species, the risks of increased bureaucracy and the introduction of tariffs on trade with the EU means that securing access to the single market is a key priority.

149. The Government should aim to secure an agreement with the EU on both future fisheries management and wider UK-EU relations that enables Northern Ireland to capitalise on the opportunities presented by Brexit. In its response to our report, the Government must clarify how access to UK waters and quota allocations will change. The Government must also provide information on the UK’s capacity to prepare and safeguard its fishing industry in the event of a no deal Brexit. At this critical time of change the Government must support Northern Ireland in dealing with long running structural problems such as infrastructure investment at ports and crewing shortages. The government must demonstrate that it has recognised the fishing industry’s crushing manpower constraints and set out how it will deal with them. This will empower the industry to take advantage of quota dividends and ensure economic benefit stays in local fishing communities. A timeline for the Government to act on our recommendations is contained at Annexe 1.

150. The collapse of devolved Government must not result in Northern Ireland being voiceless and incapable of making important policy decisions on its future fisheries and environment policy at such a time. If the Executive is not restored by the end of the year, the UK Government must be prepared to take such decisions and prevent Northern Ireland from falling behind the other devolved administrations in preparing their fishing fleets for Brexit.
Conclusions and recommendations

Securing the best Brexit deal

1. The Committee supports the Government’s commitment to move away from the current inequitable allocation of fishing opportunity under relative stability and welcomes its publication of evidence in support of the zonal attachment measure. However, the White Paper does not say whether the Government intends to negotiate quota increases in line with these projections. Nor does it set out the criteria on which the UK will determine access for foreign vessels to UK waters after Brexit. We recommend that the Government clarify, in its response to this report, how it intends to exercise its rights under international law to secure a significant redistribution of fishing opportunity in UK waters. We further recommend that the Government sets out its projections for how quota allocation based on zonal attachment will differ from that of relative stability for the Northern Ireland fleet and the criteria that will be used to permit access by foreign vessels to fishing opportunity in UK waters after Brexit. (Paragraph 31)

2. The EU is an important export market for the Northern Ireland fishing sector. Negotiating a good deal for the Northern Ireland fishing industry is therefore not just about attaining increased quota but also securing continued access for Northern Ireland’s fisheries products to EU markets. Any future agreement with the EU should secure reciprocal tariff-free trade in fish and fisheries products, mutual recognition of standards, and a streamlined export process for perishable fisheries goods. The consequences of high tariffs will be particularly acute for those fishermen in Northern Ireland who catch non-quota shellfish species. These fishermen stand to incur the costs associated with increased tariff and non-tariff barriers without gaining the benefits of renegotiated quota. We recommend the Government set out, in its response to this report, which rules pertaining to fisheries trade would be included within the common rulebook. (Paragraph 47)

3. In a no deal scenario, in which trade in fisheries products is subject to the EU’s common external tariff, the gains implied by the exclusion of EU fishermen from the UK’s EEZ would be offset to an extent that is both unclear and uneven across the sector. (Paragraph 48)

4. In the event of no deal, catch certificates will be required for Northern Ireland’s fisheries imports and exports trade with the EU. The Government must be in a position to process catch certificates for all of Northern Ireland’s trade with the EU by 30th March 2019. We recommend the Government set out, in its response to this report, DEFRA’s timetable for piloting and delivering a new IT system capable of providing catch certificate for all UK fisheries trade with the EU in the event of a no deal scenario. (Paragraph 57)

5. In the event of no deal, the UK must have sufficient assets in place to prevent illegal fishing within its EEZ by 30 March 2019. We recommend that the Government publish its assessment of the assets required to police the UK’s EEZ after the UK leaves...
the EU and provide details of the amount of funding and number of ships available to the Joint Maritime Operations Coordination Centre to prevent illegal fishing in UK waters. (Paragraph 62)

6. While informed by scientific advice, the decisions which determine Total Allowable Catch at the annual Fisheries Council are inherently political. The agreed Total Allowable Catches represent the culmination of a year’s worth of research and careful negotiation from interested parties across the EU. The absence of UK representation around the table at the December 2019 Fisheries Council, and in other fisheries governance bodies which influence the Commission's decisions, could result in disadvantage to the UK fishing industry.

7. The Committee welcomes the commitments, contained within the Draft Withdrawal Agreement, on protecting British interests during the implementation period. However, the vague language and general terms which sufficed for the Draft Agreement will not be acceptable in the final text. We recommend that the final text of the Withdrawal Agreement, or accompanying documentation, clarify:

- How the UK will be able to influence the Fisheries Advisory Councils, the Fisheries and Aquaculture Expert Group and the Science, Technical and Economic Committee for Fisheries during the implementation period;
- How the UK’s right to consultation will operate in practice;
- What action the UK can take if it believes the EU is not acting in good faith; and
- How it will make clear to the EU that opportunism would not be tolerated, that its good faith would be on trial and that failure would have consequences. (Paragraph 74)

**Territorial waters**

8. We are disappointed that the Voisinage Arrangement has been unilaterally suspended in Ireland. While Irish fishermen have access to waters in Northern Ireland, fishermen in Northern Ireland have suffered hardship through exclusion from their habitual fishing grounds. This needs to be resolved as a matter of urgency. We recommend the Government structures talks with the Irish Government to establish the future of reciprocal access for Northern Irish vessels under the Voisinage Arrangement. If the Irish Government does not give a clear commitment to pass, within 6 months of publication of this report, legislation which restores reciprocal access, the Government must discontinue access to UK waters for Irish vessels from 30 March 2019. If the Irish Government does pass legislation to reinstate the Voisinage Arrangement, then the UK Government should consider whether the arrangement should also be put on statutory footing in UK law. (Paragraph 82)

9. The dispute over maritime boundaries has resulted in environmental damage and economic disadvantage to the Lough Foyle area. The cause of the current crisis is the failure of the Irish and UK Governments to either resolve the jurisdictional issue or reach a management agreement for Lough Foyle. We recommend that the Foreign and Commonwealth Office concludes a management agreement with the Irish Government, within the next 12 months, that enables the Lough’s Agency to fully
implement the 2007 Foyle and Carlingford Fisheries Order. We further recommend that the Agency be given the extra resources necessary to remove existing unlicensed oyster trestles. (Paragraph 89)

10. The Loughs Agency, as a cross-border body, is ideally placed to manage the regulations that govern management of the river systems and loughs along the border. The Agency may face difficulties if it is required to balance two increasingly divergent sets of environmental regulations within its catchment area and so should be given the power to make sensible decisions on regulations itself. We recommend that the Loughs Agency be given the power, with the assistance and the oversight of the North-South Ministerial Council, to select the most appropriate environmental management strategy to regulate the areas under its jurisdiction and commensurate financial support and human resources to implement its decisions. (Paragraph 99)

11. It is disappointing that the collapse of devolved government in Northern Ireland is preventing the passage of legislation recommended by the Loughs Agency for the protection of the natural environment within its jurisdiction. In light of the Court decision on the limit of civil service decision-making powers in Northern Ireland, we recommend that the Government establish a new mechanism to ensure regulatory decisions proposed by the Loughs Agency and approved by the North South Ministerial Council can be implemented. (Paragraph 100)

The future of Northern Ireland fisheries

12. In the absence of a Northern Ireland Executive, there is no capacity in Northern Ireland to take decisions on future fisheries policy, particularly on the allocation of quota. This means that Northern Ireland, unlike the other devolved administrations, is unable to put forward its own management proposals or adopt the proposals the UK Government has developed for England. The Fisheries White Paper does not acknowledge this impediment and sets out a future fisheries policy for England only. We recommend that, in order to prevent a governance gap, the Government, in legislation proposed for October 2018, should set out how decisions on fishing policy in Northern Ireland will be taken in the continuing absence of an Executive. Any decisions should be amendable by a future Northern Ireland Executive, once it is established. (Paragraph 111)

13. The Government has yet to make any clear commitment to fisheries funding post December 2020. Investment in the industry at this critical period of change will be essential to ensure Northern Ireland’s fishermen can seize the opportunities presented by Brexit and adapt to new requirements. We recommend that the Government commit to continued funding for the fisheries industry, at comparable levels to EMFF, after December 2020. The Government should, in the fisheries Bill, set out priorities for funding which are based on experience of successful investments under EMFF such as harbour infrastructure and safety measures. (Paragraph 118)

14. Manpower shortages encouraged by current rules pose an existential threat to fishing businesses. Crewing fishing vessels is a skilled job, and experienced and qualified crew are required simply to maintain the current Northern Ireland fleet. Access to crew will become even more essential if the fleet is to take advantage of increased quota dividends and grow the industry after Brexit. In the short term, we
recommend the Government grant a time-limited immigration concession for non-EU/EEA crew, as it did in March 2010, to help sustain and develop the fishing industry in Northern Ireland. In the longer term, we recommend the Government creates a visa pathway for fishermen which allows crewing of boats by EU/EEA and non-EU/EEA workers from the 6-nautical mile limit in recognition of the topography of the coast lines surrounding Northern Ireland. (Paragraph 130)

15. Lack of investment in Northern Ireland’s harbours has resulted in the loss of vital repair services and reduced the economic benefit that local communities receive from the fish caught by the Northern Ireland fleet. **We recommend that the Government make a clear commitment to invest in infrastructure at Northern Ireland’s ports to ensure fishermen can bring home the benefits of renegotiated quota to their local communities.** (Paragraph 138)

16. It is deeply disappointing that absence of an Executive and Assembly in Northern Ireland is preventing progress on a valuable infrastructure project at Kilkeel. Important opportunities for economic development must not be kept on hold due to the collapse of Stormont. **In the continued absence of devolved government, and in light of the Court of Appeal’s ruling on the limit of civil servant’s decision-making powers, we recommend that the UK Government create a new mechanism to enable decisions on infrastructure investment at Kilkeel.** (Paragraph 139)

17. The Lough Neagh Fishermen’s Cooperative Society plays a vital role in bringing economic prosperity to the Lough Neagh area and conserving the wild European eel for future generations. The long-term future of the Lough Neagh wild eel fishery depends on securing a Non-Detriment Finding under CITES and maintaining financial support for the restocking project. **We recommend that the Government set out, in its response to this report, what steps it has taken to secure a Non-Detriment Finding in advance of the UK’s exit from the EU in March 2019 and whether it intends to continue the current levels of EMFF support for the restocking of eels into Lough Neagh.** (Paragraph 147)

18. The Northern Ireland fishing industry has enormous potential, post-Brexit, to generate more jobs and greater economic benefit for coastal communities, as well as contribute further to the wider Northern Ireland economy. The UK’s decision to leave the EU offers the chance for the commercial catching sector in Northern Ireland to benefit from new fishing opportunity in UK waters. However, for the processing sector and those fishermen reliant on non-quota species, the risks of increased bureaucracy and the introduction of tariffs on trade with the EU means that securing access to the single market is a key priority. (Paragraph 148)

19. The Government should aim to secure an agreement with the EU on both future fisheries management and wider UK-EU relations that enables Northern Ireland to capitalise on the opportunities presented by Brexit. In its response to our report, the Government must clarify how access to UK waters and quota allocations will change. The Government must also provide information on the UK’s capacity to prepare and safeguard its fishing industry in the event of a no deal Brexit. At this critical time of change the Government must support Northern Ireland in dealing with long running structural problems such as infrastructure investment at ports and crewing shortages. The government must demonstrate that it has recognised
the fishing industry’s crushing manpower constraints and set out how it will deal with them. This will empower the industry to take advantage of quota dividends and ensure economic benefit stays in local fishing communities. A timeline for the Government to act on our recommendations is contained at Annexe 1. (Paragraph 149)

20. The collapse of devolved Government must not result in Northern Ireland being voiceless and incapable of making important policy decisions on its future fisheries and environment policy at such a time. If the Executive is not restored by the end of the year, the UK Government must be prepared to take such decisions and prevent Northern Ireland from falling behind the other devolved administrations in preparing their fishing fleets for Brexit. (Paragraph 150)
**Glossary**

**Common Fisheries Policy (CFP):** a set of rules aimed at the sustainable management of the EU fisheries resources and its fleet. It has four main policy areas; fisheries management, international cooperation with non-EU states, trade policy and funding for fishing communities.

**Exclusive Economic Zone (EEZ):** a zone of sea beyond, and directly adjacent to, a country’s territorial sea. It extends out to a maximum of 200 nautical miles from the baseline or, if constrained by an neighbouring state, to a median line.

**Fisheries and Aquaculture Expert group:** comprising representatives of the Member States who assist the Commission in the implementation of the Common Markets Organisation and in trade issues related to the fishery and aquaculture products.

**Fish Producer Organisation (POs):** a membership organisation made up of fishermen. There are currently 11 established POs in England, 10 POs in Scotland, 2 in Northern Ireland (the Anglo-North Irish Fish Producer Organisation ANIFPO and the Northern Ireland Fish Producer Organisation NIFPO), and 1 in Wales (24 in total in the UK). Each PO has a Board, Chief Executive and supporting officials. PO’s play a role in managing quotas and marketing the fisheries products of their members.

**International Council for the Exploration of the Sea (ICES):** an international organisation that provides marine research and advice to several governments and regional fisheries management organisations, including the EU.

**Landing obligation:** A policy mechanism intended to reduce the amount of fish discarded at sea because fishermen have exhausted their quota or captured fish which are too undersized to be marketable. The landing obligation, phased in between 2015–2019, requires all catches of commercial fish species subject to quota to be landed and counted against quota.

**Maximum Sustainable Yield (MSY):** a measure which determines the largest average catch that can be removed from a fish stock population over time, under existing environmental conditions, without threatening future yields.

**Nephrops:** a shellfish species, Latin name Nephrops norvegicus, which is known colloquially under the following names: Norway lobster, Dublin Bay prawn, scampi or langoustine.

**Relative stability:** a principle, based on historical fishing patterns during the period 1973–1978, which sets the fixed amount of fishing opportunity available to each Member State in the EU. Although the TAC for a species may change annually due to evolving scientific advice, the percentage share Member State receives for each stock is fixed under relative stability.

**Scientific, Technical and Economic Committee for Fisheries (STECF):** an EU institution established in 1993 whose members are appointed by the Commission based on their scientific expertise.
The Fishery Advisory Councils: stakeholder led regional sea organisations composed of representatives from the relevant Member States' fishing industries and other interest groups.

Total Allowable Catch: limits (expressed in tonnes or numbers) on the amount of fish which can be caught are set for most commercial fish stocks. The Commission prepares TAC proposals, based on scientific advice on the stock status from advisory bodies such as the International Council of the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF). TACs are set annually for most stocks (every two years for deep-sea stocks) at the December Council of Fisheries Ministers.

Zonal attachment: a method of allocating quota which is based on an assessment of the extent to which a fish stock resides within a country's EEZ.
Annex 1: Timeline for the Government to act on the Committee’s recommendations

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<tr>
<th>Date</th>
<th>Recommendations</th>
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<tr>
<td>By end of November 2018</td>
<td>We have requested that the Government provide the following information within its response:</td>
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<tr>
<td></td>
<td>[Recommendation 31] The Government should set out its projections for how quota allocation based on zonal attachment will differ from that of relative stability for the Northern Ireland fleet and the criteria that will be used to determine access by foreign vessels to UK waters after Brexit.</td>
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<td>[Recommendation 47] The Government should set out which rules pertaining to fisheries trade will be included within the common rulebook which will form part of the future UK-EU agreement.</td>
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<td>[Recommendation 57] The Government should provide details of DEFRA’s timetable for delivering a new IT system capable of providing catch certificate for Northern Ireland’s fisheries trade with the EU, in the event of a no deal scenario.</td>
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<td>[Recommendation 62] The Government should publish its assessment of the naval capacity required to police the UK’s EEZ after the UK leaves the EU and provide details on the amount of funding and number of ships available to the Joint Maritime Operations Coordination Centre to prevent illegal fishing in UK waters.</td>
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<td>[Recommendation 82] The Government should confirm that it has organised talks with the Irish Government to establish the future of reciprocal access for Northern Irish vessels under the Voisinage Arrangement.</td>
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<tr>
<td></td>
<td>[Recommendation 147] The Government should provide details on what steps it has taken to secure a Non-Detriment Finding under CITES for the European Eel.</td>
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| In the Fisheries Bill, expected to be introduced to Parliament in the Autumn of 2018 | **[Recommendation 118]** The Government should commit to continued funding for the fisheries industry and set out funding priorities which are based on experience of successful investments under EMFF such as harbour infrastructure and safety measures.  
**[Recommendation 138]** The Government should make a clear commitment to invest in infrastructure at Northern Ireland’s ports to ensure fishermen can bring home the benefits of renegotiated quota to their local communities.  
**[Recommendation 147]** The Government should clarify whether it intends to continue financial support for the restocking of eels into Lough Neagh. |
| By the end of December 2018                                         | In the event the Northern Ireland Executive and Assembly remain suspended, and in light of the Court decision on the limit of civil service decision-making powers in Northern Ireland, we recommend:  
**[Recommendation 100]** The Government establish a new mechanism to ensure regulatory decisions proposed by the Loughs Agency and approved by the North South Ministerial Council can be implemented.  
**[Recommendation 111]** The Government should set out, in legislation proposed for October 2018, how decisions will be made on post-Brexit fisheries policy, including the future quota allocation system, for Northern Ireland. Any decisions should be amendable by a future Northern Ireland Executive, once it is established.  
**[Recommendation 139]** The Government should create a new mechanism to enable decisions on infrastructure investment at Kilkeel to be taken. |
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<tr>
<td>By 29 March 2019</td>
<td>Six months after publication of this report, and ahead of 29 March 2019:</td>
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<tr>
<td><strong>[Recommendation 75]</strong></td>
<td>The Government must clarify, in the Withdrawal Agreement or accompanying documentation, the following:</td>
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<td>How the UK will be able to influence the Fisheries Advisory Councils, the Fisheries and Aquaculture Expert Group and the Science, Technical and Economic Committee for Fisheries during the implementation period;</td>
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<td><strong>[Recommendation 82]</strong></td>
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<td><strong>[Recommendation 130]</strong></td>
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<tr>
<td>By September 2019</td>
<td>Within 1 year of publication of this report:</td>
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<td><strong>[Recommendation 89]</strong></td>
<td>The Government should conclude a management agreement with the Irish Government that enables the Lough’s Agency to fully implement the 2007 Foyle and Carlingford Fisheries Order. The Lough’s Agency should be given the extra resources necessary to remove existing unlicensed oyster trestles.</td>
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<td><strong>[Recommendation 130]</strong></td>
<td>The Government should create a bespoke visa for fishermen which allows crewing of boats by EU/EEA and non-EU/EEA workers from the 6-nautical mile limit in recognition of the topography of the coast lines surrounding Northern Ireland.</td>
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Formal minutes

Tuesday 11 September 2018

Members present:
Dr Andrew Murrison, in the Chair
Mr Gregory Campbell    John Grogan
Maria Caulfield        Nigel Mills
Robert Goodwill        Jim Shannon

Draft Report (*Brexit and Northern Ireland: fisheries*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 150 read and agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 12 September at 9.15am]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee’s website.

Wednesday 18 April 2018

Professor Richard Barnes, Associate Dean for Research, University of Hull, Dr Lynn Gilmore, Manager, Seafish Northern Ireland, Pieter-Jan Schön, Head of Fisheries and Aquatic Ecosystems, Agri-Food and Biosciences Institute

Wednesday 25 April 2018

Alan McCulla OBE, CEO, Anglo-North Irish Fish Producers Organisation, Harry Wick, CEO, Northern Ireland Fish Producers Organisation

Wednesday 2 May 2018

Dr Jade Berman, Living Seas Manager, Ulster Wildlife, Dr Kenneth Bodles, Marine Conservation Officer, RSPB Northern Ireland, Mrs Jennifer Fulton, Vice Chair of Northern Ireland Environment Link and Chief Executive of Ulster Wildlife, Donal McCarthy, Senior Policy Officer, RSPB

Wednesday 16 May 2018

George Eustice, Minister of State for Farming, Food and the Marine Environment, Department for Environment, Food and Rural Affairs, Nigel Gooding, Deputy Director for Fisheries and Conservation Policy, Department for Environment, Food and Rural Affairs

Thursday 14 June 2018

Pat Close, Chairman and CEO, Lough Neagh Fishermen’s Co-operative, Sharon McMahon, Designated Officer, Loughs Agency, Jimmy Kelly, Fisherman, and Andrew Orr, Fisherman
Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee’s website.

FSH numbers are generated by the evidence processing system and so may not be complete.

1. Agri-Food and Biosciences Institute (AFBI) (FSH0009)
2. Anglo-North Irish Fish Producers Organisation Ltd (FSH0002)
3. Defra (FSH0004)
4. Department of Agriculture, Environment and Rural Affairs (FSH0010)
5. Dr Thomas Appleby (FSH0007)
6. Lough Neagh Fishermen’s Co-operative Society Ltd. (FSH0003)
7. Loughs Agency (FSH0013)
8. Mr Martin LEECH (FSH0001)
9. NI Marine Task Force (FSH0005)
10. Northern Ireland Marine Task Force (FSH0012)
11. Professor Richard Barnes (FSH0008)
12. Seafish (FSH0011)
List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee’s website. The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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