

4 Reflections on the Trilateral and Bilateral Fishing Negotiations Between the EU, UK and Norway

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Introduction

The ocean is a shared open space, and fish stocks do not adhere to or respect international maritime boundaries. International law is clear on the fact that if a resource falls only partly within a State's jurisdiction, that State does not have an unfettered right to exploit that shared resource unilaterally.¹ Some form of cooperative regional management is necessary for fish stocks that move between the exclusive economic zones (EEZs) of States or beyond national jurisdiction to the high seas for both sustainability and legal purposes. Coastal States are obliged under the United Nations Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement to take extra steps to manage shared or transboundary stocks, which are defined as "Stocks occurring within the [EEZs] of two or more coastal States or both within the [EEZ] and in an area beyond and adjacent to it".² For these stocks, measures in addition to those of the coastal States whose EEZs these stocks inhabit are required for effective conservation and management. UNCLOS obliges coastal States to enter into negotiations to agree on the necessary measures for the conservation and management of such stocks.³ These consultations "should be meaningful in the sense that substantial effort should be made by all States concerned, with a view to adopting effective measures necessary to coordinate and ensure the conservation and development of shared stocks".⁴

1 Award between the United States and the United Kingdom, Relating to the Rights of Jurisdiction of United States in the Bering's Sea and the Preservation of Fur Seals (*United States v. United Kingdom*) Decision of 15 August 1893 RIAA XXXVIII, at 269.

2 United Nations Convention on the Law of the Sea (UNCLOS), Montego Bay, 10 December 1982, 1833 UNTS 3, Art. 63–64; Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 4 August 1995; 2167 UNTS 3, Art. 8.

3 UNCLOS, Art. 63.

4 *Request for an Advisory Opinion Submitted by The Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015 (*Fisheries Advisory Opinion*) at para. 210.

We examine below this obligation in practice. Since the UK shares around 100 stocks with the EU and its other neighbours, cooperation is necessary to ensure sustainable exploitation of shared fish stocks. Brexit has raised concerns about the UK's continued role in relationship-building in the North-East Atlantic. As a new piece in the fisheries cooperation conundrum – will the UK play a disruptive or constructive role? Since the UK has left the EU, both Parties must now proactively engage in negotiations for shared stocks in a trilateral format with Norway for the first time. In addition, Norway and the UK, and the EU and the UK have entered negotiations for bilateral fishing arrangements which raises questions for the future of fisheries cooperation in the North-East Atlantic in a post-Brexit world.

The chapter analyses the outcomes of the annual trilateral (UK–EU–Norway) and bilateral (EU–Norway, UK–Norway and EU–UK) negotiations. Considerations are provided and what the future will be regarding fishing rights for the UK regarding the TCA and the UK–Norway arrangements on fisheries. Norway's long and effective cooperative approach to fisheries management with the EU is especially insightful, so is included here. Prior to these negotiations, the EU had established preliminary fishing opportunities for the first quarter of 2021.⁵ Articles 52 and 53 of that Regulation establish fishing opportunities for Norway and the UK, respectively.⁶ The UK and Faroe Islands fisheries negotiations on the basis of the bilateral fisheries agreement between the two Parties⁷ were also terminated without a fisheries arrangement for 2021, but will remain outside the scope of discussion.

The Trilateral Agreement (UK–EU–Norway)

The trilateral arrangement on jointly managed fisheries stocks in the North Sea for 2021 (TA21) is an example of the EU, Norway and the UK undertaking the above obligations.⁸ The three Parties met for the first time in a trilateral fisheries context in January 2021, and “agreed that it was necessary to establish a trilateral framework agreement to underpin their cooperation on the management of North Sea fish stocks”.⁹ The TA21 has established the total

5 Council Regulation (EU) 2021/92 OJ L 31/31; Regulation (EU) 2017/2403, OJ L 347/81.

6 *Ibid.*

7 Framework Agreement on Fisheries between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Faroes, Copenhagen, 29 October 2020, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933792/CS_Faroe_Islands_1.2020_UK_Faroes_Framework_Agreement_on_Fisheries.pdf> accessed 13 July 2021.

8 The EU fisheries agreements with the United Kingdom, Norway, Faroe Islands, Iceland and other coastal states may all be viewed here: <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/northern-agreements_en> accessed 15 April 2021.

9 Agreed Record of Fisheries Consultations between the European Union, Norway and the United Kingdom for 2021, 16 March 2021, <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/northern-agreements_en> at para. 8.

allowable catch (TAC) and quota allocation for six fish stocks, totalling over 636,000 tonnes for 2021.¹⁰ Negotiations took two months from January 2021, and a trilateral agreement was signed allowing for the joint management of several stocks (Table 4.1).¹¹ These were considered by the Parties to be jointly managed stocks in the North Sea (see Figure 4.1),¹² who agreed “to consider and set priorities for joint long-term management strategies for jointly managed stocks”.¹³ The TAC for five out of six stocks were set at maximum sustainable yield (MSY) in line with advice from the International Council for the Exploration of the Seas (ICES), while the TAC for North Sea/Eastern Channel Skagerrak Cod (“North Sea cod”) was set below MSY (see Table 4.1). The state of the North Sea stock has been of concern for quite some time, and a long-term management plan has been in place since the year 2000; however, these have not brought the stock back into recovery.¹⁴ Norway and the EU have jointly adopted a plan of recovery for the North Sea cod stock, including technical measures such as area closures that continue to protect adult and juvenile cod.¹⁵ This considered, the setting of the North Sea cod TAC below MSY does not come as a surprise.

The Parties noted that species such as hake, anglerfish and Norway Ppud are shared stocks broadly due to migratory patterns and should be managed jointly.¹⁶ Moving forward, the Parties agreed to preparations for the joint management of these stocks, utilising factual analysis of stock distributions by experts.¹⁷ Parties agreed to share catch information of the jointly managed species by jurisdiction on a monthly basis,¹⁸ and to inform each other of their respective fisheries regulations in the North Sea.¹⁹ In addition, the TA21 also included an agreement on monitoring, control and surveillance (MCS) for joint stocks, and a Working Group on MCS was established.²⁰ The terms of reference for the working group are annexed to the TA21 with its function and

10 See ‘EU, Norway and the United Kingdom conclude key fisheries arrangements on North Sea’ European Commission Press release 16 March (2021), <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1206> accessed 16 April 2021.

11 Agreed Record of Fisheries Consultations between the European Union, Norway and the United Kingdom for 2021 (n 9) para. 8.

12 *Ibid.*, para. 10.

13 *Ibid.*, para. 11.1.

14 OECD, ‘Country note on national fisheries management systems – Norway’ Online, <www.oecd.org/norway/34430920.pdf> accessed 13 April 2021.

15 *Ibid.*; Agreed Record of Fisheries Consultations between the European Union, Norway and the United Kingdom for 2021 (n 9) para. 12.7; described in Annex IV; see also (n 10).

16 Agreed Record of Fisheries Consultations between the European Union, Norway and the United Kingdom for 2021 (n 9) para. 18.

17 *Ibid.*

18 *Ibid.*, para. 19.

19 *Ibid.*, Annex I(II).

20 *Ibid.*, para. 20; Terms of reference for a working group on monitoring, control and surveillance is found in Annex II.I.

Table 4.1 2021 quotas for jointly managed shared stocks in the North Sea between Norway, the EU and UK. Table replicated from TAZ1 with extra column indicating whether TAC for that species was set at maximum sustainable yield added by authors.

<i>Species</i>	<i>ICES Area</i>	<i>% +/-</i>	<i>TAC</i>		<i>Set at MSY?</i>	<i>Sharing</i>						
			<i>Tonnes</i>	<i>%</i>		<i>Norway</i>		<i>EU</i>		<i>UK</i>		
			<i>Tonnes</i>	<i>%</i>		<i>%</i>	<i>Tonnes</i>	<i>%</i>	<i>Tonnes</i>	<i>%</i>	<i>Tonnes</i>	<i>%</i>
Cod	4	+10%	13,246	17.0	No	39.03	2,252	5,170	43.97	5,824		
Haddock	4	+20%	42,785	23.0	Yes	14.21	9,841	6,080	62.79	26,865		
Saithe	4, 3a	-25%	59,512	52.0	Yes	37.30	30,946	22,198	10.70	6,368		
Whiting	4	+19%	21,306	10.0	Yes	31.30	2,131	6,669	58.70	12,507		
Plaice	4	-2.3%	143,419	7.0	Yes	66.53	1,039	95,417	26.47	37,963		
North Sea Herring	4, 7d	-7.4%	356,357	29.0	Yes	52.56	103,344	187,301	18.44	65,712		

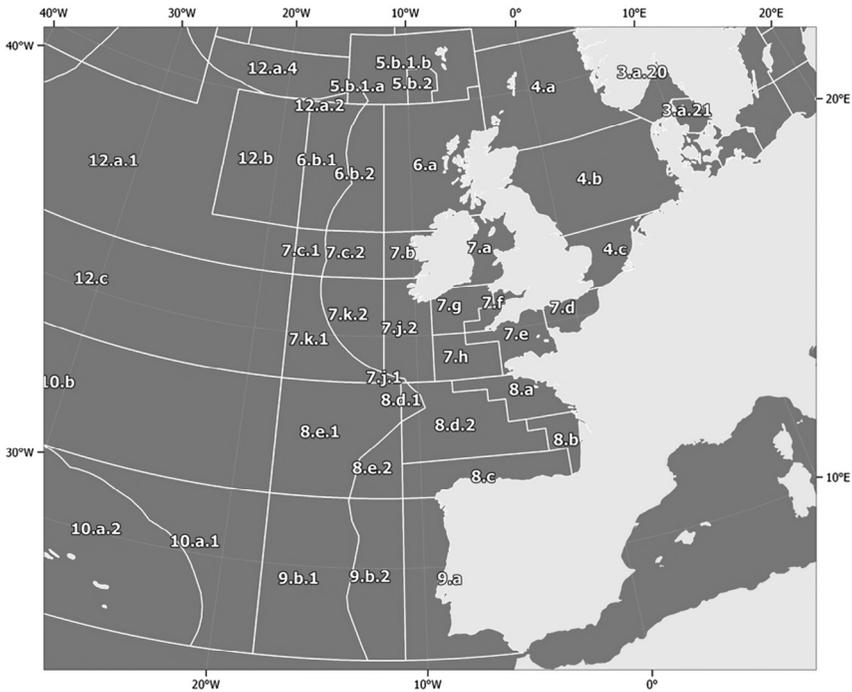


Figure 4.1 Detailed boundaries of ICES areas 27.4, 27.5, 27.6, 27.7, 27.8, 27.9.

Source: Figure Reproduced with permission from Food and Agriculture Organization of the United Nations website: www.fao.org/fishery/en/area/27 © FAO 1990–2022.

purpose being “to cooperate, exchange information and best practices related to control of joint stocks, in mutual interest in securing continued responsible fisheries and ensuring the long-term conservation and sustainable exploitation of the marine living resources for which the Parties are responsible”.²¹ A Working Group on Herring was also established with the objective, *inter alia*, “to recommend how to optimally and sustainably utilise the North Sea Autumn Spawning Herring in the North Sea and explore methods for TAC setting”.²²

Interestingly, the TA21 contains an inter-annual quota flexibility scheme. This allows each Party the option to “transfer to the following year unutilised quantities of up to 10% of the quota allocated to it. The quantity transferred shall be in addition to the quota allocated to the Party concerned in the following year. This quantity cannot be transferred further to the quotas for subsequent years.”²³ The scheme is applicable to quotas of herring, haddock,

21 *Ibid.*, Annex III.

22 *Ibid.*, Annex V.

23 *Ibid.*, Annex II.

saithe, plaice and whiting.²⁴ Parties may authorise vessels to fish up to 10% beyond the allocated quota, and all quantities fished beyond the quota allocated in one year shall be deducted from the following year's annual quota.²⁵ The scheme relies on complete catch statistics and quotas from previous years being made available to each Party “no later than 1 April”, and to ensure transparency, “more detailed information on catch utilisation shall be exchanged”.²⁶ In addition, the scheme is to be terminated if the spawning stock biomass for any of the above stocks falls below precautionary reference points, or is projected to fall below this point in the next two years, or if fishing mortality rises above the precautionary mortality level.²⁷ The inter-annual quota flexibility scheme is an interesting conclusion in the TA21, since the fisheries provisions of the TCA did not take the same approach and has been criticised for doing so.²⁸ Based on the quotas allocated in Table 4.1, fishing opportunities within EU Member States were allocated by Council Regulation (EU) 2021/703.²⁹

The Bilateral Agreement (UK–Norway)

As has already been mentioned in this chapter, the UK found itself as a new and independent player in the North-East Atlantic fisheries management game, and therefore needed to establish new fishing relationships with the EU and other coastal States, including Norway. The UK and Norway signed a framework agreement on fisheries on 30 September 2020, which entered into force on 1 January 2021.³⁰ The Agreement contains principles similar to the TCA, including the establishment of cooperation between the two parties to promote the long-term sustainability and optimum utilisation of marine living resources, use of the best scientific evidence available and application of the precautionary approach, etc.³¹ The area of application applies to waters “beyond and adjacent to the territorial sea of the Parties and in respect of which they are entitled to exercise sovereign rights or jurisdiction under Part V of UNCLOS”.³² Importantly, the Agreement grants reciprocal access to each Party's vessels for the

24 Ibid.

25 Ibid.

26 Ibid.

27 Ibid.

28 See A Serdy, Chapter 3, text at (n 52).

29 Council Regulation (EU) 2021/703 OJ L 146/1.

30 Framework Agreement on Fisheries between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway, London, 30 September 2020, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927151/CS_Norway_1.2020_UK_Norway_Framework_Agreement_on_Fisheries.pdf> accessed 20 April 2021.

31 Ibid., Art. 1; for further analysis on this Agreement, see R Barnes ‘Framework agreement on fisheries between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway’ *The International Journal of Marine and Coastal Law* 36 (2021) 155–164.

32 Framework Agreement (n 30), Art. 2.

purposes of fishing, though the extent and conditions of access is to be the subject of annual consultations between the UK and Norway.³³ The Parties are obliged to produce a written record of the annual consultations and are to determine any access by one Party to the other's waters and vice versa, and any transfer of quota between the Parties.³⁴ The Agreement also contains provisions on vessel licensing, compliance control and enforcement, consultation relating to questions relating to the interpretation and functioning of the Agreement's application, and in the case of a dispute in the application or interpretation of the agreement, amendments, relationship to other agreements, and relationship with the Law of the Sea.³⁵

The UK and Norway, in fulfilment of Article 4 of the Agreement, entered into consultations with the aim of reaching an agreement on fisheries for the year 2021. The consultations were initially projected to conclude by the beginning of 2021; however, the timing of the TCA negotiation delayed this, and Norway prioritised the negotiation of the TA21 ahead of any other bilateral fishing arrangements with the EU or UK.

In April 2021 the talks between Norway and the UK on fishing arrangements for 2021 collapsed. This resulted in loss of reciprocal access by Norwegian and UK vessels. This has consequences for both Parties, particularly with regard to the seasonality of certain fish stocks. Norway, whose vessels catch a majority of blue whiting in UK waters (note in the above Section the EU traded blue whiting to Norway) – however, by April 2021 the season for blue whiting had already passed (an important impacting factor caused by delay in negotiations). The situation is arguably worse for the UK, whose vessels fish throughout the year for cod.³⁶ UK vessels depend a great deal on access to Norwegian waters for cod stocks, and cod stocks moving further north due to warming seas increases this dependence on access to Norwegian waters.³⁷ Thus, the failure to achieve a fisheries arrangement was seen as a huge blow to distant water fishing fleets in the UK, particularly in Scotland, as well as Hull and Grimsby.³⁸ Norwegian vessels also fish for mackerel in UK waters, meaning UK vessels (especially in Scotland – see Chapter 1) may see some benefits in that respect. This followed the unilateral decision by Norway to increase its 2021 share of mackerel by 55% from 191,843 tonnes to 298,299 tonnes, and was characterised as “irresponsible” by Gerard van Balsfoort, President of the Pelagic Freezer-trawler Association.³⁹

33 Ibid., Art. 3.

34 Ibid., Art. 4.

35 Ibid., Arts. 5–10.

36 See Chapter 1.

37 See ICES *Advice on fishing opportunities, catch, and effort Greater North Sea Ecoregion*, 8 November 2019, <www.ices.dk/sites/pub/Publication%20Reports/Advice/2019/2019/cod.27.47d20.pdf> accessed 21 April 2021.

38 C Morris, ‘Brexit: Anger over government’s failure to get Norway fishing deal’ 30 April 2021, <www.bbc.com/news/uk-politics-56940914> accessed 21 April 2021.

39 ‘EU fishermen strongly rejects Norway’s unilateral mackerel quota grab’ *The Fishing Daily* 28 May 2021, <<https://thefishingdaily.com/featured-news/eu-fishermen-strongly-rejects-norways-unilateral-mackerel-quota-grab/>> accessed 21 April 2021; see also G van Balsfoort et al., Chapter 9 in this collection, text between (nn 3 and 4).

The Bilateral Agreements (EU–Norway)

Norway is not an EU Member State, and thus the CFP does not apply to it under EU law. Norway does, however, have access to EU waters as part of a bilateral fisheries agreement, which also allows access of EU and UK vessels to a certain number of fish stocks in Norwegian waters. The EU and Norway have been negotiating bilateral agreements for fisheries with the EU since 1972. When Norway did not join the European Economic Community as it was known at the time through the decision not to ratify the Treaty of Accession.⁴⁰ Since its neighbours the UK and Denmark *did* ratify the treaty, meaning fisheries competence was passed to the European Economic Community (EEC), this meant Norway had to undertake negotiations of TACs and quotas with the EEC. The UK's departure from the CFP, and the UK's fisheries agreement with Norway (discussed in the previous section) entering in to force meant that "the EU's fishing operations in Norwegian waters, and vice-versa [...] had been partially discontinued since 31 December 2020".⁴¹ The general political understanding of these specific negotiations is that Norway tends to concede catches to the EU to avoid the Union implementing punitive trade or market measures on fisheries imports from Norway.

As a result, in parallel to the TA21, the EU and Norway entered into consultations and agreed TACs and quota allocations for shared stocks in the North Sea and Skagerrak, as well as quota exchanges and reciprocal access. This resulted in three bilateral agreements signed between the Parties. The EU and Norway renewed their arrangement on reciprocal access for North Sea jointly managed stocks. Importantly, zonal attachment is the basis of quota allocations between the EU and Norway.⁴² In the interim or before the conclusion of the negotiations, Article 52 of Council Regulation (EU) 2021/92 provides for access of Norwegian-licensed vessels to fish in EU waters,⁴³ subject to the conditions of fishing operations by third countries.⁴⁴

The first bilateral arrangement concluded that the EU will have access to catch its allocated quota (29,667 tonnes) of Spring spawning herring in

40 Treaty of Accession of Denmark, Ireland and the United Kingdom [1972] OJ L 73, 27. 3 1972, 5–204; Decision of the Council of the European Communities of 22 January 1972 on the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community [1972] OJ L 73, 27.3 (1972) at p. 4; see Churchill, Chapter 2 in this collection, text between (nn 5 and 9).

41 EU, Norway and the United Kingdom conclude key fisheries arrangements on North Sea (n 10); Council Regulation (EU) 2021/92 (n 5) Annex V, Part B.

42 See R Hannesson, 'Zonal attachment of fish stocks and management cooperation' *Fisheries Research* 140 (2013) 149–154; J Hamre, 'A model of estimating biological attachment of fish stocks to exclusive economic zones' *International Council for the Exploration of the Sea C M 1993/D:43* (Copenhagen, 1993); see Churchill, Chapter 2 in this collection at (n 29).

43 Council Regulation (EU) 2021/92 (n 5), Art. 53.

44 Regulation (EU) 2017/2403 (n 5) Title III.

Norwegian waters.⁴⁵ Reciprocal access was also agreed in the case of blue whiting for the two Parties to catch up to 141,648 tonnes each.⁴⁶ Another key point of the first bilateral arrangement was quota exchange of stocks of major economic interest to both Parties. Notably, 10,274 tonnes of Arctic cod from the Norwegian fisheries zone were granted to the EU (Table 4.3) in exchange for 37,500 tonnes of blue whiting, and 12,000 tonnes of sprat (to be fished 1 July 2021 to 30 June 2022) for Norway.⁴⁷

Table 4.2 Zonal access for jointly managed stocks in the North Sea. Data from agreed record of conclusions of fisheries consultations between Norway and EU.⁴⁸

Species	ICES area	TAC	Norwegian quota	EU quota	Norwegian access in EU waters	EU access in Norwegian waters
		Tonnes	Tonnes	Tonnes	Tonnes	Tonnes
Cod	4	13,246	2,252	5,170	2,252	4,494
Haddock	4	42,785	9,841	6,080	9,841	4,523
Saithe	4, 3a	59,512	30,946	22,198	30,946	22,198
Whiting	4	21,306	2,131	6,669	2,131	4,518
Plaice	4	143,419	1,039	95,417	10,039	39,153
North Sea herring	4, 7d	356,357	103,344	187,301	3,000	3,000

Table 4.3 Quotas to the EU of Norwegian Exclusive Stocks. Data from agreed record of conclusions of fisheries consultations between Norway and EU.⁴⁹ For ICES areas, refer to Figure 4.2.

Species	ICES area	Quantity (Tonnes)
Arcto-Norwegian cod	1;2	10,274
Arcto-Norwegian haddock	1;2	500
Saithe	1;2	770
Greenland halibut (by-catches)	1;2	50
Others (by-catches)	1;2	100

45 Agreed Record of Fisheries Consultations between Norway and EU, 18 June 2021, <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/north-ern-agreements_en> accessed 19 April 2021, Table 5.

46 Ibid.

47 Ibid., Table 2.

48 Ibid.

49 Ibid.

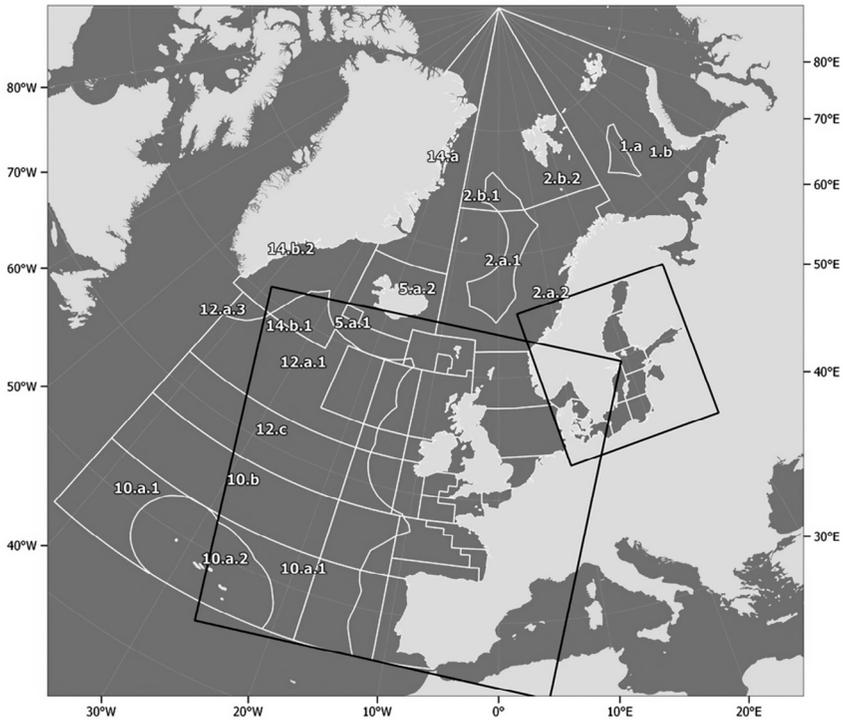


Figure 4.2 Boundaries of the Atlantic, North-East major fishing area and corresponding ICES fishing areas for statistical purposes.

Source: Figure reproduced with permission from Food and Agriculture Organization of the United Nations website: www.fao.org/fishery/en/area/27 © FAO 1990–2021.

The second bilateral arrangement relates to TACs set and quotas shared for Skagerrak and Kattegat straits.⁵⁰ TACs were set and quotas allocated for stocks of cod, haddock, whiting, plaice, pandalus, herring and sprat.⁵¹ The Parties “agreed that the negotiated quota arrangements constitute an ad-hoc solution and shall be without prejudice to future fisheries arrangements between the Parties”.⁵² Norway stipulated that this arrangement was “greatly imbalanced in Norway’s disfavour” and will invite the EU for consultations in 2021 with the aim of “establishing a sharing arrangement closer to zonal attachment of the main species”.⁵³

50 Agreed record of conclusion of fisheries consultations between Norway and the European Union on the regulation of fisheries in Skagerrak and Kattegat for 2021, 16 March 2021, <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/northern-agreements_en> accessed 20 April 2021.

51 *Ibid.*, Annex I.

52 *Ibid.*, para. 20.1.

53 *Ibid.*, para. 20.2.

The third bilateral arrangement was negotiated by the EU on behalf of Sweden for fishing activity in the Norwegian EEZ south of 62° North for 2021 (within the framework of the fisheries agreement between Norway and Sweden of 9 December 1976).⁵⁴ Quotas were allocated to Sweden in the Norwegian EEZ and included cod, saithe, pollack, herring and mackerel.⁵⁵

The Bilateral Agreement (UK–EU)

Article 498 of the TCA indicates that Parties are to enter into annual consultations for setting TACs for the 76 stocks listed in Annex 35.⁵⁶ Due to delays, however the UK and EU were not able to achieve an arrangement until June 2021. In the interim, before the conclusion of the negotiations, Article 53 of Council Regulation (EU) 2021/92 provides for access of UK-licensed vessels to fish in EU waters,⁵⁷ subject to the conditions of fishing operations by third countries.⁵⁸ Further, since the TCA came into force prior to a fisheries arrangement being agreed between the UK and EU, the provisional TACs for shared stocks under Article 499 applied. Article 499(2) aims to ensure that the provisional TACs ensure continued sustainable EU fishing activities until the EU–UK consultations pursuant to Article 498 are concluded and implemented.⁵⁹

The negotiations continued in this collection between January and May 2021, with five rounds of negotiations taking place, concluding with a settlement at the beginning of June 2021. Prior to this, EU Regulations (EU) 2021/91 and (EU) 2021/92 were amended “in order to extend provisional unilateral Union TACs in order to create legal certainty for the Union operators and to ensure the continuation of sustainable fishing activities until those consultations are concluded in compliance with the Union legal framework and the Trade and Cooperation Agreement”.⁶⁰ This approach, based on Article 499(2) of the TCA, which indicates that if a stocks listed in Annex 35 of the TCA or in Tables A and B of Annex 36 of the TCA remains without a TAC, each party

54 Agreement on fisheries between the Kingdom of Sweden and the Kingdom of Norway, 9 December 1976, <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/northern-agreements_en> accessed 20 April 2021.

55 Protocol of fisheries consultations between Norway and the European Union, on behalf of Sweden for 2021, 16 March 2021, <https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/northern-agreements_en> accessed 20 April 2021.

56 Trade and Cooperation Agreement Between the European Union and the European Atomic Energy Community, of the One Part and the United Kingdom of Great Britain and Northern Ireland, of the Other Part (TCA), OJ L 444, 31 December 2020, pp.14–1462, Art. 498, Annex 35. See A Serdy, Chapter 3 in this collection.

57 Council Regulation (EU) 2021/92, OJ L 3131–192, Art. 53.

58 Regulation (EU) 2017/2403 (n 5), Title III.

59 TCA (n 56), Art. 499(2); Council Regulation (EU) 2021/703 (n 29).

60 Council Regulation (EU) 2021/703 *ibid*.

shall set a provisional TAC that corresponds to ICES advice.⁶¹ Provisional TACs were extended until 31 July 2021.⁶²

TACs were agreed for 75/76 of the stocks listed in TCA Annex 35, and are listed in Annex I of the arrangement, and so will not be reproduced here.⁶³ Similar to the arrangements discussed above, the TACs are based on scientific advice from ICES and apply until the end of 2021; while some deep-sea fish stocks apply until 2022. Indeed, the outcome of these negotiations is unique, considering they will apply for less than 6 months of the year in most cases. Similar also to the arrangements analysed above, the arrangement covers quota transfers and inter-annual quota flexibility, technical measures and non-quota stocks. Several factors were important according to the National Federation of Fishermen's Organisations.⁶⁴ These were the terms of the TCA: the UK's political position on the "right to regulatory autonomy" as an independent coastal state; the EU's political position to maintain and limit divergence from the CFP; as well as the challenges and limitations presented by the Covid-19 pandemic. The UK had already set TACs for 2021 at the beginning of May and set provisional quotas for the UK fleets. These were formally adopted into the agreement without any significant changes. However, changes in area flexibility (an EU fisheries management practice that aims to guarantee full use of coastal fishing opportunities) between Area 6a (West of Scotland) and Area 4 (North Sea) were made. EU Member States are obliged, by way of Article 7 of amended Regulation (EU) 2021/92, to make use of area flexibilities "in a way which ensures that the overall level of Union catches in 2021 does not exceed the Union share of the maximum provisional TAC level which the Union may set under the [TCA]".⁶⁵ The Specialised Committee on Fisheries was charged with discussion of a number of issues, including prohibited species, management of discards, and multi-year strategies on non-quota stocks.⁶⁶ Moving forward, the parties agreed that in line with TCA Article 498(2), they should exchange their views early on priorities for 2022 as soon as ICES advice on the level of TACs for the Annex 35 species is available.⁶⁷ Negotiations will convene for 2022 on 10 December 2021.⁶⁸

61 TCA (n 56), Art. 499(2).

62 Council Regulation (EU) 2021/703 (n 29).

63 Written record of fisheries consultations between the United Kingdom and the European Union for 2021, <https://ec.europa.eu/oceans-and-fisheries/news/sustainable-fisheries-commission-signs-first-ever-annual-agreement-fishing-united-kingdom-2021_en> accessed 1 July 2021.

64 The National Federation of Fishermen's Organisations, 'UK-EU Fisheries Agreement for 2021', <www.nffo.org.uk/> accessed 22 April 2021.

65 Council Regulation (EU) 2021/703 (n 29), Art. 2, amending Regulation (EU) 2021/92, Article 7.

66 Written record (n 63) at 11.

67 Ibid.

68 Ibid.

Conclusions

The unpredictability of the fisheries management regime in the North-East Atlantic presents a significant challenge in a post-Brexit world. The UK has found itself having to negotiate fishing arrangements in trilateral and bilateral format, and as we have seen, there has been mixed success. The UK–EU–Norway fishing arrangement, while a success, came too late for some species. The failure of the UK and Norway to reach a timely fishing arrangement in 2021 has caused economic harm to the fishing industry, particularly in Scotland, Hull and Grimsby. Thus, it is important to remember that political failures have huge knock-on effects to livelihoods. While the EU–UK finally reached an arrangement by mid-2021, with TACs set that by and large will only apply to most stocks until the end of 2021, there is hope that in this peculiar year, negotiations from 2022 onwards may be smoother sailing.