



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

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Subject: Reply to NWWAC questions on control arrangements with the UK after Brexit

Dear Mr Brouckaert,

Thank you for your letter of 22nd March 2021.

You will find below answers to the questions you have put to us on control arrangements with the UK after Brexit.

1. In the event of a discrepancy between UK and EU control measures, what measures apply to EU vessels fishing in UK waters and how will a level playing field between vessels be ensured? In the event that both parties don't agree on TACs, would there still be a uniform control system?

Since the UK has become a third country, it decides on any measures applicable to its waters (Article 496(1) of the Trade and Cooperation Agreement¹ - TCA), although the measures applicable to EU vessels in UK waters must also apply to UK vessels (Article 496(2) TCA), except for port state control measures in place under the Port State Measures Agreement (PSMA), the North East Atlantic Fisheries Commission (NEAFC) Scheme of Control and Enforcement, the Northwest Atlantic Fisheries Organisation (NAFO) Conservation and Enforcement Measures, and Recommendation 18-09 by the International Commission for the Conservation of Atlantic Tunas (ICCAT) on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

¹ Council Decision (EU) 2021/689 of 29 April on the conclusion, on behalf of the Union, of the Trade and Cooperation agreement between the European Union and European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information.

The EU Control Regulation² applies without prejudice to special provisions contained in fisheries agreements with third countries.

The Specialised Committee on Fisheries (SCF) under Article 508 TCA may consider measures to ensure compliance with the applicable rules, including joint control, monitoring and surveillance programmes and the exchange of data notably to facilitate monitoring uptake of fishing opportunities and control and enforcement.

The framework on control in UK waters in terms of reporting requirements and control measures has remained the same and subject to the rules under Article 496 TCA for the period in 2021 in which the Parties did not reach an agreement on TACs and were applying provisional ones.

2. What role the Fisheries Committee will have in terms of control? If there are issues on control between the parties, are they going to be resolved within the Fisheries Committee?

Under Article 508 TCA, the Specialised Committee on Fisheries may in particular:

(a) provide a forum for discussion and cooperation in relation to sustainable fisheries management; [...]

(e) consider approaches to the collection of data for science and fisheries management purposes, the sharing of such data (including information relevant to monitoring, controlling and enforcing compliance); [...]

(f) consider measures to ensure compliance with the applicable rules, including joint control, monitoring and surveillance programmes and the exchange of data to facilitate monitoring uptake of fishing opportunities and control and enforcement; [...]

(i) consider matters relating to the designation of ports for landings, including the facilitation of the timely notification by the Parties of such designations and of any changes to those designations;

Therefore, it is expected to be an important forum to discuss issues on control.

3. It is not clear if there is currently any margin of tolerance in the catch certificate that allows landing a larger quantity than the declared one or some other alternative that allows unloading the difference between the estimated and actual weight. Could DG MARE try to find a solution to this problem that will affect both parties (EU and UK), allowing, for example, a maximum variation of 10% between what is estimated and previously declared with what is actually landed?

There is no margin of tolerance under the IUU Regulation³. However, Article 7(3) provides a derogation for landing the fish pending verifications or final information/documentation.

² Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

³ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999.

In case the verified quantity upon landing exceeds the weight mentioned in the catch certificate, the operator has to request an additional catch certificate from the UK for the exceeding quantity. However, it is important to notice that the initial catch certificate cannot be amended. Either the UK authority has to cancel it and issue a new one with the correct quantities, or it can validate an additional catch certificate if the exceeding quantities were obtained legally. In any case, because there is no margin of tolerance in the IUU Regulation, the full quantity landed needs to be covered by the catch certificate(s).

4. What is the scope of the licenses that have been granted to the British within 6-12 miles? Is this restricted to 6-12 miles from the MS in which the UK history was produced? Which is the method to prove the history of vessels not fitted with VMS?

During the adjustment period established by Annex 38 of the TCA, each Party shall grant to vessels of the other Party full access for qualifying vessels to the zone in the waters of the Parties between six and twelve nautical miles from the baselines in ICES divisions 4c and 7d-g to the extent that each Party's qualifying vessels had access to that zone on 31 December 2020 (Article 2(1)(c)).

Access limitations under Article 5(2) of Regulation (EU) No 1380/2013 and applicable on 31 December 2020 are taken into account. Authorisations to UK vessels to fish in EU waters are granted in accordance with Regulation (EU) No 2017/2403 on the sustainable management of external fishing fleets (the SMEFF Regulation)⁴. The list of authorisations is publicly accessible.

With regard to the track-record of vessels, discussions with the UK authorities to establish a common methodology started in early January. However, to date an overall agreement could not be reached, notably for smaller vessels not legally required to be equipped with VMS. Solutions to verify track record for vessels without VMS is currently under discussion.

5. In terms of widely distributed stocks, is there an ambition to have a control agreement between UK and EU?

The European Union will continue to seek cooperation with the UK on control measures for widely distributed stocks to ensure compliance and level playing field.

6. In relation to infringements in UK waters, what implications does that have for the licences issued by the UK?

In granting access under Article 500 of the TCA, a Party may take into account compliance of individual or groups of vessels with the applicable rules in its waters during the preceding year, and measures taken by the other Party during the preceding year pursuant to Article 497(2), which requires each Party to take all necessary measures to ensure compliance by its vessels with the rules applicable to those vessels in the other Party's waters, including authorisation or licence conditions. This topic may be discussed in the Specialised Committee on Fisheries under Article 508 of the TCA.

⁴ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008.

In the bilateral fisheries relation, the compliance by vessels of each Party with the rules applicable to those vessels when in the other Party's waters is subject to the joint review exercise of the Heading on fisheries of the TCA (Article 510(4)(e) TCA).

7. If a small vessel has a licence from the UK and from its national authority but no physical copy on board, is it liable to be arrested?

According to the UK licence conditions⁵, a copy of the licence must be carried on board of the vessel and produced to a British Sea Fishery Officer or Marine Enforcement Officer on demand. This condition, however, may be fulfilled by production of a copy in electronic format (point 1.6).

8. Is there going to be a joint communication from EU and UK in terms of questions & answers on control issues in respective waters? Such document would be very useful.

We are currently at an early stage of the implementation of the TCA. Many of the practical issues are still being explored or uncovered and clarified. For the benefit of predictability for the operators and the smooth implementation of the TCA, it will be important to ensure transparency on these practicalities. We are grateful for your suggestion in that regard.

9. If there are divergences between the two parties on the Landing Obligation, for example on the de minimis exemptions, how is that going to be enforced in respective waters?

Without prejudice to the main responsibility of the flag State, each coastal Party needs to ensure compliance with the landing obligation provisions applicable in its waters. Where the exemptions are different in the waters of each Party this will need to be considered first by operators to comply with the applicable rules, and by the flag and coastal authorities to monitor that compliance. The enforcement of cases of non-compliance can be carried out by the coastal Party, without prejudice to the possibility to transfer the proceedings to the flag State or to cases where both the detection and enforcement is carried out by the flag State. Transfer of proceedings and other elements of the enforcement may be discussed within the remit of the SCF.

10. Concerning seabass, it seems that the UK has granted authorisations to all trawlers and seiners without having them to demonstrate track record as currently required by law. The UK motivation behind this is that the other EU MS haven't been enforcing this law either. Could DG MARE provide clarification on this?

The UK grants authorisations to EU vessels via the UKSIA (UK Single Issuing Authority) in the MMO (Marine Management Organisation).

Access to waters is detailed in Article 500 of the TCA. The Commission has not been notified by the UK authorities of their motivation to grant or deny access to EU vessels concerning seabass.

The analysis of track record to authorise EU vessels to fish for seabass is an issue for Member States, as is the enforcement of the rules of the Common Fisheries Policy.

⁵ <https://www.gov.uk/guidance/united-kingdom-single-issuing-authority-uksia>.

11. Could the Commission please advise how the UK and the EU will ensure that they are both properly enforcing agreed fisheries laws and, where it appears a law is not being upheld, how the issue will be resolved?

Compliance by vessels of each Party with the rules applicable to those vessels when in the other Party's waters is subject to the joint review exercise of the Heading on fisheries of the TCA (Article 510(4)(e) TCA). Compensatory measures are detailed in Article 501 in relation to the changes and access to waters. The remedial measures and dispute resolution process is detailed in Article 506

12. Concerning seabass, EU and UK laws currently require that demersal trawlers and seiners should only have a seabass unavoidable bycatch allowance if they have a qualifying track record. We should be grateful if the EU Commission would confirm that both UK and EU member states are applying the law correctly.

The Member States shall control activities of fishing vessels within the waters under their sovereignty or jurisdiction. The Commission is currently not aware of any cases relating to non-compliances on seabass provisions in UK waters by EU vessels. The EU Commission works closely with Member State authorities and EFCA on the application of the EU fisheries law. Should the Commission become aware of breaches of the CFP, it would take appropriate measures to ensure that such breaches are addressed.

13. There are concerns about the rapid increase in fly shooting in the Channel and the impact this is having on other fishermen. The UK Government is now aware of this issue and is seeking information on the fishery. How will the EU and the UK liaise at an early stage on emerging issues like this that could have a significant impact on the status quo in a shared fishery?

The Commission has recently been informed that there may be issues with fly shooting vessels in the Channel and have raised the matter with concerned Member States.

The Specialised Committee on Fisheries, and possible working groups thereunder, provide a forum for the EU and the UK to discuss control matters of this nature.

14. There are concerns about the cod closure in the Irish Sea and particularly on the possibility that the UK may not participate to the same degree in the closure, using different derogations. Having different interpretations on the closure would certainly create difficulties for the vessels. Could the Commission please clarify the issue, also with regard to other closures shared with the UK, and how it has been addressed in the negotiations?

Under the terms of the TCA Article 494 Objectives and Principles, parties shall cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term.

With regard to the question in general on closed and fishing restricted areas, in particular those subject to Article 50 of the Control Regulation, the Commission is in discussion with Member States regarding the identification of such areas within EU waters. The UK has been asked about a similar list.

I am looking forward to our continued fruitful cooperation. Should you have any further questions on this reply, please contact Ms Pascale COLSON, coordinator of the Advisory Councils (Pascale.COLSON@ec.europa.eu; +32.2.295.62.73), who will forward it to relevant colleagues.

Yours sincerely,

Charlina VITCHEVA