



## **DG MARE**

### **INTER-AC MEETING – BREXIT - 22.02.2021**

#### **Minutes**

Mr. **Erik Lindebo** (DG MARE C5) welcomed participants to this meeting, whose aims were to present to the Advisory Councils (ACs) the main elements of the EU-UK Trade and Cooperation Agreement (TCA) in relation to fisheries and to answer the questions they had sent in written beforehand.

#### **I. Presentation of the TCA**

Mr. **Joost Paardekooper** (DG MARE C5) walked participants through the main features of the TCA, which entered into force on 1<sup>st</sup> January 2021 and whose heading 5 is entirely dedicated to fisheries. Heading five comprises four chapters:

- Chapter 1 sets the initial provisions. It reaffirms the sovereign rights of the UK and the EU as coastal states and sets the main objectives of the agreement with regards to fisheries; that of environmental, economic and social sustainability. The TCA includes a number of commitments and principles similar to the CFP, including the MSY objective, the precautionary approach, the non-discrimination principle or the requirement to use best available scientific advice.
- Chapter 2 sets out rules applicable to the conservation and sustainable exploitation of fisheries. A first set a rules on fisheries management provides that Parties can take measures only in the pursuit of the objectives and principles laid down in chapter 1, based on best available scientific advice, and provided they are applied equally to all vessels concerned. Both Parties are required to timely notify the adoption of new measures, which should allow for a period of adaptation and discussion in the Specialised Committee on Fisheries. Parties must communicate the lists of vessels and the other party must issues corresponding licences. Both Parties are expected to take all necessary measures to ensure compliance of the vessels.
- Chapter 3 sets out rules on access to waters and resources. It sets a clear calendar for TAC setting (by 10 December each year) and provides for the allocation of quotas shares as agreed in Annex 1. Specific issues such as transfers and prohibited species can be covered by consultations while provisional TACs can be decided where no fixed TACs are agreed by 20 December. The TCA provides for an adjustment period running until 30 June 2026 (set out in Annex FISH.4), during which both Parties must grants vessels of the other Party full access to their waters. From 1 July 2026, Parties will grant access to waters where TACs are agreed in relevant ICES subareas and on the basis of annual consultations aimed at ensuring balance between interests of the Parties. The TCA allows Parties to take compensatory measures in case of unilateral change in access regime, and provides for specific rules and conditions on access to waters of Guernsey, Jersey and Isle of Man.

- Chapter 4 sets arrangements on the governance of the agreement. It provides for remedial measures and a dispute resolution mechanism to address failure to comply with the rules of the TCA. It includes provisions on data sharing to ensure effective implementation of the agreement and defines the role and duties of the Specialised Committee on Fisheries (SCF), a forum for discussion and cooperation empowered to issue binding joint decisions on several matters of fisheries management (excluding TAC setting). Chapter 4 also includes termination provisions and a review clause, and acknowledges that this agreement is without prejudice to existing agreements.

Heading five of the TCA comes with four annexes. Annex FISH.1 provides sharing arrangements for TACs jointly managed between by the EU and the UK; Annex FISH.2 provides sharing arrangements for a number of other stocks including EU-UK-NO stocks and those dealt within RFMOs; Annex FISH.3 addresses non-shared TACs related to the joint management; Annex FISH.4 lays down the protocol for access to waters.

Mr. Paardekooper welcomed the TCA as a comprehensive agreement setting strong objectives and principles aligned with those of the CFP, allowing for stable quotas sharing arrangements and certainty over access to water. Heading five fully contributes to the level-playing field that is at the core of the TCA and conduces to close cooperation and convergence between both Parties. The Commission has already worked in this basis to issue licences for 2021 and is currently consulting the UK on the TACs for 2021 and related measures.

## II. Q&A

### Markets

#### **1. When exporting to the UK, how was the impact of rules of origin on qualified processing taken in account?**

The TCA contains the EU standard rules of origin for fishery products: they have to be wholly obtained meaning caught by the EU or UK vessels. Processing of fish does not change anything in relation to their origin. These are the standard EU rules that the EU MS and UK used to apply in other free trade agreements and in this respect the market access for fisheries between the EU and UK does not really change. The UK is simply no longer part of the customs union hence the necessity to comply with the rules of origin. Bilateral derogations apply in relation to product-specific rules in Chapter 16 for fish sticks and surimi preparations (the input material can be non originating), and in relation to specific quotas for tunas set in Annex II.

#### **2. Are there any updates in the situation of the UK Overseas Territories (e.g. Falklands) and the trade relations (i.e. customs and tariffs fees) with the EU in terms of seafood products?**

The UK withdrawal agreement made clear that UK Overseas Countries and Territories (UK OCTs) are no longer associated with the EU following Brexit. Hence, they are no longer covered by the EU OCT association decision and trade preferences thereof. The Commission is aware of the potential harmful

effects on the processing industry sourcing fish from UK OCTs and is currently considering measures to solve the issue, including the possible amendment of the ATQ Regulation.

Further stressing the need to find solutions to the high tariffs faced by the Spanish industry on the import of fish sourced in the UK OTCs (e.g. squid, hake), Mr. Alexandre Rodriguez (LDAC) supported the option of ATQs and stated LDAC's availability to provide relevant advice to the Commission.

### **3. Are any additional documents required as referring to IUU such as catch certificates, processing statements or storage documents?**

Yes, to export fishery products to the UK that has been previously imported into the EU they should be accompanied by:

- A Catch Certificate covering the product (the UK confirmed that the Catch Certificate issued for import into the EU can be used for exports to the UK, without the need to request a new one to the flag state, considering that the data contained in the UK Catch Certificate and the EU Catch Certificate are the same);
- The processing statement in case of processed products (same as the catch certificate, the document provided to EU inspectors upon importations can be used for exportation to the UK if the product is not further processed in the MS);
- Storage document validated by the MS of export providing evidence that the product has not been manipulated (further than unloading, reloading or subject to any operation intended to preserve the product in good condition). This requirement responds to the requirement established in Art 14.1 of the UK IUU Regulation (which is a copy of Art 14.1 of the EU IUU Regulation);
- In the case the fishery product is further processed in the Member State before being exported to the UK, another processing statement containing the details of this second processing should be issued by the MS;
- Re-export Certificate: as established in Article 21 and Annex III of the EU IUU Regulation.

*Are copies enough or are new originals needed?*

In the case that all the fishery products imported under a catch certificate are re-exported, the competent authority of the Member State should fulfil the re-export section of the original catch certificate and this original goes with the products. If only part of the imported products are re-exported, a copy of the catch certificate can be used.

*If originals are needed, what authority is responsible for, when the goods are in a warehouse in the Member State?*

As in the EU IUU Regulation, the UK IUU Regulation does not specify which authority should validate the storage document (Art 14.1). It is up to the MS to decide if this is done by customs, fisheries authority or any other that can provide the guarantees that the product has not been manipulated.

### **4. Will there be efforts to ensure standardisation and harmonization of rules on product labelling?**

Official indications from the UK government on labelling and marketing standards applicable to exports of FAPs for human consumption to the UK from 2021 are in-line with EU legislation, be it implicitly

(requirements on labelling, including commercial designations, mirror EU legislation) or explicitly (EU legislation still cited) on marketing standards. The Commission can expect that it will change, at least to remove any explicit reference to the EU legislation –but has no information yet.

The Commission is revising the marketing standards under the CMO, with possible changes related to consumer information and labelling. The impact assessment is ongoing and the proposal is currently planned for 2021.

## **International aspects**

### **5. Will the EU develop a specific strategy or dialogue with the UK to discuss joint proposals in the field of International Ocean Governance? (LDAC)**

There are no plans to set up a specific dialogue or strategy with the UK for the moment. Since the UK's withdrawal, there have been contacts on respective positions in multilateral fora, for example in the context of BBNJ or FAO, but nothing structural.

The Commission is working horizontally on internal terms of engagement with the UK, considering that there is no framework in place between the UK and the EU to develop and coordinate joint responses to foreign policy challenges. However, several DGs note an ad hoc outreach by the UK on external issues not covered by the TCA.

### **6. Will this the preparation of Annual Meetings of RFMOs be done as a result of a pre-defined collaboration or rather dealt with on a case by case basis (e.g. NAFO, ICCAT, IOTC)?**

It is DG MARE's policy to seek cooperation with other key contracting parties in RFMOs ahead of Annual Meetings and we will continue to do so when we identify such cooperation can bring added-value to the RFMOs works.

For the specific case of the UK, Article 8.8 of the TCA ("Trade and sustainable management of marine biological resources and aquaculture") shows that the EU and the UK share the same objectives in conserving and sustainably managing marine biological resources and ecosystems.

According to the TCA, "the Parties shall work together on conservation and trade-related aspects of fishery and aquaculture policies and measures, including in the WTO, RFMOs and other multilateral fora, as appropriate, with the aim of promoting sustainable fishing and aquaculture practices and trade in fish products from sustainably managed fisheries and aquaculture operations".

In that spirit, DG MARE could work together with the UK in preparation and during the RFMOs Annual Meetings where they are both members, on a case-by-case basis, taking into account the objectives the EU wants to achieve during the annual meetings.

## **Implementation of the TCA**

- 7. Can the Commission provide more detail on future procedures to ensure a level playing field between UK and EU in relation to fisheries management measures, including technical measures? In other words, that these will be science-based, non-discriminatory and proportionate to the objectives pursued?**

The TCA indicates that both Parties have a regulatory autonomy. However, measures taken by a Party shall apply to all vessels operating in the waters, thus avoiding discriminatory treatment. Chapter 2 of the agreement seeks a level playing field, providing that measures taken by Parties must respect a number of principles and commitments set out in the agreement (including the sustainability objective, proportionality and use of best available scientific advice). After notification of a measure, discussions should take place between Parties to seek convergence, but unilateral measures remain in place until an agreement is found. The Commission is currently consulting with the UK on setting TACs for 2021 but also on other related measures, including remedial measures. If a level playing field cannot be reached and if measures falling short to comply with the above-mentioned criteria are taken, the EU is entitled to take immediate and proportionate remedial actions.

- 8. Is it possible to get a definitive process and timeline for how the two bilaterals, the trilaterals, the December Council, and the Coastal States negotiations, will work alongside each other and what is the hierarchy?**

The Commission has not yet agreed on a timeline for the adoption of fishing opportunities in the North-East Atlantic, as this year comes with a lot of uncertainty and adjustment needs with regard to the involvement of all parties in the process. The Commission is currently consulting the UK and Norway on setting TACs for 2021. In the future, the aim is to agree on fishing opportunities with the UK as one of the main partners in the North-East Atlantic, taking into account other negotiations with Coastal States and within NEAFC. Two important dates by when the Commission will have to achieve progress are end of March (date of expiration for provisional quotas) and the annual meeting of the NEAFC.

- 9. Why is atlanto-scandian herring not including in Annex FISH2, under Coastal States stocks?**

The atlanto-scandian herring does not appear in EU waters anymore, and therefore is not a stock where the EU can be considered a coastal state (but a simple fishing party). It thus falls under a different category.

- 10. Does the Commission foresee fast a track mechanism for quota swaps between the UK and the EU North Sea Member States? What are the obstacles and solutions?**

The UK delegation has not shown an interest in in-year quota swaps so far, but rather in upfront quotas transfers like the EU has with Norway. The Commission is thinking about how it can overcome the hurdles of relative stability, looking at the possibility to have quota swaps with the UK in the framework of RMFOs. This could entail many practical challenges and potential quotas losses. The Commission is currently looking to the practicalities and hopes to come back to the Member States on this matter before the consultations with the UK are finalised.

- 11. Which method is/will be used to calculate the “ceiling” (which interpretation is adopted between appendix Fish.4 “non quota stocks at a level that equates to the average tonnage fished” and article FISH 8.4.(b) “At level that at least equates to the average tonnage fished...”) ? Which method will be used to identify stocks and how are stocks whose activity developed after 2016 taken into account?**

The Commission and Member States are currently working together to see how these ceilings are to be calculated for the reference period, and will continue to engage with the UK on this legal commitment. For the adjustment period the provision set out in the Annex FISH.4 prevails. We are not yet in a position to assess what impact this may have on current fishing patterns.

- 12. How does the Commission intend to implement what is referenced in the TCA in relation to non-quota species so that CFP goals are met in time for these stocks as well?**

The development of long-term management strategies for non-quota species will be discussed in the Specialised Committee on Fisheries. This will ensure non-quota species also have a long-term horizon for sustainability and will contribute to CFP objectives.

- 13. If new management strategies or options need to be agreed, as seems to be the case for non-quota species, what process for this is envisaged by the Commission? How would it do justice to the agreed policy processes in the EU and how would stakeholder consultation feature?**

The development of long-term management strategies within the SCF will be done in consultation with the Advisory Councils and STECF.

- 14. In light of the transfers of the shares in the annex 3 of the TCA (“sister TACs”) to the UK, what allowances otherwise was done in relation to those transfers?**

These TACs are exclusive EU TACs but are biologically linked to TACs where there is a joint management responsibility (e.g. Northern hake). Changes in fishing opportunities (cuts or increases) are applied evenly to all of these sister TACs, meaning that there is complete consistency/relative stability between these TACs.

- 15. How might UK management of seabass diverge from EU management and what problems would this cause?**

Divergence of management would cause problems. The Commission is currently discussing with the UK on the joint management for seabass fisheries, trying to secure a rollover of the existing EU management approach with a view to ensuring convergence.

**16. What is the problem with the UK's suggestion that the setting of TACs can be separated from other considerations?**

Issues identified relate to special conditions (on which the UK has diverging views) and to the method for calculating TAC top downs. The Commission is discussing extensively with the UK to seek convergence on the calculation method for TAC top down, as well as to close the gap between the EU and the UK landing obligation and technical measures regimes (especially in the Celtic Sea where the latter lacks convergence).

**17. Modification of the calculation of the baselines by the British**

The Commission invited the NWWAC to liaise in written with DG MARE to provide more explanation on the specific details involved.

**Licensing**

**18. What is the scope of the licences that the EU has granted to the UK within 6-12 miles? Is it restricted to 6-12 miles of the Member State in which the British precedence was created? (knowing that UK issues the authorisations for all its 6-12 miles vessels regardless of the precedence)**

At present, one single UK vessel was issued an authorisation to fish in the EU's territorial waters. Access to the territorial waters of the respective Parties to the TCA is governed by annex FISH.4 art. 2 which stipulates that *"each Party shall grant to vessels of the other Party full access to its waters to fish ... 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"* Access to territorial waters is therefore limited to the zones identified in the TCA.

**19. What is the reason for the provisional status of licences issues for the EEZ until 11/02//2021? Given the 6-meter vessels obtained a licence until 12/31/21, it is rather surprising that it is not the case for vessels of 15-16 meters.**

At present, only 7 vessels continue to operate under a provisional licence, mainly due to the fact that we were unable to provide accurate vessel owner data. The Commission is working closely with the MS concerned and the UK to resolve these issues.

**20. As the provisional licences are currently dated until 31 December 2021, what is going to happen beyond that date?**

There are no provisional licences which run until 31 December 2021. It is expected that Full licences will be issued for the next year in the context of the Annual Consultations covering the 2022 Fishing year.

## **Designation of ports**

**21. NWWAC would like to have issues with EU 1005/2008 and EU 1006/2008 in relation to what we assume are unintended consequences as a result of Brexit raised at this forum. Several of our members were forced to engage in long and dangerous voyages in small vessels in order to land in the designated ports. The solution implemented is not satisfactory as there are still unreasonable and unnecessary demands, one of which envisages vessels on the UK register, owned by Irish citizens (EU) unable to remain in their home ports. We assume that it was not envisaged that the UK would become a third country at that time. Vessels of under 12 meters are now hostage to what was designed for much larger vessels from what were then far away third countries. EU citizens are bearing the brunt of this and we feel that these regulations need to be looked at urgently to become fit for purpose.**

It is not the Commission's competence to negotiate the number or location of designated ports. In all that concerns Regulation EU No 1005/2008 (IUU Regulation), the same exact rules that the EU applies to any third country are now applicable to UK and vice-versa.

## **Specialised Committee of Fisheries**

**22. What will be the role, composition, functioning of the Specialised Committee on Fisheries? What is the role envisaged for stakeholders and Advisory Councils in the Committee? How will it interact with the umbrella partnership Council/Committee under which it sits?**

The Specialised Committee on Fisheries is not formally set up yet, and hence no meeting schedule is available. The Committee will be co-chaired by the two Parties, each having to appoint a lead and create delegations which consist of the team supporting the co-chairs. Member States can be observers to the meetings and subcommittees can be created to address specific topics.

The SCF is a discussion platform and a decision-making forum at the same time. Once agreed, decisions taken become binding to both Parties. Within the EU, the Council will adopt a formal position on what the Commission can put forward in the SCF.

The SCF is one of the several specialised committees set up under the TCA, in which the Commission will represent the EU. Though no formal role is foreseen for other stakeholders, the Commission will reflect on how to involve them in the process, including on the decision on the composition of subcommittees.

The Partnership Council and Specialised Committee of Fisheries are responsible for different elements of the fisheries heading of the TCA (e.g. review of the annexes goes to the Partnership Council).

## **Future of the ACs**

**23. Does the Commission have in mind any time plan or consultation to the ACs to review and assess the impact of Brexit in the composition, structure and functioning of the ACs?**

No particular plans but evidently this will be part of the overall reflections we have in terms of the 2022 report on the CFP. In terms of the immediate impact, the necessary arrangements were already made to

move the NSAC from the UK. NSAC established its new seat in NL, and the Commission signed a new contract with them.

For what concerns the role of the AC and the membership, the Commission will stay within the limits of the CFP regulation, which means that only EU stakeholders and NGOs may be members of the ACs. UK members can attend meetings as active observers as per Annex III 2 (k) of the CFP Regulation. They can also be reimbursed for their participation to ACs meetings in accordance with Article 6 (2) of Commission Regulation 2015/242 on the functioning of the ACs.

According to current rules, the ACs can only make recommendations to the Commission and to MS. This will not change.

As for the cooperation with third countries, inspiration can be drawn from the current approach to EU-Norway relations, Norway being sometimes present at NSAC meetings for discussions on TAC and quotas on joint stocks in the North Sea and Skagerrak.

#### **24. Will this discussion be embedded in the review of the CFP or dealt with it separately?**

The report of the CFP that will come in 2022 will not be a review, but rather will look at the current functioning of the policy with a focus on particular elements such as climate change, the social dimension and regionalisation, which will also include the role of the ACs in general. The Commission launched a study (contracted by its agency EASME) this year to provide a comprehensive overview of the functioning of the Regionalisation process under the Common Fisheries Policy, as regionalisation plays an important part in the CFP.

Through the different reforms of the CFP, development was sought for new forms of participation by stakeholders at regional level. With the latest reform in 2013, a process was sought of devolving detailed, technical decision-making (often the case with technical and scientific nature of fisheries) to some form of collective organisation of Member States – and stakeholders! – working together at the level of the regional sea. The CFP foresees regionalisation for a number of instruments and measures: multiannual plans, discard plans, establishment of fish stock recovery areas or other technical measures and conservation measures necessary for compliance with obligations under EU environmental legislation.

The situation after the TCA will obviously bring specific implications and challenges for the ACs. In this respect, the Commission is welcoming input and reflections from the ACs.

#### **25. Can the Commission outline its understanding of how annex III of the CFP, in relation with the identification of the areas of competence of the Advisory Councils, is affected by the UK's departure from the EU and how it will be addressed?**

The legal experts in the Commission are still looking into this issue and invited NWWAC to liaise in written with DG MARE for a formal answer.

### III. AOB

Mr. **Pim Visser** (MAC) prompted the Commission to look forward in terms of involvement of stakeholders in the discussions with the UK in a structured manner.

Mr. **Ivan Lopez** (Chair of the LDAC), raised the issue of the attendance of a person representing one of the Advisory Councils. Mr. Lopez pointed out that even if the person in question was in attendance, representing a European association that is legally registered in Belgium, he also represents the interests of the UK industry where he is employed. His attendance may therefore represent a conflict of interests. Several participants took the floor on the issue. The Commission agreed to address this point in written to all Advisory Councils and provide clarification on UK stakeholders' membership and participation in future meetings.

*List of participants :* Emiel Brouckaert (NWWAC), Puri Fernandez (NWWAC), Stravoula Kremmydiotou (NWWAC), Julien Lamothe (NWWAC), Mo Mathies (NWWAC), Caroline Gamblin (NWWAC), Enda Conneely (NWWAC), Jesús A. Lourido (NWWAC), Juan Pescagalia (NWWAC), John Lynch (NWWAC), Matilde Vallerani (NWWAC), Emmanuel Kelberine (NWWAC), Loeiza Lancelot (NWWAC), Jesper Raakjaer (PELAC), Sean O'Donoghue (PELAC), Gonçalo Carvalho (PELAC), Katrina Borrow (PELAC), Gerard van Belsfoort (PELAC, LDAC), Anne-Marie Kats (PELAC), Iván López (LDAC), Béatrice Goretz (LDAC), Juan Manuel Liria (LDAC), Marc Ghiglia (LDAC), Alexandre Rodriguez (LDAC), Manuela Iglesias (LDAC), Ewa Milewska (BSAC), Kenn Skau Fischer (NSAC), Peter Breckling (NSAC), Tamara Talevska (NSAC), Guus Pastoor (MAC), Andrew Kuyk (MAC), Pedro Reis Santos (MAC), Pim Visser (MAC), Jens Mathiesen (MAC), Poul Melgaard Jensen (MAC), Agnes Lisik (MAC), Patrick Murphy (MAC), Carla Valeiras (MAC), Anne Mette Baek (MAC), Erin Priddle (MAC), Guillaume Carruel (MAC), Joost Paardekooper (DG MARE), Erik Lindebo (DG MARE), Pascale Colson (DG MARE), Katarina Barathova (DG MARE), Mael Le Drast (DG MARE, minutes).