

The Transitional deal and “good faith” will decimate our fishing industry

A briefing note from Fishing for Leave

The Transition deal the government is agreeing with EU has dire implications and presents an existential threat for what's left of the British fishing industry and coastal communities.

The government hopes to ratify this transition as part of the withdrawal agreement and treaty after parliamentary approval. The terms of the transition subject the UK to re-obeying all EU law, including all new laws, after Brexit and the official termination of our current membership.

By subjecting the UK to re-obeying all EU law the transition negates the clean slate provided by Article 50, which states (as agreed by the EU) that the “treaties shall cease to apply” and with that all rights and obligations accrued under the treaties – including the disastrous, inept CFP. The transition squanders the chance to automatically repatriate our waters and resources to national control by reverting to international law (UNCLOS) and domestic legislation.

The 21month transition period means the EU will be free to enforce detrimental legislation to cull what is left of the British fleet. The EU has every incentive to do so to enable the use of international law (UNCLOS Article 62.2) to claim our resources we would no longer have the fleet to catch.

DISCARD BAN

The EU can do so in 21 months using the inept EU quota system

which is wholly unsuited to our highly mixed fisheries and forces fishers to catch more than necessary and then discard to find the species their quota allows them to keep.

As of 2019 the EU discard ban is to be fully enforced, however, this ban addresses the discard symptom not the quota cause. Consequently, from 2019, when a vessel exhausts its smallest quota it must stop fishing to avoid discarding. These 'choke species' quotas will force vessels to tie up early in the year. Public body Seafish calculates 60% of the resources the UK is currently allocated will go uncaught and resultantly a similar proportion of what's left of the British fleet will go bankrupt.

The EU has every incentive to fully enforce such a ban which would cull the UK fleet as under international law (UNCLOS Article 62.2) if a "state does not have the capacity to harvest the entire allowable catch it shall... give other States access to the surplus of the allowable catch".

The above is not conjecture, the EU also stated this possibility in a previously un-noticed document; Research for PECH Committee -Common Fisheries Policy and BREXIT – June 2017 (page17). The EU is therefore quite aware of the implications and obligations of Article 62.2 and the discard ban.

SLASH UK RESOURCE SHARES

To compound this, HM government has agreed through ARTICLE 125 of the draft agreement that the UK will be subjected to the allocation of fishing resources through the CFP.

Part 4 of Article 125 states;

Without prejudice to article122(1), the relative stability keys for the allocation of fishing opportunities referred to in paragraph 1 of this Article 125 shall be maintained.

Paragraph 1 relates to Article 43(3) TFEU;

The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

Therefore, contrary to government assertions, the EU Commission therefore has sole power to alter the 'relative stability' resource shares. These can and have been altered – as happens on a state's accession – and the EU is free to do so to the UK's detriment. A further skewing of the already disproportionately unfair share the UK receives would exacerbate and compound the discarding and discard ban problem.

12 MILE LIMIT

The EU can also abolish – indeed it may terminate with our current membership – the 12 mile limit which gives protects our inshore and shell-fishermen along with nursery grounds. The 12mile limit was established in Article 100(1) of the UK Treaty of Accession as a 10 year derogation from Article 2 of the CFP founding Regulation 2141/70.

This derogation, although reiterated in subsequent 10 year CFP renewals, ultimately stems from the UK's Treaty of Accession. With the termination of the UK's membership under Article 50, our Accession treaty will 'cease to apply' and the EU will be free to abolish the 12mile before its current 10 year period expires in 2023 if this does not happen automatically upon withdrawal.

GOOD FAITH

In addition to this the governments protestation that all will be well is through the assurance that the proposed agreement will be exercised under the provision of "good faith".

Article 4a – Good faith;

The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement. They shall take all appropriate measures...to ensure fulfilment of the obligations arising from this Agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement. This Article is without prejudice to the application of Union law pursuant to this Agreement, in particular the principle of sincere cooperation.

Therefore, under draft withdrawal agreement of 19 March, 'good faith' far from being an all will be well clause obliges HM Government to rigorously enforce all the terms of the agreement, including our re-obedience to the CFP in its entirety – it is actually a swallow the lot clause.

Consequently, 'good faith' means the UK has signed up to a Transition agreement which means fully re-obeying and subjecting our fleet to a fully enforced discard ban and resulting choke species.

Has agreed to follow 'relative stability' shares and the ability of the Commission to alter them – possibly to our detriment. The UK will have agreed to re-obey the 'raw' CFP of 'equal access to the baseline' with the possible abolition of the 12 mile limit derogation with the termination of of our current membership.

The public perceive the transition as rendering all government and MPs commitments, promises and assurances to reclaim British waters as worthless semantics

It imperative for the survival of fishing communities in a multitude of constituencies that there is a reversal on fishing being included in a transition and that all sovereignty and control over all waters and resources within the UK's EEZ reverts to Westminster at 11pm on 29th March 2019 on this symbolic issue.

In addition to this a clear termination clause similar to Article 50 must be inserted to the transition treaty to ensure that the transition and all rights and obligations accrued under it cease to apply on the 31st December 2020 to avoid any contention. Failure to do so would be perceived as a tangible demonstration that there is no intention of making a serious stand on fishing or Brexit nor fulfilling “taking back control of our borders” as optimised by this ‘acid test’ of Brexit.