



# **Can the UK do better than the European Union in the protection of the marine environment?**

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# Case C-683/16, Deutscher Naturschutzring\*

- ▶ EU Habitats Directive Article 1(1)  
‘[S]pecial area of conservation means... necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and / or the populations of the species for which the site is designated’
- ▶ MSS marine protected areas to build the Natura 2000 network of protected sites
- ▶ Article 11 CFP, must be interpreted as meaning that it precludes a Member State from adopting... measures which are necessary in order for it to meet its obligations under the Habitats Directive and which completely prohibit, in Natura 2000 areas, commercial fishing using gear which touches the sea bed

\* Deutscher Naturschutzring — Dachverband der deutschen Natur - und Umweltschutzverbände eV v Bundesrepublik Deutschland

# **Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy - MSFD**

- ▶ Marine Strategy Framework Directive (MSFD) is environmental pillar of the Integrated Maritime Policy (IMP)
- ▶ Designed to achieve **good environmental status for EU seas by 2020**
- ▶ How this is to be achieved is **not specified** except in the possible establishment of **marine protected areas (MPAs)**
- ▶ MSS to conserve marine resources and address degradation in MPAs in particular in areas which are deemed to be bio-geographically sensitive

# Common Fisheries Policy

- ▶ Art2(3) CFP is to implement the ecosystem approach ‘to ensure negative impacts of fishing on the marine ecosystem are minimised’ and ‘endeavour to... **avoid the degradation of the marine environment**’
- ▶ CFP not subject to the integrated strategy of the IMP, the objectives and principles provided by the Fisheries Regulation determine policy without reference to the integrated strategy and the new environmental pillar of marine policy
- ▶ The objectives of the IMP lie beyond the objectives laid down in the Fisheries Regulation

# Why are protections not more effective?

- ▶ MSFD binding on the Member States to be given effect in domestic legislation
- ▶ MSFD is not legally-binding on CFP
- ▶ Implementation of CFP by Member States who ‘should’ take account of the MSFD

## IMP is not embedded within CFP

**Effect:** Objectives and principles of CFP determine policy without reference to the IMP and MSFD

**Result:** Maximum sustainable yield (**MSY**) is seen as mechanism for sustainable fisheries

# Post-Brexit international law obligations on protection of marine environment – competing priorities

## The problem for environmental protection

- ▶ UNCLOS: States have the obligation to protect and preserve the marine environment
- ▶ UNCLOS: States have the sovereign **right to exploit** their natural resources pursuant to their environmental policies
- ▶ Summit on Sustainable Development:
  - Encourage application of ecosystem approach by 2010 for sustainable development of marine areas
  - Article 30(a) adopting MSY as the standard for fishing with restoration of stocks by 2015
  - Article 31(c) establishment of MPAs network by 2012

# Post-Brexit obligations: the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)

- ▶ Mandate
  - To protect and conserve marine environment over the **whole** North East Atlantic recognising the 'inherent worth' of the environment and ecosystems
- ▶ Five thematic strands including ecosystem and biological diversity
- ▶ By 2012 an ecologically coherent network of protected sites contribute to the conservation of the marine environment and protect features significant to the State
- ▶ Fisheries management is excluded but where stocks have been overfished signatories are obliged to restore them

# The European Union (Withdrawal) Act 2018 and October 2019 Revised Political Declaration

The European Union (Withdrawal) Act 2018, Maintenance of environmental principles\*

## Political Declaration Part II

- ▶ I.18 Parties retain autonomy and ability to regulate economic activity according to the levels of protection each deems appropriate to achieve legitimate public policy objectives such as...the environment including climate change
- ▶ XII.71 Fishing at sustainable levels, promote resource conservation and foster a clean, healthy and productive marine environment...
- ▶ XIV.77 the Parties should uphold common standards at the end of the transition period in the areas of ... environment...

\*S16 of the European Union (Withdrawal) Act 2018, Maintenance of environmental principles, etc, entered into force on 26 June 2018

# The Rt Hon Michael Gove MP: A Green Future

## 25 Year Plan to Improve the Environment

- ▶ The plan proposes:
  - A new **independent body** to hold government to account
  - A new set of **environmental principles** to underpin policy-making
  - Developing a set of **metrics** to assess progress towards our 25 year goals and a second 'National Ecosystem Assessment' type initiative beginning in 2022
- ▶ Ensuring that resources from nature, such as food, fish and timber, are used more sustainably and efficiently... by: **[m]aximising the value and benefits we get from our resources, doubling resource productivity by 2050**

# Draft Environment (Principles and Governance) Bill 2018 (fallen)

- ▶ Make provision and plans for improving the natural environment
- ▶ Environmental **improvement plan** to be followed for at least 15 years
- ▶ Data collection for **monitoring**
- ▶ Annual report on environmental improvement plans with **review** and possible revision every 5 years
- ▶ **No reference to marine protection** other than a reference to OSPAR and observation that environmental law covers 'marine, coastal or nature conservation'
- ▶ To make provision for the Office for Environmental Protection through:
  - Policy statement on environmental principles
  - Environmental improvement plans
  - Interpretation

# Exiting the European Union - Conservation of Habitats and Species\*

- ▶ Not directly related to fishing provisions
- ▶ Sites protected under the Birds and Habitats Directives and sites currently forming part of Natura 2000 continue to be protected but not as part of the network
- ▶ Proposed sites may be rejected by the Minister who will assess with advice from relevant authority (Natural England or JNCC) giving reasons for its decision
- ▶ Minister to offer an opinion to local decision makers, e.g. local planning authorities, as to whether 'imperative reasons of overriding public interest' apply where a plan / project may adversely affect priority habitats but there is no 'feasible alternative'.
- ▶ Minister may make amendments to protections reflecting technical and scientific progress BUT this is not explained
- ▶ Reporting requirements do not include any independent review

\*EXITING THE EUROPEAN UNION WILDLIFE The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 No. 579 Amendments regarding European sites and European marine sites

# **Can the UK do better than the European Union in the protection of the marine environment?**

- ▶ Given the direction the UK intends - probably not.

**THANK YOU**

# Trade in goods subject to customs union and single market rules

- ▶ Globally, EU **biggest importer of fish**, seafood and aquaculture products importing half internationally and half intra-EU
- ▶ UK vessels **landed 724k tonnes** of sea fish into the UK and abroad with a value of **£980m**
- ▶ Salmon, mackerel and herring main exports
- ▶ Cod, tuna shrimps and prawns and salmon main imports

Customs supervision of goods brought into the EU extends to prohibitions and restrictions justified on grounds including... the **implementation of fishery conservation and management measures and of commercial policy measures**

- ▶ Under the **European Union (Withdrawal) Act 2018** UK is retaining EU law for food and feed safety and hygiene by statutory instrument, often giving Minister broad discretion to amend

# Revised Withdrawal Agreement (1/2)

- ▶ Art 127 EU law applies during transition period
- ▶ Art 130 specific arrangements relating to fishing opportunities during transition
  - Consultation
  - Relative stability allocation

# Revised Withdrawal Agreement (2/2)

## Protocol on Ireland/Northern Ireland

- ▶ Joint Committee to establish conditions and quantities for certain fishery and aquaculture products
- ▶ Fisheries and aquaculture products brought into the customs territory of the Union by vessels flying the flag of the United Kingdom and having their port of registration in Northern Ireland are **exempted from duties**
- ▶ **Also applying:** EU marketing standards, technical measures for protection of fish juveniles, controls to ensure compliance with CFP, consumer information, IUU measures, aid for production and trade in fisheries products

# **Future relationship with the EU: barriers to trade**

- ▶ Revised Political Declaration for Future Relations - links any agreement on fisheries to the overall economic partnership
  - Fishing at sustainable levels, noting UK will be an independent coastal state
  - Non-discriminatory measures for regulation of fisheries
  - New fisheries agreement based on access to waters and quota shares
- ▶ Barriers to trade
  - Tariffs**
  - Custom controls regarding standards**

# EU Council Guidelines for future relationship with UK

## 6. To be based on a balance of rights and obligations

- Four freedoms of Single Market are indivisible and participation sector-by-sector will not be accepted
- No participation in decision-making by UK
- Role of CJEU to be ‘fully respected’

## 7. FTA cannot offer same benefits MS enjoy and cannot amount to participation in Single Market

- Aims to cover all sectors with zero tariffs, no quantitative restrictions and appropriate rules of origin

BUT

- Existing reciprocal access to fishing waters and resources should be maintained

# WTO MFN EU import tariffs for seafish

Item	Tariff
Crabs	7.50%
Lobsters	8.70%
Fresh Salmon	2.00%
Scallops prepared or preserved*	20.00%
Fresh or chilled herring	15.00%
Fresh or chilled mackerel	20.00%
Frozen mackerel	15.00%

\* Wet scallops are treated with a solution of water and sodium tripolyphosphate, or STPP, which preserves them as soon as they are harvested at sea. Then they are often frozen.

# UK Distribution of fishing opportunities (1/2)

Art 17 CFP Allocation of fishing opportunities according to environmental, social and economic criteria

## Recital 35 CFP

In view of the precarious economic state of the fishing industry and the dependence of certain coastal communities on fishing, it is necessary to ensure the **relative stability of fishing activities by allocating fishing opportunities among Member States, based on a predictable share of the stocks** for each Member State.

BUT...

## UK Distribution of fishing opportunities (2/2)

In the UK...

- ▶ 67% of UK fishing quotas owned by 25 businesses
- ▶ Rich List Families wholly own or partly own 37% UK quotas
- ▶ 5 largest quota holders control >33% UK fishing quota

And in England...

- ▶ 80% owned by foreign owners or RLFs
- ▶ Dutch multinational whose UK subsidiary owns 25% of England fishing quota
- ▶ Under 10m = 77% fleet own 3% of fish quota

# Impact of Brexit on coastal communities: Wales

- ▶ Recital 19 Regulation 1380/2013 - reserves 12nm zone for coastal communities
- ▶ Wales
  - <1% total UK fishing fleet
  - 0.02% EU fish quota
  - 451 vessels, 90% under 10m category operating inshore 0-6nm
- ▶ Coastal communities mostly depend on catching shellfish in 0-6nm zone - 90% exported to EU
- ▶ Total export value **c.£22m**
- ▶ Brexit will give Wales responsibility for fisheries zone to median point between Wales and Ireland BUT since most take is inshore and exports are to EU Brexit is unlikely to bring benefits to Wales' costal communities

# UK Guidance on export of fish after a no-deal Brexit (1/3)

## The Catch Certificate

Using a Government Gateway user ID and password complete a Catch Certificate

This must be validated by sending it to the importer for verification

Name and address of exporter  
Person responsible for the export  
Species / FAO code  
State and presentation  
Names / PLNs of catch vessels  
EU tariff commodity code per product  
Landing dates and export weights per product  
Waters where species were caught  
Transport details - how and where the export will leave the UK  
ID of the containers used for export

# UK Guidance on export of fish after a no-deal Brexit (2/3)

## Export Health Certificate - Live Fish

Public health attestation requires Export Health Certificate (EHC), except for direct landings in EU ports from UK flagged fishing vessels

Specify an official veterinarian / local authority inspector to inspect your consignment and sign your EHC before you want to export

Submit the EHC to the Animal and Plant Health Authority and it will be sent to the official vet

- 7 working days before your export date or
- Within one working day of receiving it, if you plan to export in the next 7 working days

# UK Guidance on export of fish after a no-deal Brexit (3/3)

## Export Health Certificate - Fish Products

Public health attestation / EHC depends on Food Business Operator's implementation and compliance with Regulations

Certifying Officers (COs) must inspect operations

COs may place reliance on compliance with Food Law Code of Practice / official controls regarding hygienic handling of the fish during production

Confirm Products have been produced at an approved food establishment in accordance with public health regulations

Confirm there are no concerns / investigations relating to safe production

Make appropriate checks to verify compliance regarding packaging of the goods, incl. quantities, shipping container and or seals as appropriate