

The treatment of Jurisdictional and Third Country Losses in the current system of Relatively Stability.

The United Kingdom should not gain inappropriately from the Jurisdictional and Third Country Losses experienced in the 1970s for which the European Community has already provided 26% (volume) compensation.

This paper considers the method for allocating individual quotas to Member States *i.e. Relative Stability*, used at successive December Fisheries Councils since 1984, with the purpose of highlighting that the *keys*, established for this purpose, incorporate two important principles; i) Hague Transfers, and ii) compensation for the loss of catch potential in third country waters. In the context of Brexit, and particularly in the event that the United Kingdom seeks to establish a new sharing regime with the European Union, it is vital that these transfers are considered in their new reality: that the UK EEZ no longer forms part of Community waters and consequently any additional benefit given to the UK in calculations leading up to the relative stability keys of 1983 and which that arose solely as a result of its EEZ contributing to Community waters must now be removed. To that end, it is imperative that, when seeking to establish a new base line for sharing, the UK share is adjusted *downwards (by 26%)* to once again reflect historic catches but this time *without* the benefit of any adjustment for third country losses established in the original keys and still in use today. The alternative would see the UK depart the European Union with a *key* that continues to include third country compensation (rather than track record alone in a particular management zone) and, in addition, the freedom to establishing new sharing arrangements with third countries to its benefit. Put simply this would see the UK allocated fish that i) arose as compensation and ii) were taken from the Community share (a direct transfer from other

Member States) and it *could* see these used in exchange for concessions in third country waters at the expense of EU interests.

In coming to this position we consider, in particular, the methodology set out in a Communication from the Commission to the Council (Com(80) 338, June 1980) and a working paper submitted by the Commission (Sec 81 (105), 21 Jan 1981) which set out, in considerable detail, the calculations that form the basis of what was to become the relative stability keys used in successive annual allocations (December Fisheries Council).

In the preamble to these papers, published in the lead up to the final establishment of *Relative Stability*, the Commission notes in particular that their method for allocating resources between Member States, takes into account the Council Declaration of 30 May 1980 which stated that “in compliance with the Treaties and in conformity with the Council Resolution of 3 November 1976 (the "Hague Agreement"), policy should be based on the following guidelines: i) fair distribution of catches having regard, most particularly, to traditional fishing activities, to the special needs of regions where the local populations are particularly dependent upon fishing and the industries allied thereto¹, and ii) ... **the loss of catch potential in third country waters**". It is the second of these, the loss of catch potential in third country waters, that is of particular interest here.

When establishing the original keys, the first step undertaken by the Commission was to work out the basic figures necessary to put into effect the guidelines laid down by the Council. In respect of internal and joint stocks the Commission interpreted the first criterion, that of traditional fishing activities, as the average of fishing by member States in the base period 1973 to 1978, removing from the 1978 figures any ‘catches’ that exceeded the quotas proposed for that year but taking into account quota exchanges between member States.

¹ See, paragraph 3 and 4 of Annex VII to the Council Resolution of 3 November 1976

Industrial catches (directed fishing for industrial purposes) of human consumption fish along with excess by-catches of human consumption fish in industrial fisheries were also removed from the annual catches 1973/1978. The Commission then calculated the Hague transfers for each stock. Critically the Commission next established the principle of ‘equalisation’; the negative values that arose for all but the beneficiaries of Hague Transfers (UK, Ireland, Denmark and France) were equalised so that *each member State contributed to the Hague transfers in proportion to its total 1981 catch possibilities*, i.e. in internal and joint stocks and in third country stocks.

In approaching the question of compensation for third country losses the Commission also explicitly took account of jurisdictional losses with respect to third country and joint stocks. Like all of the other calculations done at the time, jurisdictional losses were also calculated by reference to traditional catch figures defined as the average catches 1973/1976. Again critically, and as with the Hague Transfers, compensation for third country losses was equalised among member States in proportion to each member State's 1973/1976 catches, the Hague regions not being included in this calculation.

The Commission presented the results of these calculations in a series of tables, a number of which highlight the issue under discussion. Tables 3 and 4, for example, present the jurisdictional losses or gains **in third country stocks** by member States and jurisdictional losses or gains in joint stocks and their allocation to member States. For example, in Table 4 (Sec 81 (105), see Annex I, we see the UK makes significant jurisdictional gains for haddock (+15,534 tonnes), saithe (+2,803 tonnes), mackerel (+2,930 tonnes), and sprat (+15,027 tonnes) in Area IV. It is critical to note that these additional gains (and losses where appropriate) were based on the “*percentage distribution of EC total jurisdictional losses in proportion to the TAC allocation*”

Table 6 (see annex II) in particular provides a direct means of establishing just how the UK benefitted from the approach adopted by the Commission. Reproduced below, the jurisdictional loss equalization table (along with a facsimile of the original) **includes** third

country jurisdictional losses. Here it can be seen that the UK had experienced considerable third country jurisdictional losses (-147,301 tonnes) amounting to some 68% of total Community losses. However, in the equalisation process, the UK enjoys a transfer of 89,758 tonnes to ‘equalize’ this loss. Apart from Germany (+17,594) all other Member States contributed to this, including Denmark (-80,225 tonnes) Netherlands (-15,700 tonnes) etc.

Jurisdictional Loss Equalisation Table

Cod, Haddock, Whiting, Plaice, Saithe, Redfish, and Mackerel in cod-equivalents

| | Total | Germany | France | NL | Belgium | UK (N) | UK (S) | Denmark |
|---|-----------|---------|---------|---------|---------|---------|---------------|---------|
| 1973/76 total average catch (exclusive internal, joint and 3rd Country) | 1,597,159 | 309,119 | 205,145 | 99,530 | 29,024 | 205,779 | 365,925 | 360,793 |
| Jurisdictional losses | -215,366 | -66,204 | -25,369 | 48 | -26 | | -147,301 | 23,489 |
| Equal percentage loss in non-Hague areas | | -48,610 | -32,260 | -15,652 | -4,564 | | -57,543 | -56,736 |
| Difference = transfer to equalize jurisdictional loss | | 17,594 | -6,891 | -15,700 | -4,538 | | 89,758 | -80,225 |

To put this in an overall context, Table 6 below (see annex II for facsimile of original) shows the basic results for the UK for the 7 key species: cod, haddock, whiting, plaice, saithe, redfish, and Mackerel. This allocation includes the Hague Preferences (referred to in the table as *after Hague Transfer Equalisation*) and, all else being equal, should represent the final allocation to the UK based on their historic catch alone. However as can be readily seen from the Commissions original calculation **an additional** quantity (89, 758 tonnes) was then added to compensate the UK for its Jurisdictional Losses (*referred to as Jurisdictional Loss Equalisation* in the table below). The result for the UK is some 340,384 tonnes (following *Hague Transfer*

Equalisation to which **is added** the result from the jurisdictional loss equalisation calculations (+89,758 tonnes). **This amounts to a 26% increase (by volume, tonnes).**

QUOTAS 1981

Summary of Hague transfer and Jurisdictional Loss equalisation calculations.

TABLE 6

Species: Cod, haddock, saithe, whiting, plaice, redfish and mackerel: in cod equivalent.

| | EC | D | F | NL | B | UK | DK | IRL. |
|-------------------------------------|-----------|----------|---------|----------|---------|----------|----------|--------|
| 1. Result after Hague transfer | | | | | | | | |
| equalisation | 1.131.699 | 152.056 | 143.503 | 92.864 | 25.009 | 340.384 | 334.388 | 43.495 |
| 2. Result after Jurisdictional Loss | | | | | | | | |
| equalisation. | | + 17.594 | - 6.891 | - 15.700 | - 4.538 | + 89.758 | - 80.225 | |

Conclusion

In conclusion we reiterate the point made at the outset; following Brexit, the UK EEZ will no longer form part of Community waters. Consequently, any additional benefit given to the UK and reflected in the relative stability keys of 1983 which then arose solely as a result of its EEZ contributing to Community waters must now be removed. As established in this paper this amounts to a **26% (in tonnes) increase on their basic allocation**. To that end, it is imperative that, when seeking to establish a new base line for sharing, the UK allocation is adjusted **downwards** (by 26%) to once again reflect historic catches but this time **without** the benefit of any adjustment for third country losses established in the original keys and still in use today.

ANNEX I

jurisdictional losses internal and joint stocks 1991. Allocation based on percentage distribution of EC total jurisdictional losses in proportion to TAC allocation, excluding Zealand

| Stock | EC tonnes | I | | F | | NL | | B | | UK | | DK | |
|-------------------------------|-----------|---------|--------|--------|-------|-------|--------|------|-------|-------|---------|---------|---------|
| | | % | t | % | t | % | t | % | t | % | t | % | t |
| Cod IIIa | + 4504 | 0,39 | - 45 | 0 | 0 | 0,01 | - 29 | 0,17 | + 8 | 0,07 | - 3 | 98,17 | + 4520 |
| IIIb,c,d | + 25320 | 20,1247 | + 930 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 73,6753 | + 26020 |
| IV | + 5188 | 10,78 | + 557 | 4,6556 | - 241 | 12,11 | - 626 | 4,80 | - 242 | 45,31 | - 2342 | 22,43 | + 3160 |
| Total | + 25507 | - | + 888 | - | - 241 | - | - 654 | - | - 250 | - | - 2345 | - | + 20319 |
| Haddock IIIa | + 44 | 0,14 | - | 0 | 0 | 0,46 | - | 0,37 | + 1 | 0,46 | - | 93,57 | + 43 |
| IV | + 2484 | 2,11 | + 649 | 2,95 | + 951 | 1,60 | + 365 | 1,48 | + 398 | 79,73 | + 19574 | 11,71 | + 2313 |
| Total | + 2498 | - | + 649 | - | + 951 | - | + 366 | - | + 399 | - | + 19574 | - | + 2356 |
| Saithe IIIa/IV | + 17520 | 21,94 | + 112 | 21,15 | + 125 | 0,37 | + 1154 | 0,01 | + 10 | 19,51 | + 2829 | 13,54 | + 3422 |
| IIIb | + 1824 | 0,01 | - | 0 | 0 | 0,07 | - 1 | 0,01 | - | - | 0 | 99,81 | + 1822 |
| IV | + 3234 | 0,36 | - 12 | 12,14 | + 524 | 13,19 | - 328 | 2,87 | - 93 | 21,48 | + 1018 | 37,01 | + 3428 |
| Total | + 5998 | - | + 12 | - | + 524 | - | - 328 | - | - 93 | - | + 1018 | - | + 3422 |
| Plaice IIIa | + 1974 | 0,26 | - 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 99,74 | + 1,71 |
| IIIb,c,d | + 376 | 2,66 | + 51 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 92,35 | + 327 |
| IV | + 579 | 3,91 | + 75 | 1,71 | - 4 | 14,29 | - 296 | 5,37 | - 34 | 25,52 | - 853 | 10,37 | + 1,71 |
| Total | + 137 | - | + 34 | - | - 4 | - | - 296 | - | - 34 | - | - 853 | - | + 327 |
| Backscall IV | + 6203 | 0,27 | + 55 | 0,05 | + 217 | 5,31 | + 201 | 0,48 | + 29 | 45,83 | + 2530 | 42,07 | + 6277 |
| Sprat IIIa | + 18002 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 100,0 | + 18002 |
| IIIb,c,d | + 911 | 6,32 | + 56 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 93,68 | + 957 |
| IV | + 54610 | 2,23 | + 1221 | - | + 3 | 0,01 | - 6 | 0,01 | + 6 | 27,37 | + 15027 | 70,73 | + 30544 |
| Total | + 40018 | - | + 1282 | - | + 3 | - | + 6 | - | + 6 | - | + 15027 | - | + 24473 |
| Common sole IV | + 26113 | 0 | 0 | 0 | 0 | 0,03 | + 58 | 0,11 | + 230 | 5,71 | + 11962 | 94,04 | + 16510 |
| Sandeel IV | + 20254 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,36 | + 883 | 98,64 | + 25711 |
| D'land halibut NAFO I | + 12650 | 17,00 | + 2205 | 0 | 0 | 0 | 0 | 0 | 0 | 0,08 | + 12 | 62,88 | + 16233 |
| Green Grenadier NAFO I | + 7144 | 84,38 | + 9228 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15,62 | + 1136 |
| Shrimps NAFO I | + 14268 | 0 | - | 1,19 | + 173 | 0 | 0 | 0 | 0 | 0 | 0 | 98,81 | + 14441 |
| Herring IIIa | + 14088 | 0,11 | - 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 99,89 | + 13972 |
| IIIb,c,d | + 2381 | 41,38 | + 999 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 58,62 | + 13972 |
| IV | + 11678 | - | + 873 | - | 0 | - | 0 | - | 0 | - | 0 | - | + 11678 |
| Salmon IIIb,c,d | + 504 | 4,54 | + 23 | - | - | - | - | - | - | - | 0 | 75,46 | + 481 |

ANNEX II

QUOTAS 1981

JURISDICTIONAL LOSS - EQUALISATION TABLE

Cod, haddock, saithe, whiting, plaice, redfish and mackerel : in cod equivalent

| | Total | D | F(M) | F(SPM) | NL | B | UK(N) | UK(S) | DK(M) | DK(GL) |
|--|-----------|----------|----------|--------|----------|---------|---------|----------|----------|--------|
| 1. 1973/76 total average catch (exclusive internal, joint and 3rd country) | 1.597.159 | 309.119 | 205.145 | 442 | 99.530 | 29.024 | 205.779 | 365.925 | 360.793 | 21.402 |
| 2. Jurisdictional losses | - 215.366 | - 66.204 | - 25.369 | | + 48 | - 26 | | -147.301 | + 23.489 | |
| 3. Equal percentage loss in non-Hague areas (-215.366/1.369.536) | | - 48.610 | - 32.260 | | - 15.652 | - 4.564 | | - 57.543 | - 56.736 | |
| 4. Difference = transfer to equalize jurisdictional loss | | + 17.594 | - 6.891 | | - 15.700 | - 4.538 | | + 89.758 | - 80.225 | |
| 5. Commission proposal | | | | | | | | | | |
| - at 50% for 1980 level | | | | | | | | | | |
| - at 100% | | | | | | | | | | |