

## Article

# The North Sea and Svalbard Fisheries Management Regimes in the Context of Brexit: Divergence and Implications

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**Abstract:** The North Sea fishery has maintained sound and stable cooperative management over the past four decades. European Union (EU) countries exchange quotas with Norway for fish stocks in their respective fisheries jurisdictions within the framework of the EU Common Fisheries Policy (EU CFP) and the Agreement on Fisheries between the European Economic Community and the Kingdom of Norway. After beginning the Brexit process with a concomitant transitional arrangement, the United Kingdom remained in the EU CFP until the end of 2020. From 2021 onward, the United Kingdom became a completely independent coastal state outside the EU CFP framework. In this context, the long-standing and stable fisheries access and quota exchange system between Norway and the EU will face tensions. The differences among the United Kingdom, the EU and Norway in fisheries also involve quotas and access to the Svalbard Protection Zone. Norway even intends to expand the fisheries conflict to the Arctic Council. To prevent the adverse consequences of conflict spillover and to achieve sustainable development of fisheries and win–win cooperation in fisheries management, the United Kingdom, the EU and Norway launched a series of actions on fisheries issues. In tripartite negotiations, each party has its advantages. Ultimately, win–win cooperation in the fisheries game is the three parties' expected outcome.

**Keywords:** North Sea; fisheries management; EU Common Fisheries Policy; quota system; fisheries agreement; Svalbard Fisheries Protection Zone



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## 1. Introduction

Since the establishment of the European Union (EU) Common Fisheries Policy (CFP) in 1983, the EU has been providing uniform conservation and management of fisheries resources within its member states' exclusive economic zones (EEZs), with quotas allocated to member states. The EU has conducted stable quota exchange through fisheries agreements with third countries, such as Norway. During the last forty years, the North Sea fishery has been well and cooperatively managed under the EU CFP and the Agreement on Fisheries between the European Economic Community and the Kingdom of Norway. In 2019, after the United Kingdom started the Brexit process, it remained in the EU CFP until the end of 2020 as a transitional arrangement. After the end of the transition period, from 2021 onward, the United Kingdom became a completely independent coastal state outside the EU CFP framework, setting its own fisheries policy and managing fisheries activities in its EEZ. In the new context of Brexit, fishing opportunities and quotas in the North Sea and the Svalbard Fisheries Protection Zone (SFPZ) have changed dramatically, and the long-standing and relatively stable system of fisheries access and quota exchange between Norway and the EU is facing new tensions.

Furthermore, Norway even intends to submit the conflict over fisheries to the Arctic Council, which will become a destabilizing factor for the Arctic Council's functioning and the Arctic region's situation. To prevent further adverse consequences of the spillover of the conflict, an agreement on the fisheries issue amongst the United Kingdom, the EU and Norway should be reached as soon as possible. The United Kingdom and Norway

signed the UK–Norway Framework Agreement on Fisheries, which provides for annual negotiations on fisheries access and quotas. The United Kingdom and the EU also signed a trade cooperation agreement (TCA) [1], which includes fisheries. Furthermore, negotiations are underway amongst the United Kingdom, Norway and the EU. To ensure the sustainable development of fisheries and to achieve win–win cooperation in fisheries management, the three parties need to establish a legal framework for fisheries cooperation covering trade as soon as possible.

This paper aims to analyze the substantial impact of Brexit on the fisheries management regime in the North Sea and Svalbard Sea area. With Brexit further changing the already complex relationship among the UK, EU and Norway, the management of fisheries cooperation in the context of Brexit needs to be adjusted accordingly. In addition, this paper looks at Arctic governance, with Brexit exacerbating the precarious state of Arctic governance in recent years, underpinned by the long-standing conflict in the Svalbard Fisheries Management Zone. This paper gives a recent analysis and a unique contribution from these aspects.

## 2. North Sea Fisheries Management System

The North Sea (as shown in Figure 1) is a marginal sea located in the northeast Atlantic Ocean and is bordered by seven countries: Norway, the United Kingdom, Denmark, Germany, Belgium, the Netherlands and France. The North Sea is rich in fishery resources, and the North Sea fishery is one of the four principal fishing grounds in the world. The North Sea fishery is a significant component of the abovementioned coastal countries' agriculture. Except for Norway, which is not a member of the EU, and the United Kingdom, which left the EU in 2019, the coastal states of the North Sea are all members of the EU and are thus bound by the EU CFP.



Figure 1. Map of the North Sea [2], with permission from Halava, CC BY-SA 3.0, via Wikimedia Commons.

### 2.1. The European Union Common Fisheries Policy

The EU CFP, established in 1983, is a set of rules used to manage the EU fishing fleet and to protect fish stocks. The EU CFP gives all EU fishing fleets equal access to EU waters and fishing grounds and allows fishermen to compete fairly [3]. The EU CFP also forms the basis for EU cooperation with third countries and regional fisheries management organizations (RFMOs) [4].

Although the United Nations Convention on the Law of the Sea (UNCLOS) [5] was ratified in 1982 and took effect as international law on 16 November 1994, many coastal states, including European countries, had already introduced the 200 nautical mile EEZ regime in 1977. Whereas sovereign rights and other jurisdiction over natural resources in the EEZ are vested in the coastal state, EU coastal countries transfer some of their fisheries management rights in their EEZs to the EU. Therefore, the EEZs of the EU coastal states are considered to be “Union waters,” and the fisheries regime is managed by the EU, including the formulation of various fisheries policies and the signing of fisheries agreements with non-EU countries in the name of the EU. Additionally, EU fishermen can fish in any member state’s EEZ outside their territorial waters [6]. EU countries retain powers to introduce limited measures that are non-discriminatory (i.e., treating all EU fishermen equally) and necessary for conservation goals [7]. The jurisdiction of the EU CFP is not limited to the North Sea. EU countries’ annual catches in Svalbard waters are negotiated bilaterally with Norway, after which the fishing quotas are allocated to EU member states.

Fisheries is a policy area in which the EU has supranational authority under the EU CFP. Under the Treaty of Lisbon [8], the European Commission (EC) has the sole competence to negotiate fisheries agreements with third countries, including fisheries in one another’s jurisdictions. The EC participates in negotiations with third countries, such as Norway, establishes quotas and then proposes the final total allowable catch (TAC) for each fish to the EU fisheries ministers on the Council of the EU. Each member state manages its respective national quotas, redistributes its allocated quotas from the EU to nationally registered fishing vessels and issues permits as the basis for the right to catch and land a certain amount of fish each year. EU countries must be responsible for their share of quotas and fisheries licenses [9].

#### 2.1.1. Total Allowable Catch

TAC is an essential tool for fisheries management in the EU and was first established and used in 1983. The TAC is the catch limit, and fishing should be stopped once the TAC is reached. The EC sets the TAC based on scientific advice on the status of fish stocks from advisory bodies such as the International Council for the Exploration of the Sea (ICES) and the EU Scientific, Technical and Economic Committee for Fisheries (STECF). TACs for most stocks are set annually by the fisheries ministers on the council, except for deep-sea stocks, which are set every two years [10].

The stocks managed under the TAC system are either managed by EU countries alone or jointly by the EU and other non-EU countries. Where scientific assessments allow, the EU sets TACs for many exploited fish stocks. For stocks shared and co-managed with non-EU countries, TACs are agreed upon with non-EU countries. For fish stocks not managed under the TAC system, such as seabass in the English Channel, which may account for up to 50% of the fishery’s catch, fishing opportunities need to be determined in a somewhat different and sometimes complex system [11].

Generally, fishing opportunities should be determined according to objectives related to maximum sustainable yield (MSY), specifically a precautionary approach to fisheries management. It should be ensured that, in the exploitation of living marine resources, populations of harvested species are restored and maintained above levels capable of producing the MSY. Furthermore, fishing opportunities should be determined by quantifiable objectives, such as fishing mortality and/or spawning stock biomass; timeframes that should take into account economic and social impacts, commensurate with the goals and targets

pursued and the timeframe envisaged; and geographic scales, which require the application of knowledge about the interactions between fish stocks and marine ecosystems [12].

Fishing opportunities are determined based on two access regulations: fishing quantity (output) and fishing intensity (input). The intensity includes spatial and temporal components, such as the number of days at sea dedicated to an activity in a given area. Fishing opportunities are determined, to some extent, by historical rights, i.e., the fishing status of each country prior to the establishment of the EU CFP [11].

After the 2013 EU CFP reform, MSY was the primary management objective. In response to the focus on fish resource management, the reform shifted the objective from the minimum requirement of avoiding fish stock collapse to increasing long-term production [13]. To achieve the MSY, the EU CFP has established many regulatory tools in terms of allocating fishing opportunities. By 2020, the consideration of the MSY had to be covered in all fish stocks subject to the TAC. MSY aims to maximize catches while achieving the economic and social sustainability of the fisheries sector.

### 2.1.2. Quota System

The EU member states allocate TACs to national fish quotas using a fixed allocation ratio based on relative stability [14]. EU countries share the TAC in the form of national quotas, and for different fish stocks, each country adopts different allocation ratios. After the TAC is determined, EU countries exchange quotas according to each country's actual situation and needs in order to maximize the economic benefits of each country's fisheries. The exchange of quotas between countries is measured in value, not quantity.

Quota allocations are based primarily on catches from more than forty years ago, referred to as "historical catches," and are primarily based on adult fish [15]. These catches reflect the goals of national fishing fleets at the time and are not based on available fishery resources. As a result of changes in fish distribution due to the expansion of fish stocks [16] and the effects of climate change [17], fishermen are now actually catching more than their allocated quotas, leading to overfishing [18] or discards [19].

In 2013, the EU introduced a "discard ban," also known as a "landing obligation" (LO), as part of its reform of the EU CFP. However, under the current allocation system based on relative stability, quota shares are virtually unrelated to available resources within national jurisdictions. This is a considerable impediment to reducing the incidence of discards. In the case of cod and whitefish in western Scotland, both stocks are in inferior fishing and conservation conditions. Thus, since the early 2000s, the TAC has been set at zero for cod and at the "lowest possible level" for whitefish. Given that these fish are inevitably caught in a mixed benthic fishery, minimal bycatch limits were previously allowed but resulted in high levels of discards. Under the current LO, this could lead to the closure of the fishery, as the TAC would be rapidly depleted [15]. This case reflects the irrational aspect of unclear calculation under the current EU CFP.

Dissatisfaction with the EU CFP was one of the reasons that prompted British fishermen to vote in favor of Brexit. Moreover, criticism of the EU CFP is not limited to the United Kingdom; other EU countries have also pointed out that the EU CFP fails to ensure the sustainability of fish stocks because fishing levels are higher than those which scientific evidence suggests [20].

### 2.1.3. Policy Area

The EU CFP was originally part of the Common Agricultural Policy (CAP) aimed at "increas[ing] productivity, stabilizing markets, providing a source of healthy food, and ensuring reasonable prices for consumers" [7]. With the development of specific legislation and structural policy changes in the fisheries sector and the increased need to address fisheries issues, the EU CFP became a separate policy area. The EU constructed a new legal framework on fisheries based on the EU CFP.

The CFP has four main policy areas: fisheries management, ensuring the long-term viability of stocks, such as cod, tuna and shrimp in Union waters; international policy and



cooperation, which entail working with non-EU countries and international organizations to manage shared fish stocks, including Norway, Iceland and the Faroe Islands; market and trade policy, which aims to create a level playing field in the market and to set standards for seafood products sold within the EU in order to protect consumers, for example, by requiring clear product labeling; and funding, which secures funds to support the transition of fisheries to more sustainable fishing practices and assist coastal communities in diversifying their economies [21].

## *2.2. Agreement on Fisheries between the European Economic Community and the Kingdom of Norway (1980 Agreement)*

In April 1977, Norway and the EU reached an agreement on five mutually managed shared fish stocks, and quota sharing began in the same year. Since 1977, the North Sea coastal states have cooperated in managing shared fish stocks. In February 1980, Norway and the EC signed the Agreement on Fisheries between the European Economic Community and the Kingdom of Norway (known as the 1980 Agreement) [22], which is still in effect. The 1980 Agreement covers non-jointly managed fisheries stocks, access and quota exchange arrangements, covering the Barents Sea (a marginal sea of the Arctic Ocean) and the North Sea. Norway and the EU conduct annual fisheries consultations and jointly determine the TACs for the six shared stocks, and for non-co-managed stocks, each party determines its own TAC [23].

Under the 1980 Agreement, Norway and the EU have conducted annual fisheries consultations to agree on TAC quotas for shared stocks, quota exchanges and other regulations. The parties are committed to “achieving a mutually satisfactory balance in their reciprocal fisheries regulations” [22], similar to the exchange of quotas among EU countries, which is achieved in terms of value rather than catch [24]. For more than forty years, positive cooperation between Norway and the EU has contributed to the sustainability of the stock and has ensured a stable situation in the North Sea.

## *2.3. European Economic Area Agreement*

Fisheries and trade are closely related. The European Economic Area (EEA) Agreement [25] took effect on 1 January 1994. The EEA’s primary purpose is to unite the EU member states and the three EEA European Free Trade Area (EFTA) states (Norway, Iceland and Liechtenstein) to participate in the EU’s internal market, remove trade barriers and introduce standard rules for the free movement of goods, people, services and capital. EFTA countries have bilateral agreements with the EU on trade in fishery products. Specific provisions on trade in fishery products are contained in Protocol 9 of the EEA Agreement and are regulated by other specific provisions of the EEA Agreement and by separate bilateral agreements with the EU [26].

Although the EEA Agreement does not include the EU CFP, Norway cooperates closely with the EU through the EEA Agreement in the fisheries sector [27]. In parallel with EEA Agreement negotiations, Norway and the EU held separate discussions on fisheries cooperation, which facilitated the further development of bilateral cooperation based on the 1980 Agreement, leading to a new agreement based on an exchange of letters on 2 May 1992. Regarding trade, Norway was granted a permanent duty-free quota of 27,215,542 kg for products that previously only temporarily qualified as duty-free [23].

Fishery import and export trade is an essential aspect of fisheries management policy. Norway is the world’s second-largest seafood exporter, with nearly 60% of seafood exports going to the EU [4], making the EU Norway’s most critical market. Moreover, the demand for seafood in EU countries is also increasing yearly, and nearly 68% of the seafood that the countries comprising the EU consume is imported [4]. Furthermore, most of the fish consumed and processed in the United Kingdom is imported. However, the majority of caught fish is exported. The United Kingdom exports about 80% of its annual catch, 66% of which goes to the 27 EU member states [28]. The importance of the EU market to the UK fishing industry is self-explanatory. The dependence of the British fishing industry on the

EU market and the EU's significant advantages in trade could help the EU fight for more fish quotas. Otherwise, the United Kingdom could incur retaliatory tariffs and other trade restrictions from the EU [23].

Tariffs are an essential factor affecting trade. Under Protocol 9 of the EEA Agreement and other bilateral agreements, Norway enjoys duty-free trade with the EU for most whitefish products. Protocol 9 also reduced tariffs on many other seafood products but did not reduce tariffs on several essential seafood products, namely shrimp, mackerel, herring, large scallops and Norwegian lobster. For these products, the EU maintains import tariffs that vary depending on the degree of processing. For example, a 2% tariff is imposed on imports of whole fresh salmon, and the tariff on smoked salmon is 13%. Trade in some of these products, including mackerel, shrimp and herring, is subject to various tariff-free quotas established by the EU after it absorbed more member states [4].

### 3. Impact of Brexit on the United Kingdom, Norway and Europe's Tripartite Fisheries Management System

On 29 March 2019, the United Kingdom announced its departure from the EU. Although the fishing industry accounts for only a small part of the United Kingdom's total economic output, it was one of the critical issues in the Brexit negotiations [29].

Before the United Kingdom left the EU, its fisheries management system was governed by the EU CFP. However, this policy has long been criticized in the United Kingdom. Evidence from surveys collected before the Brexit referendum shows that 92% of UK fishermen intended to vote to leave the EU, believing that Brexit would improve the current state of the UK fishing industry to some extent or even significantly [30,31]. The EU CFP was criticized because UK fishermen felt that the quota allocation was unfair to the United Kingdom and that the TAC was set at a higher level than scientifically recommended, failing to ensure the sustainability of the stock.

To give the UK government time to organize its fisheries policy and to address the multiple challenges posed by Brexit [29], the United Kingdom remained in the EU CFP (including the quota system) until the end of 2020 as a transitional arrangement. After the transition period, from 2021 onward, the United Kingdom became free from the EU CFP as a completely independent coastal state outside the EU CFP framework, with the latitude to formulate its own fisheries policy and to manage fisheries activities in its EEZ. Given the United Kingdom's long-standing status and historical practice as a global maritime power, updating its fisheries policy as an independent coastal state will impact fisheries partners and stakeholders, such as the EU and Norway.

The United Kingdom has a long historical presence in North Sea fisheries. Besides the large quota shared by the United Kingdom in the North Sea [32], the 1980 Agreement also gave Norwegian fishermen access to UK EEZ waters, where fishermen from the EU member states also had the right to fish before the United Kingdom withdrew from the EU CFP. The United Kingdom's departure from the EU CFP could have a knock-on effect on the stability of the North Sea fishery. Therefore, to maintain order and sustainability regarding fisheries management in the North Sea, Norway, the EU and the United Kingdom must revise the 1980 Agreement. Another option is to sign a new trilateral fisheries agreement, through negotiations and consultations, that incorporates the United Kingdom as a new quota-sharing subject of North Sea fisheries.

Brexit also poses challenges for the European single market. The EU's market access commitments to Norway remain in effect. However, because the United Kingdom is no longer a party to the EEA, this change regarding a vital member state constitutes a destabilizing factor in the European single market. It is likely to generate trade barriers, causing losses for fishermen and seafood export processors in exporting countries as well as for consumers in importing countries. The three parties, for whom an orderly Brexit is a common desire, should maintain close dialogue and expeditiously establish a legal framework for fisheries cooperation management that includes trading.

### 3.1. The United Kingdom's Post-Brexit Fisheries Policy

Although the UNCLOS was not yet in effect when the United Kingdom joined the EC, the UK EEZ had already been established and included in the concept of Union waters. With the gradual establishment of the EU CFP, the United Kingdom ceded some authority regarding managing several fishing stocks within its EEZ to the EC. Withdrawal from the EU and the EU CFP means that the UK EEZ must be re-established outside existing Union waters. With the responsibility of decisions and the management of a fisheries policy returning to the United Kingdom, the United Kingdom will, post-Brexit, become an independent coastal state with complete control over its EEZ, including the North Sea, the English Channel, the Norwegian Sea, the Irish Sea and parts of the West Coast [33].

To achieve its fisheries objectives, the post-Brexit United Kingdom has proposed a new approach to quota calculation, namely the zonal attachment (Za) principle. The EU CFP-based quota system fails to ensure the sustainability of fish stocks and has long met with opposition from UK fishermen. Given significant differences between the estimates based on Za and the current quota shares across all stocks, the United Kingdom advocates allocating quotas based on Za, i.e., quotas or catch shares should correspond to the share of the fish stock biomass present within a country's EEZ [15], whereas the EU-27 sector supports the status quo, arguing that historical fishing patterns should be respected [11]. After the assessment of twelve of the fourteen essential fish stocks, it was found that the valuation of the UK regional attachment was significantly higher than the current quota allocation, and the share allocated to the EU was higher than the regional attachment of the EU stocks [15]. On this basis, the United Kingdom argues that it should be given more quotas in the North Sea. However, Za may be difficult to implement in the short term, as there is a need for both parties to agree on the exact level of the catch of all fishing nations in the UK EEZ [11].

After becoming an independent coastal state since Brexit, the United Kingdom decided to put sustainability at the core of UK fisheries policy and to base fisheries decisions on scientific evidence, the need for which has been supported by scientists, parliamentary committees and the industry [34]. Scientific research has become an international practice and plays an important role in the operation and decision making of regional fisheries management, particularly in determining the status of fish stocks, TACs and the subsequent allocation of national quotas [35]. Cooperation with countries on scientific research can send a broader message to the global scientific community in order to facilitate appropriate streamlining of the process of solving relevant problems and to facilitate the consideration of supra-regional issues from a broader perspective [36], especially for certain jointly managed stocks. The UK government's fisheries white paper commits to the principle of the MSY as well as to decision making guided by scientific evidence, encouraging industry participation in policy development [37]. It also reflects the fact that the UK government has learned from other coastal countries' experiences. This commitment has put sustainability at the core of the UK's fisheries policy. By setting and distributing quotas and formulating regulations on gear and access to fishing grounds, the United Kingdom's fisheries regulatory regime must be readjusted to the new post-Brexit situation [33]. Additionally, UK fisheries management is subject to international law. Under the relevant rules of international law, particularly the 1982 UNCLOS, the United Kingdom must cooperate with other states to manage shared stocks in order to establish a common management framework. The United Kingdom cannot, therefore, unilaterally set its TAC and needs to coordinate with other countries to establish a TAC shared in national quotas [11].

Fisheries is an area where policy has devolved. Brexit not only means that powers have been returned from the EU to the United Kingdom but also that some powers have devolved to administrations in the UK in policy areas such as fisheries, agriculture and the environment. It may lead to policy differences among the United Kingdom's decentralized governments, resulting in trade barriers. To coordinate the United Kingdom's devolved administrations and to remove trade barriers, the UK government launched a "common framework" in October 2017 and enacted the UK Internal Market Act in 2020 [38]. The UK government

adopted UK-led governance for its fisheries policy. The devolved governments have the autonomy to implement fisheries management approaches that respect their own realities [37]. The state of fisheries varies across each devolved government. For example, Scotland is dominant in the United Kingdom regarding fleet capacity and catches, has a more significant proportion of larger vessels and relies heavily on pelagic and demersal fisheries. However, the fleets of England and Wales consist primarily of smaller vessels, and fisheries rely heavily on shellfish. The benefit of the UK government's approach is that it allows the devolved governments to take a more active role in developing their fisheries policy in their respective areas [33].

The UK government has stated that it will respect the role of the devolved administrations in managing their fisheries and will implement an approach to fisheries management that is appropriate to their circumstances while, where necessary, maintaining the overall coherence of the UK's fisheries policy after Brexit [37]. However, changes at the EU level are likely to lead to divergence in the UK internal market. Northern Ireland will continue to be bound by EU law in certain areas. The UK Withdrawal from the European Union (Continuity) (Scotland) Bill [39] became law on 31 January 2021. It gave Scottish ministers the power to continue to align with EU rules [40]. During negotiation of the TCA, devolved governments expressed dissatisfaction with the neglect to which they had been subjected, which has laid the groundwork for disagreements. Therefore, the UK government needs to track changes in EU policy, ensure that the devolved governments understand the evolving framework of trade relations with the EU and offer them appropriate opportunities to influence the fisheries management structures established under the TCA [41]. Additionally, the UK's fisheries policy needs to be coherent with international fisheries law. The UK government's fisheries white paper highlights, where necessary, that the United Kingdom will maintain overall coherence of its fisheries policy, mainly to ensure compliance with international obligations [37].

For the United Kingdom, fisheries management fully reflects its post-Brexit governance capacity. There is a need for coordination between various devolved administrations and departments within the governments, particularly those responsible for trade and fishing. Any successful fisheries policy requires carefully balancing diverse interests. Moreover, the post-Brexit UK government needs to solve problems well beyond fisheries management by accounting for political and economic factors [29].

Coordination across the UK government is, therefore, essential. Annual negotiations on fishing at the end of the agreed adjustment period (in June 2026) cannot simply be left to the Department for Environment, Food and Rural Affairs, as they could potentially trigger changes in market access in other parts of the agreement [41]. Additionally, changes in fisheries policy involve intergovernmental arrangements for quota management, license holding and the issuance of catch certifications [21]. Demands on the government's ability to coordinate the arrangements are high. Previously, as a member of the EU and a participant in the EU CFP, substantive decision making on UK fisheries policy was undertaken at the EU level, which meant that the roles of the UK government and the fisheries sector were essential to implement policy. Despite having limited discretion in some areas, their capacity and experience to develop fisheries policy autonomously are very limited [33]. Hence, the expansion of fisheries jurisdictional powers and the widening scope of those powers represent a considerable challenge for the UK government while creating uncertainty about the future of UK fisheries.

It is also worth noting that Scotland is a significant player in the fishing industry, and it is, therefore, vital to listen to the Scottish when developing fisheries policies. Data show that approximately 93% of Norway's catches in the UK region between 2011 and 2016 were taken in Scottish waters. Other EU countries also share similar conditions as Norway, suggesting that an independent Scotland would be an essential fishing nation for Norway and the EU. Sixty two percent of Scots insist that Scotland should have policy competence over the United Kingdom's post-Brexit fishing industry [42]. If Scotland's fishing sector is unsatisfied with the TCA and its subsequent fisheries agreements, new negotiations on the



sharing of catch quotas could be triggered. Additionally, Scotland is the main area where British fishermen obtain their catches. Consequently, Scotland has deservedly become the most vocal local government in the United Kingdom regarding fisheries [23]. Coupled with the fact that the matter of Scottish independence is still on the political agenda, the voices of Scotland's fishing sector and fishermen cannot be ignored.

### 3.2. UK–Norway Fisheries Cooperation

UK Environment Secretary George Eustice and Norwegian Fisheries Minister Odd Emil Ingebrigtsen signed the Fisheries Framework Agreement [43] on 30 September 2020. The parties agreed that the United Kingdom and Norway would negotiate annually on access to waters and quotas, with the rest of the Agreement not being released to the public. As the first post-Brexit agreement signed by the United Kingdom and also the first agreement the United Kingdom signed as an independent coastal state in forty years, it is of historical significance.

Post-Brexit, the United Kingdom is no longer a party to international agreements signed by the EU. Norwegian fishermen cannot enter the UK EEZ until a fisheries agreement is signed between the United Kingdom and Norway. On the other hand, British fishermen are not allowed to enter the offshore area of the Barents Sea to catch cod. However, the Norwegian fishing industry is heavily dependent on the UK EEZ, its exclusion from which would be very costly. In contrast, the dependency of the UK fishing industry on the Norwegian EEZ is very low. Thus, it seems clear that the United Kingdom is in a dominant position regarding its dependence on fishery resources in the North Sea. Nevertheless, the northern archipelago of Svalbard is a powerful weapon in Norwegian fisheries negotiations. It influences fishing quotas in the North Sea, as Svalbard's cod is crucial to British fishermen.

The United Kingdom reached an agreement with Norway on fisheries access and quotas for 2022 on 21 December 2021, marking the start of a new arrangement between the two countries. The agreement covers cooperation regarding surveillance and the exchange of relevant information and data [44]. Both parties permit access to each other's waters and exchange several fish quotas in the North Sea and the Arctic. Furthermore, the agreement highlights both parties' continued commitment to managing fisheries sustainably [45]. Norway allocated to the United Kingdom 6.5 million kg of cod around Svalbard in exchange for a fish quota in the North Sea, which is 1.5 million kg more than that in 2021. This means that the United Kingdom can fish over 7 million kg of cod in the Arctic, estimated to be worth around £16 million [45]. Although Norway's quota for the SFPZ is set unilaterally based on historical catches and, in principle, without a quota exchange, Norway has unilaterally granted the United Kingdom a cod quota in the SFPZ that is larger than the share the United Kingdom has historically received [6]. It is reasonable to assume that this move is a concessionary compromise on the part of Norway in order to encourage the signing of a UK–Norway Bilateral Fisheries Agreement. The UK has stressed that this agreement will not impact its bilateral negotiations with the EU. Those negotiations are ongoing, with a focus on setting TACs for bilateral UK–EU stocks and a range of related technical measures [45].

While expressing dissatisfaction with the agreement's imbalance, Norway also said that the 2022 UK–EU joint quota agreement laid the groundwork and would provide a better starting point for future agreements between the parties. According to the leader of the Norwegian Fishermen's Association, "The solution for whitefish with mutual access can resume a traditional fishing pattern of the Norwegian pelagic fleet in the British zone. It is important to normalize our cooperation with the UK again, and it was, therefore, important to get a joint quota agreement for 2022" [44].

The 2022 joint quota agreement between the United Kingdom and Norway was reached under the 2020 UK–Norway Framework Agreement on Fisheries. The 2020 Framework Agreement on Fisheries only covers issues such as access to the respective area of jurisdiction, the cooperative management of fish stocks, and quota exchanges, excluding issues closely related to fisheries, such as trade. However, it is reasonable to assume that the

parties will reach a more extensive fisheries agreement in the future, including a fisheries trade permit. Notwithstanding Norway's consistent position that there should be no direct link between fisheries quotas and trade [6], the fishing industry is closely linked to trade. The United Kingdom is a huge fish market, and Norwegian seafood exporters' access to this market is essential [23]. Thus, trade policies can impact negotiations on sharing quotas between the parties and other substantial aspects related to fisheries management. There is a strong possibility that Norway will accept the United Kingdom's proposal to reduce quotas for certain species in UK waters and provide quotas for species in the Svalbard area in order to continue enjoying access to the UK EEZ and to maintain full market access to the United Kingdom.

### 3.3. UK–EU27: The EU–UK Trade and Cooperation Agreement

Following the start of the Brexit process, the United Kingdom and the EU entered into negotiations to reach a new comprehensive agreement on their future relationship. After 1492 days of lengthy negotiations, the EU–UK TCA was signed on 28 April 2021, and it took effect in May of the same year. This TCA “covers a wide range of areas, from fisheries to justice and home affairs, that go far beyond usual Free Trade Agreements” [46], and it positively impacts the strength of the UK–EU relationship. Both parties have given it a positive assessment. It is the beginning of a new chapter in the UK–EU relationship.

Fisheries are a bone of contention in the negotiations between the parties. The EU is an important market for British fishermen [23]. Therefore, fisheries export trade is an important bargaining chip for the EU in its negotiations with the United Kingdom. The EU has also issued alerts to the United Kingdom over shellfish and other seafood exports. Scotland Food and Drink chief executive officer Withers said that British food exporters experienced more than four months of a painful Brexit period [47]. Brexit has increased the costs and risks for UK domestic food exporters doing business with European customers and has reduced shipping speeds, which has hit UK food exporters hard, especially seafood exporters with high timeliness requirements. Furthermore, should the previously balanced trade relationship between the United Kingdom and the EU be disrupted, it would negatively impact not only UK and EU industries but also industries in non-EU countries that have offices in the United Kingdom and the EU and trade goods and services across the English Channel [48].

However, given that the United Kingdom has historically been a great maritime power, fisheries rights make more than economic sense and indicate the symbolic significance of national sovereignty and dignity. Therefore, the United Kingdom has maintained its position of negotiating separately with the EU on the international right of passage of EU vessels. The EU, for its part, wants to maintain the status quo of free access for EU vessels to fish in British waters after the transition period, or it may ban British fisheries from selling goods to the EU market. The vast divergence between the parties led to a stalemate in negotiations. Finally, each party conceded fishing rights to reach an agreement as soon as possible. The EU stated that it respects the United Kingdom's jurisdiction and control over its waters and accepts the United Kingdom's proposed “transition plan for fisheries powers.” The United Kingdom will also facilitate EU vessels by granting EU-owned companies incorporated in the United Kingdom the right to own UK-flagged vessels, which are the entry point for a wide range of activities, including maritime transport and fisheries [46]. This step symbolizes a compromise on the part of the United Kingdom to grant EU vessels access to its EEZ. Additionally, the parties agreed to a 5.5-year fisheries adjustment period ending in June 2026. According to the TCA, EU fishermen have the right to continue to fish in UK waters according to the current access criteria during the transition period. However, 25% of the EU quota in UK waters will be gradually transferred to the United Kingdom. The EU has also abandoned its plan to impose trade retaliation on the United Kingdom. At the end of the transition period, the parties will conduct annual negotiations on fisheries issues.

The TCA also specifies the percentage of each shared stock allocated to the EU and the United Kingdom (i.e., the share of the TAC for each party). The parties will conduct annual consultations under the leadership of the EC to determine TACs and quotas for the coming year. The principles of international obligations, the MSY, the best available scientific advice and the protection of fishers' livelihoods are to be considered in this consultation process, since these elements are at the core of the fisheries provisions in the EU CFP and the TCA. The EU Council will provide political guidance to the Commission during the negotiation process and formal approval of the final agreement. The parties also agreed that any disagreement would be resolved through arbitration, and provisions exist for trade measures to be applied by either party if the agreement is breached [49].

In June 2021, the EU and the United Kingdom reached their first annual agreement on jointly managed fish stocks based on the principles and conditions established by the TCA. The agreement set TACs for 70 fish stocks and established provisions for exploiting non-quota stocks in 2021 [50]. The parties agreed on additional fisheries management measures for 2021. Their agreed management measures will replace the interim measures the EU and the United Kingdom each developed separately in order to ensure that fishing activities continue until consultations are concluded and implemented under their respective national or EU laws. As of July 2021, the EU and the United Kingdom agreed on a monthly quota exchange [51]. In December 2021, the EU Council announced that the EU and the United Kingdom reached an agreement on fishing opportunities for 2022, which is the second annual agreement between the United Kingdom and the EU on fisheries within the TCA framework, covering all shared and jointly managed fisheries resources in UK and EU waters [52].

### *3.4. The Current Situation and Outlook of Tripartite Cooperation amongst the United Kingdom, Europe and Norway*

Prior to Brexit, all three parties were bound by the 1980 Agreement, within the scope of which, Norway and the EU have held annual fisheries consultations, and fisheries cooperation has remained stable for more than forty years. Although overfishing occurred for a certain period, flaws do not obscure the fact that the management framework for fisheries cooperation established by the 1980 Agreement ensured the stability of fisheries cooperation and thus the stability of the situation in the North Sea. The principle of relative stability established by the agreement keeps each country's quota shares constant, and all parties benefit from a stable situation.

The 1980 Agreement remains valid for Norway and the EU-27 after the United Kingdom's exit from the EU. However, it cannot bind the United Kingdom after Brexit, and the United Kingdom has become a new coastal state and quota-sharing subject independent of the EU CFP framework, which destabilizes fisheries cooperation under the 1980 Agreement framework. Therefore, Norway, the EU and the United Kingdom must revise the 1980 Agreement or sign a new trilateral fisheries agreement, through negotiations and consultations, that incorporates the United Kingdom as a new quota-sharing subject of the North Sea fisheries.

The current situation is that Norway, the United Kingdom and the EU held two annual negotiations in 2021 on a trilateral management regime for North Sea stocks and consulted on a common fisheries relationship amongst the three parties, including the management of shared fish stocks in the North Sea in 2022. The United Kingdom agreed on the TAC for 2022 for six jointly managed fish stocks in the North Sea with Norway and the EU on 10 December 2021 [45]. The agreed record of the three parties emphasizes that consultations on the trilateral framework agreement, which will be the basis for their future cooperation to ensure the long-term conservation and sustainable use of North Sea fisheries resources, will be intensified. The framework agreement should set out the objectives and scope of cooperation and contain general principles of management, procedural rules for cooperation and provisions for exchanging information between the parties [53]. The three parties hope to complete consultations on the agreement in 2022.

#### 4. Impacts on the Svalbard Fisheries Protection Zone

The Northeast Atlantic, where the warm North Atlantic current meets the cold Arctic current, is rich in fishery resources, including the Barents Sea, the North Sea and the Norwegian Sea. Historically, the Barents Sea was an unregulated open cod fishery with fishing traditions in all European countries. The Barents Sea consists of four main ocean areas: the Norwegian Exclusive Economic Zone (NEZ), the Russian Exclusive Economic Zone (REZ), a high seas area commonly referred to as the Loophole and the SFPZ [54]. Although the setting of quotas in the Svalbard area is based on historical catches and is unrelated to quota trade-offs, changes in the situation of North Sea fisheries can also affect countries' fishing activities in the Svalbard area.

The Svalbard archipelago occupies a vital position in the Arctic region due to its unique geographical location and legal status. In 1920, the signing of the Svalbard Treaty [55] granted Norway sovereignty. Svalbard waters are rich in fishery resources. In 1977, Norway enacted the Svalbard Fisheries Protection Zone Ordinance to establish a 200 nautical mile non-discriminatory fisheries protection zone in Svalbard and to assume responsibility for managing fisheries activities in the SFPZ.

##### 4.1. Management of the Svalbard Fisheries Protection Zone

Under the Svalbard Treaty, Norway has sovereignty over the Svalbard archipelago and, as a coastal state, manages fisheries in the SFPZ. Quotas are an essential tool in fisheries management, and Norway has been allocating quotas concerning the presence and catches of third-country vessels in the SFPZ. Quota setting in the SFPZ is based on historical catches, so, in principle, Norway cannot receive fishing quotas in third countries' EEZs as compensation. Except for Norway and Russia, the quotas for the SFPZ are based on catches in the reference period. The EU also bases its quota allocation in the SFPZ on its historical presence.

The 1980 Agreement between the EU and Norway also encompasses the Barents Sea and thus the SFPZ, and the parties formally engage in quota exchanges within the treaty's framework. Changes in the situation in the sea area covered by the Agreement will affect fisheries in the Svalbard area. In comparison, the Norwegian side argues that Svalbard is under the jurisdiction of Norway's national law and does not need to follow the principle of quota trade-offs [56].

A TAC exists for the entire Barents region, with quotas for the EU and the United Kingdom in the NEZ and SFPZ but not in the REZ. EU vessels with quotas in the SFPZ must harvest their quotas and cannot harvest their quotas in the NEZ. In contrast, EU vessels with quotas in the NEZ can harvest these quotas in the SFPZ. EU countries with quotas in the NEZ and SFPZ can exchange quotas with other EU countries [54].

##### 4.2. EU–Norway Fisheries Divergence

Since establishing the SFPZ, Norway and the EU have had different views and conflicts over the waters around the Svalbard archipelago. In particular, the quota system in fisheries management has been the subject of constant dispute between the two sides, as the EU–Norway snow crab clash has demonstrated. New controversies are expected to arise after Brexit.

###### 4.2.1. The Snow Crab Case

Since establishing the Svalbard fisheries Protected Zone, the Norwegian Ministry of Fisheries has been mandated to manage and supervise fishing activities in the area. For example, access by fishing vessels is authorized and monitored, restrictions on the use of fishing gear are imposed, areas for the protection of juvenile fish are established and maximum allowable catches of species are determined [57]. Controversies surrounding fishing in the Svalbard fisheries Protected Zone are frequent, and the snow crab case is a typical example involving Norway, Latvia and the EU. In January 2017, a Latvian-flagged fishing vessel fishing for snow crabs in the waters around the island was detained by the



Norwegian Coast Guard for “illegal fishing” because it did not hold a permit issued by the Norwegian government. The owner of the Latvian fishing vessel did not accept the administrative penalty and appealed to the District Court, where he lost. He then appealed to the Court of Appeals, where he still received an unfavorable decision. The case was appealed to the Norwegian Supreme Court, which rejected the appeal on the same position and grounds, i.e., Norway did not violate the Svalbard Treaty. The snow crab is a biological resource attached to the island’s continental shelf. Norway, of course, enjoys sovereignty over the continental shelf and has the right to issue permits to restrict the fishing activities of fishing vessels from other countries in this area. Therefore, Latvian fishing vessels that have not obtained a permit are fishing illegally and should be punished [58]. Although the EU is not a party to the Svalbard Treaty, because several of its member states are parties to the Svalbard Treaty, the EU has a legal obligation to act to safeguard the legitimate fishing rights of its member states. Consequently, at the end of 2017, the Republic of Latvia called on the EC to act under Article 265 of the Treaty of the Functioning of the European Union (TFEU) [59] to preserve its member states’ legal fishing rights on the island. In its response letter, the EC stated that it was not failing in its duty, but it had worked hard to find a solution and would continue to defend and pursue the EU’s position in the Svalbard fishery [60].

The controversy in the snow crab case centered on access to the fishing grounds around Svalbard and interpretation of the Svalbard Treaty. The ambiguity of the legal provisions in the Svalbard Treaty and the divergent interests of the parties have led to widely divergent positions and deep-rooted conflicts, and the parties have still not found a common and agreed-upon way to resolve their disputes. There are three positions reflecting different interpretations of the SFPZ and the scope of the application of the Svalbard Treaty: the view that Norway has exclusive rights in these areas that are not subject to the Svalbard Treaty; the position contrary to the view that Norway has no rights outside the territorial sea; and an intermediate model that has been accepted to varying degrees by different contracting parties, which holds that Norway has jurisdiction and sovereign rights outside the territorial sea and that the provisions of the Svalbard Treaty, the non-discriminatory rights in particular, are applicable [61].

There are different legal arguments regarding whether the Svalbard Treaty applies in a zone outside Svalbard’s territorial waters. Norway asserts that the Svalbard Treaty applies only to Svalbard’s land territory, internal waters and territorial sea. The position of the Norwegian government is that the Treaty is limited to the territorial waters of Svalbard, and the EEZ regime entitles Norway to establish a 200 nautical mile economic zone outside the territorial waters of Svalbard. Therefore, the SFPZ is a maritime area with exclusive rights under the international law of the sea and is not subject to the Svalbard Treaty [62]. Furthermore, the opinions of member states within the EU are divided. Poland, Hungary, the Czech Republic and others argue that Norway has no right to establish an EEZ around the island because Norway acquired its sovereignty over the island by signing the Treaty, and claiming sovereign rights in the surrounding water is contrary to the scope of application of the Treaty, which refers to the “land” and “territorial waters” of the island. Denmark, Spain, the United Kingdom and the Netherlands recognize that Norway may establish a fisheries protection zone around the island; however, they assert that each state party should be guaranteed equal rights under the Treaty in this zone. The dispute over Svalbard is seen primarily as a conflict of laws arising from differences in interpretations of the Treaty. It is foreseeable that the parties’ dispute will not soon be resolved through judicial proceedings and that Norway’s diplomatic efforts to win international understanding of the management of Svalbard’s resources will not lead to a consensus [63].

The differences in the fundamental positions of the two parties have led to disagreements about the fisheries quota system. According to the relevant principles of the UNCLOS and the Svalbard Treaty, Norway unilaterally sets quotas in the Svalbard area based on historical catches. However, the EU disagrees in principle with Norway’s view that it has

the right to set and distribute quotas among its members. In the snow crab case, the EU unilaterally sets quotas and continues to issue licenses for snow crab fishing around the Svalbard archipelago [64].

Norway believes that the EU's approach has no legal basis or legal effect [54] and violates the law of the sea and international legislation regulating fisheries [64]. Only coastal states can legally set fishing quotas in areas under their jurisdiction. In the 1970s, before the third United Nations Conference on the Law of the Sea (1973–1982) finally established the 200 nautical mile EEZs, twenty coastal states already claimed exclusive fisheries jurisdiction beyond 12 miles [65]. Those countries that previously established exclusive fishing zones required a prior agreement with flag states or had to apply for a permit for other fishing vessels to sail in their exclusive fisheries zones even before the law of the sea convention. The establishment of the EEZ regime after the UNCLOS vests sovereign rights over the management of marine natural resources in coastal states. With the expansion of coastal states' fisheries management rights, the geographical area of "freedom of fishing" has also been reduced, which requires adjustments to the traditional fishing model. Although Svalbard is entitled to an EEZ under the UNCLOS, Norway has not established such a zone. Instead, Norway has established a 200 nautical mile non-discriminatory fisheries protection zone around the Svalbard archipelago [66]. Norway has strongly emphasized that Svalbard's non-discriminatory fishing regime is to protect marine living resources. The difference between Norway's mainland EEZ and the SFPZ pertains to "exercising administrative power" and is based on "considerations of practicality and effectiveness" [67]. Norway, therefore, has the right to manage fisheries in the Svalbard area by imposing a series of legal provisions on the fisheries protection zone containing TACs, closed areas and reporting obligations. Norway believes that the legal basis for this practice is its competence as a coastal state. Norway sets annual quotas for EU fisheries reserves in the Svalbard archipelago based on historical fishing patterns in the waters around Svalbard. Norway claims that it is not bound by any internal reallocation of such quotas by the EU among its member states.

However, the EU views Norway's approach as violating the "non-discrimination clause" in the Svalbard Treaty [68]. In accordance with the EU's long-standing position on the status of the Svalbard archipelago under the Treaty of Paris of 1920; the applicability of the relevant provisions of the Treaty to fishing activities in the fisheries protection areas around the Svalbard archipelago; and the conditions and restrictions on Norway's right to take measures to protect fisheries resources in these waters in accordance with the Treaty [69], member states that are parties to the Treaty are entitled to equal access to the fisheries resources of the Svalbard archipelago. By means of a note verbale, the EU opposes any discriminatory measures by Norway.

#### 4.2.2. New Post-Brexit Controversy

A new controversy over quotas has arisen in the wake of Brexit. The announcement of Brexit and the United Kingdom's withdrawal from the EU CFP after the transition period means that the United Kingdom will take away its fishing quota around Svalbard. For its part, Norway claims that, since establishing the SFPZ, it has been allocating fishing quotas to countries that historically fished in the Svalbard area; therefore, they may continue their fishing activities. The Norwegian Ministry of Trade, Industry and Fisheries announced that the sharing of quotas was based on fisheries in the ten years prior to the creation of the zone. Due to Brexit, the United Kingdom's historic fisheries may no longer constitute a foundation for the EU's quotas. Therefore, its historic fisheries should be deducted when the EU quota is calculated [56].

There is also positional divergence between the United Kingdom and Norway on the issue of quotas. Under the 1980 Agreement, the value of Norwegian landings in British waters was eight times that of British landings in Norwegian waters. The British approach to the negotiations therefore aims to take the new fisheries arrangement with Norway beyond the 1980 Agreement such that quotas and access Norwegian fishing vessels enjoyed

in British waters should result in a more proportionate return to the United Kingdom in Norwegian waters, in the hope of receiving quota compensation in the Svalbard area. On the other hand, Norway believes that bilateral arrangements should be based on the United Kingdom's traditional level of access as an EU member state. The divergence has stalled negotiations toward a 2021 agreement on bilateral access and quota exchange arrangements between the two parties. The Norwegian side said it was surprised by the United Kingdom's lack of concessions on regional access [70], but out of a desire to reach a win-win fisheries agreement, the Norwegian authorities adopted a special arrangement to give British pelagic fishing vessels access to the waters around Svalbard [71].

Norway and the EU have divergent views on the cod quota in the Svalbard area [54]. At its October 2020 meeting, the Russian–Norwegian Fisheries Committee set aside 31,751,466 kg of cod for third countries to fish in the SFPZ. Furthermore, in the EU Council Regulation 2021/92 of 28 January 2021 [72], the EU unilaterally set a quota for cod fishing in its member states in the SFPZ that far exceeded the quota that Norway set for the EU. Additionally, previously, the EU allocated fishing opportunities in the same area to the United Kingdom without consulting Norway as a coastal state [73]. The cod quota in the SFPZ can be seen as an “incidental payment” in the larger fisheries game involving Norway, the United Kingdom and the EU, even though the SFPZ quota is autonomous and, in principle, not subject to quota exchange [54].

The EU views Norway's practices as in violation of the “non-discrimination clause” in the Svalbard Treaty, which gives Norway the right to govern fisheries activities as a coastal state. In a note verbale dated 26 February 2021, the EU delegation alleged that Norway's allocation of fishing opportunities in the SFPZ was discriminatory and favored Norwegian and Russian fishing areas [73]. The EU wants Svalbard resources to be equally distributed among the countries that signed the Svalbard Treaty.

Norway rebutted again, saying, “That is not the case”; for shared stocks that straddle the Norwegian and Russian maritime areas, Norway and the Russian Federation jointly determine quotas for the totality of the stocks' distribution area, granting each other's vessels reciprocal zonal access [73]. In 2021, when the TAC was established, there was a “surplus” of 9.674 million kg in the 2021 third-country cod quota. In a letter from the Norwegian Directorate of Fisheries to the Norwegian fishing industry [54], the Directorate asked for advice on how this would be divided between the different sectors of the industry. However, the directorate stated that half of this “surplus” belonged to Russia. This implies that, even if there is a surplus of quotas, Norway cannot unilaterally decide to allocate them to the EU.

After Brexit, Norway reallocated cod quotas in the SFPZ under Norwegian regulations, but Brexit rationale alone cannot explain these changes. It seems that Norway has taken unilateral steps to reduce the EU fishery in the SFPZ independent of the United Kingdom leaving the EU [54].

The differences in standpoint and underlying principles between Norway and the EU concerning fishing activities in the SFPZ are the source of their disagreement. Norway has insisted on a quota exchange, hoping for compensation for its quotas in the SFPZ with stocks in other marine areas. Moreover, the EU has sought an arrangement for the Svalbard area based on equal fishing rights rather than a quota-exchange-based solution for the entire Norwegian continental shelf [60]. This is because the EU realizes that reaching a practical arrangement for Svalbard without abandoning its position will be very difficult and time consuming [60]. Quota setting for exclusive stocks is based on historical fishing patterns and should be balanced among countries based on fixed ratios that have been established. However, it may also be affected by variations in the size of the stocks. For example, the recent expansive development of the cod stock in the Barents Sea has led to an increase in the quota proposed to the EU. In contrast, stocks offered as compensation from the EU to Norway have not developed similarly. Consequently, Norway has retained parts of the quota offered to the EU [4].

#### 4.3. Conflict Expansion: The Arctic Council

The EU has always been cautious regarding Svalbard, as its fishery has far more implications than it has merely in itself. In the years before 1986 (when Spain joined the EU), Spain caught 90,718,474–136,077,711 kg of cod off Svalbard, despite Norway's request to reduce catches. Following the accession of Spain and Portugal to the EU, Norway has had informal diplomatic discussions with the EC. In July 1986, Norway stopped cod fishing around Svalbard because the TAC Norway set had been reached. Divergences arose between the two parties. Although the EU disapproved of Norway's actions, it accepted Norwegian jurisdiction and reached an informal understanding with Norway in August 1986. In the snow crab case, the EC also stated in its response letter that the issues at stake around Svalbard go beyond fisheries' interests, and the spillover risks are an essential element that must be taken into account at every step of the way [60].

It can be seen that a slight move in the fisheries issue may have a butterfly effect, and in the interest of preventing spillover of the conflict, the EU's attitude is sensible and moderate. Despite this, Norway has taken a hard line, even showing an intention to link the fishing rights dispute to the EU's position in the Arctic Council, which will inevitably be drawn into the conflict, especially after Norway takes over rotating chairmanship of the Arctic Council in 2023.

The Norwegian Ministry of Foreign Affairs has repeatedly stated that the EU has no right to establish quotas in maritime areas around Svalbard under international law. As an observer to the Arctic Council, the EU must respect Norway's sovereign rights and jurisdiction in the Arctic. The criteria for admitting observers to the Arctic Council include recognition of the Arctic states' sovereignty, sovereign rights and jurisdiction in the Arctic. Furthermore, the criteria include recognizing that an extensive legal framework applies to the Arctic Ocean, including the UNCLOS. This framework provides a solid foundation for responsible management of the Arctic Ocean. The EU's unilateral establishment of fishing quotas in Norwegian Arctic waters is not in line with these basic principles of multilateral engagement and cooperation in the Arctic [73]. Norway's statement can be interpreted as an indirect threat; failure to comply with the game's rules will result in disallowance from joining the Arctic Club.

This is a significant and arguably uncharacteristic escalation. The EU has yet to receive full observer status due to opposition from Russia [74] (and previously from Canada [75]) but has still been allowed to attend meetings with other observers. Canada has withdrawn its reservation to EU observer status at the Arctic Council, and the Arctic Council ministerial meeting did not address the issue of observers but rather deferred decisions on pending observer issues [76]. Norway's signaling of the fragility of this arrangement could produce a culture within the organization in which disagreements with permanent members come at the risk of expulsion. Expulsion would, however, have to be imposed with the consensus of other Council members who could take exception to bilateral issues interfering with multilateral governance within the Council. With the EU's unique status as a quasi-observer, its fate could come down to Norway's unilateral decision once it begins its chairmanship, should it choose to interpret Article 38 of the Arctic Council Rules of Procedure [77] as giving the chair such authority. Such an act could discourage other states and organizations from seeking observer status and participation within the forum [78].

The conflict between the EU and Norway regards overfishing in Svalbard, but the primary remit of the Arctic Council is environmental and climate cooperation. The proliferation of this conflict is not only pointless regarding a solution but could even have a very negative effect. Norway's dissatisfaction with the EU and its member states over the Svalbard area fisheries has affected Norway's attitude and cooperation with these parties within the Arctic Council. Based on the fact that Norway and these countries also have bilateral or multilateral relations outside the framework of the Council, it also exacerbates tension within the Arctic region itself outside the Arctic Council.

Russia has held the rotating chairmanship of the Arctic Council since 2021, and its tenure ends in 2023. As the premier forum for Arctic governance, the Arctic Council is often



insulated from geopolitical tensions. However, under the influence of the Russia–Ukraine conflict, Western countries have announced sanctions against Russia [79]. The Russian–Ukrainian conflict has brought the Arctic Council’s operational mechanisms to a halt, and the Council is challenged by internal divisions, unprecedented resistance to international cooperation in the Arctic and stagnation of the work carried out under its framework. Currently, the Russian–Ukrainian conflict is still escalating in a protracted manner. In June 2022, seven member states announced limited resumption of the Arctic Council regarding projects that do not involve the participation of the Russian Federation [80]. Against the backdrop of a protracted Russian–Ukrainian conflict, the Arctic Council can no longer function in a consensus-based format, as the work of the Arctic Council and its subsidiary bodies has not effectively returned to its previous conditions.

Against the backdrop of the ongoing Russia–Ukraine conflict and climate change, Arctic cooperation is in a difficult situation, and Arctic fisheries are being negatively affected by both political and environmental factors, casting a shadow of uncertainty over the future of the Arctic Council. Therefore, it is necessary to address the fisheries issue against the backdrop of the potential for multiple conflicts and increased uncertainty, at least by enhancing dialogue and discussing interim solutions.

## 5. Conclusions

The Northeast Atlantic is rich in fishery resources, including the Barents Sea, the North Sea and the Norwegian Sea. The North Sea fishery, which is rich in fish production and variety, forms the center of the North Atlantic fishery and is one of the four principal fishing grounds in the world. Norway and the EU have been cooperating steadily on fisheries management in the North Sea for more than forty years since the 1980 Agreement. Moreover, the signing of the EEA Agreement has provided a free circulation market for countries to trade in fisheries.

The United Kingdom’s exit from the EU has made it a new independent coastal state and quota-sharing subject in the North Sea fisheries, creating a challenge to the stable situation in the North Sea. The arrangement of fisheries cooperation will affect not only countries’ socio-economic structure and international relations but even the situation in other sea areas, one of which is the SFPZ. However, behind the conflict over the fishing quota in Svalbard is a deeper divide and a more severe risk of spillover.

Norway, the EU and the United Kingdom have a long tradition of cooperation in fisheries management and trade in fish and fish products. Each party has its advantages in their tripartite negotiations. The United Kingdom’s leverage is the fisheries resources in its EEZ. Norway’s is the fisheries resources in the SFPZ. Last, although in a disadvantageous position regarding fisheries resources, the EU has a vast market, giving it a voice in the negotiations. Win–win cooperation is a common expectation among the three parties, and there is a high probability of achieving that outcome.

Assuming that the three parties fail to reach a consensus on the issues of maritime zone access and fish quotas as soon as possible, such failure to do so will not only adversely affect various areas in each country, such as fisheries and trade, but will also threaten the operation of the Arctic Council and the stability of the Arctic region. Therefore, concerning fisheries, the three parties should maintain close dialogue, work to resolve disputes and establish a new legal framework for fisheries cooperation, covering trade as soon as possible. The 1980 Agreement should be revised, or a new trilateral agreement should be established to achieve win–win cooperation in fisheries management and to ensure the socio-economic sustainability of fisheries. In conclusion, Brexit has had a substantial impact on the previous management regimes in the North Sea and Svalbard Sea area and has added instability to the situation of Arctic governance, which still needs further research and continuous tracking.

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