

Fishing land

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Ref: QZ O1195

PRIME MINISTER

Community Affairs

The Ministerial Committee on European Questions (OD(E)) will have met before Cabinet to consider the Mourne herring issue about which the Secretary of State for Northern Ireland, the Minister of Agriculture and the Lord Privy Seal minuted you. The issue is whether the political and economic needs of the County Down fishermen justify a derogation from the ban on fishing which would be contrary to our general conservation policy, risk an adverse judgment from the European Court and sour the atmosphere in Brussels on the common fisheries policy. You will wish to ask the Foreign and Commonwealth Secretary to report the outcome of the OD(E) discussion. The Cabinet can take note of the Committee's conclusion. If there has been strong disagreement, the Cabinet may be asked for decision, which must be taken before the end of the month. Since Cabinet colleagues will have the Northern Ireland situation very much in mind, and have had copies of the relevant minutes, you could invite the Secretary of State for Northern Ireland to explain the issue and the Minister of Agriculture and the Lord Privy Seal to give their reasons for disagreeing. A background note, with the main points, is attached. Whether the Cabinet decides to extend the ban, or to grant the 400 tonne derogation, the Commission will need to be immediately informed.

2. There is no other current Community business which need detain the Cabinet. Early reports of the drafting of the Commission's factual paper on our budget problem are encouraging but it has not yet gone to the full Commission. The Foreign and Commonwealth Secretary will be meeting his French colleague, M Francois-Poncet, on 3 September.

hnd

29 August 1979

M D M FRANKLIN

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MOURNE HERRING FISHERIES

BACKGROUND

1. The Mourne herring fisheries lies partly in United Kingdom and partly in Irish waters. It is a seasonal fishery confined mainly to the autumn. Like other herring fisheries, it has been over exploited and scientific advice from the International Council for the Exploration of the Sea (ICES) - on whose impartial recommendation UK conservation policy is founded - has been advising closure since 1976. Although their report for this year has not yet been published it is likely to repeat its recommendation for a ban on both direct fishing of spawning adult stock and on industrial fishing for sprats within the resulting by-catch of young herrings.

2. The last Government decided to close the UK part of the fisheries from 20 September 1978 to the end of 1978 subject to a derogation for small boats of up to 400 tonnes which, in the event, was taken within 6 days. The ban was later extended to 31 August 1979. The Irish Republic have closed their part of the fisheries completely. The Commission accept the case for a ban but regard the derogation as discriminatory and the issue, along with other UK conservation measures, is now before the European Court.

3. The Secretary of State for Northern Ireland considers that we should make the same 400 tonnes derogation this year; other Ministers think we should not, and should continue the straight ban.

CONSIDERATIONS

- (i) Technical. The Secretary of State for Northern Ireland may argue that the conservation risk is less this year because a fish factory in the Republic has closed and therefore there will be no industrial fishing. But even if the factory has closed for good, the saving of young herring does not solve the problem of the spawning adult stock from which the 400 tonnes would come.

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- (ii) Legal. The European Court cases are not due to be decided until later in the year but it is unlikely that we will win. If we announce another derogation it is quite possible that the Commission would seek an accelerated judgment from the Court, which, although it would not come in time to stop the 400 tonnes being taken, might precipitate unwelcome views about national conservation measures.
- (iii) Economic. The Mourne herring fisheries provide much needed employment in County Down for about 250 fishermen and 50 men involved in processing. A 400 tonne catch would be worth about £150,000 and would supplement fishermen's incomes by about £600 a head. Many of them will be on social security.
- (iv) Domestic/Political. Mr Enoch Powell, the local MP, says that the 1977 ban would have led to an ugly reaction had there been no promise of a review and the same would have happened in 1978 if the 400 tonne derogation had not been granted. He fears a widespread breach of the law if the ban is re-imposed now which, as he rightly says, no-one wants on top of the current security situation. This is the Secretary of State for Northern Ireland's main concern. But the Scots argue that they cannot hold the line with some of their local herring fishermen if a derogation is granted in Northern Ireland.
- (v) EEC/Political. Another fisheries brush with the Commission and the European Court will, according to the Minister of Agriculture and the Lord Privy Seal, make our difficult position on fisheries in the Council worse. It is even suggested that it might increase the risk of a link between fish and the Budget at the European Council.

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- (vi) Enforcement. Enforcement of a ban might be difficult in face of local opposition and the impression that the corresponding ban is not enforced by the Irish Republic.

29 August 1979

Fishing, (Ind.)

Cabinet Office
informed
24/8

Prime Minister

CONFIDENTIAL

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MR CARTLEDGE

MOURNE HERRING FISHERY

Yes -
I see where point
is - derog. done,
that's what
he intended
in 1-6 days.
no

Do you agree that
this problem should
be met to a meeting
of OD(E) on 30 August;
and that I should write
to Rt NIO as suggested
in para. 5?

[A]

1. In his minute of 22 August to the Prime Minister the Secretary of State for Northern Ireland maintains that the conservation and Community arguments for a total closure of the Mourne herring fishery from 1 September are outweighed by the political need to repeat last year's 400 tonne derogation in favour of the South Down skiff fishermen. He points out that the legal instrument necessary (under Northern Ireland legislation) to regulate the Mourne fishery after the present closure expires must issue no later than 31 August; and asks the Prime Minister to agree that OD(E) or OD should meet urgently to decide whether a derogation should be allowed, giving at least as much weight to the Northern Ireland political arguments as to the opposing case.

[B]
[C]

2. The Minister of Agriculture has set out the case against a derogation in his minute of 23 August; and I understand that the Lord Privy Seal will be minuting the Prime Minister in the same sense today.

3. The background is as follows. The Mourne herring fishery lies partly in UK and partly in Irish waters. Scientific advice for closure has been accumulating since 1977; it is derived mainly from the International Council for the Exploration of the Sea (ICES), on whose impartial recommendations United Kingdom conservation policy is founded. The last Government decided to close the UK part of the fishery from September 1978 to the end of 1978, but later extended the ban in the light of further ICES reports to 31 August 1979. The Irish Republic authorities have closed their part of the fisheries completely. Last year's derogation was introduced on 20 September 1978 to help the local fisheries-based industry in a high unemployment area. It permitted certain small vessels to take a total of 400 tonnes of herring within 1/2-mile of the coast. The 400 tonne quota was exhausted within six days. The Commission, whose approval is required for any conservation measure, accepted the case for the ban but challenged the derogation -

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- which they regard as discriminatory - before the European Court of Justice. The Court's ruling is expected later this year. We are unlikely to win; and it is quite on the cards that the Commission would seek an accelerated judgement from the Court if we announced a further derogation this year.

4. The arguments on both sides of the current issue are briefly and fairly rehearsed in paragraphs 2, 3 and 4 of Mr Atkins' minute. As amplified in the minute from the Minister of Agriculture and the earlier correspondence, they boil down to a clash between the need on domestic political grounds for the Government to do no less for the South Down fishermen than their predecessors did, and the need on the other hand to heed the unequivocal scientific advice in favour of total closure, and to avoid action which would compound the legal difficulties created by the last derogation, damage the prospects for the October Fisheries Council, and enhance the risk of our partners making an unwelcome link between fish and our budget objective at the November European Council.

5. No compromise between these two positions is likely to be achievable, since any derogation however limited would represent a discriminatory breach in our conservation measures and attract the censure of the Commission, the Court and our partners. The four options set out in paragraph 5 of Mr Atkins' minute appear therefore to represent the full range of available alternatives, though they still leave open the duration of any ban that may be agreed.

6. This is essentially a Community matter with important domestic implications. The Prime Minister may accordingly feel that it should, as Mr Atkins suggests, be considered and decided at an early meeting of the Ministerial Sub-Committee on European Questions. (OD)(E)
This would provide an opportunity for the Secretary of State for Northern Ireland and the Minister of Agriculture to state their respective cases in detail and for the several OD(E) members who have not so far declared themselves to pronounce on the question at issue. Provisional soundings suggest that all the Ministers

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concerned could attend a meeting of OD(E) immediately before Cabinet on Thursday 30 August; the Foreign and Commonwealth Secretary returns the day before and his Office have confirmed that he would be free to chair the meeting. The Northern Ireland Office have likewise confirmed that, provided a decision is reached on 30 August, they foresee no difficulty in promulgating the necessary Statutory Rule in time for it to take effect on 1 September.

7. Accordingly, if the Prime Minister agrees to this course, her reply to the Secretary of State for Northern Ireland might say that having considered the issues raised in his minute and the related minutes from other colleagues, she agrees that the matter is of sufficient importance to warrant early discussion in OD(E), hopes that the Foreign and Commonwealth Secretary might be able on his return to chair a meeting of the Sub-Committee to settle the question of the derogation before 31 August, and feels sure that due weight will be given in any discussions to all the arguments that may be advanced, including those relating to the Northern Ireland dimension.

DM
D M ELLIOTT
24 August 1979

CABINET OFFICE SW1

24 AUG 1979



[Faint, illegible handwritten text]



Prime Minister

MOURNE HERRING FISHERY

In his minute to you of 22 August, Humphrey Atkins drew your attention to disagreement among Ministers about the conditions under which the closure of the Mourne herring fishery should be extended beyond 31 August 1979.

Peter Walker will be giving you his assessment of the impact which a derogation from the closure for South Down skiff fishermen would have on the prospects for a favourable CFP settlement and on the future recovery of the Mourne herring stock. No doubt he will also have something to say about the ability of fisheries protection officials to enforce the closure, whether or not a derogation is granted. I should like to draw your attention to other considerations which Humphrey Atkins has not mentioned in his minute.

I believe that a derogation for South Down skiff fishermen would have effects going beyond the October Fisheries Council. It could further encourage other Member States to establish a link between fish and the budget problem to the detriment of progress on the latter question at the forthcoming November European Council.

The Commission took us to the European Court about the derogation the previous Government decided upon last year on the grounds that it was discriminatory, and would certainly do so again.

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CONFIDENTIAL

- 2 -

The Irish Republic authorities were upset at the derogation granted by the last Government because in practice it favoured South Down skiff fishermen. If we were to repeat this measure we would in my view unnecessarily complicate our relations with the Council Presidency at a particularly delicate moment. We require Presidency goodwill in the EEC context if we are to successfully avoid the establishment of a link between fish and the budget problem. Moreover, Irish goodwill will be important to us if we are to make political progress in Northern Ireland in the coming months. The Irish might feel particularly aggrieved since the Mourne fishery is a joint fishery controlled by the Republic of Ireland and the United Kingdom. The Irish, who face analogous social problems, have closed their part of the fishery without derogation in accordance with international scientific advice.

We should try to notify the Commission of our intention to extend the closure as soon as possible. One of the major complaints levelled against us in the past by the Commission has been that we have given inadequate notice of the closure of important fisheries. We could expect discontent on this score on the part of other Member States, whose fishermen might complain that they were unable to plan their activities on the basis of reasonable information.

I am copying this minute to Members of the Cabinet and to Sir John Hunt.

1.11.79.

24 August 1979

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24 AUG 1979



MR. CARTLEDGE

*P. A. Hunt
24/7*

Northern Ireland and Herring Fishing

Mr. Elliott of the Cabinet Office asks that the Prime Minister should avoid adjudicating on the problem posed by Mr. Atkins's minute, and that if she is disposed to adjudicate, she should avoid coming down on his side.

There will be a comment from Mr. Walker tomorrow, and possibly one from Sir Ian Gilmour. Cabinet Office may have a comment to add after seeing those. Their view is that this will have to be considered by OD(E) before next Thursday's Cabinet. Mr. Atkins will find a majority against him in OD(E). If he wishes to take it to Cabinet, he will then be able to do so on Thursday.

MA

23 August 1979

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MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH



From the Minister

23 August 1979

PRIME MINISTER

MOURNE HERRING FISHERY

1. Humphrey Atkins copied to me his minute of ~~22~~ August about the Mourne herring fishery.
2. He considers that the issue mainly turns on whether the socio-economic and political problems of Northern Ireland should over-ride fisheries conservation and consideration for our negotiating position in the forthcoming discussions on the Common Fisheries Policy. I appreciate the serious problems facing Humphrey Atkins in Northern Ireland, but I do not believe that we should seek to alleviate these by compromising our stance on fisheries conservation.
3. In common with most other herring stocks around our coasts, the Mourne fishery has been severely over-exploited in recent years. The International Council for the Exploration of the Sea (ICES), a respected independent body of scientists including those from the United Kingdom, has recommended in unequivocal terms in its latest report on the fishery that "the Mourne stock has declined to a very low level and that all fishing on the stock should be prohibited until a substantial recovery has taken place".


Contrary to what Humphrey Atkins says, my scientists advise me that a catch of 400 tonnes by the skiff fishermen taken from the spawning stock at this time of year would greatly increase the risk of a recoupment failure in the fishery, leading to the extinction of the Mourne herring. If the ban on all fishing is maintained this year, the chances of survival of this fishery would be greatly increased, and with it the prospect of a future source of income for the area. I should add that the Mourne stock is a discrete herring stock and it is not valid to compare catches from this fishery with those from the North Irish Sea stock, which is in far better shape.

4. Humphrey Atkins suggests that in the absence of a derogation there may be uncontrolled fishing and that we should follow the precedent set by the previous Administration last year. In 1977, a ban was imposed by EEC regulation and I understand that it was respected by the local community. In 1978, however, the fishery remained open until it was closed at short notice on 20 September (save for the derogation which lasted less than a week) when large trawlers threatened to take considerable quantities of herring. The closure was a conservation measure taken, albeit belatedly, in accordance with the scientific advice; but the derogation was granted to reduce the impact of the abrupt closure. Our predecessors were apparently undeterred by the prospect of the inevitable hostile reaction from our Community partners.

In 1979, the fishery has so far been closed. A derogation for skiff fishermen would be directly contrary to this year's unequivocal advice from ICES. It would almost certainly be challenged by the Commission who would probably initiate new proceedings in the European Court. Because the 1978 measure is already before the Court, there is a real risk that the Commission would apply for an interim injunction requiring the Government to revoke the derogation forthwith, perhaps even before it could have been of any benefit to the fishermen. A further Court case would worsen the atmosphere for the CFP negotiations. Furthermore, if a derogation was granted to Northern Ireland fishermen, it would undermine the firm stance which George Younger and I have been taking in resisting suggestions that quotas be re-opened for fishing on the depleted North Sea herring stock.

5. Of the courses of action proposed by Humphrey Atkins, option (a) would be very dangerous and could lead to the destruction of the stock within a few days. Option (c) would be very difficult to present, both to the fishermen and to the Commission, which would have to be given advance notification of our intentions. I cannot agree to option (d) for the reasons set out above. I therefore hope that you will agree with the view of George Younger, Ian Gilmour, Christopher Soames and myself that the present ban should be extended to the end of the year.

6. Copies of this minute go to members of the Cabinet and to Sir John Hunt.

 (Assistant Private Secretary)

fw PETER WALKER
Approved by the Minister
and signed in his absence

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CONFIDENTIAL



PRIME MINISTER

MOURNE HERRING FISHERY

1. I feel I must bring to your attention an urgent matter which threatens to take on some significance in Northern Ireland. The question is whether, as was the case last year, fishermen in South Down should be allowed to take 400 tonnes of herring from the Mourne Herring Fishery from 1 September. (The fishery has otherwise been totally closed for conservation reasons.) I remain convinced that a 400 tone quota should be allowed but colleagues take a contrary view.
2. I will not go into the full detail of the arguments here. It is, I think, sufficient to say that the issue mainly turns on whether or not conservation and EEC considerations are to be regarded as overriding. Briefly, Peter Walker takes the view that the herring stock could be further damaged by any concession to these skiff fishermen (as they are known), while I do not. As far as the EEC dimension is concerned, the main argument is that a derogation would inevitably be challenged by the Commission before the European Court of Justice; that even if we won the case it would sour the atmosphere in the run up to the Fisheries Council on 29/30 October; and that it would prejudice our chances of securing Commission and Irish Presidency goodwill in the search for a CFP settlement. I do of course concede that some damage would be done to our relations with the EEC Commission by repeating last year's derogation (which incidentally was needed for little more than a week before the 400 tonne quota was used up) and that it might not make it any easier to achieve an agreement on CFP. But I myself believe that this damage would be small and that it would be outweighed by the political advantage to be gained in Northern Ireland.
3. Our refusal to allow this herring fishery will mean that some 300 or more men in a very small community will lose an important source of income. But this issue has a significance out of all proportion to its size. People feel strongly, particularly since they perceive that damage to fish stocks has mainly been done by fishermen from the Republic. Unless we do as much this year as was done by our predecessors last year it will go down very badly. Enoch Powell, the local MP, goes so far as to say that a widespread breach of the law may occur and that it would be a very good bargain from every point of view for this small quota to be given to these fishermen. Indeed there is also a strong possibility that, if no legal fishing is allowed, more than 400 tonnes may be taken illegally which would obviously be more damaging to our conservation policies than a 400 tonne quota (which is, of course, a tiny quantity in relation to the

CONFIDENTIAL

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total allowable herring catch in the Irish Sea).

4. As you know, I intend this Autumn to make a determined effort to achieve some political progress and I believe that my chances of doing so would be seriously damaged by an insensitive decision on a matter that deeply concerns local opinion.

5. There is a very awkward timing problem. A new legal instrument to regulate this fishery is required by 31 August. As I see it there are four possible options:-

- (a) To do nothing. The effect of this would be to lift all controls from the Mourne fishery as from 1 September. While nobody can be sure what would happen, at the very least it could be expected that some Scottish and other trawlers would come down from the Manx Fishery. It might not take long for Mourne stocks to be fished out.
- (b) To reimpose a total ban. This is the course preferred by my colleagues.
- (c) To reimpose a total ban but to let it be known that we are still considering the question of a derogation for the skiff fishermen. This would be presentationally awkward but it might serve to buy the few extra days that we need to consider this properly.
- (d) To reimpose a total ban but to allow a derogation for the skiff fishermen until such time as they have reached a quota of 400 tones. This is my preferred solution but it causes difficulties for colleagues.

6. This is obviously a highly complex and technical matter and it is perhaps hardly surprising that it has proved impossible to reach agreement in correspondence between Ministers primarily concerned. My problem now is that time is so short before a decision is needed. I will naturally do my best to play for time, at least until Peter Carrington returns next week, but you will see from the options in para 6 above that my room for manoeuvre is very limited. I think that we should then meet urgently to thrash the matter out as quickly as possible - probably at OD(E) unless you consider OD more suitable. I hope you will agree to this and to the need for colleagues to attach at least as much weight to the Northern Ireland political arguments as to the EEC dimension.

7. I am copying this minute to Members of the Cabinet and to Sir John Hunt.

Humphrey Atkins

22 August 1979

CONFIDENTIAL

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23 AUG 1979