



## BRIEFING PAPER

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# End of Brexit Transition: Fisheries

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This note provides a short overview of some of the changes that will take place on 1 January 2021 after the brexit transition ends with regards to fisheries. This includes changes that will happen regardless of any negotiation outcome, and how UK fisheries may be affected in the event of a deal being agreed, or no deal being reached.

The [Fisheries White Paper, Sustainable fisheries for future generations](#), published in July 2018, set out the Government's intention to continue to co-operate closely with the EU and other coastal states on the sustainable management of fish stocks that cross borders, and stated that "decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway, will [...] be a matter for negotiation".<sup>1</sup>

Fisheries is a small part of the UK economy. However, the [economic activity](#) from fisheries is concentrated in specific coastal areas, where it is important both socially and economically. Fisheries has [featured prominently](#) in the Brexit debate. [Fishers](#), both quota and non-quota sectors, are expecting greater fishing opportunities. The [processing sector](#) and [shellfish exporters](#) have concerns about access to export markets and potential border delays.

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<sup>1</sup> Defra, [Fisheries White Paper Sustainable fisheries for future generations](#), published July 2018

The future level of access for EU vessels to UK waters and vice versa, once the transition ends is being decided during the negotiations. Depending on the outcome of the negotiations, any agreed access may or may not be linked to a trade agreement.

For an overview of the negotiations to date please see Commons Briefing Paper [The UK-EU future relationship: the March 2020 EU draft treaty and negotiations update](#). Further background can be found in the Commons Briefing Papers on [Fisheries and Brexit](#), [Fisheries Management in the UK](#) and [UK Fisheries Statistics](#)

# 1. What changes after the end of brexit transition?

At the end of the transition period the UK will cease to be part of the [EU Common Fisheries Policy](#) (CFP). The UK becomes an [independent coastal state](#) and fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of up to 200 miles. This will include setting total allowable catches (TACs), distributing quotas and determining who has access to fisheries.<sup>2</sup>

From 1 of January 2021 the UK will no longer have to abide by the rules of the Commons Fisheries Policy. However, this does not mean that there will be any significant or immediate changes to how the UK fisheries are managed. The majority of the CFP legislation has been transposed into the UK statute book as retained EU legislation and continues to apply with limited modifications. However, fisheries regulations are now amendable at UK level. The [Fisheries Act 2020](#) sets out powers to amend regulations by the devolved administrations, as fisheries management is devolved.

### Box 1: Fisheries Act 2020

The *Fisheries Act 2020* replaces some of the CFP legislation with domestic legislation. The Act sets out in legislation the UK Government's powers to set fishing quotas for each stock and area, for the whole of the UK. It creates a new licencing system for foreign fishing vessels in UK water; sets out fisheries objectives; some new quota allocation proposals; and creates a discard prevention charging scheme.

Fisheries management is devolved so the Act also provides powers for the devolved administrations to introduce and amend regulations on fisheries and marine conservation in each nation of the UK. It also creates a framework for the four administrations to work together on fisheries management.

The [Commons Briefing Paper on the Fisheries Act 2020](#) provides further details.

## 1.1 Setting UK Total Allowable Catches

From 1 January 2021 the UK Government will be responsible for setting Total Allowable Catches in UK waters. These will then be allocated as quota for distribution to the UK's four fisheries authorities. There has been no detail from Defra on quota setting from 2021. The expectation is that as a result of leaving the EU quota available for UK fishers will be higher, regardless of whether a deal is agreed or not. For example, [Scotland launched a consultation](#) in December 2020 on how additional quota it expects to receive

<sup>2</sup> Article 61(1) of the [UN Convention on the Law of the Sea \(UNCLOS\)](#) states that: "The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone."

as a result of the UK becoming an independent coastal state is allocated in 2021. [A consultation](#) on quota allocation in England and the Crown dependencies closed in November 2020.

TACs for stocks shared with third countries are expected to be set after agreement is reached through annual or multiannual agreements with neighbouring states, including the EU and Norway. However, this process has not yet begun for 2021. There is no fisheries agreement with the EU at the time of writing and trilateral agreement negotiations between the UK, EU and Norway have also not taken place.

When asked about the quota negotiations in October 2020 (prior to UK-EU Trade negotiations continuing into late December), Victoria Prentice, Parliamentary Under-Secretary for the Department for Environment, Food and Rural Affairs, stated that the aim was for negotiations to be concluded in time to provide certainty for industry in 2021:

The UK's bilateral negotiations with Norway and trilateral negotiations with Norway and the EU will both take place later this year. Exact timings for these negotiations are still to be confirmed, but the UK aims to conclude them in enough time to provide certainty for industry ahead of the 2021 fishing year.<sup>3</sup>

## 1.2 Border controls for fresh and live seafood after the brexit transition

In response to potential delays at border controls the Government has implemented a [priority scheme](#) for heavy goods vehicle carrying exclusively fresh and live seafood in the event of severe disruption at Dover or Eurotunnel. The Government aims to "minimise delays for prioritised vehicles through the traffic management system in Kent if it is needed".<sup>4</sup> For further details see [Commons Briefing Paper on End of Brexit transition: Transport](#).

## 2. What is unaffected by the end of brexit transition?

How [fishing opportunities are allocated](#) to individual fishing vessels is unaffected by Brexit or the transition period. This is because it has always been within the UK's competence rather than the EU's. Fishing for [non-quota species](#) in UK waters, such as most shellfish species, isn't affected either as it does not fall under the CFP.

The UK Government has made clear that existing fisheries quota will continue to be distributed as they have been to date but has committed to exploring new options for distributing any new quota that becomes available as a result of leaving the CFP.<sup>5</sup>

Under the CFP the Member States are able to set requirements for an [economic link](#) between fishing licences and the UK for licence holders to be allocated quota. This requirement has been carried over into UK legislation. The Government launched a [consultation on strengthening the economic link](#) in October 2020. Any changes to the economic link requirement, for example % of fish required to be landed in the UK, will not be the result of the UK leaving the EU, as it could have been implemented regardless by the UK Government as a Member State.

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<sup>3</sup> [HC written answer UIN 99095, tabled on 5 October 2020](#)

<sup>4</sup> Defra, [Transporting fresh and live seafood or day-old chicks to the EU from 1 January 2021](#), 11 December 2020

<sup>5</sup> Defra, [Fisheries White Paper: Sustainable fisheries for future generations](#), July 2018

The UK will continue to be bound by the requirements of the UN Convention on the Law of the Sea ([UNCLOS](#)) and how they relate to the management of fisheries. UNCLOS requires coastal states to give neighbouring states access to the surplus of the allowable catch in its EEZ. It also emphasises the need to minimise economic dislocation for States whose nationals have habitually fished in the zone. The Convention also places an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species.<sup>6</sup>

### 3. What could no deal mean for fisheries?

No-deal on the future relationship would have an immediate impact on access to fishing grounds for both EU and UK flagged vessels. Vessels would be excluded from each other's fishing grounds until any form of agreement was reached.

Both the EU and the UK have implanted contingency plans for licencing foreign vessels in each other's waters. The [Fisheries Act 2020](#) includes provisions for expedited licencing of foreign vessels. The Government's aim is to ensure that licences can be issued promptly once fisheries agreements are reached with the EU and other countries.<sup>7</sup> The EU has issued [contingency plans on fisheries](#) that would continue to allow UK and EU vessels to be licensed in each other's waters.

In addition, Norway has indicated that they may not allow access to UK or EU vessels to Norwegian waters (or themselves fish in EU waters) if there is no deal between the EU and UK. Mutual access has until now been based on a yearly agreement on fishing between the Norway and the EU (including the UK).<sup>8</sup>

Concerns have also been raised about potential conflict and delays at ports, as set out by UK in a Changing Europe:

The bigger no-deal risk (and one that exists, albeit in lesser form, even with a deal) is that of disruption in Channel ports, if those fishers who feel they are losing their livelihoods take action to pressure their governments to return to the negotiating table. This could compound other border disruption and become a de facto blockade. The UK will also have to step up enforcement activity, if EU fishers attempt to continue to fish in UK waters without an agreement.<sup>9</sup>

Any delays could have a significant impact on the ability to export and import fresh produce, including fish and live seafood.

Concerns have also been raised about how the UK would deal with [foreign fishing vessels fishing illegally](#) in UK waters in the event of no deal. The [Commons Briefing Paper on The Royal Navy's Offshore Patrol Vessels](#) provides further detail on fisheries protection.

#### 3.1 Tariffs and trade

The impact of a no deal Brexit on the fisheries industry's ability to export and trade is likely to be felt across the sector. With no agreement, as in other areas, trade in fisheries products would default to WTO tariffs. Generally, tariffs are higher on the most processed fish products. For further information on trade see [Commons Briefing Paper on The End of Brexit Transition: trade](#).

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<sup>6</sup> [UN Convention on the Law of the Sea \(UNCLOS\)](#)

<sup>7</sup> [PBC Deb 10 September 2020 c97](#)

<sup>8</sup> Undercurrent News, Norway to deny UK, [EU vessels access to waters without Brexit deal](#), 14 December 2020

<sup>9</sup> UKCE, [What would no deal mean?](#) 22 September 2020

In 2019, the UK imported 854,300 tonnes of fish and related products (worth £3.6 billion), more than double the total in 1983. The UK exported 496,300 tonnes of fish and related products (worth £1.9 billion). This amounts to a trade deficit of £1.7 billion. See the [Commons Briefing Paper on UK Fisheries Statistics](#) for further details.

## 4. What could a deal mean for fisheries?

Reaching agreement on the detail of sharing fish stocks has always been a technically complicated and politically charged issue. Setting quota within the Common Fisheries Policy is already based on [annual negotiations](#) between all Member States on what the TAC of each stock in each area should be. However, within the CFP the share of each TAC for Member State is fixed based on the historical fishing activity of each nation or “relative stability”.<sup>10</sup>

Any new fisheries agreement with the EU will need to set out if and how each TAC is agreed and shared. The UK and the EU have set out very different views on how this should be done.

The [UK Government](#) set out in the Written Statement of 3 February 2020 that it envisages a “suite of agreements” including an agreement on fisheries. The UK has reiterated that it wants to negotiate [fisheries access on an annual basis](#) with neighbouring nations:

The UK will become an independent coastal state at the end of 2020 and any agreement must reflect this reality. The UK will, like Norway, Iceland and the Faroe Islands, have annual negotiations with the EU on access to waters and fishing opportunities, and will consider a mechanism for cooperation on fisheries matters

The EU position set out in the [Council’s negotiation directives](#) is that agreement on fisheries should be linked to an agreement of a future economic partnership, specifically any “access conditions under the free trade area”.

As referred to above the UK has not yet set TACs or quota for individual fishers for any of the stocks where quota is currently shared for 2021. This would normally have been done by this time of year. If an agreement is reached on fisheries, both sides would then need to agree TACs for the 100 shared stocks, and distribute them to individual fishing vessels by 1 January 2021, unless interim measures are put in place.

As a unilateral interim measure the [EU has rolled over](#) 25% of last year’s Total Allowable Catches for stocks shared with the UK, to cover the first three months of 2021, should there be agreement with the UK.

## 5. Reported sticking points for a deal

There have been a number of statements on the ongoing negotiations from both the UK and the EU, referring to fisheries along with the [level playing field](#) as sticking points. There has been little official detailed report of what the difficulties regarding fisheries are, although several newspapers and journalists have reported some of the main issues:

- **Linking enforcement mechanism to trade** – as set out above the UK has always stated that a fisheries agreement should be separate from a trade agreement. The EU’s original position, set out in a [draft partnership agreement](#) published March 2020, was that failure to comply with any of the fishing agreement provisions,

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<sup>10</sup> The principle of equal access and relative stability are applied under [EU Regulation 1380/2013](#) on the Common Fisheries Policy. This sets out that “fishing opportunities allocated to Member States shall ensure relative stability of fishing activities of each Member State for each fish stock or fishery”.

would allow each party to use the suspension of trade tariffs concession on goods covered by the trade agreement as a remedy. For further details see the [Commons Briefing Paper on Fisheries: UK-EU future relationship negotiations](#)

This has continued to be contentious issue throughout the negotiations. The *Financial Times* reported the EU's chief negotiator, Michel Barnier, as stating on 18 December 2020 that the EU needed "legal means to retaliate" should the UK close its waters. Specifically, the EU should be able to cut off its market to British exports of fish. Mr Barnier is quoted as stating that "it would be unjust that fishermen have only transitory rights in UK waters when all the rest of the agreement, notably for British companies, remains stable".<sup>11</sup>

- **Length of any transitional agreement** – the UK reportedly would like a three-year transitional agreement on fisheries while the EU wants this to be eight years, (originally asking for ten years).<sup>12</sup>

Michael Gove said on 9 December that the UK could be "very generous" by reaching "[arrangements with European countries that allow a staged process](#)" to adapt to changes. But that it was "important that people can see that whatever the period of staging ... the control over UK waters, which any independent country should have, that has to be respected".

On 20 December, the EU proposal had reportedly been reduced six years.<sup>13</sup> After this, negotiations would on access to fisheries would be annual, which is the UK's stated long-term aim. The [EU's aim](#) is a deal that offers EU fishers stable fishing quota over time.

- **Quota return** – At a [press conference following the European Council meeting](#) on 11 December, Ms von der Leyen said that the EU understood that the UK aspired to control its waters but that the UK needed to understand "the legitimate expectations of EU fishing fleets built on decades, and sometimes centuries, of access". The UK reportedly wants 60% of the EU's current quota returned to UK fishers while the EU had offered up to 18%.<sup>14</sup> On December 20 the offer from EU negotiators had reportedly changed to 25% of the EU current annual quota value of €650. However, Member States are reported to be unhappy with this new proposal.<sup>15</sup>

The UK and the EU share around 100 different fish stocks, with the different nations' fleets focusing on different stocks so an overall percentage figure or value does not necessarily reflect how different national fishing fleets would be affected. For further details on who fishes what where see the [Commons Briefing Paper on UK Fisheries Statistics](#).

Reports on 21 December suggested the UK had [made a new offer on fisheries](#) involving a five year transition and [the EU ceding 35% of its quota](#) in UK waters. However, this was later denied by the UK and it was [also reported](#) that this would be in addition to a UK proposal to focus negotiations on demersal fish (mainly white fish species) and shellfish and for pelagic fish (such as tuna, sardines and mackerel)

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<sup>11</sup> Financial Times, [Barnier warns EU-UK trade deal talks reach 'moment of truth'](#) 18 December 2020 [Subscription required]

<sup>12</sup> Financial Times, [Barnier warns EU-UK trade deal talks reach 'moment of truth'](#) 18 December 2020 [Subscription required]

<sup>13</sup> Financial Times, [Fish stuck in Brexit net with talks set to continue on Monday](#), 20 December 2020 [Subscription required]

<sup>14</sup> The Guardian, [Brexit talks: what are the 'major unresolved topics' UK and EU must agree on?](#) 13 December 2020

<sup>15</sup> Financial Times, [Fish stuck in Brexit net with talks set to continue on Monday](#), 20 December 2020 [Subscription required]



to be hived off into separate annual international negotiations. This would mean that the quota loss to the EU would be greater than 35%. The EU [rejected this](#) idea.

- **Access to the 12 nautical mile (nm) exclusion zone** – currently EU fishing vessels (particularly French and Belgian) have had access to the 6-12 mile exclusion on the basis of long historical fishing activity.<sup>16</sup> The UK Government position, [stated in Parliament](#) in October 2020, is that any fisheries agreement with the EU would only cover the 12-200nm Economic Exclusion Zone (EEZ):

The Government have been clear throughout that access to the UK's territorial seas is out of scope for any fisheries framework agreement with the EU. According to the Government, any access negotiated with the EU will cover only the UK's exclusive economic zone, and not the 0 to 12-mile zone.<sup>17</sup>

- **Zonal attachment versus relative stability** – the UK wants to move away from the principle of relative stability to setting quota to one based on zonal attachment.<sup>18</sup> The EU has reportedly resisted this approach.<sup>19</sup> Zonal attachment is a methodology where share of quota of a particular stock between neighbouring countries is determined based on its behaviour, mainly where it reproduces and is present during its lifecycle.<sup>20</sup>
- **Quota ownership** – there were [reports](#) earlier in December 2020 that UK negotiators want fishing vessels to be “majority British-owned in order to take advantage of a larger catch in UK waters”.<sup>21</sup> Reports state that the UK wanted majority British ownership to qualify for all, including existing, quota allocation, which was of concern to the EU. More recent are that there has now been [agreement](#) on a way forward on this.<sup>22</sup>

## 5.1 Progress of negotiations

The Prime Minister, Boris Johnson, made a statement on 17 December 2020, following a conversation with Commission President Ursula von der Leyen. In this he stated that it was “now very likely that an agreement would not be reached” and set out the position on fisheries as follows:

On fisheries he stressed that the UK could not accept a situation where it was the only sovereign country in the world not to be able to control access to its own waters for an extended period and to be faced with fisheries quotas which hugely disadvantaged its own industry. The EU's position in this area was simply not reasonable and if there was to be an agreement it needed to shift significantly.<sup>23</sup>

The Guardian reported on Sunday 20 December that, although European Parliament's deadline for ratifying the agreement by 31 December had been missed, slow progress towards an agreement on fisheries continued to be made in the negotiations:

The teams led by the chief UK negotiator, David Frost, and his EU counterpart, Michel Barnier, were expected to continue talks on Monday despite the European parliament's notice that it would not vote on a deal if not secured by midnight on Sunday.

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<sup>16</sup> Financial Times, [Brexit trade talks: the three big sticking points explained](#), 7 December 2020 [Subscription required]

<sup>17</sup> [HC Deb c266 13 October 2020](#)

<sup>18</sup> Defra, [Fisheries White Paper: Sustainable fisheries for future generations](#), July 2018

<sup>19</sup> The Guardian, [Brexit talks: what are the 'major unresolved topics' UK and EU must agree on?](#) 13 December 2020

<sup>20</sup> NEF, [Not in the same boat: the economic impact of brexit across UK fishing fleets](#), 17 November 2019

<sup>21</sup> BBC reality check, [Brexit trade deal: Who really owns UK fishing quotas?](#) 7 December 2020

<sup>22</sup> The Guardian, [UK drops push for renationalising of fishing vessels in Brexit talks](#), 15 December 2020

<sup>23</sup> Number 10, [Prime Minister's call with European Commission President Ursula von der Leyen](#): 17 December 2020

## 8 End of Brexit Transition: Fisheries

[...]

Frost met Barnier on Sunday afternoon to discuss the latest EU proposals on fisheries, with the UK side posing a series of questions to be answered on Monday, raising some hope of progress.<sup>24</sup>

Reports on 23 December 2020 were that [negotiations were progressing](#) a deal may be reached before Christmas Day.

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<sup>24</sup> The Guardian, [UK faces Brexit limbo after talks deadline missed](#), 20 December 2020



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