



BRIEFING PAPER

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UK-EU Trade and Cooperation Agreement: Fisheries

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Contents

1. What changed after the end of the Brexit transition?	2
1.1 Setting UK Total Allowable Catches	3
Negotiations with the EU	3
UK, EU and Norway agreement for 2021	4
1.2 Exports and third country status	4
1.3 Areas unaffected by the end of the Brexit transition	5
2. Negotiated outcome for fisheries	6
2.1 UK and EU negotiating positions	6
2.2 Sticking points during the negotiations	7
2.3 Fisheries in the Trade and Cooperation Agreement	8
3. Impact of the TCA on fisheries	10
3.1 Licencing of EU Vessels	11
3.2 Borders and customs	11
3.3 Bivalve exports to the EU	12
3.4 Scottish share of quota	15

This briefing provides a short overview of some of the changes that have taken place for the fisheries sector since 1 January 2021, after the Brexit transition ended. Some changes, such as an agreement on how to share fishing stocks with the EU, are a result of the UK-EU Trade and Cooperation Agreement (TCA) while others, such as the UK becoming a third country for fisheries exports to the EU, would have happened regardless of the terms of the TCA.

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 [featured prominently](#) in the Brexit debate. [Fishers](#), both quota and non-quota sectors, were expecting greater fishing opportunities. The [processing sector](#) and [shellfish exporters](#) concerns were about access to export markets and potential border delays.

[Agreement between the UK and the EU](#) was reached on 24 December 2020. Heading Five of Part Two of the [UK-EU Trade and Cooperation Agreement](#) (TCA) covers fisheries. Under

the agreement 25% overall of the existing EU quota in UK waters will be transferred to the UK over a 5 ½ year period to 30 June 2026, with specific percentages of annually agreed Total Allowable Catches (TACs) agreed for each fishing stock. Mutual access to each other's waters will be through a licencing system for fishing vessels. After 2026 negotiations on access and share of stocks will take place on an annual basis, although provisions exist for multiannual agreements. Any disagreement will be resolved through arbitration and provisions exist for trade measures to be applied by either party if the Agreement is breached.

The end of the transition period has resulted in a number of significant impacts for the industry, including problems and delays at borders and a ban on GB and Crown Dependencies exports to the EU of live bivalve molluscs for depuration. This has resulted in the Government setting up a [£23m support fund for fish exporters](#), which has been extended to include the catching and shellfish sector.

For an overview of the negotiations prior to 2021 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 changed after the end of the Brexit transition?

At the end of the transition period the UK ceased to be part of the [EU Common Fisheries Policy](#) (CFP). The UK became an [independent coastal state](#) and fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of up to 200 miles. This includes setting total allowable catches (TACs), distributing quotas and determining who has access to fisheries.¹ However, the UK will still need to agree TACs with neighbouring states for shared stocks.

From 1 January 2021 the UK is no longer required to abide by the rules of the CFP. 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 for the UK Government to set UK TACs, licence foreign fishing vessels in UK waters and to regulate fisheries in England, with similar regulatory powers for the devolved administrations.

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 TACs 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 for England.

¹ 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."

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.

In addition, the UK is now a third country and outside the EU's Single Market and Customs Union, although special provisions apply to Northern Ireland. This means that there is now a customs and regulatory border between GB, and the EU and Northern Ireland. Under the TCA goods can cross between the GB and the EU tariff free, provided rules of origin are met. Goods moved from GB to Northern Ireland are also tariff free, [under certain circumstances](#). However, there are number of other requirements that will now need to be met when exporting goods, including fish and fish products, from GB to either NI or the EU.

1.1 Setting UK Total Allowable Catches

From 1 January 2021 the UK Government is responsible for setting TACs in UK waters. These will then be allocated for distribution to the UK's four fisheries authorities. The expectation in the fishing industry has been that as a result of leaving the EU, quota available for UK fishers will be higher, regardless of whether a deal was reached or not. For example, [Scotland launched a consultation](#) in December 2020 on how additional quota it expected to receive as a result of the UK becoming an independent coastal state would be allocated in 2021. [A consultation](#) on quota allocation in England and the Crown Dependencies closed in November 2020.

However, there will still be bilateral and multilateral negotiations neighbour countries to agree TACs for shared stocks. A failure to reach agreement on transboundary fish stocks could result in parties setting TACs unilaterally, which combined could lead to unsustainable levels of fishing for some stocks, as set out recently by [UK in a Changing Europe](#).

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.²

Negotiations with the EU

Under the CFP TACs for the following year are agreed in December. From 2021, TACs for shared stocks (with other countries including the EU) are subject to annual negotiations between the UK and the EU. Because the basis for this, the UK-EU Trade and Cooperation Agreement (TCA) was agreed in late December 2020, at the time of writing TACs had not been set for the full year for the UK.

Due to the lack of an Agreement at the time, and as a unilateral interim measure, the [EU rolled over](#) 25% of 2020's TACs for stocks shared with the UK in December 2020. This was to cover the first three months of 2021, in advance of agreement with the UK. The

² [HC written answer UIN 99095, tabled on 5 October 2020](#)

[UK Government published](#) TACs for UK vessels (subject to any agreement to be reached with the EU on TACs for 2021) for first three months of 2021 on 14 January 2021.

Negotiations with the EU on setting TACs for shared stocks are still ongoing, as reported on the 12 March 2021 in the Financial Times, [UK and EU clash over post-Brexit fishing rights](#). This reported concerns on the EU side about the UK's [announcement and ongoing consultation](#) on banning fishing in four areas, including the Dogger Bank. Concerns arise because 85% of fish in that area is caught by EU vessels (34,758 tonnes 2018, compared a UK catch of 1,318 tonnes), this according to the article has been viewed as "a cynical British step to reduce the bloc's fishing rights under the guise of environmentalism".³

UK, EU and Norway agreement for 2021

UK, EU and Norway negotiations on shares stocks were still ongoing in March 2021 and vessels that ordinarily fish in Norwegian waters were not able to do so as set out in [article in The Times](#). In response the [Government highlighted](#) that it is not unusual for this situation to arise at the beginning of each year.⁴

However, the Government [announced](#) on 16 March 2021 that trilateral agreement between the UK, EU and Norway had been reached for six stocks for 2021:

The UK has today (16 March 2021) reached agreement with Norway and the European Union on catch limits in 2021 for six jointly-managed fish stocks in the North Sea.

The agreement promotes the sustainable management and long-term viability of cod, haddock, plaice, whiting, herring, and saithe stocks in the North Sea. The catch levels agreed for 2021 are worth over £184 million to the UK fishing industry.

This is the first time the UK has participated in the talks as an independent coastal State. Throughout negotiations the UK has pressed for catch limits - known as total allowable catches - to be set sustainably to ensure the long-term future of the fisheries industry

[...]

Of the stocks jointly-managed with the EU and Norway, five out of six have been set in line with or lower than the catch level advised by ICES, the International Council for the Exploration of the Sea. This results in catch reductions for North Sea cod (-10%), plaice (-2%), saithe (-25%) and herring (-7.4%) compared with 2020, but increases in haddock (+20%) and whiting (+19%).

The agreed catch limit for haddock is well within the sustainable limits advised by the scientific body ICES. This will encourage the recovery of other key stocks in the North Sea mixed fishery.

North Sea cod will be subject to a slightly smaller reduction than the -16.5% recommended by ICES. The three parties supported this approach as it would allow the stock to recover at a similar pace to that set out in the scientific advice.⁵

1.2 Exports and third country status

For UK exporters, third country status means there are increased requirements that need to be complied with at the border, as set out by the EU Commission:

- rules of origin will apply to goods in order to qualify for preferential trade terms under the agreement;

³ Financial Times, [UK and EU clash over post-Brexit fishing rights](#), 12 March 2021 [subscription required]

⁴ [HC Debate 8 February 2020, c44](#)

⁵ Defra, [UK agrees fishing catch limits with EU and Norway](#), 16 March 2021

- all imports will be subject to customs formalities and will need to comply with the rules of the importing party;
- and all imports into the EU must meet all EU standards and will be subject to regulatory checks and controls for safety, health and other public policy purposes.⁶

The UK has secured third country 'listed status' with the EU for food, plants and live animals which means that the UK is recognised as meeting the EU's sanitary and phytosanitary requirements for imports. However, goods still need to comply with the paperwork requirements at point of entry. This has caused increased delays for fisheries and fish exporters as they adapt to the new requirements and border delays. [Seafish](#), which is the Sea Fish Industry Authority and whose role is to support the fisheries industry, has [published detailed guidance](#) for fishers and exporters on the new requirements, which are summarised as follows:

Seafood exports from Great Britain (Northern Ireland is treated differently under the Northern Ireland Protocol) will need to be accompanied by the relevant documentation including:

- export health certificates
- catch certificates
- customs declarations
- pre notifications

The EU and the UK have agreed not to apply import or export duties on goods of UK or EU origin traded between their territories. However, the EU and the UK are in separate customs unions which means customs procedures (such as the lodging of import and export declarations) will still be necessary, even if no tariffs are payable.⁷

The paperwork includes requirements as to the colour used in signatures and stamps being different to the document itself, and translations of some documents into the language of the country of destination.⁸

However, the above does not mean that all goods can move freely once they comply with the above requirements. The EU bans the import of most bivalve molluscs, such as muscles and oysters, that have not been purified before export. Discussions with the EU are ongoing as to whether this should apply to UK exports, but it has had an impact on the UK export of mussels, cockles and scallops (see section 3.3 for further details).

The [eel fishery in Loch Neagh in Northern Ireland](#) is also affected by third country status. This is because the EU rules ban the export of eel outside of the EU, as it is a critically endangered species. This means the fishery can no longer export eel to GB under the Northern Ireland protocol.

1.3 Areas unaffected by the end of the Brexit transition

The UK continues 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

⁶ EU Commission, [Questions & Answers: EU-UK Trade and Cooperation Agreement](#), 24 December 2020

⁷ Seafish, [UK exit from the EU](#) [website accessed 2 February 2021]

⁸ Seafish, [UK exit from the EU](#) [website accessed 2 February 2021]

co-operate with other coastal states on the management of shared stocks or stocks of associated species.⁹

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](#) by UK fishers, such as most shellfish species, is also unaffected as it does not fall under the CFP.

The design of any requirement for an economic link to the UK in order to be allocated UK quota has also been within UK competence under the CFP. The rules for setting this economic link remain as they have been carried over into EU retained law. The Government launched a [consultation on strengthening the economic link](#) in October 2020 to require UK flagged vessels, whether UK or foreign owned, to land an increased proportion of the catch in UK ports or forfeit part of their quota.

The UK Government has made clear that existing fisheries quota will continue to be distributed as they have been to date. It has committed to exploring new options for distributing any new quota that becomes available as a result of leaving the CFP as set out in the November 2020 [consultation](#).¹⁰

2. Negotiated outcome 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 was based on difficult [annual negotiations](#) between all Member States on what the TAC of each stock in each area should be. However, within the CFP the percentage share of each TAC for Member State is fixed based on the historical fishing activity of each nation or "relative stability".¹¹ The UK and the EU share around 100 fish stocks, with the different nations' fleets focusing on a range of stocks in different areas. For further details on who fishes what where see the [Commons Briefing Paper on UK Fisheries Statistics](#).

2.1 UK and EU negotiating positions

The [UK Government](#) set out in the Written Statement of 3 February 2020 that it envisaged the result of the negotiations as a "suite of agreements" including an agreement on fisheries. The UK reiterated that it wanted 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.¹²

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

⁹ [UN Convention on the Law of the Sea \(UNCLOS\)](#)

¹⁰ Defra, [Fisheries White Paper: Sustainable fisheries for future generations](#), July 2018

¹¹ 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".

¹² Written Statement on UK/EU relations [UIN HCWS86](#) 3 February 2020

2.2 Sticking points during the negotiations

There were 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 was little official detailed report of what the difficulties regarding fisheries were during the last weeks of the negotiations, although several newspapers and journalists reported some of the main issues:

- **Linking the fisheries enforcement mechanism to trade** – the UK aim was for a fisheries agreement 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, would allow each party to use the suspension of trade tariffs concession on goods covered by the trade agreement as a remedy.

This continued to be contentious issue throughout the negotiations. The *Financial Times* reported the EU's chief negotiator, Michel Barnier, stating 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, the EU chief negotiator, was 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".¹³

- **Length of any transitional agreement** – the UK reportedly wanted a three-year transitional agreement on fisheries while the EU proposed eight years, (originally asking for ten years).¹⁴ During the negotiations Michael Gove, Minister for the Cabinet Office, stated 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".

By December 2020, the EU proposal had reportedly been reduced six years.¹⁵ After this, negotiations on access to fisheries would be annual, which was the UK's stated long-term aim. The [EU's aim](#) was a deal that offered EU fishers stable fishing quota over time.

- **Quota return** – At a [press conference following the European Council meeting](#) on 11 December 2020, Ms von der Leyen the EU Commission president, 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 wanted 60% of the EU's quota returned to the UK while the EU had offered up to 18%.¹⁶ On 20 December the offer from EU negotiators had reportedly changed to 25% of the EU current annual quota value of €650 million.¹⁷

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.

¹³ Financial Times, [Barnier warns EU-UK trade deal talks reach 'moment of truth'](#) 18 December 2020 [Subscription required]

¹⁴ Financial Times, [Barnier warns EU-UK trade deal talks reach 'moment of truth'](#) 18 December 2020 [Subscription required]

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

¹⁶ The Guardian, [Brexit talks: what are the 'major unresolved topics' UK and EU must agree on?](#) 13 December 2020

¹⁷ Financial Times, [Fish stuck in Brexit net with talks set to continue on Monday](#), 20 December 2020 [Subscription required]

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) 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 reportedly [rejected this](#) idea.

- **Access to the 12 nautical mile (nm) exclusion zone** – EU fishing vessels (particularly French and Belgian) have had access to the 6-12 mile exclusion on the basis of historical fishing activity.¹⁸ The UK Government position, [stated in Parliament](#) in October 2020, was 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.¹⁹

2.3 Fisheries in the Trade and Cooperation Agreement

[Agreement between the UK and the EU](#) was reached on 24 December 2020. Heading Five of Part Two of the [UK-EU Trade and Cooperation Agreement](#) (TCA) covers fisheries. Under the agreement 25% overall of the existing EU quota in UK waters will be transferred to the UK over a 5 ½ year period to 30 June 2026, with specific percentages agreed for each fishing stock.

The Government [Summary Explainer](#) published with the agreement stated that “the Agreement firmly and explicitly recognises UK sovereignty over our fishing waters and puts us in a position to rebuild our fishing fleet and increase quotas in the next few years”. The Government's Summary also set out the areas in which the UK and EU would continue to work together:

The Agreement sets out the objectives and principles for fisheries management which the UK and EU share. It enshrines our joint commitment to sustainable fisheries management alongside shared principles of promoting long-term environmental, social and economic sustainability; protecting juveniles and spawning fish; protecting marine ecosystems; and timely cooperation, including sharing data to manage conservation and combat illegal fishing.²⁰

And summarised the agreement on quota transfer to the UK as follows:

These will be phased in over five years with “an adjustment period for access to waters which provide stable access for 5 ½ years” (ending 30 June 2026). From then on, the EU and the UK will hold annual consultations to agree on fishing opportunities with a view to sustainable management of fisheries and marine resources (Article FISH.6). The Agreement also allows for multiannual agreements on fisheries for both quota and non-quota stocks.²¹

Under [the Agreement](#) the EU and UK will negotiate every year (after the five and a half transition period is over) on Total Allowable Catches for each of the 87 stocks listed in Fish Annex 1 and 2. For the first five years the TCA sets out the changes EU and UK percentage share of each stock. For some stocks there will be significant changes, and some will not change at all.

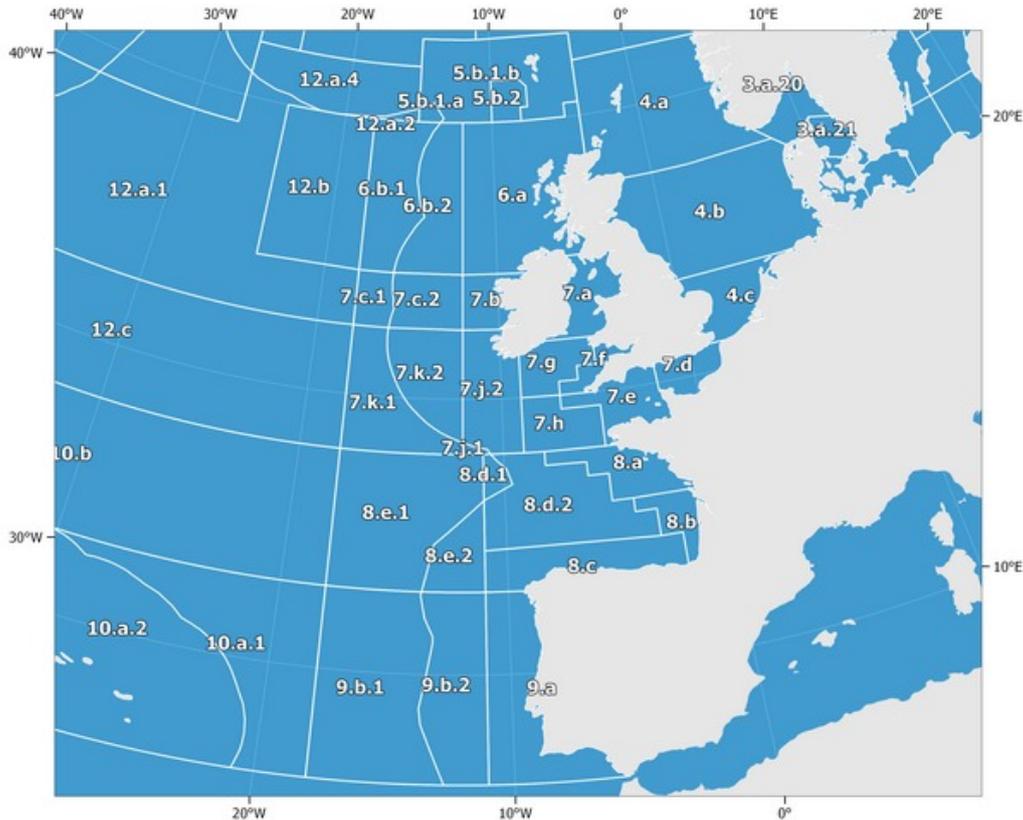
¹⁸ Financial Times, [Brexit trade talks: the three big sticking points explained](#), 7 December 2020 [Subscription required]

¹⁹ [HC Deb c266 13 October 2020](#)

²⁰ Prime Minister's Office, [UK-EU Trade and Cooperation Agreement: Summary Explainer](#), 24 December 2020

²¹ Prime Minister's Office, [UK-EU Trade and Cooperation Agreement: Summary Explainer](#), 24 December 2020

Mutual access will continue in the 6-12 nautical mile area in the fishing zones south, southeast and southwest of the UK ([ICES zones 4c and 7d—g](#)) for non- quota stock; together with access to non-quota stocks in each other’s Exclusive Economic Zone (EEZ). Both will be based on historical activity between 2012-2016.



From [FAO Major Fishing Areas: Atlantic, Northeast, \(Major Fishing Area 27\)](#)

Under the Agreement sets out that the UK Government and EU submit to each other a list of vessels that require a licence and that these should be approved by the other party.

Annex FISH.1 of the Agreement lists shared stocks and split of TAC for each between the UK and the EU up to 2026, when the transition agreement ends. The tables state the figures for the first four years and for year five as “2026 onwards” After 2026 the Partnership Council shall have the power to amend Annexes setting out the split of catches between the EU and the UK. The Partnership Council will be co-chaired by a UK and EU representative and take decisions by mutual consent.

A Specialised Committee on Fisheries will also be created which will be co-chaired by a representative of the EU and of the UK. They will meet at least once a year unless the co-chairs decide otherwise. The Committee will set its meeting schedule and agenda by mutual consent.

The UK and EU have agreed to set up a mechanism for voluntary in-year transfers of fishing opportunities between both parties, with details to be worked out by the Specialised Committee on Fisheries. The focus will be on stocks that are underfished by each party.

The Agreement includes arrangements for compensation if either the UK or the EU reduces or withdraws access to its waters, allowing the imposition of tariffs on fisheries products. These measures can be referred to an arbitration panel for review. A party can also suspend access to waters, or more broadly parts or the whole of the trade provisions of the TCA, also including road transport, where the other party is in breach of the

fisheries heading of the Agreement. This needs to be “commensurate to the economic and societal impact” of the alleged breach and can be referred to an arbitration panel. Further details can be found in the Commons Briefing Paper on the [UK-EU Trade and Cooperation Agreement: governance and dispute settlement](#).

Review clauses

Article FISH.18 provides for a review of the fisheries heading four years after the end of the adjustment period on 30 June 2026. This can be repeated every four years. The reviews will consider the provisions for access to waters, compliance with the heading, the nature and extent of co-operation under the heading and any other element agreed through the Specialised Committee on Fisheries.

The 30 June 2026 date coincides with that for the termination of the Energy agreement under ENER.33: Termination of this Title, which also allows for renegotiation of that part. This has been [noted by commentators](#) as creating a potential future link in any negotiations between UK access to electricity and EU access to fisheries.

3. Impact of the TCA on fisheries

An article by [UK in a Changing Europe](#) explains how the agreement may impact different fishing sectors:

One of the most widely quoted disparities in the Brexit debate was that EU vessels were allowed to catch 90% of the cod in the eastern Channel. As for a third of other shared stocks, that situation will not actually change in this agreement, but because that example is such a small fishery it was always a red herring.

The biggest increases for the UK are for stocks like hake (36%) and Norway pout (20%) in the North Sea, sprat in the English Channel (32%) and horse mackerel in the southern North Sea and Eastern channel (29%). The increase for hake will be welcomed, because of its current prevalence in the UK section of the North Sea, but many of the other increases will only help specific vessels in certain areas.

Although the allocation of the increased UK quota is yet to be revealed, it is difficult to see how it will benefit small-scale (under 10 m) vessels operating close inshore. These boats may have a smaller catching capacity than the larger ones but are much more numerous and have long suffered from a lack of quota.

Particularly important to them was that the deal would secure an exclusive zone for UK boats within 12 miles of shore, but foreign vessels with a track record will continue to have access to the 6 to 12-mile area under a grandfather clause.²²

With regards to what may happen after 2026, when the agreement allows for the share of agreed total catches to be amended, Barry Dees of the NFFO expressed concerns that in practice any agreement to change shares of TACs would be difficult:

There are optimists that say that, at that point, access and quota shares will be subject to annual negotiations. And in that sense, the UK can utilise its leverage on access to secure better quota shares, that the pessimists and at this point, I think that would include me, tend to point to the trade pressures that can be brought to bear to ensure that what is agreed at that point in 2026, doesn't stray too far from the status quo on access and quota shares.²³

²² UKICE, [What does the trade deal mean for fisheries?](#) 27 December 2020

²³ Westminster Food and Nutrition Forum, [UK Fisheries Policy: Key Priorities](#), 20 January 2021

Similar concerns have been raised by the [Scottish Government](#) who expressed the view that “fisheries is hardwired into the overall deal meaning any attempt to reduce EU access in future will lead to trade sanctions”.²⁴

3.1 Licencing of EU Vessels

Under the Commons Fisheries Policy there was no requirement for EU vessels to have a UK licence to fish in UK waters. They were licenced by each Member State and had a quota allocation from their national Government. However, as result of the TCA, although quota will continue to be allocated by each individual nation, the UK and EU vessels now require a licence to fish in each other’s waters and have to exchange a list of vessels to be licenced.

The legislation on licencing EU vessels in UK waters is set out in the [Fisheries Act 2020 Sections 12 and 13](#). Licences for UK and EU vessels are issued by the newly created UK Single Issuing Authority (UKSIA), further details of the process are [available on their website](#). The UKSIA has also published a [list of EU vessels](#) granted a licence for 2021 and set out the [rules for EU vessels](#) in UK waters.

3.2 Borders and customs

In advance of the end of the transition period and in response to potential delays at border controls the Government 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 aim was to “minimise delays for prioritised vehicles through the traffic management system in Kent if it is needed”.²⁵ For further details on transport arrangements see [Commons Briefing Paper on End of Brexit transition: Transport](#).

Following the end of the transition, the general delays for products being exported from the UK to the EU that have impacted fisheries.²⁶ However, the perishability of fish products, the nature of the UK fishing sector and fish export market from the UK has meant that the impacts have been particularly severe for the sector. The Government recognised this when it announced [£23m of support for fish exporters](#) stating:

This is in recognition of the unique circumstances of the fishing sector, which has had the most significant new requirements to adjust to, and for whom even a short delay can lead to goods perishing - at a time when the industry is facing lower market prices and demand due to the pandemic.²⁷

The support was specifically targeted at “fishing export businesses who can evidence a genuine loss in exporting fish and shellfish to the EU” and will be paid retrospectively from 1 January 2021. An [article in Fishing News](#) quoted concerns from Scottish Ministers that support would not be targeted at fishers:

Scottish fisheries secretary Fergus Ewing said that while more detail was ‘desperately needed’, it appeared ‘almost certain that the vast majority of fishing vessels who land but don’t export directly will not be covered by this scheme, which is beyond any rational explanation’.²⁸

²⁴ Scottish Government, [Brexit deal means drop in key fishing stocks](#), 29 December 2020

²⁵ Defra, [Transporting fresh and live seafood or day-old chicks to the EU from 1 January 2021](#), 11 December 2020

²⁶ Scottish Government, [Brexit deal means drop in key fishing stocks](#), 29 December 2020

²⁷ Defra, [New financial support for the UK’s fishing businesses that export to the EU](#), 19 January 2021

²⁸ Fishing News, [£23m UK support for seafood exporters](#), 25 January 2021

The [scheme was expanded](#) on 21 February to catching and shellfish sector affected by drop in UK demand from hospitality as a result of Covid and the impact of EU export issues

The National Federation of Fishermen (NFFO) has [listed some of the problems](#) encountered by exporters, which particularly affect smaller scale exporters:

Some of the border problems encountered include:

- Inadequate systems IT update
- Lack of clarity on commodity codes on documentation
- Different interpretation of the EU import rules at different EU entry points
- Inexplicable delays after paperwork has been completed
- Breakdown in the Calais/Boulogne transit arrangements
- Catch certificates where consignments contain the catches of multiple vessels
- Different levels of understanding what is required in order to successfully export
- The challenges of pre-notification in the context of multiple consignments of a perishable commodity

Groupage, where multiple small consignments of fish are gathered at a regional hub for onward transport and export, have been particularly badly affected, although large scale exporters using their own designated transport are by no means immune.²⁹

Whilst recognising that some of these problems may be resolved over time the NFFO has highlighted that this may be what it called “the new normal” and its view that if so “it is clearly the case that many businesses in the supply chain will fail and jobs will be lost”.³⁰

The Fishing Daily reported on 14 January some of the [issues being faced by Scottish exporters](#):

Reports from seafood businesses:

One Scottish seafood company normally sends £1m worth of product to the EU every week. Last week they managed to get £12,000 of product into the EU. As a result, they have told the 27 boats that supply them to stop fishing.

A Scottish whitefish processor that in 2020 exported 100 tonnes of seafood in the first 2 weeks in January, managed to do 8.5 tonnes last week and none this week. The product that he didn't get through has been frozen, but his freezer facilities are now at capacity, and he stopped buying at market on Thursday last week.

Another Scottish processor, exporting shellfish, exported £2m value in January last year. This year, he expects to achieve somewhere between £500k – £1m for this January.

The Government launched a [Scottish seafood taskforce](#) chaired by UK Government Minister for Scotland David Duguid on 12 February 2021, made up of stakeholders and Government representatives, with the aim of solving “ongoing problems with exports”.³¹

3.3 Bivalve exports to the EU

[Politics home reported](#) on 1 February 2021 that live bivalve exports (such as cockles, mussels and scallops) from non-Class A UK waters that have not been depurated (or purified) are now banned from entering the EU. This applies to UK exports of wild caught

²⁹ NFFO, [The New Normal? No Sign of Border Obstacles Dissipating](#), 13 January 2021

³⁰ NFFO, [The New Normal? No Sign of Border Obstacles Dissipating](#), 13 January 2021

³¹ Defra, [Scottish seafood taskforce meets to drive progress](#), 12 February 2021

and aquaculture bivalves, as most of UK waters are classified as Class B. Export for depuration within the EU, which was common practice before the end of the transition, will no longer be possible. The EU guidance on [fishery product imports from third countries](#) provides further details of the restrictions on third countries.

The Food and Agriculture Organisation (FAO) provides the following [explanation of depuration](#) and its purpose:

Depuration (purification) is a process by which shellfish are held in tanks of cleansed water under conditions which maximize the natural filtering activity which results in expulsion of intestinal contents, which enhances separation of the expelled contaminants from the bivalves, and which prevents their recontamination [...] Depuration is effective in removing many faecal bacterial contaminants from shellfish [...] Effective depuration requires the shellfish to be properly handled during harvest and pre-depuration transport and storage. It also requires proper design and operation of the depuration systems....³²

Any ban was initially thought to be temporary until the EU updated regulations in April 2021 as a [referred to by the Minister](#) below on 14 January:

It is not the case that shellfish cannot be exported at all until April. There have been certain issues regarding bivalve molluscs and getting the correct paperwork, and some issues around depuration and the ability to export stocks that have not been purified prior to export, but they do not amount to a ban on the export of shellfish.³³

In response to an [urgent question on UK shellfish exports](#) on 8 February 2021, the Secretary of State for Food, Environment and Rural Affairs George Eustice, agreed to publish correspondence with the EU and provided a further report on discussions the Government had had with the EU on the issue:

It is the case that in September 2019 the European Commission told us that for wild caught molluscs there would be a need for a new health certificate and, when that was discussed more recently, indicated that that could not come on stream until April. The Commission said that the existing trade in farmed molluscs could continue under existing export health certificates, so it has indeed changed its position.³⁴

The Minister also explained where there was disagreement between the UK and the EU on which rules applied to UK exports of live aquaculture bivalves, and the UK's view that the EU was not abiding by its own legislation:

We do not really want anything to be changed. We simply want the European Union to abide by its existing laws. The export of molluscs is governed by the animal health regime, and falls under [directive 2006/88/EC](#) and [regulation 1251/2008](#). The directive and regulation are clear that the export of bivalved live molluscs is indeed lawful

The Commission now seems to be pointing to separate public health regulations, namely [regulation 853/2004](#) and [regulation 2019/628](#), and suggests that they are the reason for a prohibition on sale. Again, that is incorrect, because legislation is clear through article 12 of the Commission implementing regulation 2019/628, which makes it clear that it does not apply where the molluscs are exported to a depuration centre. That is because when they are sent to a depuration centre, they are not yet food for sale. Therefore, the reason given by the European Commission for this change in position is not consistent with the EU's existing law.³⁵

In response to calls from Members for the Government to provide funding for UK based depuration plants the Minister responded that this was one of the options being considered:

³² FAO, [Bivalve depuration: fundamental and practical aspects](#), 2008

³³ [HC Deb 14 January 2021 c490](#)

³⁴ [HC Debate 8 February 2021, c44](#)

³⁵ [HC Debate 8 February 2021, c37](#)

14 UK-EU Trade and Cooperation Agreement: Fisheries

If we are unable to unblock the current situation and get access to the EU for our undeputed shellfish, one of the options available to us is to support the industry in procuring the deputation equipment, so that it can be done here. We will be exploring that and other options.³⁶

The potential impact of a lack of deputation facilities in the UK was highlighted in [an article](#) in on the Deeside Deputation Centre, which exports and purifies Dee Estuary cockles would have to increase its deputation facilities by a factor of 10 to maintain existing exports.³⁷

On 8 February 2021 George Eustice wrote a [letter to Stella Kyriakides, EU Commissioner for Health and Food Safety](#) from setting out the Government view and referencing a further regulation:

We accept that there is a distinction between molluscs which are already fit for human consumption and those that require purification beforehand. The point is that the animals in question are alive, destined for further treatment. The parallel might be with livestock as they leave the farm gate.

The UK's high status for shellfish health is one of the reasons that EU businesses turn to our farms. We implement and enforce high standards and have excellent traceability systems in place.

We are surprised that the Commission has changed its position, and in our view this is inconsistent with earlier statements provided to us by Commission Services. On 27 September 2019 the Commission Services provided advice to the UK Chief Veterinary Officer that when these animals are exported to the EU for purification, they can be certified with the model Export Health Certificate set out in Part A of Annex IV to [Commission Regulation \(EC\) No 1251/2008](#). The Commission Services advised that there was no need to provide supplementary documentation to assist with traceability to the waters of origin and we advised our industry accordingly, stating that the trade could continue. This is therefore unexpected and difficult news for an industry that relies on trade between the UK and EU.³⁸

Article 10 of the Regulation refers to *Part A of Annex IV Model animal health certificate for the import into the European Community of aquaculture animals for farming, relaying, put and take fisheries and open ornamental facilities*. Article 12 refers to Part B of Annex II *Model animal health certificate for the placing on the market of aquaculture animals or products thereof intended for further processing, dispatch centres and purification centres and similar businesses before human consumption*.³⁹

On 9 February [Politics home reported](#) that "the UK's leading trade body for the shellfish industry told its members that the government privately accepted that the European Union's ban on UK shellfish exports was correct", although a Defra spokesperson stated that the Government's position had not changed.⁴⁰ An [article in the Financial Times](#) from 11 February reported the position of EU Commissions officials was that the UK would be "subject to the same export and food safety rules as other non-EU countries".⁴¹

Correspondence between the UK Government and EU Commission, [deposited in the House of Commons Library](#) on 17 February 2021, includes exchanges regarding whether the form in Part A of Annex IV would be appropriate for export of live bivalve molluscs for

³⁶ [HC Debate 8 February 2021 c34](#)

³⁷ Deeside.com, [Dee Estuary cockle industry is on the verge of collapse because of Brexit red tape](#), 10 February 2021

³⁸ George Eustice, [Letter to Stella Kyriakides, EU Commissioner for Health and Food Safety](#), 8 February 2021

³⁹ [Commission Regulation \(EC\) No 1251/2008](#)

⁴⁰ Politics Home, [Shellfish Industry Leaders Claim DEFRA Privately Admitted The EU Was Right On The Shellfish Ban](#), 9 February 2021

⁴¹ Financial Times, [EU sinks UK hopes of overturning shellfish ban](#), 11 February 2021 [subscription required]

purification. The Commission's explanation for responses provided in the previous correspondence was that:

The respect of animal health requirements cannot dispense with the respect of public health obligations. This is why the reference to this certificate at the time, together with the fact that the UK had a thorough knowledge of the EU import requirements, led the Commission services to understand this request for clarification as relating to the export of live animals intended for further relaying and not for direct human consumption, and to reply accordingly.⁴²

The letter also confirmed that third-country requirements for bivalve imports to the EU do now apply to the GB and the Crown Dependencies:

I hope that this clarifies the EU requirements that have applied for many years to the import of live bivalve molluscs from third countries into the EU, and which do now apply to such imports from Great Britain and the UK Crown Dependencies.⁴³

In a written response from 16 March setting out potential funding sources for depuration facilities the Government stated that it continues to seek a resolution with the EU:

There is no scientific or technical justification for the European Commission banning the import of Live Bivalve Molluscs (LBMs), including oysters, from class B waters (where depuration/processing is required after harvest). We are seeking urgent resolution on the European Commission's decision.⁴⁴

3.4 Scottish share of quota

The Scottish Government [analysis](#) of the TCA agreement, published on 29 December 2020, concluded that for Scotland the "Brexit deal means a drop in key fishing stocks".

This is based on their analysis of how available quota will change over time for individual stocks in Scottish waters, in real terms, if future opportunities for fishers to lease quota and for quota to be swapped between the UK and Member States under the TCA are reduced. The Scottish Government is also concerned that Scottish fishers will no longer benefit from increased stock share under the Hague preference.⁴⁵ Further details, including analysis setting out changes for individual stocks is available on the [Scottish Government website](#).⁴⁶

⁴² House of Commons Library, [Covering note and correspondence between HM Government and the European Commission: export of live, bivalve molluscs to the EU from GB from 'Class B' waters](#), 17 February 2021

⁴³ House of Commons Library, [Covering note and correspondence between HM Government and the European Commission: export of live, bivalve molluscs to the EU from GB from 'Class B' waters](#), 17 February 2021

⁴⁴ Written Question on Shellfish: UK Trade with EU, [UJIN 164366](#) answered 16 March 2021

⁴⁵ The [Hauge Preference](#) is a mechanism designed to adjust national fish quota allocations to take account of the needs of certain fisheries-dependent areas in northern parts of the UK and in the Republic of Ireland. These arrangements provided additional fishing opportunities to the UK and the Republic of Ireland, at the expense of other Member States when quotas for certain stocks fell below determined trigger levels.

⁴⁶ Scottish Government, [Brexit deal means drop in key fishing stocks](#), 29 December 2020

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