

Impacts of the EU-UK Trade and Cooperation Agreement on fisheries and aquaculture in the EU: Legal aspects



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As of the 1st of February 2020, the EU and the UK had to negotiate their **future economic relationship**, including with respect to **trade and fisheries**. The legal framework for both of these issues has – for the most part – been codified in Heading Five of Part Two the **EU-UK Trade and Cooperation Agreement (TCA)**, which was concluded on 30 December 2020 and entered into force on **1 May 2021**. The study provides an analysis of the TCA's legal aspects relating to fisheries, which have replaced the **Common Fisheries Policy (CFP)** in this relationship.

Main observations

The **scope of Heading Five** of the TCA extends to the Exclusive Economic Zones (EEZs) and territorial seas of EU Member States, the EEZ and territorial sea of the UK, and the territorial sea adjacent to the Bailiwicks of Guernsey and Jersey and the Isle of Man. It applies to fishing vessels flying the flag of an EU Member State and registered in the Union as well as UK flagged fishing vessels that are registered in the UK. The TCA covers virtually **all categories of marine living resources** that are found in the waters of the EU and/or the UK.

The study

provides an analysis of the legal aspects of the EU-UK TCA relating to fisheries.

The TCA contains a **conservation and management framework**. It outlines obligations concerning cooperation and conservation, as well as rules on authorisation and

licencing. In doing so, the TCA does not harmonize the Parties' respective fisheries laws and regulations, but recognizes the sovereign rights of the EU and the UK in their respective waters.

The TCA also details the **legal framework for the fishing opportunities**. It examines the **joint setting of total allowable catches (TACs)**, a mechanism for

provisional TACs and the subsequent **allocation of pre-determined quota shares** for certain fish stocks.

For many of these stocks, the EU's pre-determined quota shares are **gradually reduced** until the end of an adjustment period that ends in June 2026. Thereafter, unless amended by agreement, the relative quota shares of both Parties **remain stable**.

During the adjustment period, each Party has **full access to the EEZ** of the other Party as well as partial access to the 6-12 nautical miles (NM) belt of the territorial sea for certain stocks. The Parties can take **compensatory measures** in response to reductions of access during the application of provisional TACs. After June 2026, **annual consultations** will determine the level and conditions of access.



Detailed **arrangements on governance** ensure the implementation of the TCA's fisheries provisions. They include a **mechanism for remedial measures and dispute settlement** in case of violations of the TCA, **institutional arrangements** and a **termination clause** that links the fate of the fisheries provisions to that of the trade provisions of the TCA.

Concerning trade-related provisions of the TCA that are relevant to fisheries, "fishery products" are considered as originating in the relevant Party, and



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generally enjoy **preferential tariff treatment**. The TCA also includes commitments and obligations concerning **trade and sustainable management of marine biological resources and aquaculture**.

Conclusions

The **fisheries-related provisions of the TCA** constitute a bilateral fisheries agreement that is **unprecedented in international fisheries law** considering the nature and extent of its contents.

The extent to which the TCA integrates aspects of fisheries and trade in the mechanism for remedial measures and in the termination clause is clear evidence of **the success of the EU** in creating a strong bond between these two issues in order to reduce the UK's possibilities in withdrawing from the arrangements on fishing opportunities and access.

The provisions on **fishing opportunities and access to waters** constitute the core of the fisheries-related provisions of the TCA. It is likely that the UK will seek to reduce EU access to its waters as part of the annual negotiations after 2026, which may lead to future disputes going far beyond the current disputes experienced in relation to the UK's territorial sea and that of the Bailiwick of Jersey. The parties of the TCA are encouraged to **act in good faith, manage expectations, and adopt moderate positions** to avoid disputes over access that could result in severe repercussions for fisheries, trade, and the EU-UK partnership generally. At the same time, the **dispute resolution mechanism** should be used to settle legal disputes where negotiations are unsuccessful.

The **ambitious nature** of the objectives and principles concerning the **conservation and sustainable use of fisheries** has to be emphasized. A priority of the EU should be to ensure that the TCA's fisheries provisions are implemented in line with these objectives and principles.

Key areas for EU action

1. Act in good faith, manage expectations, and adopt moderate positions to avoid disputes over access that could result in severe repercussions for fisheries, trade, and the EU-UK partnership generally.
2. The dispute resolution mechanism should be used to settle legal disputes where negotiations are unsuccessful.
3. Ensure that the TCA's fisheries provisions are implemented in line with these objectives and principles.



Source: Valentin J. Schatz
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