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OCEANA



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Joint NGO feedback to the European Commission on the “Sustainable fishing in the EU: State of play and orientations for 2025” consultation.

Introduction

On behalf of **BirdLife Europe & Central Asia, Blue Marine Foundation, ClientEarth, Danmarks Naturfredningsforening, Deutsche Stiftung Meeresschutz, Deutsche Umwelthilfe e.V., Ecologistas en Acción, North Sea Foundation, Oceana, The Fisheries Secretariat, Sciaena and Seas At Risk**, we present our response to the 2024 European Commission’s public consultation on the progress towards achieving more sustainable fisheries, the state of fish stocks and the setting of fishing opportunities.¹ This policy briefing provides analysis and recommendations to ensure the adoption of sustainable fishing opportunities that prioritise long-term ocean health through rebuilding fish populations, safeguarding and boosting ecosystem resilience in the face of mounting pressures like climate change, and fostering transparent and accountable fisheries management. **All references to “fishing opportunities” relate to both TAC-setting in the Northeast Atlantic and Baltic Sea, as well as fishing effort restrictions in the Western Mediterranean.**

Last year, the European Commission published its report on the functioning of the Common Fisheries Policy (CFP).^{2,3} A decade into the implementation of the current CFP, the Commission recognizes tangible progress towards more sustainable fishing, but it also states that “*full and*

¹ European Commission (2024). Communication from the Commission to the European Parliament and the Council. Sustainable fishing in the EU: state of play and orientations for 2025. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14294-Sustainable-fishing-in-the-EU-state-of-play-and-orientations-for-2025_en

² Regulation (EU) 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1380> (referred to as “CFP basic regulation”).

³ European Commission. (2023). Communication from the Commission to the European Parliament and the Council The common fisheries policy today and tomorrow: a Fisheries and Oceans Pact towards sustainable, science-based, innovative, and inclusive fisheries management. COM/2023/103 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0103>.

forceful implementation of the CFP is needed". The CFP is currently being evaluated, and it is worth noting that most of the flaws in the current framework stem from poor implementation by Member States (not shortcomings in the CFP basic regulation itself, but a lack of political will to fulfil its obligations⁴), which should be tackled before considering any potential reform of this policy. Other aspects that are not sufficiently developed or absent in the current policy, such as how to better deliver on social objectives, or climate adaptation and resilience can be addressed within the existing framework or through other legal instruments without necessitating a reform of the CFP.

The Commission now has the task to ensure firmer action to meet the ambition of the CFP and ensure its full implementation, notably by tackling the lack of coherence between fisheries management decisions and EU environmental legislation, such as the requirement to achieve Good Environmental Status (GES) under the Marine Strategy Framework Directive (MSFD). The undersigned NGOs welcome that the EU has embarked on the mission to restore its fragile ecosystems, enshrined in the Biodiversity Strategy 2030, and made binding by the adoption of the Nature Restoration Regulation. While this will help move things in the right direction, the need for restoration measures needs to be streamlined to all policy-areas and decisions impacting marine ecosystems.

EU Member States have not only abysmally failed to meet their binding obligation under the CFP to end overfishing by 2020,⁵ but their decisions on fishing limits still seem to be devoid of any genuine ambition to prioritise rebuilding of depleted and struggling fish populations, let alone ensuring the long-term health, resilience and productivity of marine ecosystems that thriving fisheries depend on. **While there is no shortage of promising-sounding ocean health-related rhetoric and commitments, meaningful action to deliver on these, particularly in the context of setting fishing limits, is still lacking, or patchy at best.** The default approach to Total Allowable Catches (TACs) still seems to be to max out on, and in many cases even still exceed, the scientific single-stock advice provided by the International Council for the Exploration of the Sea (ICES).

This falls woefully short of the long-overdue shift to fully precautionary and ecosystem-based fisheries management that respects and safeguards ecosystem integrity and dynamics and prioritises long-term ocean health.

In this contribution to the Commission's consultation on fishing opportunities for 2025, we highlight shortcomings of the current approach, and recommendations on how the Commission should raise the bar when proposing fishing opportunities for 2025.

⁴ For more aspects of CFP implementation, please see the NGO policy paper ["Common Fisheries Policy: Mission Not Yet Accomplished"](#) (2021). NGOs identify nine specific challenges in this paper (overfishing, especially in the Mediterranean Sea, the LO, harmful impacts of fishing, the transition to low-impact fisheries, harmful subsidies, regionalisation, the external dimension, and climate change) and propose a list of actionable solutions. Also see Pew's ["Lessons From Implementation of the EU's Common Fisheries Policy"](#) (2021).

⁵ Article 2(2) of the CFP basic regulation.

Key Policy Recommendations:

At a time when the ocean, and with it everyone that depends on it, faces unprecedented challenges like the climate and biodiversity crises, the Commission, the Council and individual EU Member States should urgently focus on future-proofing EU fisheries by:

- (1) rapidly recovering depleted and struggling fish populations;
- (2) generally investing in larger, healthier, more resilient and more productive fish populations; and
- (3) explicitly factoring ecosystem integrity and dynamics into the setting of fishing opportunities; while
- (4) fully applying the precautionary approach to fisheries management in the face of knowledge gaps or uncertainty, for example about climate change impacts or predator-prey interactions; and
- (5) fully implementing the Landing Obligation (LO) and ensuring that all catches are reliably documented and accounted for.

To date, however, decision-makers continue to set some TACs at, but rarely below, the best available scientific single-stock advice, while **failing to formally request rebuilding-focused and fully ecosystem-based advice from ICES**; to set some TACs in excess of the best available scientific advice; and **to find ways to bend existing rules or avoid properly applying them**.

For example, 2024 has so far seen the following worrying developments for healthy marine ecosystems:

- An attempt by the Commission to remove one of the few provisions in the fisheries multi-annual plans (MAPs) aimed at minimising the risk of population depletion through fishing, indicating an openness to scrapping rules rather than implementing them;⁶
- The opposition within the EU to the decision of the UK and Scottish Governments to close English and Scottish waters to sandeel fishing as a means of protecting them as a food source for struggling seabirds and other marine life, which constitutes a rare example of a concrete step towards ecosystem-based fisheries management;⁷
- The Commission's recent decision to silently close the pending infringement proceedings against several EU Member States for a failure to enforce the landing obligation, despite

⁶ Stockholm University Baltic Sea Centre (2024). ANALYSIS: "Those are our rules, and if you don't like them, well, we'll make others". <https://www.su.se/stockholm-university-baltic-sea-centre/news/analysis-those-are-our-rules-and-if-you-don-t-like-them-well-we-ll-make-others-1.697321>

⁷ In April of this year, the EU requested consultations under the dispute settlement mechanism of the EU-UK Trade and Cooperation Agreement (TCA) with the UK over the UK's closure of the sandeel fishery. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2050. NGOs on both sides of the English Channel released a joint statement in support of the decision to close sandeel fishing in all Scottish waters and English waters of the North Sea. <https://rspb.org.uk/media-centre/sandeel-closures-eu-challenge>.

continued widespread non-compliance jeopardising sustainability and the EU's credibility regarding its fight against illegal fishing;⁸

- Lack of action, despite the legal requirement in the western Mediterranean multiannual plan⁹ (hereafter, “West Med MAP”), to implement emergency measures in the Western Mediterranean, where three key fish stocks have biomass below the limit reference point (B_{lim}), and four more are dangerously below the precautionary approach reference point (B_{pa}).¹⁰

The upcoming fishing opportunities setting cycle for 2025 is the key opportunity for the Commission, as well as the Council, to demonstrate their genuine commitment to fully precautionary and ecosystem-based fisheries management that goes beyond simply “not overfishing” key commercial stocks, and instead finally explicitly prioritises the rapid recovery of depleted and struggling fish populations and maximises long-term ecosystem health and resilience.

It is imperative that all proposed and agreed fishing opportunities for 2025 align with the objectives of the CFP as well as GES requirements under the MSFD. This means that decisions on fishing opportunities also need to address the pressing climate and biodiversity crises and the need to safeguard and boost the resilience and health of marine ecosystems, as well as uncertainty in this regard. This is of the utmost importance, not only for the health of our marine ecosystems, but also for the long-term benefit of European fishers, particularly the small-scale and low-impact segment that is affected most harshly by the mounting pressures and impacts on fish populations.

We urge the Commission to consider the following points not only in the EU's internal approach but also during negotiations with third countries such as the UK and Norway. As every year, in addition to this joint NGO response to the Commission's consultation, we will also provide further, more detailed joint NGO recommendations on TACs and quotas to feed into the TAC-setting process for 2025, and urge the Commission to consider the already public NGO recommendations on Baltic TACs.¹¹

⁸ Mosola, D (2024). Brussels abandons crackdown on overfishing. Financial Times, 26 July 2024. <https://www.ft.com/content/92f54b80-24b7-4b57-80f6-a2eadd2a8211>.

⁹ Regulation (EU) 2019/1022 of the European Parliament and of the Council of 20 June 2019 establishing a multiannual plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea and amending Regulation (EU) No 508/2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1022>.

¹⁰ More information on this in section 3.

¹¹ Joint NGO recommendations on Baltic Sea fishing opportunities for 2025, available on: <https://www.fishsec.org/baltic/state-of-the-stocks/>.

1. Overfishing persists and the Commission's proposed approach to TAC-setting¹² fails to prioritise rebuilding fish populations, to maximise ecosystem health and resilience, and to apply the necessary precaution in the face of uncertainty in the ecosystem context

We welcome the Commission's explicit aim to improve the resilience of fishers and boost recovery of fish populations, as well as the recognition of the link between sustainable fisheries and socio-economic gains (p. 1, 8) and of the fact that "*unless the Member States apply and implement EU legislation in full, fish stocks will not recover*" (p. 4).

However, we are very concerned about the lack of explicit commitment in the communication to proposing ecosystem-based TACs, or of a vision of how this could be achieved. The Commission's proposed approach to set fishing opportunities "*in line with the MSY*" (p. 10), **i.e. at rather than below** the scientific single stock headline advice provided by ICES, will not deliver on this commitment. This is because the current ICES advice is neither geared towards rapidly rebuilding depleted or struggling stocks, nor towards maximising ecosystem health and resilience in the face of mounting pressures like climate change. **While following this single-stock headline advice for all stocks may technically "end overfishing" on paper, it fails to explicitly account for ecosystem integrity and dynamics and to build additional precaution into TAC-setting in the face of uncertainty and knowledge gaps where quantitative fully ecosystem-based advice is not yet available.** This is contrary to the CFP's requirement to adopt a precautionary and an ecosystem-based approach to fisheries management to minimise the impact on marine ecosystems (Articles 2(2) and 2(3) of the CFP basic regulation). It also fails to deliver on other existing ecological objectives derived for example from the MSFD, such as the need to ensure healthy age and size structures of fish populations as part of achieving GES.

While the Commission's reporting on progress towards ending overfishing has overall become less misleadingly positive than in past years,¹³ some of the wording in the communication may still be misinterpreted to suggest that the mission to end overfishing has basically been completed.¹⁴ It also omits the important fact that, according to the latest report by the Scientific, Technical and Economic Committee for Fisheries (STECF),¹⁵ progress with regards to some key metrics actually stagnated or even went backwards in 2022, the most recent year for which data is available. Indeed, 30% of the assessed Northeast Atlantic stocks were still overfished and

¹² While this section focuses on ICES advice provided for NE Atlantic stocks, the same issues are relevant for the STECF advice provided for the Western Mediterranean. For detailed recommendations on fisheries management in the Western Mediterranean, please refer to section 3.

¹³ See for example: Video #EndOverfishing Don't Greenwash It. June 2019. Available on <https://our.fish/news/video-endoverfishing-dont-greenwash-it/>. ClientEarth (2020). Let's get the numbers right: What proportion of fish stocks are sustainably managed in the EU? July 2020. <https://www.clientearth.org/latest/documents/let-s-get-the-numbers-right-what-proportion-of-fish-stocks-are-sustainably-managed-in-the-eu/>. Joint NGO letter to Commissioner Sinkevicius, the Director General of DG MARE and Members of the PECH Committee, regarding misleading reporting on progress towards ending overfishing. 12 May 2021. <https://our.fish/publications/letter-to-commissioner-sinkevicius-on-misleading-statements/>.

¹⁴ For example, the statement on p. 2 that "*On average, stocks in the North East Atlantic are now within the range consistent with the policy objectives on fishing mortality rate*".

¹⁵ European Commission, Joint Research Centre, Scientific Technical and Economic Committee for Fisheries (STECF) Monitoring the Performance of the Common Fisheries Policy (STECF-Adhoc-24-01), Gras, M., Pierucci, A., Mantopoulou Palouka, D., Kupschus, S. and Konrad, C. editor(s), Publications Office of the European Union, Luxembourg, 2024, <https://data.europa.eu/doi/10.2760/547228>, JRC137731. This is the case for the percentage of overfished stocks (where $F > F_{MSY}$) and stocks outside safe biological limits ($F > F_{pa}$ and/or $SSB < B_{pa}$), based on Figure A (p. 5), even though the model-based indicators in Figure B (p. 6) indicate an improvement.

41% outside safe biological limits,¹⁶ which certainly is no reason to celebrate, four years after the CFP's 2020 MSY deadline and the MSFD's 2020 deadline to achieve GES have been missed.

Moreover, some of the Commission's wording still does not match the legally binding ambition of the CFP to maintain or recover all stocks **above** biomass levels capable of producing the MSY (rather than merely recovering them "towards" or keeping them "at MSY level", p. 1). Rebuilding stocks above such levels indeed means fishing well below (rather than at) the MSY exploitation rate F_{MSY} . It is extremely concerning to see that objectives regarding stock rebuilding and ensuring ecosystem health are not yet fully reflected in the ICES advisory framework based on which ICES provides its advice on fishing opportunities, as explained in more detail in the recent joint NGO Baltic TAC recommendations.¹⁷ While this is the case, it is the responsibility of the decision-makers, i.e. the Commission, the Council, individual EU Member States and third countries fishing shared stocks, to build the necessary precaution into TAC-setting themselves, rather than maxing out on the single-stock headline advice from ICES as a default.

We therefore call on the Commission to propose TACs in a way that is geared towards a) rapidly rebuilding depleted fish populations, b) rebuilding all stocks well above B_{MSY} levels and c) boosting wider ecosystem health, resilience and productivity. This means:

- Work with ICES and other ICES advice clients to ensure that future requests for scientific advice on fishing opportunities are explicitly geared towards (1) rapid rebuilding of populations that are below sustainable biomass levels, (2) reaching and maintaining population levels well above B_{MSY} with a healthy age/size structure, and (3) fully accounting for ecosystem integrity and dynamics (including, for example, ensuring a sufficient food supply for thriving seabird and cetacean populations and other marine life, and reflecting the impact of fisheries on the oceanic carbon pump);
- Where such fully ecosystem-based and recovery-focused advice is not yet available or possible, explicitly request ICES to provide sufficiently precautionary alternative catch options that minimise the risks to fish population and ecosystem health;
- Where neither of the above are available in the short-term, propose and set catch limits well below the best available scientific single-stock advice provided by ICES, where this does not yet fully reflect ecosystem integrity and dynamics and/or is not explicitly geared towards rapid recovery above sustainable population levels. This is necessary both for stocks with advice based on the ICES MSY approach and for stocks with advice based on the ICES precautionary approach for data-limited stocks. To operationalise this the Commission could, for example, develop options for a quantitative precautionary approach

¹⁶ *Ibid.*: Based on Tables 3 and 4, p. 31, as of 2022, the most recent year with the relevant data, 25 out of 83 assessed stocks (i.e. 30%) were still exploited above F_{MSY} . Based on Tables 5-6, p. 33, 19 out of 46 assessed stocks (i.e. 41%) were still outside safe biological limits, compared to 39% in 2021.

¹⁷ Joint NGO recommendations on Baltic Sea fishing opportunities for 2025, available on: <https://www.fishsec.org/baltic/state-of-the-stocks/>. For example, despite the clear legal requirement to restore and maintain all stocks above biomass levels capable of producing MSY (B_{MSY}), the ICES MSY approach heavily relies on the use of $MSY B_{trigger}$ as a proxy (where B_{MSY} is unknown). This is problematic a) because $MSY B_{trigger}$ can be well below B_{MSY} , and b) in the absence of better estimates it is usually set at the $B_{0.01}$ level, below which a stock is outside "safe biological limits" (i.e. There is a higher risk of the stock actually being below B_{lim} , the lowest reference point where recruitment is impaired). Aiming to restore or maintain stocks only at or near $MSY B_{trigger}$ therefore is not in line with the CFP's fundamental MSY Objective of restoring and maintaining stocks above B_{MSY} .

for TAC-setting that can be used as a fallback default in the absence of fully ecosystem-based, recovery-focused ICES advice and that involves proposing TACs:

- For stocks below $MSY B_{trigger}$ and/or B_{pa} and/or B_{lim} : at or below levels that aim for recovery within no more than twice the time needed for recovery in the absence of fishing ($T_{MAX}/T_{MIN} \leq 2$, as suggested by ICES WKREBUILD2),¹⁸ and where such bespoke rebuilding-focused advice is not available, a minimum increase in biomass to be defined based on the specific stock situation and available catch options and their corresponding biomass projections.¹⁹ Moreover, the Commission should work with Member States to urgently develop and implement effective rebuilding plans and remedial measures (reflecting the findings of ICES WKREBUILD2) for all populations below $MSY B_{trigger}$ (also see section 2).
- For stocks at or above $MSY B_{trigger}$ and/or which are below it but have catch options that allow for an increase above $MSY B_{trigger}$: at or below levels that allow for population sizes to recover or be maintained at or above a certain percentage above the $MSY B_{trigger}$,²⁰ to build in a safeguard to buffer against climate change impacts and/or population fluctuations.²¹ For example, TACs could be set based on aiming for biomass levels of 120%, 150% or 200% of the $MSY B_{trigger}$ or even more, depending on the specific stock situation and available catch options and their corresponding biomass projections;²²
- For all stocks: at a maximum of a certain fraction, such as 80% (or another, lower level, depending on the stock situation), of the ICES single-stock headline advice,

¹⁸ ICES (2023). Workshop on guidelines and methods for the design and evaluation of rebuilding plans for category 1-2 stocks (WKREBUILD2). ICES Scientific Reports. Report. <https://doi.org/10.17895/ices.pub.24763293.v2>.

¹⁹ In the absence of ICES advice that is explicitly geared towards stock rebuilding over a particular timeframe, the Commission could review the available catch options in the ICES single-stock advice sheet, and for example base its proposal on the scenario corresponding or closest to the mid-point between the biomass increase projected for zero catch and that for $F_{MSY\ lower}$ or $F_{MSY\ lower} \times SSB\ 2025/MSY\ B_{trigger}$.

²⁰ As explained in more detail in the joint NGO recommendations on Baltic Sea fishing opportunities for 2025 and outlined in footnote 18 above, aiming to restore or maintain fish populations merely at or near $MSY B_{trigger}$ fails to meet the CFP's legally binding MSY Objective of restoring and maintaining all stocks above B_{MSY} . Where B_{MSY} is unknown, a proxy for it should therefore be used rather than defaulting to the use of $MSY B_{trigger}$. For example, a study by Froese et al. (2021), which "Given that B_{pa} is a proxy for $MSY B_{trigger}$ [...] assumes an approximate relation between B_{pa} and B_{MSY} with $B_{pa} = 0.5 B_{MSY}$ ", suggests that 200% of B_{pa} (or of $MSY B_{trigger}$, as this is often set at B_{pa}) could be used as a proxy for B_{MSY} to aim for in the absence of bespoke B_{MSY} estimates. Froese, R., Tsikliras, A. C., Scarcella, G., Gascuel, D. (2021). Progress towards ending overfishing in the Northeast Atlantic. Marine Policy 125 (2021) 104282. https://fishbase.de/frfoese/MarPol_EU_Fishing_2021.pdf. Similarly, another earlier study by Froese et al. (2014) had also confirmed based on analysis of stocks from other areas outside the Northeast Atlantic that "twice SSB_{pa} provides a reasonable preliminary estimate". Froese, R., Coro, G., Kleisener, K., Demirel, N. (2014). Revisiting safe biological limits in fisheries. Fish and Fisheries, Volume 17, Issue 1, p. 193-209. <https://doi.org/10.1111/faf.12102>.

²¹ For example, a study by Kemp et al. suggested that "biomass of fish stocks should be allowed to regenerate to a minimum of 120% of that which will achieve MSY to provide a buffer against the uncertainty in ecological response to climate change". Kemp, PS, Subbiah, G, Barnes, R, Border, K, O'Leary, BC, Stewart, B, Williams, C (2023). The future of marine fisheries management and conservation in the United Kingdom: Lessons learnt from over 100 years of biased policy. Marine Policy 147 (2023) 105075. <https://doi.org/10.1016/j.marpol.2022.105075>, p. 1 (abstract). Given that $MSY B_{trigger}$ constitutes only the lower boundary of biomass fluctuation around B_{MSY} , and is usually set at B_{pa} (the boundary between inside and outside safe biological limits), it seems appropriate to aim for a higher percentage than 120% above $MSY B_{trigger}$, where B_{MSY} is unknown. In combination with the potential use of 200% of the B_{pa} (or of the $MSY B_{trigger}$), this would suggest aiming for $1.2 \times 200\%$, i.e. 240% of the B_{pa} (or of the $MSY B_{trigger}$).

²² The exact percentage above the $MSY B_{trigger}$ which can be achieved in the short-term will depend on the specific stock situation, e.g. how close to or far above $MSY B_{trigger}$ the stock in question is already, and what catch options and corresponding biomass projections are available in the ICES advice. In light of the legally binding obligation under the CFP's MSY Objective to restore and maintain all stocks above B_{MSY} , the Commission could base its proposal for example on the scenario corresponding or closest to the mid-point between the biomass increase projected for F_{MSY} and for $F_{MSY\ lower}$ or $F_{MSY\ lower} \times SSB\ 2025/MSY\ B_{trigger}$, for all stocks that are not yet at or above B_{MSY} or relevant proxies (such as $2 \times B_{pa}$ or $2 \times MSY B_{trigger}$). For stocks already at or above such levels, the Commission could base its proposal on at least keeping the biomass stable.

to build in a precautionary safeguard in the face of uncertainty around ecosystem integrity and dynamics.²³

- Improve the management of key low trophic species, such as Norway pout, sandeel, herring, sardines, anchovy and sprat. The depletion of these small pelagic stocks affects food web functionality, reduces the resilience and resistance against further environmental changes, and ultimately diminishes fishing opportunities for dependent fish species. Key forage fish species should not be fished above a level consistent with the ecosystem integrity, which means leaving up to 75% of the unfished population in the ocean.²⁴ While fully ecosystem-based scientific advice geared towards ensuring a sufficient food supply for dependent predators is not yet available, and should be urgently requested, TACs must be set well below the ICES single-stock headline advice to account for ecosystem integrity in a precautionary way.

2. Current EU fisheries management lacks effective action to recover depleted populations, fails to prioritise rebuilding when setting TACs and treats “bycatch” and data-limited stocks with lower ambition than “target” and data-rich stocks.

We remain very concerned about the large number of depleted fish populations,²⁵ the lack of progress made to date to rebuild them, and the lack of action to minimise the risk of further population declines in future.

Contrary to the CFP’s fundamental MSY objective to maintain and recover **all** stocks above sustainable levels, current EU fisheries management appears to make a dangerous distinction in how seriously the need to rebuild depleted stocks is taken, depending on whether they are “targeted” or primarily caught as “bycatch” alongside other, more abundant stocks.²⁶ As a result, with some exceptions, most commercially valuable target stocks seem to be thriving, whereas **“bycatch” appears to have turned into a collecting pond that many depleted stocks get trapped in and rarely escape from**, because rebuilding them would require fisheries closures or quota cuts in the short-term.

While the recent ruling by the Court of Justice of the European Union (CJEU) helpfully confirmed that indeed the CFP’s 2020 MSY deadline to end overfishing applies without exception to target stocks, it concluded that the Council has a margin of discretion to exceed scientific advice for

²³ ICES uses a “precautionary buffer” of 20% as part of its approach to delivering precautionary single-stock advice for data-limited stocks. In the absence of quantitative ecosystem-based advice, the Commission could apply a similar percentage (by proposing TACs 20% or more below the ICES single-stock headline advice, i.e. at 80% or less of it) where the latter does not demonstrably fully reflect ecosystem integrity and dynamics. Other percentages could be applied if underpinned by bespoke stock-specific information.

²⁴ Smith, A.D., Brown, C.J., Bulman, C.M., Fulton, E.A., Johnson, P., Kaplan, I.C., Lozano-Montes, H., Mackinson, S., Marzloff, M., Shannon, L.J. and Shin, Y.J., 2011. Impacts of fishing low-trophic level species on marine ecosystems. *Science*, 333(6046), pp.1147-1150. <https://www.science.org/doi/10.1126/science.1209395>.

²⁵ ClientEarth (2023). Taking stock 2023 - are TACs set to achieve MSY? November 2023. <https://www.clientearth.org/latest/documents/taking-stock-2023-are-tacs-set-to-achieve-msy/>, section 4.6.

²⁶ *Ibid.*, section 4.4.

“bycatch” stocks under certain conditions,²⁷ in order to address “choke” situations in mixed fisheries.²⁸ This judgement effectively overturned the earlier opinion by Advocate General Ćapeta who had concluded that the 2020 deadline applies to all stocks equally.²⁹ It is therefore crucial to recall that – regardless of the Council’s discretion in applying the CFP’s 2020 MSY deadline – **the biomass component of the CFP’s fundamental MSY objective (i.e. the obligation to maintain or restore them above MSY biomass levels) still applies to all stocks, regardless of whether they are targeted or caught as bycatch, and of whether they are subject to MSY-based or precautionary ICES advice.**

We therefore wholeheartedly welcome the Commission’s statement in its communication that *“Where the biomass has decreased so much that it is below safe biological limits, the Commission propose to rebuild the stocks and include remedial measures, in line with each multiannual plan”* (p. 10), as well as its commitment to evaluating *“Member States’ progress in implementing the current by-catch reduction measures adopted alongside unavoidable by-catch-only TACs to alleviate potential choke situations”*.³⁰

A continuation of the current habit of setting bycatch TACs to avoid choke situations perpetuates the dire state of depleted bycatch stocks and traps mixed fisheries in a situation constantly overshadowed by the risk of fisheries closures. Instead, the focus should be on rebuilding stocks in line with the law, for the benefit not only of the fish populations in question and the health of the ecosystems they live in, but also of productive fisheries in the long-term.

Regarding data-limited stocks, the Commission’s consultation lacks detail on how it will propose TACs where no MSY-based advice is available. Previous TAC decisions demonstrate lower ambition and inconsistency with the precautionary approach as defined in the United Nations Fish Stocks Agreement (UNFSA) and the CFP (Article 4.1(8)). The precautionary approach requires that decision-makers do not postpone or neglect appropriate conservation and management measures when available data and information are uncertain, unreliable, or inadequate - many deep sea species are prime examples.³¹ Although some of these stocks may currently be relatively small or have lower economic value, they could, if given the opportunity to recover, support productive fisheries, and remain crucial components of the marine ecosystem. Therefore, their harvest must also be adequately managed in accordance with the implementation of an

²⁷ Judgment of 11 January 2024, Case C–330/22 *Friends of the Irish Environment v. The Minister for Agriculture, Food and Marine, Ireland and the Attorney General*, ECLI:EU:C:2024:19. <https://curia.europa.eu/juris/document/document.jsf?jsessionid=58598DC1806FA841C9D4919E16C0D233?text=&docid=281144&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=8601409>. See for example paragraph 75, concluding that “for the management of by-catch stocks falling within the scope of the latter regulation, and in particular for the setting of fishing opportunities for those stocks, the Council has discretion, regard being had to the difficulties arising from the setting of such exploitation rates for all stocks fished at the same time, especially if that fixing would lead to the premature closure of a fishery as a result of the phenomenon of ‘choke species’ described in paragraph 70 of the present judgment”.

²⁸ The term “choke” refers to a situation where no quota is available for one or more “choke” stocks, even though quotas for other more abundant stocks caught together in the mix have not been fully exhausted yet. Setting and respecting TACs set based on the scientific advice for “choke” stocks (which are often depleted and subject to zero-catch advice) can thus “choke” mixed fisheries that target more abundant stocks while also catching unwanted “choke” species as bycatch.

²⁹ OPINION OF ADVOCATE GENERAL ĆAPETA delivered on 15 June 2023, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=81605BAA9E74B5594BADE660A31A19DD?text=&docid=274653&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=3017442>, see for example paragraphs 30, 31 and 42.

³⁰ While we welcome this statement, the undersigned NGOs note that rebuilding measures should be put in place for all stocks below MSY Btrigger.

³¹ Also see ClientEarth’s briefing on TAC-setting in line with the precautionary approach: ClientEarth (2020). Caution! A TAC-Setter’s Guide to the ‘Precautionary Approach’. December 2020. <https://www.clientearth.org/latest/documents/caution-a-tac-setter-s-guide-to-the-precautionary-approach/>.

ecosystem-based approach to fisheries management, as mandated by Article 2(3) of the CFP basic regulation.

Considering all of the above, the Commission must not lower its ambition to rebuild and effectively manage fish populations that are currently data-limited and/or primarily caught as bycatch, as is the case for many deep-sea species.

We therefore call on the Commission to propose TACs in a way that safeguards data-limited stocks and finally breaks the vicious cycle of overfishing “bycatch” stocks to avoid choke situations, thereby perpetuating the dire state of these stocks. This means:

- Request ICES to provide advice geared towards rapid rebuilding of all stocks that are below $MSY B_{trigger}$;
- Propose TACs in line with rapid rebuilding of all stocks;³²
- Urgently develop and implement effective rebuilding plans and remedial measures (reflecting the findings of ICES WKREBUILD2)³³ for all populations below $MSY B_{trigger}$, geared towards rapid rebuilding above B_{MSY} , including strong safeguards to prevent future population declines or stagnation below $MSY B_{trigger}$, and subject to close monitoring and enforcement using REM with cameras;
- Propose TACs for the more abundant stocks in mixed fisheries sufficiently below their respective single-stock ICES headline advice to prioritise rapid rebuilding of associated depleted bycatch stocks;
- Apply the precautionary approach (as defined in the UNFSA and enshrined in the CFP) when setting TACs for fish populations where scientific advice based on the MSY approach is not available. This includes the setting of precautionary fishing limits in line with the best available scientific advice and additional measures to mitigate the risk of overfishing, as well as enhanced monitoring and data collection to enable the definition of MSY reference points or suitable proxies for the populations concerned.

³² See the recommendations in the previous section for ideas how this could be done where specific rebuilding-focused advice is not yet available.

³³ ICES (2023). Workshop on guidelines and methods for the design and evaluation of rebuilding plans for category 1-2 stocks (WKREBUILD2). ICES Scientific Reports. Report. <https://doi.org/10.17895/ices.pub.24763293.v2>.

3. Western Mediterranean fisheries at risk: lack of emergency measures on critical stocks, data gaps on compensation mechanism, and a lack of ecosystem-based management

The West Med MAP was adopted in 2019 to ensure that exploitation of six demersal species in the area restores and maintains populations of harvested species above levels which can produce MSY. The primary tool provided to fulfil this objective is the achievement of the target fishing mortality by 1st January 2025. The West Med MAP considers 22 stocks of six demersal species: blue and red shrimp, deep-water rose shrimp, giant red shrimp, European hake, Norway lobster and red mullet.

Unlike the multiannual plans applicable in other EU waters, all of which follow the 2020 deadline set by the CFP basic regulation, the West Med MAP is the only one which sets a five-year transitional phase from 2019 to 2024, with an ultimate deadline of 2025 to achieve sustainable exploitation of the stocks. After that, the permanent phase of this multiannual plan will begin.

While the Member States implemented a reduction in fishing days as foreseen in the West Med MAP, which currently adds up to an overall 40% reduction from 2020 to 2024, information about the percentage reclaimed by each Member State through the so-called “compensation mechanism”³⁴ is not easily available and accessible, resulting in a lack of clarity on the actual reduction.

To further control fishing mortality, policymakers introduced catch limits in the Western Mediterranean for the first time in 2022,³⁵ specifically for blue and red shrimp, as well as giant red shrimp. However, despite being gradually reduced, they have not yet been lowered to the levels recommended by STECF stock assessments to achieve the target mortality rate.

While the MAP initially only targeted the trawling fleets operating in the Western Mediterranean, in 2021 a cap on longliners’ fishing effort was introduced.³⁶ While the addition of longliners to the file is appreciated, exploring the inclusion of additional gears under the West Med MAP is crucial, if substantial catches of a specific stock with high fishing mortality are attributed to fishing gears that are not currently regulated under the plan - such as gillnets, which are responsible for 22% of hake catches in Corsica and in the Ligurian and Tyrrhenian Seas.³⁷ Implementing maximum allowable fishing effort or catch limits for these specific gears would be beneficial.

Overall, we welcome the reduction of the median F/F_{MSY} from 1.90 in 2007 to 1.20 in 2022 in the Mediterranean and Black Seas, highlighted in the Commission’s communication.³⁸ However, as the Commission itself stressed, “*despite recent improvements in the state of some stocks, more action and greater commitment is required to tackle the situation.*”³⁹ Particularly in the Western

³⁴ Starting in 2022, policymakers established for the first time a “compensation mechanism” to incentivise Member States to implement technical measures, including selectivity measures, closure areas, and the fixing of minimum conservation reference size (MCRS). Specifically, the three Member States concerned are entitled to reclaim a predetermined percentage of allocated fishing days upon satisfying one or more conditions outlined within the annual Council Regulation establishing fishing opportunities for the following year.

³⁵ Council Regulation (EU) 2022/110 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Mediterranean and Black Seas. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0110>

³⁶ Council Regulation (EU) 2021/90 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Mediterranean and Black Seas. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0090>

³⁷ Scientific, Technical and Economic Committee for Fisheries. (2023). Stock assessments in the Western Mediterranean Sea (STECF 23-09). Mannini, A., Ligas, A., & Pierucci, A. (Eds). Publications Office of the European Union. p. 125. <https://data.europa.eu/doi/10.2760/995295>

³⁸ European Commission’s communication on fishing opportunities for 2025, p. 2. Full reference in footnote 1.

³⁹ *Ibid.*, p. 12.

Mediterranean, the situation is dire. According to the latest stock assessments published by STECF⁴⁰ and the General Fisheries Commission for the Mediterranean (GFCM),⁴¹ fishing mortality remains extremely high in the Western Mediterranean Sea, averaging 1.94 times the F_{MSY} value.⁴² Here, **overfishing still affects 57% of the fish populations managed by the West Med MAP.**⁴³

Additionally, biomass levels are a cause for concern. When looking at the same datasets, the biomass of **85% of the fish populations does not meet the West Med MAP's objective.** Specifically, 46% of the stocks are in a critical state of overexploitation (biomass below $0.5 * B_{MSY}$) and 39% are overexploited (biomass between $0.5 * B_{MSY}$ and B_{MSY}).⁴⁴ **Abundance levels of four stocks⁴⁵ are below the precautionary approach reference point (B_{pa}), and three⁴⁶ are even below the limit reference point (B_{lim}).** While remedial measures must be taken for the stocks below B_{pa} starting from 1st January 2025, both the European Commission and the Member States are required to adopt emergency measures for all stocks falling below B_{lim} , according to Article 6 of the West Med MAP.

Therefore, **we call on the European Commission to take decisive action when proposing fishing opportunities for 2025, to ensure the swift recovery of all fish populations in the Western Mediterranean.** This means:

- Adopting immediate safeguard measures for stocks with spawning biomass below B_{lim} and B_{pa} , including emergency actions as outlined in Articles 12 and 13 of the CFP, to address the critical condition of the three stocks below B_{lim} ;
- Assessing the effectiveness of existing technical measures, such as selectivity improvements and closure areas, and proposing additional measures to effectively tackle ongoing challenges;
- Requesting STECF to provide disaggregated scientific data and to consider the potential addition of new gears, species, and catch limits to the West Med MAP, in order to inform and hone tailored reductions in fishing days that ensure the recovery of fish populations while preserving fleet profitability;
- Re-evaluating the compensation mechanism by scrutinising its effectiveness and ensuring that the designation of additional fishing days does not exacerbate fishing pressure, particularly in light of overexploited resources. This includes prioritising regular assessments of existing closures, accelerating the endorsement of new closures validated by STECF, and removing areas from compensation that do not effectively reduce pressure on juvenile and spawning stocks. Ensuring transparency throughout this process is essential to allow meaningful stakeholder contributions and informed decision-making; and

⁴⁰ Scientific, Technical and Economic Committee for Fisheries. (2023). Full reference in footnote 34.

⁴¹ General Fisheries Commission for the Mediterranean. (n.d.). Validated stock assessment forms (SAFs). Retrieved July 07, 2024 from: <https://www.fao.org/gfcm/data/safs/en/>

⁴² Guadagnoli, G. and López, J. (2024). Rebuilding western Mediterranean fisheries: has the western Mediterranean multiannual plan delivered? 2019–2024. Oceana. p. 21. <https://europe.oceana.org/reports/rebuilding-western-mediterranean-fisheries-has-the-western-mediterranean-multiannual-plan-delivered-2019-2024/>

⁴³ *Ibid.*, p. 13.

⁴⁴ *Ibid.*, pp. 17-18.

⁴⁵ Blue and red shrimp in GFCM geographical subareas (GSAs) 5, blue and red shrimp in GSAs 6-7, red mullet in GSA 1, and red mullet in GSA 6.

⁴⁶ European hake in GSAs 1-5-6-7, European hake in GSAs 8-9-10-11, and Norway lobster in GSA 6.

- Working with STECF to move towards fully ecosystem-based and recovery-focused scientific advice on fishing mortality and catches,⁴⁷ as well as incorporating the necessary precaution in the face of uncertainty and knowledge gaps about ecosystem integrity and dynamics.

4. Poor CFP implementation undermines long-term environmental and socio-economic sustainability and compromises the contribution of sustainable fishing opportunities to the latter

The current CFP basic regulation offers many tools to help fulfil its objectives, both environmental and socio-economic, that are poorly interpreted and implemented (if at all) and undermine the overall framework, including the contribution of fishing opportunities to long-term sustainability.

A key policy in this regard is the Landing Obligation (LO), which provides an opportunity to meet the public's demand for reducing food waste and to drive the transition to more selective, ecologically sustainable, low-impact fishing. Article 15 of the CFP basic regulation provides Member States with a range of tools to successfully implement the LO. However, broadscale non-compliance with the LO and a failure to properly account for this when setting fishing opportunities continues to undermine the objectives of the CFP and of the MSFD, jeopardises the quality of scientific data and the stock assessments they underpin, and has led to substantial increases in fishing mortality which threatens to implode the entire fisheries management system.⁴⁸ In this context, we are extremely concerned about the Commission's recent decision not to pursue the infringement proceedings that were opened in 2021 against several EU Member States for a failure to enforce the LO.⁴⁹ **Even fishing opportunities that follow scientific advice on paper will not be sustainable on the water without robust monitoring and control, and without reliable full catch accounting.**

Regarding the CFP's socio-economic objectives, the way the agreed fishing opportunities are allocated across the fleet is a key tool for directing the available fishing opportunities away from environmentally damaging parts of the fleet (e.g. those with high bycatch and/or seabed impact) towards low-impact fishing operations that are of greater importance to the local fishing community (employment opportunities and contribution to local economies). The current allocation of fishing opportunities is almost solely based on historic criteria – those fisheries who

⁴⁷ In the case of the species covered by the West Med MAP, reductions in fishing days are the primary tool to reach the target fishing mortality. However, the link between fishing mortality and fishing days is still unclear. Further research should be carried out to provide robust guidance on the setting of fishing effort restrictions that ensures that target fishing mortality is not exceeded.

⁴⁸ Scientific, Technical and Economic Committee for Fisheries (STECF) – 60th Plenary Meeting Report (PLEN-19-01). Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-02904-5. Borges, L (2020), [The Unintended Impact of the European Discard Ban](#), ICES Journal of Marine Science. Also see: [ClientEarth's](#) and [Our Fish's](#) briefings on the LO. [This short 5 min presentation](#) (starting at 15:30) visualises the risk that 'topped up' catch-based TACs pose in combination with illegal discards.

⁴⁹ Mosola, D (2024). Brussels abandons crackdown on overfishing. Financial Times, 26 July 2024. <https://www.ft.com/content/92f54b80-24b7-4b57-80f6-a2eadd2a8211>.

have historically caught certain amounts of fish in the past, are often granted similar quotas or fishing days also in subsequent years. This reinforces the impact of large-scale and industrial fisheries often using harmful fishing practices and enables the oligopoly of companies, at the expense of small-scale and low-impact fishers, fishing communities and fragile marine ecosystems. This paradox stresses the urgent **need for a new approach to the allocation of fishing opportunities that favours fairness, sustainability, and the preservation of the ocean for future generations of fishers, by directing fishing opportunities towards low-impact parts of the fleet and away from those with a high-impact, questionable social and labour practices, and/or a history of non-compliance.**

We therefore call on the Commission to underpin and accompany sustainable, ecosystem-based and rebuilding-focused fishing opportunities by ensuring the proper implementation of the CFP basic regulation, notably regarding effective LO implementation, full catch accounting and a new approach to quota and fishing effort allocation that favours low-impact fishing. This means:

- Fully implement the LO and underpin sustainable fishing opportunities by robust controls and full catch documentation using remote electronic monitoring (REM; supported by observer coverage as appropriate) for all vessels above 12 m and for medium and high-risk vessels below 12 m.
- Consider the widely recognised lack of implementation of the LO by setting fishing opportunities sufficiently below scientific catch advice to ensure illegal and unreported discarding does not lead to actual catches exceeding sustainable levels.
- Urge EU Member States to prioritise and apply environmental and social criteria for national allocation of fishing opportunities, for example through incentivising the use of selective fishing gear and low-impact fishing practices, and reflecting the contribution to local fishing communities and the implementation of fair labour practices.⁵⁰
- Provide a precise definition of low-impact fishing, monitor compliance with Article 17 of the CFP basic regulation, and require the Member States to make their allocation criteria public.

⁵⁰ For more information on good practices: Seas At Risk (2024). Allocating fishing opportunities with environmental, social, and economic criteria in mind: Examples from the EU Member States. Brussels: Seas At Risk. https://seas-at-risk.org/wp-content/uploads/2024/02/2024_Fisheries_Allocation-report_final.pdf.

5. A continued lack of transparency and accountability impedes progress towards long-term sustainability

The AGRIFISH Council deliberations happen behind closed doors, which impedes public scrutiny and accountability of decision-makers. This lack of transparency has been flagged by the EU Ombudsman, who concluded that fishing opportunities documents contain ‘environmental information’ within the meaning of the Aarhus Convention that should be publicly available and made recommendations to improve the transparency of the Council when setting fishing opportunities. The Ombudsman further confirmed a finding of maladministration in April 2020,⁵¹ expressing disappointment that Council decision-making contravened key democratic and transparency standards.

While NGO access to plenary sessions as part of international negotiations between the EU and other Coastal States like the UK has improved since Brexit, the actual consultations continue to happen behind closed doors and proper documentation and publication of negotiating positions and details of the negotiations themselves is still lacking. Both the Commission and the Council have repeatedly refused access to documents related to TAC-setting for shared stocks over the last few years, for example based on concerns about the potential impact on international relations and future negotiations.⁵²

This continued lack of transparency around key negotiation processes, as well as the criteria used in national allocation of quota and fishing days, makes it difficult to unambiguously identify who has pushed for unsustainable fishing opportunities and on what basis. This impedes civil society’s ability to scrutinise the decisions made, effectively direct both credit and blame where they are due - and ultimately hold decision-makers accountable for decisions that are not in line with science and the law.

We therefore urge the Commission and the Council to promote transparency in the decision-making process by making all proposals, including Commission non-papers, Council Working Party and AGRIFISH Council documents, and minutes, regarding both EU-only and shared stocks, publicly available. This will also enable stakeholders and the public to understand the rationale behind decisions on fishing opportunities, and to better target and tailor input in future.

⁵¹ European Ombudsman (2019), “[Recommendation of the in case 640/2019/FP](#) on the transparency of the Council of the EU’s decision-making process leading to the adoption of annual regulations setting fishing quotas (total allowable catches)”. European Ombudsman (2020). Council fails to accept Ombudsman’s recommendation for transparency in EU fishing quota decision-making process. Case 640/2019/TE. <https://www.ombudsman.europa.eu/en/case/en/54526>. Also see: [Transparency International, “Overfishing in the Darkness”](#) (2016).

⁵² For example, ClientEarth submitted an AIR to the Council on 5 September 2023, which was registered under the reference “Ref. 23/2446-PRO-mf”, https://www.asktheeu.org/en/request/request_for_access_to_documents_8#outgoing-26003. In its reply from 13 October, the Council (partially) disclosed a number of files, while refusing access to a large number of files (or parts thereof) containing information on 2023 TACs for shared stocks.

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