



August 2023

Joint NGO feedback to the European Commission on the “Sustainable fishing in the EU: state of play and orientations for 2024” consultation

Introduction

On behalf of BirdLife International, Blue Marine Foundation, ClientEarth, Dutch Elasmobranch Society, Ecologistas en Acción, Fair Seas Ireland, Oceana, Sciaena, Seas At Risk, The Fisheries Secretariat, and WWF, we present our response to the 2023 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 the long-term health of fish stocks, support ecosystem resilience, and foster transparent and accountable fisheries management.

On February 21, the European Commission published its report on the functioning of the Common Fisheries Policy (CFP).² 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 forceful implementation of the CFP is needed*”, pointing to a number of elements where implementation must be strengthened – such as the concerning situation in the Mediterranean and Baltic Seas, the poor implementation of the landing obligation, and the lack of coherence between fisheries management decisions and EU environmental legislation. This is in line with the NGO position that advocates for better implementation of the policy and the achievement of the management objectives before considering any potential reform of this

¹ European Commission. (2023, June 14). [Sustainable fishing in the EU: state of play and orientations for 2024](#). Have your say. Published initiatives.

² 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.

policy³. However, in this communication we noted a lack of proposals for firmer actions by the European Commission to meet the ambition of the CFP and move towards its full implementation.

EU Member States are failing to meet their binding obligations under the CFP to end the wasteful discarding of fish by 2019, recover and maintain all species above sustainable levels by ending overfishing by 2020, and minimise or eliminate fisheries impacts on marine habitats and biodiversity. Specifically, recent audits by the Commission show that Member States have not adopted the necessary measures to ensure effective control and enforcement of the landing obligation², around 26% and 72% of the assessed fish stocks in the Northeast Atlantic and Mediterranean⁴ respectively are still subject to overfishing (with fishing mortality rates in the Mediterranean still close to twice the sustainable levels on average), and destructive fishing practices such as bottom trawling still take place in the vast majority of EU Marine Protected Areas designated to protect the seabed.⁵

Considering this situation, like in previous responses to the annual consultation on the state of EU fisheries and orientation for 2024 fishing opportunities, we focus our contribution on the main implementation gaps and recommendations related to the setting of fishing opportunities that should be urgently addressed by the European Commission and Member States, both individually and as part of the Council. It is imperative that all proposed and agreed fishing opportunities for 2024 align with the objectives of the CFP, while also addressing the pressing climate and biodiversity crises. Furthermore, 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.

1. Overfishing persists despite binding obligation to end it

The most recent Scientific, Technical, and Economic Committee for Fisheries (STECF) report on monitoring the performance of the CFP⁴ reveals that despite the declining trend in the fishing mortality rates of the Northeast Atlantic stocks since the early 2000's, a substantial portion of the MSY-assessed stocks - 26% - remained subject to overfishing, and 38% were still outside safe biological limits in 2021. Therefore, this official report confirms that *"The objective of the CFP, which aimed to ensure that all stocks are fished at or below FMSY since 2020, has not been achieved for these stocks"*.⁴ Of particular concern is the state of the Baltic Sea fish stocks which are facing a combined challenge of overfishing coupled with an ongoing environmental crisis, thus stalling any effort to recover fish stocks. Overfishing also continues to be rampant in the Mediterranean and Black Sea, where the STECF report exposes that 72% of assessed fish stocks continue to be fished above sustainable levels. While year-to-year variation in available data for these waters makes some of the exploitation and state of the stock's indicators being considered exploratory, STECF states that *"these results alongside existing information confirm that a large majority of the stocks remain overexploited"*.⁴

³ For more aspects of the CFP pending implementation, please see the NGO policy paper "[Common Fisheries Policy: Mission Not Yet Accomplished](#)" (2021). NGOs identify nine specific challenges—overfishing, the Mediterranean Sea, the landing obligation, 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.

⁴ STECF. (2023). [Monitoring the performance of the Common Fisheries Policy, STECF Adhoc 23-01](#).

⁵ Oceana. (2020). [Unmanaged = Unprotected: Europe's marine paper parks](#). Oceana, Brussels. 52 pp.

The situation described above is the result of the continued setting of many fishing opportunities - catch limits in the Northeast Atlantic and effort restrictions in the Mediterranean - above scientific advice, and contrary to the legal obligation to exploit all fish stocks sustainably by 2020 at the latest, to recover and maintain them above abundance levels capable of producing maximum sustainable yield (MSY). To fix this situation and comply with EU law, we call on the European Commission to **propose and establish Total Allowable Catches (TACs) and fishing effort restrictions at or below scientifically advised levels**, both for stocks with available MSY-based reference points or proxies and data-limited stocks subject to precautionary advice. In order to implement the ecosystem-based approach and the precautionary approach required by the CFP, the TACs should be proposed and set sufficiently far below the headline advice provided by ICES to account for ecosystem needs and dynamics, such as predator needs when it comes to forage fish⁶ as well as challenges posed by climate change and other pressures. Promoting 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, will also enable stakeholders and the public to understand the rationale behind the fishing opportunities decisions.

Responding to the request of some EU Member States and with the aim of increasing efficiency and predictability for the EU fishing businesses, the Commission plans to explore moving, where possible, to a system of multiannual TACs for EU-only stocks. Although the Commission's communication explains that this initiative will be developed in consultation with ICES, we are concerned about the potential implications of such multiannual TACs for the status of fish stocks and the uncertainty regarding the wording of the terms of reference for ICES. Multiannual TACs must not impede the ability of decision-makers to follow the best available scientific advice, nor result in new information about a potential change in stock status not being requested or used. This may require setting TACs well enough below the respective ICES headline advice to provide a buffer against unforeseen stock decreases. Long-term environmental sustainability in line with the CFP objectives, feasibility of implementing robust ICES multiannual advice criteria, and safeguards to react to new information on stock status, particularly where this indicates a decrease, should be ensured and prioritised in any terms of reference for a special request to ICES on this topic. More specifically, we would recommend that the basis for multiannual TAC advice should be Long-Term Management Strategies (LTMS) evaluated by ICES through a full Management Strategy Evaluation procedure, deemed precautionary and aimed at achieving long-term sustainable fisheries, taking an ecosystem-based approach to fisheries management that considers ecosystem and climate-driven changes.

In our previous consultation responses, we have consistently criticised the Commission's misleadingly positive reporting on the state of the fish stocks and lack of reporting on restoring fish stocks above sustainable biomass levels.^{7,8} While we welcome that the misleading 99% sustainability statistic⁸ is no longer included, looking ahead, we continue to recommend incorporating a comparison of agreed TACs with the underlying scientific headline advice provided by ICES. This will provide a valuable addition to the Commission's current outcome-based reporting, which primarily focuses on biomass and exploitation levels, as well as an

⁶ See Oceana's briefing on management recommendations for this group of species. Oceana. (2022). [Briefing: Management recommendations for the management of forage fish in the Northeast Atlantic](#). Oceana, Madrid 4p.

⁷ ClientEarth. (2020). [Let's get the numbers right: What proportion of fish stocks are sustainably managed in the EU?](#) July 2020.

⁸ Joint NGO letter to Commissioner Sinkevičius, 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/>.

essential dimension to track progress in aligning TAC decisions with scientific advice. The UK's methodology for assessing sustainability of catch limits⁹ and the Centre for Environment, Fisheries and Aquaculture Science (Cefas) reports on this topic¹⁰, offer inspiration for developing a similar analysis for stocks of EU interest. We encourage both the EU and the UK to collaborate through the Specialised Committee on Fisheries to adopt a consistent evaluation methodology on this matter, ensuring that the results can be accepted and compared across the Channel.

Furthermore, on international cooperation related to the setting of fishing opportunities, the EU should strengthen and enhance collaboration with third countries, particularly in shared fisheries areas, to promote sustainable fisheries management beyond EU waters. Negotiations and agreements with non-EU countries should prioritise the adoption of science-based measures. The EU should leverage its international influence to promote global efforts towards sustainable fisheries management.

2. Lack of effective action to recover severely depleted stocks

The EU has made commitments through different international agreements and domestic regulation to restore and maintain commercial fish populations above sustainable levels.¹¹ However, the status of several Northeast Atlantic and Mediterranean fish stocks remains critical. According to the latest scientific information^{12,13}, there are over 20 depleted fish stocks in the Northeast Atlantic¹⁴ and 30 fish stocks in the Mediterranean. Species such as anchovy, black spot seabream, deep-water rose shrimp, eel, giant red shrimp, herring, horse mackerel, Norway lobster, sardine, cod and whiting, among others, all have one or more stocks that are known or considered to be depleted. Cod and hake stand out as the species with the largest number of populations in a critical condition in the Northeast Atlantic and Mediterranean respectively. The European eel is another prime example of a severely depleted species for which recovery efforts so far have not been effective. Despite the zero catch advice, it is still being targeted in fisheries across most of the EU. Its management also highlights the problems related to competence and migratory species which require decisive action in both marine waters and freshwater.

The depletion and lack of recovery of these stocks raises concerns not only about their status but also about the possibility that their abundance has fallen below critical thresholds with negative biological, ecological, economic, and social implications. These stocks can no longer sustain direct exploitation, as their reproductive capacity and subsequent recruitment are impaired, and the risk of stock collapse increases. Furthermore, depleted stocks become more vulnerable to anthropogenic pressures, including habitat degradation and loss, as well as environmental variations associated with climate change, hampering their recovery. Their poor

⁹ Nash, R., Garnacho, E., De Oliveira, J., Bell, E., O'Brien, C. (2021). [Methodology review to assess sustainable quota setting](#). Cefas project report. 43pp. 2 December 2021.

¹⁰ Bell, E., Nash, R., Garnacho, E., De Oliveira, J., Hanin, M., Gilmour F., O'Brien, C. (2023). [Assessing the sustainability of fisheries catch limits negotiated by the UK for 2023](#). Cefas. 30 pp. 20 February 2023.

¹¹ See for example United Nations Convention on the [Law of the Sea](#), United Nations Agreement Relating to the [Conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks](#), United Nations General Assembly. [Transforming Our World: the 2030 Agenda for Sustainable Development](#), or the Regulation (EU) 1380/2013 on the [Common Fisheries Policy](#).

¹² ICES. (2023). [Latest advice](#).

¹³ FAO. (2022). The State of Mediterranean and Black Sea Fisheries 2022. General Fisheries Commission for the Mediterranean. Rome. <https://doi.org/10.4060/cc3370en>

¹⁴ Oceana. (2022). [The most depleted fish stocks in the Northeast Atlantic](#). Oceana, Madrid. 28 p.

status also has implications for biodiversity and resilience of the whole ecosystem, and represents a failure to fully implement the ecosystem-based approach fundamental to the CFP.

Overfishing and poor fisheries management based on Council decisions that persistently exceed advised fishing limits is the primary driver behind the unsustainable status of these stocks. Despite being a clear problem, fishing mortality for the most severely depleted stocks has consistently exceeded sustainable levels throughout the available time series. Scientists recommend strong reductions or even zero catch to facilitate their recovery and sustainable exploitation. However, these recommendations are frequently ignored by decision-makers. Additionally, depleted stocks are often caught as bycatch in mixed fisheries, where management decisions typically prioritise the catches of the most productive stocks rather than focusing on the recovery of the most depleted or vulnerable stocks. **A precautionary and ecosystem-based approach should be implemented in mixed fisheries to safeguard the most vulnerable stocks. This can be achieved by closing areas with high mixing and/or by limiting quotas of highly productive stocks to prevent unsustainable bycatch of vulnerable stocks.**

So far, there have been limited efforts to implement effective measures, such as catch limits and technical measures, for their recovery. The European Commission has repeatedly highlighted in the annual communications, including the one from this year, that *“For stocks where the scientific advice is zero catch or where the biomass has decreased so much that they are below a safe limit, the Commission will propose remedial measures as outlined in each multiannual plan to rebuild the stocks”*. The adoption of emergency and remedial measures for any depleted fish stock is possible through Articles 12 and 13 of CFP, but also required under Article 8 of the Western Waters Multi-Annual Plan, Article 5 of the Baltic Sea Multi-Annual Plan, Article 7 of the North Sea Multi-Annual Plan or Article 6 of the Western Mediterranean Multi-Annual Plan. However, there has not been significant progress in the status of these stocks; in fact, for depleted stocks the EU is still very far from achieving the binding management objectives. For instance, the abundance of Irish Sea whiting, Celtic Sea cod and West of Scotland cod, and is only 7%, 13% and 15% respectively, of the MSY $B_{trigger}$ abundance levels.

The prospect of recovering these severely overexploited fish stocks appears bleak without a decisive change and more proactive management to rebuild these stocks. In this context, it is worth noting that in her recent Opinion on a legal case regarding the CFP’s missed 2020 MSY deadline,¹⁵ Advocate General Ćapeta agreed that this indeed constituted a binding deadline, without exception.¹⁵ She considered that *“by setting a fixed deadline, the EU legislature aimed to prevent the Council from putting short-term economic interests before the overarching long-term goal of progressively restoring and maintaining populations of fish stock above biomass levels capable of producing MSY. The EU legislature dealt with this in a way similar to the ‘no more chocolate from Monday’ promise; because, if Monday is not understood as a fixed deadline, one will keep eating chocolate and Monday will never come.”*¹⁵ She then further argued that *“To ensure such accountability, Article 2(2) of the CFP Basic Regulation binds the Council in two ways. First, the MSY goal cannot be circumvented after the year 2020 (a). Second, that goal concerns all stocks, without distinction, whether or not in certain fishing operations they are referred to as ‘target stock’ or as ‘by-catch’ (b).”*¹⁵ ultimately concluding that *“the CFP Basic Regulation did not leave any discretion to the Council to depart from the MSY obligation in relation to by-catch when setting fishing opportunities in mixed fisheries”*.¹⁵ The judgement in this case is expected for the autumn, but we urge the European Commission to already reflect on the considerations presented in the Advocate General’s Opinion when preparing its TAC proposal for next year.

¹⁵ Case C-330/220 Friends of the Irish Environment CLG v Minister for Agriculture, Food and the Marine, Ireland, Attorney General EU:C:2023:487. <https://curia.europa.eu/juris/documents.jsf?num=C-330/22>

It is crucial and urgent for decision-makers to implement adequate policies and measures that enable the recovery of depleted stocks to sustainable levels, as required by the CFP, within the shortest possible time frame. In that context, the European Commission should reinforce through its proposals that the setting of fishing limits is the main tool available to rebuild and maintain the biomass of fish populations above healthy levels and to prevent overexploitation. ‘Last resort’ remedial measures, while necessary due to past overfishing in some cases, are not a standalone solution to achieve the sustainable objectives of the CFP. This is particularly the case when remedial measures are adopted only for some of the stocks in need, while at the same time the Council perpetuates the decades-long trend of setting TACs exceeding scientific advice.

If measures other than fishing limits are to be introduced, these must be coupled with legally binding, reliable, and robust methods of full catch documentation, such as on-board observers or remote electronic monitoring (REM), to ensure a proper control of fishing activities. This should be required particularly for the vessels subject to exemptions from the landing obligation and vessels with by-catch of vulnerable stocks, such as in demersal fisheries.

3. Data-limited stocks are not managed in line with the CFP’s requirements

While there is suitable scientific information on the MSY exploitation rate and MSY-based scientific advice for many stocks of EU interest, a significant number of stocks still rely on scientific advice based on the ICES data-limited precautionary approach. However, both categories of stocks fall within the scope of the CFP, which mandates the restoration and maintenance of all harvested species above sustainable levels.

Previous TAC decisions for data-limited stocks 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 inadequate¹⁶. Furthermore, TACs set above precautionary advice overlook the fact that many of these stocks, if given the opportunity to recover, could support productive fisheries. Although some of these stocks may be relatively small or have lower economic value, they may remain crucial components of the marine ecosystem. Therefore, their harvest must also be adequately managed in accordance with the implementation of an ecosystem-based approach to fisheries management, as mandated by Article 2(3) of the CFP basic regulation.

The European Commission has expressed in its annual communication that *“It will focus action on getting full MSY scientific evaluation for other key stocks as soon as possible.”* However, this intention should not be limited to “key stocks” but extend to any fish stock regardless of their economic relevance, and there should be a specific ambition to pursue sustainable TACs in line with scientific advice without distinction between ICES advice categories. This will also require adequate investment by Member States in the collection of the data needed to underpin full MSY-based stock assessments going forward. The ICES data-limited precautionary approach provides a framework for setting catches and managing the risk of overfishing stocks in a

¹⁶ 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.

prudent manner, considering the levels of uncertainty in the available data. **Failing to adhere to the ICES precautionary advice for data-limited stocks contradicts the precautionary approach and violates a key principle of good governance stated in the CFP—establishing measures, including catch limits, based on the best available scientific advice (CFP Article 3(c)).**^{17,18}

4. Ecosystem-based approach, an opportunity to act on the climate and biodiversity crises

The risks associated with overfishing and destructive fishing practices have been the primary drivers of marine biodiversity loss over the last four decades.¹⁹ Additionally, we now understand that they significantly undermine the resilience of marine ecosystems to the impacts of climate change.²⁰ A sustainable marine environment is crucial to support livelihoods and food security for the coming decades, and the fishing industry can only thrive in the medium and long term if healthy fish populations are allowed to flourish through sustainable harvest strategies. This can only be achieved if, as a minimum, fishing opportunities align with scientific advice and there is a transition toward low-impact fisheries embracing an ecosystem-based approach to minimise negative impacts of fishing activities on the marine ecosystem.

The current tendency to set TACs at (or too often still above) scientific advice, as well as the current models supporting single-stock advice are insufficient to achieve ecosystem-based fisheries management. Setting fishing opportunities based solely on advice for individual species overlooks the need to consider interspecies dynamics (e.g., forage species and prey-predator relationships), mixed fisheries considerations, and impacts of fishing on non-target species, habitats, and ecosystem functions, as well as other pressures such as vulnerability to climate change. To enhance understanding and guide decision-making, **it is imperative for the European Commission to ensure that scientific advice on fishing opportunities adequately incorporates an ecosystem-based and climate-smart approach.** In addition, the European Commission should request the International Council for the Exploration of the Sea (ICES) to develop Ecosystem and Climate Impact Assessments of EU fisheries. These assessments should cover carbon sequestration potential, impacts on the seabed and marine habitats, and greenhouse gas emissions from fuel consumption. **Until such time, the European Commission should propose TACs with much greater caution, i.e. well below the current ICES headline advice,** for fish populations facing multiple stressors, by not exceeding the lower bounds of the TAC advice ranges and establishing a “climate buffer”. These actions will mitigate risks and promote the long-term sustainability of fisheries.

¹⁷ See ClientEarth’s briefing about setting TACs in line with the best available scientific advice. ClientEarth. (2020). [What is the ‘best available scientific advice’ for setting Total Allowable Catches \(TACs\)?](#) December 2020.

¹⁸ See ClientEarth’s briefing on bycatch stocks with scientific advice for zero catch. ClientEarth. (2020). [Ask the right question, get the right answer: Scientific advice for bycatch or non-targeted stocks that have zero catch advice.](#) December 2020.

¹⁹ IPBES. (2019). Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. pp. 1148.

²⁰ IPCC. (2019). IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–35. <https://doi.org/10.1017/9781009157964.001>.

The Biodiversity Strategy for 2030, which commits to recovering Europe's biodiversity for the benefit of people, climate, and the planet provides a framework to protect marine ecosystems and another avenue to integrate environmental considerations into fisheries management. Healthy and biodiverse habitats are better equipped to deliver essential ecosystem services to coastal communities, including a resilient food supply and carbon sequestration. To mitigate the impact of the fishing activity on the marine biodiversity and ecosystems, the European Commission released an Action Plan earlier this year to protect and restore marine ecosystems for sustainable and resilient fisheries²¹. We welcome the Commission's Action Plan to phase out the use of high-impact mobile bottom-contacting gears in Marine Protected Areas, which also have a high fuel demand and are detrimental to marine ecosystems through their high rates of by-catch and impact on marine benthic habitats. This same phase-out of destructive fishing practices can also contribute to reducing the impact of fishing on blue carbon habitats and other marine carbon stores, including the seabed.

Fisheries management must align as well with the European Green Deal, which aims to transition towards a climate-resilient and ecologically sustainable economy. As a first attempt to trigger action on climate mitigation, the European Commission has launched a long-awaited communication on energy transition for the fishing sector.^{22,23} However, climate adaptation considerations are still absent from the management of fish stocks. Fish populations contribute to the global carbon cycle by moving carbon from the surface to deeper waters. Overfishing in the EU has led to many fish populations being below sustainable levels, likely disturbing their role in the ecosystem and carbon cycle.^{24,25} In addition, warming waters, and other impacts of climate change on water characteristics, such as acidification, are altering the distribution, abundance, and productivity of marine species.

Given the increasing impacts of climate change on marine ecosystems, the European Commission should integrate climate adaptation considerations into fishing opportunities decisions, for example by proposing catch levels well below the scientific single-stock advice.

The EU must enhance its adaptability in fisheries governance to account for changing conditions, including shifts in stock distribution due to global heating and potential conflicts with neighbouring countries. In dialogue with third countries, the EU should develop harvest strategies and quota allocation models capable of responding to changes in species abundance and distribution, while addressing mismatches between management areas and stock distribution areas covered by ICES advice. Without climate-adaptive and transboundary management, many stocks face an increased risk of decline or collapse due to overfishing.²⁶

²¹ European Commission. (2023). Communication from the Commission to the European Parliament and the Council. [EU Action Plan: Protecting and restoring marine ecosystems for sustainable and resilient fisheries](#). COM/2023/102 final.

²² European Commission. (2023). Communication from the Commission to the European Parliament and the Council. [On the Energy Transition of the EU Fisheries and Aquaculture sector](#). COM/2023/100 final.

²³ See the policy brief by Oceana and ClientEarth on the energy transition of the EU fleet. Oceana, ClientEarth. (2023). [Carbon-friendly & economically resilient EU fisheries](#). Brussels, 16p.

²⁴ Mariani, G., Cheung, W.W.L., Lyet, A., Sala, E., Mayorga, J., Velez, L., Gaines, S.D., Dejean, T., Troussellier, M., Mouillot, D. (2020). Let more big fish sink: Fisheries prevent blue carbon sequestration—half in unprofitable areas. *Science Advances*, 6(44). DOI:[10.1126/sciadv.abb4848](#)

²⁵ Cavan, E. L., Hill, S. L. (2021). Commercial fishery disturbance of the global ocean biological carbon sink. *Global Change Biology*, 28(4), 1212–1221. DOI: [10.1111/gcb.16019](#)

²⁶ Scientists suggest that EU fish stock biomass will be reduced to just 29-42% of pre-industrial levels under MSY management and weak carbon mitigation and recommend that conservation-focused rebuilding plans are needed to achieve 46-67% of pre-industrial levels under weak carbon mitigation or 63-69% under strong carbon mitigation (William Cheung 2022). Without climate- adaptive, transboundary

Meanwhile, fishing below the scientific advice would allow stocks to increase, representing an investment into bigger, more productive stocks that are more resilient towards other pressures like climate change.

Significant progress towards low-impact fishing can also be facilitated through a better implementation of Article 17 of the CFP by Member States, which incentivises the allocation of fishing opportunities to low-impact operators. The Commission should provide guidance to Member States regarding appropriate environmental and climate criteria when allocating the fishing opportunities available to them. Accordingly, “the vademecum” on Article 17 criteria being prepared by the European Commission should highlight the criteria to be prioritised in each sea basin.

5. Implement the landing obligation

Since the last stage of implementing the landing obligation in 2019, TACs have been set based on total catch advice, with deductions for exempted discards, rather than landings advice as was done before 2015. Despite the European Commission's efforts, audits conducted in 2020 and compliance evaluations by EFCA have revealed widespread non-enforcement by Member States. In response, the Commission initiated infringement procedures against Spain, France, Belgium, Ireland, and the Netherlands in 2021 for not having monitored and enforced the landing obligation.^{27,28} The current approach of **setting TACs based on catch advice, along with the continuation of illegal discarding, allows for potentially unsustainable catches that can exceed scientific advice.**^{29,30} Ignoring the consequences of non-compliance with the landing obligation when setting TACs poses significant risks to sustainable fisheries in the EU, requiring decisive steps to address the situation.³¹

We remain concerned about the European Commission's ongoing support for various approaches to address the challenges of the landing obligation, such as setting TACs based on catch advice, granting exemptions, and establishing bycatch TACs, despite the Commission's own recognition of poor compliance. Continuing to apply such approaches under the assumption of full compliance, while acknowledging ongoing unreported discarding without taking effective measures to halt this illegal activity, is contradictory and jeopardises the achievement of the CFP's objectives.

Article 16(2) of the CFP basic regulation states that “*fishing opportunities shall be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing*

management, many stocks will face an increased risk of declining or collapsing due to overfishing. Cheung, W. W. L., Palacios-Abrantes, J., Frolicher, T. L., Palomares, M.L., Clarke, T., Lam, V.W., Oyinlola, M.A., Pauly, D., Reygondeau, G., Sumaila, U. R., Teh, L. C., & Wabnitz, C.C. (2022). Rebuilding fish biomass for the world's marine ecoregions under climate change. *Global Change Biology*, 28(21), 6254– 6267. <https://doi.org/10.1111/gcb.16368>. See also the [presentation](#) on this topic at UNOC event, Science Symposium: Fisheries management is climate action.

²⁷ European Commission. (2021). [September infringements package: key decisions](#).

²⁸ European Commission. (2021). [October infringements package: key decisions](#).

²⁹ ClientEarth. (2020). [Setting Total Allowable Catches \(TACs\) in the context of the Landing Obligation](#).

³⁰ Borges, L. (2020). [The unintended impact of the European discard ban](#). *ICES Journal of Marine Science*, Volume 78, Issue 1, January-February 2021, pp. 134–141.

³¹ Also see a [5 min presentation at the NGO AGRIFISH Press Briefing](#) on How EU Decisions On Fishing Quotas Will Set Tone for 2021, about the risk posed by catch-based fishing limits in combination with illegal discards.

opportunities that reflect catches". However, it does not specify how fishing opportunities should be adjusted, nor does it prevent the European Commission from proposing TACs lower than the ICES catch advice for the most abundant stocks in mixed fisheries, as it has done in previous cases to safeguard vulnerable stocks.

To accurately reflect catches while adhering to scientific advice, TACs need to be set in a manner that ensures actual catches (including official landings, legally exempted discards, and unreported illegal discards) do not exceed the ICES catch advice. It is important to note that ICES catch advice represents the maximum catch level not to be exceeded, rather than the level at which the TAC should be set. Given the European Commission's repeated acknowledgement that "*Member State action to monitor and enforce the landing obligation remains insufficient*³²," with the associated main risk such as illegal and undocumented discarding of catches not being mitigated sufficiently, it is evident that setting TACs at the catch advice level would result in catches exceeding advised levels and ultimately contribute to increased overfishing of these stocks.

Furthermore, the significant increase in the use of landing obligation exemptions and bycatch TACs, based on unclear scientific evidence and data³³, further undermines the objective of reducing unwanted catch. These approaches, intended to facilitate the implementation of the landing obligation, have only heightened the risk of overfishing, and undermine the fundamental principles of the CFP. To enhance monitoring and control measures, it is essential to acknowledge the reduced coverage of onboard observers and the poor implementation of the landing obligation. **We strongly support the introduction of reliable monitoring, including Remote Electronic Monitoring (REM),** for vessels above 12 metres and for medium and high-risk vessels below 12 metres, especially those associated with high discard rates.³⁴ We consequently welcome the preliminary agreement recently reached by co-legislators on the revision of the EU Fisheries Control Regulation, which would mandate REM for vessels above 18 metres and at risk of non-compliance with the landing obligation, and encourage the use of REM on smaller vessels too when the Commission or Member States are concerned about the risks of non-compliance. **Until effective control mechanisms are in place, TAC-setting must consider the ongoing unreported discarding. Access to quota top-ups should be contingent upon demonstrated compliance and full catch documentation.** We encourage the European Commission to mandate on-board observers or REM as a requirement for any proposal for bycatch TACs or TACs based on catch advice (rather than landings), to prevent illegal and unreported overfishing. This approach has been previously implemented through the TAC regulation³⁵ and remains available.

³² European Commission. (2023). Communication from the Commission to the European Parliament and the Council [Sustainable fishing in the EU: state of play and orientations for 2024](#). COM/2023/303 final.

³³ STECF. (2019). Scientific, Technical and Economic Committee for Fisheries (STECF) - [Evaluation of Landing Obligation Joint Recommendations \(STECF-19-08\)](#). Publications Office of the European Union, Luxembourg.

³⁴ Nemecky, S. (2022): The untrawled truth: Why EU fisheries (control) policy should strengthen discard monitoring, control and reporting within an implemented landing obligation. 1–19, WWF Germany, Berlin

³⁵ European Union. (2011). COUNCIL REGULATION (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters. Article 7, pp 6.