

To: Hélène Clark
Director of Directorate C, Fisheries Policy Atlantic, North Sea, Baltic
and Outermost Regions,
Directorate General for Maritime Affairs and Fisheries
European Commission

Cc. Maja Kirchner
Head of Unit, Unit C1, Fisheries Management Atlantic, North Sea
and Baltic Sea

274 Richmond Road
London E8 3QW
United Kingdom
+44 (0)20 7749 5970

Rue du Trône 60
5ème étage
1050 Bruxelles
Belgique
+32 (0)2 808 34 65

ul. Żurawia 45
00-680 Warszawa
Polska
+48 22 3070190

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info@clientearth.org
www.clientearth.org

Dear Director Clark,

Subject: ClientEarth's key priorities and outstanding questions concerning the Commission's approach to the 2019 fishing opportunities in the Northeast Atlantic

We are aware that the Commission's proposal for Northeast Atlantic TACs for 2019 is due to be published shortly. As you will be aware, we provided detailed recommendations as part of our response to the Commission's consultation on fishing opportunities for 2019, which we enclose for your information. In this letter we now highlight our key priorities for the 2019 TAC proposal and the Commission's approach to the subsequent negotiations in the lead-up to December Council.

We will be analysing your upcoming proposal in the light of the following and would welcome your feedback on the issues raised in this letter at your earliest convenience:

TACs following the best available scientific advice

2019 is the last year before the legal 2020 deadline for achieving the MSY exploitation rate required by Article 2(2) of the CFP Basic Regulation,¹ and there is no time for further delays to TACs being set in line with scientific advice. One of our key concerns in this regard is that the Commission and the Council appear to follow scientific advice primarily where it is based on MSY, and less so where it is based on the ICES precautionary approach. The same lowering of standards applies to stocks classed as 'bycatch' (as opposed to 'target' stocks) in the multi-annual plans. This is particularly apparent in the wording of the Commission's request to ICES to assess potential impacts of TAC removal for 'bycatch' stocks. This referred only to the requirement to maintain stocks within safe biological limits, whereas the CFP requires that all harvested stocks are restored above levels capable of producing the MSY. This approach to stocks without MSY-based advice and 'bycatch' stocks represents a lowering of ambition not in line with the requirements of the CFP.

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

In assessing compliance with the requirements of the CFP, we will be particularly looking for the following in the Commission's proposal and any subsequent steps:

1. TACs following scientific advice irrespective of whether this is MSY-based or based on the ICES precautionary approach, both for 'target' and for 'bycatch' stocks.
2. Where TACs are nevertheless proposed at levels that depart from this advice, evidence is provided to explain and support this, including socio-economic evidence from the relevant Member State(s) to show serious jeopardy to the fleet in question.
3. The publication of such socio-economic evidence by Member States prior to December Council, if they plan to push for a TAC to be set above scientific advice. The Commission must continue to make clear to Member States throughout the Council negotiations that further delays in 2019 to achieving the MSY exploitation rates must be the exception, and must be accompanied by a clear plan as to how these exploitation rates will be achieved by 2020 at the latest.
4. For those stocks currently lacking MSY-based advice, all efforts are made at the earliest possible opportunity to fill the data gaps in order to enable MSY-based TAC-setting as soon as possible, for example through the administrative agreement between the Commission and ICES for 2019.

TAC removal only as a last resort and in line with the best available scientific advice

We are concerned about the increasing consideration given to TAC removal to address choke issues, since this may result in unsustainable fishing levels. In reviewing the process for any potential TAC removal, we expect therefore that:

1. TAC removal will not be considered for any of the stocks for which ICES recently concluded that this would pose a high risk of unsustainable exploitation,² or for which the situation and potential alternative measures have not yet been fully assessed.
2. If the Commission nevertheless does propose to remove a TAC, where ICES has concluded that the risk of unsustainable exploitation is low, this must be made subject to the following conditions:
 - Any assumptions made by ICES in its assessment of the risk posed by TAC removal, e.g. regarding exploitation levels remaining unchanged once the TAC is removed, are regularly tested, and a mechanism is put in place to trigger action where these assumptions are no longer valid.
 - ICES should be requested to identify alternative measures and safeguards (also with a view to further improving selectivity and avoidance of unwanted catches in the absence of a TAC). These must be put in place immediately following the TAC removal, to ensure that the respective stock is fished in line with the MSY objective.

² ICES Special Request Advice sr.2018.15: EU request for ICES to provide advice on a revision of the contribution of TACs to fisheries management and stock conservation. http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2018/Special_requests/eu.2018.15.pdf

TAC removal must not be proposed where ICES has not yet provided advice on such measures.

- There should be enhanced monitoring of the alternative measures and safeguards, with regular review to ensure their effectiveness in line with the CFP's objectives. Continued monitoring and reporting on the state of the stock should feed into the ICES advice cycle and where scientific advice indicates that a stock is deteriorating following the removal of the TAC, mechanisms should be put in place to quickly reintroduce the TAC or introduce emergency measures.
 - Any proposed TAC removal must be conditional on the adoption of alternative measures and monitoring procedures in line with the above recommendations, and these conditions must be clearly included in the relevant proposal.
3. In order to minimise the risk of the conditions to which the TAC removal is subject being lost or altered in negotiations, for example in exchange for concessions on other elements of the proposal, we are of the view that decision-making around any proposed TAC removal should be separate from the discussions of other TACs.

Clarity regarding the use of TAC adjustments

ClientEarth has previously welcomed the Commission's intention to no longer propose top-ups, proposing TACs based on ICES landings advice³ rather than total catch advice. This is crucial, since granting top-ups based on an assumption of full compliance has the potential to increase the risk of fishing pressure above F_{MSY} where unreported discarding continues.

We are therefore concerned by recent indications that the Commission may have changed its approach in this regard, instead basing its proposal on total catch advice, with deductions made where exemptions from the landing obligation apply. We seek clarification from the Commission about its approach and the rationale for any changes, including a detailed explanation of its calculations.

Transparency in the decision-making process regarding 2019 fishing opportunities

Commission and Council responses to ClientEarth's access to information requests regarding December Council 2016 and 2017 show an ongoing lack of transparency in the process leading to the setting of TACs.⁴ Such transparency is essential if stakeholders are to fully understand and assess the extent to which decisions are being taken in line with the CFP's requirements and hold decision-makers to account where this is not the case.

In order to provide for transparent and accountable decision-making both at Commission- and at Council-level, we urge the Commission to publish the following as soon as possible, and in any case as soon as the relevant documents become available to the Commission:

³ Communication from the Commission to the European Parliament and the Council on the state of play of the Common Fisheries Policy and consultation on the fishing opportunities for 2019. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0452&from=EN> p.10

⁴ See for example, ClientEarth's confirmatory application regarding Council's decision on disclosure of Fisheries Council minutes and accompanying documents. Submitted 21 June 2018. https://www.asktheeu.org/en/request/access_to_information_regarding_3#outgoing-11269

- Any submissions the Commission receives from Member States regarding socio-economic considerations⁵, and a clarification how these have been used in the development of the TAC proposal and/or will be used throughout the upcoming discussions before December Council;
- An overview of any action taken by Member States throughout 2018 to honour their statements made at December Council 2017 with regards to action to be taken for certain stocks or fisheries of concern;⁶
- A clear explanation and any evidence used to justify any potential departure in the Commission's proposal from scientific advice provided by ICES;
- A detailed explanation of the Commission's approach to quota adjustments to account for changes in the landing obligation coverage, including all calculations and the resulting proposed quota adjustments;
- Comprehensive documentation of any correspondence and meetings between the Commission and Member State representatives regarding the setting of TACs for 2019, including but not limited to records of the relevant Council Working Party discussions.

All of the above steps are crucial for the Commission to demonstrate reliably that its TAC proposal is in line with the CFP's requirements and objectives, and to ensure that it provides a strong basis for the decisions taken by the Council.

We look forward to continuing to support the Commission in fulfilling its role as the guardian of the Treaties, and to receiving your input on the issues and questions raised above. We are open to discussing these topics in person with you and your team at your convenience.

Yours sincerely,



Catherine Weller
Head of Biodiversity Programme, ClientEarth
+44 (0)20 30305968
cweller@clientearth.org



Jenni Grossmann
Science and Policy Advisor, ClientEarth
+44 (0)303 050 5943
jgrossmann@clientearth.org

Annex: ClientEarth's response to the Commission's Communication concerning a consultation on fishing opportunities for 2019 under the CFP. August 2018.⁷

⁵ *Ibid.*

⁶ Proposal for a COUNCIL REGULATION fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non Union waters, and amending Council Regulation (EU) 2017/127 - Statements. ST 5382 2018 INIT - 2017/0287 (NLE). p. 5 ff. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CONSIL:ST_5382_2018_INIT

⁷ Available on <https://www.documents.clientearth.org/library/download-info/clientearths-response-to-the-commissions-communication-concerning-a-consultation-on-fishing-opportunities-for-2019-under-the-cfp/>