



## Annex I

# Joint NGO recommendations on fishing opportunities for 2018

## Northeast Atlantic and North Sea stocks

4 December 2017

### **1. Meeting the objectives of the Common Fisheries Policy (CFP)**

#### **1.1 The Maximum Sustainable Yield (MSY) Objective**

The annual fixing of fishing opportunities, aimed at limiting fishing mortality, is the main tool for achieving the CFP objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY ( $B_{MSY}$ ). Setting fishing limits below MSY rates ( $F_{MSY}$ ) is crucial to allow fish stocks to recover above these levels, notwithstanding other biological factors.

The CFP only allows postponing the achievement of MSY exploitation rates beyond 2015 *“if achieving them by 2015 would seriously jeopardise the social and economic sustainability of the fishing fleets involved”*, but requires that this objective is met for all stocks by 2020. To date, very little compelling socio-economic evidence justifying such delays has been made publicly available, raising questions about the quality of the evidence provided by member states.

With the legal 2020 deadline for achieving the MSY exploitation rate as required by Article 2(2) of the CFP basic regulation<sup>1</sup> fast approaching, it is essential that ministers use the upcoming December Council to ensure that fishing opportunities do not exceed scientifically advised levels. There is no time for further delays, as the Scientific, Technical and Economic Committee on Fisheries (STECF) has made clear that *“progress achieved until 2015 seems too slow to ensure that all stocks will be rebuilt and managed according to  $F_{MSY}$  by 2020”*.<sup>2</sup>

Furthermore, recent studies<sup>3</sup> indicate that *“the sooner fishing mortality rates are reduced to  $F_{MSY}$ , the greater the profits’ net present value from EU fisheries in the Northeast Atlantic. Even if time paths for stock recovery may be uncertain, economic benefits will be evident, also in the short-term.”*

For stocks for which MSY-based advice is not available, a precautionary approach should be adopted, as defined in Article 4(1)(8) of the CFP. Where data are limited, fishing limits should be set with extra caution to ensure that stocks can recover to healthy levels and not to merely avoid stock collapse.

We therefore urge the Council:

- To set TACs not exceeding  $F_{MSY}$  for all stocks for which MSY advice is available;
- Where MSY advice is not available, to not exceed the advised precautionary catch limits;
- To explicitly consider mixed fishery implications, which will mean setting TACs for some stocks below the advised levels to ensure that other stocks are not overexploited.

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

<sup>2</sup> STECF (2017). Monitoring the performance of the Common Fisheries Policy (STECF-17-04). Publications Office of the European Union, Luxembourg; EUR 28359 EN; doi:10.2760/491411. p 12.

<sup>3</sup> Jordi Guillen *et al.*, “Sustainability Now or Later? Estimating the Benefits of Pathways to Maximum Sustainable Yield for EU Northeast Atlantic Fisheries,” *Marine Policy* 72 (2016): 40–47, <https://dx.doi.org/10.1016/j.marpol.2016.06.015>.

## 1.2 Stocks with a presumption of stability

In 2013, the Council and the Commission agreed to keep the TACs for 21 stocks (later updated to 26) unchanged for 5 years (i.e. until the end of 2018), unless the perception of the status of any of them changed significantly according to scientific advice<sup>4</sup>. This list includes mainly stocks of low economic value with low quota uptake or taken as bycatch, though not necessarily at a low exploitation rate.

Despite repeated ICES advice to reduce the TACs for many of these stocks, the Council has continued to apply the agreement, by rolling-over the fishing opportunities associated with these stocks, thereby perpetuating TACs exceeding the scientific advice. This approach is contrary to the precautionary and ecosystem-based approaches and to the CFP objectives.

We therefore urge the Council:

- To reduce the TACs in line with ICES advice for those stocks which do not display the required stability stipulated in the agreement;
- To commit to ending overfishing for **all** harvested stocks by rejecting such broad agreements to keep TACs for certain stocks unchanged in future years.

## 1.3 Stocks without a TAC

A number of stocks which are currently not subject to a TAC have been exploited unsustainably for several years, resulting in ICES advice for zero catches, such as sea bass in the North Sea, Irish Sea, English Channel, Bristol Channel and Celtic Sea, as well as European eel throughout its natural range and sardine in the Cantabrian Sea and Iberian Atlantic waters. The MSY objective in Art. 2(2) of the CFP basic regulation applies to all harvested stocks, whether subject to a TAC or not, and it is crucial that effective stock-specific measures be introduced to ensure that these vulnerable stocks are restored above sustainable levels in line with the legal requirements.

We welcome the Commission's proposal to add the critically endangered European eel stock to the prohibited species list. This would prohibit the targeting of adult eel in marine waters, without causing choke issues for fisheries with bycatch of eel. In order to ensure that overall fishing mortality is reduced to as close to zero as possible, it will also be necessary to create incentives for the active avoidance of eel, and to assess and improve the survivability of released or discarded eel. Full and reliable documentation of all eel catches, as required under the EU Data Collection Framework, is also essential in order to reliably monitor the situation of the stock.

We therefore call on the Council:

- To introduce measures for stocks without a TAC to ensure their recovery and sustainable exploitation in line with the CFP objectives;
- To accept the Commission's proposal to add European eel to the prohibited species list, and to introduce measures that encourage avoidance, to ensure reliable catch documentation, and to assess and improve survivability of released eel. This would complement efforts to reverse habitat degradation and migration obstacles and other measures contained in the national Eel Management Plans.

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<sup>4</sup> Joint Statement by the Council and the Commission "Ad statement stable stocks". Council document PECHE 491, 15502/15 REV1.

## 1.4 Bycatch provisions

For a number of years, certain TACs have included footnotes allowing for bycatches of different species to be counted against the TAC of the target species. For example, the current TAC for sprat and associated bycatches in the Skagerrak and Kattegat (SPR/03A.) contains a footnote allowing 5% of this TAC to be used to cover bycatches of dab, haddock and whiting. As these bycatch footnotes are expressed as a percentage of the target TAC, this can allow for considerable volumes of bycatch (in addition to the catches allowed under the dedicated TAC for the bycatch stocks), particularly where the target species TAC is much larger than the TACs of the bycatch stocks. Moreover, as bycatches under such provisions are not counted against the TACs of the relevant bycatch stocks, they *de facto* represent an additional catch allowance. Furthermore, these footnotes do not include any of the safeguards established for inter-species flexibility in Art 15 of the CFP, such as that the bycatch stock needs to be within safe biological limits.

In its recent evaluation of the potential impact of additional bycatch footnotes requested by certain member states during December Council 2016, STECF concluded that *'[t]he scale of the potential landings of bycatch species arising from pelagic footnote provisions presents very real risks in terms of biology, management and governance of the bycatch species'*.<sup>5</sup> The report further highlighted that there is *'potential to significantly increase the mortality on non-targeted bycatch species to levels inconsistent with achieving  $F_{MSY}$  and to the extent that stock biomass could be reduced below safe biological limits'*.

It is essential to ensure that bycatches under such provisions do not increase fishing mortality of bycatch stocks above the scientifically advised levels. Bycatch in other fisheries should be counted against (or accounted for in) the TAC of the species caught, rather than the TAC of the target species. If Ministers consider it necessary to reserve a certain part of the TACs of the bycatch stocks to cover bycatches in fisheries targeting other stocks, they should base this on scientific advice on the appropriate amount to be reserved, for example considering current and anticipated bycatch levels. In line with STECF's recommendations, this should be done *'through a maximum permitted bycatch (tonnes) of the bycatch species and not on a % basis of the target species TAC'*.<sup>6</sup>

We therefore urge the Council:

- To ensure that bycatch provision footnotes do not allow total catches of the bycatch stocks to exceed scientific advice, by counting the catches of each species against the respective TAC;
- To ensure that the use of bycatch footnotes is in line with the safeguards established for inter-species flexibility in Art. 15 of the CFP, such as the need for bycatch stocks to be within safe biological limits;
- To remove all existing bycatch footnotes which allow fishing mortality of the bycatch stock to exceed scientifically advised levels, and not to introduce new such footnotes.

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<sup>5</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) - 55th Plenary Meeting Report (PLEN-17-02); Publications Office of the European Union, Luxembourg. p. 57. <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>

<sup>6</sup> *Ibid.*, p. 60.

## **2. Setting TACs in the context of the landing obligation**

### **2.1 Quota top-ups for fisheries under the Landing Obligation**

Until 2019, catches of many stocks are subject to the landing obligation only if taken by certain fleet segments, i.e. these stocks are only partially under the landing obligation. Appropriate quota top-ups for the TACs referring to such stocks are useful to account for catches that could previously be discarded but will now have to be landed<sup>7</sup>. However, the top-ups must only cover the discard contribution of fleet segments under the landing obligation, and only be used by these fleet segments, since other fleet segments will be able to continue to discard. In order to ensure that the resulting TACs do not exceed sustainable levels, two additional conditions must be met: the agreed TACs before top-ups must not exceed the scientific advice on landings (wanted catch advice), and the subsequent top-ups must be based on reliable data regarding the discard levels of the relevant fleet segments.

We therefore call on the Council:

- Not to grant top-ups that would result in an overall fishing mortality above scientifically advised maximum levels;
- To only apply the top-up percentages to TACs which are set in line with scientific advice before addition of any top-up, as otherwise any excess fishing mortality would be further inflated;
- Not to assign top-ups in the absence of the scientifically assessed discard data from the fleet segments under the landing obligation;
- To indicate clearly which TACs include a top-up, and to specify a) the TAC before top-up, b) the top-up added (in % and tonnes), and c) the final TAC including the top-up.

### **2.2 Accounting for 'combined' *de minimis* exemptions for more than one species**

The current North Sea discard plan for demersal fisheries includes a number of 'combined' *de minimis* exemptions which are applicable to and/or are quantified based on the catches of more than one species. The new North Sea and North Western Waters demersal discard plans for 2018 include further such exemptions.

As STECF has concluded, such 'combined' exemptions can bring the fishing mortality of individual species above sustainable levels, if they are not appropriately factored into the relevant TACs.<sup>8</sup>

We therefore call on the Council:

- To account for *de minimis* discards under 'combined' exemptions as recommended by STECF, namely '*by discounting the maximum possible amount of de minimis for each species that could potentially be discarded*' in '*the respective stocks TACs*'.<sup>9</sup> This is crucial to ensure that discards under such exemptions do not undermine the CFP's objectives.

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<sup>7</sup> Read ClientEarth's briefing on quota top-ups for further details: ClientEarth (2016). Quota top-ups and monitoring progress of TAC decisions towards MSY - Why top-up calculations are both crucial and challenging. <https://www.documents.clientearth.org/library/download-info/quota-top-ups-and-monitoring-progress-of-tac-decisions-towards-msy-why-top-up-calculations-are-both-crucial-and-challenging/>

<sup>8</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) - 55th Plenary Meeting Report (PLEN-17-02); Publications Office of the European Union, Luxembourg. p. 38. <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>

<sup>9</sup> STECF (2017). 55th Plenary Meeting Report (PLEN-17-02); Publications Office of the European Union, Luxembourg. p. 38

## 2.3 Potential removal of stocks from TAC management

As the 2019 deadline for the full implementation of the landing obligation is approaching, increasing consideration is given to the removal of stocks from the scope of the landing obligation by either removing stocks from TAC management or adding stocks to the prohibited species list, in order to mitigate anticipated choke issues. These options must not be used to circumvent the implementation of the landing obligation, and in any case it must be ensured that they do not jeopardise the conservation and sustainable exploitation of the relevant stocks.

The MSY objective in Art. 2(2) of the CFP basic regulation must be achieved for all harvested species, whether they are subject to a TAC or not, and continued monitoring of all such stocks, as well as the introduction of alternative management measures where necessary, is essential to achieve this.

We therefore call on the Council:

- Not to remove TACs or add species to the prohibited species list in order to avoid the full implementation of the landing obligation;
- To carry out a scientific assessment, through ICES or STECF, of the situation and potential implications in terms of sustainable exploitation and conservation of the relevant stocks, prior to any decision to remove TACs;
- To put alternative measures and safeguards in place as soon as any TAC is removed, in line with the best available scientific advice, so as to guarantee the protection and good status of the relevant stocks; and to monitor the effectiveness of such measures and review them regularly, to ensure that they fulfil their purpose.

## 3. Improving the transparency and accountability of setting fishing limits

### 3.1 Documenting the decision-making process

The Council's response to ClientEarth's Access to Information Request<sup>10</sup> regarding the information used to set TACs for 2017 highlighted an unacceptable lack of transparency regarding the decision-making process during and in the lead-up to the December Council in 2016, when many TACs were agreed that exceeded the levels proposed by the Commission and advised by ICES<sup>11</sup>. Concerns regarding potential consequences of the landing obligation and the anticipated socio-economic impact of following the Commission's proposal and scientific advice were often used by the member states to justify their (mostly successful) requests for higher TACs, while sufficient evidence to support these claims and any concrete plans as to how the MSY exploitation rates required by Art. 2(2) are to be achieved by 2020 at the latest were lacking.

We call on the Council:

- To record comprehensive and detailed minutes during Council negotiations and make them publicly available as soon as the TACs have been agreed<sup>12</sup>;

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<sup>10</sup> First Access to Information Request (AIR) submitted to the Council of the EU on 14 December 2016 requesting 'access to information regarding total allowable catches (TACs) of EU fish stocks in the Northeast Atlantic discussed and adopted on 12 and 13 December 2016'. Response received on 2 February 2017. Confirmatory application (Ref: 16/2430-ld/dm) sent on 24 February 2017, response received on 2 April 2017. Second AIR submitted to the European Commission on 26 June 2017 (GestDem 2017/3796- Ares (2017) 3211301), details and response available on <https://www.asktheeu.org/en/request/access-to-documents-related-to-t#outgoing-8779>

<sup>11</sup> The Pew Charitable Trusts (2017). Analysis of Total Allowable Catches in the North-East Atlantic for 2017. March 2017. [http://www.pewtrusts.org/~media/assets/2017/03/20170307\\_pew\\_analysis\\_tac\\_2017.pdf?la=en](http://www.pewtrusts.org/~media/assets/2017/03/20170307_pew_analysis_tac_2017.pdf?la=en)

<sup>12</sup> Transparency International (2016). Overfishing in the darkness. A case study on transparency in Council decision-making, p. 26. <https://transparency.eu/wp-content/uploads/2016/10/21-09-2016-Fishing-report-web.pdf>

- To provide clear justifications and sound scientific and/or socio-economic evidence in the cases where TACs are set above levels proposed by the Commission and/or advised by ICES, and to explain how the MSY objective will be met for these stocks by 2020;
- To document in a clear and detailed manner the steps taken to reach agreement on a given TAC, including information on how top-ups (see section 2.1), third country shares and mismatches between management areas and stock units (see section 3.2) were dealt with;
- To provide a clear explanation how the risk of increased mortality caused by 'combined' *de minimis* exemptions and/or bycatch provisions has been or will be accounted for.

### 3.2 Addressing mismatches between management and stock units

Stakeholders are currently prevented from conducting reliable and comprehensive assessments of the degree to which TACs are set in line with scientific advice due to mismatches between management areas used when setting TACs and the stock assessment areas (based on stock distribution) used in the scientific advice produced by ICES.<sup>13</sup> In addition to area mismatches, other issues that prevent a direct comparison between the TAC set and the scientific advice include: TACs that cover more than one species or more than one stock of the same species (see section 1.2 of this briefing); and TACs that cover bycatches of other species associated with the species the TAC is set for.

The sustainability of TAC decisions where there is a mismatch between management areas and advice units cannot be properly assessed without additional information, such as on the proportion of catches in those parts of the area where the TAC and advice units overlap, or on catches referring to individual stocks included in the respective TAC. The current lack of transparency regarding how this mismatch is dealt with when fixing fishing opportunities (for example, what information, if any, is used to address it) means that the Council is currently failing to demonstrate that the TACs it sets for stocks subject to mismatch issues are in line with the CFP's requirements.

Moreover, several TACs cover two or more stocks, in some cases even different species, which allows for overexploitation of one or more of those stocks, unless alternative measures are implemented to ensure that all included stocks are being exploited sustainably. Such combined TACs are used, for example, for skates and rays (over 30 stocks covered by 5 TACs), Norway lobster (several Functional Units covered by one TAC, for example in the North Sea) and several others including turbot and brill, anglerfish, ling and megrim. Many of these combined TACs include stocks which are outside safe biological limits.

We therefore call on the Council:

- To make the information and considerations used to address mismatch in quota setting publicly available;
- To introduce stock-specific measures for stocks covered by a combined TAC, to ensure that individual stocks, particularly the most vulnerable ones, are exploited sustainably;
- To engage with the Commission, ICES and STECF to initiate a process of aligning management areas with the assessment areas used in the scientific advice.

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<sup>13</sup> ClientEarth (2016). Mismatch between TACs and ICES advice – Why it is an issue and how to address it', December 2016. <https://www.documents.clientearth.org/library/download-info/comparing-total-allowable-catch-decisions-and-ices-advice-areas-pdf/>