Recommendations to the EU on the setting of fishing opportunities for 2024

14 September 2023

The 19 NGO signatories of this document wish to present our recommendations on the setting of fishing opportunities for 2024, including for stocks managed by the European Union (EU) alone and stocks shared with third countries like the United Kingdom (UK) and Norway. Our intent is to assist the European Commission, the Council of the EU and the Member States in making decisions on fishing opportunities that finally end overfishing, significantly contribute to restoring and/or maintaining all fish stocks above healthy levels and to minimising levels of incidental catches, and that safeguard marine ecosystem functions and resilience, also in light of the increasing effects of climate change. Finally, rebuilding its own fish populations is also imperative to reduce the EU's dependence on imports from uncooperative yet competitive, high IUU-risk sources such as Russia.

1. Missed 2020 sustainability deadline and sluggish CFP implementation

Overfishing and destructive fishing practices have been the main cause of marine biodiversity loss for the last 40 years. They also critically undermine the resilience of fish, crustaceans, corals, seabirds, marine mammals, and other wildlife to the impacts of climate change, as well as undermining their capacity to mitigate the latter.[1,2]

Despite the reduction in overfishing brought about by the Common Fisheries Policy (CFP) in the Northeast Atlantic during the last decade, the EU still missed the legal deadline to end overfishing and harvest all stocks sustainably by 2020 at the latest.[3]

1 IPCC (2019). Special Report on the Ocean and Cryosphere in a Changing Climate. IPBES (2019). Global Assessment Report on Biodiversity and Ecosystem Services.
2 Mariani, G, Cheung, WWL, Lyet, A, Sala, E, Mayorga, J, Velez, L, Gaines, SD, Dejean, T, Troussellier, M, Mouillot, D (2020): Let more big fish sink: Fisheries prevent blue carbon sequestration—half in unprofitable areas. Science Advances Vol 6, Issue 44. 28 October 2020.
3 Scientific, Technical and Economic Committee for Fisheries (STECF), Monitoring of the performance of the Common Fisheries Policy (STECF-adhoc-23-01), Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/361698, JRC133325, e.g. pp. 4 and 9.

As highlighted in Box 1, many stocks remain overfished and despite the 2020 deadline the EU – both on its own and following negotiations with third countries like the UK – has continued to set Total Allowable Catches (TACs) above the best available scientific advice provided by the International Council for the Exploration of the Sea (ICES).

Box 1. The *status quo*: overfishing continues and TACs exceed scientific advice

The most recent Scientific, Technical and Economic Committee for Fisheries (STECF) report on the performance of the CFP confirms that "*several stocks remain overfished and/or outside safe biological limits. The objective of the CFP to ensure that all stocks are fished at or below F_{MSY} in 2020 has not been achieved for these stocks"*.[4] The proportion of Northeast Atlantic Maximum Sustainable Yield (MSY) assessed fish stocks subject to overfishing has decreased from around 74% in the mid-2000s to 26% more recently.[5] However, Baltic Sea fish populations are still struggling, progress made in the Celtic Sea has been reversed in 2021,[6] and the Mediterranean and Black Seas remain in a dire state with overfishing continuing in 2021 for 72% of assessed stocks.[7] Moreover, many stocks remain data-limited, with unknown stock or exploitation status, while 38% of the stocks with assessed status are outside safe biological limits.[8]

TAC-setting still falls well short of the CFP's legally binding ambition to end overfishing by 2020: according to a recent analysis of EU-only and EU/UK shared TACs,[9] almost half (48%) of the assessed TACs still exceeded scientific advice for 2020, with gradual but insufficient progress since then (44% for 2021, 34% for 2022 and 25% for 2023). Moreover, precautionary advice for data-limited stocks continues to be exceeded more frequently (59%) than MSY-based advice for fully assessed stocks (12%), as well as for bycatch (46%) compared to target (11%) stocks.[10] The outlook presented in this year's report by the UK's Centre for Environment, Fisheries and Aquaculture Science (Cefas) is even less encouraging, concluding that only 40% of the assessed TACs negotiated by the UK for 2023 (including for example the EU/UK and EU/UK/Norway negotiations) followed scientific advice (i.e. 60% still above advice).[11] This includes 50% for stocks with MSY advice and only 20% for data-limited stocks with precautionary advice (i.e. 50% and 80% still above the respective advice), highlighting that progress for the latter is particularly lagging behind.

Although progress has been made for commercially important fish populations over the past decade, EU Member States have failed to attain Good Environmental Status (GES) for most stocks, as required in the Marine Strategy Framework Directive (MSFD), and a substantial proportion of stocks are still poorly managed.[12] Justifications presented by EU and UK decision-makers often revolve around a lack of scientific data, the lower economic importance of such stocks or the risk of "choking" other fisheries if scientific advice for stocks caught primarily as bycatch was followed.

4 *Ibid.* (STECF-adhoc-23-01), p. 9.
5 *Ibid.*, p. 3.
6 *Ibid.*, Figure 4, p. 29 and Tables 3 and 4, p. 30.
7 *Ibid.*, p. 4.
8 *Ibid.*, p. 3.
9 ClientEarth (2023). Taking stock 2023 – are TACs set to achieve MSY? This report is currently being finalised and due to be published later this year. ClientEarth's analysis covers those TACs set by the EU alone as well as those shared between the EU and the UK, excluding cases where the TAC and ICES advice do not cover the same area and are thus not directly comparable. The preliminary results presented here are based on the same scope and methodology described in ClientEarth's latest report: ClientEarth (2022). Taking stock 2022 - are TACs set to achieve MSY? October 2022.
10 *Ibid.*, results to be published later this year.
11 Bell, ED, Nash, RMD, Garnacho, E, De Oliveira, J, Hanin, M, Gilmour, F, O'Brien, CM (2023). Assessing the sustainability of negotiated fisheries catch limits by the UK for 2023. Cefas project report for Defra. 30 pp. Discrepancies between the results of these two analyses are most likely due to differences in scope and parts of the methodology used, but both confirm that many TACs still exceed scientific advice and progress has been limited.
12 For example, the MSFD implementation report produced by the European Commission in 2020 concludes that "*Biodiversity loss was not halted in Europe's seas during the first MSFD cycle"* and that *"The biodiversity of marine ecosystems is still vulnerable in Europe's seas and the good state of habitats and species is not secured*." COM(2020) 259 final, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC), p. 16.

In this context, it is worth noting that in her recent Opinion on a legal case regarding the CFP's missed 2020 MSY deadline,[13] Advocate General Ćapeta agreed that this indeed constituted a binding deadline, without exception. 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*."[14] 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*".[16] The judgement in this case is expected for the autumn, but we urge the European Commission and the Council to already reflect on the considerations presented in the Advocate General's Opinion in the TAC proposal and negotiations for next year.

Deprioritising certain stocks, for example based on data limitations or bycatch issues, goes against the CFP's key principles, in particular the MSY objective,[17] which explicitly applies to all stocks, as well as the precautionary approach and the ecosystem-based approach which must underpin EU fisheries management.[18]

It also undermines the EU's claim to be a leader in sustainable fisheries management and falls short of EU obligations relating to the application of the precautionary principle as required under Article 191(2) of the Treaty on the Functioning of the European Union (TFEU),[19] and of international commitments under the Trade and Cooperation Agreement (TCA) between the EU and the UK,[20] the United Nations Fish Stocks Agreement[21] (UNFSA) and Sustainable Development Goal (SDG) 14.[22]

Overfishing persists and the CFP is a mission not yet accomplished.[23] The EU, including the Commission, the Council and individual Member States, must act now to remedy this situation. The CFP's success and the EU's credibility are at stake.

Setting TACs not exceeding scientific advice and applying and controlling the implementation of the Landing Obligation (LO) are fundamental basics of sustainable fisheries management and must remain top priorities for decision-makers. The CFP must be fully applied if the EU is to deliver on the objectives of the European Green Deal and Biodiversity Strategy, improve the energy efficiency of the fishing fleet, and honour its international commitments.

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13 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. OPINION OF ADVOCATE GENERAL ĆAPETA delivered on 15 June 2023.
14 *Ibid*., paragraph 30.
15 *Ibid*., paragraph 31.
16 *Ibid.*, paragraph 42.
17 The "*objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield*", by achieving "*the maximum sustainable yield exploitation rate […] at the latest by 2020 for all stocks*", in Article 2(2) of the CFP Basic Regulation, Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.
18 *Ibid.,* Articles 2(2) and 2(3).
19 EC, COM(2000) 1 final. 2000. Communication from the Commission on the precautionary principle.
20 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. In force since 1 January 2021. Fisheries-related provisions fall under Heading 5.
21 UN, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
22 Sustainable Development Goals on life under water (SDG14). https://sustainabledevelopment.un.org/sdg14.
23 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).

2. Key recommendations on setting fishing opportunities

Persistent political decisions to set fishing opportunities above scientifically advised levels perpetuate overfishing of Northeast Atlantic and Mediterranean stocks, including vulnerable deep-sea stocks, and are a substantial roadblock in sustainable fisheries management. We therefore call on the European Commission and on the Council to stop repeating past management errors and to show political strength of will to fulfil the EU's commitments related to the setting of fishing opportunities.

In light of the current biodiversity and climate crises, it is imperative to rebuild all stocks well above sustainable and productive levels in order to enable them to cope with and mitigate mounting pressures. **We therefore strongly recommend investing in the resilience of stocks and ecosystems by fishing well below the maximum catch level advised by ICES in the single-stock advice**, rather than setting TACs precisely at this level as a default (also see section 4 for further details). There are plenty of reasons for this approach, such as the need to

a) maximise stock and ecosystem health and resilience in the face of climate change and other challenges,[24] such as a projected increasing frequency of marine heatwaves;
b) maximise the potential of fish stocks to contribute to effective oceanic carbon sequestration to mitigate against climate change;[25]
c) factor in the risk of illegal discarding;[26]
d) minimise and where possible reverse impacts of fishing on ecosystems, e.g. by fully accounting for predator needs and other ecosystem dynamics;[27]
e) safeguard depleted or vulnerable stocks in mixed fisheries;[28]
f) provide a buffer in case of unexpected changes in the perception of the stock and/or the ICES advice and its underlying assessment;[29] and
g) facilitate stabilising prices by avoiding large fluctuations in TACs and corresponding catches between years.

While this approach of setting TACs below the advice may require a decrease in certain TACs in the short-term, it is a key way of future-proofing EU fisheries and maximising their potential to be sustainable and ultimately more productive in the long-term. **Sustainable, ecosystem-based TAC-setting must also be underpinned by robust and comprehensive monitoring and enforcement to ensure that catches are fully documented and accounted for.** The swift roll-out of remote electronic monitoring (REM) with cameras is essential in this context.

With regards to the current push by some Member States for multiannual TACs, we are concerned about the impact this might have on sustainable TAC-setting in line with the most up-to-date, best available scientific advice. While the desire for stability and predictability for the industry is understandable, we believe that the best way to achieve this is to allow stocks to recover well enough above sustainable levels to minimise the risk of large fluctuations in stock size between years, and to refrain from fully exhausting every increase in catch advice.

24 See section and Box 4. Also see Sumaila, UR, de Fontaubert, C, Palomares, MLD (2023). Editorial: How overfishing handicaps resilience of marine resources under climate change. Front. Mar. Sci., 15 August 2023. Sec. Marine Fisheries, Aquaculture and Living Resources. Volume 10 - 2023.
25 Saba, GK, Burd, AB, Dunne, JP, Hernández-León, S, Martin, AH, Rose, KA, Salisbury, J, Steinberg, DK, Trueman, CN, Wilson, RW, Wilson, SE (2021). Toward a better understanding of fish-based contribution to ocean carbon flux. Limnology and Oceanography, Volume 66, Issue 5, pp. 1639-1664.
26 See section and Box 5.
27 See section and Box 4.
28 *Ibid.*
29 Irish Sea sole is a negative example of a stock for which the TAC was immediately set at the ICES headline advice level as soon as this was no longer for zero catch in 2019, rather than gradually increasing the TAC while monitoring the stock situation. The most recent stock assessment revealed that fishing mortality has increased steeply in the last few years and the stock has dropped back below MSY $B_{trigger}$ and B_{pa} and is now close to B_{lim}, resulting once again in zero catch advice. ICES (2023). Sole (Solea solea) in Division 7.a (Irish Sea). ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.21864291.v1, Table 6, p. 4 and Figure 1, p. 1. Not fully exhausting every increase in catch advice could help safeguard against such developments. West of Scotland whiting could serve as such a more positive example, for which the increase in catch advice from zero catch to 4114 t in 2022 was not immediately fully exhausted. Fishing mortality for this stock currently remains low whereas the stock is below MSY $B_{trigger}$ and projected to decrease. ICES (2023). Whiting (Merlangius merlangus) in Division 6.a (West of Scotland). ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.21864327.v1, Table 6, p. 4 and Figure 1, p. 1.

If multiannual TACs are nonetheless pursued, this must be done in a way that does 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. In any case, safeguards are needed to ensure that TACs are decreased accordingly where new scientific advice indicates the stock status has deteriorated compared to when the multiannual TACs were initially set.

As for data-limited stocks, we welcome the ongoing work within ICES to further develop methods to provide quantitative advice using available information for example on life history traits and exploitation characteristics.[30] **We strongly recommend that remaining data gaps are explicitly identified on a stock-by-stock basis and that concrete roadmaps as to what is needed to effectively address them going forward are developed and implemented as a matter of urgency**. Lifting stocks out of the data-poorest categories where only landings information is available is crucial to move on from the current situation where precautionary advice, often criticised by industry for the use of the precautionary buffer, is exceeded on a regular basis.

The recent examples of Celtic Sea pollack[31] and Irish Sea cod[32] which both moved from (routinely exceeded) precautionary advice to zero-catch advice based on the MSY approach, confirming their severely depleted state, should serve as a (pre)cautionary tale on the consequences of ignoring precautionary advice. Box 2 below outlines our main recommendations on the setting of fishing opportunities for 2024.

Box 2. Key recommendations for the setting of fishing opportunities for 2024

- **Set catch limits not exceeding, and preferably well below, the best available scientific advice provided by ICES, in order to maximise long-term stock and ecosystem health and productivity**. 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. Importantly, the ICES headline advice presented at the top of the respective ICES single-stock advice document represents the maximum level of catches not to be exceeded rather than a target or absolute recommendation. Indeed certain TACs need to be set below this headline advice in order to safeguard other stocks caught in the same fisheries and/or to factor in additional pressures or ecosystem dynamics (see below and Box 4).
- **Apply the precautionary approach** (as defined by the UNFSA and enshrined in the CFP) when setting TACs for stocks where scientific advice based on the MSY approach is not available. This includes the setting of precautionary fishing limits 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 stocks concerned. This is also critical for deep-sea stocks since most of these are currently still subject to precautionary advice.
- **Fulfil the EU's legal obligation to take an ecosystem-based approach to fisheries management, including for forage fish**. One fundamental step of fully implementing ecosystem-based fisheries management (EBFM) is to set TACs within ecological limits, i.e. TACs that account not just for the population health of target species but for the effects of fisheries on

30 The ICES WKLIFE workshops have been developing quantitative assessment methodologies for data-limited stocks. See for example https://www.ices.dk/community/groups/Pages/WKLIFEX.aspx and https://www.ices.dk/community/groups/Pages/WKLIFEXI.aspx.
31 ICES (2023). Pollack (Pollachius pollachius) in subareas 6–7 (Celtic Seas and the English Channel). ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.21841011.v1. This stock was subject to precautionary advice of 3360 t from 2019 to 2023 which was exceeded substantially in all years (the sum of the two relevant TACs was 12560 t in 2019, 12401 t in 2020, 9610 t in 2021, 8168 t in 2022 and 6535 t in 2023) , see Table 6, p. 4.
32 ICES (2022). Cod (Gadus morhua) in Division 7.a (Irish Sea). ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.19447895.v3. The advice for 2024 has not been released yet. The stock was subject to precautionary advice since 2020 which has been exceeded (TAC of 257 t versus advice of 116 t in 2020; 206 t vs. 93 t and 74 t in 2021 and 2022, respectively, see Table 6, p. 5).

non-target species and food webs as well as for relevant environmental conditions. This is especially critical for forage fish (including for example Norway pout, sandeel, herring, sardines, anchovy and sprat) which have an important ecological role in supporting marine wildlife (such as seabirds, marine mammals and commercial fish species). This means setting their TACs below the advised levels where ecosystem needs are not already fully factored into the scientific advice the TACs are based on, as well as commissioning the science needed to better account for these needs. See section 4 for details.

- **Set TACs below the maximum catch advice for species vulnerable to the impacts of climate change and/or marine heatwaves**, or subject to other pressures or stressors, to provide a "climate buffer", and improve population resilience and invest in larger stocks with a healthy age/size structure and higher long-term productivity. See section 4.
- **For stocks caught and assessed within a mixed fishery, factor in ICES mixed fisheries considerations** to ensure that all stocks are restored and/or maintained above biomass levels capable of producing MSY. This means setting TACs for the more abundant stocks below their single-stock advice, where this is necessary to safeguard the more vulnerable stocks caught in the fishery. See section 4 for further details. The EU and its negotiation partners like the UK should prioritise addressing any remaining concerns about the data or approach used in the current ICES mixed fisheries considerations, in order to support the effective application of the latter in TAC-setting.
- **For stocks managed through Multi-Annual Plans (MAPs), ensure that F_{MSY} point values are not exceeded**. In order to restore and maintain stocks above biomass levels capable of producing the MSY, as required by the CFP, exploitation levels need to be set below F_{MSY}, especially for stocks that are currently still below the MSY biomass level. While the MAPs allow for the use of the upper F_{MSY} range under certain limited conditions, TACs should therefore not exceed the F_{MSY} point value, and should in fact be set within the lower F_{MSY} range or even below that where this is necessary to safeguard other stocks in the same fisheries and/or boost stock resilience to other pressures.
- **If multiannual TACs are pursued, ensure that these do not result in a failure to follow the most up-to-date best available scientific advice, or in such advice not being requested.** By default, TACs (whether multiannual or not) should be set below the ICES headline advice to allow stock levels to increase, to minimise the risk of large fluctuations in stock sizes, and to build population and ecosystem resilience. Safeguards are needed to ensure that TAC-setting remains responsive to stock declines.
- **In the Mediterranean Sea, Member States should tackle overcapacity in the fleet**, and particularly improve control of engine power of trawlers to prevent fraud which seriously undermines the fishing effort regime. Data collection and stock assessments should be improved as well.
- **Fully implement the Western Mediterranean MAP**, particularly through the setting of annual fishing days in line with the scientific advice to tackle excessive fishing effort and achieve MSY exploitation by 2025[33] at the latest, timely adoption of bottom-trawling closures to protect fish nurseries and juveniles, and application of selectivity measures such as grids and T90 meshes.
- **Factor in the widely recognised lack of compliance with the LO by setting TACs lower than the recommended ICES maximum catch advice**, to ensure the agreed TAC does not lead to fishing mortality beyond sustainable levels.[34] If quota adjustments are granted to account for

33 The deadline to achieve a sustainable exploitation rate by 2025 at the latest, beyond the original 2020 CFP deadline, was established exceptionally for the demersal stocks managed under the in the western Mediterranean multiannual plan.
34 ClientEarth, 2020. Setting Total Allowable Catches (TACs) in the context of the Landing Obligation. July 2020.

previous discards, Member States should make them accessible only to vessels which demonstrate full compliance with the LO. See section 5.

- **In the case of stocks with zero catch advice, ensure that 'bycatch TACs' are not granted** unless and until the relevant Member States put in place a bycatch reduction or rebuilding plan that effectively (1) reduces bycatch, (2) sets the relevant stocks on a pathway to recovery above levels capable of producing MSY as soon as possible, and (3) is closely monitored and enforced using remote electronic monitoring (REM) with cameras. See section 5 for further details.
- **Do not remove TACs**, as the removal of a direct limit on fishing mortality is not a sustainable management solution. In instances where a TAC has already been removed (e.g. dab and flounder and several deep-sea stocks), it should be reinstated. Removing a TAC downgrades the concerned stock from a situation where the catches are capped to limit fishing mortality, to a situation where catches are effectively unlimited. Even if a stock is not directly targeted, removing a TAC could leave a stock exposed to an unsustainably high fishing mortality, such as through high discarding rates.
- **When considering (re)opening of fisheries, apply a gradual, precautionary approach to safeguard population health, particularly for vulnerable species.** For example, the spurdog fishery was reopened with individuals of 100 cm or less being taken off the prohibited species list and the TAC reinstated. As this population had previously collapsed, the reopening should have been more cautious, as noted by the UK-EU Written Record,[35] to prevent a boom and bust scenario.
- **Prioritise and apply environmental criteria for national allocation of fishing opportunities**, for example through incentivising use of selective fishing gear and low impact fishing practices and penalising destructive fishing practices. The European Commission should 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.
- **The Council should increase the transparency of the decision-making process regarding fishing opportunities** and apply the recommendations of the European Ombudsman to proactively publish documents related to the adoption of the TAC Regulation at the time they are circulated to Member States or as soon as possible thereafter.[36] Transparency principles should also be applied to the negotiations with the UK, Norway and other coastal states, in line with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).[37] This includes continued access for NGOs to relevant plenary sessions of international negotiations as well as engagement with the relevant negotiation teams throughout the process.

3. Fish stocks shared with third parties

Many decisions on fishing opportunities for fish stocks of interest for the EU need to be agreed with third parties such as the UK, Norway, or through the Northeast Atlantic Fisheries Commission (NEAFC) Coastal States process. The EU is a NEAFC Contracting Party and has established bilateral agreements and memoranda of understanding with the main Northeast Atlantic coastal fishing states, including the comprehensive TCA with the UK. While such arrangements provide management and negotiation frameworks, the setting of annual fishing opportunities still depends on annual negotiations between the EU and these third parties.

35 Written Record of fisheries consultations between the United Kingdom and the European Union for 2023. Section 4 d), p. 8.
36 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)" Also see: Transparency International, "Overfishing in the Darkness" (2016).
37 UNECE (1998). Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

To date, international agreements for Northeast Atlantic shared stocks have failed to deliver sustainable exploitation of these resources. The frequent lack of agreement on stock shares, for example for mackerel, led to the setting of unilateral quotas which exceed the agreed TAC and/or the scientific advice, resulting in overfishing.[38] The EU and the third parties with which it shares fish resources must become constructive partners in the fight against overfishing, biodiversity and habitat loss and climate change.

To achieve this, we urge the EU and coastal states involved in the setting of fishing opportunities for shared stocks to follow the recommendations in Box 3 below.

Box 3. Recommendations on fish stocks shared between the EU and third countries

- **Ensure that the legal obligations of the CFP are upheld in the negotiations**, i.e. that total fishing limits for all exploited fish populations do not exceed the scientifically advised levels in line with the CFP's sustainability objectives and that the EU reliably demonstrates that its negotiating position was indeed fully aligned with the latter. If the resulting overall fishing limits nevertheless exceed scientific advice, despite the EU's best efforts, the EU must not make that part of its share that is the equivalent portion above the advice available to its fishers.
- **Implement a genuine precautionary approach (as defined by the UNFSA) in agreements on shared stocks**. When the available data and information are uncertain, unreliable, or inadequate, decision-makers should apply more cautious management that safeguards vulnerable or data-limited stocks and habitats, and a lack of scientific certainty cannot preclude management action.
- **Include provisions regarding abundance of fish populations, limit reference points for mortality, and precautionary and ecosystem considerations in agreements on shared stocks**. We urgently call upon coastal states to conserve biodiversity, minimise the impact of fishing activity on fish populations, sensitive species and on the whole ecosystem, including the seafloor, and use scientific knowledge to inform management decisions.
- **Avoid unilateral processes leading to catches above scientific advice**. Talks on joint management should be comprehensive, including all relevant cooperative coastal states and stakeholders. Where one or more of the relevant coastal states are not part of the relevant discussions, as has recently been the case for Russia, quotas set and catches nevertheless taken by such parties must be factored in in a precautionary way when agreeing catch limits between the other involved coastal states. The United Nations Convention on the Law of the Sea[39] (UNCLOS) determines that collaboration on management must be multilateral when more than two coastal states have a stake in a given fish population, or fishery.
- **Implement the transparency obligations and rights under the Aarhus Convention in the management of shared stocks**. The underpinning scientific advice, management proposals, negotiations, positions of the parties and decisions should be published for public scrutiny, with access guaranteed for all stakeholders.
- **Apply long-term management as the underlying approach to fisheries management by default**. Although details will need to be revisited regularly, all stakeholders benefit from agreeing to, and working toward, long-term sustainable management objectives. This includes stable sharing arrangements and harvest strategies (including precautionary harvest control rules for setting catch limits). It also requires a robust monitoring and evaluation scheme, control measures and the fight against IUU fishing, a periodic review process, and any necessary

38 This situation applies to key commercial stocks to the EU such as Northeast Atlantic mackerel, Atlanto-Scandian herring and blue whiting.
39 UNCLOS (1982). United Nations Convention on the Law of the Sea.

mechanisms to transition from previous arrangements to a new system. For certain at-risk species and stocks, immediate emergency measures may be necessary.

- **Use published scientific advice from ICES as the basis for fisheries management decisions made by coastal states**. For additional scientific input explicit standards should be set, ensuring that only the best available, peer-reviewed scientific advice from independent institutions recognised at the international level is used.
- **Contribute to the timely implementation of the bilateral agreements and memoranda of understanding with the main Northeast Atlantic coastal fishing states**. Priority should be given to sustainable management objectives and principles, the precautionary approach and agreeing TACs in accordance with the best available scientific advice by ICES and governed by the MSY objective, as required for example under the TCA.
- **Prioritise resolving the allocation issues of pelagic stocks (mackerel, herring, and blue whiting) with the NEAFC Contracting Parties**, and ensure that the overall catches for each stock do not exceed scientific advice and in no case lead to unilateral quota increases.
- **Where the EU and the UK fail to reach an agreement on TACs for shared stocks by the 20th of December 2023, provisional unilateral TACs must not exceed the respective party's share of the maximum catch level advised by ICES**, as per Article 499(2) of the TCA. This represents an important safeguard to ensure that stocks are not fished unsustainably where no agreement is reached.

4. Mixed fisheries and ecosystem considerations

Achieving sustainable exploitation of each stock in fisheries targeting multiple species (mixed fisheries) can represent challenges, particularly when dealing with overfished stocks (see section 6 below). Demersal EU fisheries are an illustrative example of this issue with a diversity of species and fisheries subject to numerous biological and technical interactions.

So far, EU management decisions for mixed fisheries have mostly prioritised the exploitation of the most productive and/or economically profitable stocks, at the expense of the most vulnerable stocks (often caught as bycatch) or associated species. This approach perpetuates the depletion of vulnerable populations for the sake of avoiding short-term fisheries closures, when the focus should be on rebuilding depleted stocks which would support thriving fisheries in the long-term without the constant threat of "choking", thanks to a more resilient, productive ecosystem.

There are multiple measures that can be implemented simultaneously to mitigate these challenges and reduce fishing pressure where necessary. Using a combination of the tools below (Box 4), fishers and managers should be able to reduce the likelihood and mitigate the impact of "choke" situations whilst still fishing within MSY limits. The EU should ensure that all these options are used to their maximum effect, particularly for at-risk species and stocks, both for stocks managed by the EU alone and stocks shared with third countries.

Moreover, the EU must deliver on its legal requirement to apply an ecosystem-based approach to fisheries management. In the context of fishing opportunities, this means that TAC decisions must reflect the ecosystem role of harvested species (both targeted and taken as bycatch), including their relationship to other species in the food web (for example as forage fish for seabirds or marine mammals), and the ecological consequences of target species exploitation. Similarly, additional pressures or stressors impacting on harvested stocks or the ecosystem they live in, such as consequences of climate change, must be factored in when setting fishing limits.

In combination with the fundamental precautionary approach, this means setting certain TACs below the single-stock advice, especially in the face of uncertainty and data limitations and of the ongoing biodiversity and climate crises and other mounting pressures. This will require a decisive move towards a new approach to TAC-setting that by default prioritises the rebuilding of all stocks, both EU-only and shared ones, well above sustainable levels, rather than aiming to merely keep them at or near those (often diminished) levels. For example, a recent scientific paper by Kemp et al. 2023 concludes that the "*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*".[40] Similarly, an earlier study by Beaugrand et al. 2022 investigating the impacts of fishing pressure and climate-induced environmental change on cod found that "*alleviating fishing effort is the only way to maintain a stable SSB when the environmental regime becomes less suitable*" and that "*preventing collapse is easier than trying to reverse a collapse*".[41] There also needs to be an explicit focus on ensuring a healthy age/size structure,[42] which fishing below F_{MSY} could contribute to and which is a key element of GES under the MSFD[43] and should already have been achieved by 2020.

The reasons and benefits of investing in larger stocks with a healthy proportion of larger fish are manifold:

- Such stocks are likely to be more resilient to challenges posed by climate change and other mounting pressures, as well as more productive since larger fish tend to produce more offspring per spawner.
- They can improve carbon efficiency of fishing operations[44] and potentially increase the value or marketability of the catch since a lower amount of fuel and time is needed to catch the same amount of fish compared to a situation where fish are less abundant and smaller.
- Year-to-year fluctuations in stock size may also be more effectively mitigated by larger overall stock sizes, and adopting a habit of not fully exhausting every advised catch increase can buffer future TAC decreases if the perception of the stock deteriorates, offering more stability for fishers.
- Overall, it would constitute a key way of future-proofing EU fisheries in the face of climate change and mounting pressures which may negatively impact productivity going forward, for example providing a potential buffer against recruitment failures caused or exacerbated by environmental factors.
- Ultimately, it is an investment into the long-term profitability of the fleet as well as access to sustainable seafood for current and future generations, whereas a continuation of unsustainable fishing levels and practices jeopardises long-term sustainability across all three dimensions referred to in Article 2(1) of the CFP Basic Regulation (environmental, social, economic).

While the ICES single-stock advice currently aims for MSY-based exploitation, rather than presenting specific quantitative catch scenarios corresponding to our recommended focus on rebuilding stocks to larger sizes, this is something that should be explored further and more explicitly both within the EU and with its international negotiation partners. It is the responsibility of the ICES clients such as the EU and the UK to request catch advice that effectively prioritises healthy and productive stocks in the long-term, by taking full account of climate change and other relevant factors. In the short-term, one option could be to base TACs on additional catch scenarios geared towards larger biomass levels or to apply a generic buffer to all catch advice and by default set TACs below the single-stock advice by at least a certain

40 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).
41 Beaugrand, G, Balembois, A, Kléparski, L, Kirby, RR (2022). Addressing the dichotomy of fishing and climate in fishery management with the FishClim model. Communications Biology 5, Article number: 1146 (2022). https://doi.org/10.1038/s42003-022-04100-6, pp. 4 and 8.
42 As also advocated for at the recent event on "More big fish in the sea! Questioning the MSY paradigm for a sustainable long-term marine fisheries management" held by the European Parliament Forum on Recreational Fisheries and Aquatic Environment on 25 April 2023. Event report.
43 Descriptor 3: "*Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock*." Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive). Annex I.
44 COM(2023) 303 final. Communication from the Commission to the European Parliament and the Council. Sustainable fishing in the EU: state of play and orientations for 2024. For example, pp. 2 and 6. SWD(2023) 172 final. Commission Staff Working Document accompanying COM(2023) 303 final, e.g. p. 19.

percentage. Similar approaches, based on the concept of maximum economic yield (MEY), are already in use for example in Australia.[45]

To adequately account for mixed fisheries interactions and ecosystem dynamics, as well as factoring in and mitigating against risks posed by climate change and other pressures, we therefore urge EU decision-makers to follow the recommendations in Box 4 below.

Box 4. Recommendations for TAC-setting in a mixed fisheries and ecosystem context

- **Use mixed fishery MSY considerations provided by ICES** to assess the compatibility of single-stock TACs with the ambition to safeguard the most vulnerable stock(s) caught in the fishery. When seeking mixed fisheries scenarios from ICES, options geared towards the recovery of depleted stocks should be prioritised rather than those focusing on the full exploitation of the more abundant stocks in the fishery.
- **Set TACs for more abundant stocks in mixed fisheries below the ICES single-stock maximum catch advice** to account for mixed fishery interactions, and to ensure that no stocks in the fishery are fished above scientific advice.
- **Adopt spatial measures to reduce fishing pressure on more vulnerable species**, including temporary and permanent closures, real-time closures and 'move-on' rules.
- **Ensure independent, reliable monitoring and full documentation of catches** through Remote Electronic Monitoring (REM) with cameras, supported by observer coverage as appropriate, to better understand catch composition in mixed fisheries and use this to inform further fisheries management.
- **Mandate the use of the best available technology and practices to improve the selectivity of fishing operations**. A list of authorised mitigation measures should be made available for each active mixed fishery to support fishers. Selectivity measures employed during fishing activity should be included within the legal requirement of logbook reporting to track progress and place the burden of proof onto fishers to prove they are doing everything possible and practicable to minimise unwanted catches.
- **Ensure that TAC decisions are based on scientific advice that fully incorporates ecosystem considerations, for example regarding predator-prey interactions** (and commission such advice where these considerations are not yet fully reflected). We note the current use by ICES of multispecies modelling to account for food web dynamics in natural mortality values in the assessments of several species. However, there are concerns that this approach does not ensure that a sufficiently large biomass of forage fish (and other fish forming part of the prey of dependent predators) remains in the water or areas closed to fishing are fully accounted for[46] to allow dependent predators to meet their needs. In light of various political commitments around maintaining food web integrity, conserving marine birds and mammals, and in line with the precautionary approach and the ecosystem-based approach, decision-makers should therefore:
  (1) Ensure there are additional safeguards to guarantee that fisheries do not impact on the population health of dependent predators, particularly seabirds;

45 Department of Agriculture and Water Resources (2018). Guidelines for the Implementation of the Commonwealth Fisheries Harvest Strategy Policy, Canberra, June. CC BY 4.0, p. 19. "*Some commercial fish stocks around the world are managed to a biomass target that achieves maximum sustainable yield (B_{MSY}). This target maximises the long-term catch that can be taken in a fishery, but ignores the increasing costs of fishing as stocks are fished down to B_{MSY} levels.* ***MEY is generally achieved at a lower catch level (and conversely a higher biomass, B_{MEY})*** *and aims to maximise the economic returns from fishing rather than maximise the quantity of fish landed*." The guidelines further explain that for stocks for which bioeconomic models, needed to determine MEY-based reference points and targets, are not available or feasible, MEY proxies are used, including for example the proxy of 1.2 * B_{MSY}. This proxy is explicitly geared towards a biomass 20% larger than B_{MSY}.

46 Dunn, E (2021). Revive our Seas: The case for stronger regulation of sandeel fisheries in UK waters. Royal Society for the Protection of Birds. June 2021.

(2) Set TACs for forage fish below the relevant headline advice in order to account for ecosystem needs; and

(3) Request that ICES explores more ecologically robust alternative reference points, which set safe ecological limits for predators by accounting for not only the fish biomass predators consume (i.e. their physiological requirements) when breeding successfully, but also the much greater biomass they require access to in order to do so (i.e. their ecological requirements).[47,48]

- **Swiftly review and act on the findings of the ICES response to the pending request regarding the extent to which ICES single-stock advice for forage fish factors in ecosystem considerations.**[49] This request represents a key step in the right direction, but it will be crucial to ensure that any gaps identified (i.e. occasions where the single-stock advice does not yet fully and robustly account for all relevant ecosystem considerations) are urgently addressed. Recognising that developing or adopting the relevant methodologies may take some time, it is the responsibility of the decision-makers in the meantime to use the currently available scientific advice in a much more precautionary way, for example by setting TACs below the single-stock headline advice where relevant ecosystem considerations are not yet fully reflected. In order to clearly identify such cases, the EU and the UK could request ICES to specify in future on a stock-by-stock basis (for all stocks, not just forage fish species):

  (a) which ecosystem considerations are (likely to be) relevant for each stock;
  (b) to what extent they and any other conservation measures (e.g. area closures) have (not yet) been factored into the advice; and
  (c) what the consequences of a failure to reflect these aspects are likely to be for the stock in question and for the sustainability of the respective headline advice.

  A recent review of the inclusion of ecosystem trends and variability in ICES advice on fishing opportunities by Trenkel et al. 2023[50] already presents important findings in this regard that such further work should build on. This type of information could then for example be provided as part of the single-stock advice by default and support more ecosystem-based TAC-setting even where ecosystem considerations are not yet fully incorporated into the advice in a quantitative manner.

- **Set TACs below the single-stock advice where stocks are subject to additional pressures or stressors such as climate-related and other impacts that are not (yet) explicitly factored into the advice**, and support the incorporation of ecosystem considerations into ICES advice on sustainable catches. This is important to account for potential cumulative impacts of fisheries, offshore renewable developments and other aspects (like environmental factors) which can impact on stock status and fishing opportunities. In line with the precautionary approach, more caution should be exercised, where information about additional pressures is limited or uncertain, meaning that TACs should be set further below the advice as an additional buffer. One option could be, as a minimum, to default to setting TACs below the single-stock ICES headline advice by at least a certain percentage.

47 Hill, SL, Hinke, J, Bertrand, S, Fritz, L, Furness, RW, Ianelli, JN, Murphy, M, Oliveros-Ramos, R, Pichegru, L, Sharp, R, Stillman, RA, Wright, PJ, Ratcliffe, N (2020) Reference points for predators will progress ecosystem-based management of fisheries. Fish and Fisheries. 2020; 00:1–11.
48 Note for example, that the MSC Fisheries Standard aims to leave up to 75% of the unfished population of "low trophic level" species (such as forage fish like sandeel) in the ocean to meet ecosystem needs, compared to 40% as is typically the case for species managed based on MSY. See Marine Stewardship Council (2023). Clarifying the assessment of key low trophic level stocks.
49 A commitment to submit such a request to ICES was included in the Written Record of fisheries consultations on 09 to 13 March 2023 between the United Kingdom and the European Union about sandeels in 2023, paragraph 6, p. 1.
50 Trenkel, VM, Ojaveer, H, Miller, DCM, Dickey-Collas, M (2023). The rationale for heterogeneous inclusion of ecosystem trends and variability in ICES fishing opportunities advice. Mar Ecol Prog Ser 704:81-97. https://doi.org/10.3354/meps14227.

5. Landing obligation challenges

Since the LO came fully into force in 2019, TACs have been set based on total catch advice (albeit with some deductions for exempted discards), rather than landings advice as they used to before 2015. Despite the European Commission's efforts, it is broadly recognised that non-compliance across Member States is widespread, unreported discarding continues and the LO is not effectively controlled and enforced.[51] Setting TACs based on catch advice rather than landings advice, while illegal discarding continues, allows for unsustainable catches potentially far beyond scientific advice.[52] Poor implementation of the LO fundamentally undermines sustainable fisheries in the EU and decisive steps must be taken to remedy the current situation.

Furthermore, there are industry voices who claim that failures of implementation mean that the policy is unworkable, and that a reform of the CFP should eliminate the LO. The shared NGO position is that the LO has not been given a chance to work and that the underlying problems (such as a lack of fishing gear selectivity and effective avoidance of unwanted catches) can and must be tackled under the existing framework. To avoid negative effects of the failure to properly implement the LO on the setting of sustainable catch limits we make the following recommendations in Box 5 below.

Box 5. Recommendations regarding TAC-setting in the context of the LO

- **Underpin sustainable TAC-setting by robust controls and full catch documentation using remote electronic and camera monitoring**. REM has become a vital and irreplaceable tool that is now implemented in fisheries around the world. The swift roll-out of REM across EU waters is key to ensuring that catches are fully documented and accounted for, and that management measures (including TACs) are complied with.[53]

- **In the absence of robust, comprehensive control and monitoring, factor in poor compliance with the LO by proposing and setting TACs lower than the ICES maximum catch advice**, to ensure that the agreed TACs do not lead to fishing mortality beyond sustainable levels. So-called quota "top-ups", intended to cover catches that used to be discarded prior to the LO and now have to be landed, should not be applied while the LO is not effectively monitored and controlled. If such top-ups nevertheless continue to be used, then TAC deductions need to be made in order to account for continued discards covered by LO exemptions. Such deductions need to be based on robust discard estimates, and where discard information is limited or uncertain, larger deductions must be applied in line with the precautionary approach.

- **Make access to quota "top-ups" conditional on demonstrated vessel compliance with the LO and full catch documentation**, notably through REM, supported by independent observer coverage as appropriate. Such top-ups were intended to allow fishers to legally land catches that would have been discarded prior to the LO, and therefore must not be made available to vessels that are not demonstrably complying with the LO.

- **Create and promote quota redistribution solutions**, beyond traditional swaps, to avoid closing fisheries if quota is available elsewhere.

51 Communication from the Commission to the European Parliament and the Council (2022). COM(2022) 253 final. Towards more sustainable fishing in the EU: state of play and orientations for 2023. Commission Staff Working Document SWD(2022) 157 final.
52 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.
53 Future Fisheries Alliance (2022). TransparentSea – Protecting our ocean using Remote Electronic Monitoring with cameras.

6. Depleted stocks with zero or very low catch advice

The most recent scientific advice published by ICES highlights the continued severely depleted status of a number of key fish stocks, many of which are now jointly managed with the UK. Examples include Celtic Sea and Irish Sea whiting, Celtic Sea cod, herring in the Irish Sea, Celtic Sea and southwest of Ireland, and as of this year also Irish Sea sole and Celtic Sea pollack.[54] All of these stocks are below the biomass limit reference point, and for all of them the ICES advice is for zero catch. With climate change also likely to be affecting the resilience of some fish populations,[55] effective efforts to recover these stocks are needed more urgently than ever.[56]

We are extremely concerned that limited effort has been made by all parties involved to apply effective recovery measures while TACs continue to exceed scientific advice. In this context, it is also worth recalling the recent Opinion by Advocate General Ćapeta that indeed the CFP's 2020 MSY deadline applies to all stocks, without exception,[57] i.e. including stocks primarily caught as bycatch. These stocks are a public resource and recovering them is a necessity to contribute to a healthy resilient marine ecosystem and to provide long-term benefits to dependent coastal communities.

Managing mixed fisheries involving stocks subject to zero or very low catch advice presents a number of challenges. However, there are steps that can be taken to reduce unwanted catches and minimise the impacts of fishing on depleted stocks. With specific regard to low or zero catch advice stocks, we provide the following recommendations in Box 6 below, complementing those presented in Box 4 above regarding mixed fisheries.

Box 6. Recommendations regarding depleted stocks with zero or low catch advice

- **Follow the scientific advice provided by ICES and set catch limits for depleted stocks accordingly**. The EU should prioritise the recovery of depleted stocks over short term profit maximisation, as this is in the long-term interest of both the marine environment and coastal communities.
- **Prioritise the recovery of depleted stocks particularly in cases where "bycatch TACs" are adopted**, and do not allow catches unless and until the relevant management authority has put in place an effective rebuilding plan or a multi-year management strategy with clear recovery targets, timeframes and bycatch reduction strategies, including spatial measures (such as temporary and permanent closures) and selective gears, to achieve them.
- **Ensure that fisheries using "bycatch TACs" are fully documented using REM** (supported by observer coverage as appropriate), and strong remedial measures are in place. This is particularly crucial in light of long-standing concerns about the lack of compliance with the LO, as well as indications in the ICES advice for several depleted stocks that the relevant TACs have regularly been overshot in the past (e.g. for Celtic Sea cod and Irish Sea whiting).
- **Prioritise the recovery needs of these stocks in management measures for mixed fisheries** by ensuring that catches under no circumstances exceed the scientific advice, rather than allowing the full exploitation of the possible fishing opportunities of healthy stocks in the same

54 ICES advice for the referred depleted stocks: Celtic Sea cod, Celtic Sea whiting, Irish Sea whiting, herring in the Irish Sea, Celtic Sea and southwest of Ireland, Irish Sea sole, Celtic Sea pollack.
55 Drinkwater, KF (2005). The response of Atlantic cod (*Gadus morhua*) to future climate change. ICES Journal of Marine Science, Volume 62, Issue 7, 2005, Pages 1327–1337. https://doi.org/10.1016/j.icesjms.2005.05.015.
56 Sumaila, UR and Tai, TC (2020). End Overfishing and Increase the Resilience of the Ocean to Climate Change. Frontiers in Marine Science. https://doi.org/10.3389/fmars.2020.00523.
57 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. See for example paragraphs 30, 31 and 42, as already quoted in section 1 of this paper.

fishery.[58] As highlighted in Box 4, this means setting TACs for the more abundant stocks caught in the same fisheries (such as Norway lobster in the Irish Sea or haddock in the Celtic Sea) below their single-stock advice in order to safeguard depleted stocks (such as Irish Sea and Celtic Sea whiting and cod).

- **Request ICES to provide additional mixed fisheries scientific catch scenarios focusing on options which allow vulnerable stocks to rebuild** to inform fisheries management of the actions and/or reductions in TACs for healthy stocks which would be required. Evaluation of such scenarios could present options which avoid immediate fisheries closures while still allowing depleted stocks to recover within an ambitious timeframe.

7. Stocks not managed by a TAC

A few stocks which are currently not subject to a TAC have been exploited unsustainably for several years. Examples include the critically endangered European eel, European sea bass in the North Sea, Irish Sea, English Channel, Bristol Channel and Celtic Sea and sardine in the Cantabrian Sea and Iberian Atlantic waters. In addition, very few management options have been explored for minimising bycatch of endangered and vulnerable species like tope shark (*Galeorhinus galeus*).

The MSY objective in Article 2(2) of the CFP Basic Regulation applies to all harvested stocks, whether subject to a TAC or not. Likewise, both the precautionary approach and the ecosystem-based approach are fundamental principles that must underpin fisheries management under the CFP in general. It is crucial that effective stock-specific measures be introduced, particularly where no TAC is in place to regulate fishing levels, to ensure that vulnerable stocks are restored above sustainable levels, in line with legal requirements. The fact that we know very little about the true catch levels of some of these species further strengthens the case for REM to improve data for their sustainable management. We therefore provide the following recommendations in Box 7 below for stocks not managed by a TAC.

Box 7. Recommendations for stocks not managed by a TAC

- **Introduce effective management measures for all non-TAC stocks** that aim to ensure each stock's recovery and sustainable exploitation in line with the CFP's objectives, for example through recovery plans. In any cases where TACs have been removed and not reinstated, a quantitative evaluation of potential alternative management measures and their efficiency should be urgently conducted, as recommended by ICES for several deep-sea stocks in 2018,[59] to ensure the CFP's objectives are met for the affected stocks. Management of non-TAC stocks should also be underpinned by REM to provide robust data on capture of these species.

- **Assess and minimise the impact of fisheries for stocks subject to TACs on non-quota species and other marine life**. For example, high numbers of dab are caught in the plaice and sole fishery in the North Sea, but mostly discarded, with a discard rate of 90%.[60] This should be addressed by setting TACs for the relevant target stocks at lower levels and implementing effective bycatch reduction measures to minimise the impact on associated non-quota stocks.

58 ClientEarth (2020). Ask the right question, get the right answer: Scientific advice for bycatch or non-targeted stocks that have zero catch advice.
59 ICES (2018): EU request for ICES to provide advice on a revision of the contribution of TACs to fisheries management and stock conservation for selected deep-water stocks. ICES Advice: Special Requests. Report. https://doi.org/10.17895/ices.pub.4493.
60 ICES (2023). Dab (Limanda limanda) in Subarea 4 and Division 3.a (North Sea, Skagerrak and Kattegat). Replacing advice provided in 2022. ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.22793633.v1. Table 1, p. 2.

- **Ensure that the prohibited species list in the TAC and quota regulation has clear criteria for uplisting and removal of species.** There is a clear need for transparent criteria for the listing of prohibited species to ensure that species that are in need of protection can be listed and species that have recovered can be sustainably exploited again.[61]

- **Continue implementing measures to manage bycatches of sea bass** in commercial fisheries and to manage recreational removals of sea bass. Given that the spawning stock biomass is still below MSY $B_{trigger}$ and projected to decrease based on ICES headline advice,[62] catches should be limited to well below the headline advice to allow for a continued recovery of the stock.

- **Add European eel to the prohibited species list, stop all targeted fishing for eel, both commercial and recreational, and urgently introduce measures that address habitat loss and water quality in priority areas**. European eel is a shared stock with the UK and other countries and is subject to targeted fishing in both the EU and many other countries, despite being listed as Critically Endangered by the International Union for Conservation of Nature (IUCN).[63] The most recent scientific advice from ICES on fishing opportunities for eel,[64] provided to both the EU and the UK, is zero catch of all life stages and in all habitats, including eels used for restocking and aquaculture. It also includes advice to bring all other anthropogenic mortalities to zero and to urgently restore habitats ensuring connectivity and water quality to support recovery of the population.

8. Deep-sea stocks

The majority of TACs for deep-sea stocks were already set last year for 2023 and 2024. However, new advice has since then been released for some of these stocks, and our previous recommendations continue to apply for any potential TAC updates.[65]

Scientists indicate that deep-sea fish populations in European waters are either depleted or lacking information to assess their status. Deep-sea fish live in rarely disturbed environments and tend to be slow-growing, late maturing and long-lived. The biological characteristics of most deep-sea species and the ecosystems they inhabit make them exceptionally vulnerable to over-exploitation and poorly adapted to sustained fishing pressure, whether targeted or not, since their productivity and recovery capacity are very limited. Deep-sea habitats themselves, including potential vulnerable marine ecosystems (VMEs), are highly vulnerable to damage from deep-sea fishing - damage that can take centuries for habitats to recover from. Given these characteristics, deep-sea species and ecosystems should be managed with significant precaution, instead of being treated as by-products of target fisheries for other stocks and jeopardised as collateral damage.

However, fisheries ministers have repeatedly set TACs above the precautionary advice provided by ICES, or even removed TACs for many of these vulnerable stocks, without successful efforts to date to fill the data gaps that still prevent full MSY-based stock assessments. This is contrary to the CFP's sustainability requirements, including the precautionary approach, which requires more caution when

61 Scientific, Technical and Economic Committee for Fisheries (STECF) – 71 st Plenary report (STECF-PLEN-22-03). Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/016673, JRC132078. On p. 9, "*STECF concludes that there is currently no transparent decision-making procedure on which to include or exclude species from the prohibited species list.*."
62 ICES (2023). Sea bass (Dicentrarchus labrax) in divisions 4.b–c, 7.a, and 7.d–h (central and southern North Sea, Irish Sea, English Channel, Bristol Channel, and Celtic Sea). ICES Advice: Recurrent Advice. Report. https://doi.org/10.17895/ices.advice.21840747.v1.
63 Pike, C, Crook, V, Gollock, M (2020). Anguilla anguilla. The IUCN Red List of Threatened Species 2020: e.T60344A152845178. https://dx.doi.org/10.2305/IUCN.UK.2020-2.RLTS.T60344A152845178.en.
64 ICES. 2022. European eel (Anguilla anguilla) throughout its natural range. In Report of the ICES Advisory Committee, 2022. ICES Advice 2022, ele.2737.nea, https://doi.org/10.17895/ices.advice.19772374.
65 Joint NGO recommendations to the EU on fishing opportunities for 2023. 22 September 2022. Section 8 and Box 8, p. 12f.

data are lacking or uncertain, and the ecosystem-based approach of minimising negative impacts of fishing activities on the marine ecosystem.

It also fails to deliver on the EU's international commitments to manage deep-sea fisheries in a manner consistent with the global standard established by the United Nations General Assembly (UNGA).[66] This standard requires EU regulations to contain, amongst other things, obligations to: end overfishing of deep-sea species; rebuild depleted stocks; prevent by-catch of vulnerable species; and protect vulnerable marine ecosystems (VMEs) from the adverse impacts of fishing for deep-sea species.

Box 8. Recommendations for deep-sea stocks

Many of the recommendations covered in more detail throughout Boxes 2 to 7 in this document directly apply to deep-sea stocks, particularly regarding the following:

- The setting of TACs in line with or (where necessary for example to reflect mixed fisheries or ecosystem dynamics) below the scientific advice;
- The application of the precautionary approach and the ecosystem-based approach to fisheries management and the need to prioritise the protection and recovery of vulnerable and/or depleted stocks;
- The concerns around TAC removal and the need for the implementation and evaluation of effective recovery measures to ensure the CFP's objectives are met; and
- The need to urgently improve data collection and address current data gaps in order to enable the definition of MSY reference points or suitable proxies for the stocks concerned.

In addition to the above, recognising the particular vulnerability of deep-sea species and ecosystems, we recommend that the EU:

- Ensures the effective enforcement of the Implementing Regulation (EU) 2022/1614 establishing a list of areas closures where VMEs are known or likely to occur;
- Ensures that the 2023 annual review of the list of areas where VMEs are known to occur or are likely to occur, as required by the EU deep-sea fishing Regulation,[67] leads to the most ambitious protection of VMEs in EU waters, including seamounts;[68]
- Sets zero TACs for deep-sea species that are recognised as vulnerable, threatened or endangered, such as roundnose grenadier which is listed as Critically Endangered in the North Atlantic on the IUCN Red List; and
- Sets bycatch quotas at zero for any deep-sea species recognised as vulnerable, threatened or endangered, and implements effective mandatory bycatch mitigation measures for deep-sea sharks that are on the prohibited species list.

Environmental organisations remain committed to the objectives of the Common Fisheries Policy. We will continue to scrutinise the progress in ending overfishing as we urge the European Commission, the Council of the EU and the Member States to implement the CFP and finally deliver the EU's transition to fully sustainable fisheries.

66 Resolutions 61/105 and 64/72 adopted by the General Assembly of the United Nations.
67 Regulation (EU) 2016/2336 of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002.
https://oceans-and-fisheries.ec.europa.eu/news/fisheries-eu-moves-one-step-closer-protecting-deep-sea-ecosystems-bottom-fishing-its-waters-2022-06-28_en
68 ICES Advice on areas where Vulnerable Marine Ecosystems (VMEs) are known to occur or are likely to occur in EU waters, April 2023.

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