



ClientEarth[®]



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Feedback to the European Commission on the CFP's state of play¹

Background

On behalf of **BirdWatch Ireland, ClientEarth, Danmarks Naturfredningsforening, Deutsche Umwelthilfe, Ecologistas en Acción - Spain, The Fisheries Secretariat, Fundació ENT, De Nederlandse Elasmobranchen Vereniging, Stichting De Noordzee, Oceana, Our Fish, Sciaena, Seas At Risk, and WWF**, we hereby respond to the European Commission's public consultation on the progress of the Common Fisheries Policy (CFP) implementation, setting of fishing opportunities and the state of fish stocks.²

The current CFP Basic Regulation entered into force on 1 January 2014. It contains ambitious objectives and concrete timelines to put the European Union at the forefront of global fisheries management and make European fisheries economically, socially, and environmentally sustainable. **However, seven years later, progress in implementing the CFP has been too slow to end overfishing, rebuild fish populations and protect marine ecosystems. For some fish stocks, no progress has been made since the CFP was reformed. The EU has failed to fulfil its legal obligation to harvest all stocks sustainably by 2020.**

¹ European Commission (2021). [Towards more sustainable fishing in the EU: state of play and orientations for 2022.](#)

² For more aspects of the CFP pending implementation, please see the NGO policy paper "[Common Fisheries Policy: Mission Not Yet Accomplished](#)" (2021). NGOs identify nine specific challenges—overfishing, especially in the Mediterranean Sea, the landing obligation, harmful impacts of fishing, the transition to low-impact fisheries, harmful subsidies, regionalisation, the external dimension, and climate change—and propose a list of actionable solutions.

Despite the significant increase in fleet profitability and the reduction in overfishing brought about by the CFP in the last decade, the most recent Scientific, Technical and Economic Committee for Fisheries (STECF) report on the monitoring of the CFP performance³ confirms **that Baltic Sea fish populations are not improving, the Mediterranean and Black Seas remain in dire straits with 83% of assessed stocks overfished, whereas the North-East Atlantic overfishing rate increased from 38% in 2018 to 43% in 2019.** These outcomes clearly show that the EU is not making firm progress in its binding commitment to end overfishing, even though some other indicators continue to show a positive trend (average fishing mortality (F/F_{MSY}) continues to decline and biomass or abundance indices continue to increase). The EU must urgently act now to remedy this situation. The policy's success and the EU's credibility are at stake.

The recovery from the COVID-19 crisis should be based on the principles of the European Green Deal and "building back better".⁴ But the risks posed by overfishing, destructive fishing practices and harmful fisheries subsidies are not new, for they have been the main cause of marine biodiversity loss for the last 40 years⁵ and now we also know that they critically undermine the resilience of marine ecosystems to the impacts of climate change.⁶ While COVID-19 funds offer support in the short term to compensate for losses, a sustainable marine environment supports livelihoods for decades to come and the fishing industry will only be able to operate in the medium and long term if healthy fish populations thrive thanks to sustainable harvest strategies. **This can only be achieved if Total Allowable Catches (TACs) do not exceed scientific advice and effectively limit fishing mortality, to recover and maintain stocks above levels that can produce the Maximum Sustainable Yield (MSY), as legally required by the CFP.**

The departure of the UK from the EU has added another layer of complexity to the governance framework for fisheries in the North-East Atlantic. Most EU fishing opportunities now need to be agreed between the EU and third countries, with potential consequences for the status of fish populations and the socio-economic performance of the fleet. We note that ahead of the adoption of the final Trade and Cooperation Agreement (TCA) between the EU and the UK, the provisional 2021 EU TACs for EU/UK shared stocks were mostly set based on a 25% rollover of the 2020 TACs. This approach had no direct link to the scientific advice for 2021 catch levels provided by the International Council for the Exploration of the Sea (ICES). Now that the TCA is in place, we count on EU decision-makers to ensure that any annual fisheries arrangements with third parties, including the UK, contribute to achieving the CFP's objectives and are in line with international fisheries commitments.⁷

For many years, NGOs have issued detailed analyses and recommendations regarding the Commission's annual proposals for fishing opportunities and the Council of Ministers' decisions, specifically highlighting risks and issues in our responses to the Commission consultation. **Regrettably, most of the points raised in our various contributions have not been addressed and remain valid.** In this year's response to the consultation, we would like to focus on four CFP implementation gaps that should be addressed by the Commission to ensure that **all proposed and agreed fishing opportunities for 2022 meet the objectives of the CFP, as well as the**

³ [Scientific, Technical and Economic Committee for Fisheries \(2021\), "Monitoring the performance of the Common Fisheries Policy".](#)

⁴ For NGO recommendations on Covid-19 recovery please see: [Setting the right safety net: A framework for fisheries support policies in response to COVID-19 \(2020\)](#), and [Turning the Tide on EU Seas with a Green Recovery \(2020\)](#).

⁵ Global Assessment Report on Biodiversity and Ecosystem Services (2019), <https://ipbes.net/global-assessment>.

⁶ Special Report on the Ocean and Cryosphere in a Changing Climate (2019), <https://www.ipcc.ch/srocc/>.

⁷ Such as the United Nations Convention on the Law of the Sea (UNCLOS), United Nations Fish Stock Agreement (UNFSA) or the Sustainable Development Goals on life under water (SDG14).

ambition of the European Green Deal and of the Biodiversity Strategy. Importantly, we urge the Commission to reflect the below considerations not only in the EU’s internal approach, but also as part of its negotiations with third countries, including throughout the discussions with the UK in the Specialised Committee on Fisheries under the TCA.

1. Acknowledge the real level of overfishing

The most recent data in the STECF CFP monitoring report⁸ confirm once again that many stocks remain exploited above sustainable levels and/or outside safe biological limits, and that “*progress achieved until 2019 is obviously too slow to ensure that all stocks are fished at or below F_{MSY} in 2020.*” In 2019, around 43% of assessed stocks in the North-East Atlantic (28 of 65) were still subject to overfishing in relation to the MSY exploitation rate. This is a decrease from 55% (36 of 66) in 2014, but an increase from 42% in 2018 (27 of 65), and it represents a net reduction of only 8 unsustainably exploited fish stocks since the entry into force of the revised CFP in 2014.

Meanwhile, the number of stocks outside safe biological limits for 2019 is the same as in 2013, the year before the reformed CFP came into force (17 out of 42, or 41%). Many of these stocks remain in a perpetuated state of overexploitation⁹ as the main management measures related to these stocks, such as by-catch TACs, have been geared towards allowing the continuation of the fishing activity for other commercial fish stocks in the management area rather than supporting the recovery of the overfished stocks (see section 3 below).

The progress in ending overfishing has stopped and the trend even shows the first signs of regression. The CFP reform’s achievement is hence at great risk, unless the EU takes decisive action.



Figure 1 - Trends in stock status in the Northeast Atlantic 2003-2019. Two indicators are presented: **blue line:** the proportion of overexploited stocks ($F > F_{MSY}$) within the sampling frame (62 to 68 stocks fully assessed, depending on the year) and **orange line:** the proportion of stocks outside safe biological limits ($F > F_{pa}$ or $B < B_{pa}$) (out of a total of 42-44 stocks, depending on the year). **Source:** Modified from [STECF \(2021\)](#). **Red line:** CFP entry into force in 2014.

⁸ Scientific, Technical and Economic Committee for Fisheries - STECF (2021). “[Monitoring the performance of the Common Fisheries Policy](#).”

⁹ Examples of these stocks include: West of Scotland cod, Celtic Sea cod, eastern Baltic cod, West of Scotland and West of Ireland herring, western Baltic herring or Irish Sea whiting among others.

The STECF has been reporting on sluggish progress for many years. **The scientists' message starkly contrasts with the overly optimistic assessment in the Commission's communication year after year, which seems once again to be based on metrics that do not fully reflect the requirements of the CFP.** Indeed, the Commission now puts an emphasis on reporting in terms of landing volumes and median fishing mortality, rather than focusing on the number of stocks which meet the fishing mortality and biomass objectives of the CFP. This does not adequately reflect the CFP's legal requirements, including the MSY objective and the precautionary and ecosystem-based approaches, which apply to all stocks regardless of landings volume, commercial importance, or data availability. It also distorts the picture by overly representing large pelagic stocks. Furthermore, it fails to acknowledge that several stocks (like cod in the Baltic and North Seas, West of Scotland and the Celtic Sea) are outside safe biological limits and therefore only account for low levels of landings because for decades they have been heavily depleted by overfishing and/or continue to be illegally discarded.

We welcome that this year's communication did not contain the misleading 99% sustainability figure and statement¹⁰ which NGOs have repeatedly criticized. However, the principal concerns raised above remain, and we urge the European Commission to address them swiftly to provide clear, comprehensive and unbiased information on the progress in implementing the CFP's objectives, achieving sustainable fisheries (including trends of fishing mortality F and biomass SSB in relation to F_{MSY} and B_{MSY}), the state of fish stocks and the balance between fleet capacity and fishing opportunities. As the Guardian of the Treaties, the Commission must also hold Member States accountable for failing to implement the CFP's requirements and should not hesitate to launch legal action against those States which do not fulfil their obligations.

2. Manage data-limited stocks in line with the CFP requirements

Whilst many stocks in EU waters have suitable scientific information on the MSY exploitation rate and **MSY-based scientific advice** on catches, many stocks still only have scientific advice on catches based on the ICES **data-limited precautionary approach**. However, **both stock categories fall under the scope of the CFP, which requires *all harvested species to be restored and maintained above biomass levels capable of producing the MSY*** (CFP Article 2.2).

We note that this year's Commission communication once again does not outline the approach the Commission intends to take when proposing TACs for data-limited stocks. Instead, the focus seems to be exclusively on MSY-assessed and/or target stocks, with no explicit ambition to improve data collection and restore overfished stocks. This is regrettable given that the Commission annually asks ICES for the best available scientific advice on catches of these stocks, which is comprehensively produced and delivered at significant expense to EU taxpayers. This omission from the communication risks reinforcing a two-tier policy approach, with less ambitious Commission proposals for stocks that are subject to ICES data-limited precautionary approach advice than for those that are subject to MSY-based advice. For example, in the Commission proposal for 2020 Northeast Atlantic TACs, 24 out of the 68 proposed TACs (35%) exceeded scientific advice based on ICES precautionary approach for data-limited stocks, while only 8 of the 68 proposed TACs (12%) exceeded scientific advice in relation to the ICES MSY approach or an agreed management plan (EU multi-annual plans) using the F_{MSY} point value.¹¹

¹⁰ "Therefore, it is expected that in 2020 more than 99% of landings in the Baltic, North Sea and the Atlantic managed exclusively by the EU will come from sustainably managed fisheries", see page 2 of COM (2020) 248 Final, [Towards more sustainable fishing in the EU: state of play and orientations for 2021](#).

The misleading "99%" figure was repeatedly used by the Commission and was officially addressed in an [NGO letter to the Commission](#) from 12 May 2021.

¹¹ The [Pew Charitable Trusts \(2020\) - Analysis of Fisheries Council agreement on fishing opportunities in the Northeast Atlantic for 2020](#)

This lower ambition for data-limited stocks is inconsistent with the precautionary approach as defined in the United Nations Fish Stocks Agreement (UNFSA) and in the CFP (Article 4.1(8)), which requires that when the available data and information are uncertain, unreliable or inadequate, decision makers should not postpone or fail to take appropriate conservation and management measures.¹² Furthermore, it ignores that many of these stocks would, if they were given the opportunity to recover, support productive fisheries. While many of these stocks are relatively small in size or have lower economic value, they remain essential components of the marine ecosystem, and their harvest must therefore be adequately managed in line with implementing the ecosystem-based approach to fisheries management as required by Article 2.3 of the CFP basic regulation.¹³

The ICES data-limited precautionary approach provides a framework for advice rules to set catches and manage the risk of overfishing stocks in a prudent manner, based on the levels of uncertainty in the available data. Not following the ICES precautionary advice for data-limited stocks goes against the precautionary approach and also against a key principle of good governance stated in the CFP, namely the establishment of measures, including the setting of catch limits, in accordance with the best available scientific advice (CFP Article 3.c).^{14, 15}

Focusing the official reporting by the Commission primarily on MSY-assessed stocks does not represent an adequate account of the overall situation of fish stocks, and the proportion of stocks which cannot yet be assessed in relation to the MSY should be explicitly recognised rather than being removed from the statistics. Moreover, urgent efforts are needed to improve the situation for data-limited stocks, rather than continuing to focus exclusively on MSY-assessed stocks.

3. Use science-based catch limits rather than relying on ‘last resort’ measures

The Commission highlights in its communication the use of remedial measures under the MAPs to allow certain fish stocks to recover, like Celtic Sea cod and whiting and eastern Baltic cod. We welcome these efforts, and indeed the EU was legally obliged to adopt remedial measures under Article 8 of the Western Waters Multi-Annual Plan (WWMAP), to help rebuild Celtic Sea cod and whiting, and under Article 5 of the Baltic Sea MAP for eastern Baltic cod, since these stocks had been driven to levels below B_{lim} .

We commend the Commission for its role in securing and continuing these important measures. Nevertheless, we would like to highlight that the current very low biomass of these stocks is the result of a long-term trend of overfishing based on Council decisions that persistently exceed advised fishing limits. For example, since 2015, the TAC for cod in the Celtic Sea has been set in excess of scientific advice every year except 2018.¹⁶ Similarly, bycatch TACs have continued to be adopted for a number of stocks with zero-catch advice (including Celtic Sea cod), despite Member States not having adopted the bycatch reduction plans and fully documented fisheries

¹² Also see ClientEarth’s briefing on TAC-setting in line with the precautionary approach: ClientEarth (2020). [Caution! A TAC-Setter’s Guide to the ‘Precautionary Approach’](#). December 2020.

¹³ See ClientEarth’s briefing on setting TACs in line with the ecosystem-based approach to fisheries management. ClientEarth (2020). [How \(not\) to implement the ecosystem-based approach when setting Total Allowable Catches \(TACs\)](#). December 2020.

¹⁴ See ClientEarth’s briefing about setting TACs in line with the best available scientific advice. ClientEarth (2020). [What is the ‘best available scientific advice’ for setting Total Allowable Catches \(TACs\)?](#) December 2020.

¹⁵ See ClientEarth’s briefing on bycatch stocks with scientific advice for zero catch. ClientEarth (2020). [Ask the right question, get the right answer: Scientific advice for bycatch or non-targeted stocks that have zero catch advice](#). December 2020.

¹⁶ <https://www.ices.dk/sites/pub/Publication%20Reports/Advice/2021/2021/cod.27.7e-k.pdf>

they committed to in December 2018.¹⁷ The added pressure of other environmental factors on these vulnerable stocks in no way diminishes the role overfishing has played in depleting them, and makes the adoption of effective recovery measures all the more urgent.

In that context, the Commission should reinforce through its proposals that the setting of fishing limits is the main tool available to rebuild and maintain the biomass of fish populations (as reflected in CFP Article 2.2). ‘Last resort’ remedial measures, while necessary due to past overfishing in some cases, are not a standalone solution to achieve that objective, particularly if they are adopted only for some of the stocks in need, and while perpetuating the decades-long trend of setting TACs exceeding scientific advice.

If measures other than fishing limits are to be introduced, these must be coupled with legally binding, reliable, and robust methods of full catch documentation, such as on-board observers or remote electronic monitoring (REM), in order to have a proper control of the fishing activity. This should be a particularly high priority for the vessels that have exemptions from the landing obligation (LO).

4. Implement the landing obligation

Since the last stage of implementation of the landing obligation came into force in 2019, TACs have been set based on total catch advice (albeit with some deductions for exempted discards), rather than landings advice like they used to before 2015. Despite the Commission’s efforts, it is recognised that non-compliance among Member States is widespread.¹⁸ Setting TACs based on catch rather than landings advice, while illegal discarding continues, allows for unsustainable catches potentially far beyond scientific advice.^{19, 20} Poorly implementing the landing obligation, especially where this reality is not reflected in the setting and allocation of fishing limits, poses significant risks to sustainable fisheries in the EU and decisive steps must be taken to remedy the current situation.²¹

We remain concerned about the Commission’s continued support for various approaches to address the challenges of the LO (such as the setting of TACs based on catch advice, LO exemptions and bycatch TACs) despite the clear recognition by the Commission itself that compliance remains poor. Continuing to apply such approaches based on the assumption of full compliance, whilst acknowledging unreported discarding continues, is incongruous and jeopardises the achievement of the CFP's objectives.

Article 16.2 of the CFP basic regulation states that “*fishing opportunities shall be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches*”. Article 16.2 does not however specify how the fishing opportunities should be adjusted, and it does not prevent the Commission from proposing TACs of the most abundant stocks in mixed fisheries lower than the ICES catch advice, as it has

¹⁷ [Statement of the North Western Waters regional group made at December Council 2018](#), p. 2. Moreover, regarding the bycatch TACs, Recital 8 of the [TAC and Quota Regulation for 2019](#) (Council Regulation (EU) 2019/124) stated that ‘*all vessels benefitting from these specific TACs should implement full catch documentation as from 2019*’.

¹⁸ For example, in COM (2021) 279 Final. Communication from the Commission to the European Parliament and the Council. [Towards more sustainable fishing in the EU: state of play and orientations for 2022](#).

¹⁹ ClientEarth (2020). [Setting Total Allowable Catches \(TACs\) in the context of the Landing Obligation](#).

²⁰ Borges, Lisa (2020). The unintended impact of the European discard ban. ICES Journal of Marine Science, Volume 78, Issue 1, January-February 2021, Pages 134–141. <https://doi.org/10.1093/icesjms/fsaa200>. Also see a presentation of the findings of this paper and a related science briefing by OurFish [here](#).

²¹ Also see a [5 min presentation at the NGO AGRIFISH Press Briefing](#) on How EU Decisions On Fishing Quotas Will Set Tone for 2021, about the risk posed by catch-based fishing limits in combination with illegal discards.

previously done in several cases, which would safeguard the vulnerable stocks by preventing choking the fisheries.

To accurately '*reflect catches*' while following scientific advice, **TACs need to be set in a way that ensures that the actual catches (including official landings, legal exemption discards and unreported illegal discards) do not exceed the ICES catch advice. Importantly, ICES catch advice is not advice for the level at which the TAC should be set, but advice for the maximum catch level not to be exceeded.** Given the Commission's repeated recognition that non-compliance remains widespread and '*significant undocumented discarding*'²² continues, it is clear that setting TACs at the catch advice level would result in higher than advised catches and in the end lead to increased overfishing.

In addition, the significant increase in the adoption of LO exemptions and bycatch TACs, based on unclear scientific evidence and data,²³ further undermines the objective of the LO to reduce unwanted catch. The use of these approaches to ease in the LO, while robust and effective monitoring, control and enforcement are lacking, has only increased the risk of overfishing stocks in already poor shape and undermines the very basis of the CFP. **We therefore strongly support the Commission's push for the introduction of reliable monitoring, including REM, and highlight that until effective control mechanisms are in place, TAC-setting must reflect that unreported discarding continues despite the LO.**

²² *Ibid.*, p. 5.

²³ [STECF \(2019\). Evaluation of Landing Obligation Joint Recommendations \(STECF-19-08\)](#)