

**To:** Elisa Roller

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Dear Ms Roller

**Subject: Recommendations for the Commission's communication on fishing opportunities for 2019 and report under CFP Article 50**

We are aware that the Commission is currently preparing its communication on fishing opportunities for 2019, including its annual report under Article 50 of the Common Fisheries Policy (CFP) on the progress on achieving maximum sustainable yield (MSY) and on the situation of fish stocks. In advance of your meeting with NGOs on 4 May 2018, we would like to highlight ClientEarth's key recommendations to address some shortcomings that we noticed in the Commission's reporting last year and look forward to discussing these in more detail at the meeting.

The Commission's Article 50 report is an integral part of the monitoring of progress towards the fundamental objective of the CFP to progressively restore and maintain *'all populations of harvested species above levels which can produce the maximum sustainable yield'* (Article 2(2) of the CFP Basic Regulation<sup>1</sup>). The 2020 deadline for achieving the MSY exploitation rate in order to deliver this 'MSY objective' is fast approaching. Clear and comprehensive reporting by the Commission on progress towards this objective in terms of both fishing mortality and biomass is therefore urgently needed for all harvested species.

We previously made detailed recommendations regarding reporting on the progress of TAC decisions and the state of fish stocks towards MSY in a comprehensive briefing on this topic,<sup>2</sup> attached for your reference. We also attach our response to your communication of last year,<sup>3</sup> which further highlighted that, while there had been some improvements in the Article 50 reporting in comparison to previous years, a number of shortcomings have still not been sufficiently addressed.

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

2 ClientEarth (2016). Reporting on progress of TAC decisions and the state of fish stocks towards MSY. Briefing, December 2016.

<http://www.documents.clientearth.org/library/download-info/reporting-on-progress-of-tac-decisions-and-the-state-of-fish-stocks-towards-msy-why-it-is-important-and-how-to-improve-it/>

3 ClientEarth (2017). ClientEarth's response to the Commission's Communication concerning a consultation on fishing opportunities for 2018 under the CFP. <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-01-clientearths-response-to-the-commissions-communication-concerning-a-consultation-on-fishing-opportunities-for-2018-under-the-cfp-ce-en.pdf>

The following recommendations are relevant to your preparation of this year's communication and report:

- The Commission should extend its reporting to all harvested stocks, which are all subject to the 'MSY objective', including by using appropriate proxies for those which currently lack full MSY-based stock assessments. Moreover, it should report not only on progress in terms of fishing mortality and safe biological limits, but also on progress in terms of biomass in relation to available reference points.
- Where MSY estimates are not yet available, the Commission should report on progress in relation to other existing reference points, such as trends in relation to precautionary or limit reference points provided in the scientific advice published by ICES (making clear which reference points are being used), or to the lowest value of the time-series.
- While we welcome the Commission's attempt to quantify the extent to which TACs follow scientific advice as well as the current landing obligation coverage, we strongly recommend that the basis of such information is clearly referenced in future reports, and that relevant indicators are calculated by STECF. Generally, the Commission should be more explicit about what indicators the values it presents are based on, and how these are to be interpreted, so that the situation is accurately represented.<sup>4</sup>
- The Commission should report explicitly both on long-term trends and changes in the most recent years, instead of selectively presenting information to support an unduly positive outlook.

We have also previously recommended that the Article 50 report should include an indicator comparing TACs to the underlying scientific advice, in order to monitor progress of TAC-setting towards achieving MSY-based exploitation rates in line with the timescales set out in Article 2(2) of the Basic Regulation.<sup>5</sup> We are aware that the Commission has now requested that STECF develops two indicators - "*an indicator which compares the scientific advice for stocks with the Commission initial proposals and one that compares these proposals with the final agreed TACs*".<sup>6</sup> We welcome this request, and in particular the opportunity it presents to address the issues we have previously raised regarding mismatch<sup>7</sup> between the areas for which certain TACs are set and the areas for which scientific advice is provided. However, we understand that the STECF EWG meeting on this topic is scheduled for only one week in October 2018, and that it will not be dedicated exclusively to this issue. We would urge the Commission to make full use of the time leading up to the meeting to provide detailed input for what is likely to be a complex, but necessary, discussion and we would be happy to assist in this process.

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<sup>4</sup> For example, the Commission's reference to the model-based indicator for  $F/F_{MSY}$  as the '*average intensity of fishing compared to  $F_{MSY}$* ' (p. 5 of the Communication's Annex) was misleading.

<sup>5</sup> As noted above, the Annex to the Commission's Communication does present some relevant values, but it is unclear what they are based on, and we recommend that STECF is requested to calculate such an indicator for future reports.

<sup>6</sup> STECF 56<sup>th</sup> Plenary Meeting report (Plen-17-03), p. 97

<sup>7</sup> ClientEarth (2016) Mismatch between TACs and ICES advice, December 2016 <https://www.documents.clientearth.org/wp-content/uploads/library/2016-12-02-mismatch-between-tacs-and-ices-advice-ce-en.pdf>

Reliable, unambiguous and comprehensive reporting by the Commission is crucial for it to fulfil its role as the Guardian of the Treaties in demonstrating that TAC decisions are taken in line with the CFP's requirements and objectives. This applies not only to Article 50 requirements but to the Commission's general reporting on this subject, whether that be through the distribution of infographics<sup>8</sup> or any other communications.<sup>9</sup>

We therefore urge the Commission to consider our recommendations when preparing this year's communication and report, and in all further relevant reporting activities, and look forward to discussing them in more detail with you and your team at our upcoming meeting.

Yours sincerely,



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<sup>8</sup> For instance, two infographics about the percentage of stocks (in terms of volume and number of stocks) fished in line with MSY posted from DG MARE's twitter account in February 2018 (for example, [https://twitter.com/EU\\_MARE/status/966237657981472768](https://twitter.com/EU_MARE/status/966237657981472768)). These were ambiguous and potentially misleading, due to a lack of clarity about the information displayed and its basis, and the failure to explicitly note that these graphs did not include the large majority of the stocks for which MSY-based advice is not yet available.

<sup>9</sup> See examples in ClientEarth briefing 'Reporting on progress of TAC decisions and the state of fish stocks towards MSY' (see footnote 2 for full reference), p. 8-11