

Joint NGO recommendations on fishing opportunities for 2019

Northeast Atlantic and North Sea stocks

December 2018

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

1.1 The Maximum Sustainable Yield (MSY) Objective

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

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

The Scientific, Technical and Economic Committee on Fisheries (STECF) has made clear in its latest CFP monitoring report that “*progress achieved until 2016 seems too slow to ensure that all stocks will be rebuilt and managed according to F_{MSY} by 2020*”.¹ With only two December Fisheries Councils left to achieve the requirements of Article 2(2) of the CFP basic regulation², it is essential that ministers ensure that fishing opportunities for 2019 do not exceed scientifically advised levels and that the MSY objective can be achieved for all stocks by 2020 at the latest. There is no time for further delays.

MSY objective in multi-annual plans

The North Sea multi-annual plan (MAP) entered into force this year. In accordance with the MAP, fishing opportunities for the stocks listed in its Article 1 are to comply with F_{MSY} ranges. However, Article 3 of the MAP reiterates the CFP objective, set out in Article 2(2) of the basic regulation, to end overfishing and to restore and maintain fish stocks above levels capable of producing MSY. Only fishing mortality rates below the F_{MSY} point value can contribute to the restoration of stocks above levels capable of producing MSY, in accordance with the requirements of both the CFP and the MAP. As a result, if these requirements are to be met, exploitation rates in ranges above F_{MSY} should not be used. In the event that decision-makers do decide to take this approach, this must be on the basis that the conditions specified in the MAP have clearly been met. This should be demonstrated by means of publicly available, peer-reviewed information provided well in advance of the Council meeting.

¹ STECF (2018). Monitoring the performance of the Common Fisheries Policy (STECF-Adhoc-18-01). Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-85802-4, doi:10.2760/329345, JRC111761 p 12.

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.

The North Sea MAP moreover introduces differentiated objectives for stocks classified as ‘bycatch’ (as opposed to ‘target’ stocks). Using less ambitious targets (e.g. F_{PA} instead of F_{MSY}) is insufficient to meet the MSY requirements of the CFP, and risks continued overfishing of those stocks.

For stocks for which MSY-based advice is not available, a precautionary approach should be adopted, as defined in Article 4(1)(8) of the CFP. According to the CFP, where data are limited, fishing limits should be set with extra caution to ensure at least a comparable degree of conservation as MSY and not to merely avoid stock collapse (i.e. keeping stocks within safe biological limits by using precautionary reference points).

At the time of writing, the inter-institutional negotiations for the Western Waters MAP have concluded, but the agreed text has not yet been published. Until the MAP is finalised and published in the Union’s Official Journal its rules are not legally applicable, meaning decisions must be made at December Council only on the basis of the basic regulation.

We therefore call on the Council to:

- Set Total Allowable Catches (TACs) not exceeding scientifically advised levels. This means not exceeding MSY approach or the F_{MSY} point value catch limits for stocks where MSY-based reference points are available; and not exceeding precautionary approach catch limits where MSY-based reference points are not available; and
- Set TACs for some stocks below the International Council for the Exploration the Sea (ICES) single species catch advice when considering mixed fishery interactions, to ensure that no stocks in a mixed fishery are fished above F_{MSY} .

1.2 TAC rollovers and ‘statement stocks’

In 2013, the Council and the Commission agreed to keep 21 TACs (later updated to 26) unchanged for 5 years (i.e. until the end of 2018), unless the perception of the status of any of those stocks changed significantly according to scientific advice.³ Despite repeated scientific advice from ICES to reduce catches for many of these stocks, the Council continued to apply the agreement, keeping TACs at the same level (a rollover), and thereby perpetuating TACs exceeding scientific advice.

Notwithstanding ICES precautionary approach advice for lower catches and the expiration of the agreement, the Commission still proposes rollovers of many TACs for 2019.

For stocks with no scientific advice, the Commission claims to have followed a precautionary approach by proposing TAC reductions of 20 percent. However, the Commission has not proposed these reductions in all cases.

We encourage ministers to uphold the CFP and apply the precautionary approach as defined in Article 4(1)(8), in order to make continued progress towards ending overfishing.

We therefore call on the Council to:

- Set TACs not exceeding the ICES catch advice (rather than applying rollovers by default); and
- Take a precautionary approach when setting TACs for stocks where there is no scientific advice on maximum catches. This should include the setting of precautionary fishing limits and additional measures to mitigate the risk of overfishing, as well as enhanced monitoring and data collection for the stocks concerned.

³ Joint Statement by the Council and the Commission “*Ad statement stable stocks*”. Council document PECHE 491, 15502/15 REV1.

1.3 Stocks not managed by a TAC

The MSY objective in Article 2(2) of the CFP basic regulation applies to all harvested stocks, whether subject to a TAC or not. It is crucial that effective stock-specific measures be introduced to ensure that vulnerable stocks are restored above sustainable levels, in line with legal requirements.

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.

We therefore call on the Council and relevant decision-makers to:

- Introduce measures for all non-TAC stocks that aim to ensure each stock's recovery and sustainable exploitation in line with the CFP objectives, for example through recovery plans;
- Continue implementing measures to manage bycatches of sea bass in commercial fisheries and to manage recreational removals of sea bass; and
- Add European eel to the prohibited species list and introduce measures that encourage eel avoidance, to ensure full and reliable catch documentation, and to assess and improve survivability of released or discarded eel. This reiterates our joint recommendation for 2018 in response to the Commission proposal for European eel.

2. Setting TACs in the context of the landing obligation

The landing obligation (LO) provides an opportunity to improve fisheries sustainability and meet the public's demand for fishing to be discard free. Article 2(5)(a) of the CFP clearly defines the objective to gradually eliminate discards by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that all catches are counted and landed. Article 15 of the basic regulation provides member states with a range of tools to successfully implement the LO.

However, we are aware that alternative measures to those in Article 15 are being considered to alleviate the risks of 'choke-species' (e.g. "bycatch TACs") or to potentially remove some stocks from the LO altogether (i.e. via TAC removal or listing as a prohibited species). Without adequate accompanying safeguards, these options remove the incentive to improve selectivity and minimise unwanted catches and risk an increase of fishing mortality above sustainable levels.

In early 2018, NGOs identified recommendations for [recovering fish stocks and fully implementing the landing obligation](http://image.pewtrusts.org/lib/fe8215737d630c747c/m/1/NGO+Position+Recovering+fish+stocks+and+fully+implementing+the+Landing+Obligation.pdf).⁴ We noted that in mixed fisheries, it is inevitable that different stocks will have divergent levels of abundance. In certain cases, this may mean that setting the TAC at the maximum advised level for one of the stocks in the mixed fishery might result in either exceeding the maximum advised TAC level for another stock (or stocks), or early closure ('choking') of the fishery, if changes in fishing behaviour or selectivity are insufficient to alter catch composition. To safeguard the most vulnerable stock(s) in mixed fisheries scenarios, and to avoid choking (e.g. cod in the Celtic Sea), the TACs for the most abundant stocks in the mixed fishery should be set at lower than the maximum advised catch in the single species advice for those stocks (e.g. whiting and haddock in the Celtic Sea).

Monitoring and control at sea are essential to ensure that all catches, whether covered by the LO or not, are reliably accounted for and that the LO is adequately implemented. To this end, robust full

⁴<http://image.pewtrusts.org/lib/fe8215737d630c747c/m/1/NGO+Position+Recovering+fish+stocks+and+fully+implementing+the+Landing+Obligation.pdf>

catch documentation is necessary, using on-board observers or remote electronic monitoring systems. Without significantly increased monitoring and control of the LO, discarding will likely continue in 2019.⁵ This risks undermining the CFP objectives, and could result in the introduction of unaccounted fishing mortality and the deterioration of scientific stock assessments and advice.

2.1 TAC ‘adjustments’ for fisheries under the landing obligation

From 2019, the LO fully applies to all Northeast Atlantic stocks which are managed through TACs, unless specific exemptions allow continued discarding by certain fisheries/ fleet segments.

We welcomed the Commission’s intention in its June 2018 Communication that it would use “*ICES landings advice*” (wanted catch) as the basis of its TAC proposals for 2019. However, the Commission has not followed that original intent, and instead it appears they have proposed TACs based on ICES total catch advice where available, with deductions made for exemptions where applicable. At the time of writing the Commission has not made publicly available individual calculations where a TAC ‘adjustment’ has been applied. In the interest of transparency, the Commission should make available its calculations for each TAC proposal and for the TACs set during the Council.

Basing TACs on total catch advice assumes there will be full compliance with the LO and effective monitoring of catches along with the permitted exemptions. However, as recognised by the Commission, there are serious concerns about widespread non-compliance with the LO.⁶ Where discarding continues unreported and LO exemptions are not sufficiently monitored, there are risks of introducing unaccounted fishing mortality and catches above scientifically advised levels.

To ensure fishing mortality is not increased above scientifically advised levels and exemptions are effectively monitored, it is essential that fleets and vessels are subject to reliable and robust monitoring and control measures, including full catch documentation using on-board observers or remote electronic monitoring systems.

We therefore call on the Council and relevant decision-makers to:

- Set TACs not exceeding ICES advice on catches; and in the absence of advice on catches or in the cases where a full exemption from the LO applies, to set TACs not exceeding ICES advice on landings (wanted catch);
- Take into account the risk of non-compliance and the need to demonstrate compliance with the LO via full catch documentation, where setting TACs exceeding scientific advice on landings (wanted catch);
- Ensure reliable and robust methods of full catch documentation (e.g. observers or remote electronic monitoring) are in place (in particular, CCTV on vessels identified as being at medium, high or very high risk of non-compliance with the landing obligation), and especially where exemptions from the LO are applied; and
- Publish the catch adjustments made when setting TACs subject to the LO, and to specify a) the TAC before adjustment (based on total catch or wanted catch advice), b) the addition and/or deduction made (in tonnes and %), and c) the final TAC including adjustment.

⁵ European Commission, DG MARE, Towards new SCIPs, Advisory Council Consultation. 2018.

⁶ European Commission, DG MARE, Effective Control of the Landing Obligation, Landing Obligation Seminar, 15 November 2017

2.2 Potential removal of stocks from TAC management

With the approaching full implementation of the LO in 2019, the removal of stocks from the scope of the LO, by either removing stocks from TAC management or adding stocks to the prohibited species list in order to mitigate anticipated 'choke' issues, has been explored for a number of stocks.

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

Removal of catch limits (via a prohibition or a TAC removal) will not solve the discard problem, nor reduce the waste of natural resources or foster further improvements in selectivity to eliminate unwanted catches, as intended by the introduction of the LO. Moreover, not addressing bycatches, discards and unsustainable fishing of target species, associated/dependent species and non-target species is also counter to the precautionary and ecosystem-based approaches to fisheries management.

In September 2018 ICES responded to a request from the Commission to assess the risk that TAC removal would pose for a number of 'bycatch' stocks "*in light of the requirement to ensure that the stock concerned remains within safe biological limits (SBL) in the short and middle term*". The CFP requires that management restores and maintains stocks above levels that can produce MSY. In most cases merely keeping stocks within SBL is insufficient in this regard⁷. For the majority of stocks covered by the request, ICES concluded that removing the TAC may pose a high risk of unsustainable exploitation. For several stocks ICES evaluated this risk to be low, but clearly recommended that the status of these stocks should continue to be monitored and that management measures are put in place if the fishing mortality exceeds sustainable levels as a result of TAC removal.⁸

We therefore call on the Council and relevant decision-makers:

- Not to remove TACs, particularly in cases for which ICES has concluded this poses a high risk of unsustainable exploitation, or for which the situation and potential alternative measures have not yet been fully assessed;
- Not to add species to the prohibited list in order to avoid the implementation of the LO;
- To request, prior to any TAC being removed, ICES or STECF to carry out a further scientific assessment of alternative measures and safeguards that will enable the stocks to be managed in line with the MSY objective in Article 2(2) of the CFP;
- If a TAC is removed, to put in place appropriate measures and safeguards, that can guarantee the protection and good status of the relevant stocks, in line with best available scientific advice; and to monitor the effectiveness of such measures and review them regularly, to ensure that they fulfil the MSY objective of the CFP; and
- To ensure reliable and robust methods of full catch documentation (e.g. observers or remote electronic monitoring) are in place for fleets catching the relevant stocks where TACs are removed or prohibitions are in place.

⁷ For a few stocks ICES constrain the FMSY reference point to equal FPA for precautionary reasons.

⁸ ICES (2018) - EU request for ICES to provide advice on a revision of the contribution of TACs to fisheries management and stock conservation. http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2018/Special_requests/eu.2018.15.pdf

2.3 EC proposed “bycatch TACs” for certain stocks with zero catch advice

The Commission has proposed “bycatch TACs” for several commercial stocks caught in mixed fisheries where ICES has provided zero catch advice. These proposals are intended to prevent a ‘choke’ situation, where a fishery is closed because quota is exceeded.

The proposal is an attempt to address a problem that, at least in part and for certain stocks, stems from the Commission and Council acting too late to address overfishing and the most challenging aspects of the implementation of the LO in a timely manner. The proposed *bycatch TACs* are above scientifically advised levels, which will have consequences for those stocks and their recovery.

It is worth recalling that zero catch advice provided for many stocks is due to past over-exploitation and the failure of recent management to recover these stocks. Reduced TACs have been ineffective primarily due to catches and discarding continuing above the agreed TAC levels. It is therefore essential that any decisions on catch limits that diverge from the ICES zero catch advice aim to minimise bycatches, do not allow increases in fishing mortality, are compatible with the CFP MSY objective and encourage stock recovery in the shortest possible timeframes.

We welcome that the Commission proposal builds on some of the recommended steps and measures identified in the joint NGO paper on recovering fish stocks and fully implementing the landing obligation.⁹ However, we note that the proposal as it stands is insufficient as it does not include all of the necessary steps, measures and safeguards to ensure the complementary objectives of implementing the LO and stock recovery can ultimately be achieved. The Commission and the Council should look to address the following issues:

- Contrary to the Commission stated intent, we note that some *bycatch TAC* proposals appear to be based on a 20 percent reduction of most recent catches (e.g. cod in area 6a) or landings (e.g. plaice in 7h-k), instead of best available scientific estimates of discards (whiting in area 6a and in area 7a).
- Bycatch reduction measures are so far lacking (e.g. on the most selective gears or avoidance techniques, such as move-on rules, temporal and spatial closures), either in discard plans or for the dedicated recovery plans, and despite commitments made by member states at December Council 2017. Setting *bycatch TACs* before the necessary associated measures have been developed and implemented simply rewards member states prior to taking action and provides little incentive to introduce measures as soon as possible. Access to any potential *bycatch TACs* must be conditional on the relevant measures having been put in place.
- It is unclear how and by when it will be ensured that “*multi-annual bycatch reduction plans*” or specific measures are developed or implemented. There should be clear and ambitious timelines.
- It is unclear how the Union level bycatch allowance will be distributed amongst member states and fleet segments, or how access to this ‘pool’ will be regulated. This raises concerns about the potential to reward vessels which have not put the necessary measures and safeguards in place, at the cost of others.

⁹ <http://image.pewtrusts.org/lib/fe8215737d630c747c/m/1/NGO+Position+Recovering+fish+stocks+and+fully+implementing+the+Landing+Obligation.pdf>

We therefore call on the Council and relevant decision-makers to:

- Develop, evaluate and introduce supporting bycatch reduction measures, bycatch reduction plans and full catch documentation as soon as possible, and to only make bycatch allowances available to fisheries which agree to implementing these. All these measures and plans should be developed and submitted for review by STECF as soon as possible, but in any case within the first half of 2019, and their effectiveness should be reviewed on a regular basis to ensure the requirements of the CFP are met. Where STECF's findings indicate that the latter is not the case, the plans and measures must be adjusted accordingly, and/or access to bycatch allowances should be withdrawn;
- Consider applying additional conditions to discourage targeting;
- Take a two-step reduction in catches in 2019 and 2020 if setting *bycatch TACs*, in order to reduce fishing mortality and not exceed the MSY or MSY_{proxy} fishing mortality rates by 2020. Moreover, decisions should take into consideration catches (fishing mortality) that would prevent negative developments in stock size (e.g. whiting in area 6a) from 2020 – i.e. promote stock recovery; and
- Take into account the previous point, and ensure that whiting and haddock have fishing opportunities that correspond to the chosen mixed fishery 'scenario' and not exceeding the single species MSY approach advice, if basing a *bycatch TAC* for Celtic Sea cod on ICES mixed-fishery advice.

2.4 Bycatch footnote provisions

For several years, certain TACs have included footnotes allowing for bycatches of different species to be counted against the TAC of the target species. As these bycatch footnotes are expressed as a percentage of the target TAC, this can allow for considerable volumes of bycatch (in addition to the catches allowed under the dedicated TAC for the bycatch stocks), particularly where the target species TAC is much larger than the TACs of the bycatch stocks. Moreover, as bycatches under such provisions are not counted against the TACs of the relevant bycatch stocks, they *de facto* represent an additional catch allowance.¹⁰

It is essential to ensure that bycatches under such provisions do not increase fishing mortality of bycatch stocks above the scientifically advised levels.

We therefore call on the Council to:

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

¹⁰ Please refer to section 1.4 of the policy annex of the 'Joint NGO recommendations for fishing opportunities for 2018 – Northeast Atlantic and North Sea stocks' for further details on the risks associated with bycatch footnotes and how these should be addressed. <https://www.documents.cientearth.org/library/download-info/joint-ngo-recommendations-on-fishing-opportunities-for-2018-policy-annex/>

3. Improving the transparency and accountability of setting fishing limits

3.1 Documenting the decision-making process

The Council's response to ClientEarth's Access to Information Requests (AIR)¹¹ regarding the information used to set TACs for 2018 highlighted an unacceptable lack of transparency regarding the decision-making process during and in the lead-up to the December Council in 2017, when many TACs were agreed that exceeded the levels proposed by the Commission and advised by ICES.¹² Concerns regarding potential consequences of the LO and the anticipated socio-economic impact of following the Commission's proposal and scientific advice were often used by the member states to justify their (mostly successful) requests for higher TACs, while sufficient evidence to support these claims and any concrete plans as to how the MSY exploitation rates required by Article 2(2) are to be achieved by 2020 at the latest, were lacking.

We therefore call on the Council to:

- Record comprehensive and detailed minutes during Council Working Party meetings and make these and all other documents discussed at these meetings available as soon as possible, but in any case prior to December Council;
- Record comprehensive and detailed minutes during Council negotiations and make them publicly available as soon as the TACs have been agreed¹³;
- Provide clear justifications and sound scientific and/or socio-economic evidence demonstrating serious jeopardy to the fleet in the cases where TACs are set above levels advised by ICES, and to explain how the MSY objective will be met for these stocks by 2020;
- Document in a clear and detailed manner the steps taken to reach agreement on a given TAC, including information on how quota adjustments (such as deductions made to account for *de minimis* quantities) (see section 2.1), third country shares and mismatches between management areas and stock units (see section 3.2) were dealt with; and
- Provide a clear explanation how the risk of increased mortality caused by bycatch provisions has been or will be accounted for.

3.2 Addressing mismatches between management and stock units

Stakeholders are currently prevented from conducting reliable and comprehensive assessments of the degree to which TACs are set in line with scientific advice due to mismatches between management areas used when setting TACs and the stock assessment areas (based on stock distribution) used in the scientific advice produced by ICES¹⁴. In addition to area mismatches, other issues that prevent a direct comparison between the TAC set and the scientific advice include: TACs that cover more than one species or more than one stock of the same species; and TACs that cover bycatches of other species associated with the species the TAC is set for.

¹¹ Access to Information Request (AIR) submitted to the Council of the EU on 11 April 2018 requesting access to information regarding total allowable catches (TACs) of EU fish stocks in the Northeast Atlantic discussed and adopted on 11 and 12 December 2017, and exemptions from the landing obligation.

¹² The Pew Charitable Trusts (2018). Analysis of Total Allowable Catches in the north-east Atlantic for 2018. February 2018.

¹³ Transparency International (2016). Overfishing in the darkness. A case study on transparency in Council decision-making, p. 26. <https://transparency.eu/wp-content/uploads/2016/10/21-09-2016-Fishing-report-web.pdf>

¹⁴ ClientEarth (2016). Mismatch between TACs and ICES advice – Why it is an issue and how to address it', December 2016. <https://www.documents.clientearth.org/library/download-info/comparing-total-allowable-catch-decisions-and-ices-advice-areas-pdf/>

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

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

We therefore call on the Council to:

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