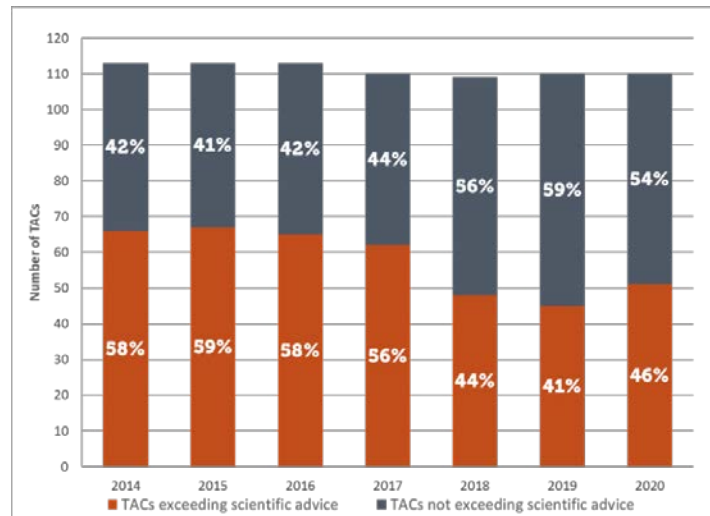


## Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2020

8 May 2020

### Summary

- On 18<sup>th</sup> December 2019, fisheries ministers of the EU AGRIFISH Council agreed catch limits in the north-east Atlantic for 2020<sup>1</sup>. Many of these Total Allowable Catch (TAC) limits continue to exceed the International Council for the Exploration of the Sea (ICES) scientific advice and permit overfishing.
- Fisheries ministers failed to achieve the objective of ending overfishing in the north-east Atlantic regions, as per the 2020 deadline outlined in Article 2(2) of the EU Common Fisheries Policy (CFP)<sup>2</sup>.
- 47 percent (32 of 68<sup>3</sup>) of the TACs proposed by the European Commission on 24<sup>th</sup> October 2019<sup>4</sup> exceeded scientific advice<sup>5</sup>. We note that even if the Commission proposal had been adopted by the EU AGRIFISH Council in full, it would have been insufficient to end overfishing in 2020.
- Fisheries ministers set 46 percent (51 of 110) of the TACs analysed exceeding scientific advice. This is an increase on the 41 percent (45 of 110) set exceeding advice for 2019 (see Figure 1)<sup>6</sup> and is likely an underestimate<sup>7</sup>.



**Figure 1** – Comparison of north-east Atlantic TACs set by fisheries ministers exceeding or not exceeding the scientific advice on catch limits for 2014-20.

<sup>1</sup> [Council Regulation \(EU\) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>2</sup> [Regulation \(EU\) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy \[...\].](#)

<sup>3</sup> Excludes TACs for *herring* in area 7ef; *plaice* in areas 5b, 6, 12 and 14; *saithe* in areas 7, 8, 9, 10 and CECAF 34.1.1; and *common sole* in areas 5b and 6, where no scientific advice on catch limits is provided by ICES.

<sup>4</sup> [COM/2019/483 Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>5</sup> Figures based on analysis of the original [Commission proposal](#), excluding any subsequent proposals made in Council Working Group 'non-papers'.

<sup>6</sup> Based on an analysis of [FishFix](#) TAC table. Version: 13 March 2020.

<sup>7</sup> The number of TACs set exceeding scientific advice are likely underestimated for 2020. For 2020 all TACs were assessed against ICES total catch advice. This assumes the landing obligation (LO) is fully implemented and all catches will be landed and effectively monitored and controlled in 2020. However, some TACs are subject to exemptions from the LO, and were set at the ICES advised level of total catch without any deductions for allowed discards.

- **Fisheries ministers have fallen short at implementing the Precautionary Approach to fisheries management<sup>8</sup>.** Where information to manage stocks in accordance with the Maximum Sustainable Yield (MSY) is uncertain, decision-makers should be more precautionary. However, the Commission and the EU AGRIFISH Council tend to set limits in excess of the best available scientific advice on precautionary catch levels. Out of the 51 TACs set exceeding scientific advice for 2020, 35 TACs were set above catch advice based on ICES data-limited precautionary approach framework.
- **15 TACs had scientific advice for zero catches and/or no targeted fisheries. All were set above advice.**
- **Fisheries ministers continued to reverse the slow progress made until 2018 on the number of TACs set not exceeding MSY-based scientific advice (including those with MSY proxies). 37 percent (29 of 78) of TACs were set exceeding MSY-based scientific advice for 2020<sup>9</sup>, compared to 32 percent (23 of 73) for 2019, and 29 percent (21 of 72) for 2018<sup>10</sup>.**
- **As in 2019, five ‘bycatch TACs’ were agreed exceeding scientific advice for Celtic Sea cod and plaice, west of Scotland cod and whiting and Irish Sea whiting.** Fisheries ministers agreed additional *remedial measures for cod and whiting in the Celtic Sea* for the second half of 2020 and removed a Commission proposal for the bycatch TAC to be conditional on at-sea monitoring and control of catches.
- **Since 2017, fisheries ministers have also removed 4 of the 114 December Council TACs with scientific advice on catch limits<sup>11</sup>.** Removing TACs does not address the potential for overfishing of these stocks, as targeted catches, bycatches and discards continue.
- **Poor monitoring, control and enforcement of the landing obligation (LO) is likely to cause overfishing.** The LO applies from 2019 to all catches of species with catch limits, unless there are specific exemptions provided for in discard plans<sup>12</sup>. Our TAC analysis assumes all catches, including ‘allowed’ discards, will be effectively monitored, recorded and controlled. However, as unreported discarding continues<sup>13</sup> and LO exemptions are not monitored, fishing mortality and catches above scientifically advised levels will increase - thereby contributing to overfishing<sup>14</sup>.
- **A lack of transparency continues to make it difficult to comprehensively analyse the extent to which the Council set fishing limits in line with the scientific advice.** Examples of insufficient transparency include: incomplete public information on TAC adjustments (‘top-downs’) to account for exemptions from the LO and incomplete information on how the Commission transforms scientific advice on catch limits into TAC proposals when stock and TAC area mismatches occur<sup>15</sup>. Our analysis therefore makes assumptions to address these uncertainties.
- **Significant steps remain to be taken to end overfishing now that the 2020 deadline has passed. Setting TACs not exceeding scientific advice and effectively implementing the LO remain top priorities if the CFP’s legally binding policy objectives are to be successfully delivered and if international commitments regarding Sustainable Development Goal 14 (SDG-14) are to be achieved.**

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<sup>8</sup> UN Fish Stocks Agreement (1995) – Annex II.

<sup>9</sup> Based on an analysis of [FishFix](#) TAC table. Version: 13 March 2020.

<sup>10</sup> Pew (2019). [Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019](#).

<sup>11</sup> Since 2017 the analysis excludes the TAC for *porbeagle* in EU waters of the north-east Atlantic and two TACs for *spurdog* (in area 3a; and in areas 2a and 4) as these TACs were removed when these species were added to the prohibited species list. Since 2018 the analysis excludes *dab* and *flounder* in areas 2a and 4 because the TAC was removed in early 2017. Since 2019 the analysis included *anchovy* in areas 9, 10 and CECAF 34.1.1 because ICES could provide catch advice.

<sup>12</sup> See Discard Plans published in the [Official Journal of the European Union, L 336, 30 December 2019](#).

<sup>13</sup> European Commission (2018), DG MARE, Towards new SCIPs, Advisory Council Consultation.

<sup>14</sup> Savina (2019). [Changes in fish stocks and sensitive components over the course of the project. Deliverable 1.4 of the H2020 DiscardLess Project - Strategies for the gradual elimination of discards in European fisheries](#).

<sup>15</sup> ClientEarth (2016). [Mismatch between TACs and ICES advice – Why it is an issue and how to address it!](#).

## Background

The CFP entered into force on 1<sup>st</sup> January 2014 and includes a requirement to end overfishing, with legally binding targets and deadlines. The CFP regulation<sup>16</sup> establishes in Article 2(2) that “*in order to achieve the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing the maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks*”. This objective is reinforced in the EU’s regional multi-annual plans (MAPs).

Setting appropriate catch limits is fundamental to achieving the CFP objective of restoring and maintaining fish stocks above levels capable of producing the Maximum Sustainable Yield (MSY). Under Article 43(3) of the Treaty on the functioning of the European Union (TFEU), fishing opportunities are proposed by the European Commission and agreed by the Council of ministers by qualified majority voting.

At the EU AGRIFISH Council on 16-18<sup>th</sup> December 2019, EU fisheries ministers decided upon Total Allowable Catches (TACs) for most fish stocks in the north-east Atlantic for 2020. This should have resulted in Council agreeing to TACs that end overfishing, because the CFP allows for postponing the 2015 deadline only in exceptional cases, when meeting it “*would seriously jeopardise the social and economic sustainability of the fishing fleets involved*” (CFP Recital 7) and requires all overfishing to end in 2020.

Pew measures progress against Article 2(2) of the CFP by assessing if the best available scientific advice from the International Council for the Exploration of the Sea (ICES), whether based on ICES MSY approach, agreed management plans (e.g. EU multi-annual plans) or data-limited precautionary approach framework, has been followed when the Commission propose and Council decide on relevant TACs each year.

The following sections analyse whether the Commission TAC proposals<sup>17</sup> and the Council agreement exceed, or not, the scientific advice on catch limits for 2020<sup>18</sup>. At the Fisheries Council on 16-18<sup>th</sup> December 2019, EU fisheries ministers set approximately 150 TACs in the north-east Atlantic for 2020<sup>19</sup>. 119 of the 150 TACs set by fisheries ministers are within the scope of this analysis<sup>20</sup>. However, scientific advice on catch limits for 2019 was available for only 110 out of these 119 TACs<sup>21</sup>.

## European Commission proposals on north-east Atlantic catch limits for 2020

On 24<sup>th</sup> October 2019 the Commission proposed TACs for 68<sup>22</sup> of the 110 TACs for fish stocks in waters of the north-east Atlantic and subject to the scope of this analysis<sup>23</sup>. Our analysis<sup>24</sup> of those proposals shows that:

- **53 percent of the TACs proposed (36 of 68) did not exceed the scientific advice.**

<sup>16</sup> [Regulation \(EU\) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy \[...\]](#).

<sup>17</sup> [COM/2019/483 Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>18</sup> The analysis assumes the landing obligation (LO) is fully implemented and all catches will be landed and effectively monitored and controlled in 2020. In the absence of complete information on TAC adjustments for 2020 our analysis makes a liberal assumption that if the total catch advice associated with a TAC was not exceeded, then the TAC was counted as not exceeding scientific advice. As such, the number of TACs set exceeding scientific advice are likely underestimated in 2020.

<sup>19</sup> [Council Regulation \(EU\) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>20</sup> Covering North-western European waters. This excludes some TACs from Annex IA of the TAC regulation which are not in EU waters (e.g. Barents Sea and Icelandic waters), are in Greenland and ultra-peripheral waters (e.g. Madeira waters), and/or are grouped TACs - ‘others’ or ‘industrial’.

<sup>21</sup> Excludes TACs for *skates and rays* (x5) – where scientific advice was published by ICES but advice on the catch limits associated with the TAC was not determinable. Also excludes TACs for *herring* in area 7ef; *plaice* in areas 5b, 6, 12 and 14; *saithe* in areas 7, 8, 9, 10 and CECAF 34.1.1; and *common sole* in areas 5b and 6, where no scientific advice on catch limits is provided by ICES.

<sup>22</sup> Excludes TACs for *herring* in area 7ef; *plaice* in areas 5b, 6, 12 and 14; *saithe* in areas 7, 8, 9, 10 and CECAF 34.1.1; and *common sole* in areas 5b and 6, where no scientific advice on catch limits is provided by ICES.

<sup>23</sup> Based on analysis of the original Commission proposal, excluding any subsequent proposals made in Council working party ‘non-papers’. [COM/2019/483 Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>24</sup> Note: In many cases it can be difficult to assess the extent to which the Commission’s TAC proposals follow the scientific advice. For many stocks there are mismatches between the geographic areas used by ICES in its assessment of a fish stock and the areas covered by a TAC. In these cases, we assess whether TACs are set exceeding or not exceeding the scientific advice based on assumptions about how the Commission has arrived at the proposed TAC from the scientific advice - for example, how scientific advice on catches for stocks are apportioned to TAC areas and whether overall the proposed TACs exceeded the total maximum catch advice for the stock.

- **47 percent of the TACs proposed (32 of 68) exceeded the scientific advice.**
  - 8 of the 68 TACs proposed exceeded scientific advice in relation to the ICES MSY approach or an agreed management plan (e.g. EU multi-annual plans) using  $F_{MSY}$  point value. These included:
    - *Cod* in areas 7bc, 7e-k, 8, 9, 10 and CECAF<sup>25</sup> 34.1.1; *whiting* in areas 2a and 4; *megrim* in area 7; *hake* in area 3a; *hake* in areas 2a and 4; *hake* in areas 5b, 6-7, 12 and 14; *hake* in areas 8abde; and *hake* in areas 8c, 9, 10 and CECAF 34.1.1.
  - 9 of the 68 TACs proposed exceeded scientific advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY ( $MSY_{proxy}$ ) were available to inform decision-making. These included:
    - *Greater silver smelt* in areas 3 and 4; *greater silver smelt* in areas 5-7; *tusk* in area 3; *tusk* in area 4; *tusk* in areas 5-7; *ling* in areas 3a-d; *ling* in area 4; *ling* in areas 6-10, 12 and 14 and *spurdog* in areas 1, 5-8, 12 and 14.
  - 15 of the 68 TACs proposed exceeded scientific advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY were not available. These included:
    - *Herring* in areas 6a (south), 7bc and *herring* in areas 5b, 6b and 6a (north) – where a continuation of the ‘scientific TAC’ exceeding scientific advice for zero catches was proposed<sup>26</sup>.
    - *Cod* in area 7a; *blue ling* in area 3; *blue ling* in areas 2a and 4; *plaice* in areas 7bc; *plaice* in areas 8-10 and CECAF 34.1.1; *pollack* in areas 5b, 6, 12 and 14; *pollack* in area 7; *pollack* in areas 8abde; *pollack* in area 8c; *pollack* in areas 9, 10 and CECAF 34.1.1; *common sole* in areas 7bc; *sole* in areas 8cde, 9, 10 and CECAF 34.1.1; and *Norway lobster* in area 8c.
- **For a further 42 TACs subject to our analysis, no proposal was published by the Commission on 24<sup>th</sup> October.** These were described as ‘*pm*’ (*pro memoria*). Reasons provided by the Commission for not including proposals for those TACs included: they were for stocks shared with third countries and consultations were yet to conclude; the scientific advice had not been received at the time the proposal was produced; or the Commission evaluation of the scientific advice was still ongoing<sup>27</sup>.

In summary, the Commission proposal on fishing opportunities for 2020 proposed many TACs that exceeded best available scientific advice, including for several stocks with scientific advice in relation to the MSY exploitation rate. **Even if the Commission proposal had been adopted in full by the Council, it would have been insufficient to end overfishing in 2020.**

## Council decisions on north-east Atlantic catch limits for 2020

### i. Council TAC setting in relation to scientific advice.

This section analyses whether the Council decisions on these 110 TACs exceeded, or not, the ICES scientific advice on catch limits for 2020<sup>28</sup>. Our analysis shows that for the 2020 deadline year to end overfishing:

- **54 percent (59 of 110) of the TACs were set not exceeding scientific advice.** This reverses progress compared to 59 percent (65 of 110) of TACs for 2019, and 56 percent (61 of 109) for 2018<sup>29</sup>.
  - 41 of the 59 TACs were set not exceeding catch advice following ICES MSY approach or an agreed management plan (e.g. EU multi-annual plans) using  $F_{MSY}$  point value.
  - 8 of the 59 TACs were set not exceeding catch advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY ( $MSY_{proxy}$ ) were available to inform decision-making.

<sup>25</sup> Fishery Committee for the Eastern Central Atlantic.

<sup>26</sup> The EU established a scientific monitoring TAC totalling 5800t in 2016, which was maintained in 2017-2019. A rebuilding plan, which contains provisions for a monitoring TAC was evaluated by ICES in 2017. The plan, including a scientific monitoring TAC of 5800t, was found not to be precautionary by ICES in 2017 – ICES advised the monitoring TAC should be reduced. A revised version of the rebuilding plan was submitted to the European Commission in 2018 but has not been evaluated. ICES advised zero catch for 2020. Council set a reduced scientific monitoring TAC of 4840t for 2020.

<sup>27</sup> [COM/2019/483 Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.](#)

<sup>28</sup> Based on an analysis of [FishFix](#) TAC table. Version: 13 March 2020.

<sup>29</sup> Pew (2019). [Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019.](#)

- 10 of the 59 TACs were set not exceeding catch advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY were not available.
- **46 percent (51 of 110) of the TACs were set exceeding scientific advice.** This is a deterioration compared to 41 percent (45 of 110) of TACs set exceeding advice for 2019, and 44 percent (48 of 109) for 2018<sup>30</sup>.
  - 16 of the 51 TACs were set above catch advice following ICES MSY approach (e.g. North Sea cod) or an agreed management plan (e.g. EU multi-annual plans) using  $F_{MSY}$  point value (e.g. hake).
    - 6 TACs had advice for zero catches. The Council agreed *bycatch TACs* for 3 of these<sup>31</sup>.
  - 14 of the 51 TACs were set above catch advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY ( $MSY_{proxy}$ ) were available to inform decision-making.
    - 2 TACs had advice for zero catches. A '*bycatch TAC*' was agreed for *plaice* in areas 7hjk and there was a continuation of the '*scientific TAC*' for *spurdog* in areas 1, 5-8, 12 and 14.
  - 21 of the 51 TACs were set above catch advice based on ICES precautionary approach for data-limited stocks, where proxies for MSY were not available. Of which:
    - 7 TACs had advice for zero catches. All were set above advice.

**Several TACs were significantly higher than the scientific advice.** Examples include: *Whiting* in areas 5b, 6, 12 and 14 (~100x advice); *cod* in areas 6b and 5b (~5x advice); *whiting* in area 3a (~4x advice); *pollack* in area 7 (~4x advice); *plaice* in areas 7bc (~3x advice); *pollack* in areas 6, 5b, 12 and 14 (~2.5x advice); *cod* in area 7a (~2x advice); and *plaice* in areas 8-10 (~2x advice).

## ii. Council TAC setting in relation to the CFP MSY objective.

78 of the 110 TACs analysed for 2020<sup>32</sup> had scientific advice in relation to the MSY objective of the CFP (e.g. ICES MSY approach, advice based on an agreed management plan using  $F_{MSY}$  point value, or ICES precautionary approach with an  $MSY_{proxy}$ ). Our analysis shows that for the 2020 deadline year to end overfishing:

- **63 percent (49 of 78) of TACs with MSY advice were set not exceeding scientific advice.** This is a step backwards compared to 68 percent (50 of 73) for 2019, and 71 percent (51 of 72) for 2018<sup>33</sup>.
  - 5 of these 49 TACs were set exceeding advice in 2019, meaning a step forward in terms of their sustainable management and meeting the CFP's objectives. These include *herring* in areas 2, 4 and 7d; *herring* in areas 4c and 7d; *haddock* in areas 7b-k, 8, 9 and 10; *saithe* in areas 3a, 4, 2a-c and subdivisions 22-32; and *saithe* in areas 6, 5b, 12 and 14.
- **37 percent (29 of 78) of TACs with MSY advice were set exceeding scientific advice.** This is a deterioration compared to 32 percent (23 of 73) for 2019, and 29 percent (21 of 72) for 2018<sup>34</sup>.
  - 19 of the 29 TACs were also set exceeding advice in 2019. These include *greater silver smelt* in areas 3 and 4; *herring* in area 3a and subdivisions 22-32; *herring* in area 3a (bycatches); *cod* in areas 2a, 3a and 4; *cod* in the Skagerrak; *cod* in area 7d; *cod* in area 6a<sup>35</sup>; *cod* in areas 7bc, e-k, 8, 9, 10 and CECAF 34.1.121<sup>31</sup>; *whiting* in area 7a<sup>31</sup>; *whiting* in areas 8 and 9a; *megrin* in area 7; *hake* in areas 8c, 9, 10 and CECAF 34.1.1; *ling* in areas 3a-d; *ling* in area 4; *ling* in areas 6-10, 12 and 14; *plaice* in areas 7hjk<sup>31</sup>; *common sole* in areas 7hjk; *sprat* in area 3a; and *spurdog* in areas 1, 5-8, 12 and 14.
  - 10 of the 29 TACs were set not exceeding advice in 2019, representing a backward step in terms of their sustainable management and meeting the CFP's objectives. These include *greater silver smelt* in areas 5-7; *tusk* in area 3; *tusk* in area 4; *herring* in areas 7ghjk; *hake* in area 3a; *hake* in areas 2a and 4; *hake* in areas 5b, 6-7, 12 and 14; *hake* in areas 8abde; *lemon sole & witch* in areas 2a and 4; and *turbot & brill* in areas 2a and 4.

<sup>30</sup> Pew (2019). [Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019](#).

<sup>31</sup> *Cod* in areas 7bc, 7e-k, 8, 9, 10 and CECAF 34.1.1, *cod* in area 6a and 5b (east) and *whiting* in area 7a.

<sup>32</sup> Based on an analysis of [FishFix](#) TAC table. Version: 13 March 2020.

<sup>33</sup> Pew (2019). [Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019](#).

<sup>34</sup> Pew (2019). [Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019](#).

<sup>35</sup> A '*bycatch TAC*' was agreed exceeding scientific advice for zero catches. See *bycatch TACs* and *bycatch reduction plans* – p6.

In summary, ministers' decisions on TACs for 2020 demonstrate:

1. A reversal in progress up to 2019 in following scientific advice when setting annual catch limits.
2. A reversal of the slow progress made up to 2018 on the number of TACs set not exceeding MSY-based scientific advice (including those with MSY proxies). The result is a failure to achieve the CFP's Article 2(2) MSY exploitation rate objective by 2020 for all stocks (whether they have subsequently been designated as "target" or "non-target" stocks).
3. A reluctance to implement the CFP and United Nations Fish Stocks Agreement (UNFSA) Precautionary Approach when setting TACs. We observe that around two thirds of the 51 TACs set exceeding scientific advice for 2020 were for stocks where ICES advice on catches was based on the data-limited Precautionary Approach framework<sup>36</sup>.

This reluctance appears to result in the Commission's proposal and AGRIFISH Council decisions exceeding best available scientific advice from ICES when they should be more cautious in situations where information is uncertain. More needs to be done by the Commission and fisheries ministers to set TACs for 2021 in accordance with ICES advice as a minimum benchmark where data is insufficient to manage these stocks in accordance with MSY advice.

**Significant steps therefore remain to be taken when setting TACs for 2021 to end overfishing now that the CFPs 2020 deadline has passed.**

## Sustainable exploitation in the context of the landing obligation (LO)

**Poor monitoring, control and enforcement of the landing obligation (LO) is likely to cause overfishing.** The LO applies from 2019 to all catches of species with catch limits unless there are specific exemptions provided for in discard plans<sup>37</sup>. Basing TACs for 2020 on ICES total catch advice assumes there will be full compliance with the LO and effective monitoring of catches along with the permitted exemptions. As recognised by the Commission, there are serious concerns about widespread non-compliance with the LO<sup>38,39</sup>. Where unreported discarding continues and LO exemptions are not monitored, fishing mortality and catches above scientifically advised levels will increase - thereby contributing to overfishing<sup>40</sup> and a possible degradation of scientific advice.

**Reintroduction of the 2019 'bycatch TACs' despite failed attempts to agree 'bycatch reduction plans'.** Member states failed to implement commitments made for 2019 in return for *bycatch TACs*. After the *bycatch TACs* were granted for 2019, the bycatch reduction plans proposed had no new measures and were not implemented, and included no means to monitor or account for any discards<sup>41</sup>. *Bycatch TACs* should not be set without additional measures to minimise bycatches and to ensure that all catches are subject to full catch documentation.

For 2020 ministers again set five *bycatch TACs* for *cod* in area 6a; *cod* in areas 7bc, 7e-k, 8-10 and CECAF 34.1.1; *whiting* in areas 6, 5b, 12 and 14; *whiting* in area 7a; and *plaice* in areas 7hjk, which all exceeded scientific advice for zero catches. This time, fisheries ministers agreed additional *remedial measures for cod and whiting in the Celtic Sea* for the second half of 2020. Pew welcomes that additional measures were agreed for certain Celtic Sea cod and whiting fisheries, but we are concerned that the measures agreed may not be effective in avoiding catches of cod and whiting<sup>42</sup>. We are also concerned that no other bycatch reduction

<sup>36</sup> Including those where proxies for MSY are estimated.

<sup>37</sup> See Discard Plans published in the [Official Journal of the European Union, L 336, 30 December 2019](#).

<sup>38</sup> European Commission (2018), DG MARE, Towards new SCIPs, Advisory Council Consultation.

<sup>39</sup> [Commission staff working document accompanying COM\(2018\) 452 final - Communication from the Commission on the state of play of the common fisheries policy and consultation on the fishing opportunities for 2019](#).

<sup>40</sup> Savina (2019). [Changes in fish stocks and sensitive components over the course of the project. Deliverable 1.4 of the H2020 DiscardLess Project - Strategies for the gradual elimination of discards in European fisheries](#).

<sup>41</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – 61st Plenary Meeting Report (PLEN-19-02). Publications Office of the European Union, Luxembourg, 2019 p. 107.

<sup>42</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – 63rd Plenary Report – Written Procedure (PLEN-20-01). Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-18117-0, doi:10.2760/465398, JRC120479.

measures were agreed for the other *bycatch TACs* set and that ministers agreed to remove the Commission proposal that a bycatch TAC be conditional on at-sea remote electronic monitoring (REM) or control observers.

## Transparency issues hindering full accountability on TAC setting

Some important transparency issues continue to impede our assessment of the extent to which Council sets catch limits in line with the scientific advice:

### TAC adjustments ('top-downs') to account for the landing obligation (LO)

The LO applied to all catches of species with catch limits since 2019 unless there are specific exemptions provided for in discard plans. Since 2019 it appears TACs are set based on ICES total catch advice where available, with deductions made for exemptions where applicable (i.e. a 'top-down' calculation). However, the publicly available information on final top-down TAC adjustments was insufficient to comprehensively analyse whether TACs were set not exceeding scientific advice. This was true in particular for TACs partially subject to the LO due to exemptions. In these cases, further information is required to assess if the TACs set (including adjustment) are in accordance with the scientifically advised levels. In the absence of complete information on TAC adjustments our analysis therefore made a liberal assumption and compared TACs against total catch advice, providing more optimistic results. Furthermore, we observe from our analysis that several TACs were set at levels consistent with maximum advised catches (total catch advice) but some fisheries targeting the associated stocks also appear to have exemptions from the LO which were not accounted for in the setting of the TACs<sup>43</sup>. All these cases are likely to lead to catches and fishing mortality above scientifically advised levels and overfishing of the stocks concerned.

### Stock and TAC area mismatch

For many stocks there are mismatches between the geographic areas used by ICES in defining stocks and the areas covered by a TAC<sup>44</sup>. This means that for some TACs it is not possible for stakeholders to ascertain to what extent scientific advice has been followed. We would welcome improved transparency on how the Commission arrives at the proposed TAC from the scientific advice, for example, how scientific advice on catches for stocks are apportioned to TAC areas, and how total catch advice is respected in relation to the LO and the adjustments made. Our analysis makes assumptions to address these uncertainties. Further recommendations to improve the transparency and accountability of setting fishing limits can be found in the joint NGO recommendations on fishing opportunities for 2020<sup>45</sup>.

## Recommendations

The institutions responsible for TAC-setting should ensure that they fulfil their roles to achieve the goals and objectives of the CFP as set by the law.

The Commission, especially through its Commission Proposal, should lead by example, guiding ministers to ensure that all legal requirements are respected, clarifying/justifying the basis of scientific advice used for TAC proposals, and proposing catch limits in accordance to the appropriate scientific advice.

The EU AGRIFISH Council should thoroughly respect the limited power assigned to it for setting TACs in the framework of Articles 43(2) and 43(3) of the TFEU, and only take decisions necessary for the pursuit of the objectives of the CFP, notably the 2020 deadline in Article 2.

### We therefore urge the Commission and Council to:

- Propose and set TACs not exceeding the best available scientific advice provided by ICES, both for stocks with advice based on ICES MSY approach and ICES data-limited precautionary approach;

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<sup>43</sup> *Haddock* in areas 3a and subdivisions 22-32; *haddock* in areas 4 and 2a; *haddock* in areas 6b, 12 and 14; *haddock* in areas 5b and 6a; *whiting* in areas 4 and 2a; *plaice* in areas 4, 2a and 3a; *saithe* in areas 3a, 4, 2a-c and subdivisions 22-32; *saithe* in areas 6, 5b, 12 and 14; *common sole* in areas 2a and 4; and, *common sole* in area 7e.

<sup>44</sup> See for instance ClientEarth (2016). [Mismatch between TACs and ICES advice – Why it is an issue and how to address it](#).

<sup>45</sup> [Joint NGO recommendations on the setting of Northeast Atlantic fishing opportunities for 2020](#).

- Where applicable, propose and set TACs not exceeding the  $F_{MSY}$  point value specified by the EU multi-annual plans (MAPs);
- Call on north-east Atlantic Coastal States to follow their common international commitments to end overfishing by 2020 for shared (jointly managed) stocks with the EU, for the objectives of the CFP to be achieved;
- Take into account the lack of implementation of the landing obligation (LO) when setting TACs. TACs should be set based on ICES wanted catch advice until there is sufficient evidence of proper implementation;
- More generally, propose and set TACs at more precautionary fishing levels than will achieve MSY, taking into consideration stock-specific uncertainties (catch misreporting, discards, assessment bias etc.), interspecies stock dynamics, and considering the pressures (pollution, climate change, eutrophication etc.) on the ecosystem;
- Provide transparent calculations for TACs based on the ICES stock advice. This includes publishing details on the methodologies for LO TAC adjustments and for matching scientific advice with TAC areas.
- Improve the transparency of any proposals subsequent to the official Commission proposal, including the Council Working Party non-papers, and of the AGRIFISH Councils – as also recommended by the European Ombudsman<sup>46</sup>.
- Ensure that TACs, *bycatch* TACs, the LO and its exemptions are respected by fundamentally increasing at-sea monitoring, control and enforcement by either at sea observers or remote electronic monitoring (REM). In particular, REM should be implemented on vessels identified as being at medium, high or very high risk of non-compliance with the LO, and especially where *bycatch* TACs and exemptions from the LO are applicable.

Finally, the European Parliament, as a co-legislator of the CFP basic regulation and of the multi-annual plans, should be vigilant that no infringements of the rules for which it is responsible occur, and that the overarching objective of ending overfishing in the EU is fully achieved. We therefore recommend that members of the European Parliament ensure effective scrutiny of the TACs set by the Council, as well as any technical measures adopted when agreeing annual fishing opportunities.

For more information, please contact:

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<sup>46</sup> [Recommendation of the European Ombudsman 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 \(total allowable catches\).](#)