

Analysis of Fisheries Council agreement on deep-sea fishing opportunities for 2019 and 2020

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Summary

On 19th November 2018, the Fisheries Council decided on deep-sea fishing limits for 2019 & 2020¹. The European Commission's proposal² already failed to propose management in line with the requirements of the Common Fisheries Policy (CFP) for some of the fish species most vulnerable to over-exploitation in European waters. The Council's decisions increase the risk of overfishing, including by:

- **Removing six total allowable catches (TACs) associated with deep-sea stocks (as proposed by the Commission).** This continued the trend of removing catch limits entirely or adding species to the prohibited list – thereby avoiding the implementation of the landing obligation (LO). **Since 2013, 10 of 22 catch limits for deep-sea stocks have been removed³.** This does not address environmental impacts or the potential for overfishing, as targeted catches, bycatches and discards can continue.
- **Setting at least three⁴ of the remaining deep-sea TACs exceeding scientific advice on precautionary catch limits for 2019 and 2020.** 'Bycatch TACs' were set at levels exceeding scientific advice and without appropriate measures to minimise bycatches, monitor the bycatch provisions and ensure that all catches are landed (e.g. via fully documented fisheries).
- **Agreeing to the prohibition of deep-sea shark species listed in the regulation, while at the same time setting three TACs of seven tonnes for deep-sea sharks that are highly vulnerable to human exploitation.** These TACs are for bycatches in the longline fishery for black scabbardfish. A similar outcome was agreed in 2016, with conditions for establishing specific data-collection measures for deep-sea sharks. However, there is no evidence these conditions were met by the member state concerned. The concerns raised by Pew in 2016 regarding not making these requirements mandatory continue to apply⁵.
- **Ignoring scientific advice⁶ and a separate call from 85 scientists⁷ recommending that the Commission and member states develop management plans for deep-sea cartilaginous fish species,** which should include measures for increased data collection, improved gear selectivity and avoidance of high abundance areas.

These outcomes raise doubts about the EU's commitment to its CFP objectives and wider commitments such as the precautionary approach / principle.

¹ [Council Regulation \(EU\) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks.](#)

² [COM\(2018\) 676 final 2018/0347 \(NLE\) Proposal for a COUNCIL REGULATION fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and Annex.](#)

³ Catch limits for greater forkbeard (4 TACs), black scabbardfish (1 TAC) and roundnose grenadier (1 TAC) were removed in 2018. Orange roughy (3 TACs) and deep-sea sharks (1 TAC) were removed in 2016 but were classified as prohibited species.

⁴ For some black scabbardfish and roundnose grenadier TACs it is not possible to directly compare the TAC set with the scientific advice on catches due to stock and TAC area 'mismatch' issues (see section below – 'European Commission proposal on deep-sea fishing limits for 2019 & 2020').

⁵ [Pew Response to Deep-Sea Fishing Limits 2017-2018](#) (2016).

⁶ ICES (2017). Report of the Working Group on Elasmobranchs, 31 May-7 June 2017, Lisbon, Portugal. ICES CM 2017/ACOM:16. 1018 pp.

⁷ [Scientists sign letter urging for better management of European deep-sea sharks.](#)

Background

Deep-sea fish species live in rarely disturbed environments and tend to be slow-growing, late-maturing and long-lived⁸. The biological characteristics of most deep-sea species and the ecosystems they inhabit make them exceptionally vulnerable to over-exploitation and poorly adaptable to sustained fishing pressure, since their productivity and recovery capacity are very limited. As such, deep-sea species and ecosystems should be managed with the highest precaution.

Setting appropriate fishing limits is fundamental to achieving the CFP objective of restoring and maintaining fish stocks above levels capable of producing the maximum sustainable yield (MSY). Article 2(2) of the CFP regulation⁹ requires that *“the MSY exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks”*.

Article 2(2) of the CFP also requires the application of the *‘precautionary approach to fisheries management’* as defined by Article 4 1(8) of the CFP. The CFP definition of the precautionary approach to fisheries management refers to a key principle of Article 6 of the UN Fish Stocks Agreement *“where the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment”*. Moreover, Article 9(2) of the CFP goes further to elaborate a key principle on the application of a precautionary approach with respect to the MSY objective, *“... ensuring at least a comparable degree of conservation of the relevant stocks”*.

None of the deep-sea stocks managed by fishing limits currently have MSY-based scientific advice. The setting of fishing limits should therefore be based on the *‘precautionary approach to fisheries management’* as defined by the CFP and guided by principles of good governance listed in Article 3(c), namely *“the establishment of measures in accordance with the best available scientific advice”*. The International Council for the Exploration of the Sea (ICES) provides scientific advice on catch limits for relevant deep-sea stocks under their precautionary advice framework.

Pew measures progress against Article 2(2) of the CFP by assessing whether the best available scientific advice from ICES (whether based on ‘MSY’ or the ‘precautionary approach’) has been followed when setting TACs.

European Commission proposal on deep-sea fishing limits for 2019 and 2020

On 9th October 2018 the Commission proposed fishing opportunities for certain deep-sea fish stocks in 2019 and 2020¹⁰. The Commission failed to propose management in line with the objectives of the CFP for some of the fish species most vulnerable to over-exploitation in European waters.

The Commission’s proposal included:

- **The removal of six TACs for deep-sea stocks.** This included four TACs for greater forkbeard in areas 1-4; 5-7; 8 & 9; and, 10 & 12; one TAC for black scabbardfish in areas 1-4; and one TAC for roundnose grenadier in areas 1, 2 & 4.

Although ICES provided some scientific assessment of the risks of removing TACs for certain deep-sea stocks, including for greater forkbeard and roundnose grenadier, the proposed removal of any TACs for black scabbardfish were not scientifically assessed by ICES. Additionally, ICES advised that *“if TACs are removed, a quantitative evaluation of the alternative management measures should be conducted previous to their implementation and the efficiency of such methods should be evaluated after a few years to ensure the stock is not*

⁸ Koslow JA et al. 2000. Continental slope and deep-sea fisheries: implications for a fragile ecosystem. ICES Journal of Marine Science, 57: 548-57.

⁹ [REGULATION \(EU\) No 1380/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on the Common Fisheries Policy \[...\]](#)

¹⁰ [COM\(2018\) 676 final 2018/0347 \(NLE\) Proposal for a COUNCIL REGULATION fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and Annex.](#)

over-exploited.” Where TAC removal was being considered, the Commission should have proposed scientifically evaluated measures and a monitoring strategy to ensure that the CFP’s objectives will still be met for the stocks concerned¹¹. This was not done and is of particular concern for stocks such as greater forkbeard, since for some EU fleets these species are a commercially important part of the catch and TAC removal could risk an increase in fishing mortality that may result in unsustainable exploitation¹².

- **At least two proposed deep-sea TACs exceeding ICES scientific advice for 2019 and 2020.**

Red seabream in areas 6-8 and roundnose grenadier in area 3 are significantly depleted. The proposed TACs were higher than the ICES advice, which was for zero catch, despite including a condition that there are no directed fisheries and quota is used exclusively for bycatches. The Commission did not propose supporting measures to minimise bycatches, monitor the proposed provisions and ensure that all catches are landed (e.g. via fully documented fisheries - using cameras or at-sea observers).

In addition, TACs for black scabbardfish in areas 8-10 and roundnose grenadier in areas 8-10 and 12 appear to exceed scientific advice. For these stocks, the areas for which TACs are set are not the same as the areas for which the stock-specific scientific advice is provided by ICES. Such ‘mismatch’¹³ makes it difficult to assess whether the proposed TACs are in line with the underlying scientific advice. ICES advice for subcomponents of these stocks appear to be exceeded in some cases, yet the total proposed TACs do not appear to exceed total catch advice. As repeatedly highlighted by NGOs, the Commission should improve transparency by making the methodology used to calculate TACs on the basis of scientific advice publicly available.

- **At least three deep-sea TACs not exceeding ICES scientific advice for 2019 and 2020.** These included alfonsinos, red seabream in area 9 and red seabream in area 10.

- **Continued use of combined TACs for roundnose and roughhead grenadier.**

The Commission proposed that bycatches of roughhead grenadier should be limited to 1% of each Member State’s quota of roundnose grenadier and counted against that quota, in line with the scientific advice. It is a concern that the Commission did not propose improved provisions for monitoring and reporting of bycatches and observing if they conform with member state quota shares and possible discards past the 1% threshold.

In 2016 the Council set combined TACs for roundnose and roughhead grenadier (areas 5b, 6 & 7; and, areas 8-10 & 12). At the time, this decision was justified as an attempt to address the scientific advice for no directed fisheries for roughhead grenadier, as well as the danger of misreporting catches. Covering two species under one TAC is unlikely to avoid overexploitation, as the whole TAC can be caught for only one species, potentially exceeding sustainable fishing limits. As such, individual TACs for roundnose and roughhead grenadier are recommended¹⁴. However, where doing this requires more comprehensive catch and effort data, an extended catch monitoring programme with confirmation of species landings should be implemented to ensure sustainable management of both stocks in the long-term.

- **Continued classification of the three orange roughy TACs as ‘prohibited species’ – maintaining no limit on catches.** This will neither provide incentives for improved selectivity, nor will it prevent bycatch and discarding (and associated fishing mortality).

¹¹ [NGO recommendations for deep-sea fishing limits 2019–2020](#) (2018).

¹² [ICES \(2018\): EU request on the role of the Total Allowable Catch instrument for fisheries management and conservation of selected deep-water stocks.](#)

¹³ For more details, refer to ClientEarth (2016). [Mismatch between TACs and ICES advice – Why it is an issue and how to address it.](#)

¹⁴ [NGO recommendations for deep-sea fishing limits 2019–2020](#) (2018).

The Commission should have proposed bycatch reduction measures and full catch documentation - which could improve scientific data, assessments and sustainable management in the long-term.

- **Provisions for the TAC for black scabbardfish in CECAF 34.1.2 to be set by Portugal by 15th March each year.** The proposal highlights the TAC should be consistent with the objectives of the CFP.

Finally, Pew notes that the Commission did not make an initial proposal for four deep-sea shark TACs (in areas 5-9; in CECAF 34.1.1, 34.1.2 & 34.2; in area 10; and in area 12). However, an unpublished Commission non-paper proposal was produced for consideration by member states prior to the November Council. Pew would recommend that to improve transparency all such non-papers should be made publicly available.

Failure of Council to end overfishing of certain deep-sea stocks by 2020

On 19th November 2018, the Council of ministers decided on deep-sea fishing limits for 2019 and 2020¹⁵. Ministers agreed to:

- **Remove six TACs associated with deep-sea stocks.** This continued the trend of removing catch limits entirely or adding species to the prohibited list – thereby avoiding the implementation of the CFP landing obligation. Since 2013, 10 of 22 catch limits for deep-sea stocks have been removed¹⁶. This does not address environmental impacts or the potential for overfishing, as bycatches and discards can continue. No alternative management measures or fully documented at-sea catch monitoring were agreed by ministers. We welcome, however, the statement by the Commission that they will continue monitoring the development of these stocks in light of the best available scientific advice¹⁷. Moreover, we recommend that the Commission and member states reconsider the ICES scientific advice to evaluate and introduce management measures¹⁸, or reintroduce the TACs, to ensure the CFP precautionary approach and MSY objectives can still be met for these stocks.
- **Set at least three¹⁹ of the remaining deep-sea TACs exceeding scientific advice on precautionary catch limits for 2019 and 2020, and two of these higher than the Commission proposal.** Pew is concerned that ‘bycatch TACs’ were set at levels exceeding scientific advice on catch for alfonsinos, red seabream in areas 6-8 and roundnose grenadier in area 3, and without appropriate measures to minimise bycatches, monitor the bycatch provisions and ensure that all catches are landed (e.g. via fully documented fisheries)²⁰. It is also a concern that the Council agreed to set the ‘bycatch TACs’ for alfonsinos and red seabream in areas 6-8 higher than the Commission’s proposals. However, we welcome the joint statement by France and Spain for red seabream in areas 6-8, committing to propose (by 1st March 2019) and implement coordinated national plans necessary for rebuilding the stock, including considering specific measures defined in the statement²¹. Moreover, Pew welcomes that these plans will be scientifically evaluated by the scientific and technical committee for fisheries (STECF).

¹⁵ [Council Regulation \(EU\) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks.](#)

¹⁶ Catch limits for greater forkbeard (4 TACs), black scabbardfish (1 TAC) and roundnose grenadier (1 TAC) were removed in 2018. Orange roughy (3 TACs) and deep-sea sharks (1 TAC) were removed in 2016 but were classified as prohibited species.

¹⁷ [COUNCIL REGULATION fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks - Statements.](#)

¹⁸ [ICES \(2018\): EU request on the role of the Total Allowable Catch instrument for fisheries management and conservation of selected deep-water stocks.](#)

¹⁹ We note that for some black scabbardfish and roundnose grenadier TACs it is not possible to directly compare the TAC set with the scientific advice on catches due to stock and TAC area ‘mismatch’ issues (see section above – ‘European Commission proposal on deep-sea fishing limits for 2019 & 2020’).

²⁰ [Recovering fish stocks and fully implementing the Landing Obligation, 2018](#) (see pages 5-6 and Annex).

²¹ [COUNCIL REGULATION fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks - Statements.](#)

Pew recommends that the plans should minimise bycatches, reduce fishing mortality, be compatible with the CFP's MSY objective and encourage stock recovery in the shortest possible timeframes. All vessels with bycatches of the stocks concerned should have full catch monitoring and documentation.

- **Set a further two TACs at levels that appear to exceed ICES scientific advice.** This includes the TACs for black scabbardfish in areas 8-10; and, roundnose grenadier in areas 8-10 & 12. As previously noted, 'mismatch'²² makes it difficult to assess whether the TACs set are in line with the underlying scientific advice. ICES advice for subcomponents of these stocks appear to be exceeded in some cases, yet the total proposed TACs do not appear to exceed total catch advice.
- **Set at least two²³ deep-sea TACs not exceeding ICES scientific advice for 2019 and 2020.** Pew welcomes that the TACs for red seabream in area 9 and red seabream in area 10 were set not exceeding scientific advice.
- **The Commission's proposed combined TACs for roundnose and roughhead grenadier (in areas 5b, 6 & 7; and, in areas 8-10 & 12).** Despite agreeing to bycatches of roughhead grenadier limited to 1% of each member state's quota of roundnose grenadier, the Council did not develop provisions for the monitoring and reporting of these bycatches.

Pew is concerned that there is a risk of a lack of monitoring, control and enforcement of the available 1% quota and a possible lack of accountability for discards past this 1% threshold.

- **The prohibition of landings of deep-sea shark species listed in the regulation, whilst at the same time setting three TACs of seven tonnes for deep-sea sharks.** Deep-sea sharks are highly vulnerable to human exploitation as a result of slow growth and productivity rates, which are among the lowest observed for any animal species. The extreme biological sensitivity of deep-sea sharks and the very limited knowledge of their abundance and distribution require highly precautionary management strategies. ICES have consistently advised that for certain species of deep-sea sharks fishing mortality should be minimized, no targeted fisheries should be permitted and bycatch of deep-sea sharks should be minimized in the mixed species deep water fisheries.

NGOs recommended that in light of the continuing concerns regarding the depleted status of deep-sea sharks, TACs for these vulnerable species should be set at zero. Additionally, the list of managed deep-sea shark species in the regulation should be updated and expanded to include all cartilaginous fish species caught in deep-sea fisheries. Furthermore, a management plan for these species consisting of enhanced monitoring (through fully documented fisheries), selectivity measures and improved data collection should be developed²⁴.

However, for deep-sea sharks two decisions were made by Council: 1) An EU wide prohibition to target, land, tranship or sell species listed in the regulation; 2) exceptions for bycatches in the longline fishery for black scabbardfish, for which three TACs of seven tonnes were approved.

These decisions are insufficient to protect vulnerable deep-sea sharks as:

- Deep-sea sharks are mainly caught as bycatch in other fisheries, and the prohibition will therefore not lead to a reduction in mortality;

²² For more details, refer to ClientEarth (2016). [Mismatch between TACs and ICES advice – Why it is an issue and how to address it.](#)

²³ In addition, TACs for black scabbardfish in areas 5-7 and 12; and, roundnose grenadier in areas 5b, 6 and 7 do not appear to exceed ICES scientific advice. However, 'mismatch' makes it difficult to assess whether the TACs set are in line with the underlying scientific advice. ICES advice for subcomponents of these stocks appear to be exceeded in some cases, yet the total proposed TACs do not appear to exceed total catch advice.

²⁴ [NGO recommendations for deep-sea fishing limits 2019–2020](#) (2018).

- The EU has a very narrow definition of deep-sea sharks for which currently only 11 species and one species group qualify, and neglects deep-sea skates and chimera, the other cartilaginous fish species in deep water;
- In 2016 three TACs of 10 tonnes each were set for deep-sea sharks meant to cover bycatches in the longline fishery for black scabbard fish. The TACs were set with the objective and conditions to facilitate species-specific data gathering on these species. However, there is no evidence these conditions were met by the member state concerned. The concerns raised by Pew in 2016 regarding not making these requirements mandatory continue to apply²⁵.

Furthermore, in the run up to the November Council 85 scientists signed a letter²⁶ asking the Commission and member states for a management plan for all deep-sea cartilaginous fish species that would include concrete steps for increased data collection, improved gear selectivity and avoidance of high abundance areas. The Council has ignored best available scientific advice²⁷ and this call from 85 scientists. Pew recommend that the Commission and member states introduce the necessary plans to ensure the CFP's objectives are met for these stocks.

Conclusion

These decisions pose an unacceptable level of risk to the health of these vulnerable fish stocks and ecosystems. The CFP's MSY and precautionary approach objectives have not been met for deep-sea fish stocks. Moreover, decisions taken to set certain TACs exceeding precautionary scientific advice and to remove catch limits altogether without the introduction of supporting or alternative conservation management measures appear to be inconsistent with the 'Precautionary Principle', an EU and internationally accepted principle of managing risks of adverse effects on the environment²⁸.

An evaluation should be undertaken to assess whether the European Commission and Council are, in the case of EU fisheries management, falling short of EU obligations relating to the application on the precautionary principle as required under of Article 191(2) of the Treaty on the Functioning of the European Union, as well as EU²⁹ or international laws, agreements³⁰ or guidelines relevant to the management of deep-sea fisheries.

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²⁵ [Pew Response to Deep-Sea Fishing Limits 2017-2018](#) (2016).

²⁶ [Scientists sign letter urging for better management of European deep-sea sharks.](#)

²⁷ ICES (2017). Report of the Working Group on Elasmobranchs, 31 May-7 June 2017, Lisbon, Portugal. ICES CM 2017/ACOM:16. 1018 pp.

²⁸ [Communication from the Commission on the precautionary principle COM/2000/0001 final.](#)

²⁹ [REGULATION \(EU\) 2016/2336 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing \[...\].](#)

³⁰ Resolutions 61/105 and 64/72 adopted by the General Assembly of the United Nations (UNGA).