



Recommendations to the EU on the setting of fishing opportunities for 2022

September 2021

NGO signatories of this document wish to present our recommendations on the setting of fishing opportunities for 2022. Our intent is to assist the European Commission, the Council of the EU and the Member States in making decisions on fishing opportunities that finally end overfishing, significantly contribute to restoring and/or maintaining all fish stocks above healthy levels and safeguard marine ecosystem functions.

Missed 2020 deadline and sluggish CFP implementation

Overfishing and destructive fishing practices have been the main cause of marine biodiversity loss for the last 40 years and also critically undermine the resilience of fish, crustaceans, corals, seabirds, marine mammals, and other wildlife to the impacts of climate change, as well as undermining their capacity to mitigate climate change.¹ Despite the increase in fleet profitability²

¹ IPCC. 2019. [Special Report on the Ocean and Cryosphere in a Changing Climate](#). IPBES. 2019 [Global Assessment Report on Biodiversity and Ecosystem Services](#).

² Communication from the Commission to the European Parliament and the Council (2021). [Towards more sustainable fishing in the EU: state of play and orientations for 2022](#). “Overall, the EU fleet remained profitable in 2020, reporting healthy gross and net profit margins of around 26 % and 14 % respectively or close to €1.5 billion of

and the reduction in overfishing brought about by the Common Fisheries Policy (CFP) in the last decade, the EU still failed to fulfil its legal obligation to end overfishing in all its waters and missed the deadline to harvest all stocks sustainably by 2020.³

The most recent Scientific, Technical and Economic Committee for Fisheries (STECF) report⁴ on the performance of the CFP confirms that Baltic Sea⁵ fish populations are not improving, the Mediterranean and Black Seas remain in dire condition with 83% of assessed stocks subject to overfishing, whereas the Northeast Atlantic and North Sea overfishing rate increased from 38% in 2018 to 43% in 2019. The EU must act now to remedy this situation. The policy's success and the EU's credibility are at stake.

For 2020, when the legal deadline to end overfishing should have been met, fisheries ministers still set 46% of Northeast Atlantic Total Allowable Catches (TACs) exceeding scientific advice. Even in the Commission's proposal that set the basis for these decisions, almost half of the proposed TACs exceeded scientific advice.⁶

Although progress has been made for some commercially important fish populations, a significant proportion of stocks are still poorly managed, with the rationale for this remaining unclear, or less sustainable management being justified by a lack of scientific data, or by their lower economic importance. This goes against the CFP's principles, which require the same policy response and objectives for all harvested species and demand an ecosystem-based approach.

Deprioritising less productive or less comprehensively assessed stocks undermines the EU's claim to be a leader in sustainable fisheries management. This shows that the European Commission and Council have, in the case of EU fisheries management, fallen short of EU obligations relating to the application of the precautionary principle as required under Article 191(2) of the Treaty on the Functioning of the European Union (TFEU),⁷ and of international commitments under the United Nations Fish Stocks Agreement⁸ (UNFSA) and Sustainable Development Goal (SDG) 14.⁹

gross profits and €800 million of net profits. This indicates a remarkable resilience, thanks to a combination of low fuel prices and the sector's efforts in previous years to achieve MSY."

³ R. Froese et al 2020. [Progress Towards Ending Overfishing in the Northeast Atlantic](#). *Marine Policy*.

Also see The Pew Charitable Trusts. 2020. [EU Fisheries Management Still Not in Line With Scientific Advice](#).

⁴ STECF. 2021. [Monitoring the performance of the Common Fisheries Policy](#).

⁵ Also see NGO recommendations on the setting of [fishing opportunities in the Baltic Sea](#) and joint [NGO response to the public consultation on the CFP state of play 2021](#).

⁶ Pew Charitable Trusts. 2020. [Analysis of Fisheries Council agreement on fishing opportunities in the Northeast Atlantic for 2020](#).

⁷ EC. COM(2000) 1 final. 2000. [Communication from the Commission on the precautionary principle](#).

⁸ UN, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. [Link](#).

⁹ Sustainable Development Goals on life under water (SDG14). <https://sustainabledevelopment.un.org/sdg14>

The CFP is a mission not yet accomplished¹⁰ and the Member States and the Commission must decisively improve its implementation. Setting TACs not exceeding scientific advice and applying and controlling the application of the Landing Obligation (LO) are fundamental basics of sustainable fisheries management and must remain top priorities. The CFP must be fully applied if the EU is to deliver on the objectives of the European Green Deal and Biodiversity Strategy, build back better after the Covid-19 crisis and honour its international commitments.

General recommendations on setting fishing opportunities

Persistent political decisions to set fishing opportunities above scientifically advised levels are driving the ongoing overfishing of Northeast Atlantic stocks and are a substantial roadblock in sustainable fisheries management. This continued failure to follow scientific advice is preventing the EU from attaining good environmental status for commercially exploited fish stocks, as required in the Marine Strategy Framework Directive (MSFD) and is of great concern to us. We therefore call on the European Commission and, on the Council, to stop repeating past management errors and to show political strength of will to fulfil the EU's commitments and international agreements related to the setting of fishing opportunities.

The following outlines our main recommendations on the setting of fishing opportunities for 2022:

- Set catch limits not exceeding the best available scientific advice provided by the International Council for the Exploration of the Sea (ICES), both for stocks with advice based on the ICES Maximum Sustainable Yield (MSY) approach and for stocks with advice based on the ICES data-limited precautionary approach.
- Apply the precautionary approach – as defined by the UNFSA and enshrined in the CFP – when setting TACs for stocks where scientific advice based on the MSY approach is not available. This includes the setting of precautionary fishing limits and additional measures to mitigate the risk of overfishing, as well as enhanced monitoring and data collection to enable the definition of MSY reference points or suitable proxies for the stocks concerned.
- For fish caught and assessed within a mixed fishery, factor in ICES mixed fisheries considerations to ensure that all stocks are restored and/or maintained above biomass levels capable of producing MSY. Where the mixed fisheries approach supports a reduction in single species TAC below the MSY advice to safeguard the more vulnerable stocks caught in the fishery, this should be followed.
- For stocks managed through Multi-Annual Plans (MAPs), ensure that F_{MSY} point values are not exceeded.
- In the Mediterranean Sea, Member States should tackle overcapacity in the fleet, and particularly improve control of engine power of trawlers to prevent fraud which seriously undermines the fishing effort regime. Data collection and stock assessments should be improved as well.

¹⁰ For more aspects of the CFP implementation, please see the NGO policy paper "[Common Fisheries Policy: Mission Not Yet Accomplished](#)" (2021). NGOs identify there nine specific challenges (overfishing, especially in the Mediterranean Sea, the LO, harmful impacts of fishing, the transition to low-impact fisheries, harmful subsidies, regionalisation, the external dimension, and climate change) and propose a list of actionable solutions. Also see Pew's "[Lessons From Implementation of the EU's Common Fisheries Policy](#)" (2021).

- Fully implement the Western Mediterranean MAP, particularly through the setting of annual fishing days in line with the scientific advice to tackle excessive fishing effort and achieve MSY exploitation by 2025¹¹ at the latest, timely adoption of bottom-trawling closures to protect fish nurseries and juveniles, and application of selectivity measures such as grids and T90 panels.
- Factor in the widely recognised lack of compliance with the LO by setting TACs lower than the recommended ICES maximum catch advice, to ensure the agreed TAC does not lead to fishing mortality beyond sustainable levels.¹² If quota adjustments are granted to account for previous discards, Member States should make them accessible only to vessels which demonstrate full compliance with the LO.
- In the case of TACs with zero catch advice, ensure that ‘bycatch TACs’ are not granted unless and until the relevant Member States put in place a bycatch reduction or rebuilding plan that effectively reduces bycatches, sets the relevant stocks on a pathway to recovery above levels capable of producing MSY as soon as possible, and is closely monitored and enforced using remote electronic monitoring with cameras (REM).
- Demonstrate the EU’s commitment to taking an ecosystem-based approach for forage fish (including Norway pout, sand eel and sprat) which have an important ecological role in supporting marine wildlife (such as seabirds, marine mammals, and commercial fish species), by accounting for the requirements of dependent predators in the setting of fishing opportunities, i.e., setting these below the advised levels where ecosystem needs are not already fully factored into the scientific advice.
- Set TACs below the maximum catch advice for species particularly vulnerable to the impacts of climate change to provide a “climate buffer” and improve population resilience.
- Do not remove TACs on commercially exploited fish stocks, as the removal of a direct limit on fishing mortality is not a solution to sustainable management. In instances where a TAC has already been removed (e.g., dab and flounder), it should be reinstated. Removing a TAC downgrades the concerned stock from a situation where the catches are capped to limit fishing mortality, to a situation where catches are effectively unlimited. Even if a stock is not directly targeted, removing a TAC could leave a stock exposed to unsustainably high fishing mortalities, such as through high discarding rates.
- Environmental criteria should be prioritised and applied for national allocation of fishing opportunities, for example through incentivising low impact fishing practices and penalizing destructive fishing practices. The European Commission should provide a precise definition of low-impact fishing, monitor compliance with CFP Art. 17, and require the Member States to make the allocation criteria public.
- The Council should increase the transparency of the decision-making process regarding fishing opportunities and apply the recommendations of the European Ombudsman to proactively publish documents related to the adoption of the TAC Regulation at the time they are circulated to Member States or as soon as possible thereafter.¹³ Transparency

¹¹ Deadline to achieve a sustainable exploitation rate by 2025 at the latest, beyond the original 2020 CFP deadline, was established exceptionally for the demersal stocks managed under the in the [western Mediterranean multiannual plan](#).

¹² ClientEarth, 2020. [Setting Total Allowable Catches \(TACs\) in the context of the Landing Obligation](#).

¹³ European Ombudsman, “[Recommendation of the 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)” (2019).

principles should also be applied to the negotiations with the UK, Norway and other coastal states, in line with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).¹⁴

Fish stocks shared with third parties

Many decisions on fishing opportunities for fish stocks of interest for the EU need to be agreed with third parties such as the UK, Norway, or through the Northeast Atlantic Fisheries Commission (NEAFC) Coastal States process. To facilitate the adoption of joint management measures for shared stocks, the EU is a NEAFC Contracting Party and has established bilateral agreements and memoranda of understanding with the main Northeast Atlantic coastal fishing states and the recent Trade and Cooperation Agreement (TCA) with the UK.¹⁵ While such arrangements provide management and negotiation frameworks, annual fishing opportunities still depend on annual negotiations between the EU and these third parties.

To date, international agreements for Northeast Atlantic shared stocks have not always delivered sustainable exploitation of these resources. The frequent lack of agreement on stock shares led to the setting of unilateral quotas which exceed the agreed TAC and/or the scientific advice, resulting in overfishing.¹⁶

The EU and the third parties with which it shares fish resources must become constructive partners in the fight against overfishing, biodiversity and habitat loss and climate change. To achieve this, we urge the EU and coastal states involved in the setting of fishing opportunities for shared stocks to follow the recommendations below:

- Ensure that the legal obligations of the CFP are upheld in the negotiations, i.e., that total fishing limits for all exploited fish populations do not exceed the scientifically advised levels in line with the CFP’s sustainability objectives.
- Include provisions regarding abundance of fish populations, limit reference points for mortality, and precautionary and ecosystem considerations in agreements on shared stocks. Coastal states are urgently called upon to conserve biodiversity, minimise the impact of fishing activity on fish populations, sensitive species and on the whole ecosystem, including on the seafloor, and use scientific knowledge to inform management decisions.
- Implement a genuine precautionary approach as defined by the UNFSA in agreements on shared stocks. When the available data and information are uncertain, unreliable, or inadequate, decision makers should apply more cautious management that safeguards vulnerable or data-limited stocks and habitats, and a lack of scientific certainty cannot preclude management action.

Also see: [Transparency International, “Overfishing in the Darkness”](#) (2016).

¹⁴ UNECE. 1998. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ([Aarhus Convention](#)).

¹⁵ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland of the other part. 2020. [Link](#).

¹⁶ This situation applies to key commercial stocks to the EU such as Northeast Atlantic mackerel, Atlanto-Scandian herring and blue whiting.

- Avoid unilateral processes. The United Nations Convention on the Law of the Sea¹⁷ (UNCLOS) determines that collaboration on management must be multilateral when more than two coastal states have a stake in a given fish population, or fishery, in order to ensure transparency across all relevant states.
- Maintain the transparency obligations and rights under the Aarhus Convention in the management of shared stocks. Publish the underpinning scientific advice, management proposals, negotiations, positions of the parties and decisions for public scrutiny, with access guaranteed for all stakeholders.
- Apply long term management as the underlying approach to fisheries management. Although details will need to be revisited regularly, all stakeholders benefit from agreeing to, and working toward, long-term sustainable management objectives. This includes stable sharing arrangements, harvest strategies that include precautionary harvest control rules for setting catch limits, a robust monitoring and evaluation scheme, control measures and fight against IUU fishing, a periodic review process, and any necessary mechanisms to transition from previous arrangements to a new system. For certain at-risk species and stocks, immediate emergency measures may be necessary.
- Set explicit standards for the scientific advice based on which decisions will be made by Coastal States, using the best available, peer-reviewed scientific advice from independent institutions recognised at the international level. Published scientific advice from ICES should be used as the basis for management.
- Contribute to the timely implementation of the bilateral agreements and memoranda of understanding with the main Northeast Atlantic coastal fishing states. Priority should be given to the sustainable management objectives and principles, the precautionary approach and agreeing TACs in accordance with the best available scientific advice by ICES and governed by the MSY objective, as required for example under the TCA.
- Resolve the sharing issues of pelagic stocks (mackerel, herring, and blue whiting) with the contracting parties, and ensure that the overall catches for each stock do not exceed scientific advice and in no case lead to unilateral quota increases.
- In case no agreement on TACs for stocks shared with the UK is reached by the 20th of December 2021, provisional unilateral TACs must not exceed the respective party's share of the maximum catch level advised by ICES, as per Article FISH.7.2 of the TCA. This represents an important safeguard to ensure that stocks are not fished unsustainably where no agreement is reached.

Mixed fisheries and interspecies considerations

Achieving sustainable exploitation of each stock in fisheries targeting multiple species (mixed fisheries) can represent challenges, particularly when dealing with overfished stocks. Demersal EU fisheries are an illustrative example of this issue with a diversity of species and fisheries inducing numerous biological and technical interactions.

So far, EU management decisions for mixed fisheries have mostly prioritised the exploitation of the most productive and/or economically profitable stocks, disregarding the consequences of this approach on the most vulnerable stocks or associated species. This is particularly concerning

¹⁷ UNCLOS. 1982. [United Nations Convention on the Law of the Sea](#).

as in most cases this results in fishing mortality rates exceeding scientifically advised levels for at risk stocks, to avoid the closure of a fishery. This approach perpetuates the depletion of vulnerable populations, when the focus should be on rebuilding depleted stocks which would avoid fisheries closures in the long-term.

There are multiple measures that can be implemented simultaneously to mitigate these challenges and reduce fishing pressure where necessary. Using a combination of the tools below, fishers and managers should be able to reduce the likelihood and mitigate the impact of “choke” situations whilst still fishing within MSY limits. The EU should ensure that all these options are used to their maximum effect, particularly for at-risk species and stocks. These include:

- Use mixed fishery MSY advice provided by ICES to assess the compatibility of single-stock TACs with the ambition to safeguard the most vulnerable stock(s) caught in the fishery.
- Set TACs below the ICES single-stock maximum catch advice for certain stocks to account for mixed fishery interactions, and to ensure that no stocks in the fishery are fished above scientific advice.
- Adopt spatial measures to reduce fishing pressure on more vulnerable species, including temporary and permanent closures, real-time closures and ‘move-on’ rules.
- Ensure independent, reliable monitoring and full documentation of catches through observer coverage and Remote Electronic Monitoring (REM) to better predict catch composition in mixed fisheries.
- Mandate the use of the best available technology and practices to improve the selectivity of fishing activity. A list of authorised mitigation measures should be made available for each active mixed fishery to support fishers. Inclusion of selectivity measures employed during fishing activity should be included within the legal requirement of logbook reporting to track progress and place the burden of proof onto fishers to prove they are doing everything possible and practicable to minimize unwanted catches.

Landing obligation challenges

Since the LO came fully into force in 2019, TACs have been set based on total catch advice (albeit with some deductions for exempted discards), rather than landings advice as they used to before 2015. Despite the European Commission’s efforts, it is broadly recognised that non-compliance across Member States is widespread.¹⁸ Setting TACs based on catch rather than landings advice, while illegal discarding continues, allows for unsustainable catches potentially far beyond scientific advice.¹⁹ Poorly implementing the LO poses significant risks to sustainable fisheries in the EU and decisive steps must be taken to remedy the current situation.

Furthermore, there are industry voices who claim that failures of implementation mean that the policy is unworkable, and that a reform of the CFP should eliminate the LO. NGOs are of the opinion that the LO has not been given a chance to work and that the underlying problems (such

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

¹⁹ L. Borges. 2020. [The Unintended Impact of the European Discard Ban](#). ICES Journal of Marine Science. Also see: [ClientEarth’s](#) and [Our Fish’s](#) briefings on the LO.

as a lack of fishing gear selectivity and effective avoidance of unwanted catches) can and must be tackled under the existing framework. To avoid negative effects of the failure in the implementation of the LO on the setting of sustainable catch limits we recommend the following:

- Factor in poor compliance with the LO by proposing and setting TACs lower than the ICES maximum catch advice, to ensure that the agreed TACs do not lead to fishing mortality beyond sustainable levels, even to account for so-called “top-ups” and exemptions to the LO.
- Make access to quota “top-ups” conditional on demonstrated vessel compliance with the LO, notably through REM and/or appropriate independent observer coverage.
- Introduce more robust controls such as with remote electronic and camera monitoring. CCTV projects, such as the ongoing Danish camera project in the demersal fishery in Kattegat, show that CCTV can be effectively used to ensure compliance with the LO. Illegal discarding should be treated as a serious infringement.
- Create and promote quota redistribution solutions, beyond traditional swaps, to avoid closing fisheries if quota is available elsewhere.
- Assess the probability of early fisheries closures²⁰ and ensure that Member States’ data on implementation of the LO improves and informs annual fishing opportunities. If a high risk of early closures remains, even after all possible measures have been applied, an effective bycatch reduction or elimination plan should be implemented by Member States, if necessary, with support from the European Maritime Fisheries and Aquaculture Fund (EMFAF).

Depleted stocks with zero or very low catch advice

Recent data published in 2021 by ICES highlights the ongoing critically depleted status of several key fish stocks, many of which are now jointly managed with the UK. Examples of these severely depleted stocks include West of Scotland cod, Celtic Sea cod, West of Scotland and West of Ireland herring, Irish Sea whiting, and North Sea cod²¹ among others. For most of these stocks, the ICES advice is a strong reduction in catches, or even zero catch. With climate change also likely to be affecting the resilience of some fish populations²², effective efforts to recover these stocks are needed more urgently than ever.²³

We are extremely concerned that limited effort has been made by all parties involved in the management and exploitation of these stocks to apply effective recovery measures. Any prospect of recovering these fish populations appears unlikely under the current unsustainable status quo conditions. These stocks are a public resource and recovering them is not only a necessity to

²⁰ For choke mitigation tools, please see the 2018 NGO paper [“Recovering fish stocks and fully implementing the Landing Obligation”](#).

²¹ ICES advice for the referred depleted stocks: [West of Scotland cod, Celtic Sea cod, West of Scotland and West of Ireland herring, Irish Sea whiting and North Sea cod](#).

²² Drinkwater, K.F. 2005. The response of Atlantic cod (*Gadus morhua*) to future climate change. ICES Journal of Marine Science, Volume 62, Issue 7, 2005, Pages 1327–1337. <https://doi.org/10.1016/j.icesjms.2005.05.015>

²³ Sumaila, U.R. and Tai, T.C. 2020. End Overfishing and Increase the Resilience of the Ocean to Climate Change. Frontiers in Marine Science. <https://doi.org/10.3389/fmars.2020.00523>

contribute to a healthy resilient marine ecosystem, but it will also provide long-term benefits to dependent coastal communities.

Managing mixed fisheries containing stocks that have received zero or very low catch advice presents several challenges. However, there are steps that can be taken to reduce unwanted catches and minimise the impacts of fishing on depleted stocks. Many such measures, presented in the advice below, would also help to achieve sustainable mixed fisheries generally. With specific regard to low/zero catch advice stocks, we recommend the following:

- Follow the scientific advice provided by ICES and set catch limits for depleted stocks accordingly. The EU should prioritise the recovery of depleted stocks over short term profit maximisation, as this is in the long-term interest of coastal communities and the marine environment.
- Prioritise the recovery of depleted stocks particularly in cases where ‘bycatch TACs’ are adopted, and do not allow catches unless and until the relevant management authority has a rebuilding plan or a multi-year management strategy in place with clear recovery targets, timeframes and bycatch reduction strategies to achieve them.
- Ensure that fisheries using ‘bycatch TACs’ are fully documented using REM and/or appropriate independent observer coverage, and strong remedial measures are in place.
- Prioritise the recovery needs of these stocks in management measures for mixed fisheries by ensuring that catches under no circumstances exceed the scientific advice, rather than allowing the full exploitation of the possible fishing opportunities of healthy stocks in the same fishery²⁴.
- Request ICES to provide additional mixed fisheries scientific catch scenarios focusing on options which allow vulnerable stocks to rebuild to inform fisheries management of the actions and/or reductions in healthy stock TACs which would be required. Evaluation of such scenarios could present options, which avoid immediate fisheries closures while still allowing depleted stocks to recover over the required period.
- Adopt spatial measures to reduce fishing pressure on vulnerable bycatch species, including temporary and permanent closures, real-time closures and ‘move-on’ rules.

Environmental organisations remain committed to the objectives of the Common Fisheries Policy. We shall continue to scrutinize the progress in ending overfishing as we urge the European Commission, the Council of the EU, and the Member States to implement the CFP and finally deliver the EU’s transition to fully sustainable fisheries.

²⁴ ClientEarth, 2020. [Ask the right question, get the right answer: Scientific advice for bycatch or non-targeted stocks that have zero catch advice.](#)

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