



**BirdWatch Ireland Submission on COM (2018) 732  
Commission Proposal for Fishing Opportunities for 2019**

2018



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A report by

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## BirdWatch Ireland Submission on COM (2018) 732 Commission Proposal for Fishing Opportunities for 2019

*A consultation response from BirdWatch Ireland to the European Commission proposal for a “Council Regulation fixing for 2019 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>1</sup>.”*

### Introduction

This submission is on behalf of BirdWatch Ireland. We welcome the opportunity to comment on the Commission’s Proposal for fishing opportunities for 2019. We trust that our views will be taken into account and inform the Governments Sea Fisheries Sustainability Impact Assessment.

We are supportive of the main objective of the proposal which in the words of the Commission is that “*all fishing opportunities regulations must limit the harvesting of the fish stocks to levels which must be consistent with the overall objectives of the Common Fisheries Policy (CFP).*” By following the best available scientific advice when agreeing fishing opportunities for the year ahead the Commission and Member States can rebuild fish stocks, ensuring fisheries are ecologically, economically and socially sustainable. The objective of the Commission’s proposal is also in line with the vision espoused in the current Irish programme for government<sup>2</sup>, namely that the CFP is “*forward looking and progressive*”. As such the government have committed to “*setting quotas at Maximum Sustainable Yield and on a scientific basis, implementing the obligation to land, and an effective system of Regional decision making.*”

We call on Minister for Agriculture, Food and the Marine Michael Creed and European Commissioner for Maritime Affairs and Fisheries Karmenu Vella to adopt fishing opportunities for 2019 which limit the exploitation of fish stocks to levels which are consistent with the overall objectives of the CFP and in particular the objective (Article 2.2) of ending overfishing for all fish stocks by 2020. It is in support of this objective that we wish to constructively highlight in our submission aspects of the Commission’s proposal which are not consistent with the full implementation of the CFP. The trajectory of progress towards the CFP’s 2020 deadline is currently insufficient to ensure full compliance with the CFP. We wish to highlight some of the short-comings in past negotiations and the opportunities associated with restoring fish stocks within the EU. It is in this context that we urge all parties to redouble efforts to end overfishing at this year’s December AGRIFISH Council.

We believe it is in the best interests of all stakeholders that the biomass of fish stocks are restored to levels that can support Maximum Sustainable Yield (MSY). This will support the restoration and conservation of our marine

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<sup>1</sup> European Commission (2018) COM(2018) 732 final fixing for 2019 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

<https://bit.ly/2PuF3QI>

<sup>2</sup> Irish Government (2016) A Programme For Partnership Government <https://bit.ly/2zbYAUt>



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environment which in turn will help to underpin vibrant fisheries which can support a prosperous blue economy which will benefit dependent coastal communities.

**TACs agreed in December 2018 must reflect the reality that overfishing is negatively impacting on our environment and society. The progress that has been made to date to end overfishing has been inadequate. An ambitious agreement is therefore necessary this December in order to put the EU on track to fulfil the CFP's obligation to end overfishing by 2020.**

### Background – CFP Context

The EU's reformed Common Fisheries Policy<sup>3</sup> entered into force in January 2014. The political agreement between the EU Council of Ministers and the European Parliament reflected the will of the EU's citizens that European fisheries policy needed radical reform. This new dawn in EU fisheries policy was underpinned by overwhelming evidence and wide consensus that overfishing must end and that the failure to do so would have grave consequences for the fishing industry, the environment, and the food supply chain. The announcement marked the culmination of a process, which began in 2009 with extensive public consultation.

The achievement of Maximum Sustainable Yield (MSY) and the restoration and management of fish stocks form the guiding principles of the reformed CFP. Setting TACs which do not exceed scientific advice will secure the best economic, social and environmental outcomes for European citizens. Following scientific advice when setting the Total Allowable Catch (TACs) for fish stocks in the North East Atlantic and the North Sea for 2019 is fundamental to achieving the objective of the CFP to end overfishing and to restore and maintain all fish stocks above levels capable of producing MSY. More specifically, Article 2.2 of the CFP requires 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."*

The target laid down by Article 2.2 of the CFP calls for fish stocks to be at levels that can support the MSY 'by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.' The EU has failed to make the 2015 deadline. The legislation stipulates that a deferral of the 2015 deadline is allowed only in exceptional cases when meeting it *"would seriously jeopardise the social and economic sustainability of the fishing fleets involved"* (CFP Recital 7). The European Commission and Member States have never submitted adequate socio-economic impact assessments to justify the failure to make the 2015 deadline. The only socio-economic evidence that has been published to date is from Member States on the impact of the Commission's TAC proposal. In addition, the analysis that have been presented are critically undermined by the myopic focus on the short-term economic impacts of ending overfishing, failing to consider the long-term socio-economic benefits of stock recovery; of which sustainable TACs are the implementing tool.

In the Irish Governments response to the Commission on fishing opportunities for 2017 it was stated that the *"proposal moves us in the right direction but must emphasise that the implementation of our MSY targets should be implemented in a rational and progressive manner. In line with the CFP Ireland considers that we will need to phase-*

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<sup>3</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013

<https://bit.ly/1dcv0FM>



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*in delivering MSY if its immediate application seriously jeopardises the social and economic stability of our fishing fleets and the economies of vulnerable coastal communities<sup>4</sup>.* No evidence was provided to support the socio-economic arguments that were made in relation to the Commission's proposal in general or to specific stocks (e.g. Cod VII bc, ek, VIII, IX, X, 3.4.1.1, Nephrops VII, Common Sole VIIa) within the submission.

## The December AGRIFISH Council and Overfishing

This year fisheries ministers will once again meet in Brussels in December to negotiate TACs in the North East Atlantic and the North Sea for commercially fished species. These TAC's are the tools which determine the exploitation of fish stocks and therefore play a critical role in the implementation of the CFP. Negotiating TACs which do not exceed scientific advice is clearly a precondition if Ireland intends to play a positive role in restoring and maintaining fish stocks above biomass levels capable of delivering MSY. The past failure of both the Commission and fisheries Ministers to follow ICES advice when agreeing TACs has driven overfishing in the EU. According to the New Economics Foundation (NEF) who have analysed December Council decisions between 2001 and 2017<sup>5</sup>, on average seven out of every ten fishing limits set by Member States were above the limits advised by scientists. Whilst the percentage by which TACs were set above advice declined throughout this period (from 42% to 12%), the proportion of TACs set above advice did not.

One of the NEF's conclusions was that *"Member States are the main drivers of overfishing, either because they are actively pushing for fishing limits to be set above scientific advice or they are failing to prevent it."*

In their opinion recurring issues identified within past negotiations which drive overfishing include:

- a lack of transparency in the negotiations
- Decision making based on short-termism
- Effective lobbying from industry
- Perverse competition between member states

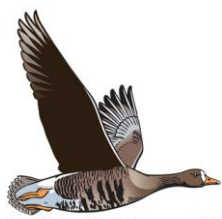
During last year's December Council fisheries ministers continued to agree fishing limits for 2018 that were above the scientific advice. Of the fishing limits analysed by The Pew Charitable Trusts 44% were set exceeding the scientific advice. This is however a reduction from 54 % set exceeding advice in 2017, and 57 % set exceeding advice in 2016<sup>6</sup> (Figure 1).

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<sup>4</sup> Irish Submission in response to COM(2016) 698 final Subject: Proposal for a COUNCIL REGULATION fixing for 2017 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 <https://bit.ly/2zaxXo4>

<sup>5</sup> NEF (2017) Landing The Blame: Overfishing in the Atlantic 2017 <https://bit.ly/2hR5XIW>

<sup>6</sup> PEW (2018) Analysis of Total Allowable Catches in the north-east Atlantic for 2018 <https://bit.ly/2Tgfuka>



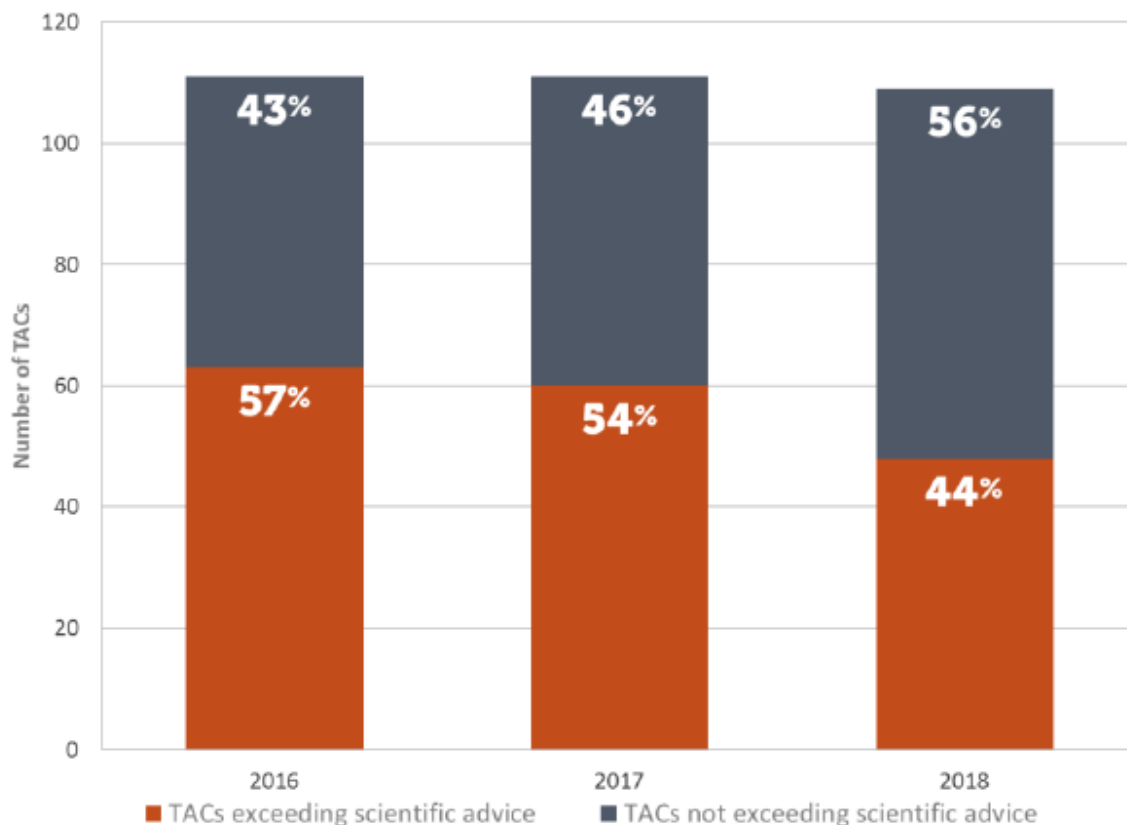
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**Figure 1: How TACs set by the Council in North-Western European waters compare with the scientific advice on fishing limits (2016-18)<sup>7</sup>**

Another report commissioned by The Pew Charitable Trusts shows that while the extent to which fish stocks are being overfished improved between 2013 and 2017, the number of overfished stocks remains too high<sup>7</sup>. This is in line with the findings of the Scientific, Technical and Economic Committee for Fisheries (STECF)<sup>8</sup> who found that while stock status has significantly improved in the North East Atlantic progress has slowed in the last few years and many stocks remain overfished and/or outside safe biological limits. In their opinion the progress that has been achieved seems too slow to ensure that all stocks will be rebuilt and at MSY by 2020.

<sup>7</sup> Poseidon Aquatic Resources Management Ltd., "Taking Stock: Progress Towards Ending Overfishing in the European Union" (2017) <https://bit.ly/2zZ3wUY>

<sup>8</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – Monitoring the performance of the Common Fisheries Policy (STECF-Adhoc-18-01). Publications Office of the European Union, Luxembourg, 2018, ISBN XXXXXX, doi:XXXXXXXX, PUBSY No



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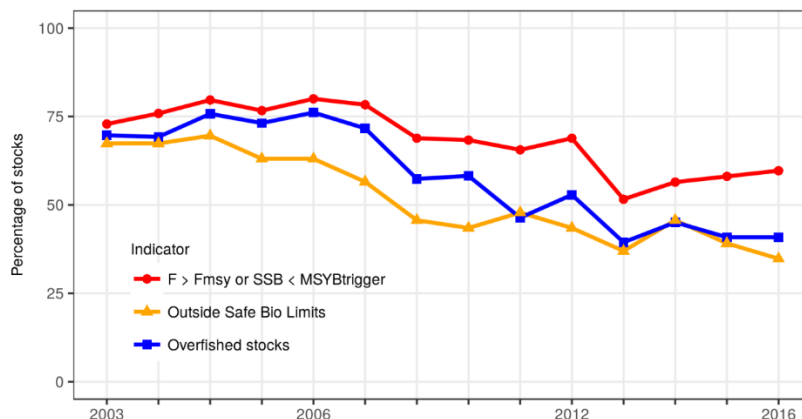
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**Figure 2: Trends in stocks status, 2003-2016. Three indicators are presented: Blue line: the proportion of overexploited stocks (F>FMSY) within the sampling frame (65 to 71 stocks fully assessed in the ICES area, depending on year); Orange line: the proportion of stocks outside safe biological limits (F>Fpa or B<Bpa) (46 stocks); Red line: F>FMSY or SSB <MSYBtrigger<sup>8</sup>**

## Ireland’s Role in the December Council

Based on the NEF’s assessments of EU December Councils between 2001 and 2017 Ireland has historically played a negative role in the negotiations. For 2018 Ireland was the country with the highest percentage of fishing quotas in excess of scientific advice. Ireland was involved in decisions that allow fishing at 18% above Maximum Sustainable Yield. The United Kingdom, Belgium, and the Netherlands respectively agreed fishing limits 15%, 8% and 8% above scientific advice.

The UK, Ireland, the Netherlands, and Denmark were the worst offenders in terms of the total tonnage of fishing limits set above advice. According to the NEF Ministers representing these Member States have received the largest quota increases above scientific advice in terms of tonnes and are therefore the most responsible for impeding the transition to sustainable fisheries in the EU.

Ireland has negotiated fishing quota for 2018 31,127 tonnes above scientific advice. This now means that Ireland has received fishing quota a total of 703,127 tonnes above scientific advice since 2001.<sup>9</sup> Ireland now must surely be considered among the worst offenders when it comes to the percentage of fishing limits set above scientific advice, having over the previous two years also ranked worst (26% above advice for 2017 fishing quotas)<sup>10</sup> and joint worst (10% above advice for 2016 fishing quotas)<sup>11</sup>.

<sup>9</sup> NEF (2017) Landing The Blame: Overfishing in the Atlantic 2017 <https://bit.ly/2hR5XIW>

<sup>10</sup> NEF (2017) Landing The Blame: Overfishing in the Atlantic 2017 <http://bit.ly/2zngexE>

<sup>11</sup> NEF (2016) Landing the blame: overfishing in the Northeast Atlantic 2016 <https://bit.ly/2hI7x5V>



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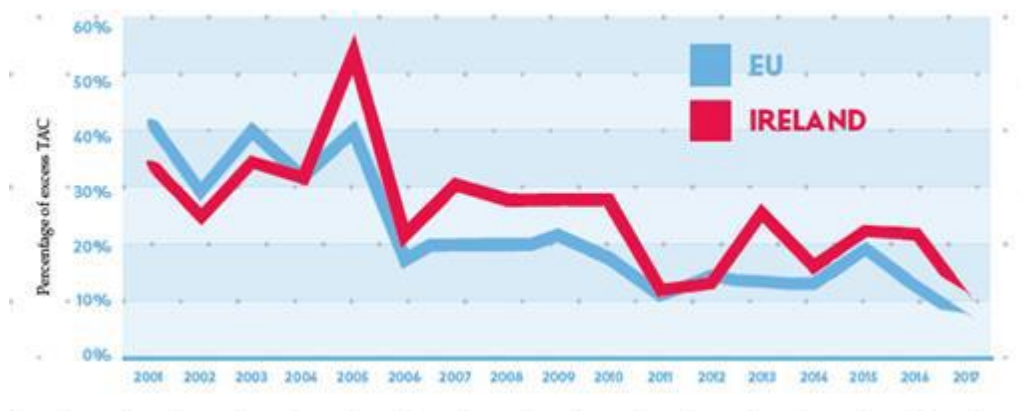
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**Figure 3: Percentage of Irish & EU TACs in excess of scientific advice in EU waters<sup>12</sup>.**

As in previous years Minister Michael Creed celebrated the fact that Ireland had secured that right for the fishing industry to overfish certain stocks in 2018. On a positive note however we commend the Minister on highlighting the economic benefits which have accrued due to the ongoing recovery of Irish shared stocks following years of conservation efforts stating that *“the rebuilding of many of our stocks is also demonstrated by a 34% increase in our whitefish quotas off the north-west coast and a 64% increase in the Irish Sea compared to 5 years ago - both areas where stocks were depleted...The cod stock in particular was in a near state of collapse since 2000. The work done to rebuild this stock and the haddock stock has paid off this year with significant increases for both quotas for our East coast fleets.”*<sup>13</sup>

The Minister also recognised the need to make progress towards MSY stating that *“the progress we have made this year will continue the journey we are all on to rebuild our fish stocks which underpin the future of our industry and our coastal communities.”* We would encourage the Minister to follow ICES advice wherever possible and as a bare minimum to ensure that TACs agreed for 2019 are consistent with having all stocks at MSY by 2020. It is in this context that we wish to further highlight the economic benefits of sustainable fisheries management.

## The Economic Benefits of Achieving MSY

Much of the economic debate around adopting sustainable fishing limits has in the past focused on the short-term economic cost of reducing fishing pressure and transitioning to MSY rather than on the economic benefits of reaching MSY. This is clearly apparent in the Irish Governments submissions to the European Commission’s proposals on fishing opportunities over recent years. The Irish Governments economic arguments are based on the annual ‘Sustainability Impact Assessments’ prepared by BIM<sup>14</sup>. These assessments only calculate the cost of the Commissions proposed TAC reductions for the year ahead and fail to consider the medium to long term economic gains in achieving MSY. This evidence according to the New Economics Foundation<sup>9</sup> is methodologically weak as it

<sup>12</sup> NEF (2017) A Fair Fishing Deal for Ireland – How to Manage Irish Fisheries in the Public Interest

<http://bit.ly/2zpe4NY>

<sup>13</sup> DAFM (2017) Creed Delivers 8% Increase in Value of Whitefish Quotas for Irish fishermen <https://bit.ly/2BZGWcl>

<sup>14</sup> BIM (2013) Fisheries TAC’s and Quotas 2013 Sustainability Impact Assessment <https://bit.ly/2zcfERw>



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omits cost reductions, quota uptake, and price elasticities. The Departments 2018 Sustainability Impact Assessment<sup>15</sup> likewise highlighted the short-term socio-economic impacts of the Commission's proposal on the fishing and processing sectors without also highlighting the long-term economic benefits of restoring fish stocks to Bmsy. The failure of the Commission to include the Hague preferences in their proposal was also highlighted as a negative without considering the fact that quota top-ups would potentially result in fishing above Fmsy, which would result in declining biomass with long-term negative socio-economic impacts.

Fish are one of Ireland's and the EU's greatest renewable resources, if they are managed correctly. Aside from their innate value as living things and fundamental components of marine ecosystems fish can provide multiple benefits to society in the form of food, revenue and jobs. Overfishing results in smaller catches, lower revenues and fewer jobs. As the World Bank have put it "*biological overfishing has led to economic overfishing, which creates economic losses*<sup>16</sup>."

MSY from an economic standpoint must be the goal which we should strive for if we wish to achieve the point of greatest economic return<sup>17</sup>. Fishing at MSY levels which deliver sustainable catches is a precondition to landing more fish. According to the World Bank globally fisheries accrued an economic loss of about \$83 billion in 2012, compared with what could have been generated by managing fisheries in line with scientific advice<sup>16</sup>. From an EU perspective it is estimated that in 2015 that by failing to exploit fish stocks below MSY the EU caused a total loss of 8.6 million tonnes of catch and €7.1 billion in revenues over the previous five-year period<sup>18</sup>.

According to research carried out in 2016 on the benefits of pathways to MSY for EU Northeast Atlantic fisheries, the study found achieving MSY for fish stocks in the Northeast Atlantic fisheries could generate about €4.64 billion in operating profit annually<sup>19</sup>. From an Irish perspective the economic benefits relative to 2012-14, of rebuilding EU fish stocks to MSY could provide Ireland with an additional 200,000 tonnes of fish landings annually. This would generate an additional €270 million in earnings potentially supporting 2,200 new jobs<sup>12</sup>.

Based on the STECF's most recent annual economic assessment of EU fisheries the revenue generated by fisheries in the NE Atlantic in 2016 was estimated at €2.66 billion, an increase of 8% from 2015<sup>20</sup>, with the Irish fleet generating €265 million. The net profit generated by the EU fleet was estimated at €417 million, an 84% increase on 2015. The recovery of some stocks is one important factor in the positive outlook for the sector. In this context the arguments which have been made in the past of the economic cost of transitioning to MSY are less convincing.

The positive outlook for the sector means that there can be no excuses in delaying our legal obligations. The economic benefits of rebuilding fish stocks will accrue even in the short-term due to the increased profitability of greater catches and the reduced costs of catching more abundant stocks<sup>16</sup>. Now is an ideal time to take the steps

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<sup>15</sup> DAFM (2017) Fisheries TAC's and Quotas 2018 Sustainability Impact Assessment <https://bit.ly/2Q37u7A>

<sup>16</sup> World Bank (2017) The Sunken Billions Revisited, Progress and Challenges in Global Marine Fisheries <http://bit.ly/2B28Ow2>

<sup>17</sup> Client Earth (2017) Maximum Sustainable Yield in the Common Fisheries Policy – A Legal Briefing

<sup>18</sup> NEF (2015) Managing EU fisheries in the public interest, Results from the Bio-Economic Model of European Fleets <http://bit.ly/2mNcSOD>

<sup>19</sup> Guillen, J et al., (2016). Sustainability now or later? Estimating the benefits of pathways to maximum sustainable yield for EU Northeast Atlantic fisheries. *Marine Policy*, 72, 40-47.

<sup>20</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – The 2018 Annual Economic Report on the EU Fishing Fleet (STECF-18-07). Publications Office of the European Union, Luxembourg, 2018, JRC112940, ISBN 978-92-79-79390-5, doi:10.2760/56158



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necessary to achieve compliance with the CFP. The sooner we transition to MSY the sooner we can enjoy the economic benefits.

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## The European Commission's Proposals for North-East Atlantic TACs in 2019

The European Commission has proposed fishing opportunities for 2019 that the Union establishes autonomously for fish stocks in northern and southern waters of the North-east Atlantic and the North Sea. It also features fishing opportunities resulting from multilateral or bilateral fisheries consultations. We would like to focus our recommendations on the elements of the Commission's proposal which are most relevant to Ireland, however we will also highlight some overarching issues within the proposal and in the TAC setting process which we believe hinder the transparency and accountability in the decision-making process as well as delaying the transition to sustainable fisheries. Our observations on specific stocks will be based on the data contained within the consultation table circulated by the DAFM on the 'Summary quota situation for Irish fishermen for 2019'. This table presents the Commission's proposal on TACs and quotas for fifty stocks of relevance for Irish fishermen.

For TACs of direct relevance to Irish fishermen of the 21 TACs which at the time of drafting 1) the Commission had made a proposal and 2) ICES advice was available, for 16 of these TACs the Commission has proposed fishing limits that exceed ICES advice. No supporting evidence has been provided by the Commission to advocate that the social and economic sustainability of the fleets involved would be seriously jeopardised as per CFP Recital 7.

For TACs of direct relevance to Irish fishermen 5 TACs are subject to a joint political statement by the Council and the Commission<sup>21</sup>. These specific data limited stocks have roll-over TAC proposals which remain fixed unless the perception of the status of these stocks changes significantly. The roll-over TACs proposed exceed the best available scientific advice provided for 2019.

There are 16 "pm" (pro memoria) TACs where no proposal has been published to date. This may be because the stocks in question are shared with third countries and consultations have yet to conclude, or because the scientific advice was not received at the time the proposal finalised, or because the Commission are still finalising their position. Some of these pm TAC's are subsequently proposed using "non-papers", which are not made publicly available. This lack of transparency prevents stakeholders such as ourselves from giving input into the Commission's proposals and therefore undermines public participation and effective consultation. Please raise these ongoing concerns with the Commission so that a more transparent system can be put in place in the future.

## Recommendations to Minister Creed on the proposed TACs for the North-East Atlantic

The CFP entered into force in 2014, with a clear timeframe to achieve the MSY exploitation rate by 2015 where possible and, on a progressive, incremental basis at the latest by 2020. In 2017, 54 percent of TACs set by Council for European stocks in the north-east Atlantic region (60 of 111) exceeded the scientific advice on catch limits. With the

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<sup>21</sup> Council of the European Union document [5232/14](#)



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2020 deadline only two years away ministers need to make substantial progress towards ending overfishing by setting TACs not exceeding scientific advice.

1. The Minister should adopt the 16 TACs within the Commission's proposal which do not exceed the ICES advice on sustainable catches for 2019 i.e. Greater silver smelt 5, 6 & 7; Boarfish (all waters); Herring 7a; Herring 7g-k; Cod 7a; Megrims 6, 5b, 12, 14; Monkfish 6, 5b, 12, 14; Haddock 7 b-k, 8,9, 10 & 34.1.1; Haddock 7a; Hake 6,7, 5b, 12, 14; Plaice 7a; Plaice 7f-g; Common Sole 7a; Common Sole 7f-g; Horse mackerel 4b-c, 7d; Horse mackerel 2a, 4a, 6, 7a-c, 7e-k, 8a, b, d, e, 5b, 12, 14.

2. The Minister should set fishing limits not exceeding the ICES advice for the 14 TACs for which the Commission's proposal exceeds the advice, including those data limited stocks for which TAC roll-overs are proposed. These can be summarised as follows:

- Instances where the Commission's proposal for non-zero TAC stocks is higher than scientifically advised: Pollack 7; Whiting 6, 5b, 12 & 1.
- Instances where the proposed TACs are greater than zero despite scientific advice for zero catch or no directed fisheries and minimisation of bycatch: Herring 5b, 6b & 6aN; Herring 6aS, 7bc; Cod 6a; Cod 7b-c,e-k, 8, 9 & 10 & 34.1.1; Whiting 7a; Blue Ling 2 & 4; Plaice 7h, 7j & 7k.
- Instances where specific data limited stocks have roll-over TAC proposals which exceed scientific advice: Greater silver smelt 3 & 4; Cod 6b 5b 12 & 14; Pollack 6; 5b; 12 & 14; Common sole 7b & 7c; Common sole 7h, 7j & 7k.

3. The Minister should follow the precautionary approach to fisheries management for the 16 "pm" (pro memoria) TACs where no proposal has been published to date: Cod Nor waters of 1 & 2, Cod 7b-c, e-k, 8, 9, 10 & 34.1.1; Haddock 6b; 12 and 14; Haddock 5b and 6a; Whiting 7b - 7k; Blue Whiting 1 - 7, 8a,b,d,e, 12 & 14; Blue Ling 5b, 6, 7; Ling 6, 7, 8, 9, 10, 12, 14; Norway Lobster 6; 5b; Norway Lobster 7; Saithe 6; 5b; 12 & 14; Skates/Rays 6a, 6b, 7a-c, 7e-k; Mackerel 6, 7, 8a,b, d & e; Mackerel 5b; 2a; 12 & 14; Herring 1 & 2; Albacore Atlantic Ocean N of 5N

4. The Minister should ensure that in the absence of scientific advice on sustainable catch limits then suitable conservation and management measures should be put in place to improve data collection and prevent over-exploitation, for instance by means of a TAC reduction. If or when scientific advice becomes available, then the TACs should be set not exceeding that advice.

5. The use of Hague preferences in addition to the sustainable fishing levels advised by ICES would result in overfishing. We therefore ask that the Minister not seek additional TAC which would result in fishing mortality in a given stock greater than the best available scientific evidence provided by ICES or STECF. Overfishing of stocks in 2019 would likely result in reduction in stock biomass heading into 2020 which would require that an even greater reduction in TACs would be required in order to achieve the CFP's MSY objective by 2020. This may have negative socio-economic impacts on the relevant fleets.

## Other issues in the Commission proposal

### i. Transparency

The recurring lack of transparency around the decision-making process both within the drafting of the Commission



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proposal and the final adoption of TACs at the December Council is a recurring concern for NGO's. The lack of transparency around decision making aside from causing confusion hinders accountability and facilitates poor decision making.

We therefore call on the Irish Government to:

- Advocate that a detailed record of the Council negotiations be made publicly available as soon as the TACs have been agreed;
- Ensure that in cases where TACs are set above levels proposed by the Commission and/or advised by ICES that a clear rationale for doing so is publicly available. A record of the scientific and/or socio-economic evidence supporting any such decisions should be included in the text as well as a reference to how the TAC will result in the achievement of the CFP's MSY objective by 2020;
- Ensure that the text includes the steps taken to reach agreement on a given TAC, including information on how setting top-ups, third country shares and mismatches between management areas and stock units were agreed;
- To provide a clear explanation how the risk of increased mortality caused by 'combined' de minimis exemptions and/or bycatch provisions has been or will be accounted for.

### ii. Stock and TAC area mismatch

As in previous years it is unclear due to missing information how the Commission proposed TACs relate to the ICES TAC advice. One reoccurring issue is the mismatches between the geographic areas used by ICES in its stock assessment and the areas used to define a TAC<sup>22</sup>. This lack of transparency makes it extremely difficult for us to adjudge whether the Commission's proposals are adequate to fully meet the objectives of the CFP. In an Irish context this is an ongoing issue for stocks like Whiting 7 b-k, Megrim 7 and Monkfish 7.

### iii. TACs proposed using the ICES combined stocks advice

Combining TACs as proposed by the Commission prevents effective control of the single-species exploitation rates of either stock and could lead to the overexploitation of either species. In an Irish context single stock advice has been given for Megrim 7 and Monkfish 7. ICES have combined two distinct but related fish species. In the case of Megrim 7 ICES have proposed management of Megrim (*Lepidorhombus whiffiagonis*) and Four-spot megrim (*Lepidorhombus boscii*) under a combined species TAC. In the case of Monkfish 7 ICES have proposed management for Black-bellied Monkfish (*Lophius budegassa*) and White-bellied Monkfish (*Lophius piscatorius*) under a combined species TAC.

TACs should be based on the best available scientific evidence for that individual stock. In the case of Megrim 7 one of the stocks has MSY advice while the other is based on precautionary advice. In the absence of scientific advice Minister Creed and other fisheries ministers should follow the precautionary approach to fisheries management for these stocks. In the absence of scientific advice on sustainable catch limits suitable conservation and management

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<sup>22</sup> 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/>



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measures are taken to improve data collection and prevent over-exploitation, for instance by means of a TAC reduction. If or when scientific advice becomes available, then the TACs should be set not exceeding that advice.

In the context of our concerns in relation to ii. Stock and TAC area mismatch and iii. TACs proposed using the ICES combined stocks advice

We call on the Irish Government to:

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

### iv. TACs subject to the joint statement on data-limited stocks

In 2013 the Council and Commission agreed to fix 21 TACs (later five more were added) at the same levels until the end of 2018 unless the perception of the status of any of these stocks changed significantly according to scientific advice (joint statement by the Council and the Commission "Ad Specific Data Limited Stocks")<sup>23</sup>. The Commission reasoned that the TACs of these stocks could be subject to a roll-over because the stocks had "*limited information on stock status and which are of low economic importance, or are taken only as by-catches, or which show low levels of quota uptake.*"

The agreement has served as a barrier to ending overfishing for several years, allowing TACs to be continually set higher than the scientific advice. This approach is contrary to the precautionary and ecosystem-based approaches and to the CFP objectives. Even though this agreement was supposed to end in 2018, the Commission again proposed no change in fishing opportunities for 2019, despite ICES precautionary approach advice for lower catches.

Where there is no scientific advice at all, the Commission claim that a precautionary approach has been followed by proposing TAC reductions of 20% - but this not the case for several TACs without scientific advice on maximum catches.

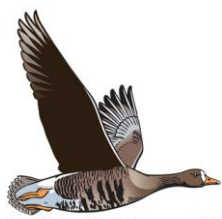
We call on Minister Creed to adopt the CFPs precautionary approach (as defined in Article 4(1)(8)), when finalising the Irish Governments position on these stocks. This would be in line with the requirements of the CFP and would be the most progressive way to ensure that progress is made towards ending overfishing for the stocks in question.

We call on the Irish Government to:

- Set these TACs not exceeding the catch limits advised by ICES;
- Commit to ending overfishing for all harvested stocks by rejecting roll-over proposals in negotiations;
- 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/or additional measures to mitigate the risk of overfishing and enhanced monitoring and data collection for the stocks concerned.

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<sup>23</sup> PEW (2018) Analysis of Total Allowable Catches in the north-east Atlantic for 2018 <https://bit.ly/2Tgfuka>



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## v. The use of F ranges

The North Sea multi-annual plan (NS MAP) entered into force in 2018. In accordance with the MAP fishing opportunities for the stocks listed in its Article 1 are to comply with FMSY 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 FMSY 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. We therefore strongly oppose the use of MSY F upper specified in the MAP.

In any case at the time of writing, the Western Waters MAP is being subject to inter-institutional negotiations. Until the MAP is finalised and published in the Union's Official Journal, the requirements of the basic regulation must be upheld. Therefore, F ranges cannot be considered when setting TACs in mixed fisheries in the EU's western waters.

## vi. Bycatch allowance footnotes

For several years, certain TACs have included footnotes allowing for bycatches of a specified quantity of non-target species (e.g. whiting, mackerel, haddock and boarfish) to be caught in pursuit of the target TAC<sup>22</sup>. As these bycatch footnotes are expressed as a percentage of the target TAC, this additional TAC in addition to the stocks own dedicated TAC can lead to substantial fishing in excess of scientific advice. This is particularly relevant where the target stocks TAC is significantly larger than the bycatch provision stocks. Furthermore, these footnotes do not include any of the safeguards established for inter-species flexibility in Art 15 of the CFP, such as that the bycatch stock needs to be within safe biological limits.

Our concerns are supported by an assessment by STECF in 2017 who concluded that *"the scale of the potential landings of bycatch species arising from pelagic footnote provisions presents very real risks in terms of biology, management and governance of the bycatch species"*...and there is *"potential to significantly increase the mortality on non-targeted bycatch species to levels inconsistent with achieving FMSY and to the extent that stock biomass could be reduced below safe biological limits"*<sup>24</sup>.

In order to avoid overfishing bycatch stocks it is essential that fishing mortality does not exceed the catch limits advised by ICES. Therefore, a directed TAC and any additional bycatch TAC for a given stock should not in combination exceed the sustainable catch limits advised by ICES. Stocks which are subject to these bycatch provisions should as STECF have recommended have a TAC allocated *"through a maximum permitted bycatch (tonnes) of the bycatch species and not on a % basis of the target species TAC"*<sup>27</sup>.

We call on the Irish Government to:

- Ensure that bycatch provision footnotes do not allow for the total catches of the bycatch stocks to exceed scientific advice. The sum of the targeted catches and the bycatch catches should not exceed scientific advice.

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<sup>24</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) - 55th Plenary Meeting Report (PLEN-17-02); Publications Office of the European Union, Luxembourg. p. 57. <https://bit.ly/2K7L53B>



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- Ensure that the use of bycatch footnotes is in line with the safeguards established for inter-species flexibility (Art. 15 of the CFP), such as the need for bycatch stocks to be within safe biological limits;
- Ensure that no bycatch footnotes are adopted for 2019 which would allow fishing mortality of bycatch stocks to exceed scientifically advised levels,

### vii. The implementation of the Landing Obligation and 2019 TACs

Two of the most significant developments made under the reform of the Common Fisheries Policy are the legal requirement to achieve the Maximum Sustainable Yield exploitation rate by 2020, and the obligation to end the practice of discarding fish at sea aka the landing obligation by 1<sup>st</sup> of January 2019. Both are inextricably linked and complementary, and both are necessary to deliver environmentally, socially and economically sustainable EU fisheries. Both objectives were the result of a public movement to place the EU's fisheries on a more environmentally, socially and economically trajectory. Falling short of the full implementation of the CFP is unacceptable.

#### a. Quota top-ups for fisheries under the Landing Obligation

As a consequence of the full implementation of the landing obligation as of 1<sup>st</sup> January 2019, the Commission have proposed TACs on the basis of catch advice instead of previously used landings advice. The proposed TACs should take account of the fact that certain limited discards on the basis of established exemptions will occur, and thus will not be landed and counted against the quotas. Therefore, these amounts are deducted from the catch-based TACs. Where exemptions are in place then stock catch limits are only partially under the subject to the landing obligation. The Commission proposed in its June 2018 Communication that it would mitigate these risks by using "landings advice", but it has not followed this approach in making TAC proposals.

Appropriate quota top-ups for the TACs referring to such stocks are used to account for catches that could previously be discarded but will now have to be landed. However, the top-ups must only cover the discard contribution of the fleet segments under the landing obligation, and should only be used by these fleet segments, since other fleet segments may be able to continue discarding.

In order to ensure that the resulting TACs do not exceed sustainable levels, additional conditions must be applied:

- 1) top-ups should only apply to TACs if methods of full catch documentation for medium, high and very high-risk fleet segments are in place;
- 2) the TACs without top-ups must not exceed the scientific advice on landings (wanted catch advice); and
- 3) the TACs with top-ups must be based on reliable data regarding the discard levels of the relevant fleet segments subject to the LO, and in case of fully subject to the LO should not exceed the total catch advice (wanted + unwanted catch).

We therefore call on the Irish Government to:

- Not assign top-ups in the absence of the scientifically assessed discard data.
- Not to assign top-ups to TACs unless fleets can demonstrate that they have full catch documentation using on-board observers or electronic monitoring systems;



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- Not to grant top-ups that would result in an overall fishing mortality above scientifically advised maximum levels;
- To only apply the top-up percentages to TACs which are set in line with scientific advice before addition of any top-up, as otherwise any excess fishing mortality would be further inflated;
- To indicate clearly which TACs include a top-up, and to specify a) the TAC before top-up, b) the top-up added (in % and tonnes), and c) the final TAC including the top-up.

### *b. The proposed removal of stocks from TAC management*

One of the options which have been proposed by some stakeholders to address problematic 'choke stocks' is the removal of the stocks from TAC management or adding stocks to the prohibited species list. It is unfortunate that the implementation period, which should have been used to apply changes in fishing behaviour and rollout new monitoring and enforcement measures, has instead been squandered by some in an effort to identify exemptions and loopholes to allow enough flexibility for fishing practices to remain unchanged. NGO's have consistently called for greater focus be directed towards identifying solutions, implementing technical measures and increasing the biomass of potential choke species. A counterproductive approach from some stakeholders has undermined the implementation of the LO. This is supported by the findings of the DiscardLess project which found that "*progress towards achieving the objectives of the LO of reducing unwanted catch and changing fishing practices has been imperceptible due to a combination of policy changes and insufficient monitoring and control.*"<sup>25</sup>

These proposals put forward by other stakeholders such as TAC removal and the placing of problematic stock on the prohibited species list would clearly fail to address the root causes of the problem, or simply mask overfishing or discarding rather than implementing the multiple requirements of the CFP. Regarding the way these choke issues can be addressed, NGO have proposed a different approach to the European Commission, which was developed in a joint-NGO position paper "*Recovering fish stocks and fully implementing the Landing Obligation-Managing fishing mortality to meet CFP objectives*"<sup>26</sup>.

This position paper outlines why TACs should not be set higher than scientific advice. Setting a TAC at a value that exceeds scientific advice is not consistent with the achievement of the maximum sustainable yield (MSY) exploitation rate by 2020 and will not contribute to restoring fish stocks to healthy biomass levels. We want to recall that 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 without exception. We are not aware of any evidence demonstrating that the implementation of the landing obligation would jeopardise the sustainability of the fleets concerned.

With the 2015 deadline passed and the 2020 deadline just over a year away, substantial progress needs to be made in advance of the 2020 deadline. Setting fishing limits at levels identified within scientific advice remains the best option to restore and maintain populations of fish stocks above biomass levels capable of producing the maximum sustainable yields.

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<sup>25</sup> Borges et al., 2016. , Conflicts and trade-offs in implementing the CFP discard policy, DiscardLess Deliverable Report 7.3, 5 Mar 2018 <http://dx.doi.org/10.5281/zenodo.1238588>

<sup>26</sup> Recovering fish stocks and fully implementing the Landing Obligation-Managing fishing mortality to meet CFP objectives <https://bit.ly/2qRrWtT>



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We therefore call on the Irish Government to:

- Not support the removal of TACs;
- Not support the addition of choke stocks to the prohibited species list;
- Prior to any proposed TAC removal, request 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;
- Put in place appropriate measures and safeguards when removing a TAC, that in line with best available scientific advice can guarantee the protection and good status of the relevant stocks; and to monitor the effectiveness of such measures and review them regularly, to ensure that they fulfil the MSY objective of the CFP.

### *c. The proposed management of zero TAC stocks*

The Commission's proposal has highlighted that a number of stocks which are relevant for Ireland which have zero TAC advice for 2019: Cod 6a; Cod 7b-c,e-k, 8, 9 & 10 & 34.1.1; Whiting 7a; Blue Ling 2 & 4; Plaice 7h, 7j & 7k. The Commission highlight that these stocks are considered "choke species" due to their potential to choke non-target fisheries during the implementation of the full landing obligation in mixed fisheries where by-catches of the above-mentioned stocks occur, and the existing flexibilities cannot be applied. This is a situation which BirdWatch Ireland are aware of given that we sit on North Western Waters Advisory Council (NWWAC). As part of the NWWAC we have been involved in the development of the "choke mitigation tool" to identify, categorise and suggest mitigation measures to avoid choking fisheries under the implementation of the landing obligation.

A full closure of fisheries in large parts of EU waters is not a desired outcome for any of the stakeholders. To prevent this scenario, NGO's have recommended for years that it was imperative that industry and Member States commit to real change. This includes the full documentation and a clear plan of actionable measures to reduce unwanted catches and end overfishing. Whilst fisheries closures are an undesirable management outcome, it is worth recalling that many of the stocks with zero catch advice are due to past over-fishing and on the failure of adequate action being taken to recover these stocks. These stocks have not recovered either because unsustainable mortality persisted due to excessive fishing limits or persistent discarding. In order to improve the status of these stocks it is 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.

In response to the risk of fisheries closing due to a "choke" scenario created by zero TAC stocks the Commission has proposed that "bycatch TACs" be attributed to those stocks. These bycatch TACs will clearly allow for exploitation above scientifically advised levels. This will result in overfishing, which will prevent the stocks from recovering and potentially lock them into an ongoing vicious cycle of overfishing. Significant safeguards are therefore required to mitigate negative outcomes for these stocks, if Council were to decide that overfishing should continue in the short term.



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To safeguard the most vulnerable stocks in such 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 a level lower than the maximum advised in the single species advice for those stocks (e.g. whiting and haddock in ICES mixed-fisheries for the Celtic Sea). Where ICES advice exists for mixed fisheries in the North Sea and the Celtic Sea it is clear that this approach has not been adopted.

We support the following aspects of the Commission proposal that are within the spirit of the NGO recommendations<sup>26</sup> for addressing *category 3 choke* risks:

- the intent for *bycatch TACs* being established based on best available scientific advice on estimated discards and at a level that ensures fishing mortality does not increase and incentivises improvements in selectivity and avoidance;
- the allocation of only a Union level TAC(/quota) exclusively for bycatches and no directed fisheries - with an emphasis that member states should agree on a shared management of that TAC to mitigate the risks of a choke situation from unavoidable bycatches;
- the intent for member states to develop, propose and implement multi-annual bycatch reduction plans in the relevant fisheries with a view to progressively reduce unwanted catches of the stocks concerned through measures;
- the condition that all vessels benefitting from these *bycatch TACs* should implement full catch documentation as from 2019;
- that these bycatch reduction plans are to be evaluated by STECF and reviewed after 2 years.

However, the following concerns remain in relation to the Commission proposal for bycatch TACs that we would like to see addressed by Council:

- Some bycatch TAC proposals are based on a 20 percent reduction in most recent catches or landing rather than being based on the best available scientific estimates of discards. This approach is clearly not based on the use of the best available scientific evidence.
- There is a lack of proposed additional measures to safeguard the stocks such as the compulsory use of the most selective gears available or avoidance techniques (e.g. move-on rules, temporal and spatial closures) in the TAC and quota regulation or in the Discard Plans for 2019. We believe that specific bycatch reduction plans and associated measures should have been developed before bycatch TAC proposals were made. This would have allowed the proposed measures to be evaluated in advance of implementation in 2019.
- The Commission has failed to include an Article in the body of the TAC regulation requiring the creation of “multi-annual bycatch reduction plans”, or other specific measures as a pre-condition to the use of bycatch TACs.
- The lack of conditionality and/or deadlines will in our opinion hinder progressive action at a national and regional issue to reduce unwanted catches.

Key implementation questions include:

- i. What timeframe will member states develop bycatch reduction plans to in 2019?



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- ii. By when will STECF be able to evaluate those bycatch reduction plans?
- iii. By when in 2019 will member states implement these bycatch reduction plans, including 'measures' and full catch documentation?
- iv. What types of full catch documentation will be implemented and how effective/ robust will these be at monitoring the bycatch TACs?
- v. How will member states collectively ensure the TAC is not exceeded if quotas are not allocated on a relative stability basis?

The risk is that by the time these concerns and questions are addressed, we could be a significant way through 2019 and uncontrolled bycatches of these stocks could have already taken place. This is unacceptable from a stock conservation perspective.

We therefore call on the Council:

- If setting "bycatch TACs" take a two-step reduction in catches in 2019 and 2020 - in order to reduce fishing mortality and not exceed the MSY or MSY proxy fishing mortality rates for 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;
- If basing a bycatch TAC for Celtic Sea cod on ICES mixed-fishery advice, take into account the points above, and ensure that whiting and haddock have fishing opportunities that correspond to the chosen 'scenario' and not exceeding the single species advice;
- To temporarily suspended the fisheries where the Commission have proposed bycatch TACs in 2019, or at the very least, have further reduced bycatch TACs until supporting bycatch reduction measures, bycatch reduction plans and full catch documentation are in place;
- To consider disincentivising targeting, through applying additional conditions such as not being able to sell stocks subject to these bycatch TACs for human consumption.

In the most recent engagement with the NWWAC OIG's constructively worked with all stakeholders to propose options to address choke risk in NWW after exemptions. In relation to fixing a TAC that above ICES advice, OIG members remain of the view that TACs should not be set above scientific advice. However, OIG members are also of the view that if Member States provide socio-economic evidence (Recital 7 of the CFP) demonstrating that setting TACs in line with scientific advice will seriously jeopardize the social and economic sustainability of the fleets involved and the result is that the TAC for 2019 is to be set at a value exceeding ICES advice, then the following requirements should be attached:

- a) Use the available quota exclusively to cover unwanted catches of the choke species in mixed fisheries (i.e. cease targeted fisheries of the stock in question).
- b) Only allow continued mixed fisheries that have some likelihood of having bycatches of the stock in question if:
  - i. All vessels engaging in the fishery agree to full catch documentation (via electronic means and/or observers on board).



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ii. Full documentation is used to demonstrate that (a) there is no increase in fishing mortality on the stock; (b) fishing mortality/unwanted catches are being progressively reduced; and (c) all catches are being landed apart from those with sanctioned catch and release protocols (i.e. de minimis, high survival exemptions and prohibited species).

c) Develop and implement a bycatch reduction or elimination plan for the fishery in question, in which EMFF funding could be used not only to develop/implement new fishing gears and methods, but also to help fishers switch gears and/or adapt their activities to eliminate or minimize bycatch as far as possible in the medium term.

The Commission has not introduced an Article in the body of the TAC regulation 'requiring' the creation of "multi-annual bycatch reduction plans", or specific measures as a pre-condition for use of their proposed bycatch TACs. Bycatch reduction plans and full catch documentation should not be after the fact.

d) Evaluate all these measures ahead of the TAC-setting process for 2020 TACs, and review them accordingly to ensure the requirements of the CFP are met.

BirdWatch Ireland remain of the view that all TACs should be set in line with scientific advice by 2020 and that the decisions made at the 2018 December AGRIFISH Council and over the course of 2019 should be consistent with the full implementation of the CFP.

### viii. Measures on European Eel

The European Eel has been listed since 2008 as critically endangered on the IUCN Red List<sup>27</sup>. We note that the ICES advice note on the status of eel produced in November 2013 for the 2014 calendar year states "... *when the precautionary approach is applied for European eel, all anthropogenic impacts (e.g. recreational and commercial fishing on all stages, hydropower, pumping stations, and pollution) decreasing production and escapement of silver eel should be reduced to – or kept as close to – zero as possible.*" There has been no change in the overall scientific perception of the stock and the situation remains critical and requires urgent action.

Last year we welcomed the Commission's proposal that pending longer term solutions, a prohibition should be placed on any fishery of European eel in 2018 in the Union waters of the ICES area and in the Baltic Sea. Unfortunately, the final proposal adopted by the Council allowed further commercial fishing of the species on a seasonal basis.

The Irish Eel Management Plan, submitted to the EU on the 9th January 2009 and accepted by the EU in June 2009, outlined the main management actions aimed at reducing eel mortality and increasing silver eel escapement to the sea. One of the four actions within the plan was "*the cessation of the commercial eel fishery and closure of the market.*" Given that Member States such as Ireland have already closed their eel fishery it is completely reasonable that other Member States also do the same as part of an EU wide effort to restore the stock. Minister Creed and the Irish Government should support an EU wide closure of the Eel fishery. We call on the European Commission to ensure that the prohibition on the exploitation of European eel covers both commercial and recreational fisheries,

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<sup>27</sup> Department of Communications, Energy and Natural Resources (2008) National Report for Ireland on Eel Stock Recovery Plan Including River Basin District Eel Management Plans <https://www.fisheriesireland.ie/documents/59-eel-management-plan-1/file.html>



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that it covers all exploitation in fresh, brackish and coastal waters and that it includes the exploitation of all life stages of the species.

### **ix. Measures on Seabass**

According to the Commission's proposal the scientific advice for European seabass in the Celtic Sea, Channel, Irish Sea and southern North Sea remains in a perilous state. Spawning-stock biomass has been declining since 2005 and is now below Blim and recruitment was estimated to be poor since 2008, with the exception of the 2013 and 2014 year-class estimates which show average recruitment. ICES advise that when the MSY approach is applied, total removals in 2019 should be no more than 1789 tonnes.

We call on the Minister to maintain the strict seabass management regime currently operating for Irish waters. The current system whereby only catch-and-release fishing for European seabass shall be allowed should be maintained.