

## **Annex: Comments and recommendations for Member States on the**

### **Commission proposal for a *Council Regulation fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks* (COM(2016) 698)**

22 November 2016

We provide our recommendations to the Council of Ministers for the setting of fishing opportunities in 2017, building on the latest advice from the International Council for the Exploration of the Sea (ICES).<sup>1</sup>

In recent years, the official Commission proposals have neglected to provide TAC proposals for a large, and increasing, number of stocks. In its proposal for fishing opportunities in the North Atlantic and North Sea in 2017, the Commission does not propose Total Allowable Catches (TACs) for 78 of the main group of 153 TACs. For 24 of these 78 stocks there is no TAC proposal due to a TAC roll-over agreement by the Council several years ago.

That TAC proposals for certain species are missing is either due to the fact that the related scientific advice was not yet available, or that the TAC required additional calculations due to complexities related to the landing obligation, or that the TAC is subject to international negotiations or arrangements concluding after the publication of the proposal. Recently, the landing obligation has delayed the publication of proposals for an additional number of TACs, as the Commission is dependent on information on fleet and metier basis by Member States to calculate the correct top-up for each stock.

These missing TAC proposals are later provided to the Council prior to the negotiations, but they are not made public. It is questionable whether civil society and the public can be left in the dark about such important considerations, especially as deadlines for different aspects of the CFP are approaching (2019 for the landing obligation, 2020 for MSY). It is of utmost importance that all interested stakeholders are informed of the full proposals and the underlying scientific advice in a timely fashion, well ahead of the relevant Council meeting.

### **Objectives of the Common Fisheries Policy**

A key objective of the Common Fisheries Policy (CFP) is **to restore and maintain populations of fish stocks above biomass levels capable of producing Maximum Sustainable Yield (MSY)**. This objective is in line with the EU commitments made in Johannesburg (2002),<sup>2</sup> and Rio (2012)<sup>3</sup> and contributes towards achieving Good Environmental Status (GES) for European seas under the Marine Strategy Framework Directive (MSFD).<sup>4</sup> Moreover it was reaffirmed in September 2015 in the UN Sustainable Development Goals.<sup>5</sup>

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<sup>1</sup> Full ICES advice is available at <http://www.ices.dk/publications/library/Pages/default.aspx>

<sup>2</sup> Johannesburg Declaration, WSSD, 2002.

<sup>3</sup> Rio+20 Outcome document. The future we want. United Nations General Assembly A/RES/66/288

<sup>4</sup> Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).

<sup>5</sup> UN Sustainable Development Goals: Goal 14 available at <http://www.un.org/sustainabledevelopment/oceans/>

In its proposal for fixing 2017 fishing opportunities (COM (2016) 698) the Commission states: “The ultimate objective is to bring and maintain the stocks to levels that can deliver MSY”. The Commission disappointingly falls short of the CFP objective to restore and maintain stocks above biomass levels that can deliver MSY. This failure to adhere to one of the fundamental objectives of the CFP, as set out by the co-legislators during the reform, is a repetition of last year’s phrasing, calling into question the Commission’s intent to fully implement the CFP.

**We urge the Council of Ministers to set fishing opportunities below the exploitation rate that corresponds with  $F_{MSY}$  as soon as possible, and by 2020 at the latest, in order to achieve the main CFP objective to restore and maintain stocks above biomass levels that can deliver MSY.**

### Landing obligation

In 2017 an increasing number of Atlantic demersal stocks will be covered by the landing obligation, as set out in the CFP, which has important effects on the fixing of Atlantic fishing quotas or TACs. As the joint recommendations provided by the respective Member States’ groups and the resulting delegated acts from the Commission only apply to some gear types and catch profiles, the landing obligation may not apply to all fleets fishing a stock and some discarding will still occur [legally], making it difficult to implement and control.

Article 16 of the CFP stipulates that fishing opportunities for stocks that fall under the landing obligation shall be fixed taking into account total catches rather than landings, as was previously the case, as discarding will no longer be allowed. In practice this often results in an increase (top-up) of the TAC by an amount equal to the ratio of catch previously discarded. However, ICES provides scientific advice on 2016 catches and landings for each stock across its range, and not per fishery, let alone by fleet segment. Therefore, it becomes very difficult to calculate a TAC top-up if a stock is fished by a combination of fleets, some of which are obliged to land bycatch and others that may legally continue to discard.

In 2015, the Commission was not able to provide proposals for fishing opportunities in management areas that fall partially or completely under the landing obligation, as it was initially dependent on data from Member States and, subsequently, on STECF methodology. This year, it announced in its annual Communication<sup>6</sup> on fishing opportunities that it will submit its methods to STECF for advice. Unfortunately, these preparations do not seem to have been concluded in time to be included in TAC proposal but will instead be provided at a later stage, according to the proposal.

The legal basis for these methods and preparations are delegated acts prepared by the Commission based on Joint Recommendations by the respective regional Member States and following scientific evaluation by STECF. Seas At Risk and other NGOs have scrutinized this process over the last two years and found that in many cases the Commission has not taken the scientific concerns and recommendations into account. Instead it transposed exemptions from the Joint Recommendations into delegated acts despite STECF clearly stating that the underlying information provided, in some cases even after a repeated request to Member States, was insufficient to justify several exemptions.

After the final agreement on TACs during the December Council meeting and swaps between Member States, it remains the task of the respective ministries and authorities to distribute the quotas to the different fleets. This distribution must follow the intention of the catch quotas and ensure that only fleets which are subject to the landing obligation in 2017 benefit from any quota top-up.

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<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0396&from=EN>

**We urge the Council of Ministers to adhere to the following principles when agreeing on TACs top-ups:**

- Any agreed TAC top-up should only be smaller or equal to the earlier discards of fisheries and fleets covered by the landing obligation, and not the total discards of all fleets exploiting the stock. Applying a top-up based on the total discards while some of the fleets exploiting that stock are still discarding would result in “double counting” of discards and an unintended increase in fishing mortality – not in line with scientific advice.
- A TAC top-up for any fleet segment subject to the landing obligation should only be granted if Member States have provided relevant data to the Commission to calculate that TAC top-up. If insufficient relevant data have been provided, then that fleet should not receive a TAC top-up. Under no circumstances should the granted TAC top-up increase the total fishing mortality of that fleet segment.
- The foreseen exemptions from the landing obligation such as ‘de minimis’ can reach as much as 7% of the total TAC in the first two years. These discarded amounts must be subtracted from the calculated top-ups following Art 15.5(c) of the CFP to avoid “double counting” of discards and an unintended increase in fishing mortality.
- In all cases, the agreed TAC, including any top-ups, should always remain below the respective  $F_{MSY}$  value of the whole population, across management areas, following Art 2.2 of the CFP Regulation.

**Coherence of management areas and assessment areas**

Assessment areas in scientific advice capture a stock across its full range. However, the full ranges of many North Atlantic and North Sea stocks straddle multiple management areas. This mismatch between management areas and assessment areas makes projections of exploitation rates, as well as the application of the MSY approach difficult. It also reduces the accuracy of the estimates of stock development and stock status, potentially resulting in mismanagement and a higher risk of overfishing.

For the following stocks, for example, there is a considerable mismatch between assessment area and management area:

- Anglerfish in VIIIc, IX, X, CECAF 34.1.1, VII and VIIIabde;
- Megrims in IIa and IV
- Haddock VIIb-k, VIII, IX, X, CECAF 34.1.1 (EC)

Whilst changes to the management areas require significant effort, this is ultimately necessary in order to manage stocks according to scientific advice and meet the objectives of the CFP. ICES has repeatedly recommended, for example for nephrops, that management and advice areas should be aligned.

**We urge the Council of Ministers to work with the Commission and ICES to align the current management areas with the assessment areas used in scientific advice. Moreover, we call on the Council of Ministers to immediately make public the methodology used when aligning the agreed TACs to the management area in question when mismatches occur.**

## **Detailed summary of recommendations for fishing opportunities in EU waters**

Due to the large number of stocks covered by this proposal, we have chosen to limit our detailed recommendations to a few species which require close attention.

### **Stocks for which increased TACs have been proposed by the European Commission**

#### *Norway lobster in areas IX, X and Union waters of CECAF 34.1.1*

For Norway lobster (*Nephrops norvegicus*) in areas IX, X and Union waters of CECAF 34.1.1 the Commission proposes a slight increase of 5% compared to this year to a total of 336 tonnes.

This increase, as an absolute amount, is justified when looking at the total amount advised for this area by ICES. But ICES provides its advice for nephrops by Functional Unit (FU), and for the FUs 26–27 (which together with FUs 28–29 and 30 comprise the management area IX) the advice is zero following the precautionary approach. The FUs are distributed along the western Spanish coast and Portugal waters.

**As in previous years, we call on the Council of Ministers to manage these fisheries by FUs, and not combined, in line with the ICES recommendation.**

### **Stocks with no changes in TAC**

#### *Sole in area VIIIab (Northern and Central Bay of Biscay)*

For common sole (*Solea solea*) in VIIIab, ICES applies the MSY approach and advises catches of no more than 3 107 tonnes. The SSB has just returned to levels above  $MSY B_{trigger}$  after being below the threshold for two years. The fishing mortality has been above  $F_{MSY}$  since 1986 and is currently even above  $F_{PA}$ .

The Commission has proposed a TAC of 3 420 tonnes for 2017. Since 2012, the Council has agreed on TACs greater than the scientific advice, and in 2013 and 2014 the official landings exceeded the agreed TACs.

**We urge the Council of Ministers to follow the scientific advice and set the TAC for sole in area VIIIab at no more than 3 107 tonnes, in line with the scientific advice for MSY management.**

#### *Plaice in division VIIa (Irish Sea)*

ICES describes, using a trend-based assessment, that the spawning-stock biomass is stable, the fishing pressure has been declining since more than 20 years and is below the FMSY proxy reference point. Discards are very high for this stock with a discard rate of 0.7, meaning that of the 1005 tonnes caught in 2015, 565 tonnes were discarded. Based on the precautionary approach, ICES therefore advises landings of no more than 436 tonnes.

The Commission proposes for 2017 a TAC of 1098 tonnes which means a roll-over of the 2016 TAC. This proposal is between the ICES proposal for landings (436 tonnes) and catches (1436 tonnes). The Commission has outlined that any top-ups will be added at a later stage to the proposal, and therefore should have followed the scientific advice on landings.

**We ask the Council of Ministers to follow the scientific advice and agree on landings of no more than 436 tonnes.**

### *Cod in division IIIa (Kattegat)*

Cod in division IIIa is taken mainly as bycatch in the nephrops fishery. According to ICES, using a trend-based assessment, the spawning stock biomass is increasing and the fishing mortality is decreasing. However, there is a large proportion of unattributed removals that cannot be quantified. ICES estimates that of the 508 tonnes caught in 2015, 401 tonnes have been discarded, and therefore the advice for 2017 is that landings should not exceed 129 tonnes.

The Commission proposal for 2017 is a TAC of 470 tonnes – a roll-over of the 2016 TAC – which is between the ICES suggestions for landings (129 tonnes) and for catches (643 tonnes). It also sets out that any top-ups will be added to the proposal at a later stage, and therefore the Commission should have followed the scientific advice for landings.

**We call on the Council of Ministers to follow the scientific advice and agree on landings of no more than 129 tonnes. Furthermore, we stress the importance of fully implementing and controlling the landing obligation, without this the early closure of the nephrops fishery is a necessity.**

### **Stocks with proposals for decreased TAC**

#### COMMON SOLE

The Council will set TACs for sole in almost all areas of the North-East Atlantic and the North Sea. In recent years, the Council has set TACs for common sole in excess of scientific advice, resulting in a decline of the stocks and causing problems for both the ecosystem and dependent fisheries. Several common sole stocks are now at risk of impaired recruitment and collapse.

#### *Common sole in VIIa (Irish Sea)*

For over a decade, the population of common sole (*Solea solea*) in the Irish Sea has had a bleak outlook. Its biomass has remained well below  $B_{LIM}$  – the biomass reference point below which stocks are at serious risk of recruitment failure and collapse – since 2004, and recruitment has been particularly poor since 2011. However, last year saw a slight improvement and there are some positive indications for the stock.

Since fishing mortality fell below  $F_{MSY}$  a few years ago, the biomass has been increasing from a very low level. In the past two years, small improvements in the health of the stock have been noted, and if this trend is allowed to continue it is likely to bring cumulative benefits.

The ICES advice is to close the fishery for the coming two years, which may give the population a chance to climb above at least  $B_{LIM}$ . This is supported in the Commission proposal of a 0 TAC.

**We urge the Council of Ministers to follow the scientific advice and the Commission's proposal and close the fishery of common sole in division VIIa, in order to allow the stock to rebuild.**

#### *Common sole in VIId (Eastern English Channel)*

Common sole in the Eastern English Channel has been overfished since records began in 1982 and the fishing pressure increased strongly in 2012–2015, finally reaching  $F_{LIM}$  which brings with it a risk of recruitment failure and in the longer term stock collapse. Coupled with low recruitment in 2012 and 2013, overfishing has caused the biomass to decline and in 2016 the SSB is predicted to fall below  $MSY B_{trigger}$ .

MSY  $B_{\text{trigger}}$ , which is equal to  $B_{\text{PA}}$  for this stock, is the only reference point that ICES has developed. The priority now is to manage the stock in line with the MSY objective outlined in the CFP by setting a TAC below  $F_{\text{MSY}}$  for the first time. Discarding is estimated to be around 10% of the catches.

The ICES advice as well as the Commission proposal for 2017 is that catches should be no more than 2 257 tonnes following the MSY approach. It is expected that with the proposed TAC the SSB will return to levels above MSY  $B_{\text{trigger}}$ . This will be helped by the revival of recruitment over the past two years, which is a significant improvement from 2012 and 2013.

**We urge the Council of Ministers to follow the scientific advice and the Commission proposal for common sole in division VIIa and set a TAC of no more than 2 257 tonnes.**

## HAKE

### *Southern hake in VIIIc and IXa (Cantabrian Sea and Atlantic Iberian waters)*

The Southern hake (*Merluccius merluccius*) stock has been seriously overfished for many years, but the fishing pressure has been falling and is now at least under  $F_{\text{PA}}$ , though still well above  $F_{\text{MSY}}$  (0.25). The SSB has increased from a very low level in 1998 and is now above MSY  $B_{\text{trigger}}$  at 23 101 tonnes. Recruitment has been close to the historical mean since 2010, and the stock is now assessed as at full reproductive capacity.

A management plan was agreed in 2005 with the aim to rebuild the stock to safe biological limits and reduce fishing mortality by 2016. The intent was a biomass recovery to above 35 000 tonnes and a reduction in the fishing mortality rate to 0.27. This plan has not been evaluated by ICES, but we can conclude that though the stock is currently developing in the right direction, the targets have not yet been reached.

Discarding continues to be a significant issue, accounting for almost 20% of catches. Considering the socio-economic importance of the stock to local artisanal fishers, particularly in Spain and Portugal, this wasteful practice is not the best use of quota. The Member States put forward a joint recommendation for a discard plan, including Southern hake, that the Commission transposed into a delegated act (COM(2015)6835). Regrettably, not all fisheries and fleets targeting the stock are covered under the discard plan, which complicates the calculation of the final TAC.

On the basis of the MSY approach, ICES advises a total catch of no more than 8 049 tonnes (wanted catch (landings)  $\leq$  6 838 tonnes). The Commission proposal for 2017 is 6 838 tonnes. It is managing these divisions (VIIIc and IXa) together with division X and EU waters of CECAF 34.1.1, but in the latter two divisions only 200–300 tonnes are likely to be caught.

**For Southern hake, we ask the Council of Ministers to set the TAC in line with the Commission proposal at 6 838 tonnes, considering that only part of the fleet targeting hake is covered by the landing obligation.**

## HERRING

### *Herring in divisions 6.a and 7.b-c (west of Scotland, west of Ireland)*

Despite efforts to sustainably manage the herring fisheries and set quotas below  $F_{\text{MSY}}$ , these two stocks – assessed as one – have continued to decline. The spawning stock biomass is now below  $B_{\text{LIM}}$  – at reduced reproductive capacity. The scientific advice from ICES is to close the fishery and develop a stock recovery plan, going as far as to state that “fishing should not proceed unless accompanied by a stock recovery plan”.

Even if the fishery is closed, however, and under “a zero-catch regime”, the stock is expected to continue to decline. This is partly attributable to the fact that over the past 4 years recruitment has been at an all-time low and the SSB has now fallen below  $B_{LIM}$  for the first time, increasing the risk of recruitment failure.

Another reason for the continued decline of these stocks is that the spawning habitat has likely been damaged. Looking at the wider ecosystem, construction of marine renewables may have disturbed their spawning grounds. Extraction of gravel and sand, an essential habitat for herring spawning, may be a key factor behind the continued decline despite the “sustainable quotas” set in recent years. Therefore, the future management of these stocks may require a true ecosystem approach, with potential habitat restoration efforts, in order to facilitate long-term stock recovery.

The Commission has proposed a TAC of 1 360 tonnes, despite the fact that the Council set a 0 quota last year. However, we strongly oppose this suggestion. The fishery was reopened during the latter part of 2016 with the Council providing the caveat that “this would improve the future scientific advice on those stocks”. Subsequently, the scientific advice for next year was to once again set a zero TAC.

**We urge the Council of Ministers to close the fishery and develop a stock recovery plan that contains broader ecosystem considerations.**

*Herring in VIIg–h and VIIj–k (Irish Sea, Celtic Sea and southwest of Ireland)*

Herring (*Clupea harengus*) in the Irish Sea, Celtic Sea and southwest of Ireland is assessed to be at full reproductive capacity and harvested sustainably in line with the MSY objective. Despite this, both recruitment and SSB have declined quite dramatically in recent years.

In terms of longer-term management, ICES has raised concerns that activities that have an impact on the spawning habitat of herring should not occur. Habitat degradation is being accelerated through shared use of the sea and a lack of ecosystem-based management. More integrated management of these non-fishing activities, which make use of the marine environment, will allow for improved planning and decisions to be taken, with beneficial effects on the fish stocks.

For the past two years, a management plan has been in place for this herring stock. It was developed by the Pelagic Advisory Council and foresees a lower  $F$  than  $F_{MSY}$ , resulting in a lower TAC than the ICES advice for this year.

The ICES advice for 2017 is that catches should not be above 16 145 tonnes, in line with the MSY approach ( $TAC = F_{MSY}$ ). The Commission proposal is at TAC of 14 467 tonnes, which is in line with the management plan.

**We urge the Council of Ministers to follow the proposal put forward by both the Pelagic Advisory Council and the Commission. There has been a consensus amongst regional stakeholders to implement a management plan which sets fishing mortality below  $F_{MSY}$ , in order to reap long-term benefits. We ask the Council to look into this as a model for decision-making, which brings together the MSY objective within the CFP and allows for stakeholders and regional bodies to be fully integrated into the quota setting process.**

## PLAICE

### *Plaice in VIIh–k (Celtic Sea South and southwest of Ireland)*

The plaice population (*Pleuronectes platessa*) in the Celtic Sea south and the southwest of Ireland has been declining for almost 25 years. Landings, relative recruitment and SSB are all at all-time lows. Recruitment was particularly poor in 2015, by far the worst since data collection began on the stock. Moreover, the stock has continually been overfished, with fishing mortality above the FMSY proxy.

In terms of the management challenges, plaice in these areas is caught in a mixed fishery. It is also, however, caught in specific areas within the overall management area. Therefore, restricting effort in the areas where it is caught as bycatch could be more effective than limiting total landings.

A reduction in the abundance of small plaice has driven the decline in SSB and may have ramifications for the future productivity of the stock. A driver of this has likely been unregulated discarding within the fishery. ICES says that “discarding is known to take place, by ICES cannot quantify the corresponding catch”.

For the coming year, the ICES advice of 86 tonnes is based on the precautionary approach. The Commission proposal is 108 tonnes, a small cut compared to the current TAC of 135 tonnes.

**We ask the Council of Ministers that a TAC of no more than 86 tonnes is set, in line with scientific advice. Management measures must be taken to fully implement the landing obligation and improving selectivity by reducing catches of small plaice. These are being discarded in unknown volumes and consequently key data on the stock is missing from the assessments.**

## SPRAT

### *Sprat in VIId and VIle (English Channel)*

The sprat (*Sprattus sprattus*) population in the English Channel is a “category 3 stock” and has not been subjected to a full assessment. The biomass index for this stock is estimated to have decreased with more than 20% and therefore an “uncertainty cap” has been applied to the ICES advice.

In fact, ICES has only provided advice on the TAC for this stock for the past 4 years, and every year the Council has agreed a TAC above the scientific advice. However, not once has the quota been exhausted. This is indicative of a management failure.

Fishing pressure has increased over the past two years while landings have declined, a clear indication of an inefficient fishery that has been managed poorly. Of particular concern is that the entire quota uptake is a very fuel intensive mid-water trawl fleet and, as the quota is not restricting fishing effort, there is the potential for unnecessary pollution and degradation of the marine environment.

Last year, quotas were increased by 20%, the maximum suggested by the scientific community. However, the stock biomass has subsequently declined. MSY values for the stock are not known. The ICES advice for 2017 is a TAC of no more than 3 678 tonnes. The Commission proposal is 4 120 tonnes, but records indicate that this volume will not be caught and, with the decline in biomass, it is imperative that the TAC regulates the fishing effort.

**We urge the Council of Ministers to agree on a TAC of no more than 3 678 tonnes. This is in line with the scientific advice and is higher than the landings in 2015.**