



Environmental Pillar

ENVIRONMENTAL PILLAR SUBMISSION
SUSTAINABILITY IMPACT ASSESSMENT
OF THE EUROPEAN COMMISSION
PROPOSAL FOR FISHING
OPPORTUNITIES FOR 2020

NOVEMBER 2019

Contents

Introduction	2
Background – CFP Context	3
The Status of CFP Implementation	5
The December AGRIFISH Council and Overfishing	7
Ireland's Role in the December Council.....	9
The Economic Benefits of Achieving MSY	11
The European Commission's Proposals for North-East Atlantic TACs in 2020.....	13
Recommendations to the Minister on the Commission's Proposal	13
1. On setting TACs in line with the requirements of the CFP	14
2. Other recommendations on the Commission's Proposal	15
The Landing Obligation	15
The implementation of the Landing Obligation and 2020 TACs	16
Mixed Fisheries Advice & the use of F ranges.....	17
Bycatch TACs	18
Hague Preferences.....	19
Pelagic Advisory Council Advice	19
Transparency	19
Stock and TAC area mismatch	20
TACs subject to the joint statement on data-limited stocks.....	20

A submission by

Fintan Kelly, Policy Officer, BirdWatch Ireland fkelly@birdwatchireland.ie

November 2019

Address for correspondence: BirdWatch Ireland, Unit 20 Block D, Bullford Business Campus, Kilcoole/Greystones, Co. Wicklow.

Phone: + 353 1 2819878 Email: fkelly@birdwatchireland.ie or info@birdwatchireland.ie

Environmental Pillar submission in response to the European Commission's proposal for fishing opportunities for 2020

A consultation response from the Environmental Pillar in response to Minister Creed's Sustainability Impact Assessment of the European Commission Proposal for fishing opportunities for 2020, as outlined in "Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters¹."

Introduction

This submission is on behalf of the Environmental Pillar - an organisation comprising 26 environmental NGOs working to represent the views of the Irish environmental sector. We welcome the opportunity to comment on the Commission's Proposal for fishing opportunities for 2020 as part of the Department of Agriculture, Food and the Marine's annual public consultation. We trust that our views will be taken into consideration by Minister Creed during the upcoming December AGRIFISH Council negotiations on fishing opportunities in the North East Atlantic for 2020. We look forward to the opportunity to table our recommendations before Minister Creed in the coming weeks.

According to the European Commission the reasons for, and objectives of, the proposal are 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). In this respect... "the Basic Regulation" ...sets out the objectives for the annual proposals for catch and fishing effort limitations to ensure that Union fisheries are ecologically, economically and socially sustainable."*

Unfortunately, the Commission's proposal falls short of this objective and the legal requirements of Article 2(2) of the CFP Basic Regulation, which 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 above regulation is legally binding and must be met by the 1st January 2020. As the Total Allowable Catches (TAC) that will be agreed at the upcoming December AGRIFISH Council will apply to 2020 fishing opportunities, there are now only weeks to ensure fishing limits are set in compliance with the 2013 agreement. While any legal consequence of the failure to comply with the requirements of the CFP basic regulation would depend on a ruling by the European Court of Justice, it remains a legally binding commitment between the European Commission, Parliament and Member States to achieve the MSY exploitation rate for all stocks by 2020 at the latest. Specifically, the upper limit of fishing mortality rate (F) for all TACs adopted by the Council must be at or below the Maximum Sustainable Yield (MSY) point values for fishing mortality (FMSY), as per the advice provided by the International Council for the Exploration of the Seas (ICES). Where MSY-based reference points are not available; then TACs should not exceed ICES advised precautionary approach catch limits. An analysis of 71 TACs within the Commission's proposal reveals that 30 TACs are set above ICES advice and 4 TACs have no advice. Therefore, going into the

¹ [European Commission \(2019\) COM\(2019\) 483 final Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters](#)

negotiations around 40% of TACs proposed by the Commission already exceed ICES advice and would therefore not be in line with the CFP's 2020 deadline.

The trajectory of progress towards the CFP's 2020 deadline has to date been insufficient to ensure full implementation of the CFP's Article 2(2), and that implementation of the landing obligation (also known as the discards ban, which effects certain stocks as of January 2019). Over the last five years we have consistently highlighted the need for incremental progress towards the 2020 deadline for all harvested stocks in order to prevent fisheries closures that would arise from having to drastically cut TACs. The greatest ongoing impediment to the implementation of the CFP remains a lack of political will, resulting in the Council of Ministers repeatedly pushing TACs above the recommended scientific advice.

We call on Minister for Agriculture, Food and the Marine - Michael Creed - to work with all parties concerned to improve upon the Commission's proposal in the upcoming negotiations to ensure that the final Council decision is fully compliant with the requirements of the CFP. We count on you to ensure that the commitments made repeatedly by the Irish Government and the institutions of the European Union during and after the reform of the CFP are upheld. However, we note that you have held this ministerial position for the period during which the Council of Ministers has consistently failed to honour the 2013 CFP agreement.

The evidence clearly indicates that it is in the best interests of all stakeholders that fish stocks are sustainable, meaning that the biomass of fish stocks are restored to levels that can support MSY. Ending overfishing of all harvested fish stocks is critical for the conservation and restoration of the marine environment. Ensuring that MSY is an upper limit for fishing mortality is one of the cornerstones of sustainable fisheries management, upon which many stakeholders, especially coastal communities, and the broader blue economy depend.

Background – CFP Context

The industrialisation of European fisheries post World War II drove overfishing across the North Atlantic, damaging marine habitats and fundamentally altering the balance within marine food webs². Fisheries began by overfishing large fish species before moving onto smaller ones, depleting and hollowing out marine ecosystems. Likewise, fisheries depleted coastal shallow waters before extending their reach to the high seas and the depths beyond the continental shelves³. Through the removal of large fish over generations we have even impacted on fish species at a genetic level, with some Cod stocks now maturing at smaller sizes⁴. Overfishing has severely impacted on marine biodiversity in Irish waters, for example six species of sharks and rays are Critically Endangered and a further five species are Endangered⁵. The collapse of breeding colonies of seabirds is becoming increasingly common in the North Atlantic due to their inability to find enough fish to feed their young, with overfishing one of the primary causes⁶.

Overfishing inevitably drove the decline and collapse of many commercially important fish stocks, with predictable consequences for impacted fishing communities. The less viable fishing has become as too many vessels chase too few fish, the more pressure the industry has exerted on politicians to increase quotas, basing fisheries management

² Christensen et al., 2003. Hundred-year decline of North Atlantic predatory fishes. *Fish and fisheries*, 4(1), 1-24.

³ Maureaud et al., 2017. Global change in the trophic functioning of marine food webs. *PloS one*, 12(8), e0182826.

⁴ Jørgensen, T. 1990. Long-term changes in age at sexual maturity of Northeast Arctic cod (*Gadus morhua* L.). *ICES Journal of Marine Science*, 46(3), 235-248.

⁵ Clarke, M., Farrell, E.D., Roche, W., Murray, T.E., Foster, S. and Marnell, F. (2016) Ireland Red List No. 11: Cartilaginous fish [sharks, skates, rays and chimaeras]. National Parks and Wildlife Service, Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. Dublin, Ireland.

⁶ Cook A.S.C.P., et al., 2014b. Indicators of seabird reproductive performance demonstrate the impact of commercial fisheries on seabird populations in the North Sea. *Ecological Indicators* 38: 1-11.

on short-term returns, perpetuating a downward spiral. The state of affairs before the 2013 reform of the EU's CFP was reflected by the European Commission who outlined the *"current reality of overfishing, fleet overcapacity, heavy subsidies, low economic resilience and decline in the volume of fish caught by European fishermen"*⁷.

In response to this crisis the CFP⁸ was reformed in 2013, during an Irish EU Presidency and entered into force in January 2014. The reform marked the culmination of a process, which began in 2009 with extensive public consultation. 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 departure 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.

Thirty-seven years ago, as parties to the United Nations Law of the Sea Convention, European nations agreed to limit fishing to levels deemed sustainable by fisheries scientists. Twenty years later, at the 2002 United Nations World Summit on Sustainable Development, EU Members States reiterated this commitment by agreeing to restore stocks to scientifically governed sustainable levels by 2015 where possible. In 2013, this deadline to achieve the Maximum Sustainable Yield (MSY) exploitation rate for targeted fish stocks was enshrined in Article 2(2) of the CFP, which 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 Irish Government, and the present Minister, have repeatedly committed to *"setting quotas at Maximum Sustainable Yield and on a scientific basis."*⁹. The Government's Integrated Marine Plan for Ireland is also committed to delivering *"all measures relevant to Ireland as directed under the Common Fisheries Policy (CFP) and national measures including the conservation, management and rebuilding of fish stocks and long-term sustainable exploitation of marine biological resources"*¹⁰.

The EU has failed to make the 2015 deadline. Recital 7 of the CFP basic regulation stipulates that a deferral of the 2015 deadline to 2020 was allowed only in exceptional cases when meeting it *"would seriously jeopardise the social and economic sustainability of the fishing fleets involved"* (CFP Recital 7). According to CFP, delays beyond 2015 in achieving the MSY exploitation rate *"should be allowed only if achieving them by 2015 would seriously jeopardise the social and economic sustainability of the fishing fleets involved"*. These socio-economic arguments are no longer applicable, given that this year's December Council is the last before the 2020 deadline.

The failure to end overfishing won't just be a failure under the CFP, it will also be a failure to implement Europe's Marine Strategy Framework Directive and United Nations Sustainable Development Goals. Additionally, it will signal an alarming complacency about the state of our oceans and the growing threat posed by climate change. Climate change will act in combination with overfishing to increasingly threatening marine ecosystems, complicating fisheries management¹¹.

Moving forward Europe needs a more joined up approach that considers the impacts of fishing on marine ecosystems and recognises the need to limit the pervasive reach of fisheries if we are going to restore populations of

⁷ EC 2009. GREEN PAPER Reform of the Common Fisheries Policy. Brussels, 22.4.2009 COM(2009)163 final <https://bit.ly/37lGbLm>

⁸ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 <https://bit.ly/1dcv0FM>

⁹ Irish Government (2016) A Programme For Partnership Government <https://bit.ly/2zbYAuT>

¹⁰ Irish Government (2012) Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland <https://bit.ly/2rBHFAM>

¹¹ Sumail, Rashid. U, & Travis C. Tai. (2019). Ending overfishing can mitigate impacts of climate change, Working paper. Institute for the Oceans and Fisheries The University of British Columbia

threatened species and habitats. An important gauge of the willingness of the establishment will be whether EU decision makers will end overfishing this December by listening to fisheries scientists when agreeing fishing limits. Creating more jobs by managing fisheries more sustainably should be central to Ireland's integrated marine plan *Harnessing Our Ocean Wealth*. After thirty-seven years of commitments decision makers must finally ensure that MSY is the upper limit for Total Allowable Catch (TAC) at the December AGRIFISH Council.

The Status of CFP Implementation

According to the most recent assessment carried out by the Scientific Technical and Economic Committee for Fisheries (STECF)¹² monitoring the performance of the CFP, progress has been made at reducing overfishing across Europe's North Western Waters. This has resulted in a 36% increase in the total mass of commercially exploited fish populations between 2003 and 2017. Overall however progress has been too slow and has stagnated since the reform of the CFP, with the proportion of overexploited stocks (i.e. $F > F_{MSY}$, blue line) in figure 1 remaining close to 40%. Likewise, the proportion of stocks outside the safe biological limits ($F > F_{pa}$ or $B < B_{pa}$, orange line), has shown only marginal progress since 2013 and was around 35% in 2017.

While fishing pressure has decreased across all ICES ecoregions relative to the start of the time series, in the recent years the decreasing trend in exploitation has been reversed in the Baltic Sea and Celtic Sea and has stalled in the case of NE Atlantic widely distributed stocks.

STECF concluded that: *"On average the stock biomass is increasing, and stock status is improving. Nevertheless, based on the set of assessed stocks included in the analyses, STECF notes that many stocks remain overfished and/or outside safe biological limits, and that progress achieved until 2017 seems too slow to ensure that all stocks will be rebuilt and managed according to FMSY by 2020."*

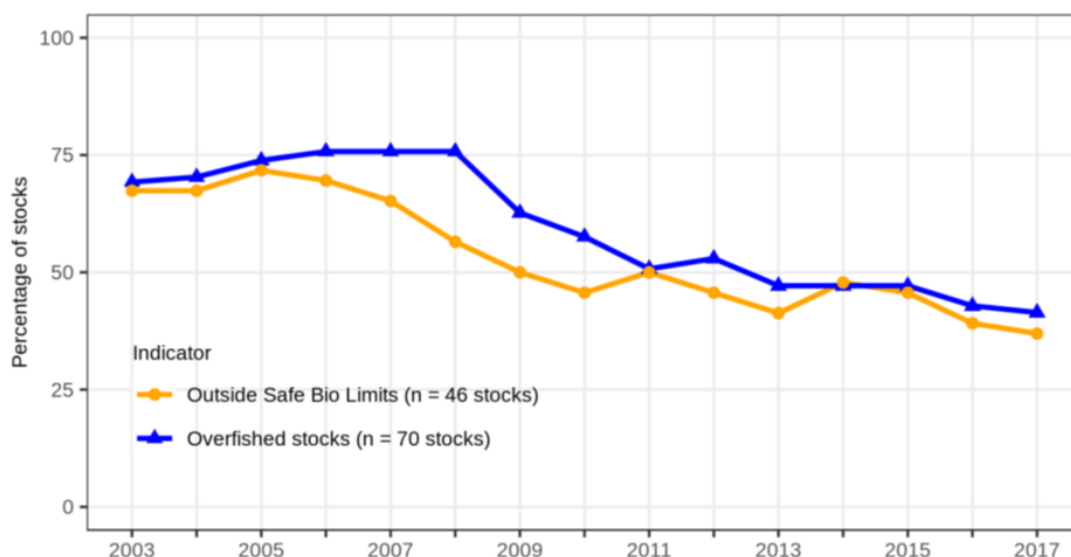


Figure 1. Trends in stock status in the Northeast Atlantic 2003-2017. Two indicators are presented: blue line: the proportion of overexploited stocks ($F > F_{MSY}$) within the sampling frame (64 to 70 stocks fully assessed, depending on year) and orange line: the proportion of stocks outside safe biological limits ($F > F_{pa}$ or $B < B_{pa}$) (out of a total of 46 stocks)¹².

¹² Scientific, Technical and Economic Committee for Fisheries (STECF) – Monitoring the performance of the Common Fisheries Policy (STECF-Adhoc-19-01). Publications Office of the European Union, Luxembourg, 2019, ISBN XXXXXX, doi:XXXXXXXX, PUBSY No.

Progress has been made in the management of some commercially important stocks of relevance to Ireland, however the speed and scale of progress has been insufficient. Less commercially important stocks such as data limited precautionary approach (PA) and bycatch species continue to be overfished, as do several commercially important Herring and Cod stocks. The divide which has been created by managers between target/bycatch and MSY/PA stocks has no basis in Article 2(2) of the CFP, which refers to all harvested stocks. This bias is reflected in the TAC setting process and also in the way Ireland's Marine Institute are reporting on the sustainability of stocks of Irish interest. The Marine Institute (MI)¹³ report that the number of sustainably fished stocks ($F < F_{MSY}$) in 2019 is just 47 percent (35 out of 74). This is an improvement on the 34 percent (29 out of 73)¹⁴ that were sustainably managed in 2014, at the time of the reform of the CFP. In 2019 the number of stocks with biomasses higher than sustainable reference levels has decreased to 34 percent (25). 18 percent of stocks (13) were overfished ($F > F_{MSY}$) in 2019. The number of stocks with unknown status remained at 35 percent (26). These results are heavily biased by the fact that the 35 percent of unknown stocks are not included in the sustainability evaluation. This large subset of stocks includes stocks which are not subject to MSY evaluation. This according to the authors may be due to short time series of biological data, low catches and/or insufficient sampling data or missing catch information (e.g. angling catches or discards). Many of the least sustainably managed stocks are data-limited stocks, who due to factors such as overfishing and illegal discarding may have insufficient sampling data and missing information to allow MSY assessments. The fact that these stocks are not included in the sustainability assessment distorts the perception of the sustainability of fisheries management (Figure 2).

Species	TAC Area	TAC set in 2019	ICES advice (TAC) for 2020	TAC % Change for 2020	EC TAC for 2020	EC TAC % Change for 2020	% EC TAC above ICES advice	Category
Herring	EU & International Waters of 5b, 6b and 6a(N)	4170	0	-100%	3480	-17%	100%	PA
Herring	6a(S) & 7bc	1630	0	-100%	1360	-17%	100%	PA
Cod	7a	807	116	-86%	257	-68%	122%	PA
Blue ling	EU & International Waters of 2 & 4	53	0	-100%	32	-40%	100%	PA
Blue ling	EU & International Waters of 3	8	0	-100%	5	-38%	100%	PA
Ling	EU Waters & International Waters of 6-10, 12 & 14	20396	16127	-21%	20396	0%	26%	PA (MSY proxy)
Pollack	7	12163	3263	-73%	7298	-40%	124%	PA (MSY proxy)
Pollack	6, EU & International Waters of 5b and of 12 & 14	397	96	-76%	238	-40%	148%	PA (MSY proxy)
Plaice	7bc	74	24	-68%	74	0%	208%	PA
Sole	7bc	42	24	-43%	42	0%	75%	PA
Greater Silver Smelt	EU & International Waters of 5-7	4661	3183	-32%	3729	-20%	17%	PA (MSY proxy)

Figure 2. A list of stocks which are relevant to Ireland which are not subject to MSY assessment in 2019 and have a history of overfishing or have a proposed TAC which is in excess of ICES precautionary advice.

Ireland has a relative stability share in a high proportion of the least sustainably managed stocks in the North East Atlantic. For example there are eight stocks which Ireland has a relative stability share that have zero TAC advice for 2020 (Herring 5b, 6b & 6aN; Herring 7bc, 6aS; Herring 7h-k; Cod 6a, 5b; Cod 7b-c, e-k, 8, 9 & 10 & 34.1.1; Whiting 7a; Blue Ling 2 & 4; Plaice 7hjk). According to the North Western Waters (NWWAC) Choke Identification Tool 2019¹⁵ there are ten stocks which are classified as high risk chokes and Ireland has a relative stability share in all of them (Haddock 7b-k; Cod 7e-k; Sole 7hjk; Plaice 7hjk; Cod, Haddock and Whiting 6a; Cod 6b; Cod 7a and Whiting 7a). In

¹³ Marine Institute (2019) The Stock Book 2018: Annual Review of Fish Stocks in 2019 with Management Advice for 2020 <https://bit.ly/35m83x3>

¹⁴ Marine Institute (2014) The Stock Book 2014: Annual Review of Fish Stocks in 2014 with Management Advice for 2015 <https://bit.ly/2rNGH4D>

¹⁵ NWWAC (2019) Addressing Choke Risk in NWW after exemptions <https://bit.ly/2CVyBt6>

2019 of the 13 stocks where advice was available and Ireland had an at least 40 percent relative stability share and therefore an important role in TAC setting, 46 percent (6) were not at MSY, 31 percent (4) have Zero TAC advice for 2020 and 31 percent (4) are high risk chokes. This is indicative of the negative role that Ireland has played in past December Councils, pushing up TACs above levels advised by ICES (i.e. $F > F_{MSY}$). This will be covered in more detail in the following sections on the December AGRIFISH Council. One of the ongoing drivers of poor decision making is that EU fisheries policy remains blinkered by a focus on the short-term exploitation of commercially important stocks rather than on an ecological approach which recognizes the interactions of species through food webs, the role of keystone species like sharks and rays, the importance of forage fish stocks, and the negative feedbacks associated with damaging marine habitats. This myopic approach to fisheries management ignores the medium to long term economic benefits of increasing fish biomass, improved food security as well as the increased stability that would result from healthier stocks.

Regarding TAC setting there is a clear bias towards maximising the short-term economic return of commercially important stocks at the expense of the sustainable management of less commercially important stocks; which may be bycatch and/or subject to data-limited precautionary approach (PA) advice¹⁶. This is the case for a large proportion of the 35% of assessed stocks in the North East Atlantic which remain outside of safe biological limits¹². These stocks are being treated with a lower level of ambition than those that are targeted and/or subject to MSY-based advice. This approach is not in line with the CFP's Article 2(2) MSY objective to maintain and restore the biomass of all harvested species to (BMSY). In the case of PA stocks, a precautionary approach to TAC setting, as defined by Article 6 of the United Nations Fish Stock Agreement (UNFSA) should be followed. The ongoing failure to implement ICES data-limited precautionary approach to catch advice also runs counter to the CFP's Article 3, which requires that management follows the best available scientific advice. The failure to restore the biomass of these stocks to healthy levels has serious implications for a range of mixed fisheries across North Western Europe and the implementation of the Landing Obligation.

In a mixed fisheries context creative and innovative solutions are required involving spatial and temporal management, technical measures, and in some cases balancing short- and long-term socio-economic trade-offs¹⁵. Progress has been made in advancing our understanding of chokes and several measures were proposed by the DiscardLess project including technical gear modifications, electronic monitoring and potential avoidance measures informed by advanced knowledge on the spatial distributions of choke species and unwanted catches. Moreover, the STECF¹⁷ has identified a range of measures, which could improve selectivity regarding stocks identified as 'high risk chokes' by the NWWAC choke identification tool¹⁵. It has more recently also referred back to a number of existing studies regarding relevant selectivity and avoidance measures as part of its evaluation of the bycatch reduction plan developed by the regional North Western Waters Member State Group.¹⁸ These options remain valid and should be implemented as a matter of urgency.

The December AGRIFISH Council and Overfishing

The stagnating and, in some cases, reversing trends in fishing mortality that have been reported by the STECF¹² are the result of decisions that have been made in the December AGRIFISH Council by EU fisheries Ministers and the

¹⁶ Client Earth (2019) Taking stock - are TACs set to achieve MSY? <https://bit.ly/2NMGdEn>

¹⁷ Scientific, Technical and Economic Committee for Fisheries (STECF) – Technical Measures – Improving selectivity to reduce the risk of choke species (STECF-18-02). Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-79382-0, doi:10.2760/41580, JRC111821; <https://bit.ly/2CZZI64>

¹⁸ Scientific, Technical and Economic Committee for Fisheries (STECF) – 61st Plenary Meeting Report (PLEN-19-02). Publications Office of the European Union, Luxembourg, 2019 p.102 onwards. <https://bit.ly/2NZAOKk>

European Commission. According to the New Economics Foundation (NEF)¹⁹ who have analysed December Council decision since 2001 it is the “*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.*” Their analysis of TACs adopted at the December Council between 2001 and 2018²⁰ shows that, on average, two-thirds of TACs were set above scientific advice. The percentage by which TACs were set above advice did decline throughout this period (from 42% to 8% in all EU waters), however the proportion of TACs set above advice has shown little improvement.

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

Client Earth have also identified the negative role Member States have played in driving overfishing. Their analysis of files held by the Commission for December Councils in 2017, 2018 and 2019, show that at least one Member State advocated for higher than scientifically advised TACs in 52%, 37% and 49% of the cases respectively¹⁶.

During last year’s December Council fisheries ministers continued to agree fishing limits for 2019 that were above the scientific advice. Of the 2019 fishing limits analysed by The Pew Charitable Trusts²¹, 41 percent (45 of 110) of the TACs exceeding scientific advice. A small reduction on the 44 percent (48 of 109) set exceeding advice the previous year.

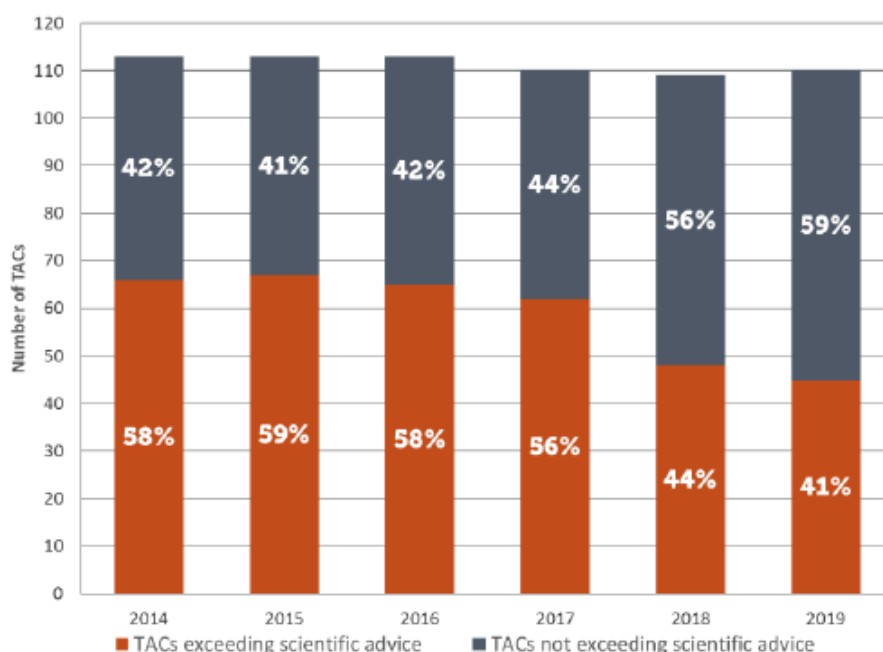


Figure 3. Comparison by the PEW Charitable Trusts of the proportion of December Council TACs set by fisheries ministers exceeding or not exceeding scientific advice on catch limits (2014-2019)²¹.

¹⁹ NEF (2019) Landing The Blame: Overfishing in the North East Atlantic. London: New Economics Foundation.

²⁰ NEF (2018). Landing the Blame: Overfishing in the Atlantic 2018. London: New Economics Foundation <https://bit.ly/2KAwA9H>

²¹ PEW (2019) Analysis of Fisheries Council agreement on fishing opportunities in the north-east Atlantic for 2019 <http://tiny.cc/fkytfz>

According to the New Economics Foundation (NEF)²² the percentage of excess TAC set during the northeast Atlantic negotiations rose in 2019 (Figure 4), also pushing up the excess TACs for all regions combined. They concluded that ensuring sustainability in Northeast Atlantic fisheries is paramount to ending overfishing across the EU as a whole.

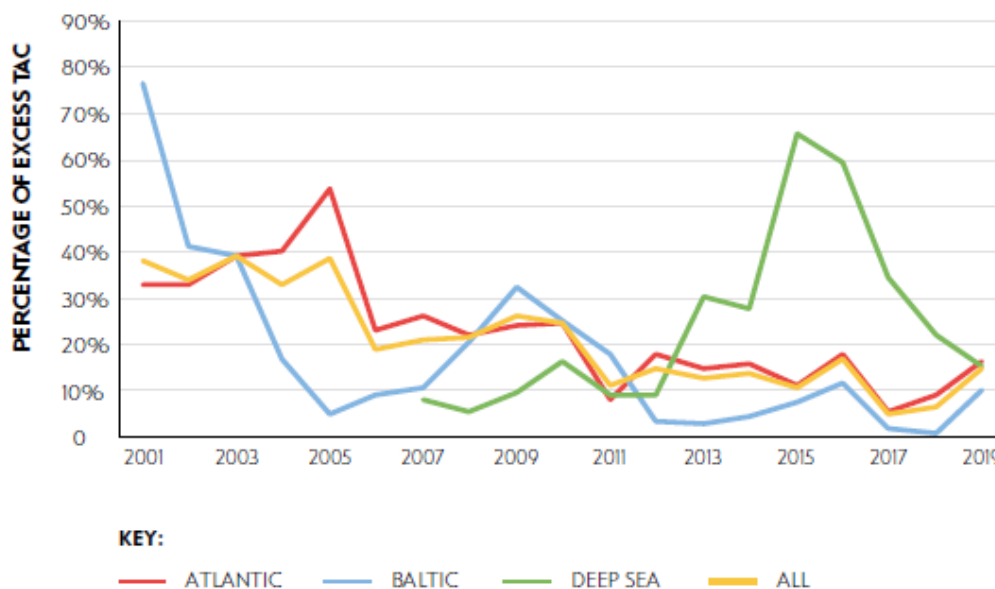


Figure 4. Percentage of Excess TAC 2001–2019²²

Ireland's Role in the December Council

The New Economics Foundation (NEF) have assessed the role of Member States in December AGRIFISH Councils between 2001²³ and 2018²². Based on these assessments they claim that **Ireland has played a negative role in the negotiations, driving up fishing limits above sustainable levels**. This is supported by Client Earth, who based on their analysis, of the last three December Councils identified Ireland as being among the top four Member States who have most frequently pushed (successfully or not) for higher than advised TACs¹⁶. Across all three years Ireland holds the worst record for the maximum number of such cases, having in 2017 pushed for 14 TACs to be set above scientific advice (representing 50% of the cases where Ireland holds a TAC share)¹⁶. Client Earth also found that Ireland, on average over the three years, had the highest percentage of TAC decisions where it successfully pushed for a higher TAC¹⁶. Ireland were also found to be second only to France regarding the largest TAC excess (in terms of volume) in relation to the overall Member State-specific TAC share, with 12% compared to Frances 15%, on average across all three years¹⁶. Ireland was also found to be the worst perpetrator, in terms of the average difference between the Council TAC and the corresponding advice per TAC/advice comparison (rather than in total) across all three years. The Irish share of the TACs exceeded the corresponding advice on average by 34% per TAC/advice comparison, compared to a 10% overall TAC excess calculated as a proportion of Ireland's total TAC share¹⁶.

In this context it is not surprising that more than half of the TACs of which Ireland has a share exceeded scientific advice for each of the years 2017, 2018 and 2019, averaging at 59% of the cases. The percentage was highest in 2017 (68%), dropping to 55% in 2018 and 2019 (Figure 5).

²² NEF (2019) Landing The Blame: Overfishing in the North East Atlantic <https://bit.ly/37ie1AO>

²³ NEF (2017) Landing The Blame: Overfishing in the Atlantic 2017 <https://bit.ly/2hR5XIW>

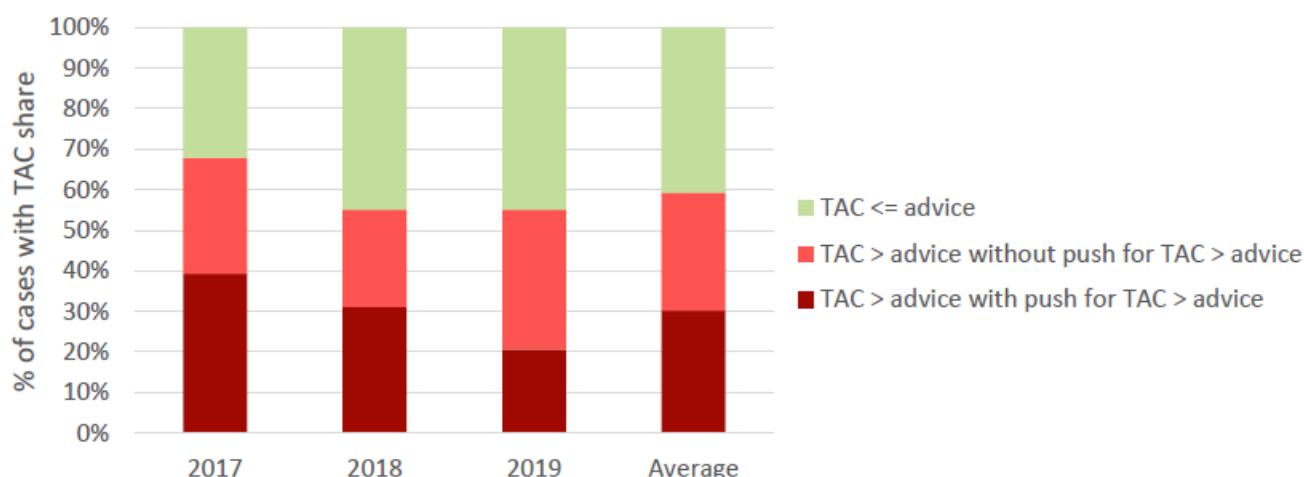


Figure 5. Time series and average across 2017-2019 of the percentage of cases (in relation to the total number of cases where Ireland has a share of the TAC) where the TAC was set above (dark red: with push from Ireland, light red: without push from Ireland) versus below or in line with (green) the scientific advice¹⁶.

BirdWatch Ireland have carried out their own analysis of the December Council ‘bible’ from 2016 to 2018. The ‘bible’ is a record of the positions of Member States, which is drafted by the EC General Secretariat based on working party meetings and Member States written comments in the build up to the December Council. It is a comprehensive account of the different positions expressed by Member States heading into the negotiations²⁴.

These records show that the Irish Government has routinely argued for stocks to be overfished, for example:

- Calling for a TAC roll-over to avoid cuts resulting from ICES advice (including non-statement stocks).
- Calling for overfishing of bycatch stocks to avoid choke / under exploitation of target stocks
- Calling for TAC deletion
- Using short-term socio-economic impacts as an excuse to justify overfishing

There are numerous examples where Irelands negative positions have coincided with a Council TAC that was above the fishing limits advised by ICES. For many of these stocks overfishing has negatively impacted on their biomass and stocks status, creating high risk chokes which threaten to close numerous fisheries in 2020. If Minister Creed had advocated for measures to be taken to recover these stocks over the last five years, then maybe this unfortunate situation could have been prevented.

- In the case of Plaice 7 hjk, between 2016 and 2018 the Irish government called for a bycatch TAC for the stock which was above ICES advice. The stock has gone from have a catch advice of 135 tonnes in 2016 to 0 tonnes in 2020. Ireland persistently pushed for a roll-over of the TAC, knowing this would result in overfishing. The stock is now a high choke risk. Ireland holds 44% of the EU TAC for this stock.
- In the case of Whiting 6, 5b, 12 and 14 the Irish government in 2016 claimed that the stock was improving, calling on the EC to not implement a 0 TAC. The Council agreed a TAC of 213 tonnes. In 2017 the Commission again proposed 0 TAC. The Irish government proposed a rollover of the TAC. The Councils decision was to roll-over the TAC. In 2018 again the ICES advice was for 0TAC. The Irish government called for the TAC to be removed completely. Ireland holds 30% of the EU TAC for this stock.

²⁴ EU Ombudsman (2019) Recommendation of the European Ombudsman in case 640/2019/FP on the transparency of the Council of the EU’s decision-making process leading to the adoption of annual regulations setting fishing quotas (total allowable catches) <https://bit.ly/2Qzihq2>

- In the case of Whiting 7a, in 2017 the Irish government called for a roll-over of the TAC of 80 tonnes, even though the stock had 0 TAC advice. The stock has not recovered and again has 0 TAC advice for 2020 and is a high choke risk. Ireland holds 57.5% of the EU TAC for this stock.
- In the case of Haddock 7 b-k the Irish governments position has persistently ignored the implications of overfishing Cod 7 bc,e-k when setting the TAC for Haddock and Whiting in the Celtic Sea mixed fishery. In 2017 Minister Creed called for a roll-over TAC, ignoring mixed fisheries implications. In 2018 Minister Creed supported the Commission's proposal for Haddock which was above the mixed fisheries scenarios which would have prevented the Cod stock from being overfished. In 2016 Ireland advocated that a cut in the Cod TAC could have devastating socio-economic impacts. Cod 7bc,e-k has gone from a TAC of 1447 tonnes in 2017 to 0t 2019 and 2020 and is a high risk choke for the Celtic Sea mixed fishery. Ireland holds 25% of the EU TAC for this stock.
- In 2017 the Commission advocated that the TAC for Irish Sea Cod 7a to be set below ICES FMSY advice, after the stock appeared to be recovering from years of 0 TAC advice. The Irish Government advocated against the Commission, going for the full ICES advice (FMSY). The stock has declined from catch advice of 1073 tonnes in 2018 to 116 tonnes in 2020. The stock is considered a high-risk choke in 2020. Ireland holds 60% of the EU TAC for this stock.

In 2019 Sweden, the United Kingdom and Ireland were the Member States with the highest percentage of their fishing quotas in excess of scientific advice. These Member States were involved with TAC decisions that allow fishing at 52.4%, 24.3% and 21.7%, respectively, above levels that scientists have determined to be consistent with the sustainable management of these fish stocks²².

In terms of the total tonnage of TAC set above advice the UK, Denmark, and Ireland are the worst offenders. According to NEF, ministers representing these Member States have received the largest TAC increases above scientific advice in tonnage and are therefore the most responsible for impeding the transition to sustainable fisheries in the EU²².

Ireland negotiated fishing quota for 2019 34,052 tonnes above scientific advice. This now means that **Ireland has negotiated fishing quota a total of 737,179 tonnes above scientific advice since 2001²²**. Ever since the initiation of the reformed CFP, Ireland has consistently been one of the worst offenders in Europe when it comes to overfishing having over the previous three years also ranked worst in 2018²⁵, and 2016²⁶ and joint worst in 2017²³ when it comes to the percentage of quotas set above scientific advice.

The Economic Benefits of Achieving MSY

Much of the debate against setting fishing limits with FMSY as an upper limit has in the past focused on the short-term economic cost of reducing fishing pressure, rather than on the medium to long-term 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 BIM²⁷. Last year's assessment calculated the cost of the proposed TACs within the Commission's proposal on the basis of volume (tonnes), value (€) and direct income²⁸. This

²⁵ NEF (2018) Landing The Blame: Overfishing in the Atlantic 2018 <https://bit.ly/2qipShZ>

²⁶ NEF (2016) Landing the blame: overfishing in the Northeast Atlantic 2016 <https://bit.ly/35eTuLL>

²⁷ BIM (2013) Fisheries TAC's and Quotas 2013 Sustainability Impact Assessment <https://bit.ly/2zcfERw>

²⁸ DAFM (2018) Fisheries TAC's and Quotas 2018 Sustainability Impact Assessment

analysis is also carried out on a sectoral and regional basis and the findings are extrapolated to equivalent full and part time jobs in the catch and processing sectors.

This approach fails to consider the medium to long term economic gains resulting from managing stocks at or below MSY. According to the New Economics Foundation²⁹ this line of argument is methodologically weak as it omits cost reductions, quota uptake, and price elasticities. The failure of the Commission to include the Hague preferences in their proposal was highlighted as a negative without considering the fact that TAC uplifts would potentially result in fishing above FMSY, which would result in declining biomass and negative socio-economic impacts. It also fails to consider the cost of losses in natural capital, stock resilience or management scenarios such as choked fisheries.

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*"²⁹. MSY from an economic standpoint must be the goal which we should strive for if we wish to achieve the point of greatest economic return³⁰. 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 advice³¹. 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 period³².

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 annually³³. 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 jobs³⁴.

Based on the STECF's most recent annual economic assessment of EU fisheries³⁵, in 2017, the Irish fleet recorded a gross profit of €64 million and net profit of €34 million. The net profit and fleet revenue is stable and slightly increasing relative to 2016. Forecasting predicts a relatively stable picture with some minor fluctuations in overall income and costs. Capacity/effort reduction in recent years was one of the main driving forces behind an overall improvement in the economic performance of the Irish fleet. Increasing the biomass of fish stocks would further improve capacity/effort within the Irish fleet, further increasing profits. The positive economic performance of the sector means that there can be no excuses in delaying the CFPs 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 stocks³¹. The sooner we transition to MSY the sooner we can enjoy the economic benefits.

²⁹ World Bank (2017) The Sunken Billions Revisited, Progress and Challenges in Global Marine Fisheries <http://bit.ly/2B28Ow2>

³⁰ Client Earth (2017) Maximum Sustainable Yield in the Common Fisheries Policy – A Legal Briefing

³¹ World Bank (2017) The Sunken Billions Revisited, Progress and Challenges in Global Marine Fisheries <http://bit.ly/2B28Ow2>

³² NEF (2015) Managing EU fisheries in the public interest, Results from the Bio-Economic Model of European Fleets <http://bit.ly/2mNcSOD>

³³ 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.

³⁴ NEF (2017) A Fair Fishing Deal for Ireland – How to Manage Irish Fisheries in the Public Interest <http://bit.ly/2zpe4NY>

³⁵ Scientific, Technical and Economic Committee for Fisheries (STECF) – The 2019 Annual Economic Report on the EU Fishing Fleet (STECF-19-06). Publications Office of the European Union, Luxembourg, 2019 <https://bit.ly/2NOCh5S>

The European Commission's Proposals for North-East Atlantic TACs in 2020

The European Commission has proposed fishing opportunities for 2020 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 2020,' which presents the Commission's proposal on TACs and quotas for fifty stocks of relevance for Irish fishermen.

The Commission's annual proposals for fishing opportunities has persistently been a stumbling block to ensuring that the Council adopts TACs that are consistent with the CFPs objective of restoring and maintaining fish stocks above biomass levels capable of delivering MSY. Every year the Commission propose fishing limits in excess of ICES advice. This year appears no different as an analysis of 71 TACs within the Commission's reveals that 30 are above ICES advice and 4 have no advice. Therefore, going into the negotiations around 42 percent of TACs proposed by the Commission already exceed ICES advice and would therefore not be in line with the CFP MSY 2020 deadline. All the Commission's TAC proposals should have been in line with ICES advice for 2020 given the CFPs Art 2(2) deadline to end overfishing. In the past the Council have rarely adopted TACs which are more precautionary than the Commission's proposal³⁶, suggesting that there is a probability that EU institutions will fail to implement the CFP. After years of constructive dialogue with decision makers and industry representatives it is deeply concerning that we are going into this all-important December Council with a Commission proposal that falls short of the CFPs legal requirements.

For TACs of direct relevance to Irish fishermen of the 25 TACs which at the time of drafting 1) the Commission had made a proposal and 2) ICES advice was available, for 10 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.

For TACs of direct relevance to Irish fishermen there appear to be 5 TACs which have roll-over TAC proposals. These specific data limited stocks have in the past fallen under a joint political statement by the Council and the Commission³⁶, which resulted in their TACs remaining fixed unless the perception of the status of these stocks changed significantly. The roll-over TACs proposed for at least one of these stocks exceeds ICES advice and no advice is available at the time of writing for three others.

There are 20 "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 us from giving input into the Commission's proposals and therefore undermines public participation and effective consultation.

Recommendations to the Minister on the Commission's Proposal

We call on the Minister to work constructively with other EU decision makers at the upcoming AGRIFISH Council to ensure the full implementation of the CFP including the 2020 deadline and the Landing Obligation. Progress can be

³⁶ Council of the European Union document [5232/14](#)

made by ensuring that fishing opportunities are set in line with the best available scientific advice from ICES (including mixed fisheries advice) and by redoubling efforts to implement the LO.

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. At last year's penultimate December Council 41 percent (45 of 110) of the TACs agreed still exceeded scientific advice²¹. In order to make the substantial progress needed during this year's negotiations we make the following recommendations.

1. On setting TACs in line with the requirements of the CFP

ICES issue advice on fishing opportunities which integrates the ecosystem and precautionary approach with the CFPs objective of achieving maximum sustainable yield (MSY). The aim is, in accordance with the aggregate of international guidelines, to inform policies for high long-term yields while maintaining productive fish stocks within healthy marine ecosystems³⁷.

- We ask the Minister to set TACs not exceeding ICES advice on the basis of the ICES MSY approach or, in the absence of defined FMSY reference point, not exceeding the precautionary approach.
- For the five bycatch stocks which the EC requested ICES provide advice based on the precautionary approach, despite the fact that the stocks had MSY reference points, we ask the Minister to set TACs based on the MSY rule. Using the precautionary reference points (e.g. Fpa) is not in ICES technical guidelines and would allow for higher fishing pressure, which would run counter to the CFP's objectives.
- When there is no scientific advice on maximum catches, we ask the Minister to take a precautionary approach, as defined by the United Nations Fish Stock Agreement (Article 6). Fishing limits should be set on a precautionary basis and should include additional measures to mitigate the risk of overfishing, including enhanced monitoring and data collection.
- For all stocks which do not have a TAC we call on the Minister to ensure that their management is in line with the objectives of the CFP.

I. The Minister should adopt the TACs within the Commission's proposal which do not exceed the ICES advice on sustainable catches for 2020 e.g. Greater Silver Smelt 3 and 4; Boarfish; Herring 7a; Megrims 7; Monkfish 7; Haddock 7a; Blue Ling 5b,6,7; Plaice 7a; Plaice 7 fg; Common Sole 7a; Common Sole 7 fg; Horse Mackerel 4b,c, 7d; Horse Mackerel 2a, 4a, 6, 7a-c, 7e-k, 8a,b,e, 5b, 12, 14.

II. The Minister should set fishing limits not exceeding the best available scientific advice from ICES (FMSY) for the 10 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: Cod 7a; Hake 6 and 7, 5b, 12 and 14; Ling 6-10,12 and 14; Pollack 6,5b,12 and 14; Pollack 7; Common Sole 7bc.
- 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 7bc, 6aS; Blue Ling 2 & 4.
- Instances where specific data limited stocks have roll-over TAC proposals which exceed scientific advice: Pollack 6; 5b; 12 & 14.

III. The Minister should follow the precautionary approach to fisheries management for the 20 "pm" (pro memoria) TACs where no proposal has been published to date: Herring 7 g-k; Cod Nor waters of 1 & 2, Cod 6b, 5b, 12 and 14; Cod 6a, 5b; Megrims 6, 5b, 12 and 14; Monkfish 6, 5b 12 and 14; Haddock 6b; 12 and 14; Haddock 5b and 6a; Whiting 6, 5b, 12, 14; Whiting 7a; Whiting 7b - 7k; Blue Whiting 1 - 7, 8a,b,d,e, 12 & 14; Norway Lobster 6; 5b;

³⁷ ICES (2018) ICES Advice basis. ICES Advice 2018, 13pp. <https://bit.ly/2rc06f5>

Norway Lobster 7a; Plaice 7 hjk; 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

IV. 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 for: Greater Silver Smelt 3 and 4; Plaice 6, 5b, 12 and 14; Saithe 6, 5b, 12 and 14; Common Sole 6, 5b 12 and 14.

V. The Minister should establish strong remedial measures for stocks that are below Blim and/or have zero-catch advice e.g. Herring 5b, 6b & 6aN; Herring 7bc, 6aS; Herring 7h-k; Cod 6a, 5b; Cod 7b-c, e-k, 8, 9 & 10 & 34.1.1; Whiting 7a; Blue Ling 2 & 4; Plaice 7hjk.

2. Other recommendations on the Commission's Proposal

The Landing Obligation

The introduction of the Landing Obligation (LO) or the ban on discarding catch was one of the most significant elements of the reformed CFP. This change in policy was driven by public support on the basis that discarding catch often contributes to overfishing and is also a wasteful practice and landing all catches would improve the quality of fisheries data which could be used to improve fisheries management.

The LO is complementary to the MSY objective, which together are intended to restore the EU's marine environment, improve the status of fish stocks and to make the fisheries sector more sustainable and profitable moving forward³⁸. The EU is not the first to establish a discard ban. Similar initiatives have taken place in Norway, Iceland, Chile and New Zealand^{39,40}. Internationally, discard bans have been most beneficial when they support the effective implementation of fishing limits, reduced fish mortality and increase stock biomass. Several key measures are needed to support this, with the most effective of these pre-emptively avoiding unwanted catches in the first place such as spatial and temporal closures the use of more selective fishing gear and moving-on provisions⁴¹. The implementation of a discard ban requires also effective monitoring and control measures^{43 40}.

In the interest of helping the fishing industry to adapt to the LO, implementation deadlines were set starting from 2015 with the final deadline in January 2019. This was in order to ensure that different fisheries were brought under the obligation on a phased basis. However, despite the 2019 deadline fishing practices have remained largely unchanged. There has been no measurable reduction in the levels of unwanted catch as Member States and the industry have focused their energy on maintaining the status quo.

This resistance has meant that the necessary changes in fisheries management have not been implemented and there is little evidence that Member States in North Western Waters have adopted avoidance measures. While numerous studies have been carried out on more selective fishing gear, to date, there is a lack of evidence that specific improvements in selectivity have come about as the result of the LO⁴². Information on discard quantities

³⁸ Joint NGO Position, 2018 Recovering fish stocks and fully implementing the Landing Obligation-Managing fishing mortality to meet CFP objectives <https://bit.ly/2NY9ps8>

³⁹ Borges, L., Cocos, L., & Nielsen, K. N. (2016). Discard ban and balanced harvest: a contradiction?. ICES Journal of Marine Science, 73(6), 1632-1639.

⁴⁰ Guillen, J., Holmes, S. J., Carvalho, N., Casey, J., Dörner, H., Gibin, M., ... & Zanzi, A., 2018 A Review of the European Union Landing Obligation Focusing on Its Implications for Fisheries and the Environment. Sustainability, 10(4), 900.

⁴¹ Gullestad, P., Blom, G., Bakke, G., & Bogstad, B. (2015). The "Discard Ban Package": Experiences in efforts to improve the exploitation patterns in Norwegian fisheries. Marine Policy, 54, 1-9.

⁴² NWWAC (2019) Report on DG MARE Seminar on "The EU Landing Obligation: State of Play". Brussels. 14th June 2019

presented by Member States remains scant and there is no evidence that there have been any changes in discard quantities. STECF report that *“fishers seem slow to change fishing practices; and in many areas, a business as usual mentality seems to prevail.”*⁴³. 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.”*⁴⁴

The implementation of the Landing Obligation and 2020 TACs

There are a number of outstanding issues with the implementation of the LO which are relevant to the adoption of TACs for 2020.⁴⁵

The proposed removal of stocks from TAC management

The removal of the stocks from TAC management or adding stocks to the prohibited species list are two extreme options which have been proposed in the past to address problematic choke stocks. NGO's have consistently called for greater focus be directed towards identifying solutions, implementing technical measures and increasing the biomass of potential choke species over the last five years³⁸.

The removal of the stocks from TAC management will fail to address the root causes of the problem, or simply mask overfishing or discarding rather than implementing the CFP. In order to address choke issues NGOs, have in the last year developed a joint position paper - *“Recovering fish stocks and fully implementing the Landing Obligation- Managing fishing mortality to meet CFP objectives”*⁴⁶. This position paper outlined 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. 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 MSY.

There are eight stocks which Ireland has a relative stability share that have zero TAC advice for 2020: Herring 5b, 6b & 6aN; Herring 7bc, 6aS; Herring 7h-k; Cod 6a, 5b; Cod 7b-c, e-k, 8, 9 & 10 & 34.1.1; Whiting 7a; Blue Ling 2 & 4; Plaice 7hjk. Designating stocks with zero TAC advice as prohibited species will not address the root causes of overfishing and provides little incentive for fishers to improve selectivity and avoidance measures. The prohibited species list should only be used for species which are biologically sensitive to any exploitation⁴⁷. Adding a species to the prohibited species list just to facilitate discarding will not improve the sustainability of the stock⁴⁵.

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;

⁴³ Scientific, Technical and Economic Committee for Fisheries (STECF) – 54th Plenary Meeting Report (PLEN-17-01); Publications Office of the European Union, Luxembourg; EUR 28569 EN; doi:10.2760/33472 <https://bit.ly/344it4u>

⁴⁴ 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>

⁴⁵ Borges, L., & Penas Lado, E. (2019). Discards in the common fisheries policy: The evolution of the policy. In S.S. Uhlmann, C. Ulrich, S.J. Kennelly (Eds.), The European Landing Obligation - Reducing discards in complex, multi-species and multi-jurisdictional fisheries. Cham: Springer.

⁴⁶ Recovering fish stocks and fully implementing the Landing Obligation-Managing fishing mortality to meet CFP objectives <https://bit.ly/2qRrWtT>

⁴⁷ STECF. (2017c). Long-term management of skates and rays (STECF-17-16). Publications Office of the European Union, Luxembourg.

- 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.

Mixed Fisheries Advice & the use of F ranges

Article 2(2) of the CFP Basic Regulation requires that the EU restore and maintain harvested species above biomass levels capable of producing MSY. It applies to all harvested stocks and makes no distinction between 'target' and 'bycatch' stocks. According to Client Earth¹⁶ who analysed December Council the Commission's proposals and Council decisions over the last five years, contrary to the CFP's requirements, stocks classified as bycatch have been treated with a lower level ambition than target stocks. In 2019, for example the percentage of TACs above scientific advice was considerably higher for bycatch stocks than for target stocks both for the Commission's proposal and for the agreed TACs. On average TACs also exceeded the advice by a larger amount for bycatch than for target stocks¹⁶.

In mixed fisheries, differences in the productivity and mortality levels of the different stocks, mean that in order to restore and maintain the biomass levels of all harvested stocks at levels capable of producing MSY, the mortality of the most vulnerable stock must dictate the TACs of the least limiting stocks. The failure of the EU over the course of the last six years to take the necessary steps to restore the biomass of stocks to healthy levels has resulted in a situation where according to the NWWAC Choke Identification Tool 2019¹⁵ there are ten stocks that pose a high choke risk. This is extremely frustrating as it was both foreseeable and preventable. The last few years should have been used to reduce the fishing mortality of these stocks and restore their biomass. Instead time and resources were squandered in an effort by decision makers to identify loopholes in the LO to maintain the status quo.

As TAC-setting in mixed fisheries should be guided by the advice for the most limiting stock, this means that in certain cases it will be necessary to set the TACs for more abundant stocks below the maximum single species advice. Likewise using FMSY ranges provided for by the Western Waters MAP must not result in the over-exploitation of the more limiting stocks. In this context ICES mixed fisheries advice where available, should be used to ensure that the individual TACs set in a mixed fishery are guided by the sustainable exploitation of the most limiting stock. Within the Celtic Sea mixed fishery Cod 7e-k is the most limiting stock, with Haddock 7b-k being limiting for some vessels and Whiting 7b-ce-k being the least limiting. Therefore, in the Celtic Sea mixed fishery the TACs of Haddock and Whiting should be governed by the Cod TAC.

ICES have issued advice in response to a special request from the EC on the likely catches in 2020 of specific bycatch / non-targeted stocks that have zero catch advice⁴⁸. The catch scenarios are based on favourable catch scenarios for target stocks and if adopted by the Council would result in $F > F_{MSY}$ for the bycatch stocks with zero catch advice. We do not support this approach. The advice for the Celtic Sea mixed fishery is based on three MSY scenarios for Haddock. We call on the Minister not to adopt this approach as all three haddock MSY scenarios would result in $F > F_{MSY}$ for Cod. We call on the Minister to advocate for the use of the ICES Celtic Sea mixed fisheries advice; to ensure that the TACs for Haddock 7b-k and Whiting 7b-c, e-k are set below their individual ICES single stock advice. Of the F range options which will be proposed by ICES we advocate that the 'cod FMSY' scenario or a more conservative option be used to determine the TACs of the three stocks.

Likewise, the catch scenarios proposed by ICES for Whiting 7a is based on status quo fishing mortality within the Nephrops fishery. This is totally inappropriate given the state of the whiting 7a stock. Its biomass is extremely low, the spawning-stock biomass (SSB) has been declining since the start of the time-series and has been well below Blim

⁴⁸ ICES (2019) EU request to provide likely catches in 2020 of specific bycatch / non-targeted stocks that have zero catch advice (cod in divisions 7.e-k and 6.a and in Subdivision 21, whiting in divisions 6.a and 7.a, and plaice in divisions 7.h and 7.j-k) <https://bit.ly/2Km5W4j>

since the mid-1990s. Recruitment (R) has been low since the early 1990s. We call on the Minister to take all possible steps to reduce the fishing mortality of Whiting 7a in the Nephrops fishery.

ICES remain unable to issue catch advice for Plaice 7hjk because of the uncertain discard rates. ICES have noted that discard rates may be increasing. Greater efforts must be made to improve the monitoring of all fisheries catching Plaice 7hjk. We call on the Minister to advocate that the relevant fisheries be subject to full catch documentation and that the sustainable management of Plaice 7hjk is reflected in the TACs for Cod 7e-k, Haddock, Whiting, Monkfish, Megrim and Hake.

Unfortunately, the mixed fisheries advice developed by ICES is not due to be published until late November and therefore we are not able to comment on specific scenarios at this stage. 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 advocate that the most sustainable mixed fisheries scenarios from the perspective of the most limiting bycatch stocks are adopted by the Council.
- Supporting measures aimed at minimizing the misalignment between activity and stock shares for the fleets, such as changes in gear selectivity, spatiotemporal management measures, or reallocation of stock shares, should also be considered.

Bycatch TACs

Article 2(2) of the CFP Basic Regulation requires that the EU restore and maintain harvested species above biomass levels capable of producing MSY. It applies to all harvested stocks and makes no distinction between 'target' and 'bycatch' stocks.

According to the NWWAC Choke Identification Tool 2019 ten stocks which are classified as high risk chokes¹⁵. These stocks are – Haddock 7b-k; Cod 7e-k; Sole 7hjk; Plaice 7hjk; Cod, Haddock and Whiting in 6a; Cod in 6b; Cod in 7a and Whiting in 7a. 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 identification tool” to identify, categorise and suggest mitigation measures to avoid choking fisheries under the implementation of the landing obligation¹⁵.

In order to avoid high risk choke situations arising from zero catch advice last year, the Council in 2018 adopted bycatch TACs, with the Member States concerned committing to the development of bycatch reduction plans and to the implementation of full catch documentation for these stocks from 2019⁴⁹. The Member States of the NWW regional group committed to developing these bycatch reduction plans by 30th April 2019 in close collaboration with the NWW Advisory Council (NWWAC).⁵⁰ NGO's supported this approach in 2019 on the understanding that 1) effective bycatch reduction plans would be developed which would progressively restore the stocks concerned while also ensuring full catch documentation 2) any such measures allowing the overfishing of zero and low quota stocks would be illegal under the CFP in 2020. The bycatch reduction plans developed by the NWW Member State Group⁵¹ have been evaluated by the STECF in July 2019⁵². STECF found that the bycatch reduction plan “*Does not fulfil the commitments made by the Member States as it does not contain any elements to ensure reduced by-catches of the relevant stocks over and above the measures already included in the discard plan*”. The proposal made by the NWW

⁴⁹ Recital 8 of Council Regulation (EU) 2019/124, stating that “all vessels benefitting from these specific TACs should implement full catch documentation as from 2019”.

⁵⁰ Statement of the North Western Waters regional group made at December Council 2018.

⁵¹ By-catch reduction plan (BCReP) in the North Western Waters. 2019-06-04 version. Draft received on 12 June 2019.

⁵² STECF (2019) - 61st Plenary Meeting Report (PLEN-19-02).

Member State Group was not fit for purpose as it lacked a number of necessary elements to progressively reduce unwanted catches in line with the objectives of the CFP.

The plan lacked well-defined objectives to be reached over finite timescales, or clearly defined biological reference points. The plan also lacked the necessary steps to ensure the implementation of full catch documentation as is required from 2019 onwards. The first paragraph of the draft plan reads "*NB: Should one of these TACs fall under a normal TAC from 2020 or afterwards it then would not be bound to such BCRP.*" This clearly indicates from the outset that these plans aren't intended to recover the stocks concerned but rather to facilitate the ongoing exploitation of target stocks.

Based on the failure of Member States like Ireland to fulfil their commitments and considering the CFPs MSY 2020 deadline we do not consider the use of bycatch TACs as a credible option moving forward. Ineffective bycatch reduction plans, without the necessary measures to ensure that the bycatch TACs are respected, is inappropriate and counter-productive to the delivery of the CFP's objectives. The STECF's evaluation of the NWW bycatch reduction plan clearly confirms concerns that it is not fit for purpose. Allowing business as usual to continue in the absence of a clear, ambitious route towards bycatch minimisation and stock recovery sets a dangerous precedent, endorsing inaction instead of honouring the commitments made at the 2018 December Council, and as part of the TAC and Quota Regulation for 2019.

- Based on the failure of Member States like Ireland to fulfil their commitments and considering the CFPs MSY 2020 deadline we do not consider the use of bycatch TACs as a credible option moving forward.
- Stock recovery plans should be developed to effectively reduce bycatches and set the relevant stocks on a pathway to recovery above levels capable of producing MSY
- All of the fisheries which catch the relevant stocks should be subject to robust monitoring and control including full catch documentation in 2020.

Hague Preferences

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 ($F > F_{MSY}$) provided by ICES or STECF. Any TAC in excess of ICES F_{MSY} advice in 2020 would not be in line with the CFP's Art 2(2) MSY objective.

Pelagic Advisory Council Advice

The Pelagic Advisory Council have provided consensus advice between the fisheries sector and other interest groups for fishing opportunities for 2020⁵³. This covers eight stocks for which Ireland has a relative stability share: Boarfish; Herring 5b, 6b & 6aN; Herring 7bc, 6aS; Herring 7a; Herring 7g-k; Blue whiting 1 - 7, 8a,b,d,e, 12 & 14; Horse mackerel 4b, 4c, 7d; Horse mackerel 2a, 4a, 6, 7a-c, 7e-k, 8a,b,d,e, 5b, 12, 14.

We call on the Minister to:

- Set TACs for Irish pelagic stocks in line with the ICES advice. This is supported by the consensus position of the Pelagic Advisory Council.

Transparency

The recurring lack of transparency around the decision-making process both within the drafting of the Commission proposal and the final adoption of TACs at the December Council is a recurring concern for NGO's. The lack of

⁵³ Pelagic Advisory Council (2019) Advice on Fishing Opportunities for 2020 <https://bit.ly/2KGAcHl>

transparency around decision making aside from causing confusion hinders accountability and facilitates poor decision making. Issues around the transparency of the December Council's decision-making process was recently subject to an inquiry by the EU Ombudsman²⁴, who recommended that the Council should proactively make available documents related to the adoption of the TAC Regulation at the time they are circulated to Member States or as soon as possible thereafter, in line with Article 12 of Regulation 1049/2001. This would mean making such documents directly accessible to the public at the time they are circulated, or soon thereafter.

In 2018 and 2019 the European Commission and Member States again chose to allow fishing industry representatives preferential access to key negotiations, such as the EU Norway consultations while excluding civil society groups like BirdWatch Ireland. The bias towards the fishing industry and a lack of transparency within the negotiations remain of serious concern to us.

We therefore call on the Minister to:

- Advocate that the Council should proactively make available documents related to the adoption of the TAC Regulation at the time they are circulated to Member States or as soon as possible thereafter, in line with Article 12 of Regulation 1049/2001. This would mean making such documents directly accessible to the public at the time they are circulated, or soon thereafter.
- 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 TAC adjustments, 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.
- Ensure civil society groups have equal access to consultations as other stakeholders.

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 TAC⁵⁴. 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.

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")⁵⁵. 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."*

⁵⁴ ClientEarth (2016). Mismatch between TACs and ICES advice – Why it is an issue and how to address it', December 2016. <https://bit.ly/2KBR00z>

⁵⁵ PEW (2018) Analysis of Total Allowable Catches in the north-east Atlantic for 2018 <https://bit.ly/2Tgfuka>

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 Minister 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.

TAC Advice for Minister Creed for 2020								
SPECIES	AREA	2019		2020				
		TAC	Ireland	COM Proposal	ICES TAC	Advice Category	Council TAC Recommendation	Comment
Greater silver smelt	3 and 4	1,234	8	1234	10270	YES	10270	
Greater silver smelt	5, 6 and 7	4,661	329	3729	3183	Unknown	3183	
Boarfish (all waters)		21,830	15,086	19152	19152	YES	19152	Follow PeIAC Advice
Herring	5b and 6b; 6aN (1)	4,170	630	3480	0	NO	0	Follow PeIAC Advice
Herring	7bc ; 6aS (1)	1,630	1,482	1360	0	NO	0	Follow PeIAC Advice
Herring	7a (1)	6,896	1,795	8064	8064	YES	8064	Follow PeIAC Advice
Herring	7g, 7h, 7j and 7k (1)	4,742	4,097	p.m.	0	pm	0	Follow PeIAC Advice
Cod	Nor waters of 1 and 2	21,518	322	p.m.			unknown	UNFSA precautionary approach to TAC setting
Cod	6b 5b 12 and 14	74	16	p.m.	14	pm	14	
Cod	6a 5b	1,735	385	p.m.	0	pm	0	Rebuild stock, Fully disclosed fisheries
Cod	7a	807	530	257	116	NO	116	
Cod	7b-c,e-k, 8, 9 & 10; & 34.1.1	1,610	650	189	0	NO	Mixed Fishery	Refer to Mixed Fishery recommendations
Megrim	6; 5b; 12 and 14	5,782	749	p.m.	5847	p.m.	5901	
Megrim	7	18,132	3,001	18732	19982	YES	19982	Consider Plaice 7h-k, Spatial/temporal closures
Monkfish	6; 5b; 12 and 14	11,453	1,145	p.m.	7971	pm	7971	
Monkfish	7	32,999	2,501	35299	44757	YES	44757	Consider Plaice 7h-k, Spatial/temporal closures
Haddock	6b; 12 and 14	10,469	824	p.m.	10472	pm	10472	
Haddock	5b and 6a	3,226	528	p.m.	2872	pm	2872	
Haddock	7b-k, 8, 9 and 10; 34.1.1	8,329	1,851	10859	16671	YES	16671	Refer to Mixed Fishery recommendations
Haddock	7a	3,739	1,619	3156	3156	YES	3156	
Whiting	6; 5b; 12 and 14	1,112	324	p.m.	unknown	pm	9	Improve monitoring of discards
Whiting	7a	1,246	717	p.m.	0	pm	0	Reduce mortality in Nephrops 7a, Rebuild stock, Fully disclosed fishery
Whiting	7b - 7k	19,184	5,334	p.m.	10378	pm	10378	Refer to Mixed Fishery recommendations
Hake	6 and 7; 5b; 12 and 14	79,762	4,400	63325	58746	NO	58746	Consider Plaice 7h-k, Spatial/temporal closures
Blue whiting	1 - 7; 8a,b,d,e, 12 & 14	319,727	37,800	p.m.	1161615	pm	1161615	Follow PeIAC Advice
Blue Ling	5b, 6, 7	11,378	33	11150	11150	YES	11150	
Blue Ling	2 and 4	53	4	32	0	NO	0	
Ling	6, 7, 8, 9, 10, 12, 14	12,196	898	20396	16128	NO	16128	
SPECIES	AREA	2019		2020				
		TAC	Ireland	COM Proposal	ICES TAC	Advice Category	Council TAC Recommendation	Comment
Norway lobster	6; 5b	15,092	204	p.m.	261	pm	16603	
Norway lobster	7	19,784	7,296	p.m.		pm	19590	Consider Cod 7a
Plaice	6; 5b ; 12 and 14	658	261	658		No advice	unknown	UNFSA precautionary approach to TAC setting
Plaice	7a	3,075	1,499	2790	3299	YES	3299	
Plaice	7b and 7c	74	63	74	unknown	unknown	unknown	UNFSA precautionary approach to TAC setting
Plaice	7f and 7g	1,662	243	2,003	2295	YES	2295	
Plaice	7h, 7j and 7k	109	47	p.m.	0	pm	0	Mixed Fisheries Issue
Pollack	6; 5b; 12 and 14	397	56	238	96	NO	96	
Pollack	7	12,163	929	7,298	3264	NO	3264	
Saithe	6; 5b; 12 and 14	9,713	418	p.m.	8281	pm	8281	
Saithe	7, 8, 9 and 10; 34.1.1	3,176	1,491	3,176		No advice	unknown	UNFSA precautionary approach to TAC setting
Skates/Rays	6a, 6b, 7a-c 7e-k	10,184	1,329	p.m.		pm	unknown	UNFSA precautionary approach to TAC setting
Mackerel	6, 7, 8a,b, d and e; 5b; 2a; 12 and 14	260,813	55,313	p.m.	682019	pm	682019	
Common sole	6; 5b ; 12 and 14	57	46	57		No advice		UNFSA precautionary approach to TAC setting
Common sole	7a	414	74	457	561	YES	561	
Common sole	7b and 7c	42	36	42	24	NO	24	
Common sole	7f and 7g	1,009	32	1528	1731	YES	1731	
Common sole	7h, 7j, and 7k	382	171	213	213	YES	213	
Horse mackerel	4b, 4c, 7d	12,619	376	13,763	14014	YES	14014	Follow PeIAC Advice
Horse mackerel	2a, 4a, 6, 7a-c, 7e-k, 8a,b,d,e ,5b, 12, 14	117,518	30,306	70617	72480	YES	72480	Follow PeIAC Advice