

Annex 1: On the proposal for a *Council Regulation fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks* (COM(2016) 643)

Setting precautionary TACs in line with scientific advice and the objectives of the Common Fisheries Policy (CFP) will complement the recently agreed deep-sea access regime (COM(2012)371) - which still needs to be adopted by the co-legislators – in the protection of the deep sea.

The objectives of the CFP that also apply to deep-sea stocks include the restoration and maintenance of the stocks to above levels which can produce maximum sustainable yield (BMSY) through an exploitation rate below FMSY at the latest by 2020 for all stocks.

Rather than focusing on avoiding an undesired outcome – as is the case with the precautionary approach – the Maximum Sustainable Yield (MSY) framework strives at *achieving a desired* outcome: a high sustainable long-term yield.

This may be quite a challenge with deep-sea species, as they are generally slow-growing, late-maturing and have a low reproductive rate, which makes them particularly vulnerable to overfishing, especially when there is limited scientific knowledge.

The deep-sea stocks that are managed together with third countries such as Norway are covered in external quota negotiations, and have therefore been excluded from this proposal. As a result, stocks such as blue ling and greater silver smelt will be negotiated later on. Other species such as ling will be discussed in the December Council together with North Sea and Atlantic stocks.

General comments

For the majority of species the scientific advice is based on the precautionary approach because only trends and survey data were available to ICES. Only for one stock of roundnose grenadier ICES was able to apply the MSY approach.

There are several examples among the deep-sea stocks that clearly show what happens to stocks that are exploited beyond their capacity and without following scientific advice. Orange roughy and red blackspot seabream have been subject to a “boom and bust” fishery in earlier decades and it is not possible anymore for the scientific bodies now to provide any other advice than closing the fishery, which in some cases has already been recommended for many years but often not followed.

At the latest Council decision on deep-sea TACs in November 2014, the Council decided to set quotas above those recommended by scientists for alfonosinos, red seabream, black scabbardfish and roundnose grenadier, ignoring the commitments under CFP to stop overfishing and follow scientific advice.

Earlier this year, a political agreement has been achieved on the proposal for a new deep-sea access regime, COM(2012)371. While the final adoption by the co-legislators is still pending,

the agreement paves the way to an improved protection of deep-sea ecosystems. The new rules include amongst others the prohibition of bottom trawling below 800m in EU waters, mechanisms for identifying and closing areas below 400m where VMEs are known or likely to occur, and the requirement to carry out impact assessments prior to fishing in new areas outside for the current footprint. This proposal now needs to be legally adopted and then properly implemented.

In addition to these provisions, deep-sea species need to be adequately managed (where possible). In many cases, there are insufficient data available to establish TACs in line with the MSY framework. The 2009 UN General Assembly (UN GA) Fisheries Resolution states clearly that when the scientific information available does not make it possible to identify sustainable exploitation rates, no fishing opportunities should be allocated for the fisheries concerned.

In deep-sea fisheries, and particularly in bottom trawl fisheries, bycatch levels are high and catches contain a wide range of deep-sea species. This results in significant impacts on these non-target species, as well as on the wider deep-sea environment. It should be noted that the ecosystem-based approach to fisheries management is enshrined in the CFP and that ways to minimise bycatch and prevent catches of the most vulnerable species also need to be considered when setting fishing opportunities.

If one compares the proposal for fishing opportunities (COM(2016)643) with the list of 49 deep-sea species in the text for a revised deep-sea access regime, many species are missing. No TAC has been proposed for many of the species that are caught in large quantities (as bycatch) in mixed deep-sea fisheries, leaving them unmanaged and unregulated.

In addition, the management of deep-sea stocks is still hampered by mismatches between management units and the areas assessed by the scientific bodies. These mismatches need to be solved in a proactive way to facilitate the best use of scientific advice when setting fishing opportunities.

In summary, setting fishing limits for the deep-sea species addressed in the Commission proposal for 2017 and 2018 will in itself not ensure sustainable fisheries. Managing mixed fisheries on vulnerable deep-sea species by setting TACs and quotas for some, but not all, is not adequate. All of the above considered:

- ***We urge you to at least follow the scientific advice for deep-sea fishing possibilities, as this should be acknowledged as the bare minimum to ensure the application of the precautionary approach.***
- ***We urge you to finalise the adoption on the deep-sea access regime (COM(2012)317) and ensure a quick and proper implementation.***

Comments on specific species

Alfonsinos

For alfonsinos, the Commission proposal is in line with scientific advice and proposes a total catch of 280 tonnes for 2017 and 2018. The Commission had already proposed the same TAC for 2015 and 2016 which was not followed by the Council; instead it agreed on higher TACs.

Based on the precautionary approach, ICES advises landings of no more than 280 tonnes for each year following the precautionary approach. Data and knowledge of the stock are limited, with the latest survey finished in 2013 which was limited to the Azores. Further, the discard rate cannot be quantified for the entire stock. ICES notes that the species is easily overexploited due to its life history traits and aggregation behaviour, and therefore recommends that currently unmapped aggregations and unassessed populations should not be targeted.

We urge you to follow the Commission proposal of 280 tonnes for each 2017 and 2018 and not allow exploitations of new aggregations as advised by ICES. We further ask you to improve knowledge and available data on this species, especially on discards.

Orange roughy

The Commission has reacted to the long-lasting desperate state of orange roughy by proposing to make it a prohibited species. In the last years it was already managed as a zero TAC species as agreed by the Council.

ICES has as at least since 2007 advised no direct fishery for this species as well as reduction of bycatch of this species in mixed fisheries as much as possible. This year, ICES advises zero catches until 2020. The species matures very late – around an age of 35 years – which makes it extremely vulnerable to exploitation, causing the depletion of aggregations in several subareas.

We urge you to follow the Commission proposal to prohibit orange roughy from being fished and transhipped. However, to prohibit its retainment on board or its landing would in practice allow for unlimited and uncontrolled by-catches and discards of a threatened species. Therefore we urge you that any catches of orange roughy must be landed and reported, but cannot be sold for any purpose.

Red seabream

Red (blackspot) seabream is managed in three different units. For the first – in ICES subareas VI, VII and VIII – the Commission proposes no directed fishery and only a bycatch TAC of 128 tonnes for 2017 and 102 tonnes for 2018. This means for 2017 actually an increase to the amount proposed for 2016 (which was already not following the scientific advice). The Council did not follow the scientific advice at that time but instead adopted TACs of 169 and 160 tonnes, respectively.

ICES advises zero catches for both years and reduction of mortality by all means. The situation of the stock has not changed: current catches are only 1–2 per cent of historical levels, indicating that the stock is collapsed with no indication of recovery; it even is caught only rarely in relevant surveys. ICES further recommends the establishment of a recovery plan

(2014), protection of areas where juveniles occur, and the consideration of impact from recreational fisheries on the mortality of juveniles.

For this management unit (ICES subareas IV, VII, VIII) the 2014 Council decision included the commitment by Member States to put in place measures by May 2015 to limit bycatches. Following the wording in the 2016 STECF evaluation¹, “no MS seems to have selectivity measures or spatial and temporal closures in place to avoid bycatches of red seabream”. This means that a major commitment by Member States that was possibly used as a justification for any TAC agreed was not accomplished. Given that the stock has collapsed, stronger management measures and actual real efforts to reduce bycatch have to be implemented.

For the second management unit (ICES subarea IX) the Commission has proposed a TAC of 160 tonnes in 2017 and 138 tonnes in 2018. The proposal back in 2014 already saw a gradual reduction over the biannual period of deep-sea quota setting that would have led to the TAC advised by ICES in the second year. The Council did not follow this reasonable approach but instead adopted TACs of 374 and 183 tonnes, respectively.

ICES advises for each 2017 and 2018 catches of no more than 138 tonnes, following the precautionary approach. For this management unit, ICES notes that the stock distribution extends into the Strait of Gibraltar and recommends obtaining catch statistics from other fleets fishing on this stock to improve the assessment. It further recommends establishing a management plan that comprises the entire stock distribution area.

For the third management unit comprising ICES subarea X, the Commission has proposed a TAC of 455 tonnes in 2017 and 400 tonnes in 2018. Also for this stock the Commission proposal from 2014 that would have led to the scientifically advised TAC in the second year of the biannual TAC period was not followed back then and the Council agreed on higher tonnages.

ICES advises catches of no more than 400 tonnes for each year, following the precautionary approach. ICES further suggests that resuming the only survey that provided information on stock trends would improve the knowledge on the stock and the advice on fishing opportunities.

- ***For the management unit including ICES areas VI, VII and VIII, we urge you to not allow any directed fishery for red seabream, to finally adhere to the 2014 Council commitment to put measures in place that will limit bycatches, to protect areas where juveniles occur and to ensure reduced impacts of recreational fisheries on the mortality of juveniles.***
- ***For area IX, we urge you to follow scientific advice and limit the fishing opportunities to 138 tonnes for each year, to obtain catch statistics from other fleets that fish this stock and to establish a management plan for the entire distribution area.***
- ***For area X, we ask you to follow scientific advice and set the TAC at 400 tonnes per year for each 2017 and 2018.***

¹ Reports of the Scientific, Technical and Economic Committee for Fisheries (STECF) – 52nd Plenary Meeting Report (PLEN-16-02). 2016. Publications Office of the European Union, Luxembourg, EUR XXXXXX EN, JRC XXXXXX, 162 pp.

Greater forkbeard

For greater forkbeard, the Commission proposes fishing opportunities for four management units. The combined proposed TAC for all units amounts to 2285 tonnes in 2017 and 1829 tonnes for 2018.

ICES can only provide advice on landings because the species is mainly taken as bycatch in demersal trawls and longline fisheries targeting deep-sea fish and other species such as hake, megrim, monkfish, ling or deep-sea fish. ICES advises combined landings of no more than 1682 tonnes following the precautionary approach. Discards comprise more than 40% of the catches for those fleets that report landings, but cannot be quantified for all fleets and areas. The survey data available do not cover the complete stock distribution area.

- ***We urge you to follow the scientific advice and agree to combined landings of no more than 1682 tonnes in each year.***
- ***We further ask you to ensure that future surveys of this species are more complete, providing a fuller picture of stock development.***

Black scabbardfish

For black scabbardfish, the Commission proposes fishing opportunities for three management units. The combined proposed TAC for all units amounts to 5909 tonnes in 2017 and 4870 for 2018. Not all management units used by the Commission do completely correspond to the ICES advice units. The Commission has further included in its proposal only those amounts caught by EU fleets compared to the ICES advice, and excluded the amounts caught by third countries. Still the combined amounts for 2017 are above those proposed by ICES.

ICES advises combined catches of no more than 5894 tonnes for each year based on the precautionary approach, which is the same advice as for 2015 and 2016 as the stock abundance indices have barely changed.

Given the bycatch of roundnose grenadier^{4,5} in black scabbardfish bottom trawling fisheries in subareas VI and VII and division Vb and XIIb, these fisheries should not be conducted with bottom trawl gear to contribute to the conservation of roundnose grenadier.

We ask you to follow the scientific advice for 2017 and set fishing limits for black scabbardfish at a combined value for all areas of no more than 5894 tonnes, and follow the Commission proposal for 2018 with 4870 tonnes. We further ask you to not allow any bottom trawl fishing for black scabbardfish in subareas VI and VII and division Vb and XIIb to allow for the reduction of bycatch of roundnose grenadier.

Roundnose and roughhead grenadier

For many years, both species grenadier have been caught jointly, with roughhead being reported as bycatch of roundnose catches. Due to misreporting, roughhead grenadier has so far been without a catch limit, although the Commission had proposed a joint TAC for 2015 and 2016 including the requirement for separate reporting. This year, the situation has become even more complicated due to a court case by Spain against the Council on the TAC

decision for these two species for 2015 and 2016. Therefore, the Commission has not proposed a TAC yet.

On the scientific side, ICES has provided advice for the different stocks of roundnose and a combined advice for roughhead.

For roughhead grenadier, ICES advises until 2020 no directed fisheries with any bycatches to be counted against the roundnose TAC in the respective area.

For roundnose grenadier in subareas VI and VII and division Vb and XIIb, ICES advises catches of no more than 3325 and 3399 tonnes for 2017 and 2018, but we urge you to set a zero TAC for the following reasons:

1. Concerns over the status of roundnose grenadier, which is one of the three principal target species in the mixed species deep-sea fishery in these areas.

Roundnose grenadier has been classified as endangered by the IUCN in its first ever Red List of European marine fish species published in 2015². Moreover, ICES states that there are serious uncertainties in the stock assessment for roundnose grenadier in these areas which “strongly impact[s] on the quality of the assessment” because in Division XIIb “the actual level of catch has been considered uncertain for several years because of problems with species being reported and misreported in different areas”³.

2. Concerns over bycatch, in particular of highly vulnerable species, in the mixed species deepwater fishery in ICES Subareas VI and VII, and Divisions Vb and XIIb.

ICES has expressed general concern over the high number of species impacted in the deep-sea trawl fisheries in these areas, stating for example in 2008 that “such fisheries tend to deplete the whole fish community biomass”⁴. This concern was reinforced by several studies published over the past few years which concluded that the populations of some 77 species of deep-sea fish, most with no commercial value, inhabiting the continental slope in the Northeast Atlantic off the coast of Ireland have declined by an average of almost 70% as a result of deep-sea bottom trawl fishing⁵.

When providing advice on TACs for the three target deep-sea species in these areas, ICES has highlighted the need to consider the impacts on other species taken in the mixed species fisheries. Typical is the advice ICES provided on setting TACs for black scabbardfish in 2012 as follows: “Due to the mixed nature of the trawl fisheries in Subareas VI, VII, XII, and

² Nieto, A et al., European Red List of marine fishes. Prepared by the International Union for Conservation of Nature (IUCN). Luxembourg: Publications Office of the European Union. 2015. Retrieved from http://cmsdata.iucn.org/downloads/iucn_european_red_list_of_marine_fishes_web_1.pdf

³ ICES Advice on fishing opportunities, catch, and effort Faroes, Celtic Seas, and Oceanic Northeast Atlantic ecoregions: Roundnose grenadier (*Coryphaenoides rupestris*) in subareas 6 and 7, and divisions 5.b and 12.b (Celtic Seas and the English Channel, Faroes grounds, and western Hatton Bank). ICES Advice 2016, Book 9. June 2016.

⁴ ICES. (2008). Report of the Working Group on the Biology and Assessment of Deep-Sea Fisheries Resources (WGDEEP), 3–10 March 2008, Copenhagen, ICES Headquarters. (ICES CM 2008/ACOM:14), p. 70.

⁵ See for example Bailey, D. M., Collins, M.A., Gordon, J. D. M., Zuur, A. F. & Priede, I. G. (2009). Long-term changes in deep-water fish populations in the northeast Atlantic: a deeper reaching effect of fisheries? Proceedings of the Royal Society B. doi: 10.1098/rspb.2009.0098.

Division Vb, any measure taken to manage this species in these areas should take into account the advice given for other species taken in the same mixed fishery” and in 2014 in respect of the TAC for roundnose grenadier “As this fishery is part of a mixed fisheries, effort on roundnose grenadier also impacts other commercial and non-commercial deep-water species”⁶.

Deep-sea sharks have been recorded in substantial quantities as bycatch in the French deep-sea trawl fishery in this area, including a catch in 2012 of over 120t⁷ of deep-sea sharks now classified as endangered or critically endangered on the IUCN European Red List of Marine Fishes². ICES has consistently advised that the bycatch of deep-sea sharks be minimized or avoided in the mixed species deep-sea fisheries⁸. However, there are no management measures in place to avoid or prevent the bycatch of deep-sea sharks in the deep-sea trawl fishery in ICES Subareas VI and VII, and Divisions Vb and XII.

3. Impact on VMEs

In its recommendations for the deep-sea fishery in this area over the past several years, ICES has also highlighted that setting TACs for this fishery should take into consideration the following: “Deep-water trawls impact the ocean floor, causing potential damage to deep-water coral communities. This is mitigated in some areas by area closures to protect vulnerable marine ecosystems (VMEs)”⁹. Council and Parliament have recently agreed to a new regulation for the management of deep-sea fisheries in EU waters that will require a prohibition on bottom trawling below 800m and provides for a mechanism for identifying and closing areas where deep-sea vulnerable marine ecosystems are known or likely to occur to protect them from the adverse impacts of bottom fishing using bottom trawls or other gears.

However, the new regulation is not likely to enter into force until 2017 and it is not clear how long it will take before the depth limitation for bottom trawling is established nor how long before VME areas can be identified and protected under the new regulation. In the meantime, very few deep-sea areas within EU waters are currently protected from the adverse impacts of bottom fishing aside from seamount areas within the EEZs surrounding the Azores, Madeira and Canary Islands and several area closures along the continental slope within the EEZs of Member States (several SACs within the Irish EEZ, the Darwin Mounds and parts of Rockall and Hatton Banks in UK waters, El Cachucho Bank in Spanish waters).

⁶ ICES Advice (2014). Widely distributed and migratory stocks. Roundnose grenadier (*Coryphaenoides rupestris*) in Subareas VI and VII, and Divisions Vb and XIIb. May 2014. <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2014/2014/rng-5b67.pdf>

⁷ Anne-Sophie Cornou, Alain Biseau, Analyse des captures du métier ‘Chalutiers à espèces profondes en Ouest Ecosse’. IFREMER, March 2014. Table on pages 7-9: catch in 2012: Squale-chagrin de l’Atlantique (*Centrophorus squamosus*), classified by IUCN as “endangered” - 65.05 tonnes; Squale savate (*Deania calcea*) classified by IUCN as “endangered” - 39.82 tonnes; Pailona commun (*Centroscymnus coelolepis*) classified by IUCN as “endangered” – 19.74 tonnes.

⁸ ICES (2015). ICES Advice on fishing opportunities, catch, and effort Oceanic Northeast Atlantic Ecoregion: Leafscale gulper shark (*Centrophorus squamosus*) in the Northeast Atlantic. October 2015.

⁹ Supra note 5: ICES Advice 2014. Roundnose grenadier (*Coryphaenoides rupestris*) in Subareas VI and VII, and Divisions Vb and XIIb.

4. International considerations

The UN General Assembly (UN GA), through its resolutions 61/105, 64/72 and 66/68 has committed States ‘individually and through RFMOs’ to manage bottom fisheries on the high seas to, inter alia, “ensure the long-term sustainability of deep-sea fish stocks and non-target species, and the rebuilding of depleted stocks” and “not to authorize bottom fishing activities until such measures have been adopted and implemented”¹⁰. These and the other commitments in the UN GA resolutions in turn reflect obligations contained in Articles 5 and 6 of the 1995 UN Fish Stocks Agreement. In setting TACs for roundnose grenadiers that apply to the high seas portions of ICES Subareas VI and VII, and Divisions Vb and XIIb, Council will effectively authorise bottom fisheries in these areas in contravention of the commitment made by the EU to the UN General Assembly, unless the TACs are set at zero.

For division Xb and XIIc, and subdivisions XIIa2, XIVb1 and Va1, ICES applies the precautionary approach and advises landings of no more than 717 tonnes for each year.

For division IIIa, and based on the precautionary approach, ICES advises zero catches for the biannual period. The landings history in this area shows that until 2006 high and unsustainable amounts were landed that was probably supported by a strong recruitment event in the previous decade. Today, only quantities of around less than one tonne are reported by the respective fleets, as bycatch in shrimp fisheries.

For subareas I, II, IV, VIII, IX; division XIVa, and subdivision XIVb2 and Va2, ICES advises landings of no more than 65 tonnes for each year following the precautionary approach. Compared to the previous year, ICES reduces its advice as the available information is insufficient to clarify whether the current level of exploitation is appropriate for the stock.

- ***We ask you to follow the scientific advice for roughhead grenadier and not allow any directed fishery while counting any bycatches against the respective roundnose quota.***
- ***We ask you to follow the scientific advice for area III and close all directed fisheries.***
- ***We ask you to follow the scientific advice for areas I, II, IV, VIII, IX, XIVa, XIVb2 and Va2 and agree on landings of no more than 65 tonnes for each 2017 and 2018.***
- ***We ask you to follow the scientific advice for areas Xb, XIIc, XIIa2, XIVb1 and Va1 and agree on landings of no more than 717 tonnes for each 2017 and 2018 .***
- ***For areas Vb, VI,VII and XIIb, we urge you to adopt a zero TAC in the mixed species deep-sea bottom trawl fishery, and ask you to ensure that***
 - ***ICES is requested to review the status of roundnose grenadiers in light of its listing as endangered on the IUCN Red List***

¹⁰ United Nations General Assembly resolution 64/72 (2009). Paragraphs 119(d) and 120.

- **management measures are put in place to ensure that the bycatch of deep-sea sharks and other highly vulnerable deep-sea species is prevented or eliminated consistent with ICES advice and to prevent the further risk of extinction**
- **the new regulation for the management of deep-sea fisheries in EU waters comes into force and VME areas are identified and closed in the EU waters of Subareas VI and VII to bottom fishing practices that may cause significant adverse impacts on vulnerable marine ecosystems; and**
- **these fisheries are managed in international waters consistent with the EU's commitments in UN resolutions and obligations under international law.**

Deep-sea sharks

Also for deep-sea sharks the Commission has delayed its proposal while the advice from ICES is pending. During 2016, it has tasked STECF though to look in the persistent problem of deep-sea sharks as bycatch.

Several deep-sea sharks are still being caught as bycatch in other fisheries while a zero TAC has been in place since many years, and some of them have a received a bycatch TAC. Due to this bycatch the zero TAC has been considered insufficient, as even low levels of catch can have a significant impact on their sustainability. The Commission has therefore requested STECF¹¹ to evaluate additional or better methods to protect these vulnerable species, in particular leaf-scale gulper shark and Portuguese dogfish that are being bycaught in longline black scabbardfish fisheries. Both species are also listed as endangered in the IUCN European red list of marine fishes¹².

STECF notes that due to lack of sufficient studies and information, no advice on specific management measures can be provided to reduce the bycatch of deep-sea sharks in the evaluated fishery. It suggests though to adjust the TAC to actual catches and to reduce fishing effort to reduce bycatch.

We urge you to follow the scientific advice when setting any quotas for deep-sea sharks, adjust TACs to actual catches where there are large discrepancies, and to reduce fishing effort to reduce bycatch.

¹¹ Reports of the Scientific, Technical and Economic Committee for Fisheries (STECF) – 52nd Plenary Meeting Report (PLEN-16-02). 2016. Publications Office of the European Union, Luxembourg, EUR XXXXXX EN, JRC XXXXXXX, 162 pp.

¹² Nieto, A et al., European Red List of marine fishes. Prepared by the International Union for Conservation of Nature (IUCN). Luxembourg: Publications Office of the European Union. 2015. Retrieved from http://cmsdata.iucn.org/downloads/iucn_european_red_list_of_marine_fishes_web_1.pdf