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Joint NGO feedback to the European Commission on the Common Fisheries Policy's state of play and orientations for 2023¹

Introduction

On behalf of **Bund für Umwelt und Naturschutz Deutschland e.V. (BUND)**, **ClientEarth**, **Danmarks Naturfredningsforening**, **Deutsche Umwelthilfe**, **Ecologistas en Acción**, **The Fisheries Secretariat**, **France Nature Environnement**, **De Nederlandse Elasmobranchen Vereniging**, **Stichting De Noordzee**, **Oceana**, **Our Fish**, **Sciaena**, **Seas At Risk**, and **WWF**, we hereby respond to the European Commission's public consultation on the progress towards more sustainable fisheries, the state of fish stocks and the setting of fishing opportunities.²

The current Common Fisheries Policy (CFP) Basic Regulation entered into force on 1 January 2014. It contains ambitious objectives and concrete timelines to put the European Union at the forefront of global fisheries management and make European fisheries economically, socially, and environmentally sustainable. However, although some progress has been made, in particular in Northeast Atlantic waters, **the EU is still far from reaching its overdue legal obligation to harvest all stocks sustainably by 2020.**

¹https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13508-Towards-more-sustainable-fishing-in-the-EU-state-of-play-and-orientations-for-2023_en

² For more aspects of the CFP pending implementation, please see the NGO policy paper "[Common Fisheries Policy: Mission Not Yet Accomplished](#)" (2021). NGOs identify nine specific challenges—overfishing, especially in the Mediterranean Sea, the landing obligation, harmful impacts of fishing, the transition to low-impact fisheries, harmful subsidies, regionalisation, the external dimension, and climate change—and propose a list of actionable solutions.

Despite the significant increase in fleet profitability and the reduction in overfishing brought about by the CFP in the last decade, the most recent Scientific, Technical and Economic Committee for Fisheries (STECF) report on the monitoring of the CFP performance³ confirms that *“many stocks remain overfished and/or outside safe biological limits and the objective of the CFP to ensure that all stocks are fished at or below FMSY in 2020 has not been achieved”*.⁴ Specifically, **the Baltic Sea fish populations are not improving, the Mediterranean and Black Seas remain in a dire state with 85% of assessed stocks overfished, whereas the proportion of Northeast Atlantic Maximum Sustainable Yield (MSY) assessed fish stocks subject to overfishing has decreased from around 75% in the mid-2000s to 28% more recently.**

Background: instability and uncertainty

The recovery from the COVID-19 crisis should be based on the principles of the European Green Deal and “building back better”.⁵ But the risks posed by overfishing, destructive fishing practices and harmful fisheries subsidies are not new, for they have been the main cause of marine biodiversity loss for the last 40 years⁶ and we now also know that they critically undermine the resilience of marine ecosystems to the impacts of climate change.⁷ While recovery funds offer support in the short term to compensate for losses, a sustainable marine environment supports livelihoods for decades to come and the fishing industry will only be able to operate in the medium and long term if healthy fish populations are allowed to thrive thanks to sustainable harvest strategies. **This can only be achieved if, as a minimum, Total Allowable Catches (TACs) do not exceed scientific advice and effectively limit fishing mortality, to recover and maintain stocks above levels that can produce the MSY, as legally required by the CFP.**

After the pandemic, another disruption hit the EU fisheries and market. Due to Russia's war against Ukraine, fuel and raw material prices have skyrocketed and hit the EU fishing industry, exposing its strong dependency on cheap fossil fuel subsidised by EU tax breaks.⁸ This situation instigated the use of the European Maritime, Fisheries and Aquaculture Fund (EMFAF) crisis mechanism and State Aid measures to mitigate the rise in fuel costs. Regarding the response to this energy crisis, **we oppose any economic or management measures that go against the conservation of the fish stocks, perpetuate overcapacity, or aggravate overfishing for years to come, such as the possibility to increase the interannual quota flexibility⁹ which according to the European Commission Communication remains a valid option.** On the contrary, any crisis measures should contribute to alleviating the existing biodiversity and climate crises, in line with the Green Deal objectives, and decrease fishing industry dependence on fossil fuels and fossil fuel subsidies.

³ [Scientific, Technical and Economic Committee for Fisheries. 2022. Monitoring the performance of the Common Fisheries Policy STECF Adhoc 22-01](#)

⁴ Ibid., p. 9.

⁵ For NGO recommendations on Covid-19 recovery please see: [Setting the right safety net: A framework for fisheries support policies in response to COVID-19 \(2020\)](#), and [Turning the Tide on EU Seas with a Green Recovery \(2020\)](#).

⁶ [Global Assessment Report on Biodiversity and Ecosystem Services \(2019\)](#)

⁷ [Special Report on the Ocean and Cryosphere in a Changing Climate \(2019\)](#)

⁸ Also see: https://our.fish/wp-content/uploads/2021/11/REPORT-ELIMINATING-FUEL-SUBSIDIES_FINAL.pdf

⁹ [Covid-19 crisis response: Increased interannual quota flexibility is risky and unnecessary.](#)

Since its own cod populations are depleted, the EU imports massive amounts of Russian cod which enter mainly through the Netherlands, with destination markets in Portugal, Spain, and Germany.¹⁰ Without proper information on the origin of all fisheries products placed on the EU market, European consumers cannot make informed buying choices. The EU must improve traceability, transparency and control, and take immediate action on its overfished stocks in order to reduce its dependence on problematic foreign imports, such as Russian fish at high risk of IUU and unsustainable catch.¹¹ To restore its own fish resources, the EU should follow scientific advice, apply an ecosystem-based approach, and transition to low-impact and climate-friendly fisheries.

Against this backdrop of uncertainty and instability, in this year's response to the consultation, we would like to focus on the main implementation gaps that should be addressed by the European Commission to ensure that **all proposed and agreed fishing opportunities for 2023 meet the objectives of the CFP, as well as address the climate and biodiversity crises**. Importantly, we urge the Commission to reflect the below considerations **not only in the EU's internal approach, but also as part of its negotiations with third countries**, including throughout the discussions with the UK in the Specialised Committee on Fisheries under the Trade and Cooperation Agreement (TCA).

General principles for TAC setting

Overall, we urge the European Commission to propose fishing opportunities in accordance with the following recommendations:

- Request scientific advice on fishing opportunities by the International Council for the Exploration of the Sea (ICES) that reflects a climate-wise and ecosystem-based approach, with special attention to mixed fisheries, prey-predator dynamics, and the recovery and conservation of the most depleted stocks.
- Set TACs not exceeding scientifically advised levels based on the MSY Approach for all stocks for which MSY-based reference points are available;
- Where MSY-based reference points or proxies are not available, set TACs not exceeding the Precautionary Approach catch limits advised by ICES.

¹⁰ It is worth noting that the [Netherlands is currently facing an infringement procedure](#) due to its failure to effectively control, inspect and enforce essential aspects of weighing, transport, traceability and catch registration with respect to landings of EU and non-EU fishing vessels in Dutch ports.

¹¹ Much of Russia's catch remains unassessed and [close to half of its assessed stocks are classified as overfished](#). Furthermore, a Norwegian-Russian bilateral [management plan for Arctic cod](#) was developed in 2021 in disregard of international cooperation and deviated significantly from the MSY, while final decision [exceeded MSY approach by over 200 000 tonnes](#). Even more worrying, overfishing of that key cod population was systematic from 2017 to 2020, for the quotas set by Norway and Russia even overshot the level fixed by their own bilateral management plan. Moreover, Russia is currently [ranked second in the IUU Fishing Index](#) out of 152 nations for poor performance when it comes to effectively fighting illegal, unreported and unregulated (IUU) fishing, and its behaviour has worsened since 2019, when it was ranked fourth. Globally, only China performs worse. According to [Oceana's report](#), 50 percent of the suspected transshipping events worldwide—notorious for their high IUU risk—occurred within Russian waters, both of pelagic fish and whitefish. Nearly 80 per cent of Russia's fisheries subsidies – worth approximately US \$1.1 billion in 2018 –are linked to [activities that promote overcapacity](#), including reduced fuel prices and tax exemptions. Russian fleet is expanding and has a target of [building at least 100 new vessels by 2025](#).

- Set TACs at more precautionary, lower levels and in line with an ecosystem-based approach to fisheries management (along with additional spatial and temporal measures) to accommodate stock-specific circumstances (overfishing level, poor recruitment), interspecies dynamics (e.g., forage species, prey-predator relationships), and other pressures such as climate change.
- Fully utilise the precautionary approach in relation to mixed fisheries, protecting the most vulnerable stock(s), for example by closing areas with high mixing or by limiting quotas of the most productive stocks to levels that prevent by-catch of the vulnerable stocks.
- Consider that control with onboard observers was significantly reduced in 2021 due to the Covid-19 pandemic, landing obligation implementation remains poor, and discard rates are subject to high uncertainty. Implement remote electronic monitoring for all vessels above 12 m and for medium and high-risk vessels below 12 m (e.g., where the associated discard rates of the gear used are known to be high).¹²
- Improve transparency by making publicly available any proposals after the official Commission proposal, including Commission non-papers as well as Council Working Party and AGRIFISH Council documents and minutes, and provide transparent calculations for TACs based on the ICES advice on fishing opportunities.

Please see our more detailed recommendations below.

1. Acknowledge the real level of overfishing

As highlighted above, the latest STECF CFP monitoring report confirms that despite long-term progress since the early 2000s, 28% of MSY-assessed Northeast Atlantic stocks were still subject to overfishing and 38% were still outside safe biological limits in 2020, the year of the CFP's deadline to end overfishing. Moreover, this year's report by the UK's Centre for Environment, Fisheries and Aquaculture Science (Cefas) concluded that only around a third of the assessed TACs negotiated by the UK for 2020, 2021 and 2022 (covering various TAC-setting processes, including the EU/UK and EU/UK/Norway negotiations) followed scientific advice.¹³

In previous consultation responses, and most recently in a letter¹⁴ to Commissioner Sinkevičius, we have repeatedly criticised the misleadingly positive reporting by the Commission on the situation, for example through the focus on volume-based statistics that fail to reflect the lack of progress on depleted stocks with lower catch volumes.¹⁵ We welcome that the Commission has in this year's report refrained from presenting such metrics and instead focused primarily on the findings of the official STECF report. However, we reiterate that a dedicated evaluation of progress in terms of the management intention (comparing the agreed TACs to the underlying scientific advice) would usefully complement the Commission's current, more outcome-based reporting (focused on biomass and

¹² Nemecky, S. (2022): The untrawled truth: Why EU fisheries (control) policy should strengthen discard monitoring, control and reporting within an implemented landing obligation. 1–19, WWF Germany, Berlin.

¹³ Bell, E., Nash, R., Garnacho, E., De Oliveira, J., O'Brien, C. (2022). [Assessing the sustainability of fisheries catch limits negotiated by the UK for 2020 to 2022](#). Cefas. 38 pp. 2 January 2022.

¹⁴ [NGO letter to the Commission](#) from 12 May 2021.

¹⁵ ClientEarth (2020). [Let's get the numbers right: What proportion of fish stocks are sustainably managed in the EU?](#) July 2020.

exploitation levels). Inspiration could be drawn from the UK's reporting methodology developed in support of the Cefas report mentioned above to compute a similar analysis for stocks of EU interest.¹⁶ In addition, the Commission's reporting fails to assess progress in relation to the CFP's objective of restoring all harvested populations above biomass levels capable of producing Maximum Sustainable Yield.

Going forward, **we recommend that the Commission include in its report a comparison of the agreed TACs (both set by the EU alone and negotiated with third countries) with the underlying scientific headline advice provided by ICES**, including a detailed description of the methodology used and any assumptions made.¹⁷ This will add an important dimension by tracking progress towards aligning TAC decisions with scientific advice, and help focus the attention on those stocks where discrepancies between TACs and science are yet to be addressed. **We encourage both the EU and the UK to liaise through the Specialised Committee on Fisheries to develop a consistent evaluation methodology on this matter** to ensure that the results can be accepted and compared across the Channel.

2. End overfishing to act on climate and biodiversity crises

Fisheries management must be aligned with the EU flagship agenda, the European Green Deal, in which the EU committed to shift investment and legislation towards a climate-resilient and ecologically sound economy. Climate considerations are absent from the EU's fisheries regulatory framework, including the CFP, which was reformed in 2013. However, the EU has legal instruments to fill this gap without entering a reform process of the CFP. In particular, the Biodiversity Strategy for 2030, which commits to "put Europe's biodiversity on the path to recovery by 2030, for the benefit of people, climate and the planet", includes the commitment to an Action Plan to conserve fisheries resources and protect marine ecosystems, which can and must address climate considerations.

Ending overfishing and destructive fishing and protecting marine habitats would strengthen the resilience of marine and coastal ecosystems, their associated wildlife, and the people who depend on them in the face of the climate crisis¹⁸. Healthy and biodiverse habitats are more capable of delivering ecosystem services for coastal communities, such as providing a resilient supply of food and sequestering atmospheric carbon. Global heating and climate change is also affecting the distribution and abundance of marine species. As fish populations shift or decline in response to changing temperatures, salinity levels and other variables, fisheries managers must adapt to increasing or decreasing stock availability. Without climate-adaptive, transboundary management, many stocks will face an increased risk of declining or collapsing due to overfishing.¹⁹

¹⁶ Nash, R., Garnacho, E., De Oliveira, J., Bell, E., O'Brien, C. (2021). [Methodology review to assess sustainable quota setting. Cefas project report](#). 43pp. 2 December 2021.

¹⁷ For further details on reporting-related issues and recommendations, refer to section 3, p. 14 of this report: ClientEarth (2020). [Taking stock 2021 - are TACs set to achieve MSY?](#) November 2020. Note that an update of this report is due to be published later this year.

¹⁸ Sumaila, U.R. & Tai, T.C. 2019. Ending overfishing can mitigate impacts of climate change. Institute for the Oceans and Fisheries, University of British Columbia. Working Paper Series #2019 – 05. 18pp.

¹⁹ Scientists suggest that EU fish stock biomass will be reduced to just 29-42% of pre-industrial levels under MSY management and weak carbon mitigation and recommend that conservation-focused rebuilding plans are needed to achieve 46-67% of pre-industrial levels under weak carbon mitigation or 63-69%

The European Commission and Member States should urgently address CFP implementation shortcomings, such as catch limits that still exceed scientific advice, non-compliance with the landing obligation and by-catch due to unselective fishing, as well as other negative impacts of fishing on marine species and habitats. **The Commission’s report on the functioning of the CFP (due by December 2022) must guide better implementation of the policy and include clear references to climate action and the need to increase the resilience of marine ecosystems.**

The European Commission should request ICES to **conduct Ecosystem and Climate Impact Assessments of EU fisheries** (including on the carbon sequestration potential of fish populations, the seabed, and marine habitats, as well as the greenhouse gas emissions from fuel consumption). Based on these assessments, the Commission should initiate a roadmap for a just transition to climate-friendly, low-impact fisheries.

The European Commission should also **request ICES scientific advice on fishing opportunities that reflects a climate-wise and ecosystem-based approach, with special attention to mixed fisheries, prey-predator dynamics and the recovery and conservation of depleted stocks.** Where possible, the Commission should propose, and the Council adopt, fishing limits below the MSY point value to provide a “climate buffer” for fish populations under multiple stressors.

The EU should **increase its responsiveness in fisheries governance** to account for changing conditions, including geographical shifts in stock distribution due to global heating and potential conflicts with neighbouring countries. In dialogue with third countries, the EU should develop harvest strategies and quota allocation models that can respond to changes in species abundance and/or distribution patterns, as well as address mismatches between management areas for which TACs are set and stock distribution areas for which ICES advice is provided.

EU fleets should **transition to low-impact, low-carbon and more local forms of fishing.** We welcome the Commission’s statement of intent to utilise the Action Plan on fisheries and marine ecosystems to support “the sector to ensure a fair and just transition” and consider this the perfect opportunity to urgently limit high-impact, bottom-contacting mobile gear, which has a high fuel consumption and greenhouse gas footprint, as well as severe impacts on marine ecosystems and generally high rates of by-catch and discards. This “just transition” can be activated by Member States **implementing CFP Article 17**, which incentivises the allocation of fishing opportunities to low-impact operators. The Commission should provide guidance to Member States on environmental and climate criteria, and the impact on blue carbon habitats and other marine carbon stores, including the seabed.

under strong carbon mitigation (William Cheung 2022). Without climate- adaptive, transboundary management, many stocks will face an increased risk of declining or collapsing due to overfishing. Cheung, W.L. et al (2022), Rebuilding fish biomass for the world's marine ecoregions under climate change. In press. DOI: 10.1111/GCB.16368 [Presentation](#) at UNOC event, Science Symposium: Fisheries management is climate action.

3. Apply an ecosystem-based approach

Scientific advice and the models underpinning it, alone, are not delivering ecosystem-based management options. Setting TACs based on single species advice omits the need to consider sub-populations at risk and misses consideration of size and age distribution. ICES can produce more comprehensive advice, but the decision-makers must request this and until they do, they must set TACs with much greater caution. The European Commission must reconsider the current approach by requesting new and different scientific advice that, for example, adequately reflects ecosystem considerations, safeguards vulnerable sub-populations, and prioritises a healthy size and age distribution, or we will face more stocks faltering. The solution here and now is to take a more precautionary approach by staying in the lower bounds of the TAC advice ranges.

4. Manage data-limited stocks in line with the CFP's requirements

Whilst many stocks in EU waters have suitable scientific information on the MSY exploitation rate and **MSY-based scientific advice** on catches, many stocks still only have scientific advice on catches based on the ICES **data-limited precautionary approach**. However, **both stock categories fall under the scope of the CFP, which requires *all harvested species to be restored and maintained above biomass levels capable of producing the MSY*** (CFP Article 2.2). This recommendation is particularly relevant this year, as the TACs for deep sea stocks for 2023 and 2024 will be decided, and all of them continue to be considered data-limited by ICES. In this regard, we welcome the Commission's commitment, expressed in its communication, to *"getting full MSY scientific evaluation for other key stocks as soon as possible"* for the stocks managed only by the EU, although this statement should apply as well for the shared stocks, and the will *"to pursue sustainable TACs in line with the scientific advice"* without distinction between ICES advice categories.

The lower ambition for data-limited stocks demonstrated in previous TAC decisions is inconsistent with the precautionary approach as defined in the United Nations Fish Stocks Agreement (UNFSA) and in the CFP (Article 4.1(8)), which requires that when the available data and information are uncertain, unreliable or inadequate, decision makers should not postpone or fail to take appropriate conservation and management measures.²⁰ Furthermore, it ignores that many of these stocks would, if they were given the opportunity to recover, support productive fisheries. While many of these stocks are relatively small or have lower economic value, they remain essential components of the marine ecosystem, and their harvest must therefore be adequately managed in line with implementing the ecosystem-based approach to fisheries management as required by Article 2(3) of the CFP basic regulation.²¹

The ICES data-limited precautionary approach provides a framework for advice rules to set catches and manage the risk of overfishing stocks in a prudent manner, based on the levels of uncertainty in the available data. Not following the ICES precautionary advice for data-limited stocks goes against the precautionary approach and against a key principle of good

²⁰ Also see ClientEarth's briefing on TAC-setting in line with the precautionary approach: ClientEarth (2020). [Caution! A TAC-Setter's Guide to the 'Precautionary Approach'](#). December 2020.

²¹ See ClientEarth's briefing on setting TACs in line with the ecosystem-based approach to fisheries management. ClientEarth (2020). [How \(not\) to implement the ecosystem-based approach when setting Total Allowable Catches \(TACs\)](#). December 2020.

governance stated in the CFP, namely the establishment of measures, including the setting of catch limits, in accordance with the best available scientific advice (CFP Article 3(c)).^{22, 23}

5. Use science-based catch limits rather than relying on ‘last resort’ measures

The European Commission highlights in its communication the use of remedial measures under the relevant MAPs to allow the recovery of certain fish stocks where the scientific advice is zero catch or where the biomass has decreased so much that they are **below a safe limit, like Celtic Sea cod and whiting; Irish Sea whiting; Irish Sea, Celtic Sea, and southwest of Ireland herring; eastern and western Baltic cod**. We welcome these efforts, and indeed the EU was legally obliged to adopt remedial measures under Article 8 of the Western Waters Multi-Annual Plan (WWMAP), to help rebuild Celtic Sea cod and whiting, and under Article 5 of the Baltic Sea MAP for eastern Baltic cod, since these stocks had been driven to levels below B_{lim} . For stocks where the scientific advice is zero catch or where the biomass is below a safe limit, remedial measures must be proposed to rebuild the stocks.

We commend the European Commission for its role in securing and continuing these important measures. Nevertheless, we would like to highlight that the current very low biomass of these stocks is the result of a long-term trend of overfishing and poor fisheries management based on Council decisions that persistently exceed advised fishing limits and ignored interspecies dynamics. For example, since 2015, the TAC for cod in the Celtic Sea has been set in excess of scientific advice every year except 2018.²⁴ Similarly, bycatch TACs have continued to be adopted for a number of stocks with zero-catch advice (including Celtic Sea cod), despite Member States not having adopted the bycatch reduction plans and fully documented fisheries they committed to in December 2018.²⁵ **The added pressure of other environmental factors on these vulnerable stocks in no way diminishes the role overfishing has played in depleting them, and makes the adoption of effective recovery measures all the more urgent.**

In that context, the European Commission should reinforce through its proposals that the setting of fishing limits is the main tool available to rebuild and maintain the biomass of fish populations above healthy levels (as reflected in CFP Article 2(2)). ‘Last resort’ remedial measures, while necessary due to past overfishing in some cases, are not a standalone solution to achieve that objective, particularly if they are adopted only for some of the stocks in need, and while perpetuating the decades-long trend of setting TACs exceeding scientific advice.

²² See ClientEarth’s briefing about setting TACs in line with the best available scientific advice.

ClientEarth (2020). [What is the ‘best available scientific advice’ for setting Total Allowable Catches \(TACs\)?](#) December 2020.

²³ See ClientEarth’s briefing on bycatch stocks with scientific advice for zero catch. ClientEarth (2020). [Ask the right question, get the right answer: Scientific advice for bycatch or non-targeted stocks that have zero catch advice](#). December 2020.

²⁴ [ICES Advice 2022, cod.27.7e–k](#).

²⁵ [Statement of the North Western Waters regional group made at December Council 2018](#), p. 2.

Moreover, regarding the bycatch TACs, Recital 8 of the [TAC and Quota Regulation for 2019](#) (Council Regulation (EU) 2019/124) stated that ‘*all vessels benefitting from these specific TACs should implement full catch documentation as from 2019*’.

If measures other than fishing limits are to be introduced, these must be coupled with legally binding, reliable, and robust methods of full catch documentation, such as on-board observers or remote electronic monitoring (REM), to have a proper control of the fishing activity. This should be required for the vessels that have exemptions from the landing obligation (LO) and vessels with considerable bycatch of vulnerable stocks, such as in demersal fisheries.

6. Implement the landing obligation

Since the last stage of implementation of the landing obligation came into force in 2019, TACs have been set based on total catch advice (albeit with some deductions for exempted discards), rather than landings advice like they used to before 2015. Despite the European Commission's efforts, it is recognised in the audits launched by the Commission in 2020 and in compliance evaluations by EFCA that non-enforcement by Member States is common. Reacting to that, the Commission launched in 2021 infringement procedures against Spain, France, Belgium, Ireland and the Netherlands²⁶. Setting TACs based on catch rather than landings advice, i.e. granting quota top-ups, while illegal discarding continues, allows for unsustainable catches potentially far beyond scientific advice.^{27, 28} Ignoring the consequences of non-compliance with the landing obligation in the setting of TACs, poses significant risks to sustainable fisheries in the EU and decisive steps must be taken to remedy the current situation.²⁹

We remain concerned about the European Commission's continued support for various approaches to address the challenges of the LO (such as the setting of TACs based on catch advice, LO exemptions and bycatch TACs) despite the clear recognition by the Commission itself that compliance remains poor. Continuing to apply such approaches based on the assumption of full compliance, whilst acknowledging unreported discarding continues and yet not ensuring that this illegal activity is halted, is incongruous and jeopardises the achievement of the CFP's objectives.

Article 16(2) of the CFP basic regulation states that *"fishing opportunities shall be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches"*. Article 16(2) does not however specify how the fishing opportunities should be adjusted, and it does not prevent the European Commission from proposing TACs for the most abundant stocks in mixed fisheries lower than the ICES catch advice, as it has previously done in several cases, which would safeguard the vulnerable stocks.

To accurately '*reflect catches*' while following scientific advice, **TACs need to be set in a way that ensures that the actual catches (including official landings, legal exemption discards**

²⁶ COM (2022) 253 Final. Communication from the Commission to the European Parliament and the Council. [Towards more sustainable fishing in the EU: state of play and orientations for 2023.](#)

²⁷ ClientEarth (2020). [Setting Total Allowable Catches \(TACs\) in the context of the Landing Obligation.](#)

²⁸ Borges, Lisa (2020). [The unintended impact of the European discard ban.](#) ICES Journal of Marine Science, Volume 78, Issue 1, January-February 2021, Pages 134–141. Also see a presentation of the findings of this paper and a related science briefing by OurFish [here](#).

²⁹ Also see a [5 min presentation at the NGO AGRIFISH Press Briefing](#) on How EU Decisions On Fishing Quotas Will Set Tone for 2021, about the risk posed by catch-based fishing limits in combination with illegal discards.

and unreported illegal discards) do not exceed the ICES catch advice. Importantly, ICES catch advice is not advice for the level at which the TAC should be set, but advice for the maximum catch level not to be exceeded. Given the European Commission's repeated recognition that non-compliance remains widespread and '*significant undocumented discarding*'³⁰ continues, it is clear that setting TACs at the catch advice level would result in higher than advised catches and in the end lead to increased overfishing of certain stocks.

In addition, the significant increase in the adoption of LO exemptions and bycatch TACs, based on unclear scientific evidence and data,³¹ further undermines the objective of the LO to reduce unwanted catch. The use of these approaches to ease in the LO, while robust and effective monitoring, control and enforcement are lacking, has only increased the risk of overfishing stocks in already poor shape and undermines the very basis of the CFP. **We therefore strongly support the European Commission's push for the introduction of reliable monitoring, including REM, and highlight that until effective control mechanisms are in place, TAC-setting must reflect that unreported discarding continues despite the LO, and access to quota top-ups should be conditional on demonstrated compliance and full catch documentation.** We encourage the Commission to condition any proposal for bycatch TACs or TACs based on catch (rather than landings) advice with the requirement to have on-board observers or REM to avoid illegal, unreported overfishing. This has been done in the past through the TAC regulation³² and remains open to the Commission as a short-term solution until the review of the Control Regulation is finalised.

³⁰ COM (2022) 253 Final. Communication from the Commission to the European Parliament and the Council. [Towards more sustainable fishing in the EU: state of play and orientations for 2023.](#)

³¹ [STECF \(2019\). Evaluation of Landing Obligation Joint Recommendations \(STECF-19-08\).](#)

Similarly, this issue is recognised by the Commission itself in this year's consultation document: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13508-Towards-more-sustainable-fishing-in-the-EU-state-of-play-and-orientations-for-2023_en

³² COUNCIL REGULATION (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters. Article 7, page 6.