



THE
PEW
CHARITABLE TRUSTS

Submission to the European Commission's Consultation on Fishing Opportunities for 2019

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The Pew Charitable Trusts
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Summary

The Pew Charitable Trusts welcomes the Commission's Communication initiating a consultation on fishing opportunities for 2019¹. Concentrating on the waters of North-Western Europe, where Pew's effort to end European Union overfishing is currently focused, Pew would like to highlight the following:

Progress in ending overfishing and recovering fish stocks

- The Commission's report paints an overly positive picture by emphasising the progress made on a small set of stocks, over a long time period. Closer inspection of the key findings in the 2018 report of the Scientific, Technical and Economic Committee for Fisheries (STECF)² reveals that overfishing persists, with 41 percent of analysed North-East Atlantic stocks overfished in 2016.
- Most progress in reducing overfishing has been achieved in the period preceding the reform of the Common Fisheries Policy (CFP), with progress slowing down in more recent years.
- The report omits any analysis of progress towards the CFP's objective to restore and maintain stocks above levels which can produce Maximum Sustainable Yield (MSY).
- When reporting on biomass trends, the Commission uses inadequate reference points, which are insufficient to assess progress towards the CFP's objective.
- While long-term biomass trends look positive over a period of 13 years, a significant proportion of stocks is still outside safe biological limits and thus very far from reaching the CFP's objective.

The Commission and member states must significantly step up their efforts to end overfishing by 2020 at the latest, and to ensure full coverage of the landing obligation by January 1st 2019. The Commission must also improve its requests for scientific advice so that it can adequately report against progress in achieving the requirements of the CFP.

Setting fishing opportunities for 2019

- Proposals for fishing opportunities must not exceed scientific advice on F_{MSY} mortality rates, whether the stocks in question are caught as targeted catch or as bycatches.
- Where MSY reference points are unavailable, extra caution must be exercised to ensure that all stocks are allowed to recover to healthy levels. The precautionary catch advice from the International Council for the Exploration of the Sea (ICES) should in any case not be exceeded.
- The Commission must resist pressures to weaken, postpone or ignore CFP requirements, for instance by removing Total Allowable Catches (TACs) or postponing the setting of fishing opportunities not exceeding F_{MSY} .
- The Commission has the opportunity to achieve greater transparency throughout the TAC setting process by making public the rationale for its proposals and the decisions made. This would benefit all stakeholders involved in the process.

¹ [Communication from the Commission to the European Parliament and the Council on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2019 \(COM/2018/452 final\)](#)

² STECF (2018), [Monitoring the performance of the Common Fisheries Policy \(STECF-Adhoc-18-01\)](#)

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1. Progress in ending overfishing and recovering fish stocks

Pew welcomes the Commission’s efforts to comply with Article 50 of the CFP to report annually to the European Parliament and the Council on the progress on achieving MSY and on the status of fish stocks. Concentrating on the waters of North-Western Europe, where Pew’s effort to end European Union overfishing is currently focused, Pew would like to comment on several aspects of this reporting.

1.1 Ending overfishing

Scope of the assessment: Article 50 of the CFP requires that the Commission report on progress “on achieving maximum sustainable yield and on the situation of fish stocks”. The CFP’s objectives, detailed in its Article 2, apply to all harvested stocks. For stocks lacking MSY-based reference points, multi-annual management plans (MAPs) should ensure at least a comparable degree of conservation, in line with Article 9(2) of the CFP.

The Commission’s report paints an overly positive picture by emphasising the progress made on a small set of stocks, over a long time period. The report further complicates the picture by reporting both on fishing pressure trends, based on figures from the STECF³, and on political decisions on TACs, based on the Commission’s own analysis. While in the North-East Atlantic alone over 150 stocks are managed through the setting of TACs, the STECF report only provided information on 66 stocks, and the Commission analysis only focuses on 76 TACs that have MSY-based advice. The report also places great emphasis on volumes of catches, downplaying the importance of ending overfishing for stocks that may be smaller in terms of tonnage, but that are crucially important, either as components of vulnerable marine ecosystems such as the deep sea, or economically important for regional or localized fisheries.

The Commission should request more extensive reporting from STECF in order to meet its reporting responsibilities. The Commission should furthermore take steps to ensure that stocks lacking MSY-based reference points are still afforded the possibility to rebuild above levels capable of producing MSY, as

³ STECF (2018), [Monitoring the performance of the Common Fisheries Policy \(STECF-Adhoc-18-01\)](#)

required by the CFP. The reporting on progress towards the CFP's objectives should encompass all stocks.

Overfishing persists: Closer inspection of the key findings in the STECF report reveals that overfishing persists, with 41 percent of analysed North-East Atlantic stocks subject to overfishing in 2016. Most progress in reducing overfishing has been achieved in the period preceding the reform of the CFP, with progress slowing down in the last few years. The Commission highlights that median fishing mortality has stabilised around 1.0 but does not clarify that this corresponds to only around half of the stocks being fished at or below F_{MSY} , and that this indicator has been stable since 2013. The STECF report notes that “the recent slope of the indicators suggests that progress until 2016 has been too slow to allow all stocks to be maintained or restored to at least the precautionary B_{pa} , and managed according to F_{MSY} by 2020.” This significant finding is not reflected in the Commission's Communication.

Simultaneously, Pew analyses of the Commission's proposals for TACs⁴ indicate that the Commission's assertion that all its proposals were in line with or slightly below F_{MSY} omits important detail. Up until and including 2018, the Commission has proposed, and the Council has adopted, TACs for several stocks⁵ that exceed the advice under ICES' MSY approach⁶, as well as the best available scientific advice on precautionary exploitation for other stocks. The Commission's report recognises that only 69 percent of the F_{MSY} assessed TACs in the ICES area for 2018 have been set in line with scientific advice – meaning that almost a third of TACs continues to exceed the CFP's required levels, only two years before the ultimate deadline of 2020.

1.2 Recovering fish stocks

Omission of any reporting on the key objective of the CFP: one of the major paradigm shifts introduced by the reform of the CFP was the requirement to rebuild stocks above levels which can produce the maximum sustainable yield. This new requirement contrasts significantly with previous policy, which merely aimed to ensure that stocks had a low probability of collapsing.

Pew notes with concern that this objective is not accurately reflected in the Communication, stating that the CFP's objective is to restore and maintain stocks “to” [sic] levels that can produce MSY.

The Commission's Communication dedicates a very small section (section 2.2 on biomass trends) to this key element of the CFP, which contains little detail. Crucially, the Commission does not report at all on the objective to restore and maintain populations of harvested species above levels which can produce MSY.

⁴ [Pew recommendations for certain fishing opportunities in the north-east Atlantic for 2018](#)

⁵ Including for herring in areas 5b, 6, 7bc, for cod in the Kattegat and for common sole in the Irish Sea. For all these stocks the MSY-based scientific advice was for zero catches, but the Commission proposed, and the Council adopted, a TAC.

⁶ [ICES Advice Basis 2018](#), p8

Use of inadequate reference points: when reporting on biomass trends, the Commission mentions increases in biomass, and the percentage of stocks within safe biological limits. Neither measure is sufficient or adequate to assess progress towards the CFP's objectives, as required by Article 50.

While previous policy aimed to maintain stocks "within safe biological limits" (i.e. provide a lower risk of collapse), the current CFP only refers to safe biological limits in the definitions and in Article 15(8) (regarding its use as a safeguard on exemptions to the landing obligation⁷). Therefore, reporting on the status of stocks in relation to this outdated reference point does not deliver information on the progress in achieving the CFP's objectives. The fact that a third of the smaller subset of stocks analysed do not even meet those insufficient reference points suggests that progress toward the CFP's objectives may be very limited.

Much more progress is needed: while the long-term biomass trends look positive over a period of 13 years, the STECF report clearly shows that a significant proportion of stocks (around 30 per cent) is still outside safe biological limits. STECF also highlights its inability to report on progress towards rebuilding stocks to levels above those capable of producing MSY, due to the lack of available estimates. The Commission should request that, where possible, ICES provide estimates of B_{MSY} in their advice, and not just MSY $B_{trigger}$ (the lower bound of B_{MSY}). Middle and upper bounds of B_{MSY} are calculable for some stocks and would provide STECF with data to improve reporting on progress against the MSY objective of the CFP.

It is the Commission's responsibility to request scientific advice from the International Council on the Exploration of the Seas (ICES) regarding B_{MSY} levels, and to propose fishing limits below F_{MSY} or comparable reference points in order to rebuild stock biomass and achieve the CFP's objectives.

⁷ Article 15(8): *By way of derogation from the obligation to count catches against the relevant quotas in accordance with paragraph 1, catches of species that are subject to the landing obligation and that are caught in excess of quotas of the stocks in question, or catches of species in respect of which the Member State has no quota, may be deducted from the quota of the target species provided that they do not exceed 9 % of the quota of the target species. This provision shall only apply where the stock of the non-target species is within safe biological limits.*

2. Proposals for fishing opportunities for 2019

Clear targets and timelines for setting sustainable fishing limits, in order to reach the objective of recovering fish stocks, are the cornerstones of the CFP. The annual setting of TACs as a limit on fishing mortality is closely related to the CFP objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY. Setting fishing limits below MSY rates (F_{MSY}) aims to allow fish stocks to recover to biomass levels above those capable of producing MSY (B_{MSY}), notwithstanding other biological factors. The Communication raises a number of important issues regarding 2019 fishing opportunities:

Timeline for achieving F_{MSY} : Pew welcomes the Commission's objective to achieve significant further progress towards reaching F_{MSY} as this is the last year to do so before the 2020 deadline. Pew particularly welcomes the Commission's intention to request timely and robust socio-economic justification from member states before considering postponing the achievement of F_{MSY} exploitation rates beyond 2019. The CFP required the achievement of such rates by 2015, and to date very little evidence has been made publicly available to justify delays, raising questions about the quality of the socio-economic evidence provided by member states. It is hard to see how further delays could be justified so close to the 2020 deadline. Any evidence demonstrating that another delay is needed (4 years after the initial deadline) should be made available to the public. In the particular case of deep sea stocks, this year's November Council will set fishing limits for the 2020 deadline year. Therefore, for deep sea stocks in particular, no postponement can be considered. Taking into account that there are no estimates of MSY for these stocks, we urge the Commission to propose fishing opportunities that do not exceed the scientific advice on maximum catches provided by ICES.

The Commission's statement that "ensuring all TACs are at F_{MSY} at all times is a challenge" risks misrepresenting CFP objectives. The CFP does not require fishing "at" F_{MSY} rates simultaneously and at all times. In order to achieve the CFP's objective of rebuilding and maintaining stocks above levels capable of producing MSY, mortality rates would generally need to be below F_{MSY} , and for some stocks in mixed fisheries significantly lower. Furthermore, TACs are *maximum allowable* catch levels. They stipulate a maximum amount of catches that can be taken from a given stock, but even if all TACs were set in line with the best available scientific advice for F_{MSY} exploitation rates, this would not automatically result in simultaneous *exploitation* at F_{MSY} levels. TACs establish the limits within which the sector may operate, but exploitation levels within those limits will depend on many other factors, such as quota allocations, market demand, choke effects and other considerations.

Not exceeding scientific advice: It is the responsibility of the Commission and member states to cap fishing limits at sustainable levels. The Communication states an intention to use scientific advice as only one factor among many for the setting of fishing opportunities, in contrast to commitments made in previous years to not exceed scientifically advised maximum catch levels. In light of the slow progress identified by STECF, now is not the time for the Commission to lower its ambition or to slow down efforts to meet the CFP's requirements.

The Commission furthermore indicates that it will consider capping large TAC variations resulting from ICES benchmark exercises. The North Sea and Baltic MAPs limit such a capping exercise to 20 percent inter-year variability, and only in cases where the stock is above MSY B_{trigger} levels. The Commission should respect the legal framework in these regions, and not exceed the scientific advice in the remaining sea areas.

Multiannual Plans: Pew strongly opposes continued overfishing (i.e., fishing above the F_{MSY} point estimate), as doing so undermines the core objective of the CFP to end overfishing and contradicts international agreements.⁸ Both MAPs adopted thus far (for the Baltic and the North Sea) allow setting fishing opportunities above the F_{MSY} point value in certain circumstances (Article 4), for instance to avoid “serious harm” to a stock resulting from ecosystem interactions.

Pew welcomes that the Commission is proactively consulting ICES on whether inter-or intra species dynamics relating to a specific stock would justify using ranges above F_{MSY} , under the rules set in MAPs. However, Pew is concerned by the lack of definition of what constitutes “serious harm” to a stock, and by the Commission’s intention to use the entire range in instances where ICES advice may indicate that such dynamics exist. Fishing in the upper range above the F_{MSY} point value will not restore and maintain stocks above B_{MSY} levels, as required by the CFP. Moreover, ICES has clearly indicated that “fishing above F_{MSY} implies reduced stock biomass and this may be substantial where F_{upper} is much higher than F_{MSY} . So in utilizing F_{MSY} ranges there are more advantages to fishing between F_{MSY} and F_{lower} than between F_{MSY} and F_{upper} .

With higher fishing mortalities the following occurs:

- A need for increased fishing effort;
- Higher dependence of stock and yield on recruiting year classes and increased variability on catch opportunities;
- The size of the fish in the stock and the catch will be smaller on average;
- Greater probability of SSB being less than MSY B_{trigger} ;
- A lower probability of density-dependent effects such as reduced growth or increased cannibalism.”⁹

Pew strongly opposes the Commission’s intention to manage so-called “bycatch” stocks on the basis of lower objectives than other stocks. Firstly, the CFP’s objectives apply to all harvested stocks, whether they are “target” or “bycatch”. Secondly, in mixed fisheries, it is often impossible to draw a strict line between target and bycatch, as it is the species complex that is targeted. Thirdly, the “precautionary fishing mortality rates” that are defined in the ICES framework for advice¹⁰ are geared towards avoiding

⁸ UN Agreement for the implementation of the provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, Annex II: “The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points.”

⁹ ICES Special Request Advice. [EU request to ICES to provide FMSY ranges for selected North Sea and Baltic Sea stocks](#)

¹⁰ [ICES Advice basis](#)

stock collapse, but not towards recovery of fish stocks in line with the CFP. Setting fishing opportunities in line with such advice is insufficient to meet the CFP's objectives, and exceeding even this advice will likely prevent these stocks from recovering to healthy levels. Finally, the Commission's intention to apply the same approach in the EU's western waters as set out in MAPs for other regions, despite the fact that the corresponding multi-annual plan has not yet been adopted, is not consistent with the current legal framework.

"Stocks with a presumption of stability": as in previous years, the Commission Communication mentions "statement stocks", for which the Council has agreed¹¹ to keep the TACs unchanged. It should be highlighted that the agreement on stocks with a presumption of stability has expired and should no longer be applied. The agreement has acted as a significant barrier to ending overfishing, allowing TACs to be continually set higher than the scientific advice. In order to make continued progress towards ending overfishing, all TACs must be set not exceeding the levels advised by ICES for 2019.

Landing obligation: with the full implementation of the landing obligation (LO) in 2019, Pew welcomes that the Commission will no longer propose adjustments to fishing opportunities. The Commission indicates that it will base its proposal on ICES advice on landings rather than on total catches. It is not clear whether this implies that the Commission expects discarding to continue, but setting TACs based on ICES landings advice would help provide a precautionary buffer against under-implementation of the LO. Under full implementation of the LO, the agreed TACs should under no circumstances exceed the scientifically advised wanted catch levels and should provide an incentive to fish more selectively.

In mixed fisheries, it is inevitable that different stocks will have divergent levels of abundance. In certain cases, this may mean that setting the TAC at the maximum advice level for one of the stocks in the mixed fishery might result in either exceeding the maximum advised TAC level for another stock (or stocks), or in choking the fishery, if changes in fishing behaviour or selectivity are insufficient to alter catch composition. In order to safeguard the most vulnerable stock(s) in such scenarios, and to avoid choking, the TACs for the most abundant stocks in the mixed fishery should be set at a level lower than the maximum advised in the single species advice for those stocks.¹²

Removal of TACs: Pew is concerned about proposals to use the challenges in implementation of the landing obligation as justification to weaken, postpone or ignore the requirements of the CFP. The Commission's request to ICES to provide advice on removing TAC management for several stocks¹³ is a worrying indicator that this option is actively being pursued. This request specifically instructed ICES to

¹¹ Council document PECH 491, 15502/15 REV1. Joint statement by the Council and the Commission "Ad Specific Data Limited Stocks", which fixes TACs at the same levels until the end of 2018, unless the perception of the status of these stocks changes significantly.

¹² Further considerations on the implementation of the LO while meeting the CFP's MSY objectives can be found in the joint NGO position paper (2018) "[Recovering fish stocks and fully implementing the Landing Obligation: Managing fishing mortality to meet CFP objectives](#)"

¹³ [EU request on the role of the Total Allowable Catch instrument for fisheries management and conservation of selected deep-water stocks](#)

evaluate management measures as a means to maintain stocks within safe biological limits (rather than restoring them above MSY levels), which is in clear contradiction with the objectives of the CFP.

Removing a TAC obviously removes a limit on fishing mortality, taking catches from a situation where they are controlled to a situation where catches are effectively unlimited, whatever the status of the stock at a particular point in time. This puts in jeopardy the achievement of the CFP's requirement to limit exploitation rates in order to restore and maintain stocks above B_{MSY} levels. Taking such a step is therefore unlikely to be justified under the CFP as it would only make the achievement of CFP objectives less likely. Removal of TACs for non-target or less commercially valuable fish stocks, and of the associated obligation to land catches of these species, will not solve the discard problem, reduce the waste in fisheries, nor foster further improvements in selectivity intended by the introduction of the landing obligation.

In cases where it is decided to remove a TAC, a scientifically validated, monitored and enforced management strategy must be in place to ensure the CFP's objectives with regard to fishing mortality and biomass will still be met. This strategy must ensure that MSY exploitation rates are not exceeded, that biomass of the stock is restored and maintained above MSY levels, and that appropriate safeguards are triggered in response to stock biology and catching patterns. In such circumstances, decision-makers bear the same responsibility to manage the stock and report on stock status each year to ensure CFP objectives are met.

Transparency: the entire process of setting annual fishing opportunities could greatly benefit from enhanced transparency, and the Commission has a responsibility to secure improvements in this regard.

At a minimum, each Commission proposal on fishing opportunities should be made immediately available to the public. Last year, several proposals on fishing opportunities for 2018 were put forward as Commission "non-papers", which were not published on the Commission's website. The Council eventually made these proposals available on its website after NGOs submitted access to information requests. The Commission should publish all its proposals on its own website, or at the very least inform the Council secretariat that such documents can be accessed by the public, so that they are published without restrictions in the Council's document centre.

For numerous reasons, such as area mismatches¹⁴ or unknown shares of third countries, it is often challenging to compare proposed TACs and the best available scientific advice. To facilitate the decision making process and increase transparency and accountability, Pew encourages the Commission to include in its proposals for fishing limits not only the proposed TAC in tonnes, but next to it also the corresponding available scientific advice in tonnage for that TAC, or to make that information easily available elsewhere.

¹⁴ See for instance: [Client Earth \(2015\) Comparing TAC and ICES advice areas](#).

3. Conclusions and recommendations

The Commission's Communication and the STECF monitoring report clearly show that overfishing persists, and that the EU is far from achieving the CFP's objectives in terms of stock recovery. With limited opportunities remaining before the 2020 deadline, it is urgent that the Commission and member states step up efforts to end overfishing and realise the environmental, economic and social benefits associated with sound fisheries management. Pew would like to make the following summary recommendations to the Commission:

- The Commission must propose fishing opportunities not exceeding the scientific advice provided by ICES or STECF and ensuring that the precautionary approach, as defined in the CFP, is applied.
- The Commission must resist pressures to weaken, postpone or ignore CFP requirements, for instance by removing TACs or postponing setting fishing opportunities not exceeding F_{MSY} .
- Any further delays to setting fishing limits in line with the CFP's requirements should be accompanied by publicly available information detailing why such delays have been granted, and how the CFP's requirements will still be met within the legally established deadlines.
- Enhanced clarity of language and reporting on progress by the Commission would contribute to communicating to ministers the urgency and benefits of ending overfishing.
- The Commission must proactively request sufficient information, using adequate reference points (e.g. B_{MSY}), from the relevant scientific bodies so as to properly report against progress in meeting the CFP's objectives.