



Council of the
European Union

Brussels, 25 March 2022
(OR. en)

7553/22

LIMITE

PECHE 95
UK 54

NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Commission Services Non-paper on Union position to be taken in the Specialised Committee on Fisheries, established under Article 508 of the EU-UK Trade & Cooperation Agreement

- Presidency compromise

Delegations will find herewith a Presidency compromise on selected parts of the above-mentioned proposal. Changes to the Commission's proposal (doc. 7156/22) are marked in **bold underlined** and **~~bold strikethrough~~**.

This document will be discussed at the Working Party on Fisheries Policy on 28 March 2022.

The remaining parts of doc. 7156/22 will be discussed in forthcoming Working Parties.

COMMISSION SERVICES NON-PAPER ON UNION POSITION TO BE TAKEN IN THE SPECIALISED COMMITTEE ON FISHERIES, ESTABLISHED UNDER ARTICLE 508 OF THE EU-UK TRADE & COOPERATION AGREEMENT

This document serves as a basis for discussion at the Council Working Party. It cannot in any circumstances be regarded as the official position of the Commission. It is intended solely for those to whom it is addressed

Article 8(q) of the EU-UK Trade and Cooperation Agreement (TCA) establishes a Specialised Committee on Fisheries (SCF). Decision No 1/2022 of the SCF of 3 March 2022 establishes a Working Group on Fisheries, reporting to the SCF.

Article 508 of the TCA provides a list of possible tasks within the remit of the SCF. Some of these tasks have been further specified in the Written Records of the 2021 and 2022 annual fisheries consultations between the EU and UK (henceforth referred to as the 2021 Written Record and 2022 Written Record), together with additional tasks arising from these consultations.

Council Decision (EU) 2021/1765 of 5 October 2021 sets out the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. Article 2 and Annex III of Council Decision (EU) 2021/1765 provide for the specification of the Union’s position to be adopted within the SCF, through the Council’s endorsement of the details of the position to be expressed on the Union’s behalf in the SCF.

This ~~document non-paper~~ sets out the ~~proposed-specification of the~~ Union position as regards those tasks which the Commission, on behalf of the Union, ~~intends-should~~, as a matter of priority, ~~to~~ discuss in the SCF ~~in 2022~~ with the UK. Further non-papers ~~will-should~~ be presented at later dates regarding ~~certain~~ other tasks within the remit of the SCF.

~~The Commission seeks the views of the Council on the proposed position to each task of the SCF set out hereunder.~~

The main orientations are set out in Council Decision (EU) 2021/1765 of 5 October 2021.

~~Main orientations – principles on the proposed position to be taken by the Union in the SCF~~

~~1. The Union should engage with the UK on the proposed position set out in this non-paper, in line with the relevant TCA provisions and the rules of the EU common fisheries policy (CFP). In particular, such a position must comply with the objectives and principles set out in Article 494 of the TCA:~~

~~“1. The Parties shall cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties.~~

~~2. The Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.~~

~~3. The Parties shall have regard to the following principles:~~

~~(a) applying the precautionary approach to fisheries management;~~

~~(b) promoting the long-term sustainability (environmental, social and economic) and optimum utilisation of shared stocks;~~

~~(c) basing conservation and management decisions for fisheries on the best available scientific advice, principally that provided by the International Council for the Exploration of the Sea (ICES);~~

~~(d) ensuring selectivity in fisheries to protect juvenile fish and spawning aggregations of fish, and to avoid and reduce unwanted bycatch;~~

~~(e) taking due account of and minimising harmful impacts of fishing on the marine ecosystem and taking due account of the need to preserve marine biological diversity;~~

~~(f) applying proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties;~~

~~(g) ensuring the collection and timely sharing of complete and accurate data relevant for the conservation of shared stocks and for the management of fisheries;~~

~~(h) ensuring compliance with fisheries conservation and management measures, and combating illegal, unreported and unregulated fishing; and~~

~~(i) ensuring the timely implementation of any agreed measures into the Parties' regulatory frameworks.”²²~~

~~2. Moreover, the Union's proposed position within the SCF should respect the principles set out in Annex I of Council Decision (EU) 2021/1765 of 5 October 2021 on the position to be adopted on behalf of the European Union, for the period 2021-2026, within the Specialised Committee on Fisheries established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part:~~

~~“a) the Union shall act in accordance with the objectives and principles pursued by the Union within the common fisheries policy (CFP) to ensure that fisheries are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, in particular through the aims related to the MSY as laid down in Article 2(2) of Regulation (EU) No 1380/2013 and the applicable multiannual plans, and in line with the precautionary approach, to promote the implementation of an ecosystem-based approach to fisheries management, to avoid and reduce, as far as possible, unwanted catches, and gradually eliminate discards, and to minimise the impact of fishing activities on marine ecosystems and their habitats, as well as to provide, through the promotion of economically viable and competitive Union fisheries, for a fair standard of living for those who depend on fishing activities while taking account of the interests of consumers; and shall act in accordance with Articles 28 and 33 of that Regulation as regards the management of stocks of common interest;~~

~~b) the Union shall ensure the operationalisation of the Specialised Committee on Fisheries, including the preparation or amendment of its rules of procedure;~~

~~e) the Union shall aim to ensure that acts or measures having legal effects adopted by the Specialised Committee on Fisheries are consistent with international law, including the United Nations Convention on the Law of the Sea, the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and the FAO Agreement on Port State Measures and with the Union's international commitments;~~

~~d) the Union shall ensure that acts or measures having legal effects adopted by the Specialised Committee on Fisheries are consistent with Article 494 of the Trade and Cooperation Agreement, including the promotion of the long-term sustainability and optimum use of shared stocks, the use of the best available scientific advice principally provided by the International Council for the Exploration of the Sea (ICES) as the basis for conservation and management decisions, and the application of proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties, pursuing a level playing field between the EU and UK fleets and seeking a shared approach between the Parties' rules;~~

~~e) the Union shall promote positions consistent with best practices and with positions taken in other forums and multilateral and bilateral consultations in the north-east Atlantic, and promote coordination with other Parties and with the North East Atlantic Fisheries Commission (NEAFC);~~

~~f) the Union shall act in line with the Council conclusions of 19 March 2012 on the Commission communication on the external dimension of the common fisheries policy;~~

~~g) the Union shall aim to promote timely implementation by the Parties of measures adopted under the Trade and Cooperation Agreement into their respective legal frameworks, taking into account their respective internal procedures.”~~

~~Detailed proposed~~Specification of the Union position as regards those tasks which the Commission, on behalf of the Union, and the UK intend should to discuss in the SCF as a matter of priority

I. Non-quota stocks – approach to data monitoring and multi-year strategies

EU applicable legal framework

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.07.2019, p. 105).

Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 21.12.2009, p. 1) and Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 112, 30.4.2011, p. 1).

Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ L 289, 7.11.2003, p. 1).

Commission Delegated Regulation (EU) 2020/2013 of 21 August 2020 amending Regulation (EU) 2019/1241 of the European Parliament and of the Council as regards technical measures for certain demersal and pelagic fisheries in the North Sea and in the South Western Waters (OJ L 415, 10.12.2020, p. 3).

Commission Delegated Regulation (EU) 2017/118 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the North Sea (OJ L 019, 25.1.2017, p. 10).

Background

3. Article 495(1)(e) of the TCA defines non-quota stocks as “stocks which are not managed through TACs” (Total Allowable Catches). Article 2(1)(b) of Annex 38 of the TCA provides for full access to the waters of the other Party to fish non-quota stocks during the adjustment period (lasting from 1 January 2021 until 30 June 2026) at a level that equates to the average tonnage fished by that Party in the waters of the other Party during the period 2012-2016. The 2022 Written Record noted an average tonnage level during the 2012-2016 reference period of 33,023 tonnes for EU vessels in UK waters and of 12,365 tonnes for UK vessels in EU waters.
4. In paragraph 13 of both the 2021 Written Record and the 2022 Written Record, the Parties agreed not to apply the tonnage levels limits referred to in Article 2(1)(b) of Annex 38 to the TCA, but to closely monitor non-quota stocks fished by each Party in the waters of the other Party.
5. For the purpose of monitoring these landings data and in line with the Parties’ obligations under Article 507 of the TCA (data-sharing), the Parties agreed to exchange landings data (at species level for each Party’s vessels in the EEZ and territorial waters of the other Party) at monthly intervals on or before the 25th day of each calendar month, covering the previous calendar month. Both Parties also committed to ensuring the robustness of the landings data exchanged and to work at technical level to address this subject. Additionally, in paragraph 13(c) of the 2022 Written Record, the Parties agreed that, in the event that either Party reaches 80% of its total annual tonnage before the end of 2022, the Parties will discuss this issue in the SCF and consider next steps.
6. Pursuant to Article 508 (1)(c) of the TCA, the SCF may develop multi-year strategies for the conservation and management of non-quota stocks. Accordingly, both the 2021 Written Record and the 2022 Written Record made it a priority to ensure sustainable management of these fisheries from 2023 onwards. In paragraph 13(d) of the 2022 Written Record, the Parties committed to hold further consultations in the Working Group of the SCF from the beginning of 2022 with the aim of developing under the SCF, by 31 July 2022, a first set of multi-year strategies covering fisheries, sea basins and/or key non-quota species. The Parties also agreed to continue to work to build on these strategies and to develop further multi-year strategies for other non-quota species, fisheries and/or sea basins.
7. The Parties agreed a shared and non-exhaustive set of principles in paragraph 13(e) of the 2022 Written Record to underpin the development of the multi-year strategies for the conservation and management of shared non-quota species:
 - *“Strategies should support long-term sustainability (environmental, social and economic) and take due account of and minimise the harmful impacts of fishing on the marine ecosystem;*

- *Strategies should be based on the best available scientific advice;*
- *Strategies should set out how often advice will be obtained and set out steps for improving advice on stock status and addressing evidence gaps;*
- *Strategies should be subject to review to take account of any developments that may affect the sustainable management of these stocks, including potential impacts of changes in fishing behaviours.”*

Orientation

Data monitoring

8. Before engaging with the UK on the monitoring of landings data, the Commission and the Member States should work to ensure the robustness and consistency of the data exchanged by Member States in the Aggregated Catch Data Report (ACDR) system. This work should identify any reporting issues that may exist at present, and any technical clarifications needed from Member States on this subject.
9. Once this task is complete, the Commission should ascertain with the UK the robustness of EU and UK data reporting on non-quota stocks landings.
10. On the question of the discussions foreseen once either Party reaches 80% of its total annual non-quota tonnage before the end of 2022, the Commission should monitor landings data and present a non-paper in the future on how it would approach these discussions.
11. The EU should also seek to agree with the UK on measures that will contribute to keeping non-quota fishing activity in each other’s waters within the agreed tonnage level limits in Article 2(1)(b) of Annex 38 TCA. It will be a priority to agree these measures ahead of the implementation and enforcement of these limits in future years, and to ensure corresponding implementation in the EU legal order.

Multi-year strategies

12. As a first step and before going into the development of specific multi-year strategies, it is important that the Union and the UK agree on a common vision, and approach for the joint sustainable management of the non-quota stocks. This requires the elaboration of an overarching strategy that will define the fundamental objectives and principles on which specific multi-year strategies should be based, as well as the long-term aims and the short-term objectives for the joint sustainable management of the non-quota stocks that should guide these multi-year strategies. The EU approach to the development of the overarching strategy should build on the following elements, with the aim of ensuring long-term sustainability (environmental, social and economic):

1. Building on existing knowledge. As referred to in the 2022 Written Record, the development of multi-year strategies should be based (at the start) on existing knowledge, in particular on the current state of the non-quota stocks. The EU should propose urgent mapping of the relevant information (e.g. biological, social, economic data) so as to obtain an overview of the non-quota stocks and fisheries. This will provide a reference baseline on the current knowledge and gaps, and on where the main complexities may occur (e.g. quota and non-quota interactions).
2. Scope (fisheries, sea-basins, species). The Parties will have to decide the scope of the multi-year strategies and how they fit within the overarching strategy. Possible options for multi-year strategies include by fisheries, by geographical area (sea basins), by species and/or by groups of species. They could also comprise a combination of these elements (e.g. a particular species in a defined area). This will further inform on what basis the data mapping should be further refined. The proposed EU position is that the decision on scope (by species, fisheries or sea-basin) should be based on the **appropriate approach from a sustainability perspective best available scientific information and knowledge, which determines how different species can be best managed sustainably**.
3. Use of the best available scientific information. The EU should propose the integration of advice from scientific bodies/organisations, such as ICES and the Scientific, Technical and Economic Committee for Fisheries (STECF) to ensure the use of the best available scientific information and knowledge. Additionally, input from Advisory Councils and Member State experts will be necessary and essential to this work, in view of the specific and localised nature of much of the Union's non-quota stocks fisheries. The EU position should be that the EU and the UK jointly request ICES to assess the potential vulnerability of any species, to assess the exploitation level and to identify data gaps, which is required for building the necessary knowledge on the non-quota stocks and fisheries. The EU position should be that this advice should be read in combination with catch, socio-economic, fleet and market information. The EU and UK should also seek scientific advice to clarify the target/bycatch nature of specific and relevant fisheries, and how catches of non-quota species interact with TAC regulated fisheries. The EU should seek to identify and agree with the UK the most adequate frequency of advice and the necessary steps for improving advice on stock status and addressing evidence gaps.
4. Compatibility with existing provisions. The EU should ensure that any multi-year strategies are compatible with existing provisions, such as the North Sea and the Western Waters multiannual plans, technical measures (EU, Member State and UK measures), the Western Waters effort regime, and the development of joint recommendations (e.g. king scallops).
5. Review. The EU should seek to ensure periodic reviews of multi-year strategies to take account of any developments that may affect the sustainable management of these stocks, including potential impacts of changes in fishing behaviours.

13. The overarching strategy developed by the EU and UK, based on the above-described elements, will be important for the discussions on conservation and multi-year strategies. In those discussions, a broad and comprehensive setting is needed to achieve sustainable fisheries, which ~~cannot be limited to considering only~~ **should be based on broader considerations than** species-specific catch limits or quotas.
14. Consequently, and with a view to developing possible multi-year strategies for some selected non-quota species, the Union should consider a range of possible management options available under the CFP. The Union should present concrete proposals to the SCF that would both defend our interests (including environmental, social and economic sustainability, and equitable impacts on both EU and UK fleets) and seek to contain the UK's ambition to discuss and establish catch limits per species in isolation, which could lead to the setting of TACs for such species independently of other measures in the context of the multi-year strategies. Taking into account the deadline of 31 July 2022, as set out in the 2022 Written Record, the Union should be open to exploring specific multi-year strategies ~~for two fisheries in the Channel area (whelks and king scallops)~~ and focus on achieving a joint approach to the application of measures, **based on additional non-papers by the Commission to be endorsed by the Council. For the other non-quota stocks and species, the Union should further collect data and evidence, and identify possible proposals, in a timely manner before the discussions in the SCF on these during the second half of 2022, or thereafter.**
15. As regards formal scientific advice, the Commission should seek advice from STECF for non-quota stocks. Once the Commission has received and reviewed this advice (expected in the second half of 2022), the Commission should engage with the UK in the SCF to discuss the development of Terms of Reference for ICES.

II. Transfers of fishing opportunities between the Parties

EU applicable legal framework

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22), in particular Articles 16(8) and 33(2).

Article 52 of Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 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 (OJ L 21, 31.12.2022, p. 1).

Background

16. Article 508(1)(m) of the TCA provides for a voluntary in-year transfer of fishing opportunities between the Parties and assigns responsibility to the SCF to decide on the details of this mechanism: “[The Specialised Committee may in particular] develop a mechanism for voluntary in-year transfers of fishing opportunities between the Parties, as referred to in Article 498(8).”
17. Article 498(8) of the TCA states: “The Parties shall set up a mechanism for voluntary in-year transfers of fishing opportunities between the Parties, to take place each year. The Specialised Committee on Fisheries shall decide on the details of this mechanism. The Parties shall consider making transfers of fishing opportunities for stocks which are, or are projected to be, underfished available at market value through this mechanism.”
18. For 2021, and in the absence of such a permanent mechanism, the Parties executed transfers by means of an interim mechanism. Paragraph 8(a) of the 2022 Written Record provides that this interim mechanism should continue, until such a time it is replaced by an agreed mechanism developed in the SCF.

Orientation

19. The EU position should be that discussions in the SCF on the development of a permanent mechanism for voluntary in-year transfers of fishing opportunities between the Parties should build upon the best practice and lessons learnt from the application of the interim mechanism in 2021 and 2022. Specifically, the Union should seek agreement on a permanent mechanism in line with the principles of the interim mechanism, which are outlined hereunder.
20. First, in-year voluntary quota transfers should take place at regular and predictable intervals, e.g. every 2-4 weeks.
21. Second, the final quota transfers relating to the preceding year should be executed by no later than ~~23~~ 31 January.
22. Third, Member States should play a role in facilitating transfers and swaps of quotas, specifically on the development of the outline and practical elements of the intended quota transfer. In this preparatory and development process, the Member States should discuss and pre-agree outlines of the intended quota transfer directly with the UK ‘counterpart’ or Producers Organisations (POs).
23. Fourth, Member States should notify quota swap requests to the Commission one week in advance, by email to the designated functional mailbox for UK swaps. These notifications should include information on, inter alia, the requesting Member State (as donor/receiver), the species codes, the area code and the quantity.
24. Fifth, the Commission’s assessment of notification should be based on the availability of quota for the Member State concerned, taking into consideration the reported catches and other information requested from the Member States.

25. Sixth, the Commission should exchange and discuss the validated requests with the UK in the following week. By the agreed deadline, both Parties should express their consent to be bound by the mutually agreed quota transfers.
26. Seventh, the Commission should consequently inform the Member States concerned of the agreed quota transfer or exchange.
27. The fishing opportunities received from, or transferred to, the UK under the abovementioned permanent mechanism should be considered quotas allocated to, or deducted from, the allocation of the Member State concerned, as from the moment that the quota transfer or exchange takes effect. Such allocation should not change the existing distribution key for the purpose of allocating fishing opportunities among Member States in accordance with the principle of relative stability of fishing activities.

III. Notifications under Article 496(3) TCA

Background

28. Article 496(3) of the TCA establishes a requirement for each Party to notify the other Party of new measures that are likely to affect the vessels of the other Party before those measures are applied, allowing sufficient time for the other Party to provide comments or seek clarification. Article 508(1)(j) of the TCA states that the SCF may establish timelines for the notification of measures referred to in Article 496(3) of the TCA.
29. At the meeting of the SCF on 27 October 2021, an initial exchange of views took place on developing a procedure for notifications by the Parties under Article 496(3) of the TCA and on lessons learned to date. The EU proposed that a two-month window for the other Party to review notified measures would be appropriate and reminded the UK of the importance of sufficiently detailed notifications. The UK disagreed on the proposed length of the window, considering one month to be sufficient. In the minutes of the meeting, the Parties agreed to continue discussions with a view to developing a protocol.

Orientation

30. In the SCF, the Union position should be to emphasise that the one-month window offered by the UK to review notified measures does not provide sufficient time for the Union to consider fully the proposed measures. The Union should seek to ensure that a minimum of two months is agreed as a standard window. **In addition, there should be a sufficient period of time between the adoption of the measure and the entry into force.** The other Party should in turn reply to comments and requests for clarifications from the other Party on notified measures in a timely manner and in advance of any implementation. **The other Party should consequently reply timely to any further questions raised.** The Union should also seek to account for flexibility in cases of urgent measures. Such flexibility should be clearly defined and reviewable to ensure this exception is only used when appropriate **and remains exceptional.** The Union should further seek to agree practical elements to make the process of notifications more efficient.

31. As regards the contents of notifications, the Union position should be to emphasise the need for notifications to be sufficiently detailed. Notifications should include a summary of the context and (if relevant) a description of the current measures in place, as well as a comprehensive outline of the proposed new measures, ~~and~~ a summary of what the Party intends to achieve through the measures **and indication if the measure will also apply to its domestic fleet. Where applicable, the notification should also include relevant ICES/FAO codes. Insofar as soon as is possible, a copy of the draft text of the legislative and/or administrative measures should be included with the notification. Furthermore, the scientific basis for measures, in line with Article 496(2) of the TCA, should be cited attached in to the notification. In addition, notifications should demonstrate how the adopted measures take into account criteria on the basis of which shared stocks are managed according to article 494 of the TCA. Finally, questions regarding the interpretation and implementation of the measures should be clarified between Parties before their entry into force. In view of good faith in the application of Art. 496(3), the deadline for comments or clarifications should predate the entry into force of the proposed measures so that the comments made can be taken into account in a meaningful way. As soon as possible, after the adoption of any measure, the final text of the legal act should be communicated, whenever possible including a consolidated version.**
32. Until such time as agreement is reached on this matter, in light of the ongoing notifications and the precedents this can create, the Union should offer the UK a two-month window to reply to notifications of EU measures. The EU should also continue to remind the UK of the points above.
33. Furthermore, where the UK notifies proposed measures that significantly diverge from those in place in Union waters, without any prior engagement, the Union position should be to seek to engage the UK in discussions within the SCF to explore to what extent convergence is possible and/or to discuss practical elements to ease the burden on fishers.

IV. ICES requests

Delegations should be associated in preparing the content of the requests to ICES.

Considering the various subjects where ICES advice or analysis is needed, the Union should prioritise the following topics in preparation for the upcoming consultation with UK:

Mixed fisheries science

88. In the SCF, the Union position should be to seek to make progress towards an agreed Terms of Reference for ICES on mixed-fisheries. The Union position should also remain that there are a number of underlying assumptions that preclude the automatic use of the mixed-fisheries scenarios for the setting of fishing opportunities.
91. The Union position should therefore be to consider the following as the basis of discussions for the mixed fisheries Terms of Reference for ICES:
- i. assess variability in catch composition at various levels of catch aggregations including correlations between stocks at a stock level and finer levels of aggregation across stocks e.g. gadoids, flatfish and groundfish groupings;
 - ii. assess variability at a haul, trip, metier and fleet level;
 - iii. assess spatial and temporal correlations within ICES subareas and divisions;
 - iv. contrast outputs from these finer resolutions runs with current fleet and metier definitions e.g. DCF level 6 **in order to better identify metiers involved;**
 - v. if significant differences in correlations, **based on a spatial analysis of catchability per year and metier,** are found, explore the possibility to modify current catchability and correlation assumptions; and
 - vi. with particular reference to depleted and choke stocks, consider whether the outcomes of points (i)-(v) can be used for more spatial and/or temporal management of stocks of primary concern e.g. cod.

Seabass

62. In 2020, ICES further developed the ICES seabass tool¹, at the request of the Commission. The tool now takes into account all vessels with seabass catches, **even with very low catches** (based on data from Member States and the UK), resulting in a significant increase in the number of vessels catching sea bass to be considered in the tool. The tool also now takes into account the frequency of seabass landings. This significant increase in the number of vessels allows the tool to calculate a lower individual portion per vessel (the same overall amount is shared out over more vessels).

63. However, a persisting limitation of the tool is that it considers that each vessel uses 100% of its catch limit each month and year. Exploratory data analysis from ICES² shows that this is not the case **and that this hypothesis leads to an overestimation of vessels uptake**. For several fishing gears, the **vast** majority of catches are below the limits, with only a **handful of vessels fully utilizing the catch limits. few vessels using 100% or more of their limits**. Unfortunately, although requested to do so, ICES has yet to take into account this “curve” in vessel catch limit consumption in the tool. **In addition, the tool does not simulate all management measures, as the 5% limit per fishing trip is not taken into account when simulating trawls and seines limits and it is not possible to include bimonthly limits in the tool**. For 2021 and for 2022 neither the UK, nor the Union considered the adapted seabass tool sufficiently developed to apply it in the setting of the fishing opportunities. Rather, the annual ICES advice formed the basis for the consultations on fishing opportunities for these years.

64. Pursuant to paragraph 13(h) of the 2021 Written Record, the Parties agreed to work together in the SCF on the management of seabass and to prioritise the further improvement of the ICES assessment tool for northern seabass with a view to using the tool for calculations for individual catch forecasts, both in commercial and recreational fisheries, ~~**in support of the setting of the fishing opportunities and catch limits per vessel/angler**~~.

65. Additionally, in paragraph 13(f)(ii) of the 2022 Written Record, the Parties committed to keeping the adjustments made to seabass management arrangements (fishing opportunities and catch limits) under review in 2022, including at the annual consultations for 2023. This review should include consideration of information on uptake available during the year and effects on stock mortality.

66. The ICES seabass tool remains the only internationally, peer-reviewed, method for estimating if vessel catch limits exceed MSY advice. **Its limitations should be assessed and corrected in order to advise Parties in their consultations** ~~**Notwithstanding certain limitations, it remains the best source for scientific advice and therefore the best basis**~~ for joint management. The Union should seek to agree on submitting a joint EU-UK request to ICES to update the tool to address the identified issues.

¹ <https://ices-taf.shinyapps.io/seabass-catch-allocation-tool/>

² <https://www.ices.dk/sites/pub/Publication%20Reports/Advice/2020/2020/ts.2020.01.pdf>

67. Pursuant to paragraph 13(~~gf~~~~(ii)~~) of the 2021~~2~~ Written Record, it will be necessary to discuss as a matter of priority within the SCF a monitoring scheme providing information on fishing mortality of commercial shore-based netting, with a view to the implementation of the scheme in 2022. The Union should seek to agree on such a scheme with inclusion of considerations on how catches are reported and fed into the seabass tool, including on shore-based netting.

68. The Union should seek the following adjustments of the seabass tool in the request to ICES:

- assessment of catch scenarios below MSY point, e.g. zero biomass change (ICES has recently removed FMSY lower scenario in the tool compared to previous years);
- fitting of a vessel catch limit utilisation curve to the tool simulation, in conjunction with the updated vessel numbers included in the tool – based upon the data and graphs presented in recent supporting documentation⁴; and
- inclusion of bycatch data of commercial shore-based netting.

Other elements could also be discussed, including considerations on the number of vessels used to populate the tool and potential groupings of vessels based on their level of catches.

Landing obligation – TAC deduction to implement the survivability exemption

71. While the Commission has been dealing with these survivability exemptions through the implementation of proportionate catch volume deductions to establish the final annual adjusted TAC, STECF advice has indicated that survivability exemptions could increase the risk of fishing beyond sustainable levels, **unless surviving discards are accounted for in stock assessments when dead discards are discounted in TAC setting.**

72. During the EU-UK fisheries consultations for 2021, it became clear that there was some misalignment between the Commission and the UK on TAC setting rules for stocks benefiting from exemptions to the landing obligation due to high survival rates. These stocks are ple.7a, ple.7de, ple.7fg, sol24-c, sol.7d, tb2ac4c, ple3an, ple2a3ax4. While the Commission intended to revise its traditional approach in light of the STECF advice, the UK was not ready to move away from the traditional approach applied by the Union.

73. At paragraph 11(b) of the 2021 Written Record, the Parties agreed to work together through the SCF to improve scientific knowledge on the landing obligation and TAC deductions. The Parties confirmed this commitment in paragraph 11(b) of the 2022 Written Record and agreed to make a joint request to ICES to include discard survival estimates in their advice for shared stocks in future.

74. Given that survivability exemptions from the landing obligation are in place beyond EU waters for some shared stocks (EU-UK and EU-NO-UK), scientifically robust ground methodologies need to be developed that can be followed in managing these stocks. The Commission has been in dialogue with ICES vis-à-vis the development of such methodologies. While limitations still exist for a swift change for all stocks that receive survival exemptions, ICES, in reply to a Commission query, stated that the revision of the assessment for stocks with survival exemptions will be a demanding process and may require greater time than a one-year cycle to cover all stocks.

77. Therefore, the EU position should be: (i) in a first stage, work under the SCF should produce Terms of Reference for ICES for the development of a roadmap towards the integration of stocks survivability into the scientific advice; and (ii) in a second stage, the swift implementation of the roadmap with the view of integrating survivability into the scientific assessment and therefore into the catch advice.

Adjustment of management areas for stocks marked with an asterisk in Annex 35 of the TCA

(Article 504 TCA)

34 Article 504(1) of the TCA provides that the Parties should have requested advice from ICES on the alignment of the management areas and the assessment units used by ICES for the TACs marked with an asterisk in Annex 35 by 1 July 2021, namely:

- Lemon sole and witch, North Sea;
- Turbot and brill, North Sea;
- Plaice, 7d and 7e; and
- Whiting, Celtic Sea.