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From: General Secretariat of the Council
To: Delegations

Subject: COMMISSION SERVICES NON-PAPER ON EU POSITIONS FOR
BILATERAL EU-UK, TRILATERAL EU-UK-NO AND BILATERAL EU-NO
CONSULTATIONS ON FISHING OPPORTUNITIES FOR 2023 AND, FOR
CERTAIN DEEP-SEA STOCKS, 2023 AND 2024

- *Presidency compromise*

Delegations will find below a Presidency compromise on the above-mentioned Commission non-paper. Changes compared to the original Commission document are marked in ***bold italic*** and ~~strikethrough~~.

It would be presented at the Working Party on Fisheries meeting on 13 October 2022.

COMMISSION SERVICES NON-PAPER ON EU POSITIONS FOR BILATERAL EU-UK, TRILATERAL EU-UK-NO AND BILATERAL EU-NO CONSULTATIONS ON FISHING OPPORTUNITIES FOR 2023 AND, FOR CERTAIN DEEP-SEA STOCKS, 2023 AND 2024

SENSITIVE

This document cannot in any circumstances be regarded as the official position of the Commission. It is intended solely for those to whom it is addressed

A) Bilateral EU-UK and trilateral EU-UK-NO consultations on fishing opportunities for 2023 and, for certain deep-sea stocks, 2023 and 2024

Fisheries relations with the United Kingdom (UK) and with Norway (NO) are of major importance for the European Union (EU). After a successful conclusion of the 2021 and 2022 bilateral fisheries consultations with the UK and with NO and trilateral consultations with the UK and NO, the 2023 consultations should build on the experience gained. The Union should seek to ensure full consistency between the bilateral EU-UK and the trilateral EU-UK-NO fishing opportunities and related provisions.

In accordance with the EU-UK Trade and Cooperation Agreement (TCA), the Commission will, on behalf of the Union, engage in bilateral consultations with the UK on the setting of the fishing opportunities for 2023 (and, for certain deep-sea stocks, 2023 and 2024) and potentially related provisions. During the 2021 and 2022 bilateral consultations with the UK, accompanying management arrangements such as inter-area and inter-species flexibilities, specific footnote conditions, etc. in the case of stocks bilaterally managed with the UK have been deferred for consultation under the remit of the Specialised Committee on Fisheries (SCF).

In the event of no agreement in the bilateral consultations, provisional TACs are to be in accordance with Article 499(2) and in the case of special stocks in accordance with any guidelines adopted by the SCF pursuant to Article 499(5). To date no such guidelines have been adopted. The SCF is currently discussing the possibility to agree guidelines for stocks where ICES advice is for a zero TAC before the end of the calendar year.

Pending the outcome of those discussions, scheduled for 2023, the Union may need to consider again engaging in consultations on detailed management arrangements that are sustainable and facilitate the operation of the fishing opportunities for 2023.

~~In accordance with the Treaty of the Functioning of the European Union, in particular Article 43(3) thereof, and Council Decision (EU) 2021/1875 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches~~

~~(Council Decision (EU) 2021/1875)¹, the Commission is seeking endorsement by the Council of the approach hereby detailed.~~

This non-paper aims to contribute to effective coordination with the Council in the preparation of the Union position for the bilateral consultations with the UK and of the Union position for the trilateral consultations with the UK and NO. The Union position presented in the non-paper is based on the best available scientific advice delivered by International Council for the Exploration of the Sea (ICES) and in accordance with the objectives of the Common Fisheries Policy (CFP) (Regulation (EU) No 1380/2013)² and Regulation (EU) No 2019/472 (the Western Waters)³ and Regulation (EU) No 2018/973 (the North Sea)⁴ multiannual plans (MAPs) for fisheries management for the stocks concerned.

The Commission, on behalf of the Union will, where appropriate, endeavour to reach agreement with the UK and with the UK and NO for the fishing opportunities (TACs and ~~their~~ **other** functionally linked measures), based on Council Decision (EU) 2021/1875 and the general principles and the specific orientations for each of the consultations as detailed under the correspondent items below. Outcomes of the consultations will be laid down in a Written Record (EU-UK) and in an Agreed Record (EU-UK-NO).

On that basis, the Commission will update its proposal for a Council Regulation on the fishing opportunities for the Union for 2023 and 2024 for certain stocks, with the Council ultimately being competent to set fishing opportunities under Article 43(3) of the Treaty on the Functioning of the European Union.

¹ ~~Council Decision (EU) 2021/1875 of 22 October 2021 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches, OJ L 378, 26.10.2021, p. 6–11.~~

² 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. 22–61.

³ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008, OJ L 83, 25.3.2019, p. 1–17.

⁴ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008, OJ L 179, 16.7.2018, p. 1–13.

Main Orientations - Principles underpinning the two consultations

The Union should seek to agree on fishing opportunities and set TACs based on the best available scientific advice, which would restore or maintain stocks above levels which can produce the maximum sustainable yield (MSY), and, where such advice is not available, under the principle of precautionary approach to fisheries management.

In agreeing with the UK and with NO on fishing opportunities for 2023 and, for certain deep sea stocks, 2023 and 2024, the Union should also seek to promote a level-playing field for Union operators vis-à-vis third-country's operators, in accordance with Articles 28(2)(d) and 33(1) of the CFP Regulation.

The Union should consider how, for individual cases or specific issues, a specific approach may need to be developed to deliver results that ensure the overall objective of sustainable management of the fisheries and marine biological resources in its three dimensions (environmental, economic, and social) in accordance with the objectives of the CFP, including flexibilities available under the Western Waters and North Sea MAPs.

Where the Western Waters and North Sea MAPs are relevant for the bilateral consultations with the UK and the trilateral consultations with the UK and NO, and if the stock conditions set out in the MAPs are fulfilled, the Union should seek to make use of the provisions of those MAPs and set TACs by using the F_{MSY} ranges as provided by ICES.

The Union should consider the difficulty of fishing all stocks in a mixed fishery at the MSY level at the same time. Particular consideration should be given to potential cases of choke species.

Accompanying management arrangements in the case of bilaterally managed stocks with the UK (such as inter-area and inter-species flexibilities, specific footnote conditions, etc.) have been deferred for consultation within the SCF, which is now fully operational. However, the output of this work will not be concluded in due time for the 2023 bilateral consultations. Hence, during the 2023 bilateral consultations, TAC level discussions with the UK may require due consideration of additional management arrangements that, in conjunction with TAC levels, will ensure sustainability and facilitate the operation of the fishing opportunities.

There is a strong interplay between the bilateral consultations with the UK and the trilateral consultations between the Union, UK and NO covering some stocks in the North Sea (cod, herring, haddock, saithe, plaice and whiting) and West of Scotland (haddock and saithe). It is important that this interplay between the bilateral and trilateral consultations is well coordinated.

Given the lack of, or insufficient, recovery of cod stocks in the Celtic Sea, North Sea and West of Scotland, TACs for associated species such as haddock and whiting should take into account mixed fisheries interactions.

Detailed approach to the consultations on fishing opportunities for 2023 and, for certain deep-sea stocks, 2023 and 2024

For the consultations on the 2023 and, for certain deep-sea stocks, 2023 and 2024 fishing opportunities between the Union and the UK and between the Union, the UK and NO, the Commission considers that the Union should take the following approach.

1. TAC setting in line with ICES advice

Stocks with MSY advice

MSY stocks, or analytical stocks, are stocks that have been subject to a quantitative evaluation of trends in the stock, based on data about the stock's biology and exploitation, which scientific review has indicated to be of sufficient quality to provide advice on options for future catches.

For the 46 TACs with **MSY advice** pertaining to the Celtic Sea, North Sea, Irish Sea, West of Scotland and the Channel), the Union should seek to agree TACs at MSY point for ~~34~~ **36** of those 46 TACs.

Those ~~34~~ **36** TACs include 6 herring TACs in the North Sea and Skagerrak, *for which the Union should seek to agree combined TAC levels that follow the overall MSY advice for the stock.* However, there are still unresolved complexities related to the management of the herring stock in the North Sea and Skagerrak, including its interaction with the depleted Western Baltic herring. A EU-UK-NO working group has been set up to explore possible management strategies and the Parties will discuss the report of the working group this autumn⁵, although it is unlikely that a long-term management solution is agreed before the annual trilateral consultations. Like for 2022, the Parties may need to reduce the targeted fishery for herring in those areas.

For the remaining ~~10~~ **42** TACs, the Commission considers that specific exceptions in line with the applicable Union legislation should apply for the following reasons.

⁵ The report will be made publicly available once finalised.

Celtic Sea cod, West of Scotland cod, Irish Sea cod, Irish Sea whiting and Celtic Sea herring.

These five stocks have **zero catch advice**. In line with the relevant provisions of the CFP and Western Waters MAP, and to avoid choking of other fisheries, the Union should seek to agree a small by-catch TAC. These by-catch TACs would be the following:

- **Celtic Sea cod:** the [ICES advice](#) is for a zero TAC for the fifth year in a row, and the stock has declined further. None of the 2023 catch scenarios provided by ICES, including zero catch, will bring the stock size above B_{lim} in 2024 (risking impairment to the reproductive capacity). At the same time, this stock is caught in mixed fisheries; hence a zero TAC would risk paralysing fisheries for other species caught in the mixture, such as haddock, whiting and, to lesser extent, other demersal species. Small by-catch TACs have been adopted in the last three years, together with the adoption of technical remedial measures to ease fishing pressure. For 2022, the Union started with a proposal for 134 tonnes and a TAC of 644 tonnes was agreed with the UK, who pushed for an even higher TAC. ~~For consistency with the approach to other TACs, the~~ The Union should seek to agree a by-catch TAC at MSY ~~lower~~ **point value of 424 tonnes**, ~~without considering the ICES sliding rule, to be given by ICES in the context of a technical service request.~~ This value should be seen as a starting point for the consultations, always considering the issue of choking of the fishery due to by-catches of cod. This would imply a substantial reduction of the TAC compared to 2022, but in face of the continued and rapid decline in the stock, it would be difficult to justify any other approach. The Commission will inform the Council of the exact level of the proposed TAC once ICES has provided a reply to its technical service request.
- **West of Scotland cod:** The [ICES advice](#) for 2023 and 2023 remains zero catch advice. ICES has been advising zero catch since 2004. The mixed fisheries considerations, like the ones for the Celtic Sea cod, and the adoption of remedial measures for West of Scotland cod underpins the setting of a small by-catch TAC for 2023 and 2024. For 2022, a rollover of the 2021 TAC was adopted. For 2023, the Union should seek to agree a TAC of 514 tonnes, based on MSY lower values, without ICES sliding rule. This would imply a reduction of -60% of the TAC. This is forecast to result in a 53% increase in SSB and fishing mortality at 0.18, which is the lower F_{MSY} value.
- **Irish Sea cod:** The [ICES advice](#) for 2023 is for zero catches. Discards continue to be high and the status of the stock is worsening. For 2022, the Union started with a proposal for 165 tonnes and a TAC for 206 tonnes was agreed with the UK. For 2023, the Union should seek to agree a TAC of 159 tonnes, a level advised by ICES in its reply to a technical service request. This would imply a reduction of -23% of the TAC. This is forecast to result in a 6.4% increase in SSB and a fishing mortality rate of 0.036, which is well below F_{MSY} .

- **Irish Sea whiting:** [ICES advises](#) that, when the MSY approach and precautionary considerations are applied, there should be zero catches in 2022 and 2023. Fishing pressure on the stock is above all reference points, and the stock size remains low. Most catches have been discarded for the last couple of decades. However, the introduction in 2020 of further remedial measures with highly selective gears to reduce finfish catch and discards in the Nephrops fishery appears to have reduced whiting catches in the last three years. For 2022, the Union proposed a TAC at 498 tonnes, corresponding to the MSY_{upper} value, and a rollover of the TAC at 721 tonnes was agreed with the UK. For 2023, for consistency with the approach to Celtic Sea cod and Celtic Sea haddock, the Union should seek to agree a TAC at 368 tonnes, a level corresponding to the MSY_{lower} value. This would imply a reduction of -49% of the TAC. This is forecast to result in a 51% increase in SSB and a fishing mortality rate of 0.158, which is the lower F_{MSY} value.
- **Celtic Sea herring:** [ICES advises](#) that, when the MSY approach and precautionary considerations are applied, there should be zero catches in 2023. In light of zero catch advice, the need to avoid the choking phenomenon and in light of the impossibility of collecting any information about the stock status, the approach has been to set a scientific/monitoring TAC with zero catch advice. Fishing mortality (F) is below F_{MSY} but stock size is below B_{lim} . According to 2023 ICES advice, no catch scenario will rebuild the stock above B_{lim} by 2024. For 2022, a monitoring TAC of 869 tonnes was agreed with the UK, corresponding to the level advised by ICES in its technical service for a monitoring TAC. The Union should seek to agree the same TAC in 2023. This is forecast to result in a 15.3% increase in SSB and a fishing mortality rate of 0.046, which is below F_{MSY} .

Haddock in the North Sea, Skagerrak, West of Scotland, Irish Sea and Celtic Sea and North Sea whiting, where mixed fisheries considerations lead to a proposal for **TACs lower than the F_{MSY} point** value, following the same approach as for 2022:

- **Haddock in the North Sea, Skagerrak and West of Scotland:** [ICES advised](#) that in 2023, catches should be no more than 137 058 tonnes for the overall stock, managed through 3 TACs in the North Sea, Skagerrak and West of Scotland. If the Union were to follow that advice, it would represent an increase of 160% in the TAC. For 2022, the Union, the UK and Norway agreed on a moderate increase in the TAC (5%) due to strong interactions with cod in both the North Sea and West of Scotland. Given those interactions, the Union should seek to agree a limited increase in the TAC of no more than ~~+20 30%~~ **(68 498 63 229 tonnes)**; ~~in accordance with the provisions of the North Sea MAP.~~

- ~~Celtic Sea haddock: ICES advised that in 2023, catches should be no more than 11 901 tonnes, corresponding to a 21% reduction in the 2022 TAC. This is mainly due to a low recruitment rate. However, given the mixed fisheries interactions, notably with cod and whiting, the Union should seek to agree a TAC at the MSY_{lower} value at 7 862 tonnes. This would imply a reduction of 48% in the TAC.~~
- ~~Irish Sea haddock: ICES advised that in 2023, catches should be no more than 2 648 tonnes, corresponding to a 13% reduction in the 2022 TAC. This is mainly due to a lower recruitment in 2020. However, given the mixed fisheries interactions, notably with cod and whiting, the Union should seek to agree a TAC at the MSY_{lower} value at 1 956 tonnes. This would imply a reduction of 36% in the TAC.~~
- **North Sea whiting: ICES advised that in 2023, catches should be no more than 110 172 tonnes, corresponding to a +25% increase in the 2022 TAC. For 2022, the Union, the UK and Norway agreed on a steep moderation of the increase in the TAC to protect North Sea cod (from +235 to only +25%). Given the continuous poor status of cod and strong technical interaction between whiting and cod, the Union should seek to agree a limited increase in the TAC of no more than +20 25 % (33 295 31 963 tonnes), in accordance with the provisions of the North Sea MAP.**

More moderate cuts in the sole fisheries in the Western Channel and Irish Sea may be considered in light of the flexibilities offered by the Western waters MAP, as well as a possible step-wise approach to setting the TAC for plaice in the Bristol Channel (7fg) to offset the risk of choking the sole fishery.

Seabass: while the stock has no TAC-based management, it is nonetheless MSY assessed. ICES advised that in 2023, overall fishing opportunities could be increased by almost 15%. Given the agreed increased fishing opportunities for 2022⁶ and the need to update the ICES catch allocation tool⁷, the EU should *remain cautious, but may nevertheless seek to agree a moderate and balanced increase in the catch limits across all fleet segments, in the direction of the positive scientific advice received.* ~~rollover of the vessel catch limitation measures, rather than proposing a new increase compared to 2022. This approach is strengthened by the fact that, if the Union and the UK were to set catch limits at the level of the advice, the SSB would be reduced by 2%, which remains below MSY B_{trigger}.~~

Stocks with precautionary advice

⁶ See point 13(f) of the Written Record of fisheries consultations between the European Union and the United Kingdom for 2023.

⁷ The ICES seabass catch allocation tool allows for the aggregation and distribution of catches per metier, area and type of fishery (commercial/recreational). A joint EU-UK request to ICES was sent on 9 September 2022 to update this tool with a new model, that could be then used for considering fishing opportunities for 2024 and beyond.

Precautionary stocks are stocks where data about their biology and exploitation is lacking or considered of insufficient quality for the purpose of carrying out a quantitative evaluation of trends in the stock. ICES uses specific reference points when assessing the state of those stocks and their exploitation relative to the precautionary approach objectives.

For the 20 **stocks with Precautionary Advice (PA)**⁸ pertaining to the Celtic Sea, North Sea, Skagerrak and Kattegat, Irish Sea, West of Scotland and the Channel, the Union should seek to agree TACs in line with the ICES headline advice for 11 of those 20 stocks.

For the remaining 9 TACs, the Commission considers that specific exceptions could apply for the following reasons.

Blue ling North Sea, Skagerrak and International 1 and 2 (3 TACs): ICES advises that when the precautionary approach is applied, there should be zero catches in 2023, like it advised for 2020 to 2022. No reference points are defined and, according to ICES, the stock size is below reference points, and the stock is depleted. This is however a by-catch stock, and to avoid choking, the Union should seek to agree a small by-catch TAC, to avoid paralysing other fisheries. Following a stepwise approach after a -40% reduction in 2020, -30% reduction in 2021, and a rollover in 2022, the Union should seek to agree a further -10% reduction for 2023, which would result in a limited overall fishing opportunity of just under 100 tonnes, getting close to the zero advice, but avoiding the choking of other fisheries.

Pollack 7 and West of Scotland (2 TACs) received an overall advice for 3 360 tonnes. Given there is no change in the ICS advice compared to 2022, and because the continuous setting of a TAC higher than that advised by ICES in recent years has had no effect on the ICES proxy to MSY⁹ (unchanged for the last three years), the Union should seek to agree a rollover of the 2022 TACs of 8 012 and 156 tonnes respectively.

Tusk North Sea and Western waters (2 TACs). ICES advised that in 2022 and in 2023, catches should be no more than 7 821 tonnes. For 2022, the two TACs have been set at levels below the ICES advice (4 522 tonnes). The Union should seek to agree a rollover, which is still 40% below the advised level.

Skates and rays North Sea and Skagerrak/Kattegat (2 TACs) have received no new advice for 2023. The Union should therefore seek to agree a rollover of the TACs from 2022, at 1 764 and 48 tonnes respectively. New advice for 2023 will only be published in October 2022, and only for a limited number of species/areas (Eastern Channel and Western waters). The Union and the UK have worked in the SCF to clarify their understanding on how they respectively translate ICES advice into TAC proposals for skates and rays group TACs, following two years of diverging approaches.

⁸ Those 20 TACs exclude TACs receiving a combined MSY and PA advice.

⁹ ICES approximation of MSY reference points.

It is unlikely that the SCF will provide agreement on a definitive approach to the setting of these TACs for 2023. In the consultations, the Union will therefore need to seek a way to bridge any gap that may arise from diverging positions between the Union and the UK. Any timely outcome of the STECF EWG and the new scientific advice delivered in October will need to be considered in discussions with Member States to formalise the Union position on these TACs.

Ling (3 TACs). In the Written Record of fisheries consultations for 2022, the Union and the UK expressed a cumulative level of TAC foreseen for 2023, corresponding to the MSY point value for the overall stock. The distribution of this cut among the different TACs can be assessed in coordination with Delegations, as done during the consultations in 2021.

For the 5 TACs based **on combined MSY and PA advice** (greater silver smelt 5-7; megrim 7; plaice English Channel; lemon sole and witch North Sea; and turbot and brill North Sea), the Union should seek to follow the approach of combining the ICES advice as the basis of the TAC setting.

For the 4 TACs **with no ICES advice** (herring 7ef; plaice West of Scotland; saithe Celtic Sea; and sole West of Scotland), the Union should seek to agree a rollover. These TACs are small, of little economic relevance, and ICES has given no indication that the current exploitation is negatively affecting these stocks. In the past, the UK has insisted on a 40% reduction for herring 7ef and saithe Celtic Sea (mainly because they have very little fishing interest in these stocks), but the Union have resisted this as there is no scientific or methodological underpinning such cuts. A joint EU-UK request to ICES was agreed at the 20 July 2022 meeting of the SCF with the objective of having ICES advice for those two stocks in 2023.

For stocks for which ICES advice does not match the management unit/approach, some TACs are composed of more than one species, while others cover several stocks in one TAC. The Union position should be to maintain the current approaches of combining the advice for both species or stocks (sometimes both MSY and precautionary advice) when setting those TACs. The 3 stocks in this category are: (i) anglerfish and megrim in the Celtic Sea; (ii) lemon sole and witch, turbot and brill, Nephrops and sandeel in the North Sea; and (iii) plaice in the English Channel. Pending the discussions under the SCF in 2023 on alignment of management areas for lemon sole and witch, turbot and brill, and plaice in the English Channel pursuant to Article 504(2) of the TCA, the Union position in the should be to maintain the above approach.

2. Mixed fisheries considerations and avoidance of choke situations

Article 4(36) of the CFP Regulation defines a “mixed fishery” as “fisheries in which more than one species is present and where different species are likely to be caught in the same fishing operation”. A “by-catch stock” in a mixed fishery is a stock that is caught when another stock is the target catch. A “choke species” is a species with a low quota that can cause a fishing vessel to stop fishing even if they still have quota for other species.

The CFP Regulation, the Western Waters MAP and the North Sea MAP all contain provisions for the management of mixed fisheries and avoidance of choke situations. In the pursuit of setting agreed TACs for shared stocks, the Union will have regard to these provisions, in accordance with Article 2(1) of the CFP Regulation. Details on how the elements in the Western Waters and North Sea MAPs should be taken into account when using the ICES headline advice have been detailed above (section 1 – MSY stocks).

The most pressing situation is for TACs where ICES provided a zero-catch advice and for which the Commission proposes that the Union should seek to agree by-catch TACs, in line with the applicable Union legislation. This is necessary where zero-catch TACs would lead to a complete halt of other fisheries, with potentially severe socio-economic implications for the coastal communities dependent on those fisheries.

The main mixed fisheries issues are related to the state of cod stocks and their by-catch in fisheries of certain other stocks in the Celtic Sea, West of Scotland, Irish Sea (all three zero catch advice for cod), as well as in the North Sea. For all these fisheries, the setting of the cod TAC since 2019 has been combined with technical remedial measures, as stipulated by the corresponding MAP. In the Celtic Sea, in 2021, the Union¹⁰ and the UK amended their respective technical measures in different directions, leading to a divergence between the measures in place in both Parties' waters. In paragraph 12(e) of the 2022 Written Record the Union and the UK committed to work through the SCF to identify and evaluate coordinated technical measures to reduce Celtic Sea cod-end specifications and discussions which will continue into 2023.

For the Celtic Sea, the UK position has been to strictly follow the ICES mixed fisheries advice, seeking to agree TACs for haddock, whiting, anglerfish, megrim and pollack at levels significantly lower than the ICES advice. The Commission expects this to be UK position again for 2023 in light of the ICES advice for cod, haddock and whiting in the Celtic Sea. However, the UK's position is inconsistent with its approach in other sea basins such as West of Scotland and the North Sea, where the UK has been ignoring or downplaying mixed fisheries consultations, looking to agree on TACs for haddock and whiting using the full advice.

For 2021 and 2022, the Union agreed to TACs with the UK considering mixed fisheries interactions, but not following the ICES mixed-fisheries scenarios values, which underlying premises and model limitations raise concerns. The Union has engaged with the UK in the SCF to better understand the limitations of the mixed-fisheries science¹¹. However, the UK has been

¹⁰ Commission Delegated Regulation (EU) 2021/2324 of 23 August 2021 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 Celtic Sea, the Irish Sea and the West of Scotland, *OJ L 465*, 29.12.2021, p. 1–7.

¹¹ st07553-re01.en22

reluctant to move from its position to strictly apply mixed fisheries scenarios in the Celtic Sea, with the consequence that terms of reference for a request to ICES to further explore the sensitivities and assumptions around mixed fisheries science are still not agreed in the SCF and consequently will not be ready for this year's consultations. Given this situation, a science-based approach to mixed fisheries issues should again be pursued to achieve the CFP's environmental and socio-economic sustainability objectives.

Moreover, it will be critical for the Union to ensure a coordinated approach across sea basins, implying that any consideration on mixed fisheries in one area (sea basin) should be mirrored in another area. This means that the Union should keep an open position on certain key species in each of these sea basins (haddock, *saithe*, whiting, anglerfish, megrim, and sole) until the UK tables its position for stocks in the Celtic Sea, which is unlikely to happen before the publication of the ICES mixed fisheries scenarios on 10 November.

For Celtic Sea cod, given zero-catch advice again for 2023, the Union should seek to follow the MSY_{lower} value, which the Commission has requested to ICES in the context of a technical service request. For Celtic Sea haddock, ICES advises a -25% reduction (following 13% annual reductions in 2021 and 2022), resulting in a TAC of 11 901 tonnes. The Union and the UK agreed for 2022 on a TAC of 15 000 tonnes, 6% below advice level. For 2023, the Union should seek to agree a TAC at the MSY_{lower} value at 7 862 tonnes (-48%).

For whiting, ICES advises a -61% reduction. Anglerfish and megrim (a slight increase), and sole in the Celtic Sea (stable) are caught further west where there is limited mixing with cod. Therefore, the Union should seek to follow the advice as much as possible for these TACs.

Consistent with the approach in the Celtic Sea, as well as with the Union approach to internal TAC setting for Eastern Baltic cod and Western Baltic herring, the Union should seek to agree a by-catch only TAC at the MSY_{lower} value for West of Scotland cod, which also has zero catch advice again in 2023. The mixed fisheries approach and consequent TAC reduction for whiting and haddock is a sensitive issue for the UK, with whiting and haddock enjoying a continuous trend for increases in the advice (+1% for whiting, following an increase from zero in 2021 to 4 114 tonnes in 2022; +6.5% for haddock, following an 86% increase from 2021 to 2022). The Union should seek to follow an approach that is consistent with the Celtic Sea for these stocks, in line with the Western Waters MAP.

Irish Sea cod has received zero-catch advice. Given the change from a precautionary to MSY advice, the Union should seek to agree a 20% reduction in the TAC, rather than follow the MSY_{lower} value, which would lead to a +341% increase in the TAC that is undesirable given the zero catch advice. In order to ensure a consistent approach with the Celtic Sea, the Union should seek to agree TACs at MSY_{lower} values for haddock and whiting in this basin.

For the North Sea, given the advice for cod (+61%), mixed fisheries considerations should be less acute than for 2022. Nevertheless, in order to avoid unwarranted pressure on the vulnerable cod stock, the Union should seek to agree an increase in both TACs of only 20% to limit inter-annual variations, in line with the North Sea MAP.

For stocks with zero catch advice or where the stock is below safe biological limits, the Union should propose to suspend the inter-annual flexibility. The Commission has proposed a delegated act amending Regulation (EU) 2019/1241 for ensuring the continued protection of cod and other demersal species in the Celtic and Irish Sea, currently under Parliament scrutiny.

3. Technical remedial measures

The Union should seek the continuation of technical remedial measures for cod and whiting in 2023 in the Celtic Sea as laid out under the above mentioned delegated act amending Regulation (EU) 2019/1241, ensuring continued technical remedial measures remain in place pending the agreement of new and aligned measures between the Union and the UK under the SCF in 2023. The Union should also propose to carry over, *or refine*, the current technical remedial measures to aid the recovery of North Sea cod, as set out in Article 16 of Regulation (EU) 2022/109 (fishing opportunities Regulation for 2022).

4. Special conditions (footnotes, flexibilities)

In the 2021 Agreed Record¹², the Union and the UK agreed to start a review process of all footnotes. The review process is particularly important for industrial fishing and for horse mackerel fishery (both in the North Sea/Channel and in the Western Waters). Pending the outcome of this process in 2023, the Union should seek to agree a rollover of all footnotes *and flexibilities*.

5. Exemptions / TAC deductions

Commission Delegated Regulations (EU) 2020/2014 and 2020/2015, as amended by the two 2022 delegated acts currently under European Parliament scrutiny, define the exemptions applicable in 2023 from the landing obligation in Union waters (North Sea and Western Waters, respectively). These exemptions are applicable to Union vessels and to UK vessels. During the 2022 consultations, the Union and the UK agreed to continue working in the SCF, notably to consider possible measures on discards, including on the issue of landing obligation exemptions and TAC deductions. The Union and the UK also agreed in 2022 on a joint request to ICES concerning the

¹² See point 6(d) of the Written Record of fisheries consultations between the European Union and the United Kingdom for 2021.

management of discards and survivability. Pending an agreement on a joint methodology for exemptions, the Union and the UK should again seek to confirm exemptions in each other's waters and compare approaches, with a view to harmonising them as much as possible, subject to the implementation in the respective legal orders according to the applicable procedures. This is important to ensure a level playing field to Union fishers vis-à-vis third countries' operators, and to provide the necessary stability and certainty to the sector.

6. 2023 and 2024 deep-sea stocks fishing opportunities

The scientific advice for deep-sea stocks has not significantly changed compared to 2021 and 2022. As a general approach, the Union should seek to follow the ICES advice for those stocks. In the specific case of red seabream in the Western Waters, which again receives a zero catch advice, the Union should make use of the provisions under the Western waters MAP and the CFP Regulation to avoid the choking of hake, megrim and anglerfish in mixed fisheries. The Union should therefore seek to agree a rollover of the small by-catch TAC (105 tonnes). The UK will likely seek to agree to the following of the ICES advice, or a noticeable reduction, since they do not have high interest in those fisheries. In more general terms, the UK will again be firm on reducing pressure on deep-sea stocks, by seeking by-catch TACs only, as well seeking better alignment between stock advice and TAC areas (e.g. roundnose grenadier). The Union should seek to maintain the current level of activities for those fisheries, by agreeing on TACs at the level of the scientific advice (with the exception of red seabream in the Western Waters), which as of 2023 will be supported by improved technical measures to reduce pressure on this stock. Given the joint follow-up in the SCF on the management of deep-sea stocks (agreed terms of reference for a request to ICES on roundnose grenadier and discussion on the Union's delegated act on Western red seabream), more straightforward consultations than for 2021 and 22 can be expected.

7. Control and data management

The Union should seek to renew the trilateral framework between the EU, the UK and NO for the cooperation on control (the North Sea MCS Working Group), and on data management. On the latter, the Union should pursue a trilateral cooperation not only on the standardisation of data exchanges of fishing authorisations but also for electronic logbook information.

B) Bilateral EU-NO fisheries consultations for 2023

Background and scope of the consultations

Bilateral negotiations between the Union and Norway are based on three different agreements: Framework Agreement for the North Sea (1980), Skagerrak Agreement (2014), Neighbourhood Agreement for SE, Norwegian zone North Sea (1976). Union positions in fisheries relations with NO have been of importance for the conservation of the stocks of North Sea shrimp and Skagerrak whiting and the management of the fishing fleets in the North Sea (and the Skagerrak). Bilateral relations with NO focus mainly on exchange of fishing opportunities and (related) access to waters, as well as two TACs in the Skagerrak.

1. Exchange of fishing opportunities

The traditional quota exchanges with NO were affected by the departure of the UK from the Union as most exchanges in the past were fished in UK waters.

The Union should seek to agree quota exchanges on the basis of the 2022 agreed exchanges, taking into consideration the quota uptake levels. A large part of the traditional quota exchanges is based on the mandatory offer by NO of Arctic cod, under the Oporto letter. The Union is required to compensate the Norwegian offer by a counter quota offer.

As part of the 2023 consultations, NO will need to positively consider the setting an additional quota of cod for Union vessels fishing in the NO EEZ for 2023, in line with point 3(b) of the EU-NO political understanding in relation to the fisheries in ICES areas 1 and 2. More broadly, the EU-NO consultations will entail several complexities, not least as the Union enters this year's exchange exercise with NO with a "debt" deriving from anticipated exchanges of Greenlandic shrimp for 2023 and the lack of materialisation of the exchanges of sprat. In addition, the Union will likely not be able to rely on a very large capelin TAC in the exchanges, since it is unlikely that the advice will be as high as for 2022.

2. Access arrangements to EU-NO waters

Access arrangements to NO waters for Union vessels and reciprocal access for NO vessels to Union waters had remained largely unchanged for the past few decades and until recently were not an issue. However, since the UK withdrew from the Union, Norway sees access in the North Sea as imbalanced, given the level of NO activities in Union waters is more limited. As a result, the bilateral EU-NO consultations for 2021 and 2022 proved challenging also on the access front.

For 2022, NO decided to reduce the access to their waters for Union vessels to fish trilaterally jointly managed stocks in the North Sea¹³ by 10%. The objective of the Union in 2023 should be to avoid further reductions of reciprocal access to North Sea waters.

¹³ Cod, haddock, herring, plaice, saithe, whiting.

Regarding the reciprocal access for pelagic stocks, the Union should aim at maintaining the 2021 levels for Atlanto-Scandian herring (unilateral access to NO waters for the full Union quota) and blue whiting. Restoring a reciprocal access for mackerel, last agreed in 2020, would be dependent on sharing arrangements at coastal States level for the stock.

The Union and NO also agreed earlier in 2022 to assess the need for further protection of the halibut stock in the Skagerrak during the consultations for 2023. NO has been asking the Union to consider introducing temporary closures during the winter (20 December to 31 March), when spawning mainly takes place, as is currently the case under NO legislation. Based on the lack of harmonisation of technical measures, Norway has first requested a Catch on Entry/Exit reporting obligation in the Skagerrak and later expressed a will to prohibit cross-border fishing. The Union should seek to harmonise the technical measures, in line with the provisions of the 2014 EU-NO Skagerrak Agreement and to avoid a limitation of cross-border fishing.

3. TAC setting

TACs for the Skagerrak are established on the basis of the Skagerrak Agreement, though most of the stocks also cover the North Sea and are therefore to a large extent discussed in the context of the EU-NO-UK negotiations. During the bilateral consultations, EU and NO consult on TACs in Skagerrak for two stocks (shrimp and whiting) that are not related to one of the North Sea TACs discussed in trilateral EU-NO-UK consultations. The Union should follow the general orientations set out in this non-paper for these stocks. ~~The EU-NO bilateral consultations concern TACs in Skagerrak for two stocks, where the Union should follow the general orientations set out in this non-paper.~~

Skagerrak whiting

ICES considers the Skagerrak whiting stock as an independent stock. TAC setting is not connected to the decisions made for North Sea whiting. The Union holds 98% of the TAC (the UK has 0%), although 78% is fished as a by-catch. ICES advice is based on the precautionary approach based on ~~survey data~~ *new ICES approach to data limited stocks. The Commission notes that this change in method has resulted in a more restrictive advice, despite the stock having increased to a level well above.* ~~The stock size has fluctuated over the past decades with no governing trend and is now close to the long-term mean size. ICES advises that when the precautionary approach is applied, catches in each of the years 2023 and 2024 should be no more than 676 tonnes.~~

The Union should seek to agree a TAC following this advice.

Northern Shrimp (*Pandalus borealis*)

This stock is split into two TAC areas, one in the North Sea, the other in Skagerrak. The North Sea TAC is exclusively NO while the TAC in Skagerrak is shared between the Union and NO, with no allocation to the UK.

ICES advice is released in March each year, so the Union and NO will need to set a provisional TAC for the first six months of 2023. The final TAC is decided after the advice release in March of the TAC year.

In March 2022, ICES advised that, when the joint long term management strategy is applied, catches for the first two quarters of 2022 should be no more than 5 882 tonnes.

The Union should seek to agree on a TAC following this advice.

In addition, the Union and NO have requested ICES to evaluate the long-term management strategy for Northern Shrimp in accordance with new terms of reference, including the transition from a two-step to a single 12-month advice. The initial offer from ICES indicates that the management year for that stock should be 1 July to 30 June. The Union should seek to agree with Norway on this new management scheme *during the consultations for 2023 with a view to implementation on 1 July 2023. This would allow some time for ICES and national quota management to adjust to this change in quota year.*
