

## How relaxing misreporting rules could undermine the EU's position in international fisheries negotiations

This briefing provides an introduction to the fisheries negotiations on small pelagic fish species (herring, mackerel etc.) between the EU and Coastal States in the Northeast Atlantic. It also explains the potential destabilising effect that current proposals by MEPs and Council to increase the Margin of Tolerance (MoT) in the Fisheries Control Regulation<sup>i</sup> can have on negotiations for these valuable fish.

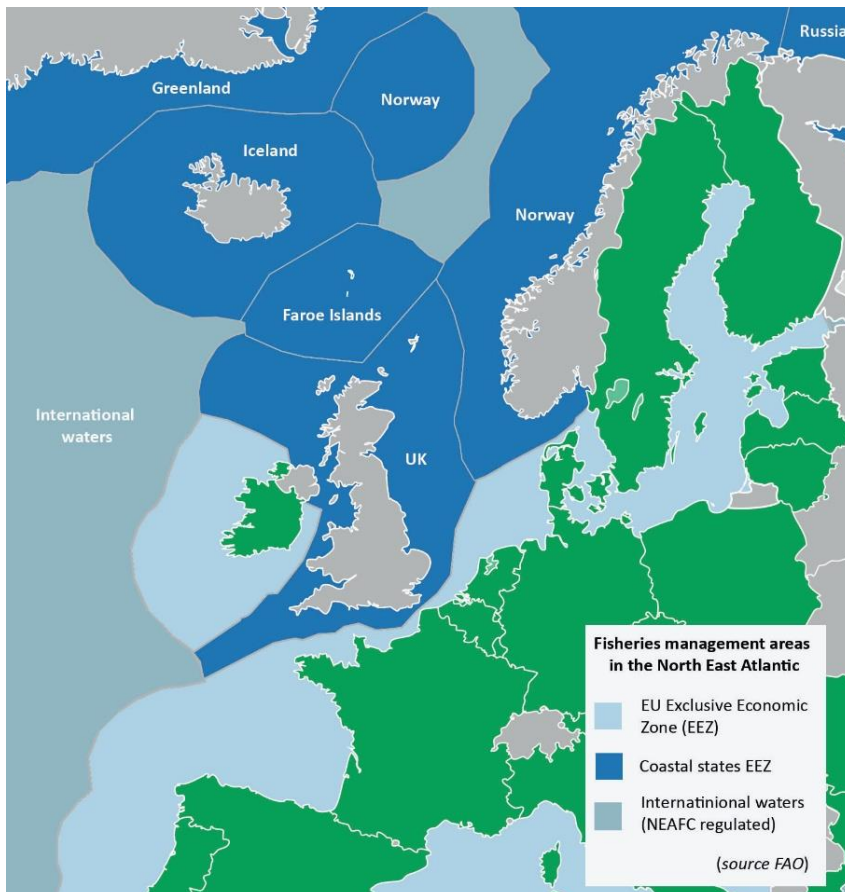
The proposed amendments would allow for a substantial increase in legal misreporting of catch data. This could undermine the EU's position, leading to a decrease in fishing opportunities, as it would:

- (1) Render scientific catch advice considerably less reliable, leading to advice to be set at precautionary (lower) levels;
- (2) Force the EU to decrease catches to stay in line with EU-internal legal requirements;
- (3) Weaken the negotiation position of the EU with other Coastal States as the latter could use the argument that EU fishers are allowed to legally overfish under an inflated MoT.

In a situation where important negotiation partners like the UK and Norway have already indicated they have low confidence in the catch reporting by EU vessels, adopting legislation that would create incentives for misreporting would most likely lead to a worsening of the EU's negotiating position.

### Negotiations for pelagic fisheries

Some of the largest and most profitable fisheries in the EU are those for small pelagic fishes like herring and mackerel. These fish swim through the Atlantic ocean in enormous schools entering the Exclusive Economic Zones (EEZs) of several Coastal States, the EU and international waters (see map below). In 2020 EU vessels landed 342 000 tonnes of Atlantic herring with a value of €174.000.000



and 228.000 tonnes of mackerel worth €242.000.000, making these some of the largest and most valuable fisheries for the EU<sup>ii</sup>.

To be allowed to fish these valuable stocks, the EU needs to negotiate with the other Coastal States on an annual basis for access and fishing quota.

When the negotiations focus on reciprocal access to each other's EEZ (for example between the EU and the UK) they happen in a bilateral, trilateral or Coastal States group context. When the fishery is in international waters outside of a nation's EEZ, the negotiations run through Regional Fisheries

Management Organisations (RMFOs). The key RMFO of relevance to the Northeast Atlantic fisheries is the Northeast Atlantic Fisheries Commission (NEAFC). Depending on the species, fishing nations and the area there are different configurations of the negotiating framework.

Negotiating body	States	Fish stocks
North East Atlantic Fisheries Commission (NEAFC)	EU, UK, Faroe Islands, Greenland, Iceland, Norway, Russian Federation	<i>Atlanto–Scandian herring, mackerel, blue whiting, redfish, Rockall haddock and deep-sea fisheries in the International waters of the Atlantic and Arctic Oceans</i>
Bilateral Coastal States Consultations	EU, Norway	<i>herring and plaice in the Skagerrak as well as access and quota exchanges for the stock agreed in EU,UK, Norway</i>
	UK, Norway	<i>Access and quota exchanges for the stock agreed in EU,UK, Norway</i>
	EU, UK	<i>100+ shared stocks as well as access and quota exchanges for the stock agreed in EU,UK, Norway</i>
Trilateral Coastal States Consultations	EU, UK, Norway	<i>cod, herring, saithe, haddock and whiting in the North Sea</i>
Coastal state cooperation on highly migratory stocks that straddle into international waters (coastal state groups)	Various depending on species	<i>Blue whiting: EU, UK, Faroe Islands, Iceland, Norway Mackerel: EU, UK, Faroe Islands, Norway Redfish in the Irminger Sea: Faroe Islands, Greenland, Iceland Norwegian spring spawning (Atlanto–Scandian) herring: EU, UK, Faroe Islands, Iceland, Norway, Russian Federation</i>

### The Coastal States quota setting process

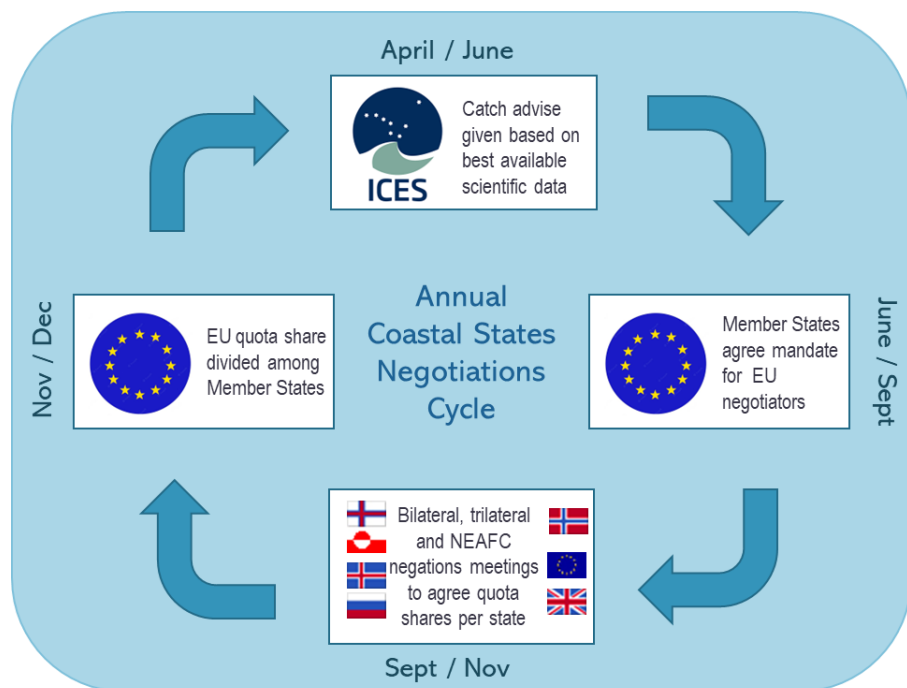
The annual quota or Total Allowable Catch (TAC) setting process follows a strict timeline to ensure that fisheries can commence in January of the following year.

The first stage is the publication of scientific advice on how much fish can be caught sustainably. Accurate and reliable catch data are fundamental to this advice. The International Council for the Exploration of the Sea (ICES) is the independent scientific authority tasked with issuing scientific advice on fish stocks in the North Atlantic region; it is recognised by all Coastal States negotiating partners as the leading scientific authority.

Using catch data and fisheries independent biological data, ICES provides advice that gives the best estimate of the state of the fish stocks and the amount of fish that can be sustainably harvested.

This information is then used by the EU Member States to agree how big they want the EU share to be. The EU's Common Fisheries Policy gives clear

guidance on the maximum TAC levels to prevent overfishing: TACs should be set at or below a level



that can produce the Maximum Sustainable Yield (MSY)<sup>iii</sup>. This rule is followed by other Coastal States, including the UK.

Whereas almost all parties in the Coastal States and NEAFC negotiations will follow the ICES advice for the total population, they often do not agree on the size of the share each state should receive. A key negotiation point is the so-called “Zonal Attachment” of a fish population (in which states’ EEZ the fish can be caught). The negotiating position of the EU in these instances is not strong as the bulk of the fisheries for valuable species like herring, mackerel and whiting takes place outside EU waters. The EU relies on access to the EEZs of other Coastal States to get the fish for its fleet.

If Coastal States fail to reach an agreement they can opt to set unilateral TACs for their fleet. Where this happens the combined TACs for all states almost always exceed the ICES catch advice<sup>iv</sup>. This of course negatively impacts the fish populations but can also have negative financial outcomes as fleets lose sustainability labelling they require for access to certain markets<sup>v</sup>. In March 2023 the negotiations for mackerel were halted because the Coastal States could reach no agreement on catch shares<sup>vi</sup>.

### Expanding the Margin of Tolerance

To allow fishers some room for error in estimating their catches while at sea, they are allowed a Margin of Tolerance (MoT). Under the current EU Control Regulation rules, the maximum difference allowed between the numbers reported in the logbook and the final figures recorded at landing is 10% per species.

MEPs and Council have tabled proposals to increase the MoT for small pelagic and industrial fisheries in the revised Control Regulation<sup>vii</sup>. They propose to have the MoT allowance calculated over the total catch (including bycatches), instead of per species as it is calculated now. Whilst on paper this looks like a minor change the effects at sea are huge. The large tonnages of fish caught in pelagic and industrial fisheries mean that, under this proposal thousands of tons of fish could be legally misreported. Especially for rare, valuable species the incentive to fish above quota would go up.

To see the negative effects of an MoT increase, one can look at the Baltic. Baltic fisheries have had a more lenient MoT since 2016 and this has led to a large decline in the accuracy of catch reporting. An audit by the Commission found underreporting of sprat by 78% in one country combined with an overreporting of over 800% of bycatch species not subject to quota. In another instance they found an average underreporting of herring of 36% and of 63% in the case of sprat<sup>ix</sup>.

### How an expanded MoT can undermine the EU’s position in Coastal State negotiations

Expanding the MoT for EU small pelagic fisheries as proposed by MEPs and Council would allow significant under- and over reporting of catches. This risks creating an imbalance in the Coastal States negotiations process in at least three ways:

1. An increase in the MoT for EU vessels would mean that the catch data used by ICES to calculate their advice would become considerably less reliable, as they would have to factor in the probability of underreported catches. This will likely lead to catch advice being set at a lower, more precautionary level.
2. The EU has a legal obligation to not exceed MSY advice for the stocks caught by its fleet. If the advice goes down, the EU would need to decrease catches as they would no longer be deemed sustainable and go against the legal obligations under the Common Fisheries Policy.
3. The negotiating position of the EU in Coastal States processes would be weakened. Other nations can use the fact that EU vessels will have more room for misreporting through the MoT as an argument for the EU to get a smaller share.

## The risk for EU vessels seeking access to Norway and UK waters

Both the UK and Norway have in the past years indicated that they question the accuracy of the fisheries data reported by EU fishers. In the case of Norway this has led to additional conditions being incorporated in the access agreement between Norway and the EU for the fisheries in the Skagerrak<sup>x</sup>. In a letter to the Parliament from July 2021, UK Fisheries minister Victoria Prentis wrote that they were closely following the EU review of the Control Regulation. In the letter she notes that the proposed MoT increase: “elevates the risk and magnitude of underreporting and overfishing with no risk of sanction for the operator”<sup>xi</sup>. As the UK is currently in the process of developing its own post-Brexit control framework there is a risk that the EU’s ability to access UK waters becomes uncertain if there is a fundamental divergence between UK and EU rules.

In response to parliamentary questions Commissioner Sinkevičius recently indicated that if the EU would expand the MoT, it could “breach” rules of its agreement with the UK, and put the EU “in a very difficult position”, especially after 2026 when the EU has to negotiate access to waters with the UK every year.<sup>xii</sup>

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<sup>i</sup> Legislative Train Schedule; European Parliament; Revision of the fisheries control system; [link](#)

<sup>ii</sup> European Commission, Joint Research Centre, Scientific, Technical and Economic Committee for Fisheries, Virtanen, J., Guillen, J., Prelezo, R., et al., The 2022 annual economic report on the EU fishing fleet (STECF 22-06), Virtanen, J. (editor), Guillen, J. (editor), Prelezo, R. (editor), Sabatella, E. (editor), Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2760/120462>

<sup>iii</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy; Document 32013R1380; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1380>

<sup>iv</sup> Cf. Landing the blame, Overfishing in EU waters 2001–2015; Griffin Carpenter and Richard Kleinjans; New Economics Foundation; [link](#)

<sup>v</sup> Press release: MSC certificates suspended for all North East Atlantic mackerel fisheries; 31/01/2019; [link](#)

<sup>vi</sup> Press release Pelagic Freezer Trawler Association; EU fishing industry disappointed with Coastal States’ failure to seal mackerel sharing deal and warns against parties again setting inflated unilateral quotas; [link](#)

<sup>vii</sup> Amendment 328 Izaskun Bilbao Barandica, on behalf of the Renew Group; A9-0016/2021; [https://www.europarl.europa.eu/doceo/document/A-9-2021-0016-AM-328-328\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-9-2021-0016-AM-328-328_EN.pdf)

<sup>viii</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control – General Approach; 2018/0193(COD); [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_9390\\_2021\\_ADD\\_1\\_REV\\_1&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_9390_2021_ADD_1_REV_1&from=EN)

<sup>ix</sup> The Guardian; 16/03/2023; Arthur Neslen; ‘Phenomenal loophole’ in quotas could lead to massive overfishing; [link](#)

<sup>x</sup> Agreed record of conclusions of fisheries negotiations between Norway and the EU for the Skagerrak in 2023; 17/03/2023; <https://www.regjeringen.no/contentassets/db5400fed30b48f1be1f9f072c042803/norway-eu-skagerrak-agreement.pdf>

<sup>xi</sup> Letter from Victoria Prentis MP to parliament on EU Fisheries Control Regulations; 07/0702021; [https://webarchive.nationalarchives.gov.uk/ukgwa/20220322085221/https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/07/21-07-09\\_VP\\_to\\_WC\\_letter.pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20220322085221/https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/07/21-07-09_VP_to_WC_letter.pdf)

<sup>xii</sup> Comments made by Commissioner Sinkevičius in PECH Committee hearing on 26/04/2023; [recording](#)