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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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COMMISSION STAFF WORKING DOCUMENT

Emergency measures for sea bass

Commission Staff Working Document

Explanatory note

Emergency measures for sea bass

A. Procedure for emergency measures and consultation process

- (1) The need to address urgently the imminent decline of the stock of sea bass was raised by the Commission and by Member States during a series of discussions in the autumn of 2014.
- (2) By letter dated 19 December 2014 the United Kingdom (UK) requested the Commission to take action under Art. 12 of Regulation (EC) No. 1380/2013, with a view to closing ICES area VIIe (Western Channel) to pelagic fisheries targeting bass during January to April 2015 in order to reduce fishing pressure by protecting the spawning aggregations of sea bass. The UK justified its request on the basis of the scientific advices by the International Council for the Exploration of the Sea (ICES) on European sea bass from June 2014 and the 46TH Plenary Meeting Report of the Scientific, Technical and Economic Committee for Fisheries from July 2014 and the accompanying technical paper. In line with the procedure outlined in Art. 12 of Regulation (EC) No. 1380/2013, the UK has copied its request to France, the Netherlands, Belgium and Ireland as well as to the North Western Waters Advisory Council (NWWAC).
- (3) On 19 December 2014 the Commission informed all Member States as well as the NWWAC and the North Sea Advisory Council (NSAC) of the UK request. The Member States involved in the bass fishery were invited to submit their comments within the deadlines stated in Article 12.
- (4) Belgium replied by letter of 19 December 2014 accepting the urgency measures proposed by the UK to protect the sea bass in ICES area VIIe, by a closure of that area for the pelagic fishery targeting sea bass during the spawning period January to April 2015.
- (5) France replied by letter dated 29 December 2014, thus within the deadline for comments which ended for France on 31 December 2014. France objects to the requested measures by contesting that Article 12 is the appropriate legal basis, by contesting the urgency of measures and the effectiveness of the measures requested, by contesting the procedure used and by raising concerns about alleged discrimination. France has also made a counter proposal for measures to be agreed between Member States and put in place nationally while avoiding any emergency measures. This counter proposal includes decreasing fishing effort for pelagic trawlers, increasing the minimum size for sea bass caught by commercial vessels, prohibiting targeted fishing for seabass in area VIIa,g,j, monthly catch limits for vessels using hooks, lines and other gear types and a bag limit for recreational fishermen.
- (6) The Netherlands replied by e-mail of 9 January 2015 with an agreement on emergency measures, but asking for a wider coverage to include area VIId,e,f,h, a monthly landing limit for all commercial fisheries, increasing the minimum size as well as a bag limit for recreational fishermen.
- (7) By e-mail of 24 December 2014, the Chairman of the North-Western Waters Advisory Council (NWWAC) recognised the state of sea bass clearly as a matter of concern, but expressed doubts about the urgency of measures and the seriousness of the threat to conservation. The Chairman also expressed doubts as to whether the requested measures,

being limited to one metier in one area, would be equitable and asked for more time, until the end of January, to give the NWWAC time to formulate its comments, while recognizing the proximity of the spawning season.

- (8) The procedural arguments made by France and the NWWAC, i.e. that the time allowed for comments under Article 12 was not sufficient, cannot be accepted. Firstly, the seven-working-day deadline for comments in Article 12 is conditioned by a similarly tight deadline for the Commission to take a decision on emergency measures; it was clearly the will of the co-legislator, including the Council, to set such tight deadlines in view of the urgency that is required. Secondly, these deadlines follow naturally from the fact that Article 12 is limited to the need for immediate action (“duly justified imperative grounds of urgency”). It is logical that where the material requirement is so strict, the procedural requirements need to be tight too, in order to allow for immediate action. Thirdly, the Commission had already previously and comprehensively consulted both France and the NWWAC, as well as all other Member States concerned, on the current situation of the sea bass stock and on all the scientific evidence available now. Intense discussions were held since September 2014, during the preparation of the Council on 15-16 December and during the Council itself. All parties have therefore been fully familiar with the facts and evidence. In particular, the Commission formally invited the NWWAC already on 1 August 2014 to give its opinion, within three months, on management options for the sea bass stock. Five months later, it is unclear why the Advisory Council would need yet another month to deliver an opinion. Under those conditions, and in view of the recognized urgency, there is no basis for not applying the legal deadlines.
- (9) During this procedure, the Commission has also received over 100 spontaneous submissions from citizens (recreational and professional fishers) active in fishing sea bass, who almost unanimously and some with detailed reasons asked the Commission to take emergency measures to protect the sea bass stock. In their submissions citizens and professionals expressly criticize the fishing on spawning aggregations and identified it as damaging in the current circumstances. They expressly ask that the Commission takes measures that ensure that large shoals of breeding fish are left alone so that they can replenish the stock of sea bass. The association of French line fishermen moreover stated that line fishermen have lost 50% of their income from the sea bass fishery due to a lack of measures to protect sea bass.

B. The sea bass fishery, its economic value and the socio-economic impact of possible measures

1. The sea bass fishery

- (9) Sea bass is a high value fish that occurs in several populations in the North-East Atlantic and in the highest abundance from the southern North Sea, Irish Sea and west of Ireland down to the Iberian coast. ICES considers the population in the southern North Sea, Channel, Celtic Sea and Irish Sea (see map in Annex) as a separate stock, which is also the subject of this procedure.
- (10) The sea bass stock in this area has recovered from a very low level since the beginning of the 1990ies but has been declining rapidly since 2012 and will according to ICES approach its historically lowest level in 2016. The number of young fish adding to the stock (so-called recruitment) has been declining since the mid-2000s and has been very poor since 2008; this has been the longest period of low recruitment on record. Fishing pressure (so-called fishing mortality) has continuously risen since the early 1990ies and reached an all time high in 2013. ICES now advises a severe reduction of catches, by 80%, to stem the rapid decline in biomass.

- (11) Sea bass is targeted by a number of fishing techniques, but mainly by pelagic (mid-water) trawlers, which contribute more than 25% to the total fishing mortality. Pelagic trawling targets sea bass during the spawning season from December through April, when bass aggregate in spawning areas and are therefore available as a target. Other métiers, such as lines and hooks, gill-nets and other gears, catch sea bass mainly in different areas and throughout the year. Sea bass is also a by-catch in different fisheries. A detailed overview of fishing techniques for sea bass is given by the STECF report of November 2014 based on a study commissioned by the Commission. For a summary overview of the composition of the fishery, see the diagrammes in the annex to this note.
- (12) Ireland, France, the UK, the Netherlands and also Belgium have a stake in the commercial fishery for sea bass.
- (13) Ireland responded to the crisis of the stock in the late 1980ies/early 1990ies by prohibiting the commercial landing and sale of sea bass and therefore closing its sea bass fishery. This precautionary measure has helped the stock recover since the 1990ies and is being upheld until today. France, has developed its commercial fishery of sea bass since the early 2000s. France fishes two thirds (67%) of the total commercial catches of sea bass in the area; it also maintains by far the largest recreational fishery. In particular, France has developed an industrial fishery targeting mature sea bass in spawning areas, during periods when the fish congregate to reproduce. That targeted spawning ground fishery accounts for one quarter (25%) of the fishing pressure alone. All other countries maintain smaller-scale fisheries using different techniques. Some countries have a ban on pelagic pair trawling within their own 12 mile zones.¹
- (14) Sea bass is a popular target for recreational fishers, mostly anglers, in Europe. The recreational fishery depends on a healthy sea bass stock. France has by far the largest recreational fishery for sea bass, followed by the UK and the Netherlands. Recreational catch contributes appr. 25% to sea bass landings.

2. Economic value

- (14) The commercial fishing fleet that catches sea bass comprises a wide diversity of vessel size, range and gears used. A large fraction of the fleet are small vessels (below 12m) whose activities are mainly limited to the 12 mile zone.
- (15) The extent to which fishing vessels depend on sea bass varies greatly. Generally speaking, small vessels that fish sea bass with “artisanal” means (lines and hooks) can depend considerably more on bass than large vessels that use trawls and often operate in mixed fisheries. In France, more than 220 small vessels using lines, with more than 270 sailors, depend to more than 50% of their revenue on sea bass. 21 pelagic (mid-water) trawlers and appr. 100 sailors depend more than 50% on sea bass, although they exercise most of the fishing pressure (25% of the total fishing mortality).
- (16) Sea bass is being produced in considerable quantities in aquaculture; wild sea bass is a higher-value product that occupies a smaller segment of the market. Sea bass fished by small-scale fishermen who use lines/hooks is a high value product ("bar à la ligne"). Bass caught in that way has a much higher sales value (16.67 euro/kg in France 2013), appr. twice the value than bass caught by trawlers. Pelagic trawls on spawning aggregations yield the lowest prices (7.37 euro/kg in France 2013; see annex). Pelagic trawling may also be responsible for pressure on overall prices: during the first quarter of the year, when

¹ The South-west Territorial Waters (Prohibition of Pair Trawling) Order 2004 (United Kingdom)

pelagic trawlers target sea bass on spawning grounds, average prices are half as low as during the rest of the year.

- (17) Recreational fishing represents an important economic activity.
- In France, more than 1.3 million people undertake more than 9 million fishing trips per year, and sea bass is the main species caught. The total yearly expenditure on angling equipment, baits and boats is estimated at appr. EUR 530m.
 - In the UK, it is estimated that in 2012, almost 900,000 sea anglers spent GBP 1.23bn on the sport.
 - By comparison, the annual revenue generated by the first sale of sea bass for commercial fishing in France amounts to EUR 43 million (according to France)

While a direct comparison of those figures is not entirely possible, they show nonetheless that recreational fishing has a considerable economic significance, perhaps surpassing that of commercial fishing in this sector.

3. Socio-economic impact of possible measures/of no action

- (18) Immediately applicable emergency measures, if limited to measures to restrict pelagic trawling on spawning grounds and during the spawning season, will affect a limited number of vessels. 21 French pelagic trawlers appear to depend more than 50% on sea bass, with appr. 100 sailors being affected. A small number of UK pelagic trawlers may be affected. On a regional basis, a total of 628 fishing vessels with 2208 fishermen operate in Normandy. Appr. 5 million euro of income would be affected, against a regional income from fishing in Normandy of 142 million euro. Total income from fishing sea bass in Normandy is 11 million euro per year, therefore the larger part (6 million euro) would remain untouched.²
- (19) Other fleet segments, such as “artisanal” fishermen using lines and hooks (in France, the so-called “hamecon”), would be more affected if they were included in a seasonal closure through emergency measures (in particular in France, more than 220 small vessels using lines (“hamecon”), with more than 270 seamen, depend to more than 50% of their revenue on sea bass).
- (20) A proper socio-economic analysis would require determining the economic effect on the vessels and firms concerned: How would their profitability change? would they be able to still make earnings from fishing other species or other activities? do they have sufficient reserves or alternatives etc. However, unfortunately, the Member States concerned have not been able to provide precise and specific data to answer those questions; the data supplied so far are not in themselves sufficient to make a full assessment. An approximate assessment could look at the catch profiles month by month of the different fishing métiers concerned, in order to analyze more precisely the rates of dependency on sea bass. Data are available only from 2009, in an IFREMER report of 2011. Those data show that small-scale vessels using lines depend to a significantly larger extent on sea bass than pelagic trawlers targeting sea bass. For the small segment, sea bass is the most important species throughout the year. For the pelagic trawlers, bass is the most important species from January through April, and for some through June; during the remainder of the year, they rely economically on a

² Les chiffres clés de la pêche en Normandie,

http://www.normandiefrancheurmer.fr/media/la_peche_de_normandie_en_chiffres_donnees_2012_011844800_1536_04092014.pdf

spectrum of other pelagic and demersal species (in particular sardine, sea bream, tuna, mackerel, herring, hake and nephrops).

- (21) Therefore, socio-economic analysis highlights mainly the potential effects on small in-shore vessels, which depend more on sea bass, but exercise less pressure on the stock and achieve a higher quality product.³
- (23) The socio-economic consequences of no action and therefore of a decline of the stock will also have to be considered. Assuming that a considerable amount of recreational fishing activity depends on sea bass, a comparatively large number of jobs might be affected. For instance, it is estimated that in 2012, recreational angling in England supported 10,400 full-time equivalent jobs and, taking into account indirect and induced effects, sea angling supported over 23,600 jobs.
- (24) In order to alleviate effects for the pelagic trawlers, which would be mainly concerned by the emergency measures, aid for temporary cessation of fishing activities is available, both under the EFF and under the EMFF. Both the EFF and the EMFF envisage temporary cessation aid precisely in order to bridge temporary emergency measures; this is one of the purposes of this financing instrument. The initiative to use such aid would need to come from the Member States concerned.

C. Management measures taken to date

- (21) The sea bass fishery is shared mainly by France, the UK, the Netherlands and Belgium, and is regulated mainly by diverse national controls on commercial and recreational fisheries. Only Ireland has taken an entirely precautionary management approach, in response to a similarly serious risk for the sea bass stock in the early 1990ies, by adopting a moratorium on commercial fishing and marketing of sea bass for Irish vessels. The spectrum of national measures in other countries includes minimum landing sizes (MLS), sea bass licensing for commercial fisheries in France, weekly or monthly boat limits in some commercial fisheries, closure of nursery areas in England and Wales, some closed seasons for French fleets and bag limits for recreational fisheries in several Member States. At EU level, the only management measure consists in a minimum landing size of 36 cm (Regulation no 850/98, annex XII).
- (22) The Commission's scientific advisory body, the STECF, has assessed the effectiveness of the diverse national measures in place. The STECF concluded that the "combined current national measures have not been effective in controlling catches and in preventing an increase in fishing mortality and/or decline in biomass for the North Sea, Channel, Celtic Sea and Irish Sea stock of sea bass". Furthermore, the STECF considered that the "current existing national measures as a whole, if commercial effort and catches are maintained at the level observed in 2013, are likely not to be effective to control F and allow the stock to recover to MSY levels over a 3-5 years' timescale". Therefore the conclusion is inevitable that the patchwork of existing national management and control measures is unfit to safeguard the sustainability of the sea bass stock in the North Sea, Channel, Celtic Sea and Irish Sea in the medium-term.

³ It is also possible that small vessels ("hamecon"), which depend more on sea bass, might actually benefit from restrictions on *pelagic trawling*, because such restrictions may remove some pressure on prices. It is clear from the data that the industrial pelagic trawling is responsible for strong seasonal variations in prices (low average prices in January through April).

- (23) A coherent management approach is needed to slow the decline of the sea bass stock, if there is to be any chance of bringing the stock back to sustainability at least in the medium term. Since the fishery is shared by several countries, no single national management measure, nor a patchwork of unrelated and uncoordinated national measures, can be effective. The fact that the current patchwork of national measures and controls has done nothing to prevent the present decline of the stock proves that point.
- (24) Given that the sea bass stock has not been subject to EU-level management measures to date, the Commission has attempted to encourage and facilitate the adoption of more coordinated and more effective measures at national level.
- (25) Taking this into account, and in view of concerns expressed by ICES, the Commission invited Member States repeatedly during the period of 2012 to 2014 to agree on appropriate management measures for sea bass in order to alleviate the excessive fishing pressure and to manage the fishery sustainably in line with the CFP. The Commission organized a considerable number of meetings, made inquiries with the Member States concerned to establish a register of national management measures and, on that basis, invited the Member States to discuss and coordinate amongst themselves measures that could be more effective. To facilitate that process, the Commission commissioned a scientific study (Armstrong/Drogou, July 2014) and asked the STECF to review possible management measures that could be adopted by Member States if they wished. In parallel, the Commission also discussed with the Member States in several meetings during 2012 and 2013 the possibility of setting EU-level total allowable catches (TAC) for sea bass, which would be fixed by the Council. Member States could not agree on either coordinated national measures or a EU-level TAC in any of those discussions. While there was general agreement that fishing mortality must be reduced, there was no agreement on concrete measures.
- (26) In view of the serious concern raised by ICES in June 2014 about the present status of the sea bass stock, the Commission took again the initiative to propose possible management measures for sea bass as part of its proposal for the 2015 Fishing Opportunities in the North Sea and Atlantic. This included freezing the number of fishing vessels in the targeted fishing area, limiting existing fishing vessels that target spawning grounds via number of days at sea and limiting daily catches by recreational fishers. The proposal was discussed prior to and during the Fisheries Council Meeting on 15 and 16 December 2014 with a view to agreeing on EU wide measures. The Council was however unable to agree any measures to achieve the urgently needed reduction in fishing pressure on sea bass.

D. Evidence available in the present procedure

- (27) The evidence available to the Commission includes:
- ICES advice of June 2014⁴;
 - Study on Sea Bass fisheries in Europe and their management, by Mike Armstrong (UK) and Mickael Drogou (IFREMER, France), commissioned by the Commission, July 2014 as reviewed by the STECF plenary, July 2014⁵;
 - A report submitted to the European Parliament in 2014 ("Le stock du bar commun et les mesures de gestion dans L'union Européenne"), by Mickael Drogou (IFREMER, France)

⁴ <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2014/2014/bss-47.pdf>

⁵ http://stecf.jrc.ec.europa.eu/documents/43805/812327/2014-07_STECF+PLEN+14-02_Final+Report_JRC91540.pdf

and others, which is largely identical to the above-mentioned study commissioned by the Commission⁶

- Data provided by France, the UK, the Netherlands and Belgium in response to a data call by the Commission in December 2014⁷;
- Additional analysis of catch limits for recreational fisheries, by Mike Armstrong, commissioned by the Commission, December 2014;⁸
- Submissions by different Member States during 2013 and 2014.⁹
- A report published by IFREMER ("Synthèse des informations disponibles sur le bar: flotilles, captures, marché"), April 2011.¹⁰

E. Legal requirements for emergency measures according to Article 12 of Regulation (EC) No. 1380/2013

1. Serious threat to the conservation of marine biological resources

- (28) According to Art. 12 of Regulation (EC) No. 1380/2013 on duly justified imperative grounds of urgency relating to a serious threat to the conservation of marine biological resources based on evidence, the Commission, at the reasoned request of a Member State or on its own initiative, may in order to alleviate that threat, adopt immediately applicable implementing acts applicable for a maximum period of six months in accordance with the procedure referred to in Art. 47(3) of the same regulation. Furthermore the Member State shall communicate this request simultaneously to the Commission, to other Member States and to the Advisory Councils concerned. The other Member States and the Advisory Councils may submit their written comments within seven working days of the receipt of the notification. The Commission shall take a decision within 15 working days of the receipt of the request.
- (29) Article 12 of Regulation (EC) No. 1380/2013 makes it clear that a serious threat can arise from environmental developments and from fishing pressure; both are pertinent and need to be taken into account. The argument according to which Article 12 would only apply in the case of natural disasters and not in emergencies caused by overfishing, is flawed and not compatible with the wording of the law, nor with the intention of the legislator. The wording of Article 12 is modelled on the narrower wording of the same provision in the previous CFP regulation (Art. 7 of Regulation 2371/2002), which clearly and undisputedly applied to threats caused by overfishing¹¹. The specific mention of “fishing activities” in Article 13 is to be read in connection with the geographic limitation of measures under that article (“relating to fishing activities in waters falling under the sovereignty or jurisdiction of a Member State”); it limits the scope of Article 13, not that of Article 12. The intention of the EU legislator by extending Art. 12 to any threat, not limited to threats caused by fishing activities, was clearly not to abolish the EU competence for addressing emergencies caused

⁶ [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529083/IPOL_STU\(2014\)529083_FR.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529083/IPOL_STU(2014)529083_FR.pdf)

⁷ Unpublished,

⁸ Request for services commitment No. 686192 :to be evaluated by STECF Plenary 2015

⁹ Minutes of and information submitted in response to Expert meetings 2012-2014 and requests to the Expert Group in 2014.

¹⁰ <http://archimer.ifremer.fr/doc/00035/14577/11879.pdf>

¹¹ Judgment of the Court of 17 March 2011, AJD Tuna, C-221/09, point 52

by fishing activity, something that would devoid the CFP of one of its essential elements and of its effect. Indeed, such a notion was never even discussed in the legislative process.

- (30) ICES stated in its scientific advice of June 2014 on sea bass in the Irish Sea, Celtic Sea, English Channel and southern North Sea that “the combination of declining recruitment and increasing fishing mortality is causing a rapid decline in biomass”. The following elements underpin that assessment.
- Recruitment of young fish has been declining since the mid-2000s and has been very poor since 2008. The length of this period of low recruitment considerably exceeds any other period of occasional low recruitment in the ICES time series since 1985.
 - The spawning stock biomass (SSB), the part of a fish stock that ensures its continuous reproduction in future (total weight of all sexually mature fish in the stock), has declined since 2009 and is declining rapidly towards the limit reference point (Blim). This reference point usually lies below the precautionary level for spawning stock biomass (Bpa). The present decline also means that the SSB is converging towards the lowest historically observed level of spawning-stock biomass.
 - Fishing mortality has increased considerably. Total fishing mortality over mature fish (ages 5-11) was 0.387 in 2013, this is a more than 30% increase compared to the fishing mortality during the years until 2011, which was mostly below 0.3; and even a fishing mortality of 0.3 would be almost three times as high as the sustainable rate of fishing mortality (Fmsy), estimated by ICES to be at 0.13.
 - The fishing mortality appears to have increased in 2012 and 2013 despite stable landings, which indicates that catches, already at a historically high level for the last 10 years, are being maintained despite declining biomass, hence inflicting a higher fishing mortality.
 - This phenomenon can in turn be explained by the specific pattern of the fishery. Certain fishing techniques, which constitute large parts of the fishery, allow targeting spawning aggregations, in other words they allow targeting the fish stock when it aggregates in certain places and at certain times to reproduce. These fishing techniques are therefore being able to maintain a high fishing pressure even when the biomass declines sharply. This implies the risk of doing increased harm to the spawning-stock biomass.
- (31) ICES therefore advises to “implement measures to substantially reduce fishing mortality throughout the range of the stock”. ICES warns that current combined catches from both commercial and recreational fishing are four times the amount of what the stock can sustain.
- (32) A number of characteristics of sea bass make this species particularly vulnerable to over-exploitation and exacerbate the risks that arise from these developments. ICES states that a “combination of slow growth, late maturity, spawning aggregation and site fidelity that increases the vulnerability of sea bass to overexploitation”. Sea bass grows slowly, do not mature until 4-7 years of age and have been recorded up to 28 years of age. Adult bass undertake seasonal migrations, mainly from January through April, from inshore habitats to offshore spawning sites (so-called spawning aggregation) where they are targeted by pelagic trawlers. After spawning, sea bass tend to return to the same coastal sites each year (so-called site fidelity).
- (33) Consequently, bass is particularly vulnerable to the following fishing practices:
- Fishing techniques that target the stock when it aggregates on spawning sites can maintain a considerable amount of fishing pressure even when the stock is shrinking drastically overall. During the spawning period from January through April, aggregations of bass can be targeted using mid-water (pelagic) trawls. Catch statistics confirm that those fishing practices take out mainly adult fish which are therefore no longer available to contribute to

the reproduction of the stock (see annex). Spawning fish is targeted by commercial vessels, relatively few sea bass are taken recreationally in this area at this time.

- Fishing techniques that target the fish when it congregates in nursery and feeding areas, often coastal areas, can harm a declining stock in a similar fashion. Bass are present in nursery areas throughout the year and in feeding areas from April through November. Both commercial (hooks, lines) and recreational fishing target bass in those areas.

- (34) An illustrative example of how a fish stock can permanently decline, once its capacity to reproduce is damaged, is the stock of cod in the Irish Sea. The spawning-stock biomass of that stock has declined tenfold since the late 1980s and has had reduced reproductive capacity since the mid-1990s. Since then the stock has remained outside safe biological limits, despite recovery efforts. Cod displays a similar vulnerability to fishing pressure: as a schooling species, it can be targeted even when the stock size has declined sharply. As a consequence, it has been permanently decimated.
- (35) In conclusion, the assessment of a serious threat is based on the fact that ICES advises a reduction by 80% of what is likely to have been caught in previous years and likely to be caught in 2015 and the risk of a collapse of the reproductive capacity of the stock, due to the steep decline of the spawning stock biomass, in combination with the expectation that continued targeted fishing will inflict unsustainable damage on the spawning stock.

2. Duly justified imperative grounds of urgency

- (36) Article 12 of Regulation (EC) No. 1380/2013 requires that emergency measures must be justified by imperative grounds of urgency, once the serious threat to the conservation of marine biological resources has been established. That second requirement relates to the justification and degree of the *urgency* of taking action. Measures should be not merely desirable but, as the recital 38 of Regulation (EC) No. 1380/2013 confirms, “immediate action” must be necessary.
- (37) Immediate action is needed to protect the sea bass stock during the imminent spawning season from a further significant reduction of its spawning stock biomass. Limiting or closing the spawning ground fishery will immediately remove considerable fishing pressure.
- The targeted fishery for sea bass in spawning areas has commenced. As ICES has confirmed (June 2014), sea bass are targeted on offshore spawning grounds during December to April. Catch data show that by far the largest quantities in this component of the fishery are taken during the first quarter of the year (Report, section 3.2). Since the spawning season of sea bass will only last until the end of April, this is a very short time window during which to act as a matter of urgency.
 - As landings data show, the spawning stock fishery catches mainly sea bass individuals with a high spawning potential (most landings are above 43 cm in length).
 - The fishery during the spawning season represents the biggest single contribution to the total fishing mortality. According to STECF, around 25% of the current fishing mortality is attributed to the spawning ground fisheries.
 - As the stock shrinks, the fishing mortality caused by spawning ground fisheries would increase further if no measures were taken. As long as any fish are aggregating to spawn, modern location technology allows fishing vessels to find and target such aggregations of spawning fish. By targeting spawning fish, catches could be kept high even though the stock as a whole shrinks rapidly, possibly until the collapse of the stock.
 - Therefore, limiting or closing the targeted spawning ground fishery will immediately remove considerable fishing pressure which is otherwise likely to increase.

- (38) In the absence of action, the spawning stock biomass, which has already declined by appr. one third between 2011 and 2014, would according to ICES decline further by appr. 23% in 2015 and by appr. 40% by 2016. It has been argued that even with such a decline, the total biomass of sea bass might still stay slightly above the critical limit reference point for a stock collapse (Blim) in 2015, and that therefore action should be deferred. However, this argument is untenable and cannot be accepted. Firstly, while the ICES' prediction represents the middle point in a range of probabilities, it is also possible, according to ICES, that the biomass might drop below the limit even in 2015 (see annex). As the Court of Justice has observed, it is sufficient to demonstrate the risk of the damage to the stock and there is no need to demonstrate the actual damage.¹² Secondly, the limit reference point chosen by ICES, for lack of alternative values, is the lowest historically observed stock size; it is therefore not compatible with the precautionary approach to consider that reaching such a low level would not risk to inflict permanent and irretrievable harm. Simply delaying to drive the stock down below historical lows cannot be considered precautionary. Thirdly, continuing to remove fish with a high spawning potential increases the risk that the reproductive capacity of the stock will be damaged permanently, especially in view of the biological characteristics of sea bass (slow growth, late maturity). Against the background of seven years of poor recruitment, deferring action and reducing further the spawning component of the stock is not acceptable.
- (39) Therefore, failure to act now would mean missing the crucial spawning season. Allowing fishing on spawning aggregations of sea bass from January to April 2015 would have a double negative effect: 1) it leaves aggregating sea bass unprotected with the direct effect that large amounts of sea bass would be fished going up to 300% beyond the scientifically advised level and 2) it prevents large amounts of the stock from spawning and producing young fish to recover this stock that is faced with collapse. ICES stated that sea bass is slow growing and matures late around 4 to 7 years of age and therefore further substantial damage to the stock will harm it for a long time. ICES has clearly warned that this may even do permanent damage.

3. Effectiveness and proportionality

- (40) Emergency measures to be taken are not directed “against” a specific fleet segment. The justification for emergency measures is to protect the spawning stock of sea bass and its capacity to reproduce against an imminent serious threat. Against that background, the point made by France and the Netherlands, that a limitation of emergency measures to one area only (area VIIe - Western Channel) would be ineffective, appears worth considering. It is necessary to identify measures that will be effective, proportionate and immediately necessary. Once that is done, there can be no grounds for claiming that such a measure would be “discriminatory” or “lack equity”.
- (41) Article 12 of Regulation (EC) No. 1380/2013 does not require that emergency measures eliminate the serious threat entirely; such measures need “to alleviate that threat”.
- (42) Firstly, emergency measures should encompass those components of the fishery that take out large quantities of fish in the first and second quarters of the year. In parallel to the emergency measures the situation should be re-assessed with respect to other components of the fishery, which take most of their catches during the second half of the year (cf Armstrong/Drogou, section 3.2).

¹² Judgments of the Court of 17 March 2011, AJD Tuna, C-221/09, points 63 to 65 and of 14 October 2014, Giordano, C-611/12P, point 46.

- Fisheries that catch large amounts during the first and second quarters: mid-water (pelagic) trawls on spawning grounds (FR and UK)
 - Fisheries that catch some amounts during first and second quarters: bottom (demersal) trawls in the same areas (otter and beam trawls - UK, FR and NL), where seabass is caught as a by-catch;
 - Fisheries that catch their main amounts during the second half of the year: lines and hooks, gill-nets, other gears (FR, UK, NL, BE).
 - Recreational fishing can also be considered to concentrate mainly on the Summer and Autumn months.
- (43) The measures proposed by France include increasing the minimum size for sea bass caught by commercial vessels and monthly catch limits for vessels using hooks, lines and other gear types as well as a bag limit for recreational fishermen. However, these measures do not cover the fisheries with the largest impact on spawning aggregations (targeted pelagic trawling on spawning grounds and during the crucial spawning season is explicitly excluded from the proposed catch limits) and are therefore considered insufficient to respond to the current immediate threat.
- (44) Secondly, measures should address those components of the fishery that have largest impact on fishing mortality on the spawning stock during this spawning period. The top commercial mortality impact comes from targeted spawning ground fishing. By-catches in demersal trawling also have an impact on mortality, but with the current selectivity measures available on the market it is not possible to avoid catching seabass in the first place. Therefore if demersal vessels catch seabass the fish should be landed, as any obligation to discard would have no conservation effect for the stock at this point in time. Between 2010 and 2013 targeted fisheries accounted for 33%, of which mid-water/pelagic trawling is more than 25% , according to the STECF (November 2014). Taking into account that it is the pelagic trawling that accounts for 25% of mortality in a short period of time namely during the spawning season till end of April it is not necessary at this point in time to put in place emergency measures going beyond pelagic fisheries.
- (45) France has proposed a limitation of the fishing effort for pelagic trawlers by 50%; however, this must be considered insufficient. Such a measure will not sufficiently protect the spawning aggregations of sea bass that is needed during the crucial spawning season. A reduction of fishing effort (days spent at sea) does not translate one-to-one into a corresponding reduction of catches. This is because of the fishing technique used: to target a shoal of spawning fish, it is sufficient that one vessel locates the shoal for other vessels to join in the fishing. Time at sea, even if limited, can therefore be maximised for fishing rather than for searching the fish. This is recognised by scientists and also by France, which estimates a reduction of landings lower than 50% (only 40%). However, it is not clear if even the 40% figure is realistic, as a detailed analysis is missing; it is possible that the reduction of catches would be lower. Such a limited fishing effort measure would therefore seem to uncertain and not effective enough to be justified on an emergency basis in response to an imminent serious threat.
- (46) Thirdly, emergency measures could offer Member States yet another opportunity to agree amongst themselves on broader coordinated measures, despite the lack of agreement so far to protect sea bass and despite the poor record to date in coordinating national measures. It would then also be possible for Member States to consider measures for those components of the fishery where the socio-economic impact would be higher (for instance, for smaller vessels operating mostly in-shore targeting sea bass with lines and nets), as well as for recreational fisheries.
- (47) France has indeed proposed other measures which could be agreed between Member States. While these therefore measures cannot replace emergency measures which are needed to

respond to the immediate threat, they could be a useful starting point in building a broader management approach for sea bass. However, without protecting the spawning aggregations of sea bass from fishing in the immediate future, the stock of sea bass risks to continue to decline.

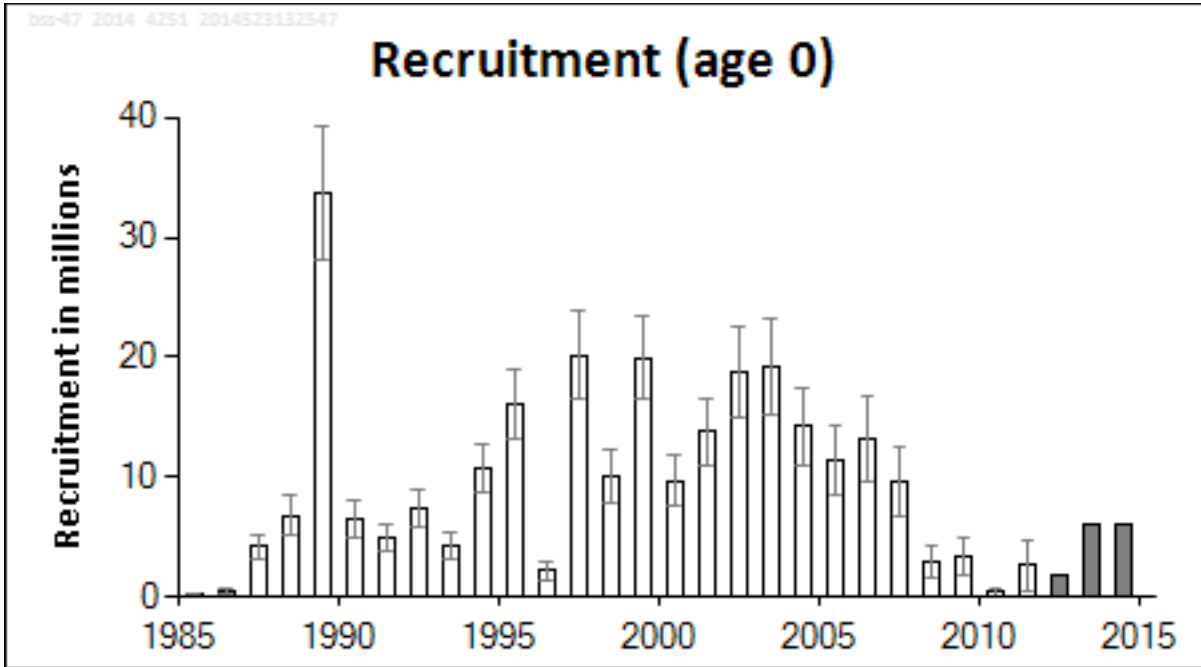
- (48) Fourthly, the geographic area in which the measures apply should be chosen such that the measures can be effective and that not one single part of the fishery or one Member State is singled out. The STECF has found that while the closure of fisheries targeting spawning grounds can “achieve a substantial reduction in fishing mortality on adult sea bass”, the fishing effort of the vessels involved in the fishery must not be allowed to be displaced to other areas within the same stock of in neighbouring stock areas. The STECF therefore recommends that “it is crucial that the defined spatial closures are sufficiently large”. This means that the area coverage of the Western Channel proposed by the UK in its request for emergency measures is insufficient as it would only cover a limited area and poses the risk of displacement of fishing of sea bass to other areas. The area proposed by France for a closure is restricted to areas around Ireland and therefore insufficient, as it leaves out the important areas of the southern North Sea, the Channel and parts of the Celtic Sea (IVb,c and VIId,e,f,h) which have been identified by STECF as needing protection during spawning season. Such a limited closure would therefore not be sufficient to protect the spawning aggregations of sea bass during the crucial spawning season.

G. Conclusions

The emergency measures therefore prohibit the fishing, retention, transshipment or landing of sea bass by pelagic trawls as these have been identified by scientific advice as the top commercial mortality impacts. They last from the date of application until 30 April 2015 which is the period that has been identified by scientific advice to be the spawning season for sea bass. They cover the Irish Sea, Celtic Sea, English Channel and North Sea (ICES areas IVb,c, VIIa and VIIa,d-h) and correspond to ICES advice as covering spawning areas.

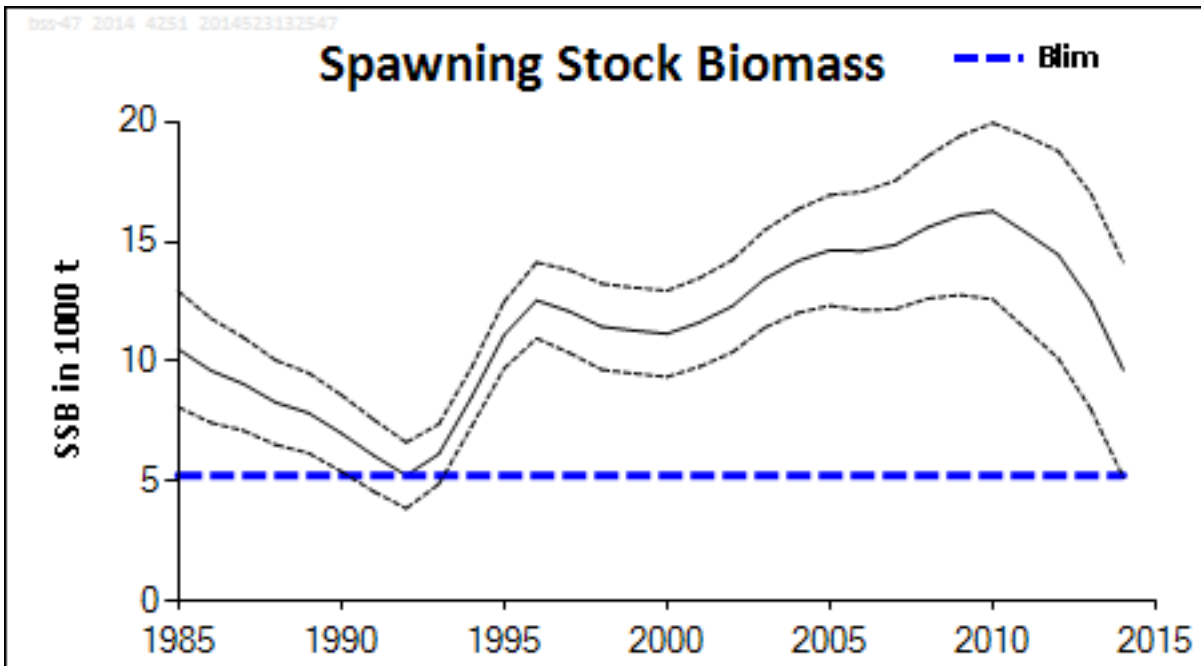
Annexes

Recruitment



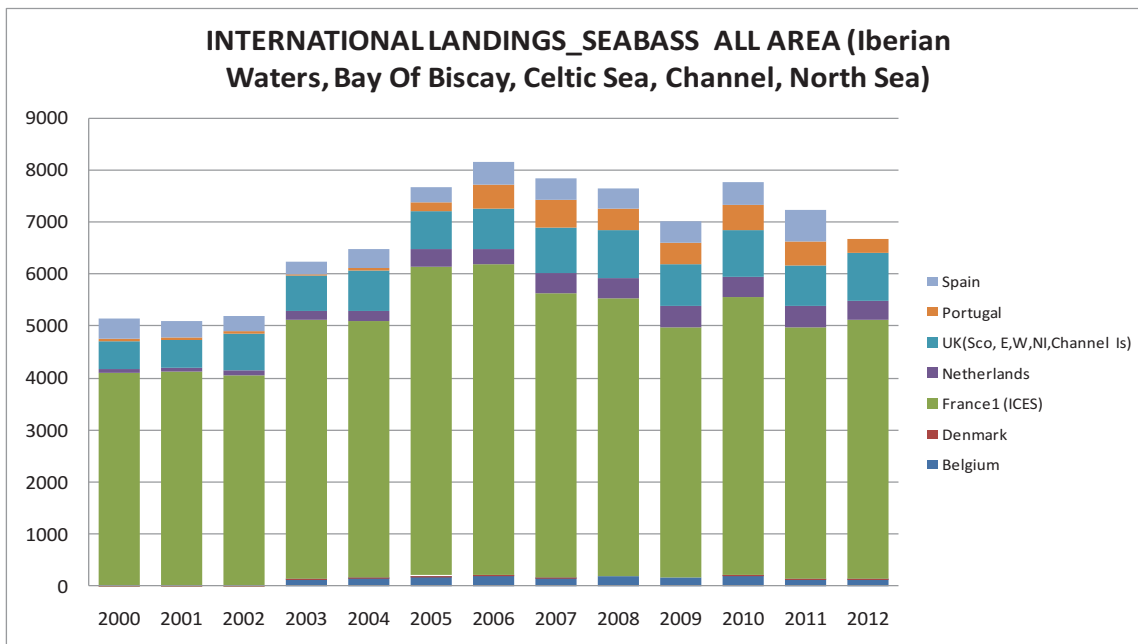
Source: ICES 2014, advice for sea bass in southern North Sea, Channel, Celtic Sea, Irish Sea

Spawning stock biomass



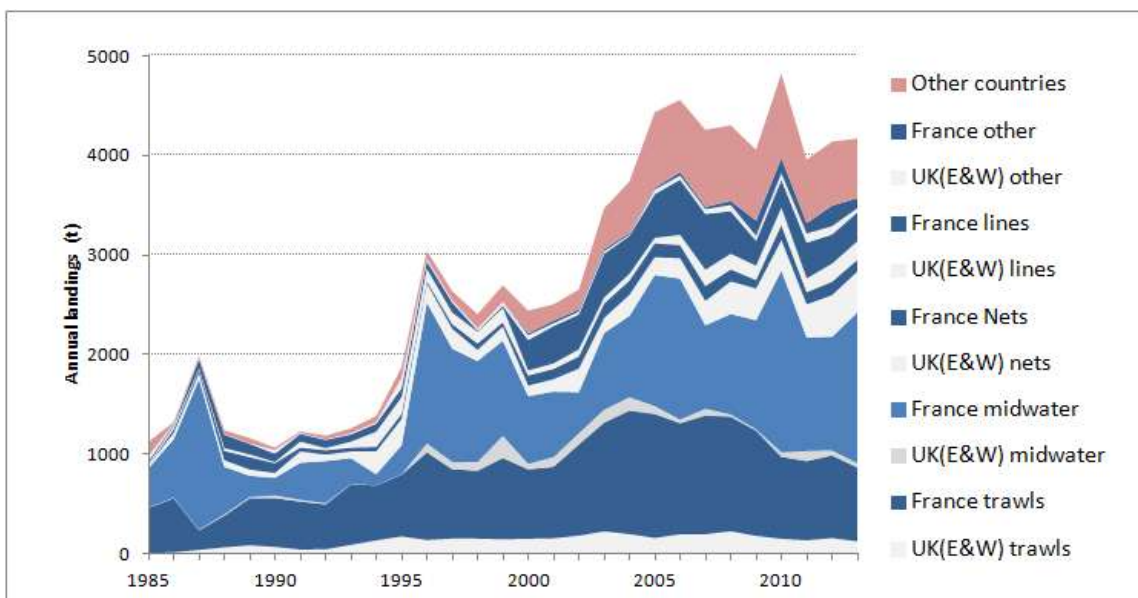
Source: ICES 2014, advice for sea bass in southern North Sea, Channel, Celtic Sea, Irish Sea

Composition of the fishery by country

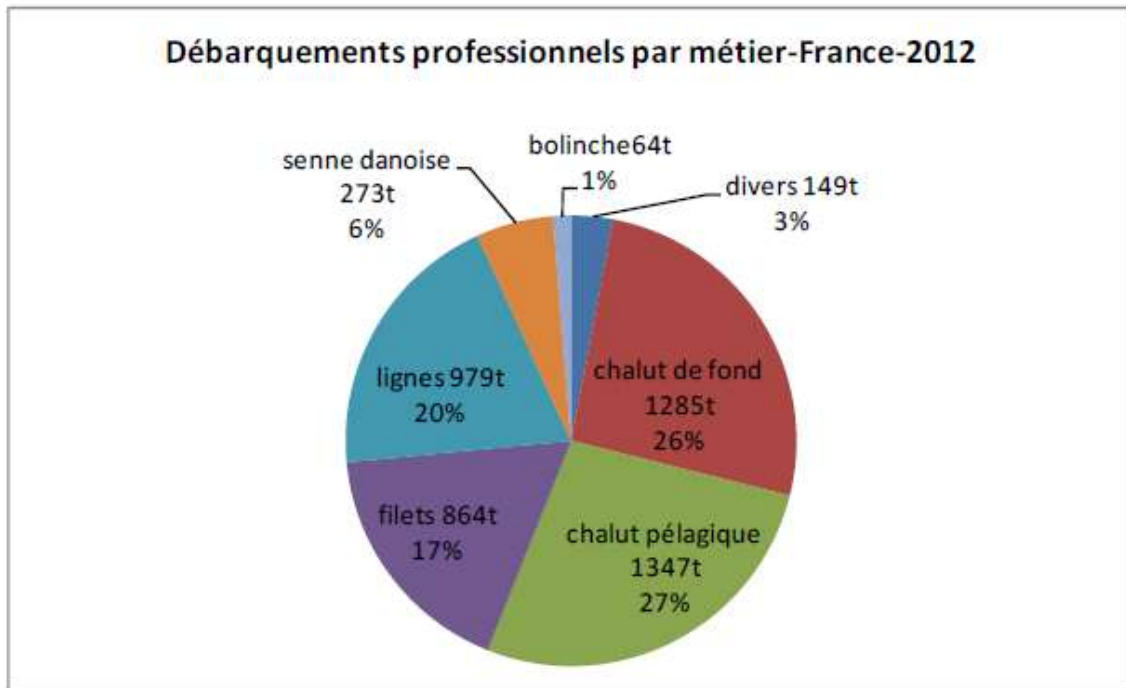


Source: Armstrong/Drogou 2014 and Ifremer

Composition of the fishery by métier



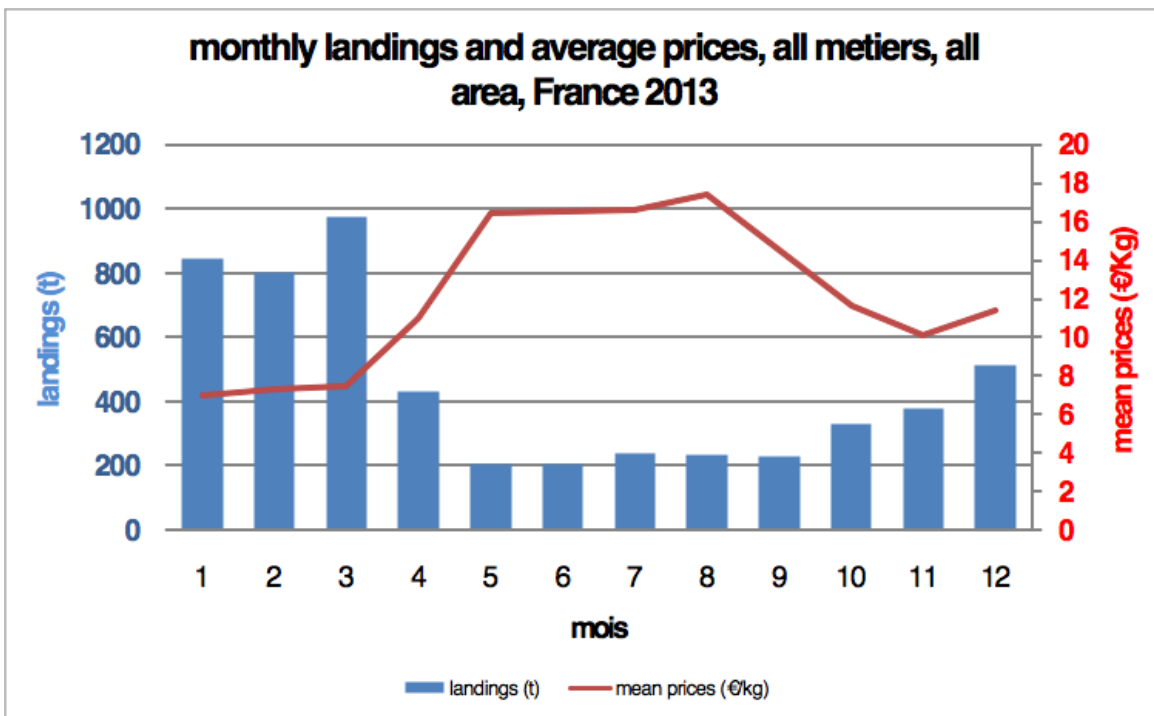
Source: Armstrong/Drogou 2014. Annual landings of sea bass by France and the UK in the northern stock area (IVb,c and VIIa,d-h), by gear groupings, plus the total landings of other countries (mainly Belgium and the Netherlands). “Midwater” is predominantly midwater pair trawls, which means pelagic trawls.



Source: ; SACROIS DPMA-Ifrémer, 2012

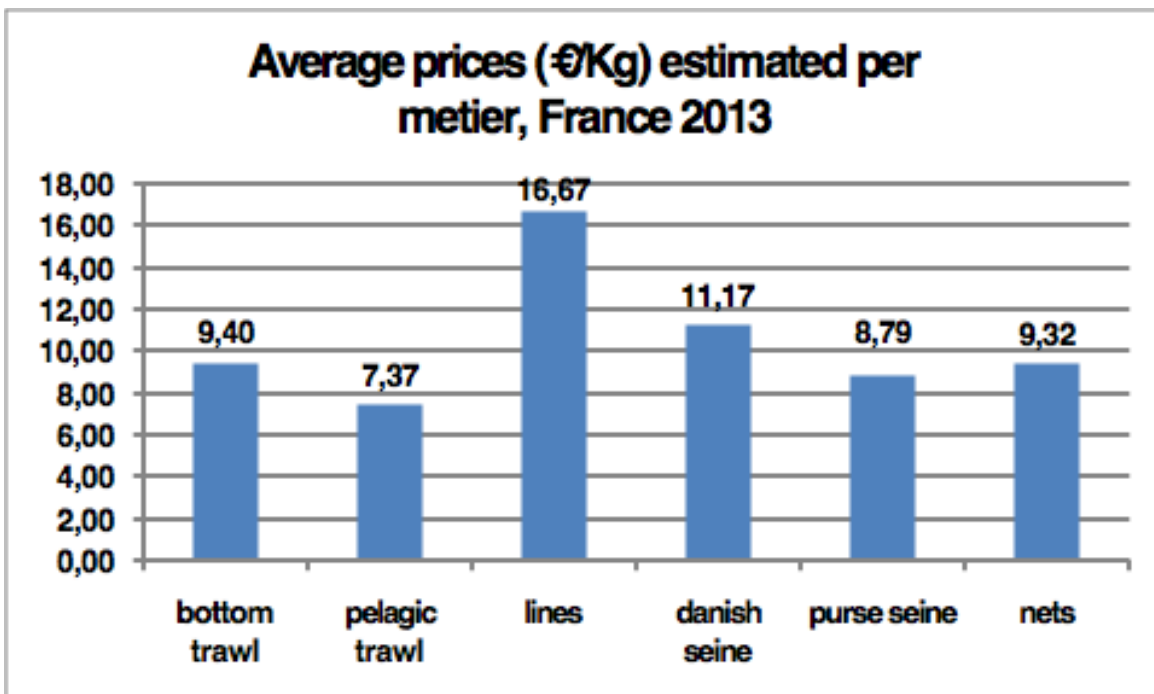
Length distribution of catches

Monthly landings and average prices (France 2013, all metiers, all areas)



Source: Armstrong/Drogou 2014 and Ifremer

Average prices per metier (France 2013)



Source: Armstrong/Drogou 2014 and Ifremer