



Submission to Commission's Consultation on the Development of a regulation establishing a multi-annual Plan for the management of North Sea demersal fisheries

May 2015

Introduction

BirdLife Europe welcomes this consultation on the development of a multi-annual plan (MAP) for the management of North Sea demersal fisheries. BirdLife Europe is a partnership of 48 national conservation organisations and one of six regional secretariats that compose BirdLife International. BirdLife Europe's unique local to global approach enables it to deliver high impact and long-term conservation for the benefit of nature and people. With what concerns marine and fisheries issues, the BirdLife Europe's partnership work is focused on improving the situation for seabirds, including through monitoring and surveying at sea, thus enabling close relationships with fisherman and local authorities as means of implementing needed conservation measures. The scientific knowledge derived from our local work is translated to EU policy issues aiming at improving EU legislation that relates to the environment and biodiversity. The BirdLife Europe partnership has over 4.100 staff members working on nature conservation, we represent more than 2 million members and we own or manage over 6.000 nature sites covering over 320.000 hectares. Our Partners are present in 47 European and Central Asian countries including all EU Member States.

General remarks

We welcome that the consultation document highlights:

- Article 2.2 of the CFP with regard to the objective of restoring and maintaining stocks above levels capable of producing the maximum sustainable yield (MSY)
- Article 2.5(j) with regard to contributing to achieving good environmental status in the North Sea as required by the Marine Strategy framework Directive (MSFD)

However, we regret that the other key elements of Article 2 are not also stated at the outset, namely the obligation to apply, respectively, a precautionary approach and an ecosystem-based approach to fisheries management. This and other MAPs must also make explicit mention of the need for compliance with the Birds and Habitats Directives (as also required by Article 2.5(j) of the CFP).

The assessment of the MAP's efficacy, and need for revision (Article 10.3 of the CFP) and adaptive management, must be evaluated against compliance with all Article 2 elements.

In this regard, we would have expected greater alignment in the Commission's introduction with the Article 10 of the CFP, as well reflected in language of the Communication *Concerning a consultation on Fishing Opportunities for 2015 under the Common Fisheries Policy*¹, namely '*Plans should provide a robust a lasting framework for management, ensuring the sustainability of fisheries with high yields for the fishing industry, while taking into account an ecosystem based approach to fisheries management by minimising negative impacts on fishing activities on the marine ecosystem*'.

¹ COM(2014)338final



In complying with these obligations under the CFP, the MAP must (i) make it clear that Fmsy is a limit, not a target; (ii) include clear, Article 2.2-compliant biomass reference limits linked to harvest control rules that adjust F according to best available evidence on biomass levels; (iii) set safeguards to ensure that F is reduced when a stock falls below the requisite biomass reference point, with the aim of restoring biomass as soon as possible.

In governance terms, in keeping with Article 18 of the CFP, it is also essential that this MAP endorses a robust regional approach to decision-making. This in turn requires the Commission to facilitate and foster the conditions in which this can happen in a coherent and transparent way, open to the continuing input of NGOs and other stakeholders through the North Sea Advisory Council and regional management body (Scheveningen Group).

Furthermore, the elements mentioned above were either missing or were inadequately integrated in the Baltic MAP, as demonstrated by the European Parliament and Agriculture and Fisheries Council in their respective positions and intent in their correction of the Baltic MAP. Therefore the same neglect must not be repeated, and the elements above must clearly be included in the North Sea MAP.

BirdLife makes the following responses to the Commission's questions:

1) Do you agree that the existing management plans need to be replaced when the landing obligation comes into force?

Having strongly promoted the comprehensive need for long-term management plans ever since our response to the CFP Green paper in 2009, we strongly support that the existing plans are replaced when the landing obligation comes into force.

We consider this a necessary and logical response, not only to Article 15.5 of the CFP which requires details of the landing obligation to be specified in multi-annual plans, but also to Article 2 which sets a new high bar for ecologically sustainable fisheries.

2) Do you think that a mixed fisheries multi-annual management plan for the North Sea, where interactions between the fisheries are taken into account, is a good approach?

Given the inevitable interactions of exploiting the North Sea's mixed demersal fishery, involving multiple Member States and métiers, we strongly support the approach of a mixed fisheries multi-annual management plan.

Such an approach in the North Sea is necessary fulfilment of Article 9.3 of the CFP that MAPs shall cover *'mixed fisheries or where the dynamics of stocks relate to one another, fisheries exploiting several stocks in a relevant geographical area, taking into account knowledge about the interactions between fish stocks, fisheries and marine ecosystems'*.

Moreover, an ecosystem-based approach to managing North Sea fisheries demands nothing less than a multi-annual mixed fisheries approach if we are to address in a coherent and effective way the relevant trophic and cumulative impacts. In this regard, a mixed fisheries MAP approach is also a



prerequisite for delivery of good environmental status across several MSFD descriptors (notably D1, D3, D4, D6).

This coherence also requires an integrated approach of the North Sea demersal fisheries MAP with any other North Sea MAPs, notably for fisheries on pelagic and low trophic level species (notably sandeel).

3) On scale of 1 (strongly agree) to 5 (strongly disagree), to what extent do you agree that the implementation of the landing obligation will present a major challenge for the fishing industry?

As the consultation alludes to in its introduction, the primary issue of ‘choke’ species and other constraints will undoubtedly impose new burdens on the fishing industry. However hard these challenges may be to surmount, however, we strongly believe that even greater challenges would have continued to face the industry and the North Sea ecosystem had the current landing obligation not been introduced. Prior to the new CFP, statutory and voluntary efforts towards higher selectivity and low-impact fishing had at best been piecemeal and ineffective across the spectrum of mixed fisheries, and had not represented an ecosystem-based approach.

Even though significant progress has been achieved in reducing unwanted catches from the North Sea roundfish fishery, this can be characterised as a necessary but not sufficient response to the wide-ranging new obligations for sustainable fisheries under Article 2 of the CFP.

The primary rationale and imperative of the landing obligation has tended to get lost in over-emphasis on the means of a ‘discard ban’ at the expense of championing the ends, namely creating an incentive for higher selectivity in pursuit of maintaining stocks above levels capable of producing MSY.

Delivery of this transition is strongly facilitated by synergy with the opportunities offered by the EMFF and should also be reinforced by Member State implementation of Article 17 of the CFP. We consider that the conditions laid down in Article 15 of the CFP will assist the industry to adjust to the landing obligation. How these conditions are applied and transposed into practical implementation of the mixed fisheries MAP must, however, be clearly set out in the plan.

The available flexibility must not translate into exemptions to the extent that they undermine the core rationale for the landing obligation. Exemptions must not be permitted unless proven that the primary objective of reducing unwanted catches is met. Any request for exemptions must be justified with robust science and documented evidence, and a condition of any exemption should be the adoption of on-board cameras. In short, exemptions cannot be seen as awarding ‘free fish’ – the level of mortality associated with high survival exemptions (where survival is proven to be 100%) and *de minimis* exemptions must be taken into account in stock assessments and TACs.

4) How should we deal with stocks that straddle the North Sea and other management areas? How should we decide which stocks should be covered by the plan? Should the plan cover any stock that is caught in the North Sea, regardless of whether the stock straddles other areas, or should it be restricted to stocks that are predominantly fished in the North Sea?



Other than the main target species in the mixed fishery MAP, the plan will have to account and make provision for fishing mortality on stocks in other fisheries. This calls for an integrated approach across different MAPs to address all the species caught in North Sea fisheries with which the demersal fishery interacts. The same need for coherence (ultimately with the CFP objectives) applies equally where a stock straddles waters outside the North Sea.

5) The main target species are considered to be cod, haddock, saithe, whiting, sole, plaice and Nephrops. What other species do you think should be considered as important target species? If we restricted the scope of the plan to the main target species, what measures would we envisage to protect the by-catch species? Are there any by-catch species that would require special consideration?

To restrict the scope of the plan to the 'main target' species is effectively a false dichotomy in that both main target and by-catch species are subject to Article 2.2 of the CFP, and need to meet the same targets for achieving good environmental status under MSFD measures. In this sense, Article 10 of the CFP on content of MAPs should not discriminate between main target and bycatch species. Moreover, in this regard, 'bycatch' applies to both commercial and non-target species including fish and other taxa such as seabirds and marine mammals.

The Commission's scoping meeting (Brussels, Sep 2014) for a mixed fishery MAP for the North Sea concluded the need to incorporate specific alternative conservation measures for dealing with bycatch species (commercial and non-target) and species of minor importance to fishers. The MAP must specify and define bespoke measures for reducing the capture of minor and by-catch species. Several such measures could be adopted through regionalisation:

- i) Modifications of fishing gear and other mitigation measures to minimise unwanted catches of Endangered, Threatened or Protected (ETP) species such as certain seabirds, cetaceans, sharks and rays.
- ii) Restricted or selective use of gears in vulnerable areas (e.g. as proposed in the case of mobile, bottom-contacting gears in the Dogger Bank for the protection of benthic communities)
- iii) Spatial closures/Marine Protected Areas (MPAs), either real-time, seasonal or permanent
- iv) For sharks and rays, best practice in terms of trawl duration, holding tanks and handling protocols to ensure maximum survival for species that must or may be returned to the sea.

A combination of such measures (most of which are specified in Articles 7 and 8 of the CFP) may be required, such as seasonal or real-time closures, specifications on gear type, vessel size or horsepower. If the state of the stocks relative to precautionary/conservation reference points or ranges indicates that additional measures are necessary, there should be an agreed framework in place to facilitate their rapid introduction.

Although ETP species are invoked above, the mixed fisheries MAP must also make provisions for avoiding mortality of any species or habitats protected by the Birds and Habitats Directives. This is a legal requirement under Article 2.5(j) of the CFP which requires the CFP to be coherent with not just the MSFD but with '*Union environmental legislation*' generally.



The MAP will not be able to incorporate appropriate measures or be responsive to adaptive management without adequate monitoring of bycatch. Bycatch of all vulnerable species (such as seabirds, cetaceans and elasmobranchs) should be recoded in e-logbooks. To make this a legal requirement across all these taxa requires the CFP's Data Collection Framework to be amended to require an ecosystem-based data collection and reporting protocol which extends beyond the current regulation's focus on just monitoring the impacts of fisheries on fish.

In the case of known vulnerable elasmobranchs (such as blonde ray, very rare and of no market value), group TACs should be avoided as they allow such vulnerable species to be taken along with others.

6) Which ecosystem-related issues should be considered in the context of the plan, and which corresponding management tools would be required under the plan, so as to minimise negative impacts on the ecosystem?

See also answer to Question 5.

The need for the MAP's compliance with the MSFD, the Birds and Habitats Directives and the CFP has already been stressed in our introductory remarks. We regard the mixed fishery MAP and other MAPs as vital delivery mechanisms for the ecosystem objectives of these legislations.

This goes well beyond 'minimising negative impacts', rather the objective may be explicit *restoration*; in the case of the Dogger Bank SACs, for example, the North Sea Member States with adjoining Nature 2000 sites (SACs) want to 'decrease human pressure on the habitat as a result of mobile bottom-contacting fishing gear, with the aim to: improve the quality of the habitat (NL); restore the habitat to favourable condition (UK); conservation and restoration of a favourable conservation status of the habitat type (1110) including its typical and threatened communities and species (GER).'

By the same token, the MSFD requires measures not only to minimise negative impacts but also to, variously, achieve sustainable seabird populations, healthy population structures of fish stocks, healthy food webs (which – in the context of the mixed fishery MAP – may call for protection of low trophic level fish), and sea floor integrity. The mixed fishery MAP must align itself with all of this and contain the appropriate toolkit to do so.

We consider that environmental impact assessment for new fisheries, or existing fisheries in relation to European Marine Sites and other MPAs, needs to be integral to the MAP. For example, in the current state of knowledge, and until conclusive evidence is produced of no adverse impact on site integrity, pulse trawling should not be permitted under any circumstances in Natura 2000 sites, other MPAs and any sensitive areas where protection of sensitive benthic fauna and features is a priority. Pulse trawls should be assessed for impacts on, notably, bycatch, damage to and displacement of sensitive species (e.g. elasmobranchs), and benthic communities. Essentially this should be a matter of marine spatial planning in the North Sea to define where pulse trawling is or is not permissible.



7) What technical measures (such as minimum sizes, permanent or seasonal closures) do you think should be introduced at regional level to help achieve the objectives of the plan?

Beyond setting TACs compliant with Article 2.2, we envisage that the landing obligation will drive the development of technical measures to improve selectivity and to protect spawning and nursery grounds, etc.

See also answer to Q 5.

Other comments (based on the Brussels scoping report, Annex 1, Group 5)

- 1) While it should not be allowed to delay the introduction of the MAP, for the MAP to be effective in relation to delivery of the MSFD, there is a need for ongoing and enhanced mapping and auditing of the impacts of mixed demersal fisheries on the ecosystem. Elements in scope include:
 - Spawning sites (fish and elasmobranchs)
 - Nursery and juvenile areas
 - Concentrations of ETP species
 - Fishing intensity (including possible future concentration in limited fishing grounds following displacement from offshore renewable and other marine developments)
- 2) The periodic review of the MAP should include, in addition to the biological, social and economic assessment, an evaluation of the changing ecosystem, its relevance to the plan's objectives, as well as fisheries impacts on ecosystem objectives. It will be necessary to ensure the MAP's capacity to respond to changing environmental circumstances and conditions, particularly in an era of rapid climate change.

Also, any cost benefit analysis of the MAP must take into account benefits to the wider marine environment and local communities as a result of its effective implementation.