

BSAC reply to the European Commission open feedback on the proposed changes to the Baltic Multiannual Plan (MAP)

29th January 2024

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Background

On 6th December 2023, the European Commission tabled a proposal for a Regulation amending the Multiannual Plan for the Baltic¹ (the MAP) and opened the possibility to send some feedback on the proposal until 31st January 2024.

The European Commission proposal focuses on the MAP's Article 4.6 which provides that '*fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim}* ' (called the 5% rule). The proposal explains that Article 4.6 of the Baltic MAP might be inconsistent with other Articles of the MAP in specific situations². Therefore, the Commission proposes to delete Article 4.6 of the MAP.

The Commission proposal also states that in 2023, the Commission *discussed* the 5% rule with stakeholders, notably the Baltic Sea Advisory Council and BALTFISH and that the majority of stakeholders expressed deep concerns about the inconsistencies of the 5% rule³.

BSAC context

The BSAC previously provided feedback on the Baltic MAP through a reply to the Commission's questionnaire, submitted during its first assessment in year 2019. The BSAC presented its comments to the Baltic MAP in the BSAC White Paper, published in 2022, and discussed it in a dedicated workshop held by the BSAC on 17th May 2023.

Although the BSAC members had divergent views on the MAP, the BSAC was in agreement that the MAP has not lived up to expectations and has not delivered the expected results.

The ICES advice on fishing opportunities in the Baltic, presented in June 2023, had featured the usual reference points but, for some herring and cod stocks, contained also for each catch scenario, an indication of the short-term probability of the spawning stock biomass falling under B_{lim} in 2025. The Commission, taking into account this information, proposed to

¹ The proposal also covers the Multiannual Plans for the North Sea and the Western Waters.

² The Application of Article 4.6 *may result in a situation that would be inconsistent with the other rules of the MAPs governing the fixing of fishing opportunities and have potentially severe socioeconomic implications. On the one hand, the 5% rule may mean that fishing opportunities cannot be set and the targeted fishery must be suspended. On the other hand, the safeguard provisions in the MAPs require the adoption of remedial measures to bring the stock above $B_{trigger}$, based on a case-by-case assessment on the appropriateness for choosing such measure, in accordance with the criteria set out in the MAPs. Moreover, the MAPs refer to the possibility, and not the obligation, to suspend the targeted fishery.*

³ *The majority of stakeholders expressed their deep concerns about the consistency of the 5% rule with the other rules of the MAPs governing the fixing of fishing opportunities and its potentially severe socio-economic implications.*

close some targeted fisheries in 2024, referring to the MAP Article 4.6 and the anticipated SSB levels for 2025.

Some Member States opposed this legal interpretation of the MAP by the Commission, referring to Article 5 and the possibility therein to take remedial measures instead of reducing fishing opportunities.

During October 2023 BSAC Executive Committee, the representative of DG MARE recalled that Member States had requested the Commission to clarify the interpretation of certain Articles in the MAP. He stated that the Commission was working on modifications to the Baltic MAP-to allow for a clearer interpretation.

The BSAC Secretariat has drawn up this document on the basis of previous BSAC input to the MAP as well as BSAC members' submissions in response to the open feedback mechanism on the proposal to delete Article 4.6 (from EFFOP, LIFE, WWF, an OIG Group⁴, DFPO, DPPO, National Chamber of Fish producers PO, Fish Producers Organisation Bałtyk). The Executive Committee adopted this response on 24th January 2024.

BSAC feedback

Procedural aspects

The BSAC underlines that the BSAC was not formally consulted on this proposal before the opening of the feedback mechanism and no formal discussions within the BSAC had previously taken place, despite the inference of such discussions under the heading "stakeholder consultations" in the proposal.

Further, the feedback period is limited to 8 weeks (including the Christmas break) and closes after some of the co-legislators might have will already have started discussions or potentially agreed on a position. Such fast-track consultation is another example of a paper exercise where we fail to see how input from BSAC will be taken into account properly.

Deletion of Article 4.6

The BSAC recommends to delete Article 4.6 of the MAP in line with the European Commission's proposal. This will address the inconsistency in the legal framework and clarify the guidelines for setting fishing opportunities. The proposed deletion is clearly needed to move discussions away from legal quarrels and instead focus on obtaining healthy fish stocks and environmentally, socially, and economically sustainable fishing opportunities.

Some small-scale fisheries representatives⁵ recognise the issues with the 5% rule but are disappointed by the Commission proposal that does not resolve the question of what to do once stocks are under $MSY B_{trigger}$ and B_{lim} . They find the proposal to be confusing further the interpretation of the Baltic MAP which risks worsening the health of stock biomass. They see clear issues with the 95% rule and the scientific calculations upon which it is based on and note that ICES does not use B_{MSY} as the baseline for assessing which level of fishing mortality corresponds with MSY. The key is to ensure that stock biomass is at healthy levels

⁴ CCB, FANC, FISH, EAA, SSNC, BalticWaters and DAFV

⁵ LIFE, SYEF

(above BMSY). Finally, they remark that the proposal does nothing to ensure that the socioeconomic possibilities for the fishery are improved.

A BSAC minority group⁶ strongly opposes the European Commission proposal. They point out that the deletion of the 5% rule will remove the safeguard when targeted fishery must be stopped and therefore worsen the state of the stock. This is because the safeguards and remedial measures set out in Article 5 are insufficient to prevent fish stocks from collapsing to critical levels. Furthermore, they highlight that the proposal is inconsistent with the objectives of the CFP⁷ and create further confusion in relation to Article 5 as to “when” and “what” appropriate “remedial measures” must be required. Finally, they underline that clear and legally binding safeguards, including an obligation to a temporary stop of targeted fishery, are needed. In their view, Article 5 in its current form does not provide explicit details on what is an appropriate point to adopt a fishery closure.

Conclusion

In the past, the BSAC expressed the opinion that the MAP has not lived up to its expectations and has not delivered the expected results during 6 years of its implementation. The inconsistencies in the MAP, identified in the Commission’s proposal to delete Article 4.6, add themselves to the issues already identified and further support the BSAC recommendation to revise the MAP in order for it to allow for a more adaptive management in the following years.

The BSAC welcomes the upcoming report on the implementation of the MAP planned by the European Commission in 2024 and stands ready for further discussions on this issue.

⁶ WWF, CCB, FANC, FISH, EAA, SSNC, BalticWaters and DAFV

⁷ Art. 9(1) states that MAPs “shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield in accordance with Article 2(2)”. Art. 10(1 g) states that MAPS shall include “safeguards to ensure that quantifiable targets are met, as well as remedial action, where needed, including for situations where the deteriorating quality of data or non-availability put the sustainability of the stock at risk”.