

# Legal briefing: Complying with Article 2(2) of the CFP basic regulation in the Baltic multiannual plan

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## Recommendations for incorporating the MSY objective in the Baltic MAP

- All conservation measures, including multiannual plans (MAPs), must achieve the objectives in Article 2 of the Basic Regulation with respect to the conservation and sustainable exploitation of marine biological resources.<sup>1</sup> In particular, MAPs must contain *'measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield in accordance with Article 2(2)'*.<sup>2</sup>
- The Commission's proposal for the Baltic MAP is not in line with this requirement and will not achieve the maximum sustainable yield (MSY) objective of the Common Fisheries Policy (CFP) as specified in Article 2(2) of the CFP basic regulation ('Basic Regulation').<sup>3</sup>
- The European Parliament's amendments<sup>4</sup> to Articles 3(1) of the Baltic MAP must be accepted to bring the MAPs objectives in line with the CFP's requirements.<sup>5</sup>
- Ranges of exploitation must be bounded at the upper limit by an exploitation rate that will allow for stocks to be restored and maintained above levels that can produce MSY in accordance with Article 2(2) of the Basic Regulation. Therefore, when setting fishing opportunities based on a range of exploitation the Council must set catch levels or fishing effort below the upper limit.

## Background

The reform of the Basic Regulation introduced many changes to the framework of EU fisheries management, including more of an emphasis on MAPs and a legal requirement to fulfil the

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1 Article 6(1) of the Basic Regulation

2 Article 9(1) of the Basic Regulation

3 Regulation (EC) No 1380/2013/EU 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.

4 Amendments adopted by the European Parliament on 28 April 2015 on the proposal for a regulation of the European Parliament and of the Council establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (COM(2014)0614 – C8-0174/2014 – 2014/0285(COD)) (1) (Ordinary legislative procedure: first reading), P8\_TA(2015)0104.

5 See section 2.1.4 of our briefing on MSY in the CFP for more details of the CFP's MAP requirements <http://documents.clientearth.org/wp-content/uploads/library/2015-09-08-maximum-sustainable-yield-in-the-common-fisheries-policy-ce-en.pdf>

longstanding Union policy objective<sup>6</sup> to manage fish stocks in line with the concept of MSY. The Commission's proposal for a MAP for the Baltic Sea ('the Baltic MAP') - the first MAP set to be agreed under the new CFP - is not in line with the requirements of the CFP in several respects. However, this briefing will focus solely on the legal inconsistencies between the MSY objective in Article 2(2) of the Basic Regulation and the measures proposed under Article 3 and Article 4 of the Baltic MAP that are meant to achieve this objective. The amendments to the Commission's proposal submitted by the European Parliament address these legal inconsistencies and must be accepted.

## The MSY objective in the Basic Regulation

Article 2(2) of the Basic Regulation stipulates that the CFP must "*apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield*" (i.e. biomass above  $B_{MSY}$ ). In its second paragraph, Article 2(2) states that this objective is to be reached through the achievement of exploitation rates that will achieve this (i.e. fishing mortality below  $F_{MSY}$ ) "*by 2015 where possible and on a progressive, incremental basis at the latest by 2020 for all stocks.*"

## Managing fish stocks through multiannual plans

MAPs are a type of conservation measure provided for in Article 7 of the Basic Regulation and are to be "*adopted as a priority, based on scientific, technical and economic advice[...] to restore and maintain fish stocks **above** levels capable of producing maximum sustainable yield in accordance with Article 2(2)*" (emphasis added).<sup>7</sup> This makes it very clear that the European Commission, Council of Ministers and European Parliament must ensure that multiannual plans will deliver the recovery and maintenance of stocks' biomass above MSY levels, as per Article 2(2). The means of achieving this objective is mainly through the careful regulation of exploitation rates and the setting of fishing opportunities (catch or effort limits).

Among other specifications, MAPs must contain "*objectives that are consistent with the objectives set out in Article 2*", "*quantifiable targets such as fishing mortality rates*", "*clear time-frames to reach the quantifiable targets*", and "*conservation reference points consistent with the objectives set out in Article 2*" (CFP Article 10(1)(b),(c),(d) and (e), respectively).

## The Commission's proposal for the Baltic MAP and amendments

The Commission's proposal for the Baltic MAP<sup>8</sup> states that the plan "*shall aim at contributing to the objectives of the common fisheries policy listed in Article 2[...] in particular (a) achieving and maintaining maximum sustainable yield of the stocks concerned, and (b) ensuring the conservation of the stocks of plaice, brill, flounder and turbot in line with the precautionary approach*" (Baltic MAP proposal, Article 3(1)(a-b)).

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<sup>6</sup> Communication from the Commission to the Council and the European Parliament on implementing sustainability of EU fisheries through maximum sustainable yield. COM(2006) 360 (final); and Commission Decision 2010/477/EU (Annex Part B, Descriptor 3).

<sup>7</sup> Article 9 of the Basic Regulation

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 of 6 October 2014, COM(2014) 614 final.

The drafting of this article is not in line with the requirements for MAPs set out in Articles 9 and 10, set out above. For instance, to "*aim at contributing to the objectives*" implies there is tolerance for not achieving the objectives of the CFP. Additionally, the MSY objective in Article 2(2) of the Basic Regulation applies to all harvested species, not just to the main commercial species as listed in the proposal. Finally, the Baltic MAP's objective of "*achieving and maintaining maximum sustainable yield*" will **not** achieve the objective in Article 2(2) of the Basic Regulation to restore stocks above levels capable of producing MSY.

This inconsistency is all the more important because of the possibility that ranges of exploitation will be agreed in the MAP,<sup>9</sup> instead of the point estimates for fishing mortality that have been used to date. Using ranges of exploitation makes sense in the context of mixed fisheries (when multiple species are caught in the same gear at the same time). This is particularly relevant as the landing obligation will require catch limits to be more aligned with actual catches as discarding will no longer be allowed. However, as specified in Article 9 and 10 of the Basic Regulation, the ranges given in MAPs must still deliver the MSY objective in Article 2(2) of the Basic Regulation.

In the Commission's proposal for Article 4 of the Baltic MAP, the upper end of the range of allowable exploitation is not consistent with restoring and maintaining stocks above levels that can produce MSY. This clearly contravenes Articles 2(2), 9(1) and 10(1) of the CFP. As already explained, Article 2(2) of the CFP is the foundation of all MAPs. Therefore, the exploitation rate that will allow for stocks to be restored and maintained above levels that can produce MSY (" $F_{MSY}$ ") **must** be the upper limit of any range, and actual exploitation rates must be set below it.

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<sup>9</sup> See the report of the inter-institutional task force on multiannual management plans (April 2014) for more details, available at <http://cfp-reformwatch.eu/2014/04/new-agreement-opens-up-for-progress-on-multiannual-fisheries-plans/>

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