

Comments on the Commission Communication on the state of stocks and fishing opportunities for 2016

Contents

General comments on the Communication	1
Specific comments on the state of the stocks	5

30 September 2015

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General comments on the Communication

We welcome the Commission Communication on the state of fish stocks in Europe, which has become a regular and appreciated opportunity to evaluate progress and deficiencies in the efforts to recover fish populations to a sustainable state. We encourage the Commission to continue presenting annual summaries of the state of fish stocks, including supportive data tables, regional summaries etc.

However, we are disappointed that the 2015 Communication again fails to examine some of the agreed stock reference limits, most notably B_{MSY} , and to report developments in relation to associated management questions. Numerous submissions to last year's consultation, including that of Greenpeace, emphasised that the omission of such data and analysis severely impairs the Commission's ability and that of others to monitor whether the EU and its Member States are delivering their stock management obligations.

Failure to report on progress towards achieving B_{MSY}

We are highly concerned that the Commission continues to mis-quote the objectives set by the CFP Regulation. In the Communication's introduction, the Commission states that "[t]he fishing opportunities for 2016 will be fixed under the objectives of the new Common Fisheries Policy (CFP), in particular the objective of bringing the impact of fishing fleets on the stocks (fishing mortality) in the shortest feasible time frame to the levels required to allow stocks to rebuild to biomass levels that can produce maximum sustainable yield" (*emphasis added*). The correct wording, in accordance with Article 2 (2), is "to allow stocks to rebuild above biomass levels capable of producing maximum sustainable yield" (*emphasis added*).

By construing the biomass reference point as a target rather than a limit, the Commission is failing its duty to uphold the EU acquis and – worse still – is deliberately or mistakenly lowering the standard of protection for stock biomass below internationally agreed standards. This has significant ecological, economic and legal consequences, which Greenpeace has summarised in the following briefing:

"Article 2 (2) of the CFP Regulation and the provisions for maximum sustainable yield"

http://www.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2015/20150929_MSYS%20legal%20%20briefing_FINAL.pdf

In fact, the Communication would generally benefit from clearer language in relation to the maximum sustainable yield (MSY) and related reference points: it often only refers to MSY without specifying whether it is in relation to the yield or the fishing mortality (F) or biomass (B) reference points. This is inaccurate and can create unnecessary confusion.

As highlighted in our submission last year, in accordance with the agreed stock management objectives in Article 2 (2), the Commission should evaluate the state of fish stocks in relation to the B_{MSY} reference limit and not confine its evaluation to current levels of fishing mortality. Moreover, in

view of achieving this, the Commission should adjust its request to ICES to specifically include advice in relation to the B_{MSY} reference limit. We herewith ask the Commission to do so promptly.

Provided the Commission will in future accurately reference the stock management objectives in accordance with Article 2 (2), we concur with the Commission statement that MSY-based management “creates the prospect of stock recovery to levels that could deliver high yields” and better economic performance.

Deficiencies in reporting on progress towards achieving F_{MSY}

We welcome the addition of a list of stocks fished at or below F_{MSY} and those fished above F_{MSY} in Annex I. However, there are some confusing discrepancies in the numbers given for the sum of stocks that are fished in line with the agreed F_{MSY} objective: the conclusion of the Communication and Annex I refer to 32 stocks “being fished at or below MSY”, while the introduction refers to just 26 stocks that are fished “at levels corresponding to MSY”.

Moreover, in this context, we would like to recall that in order to achieve the CFP objective of restoring biomass levels above the B_{MSY} limit, exploitation rates must be set below F_{MSY} ; not “at” or “around”.

Regrettably, the Communication fails to explain why numerous stocks (almost half of the MSY assessed stocks) are still being overfished, in spite of the 2015 legal deadline to achieve exploitation rates commensurate with achieving stock recovery above B_{MSY} levels. Overfishing beyond the 2015 deadline may only occur if a reduction of exploitation rates below F_{MSY} “would seriously jeopardise the social and economic sustainability of particular fleets” (Recital 7). The Council and Commission should have evaluated any data presented by Member States to justify delays and the Council should have presented this data in October and December 2014. Anyway, the Commission should have summarised the reasons for delay and outlined the projected timeframe for bringing all stocks in line with the management objectives in the present Communication.

In any case, the trajectory for decisions on exploitation rates must comply with Article 2(2) of the CFP Regulation, i.e. exploitation rates for stocks where a delay has been justified beyond 2015 must be brought below F_{MSY} “on a progressive, incremental basis” before 2020.

The term “incremental” was added by the legislator to ensure that every year the fishing mortality of more of the deferred stocks is brought below F_{MSY} . Progress towards this goal should therefore be reviewed annually as part of the Commission Communication on the state of stocks.

In this context, we welcome the Commission’s stated intention to propose TACs in line with achieving MSY in 2016 for MSY assessed stocks and clear commitment that “only if this would imply very large annual reductions of fishing opportunities that seriously jeopardise the social and economic sustainability of the fleets involved, would a delay in reaching the objective beyond 2016 (and not later than 2020) be acceptable”.

However, we would like to re-emphasise that setting exploitation rates below F_{MSY} should now be the norm for all stocks that are commercially exploited (i.e. delays/derogations must be the exception).

In relation to the particularly critical situation of Mediterranean stocks and some other stocks not currently managed by quota, we call on the Commission to ensure that exploitation rates are significantly lowered until data availability and understanding has improved sufficiently to define, implement and monitor the achievement of relevant MSY limit reference points.

As mentioned above, where a decision is taken to defer the deadline for individual stocks beyond 2016, the TAC decisions should also set out the specific justifications for deferral and identify a timeframe for setting F below F_{MSY} . It is clear from Article 50 of the CFP that the Commission's Communication should not only give information on the status of stocks in relation to reference points but also on the progress towards achieving MSY-based management and reasons for lack of progress.

We herewith ask the Commission to ensure that this year's negotiation and next year's Communication present these justifications for delay and provide a prognosis for those exceptional stocks for which the Council adopts a TAC above F_{MSY} beyond 2015/2016. Moreover, the Commission should outline how it will moderate any process designed to agree deferrals, specifically how and by when Member States must raise their requests and how the Commission assesses whether the requested delays are justified.

Multi-annual plans and F_{MSY} ranges

While we welcome the fact that the Communication reports on the development of multi-annual plans, we remain concerned about the Commission's approach to F_{MSY} ranges.

In the context of the Baltic multi-annual plan, which is the first plan to be adopted under the new CFP Regulation, the Commission proposed ranges "around" F_{MSY} based on ICES advice, i.e. values that range from below to above the F_{MSY} reference point.

This approach violates the CFP objectives. The F_{MSY} reference point is a limit and not a target. The exploitation rate that is commensurate with restoring and maintaining fish populations above B_{MSY} lies below the F_{MSY} limit. Moreover, the precautionary approach to fisheries management, which must be applied in accordance with Article 2(2) and international agreements (notably the UN Fish Stocks Agreement), reinforces the requirement to interpret F_{MSY} and B_{MSY} as limit reference points.

This means that if exploitation rates are expressed as a range, the upper limit of the range must be kept below the F_{MSY} limit reference point to ensure that all levels of exploitation are kept below F_{MSY} .

Absence of data series and other useful information

As in previous years, we appreciate the tables and graphs that have been provided to illustrate developments. However, it is problematic that the 2015 Communication discontinues the use of the time series tables that previously summarised advice concerning stocks in the North-East Atlantic and adjacent waters.

The explanation that STECF has been asked to change its methodology to be able to include time series for more stocks (supposedly making previous time series invalid) is unsatisfactory. This raises the question whether it would not have been more beneficial to keep the existing time series to allow for continued trend analysis, while clearly identifying new/additional stock information on the side. The loss of the time series is particularly perplexing given that STECF's 2015 report on monitoring the performance of the CFP suggests it continued to report on indicators used in previous communications (e.g. number of stocks with MSY assessment, overfished stocks, stocks inside/outside safe biological limits) and given that much of the data in Annex I matches the information in previous time-series. Moreover, it is unclear why the Commission completely dropped useful information on the percentage excess/overshoot of 2015 TAC compared to the advice on exploitation rates for this year. This analysis of the gap between the recommended and actual catch limits should form the core of the Commission's review on progress in implementing Article 2, so why did the Commission discontinue it this year?

In fact, had the overall time series been continued it would indicate that 30 of 62 stocks for which MSY estimates exist (i.e. 48 percent) are known to have been overfished in 2015 – i.e. an increasing trend, up from 39 percent in 2013 and 41 percent in 2014.

We urge the Commission to re-instate equivalent time-series data in the next Communication, particularly the trend assessment of TAC decisions vs advice.

We also share the concern of other NGOs that the Communication does not include the arithmetic mean value of F/F_{MSY} ratio indicator, while this information was provided by STECF. Moreover, we encourage the Commission to bring back the pie charts that showed the proportion of catches within and outside the F_{MSY} limit by fishery and region in the 2014 Communication.

Last but not least, we request that – in future Communications – the Commission provides the accompanying core figures for all graphs presented in the Communication, and request that the Commission clarifies the discrepancies between its own figures for stocks inside/outside safe biological limits (i.e. 20/16 stocks) and those used in the STECF report (i.e. 38/24 stocks).

Specific comments on the state of the stocks

Baltic, North-East Atlantic and adjacent waters

We note with concern that the trend to reduce overfishing in the northern seas has slowed and apparently reversed: with 48 percent of stocks with MSY estimates considered fished above the F_{MSY} limit in 2015, compared to 41 percent in 2014 and 39 percent in 2013. Exploitation rates and therefore TACs for 2016 must now be set below F_{MSY} for all or at least the majority of stocks. Exploitation rates for stocks that are already exploited below the F_{MSY} limit must not be raised beyond this limit, unlike last year when the EU actually regressed in the case of some stocks.

We agree that fishing opportunities for stocks covered by management plans that are not yet consistent with MSY-based management should be set in accordance with MSY-based advice, where it is available.

The western Baltic cod stock is still being exploited above F_{MSY} . We demand that the 2016 TAC for this stock be set below F_{MSY} in line with last year's statement by Denmark Germany, Finland, Lithuania, Poland, Latvia, Estonia and Sweden (Council of the European Union, 14275/14, 13 October 2014). Regarding the eastern Baltic cod stock, we urge the Commission to amend its TAC proposal so as to use the same methodology as ICES, which is more precautionary. Likewise, the Council should follow the ICES advice (i.e. catches should not be more than 29,220 tonnes). While this stock is current classified as data limited, scientists and fishermen all warn of its poor state.

Regarding other cod stocks, we urge the Commission to propose no fishing, in line with ICES advice, for cod in VIIa (Irish Sea), VIa (West of Scotland) and Subdivision Vb1 and 2 (Faroe plateau and bank). We are also concerned that the cod populations in VIIe-k (Channel and southern Celtic seas) have fallen below B_{MSY} . Fishing mortality for this stock should urgently be reduced below F_{MSY} to avoid a further decline. Cod is mainly taken as by-catch or in mixed fisheries in these areas, it is therefore of utmost importance to ensure that only gear which demonstrates no or a very low cod by-catch rates is allowed to operate in these areas. Moreover, fishing mortality should also be further reduced and set below F_{MSY} for North Sea cod, which still presents low stock levels and is at an increased risk because of poor recruitment.

It is encouraging to see that the Kattegat cod (IIIa East) stock levels are showing some small signs of improvement. However, the spawning stock biomass is still far below what can be considered sustainable levels. As cod is mostly caught as bycatch in the fisheries for Norway lobster, we urge the Commission and governments to ensure that no directed fisheries for cod are permitted, and that only gear that demonstrates a near zero by-catch of cod is allowed in non-target fisheries. When the Kattegat cod TAC has been caught, the Commission should close (or ask Member States to close) any fisheries in the area that take cod as by-catch.

In the West of Scotland, Irish Sea and Celtic Sea, the situation of several stocks remains worrying. We welcome the fact that “technical measures are developed jointly by Member States and industry to reduce cod mortality and to avoid unwanted catches (e.g. in the Irish Sea)”. We urge the Commission to follow ICES advice for whiting in waters West of Scotland and herring in waters West of Scotland and Ireland.

We are also concerned that the number of stocks fished above F_{MSY} has increased in the Bay of Biscay and Iberian Seas. For instance, fishing mortality of sole has increased, while hake and megrim continue to be fished above F_{MSY} . We urge the Commission and Council to set the 2016 TAC below F_{MSY} .

Moreover, we urge the Commission and Council to agree further immediate measures to recover the Atlantic sea bass population. This stock has been impacted by a steady creep in fishing effort and fishing capacity deployed in the Channel and Southern North Sea. Management measures must therefore be targeted at those vessels and gears that have the greatest impact on the stock and marine environment.

Mediterranean Sea

Greenpeace remains highly concerned by the overfishing of Mediterranean stocks, both in terms of the number of stocks concerned and the level of overfishing (e.g. fishing mortality six times higher than F_{MSY} for stocks such as hake, red mullet and blue whiting). We welcome the Commission’s work to review national management plans in the Mediterranean and hope the outcome of this review will be made publically available. We agree with the need to “provide as a matter of priority MSY estimates for all known stocks” and revise national plans accordingly, and welcome all efforts to improve data collection for all relevant stocks and request STECF for advice on new stocks.

We welcome the development of EU multi-annual plans for the Mediterranean Sea and expect that they will be comprehensive, strictly apply the precautionary and ecosystem approach and ensure a proper management of the fishing effort of the fleets to ensure overfishing is ended and stocks recover above levels which can produce the MSY. We further urge the Commission to remind Member States of their obligation to reduce overcapacity in their Mediterranean fleets.

Deep-sea species

It is a scandal that the Council continues to stall negotiations on the proposed management regime for deep-sea fisheries. We urge the Commission to close all relevant deep-sea fisheries until the outdated management regime has been replaced by new rules.

Stocks without biological advice

The Commission has restated its intention to propose TACs in line with the precautionary approach “in a systematic, predefined and transparent way” for all those stocks that lack scientific advice.

While we support the application of the precautionary principle (and precautionary approach to fisheries management as defined in the CFP Regulation), we note that the Commission has again omitted to explain what it means by “predefined” manner (i.e. defined when and by whom?).

Stocks with presumption of stability

The Commission has restated its intention to keep the TACs for 26 stocks unchanged (i.e. rollover) unless biological advice calls for adjustment. Yet in 2014, the Commission proposed rollovers for several stocks despite existing scientific advice to lower fishing mortality or even to stop fishing: e.g. whiting in VIIa (Irish Sea) and blue ling in III (Kattegat & Skagerrak), II and IV (Barents and North Sea). We object to this and agree with other NGOs that fishing opportunities should always be based on existing scientific advice.

In the absence of scientific advice, the burden of proof is with decision-makers to demonstrate that the TAC is consistent with the precautionary approach as defined internationally and in the CFP Regulation.

TAC uplifts

Greenpeace greatly welcomes and supports the statement that “TAC adjustments need to remain compatible with achieving MSY and they should not increase fishing mortality rates” (p.6). However, we disagree with the Commission’s intention “to propose TAC adjustment where catches from a stock are *predominantly* under the landing obligation”.

Quota uplifts must never entail the risk of overfishing, i.e. must not lead to the overall catch rates rising above F_{MSY} . We therefore ask that TAC adjustments are only considered when all catches from a stock are covered by the landing obligation, strictly based on the corresponding ICES advice on catch limits. Moreover, we call on the Commission to:

- ensure that the application of derogations and flexibility mechanisms under Article 15, such as the *de minimis* rule, are duly taken into account when considering adjustments. They must be deducted from any TAC uplift to ensure that overall exploitation rates are kept below the prescribed level; and
- resist demands for uplifts that represent the total estimated amounts of fish previously discarded on precautionary grounds. A percentage of the total potential increase should be “banked” to cover for possible illegal discarding and to serve as an investment into the future recovery of the stock.

Moreover, we urge the Commission and Council to adopt a common statement that commits Member States to allocate any additional quotas that may become available on the basis of uplifts strictly on the basis of Article 7 paragraph 1 d). In other words, any available uplift should be allocated specifically to incentivise and reward those that are fishing in the most selective way. It should not be used to cover for unselective catches.

Discrepancy between ICES areas and management areas

We remain critical of the fact that the management units for some of the stocks are not aligned with the spatial units for which ICES presents advice. We request that the Commission aligns management areas for these stocks with those used by ICES to allow a more informed decision-making and evaluation of fishing opportunities.

Concluding remark

Greenpeace is monitoring the implementation of Article 17 of the CFP and is concerned that no Member State is meeting its obligations to date. Member States' obligations under Article 17 are inherently linked with the allocation of TACs amongst Member States and subsequently fishermen. If Member States fail to comply with Article 17, the Commission should take action and impose consequences in the context of the allocation of TAC to Member States.