

THE
PEW
CHARITABLE TRUSTS

Response to the Commission's proposal for a multi-annual plan for the Western Waters (COM (2018) 149 Final)

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SUMMARY

If properly designed, the multi-annual plan (MAP) for the Western Waters could make a significant contribution to ending overfishing and restoring fish stocks in line with the Common Fisheries Policy's (CFP) requirements. The European Commission proposal is, however, insufficient to meet the CFP's objectives regarding sustainable fisheries management and must therefore be substantially improved.

Key recommendations:

- The CFP's objective to restore and maintain all stocks above levels which can produce the maximum sustainable yield (MSY) should apply to all stocks covered by the MAP, including so-called by-catch stocks, and should contain clearly defined and time-bound targets and measures designed to achieve that objective.
- The target fishing mortality rate must be limited to F_{MSY} as the upper limit, to allow all stocks under the MAP to be restored above biomass levels that can produce MSY. For stocks that currently lack MSY reference points, the MAP should afford a comparable degree of conservation.
- Management of by-catch stocks must ensure that fishing mortality of all stocks in a mixed fishery remains below F_{MSY} rates.
- Safeguards must be improved to ensure that timely and effective remedial measures are put in place if stock biomass falls below pre-determined reference points, both for target and by-catch stocks;
- Specific targets and measures should be added for deep sea stocks, recognising their vulnerability to fishing and the EU's obligations to protect them from overexploitation.

INTRODUCTION

On March 23rd 2018 the European Commission published a proposal for a multi-annual plan for fish stocks in the Western Waters and adjacent waters, and for fisheries exploiting those stocks.¹ The CFP requires, as a priority, the adoption of such plans to provide robust and lasting frameworks for fisheries management to restore and maintain fish stocks above levels capable of producing MSY (CFP Article 9(1)).

The CFP requires an end to overfishing for all stocks, with legally binding targets and deadlines. Specifically, Article 2(2) requires that:

“In order to achieve the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing the maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks”.

The CFP allows for postponing the 2015 deadline only in exceptional cases, when meeting it *“would seriously jeopardise the social and economic sustainability of particular fleets”* (Recital 7).

If properly designed, the multi-annual plan for the Western Waters could make a significant contribution to ending overfishing and restoring fish stocks in line with the CFP. The proposal as currently drafted, however, must be substantially improved if it is to ensure that the multiannual plan delivers on the CFP's objectives. Pew's proposals for improvement are outlined below.

1 SCOPE

The proposal establishes a multiannual plan for 37 demersal stocks in the EU's Western Waters, and for the fisheries exploiting those stocks. The CFP requirement to restore and maintain populations of harvested species above levels that can produce MSY applies to all stocks, as specified in its Article 2(2). However, in the geographical area covered by the proposal, at least 20 stocks are exploited which have not been included in the proposal.²

It is not clear which criteria have been used by the Commission to limit the scope of the plan to the 37 stocks listed in Article 1(1) of the proposal. The Commission's explanatory memorandum mentions “stocks that determine fishermen's behaviour and are economically important” and explains that the plan will result in “around 95% of landings in the Western Waters in terms of volume” being managed “in line with MSY”, but it is not clear how the inclusion or exclusion of some stocks match these statements. For instance, the inclusion of low-volume deep sea stocks in the list seems to indicate that volume of landings was not used as the selection criterion, and the lack of

¹ European Commission (2018) Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for fish stocks in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulation (EU) 2016/1139 establishing a multiannual plan for the Baltic Sea, and repealing Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) 509/2007 and (EC) 1300/2008. COM(2018) 149 final

² Stocks managed through annual TACs, including cod in the West of Scotland (areas 6a and 6b); plaice in the Celtic Sea (areas 7bc, 7fg and 7h-k); whiting in the West of Scotland and in the Irish Sea (areas 6a and 7a); saithe in the West of Scotland (area 6); seabass in the West of Scotland and in the Bay of Biscay (areas 6a, 8ab, 8c, 9a); *Nephrops* in the Bay of Biscay (areas 8c, FU25; 8ab, FU-23-24; and 8c, FU 31); and skates and rays in the Celtic Sea and in the Channel.

inclusion of economically attractive stocks, including several cod, whiting and Nephrops stocks indicates that (potential) economic value was also not used as the criterion.

Fisheries in the Western Waters tend to be predominantly multi-species (mixed fisheries). The Commission proposal considers that the 37 stocks identified in Article 1(1) are targeted, and that any other stocks caught in the mixed fishery are by-catches. The definition of what is a target or by-catch stock is subjective and will show a high level of variability across different stakeholders³. In such a large geographical area, where many fish stocks are highly mixed and diverse, it is very difficult to draw a strict line between target and by-catch stocks.

Within and across fleets the individual stocks and catch compositions which are targeted by fishers have shown a high level of temporal and spatial variability³ and are known to be influenced by a range of factors including economic incentives, stock abundance and regulation. Fleets tend to target species complexes⁴, and often the "by-catch" stocks in fact constitute an important part of the fleet's income, as evidenced by the reluctance of fishers to reduce the by-catch of economically valuable non-target species through the implementation of technical measures to improve selectivity. This includes for example the whitefish/monkfish by-catch within the Nephrops fishery in the West of Scotland.³ Some of the stocks excluded from the Commission's proposed list of target stocks could in fact be very valuable and drive fishers' behaviour, if allowed to recover to healthy biomass levels.

Some of the stocks excluded from the Commission's proposed list have been identified by the North Western Waters (NWW) Advisory Council (AC) and member state group as stocks with a high risk of leading to early fishery closures due to the full implementation of the landing obligation.⁵ While applying less ambitious management objectives to these high risk stocks (see section 2 of this document) might mitigate the risk of early closure of the mixed fishery, it will also prevent their recovery and thus preclude the possibility of them sustaining healthy fisheries in the future.

Furthermore, Article 1(1) lists the stocks by species and area, which matches the scientific advice provided by the International Council for the Exploration of the Sea (ICES). This structure does not match the management units used by the European Commission when proposing fishing opportunities, and by the Council of Ministers when adopting Total Allowable Catches (TACs). This mismatch poses challenges in comparing proposed or agreed TACs and the best available scientific advice.

Pew recommends that:

- The scope of the proposal be amended to encompass all harvested stocks, in line with the requirements of the CFP;

³ [Wilson, D. C., & Jacobsen, R. B. \(2009\). Governance issues in mixed-fisheries management: an analysis of stakeholder views. IFM-Innovative Fisheries Management.](#)

⁴ See, for example, [ICES \(2017\), Report of the Working Group on Mixed Fisheries Advice \(WGMIXFISH-ADVICE\)](#): "Fisheries in the Celtic Sea are highly mixed, targeting a range of species with different gears. Otter trawl fisheries take place for mixed gadoids (cod, haddock, and whiting), Nephrops, hake, anglerfishes, megrims, rays as well as cephalopods (cuttlefish and squid). Beam trawl fisheries target flatfish (plaice, sole, turbot), anglerfishes, megrim and cephalopods (cuttlefish and squid) while net fisheries target flatfish, hake, pollack, cod, anglerfishes as well as some crustacean species."

⁵ Including cod in the West of Scotland (area 6a); plaice in the Celtic Sea (area 7fg); whiting in the West of Scotland and in the Irish Sea (areas 6a and 7a); saithe in the West of Scotland (area 6); and skates and rays in the Celtic Sea and in the Channel. See [North Western Waters Choke Species Analysis 2016](#).

- The plan requires that TAC decisions be accompanied by a clear description of the steps taken to reconcile the stock areas used in the provision on the best available scientific advice with the management areas used in TAC setting, in order to facilitate the decision making process and increase transparency and accountability.

2 MAP OBJECTIVES

Pew welcomes that the Western Waters MAP proposal reaffirms the following CFP objectives:

- To apply a precautionary approach to fisheries management as described in Article 4(1)(8) of the CFP;
- To ensure that the exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield (MSY);
- To contribute to the elimination of discards by avoiding and reducing, as far as possible, unwanted catches;
- To implement the ecosystem based approach to fisheries management in order to ensure that negative impacts of fishing activities on the marine ecosystem are minimised;
- To be coherent with Union environmental legislation, in particular the objective of achieving good environmental status by 2020 as set out in the Marine Strategy Framework Directive (2008/56/EC) and the objectives set out in the Birds and Habitats Directives (92/43/EEC and 2009/147/EC); and
- To ensure that measures under the plan are taken in accordance with the best available scientific advice.

The second sentence of Article 3(5), however, is unclear. It mentions that “where there is insufficient data, a comparable degree of conservation of the relevant stock shall be pursued”, yet it does not clarify that the baseline to be used for the comparison is MSY (as per Article 9(2) of the CFP).

More generally, while the objectives listed in Article 3 of the proposal are adequate and in line with CFP requirements, the provisions in the remainder of the proposed MAP do not support the attainment of the stated objectives. In contrast to the current version of the Baltic MAP, for example, references to the objectives in other articles of the proposal (e.g. Article 4, on targets) have been removed.

Pew recommends that:

- The formulation of Article 3(5) be improved to more closely reflect the requirement under Article 9 of the CFP, to offer those stocks that do not have MSY advice a comparable degree of conservation to those that have MSY advice.
- The remaining articles of the MAP be amended to support the attainment of these objectives listed in Article 3 of the proposal.

3 TARGETS

Article 9 of the CFP stipulates that MAPs must contain conservation measures to restore and maintain fish stocks above levels capable of producing MSY. Article 10 further specifies that targets must be quantifiable, and that clear timeframes must be defined to reach them.

Chapter III of the proposal, regarding targets, is therefore an essential element of the plan. The Chapter includes two articles: Article 4 stipulates targets in terms of fishing mortality for the stocks listed in Article 1(1) of the proposal. Article 5 mentions a few management principles, but it does not clearly specify any management targets for so-called “by-catch” stocks. It also lacks any criteria for determining whether a given stock is “targeted” or caught only as “by-catch”.

Pew recommends that:

- The proposal be amended to ensure that clearly defined and time-bound targets are put in place to restore and maintain all stocks in the EU's Western Waters above levels capable of producing MSY.
- If distinct management approaches are adopted for “target” and “by-catch” stocks, clear criteria should be detailed to determine the category of any given stock. In addition, provisions should be made for stocks to move from one category to the other in case of changes in fishing patterns.

Article 4: Target fishing mortality rate

Pew remains strongly concerned about the Commission's proposal to set targets for fishing mortality in accordance with a range of values *around* F_{MSY} . Fishing above the F_{MSY} point value will not lead to restoring and maintaining fish stocks above B_{MSY} levels as required by Article 2(2) of the CFP and as per the objectives stated in Article 3(1) of the proposal. The F_{MSY} mortality rate should be regarded as a limit, rather than a target.

In its original advice to the Commission on ranges around F_{MSY} ⁶ the International Council for the Exploration of the Sea (ICES) stated:

“In a single-species context fishing above F_{MSY} implies reduced stock biomass and this may be substantial where F_{upper} is much higher than F_{MSY} . So, in utilizing F_{MSY} ranges there are more advantages to fishing between F_{MSY} and F_{lower} than between F_{MSY} and F_{upper} . [...] For some mixed fisheries it may be difficult to reconcile the F s on different stocks. An approach for maximizing long-term yield could be to attempt to reconcile F on a mixed fishery using F s between F_{lower} and F_{MSY} .”

Furthermore, we are concerned that the proposed Western Waters MAP includes values for broader ranges around F_{MSY} without specifying in the articles that the ICES MSY “advice rule” needs to be followed when fishing limits are set. When the Commission asked ICES to advise on ranges *around* F_{MSY} , ICES did so on the basis of two different approaches:

- Broader ranges for plans following the ICES MSY advice rule, i.e. requiring reducing F linearly towards zero when SSB is below MSY $B_{trigger}$.

⁶ [ICES Special Request Advice 2015: EU request to ICES to provide \$F_{MSY}\$ ranges for selected North Sea and Baltic Sea stocks.](#)

- Narrower ranges for plans that would not have such a requirement.

ICES stated: *“Although the first often provides a wider F_{MSY} range, it requires the ICES MSY advice rule to be used.”* Yet, the Western Waters plan mentions this requirement only in Recital 16.

Pew recommends that:

- The target fishing mortality rate be limited to F_{MSY} as the upper limit, in order to allow all stocks under the MAP to be restored above biomass levels that can produce MSY, as required by the CFP;
- Clearer provisions reflecting the ICES advice rule to be introduced into the plan.

Article 4: Conditions for the use of the F_{MSY} upper ranges

While the objective of the proposed Western Waters MAP is to restore and maintain harvested species above B_{MSY} levels, fishing mortality rates that would allow that aim to be achieved ($F < F_{MSY}$) are only unambiguously required if the stock biomass is below the minimum spawning biomass reference point ($MSY B_{trigger}$) level, which is lower than B_{MSY} . In the Commission's proposal (Art. 4(5)), stocks above $MSY B_{trigger}$ can, under vague conditions, be fished above the F_{MSY} point value fishing rates. This would however directly impede reaching the MAP and CFP objectives of progressively restoring and maintaining populations of fish stocks above B_{MSY} levels.

Two of the exceptions allowing fishing opportunities to be fixed based on the upper F range, and thus to overfish, are only vaguely defined and provide ample room for interpretation. The Western Waters MAP proposal Art. 4(5) a) and b), states:

- a) *“If, on the basis of scientific advice or evidence, it is necessary for the achievement of the objectives laid down in Article 3 in the case of mixed fisheries”.*

It is not clear why overfishing would be needed to achieve the objectives as defined in Article 3 (restoring stocks above B_{MSY} levels, eliminating discards and implementing the ecosystem-based approach to fisheries management). For example, the elimination of discards shall be achieved through the landing obligation and discard plans. Tools to facilitate the elimination of discards are for instance quota flexibility, swaps and increased selectivity.⁷

- b) *“If, on the basis of scientific advice or evidence it is necessary to avoid serious harm to a stock caused by intra- or inter-species stock dynamics”*

The proposal does not define “serious harm to a stock”. In an ecosystem most stocks have inter-species dynamics, and all stocks have intra-species dynamics.

Pew remains opposed to the use of ranges of fishing mortality above the F_{MSY} point value, as their use will impede the achievement of the CFP's objective. If these ranges are retained in the proposal, however, we recommend that:

- The provisions regarding the use of mortality rates above F_{MSY} should be made more specific and clear;

⁷ [Recovering fish stocks and fully implementing the Landing Obligation: Managing fishing mortality to meet CFP objectives \(May 2018\)](#)

- Member states be required to explain the application of these exceptions by a reference to one or more of the conditions outlined above, and to provide scientific evidence to demonstrate that fishing the stock in question above F_{MSY} mortality rates will achieve the objectives outlined in Article 3;
- The scientific advice / evidence mentioned in Article 4(5)(a) and 4(5)(b) be peer reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF) and made publicly available to ensure minimum scientific standards, timely delivery as well as public scrutiny.

Article 5: Management of by-catch stocks

Pew is highly concerned with the proposal for management of so-called “by-catch” stocks.

In mixed fisheries, it is inevitable that different stocks will have divergent levels of abundance. In certain cases, this may mean that setting the TAC at the maximum advice level for one of the stocks in the mixed fishery might result in either exceeding the maximum advised TAC level for another stock (or stocks), or in premature closure of the fishery, if changes in fishing behaviour or selectivity are insufficient to alter catch composition. In order to safeguard the most vulnerable stock(s) in such scenarios, and to avoid premature closures, the TACs for the most abundant stocks in the mixed fishery should be set at a level lower than the maximum advised in the single species advice for those stocks.

The proposal makes reference to the precautionary approach to fisheries management as defined in point 8 of Article 4 (1) of Regulation (EU) No 1380/2013 “when no adequate scientific information is available”. Lack of scientific certainty due to insufficient relevant scientific information must not lead to less ambitious restoration targets for fish stocks, but additional safeguards need to be added. This will also provide an incentive to fully comply with the data collection requirements and to further enhance knowledge about the stock.

Precautionary Approach reference points (F_{PA}) should not be treated as management targets when setting fishing opportunities. In the absence of MSY-based advice, good management should strive to keep fishing mortality well below F_{PA} , and SSB well above B_{PA} , until information to allow the assessment of MSY is possible. Further management actions to ensure stocks are on a trajectory to recover to levels above those capable of producing MSY should be considered when setting fishing opportunities.

Article 5(3) of the proposal also seems to misinterpret Article 9(5) of the CFP, in its reference “the management of mixed fisheries [...] shall take into account the difficulty of fishing all stocks at MSY at the same time, especially in situations where this leads to a premature closure of the fishery”. On the contrary, Article 9(5) of the CFP makes clear reference to the need to adopt ecosystem-based approaches to achieve the objectives in Article 2(2) of the CFP in the case of mixed fisheries, in particular “in cases where scientific advice indicates that increases in selectivity cannot be achieved”.

Pew recommends that:

- Management of by-catch stocks be geared towards attaining the objectives in Article 3 by ensuring that mortality of all stocks in a mixed fishery remains below F_{MSY} rates; this may

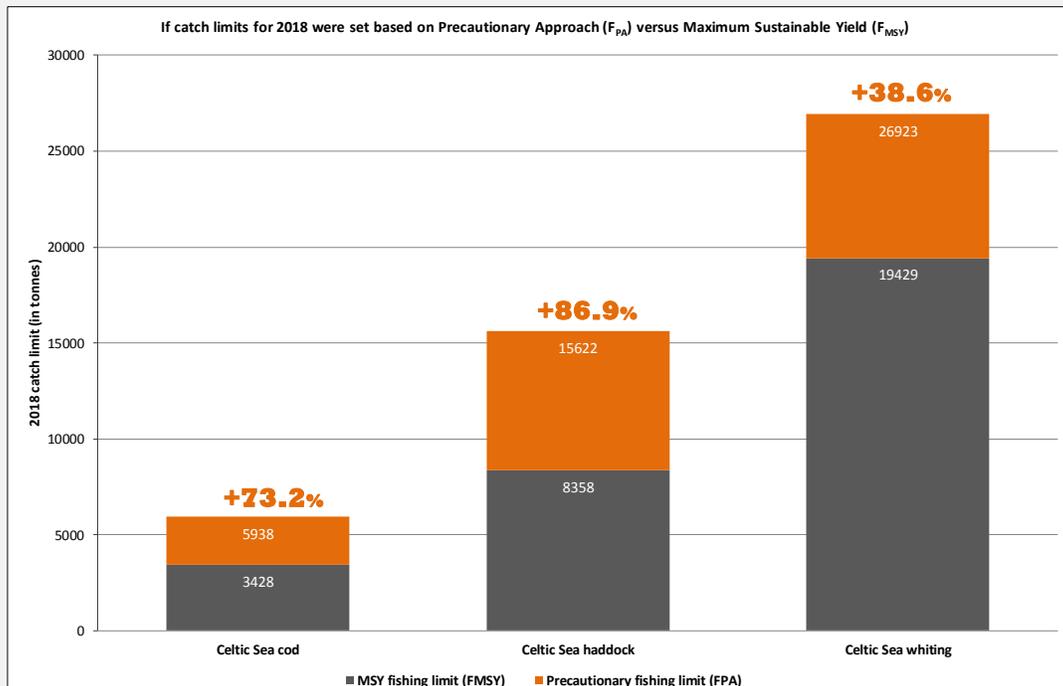
require setting fishing limits for more abundant stocks in the mixed fishery below the maximum advised level of fishing mortality for those stocks;

- In cases where scientific knowledge is insufficient to determine MSY reference points, additional measures are taken to ensure that the less understood stocks are afforded a comparable level of conservation to those for which MSY reference points are available.
- The language in the proposed Article 5(1) be amended to require that management measures for by-catch stocks be taken in accordance with the best available scientific advice, as per Article 3(c) of the CFP and the proposed Article 3(5) of the MAP.

Box 1: ICES Precautionary approach vs MSY approach

In order to provide advice for fisheries managers to maintain fish populations within safe biological limits, ICES have developed Precautionary Approach advice rules for data-limited stocks, as well as precautionary reference points (F_{PA} and B_{PA}) for other stocks. However, whilst the management application of precautionary approach reference points provides boundaries to ensure stocks remain within safe biological limits, aiming to safeguard against the risk of stock collapse, this in itself is not a sufficient condition for restoring and maintaining fish stocks above levels capable of producing MSY, as required by Art. 2(2) of the CFP.

As illustrated by the examples in the graph below, the fishing mortality rate associated with harvesting at F_{PA} is higher than the rate F_{MSY} , as indicated by the corresponding catch limits (tonnes) for stocks. If MSY reference points are not available for certain stocks, it must be ensured that fishing opportunities set on the basis of the precautionary approach ensure at least a comparable degree of conservation of the relevant stocks, which is not met when setting fishing opportunities at F_{PA} levels.



Management of Norway lobster stocks

The proposed Article 9(3) states that TACs for Norway lobster (*Nephrops norvegicus*) stocks under the MAP may be set as “the sum of the catch limits of the functional units and of the statistical rectangles outside the functional units”. Setting a single TAC for different functional units with divergent abundance levels entails the risk of overfishing the functional units where abundance is lower, as repeatedly highlighted by ICES in its advice.

Pew recommends that:

- Fishing limits be set for each of the *Nephrops* functional units, in accordance with the best available scientific advice.

Management of deep sea stocks

Deep sea fish species are generally vulnerable to fishing, because they are predominantly long-lived, slow-growing, and they spawn few young. The EU is committed to implementing Resolutions 61/105 and 64/72 adopted by the United Nations General Assembly, which call on States to ensure the protection of vulnerable deep sea marine ecosystems from the impact of bottom fishing gears, as well as the sustainable exploitation of deep sea fish stocks. To this end, the EU has adopted the deep sea regulation, which recognises that deep sea species are by nature vulnerable to fishing (Recital 2).⁸

The Western Waters MAP proposal includes deep sea stocks in its scope, but does not contain any specific provisions regarding the management of these vulnerable species.

Pew recommends that:

- Specific targets and measures be added for deep sea stocks, recognising their vulnerability to fishing and the EU's obligations to protect them from overexploitation;
- Due to their vulnerability and data-limited status, the MAP should not provide any possibility to fish deep sea stocks in the ranges above F_{MSY} .

4 SAFEGUARDS

Similar to the concerns about different targets for target and by-catch stocks in Articles 4 – 5, Pew has strong concerns regarding the differentiation of recovery objectives for both categories. The CFP applies the same recovery objective to all harvested species. This key requirement is overlooked in the Western Waters MAP which lacks recovery objectives for by-catch stocks.

Article 7: Safeguards

Pew welcomes the inclusion of a provision determining that, if biomass of stocks managed under the MAP falls below minimum reference points, all appropriate remedial measures shall be taken to ensure that the stock recovers to levels above those capable of producing MSY. However, concrete actions within a specific timeframe for recovery should be included in the MAP, including

⁸ [Regulation \(EU\) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation \(EC\) No 2347/2002](#)

a clear requirement to linearly reduce mortality in proportion to the decrease in biomass in line with the ICES framework for advice.

Article 7(2) proposes that remedial measures *may* include that the targeted fishery be suspended if a stock falls below B_{lim} levels or the adequate reduction of fishing opportunities (emphasis added). Irrespective of the proportionality requirements set out in Art. 7(4), it is difficult to conceive in which manner the full reproductive capacity of a depleted stock could be restored without significantly reducing or suspending fishing.

Pew welcomes that Art. 7(3) specifies that emergency measures in case of a serious threat to marine biological resources (CFP Art. 12 and 13) are applicable in the framework of the Western Waters MAP.

While the proposed plan details a number of proportionality requirements regarding the choice of safeguard measures taken (Art. 7(4)), it does not contain a timeframe for the adoption of such measures. In terms of safeguarding the full reproductive capacity of stocks, the appropriateness of measures largely depends on their timely adoption.

Lack of safeguards for by-catch stocks

Pew has concerns about the lack of specific safeguards for by-catch stocks. The reference in Art. 5(2) to the precautionary approach does not fulfil the requirement for MAPs to include “safeguards to ensure that quantifiable targets are met, as well as remedial action” (CFP Art. 10(1) (g)). It is essential that all stock categories, including by-catch stocks, be managed so as to allow stocks to rebuild and thereafter maintain biomass levels above those capable of producing MSY.

The Western Waters MAP should ensure that management measures must be taken if stocks fall below the biomass levels capable of producing MSY. This must include the requirement to reduce fishing mortality when biomass is below $MSY B_{trigger}$ proportional to the reduction of biomass, as set out in ICES advice for wider F-ranges.

Pew recommends that:

- Concrete actions for recovering stocks above biomass levels that can produce MSY be included in the MAP, within specific timeframes;
- A clear requirement be introduced to linearly reduce mortality in proportion to the decrease in biomass, in line with the ICES framework for advice, for stocks falling below $MSY B_{trigger}$.
- Remedial measures taking the form of quantitative reductions or suspensions, within specific timeframes, be obligatory for stocks falling below B_{lim} .
- Safeguards be added for by-catch stocks.

5 PROVISIONS LINKED TO THE LANDING OBLIGATION

The landing obligation is intended to put an end to the wasteful practice of discarding unwanted fish, by avoiding and reducing unwanted catches in the first place. As such, emphasis must be placed on avoidance and selectivity measures, followed by national and international quota swapping,

which is allowed for under the CFP. In this regard, Pew particularly welcomes the proposed Article 9(1), which stipulates that member states shall ensure that the composition by species of the quotas available to vessels participating in mixed fisheries are appropriate to the likely composition of the catch.

We further recall that Recital 32 of the CFP specifies that the introduction of the landing obligation should not jeopardise the MSY objective nor lead to an increase in fishing mortality. The fixing of fishing limits in mixed fisheries must take this into account.

6 EVALUATION OF THE PLAN

The proposed plan includes in Article 14(a) requirement for evaluation no less than 5 years after entry into force of the regulation. It is essential that such an evaluation includes an assessment of the status of the stocks covered by the plan in relation to the biomass level capable of producing the MSY (B/B_{MSY}). Without this assessment it will not be possible to evaluate to what extent the plan achieved its objectives and the objectives of the CFP.

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