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This is a joint response from Oceana, the Fisheries Secretariat (FISH), WWF, Coalition Clean Baltic and the Finnish Society for Nature Conservation on the BALTFISH DRAFT Outline of a discard plan for the Baltic Sea for consideration before submission of the joint recommendations to the European Commission.

We welcome the draft BALTFISH discard plan for the Baltic Sea and the efforts by the Member States to advance earlier drafts that we have seen. In April 2013, a detailed joint NGO position was submitted ahead of the joint BALTFISH and 9th HELCOM Baltic Fisheries/Environmental Forum in Tallinn, Estonia. Many of the issues that were raised by the NGOs at that meeting are still valid.

We are of the opinion that the problem with unwanted catches must primarily be solved at sea through improved selectivity of fishing gears and changes in fishing practices, and not by simply introducing a landing obligation. A discard ban can work as a strong incentive to change practices, but if it is to do so, it needs to be implemented in such a way that it reinforces this necessary change.

In addition, the implementation of the discard ban provides us with a unique opportunity to improve information on the Baltic fish stocks and catches, provided that all catches are properly entered into the log book under the species in question. This will be important in terms of improving management of fish stocks across the EU, and should also be carefully considered in the revision of the EU Data Collection Framework.

There are some important issues that we feel are largely missing in the outline, specifically the potential use of temporal closures and moving on measures in order to avoid the bycatch of juveniles, the possible inclusion of non-TAC species in the landing obligation, and details regarding monitoring and control of the discard ban.

Detailed comments on the proposal

1. Species to be included

We support the proposed list of species and the timeframe for inclusion provided in Table 1. However, we urge BALTFISH to include other species (specifically flatfish) in the landing obligation at a later stage – no later than 2018.

We are disappointed to see that the earlier unity among Member States on the inclusion of sea trout is now less consistent, and that a number of exemptions have been suggested. In general, the same rules should apply throughout the Baltic Sea region. We don't support different national exceptions unless there is strong scientific evidence to support this.

Therefore, we would like to see a full inclusion of sea trout in the whole Baltic Sea region. Derogations for certain gear types could be included under section 2 as for other species, including references to scientific evidence of the survivability after release.

The survival of sea trout in gill net fisheries and possible exemptions are currently debated. To our knowledge, survivability in gill nets is generally poor, and we suggest that measures such as regulating where the nets are set (e.g. not shallower than 3m) are explored and that a scientific evaluation of the survivability in the specific fisheries is made. In the table "expert judgment" is referred to but no reference has been provided. In the absence of scientific evidence to support an exemption for gill net fisheries, this gear type should be included in the discard ban.

More attention should be given to the problem of undersized cod being caught as a result of accumulation of flatfish in the trawl. It is one of the reasons why we would like all flatfish species to be included in the discard ban by 2018. Already existing gear modifications to reduce the catches of flatfish and undersized cod need to be further tested and developed, and further gear improvements need to be investigated.

2. Exemptions for certain types of fisheries

We support the exemption of the gears listed in section 2, and in principle exemptions can be made for gears where the survivability of unwanted catch is high as long as this is based on scientific evidence. We call for further studies on the survivability in different fisheries, particularly for species that have not yet been included in the ban.

A clarification is needed in the first paragraph under the table, suggesting the exemption of "additional species" – should this not be "additional gear types"?

Moreover, we recommend that guidelines and techniques on how to reduce mortality when releasing fish back into the water are developed, as the handling of fish when caught and released needs to be improved. In addition, modifications to trap nets and push-up traps facilitating improved survivability are needed.

3. Year-to-year flexibility and inter-species flexibility

In general, we believe that the landing obligation should be implemented without exemptions and derogations, as that will be advantageous in terms of simplicity, data collection and controllability, as well as create stronger incentives to avoid unwanted catches.

Therefore, we are not in favour of the inter-species flexibility option. It is preferable that undersized or unwanted catch is counted against the quota of the specific species in question. If inter-species flexibility is introduced, careful consideration must be given to how to ensure that the species are correctly reported in the log book, or an important opportunity to improve catch data is lost. It will also be necessary for Member States to review routines for use of log book and landing data, in order to optimise the use of new information that will be available.

4. Selectivity

We are happy to see that improved selectivity of fishing gears is given priority in the plan, and strongly support the proposal that BALTFISH continues to discuss solutions and work on more selective gear in the Baltic Sea region. It is crucial that this work is developed in close collaboration with the fishing sector, the Baltic Sea AC and other interested stakeholders, as engagement of all stakeholders in the development of selective gears and other new technical measures will increase understanding and compliance.

The scope of the work needs to be broader than the LOT1 project and not only focus on improvements in cod trawls but also other gears, as well as fishing practices, such as mitigating bycatch through real time closures and moving on measures. We further recommend that the size selectivity of different gear is improved and tested, beginning in 2015 at the latest.

5. Minimum Landing Size/Minimum Conservation Reference Size and selective fishing for cod and salmon.

In general, we want to see scientifically based advice on MCRS, reflecting the age and size for first reproduction as called for by the European Parliament¹ in the negotiations on the basic regulation of the CFP. Removal, or lowering, of the MCRS would also remove an important incentive to improve the selectivity of the gears used. However, the key to healthy stocks is to keep fishing mortality low enough to work towards the long-term target of BMSY.

We do not support the idea of reducing the Minimum Conservation Reference Size (MCRS) for Baltic cod to 35 cm. We believe this to be in direct conflict with the

¹Article 15.2 of the European Parliament legislative resolution of 6 February 2013 on the proposal for a regulation of the European Parliament and of the Council on the Common Fisheries Policy (COM(2011)0425 – C7-0198/2011 – 2011/0195(COD))

agreed fish population objectives in HELCOM's Baltic Sea Action Plan, as well as the relevant descriptors for Good Environmental Status under the Marine Strategy Framework Directive (MSFD). It is also in contradiction with the objective of the CFP to maintain and restore the health of fish stocks and the marine ecosystem, as a lowering of catch size could potentially undermine the reproductive capacity of the stock.

STECF concludes that a lowering of the MLS will not lead to an increase in fishing mortality, but this will ultimately be dependent on the FMSY target set for Baltic cod under the upcoming multispecies plan. Considering that quota uptake has been poor in recent years, a lowering of the MCRS may well be a temporary improvement in the catch per unit effort, but could also lead to increased mortality, continued growth overfishing and ultimately threaten the cod population, which is clearly not in a good state at the moment.

We believe it is necessary to take a wider ecosystem perspective in management, looking at the interactions of species in the food web and the links to eutrophication and the spread of anoxic areas, and how different fishing patterns affect these processes, particularly in the future work on developing the Baltic multispecies management plan.

Also, ambitions should be higher, aiming for an overall decrease in fishing mortality as a result of improved selectivity not merely a status quo. If the MCRS is indeed reduced, as there is now widespread political support for this in the region, we ask BALTFISH to put in place technical measures that allows for the escapement of larger cod as they are very important for the reproductive capacity of the stock.

Regarding the MCRS for salmon and sea trout, we again do not support a lowering of the size limits. Instead, we would like to see the same MCRS of 60 cm apply for both species throughout the region, as a unified MCRS would help address current problems with misreporting. This size limit already applies to both species in most of Finland.

We welcome the proposals for other measures to support the recovery of wild salmon stocks and reduce the catch of undersized individuals.

6. De minimis rule

It would be preferable not to allow any kind of discard (even seal damaged fish), since this may result in poorer data quality, as well as be used to hide real discarding, making control of the ban more difficult. However, the proposal to use the "de minimis rule" and not count seal damaged fish against the quota as long as it is below 5 % is an acceptable solution, as long as the damaged fish is still recorded in the log book. We also see the potential problems that landing of seal damaged fish could cause in terms of the need for separate storage.

Any application of the de minimis rule in the Baltic region should be fully in line with the criteria in the basic regulation (EU 1380/2013) under Article 15.5 c, with arguments for its use clearly set out and verified.

7. Fishing effort

STECF concludes that fishing effort management is not needed in order to sufficiently limit fishing mortality. As long as FMSY is kept low enough and control and data collection is sufficiently good, we agree that the days at sea regulation can be removed. A lack of days at sea may also create a disincentive to avoid catching large amounts of undersized fish – i.e. not being able to “afford” moving on to other fishing grounds.

8. Fixing of fishing opportunities

A landing obligation should not automatically result in a higher TAC for all species. We want to emphasize that the basic regulation now refers to biomass levels *above* those which can produce MSY and not only to FMSY as currently phrased in the BALTFISH paper. In addition, it is the responsibility of Baltic Member States to ensure Good Environmental Status under the EU Marine Strategy Framework Directive (MSFD), which aims for BMSY by 2020. Baltic fisheries management has to be consistent with fulfilling these environmental obligations.

When fixing fishing opportunities, there are several aspects to consider:

- a) Whether an increase would be appropriate depends on whether the stock is well managed and management targets have already been reached, such as MSY by 2015 as well as more ambitious long-term targets. If this is not the case, the TAC should definitely not be increased. This is also clearly set out in the basic regulation in Article 16.4.
- b) To simply add the best estimate for current discards to the TAC would remove a major incentive to develop more selective ways of fishing. It could also lead to misreporting of unwanted catches in the years leading up to the discard ban, in order to inflate the future TAC.
- c) STECF has in its work on the landing obligation highlighted that the TAC may also have to be adjusted downwards to take account of the increased mortality caused by landing unwanted catches with low survivability – but still some fish would survive if released. This increased mortality would need to be taken into account when adjusting the TACs to catch quotas (Article 16.2).
- d) Discarding will not necessarily go down to zero at the point of entry into force. When adjusting the TAC, the decision-makers will in future need to take into

account estimated continued (illegal) discarding, as well as landed “discards” and increased mortality caused by landing some fish that would have survived (even if survival rates were low).

- e) Instead of simply increasing the overall TAC, a special credit/premium/priority access could be granted to those using the most selective gear/best practices. This would strengthen the incentive to shift to more selective ways of fishing, and be in line with Article 17 on criteria for the allocation of fishing opportunities.

9. Technical measures

We welcome the overview provided by BALTFISH over technical measures that need to be reviewed in the context of the landing obligation – an effort that needs to be matched with the proposed “omnibus regulation” (COM(2013)889). However, we do not believe that Article 18 of EC 2187/2005 regarding “the ban against keeping eel which have been caught with active gears” is relevant in this context. It should remain in place considering the exceptionally high survival of eel, the very poor status of the stock, the fact that eel is not included in the landing obligation and that the species remains under separate management measures.

We also strongly regret that BALTFISH at this stage has not made an effort to look at the potential of other types of technical measures in support of avoiding unwanted catches, such as spatial and temporal “moving on measures” (in line with article 7.2 d) in the basic regulation), which are widely used in the global context. We urge BALTFISH to discuss the potential use of these types of measures and to add such provisions now.

10. Provision of documentation

This point is of outmost importance in order to meet one of the objectives of the landing obligation – better catch and stock data – which is greatly needed in order to improve stock advice and management.

The inclusion of the second sentence here causes confusion, and should preferably be removed, as it could be read as an exemption from the correct recording of all species in the log book.

11. Control measures

We find this section quite vague and would like to see a more detailed proposal of the control measures and instruments that will be used in order to ensure the fulfilment of the landing obligation.

It is crucial that monitoring, control and enforcement of the ban is harmonised throughout the Baltic Sea region, so that the same rules and conditions apply to all fishermen (ensuring a level playing field). This can potentially be achieved in collaboration with the European Fisheries Control Agency (EFCA) under a permanent Joint Deployment Programme for the Baltic – something that has already been suggested by the EFCA. We understand that work is progressing in this area and that Baltic Member States recently had a meeting with the EFCA to discuss this possibility and want to express our strong support for this development.

Considering the EFCA draft recommendations on control of the landing obligation, as well as experience around the world, it is also clear that use of a reference fleet together with conventional control is not going to be sufficient and that control efforts need to be tailored to the respective fisheries and make use of the full range of tools available, including CCTV and observer schemes.

12. Evaluation

We agree on the need of an evaluation of the discard plan according to the suggested timeline, though the first year may not be indicative of future functioning of the ban, as implementation requires a significant shift from current practices. We think that it is of particular importance that the evaluation reviews reduction of unwanted catches, use of selective gear and changes in fishing behaviour, as well as catch reporting, in order to properly assess whether the intentions of the ban have been fulfilled.

Finally, we would like to stress here that according to Article 15.6 of the basic regulation discard plans should only be developed and adopted as delegated acts where “no multiannual plan or management plan... is adopted for the fishery in question” and should cover a period of “no more than three years”. It is widely recognised that the discard ban plans now under development are a result of the unresolved issues between the co-legislators regarding all EU multiannual management plans. Therefore, after this period of a maximum of 3 years, all provisions necessary to fulfil the landing obligation should be incorporated into the relevant multiannual plans, in line with Article 15.5. This will also be an opportunity to review evaluations of the first few years and make improvements in the provisions.