

“Too many vessels chase too few fish”

– Is EU fishing overcapacity really being reduced?



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Author:

Charles Berkow, Senior Policy Adviser,
The Fisheries Secretariat

Contributor:

Lena Frändberg, researcher, www.lfresearch.se

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Prästgatan 9, 11129 Stockholm, Sweden
+46 (0) 8250790, info@fishsec.org, www.fishsec.org

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Our goal is well managed seas with rich biodiversity and thriving fish stocks to secure healthy and local sea-food to consumers and a sustainable fishing sector.

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Summary

Background

The CFP aims to reverse a historic trend of overfishing, create sustainable fish stocks and a viable fisheries sector¹. European waters have been heavily depleted for decades², leading to financial problems for many fishers.

In the run-up to the 2013 reform of the CFP, a 2009 European Commission Green Paper summed up the problem for European Union (EU) fisheries as being that “too many vessels chase too few fish.”³ Overcapacity in the EU fishing fleet drives overfishing and increases pressure on marine resources. According to the Green Paper it was the fundamental problem to be solved by the CFP reform.⁴

The reformed CFP accordingly has a number of provisions that seek to address overcapacity. Article 22 of the CFP’s Basic Regulation establishes mechanisms by which Member States are to seek to identify overcapacity and continually to adjust the size and nature of their fishing fleets to their fishing opportunities.⁵ The Member States are to submit annual reports to the Commission on the balance between the capacity of their fleets and their fishing opportunities (capacity balance reports). These national reports are to be based on guidelines developed by the Commission, and the guidelines are to indicate relevant parameters. If an overcapacity is identified by a Member State in its report, the Member State is to prepare and submit an action plan to the Commission to achieve balance. Each year, the Commission is in turn to inform the European Parliament and Council about the balance between Member States’ fleets and fishing opportunities.

Article 17 of the Basic Regulation implies that in the event of a need to reduce overall capacity, the most sustainable fisheries are to be prioritised for retention.

EU financial assistance to Member States and fisheries under Articles 40–42 of the CFP can be used to support the adjustment process, and submission of the annual capacity balance report is a precondition for obtaining certain funding.

Regionalisation (decentralisation of some decision-making to the Member States fishing in a particular marine area) under Article 18 is an important part of the reformed CFP.⁶ It has the potential to improve the sustainability of fisheries and the efficiency of their administration. In this context, politicians and civil servants managing fisheries, as well as fishers and potential investors, will need balance assessments conducted at the regional level. These do not at present exist.

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¹ See for example The Common Fisheries Policy (CFP), https://ec.europa.eu/fisheries/cfp_en

² European Commission: GREEN PAPER Reform of the Common Fisheries Policy, COM(2009)163 final, Brussels, 22.4.2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF> (henceforth referred to as the Green Paper). Note that in the present study, “fishers” refers to individuals and companies that fish commercially.

³ Green Paper, p. 5

⁴ Green Paper, p. 8

⁵ Official Journal of the European Union, REGULATION (EU) No 1380/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on the Common Fisheries Policy. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1380> (henceforth referred to as the Basic Regulation). “Fishing opportunities” refers to permitted levels of catches or of effort spent trying to catch fish.

⁶ https://ec.europa.eu/fisheries/cfp/fishing_rules/regionalisation_en

In this study, we take a closer look at Article 22 and the reporting guidelines developed by the European Commission in accordance with it. We also take a look at some of the capacity balance reports submitted by Member States in the Baltic Sea region and at the way the European Commission has been dealing with these reports. Besides this, we look at capacity balance reports prepared by the European Commission's Scientific, Technical and Economic Committee for Fisheries (STECF).⁷

The capacity balance reporting relating to the western Baltic cod fishery, a fishery showing clear symptoms of overcapacity and overfishing, is used as a running case study.

The goals of the study are:

- to review Member States' compliance with the provisions on submission of capacity balance reports and action plans to the European Commission, and the Commission's compliance with the requirements on reporting to the European Parliament and Council, as set out in Article 22; and
- to identify whether the capacity balance reporting regime and the Commission's guidelines provides decision-makers and stakeholders at the national, regional, and EU levels with the information about overcapacity that they need in order to help them achieve the objectives of the CFP.

Findings

On the basis of our analysis of capacity balance reports by the EU Member States in the Baltic Sea region, STECF and the European Commission, as well as the Commission's Guidelines⁸ for national reporting under Article 22, we conclude that **decision-makers and stakeholders do not currently receive adequate information** from Member States and the Commission about overcapacity. As a consequence, **the CFP's system designed to reduce overcapacity is in all probability not delivering the intended reductions.**

One of the primary reasons appears to be that the Commission itself fails to comply with key provisions of Article 22 in a number of ways. For example, its Guidelines do not indicate relevant enough parameters and indicators for national capacity balance reporting. Moreover, there is overall **poor compliance** with the Basic Regulation and the Commission's Guidelines among EU Member States in the Baltic Sea region.

STECF has repeatedly criticised the Commission's Guidelines and proposed improvements. However, **STECF's criticisms and recommendations have not been reflected in the Commission's reports to the European Parliament and Council**, and the Commission appears to have taken no follow-up actions in response to STECF's findings. Furthermore, there is a **serious weakness in the CFP's indicators for measuring fishing capacity**. They do not take account of 'technological creep', as a

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⁷ STECF is an expert advisory body set up by the European Commission and connected to the Commission's scientific service, the Joint Research Centre (JRC) <https://ec.europa.eu/jrc/en/about/jrc-in-brief>. See also COMMISSION DECISION of 25 February 2016 setting up a Scientific, Technical and Economic Committee for Fisheries (2016/C 74/05) https://stecf.jrc.ec.europa.eu/c/document_library/get_file?uuid=679f11ad-af3a-4ea0-9c65-b64f9711e122&groupId=43805

⁸ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Guidelines for the analysis of the balance between fishing capacity and fishing opportunities according to Art 22 of Regulation (EU) No 1380/2013 of the European Parliament and the Council on the Common Fisheries Policy, COM(2014) 545 final, Brussels, 2.9.2014 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0545:FIN:EN:PDF> (referred to henceforth as the Guidelines or the Commission's Guidelines).

result of which a Member State's ability to catch fish may increase despite indicators showing a decrease.⁹

From a regional perspective, neither of the two national reports¹⁰ analysed most closely in this study reflect the actual extent of overcapacity in the western Baltic cod fishery. Fleet segments¹¹ are identified and grouped together in such a way that an overcapacity is identified for small vessels, but not for larger vessels (even if the latter fish more from the same depleted stock¹²). It is not possible to obtain a good regional overview either from the national reports of the Member States in the Baltic Sea region or from the reviewed capacity reports produced by STECF. Thus, **reporting does not currently provide fisheries managers and stakeholders at the regional level with the information needed to reduce overcapacity and to pressure decision-makers to prevent overfishing.**

It is still common for Member States and some stakeholders to argue for the right to catch more fish for so-called socio-economic reasons.¹³ However, for a Member State to plead socio-economic reasons for higher fishing quotas may simply indicate that it has an overcapacity in its fleet. **Claims regarding socio-economic impacts should trigger the Commission (and where relevant, the Member State) to take a closer look at the capacity balance of fleet segments potentially fishing the relevant stock.**

The potential effects of Brexit are difficult to assess fully, but some scenarios may result in an overcapacity in remaining EU Member States that in turn risks spilling over into other EU fishing waters. Therefore, **it is a matter of urgency that a robust EU-wide system to identify and address overcapacity be in place by the time Brexit enters fully into force.**

Recommendations

We recommend that **EU Member States:**

- give closer consideration to the intentions behind the CFP and follow the European Commission's Guidelines more closely when reporting on capacity balance;

⁹ 'Technological creep' refers to technological advances that increase the ability to catch fish but are not captured by the conventional method of measuring fishing capacity. See for example Marchal, Paul & Bo, Andersen & B, Caillart & Eigaard, Ole & Guyader, Olivier & Holger, Hovgaard & Iriondo, Ane & Fur Fanny, Le & Sacchi, Jacques & Santurtún, Marina. (2007). Impact of technological creep on fishing effort and fishing mortality, for a selection of European fleets. ICES Journal of Marine Science (1054-3139) (Oxford university press), 2007 , Vol. 64 , N. 1 , P. 192-209. 64. https://www.researchgate.net/publication/29491769_Impact_of_technological_creep_on_fishing_effort_and_fishing_mortality_for_a_selection_of_European_fleets

¹⁰ Those produced in 2016 and 2015 respectively by Denmark and Germany, who together dominate the western Baltic cod fishery. Links to these and the other national reports reviewed may be found in the References section at the end of this study.

¹¹ A fleet segment is a subdivision of a country's overall fishing fleet. A segment is normally defined as a combination of a particular fishing technique category and a vessel length category. See for example <https://datacollection.jrc.ec.europa.eu/wordef/fleet-segment-dcf>

¹² A stock is defined in the Basic Regulation as "a marine biological resource that occurs in a given management area" (Art. 4(14)), that is, the population of a particular species of fish in a particular area. ICES defines a fish stock thus:

"A part of a fish population usually with a particular migration pattern, specific spawning grounds, and subject to a distinct fishery. In theory, a Unit Stock comprises all the individuals of fish in an area, which are part of the same reproductive process. It is self-contained, with no emigration or immigration of individuals from or to the stock. On practical grounds, a fraction of the unit stock is considered a 'stock' for management purposes (or a management unit), as long as the results of the assessments and management remain close enough to what they would be on the unit stock."

ICES, Acronyms and terminology, http://www.ices.dk/community/Documents/Advice/Acronyms_and_terminology.pdf

¹³ See for example the 'bible' with comments from national delegations prepared by the General Secretariat of the Council in advance of the Agriculture and Fisheries Council meeting in October 2016 to determine fishing quotas for the Baltic Sea for 2017: Note from the General Secretariat of the Council to Delegations, 11813/16 PECHÉ 296 + ADD 1 - COM(2016) 545 final + Annex, 22 September 2016 <http://data.consilium.europa.eu/doc/document/ST-12395-2016-REV-1/en/pdf>

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- be more active in seeking to identify and address imbalances, for example by providing supplementary information needed for more accurate assessments;
- present capacity balance conclusions in a clear and transparent manner;
- submit robust action plans that are in compliance with European Commission's Guidelines when they identify an overcapacity;
- follow up on action plans and include updates on progress on capacity reduction in their annual capacity balance reports;
- request the European Commission to improve its Guidelines by including parameters and indicators for capacity balance reporting that are more relevant, as well as clearer directions for fleet segmentation, in order to remedy the deficiencies identified by STECF; and
- encourage the European Commission to request STECF or another independent body to prepare a regional capacity balance report for the Baltic Sea region as a pilot area.

We recommend that the **European Commission**:

- revise its Guidelines, by:
 - altering their approach to fleet segmentation to ensure that it reflects the total pressure on a fish stock;
 - revising the parameters and indicators for capacity balance reporting as recommended by STECF; and
 - including templates for the annual national capacity balance report and action plan;
- include reference to Member States' action plans in its annual capacity balance reports to the European Parliament and Council, as stipulated by the CFP;
- include a summary of the opinions of STECF in its annual capacity balance reports to the European Parliament and Council, as was formerly stipulated by the Basic Regulation prior to its 2013 revision;
- take action when Member States do not comply with its Guidelines, for example by:
 - asking follow-up questions of, and providing feedback to, Member States; and
 - using the financial penalties available under Article 22(4) of the Basic Regulation when Member States continually fail to comply with the Guidelines;
- request that STECF develop and apply a methodology for taking into account 'technological creep' when assessing trends in fishing fleet capacity;
- request that STECF or another independent body take a closer look at the capacity balance of fleet segments fishing a particular stock in cases where Member States or fishers' representatives argue that scientific advice should not be followed because of socio-economic impacts; and
- request that STECF or another independent body conduct a pilot regional assessment of capacity balance covering the Baltic Sea region.

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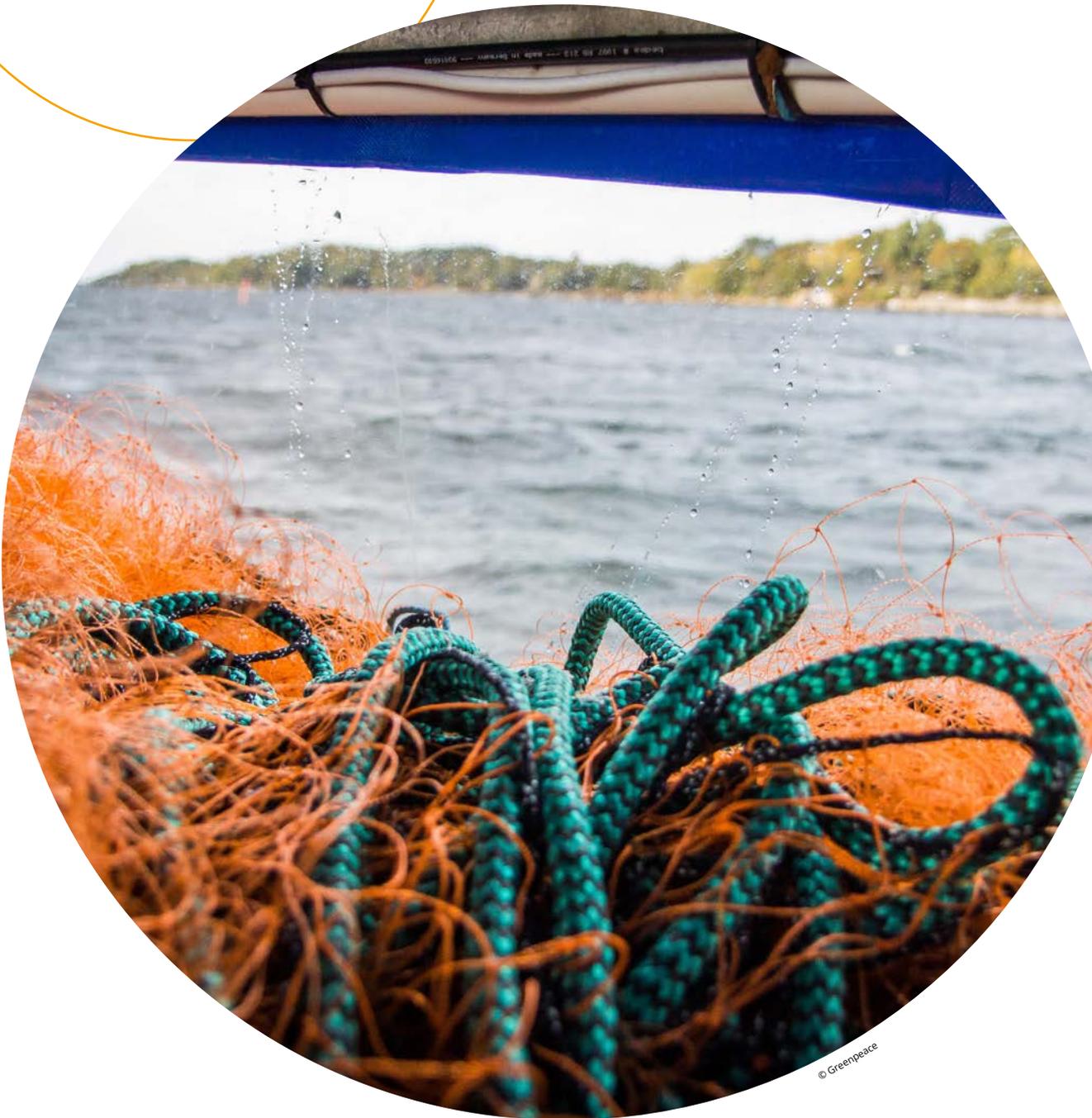
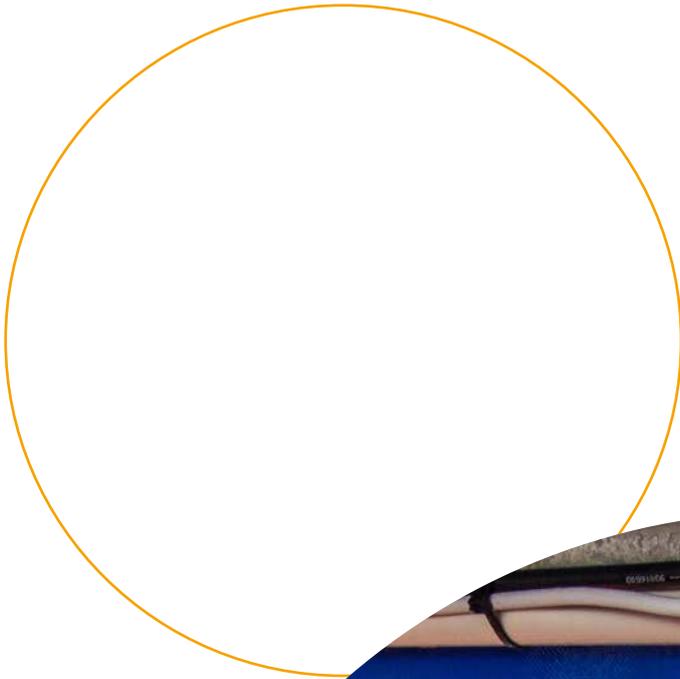


We recommend that the **European Parliament** and **national parliaments**:

- act to ensure that the rules and intentions of the CFP are followed, and that capacity balance reporting does in fact contribute to achieving the goals of the CFP, by:
 - monitoring developments in capacity balance reporting more closely;
 - ensuring that the European Commission includes reference to national action plans in its annual capacity balance reports to the European Parliament and Council;
 - requesting the European Commission to include the opinions of STECF in its annual capacity balance report; and
 - requesting the European Commission to revise its Guidelines in order to remedy the deficiencies identified by STECF, with particular attention to the relevance of fleet segmentation, parameters and indicators; and
- encourage the European Commission to request STECF or another independent body to prepare a regional capacity balance report for the Baltic Sea region.

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1. Fishing fleet overcapacity in the Common Fisheries Policy

1.1 Fishing fleet overcapacity – the fundamental problem

1.1.1. A global problem

Overfishing and the consequent depletion of our common resources in the oceans threaten the wider marine environment as well as the commercial fisheries sector and those working in it, the welfare of communities dependent on fishing, and ultimately global food security. At the World Summit on Sustainable Development in Johannesburg in 2002, governments from all around the world agreed urgently to address the issue of managing fleet capacity.¹⁴

Excessive fishing capacity has long been recognised by the UN Food and Agriculture Organization (FAO) as the primary cause of overfishing and the resultant declines of fish stocks.¹⁵ Overcapacity in fishing fleets can lead to:

- political pressure from fishers' organisations, local politicians and others to set quotas above scientifically recommended levels;
- consequent overexploitation and depletion of stocks;
- poor profitability in the sector;
- conflicts between different fleet segments competing for the same fish stock;
- increasing incentives to engage in illegal practices such as fishing above set quotas or high-grading;¹⁶ and
- problems with monitoring and enforcement, as authorities' efforts may not keep pace with increased incentives to engage in illegal practices.

1.1.2 A European problem

The marine ecosystems in the EU's waters have the potential to ensure highly productive fish stocks and a thriving fisheries sector.¹⁷ Unfortunately, these waters have been overfished for decades, leading to depleted stocks and economic problems for the fisheries sector. The CFP aims to reverse this downward trend, creating healthy fish stocks, sustainable fisheries and a viable fishing industry.

Overcapacity has long been recognised as a problem in the EU. The CFP, originally

¹⁴ Plan of Implementation of the World Summit on Sustainable Development, Article 31(d), http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

¹⁵ FAO Fisheries technical paper 445, 2003, Measuring capacity in fisheries, <http://www.fao.org/tempref/docrep/fao/006/y4849e/y4849e00.pdf>

¹⁶ 'High-grading' refers to the discarding of a portion of a vessel's legal catch that could have been sold in order to retain a higher or larger grade of fish that will bring higher prices. (ICES, Acronyms and terminology, www.ices.dk/community/Documents/Advice/Acronyms_and_terminology.pdf)

¹⁷ See for example Green Paper, p. 7.

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adopted in 1983, was reformed in 1992 with the intention (among others) to “remedy the serious imbalance between fleet capacity and catch potential”.¹⁸ The reform resulted in compulsory targets for capacity reduction; however, the results were insufficient to remedy the problem.¹⁹

Another revision of the CFP took place in 2002, with new measures being introduced to address the problem of overcapacity.²⁰ However, these measures also proved inadequate: the Green Paper prepared by the Commission in 2009, in advance of the 2013 reform, concluded that

[d]espite continued efforts, fleet overcapacity remains the fundamental problem of the CFP. Overall, the European fleets remain far too large for the resources available and this imbalance is at the root of all problems related to low economic performance, weak enforcement and overexploited resources. The future CFP must have in-built mechanisms to ensure that the size of European fishing fleets is adapted and remains proportionate to available fish stocks. This is a pre-requisite for all other pillars of the policy to work.²¹

Or put more simply

the fishing fleets remain too large for the available resources ... too many vessels chase too few fish.²²

The Green Paper further found that

[a]nother important consequence of the vicious circle of overfishing, overcapacity and low economic resilience is high political pressure to increase short-term fishing opportunities at the expense of the future sustainability of the industry. Sustained political and economic pressure has led industry and Member States to request countless derogations, exceptions and specific measures. In many cases, the industry has found ways to counteract the short-term negative economic effects of these measures, leading to the need for even more detailed measures. Documenting, deciding, implementing and controlling the vast and diverse European fisheries through such micromanagement is increasingly complex, difficult to understand and very costly to manage and control.²³

In other words, resistance by fishers to short-term measures to increase the long-term sustainability of the fisheries sector had resulted in an increase in regulation and management effort which is burdensome both to authorities and to the industry. Resistance can take the form of demands for exemptions, and the more exemptions, the more administration. Resistance can also take the form of cheating, and the more cheating, the more control. The Green Paper went on to note that the problems associated with overcapacity were compounded by

heavy public financial support given to the fishing industry, one of the results being to artificially maintain excess fishing capacity. On top of direct aid from

¹⁸ European Parliament. Fact Sheets on the European Union. The Common Fisheries Policy: origins and development http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.3.1.html

¹⁹ See for example European Court of Auditors, Special Report No 12/2011: Have EU Measures Contributed to Adapting the Capacity of the Fishing Fleets to Available Fishing Opportunities? https://www.eca.europa.eu/Lists/ECADocuments/SR11_12/SR11_12_EN.PDF, henceforth referred to as the Auditors' report.

²⁰ Green Paper, p. 6. See Annex I in this study for relevant excerpts from the 2002 Basic Regulation.

²¹ Green Paper, p. 8

²² Green Paper, p. 5

²³ Green Paper, p. 7

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the European Fisheries Fund and similar national aid schemes, the industry benefits from a number of indirect subsidies ...²⁴

and that this financial support,

including tax exemptions ... also often contradicts with CFP objectives, in particular the need to reduce overcapacity, and has sometimes appeared as compounding structural problems rather than helping to solve them.²⁵

It also noted that previous efforts to reduce capacity had been

broadly offset by technological progress in fishing efficiency (estimated at 2 to 3% a year).²⁶

This progress can result from improvements in areas such as electronic equipment, gear design, engines and deck equipment, and changes in fishing methods such as new catch-handling procedures.²⁷ Any policy to reduce capacity must therefore reduce the ability to catch fish by more than it is increased by so-called 'technological creep'. However, it has been repeatedly pointed out (for example in a 2011 report from the European Court of Auditors) that the capacity increase due to technological creep is not captured by the CFP measures of fishing capacity, which are based on a vessel's gross tonnage (GT) and engine power in kilowatts (kW),²⁸ following a regulation dating from 1986.²⁹

STECF prepares an annual review of national reports on Member States' efforts to achieve a balance between fleet capacity and fishing opportunities. In these reviews STECF also reviews the action plans and computes values for the Guidelines' indicators, based on information from national reports.³⁰ STECF has also produced reviews of the Commission's report to the Council and the European parliament on Member States' efforts to achieve a balance between fleet capacity and fishing opportunities.³¹

1.1.3 Questions asked by this study

Reporting under Article 22 of the CFP's Basic Regulation should provide the national authorities of Member States, and indirectly the European Commission and Parliament, as well as other interested stakeholders, with the information they need to identify and act on fleet overcapacity in order to help realise the goals of the reformed CFP. The present study assesses whether this is currently the case by

²⁴ Green Paper, p. 8. The European Fisheries Fund was replaced in the 2013 reform by the European Maritime and Fisheries Fund (EMFF). The EMFF is discussed further in sections 1.4 and 3.5.

²⁵ Green Paper, p. 22

²⁶ Green Paper, p. 8

²⁷ See for example Marchal, Paul & Bo, Andersen & B, Caillart & Eigaard, Ole & Guyader, Olivier & Holger, Hovgaard & Iriondo, Ane & Fur Fanny, Le & Sacchi, Jacques & Santurtún, Marina. (2007). Impact of technological creep on fishing effort and fishing mortality, for a selection of European fleets. ICES Journal of Marine Science (1054-3139) (Oxford university press), 2007, Vol. 64, N. 1, P. 192-209. 64. https://www.researchgate.net/publication/29491769_Impact_of_technological_creep_on_fishing_effort_and_fishing_mortality_for_a_selection_of_European_fleets or Ole Ritzau Eigaard, Paul Marchal, Henrik Gislason & Adriaan D. Rijnsdorp (2014) Technological Development and Fisheries Management, Reviews in Fisheries Science & Aquaculture, 22:2, 156-174, DOI: [10.1080/23308249.2014.899557](https://doi.org/10.1080/23308249.2014.899557) <http://www.tandfonline.com/doi/full/10.1080/23308249.2014.899557?scroll=top&needAccess=true>

²⁸ Auditors' report, p. 17

²⁹ Basic Regulation, Article 4 (24).

³⁰ See, for example, Scientific, Technical and Economic Committee for Fisheries (STECF) Assessment of balance indicators for key fleet segments and review of national reports on Member States efforts to achieve balance between fleet capacity and fishing opportunities (STECF-16-18); Publications Office of the European Union, Luxembourg, EUR 27134 EN, JRC 94933 <https://stecf.jrc.ec.europa.eu/documents/43805/1453963/STECF+16-18+-+Balance+capacity.pdf>

³¹ See for example COMMISSION STAFF WORKING PAPER REPORT OF THE SCIENTIFIC, TECHNICAL AND ECONOMIC COMMITTEE FOR FISHERIES REVIEW OF THE ANNUAL REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON MEMBER STATES' EFFORT DURING 2005 TO ACHIEVE A SUSTAINABLE BALANCE BETWEEN FISHING CAPACITY AND FISHING OPPORTUNITIES. https://stecf.jrc.ec.europa.eu/documents/43805/122924/06-11_ADHOC+06-03+-+Balance+capacity+fishing+opportunities_SECxxx.pdf

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reviewing the European Commission's Guidelines on national reporting, recent annual capacity balance reports from Member States with Baltic Sea coasts, STECF's recent annual reports on capacity balance and the annual reports from the European Commission to the European Parliament and the European Council.

In order to assess the effectiveness of the reporting regime in ensuring identification of and action on overcapacity, we try to answer the following questions:

- Do the institutions responsible for fisheries policy, stakeholders and the public get the information they need in order to assess whether there is an imbalance between fleet capacity and the fishing opportunities?
- Do Member States comply with Article 22 of the Basic Regulation and the intentions behind it by:
 - reporting according to the Commission's Guidelines; and
 - taking actions to correct imbalance in their fishing fleets?
- Does the Commission comply with Article 22 and the intentions behind it by:
 - providing Guidelines with relevant parameters and indicators, and creating appropriate reporting formats that are easy to understand and contribute to an EU-level overview;
 - reporting to the European Parliament and Council in a transparent manner; and
 - taking action if Member States:
 - do not follow its Guidelines; or
 - fail to implement action plans?

As a running case study, we consider the western Baltic cod fishery. Given that this fishery appears to be a clear case of overcapacity and overfishing (see section 2.1.2) then if this overcapacity is not identified and addressed in the various capacity balance reports reviewed, we can conclude that the intentions of the CFP are not currently being met.

1.2 The CFP's requirements for reporting and action on capacity balance

1.2.1 Fishing opportunities

Capacity balance is about fishing capacity in relation to fishing opportunities. In the CFP, fishing opportunities are based on a target related to maximum sustainable yield (MSY).³²

At the beforementioned World Summit on Sustainable Development in Johannesburg in 2002, governments from all around the world, including the EU Member States, made a commitment to;

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³² The CFP defines maximum sustainable yield as "the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without significantly affecting the reproduction process" (Basic Regulation, Article 4(7)).

maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015.^{33 34}

However, up until the time of the 2013 reform of the CFP, the EU Member States' progress towards the goal of maintaining or restoring stocks to MSY levels was insufficient.³⁵ Accordingly, the reform established reaching MSY levels as the main target for all fisheries, stipulating that by 2020 at the latest (and where possible by 2015) fishing pressure is to be set at F_{MSY} (the level of catches of a given stock that produces the MSY).³⁶

Outside the Mediterranean and Black Seas, EU-wide fishing opportunities for individual fisheries, expressed as total allowable catches (TACs), are normally determined by Member States' fisheries ministers in the forum of the Agriculture and Fisheries Council (AGRIFISH). Ministers negotiate the TACs on the basis of proposals made by the European Commission.³⁷ The Commission proposals in turn refer to scientific assessments of the state of the fish stocks, of MSY and of F_{MSY} . TACs proposed by the Commission are often higher than the scientific recommendations, and the TACs agreed by ministers can in turn be higher than the Commission proposals.

The TAC for each stock is divided among Member States according to a fixed pattern, in the form of national quotas that define each Member State's fishing opportunities. The Member States in turn allocate fishing opportunities to specific vessels in different ways. In the Mediterranean and Black Seas, TACs are not normally used and management is more complex (and less successful).³⁸

The most important scientific assessments for various stocks in EU waters outside the Mediterranean and Black Seas are carried out by the International Council for Exploration of the Seas (ICES).³⁹ These assessments are conducted according to maritime areas or subdivisions. For example, subdivisions 22–32 refer to the Baltic Sea as a whole, while subdivisions 22–24 refer to the western Baltic. The Baltic cod population is divided into two stocks, the eastern and the western.⁴⁰

³³ United Nations: Plan of Implementation of the World Summit on Sustainable Development http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf Article 31(a), and FAO, World Summit on Sustainable Development 2002 and its implications for fisheries <http://www.fao.org/docrep/meeting/005/y8294E.htm>

³⁴ EU Commission: Questions and Answers on Maximum Sustainable Yield (MSY) http://europa.eu/rapid/press-release_MEMO-06-268_en.htm

³⁵ See for example Ending overfishing: much to celebrate, much to do, https://ec.europa.eu/dgs/maritimeaffairs_fisheries/magazine/en/policy/ending-overfishing-much-celebrate-much-do

³⁶ European Parliament, Fact Sheets on the European Union, The Common Fisheries Policy: origins and development http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_5.3.1.html "F" refers to fishing pressure. A more technical definition of F in this context is: "F, Fishing mortality: Instantaneous Rate of Fishing Mortality. When fishing and natural mortality act concurrently, F is equal to the instantaneous total mortality rate (Z), multiplied by the ratio of fishing deaths to all deaths." ICES, Acronyms and terminology, http://www.ices.dk/community/Documents/Advice/Acronyms_and_terminology.pdf

³⁷ Total allowable catches (TACs) are catch limits, expressed in tonnes or numbers, set for most commercial fish stocks in EU waters outside the Mediterranean and Black Seas. Where used, they are a key tool for regulating commercial fishing. They are also often referred to as fishing opportunities. https://ec.europa.eu/fisheries/cfp/fishing_rules/tacs_en

³⁸ For a description of management and its results in the Mediterranean Sea, see https://ec.europa.eu/fisheries/cfp/mediterranean_en; for a comparison of the status of the stocks compared with other regions, see European Environmental Agency, Status of marine fish and shellfish in European seas <https://www.eea.europa.eu/data-and-maps/indicators/status-of-marine-fish-stocks-3/assessment>

³⁹ For more on ICES, see <http://www.ices.dk/explore-us/who-we-are/Pages/Who-we-are.aspx>

⁴⁰ Both the eastern and western Baltic cod stocks may be found in subdivision 24 (roughly between Bornholm and Rostock). ICES.2017. Cod (*Gadus morhua*) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf>

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1.2.2 Article 22 capacity adjustment and reporting requirements

Article 22 in the Basic Regulation requires each Member State to continually adjust the fishing capacity of its fleet to its fishing opportunities. It includes an obligation for Member States to report annually to the European Commission on fleet capacity in relation to fishing opportunities. These capacity balance reports must follow a set of Guidelines adopted by the Commission (see section 1.2.3), which are to cover relevant technical, social and economic parameters. Article 22 further stipulates that the reports are to seek to identify structural overcapacity by fleet segment and to include an action plan for segments with identified structural overcapacity.⁴¹ On the basis of these Member State reports, Article 22 requires the European Commission to produce an annual report to the European Parliament and European Council on the balance between the EU's fishing fleet capacity and fishing opportunities in EU waters (see section 1.3). Failure on the part of a Member State to comply with the reporting requirements or to implement an action plan may result in a reduction of EU financial assistance.⁴²

Article 22(7) requires Member States to ensure by 1 January 2014 that the capacity of their fleets does not at any time exceed specified ceilings, expressed in gross tonnage (GT) and kilowatts (kW). Numerical values for both of these parameters for each coastal Member State are specified in an annex.

1.2.3 The European Commission's Guidelines

The Guidelines reaffirm the need to attain a balance between fishing opportunities and fleet capacity:

The existence of fleets which are not in balance with the resource they exploit has been an important driving force behind the historic overexploitation of resources in European waters. The new Common Fisheries Policy confirms the need for measures to manage fishing capacity: Member States are required to put in place measures to adjust the fishing capacity of their fleets to their fishing opportunities over time.⁴³

1.2.3.1 A common approach

A range of challenges was identified in the run-up to the 2013 reform of the CFP. One of the primary ones was identified in a report by environmental law organisation ClientEarth as the impossibility of having “a clear overview at the EU level of EU fishing capacity”.⁴⁴ This was attributed to the lack of alignment between the indicators and sets of information used by different Member States when drafting the annual capacity balance reports they were required to submit to the Commission under the 2002 CFP reform.⁴⁵

The issue was addressed in the 2013 reform, where Article 22(2) subparagraph 1 of the Basic Regulation grants the European Commission authority to draft a set of Guidelines for Member States to follow in drafting their capacity balance reports:

⁴¹ It may be noted that the Basic Regulation does not define “structural overcapacity”, while the Guidelines do not use the term “structural”. This may of course cause some uncertainty or create useful room for interpretation.

⁴² The provisions of Article 22 are reproduced in Annex II and are discussed in more detail in this chapter.

⁴³ Guidelines, p. 2

⁴⁴ ClientEarth. 2015. Reporting on fishing capacity under the CFP and EMFF <https://www.documents.clientearth.org/wp-content/uploads/library/2015-06-11-reporting-on-fishing-capacity-under-the-cfp-and-emff-ce-en.pdf>, (henceforth referred to as ClientEarth), p 5

⁴⁵ The requirement for national reports to be submitted to the Commission was set out in Article 14(1) of the Basic Regulation of 2002; see Annex I in this study.

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to facilitate a common approach across the Union, that report shall be prepared in accordance with common guidelines which may be developed by the Commission indicating the relevant technical, social and economic parameters.

Although one aim of the Guidelines is an alignment between the indicators used by different Member States to assess capacity balance, in practise, the Guidelines leave Member States substantial leeway to decide on the format and structure of their reports. The capacity balance reports reviewed for this study (see Chapter 2) differ in a number of ways, including the range of data they include, the presentation of the capacity balance assessments and the level of detail provided about the relationship between the fishing fleet and its target fisheries. These different report formats and structures may increase the risk of important results being missed by the reader, even if they are mentioned in the report. Such differences also make it more difficult to read through, interpret and compare the results of various reports.

1.2.3.2 Indicators

The Guidelines specify six basic indicators (presumably corresponding to the parameters mentioned in Article 22): two biological indicators measuring potential impact on overfished or depleted stocks, two economic indicators of fleet viability and two technical indicators measuring vessel use.⁴⁶ For each indicator, the Guidelines specify a threshold which, when crossed, could be an indication of capacity imbalance.⁴⁷ The indicators are presented in more detail, along with their threshold values, in Annex III.

The Guidelines refer to, but do not prescribe, the use of a “traffic light system” to present values for indicators. **Green** signifies that the fleet segment’s capacity is assessed as being in balance with its fishing opportunities according to the indicator. **Yellow** suggests that the segment is approximately in balance or only slightly out of balance. **Red** may indicate an imbalance. For example, a segment with a vessel utilisation below 0.7 (that is, vessels are used only around 70% as much as they could feasibly be used) would be assigned a red light.⁴⁸

The Guidelines point to the technical (or vessel use) indicators as being of particular value when assessing a segment’s capacity:

These indicators shows [sic] by how much fleet capacity could be reduced without reducing overall fleet output (landings). The technical indicator can therefore be considered the baseline indicator for each fleet segment.⁴⁹

In some cases where a Member State’s positive assessment of fleet segment balance contradicts the conclusion that would be drawn from an indicator value, the Member State is required to justify its reasoning in detail:

Where the indicators suggest a situation of imbalance, but a Member State considers that nevertheless the fleet segment in question is in balance with resources (or vice versa), the Commission will expect a supporting analysis to be provided.⁵⁰

⁴⁶ The two biological indicators assess whether vessels are relying on overfished stocks, or involved in causing a high biological risk to a depleted stock. The two economic indicators evaluate whether fleet segments are economically sustainable in the long term (allowing capital investments) and able to cover their costs in the short term. The technical or vessel use indicators measure how intensively the ships in a fleet segment are being utilised.

⁴⁷ Guidelines, pp. 5-7

⁴⁸ Guidelines p. 16

⁴⁹ Guidelines, p. 15

⁵⁰ Guidelines, p. 4

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However, the review of selected national reports in Chapter 2 shows that this is not always done.

STECF has repeatedly criticised some of the indicators defined in the Guidelines (see section 1.2.3.7 below).

1.2.3.3 Fleets

Article 22(2) subparagraph 2 of the Basic Regulation requires Member State capacity balance reports to

contain the annual capacity assessment **of the national fleet and of all fleet segments** of the Member State. The report shall **seek to identify structural overcapacity by segment** and shall estimate the long-term profitability by segment.⁵¹ [Emphasis added]

Reporting and assessment at segment level is important. But if the total impact of a Member State's fleet on a stock is not assessed in cases where several segments target the same stock, there is a risk of losing important information about the total pressure on that stock, and it becomes even more difficult to estimate what the total potential pressure on that stock would be if there were to be maximum usage of the existing capacity. Article 22(2) subparagraph 2 of the Basic Regulation clearly requires reporting both on the **national fleet** and on **all fleet segments**. However, the Guidelines fall short of this requirement, relating only to the segment level:

The purpose of these guidelines is to provide a common methodology for the assessment of the balance over time between fleet capacity and fishing opportunities at **fleet segment** level.⁵² [Emphasis added]

Since the Guidelines do not require a Member State to report on its national fleet as whole, such information is missing in several of the national reports reviewed in this study. This is a clear sign of the inadequacy of the Guidelines. As is shown in the review of national reports in Chapter 2, this can make it more difficult to identify and understand excess pressure on a stock fished by several segments from one country. And as fleets from several countries often target the same stock, it is important to be able to assess capacity at the regional level (see section 2.6). Further, this lack of fleet-level information poses a serious obstacle to obtaining the sort of EU-level overview of capacity that was identified in advance of the 2013 reform as desirable but currently unobtainable.

1.2.3.4 Segments

A key issue for the usefulness of national capacity balance reports is the definition of the fleet segments according to which reporting is to be carried out.

The Guidelines require that

the annual national fishing fleet reports contain the following additional information:

- (a) a description of the fishing fleet segments in relation to fisheries.⁵³

However, in contrast with their detailed instructions for calculating certain indica-

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⁵¹ CFP Basic Regulation

⁵² Guidelines, p. 3

⁵³ Guidelines, p. 7

tors, the Guidelines give only a vague description of how fleet segments should be defined. The Guidelines do state that

in order to keep the workload manageable and to have standardised analyses, these parameters should be calculated using data collected under the Data Collection Framework [9].

[9] See Council Regulation (EC) No 199/2008 of 25 February 2008, concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy, OJ L 60, 5.3.2008.⁵⁴

A “fleet segment” is defined in the implementing decisions to the regulation as “a group of vessels with the same length class (LOA, length overall) and predominant fishing gear during the year”. There are eight length classes, along with three general categories of gear (“active”, “passive”, and “polyvalent” (active and passive)) which are in turn divided into a total of 13 groups. Data is to be collected and presented on the basis of the fleet segments defined by these parameters.⁵⁵ The Guidelines simply accept these pre-existing definitions and do not require segments to be defined in a way that would facilitate the identification of potential overcapacity with regard to all vessels engaged in a particular fishery.

When Member States look at the regulations and implementing decisions for guidance, it may not be clear to them whether or not it is compulsory for capacity assessments to be based on fleet segment definitions involving vessel length and gear type, **and nothing more**. Our review of Member States’ capacity balance reports shows that in some cases, Member States have made more detailed distinctions, revealing significant information. The Commission’s Guidelines emphasise the importance of balancing each fleet segment to the stocks it fishes on:

To this end, it is recommended to assess, for each fleet segment, the extent to which each fleet relies on stocks that are fished above the target rates, and to assess how many stocks that make up a significant part of their catches are at biological risk due to low abundance and are significantly affected by the fleet. This will allow an assessment of the imbalance between each fleet segment and the stocks they rely on.⁵⁶

However, what really needs to be identified is the total pressure on a particular fish stock as implied by the Guidelines’ recommendation to consider which stocks “are significantly affected by the fleet” rather than by the individual segment. Accordingly, if the segment definitions are too broad (defining segments engaged in several fisheries), fisheries managers in the Member States concerned will not have access to the information they need in order to identify and reduce overcapacity; and STECF,

⁵⁴ Guidelines, p. 3. This regulation has since been replaced by Council Regulation 2017/1004. Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017R1004> These regulations were followed up by implementing decisions in 2009 and 2016 (the latter of which came into force in 2017), respectively. Official Journal, COMMISSION DECISION of 18 December 2009 adopting a multiannual Community programme for the collection, management and use of data in the fisheries sector for the period 2011-2013 (notified under document C(2009) 10121) (2010/93/EU) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:041:0008:0071:EN:PDF> (henceforth referred to as “Implementing decision”), and Official Journal, COMMISSION IMPLEMENTING DECISION (EU) 2016/1251 of 12 July 2016 adopting a multiannual Union programme for the collection, management and use of data in the fisheries and aquaculture sectors for the period 2017-2019 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D1251>

⁵⁵ See for example Implementing decision, Chapter III.A.2.1. and Appendix III.

⁵⁶ Guidelines, pp 2-3

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the Commission and others will not be able to get a satisfactory overview of the situation. This can, however, be rectified if adequate supplementary information is provided. But this is not required under the current Guidelines.

The Commission's Guidelines do go part of the way towards acknowledging this problem, in the following terms:

The indicators are intended to be used in combination to draw conclusions on imbalance for each fleet segment separately. Aggregated analyses across many different fisheries in one Member State are not useful.⁵⁷

While this advice identifies the aggregation of different fisheries (i.e. different stocks targeted) as unhelpful, it implies that ensuring separate treatment of each segment (as defined by vessel length and main gear type) is sufficient to avoid such aggregation. Unfortunately, this is misleading, inasmuch as many of the fleet segments as currently defined target more than one fish stock. Thus, while aggregated analyses **across many different fisheries in one Member State** may not be useful (although required under Article 22(2) subparagraph 2), aggregated analyses **of individual fisheries across different segments and Member States** may be crucial to get an accurate picture of the capacity balance. This issue is discussed in more detail in section 2.6 below.

1.2.3.5 Geographical basis used for stock and capacity balance assessment, and for determining of fishing opportunity

Ideally, the management areas for which fishing opportunities are determined should match the areas covered by stock assessments. When the geographical areas for which stocks are assessed differ from the areas for which fishing opportunities are determined, fisheries management becomes much more challenging, leading to a greater risk of overfishing. Similarly, when the geographical areas for which fishing opportunities are determined differ from the areas for which capacity balance is assessed, it becomes nearly impossible to assess the actual balance between fleet capacity and fishing opportunities.

In the worst case, the capacity balance assessment becomes meaningless or even misleading, increasing the risk that overcapacity will not be identified or reduced. As a result, it becomes more difficult for fisheries managers to take decisions that will allow depleted stocks to recover.

Our review of national capacity balance reports in the Baltic Sea region in Chapter 2 shows that there are serious geographical discrepancies between on the one hand areas for which stocks are assessed and areas for which fishing opportunities are determined, and on the other hand areas for which capacity is assessed. For example, there is often no distinction made between vessels fishing in the eastern Baltic and those fishing in the western Baltic. Worse, there is sometimes no distinction made between vessels fishing in the Baltic, those fishing in the North Sea and those fishing in both seas.

After the 2013 reform, some participants in the reform process believed that an obligation to present capacity by fleet segment would result in “a more precise and detailed picture of the fishing capacity situation affecting a given fish stock”.⁵⁸ However, as noted above, the European Commission's Guidelines do not require Member

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⁵⁷ Guidelines, p. 4

⁵⁸ ClientEarth p. 6

States to relate fleet segments to stock(s) fished or to the management area where fishing is taking place. In the course of our review of national reports, we often found it impossible to relate the capacity of fleet segments given in the national reports to assessments of the state of stocks in ICES advice or to the fishing opportunities resulting from TAC and quota negotiations. In such cases, the reports simply did not give the necessary information to enable an assessment of whether there was balance or overcapacity. In other words, the fleet segmentation parameters used are irrelevant to the assessment of capacity balance as it relates to individual stocks.

As a result, on the basis of the information presented in the reports it is impossible to obtain a clear overview of fishing capacity targeting depleted fish stocks in the Baltic Sea region.

The 2016 annual report from the European Commission to the European Parliament and Council addressed the question of adopting an appropriate geographical level for reporting. However, this referred only to the Mediterranean:

Another issue is catch and effort data at the appropriate geographical stratification in the Mediterranean, making it impossible to link capacity to effort and ultimately to fishing opportunities.⁵⁹

1.2.3.6 Action plans

Following Article 22(4) subparagraph 1 in the Basic Regulation, the Guidelines prescribe that

for the fleet segments with clearly demonstrated imbalance, the Member State concerned shall prepare and include in the report on the balance between fishing capacity and fishing opportunities an action plan that sets out the adjustment targets and tools to achieve a balance and a clear time frame for its implementation. The plan should specify the causes of the imbalance and in particular if it has a biological, economic or technical background as calculated according to section 7.⁶⁰

According to an analysis by ClientEarth, “adjustment targets” means concrete objectives for the reduction of overcapacity, “tools” means a set of specific tools developed for this purpose, and “time frame” indicates that the action plan must explain how a balance between capacity and fishing opportunities is expected to be re-established over time.⁶¹

However, the Guidelines do not specify what time frame would be considered appropriate for such an action plan.

The action plans reviewed for this study vary widely in terms of the level of information they provide. This suggests that the Guidelines fail to facilitate a common reporting approach across the EU as required in Article 22(2), see section 1.2.3.1.

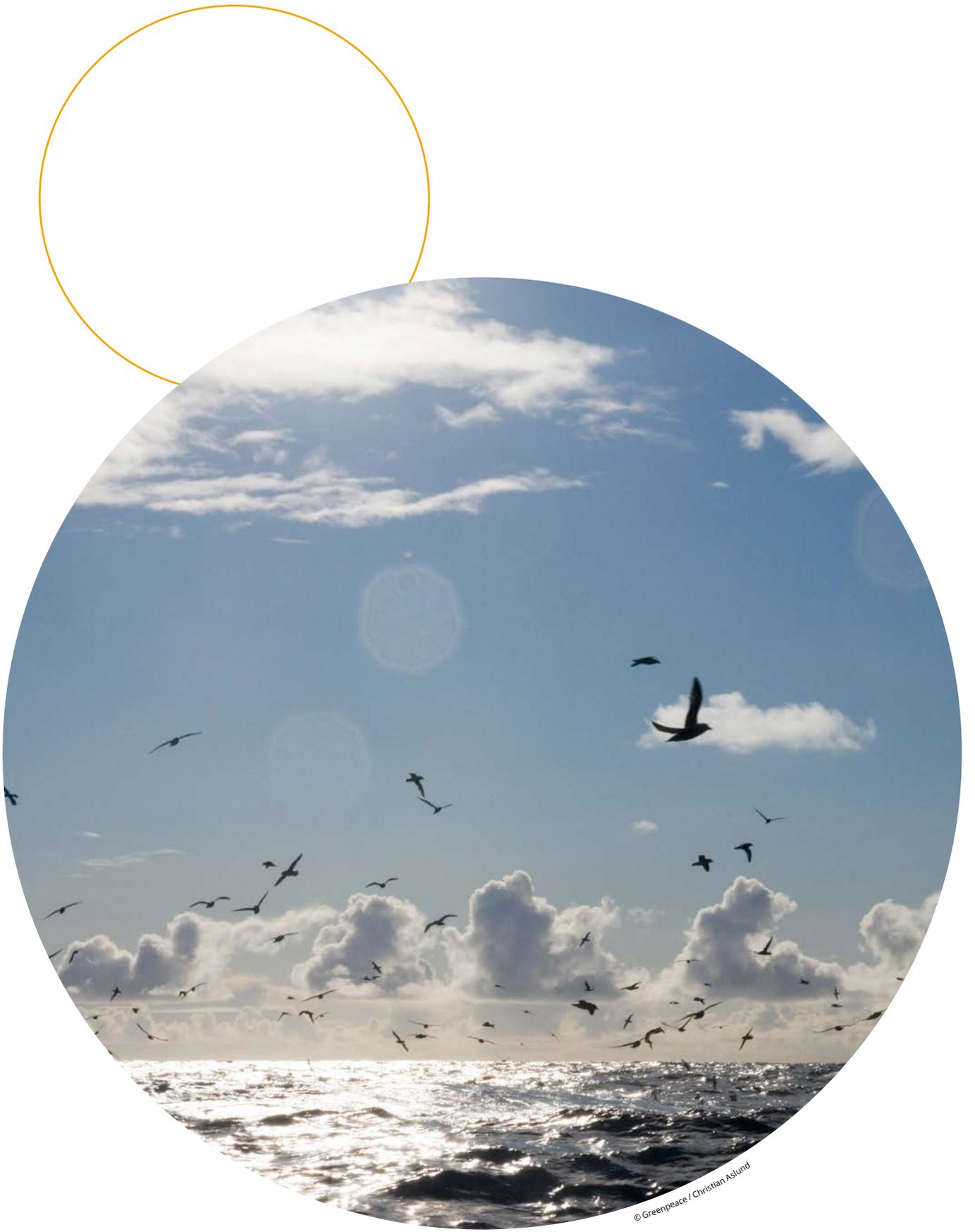
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⁵⁹ European Commission: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Member States' efforts during 2014 to achieve a sustainable balance between fishing capacity and fishing opportunities <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:380:FIN>, (henceforth referred to as 2016 Commission capacity balance report), p. 3

⁶⁰ Guidelines, p. 5

⁶¹ ClientEarth, p. 7



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1.2.3.7 STECF comments on the Commission's Guidelines

As mentioned above, each year, the European Commission's Scientific, Technical and Economic Committee for Fisheries (STECF) releases an analysis of the development of capacity balance in the EU, as well as a review of the Member States' capacity balance reports.⁶² In the 2014, 2015 and 2016 reports STECF offered some critical comments on treatment of indicators in the Guidelines.⁶³ In their national capacity balance reports, some Member States also refer to STECF's criticism of the Guidelines.⁶⁴

STECF alludes to the problem of fleet segmentation and aggregation in its 2016 report. For example, in a detailed list of indicator issues, STECF wrote:

5. The SHI [Sustainable Harvest Indicator, one of the two biological indicators defined in the Guidelines] may deliver a value of less than 1 for fleet segments which partly rely on individual stocks harvested at rates above F_{MSY} .⁶⁵
6. The SHI may flag problems with a certain fleet segment despite the fact that the main problem lies with another fleet segment, which in turn may not necessarily be flagged.
7. SHI values calculated for different fleet segments may not be comparable. Small vessels in particular frequently harvest only a low number of stocks, leading to a high SHI when one of these stocks is overharvested. Fleet segments with larger vessels on the other hand generally fish more stocks in different areas. Therefore, their SHI is less sensitive to the overexploitation of particular stocks, and problems may be masked.⁶⁶

As shown by our review of national capacity balance reports in Chapter 2, the issues STECF identified under points 6 and 7 above describe exactly what has happened in the case of the western Baltic cod stock.

In its 2016 report, STECF concludes that there is a need to revise the Commission's Guidelines on balance indicators and suggests that the EU's Directorate-General for Maritime Affairs and Fisheries (DG MARE) should draw up a timeline for such a revision.⁶⁷ STECF reports that it:

notes the increasing frustration of the EWG [Expert Working Group⁶⁸] participants because of the largely administrative nature of the exercise. Such frustration may lead to increasing difficulties to recruit experts for future meetings on this topic. Furthermore, the guidelines to Member States (COM 2014, 545 Final) may imply that the values of the indicators specified therein can identify whether a fleet is in or out of balance with its fishing opportunities. However, STECF has stated previously (STECF 15-02, STECF 15-05 (p. 9)) that this is not the case, as indicator values alone are not sufficient to draw such a conclusion.

⁶² These reports are available on the STECF website under the heading "Balance between capacity and fishing opportunities", <https://stecf.jrc.ec.europa.eu/reports/balance>

⁶³ Scientific, Technical and Economic Committee for Fisheries (STECF) Assessment of balance indicators for key fleet segments and review of national reports on Member States efforts to achieve balance between fleet capacity and fishing opportunities (STECF-16-18); Publications Office of the European Union, Luxembourg, EUR 27134 EN, JRC 94933 <https://stecf.jrc.ec.europa.eu/documents/43805/1453963/STECF+16-18+-+Balance+capacity.pdf> p. 9

⁶⁴ See for example The Swedish Agency for Marine and Water Management, Swedish Fleet Capacity Report 2015, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_SWE_MSAR_EN.PDF p.12

⁶⁵ That is, this would not indicate overcapacity. See Annex III for a more detailed explanation of this indicator.

⁶⁶ STECF 16-18 pp 158-159

⁶⁷ Scientific, Technical and Economic Committee for Fisheries (STECF) Assessment of balance indicators for key fleet segments and review of national reports on Member States efforts to achieve balance between fleet capacity and fishing opportunities (STECF-16-18); Publications Office of the European Union, Luxembourg, EUR 27134 EN, JRC 94933 <https://stecf.jrc.ec.europa.eu/documents/43805/1453963/STECF+16-18+-+Balance+capacity.pdf>, (henceforth referred to as STECF 16-18), p. 9

⁶⁸ European Commission: Joint Research Centre, About STECF, <https://stecf.jrc.ec.europa.eu/about-stecf>

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STECF concludes that there is a need to revise the guidelines on balance indicators and suggests that DG MARE prepares a time for such a revision, so that in future, scientific expertise can be best employed to assist the Commission and Member States in meeting their obligations under Article 22 of the CFP (Regulation (EU) No 1380/2013).⁶⁹

In essence, STECF argues that the balance reporting process as currently carried out is more or less useless, since thanks to the inadequate nature of the Commission's Guidelines it does not accurately identify overcapacity as the basis for action plans to reduce that overcapacity.

As of October 2018, however, the Guidelines had not been changed.

STECF has also pointed out the shortcomings of Member State action plans and recommended the European Commission to develop an action plan template.⁷⁰

1.2.3.8 Conclusions

- It seems reasonable to conclude from STECF's comments and the findings of the present study discussed above that the European Commission has not fulfilled its responsibility set out in Article 22(2) of the Basic Regulation of the CFP to develop common Guidelines for capacity balance reporting that indicate relevant technical, social, and economic parameters.
- In order to enable overcapacity to be identified more effectively, the Guidelines would need to propose arrangements to break down reporting on fleet segments into the individual stocks fished (as some Member State reports have done), and to aggregate the impact of different segments fishing the same stock. At the Member State level, this could be done within the context of an assessment of the national fleet in the national capacity balance report. Aggregate figures for the total pressure on a stock from each Member State's fleet would in turn enable an overview of the total pressure on that stock at the regional level.

1.2.4 Reports from the European Commission to the European Parliament and the European Council

Article 22(4) subparagraph 2 of the 2013 Basic Regulation prescribes that:

on a yearly basis, the Commission shall prepare a report for the European Parliament and for the Council on the balance between the fishing capacity of the Member States' fleets and their fishing opportunities, in accordance with the guidelines referred to in the first subparagraph of paragraph 2. The report shall include action plans referred to in the first subparagraph of this paragraph.⁷¹

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⁶⁹ STECF 16-18, p. 9

⁷⁰ STECF 16-18, p. 11

⁷¹ Basic Regulation

There was a similar requirement in the 2002 Basic Regulation.⁷² The Commission's annual capacity balance reports from 2003 onwards are available on the European Commission website, as are the annual capacity balance reports from the Member States.⁷³

For the 2017 report, however, the Commission changed its reporting format. This report (primarily based on data from 2015 but including some information from 2016) differs from previous years as it is not a stand-alone report. Instead it is attached as an annex to the Commission Staff Working Document accompanying the Commission's Communication on the State of Play of the CFP and Consultation on the Fishing Opportunities for 2018.⁷⁴ The Staff Working Document and the Commission capacity balance report attached to it are not available on the Commission Fleet Management reporting website as in previous years. This change may make the report harder to locate and give it a perceived lower status.

More worrying is that the 2017 report is less informative than the 2016 report. For example, the 2016 report states that

the analysis does show that some fleet segments such as trawlers are economically dependent on stocks that are fished above MSY fishing pressure levels. It also confirms the low vessel utilisation in many Member States. These observations justify continued active fleet capacity management and adjustment where required. Member States should continue to address the fishing capacity of their fleets in order to achieve economically viable fleets that operate and exploit the marine biological resources sustainably.⁷⁵

The 2017 report, on the other hand, mentions neither vessel utilisation nor trawlers specifically, even though, as seen in Chapter 2 and Annex IV or the present study, Member States' reports show low vessel utilisation for many segments, including some demersal trawlers targeting the western Baltic cod stock.

1.2.4.1 Action plans

Although the Basic Regulation clearly requires that the European Commission's capacity balance report shall include Member States' action plans, none of the Commission's reports subsequent to the 2013 CFP reform does so.

Instead, the reports now refer readers to the respective Member States' capacity balance reports for details of the plans. As well as being in clear violation of Article 22(4) subparagraph 2, this makes it more difficult to find the action plans, since while some are included in the national capacity balance reports themselves, others are separate documents. The Commission's failure to include the national action plans in its reports to the European Parliament and Council makes it harder to compare and evaluate them, and to follow them up.

⁷² See Article 14(1). Official Journal of the European Communities, COUNCIL REGULATION (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:358:0059:0080:EN:PDF>. An excerpt from the 2002 Basic Regulation may be found in Annex I.

⁷³ These reports are found in the section "Annual report – Reporting – Fleet Management" http://ec.europa.eu/fisheries/fleet/index.cfm?method=FM_ReportingAnnualReport&ar_year=2015.

⁷⁴ European Commission: COMMISSION STAFF WORKING DOCUMENT Accompanying the document COMMUNICATION FROM THE COMMISSION on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2018, SWD(2017) 256 final, Brussels, 5.7.2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2017%3A256%3AFIN> (Henceforth referred to as 2017 Commission capacity balance report).

⁷⁵ 2016 Commission capacity balance report, p. 3

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1.2.4.2 Capacity

The European Commission concludes in its 2017 report that

the overview of trends in the balance indicators shows progress in most fleet segments. However, the balance indicators for some segments may require further action to redress the situation.⁷⁶

It further notes that the capacities of Member State's fleets were clearly below the capacity ceilings to be reached by 2014 as set out in the CFP, and states that

fleet capacity is still decreasing; in the EU's 23 coastal Member States there have been falls of 1.09% in the number of vessels, 1.53% in kW and 2.16% in GT, continuing the trends seen in the past decade.⁷⁷

These broadly upbeat findings assume correct reporting on engine power (kW) and gross tonnage (GT) by Member States, although a 2017 study by the European Court of Auditors on Member States' monitoring systems found "weaknesses with the verification of the accuracy of their fleets' capacity".⁷⁸

Moreover, the decrease in the overall capacity of the EU fleet since the previous year as reported by the Commission is in fact substantially below the average annual reduction over the past 10 years (average decreases were 3.2% per year for gross tonnage and 2.3% per year for engine power).⁷⁹

In addition, the report overlooks the observation from the Commission's own 2009 Green Paper that there is a continual capacity increase of 2–3% per year as a result of 'technological creep' (see section 1.1.2).⁸⁰

The Commission's 2017 report also states that

vessels decommissioned with public support from the Fund cannot be replaced, thereby ensuring that overall fleet capacity has been reduced.⁸¹

Here, "the Fund" refers to the European Fisheries Fund (now the European Maritime and Fisheries Fund (EMFF) – see sections 1.4 and 3.5). However, as noted in our review of the Polish capacity balance report (section 2.4.3), some of the capacity reduced with support from the Fund has in fact been reintroduced via modernisation of vessels. Further, this disregards the risk that EMFF funding increases the actual ability to catch fish as opposed to the rough indicators of GT and kW used in the CFP to measure capacity.

1.2.4.3 STECF opinions

Under the 2002 Basic Regulation, the European Commission's capacity balance reports were required to include reference to the opinions of STECF.⁸² Although this explicit requirement does not appear in the 2013 Basic Regulation, the obligation to

⁷⁶ 2017 Commission capacity balance report, p. 25

⁷⁷ 2017 Commission capacity balance report, p. 24

⁷⁸ European Court of Auditors, Special Report No 08/2017: EU fisheries controls: more efforts needed <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=41459>

⁷⁹ Calculation for the present study, based on the figures in European Commission: ANNEXES to the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Member States' efforts during 2014 to achieve a sustainable balance between fishing capacity and fishing opportunities http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2014_ARA1_EN.PDF Annex III, "Evolution of EU fleet between January 2006 and November 2015 (first day of year)"

⁸⁰ Green Paper, p. 8

⁸¹ 2017 Commission capacity balance report, p. 25

⁸² Presumably this refers to STECF's opinions on the national balance reporting. See Article 14(1) subparagraph 2 in the excerpts from the 2002 Basic Regulation in Annex I.

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report to the European Parliament and Council remains. Not to include STECF's opinions in this reporting would mean that the Parliament and Council got less information than before the reform. This could be expected to impact negatively on their ability to follow up and improve implementation of the reform. However, while including this information is no longer compulsory, there is nothing to prevent the Commission from continuing to do so.

Subsequent to the 2013 CFP reform, the Commission's reports do still provide selected information from STECF's findings, although they fail to include other significant information from the same source. For example, in its 2016 report the Commission states that

as noted by STECF, to improve the coverage and appropriateness of indicators, Member States need to provide more comprehensive data sets with higher coverage of fleet segments and more analytical stock assessment, which points towards biological and survey data collected under the data collection framework (hereafter DCF). In addition, catch data, rather than landings, could improve coverage and appropriateness of indicators. This could be linked to discards data coming from logbooks, in other words, data collected under the Council Regulation (EC) No 1224/2009.⁸³

But there is no mention in the Commission's 2016 or 2017 reports of STECF's significant criticism of the indicators and Guidelines or of its recommendations to revise them.⁸⁴ In short, the Commission reports on STECF's criticism of the Member States, but not of itself.

1.2.4.4 Regionalisation

A key part of the 2013 reform was decentralisation and a stronger role for regional groups of Member States. This is expressed in Articles 18 and 43-45, as well as Annex III of the Basic Regulation, which identifies seven geographical areas (the regionalisation agenda is described in more detail in section 2.1.1). The European Commission divides its regional assessment into just two areas. This gives rise to broad-brush conclusions which can mask problems. Concerning the Northeast Atlantic area (which includes the Baltic and North Seas) the Commission comments in its 2016 report that there is

progressively less imbalance between fishing capacity and fishing opportunities.⁸⁵

It also notes that catches have generally progressed towards MSY levels in the Northeast Atlantic and that

this also may be linked with the continuous reduction of the fleet capacity ceilings that were achieved during the last years.⁸⁶

In its 2017 report the Commission says that

in the North-East Atlantic, fishing capacity in terms of GT and kW continues to decrease and there is a general improvement across all the balance indicators. However, according to the STECF analysis, some fleet segments in the North-East Atlantic remain out of balance with their fishing opportunities and rely on stock [sic] considered at risk.⁸⁷

⁸³ 2016 Commission capacity balance report, p. 3

⁸⁴ 2016 Commission capacity balance report and 2017 Commission capacity balance report

⁸⁵ 2016 Commission capacity balance report, p. 8

⁸⁶ 2016 Commission capacity balance report, p. 8

⁸⁷ 2017 Commission capacity balance report, p.26

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The information in the Commission's 2016 and 2017 reports covers too large an area to be of much use to national fisheries managers or for facilitating Member State cooperation on the regional level. It would be preferable if the Commission were to provide assessments for each of the smaller regions identified in the Basic Regulation (Annex III Article 1).⁸⁸

1.2.4.5 The Commission's conclusions

The European Commission's 2017 capacity balance report sums up the situation as follows:

From the STECF analysis and Member State reports, the following conclusions can be reached.

Member States are making huge efforts to balance their fleets' fishing capacity and the available fishing opportunities ... In comparison with 2014, in 2015 the number of fleet segments for which Member States identified an imbalance with the available fishing opportunities increased ...

In concrete situations of segments with identified structural overcapacity, the Member States' action plans to reduce the imbalance appear to be a transparent and effective means of pursuing a balance between fishing fleet capacity and fishing opportunities over time.⁸⁹

This is not entirely consistent with the present study's findings on some of the national reports reviewed. While some Member States are taking concrete measures to decrease overcapacity, some give the impression that they are not actively seeking to identify imbalance, let alone to remedy it.

The 2017 report concludes that

in spite of the above developments, in recent years the balance between fishing capacity and fishing opportunities has improved across the entire EU fleet. This is partly because, over the last decade, the EU fishing fleet's capacity has been gradually cut. However, Member State reports and action plans reveal that further efforts are needed on fleet segments where structural overcapacity remains. The reduction in fleet capacity in recent years has helped improve the state of fish stocks generally and continues to move fisheries towards the MSY objectives in the CFP.⁹⁰

This is roughly the same message as the conclusion of the 2016 report:

Overall, there has been significant progress in recent years in efforts to achieve balance between fishing capacity and fishing opportunities across the EU. The reduction in fleet capacity in recent years has helped to improve the situation of fish stocks which are overexploited moving the fisheries in the direction of the maximum sustainable yield targets. In addition, better implementation of the Guidelines has helped to improve the analysis of imbalance within different fleets. However, reports by the Member States reveal that for specific fleet segments, further efforts are needed to reduce the identified imbalances, especially in the Mediterranean Sea.⁹¹

⁸⁸ These are defined for the purposes of the Advisory Councils of regional stakeholders for which the CFP calls. As noted in section 2.1.1, with the exception of the Mediterranean Sea, these councils correspond with the areas covered by the Member States' High Level Groups.

⁸⁹ 2017 Commission capacity balance report p. 27

⁹⁰ 2017 Commission capacity balance report p. 28

⁹¹ 2016 Commission capacity balance report pp. 9-10

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1.3 Capacity balance reporting and the EMFF

Article 22(4) subparagraph 3 of the Basic Regulation directly connects capacity balance reporting with access to EU funds for fisheries:

Failure to make the report referred to in paragraph 2 [the annual national capacity balance report], and/or failure to implement the action plan referred to in the first subparagraph of this paragraph, may result in a proportionate suspension or interruption of relevant Union financial assistance to that Member State for fleet investment in the fleet segment or segments concerned in accordance with a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the period 2014–2020.⁹²

As our review in Chapter 2 makes clear, however, Member States' capacity balance reports do not always report on progress towards the implementation of action plans contained in reports from previous years. Article 22 does not explicitly require annual national reporting on implementation of an action plan; neither do the Commission's Guidelines.⁹³ Still, it is hard to see how the Commission can judge whether action plans are being implemented if Member states do not report on their progress, ideally in the context of the annual national capacity balance reports.

EU financial assistance for fisheries is currently channelled through the EMFF. The EMFF Regulation⁹⁴ covers the period 2014–20 and reinforces the link between Member States' obligation to report as required in Article 22 of the Basic Regulation and their access to financial support.

Among other things, the EMFF provides funds to help Member States and fishers withdraw capacity. The EMFF regulation makes a direct connection between its support for capacity withdrawal and Article 22, saying that

as regards the measures for the permanent cessation of fishing activities under Article 34 of this Regulation, the description of the strategy shall include the targets and measures to be taken for the reduction of the fishing capacity in accordance with Article 22 of [the Basic] Regulation.⁹⁵

A condition for EMFF support for permanent cessation of fishing activities is that

the permanent cessation is foreseen as a tool of an action plan referred to in Article 22(4) of Regulation (EU) No 1380/2013 [the Basic Regulation] indicating that the fleet segment is not effectively balanced with the fishing opportunities available to that segment.⁹⁶

Moreover,

support under this Article shall be paid only after the equivalent capacity has been permanently removed from the Union fishing fleet register and after the fishing licences and authorisations have also been permanently withdrawn. The beneficiary shall be prohibited from registering a new fishing vessel with-

⁹² Basic Regulation

⁹³ Guidelines, p. 5.

⁹⁴ Official Journal of the European Union, REGULATION (EU) No 508/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0508> (henceforth referred to as the EMFF regulation). The EMFF Regulation entered into force on the same day as the Basic Regulation, 1 January 2014.

⁹⁵ EMFF regulation, Article 18(1)(b)(ii)

⁹⁶ EMFF regulation, Article 34(1)(b)

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in five years following the receipt of such support. The decrease in capacity as a result of the permanent cessation of fishing activities with public aid shall result in the permanent equivalent reduction of the fishing capacity ceilings set out in Annex II to Regulation (EU) No 1380/2013.⁹⁷

Conversely, EMFF support is also available for acquisition of a first fishing vessel by a young person entering the industry. A condition of such support is that the vessel

belongs to a fleet segment for which the report on fishing capacity, referred to in Article 22(2) of [the Basic] Regulation ..., has shown a balance with the fishing opportunities available to that segment.⁹⁸

Similarly, EMFF support for the replacement or modernisation of engines

may only be granted in respect of vessels belonging to a fleet segment for which the report on fishing capacity, referred to in Article 22(2) of [the Basic] Regulation ..., has shown a balance with the fishing opportunities available to that segment.⁹⁹

In sum,

permanent cessation measures under the EMFF are only possible for imbalanced fleet segments (and only until the end of 2017). Engine replacement and start-up support for young fishermen are only possible in balanced fleet segments.¹⁰⁰

Annex IV of the EMFF Regulation sets out some further preconditions for all funding including that the Member State's

report on fishing capacity has been submitted in accordance with article 22(2) of [the 2013 CFP] regulation.¹⁰¹

The two criteria for fulfilling this condition are specified in the EMFF regulation as a;

- the report is made in accordance with common guidelines issued by the Commission
- Fishing capacity does not exceed the fishing capacity ceiling set up in Annex II to Regulation (EU) No 1380/2013.¹⁰²

However, despite the shortcomings of Member State reporting as discussed in this study, no EMFF financial assistance for fleet investments has been suspended or interrupted by the Commission as of September 2017.¹⁰³ To help ensure an improved quality of reporting, the Commission needs to act if Member States fail to comply with the provisions of the Basic Regulation or Guidelines.

⁹⁷ EMFF regulation, Article 34(5)

⁹⁸ EMFF regulation, Article 31(d)

⁹⁹ EMFF regulation, Article 41(3)

¹⁰⁰ 2017 Commission capacity report, p. 26

¹⁰¹ EMFF regulation, Annex IV, p. 63.

¹⁰² EMFF regulation, Annex IV

¹⁰³ Elisa Roller, DG MARE, personal communication, 1 September 2017

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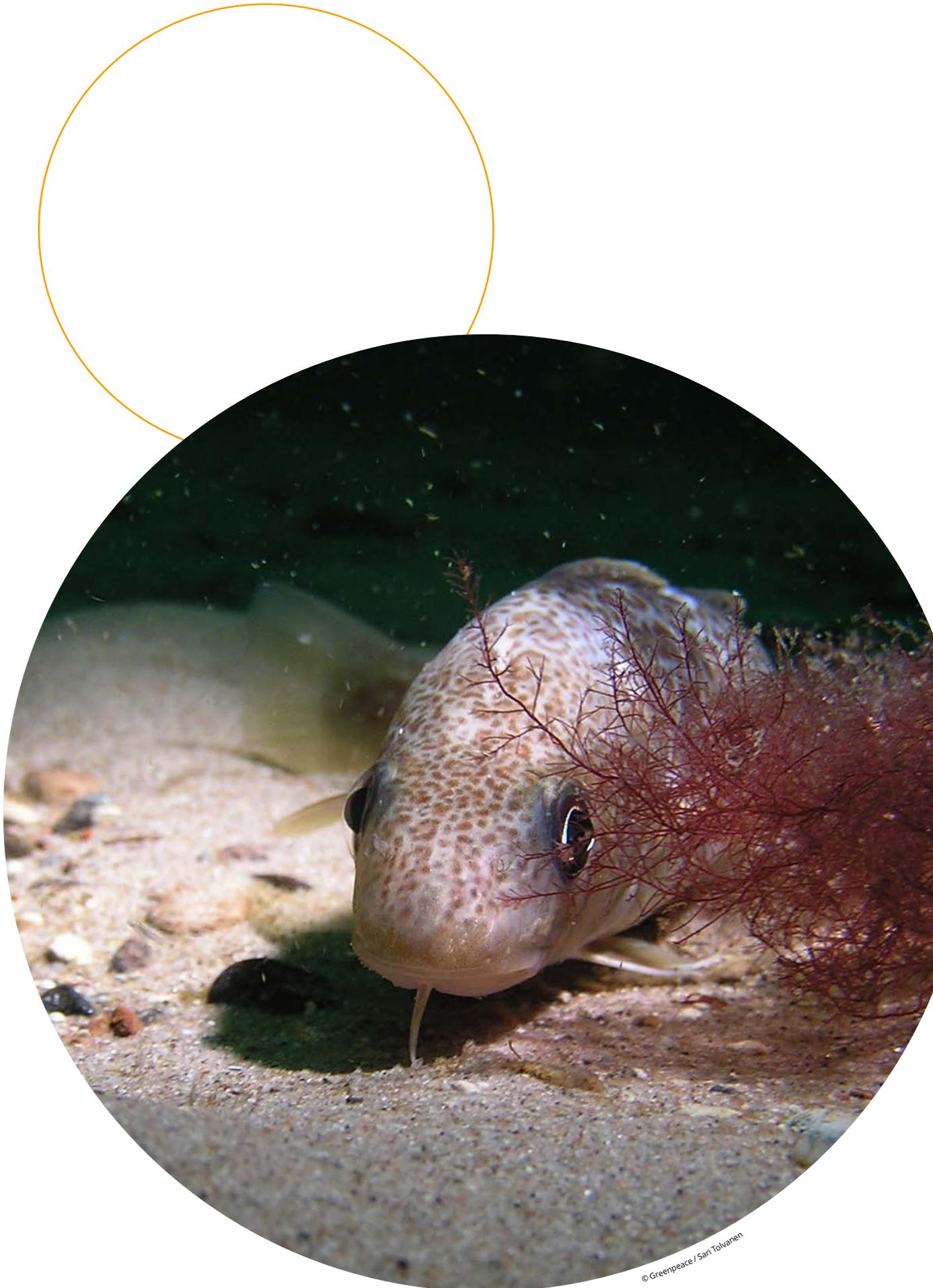


1.4 Conclusions

- The Commission fails to comply with Article 22 and the intentions behind it by:
 - not providing Guidelines that facilitate a common approach regarding relevant parameters for Member States' capacity balance reporting;
 - not including Member States' action plans in its reports to the European Parliament and Council;
 - failing to include in those reports, in a clear and understandable way, information that the European Parliament and Council need in order correctly to assess progress in achieving balance between fishing capacity and opportunities; and
 - not using the financial penalties available ("suspending or interruption of relevant Union financial assistance") as a response to Member States not reporting in accordance with the Guidelines or the Basic Regulation.
- Moreover, the Commission fails to draw the attention of the European Parliament and Council to STECF's criticism of and recommendations concerning its Guidelines and the indicators used in capacity balance assessments. While it is no longer formally required to report on STECF's views, such an omission can only compromise the effectiveness of the capacity balance reporting regime.
- The Commission's own reports give an overly optimistic picture of progress in achieving capacity balance to the European Parliament and the Council. Examples of information which, while not formally required under the 2013 Basic Regulation, are needed by the Parliament and the Council to enable them correctly to assess progress in achieving balance between fishing capacity and opportunities include:
 - reports on Member States' infringements of Article 22 and the quality of the Member States' action plans; and
 - STECF's criticism of and recommendations concerning the Commission's Guidelines and the indicators used in capacity balance assessments.

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2. Capacity balance reporting in the Baltic Region

This chapter reviews capacity balance reports from four EU Member States in the Baltic Sea region: Denmark, Germany, Poland and Latvia.¹⁰⁴ It focuses particularly on the extent to which their reporting complies with the requirements and intentions of Article 22 of the CFP's Basic Regulation and with the Guidelines prepared by the European Commission. With one exception, this analysis is based on the most recent capacity balance reports available on the European Commission's website at the time of writing. These reports were released in 2016 and are based on data from 2015 or earlier. The Danish report, however, is from 2017 (based on data from 2016 and earlier) and was obtained via the website of the Danish Ministry of Environment and Food.

Particular consideration is given to reporting of national fleets' impacts on the troubled western Baltic cod stock, which serves as a running case study of the effectiveness of the capacity balance reporting regime, as explained in section 1.1.3. The chapter begins with an overview of the recent history of this fishery. Of the four reports reviewed, a more detailed assessment is made of those from Denmark and Germany, as they are the dominant countries in the western Baltic cod fishery. A quick comparison with the capacity balance reports from the remaining EU Member States with Baltic coasts (Estonia, Finland, Lithuania and Sweden) suggests that the four reports reviewed are more or less representative of the quality of the others. Excerpts from the Commission's Guidelines detailing the indicators used in the national reports' balance assessments are attached as Annex III. Annex IV contains an overview of the application of these indicators to fleet segments potentially fishing for western Baltic cod.

After reviewing the national reports' compliance with Article 22 and the Commission's Guidelines, the chapter concludes by considering the role of regionalisation in the CFP and in particular the desirability of a regional capacity balance assessment for the Baltic and the extent to which information from the national reports and STECF's reporting could be drawn on to provide this.

2.1.1 Regionalisation in the CFP

An important feature of the 2013 CFP reform is regionalisation, which is intended to allow more consideration to be taken to the specific circumstances in the region. It takes the form of cooperation between Member States in an (unspecified) relevant geographical area (Article 18). The CFP does identify seven geographical regions to be covered by Advisory Councils consisting of representatives from stakeholders such as fishing operators or environmental groups. These regions are the Baltic Sea, the Black Sea, the Mediterranean Sea, the North Sea, Northwestern Waters,

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¹⁰⁴ These were chosen on the basis that they included two newer and two older Member States, and a mix of large and small countries.

Southwestern Waters and Outermost Regions.¹⁰⁵ In practise, Member State cooperation is normally managed by so-called High Level Groups of senior civil servants. There is a High Level Group corresponding to each region covered by an Advisory Council, with the exception of the Mediterranean (where there are three, covering different subregions). The High Level Group for the Baltic Sea region is called BALT-FISH.

Under Article 18, a group of Member States may

agree to submit joint recommendations for achieving the objectives of the relevant Union conservation measures, the multiannual plans or the specific discard plans.¹⁰⁶

Conservation measures are needed to minimise the negative impacts of commercial fishing on the marine environment and to align fisheries policy with other environmental policies, as stipulated in Articles 2(3), 2(5)(j) and 11 of the Basic Regulation. Multiannual plans are a key instrument for achievement of the goals of the CFP, as is made clear in Article 9. Discard plans are important for achieving the ban on discards and obligation to land fish stipulated in Article 15 and in particular 15(6).

Regionalisation has the potential to improve the sustainability of fisheries and the efficiency of their administration. Increased decentralisation of fisheries management from the EU-wide level to regions such as the Baltic Sea is an ongoing process throughout the EU. For example, the EU multiannual plan from 2016 for managing Baltic Sea cod, sprat and herring includes provisions for reinforcing regional management.¹⁰⁷

Further, Article 18(7) gives groups of Member States of the opportunity to make joint recommendations to the Commission on other measures to be proposed or adopted by the Commission. In practice, regional High Level Groups of Member States have discussed and made joint recommendations on a range of issues, including TACs.¹⁰⁸ Given the threat posed by overcapacity to the attaining of goals set out in the multiannual plans or discard plans, there is also good reason to assess overcapacity at the regional level, even though the Basic Regulation does not explicitly require this. Overcapacity can be a reason for the failure to adopt or implement conservation measures, TACs in line with scientific advice, effective discard plans and so on, and it may also have controversial socio-economic impacts.

2.1.2 Western Baltic cod

The western Baltic cod stock is an example of a stock that has been overfished for a long time. In 2014 and 2015 six countries conducted commercial fisheries for the stock: Denmark, Germany, Sweden, Poland, Finland and Latvia. Denmark dominates the fishery with approximately half the catch. Germany's catch is the second largest, Sweden's catch the third and Poland's catch the fourth largest. Together, these

¹⁰⁵ CFP, Articles 43-45 and Annex III.

¹⁰⁶ CFP, Article 18(1). The Basic Regulation does not define the regions, using instead language such as "a relevant geographical area" and "Member States having a direct management interest". In practise, the regional cooperation amongst Member States normally follows the regions covered by the Advisory Councils, as explained below.

¹⁰⁷ REGULATION (EU) 2016/1139 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 July 2016 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1139&from=EN>

¹⁰⁸ See for example BALTIFISH Forum, <http://bsac.dk/Meetings/External-events/BALTIFISH-Forum> (BALTIFISH does not have a website of its own).

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four countries caught more than 99% of the landings of western Baltic cod in 2015.¹⁰⁹ Lithuania has a quota but swaps it for eastern Baltic cod quota.¹¹⁰

Fishing levels¹¹¹ for the western Baltic cod stock have been much too high during most of the last 19 years. Replenishment of the stock has been low since 1999, and since 2008 the spawning stock has been below the biomass limit reference point (B_{lim}),¹¹² indicating that the capacity of the stock to reproduce may have been reduced.¹¹³ Overfishing has contributed to preventing the stock from recovering, even though management plans have been in place since 2007.¹¹⁴ Despite the poor state of the stock, Member States continue to agree to set TACs above the scientific recommendations, as they did for the fourth year running at the Agriculture and Fisheries Council meeting of October 2017.¹¹⁵ As the CFP requires that all stocks be fished below F_{MSY} by 2020 at the latest, TACs of western Baltic cod need to be cut significantly in order to comply with the legislation unless there is a substantial improvement in the status of the stock.

An obligation to land all cod (and deduct undersized cod from quotas) entered into force in 2015. However, there are recurring reports of continuing illegal discards in cod fishing. For example, ICES estimated that discards corresponded to about 2.4% of total landings of western Baltic cod in 2016, but might increase well above that in the future.¹¹⁶

The 2017 economic report on the EU fishing fleet by STECF states that

the profitability of the EU fishing fleet again increased in 2015 compared to 2014 and is expected to have continued in 2016 and into 2017 mainly because of increased landings and low fuel prices. At the regional level, **the profitability of the European fleets is improving in almost all the regions except for the Baltic region where the net profit still shows negative values and after a slight improvement in 2013 and 2014, deteriorated again in 2015.**¹¹⁷ [Emphasis added]

Among factors that may have negatively influenced the economic performance of the EU's Baltic fishing fleet, STECF identifies a fall in the price of Baltic cod (related to the poor quality and small size of the fish being caught), as well as reduced TACs and quotas for Baltic cod. Conversely, STECF notes that vessel decommissioning schemes positively influenced Polish and Latvian fleet profitability – in other words, a reduction of capacity improved economic performance.¹¹⁸

¹⁰⁹ ICES Cod (*Gadus morhua*) in subdivisions 22-24, western Baltic stock (western Baltic Sea) 2017, <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> Table 11, p. 12. See also Annex IV.

¹¹⁰ ANNUAL REPORT LITHUANIA, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_LTU_MSAR_EN.PDF, pp. 5-6

¹¹¹ Technically generally referred to as fishing mortality, which is defined scientifically as follows: "When fishing and natural mortality act concurrently, F is equal to the instantaneous total mortality rate (Z), multiplied by the ratio of fishing deaths to all deaths. Expressed on an exponential scale: $F=0.5$ means that $1-EXP(-0.5)=39\%$ are removed." ICES, Acronyms and terminology

¹¹² "For stocks where quantitative information is available, a reference point B_{lim} may be identified as the stock size below which there may be reduced reproduction resulting in reduced recruitment", ICES, Advice basis June 2013 http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2013/2013/1.2_General_context_of_ICES_advice_2013_June.pdf p. 7

¹¹³ ICES Cod (*Gadus morhua*) in subdivisions 22-24, western Baltic stock (western Baltic Sea) 2017, <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> p. 1

¹¹⁴ ICES.2017. Fisheries Overviews Baltic Sea Ecoregion http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/Baltic_Sea_Ecoregion_Fisheries_Overview.pdf, p. 10

¹¹⁵ 2018 EU TOTAL ALLOWABLE CATCHES (TACs) IN THE BALTIC SEA <http://www.consilium.europa.eu/media/23926/2018-eu-total-allowable-catches-tacs-in-the-baltic-sea.pdf> and ICES Cod (*Gadus morhua*) in subdivisions 22-24, western Baltic stock (western Baltic Sea) 2017, <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> Table 9 p. 9

¹¹⁶ ICES.2017. Cod (*Gadus morhua*) in subdivisions 22-24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> p. 5.

¹¹⁷ Scientific, Technical and Economic Committee for Fisheries (STECF) - The 2017 Annual Economic Report on the EU Fishing Fleet (STECF 17-12), <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/2017-annual-economic-report-eu-fishing-fleet-stecf-17-12>, p 22

¹¹⁸ Scientific, Technical and Economic Committee for Fisheries (STECF) - The 2017 Annual Economic Report on the EU Fishing Fleet (STECF 17-12), p 27

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The combination of fishing quotas being set above scientific advice despite the poor condition of the stock and businesses dependent on the fishery struggling to make a living strongly suggests that there is an imbalance between fleet capacity and resources in the western Baltic cod fishery.¹¹⁹ The fishery thus appears to be a good example of one that would benefit from a regional assessment leading to an adjustment of fishing capacity, as provided for by Article 22.

2.2 Denmark's 2016 capacity balance report

2.2.1 Description of fishing fleet and its activity

Denmark's 2016 capacity balance report identifies a number of different fleet segments, defined by length and by gear type. Segmentation by gear type ranges from highly specialised (e.g. "dredgers") to broad (e.g. "vessels using active and passive gears").¹²⁰ The 20 main segments identified are summarised in a series of tables.¹²¹ Two of these tables show for each segment the percentage of its total landed value and landed weight represented by each of seven different categories of fish landed, with cod being included in the category "roundfish".¹²²

From the figures in the latter table, it can be calculated that about 38,000 tonnes of roundfish were landed by the Danish fleet in 2016. According to figures from ICES, that year the Danish fleet landed about 5,600 tonnes of cod from the western Baltic, 6,700 tonnes of cod from the eastern Baltic and about 10,400 tonnes from the North Sea and Skagerrak. Taking account of double counting of eastern Baltic cod catches in the area where the two stocks overlap, these figures give a total of roughly 21,000–23,000 tonnes of cod landed in 2016.¹²³ It might be mentioned that the eastern Baltic and North Sea cod stocks were assessed by ICES in 2015 and 2016 as being overfished (above F_{MSY}).¹²⁴ This suggests that opportunities for shifting from one stock to another have some limits.

The data presented does not include information on each fleet segment's catches by species or on each segment's fishing areas. It is therefore impossible for the reader to identify the fleet segments fishing for individual stocks such as western Baltic cod, since one segment as defined could consist of vessels fishing in the Baltic Sea and vessels fishing in the North Sea, for species that may or may not include cod.

¹¹⁹ Scientific, Technical and Economic Committee for Fisheries (STECF) – The 2015 Annual Economic Report on the EU Fishing Fleet (STECF-15-07). 2015. Publications Office of the European Union, Luxembourg, EUR 27428 EN, JRC 9737 <https://stecf.jrc.ec.europa.eu/documents/43805/1034590/STECF+15-07+-+AER.pdf>, pp. 98,100

¹²⁰ Ministry of Environment and Food in Denmark. 2017. Annual Report on fishing fleet capacity 2016 – Denmark http://lbst.dk/fileadmin/user_upload/NaturErhverv/Filer/Fiskeri/Kort_statistik/Statistik/flaaderapport/23-05-2017-DKFleetreport2016_final.pdf (henceforth referred to as the Danish report), p. 21

¹²¹ Danish report, pp. 1–4, 10–16, 20–26. Note that three additional segments are incorporated for reporting purposes into one or other of the tabulated segments.

¹²² 'Roundfish' can also include species such as saithe, haddock or hake. L.T. Kell, G.M. Pilling, G.P. Kirkwood, M. Pastoors, B. Mesnil, K. Korsbrekke, P. Abaunza, R. Aps, A. Biseau, P. Kunzlik, C. Needle, B.A. Roel, C. Ulrich-Rescan; An evaluation of the implicit management procedure used for some ICES roundfish stocks, ICES Journal of Marine Science, Volume 62, Issue 4, 1 January 2005, pp 750–759, <https://doi.org/10.1016/j.icesjms.2005.01.001>

¹²³ Western Baltic cod <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> Table 11, eastern Baltic cod <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.24-32.pdf> Table 9 and North Sea ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.47d20_replaced.pdf. Note that there is some double counting between the western and eastern Baltic stock advice reports, as eastern Baltic cod caught in subdivision 24 are included in both reports' figures.

¹²⁴ For the eastern Baltic cod stock see <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.24-32.pdf> and for the North Sea cod stock see <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.47d20.pdf>

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One piece of relevant information is however provided in passing in the section analysing one of the biological indicators, the Sustainable Harvest Indicator (SHI):

The small vessels with a high proportion of North Sea cod or Western Baltic cod have a SHI>1 (“out of balance”).¹²⁵

In the SHI data table the fleet segment consisting of demersal trawlers¹²⁶ between 10 and 12 metres in length (VL1012 DTS) is reported as having SHI values of 1.6, 1.4 and 1.7 for the years 2012–2014.¹²⁷ According to the European Commission’s Guidelines, for a fleet segment to have indicator values above 1 for three consecutive years suggests that it may be out of balance with fishing opportunities.¹²⁸

The lack of specific information regarding the fleet capacity targeting individual species or stocks makes it impossible to identify total potential overcapacity. In the case of the western Baltic cod stock, vessels within various segments such as small demersal trawlers, other demersal trawlers and vessels with passive gear can fish for the stock, but the total fishing capacity targeting the stock cannot be extrapolated from the data provided.

2.2.2 Fleet assessments and supporting analysis

Denmark’s report includes a table that shows all indicator values as well as an overall ‘traffic light’ assessment for each fleet segment.¹²⁹ A large number of segments have red values for the Return on Investment and/or Vessel Utilisation indicators, suggesting that they are out of balance (i.e. that the segment has an overcapacity).¹³⁰ However, despite the latter indicator (described by the Commission’s Guidelines as the baseline indicator¹³¹) implying possible imbalance for most segments and a number of segments having one or more other indicators suggesting some degree of imbalance, the overall indication in the traffic light system is green for all segments, with the exception of the three segments for vessels under 10 metres, which are classed as “mainly inactive or less active” and/or “non-commercial”. All other fleet segments are assessed as being in balance with their fishing opportunities, even when they show a majority of red or yellow indicators. The report offers no explanation for this assessment.

Table 1 below collects and summarises indicator values given in the report for fleet segments with landings of roundfish, their share of the country’s roundfish landings and the report’s overall assessment of each segment.

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¹²⁵ Danish report, p.11

¹²⁶ Trawlers fishing for demersal species, i.e. species that live on or near the seabed.

¹²⁷ Danish report, Table F.3 p.11

¹²⁸ Guidelines, p. 5

¹²⁹ Danish report, Table F.8 p.20

¹³⁰ Danish report, p. 20. For a description of the indicators, see Annex III in the present study.

¹³¹ Guidelines, p. 15

TABLE 1: Indicator values, landings and assessments for segments of the Danish fleet with landings of roundfish in 2016

Length	Gear code	ROI	Current/ break- even	SHI 3 years	SAR	Utilisation	Share of Danish roundfish landings	Overall assessment
VL0010	DTS	0.02	1.32	1.3, 1.0, 0.9	0	0.29	0%	Less active
VL0010	PGP	-0.11	-0.09	1.9, 1.9, 1.8	N/A	0.13	2%	Less active
VL0010	PMP	-0.04	0.53	1.5, 1.4, 1.2	1	0.23	1%	Less active
VL1012	DTS	0.00	0.96	1.6, 1.4, 1.7	1	0.57	1%	In balance
VL1012	PGP	-0.04	0.57	2.5, 2.3, 2.9	3	0.57	2%	In balance
VL1012	PMP	-0.01	0.92	1.5, 1.4, 1.2	0	0.43	2%	In balance
VL1218	DTS	0.01	1.14	1.4, 1.2, 0.9	6	0.43	14%	In balance
VL1218	PGP	-0.02	0.81	1.4, 1.2, 1.2	0	0.49	3%	In balance
VL1218	PMP	0.00	1.04	1.6, 1.4, 1.4	1	0.45	5%	In balance
VL1218	TM	0.07	2.68	1.0, 1.2, 1.0	2	0.55	1%	In balance
VL1824	DTS	0.04	1.64	1.3, 1.1, 1.0	5	0.54	12%	In balance
VL1824	PMP	0.05	1.84	1.2, 1.0, 1.0	1	0.70	2%	In balance
VL2440	DTS	0.05	1.78	1.1, 1.1, 1.0	4	0.72	41% [1]	In balance
VL2440	PMP	N/A	N/A	N/A	N/A	0.63	10%	In balance
COM	Green	>0	>1	<1	0	>0.9		
Guide-	Yellow		>0<1		>0			
lines	Red	<0	<0	>1	>10%	<0.7		

Segments with 10% or more of the Danish catch of roundfish are shown in bold.

Indicators:

ROI Return on Investment Indicator

SHI Sustainable Harvest Indicator

SAR Stocks at Risk Indicator

VL indicates vessel length range in metres. N/A indicates data not available.

Gear codes:

DTS Demersal trawlers and/or demersal seiners

PGP Vessels using polyvalent passive gears only

PMP Vessels using active and passive gears

TM Pelagic trawlers

Source: Danish national report for 2016.¹³² More detailed information on the indicators may be found in Annex III of the present report.

The segment (VL2440 DTS) with the largest share of roundfish landings (41%) has an SHI value indicating a high risk of overcapacity, and SAR and Vessel Utilisation values indicating possible overcapacity, but the report nonetheless classifies it as in balance. Two of the other segments (VL1218 DTS and VL1824 DTS) with more than 10% each of Danish roundfish landings have biological and Utilisation indicator values indicating high risk of or possible overcapacity. These are also classified in the report as being in balance. The segment VL2440 PMP, with 10% of the Danish roundfish catch, has a Utilisation value indicating high risk of overcapacity. Values for other indicators are not given in the report, possibly due to the small number of active vessels (four) in this segment.

In sum, despite indicator values indicating high risk of or possible overcapacity in the four segments together responsible for more than 75% of Danish roundfish landings in 2016, each of these segments is classed as being in balance and the fleet as a whole

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¹³² Most information comes from "Table F.8. Traffic Lights" in the Danish report (p. 20). The utilisation value for the segment VL2440 PMP comes from "Table F.2. Ratios between average days at sea and maximum days at sea" (p. 10). Table F.8 contains only values for the latest year and does not show a traffic light colour. The Guidelines clarify that if the value is greater than one for three consecutive years it could be an indication of imbalance. The SHI values for the latest three years (2012, 2013 and 2014) come from "Table F.3. Sustainable Harvest Indicator (SHI)" (p. 11) When the value is greater than one for three consecutive years the segment has therefore been given a red light in Table 1 in this report. The shares of the Danish roundfish landings were calculated for the present report from information in "Table A.3. Distribution landing live weight in 2016 on overall fisheries (%)" (p. 3). The Danish report includes catches from VL24XX TBB (beam trawlers) in the catches from VL2440 DTS, which is sometimes done when there are very few vessels in a segment.

is classed as being in balance with fishing opportunities. Only segments with very small shares of the overall roundfish landings (such as demersal trawlers under 10 metres) are classed as being out of balance with fishing opportunities, even though larger demersal trawlers may fish the same stocks as them.

In the final “Summary and evaluation” section of the report the fleet segments are aggregated and analysed in five groups. With the exception of two groups that encompass the segments involved in mussel and brown shrimp fisheries, the groups are defined only by vessel length, with demersal and pelagic vessels of similar length being lumped together. This makes it impossible to draw even the most general conclusions about impacts on individual species or stocks and rendering the conclusions regarding balance effectively meaningless. No meaningful explanation is given for the decision to aggregate segments in this way.

This method of aggregation and analysis is not in compliance with the requirements of the Guidelines, as no supporting analyses are provided at segment level, despite the assessments of individual segments diverging from the indicator values.¹³³

The “Summary and evaluation” also comments with regard to the group comprising all vessels of 12–24 metres that

it should also be taken into consideration that the capacity of this group of vessels has already been reduced considerably.¹³⁴

The implication seems to be that if a segment has declined, it should not be classed as in imbalance, or subject to an action plan, even if the indicator values otherwise suggest that there is an imbalance. This might be justified, if the reductions were the result of a system that has delivered capacity reductions in the past and can be relied on to do so also in the future, to the extent necessary, with no changes needed (see below).

The question arises, however, whether Denmark’s 2016 report “seek[s] to identify structural overcapacity by segment”, as stipulated by Article 22(2) subparagraph 2 of the Basic Regulation, or whether it in fact masks overcapacity.

Furthermore, the report contains no capacity assessment of the national fleet as a whole, as prescribed by Article 22(2) subparagraph 2.

2.2.3 Action plan

Although in 2016 only one of 19 vessel segments for which the indicator is reported had a Vessel Utilisation figure above 0.9 (green light) and 14 of 19 segments had one below 0.7 (red light), Denmark’s 2016 report concludes that “there is an acceptable balance between capacity and fishing possibilities”, and no action plan was submitted together with the report.¹³⁵

An action plan was included in the 2015 report. That report concludes that there are two areas where there could be some imbalance between fleet capacity and fishing resources: less active and inactive vessels under 10 metres, and vessels managed under a national system with individual transferable quotas, including medium-sized vessels

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¹³³ Guidelines, p. 4

¹³⁴ Danish report, p. 18

¹³⁵ Danish report p. 19.

of 12–18 metres.¹³⁶ But the corresponding action plan has no adjustment targets, tools, or time frame as required by Article 22(4) of the Basic Regulation. In fact, it concludes that no actions are needed besides those already in place (in particular the ITQ system). The section “Action in response to situations of imbalance” of the 2015 report states that

The situation is being followed very carefully in order to assess whether there is a need for further action. So far, no significant change to the capacity situation has been noted. If anything, there is an indication of some improvement compared to the 2014-report from June 2015. In conclusion there is no need for further immediate action.¹³⁷

As indicated above, the following year’s report does not supply much evidence of the situation being followed particularly carefully. If anything, the position of the Danish government in the negotiations on the western Baltic cod TAC for the next year pointed in another direction. One of the main problems with overcapacity is the fact that it puts pressure on the European Commission and Member States respectively to propose and agree higher TACs (and thus national quotas) than are recommended by scientists. As noted above, the 2015 Danish action plan implied that decisions leading to a timely resolution of any potential overcapacity problem had already been taken. Therefore, the Danish government could have been expected to have pushed for TACs in line with scientific advice to speed up the recovery of depleted stocks. However, in the negotiations leading up to the European Council decision on the western Baltic TACs for 2017, exactly the opposite happened. The scientists at ICES had advised a commercial catch of western Baltic cod of at most 917 tonnes.¹³⁸ The Commission argued that the “situation is very grave with very low biomass and practical no recruitment¹³⁹ so radical measures needed [sic]”¹⁴⁰ and proposed a catch of 1,588 tonnes, while the Council finally approved a far higher TAC of 5,597 tonnes.¹⁴¹ The Danish government expressed itself “strongly opposed to the proposal” by the Commission, explicitly citing the socio-economic consequences of too low a TAC.¹⁴² This can be interpreted as a tacit admission of an overcapacity not identified in the country’s 2016 capacity balance report nor resolved by the plan of action in the previous report.

¹³⁶ Individual Transferable Quotas refers to a national system whereby fishers can sell and buy fishing rights. The system is described briefly in the Danish report on pp. 7-8. Article 21 in the Basic Regulation gives Member States an explicit right to establish systems for transferable fishing concessions.

¹³⁷ Ministry of Environment and Food of Denmark, Annual Report on fishing fleet capacity 2015 - Denmark http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_DNK_MSAR_EN.PDF p. 34

¹³⁸ ICES.2017. Cod (*Gadus morhua*) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf>

¹³⁹ Recruitment refers to the “amount of fish added to the exploitable stock each year due to growth and/or migration into the fishing area. For example, the number of fish that grow to become vulnerable to the fishing gear in one year would be the recruitment to the fishable stock that year. This term is mostly used in referring to the number of fish from a year class reaching a certain age. For example, all fish reaching their first year are age 1 recruits.” ICES, Acronyms and terminology http://www.ices.dk/community/Documents/Advice/Acronyms_and_terminology.pdf

¹⁴⁰ General Secretariat of the Council (AgriFish), Note from the General Secretariat of the Council to Delegations, 11813/16 PECHE 296 + ADD 1 - COM(2016) 545 final + Annex, 22 September 2016 <http://data.consilium.europa.eu/doc/document/ST-12395-2016-REV-1/en/pdf> p. 14

¹⁴¹ European Council, EU total allowable catches (TACs) in the Baltic Sea for 2017, <http://www.consilium.europa.eu/media/24265/eu-total-allowable-catches-tacs-in-the-baltic-sea-for-2017.pdf>

¹⁴² General Secretariat of the Council (AgriFish), Note from the General Secretariat of the Council to Delegations, 11813/16 PECHE 296 + ADD 1 - COM(2016) 545 final + Annex, 22 September 2016 <http://data.consilium.europa.eu/doc/document/ST-12395-2016-REV-1/en/pdf> p. 14.

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2.2.4 Conclusions

- Denmark's 2016 report provides potentially useful information at the level of fleet segments.¹⁴³
- However, it does not appear to comply with Article 22 of the Basic Regulation and the intentions behind it in the following ways:
 - The description of the relation between the segments of the fishing fleet and the stocks targeted is inadequate.
 - The analysis of the balance between fishing opportunities and fishing capacity is not made at stock level. As a result two segments potentially fishing for the same overfished stock receive different traffic light assessments for particular capacity balance indicators.
 - Nearly all segments are assessed as being in balance with no supporting analysis, despite one or more indicator values in a majority of cases suggesting imbalance.
 - The possible overcapacity in the western Baltic cod fishery is not addressed.
 - The report does not appear to seek to identify structural overcapacity.
- As the report does not identify any overcapacity, there is no action plan included. No results of the previous year's action plan are reported.
- The possibility of an overcapacity in the western Baltic cod fishery, although not identified in the report, is consistent with the arguments of the Danish government for a higher 2017 TAC than recommended by scientists and proposed by the Commission.

2.3 Germany's 2015 capacity balance report

2.3.1 Description of fishing fleet and its activity

This section assesses Germany's capacity balance report for 2015. In most cases, however, indicator values refer to 2014.¹⁴⁴

In Annex 1 of the report 21 fleet segments are listed, along with their catches in tonnes of each species or stock in specific ICES/Northwest Atlantic Fisheries Organization areas. Thus, the report specifies landings in tonnes of western Baltic cod (and all other relevant stocks) for each segment. In Table 2 it can be seen for example that demersal trawlers and seiners 18 metres or longer took about 33% of the German western Baltic cod catch, while the smallest vessels using passive gear took about 20% of the catch of that stock.

This information allows a close look at the capacity balance situation in the German western Baltic cod fishery.

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¹⁴³ For example, the values for the SHI indicator, which were used to designate a colour for this indicator for segments in Table 1.

¹⁴⁴ Report to the European Commission under Article 22 of Regulation (EU) No 1380/2013 on the balance between the fishing capacity and the fishing opportunities of the German fishing fleet in 2015, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_DEU_MSAR_EN.PDF, (henceforth referred to as the German report).

2.3.2 Fleet level assessments

In Germany's 2015 report, capacity balance assessments are made at fleet segment level. For the main segments targeting western Baltic cod, the catches and balance assessments are given in Table 2 below.

TABLE 2: Indicator values, landings and assessments for segments of the German fleet with significant landings of western Baltic cod in 2015

Length	Gear code	ROI	Current/break-even	SHI 3 years	SAR	Utilisation	Landings of western Baltic cod, tonnes	Assessment
VL0010	PG	18,9	1.37	2.37, 2.32, 2.28	1	0.36	643	Imbalance
VL1012	PG	-42.8	0.12	2.23, 2.02, 1.83	0	0.44	483	Imbalance
VL1012	DTS	-47.6	0.39	2.48, 2.67, 2.52	0	0.45	133	Imbalance
VL1218	DTS	-8.1	0.8	2.49, 2.45, 2.44	0	0.52	835	Imbalance
VL1824	DTS	37.6	2.25	1.84, 1.64, 1.45	0	0.60	698	In balance
VL2440	DTS	8.8	1.31	1.13, 1.06, 1.17	1	0.66	339	In balance
COM	Green	>0	>1	<1	0	>0.9		
Guide-	Yellow		>0<1		>0			
lines	Red	<0	<0	>1	>10%	<0.7		

Indicators:

ROI Return on Investment Indicator

SHI Sustainable Harvest Indicator

SAR Stocks at Risk Indicator

VL indicates vessel length range in metres.

Gear codes:

DTS Demersal trawlers and/or demersal seiners

PG Vessels under 12 metres using passive gears only¹⁴⁵

Source: German national report for 2015, pp. 13, 15, 24, 25, 26, 27, 38, 40. More detailed information on the indicators may be found in Annex III of the present report.

As regards the SHI values for the fleet as a whole, the report finds

that those segments that make a substantial contribution to German landings ... produced good indicator values. The values were more problematic for smaller vessels, but these had comparatively low landings in 2014 and 2015. The main problem can also be narrowed down geographically to the western Baltic Sea and concerns fleet segments fishing western Baltic cod.¹⁴⁶

As can be seen from the table, four out of the six segments landing western Baltic cod in significant quantities are assessed as out of balance, while the remaining two have red levels for SHI and Vessel Utilisation, raising the question of why they too are not assessed similarly.

2.3.3 Supporting analysis of assessments

Germany's 2015 report provides analyses to support its balance assessments for each segment, though these are not always thorough or entirely convincing. For example, for the three segments covering vessels under 12 metres assessed as being out of balance (i.e. PG VL0010, PG VL1012 and DTS VL1012), the report argues that the indicators are not particularly meaningful, due to the indicator methodology allegedly overestimating the monetary value of vessels and of their depreciation, as well as



¹⁴⁵ European Commission, Joint Research Centre, DCF – Data Collection Framework, Fleet segment DCR

¹⁴⁶ German report, p. 33

to the part-time and non-profit-driven nature of much of the country's small vessel fishing.¹⁴⁷ The report underlines that the German

fleet management approach is further characterised by the fact that Germany wants the tradition of fishing as a side business – which is very much rooted in the family – to retain its significance (not least because it also acts as a draw to tourists) so that its harbours do not become deserted. This type of fishing was also granted its historical fishing rights, which have to be taken into account when distributing fishing opportunities under the provisions of the applicable German Marine Fisheries Act. In this context, it is important to emphasise that although the catch percentages for fishing as a side business are generally very low, they are nevertheless to be deliberately retained.¹⁴⁸

Nevertheless, as can be seen from Table 2 above, the three segments assessed as being out of balance and comprising vessels of 12 metres or less account for more than 40% of the total catch of western Baltic cod by the German fleet.

A similar mixture of special pleading and a selective approach to the indicators characterises the analysis of the two segments with the largest vessels fishing for western Baltic cod (and accounting for roughly one-third of the German catch of that stock), which as shown in Table 2 are assessed as being in balance, despite reported indicator values for both segments suggesting imbalance.

Thus, the SHI for segment DTS VL1824 was 1.45 for 2014, and had been at 1.6 or above in every previous year as far back as 2008. This is far above the threshold for a 'red light', for which the value needs to exceed 1 for just three consecutive years. The vessel use indicator value was 0.60 for 2015, which also indicates imbalance. Indeed, this value was below the overcapacity threshold of 0.70 every year between 2008 and 2015.¹⁴⁹ While the economic indicator values are said to not point to any overcapacity, according to the Guidelines

fleet segments that are not in balance with the fishing opportunities they are exploiting would normally be considered as being in imbalance, even if economic indicators show short and long term profitability.¹⁵⁰

Nevertheless, this fleet segment is classed as being in balance. The report justifies this by saying that the vessel use indicator is stable, while "the SHI is on a positive trend, and no stock at risk is fished".¹⁵¹ The report also questions the validity of the SHI itself, referring *inter alia* to the STECF criticism of the indicator.¹⁵² The fact that the number of vessels has dropped is also mentioned in the overall analysis, implying the view that as long as some reduction has been achieved it is unimportant – or perhaps politically unviable – to reduce capacity further, even if there is still overcapacity. Moreover, the imbalance in the vessel use indicator is blamed on "the fishing effort rules of Regulation (EU) No 1348/2008",¹⁵³ which seems to be another way of saying that the imbalance is due to the lack of fishing opportunities rather than capacity being too high.

¹⁴⁷ German report, pp. 14, 16, 24, 35–37

¹⁴⁸ German report, p. 11

¹⁴⁹ German report, p. 26. The indicators and threshold values are presented in more detail in Annex III.

¹⁵⁰ Guidelines, p. 4

¹⁵¹ German report, p. 26

¹⁵² German report, pp. 33–34

¹⁵³ German report, p. 26. We have not managed to find this regulation. Perhaps it is a misprint and Regulation (EC) No. 1342/2008 (a long term plan for cod in the North Sea etc.) is meant. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1342&from=EN>

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For the segment DTS VL2440 the SHI was 1.17 in 2014 and had been above the threshold value for each of the previous six years, while the vessel use indicator was 0.66 – both suggesting overcapacity. Surprisingly, the analysis describes the 2014 SHI value as “low” even though it is above the threshold set in the European Commission’s Guidelines. The analysis notes that that STECF considered that one stock being fished by this fleet segment in 2014 was considered at risk, suggesting a possible imbalance, and concludes that the stock at risk was most likely eastern Greenland shelf cod.¹⁵⁴ Nonetheless, this segment is assessed overall as being in balance. The supporting analysis justifies this by stating that the biological (SHI) and vessel use values are “close to one” and that the economic indicators are positive.¹⁵⁵

The fact that of the segments identified in Germany’s 2015 report as fishing for western Baltic cod, those assessed as being out of balance are the smaller vessel segments, while larger vessel segments targeting the same stock are assessed as being in balance with their fishing opportunities, offers a similarity with the Danish report reviewed above. Here, of those segments fishing any overexploited species, it is the smaller vessel segments, with a lower share of the catch, that are classed as being out of balance with fishing opportunities while the larger vessel segments are classed as being in balance despite some indicator values suggesting otherwise. This appears to be a good illustration of the problem that STECF alluded to in its 2016 report, where the SHI indicator may mask problems for fleet segments with larger vessels (see sections 1.2.3.7 above and 3.3. below).¹⁵⁶ As with the Danish report, there is no aggregated analysis of all segments targeting the same stock.

As discussed above, Germany’s report presents socio-economic arguments for why smaller vessels in segments classed as being out of balance should nonetheless be allowed to continue to fish. Taken together, Article 17 (on the criteria for the allocation of fishing opportunities by Member States) and Article 22 of the Basic Regulation imply that where there is an overcapacity across a number of segments, reductions should be made in the less sustainable and less socio-economically important segments. Accordingly, the implication of the socio-economic arguments presented in the German report for not addressing overcapacity in the smaller vessel segments is that capacity among the larger vessel segments targeting the same stocks should be reduced instead. However, as remarked above, in the case of the western Baltic cod stock the two segments with the largest vessels, with about 1/3 of the catch, have been assessed (on rather questionable grounds) as being in balance. They are included in the action plan supplied with the report, however, and there is some discussion there of a reallocation of quota.

2.3.4 Action plan

Germany’s 2014 capacity balance report concluded that no action plan was needed.¹⁵⁷ However, after correspondence with the European Commission in June 2015, the German Government submitted an action plan covering six segments. An updated

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¹⁵⁴ German report, p. 28

¹⁵⁵ German report, pp. 27–28

¹⁵⁶ STECF 16-18 pp 158-159

¹⁵⁷ Report to the European Commission under Article 22 of Regulation (EU) No 1380/2013 on the balance between the fishing capacity and the fishing opportunities of the German fishing fleet in 2014, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2014_DEU_MSAR_EN.PDF, p. 17

version of this plan is supplied with the 2015 report. It is a relatively detailed document, running to 14 pages.¹⁵⁸

The action plan covers six fleet segments considered as showing signs of possible imbalance: two passive gear segments (PG VL1012 and DFN VL1218) and four demersal trawler/seiner fleet segments (DTS VL1012, DTS VL1218, DTS VL1824 and DTS VL2440, the last two of which the 2015 report actually assesses as being in balance, as it does DFN VL1218). Of these, only DFN VL1218 does not fish for western Baltic cod. Vessels with a vessel length of 10 metres or less are not included, despite being classed as being in imbalance. The report explains that small-scale coastal fishing frequently involves “part-time fishermen whose catches made up a very small percentage of total catches”. And further, that “it can be safely assumed that the small size, and, in turn, the low fishing capacity of these vessels make it highly unlikely that they could be the cause of any overfishing.”¹⁵⁹ In another section, the report argues that these vessels are important for social and cultural reasons, and are politically prioritised.¹⁶⁰ As was seen in Table 2 above, this segment caught about 20% of Germany’s catch of western Baltic cod.

According to the Commission’s Guidelines, following Article 22(4) subparagraph 1 of the Basic Regulation, an action plan should “contain adjustment targets, tools, and a time frame for implementation”. The 2015 German action plan contains four “global targets”. These are:

- transposition of the legal requirements of the new CFP;
- adjustments to the data and calculation methods used to improve the accuracy of measures to adjust fishing capacity to fishing opportunities;
- modernisation of the German fishing fleet; and
- shifting fishing pressure from the Baltic Sea to the North Sea and other fishing areas.

The tools to be used are specified as:

- measures to swap or redistribute relevant quotas between the Baltic and North Seas;
- abolition of the restrictions on fishing effort in the Baltic and North Seas (for example allowing increased fishing of flatfish in the North Sea by trawlers at least 18 metres long, so that fishing allocations for cod in the western Baltic Sea can be redistributed to vessels less than 18 metres long);
- Marine Stewardship Council certification;
- marketing support;
- restrictions on the use of financing from the EMFF¹⁶¹ so that it can only go to undertakings which can prove annual profits above a certain level or demonstrate that they were at sea more than 60 days a year on average over the past three years;

¹⁵⁸ Action plan to redress structural imbalances in the German fishing fleet in accordance with Article 22(4) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_DEU_MSARA_EN.PDF

¹⁵⁹ German report, p. 37.

¹⁶⁰ German report, p. 11.

¹⁶¹ The EMFF is discussed in more detail in sections 1.4 and 3.5.

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- EMFF support for modernisation in areas such as selectivity, energy efficiency, on-board processing and storage;
- fisheries monitoring and enforcement; and
- a project in the North Sea to fit two cod fishing vessels with closed circuit television (CCTV) monitoring (for monitoring compliance with the discard ban, see section 2.1.2) in return for additional quotas.¹⁶²

The time frame for implementation set out in the plan involves an evaluation in 2017, with further (unspecified) measures possibly being implemented in 2018, if necessary.

According to ClientEarth, the term “adjustment targets” as used in the Commission’s Guidelines means concrete objectives for the reduction of overcapacity.¹⁶³ However, the German action plan does not include quantified objectives. Underlining the problematic nature of this approach, when the STECF Expert Working Group EWG 15-17 commented on the original action plan at the time of its release in 2015,¹⁶⁴ It concluded that progress towards the plan’s global targets would be difficult to monitor and evaluate and that there were no specific targets for the separate fleet segments. As this situation has not improved substantially in the revised plan, the action plan does not appear to be in compliance with the requirements of Article 22.

2.3.5 Conclusions

- Germany’s 2015 report complies with most of the formal requirements of the European Commission’s Guidelines.
- The report includes information which enables an evaluation of the report’s assessments and analyses.
- The analysis of the balance between fishing opportunities and fishing capacity is not made at stock level. As a result two segments potentially fishing for the same overfished stock receive different traffic light assessments for particular capacity balance indicators.
- Smaller vessel segments fishing for western Baltic cod are assessed as being out of balance (but prioritised for protection on socio-economic grounds), while larger vessel segments fishing for the same stock are assessed as being in balance, despite indicator values implying imbalance.
- The action plan supplied with the report does not include quantified objectives for the reduction of overcapacity in the fleet and therefore appears not to be in compliance with Article 22 or the Guidelines.
- It is unclear if action proposed to reduce the identified or implied overcapacity in fleet segments fishing for western Baltic cod will lead to concrete results or when the results are expected to be achieved.

¹⁶² Article 15(13) of the Basic Regulation identifies CCTV monitoring as particularly important for monitoring compliance with the discard ban.

¹⁶³ ClientEarth, p. 7. The Commission’s Guidelines do not themselves define the term.

¹⁶⁴ Scientific, Technical and Economic Committee for Fisheries (STECF) Assessment of balance indicators for key fleet segments and review of national reports on Member States efforts to achieve balance between fleet capacity and fishing opportunities (STECF-15-15), <https://stecf.jrc.ec.europa.eu/documents/43805/1166222/STECF+15-15+-+Balance+capacity.pdf>, p. 111

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2.4 Poland's 2015 capacity balance report

2.4.1 Description of fishing fleet and its activity

Poland's capacity balance report for 2015 describes the Polish fishing fleet and names species caught by the fleet in the Baltic Sea as well as in the North Sea and African waters.¹⁶⁵ Cod is an important species for the Polish fleet, with the cod catch consisting primarily of eastern Baltic cod. The report contains specific information on catches in the Baltic Sea. For the western Baltic cod stock – the only assessed stock classed as fulfilling the “biomass has fallen below B_{lim} ” criterion for the Stocks at Risk indicator – it contains information on catches (by tonnage) for each fleet segment, whereas similar information for the eastern Baltic cod stock (and all other stocks) is lacking.¹⁶⁶

The segment with the largest share of the Polish catch of western Baltic cod (VL1218 DTS) is described as relying

on overfished stocks that are exploited at a level higher than F_{MSY} , with the sustainable harvest indicator exceeding 1 in the period of 2013–2015.¹⁶⁷

2.4.2 Fleet level assessments and supporting analysis

Poland's 2015 capacity balance report includes information on the fleet segments in relation to all indicator values for three consecutive years.¹⁶⁸ It discusses, evaluates and reaches a conclusion for each segment. All the assessments are based on supporting analysis.

Two segments (VL1012 PG and VL1218 DFN) are assessed as showing clear imbalance between fishing capacity and fishing opportunities. Two segments (VL1218 DTS and VL1824 DTS) are assessed as slightly out of balance. The supporting analysis in some cases appears to downplay the seriousness of the red indicator values recorded for the segment. For example the conclusion for the segment catching the largest share of western Baltic cod is

that the **fishing capacity of the VL1218 DTS segment is only slightly imbalanced in relation to available fishing opportunities (with an outlook for improvement)** and the segment's financial performance is indicative of its good economic situation.¹⁶⁹ [Emphasis in the original]

As with the Danish and German reports, there is no aggregated assessment of all segments targeting a specific stock. Table 3 below collects and summarises the findings for segments that fished western Baltic cod in 2015.

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¹⁶⁵ POLAND Annual report on Poland's efforts to achieve balance between fishing capacity and fishing opportunities for the period of 1 January to 31 December 2015 http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_POL_MSAR_EN.PDF, (henceforth referred to as the Polish report), p. 3. Polish vessels are reported as fishing in waters under the jurisdiction of Namibia, Angola and Morocco (according to other reports including Western Sahara, see for example DPA, EU court rules Western Sahara not part of EU-Morocco fisheries deal, <http://www.dpa-international.com/topic/eu-court-rules-western-sahara-part-eu-morocco-fisheries-deal-180227-99-258859>).

¹⁶⁶ Polish report, pp. 10-11

¹⁶⁷ Polish report, p. 26

¹⁶⁸ (2013–15 in the case of the biological and technical indicators, 2012–14 in the case of the economic indicators)

¹⁶⁹ Polish report, p. 26



TABLE 3: Indicator values, catches and assessments for segments of the Polish fleet with catches of western Baltic cod in 2015

Length	Gear code	ROI	Current/ break-even	SHI 3 years	SAR	Utilisation	Catch of western Baltic cod, tonnes	Assessment
VL0010	PG	0.02	1.32	0.62, 0.75, 0.85	0	0.40	30	In balance
VL1012	PG	-0.11	-0.09	1.48, 1.28, 1.28	1	0.42	208	Significant imbalance
VL1012	DFN	-0.04	0.53	1.69, 1.55, 2.97	1	0.49	81	Significant imbalance
VL1218	DTS	0.00	0.96	1.30, 1.51, 1.13	1	0.58	321	Some imbalance
VL1824	DTS	-0.04	0.57	1.35, 1.41, 1.01	1	0.54	89	Some imbalance
VL2440	TM	0.01	1.14	1.25, 1.30, 0.96	0	0.66	15	In balance
COM	Green	>0	>1	<1	0	>0.9		
Guide-	Yellow		>0<1		>0			
lines	Red	<0	<0	>1	>10%	<0.7		

Indicators:

ROI Return on Investment Indicator

SHI Sustainable Harvest Indicator

SAR Stocks at Risk Indicator

VL indicates vessel length range in metres.

Gear codes:

PG Vessels using passive gears only

DFN Drift and/or fixed netters

DTS Demersal trawlers and/or demersal seiners

TM Pelagic trawlers

Utilisation in this table is based on kW days; the Guidelines allow the Member State to choose to base utilisation on kW days or GT days. The Polish report provides data on both.

Source: Polish national report for 2015, pp. 2, 8, 9, 11, 12. More detailed information on the indicators may be found in Annex III of the present report.

2.4.3 Action plan

Poland included an action plan in its capacity balance report for 2014 and included the same plan in its report for 2015. The plan is based on two different tools: permanent cessation of fishing activities (or scrapping of vessels), and temporary cessation of fishing activities. Permanent cessation is especially intended for the two smaller vessel segments assessed as out of balance, whereas temporary cessation is meant to be used for the demersal trawlers in the two segments assessed as being “slightly imbalanced”. 50 fishing vessels were due to be scrapped by 2017.¹⁷⁰

The Polish action plan provides adjustment targets, tools and a set time frame. As such it fulfils the requirements of Article 22. However, the 2015 report does not include a follow-up on what action has been taken since the action plan first appeared in the 2014 report. Specifically, no information is provided on numbers of vessels that have been scrapped or temporarily suspended from fishing. Conversely, it is stated that some capacity withdrawn through decommissioning vessels with the support of funds from the European Fisheries Fund (EFF, the forerunner to the EMFF) has been reintroduced to the fleet as a result of the modernisation of vessels (including the replacement of engines).¹⁷¹

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¹⁷⁰ Polish report, pp. 29–30

¹⁷¹ Polish report, p. 4. Information on EFF financing of the programme referred to in the report was obtained from the Polish Agency for Restructuring and Modernisation of Agriculture, Operational Programme “Sustainable Development of the Fisheries Sector and Coastal Fishing Areas 2007–2013”, at <http://www.arimr.gov.pl/o-arimr/information-about-the-agency/forms-of-aid-managed-by-arma/operational-programme-sustainable-development-of-the-fisheries-sector-and-coastal-fishing-areas-2007-2013.html>

2.4.4 Conclusions

- Poland's 2015 report complies with the requirements of the European Commission's Guidelines on most parameters, but it fails to describe the country's fishing fleet in relation to the fisheries targeted in a comprehensive way.
- The basis for the assessments is clear and transparent, it is relatively easy for a reader to follow and understand.
- Clear information is provided on catches of western Baltic cod (in weight) per segment, although the Polish catch of this stock is relatively small. Corresponding information on the eastern Baltic cod stock, which is much more important to the Polish fleet, is lacking.
- The analysis of the balance between fishing opportunities and fishing capacity is not made at stock level. As a result two segments potentially fishing for the same overfished stock receive different traffic light assessments for particular capacity balance indicators.
- The action plan provided includes adjustment targets, adjustment tools and a time frame within which it needs to be implemented, as required by Article 22(4) of the Basic Regulation.
- No follow-up of the original 2014 action plan is provided in the 2015 report, meaning that no information is presented on the progress of capacity reduction in the Polish fleet thus far.
- Some capacity withdrawn from the fleet with the use of European funds has later been reintroduced by means of vessel modernisation.

2.5 Latvia's 2015 capacity balance report

2.5.1 Description of fishing fleet and its activity

Latvia's capacity balance report for 2015¹⁷² distinguishes between three main parts of the Latvian fleet: the high sea fleet, the Baltic Sea (including Gulf of Riga) offshore fleet, and the coastal fleet. The high sea fleet is described as consisting of "11 big vessels". The report lists the species targeted by the High Seas fleet, which contributed 23.1% of the total Latvian catch in 2015, for each management area.¹⁷³

The Baltic Sea offshore fleet is divided into six segments, based on three vessel lengths (VL1218, VL1824 and VL2440) and two gear categories (trawlers and netters). The report gives the percentages of the Baltic Sea offshore fleet's total 2015 catch of three key species (cod, herring and sprat) that were accounted for by each of these segments.¹⁷⁴ It also provides figures for catch (by tonnage) of four stocks (as designated by ICES) of these three species by three of these segments for each year 2012–14.¹⁷⁵ This includes information on the eastern Baltic cod stock, but not on the western

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¹⁷² The Annual Report On the Latvian Fishing Fleet 2015, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_LVA_MSAR_EN.PDF (henceforth referred to as the Latvian report).

¹⁷³ Latvian report, p. 2

¹⁷⁴ Latvian report, pp. 2–3

¹⁷⁵ Latvian report, p. 12

Baltic cod stock, although according to ICES figures Latvia did have a small catch of this stock each year (11, 128 and 39 tonnes, respectively).¹⁷⁶

For the coastal fleet, the report provides information only on some different species caught, and reports that this fleet catches about 4% of the Latvian fleet's total Baltic Sea catches.¹⁷⁷

2.5.2 Fleet level assessments and supporting analysis

Some indicator values are presented for four fleet segments. The indicator values for these segments are displayed in tables covering the years 2012–15 and usually showing the assessment for each indicator, though some figures are missing. Overall balance assessments for each segment are not given. Supporting analysis is provided, generally organised by indicator, instead of by segment (making it more difficult to get an overview of the balance situation for each segment). Indicator values given are summarised in Table 4 below.

TABLE 4: Indicator values for some segments of the Latvian fleet

Length	Gear code	ROI	Current/ break-even	SHI 3 years	SAR	Utilisation
VL0010	PGP	>0	51.29	N/A	N/A	0.24
VL1218	TM	<0	-1.14	1.05, 0.84, 1.1	N/A	0.64
VL2440	TM	>0	1.31	0.95, 1.15, 1.5	N/A	0.58
VL2440	DFN	N/A	N/A	1.24, 1.51, Not defined	N/A	0.89
COM	Green	>0	>1	<1	0	>0.9
Guide-	Yellow		>0<1		>0	
lines	Red	<0	<0	>1	>10%	<0.7

Indicators:

ROI Return on Investment Indicator

SHI Sustainable Harvest Indicator

SAR Stocks at Risk Indicator

VL indicates vessel length range in metres.

Gear codes:

DFN Drift and/or fixed netters

TM Pelagic trawlers

PGP Vessels using polyvalent passive gears only

Source: Latvian national report for 2015 pp. 15–16. More detailed information on the indicators may be found in Annex III of the present report.

As well as the lack of overall assessments for the segments covered, the report does not include a balance assessment at the national fleet level, nor aggregated assessments of all segments targeting a specific stock. The absence of such assessments gives rise to some questionable conclusions. For example, two segments catch most of the eastern Baltic cod taken by the Latvian offshore fleet.¹⁷⁸ It is proposed to scrap the smaller segment (VL2440 DFN),¹⁷⁹ which takes 12% of the offshore fleet's cod catch, but not the other segment (trawlers of the same length)¹⁸⁰ which takes over 80% of that catch. The netters target only cod, whereas the trawlers target sprat,

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¹⁷⁶ ICES.2017. Cod (*Gadus morhua*) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> p. 12

¹⁷⁷ Latvian report, p. 3

¹⁷⁸ Latvian report, pp. 2–3

¹⁷⁹ Latvian report, p. 8

¹⁸⁰ Here, this study follows the language in the Latvian report, which often distinguishes between "netters" and "trawlers", but not between, for example, different kinds of trawlers.

herring and cod and are assessed as relying on the overfished Baltic sprat stock.¹⁸¹ The trawlers also had a low vessel utilisation indicator during the four years to 2015, a result noted as corresponding to a red light in the traffic light system.¹⁸² Although the scrapping of the netters is likely to ease the situation for the trawlers, there is no explicit discussion of its potential effects.

2.5.3 Action plan

An action plan for 2015–17 was submitted in 2015, attached to the report for 2014.¹⁸³ The goal of this plan is limited to managing the VL2440 DFN segment. Taking account of biological and economic indicator values, the action plan comes to the conclusion that this fleet segment is out of balance and that action should be taken to correct it. The action plan envisages the scrapping of the whole fleet segment (six vessels) by the end of 2017. There is no indication of how this is to be achieved.

The 2015 report refers to the action plan, including the intention of scrapping the entire VL2440 DFN fleet segment. Although the report does not say anything about progress in the action plan, it does provide information about the level of fleet reduction between 2004 and 2015 in terms of number of vessels, total gross tonnage and total engine power.¹⁸⁴ It also includes numbers of vessels per segment in 2014 and 2015.¹⁸⁵

2.5.4 Conclusions

- Latvia's capacity balance report for 2015 fails to comply with Article 22 and the intentions behind it in the following ways:
 - The description of the relation between fleet segments and fishing opportunities is incomplete, although much relevant information is available in the report and a diligent reader can fill in many of the gaps and draw conclusions.
 - There are no assessments and analyses of the balance between fishing opportunities and fishing capacity at fleet level.
- The action plan submitted in 2015 includes adjustment targets, tools, and a time frame, but does not include a description of how it is going to be carried out in due time.

2.6 A regional overview for the Baltic?

In view of the greater role for regional management introduced in the 2013 CFP reform and the magnitude of the overcapacity challenge, it would be in the interest of policy-makers and fisheries managers in the countries around the Baltic to have access to an assessment of the balance between fleet capacity and fishing opportunities

¹⁸¹ Latvian report, pp. 2–3, 7

¹⁸² Latvian report, pp. 5–6, 15

¹⁸³ The Annual Report On the Latvian Fishing Fleet 2014, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2014_LVA_MSAR_EN.PDF

¹⁸⁴ Latvian report, p. 1

¹⁸⁵ Latvian report, p. 2-3

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at the regional level. Although there are indications of overcapacity in some Baltic Sea fisheries, there is at present no regional capacity assessment.

In connection with its 2016 report, STECF published an overview of the assessments of each indicator for each segment of the fleets of all 28 EU Member States, based on the traffic light system.¹⁸⁶

In the process of preparing this study, we have attempted to see what conclusions could be drawn on a regional level about possible overcapacity in the EU fleet fishing the western Baltic cod stock, on the basis of national capacity balance reports and information from STECF. To this end we have analysed the 2016 STECF overview and the national reports for 2015 (i.e. covering the same time period, 2015, as the 2016 STECF overview, in order to have comparable figures), with a particular focus on the four Member States in the Baltic Sea region that together catch nearly all the western Baltic cod landed – Denmark, Germany, Sweden and Poland.¹⁸⁷

Annex IV presents information obtained in the course of this analysis from the 2016 STECF overview or the 2015 national reports, covering 30 segments of the Danish, German, Swedish and Polish fleets. These are segments that, based on the national reports, have caught or, judging by their gear type, could catch western Baltic cod. Most (23, or 75%) of these segments have a Vessel Utilisation value indicating overcapacity.

The German national report includes information on landings of western Baltic cod, and all other species, by each segment. The Polish report includes similar information regarding catches of western Baltic cod (but not those of any other species). The Danish report, however, contains only information on landings of roundfish (which encompasses a number of different species, including cod, from both the Baltic Sea and elsewhere) for each segment. Danish catches of western Baltic cod corresponded to about 18% of Danish landings of roundfish in 2015.¹⁸⁸ The Swedish report includes no information about catches or landings of individual stocks or by individual segment.¹⁸⁹ These deficiencies in the data provided by some countries make it difficult to achieve an overview of the situation in the region.

As can be seen in Annex 4, all segments except one have at least one indicator that points to imbalance (red, in the traffic light system). Most have several indicators pointing to imbalance. In particular, the Vessel utilisation indicator (identified by the Commission's guidelines as most significant) points to imbalance in most segments.

In the case of both German and Polish fleets, the figures reveal that more than half the western Baltic cod caught or landed was accounted for by demersal trawlers or seiners longer than 12 metres. Across the four national fleets, Annex IV shows nearly

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¹⁸⁶ Scientific, Technical and Economic Committee for Fisheries (STECF), STECF 16-18 - Balance capacity – indicator table.xlsx, available from <https://stecf.jrc.ec.europa.eu/reports/balance> at STECF 16-18 - Balance capacity - indicator table.xlsx

¹⁸⁷ ICES.2017. Cod (*Gadus morhua*) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> p. 12

¹⁸⁸ This figure was obtained by comparing reported landings of roundfish in tonnes in Table A.3 in Ministry of Environment and Food of Denmark, Annual Report on fishing fleet capacity 2015 - Denmark http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_DNK_MSAR_EN.PDF with Danish catches of cod in areas 22-24 in 2015 according to Table 11 in ICES.2017. Cod (*Gadus morhua*) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf> It should be noted that some eastern Baltic cod is caught in area 24 and may be included in the figure. Also the proportion of western Baltic cod in the total Danish roundfish catch will vary from year to year.

¹⁸⁹ The Swedish Agency for Marine and Water Management, Swedish Fleet Capacity Report 2015, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_SWE_MSAR_EN.PDF



400 demersal trawlers or seiners longer than 12 metres that are part of segments with Vessel utilisation values indicating overcapacity. About half of these are Danish.

The existence of such a large number of vessels in segments with low utilisation and that are capable of fishing cod suggests a risk of increased pressure on the already overfished western Baltic cod stock, as it makes it all the more likely that fisheries managers and decision-makers will continue setting higher TACs than scientists recommend.

Our analysis has thus gone some way to confirming the impression of significant regional overcapacity. There are a number of indications of imbalance in individual segments targeting the stock, both in STECF's report and in those of Member States (including in the latter case the admission of imbalance implicit in the socio-economic arguments against TAC and quota reductions that they present both in their reports and elsewhere). However, there are few strong measures to reduce capacity proposed in the national reports and action plans. On the contrary, the reports contain a variety of arguments against taking measures to reduce capacity. We have nevertheless had to conclude that due to the deficiencies in the data provided by the current national capacity balance reporting, it is not possible to get a clear enough regional overview of the balance between fishing capacity and fishing opportunities for the fleet segments targeting the western Baltic cod stock.

A regional overview is urgently needed. As noted in section 2.2.3, in the negotiations leading up the Council decision on western Baltic cod fishing opportunities for 2017, the Commission argued that the situation of the stock was very grave and that radical measures were needed.¹⁹⁰ The Commission proposed a substantial reduction in the TAC, although the scientists at ICES had proposed an even larger reduction. The third and fourth largest fishers of the stock (Sweden and Poland respectively) supported the Commission's (Sweden) or ICES (Poland) proposals for TAC reductions. However, neither of the two countries with the largest commercial landings of western Baltic cod (Denmark and Germany) supported the Commission's proposal for a reduction in the TAC. Denmark, with the largest share of catches, explicitly cited socio-economic reasons for its opposition to a reduced TAC. Germany asked if funds from the EMFF could be used (presumably in direct or indirect support for fishers whose incomes would be reduced). The Commission replied that the "EMFF is looked at to provide some mitigation of socio-economic consequences".¹⁹¹ This response raises the question of whether EMFF funding could in effect be used to maintain an overcapacity.¹⁹²

An accurate regional assessment would instead clarify the need to reduce capacity to achieve a better balance.

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¹⁹⁰ For the positions of the Member States and the Commission, see General Secretariat of the Council (AgriFish), Note from the General Secretariat of the Council to Delegations, 11813/16 PECHE 296 + ADD 1 - COM(2016) 545 final + Annex, 22 September 2016 <http://data.consilium.europa.eu/doc/document/ST-12395-2016-REV-1/en/pdf> p. 14

¹⁹¹ See General Secretariat of the Council (AgriFish), Note from the General Secretariat of the Council to Delegations, 11813/16 PECHE 296 + ADD 1 - COM(2016) 545 final + Annex, 22 September 2016 <http://data.consilium.europa.eu/doc/document/ST-12395-2016-REV-1/en/pdf> p. 14. For Member States' shares of the western Baltic cod catch, see ICES.2017. Cod (*Gadus morhua*) in subdivisions 22-24, western Baltic stock (western Baltic Sea).

¹⁹² See sections 1.4 and 3.5 for a further discussion of the EMFF in relation to capacity balance reporting.



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3. Discussion

3.1 Introduction

The CFP identifies overcapacity in the EU's fishing fleet as a major problem. Overcapacity contributes to poor profitability in the fisheries sector and hampers the recovery of depleted fish stocks. As already noted, according to the European Commission's 2009 Green Paper, overcapacity is the fundamental problem for the reformed CFP to solve.¹⁹³

The CFP reform of 2002 contained provisions to address the problem. However, due to these measures' lack of success, efforts to reduce overcapacity had to be strengthened in the subsequent 2013 reform. On any reasonable interpretation of the current CFP, Member States, with the support of the European Commission, are required proactively to identify and address any overcapacity in their fishing fleets.

Article 22 of the CFP's Basic Regulation contains the central provisions to ensure that Member States continually adjust fishing capacity to the fishing opportunities available. However, our review of selected national capacity balance reports supplies evidence that capacity balance reporting in the form required by Article 22, and as currently conducted, does not provide the information needed to identify and address overcapacity in Member State fishing fleets. This information should primarily be used by the Member States. But it is also needed by STECF to assess the national reports and the capacity balance situation in general, and by extension by the Commission, the European Parliament, the Council, stakeholders or media to monitor and discuss developments. The provisions of the Regulation and Guidelines are too vague and insufficiently stringent, while non-compliance with even those inadequate provisions is common.

Even the European Commission clearly violates at least one of the provisions in Article 22, in that it does not attach the national reports to its report to the European Parliament and the Council. It is also open to question whether the European Commission is compliant with the intentions of Article 22 in other ways. This chapter reflects on this situation, some possible reasons, and some ways forward.

3.2 Mismatch and imbalance

According to the Basic Regulation, Member States' national capacity balance reports are supposed to assess the balance between fishing capacity and fishing opportunities and "seek to identify structural overcapacity by segment".¹⁹⁴ One of the reasons for their widespread failure to achieve this aim in a useful way is the lack of clear requirements in the Commission's Guidelines for reporting. Member States have interpreted the Guidelines as prescribing, or at least allowing, Member States to present information that would provide a clear indication of the total capacity targeting particular stocks and if there is excess capacity that might target those stocks.

A better presentation of information already available on the Member State level would facilitate identification of overcapacity. This should allow a more successful

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¹⁹³ Green Paper, p. 8

¹⁹⁴ Basic Regulation, Article 22(2) subparagraph 2.

implementation of the requirement to identify structural overcapacity than is currently the case, providing more useful information for stakeholders and decisionmakers at all levels.

As early as 2009, the Institute for European Environmental Policy (IEEP) proposed that fleet segments should be linked to fish stocks when assessing and reporting on capacity balance.¹⁹⁵ The 2016 Estonian national capacity balance report makes a similar point, but suggests that all vessels targeting the same stock with similar gear should be analysed together:

In general, it is important to stress that vessels belonging to the same fishery (i.e. fishing in the same area, for the same species/stocks, using similar gear) should be analysed together as dividing them into smaller subsets (e.g. based on DCF fleet segments) might distort the results.¹⁹⁶

The IEEP's approach does not exclude the Estonian one. Indeed, the two approaches could be combined to offer a much more effective means of identifying structural overcapacity than the approach used in national reports today. Such approaches would also help to resolve a problem with the SHI pointed out by STECF, as discussed in section 1.2.3.7.¹⁹⁷

3.3 Self-defeating bias against small-scale coastal fishers

As STECF's criticism and proposals for change indicates, weaknesses in the indicators for national capacity balance reporting set out in the European Commission's Guidelines have negative implications for the quality of fisheries management.¹⁹⁸ This has a particular impact on the way the system treats small-scale coastal fishers.

One indicator defined in the Guidelines is the economic dependence of a fleet segment on stocks that are overfished – the SHI. The use of this indicator results in a segment that specialises in one overfished stock being much more likely to be identified as out of balance than a segment fishing for several stocks, even if the latter catches much larger quantities of that same overfished stock.¹⁹⁹ As a consequence, measures to improve capacity balance tend to be concentrated on segments covering specialised vessels.

Two of the other indicators specified in the Guidelines focus on economic parameters – return on investment and the ratio of current revenue to revenue required to break even. Again, if two segments target the same stock, the profitability of one segment may very well be at the expense of the other.

Both of these factors can result in a structural bias against small-scale coastal operators. These operators cover a relatively small geographical area and sometimes target a specific fish stock. Their profitability may be affected by competition for the same stocks from larger fishing vessels. Even though the impact on a particular depleted

¹⁹⁵ The IEEP can be described as a sustainability think tank. Institute for European Environmental Policy, *Overcapacity – What Overcapacity?*, 2009, <https://ieep.eu/publications/overcapacity-what-overcapacity> p. 30 See also Sophie des Clers' presentation at a Seas at Risk Conference 2009 http://www.seas-at-risk.org/images/pdf/archive/091021SdC_Pres_final.pdf, slide 16

¹⁹⁶ The Annual Report on the Fishing Fleet of Estonia 2015, http://ec.europa.eu/fisheries/fleet/software/FleetManagement/FM_Reporting/AnnualReportDocs/2015_EST_MSAR_EN.PDF, p. 10

¹⁹⁷ STECF-16-18, pp. 158-9

¹⁹⁸ STECF 16-18

¹⁹⁹ As mentioned above, STECF has identified this problem. See section 1.2.3.7 in this report and STECF-16-18, pp. 158-9

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stock from fishing by larger vessels may be greater than that from fishing by small vessels, this may be masked by the current indicators, which will identify only the smaller vessel segment as being out of balance.

However, EU fisheries policy, along with national fisheries policies in a number of Member States, promotes small-scale, artisanal and coastal operators.²⁰⁰ Potential measures to reduce capacity in small vessel segments where overcapacity is indicated, may clash with political priorities. At the same time, due at least in part to the problems STECF has identified in the Commission's construction of the indicators and the lack of adequate reporting from Member States, existing overcapacity targeting the same stocks is not identified. The result would be either political impasse, with no action being taken, or the pursuit of unpopular policies that do little to improve the status of fish stocks.

The problem is well illustrated by the example of the western Baltic cod stock: the impact of larger vessels on the depleted stock is masked in the current capacity balance reporting. There is therefore less pressure for decision-makers to reduce the capacity of these segments. At the same time smaller vessel segment, despite their much less significant impact, are identified as being out of balance. The alternative of reducing the capacity of, fishing pressure from, larger vessel segments in order to improve fishing opportunities for the politically prioritised smaller vessels is not identified because of the deficiencies in the capacity balance reporting.

3.4 An optimistic approach

Our review of the Baltic Member States' annual capacity balance reports and the 2016 and 2017 reports from the European Commission to the European Parliament and Council gives the impression that neither the Member States nor the Commission are actively trying to identify and reduce overcapacity.

Instead, the European Commission presents a basically positive picture in its reports to the European Parliament and Council. There is a stark contrast between the assured tone of the Commission's 2017 report and the crisis situation presented in its 2009 Green Paper. Some Member States' national reports also seem to portray the situation as better than it actually is.

As described in section 1.3.2, according to the Commission's 2017 report 2015 saw a significant decrease in EU fleet capacity in terms of both gross tonnage and engine power, which the report claimed "continu[ed] the trends seen in the past decade".²⁰¹ It is, of course, theoretically possible that there has also a significant **reduction in overcapacity** in the interval between the 2009 Green Paper and the 2017 Commission capacity balance report. It is beyond the scope of this study to ascertain whether this is the case. In addition to reductions in fleet capacity, improvement noted in some fish stocks has given more fishing opportunities and thereby improve capacity balance. But as noted in section 1.1.2, capacity reductions of the magnitude reported in the Commission's 2017 report may be outweighed by the estimated annual capacity increase of 2–3% due to the 'technological creep' identified in the 2009 Green Paper.

²⁰⁰ See for example the Basic Regulation, Recital (19), Article 2(5)(f) and (i), and Article 17 and the German national report, as mentioned in section 2.3.3 above.

²⁰¹ 2017 Commission capacity balance report, p. 24

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The Commission's failure to take account of this last factor may go some way to explaining its lack of a sense of urgency and its consequent inaction in response to on STECF's recommendation (echoed by some Member States) that its Guidelines be revised (see section 1.2.3.7). As section 1.3.3 notes, the Commission has not even reported on STECF's criticisms to the European Parliament or the Council.

National decision-makers and fisheries managers are regularly more optimistic about the state of fishing stocks than are the scientists who advise them. It is conceivable that both the Commission and national fisheries managers have sometimes dragged their feet on action to reduce capacity in the hope that depleted stocks will recover faster than scientists predict. Such a hope would be consistent with TACs often being set at a higher level than scientists recommend. The poor state of the western Baltic cod stock over the past two decades may be an example of what happens when such an optimistic view takes precedence over the precautionary approach mandated by the CFP.²⁰² Decision-makers and fisheries managers are responsible not only for maintaining the resource base for a business sector, but also more importantly for ensuring the wellbeing of a key part of the marine ecosystem with long-term consequences for a number of broader environmental, social and even economic interests. A cautious attitude to risk is more appropriate (and more in line with the precautionary approach to fisheries management mandated by Article 2(2) of the Basic Regulation) than an overly optimistic approach.

3.5 EMFF incentives and capacity balance reporting

The artificial maintenance of excess fishing capacity by means of subsidies has long been identified as a problem, including in the Commission's 2009 Green Paper. Despite attempts to address this issue in the 2013 reform, it is possible that EMFF funding targeted at other objectives may continue to contribute to overcapacity and even capacity increases, at least in terms of the capacity of individual vessels.

Although the EMFF Regulation states that

the pursuit of [its] objectives shall not result in an increase in fishing capacity, that the EMFF shall pursue priorities in the CFP, including

the ensuring of a balance between fishing capacity and available fishing opportunities

and that

operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish

shall not be eligible for EMFF funds,²⁰³ the measures of capacity used in the CFP definition (engine power and gross tonnage)²⁰⁴ are not comprehensive enough to capture

²⁰² Article 2.2 of the Basic Regulation states:

the CFP shall 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.

Article 4(8) gives the following definition:

'precautionary approach to fisheries management', as referred to in Article 6 of the UN Fish Stocks Agreement, means an approach according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.

²⁰³ EMFF regulation, Article 5 paragraph 2, Article 6(1)(c) and Article 11(a), respectively.

²⁰⁴ Basic Regulation, Article 4.1.(24)

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an increase in the actual capacity to catch fish, thanks in large to the issue of ‘technological creep’ discussed in section 1.1.2. As a result there is a risk that the EMFF aims just mentioned will not be achieved.

The intention seems to be that access to EMFF funding should be an incentive to address overcapacity, at the same time that the addressing of overcapacity helps to ensure that EMFF funding does not prolong or increase the problem. If the capacity balance system is not robust enough, this approach will not work. As seen in the present study, there are disturbingly many indications that the system is not functioning as intended. However, it is beyond the scope of this study to establish whether EMFF funds have in practice gone to measures that may actually prolong overcapacity or even increase a national fleet’s ability to catch fish.

It is worth noting that the EMFF Regulation’s stipulation that a sector-specific action plan to tackle overcapacity is a precondition for the payment of decommissioning funds for permanent withdrawal of vessels in the segment concerned (see section 1.4) has given Member States an incentive to identify overcapacity.²⁰⁵ Conversely, the EMFF Regulation’s stipulation that a capacity balance report showing no overcapacity is a precondition for the payment of funds for vessel modernisation or support for young people entering the industry may give Member States a perverse incentive to refrain from identifying overcapacity. That is, the EMFF conditionality, intended to reinforce efforts to reduce overcapacity, may give incentives to distort reporting.

The first of these points is illustrated by two of the national capacity balance reports reviewed in this study. Despite some indications of overcapacity, Denmark has not identified overcapacity in its national report and does not seek EMFF funding for cessation activities.²⁰⁶ Poland has identified overcapacity and does seek EMFF funding for cessation activities.²⁰⁷

3.6 Insufficient incentives to act

In addition to the EMFF-related issue just mentioned, if a Member State identifies no overcapacity, there is no need for it to prepare an action plan to deal with overcapacity. This may offer fisheries managers and political decision-makers short-term benefits (such as evading the need to take action, and thereby avoiding domestic political conflicts or loss of employment in coastal communities). At the same time, it may prolong problems such as depleted stocks and poor profitability.

However, while it is clear that the system to identify and reduce overcapacity is flawed, if no one complains about the problem then it may not be perceived as urgent for the Commission to address it. The resulting inaction may again bring some short-term benefits for both the Commission and some Member States.

If there is criticism made, but it does not come to the attention of the public or an institution with a potential watchdog role such as the European Parliament, this may again result in a lack of incentive for the Commission and Member States to address the identified flaws. It is in this context that the failure of the Commission to include in its reports to the European Parliament and Council any mention of STECF’s

²⁰⁵ EMFF regulation, Article 34(1)(B)

²⁰⁶ European Maritime and Fisheries Fund – Operational Programme for Denmark https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/op-denmark_da.pdf p. 72

²⁰⁷ Polish report, p. 2

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criticism and proposals for change, or to act on that criticism, may have serious consequences. These failures have further reduced the pressure on the Commission and Member States to take action and have in all probability contributed to continued overcapacity, with all its negative effects.

3.7 Regionalisation and a STECF capacity balance report for the Baltic

As noted in section 2.1.1, a major change brought about by the 2013 CFP reform was the stronger role given to regions in fisheries management. Further regionalisation of fisheries management has been a trend throughout the EU. For example the Regional High Level Group for the Member States in the Baltic (BALTFISH) spends a lot of its energy discussing TACs, a topic which is not specifically mentioned in the Article on regionalisation in the CFP.²⁰⁸

It is essential for an efficient and sustainable fisheries administration that regionalisation should function well. Given that the fleets of several nations often fish for a single stock, it would for example be highly desirable to clarify the total potential fishing pressure on each stock. This would by extension give a sense of the cumulative political pressure faced by managers and decision-makers. The more ministers who are under pressure to maintain high TACs and quotas in a context of regional overcapacity, the more difficult it will be for them to reach an agreement to reduce TACs in line with scientific recommendations. On the other hand, better information on the scope of the overcapacity challenge can provide more support to (or pressure on) managers to address that challenge.

As noted in section 3.3, small-scale, coastal and even part-time operators, who depend on a particular overfished or biologically vulnerable stock in a particular area, may compete for the same fish with larger-scale, wider-ranging fishers.²⁰⁹ It is thus in the interest of the large-scale fishers that the fleet segments to which the smaller-scale fishers' vessels belong be classed as being out of balance, as that may lead to a reduction in capacity among the latter and thereby ensure more access to the scarce resource for the larger-scale fishers. However, the small-scale fishers are prioritised for protection in the CFP and by some Member State governments. A regional assessment of the balance between fleet capacity and fishing opportunities might clarify the potential for trade-offs between different segments.

In sum, effective fisheries management requires dedicated capacity balance assessments at a regional level. However, such assessments are currently lacking. The European Commission's centralised reviews of the national capacity balance reports do not provide an adequate regional overview.

Moreover, as described in section 2.6, it is impossible to assemble a clear regional overview on the basis of information currently provided in the relevant national capacity balance reports, even with the help of STECF's overview of the assessments in those reports.

²⁰⁸ Article 18. Strictly speaking, an agreement among the Member States on TACs would be a recommendation to the Council, while Article 18 refers only to measures to be adopted by the Commission.

²⁰⁹ For a definition of the terms 'overfished' and 'biologically vulnerable' see the descriptions of the SHI and the Stocks at Risk indicator, respectively, in Annex III.

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A group of Member States could jointly produce a regional capacity overview. Given the other new burdens that regionalisation in the CFP places on Member States, they might not have the resources and capacity for a new task. There are also advantages to having an external body producing a regional capacity balance report.

STECF has extensive experience in commenting on national capacity balance reports and has made recommendations to the European Commission on improving the Guidelines for such reports. STECF is therefore well placed to produce a regional overview.

Besides its intrinsic value, producing a pilot independent regional overview of capacity balance could provide an opportunity for STECF to test more suitable parameters and other information to assess capacity balance. Such a report should include an assessment for each stock that is either overfished or biologically vulnerable. Presumably, national fisheries authorities hold detailed information on what stocks are fished by which vessels, as this is necessary in order to ensure that quotas are not overfished. This information should be of use to STECF in preparing assessments of fishing pressure on specific stocks.

The Baltic Sea is characterised by some depleted fish stocks as well as poor profitability in a number of the fleet segments operating in its waters. From time to time Member States in the Baltic Sea region have been frontrunners in trying out new fisheries management initiatives to address such issues. As such it would be appropriate for the Baltic Sea region to form the subject of the first regional assessment of capacity balance undertaken by STECF or by another competent independent entity.

3.8 Socio-economic effects and measuring overcapacity

A common argument against following scientific advice on TACs is that TACs set on this basis would entail unacceptable socio-economic effects.²¹⁰ In effect, this is arguing that such TACs and quotas would not allow fishers to make a viable income due to the resultant imbalance between fleet capacity and fishing opportunities.

As mentioned in sections 2.1.1 and 3.7, one of the negative impacts of overcapacity is precisely this pressure on politicians to permit unsustainably high fishing pressure.

In the CFP, capacity balance is measured as a relation between fleet capacity and the available fishing opportunities. Putting aside the issue of how fishing capacity is determined, fishing opportunities are determined by Member States in the AGRIFISH Council (or, for the Mediterranean and Black seas, in other fora). Fishing opportunities may therefore have been inflated to match capacity. A measure based on fishing opportunities may well miss an overcapacity in relation to what, according to the best available scientific advice, can be sustainably fished.

It would therefore be desirable to base capacity balance assessments on the available resource, instead of politically determined fishing opportunities. On the other hand, the indicators currently used (such as return on investment, vessel utilisation and so forth) are directly related to the politically determined opportunities. Until better

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²¹⁰ See section 2.2.3 above for an example.

indicators can be developed, it should be recognized that the current system contains a systematic bias towards underestimating overcapacity in relation to fish stocks.

Furthermore, any time socio-economic impacts are used as an argument against following scientific advice in determining fishing opportunities, this is likely to be an indirect admission of an overcapacity in relation to the available resources. This suggests that in such instances, fishing capacity needs to be reduced.

3.9 Brexit: a further source of urgency

It is impossible to predict the consequences of Brexit in relation to the EU's fisheries. But one scenario is that it could lead to displacement of fishing effort on the part of the remaining EU Member States from UK waters to other EU waters. This in turn could create overcapacity in fisheries where there currently is none, or increase overcapacity in fisheries where it already exists.

Despite the new mechanisms which the 2013 CFP reform introduced in Article 22 of the Basic Regulation, there is a clear risk that the reformed CFP will not succeed in addressing the imbalance for various fisheries between capacity and stocks. As the Commission wrote in the 2009 Green Paper,

this imbalance is at the root of all problems related to low economic performance, weak enforcement and overexploited resources ... mechanisms to ensure that the size of European fishing fleets is adapted and remains proportionate to available fish stocks ... is [sic] a pre-requisite for all other pillars of the policy to work.²¹¹

It is therefore a matter of urgency to put in place a more robust system to identify and address imbalances between capacity and stocks by the time Brexit transition period ends at the end of 2020. Significant improvements can and should be made by the European Commission and by Member States within the current provisions of the CFP.

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²¹¹ Green Paper, p. 8



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4. Recommendations

4.1 Recommendations to EU Member States:

- give closer consideration to the intentions behind the CFP and follow the European Commission's Guidelines more closely when reporting on capacity balance;
- be more active in seeking to identify and address imbalances, for example by providing supplementary information needed for more accurate assessments;
- present capacity balance conclusions in a clear and transparent manner;
- submit robust action plans that are in compliance with European Commission's Guidelines when they identify an overcapacity;
- follow up on action plans and include updates on progress on capacity reduction in their annual capacity balance reports;
- request the European Commission to improve its Guidelines by including parameters and indicators for capacity balance reporting that are more relevant, as well as clearer directions for fleet segmentation, in order to remedy the deficiencies identified by STECF; and
- encourage the European Commission to request STECF or another independent body to prepare a regional capacity balance report for the Baltic Sea region as a pilot area.

4.2 Recommendations to the European Commission:

- revise its Guidelines, by:
 - altering their approach to fleet segmentation to ensure that it reflects the total pressure on a fish stock;
 - revising the parameters and indicators for capacity balance reporting as recommended by STECF; and
 - including templates for the annual national capacity balance report and action plan;
- include reference to Member States' action plans in its annual capacity balance reports to the European Parliament and Council, as stipulated by the CFP;
- include a summary of the opinions of STECF in its annual capacity balance reports to the European Parliament and Council, as was formerly stipulated by the Basic Regulation prior to its 2013 revision;

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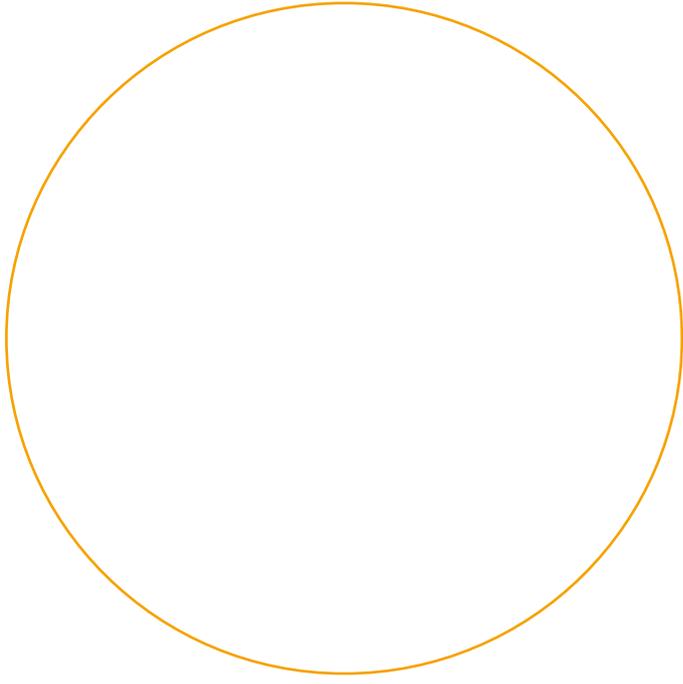
- take action when Member States do not comply with its Guidelines, for example by:
 - asking follow-up questions of, and providing feedback to, Member States; and
 - using the financial penalties available under Article 22(4) of the Basic Regulation when Member States continually fail to comply with the Guidelines;
- request that STECF develop and apply a methodology for taking into account ‘technological creep’ when assessing trends in fishing fleet capacity;
- request that STECF or another independent body take a closer look at the capacity balance of fleet segments fishing a particular stock in cases where Member States or fishers’ representatives argue that scientific advice should not be followed because of socio-economic impacts; and
- request that STECF or another independent body conduct a pilot regional assessment of capacity balance covering the Baltic Sea region.

4.3 Recommendations to the European Parliament and national parliaments:

- act to ensure that the rules and intentions of the CFP are followed, and that capacity balance reporting does in fact contribute to achieving the goals of the CFP, by:
 - monitoring developments in capacity balance reporting more closely;
 - ensuring that the European Commission includes reference to national action plans in its annual capacity balance reports to the European Parliament and Council;
 - requesting the European Commission to include the opinions of STECF in its annual capacity balance report; and
 - requesting the European Commission to revise its Guidelines in order to remedy the deficiencies identified by STECF, with particular attention to the relevance of fleet segmentation, parameters and indicators; and
 - encourage the European Commission to request STECF or another independent body to prepare a regional capacity balance report for the Baltic Sea region.

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Annex I

– Excerpts from the 2002 Basic Regulation

CHAPTER III ADJUSTMENT OF FISHING CAPACITY

Article 11 Adjustment of fishing capacity

1. Member States shall put in place measures to adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities.
2. Member States shall ensure that the reference levels expressed in GT and kW for fishing capacity referred to in Article 12 and paragraph 4 of this Article are not exceeded.
3. No exit from the fleet supported by public aid shall be permitted unless preceded by the withdrawal of the fishing licence as defined in Council Regulation (EC) No 3690/93 (OJ L 341, 31.12.1993, p. 93) and, where provided for, the fishing authorisations as defined in the relevant regulations. The capacity corresponding to the licence, and where necessary to the fishing authorisations for the fisheries concerned, cannot be replaced.
4. Where public aid is granted for the withdrawal of fishing capacity that goes beyond the capacity reduction necessary to comply with the reference levels under Article 12(1), the amount of the capacity withdrawn shall be automatically deducted from the reference levels. The reference levels thus obtained shall become the new reference levels.
5. On fishing vessels of 5 years of age or more, modernisation over the main deck to improve safety on board, working conditions, hygiene and product quality may increase the tonnage of the vessel, provided that such modernisation does not increase the ability of the vessel to catch fish. The reference levels under this Article and Article 12 shall be adapted accordingly. The corresponding capacity need not be taken into account for the establishment of the balance of entries and exits by Member States under Article 13.

The detailed rules and conditions for such measures may be adopted in accordance with the procedure laid down in Article 30(2).

Article 12 Reference levels for fishing fleets

1. The Commission shall establish for each Member State reference levels expressed in GT and kW for the total fishing capacity of the Community fishing vessels flying the flag of that Member State in accordance with the procedure laid down in Article 30(2).

The reference levels shall be the sum of the objectives of the Multi-annual Guidance Programme 1997–2002 for each segment as fixed for 31 December 2002 pursuant to Council Decision 97/413/EC.

2. Implementing rules for the application of this Article may be adopted in accordance with the procedure laid down in Article 30(2).

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Article 13 Entry/Exit scheme and overall capacity reduction

1. Member States shall manage entries into the fleet and exits from the fleet in such a way that, from 1 January 2003:

(a) the entry of new capacity into the fleet without public aid is compensated by the previous withdrawal without public aid of at least the same amount of capacity,

(b) the entry of new capacity into the fleet with public aid granted after 1 January 2003 is compensated by the previous withdrawal without public aid of:

(i) at least the same amount of capacity, for the entry of new vessels equal or less than 100 GT, or

(ii) at least 1,35 times that amount of capacity, for the entry of new vessels of more than 100 GT.

2. From 1 January 2003 until 31 December 2004 each Member State which chooses to enter into new public aid commitments for fleet renewal after 31 December 2002 shall achieve a reduction in the overall capacity of its fleet of 3 % for the whole period in comparison to the reference levels referred to in Article 12.

3. Implementing rules for the application of this Article may be adopted in accordance with the procedure laid down in Article 30(2).

Article 14 Exchange of information

1. Each year the Commission shall present a summary of the results of Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities. This summary shall be based on a yearly report from each Member State to be sent to the Commission not later than 30 April of the following year.

The Commission's summary with the Member States' reports attached, shall be sent before the end of the year to the European Parliament and the Council accompanied by the opinions of the STECF and the Committee for Fisheries and Aquaculture established under Article 30(1).

2. Implementing rules for these exchanges may be adopted in accordance with the procedure laid down in Article 30(2).

Article 15 Fishing fleet registers

1. Each Member State shall keep a register of the Community fishing vessels flying its flag which shall include the minimum information on vessel characteristics and activity that is necessary for the management of measures established at Community level.

2. Each Member State shall make available to the Commission the information referred to in paragraph 1.

3. The Commission shall set up a Community fishing fleet register containing the information that it receives under paragraph 2 and shall make it available to Member States. It shall comply with Community provisions regarding the protection of personal data.

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4. The information referred to in paragraph 1 and the procedures for its transmission referred to in paragraphs 2 and 3 may be determined in accordance with the procedure laid down in Article 30(2).

Article 16 Conditionality of Community financial assistance and reduction of fishing effort

1. Financial assistance under Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, with the exception of funds for the scrapping of fishing vessels, can be granted only as far as a Member State has complied with Articles 11, 13 and 15 of this Regulation and has provided the information required under Council Regulation (EC) No 2792/99 and Commission Regulation (EC) No 366/2001. In this context, the Commission shall, after having afforded the Member State concerned the possibility of being heard and as far as proportionate to the degree of non compliance, suspend financial assistance under Council Regulation (EC) No 2792/ 1999 for the Member State concerned.

2. If, on the basis of the information available, the Commission deems that the capacity of the fleet of a Member State exceeds the capacity which it is bound to respect under Articles 11, 13 and 15, it shall inform the Member State concerned thereof. This Member State shall immediately reduce its fishing effort to the level which would have existed had Articles 11, 13 and 15 been complied with, without prejudice to the obligations resulting from these Articles. The Member State concerned shall communicate its reduction plan to the Commission for verification, in conformity with the procedure laid down in Article 30(2), whether or not the reduction is equivalent to the exceeded capacity.

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Annex II

– Excerpts from the 2013 Basic Regulation

Article 22

Adjustment and management of fishing capacity

1. Member States shall put in place measures to adjust the fishing capacity of their fleet to their fishing opportunities over time, taking into account trends and based on best scientific advice, with the objective of achieving a stable and enduring balance between them.

2. In order to achieve the objective referred to in paragraph 1, Member States shall send to the Commission, by 31 May each year, a report on the balance between the fishing capacity of their fleets and their fishing opportunities. To facilitate a common approach across the Union, that report shall be prepared in accordance with common guidelines which may be developed by the Commission indicating the relevant technical, social and economic parameters.

The report shall contain the annual capacity assessment of the national fleet and of all fleet segments of the Member State. The report shall seek to identify structural overcapacity by segment and shall estimate the long-term profitability by segment. The reports shall be made publicly available.

3. With regard to the assessment referred to in the second subparagraph of paragraph 2, Member States shall base their analysis on the balance between the fishing capacity of their fleets and their fishing opportunities. Separate assessments shall be drawn up for fleets operating in the outermost regions and for vessels operating exclusively outside Union waters.

4. If the assessment clearly demonstrates that the fishing capacity is not effectively balanced with fishing opportunities, the Member State shall prepare and include in its report an action plan for the fleet segments with identified structural overcapacity. The action plan shall set out the adjustment targets and tools to achieve a balance and a clear time frame for its implementation.

On a yearly basis, the Commission shall prepare a report for the European Parliament and for the Council on the balance between the fishing capacity of the Member States' fleets and their fishing opportunities, in accordance with the guidelines referred to in the first subparagraph of paragraph 2. The report shall include action plans referred to in the first subparagraph of this paragraph. The first report shall be submitted by 31 March 2015.

Failure to make the report referred to in paragraph 2, and/or failure to implement the action plan referred to in the first subparagraph of this paragraph, may result in a proportionate suspension or interruption of relevant Union financial assistance to that Member State for fleet investment in the fleet segment or segments concerned in accordance with a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the period 2014–2020.

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5. No exit from the fleet supported by public aid shall be permitted unless preceded by the withdrawal of the fishing licence and the fishing authorisations.
6. The fishing capacity corresponding to the fishing vessels withdrawn with public aid shall not be replaced.
7. Member States shall ensure that from 1 January 2014 the fishing capacity of their fleets does not exceed at any time the fishing capacity ceilings set out in Annex II.

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Annex III

– Excerpts from the Commission Guidelines

The following excerpts are from the Commission Guidelines for the analysis of the balance between fishing capacity and fishing opportunities according to Article 22 of the Basic Regulation, pp. 5–7. These are summaries of the descriptions of the indicators and their interpretation. For more detailed explanations, see the Guidelines.

Biological indicators

The Sustainable Harvest Indicator (SHI)

The sustainable harvest indicator is a measure of how much a fleet segment relies on stocks that are overfished. Here, “overfished” is assessed with reference to F_{msy} values over time, and reliance is calculated in economic terms. Where F_{msy} is defined as a range, exceeding the upper end of the range is interpreted as “overfishing”.

Threshold: Values of the indicator above 1 indicate that a fleet segment is, on average, relying for its income on fishing opportunities which are structurally set above levels corresponding to exploitation at levels corresponding to MSY. This could be an indication of imbalance if it has occurred for three consecutive years. Shorter time period should be considered in the case of small pelagic species.

The Stocks at Risk Indicator (SAR)

The stocks-at-risk indicator is a measure of how many stocks are being affected by the activities of the fleet segment that are biologically vulnerable – in other words, stocks which are at low levels and are at risk of not being able to replenish themselves ...

Threshold: if a fleet segment takes more than 10% of its catches taken from a stock which is at risk, this could be treated as an indication of imbalance.²¹²

Economic indicators

The Return on Investment Indicator (RoI)

The first indicator (Return on Investment) compares the long-term profitability of the fishing fleet segment to other available investments. If this value is smaller than the low-risk long term interest rates available elsewhere, then this suggests that the fleet segment may be over-capitalised.

Threshold: If the return on investment (RoI) is less than zero and less than the best available long-term risk-free interest rate, this is an indication of long-term economic inefficiency that could indicate the existence of an imbalance.

The Current Revenue/Break-Even Revenue Indicator (CR/BER)

The second indicator is the ratio between current revenue and break-even revenue. This measures the economic capability of the fleet segment to keep fishing on a day-by-day basis: does income cover the pay for the crew and the fuel and running costs for the vessel? If not, there may be an imbalance.

Threshold: If the ratio between current revenue and break-even revenue is less than one, this

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²¹² It is not clear from the Guidelines whether the share of catches is to be calculated in terms of value or of landed weight.

is an indication of short-term economic inefficiency that could indicate the existence of an imbalance.

Technical/vessel use indicators

Inactive Fleet Indicator/ Vessel Utilization Indicator

The first indicator describes the proportion of vessels that are not actually active at all (i.e. that did not fish at any time in the year).

The second indicator concerns the average activity levels of vessels that did fish least once in the year, taking account of the seasonality of the fishery and other restrictions. Under normal conditions, it can be expected that 10% or less of the vessels in a fleet segment should be inactive, which could be due to major repairs, refits, conversions or pending sales and transfers.

Threshold: if more than 20% of the fleet segment is recurrently inactive or if the average activity level of vessels in a fleet segment is recurrently less than 70% of the potential, workable activity of comparable vessels, this could indicate technical inefficiency, that may reveal the existence of an imbalance, unless it can be explained by other reasons, such as unexpected climatic or man-made events or emergency measures as foreseen in the CFP.

Annex IV

– A regional overview of fishing capacity and the western Baltic cod stock

The following table shows catches, numbers of vessels and STECF classifications of key capacity indicators for most fleet segments that catch or could catch western Baltic cod. For segments where STECF did not present classifications for a particular indicator, but the figures are available in the national reports, those figures from the national reports are presented along with the classifications based on what they would be given the threshold values used for that particular indicator. In these cases, the “traffic light” is a slightly different colour than for those segments and indicators.

It can be noted that there are 399 demersal trawlers/seiners 12 metres or longer with vessel use indicators indicating possible overcapacity. Half of these are Danish. These segments are, for the most part, classed as being more or less in balance with their fishing opportunities in the national reports. This gives a rough impression of the latent pressure on decision-makers to provide higher TACs and quotas. Vessels under 12 metres using passive gear correspond roughly to the small, coastal fishers that are normally politically prioritised, but also more likely to be classed as having overcapacity. These take less than half of the German and Polish catches of western Baltic cod (39% and 32%, respectively).

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Country, length code	Gear code [1]	Western Baltic cod or roundfish, tonnes 2015 [2]	Number of vessels [3]	Indicators, STECF classifications [9] VUR220 [4]	SAR [5]	SHI [6]	CR/BER [7]	RoFTA [8]
DENMARK		7361						
VL0010	PGP	[1 740]	838					
VL0010	PMP	[410]	121					
VL1012	DTS	[498]	13					
VL1012	PGP	[1 036]	50					
VL1012	PMP	[766]	34					
VL1218	DTS	[7 606]	117					
VL1218	PGP	[1 279]	29					
VL1218	PMP	[2 367]	37					
VL1218	TM	[192]	13					
VL1824	DTS	[6 630]	49					
VL1824	PMP	[580]	10					
VL2440	DTS	[13 412]	30					
VL2440	PMP	[3 774]	5	0.63	N/A	N/A	N/A	N/A
GERMANY		2915						
VL0010	PG	643	1051			2.37, 2.32, 2.28		
VL1012	PG	483	71					
VL1012	DTS	122	10					
VL1218	DTS	835	28					
VL1824	DTS	698	16					
VL2440	DTS	339	11					
SWEDEN		2351						
VL0010	DFN	N/A	242					
VL1012	DTS	N/A	49					
VL1218	DTS	N/A	68					
VL1824	DTS	N/A	37					
VL2440	DTS	N/A	21					
POLAND		755						
VL0010	PG	30	516	0.40	0	0.62, 0.75, 0.85	1.32	0.02
VL1012	PG	208	103			1.48, 1.28, 1.28		
VL1218	DFN	81	23			1.9, 1.55, 2.97		
VL1218	DTS	321	69	0.58	1	1.30, 1.51, 1.13	0.96	0.00
VL1824	DTS	89	38					
VL2440	TM	15	41					

NOTES

- [1] Gear codes
- DFN = Drift and/or fixed netters
 - DTS = Demersal trawlers and/or demersal seiners
 - PG = Vessels using passive gears only (for vessels <12m)
 - PGP = Vessels using polyvalent passive gears only
 - PMP = Vessels using active and passive gears
 - TM = Pelagic trawlers

[2] Overall national figures refer to landings and come from ICES. Figures for German and Polish segments come from the respective national reports. Danish percentages refer to the segment's percentage (by weight) of the Danish catch of roundfish (figures calculated from information in the 2015 Danish report), of which 18% was western Baltic cod in 2015 (based on figures from ICES). Numbers in parentheses refer to catch of roundfish by weight. Roundfish can also include fish from the North Sea and species such as saithe, hake and haddock. The Swedish national report contained no information on catches of different types of fish.

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[3] Figures come from national reports.

[4] VUR220: STECF calculated the Vessel Utilisation Indicator on the basis of 220 days at sea being a maximum for all segments and calls this the Vessel utilisation ratio (VUR). The Guidelines specify that Member States should determine the maximum days at sea for each segment based on natural, technical and social conditions, but use 220 days as a default value if sufficient data are not available.²¹³

[5] Stocks at Risk Indicator.

[6] Sustainable Harvest Indicator.

[7] Current revenue to break-even revenue ratio.

[8] RoFTA: Returns on fixed tangible investments (the same as the Return on Investments Indicator (ROI) except that investments and returns related to fishing rights are not included. Numbers from national reports are based on ROI. The classification for these segments refers therefore to ROI.

[9] For segments and indicators where STECF did not provide classifications, classifications were assigned based on figures from national reports (which are presented in the table).

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²¹³ Guidelines, p. 15.

Sources

Unless numerical values are provided, classifications come from Scientific, Technical and Economic Committee for Fisheries (STECF), STECF 16-18 - Balance capacity – indicator table.xlsx, available from <https://stecf.jrc.ec.europa.eu/reports/balance>

Numerical values provided for segments and indicators where there were no STECF classifications come from Member States national reports for 2015, listed in the references in this report. Classifications are based on those numerical values and the Commission Guidelines' thresholds for the respective indicators.

Information on Member States' overall landings of western Baltic cod from 2015 is from ICES.2017. Cod (Gadus morhua) in subdivisions 22–24, western Baltic stock (western Baltic Sea) <http://ices.dk/sites/pub/Publication%20Reports/Advice/2017/2017/cod.27.22-24.pdf>

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