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BSAC 2021-2022_22

Copenhagen 4th October 2021

Re: The European Commission online public consultation on the review of the Marine Strategy Framework Directive.

Dear Commission representatives at DG ENV and DG Mare,

On 26th July 2021, the European Commission launched its consultation on the Marine Strategy Framework Directive. It runs until 21st October 2021. Thank you for inviting the Advisory Councils to take part.

The multiple-choice survey provided is very difficult for us reply to, given its format and the differing views amongst the BSAC members. For that reason, the BSAC is sending a written contribution, rather than providing direct answers to the questionnaire.

The BSAC Secretariat prepared a draft, in close coordination with the BSAC Chair of the Ecosystem Based Working Group. The BSAC Executive Committee has been consulted, and their input has been gathered and included. The BSAC Executive Committee was informed of the final product, and written consultation was concluded on Friday 1st October 2021.

Please find attached the BSAC contribution to your consultation. ./.

The BSAC really encourages and invites participation from DG ENV and DG Mare at a later stage to explain the process, to present their evaluation and to assist the BSAC in preparing further input later this year and during next year.

Kind regards,



Esben Sverdrup-Jensen, Chair BSAC Executive Committee

Copy to: DG Mare Baltic Unit, BALTFISH Member States; HELCOM

Consultation on the review of the Marine Strategy Framework Directive

BSAC input to the Commission

The BSAC is sending written comments, rather than answering the questionnaire. A multiple-choice survey is very difficult to reply to, given its format and the different views amongst the BSAC members.

General remarks

The BSAC welcomes the review of the Marine Strategy Framework Directive (MSFD) by 15th July 2023, as well as the impact assessment of the Directive by 2022. These initiatives are legally stipulated by the provisions of the Directive (Art. 23¹).

The BSAC takes note of the challenges in working with the MSFD. A review process is extremely important. The BSAC **encourages** the European Commission to have a dialogue with the Advisory Councils about the review process. The Advisory Councils want to do their part.

The BSAC is of the opinion that the MSFD is a crucial directive for the protection of the seas. The MSFD ensures that the ecosystem-based approach has become a legally binding and operational principle for managing the EU's entire marine environment.² The well-being of fish stocks and the future of fisheries (commercial and recreational) depend on the implementation of ecosystem-based management. At the same time, full transparency is of utmost importance in this work.

Any improvements to the Directive, if and where necessary, will contribute to a more effective protection of the marine environment, and in turn to a more sustainable use of the marine resources.

According to the Commission's report on the first implementation cycle of the Marine Strategy Framework Directive published in June 2020,³ the Directive contributed to a better understanding of the pressures and impacts of human activities on the sea, and their implications for marine biodiversity, their habitats, and the ecosystems they sustain.

¹ Article 23 of the MSFD sets an obligation to review the Directive by 2023 and, where appropriate, propose any necessary amendments. The review of the MSFD will follow a back-to-back evaluation and impact assessment.

² [Report on the implementation of the Marine Strategy Framework Directive \(europa.eu\)](#)

³ [EUR-Lex - 52020DC0259 - EN - EUR-Lex \(europa.eu\)](#)

The knowledge gained from implementing this Directive was, for example, a driving force leading to the adoption of the Single Use Plastics Directive and initiatives to deal with marine litter. The report added that the EU Member States could further improve their coordination, namely in determining the coordinated objectives and targets and having effective measures tackling the right pressures.

There is also a heavy workload on Member States to implement and carry out the MSFD in terms of assessment, determination of Good Environmental Status (GES), establishing targets and indicators, monitoring programmes and developing programmes of measures. This has taken time to develop and establish, and for the Commission to evaluate and report on in its regular cycles. The reporting must get into the full routine of this before making major changes. **The BSAC takes note** of this report and findings.

Interactions between the MSFD and other EU policies

It has been widely and repeatedly recognised that there needs to be closer interaction of MSFD implementation with the implementation of the other EU policies, for example in order to reduce unnecessary duplication of work and effort, to increase efficiency, and to streamline processes.

So, it is vital that the MSFD is considered in the light of major EU strategies, such as the Green Deal⁴, the 2030 Biodiversity Strategy⁵ and the Farm to Fork⁶ Strategy.

It is important that all these ongoing initiatives are clearly linked, in order to improve implementation of the MSFD. Otherwise, it will be a confusing mess. Implementation challenges also come from a sectoral silo approach, which is a challenge for authorities working together, and which is a real barrier to delivering GES, given the multiple policies and human uses which impact the marine space.

The added value of the MSFD is that it should deliver healthier seas that will provide gains - also for fishing. However, at present, we are not seeing strong or tangible results from the regionalised approach of the MSFD. Nor has regionalisation yet been fully included in the Common Fisheries Policy. In particular, it has not been possible to apply it at the speed needed, and as was anticipated when regionalisation was introduced.

On a positive note, that there is increased awareness of the marine environment, and a greater understanding that seas such as the Baltic are heavily impacted from what happens on land. The MSFD has also helped to underline other pressures, such as those coming from plastic and marine litter, from underwater noise, and from construction work at sea.

⁴ https://ec.europa.eu/info/sites/default/files/european-green-deal-communication_en.pdf

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590574123338&uri=CELEX:52020DC0380>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590404602495&uri=CELEX:52020DC0381>

Implementation of the MSFD

According to the Commission's assessment of the first phase of MSFD implementation carried out in 2020, regional coherence varies widely across the EU and is high in some regions and, for some descriptors, overall levels are moderate to low. In the Baltic it is assessed to be medium⁷.

The BSAC urges the European Commission to use all existing legal tools to improve the implementation of the Directive before beginning a root and branch exercise of complete overhaul. An evaluation is needed, and this may show up those parts of the MSFD that do need changing before carrying out a clean sweep. The cart must not go before the horse. Of key importance are the upcoming EU initiatives which could reinforce the MSFD, for example the EU Action Plan to conserve fisheries and protect marine ecosystems (the Technical Measures Regulation) and the review of the Common Fisheries Policy.

The BSAC is of the opinion that a full assessment of the Common Fisheries Policy should come before the assessment of the MSFD. The Commission is due to report on implementation of the CFP at the end of 2022.

Work to support reaching GES must be explored (technical rules, control rules, but also CFP Basic Regulation Articles 8, 11, 17, 19, 20), particularly within the fisheries Action Plans⁸. A full evaluation of the feasibility and ramifications of the current GES levels and indicators should be carried out first. One example is the Baltic grey seal population, where the GES level is set by HELCOM at carrying capacity. This in practice means unhindered growth of the grey seal population to the point where they start to die from starvation or disease, and where their distribution across the Baltic is imbalanced. There has to be an inter-linking between the CFP and MSFD revision processes. Data collection programmes, control and technical measures need to be harmonised with the MSFD in order to avoid inconsistencies and conflicting objectives.

Gaps in the implementation of the MSFD

The BSAC is aware of several gaps existing in the implementation of the MSFD. In the Baltic, several Member States have recognised gaps in the monitoring of all the required elements for Descriptor 3 (populations of all commercially exploited fish).

The main data sources for Descriptor 3 indicators and assessments of Baltic Sea coastal stocks are under the national EU Data Collection Framework (DCF) programmes.

Some adjustments in national data collection programmes are necessary in order to cover the coastal fish stocks under Descriptor 3.

⁷ Link to the Member States reports under MSFD: https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/reports_en.htm

⁸ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12953-Action-plan-to-conserve-fisheries-resources-and-protect-marine-ecosystems->

There is also a need to improve the reporting by Member States on the mortality of species linked to incidental bycatch or the physical disturbance to the seabed by fishing activities⁹. Work to develop monitoring with respect to Descriptor 6 (Sea-floor integrity) is under development.

In June this year, ICES produced advice on management scenarios relating to bottom trawling.¹⁰ This is a new piece of the jigsaw that needs to be incorporated and tested.

The BSAC is of the opinion that conservation objectives set out under the MSFD need to be commonly agreed on and finalised. Many EU Member States have not yet established baselines or reference levels for population abundance or pressures, such as bycatch, against which the status of the species can be assessed¹¹.

The BSAC points out that there are several EU legal acts which address key pressures in the marine environment. This means making better use of all the existing legislation which links into the MSFD. Full implementation of existing regulations is key for success.

A regional approach

The BSAC is of the opinion that a regional approach should be applied in implementing the measures set by the Directive to better meet the interests of the environment and fisheries. The importance of links with the regional conventions is referred to in the Commission report. The BSAC supports this and wants to be assured that the regional processes coordinate and dovetail with the requirements of the MSFD.

The BSAC is also of the opinion that more effort should be made to incorporate fisheries knowledge more into the work of HELCOM work with a view to clearer understanding of the issues that relate to fisheries management. The volume of meetings and documents is challenging and there is a need for better coordination. The need for an increased tempo in the mitigation of eutrophication, pollution, and continued degradation of coastal zones is not a matter of debate, it is a must. Protection, as well as restoration, are important and, in the case of the Baltic, are badly and urgently needed if fisheries are to survive. In order for this to happen, there must be a cooperative approach, in line with the ecosystem approach that includes fishing (commercial and recreational) stakeholders and the wide environmental objectives at the same time.

MSFD and fisheries

The BSAC is fully aware that fishing is an impact on the ecosystem and that it can have negative side effects. But given the current situation for fish stocks in the Baltic Sea, fishing as a pressure is reduced to almost insignificant levels in areas where there were measurable impacts earlier. As stated, the MSFD and the CFP need to be better aligned, and efforts to deal with the main drivers of ecosystem degradation must be the top priority.

⁹ [Report on the implementation of the Marine Strategy Framework Directive \(europa.eu\)](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1)

¹⁰ <https://www.ices.dk/sites/pub/Publication%20Reports/Forms/DispForm.aspx?ID=37785>

¹¹ [\[Modtagerfelt\] \(bsac.dk\)](#) meeting of the BSAC EBM working group 21-22 September 2020

An update of the MSFD should include the objective for a future coherent management approach, instead of the dual control of fisheries on one side and the rest of the environment on the other. That is not how our ecosystems work. Coming back to the example of the Baltic grey seal, for the fishers in the Baltic, the positive development of an increased population of grey seals and the associated spread of parasites, which is likely to affect the cod population's ability to reproduce, has turned into a big problem. The BSAC therefore sees research into these relationships as an urgent task to be dealt with without delay.

Looking ahead

The BSAC looks forward to the Stakeholder Conference in November 2021. The BSAC also looks forward to other stakeholder meetings and hopes to be able to give inputs in a more constructive and workable way rather than answering a survey. The BSAC plans to meet in the autumn to address the questions in more detail.