

Defra's consultation on the proposed Southern North Sea and Eastern Channel Mixed Flatfish Fisheries Management Plan (FMP)

ClientEarth submission

Questions on the proposed Southern North Sea and Eastern Channel Mixed Flatfish FMP

1. Do you have any comments on the process for developing the Southern North Sea and Eastern Channel Mixed Flatfish FMP?

No

2. What are your views on the evidence presented on the current state of the southern North Sea and eastern Channel mixed flatfish stocks in English waters and can you provide other evidence which supports or differs from ours?

N/A

3. What are your views on the goals for the management of flatfish in English waters of the southern North Sea and eastern Channel?

ClientEarth welcomes the fact that this FMP is based upon objectives, with associated actions to achieve them, that map onto the objectives set out at Section 1(1) of the Fisheries Act 2020 (the "FA Objectives" and the "Act", respectively). However, as explained below, we consider that: (i) certain of the FA Objectives are not fully addressed by the FMP objectives; and (ii) several of the FMP actions are too vague and/or non-binding or are to be implemented over too long a time frame. We recommend that the FMP objectives and actions are firmed up, as detailed in this response, in order to make this FMP more effective in pursuit of the Government's stated aim of "setting a gold standard for sustainable fishing around the world"¹ and achieving "clean, healthy, safe, productive and biologically diverse seas".²

The legal framework for the FMP objectives is as follows. Under Section 2(1) of the Act, the fisheries policy authorities must produce a Joint Fisheries Statement ("JFS") which: (i) sets out the policies of the fisheries policy authorities for achieving, or contributing to the achievement of, the FA Objectives; and (ii) contains a statement explaining what use the fisheries policy authorities will make of fisheries management plans in order to achieve, or contribute to the achievement of, the FA Objectives.

The JFS was published in November 2022. Section 2.1 explains how the fisheries policy authorities have interpreted the FA Objectives – it is this set of interpretation against which we have assessed the FMP objectives and actions. Section 4.1.14 of the JFS makes clear that the FMPs employed by the fisheries policy authorities "will set out policies for specific fisheries or stocks to contribute to delivering the fisheries objectives [i.e., the FA Objectives]". Section 5.2.1 of the JFS goes on to state that, "FMPs set out the policies to secure the long-term sustainability of our fish stocks for current and future generations. They will place binding obligations on the national fisheries authorities, which seek to deliver these goals". To summarise, each FMP must set binding obligations on national fisheries authorities in order to achieve, or contribute to the achievement of, the FA Objectives. We assess each of the FMP objectives and actions by reference to this standard.

Objective 1.1 – "Evidence. Develop an improved evidence base for quota and non-quota in the Southern North Sea and Eastern Channel mixed flatfish FMP". The text for this objective states that

¹ Fisheries white paper: sustainable fisheries for future generations - GOV.UK (www.gov.uk)

² Marine Strategy Part One: UK updated assessment and Good Environmental Status (publishing.service.gov.uk)

"[t]he rationale for having the overall evidence theme and objective is that having robust data available allows for evidence-based decisions to be made in fisheries management and move away from precautionary management approaches. This will be central to achieving the sustainability and scientific objectives outlined in the Fisheries Act 2020".

We consider that this objective satisfies the requirements of the sustainability and scientific FA Objectives, as set out in the Act and interpreted in the JFS. However, we consider that the language of the actions could be stronger, in particular the second action which reads, "establish what are the current and upcoming opportunities are [sic] to improve the evidence base". We consider that this action should include a commitment to making use of such opportunities, or a presumption that such opportunities should be exploited (in the alternative, there could be a complementary action, to run over the long-term of 3-5 years, to make use of evidence gathering opportunities). We also raise our concern with the wording "move away from precautionary management approaches" and emphasise that the precautionary approach to fisheries management, as referred to in the precautionary FA Objective, should underpin UK fisheries management in general and the FMP must not allow for management measures (or a failure to take relevant measures) contrary to the precautionary approach.

Objective 2.1 – "Sustainable fisheries. Deliver effective management of the stocks within the Southern North Sea and Eastern Channel mixed flatfish FMP". The text for this objective states that it is intended to "deliver sustainable stock levels across both quota and non-quota stocks, to be able to restore or maintain fisheries at sustainable levels" and that it is "central to achieving the sustainability and precautionary objectives outlined in the Fisheries Act 2020".

We consider that this objective does not fully satisfy the requirements of the sustainability and precautionary FA Objectives, as set out in the Act and interpreted in the JFS. In particular, we consider that the language of the first and third short-term actions is too non-committal and the reference to "increase the number of stocks fished at MSY" (emphasis added) does not fully reflect the precautionary FA Objective. The first action reads, "[f]or all stocks that are data poor and consequentially unable to be assessed for stock status, and MSY, seek to improve datasets to allow for assessment" and the third reads "seek to use this FMP to increase the number of stocks fished at MSY, consistent with the best available scientific advice and taking into account best available evidence on the effects of fishing activity". We consider that "at MSY" (throughout the FMP) should be replaced by "at or below MSY" or "not exceeding MSY", because the precautionary FA Objective aims for "exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield" (emphasis added). The word "above" is fundamental, since this means setting exploitation levels below FMSY, the fishing mortality level that should lead to the biomass required for a stock to deliver maximum sustainable yield (BMSY). Consistently fishing at FMSY will not fulfil the precautionary FA Objective, meaning that FMSY is a limit, not a target exploitation rate. Particularly in a mixed fisheries context (as here) certain stocks must be fished below levels corresponding to the FMSY point value (for example, through requiring the relevant catch limits to be set accordingly – i.e. below MSY-based scientific advice), in order to rebuild them above the relevant MSY biomass levels. This is also crucial in order to safeguard and restore vulnerable and/or depleted stocks caught in these fisheries and factor in ecosystem needs and dynamics as part of an ecosystem-based approach, in line with the ecosystem FA Objective.

Moreover, the word “seek” is too weak and should be replaced with a firmer commitment to establishing and then fishing in line with, i.e. at or below MSY. We also highlight that the wording on p. 22 of the FMP (under ‘Considerations when developing management approaches’) to “maintain stocks at or above levels that sustain long-term exploitation of stocks at fishing MSY” (emphasis added) again falls short of the precautionary FA Objective, which unambiguously aims to restore and maintain them “above”, not “at or above” biomass levels capable of producing the MSY.

Objective 2.2 – “Sustainable fisheries. To support and deliver wider environment sustainability by understanding how the fishing activities within this FMP impact on the wider marine environment and identify options to minimise negative impacts”. The text for this objective states that “the Government is committed to an ecosystem approach to fisheries management which will account for, and seek to minimise, impacts on non-commercial species and the marine environment generally...By better understanding the impact of fishing gear interactions within the marine environment and working to minimise any of the negative impacts of fishing on non-target species, marine habitats and ecosystems...This rationale is central to achieving the sustainability, ecosystem, climate change and bycatch objectives outline in the Fisheries Act 2020”.

We consider that this objective satisfies some, but not all, of the requirements of the sustainability, ecosystem, climate change and bycatch FA Objectives, as set out in the Act and interpreted in the JFS. We consider that this objective, when read in conjunction with objective 2.1, satisfies the sustainability FA Objective. However, we consider that this objective does not fully satisfy the ecosystem FA Objective. . The ecosystem FA Objective comprehensively refers to the use of an ecosystem-based approach “so as to ensure that impacts on the marine ecosystems are minimised, and where possible, reversed”, whereas the FMP wording appears to focus on “non-commercial species” and “non-target species”. While there is also a wider reference to “the marine environment generally” and “marine habitats and ecosystems”, we would highlight that in order to meet the ecosystem FA Objective, the FMP would have to minimise impacts not only on “non-commercial” and “non-target species”, but any species caught or otherwise impacted by the fisheries in question, including vulnerable/depleted commercial bycatch and target stocks.

With respect to the climate change FA Objective, we note that this objective does not expressly address either part, but the effect may be limited given that objective 4.1 is specifically concerned with climate change. With respect to the bycatch FA Objective, we consider that the language in the FMP does not expressly emphasise that all catches should be recorded and accounted for, with a reinforcement of the principle that all catches subject to a Total Allowable Catch (TAC) should be landed. We reiterate that robust, full catch documentation and accounting is the cornerstone of effective sustainable fisheries management, and a swift roll-out of Remote Electronic Monitoring (REM) plays a key role in this context, particularly in bycatch- and discard-rich fisheries like the mixed flatfish fisheries.

With respect to the actions set out for objective 2.2, we note that there are no short-term actions listed to address bycatch – this is a shortcoming that should be addressed. For example, the reference in the long-term goals to “investigate and understand” bycatch and seabed integrity, and mitigation measures for both, could and should be commenced in the short-term, with a related long-term commitment to implement any mitigation measures identified.

Objective 3.1 – “Social and economic. To better understand and effectively manage the social and economic value of the fisheries to the coastal communities within the FMP area”. The text for this

objective states that “Flatfish is a highly valuable fishery and if managed appropriately, flatfish fishing therefore has the potential to generate substantial social and economic benefits for local coastal communities. This ambition is driven by the Fisheries Act 2020 and is central to achieving the sustainability, equal access and national benefits objective”.

We consider that this objective satisfies some, but not all, of the requirements of the sustainability, equal access and national FA Objectives, as set out in the Act and interpreted in the JFS.

Objective 4.1 – “Climate Change. Explore options for adapting and mitigating risk onto the fishery and wider environment from the changing climatic conditions”. The text for this objective states that “the UK government is committed to reducing CO2 emissions within the fishing fleet, and to improving resilience to climate-driven impacts across the sector. By mitigating and reducing the impacts from changing climatic conditions, this will contribute to climate change, ecosystem and national benefit objectives outlined in the Fisheries Act 2020. Even though delivery of mitigation strategies for climate change is not within scope of this first iteration of this FMP, it holds a longer-term objective which is set out below.” We consider that the language of this objective does not adequately meet the requirements of the climate change FA Objective – the commitment to “explore options” is too weak, as is the unexplained statement that “delivery of mitigation strategies for climate change is not within scope of this first iteration of this FMP”. Moreover, we recommend putting a stronger emphasis on the first part of the climate FA Objective (see part (a)) that “the adverse effect of fish and aquaculture activities on climate change is minimised”, rather than primarily focusing on adaptation to and mitigation of climate impacts on fisheries.

With respect to the action set out for objective 4.1, we note that there are no short-term proposals and the first long-term proposal only aims to “encourage” industry participation in initiatives to reduce CO2 emissions – a stronger commitment requiring industry participation would be welcome. In addition, there is no mention in the objective or its actions of identifying and protecting blue carbon habitats (there is a short section on blue carbon at page 35 of the FMP but this does not contain any firm commitments, only a statement that “Defra continues to develop an evidence base on blue carbon habitats in the UK, further evidence is required to understand the trade-offs and wider consequences of decisions. The Blue Carbon Evidence Partnership is working to increase the blue carbon evidence base, and as further research develops in this area, it will be considered for future iterations of the FMP”).

One concrete action we recommend taking already in the short-term, and explicitly including in the FMP, is the setting of ecosystem-based fishing limits below the respective scientific single-stock advice (see also Question 4), in order to maximise the health, resilience and productivity of fish populations and ecosystems in the face of mounting pressures (including climate change) and their capacity to mitigate them.³ In this context, we would like to draw your attention to the recently published joint NGO recommendations to the UK on the setting of fishing opportunities for 2024, and particularly section 4 thereof.⁴ Investing in larger, healthier stocks by fishing below the single-stock advice (rather than aiming for exploitation ‘at MSY’, as referred to in the Objective 2.1 actions and in a few other places throughout the FMP and consultation document) is a key way of future-proofing

³ Sumaila, UR, de Fontaubert, C, Palomares, MLD (2023). Editorial: How overfishing handicaps resilience of marine resources under climate change. *Front. Mar. Sci.*, 15 August 2023. *Sec. Marine Fisheries, Aquaculture and Living Resources*. Volume 10 – 2023

⁴ <https://www.clientearth.org/latest/documents/joint-ngo-recommendations-to-the-uk-on-fishing-opportunities-for-2024/>

UK fisheries in light of climate change and other pressures. It would also help maximise the potential of fish stocks to contribute to effective oceanic carbon sequestration to mitigate against climate change. Recent research concludes that the “biomass of fish stocks should be allowed to regenerate to a minimum of 120% of that which will achieve MSY to provide a buffer against the uncertainty in ecological response to climate change”⁵, and that “alleviating fishing effort is the only way to maintain a stable SSB when the environmental regime becomes less suitable”, noting that “preventing collapse is easier than trying to reverse a collapse”.⁶

In support of ecosystem-based and climate-smart fisheries management, in line with the ecosystem and climate FA Objectives, we recommend that the UK and its devolved administrations should explore more ambitious policy objectives, geared towards larger, healthier, more resilient stocks in the long-term, which will require fishing below MSY. The availability of scientific catch advice that effectively prioritises healthy and productive stocks in the long-term, by taking full account of climate change and other relevant factors, will be key in this context. We would welcome an explicit commitment in

the FMP to advancing the science in this area (which would also address the scientific evidence FA Objective) – for example, through engagement with the International Council for the Exploration of the Sea (ICES) and the UK's international negotiation partners like the EU. In the short-term, one option could be to base TACs on additional catch scenarios geared towards larger biomass levels (which ICES clients would need to request) or to apply a generic buffer to all catch advice and, by default, set TACs below the single-stock advice by at least a certain percentage. Similar approaches, based on the concept of maximum economic yield (MEY), are already in use in, for example, Australia (Department of Agriculture and Water Resources (2018).

Guidelines for the Implementation of the Commonwealth Fisheries Harvest Strategy Policy, Canberra, June. CC BY 4.0, p. 19. “Some commercial fish stocks around the world are managed to a biomass target that achieves maximum sustainable yield (BMSY). This target maximises the long-term catch that can be taken in a fishery but ignores the increasing costs of fishing as stocks are fished down to BMSY levels. MEY is generally achieved at a lower catch level (and conversely a higher biomass, BMEY) and aims to maximise the economic returns from fishing rather than maximise the quantity of fish landed.” The guidelines further explain that for stocks for which bioeconomic models, needed to determine MEY-based reference points and targets, are not available or feasible, MEY proxies are used, including for example the proxy of $1.2 * BMSY$. This proxy is explicitly geared towards a biomass 20% larger than BMSY).

4. What are the benefits and drawbacks (environmental, economic, social) of principles for TAC setting for southern North Sea and eastern Channel mixed flatfish fishing in English waters? What points would need to be considered when delivering this?

We support the stated intention of the UK government to advocate “an approach towards TAC setting which is founded on the best available scientific advice” as well as “the need to minimise

⁵ Kemp, PS, Subbiah, G, Barnes, R, Border, K, O'Leary, BC, Stewart, B, Williams, C (2023). The future of marine fisheries management and conservation in the United Kingdom: Lessons learnt from over 100 years of biased policy. *Marine Policy* 147 (2023) 105075, <https://doi.org/10.1016/j.marpol.2022.105075>, p. 1 (abstract)

⁶ Beaugrand, G, Balembois, A, Kléparski, L, Kirby, RR (2022). Addressing the dichotomy of fishing and climate in fishery management with the FishClim model. *Communications Biology* 5, Article number: 1146 (2022). <https://doi.org/10.1038/s42003-022-04100-6>, pp. 4 and 8

unwanted bycatch", recognising the interaction of target stocks with others caught in the same mixed fishery (see p. 22 of the FMP). However, we reiterate the fact that the single-stock advice provided by the International Council for the Exploration of the Sea (ICES) does not constitute a recommendation to fish at the advised level, but rather a maximum catch level that must not be exceeded from a single-stock sustainability perspective, which does not factor in mixed fisheries interactions, and does not necessarily fully account for ecosystem dynamics and needs. Particularly in the face of uncertainty around climate change impacts on stocks and ecosystems, the adoption of a precautionary and ecosystem-based approach, as referenced in the precautionary and ecosystem-based FA Objectives, is essential, even where MSY-based single-stock advice is available.

As explained in much more detail in the recent joint NGO recommendations to the UK on Total Allowable Catches (TACs) for 2024,⁷ catch limits should be set well below the ICES advice in order to maximise long-term stock and ecosystem health, resilience and productivity, as well as the capacity to mitigate climate change (see also the final part of our response to Question 3). Further arguments supporting this approach (rather than by default aiming for exploitation at the advised level) are addressed in more detail in the aforementioned NGO TAC recommendations (particularly in section 4), including for example the need to factor in the risk of illegal discards beyond the agreed TAC level, and to safeguard depleted or vulnerable stocks in mixed fisheries. We therefore strongly recommend to interpret the wording "aim to set total allowable catch for quota species in line with the ICES MSY advice" (in the first principle listed on p. 11 of the consultation document, and on p. 23 of the FMP), as 'at or below' or 'not exceeding' this advice, rather than as 'at' this exact level.

Particularly in bycatch-rich fisheries like the mixed flatfish fisheries covered by this FMP, it is crucial to prioritise the recovery of the most depleted, vulnerable stocks in the mix in order to meet the precautionary and ecosystem FA Objectives, which will require setting TACs for the more abundant stocks well below their single-stock advice. The FMP must not present an obstacle to such TAC-setting below the ICES advice.

We are concerned about the lack of proposals in the FMP to rebuild the depleted witch stock. According to the ICES mixed fisheries considerations from last year (yet to be released for this year), witch was the most limiting stock in the Greater North Sea area.⁸ Based on the most recent single-stock advice from June this year,⁹ the stock continues to be subject to overfishing ($F > F_{MSY}$) and the biomass remains below B_{pa} , i.e. outside safe biological limits. Despite the note in the FMP that witch landings in 7d are low, the stock-level ICES advice shows that the overall catches have routinely exceeded the ICES single-stock advice for many years (every single year since 2014, the first year with quantitative advice, see Table 6, p. 5), clearly highlighting a management failure in relation to ensuring sustainable exploitation. ICES continues to highlight that the "use of a combined species TAC for witch and lemon sole prevents effective control of the single-species exploitation rates and could lead to the overexploitation of either species" and "advises that management should be implemented at the species level and cover the entire stock distribution area (Subarea 4 and

⁷ <https://www.clientearth.org/latest/documents/joint-ngo-recommendations-to-the-uk-on-fishing-opportunities-for-2024/>

⁸ ICES (2022) Greater North Sea mixed fisheries considerations. ICES Advice: Recurrent Advice. Report. <https://doi.org/10.17895/ices.advice.21532941.v2>

⁹ ICES (2023) Witch (*Glyptocephalus cynoglossus*) in Subarea 4 and divisions 3.a and 7.d (North Sea, Skagerrak and Kattegat, eastern English Channel). ICES Advice: Recurrent Advice. Report

divisions 3.a and 7.d)".¹⁰ We therefore welcome the ongoing work on TAC alignment within the Specialised Committee on Fisheries and support stock-specific fishing limits. As long as the TAC remains combined with lemon sole, the priority must be to recover witch, rather than to fully exploit the lemon sole stock, meaning that the overall TAC must be set low enough to allow the witch stock to recover above a biomass level capable of producing the MSY, as per the precautionary FA Objective.

As regards dab, we are concerned by the very high discard rates, which – while the stock currently remains within safe biological limits – constitute waste and are contrary to the important ambition underpinning the landing obligation to minimise and avoid unwanted catches, and specifically part (a) of the bycatch FA Objective to avoid or reduce bycatch. The reference on p. 25 of the FMP to “the need to understand the discarding of this stock” (emphasis added) does not sufficiently address this issue. As also specified in our joint NGO TAC recommendations (see Boxes 2 and 7), we recommend reintroducing the TAC for this stock, as well as setting TACs for the relevant target stocks alongside which dab is caught at lower levels and implementing bycatch reduction measures to minimise the impact on associated non-quota stocks like dab.

We highlight our concern with the statement that “the UK government does not see a need to take a precautionary approach to managing this non-quota stock in the meantime” regarding flounder. The FMP states, at p. 26, that “there is no defined MSY [for flounder], just an FMSY proxy as there is no agreed analytical assessment.” Section 3(i) of the Fisheries Act 2020 states, in summary, that where there is insufficient evidence to make an assessment of MSY for inclusion in an FMP, the relevant authority or authorities must “specify policies...for maintaining or increasing the levels of stock”. Section 6(4) states that, in determining such policies, “the relevant authority or authorities must adopt the precautionary approach to fisheries management”. It is apparent, therefore, that in setting policies in this FMP for flounder, the UK government is under an obligation to take a precautionary approach that satisfies the precautionary FA Objective.

5. What are the benefits and drawbacks (environmental, economic, social) of introducing Minimum Conservation Reference Sizes for lemon sole, turbot and brill in 7d?

The FMP states, at p. 27, that “[a]t present, the FMP is exploring the technical measures outlined below [which include MCRS for lemon sole, turbot and brill], which could contribute to sustainable harvest in the short-term, whilst a long-term strategy is being considered. Further work is needed to determine how applicable these measures are and refine the benefits. The rationale for the below measures is to protect pre-spawn juveniles and promote recruitment. These possible measures are being explored as a precautionary step given concerns surrounding stock health. Future iterations will deem if these measures are appropriate as evidence is developed”. At p. 28, the FMP states, “[t]he ambition will be to explore the introduction of these MCRS through the FMP”. ClientEarth considers that this language is far too non-committal – it only commits the fisheries policy authorities to “exploring” MCRS whilst a ‘long-term’ strategy (no detail at all on what that will entail) is developed. The FMP should contain a firm commitment to MCRS set at levels that will effectively protect juvenile fish.

6. What are the benefits and drawbacks (environmental, economic, social) of towed gear measures in 7d?

¹⁰ ibid

We are concerned about the vague and non-committal nature of the wording “[c]onsider gathering evidence on potential viable options for management measures for towed gears” (p. 29 of the FMP). If progress is to be made in this regard, the FMP would need to contain a concrete requirement to first gather the relevant information (including a clear overview of which options have already been trialled and why they have not yet been implemented more widely), and then implement the relevant measures, within a clear timeframe.

As a general point, we support the development and implementation of effective technical measures to maximise selectivity and avoidance of unwanted catches, in terms of both age/size and species. We recommend a holistic approach to fisheries management that covers both technical measures and the setting of ecosystem-based TACs geared towards protecting and rebuilding the most vulnerable/depleted stocks in mixed fisheries. This means that where further selectivity or avoidance improvements in a mixed fishery are difficult or on their own insufficient to limit bycatches to sustainable levels, the relevant TACs for the more abundant stocks caught in the fishery must be set well enough below the single-stock advice for those stocks, in order to allow others to recover in line with the precautionary FA Objective. Quota allocation in line with the requirements of Section 25(3) of the UK Fisheries Act, i.e. incentivising “the use of selective fishing gear” and of “fishing techniques that have a reduced impact on the environment”, could also play a key role in this context. We therefore strongly recommend that the FMP supports such ecosystem-based TAC-setting and quota allocation (also see our responses to Question 3 and 4, and section 4 of our recent joint NGO TAC recommendations.¹¹

7. Do you agree that these actions to improve the evidence base are appropriate for the flatfish FMP?

N/A

8. How would you like to be involved in the delivery of the plan and the future management of the southern North Sea and eastern Channel mixed flatfish fishery?

N/A

9. Are there any important connections with, or links to, other fisheries that we should consider when finalising this FMP or during its implementation process?

N/A

¹¹ Joint NGO recommendations to the UK on fishing opportunities for 2024. September 2023.
<https://www.clientearth.org/latest/documents/joint-ngo-recommendations-to-the-uk-on-fishing-opportunities-for-2024/>

Angus Eames

Lawyer, UK

020 7749 5975

AngusEames@clientearth.org

www.clientearth.org

Brussels Beijing Berlin London Warsaw Madrid Los Angeles Luxembourg

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.