FISH
FISKESEKRETARIATET
THE FISHERIES SECRETARIAT

SEAS AT RISK

Stockholm & Brussels, November 10, 2009

To: The Fisheries Ministers of EU Member States

Re: Input to the EU Fisheries Council Meeting, 19–20 November 2009

Dear Minister,

On behalf of the Fisheries Secretariat (FISH) and Seas At Risk (SAR) we offer you our views and key messages on three of the issues that are currently on the agenda of the November Fisheries Council: the Technical Measures Regulation, the need to minimise unwanted by-catch of seabirds, and the reform of the Common Fisheries Policy. The aim of our recommendations is to encourage a more sustainable utilisation of our common marine resources, and we hope that our views will be taken into consideration in your deliberations at the Council meeting.

1. Council Regulation concerning the conservation of fisheries resources through technical measures (COM(2008)324)

The proposal consolidates existing technical measures for the Atlantic and external waters into one single regulation, and introduces a new regulatory approach. Although initially only intended to unify and simplify existing provisions, the current proposal includes a number of new and revised technical measures. The effects of some technical adjustments are difficult to judge, however, we are concerned about some of the revisions, such as the downward adjustment of some Minimum Landing Sizes (MLS).

- We generally support the introduction of the Comitology procedure, but the lack of accountability of the Commission for the adoption of technical measures needs to be addressed.
- Moreover, the powers which have been delegated to the Commission should be extended to cover what we believe are also detailed technical measures, such as minimum landing sizes, percentages of species and mesh size ranges. Ideally, many of these measures should in the future be part of comprehensive, ecosystem-based Long-term Management Plans covering all of the EU commercial fish stocks.
- We also call on you to address the lack of regulation during the transition period between the adoption of this proposal repealing several Regulations and the adoption of new technical measures through the Comitology procedure, before you approve the proposal.
- We would like to take this opportunity to stress the importance of sound MLS for fisheries management. It is a fundamental measure to avoid targeting juveniles and should be closely linked to the relevant mesh sizes and gear regulations in order to be effective.
- We welcome the establishment of a procedure to deal with fisheries management in Natura 2000 sites (Article 22a) and ask you to support the application of the Comitology procedure in the case where fisheries of several MS are involved; however, we urge you to ensure that in cases where only one MS is involved, the power is delegated to the concerned MS.

See Annex 1 for more detailed comments on this proposal.

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2. On the need to minimize unwanted by-catch of seabirds

In Europe, the incidental catch of birds is caused mainly by longline fisheries and gill-nets. The worst known by-catch 'hotspots' are the Mediterranean Sea and west of Ireland, where species such as Cory's shearwater, Balearic shearwater and Great shearwater are being killed at an alarming rate. Recent studies from the Baltic and eastern North Seas also show that the extent and impact of incidental catch in small-scale gill-net fisheries is much higher than previously thought, with estimates ranging from 100,000–200,000 birds killed per year.

Despite the urgency to reduce seabird by-catch by EU vessels operating within and outside Community waters, the issue has still not been subject to any systematic measures at Community level. In 1999 – ten years ago – the EU committed to the development of a Community Plan of Action for tackling seabird by-catch, in response to FAO's International Plan of Action (IPOA) for reducing incidental catch of seabirds in longline fisheries. A 2001 draft did not develop further until 2008 when the Commission made a request to ICES for formal assessment, as required by the FAO IPOA. On this matter we would like to draw your attention to the following issues for your discussions at the Council meeting:

- We urge you to take emergency action for the most threatened species such as Cory's shearwater, Balearic shearwater, Yelkouan shearwater and Great shearwater.
- We call for swift adoption of the EU Action Plan for reducing seabird by-catch; this must be based on the UN FAO Best Practice Technical Guidelines to which the EU has signed up.
- We believe the current efforts to collect seabird by-catch data should be strengthened, as there is some indication that existing data are only the tip of the iceberg and serious by-catch 'hotspots' may be overlooked.

See Annex 2 for a briefing on by-catch of seabird in EU waters and necessary EU action produced by BirdLife International.

3. On the reform of the Common Fisheries Policy

FISH and SAR are both members of OCEAN2012, an alliance of organisations dedicated to transforming European Fisheries Policy to stop over-fishing, end destructive fishing practices and deliver fair and equitable use of healthy fish stocks. As you will have a chance to exchange views with colleagues about the upcoming reform of the Common Fisheries Policy (CFP) at an informal lunch during the next Council meeting, we encourage you to support "a root and branch" reform of the CFP based on:

- Prioritising environmental objectives as a prerequisite to fulfilling social and economic objectives. The precautionary and ecosystem-based approaches to fisheries management must form the fundamental basis upon which fisheries management is built.
- Granting access to fishing resources to EU fleets – fishing within and outside EU waters – based on environmental and social criteria, favouring less destructive fishing gear and practices, compliance with the law, low fuel consumption, decent working conditions and high quality products.
- Adopting a decision-making framework which ensures decisions are taken at the appropriate levels, differentiating between long-term strategic and operational management decisions. We suggest that the Council of Ministers and the European Parliament (with its new powers on fisheries granted by the Lisbon Treaty) focus on the over-arching vision and objectives of the CFP and leave the detailed implementation to more appropriate bodies such as the Commission, Member States, or new decentralised management bodies.

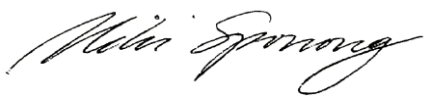
- Establishing instruments and competencies which deliver sustainable fishing power – at an EU and regional level. This should include legally-binding and time-bound fishing power limits per fishery or group of fisheries in a given area. Fisheries management should be based on fishing power rather than catches or fishing effort. Fishing power is a measure of the properties of a fishing vessel, measured in terms of the *fishing mortality* the vessel causes on the fish stock or stocks; it must not be confused with engine power.
- Phasing out of public aid that sustains overcapacity. Subsidies and other financial instruments should support the transition to environmentally and socially sustainable fisheries.

For further details on our views, we have taken the liberty to include an OCEAN2012 discussion paper on the reform. We wish you every success with the challenges ahead and will continue to support you in working to achieve sustainable fisheries within the EU and beyond.

See Annex 3 for the OCEAN2012 discussion paper on CFP reform.

Finally, we would like to take this opportunity to point out that the negotiations between the EU and Norway on fishing possibilities is an area of EU fisheries policy that is still non-transparent and inaccessible for interested stakeholders, going against the grain of the Aarhus Convention and general principles of openness, transparency and participation.

Yours sincerely,



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Annex 1. On a *Council Regulation concerning the conservation of fisheries resources through technical measures (COM(2008)324)*

The proposal for a Regulation on Technical Conservation Measures[1] is an attempt to consolidate and simplify existing technical measures, which are currently spread over numerous EC legislations and drafted in a highly complex and technical manner[2]. The aim is to clarify and harmonise the legal framework, while also rendering it more coherent, avoiding duplications of rules and inconsistencies with existing general environmental legislation such as implementation of the Birds and Habitat directives[3].

It is expected that the simplification of the framework will make technical measures more easily understandable, enforceable and controllable, and thus result in a higher level of implementation and compliance. However, it must be noted at this stage, that the proposed Regulation does not merely simplify and unify but also amends existing measures and even introduces new ones.

In addition to the simplification process, the proposal introduces a new regulatory approach, which will simplify and speed up the decision-making process for technical measures by avoiding micro-management at Council level. Only the most general measures are to be covered by the Council Regulation. In the future, it is proposed that more detailed, temporary and technical measures are to be dealt with through Commission Regulations. Again, however, it should be noted that the proposed Regulation does not quite live up to this division, but still contains a large number of quite detailed measures of a technical nature.

During the transition period (the period between the adoption of this proposal and the resulting repeal of existing technical measures, and the adoption of Commission Regulations), a large number of presently existing technical matters will be unregulated. This is a great problem that needs to be addressed.

The Fisheries Secretariat (FISH) and Seas At Risk (SAR) are generally supportive of the efforts to consolidate and simplify the technical Regulations, including the proposed simplification of the decision-making system. The latter is, however, highly complex and closely linked to the current debate on CFP reform and should be considered in this context.

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[1]Working Document of 28 September 2009, discussed in the Working Group of the Council on 30 September–1 October 2009 and COM(2008)234..

[2]In particular Council regulations (EC) No 1434/98, (EC) No 850/98, (EC) No 2549/2000, (EC) No 2056/2001, (EC) No 2602/2001, (EC) No 254/2002, (EC) No 494/2002, (EC) No 2166/2005 and Article 7 from (EC) No 1359/2008.

[3]For example, Article 22a explains the interplay between the proposed Technical Measures Regulation and implementation of Council Directive 79/207/EEC Article 4(4) (Birds Directive) and Council Directive 92/43/EEC Article 6(2) (Habitat Directive).

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SUMMARY OF RECOMMENDATIONS

Our recommendations are divided into two parts. Part 1 addresses the simplification efforts as well as the new regulatory approach, whereas Part 2 deals with the proposed provisions on technical measures.

Part 1: Simplification and the new regulatory approach

- *We generally support the introduction of the Comitology procedure, but the lack of accountability of the Commission for the adoption of technical measures in the current proposal needs to be rectified.*

- *Moreover, the powers which have been delegated to the Commission should be extended to cover what we believe are also detailed technical measures, such as minimum landing sizes, percentages of species and mesh size ranges.*

- *In the longer term, however, we would like to see the technical implementation of objectives, targets and principles agreed on the highest political level happen at the regional or even local level. Ideally, many of these measures should be part of comprehensive, ecosystem-based Long-term Management Plans covering all of the EU commercial fish stocks.*

- *We call on you to address the lack of regulation during the transition period between the adoption of this proposal, repealing several Regulations and the adoption of new technical measures through the Comitology procedure, before you approve the proposal.*

- *Finally, it would be appropriate to review the Technical Measures Regulation and the Comitology procedure in the context of the new CFP in 2013.*

Part 2: Technical measures

- *We encourage you to support the expansion of the scope for technical conservation measures, as the greater geographical coverage in combination with the activities and subjects included will ensure that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place, thereby addressing existing loopholes in the current framework.*

- *We urge you to a) not approve the proposed decreases in minimum landing sizes (MLS) and b) to gradually increase the coverage of MLS for more species, as well as the sizes themselves until they are at least in line with the size for 50 % maturity. Technical Regulations such as mesh sizes will need to be amended accordingly. As Member States (MS) are, according to Article 17 in the proposal, allowed to take unilateral action to go beyond the minimum requirements set out in Community Fisheries Regulations, we encourage you to show foresight and do so.*

- *It is our view, that detailed measures such as MLS should gradually be decentralised and included in Long-term management plans (LTMPs) for specific stocks, while the overarching Technical Conservation*

Measures Regulation will contain more general policy guidance. In the future, one could consider a text such as this in the overarching Council Regulation on MLS:

Article 4 **Minimum landing size of living aquatic resources** 1. A living aquatic resource shall be considered as undersized if it is smaller than the mean size at maturity (has reached reproductive age and size) and the minimum landing size should be agreed accordingly for the relevant stocks/species.

- *We encourage you to support the one mesh size rule (Article 5), as it will facilitate control and enforcement procedures, whilst ensuring that the Regulation is drafted in such a manner so as to promote compliance and prevent discarding.*

- *We urge you to support the measures to ban high grading (Article 9), as well as the inclusion of real-time closures and moving-on measures to protect spawners and juveniles among other things (Articles 10 and 10a).*

- *We ask you to ensure that the currently protected species will continue to be protected in the future and to ensure that there is no duplication of rules in the Species Specific Provisions (Articles 12, 14 and 15).*

- *We urge you to support the proposed discard plans, which will allow a more regionalized, bottom-up approach towards discard reduction and improved gear selectivity, with technical measures better adapted to the local realities (Article 18).*

- *We welcome the establishment of a procedure to deal with fisheries management in Natura 2000 sites (Article 22a) and ask you to support the application of the Comitology procedure in the case where fisheries of several MS are involved; however we urge you to ensure that in cases where only one MS is involved, the power is delegated to the concerned MS.*

DETAILED COMMENTS

We have divided our comments and recommendations into two parts. Part 1 will address the simplification efforts as well as the new regulatory approach – i.e. the move from Council Decisions to Commission Regulations through Comitology procedures set out in Comitology Decision 1999/468/EC – whereas Part 2 will deal with the proposed provisions on technical measures.

PART 1: SIMPLIFICATION AND THE NEW REGULATORY APPROACH

1. Simplification

The underlying objective of the proposal is to simplify, clarify and harmonise the current legal framework on technical measures in fisheries, and to remove any existing inconsistencies and duplications. Unfortunately, through the numerous deletions, additions and amendments made to the proposal, the working document from September 2009 has become more and more complex, unclear and inconsistent in comparison with the original proposal adopted by the Commission in June 2008 (COM(2008)324).

Thus, although the original intention was to limit the provisions in the Regulation to technical measures applicable to all areas and species (excluding the Mediterranean, the Baltic and the Black seas), the proposal now includes an increasing number of area and species specific measures. For example, Article 4 on Minimum Landing Sizes (MLS), Article 4a and Annex III on Percentages of Species and Mesh Size Ranges, and articles 14-15 on restrictions on fishing for shrimps and salmon to protect flatfish and sea trout. Moreover, the proposed Regulation affects a number of existing provisions on technical measures (for example in Regulation (EC) No 254/2002, No 2015/2006 and No 40/2008), which are not explicitly repealed in the proposal[4]. In addition, some provisions of this proposal, such as Article 12 on the protection of elasmobranches, are also included in the draft Proposal for Fishing Opportunities 2010 (Article 28).[5]

While we support the simplification and unification process, we urge you to remove the above listed inconsistencies in the proposal.

2. Commission Regulation – Comitology Procedure

The proposal distinguishes between general principles and provisions applicable in all areas[6] and purely technical, often temporary and area specific measures[7]. It is suggested that the former type of measures continue to be dealt with at Council level and they are covered in the proposal. For the adoption of detailed fisheries conservation measures relating to specific fisheries areas, it is proposed that the Management Comitology Procedure[8] be used, allowing the Commission to adopt Commission Regulations on purely technical matters.

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[4]Economic and Social Committee in its report on COM(2008)324.

[5]Proposal for a Council Regulation fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels , in waters where catch limitations are required (COM(2009)553).

[6]For example, one mesh size rule and minimum landing sizes.

[7]For example, closed areas and seasons.

[8]The power to take decisions and make amendments and derogations on technical matters is conferred from the Council to the Commission. In taking those decisions, the Commission is assisted by a management committee, consisting of representatives from MS. The committee is chaired by the Commission and provides a forum for discussion, enabling a dialogue with national administrations before implementing measures. The Commission must submit a draft of the measure to the committee, on which it must deliver its opinion within the time-limit set by the Chair. The opinion is taken by qualified majority vote. If the Commission decides to adopt a measure which

More specifically, the Commission may adopt measures on the reduction or elimination of discards and the improvement of the selectivity of fishing gear (Article 22); closed seasons and areas (Article 22); real time closures (Article 10); discard plans (Article 18); technical descriptions of devices that may be attached to nets (Article 22); and other technical measures on the basis of proposals submitted by MS and/or RACs to protect living aquatic resources and marine ecosystems (Article 22). In addition, the Commission may adopt derogations to certain technical measures (Article 5 on one mesh size rule; Article 8 on gillnets and trammelnets; Article 12 on destructive fishing practices). The Commission may also make amendments to the annexes of the proposed Regulation[9].

We believe that the more detailed and species-specific measures that according to the proposal will remain with the Council, such as MLS and mesh sizes, should be delegated – at the first instance to the Commission through Comitology but in the long-term to a lower level (see below).

Adopting a new decision-making approach for the regulation of technical measures is essential to keep the CFP workable, especially after the coming into force of the Lisbon Treaty. Taking measures of such a highly technical nature at the Council level is inappropriate, due to time constraints as well as limitations in technical knowledge. Once the Lisbon Treaty enters in to force and introduces co-decision for most fisheries matters, the expected timespan between the publication of a proposal and the moment of adoption is two years. The Comitology procedure will permit the moving away from micro-management at the highest political level and render the adoption of technical measures easier, faster and more flexible, thereby ensuring the more rapid adaptation to changing circumstances. Moreover, it is intended that technical measures will relate to RAC areas, which will allow the tailoring of technical measures to regional realities and features of specific fisheries.

Ideally, we believe that such matters should not be regulated by the Commission but delegated to a regional level or even local level. Whilst we consider Comitology more workable than a status quo, we hope that the future CFP will accommodate for greater regionalization of the technical implementation of targets and objectives set by the Council [and the European Parliament]. In particular, we believe measures such as selectivity, MLS, mesh sizes and closed areas should ideally be contained within long-term management plans for all commercial species.

Nonetheless, we would like to draw your attention to several shortcomings we see in the proposed Comitology procedure. First and foremost, the proposal holds the Commission insufficiently accountable for the adoption of technical measures, despite the important delegation of powers to it. The proposed Management Comitology Procedure will thus supply the Commission with a high degree of discretion and lead to a loss of democratic scrutiny.

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is not in accordance with the Committee's opinion, the Commission must refer it to the Council, which may take a different decision by qualified majority.

[9]N.B.: subject to a different Comitology procedure

Secondly, and this may sound contradictory, insufficient powers would be delegated to the Commission to truly achieve the proposal's aim that only the most general principles and provisions applicable in all areas and species should be regulated by the Council. Inevitably, this also means that the proposal's objective of simplification cannot be achieved. More specifically, the powers to set MLS, percentages of species and mesh size ranges have not been delegated. Nevertheless, we believe that the potential benefits of the Management Comitology Procedure outweigh its drawbacks.

We generally support the introduction of the Comitology procedure, but the lack of accountability of the Commission for the adoption of technical measures in the current proposal needs to be addressed.

Moreover, the powers which have been delegated to the Commission should be extended to cover what we believe are also detailed technical measures, such as MLS, percentages of species and mesh size ranges.

In the longer term, we would like to see the technical implementation of objectives, targets and principles agreed on the highest political level happen at the regional or even local level. Ideally, many of these measures should be part of comprehensive, ecosystem-based Long-term Management Plans covering all of the EU commercial fish stocks.

Finally, we call for a review of the Technical Measures Regulation and the Comitology procedure in the context of the new CFP in 2013.

3. Preventing a "regulation gap" in the transition phase

An obvious shortcoming in the proposal, is that the transition period after its adoption is not appropriately addressed. The proposal provides for the repeal of several Regulations and only takes over the key provisions from the existing legislation, arguing that the detailed provisions, which are not included in the Council Regulation, will be regulated by technical measures adopted by the Commission through the Comitology procedure. It appears that in between the coming into force of the proposed Technical Measures Regulation and the adoption of the individual Commission Regulations, many matters which are currently governed by existing legislation will be unregulated. The situation is aggravated by the fact that the Commission does not possess unlimited powers under the Management Comitology procedure but can be vetoed by the Council. This means that, in theory, the adoption of new measures can prove to be impossible or very difficult after the currently existing rules have already been repealed.

We therefore call on you to address this lack of regulation during the transition period between the adoption of this proposal repealing several Regulations and the adoption of new technical measures through the Comitology procedure, before you approve the proposal.

PART 2: TECHNICAL MEASURES

The main purpose of the proposed Regulation is to simplify and consolidate existing technical measures, whilst also aiming to achieve the environmental objectives of discard reduction and the protection of juveniles, as well as the protection of specific species and ecosystems.

Although the Commission argues that its proposal merely represents a simplification process and that improvements to existing technical measures are only to be introduced in the future, the proposal contains several new or modified provisions.

Having one Regulation for all technical measures can be considered a simplification of the current system, making it easier for everyone to keep track of the up-to-date rules. However, we are concerned about some of the revisions, for example, that the MLS for some species have been adjusted downwards.

Articles 1–2 Scope and definitions

In comparison with Council Regulation 850/98, arguably currently the key Regulation on technical measures, the proposal's scope is wider in terms of activities[10] and subjects[11] covered, as well as in terms of geographical scope[12]. By expanding the geographical scope and the activities and subjects covered, it is ensured that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place.

We encourage you to support the expansion of the scope for technical conservation measures, as the greater geographical coverage in combination with the activities and subjects included will ensure that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place, thereby addressing existing loopholes in the current framework.

Chapter II: Article 4 and Annex I on Minimum Landing Sizes (MLS)

Currently, Minimum Landing Sizes (MLS) are specified for 36 species in EC legislation. In its September 2009 version of the proposal, the Commission has transferred the MLS sizes for all species except for plaice and pollack, and introduced MLS for several species which are not yet regulated.

We would like to take this opportunity to stress the importance of sound MLS for fisheries management: MLS is a fundamental measure to avoid targeting juveniles and thus prevent the development of fisheries targeted at juveniles. But in order to effectively contribute to more sustainable fisheries management, they need to be set above average age of maturity (ie size and age at reproduction). Indeed, there is scientific support for this. We would like to highlight two examples:

[10]This proposal covers catching, retention on board, transshipment, and landing of fishery resources, as well as storage, sale, display and offer for sale; as opposed to Regulation 850/98, which just covers the taking and landing in maritime waters.

[11]It includes activities pursued in fishing zones of EC waters, as well as by EC vessels and nationals of MS in fishing zones in non-EC waters. By way of contrast, Regulation 850/98 only covers activities taking place in the maritime waters under the sovereignty or jurisdiction of MS and in the fishing zones.

[12]The proposal applies to commercial and recreational fishing in all European waters, with the exception of the Mediterranean Sea, the Baltic Sea, the Black Sea, and highly migratory fish stocks in all waters, for which specific rules apply.

1) A study by P. Serafim, A.S.T. Aubyn & M. Castro of spiny lobster (*Palinurus elephas*) in Portugal indicates that with increasing fishing mortality, larger MLS are required in order for the stock to remain within safe biological levels.[13]

2) In a paper by B. Ernande, U. Dieckmann and M. Heino, the authors link low MLS to fisheries-induced evolutionary changes that a) will result in maturation at lower ages and sizes, which in turn will result in a decrease of stock biomass, and b) can induce so-called frequency-dependent selection, which may lead to self-extinction by natural selection.[14]

The results of both studies support the need for MLS to be above average reproductive size in order to contribute to long-term stock management. This is not the case today – one example is North Sea cod, which currently has a MLS of 35 cm, and for which the size at which 50 % of individuals is estimated to have reached maturity is almost 70 cm (69.7 according to INCOFISH[15]). Cod is a species for which age and size at maturity varies considerably between different stocks, with coastal cod reaching maturity much earlier – another factor that reinforces the need for MLS to be stock-specific and included in LTMPs – rather than a general measure based on lowest common denominator.

Ideally, species-specific provisions such as MLS should not be governed by a Regulation meant to be of a general and non-technical nature, but should instead be included together with other relevant, species-specific technical measures in long-term management plans (LTMPs). However, until the general content of LTMPs is increased and they cover a much wider range of stocks, we believe it is important to extend and improve the use of MLS within the EU. As other Regulations will be repealed when this COM(2008)234 is approved, it is better to include current MLS here than to deregulate.

We therefore urge you to a) not approve the proposed decreases in MLS in the Regulation and to gradually increase the coverage of MLS for more species, as well as the sizes themselves until they are at least in line with the size for 50 % maturity. Technical Regulations such as mesh sizes will need to be amended accordingly. As MS are, according to Article 17 in the proposal, allowed to take unilateral action to go beyond the minimum requirements set out in Community Fisheries Regulations, we encourage you to show foresight and do so. Indeed, countries such as the UK and Belgium have already gone beyond in their national measures.

Also, it is our view, that detailed measures such as MLS should gradually be decentralised and included in Long-term management plans (LTMPs) for specific stocks, while the overarching Technical Conservation Measures Regulation will contain more general policy guidance. In the future, one could consider a text such as this in the overarching Council Regulation on MLS:

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[13] In *Biodiversity Crisis and Crustacea: Vol 2: Proceedings of the Fourth International Crustacean Congress* by F. Schram & J. Carel von Vaupel Klein (eds). Taylor & Francis, 2000.

[14] B. Ernande, U. Dieckmann & M. Heino (2002). Fisheries-induced changes in age and size at maturation and understanding the potential for selection-induced stock collapse. Theme Session Y : The effects of fishing on the genetic composition of living marine resources. CM2002/Y:06

[15] http://www.incofish.org/Workpackages/WP7/FishGuide/ScientificNameSearchList.php?Crit1_FieldName=SPECIES.Genus&Crit2_FieldName=SPECIES.Species&Crit1_FieldType=CHAR&Crit2_FieldType=CHAR&Crit1_Operator=EQUAL&Crit1_Value=Gadus+&Crit2_Operator=CONTAINS&Crit2_Value=morhua

Article 4

Minimum landing size of living aquatic resources

1. A living aquatic resource shall be considered as undersized if it is smaller than the mean size at maturity (has reached reproductive age and size) and the minimum landing size should be agreed accordingly for the relevant stocks/species.

Article 5 One mesh size rule

The Commission's proposal pioneers a "one mesh size rule" according to which a fishing vessel is only allowed to carry one gear of one mesh size range during any single fishing voyage.

The "one mesh size rule" reduces the numerous existing and complex mesh size/net rules to one single, easily understandable technical measure. The resulting simplification and clarification makes the carrying out of inspections simpler and cheaper, as this technical measure becomes more easily enforceable. On the other hand, the measure illustrates a perfect example of where the Commission's proposal merely simplifies from the point of view of the legislators and inspectors, whilst rendering the activities of fishermen more difficult. From the perspective of fishermen, the rule potentially removes an important flexibility and leads to higher operational costs and difficulties, and may force vessels to fish with inappropriate gears. Consequently, there is an elevated risk of non-compliance and increased discarding. Despite the social and technical problems this provision may create, we are convinced that the benefits outweigh the difficulties.

We encourage you to support the one mesh size rule, as it will facilitate control and enforcement procedures, whilst ensuring that the Regulation is drafted in such a manner so as to promote compliance and prevent discarding.

Article 9a Prohibition of Highgrading

Where a species is caught during fishing operations which is subject to a quota scheme, it must be brought aboard the vessel and subsequently landed unless this would be contrary to EC fisheries legislation.

This provision will reduce discarding of valuable fish and lead to a more correct estimation of caught species, as the throwing overboard and non declaration of that specie, as allowed under current rules, falsifies the estimated number. This could encourage fishermen to use and adapt more appropriate gears so as to avoid bycatch and discarding.

We therefore encourage you to adopt the measure.

Articles 10 and 10 a: Moving-on Measures and Real Time Closures

When a trigger catch level of a particular species or group of species, or of spawning fish or juvenile, has been reached the area concerned shall be temporarily closed to the relevant fisheries in accordance with the Management Comitology Procedure.

On the basis of the information demonstrating that a catch level has been reached MS may determine an area to be temporarily closed in accordance with the provisions laid down in the Control Regulation (721/2009). The Commission may also determine an area to become temporarily closed in line with the provisions laid down in the Control Regulation (721/2009) and in accordance with the Management Comitology Procedure.

This measure will lead to a higher protection of juveniles and specific species and consequently result in limited discarding. Moreover, the provision is in line with the new discard policy. However, we would like to draw your attention to the fact that there needs to be a clear provision for setting these trigger catch levels in the near future.

We urge you to support this measure, due to the environmental benefits associated with this rule.

Article 18 Discard plans

MS and/or RACs may submit plans on discard reduction/elimination and/or fishing gear selectivity to the Commission. The Commission must present its observations to the MS and/or RACs within three months of the date of receipt. The Commission may adopt, on the basis of the proposals and after the consideration of the STECF advice, such plans in line with the Management Comitology Procedure.

We urge you to support this measure, which will allow a more regionalize, bottom-up approach towards discard reduction and improved gear selectivity, with technical measures better adapted to the local realities.

Article 22a Natura 2000

According to the Birds and Habitats directives, Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant[16].This article describes procedures for presenting proposals concerning the restrictions of fisheries in above mentioned areas (Natura 2000 areas).

The proposal suggests a "fast track" for decision-making on fisheries measures in marine Natura 2000 sites, by enabling the Commission to take decisions through the Comitology procedure[7]. Currently, there is no established procedure to deal with fisheries management in Natura 2000 sites, and in the past the emergency measures procedure set out in EC 2371/1002 has been used to ensure rapid implementation of protection measures. The proposed legislation fills a procedural gap, and provides a simpler and faster path for establishing fisheries management measures in Natura 2000 sites.

[16] Council Directives 79/297/EEC and 92/43/EEC

We are concerned, however, that these increased powers of the Commission, involving STECF and possibly the RACs, could be misused to question necessary restrictions in fishing proposed by a MS. In this context, the information required from the MS (Article 22A), under point 2 a), b) and c) seems excessive and irrelevant, as it concerns information necessary for a decision on the designation of a Natura 2000 site rather than for a decision on restriction of fisheries activities.

It would be preferable if the increased delegated powers were given to the MS instead of the Commission, as MS would be able to implement their site protection obligations under the Directives more directly and with more certainty. The proposed Comitology procedure would be best limited to only those cases where fisheries measures for the site would have implications for several MS.

We welcome the establishment of a procedure to deal with fisheries management in Natura 2000 sites and ask you to support the application of the Comitology procedure in the case where fisheries of several MS are involved; however we urge you to ensure that in cases where only one MS is involved, the power is delegated to the concerned MS.

Bycatch of seabird in EU waters and necessary EU action

BirdLife International briefing, September 2009

1 Problem

In Europe, the incidental catch of birds is caused mainly by longline fisheries and gill-nets.

Seabirds are being killed in longline fisheries when they are attracted to baited longline hooks, get caught on the hooks, dragged underwater and drowned. According to BirdLife data, at least 300,000 seabirds are caught annually in this way around the globe. In Europe, the worst known bycatch 'hotspots' are the Mediterranean Sea and west of Ireland. As a result, species such as Cory's shearwater *(Calonectris diomedea)*, Balearic shearwater (*Puffinus mauretanicus)* and Great shearwater (*Puffinus gravis)* are being killed at an alarming rate. IUCN places Balearic shearwater in the highest threat category (Critically Endangered), predicted as it is to face extinction in the next 40 years if the current rate of mortality is not checked.

Especially in shallow seas and coastal areas, gill-nets also pose a danger to seabirds which can get entangled and drowned when they dive for food. Recent studies from Baltic and North Seas show that the extent and impact of incidental catch in small-scale gill-net fisheries is much higher than previously thought, ranging form 100,000 to 200,000 birds killed per year. This toll includes species protected under international agreements, including the Birds Directive such as Steller's eider *(Polysticta stelleri)*, Red-throated diver (*Gavia stellata);* Black-throated diver (*Gavia arctica)*, Slavonian grebe (*Podiceps auritus)* and smew (*Mergellus albellus)*.

In several parts of the world, trawling has also been found to inflict heavy mortality on seabirds. The extent of this threat in Community waters is unknown although research suggests that certain injuries suffered by seabirds in the Mediterranean are consistent with trawling gear.

2 Solution

Incidental catch of seabirds in longline fisheries is a readily solvable problem – by applying an appropriate combination of simple technical fixes, this needless waste of life can be virtually eliminated.

BirdLife International's Albatross Task Force (ATF) has been working closely with fishers and their managers around the world to help develop, test and promote such mitigation measures. This work has been done mainly in southern oceans where albatrosses, the most endangered group of seabird species, occur. Achievements by the ATF and related BirdLife initiatives to date include:

- In South Africa, deaths of around 18,000 seabirds in the hake trawl fishery have been reduced by some 90%, with a similar rate of reduction in the tuna longline fishery
- In Brazil the voluntary adoption by over 40% of the fleet of bird-scaring lines has helped reduce incidental capture of seabirds by 56%
- In Norway, with BirdLife support the use of bird-scaring lines is now more widespread on longline vessels, reducing the bycatch of northern fulmar

Stopping birds from dying in gill-nets is not so straightforward, but some promising mitigation measures have been tested outside Europe. They include visual barriers at the

top of nets and closures of areas where gill-nets overlap with seasonal concentrations of vulnerable birds.

3 Win-win for seabirds and fishers

BirdLife's Albatross Task Force has also been studying how the application of mitigation measures affects the fish catch. Observations show clearly that using a bird-scaring line markedly reduces seabird bycatch but at the same time can often result in an increased catch of the target fish. This is due to reduced bait loss from scavenging birds during line-setting. The fishers benefit financially in two ways, firstly by preventing wastage of costly bait, and secondly from the greater size and value of their catch. In some fisheries, the cumulative economic gains over the year are huge in relation to the modest cost of mitigation measures, serving as a powerful driver for compliance with the best available technology.

4 EU Action

In 1999 the EU committed to the development of a Community Plan of Action – an EU blueprint for tackling seabird bycatch, but has made practically no progress until recently. The EU's pledge was in response to FAO's International Plan of Action for reducing incidental catch of seabirds in longline fisheries which encouraged nations to develop and implement national or regional plans. Since then, 10 countries, (Brazil, Canada, Chile, Japan, New Zealand, Uruguay, Namibia, South Africa, USA and Australia) have developed national seabird plans. But the EU has been sadly lagging behind.

On the basis of the existing Plans of Action and taking into account new knowledge on seabird bycatch, in 2009 the FAO agreed Best Practice Technical Guidelines for the development of both existing and future Plans of Action. These guidelines represent a golden set of rules for reducing the accidental deaths of seabirds in fisheries. They extend the scope of the FAO's seabird action plan from longline to other relevant fisheries, notably trawls and gill-nets, and they also extend to assisting RFMOs in implementing such Plans.

In 2008, the European Commission renewed its commitment and commenced working on the European Community Plan of Action for Seabirds with a view to making a proposal by the end of 2009. Despite the lack of systematic data on the extent of the problem from all the EU countries, the existing data provide a solid and compelling case for urgent and comprehensive EU action, which has been confirmed by an assessment provided to DG MARE by the International Council for the Exploration of Sea (ICES).

BirdLife calls on the European Commission, Member States and the European Parliament to adopt and implement a robust and ambitious European Community Plan of Action for Seabirds that comprehensively follows the FAO Best Practice Technical Guidelines:

1. **Ensure that the scope of the Action plan covers all relevant fisheries and gears** in which seabird bycatch occurs, including EU vessels operating in both Community and international waters; develop and implement a strategy for EU engagement with RFMOs.
2. Introduce **emergency action for the most threatened species,** prioritising measures to be taken within 1 year for Mediterranean longline fisheries impacting on Balearic, Cory's and Yelkouan shearwaters.
3. **Introduce minimum mitigation standards** in the areas where threatened species interact with fisheries, not least in Special Protection Areas (SPAs) and Important Bird Areas (IBAs) identified by BirdLife International
4. Require Member States to **collect and report seabird bycatch data** in longline fisheries to an agreed protocol, including a minimum of 10% on-board observer coverage of fishing effort to detect if a bycatch problem exists and at least 20% coverage once a

significant problem is detected. Amend the Data Collection Regulation to facilitate this.

5. Provide EU funds for research to **develop and test mitigation measures,** tailored to specific fisheries, and for enabling distribution of best practice mitigation to relevant fleets.
6. Establish **awareness-raising and training programmes for fishers,** and **training programmes for observers**.
7. **Facilitate collaboration** between scientists, the fishing sector, management authorities and NGOs to **review new evidence and measures, and to evaluate implementation of the action plan.**

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How to Transform European Fisheries Policy

INTRODUCTION AND SUMMARY OF KEY RECOMMENDATIONS

The public debate on the third reform of the Common Fisheries Policy (CFP) began on April 22nd 2009 with the publication of the European Commission's Green Paper. With over 80 percent of assessed fish stocks in Community waters deemed over-fished and the fishing industry stumbling from one crisis to another, the current CFP is widely perceived as being a failure. The situation is dire. Unless this reform addresses the main structural failings of the CFP, fish stocks will be further depleted, exacerbating the crises facing the fisheries sector, with potentially disastrous consequences for fishery-dependent coastal communities.

EU fisheries are characterised by fleets that are able to catch more fish than are available, catch limits that are frequently set too high for reasons of political expediency, opaque decision-making procedures and a culture of non-compliance with the rules of the CFP.

The 2002 CFP reform brought some improvements in the areas of long-term management, participation, control and allocation of subsidies. However, it did not prioritise achieving environmental sustainability – a prerequisite for the socially and economically sustainable exploitation of marine resources.

The Commission stated in the Green Paper in April 2009 that it "believes that a whole-scale and fundamental reform of the Common Fisheries Policy (CFP) and remobilisation of the fisheries sector can bring about the dramatic change that is needed to reverse the current situation. This must not be yet another piecemeal, incremental reform but a sea change cutting to the core reasons behind the vicious circle in which Europe's fisheries have been trapped in recent decades."[1]

This paper responds to this challenge, proposing a fundamentally new, principle-centred approach to fisheries management in Community waters and for the EU fleet globally. It outlines the key issues that OCEAN2012 – an alliance of organisations dedicated to transforming European Fisheries Policy to stop over-fishing, end destructive fishing practices and deliver fair and equitable use of healthy fish stocks – would like to see incorporated into a new CFP:

[1] COM(2009)163 final

- Environmental objectives should be enshrined in the CFP as a prerequisite to fulfilling social and economic objectives; the precautionary approach and the ecosystem-based approach to fisheries management must form the fundamental basis upon which EU fisheries management is built.
- The CFP should define a decision-making framework ensuring that decisions are taken at the appropriate levels, differentiating between long-term strategic and operational management decisions.
- The CFP should define instruments and competencies which deliver sustainable fishing power[2] at EU and regional level; this should include legally-binding and time-bound fishing power limits per fishery, or group of fisheries, in a given area in the case of multi-species fisheries.
- Access rules should be based on a set of criteria that ensure a transition to, and support for, environmentally and socially sustainable fishing.
- The decision-making processes should be transparent and participatory.

PURPOSE AND PRINCIPLES OF A REFORMED CFP

The primary purpose of the reformed CFP emerging in 2012 must be to secure environmentally and socially sustainable fisheries in Community waters and wherever else EU fleets are active. In order to reach this, environmental objectives must be enshrined in the new Basic Regulation and be given priority over all other objectives as a prerequisite to achieving social and economic sustainability.

The precautionary approach and the ecosystem-based approach, mentioned in the current CFP, must underpin any future policy. In particular, they must be defined in an operational manner and be applied routinely in fisheries management.

The Precautionary Approach

States, sub-regional and regional fisheries management organisations are called upon by the FAO Code of Conduct for Responsible Fisheries (1995) to apply a precautionary approach to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available.

The precautionary approach is referenced in a number of international agreements, including the Convention on Biological Diversity and the 1995 UN Fish Stocks Agreement, both of which were ratified by the EU, and should therefore be applied in all relevant policy areas. The UN Fish Stocks Agreement states that the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures. It also includes a concise description of how the precautionary approach should be applied to fisheries management (Article 6 and Annex II).

[2] In this context, fishing power is a measure of the properties of a fishing vessel, measured in terms of the *fishing mortality* the vessel causes in the fish stock(-s); it must not be confused with engine power. Documents of the European Commission and others frequently refer to the notion of *fishing capacity*.

UN Fish Stocks Agreement 1995 Application of Precautionary Approach (Article 6)

3. In implementing the precautionary approach, States shall:

a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the

The Ecosystem-based Approach

Because the effects of fishing go far beyond commercially exploited species, its impact on all components of the marine ecosystem – target and non-target species, associated or dependent species, as well as the marine habitat – needs to be considered. Applying an ecosystem-based approach also means that the impact of other human activities, including habitat destruction, climate change and pollution, needs to be considered when taking management decisions. Current scientific knowledge is not sufficient to predict the consequences of our activities in marine ecosystems; therefore an adaptive approach to fisheries management is needed. The ecosystem-based approach is described in the Marine Strategy Framework Directive of June 2008[3].

[3]Directive 2008/56/EC of the European Parliament and of the Council.

Ecosystem-based Approach – Marine Strategy Framework Directive (MSFD), Art. 1.3

Marine strategies shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations.

Under the current CFP, no real attempt to implement an ecosystem-based approach has been made. This needs to change, as the future of fisheries and meeting other EU objectives rely on its successful application. The Marine Strategy Framework Directive provides a starting point in committing Member States to achieving Good Environmental Status (see box below) by 2020. The Directive specifically mentions the need for coherence with the CFP (and other EU policies). In order for the Member States to implement the Marine Strategy Framework Directive, its requirements need to be integrated into all relevant policy areas. The future CFP must therefore be formulated and applied in a way that delivers the fisheries-related aspects of Good Environmental Status, thus contributing to its achievement by 2020.

Good Environmental Status – Marine Strategy Framework Directive (MSFD), Art. 3:

'Good environmental status' means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations.

ANNEX I
Qualitative descriptors for determining good environmental status (Art. 3(5), 9(1), 9(3) and 24)

1) Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.
2) Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems.
3) Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.
4) All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.
5) Human-induced eutrophication is minimised, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algae blooms and oxygen deficiency in bottom waters.
6) Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.

Cont.

7) Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems.
8) Concentrations of contaminants are at levels not giving rise to pollution effects.
9) Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.
10) Properties and quantities of marine litter do not cause harm to the coastal and marine environment.
11) Introduction of energy, including underwater noise, is at levels that do not adversely affect the marine environment.

WHO SHOULD BE ALLOWED TO FISH WHAT, WHERE, AND HOW? DECISION-MAKING IN A REFORMED CFP

The failure of the CFP to achieve its stated objectives can, in large part, be attributed to the way in which decisions are made. Today, even very detailed management measures are decided at the highest political level: the Council of Ministers. As a political body, the Council is moved by short-term, often national, economic interest, rather than a shared vision of how to ensure long-term sustainable fisheries. The Lisbon Treaty will not change this. The flaws in decision-making are further aggravated by a lack of meaningful participation and consultation of the stakeholders most affected.

In order to achieve long-term sustainable fisheries, OCEAN2012 proposes that the process of decision-making be fundamentally changed. We suggest that the Council of Ministers and the European Parliament focus on the over-arching vision and objectives of the CFP and leave the detailed implementation to more appropriate bodies such as the Commission, Member States, or new decentralised management bodies.

OCEAN2012 proposes that there are different hierarchical steps in decision-making:

- Setting overall, long-term policy objectives (at which level of abundance should fish stocks be maintained?);
- Determining the available fish resources (how much fish can be caught?);
- Determining the amount and type of fishing power (how should fishing take place?); and
- Allocating access to the resource (who should be allowed to fish and where?).

Below we have set out how we believe these decisions should be reached.

Step 1: Setting of Long-term Policy Objectives

The current CFP has multiple and conflicting objectives:

- To protect and conserve living aquatic resources;
- To provide for their sustainable exploitation;
- To minimise the impact of fishing activities on marine ecosystems;
- To progressively implement an ecosystem-based approach to fisheries management;
- To contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry;
- To provide a fair standard of living for those who depend on fishing activities; and
- To take into account the interests of consumers.

These objectives cannot all be met simultaneously, yet the CFP gives no indication of how they should be prioritised.

As stated above, a key issue for OCEAN2012 is to have environmental objectives given priority. This means that fishing mortality limits must be established within the biological limits of the marine ecosystems, with the aim of keeping stocks of both target and non-target species at levels capable of ensuring their long-term abundance and retention of their full reproductive capacity. It would minimise the risk of stock depletion or collapse, ensure that the fish stocks are maintained as a functioning part of the ecosystem and reduce management costs.

The EU has set Maximum Sustainable Yield (MSY) as a management target for fisheries. In theory this corresponds to the largest average catch that can be made year after year without reducing the abundance of the stock. The common assumption is that this occurs when the fish stock has been reduced to less than half of the un-fished level. The Johannesburg Declaration of 2002 called for fish stocks to be allowed to increase to the level at which they could produce MSY by 2015.

Fishing beyond MSY will not yield economic gains in the long-term. Fishing at a lower level will result in almost the same catch with much less effort and is therefore economically more viable in the medium to long-term. Furthermore, MSY is a maximum value beyond which productivity is assumed to decline. It is calculated using estimates rather than sound data, meaning it can easily lead to the over-exploitation of fish stocks.

Therefore, as stated in the UN Fish Stocks Agreement, MSY should only be considered an intermediate target to achieving abundance. Alternative objectives of fisheries management must be developed that are more conservative and precautionary in nature.

OCEAN2012 recommends that such long-term policy objectives be set by the highest decision-making bodies: the Council of Ministers and the European Parliament. These two bodies should:

- Jointly decide on long-term management objectives such as level of abundance of fish stocks, speed of recovery and other relevant aspects relating to the marine environment, in line with the 2008 Marine Strategy Framework Directive, the 1992 Habitats Directive and international agreements such as the Convention on Biodiversity, and agree a set of environmental and social criteria to allocate access to resources; and
- Give a clear mandate (limited in time and regularly reviewed) to the European Commission, Member States, and relevant decentralised management bodies to ensure delivery of these objectives based on the steps outlined below.

Step 2: Determination of Available Fish Resources

Currently, scientific advice is not followed: fishing limits agreed by the Council have exceeded scientific advice by approximately 48 percent in recent years, resulting in severe reduction of fish stocks. To remedy this, short-term political interests need to be uncoupled from the determination of fishing limits. Once policy objectives have been set, scientists can determine the amount of fisheries resources available to be caught sustainably in any one timeframe, within a sufficiently robust framework.

OCEAN2012 recommends that future scientific assessment of fish stocks and the determination of fishing opportunities are based on a more conservative and precautionary policy framework:

- The precautionary approach as defined by the UN Fish Stocks Agreement from 1995 and the ecosystem-based approach as defined in the Marine Strategy Framework Directive should be the foundation for scientific advice, and should be revised as knowledge improves. The relevant scientific bodies should deliver advice on available resources, responding to *what and how much can be safely caught where*?
- The scientific process should take into account traditional knowledge of the resources and their habitat.
- The fishing mortality limits must be set to include all fish that are caught, not simply those that are landed. In other words, discards must count as catch and be included in the scientific assessments. That should also apply to recreational fisheries where sizable catches from overfished/recovering stocks such as cod, salmon and bluefin tuna are taken.
- The advice should be legally-binding to the relevant management bodies.

Step 3: Determination of Amount and Type of Fishing Power

It has repeatedly been documented that the fishing capacity[4] of EU fleets far exceeds the available resources despite four EU programmes lasting 20 years intended to correct that imbalance. In 2002, these capacity reduction programmes were terminated and replaced by a "reference threshold" for each Member State, but this has not led to a balance between capacity and resources.

Limits on catches or fishing effort cannot, by themselves, guarantee sustainability or the achievement of MSY. They could, however, play a role in a system based on a third option – limiting of *fishing power*. In this context, fishing power is a measure of the properties of a fishing vessel, measured in terms of the *fishing mortality* the vessel causes on the fish stock or stocks; it must not be confused with engine power. The fishing power of the fleet should be managed so as to result in the rate of fishing mortality that will ensure sustainability. Such an approach requires good data on the activities of the fleets. Limiting either the exercise of fishing effort by a fleet, or the catches, could be used as secondary measures once the power of the fleets is appropriately regulated.

Fishing power must be evaluated on a fishery-by-fishery basis relative to the resources available. It is essential that fishing power matches fishing opportunity and effort, in order to ensure economically viable fisheries, and to prevent illegal, unregulated and unreported (IUU) fishing and extreme inefficiency. The European Commission recently improved assessment of fleet overcapacity by issuing capacity reporting guidelines with a variety of

[4]This has been defined by FAO as: *"The amount of fish (or fishing effort) that can be produced within a period of time (e.g. a year or a fishing season) by a vessel or a fleet if fully utilised and for a given resource condition."* To use such an important term alternatively as a quantity of fish (output) or an amount of fishing effort (input) introduces counter-productive ambiguity into discussions of management. We shall avoid it, preferring to use well-defined terms in the scientific literature of fisheries management. But if "capacity" is to be used at all it should probably be as a quasi-synonym for "power".

indicators. Yet assessing real fishing power in relation to available fishing opportunities remains a challenge.

OCEAN2012 recommends that for each fishery, fishing power limits are established independently of national interest, and that instruments and competencies which deliver sustainable fishing power – at an EU and regional level – are established. This should include legally-binding and time-bound fishing power limits per fishery or group of fisheries in a given area, in order to balance fleet power with available resources as quickly as possible. The required fleet reductions must not lead to the creation of excess power in other fisheries in Community waters or elsewhere.

Some aspects of fisheries management, such as the type of fishing power to be allowed in a given fishery (type of vessels, fishing gears and methods based on the criteria mentioned above), should be implemented in a decentralised manner, with appropriate stakeholder input (e.g. government, fishing sectors, trade unions, NGOs). Such decisions must be based on common principles and objectives. Strict control and enforcement would be a prerequisite and it would require oversight by a central authority.

Once fishing power limits have been set for each fishery or, in the case of multi-species fisheries, for each group of fisheries in a given area, a sustainable fleet should be determined as follows:

- Based on the criteria outlined below (Step 4), the appropriate body should decide through a participatory process involving the relevant consultative bodies, on how much of what kind of fishing power can be allowed for each fishery in order to exploit the estimated available resources.
- These decisions should be legally-binding and implemented progressively according to a strict timetable.

The abundance of fish stocks and the fishing power of the fleet must be re-estimated regularly in order to adjust the fishing power to balance it with available resources. Most fisheries are conducted by more than one Member State, so the fishing power must be evaluated by fishery, rather than within individual Member States.

Step 4: Allocation of Access to Resources

Since the conception of the CFP, access to fish resources has been highly politicised. The situation has been aggravated by fishing power far exceeding available fish resources. Add to that a division of Total Allowable Catches (TACs) into national quotas of fish that can be caught based on historical catches, disregarding environmental or social performance.

In principle-centred decision-making, the current quota allocation regime (relative stability) should be replaced by a system that contributes to environmental sustainability, a more equitable distribution of access to the available fish resources and a culture of compliance. The right to fish should be granted to those who contribute to the overarching objectives of the CFP.

OCEAN2012 recommends that decisions about access to fish resources and adequate fishing power are based on a set of transparent criteria which favour less destructive fishing gear and practices, low fuel consumption, greater employment, good working conditions and

high quality products. Use of these criteria is intended to create positive competition amongst fishers; those who fish in the most environmentally and socially sustainable way would be permitted to fish the most. In the longer term, such an approach would transform EU fisheries.

Decisions on allocation of access to fisheries could be significantly decentralised. This could be done on an ecosystem/regional/local basis depending on the fishery and fish stocks concerned.

Local fishing communities in a given area should have primary access. Fishing interests from outside the area can apply for access if they can demonstrate that their fishing activities conform to local interest. Such a decentralised management process will require good governance, transparency and accountability.

Access would be granted based on a set of criteria agreed at EU level, which should include:

- **Selectivity** – Different fishing methods result in different amounts of by-catch which are (currently) often discarded. Fishers using fishing methods with low by-catch should be given priority access to the available resources;
- **Environmental impact** – The impact of different gears and practices on the environment vary widely, for example damage to the sea bed and pollution. Fishers using less destructive fishing methods should be given priority access;
- **Energy consumption** – Some gear and vessel types require enormous amounts of energy compared to the fish they catch, most notably some types of trawlers and seiners. Fishers using vessels and fishing methods consuming less energy per tonne of fish caught should be given priority access;
- **Employment and working conditions** – Fishing methods that provide more employment, as long as they are also less damaging for the environment, should be given priority access. Working conditions should comply with relevant international standards, notably the 2007 International Labour Organisation (ILO) Work in Fishing Convention;
- **Quality of product** – The gear type used affects the quality of the fish caught. Fishers using gear types providing the best quality of fish for human consumption should be given priority access; and
- **History of compliance** – Past compliance with the rules of the CFP by fishers as well as Member States should be considered when allocating access to fishing rights.

Use of these criteria would help to create more sustainable EU fisheries to the benefit of both the marine environment and the communities that depend on them. If formulated and implemented as described above, the EU's fisheries policy could become a global model. These criteria should be developed and applied gradually affording fishers the opportunity to adapt.

A transition period will be needed in order to implement any agreed criteria. Relevant financial instruments should aim at facilitating the transition towards environmentally and socially sustainable fisheries by supporting the elimination of fishing power which does not comply with the criteria and is in excess of the amount allowed (as per step 2).

Transparency and Participation

In order to improve the understanding of those responsible for taking fisheries management decisions and to ensure public accountability, transparency of the decision-making process and stakeholder participation are essential. Meaningful participation is only possible with accessible, timely and accurate information for all stakeholders. Consequently, OCEAN2012 recommends that, amongst others:

- Information on all landings by all vessels be publicly available (as it is in the USA and Norway);
- Aggregated Vessel Monitoring System (VMS) data be available to scientists (as it is in the USA and Norway);
- Data on catches and activities of long distance fishing fleets be available to Third Countries where they are active; and
- Impact assessments and evaluations of Fisheries Partnership Agreements (FPAs) be publicly available.

External Issues

In Community waters fishing should, in theory, be effectively managed as the EU and Member States have full legal competence. In Third Country waters and on the high seas, fishing can only be restricted by the negotiation of bilateral and multilateral agreements. In many cases, an unsustainable level of fishing is pursued, often caused by a combination of authorities in coastal states allocating excessive fishing rights in order to get a higher financial return and illegal, unreported and unregulated fishing. When EU vessels are re-flagged outside the EU waters, the only way to restrict their activities is through legislation covering fisheries-related activities by EU nationals and investments by EU nationals and companies (e.g. processing).

The EU should seek agreement with developing countries in order to establish a framework for governance and a dialogue on how sustainable fisheries management can be promoted in third country waters, on the basis of its priorities for the sector. This framework should also provide for the funding needed in order to achieve the joint objectives. However, the funds allocated through such a framework should be de-coupled from any fishing possibilities allocated to vessels of EU origin. EU vessel owners operating through such frameworks should pay the full costs of their access to third country waters. Such a framework must provide priority access to artisanal fishing fleets, as stated in the FAO code of conduct for responsible fisheries (Art 6.18).

OCEAN2012 is an alliance of organisations dedicated to transforming European Fisheries Policy to stop overfishing, end destructive fishing practices and deliver fair and equitable use of healthy fish stocks.

OCEAN2012 was initiated, and is coordinated, by the Pew Environment Group, the conservation arm of The Pew Charitable Trusts, a non-governmental organization working to end overfishing in the world´s oceans.

The founding members of OCEAN2012 are the Coalition for Fair Fisheries Arrangements (CFFA), the Fisheries Secretariat (FISH), nef (new economics foundation), the Pew Environment Group and Seas At Risk (SAR).