



## **OCEAN2012 BRIEFING:**

### **An initial reaction to the Commission's package on reform of the Common Fisheries Policy**

The first package on reform of the Common Fisheries Policy (CFP), published on 13 July 2011, sets out the Commission's ambitions for the reform, including a proposal for a new basic Regulation, a proposal for a new organisation of the market and a communication on the external dimension. The package includes some significant improvements, but is not the radical reform proposal that we expected.

This reform offers a unique opportunity to recover the wellbeing of our seas and fishing-dependent communities. The CFP should end overfishing, reduce damage to ecosystems, and rebuild a European Union fishing sector that is environmentally sustainable and socially, as well as economically, viable. Only such a fisheries policy will guarantee Europe's consumers a rich variety of responsibly and locally caught fish in the future.

Now that some of the reform proposals have been published, it will be up to the European Parliament and the Fisheries Council to ensure that the CFP achieves healthy fish stocks and contributes towards achieving good environmental status for EU waters according to the 2008 Marine Strategy Framework Directive. Only through stock recovery can the CFP deliver a secure future for fish, fishing communities, and consumers alike.

### **General comments on the proposal for a basic Regulation**

#### What OCEAN2012 supports

The proposal provides a clear target regarding the conservation of fish stocks, stating that the CFP "shall aim to ensure, by 2015, that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield"<sup>1</sup>. This is in accordance with the EU's international commitment.

The proposal also contains a commitment to establish management measures "in accordance with the best available scientific advice"<sup>2</sup>. This is stronger wording than the existing CFP's "based on scientific advice", and will provide a stronger basis for reaching the 2015 target.

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<sup>1</sup>See articles 2.2, 9.1, 10.1, 14 (a) for specific commitments on MSY

<sup>2</sup>See article 4 (b)

Furthermore, integration of EU environmental legislation (i.e. the Marine Strategy Framework Directive and the Habitats Directive) is now included under the general objectives and referenced elsewhere<sup>3</sup>.

The Commission's proposal contains provisions for the elimination of the unwanted catches of some commercial species, i.e. a provision to end the wasteful practice of discarding<sup>4</sup>. Again, this is a positive development, and one that has most likely come about in response to concerted public pressure. The move from landing quotas to catch quotas is a necessary and important aspect of the proposal, which should not be restricted to the few species selected by the Commission. However, the piecemeal approach proposed by the Commission fails to address problems in some mixed fisheries, as well as the widespread discarding of non-commercial species, thereby reducing the incentive to prevent these unwanted catches.

Regarding the external dimension<sup>5</sup>, the proposal contains a positive provision that sustainable fisheries agreements (SFAs) concluded with third countries will contribute to the establishment of a governance framework to ensure efficient monitoring, control and surveillance capability<sup>6</sup>.

We also welcome the inclusion of a transparency clause on SFAs<sup>7</sup>, although we feel its scope – to have knowledge of the cumulated fishing effort in a third country – is far too narrow. As a prerequisite for better stakeholder participation, transparency should address wider issues. Ex-ante and ex-post evaluations of fisheries agreements should be made publicly available, as they contain essential information such as the value of the catches made by EU fleets. The proposal also falls short of providing tools to ensure that the conduct of all EU fishing vessels operating in third countries, including those operating outside SFAs<sup>8</sup>, will be in line with EU international commitments to promote sustainable fisheries, and will respect commitments to human rights, in particular the right to food.

#### Where OCEAN2012 has concerns

The proposal fails to prioritise the objective of achieving environmental sustainability as a prerequisite for achieving social and economic sustainability<sup>9</sup>. The reason given for this is that such a prioritisation would run counter to the Lisbon Treaty, which positions all objectives equally. This contrasts, however, with past decisions that, more often than not, prioritised short-term economic gains or social considerations – with depletion of fish stocks the result.

The Commission claims to propose a radical reform, yet the most radical aspect of this proposal is the move towards a compulsory near-privatisation of marine resources<sup>10</sup>. The

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<sup>3</sup>See articles 2.4, 12.1

<sup>4</sup>See articles 3 (a), 7 (d) (g), 11 (e), 14 (b) (c), 15

<sup>5</sup>See articles 39-42, as well as the EC communication on external dimension (COM(2011)424)

<sup>6</sup>See article 42.1 (b)

<sup>7</sup>See article 41.2

<sup>8</sup>Currently, about half of the external EU fleet operates outside fisheries agreements or RFMOs.

<sup>9</sup>See article 2.1

<sup>10</sup>See article 27

proposal foresees the allocation of the right to exploit the fish resources in EU waters and beyond (with the exception of fishing activities under SFAs<sup>11</sup>) in the form of transferable fishing concessions (TFCs), for at least a 15-year period<sup>12</sup>, without any compensation to the public or reward for those who fish in a more environmentally and socially responsible way. This is of concern for a number of reasons (see below for a detailed critique on mandatory TFCs).

The Commission's 2009 Green Paper identified overcapacity as the key driver of overfishing. The Commission claims that TFCs will achieve the necessary elimination of overcapacity. However, it is not clear how the Commission will guarantee that the most inappropriate and environmentally and socially harmful capacity is eliminated by market forces, forces more typically suited to ensuring economic efficiency.

Finally, in terms of aquaculture<sup>13</sup>, the promotion and development suggested by the Commission may lead to the same problems of over-establishment, environmental effects and poor profitability as in the catching sector. Instead, promotion should be directed to the development of ecologically sustainable and environmentally responsible aquaculture. The most crucial means of achieving this is to ensure that European aquaculture does not rely on nor lead to the overexploitation of feed fisheries in order to feed farmed carnivorous fish. The reformed CFP must ensure that, if it is to contribute to future food security, aquaculture becomes a net producer of fish protein.

## **Specific comments on areas of priority for OCEAN2012**

### Environmental sustainability as a prerequisite for achieving socio-economic objectives

The current CFP is supposed to achieve environmental, economic and social sustainability, as well as a series of other objectives, such as employment and the interest of consumers. However, the lack of prioritisation of these objectives has meant that none of the objectives has been met. We insist that environmental sustainability, based on the precautionary and ecosystem-based approaches, is the prerequisite for achieving social and economic sustainability. If environmental sustainability is not ensured, and if fish stocks are overfished, then the viability of fishing communities and the industry that depends on them is threatened.

The Commission is proposing long-term management plans (now called multiannual plans or MAPs) as the central tool for ensuring that fishing opportunities (i.e. catch or effort limitations) are not set above the scientific advice<sup>14</sup>. The objective is to restore stocks and then maintain them at levels above those capable of producing maximum sustainable yield, but stock management will be dependent on how the "predefined conservation reference points" and their definition<sup>15</sup> will be implemented. The proposal also specifically notes that stock assessments must take account of the various uncertainties in fisheries management,

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<sup>11</sup>See article 28.2

<sup>12</sup>See article 28.5

<sup>13</sup>See article 43

<sup>14</sup>See articles 9–11

<sup>15</sup>See articles 9.2 (a), 5

including the limitations of available data<sup>16</sup>. In accordance with the precautionary approach, scientific advice must lead to fishing limits that allow for fish stocks to recover to abundant levels. This is an important development that, if properly implemented, would contribute significantly to environmental sustainability. In addition, the proposed MAPs encompass wider aspects of fisheries management than the current MAMPs, including “interactions between stocks and fisheries”, measures to eliminate unwanted catches and efforts to minimise impacts on the wider ecosystem.

The proposal also contains stronger language on establishing management measures in accordance with scientific advice<sup>17</sup>. OCEAN2012 welcomes this, however, the proposal does not contain any provision to prevent fishing opportunities (catch or effort) from exceeding scientific advice. Given that fishing limits have been habitually set above the levels advised by scientists, such a provision should be added to the regulation, in line with legislation in other jurisdictions, such as with the Magnuson-Stevens Act in the USA.

### Capacity reduction

The mandatory application of TFCs is presented as a faultless tool for the self-management of fishing capacity by the sector, as it assumes that market forces will take care of excess capacity. The Commission is giving up on other tools, such as mandatory capacity ceilings and capacity reduction programmes.

The capacity ceilings proposed will most likely only apply to the small-scale sector (smaller than 12 metres using passive gear), whose inclusion in the TFC system is optional and up to the individual Member States<sup>18</sup>. The proposal does not contain an alternative system for the small-scale sector but leaves it up to Member States to decide on access management for these boats, which make up more than 70 percent of the EU fishing fleet.

While we acknowledge that rights-based management tools, under certain circumstances, can reduce capacity in numerical terms, we do not agree that this proposal responds in a sufficiently differentiated way to the current circumstances. We are concerned that the proposed system, without proper safeguards, may simply lead to a concentration of ownership, may further marginalise local fishing communities, and may fail to ensure that capacity reduction is addressed in a qualitative way, i.e. ensuring that more socially and environmentally responsible operators are promoted or prioritised.

Finally, in order to achieve the fundamental objectives of the CFP, the Commission must continue to monitor fishing capacity and set compulsory capacity limits, in accordance with the EU’s international commitments.

### Access to fish resources

The question of who has access to fish resources is a fundamental one. There are many ways to grant access, and any access regime must do its utmost to support the objectives of the

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<sup>16</sup>See article 9.4

<sup>17</sup>See article 4 (b)

<sup>18</sup>See articles 27, 35

CFP. Consequently, access to fish resources should be granted to those who fish in a more environmentally and socially sustainable manner, rather than being handed out indiscriminately, including to those who contributed to overfishing in the past.

Environmental and social criteria should be introduced as the basis for allocation of access. The proposal does provide for such criteria to be introduced by Member States when allocating TFCs<sup>19</sup> and/or for the five percent of their quotas that may be set aside<sup>20</sup>. This should be increased, possibly over time, to 100 percent of the access allocation.

TFCs are neither a conservation tool nor a proven way to manage access to fish resources. They are only one, very specific, form of rights-based management (RBM). Instead of being obliged to use only one tool, Member States should be able to choose from a range of schemes, as is currently the case. This would also be more in line with the principle of subsidiarity on access arrangements. A toolkit should contain solutions suited to input (capacity) and output (catch quota) management systems, as well as to artisanal and industrial fisheries, individual vessels and communities.

Any RBM scheme will only work together with other management measures, such as strict fishing limits and substantial control and enforcement. Clear safeguards would need to be designed to prevent overfishing and other undesirable side effects, such as:

- a clear possibility of revoking concessions (currently it is only possible on short notice in cases of severe non-compliance<sup>21</sup>) – without any cost to society, i.e. there should be legal safeguards ensuring that a Member State that withdraws a concession is not challenged to provide financial compensation;
- a resource rent for the public (currently the proposal foresees the handing out of fishing concessions for free to only a single generation of fishers; thereafter others would have to pay to take it over and the public will not receive anything in return for their resources) – a rent could help pay for management expenses such as control, enforcement and data collection;
- transferability of concessions should be optional (currently, transferability is proposed to be obligatory<sup>22</sup>);
- concentration of concessions should be restricted to prevent the creation of fishing monopolies or cartels; and
- environmental and social criteria should be introduced as the basis for the allocation of access.

### Subsidies

The proposal contains improvements on cross-compliance, where funds would be withheld both for Member States<sup>23</sup> and operators<sup>24</sup> if there were serious infringements. Also, it is

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<sup>19</sup>See article 28.2

<sup>20</sup>See article 29.4

<sup>21</sup>See article 28.6

<sup>22</sup>See article 27.1

<sup>23</sup>See article 50

<sup>24</sup>See article 51

proposed that there will be only one financial instrument in the future, including all funding streams, except for SFAs.

OCEAN2012 calls for the proposal to include principles governing the allocation of the future European Fisheries Fund (EFF), for example:

- subsidies contributing to overfishing and environmentally harmful subsidies should be eliminated;
- public funds should be used only for public goods (e.g. research, data collection, monitoring and control, pilot schemes) and allocated to individuals only if they contribute to public goods and services;
- those who infringe the CFP rules or other relevant legislation should not be eligible for public funds;
- in cases of infringements of relevant rules and legislation after receiving public funds, these should be repaid to the relevant authority;
- the withholding, or demanding repayment, of public funds should be based on prosecuted infringements; and
- while the EU can and should continue to make funds available that support capacity building in developing countries, including for fisheries management, the payment for access to fisheries resources in external waters should be fully borne by operators.

## **Conclusion**

In the face of concerted short-term economic interests, the Commission has struggled to craft a proposal that responds adequately to the issues outlined in its 2009 Green Paper. After almost 30 years of consistent mismanagement of EU fisheries, Europeans are now looking to the European Parliament and the Fisheries Council to end this waste, and to lead in the delivery of a secure future for fish, fishing communities and consumers alike.

*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 organisation working to end overfishing in the world's oceans.*

*The steering group of OCEAN2012 consists of the Coalition for Fair Fisheries Arrangements, Ecologistas en Acción, The Fisheries Secretariat (FISH), nef (new economics foundation), the Pew Environment Group and Seas At Risk.*