

Stockholm & Brussels, 7 February 2013

To: The Fisheries Ministers of the EU Member States

**Re: Input to the EU Fisheries Council Meeting, 25–26 February 2013**

Dear Minister,

On behalf of the Fisheries Secretariat (FISH) and Seas At Risk (SAR), we send you our views on the proposal for a regulation of the European Parliament and of the Council on the Common Fisheries Policy, in relation to ongoing discussion on the Council's General Approach and the Common Organisation of the Markets.

1. Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy

While the European Parliament has been preparing its plenary vote on the proposed basic regulation that took place yesterday, the Council has been focusing on reaching agreement on the text left outstanding last year. We would therefore like to provide some timely comments on a limited number of articles.

In light of the Council's agreement on this proposal in June 2012 and the European Parliament Fisheries Committee vote in December – as we do not have the full details of yesterday's vote yet – we urge you to carefully consider the following points:

- Commit to **end overfishing no later than 2015** (FMSY), in order to recover fish stocks to sustainable levels (BMSY) by 2020 at the latest (e.g. Art. 2.2 and Art. 10.1);
- Support changes in Article 5 **Definitions** on **"MSY"** – **change to FAO definition** supported by several Member States and used by the EP Fisheries Committee; **"fishing mortality rate"** – **change to FAO definition or wording suggested by Spain**; and the EP Fisheries Committee **definition of "fishing capacity"**, which is in line with views expressed by Spain and Portugal; and
- Require that all Member State **fisheries management measures** under the CFP are **consistent with EU environmental legislation** such as the Habitat Directive, the Birds Directive, and the Marine Strategy Framework Directive (Article 12).
- We do not think EMFF funding should be made available to support the establishment of national systems of transferable fishing concessions (TFCs), considering that compulsory TFCs have been rejected by both Council and the EP Fisheries Committee (Article 27).
- **Access to community funding should be conditional upon compliance with CFP rules** for Member States as well as operators in the fishing industry – support Fisheries Committee amendments to articles 50 and 51.
- More detailed legislation on the composition and function of the future Advisory Councils (ACs) ought to be set out in a separate regulation. We therefore ask you to remove Annex III on the ACs and to deal with this matter at a later stage.

Article 15 on the obligation to land all catches has been the focus of much discussion and controversy, but a discard ban will move the focus of management measures from landings to catches, and thereby to overall fishing mortality. Carefully designed, it will create a strong incentive to reduce wastage, increase selectivity and improve the assessments of our fish stocks. The current text proposed by Council, however, includes several derogations undermining its effectiveness and creating new challenges in term of control and enforcement. We would like to make the following points:

- Even with “fully documented fisheries”, **we do not believe that a landing obligation should automatically result in a higher TAC.** Whether this is appropriate depends on whether the stock management targets have already been reached;
- **Deduct bycatch from the quota of the caught species** – not the target species; and
- **We do not support the *de minimis* exemption, or the 10 % year-to-year flexibility.**

*See Annex 1 for more detailed comments on the General Approach to the basic regulation.*

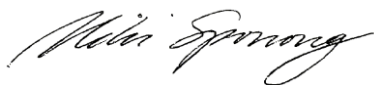
## 2. Proposal for a Regulation of the European Parliament and of the Council on the Common Organisation of the Markets in Fishery and Aquaculture Products

Regarding the Regulation on the common organisation of the markets in fishery and aquaculture products (CMO), both the Council and the European Parliament (EP) have already finalised their positions and the Irish Presidency will have a mandate to start triologue negotiations in the hope of reaching agreement in April.

We regret that both the EP and the Council have chosen to disregard the need for **access to additional information to the public on fish products**. We urge you to reconsider this in the upcoming negotiations and to **support the introduction of information on gear, specific fish stock, catch and farming area, as well as defrosting** on the product label.

The EP has added a proposal for a Union-wide ecolabelling scheme for fisheries products, replacing all current environmental labels. While legitimate questions may be asked about the standards applied by certain companies, such a blanket approach ignores the quality of existing labels and the trust and credibility they have built up with consumers over a long period of time, including increasing consumer awareness and a demand for sustainably caught fish. **Rather than creating an additional label, we urge you to set minimum standards for existing labels with requirements that go further than existing regulations to ensure labeled products stand out from other products in terms of environmental sustainability.**

Yours sincerely,



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Director  
Fisheries Secretariat (FISH)



Monica Verbeek  
Executive Director  
Seas At Risk (SAR)

## **Annex 1: On a Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy – General Approach**

At the upcoming meeting on 25–26 February 2013, the Fisheries Council is planning to finalise its General Approach on the proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy in order to prepare for the trilogue negotiations with the European Parliament after its plenary vote on 6 February. The Council is currently focusing on reaching agreement on the text left outstanding last year, but it is also looking at the results of the vote in the European Parliament Fisheries Committee on 18 December 2012. We would like to provide some timely comments on a limited number of articles in the Council General Approach of 13 June 2012.

### **Overall comments on the General Approach**

The Commission proposal provides a new framework for the EU's Common Fisheries Policy – something that only happens once every ten years. As such, the overarching objectives of the policy are of particular importance. In light of the European Parliament Fisheries Committee vote, we urge Ministers to carefully consider the Council's previous agreement on Article 2, which represents a further delay and weakening of the goal for fish stock recovery.

Instead of committing to meet the internationally agreed target of recovering fish populations to sustainable levels of abundance by 2015, Ministers merely agreed to reduce fishing pressure progressively by 2015, where possible, and 2020 at the latest. This would allow overfishing to continue for the next decade and makes actual stock recovery an unspecified and distant target.

Rather, Ministers need to set targets **aimed at setting sustainable catch levels by 2015 and restoring fish populations to biomass levels that can support a sustainable catch by 2020 at the latest, as well as support solutions that will promote a shift to environmentally sustainable, low-impact fishing practices and reduce damage to marine ecosystems.**

In mixed fisheries, the status of the most vulnerable species should determine the scope of stock recovery measures. It is also important to ensure that the CFP is consistent with EU environmental legislation such as the Marine Strategy Framework Directive (MSFD) and the Habitat Directive. The new fisheries management framework must contribute to the achievement of Good Environmental Status (GES) in the marine environment. It can do that by including GES targets in fisheries management plans, as well as ensuring that fishermen who have the least impact on the environment and add the most value to local fishing communities are given priority access to fisheries resources. The latter will create incentives for the industry to ensure that the necessary environmental considerations are taken.

Finally, we believe that the access to community funding should be conditional upon compliance with CFP rules for Member States as well as operators in the fishing industry (articles 50 and 51).

### **Detailed comments for the February Fisheries Council**

We have chosen to provide detailed comments on the articles for which the Council could not find common ground in June last year and which will be the focus of the February Fisheries Council meeting, namely definitions, marine protection measures, the obligation to land all catches, compliance with union legislation and the Advisory Councils.

## **Article 5 Definitions**

Article 5 contains a number of definitions relevant for the basic regulation as well as the whole CFP. A number of key concepts have, however, been left without or with an inadequate definition. Notably, both the EP Fisheries Committee and the Fisheries Council have added significant amounts of text to this section. We would like to highlight several examples of additions to the Commission proposal, of either entirely new text or important details to existing definitions.

1. On **'maximum sustainable yield'**, we ask you to substitute the Commission proposal with the FAO definition preferred by several countries in your earlier negotiations – this is also the definition supported by the EP Fisheries Committee:

*'maximum sustainable yield' means the highest theoretical equilibrium yield that can be continuously taken (on average) from a stock under existing (average) environmental conditions without significantly affecting the reproduction process;*

2. On **'fishing mortality rate'**, we also ask you to substitute the Commission proposal with the definition used by FAO:

*'fishing mortality rate' means the rate at which fish are dying due to fishing and is therefore expressed per time unit, usually per year;* alternatively the definition proposed by Spain, which is also clearer:

*'fishing mortality rate' means the rate at which individuals or biomass are removed from a stock through fishing operations;*

3. On **'fishing capacity'**, we support views expressed by Spain and Portugal on the need to include gear-related indicators in the definition and propose that the Council adopts the EP Fisheries Committee text.

*'fishing capacity' means the ability of a vessel to catch fish, measured in terms of vessel characteristics, including a vessel's tonnage in GT (Gross Tonnage), its power in kW (Kilowatt) as defined in Articles 4 and 5 of Council Regulation (EEC) No 2930/86, as well as the character and size of its fishing gears and any other parameter that affects its ability to catch fish;*

4. **Minimum conservation reference size** is a new key concept set out to replace the current minimum landing size once the landing obligation is being implemented. We ask the Council to add a definition of this concept that is in line with the EP Fisheries Committee text under Art. 15.

*'minimum conservation reference size' means the established size and age for first reproduction;*

## **Article 12 on Compliance with (Member States) obligations under Union environmental legislation**

It is of crucial importance that fishing activities are managed in accordance with existing environmental legislation, in particular, in special areas of conservation.

On Article 12, paragraph 1, we therefore ask you to ensure that all Member State measures under the CFP are consistent with EU environmental legislation such as the Habitat Directive, the Birds Directive and the Marine Strategy Framework Directive. We therefore ask you to retain the following text in this paragraph:

*"a) Article 13(4) of the MSF Directive; b) Article 4 of the Birds Directive; c) Article 6 of the Habitat Directive"* – as outlined in the Council General Approach.

### **Article 15 on the obligation to land all catches**

Article 15 on the obligation to land all catches has been the focus of much discussion and controversy but, if it is going to be a meaningful part of the EU's future fisheries management, one must not forget the intention of this new obligation. A discard ban will move the focus of management measures from landings to catches, and thereby to overall fishing mortality. Carefully designed, it will create a strong incentive to reduce wastage, increase selectivity and improve the assessments of our fish stocks.

Discarding is a serious problem in the EU due to the use of unselective gear, conflicting regulations and high-grading. A landing obligation can be part of the solution but needs to be coupled with serious efforts to reduce unwanted catches, through gear modifications and (temporary) closures. With a few exceptions, such as species for which fishing is prohibited or for which there is clear scientific evidence of high survival rates, a ban should cover all species – and not only certain commercial stocks – in order to improve data on fish stocks and fishing mortality, and help identify the areas where selectivity measures are likely to be most effective.

Currently, Article 15 includes several derogations, undermining the effectiveness of the landing obligation. In addition, several outstanding issues remain which will be agreed at the upcoming Council meeting. One is the proposed addition of the following recital:

*[“Subject to scientific advice and without jeopardising the objectives of MSY and without increasing fishing mortality, when a landing obligation including documentation of catches is in operation, an increase of related fishing opportunities is foreseen, since discards will no longer take place. It should also be considered whether such a change in the management system may lead to the abolition of certain control measures and technical measures.”]*

An increase in the total allowable catch (TAC) equivalent to the estimated unwanted catch is flaunted as an incentive for fishermen to support the ban. However, even with “fully documented fisheries”, we do not believe that a landing obligation should automatically result in a higher TAC. Whether this is appropriate depends on whether management targets for the stock, such as MSY by 2015 and more ambitious long-term targets, have already been reached. To simply add the best estimate for current discards to the TAC would also remove a major incentive to develop more selective ways of fishing. Also, a landing obligation is likely to require additional control measures rather than a reduction. **We therefore urge Ministers to delete this recital, or change it to the following wording:**

*“Subject to scientific advice and without jeopardising the objectives of MSY and without increasing fishing mortality, when a landing obligation including documentation of catches is in operation, an increase of related fishing opportunities may be considered, since discards will no longer take place. It should also be considered whether such a change in the management system may lead to the abolition of certain ~~control measures and~~ technical measures.”*

Regarding the timeframe for the implementation of the landing obligation (Art. 15.1 a, b and c) , we fail to see the logic of introducing different timelines for the obligation to land bycatches of fish in excess of the quota or juveniles of the target species and bycatches of non-targeted species (Art. 15.1 b and c). Such differentiation will allow continued discarding of, for example, cod in the haddock fisheries in the North Sea and Skagerrak or in the nephrops fisheries in the Kattegat until the end of 2018. This would undermine the landing obligation for cod in the fisheries targeting cod, which will be in place on 1 January 2015, as well as sound assessments of the status of the cod stock.

**We therefore urge Ministers to remove the brackets around the dates of 1a: 2014, 1b: 2015 and 1c: 2016, and either delete the separate timelines for the bycatch species or change the dates of 1b [2018] to 2015 and of 1c [2019] to 2016.**

**We do not support the *de minimis* provisions** set out in by the Council in the General Approach (Art. 15.3 c) or the exception in Article 15.2 c), as we believe that particularly “*disproportionate costs of handling unwanted catches*” will be open to subjective judgment and that the entire clause will create a number of difficulties in terms of control and enforcement.

All the proposed changes to Article 15.4 are particularly difficult to overview and judge the consequences of. **We particularly want to highlight the importance of counting landed bycatch against the quota of the actual species landed and not against the quota of the target species** of the fishery. If not, a strong incentive to shift to more selective gears and fishing behaviour will be lost. Moreover, given that the quota of the least abundant or most vulnerable species may very well be much lower than the quota of the target species, deducting the catch of a bycatch species from the quota of the target species may therefore have detrimental impact on the recovery of vulnerable stocks. Therefore, in mixed fisheries, the whole fishery should be closed when the quota of the least abundant or most vulnerable species has been used up, unless ways can be found to separate the catch.

We support the first section of recital 42 discussed by Council, as follows, but not the last part:

*<sup>42</sup>“Within the management of the landing obligation, Member States must do their utmost to reduce unwanted catches. To this end, improvements of selective fishing techniques to avoid unwanted catches must have a high priority. It is important that Member States distribute quotas between vessels in a mix reflecting as much as possible the expected composition of species in the fisheries. Mismatch between available quotas and actual fishing pattern could be adjusted through quota swaps with other Member States. Vessel owners could also consider pooling individual quotas for example in producer organisations or in groups of vessel owners. ”*

To handle unwanted catches in excess of available quotas, both quota swaps between Member States to adapt fishing opportunities to actual fishing patterns and the establishment of specific bycatch quotas [as currently proposed in brackets] may be useful measures. Quota swaps is already a long standing practice; the advantages of making them permanent are difficult to judge. If bycatch quotas are established, it is crucial that the total of the “target” quota and the bycatch quota for the species does not exceed the total allowable catch recommended by scientists.

**In line with these recommendations, we ask you to keep the first part of the new recital, proposed between brackets for Article 15.4, but delete the last three sentences with references to year-to-year flexibility and the possibility to count bycatch species against the quota of the target species.**

**We also want to express strong support for the changes in Article 15.2 adopted by the EP Fisheries Committee.**

Finally, we would like to highlight again that no measures facilitating the creation of a market for undersized and juvenile fish for human or non-human consumption should be put into place. In that context, and taking the current financial crisis into consideration, the proceeds of sales of all landings of unwanted catches should be paid into a fund for control and surveillance and the collection of scientific and fishery-related data. A small compensation for the landing of bycatch species to the operators could be considered in order not to encourage illegal discarding.

### **Article 17 on regionalisation**

It is our view that the Council's approach to regionalisation as set out in this article is a great improvement on process outlined in the Commission proposal. We strongly support the aim to reach joint recommendations and subsequently legislation in order to ensure true regionalisation rather than re-nationalisation, risking slightly different rules in different countries.

We are therefore positive to the proposal of the Commission being empowered to adopt measures on delegated or implementing acts where Member States have agreed on joint recommendations on measures submitted under paragraph 1, provided that such recommendations are compatible with the relevant conservation measure and/or multiannual plans. **We therefore ask you to keep the following recital:**

*"The Commission should only adopt conservation measures through implementing acts or delegated acts in accordance with Article 17 where all Member States concerned in a region agree on a joint recommendation. In the absence of an agreement, the Commission should put forward a proposal for the relevant measures in the ordinary legislative procedure."*

### **Article 27 on establishment of systems of transferable fishing concessions**

We oppose the use of EMFF funding to support the establishment of national systems of transferable fishing concessions and instead suggest that aid aimed at establishing systems for the management of fishing allocations should be targeted at stakeholder-led / co-management systems at a fishery by fishery level.

We therefore ask you to delete the following text in brackets:

*[With a view to facilitating the creation of transferable fishing concessions by Member States, the EMFF should envisage particular support for their introduction.]*

### **Annex III Advisory Councils**

We are of the view that while the Basic Regulation should include sections on the establishment and objectives of the Advisory Councils, but consider the addition of rules on the functioning of the ACs provides too much detail to be included in the framework regulation. It also pre-empts the results of the recent Commission consultation on the composition and future of the ACs that has been sent to the already established RACs.

**It would be preferable to have more detailed legislation on the composition and function of the future Advisory Councils (ACs) in separate legislation. We therefore ask you to remove Annex III on the ACs – particularly section 2 – and to deal with this matter at a later stage.**

On the future composition of the ACs, we ask you to ensure that there is a balanced representation of stakeholders, particularly as the Council has suggested that they become "the primary stakeholder" to provide advice (Art. 26b, paragraph 1). If the current 1/3 + 2/3 division between stakeholder groups is to continue, we strongly suggest that all stakeholders that have an economic interest in fisheries or strong ties to the fishing industry are placed in the 2/3 group, including aquaculture interests, angler organisations, trade unions and fisherwomen networks.