Discussion Paper on the Reform of the Common Fisheries Policy

INTRODUCTION AND SUMMARY OF KEY RECOMENDATIONS

The public debate on the third reform of the Common Fisheries Policy (CFP) began with the Commission's publication of the Green Paper on April 22nd 2009. With over 80 percent of assessed fish stocks in Community waters deemed overfished 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 further, 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 base upon which fisheries management is built within the CFP.
- The CFP defines a decision-making framework that ensures 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 capacity at EU and regional level; this includes legally-binding and time-bound capacity limits per fishery, both in quantitative and qualitative terms.
- 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 CFP that will emerge from the current review in 2012 must be to obtain environmentally and socially sustainable fisheries in Community waters and wherever else EU fleets are active.

Environmental objectives must be enshrined in the new Basic Regulation, and give precedence over all other objectives, as a prerequisite to achieving social and economic sustainability.

The precautionary approach and the ecosystem approach, mentioned in the current CFP, must form the backbone of the basic principles underpinning any future policy. In particular, they must be defined in an operational manner and be applied routinely in fisheries management.

The Precautionary Approach

States and sub-regional and regional fisheries management organisations are called on by the FAO Code of Conduct for Responsible Fisheries (1995) to apply a precautionary approach widely 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 the EU has ratified and should be applying 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).

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 sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

The Ecosystem-based Approach

The effects of fishing go far beyond simply commercially exploited species, so its impact on all components of the marine ecosystem need to be considered – target and non-target species, associated or dependent species, as well as the marine habitat. Applying an ecosystem-based approach also means that the impact of other human activities, including habitat destruction, climate change and pollution need to be considered when making

management decisions. The ecosystem-based approach is described in the Marine Strategy Framework Directive of June 2008[2].

Ecosystem-based Approach as per 2008 Marine Strategy Framework Directive, 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 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 it delivers the fisheries related aspects of Good Environmental Status, thus contributing to the achievement of Good Environmental Status by 2020.

Good Environmental Status as per 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
(referred to in Articles 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.
(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, economic interest, rather than a shared vision of how to ensure long-term sustainable fisheries. A ratified Lisbon Treaty will not improve this as the decision on annual fishing opportunities (TACs) will remain the competency of the Council of Ministers. This process is aggravated by a lack of meaningful participation and consultation by all stakeholders and rarely involves those most affected.

In order to achieve long-term sustainable fisheries, OCEAN2012 proposes that the decision-making structure and processes be fundamentally modified. We suggest that the Council of Ministers – and, under a ratified Lisbon Treaty, 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 bodies.

Ocean 2012 asserts that there are different hierarchical steps in decision-making:

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

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, OCEAN2012 wants environmental objectives given priority. This means, amongst others, that catch and/or effort limits must be established within the biological limits of the marine ecosystem with the aim of keeping stocks of both target and non-target species at levels capable of ensuring their long-term abundance and the retention of their full reproductive capacity. This 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 currently aims to reach 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, only ecological damage. Fishing at a lower level will bring almost as much fish with much less effort and is therefore economically more beneficial in the long term. Also, as MSY is a maximum value beyond which productivity is assumed to decline, and as it has to rely on a number of estimates rather than sound data, it can easily lead to the over-exploitation of fish stocks.

Over-exploitation of a fish stock makes it more susceptible to environmental factors and fishing. Therefore, as stated in the UN Fish Stocks Agreement, MSY should only be considered as an intermediate target to achieving abundance and 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;
- Give a clear mandate (limited in time and regularly reviewed) to the European Commission, Member States, and other appropriate bodies to ensure delivery of these objectives based on the steps outlined below.

Step 2: Determination of Available Fishing Resources

Currently scientific advice on available fishing resources is not followed: catch limits agreed by the Council have exceeded scientific advice by approximately 48% in recent years, resulting in severe reduction of fish stocks.

Therefore, short-term political interests need to be uncoupled from the determination of available fishing resources. Once policy objectives have been set, scientists can determine the amount of fishing resources available to be caught in any one timeframe, within a sufficiently robust framework.

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

- Using 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, relevant scientific bodies should deliver advice on available resources: what and how much can be safely caught where.
- Scientific evidence should take into account traditional knowledge of the resources and their habitat.
- The advice should be legally-binding to the relevant management bodies making subsequent decisions.
- The catch or effort limits must be set to include all fish that are caught, not simply those that are landed. In other words, discards must count against the quota and be included in the scientific assessments. That should also apply to recreational fisheries where catches are kept such as cod, salmon and bluefin tuna.

Step 3: Determination of Amount and Type of Capacity

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

Capacity must be evaluated on a fishery-by-fishery basis relative to the resources available and it is essential that fishing capacity matches fishing opportunity, in order to ensure economically viable fisheries, and to prevent illegal, unregulated and unreported fishing. The European Commission has recently started to enable better capacity assessment, by issuing reporting guidelines with a variety of indicators. Yet assessing capacity in relation to available fishing opportunities remains a challenge.

OCEAN2012 recommends that for each fishery capacity limits are established independently of national interests, and for regulatory programmes to be adopted with fixed timetables to balance as quickly as possible fleet capacity with the available resources. The required fleet reductions must not lead to the creation of excess capacity in other fisheries in Community waters or elsewhere.

Once capacity limits have been set for each fishery, a sustainable fleet should be determined as follows:

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

The balance between the capacity of the fleets and the resources must be re-evaluated regularly to track possible changes in the abundance of fish stocks and the capacity of the fleet. Most fisheries are conducted by more than one Member State, so fleet capacity must be evaluated by fishery rather than within individual Member States.

Step 4: Allocation of Access to Resources

Since the start of the CFP and given the nature of Community waters and European decision-making, the issue of access to fishing resources has been highly politicised. This is further aggravated by a situation where available fish resources fall dramatically short of fishing capacity.

Today, the division of Total Allowable Catches (TACs) into national quotas of fish that can be caught and kept is based on historical catches. This process does not take environmental and social performance into account.

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 fishing 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 capacity are based on a set of transparent criteria which would favour less destructive fishing gear and practices, low fuel consumption, greater employment, good working conditions and high quality products. Member States should then decide on allocation of access to resources based on these criteria, 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 should be favoured, as long as they are also less damaging for the environment, and 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 fish should be given priority access;

- **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 it. 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. They should have the advantage of creating 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.

Relevant financial instruments should primarily aim at facilitating the transition towards environmentally and socially sustainable fisheries by supporting the elimination of fishing capacity 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 is 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. Some coastal states allow excessive fishing rights in order to earn higher financial return. When EU vessels are reflagged outside the EU, the only way to restrict their activities through EU legislation is by rules governing fisheries-related activities by EU nationals and investments by EU nationals and companies (e.g. processing).

OCEAN2012 recommends that the above policy recommendations (Step 1 to 4) apply to non-EU waters wherever EU flagged vessels, nationals or companies are involved.

The EU should establish with developing countries a framework for governance, with the objective of establishing a dialogue on how sustainable fisheries management can be promoted in their waters, on the basis of the Third Country's priorities for the sector. This framework should also provide for necessary funding in order to achieve objectives jointly decided. 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).

CEAN2012 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 OCEANS 2012 are the Coalition for Fair Fisheries Arrangements (CFFA), Fisheries Secretariat (FISH), nef (new economics foundation), The Pew Environment Group and Seas At Risk (SAR).

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