



TOWARDS A REFORM OF THE COMMON FISHERIES POLICY IN 2012 – A CFP HEALTH CHECK

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ACRONYMS

AC	Advisory Committee	HCRs	Harvest Control Rules
ACF	Advisory Committee for Fisheries	ICCAT	International Commission for the Conservation of Atlantic Tunas
ACFA	Advisory Committee for Fisheries and Aquaculture	ICES	International Council for the Exploration of the Sea
ACFM	Advisory Committee on Fisheries Management	ICZM	Integrated Coastal Zone Management
B _{pa}	Biomass at precautionary approach level	IEEP	Institute for European Environmental Policy
B _{lim}	Biomass at limit reference point	IMP	Integrated Maritime Policy
B _{MSY}	Biomass at Maximum Sustainable Yield	ITQ	Individual Transferable Quota
CCAMLR	Convention for the Conservation of Antarctic Marine Living Resources	JDP	Joint Development Plan
CEC	Commission of the European Community	MAGP	Multi-annual Guidance Programmes
CFCA	Community Control Fisheries Agency	MCAP	Management Committee Advisory Process
CFP	Common Fisheries Policy	MP	Maritime Policy
CFR	Community Fleet Register	MPA	Marine Protected Area
DCR	Data Collection Regulation	MCAP	Management Committee for the Advisory Process of ICES
COM	Commission Communication	MCS	Monitoring, Control and Surveillance
DEFRA	Department for the Environment, Food and Rural Affairs	MS	Maritime Strategy
DG	Directorate-General	MSFD	Marine Strategy Framework Directive
EBCD	European Bureau for Conservation and Development	MSP	Maritime Spatial Planning
EC	European Community	MSY	Maximum Sustainable Yield
EEC	European Economic Community	NAFO	Northwest Atlantic Fisheries Organisation
ECR	European Court Reports	NWW	North Western Waters
EFF	European Fisheries Fund	OP	Operational Programme
EG	Expert Groups	QMV	Qualified Majority Voting
EEZ	Exclusive Economic Zone	RAC	Regional Advisory Council
EIA	Environmental Impact Assessment	RG	Review Group
EL	Environmental Liability	RFMO	Regional Fisheries Management Organisation
eNGO	Environmental NGO	RL	Research Laboratory
EU	European Union	RSPB	Royal Society for the Protection of Birds
FAO	Food and Agricultural Organisation	SBL	Safe Biological Limits
FIFG	Financial Instrument for Fisheries Guidance	SCM	Subsidies and Countervailing Measures
FMC	Fisheries Management Centres	SEA	Strategic Environmental Assessment
GDP	Gross Domestic Product	SGRN	Subgroup on Research Needs
GVA	Gross Value Added	SWW	South Western Waters
		STECF	Scientific, Technical and Economic Committee for Fisheries

TAC	Total Allowable Catch
TCM	Technical Conservation Measure
VMS	Vessel Monitoring Systems
WFD	Water Framework Directive
WG	Working Group
WWF	Worldwide Fund for Nature
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

FOREWORD

Of all the European policies that govern the exploitation of natural resources there is none that attracts the same level of criticism and public bafflement as the Common Fisheries Policy (CFP). Why are we presiding over the demise of a once plentiful resource with so little apparent ability to reverse the plunge in so many stocks? Why do we persist in maintaining a much larger fleet than the diminished resource can support? Why do we still subsidise the fishing sector to a substantial degree? Is the talk of an 'ecosystem approach' to stock management meaningful?

The Common Fisheries Policy is over twenty years old and at a stage when a Health Check is overdue. The Commission has rightly raised some fundamental questions in starting a review due to culminate in a new policy from 2012. There is considerable consensus that business as usual is not an option but the prescription for change will require some painful choices. This report looks at two core issues amongst the multiple strands that make up the CFP. These are concerned with stock management and structural issues. Both are critical to sustainability.

In each case we look back at progress since the 2002 reform and ahead to the possible options for the future, considering some immediate possibilities as well as opportunities that could be taken with a new policy in 2012. In doing so we draw on our own history of monitoring and commenting on the evolution of this troubled policy, both in analytical work and our European newsletter, *El Anzuelo*. We try also to set the CFP into the context of an ongoing European framework on marine policy stretching well beyond fisheries into a more holistic approach to marine management.

Now is the time to be honest about the ailments affecting fisheries policy and to give environmental sustainability pride of place when setting new objectives and devising new policies. We do not wish to under estimate the efforts that have been made but they are not yet enough.

David Baldock
Director of IEEP

EXECUTIVE SUMMARY

In 2012, the Common Fisheries Policy (CFP) will undergo its third major reform. The review process was officially launched by Commissioner Borg in September 2008 with the publication of a non-paper which presented a very frank and timely analysis of the CFP to date. The non-paper included a review of progress since 2002 but clearly highlighted the key challenges in making further progress towards sustainable EU fisheries. The Council supported the Commissioner in his call for a comprehensive review of the CFP. This process began in 2009 with publication of the Commission Green Paper on the Reform of the Common Fisheries Policy, and will end in 2012, at which time there are great expectations that the solutions to the current challenges of managing EU fisheries will be agreed and legislated for.

IEEP has been tracking and monitoring the development and implementation of the CFP since the 1992 mid-term review. In light of this record of experience with the CFP, it seemed timely to undertake an independent review – a Health Check – of the policy. Our Health Check focuses on two key aspects of the CFP, the conservation policy and the structural policy but also includes a third issue concerning the further implementation of the environmental objectives of the CFP through other EU marine initiatives and legislation.

The review of the conservation policy concludes that there has been some progress since 2002 towards achieving the environmental objectives of the CFP but the pace has been slow and in many respects piecemeal. The issues and topics of discussion and debate still centre around much the same 'crisis' in EU fisheries as that which existed prior to 2002. This is despite the implementation of recovery plans, long term management plans, revisions of technical measures and improvements to the data collection system to provide a sound basis to the ecosystem-based approach to management. Furthermore, the paper argues that if decision making under the CFP continues to compromise the ecological sustainability of fish stocks and the marine ecosystems upon which they depend, it is difficult to

imagine that there will be a reversal of the economic, and therefore social, decline in the sector. There is a compelling logic to the notion that securing the ecological sustainability of fisheries will lead to better long term economic and social outcomes for the sector and those whose livelihoods depend on fishing. This in turn will serve the broader public interest.

Major developments since 2002 include the establishment of the Regional Advisory Councils (RACs) and the Community Fisheries Control Agency (CFCA), the former to ensure stakeholder participation and greater transparency of decision making, the latter to ensure a more coordinated approach to control and enforcement. However, in 2009, there is already a need to look closer at further improvements to these bodies. The RACs were recently reviewed and their role post 2012 is likely to be modified pending decisions about further regionalisation of the CFP and de-centralisation of management. In addition, the CFCA may take on different responsibilities on behalf of the Commission if and when the new control regulation is adopted. Amongst the recommendations relating to the conservation policy post 2012 it is proposed that a new 'basic' regulation for conservation and sustainable exploitation under the CFP should explicitly prioritise ecological sustainability over the economic and social dimensions in a new hierarchical CFP objective relating to sustainable development. It should also establish a viable legal framework for setting high-level principles and Community standards for conservation policy.

A key proposal post 2012 is that ecosystem-based fisheries management plans should be established for all fisheries. This would extend the approach set out in the Communication on maximum sustainable yield (MSY) and sustainability with regard to long term plans for groups of stocks that are caught together while taking into account the impact of fishing on habitats and the broader marine ecosystem. Ecosystem-based fishery management plans could be an important bridge between the particular and

urgent needs of fisheries management and the new Marine Strategy Framework Directive (MSFD).

It is also recommended that technical implementation (or operational decision-making) of the conservation policy including but not limited to, technical measures, management and recovery plans and annual effort and catch limits, be delegated closer to the 'action' either through regionalisation or comitology procedures and that the complexity and number of CFP regulations should be reduced.

A review of the structural policy is presented in section 5 of this report and concludes that the 2002 Regulation marked a new effort to better integrate the CFP structural and conservation policy. The 2002 Regulation introduced the entry-exit regime, the new fleet management scheme with its three objectives of giving more responsibility to Member States to put measures in place to adjust the fishing capacity of their fleets, to simplify fleet management and to end subsidies for fleet renewal. This was a very positive development, supported by the Community Fleet Register (CFR). The adoption of the 2003 Regulation which requires Member States to report annually on their efforts to balance fishing capacity with fishing opportunities and the 2008 Guidelines for an improved analysis of this balance, using indicators, was also helpful. In 2002 Member States gained more responsibility overall, for the management of their fleet. However, there remain serious issues of non-compliance with reporting obligations and, as pointed out in the CFP Green Paper, overcapacity still remains a huge challenge which needs to be addressed in the pre and post 2012 period.

The role of the European Fisheries Fund (EFF) in addressing the overcapacity issue is also discussed. At this early stage (the EFF has only been implemented since 2007) budget allocations clearly indicate the absence of any direct link between specific species recovery plans and fleet adaptation of the kind required. Instead, Member States have shown a clear preference for allocating funds to fleet adaptation and modernisation rather than supporting nature conservation. Therefore it seems unlikely that the

fleet adaptation measures under the EFF will be more effective at rationalising the EU fleet, than under the previous EU financial instrument, the Financial Instrument for Fisheries Guidance (FIFG). The report concludes that the emphasis placed on specific measures may become more obvious during the second year of implementation of the EFF, provided that links are made between fleet capacity adjustments and fishing opportunities. In relation to overcapacity, it is recommended that the links between fishing mortality, fishing effort and fishing capacity need to be further investigated and used to assess overcapacity as a matter of priority. Without these links being established for all ecosystems, fisheries and fleet segments, the structural policy will remain disconnected in its efforts to steer sustainable fishing capacity reductions.

Finally, the review takes another look at the environmental objectives of the CFP and discusses the potential role of new EU marine initiatives and legislation in support of their achievement. The CFP Green Paper recognises that European fisheries must be considered in a wider ecological and economic context and thus inter-relations between the CFP and the new Integrated Maritime Policy (IMP) and Marine Strategy Framework Directive (MSFD) need to be examined and considered during this review of the CFP. Given the dependence of fisheries on the health and productivity of ecosystems, it is logical that the CFP incorporates measures for conserving the ecological systems required for the maintenance of fish populations. However, achieving an ecosystem-based approach in marine systems poses unique challenges and the current basic Regulation does not provide a step-wise approach indicating how the current CFP can overcome these. It is timely that the IMP and its environmental pillar, the MSFD, provide a new framework to support the CFP in meeting its environmental objectives.

The MSFD sets targets for action over the next decade. By 2012, as the new CFP is launched, Member States will need to have preliminary assessments of 'good environmental status' independently and collectively for their marine regions. By 2015 there should be programmes in place on both the national and regional levels, setting out how to

achieve 'good environmental status' by 2020. The condition of fish populations will be an element of these assessments and will provide an additional driver for Member States to work towards achieving sustainable fisheries while reducing their impacts on habitats and sensitive species.

The CFP Green paper highlights the importance of fisheries within the wider IMP and the MSFD. It states that 'the future CFP must be set up to provide the right instruments to support this ecosystem approach' and asks the simple question 'how can the future CFP best ensure consistency with the MSFD and its implementation?' To build on this opportunity the Commission now needs to highlight all the areas where Member States have no competence on fisheries and where action is necessary within the CFP to support the achievement of 'good environmental status' both for fish stocks and for other elements affected by fishing activity. It is recommended that Member States seek an early statement from the Directorate General Maritime Affairs and Fisheries (DG Mare) on how the objectives of the MSFD are to be addressed by the CFP in concrete terms. At the same time the determination of 'good environmental status' under the MSFD should be undertaken in such a way to ensure easy cross over of the results of this environmental assessment requirement into the decision-making framework of the CFP. A good example would be to link the new assessments to the setting of Total Allowable Catches (TACs) on an ecosystem basis. Establishing the right policy architecture in advance will tie together marine and fisheries policies at the same time as CFP reform is taken forward.

In conclusion, the report while not covering all the aspects of the CFP, presents an independent evaluation of some key elements of the CFP and its potential interaction with the newly adopted IMP and MSFD and a series of recommendations for consideration during this important year for fisheries policy.

I INTRODUCTION

The state of the European Union's fisheries and its fisheries sector is an ongoing political and public policy challenge. Since the first 'basic' regulation for the Common Fisheries Policy (CFP) was enacted in 1983 the formidable goal for policy and law makers has been to create a regulatory and policy framework that fosters ecologically sustainable use of fisheries resources by a thriving fisheries sector that sustains a diverse pattern of fishing communities. The framing and implementation of the CFP and the achievement of sustainable outcomes has been dogged by the avoidance of some tough decisions, increasing regulatory complexity, the struggle to balance long and short-term thinking and the challenges presented by the political process. This has resulted in continued declines in fish stocks, overcapacity of fishing fleets and use of European taxpayers' money to prop up or buy out poorly performing segments of the sector.

The European Commission's 2009 Green Paper¹ on reforming the CFP was published in April 2009. As an institute IEEP has chosen to produce an independent Health Check on the CFP, reviewing progress since the 2002 reform and examining what may be needed as we move towards the next reforms timetabled for 2012. The Commission's Green Paper identified a number of aspects which should be considered at this juncture. We have chosen to focus on three different aspects in our review of the CFP:

- Conservation Policy;
- Structural Policy; and
- The relationship between the CFP and the EU Integrated Maritime Policy (IMP) which is currently emerging.

Our intention is to use our own Health Check and the individual thematic reviews as a platform for policy discussion and debate with the European institutions and the basis for discussions with other stakeholders with an interest in the future of the CFP.

¹ COM (2009) 163. Green Paper: Reform of the Common Fisheries Policy.

2 THE COMMON FISHERIES POLICY FRAMEWORK

Marine fisheries policy is an exclusive competence of the European Community (EC). This means that all decisions are taken at the level of the Union. Member States cannot intervene in fisheries management unless they are explicitly delegated the powers to do so. At present the main area for which Member States have such powers relates to inshore fisheries (with a maximum of 12 nautical miles (nm) from the shore). Community waters beyond these coastal waters are regarded as 'one big pond' for fisheries purposes. The CFP thus provides the framework for European and national fisheries management activities.

2.1 Origins and basis of the CFP

The 1957 Treaty of Rome, which formed the then European Economic Community (EEC), contained a passing reference to 'the products of fisheries' within its definition of agricultural products (Title II, Article 38). At the outset, the primary aim of the then six Member States, Luxembourg, Belgium, Netherlands, Italy, Germany and France, was the establishment of a Common Agricultural Policy (CAP). The Member States had little reason to push for a Community fisheries policy. Their most important fisheries were largely in international waters, outside their national jurisdictions. Where these stocks were jointly managed by two or more Member States this was done under the auspices of multilateral agreements.

A number of founding objectives for a common agricultural policy were established by the Treaty of Rome, and by extension applied to fisheries policy (Article 33):

- Increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- Ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

- Stabilise markets;
- Assure availability of supplies; and
- Ensure that supplies reach consumers at reasonable prices.

While the CFP has evolved in many respects, these underlying aims still apply today. It is unlikely, however, that the authors of the 1957 Treaty anticipated the development of a separate and substantial common fisheries policy as exists today. It was not until 1966 that the Commission took its first steps towards the formulation of the CFP as a consequence of pressure from France and Italy whose fishing industries were not particularly efficient and faced increased competition. They were fearful of the prospect of forthcoming EEC enlargement which was to bring in the United Kingdom, Denmark and Ireland.

A CFP should have been adopted by the end of the transitional period for implementing the EEC Treaty, which was set at 31 December 1969. This deadline was not met as the 1968 Commission proposal was only adopted in October 1970. Any significant progress was blocked for two years in the EEC Council by the practice of the 'Luxembourg Compromise', which required a systematic quest for consensus amongst all Member State governments before measures could be agreed. This slow progress expressed the lack of enthusiasm in all Member States except France. The lack of interest is also to be explained by the limited fishing grounds of the six founding Member States. Fishing limits then generally extended only to three nm and 90 per cent of the catch by the original six was taken outside these limits. Beginning in 1969, applications for membership from Denmark, Ireland, Norway and the United Kingdom totally changed the terms of the negotiation process. The prospect of multiplying fishery production fourfold and the potential institution by the applicant countries of an exclusive economic zone or fisheries zone extending to 200 nm sparked new debate.

Since the first regulations adopted in 1970, there have been three major reforms of the Community's fisheries policy: in 1983, 1992 and 2002. Seven years of negotiations led to the adoption of Council Regulation 170/83 formally establishing a CFP in 1983. The 1983 reform introduced the principle of relative stability which underlies the division of the Total Allowable Catches (TACs) into quotas and their distribution among the Member States. The principle ensures that Member States are allocated a fixed percentage of the TAC for a given fish stock. The allocation key took into account the historical fishing patterns of the Member States, the loss of fishing potential in non-EC waters following the extension of fishing limits to 200 nm by third States, as well as specific needs of regions particularly dependent on fishing industries (i.e. the United Kingdom and Ireland).

A mid-term review of the CFP took place in 1992 resulting in the adoption of Council Regulation 3760/92. It attempted to address the imbalance between the fishing capacity of Member States' fleets and available fishing opportunities. The reform prescribed a reduction in the size of the Community's fishing fleet, accompanied by structural measures to alleviate the socio-economic impact of such reductions. The CFP Regulation also introduced the concept of fishing effort, which provides a measure which can be used to limit the time vessels are allowed to spend at sea. The greening of the CFP, which began in the early 1990s, also moved forward in the 2002 review. The 2002 basic Regulation clearly stated its aims, namely to protect and conserve marine aquatic resources. Furthermore, it included a requirement to take account of the implications for the marine ecosystem when adopting management measures in parallel. European fisheries have changed dramatically during recent decades, with much more efficient fleets, higher fishing capacity and most European stocks deteriorating sharply.

2.2 Broad remit of the CFP

Despite the CFP's rather humble beginnings, it has developed into a significant area of Community activity, consisting of a collection of more than seven hundred regulations. It spans not only fishing activities directly, but

also aquaculture, secondary and tertiary production processes. This broad scope and historic basis is a reason for some of the policy incoherence within the CFP (Box 1). Four relatively distinct strands of the CFP can nonetheless be identified:

- *Conservation policy* – governing the direct exploitation of Community fish resources with the aim of conserving and managing living marine aquatic resources, and providing for their exploitation on a sustainable basis;
- *Structural policy* – governing the modernisation of the sector, including expansion of aquaculture, marketing, processing, and vessel building and decommissioning aiming to achieve a balance between fishing capacity and fish stocks;
- *Market policy* – aimed at stabilising markets, guaranteeing supplies of fish products and ensuring reasonable prices for consumers and reasonable incomes for workers; and
- *External policy* – governing activities of vessels active on the high seas or in waters of third countries, and international trade in fish products.

These four strands are not always entirely distinguishable in practice given that several span more than one objective.

2.3 The 2002 CFP Reform

At the end of December 2002, the Council agreed to an important package of reforms to the CFP. These were primarily legislative changes to the conservation and structural policies. They reflected:

1. An intention to progress towards a more long-term approach to fisheries management signalling a move away from the annual decision-making on Total Allowable Catches (TACs), to multi-annual planning;
2. A new fleet policy to limit and gradually reduce overcapacity with Member States being given more responsibility for fleet and overcapacity management;
3. A commitment to improve the governance of the CFP, with the setting up of the Regional Advisory Councils (RACs) resulting in greater involvement of stakeholders in the policy making process and some measure of localisation.

The 2002 reform was preceded by the adoption of a series of action plans and since 2002 a range of implementing legislation has been put in place to implement the new framework with a view to meeting the revised obligations. The effect of these changes is a central theme of this report.

Box 1 Hunting versus husbandry

It is clear that the conservation strand of the CFP fits rather uncomfortably with the limited and somewhat outdated objectives of the Treaty, and particularly those aiming to 'increase agricultural productivity by promoting technical progress'. This has been a key reason behind the failure of the CFP to conserve fish stocks, historically focusing on increasing fish production through improved technology. Even now, the CFP is as much a social policy as a resource management and conservation policy.

Fishing and aquaculture are different activities, each demanding specific management approaches. Fishing is a hunting activity with the management of exploitation of mobile, shared, renewable and exhaustible resources being of central importance, whereas aquaculture is a husbandry activity commanding a similar approach to terrestrial agricultural management to some extent.

3 THE STATE OF THE EUROPEAN COMMUNITY'S FISHERIES RESOURCES AND FISHERIES SECTOR

3.1 The Resources

In 2008, the European Commission, in a policy statement about fishing opportunities for 2009, stated very plainly that *"in many sectors, conservation policy is not delivering sustainability"* and *"fisheries management in the European Union is not working as it should"*².

Of the 43 per cent of stocks which are currently assessed, more than two-thirds (68 per cent) are thought to be at high risk of depletion, leaving only 32 per cent considered to be harvested sustainably³. This means that fewer than 14 per cent of all CFP managed stocks are thought to be sustainable. Equally worryingly, stock status was unknown for some 57 per cent of stocks managed under the CFP, because, according to the Commission, catch data were so poor as to prevent reliable stock assessment⁴. Estimates also suggest that 88 per cent of EU fisheries for which maximum sustainable yield (MSY) can be calculated are subjected to overfishing that is *"so serious that more fish would be caught if there were less fishing"*⁵. In a final indictment against the efficacy of fisheries management in EU waters, the Commission quotes scientific advice saying that 19 per cent of stocks are in such a *"bad state"* that *"there should be no fishing"*⁶.

The Commission reported that fishing effort and fishing mortality for cod as well as for other stocks, is still too high and that the existing regime cannot deliver further reductions because complex derogations offset any reductions achieved⁷.

Against this backdrop, several recovery plans have been implemented since 2002 for depleted stocks in European waters; these aim to return stock levels to MSY over specified time periods. However, most demersal fish stocks have declined and are either suffering, or are at risk of, reduced reproductive capacity⁸. Some pelagic stocks fared better with the exception of bluefin tuna, and species such as sandeel and capelin were *"scarce"*⁹. One explanation for this further erosion of the resource is that the TACs and

quotas agreed by Council are very often in excess of scientific advice and that this tendency by the "TAC machine" has not been eliminated since the last reform process¹⁰. Indeed, the Commission's own estimation is that TACs decided by Council have been on *"average about 48% higher"* than the catches that scientific advice suggests are sustainable in accordance with the precautionary approach¹¹. Since 2003 and the progressive implementation of the 2002 CFP reforms, the Commission reports that there have been *"no significant signs of stock recovery or reductions in overfishing"* and: *"effort management systems have not worked as expected. There are serious problems in the enforcement of fishing opportunities, and implementation problems need to be addressed."*¹²

The Commission's damning observations echo comments and reflections made in 2007 by other stakeholders and researchers. The international environmental organisation, the Worldwide Fund for Nature (WWF) concluded that the way TACs and quotas were set and the outcomes they achieved within the current decision-making framework revealed the *"systemic failure"* of the CFP¹³. Similarly, Sissenwine and Symes, in their mid-term reflections on the CFP for the Commission, concluded that while the scientific enterprise supporting the CFP is of high quality and the advice sound, the *"fisheries subject to the CFP suffer a much higher rate of overfishing than occurs on average worldwide"*¹⁴.

3.2 Sector status

Fishing outside safe biological limits, indeed above MSY, affects fisheries productivity (reproductive capacity), which in turn results in negative economic and social consequences. Excessive fishing pressure, driven by continued overcapacity, relentlessly undermines the productivity of fish stocks, further weakening and damaging the very foundation of a sustainable future for the EU's fisheries sector.

The annual report presented by the European Commission to the European Parliament and the Council in January

² COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Formerly labelled by ICES as "outside safe biological limits".

⁹ COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

¹⁰ WWF (2007) *WWF mid-term review of the EU Common Fisheries Policy*. WWF European Policy Office. Brussels.

¹¹ Ibid. ¹

¹² COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

¹³ WWF (2007) *WWF mid-term review of the EU Common Fisheries Policy*. WWF European Policy Office. Brussels.

¹⁴ Sissenwine M. and Symes, D. (2007) *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

2009 on Member States' efforts in 2007 to manage or reduce the fishing capacity of their fleets concluded that the fishing capacity of the EU fleet was reduced by about two-three per cent in 2007, following the overall trend of the last 16 years¹⁵. The trends for individual Member States show considerable variation and lead the Commission to conclude that CFP-wide capacity adjustment measures are of questionable effectiveness¹⁶.

In addition there is an absence of reporting from the United Kingdom and a general failing by Member States to make clear links between fishing effort management and fleet capacity adjustment. This, reported the Commission, was because most of the remaining Member States' reports were not compiled in such a way as to enable this analysis to be performed¹⁷. However, the fleet capacity reduction that did occur seemed, to the Commission, mainly driven by poor economic performance by the relevant vessels or the availability of Community or national funds for decommissioning, rather than fishing effort adjustment measures¹⁸. Against this backdrop, the Commission also estimates that technological development ("technology creep") accounts for a two-four per cent increase in harvesting capacity per year in many fisheries¹⁹.

Additional temporary and specific measures for restructuring the fleet were adopted by Council in 2008. These and other aspects of structural policy are discussed in section 5 below. Suffice to say, the quest to find "a sustainable balance" between capacity and so-called fishing "opportunities" is also failing to produce ecologically sustainable fisheries.

When one combines the overcapacity of the fishing fleet with the decline in fish stocks and the volatility of fuel prices, the economic efficiency and general profitability of the sector as a whole is low²⁰. By 2001 the relative contribution of domestically caught fish to Europe's seafood supply had declined from 75 per cent in the 1970s to less than 40 per cent, meaning that more fish were being imported from outside the EU to supply European consumers. The prognosis for the sector makes for grim reading when the Commission acknowledges that: "*Worse, major retail chains*

now believe the fact that fish have been harvested under the CFP, does not provide their customers with sufficient guarantees for sustainability."²¹ This is a helpful acknowledgement of another aspect of the broader public interest at stake which is currently being failed.

¹⁵ COM(2008) 902, final. 12.1.2009. Annual Report from the Commission to the European Parliament and the Council on Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ http://ec.europa.eu/fisheries/publications/factsheets/legal_texts/reflection_cfp_08_en.pdf Accessed on 8 April 2009.

²⁰ *Ibid.*

²¹ *Ibid.*

4 HEALTH CHECK OF THE CONSERVATION POLICY

4.1 CFP Objectives

Following the 2002 reform, the main objective of the CFP was set out in a new basic Regulation, Regulation 2371/2002. Article 2(1) states that:

*"The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions."*²²

The preamble to the 2002 basic Regulation requires that, while pursuing an objective of sustainable development, decision-makers shall take into account economic, environmental and social aspects in a balanced manner²³. Article 2(1) goes on to add further context to the objective:

*"For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers."*²⁴

The Regulation does not specify how this balance is to be achieved, or how the objective will be implemented in the 'day-to-day' management of fisheries. That is, how the objective should guide decision-makers when facing the trade-offs between the three aspects of sustainable development²⁵. While the above sub-paragraph of Article 2(1) does use the term "shall" in reference to application of the precautionary approach, this appears to be mitigated by the subsequent aims linked to the economic and social dimensions of sustainable development.

To put it simply, no single aspect of sustainable development is prioritised over another. The annual Council 'horse-trading' over TACs and quotas, the disparity in many cases between scientific advice and the eventual outcomes

serve as evidence that neither ecological sustainability as an objective nor the precautionary approach are actively or routinely applied as a matter of priority.

If decision making under the CFP continues to compromise the ecological sustainability of fish stocks and the marine ecosystems upon which they depend, it is difficult to imagine that there will be a reversal of the economic, and therefore social, decline in the sector. There is a compelling logic to the notion that securing the ecological sustainability of fisheries will lead to better long term economic and social outcomes for the sector and those whose livelihoods depend on fishing. This in turn will serve the broader public interest.

A significant move towards better ecological outcomes would be to reframe the CFP objectives so that the ecological sustainability dimension is the first and highest priority consideration above the economic and social dimensions. This would involve specifying, for example, that the CFP "shall first ensure that exploitation of living aquatic resources is ecologically sustainable in a manner that is consistent with the application of the precautionary approach". This would mean that after considering the ecological sustainability dimensions of CFP-related decisions, the economic and social conditions may be considered.

Commission proposals would then have to be formulated by first applying the overarching objective and guiding principle and framed in terms of how ecological sustainability is being pursued in a manner consistent with the precautionary approach. Equally the objectives would be unambiguous for the Council and Parliament.

The purpose in suggesting a hierarchical approach to the objectives of the CFP with ecological sustainability firmly at the top is *not* to render invisible the important social and economic dimensions of the sustainable development triangle, but rather to attempt to tighten the focus on the single most important condition that makes the sustainability of the other two possible.

²² Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

²³ *Ibid.*

²⁴ Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy

²⁵ Sissenwine M. and Symes, D. (2007) *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

Such a fundamental change in objective would in turn serve to link to other dimensions of the CFP that would aid the pursuit of ecological sustainability, such as ecosystem-based management, the use of long term management plans, (MSY) and other supporting measures such as harvest control rules (HCRs) – all of which are discussed in subsequent sections of this paper.

Such a change could also lay the foundations to guide the advisory and decision making processes for a truly reformed CFP and thereby pave the way for a regulation which set guiding principles at the EU level. This would also mean that the competence for operational fisheries management decision-making pushed closer to where fishing takes place, at a regional level. A subsequent section of this paper touches briefly on the role of advisory bodies in the context of conservation policy.

4.2 An Ecosystem-Based Approach to Fisheries Management

Article 1(2) (b) of the basic fisheries Regulation 2371/2002 enables decision-makers under the CFP to create coherent measures to limit the environmental impacts of fishing²⁶. In addition, Article 2(1) refers to the aim of progressive implementation of an ecosystem-based approach to fisheries management and applying the precautionary approach to minimise the impact of fishing activities on marine ecosystems:

"The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

*For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system based approach to fisheries management....."*²⁷

This is at best a vague guiding principle, rendered optional by the wording "shall aim" and gradual by the phrase "progressive implementation..."

In 2002, before the adoption of the new basic Regulation, a Community Action Plan was developed to integrate environmental protection requirements into the CFP²⁸. The objective of the plan was to achieve integration by defining guiding principles, management measures and a work programme. The guiding principles for environmental integration made reference to the achievement of the environmental objectives set out in Article 174 of the EC Treaty, without prejudice to its economic and social objectives, as well as the aim of "progressive implementation of an ecosystem-based approach, to the extent permitted by scientific knowledge"²⁹. The highest priority measures were multi-annual management plans that attempted:

- To reduce fishing pressure to sustainable levels, targeting activities having adverse effects on the sustainability of fish stocks;
- To achieve 'favourable conservation status' of non commercial species and habitats; as well as reducing discards, incidental by catch and impacts on habitats by improving fishing methods; and
- To develop an Action Plan on discards, and proposals to protect sharks, cetaceans and sea birds from the adverse effects of fishing.

Some of the overarching principles and specific measures of the Action Plan were rendered obsolete when the new basic Regulation came into force and some of the laudable aims are yet to be realised (e.g. reducing fishing pressure to sustainable levels and reducing discards and incidental by catch or habitat impacts). However, the Plan continued to be implemented after the 2002 CFP reforms and has resulted in a number of proposals and some regulations on the following:

²⁶ Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

²⁷ Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

²⁸ COM(2002) 186 final, 28.5.2002. Communication from the Commission setting out a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy.

²⁹ Ibid.

- Discards^{30,31,32} and indicators³³;
- MSY³⁴;
- Data collection³⁵;
- Cetacean protection measures³⁶;
- A shark action plan³⁷; and
- Protection of vulnerable deep sea ecosystems³⁸.

Taken collectively all these initiatives could be said to be consistent with the aim of “progressive implementation” of an ecosystem-based approach to fisheries management.

In its most recent Communication in 2008 about its progress on implementing an ecosystem-based approach the Commission, acknowledged the complexity in relation to objective setting, governance and information, also presented a list of next steps and individual actions to advance implementation of this approach to fisheries management³⁹. A hint of the direction that could be taken under a reformed CFP is embedded within the paper:

“There is also a need to spell [objectives] out and make them operational for specific ecosystems and fisheries. This must take place in interaction between the European institutions, governments and stakeholders. The main mechanism for interaction with stakeholders within the CFP is the Regional Advisory Councils (RACs).

The general boundaries of an overall ecosystem approach will be defined by identifying good environmental status through the implementation of the Marine Strategy Directive. Specific objectives for fisheries will be developed through long-term management plans based on the MSY

concept, but will in the future also integrate considerations of ecosystems impacts of the specific fisheries concerned.”⁴⁰

However, without a unifying framework of Community standards and a coherent and logical strategy tying together the disparate pieces of work, the list of next steps appears to be a continuation of a piecemeal and gradual approach to implementation.

The lack of a comprehensive strategy or framework of Community standards, or of a sense of urgency, raises some serious questions about the pace of change. There are also questions as to what happens to the valuable research and consultation that is conducted on relevant issues, how results and next steps are communicated transparently, and finally how, specifically, results filter into the policy-making domain and day-to-day fisheries management decisions. Without a comprehensive framework, how is the precautionary approach applied consistently and transparently to ecosystem-related matters?

A significant aid to understanding the ecological issues faced by individual fisheries and determining priorities for action would be to conduct Ecological Risk Assessments (or Strategic Environmental Assessments (SEAs)) of each regional marine ecosystem. These could perhaps be aligned with the boundaries of the seven RACs). Such a requirement with accompanying standards for implementation could help to accelerate the pace of change and be introduced as part of the reform in 2012.

The pursuit of ecological sustainability would be greatly enhanced by abandoning the progressive and piecemeal approach to ecosystem-based management. This could be achieved by integrating ecosystem-based management into the overarching objective of the basic fisheries regulation, and setting out a framework of Community standards within a comprehensive strategy. This strategy should integrate the measures by which ecological sustainability will be achieved with the measures for long term management plans, technical measures, data collection, scientific advice and ecological risk assessment, and the formulation of the role of the RACs.

³⁰ COM(2002) 656 final, 26.11.2002 Communication from the Commission to the Council and the European Parliament on a Community Action Plan to reduce discards of fish.

³¹ COM(2007) 136 final, 28.3.2007 Communication from the Commission to the Council and the European Parliament: A policy to reduce unwanted by-catches and eliminate discards in European fisheries.

³² SEC(2007) 380, 28.3.2007 Accompanying document to the Communication from the Commission to the Council and the European Parliament: A policy to reduce unwanted by-catches and eliminate discards in European Fisheries. Impact Assessment.

³³ INDENT (2006) Indicators of environmental integration. Final report FISH/2004/12. 288pp

³⁴ COM(2006) 360, final. 4.7.2006 Communication from the Commission to the Council and the European Parliament: Implementing sustainability in EU fisheries through maximum sustainable yield.

³⁵ Regulation (EC) No. 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

³⁶ Regulation (EC) No. 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries.

³⁷ COM(2009) 40 final, 5.2.2009 Communication from the Commission to the European Parliament and the Council on a European Community Action Plan for the Conservation and Management of Sharks.

³⁸ Regulation (EC) No. 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears.

³⁹ COM(2008) 187 final, 11.4.2008 Communication from the Commission to the Council and the European Parliament: The role of the CFP in implementing an ecosystem approach to marine management.

⁴⁰ Ibid.

Creating a framework of standards and requirements within the basic fisheries Regulation would serve to reduce regulatory complexity, inconsistency of application, as well as to increase transparency and accountability and speed up implementation.

Further implementation of the ecosystem-based approach to managing EU fisheries may be assisted by further regionalisation of the CFP. This option raises issues that are discussed briefly in section 4.6.

4.3 Recovery Plans, Management Plans and Maximum Sustainable Yield (MSY)

4.3.1 Recovery plans and management plans

Articles 5 and 6 of the 2002 basic Regulation set out the requirements for Council to adopt recovery plans as a priority for stocks outside safe biological limits and management plans, as far as necessary, for stocks at or within safe biological limits⁴¹. Both require the use of a multi-annual or long term approach. Recovery plans are intended to be designed to stop and reverse stock depletion, restoring biomass to above limit reference points in a specified time scale (usually ten years⁴²). Management plans are intended to be designed to maintain stock levels above limit reference points. Recovery plans have been implemented for North Sea cod, northern and southern hake, Norway lobster, European eels, bluefin tuna and Greenland halibut⁴³. Multi-annual management plans have been adopted for Bay of Biscay sole, Baltic cod, Western Channel sole, North Sea sole and plaice, and herring in Western Scotland^{44,45}.

Recovery plans are not yet in place for all stocks that are outside safe biological limits and/or critically endangered⁴³ but, according to the Commission, plans have been developed for 28 per cent of pelagic fish stocks and 32 per cent of demersal fish stocks⁴⁶. Wakeford *et al.*'s review in 2007 pointed to 23 out of 59 stocks and/or species groups requiring "*rebuilding to return biomass to levels above the precautionary threshold of B_{pa}* "⁴⁷.

Looking ahead to 2012 significant signs of recovery in depleted species should be apparent, if not complete and demonstrable recovery to MSY for some species. Stakeholders would be justified in expecting that by then 100 per cent of stocks would be managed under either recovery or multi-annual management plans. Given the current rate of implementation this seems unlikely.

The slow pace of implementation in part reflects the numbers of stocks managed under the CFP, the complexity and time consuming nature of the task including new procedures for consulting the RACs and finally, the resources available to the Commission to undertake the work. There seems to be little doubt over the Commission's commitment to continue developing recovery and management plans. However, the pace of developing recovery plans needs to increase if further depletion is to be avoided. This almost certainly means increasing the resources available to the Commission as well as the political will to deliver.

In considering what might strengthen the contribution such plans could make to the pursuit of ecological sustainability under a reformed CFP, it is useful to explore some of the weaknesses of the plans from a conservation policy perspective.

There has been some criticism by ICES that management plans are not precautionary enough⁴⁸ and that the recovery process is ill-defined with unclear HCRs, unclear target and limit reference points and a lack of precise timeframes for recovery^{49,50}. The Commission itself raised concerns following research that revealed that the rules in recovery plans which stipulate rates of change to TACs or effort limitations designed for industry stability may not achieve recovery because the rate of depletion for some stocks is higher than the rate of reduction in effort or TAC^{51,52}. The Commission proposed raising the rate from 15 to 30 per cent in 2009 and it appears that TACs may be cut by between 15 and 25 per cent (see Box 2)⁵³. Whether such a rule change should be applied to existing recovery plans but it is not yet apparent whether this is planned.

Another weakness is the focus on individual stocks rather than ecosystems or fisheries as a whole, despite scientific

⁴¹ Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

⁴² Binet, T. and Lutchman, I. (2007) *Interim assessment of the European Union recovery plans*. Institute for European Environmental Policy, London. 19pp.

⁴³ Lutchman, I., Van den Bossche, K. and Zino, F. (2008) *Implementation of the CFP – An evaluation of progress made since 2002*. Institute for European Environmental Policy, London. 80pp.

⁴⁴ *Ibid.*

⁴⁵ Regulation (EC) No. 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock.

⁴⁶ COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

⁴⁷ Wakeford, R.C., Agnew, D.J. and Mees, C.C. (2007) *Review of institutional arrangements and evaluation of factors associated with successful stock recovery plans*. CEC 6th Framework Programme No. 022717 UNCOVER. MRAG Report, March 2007. 58pp.

⁴⁸ JNCC (2008) *Influencing strategy for the 2012 review of the Common Fisheries Policy*. JNCC 08 P12. Joint Nature Conservation Committee, UK. 14pp.

⁴⁹ *Ibid.* ⁴²

⁵⁰ *Ibid.* ⁴⁴

⁵¹ COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

⁵² *Ibid.* ⁴⁴

⁵³ CFP Fact Sheets – TACs and Quotas – Rules for 2009. Accessed on 9 April 2009: http://ec.europa.eu/fisheries/publications/pcp2008_factsheets_en.pdf

advice that increasingly addresses fishery interactions and mixed stock issues and the Commission's assertions that management plans are an important means by which to implement an ecosystem-based approach to fisheries management^{54,55,56,57,58}.

In their mid-term reflections on the CFP, Sissenwine and Symes articulated key points that would improve recovery and management plans, as did Wakeford *et al.*'s review of factors associated with successful stock recovery plans^{59,60,61}. Accordingly, they recommend that plans should outline the recovery or management strategy, define clearer target and limit reference points, prescribe unambiguous HCRs and set appropriate, clear timescales. Similarly, plans should have specific operational objectives, performance measures and performance standards^{62,63,64}. These recommendations need to be considered in the CFP review.

In short, there have been many criticisms of the recovery plans as they have emerged in practice. Although some of these may have been premature, the need to strengthen the plans and increase the pace of implementation is clear. Certainly as a concept, a longer term management approach must remain a central part of any CFP and recovery and management plans have a vital role to play in the pursuit of ecological sustainability. The challenge is to make them fit for this purpose.

4.3.2 Ecosystem-based Fishery Management Plans

A significant reform for 2012 would be to give recovery and management plans a broader focus and to create a new generation of "Ecosystem-based Fishery Management Plans". This would simply extend the approach set out in the Communication on MSY and sustainability with regard to long-term plans for groups of fish stocks that are caught

together⁶⁵. These plans would be developed in the context of the conservation policy to address the urgent needs of the current fisheries management system to ensure better understanding and management of the impact of fishing on habitats and ecosystem function and health. However, these plans could also be considered in the broader marine management context. They will be an important contribution to the achievement of 'good environmental status' as defined in the Marine Strategy Framework Directive (MSFD) (see section 6.2.2).

A new basic Regulation could stipulate the high level principles that would guide the development of these plans and establish Community standards for the specific measures to be included in such plans. Such plans could cover related species groups and single-stock fisheries as the Commission already anticipates, incorporating multi-species approaches and fishery interactions with ecologically related species and habitats. They could be organised along the same eco-regional basis as the current RACs, although there would necessarily be more than seven ecosystem-based fishery management plans.

In order to reduce the complexity of all current fisheries management instruments (to aid fisher understanding, implementation and compliance), all plans could incorporate the following:

- Relevant precautionary fishing effort management arrangements and/or TACs and quotas for all sources of fishing mortality;
- Technical measures, such as gear restrictions or spatial and/or temporal management;
- Well designed and defined rights-based measures;
- Multi-species management measures, including for discarding;
- Incidental bycatch and other ecosystem impact mitigation measures;
- Indicators (including proxies) of ecological sustainability; and

⁵⁴ COM(2008) 187 final, 11.4.2008 Communication from the Commission to the Council and the European Parliament: The role of the CFP in implementing an ecosystem approach to marine management.

⁵⁵ *Ibid.* ⁴³

⁵⁶ Wakeford, R.C., Agnew, D.J. and Mees, C.C. (2007) *Review of institutional arrangements and evaluation of factors associated with successful stock recovery plans*. CEC 6th Framework Programme No. 022717 UNCOVER. MRAG Report, March 2007. 58pp.

⁵⁷ JNCC (2008) *Influencing strategy for the 2012 review of the Common Fisheries Policy*. JNCC 08 P12, Joint Nature Conservation Committee, UK. 14pp.

⁵⁸ Rosenberg, A. and Mogensen, C.B. (2005) *Long-term management plans for North Sea fisheries*. WWF European Policy Office, Brussels. 32pp.

⁵⁹ *Ibid.* ⁵⁶

⁶⁰ Symes, D. (2007) In: Sissenwine, M. and Symes, D. (2007) *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

⁶¹ Sissenwine, M. (2007) In: *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

⁶² *Ibid.* ⁵³

⁶³ *Ibid.* ⁵⁷

⁶⁴ *Ibid.* ⁶¹

⁶⁵ COM(2006) 360, final, 4.7.2006 Communication to the Council and the European Parliament: Implementing sustainability in EU fisheries through maximum sustainable yield.

- Monitoring, control and surveillance procedures.

Each plan would have relevant species-specific operational objectives, clear limit and target reference points for all species, pre-determined decision rules (HCRs) related to stock management and ecologically-related species using proxies based on the precautionary approach.

By incorporating technical conservation measures and including mortality from all sources, the effects of redistribution of effort within and between similar multi-species fisheries could be overcome, which would go a long way to engendering the confidence and improved compliance of fishermen and the industry in recovery and management plans⁶⁶.

To aid the development of ecosystem-based fishery management plans, a series of Community standards for management tools would almost certainly need to be developed. These should include:

- Ecological Risk Assessments (Strategic Environmental Assessments (SEA)).
- Formalised Management Strategy Evaluations – these would provide stakeholders and decision-makers with relevant information about possible management actions (like effort limitations or TAC levels) take into account the uncertainties and areas of risk associated with the achievement of operational objectives. This would be a key platform to enable more transparent and accountable decisions to be made. They would explain and expose the scientific, precautionary and objective-led basis for all key management decisions. At present these are often overshadowed by political interventions.
- Harvest control rules (HCRs) should be amended so as to become “plan” specific, consistent with operational objectives and the precautionary approach, while remaining within the boundaries set by Community standards. For example:

- TACs are set to recover or maintain stocks at or above clear, precautionary target reference points (e.g. MSY or B_{MSY}) over a specified timescale determined by biological parameters of the stock or environmental conditions in the ecosystem.
- Agreement that in a recovery plan, a percentage change (such as a reduction in TAC or fishing mortality) must be greater than the rate of depletion.
- Additionally in a recovery plan a percentage change must be equal to or greater than the rate of recovery needed to achieve recovery within an approved and specific period of time.
- Alternatively, the EU could follow the Norwegian example which sets no limitation on year to year variations when biomass is lower than B_{pa} although this option would need to be explored further.
- An extension of HCRs (and therefore the MSY concept) to include the ecological dimension. These could follow the example of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR's) decision rules which first safeguard the stock and recruitment to the stock (Rule 1) and second, aim to safeguard the ecosystem to support natural predators and the general balance of the ecosystem (Rule 2).⁶⁷ Rule 3 then directs decision-makers to determine the level of catch that balances the safeguarding of stocks and recruitment with the safeguarding of ecosystems which support natural predators.

This would be a significant change of approach and would need to be well prepared. Research has demonstrated that those plans that have the greatest likelihood of success and are most likely to lead to compliance are those that have been developed through a participatory approach involving all relevant stakeholders⁶⁸. Effectively engaging the RACs in developing Ecosystem-based Fishery Management Plans will be critical to their success.

⁶⁶ Wakeford, R.C., Agnew, D.J. and Mees, C.C. (2007) *Review of institutional arrangements and evaluation of factors associated with successful stock recovery plans*. CEC 6th Framework Programme No. 022717 UNCOVER. MRAG Report, March 2007. 58pp.

⁶⁷ Agnew, D. (2004) *Fishing South: The history and management of South Georgia fisheries*. Government of South Georgia and South Sandwich Islands. 123pp.

⁶⁸ *Ibid.* ⁶³

The challenges presented by such radical reforms to the development and implementation of recovery and management plans should not be underestimated particularly given the difficulties associated with implementing and developing single-stock or single species plans. However, there needs to be a much greater sense of urgency about both achieving stock recovery and an accelerated pace for implementing an ecosystem-based approach to fisheries management. The introduction of 'Ecosystem-based Fishery Management Plans' would offer benefits which more than offset the challenges of implementation and would be a valuable element of the 2012 reform.

4.4 Maximum Sustainable Yield (MSY)

In 2002, the World Summit on Sustainable Development (WSSD) used the concept of MSY in its target for fisheries management:

"To achieve sustainable fisheries, the following actions are required at all levels:

*Maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015."*⁶⁹

In 2006, the Commission moved to integrate the MSY concept into EU fisheries policy and the implementation of fisheries management decisions. Citing the consistency of the MSY concept with CFP initiatives on longer term management and the gradual implementation of an ecosystem-based approach, as well as the then emerging EU maritime policy, the Commission set the groundwork for using the MSY concept under the CFP⁷⁰.

A major part of the Commission's approach to sustainability is the integration of MSY into long-term management plans for groups of stocks caught together. The potential for reform of those plans in 2012 into something more broadly encompassing an ecosystem-based approach was discussed at length in the previous section. However, the interaction between an ecosystem-based approach and MSY in the

context of single species reference points and their appropriateness to ecosystem-related sustainability objectives is worth exploring briefly.

The Commission contemplates setting target rates of fishing, rather than seeking to manage biomass levels, and defines means to achieve target rates of fishing gradually. In defining target rates on a single species or stock basis, without considering the complex interactions between species *and* the behaviour of fishermen, targets and measures could have unintended consequences. There is a danger of further compromising the ability to achieve sustainability targets for a range of species for which different fishing rates have been set.

A precautionary way to overcome this may be to express MSY for species groups and multi-species complexes as a target fishing rate that would achieve MSY for the lowest common denominator in the species group. In other words, the target fishing rate becomes that which is calculated for the species or the stock that can bear the lowest fishing effort or fishing mortality.

Regardless of whether MSY is used as a target for single or multiple species, the major challenges for meeting the 2015 MSY target are in the rate at which fishing mortality will have to be reduced (in some cases up to 50 per cent). This was made clear in the recent report to DG Mare by Sissenwine and Symes⁷¹. Symes puts the challenge of meeting the 2015 goal eloquently:

*"The pace of change needs to be cautious enough to win the confidence of industry, to allow adaptive management, and to encourage appropriate investment during the transition, but not so gradual that progress towards the goal is not overtaken by accelerating rates of stock decline or postpones arriving at the goal indefinitely."*⁷²

This observation is as true for those species groups or stocks for which there are recovery or management plans as the majority for which there are none. Establishing MSY for this majority will, as Symes puts it: "*more than perhaps any previous issue, [...I test the negotiating skills and the*

⁶⁹ WSSD (2002) Plan of Implementation of the World Summit on Sustainable Development, paragraph 31(a), 62pp. http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf Accessed 10 April 2009.

⁷⁰ Ibid⁶⁵

⁷¹ Sissenwine M. and Symes, D. (2007) *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

⁷² Symes, D. (2007) In: Sissenwine, M. and Symes, D. (2007) *Reflections on the Common Fisheries Policy*. Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission. 75pp.

*resilience of the decision making process within the Commission*⁷³.

The Commission's proposals for fishing opportunities in 2009 contained some harvest control rules (HCRs) for these 'non-plan' species and stocks (see Table 1)^{74,75}. How far the Council will follow the HCRs in making decisions in 2009 that prioritise ecological sustainability, remains to be seen. However, it would be revealing in future research to see whether previous discrepancies between scientific advice and actual TACs (calculated by the Commission to average 48% higher than advice) have been reduced or indeed removed.

A major priority for the 2012 CFP reform has to be finding a way of either binding the Council to HCR-led decisions or changing the competence of the Council so that it is more restricted to decisions on high level principles and standards rather than micro-management of implementation decisions.

A more immediate priority is to estimate stock status more precisely for the 57 per cent of CFP-managed stocks where there are no assessments⁷⁶. Without a clear picture of the status of these stocks, understanding of their levels in relation to MSY is rendered moot. The default HCRs for stocks of imprecise or unknown status leave too much room for uncertain and less than precautionary decisions on TACs, quotas and fishing effort limitations for these stocks. Remedying this shortfall in critical information will also require implementation of the new data collection framework established in the EU and rigorous evaluation and review by the STECF to ensure that national programmes are appropriate and the data are of high quality⁷⁷. The focus will then shift to ICES to produce stock assessments.

⁷³ *Ibid.*

⁷⁴ COM(2008) 331, final, 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

⁷⁵ CFP Fact Sheets – TACs and Quotas – Rules for 2009. Accessed on 9 April 2009: http://ec.europa.eu/fisheries/publications/pcp2008_factsheets_en.pdf

⁷⁶ *Ibid.* ⁷¹

⁷⁷ Regulation (EC) No. 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

Table I. Rules for setting TACs 2009⁷⁸

Scientific advice	Action to take in setting TAC	Stock examples
Stock exploited at the maximum sustainable yield rate.	Aim to set the TAC to the forecast catch corresponding to the fishing mortality that will deliver the highest yield in the long term, but do not change the TAC by more than 25 %.	Plaice in VIIa.
Stock overexploited compared to maximum sustainable yield but inside safe biological limits.	Aim to set the TAC to the higher value of (a) to the forecast catch corresponding to taking the highest yield in the long term, or (b) fishing at an unchanged mortality rate, but do not change the TAC by more than 15 %.	Common sole in VIIf and g, haddock in VIb, XII and XIV.
Stock outside safe biological limits.	Aim to set the TAC to the forecast catch that will result in a 30 % reduction in fishing mortality rate, but do not decrease the fishing mortality so far as to prejudice long-term yields and do not reduce the TAC by more than 20 %.	Herring in Vb, VIa and VIb, plaice in VIIf and VIIg.
Stock is subject to long-term plan and scientists advise on the catch that corresponds to the plan.	The TAC must be set by following the relevant plan.	Blue whiting and cod, saithe, hake in IV.
Stock is short-lived and a one-year forecast cannot be provided.	A provisional TAC is set and will be changed when new information is available during the year.	Anchovy in VIIIbde, Norway pout, sandeel.
State of the stock not known precisely and STECF advises on an appropriate catch level.	Aim to set the TAC according to STECF advice but do not change the TAC by more than 15 %.	Anglerfish, tusk, plaice in IIIa and VIIbcde.
State of the stock not known precisely and STECF advises to reduce fishing effort.	The TAC should be reduced by up to 15 % and STECF should be asked to advise on the appropriate level of effort.	Whiting in VIIb-k.
State of the stock not known precisely and STECF advises the stock is increasing.	The TAC should be increased by up to 15 %.	Haddock in VIIa and sprat in IV.
State of the stock not known precisely and STECF advises the stock is decreasing.	The TAC should be decreased by up to 15 %.	Haddock in VII, VIII, IX and X.
STECF advises a zero catch, a reduction to the lowest possible level or similar advice.	The TAC should be reduced by at least 25 %. Recovery measures should be implemented including effort reductions and introduction of more selective fishing gear.	Cod in VIIa, haddock in Vb and Va, and spurdog.
There is no STECF advice.	TACs should be adjusted towards recent real catch levels but should not be changed by more than 15 % per year or Member States should develop an implementation plan to provide advice within a short time.	Megrim in IV and pollack

⁷⁸ CFP Fact Sheets – TACs and Quotas – Rules for 2009. Accessed on 9 April 2009:
http://ec.europa.eu/fisheries/publications/pcp2008_factsheets_en.pdf

4.5 Technical conservation measures

In June 2008, after extensive consultation with Member States, the RACs, Advisory Committee for Fisheries Advice (ACFA) and the Scientific, Technical and Committee on Fisheries (STECF) and an impact assessment, the Commission proposed a single new regulation to rationalise and simplify technical conservation measures under the CFP (for example, gear selectivity, seasons, and minimum landing sizes, by catch limits) that have been built up over time and are currently spread around in a range of regulations. This led to a process of transforming the legislative approach to the creation of technical conservation measures. The Commission and the RACs (expressing their views through Member States) are now able to consider region-specific measures through the comitology procedure and the implementation of Commission, rather than Council, regulations. This has the potential to reduce, although not eliminate some of the pressures of national self interest that are exerted strongly in the Council.

The priority set out in the 2008 proposal is to establish a set of simpler, clearer rules aimed at all European waters except the Mediterranean, Baltic and Black Seas and fisheries for highly migratory species. There is also the clear intention to make the Council more responsible for the high level principles concerned with technical conservation measures rather than the specific measures at operational level⁷⁹. The proposal is still being examined at Council level, and the Commission anticipates final adoption in 2009⁸⁰.

As a consequence of these developments, the Commission anticipates that during 2009 technical conservation measures will be applicable only on a regional basis within each RAC area and will come into force through Commission Regulations⁸¹ for:

- Conservation of fisheries resources through technical measures in South Western Waters;
- Conservation of fisheries resources through technical measures in North Western Waters;
- Conservation of stocks of herring, blue whiting, horse mackerel and mackerel through technical measures in Community and non-Community waters, excluding the Baltic Sea and the Mediterranean Sea; and

- Conservation of fisheries resources through technical measures in the North Sea.

This approach builds on earlier measures adopted for the Baltic and Mediterranean. In December 2005, Council adopted a Regulation to streamline and harmonise technical conservation measures for fisheries in the Baltic Sea⁸². In 2006, a similar regulation concerning the technical and management measures for the Mediterranean Sea was adopted three years after it was first proposed by the Commission^{83,84}. The Regulation for the Mediterranean was a response to the need to “*revamp the only conservation regulation on technical measures applicable to the area*”⁸⁵. It decentralises some policy issues to the regional level and requests relevant Member State governments to implement management plans for some fisheries in their territorial waters⁸⁶.

The suite of measures put forward under the aegis of the 2008 proposal to ‘de-centralise’ decision-making on technical measures for much of the north east Atlantic represents a step in the right direction from a legislative perspective and is consistent with the aim of reducing complexity and increasing compliance by the industry. However, there is an ongoing debate about whether technical measures should stand outside longer term management plans. In a 2007 journal article, Mr. Penas (DG Mare) made reference to proposals presented by the fishing industry and some Member States for extra effort allocations in the cod recovery plan in exchange for adopting specific technical measures⁸⁷. This approach has obvious dangers and is not universally supported. Other researchers remain critical about the regulatory separation of technical measures from management plans particularly in relation to their unintended consequences such as redistribution of effort within and between similar multi-species fisheries⁸⁸.

Looking ahead to 2012 the approach of simplifying and streamlining technical measures and testing the use of the delegated legislative approach is desirable in many respects, while putting the onus on Member States to make it work.

⁷⁹ COM(2008) 324 final, 4.6.2008. Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures.

⁸⁰ http://ec.europa.eu/fisheries/cfp/simplification/technical_2008_2_en.htm Accessed on 10 April 2009.

⁸¹ *Ibid.*

⁸² Regulation (EC) No. 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No. 1434/98 and repealing Regulation (EC) No. 88/98.

⁸³ Regulation (EC) No. 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No. 2847/93 and repealing Regulation (EC) No. 1626/94.

⁸⁴ Penas, E. (2007) The fishery conservation policy of the European Union after 2002: towards long-term sustainability. *ICES Journal of Marine Science*, **64**: 588-595.

⁸⁵ *Ibid.* ⁸⁰

⁸⁶ *Ibid.*

⁸⁷ Penas, E. (2007) The fishery conservation policy of the European Union after 2002: towards long-term sustainability. *ICES Journal of Marine Science*, **64**: 588-595.

⁸⁸ Wakeford, R.C., Agnew, D.J. and Mees, C.C. (2007) *Review of institutional arrangements and evaluation of factors associated with successful stock recovery plans*. CEC 6th Framework Programme No. 022717 UNCOVER. MRAG Report, March 2007. 58pp.

Extending the approach further to integrate technical measures into long term management plans, indeed Ecosystem-based Management Plans, would further reduce complexity. In addition, it has the potential to significantly increase harmonisation and potential compliance, particularly if the RACs have a substantive role in developing proposals for such holistic management plans.

4.6 Compliance and enforcement

4.6.1 Compliance

A key element in the quest for ecologically sustainable fisheries and a major contributor to the success or otherwise of fisheries management is compliance at sea with agreed rules and procedures. At the heart of compliance is human behaviour and motivation: what makes some people comply with rules and others disobey them? Answering that question in the context of a system that is clearly not working⁸⁹ should take place in the context of the incentives and disincentives for compliance: the carrots and the sticks. This is not just about control and enforcement, nor is it merely a problem to be laid at industry's door as one of a lack of commitment⁹⁰. It is a systemic problem.

An ideal scenario for any fisheries management regime is that the system itself is one that fosters the stewardship instincts of the majority to treat the resources of our oceans as ecological, economic and societal assets for their *own* long-term good which will in turn serve the public interest – harnessing enlightened self interest for the public good. Attacking the problem by papering over the cracks in the system with increasing layers of complex, potentially contradictory and possibly incomprehensible regulations is unlikely to produce this result.

Indeed it is imperative to improve compliance that points to the need for 'root and branch' reform of the CFP. As unpopular as the idea is to some, the current debate and consultation about the use of rights-based measures must continue. There is a wealth of evidence about the impact that rights or rights-based measures can have in creating positive incentives to steward resources and therefore improving compliance, ultimately leading to more

sustainable fisheries^{91,92,93}. The issues critical to this are: being clear about the objectives that rights-based measures are aiming to achieve; designing 'fit-for-purpose' rights-based measures; and ensuring they are well-defined in legal and qualitative terms.

A major and significant disincentive to compliance was highlighted by the European Court of Auditors in a recent report. They argued that overcapacity:

*"detracts from the profitability of the fishing industry and in a context of decreasing authorised catches is an incitement to non-compliance with these restrictions."*⁹⁴

Once again this points to the need to deal with overcapacity in a systematic, decisive and comprehensive way. With reduced capacity, the conservation policy should become easier and cheaper to administer; incentives to comply become more visible and the chances of successfully achieving ecological sustainability objectives increase.

Compliance and related systemic issues are not only about creating incentives in the form of rights-based, or rights-like, measures that will help foster stewardship and create a culture of compliance with fisheries rules. Clarifying the respective roles and responsibilities of the various players in the management system through participatory, partnership or co-management processes can empower those whose compliance the system seeks. Strengthening and extending the RAC process, delegating more decision making power and the ability to influence the rules closer to where they apply will help to create a culture of compliance.

In such a context it would also be helpful to reduce the complexity and number of regulations and instruments governing the conduct of the CFP. In principle it could ease understanding and compliance and make it easier for Member States to enforce.

4.6.2 Enforcement

A discussion about compliance would be incomplete if enforcement of the rules and sanctions for non-compliance were not included.

⁸⁹ ECA Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources together with the Commission's replies.

⁹⁰ *Ibid.* ⁸⁴

⁹¹ Beddington, J.R., Agnew, D.J. and Clark, C.W. (2007) Current problems in the management of marine fisheries. *Science*, **316**: 1713-1716.

⁹² Hilborn, R. (2007) Moving to sustainable fisheries by learning from successful fisheries. *Ambio*, **36**(4): 296-303.

⁹³ Hilborn, R., Orensanz, J.M. (Lobo), Parma, A.M. (2005) Institutions, incentives and the future of fisheries. *Phil. Trans. R. Soc. B*, **360**: 47-57.

⁹⁴ *Ibid.* ⁸⁵

The concept of the 'level playing field' is crucial in the context of fostering stewardship and creating a culture of compliance. A sense that everyone in the system will be treated fairly and evenly and that the same rules and potential sanctions will apply across the board to offenders is important. Rationalisation of the rules would represent a significant improvement to current control and enforcement regime. These themes of control, inspection and sanction systems under the CFP have rightly received growing attention and were highlighted both by the Commission and the European Court of Auditors in 2007^{95,96}.

The Commission responded in 2008 with proposals for a "root and branch" overhaul of the system to "foster a culture of compliance with fisheries rules and create a level playing field for Europe's fishermen"⁹⁷. Three regulations will form a framework for monitoring, control and enforcement: rules about Illegal, Unreported and Unregulated (IUU) fishing⁹⁸; rules for Community vessels operating outside Community waters; and a regulation to establish a Community control system to ensure compliance with the CFP⁹⁹.

The main objectives of the proposed control regulation are to achieve: a common approach to control and inspection; a culture of compliance; and effective implementation of CFP rules¹⁰⁰. Some of the mechanisms currently under consideration include:

- Strategic targeting and programming of enforcement activity;
- Harmonised inspection procedures, higher standards for control measures and redefinition of inspectors' powers;
- Introduction of a comprehensive traceability system;
- Use of modern technologies for data validation and transfer;
- Simplification and streamlining of the legal framework;
- Harmonised sanctions;

- Extension of the mandate of the Community Fisheries Control Agency (CFCA); and
- Powers for the Commission to close fisheries, deduct quotas from Member States and rectify Member States' catch figures, as well as impose financial sanctions.

Taken together, the proposals represent a coherent and strategic approach to the challenges of enforcing the CFP and when combined with other initiatives aimed at fostering stewardship of the European Union's fisheries resources and marine ecosystems, is set to make a crucial contribution to better management and compliance. The challenges for the Member States to deliver on these measures will be considerable. However, the proposed control regulation, if adopted as proposed, should give the Commission the power to remedy some of the more critical implementation failures provided that the Community powers are sufficiently enhanced to make this possible. .

4.7 Role of the advisory bodies in Conservation Policy

4.7.1 The Regional Advisory Committees (RACs)

Articles 31 and 32 of the 2002 basic Regulation contain the foundation of one of the most fundamental and potentially positive elements of the 2002 reform process. These articles provided new avenues for participation of stakeholders in the CFP process through the creation of the RACs¹⁰¹. Initial funding, which was not envisaged as long-term, was provided through Community aid to get the RACs started. By 2007, however, recognition of the benefits of the RACs as an essential part of the CFP heralded a Council decision to provide enough permanent funding to continue their work as "bodies pursuing an aim of general European interest"¹⁰².

Seven RACs have now been established, including the Mediterranean RAC which was announced in late 2008. The RACs represent an important advance in the governance of fisheries and the sense of stakeholder involvement. However, there have also been some challenges in relation to the conservation policy which include^{103,104,105} :

⁹⁵ ECA Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources together with the Commission's replies.

⁹⁶ COM(2007) 167 final, 10.4.2007. Report from the Commission to the Council and the European Parliament on the monitoring of the Member States' implementation of the Common Fisheries Policy 2003-2005.

⁹⁷ http://ec.europa.eu/fisheries/cfp/control_enforcement/reform_control_en.htm Accessed on 11 April 2009.

⁹⁸ Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999.

⁹⁹ COM(2008) 721 final, 14.11.2008. Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

¹⁰⁰ *Ibid.*

¹⁰¹ Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

¹⁰² Council Decision 2007/409/EC of 11 June 2007 amending Decision 2004/585/EC establishing Regional Advisory Councils under the Common Fisheries Policy.

¹⁰³ Lutchman, I. Van den Bossche, K. And Zino, F. (2008) *Implementation of the CFP – An evaluation of progress made since 2002*. Institute for European Environmental Policy, London. 80pp.

¹⁰⁴ Penas, E. (2007) The fishery conservation policy of the European Union after 2002: towards long-term sustainability. *ICES Journal of Marine Science*, **64**: 588-595.

¹⁰⁵ COM(2008) 364 final, 17.6.2008. Communication from the Commission to the Council and the European Parliament: Review of the functioning of the Regional Advisory Councils.

- Establishing the right balance of membership between the fishing industry and other interests such as, environmental NGOs, civil society or recreational fishing interests;
- Challenges for minority members to get their issues on RAC agendas, to finance their own participation;
- Reaching consensus on TACs and quotas, short-term interests and industry interests dominating in some cases and instances of the withdrawal of environmental NGOs and refusal to endorse recommendations; and
- Reacting to an increasing volume of work emerging from the Commission while trying to be proactive and organise 'own-initiative' meetings and seminars on issues of strategic importance.

Some of the positive experiences relevant to conservation policy to emerge from the RACs include^{106, 107, 108};

- Striving for consensus on the issues, but recording minority views;
- The commitment to transparency as evident in the RAC proceedings;
- Participation by scientists as 'non-members';
- Better access to information and better understanding of decisions at European level; and
- RACs becoming active participants in the CFP governance process and already making a positive contribution to the development of the CFP.

Some RAC activities, in terms of input to the TACs and quota setting, have been rationalised to reflect changes to the Commission's legislative programme and to improve access for example, the Commission now circulates its proposals for fishing opportunities months in advance of the Council meeting to enable sufficient time for the RACs to consider their advice. The impact assessment process also allows RACs the opportunity to provide input to a broad range of issues which are likely to affect stakeholders.

Looking ahead to 2012, if a more devolved regional decision making structure is contemplated, the RACs could provide the setting and means for a true partnership approach (i.e. a non-legislative role for RACs but with some delegated authority) or more of a true co-management model (i.e., with some form of delegated legislative power). There may well be significant legal barriers to overcome in order to realise the second of those two scenarios, so the first may be more feasible. Competence for technical and implementation decisions could rest with the Commission and Member States based upon consensus from the RACs wherever possible.

In order to gain such a consensus, the balance of the current membership of the RACs would need to be redressed, as would clarity about the 'rules of engagement'. Most critically, fishing industry interests would need to be balanced by members outside of and independent from the industry, with more formal seats for scientists at the table, with others representing alternate views about the conduct of the CFP.

4.7.2 The Advisory Committee for Fisheries and Aquaculture (ACFA)

A major review of the role and performance of ACFA was contracted by the Commission and published in 2008¹⁰⁹. The evaluators consulted a wide range of stakeholders and examined a large volume of documentation, and amongst their conclusions were:

- ACFA is highly appreciated by stakeholders, providing network and dialogue opportunities between sectors and interests.
- But there is uncertainty and their future participation should be re-evaluated.
- While the Commission emphasises the need for ACFA's input on technical advice, members tend to view ACFA primarily as a channel for political influence.

¹⁰⁶ Lutchman, I. Van den Bossche, K. And Zino, F. (2008) *Implementation of the CFP – An evaluation of progress made since 2002*. Institute for European Environmental Policy, London. 80pp.

¹⁰⁷ Penas, E. (2007) The fishery conservation policy of the European Union after 2002: towards long-term sustainability. *ICES Journal of Marine Science*, **64**: 588-595.

¹⁰⁸ COM(2008) 364 final, 17.6.2008. Communication from the Commission to the Council and the European Parliament: Review of the functioning of the Regional Advisory Councils.

¹⁰⁹ COWI et al. (2008) *Intermediate evaluation of the Advisory Committee for Fisheries and Aquaculture (ACFA)*. Final Report, August 2008. COWI, Nautilus Consultants and Framian. COWI, Denmark. 113pp.

- There is some overlap between ACFA and the RACs which should be avoided, however; some issues do benefit from a pan-European view rather than solely a regional view.

Recommendations for change included: clarifying the role and objectives of ACFA; leading to reconsideration of stakeholder representation and membership criteria; better formulation of consultation questions; more flexible organisation; improved communications both electronic and in translation; and regular feedback.

Four scenarios are put forward for the future, the choice of which depends on Commission priorities and future stakeholder needs:

- Replace ACFA with a RAC Co-ordinating Committee.
- Smaller ACFA focussing on EU-wide CFP issues.
- Larger ACFA focussing on fisheries within the broader uses of the marine environment.
- Maritime Consultative Group with form following the function of DG MARE in the broadest sense.

The contribution ACFA in the future will depend largely on its continued relevance as a forum for discussion of conservation and issues of ecological sustainability.

4.8 The Role of the Council in implementing the Conservation Policy

Much has been said about the role of the Council in managing the CFP, both in legal and performance terms. A majority of pundits place the blame for failure of the CFP to achieve its conservation and ecological sustainability objectives squarely at the Council's door. Clearly the absence of political will in the Council is not the only issue, as illustrated in previous sections, but it is central to the failure to meet the revised objectives of the CFP since 2002.

There has been little will to make hard, potentially politically damaging decisions for the sake of some unknown future and a tendency to pursue narrowly conceived, short term national interest. When this is added to the decision-making process which requires a qualified majority of votes to adopt

new regulations, there is further potential for political compromises to be made. Some of the reforms and progress that has been made since 2002 have been attempts to overcome, mitigate or minimise the engagement of Council in the micro-management of what should be operational decisions about fisheries management. The Lisbon Treaty and resultant co-decision procedures with the European Parliament may serve to increase political micro-management, with the exception of the setting of annual TACs (fishing opportunities) – competence for this will remain with the Council. If there were to be a single reform in 2012 that would take the CFP into the 21st century and put it on a footing that could engender successful conservation outcomes through operational fisheries management decision-making, thereby reducing the political intervention from the Council at this level.

4.9 Conclusions

A great deal of work has been undertaken by the Commission, its advisers and EU stakeholders and progress has been made since the 2002 reform process. For some the pace of change is too slow and too piecemeal and many want to see more recovery and management plans in place and discarding policies implemented. For others, the single most significant factor preventing EU fisheries from achieving ecological sustainability is the continued overcapacity of the fleet when compared to the carrying capacity of fish stocks in Europe's seas. For yet others, the gradual implementation of ecosystem-based fisheries management is unlikely to achieve its goal and the policy needs to be re-evaluated.

Some of the most immediate actions that need to be taken during the next three years in the run up to 2012 reforms involve improving knowledge about stock status for 57 per cent of EU stocks for which there is limited information on which to base management decisions. This process can be assisted by the implementation of the data collection framework. In addition, there should be further development and implementation of the data collection regulation (DCR) for those stocks for which stock status is known. Finally, once the proposed control regulation is

adopted, moves are required to implement it as quickly and efficiently as possible.

The issues and topics of discussion and debate centre around much the same 'crisis' in EU fisheries as that which existed prior to 2002. In the run up to 2012 some difficult decisions will have to be made with respect to Conservation Policy specifically and the CFP in general.

4.10 Recommendations

A new 'basic' regulation for conservation and sustainable exploitation under the CFP should:

- 1 Prioritise ecological sustainability over the economic and social dimensions in a new hierarchal CFP objective relating to sustainable development.
- 2 Establish a viable legal framework for establishing high-level principles and Community standards for Conservation Policy. The technical implementation (or operational decision-making) on conservation, including but not limited to, technical measures, management and recovery plans and annual effort and catch limits, would be delegated closer to the 'action' either through regionalisation or comitology procedures.
- 3 Aim to reduce the complexity and number of CFP regulations.
- 4 Clarify the rights, roles and responsibilities of decision-makers, stakeholders, advisers and others involved in the fisheries management system in the light of new priorities.
- 5 Review the roles and relevance of the RACs, ACFA, STECF and ICES once the appropriate legal framework has been determined, so that form follows function and each advisory body is 'fit-for-purpose' and can meet the needs of management.
- 6 Develop and establish the boundaries for regional marine ecosystems within the existing boundaries set forth for the RACs and Ecological Risk Assessments (or Strategic Environmental Assessments) required to identify the high, medium and low risk activities and priorities for each eco-region.
- 7 Abandon the 'progressive implementation' approach to ecosystem-based management and replace with a new approach aimed at:
 - a) Integrating ecosystem-based management into the overarching objective of a new basic fisheries regulation.
 - b) Setting out a framework of fisheries-related, ecosystem-based Community standards within a comprehensive strategy.
- 8 Expand recovery and long term management plans and develop 'Ecosystem-based Fishery Management Plans' which should include:
 - i Well defined 'ecosystem' boundaries: spatial and/or species and/or fishing gear related.
 - ii Well designed and defined rights-based measures.
 - iii Species-specific operational objectives, time-bounded management or recovery strategies, and clear, unambiguous limit and target reference points for all major species.
 - iv Pre-determined decision rules (HCRs) related to stock management and ecologically related species, using an explicit precautionary approach.
 - v Relevant precautionary fishing effort and/or catch limitations for all sources of fishing mortality.
 - vi Additional technical measures to complement effort and catch limits.
 - vii Multi-species management strategies, including controlling discarding.
 - viii Incidental bycatch and other ecosystem impact mitigation measures.

- ix Data collection requirements related to the species-specific operational objectives and other elements of the plan.
 - x New and effective monitoring, control and surveillance requirements.
 - xi Formalised use of Management Strategy Evaluations by scientific and technical advisors to provide stakeholders and decision makers with information about alternative decision scenarios.
 - xii Establishment of guidelines for setting operational objectives and management plan-specific HCRs.
 - xiii Extension of the HCR (and therefore MSY) concept to include the ecological dimension, like the decision rules that bind CCAMLR to safeguard the ecosystem.
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5 HEALTH CHECK OF THE STRUCTURAL POLICY

In 2002, the Council Regulation on the conservation and sustainable exploitation of fisheries resources¹¹⁰ marked a new effort to better integrate the CFP structural and conservation policies.

For marine fisheries, the overriding objective of the new structural policy was to reduce the capacity of the Community fleet in order “to bring it into line with available resources”¹¹¹. This had been a central objective of the CFP since its inception in 1983, but the 2002 reform emphasised the need for measures concerning the structural policy and management of the fleet capacity to be provided in coherence with those concerning conservation and sustainability.

For each type of measure in the conservation policy¹¹², mechanisms were put forward to tackle the chronic problem of fishing fleet overcapacity with financial aid from the Community Structural Funds.¹¹³

The first two sections of this chapter examine in more detail the reform of the fleet management system, and the changes introduced to structural assistance in the EU. This is followed by an analysis of the subsidies in support of the fisheries sector, and finally a discussion of further changes needed to better integrate environmental objectives into the structural policy during the 2012 CFP reform.

5.1 Fleet management system and overcapacity post 2002

A comprehensive structural policy for the management of the EU fleet has been in force since 1983. A series of structural adjustment measures were implemented under the Multi-Annual Guidance Programme (MAGP) framework over the twenty-year period 1983-2006. There were four MAGPs in total with MAGP IV concluding in 2006. The MAGPs were heavily criticised for failing to rationalise the EU fleet and reduce overcapacity. Although the MAGPs led to gradual and steady reductions of overcapacity, no significant reduction in overcapacity has been achieved largely due to technological progress or ‘technological creep’ which had the effect of cancelling out any fishing capacity

reductions.¹¹⁴ The MAGPs have been heavily criticized for failing to rationalize the EU fleet and reduce overcapacity.

5.1.1 The Fourth Multi-Annual Guidance Programme (MAGP IV)

During the mid-term review of the MAGP IV in 2000, the Commission¹¹⁵ noted that perversely, the real level of fishing effort had very possibly increased since the beginning of MAGP IV in 1997, and suggested further measures to make this policy framework more effective in tackling fleet overcapacity.

The Commission suggested modifying the way in which capacity reduction rates were calculated, and that the required reduction in fishing mortality should be achieved exclusively through cuts in fleet capacity rather than by combinations of capacity and effort cuts which had proved hard to make effective in practice.

A detailed analysis of MAGP results between 1 January 1997 and 30 June 2002 conducted in 2002¹¹⁶ showed that, in effect, the summary of structural changes that was reported by Member States failed to highlight the capacity increase that had actually occurred for some important fleet segments. Although every Member State had complied with their overall reduction targets expressed in terms of kW¹¹⁷, only Denmark, Spain, Portugal, Ireland and Finland had effectively met their targets for all their fleet segments considered individually. Member States were required to suspend public aid schemes funded through the Financial Instrument for Fisheries Guidance (FIFG) for fleet segments that had failed to comply with reduction targets.

A summary of compliance is provided in Table 2, indicating with an amber colour the Member States with fleet segments that failed to comply with the MAGP IV interim objectives. By 2002, all Member States had complied with their overall fleet targets, but only five Member States had also complied with each segment capacity target and eight had failed to comply with some of their segment objectives. Furthermore, the 2003 CFP Compliance Scoreboard¹¹⁸

¹¹⁰ Regulation (EC) N° 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy; art. 1

¹¹¹ note preamble (12)

¹¹² note chapter II

¹¹³ note; chapter III

¹¹⁴ “fishing effort” means the product of the capacity and the activity of a fishing vessel; for a group of vessels it is the sum of the fishing effort of all vessels in the group.” Regulation 2371/02, *supra* note 4, Article 3 (h).

¹¹⁵ COM (2000) 272 final, 10.5.2000. Report from the Commission to the Council. Preparation for a mid-term review of the Multi-annual Guidance programme (MAGP).

¹¹⁶ COM (2002) 483 final, 03.9.2002. Report from the Commission to the Council on the intermediate results of the multi-annual guidance programmes for the fishing fleet at 30 June 2002.

¹¹⁷ Gross Tonnage (GT) could not be used as an indicator because of progressive re-measurement over the period

¹¹⁸ http://ec.europa.eu/fisheries/fleet/index.cfm?method=FM_ReportingScoreboard accessed 15 April 2009

indicated that formal EU legal infringement procedures for failure to meet MAGPIV interim objectives were pending for Ireland, Italy and the Netherlands (indicated by a red X).

Given the weakness of the MAGP model it was not surprising that after a year's extension to cover the period

Table 2.A number of fleet segments in compliance with MAGPIV objectives (in power (kW)) relative to national total, by Member State for the period 1997-2002

Member States	Fleet segments
Belgium	1/2
Denmark	4/4
Germany	6/7
Greece	5/6
Spain	7/7
France	19/21
Ireland	3/3 X
Italy	7/11 X
Netherlands	4/7 X
Portugal	10/10
Finland	4/4
Sweden	5/6
United Kingdom	7/8

	Global and segment objectives achieved
	Segment objectives not achieved
X	Infringement procedures pending in 2003 ¹¹⁹
x/y	Fleet segments with objectives achieved/total

to 31 December 2002¹¹⁹ it was replaced by the new Entry-Exit fleet management programme.

5.1.2 Entry-Exit regime

The 2002 CFP reform introduced the Entry-Exit regime, a simpler fleet management scheme with three operational objectives. The first is to give more responsibility to Member States which now have to “*put in place measures to adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between fishing capacity and their fishing opportunities*”¹²¹. The second is to simplify fleet management¹²², and the third to end subsidies for fleet renewal which was identified clearly as an ongoing problem.

New provisions for the adjustment of fishing capacity are detailed in Chapter III articles 11 to 16 of Regulation 2371/2002. Fleet capacity adjustments now rely on:

- 1 The determination by each Member State of ceiling capacity reference levels not to be exceeded (art.12), expressed in both GT and kW, on the basis of the sum of the objectives of the MAGP 1997 to 2002, and the obligation by Member States to ensure that their fishing capacity remains below these levels (art. 11);
- 2 Records kept by each Member State of fishing fleet registers containing minimum information on vessel characteristics and activity that is necessary for the management of measures established at the Community level (art. 15) This needs to be communicated annually to the Commission no later than 30 April the following year (art. 14);
- 3 The establishment by each Member State of an entry/exit scheme to cover all vessel movements in and out of the fleet (art.13) that allows the entry of new capacity into the fleet without public aid, only if it is compensated by a withdrawal of vessels of at least the same capacity; and

¹¹⁹ Commission Decision 2002/652/EC of 29 July 2002 amending Decisions 98/119/EC to 98/131/EC in order to prolong the multi-annual guidance programmes for the fishing fleets of the Member States until 31 December 2002 (notified under document number C(2002) 2831)

¹²⁰ Number of fleet segments 2002 : for which intermediate target were met at 30.6.2002. COM (2002) 483 final.

¹²¹ COM(2008) 331, final. 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission.

¹²² http://ec.europa.eu/fisheries/cfp/2002_reform/fleet_en.htm accessed 15 April 2009.

- 4 The entry of new vessel capacity into the fleet with public aid (art. 13), which is permitted provided that the same capacity is withdrawn for new vessels of 100GT or less, or that 1.35 times the capacity is withdrawn for new vessels of more than 100GT. Furthermore, any capacity withdrawal supported by public aid must be accompanied by a permanent withdrawal of the corresponding fishing license, and must be deducted from the national reference levels permanently;

The Regulation also introduces the conditions under which each Member State is able to obtain financial assistance from the EU based on its reduction of fishing effort and the requirements for keeping and providing information, and complying with the new rules (art. 11, 13 and 15).

There are also provisions for:

- Commission emergency measures (art. 7); and
- Member State emergency measures (art. 8).

Implementation details for the new fleet policy are set out in two accompanying Council Regulations, one to amend existing rules and arrangements regarding Community structural assistance¹²³, and another to establish an emergency Community measure for scrapping fishing vessels¹²⁴.

Member States must put in place their own management plans to deal with overcapacity, and report on the outcome to the Commission. The reporting requirements and way they are complied with became an important part of the new fleet management system. The new data collection and reporting obligations are detailed further in Commission Regulation 1438/2003. Member States must now report on their efforts to “*achieve a sustainable balance between fishing capacity and fishing opportunities*” by 30 April (art. 12) and in a maximum of 10 pages containing “at least” (art. 13), the following:

- a) “A description of the fishing fleets in relation to fisheries: developments during the previous year, including fisheries covered by multi-annual management or recovery plans;

- b) The impact on fishing capacity of fishing effort reduction schemes adopted under multi-annual management or recovery plans or, if appropriate, under national schemes;
- c) Information on the compliance with the entry/exit scheme and with the level of reference;
- d) A summary report on the weaknesses and strengths of the fleet management system together with a plan for improvements and information on the general level of compliance with fleet policy instruments;
- e) Any information on changes of the administrative procedures relevant to the management of the fleet.”

Whilst the entry-exit scheme has resulted in more transparency regarding Member States action on fleet management, there have been a number of obstacles to real reductions in capacity. Firstly, the kilowatt (kW) indicator used for “capacity” measurement is still very unreliable. Secondly, the concept that Member States now have to “put in place measures to adjust capacity” has a positive intention but it has actually led to a more lenient approach to capacity reduction. The Commission has little power to push the Member States for further reductions of the kind needed; the leverage essential to tackle a persistent problem is inadequate.

5.1.3 Community Fishing Fleet Register (CFR)

As indicated earlier, the fleet management policy changed substantially with the 2002 reform. The MAGPs disappeared, so did fleet segmentation and the objectives by segments were replaced with reference levels and a strict exit-entry scheme. These changes also led to the adaptation of the Fleet Register as additional data now needed to be collected and also because the new data access rules meant that the Fleet Register data was no longer restricted to Member States. The new Community Fishing Fleet Register¹²⁵ was therefore adopted in 2004. Since 2004, each Member State is required to transmit data on their fleets on

¹²³ Regulation (EC) N° 2369/2002 of 20 December 2002 on the European Fisheries Fund

¹²⁴ Regulation (EC) N° 2370/2002 of 20 December 2002 establishing an emergency Community measure for scrapping fishing vessels

¹²⁵ Regulation (EC) N° 26/2004 of 30 December 2003 on the Community fishing fleet register.

a quarterly basis to the Commission. These data are classified into four different categories:

- Administrative identifications: name, port, external markings;
- Technical characteristics: length, tonnage, power, fishing gear;
- Historical events: entry into and exit from the fleet, modifications of characteristics;
- Personal data: agent and owner's name and address.

According to the Commission, information provided in the CFR has resulted in improvements to the quality of the Member States' annual reports on the structural policy. This is illustrated in Table 3, which shows an obvious improvement from the 2003 Scoreboard¹²⁶, which reported that only 7 out of 12 Member States had a full or almost full reporting compliance. Presently, Member States including all new entrants, update their CFR data quarterly¹²⁷.

The Commission synthesis of Member States reports for 2007¹²⁸ shows a full compliance with the entry-exit regime on the basis of data available in the CFR on 9 October 2008 and additional data from Member States. It is therefore concluded that the 2002 CFP reform brought in a rationalized and efficient CFR.

However, despite the steady fleet capacity decrease, most fishing opportunities have not been brought to sustainable levels (see below) and the fleet capacity mismatch will need to be addressed by the 2012 reform much more effectively.

Table 3. Compliance with Community Fleet Register reporting obligations

Member States	2003	2004	2005	2006	2007
Belgium	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Bulgaria	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Denmark	More than average compliance	More than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Germany	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Estonia	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Greece	More than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Spain	Full or almost full compliance	More than average compliance	More than average compliance	Full or almost full compliance	Full or almost full compliance
France	Full or almost full compliance	More than average compliance	More than average compliance	Full or almost full compliance	Full or almost full compliance
Ireland	Less than average compliance	Poor compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Italy	Less than average compliance	Less than average compliance	More than average compliance	Full or almost full compliance	Full or almost full compliance
Cyprus	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Latvia	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Lithuania	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Malta	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Netherlands	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Poland	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Portugal	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Romania	Less than average compliance	Less than average compliance	Less than average compliance	Less than average compliance	Full or almost full compliance
Slovenia	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Finland	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
Sweden	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance
United Kingdom	Less than average compliance	Less than average compliance	Full or almost full compliance	Full or almost full compliance	Full or almost full compliance

Full or almost full compliance	More than average compliance
Less than average compliance	Poor compliance

¹²⁶ Regulation (EC) N° 26/2004 of 30 December 2003 on the Community fishing fleet register.

¹²⁷ http://ec.europa.eu/fisheries/fleet/index.cfm?method=FM_ReportingAnnualReport&ar_year=2007.

¹²⁸ http://ec.europa.eu/fisheries/fleet/index.cfm?method=FM_ReportingAnnualReport&ar_year=2007, accessed 22 April 2009

5.1.4 Fishing effort control

In 2007, a Commission report on the Member States' implementation of the CFP in 2003-2005¹²⁹ lamented that "control of fishing effort, which should be implemented in a way to complement quota limits, seems to be implemented in a way that causes least effect on actual fishing activity. There is no evidence that the reduction in fishing effort has compensated for over-capacity in the fleet, even taking into account the effect of decommissioning schemes". This had been noted before¹³⁰ and suggests the need to explore separate measures for the permanent reduction of fleet capacity on the one hand, and temporary control of fishing activity (effort) on the other.

5.1.5 Fishing capacity in relation to fishing opportunities

Fishing capacity is defined in Regulation 1438/03 and recorded as the vessel's tonnage in GT and its power in kW, with "*certain types of fishing activity, capacity may be defined by the Council using for example the amount and/or the size of a vessel's fishing gear*".¹³¹ And Council Regulation 2371/02 defines fishing opportunity as "*a quantified legal entitlement to fish, expressed in terms of catches and/or fishing effort*"¹³², and "*catch limit*" as a "*quantitative limit on landings of a stock or group of stocks over a given period unless otherwise provided for in Community law*"¹³³.

Catch and/or fishing effort limits and associated conditions are set annually by the Council of Ministers for each stock or fishery, and fishing opportunities allocated among the Member States¹³⁴.

In the 2012 reform, the crucial links between fishing mortality, fishing effort and fishing capacity need to be enshrined in a new structural policy. This is a complex task; indeed the difficulty of establishing the links between fishing capacity and fishing opportunities was identified by the Commission Scientific, Technical and Economic Committee for Fisheries (STECF)¹³⁵ as one of the main factors of failure in MAGP IV¹³⁶.

The majority of Member States are still very far from linking their fleet capacity to specific fishing opportunities in their

reports in any manner that would allow the Commission to analyse efforts made to achieve a balance between the capacity of the fishing fleet and the available fishing opportunities. However this is a legal obligation, as stipulated by Article 14 of Regulation 2371/02¹³⁷ and specifically required by Article 13 (1) (a) of Regulation 1438/03¹³⁸.

5.1.6 Fleet segments

The complexity of linking capacity to fishing opportunities may lie in part with the definition of fleet segments, which has changed over the years. Unfortunately, the obligation to report on MAGP IV segments was abandoned from 1st January 2005, making it difficult to monitor compliance through the fleet capacity regime change. Thereafter, the link established between segment capacity compliance and FIFG funding was broken, although some Member States have kept the original segmentation in their national data systems.

Changes in the number of fleet segments since 2002 are apparent for three out of the five Member States which reported in 2002 and for 2007, using the indicators in the 2008 Guidelines (see section 5.1.7) (Table 4). For the purpose of linking fishing capacity to fishing opportunities, Denmark and Italy have increased the number of segments they consider in their reports, from 4 to 12 and 11 to 21 respectively, while the Netherlands has decreased the number of fleet segments from 7 to 3. The three Dutch segments are AQU – for aquaculture vessels – and MFL – the Main fishing Fleet - split into two national sub-segments MFL1 and MFL2, with MFL2 including all vessels fishing for non-quota species. According to the Netherlands' report for 2007¹³⁹ a key advantage of using the MFL very wide fleet segment lies in the greater flexibility for vessels to switch gear; and for capacity transfer between what used to be the old segments. However, with a segment as wide as MFL or even MFL1 that includes demersal and pelagic trawlers, it is difficult to imagine how capacity can be matched to fishing opportunities in any simple or meaningful way.

In 2006, the Commission concluded that more detailed guidelines were needed for the content of the annual reports, alongside a common harmonized methodology to

¹²⁹ COM (2007) 167 final, 10.4.2007. Report from the Commission to the Council and the European Parliament on the monitoring of Member States' implementation of the Common Fisheries Policy 2003-2005.

¹³⁰ COM(2008) 331, final, 30.5.2008. Fishing Opportunities for 2009. Policy Statement from the European Commission

¹³¹ note; art. 3 (n)

¹³² note; art. 3 (r)

¹³³ note; art. 3 (m)

¹³⁴ note; art. 20 (3)

¹³⁵ SEC (2003) 74, 21.1.2003. Commission Staff Working Paper; The STECF subgroup on balance between resources and their exploitation. Report investigating the scientific basis for a follow up to the fourth generation MAGP (2001), 3rd Meeting, Brussels 19-21 November 2001, 132pp. and Annex 102pp.

¹³⁶ *Ibid* 118

¹³⁷ Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

¹³⁸ Regulation (EC) N° 1438/2003 of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) N° 2371/2002.

¹³⁹ Binet, T. and Lutchman, I. (2007) *Interim assessment of the European Union recovery plans*. Institute for European Environmental Policy, London. 19pp.

link fishing capacity to available fish stocks¹⁴⁰. Progress had remained slow even though some guidance on the computation of technical, biological, economic and social indicators of overcapacity had already been given by the STECF in 2003¹⁴¹, and the Commission noted again in December 2008 that most Member States repeatedly failed to make any link between capacity and fisheries in their reports¹⁴².

In 2007, the Commission released more information on ways of improving fishing capacity and effort indicators under the CFP¹⁴³. The European Parliament¹⁴⁴ expressed the view that it was unacceptable that Member States failed to comply with their obligations to forward data in relation to matching their fishing capacity with the state of the stocks. The same year STECF confirmed that Member States' reports simply emphasized the implementation of national fleet management measures and did not describe their efforts to balance fishing fleet capacity with available fishing opportunities¹⁴⁵. It also stressed that the reported reductions in GT and kW were feeble attempts when *"confronted with the important effort reductions still required for some important fish stocks, the steady technological creep, and the poor economic performance of important parts of the fleet"*.

In the same 215 pages tome, the STECF reported on an Expert Group (EG) meeting held in October 2007 at the demand of the Commission to (in particular):

- Discuss a suitable approach to the meaning of "fishing opportunities", "fishing capacity" and of the "balance" between them, in view of available information on fleets and fisheries;
- Identify quantitative indicators that assist in the qualitative assessment of the balance between fishing capacity and fishing opportunities as undertaken at Member State and Commission level.

¹⁴⁰ COM (2006) 872 final, 9.1.2007. Annual Report from the Commission to the Council and the European Parliament on Member States' Efforts during 2005 to Achieve a Sustainable Balance Between Fishing Capacity and Fishing Opportunities.

¹⁴¹ COM(2008) 187 final, 11.4.2008 Communication from the Commission to the Council and the European Parliament: The role of the CFP in implementing an ecosystem approach to marine management.

¹⁴² Annual reports http://ec.europa.eu/fisheries/fleet/index.cfm?method=FM_Reporting_menu accessed 14 April 2009

¹⁴³ COM (2007) 39 final, 5.2.2007. Communication from the Commission to the Council and the European Parliament on improving fishing capacity and effort indicators under the common fisheries policy.

¹⁴⁴ European Parliament non-legislative resolution INI/2007/2108 of 5 September 2007 on Member States' efforts during 2005 to achieve a sustainable balance between fishing capacity and fishing opportunities.

¹⁴⁵ SEC (2007) 474 final EC, 2.4.2007. Commission Staff Working Document - 21st Report of the STECF - (Second Plenary Meeting 7-11 November 2005).

Table 4. Number of fleet segments used in reports for 2002 and 2007 for Member States using the 2008 Guidelines

Member States	Fleet segments	
	2002	2007
Belgium	2	2
Bulgaria	—	4
Denmark	4	12
Italy	11	21
Lithuania	—	2
Malta	—	3
Netherlands	7	4
Sweden	6	6

5.1.7 Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities

The STECF Expert Group met again in February 2008, and the combined results of its two meetings are summarized in a set of detailed guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities¹⁴⁶, herein called the "2008 Guidelines". The Guidelines are important as they are a critical tool towards balancing capacity and resources. Consequently, we consider the recent use of the guidelines in some detail.

The 2008 Guidelines recommend the use of eight indicators – one technical indicator, three biological indicators, two economic indicators and two social indicators. These indicators have been recommended to Member States to assist with their efforts to balance capacity with fishing opportunities.

The Commission recommends the technical indicator, defined as the ratio between average days at sea and maximum days at sea observed in a fleet segment, to be of *"primary importance"* because *"it is based on robust data, it provides a reference for a fishing capacity potential in prevailing*

¹⁴⁶ DG MARE (2008). Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities. The use of indicators for reporting according to Art 14 of Council Regulation 2371/2002. Version 1 March 2008, 11 pp.

circumstances for the fishing activity, and it can be quickly calculated". It also recommends that, as a minimum, the technical indicator be applied to all fleet segments as a baseline.

In addition to the technical indicator, the Commission identifies the biological indicators as very important as "*a healthy resource base is a prerequisite for sustainable exploitation*". However, it acknowledges that the calculation and interpretation of these indicators will need support from fisheries scientists. Equally, the economic indicator complements the biological indicator, and the social indicator "*makes good the fact that the other indicators do not show the societal benefits of the economic activity*". A description of the indicators and sources of data in calculating them (mainly referring to the Data Collection Regulation, DCR¹⁴⁷) is given in the 2008 Guidelines and some examples of how the indicators can be calculated are provided in the annex of the 2008 Guidelines¹⁴⁸.

Published in January 2009, the Commission annual report provides an analysis of the Member States' annual report submissions with regard to their compliance with reporting obligations and fleet capacity changes during 2007¹⁴⁹. The following important points can be noted:

- Only 13 of the 22 expected Member States submitted their reports on time by the end of April 2008. The UK failed to submit its annual report altogether;
- All Member States have complied with the entry-exit ceiling and the reference levels at 31 December 2007, according to data extracted directly from the Community Fleet Register, as noted previously;
- The EU fleet was reduced by approximately 11 per cent net over the five-year period 2003-2007, most of this with public aid;
- Despite a slow but steady decline in fleet capacity at an annual rate between 2 per cent and 3 per cent over the last 16 years, the Commission remarked that the lack of effect on the fisheries "*puts a question mark over the effectiveness of the capacity adjustment applied under the CFP*"; and that

- Some Member States have made use of the 2008 Guidelines, despite "the short deadline and their rather technical nature".

The national reports on efforts to balance fishing capacity with fishing opportunities for 2007 were the first which made use of the 2008 Guidelines. IEEP has undertaken its own evaluation of the national reports to complement the Commission's analysis. For those Member States using the 2008 Guidelines, a first indication of fleet segment over-capacity for 2007 is evident.

In particular, it is noted that:

- Only eight Member States reported on the new set of indicators for some of their fleet segments and some fisheries;
- In these eight Member State reports, the technical indicator has been "applied to all fleet segments as a baseline"¹⁵⁰;
- The 2008 Guidelines recommend that one indicator should be used from each biological, economic and social group, but despite this, information provided on these indicators is very patchy and cannot be analyzed further;
- Germany submitted a useful table giving the correspondence between its fleet segments and main target stocks (species and areas), and this should become part of all future submissions; finally
- For the new indicators, reported values nearly always fall into either the red or amber categories established in the 2008 Guidelines, indicating important or major problems with the fleet segments and fisheries concerned.

The technical indicator used by most Member States is the ratio of actual to maximum available days at sea by fleet segment¹⁵¹. The 2008 Guidelines assume that a fleet using at least 90 per cent of its fishing days has no technical problems (green indicator value), a segment using less than 70 per cent of its fishing days has serious technical problems

¹⁴⁷ Regulation (EC) N° 199/2008 of 25 February 2008 concerning the establishment of an EU framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (CFP).

¹⁴⁸ DG MARE, 2008. Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities. The use of indicators for reporting according to Art 14 of Council Regulation 2371/2002. Version 1 March 2008, 11 pp.

¹⁴⁹ COM (2008) 902 final, 12.1.2009. Annual report from the Commission to the European Parliament and the Council on Member States' Efforts During 2007 to achieve a Sustainable Balance Between Fishing Capacity and Fishing Opportunities, with annex.

¹⁵⁰ COM(2008) 187 final, 11.4.2008 Communication from the Commission to the Council and the European Parliament: The role of the CFP in implementing an ecosystem approach to marine management.

¹⁵¹ Except in the Danish report which uses an equivalent actual to maximum number of vessels.

(red indicator value). Intermediate indicator values are given amber rating.

The numbers of fleet segments falling in each of the green, amber and red category for the technical indicator are given in Table 5 relative to the total number of segments for the eight Member States that used the 2008 Guidelines. In some cases such as for Bulgaria, the total number of segments considered in the 2007 report is not really clear. This is largely due to the fact that the reporting format is not prescribed and the complexity and multiplicity of the data reported are difficult to disentangle.

Based on the values of the technical indicator alone, it is possible to identify problems more readily, and it is apparent that most fleet segments experience serious (amber) or acute (red) technical problems (Table 5).

Table 5. Number of fleet segments with green, amber and red values in 2007 relative to total fleet segments for Member States using the 2008 Guidelines

Member States	2007 Fleet segments		
Belgium	1/2	1/2	
Bulgaria		4	
Denmark		7/12	5/12
Italy	1/21	2/21	11/21
Lithuania			2/2
Malta			3/3
Netherlands		1/4	
Sweden			6/6
United Kingdom			

Looking to 2012, it is evident that the management of fleet capacity will need to be reformed in order to manage permanent capacity reduction and temporary fishing effort control separately, and to establish clear functional links between fishing capacity and fishing opportunities. The

development and use of the 2008 Guidelines is very promising but their increased usage will only be achieved if the use of indicators becomes mandatory. This will require the 2003 Regulation¹⁵² to be updated, implemented and enforced. Consequently, the Commission needs to provide a new reporting format, acknowledging the fact that information on the entry/exit regime and the Outermost Regions are now provided directly and in separate reports and should not be confused with the requirement to report on efforts to balance fishing capacity with fishing opportunities.

Looking ahead to 2012, the Commission must provide guidance on both the new annual report presentation and its content, stipulating, for example, a list of headings that need to be informed, as well as progressive steps to present the data that are used to compute the indicators. These changes would increase the transparency of national reports and benefit the Commission's annual synthesis and reporting to the Council and the Parliament. Finally, but above all, the Commission must seek ways to ensure that all Member States respect their legal obligations to report on time.

On the methodological side, the definition of some fleet segments will need to be clarified, as already planned by some Member States for 2008, to allow for more natural links between fleet activity and resources and provide more precise indicators that can be linked to the Ecosystem-based Fishery Management Plans (see section 4.3.2).

In order for the Commission to fully assess the level of EU fishing capacity, all fisheries areas must be reviewed in order to obtain realistic indicators, including for the most mobile segments. The Commission must make sure to include all Member States active in each fishery, and to report on all fleet segments. In particular, the small-scale under-12m coastal fishing fleet, which makes up the large majority of European fishing vessels numbers¹⁵³, need to be counted and also linked to their target fisheries resources.

5.2 Structural Funds and fleet capacity adjustment

Financial aid is available on a considerable scale from the EU to assist the aims of the CFP Structural Policy. In theory at

¹⁵² Regulation (EC) N° 1438/2003 of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council regulation (EC) N° 2371/2002.

¹⁵³ in all Member States except for Netherlands and Belgium, Ifremer consortium (2007). Small-scale Coastal Fisheries in Europe N° FISH/2005/10, 447pp.

least, aid from the relevant fisheries “financial instruments” within the Structural Funds aim to contribute to achieving a sustainable balance between fishery resources and their exploitation, and to strengthen the competitiveness of the sector and development of fishing areas dependent upon it.

5.2.1 FIFG (2002-2006)

The Financial Instrument for Fisheries Guidance (FIFG) was the instrument supporting the CFP structural policy between 2000 and the end of 2006 and straddles two fleet management regimes, MAGP IV and from 1st January 2005, the Entry-Exit regime.

The FIFG goals linked to the management of fleet capacity were to¹⁵⁴:

- Contribute to achieving a lasting balance between fisheries resources and their exploitation;
- Strengthen competitiveness and the development of economically viable businesses in the fishing industry;
- Help revitalise areas dependent on fisheries and aquaculture.

FIFG supported MAGP IV in particular with measures for¹⁵⁵:

- Fleet renewal and modernisation;
- Adjustment of fishing efforts through permanent cessation of fishing activities, or transfer to a third country, including through the creation and operation of joint enterprises; and
- The temporary suspension of activities, linked to resource recovery plan closures or to technical gear restrictions.

However, it is of considerable concern that the sustainability impact of the FIFG between 2000 and 2006 is not clear.

In 2003, Member States carried out a mid-term evaluation of their FIFG programmes to examine the initial results of the assistance, their relevance and the extent to which the targets have been attained, but national reports have not been made public. Personal communications from experts who performed some of the evaluations suggest that no

links were established between state aid and stock recovery plans.

Close scrutiny of the FIFG programme to rationalise the Danish fleet¹⁵⁶ also established the perverse incentive of modernisation subsidies that led to an increased, rather than decreased, fishing capacity.

The Synthesis report of national mid-term evaluations¹⁵⁷ notes that “the adjustment of fishing effort proved very popular and in many cases shows a very high take-up rate”. This was also the case for “Fleet renewal and modernisation”. However, the report deplores that “the mid-term evaluations ... contain very little detail on programme results and impacts, largely because so little spending through FIFG” had taken place by 2003. The synthesis also puts forward several possible explanations for the initial very slow FIFG uptake, noting among other factors, a “weak financial state of the sector, declining natural resources, and difficulties in reaching small project sponsors.”

The final evaluation of FIFG national programmes is currently underway and will be completed by the end of 2009.

5.2.2 The European Fisheries Fund (EFF)

The European Fisheries Fund (EFF) replaced the FIFG as the CFP financial instrument from 2007.

Under the EFF, funding is available for measures under five priority areas, or axes:

- Priority axis 1 – adapting the Community fleet;
- Priority axis 2 – aquaculture, inland fishing, processing and marketing of products;
- Priority axis 3 – measures of common interest;
- Priority axis 4 – sustainable development of fisheries areas; and
- Priority axis 5 – technical assistance.

With a budget of 4.3 billion for the programming period 2007-2013, the EFF covers all fishing and aquaculture activities over the enlarged European Union, including

¹⁵⁴ Regulation (EC) No. 1263/1999 of 21 June 1999 on the Financial Instrument for Fisheries Guidance.

¹⁵⁵ Regulation (EC) No. 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector; Title II

¹⁵⁶ Lindebo, E. (2005). Role of subsidies in EU fleet capacity management. *Marine Resource Economics* 20: 445-466.

¹⁵⁷ London Economics (2004). A Synthesis of the mid-term evaluations of the FIFG 2000-2006. Report to the European Commission DG Fish, March 2004, 38pp.

inland. It represents potential support of around 578 million a year to all 26 Member States (there is no operational programme for Luxembourg), supplemented by around 470 million a year of matching national public funds (i.e. co-funding).

There are seven aims to the financial assistance provided by the EFF¹⁵⁸ and in particular with regards the European fishing fleet. The aim of promoting a sustainable balance between resources and the fishing capacity of the Community fishing fleet corresponds to priority Axis 1 of "Measures for the adaptation of the Community fishing fleet" and to a lesser extent to Axis 4 for the "Sustainable development of fisheries areas".

In an introduction to the EFF Council Regulation and accompanying Commission Regulation laying down its detailed implementation rules¹⁵⁹, the Commission notes that, *"on fleet support, the EFF retains the spirit of the change that had already been made to the FIFG regulation in 2005"*. However, *"the EFF finances certain types of assistance that did not exist under the FIFG, such as measures to accompany stock recovery plans (art. 24), support for more selective fishing methods and the diversification and conversion of areas affected by declining resources"*.

The EFF budget was divided between the Member States based on the size of their fisheries sector, the number of people working in the sector and the adjustments considered necessary for the fishing industry and for the continuity of the activities, according to each Member State's high level objectives as described in the priorities of each Operational Programme (OP)¹⁶⁰. In addition, about 75 per cent of the budget is earmarked for the regions eligible under the EU's convergence objective (i.e. less prosperous regions with a GDP per inhabitant less than 75 per cent of the EU average, EC 2008¹⁶¹). These also benefit from higher project support rates.

From 2007, in the new programming period, the EFF (unlike FIFG before it) has a much more transparent and timely reporting mechanism, separate from other Structural Funds.

The Commission's first annual implementation report¹⁶² notes, yet again, that only 19 out of 26 OPs were submitted on time to be adopted by the end of 2007. Consequently, financing of the remaining OPs, including for the UK, will now be spread over six years instead of seven.

For the first year, about 27 per cent of Member States' allocations went to priority Axis 1 (adaptation) and about 10 per cent to priority Axis 4 (sustainable development)¹⁶³. Italy (38 per cent), Greece (37.2 per cent), Spain (35.6 per cent), the Netherlands (34.8 per cent) and France (27.6 per cent) have the highest allocations to Priority Axis 1 and thus to fleet reduction measures.

At this early stage, budget allocations indicate no direct links between specific species recovery plans and fleet adaptation measures. Therefore there is no suggestion that these measures will be more effective under the EFF than they were under the FIFG. The emphasis placed by each Member State on specific measures may become more apparent in the second year implementation report, provided that links made between fleet capacity adjustment and fishing opportunities are explicit.

5.2.3 Emergency measures

In July 2008, following a *"drastic increase in fuel prices"* which affected the profitability of fishing fleets, Council Regulation 744/2008¹⁶⁴ introduced a set of emergency measures *"to promote the restructuring of fleets affected by the economic crisis"*, providing assistance to vessels wanting to stop fishing permanently. The financial provisions are drawn from the EFF, and therefore some EFF measures and implementation rules have been temporarily altered and others have been added

Interestingly, in July 2008, in an assessment of the progress of the CFP since 2002, the House of Lords European Union Committee¹⁶⁵ in the UK concluded that there had been a failure of the *"2002 reform - which handed responsibility for adapting fleet size to fishing opportunities back to Member States - to stimulate fleet reductions"*¹⁶⁶. It added *"It may thus be left to the market to precipitate exits from national fleets—notably through fuel prices."*

¹⁵⁸ Regulation (EC) No. 1198/2006 of 27 July 2006 amending regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector; art. 4

¹⁵⁹ Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund.

¹⁶⁰ OPs are available in the Member States own languages, on the europa website, accessed 16 April 2009 http://ec.europa.eu/fisheries/cfp/structural_measures/operational_programmes_en.htm

¹⁶¹ European Fisheries Fund 2007-2013 Regulations, 124pp.

¹⁶² COM(2008) 902, final, 12.1.2009. Annual Report from the Commission to the European Parliament and the Council on Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities.

¹⁶³ COM (2009) 6 final, 16.1.2009. Report from the Commission. Annual report on implementation of the European Fisheries Fund, 15p.

¹⁶⁴ Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis; preamble (3)

¹⁶⁵ UK, 2008. House of Lords, European Union Committee Publications. July 2008. European Union - Twenty-First Report, from <http://www.parliament.the-stationeryoffice.com/pa/ld200708/ldselect/lducom/146/14607.htm> accessed 16 April 2009.

¹⁶⁶ Chapter 4: Summary of Conclusions and Recommendations; points 232 to 234

5.2.4 De minimis Regulation

From 10 July 2007, the specific “*de minimis*” regulation¹⁶⁷ for fisheries increased the ceiling on national grants that do not have to be notified to the Commission to a total sum of 30 000 per enterprise (i.e. not per vessel) over three years¹⁶⁸, provided that the cumulative sum of all aid granted in the Member State concerned remains below 2.5 per cent of the turnover of its fisheries sector.

The principle of a ceiling is common to all state aid programmes, and aims to reduce potential unfair competitive advantage between operators in the sector. For fisheries, it applies to all possible support listed in the Block Exemption Regulation¹⁶⁹ and emergency measures¹⁷⁰.

The effects of a possible increase in the *de minimis* ceiling per enterprise (up to 100 000¹⁷¹) were recently investigated. This study showed that an increase in the ceiling would increase a vessel's potential and by extension a fleet segment's Gross Value Added (GVA), is similar to a subsidy towards operating cost, and would provide an incentive to continue fishing. The study also noted that the potential impact on fishing activities and therefore resources, varied between fleet segments, with the current lower ceiling having relatively more impact on smaller vessels while even the raised ceiling would represent a value less than 10 per cent of the GVA of larger vessels. Finally, it concluded that “*both present and proposed de minimis regimes are ill-suited to meet the higher fuel costs of the fleet segments which need it most.*”

In its annual report, the Commission expresses some enthusiasm that the 2008 fuel price crisis and associated emergency support measures are “providing an opportunity to achieve the necessary restructuring of the fleet which should not be missed”¹⁷². However, in order for others to share such optimism, the Commission would need to:

Conduct a final assessment of the FIFG, particularly the combined effects of its various measures in terms of an effective control of fleet capacity, fishing efficiency and fishing effort, in relation to fishing opportunities;

Give clear summary descriptions of Member States' Operational Plans (currently only available in national language), and agreed budgets for priority measures;

Clearly establish the links between fishing capacity, fishing activities and fishing opportunities for every State Aid that aims to decrease fishing mortality, and for any modernisation measure that may result in increased fishing mortality.

In conclusion, it is still not possible to establish the effectiveness of European fisheries Structural Funds in supporting a sustainable structural policy. Until fishing fleet capacity can be linked to fishing opportunities, it is difficult to assess whether the FIFG or the EFF and its emergency measures, have or will contribute to an effective fleet capacity reduction or provide incentives to continue fishing and in so doing contribute to sustaining over-capacity.

5.3 Roles and Impacts of subsidies

The fishing sector is in receipt of a considerable volume of subsidies from the EFF and other sources. These have the potential to maintain unsustainable practices or to help to assist change. In simple terms subsidies can be classified roughly into “bad” and “good” subsidies. We follow this approach and suggest that there needs to be more progress to eliminate perverse incentives, i.e. those that slow down further fleet capacity reductions.

5.3.1 “Bad subsidies”

According to a recent scientific report¹⁷³, the majority of the EFF budget and matching national contributions - about 1 billion per year over seven years - should be counted as “bad subsidies”, because of the perverse incentive they provide to maintain excessive fishing capacity and fishing effort. Some of the measures have obvious potential to increase fishing capacity or fishing activities hence fishing mortality, and are examined below.

The 2002 CFP reform brought significant reductions to the level of EU subsidies in support of fleet management, and notably:

- An end of vessel construction subsidies after 31 December 2004¹⁷⁴;

¹⁶⁷ Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) N° 1860/2004.

¹⁶⁸ The general *de minimis* aid ceiling was increased to 7200 000 in 2007; the previous *de minimis* ceiling for fisheries project was 3 000.

¹⁶⁹ Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises actives in the production, processing and marketing of fisheries products.

¹⁷⁰ Regulation (EC) N° 2370/2002 of 20 December 2002 establishing an emergency Community measure for scrapping fishing vessels

¹⁷¹ Framian (2009). Economic analysis of raising *de minimis* aid for fisheries (MARE/2008/12), 63pp.

¹⁷² COM(2008) 902, final. 12.1.2009. Annual Report from the Commission to the European Parliament and the Council on Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities.

¹⁷³ Sumaila, U.R. and D. Pauly eds., 2007. Catching more bait: A bottom-up re-estimation of global fisheries subsidies (2nd version), UBC Fisheries Research Centre report, 14(6) 121 pp.

¹⁷⁴ “In continuity with the some of the FIFG provisions, aid to build new fishing capacity until 31 December 2004 for vessels under 400 GT was allowed for those Member States who had met the objectives set for their fleets in the MAGP IV ending on 31 December 2002”.

- Stricter entry/exit rules; and
- Restricted modernisation subsidies.

The EU subsidies that are still allowed are defined in the measures and conditions laid down in the Council Regulations on the EFF¹⁷⁵ and its detailed implementation rules¹⁷⁶. National subsidies are to some degree circumscribed by the Commission Regulation that grants a Block Exemption to SMEs (Small and Medium Enterprises) from the notification requirement for State Aid of Article 88(3) of the Treaty¹⁷⁷. In effect, national subsidies below a threshold do not have to be notified to the Commission and assessed for their impact on competition within the single market.

5.3.2 Investments on board fishing vessels

The EFF Axis I (fleet measures) allows for investments on board fishing vessels, to improve safety, working conditions, hygiene, product quality, energy efficiency, gear selectivity, and fuel efficiency, provided these do not increase fishing effort. Contributions toward engine replacement are also allowed, provided the new engine is 20 per cent less powerful, unless the vessel is less than 12m and does not use towed gear, in which case the new engine may have the same capacity as the old one. Although subsidy uptake by small coastal vessels seems to have been limited under FIFG¹⁷⁸, mostly because of the small firms' lack of own finances, EFF subsidies towards new engines (within the capacity cap) have the potential to provide direct incentives to increase fishing pressure, and should be banned.

5.3.3 Young fishers

The EFF rules out subsidies for the construction of new vessels, but it can provide (Art. 27) up to 50,000 to wards part or the full cost of a second hand vessel (less than 24m, between five and thirty years old) to young fishers (under forty years old, with at least five years experience or equivalent training).

This provision, mentioned in the UK Operational Plan for the period 2007 - 2013¹⁷⁹ for example, effectively amounts

to subsidising a non-reduction of fishing capacity in coastal waters, and should also be banned.

5.3.4 Fuel subsidies

Dramatic increases in fuel prices in 2008 have made fuel subsidies very topical, with France and Spain making provision for emergency loans to help the fishing industry with fuel costs, and the European Council of Ministers agreeing to a package of emergency measures targeting fuel inefficiency and aiming to subsidise the exit out of the industry of fishing vessels with high fuel consumption.

A study, commissioned by the European Parliament Committee on Fisheries¹⁸⁰, predicted significant economic impacts of fuel price increases on the viability of continued operations of the European fisheries sector, and significant associated social impacts through decreases in GVA (Gross Value Added), including crew remuneration. It also estimated that, in 2002 the European fishing fleet (EU-25) had used 4.3 billion litres of fuel, costing about 15 per cent of the value of landings or just over 1 billion, and therefore that, on average, "one kg of fish required about 0.7 litres of fuel" to catch, with large differences between passive gears using less fuel, and active gears using more, beam trawlers particularly¹⁸¹.

More recently, an academic review of fisheries subsidies around the world¹⁸², singled out some European Member States for their fuel subsidies to the fishing industry. In effect, every single European country exempts or refunds duty and value-added tax (VAT) on fuel used by fishing vessels¹⁸³. Even though most Member States do not register this as a subsidy, fuel subsidies to the fisheries sector are explicitly recognised at European level by the Block Exemption Regulation (preamble (28))¹⁸⁴.

Using a hypothetical rate of 15 per cent to cover both fuel duty and VAT exemptions, this would have provided around another 150million of subsidies for the European fleet, assuming it was spending 1bn on fuel in 2002¹⁸⁵.

¹⁷⁵ http://ec.europa.eu/fisheries/cfp/structural_measures/operational_programmes_en.htm accessed 15 April 2009

¹⁷⁶ Salz, P and Smit, J. (2006). The impact of the increase of the oil price in European Fisheries. Final report of the study for the Committee on Fisheries of the European Parliament, 101 pp. http://www.framian.nl/impact_of_the_increase_of_fuel_price/ accessed 12 April, 2009.

¹⁷⁷ Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises actives in the production, processing and marketing of fisheries products.

¹⁷⁸ *Ibid.*

¹⁷⁹ http://ec.europa.eu/fisheries/cfp/structural_measures/operational_programmes_en.htm accessed 15 April 2009.

¹⁸⁰ Salz, P and Smit, J. (2006). The impact of the increase of the oil price in European Fisheries. Final report of the study for the Committee on Fisheries of the European Parliament, 101 pp. http://www.framian.nl/impact_of_the_increase_of_fuel_price/ accessed 12 April, 2009.

¹⁸¹ Salz, P and Smit, J. (2006). The impact of the increase of the oil price in European Fisheries. Final report of the study for the Committee on Fisheries of the European Parliament, 101 pp. http://www.framian.nl/impact_of_the_increase_of_fuel_price/ accessed 12 April, 2009.

¹⁸² Sumaila, U. R., Teh, L., Watson, R., Tyedmers, P., and Pauly, D. 2008. Fuel price increase, subsidies, overcapacity and resource sustainability – ICES Journal of Marine Science, 65: 832–840.

¹⁸³ *Ibid.*¹⁶⁸

¹⁸⁴ Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises actives in the production, processing and marketing of fisheries products.

¹⁸⁵ *Ibid.*¹⁶⁸

The impacts of fuel tax relief subsidies on total fleet capacity are unfortunately difficult to quantify¹⁸⁶. This is partly because of the enormous differences in average net fuel price to the fishing industry between Member States, with an estimated constant difference of approximately 45 per cent between prices in the cheapest country (Netherlands) and the most expensive countries (Denmark and Italy) for the years 2002 to 2005¹⁸⁷. This is far in excess of the average tax relief to the industry in any European country.

Fiscal exemptions for fuel are to be reviewed in 2010, but it seems possible that fisheries (and agriculture) may have their exemptions tacitly renewed.

5.3.5 World Trade Organisation (WTO) negotiations

The pressure for a reform of all fisheries subsidies has been increasing in recent years, and particularly since the World Trade Organisation (WTO) members (EU included) agreed to launch negotiations to “clarify and improve WTO disciplines on fisheries subsidies” during the Ministerial conference held in Doha (Qatar) at the end of 2000.

Following the 2002 CFP reform, there were plans to bring subsidies for fleet renewal to an end by 2015, the Commission tabled a paper in 2003¹⁸⁸ to be included in the WTO Subsidies and Countervailing Measures (SCM) Agreement setting out specific provisions for fisheries subsidies. After lengthy negotiations, the EC submitted revised proposals in 2006¹⁸⁹. The WTO negotiations broke down at the end of 2007, and more than a year later they are only just resuming. The Chair of the Negotiating Group on Rules has set aside previous working versions and tabled a roadmap¹⁹⁰ for negotiations which started anew in February 2009. The roadmap brings together all previous suggestions in the form of questions, and splits fisheries subsidies into two categories, prohibited and exceptions, which include the essence of the EC’s proposals and are set out in Box 2 below.

The “Red light” category targets fishing capacity enhancing subsidies, which should be prohibited. The “Green light” category of permitted subsidies covers those used to reduce fishing capacity and to mitigate social and economic

consequences of restructuring the fisheries sector. Green light subsidies would be permitted and therefore not subject to potential WTO-level challenges.

The revised EC proposals to WTO also included provision for a review every five years (Art. 4), and provisions for increased Transparency (Art. 5). In particular, they stipulated that any permitted “Green light” Article 3 subsidies be notified prior to their adoption or prior to the commitment in the case of an ad hoc grant, and for “a rigorous and timely reporting system” supplemented by periodic ex-post reports¹⁹¹. However, the approach in EU submissions to WTO has been less restrictive of subsidies than the proposals of the US or of Chile, for example. For these countries, there is no such thing as a “green-light” subsidy. Instead, only one category covers all possible subsidies that are not in the red-light category. For “amber-light” subsidies, the onus is on governments to “affirmatively demonstrate that no overcapacity/overfishing or other adverse trade effects have resulted from the subsidy”¹⁹².

5.3.6 “Good subsidies”

By contrast with any of the subsidies listed above, including the “bad” ones in the proposed WTO Green Light box, the report from Sumaila *et al.* (2007)¹⁹³ argues that there is a group of “good” subsidies. These include the payment for resource assessment, research, monitoring, control, and surveillance activities, which for the European fleets come out of the European and Member States budgets.

Several Member States, including, for example, the UK, have already examined possible cost-recovery for some of the fisheries management and administration costs, in order to increase compliance and greater buy-in. However, given the integration of the European fish market, national initiatives in this area would also need to be discussed at European level if they are to become more widespread. In the interim, until cost-recovery can be progressively and widely introduced, it would be very useful to have estimates of the magnitude of these subsidies across Member States, by fishery and fleet segments, so that a more rigorous assessment of impacts could be made.

¹⁸⁶ Framian (2009). Economic analysis of raising *de minimis* aid for fisheries (MARE/2008/12), 63pp.

¹⁸⁷ *Ibid.* 168

¹⁸⁸ WTO, 2003. Submission of the European Communities to the Negotiating Group on Rules - Fisheries Subsidies. TN/RL/W/82, 23 April 2003.

¹⁸⁹ WTO, 2006. Submission of the European Communities to the Negotiating Group on Rules - Fisheries Subsidies. TN/RL/GEN/134, 5p. 24 April 2006.

¹⁹⁰ WTO, 2008. Negotiating Group on Rules, New draft consolidated Chair texts of the AD and SCM Agreement TN/RL/W/236, 94p. 19 December 2008.

¹⁹¹ *Ibid.*

¹⁹² Benitah, M. (2004). On going WTO Negotiations on Fisheries Subsidies. The American Society of Law Journal, 5p. with addendum updated 14 Dec 2007. <http://www.asil.org/insight136.cfm>, accessed on 12 April 2009.

¹⁹³ Sumaila, U.R. and D. Pauly eds., 2007. Catching more bait: A bottom-up re-estimation of global fisheries subsidies (2nd version), UBC Fisheries Research Centre report, 14(6) 121pp.

**Box 2 Proposed EC WTO rules on fisheries subsidies
(from TN/RL/W/134 - 2006)**

Red light – prohibited subsidies (Art. 2)

- Subsidies for the construction of new fishing vessels,
- Subsidies for the renovation of existing vessels, and
- Subsidies for the permanent transfer of fishing vessels to other countries, including through the creation of joint ventures with partners of those countries.

Green light – permitted subsidies (Art. 3)

- Subsidies contingent upon a reduction in fishing capacity or that are provided for the specific purpose of mitigating the negative social and economic consequences of reductions in capacity;
- Subject to a non-increase in capacity, subsidies that are granted in the context of conservation measures, for product development, for modernisation of vessels including improved working conditions and safety on board, and subsidies that promote environmentally friendly fishing operations.

Looking to 2012, it is argued that most of the financial support of the European Fisheries structural policy should eventually be phased out^{194,195,196,197}. The provision of fleet decommissioning schemes and, at the same time, modernisation subsidies have persistently given the wrong signal to industry and have had undesirable impacts on fleet capacity development.

The same 'mixed messaging' would apply to the set of temporary measures "to alleviate the effects of dramatic fuel price increases since the spring of 2008" put together by the Council in an attempt to reinforce decommissioning efforts for fuel-hungry vessels and for those prosecuting over-exploited stocks.

The correspondence between fishing capacity by fleet segments and fishing opportunities is, in most instances, not yet clearly defined and therefore, there is little chance that

permanent cessations of activity achieved through these emergency measures may also be optimal from the resource point of view, thus wasting precious finances.

Finally, all subsidies to fishing vessels need to be phased out, including and particularly those allowed under the EFF to under-12m vessels, which are likely as any other sized vessels to be operating in over-exploited fisheries.

5.4 Conclusions

Following the 2002 reform, the CFP structural policy has been greatly simplified. The simpler Entry-Exit regime for fishing vessels introduced in 2003 has been followed by clearer structural funding guidelines presented in European Fisheries Fund (EFF) Regulation adopted in 2007. The Commission now reports on the progress of both annually and this has also increased transparency.

The 2002 reform gave Member States more responsibility for the management of their fleet, and after some years of painstaking recoding and standardisation, quarterly reporting obligations to the new CFR are now fully complied with.

However, the Member States compliance with their annual reporting obligations on their efforts to achieve a sustainable balance between fishing capacity and fishing opportunities remains extremely poor. Only half of the Member States submitted their annual reports for 2007 on time. Thus, much work remains to be done in the coming three years to establish a clear and effective reporting format that can underpin the necessary adjustment of fishing capacity that would allow sustainable – and therefore more profitable – fishing businesses. These obligations, needs to be enforced as a matter of priority.

The Commission is encouraging a more area-based approach to fisheries management, and it is argued that Ecosystem-Based Fishery Management Plans (proposed in Section 4) are long overdue. However, some essential information and assessment tools are still needed for the structural policy to contribute to the process effectively.

¹⁹⁴ Clark, CW, GR Munro and UR Sumaila (2005). Subsidies, buybacks, and sustainable fisheries. *Journal of Environmental Economics and Management*, 50(1): 47-58.

¹⁹⁵ Cox, A. (2007). Capacity analysis and fisheries management: Is the tail wagging the dog? *Marine Resource Economics* 22: 95-98.

¹⁹⁶ Framian (2009). Economic analysis of raising *de minimis* aid for fisheries (MARE/2008/12), 63pp.

¹⁹⁷ Symes, D. (2005). Altering course: future directions for Europe's fisheries policy. *Fisheries Research* 71: 259-265.

5.5 Recommendations

The suggestions for reform made in this chapter need to be closely related to those made in the other chapters in order to produce a better integration of the Conservation Policy objectives into the Structural Policy.

1. Most urgently, the links between fishing mortality, fishing effort and fishing capacity need to be developed. Without these being established for all ecosystems, fisheries and fleet segments, the Structural Policy will remain disconnected in its efforts to steer sustainable fishing capacity reductions.
2. An operational system needs to be developed on the basis of the 2008 Guidelines, to inform the links between fishing capacity and fishing opportunities. Fleet segmentation will need to be reviewed and introduced in the reporting obligations. It will also rely on the reform of the Reporting and possibly the Data Collection Regulations.
3. Once new reporting guidelines are available, the compliance of Member States submitting annual reports on their efforts to link fishing capacity to fishing opportunities should be enforced, and penalties for non-compliance introduced when needed.
4. The Entry-Exit system should
 - a) Include details by fleet segment and resource unit,
 - b) Be linked up to an equally transparent up-to-date and reliable system for fishing opportunities;
 - c) Include details of permanent reductions of fleet capacity that have been made , and those relating to temporary control of fishing activity (effort).

Finally, the EFF will need to be further reformed:

- a) To weed out the remaining subsidies still clearly linked to maintaining fishing effort and capacity increase, including those currently disguised as incentives towards more fuel-efficient engines, which can only defeat other efforts to reduce fishing mortality;

- b) To re-establish the link between fleet segment capacity increase and the availability of support from the Structural Funds to Member States;
- c) To ensure that funding of rights-based measures or implementation systems do not result in subsidized fishing capacity.

6 INTEGRATION OF THE CFP WITHIN WIDER EU MARITIME POLICY

While the basic Regulation in principle allows for better integration of nature conservation objectives within the CFP, the state of many of Europe's fish stocks and this has not been achieved in practice, as is clear from the impact of fishing activities on the marine environment remains a problem. The CFP review process recognises that the fisheries sector must be seen in a wider ecological and economic context and thus inter-relations between the CFP and the new Integrated Maritime Policy (IMP) and Marine Strategy Framework Directive (MSFD) are key to achieving sustainable European fisheries. This section of the report examines the opportunities presented by the CFP review process and these new maritime initiatives towards achieving the environmental objectives of the CFP.

The main legislative developments since the last iteration of the CFP are considered and some potential conflicts and synergies between the different EU legal instruments for marine conservation presently in development are identified, focusing on the Integrated Maritime Policy (IMP) and Marine Strategy Framework Directive (MSFD).

6.1 Progress towards meeting the environmental objectives of the 2002 Regulation

As discussed in section 4, the basic Regulation strengthened the CFP's environmental aspect by including in its objectives the application of a *“precautionary approach in taking measures designed to protect and conserve aquatic resources”* and the *“progressive implementation of an ecosystem-based approach to fisheries management”* (Article 2(1)). However, the actual mechanisms for achieving precautionary and ecosystem-based approaches to fisheries management were not clearly outlined, nor was it specified how they would integrate with existing legislation. The basic Regulation does however call for recovery plans (Article 5) and management plans (Article 6) to maintain stocks within safe biological limits, and it provided a new emergency closure mechanism (Articles 7, 8 and 9) to protect living marine resources and/or habitats. This latter mechanism is

discussed in more depth below, as it provides an opportunity for addressing tensions in situations where marine nature conservation is at risk from fishing activities.

6.1.1 Implementation of the objectives

The basic Regulation calls specifically for management plans to be *“drawn up on the basis of the precautionary approach to fisheries management and take account of limit reference points recommended by relevant scientific bodies”* (Article 6(3)) but it does not make specific reference to adaptive management or outline a progressive, reflexive approach to management, which would have been a way of incorporating precaution in the decision-making process. Given the complexity of the marine environment, in which the effects of human impacts can be hard to predict, greater room for uncertainty (i.e. flexibility) needs to be built into the institutions being designed to address marine environmental management. This issue becomes increasingly important when the effects of climate change on the marine environment are considered.

While such an adaptive approach is not yet in place, the establishment of the RACs has increased stakeholder participation and opened the door to a wider range of environmental perspectives. Moving towards a more 'regional' approach and incorporating stakeholder views into the process are also important steps towards an adaptive/precautionary approach. Complementary to this, the UK's inter-agency Marine Fisheries Working Group (MFWG) has recommended¹⁹⁸ the use of Strategic Environmental Assessments (SEAs) for European fisheries, to be carried out by the RACs – though it also admits that this will require an expansion of the RAC's current capacity. Such an approach, if designed appropriately, could help incorporate an adaptive/precautionary approach into the CFP.

Since fisheries are dependent on the health and productivity of ecosystems, the CFP clearly needs to

incorporate means for conserving the systems required for the maintenance of fish populations. This is especially true given the fact that traditional management approaches focusing on individual species or stocks have not achieved long-term sustainability.

Achieving an ecosystem-based approach in marine systems poses much greater challenges compared with their terrestrial counterparts, given the three-dimensional, complex-adaptive physical nature of the marine environment. A comprehensive ecosystem-based approach would require understanding and taking into account of several factors, including interactions between the target fish stock and their natural predators, competitors, prey species and habitat, the effects of fishing activities and climate change, and so on. Consequently it is impossible to create a fully comprehensive model of all factors affecting target species and their habitats, and management efforts must instead identify steps that can be made to maintain the healthy functioning of the ecosystem in question. For example, it is becoming increasingly recognised that newly-designated Marine Protected Areas (MPAs) need to have a degree of flexibility built-in, as the physical boundaries of the area in need of protection may change with the future effects of climate change. With changes in water temperature and the effects of ocean acidification, we have already seen changes in fish distribution patterns and ecological impacts. Consequently, a truly ecosystem-based approach needs to have a regular review process built-in, whereby current measures can be evaluated in accordance with how/whether physical changes have occurred that would require adaptation to the management regime (hence the term “adaptive management”).

While the basic Regulation does not provide a step-wise approach for Member States to implement an ecosystem-based approach, some progress has been achieved in the context of fisheries management, as highlighted in a Commission Communication¹⁹⁹ and outlined in Section 4 of this report. In addition to the introduction of emergency measures for protecting sensitive habitats (described below), and the establishment of RACs, the following

positive outcomes have been achieved and/or are in progress:

- A move towards reduced fishing pressure on marine ecosystems by working towards MSY approaches to exploitation and long-term management plans;²⁰⁰
- The development of a policy to reduce and eventually eliminate unwanted by-catch (the discards policy).²⁰¹ This proposal will also include considerations of habitat damage;
- The compulsory use of pingers on gill nets to help avoid incidental bycatches of marine mammals;²⁰²
- Area closures so as to increase the fish-based food availability for seabird predators (e.g. sandeel fishery closure²⁰³);
- The implementation of a ban on bottom-trawling in the Mediterranean in waters deeper than 1000 metres (under decisions taken by the General Fisheries Commission for the Mediterranean), the closure of three areas in international waters to protect sensitive habitats (e.g. Posidonia and maërl beds), and a requirement on Member States to establish a network of fisheries protected areas in the Mediterranean;
- Actions to address illegal, unreported and unregulated (IUU) fishing in European and international waters;²⁰⁴
- From 2009 onwards, indicators on the ecosystem effects of fisheries will be included in Member States' data collection programmes;
- Plans of action to protect sensitive species are in progress (including sharks and elasmobranchs (2008), and seabirds (2009)).

These measures are a positive indication of what can be achieved through a revision of Europe's fishing policy but

¹⁹⁸ Blasdale, T., Marubini, F., and Tasker, M. Influencing strategy for the 2012 review of the Common Fisheries Policy, JNCC 08 P12, December 2008.

¹⁹⁹ COM(2008) 187 final. Communication from the Commission to the Council and the European Parliament: The role of the CFP in implementing an ecosystem approach to marine management [SEC(2008) 449]. Brussels, 11.4.2008.

²⁰⁰ COM(2006) 360 final. Communication from the Commission to the Council and the European Parliament: Implementing sustainability in EU fisheries through maximum sustainable yield [SEC(2006) 868]. Brussels, 4.7.2006.

²⁰¹ COM(2007) 136 final. Communication from the Commission to the Council and the European Parliament: A policy to reduce unwanted by-catches and eliminate discards in European fisheries [SEC(2007) 380 and 381]. Brussels, 28.3.2007.

²⁰² Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, OJ L 150, 30.4.2004, p.12.

²⁰³ Council Regulation (EC) No 2287/2003 of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required. OJ L 344, 31.12.2003, p.1.

²⁰⁴ Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems, COM(2007) 604 final, and Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears - COM(2007) 605 final, 0227/0224 (CNS), OJ C 224, 30.8.2008, p. 77.

more action is needed. At the same time, responsibility for attaining an ecosystem-based approach to marine management stretches beyond fisheries and is beyond the scope of the CFP alone. It must be shared in a cross-sectoral manner, through the IMP and, specifically, its 'environmental pillar', the MSFD. These recent EU initiatives and their emerging relationship with the CFP are discussed below. First, a brief discussion of the basic Regulation's mechanism for emergency closures is warranted, in light of the CFP's aim for achieving a precautionary approach to marine management.

6.1.2 Emergency measures

While the predecessor to the basic Regulation, Regulation 3760/92²⁰⁵, referred to *"taking into account [fisheries exploitation activities] implications for the marine eco-system"* (Article 2(1)), the basic Regulation goes a step further by providing an emergency closure mechanism where needed for nature conservation objectives.

In order to implement precautionary and ecosystem-based approaches, Chapter II of the Regulation 2371/2002 entitled 'Conservation and Sustainability' outlines specific technical measures including recovery and management plans and the establishment of emergency closures. In particular, Article 7 allows for the Commission to apply emergency measures *"if there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action"*. Under the three subsequent Articles (8-10), some powers of legislative jurisdiction concerning fisheries conservation and management have been returned to Member States, namely in Articles 8 on Member State emergency measures, Article 9 on Member State measures within the 12nm zone and Article 10 on Member State measures applicable solely to fishing vessels flying their flag. Nevertheless, the emergency measures mechanism for closing an area for nature (rather than fish stock) conservation objectives represents an important shift in the legislative approach to European marine environmental protection.

In practice, the emergency measures mechanism has had mixed success. Following the closure of the Darwin Mounds area of cold-water coral off the coast of Scotland in 2003 (which subsequently became a permanent closure), an attempt by the UK government to use this mechanism to prohibit pair-trawling for sea bass in the English Channel was unsuccessful.²⁰⁶ This discrepancy in outcome highlighted a key issue, i.e. the requirement to provide *"evidence of a serious threat"* before an emergency closure can be implemented. In addition, recent judgments in European courts have been shifting towards a more risk assessment-focussed interpretation of precaution.²⁰⁷ Risk is more quantifiable than uncertainty, but concrete assessments of probability are not always available for decision-makers, especially in the marine environment.

It can be argued that a strict requirement for firm evidence before a closure can occur prevents the operationalisation of a truly precautionary approach to marine management. This fact should be kept in mind as the CFP continues to evolve, along with other developing marine conservation legislation that calls for a precautionary approach to management, that is the IMP and MSFD. If the precautionary principle continues to be enshrined in legislation without a clear definition of its purpose and role, it is likely that its efficacy will be diminished. A written clarification from the Commission and/or Parliament, following up on the 2000 Communication and clarifying the intended role and use of the precautionary principle with a specific focus on the European *marine* environment would be helpful, especially as one can argue that the role of uncertainty and risk have been somewhat confused in the use of precaution in environmental decision-making in recent years.²⁰⁸ Whereas risk is often quantifiable, uncertainty is not – and it can be argued that the complex physical nature of the marine environment does not always lend itself to quantifiable risk estimates. Consequently, a truly precautionary approach would accept a degree of uncertainty as a less negative factor in the process, i.e. as a reason for gathering more and better information, not as a reason for inaction or taking an ill-informed decision.

²⁰⁵ Council Regulation (EEC) no 3769/1992 of 20 December 1992 establishing a Community system for fisheries and aquaculture, OJ L 389, 31.12.1992, p.1.

²⁰⁶ These cases are discussed in more depth in De Santo, E.M. and Jones, P.J.S. (2007) Offshore marine conservation policies in the North East Atlantic: Emerging tensions and opportunities, *Marine Policy* 31: 336-347.

²⁰⁷ For more details see Stokes, E. (2008) The EC courts' contribution to refining the parameters of precaution, *Journal of Risk Research* 11(4): 491-507.

²⁰⁸ K.H. Whiteside (2006) *Precautionary Politics: Principle and Practice in Confronting Environmental Risk*, MIT Press.

If the Commission intends to uphold a precautionary approach to marine nature conservation and fisheries management, then it needs to ensure that the regime for Maritime Spatial Planning that will come out of the currently developing legislative framework allows not only for adaptive management (i.e. promoting the input of new information periodically in decision-making) but also to shift bias away from a strictly science-based approach to managing risk, and allowing for uncertainty to enter the decision-making process, thereby favouring more conservative approaches to both nature conservation and fisheries management. The next section discusses how this developing legal framework can be best integrated to attain ecosystem-based and precautionary approaches to marine environmental management.

6.2 Interactions with other EC Legislation

The IMP and MSFD provide a new opportunity for integrating the CFP into a wider European strategy aimed at marine environmental management. However, it is important that the architecture to deliver this is established in the right way. This section goes into some detail on existing marine initiatives and legislation, examining synergies and conflicts that may arise as they come into force.

6.2.1 The new Integrated Maritime Policy (IMP)

With regard to the marine environment, the European Commission's Strategic Objectives for 2005-2009 state that *"in view of the environmental and economic value of the oceans and seas, there is a particular need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally-sustainable manner"*.²⁰⁹ This commitment materialised in the development of a Maritime Green Paper "Towards a Future Maritime Policy", which was open to consultation from 2006-2007. In October 2007, a post-consultation Integrated Maritime Policy²¹⁰ (IMP, also known as the 'Blue Book') was released, accompanied by an action plan, impact assessment, and a report detailing the consultation results.

The IMP lays the foundation for an overarching maritime policy, encompassing all sectors and is thus quite an

ambitious framework. In terms of environmental objectives, the IMP emphasises the need for fish stock recovery, moving towards multi-annual planning, implementing MSY approaches to management, and eliminating IUU fishing. It also reiterates the CFP's commitment to the ecosystem-based approach and requires Member States to draw up national integrated maritime policies and implement maritime spatial planning (MSP), under the guidance of a roadmap on MSP released in 2008.²¹¹ As an overarching policy, the IMP does not impose binding obligations on Member States; rather it requires the implementation of the MSFD, its 'environmental pillar' for this end. Unlike regulations which are immediately binding upon Member States and dominate the CFP Directives must be implemented via national legislation. Thus while there is some guidance on MSP from the IMP, the MSFD provides for direct accountability on the part of Member States with regard to attaining environmental objectives.

The 2007 Action Plan²¹² that accompanies the IMP sets out specific action points for the policy's implementation. Those focusing on environmental objectives are just being released and/or are in progress, thus their effectiveness can not yet be evaluated. However some of the points and actions are of direct relevance to the environmental objectives of the CFP.

The IMP is already starting to serve as an overarching European governance framework. As Member States develop their MSP policies and fulfil their obligations under the MSFD, it will be possible to evaluate how this framework is functioning in comparison to the previous piecemeal approach.

6.2.2 The Marine Strategy Framework Directive (MSFD)

The Marine Strategy Framework Directive²¹³ (MSFD) was adopted in June 2008, following a long process of consultation and revision. The MSFD's main objective is to achieve a 'good environmental status' of the European marine environment by 2021. 'Good environmental status' is defined in Article 3(5) as *"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*

²⁰⁹ COM(2005)12 final. Communication from the President in agreement with Vice-President Walström: Strategic Objectives 2005-2009 'Europe 2010: A Partnership for European Renewal. Prosperity, Solidarity and Security', Section 2.2. Brussels, 26.1.2005.

²¹⁰ COM(2007) 575 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An Integrated Maritime Policy for the European Union. Brussels, 10.10.2007.

²¹¹ Communication from the Commission: Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU. Brussels, 25.11.2008, COM(2008) 791 final.

²¹² Commission Staff Working Document: Accompanying Document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Integrated Maritime Policy for the European Union, COM(2007) 574 final, 575 final. Brussels 10.10.2007, SEC(2007) 1278.

²¹³ Directive 2008/56/EC, OJ L 164, 25.6.2008, p.19.

marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations”

The Directive establishes four marine regions²¹⁴ as management units for its implementation, within which Member States are obliged to develop Marine Strategies and cooperate with each other, and with third parties where relevant. Two of the four marine regions are further subdivided²¹⁵, reinforcing the regionalisation approach inherent in the MSFD, a positive step towards ecosystem-based management.

During the consultation process, there was some concern regarding the lack of a quantifiable definition for ‘good environmental status’ or a clear indication of how the Directive will interact with existing legislation (e.g. the Water Framework Directive WFD and CFP). While the final version of the MSFD does not answer this latter question, it does now contain steps to help Member States interpret the key elements of ‘good environmental status’ in Annex I of the Directive.

Like the CFP, the MSFD calls for the implementation of a precautionary approach. It can be inferred that this emphasis on ‘good environmental status’ is one way of trying to deliver environmental indicators necessary for the implementation of the precautionary approach. In addition, the MSFD offers advice to Member States for engaging in communication, stakeholder involvement and raising public awareness in Annex VI. In terms of an ecosystem-based approach to marine management, the MSFD provides a base for Member States to enact national legislation directed at MSP.

By 2012 Member States will need to have made preliminary assessments of Europe’s seas by determining the characteristics of ‘good environmental status’ as set out in Annex I of the MSFD, identifying targets and indicators to be achieved and setting up monitoring programmes. By 2015 they will need to have developed a programme of measures for each marine region and sub-regions, with each programme setting out how to achieve good environmental status by 2020 (or maintain it if it is already present).

Table 6. IMP Action Plan References and Outputs

IMP Action Plan Reference	Specific Action
3.2 Maritime Spatial Planning and Integrated Coastal Zone Management	• Roadmap on MSP, 2008 (released) • Establishment of a system for exchanging best practices, 2009 (in progress) • Examination of options needed to make the uses of different maritime activities more compatible, 2008 (in progress)
4.9 Implementation of the ecosystem approach in European fisheries	• Communication on the ecosystem approach in fisheries, 2008 (released) • Roadmap for discards, 2008 (released)
4.10 Proposals on the protection of fisheries resources in international waters (IUU fishing and destructive fishing practices)	• Communication and Regulation on combating IUU fishing, 2007 (released) • Communication and Legislative Proposal on destructive fishing practices, 2007 (released)
7.4 Action to protect the high seas	• A strategy for the protection of marine biodiversity, 2009 (in progress)

²¹⁴ These include the Baltic Sea, the North-East Atlantic Ocean, the Mediterranean Sea, the Black Sea, and subdivisions within each of these (Article 4(2)).

²¹⁵ The North-East Atlantic is further subdivided into: (i) the Greater North Sea, including the Kattegat and the English Channel; (ii) the Celtic Seas; (iii) the Bay of Biscay and the Iberian Coast; (iv) the waters surrounding the Azores, Madeira and the Canary Islands. The Mediterranean has four sub-regions: (i) the Western Mediterranean; (ii) the Adriatic Sea; (iii) the Ionian Sea and Central Mediterranean Sea; (iv) and the Aegean-Levantine Sea.

However, the measures that Member States can adopt can only be those over which they have legal competence. Where fisheries pressures inhibit the achievement of 'good environmental status', Member States will have limited ability to adopt measures to achieve 'good environmental status'. The MSFD alone, therefore, cannot deliver 'good environmental status'.

Achieving good environmental status for Europe's marine waters will require a comprehensive approach to environmental management, spanning all the major parameters, from fishing and other extractive activities to land-based sources of pollution. Thus it is necessary to include the interactions of other EU Directives and initiatives in this discussion. Clearly Europe is at a pivotal point with regard to the management of its marine environment. Given the opportunity of a new review of the CFP, it is vital that approaches to mitigating environmental threats in different, linked sectors are harmonised.

6.2.3 Other initiatives and legislation: Synergies and conflicts

As the IMP and MSFD do not explicitly set out the interactions that can be expected with other EC legislation, it is worth discussing those relevant legal measures and other initiatives that will have some bearing on the future of European marine environmental management. A list of initiatives and legislation where there are synergies and potential conflicts is provided in Annex I of this report. The aforementioned Communication from the Commission providing a roadmap for MSP highlights these initiatives in relation to their potential overlap and impact on MSP efforts. This section will discuss how they interact with the CFP and broader conservation objectives.

The reform of the CFP is an opportunity to strengthen the commitment to ecosystem-based management enshrined in the MSFD and should make direct reference to the Directive's Annex I on defining 'good environmental status'. Each Member State will need to assess progress towards 'good environmental status', and the same evaluation will need to be made in groups of Member States on a marine region-by-region level. The results of such evaluations

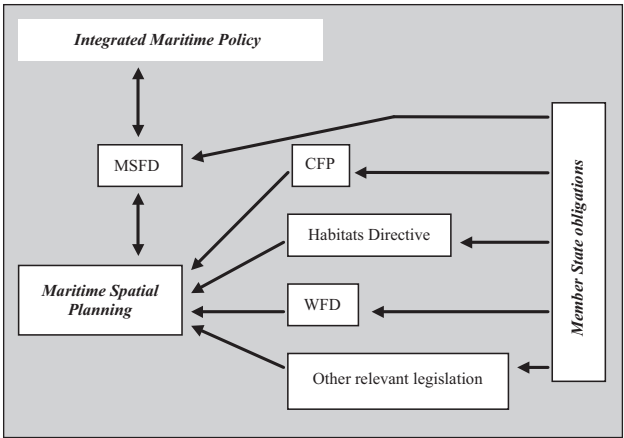
should guide future CFP implementation (e.g. setting TACS, etc.)

The table in Annex 2 of this report outlines the qualitative measures given in Annex I of the MSFD as a factor of relevant European legislation and initiatives, where applicable. As the CFP enters a new review process, it may be helpful to visualise where it should be able to provide information to this assessment process. While the MSFD does not stipulate exactly how 'good environmental status' will be quantified, this table provides the criteria that Member States can begin to aim towards attaining. The added right-hand column sets out the relevant legislation that Member States may look to in a synergistic fashion to help them attain and/or compile the information required for complying with the MSFD and its requirement of 'good environmental status'.

Annex 2 lists several instruments that Member States can draw upon to aid their self-assessments (and regional approaches) towards 'good environmental status'. The requirements for 'good environmental status' have been outlined in such a way that Member States' efforts towards fulfilling their obligations under other legislation can contribute to achieving the objectives of the MSFD and IMP, so there may be overlap between legal obligations. However, to ensure effective integration of these objectives requires efficient coordination at the national and regional level.

The IMP has been designed to be holistic and it should serve as a framework for coordinating European marine environmental management, overseeing how individual Member States and regional efforts work towards progress in MSP. The IMP's cross-sectoral approach and the MSFD's regional focus complement one another, in terms of a comprehensive approach to European marine conservation. The following figure represents the interactions between Member States, their obligations under EC environmental law, and the potential relationship between these legal drivers and MSP:

Table 7. Inter-relationships between the CFP, MSFD, IMP and other relevant initiatives involved in Maritime Spatial Planning



As illustrated above, Member States are accountable for obligations under EC legislation, which could, eventually be coordinated within a MSP framework, guided by the IMP, but also through the MSFD to provide baseline information for measuring 'good environmental status'. Member State obligations arising from existing Directives and Regulations provide the backbone for attaining environmental objectives in marine European environmental management. However, there needs to be a reflexive, adaptive review processes built into these instruments, and into the MSP process as a whole, in order to meet the underlying obligation of implementing a precautionary and ecosystem-based approach to marine management in European waters. The IMP provides an opportunity for harmonisation beyond what has been achieved to date with the Basic Regulation's incorporation of stakeholder participation, with the intention of establishing networks of best practice between maritime stakeholders and cross-fertilisation between different sectors.

This is an important step towards adaptive management, but it remains to be seen how well it will work in practice. European regions vary in their capacity for adaptive management, and the regional focus enshrined in the MSFD and IMP will need to be taken forward in a predictive and proactive manner to ensure that this approach really works.

Whereas the CFP has previously had overarching authority over conserving fish stocks, this new institutional arrangement presents a new assessment framework to judge the CFP, given both the key environmental role the MSFD will play in the IMP and its requirement for fish stock data as part of determining overall 'good environmental status'. The focus on MSP and integrating economic and environmental concerns inherent in the IMP is an important step forward and must be followed through. In addition, the existing legal framework needs to be integrated in an effective manner. Annex 2 highlights how this is possible through the MSFD, on the Member State and regional level, using different directives and regulations to gather information on different required parameters and ensure compliance.

Consequently, the IMP and MSFD have been drafted in such a way as to pursue more synergy than conflict in the future management of European marine waters. Historically there has been an underlying tension between fisheries management and marine nature conservation, as the community retains exclusive jurisdiction over fisheries while Member States are responsible for nature conservation within their territories. Following the extension of the Habitats and Birds Directives over the continental shelves of Member States and the early indication of problems with the basic Regulation emergency measures mechanism discussed earlier, there is potential for conflict. The MSFD will provide a checklist for Member States to show whether they are taking conservation objectives seriously, but if the measures necessary to achieve 'good environmental status' are beyond their competence (that is, if fishing does not become more sustainable) it will be necessary for measures within Community competence to be adopted. Given the MSFD's comprehensive approach, requiring data on species, habitats as well as water quality, it will be difficult for Member States to meet all of these criteria without strong support from the Commission via the IMP, and through a unified approach with other Member States. For this reason, the sharing of best practice between countries and regions will be key to the success of both the IMP and MSFD.

The IMP needs a strong environmental framework with a strong policy to deliver this. The IMP states that the MSFD is the 'environmental pillar'. However, the MSFD only addresses, in respect of concrete control measures, the issue of Member States' competence. Therefore, the CFP has to form an important twin pillar to the environmental role played by the MSFD within the IMP.

The revised CFP needs to be integrated into the new EU framework for a more integrated maritime policy both in terms of economic and environmental objectives. The IMP is strongly focused on Europe's economic future and is grounded in the Lisbon agenda to secure jobs and growth and the Gothenburg agenda for sustainability. This should provide for synergy with the new CFP and address concerns regarding the socioeconomic impacts of reducing capacity.

The legislation and initiatives in Annex I provide a framework that should be used to strengthen the new CFP. Specifically, in terms of implementing an ecosystem-based approach to EU fisheries management, it is paramount that the burden of proof for evidence-based conservation be shifted to users more than it has been to date. Otherwise industry will have little motivation to enact conservation measures that may reduce profitability in the short run, but which will ensure that fisheries survive in the long run. Consequently, in order to truly implement a precautionary approach to fisheries management, the new CFP needs to provide for an effective emergency closure mechanism that allows the better incorporation of a precautionary approach than the current emergency measures do. This will require a revisiting of the role of precaution in decision-making in the marine environment.

6.3 Conclusions

While a legal framework for marine environmental conservation in relation to fisheries activities exists and is being strengthened by the addition of new legislation, a truly ecosystem-based approach to managing marine resources will not be attained without a stricter adherence to adaptive management. The requirements for 'good environmental status' enshrined in the MSFD are a step forward, as is the

increased role of stakeholders in both the IMP and the CFP. However, the dual national/regional nature of the MSFD will require a great deal of coordination to implement effectively while taking stakeholder perspectives into account. The Commission will therefore need to play an active monitoring role through the IMP. Currently, the IMP is producing communications, strategies and roadmaps for helping Member States meet their environmental obligations. An alternative model would be for Member States to create new bodies to oversee their maritime management; for example the United Kingdom has designed a Marine Management Organisation (MMO) which is likely to be established through the UK Marine Bill currently in Parliament. This may prove a useful model for Member States to follow, in order to better organise and manage their work towards MSP. Such organisations, if effectively structured, could then liaise with the Commission and one another to further strengthen the implementation of the IMP, MSFD and CFP.

As we approach 2012 and beyond, several issues need to be emphasised in discussions on attaining the environmental objectives enshrined in European legislation for the new CFP. There needs to be greater clarity from the Commission on the intended interaction between the CFP, the IMP and the Directives and initiatives discussed above, and on how the IMP and MSP approaches should oversee the integration of all of these. While the MSFD represents the 'environmental pillar' of the IMP, there are several other instruments in existence which need to function efficiently in concert with one another in order to achieve ecosystem-based management, not least recognising that the MSFD is directed to the Member States and the competencies that they have and that the IMP should also direct Community level policies towards its sustainability agenda. The IMP has a key role to play in overseeing the process of integrating policy approaches and in coordinating MSP across Europe. It will need to provide a forum for exchanging experiences between different Member States, as well as a means for them to use comparable and compatible systems. From a legal perspective, Member States would benefit from better clarification of their rights and obligations (where they start

and finish) within the many pieces of marine-focussed legislation that have emerged in the past decade. Providing this guidance would also help to improve compliance, as otherwise there is room for misinterpretation and delays in implementation.

The MSFD sets targets for action over the next decade. By 2012, as the new CFP is launching, Member States will need to have made preliminary assessments of 'good environmental status' independently and collectively within their marine regions. By 2015 there should be programmes in place on both the national and regional levels, setting out how to achieve 'good environmental status' by 2020. The condition of fish populations will be an element in these assessments as well as the impact of fisheries on habitats and sensitive species. The continued development of supporting legislation such as the discards policy and plans of action to protect sensitive species will help support a new CFP, but the latter will need to be effective on its own in order to support the MSFD, MSP and the broader IMP process of which it is a part.

The CFP Green Paper launched in April 2012 highlights the importance of fisheries within the wider Integrated Maritime Policy (IMP) and the MSFD. With reference to the ecosystem approach and achieving good environmental status by 2020 it states 'the future CFP must be set up to provide the right instruments to support this ecosystem approach'. In particular, the Green Paper asks a simple question 'how can the future CFP best ensure consistency with the MSFD and its implementation?

This question is an open door to highlight all of those areas where Member States have no (or insufficient) competence on fisheries and where action is necessary within the CFP to deliver good environmental status, both for the fish stocks themselves and for other elements of ecosystems affected by fisheries activity. It is interesting to note that the Green Paper addresses policy integration (for the IMP and MSFD) in terms of how the CFP can contribute to those policies. Integration can, however, happen in both directions and outcomes from the MSFD can contribute to CFP goals.

6.4 Recommendations

The CFP and the MSFD both have to be implemented. They have different objectives and timelines but areas of overlap are clearly identified within the context of implementing an ecosystem-based approach to management. It is important to seek to avoid a potential delaying tactic that, because good environmental status is not yet clarified by any Member State, action under the CFP would be premature. The MSFD sets some clear goals for the sustainability of marine ecosystems, so it is clear that where fisheries, because of direct extraction or a damaging process, are already unsustainable, then changes will be required to meet MSFD objectives. It is also important that the CFP and its decision-making processes are altered so as to be able to address the changes that will be required as the MSFD is implemented and measures to achieve good environmental status are identified. This must be done within the current CFP reform and does not require any delay due to the implementation timetable of the MSFD. There needs to be greater clarity from the Commission on the interaction of the CFP and the MSFD. From a legal perspective in particular, Member States would benefit from better clarification of the rights and obligations within the CFP, MSFD and other marine focussed legislation that have emerged in the past decade. This guidance would also help compliance as otherwise there is room for misinterpretation and delays in implementation.

It is important, therefore, to ensure the following are undertaken in the context of CFP reform in 2012:

- That the CFP acknowledges the requirement of achieving good environmental status as a clear objective in guiding the decisions that are undertaken within its policy sphere.
- That Member States seek an early statement from DG MARE on how the objectives of the MSFD are to be addressed by the CFP in concrete terms.

- That the aspects of current fisheries practice that are not consistent with any likely future determination of good environmental status are identified at an early stage and are highlighted as practices that must be changed.
 - That determination of 'good environmental status' under the MSFD should be undertaken in such a way as to ensure easy cross-over of the results of this environmental assessment into the decision-making framework of the CFP, for example in the setting TACs which take into account ecosystem requirements.
 - That the necessary protection measures for MPAs and sites selection under the Habitats Directive (directly) and the objectives within the MSFD (indirectly) are put in place.
 - That information on impacts on non-target species and habitats is clearly identified within the assessment of good environmental status and linked to the CFP reform objectives.
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Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis; preamble (3)

Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises actives in the production, processing and marketing of fisheries products.

Regulation (EC) No. 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears.

Regulation (EC) No. 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) N° 1860/2004.

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Regulation (EC) No. 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No. 1434/98 and repealing Regulation (EC) No. 88/98.

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Regulation (EC) N° 2369/2002 of 20 December 2002 on the European Fisheries Fund

Regulation (EC) No. 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector; Title II

Regulation (EC) No. 1263/1999 of 21 June 1999 on the Financial Instrument for Fisheries Guidance.

Council Regulation (EEC) no 3769/1992 of 20 December 1992 establishing a Community system for fisheries and aquaculture, OJ L 389, 31.12.1992, p.1.

Resolution

European Parliament non-legislative resolution INI/2007/2108 of 5 September 2007 on Member States' efforts during 2005 to achieve a sustainable balance between fishing capacity and fishing opportunities.

ANNEX I List of initiatives and legislation with potential synergies and conflicts with the CFP

The Water Framework Directive (WFD)²¹⁶ requires Member States to publish River Basin Management Plans (RBMPs) by December 2009, and like the MSFD its core objective is to achieve a 'good status' for freshwater and coastal waters. Article 8(2) of the MSFD stipulates that areas of overlap with assessments completed under the WFD and international marine conventions will be harmonised. Given that the WFD aims to reduce land-based sources of pollution to the marine environment and safeguard coastal areas, including estuaries and coastal lagoons that provide spawning grounds for many marine species, there is an important link between the WFD, CFP and MSFD. And given that the WFD has already been in operation for eight years, it would be beneficial for Member States to have some formal guidance on how to implement these initiatives in concert with one another.

The Habitats Directive²¹⁷ and Birds Directive²¹⁸ require Member States to identify and protect areas for the conservation of species or habitats they contain, with the aim of producing a network of sites referred to as NATURA 2000. In the marine environment, the Habitats Directive is now being applied out to the 200nm extent of Member States' exclusive economic zones (EEZs), and the designation of marine and coastal protected areas is ongoing. The NATURA network of protected areas will form the basis of the EC's commitment to the 2012 targets for marine protected area (MPA) called for by the World Summit on Sustainable Development and the Convention on Biological Diversity. It will also form the basis of Member States' commitment to establishing a network of MPAs under the OSPAR Convention. In addition, as its jurisdictional area includes the high seas, the OSPAR Convention's efforts on establishing MPAs is in line with the IMP's call for high seas MPAs. An important interaction between the Habitats Directive and the CFP can be seen in the emergency measures mechanism discussed earlier. As designating a site under the Habitats Directive requires a period of time, closing an area that is at risk from fishing

activities through the Basic Regulation's emergency measures mechanism is a faster option and may be an important first step. However, as mentioned earlier, (i.e. the difference in outcomes between the Darwin Mounds closure and attempted pair-trawl ban), there are other issues related to risk assessment and precaution that may be negatively impacting this mechanism's potential.

The EU Integrated Coastal Zone Management (ICZM) Recommendation²¹⁹ calls for Member States to develop ICZM strategies and cooperate with neighbouring third countries. As a recommendation it is not binding, but it provides guidance for Member State behaviour and has thus hopefully provided some preliminary infrastructure for the implementation of the MSFD on the national level.

²¹⁶ Directive 2000/60/EC, OJ L 327, 22.12.2000, p.1.

²¹⁷ Directive 92/43/EEC, OJ L 206, 22.7.1992, p.7.

²¹⁸ Directive 79/409/EEC, OJ L 103, 25.4.1979, p.1.

²¹⁹ Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (2002/413/EC), OJ L 148, 6.6.2002, p.24.

ANNEX 2 Annex I of the MSFD presenting Guidelines and Relevant EC legislation that Member States can implement towards achieving ‘good environmental status’ assessments

MSFD Annex I qualitative descriptor	Relevant EC legislation and initiatives
(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.	Habitats Directive, WFD
(2) Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems.	EU strategy on invasive species (in development)
(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.	CFP
(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.	CFP, Habitats Directive, EU discards policy
(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.	WFD; UWWWD
(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.	Habitats Directive
(7) Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems.	SEA, EIA
(8) Concentrations of contaminants are at levels not giving rise to pollution effects.	WFD, Bathing Water Directive (76/160/EEC), Environmental Quality Standards Directive (2000/60/EC), EC and regional legislation on marine pollution (various), Urban Wastewater Directive (91/271/EEC)
(9) Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.	Environmental Quality Standards Directive (2000/60/EC)
(10) Properties and quantities of marine litter do not cause harm to the coastal and marine environment.	Environmental Quality Standards Directive (2000/60/EC)

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