



**Oceana submission to the consultation
on the
Green Paper on the Reform of the
Common Fisheries Policy**

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Summary and General Recommendations

European oceans are highly threatened by both pollution and dramatic loss of marine species and habitats. However, key drivers of the degradation of ocean ecosystems are overfishing and the existing harmful fishing practices.

Increasing human impacts such as climate change, increased industrial use of the oceans, pollution and ocean acidification add pressure to the marine ecosystems. At the same time, ecosystem resilience has declined, making it more difficult for ecosystems to recover from such impacts.

The European Union Common Fisheries Policy attempts to regulate the activities of the EU fishing fleet, but in many areas the policy fails to achieve its objectives and Europe's seas continue to suffer from excessive fishing pressure, with external waters also feeling the effects of the European Union's policy weaknesses as more and more vessels seek fishing grounds outside EU waters.

Oceana welcomes the Commission's Green Paper on the Reform of the Common Fisheries Policy and the acknowledgement of the present policy's shortcomings and the consequent effects on the marine environment, the sector and consumers. However, Oceana would like to point out that the current status of the European seas is mainly due to poor implementation.

This paper focuses on outlining recommendations to contribute to the renewed Common Fisheries Policy in order to achieve a situation where regulation and implementation ensure that fishing activities operate within healthy marine ecosystems and enable the recovery of degraded ecosystems within and beyond EU waters. In order to ensure healthy marine ecosystems and allow for the recovery of degraded ones, the renewed Common Fisheries Policy framework must be integrated as a key tool within the EU's environmental laws, in order to be consistent with EU aims, goals and commitments, notably the European Marine Strategy Framework Directive. The European Marine Strategy Directive from June 2008 is the first EU legislation designed for the preservation, restoration and protection of marine ecosystems. The Directive aims at achieving good environmental status of the EU marine waters by 2020.

Furthermore, the new Common Fisheries Policy must be organized in a way that it does not prevent or hamper attainment of the objectives set in other biodiversity laws such as the Habitats Directive. The renewed Policy should also allow for flexibility and adaptation in relation to possible future evolution of nature/biodiversity protection laws.

Nature/biodiversity protection should be the fundamental basis of the renewed Common Fisheries Policy in order to achieve long-term ecological sustainability. For example, the definition of the Natura 2000 Marine Network could be further expanded in the future with a view to comply with obligations set forth in the Convention on Biological Diversity (CBD) and other international agreements.

The present and future establishment of Marine Protected Areas (MPAs) should be integrated in the Common Fisheries Policy as a measure to ensure and strengthen the primary objectives of securing long-term ecological sustainability of the seas and, by doing so, the long-term viability of the fisheries activities. The CBD has mandated Parties to establish a representative network. To efficiently protect marine ecosystems and restore fish stocks, the European Union should expand the network of marine protected areas to at least 20%-30% as recommended by the IUCN, after achieving the 10% aim of the CBD by 2012.

These challenges and existing legislative frameworks illustrate the need to change the Common Fisheries Policy so it works towards protecting ocean biodiversity and rebuilding ocean ecosystems in the European Union.

The overarching objective of the Common fisheries policy must be long-term ecological sustainability in order to meet the obligation to achieve the Good Environmental Status of European Seas by 2020. The rebuilding and protection of ocean ecosystems and the recovery of ocean biodiversity must be the leading principle of the new Common Fisheries Policy as healthy ocean ecosystems are a prerequisite for a prospering economically and socially sustainable fishing industry.

For the Reform of the Common Fisheries Policy, Oceana further recommends:

- The implementation of the precautionary principle and an ecosystem-based approach to fisheries management.
- The correct management of all fisheries through TACs – (Total allowable catches), effort control and technical measures.
- Fisheries in European Union waters and by European Union vessels should only be carried out if ecologically sustainable management measures are established, based on the best available scientific information.
- As required by the Convention on Biological Diversity, a minimum of 10% of the oceans must be designated Marine Protected Areas by 2012. Marine reserves should be expanded from 20% to 30% as recommended by the IUCN.
- The restoration of depleted fish stocks to MSY by 2015. Replace MSY as a management objective for fisheries. Fisheries should be managed under the ecosystem-based approach and by integrating the precautionary principle.
- The use of an integrated approach to manage marine ecosystems aimed at achieving good environmental status of the oceans.
- The eradication of by-catch and discards in European Union waters and by European Union vessels.
- Eliminate IUU fishing in the European Union and by EU vessels. Close the European market for IUU caught fish and seafood; prohibit trade with IUU caught fish.
- Manage the "external element" of the fishing fleet within the Common Fisheries Policy under the aim of protecting oceans biodiversity and rebuilding third countries ocean ecosystems towards a good environmental status of the oceans.

- Eliminate environmental harmful fisheries subsidies and introduce legally binding goals for a substantial capacity reduction of the fleet.

Introduction

European oceans are highly industrialized and a growing number of industries and governments in the European Union aim at “*maximizing*” the use of the oceans for transport, oil and gas exploration, offshore aquaculture, bio-prospecting and other activities.

The oceans absorb roughly 30% of global carbon emissions and 80% of the heat generated by increased levels of greenhouse gases¹, thereby mitigating some of the climate change that would otherwise occur. As a result of climate change, ocean water temperature has already increased significantly and recent scientific studies show that climate change leads to increased ocean acidification.

The increased amount of carbon dioxide absorbed by the oceans changes the movement of nutrients and chemicals and also affects the growth, reproduction and disease resistance of many species. Impacts on corals, algae, crustaceans, mollusks and other species with calcified skeletons or structures could have ripple effects through ecosystems, ultimately harming large ocean species and commercial fisheries. Cooler water holds higher levels of carbon dioxide and becomes more acidic. The current trend of carbon dioxide emissions would leave cold-water corals severely stressed by 2040, and two-thirds of them would be in a corrosive environment by the end of the century.²

The resilience³ of ocean ecosystems has already declined due to loss of biodiversity and dramatic changes in species composition. Oceans and their valuable ecosystems and biodiversity play a critical role in maintaining the climate and coastal areas, where most of the fish is caught, and must serve as crucial carbon storage areas.

Restoring ocean ecosystems and improving their ability to absorb and bury CO₂ is crucial for the mitigation of climate change. Currently, most fish stocks in European waters have been fished down for decades. As outlined in the Commission’s Green Paper, 88% of Community stocks, for which the actual status is known, are fished beyond biomass levels that support a maximum sustainable yield.⁴

The 2008 European Marine Strategy Directive⁵ provides the framework for new integrated management of oceans and fisheries. The Directive aims to achieve good environmental status of the EU marine waters by 2020. According to the Directive, EU States should progressively work towards achieving “a good environmental status” which should ensure the maintenance of ecologically healthy, clean and productive seas, and reduce adverse human impacts on the marine ecosystems. Human pressure, like fishing, needs to be decreased in order to achieve that goal.

The Marine Strategy Directive stresses that good environmental status shall be reached by applying an “ecosystem-based approach” to fisheries management:

Rebuilding ocean ecosystems, including marine biodiversity, and allowing species not only to recover from exploitation, but also allowing them to play their role in the ecosystem and maintain proper marine dynamics requires moving away from fisheries management based on the single-species approach and towards the management of the entire ocean ecosystem. Management under the ecosystem approach should aim to stop biodiversity loss and rebuild natural biodiversity of the oceans, recovering ocean ecosystems and improving their resilience.

The ecosystem approach to ocean management must be based on the precautionary principle, which mainly involves applying precautionary management measures when there is a lack of scientific knowledge or advice. Fisheries must not operate without management measures and new fisheries should only operate when there is proof that they do not harm the ecosystem.

Overcoming the structural failures of the Common Fisheries Policy⁶

Oceana does not share the view that the Common Fisheries Policy itself has failed, but attributes the failure of fisheries management of European Union fish stocks and European Union vessels mainly to a lack of implementation of the concepts laid down in the Common Fisheries Policy.

The present Common Fisheries Policy regulation addressed some correct principles, the European Fisheries Fund allocated adequate funds for the possible implementation of the policy and the EU has ICES as its independent scientific body providing advice on an increasing number of fish stocks. The most important failure during recent years concerns the correct implementation of the Common Fisheries Policy.

Following, Oceana highlights some of the main structural failures in the present Common Fisheries Policy:

- 78% of scientific recommendations on TACs for European Union fish stocks have been continuously ignored. Over the last 20 years, the International Council for the Exploration of the Sea (ICES) has produced over 1,500 scientific opinions for the EU and other governments in the North-East Atlantic for the correct management of fish stocks. However, only 350 (22%) have been properly translated into effective catch limits.
- Despite the fact that several hundred marine species are commercialized in the EU, less than 40% are scientifically assessed and managed by means such as Total Allowable Catches (TACs); the rest is commercially exploited without scientific knowledge about the impact on the ecosystem and fish stocks.⁷ Those fisheries have been authorized ignoring the precautionary principle.
- Lack of political will to ensure compliance. Every year, the European Commission reports an increasing number of infringements against the

Common Fisheries Policy, concluding in 2008 that: “the number of breaches detected, when compared with the size of the fleet, highlights poor performance in control activities or even a lack of control in certain Member States.”⁸

Oceana believes that consequent implementation of the principles laid down in the current Common Fisheries Policy would have improved the situation of fish stocks significantly. These principles include the precautionary approach, the adoption of recovery plans for fisheries exploiting stocks that are outside safe biological limits, multi-annual management plans for fish stocks within safe biological limits and catch and effort limits for all other fish stocks exploited.

Addressing the deep-rooted problem of fleet overcapacity⁹

Overcapacity of the EU fishing fleet remains a major problem and repeated attempts to tackle the issue have failed and technological creep has surpassed any small capacity decreases. Technological creep describes how reductions in fishing capacity are compensated by improvements in fishing technology that substantially increases the efficiency of the fishing vessel. The overcapacity issue has been greatly driven by the allocation of financial assistance in order to modernize or renew the fishing fleet. Although in theory capacity-enhancing subsidies ended with the last Common Fisheries Policy reform, such funding continues to enable some EU fleets to enhance effort or capacity. Such subsidies must be definitively abolished.

Apart from direct payments to fishermen and their vessels, subsidies to the fishing sector also include payments for national access to fish in foreign waters, tax breaks for fuelling fishing boats, funds for the construction and maintenance of port facilities, and support for ship building and fish processing. Subsidies for the new construction of fishing vessels must be effectively prevented in the European Union and in Europe's outermost regions, including the Canary Islands, for example.¹⁰

Overcapacity affects fisheries management in many ways: inter alia, it leads to political demands to disregard scientific advice for reduction of catch limits, it causes illegal fishing, it reduces the profitability of operators, and excessive fishing activities damage the marine environment, leading to catches of non-target and protected species. Excess fishing capacity would not in itself lead to overfishing if management measures, such as management plans, TACs, effort limits and technical measures, were focused on conserving stocks and consequently implemented and enforced. Unfortunately this is not the case.

Oceana opposes Individual Transferable Quotas (ITQs) and the trading of fishing quotas as well as the development of markets for fishing rights. While other systems of rights-based management can be useful, for example for artisanal fisheries or in order to allocate rights to environmentally friendly fisheries, Oceana does not agree with the view that the ownership of fishing rights will lead to increased responsibility of fishermen or to the decrease of fishing capacity or fishing effort.

Implicit in the introduction of ITQs and other transferable rights-based management systems is the concentration of ownership of fishing rights in some large companies. Other problems include uncontrollable quota leasing, difficult monitoring, control and surveillance and the exclusion of new entrants to the fishery. This is detrimental both to resource sustainability, to equity in the sector and to consumers. Another inherent risk in the allocation of ITQs is increased self-governance of the fishing sectors, aimed at short term economic profits and lesser possibilities for influence by administrative bodies, supporting fisheries management aimed at the ecosystem-based approach.¹¹

Oceana recommendation:

- Eliminate harmful fisheries subsidies and introduce legally binding instruments for a substantial reduction of fleet capacity

Please read this paragraph in conjunction with Oceana's recommendations on subsidies included in the corresponding section.

Focusing on policy objectives¹²

The Common Fisheries Policy plays a fundamental role in shaping the domestic and external activities of the EU fleets. This role should nonetheless be applied with the greatest responsibility towards the preservation of the ecological balance of the seas and the conservation and restoration of their biological resources. The present policy regime and its poor implementation strongly contributed to the depletion and degradation of European seas as well as external waters.

The overarching objective of the fisheries policy is currently to “ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.”

The renewed Common Fisheries Policy should acknowledge the fact that fisheries constitute one of the human activities with greatest potential adverse impact on the fragile marine environment and its biological components and should consequently prescribe the most appropriate management system. The renewed Common Fisheries Policy should be focused on establishing a legal framework regulating fishing activities in order to ensure healthy marine ecosystems and allow recovery of degraded ecosystems within and beyond EU waters.

The failure of the present Common Fisheries Policy has clearly demonstrated that the sustainability of the social and economic aspects of fisheries can only be achieved by first accomplishing ecological sustainability and therefore minimizing the existing/potential adverse impacts and pressures of fisheries activities on the marine environment and its biological components, while at the same time allowing recovery of the components that are depleted or at risk of depletion. Securing ecological sustainability will result in long-term beneficial economic and social outcomes for the fisheries sector and associated coastal activities. The need to prioritize ecological

sustainability over the social and economic priorities has already been recognized by the Commission in the Green Paper on Common Fisheries Policy¹³.

In order to ensure healthy marine ecosystems and allow for the recovery of degraded ones, the renewed Common Fisheries Policy framework should be consistent with established EU environmental laws, notably the European Marine Strategy Framework Directive (EMSF, 2008/567EC).

Oceana attributes most of the responsibility for the failure of current fisheries management mainly to a persistent lack of implementation of the principles laid down in the 2002 Common Fisheries Policy Regulation.

The European Marine Strategy Directive

In order to ensure healthy marine ecosystems and allow for the recovery of degraded ones, the renewed Common Fisheries Policy framework must be based upon established EU environmental laws, notably the European Marine Strategy Framework Directive.¹⁴

Point 40 of the EMSFD preamble specifies that “the Common Fisheries Policy, including the future reform, should take into account the environmental impacts of fishing and the objectives of this Directive”. The Marine Strategy Directive highlights that “the marine environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and providing diverse and dynamic oceans and seas which are clean, healthy and productive¹⁵”. The EMSFD sets a binding roadmap to achieve good environmental status¹⁶ in the European seas by 2020. The indicated good environmental status identifies clear boundaries concerning the fisheries activities to be carried out in European seas.

“Good environmental status” means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.: (a) the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance.

The text makes reference to key objectives that should be integrated in the renewed Common Fisheries Policy such as, among others:

- Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance (art 5. a)
- 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.

- Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems. 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.
- 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.
- 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.

Although the EMSFD applies to European seas only, Oceana would like to highlight that the Directive itself specifies that *'since action at international level is indispensable to achieve cooperation and coordination, this Directive should further enhance the coherence of the contribution of the Community and its Member States under international agreements'*¹⁷.

Oceana asks the Commission therefore to include the above, identified objectives in the external dimension of the Common Fisheries Policy, as well as promoting them in the regional and international fora of which the EU is a member. This would ensure the eradication of these double standards among domestic and external dimensions in the renewed Common Fisheries Policy. The 'Good environmental status' must be taken as a baseline for the renewed Common Fisheries Policy within the EEZ, in international waters and third-country EEZs where the EU fleet may operate.

Coherence with national and international environmental politics

Furthermore, the new Common Fisheries Policy should be organized to integrate the objectives set forth in other biodiversity laws such as the Habitats Directive.¹⁸ The renewed Policy should also allow for flexibility and adaptation in relation to possible future evolution of the nature/biodiversity protection laws. Nature and biodiversity protection is a key tool to achieve ecological sustainability and therefore must constitute the fundamental basis of the renewed Common Fisheries Policy. For example, the ongoing definition of the Natura 2000 Marine Network should be further expanded in the future, also with a view to comply with the future obligations of the Convention on Biological Diversity. The present and future establishment of Marine Protected Areas to include 20% - 30% of marine ecosystems should be integrated in the Common Fisheries Policy as a measure to ensure and strengthen the primary objectives of securing ecological sustainability of the seas and the long-term viability of fishery activities. The European Union is also bound by other regional treaties to protect the ocean ecosystems and biodiversity, including the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution, the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea, and the Oslo-Paris Convention for the Protection of the Marine Environment of the Northeast Atlantic (OSPAR). Furthermore, the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) call for the protection of fish, mammals and other marine wildlife.

Obligations arising from these treaties must be integrated in the renewed Common Fisheries Policy.

Coherence with international fisheries legislation

The integration of international commitments in fisheries should be also included among the objectives of the renewed Common Fisheries Policy. Main provisions from international instruments should be clearly reflected in the renewed text. The main international instruments to be considered are, among others: the United Nations Convention on the Law of the Sea (UNCLOS), the United Nations Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fishing. Although all these instruments have been transposed in European Union law, their provisions have not been necessarily integrated in the present Common Fisheries Policy. For example, despite the UN Fish Stocks Agreement setting clear obligations upon Parties about by-catch minimization and the effect of fishing on marine species through food web and ecosystem interactions, no operational obligations have been imported into the Common Fisheries Policy.

Cross-compliance between the renewed Fisheries Policy and other relevant instruments should also be ensured by integrating some of these instruments directly in the renewed CFP.

The overarching objective of the Common fisheries policy must be long-term ecological sustainability in order to meet the obligation to achieve Good Environmental Status of European Union seas by 2020. The rebuilding and protection of ocean ecosystems and the recovery of ocean biodiversity must be the leading principle of the new Common Fisheries Policy as healthy ocean ecosystems are a prerequisite for a prospering economically and socially sustainable fishing industry.

Furthermore, the renewed Common Fisheries Policy should apply to all EU fisheries in both domestic and external waters. Oceana believes that there is no legal justification for maintaining the present two-fold EU fisheries policy.

Oceana recommendations:

- Implement the precautionary principle and ecosystem-based fisheries management.
- Establish a legal framework regulating fishing activities to ensure healthy marine ecosystems and allow recovery of degraded ones within and beyond EU waters.
- Ensure consistency with the Marine Strategy Framework Directive and integrate the Directive in the external dimension of the Common Fisheries Policy.
- Ensure consistency and future adaptation (cross-compliance) with the Habitats Directive and any regional and international nature/biodiversity protection and conservation legislation.

Focusing the decision-making framework on core long-term principles¹⁹

The renewed Common Fisheries Policy should move away from the current highly politicized and short-term decision-making approach and give more value to the interests of society as opposed to the interests of the fishing sector, along with equitable access to resources, transparency, accountability and long-term vision. Fisheries management should be a shared responsibility between fisheries administration and environmental administration at European, Member State and regional levels.

Since compliance with rules should be at the core of any meaningful policy, successful governance should ensure the equitable distribution of rights, duties and responsibilities at the European Union and national levels while ensuring effective monitoring, control and prosecution of offences. Contrary to the present Common Fisheries Policy, the renewed policy should aim at differentiating decision-making at macro and micro levels by setting binding, overarching and common principles, criteria and operational standards at the EU level, delegating the technical measures and regional implementation at the national level by Member states, local authorities and management bodies.

Control, monitoring and assessment criteria should be harmonized at the EU level in order to ensure effectiveness. Poor implementation by Member States, regions and operators should be rapidly penalized by means of sanctions and fines.

At the micro level, operators should be held highly accountable in exchange for access to fishing quotas. Operators will have to reach certain standards before being licensed to operate and accessing fishing quotas.

Regional dimensions, which should include environmental organizations as representatives of civil society and other stakeholders, need to be integrated and provide governance bodies with advice in order to help them achieve ecosystem objectives and provide feedback to the macro decision-making levels. The role of scientific advice needs to be revised. As of today, the Fisheries Council has been able to disregard scientific advice and therefore set decisions that negatively impact the marine environment. The renewed Common Fisheries Policy governance should give clear weight to scientific advice throughout the management and implementation process. Scientific advice must be binding, in order to prevent the authorization of activities that are not based on sound and independent scientific research.

Encouraging the industry to take more responsibility in implementing the Common Fisheries Policy²⁰

Fishing companies, like other industries, are focused on maximizing economic profit and, depending on the shareholder structure, this maximization usually concerns short-term profit. As the Commission correctly noted, this short-term goal conflicts with integrated fisheries management under an ecosystem-based approach aimed at the good environmental status of the oceans.

Therefore, Oceana strongly opposes the idea of self-management of the fishing industry and supports the strong leadership of the Commission, the Council, the European Parliament and the national ministries and administrative bodies in fisheries management. This is especially important as oceans are in crisis and integrated management with other maritime sectors is necessary in order to guarantee a good environmental status of the oceans by 2020 and to create an efficient network of marine reserves.

Oceana Recommendation

- Industry advantages (fishing access, TAC shares, product labeling, economic aid, etc) must depend on behavior and good compliance with the aims of the renewed Common Fisheries Policy.

Developing a culture of compliance²¹

As outlined above, the basic ideas of the Common Fisheries Policy including the precautionary principle, the adoption of long-term management plans and catch and effort limits have not been consequently implemented and, where implemented, infringements are common.

Oceana believes that the key point to achieve a “culture of compliance” is the improvement of the European system for monitoring, control and surveillance and consequent sanctions. Currently, sanctions are weak and assumed as an additional operational cost of fishing activities. In some fisheries, the fines applied are worth a small percentage of the value of the daily catch. Sanctions must be significant and effective enough to prevent infractions and they must be applied against countries, authorities, vessel owners and all other companies and individuals involved in the chain of custody.

The European Union IUU Regulation²² enters into force in January 2010, introducing new EU rules to deter, prevent and eliminate IUU fishing. The regulations must be enforced without exemptions for all fisheries and all fish stocks, and similar rules must be enforced for European Union fishing vessels. The reduction of the fleet capacity to balance it with available fishing quotas is a prerequisite in the fight against IUU fishing. Oceana supports the introduction of an EU harmonized system of criminal sanctions for repeat offenders and urges the Commission to prevent any imports or trade of IUU fish by EU companies or through EU territory. The world's fishing nations committed in August to an important step to end illegal, unreported and unregulated fishing (IUU) by agreeing on a text for a legally binding international agreement on so-called Port State measures. The European Union must take an active role in the process to implement and improve the legislation quickly.

In order to strengthen compliance with European Union fishing rules, a new fisheries control regulation has been agreed. Oceana points out the importance of a strong control regulation and a strong regime for sanctions against all players involved in the trade and marketing of fish.

Oceana opposes fishing subsidies that increase the overcapacity of the fleet and supports approaches in which owners of industrial fishing vessels, and medium and large companies, pay for the access to fishing rights in European waters and in third countries, sharing costs for fisheries management and controls. Increased fishing costs will make fisheries less profitable and will decrease fishing pressure, especially for overfished and depleted stocks, giving fish stocks and ecosystems a chance for recovery.

Oceana recommendation

- Eliminate IUU fishing in the European Union and by EU vessels. Close the European market for IUU-caught fish and seafood; prohibit trade in IUU-caught fish.

Cross-compliance

Environmental cross-compliance has already been introduced into the EU Common Agricultural Policy, where access to public aid depends on compliance with environmental policy obligations. Oceana welcomes the partial introduction of cross-compliance into the Common Fisheries Policy in the recently adopted European Union Control Regulation²³, where access to public financial assistance can be suspended in the event of non-compliance with the rules of the Common Fisheries Policy.

Cross-compliance should become an essential requirement of public funding under the Common Fisheries Policy and should be included in the Common Fisheries Policy framework regulation. Subsidies should only be available to those Member States that meet European policy commitments affecting the marine environment, including the Habitats Directive and the EMSD as well as international obligations. Considering the key objectives of the Common Fisheries Policy mentioned above, Oceana believes that environmental cross-compliance should be an essential element of public funding under the renewed policy and therefore public assistance should only be available to those member states and operators that meet policy commitments that affect the marine environment.

Oceana recommendations:

- Make cross-compliance a founding principle of the new Common Fisheries Policy.
- Make cross-compliance a prerequisite for accessing EEF allocations.

A differentiated fishing regime to protect small-scale coastal fleets? Relative stability and access to coastal fisheries²⁴

As outlined above, the overarching aim of the Common Fisheries Policy for all fleets including small-scale coastal fleets and artisanal fleets must be long-term ecological sustainability in order to meet the obligation to achieve Good Environmental Status of European Union seas by 2020.

Oceana would like to highlight that a reduction of fleet capacity would not necessarily lead to less overall employment in the fishing sector. In fact, European Union oceans will be much more productive when fish stocks are restored and managed responsibly, and as a consequence, this would lead to more fishing in European Union waters, more processing in European Union countries, less dependency on imports and more European employment in the fishing sector. More than 80% of the fishing vessels in the European Union are artisanal fishing vessels, smaller than 12 meters and another 13% are between 12 and 24 meters, suggesting that most employment of Europeans in the European fisheries sector is provided by artisanal fishing fleets.²⁵ While fishing vessels longer than 24 meters provide employment for larger crew, this crew is usually not European and therefore operators of large-scale fishing vessels do not usually employ many citizens of the European Union.

Oceana supports sustainable artisanal fisheries because they use more selective fishing gear; they catch higher value, fresh products and employ more people in relation to the biomass and value of the catch.²⁶

A clear change in the Common Fisheries Policy towards a rebuilding of coastal fish stocks, the construction of a network of 20%-30% marine reserves, and the consequent increase in European artisanal fisheries in the medium-term should also result in an increase in local catching and processing of fish. Such a policy has the potential to increase employment in the fisheries sector substantially, while increasing the quality of fish for European consumers, increasing the safety of food supply for European consumers and reducing the carbon footprint of fish consumed in the European Union, which is urgently necessary.

Artisanal fisheries must be defined in more detail. Fishing boats defined as “artisanal” should not exceed 12 meters in length and should not use towed gear.

Artisanal fishermen with vessels up to 12 meters in length without towed gear should have priority access to coastal fishing grounds and, based on fisheries management plans, economic incentives to rebuild coastal fish stocks, to support the construction of a network of coastal marine reserves and to increase the production high value, locally caught fish in the medium-term.

Artisanal fishing fleets up to 12 meters without towed gear should not compete with larger vessels, especially not with trawlers. Therefore, Oceana supports the reservation of fishing rights within 12 nautical miles to those artisanal fisheries.

Recent scientific research showed that the most important element of successful small-scale fisheries management has been community-based management, where

fishing communities develop solutions for matching exploitation rates to the productivity of resources²⁷. The establishment of a network of 20% - 30% Marine Protected Areas in coastal waters is another important element of management.

Oceana recommendations

- Artisanal fishing fleets up to 12 meters without towed gear must have priority access to fishing grounds and a positive preferential treatment.

Making the most of our fisheries²⁸

Managing Fishing Activities

Currently, total allowable catches (TACs) guide fisheries management for a number of fisheries outside the Mediterranean, with several fisheries operating under management or recovery plans. The system of total allowable catches (TACs) is repeatedly being criticized and some proposals have been made to dismantle it.

Oceana would like to point out that the management of the TAC and quota system – not the system itself- has proven ineffective in improving the state of marine resources. But while criticism about the system is increasing, the factors that hinder the correct functioning of the TACs are not taken into consideration, although they are widely known. Serious failings in the establishment, the application and control of TACs and quotas must be addressed. Over the last 20 years, the International Council for the Exploration of the Sea (ICES) has produced over 1,500 scientific opinions for the EU and other governments in the North-East Atlantic for the correct management of fish stocks. However, only 350 (22%) have been properly transformed into effective catch limits. These figures are illustrated in Oceana's analysis on quota and catch data by European fleets over the last two decades. In fact, 78% of scientific recommendations on TACs for European Union fish stocks have been continuously ignored.²⁹ TACs adopted by the Council significantly exceed the volume of catches considered sustainable by scientists; additionally, real catches are exceeding the TACs that have already been set too high by politicians.

At the same time, catches are analyzed based only on landings, without taking into account the discarded biomass that must be included to calculate correct mortality rates for that fishery. The difference between catch estimates based on landings and the biomass actually extracted from the fishing grounds, including discards, may be quite significant.

Despite the fact that several hundred marine species are commercialized in the EU, less than 40% are scientifically assessed and managed by means such as Total Allowable Catches (TACs); the remainder lacks both management and catch limits.

Furthermore, way TACs are determined must be urgently changed. A key step for achieving sustainability is the effective application of binding scientific advice in European Union fisheries management and discards must be taken into account for

the calculation of mortality rates. In addition, it is essential to increase dialogue between scientists and fishermen in order to improve reliable data availability.

Many fisheries are still carried out without any assessment and management measures. The problem of unregulated fisheries must be urgently solved and a deadline must be set to accomplish this objective.

The failure of MSY as a goal for fisheries management

Single stock fisheries models are used to determine the exploitation rate for a fish stock that provides the maximum sustainable yield (MSY) for a particular stock. Traditionally, single species MSY have been used as an aim for the exploitation of a certain fish stock.

Following a number of international conventions and agreements on the precautionary approach, in 1995, the legally binding “United Nations Fish Stocks Agreement” stipulated that European Union nations must apply ecosystem-based fisheries management and the precautionary principle.

The idea of managing fisheries at MSY was developed around 1948, based on indicators and populations models developed between 1918 (Baranov) and 1935 (Graham). Already in the 40s and 50s, scientists sharply criticized the idea of MSY, knowing that fish are part of a complex community and the single species approach of MSY is insufficient to manage the ecosystem.

Scientists criticized the MSY system and the main problems associated to this approach, including³⁰:

- MSY ignores the role of the targeted species in the ecosystem, the relationship with other species, and the impact of the fishery on non-target species and the environment.
- MSY implies reducing the natural virgin biomass of a fish stock to a level where catches are supposedly maximized.
- Exact characteristics of fish stocks are difficult to estimate precisely. Reference points like MSY are only estimations. MSY has been criticized because it constitutes a high-risk point close to a situation of overfishing.
- MSY is not even the correct level to maximize economic profitability, ecosystem preservation and employment. All those maximum profits are achieved at an exploitation level lower than MSY.

Rebuilding all depleted and overfished fish stocks to MSY might be sufficient as an initial step, but MSY should be treated as a minimum limit that must be avoided. In fact, target reference points, that are more precautionary than MSY must be set as a preliminary goal for managing fish stocks.

All fisheries management strategies based on MSY, like the establishment of precautionary limits and reference points, can only constitute an initial and transitional step.

The new Common Fisheries Policy must go far beyond that point by allowing species not only to recover from exploitation, but also allowing them to play their role in the ecosystem and maintain proper marine dynamics.

Develop long-term management plans for all fisheries based on the ecosystem approach

In a renewed Common Fisheries Policy, fishing activities should only take place after the development of long-term management plans based on an ecosystem approach.

These plans should not only regulate the amount of fish to be extracted, but also address the impacts of fishing on other species and marine habitats. They should also aim to fulfill the relevant MSFD objectives and be in line with other environmental marine legislation such as the Habitats Directive. Criteria for the plans should be outlined in the renewed Common Fisheries Policy Framework Regulation.

A key element of these plans should be the establishment of total allowable catches (TACs). TACs have been highly criticized and often blamed for the failings of the Common Fisheries Policy to conserve fish stocks. However, TACs in themselves are a useful tool to regulate fishing activities – the problem is how TACs are set and implemented.

A key change that should be made to the TAC system is that they must reflect catches rather than landings, as is currently the case. Actual catches should be recorded and verified against catch quotas. Moreover, scientific research should guide the setting of annual TACs and should not be considered mere advice to be followed or ignored depending on the current political will.

Oceana recommendations:

- Ensure correct management of all fisheries with TACs – (Total allowable catches), effort controls and technical measures.
- Fisheries in European Union waters and by European Union vessels should only be carried out if proper management measures are established based on the best available scientific information.
- Restore depleted fish stocks to MSY until 2015. Replace MSY as a management objective for fisheries with a precautionary fisheries management based on the ecosystem approach.
- Eradicate discards in European Union waters and by European Union vessels.

Precautionary principle and the reverse of the burden of the proof

The FAO Code of Conduct for responsible fisheries states that States and sub-regional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.³¹

Article 191 of the European Union treaty of Lisbon further clarifies that EU policy on the environment shall aim at a high level of protection and “shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”³²

In 2000, the Commission published a Communication on the precautionary principle to help decision makers identify available tools to implement precautionary policies. The Communication stated: “The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU”.³³

The Communication identifies four guiding principles for precautionary action: proportionality, non-discrimination, consistency, examination of the benefits and costs of action or lack of action, examination of scientific developments. The Communication also clarifies that it is an already acknowledged practice for some EU policies to apply the reverse of the burden of the proof principle by shifting responsibility for producing scientific evidence to business operators (e.g. producers, manufacturers or importers).

Therefore, the European Union must apply the precautionary approach to fisheries management not only as outlined in several international treaties, including the United Nations Fish stocks agreement and the Convention on Biological Diversity, but also as expressed in its own legislation, communications, rules and aims.

Oceana asks the Commission to clearly integrate *the reverse of the burden of the proof* principle in the renewed Common Fisheries Policy. The current Common Fisheries Policy has taken the approach to permit fisheries with limited restrictions until there is evidence of an unacceptable impact on the marine ecosystem. Such an approach is mainly responsible for the current dramatic loss of biodiversity with some ecosystems at the verge of collapse. Comprehensive scientific assessment of the potential risks of the fisheries activities should be mandatory and conducted prior to authorization.

Oceana recommendation:

- Integrate the reverse of the burden of the proof principle in the renewed Common Fisheries Policy.

The ecosystem-based approach to fisheries activities

The 2002 World Summit on Sustainable Development (WSSD) has called for the application of the ecosystem approach to fisheries by 2010.³⁴ Oceana welcomes the implementation of the ecosystem-based approach to fisheries activities. As a response to the UN commitments, the European Marine Strategy Framework Directive has already been built on the ecosystem-based approach to human activities on the marine environment. Oceana would urge the Commission to define specific implementation tools in the renewed Common Fisheries Policy to translate the approach into factual policy. The 2005 ICES paper entitled “Guidance to the application of the ecosystem approach to the management of human activities in the European marine environment”³⁵ provides very useful indications, among others:

- Management should be long-term and based upon the precautionary principle, the polluter-pays principle and the prevention principle. Best Available Technologies (BAT) and Best Environmental Practices (BEP) should be applied.
- Management should address interactions and cumulative effects.
- Management should be supported by coordinated programs for monitoring, assessment, implementation enforcement, by peer-reviewed scientific research and advice and should make the best use of existing scientific knowledge.
- Management should specify measurable ecological objectives accompanied by indicators, limits, and targets at all scales.

Furthermore, the relationship between fisheries and the marine environment is extremely complex. This is why a number of instruments should be used to assess the potential impact of fisheries at sea prior to any activity. One of the best available instruments is the Environmental Impact Assessment (EIA) as defined by the dedicated Directive³⁶. Such an instrument has not yet been used in fisheries and Oceana believes it should now be made mandatory. This would ensure that environmental consequences of fisheries are identified and assessed before authorization is granted. Following amendments of the EIA made by the Aarhus Convention, public participation could be foreseen to increase transparency in fisheries. The EIA has been prescribed by the 2002 World Summit for Sustainable Development as a fundamental tool to be used for decision-making.

Oceana recommendation:

- Integrate best available Environmental Impact Assessments in the renewed Common Fisheries Policy and make them mandatory.

Developing binding principles and criteria to address by-catch and discards

Discards are one of the main problems in European Union fisheries, some of which throw 80% of their catches back into the sea.³⁷ The EU does not yet have a specific policy on minimizing by-catch and discards, despite the fact that by-catch prevention and the elimination of discards are key drivers for an effective ecologically and economically sustainable fisheries policy. Nevertheless, the recently published 2009 Commission Green Paper on the Common Fisheries Policy Reform has not provided a clear and timely roadmap for solving these standing dramatic problems. Moreover, in the Common Fisheries Policy Green Paper, discards are still being described as the logical consequence of the catch limitations system and the principle of relative stability. The truth is, discards exist for many reasons, including the lack of will of fishing vessels to develop selective strategies and catch legal target species, and the incomprehensible, almost complete lack of specific regulations to reduce actual discards.

Fisheries constitute an industrial activity operating on common resources and it should only catch the species for which they have been authorized. Fishing should avoid by-catch because it is a waste of living biological resources and also constitutes unauthorized catches.

A renewed and stronger political commitment to avoid discards is necessary.

Oceana would like to highlight that the present Common Fisheries Policy has been unable to address the by-catch and discard problems. Solutions to these problems should be prioritized if long-term ecological sustainability is to be achieved and any credible marine conservation policy implemented.

So far, under the current Common Fisheries Policy, there has been a theoretical legal presumption that by-catch would occur under *incidental conditions* and therefore under *unwanted conditions*. However, this presumption does not reflect the reality of fishing.

Currently, it is not mandatory for the fishing industry to demonstrate adequate measures are taken to avoid by-catch prior to fishing operations. The current total allowable catch (TAC) system does not actually address what is caught but what is landed. This makes it difficult, if not impossible, to monitor the impact of fisheries on the European seas. Moreover, by-catch remains poorly regulated in other EU laws as well such as the Habitats Directive. EU laws only generally prescribe fisheries to avoid by-catch or avoid incidental catches; however, no specific action is associated to such prescription.

Oceana urges the Commission to integrate the following principles and criteria in the *renewed Common Fisheries Policy* (while more specific provision should then be developed in secondary legislation).

Oceana recommendations:

- Establishment of limits for incidental accessory catches, fisheries should be halted once an agreed by-catch limit is reached.
- High selectivity in fisheries and elimination of unselective fishing gears.
- Prohibition of discards. Landing everything that has been caught, because this is an effective measure that leads fishing industries to operate more selectively and provides fisheries managers with accurate knowledge of real fishing mortality.
- Establishment of preferential access areas; establishment of closed areas in real time with obligation to move to other zones.
- Prohibition of 'high grading'.
- Effective control and monitoring, and development of an adequate sanction system.

Integrating the Common Fisheries Policy in the broader maritime policy context³⁸

As outlined above, the European Marine Strategy Directive aims at achieving good environmental status of the EU marine waters by 2020 that should ensure the maintenance of ecologically healthy, clean and productive seas while reducing adverse human impacts on the marine ecosystems. The Marine Strategy Directive clarifies that good environmental status shall be reached by applying an “ecosystem-based approach” to fisheries management.

In 2009, less than 1% of the European marine waters are currently legally protected. Biodiversity loss and extinction of species are accelerating at critically unsustainable rates. Currently, many of the marine protected areas barely reach a surface area of one square kilometer and they are, mostly, in coastal areas, making them inefficient for conserving certain habitats and species.³⁹ The European Union is signatory to a large number of international Conventions mandating biodiversity protection, however implementation of commitments in EU waters remains poor and the EU lacks leadership at the international level.

So far, the Habitats Directive has been either poorly implemented or delayed as a result of political compromises. The UN Convention on Biological Diversity requires that at least 10% of the world's marine and coastal eco-regions be legally protected by 2012. To efficiently protect marine ecosystems and restore fish stocks, the European Union should expand the network of marine protected areas to protect at least 20%-30% of each habitat after achieving the 10% aim of the CBD by 2012 as recommended by the IUCN⁴⁰.

European oceans and coastal areas are highly industrialized and a growing number of industries in the European Union want to “maximize” the “use” the oceans for transport, oil and gas exploration, offshore aquaculture, bio-prospecting and tourism.

An ecosystem-based approach cannot be implemented through fisheries policy.

All maritime policies must contribute to a cross-sectoral ecosystem approach to marine management. So far, consistency and coherence between marine conservation protection rules, the Common Fisheries Policy and other industrial policies at sea has not been established.

Despite the fact that the EU does not have maritime competence and therefore is unable to legislate on this specific issue, the Commission put forward non-binding instruments to coordinate Member States actions on a number of activities undertaken at sea or in relation to seas. In 2007, the European Commission published a Communication on Integrated Maritime Policy for the European Union.⁴¹ The October 2008 Action Plan on Integrated Maritime Policy clarifies that the EMSFD, a legally binding instrument, is to be considered the “environmental pillar” of the maritime policy in the EU.

The approaches taken by the European Commission concerning maritime policy fail to explicitly recognize the importance of healthy marine ecosystems in relation to the sustainability of marine resources and fail to recognize the good environmental status of the oceans as the overarching aim of all maritime policies.

The recently published report about the implementation of the Action Plan on Integrated Maritime Policy identifies four main areas for cooperation among Member States under the leadership of the European Commission⁴²:

- To promote integration of governance structures by making them more inclusive and co-operative;
- To build the knowledge base and cross cutting tools necessary to enable the implementation of integrated policies;
- To improve the quality of sectoral policies, through an active search for synergies and increased coherence across sectors;
- In implementing all of the above, to take account of specificities of the regional seas around Europe, through tailor-made solutions.

In their recent progress report on the Integrated Maritime Policy for the EU – priorities for the next Commission, the Commission pointed out the focus on “sustainable economic growth”, the desire to “push for the development of intra-European maritime transport, stimulating investments in EU-flagged shipping and in the shipbuilding sector”.

The goals focused on economic growth of maritime policies might be inconsistent with the aim to achieve good environmental status of the oceans. As outlined above, the rebuilding of ocean ecosystems and the increase of ocean resilience imply a reduction of human impacts on the oceans.

The Commission has also recently published two new Communications on maritime integration and cooperation in the Mediterranean area, at the international level and on surveillance matters, promoting the sharing of information among Member States. Oceana welcomes the proposed integrated maritime activities when aimed at promoting new tools for further protection and conservation of the seas, rather than maximizing their already highly exploited use.

Oceana urgently calls for the responsible use of Maritime Spatial Planning as a framework to ensure sustainable management of 100% of European Union waters, enhancing the expansion of existing marine protected areas and the declaration of new marine protected areas under European legislation, and ensuring the ecosystem-based approach of all human activities that have an impact on the marine environment.

Scientific research must be boosted in European waters to better understand ocean ecosystems. EU Member States lack research programs aimed at studying the seabeds and ecosystems, especially in offshore and deeper areas. EU coordinated action is necessary, supported by adequate funding. Scientific research must be efficiently translated into legislation.

Oceana welcomes the steps taken towards establishing a European Marine Observation and Data Network because data collection is a prerequisite for achieving long-term ecological sustainability. Oceana would urge the Commission to further use these instruments to establish EU-wide coordination focused on the effects of climate change on the European seas and other oceans, notably acidification, with a view to promoting effective actions.

The Mediterranean

An integrated approach to maritime policy and effective fisheries management both based on the ecosystem approach is urgently needed for the Mediterranean. Overexploitation and the fleet's overcapacity constitute the main threats to Mediterranean fishing grounds. Effective fisheries management with TACs, effort management and technical measures is lacking. The lack of control in ports is notorious and the data collection is insufficient. All of these factors maintain these fishing grounds at inferior planning levels compared to the Atlantic Ocean, thus threatening their immediate future.

A strategy and road map for the establishment of coherent management measures for the exploitation of fishing resources in the Mediterranean must be included in the Common Fisheries Policy.

New measures must be implemented that effectively guarantee compliance with the management measures in order to achieve good environmental status of the Mediterranean Sea.

Oceana recommendations:

- As required by the CBD, a minimum of 10% of the oceans must be declared Marine Protected Areas by 2012. The area of marine reserves should be expanded to 20%-30%.
- To use an integrated approach to manage human impacts with the aim of achieving good environmental status of the oceans.

Structural policy and public financial support

As outlined in the section “Addressing the deep-rooted problem of fleet overcapacity”, the reason for overcapacity is fishing subsidies.

A failure to tackle overcapacity would hamper all measures to achieve the Common Fisheries Policy objective of a healthy marine environment. Therefore, a key priority for the Commission and Member States should be to find an effective and working legally binding mechanism to significantly reduce fleet capacity. Overcapacity can only be tackled by scrapping the fishing vessel or converting it. All export of fishing capacity must be prevented in every case.

Apart from direct payments for fishermen and their vessels, subsidies to the fishing sector include payments for national access to fish in foreign waters, tax breaks for fuelling fishing boats, funds for the construction and maintenance of port facilities, and support for ship building and fish processing.

Certain fishing subsidies contribute directly to overfishing. When governments subsidize vessel owners, they reduce the cost of fishing operations and make fisheries more profitable, and as a consequence, this leads to an artificial reduction of costs, thereby increasing the economic performance of the vessel and supporting further overfishing of stocks, which would be too expensive without subsidies.⁴³ Countries are working in the World Trade Organization to ban harmful fishing subsidies worldwide; the European Union needs to support a ban on harmful fisheries subsidies constructively.

Despite a commitment in the 2002 Reform of the Common Fisheries Policy to eliminate so-called harmful subsidies, effort-enhancing subsidies are still available to the fisheries sector, for example those available for engine replacement and the derogations from the non-modernization rules and the allowance of new vessel construction for the outer regions. Once again, despite good intentions, implementation of the Common Fisheries Policy fails to match the commitments. Subsidies for the new construction of fishing vessels must be effectively prevented in the European Union and in Europe’s outermost regions, including the Canary Islands, for example.⁴⁴

Furthermore, the new Common Fisheries Policy Framework Regulation should be used as an opportunity to abolish continued public funding of measures to increase the ability to fish and capacity of a sector that is far too large for the available resources. At a time of chronic overcapacity in the EU fleet and considering the increased fishing potential through the technological creep associated with vessel modernization, all effort and capacity-enhancing subsidies are unacceptable and must be definitively halted. Other environmentally damaging subsidies must be eliminated, such as fuel subsidies provided by Member States or regional authorities. These subsidies increase the fishing sectors’ dependence on state assistance rather than assisting in the long-term capacity reduction of the fishing sector.

Public financing for fisheries should only be used in certain cases, bound to a long-term management plan, based on the ecosystem approach, mainly to support

artisanal fisheries. Public funding should be targeted, bound to management plans, focused on adapting the EU fleet to resources, with the phasing out of unselective and environmentally harmful fishing techniques as a priority (i.e. certain trawling methods).

Oceana recommendations:

- As required by the Convention on Biological Diversity, a minimum of 10% of the oceans must be declared as Marine Protected Areas by 2012. The area of marine reserves should be expanded to 20%-30% as recommended by the IUCN.
- Use an integrated approach to manage marine ecosystems aimed at achieving the good environmental status of the oceans.

The External dimension⁴⁵

The European Union is obliged to manage the activities of fishing vessels within the European Union and outside the European Union in international waters and in the waters of third countries and developing countries.

Oceana strongly opposes the idea of managing vessels fishing outside the European Union under other frameworks and goals other than the Common fisheries policy itself: achieving good environmental status by 2020 for the oceans, the rebuilding and protection of ocean ecosystems, especially in vulnerable coastal ecosystems, including the recovery of ocean biodiversity.

The rebuilding of ocean ecosystems in coastal areas of third countries will provide the best basis for prospering artisanal fisheries and local fish-processing industries in those countries.

A management of the “external fleet” under other frameworks or goals would create double standards and result in an enormous drawback compared to the current situation.

Oceana would like to point out that under the definition provided by the Commission in the Common Fisheries Policy Green Paper for vessels belonging to the “external dimension”, some of the most important European Union fishing fleets would fall under this definition as they are not operating in European Union waters, including the Mediterranean bluefin tuna fleet, all other Mediterranean fisheries because this sea is almost entirely comprised of international waters, the surface longline and tuna fleets operating in the world’s oceans, the bottom trawlers and other fleets in NEAFC and NAFO, to name a few.

European Union vessels operate in the waters of roughly 20 developing third-countries under so-called “fisheries partnership agreements” and additionally several Member States have entered into private agreements or charter agreements with developing countries, outside the framework of the Commission fleet management.⁴⁶ In general, fishing in developing countries and fish trade with those countries has the

potential to undermine food security for fishing communities and the populations of developing countries.

The European Union could enhance the capacities for sustainable fishing and fish processing in developing countries by their own fleets. “Private” agreements between fishing companies and developing countries are problematic. Those agreements lack transparency and too often agree on fishing in overfished or depleted stocks, in competition with local fishermen and local processing and are carried out with unsustainable fishing gears.

According to the United Nations Convention on the Law of the Sea (UNCLOS), fish stocks within the 200-mile EEZ of a country belong to that country. The legal foundation for access of foreign nations to developing the fish stocks of developing countries is the principle of a “fishable surplus”. Article 61 of the Convention determines that countries must manage fish stocks at MSY, prevent overexploitation and determine the total allowable catch. Countries then need to determine their own fishing capacity and when they do not have capacity to harvest the entire allowable catch, to give other states –particularly landlocked developing states- access to the “surplus” through “agreements or other arrangements”.

The concept of the “surplus stock” has not been respected in European Union fisheries agreements. Presently, European-owned and European-flagged vessels fish in third countries for overexploited stocks, in vulnerable coastal ecosystems and in direct competition with local fishermen. The new Common Fisheries Policy must clarify that fisheries agreements can only be reached when fish stocks are assessed, managed and a “surplus” is scientifically proven and available. When scientific data are missing, there is per definition no “surplus” available, the precautionary approach must be applied and a fisheries agreement is impossible. Fisheries agreements that are inconsistent with UNCLOS and that allow access to fisheries that are fully exploited or overexploited or in competition with local fleets must be halted.

Oceana urges the Commission to change fisheries partnership agreements with third countries to prevent:

- any agreements on unmanaged fisheries, as is currently the case with targeted shark fisheries.
- any fishing agreement that is not based on the UNCLOS concept of “surplus stock”.
- any fishing agreements for access to overfished or non-assessed fish stocks.
- any fishing agreements, especially concerning demersal stocks, where European Union industrial fishing vessels compete with artisanal fishermen from developing countries.
- any fisheries agreements that are designed for the simple export of the fish to Europe and do not include local processing of the fish.
- any fishing agreements that do not pay fair prices for the fish to developing countries.

Oceana recommendation:

- Manage the "external element" of the fishing fleet within the Common Fisheries Policy under the aim of protecting ocean biodiversity and rebuilding third-country ocean ecosystems focused on achieving the good environmental status of the oceans.

For further information please contact:

Oceana:

Pza. España-Leganitos 47, 28013 Madrid, Spain

Tel. +34 911 440 880

Fax +34 911 440 890

europa@oceana.org

Rue Montoyer 39, 1000 Brussels, Belgium

Tel +32 (0) 2 513 22 42

Fax +32 (0) 2 513 22 46

Jose Rodríguez: jrodriguez@oceana.org

Anne Schroeer: aschroeer@oceana.org

Gaia Angelini: gangelini@oceana.org

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