



Putting the environment at the heart of the Common Fisheries Policy reform

BirdLife International Response to the Consultation on the Reform of the Common
Fisheries Policy

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Executive Summary

OBJECTIVES

- Ecological sustainability must be given top priority in the objectives of the reformed CFP, as a pre-requisite for healthy marine ecosystems and a viable fishing sector. Commitment to the precautionary principle must be reaffirmed.
- The CFP must state explicitly the legal obligation to work towards achieving or maintaining good environmental status of EU waters as specified in the EU Marine Strategy Framework Directive (MSFD).
- To achieve this, there must be an unconditional commitment to apply an ecosystem-based approach to fisheries management and this must be defined operationally for regional seas.
- MSY should only be an intermediate step towards achieving sustainability and a more precautionary reference point. MSY should therefore be regarded as a direction of travel and a limit to be avoided rather than a target.
- ICES needs to address that it is still working to reference points (Bpa, Blim and F equivalents) that are not proxies for MSY.

A STRATEGIC ECOSYSTEM APPROACH and LONG TERM MANAGEMENT PLANS

- Making an ecosystem approach operational should embrace two key elements, namely the establishment of regional fisheries plans (in each of the four marine regions under the MSFD) and, within those broad regional strategies, Long Term Management Plans (LTMPs) for all fisheries (invoking a move from stock-based to fisheries-based management).
- An ecosystem approach shall be embedded in each LTMP, the agreement of a LTMP should be a pre-condition for access to the fishery, and there should be robust sanctions against operators and Member States for non-compliance with the conditions of a LTMP.
- In developing regional fisheries plans, Strategic Environmental Assessment (SEA) should be carried out for each of the marine regions in order to identify the key impacts facing individual fisheries and to determine coherent priorities for action.
- A shift to an operational ecosystem-based approach demands a comprehensive evaluation and revision of data collection capacities, programmes and protocols across a range of institutional levels, not least the proposed Regional Management Organisations and the RACs which support them.
- The CFP must strengthen support for measures, including restriction of fishing activity as necessary, to maintain and improve the ecological status of Natura 2000 and other emerging MPA networks. Vessel Monitoring System VMS should be required for all vessels fishing in or likely to encroach on Natura 2000 sites, irrespective of vessel length (i.e. no 15m threshold).
- Consideration should be given to delegating to Member States powers for taking fisheries management measures in relation to fisheries that impact on Natura 2000 sites beyond 12nm of the Member State's coast.

CATCH LIMITS, DISCARDS and RESULTS-BASED MANAGEMENT

- The CFP should require that catch limits do not exceed the level specified in scientific advice, and the Council should be thus constrained.
- Catch limits should include all sources of fishing mortality. To this end, TACs and quotas should include all fish that are caught – not just landed catch (i.e. discards should count against quota and be included in scientific assessment).
- In this context, there should be moves towards landing all fish (and other non-target species such as seabirds) caught. However, other means (driven by results-based management) of mitigating bycatch should be developed further and evaluated to gauge their success before a ‘discard ban’ is implemented.
- We support a bycatch quota system for species under a recovery plan, to prevent the capture of species whose stocks have been reduced to critically low numbers.
- In pursuit of discard reduction and other sustainable fishing practices, we strongly support incentivising the sector and shifting responsibility towards it by the promotion of results-based management to fund gear development, trials and observer programmes. One such trial could be a discard ban to explore practical implementation and outcomes.

REGIONALISATION

- We strongly support regionalisation of the CFP and advocate a two-tier approach, with delegation of management powers on technical matters to Regional (sea) Management Organisations (RMOs) led by Member State representatives for the relevant marine sea basin. RMOs would operate within Community principles, limits and standards set by the top tier of Commission, Council and Parliament. The RMO will continue to take advice from enhanced RACs.
- The rate of devolving regional management responsibility must be dependent on the demonstration that the region has the structures, compliance and implementation capable of delivering sustainable fisheries.

CAPACITY REDUCTION

- Substantial and permanent reduction of fishing capacity is urgently required to lessen impacts on fish stocks and the overall status of the environment. Legally binding fleet reduction targets must be placed on Member States, with heavy penalties for failure to comply.
- The 1:1.35 entry-exit ratio for vessels over 100 GT should be extended to those under 100 GT
- In adjusting fleet capacity, both the size and the nature of the fleet must match available fish stocks, as defined by applying qualitative criteria for sustainable fishing, such as gear selectivity, ecological footprint, etc.
- We consider this approach to fleet restructuring as being key to effective fleet capacity reduction and a prerequisite for any secondary tools, notably transferable rights. We do not consider rights-based management to be a primary tool for such reduction, although it has a role to play in certain regions and regimes.

SUBSIDIES

- Permanent fisheries subsidies should be phased out as far as possible with the presumption that any public support should be minimised and compliant with the CFP, the MSFD and associated directives.
- We strongly support (Green Paper 4.5) ‘creating a link between effective compliance with control responsibilities and access to Community funding’. Public money must be for public goods and marine fish stocks are a public good. Community funding should be conditional on compliance not just with the CFP but with the MSFD, Habitats and Birds Directives. Member States and operators which fail to meet such cross-compliance should incur sanctions, notably the withdrawal or withholding of EFF allocation.

SMALL-SCALE COASTAL FLEETS and SEMI-PROFESSIONAL/RECREATIONAL FISHERIES

- While we accept that individual Member States could have the discretion to apply a differentiated regime, we oppose a two-tier system at EU level to protect small scale coastal fleets. A more beneficial differentiated management regime would be one which grants preferential access to those vessels (irrespective of whether they operate offshore or inshore) which can prove that their environmental impact on stocks and marine ecosystems falls within acceptable limits.
- However, improvements to the existing inshore access restriction could be secured by (a) making the restriction permanent rather than the current derogation from open access; (b) enabling Member States to extend their national fisheries and conservation legislation to both national vessels and ‘foreign’ vessels that have established rights to fish in the 12nm zone.
- CFP reform must recognise and address the growth of recreational (or ‘sports’) and semi-professional fisheries and the need to integrate these into the wider control regime, including the setting and allocation of TACs and quotas.

EXTERNAL DIMENSION

- The EU should take a lead in policy-setting in RFMOs, apply common standards at home and abroad, and should take a lead in embedding a culture of best-practice ecosystem approach to fisheries management in the RFMOs.
- The primary objective of the CFP’s external dimension, including Fisheries Partnership Agreements (FPAs), needs to be changed. The reformed objective would be to contribute to the establishment of responsible and sustainable fisheries (of which the EU involvement is but part), rather than as – at present – securing long term access to the resources and maintaining the EU’s presence in third country and international waters.
- Access by EU vessels to the waters of third countries and to the high seas under RFMOs should be conditional on meeting agreed criteria consistent with sustainable development, including environmental impact assessment and an ecosystem-based approach.
- Access costs to third country waters should be fully met by the applicant EU vessel owner

- Support to EU investments in developing countries should exclude the practice of transferring fishing capacity.

CERTIFYING BEST PRACTICE

- All CFP actions should be supported by a chain of custody from net to plate and communication to create public support for sustainable fisheries. Minimum EU standards should be set for certification and labelling.

AQUACULTURE

- Aquaculture should be treated separately from the CFP as a matter of national rather than EU competence. That said, aquaculture is a key sector, socio-economically and environmentally, and needs an overarching, strategic instrument at EU level.
- While it should not be a fundamental pillar of the CFP, there should be strategic links between the CFP and Aquaculture Strategy, given (e.g.) the important linkage between forage fisheries and supply to the aqua-feed sector.

BirdLife International response to the Green Paper

BirdLife International is a global partnership of conservation organisations that strives to conserve birds, their habitats and global biodiversity, working with people towards sustainable use of natural resources. The BirdLife Partnership operates in more than 100 countries and territories worldwide, is represented in 42 European countries and active in all EU Member States.

We are committed to working towards ecologically sustainable fisheries for the benefit of the wider marine environment and viable livelihoods for fishermen and their communities. In pursuit of this, for the past ten years we have been deeply involved in the promotion and development of an ecosystem-based approach to fisheries and the policy development towards a more integrated approach to maritime use.

We are committed to working closely and cooperatively with the fishing sector. We do so in the North-Western Waters RAC and North Sea RAC where we currently chair the Spatial Planning Working Group.

Marine ecosystems are under increasing pressure from climate change and other threats. However, we start from the premise that fishing is the single most influential human activity in the marine environment, with overfishing the principal factor damaging the ecosystems on which fisheries depend.

With the 2002 reform of the CFP having signally failed to make adequate progress towards sustainable fisheries, the 2013 reform is now crucially important to building resilient, healthy seas, and to restoring the balance between fishing effort, fish stocks and the wider marine environment. In this regard we welcome that the Green Paper calls for radical change.

The following response reflects that challenge. We address most (but not all) of the questions posed in the Green Paper, following the numbering in that document. In places, however, we have dealt with closely related questions together, i.e. in a different sequence from the Green Paper.

4.1 Addressing overcapacity

Should capacity be limited through legislation? If so, how?

Yes - there is an urgent need to (a) set mandatory reduction targets and (b) to restructure the EU fleet. Those Member States who do report annually on their efforts to achieve a balance between capacity and fishing opportunities indicate that most European fleets operate with severe overcapacity, not just to the detriment of legal fishing but also acting as a driver of IUU fishing. This cannot continue.

Compliance with such capacity reporting, however, is the exception and currently most Member States, while continuing to use EU funding on modernisation, consistently fail to report and comply with their legal obligation to report annually on their efforts to achieve a balance between capacity and resources.

We therefore strongly support creating a link between effective compliance with this responsibility and access to Community funding, as suggested by 4.5 in the Green Paper. Member States which fail to meet such cross-compliance should incur sanctions, notably the

withdrawal or withholding of EFF allocation, following the precedent set by the Control Regulation.

Missing from the Green Paper, however, is any real sense of what sort of fleet structure is actually required (in terms of quantity and quality) and how to get there. Interventions such as scrapping funds and rights-based management (RBM) should be seen as supporting tools to aid the transition towards fleet restructuring, rather than as primary tools for addressing this central issue.

The starting point is to conduct an urgent analysis (to an agreed timetable) of the existing EU fleet structure, segment by segment, to determine where there is overcapacity relative to available resources. On that basis should then be decided what the capacity limits need to be for each fishery and how much capacity needs to be lost. We concede, however, that defining fleet 'segments', is a challenge, given the heterogeneity across EU fleets.

A better picture of the existence of over-capacity would also be obtained if all Member States provided the Commission with reliable figures on balance indicators (biological, technical, social and economic) for particular fisheries and areas.

Fleet capacity should be defined as the impact of a fleet on fishing mortality (it is widely agreed that the traditional GT and kW indicators have not been adequate descriptors or drivers of the necessary balance between fishing opportunities and deployed fishing capacity). Reduction targets and indicators also need to factor in continuous 'technological creep' to a degree not captured by previous CFP reforms.

Qualitative criteria also need to be applied to set limits on what kind of capacity should be deployed in order to exploit the available resources sustainably, and on this basis, preferential access to fishing opportunities should be given to capacity which meets such criteria.

Criteria should reflect environmental, social and economic considerations. Foremost among such criteria should be:

- ecological footprint in relation to metier and gear type (i.e. preference should be given to better gear selectivity and less environmentally-damaging gears),
- reduced/low fuel consumption (the fleet must contribute to CO₂ reduction)
- employment rate (other things being equal in sustainability terms, fishing methods which employ more people should be favoured over others)
- track record of compliance

Achieving set limits on quantity and quality of capacity, as defined above, should be deployed incrementally but to an agreed timetable and should be legally-binding on Member States. The balance between capacity and estimated available resources then needs regular re-evaluation at a fishery (rather than Member State) level to ensure continuation of the balance as stock conditions change.

Compliance with comparable qualitative criteria should be a pre-condition for access to third country waters and for fisheries under the jurisdiction of RFMOs (see also 5.8, below).

Is the solution a one-off scrapping fund?

Scrapping subsidies don't work long term and are no solution for a coherent strategy for achieving a fleet capacity in balance with marine resources as described above. However, we

do recognise the value of well-designed decommissioning schemes, enlisting public aid, as a tool to assist the transition towards a more sustainable fleet structure (see also answer below on Rights-based Management).

We support the concept of the entry-exit scheme but the rules should be amended and there should be no exemptions from them. According to Council Regulation 865/2007 Article 13, Member States shall manage - with an entry-exit ratio of 1:1 - new entries into the fleet of vessels equal to or less than 100 GT, and with 1:1.35 for vessels of more than 100 GT. BirdLife considers that a ratio of 1:1.35 should be applied to all vessel types, including those less than 100 GT, otherwise vessel modernisation, more powerful engines and more effective fishing techniques are not sufficiently taken into account.

In Germany, for example, in 2008 the fleet consisted of 1825 vessels with a tonnage of 68,500 GT, and a high proportion comprised vessels less than 100 GT. The majority of these vessels could be 'exchanged' with new and more effective / destructive ones at a ratio of 1:1, which will definitely not lead to a reduction of fishing capacity. At the same time, this 'small scale' coastal fishery affects regional fish stocks in the North and Baltic Seas and is particularly known for incurring significant bycatch rates of cetaceans and seabirds.

Could transferable rights be used more to support capacity reduction for large-scale fleets?

We don't see any justification for this being the primary EU-wide mechanism towards achieving a sustainable fleet structure (see above), although – as with decommissioning schemes – we recognise the capacity of rights-based management (RBM) to help ease the transition towards restructuring the fleet.

The CFP should take note of the experience of RBM in Australia. RBM did not work there while there was excessive fleet capacity and no strategy to deal with it -- vessels couldn't find a market for their fish but neither could they readily decommission from the sector. It was not until Australia spent \$AUS20 million on a one-off scrapping scheme which fundamentally rebalanced capacity with marine resources that the conditions were created under which RBM could be an effective tool.

Insofar as RBM is implemented in any EU Member States or regional management framework, it needs to incorporate an effective system of protecting sustainable fishing by small, coastal communities, and of preventing a concentration of ownership with the associated environmental, social and economic risks.

Should this choice be left entirely to Member States or is there a need for common standards at the level of marine regions or at EU level?

The argument for EU-wide restructuring of the fleet argues for common standards to be applied on a wide spatial scale, as described in our answer to the first Q in 4.1. Moreover, these standards need to be compatible with the objectives of the Marine Strategy Framework Directive (2008/56/EC) for marine regions. Within these constraints, however, we can envisage the choice being left to Member States to operate a system of transferable rights at their discretion as a means of managing access to resources.

4.2 Focusing the policy objectives

How can the long term objectives regarding ecological, economic and social responsibility be defined in a clear, prioritised manner which gives guidance in the short term and ensures long-term sustainability and viability of fisheries?

5.5 Integrating the CFP in the broader maritime policy context

These two sections in the Green Paper are inextricably linked and will be dealt with together here:

Ecological sustainability must be made a pre-condition for viable fisheries

This recognises that the social and economic well-being of the fishing industry is dependent on the health of the marine ecosystem, of which fish stocks are an inherent part. The Objectives in the Basic Regulation of the CFP must therefore be revised to state explicitly that the ecological and conservation goals of the CFP will be set as the priority objective.

To meet this, Art 2.1 of the Basic regulation could be re-stated as:

The Common Fisheries Policy shall aim to ensure healthy marine ecosystems, including productive stocks, both within and beyond EU waters, by establishing a framework for measures governing access to EU waters and resources, and the sustainable pursuit of fishing activities.

To this end, the Objectives must assert that the CFP will be fully compliant with, and actively promote, the attainment of Good Environmental Status (GES) of EU waters as specified in the Marine Strategy Framework Directive (MSFD). This could be framed with reference to the objective (above) as:

In pursuit of this objective in respect of EU waters, the Common Fisheries Policy shall contribute to the achievement or maintenance of good environmental status pursuant to Directive 2008/56/EC.

It is also necessary to amend the Basic Regulation to capture the contribution that fishing as an activity makes to climate change through CO₂ emissions. The CFP must minimise and, where possible, eliminate the impacts of fishing on the environment generally, including through measures in relation to the impact of the fisheries sector on climate change.

The Objectives must reassert the need to apply the precautionary principle

The Objectives must reassert the commitment of the EU institutions and Member States under the CFP to apply the precautionary principle to achieve the objectives set out in Art 1, paras 1 and 2. The principle should be explicitly spelled out, namely that the absence of adequate scientific information shall not be used as a reason for postponing or failing to take action aimed at achieving these objectives.

We consider that the CFP should refer to the precautionary principle rather than the 'approach' (the term used in Art 2.1 of the current Basic Regulation) because:

- i) the term 'principle' is stronger, as it implies (a) that one is referring to just one universally agreed principle (and not lots of different 'approaches'), and (b) that it is recognised as a universal principle of international law
- ii) the EC Treaties (including Lisbon) refer to the precautionary principle, not the precautionary approach.

A stronger driver for implementing an ecosystem approach is required

Under the MSFD, the reformed CFP must go further than the reactive and piecemeal attempts to an ecosystem approach made so far, which have not been helped by the weak call to action in Art 2.1 of Reg 2371/2002, namely 'It (the Community) shall aim at progressive implementation of an ecosystem-based approach to fisheries management'. While the intent of this progressiveness is understood, it has been open to interpretation as an excuse for delay in taking necessary and timely action. The current language in the regulation is at best a vague guiding principle, rendered optional by 'shall aim', and gradual by the phrase 'progressive implementation'.

To amend this, Art 2 of the Basic Regulation should make a straightforward commitment to apply an ecosystem approach in order to meet the CFP's objectives, and to spell out the definition of an ecosystem-based approach as given in the MSFD.

A strategic framework is needed for operationalising an ecosystem approach

The CFP must define an ecosystem-based approach to fisheries management in an operational way. It is not enough just to specify compliance with the MSFD and trust that Member States will translate this into detailed practice. Instead, the CFP should outline and formalise the approach required at the regional sea level to deliver an ecosystem-based approach. This calls for a holistic approach, building on Long Term Management Plans for stocks, in a process equivalent to the Fisheries Ecosystem Plans initiated in the USA.

BirdLife sees the need for a hierarchical (but closely coordinated) approach to such plans which has two main levels, the first strategic, the second operational, as follows:

Level 1

At the first of these two levels (which we may call regional fisheries plans), there is a need to set the over-arching, strategic objectives for fisheries management at regional sea/basis level compatible with the achievement or maintenance of good environmental status as defined in the MSFD.

Next, in a stakeholder-wide process, identify the principal fisheries-ecosystem interactions/conflicts which need to be addressed to meet these objectives. This will require quantification of inter alia discards and other bycatch, deterioration of seabed, etc.

Strategic Environmental Assessment (SEA) should be carried out for each of the marine regions in order to identify the key impacts facing individual fisheries and to determine priorities for action in a coherent way.

The RACs have an important part to play in both Level 1 and Level 2, and it will be important to conduct pilot studies to (e.g. Dogger Bank) level to determine best practice in terms of procedure and substance.

Regional Management Organisations (RMOs: see answer to a later Q) are appropriate and necessary to develop and agree Level 1 and 2 plans for submission to the Commission, Council and European Parliament.

Level 2

The measures which then need to be taken at fisheries level to address these conflicts would be implemented through Long Term Management Plans (LTMPs) which will differ from the CFP's current ones in the fundamental aspect that each shall incorporate an explicitly

described ecosystem-based approach based on a set of Community standards. Such plans have been called 'Ecosystem-based Fishery Management Plans' (Lutchman et al 2009 Towards a reform of the Common Fisheries Policy in 2012 – CFP health check, IEEP. London).

This approach, giving recovery and management plans a broader focus, also in effect extends the approach set out in the Communication on MSY and sustainability with regard to groups of fish stocks that are caught together in a mixed fishery. The plans would set a coherent strategy for achieving an ecosystem approach to fisheries management in the EU waters of each of the four marine regions under the MSFD, and contribute to achieving/maintaining their good environmental status.

Feedback from Level 2 to Level 1

Level 2 on its own will not necessarily deliver the coherent, regional ecosystem approach that is so signally lacking under the current CFP. The balance, synergies, and possibly conflicting outcomes of individual Long Term Management Plans need to be monitored, reviewed and, as appropriate, adapted in a coordinated way which is a function of Level 1. Trans-boundary issues with neighbouring marine regions may also need to be addressed.

Criteria for Long Term Management Plans under reformed CFP

Each plan will be based on a set of Harvesting Control Rules and shall provide for a recovery phase if necessary, and a management phase. In addition:

Plans must be specific for fisheries or regions

A weakness of LTMPs hitherto has been the focus on individual stocks rather than ecosystems or fisheries as a whole.

Integration of an ecosystem-based approach requires that LTMPs henceforth have in-built actions, indicators and timetables for tackling impacts on target and non-target species and habitats, notably:

- measures aimed at the elimination of bycatch of seabirds and other non-target species including fish discards
- establishing the necessary data collection protocols and observer programmes to that end
- making fishing gear, spatial distribution/level of effort (including possibility of zero) and fisheries-licensing conditional on environment impact assessments (fisheries access needs to be conditional on demonstration that it is not environmentally damaging, i.e. reversal of burden of proof)
- restricting or banning fisheries in areas of high conservation value, both for nature conservation and for fish stock restoration.

A plan needs to be a pre-condition for fishing

We can no longer live with the vagueness of Art 6 of the current regulation: 'The Council shall adopt management plans as far as necessary...'. No fishery should be the target of a fishery in EU waters unless or until it is subject to a multi-annual plan. Regulation text should therefore specify a mandatory requirement for all European fisheries to have functional plans agreed within a specific timeframe, and that these should comply with a basic set of requirements set out in the Regulation. A reasonable target would be a deadline of 2015 for the agreement of

all LTMPs. Extra provisions would have to be made for shared stocks with (e.g.) Norway or which straddle into the high seas, notably by negotiating with third parties for the establishment of multi-annual plans.

Further to the deadline suggested, the CFP should specify that any stock (in EU waters or the high seas) which has not been the target of a fishery by EU vessels at any point during, say, the 12 months prior to the date of entry into force of the (new) Regulation shall not be the target of fishing from that date or until this stock is subject to a LTMP.

Constrain catch limits to levels recommended by scientific advice

The Commission concedes that catch limits set by the Fisheries Council have exceeded scientific advice by about 48% in recent years. Following the model of the Magnuson-Stevens Fishery Conservation and Management Act which constrains USA Fisheries Councils not to exceed formal scientific advice on annual catch limits, the CFP should require that fishing opportunities do not exceed the level specified in such advice.

With catch limits 'locked in' by this empirical approach, there is no need for Ministers to have the final decision which can thus be delegated to the Commission in cooperation with Member States. Some argue that such a move would simply politicise the scientific advice itself but we regard this as lesser risk than is incurred by the present decision-making procedure.

Whether or not catch limits are capped in this way, clear Harvest Control Rules must (as stated above) be set, with clear targets and timelines, which de facto also constrains the Fisheries Council to parameters which are not open to manipulation,

Catch limits should include all sources of fishing mortality. TACs and quotas should include all the fish that are caught – not just landed catch (i.e. discards should count against quota and be included in scientific assessment), not least to improve the basis of fisheries science. This needs to happen within a strong framework of catch/effort limitation, monitoring and enforcement (e.g. through on-board observers and CCTV) and should be rolled out on a pilot fishery basis. It also invokes the need to move towards the landing of all fish (i.e. a discard ban) if other means of mitigating current levels of discards prove unsuccessful (see answer to 5.2, below, on eliminating discards).

There should also be an obligation to retain, land, and report bycatch of non-target species other than fish, notably seabirds, turtles and sea mammals (see also answer to 5.2, below, on discards).

Sanctions for breach of compliance. There should be formal penalties, standardised across Member States for failure to implement fisheries plans in accordance with the CFP and its supporting framework of Directives, notably the MSFD.

Maritime Spatial Planning, Fisheries and MPAs

Management measures for marine Natura 2000 sites

The CFP must strengthen support for measures, including restriction of fishing activity as necessary, to maintain and improve the ecological status of Natura 2000 and other emerging MPA networks. Such measures are provided for, at least inshore, in emerging legislation in some Member States, e.g. the UK's Marine and Coastal Access Act.

According to the Communication on the role of the CFP in implementing an ecosystem approach to marine management (COM(2008)187 final), 'CFP instruments will be used to ensure appropriate management of fishing activities within areas protected by Community legislation (e.g. Natura 2000 sites, or other protected areas including under the Marine Strategy Framework Directive'.

It is essential that the appropriate fisheries management measures be taken speedily, effectively and in a coherent way where Natura 2000 sites adjoin the EEZs of different Member States, e.g. Dogger Bank. Major delivery mechanisms for this should be SEA and making the adoption of LTMPs conditional on prior environmental impact assessment (see above).

Under the CFP, guidance should also be developed to arrive at a coherent and effective suite of mitigation measures for potential conflicts between particular fishing activities and particular species and habitats. This will be particularly important for contiguous Natura 2000 sites in areas like the Dogger Bank. In this regard, the ICES EMPAS project¹ has already offered a good way forward for gill-net fisheries in the Baltic.

As appropriate to the nature conservation value threatened by fishing activity and the management measures appropriate, the use of selective gear should be mandatory to enable access to Natura 2000 sites. Vessel Monitoring System VMS should be required for all vessels fishing in or likely to encroach on Natura 2000 sites, irrespective of vessel length (i.e. no 15m threshold).

Competence for management measures and notification times

Due to the protracted process of applying for EU fisheries measures to protect designated Natura 2000 sites, however, the process of adopting fisheries restrictions has been challenging, even in cases where Member States are willing to protect marine habitats or species. Where Natura 2000 designations have conferred, or will confer, special protection to an area, the adoption of fisheries management measures has lagged behind or not been applied for at all. This brings into sharp focus the conflict between exclusive Commission competence for fisheries policy and mixed competence for environmental policy.

Consideration should therefore be given to delegating to Member States powers for taking fisheries management measures in relation to fisheries that impact on Natura 2000 sites beyond 12nm of the Member State's coast. These measures would still be subject to consultation with other relevant Member States and the appropriate RAC(s).

Under Reg 2371/2002, Art 8, 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, the Commission, at the request of the Member State or on its own initiative, may decide on emergency measures lasting for only 6mths in the first instance.

Having notified the Commission, other Member States and the RACs, of the intention to take emergency measures, the Member States and the RACs must submit their written comments within 5 days of the date of notification (Art 8.3). In practice, compliance with this deadline is highly challenging, particularly for the RACs.

¹ <http://www.ices.dk/iceswork/wgdetail.asp?wq=WKFMMPA>

The CFP should extend the response time to the same 15 days afforded to the Commission (to confirm, cancel or amend the measure).

In practice, however, the emergency measure mechanism (even though we acknowledge it is a measure of last resort) has had mixed success. Following the closure of the Darwin Mounds under this mechanism in 2003, the UK's attempt to do likewise to prohibit pair-trawling for sea bass in the English Channel failed. In this respect, the CFP needs to define a more precautionary approach to acknowledging uncertainty in 'evidence of a serious threat'.

How can indicators and targets be defined to provide proper guidance for decision making and accountability? How should timeframes be identified for achieving targets?

The CFP should draw on the targets, indicators and timeframes defined in the MSFD. Timeframes with legally-binding deadlines should also be embedded in key policy objectives, notably:

- fleet capacity reduction and the restructuring programme necessary to achieve this
- deployment of ecosystem-based regional fisheries plans
- and, within those, multi-annual plans.

A more accurate picture of over-capacity would be obtained if all Member States provided the Commission with reliable figures on balance indicators (biological, technical, social and economic) for particular fisheries and areas.

4.3 Focusing the decision-making framework on core long-term principles

How can we clarify the current division of responsibilities between decision-making and implementation to encourage a long-term focus and a more effective achievement of objectives? What should be delegated to the Commission (in consultation with Member States), to Member States and to the industry?

Creation of Regional Management Organisations (RMOs)

We do not favour the Green Paper's option of the comitology procedure as a routine approach as this does not distance decision-making sufficiently from the Commission.

We support the development of structures and functions for devolution of governance which gives more responsibilities on technical issues to regional management.

We fully accept the need for safeguards such that decentralisation will still operate within a framework of strict accountability to Community principles, limits, standards and control, with effective sanctions for non-compliance. The first tier of governance remains the Commission, Council and Parliament with advice from ICES, STECF, ACFA and the RACs.

With regional limits set by the first tier, management powers would then be delegated to Regional (sea) Management Organisations (RMOs) led by Member State representatives for the relevant marine sea basin.

The RMO will incorporate scientists, and its deliberations will be highly dependent on an enhanced advisory role of the relevant RAC(s). The agreement of the management units would rest with the top tier. This enhanced role implies formal (and suitably resourced) scientific support to the RACs in order to better translate the knowledge and expertise of the RAC stakeholders into policy advice.

In this sense, although ICES will continue to be a source of scientific advice, the RACs will have to have bespoke scientific expertise built into their formal structure. Without increased support and capacity, RACs will not be in the position to take a stronger role within a system of devolved governance.

While we fully support the industry's call to take greater responsibility for developing fisheries plans, it has to happen within the RMO. In this regard, there has been some confusion about the proposal from parts of the sector for 'self-defined industry groups' to generate 'fishing plans' for audit and oversight by the RMO.

We can support this as long as it does not mean delegating responsibility for developing LTMPs to the sector or even groupings within it. Rather the only role we see as acceptable is the delegation of responsibility for operational implementation of management measures under the LTMP to the fishing sector and stakeholders through the preparation of sustainable fishing plans. These plans might, as suggested by the sector, be developed initially by self-defined fishing industry groupings. They would be coherent within a fishery, and would describe how the vessels would fish sustainably over a defined period within the confines of the agreed LTMP.

However, a potential hazard of this approach is that, depending on the composition of the 'self-defined fisheries group', fisheries plans might become too local/parochial such that they become disconnected from one another. This could act to the detriment of coherent and sustainable resource use at a wider spatial scale (which may have trans-boundary implications, involving devolved administrations and/or other Member States and neighbouring marine regions).

Rate of Regionalisation

Movement towards responsibility for a more regionalised management approach should be incremental, and regions such as the Mediterranean (where EU Member States are a minority of the regions coastal states and where common measures remain poorly developed) should only graduate towards 'full' regionalisation when they have demonstrated structures, compliance and implementation capable of delivering sustainable fisheries. In other words, flexibility is needed around a common model: as David Symes puts it (Fisheries Research 100 (2009), 99-102), 'A willingness to see the CFP evolve at different rates and along different trajectories, but bound by a common set of principles, standards and a unifying aspiration for sustainable fisheries, is a sine qua non of a reform agenda with regionalisation at its core'.

CFP reform should also strengthen the development of structures to allow better communication and practice at bordering marine basins, such as the Mediterranean and Black Seas. EU regulations at these boundaries will have only limited impact if non-EU countries in these regions are not taken into account.

Do you think decentralised decisions on technical matters would be a good idea? What would be the best option to decentralise the adoption of technical or implementing decisions? Would it be possible to devolve implementing decisions to national or regional authorities with Community legislation or principles? What are the risks implied for the control and enforcement of the policy and how are they remedied?

While Community limits and standards would rest with the formal EU governance framework, this would cascade into the setting of regional limits and standards by the Member States (e.g. those around the North Sea) in concert with scientific advice and from the enhanced RAC structure. The 'committee of Member States' which form the legally mandated core of the RMO's responsibilities would be populated by Member State representatives but we envisage that its decisions would have the sign-off of the Ministers of its constituent Member States. Roles and decision-making that would fall to the RMO would include, notably:

- the setting of fishing opportunities within the constraints of Harvest Control Rules and strictly congruent with scientific advice,
- the development of regional fisheries plans and multi-annual plans incorporating an ecosystem-based approach (see response to 4.2 and 5.5, above).

4.4 Encouraging the industry to take more responsibility in implementing the CFP

How can more responsibility be given to the industry so that it has greater flexibility while still contributing to the objectives of the CFP?

How could the catching sector be best structured to take responsibility for self-management? Should the POs be turned into bodies through which the industry takes on management responsibilities? How could the representativeness of the POs be ensured?

What safeguards and mechanisms are needed to ensure self-management by the catching sector does not fail, and successfully implements the principles and objectives of the CFP?

As described above, we believe that the industry has a central role to play in the development and implementation of regional fisheries plans and, in particular, LTMPs. Within this framework, we see results-based management as a major driver for industry to take responsibility for steering towards sustainable outcomes, and in so doing to deliver a stronger culture of compliance.

In this regard, we envisage the future model as one of co-management in which the sector will have a major influence on macro- and micro-management, in concert with Member States, scientists, NGOs and other stakeholders.

We see the way forward as co-management rather than 'self management'. We can see that POs may, in certain cases, have a role to play in co-management and in the implementation which flows from regionalisation. It is important, however, that sector input to LTMPs is delivered at the most appropriate and coherent spatial scale, especially given that the future focus of LTMPs should be on fisheries for regional seas rather than stocks.

Should the catching sector take more financial responsibility by paying for rights or sharing management costs, e.g. control? Should this only apply to large-scale fishing?

When giving more responsibility to the industry, how can we implement the principles of better management and proportionality while at the same time contributing to the competitiveness of the sector?

Are there examples of good practice in particular fisheries that should be promoted more widely? Should incentives be given for the application of good practices? If so, which?

We believe the sector should take more financial responsibility for access and management, and this should not just apply to large-scale fishing.

While we do not support transferable rights between Member States, we have no problem with internal transfer (as already happens in many Member States).

We are strongly supportive of results-based management such that fishermen in cooperation with other stakeholders implement operational plans which show that fishing will happen within defined sustainable limits and meet the burden of proof that the plan will deliver on its objectives. We support the linkage to incentives, e.g. extra days at sea as long as this matches a genuine raising of the bar (e.g. use of more selective gear) and is not a reward for what vessels should be doing anyway to qualify as fishing sustainably.

There are existing exemplars of this approach on which to build, not least the Conservation Credits Scheme (CCS) in Scotland, run by the Marine Scotland and advised by a comprehensive and inclusive steering group of stakeholders.

4.5 Developing a culture of compliance

How can data collection systems be improved in the short and medium term to ensure coherent information for enforcement purposes?

Which enforcement mechanisms would best ensure a high level of compliance: centralised ones (e.g. direct Commission action, national or cross-national controls) or decentralised ones?

Would you support creating a link between effective compliance with control responsibilities and access to Community funding?

Could increasing self-management by the industry contribute to this objective? Can management at the level of geographical regions contribute to the same end? What mechanisms could ensure a high level of compliance?

Across the Community, the biggest source of non-compliance is generally rejection of scientific advice. Improving scientific support will improve compliance, as will greater opportunity for fishermen to collect data and input their own expertise.

Transposing the MSFD into national regulation, and making appropriate operational linkage to ensure compliance between the MSFD and CFP, will require data collection systems to be revisited, to ensure they deliver for this new framework.

Integrating an ecosystem approach into Long Term Management Plans for fisheries, and the need to have LTMPs for all fisheries as a pre-condition for conducting a fishery at all, requires more leverage of funding for research and monitoring on ecosystems in relation to fisheries impacts.

Beyond resourcing, this shift to a more strategic ecosystem-based approach demands a comprehensive evaluation and revision of data collection capacities, programmes and protocols across a range of levels, from ICES to national fisheries institutes and agencies, ultimately extending to the proposed Regional Management Organisations and the RACs which support them.

EFF programmes will need to be reconfigured to give greater priority to delivering an ecosystem-based approach to fisheries management, notably through the adaptation of vessels and their gear to environmentally-friendly fishing. We envisage significant onboard research to develop, test and refine mitigation measures, and resourcing will need to be made available to undertake such programmes.

As an exemplar of where the RACs have already been active in the area of data provision in relation to environmental protection, CEFAS led an EU-funded 'Lot 7 project' to analyse VMS and logbook data to provide standardized efforts of fishing effort on the Dogger Bank in consultation with the North Sea RAC. The final report to the Commission August 2009 demonstrated how much data can be forthcoming from the sector when fishing space and opportunities are affected by Natura 2000 and by windfarm development. This sort of data will be increasingly necessary to underpin the role and status of fishing in the context of emerging MPA networks and the development of Maritime Spatial Planning. However, the RACs will need better resourcing and formal scientific support to engage routinely and proactively in such data provision.

Where fisheries interact (or have the potential to do so) with marine Natura 2000 sites, Vessel Monitoring System (VMS) should be mandatory for all vessels irrespective of length (i.e. there should be no 15m threshold in this case), and the VMS signal rate should be increased in the zone around Natura sites.

The Data Collection Regulation and its secondary legislation are in need of amendment to ensure that Member States collect the data on seabird bycatch necessary to implement the Commission's proposed Community Plan of Action for the reduction of seabird bycatch in fisheries. The absence of any legal obligation on Member States to collect and supply such data is an obstacle to best practice in this arena.

We strongly support 'creating a link between effective compliance with control responsibilities and access to Community funding'. Public money must be for public goods and marine fish stocks are a public good. We argue for making access to Community funding conditional on compliance not just with the CFP but with other relevant EU and international policies, not least the MSFD, Habitats and Birds Directives. Member States and operators which fail to meet such cross-compliance should incur sanctions, notably the withdrawal or withholding of EFF allocation.

As indicated above, we strongly support the development of results-based management to incentivise the sector, e.g. the use of CCTV to record discards. Moving towards a regime whereby all fish are landed (and TACs account for fish which would otherwise have been discarded – see answer to 5.1, above and 5.2, below) will undoubtedly improve the database

for stock assessment and should lead to the sector's greater compliance with, and contribution to, scientific advice.

5.1 A differentiated fishing regime to protect small-scale coastal fleets?

How can overall fleet capacity be adapted while addressing the social concerns faced by coastal communities taking into account the particular situation of small-and medium-sized enterprises in this sector?

How could a differentiated regime work in practice?

How should small-scale fisheries be defined in terms of their links to coastal communities?

What level of guidance and level-playing field would be required at EU level?

In the southern EU States with large numbers of small-scale inshore fleets, particularly Greece, Italy and Portugal, there are continuing calls for policy change to support and protect inshore fishing communities. Strongly empathising with this, we fully understand the concern and intent behind the Commission's thinking.

However, while we accept that individual Member States could have the discretion to apply a differentiated regime, we oppose a two-tier system at EU level to protect small scale coastal fleets. Boats that might fit the terminology of 'small scale and coastal' need to be as strongly managed as larger-sized and often less environmentally damaging vessels. In this respect, we fully agree with the Green Paper's contention (4th para in 5.1) that (while 'Many vessels are small scale and have limited environmental impact') 'small-scale fishing can also be harmful to sensitive coastal habitats and its aggregated impact can be significant with real consequences on the state of stocks'.

Indeed there are many examples where fleets of larger vessels working offshore are making greater strides towards ecological sustainability of stocks and the wider marine environment than some coastal fleets (e.g. Scottish pelagic fisheries which are now MSC certified).

We believe that a differentiated regime would be highly impractical for those Member States with fleets which cannot easily be defined. In Scotland, for example, larger-sized vessels working offshore may be family-owned and bring great benefits to coastal communities where these families and crews are based.

Any 'two tier' system must ensure that all vessels, regardless of how they are defined, are regulated in a manner which allows them to meet the environmental objectives of the CFP and the MSFD.

A more beneficial differentiated management regime would be one which (a) operates Long Term Management Plans as the best way to deliver sustainable fisheries, irrespective of whether they are prosecuted offshore or by small-scale inshore fleets; (b) favours granting access and fishing opportunities to those vessels which can prove that their environmental impact on stocks and marine ecosystems falls within acceptable limits. The new regime must award best practice and give preferential rights to those operators which can prove they are fully compliant with environmental regulations set by the Commission, Council and

Parliament. A revised management policy based on an ecosystem approach to fisheries and a balanced fleet capacity across the EU will protect all coastal communities by ensuring they are economically and environmentally viable, regardless of how Member States define their fleets.

See also answer to Q5.3 below (Should access to the 12nm zone be reserved for small-scale fishing vessels?)

Regulation of non-sector 'small-scale fisheries'

While we recognise that it may be a matter more for national regulation, an issue which the CFP reform must recognise and address is the growth of recreational (or 'sports') and semi-professional fisheries and the need to integrate these into the wider control regime.

Collectively, in certain regions of the EU, these can have substantial impacts on fish stocks and also incur bycatch of non-target species such as seabirds and sea mammals. Examples include:

- Belgian and Dutch scientific reports present evidence of incidental catch of sea mammals by recreational angling).
- The results of an official pilot study on the recreational cod fisheries in waters under Belgian jurisdiction (Feb 2007) concluded that cod catches by recreational fishers in the Belgian coastal waters amounted to 100-200 tons annually. In comparison, in 2003-05, the total cod catches by professional fishers from the same area were 50-75 tons annually.
- Recreational fisheries in Spanish waters are conducted by ca 70,000 vessels, none of whose activities are regulated, compared with ca 12,000 vessels in the traditional commercial sector.
- In Denmark, there are significant numbers of semi-professional fishermen for whom fishing is only a minor part of their income, yet they sell their fish through different channels from those of the official sector and belong to their own organisations, e.g. <http://www.fritidsfiskerforbundet.dk/index.htm>

In order to assess the extent to which the CFP should address this issue in policy terms, the initial need is for centralised documentation of joined-up (across Member States) statistics on the scale and impacts of semi-professional and recreational fisheries.

Semi-professional fisheries should be subject to regulation, especially on technical conservation measures (gear types, selectivity, etc). Pilot projects could be conducted on closed areas and other options for regulation.

In the sense that 'you can't catch fish twice', the setting and allocation of TACs and quotas needs to consider the relative take-up by professional and semi-professional/recreational fishers. This is particularly important where mobile stocks are concerned that may affect different national jurisdictions.

5.2 Making the most of our fisheries

How can long-term management plans for all European fisheries be developed under the future CFP? Should the future CFP move from management plans for stocks to fisheries management plans?

See answer to Q 4.2/5.5 (above) which strongly recommends that:

- LTMPs be developed for all fisheries (rather than individual stocks) and fisheries should not be prosecuted unless and until such multi-annual plans are in place
- An ecosystem approach should be integrated into each LTMP
- LTMPs should, collectively, contribute towards the delivery of a regional fisheries plan (otherwise known as fisheries ecosystem plans) compatible with achievement and /or maintenance of good environmental status. (In other words, we strongly agree with a move from stock based management to fisheries-based management).

Should we consider reforming the CFP in two steps, with specific measures to move to MSY prior to 2015 followed by measures to maintain MSY as the upper exploitation rate after that?

How could the MSY commitment be implemented in mixed fisheries while avoiding discards?

We recommend the setting of TACs and quotas to take into account the requirements of the Marine Strategy Framework Directive in respect of aiming to achieve and maintain good environmental status, and to achieve Maximum Sustainable Yield targets by 2015². The MSFD asks for integrating the CFP and forces us to consider fish not as a protein resource only, but as a vital and essential part of marine ecosystems, biodiversity and food webs (MSFD, Descriptors 1 & 4).

Although Johannesburg 2002 agreed that MSY should be regarded as a target, it is well known that setting MSY as a target reference point often leads to overfishing. The reference point, Fmsy should be treated as a limit to be avoided rather than as a target, with sufficient measures in place to ensure that the limit is not exceeded. Accordingly, as stated in the UN Fish Stocks Agreement, MSY should only be considered as an intermediate step towards achieving sustainability. MSY should only, therefore, be treated as a direction of travel and the CFP needs to move towards alternative objectives incorporating a much more precautionary reference point (e.g. Maximum Economic Yield, MEY).

It is widely accepted that it will be impossible to achieve MSY simultaneously for all species within a mixed fishery and that prudent compromises will have to be defined and agreed in order to avoid excessive pressure on constituent species and to ensure they remain within

² Under the EU Sustainable Development Strategy *Objective 3: Improving management and avoiding overexploitation of renewable natural resources such as fisheries, biodiversity, water, air, soil and atmosphere, restoring degraded marine ecosystems by 2015 in line with the Johannesburg Plan (2002) including achievement of the Maximum Yield in Fisheries by 2015.*

ecologically sustainable limits. See below (answer to Q on elimination of discards) for appropriate measures to minimise discards.

Implications of MSY for ICES

If, according to the Green Paper (P. 15), the WSSD commitment to achieve MSY by 2015 should be 'enshrined as a principle for stock management in the CFP', an issue that needs addressing is that ICES is still working to reference points that are not proxies for MSY.

Most EU fisheries have been assessed against ICES precautionary reference points (Bpa and Blim or F equivalents) for the evaluation of stock status and reference point performance indicators, and these are not appropriate proxies for MSY.

EU fisheries are managed with F targets rather than biomass targets, and Fmsy for most stocks lies in the range between YPR (Yield Per Recruit) proxies of F0.1 and Fmax.

ICES currently does not routinely provide estimates of Bmsy or Fmsy but may be willing to consider doing so.

What should the main management system be for Community fisheries and to which fisheries should it apply? Catch limitations? Fishing effort management? A combination of the two? Are there any options?

As approaches, we need limits on both catches and fishing effort, but more importantly they should be embedded in LTMPs for all fisheries on a regional seas basis (see above). There are two main obstacles to a purely effort-based management: (i) preventing excess effort during days at sea; (ii) making sure different stocks get fished at an effort proportionate to their sustainable limits. This is very difficult in a mixed fishery although it might be possible to conceive of a weighting system which makes it more costly to the operator to fish one stock than another, according to its abundance.

What measures should be taken to further eliminate discards in EU fisheries? Could management through transferable quotas be useful in this regard?

Any EU policy on discards should be based on the FAO definition of discards and provide effective measures for tackling the problem based on this wide definition. According to FAO, discards are not only fish but also any other organism which is caught incidentally ('that proportion of the total organic material of animal origin in the catch, which is thrown away, or dumped at sea for whatever reason. It does not include plant material and post harvest waste such as offal. The discards may be dead or alive').

We see a role for a 'discard ban' but only if supporting forms of mitigation are first given every chance to work and fail to do so in a specified timeframe. Such mitigation measures include effort reduction, effective control and enforcement (involving adequate onboard observer programmes of at least 15% coverage), real-time closures, multi-annual plans compliant with scientific advice, and mandatory bycatch reduction measures.

There should therefore be initial emphasis on results-based management in order to give the sector the opportunity to reduce discards by its own efforts, with the proviso that if this strategy does not succeed, a discard ban will be imposed in due course. Underpinning this approach will be substantial support from the EFF to fund gear development, trials and

observer programmes. Even so, trials could include a discard ban itself to explore its practical implementation and outcomes.

Catch/effort limits should be set to include all fish caught, not just those landed, i.e. discards should count against quota and be included in scientific assessments. This should happen within a strong framework of catch/effort limitation and enforcement and should be rolled out on a pilot fishery basis.

We support calls for a bycatch quota system for species under a recovery plan, to prevent the capture of species whose stocks have been reduced to critically low numbers.

There should be no place in the market for undersized fish. Current discard practices that arise from incompatibility between technical rules on minimum landing size (MLS) and mesh sizes, such as the bycatch of undersized plaice in the sole fishery with 80mm mesh, should be addressed as a priority. In order to deliver a discard ban, we support the Commission's suggestion (in its 2008 non-paper) to replace MLS with a minimum marketing size (MMS), not least as a necessary safeguard against creating new markets for undersized fish.

If there was a market value (compensation) for any landed bycatch, this might encourage the targeting of fish which vessels had previously sought to avoid catching in the first place. To avoid such a perverse outcome, there should be no compensation for landed bycatch. The Alaskan pollock fishery requires the landing of all fish caught but there is no compensation for bycatch, rather the latter is separated out for delivery to a welfare food programme. Lack of compensation creates a zero incentive for taking bycatch and a strong incentive for better selectivity etc which minimises the capture of non-quota species.

In the EU, the inclusion of total removals within the TAC could provide the best incentive for avoiding discardable fish by attaching a cost to fishers of total removal. Benefits accruing from a quality label earned for best practice for meeting discard reduction targets could also act as an incentive for discard avoidance.

5.3 Relative stability and access to coastal fisheries

<p>How could relative stability be shaped to better contribute to the objectives of the CFP? Should it be dismantled or, if not, should it become more flexible and if so, how? How could such alternatives be set up?</p>
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As the Green paper says, after twenty-five years, there has been so much drift from the original justification for allocation that relative stability no longer guarantees that fishing rights remain with their fishing communities, while also constraining the CFP's flexibility in sundry ways. At the same time, we recognise that this is an issue which divides the sector, even within individual RACs, with many in the sector favouring retention of relative stability but with greater flexibility of opportunities for quota swaps.

The Green Paper suggests the option of replacing relative stability with a more flexible system such as allocating fishing rights. We would support a transition towards such a system that contributes to ecologically sustainable fisheries, more equitable distribution of access to fishing opportunities, and a culture of compliance. The criteria for such access should be predicated on the same qualitative criteria that we have listed (above) in our answer to 4.1 on fleet capacity. These criteria set limits on what kind of capacity should be deployed in order to exploit the available resources sustainably, and on this basis,

preferential access to fishing opportunities should be given to capacity which meets such criteria.

Should access to the 12nm zone be reserved for small-scale fishing vessels?

It depends somewhat on how you define 'small-scale' but in general we do not believe 12nm should be reserved for small-scale vessels. Zoning does not necessarily lead to more environmentally or socially sustainable fishing, for the same reason that we reject the two-tier fleet concept (see answer to 5.1, above).

That said, we do accept that the current 12nm access restrictions 'to restrict fishing to vessels that traditionally fish in those waters from ports on the adjacent coast' have helped Member States to manage their inshore waters in a more sustainable way than under an open access regime.

However, improvements to the existing inshore access restriction could be secured by:

- making the access restriction to the 12nm zone permanent under the CFP, rather than the current derogation from open access that has to be renewed every time the CFP is up for review
- extending the explicit purpose of the access restriction to cover 'sustainable social and environmental development in inshore areas'
- extending Member States' management systems up to the 12nm limit, i.e. managing both national vessels and 'foreign' vessels that have established rights to fish in the 12nm zone

With regard to the last bullet, we believe there is a case for supporting a stricter management regime within the 12-mile limit, to ensure that national fisheries and conservation management measures apply to all vessels, including those from other Member States. This revision should afford greater protection to the local fleet from intensive pressure from vessels with historic rights. Such a move has the potential to reduce environmental impacts and improve the economic and social benefits to local fisheries.

Under this proposal, historic rights would be retained, but with the explicit revision that Member States fisheries and conservation legislation be applicable to all vessels, regardless of country of origin (registration). Where inconsistencies exist between existing fisheries and national regulations we suggest that a process or arbitration is adopted, or alternatively, the matter is resolved through the development process for the long-term management plan for the particular fishery.

Lastly, while offshore operators often argue that management of small-scale fisheries is a matter for national rather than CFP governance, and therefore not a trans-national issue, we would also like to see greater representation of inshore fishers on the RACs. While it is up to inshore fishermen to apply for membership, a receptive response by Member States concerned is required.

See also answer to 5.1 (above).

5.4 Trade and markets – from catch to consumer

How can the future CFP best support initiatives for certification and labelling?

How can traceability in the production chain best be supported?

How could the EU promote that fisheries products come from sustainably managed fisheries, providing a level playing field for all?

We support pursuit by the sector of third party certification which bestows the incentive of secure market access through enhanced consumer choice. We recognise, however, that – frequently led by the retail sector – the market is increasingly beset by a plethora of eco-labels, several of which offer conflicting judgements on sustainability, to the detriment of the producer, the retailer and the consumer, and ultimately to coherent feedback pressure on fisheries management. We therefore urge that the EU market accepts and promotes certified products only from FAO-compliant accreditation schemes.

In pursuit of this, minimum EU standards should be set for certification and labelling. This does not mean that the EU should create its own labelling scheme, and we would not support such a move. In this regard, we find (§ 27 of the draft European Parliament report (2009/2106(INI), November 2009) somewhat ambiguous when it ‘Calls on the Commission to draw up a specific eco-labelling programme...’.

We welcome the support that various Member States have given to the sector to seek certification of their fisheries, and the use of EFF funding to pursue this. The future EFF should maintain and strengthen its support for this use. While the sector, however, can source such financial support, assessment for certification is a stakeholder-inclusive process and NGOs are challenged to find the resources needed to play their part as full stakeholders in what is a highly resource-hungry process. Member States need to be aware of and responsive to this inequity.

MSC certification requires full traceability with third party audits to verify that this is robust at every step in the supply chain. Promotion of this approach will evidently, therefore, support ‘traceability in the production chain’. In pursuit of rigour in an increasingly complex global marketplace, the EU needs to advance beyond a one-up one-down traceability system (which breaks the supply chain into each actor having to verify source and onward buyer) to a MSC-like, net-to-plate approach.

In the interests of transparency and informed consumer choice, the marketplace also needs to move collectively towards routine and explicit labelling of where and how product was caught as a legal requirement. Where product has been caught in the EU but processed externally (sometimes as distant as the Far East) this also needs to be explicitly stated on product so that the consumer can take account of the carbon footprint such outsourced processing incurs.

5.6 The knowledge base for the policy

How can conditions be put in place to produce high-quality scientific research regarding fisheries in the future, including in regions where it is currently lacking? How can we best ensure that research programmes are well coordinated within the EU? How can we ensure that the resources are available and that young researchers are educated in this area?

How can the resources available best be secured and utilised to provide relevant and timely advice?

How can we better promote stakeholder involvement in research projects, and incorporate stakeholder knowledge in research-based advice?

The CFP's role in implementing the MSFD calls for new data, particularly on applying an ecosystem approach to fisheries management, which places a special onus on Member States and OSPAR (in conjunction with ICES) to assess what data already exists and what needs to be done to fill gaps. By the same token, the development of LTMPs subject to environmental impact assessment creates a parallel demand.

To this end, the EU's Research and Technological Development (RTD) Framework Programmes should give priority to reviewing data requirements and to prioritising the most critical needs.

While northern seas are relatively data-rich, particular attention needs to be given to the data deficiencies in the Mediterranean and Black Seas. The responsibility for sourcing and providing scientific advice in the Mediterranean rests with GFCM and STECF but delivery is currently not fit for purpose in the new era of an Integrated Maritime Policy and the MSFD. In this regard, BirdLife supports WWF's call for the creation of a scientific council akin to ICES to provide science-based assessments for applying an ecosystem-based approach to fisheries management in the Mediterranean.

Maritime spatial planning in EU waters demands that the fisheries sector is proactive in mapping key areas of fishing activity if it is to protect its livelihoods in the face of overwhelming demands from other offshore industries, notably wind farms. We are not averse to the possibility of fishing zones arising out of this process, to give assured space for fishing equivalent to zoned space for other activities such as windfarms.

To this end, the sector with the participation of other stakeholders, needs to be much less defensive about access to VMS and logbook data than it has been on occasions in the recent past. Aggregated VMS data should therefore be readily available to scientists and other bona fide researchers, and we applaud the steps that the Data Collection Regulation has made towards ensuring a more level playing field in this regard.

By the same token, information on all landings by all vessels should be publicly available, as it is in the USA and Norway. This will assist the RACs, for example, in preparing or contributing to impact assessments of potential spatial displacement as a result of other offshore activities competing for maritime space, including the creation of Natura 2000 and other MPA networks.

For further input on data collection, especially on data collected in conjunction with the sector and the RACs. see response (above) to 4.5 (Developing a culture of compliance)

5.7 Structural policy and public financial support

What should be the top priorities for future public support and why? What changes can the sector not manage to bring about on its own and therefore require public financial support?

How can we manage change the focus of EU financial resources to promote innovation and adaptation to new policies and circumstances? Does any new policy arena require funding? Should public support be focussed on specific transitions such as eliminating discards in the fishing industry?

Perversely, public aid in the past has not only failed to prevent the fisheries sector from becoming more sustainable but has contributed to overfishing. In line with the negotiating mandate agreed by WTO ministers in Hong Kong, the EU should immediately prohibit subsidies that promote overcapacity and overfishing.

If the European Fisheries Fund is regarded as a support for best practice, the fuel crisis precipitated crisis management of the EFF which had the potential to grossly distort the proportionality of spend so as to undermine the overall rationale, intent and success of the EFF. The EFF post-2013 must be deployed much more equitably in relation to its axes of spend which we regard to be fit for purpose in the current EFF, not least in encouraging environmentally-sensitive fishing.

The latter will need to gain momentum in a future scenario of a more operational approach to ecosystem-based fisheries management in pursuit of CFP compliance with the Marine Strategy Framework Directive, adapting fishing to Natura 2000 and other MPA networks, and adapting management to climate change-driven changes in stock abundance and distribution.

Much of this demand could be channelled into redirecting funding to enable fisheries to meet the targets and delivery mechanisms of LTMPs within specified timeframes, including adaptation to more selective fishing gear, application of specific mitigation measures (e.g. for reducing seabird bycatch), measures to minimise discards etc.

How can synergy and coherence of possible CFP funds with other EU and national instruments be ensured?

How can a synergy between the pillars of the future CFP be achieved? Should public assistance be conditional on Member States achieving policy objectives?

Public money must be for public goods (see also answer to 4.5, above), so public assistance should be conditional on the compliance of Member States (and any future regionalised management bodies) with the CFP. As an example of manifest failure to meet such compliance, currently a number of Member States fail to report and assess over-capacity in their fleets while continuing to use EU funding on modernization. We therefore strongly support, as suggested by Section 4.5 of the Green Paper, 'creating a link between effective compliance with control responsibilities and access to Community funding'.

In the reformed CFP, access to Community funding should be conditional on compliance not just with the CFP but also with other relevant EU and international policies, including the MSFD, Habitats and Birds Directives. Member States which fail to meet such cross-compliance should incur sanctions, notably the withdrawal or withholding of EFF allocation, following the precedent set by the Control Regulation.

Receipt by an individual operator of financial support should be subject to the same cross-compliance regarding serious failure to comply with the CFP and its associated Directives (MSFD, Habitats and Birds Directives).

How can EU financial resources be developed to provide the flexibility needed to respond swiftly when a crisis occurs?

While we support the need for flexibility, this must not be at the expense of short-termism crisis management, and incoherence with other policies, which individually and collectively can have perverse outcomes. As indicated above, the reconfiguration of the EFF to respond to the fuel crisis was, in our view, an example of excessive flexibility.

A related example of the CFP caving into expediency and generating policy incoherence was the move to increase de minimis aid in 2008. By doing so, the EU approved the provision of fuel subsidies to the sector at a time when the EU was developing policies to phase out environmentally harmful subsidies to meet biodiversity targets within its 6th Environmental Action Programme, and to meet its climate change commitments under the Kyoto Protocol.

Should permanent fisheries subsidies be phased out, maintaining, on a temporary basis, only those aimed at alleviating the social impacts of restructuring the sector?

To this we say an unequivocal 'yes'. There should be a presumption that subsidies will at least be minimised. We support the concept of transitional subsidies towards creating a sustainable balance between fishing power and available resources, equitably distributed inshore and offshore, and to embedding the fishing sector in a new era of ecologically sound fishing and maritime spatial planning. Any funding support to the sector, especially EFF, should therefore be conditional on the funded activity being compliant with the MSFD and an ecosystem-based approach to fisheries management.

In the long term, however, and as we say above (see answer to 5.5), we believe the sector should take more financial responsibility for access and management.

5.8 The external dimension

The core objective of the CFP is to promote responsible and sustainable fisheries. Is there any reason why the external dimension of the CFP should be driven by different objectives?

No, the external dimension of the CFP should be driven by the same objectives and standards as it sets for Community waters.

How could the EU strengthen its role on the international stage to promote better global governance of the sea and in particular of fisheries?

How can the EU cooperate with its partners to make RFMOs more effective?

The EC needs to take a lead in policy-setting in RFMOs and, as indicated above, apply common standards at home and abroad and should take a lead in embedding a culture of best-practice ecosystem approach to fisheries management in the RFMOs.

For example, BirdLife expects the EU to fulfil its long-standing commitment to develop and implement a European Community Plan of Action (ECPOA) for reducing seabird bycatch, following FAO Best Practice Technical Guidelines agreed in 2009. This plan should address the need to minimise bycatch both in EU waters and externally.

In this regard, the EU should be as scrupulous and progressive in regard to setting best practice standards for its vessels fishing externally to Community waters as it does for its vessels operating internally. Requirements for applying mitigation measures externally must be as strong as those applied internally, and should not just follow the minimum requirements required by RFMOs. At least some such actions could be taken independently by the EC while others may need to be adopted and implemented through the appropriate RFMO.

In the context of the ECPOA, the EC should ensure that standards developed for vessels fishing in Community waters also apply to EC-flagged vessels fishing in external waters, and also, to the extent possible, to vessels flagged to non-EC States but owned or controlled by EC-based owners and operators.

The San Sebastian joint-RFMO meeting in 2009 ('Kobe-II') recommended the establishment of a cross-RFMO bycatch working group which should be used to harmonise and promote best practice in bycatch reduction of seabirds and other non-target species. The EC can and should play a leading role in such cooperative effort.

Contrary to the current free access principle in international waters, should fishermen pay for the right to fish in the high seas under the governance provided by RFMOs?

Yes

Are the FPAs the best instrument to achieve sustainability beyond EU waters or should they be replaced by other forms of cooperation? Should the regional perspective be explored and either substitute or complement a streamlined bilateral one?

The answer below also addresses the Green Paper's Q in this section: How could we contribute to increasing fisheries management capabilities of developing countries, e.g. through targeted assistance?

The Green Paper clearly calls into question Fisheries Partnership Agreements (FPAs) under the future CFP on the grounds that they require intensive follow-up, are sometimes difficult to implement and that the use of provided assistance is slow or even non-existent.

We share these concerns. There is a need for a fundamental change of guiding principles and framework for EU fisheries relations with developing countries which gives priority to good governance and environmental sustainability while providing an enabling environment for the fishing sectors of developing countries, and particularly small-scale fishing communities.

The first step should be to change the primary objective of the CFP's external dimension, including FPAs. The reformed objective would be to contribute to the establishment of responsible and sustainable fisheries (of which the EU involvement is but part), rather than as – at present – securing long term access to the resources of third countries and maintaining the EU's presence in third country and international waters.

To deliver on this new objective, FPAs should be replaced by a fisheries governance framework which aims to create dialogue on the way in which the CFP can meet partner country priorities for the development of their fisheries sector. This development needs to address management and food security, support for the integrated development of coastal communities, and of international commercial operations, etc. Through such dialogue the EU should promote transparency and stakeholder participation, key elements of the FAO Code of Conduct for Responsible Fisheries.

This paradigm shift, in turn, changes the terms of reference for funding, requiring a broader base to mobilise various EU sources, including development funds, and closer coordination between the EU services of the respective DGs dealing with third county fisheries.

Criteria for access by EU fleets

Within the new framework outlined above, access costs to third country waters should be fully met by the EU vessel owners seeking such access. The latter would, in turn, benefit from the improved infrastructure and cooperation in the third country concerned, in terms of better research and assessment, reinforcement of Monitoring Control & Surveillance (MCS) against incursions of IUU fishing, etc. This would be advanced by the EU on a regional strategy of cooperation and harmonisation.

Access by EU vessels should be more strictly controlled than at present, and conditional on the operator being able to demonstrate the sort of qualitative, sustainable development criteria that BirdLife is also asking (see 4.1, above) to be applied to fit-for-purpose fleet capacity in EU waters, notably a clear fishing opportunity 'niche' which does not compete to the detriment of the local artisanal sector, appropriately-low environmental impact (including low fuel consumption), job creation, record of compliance, etc.

In cases where EU vessels are operating in developing countries in the absence of a formal agreement with those countries, the EU should seek to establish a governance agreement with the third country, or – failing this – explore ways in which equivalent conditions may be applied.

In the past, investments linked to the transfer of EU fishing capacity (including vessel transfers and joint ventures) have aggravated over-exploitation and undermined local communities rather than delivering social and economic benefits to the developing countries concerned. Support to EU investments in developing countries should therefore exclude the practice of transferring fishing capacity.

In the interest of supporting third country small-scale fisheries, FPAs and other access arrangements (transfers, joint ventures) for EU vessels should be subject to inter alia the following constraints:

- Prohibit access to over-exploited stocks
- Reserve coastal demersal stocks for national – especially artisanal – fisheries
- Increase support for research and MCS, including for environmental assessment as part of applying an ecosystem-based approach to fisheries management (i.e. while the MSFD does not apply to external waters, its intent and standards should be applied)
- Evaluate FPAs during agreements to ensure they comply with third country fishery development plans, and adapt as necessary
- Ensure funding includes provision for training and remunerating on-board observers to a level of cover commensurate with the needs of the fishery
- Apply strict conditions for transparency in terms of the purpose and actual deployment of financial compensation.

How could we make scientific research to assess the sustainability of fish stocks and the control of the fishing activity more transparent and efficient?

How could the sustainability of small-scale fisheries in third countries for sustainability, ecological; and social benefits be enhanced?

The 2002 Communication setting out a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy (COM(2002)186 final) set as one of its 'priority measures': the adoption of a Community strategy for distant water fisheries to contribute to sustainable fishing outside Community waters through global and bilateral partnership at national and/or regional level. This aspiration remains as relevant and urgent to CFP reform now, if not more so, as it was in 2002.

Data on catches and activities of long distance fleets should be available to third countries where they are active. In addition, impact assessment and evaluations of FPAs should be publicly available.

The concept and requirements of LTMPs (see answer to 4.2 above), in conjunction with third country partners and their stakeholders, should be as applicable to EU vessels fishing on the high seas and in the waters of third countries as they are in EU waters

Ideally, the only stocks that should be targeted by EU vessels should be those not exploited by local fisheries, and depended upon by artisanal coastal communities. It is worth noting that the Marine Stewardship Council (MSC) is increasingly fostering the certification of such fisheries through its adapted risk-based methodology designed to assess data-poor fisheries.

5.9 Aquaculture

What role should aquaculture have in the future CFP: should it be integrated as a fundamental pillar of the CFP, with specific objectives and instruments, or should it be left for Member States to develop on a national basis. What instruments are necessary to integrate aquaculture into the CFP?

We favour aquaculture being treated separately in the same way that many inshore fisheries issues are a matter for national rather than EU competence. That said, aquaculture is a key sector of major importance, socio-economically and environmentally, and needs an overarching, strategic instrument at EU level.

However, while it should not be a fundamental pillar of the CFP, there needs to be strategic links between the CFP and the Aquaculture Strategy, with the necessary coherence sought to meet the requirements of the MSFD. This is required by a number of critical links between aquaculture and capture fisheries, not least by the contribution that wild capture fisheries (such as sandeel) make to the aqua-feed industry. Also, in Spain the use of small pelagic fish to feed farmed fish (primarily tuna) has resulted in purse-seine catches being less selective, as previously low value fish now have a new market; aquaculture is also used as a cover to hide/disguise tuna catches.