

REFORM OF THE COMMON FISHERIES POLICY

Contribution by New Zealand to the European Union

Summary

1. The efforts by the European Union (EU) to reform its Common Fisheries Policy (CFP) are commendable. The 2002 CFP reforms were far reaching, not only in reshaping the overarching legal framework for fisheries management but also in initiating a process of ongoing policy and process reforms that are leading the EU in the direction of conservation and sustainable use of fisheries resources.
2. The 2012 CFP reforms need to maintain this positive momentum. The CFP establishes a good, enabling framework for fisheries conservation, including the necessary provisions for the EU to utilise fisheries sustainably. If the EU is to meet its sustainability objectives however, New Zealand considers greater policy coherence will be required within and between the strands of the CFP, the Treaty on the Functioning of the EU and broader EU policies (e.g. trade) and Member States' own national policies. Emphasis also needs to be placed on policy implementation.
3. As a party directly affected by the CFP (economically in EU and world markets, and in international fisheries more generally), New Zealand continues to be vitally interested in the reform and implementation of the CFP. New Zealand will continue to engage with the European Commission ('the Commission') and Member States on the implications of these changes, in particular for their trading and fishing partners.

Introduction

4. New Zealand welcomes the opportunity to contribute to the EU's 2012 CFP reform process. New Zealand's reference points in making this submission include:
 - The adoption of a rights-based quota management regime in New Zealand almost three decades ago;
 - New Zealand's experience as an exporter of fisheries products to the EU and the rest of the world;
 - New Zealand's experience in working with the EU bilaterally and in international fora, including the United Nations (UN); Regional Fisheries Management Organisations (RFMOs); Organisation for Economic Co-operation and Development (OECD); and the World Trade Organisation (WTO); and
 - a desire to see fisheries management strengthened to ensure fisheries are sustainably utilised in a manner consistent with the numerous international instruments on fisheries, development and sustainability to which New Zealand is party.

5. In some cases, New Zealand-flagged vessels participate in the same fisheries as EU-flagged vessels (notably in the Pacific region). New Zealand also has strong relationships with developing countries in the Pacific region. The contribution that the EU makes to utilising these fisheries sustainably through the application of the CFP is therefore of direct interest to New Zealand.
6. Fisheries production and exports of fisheries products are important to New Zealand's economic and social wellbeing. The bulk of New Zealand's production of these goods is exported and accounts for 4.4% of merchandise exports value. The EU market accounts for 14% of New Zealand's seafood exports or about NZ\$193 million. As a long-time exporter of fisheries products to the EU, and as a country which has had to compete with subsidised EU products on world markets, New Zealand has a strong interest in the evolution of the CFP.

Fleet Overcapacity and External Policy

7. The capacity management elements of the reformed CFP will prove central to its success, both within EU waters and beyond. Overcapacity leads to overfishing and economic waste. It also creates incentives for illegal, unregulated and unreported (IUU) fishing.
8. Commission reporting suggests that overcapacity remains an issue in EU fisheries. The Green Paper notes that decreases in EU fleet tonnage and power have been offset by a steady increase in the efficiency of its fishing vessels (CEC, 2009). This has negative implications not only for EU resources, but globally. Over a fifth of the EU fleet, by tonnage, operates outside of EU waters (Earle, 2006). As domestic EU management is tightened this figure is likely to increase, indicating that a global approach to capacity management is required in order to prevent displacement of effort into areas outside Commission jurisdiction.
9. Examples of this displacement effect include the growth in the number and capacity of EU flagged vessels in Pacific region fisheries in the last decade, including since the 2002 CFP reforms. Such capacity increases have been on the high seas and under the auspices of bilateral fishing agreements with Pacific Island countries. This includes tuna fisheries falling under the Western and Central Pacific Fisheries Commission (WCPFC); and pelagic fisheries in relation to the fledgling South Pacific Regional Fisheries Management Organisation (SPRFMO).
10. While New Zealand recognises the EU's rights to exploit fisheries on the high seas and to enter into fishing agreements with coastal states, the scale of the increases and the fact that they have been accompanied by an increase in EU vessels operating in joint ventures under flags of non EU members, is of concern. Given the environmental commitments set out in the CFP, the Treaty establishing the European Community (e.g., Articles 2, 6 and Title XIX) subsequently reaffirmed in the Treaty on the Functioning of the EU (e.g., Title XX), New Zealand looks to the EU to

provide leadership in the development of capacity and effort management regimes in the WCPFC and SPRFMO.

11. The WCPFC is currently facing the challenge of how to limit catch and effort for key target stocks that are currently subject to unsustainable levels of fishing effort – specifically bigeye and yellowfin tuna, and also swordfish. The development aspirations of Pacific Island countries are a key factor in the negotiation of conservation and management measures by the WCPFC and have inevitably led to tensions with distant water fishing nations. The increase of EU fishing capacity in the region – either under EU flags or through joint ventures under other flags – has largely been conducted in a manner consistent with the international legal framework and the measures of the WCPFC. There is no doubt, however, that it has increased pressure on key resources and made agreement on effective management measures more difficult.
12. It is in this context that New Zealand is looking to the EU to play a strong leadership role on conservation and management measures, including limitations on the introduction of new capacity, within WCPFC. Poor data reporting with respect to fishing by EU flagged vessels undermines the scientific processes of the WCPFC and increases the need for a more precautionary approach to fisheries management, including with respect to increases in fishing effort.
13. In April/May 2007 fishing capacity limits for pelagic fisheries were agreed in Reñaca, Chile by participants in the negotiations to establish the SPRFMO as part of voluntary interim conservation and management measures pending the adoption and entry into operation of the new Convention. The key measure for pelagic fisheries was to freeze catch capacity for two years. While the freeze did not take effect until 1 January 2008, the EU representative at the negotiations assured other participants that there would be no dramatic increase in EU flagged vessels prior to that date. The number and capacity of EU flagged and EU beneficially owned vessels entering the pelagic fishery nonetheless increased considerably. While the increase is not contrary to the letter of the interim measures, the effect was to test the credibility of both the interim measures and the wider SPRFMO negotiations.
14. When new interim measures on jack mackerel were being negotiated in Auckland in November 2009, to replace the 2007 measures on pelagic fisheries that expire at the end of 2009, the EU resisted efforts to impose effective catch limits and joined with other distant water fishing nations to push for an increase in fishing capacity. The end result was that, contrary to scientific advice to cut catches by a third, the interim measures provide for more than a 30% increase in vessel gross tonnage over that recorded in 2007.
15. The SPRFMO capacity increases may reflect some lack of clarity or effectiveness at the EU level over the Commission's ability to control Member State fishing capacity. The entry/exit regime established under

Chapter III of Regulation 2371/2002 requires Member States to simply '*put in place measures to adjust capacity...to achieve a stable and enduring balance between fishing capacity and fishing opportunities.*' A 'stable and enduring balance' is undefined and there is no minimum requirement for what 'measures' are necessary. It would seem, therefore, that the Commission may be constrained in its ability to control Member States' fleet movements. If so, this has potentially serious consequences for the Commission's ability to give effect to agreed effort and catch limitations and for the confidence of other States in commitments made by the Commission on behalf of member States.

16. The EU's subsidy programme was a key factor in undermining the EU's pre-2002 capacity management regime under the Multi-Annual Guidance Programmes (MAGPs). There is a risk that history could repeat itself as fuel costs and engine modernisation continue to be eligible for subsidies, which in some cases are increasing (see below). The vessels in the SPRFMO pelagic fishery for example are understood to have received over €10 million in EU subsidies for construction, modernisation and transfer costs.
17. It is against this backdrop of expansion and lack of clarity in fisheries/structural aid policy that New Zealand is of the view that relaxing the constraints on the size of the EU's external fleet would likely increase pressure on the Commission, which as has been noted, has had difficulty ensuring Member States manage their fishing capacity appropriately. While the fleet segment targets set under the MAGP may have had limited success in preventing overcapacity, the rules and targets for the external fleet should be tightened rather than relaxed if the CFP's sustainability objectives are to be met beyond EU waters.

Structural Policy, Public Financial Support and External Policy

18. The adoption of the European Fisheries Fund (EFF) in 2006 represented a useful continuation of the CFP reform process. Some of the most positive environmental elements include the codification of the phase-out of construction subsidies and the end of joint venture support agreed in 2002. There is also a reorientation of the use of funds towards sustainable development projects.
19. The level of funding available under the EFF (€3.8 billion) and direction of some spending still gives cause for concern, however. Member States rolled back the original EFF proposal made by the Commission by including engine modernisation in the final package. Furthermore, State aid rules were subsequently changed to increase the level of *de minimis* aid for fuel that Member States can provide without notifying the Commission.
20. While it is too early to evaluate the impacts of these developments and the EFF more broadly, it remains a cause for concern that subsidies

persist at such levels, contributing to market/trade distortions, overcapacity and overfishing.

21. Subsidies exacerbate pressure on global fisheries resources and can cause related environmental impacts. Developed country support to the fisheries industry, by distorting competition in fisheries and markets, has also reduced developing country opportunities in a sector so important to their developmental aspirations.
22. A recent World Bank and FAO study recently concluded that marine capture fisheries are an underperforming global asset, with the difference between the potential and actual net economic benefits from marine fisheries being in the order of US\$50 billion per year (World Bank 2008). Taking into account subsidies, the global harvest subsector is actually in deficit, with the cumulative economic loss to the global economy over the last three decades estimated to be in the order of US\$2 trillion.
23. The University of British Columbia recently estimated global fisheries subsidies to be between US\$30-34 billion per year for the period from 1995 to 2005 (Sumaila *et al*, 2006). Even those more conservative estimates, such as that of the World Bank (US\$14-20 billion), are significant. In contrast with other sectors, such as agriculture, accurate figures are difficult to derive because of the lack of transparency and notification to the WTO.
24. The EU is estimated to be the second largest fisheries subsidiser, as a region, after Asia, with half of its subsidies contributing directly to overcapacity and overfishing (Sumaila *et al*, 2006).
25. The EU is therefore a key player in WTO fisheries subsidies negotiations. These have the potential to deliver significant wins for trade, the environment and for development. They represent a major opportunity to establish binding global rules on the types of subsidies that are permitted, and under what circumstances.
26. New Zealand is arguing for a broad ban on most fisheries subsidies, with a narrow list of exceptions for benign or positive subsidies such as vessel decommissioning together with Special and Differential Treatment for developing countries.
27. The EU, in contrast, advocates a narrow ban. While it states that it is seeking a major environmental outcome from the Doha Round overall, in perhaps the most important area the EU has positioned itself on what New Zealand considers to be the wrong side of the debate, together with the principal defenders of subsidies such as Japan, South Korea and Chinese Taipei.
28. The EU appears to us to be seeking to use the WTO negotiations to codify the ERF, instead of raising the bar for itself and the rest of the international community. As with other areas of the negotiation, the EC

and other countries must be prepared to show flexibilities beyond their existing policy settings.

29. In New Zealand's view, the WTO fisheries subsidy negotiations are an area where EU policies would benefit from greater consistency. The EU has made a number of high-level EU legal and political commitments which sit uneasily with its current negotiating position. These include the revised EU Sustainable Development Strategy (SDS) adopted in 2006, with endorsement from the EU Council, which calls for further reforms of EU subsidies 'that have considerable negative effects on the environment and are incompatible with sustainable development, with a view to gradually eliminating them.' Such a roadmap for fisheries subsidies has not been developed, and the position of the EU in the WTO is contrary to such calls for reform by EU Heads of States.

References

CEC (2009) Green Paper. Reform of the Common Fisheries Policy. COM(2009)163, Brussels, 22.04.2009.

Council of the European Union, Renewed EU Sustainable Development Strategy, Brussels, 9 June 2006. 10117/06

Earle M (2006) Paying for Unsustainable Fisheries: Where the European Union Spends its Money. pp. 227-242 in: Lavigne, D. M. (ed.). Gaining Ground: In Pursuit of Ecological Sustainability. International Fund for Animal Welfare, Guelph, Canada, and University of Limerick, Ireland. 425 pp.

Sumaila, U.R., Pauly, D. (eds.), (2006) Catching more bait: a bottom-up re-estimation of global fisheries subsidies. Fisheries Centre Research Reports 14(6), pp.2. Fisheries Centre, the University of British Columbia, Vancouver, Canada.

World Bank (2008) The Sunken Billions – The Economic Justification for Fisheries Reform. Agriculture and Rural Development Department. The World Bank. Washington DC. pp. xiii.