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For the attention of: European Commission, Directorate-General for Maritime Affairs and Fisheries, "CFP Reform", B-1049, Brussels, Belgium.

Dear Sir, Green Paper: Reform of Common Fisheries Policy COM(2009) 163 final.

I write on behalf of MARINET, the marine Network of Friends of the Earth, to submit our comments on the proposed Reform of the Common Fisheries Policy as identified in the European Commission's Green Paper, COM (2009) 163 final.

We note that the European Commission has identified five principal structural failings of the Common Fisheries Policy (ref. Green Paper, Section 4, page 8):

- A deep-rooted problem of fleet overcapacity.
- Imprecise policy objectives resulting in insufficient guidance for decisions and implementation.
- A decision-making system that encourages a short-term focus.
- A framework that does not give sufficient responsibility to the industry.
- Lack of political will to ensure compliance and poor compliance by the industry.

The Green Paper asks that we address our submission to these main matters. This we will do. However first we must outline for the Commission significant matters which the Commission has not stated in this summary of the key failings and which, if they are not addressed by the Commission, will result in a failure of the CFP Reform process.

These are:

- The absence of a statement and assessment of the primacy of law with respect to the Common Fisheries Policy.
- The absence from these five structural failings of a statement regarding the primacy of the ecosystem approach in the management of European seas, along with the current failure to implement the principles of the ecosystem approach with respect to the CFP.

The Primacy of Law.

It is an axiom of jurisprudence that policy is subordinate to law.

Accordingly, the Common Fisheries Policy must be subordinate to European Directives. In this regard, the following Directives are particularly relevant:

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing the framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008).

In particular, Directive 2008/56/EC states that Good Environmental Status (ref Articles 3(5), 9(1), 9(3) and 24) must exist for the following parameters by the year 2020 (ref . Annex I, paragraphs 3 and 4):

- *Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.*
- *All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.*

Also, Clause 40 of the opening preamble of Directive 2008/56/EC (MSFD) states: “*The Common Fisheries Policy, including the future reform, should take into account the environmental impacts of fishing and the objectives of this Directive.*”

Further, Clause 39 of the opening preamble of Directive 2008/56/EC (MSFD) states: “*Measures regulating fisheries management can be taken in the context of the Common Fisheries Policy, as set out in **Council Regulation (EC) No 2371/2002** of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy . . . including the full closure of fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds.*” This is confirmed in Council Regulation 2371/2002, ref Article 4(1) and 4(2) para. (g) [ii] and [iv].

Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries policy, states in Article 4:

1. *To achieve the objectives mentioned in Article 2(1), the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities.*
2. *The measures referred to in paragraph 1 shall be established taking into account available scientific, technical and economic advice and in particular of the reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STEFEC) established under Article 33(1) as well as in the light of any advice received from the Regional Advisory Councils established under Article 31. They may, in particular, include measures for each stock or group of stocks to limit fishing mortality and the environmental impact of fishing activities by:*
 - (a) *adopting recovery plans under Article 5;*
 - (b) *adopting management plans under Article 6;*
 - (c) *establishing targets for the sustainable exploitation of stocks;*
 - (d) *limiting catches;*
 - (e) *fixing the number and type of fishing vessels authorised to fish;*

- (f) limiting fishing effort;
- (g) adopting technical measures, including:
 - (i) measures regarding the structure of fishing gear, the number and size of fishing gear on board, their methods of use and the composition of catches that may be retained on board when fishing with such gear;
 - (ii) zones and/or periods in which fishing activities are prohibited or restricted including for the protection of spawning and nursery areas;
 - (iii) minimum size of individuals that may be retained on board and/or landed;
 - (iv) specific measures to reduce the impact of fishing activities on marine eco-systems and non target species;
- (h) establishing incentives, including those of an economic nature, to promote more selective or low impact fishing;
- (i) conducting pilot projects on alternative types of fishing management techniques.

Accordingly, it is essential that Reform of the Common Fisheries Policy recognises the primacy of European Law – specifically Directive 2008/56/EC and Council Regulation (EC) 2371/2002. Therefore any Reform of the CFP which is not predicated upon the observance and implementation of these laws will not only be negligent but also illegitimate.

The Ecosystem-based Approach.

Central to the Reform of the CFP is the requirement to implement the sustainable pursuit of fishing activities. This is embodied in Council Regulation (EC) 2371/2002, Article 2, which states:

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

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

The central nature of the ecosystem-based approach to the development and management of a sustainable European fishery is recognised in the **Communication from the Commission – COM (2008) 187 : The role of the Common Fisheries Policy in implementing an ecosystem approach to marine management.**

The Commission’s CFP Reform Green Paper appears to take an important step forward in recognising the importance of the ecosystem-based approach when it states, Section 5.5, page 19:

An ecosystem approach to marine management, covering all sectors, is being implemented through the Marine Strategy Framework Directive, which is the environmental pillar of the IMP [Integrated Maritime Policy] and sets the obligations for member States to achieve Good Environmental Status in 2020. The future CFP must be set up to provide the right instruments to support this ecosystem approach¹¹. This is also in the interests of the fishing sector because this approach will address the impacts of other sectors on fisheries resources in a proportionate and coherent way.

11 The role of the Common Fisheries Policy in implementing an ecosystem approach to marine management. Communication from the Commission – COM (2008) 187.

Therefore it would appear absolutely clear that Reform of the CFP has to embrace an ecosystem-based approach to management of European fish stocks, both for the benefit of those fish stocks and the health of the marine ecosystem as a whole. This is mandated by European law, ref: Council Regulation (EC) 2371/2002, and Directive 2008/56/EC.

This awareness of the central importance of the ecosystem-based approach is evident in the **Communication from the Commission – COM (2008) 187** : *The role of the Common Fisheries Policy in implementing an ecosystem approach to marine management*.

Significantly, however, this commitment to the ecosystem-based approach is less evident in the specific proposals and discussion topics of the Green Paper on CFP Reform. This is noteworthy because the ecosystem-based approach is effectively absent from current CFP management (i.e. 88 % of Community stocks are being fished beyond MSY [maximum sustainable yield]: ref CFP Green Paper, Section 3, page 7). The current failure in the CFP to deploy the ecosystem-based approach concerns us and, in particular, the fact that this failure is **not** identified in the Green Paper as one of the five principal structural failings of the Common Fisheries Policy.

Let us be absolutely clear about what the Communication from the Commission - COM (2008) 187 recommends:

- COM (2008) 187 recognises the importance of Council Regulation (EC) 2371/2002 : “*Protected areas are an important tool for protecting sensitive habitats and species within an ecosystem approach*” (ref. Section 2, page 4).
- COM (2008) 187 states : “*The task of fisheries management within an ecosystem approach in a EU context is thus to:*
(1) *keep direct and indirect impacts of fisheries on marine ecosystems within bounds in relation to healthy marine ecosystems and ecologically viable fish populations by including all the knowledge we have about the interactions between fisheries and marine ecosystems in decisions under the CFP, and*
(2) *ensure that actions taken in fisheries are consistent with and supportive of actions taken under the cross-sectoral Marine Strategy and Habitats Directive.*” (ref. Section 2, page 4).
- COM (2008) 187 states : “*The main impact of fisheries on the marine ecosystem is the killing of marine animals [. . . .] Fisheries may also impact habitats when fishing gear is in contact with the bottom and thus affecting the bottom substrate and organisms living in or on the bottom. Both the direct impact of killing marine animals and the impact on habitats are first and foremost linked to the amount of fishing activity that takes place. The main and first task of fisheries management is therefore to **reduce the overall fishing pressure** [emphasis in the original] to sustainable levels*” (ref. Section 3, page 5).
- COM (2008) 187 states : “*The main instruments to act on the overall fishing pressure are long-term management plans building on the WSSD [World Summit on Sustainable Development] requirement to rebuild fish stocks to 'maximum sustainable yield' (MSY) levels.*” (ref. Section 3, page 5) . Note: Maximum Sustainable Yield is most clearly defined in the Fact Sheets produced by the European Commission and available on its website, titled “CFP A Users Guide” – see http://ec.europa.eu/fisheries/publications/pcp2008_factsheets_en.pdf viz: “*Maximum sustainable yield (MSY) is the optimal catch which may be taken from a fishing stock year after year without endangering its capacity to regenerate for the future [. . . .] Under this new approach, the management goal is to produce stable and sustainable catch levels, rather than maintain an ideal stock size because stock size can be influenced by other factors and vary from year to year [. . . .] At present, most fish stocks are fished at levels well above MSY.*” In this Fact Sheet it is noted that 88 fish stocks in EU seas are monitored. At

present, less than half of these 88 fish stocks (43 in total) have been evaluated for their maximum sustainable yield. Of all the stocks that have been assessed for their maximum sustainable yield (43 in total) only 9 are currently being fished within their maximum sustainable yield, and the remaining 35 are currently being fished beyond their maximum sustainable yield.

Also of significance is that whilst it appears that the Green Paper on CFP Reform recognises the importance of the ecosystem-based approach, it must be observed that there remain serious shortcomings in the way the ecosystem-based approach has been *interpreted* in the current formula for CFP Reform.

These shortcomings in interpretation are:

- The partial definition which the European Commission and its Common Fisheries Policy give to the Ecosystem-based Approach.
- The heavy reliance placed on maximum sustainable yield in the Commission's definition of the ecosystem-based approach; and, the uncertainty whether maximum sustainable yield as a management instrument is actually being employed in a manner that can deliver not only sustainable European fisheries but also an ecosystem-based approach to the management of European seas as a whole.

Let us consider each of the above points in turn.

COM (2008) 187 states : *The approach [ecosystem approach] is here defined as one that "strives to balance social objectives, by taking into account knowledge and uncertainty about biotic, abiotic, and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries."* (ref. Section 1, page 3).

However MARINET has researched definitions of the Ecosystem-based Approach for OSPAR (Oslo Paris Commission – see <http://www.marinet.org.uk/eatmm/definition.pdf> for document titled: *Ecosystem-based Approach to Marine Management, OSPAR : ICG-Bergen, October 2008.*)

Central to a definition of the ecosystem-based approach are two concepts, each of which must be viewed as either side of the same coin. On the one side is "ecosystem integrity" and on the other side is "sustainable management of human activities" (which is also known as "adaptive management"). For the ecosystem-based approach to be employed, both of these concepts must be operative and, importantly, be interactive and responsive to each other.

By definition, there can be no ecosystem-based approach which does not recognise the primacy of the ecosystem, and the need to maintain its well-being and integrity. After all, no human activity has any real and enduring economic or social value if the ecosystem/environment upon which it depends is severely damaged. Very simply, it is the ecosystem which provides the basis for all goods and human activities. Any degradation of an ecosystem's integrity is therefore a serious problem and, in the long-term, wholly unsustainable.

Against this background, human activities must be managed sustainably. This means that these activities must not only be able to endure socially and economically (e.g. be able to support human communities in the long-term and to generate wealth continuously over the long-term), but they must also be able to operate within environmental limits (the defined physical parameters of a

resource or system), and they must also be managed in a politically open, transparent and democratic manner.

In order for “ecosystem integrity” and “sustainable management of human activity” to be delivered simultaneously (the two sides of the same coin), the ecosystem-based approach to marine management has to deliver and operate via specific management tools, provided and delivered by operatives skilled in the use of these management tools.

These management tools are:

- *A strategy which structures overall thinking* - this strategy must be based on the principles of ecosystem integrity and sustainability, and have objectives which are commonly agreed and owned by all stakeholders (democratic legitimacy).
- *A set of Environmental Quality Objectives* – these are objective, scientifically determined criteria which define the essential requirements or benchmarks for determining the health of the physical and biological components of the marine environment (e.g. dissolved oxygen levels, productivity of keystone species, and so forth). These environmental quality objectives require to be framed for both the over-arching environment (a sea or ocean) and for sub-sets of that environment (the component ecosystems). These environmental quality objectives can further inform such concepts as “good environmental status” (ref. Directive 2008/56/EC).
- *A network of spatially defined areas* – these are areas of the sea where the type of human activity which may occur within that area has been designated. On the one hand, this tool consists of a management agency/organisation empowered to define these areas and the activities which may occur within these areas. On the other hand, this tool consists of the instruments of designation (such as “no-take” marine reserves used to regenerate over-exploited fish stocks) which proscribe the nature of the management regime, along with its objectives, that will operate in those areas.
- *A system of monitoring* – this is an essential instrument in order to ensure, firstly, that key management decisions are observed by all parties; and, secondly, that evidence is gathered to establish how management regimes are operating and how they need to be altered and developed in order to improve their value.
- *A range of management instruments* – these are used to control and govern the actual implementation of a human activity. In the main, these instruments will be technologically based, but may also define the parameters of human activity. For example in the case of fishing activities, a technological instrument would be a control of net characteristics, whilst a licence would define a parameter of human activity (e.g. days at sea)
- *The precautionary principle* – this is a fundamental. This tool should be founded on the principle that no activity is allowed to occur until it can be shown that no damage will result from that activity. It should not be founded on the reverse i.e. any activity may occur until there is reason to believe that it may cause damage, although proof remains unavailable. The former version is a strong interpretation of the principle, the latter a weak interpretation. Given our present limited knowledge of the marine environment, and in order to protect ecosystem integrity, the ecosystem-based approach must use the strong version. It is upon the strong version of the principle that licences, and their environmental impact assessments, need to be founded.

Thus, as can be seen above, the ecosystem-based approach has a range of management tools available to it in order to ensure that human use of the environment is sustainable. If

deployed in this manner it can accomplish the clear objective and understanding stated in COM (2008) 187, namely “. . . *healthy ecosystems are a prerequisite for the continued existence of a fishing industry.*” (ref Section 4, page 6).

However, our concern is that the Green Paper on CFP Reform does not actually consider or discuss the ecosystem-based approach in its consideration of the various aspects for reform, other than in a single paragraph (cited above) in Section 5.5, page 19, and in that paragraph relies almost exclusively on the statement “*The future CFP must be set up to provide the right instruments to support this ecosystem approach*”¹¹ (Note: 11 is COM (2008) 187).

As a result, we have the Green Paper on CFP Reform using a definition of the ecosystem-based approach which does not:

- make any *serious* acknowledgement or show any *serious* understanding of the fundamental importance of **ecosystem integrity** in the reformulation of the Common Fisheries Policy.
- makes very limited use of the range of “management tools” available to implement the ecosystem-based approach, and appears to rely exclusively on management instruments such as maximum sustainable yield and licences/quotas, whilst ignoring the key tools based on **marine reserves (marine protected areas), overall strategic thinking and the strong definition of the precautionary principle.**

Let us therefore now give further thought and analysis to this ecosystem-based range of management tools available to the reform of the CFP and, in particular, to the reliance that the Green Paper places upon long-term plans for individual fisheries based on the concept of maximum sustainable yield (MSY).

As COM (2008) 187 states “The future CFP must be set up to provide the right instruments to support this ecosystem approach”.

Fisheries management around the world, as exemplified by the United Kingdom **Royal Commission on Environmental Pollution 2004 report : Turning the Tide - Addressing the impact of fisheries on the marine environment** <http://www.rcep.org.uk/reports/25-marine/documents/Turningthetide.pdf> and **Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy**, has clearly stated, both in terms of science and law, that marine protected areas (marine reserves) which forbid extractive human activities are an essential tool and component of the ecosystem-based approach, and are fundamental to the rebuilding of damaged commercial fish stocks and the maintenance of their reproductive health over the long-term.

The empirical evidence in support of marine reserves is overwhelming. In European seas fish stocks which had been severely depleted prior to the First World War, and again prior to the Second World War, rebounded dramatically in subsequent years due to the enforced closure of the fisheries during the war years. Quite simply, stop fishing and fish stocks recover. In the more recent case of the Atlantic fishery off the United States of America and Canada a refusal to impose reserves and no-take fishing areas has led to a collapse of one of the most abundant fisheries in the world, and only now that marine reserves have been established is there any signs of recovery. However the lesson is clear, act *before* fishing stocks collapse otherwise the stock itself (as is the case with the Canadian Grand Banks cod stock) can and will become extinct. Elsewhere around the world (viz: New Zealand, Australia, South Africa, the Caribbean) where fishing reserves have been established the evidence is universally clear : reserves allow fish stocks to increase significantly in size and permit the survival of older fish which in turn dramatically increases the

reproductive capacity of the stock. Furthermore, the spillover of these increased fish populations from within the reserves into the areas outside regenerates the neighbouring fisheries. The UK Royal Commission in its 2004 Report has assembled incontrovertible scientific evidence to support these facts.

Has the Green Paper on CFP Reform discussed and recorded these facts ? The answer is no, it makes no acknowledgement or reference to the central importance of marine protected areas (marine reserves).

It is inconceivable that any fish stock can be rebuilt in terms of size, abundance and productivity unless key areas in its life cycle (nursery, spawning and essential places of refuge and food) are prohibited from extractive activity, both in terms of fishing and other human activities.

It is known that reproductive ability is related to fish size and age, with fecundity (egg production) increasing dramatically as the fish grows older. Yet current fishing practices under the CFP continue to extract fish at an age where sexual maturity is largely underdeveloped, and where fish stocks have no areas of sanctuary and thus no opportunity to live a full life cycle. For example Atlantic cod (*Gadus morhua*) which can live to 25 years and attains its first reproductive capability around the age of 5 or 6 years, is now so intensively fished that all NE Atlantic cod stocks contain virtually no fish greater than 6 years in age with the result that the reproductive ability of European Atlantic stocks is seriously compromised under current CFP management practices.

Without this basic provision of marine protected areas (marine reserves), fish stocks will continue to decline (viz: Green Paper on CFP Reform, Section 3, page 7 "*The marine ecosystems in Europe's waters have the potential to support a high productivity of fish stocks. However, most fish stocks have been fished down. 88 % of Community stocks are being fished beyond MSY: this means that these fish populations could increase and generate more economic output if they were left for only a few years under less fishing pressure. 30 % of these stocks are outside safe biological limits, which means that they may not be able to replenish. European fisheries today depend on young and small fish that mostly get caught before they can reproduce. For instance, 93 % of the cod in the North Sea are fished before they can breed. This overall picture conceals considerable variations by marine region and species. Nonetheless, European fisheries are eroding their own ecological and economic basis.*").

So, we come to the vital question: will the current thinking exemplified in the Reform of the CFP Green Paper rebuild commercial fish stocks and thereafter maintain them in sound health (and, one should add, sustain a healthy marine ecosystem overall) and, if the current reform proposals will not, what are the proposals that will solve the pressing need and provide the answer?

The CFP Reform Green Paper recognises that excessive fishing pressure (fleet capacity) is resulting in over-fishing and substantial consequential damage to the marine ecosystem as a whole, and the Green Paper appears to recognise that the ecosystem-based approach allied to the right management instruments is the way forward.

However, has the Green Paper identified a viable way to reduce fishing pressure, and has the Green Paper provided an interpretation and understanding of the ecosystem-based approach which will identify the right management instruments ?

The Green Paper states that it believes in the ecosystem-based approach, but MARINET believes that it fails to properly comprehend the concept.

It is abundantly clear than management instruments based on quotas and total allowable catches (TACs) cannot be allowed to continue, and are therefore not the appropriate solution.

These instruments have failed to adequately come to grips with reduced stock sizes and the continued threat to the reproductive capacity of fish stocks, and they have failed to provide fishermen with a system they can believe in and which can provide them with economic security. These instruments are discredited.

As a consequence, the Common Fisheries Policy has turned to the concept of Regional Advisory Councils (in order to involve fishermen more actively in decision-making and management) allied to the concept of formulating long-term management plans for individual fish stocks, based on the belief that sustainable catches of fish can and should be based on the concept of maximum sustainable yield.

This particular concept and management instrument is drawn up on the basis that scientific knowledge is sufficient in its powers of measurement and prediction to know the key characteristics of a fish stock (distribution, abundance and reproductive capacity) and thus to be able to determine what is a “maximum sustainable yield”. On this basis, fishing licences (quotas, total allowable catches and other technical instruments) can be determined.

However, we have to note the following with regard to maximum sustainable yield (MSY):

- The concept assesses the total allowable catch on an annual basis, rather than the total annual stock size. This is because it is argued that stock size can vary from year to year due to reasons other than fishing pressure, and the fishing industry needs a predictable annual catch quota in order to remain economically viable. As a result, catch quotas can and are set on a basis that is actually greater than the scientific determination of maximum sustainable yield, and are excused by the assertion that they will be brought into line over the long-term. In the case of those European fish stocks that have been assessed for maximum sustainable yield (43 in total), only 8 are currently being fished in accordance with their MSY and the remaining 35 are being fished beyond their MSY. Thus the concept, which is being advanced by CFP Reform as a key instrument of the ecosystem-based approach and its main instrument for sustainability, is currently being more honoured in the breach than in the observance. Alas, this is an all too familiar story in respect of the Common Fisheries Policy. It does not engender confidence.
- Over half of the principal European commercial fish stocks (45 out of 88) have not yet been assessed for their maximum sustainable yield. There is considerable uncertainty as to whether there is sufficient scientific expertise and knowledge about the distribution, abundance and reproductive capacity of the majority of European commercial fish stocks to enable this management instrument to be rolled out and implemented comprehensively. Thus, if the depth of scientific knowledge is insufficient to enable us to know enough about the nature of certain fish stocks and, in turn, enable the MSY instrument to have scientific validity, then “maximum sustainable yield” can hardly be advanced as a comprehensive management tool which is going to protect fish stocks and the marine ecosystem as a whole. In other words MSY, on its own, cannot deliver the ecosystem-based approach.
- At what stock size is the baseline for the abundance and reproductive capacity of a commercial fish stock established? We know, with a strong measure of certainty, that nearly all European commercial fish stocks are a fraction of their historic levels. Therefore, in determining a maximum sustainable yield based on a certain stock size and reproductive capacity, are we using contemporary definitions of stock size (which are a fraction of historic levels) or are we aiming to rebuild stock size to a level approximating historic levels? The answer to this question will determine our definition of maximum sustainable yield, and whether the reform of the CFP has any real intent to rebuild the size and reproductive capacity of severely depleted commercial fish stocks. Once again, the fact that there are only 9 out of the 43 fish stocks which have currently

been assessed for MSY are being fished within the present definition of MSY does not engender confidence in this management instrument.

- It is not clear how maximum sustainable yield eliminates fishing quotas, total allowable catches, and the seriously discredited and damaging practice of discarded by-catches. A licence to fish a MSY fish stock will have to set limits to the catch, and therefore the management instruments of quotas, TACs and by-catch appear destined to continue under this reform structure of the CFP. This is simply not acceptable. It is both inconsistent with and a violation of ecosystem integrity and the ecosystem-based approach to set a limit on a catch, and then to fish beyond that limit and discard the non-commercial catch in order to ensure compliance with the limit/quota.

Therefore, given that a Reform of the Common Fisheries Policy based on management instruments centred on long-term management plans founded on Maximum Sustainable Yield (i.e. a reformulation of “fishing as normal”) will **not** deliver ecosystem integrity and a sustainable European fishery, to where do we turn ?

The answer is that we have to accept:

- **The primacy of European law over policy.** This means formulating a Common Fisheries Policy which, before everything else, delivers the requirements of those laws. These laws (Directive 2008/56/EC and Council Regulation (EC) 2371/2002) have laid down the definition of ecosystem integrity and the range of management tools that can deliver sustainable human extractive activity. Therefore Reform of the CFP must, first and foremost, implement the principles identified in these laws. When it does so, the Common Fisheries Policy will, firstly, be founded on legal legitimacy (its current activities violate these laws and are thus, in many instances, illegitimate); and secondly, will attain a logical and legal consistency that will provide it with intellectual coherence. In other words, when the CFP observes and implements the ecosystem-based approach to the management of its fisheries and the seas as a whole, the nature of its policies will become self-evident because the law has already defined the principles which underpin these management policies.
- The essential truth that **ecosystem integrity and sustainable human extractive activity are two sides of the same coin**. Neither of these two side of the coin must be denied or ignored if the Common Fisheries Policy is to actually deliver the true, complete nature of the ecosystem-based approach to the management of our seas. When the CFP **understands and implements this fact**, then the CFP (i.e. those who actually design, formulate and implement fisheries policy) will find that the CFP can also be constructed and administered to deliver sustainable fisheries management.
- The clear, unblinkered perception that fish stocks can be restored to and maintained ***at best productive levels*** (i.e. sustainable catch size, ideal stock level, increasing reproductive capacity) by using a range of management tools in combination, whilst simultaneously recognising that the use of protective measures to preserve the *biological integrity* of commercial fish stocks is essential if stock levels and catches are to prosper. ***Above all else, this means that marine protected areas (marine reserves) must be established for all spawning, nursery and other key areas in the life cycle of fish stocks in order to guarantee their biological integrity (best productive level)*** and that, where there is uncertainty, ***the strong version of the precautionary principle*** must be used as the guiding principle of marine management.
- ***An ecologically coherent network of marine reserves, which is freed from all extractive activity and is sufficient in overall size, must be established in order to ensure the long-term biological integrity (best productive level) of commercial fish stocks*** (the UK Royal Commission recommended at least 30% of the sea in their 2004 Report). This ***essential action***, linked to a

proper assessment of fishing fleet capacity in association with a proper assessment of fish stock levels (maximum *sustainable* yield) will determine the size of the annual European fish catch. When certain areas of the seas are permanently off-limits to fishing, when fishing fleets are properly sized in terms of fishing capacity and related technology, when **all** catches are landed and thus have commercial value, when net sizes and dimensions are licensed and operated in a manner that is proportionate to maximum sustainable yield (i.e. long-term plans which have *genuinely* established a long-term sustainable yield), then equilibrium will return to European fish stocks and their management. Only then will the CFP have undergone both real and actual reform.

○ The CFP must recognise that as catch levels fall in order to bring European fisheries into a sustainable condition (by means of marine reserves, the determination of genuine estimates of long-term sustainable yield, and the use of the full range of ecosystem-based management tools) then the monetary cost to the consumer of fish must rise. Quite simply, this is the economic law of supply and demand. If the supply is short, the economic value of the commodity rises. The Commission must ensure that this basic law of economics operates. When this law operates, the individual fisherman will be able to offset his reduced catch volume against an increase in the value of the actual catch, and the consumer and retail industry will have to pay a genuine price in order to underwrite the ecosystem-based approach to management which will rebuild the industry and fish stocks in the long-term. This reality of economic law must be allowed to exist, and thus used to good purpose.

○ Fishermen must receive financial assistance from the European Union, via the Common Fisheries Policy, to pay off financial loans for the purchase of their fishing vessels and thus enable a decommissioning in European fleet capacity to be equitably and fully implemented, **whilst at the same time** receiving financial assistance, again via the Common Fisheries Policy, to enable these same fishermen who have surrendered their fishing entitlement ***to be re-employed in the conservation of commercial fish stocks through the active management of the ecologically coherent network of marine protected areas*** (marine reserves). Thus, fishing communities are involved, via the Common Fisheries Policy, in *the rebuilding of the biological and economic base of their fisheries* for future generations. Fishermen must be given a new economic role as managers of the health of the European seas.

○ The recognition that the above actions and policies, founded and directed by European law, will achieve the key, vital objective of *food security*. The historic operation of the Common Fisheries Policy has destroyed commercial fish stocks, and thus endangered European food security. It must now therefore be a primary objective of the Reform of the Common Fisheries Policy to rebuild and restore food security.

○ In terms of any definition of sustainable human activity, the environment has primacy over social and economic objectives because without a secure, healthy environment (marine ecosystem) no social or economic objective (commercial fishery) can be sustained in the long-term. The use of the ecosystem-based approach mandates this recognition of the primacy of the environment.

Conclusion:

At the outset of this submission, we said that we would address the concerns of the European Commission in its Green Paper concerning its definition of the main structural deficiencies of the CFP once we had explained to the Commission the importance of the primacy of the law over policy and the essential, central nature of the ecosystem-based approach in any Reform of the CFP. Having explained our understanding of the shortcomings of the CFP and the related Green Paper, and thus the essential actions which the Commission *must take* to Reform the

CFP in a meaningful and successful manner, we now address the Commission's specifically stated concerns. Namely:

- A deep-rooted problem of fleet overcapacity.
- Imprecise policy objectives resulting in insufficient guidance for decisions and implementation.
- A decision-making system that encourages a short-term focus.
- A framework that does not give sufficient responsibility to the industry.
- Lack of political will to ensure compliance and poor compliance by the industry.

Fleet overcapacity : we have made specific recommendations in this regard, both in terms of the *principles* by which fisheries management is reformulated in order to allow fleet overcapacity to be reduced, and in terms of the *administrative actions* which are necessary to ensure the successful reduction in overcapacity. Central to this is a proper, intelligently applied implementation of the ecosystem-based approach to fisheries management. We trust the Commission now understands exactly what this means.

Imprecise policy objectives : we have spent a great deal of time in this submission explaining and defining the serious shortcomings of imprecise policy objectives (and CFP policy objectives based on mistaken, fallacious thinking). We believe we have redefined policy objectives (e.g. ecosystem integrity, marine reserves within the context of the ecosystem-based approach) so that the CFP's policy objectives now stand on an intellectually coherent basis; and, if intelligently applied (via a proper understanding of the ecosystem-based approach) the Common Fisheries Policy will be able henceforth to rebuild commercial fish stocks on a genuinely sustainable basis.

Short-term focus of decision making : we have defined a Reform of the CFP using an intellectually and ecologically coherent paradigm which will genuinely free the Commission and its administrators from the short-term focus of decision making. The Commission must have the strength of mind and purpose to recognise the force of ecological imperatives, the primacy of its own laws, and thus embrace an intellectual and administrative framework which will provide the Commission with the long-term thinking that the Reform of the CFP so urgently requires. When it has implemented the ecosystem-based approach as we have defined it here, then we will know that the Commission has understood the task it faces and how to deliver its essential outcome.

Insufficient responsibility to the industry : we have shown how commercial fish stocks can be rebuilt and restored onto a sustainable basis using specific management concepts and tools and, when this is undertaken by the Commission, this will result in a clear perception by fishermen that their industry has a growing, sustainable future which will be available both to themselves and their children; and, most importantly, that they have a role (through financial instruments generated under Reform of the CFP) in delivering and administering this new management regime.

Lack of political will to ensure compliance : politicians and industry members will always demonstrate a lack of political will when the formula for management and/or reform fails to convince and thus, by virtue of its flawed logic and evidence, will clearly fail. The Common Fisheries Policy has a long history of failure, being predicated upon unsound principles and decisions which have sought to defy both the imperatives and facts of reality. Not surprisingly, few have believed in the CFP and have therefore been unwilling to comply with its strictures and instructions. We have now provided the Commission with an intellectually and ecologically coherent structure and set of principles for the Reform of the CFP. These principles are founded on a recognition of truths. This being so, both politicians and the industry can have confidence in the knowledge that the Reform of the CFP will deliver a sustainable fishing industry. The logic and correctness of the evidence on which we have built these management principles guarantees this. It will only fail if the Commission itself fails to embrace these principles, and fails to observe

these very same principles which are already established and mandated in European law : Directive 2008/56/EC and Council Regulation (EC) 2371/2002. Thus, if the Commission itself fulfils its duty, it will find that both politicians and the industry will implement this Reform of the Common Fisheries Policy with a firm and resolute political will. This is because the Reform of the CFP is founded on the right principles, and therefore can be believed in and supported by politicians and industry with complete confidence.

Thus, we trust the Commission has understood the shortcomings in its current formulation of Reform of the CFP as expressed in its Green Paper, and has understood the nature of the changes in terms of principle and intellectual conceptualisation that it must embrace.

These changes, the primacy of law over policy and the full and proper understanding and implementation of the ecosystem-based approach to the management of fisheries and our seas, are already established in European law. What the Commission has to do is to *internalise* this reality into its own thinking. If it does this, it will come forward with a Reform of the CFP that will actually restore health to European fish stock and seas. In short, it will succeed.

We trust that the Commission has the wisdom to perceive this, and to so act.

Yours faithfully

S. D. Eades
On behalf of MARINET
Marine Network of Friends of the Earth.