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Conservation  
Society

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## **Consultation on the reform of the Common Fisheries Policy**

### Background to the Marine Conservation Society (MCS)

MCS is the only UK charity dedicated to championing all aspects of the marine environment. Our priorities are tackling biodiversity loss, sustainable fisheries and clean seas & beaches. MCS's mission is for *seas fit for life* – seas that support abundant marine life, healthy fish stocks and a pollution free environment for people and wildlife. We work to achieve this by providing the necessary knowledge, resources and activities to ensure that the UK's Government, private sector, civil society, and general public can jointly manage and improve our seas.

### MCS response to the green paper

MCS welcomes the early preparations for the 2012 CFP reform, and thanks the commission for providing the opportunity to input into this process. Although much progress has been made since the 2002 reform, the current state of stocks within the EU (88% overfished) is the clearest indicator that the CFP is failing to achieve sustainable fisheries- ecologically, socially and economically. Therefore a fundamental, whole-scale reform is *absolutely crucial* if we are to improve the sustainability of our fisheries for future generations.

MCS fully agrees with the Commission's analysis identifying five main structural failings of the current CFP: fleet overcapacity, imprecise policy objectives resulting in insufficient guidance, a short-term focus in decision-making, insufficient industry responsibility and poor compliance. However, we believe that the reform needs to go beyond these failings and focus on addressing how we can successfully *implement* the key objectives of the CFP.

In its green paper, the commission states "...*ecological sustainability is the basic premise for the economic and social future of European fisheries*". MCS believes that to meet this core objective of ecological sustainability, the following three principles are vital under the reformed CFP: use of an ecosystems based approach in fisheries management; application of the precautionary principle; achieving consistency with other EU and international policies, in particular in relation to the environment.

MCS and ClientEarth organization have jointly proposed new Fishing Credits System (FCS), which we believe could meet these three fundamental goals and the core objective of ecological sustainability. This was submitted as a joint response to the green paper: [http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf) and can also be found in Annex 1 of this document.

The FCS does not deal with all of the issues highlighted within the green paper, but instead focuses on a new management instrument that could; maintain capacity at levels aligned with fishing opportunities; uses a true ecosystem based approach to fisheries management; integrates other environmental polices; create strong incentives to target sustainable stocks caught with selective gear; provide a robust framework for monitoring, control, compliance and enforcement; would utilize a simplified, flexible, regionalised management structure and give more responsibility to fishers with the benefits of increased flexibility and participation of the industry.

This individual consultation response advocates the Fishing Credits System proposed jointly between MCS and Client earth, but is also intended to provide MCS input on a number of issues, where relevant, that are not covered by the FCS proposal.

We trust you will find our input of interest and hope that our views will be taken into account during the reform process.

Melissa Pritchard  
Fisheries policy Officer  
Marine Conservation Society

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**Caring for our seas, shores and wildlife - now and for future generations.**

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## **OVERCOMING THE FIVE STRUCTURAL FAILINGS OF THE POLICY**

### **4.1 Addressing the deep-rooted problem of fleet overcapacity**

MCS agrees with the Commission that there is serious overcapacity in the current fleet. Excess capacity is at the root of many of the problems in EU fisheries and it can result in overfishing and illegal fishing, as resources decrease. Unless this problem is addressed as a matter of urgency and a balance achieved between fishing effort & available resources, neither the long-term sustainability of the industry, or resource base will be achieved.

Part of the process of reducing capacity involves restructuring the fleet, so it is essential that the nature of the resultant fleet is determined prior to targeted capacity reduction programs and it should be ensured that the fleet that remains is as ecologically sustainable as possible. It is vital that excess capacity is not simply exported via third country agreements.

In addition, it is essential that employment initiatives and appropriate funding is available to reduce local dependency on fishing where fishers are obliged to leave the industry as part of a capacity reduction program.

When considering which instruments would be most appropriate for reducing capacity, it would be advisable for the community to review previous capacity reduction programs and analyzing their effectiveness and the reasons for success or failure. In some cases it may not be the tool used to reduce capacity that was inappropriate, but that the target was set too low, or directed at the wrong part of the fleet, therefore having an insignificant effect on overcapacity.

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

Capacity should be reduced through obligatory targets created in legislation, within a given time frame. It is crucial that these targets are aligned with fishing opportunities so that are effective, and there should be penalties for management bodies or member states that fail to reach the specified target.

Although targets should be decided at a European level, identifying where capacity needs to be reduced and to what level, the decision on which instruments used to meet those targets could be left to the member state or regional bodies, following EU guidelines, to allow management sensitive to local conditions

In addition, a program of monitoring capacity levels and consequent management technology creep should be conducted at member state, regional and EU level, to avoid exceeding capacity in the future, which would undermine efforts made to reduce capacity.

#### ***Is the solution a one-off scrapping fund?***

A one-off scrapping fund could aid a quick transition to a more sustainable fleet, however used alone it will not solve the underlying causes of overcapacity. Unless the root causes are reviewed and addressed, it is possible that a "one-off" scrapping fund will be required more than once, defeating its purpose.

If a one-off scrapping fund was used in the short term, then it is essential that it removes actual capacity -both vessel and fisher- not armchair fishers, and that it targets those vessels that are inefficient, unsustainable and therefore unwanted in the resultant fleet. When allocating access to the

resource, priority should be given to those who operate in a sustainable manner and have a good compliance record regarding CFP and other maritime regulations- such as those recommended by Oceans 2012. Please also refer to section 4.1 of the joint MCS & Client Earth proposal for a “fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper and can also be found in appendix 1

Overcapacity is closely linked to perverse subsidies, which have helped to artificially maintain parts of the fleet that would otherwise have been forced out by the markets. Therefore it is crucial that future public financial support is only available to support positive changes to the fleet and the seafood industry, and to support communities affected by decommissioning to develop new skills for alternative employment (see also the MCS response to section 5.7)

***Could transferable rights (individual or collective) be used more to support capacity reduction for large-scale fleets and, if so, how could this transition be brought about? Which safeguard clauses should be introduced if such a system is to be implemented? Could other measures be put in place to the same effect?***

There are a variety of Rights Based Management Tools, which allow transferability, being used across the globe. It is possible that such transferable rights could support a reduction in capacity however this instrument should not be seen as the panacea to overcapacity on its own, as there are many other methods which may be more effective. It is more likely that transferable rights could help to maintain capacity at levels aligned with fishing opportunities.

When considering the use of transferable rights, a number of safeguards should be introduced upon implementation, such as avoiding the concentration of rights; and ensuring the system allows for adaptive management

Please also refer to the joint MCS & Client Earth proposal for a “fishing Credits System”- a new type of transferable right that could be used in the management of our fisheries, providing the benefits of incentivisation, stewardship, security for the fleet but avoids many of the issues surrounding existing transferable rights. The proposal has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in appendix 1

***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?***

It is essential that a common set of standards is used at the member state, marine region and EU level, to ensure harmonization. These standards should cover guidelines for transparency, participation of stakeholders, balancing of environmental and social issues when restructuring the fleet. However, the instruments required to reduce capacity could vary between regions or member states and therefore a degree of flexibility will be required.

## **4.2 Focusing the policy objectives**

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

Achieving a balance between ecological, social and economic issues is clearly necessary. However, productive, profitable fisheries depend on healthy marine ecosystems, therefore, it is clear that the reformed CFP should set ecological sustainability as its highest priority, even if there may be short-term conflicts between the three priorities. Only by putting ecological sustainability first will the future of EU fisheries be secure.

A reformed CFP should be guided by the following three goals to ensure ecological, economic and social sustainability are achieved: Effective implementation of an ecosystems based approach, applying the precautionary principle in practice, and achieving consistency with other EU and international policies, in particular in relation to the environment.

In order to meet these three fundamental goals and the core objective of ecological sustainability, MCS and Client Earth have proposed new Fishing Credits System (FCS) in an earlier joint submission ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in appendix 1

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

In order to properly ensure that decision-making focuses on the long-term objective of ecological sustainability, it is absolutely necessary to provide for a degree of decentralisation in the form of a regional management framework. Since the long-term objective needs to be ecological sustainability, it is vital that EU fisheries are managed at an ecosystem level. This can only be achieved through regional management.

We would envisage the European Council and Parliament focus on fundamental principles and long-term strategy, with the Commission making more detailed proposals leaving actual implementation to regional management organizations and Member States using a results-based strategy and involving a variety of stakeholders in the process. Please refer to section 4.2 of the joint MCS & Client Earth proposal for a “fishing Credits System” which contains more detail on the division of responsibilities. This proposal has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in appendix??

The regional fisheries management units that we propose could be new bodies or possibly evolve out of the existing Regional Advisory Councils (RACs). Depending on the varying needs of each region and sector, management may be appropriate at a regional, Member State, local or individual level. However, what would fundamentally change is that these regional or other appropriate management units would need to be organized on the basis of appropriate ecological criteria and in appropriate ecological management units.

We would suggest that the easiest and most practical way to achieve these new ecological management units would be to use the same ‘marine regions’ or ‘sub regions’ already defined in Article 4 of the Marine Strategy Framework Directive). In addition the FCS proposal suggest the decentralization of technical regulations, and the greater involvement of the industry in the management framework by giving the industry more responsibility, flexibility but also accountability. Again please refer to sections 4.2 and 4.4 of the joint MCS & Client Earth proposal for a “fishing Credits

System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1

#### **4.4. Encouraging the industry to take more responsibility in implementing the CFP**

Please refer to section 4.4 the joint MCS & Client Earth proposal for a “fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

This section covers:

- Options for results based management,
- The benefits of exclusivity, security, duration, transferability, and flexibility as a result of giving the industry more responsibility,
- Potential for greater participation from the industry
- Giving the industry greater financial responsibility.

#### **4.5. Developing a culture of compliance**

Compliance is the key to a successful CFP, and thus this reform must ensure the monitoring, control, and enforcement are sufficient enough to create a culture of compliance.

Please refer to section 4.5 of the joint MCS & Client Earth proposal for a “fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1. This sections covers:

- The need to harmonise sanctions across the EU
- Ensuring penalties are severe enough to be an effective deterrents, the removal of licences following consecutive infringements
- Benefits of the new control regulation
- The need for real time data collection and reporting, increased VMS, observers, inspections, and the use of video technology for monitoring
- Improved transparency & traceability
- Ensuring access to public funds are only available to those with a proven good compliance record
- Cross compliance with other environmental legislation.

## **5. FURTHER IMPROVING THE MANAGEMENT OF EU FISHERIES**

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

Please refer to section 2 of the joint MCS & Client Earth proposal for a “Fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

This section suggests a new management regime applicable to *all* vessels, which is simpler, more flexible and easier to manage than the current system.

### **5.2. Making the most of our fisheries**

Please refer to section 3.1 of the joint MCS & Client Earth proposal for a “Fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

This section advocates the following principles:

- A long term aim of ecosystem management plans, with multispecies fisheries management plans in the interim
- MSY should be used as a ceiling exploitation level, with a lower target reference point
- Within mixed fisheries MSY can be achieved if a multispecies/ecosystem approach is taken, the FCS proposal describes a method of achieving MSY and ecosystem integrity through the true application of an ecosystems based approach to fisheries management
- The proposed FCS suggests a system that would eliminate discards and reduce bycatch through individual ecosystem credit quotas, achieved after a series of transition stages beginning with effective discard monitoring.
- All species should be assessed & managed- commercial fish, non-commercial fish, and all other species and habitats impacted by fishing
- Closed areas for fisheries protection and Marine Protected Areas for Biodiversity protection should be used to make the most of our fisheries
- The reformed CFP should encourage the use of selective gear - our proposed FCS suggests a method of achieving this.
- The reformed CFP should incentivizes the capture of plentiful, sustainable species- our proposed FCS suggests a method of achieving this.

### **5.3. Relative stability and access to coastal fisheries**

***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?***

As the Green paper discusses, the principle of relative stability is no longer serving its purpose, and it has also restricted the CFP from achieving its objectives in a variety of ways, most notably in the setting of TACs. These impacts of the relative stability must be addressed urgently to avoid this principle undermining the objectives of the CFP.

When allocating access to the resource, priority should be given to those who operate in a environmentally sustainable manner and have a good compliance record regarding CFP and other

maritime regulations. Please refer to FCS proposal, section 2, for allocation options. This proposal has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

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

The 12nm zone is often home to a variety of essential fish habitats and areas of importance for marine biodiversity, therefore it is crucial that it is effectively managed and protected. Small-scale fishing vessels often have a minimal environmental impact, and make an important contribution to small coastal communities, so reserving the 12nm zone for such vessels could contribute to environmental and social objectives under the reformed CFP. However it is essential that the cumulative impacts of these vessels be monitored – both on target stocks, but also on the biodiversity of fishing grounds themselves, and that control and enforcement is as stringent as it is for larger vessels outside this zone.

In addition the historical fishing rights that currently exist between 6-12nm should be reconsidered to improve the effectiveness of management in this area: by reserving fishing in the 0-12nm zone exclusively for the member state, it would allow the member state to better enforce fisheries conservation regulations and measures designed for biodiversity protection, such as the protection of vulnerable Marine Conservation Zones in national waters.

## **5.4. Trade and markets – from catch to consumer**

### ***How could market mechanisms be used to encourage the development of fisheries that are market efficient as well as sustainably exploited?***

The improvements of market mechanisms, from point of first sale, to the consumer, will need to be developed in order to ensure that the CFP achieves sustainable fisheries.

Currently less abundant, less sustainable seafood often commands a higher price due to the demand from market traders and its low availability; incentivizing the catching sector to target and retain these species. Conversely, the more abundant and sustainable species, often caught as bycatch, command a lower price (due to a combination of low demand and high availability) and are often discarded.

There are two mechanisms that need to be developed in order to improve this situation. Firstly, demand for the sustainable product needs to increase. Ultimately this will come from the consumer demand, but corporate and social responsibility of major businesses within the seafood supply chain can also have an impact on demand. By educating the consumer on the use of different species and the issues surrounding seafood sustainability, and the need to diversify the species consumed, it will help to drive an increase for sustainable species, leading to higher prices being achieved for this seafood. Another mechanism would be to ensure that minimum prices are achieved. The electronic auction system goes some way to improving the prices that are paid for fish, however without a minimum price that could be set by the fisher to ensure a fair return on effort, there may always be incentivisation to land unsustainable, higher value species.

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

Certification schemes go a long way in helping the consumer to make the right sustainable choice, and they also incentivize improvements amongst the fishing industry.



Currently the Marine Stewardship Council certification scheme is the most well-known and respected labelling scheme globally, and its success should be encouraged through the future CFP. It is an example of a voluntary, bottom-up driver towards improving the sustainability of our fisheries, and can often achieve a premium price. It is also a label which consumers recognise and trust and are quickly able to identify responsibly caught seafood. The reformed CFP could support fishers wanting to apply for MSC accreditation by improving data collection and knowledge base on a larger range of fisheries.

However there are some limitations to this certification initiative- the scheme is limited to wild-capture and enhanced fisheries, with no aquaculture certification scheme in place at present (Aquaculture Stewardship Council scheme expected in 2012). The process of certification is also costly, and with no guarantee of a price premium, many small-scale fisheries are deterred by this. As a result, there are a number of sustainable fisheries that are not certified under the MSC scheme so it is important that the future CFP does not discriminate those who are unable to apply for the MSC or other certification labelling schemes, but are operating in a sustainable manner.

There are a number of fisheries deemed sustainable by various environmental NGOs but which have no MSC certification. Obviously this can prove difficult to communicate to consumers compared to the MSC label, however this is currently overcome by NGO "Green" lists of fisheries which are often used by retailers as part of their sourcing policy. The future CFP can also support such fisheries by improving the level of detail on seafood products to enable consumers to make an informed choice, and differentiate those fisheries that although are not MSC certified, are going to great lengths to fish in a sustainable manner.

The current labelling of seafood is ineffective. In many cases fish stocks are managed at ICES sub-area or divisional level, yet current EU legislation requires labelling to the FAO area only. This does not inform the consumer as to whether a particular product is sustainable. The public is becoming far more aware of the issues of sustainability and consumers are starting to drive change throughout the supply chain down to the catching sector. To allow consumers to identify whether the seafood product is from a sustainable source, the product labelling should be extended to include the following:

- Latin name – to remove confusion associated with common market names, which can often refer to a number of species, for example, the labelling of ray wings as skate.
- Capture Area – this should be specific to the level of stock management (e.g ICES area).
- Capture Method –Detail to the level of 'line-caught' or 'trawl caught' should be the minimum, with future labelling including the exact capture method to help consumer identify the sustainability of the product.

Much of this information is currently readily available to the retailer for health and safety traceability reasons, and thus the barriers to implementing this level of detail at point of sale are very small.

To our knowledge there is currently no legal definition of the terms 'sustainable' or 'responsible' at the national, EU or international level. This has led to seafood being labelled as such without any qualification or demonstration of sustainability. This can lead to confusion and even deception of the consumer and is an issue that needs to be dealt with immediately.

### ***How can traceability and transparency in the production chain be best supported?***

The future CFP must have an improved degree of traceability throughout the supply chain- from net to plate. Electronic logbooks can be used to help improve traceability and transparency from the net, providing real time catch data which can be traced throughout the supply chain. In addition, all EU wild caught seafood products should be labelled beyond the EU 2002 regulations as described above, to help increase traceability to the plate.

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

The unrestricted use of the phrase ‘sustainable’ or “responsibly sourced” on a number of retailer products and the foodservice industry does not create a fair or level playing field for all. As far as we are aware, there are currently no EU or international laws to regulate the use of these words and it is concerning that they are being used in haphazard manner, with no independent standards authority, thus misleading the consumer and undermining the efforts of those who have taken steps to become certified or achieve a ‘sustainable/responsibly sourced’ ecolabel. This is an issue that needs to be dealt with immediately.

In addition, the EU community, and individual member states have a responsibility to market the benefits of under-utilized, environmentally sustainable species to consumers, and encourage consumers to diversify their seafood choices, to help relieve the pressure on the more traditional seafood species. In the UK most of the seafood eaten comes from just 10 species, with consumers wary of trying “new” seafood and simply continuing with traditional choices that are often unsustainable. A variety of methods can be used to encourage diversification to more sustainable seafood choice; work with celebrity chefs, educational programmes at schools, and revised government seafood health advice. Public Financial aid should be reserved for the development and marketing of fisheries that are sustainably exploited

### **5.5. Integrating the Common Fisheries Policy in the broader maritime policy context**

The CFP is not an EU policy that stands in isolation. The fishing industry interacts with a number of other sectors, in particular, conservation, aquaculture and renewable energy and the CFP is already linked to a number of other EU and international policies and requirements, in particular in relation to environmental policy, but also as regards general maritime and water related policies.

In order to achieve the objective of the CFP and implement other EU commitments it is essential that there is consistency of the CFP with other EU and international policies in particular relating to the environment.

In particular CFP reform must enable Member States to:

- Facilitate Member States to set up and ***effectively manage networks of fully-protected marine reserves*** in order to restore marine biodiversity, understanding the role of marine reserves as the cornerstone to achieving an ecosystem approach to marine environmental management.
- Conserve their national marine protected areas by allowing them to prohibit fishing through the CFP where necessary. At present, in the UK, foreign vessels could potentially damage national marine protected areas under the ***UK Marine Act***.
- Maintain Special Areas of Conservation in favourable conservation status under the ***EU Habitats Directive*** by prohibiting fishing through the CFP in sites where fishing will have an adverse affect on the site. Where bottom-fishing activities continue to operate in SACs with Annex 1 seabed features, they should be restricted from sites pending Appropriate Assessments<sup>1</sup>. At present Member States are finding it virtually impossible to prohibit fishing through the CFP in SACs.

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<sup>1</sup> Article 6(3) of the Habitats Directive

- Achieve Good Environmental Status under the **Marine Strategy Framework Directive**. Fisheries that are unsustainable under the CFP will be the key factor in preventing member states meeting this directive. At least 6 of the 11 Qualitative Descriptors of good environmental status are relevant to fisheries:
  1. **Biological diversity** is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.
  3. **Populations of all commercially exploited fish and shellfish are within safe biological limits**, exhibiting a population age and size distribution that is indicative of a healthy stock.
  4. All elements of the **marine food webs**, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.
  6. **Sea-floor integrity** is at a level that ensures that the structure and function of the ecosystem are safeguarded and benthic ecosystems, in particular, are not adversely affected.
  9. **Contaminants in fish** and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.
  10. Properties and quantities of **marine litter** do not cause harm to the coastal and marine environment.
- Apply the **Strategic Environmental Assessment Directive** to fisheries under the CFP. SEAs must also be undertaken of Marine Plans and other developments, but Member States cannot meet the objectives of this directive while unsustainable fisheries under the CFP are contributing to adverse environmental impacts at the regional sea level.
- Halt the decline in marine biodiversity under the **1992 Convention on Biological Diversity**

In addition, the reformed CFP must ensure it meets the requirements of:

- The 1995 UN Fish Stocks Agreement
- Johannesburg Plan of Implementation that was agreed under the 2002 World Summit on Sustainable Development.
- The United Nations Convention on the Law of the Sea
- The FAO Code of Conduct for Responsible Fishing
- Support a well-managed ecologically coherent MPA network being established in OSPAR waters by 2010 under OSPAR (and WSSD commitments by 2012).

Furthermore, MCS believes the future CFP can support adaptations to climate change and ensure that fisheries do not undermine the resilience of marine ecosystems through the support of, and ensuring compliance with an ecologically coherent network of 30% Marine Protected Areas and marine reserves<sup>2</sup>.

Please also refer to section 3.3 of the joint MCS & Client Earth proposal for a “Fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

MCS also supports the suggestions for integration of the Common Fisheries Policy in the broader maritime policy context put forward by Client Earth’s individual response to this consultation.

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<sup>2</sup> The UN Millenium Project in 2005 called for 10% of the worlds oceans to be covered in marine reserves in the short-medium term, with a long-term goal of 30%.

## **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?***

The scientific knowledge base is the foundation of good policy, so it is vital that resources are used to their maximum. More resources need to be filtered into data collection and assessment so that we can regularly quantify and monitor the status of all target, bycatch and discarded fish stocks, as well as research into the impacts on other species and habitats affected by fishing activities.

Knowledge can also be gained from examples of management outside of the EU. For example, the management of fisheries in NE USA on the Georges Bank<sup>3</sup>. These management structures (where five areas totalling a 17,000km<sup>2</sup> area have been closed to bottom fishing, which equates to approximately 30% of the shelf area) are showing evidence of the productive capacity for finfish and shellfish fisheries. These combined areas provide a scientific control, which allows fisheries managers to moderate decisions in areas outside these zones.

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

Data quality and availability are essential to enable advice to be timely & relevant. Through a regional management system (as suggested under the FCS proposal- see section 4.2 in annex1), resources could be coordinated between Member States to maximise these resources and avoid duplication of effort.

The use of real time logbook data would provide an opportunity to provide real time monitoring and immediate action where necessary such as real time closures to protect aggregations of juveniles or spawning groups.

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

We anticipate that the greater involvement of fishers in the process could include more fisheries-science partnerships, and possibly even the introduction of an option of self-sampling (after an initial training period). This would give fishers more responsibility and involvement in the process, and thus more respect of the system and therefore compliance.

In addition, the involvement of other non-fishing stakeholders, many of whom already have significant marine data, could help to coordinate and share knowledge, research and data collection efforts.

Please also refer to section 4.4.5 of the joint MCS & Client Earth proposal for a “Fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1.

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<sup>3</sup> Murawski *et al.* (2005) Effort distribution and catch patterns adjacent to temperate MPAs .ICES journal of Marine Science 62(2): 1150-1167.

## **5.7. Structural policy and public financial support**

Under the current system, fishing subsidies are artificially maintaining fishing operations that would otherwise have been forced out by the markets. They can also lead to an increase in fishing effort and thus overexploitation of resources.

Please refer to section 4.6 and 4.4.2 of the joint MCS & Client Earth proposal for a “Fishing Credits System” paper ([http://ec.europa.eu/fisheries/reform/docs/clientearth\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/clientearth_en.pdf)) and can also be found in annex 1 which discusses key issues for public financial support including the following suggestions:

- Permanent subsidies should be phased out so that the fleet becomes less reliant on public aid and more self-sufficient, to ensure stability through difficult times, and to avoid detracting funds away areas of positive change
- The industry should take more financial responsibility, to contribute towards the costs of management
- Tax exemptions could be made available only for fuel-efficient, selective gear- this would also help to address & reduce fisheries carbon footprint and contribution to climate change
- Aid should only be available to those that have a proven good compliance history- for the CFP and all other relevant policies- in particular to environmental regulations
- Priority access to funds should be reserved for those who operate in an environmentally sustainable manner
- Financial aid should also be directed to positive changes in the industry- such as changes to more selective gear, intelligent marketing of sustainable species currently discarded

## **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 core objective of the CFP should also drive the external dimension, however it is crucial that a precautionary approach is taken in areas where scientific knowledge of stock status and impacts of fishing on the local ecosystem are limited. It is also essential that over-capacity within the EU is exported via third country agreements.

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

The EU must set a precedent of good practice for the international community, achieved through reformed CFP that puts ecological sustainability at its heart and effectively deals with the five structural failings of the current CFP.

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

Many of the issues that need to be addressed internally also apply to the RFMOs, to make them more effective including greater transparency, prioritized policy objectives and decision making processes, and improved control and enforcement.

***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?***

The same issue that applies internally should also apply externally; in that the industry should take more financial responsibility in the respect of contributing towards the cost of management.

***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?***

Whichever instrument is used, it is essential that the process has a high level of transparency.

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

The efficiency of scientific research for stock assessments could be improved through greater cooperation to enable knowledge transfer and sharing of resources.

***How can we assure better cooperation and compliance with new regulations in developing countries?***

Again, the same principles that apply internally should be incorporated in external partnerships; greater involvement of stakeholders, participation in data collection, improved transparency.

***How could we contribute to increasing the fisheries management capabilities of developing countries, e.g. through targeted assistance?***

Targeted assistance would help to increase the fisheries management capabilities of developing countries, and such assistance must be transparent. It is essential that capacity in these areas is aligned with fishing opportunities and that appropriate regulations are in place to ensure the sustainability of the resource and the continuing livelihood of those communities dependent on them.

***Should aquaculture be included in future partnership agreements?***

Yes- just as areas of cross over between aquaculture and fisheries should be address under the CFP, the same principle should apply externally. In particular, the issue of feed fisheries and the impact of aquaculture on wild fisheries and the environment on which they depend.

However to ensure the growth of the industry in a environmental friendly, responsible and sustainable way, nations should develop National Plans to deliver these objectives, and the EU should provided assistant where appropriate.

## **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?***

Key areas of cross-over or interaction between aquaculture and fisheries should form an integral part of the reformed CFP- as described in detail below. However to ensure the growth of the industry in a environmental friendly, responsible and sustainable way as outlined in the European Strategy for Aquaculture Development 2009, each Member State should also develop National Plans to deliver these objectives.

### **Impact of aquaculture on fisheries.**

The farming of carnivorous species (most popular farmed species in Europe) such as salmon, trout, bass & bream, all rely upon a source of marine protein and oil to form the basis of their concentrated diet. These proteins and oils are derived from both wild capture feed fisheries, and trimmings and waste from fish processing for human consumption.

#### **a) Data deficiency**

Many of the feed species targeted are data deficient or stock status unknown, so it is essential that our knowledge of these stocks be improved under the reformed CFP so that they can be sustainably managed

#### **b) Food web effects**

Feed fisheries are currently managed in the same way as human consumption fisheries- taking a single species approach, which does not consider the wider ecosystem or the food web effects. This is a serious issue in feed species as many are small, fast growing, short lived, at the base of the food chain, on which many species are highly dependant on- such as seabirds, but more importantly from a fishers perspective, highly valuable commercial species such as cod. Therefore it is crucial that an ecosystems based approach is applied to fisheries management under the reformed CFP (please also refer to section 3.1 of the joint MCS & Client Earth proposal for a “Fishing Credits System” which has been submitted to the European Commission in response to the CFP green paper and can also be found in annex 1)

#### **c) Environmental variability**

Similar to other species in the marine web, these feed species are also vulnerable to climate change and environmental variability; as seen in the Peruvian anchovy fishery and Sandeel fisheries in Scotland. Therefore it is essential that the reformed CFP takes such environmental variables into consideration when managing these stocks.

#### **d) Escapes**

Escaped farmed fish such as salmon can adversely affect their wild counterparts by interbreeding and causing genetic dilution in subsequent generations, making them less fit to survive in their environment and later breeding farmed fish or hybrid fish can displace the eggs of the wild species. It is essential that this type of impact is monitored and managed correctly under the reformed CFP.

#### **e) Parasite and disease transfer**

The location of fish farms is vital to minimise the interaction between farmed fish and wild stocks. With salmonids, farmed fish can provide a concentration hotspot for parasites such as sea lice and diseases such as ISA. The location of farms to avoid interaction and therefore minimise this transference risk is essential and should be monitored under the reformed CFP.

### **OTHER ISSUES FOR THE CFP REFORM NOT COVERED BY THE GREEN PAPER**

#### **Reduction of Abandoned, Lost or otherwise Discarded Fishing Gear.**

Abandoned, lost or otherwise discarded fishing gear (ALDFG) is a problem that is increasing concern. In addition to create ocean debris and beach litter, ALDFG has a number of impacts significant to commercial fishing:

##### **Entanglement of threatened or endangered species**

Entanglement from ALDFG can reduce movement and potentially result in serious injury, death by starvation, drowning or suffocation. Fishing debris, such as nets and monofilament lines, have the greatest potential to cause entanglement problems<sup>4</sup>.

##### **Ghost fishing of target and non-target species**

Due to the modern synthetic fibres used, fishing gear is non-biodegradable, therefore lost gear can continue to fish indefinitely in a circle of capture, decay and attraction<sup>1</sup>. Once the gear has caught a number of species (including commercially important species) it sinks under its own weight to the seafloor. Then the as species start to decay, the now accessible gear becomes attractive to scavengers. Once the gear has been cleared of decaying species, it is then lighter and able to resume ghost fishing again.

##### **Alterations to the benthic environment;**

Lost fishing gear may be dragged along the seafloor by ocean currents, potentially harmful fragile organisms and habitats, or smothering benthic communities after an accumulation of debris.

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<sup>4</sup> Abandoned, lost or otherwise discarded fishing gear UNEP & FAO technical paper 185, 523 Graeme Macfadyen, Tim Huntington, Rod Cappell



## **Navigational hazards**

The navigational hazards caused by ALDFG can cause social and economic issues: ALDGF can cause fouling or entanglement in parts of a fishing vessel (i.e. propeller, rudder) reducing its ability to maneuver. This can create a health and safety risk if the vessel is in bad weather conditions, unable to move away from other vessels, or putting crew member at risk who attempts to clear the debris underwater. In addition, there are the economic costs of repairing or cleaning a vessel affected by ALDFG, lost fishing time and at sea retrieval programmes<sup>1</sup>.

## **Introduction of synthetic material into the marine food web;**

Synthetic materials used in the creation of fishing gear, such as plastic, can remain in the marine environment for hundred of years. Although the exact implications on the marine food web are unknown, the ability for material such as microplastics to accumulate could be a potential source of toxic chemicals in the marine environment and food web. This could potentially impact upon target fish species.

## **Introduction of alien species transported by ALDFG;**

Plastics are a good surface for fouling organisms to attach to, as they remain buoyant, and are extremely durable. ALDFG creates a vehicle for non-native species to increase their distribution. Such alien species can have significant impacts on the marine food web and on commercial target species.

For example the stalked barnacle (*Dosimia fascicularis*) attaches itself to floating debris at settlement and has been found attached to small tar pellets and plastic fragments on Irish North Atlantic shores<sup>5</sup>. In addition, observations of floating debris collected along the Catalan coast revealed the presence of potentially harmful dinoflagellates such as *Ostreopsis* and *Coolia*, and *Alexandrium taylori*, illustrating that plastic debris has the potential to transport and disperse harmful algal bloom species<sup>6</sup>.

## **Recommendations for reducing ALDFG under the reformed CFP**

Several schemes for the identification of fishing gear are currently available: tags, tracers in webbing, coded wire tag and “rogue’s yarn”. More research is needed into the viability of implementing such systems across the EU. The introduction of net markers for those fishing in community waters should be implemented as it is in the USA and Canadian fisheries.

Currently accidental losses are not reported and are exempt from prosecution under MARPOL. Under the reformed CFP, any vessel that loses gear through unforeseen circumstances, such as snagging on the seabed floor, should be required to report the loss. A no blame reporting system should be used for reporting lost or abandoned fishing gear. Appropriate action could then be taken to try and retrieve the gear. Using a marking system any gear found washed ashore would then be identifiable and the owner could be prosecuted under MARPOL, unless the gear had been reported as lost.

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<sup>5</sup> Minchin, D. (1996). Tar pellets and plastics as attachment surfaces for *Lepadid cirripedes* in the North Atlantic Ocean. *Marine Pollution Bulletin* **32** (12).

<sup>6</sup> Maso M, Garces E., Pages F., and Camp J. (2003). Drifting plastic debris as a potential vector for dispersing Harmful Algal Bloom species. *Scientia Marina* **67**(1) pp 107-111.

Incentives to encourage all vessels to bring back any litter found at sea should be created; particularly debris likely to cause a hazard to navigation and safety, for correct disposal. Large items and lost fishing gear, which cannot be removed, should be reported to the MCA. 'Fishing for litter' schemes should be used across the EU.

Fishing nets used to be made of biodegradable hemp but are now made of plastic but have a life usage of 1-5 years. Under current legislation if fishing vessels bring used nets to shore they are charged for disposal, which encourages disposal at sea. Pieces of net are commonly found on beach as they are frequently repaired during their lifetimes. Monofilament netting has a life expectancy of 450 years but is generally only used for up to 5 years Therefore research should be undertaken into biodegradable netting and into recycling netting.

Port Waste Reception Facilities Regulations should be extended to fishing vessels, which are currently exempt. In addition to having to maintain a waste log, all vessels should be encouraged to return all litter, including netting, back to port for appropriate disposal.

Research should be carried out into recycling and reuse facilities for fishing gear at ports.

Environmental responsibilities should be incorporated into the education and training of fishers, with information on the how to prevent, report and dispose of ALDFG.

Recreational fishers and anglers should be made aware of the problems fishing gear can cause and appropriate disposal facilities provided.

**APPENDIX 1: Marine Conservation Society & Client Earth joint CFP Reform Proposal: The Fishing Credits System**



**CFP Reform Proposal**

**The Fishing Credits System**

## CFP Reform Proposal

### The Fishing Credits System

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# CFP Reform Proposal

## The Fishing Credits System

### 1. Introduction

#### 1.1. Background

In its Green Paper on the reform of the Common Fisheries Policy (CFP), the Commission suggests that

*‘a whole-scale and fundamental reform of the Common Fisheries Policy (CFP) and remobilisation of the fisheries sector can bring about the dramatic change that is needed to reverse the current situation. This must not be yet another piecemeal, incremental reform but a sea change cutting to the core reasons behind the vicious circle in which Europe’s fisheries have been trapped in recent decades’.*

ClientEarth and the Marine Conservation Society (MCS) fully agree with this analysis and have sought to develop such a *‘whole-scale and fundamental’* CFP reform model.

#### 1.2. About MCS and ClientEarth

The Marine Conservation Society is a leading UK Non-Government Organisation with a long-standing interest in fisheries conservation. MCS is a unique Non-Government Organisation in its relationships with the public and the seafood industry: MCS 'Fishonline.org resources and pocket Good Fish Guide' defines the sustainability of fish available to UK consumers creating a demand for sustainable seafood. As corporate social responsibility has become an important factor in the seafood retail industry, MCS fisheries advice has become very influential in altering supermarket and retailer procurement practices. In this way MCS has ensured that the market for the most unsustainable fish is greatly reduced.

ClientEarth is a non-profit environmental law, science and policy group working in the EU and beyond. ClientEarth uses advocacy, lobbying, litigation and research in its efforts to protect the environment and acts for people and the planet. Through its use of the legal system, allied with current scientific knowledge, it has achieved a pedigree of success in its work in other environmental areas, in particular in relation to climate change and energy policy, which it is hoping to emulate in relation to fisheries and marine issues.

ClientEarth and MCS have worked together on other marine environmental issues, and hope to continue this success with their work on the CFP reform.

Both MCS and ClientEarth are planning to also submit separate individual responses to the Green Paper in relation to areas in which their respective organisations take a particular interest, such as markets and trades, aquaculture and the external dimension in the case of MCS, or certain additional aspects of jurisdiction, enforcement and integration of environmental rules and the CFP in ClientEarth's case.

### 1.3. The core objectives of a reformed CFP

ClientEarth and MCS welcome the early preparations for the 2012 CFP reform, and agree with the Commission's analysis identifying five main structural failings of the current CFP: fleet overcapacity, imprecise policy objectives resulting in insufficient guidance, a short-term focus in decision-making, insufficient industry responsibility and poor compliance.

However, we believe that the reform needs to go beyond these failings and focus on addressing how we can successfully implement the key objectives of the CFP.

In its Green Paper, the European Commission recognizes that one of the structural failings of the CFP is a lack of a hierarchy of objectives, and states:

*"Economic and social sustainability require productive fish stocks and healthy marine ecosystems.... **Ecological sustainability** is therefore a **basic premise** for the economic and social future of European fisheries".* (Emphasis added)

MCS and ClientEarth agree. Achieving a balance between ecological, social and economic issues is clearly necessary. However, productive, profitable fisheries depend on healthy marine ecosystems, and cannot be achieved without them in the long-term, or even in the short-term, given the state of many ecosystems and fish stocks. Therefore, it is clear that the reformed CFP should set ecological sustainability as its highest priority, even if there may be short-term conflicts between the three priorities. Only by putting ecological sustainability first will the future of EU fisheries be secure.

Within the core objective of ecological sustainability, ClientEarth and MCS have identified three fundamental goals which a reformed CFP must meet in order to be successful:

**Core objective: ecological sustainability**

**Key principles to achieve it: ecosystems based approach, precautionary principle, consistency with EU policies.**

- **Effectively using an ecosystems based approach** as already envisaged in the current CFP (see below), EU policy (e.g. in the Commission's Communication on the role of the CFP in implementing an ecosystem approach to marine management), and EU law in general (e.g. Directive 2008/56/EC establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive)).
- **Applying the precautionary principle in practice** as already required by the current CFP (see below) and by EU law and policy more generally (e.g. by the Lisbon Treaty: see for example Article 191(2) of the Treaty on the Functioning of the European Union (TFEU)), as well as by international law.
- **Achieving consistency with other EU (and international) policies, in particular in relation to the environment** as already required by the current CFP (see below) and by EU law and policy more generally (see also Article 7 and Article 11, TFEU).

MCS and ClientEarth propose that these should be the core foundations of a reformed policy, and the litmus test that must be met for the policy to be effective.

In order to meet these three fundamental goals and the core objective of ecological sustainability, ClientEarth and MCS are proposing a new Fishing Credits System (FCS). The FCS relies on a combination of:

- integration of the CFP with other EU (and where necessary, international) maritime, and in particular, environmental policies;
- a robust framework for monitoring, control, compliance and enforcement;
- simplified, flexible, regionalised management structures;
- strong incentives for sustainable fisheries; and
- more flexibility and independence for fishers (but also more responsibility).

The following sections set out how the proposed FCS works and the management structures which are needed to support it for it to be fully effective. Chapter 2 introduces the central characteristics of the FCS in outline, in particular the proposed system of credits allocations and the need for a discard ban. Chapter 3 describes some of the characteristics of the FCS in more detail and further explains how the FCS meets the three key objectives described above. Chapter 4 then goes on to set out the necessary management framework without which the FCS cannot work, including (amongst others) legal and geographic management structures, financial considerations and incentives, a discussion of rights and responsibilities, an explanation of how the FCS aims to balance capacity with fishing opportunity, and other aspects, for example in relation to monitoring, control, surveillance and enforcement.

In this context, it should be noted that the proposed FCS is intended to be a stand-alone proposal providing an entire, holistic idea for reforming the CFP. It is a concept and not intended to answer each section of the Green Paper individually. However, overall, the proposed FCS deals in varying amounts of detail with all the aspects of section 4 and most of the aspects of section 5 of the Green Paper.

## **2. Outline of the proposed new Fishing Credits System**

As already discussed, a key part of the FCS is the focus on ecological sustainability, and therefore the application of the ecosystems based approach and the precautionary principle to fisheries management, as well as consistency between the CFP and EU environmental policy in particular (see Chapter 3.3 below).

In this context it is helpful that the ecosystems based approach is already a fundamental principle of the current CFP (see Article 2(1), Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries under the Common Fisheries Policy (the CFP Regulation)) and see also the Commission's Communication on the role of the CFP in implementing an ecosystem approach to marine management). However, so far, it has not in practice been applied holistically or effectively.

The FCS proposes fisheries management at an ecosystem level in a number of different ways (see also Chapters 3.1 and 4.2 below). For example, rather than relying on single species stock assessment and management, the FCS would take account of as many ecologically relevant species as practically possible that

Credits allocations for **all** fish, shellfish, marine mammals & seabirds caught, based on ecosystem criteria.

are impacted by a fishery directly (i.e. through capture) or indirectly (i.e. through the removal of prey/predators from the food chain) within a particular ecosystem region. This would include, for example, all fish, shellfish, marine mammals and seabirds caught for which the credits allocations described below would be used, but also habitats, and non-commercial benthic species not removed through fishing, (such as echinoderms), which would be managed through a system of closed and protected areas (see Chapter 3.1 below).

In the case of species impacted directly through capture within a particular ecosystem region, including bycatch (so fish, shellfish, marine mammals and seabirds), the FCS would assign a number of credits (points) to each relevant species.

The relevant ecosystem regions would be based, we would suggest, on the ecosystem regions and sub-regions already established by the Marine Strategy Framework Directive (see also Chapter 4.2 below).

The credits allocations for species would be determined annually according to a number of ecosystem criteria including, for example:

- stock level (with MSY as a ceiling reference point, not a target);
- vulnerability to overexploitation;
- composition of the population (age/size/sex ratio);
- whether the species is a keystone species; and
- impacts of the species' removal on the food web.

Ecosystem resilience theory could also be considered where appropriate.

Therefore, credits allocations in relation to different species would be weighted according to ecosystems based criteria. The application of the precautionary approach would be essential here. Thus, those species deemed to be overfished, highly vulnerable or of vital importance to the marine ecosystem (for example) would have a high credits allocation, compared to under-fished, more resilient stocks, which would have a lower credits allocation.

Species credits 'units' would be measured by reference to weight, with the exact credits allocation per tonne of a particular species varying between marine regions (depending on the relative importance of the different ecosystem criteria in relation to the same species in different ecosystems based regions). For example North Sea cod may be allocated 10 credits per tonne, whereas cod from a different ecosystems based region may be allocated 8 credits per tonne (see also Chapter 3.1 below) (N.B.: Examples are not based on any real data; they are random figures used for illustration only).

Credits allocations would be set annually, based on a fresh scientific assessment each year. The Commission's proposal would reflect the scientific advice received (irrespective of the degree of change the proposed credits allowances reflected compared to the previous year).



## Assignment of Credits – Hypothetical Example

### High credits allocation:

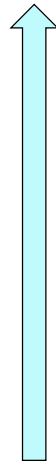
- Overfished
- Highly vulnerable
- Keystone species

**1 licence: e.g. 100 credits**

### Low credits allocation:

- Underfished
- Resilient to fishing pressure
- Not keystone species

\*Fish pictures: cod and haddock:MCS, saithe: Seafish



Cod\*: e.g. 10 credits/t



Haddock\*: e.g. 5 credits/t



Saithe\*: e.g.1 credit/t

**The fisher could spend credits any way he liked.**

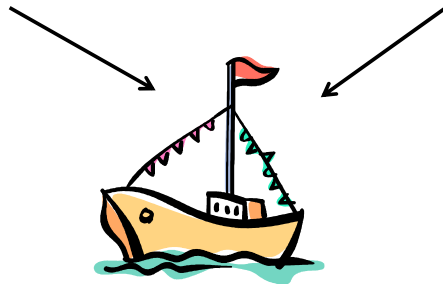
Each fisher would be given a licence for a specified time period (probably more than one year - see Chapter 4.4.3 below) specific to a particular person and registered vessel and a particular marine region, with a set credit allocation - say 100 credits per year ('100' here is a random number used for illustration only). Although this appears similar to giving fishers an individual quota, the FCS would be much more flexible, as the fisher could spend his 'credits' any way he liked, on any combination of species, deducting the credits value of each unit of a particular species caught from the total credits allowance until he exhausted his allowance.

**Licence:**

- per individual
- per vessel
- per eco-region
- not transferable
- multi-annual
- licence fee payable

**Credits Allowance**

- annual
- per licence (per ecoregion)
- weighted ecosystem species allowance
- limited transferability



A discard ban would be in place.

It is recognized that some fishers may wish to spend all credits on one species, meaning a concentration of effort on one species. This would be accounted for through the application of the precautionary approach in setting the relevant credits in the first place.

For the FCS to work, all species caught must be landed, including under-sized or 'over-quota' species. Therefore, there would necessarily have to be a discard ban. The landed species that would have previously been discarded under the current system, for example because they were under the minimum landing size, or the fisher did not have a quota for the particular species, would be weighed and counted against a fisher's credit allowance. Once landed these species could be used, for example, in the fishmeal industry, but at no profit, to avoid incentivising targeting of juveniles or other unsustainable practices. Species landed which would normally be discarded because of a low market value, could be sold for human consumption, after some intelligent marketing.

Due to the variable credits allocations of species and the discard ban, the FCS could provide the much-needed incentive for fishers to target plentiful stocks using and developing more selective gear. Another incentive would, for instance, be to make it possible for fishers to gain extra credits for examples of best practices including the use of environmentally sensitive, selective fishing gear or through respecting voluntary closures (similar to incentives in the Scottish Conservation Credits Scheme). Other incentives are discussed in Chapter 4.4 and in Chapter 4 more generally.

In order to reinforce the strong positive incentives created by the FCS, it would also be necessary to implement robust monitoring, control, surveillance and enforcement requirements (see Chapter 4.6 below).

Moreover, we would suggest that in order to be allowed to apply for a licence and be allocated credits under the FCS, the fishers should be required to demonstrate that they have acted responsibly and adhered to the relevant FCS and other environmental rules (see also Chapter 3.3 and Chapter 4.7 below).

In recognition of the possibility of exceeding the credits allowance (similar to going over-quota in the current system), we could envisage a degree of transferability of a limited percentage of credits between fishers within the specified marine region, through a regulated management body. However, licences themselves would not be transferable between persons, vessels, marine ecosystem regions or countries.

Also, we would suggest that such transfers should only be allowed to take place between active fishers (see also Chapter 4.4.3 below), who are either in need of additional credits or have not fully used up their allowance (and would therefore stand to lose financially if they did not use up their allowance). This could possibly be done through a regionally managed credits pool in to which fishers could sell unused allowances and/or from which they could buy a limited number of credits.

Lastly, if a fisher made changes to his vessel, the relevant regional authority would need to be informed, so that technology creep could be monitored and managed to ensure capacity remained aligned with fishing opportunities (see Chapter 4.3 below).

### 3. Meeting the fundamental goals

#### 3.1. Ecological sustainability

##### 3.1.1. Using an ecosystems based approach

As already explained, a key part of the FCS is the focus on ecological sustainability, and therefore the application of the ecosystems based approach to fisheries management. The FCS aims to implement the ecosystem based approach at the **catching level** through two steps:

**The FCS implements the ecosystems based approach through:**

- **continuous monitoring in each marine region; and**
- **managing the impacts of fisheries on ecosystems**

- **Continuous monitoring of the ecosystem in each defined marine region, including the use of ecological impact assessments:** The information gained would help to provide guidance on areas, species and populations particularly impacted by a fishery. This would include the much-needed stock assessments on all fish species caught by a fishery (including reduction fisheries), also in relation to Maximum Sustainable Yield (MSY), which is currently lacking under the CFP. In addition, this step would include the use of appropriate assessments under Article 6(3) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) where fisheries might adversely affect relevant protected Natura 2000 sites. This is already a requirement of EU law in any case (see *Waddenzee* case (Case C-127/02)), but it is a requirement that needs to be properly implemented.

**There could be a degree of transferability of a percentage of credits between active**

- **Managing the impacts of fisheries on ecosystems:**
  - Habitats, species not removed through fishing and non-commercial invertebrate species captured (such as echinoderms) would be managed through a combination of closed areas to protect essential fish habitats (such as known spawning and nursery areas, to avoid damage to habitat and capture of these life stages), which may be real time, seasonal or permanent, and marine protected areas under nature conservation legislation such as the Habitats Directive for

the purposes of biodiversity protection. With both closed areas and marine protected areas, displaced fishing effort must be countered to avoid undermining the effectiveness of the closure. The capture of non-commercial benthic invertebrate species would be managed through incentivising the use of selective fishing gear (see Chapter 4.4 below).

- All other species likely to be caught in the fishery (fish, shellfish, seabirds, marine mammals) would be managed through the assignment of credits as set out in Chapter 2 above, with credits allocations depending, as already explained, on a number of ecosystems criteria (including stock level (using MSY as a ceiling reference point rather than a target), stock composition (age, size, sex ratios), vulnerability to overexploitation, whether it is a keystone species etc – see Chapter 2 above), and being assigned per marine region.

### 3.1.2. Reducing bycatch and discards

It is suggested in section 5.3 of the Green Paper that in order to make the most of EU fisheries under a reformed CFP, bycatch and discards should be eliminated.

The proposed FCS would provide a possible mechanism to achieve this. However, the FCS itself proposes the use of a discard ban not as the solution to the issue of discards, but primarily as a way of effectively managing what is essentially an 'ecosystems' quota. Without a discard ban, it would not be possible to ensure that fishers were really accounting for all species caught and counting them against their credits allowance. For this reason it would also be necessary to carefully monitor all catches, through the use of observers, CCTV and more frequent fisheries inspections (see Chapter 4.6.1 below). The discard ban would also help to provide an incentive for fishers to improve the selectivity and efficiency of their gear (in order to maximise profits).

#### A discard ban would:

- ensure that fishers were really accounting for all species caught;
- help to provide an incentive for fishers to improve the selectivity and efficiency of their gear; and
- allow continuous monitoring of catches which would then be fed into stock level and ecosystem impact assessments.

In addition, the combination of real time logbook reporting and a discard ban, would allow continuous monitoring of catches which would then be fed into stock level and ecosystem impact assessments as set out in Chapter 3.1.1 above.

Moreover, (and apart from the necessity of a discard ban for the FCS to work), the added advantages of the FCS (and discard ban under the FCS) are best seen in a mixed fishery scenario. The ('ecosystems' quota-like) credits allowances under the FCS have parallels with the catch quotas currently being proposed by Denmark, and as used in countries beyond the EU. However, the FCS would add to the catch quota system by enabling the effective monitoring of the ecological impacts of fishing and by providing a method of mitigating negative impacts through assignment of higher credits amounts to vulnerable species, as a deterrent for targeting such species. In addition, as already seen, the mechanism of assigning varying amounts of credits per species in each marine region would provide protection for vulnerable species in overfished stocks or with a significant ecosystem value, and simultaneously create an incentive for fishers to target more resilient species from sustainable, under-fished stocks, as these would not use up as many credits as vulnerable species. Also the motivation to avoid wasting credits on unwanted species, and the opportunity to gain more credits through environmentally sensitive fishing gear would help to incentivise the catching sector to develop and use more selective fishing gear.

This incentive to eliminate bycatch and discards, and encourage the capture of species from sustainable stocks is fundamentally lacking in the current CFP.

The transition from the current CFP to the FCS would need to be gradual to allow for adjustments. Once in place a limited possibility to transfer credits between fishers will help to lessen the impact of a discard ban, allowing fishers to buy up credits from others to account for their bycatch (see Chapter 2 above).

The precautionary approach is an essential requirement of the FCS.

### 3.2. Applying the precautionary principle

The precautionary approach is an essential requirement of the FCS and therefore is the underlying basis of the management framework, from the top level decisions on long term principles through to the allocation of credits and the implementation of the FCS at the catching level.

Its main application within the proposed FCS would be during the ecosystems based assessment that scientists would carry out in order to allocate credits to different species each year, where those species deemed to be overfished, highly vulnerable or of vital importance to the marine ecosystem (for example), would have a high credits number, compared to under-fished, more resilient stocks, which would have lower credits allocations.

In addition, such calculations would need to consider, for example, that some fishers may wish to spend all their credits on one species, meaning a concentration of effort on one species. Credits allocations for species where this might happen would be carried out on the assumption that each fisher may wish to take such a course of action (although this would almost certainly not be the case, for example because of the strong incentives to catch less highly 'credited' species).

In a further application of the precautionary principle, annual credits calculations would also take account of any potentially displaced fishing effort due to fisheries closures, and there would be weighted credits cuts (i.e. including an added penalty) in future years as a response to non-compliance with the FCS or other EU environmental rules in a particular year.

A reformed CFP needs to fully integrate other relevant EU and international rules and principles, particularly in

### 3.3. Achieving consistency with other EU and international policies, in particular in relation to the environment

#### 3.3.1. Integration of the reformed CFP/FCS with other EU and international policies

The CFP is not an EU policy that stands in isolation. It is already linked with and dependent on a number of other EU and international policies and requirements, in particular in relation to environmental policy, but also as regards general maritime and water related policies.

Thus, the current CFP itself (in Article 2(2)(d) of the CFP Regulation) requires consistency with other EU policies, including environmental policies, as a principle of good governance. This principle is confirmed by the Treaty itself (see Articles 7 and 11, TFEU).

However, the current CFP does not in practice meet many of the requirements that it is already subject to, for example with regard to full compliance with the integration principle in relation to environmental protection requirements (under Article 11, TFEU), or with some of the requirements of the 1995 UN Fish Stocks Agreement or of the *Johannesburg Plan of Implementation* which was agreed under the

2002 World Summit on Sustainable Development. Other international instruments are relevant too, such as the Law of the Sea Convention, the FAO Code of Conduct for Responsible Fishing and the 1992 Convention on Biological Diversity.

It is necessary that a reformed CFP should fully integrate all other relevant rules and policies, including by securing compliance with them where appropriate.

In our opinion, the suggestions we have proposed would support and implement a crucial number of the major goals and principles expressed in these instruments, including in particular the ecosystems based approach and the application of the precautionary principle, as well as a regional approach and effective monitoring, surveillance and enforcement mechanisms.

### 3.3.2. The integration of fisheries and EU environmental legislation

In the context of the relationship between EU fisheries and environmental legislation, a number of questions need to be addressed urgently, because in our opinion they have substantially contributed to the high degree of paralysis in both compliance and enforcement, not only of the CFP, but of EU environmental rules too.

In our opinion, the distinction made between conservation measures under the CFP (which will remain subject to exclusive EU competence under the Lisbon Treaty (Article 3(1)(d), TFEU) and under EU environmental legislation (which is subject to shared competence between the EU and Member States), leads to the apparent removal (in error, in our opinion) of fisheries from the scope, or at least from the direct application, of EU environmental rules, and to a restriction of Member States' rights of enforcement of national (in the 6-12 nm zone) and EU (in 6-12nm zone and EEZ) environmental/conservation laws.

It is important that conservation measures under EU environmental legislation are complied with by the fishing industry. This does not mean that the conservation measures themselves are merged, as they at least in part, clearly different tools (and need to be separate because of Article 3(1)(d), TFEU – although below with regards to ecosystems based approach).

**The reformed CFP, in compliance with the Treaty, needs to provide for the integration of environmental and fisheries law and policy,**

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Currently, fisheries conservation measures under the CFP relate almost exclusively to fish stock conservation, whereas biodiversity conservation measures under the Habitats or Marine Strategy Framework Directives, for example, relate to the conservation of biodiversity and/or the protection of the marine environment in general.

However, both types of conservation measures are connected to each other in their goals and effects (i.e. the conservation of healthy ecosystems, including fish stocks), and must be consistent with each other (see Chapter 3.3.1 above). Moreover, it is important to separate fisheries conservation measures and fishing practice. Just because fisheries conservation measures fall within the CFP and not within environmental conservation rules, this does not mean that fishing practice must not comply with EU environmental rules on conservation (e.g. in Natura 2000 sites). Dredging or beam trawling in a Natura 2000 site may not have any effect on fish stocks and therefore not damage fish stock conservation (so no connection at all with CFP conservation measures), but it may cause serious damage to biodiversity and the ecosystem (and therefore affect biodiversity conservation under the Habitats Directive for example). Therefore, the often heard argument that the CFP has its own rules relating to damage to biodiversity to the exclusion of general EU environmental rules is mis-leading. This is further confirmed by the following:

- The integration principle set out in Article 11, TFEU (see Chapter 3.3.1 above) is a binding principle of EU law that requires EU environmental law and policy to be integrated into all other EU policies.
- Article 7, TFEU requires consistency between EU policies.
- EU case law confirms that fisheries are subject to requirements of the Habitats Directive, e.g. appropriate assessments under Article 6(3) (see the *Waddenzee* case (Case C-127/02)).
- References in Commission Action Plans and Communications confirm this (e.g. the Commission's Action Plan to integrate environmental protection requirements in to the Common Fisheries Policy (COM(2002)1986 final) or the Commission's Communication on the role of the CFP in implementing an ecosystem approach to marine management (COM (2008) 187 final)).

In addition, the conservation of fish stocks cannot be achieved without protecting the relevant ecosystems. Hence the need for an ecosystems based approach, which is an EU and international law principle (see Chapter 3.3.1 above), and which is moreover a principle of both the CFP and EU environmental law (in the Marine Strategy Framework Directive).

Therefore, maintaining a rather artificial separation between fisheries and other marine conservation cannot be the intention either of the Treaty or of EU law in general (including the CFP).

However, because of the retention of EU exclusive competence in relation to the conservation of biological marine resources under the CFP (under Article 3(1)(d), TFEU), it will be necessary and important to address this issue specifically in the reformed CFP.

The reformed CFP, in compliance with the Treaty, needs to provide for the integration of environmental and fisheries law and policy, and fishers must be subject to the relevant EU environmental rules. The necessary powers of enforcement must also be provided at the appropriate level.

#### 4. The management framework

##### 4.1. The legal framework

Now it is clear that the Lisbon Treaty will apply to the new CFP, we suggest that the necessary legislative basis for decision making in the reformed CFP and for the proposed FCS should be based on the following principles:

##### Basic legal framework:

- **Two basic regulations (one under Art 43(2), TFEU and one under Art 43(3), TFEU).**
- **Annual instrument(s) setting annual credit allocations for eco-regions (under Art 43(3), TFEU).**
- **Amended Control Regulation.**

Because of the split legislative procedures set out in Article 43(2) and (3), TFEU, it would be necessary to have two new **basic** CFP instruments setting out the foundations for the FCS/reformed CFP:

- a regulation (or directive) under Article 43(2) relating to all issues not regarding the fixing and allocation of fishing opportunities, e.g., fundamental objectives, incentive setting, monitoring and surveillance, enforcement (although much of this would be dealt with by amending the proposed Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (currently COM (2008) 721 final) (the Control Regulation), protected areas (so far as not covered by the Marine Strategy Framework Directive or Habitats Directive), integration with other EU laws and policy areas etc. This would be subject to the ordinary legislative procedure set out in Article 294 of the Lisbon Treaty and would involve the legislative input of the European Parliament;

- a regulation under Article 43(3) setting out the mechanics of determining and allocating the credits under the FCS, as the FCS is a system that defines the measures to be introduced for the fixing and allocation of fishing opportunities. This regulation would be proposed by the Commission and passed by the Council by qualified majority vote (see Article 16, TEU). However, it should be noted in this context that Article 293, TFEU applies to Article 43(3) (i.e. the fixing of fishing opportunities), which means that although qualified majority voting will be needed to pass any proposals by the Commission in Council, Council will only be able to amend such proposals unanimously.

In addition to the two basic regulations (and similar to the current regulation(s) on fixing annual or multi-annual fishing opportunities) there would also have to be another instrument or a number of instruments **each year** for the annual setting of the total credits available for each fishing region, and potentially the allocation of each region's credits to Member States who are coastal states in the relevant region or whose fishers fish in a particular region. In this way it would be possible to maintain a relative-stability-approach based on historic fishing, except that the fishing credits allocations would not be made on a purely national basis for individual stocks across EU waters, but would instead be specific to each regional eco-system. Alternatively, the allocation of credits could go directly to fishers in the relevant regions, on the basis of a new system of allocation (e.g. on the basis of meeting sustainability criteria, or through a lottery, auction or sale), depending on how the system is to be implemented.

These instruments would be proposed by the Commission, based on scientific advice received from the relevant regional scientific advisers. As these instruments would also be related to the allocation of fishing opportunities, they would also fall within Article 43(3) TFEU, meaning that the Council would vote on the proposed annual allocations on the basis of a qualified majority vote, but could only amend the proposals unanimously (see Chapter 4.1 above).

It is our opinion that, due to the complex scientific nature of credit allocations under the FCS and the legal framework provided by the Lisbon Treaty, the recommended credits allocations for species under the FCS would be likely to be supported by the Commission and the Council, rather than being negotiated values in the way that Total Allowable Catch limits (TACs) currently are.

In addition to these basic instruments there would still be a number of other relevant laws which would apply to fishermen (although significantly fewer – see below), for example the Control Regulation, which would need to be amended to reflect the rules of the FCS (see Chapter 4.5 below) and reformed rules on financial aid under the European Fisheries Fund (EFF) from 2014 (see Chapter 4.6 below). However, as already mentioned, the FCS does not depend on a raft of detailed technical measures, so many of the current micro-management rules under the CFP could be repealed. In addition, we would suggest re-casting any other rules that would still be necessary into one of the basic regulations in order to make it easier for fishers to apply the CFP/FCS and comply with it. This would also be consistent with the EU strategy to simplify the regulatory environment (COM 2005 (535) final) (better regulation strategy).

**Regional management needs to be at an ecosystems level and based on ecological criteria.**

#### **4.2. A regionalised approach to management**

Many stakeholders, including many parts, if not all, of the fishing industry appear to support the Green Paper's reference to regional management solutions implemented by Member States, subject to EU standards and control. In our opinion, in order to properly ensure that decision-making focuses on the long-term objective of ecological sustainability, it is absolutely necessary to provide for a degree of decentralisation in the form of a regional management framework.



However, decentralisation cannot and must not merely consist of the delegation by the EU to Member States of general powers and responsibilities and of the existing failed (micro-) management framework. Rather, since the long-term objective needs to be ecological sustainability, it is vital that EU fisheries are managed at an ecosystem level. This can only be achieved through regional management.

The regional fisheries management units that we propose could be new bodies or possibly evolve out of the existing Regional Advisory Councils (RACs). Depending on the varying needs of each region and sector, management may be appropriate at a regional, Member State, local or individual level. However, what would fundamentally change is that these regional or other appropriate management units would need to be organized on the basis of appropriate ecological criteria and in appropriate ecological management units. We would suggest that the easiest and most practical way to achieve these new ecological management units would be to use the same 'marine regions' or 'sub regions' already defined in Article 4 of the Marine Strategy Framework Directive).

Although scientists should determine available resources for fishing opportunities, the involvement of other relevant stakeholders in other more general regional management processes needs to be guaranteed. Such other relevant stakeholders would include all countries bordering the marine region, as well as all countries involved in harvesting living resources in the region, and possibly stakeholders whose non-fishing activities affect the region, e.g. through tourism, as well as the affected fishers/fishing industry, appropriate nature protection/conservation bodies (whether governmental, quasi-governmental or non-governmental), seafood distributors, supermarkets etc and possibly relevant consumer organisations. These stakeholders should be involved, for example, in the appointment of the regional bodies of scientists, and once the over-all credits for a region have been determined scientifically, the input of economists in relation to the actual allocation of credit allowances to particular fishers would be helpful.

Under the FCS capacity would always match the available fishing opportunities. However, the FCS does not prescribe how excess capacity would be eliminated.

#### **4.3. Balancing capacity with fishing opportunity**

Balancing capacity and fishing opportunities is crucial for any management system to be successful. Under the proposed FCS, only a limited number of licences would be allocated, each with a limited credits allocation (as many as are ecologically sustainable that year). As explained below (in Chapter 4.4), the need for the race for fish would be eliminated by the FCS and fishers with a licence would have a high level of security in relation to being able to fish to their allocated credits limit. At the same time, the provision of strong incentives and a robust monitoring, surveillance and enforcement system would minimise illegal fishing (see Chapter 4.5). Therefore, under the FCS capacity would always match the available fishing opportunities, and all these considerations are intrinsically linked to ensuring such an alignment of capacity and fishing opportunity.

However, the FCS does not prescribe how excess capacity would be eliminated. There are various possibilities, for example a one-off decommissioning scheme with meaningful targets so that capacity and fishing opportunities could be aligned.

When restructuring the fleet as a result of reducing capacity, it would be important to ensure that access to fishing opportunities is prioritised according to individual compliance records and environmental criteria under the proposed FCS. This could be done whilst still maintaining relative stability (as already described above).

In addition, we would suggest that the entry exit scheme currently in operation should continue, although it would need to be tightened up in certain respects to help maintain capacity at the appropriate levels (for example there should be no extra funding under the EFF for young fishers to enter the industry – although there would be no additional obstacles for young fishers, they would be subject to the same criteria (i.e. based on environmental factors, as already described) as all other fishers).

If the FCS is to be successful, it would also be necessary to oblige fishers making changes to their vessels to inform the relevant regional authorities of this, so that technology creep could be monitored and managed, and also for the correct allocation of credit allowances in future (for example, new selective gear may lead to extra credits in the next year).

#### 4.4. Industry responsibility

A key part of the FCS is results based management, giving increased responsibility to the industry. This coupled with rights, incentivisation and participation provides much stronger incentives for encouraging best practice, respect and a culture of compliance to help achieve the objectives of the CFP. At the same time it also benefits fishers by providing greater certainty, security and a higher degree of exclusivity. All of these are described in the following paragraphs. Moreover, as already mentioned in Chapter 4.3 above, creating such successful incentives for good practice is intrinsically linked to ensuring capacity is aligned with fishing opportunities.

**The FCS has a number of key characteristics that would meet many of the wishes expressed by fishers, e.g.**

- More responsibility.
- Fewer and simpler rules (no micro-management).
- A high degree of flexibility, self-determination and self-management;
  - Regional management.
- Strong incentives and rewards for sustainable fishing practices.
- Stronger participation in

##### 4.4.1. Results based management

Currently fishers feel they are micromanaged on every technical detail, and often these blanket cover regulations are not appropriate for every fisher. The proposed FCS would aim to remove such technical regulations and replace them with a much simpler system of rules based on licences, credit allocations and robust monitoring and enforcement.

Under the FCS, the industry would be given an output target (the relevant annual credits allowances, and credit amounts per species), as agreed by the Commission and the Council, but it would then be up to the individual fisher how to meet this target. Therefore, one of the major strengths of the FCS is its *flexibility* (this also being one of the main advantages often cited in relation to individual transferable quotas (ITQs)). The fisher would only have to concentrate on keeping within the credits allocation, and in general it would be his decision which fishing gear he used, and which species he targeted. This would give the industry freedom and motivation to develop gear technology appropriate to meeting the aims of best practice.

Increasing self-management could help to develop a culture of stewardship and compliance, and the FCS would strongly promote such a stewardship and compliance culture. Of course, all targets for results based--management would need to be set appropriately, taking an ecosystem and precautionary approach, in order to meet the core objectives of the reformed CFP.

Continuous review of the implementation of the CFP at EU and regional level would be vital to ensure that CFP objectives were being successfully achieved. We would recommend that as part of the

reformed CFP/FCS key performance indicators be agreed and reviewed. These indicators could be set at a variety of levels from local to EU level, to ensure joint responsibility.

#### 4.4.2. Financial responsibility

As well as increasing fisher responsibility through a number of rights (see Chapter 4.4.3 below), under the FCS the catching sector would also be financially responsible. Currently, the catching sector is given fishing rights for free, with the costs of monitoring, enforcement, stock assessment, decommissioning etc left to the EU or Member States. This is unlike most other marine industries.

Therefore, under the FCS, fishers would pay a licence fee to contribute to the costs of management. This would help to increase fisher responsibility and stewardship over the resource. The level of contribution could vary between fishers to reflect the costs of monitoring and enforcement, and vary according to a variety of environmental criteria. For example intense fishing operations using high impact gear, with high CO<sub>2</sub> emissions, requiring costly enforcement, could contribute more than say those using environmentally sensitive, less intense operations, with low CO<sub>2</sub> emissions and voluntarily using observers.

The FCS provides fishers with a number of clear benefits: increased flexibility, security (duration), exclusivity and some transferability.

#### 4.4.3. Benefits

The proposed FCS would provide fishers with a number of clear benefits (linked to responsibility and accountability), but always subject to compliance with the FCS rules, in particular in relation to fishing sustainably, not going over-credit, and complying with relevant environmental laws, as well as rules on monitoring, control and surveillance.

Licences would be given for a determined time period (say two, five years or more years) and during this time the right to operate under a particular licence and to obtain credits allocations in relation to it would be guaranteed (subject, as already mentioned, to compliance with the relevant rules). Thus, the system of licences with a validity over a determined amount of time and giving the right to yearly credits allocations would mirror one of the perceived advantages of market-based tools such as Individual Transferable Quotas (ITQs): *duration*.

In addition, because all fishers in a particular marine region (or sub-region) would have a set guaranteed credits allocation for the year (again subject to compliance as stated above), each individual fisher would be as secure as is practically possible in the knowledge that he/she would be able to fish for their allocated amount of fish over the next year. There would be no need to race for fish (i.e. to compete for shares of catch quotas). In economic theory, this is referred to as *exclusivity*, which is regarded as one of the main benefits of ITQs. It is also one of the strengths of the proposed FCS.

The proposed FCS also allows fishers to transfer a percentage of the credit allowances each year (within the specified marine region), again reflecting an important aspect of market-based tools, such as ITQs. However, to prevent some of the weaknesses of some ITQ systems, transferability should be limited to a set percentage only of the allocated credits, and the licences themselves would not be transferrable (see Chapter 2 above). Nevertheless, the FCS would still allow enough opportunity for transferring credit allowances to prevent the system from being too rigid and inflexible and to guarantee short-term efficiency (i.e. by not wasting credits and by providing a mechanism to account for accidental over-fishing).

At the same time, it would prevent an unwanted concentration of licences and ‘arm-chair’ fishing (i.e. owners of licences/credit allowances who simply sold off or ‘rented out’ their rights without actually being active fishers) and it would provide the right incentives to operate within the rules and to fish sustainably (which may not be the case if it is possible to simply sell off the majority of fishing rights). Therefore, in our opinion, the FCS provides the correct level of *transferability* to be economically efficient.

#### 4.4.4. Providing the right incentives

Currently the CFP provides no real incentives to use or develop best practice (and there are insufficient levels of deterrents in relation to non-compliance), yet these are key drivers for creating improvements to the sustainability of fisheries, and they are at the heart of the FCS proposal.

The rewarding of best practice is an important tool in encouraging long-term stewardship. Many responsible fishing practices began as voluntary agreements (sometimes by providing an incentive for participation, e.g. the Scottish Conservation Credits Scheme) and then evolved into laws or accepted best practice (such as the eliminator trawl). These practices must be encouraged more widely and rewarded.

The proposed FCS would aim to build upon best practice from around the globe by providing strong incentives and rewards for good practice and compliance. For example, the FCS could reward good practice by giving extra credits for the voluntary use of fishing gear with minimal environmental impact (similar incentives are provided in the Scottish Conservation Credits scheme). The FCS would also reward best practice by allowing preferential access for those with a good compliance record and implementing good fishing practices (see Chapter 4.3). These rewards would create an incentive for fishers to implement best practices and to comply with FCS rules.

The FCS encourages long-term stewardship and compliance by creating incentives and rewards for responsible fishing practices and by providing for increased fisher participation.

The role of incentivising good practice is not just limited to the EU or Member States - we have already seen examples of how the supply sector can encourage best fishing practices, most notably with the Marine Stewardship Council certification, but also in the UK with the Responsible Fishing Scheme. Often, participation in these schemes can command a premium product price, but it has also become increasingly important for market access. As corporate social responsibility has risen on the agenda, suppliers and retailers have developed more stringent sourcing policies, buying from those who demonstrate good practice. The FCS proposes that such methods of incentivisation should also be encouraged throughout the EU to help achieve the objectives of the CFP.

Incentives are also closely linked to subsidies. In this context, financial aid should only be used for positive incentives, rather than some of the ‘perverse’ subsidies that currently exist which encourage overcapacity and poor fishing practices (see Chapter 4.6 below).

#### 4.4.5. Participation

The FCS also advocates more fisher participation, which will help to contribute to the design of regional management measures and will be crucially important for data collection for scientific resource assessments.

Fisheries science partnerships are encouraged, and the possibility of fisher self sampling after vocational training for the fisher (i.e. fishers, rather than scientific observers, carrying out scientific sampling of their catch) should be explored, as these help to increase fisher participation with the added benefit (again) of increasing data collection capacity and resources.

Strong monitoring, control and surveillance are crucial for compliance, and are also necessary for data collection and regulating access to financial aid.

In addition, more participation will often invoke greater respect and a sense of responsibility or stewardship, qualities which are vital for compliance and integral to a successful CFP.

#### **4.5. A culture of compliance**

##### **4.5.1. Monitoring, control and surveillance**

Without compliance, the reformed CFP/FCS will not work. Therefore, monitoring, control and surveillance will be crucial and will need to be addressed very carefully, even more so because under the FCS a discard ban will be in place. Moreover, as already explained (and see also Chapter 4.6 below), the system we propose will be much simpler for fishers to apply and it will create a raft of positive incentives which would encourage fishers to operate sustainably and to comply with the rules.

The reformed Control Regulation includes a variety of management measures to contribute to monitoring, control, and enforcement.

In order to be effective, these measures would need to be amended and reinforced under the FCS.

The FCS includes a proposal for the use of electronic logbooks to ensure real time monitoring. Not only will this contribute to control, but it is also necessary to enable timely data collection and the opportunity to implement real time measures such as real time closures to protect aggregations of juveniles or spawning fish. The data collected would also help the EU to meet the requirements of Article 14 of the UN Fish Stocks Agreement.

In addition, under the FCS, the frequency of VMS signals would be increased to ensure protection of closed areas and MPAs. Increased observer coverage would also contribute to monitoring and control (as well as data collection) and more frequent fisheries inspections would improve fisheries surveillance. The use of video technology such as CCTV would contribute to monitoring and surveillance at a small cost, and could be an effective way of ensuring compliance with the proposed discard ban under the FCS (similar to the trials being conducted with CCTV in Scotland & Denmark). Where VMS or video surveillance has malfunctioned, the fisher should immediately return to port for repair to avoid illegal fishing during this period. As already mentioned, at least some of the costs of such measures would be covered through the licence fees payable by fishers.

Benefits under the FCS like additional credits in subsequent years, additional public aid (see Chapter 4.6 below), or a sustainable fisheries certification as a reward for sustainable fishing should entirely depend on fishers being able to prove that they have complied with the rules. Similarly, penalties (e.g. the reduction of future credits or the denial of public aid or of a certificate) should follow if fishermen cannot do this.

#### 4.5.2. Transparency and traceability

Public rights to access to environmental information general, as well as to public participation procedures access to justice as required under the 1998 Aarhus Convention (on access to information, public participation in decision-making and access to justice environmental matters) would need to be considered incorporated into the relevant basic legislative instruments. In particular, the methods and basis for setting annual credits allowances by scientist and ultimately by the Commission/Council would need to be accessible to the public, as would other regional management decisions.

Enforcement should be robust and should extend the systems already used in the Control Regulation, e.g. penalty points, deduction of credits from following year's allowance, cancellation of public aid and licence revocation.

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In addition, there should be an improved degree of traceability throughout the supply chain. For EU caught seafood, products should be labelled with the capture area according to the marine ecosystem region and the detailed capture method, and an explanation/certification in relation to the sustainability of the relevant fishing methods. This would also help consumers differentiate sustainably caught seafood products and help to incentivise the use of efficient, minimal impacting gear through consumer demand.

#### 4.5.3. Enforcement

In addition to the positive incentives contained in the proposed FCS and the strong monitoring, control and surveillance regime already described, it would also be necessary to have a robust system of enforcement of the new FCS rules. The new Control Regulation already contains many tools and approaches that are necessary for the enforcement of the proposed FCS, although some of these would need to be amended and strengthened to guarantee that the FCS system can be fully effective.

Thus, we would envisage that the systems of penalty points and fines currently proposed in the new Control Regulation should be used in relation to the FCS also, although rules may need to be tightened up in these respects and should be expanded to sanction those who have broken other EU rules, e.g. under the Habitats Directive or the Marine Strategy Framework Directive. In this regard, it is crucial that sanctions are severe enough to deter illegal activity, so that it does not 'pay to cheat', which commonly happens under the current system.

**Wide stakeholder involvement and public transparency of decision-making are crucial for**

Sanctions should consist of:

- deducting specified percentages of credits from the following year's allowance;
- cancelling any public/state aid applied for or received for the following year and any additional time during which there still are penalty points (with an additional obligation to repay for relevant period); and
- revoking the fisher's licence if he carries out any one (or any combination) of these illegal acts on more than two occasions.

**There should be improved traceability throughout the supply chain to help to incentivise the use of efficient.**

To ensure all penalties are applied equally, the regional management bodies may need to be empowered to impose penalties and to work very closely with Member States' enforcing authorities in this regard.

#### 4.6. Public aid

Under the current system, fuel subsidies and tax exemptions can artificially maintain fishing operations that would otherwise have been forced out by the markets. In addition they can lead to an increase in fishing effort and thus overexploitation of resources.

Under the FCS proposal, fuel subsidies would cease, and the indirect subsidy through tax-free fuel should be replaced, for example by providing aid and/or tax exemptions for more fuel-efficient fisheries. This is also how the CFP could fulfil its role in reducing fishing carbon emissions and thus address fisheries' contribution to climate change, which itself would impact the marine environment on which fishing depends.

Aid under the EFF should only be available to fishers who can prove that they have complied with all the rules of the CFP/FCS (which will be much fewer rules under the FCS proposed here) and good practice requirements, as well as other EU environmental rules, for example under the Habitats Directive. This would mirror cross-compliance requirements imposed on farmers in relation to agricultural subsidies and would be an added incentive to comply with the rules. At the same time, fishers who operate sustainably, or who, for example, gain certification for sustainable fishing practices, should be rewarded and be given priority in their applications for aid.

In this context, the rules already proposed in the new Control Regulation which preclude fishers who have committed serious infringements of CFP rules from benefitting from EFF funding, and may even require them to repay public assistance and subsidies, should be extended to cover breaches of the FCS, best practice and EU environmental laws (similar to cross-compliance rules in agriculture – see above). Similar relevant changes should be made to rules on state aid.

Under the FCS, or more probably the reformed EFF, financial aid should also be directed toward other more positive approaches such as the marketing of 'new' species of seafood that would be landed as a result of the discard ban, but would not initially have a market. This would provide an incentive for fishers to target under-utilised, sustainable species. As already mentioned, public aid could also be used for the funding of innovations in gear technology to incentivise improvements in gear selectivity.

Rules on financial aid under the EFF and in relation to state aid will need to be reformed too. It makes no sense to radically reform the CFP without also radically changing rules on EU and state aid. The current EFF period runs until 2013. A reform of the rules in relation to the new fund from 2014 can be prepared in conjunction with the reform of the CFP.

Aid would only be available to fishers who have complied with the FCS/CFP, good practice and environmental rules.

## 5. A phased transition

Transferring from the current system to the FCS would need to be a gradual process. This could be successfully achieved through a series of transition stages from the current single species approach, toward a multispecies approach and finally the ecosystem approach. The following is a possible approach to achieving the FCS in a gradual fashion:

- 1) The implementation of long-term management plans for all commercial fish species, adhering to the precautionary approach, and sufficient coordination between these plans to ensure they are effective, also voluntary reporting of discards.
- 2) Use of credits system for the existing commercially assessed species, but credits criteria would only be based on the scientifically recommended annual individual TACs, also mandatory reporting of discards.
- 3) Use of credits system for the existing commercially assessed species, with credits criteria based only on the scientifically recommended annual individual TACs, and implementation of a discard ban from now onwards.
- 4) Use of credits system for the existing commercially assessed species, with credits criteria based on the scientifically recommended annual individual TACs but also other ecosystem factors.
- 5) Use of credits system for all fish species likely to be caught in the fishery basing the credits allocations on scientifically recommended ecosystem factors.
- 6) Use of credits for all fish species and endangered species likely to be caught in the fishery basing the credits allocations on scientifically recommended ecosystem factors.
- 7) Use of credits for all species (fish and non-fish) likely to be caught in the fishery basing the credit allocations on all scientifically recommended ecosystem factors.

In parallel to this transition period, we would recommend that a series of scientific and commercial trials be conducted on a voluntary basis with the fishing industry, to test the FCS and to start developing the appropriate ecosystems criteria and assessments. These could start immediately, to ensure a smoother transition into the reformed CFP from 2013.

The trials could follow a similar transition as the steps above or they could begin with a catch quota which would be the equivalent of stage 3. Such catch quotas are already being advocated by some Member States (Denmark, UK, Germany), and therefore these may be ideal states to voluntarily implement trials of the FCS, for example, in the mixed UK whitefish fishery (where many successful voluntary trials have been conducted), or in the Kattegat (since this would only involve two Member States). In these trials, Member States could use a portion of their own quota to be adapted to a catch quota or ecosystem quota under the FCS. Alternatively, the EU could agree to dedicating a small percentage of annual fishing opportunities to these trials.

**Transferring from the current system to the FCS would be gradual and go through a series of transition stages from the current single species to a multi-species to the full**



## **6. Conclusion**

Since no management system that currently exists effectively implements an ecosystem approach, the EU has the unique opportunity to lead the way in this reform. We believe that the proposed FCS would be of huge benefit to the marine environment, at the same time as improving the management process, and benefitting the fishing industry and the public.

### **6.1. Benefits of the FCS for the effective and sustainable management of fisheries**

The annual setting of fishing opportunities has always been a highly politically sensitive process. The success of the proposed FCS (and indeed of any reformed CFP) will depend crucially on the perceived objectivity and fairness of the underlying process, both in terms of achieving a culture of compliance (with an industry that wants to comply with the rules), but also in terms of a level of transparency that enables competent authorities and relevant stakeholders to monitor compliance and to easily enforce rules where necessary.

In our opinion, the FCS approach and supporting legal and management structures we have set out above would help to ensure ecological sustainability and a generally more effective approach through:

- focusing management on core long-term principles;
- robust basic legislation firmly entrenching the primacy of ecological sustainability and the precautionary approach;
- true application of the ecosystem approach:
  - prioritisation of ecological sustainability in the long and short term;
  - management according to ecosystem regions;
  - annual multi-species credits allowances set by independent scientists by reference to scientific ecological criteria in relation to eco-regions;
  - impact assessments and management of habitats and species affected by fishing activities;
  - elimination of discards;
  - reduction in bycatch;
  - habitat protection;
  - integration and consistency with other environmental policies;
- creating a mechanism to ensure capacity is maintained at levels aligned with fishing opportunities;
- transparency of all decision-making and management processes with public access to information on them;
- the proposal of the annual credit allowances by the Commission to the Council (with changes by the Council only possible by unanimous vote);
- a strong surveillance, monitoring and enforcement system;
- providing an incentive to fish in a sustainable manner;
- providing an incentive to target less utilised, plentiful, sustainable species;
- allowing management to be sensitive to local conditions;
- a regionalised approach providing the right balance of flexibility, independence and responsibility;
- being an easier system to enforce in the long-term;
- allowing the coordination of resources for an improved knowledge base.

## 6.2. Benefits of the FCS for the catching sector, the industry and the public

The proposed FCS has a number of key characteristics that would meet many of the wishes that fishers have expressed in relation to a reformed CFP, for example by:

- creating a system that is more simple to use, with a substantial reduction of rules on technical measures (and avoidance of micro-management);
- providing strong incentives and rewards for sustainable fishing;
- providing fishers with more responsibility;
- giving fishers a high degree of flexibility;
- ensuring more fisher accountability;
- utilising results based management;
- allowing stronger participation in data collection and management.

In addition, by focusing on the core objective of ecological sustainability in the reformed CFP it is possible to achieve social and economic sustainability by ensuring:

- sustainable seafood resources - making sustainable seafood affordable and helping to mitigate future food security pressures;
- no more wasteful discards, helping to contribute to food security;
- EU fisheries' economic future through sustainable fisheries resources;
- better utilisation of public financial aid;
- security of employment in this sector for future generations.

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