



Response to the Green Paper on the Reform of the Common Fisheries Policy (CFP) COM(2009)163 final

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1 Introduction

The Pew Environment Group welcomes the Commission's Green Paper and the early opportunity to provide input into the reform of the Common Fisheries Policy (CFP). Pew shares most of the Commission's analysis of the failures of the current CFP: European Union (EU) fleets are able to catch far more fish than can be sustainably harvested, catch limits are set far above scientific advice, opaque decision-making processes without clear guidelines and benchmarks prevail and large parts of the sector are characterised by a culture of non-compliance with the rules of the CFP, undermining the effectiveness and credibility of EU fisheries management.

At the same time, the combined Exclusive Economic Zone of the EU is larger than that of any single country. The EU also has one of the largest fishing fleets in the world operating in every ocean and is the world's largest importer of fisheries products. The EU is a contracting party to almost every Regional Fisheries Management Organisation (RFMO) and plays a significant role in the development and implementation of global oceans governance. However, to date, the EU has not lived up to its responsibility and stated goal of promoting sustainable fisheries. More than 30 percent of assessed EU fish stocks are now outside safe biological limits and more than 80 percent overfished; this compares to a global average for overfished stocks of 25 percent.

Fishing is the single most significant human activity currently impacting marine ecosystems. The 2012 reform of the CFP is therefore a unique opportunity to restore the balance between fish stocks, fishing activities and the marine environment in Community waters and beyond. Any failure to show the required political will for a root and branch reform will only accelerate the collapse of fish stocks, degradation of marine ecosystems, and the further decline of the fishing industry.

2 CFP Reform Priorities for the Pew Environment Group

2.1 Increasing Accountability

Increased accountability of policy makers and managers must be an essential component of the reformed CFP. The current CFP does not include clear indicators or yardsticks that provide more concrete guidance and help to measure policy achievements. As a result, policy makers have more flexibility to take decisions which might be popular in the short run, but detrimental to the future of the fisheries sector in the medium and long run. In order to ensure better governance, there is a need for clear guidance for decision-makers and managers, as well as performance targets and evaluation. In order to make the application of the regulations more consistent in terms of both processes and outcomes there must be a prioritisation of the objectives.¹

¹ See among others also Michael Sissenwine and David Symes (2007): Reflections on the Common Fisheries Policy.

At the same time, there is a need for increased transparency and participation. Fishery management data, such as information on individual quotas, aggregated vessel monitoring systems (VMS) data, information on individual infringements and ensuing fines, as well as decision-making and management processes should be well documented and accessible to stakeholders and the public. Policy options should be analysed in advance of decisions using state of the art decision support tools that take account of scientific and implementation uncertainty. Decisions should be explained with respect to these analyses. Increased transparency is key to allowing all stakeholders to meaningfully engage in the debate and to scrutinise the implementation of policy decisions. Recent research has highlighted the essential role of participatory and transparent processes for achieving fisheries' sustainability, regardless of other attributes of the fisheries.²

In addition, enforcement mechanisms which serve as a deterrent must be put in place and employed. For instance, in the past many Member States have insufficiently implemented and complied with existing CFP regulations³. The Commission should be provided with, and use, the most efficient instruments to ensure the implementation of all regulations to establish a level playing field across the EU.

2.2 Securing the Ecological Objectives

The Pew Environment Group believes it is essential that ecological objectives be enshrined in the CFP as a prerequisite to fulfilling social and economic objectives. To that end, the precautionary approach and the ecosystem approach to fisheries management as defined in Article 5 and 6 in the UN Fish Stocks Agreement must form the basis upon which fisheries management is built. The reasoning is clear: there is fish without fisheries, but no fisheries without fish. The sustainable use of natural resources is a key component for medium and long-term prosperity, both within the EU and globally. This is reflected in the EU Strategy for Growth and Jobs⁴ endorsed by the spring summit of 2005 which gave high priority to more sustainable use of natural resources. In addition, clear ecological targets, timelines, and triggers for emergency measures must be put in place to ensure healthy fish stocks and ecosystems. In that respect, the new CFP must also help Member States to deliver the target of Good Environmental Status under the Marine Strategy Framework Directive.

2.3 Determining Fishing Mortality

The setting of precautionary fishing mortality levels is a key component of sustainable

² Mora et. al. (2009) Management Effectiveness of the World's Marine Fisheries. In PLoS Biology. Volume 7 / Issue 6.

³ See for instance: Court of Auditors (2007): "Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources"; IEEP (2009): "Overcapacity – what overcapacity?" available at www.pewenvironment.eu/resources/IEEP-Overcapacity-Report.pdf; Fishsubsidy.org (2009) "Through the Net - How EU countries evade new budget transparency rules" available at <http://www.followthemoney.eu/through-the-net/>.

⁴ Com(2005) 141 Integrated Guidelines for Growth and Jobs.

fisheries management.

The EU is using Maximum Sustainable Yield (MSY) as a management target for fisheries, in accordance with the 2002 Johannesburg Plan of Implementation of the World Summit on Sustainable Development. However, in fisheries science, there is a growing consensus that the exploitation rate that achieves MSY should be reinterpreted as an upper limit to exploitation rather than set as a management target. The Pew Environment Group does not consider MSY to be an appropriate ultimate target for fish stock exploitation; rather, it should only be seen as an intermediate step towards the restoration of fish stocks to abundant levels. Fishing beyond MSY will not yield economic gains in the long term either, but only further ecological and social damage, whereas fishing at a lower level would eventually restore fish and would therefore be more beneficial economically. As a result, MSY should only be considered as an intermediate target to achieving abundance, and alternative objectives for fisheries management must be developed that are more conservative and precautionary in nature. Prior environmental impact assessments that include interactions with other fish stocks and associated and dependent species, annual variations in stock productivity, composition of populations, unreliability of data and risk analysis must be an integral part of the identification of the management target.

Management systems from elsewhere can provide useful lessons on how to set more adequate fishing mortality targets and appropriate management rules. For instance, the United States' Magnuson Stevens Fishery Conservation and Management Act (MSA) addresses depletion and rebuilding, and contains quantified triggers. In a nutshell, the MSA spells out that fisheries shall be managed for optimum yield, which is MSY as reduced by social and economic considerations. In principle, MSY is an upper limit. Long-term economic and social considerations - such as the benefits from fisheries population rebuild - could mean lower catch limits in the short-term. The MSA also defines "overfishing" as the 'rate or level of fishing mortality that jeopardises the capacity of a fishery to produce the maximum sustainable yield on a continuing basis'. Under the Act, fishery managers are charged with ending overfishing, and must enact plans designed to rebuild stocks within a 10 year window. When a population falls below 50 percent of its estimated biomass needed to continually support MSY, it is defined as "overfished". Once a species is defined as overfished or is projected to reach overfished status within two years, the regional fisheries management council has one year to create a plan to ensure the stock recovers speedily within a period not exceeding 10 years.

Another piece of legislation which might be instructive is the Australian Harvest Strategy Policy⁵. Among other things, the policy identifies the need to base fishing limits on explicit and science-based fishing strategies, using target and limit reference points and control rules to relate the catch/effort to current stock status. It also spells out that there must be at least 80 percent probability of avoiding overfishing and overfished stocks.

Transferring policies from one context to another has its limitations. However, there are a number of examples on which the EU can build to make the setting of catch limits and the

⁵ Strategy and implementing guidelines are available online at <http://www.daff.gov.au/media/documents/fisheries/domestic/HSP-and-Guidelines.pdf>.

recovery plans of fish stocks more efficient, effective and predictable. The unwillingness to follow scientific advice is one of the key reasons why more than 80 percent of assessed EU fish stocks are considered to be overfished and 30 percent are outside safe biological limits. Once robust targets are set, fishing limits – in terms of catches as opposed to landings - should follow the best scientific advice available based on the precautionary approach and clear and quantifiable targets, probabilities and triggers. Scientific advice should be followed, not modified to fit short-term political imperatives.

2.4 Eliminating Overcapacity

The Pew Environment Group shares the view that overcapacity is currently the main driver of overfishing for the EU. Overcapacity is also, however, the result of the current management system. Therefore, it is not sufficient to eliminate current overcapacity. Systems must be created to provide permanent incentives to match fleet capacity with available resources, all underpinned by scientific advice and the imperative to ensure sustainable fishing for the long-term well-being of people and ecosystems.

At present, the amount of overcapacity is by and large unknown, despite international and European obligations to assess it⁶. Progress on how to measure overcapacity has been made with the Commission's guidelines from 2008⁷, but there is still a need to discuss how capacity (and therefore overcapacity) could be better measured and then, as necessary, reduced.

The Pew Environment Group does not agree that overcapacity should be exclusively limited to a 'size' problem ('too many boats chasing too few fish'), as is stated in the Green Paper. Overcapacity is also a qualitative problem, as different fleet segments and gears have different impacts on the marine environment, have a different level of fuel intensity, deliver different quality of fish, and result in different social outcomes depending on employment needs. What is needed is an open discussion about what kind of fleets the EU would need to have in the future which would best ensure the health of the marine ecosystem, and which instruments would be most effective in achieving the transition. Unfortunately, there is no single solution. Capacity management programmes must consist of a combination of approaches and instruments, including, for instance, gear restrictions, limited entry programmes, individual quotas, collective fishing rights, buyback programmes, taxes and royalties.

Whatever management instruments are used, they must not result in a transfer of capacity to other fisheries and waters and should support the transition towards a more sustainable fleet and not – as for instance with parts of the structural funds – delay or even undermine such a transition (see 2.6 Phasing out Harmful Subsidies).

⁶ See for instance: IEEP (2009) "Overcapacity – What overcapacity?" available at <http://www.pewenvironment.eu/resources/IEEP-Overcapacity-Report.pdf>.

⁷ DG Mare (2008): Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities. The use of indicators for reporting according to Article 14 of Council Regulation 2371/2002. Version 1, March 2008.

2.5 Prioritisation of Access Based on Environmental and Social Criteria

Restricting access to fisheries is one of the key features of sustainable fisheries management. Dating back to the 1970s, the 'relative stability' principle guides the division of total allowable catches (TACs) between Member States, enshrining fixed allocation proportions based upon each country's historical catches. In theory, the purpose of relative stability is to avoid having annual debates about how quotas should be divided between national interests. In practice, however, it has led to short-term decision-making and had the effect of pushing TACs upwards as each Member State seeks to maximise its interests at the expense of long-term sustainability.

Instead of basing allocation on historical catches (indeed often historical overfishing), the Pew Environment Group proposes to set up allocation systems which explicitly take environmental and social performance into account. That is, an allocation system which grants the right to fish to those who contribute to the achievement of the overarching objectives of the CFP. Within and outside Europe there are a number of fisheries which already use environmental and social criteria to decide access to limited resources (see Annex 5.1: OCEAN2012 report: "Environmental and Social Criteria for Allocating Access to Fisheries Resources"). For instance, the Cape Cod fishery off the east coast of the United States provides several innovative ideas related to both environmental and social considerations governing fisheries access. In the South Georgia toothfish fishery in the sub-Antarctic, the government uses environmental criteria and a history of compliance to guide decisions about access to the fishery's lucrative resources. A number of European inshore fisheries in Sweden, France, Spain, the UK and the Netherlands also demonstrate how environmental and social considerations can be integrated to determine access to fisheries resources.

The Pew Environment Group recommends that decisions about access to fish resources and adequate fishing capacity be based on a set of transparent criteria which favour fishing methods and practices that contribute to achieving the objectives of the CFP. The use of such criteria will create positive competition amongst fishers; those who fish in the most environmentally and socially sustainable way would be permitted to fish the most.

2.6 Phasing Out Harmful Subsidies

Pew shares the Commission's vision that by 2020 the European fishing industry should be far more financially robust and, to the extent possible, independent from public financial support. It is unfortunate that the use of public money in the fisheries sector has not supported the transition of the sector towards a more sustainable future, but greatly contributed to developing the main driver of overfishing, namely overcapacity. Also at present, a number of measures are in force which increase fishing capacity and/or effort. For instance, EU aid supports the modernisation of fleet segments which are characterised by overcapacity, the fuel tax exemption for fishing operations provides incentives to increase effort, and financial support is even provided to further increase fishing capacity in outermost regions. In addition, on its own initiative, the Commission recently increased the

so called *de-minimis* aid, allowing Member States to pay direct subsidies to fishing operators, (e.g. for fuel). This allows vessels to fish further and further away and is in direct contradiction to efforts to combat climate change in addition to increasing over-fishing.

Healthy ecosystems and fish stocks are the fundamental basis on which the fisheries sector and fishing communities depend. As a result, all environmentally harmful subsidies should be phased out within a short timeline and as a matter of urgency. This is also in line with the Commission's commitment to set up roadmaps – sector by sector – to phase out environmentally harmful subsidies with a view to eliminating them⁸ as well as the recent G20 call to phase out fuel subsidies.

In times of financial and economic crisis, it is even more important to ensure that public aid supports public goods which create environmental and social benefit. A key focus of public aid should be to support good governance in fisheries resource exploitation within the EU and beyond, such as independent scientific research, efficient and harmonised catch documentation and monitoring, control and surveillance technologies.

A key component of good governance, including the spending of public aid, is transparency. As a matter of urgency, the Commission should ensure that Member States comply with their disclosure requirements.⁹ In addition, detailed information about the supported projects should be made available in a central database accessible to the public and easily searchable. While initiatives from civil society, such as www.fishsubsidy.org, have already contributed to disclosing parts of this important information, the disclosure of EU aid related information should be the responsibility of the European Commission. Providing civil society with the opportunity to analyse and scrutinise the spending of EU financial resources will contribute to more efficient spending and help to ensure that the EU is more accountable to its citizens.

2.7 Creating a Culture of Compliance

The dismal state of fish stocks in European waters and elsewhere, combined with a situation of overcapacity in many fisheries, has resulted in an increasing number of infringements, more or less tolerated by flag Member States, combined with a marked tendency for lower and lower sanctions.¹⁰

The Pew Environment Group believes that – if properly implemented – the Regulation to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing as well as the Regulation on strengthening control of the Common Fisheries Policy have the potential to significantly improve the current control system.

Further investments in monitoring, control and surveillance (MCS) are needed and funding priorities should be reviewed to that end. The EU currently provides annually €837 million in

⁸ EC (2006): Renewed EU Sustainable Development Strategy.

⁹ According to the Commission Italy, Romania, Malta, Portugal and Slovenia do not comply with the legal requirements to disclose information on the assistance received under the European Fisheries Fund (EFF).

¹⁰ Communication from the Commission to the Council and the European Parliament (Nov 2008) – Reports from Member States on behaviours which seriously infringed the rules of the Common Fisheries Policy in 2006.

structural assistance for fisheries and €156 million for International Fisheries Agreements, while the EU's contribution to control and enforcement activities amounts to only €46million per annum.¹¹ At the same time, non-compliance with the rules of the CFP incurs great costs to EU Member States. Research commissioned by the Pew Environment Group concluded that the cost of CFP infringements to EU Member States by 2020 will be €10billion in lost catches, €8billion in lost stock value and 27,000 jobs in the fishing and processing industries. The true costs are most likely considerably higher because these estimates only include selected costs and key stocks with clear evidence of illegal fishing.¹²

With a move towards a more decentralised management model, the future CFP is likely to put more emphasis on results-based management to incentivise good fishing practices. In that case, fishers must be made more accountable for their total catches (as opposed to their landings). This would improve information and management of removal levels of fish stocks and incentivise the development of selective fishing methods, gear and technology that can optimise the value of catches whilst significantly reducing the wasteful practice of discards. The recent joint declaration from Denmark, Germany, the UK and Scotland expressing their wish to explore the scope for voluntary testing and incentive-driven management mechanisms based on catch rather than landing quotas¹³ is welcome.

3 Comments on other Issues

A number of issues received great attention in the discussions following the release of the Green Paper. These include the regionalisation of the CFP, the use of individual transferable quotas (ITQs) and the idea to base the management regime on effort rather than on catch limits.

3.1 Regionalisation

The Lisbon Treaty, which brought about co-decision for the European Parliament on most fisheries management issues, will require changing the current decision-making process. The micromanagement decisions about technical and implementation aspects of the CFP can no longer be taken by the Council, as the co-decision process would make such decisions too time-consuming. The Pew Environment Group therefore supports the proposals in the Green Paper to allow Council and Parliament to set the overarching principles, goals and objectives of the policies and to allow the technical and implementation details to be decided at a more appropriate level, as long as they adhere to those principles, goals and objectives and provided review mechanisms are in place to ensure accountability.

The Pew Environment Group would support the delegation of regional responsibilities to appropriate regional bodies, allowing them to be responsible for managing within the regulatory framework established at EU level. Recent EU policy instruments on marine

¹¹ Court of Auditors (2007), see Note 3.

¹² Eftec (2008) The Costs of IUU Fishing to EU Member States, <http://www.pewenvironment.eu/resources/costsofIUU.html>.

¹³ Available at: <http://www.danfish.com/ref.aspx?id=7622>.

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environment conservation, such as the Marine Strategy Framework Directive, should be integrated into the options considered for regional fisheries management, particularly how regional collaboration may take advantage of any synergies and reduce any potential policy conflicts or redundancies.

Lessons on how to realise a regional fisheries management approach could be learned from experience in other parts of the world, including the US Regional Fisheries Management bodies (see Annex 5.2: Background Paper and Conference Proceedings of a Conference on Regional Fisheries Management which took place in Brussels September 29th 2009). In the US, the primary legislation – the MSA - establishes a framework for regional fisheries management, as well as the high- level objectives and principles by which fisheries are managed. Councils are delegated the responsibility to create Fisheries Management Plans (FMPs) and regulations that are consistent not only with national standards, but other relevant legislation such as the National Environmental Policy Act, the Endangered Species Act and the Marine Mammal Protection Act and relevant operational guidelines.

FMPs produced by Councils are subject to the approval of the Secretary of Commerce following review by the National Marine Fisheries Service (NMFS). The Secretary has limited scope for action in relation to FMPs and may only approve, disapprove or partially approve a Plan based upon its consistency with the national standards, the other provisions of the Act and other applicable laws.

Recent amendments to the MSA are likely to enhance Councils' ability to carry out their mandate:

- Requiring the establishment of annual catch limits that do not allow overfishing and rebuild depleted fish populations. In January 2009 guidelines were produced for Councils on implementing the annual catch limit requirement, taking account of scientific uncertainty and accountability measures to address excessive catches quickly;
- Requiring implementation of management measures to immediately end overfishing within two years of identification of a fish population as subject to overfishing. Ability to implement market-based management measures through Limited Access Privilege Programs allocated to individuals, corporations, communities or regional fishery associations; and
- Improving science and enhancing the role of Councils' Science and Statistical Committees, requiring five year research priorities and enabling pilot programs for ecosystem research.

While the US model operates in a different setting, there are general similarities between the fisheries context in the US and EU: diverse regions and needs; centralised governing institutions and 'member' states; and the need for a coordinating legislative framework. The US model of regionalisation of fisheries management is not flawless, but the Pew Environment Group encourages the Commission to further explore such examples to identify best practice solutions and adapt them to the European context.

3.2 Rights-Based Management Tools

Rights-Based Management, including in particular transferable quotas, are high on the agenda within the discussions surrounding the CFP reform. However, rights-based management measures should be at best tools within a more comprehensive management system that strengthens conservation and supports communities. For instance, clear management objectives, science-based catch limits and control and enforcement are all essential for fisheries management systems to be effective. In addition, when rights-based measures form part of a fisheries management system, critical decisions about the implementation, and who receives an allocation, must be given careful analysis. Wild fish are a public resource. Therefore, allocated access to fisheries resources only grants time-limited privileges to a portion of the total catch and must not convey exclusive property rights to the resource.

As with any other fisheries management system, properly designed programmes based on stronger access rights must include at least (see also Annex 5.3: Design Matters - Making Catch Shares Work):

- Science-based multi-year catch limits that include all fish killed as a result of fishing (target fish landed and non-target fish—or bycatch—discarded at sea);
- Adequate monitoring of the target fish catch and bycatch;
- Identification of explicit conservation, social and economic goals that the program intends to achieve and specific indicators for measuring attainment of those goals;
- A clear time limit for permits and regular review and evaluation of program performance with opportunities to modify and improve the programme;
- Adequate enforcement, including validation of catch and discard reporting and, to the extent possible, real-time management with the authority to close the fishery as soon as the quota is reached; and
- Fair and equitable allocation through a transparent and open process, including mechanisms to accommodate recreational anglers, working fishers and coastal communities; ownership caps so that one entity does not hold an excessive share of the quota; and opportunities for new fishers.

As mentioned before (see section 2.5 Prioritisation of Access Based on Environmental and Social Criteria), the Pew Environment Group recommends that decisions about access to fish resources and adequate fishing capacity are based on a set of transparent criteria which favour types of fishing supportive of the objectives of the CFP. The use of such criteria will create positive competition amongst fishers; those who fish in the most environmentally and socially sustainable way would be permitted to fish the most. In the longer term, such an approach would transform EU fisheries to work for the long-term interest of all the citizens of Europe, as well as for the health of the marine environment.

3.3 Effort versus Catch Limits

In a speech given to the European Parliament in September 2009, Commissioner Joe Borg said: "Another possibility could therefore be to manage stocks with effort only, replacing the traditional TACs and quotas." The Pew Environment Group is not of the opinion that EU fisheries are best managed under an effort regime, and would like to point to the fact that both systems have failed in different contexts to achieve desired results. For instance, while most of the overfishing in the EU occurs within a catch limit system, overfishing in other places, such as the New England region of the United States, takes place within effort regimes. Effort management faces a number of challenges, including:

- Lack of knowledge on catches: There is little reliable data about real catches. Fishers are provided with a strong incentive to understate their real catches to gain more days at sea.
- Re-calculating mortality in effort: Ultimately the fishing mortality is of importance to achieve healthy fish stocks. However, re-calculating mortality into days at sea is complex, in particular as the ability to catch fish is constantly advancing through technological creep.
- Strong incentives to increase fishing capacity: there are strong incentives to increase the fishing capacity as there is the incentive to catch fish as quickly as possible during available days. This undermines the impetus for responsible fishers to take the time to fish in a safe, profitable and ecologically conscientious manner.
- Protection of the weakest stock: In mixed fisheries, there is always the challenge to protect the weakest stock.

The Pew Environment Group is convinced that neither effort nor catch limits alone can guarantee sustainable fishing. Learning from recent experience in Europe and the United States, it is clear that securing sustainable fisheries requires that a number of management principles sit at the core of any fisheries management system, and they must be followed. These include the application of the precautionary approach and ecosystem based approach, sound management objectives, independent science which sets the limits for fishing activities in the context of associated and dependent species, the protection of the weakest stock in mixed fisheries, the monitoring of catches and landing, the matching of fishing capacity with resources, and the strict control and enforcement of the rules.

4 About the Pew Environment Group

The Pew Environment Group is the conservation arm of the Pew Charitable Trusts, a non-governmental, non-profit organisation. Pew applies a rigorous, analytical approach to improving public policy, informing the public and stimulating civic life. The objective of Pew's European Marine Programme is to support the European Union in ending global overfishing and reducing the destruction of the world's oceans.

5 Annexes

- 5.1 Meridian Prime (2009): “Environmental and Social Criteria for Allocating Access to Fisheries Resources”**
- 5.2 Background Paper and Conference Proceedings of a Conference on Regional Fisheries Management which took place in Brussels September 29th 2009**
- 5.3 Pew Environment Group (2009): Design Matters - Making Catch Shares Work**