



Allington House  
Allington  
Chippenham  
Wiltshire SN14 6LN  
Tel. 01249 653972  
Email. [stephen.marinet@btinternet.com](mailto:stephen.marinet@btinternet.com)

14<sup>th</sup> July 2011.

For the attention of: Directorate-General for Maritime Affairs and Fisheries, European Commission  
99 rue Joseph II, B-1049 Brussels. Belgium

Dear Sir,                    Consultation on Fishing Opportunities : COM (2011) 298 final.

I am responding on behalf of MARINET, the Marine Network of Friends of the Earth, England Wales and Northern Ireland (FOE EWNI). We are licensed by FOE EWNI to represent them on marine matters, and we are a part of the voluntary arm of the organisation as opposed to its professional arm. In terms of the consultation on Fishing Opportunities COM (2011) 298 final, I advise that we are a non-registered organisation with respect to the Interest Representative Register

We are addressing the two key questions which the Commission has set out in its Communication with respect to its Common Fisheries Policy, namely:

- How should Total Allowable Catches (TACs) for fish stocks be fixed for 2012 and thereafter?
- How to eliminate over-fishing ?

We note from the Commission's Communication *Com (2011) 298 final*, the following evidence recorded by the Commission:

- The Commission and the Member States have committed themselves to reach the objective of maximum sustainable yield (MSY) fishing by 2015 [Ref. Introduction].
- Setting Total Allowable Catches (TACs) and quotas remains an essential conservation tool [Ref. Introduction].
- Recent analysis indicates that there is no evidence that significant reductions in the overcapacity of the EU fleet have been made [Ref. Introduction].
- In 2010 the proportion of over-fished stocks in the Atlantic was 63%, and in the Mediterranean Sea it was 82% [Ref. Introduction].

- The two most important costs for the EU fishing fleet are fuel (23% of total average costs), and wages (around 28%) [Ref. Section 3].
- In 2010 the following data applied to fish stocks in the North East Atlantic and adjacent waters [Ref. Annex Ia, Table 1]:
 

• Outside safe biological limit	22
• Inside safe biological limit	15
• State of stock unknown due to poor data	60
- Scientific advice about over-fishing is missing for about two-thirds of the Total Allowable Catches (TACs) [ Ref. Section 4.1].
- Providing scientific data on fisheries is the responsibility of Member States, and these responsibilities in a number of cases are not fully met (Ref. Section 4.1).
- In 2010, when assessing the difference between Total Allowable Catch (i.e. quota for a stock) and the sustainable level of fishing in the North East Atlantic, 34% of TACs (quotas) exceeded the sustainable catch recommended by ICES and the Commission’s scientific committee [ Ref. Annex Ia, Table 4].
- In response to the above evidence, the Commission is recommending [Ref. Section 4.1]:
  - When scientific evidence on over-fishing is unavailable with regard to a particular stock, there should be a reduction of 25% in the Total Allowable Catch (quota) for that stock.
  - Member States should urgently deliver the necessary information to allow the state of stocks to be estimated.
  - Scientific agencies should be urgently tasked with assisting the determination of stock sizes, bearing in mind that responsibility rests with Members States.
  - Indicators should be developed to provide robust rules about what constitutes the sustainable exploitation a stock.

In addressing these matters and the two questions posed by the Commission – how Total Allowable Catches (quotas) should be fixed, and how to eliminate over-fishing – MARINET offers the following advice and recommendations. These may be headlined as

- Compliance with EU law.
- Referencing maximum sustainable yield to historic stock levels, thus achieving food security.
- Using fisheries-based marine reserves in order to rebuild stocks, re-employing fishermen as the managers of these reserves.

We now offer the detailed basis for each of these recommendations, explaining how they enable sound, sustainable fishing quotas (TACs) to be set, and how they contribute directly to the elimination of over-fishing.

## Compliance with EU law.

It is the obligation of the Common Fisheries Policy and of all parties – fishermen and the European governmental institutions – to comply with EU law. This principle is cardinal.

We observe that the Marine Strategy Framework Directive, 2008/56/EC, requires that the following “good environmental status” descriptors which are central to the management of European fisheries be achieved by 2020:

- *Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.*
- *All elements of 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 retention of their full reproductive capacity.*

We observe, therefore, that the determination of Total Allowable Catches (quotas) in 2012, and thereafter, must be capable of securing the achievement by 2020 of these specific legal requirements. This is a central test of the integrity of Total Allowable Catches. The establishment of this integrity will contribute substantially to the elimination of over-fishing as a direct consequence.

We observe that the Marine Strategy Framework Directive, 2008/56/EC, contains further legal obligations and implications for the Common Fisheries Policy. Specifically:

- Section 3 of the Opening Preamble states: “ *The marine environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and providing diverse and dynamic oceans and seas which are clean, healthy and productive. In that respect, this Directive should, inter alia, promote the integration of environmental considerations into all relevant policy areas and deliver the environmental pillar of the future maritime policy for the European Union.*”
- Section 40 of the Opening Preamble states: “ *The Common Fisheries Policy, including in the future reform, should take into account the environmental impacts of fishing and the objectives of this Directive.*”
- Section 39 of the Opening Preamble states: “ *Measures regulating fisheries management can be taken in the context of the Common Fisheries Policy, as set out in Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, based on scientific advice with a view to supporting the achievement of the objectives addressed by this Directive, including the full closure to fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds.* “

Thus, Directive 2008/56/EC clearly establishes legal obligations and powers with respect to the Common Fisheries Policy, and how the European governmental institutions (Commission, Parliament and Council of Ministers) should formulate and operate the Common Fisheries Policy.

In respect of the legal obligation to implement the ecosystem-based approach and the precautionary approach to the management of fisheries, we observe that Council Regulation 2371/2002/EC legally requires:

- Article 2, Section 1 : “ *The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Community shall apply the precautionary approach in taking measures designed to*

*protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine ecosystems. It shall aim at a progressive implementation of an ecosystem-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.”*

Within this context, we observe that the precautionary approach is defined by Council Regulation 2371/2002/EC:

- Article 3, paragraph (i) : “ *‘precautionary approach to fisheries management’ means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.”*

Within this context, we observe that the definition of the ecosystem-based approach in Directive 2008/56/EC is embraced within the definition of marine strategies:

- Article 1, Section 3 : “ *Marine strategies shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations.”*

And, within this context, we observe that the ecosystem-based approach is defined specifically by the Oslo Paris Convention for the Protection of the North East Atlantic (OSPAR), of which Convention the European Commission is a signatory and full constitutional member:

- OSPAR Quality Status Report 2010 : “ *Ecosystem approach : the comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of the marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity.”*

Thus, in addressing the matter of how to set Total Allowable Catches and how to eliminate over-fishing, we observe that there are clear instructions and requirements within European law, as specified above. Furthermore if these requirements are not met then the Common Fisheries Policy, both in terms of its principles and implementation, is open to challenge on the grounds of non-compliance with the law.

Accordingly, it is our clear **recommendation** that the reformed and future Common Fisheries Policy must be compliant with EU and international law. How this compliance is achieved is the responsibility of the European governmental institutions (Commission, Parliament and Council of Ministers). However what is absolutely clear is that such compliance is cardinal, and that the setting of Total Allowable Catches and the actions needed to eliminate over-fishing must be mindful of the principles, requirements and stipulations of EU and international law.

We now offer some observations on the management principles that can secure legal compliance, and thus resolve the two questions – how Total Allowable Catches should be fixed, and how over-fishing can be eliminated.

## **Referencing maximum sustainable yield to historic stock levels, thus achieving food security.**

We accept that maximum sustainable yield (MSY) is a sound scientific principle which should be at the heart of the Common Fisheries Policy's principles and management.

However, in itself, maximum sustainable yield does not solve the problem either of the levels at which quotas should be set, or how over-fishing can be eliminated. This is because there is a need under EU law to restore fish stocks and marine food webs, and thereby the integrity of the marine ecosystem itself, to a healthy condition and a full reproductive capacity. Further, such objectives must be integrated so as to be environmentally, economically and socially sustainable.

If Total Allowable Catches (quotas) for fish stocks are set on the basis of the maximum sustainable yield – the catch that can be taken year upon year without harming the stocks reproductive capacity – then it is essential that TACs are referenced to *historic* levels of these stocks, rather than the current, depleted levels of these stocks which exist due to over-fishing.

This is because if current, depleted levels are used as the reference point then this is equivalent to accepting, and thus perpetuating, the current degraded condition of the marine ecosystem (fish species and their populations are a key component of the marine ecosystem) and, moreover, it ignores the imperative need both to restore the marine ecosystem and to rebuild the size of fish populations. In short, this approach would likely be in violation of EU law.

Furthermore, there is an imperative need for the Common Fisheries Policy to deliver food security, defined as the ability of EU seas to feed the EU population throughout the entire year. This is a legitimate expectation of CFP management, and a yardstick of the health of fish stocks and the marine ecosystem as a whole given that, historically, European countries have been able to deliver precisely this requirement. At present, food security is only operative for six months of each year, and for the remaining six months the EU has to rely on fish caught from seas elsewhere [http://assets.ocean2012.eu/publication\\_documents/documents/104/original/2011\\_Fish\\_Dependence\\_UPDATE.pdf](http://assets.ocean2012.eu/publication_documents/documents/104/original/2011_Fish_Dependence_UPDATE.pdf)

As a consequence it is essential that maximum sustainable yield (MSY), and the total allowable catches (quotas) which are based on MSY, are referenced to historic levels of fish stocks in order for food security to be delivered. In the case of the North Sea, MARINET has researched the scientific data on historic stock levels and compared these to current stocks levels in 2010 based on ICES data. This research (Briefing Paper) is enclosed with this submission and may be viewed on our website: [http://assets.ocean2012.eu/publication\\_documents/documents/104/original/2011\\_Fish\\_Dependence\\_UPDATE.pdf](http://assets.ocean2012.eu/publication_documents/documents/104/original/2011_Fish_Dependence_UPDATE.pdf)

Our historical data for the North Sea relates to 1880, the date that marks the first introduction of steam power to fishing and thus the date up until when fish stocks had largely been unexposed to intensive fishing practices. There is therefore a clear notion, scientifically speaking, of what historical referencing means.

However it must be also noted that environmental conditions have changed in the intervening 130 years from 1880 to 2010 due both to intensive fishing practices such as the impact of repeated trawling on the physical structure of the seabed and thus its ecological character, and due to other factors such as increased carbon dioxide concentrations in the atmosphere which affect sea temperature and acidity levels.

Therefore, when we say there is a requirement to reference maximum sustainable yield to historical levels it must be recognised that the physical nature of the world in 2011 is no longer the same as in 1880. Exact duplication in referencing is therefore not to be countenanced. However it

is, indubitably, a clear guide not just to the measure of change and but also the aspirations for the restoration of fish populations and ecosystem integrity; and, even more importantly, historical referencing serves as a key benchmark for population sizes with respect to re-establishing food security.

Therefore, although it is clear from the earlier discussion of the obligations of EU law that there is a requirement for fish populations to be rebuilt in order to meet the good environmental status descriptors of the Marine Strategy Framework Directive (and thus, by direct implication, Total Allowable Catches are set in order to meet this legal obligation), it is also equally clear that there is an imperative for Total Allowable Catches and Maximum Sustainable Yield quotas to be referenced to food security, and thus the size of fish stocks which allow EU seas to feed the population of the EU throughout the entire year, year after year.

So, in defining Total Allowable Catches, there is a clear procedure for determining what is the minimum target (quota) that is acceptable in terms of re-establishing food security, and also what is the minimum acceptable target in legal terms, i.e. providing us with a definition of what is a healthy population with full reproductive capacity, and what is the size of the fish population that enables the fishing industry to have a economically sound basis, year after year.

Total Allowable Catches set in accord with the need to achieve food security means that legal compliance with EU law is being achieved, and it means that we know the direction of the Common Fisheries Policy in terms of principles and management. It also defines the terms of what is required to eliminate over-fishing because it requires us to have a fleet sized and active in accordance with this requirement.

It also means that the requirement of sustainability is being met. In other words, stocks that can meet human needs for nutrition year after year, stocks that can guarantee an enlarged fishing industry in the long-term, and stocks that are sufficiently large and properly managed to enable the diversity and complexity of the marine ecosystem to be restored.

Towards this end MARINET has produced a graph, based on scientific data, which defines and illustrates food security with respect to cod in the North Sea, covering the period 1880 to 2010. This graph is enclosed with this submission, and the principles and methodology employed in its formulation can be generalised to all species and stocks throughout EU seas.

Thus, we **recommend** the setting of Total Allowable Catches not just on the basis of compliance with the obligations of EU law but also on the basis of referencing to historical stock size data and thus, by employing this data, as to the stock sizes necessary to deliver food security. We believe that this methodology also inherently defines the parameters of what constitutes over-fishing.

We also observe, as the Commission's evidence in *Com (2011) 298 final* records, that scientific advice about stock sizes, and therefore what constitutes over-fishing, is missing for about two-thirds of stocks and that, importantly, the determination of this data is the responsibility of Members States which they are failing to act and deliver upon.

Therefore, we not only **recommend** that the Commission reduce Total Allowable Catches by 25% for stocks for which no data exists (or, as is very probable, has simply not been delivered to the Commission ) because, we observe, this is consistent with the precautionary approach as required by Council Regulation 2371/2002; but we also **recommend** that the Commission is justified under the same Council Regulation and its legal powers to close such fisheries – or to set the Total Allowable Catch for that stock at zero – until such time as the Member State delivers the data necessary to enable management of that fishery to proceed on a sound and responsible basis.

Referencing Total Allowable Catches (quotas) not just to obligations under EU law but also to stock sizes necessary to deliver food security does, we recognise, mean that for certain stocks Total Allowable Catches may need to be set at zero for whatever period of time is necessary for the stock size to be rebuilt in order for a quota – maximum sustainable yield – to be operative which can meet the requirements of delivering food security.

This is a hard truth that has to be faced. If we do not face this truth and the management actions mandated by this truth, then stock sizes in EU seas will continue to collapse, and food security will all but vanish along with any real notion that the Common Fisheries Policy is being formulated and operated in a way that respects the fundamental needs of the marine ecosystem. Furthermore, the Common Fisheries Policy will continue to be not just an affront to good sense but also, in all probability, illegal.

How we manage a fishery where Total Allowable Catches may have to set at zero, or very close to zero, for a substantial number of stocks for an indeterminate period of time, and still deliver a livelihood for fishermen and the fishing industry, is the subject of the next section.

### **Using fisheries-based marine reserves in order to rebuild stocks, re-employing fishermen as the managers of these reserves.**

In the light of the above evidence and discussion, how are Total Allowable Catches (quotas) to be defined and delivered, over-fishing eliminated, and how is the over-arching problem of the imminent collapse of both the fishing industry and the marine ecosystem to be solved ?

In response to this need, we have already outlined two cardinal principles which must be deployed, and respected, by the European governmental institutions – namely, compliance with EU law and the referencing of stocks to historical levels in order to deliver food security. These are key components in the architecture of a reformed Common Fisheries Policy.

However, they will not deliver the endgame, unless they are linked to the active use of the ecosystem-based approach to marine management in conjunction with the precautionary approach.

Only then will ecosystem integrity be restored.

And restoration of ecosystem integrity is essential because all human uses of the sea, primary amongst which is fishing and the meeting of our nutritional needs, can only be delivered on a long-term and genuinely sustainable basis if the marine ecosystem itself is in a sound, healthy condition. Indeed this logic is not only indisputable, its observance is imperative.

Thus in order to deliver Total Allowable Catches which are referenced to maximum sustainable yield which, in its own turn, must guarantee food security, it is imperative to implement management procedures which rebuild stocks.

This means not just reducing fishing, the corollary of which is a reduced fishing fleet.

It also means, in simple biological logic, protecting the spawning, nursery and feeding grounds of depleted commercial fish stocks so that their populations can be rebuilt in size and reproductive capability (an EU legal requirement) by means of fisheries-based marine reserves.

There is no other solution. Fishing of these areas has to cease. If fishing in these areas does not cease then – once more, following biological logic - stocks cannot be rebuilt; and, just as importantly, if fisheries policy does not observe this logic then it transgresses inevitably the requirements of the law.

Thus, given that fishermen will be displaced from these traditional fishing areas whilst the imperatives of the law and the marine ecosystem are met, it is *equally imperative* that fishermen are given a new economic role. In short, they must be re-employed as the managers of these protected areas, undertaking the patrolling and assisting in the monitoring and collection of scientific data.

If this course is followed and these management procedures implemented, fishermen will have a vested interest in this new management regime and they will be able to identify readily with the logic. A logic which is not only is capable of delivering for them an assured livelihood and new economic role, but also a logic which delivers rebuilt stocks and a restored ecosystem, and thus an industry of increased dimensions and sustainability for future generations of their families.

A Common Fisheries Policy formulated in this manner not only delivers on the obligations of natural justice, it is also the wisest and most pragmatic solution in order to ensure that expertise and knowledge of fishermen is retained and is available for the upturn in the fishing industry in the future. An upturn which *will* occur, but only provided the biological logic underlining this need for fisheries-based marine reserves is recognised and acted upon.

Thus, we have an economic and management solution to over-fishing. And, we have a logic firmly dictating how Total Allowable Catches, both within and outside fisheries-based reserves, should be determined. We strongly **recommend** this approach to the Commission.

## **Conclusion.**

MARINET believes it has outlined to the Commission a clear and certain route by which reform of the Common Fisheries Policy can be delivered.

Equally importantly, it will meet the objectives of present reform – namely, compliance with the law, the rebuilding of fish stocks to levels capable of delivering food security by means of referencing maximum sustainable yield (quotas) to historical levels of those stocks, and also the management tools in the form of fisheries-based marine reserves which will both rebuild fish stocks in a literal, actual sense whilst guaranteeing that fishermen have an economic role both within the present fishing industry and the industry bequeathed to future generations.

MARINET believes it has clearly explained how Total Allowable Catches (quotas) should be fixed, and how over-fishing can be eliminated - the declared objective of *COM (2011) 298 final*

MARINET also advises the Commission that if this path, or something very similar to it, is not followed then the reformed Common Fisheries Policy will not only fail to deliver real reform, but also risks being in transgression of the law and open to legal challenge.

Yours faithfully

S. D. Eades  
On behalf of MARINET.

## Footnote.

As a footnote to MARINET's comments and recommendations to the Commission on the two key questions – how should Total Allowable Catches (quotas) be fixed, and over-fishing eliminated – we wish to record the following evidence which has been drawn to our attention.

Firstly, have the Member States, as advised by the Commission in *COM (2011) 298 final*, committed themselves to the objective of maximum sustainable yield (MSY) fishing by 2015 ?

It is reported by Seas At Risk ([www.seas-at-risk.org](http://www.seas-at-risk.org)), Brussels, 28th June 2011: "*At the Fisheries Council meeting today, EU Fisheries Ministers outrageously backed out of their international commitment to end over-fishing by 2015 and chose to oppose the Commission's proposals that would result in more sustainable fisheries. These conclusions directly contradict what was agreed amongst Environment Ministers only last week, when they met to discuss the EU's Biodiversity Strategy and encouragingly endorsed a commitment to achieve MSY by 2015. Furthermore, Fisheries Ministers did not support the Commission's intention to apply a 25% reduction of Total Allowable Catches (TACs) as a matter of precaution for stocks for which there is no scientific advice or only poor information.*" [Ref. <http://www.marinet.org.uk/latestnews.html#embo> ].

Secondly if, as the Commission advises *COM (2011) 298 final*, fuel currently represents on average 23% of a fishing vessel's total costs and the objective of EU policy is to reduce over-fishing (i.e. to try to reduce the size and/or activity of the fleet), how can it make sense for the European administration to seek – in this instance, the Parliament - **an increase** in the fuel subsidy to the EU fishing fleet ?

It is reported by Seas At Risk ([www.seas-at-risk.org](http://www.seas-at-risk.org)) Strasbourg, 12<sup>th</sup> May 2011: "*With blatant disregard for the EU's commitments on climate change and biodiversity loss, and in a move that could encourage further over-fishing of depleted fish stocks, European Parliamentarians have voted favourably on a resolution urging the European Commission to increase national fuel subsidies for the fishing industry. The resolution argues that continuing rises in fuel prices are putting European fishermen in a difficult situation, and therefore urges the European Commission to allow Member States to increase state aid to the fishing sector. For fisheries, the de minimis ceiling was limited to 3.000 euros until 2007. It was then increased tenfold to 30.000 euros per company over a period of three years. The Parliament resolution approved today, with 369 votes in favour and 203 against, calls for it to be raised yet again to 60.000 euros — a staggering twenty fold increase in less than 5 years. Such an increase could make up as much as 48% of a vessel's annual operating cost, and a study conducted in 2009 concluded that it does distort competition between fleets of different Member States.*" [ Ref. <http://www.marinet.org.uk/latestnews.html#mvti> ]

MARINET recognises that in the first instance above this is a decision of the **Council of Ministers**, and in the second instance it is a decision of the **European Parliament**. They are therefore not decisions of the Commission.

However, given that the future Common Fisheries Policy and its current reform *must* comply with EU law, we do strongly advise the Commission to draw this key, essential fact to the attention of these European governmental institutions.

