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Submission to Consultation on Fishing Opportunities

I am grateful for the chance to submit to this consultation and recognise that this shows a true change of direction for the Common Fisheries Policy.

Living in the United Kingdom at the moment is an interesting experience. For years we have known that private detectives employed illegal methods in their search for evidence, and that these were used by the media in their search for scurrilous information on celebrities. Never before has there been such a high profile link between the illegal activity of a contractor and the people at the top of the employing organisation, who tacitly encouraged a culture of breaching the law. Suddenly even Rupert Murdoch and his media empire have become aware that there is a rule of law and that anything else is corruption, and that those who condone it are accountable.

Every year, fisheries leaders from around the EU gather and routinely allocate quota beyond that set by scientific advice. That arrangement is illegal, and has long been known to be so¹. Coastal states are not permitted to allocate fishing quota beyond maximum sustainable yield under United Nations Convention on the Laws of the Sea². It is only a matter of time, before the legal reality catches up with those responsible and this will inevitably leave the reputation of the European institutions and those involved being heavily tarnished at a time when the EU faces its gravest challenges yet because of the Euro crisis. All the EU institutions must be seen to be functioning in an unimpeachable fashion to avoid the economic crisis developing into a political crisis. This means that the Council of Ministers, DG MARE and the Parliament **must** heed scientific advice or they risk the endangering the shaky credibility of the European project. Fisheries are one of the few areas where the EU has sole competence and it should show the way, not break the law or encourage others to do so. It is imperative to act now and draw a line under this illegal behaviour before this develops into a full blown scandal.

Yours sincerely

Tom Appleby

¹ Henrikson, T. & Hoel, A. *Determining Allocation: From Paper to Practice in the Distribution of Fishing Rights Between Countries* Ocean Development & International Law, 42:66–93, 2011

² Legal Briefing note attached

LEGAL BRIEFING NOTE

UNCLOS and INTERNATIONAL LAW

The United Nations Convention on the Laws of the Sea represents the generally accepted position in international law governing coastal states sovereign rights over the sea. This has been of enormous benefit to many EU member states, enabling the development of a firm understanding of the law, permitting the economic exploitation of the European marine area, under known rules.

UNCLOS and Fisheries

Article 56 of UNCLOS states:

In the exclusive economic zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil (The coastal state has sovereignty over fishing rights)

That is very clear and precise. The coastal state (in this case the member state) has sovereign rights for the exploitation of living marine natural resources, in this case fish stocks out to the edge of the exclusive economic zone.

Those sovereign rights are not limitless; they are qualified in Article 56:

In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall act in a manner compatible with the provisions of this Convention.

Article 61 states (and the whole text is pertinent):

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

Particularly because of Article 61 (3), the coastal state **does not have discretion** to allocate catch quota beyond maximum sustainable yield. Similarly, although the Article 38 Treaty of Lisbon gives the EU certain powers to define and implement a common agriculture and fisheries policy, it **does not** give the EU any greater sovereign rights over coastal states' fish stocks than those states had under international law. Therefore the European institutions have no power to allocate fish stocks beyond maximum sustainable yield; such action is unauthorised and illegal of itself. It also actively encourages member states themselves to break international law.