

**JNCC Report  
No. 428**

**Implementation of the CFP -  
an evaluation of progress made since 2002**

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**Citation and disclaimer**

This report should be quoted as follows:

Lutchman, I. Van den Bossche, K., and Zino, F. 2008. Implementation of the CFP - An evaluation of progress made since 2002. IEEP. London.

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## **Executive summary**

The Common Fisheries Policy (CFP) underwent two major reviews in both 1992 and 2002. The next official review will be held in 2012. The 2002 review was more comprehensive than legally required and a number of substantive changes were made to Regulation 3760/92 to address concerns in 2002. This resulted in the writing of Regulation 2371/2002 which incorporates more progressive elements including the requirements to adopt the precautionary and the ecosystem approach in an attempt to modernise the CFP and respond to demands for a more environmentally focused fisheries policy. A detailed comparison of these two regulations can be found in Section 3.1.

Since 2002, the Commission has proposed and adopted a number of implementing regulations in order to meet the objectives of the reformed CFP. These include recovery plans, emergency measures and revised technical measures for the Baltic and the North East Atlantic. Regulations relating to the adjustment of fishing capacity have also been added as well as recent new proposals to improve the EU control regime. The Commission has also established the Community Fisheries Control Agency (CFCA), situated in Vigo, and adopted the framework regulation for the establishment of the regional advisory councils (RACs). These regulations are listed in Annex 2.

While the environmental principles identified in 2002 have been considered and even integrated into a number of implementing regulations, further action is required, both at Commission and Member State level, to ensure that the CFP Regulation achieves its objectives. This report outlines what action is required. Firstly, the report demonstrates that although the Commission has adopted more regulations concerning conservation and sustainability there are fewer regulations pertaining to the adjustment of fishing capacity and among these, the majority relate to the management of fleet rather than capacity. Secondly, while the report also acknowledges that there has been some progress on strengthening the control and enforcement regime, the recent proposals by the Commission in 2007 have largely been in response to the Court of Auditors report of December 2007. Finally, although the input of stakeholders into EC decision-making has increased following the establishment of the RACs, it is still restricted to responding to EU proposals while their consideration of environmental issues remains a low priority despite the active involvement of some NGOs.

Commissioner Borg in his speech to the European Parliament in May 2008 stated that the Commission would soon be launching a 'Health Check' on the CFP. In the last 12 months, the Commission has launched a number of consultations on outstanding issues such as the discarding of fish and the reform of the Community control system. In the build-up to the 2012 CFP review, it is likely that the Commission will propose more regulations relating to the issues mentioned, as well as on other concerns where little progress has been made. However, it is also the hope that 2012 may present an opportunity to call for new and specific actions, including the establishment of targets and timelines which are necessary in achieving sustainable EU fisheries.

## Acronyms

AC	Advisory Committee
ACF	Advisory Committee for Fisheries
ACFA	Advisory Committee for Fisheries and Aquaculture
B <sub>pa</sub>	Biomass at precautionary approach level
B <sub>lim</sub>	Biomass at limit reference point
CEC	Communication from the European Commission
CFCA	Community Control Fisheries Agency
CFP	Common Fisheries Policy
CFR	Community Fleet Register
DCR	Data Collection Regulation
COM	Commission Communication
DEFRA	Department for the Environment, Food and Rural Affairs
DG	Directorate-General
EBCD	European Bureau for Conservation and Development
EC	European Community
ECR	European Court Reports
EFF	European Fisheries Funds
EG	Expert Groups
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EL	Environmental Liability
eNGO	Environmental NGO
EU	European Union
FAO	Food and Agricultural Organisation
FIFG	Financial Instrument for Fisheries Guidance
FMC	Fisheries Management Centres
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
ICZM	Integrated Coastal Zone Management
IEEP	Institute for European Environmental Policy
IMP	Integrated Maritime Policy
JDP	Joint Development Plan
MAGP	Multi-annual Guidance Programmes
MCAP	Management Committee Advisory Process
MP	Maritime Policy
MPA	Marine Protected Areas
MCAP	Management Committee for the Advisory Process of ICES
MCS	Monitoring, Control and Surveillance
MS	Maritime Strategy
MSFD	Marine Strategy Framework Directives
MSY	Maximum Sustainable Yield
NAFO	Northwest Atlantic Fisheries Organisation
NWW	North Western Waters
RAC	Regional Advisory Council
RG	Review Group
RFMO	Regional Fisheries Management Organisation
RL	Research Laboratory
RSPB	Royal Society for the Protection of Birds

SBL .....	Safe Biological Limits
SEA .....	Strategic Environmental Assessment
SGRN .....	Subgroup on Research Needs
SWW .....	South Western Waters
STECF .....	Scientific, Technical and Economic Committee for Fisheries
TAC .....	Total Allowable Catch
TCM .....	Technical Conservation Measure
VMS .....	Vessel Monitoring Systems
WG .....	Working Group
WWF .....	Worldwide Fund for Nature
QMV .....	Qualified Majority Voting
WSSD .....	World Summit on Sustainable Development

# 1 Introduction

The CFP provides the framework for fisheries management in the EC. Member States can only act to conserve fish stocks if they are given express powers to do so under the CFP. Securing sustainable fisheries at national or local level in any of the Member States therefore depends on getting the regulatory policy framework right, as well as ensuring its correct implementation on the ground or at sea.

Prior to 2002, the CFP was criticised by some for mismanaging the fisheries sector and forcing fishermen to overfish, leading to irreversible damage on stocks of major economic importance, as well as on invaluable marine ecosystems. In the run up to the legislative changes, the European Commission adopted a series of communications and action plans contemplating the changes required to address the alarming state of stocks and new measures needed to change fisheries management. This new approach was reflected in the new CFP framework Regulation 2371/02 adopted by the Council in December 2002.

The 2002 changes were significant, but in many ways just marked the beginning of a long term reform process. The new CFP Regulation sets out the objectives, principles and instruments to support fisheries management in the 21st century. But real change required the subsequent adoption and successful implementation of detailed 'daughter' legislation. The last five years have been viewed as a critical period for potential delivery of real change in EC fisheries management to serve both the marine environment and the fishing industry.

Since 2002 the EC institutions (including some Member States) have developed new implementing legislation, new and existing institutions, and worked to realize the new framework with a view to meet the obligations. This report aims to evaluate the implementation of the CFP since 2002. Particular attention is paid to the provisions of Regulation 2371/2002 relating to the conservation of stocks, environmental integration and biodiversity conservation.

Section 2 provides a background to the CFP with a focus on the drivers which led to some of the key changes in the current CFP. Section 3 lists the key legislative changes in Regulation 2371/2002. In Section 4, the key implementing instruments are addressed relating to specific measures such as recovery plans and emergency measures. The extent to which key environmental elements have been translated into Regulations and the constraints as to their implementation is evaluated. The reformed CFP includes provisions aimed at improving consultation in decision-making. Section 5 examines the role of the RACs, the International Council for the Exploitation of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) in decision-making since 2002 and the evolution of their work programs in response to the new demands for advice and input. A number of Directives have links with the CFP. Section 6 examines this relationship in order to assess whether they support or hamper the implementation of the CFP. Finally, a summary of progress since 2002 and recommendations on the path towards the CFP reform in 2012 are made in Section 7.

## 2 The Common Fisheries Policy Framework

### 2.1 Origins and basis of the CFP

The 1957 Treaty of Rome, which formed the then European Economic Community (EEC), contained a passing reference to 'the products of fisheries' within its definition of agricultural products.<sup>1</sup> At the outset, the primary aim of the six Member States - Luxembourg, Belgium, Netherlands, Italy, Germany and France - was the establishment of a common agricultural policy (CAP). The Member States had little reason to push for a CFP. Their most important fisheries were largely in international waters, outside their national jurisdictions. Where these stocks were jointly managed by two or more Member States this was done under the auspices of international organisations created by multilateral agreements. It was not until 1964, that the idea of a CFP was introduced.

The Treaty of Rome established a number of founding objectives for a CAP, with the following aims in mind:

- increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- stabilise markets;
- assure availability of supplies; and
- ensure that supplies reach consumers at reasonable prices.<sup>2</sup>

Although the CFP has since evolved, these underlying objectives still apply today.<sup>3</sup>

In 1970 the United Kingdom, Denmark, Norway and Ireland, all with major fishing interests, applied to join the EEC and the first fisheries Regulations were set up.<sup>4</sup> The policy was nevertheless relatively limited, regulating primarily the issue of access to waters. It was only in 1976, however, after a Directorate-General (DG) for Fisheries was set up (DGXIV) that the overfishing problem was realised and action initiated to tackle the problem. Around this time, fishing waters were extended from 12 to 200 nautical miles (nm) around the Member States' coasts. It was also decided then that the Community was best placed to manage access to fisheries, but it was not until 1983 that an operational CFP was agreed by all the Member States.<sup>5</sup> The 1983 Regulation organised the CFP around four main aspects: a market policy, a structural policy, relations with third countries and a conservation policy. This more comprehensive conservation regime depended on a combination of measures, predominately involving fishing gear restrictions and Total Allowable Catch (TAC)

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<sup>1</sup> Treaty establishing the European Economic Community, 25 March 1957, 298 UNTS 11, Title II, Article 38. This treaty entered into force on 1 January 1958.

<sup>2</sup> *Ibid.*, Article 39.

<sup>3</sup> Treaty Establishing the European Community [consolidated version], OJ N° C 325, 24/12/2002, p. 33-184, Article 33.

<sup>4</sup> Regulation 2141/70 of the Council of 20 October 1970 Laying Down a Common Structural Policy for the Fishing Industry, OJ N° L 236, 27/10/1970, p.1; Regulation 2142/70 of the Council of 20 October 1970 on the Common Organisation of the Market in Fishery Products, OJ N° L 236, 27/10/1970, p. 5.

<sup>5</sup> Regulation (EEC) N° 170/83 of 25 January 1983 Establishing a Community System for the Conservation and Management of Fishery Resources, OJ N° L 24, 27/01/1983, p. 1-13.

limits. At that time TACs were not primarily intended to serve as a conservation instrument, but rather as a tool to distribute catches among Member States by means of a national quota system. This distribution system formed the cornerstone of the CFP.

The CFP has since been the subject of two reviews, in 1992 and 2002 consecutively. The 1992 reform addressed the imbalance between the Member States' fleets fishing capacity and the available fishing opportunities. Regulation 3760/1992 also introduced the concept of fishing effort and obliged the Member States to operate a national licensing scheme. The greening of the CFP, which began in the early 1990s, also found its expression in the 1992 review. The 1992 basic Regulation clearly stated its aims, namely to protect and conserve the marine aquatic resources. Furthermore, it included a requirement to take account of the implications on the marine ecosystem when adopting management measures.<sup>6</sup>

## 2.2 2002 CFP reform

### 2.2.1 EU fish stocks and industry in crisis

A 1999 scientific review carried out by the STECF on the status of EC fish stocks, concluded that 67 % were overfished, 40 % were 'depleted' and 37 % of species were both depleted and overfished.<sup>7</sup> Furthermore, a 1999 survey in the North East Atlantic confirmed that 40 out of the 60 main commercial fish stocks were outside safe biological limits. The most severely depleted species was cod. In the EC, the average landings for the period 1995-1999 were down 65 % compared to 1978-1982 with a major decline in the numbers of larger, mature fish by 73 % in the same period.<sup>8</sup> The European Commission's Green Book in 2001 painted a very bleak picture of EC fish stocks stating that in the Baltic, 'the current situation does not seem sustainable'; that in the North Sea, 'it has not been possible to reverse the decline of round fish stocks'; that in the western waters, fishing mortality rates 'have far exceeded historical levels observed in the North Sea' and that in the Mediterranean, 'many important stocks have been over-fished'.<sup>9</sup>

The need to protect jobs was often given as a reason for not addressing the overcapacity problem. However, in the 1990's up to the time of the reform, it was obvious that the CFP had failed to save jobs. In the period 1990-1997, the number of fishermen in the EU fell by 60,000 - a decline of 30 %<sup>10</sup> - but the decline in catches and landings was progressively worsening with negative impacts on the industry. For the period 1960-1999, total fish landings in the United Kingdom, for example, declined from 900,000 to 400,000 tonnes, with the value of the catch falling from a peak of £880 million to just less than £200 million in 1999.<sup>11</sup>

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<sup>6</sup> Council Regulation 3760/92 of 20 December 1992 Establishing a Community System for Fisheries and Aquaculture, OJ N° L 389, 21/12/1992, Article 2 (1).

<sup>7</sup> COM (2000) 272, Report from the Commission to the Council - *Preparation for a mid term review of the Multi-annual Guidance Programmes (MAGP)*, 10.5.2000.

<sup>8</sup> COM (2001) 135, *Green Paper on the Future of the Common Fisheries Policy, Volume I*, 20.3.2001.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> WWF, *Mid-Term Review of the Common Fisheries Policy*, October 2007 (WWF, 2007).

### 2.2.2 Political/legal drivers for reform

In March 1997 a number of North Sea Member States, Norway and the Commission participated in the Intermediate Ministerial Meeting on the Integration of Fisheries and Environmental Issues in Bergen, Norway.<sup>12</sup> This meeting took place in the framework of the North Sea Conferences and resulted in the adoption of a Statement of Conclusions. It was at this meeting that for the first time serious thought was given to the halting of adverse fishing effects on the European marine environment.<sup>13</sup> Also in 1997, Article 6 of the EC Treaty was adopted, stating that ‘environmental protection requirements must be integrated into the definition and implementation of the Community policies [...] in particular with a view to promoting sustainable development’.<sup>14</sup> The ‘Cardiff integration process’ was another important factor. This was the name given to the process launched by European Heads of State and Government (the European Council) when they met in Cardiff in June 1998, which required the integration of environmental considerations into the respective activities, of the Council of Ministers, putting Article 6 of the EC Treaty into practice.<sup>15</sup>

In March 1998 Emma Bonino, Fisheries Commissioner, circulated a CFP review questionnaire with nine pages of detailed questions, including one under ‘resource management’ asking whether the present CFP takes ‘sufficient account of environmental considerations? If not, what improvements do you propose?’ It was circulated to roughly 300 organisations representing fishermen, traders, processors, consumers and environmental interests. It closed to replies at the end of September 1999 and in that time attracted over 170 responses, many from the United Kingdom (49), with only one Member State (Luxembourg) failing to produce any reply. Just under half the replies (80) came from fishermen’s organisations, compared to 20 responses from trade/processing organisations, 13 from organisations representing the environment and 32 from ‘other’ groups.<sup>16</sup> Then between September 1998 and June 1999, 30 regional meetings in Member States were held to encourage stakeholder participation.

In 1999, Franz Fischler took up his post as Fisheries Commissioner. By this time the CFP reform process was already underway. Two of his initial priorities were to take urgent measures to restore fish stocks and to create an effective and coherent fisheries policy. Fischler was an advocate of environmental integration, including concrete measures to protect fish stocks and the wider marine environment, as well as greater stakeholder involvement. During his time in office, stakeholder consultation has been broadened to involve not only the sector but also others such as developmental and environmental NGOs. He always kept an open door policy with environmental interests, generally supporting their claims. This was a politically turbulent period, when many Ministers put the interests of their national fishing fleet first and fought

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<sup>12</sup> The North Sea Conferences are political events. The decisions of Ministers, as recorded in the Ministerial Declarations, are political commitments which have played an important role in influencing legally binding environmental management decisions both nationally and within the framework of competent international bodies.

<sup>13</sup> The Commission produced in 1998 and in 1999 follow-up reports on the implementation within the Community of the aforementioned Statement of Conclusions. See COM (1998) 326 final, *Report on the Implementation of the Statement of Conclusions from the Intermediate Ministerial Meeting on the Integration of Fisheries and Environmental Issues*, Bergen, 13-14/03/1997; COM (1999) 270 final, *Second Report from the Commission to the Council and the European Parliament on the Implementation of the Statement of Conclusions from the Intermediate Ministerial Meeting on the Integration of Fisheries and Environmental Issues*, Bergen, 13-14/03/1997.

<sup>14</sup> EC Treaty, *supra* note 3, Article 6.

<sup>15</sup> Presidency Conclusions of the Cardiff European Council, 15 and 16 June 1998, Document SN 150/1/98 REV 1 EN.

<sup>16</sup> El Anzueto (1998), *Assessing the questionnaire responses* Vol. 2, p. 3.

the reform process in different ways. The six 'Friends of Fishing' nations (Ireland, France, Spain, Portugal, Italy and Greece) lobbied heavily and the Director-General of Fisheries, Steffen Smidt, left his job in the middle of the reform process under dubious circumstances.

In the United Kingdom, the Minister for Fisheries at the time was Mr. Elliot Morley who supported the need for a thoroughly revised CFP to reflect a modern fishing industry in balance with its environment. Whilst the United Kingdom was supportive of measures to prevent the collapse of overfished stocks such as cod, there was a feeling that further action by other Member States in terms of effort reduction was required. At the time, it was stated by Ministers that the United Kingdom had already contributed sufficiently to fleet reduction.

At the end of 1999 the Commission drafted a Commission report and proposals and in March 2001 produced its Green Book.<sup>17</sup> The Green Book attracted widespread discussion and official negotiations were held before finally adopting the new CFP legislation, which took effect from 1st January 2003.<sup>18</sup> After the December 2002 Council meeting, Fischler stated that compromise on reform was still 'an historic milestone in the EU policy on fisheries', and a 'significant turning point' where ministers took difficult decisions and set an entirely new course for the CFP.

### **2.2.3 Demands for environmental integration into the CFP**

Aware that the CFP traditionally dealt with environmental matters in a reactive way, rather than integrating environmental concerns into all management considerations in a proactive matter,<sup>19</sup> the Commission concluded that in order to respond to the legal obligation of integration, the CFP needed to equip itself with the necessary tools.<sup>20</sup> At the Cologne summit in June 1999, the European Council requested that the Commission prepared a report on the integration of environmental requirements and sustainable development into the CFP.<sup>21</sup> A first and fundamental element of the environmental integration in fisheries was identified as a change in attitude of management through the adoption of an ecosystem-based approach to fisheries management: any management action performed should take into account its potentially important effects on the marine ecosystem. Secondly, the environmental policy principles (see section 3.1.) needed to be applied to fisheries management. With the exception of the precautionary principle in the management of single fish stocks, limited work had been carried out to ascertain their implications to fisheries management. Thirdly, specific management action (action plans), covering all aspects of fisheries management, needed to be undertaken in order to serve the environmental objectives. Specific attention was given to the 2002 CFP reform, as an opportunity to reinforce the legal framework to facilitate such specific action.<sup>22</sup>

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<sup>17</sup> COM (2001) 135, *supra* note 8.

<sup>18</sup> Council Regulation (EC) N° 2371/2002 of 20 December 2002 on the Conservation and Sustainable Exploitation of Fisheries Resources Under the Common Fisheries Policy, OJ N° L 358, 31/12/2002, p. 59-80.

<sup>19</sup> COM (2001) 143 final, Communication from the Commission to the Council and the European Parliament - *Elements of a Strategy for the Integration of Environmental Protection Requirements into the Common Fisheries Policy*, 16/03/2001, p. 5.

<sup>20</sup> COM (1998) 333, *Partnership for Integration, A strategy for Integrating Environment into European Union Policies*, June 1998.

<sup>21</sup> European Council, *Presidency Conclusions of the Cologne European Council*, 3 and 4 June 1999.

<sup>22</sup> COM (2001) 143 final, *supra* note 19, p. 21-22.

In order to fulfil the integration obligations, the protection of the marine environment was also elaborated from a biodiversity perspective. On 21 June 1998, the Council endorsed a 'Community Strategy on Biological Diversity'.<sup>23</sup> This strategy called for the generation of sector-based action plans. With regard to the fisheries, the objectives were twofold: firstly, to conserve commercially fished species of marine fish in order to achieve sustainability of stocks, fishing opportunities and food supply and, secondly, to reduce the impact of fishing operations on non-target species and marine habitats. It therefore envisaged the application of the precautionary approach to the setting of TACs and the reform of the main CFP consultative forum, the Advisory Committee on Fisheries (ACF), to include environment and development organisations.<sup>24</sup>

In June 1999, the Commission adopted a 'Communication on Fisheries Management and Nature Conservation in the Marine Environment' identifying a number of priorities and implementing measures which would benefit from increased co-ordination and coherence between the CFP and the environmental policy. It was said that the complementarities of such measures was synergistic to the conservation of fish stocks and to the conservation of marine nature as they would help to 'eliminate overfishing and to ensure that fisheries managers take into account life and biodiversity in the oceans.' Its guiding principles were sustainable development, responsible fisheries, precaution and preventative action.

The priorities were identified as: the improvement in the selectivity of fisheries operations; the protection of the natural habitats or the habitats of species of Community interest under the Habitats Directive<sup>25</sup>; the strict protection of marine animal species; and lastly, the use of space/time limits on fisheries activities: restricted areas inside which specific, different and generally more binding measures apply than those for the entire management area of which they form part.<sup>26</sup>

The Biodiversity Strategy was followed by a more specific 'Biodiversity Action Plan for Fisheries'.<sup>27</sup> It contains valuable information and concrete proposals for minimising the impact on the Community waters' biodiversity. In brief, most attention is given to the precautionary approach, the uncertainty of scientific information with respect to the ecosystem (habitats, untargeted species, etc.). It stresses the reduction of fishing pressure and identifies therefore the need, in line with the Habitats Directive, to make use of restricted areas such as closed areas or no-take zones. The action plan also acknowledges the need to adopt technical measures to restrict pressure on fish stocks (mesh sizes, temporal closures, etc). Under a separate heading, it stresses the need for technical measures in relation to other organisms and habitats, which it seems to equate with ecosystems. Again the importance of the Habitats Directive was reiterated, as special attention needed to be paid to reducing the impact on species and habitats listed in the Habitats and Birds<sup>28</sup> Directives.

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<sup>23</sup> COM (1998) 42, *A European Community Biodiversity Strategy*, 4/02/1998.

<sup>24</sup> COM (2000) 803 final, *Communication from the Commission to the Council and the European Parliament - Application of the Precautionary Principle and Multiannual Arrangements for Setting TACs*, 1 December 2000.

<sup>25</sup> Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ N° L 206, 22/06/1992, p. 7-50.

<sup>26</sup> COM (1999) 363 final, *Fisheries Management and Nature Conservation in the Marine Environment*, 14 June 1999.

<sup>27</sup> COM (2001) 162 final, *Biodiversity Action Plan for Fisheries (Volume IV)*, 27 March 2001.

<sup>28</sup> Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds, OJ N° L 103, 25/4/1979, p. 1-18.

The need for a broader maritime approach was identified in order to counteract many of the problems in the marine environment which were not exclusively due to the effects of fishing activities but did nevertheless affect the state of fish stocks. In particular, pollution from industrial and other human activities and climate change were mentioned. In addition, environmental problems resulting from the combined impacts of fisheries and another activity, e.g. the joint impact of tourism and fisheries on the degradation of habitats, called for a co-ordinated, integrated and coherent policy approach whilst identifying the process of Integrated Coastal Zone Management (ICZM) as an institutional framework.

With regards to the need to integrate the environmental dimension into the CFP policy making, the Commission again adhered to its previous communications by stressing the essential objectives and elements of an integration strategy as being:

- the adoption of an ecosystem-based approach to fisheries management;
- the embracing of the environmental principles of Article 174 of the Treaty;
- the implementation of the 'Biodiversity Action Plan for Fisheries'; and
- other specific initiatives, some of which were described in the Communication 'Fisheries management and Nature Conservation in the marine environment'.

As part of the CFP reform, other non-binding Community action plans were adopted in 2002. These plans contain policy options to reduce the impact of fishing activities on marine habitats and species and reinforce the ecosystem-approach.<sup>29</sup> The action plan on the eradication of illegal, unreported and unregulated (IUU) fishing<sup>30</sup> as well as that of the reduction of discards of fish<sup>31</sup> are good examples of identifying useful criteria and naming the measures which should be adopted to pursue sustainable fishing practises. A separate plan addresses the conservation and sustainable exploitation of Mediterranean fisheries resources.<sup>32</sup>

In the Green Book, the Commission expressed its concern over the impacts of fishing activities on the degradation of habitat and biodiversity and called for a balance to be established between environmental and fisheries interests. In addition, the Commission heard the statements of some 400 stakeholders, many of whom supported putting sustainability as the main goal of the CFP and specifically the integration of environmental issues into the CFP. Environmental NGOs in particular highlighted that a well-functioning ecosystem and the marine species within it could lead to a win-win situation for marine ecosystems and the fishing industry.<sup>33</sup>

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<sup>29</sup> COM (2002) 186, *Action Plan to Integrate Environmental Protection Requirements into the CFP*, 28/5/2002.

<sup>30</sup> COM (2002) 180, *Action Plan to Eradicate Illegal, Unreported and Unregulated Fishing*, 28/4/2002.

<sup>31</sup> COM (2002) 656, *Commission Action Plan to Reduce Discards of Fish*, 26/11/2002.

<sup>32</sup> COM (2002) 535 final, *Communication from the Commission laying down a Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the Common Fisheries Policy*, [not dated].

<sup>33</sup> COM (2001) 143 final, *supra* note 19, p. 21-22.

### 3 Key legislative changes in the 2002 regulation

Although only explicitly obliged to review three components during the 2002 review - the rules of access to the 6 to 12 nm limit, to the Shetland Box and to the North Sea<sup>34</sup> - all the factors, as discussed above, led to the general consensus that the CFP was failing to achieve its objectives of conserving fish stocks, protecting the marine environment, ensuring the economic viability of the European fleets and providing good quality food to consumers. The Commission therefore considered that the whole of the CFP had to be reviewed. The 2002 CFP reform was much more comprehensive than legally required and it covered a much larger range of issues than previously discussed under the CFP. This led to the formulation of broader objectives and a number of significant changes. These were primarily legislative changes to conservation and structural policies. They reflected:

1. a move towards a more long-term approach to fisheries management. The revised CFP should lead to a shift away from annual decision-making on TACs, to multi-annual planning as well as the use of recovery plans for restoring overfishing and depleted fish stock;
2. a new fleet policy to limit and gradually reduce over-capacity. Member States are given more responsibility to match capacity with fishing possibilities, while vessels renewal and modernisation subsidies are phased out;
3. a better application of the rules. This is to be achieved through an increased co-operation between national authorities and a more uniform control and sanction system throughout the EU; and improved governance. The aim is to involve stakeholders more closely into the policy making process. This is to be achieved through the setting up of RACs.

The new Regulation 2371/02 concerning the conservation and sustainable exploitation of fisheries resources now contains more specific and progressive objectives and provisions (see Annex 1) with 36 articles laid out in seven chapters replacing Regulation 3760/92 with its 21 articles. The new Regulation which on paper aims for sustainable exploitation provides the legal basis to adopt measures to reduce negative impacts on the environment.

#### 3.1 Environmental objectives

No explicit reference is made to the integration principle of Article 6 EC Treaty in Regulation 2371/2002. However, it does state that the CFP shall be 'guided' by the principle of good governance, which entails, *inter alia*, consistency with other Community policies, in particular environmental policies.<sup>35</sup>

The wording of the environmental policy objectives defined in the EC Treaty bears little resemblance to that of the CFP.<sup>36</sup> The new Regulation sets out definite objectives. Its main objective is formulated so as to 'ensure exploitation of living aquatic resources, providing sustainable economic, environmental and social

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<sup>34</sup> Regulation 3760/92, *supra* note 6, Article 14 (2); 1985 and 1994 Acts of Accession. Regulation 3760/1992 did not rule out an all encompassing review, as it was stipulated that the Council was to decide - on the basis of a report on the fisheries situation in the Community and, in particular, on the economic and social situation of the coastal regions, on the state of the resources and their expected development, and on the implementation of Regulation 3760/1992 - *on any necessary adjustments to be made*.

<sup>35</sup> Regulation 2371/02, *supra* note 18, Article 2 (2).

<sup>36</sup> EC Treaty, *supra* note 3, Article 174 (1).

conditions.’<sup>37</sup> Throughout Regulation 2371/2002 no reference is made to the environmental policy objectives. Nevertheless, some of them undoubtedly touch upon the road to achieving sustainable fisheries, i.e. preserving, protecting and improving the quality of the environment; prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems.

The objective of sustainable exploitation through combating overexploitation is an important element in achieving sustainable fisheries and at the same time contributes to the requirements of the prudent and rational utilisation of natural resources. The measures announced in Article 4 (see section 4.) are particularly designed towards this end. The inclusion of these measures is to be considered as a turning point in the road towards achieving sustainable fisheries. Prior to this framework Regulation, the CFP Policy was largely based on a traditional ‘command’ and ‘control’-type legislation,<sup>38</sup> largely to the detriment of innovative instruments aimed, inter alia, at the ecosystem approach, and at combating by-catch and illegal fishing.

### 3.2 Environmental principles

Reference to the environmental principles of Article 174 (2) EC Treaty is made once in the Regulation’s preamble ‘the precautionary approach is based on the same considerations as the precautionary principle referred to in Article 174 of the Treaty.’<sup>39</sup> The prominent place of the precautionary principle is to be explained by its popularity among the environmental principles in the last decade. The absence of or the restricted interpretation of the environmental principles in Regulation 2371/02 might be explained by the existing confusion on their legal nature. It has been argued that the wording of Article 174 (2), in particular because of its alleged vagueness, does not contain legally binding rules that must be applied in every case or must be taken into account as the basis for every Community policy. Rather, they are principles that, by their nature, allow for exemptions or derogations. In other words, they have no direct legal consequences and require no specific action. They only have ‘legal’ significance’ as ‘general guidelines’ when applying the provisions of Article 174.<sup>40</sup> This approach is followed in the basic fisheries Regulation when formulating its principle of good governance.

#### *Preventive action*

Preventive action is considered to be the most ecologically expedient method for environmental protection. Therefore, the presence of the preventive principle might be expected in the Regulation. The principle is referred to, but in each of the three instances, it is not an inherent part of conservation instruments. This approach has a restricted or reactive nature, i.e. limited to enforcement/control or the envisaged measure addresses only situations where there is evidence of a risk. Firstly, if there is evidence of a risk that fishing activities could lead to a serious threat to the conservation of living aquatic resources, the Commission may take preventive

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<sup>37</sup> *Ibid.*, Article 2 (1).

<sup>38</sup> Coffey, C., Newcombe, J., *The Polluter Pays Principle and Fisheries: the Role of Taxes and Charges*, London (IEEP) 2001, p. 5.

<sup>39</sup> Regulation 2371/02, *supra* note 18, 3<sup>rd</sup> Recital.

<sup>40</sup> Dhondt, N., *Integrating Environmental Protection Into Other EC Policies*, Groningen (Europa Law Publishing) 2003, p. 115; Krämer, L., *EEC Treaty and Environmental Protection*, London (Sweet and Maxwell) 1990, p. 60-61.

measures.<sup>41</sup> This provision does not entail a duty to act. Secondly, Member States must take inspection and enforcement measures to prevent the involvement of their nationals in fisheries activities that do not respect the applicable conservation and management measures.<sup>42</sup> Lastly, Member States must take immediate measures to prevent vessels, natural or legal persons found in flagrante delicto, as defined in Regulation 1447/1999, from continuing to do so.<sup>43</sup>

Elements of a preventive approach can be found indirectly in the technical measures available under both management and recovery plans. However, by not explicitly including it in the chapter on conservation measures, the Regulation fails to incorporate a more proactive approach towards the conservation of the marine environment.

#### *Polluter pays and rectification at source principles*

The principle that the cost of environmental damage or resource depletion should be borne by polluters or users, the polluter pays principle, is not enshrined in the basic Regulation.<sup>44</sup> One can also look in vain for the rectification at source principle.

#### *Precautionary principle*

It is explicitly stated that the CFP must provide for coherent measures concerning the 'limitation of the environmental impact of fishing.'<sup>45</sup> To this end, it sees the precautionary approach, when taking protection and conservation measures, as an appropriate tool.<sup>46</sup> This means, in accordance with the definition given to it, 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.<sup>47</sup> This definition links the precautionary principle to the protection of ecosystems.

### **3.3 Ecosystem approach**

The gradual implementation of an ecosystem based approach to fisheries management is further envisaged.<sup>48</sup> Sustainable exploitation is explicitly linked with minimising the effects on marine ecosystems.<sup>49</sup> Contrary to the precautionary approach, the Regulation does not provide a definition of the ecosystem approach.

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<sup>41</sup> *Ibid.*, Article 26 (3).

<sup>42</sup> *Ibid.*, Article 24 (e).

<sup>43</sup> *Ibid.*, Article 25 (5); Regulation (EC) N° 1447/1999 Establishing a List of Types of Behaviour which Seriously Infringe the Rules of the Common Fisheries Policy, OJ L 167, 2/07/1999, p. 5.

<sup>44</sup> The polluter pays principle can play an important role in fisheries. Taxes and charges can be used in applying the principle to fisheries. As Coffey points out, fisheries are associated with a number of 'externalities': costs arising from an economic activity that fall on a third party, and are not taken into account by those undertaking the activity. The damage to or loss of natural capital is born by society, but is external to the fishing sector. See: Coffey & Newcombe, *supra* note 38, p. 5.

<sup>45</sup> Regulation 2371/02, *supra* note 18, Article 1 (2) (b).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, Article 3 (i).

<sup>48</sup> *Ibid.*, Article 2 (1). This Article reads "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 eco-systems. It shall aim at a progressive implementation of an eco-system based approach to fisheries management."

<sup>49</sup> Article 3 (e) reads "sustainable exploitation means the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine eco-systems."

Regulation 3760/92 made brief mention of the ecosystem but not to the precautionary approach. It stated its objective as ‘to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system’.<sup>50</sup> As well as defining the precautionary approach, the new Regulation also defines what it means by ‘limit reference points’, ‘conservation reference points’ and ‘safe biological limits’, all terms that are absent from the old Regulation.

### 3.4 Conservation measures

In order to substantiate the CFP objectives, Chapter II of the 2002 Regulation sets out the conservation measures to be adopted in the pursuit of sustainable fishing activities. These measures are more comprehensive than those laid down in Regulation 3760/92. They may, in particular, include measures for each stock or group of stocks aimed at limiting fishing mortality and the environmental impacts of fishing activities. The types of measures are listed in Article 4.<sup>51</sup> When mentioning ‘zones in which fishing activities are prohibited or restricted’ it goes on to specify ‘including for the protection of spawning and nursery areas’.<sup>52</sup> Again it is specific about technical measures, stating they must be adopted including ‘specific measures to reduce the impact of fishing activities on marine eco-systems and non-target species’,<sup>53</sup> compared to Regulation 3760/92 which simply stated that technical measures should be laid down ‘regarding fishing gear and its method of use’.<sup>54</sup> The new Regulation also makes provision for the establishment of incentives, including those of an economic nature, to promote low impact fishing.<sup>55</sup> Finally, a new measure is included of ‘conducting pilot projects on alternative types of fishing management techniques’.<sup>56</sup>

### 3.5 Multi-annual/multi-species approach

In terms of conservation, the trend is now for a multi-annual approach to management and recovery plans. In the past, despite Regulation 3760/1992 stating that the Commission should determine TACs ‘where appropriate on a multi-annual basis and/or on a multispecies basis’ in reality, TACs were set annually and only with respect to single species.<sup>57</sup> The reformed CFP re-introduces a long term approach to fisheries management, condoning a multi-annual approach to a much greater degree. In its preamble it notes that ‘the objective of sustainable exploitation will be more

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<sup>50</sup> Regulation 3760/92, *supra* note 6, Article 2 (1).

<sup>51</sup> These include the adoption of recovery plans; the adoption of management plans; the establishment of the targets for the sustainable exploitation of stocks; limiting catches; fixing numbers and types of vessels; limiting the fishing effort. Technical conservation measures such as gear restrictions; the establishment of closed or restricted areas; measures aimed at the reduction of the impact of fishing activities on the marine ecosystems and non-target species; minimum size of individuals that may be retained on board and /or landed, the establishment of incentives to promote more selective or low impact fishing; and conducting pilot projects on alternative types of fishing management techniques.

<sup>52</sup> Regulation 2371/02, *supra* note 18, Article 4 (g) (ii).

<sup>53</sup> *Ibid.*, Article 4 (g) (iv).

<sup>54</sup> Regulation 3760/92, *supra* note 6, Article 4 (2) (f).

<sup>55</sup> Regulation 2371/02, *supra* note 18, Article 4 (h).

<sup>56</sup> *Ibid.*, Article 4 (i).

<sup>57</sup> Regulation 3760/92, *supra* note 6, 10<sup>th</sup> Recital.

effectively achieved through a multi-annual approach... involving multi-annual management and recovery plans'.<sup>58</sup>

For stocks at or within safe biological limits, multi-annual management plans will be adopted to ensure the objective of sustainable exploitation. For stocks outside safe biological limits,<sup>59</sup> the adoption of multi-annual recovery plans is an absolute priority. Both plans may cover either fisheries for single stocks or fisheries exploiting a mixture of stocks, and must take due account of interactions between stocks and fisheries. Stocks for which no multi-annual plans have been established will be managed by means of the more traditional catch and effort limitations.<sup>60</sup> Both recovery and management plans must be drawn up on the basis of the precautionary approach<sup>61</sup> and must include conservation reference points, such as targets against which the recovery/maintenance of stocks will be assessed. These plans may also include targets relating to other living aquatic resources and the maintenance or improvement of the conservation status of marine ecosystems.<sup>62</sup> Where more than one target is set, management plans must specify the order of priority of these targets. Both management and recovery plans must indicate the expected time frame for reaching the targets established. Management and recovery plans must always include conservation reference points expressed in population size, long term-yields, fishing mortality rate and/or stability of catches.<sup>63</sup>

### 3.6 Emergency measures

When there is evidence of a serious threat to the conservation of living aquatic resources or to the marine ecosystem, resulting from fishing activities, the Commission may decide on emergency measures. The fact that the evidence of a serious threat has to be awaited shows that the CFP still relies on a reactive approach to fisheries management. The Commission can do so on its own initiative or at the request of a Member State. The measures are not to last more than six months, unless the Commission extends them for a maximum period of another six months.<sup>64</sup> As it is the case for the Member States emergency measures and under the same procedural requirements as described below, the Council may take eventually another decision.<sup>65</sup> This provision is not entirely new.<sup>66</sup> Regulation 3760/1992 provided that such action was possible 'in the event of serious and unexpected upheaval liable to jeopardize conservation of resources'.<sup>67</sup>

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<sup>58</sup> Regulation 2371/02, *supra* note 18, 6<sup>th</sup> Recital.

<sup>59</sup> According to Article 3 (1) of Regulation 2371/02, 'safe biological limits' means indicators of the state of a stock or of its exploitation inside which there is a low risk of transgressing certain limit reference points.

<sup>60</sup> *Ibid.*, Preamble, 9<sup>th</sup> Recital.

<sup>61</sup> *Ibid.*, Articles 5 (3) and Article 6 (3)

<sup>62</sup> *Ibid.*, Articles 5 (2) and 6 (2).

<sup>63</sup> *Ibid.*, Article 5 (2).

<sup>64</sup> *Ibid.*, Article 7 (1).

<sup>65</sup> *Ibid.*, Article 7 (2-5).

<sup>66</sup> Council Regulation (EEC) N° 171/83 of 25 January 1983 Laying Down Certain Technical Conservation Measures for the Conservation of Fishery Resources, OJ L 24, 27/01/1983, Article 18 (1); Council Regulation (EEC) N° 3094/86 of 7 October 1986 Laying Down Certain Technical Measures for the Conservation of Fishery Resources, OJ L 288, 11/10/1986, Article 13 (1); Council Regulation (EC) N° 894/97 of 29 April 1997 Laying Down Certain Technical Measures for the Conservation of Fishery Resources, OJ L 132, 23/05/1997, Article 16 (1); Council Regulation (EC) N° 850/98 of 30 March 1998 for the Conservation of Fishery Resources through Technical Measures for the Protection of Juveniles of Marine Organisms, OJ L 125, 27/4/1998, Article 45 (1).

<sup>67</sup> Regulation 3760/92, *supra* note 6, Article 15.

Member States can also take temporary emergency measures to protect their living aquatic resources or the marine ecosystem within waters falling under their sovereignty or jurisdiction, when there is evidence of a serious and unforeseen threat and where any undue delay would result in damage that would be difficult to repair.<sup>68</sup> This delegated competence is a major step forward. The material scope extends to the living aquatic resources and the marine ecosystem. The duration of the measures is limited in time for a maximum period of three months. Moreover, the Member States have to provide evidence that the threat was unforeseen and immediate action is required. An important limitation, however, is that the threat must result from fishing activities. Consequently, it appears that - under this provision - Member State action is not possible if the danger would result from other activities, such as oil spills resulting from marine traffic collisions at sea. Notification is required prior to the adoption of the emergency measure. Member States must notify their intention to adopt emergency measures to the Commission, the other Member States and the RACs. These recipients may submit their written comments to the Commission, which is charged with confirming, cancelling or amending the measures. Subsequently, the Commission decision is notified to the Member States concerned, which may refer it to the Council. The Council acting by qualified majority voting (QMV) may take a different decision.<sup>69</sup> It follows that in a situation where no disagreement on the measure has arisen in the other Member States and by the Commission, a Member State can enact its measure within six days at the earliest and 21 days at the latest after notification. In the opposite situation, it could take as long as two months, in a case when the Council agrees to the measure, to put the measure into operational effect.

### **3.7 Rules on access to waters and resources**

The principle of equal access to waters and resources in all Community waters still applies, subject to some exceptions. The restrictions on access in the 12 nm coastal bands of Member States have been maintained which means that Member States may retain exclusive fishing rights. This derogation is based on preserving the most sensitive areas by limiting fishing effort and protecting traditional fishing activities on which the social and economic development of certain coastal communities depends. Certain Member States, however, need to respect the historical rights enjoyed by other Member States in these waters.<sup>70</sup> A review of the current provisions will take place in 2012 as part of the CFP review.

Beyond these coastal waters, certain access restrictions also apply. The Shetland Box<sup>71</sup> was set up to control access to species of special importance in the region and which are biologically sensitive.

The allocation key used to share fishing opportunities among Member States has also been retained.<sup>72</sup> Fishing opportunities are allocated among the Member States in such a way as to ensure the relative stability of the fishing activities of each Member State for each stock concerned. This distribution pattern, based on historical catches,

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<sup>68</sup> Regulation 2371/02, *supra* note 18, Article 8 (1).

<sup>69</sup> *Ibid.*, Article 8 (2-6).

<sup>70</sup> Regulation 2371/02, *supra* note 18, article 17.

<sup>71</sup> *Ibid.*, Article 18.

<sup>72</sup> Regulation 2371/02, *supra* note 18, Recitals 16-18 & Article 20.

implies the maintenance of a fixed percentage of authorised fishing effort of the main commercial species for each Member State.

There is now a clause in Regulation 2371/2002 which also ensures that if quotas are exceeded by a Member State in one year, then ‘the Commission shall operate deductions from future fishing opportunities of that Member State’. If as a result of such exceeding, another Member State has not been able to exhaust its own fishing opportunities, equivalent fishing opportunities may, totally or partly, be reallocated to this Member State.<sup>73</sup>

### **3.8 Member States’ measures within their coastal waters**

Apart from the emergency measures discussed above, Member States may also take non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effects of fishing on the conservation of marine ecosystems within 12 nm of their baselines, provided that the Community has not yet adopted measures specifically for this area and do not affect the vessels of another Member State.<sup>74</sup> Where measures to be adopted by a Member State are liable to affect the vessels of another Member State, such measures shall be adopted only after the Commission, the Member State and the RAC concerned have been consulted on a draft of the measures accompanied by an explanatory memorandum. Only after such consultation can the measures be adopted. No consultation requirement is imposed on the Member States when the activities of the vessels of other Member States are not affected. This gives the coastal Member States an unprecedented discretionary power.

The coastal waters of the vast majority of Member States are not frequented by the vessels of other Member States, i.e. those vessels enjoy no historical rights. If the Commission considers during the consultation procedure that the proposed measures do affect the vessels from other Member States, the Commission has to confirm, amend or cancel the measure. The Council could take another decision.<sup>75</sup> Since the Member States are authorised from 1 January 2003 to 31 December 2012 to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, this is of particular importance for the Member States enjoying historical fishing rights within the coastal waters of other Member States. The reservation made that no such action is possible when the Community has already specifically legislated for this area seems also targeted at safeguarding the rights of other Member States. Equally, the requirement for such measures to be of a non-discriminatory character seems only to be relevant in respect of certain Member States’ coastal waters, especially since the ECJ has held in Case C-370/88 that the non-discrimination principle did not require the Member States to treat their own nationals equally.<sup>76</sup>

The practical implication of this provision is that it allows Member States to pursue different fisheries policy objectives that are complementary but not contradictory to the EC objectives. It should be noted, however, that apart from judiciary proceedings, the Commission has no means at its disposal to halt the adoption of a measure which

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<sup>73</sup> Regulation 2371/2002, *supra* note 18, 21<sup>st</sup> Recital & Article 23 (4).

<sup>74</sup> *Ibid.*, Article 9 (1).

<sup>75</sup> *Ibid.*, Article 9 (2). This procedure is dealt with in Article 8 (3-6).

<sup>76</sup> Case C-370/88, Reference for a preliminary ruling: High Court of Judiciary (Ecosse) - United Kingdom, 1990 ECR I-04071.

is contrary to the CFP objectives. These national complementary objectives tend to place a stronger emphasis on the socio-economic dimensions such as employment, e.g. Italy, Ireland, or the maintenance of a national independent fisheries sector, e.g. Belgium, Italy and Portugal.<sup>77</sup>

### 3.9 Fishing capacity

The 1992 Regulation makes no mention of fishing capacity, but Regulation 2371/2002 addresses this problem, dedicating a whole chapter to 'Adjustment of Fishing capacity', including an article on 'entry/exit scheme and overall capacity reduction' and another explaining 'Conditionality of Community financial assistance and reduction of fishing effort.' Five articles are devoted to the adjustment of fishing capacity. Ways to achieve this are:

- the fixing the number of vessels and type authorized to fish;<sup>78</sup>
- the establishment for each Member State of reference levels for fishing fleets expressed in GT and kW;<sup>79</sup>
- the use of entry/exit schemes and overall capacity reduction;<sup>80</sup>
- Member States are also expected to report on their efforts to achieve a sustainable balance between fishing capacity and fishing opportunities;<sup>81</sup>
- the obligation to keep fleet registers as a means to control and monitor fishing capacity.<sup>82</sup>

### 3.10 Enforcement

Regulation 2371/2002 pays greater attention to enforcement with a whole chapter dedicated to 'Community Control and Enforcement System'. This chapter includes seven articles and makes mention, inter alia, of fishing licenses, inspectors, observer schemes and remote vessel monitoring systems (VMS).<sup>83</sup> Regulation 3760/92 only dealt with enforcement in one article under 'General Provisions' where it stated 'to ensure compliance with this Regulation, the Council . . . shall install a Community control system'.<sup>84</sup>

The main provisions governing control, inspection and enforcement of the CFP rules have been inserted into Regulation 2371/02.<sup>85</sup> The system was reinforced and the division of responsibilities between the Member States' authorities and the Commission clarified. This new legal framework applies throughout the fisheries chain, to structural and market policies as well as to fishing operations. The general distribution of responsibilities, according to which the Member States are responsible for the control and enforcement of the CFP and the Commission for monitoring and

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<sup>77</sup> IEEP, *Development of Indicators of Environmental Performance of the Common Fisheries Policy – A Review of the Current Management Framework Policy Objectives for Which Indicators are Needed* 12 (D. Reyntjens & J. Brown eds, 2006).

<sup>78</sup> Regulation 2371/02, *supra* note 18, Article 11.

<sup>79</sup> *Ibid.*, Article 12.

<sup>80</sup> *Ibid.*, Article 13.

<sup>81</sup> *Ibid.*, Article 14.

<sup>82</sup> *Ibid.*, Article 15.

<sup>83</sup> *Ibid.*, Articles 21-28.

<sup>84</sup> Regulation 3760/92, *supra* note 6, Article 12

<sup>85</sup> Regulation 2371/02, *supra* note 18, 19<sup>th</sup> Recital.

enforcing the correct application of Community law, were not altered. Nevertheless, the Commission's role in monitoring the application of the CFP rules by the Member States was enhanced.

Member States must take the inspection and enforcement measures necessary to ensure compliance with the rules of the CFP. These measures must be effective, dissuasive and proportionate.<sup>86</sup> The Commission is provided with new powers to monitor and ensure the application of the CFP by the Member States, including the power to impose sanctions on Member States. If there is evidence that rules on conservation, control, inspection or enforcement are not being complied with and that this could lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system, the Commission is to inform the Member State concerned of its findings. The Member State in question can then demonstrate compliance by giving its comments. These comments are taken into account by the Commission<sup>87</sup> when it decides to take preventive action, such as suspending certain fishing activities or landings of catches by certain categories of vessels or in certain ports. First the Commission has to have evidence that there is a risk that fishing activities carried out could lead to a serious threat to the conservation of living aquatic resources. Such action by the Commission must be proportionate to the risk which non-compliance with the rules would bring. They may not exceed three weeks in duration and may be prolonged up to a maximum of six months, following a decision by the management committee. When the Commission finds that the risk no longer exists, the measures must be lifted immediately.<sup>88</sup>

Regulation 2371/02 intensified the cooperation and coordination requirements by stipulating, inter alia, that Member States, in the case of control and inspection of transboundary fishing activities, must coordinate their actions and exchange inspectors to this end.<sup>89</sup> Without prejudice to the primary responsibility of the coastal Member State, Member States are authorised to inspect Community fishing vessels flying their flag in all Community waters outside waters under the sovereignty of another Member State. Member States are also authorised to carry out inspections in all Community waters outside waters under their sovereignty on fishing vessels, after being authorised by the coastal Member State concerned, or where a specific monitoring programme has been adopted. In international waters, Member States can inspect Community fishing vessels flying the flag of another Member State.<sup>90</sup>

### 3.11 Decision-making

The good governance principle, as outlined in the new Regulation, helps significantly in the decision-making process. Firstly it requires that the CFP is guided by the broad involvement of stakeholders at all stages of the policy from conception to implementation. Secondly, it ensures that the responsibilities at the Community,

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<sup>86</sup> *Ibid.*, Article 24.

<sup>87</sup> *Ibid.*, Article 26 (2)

<sup>88</sup> *Ibid.*, Article 26 (3).

<sup>89</sup> *Ibid.*, Article 28 (1-2).

<sup>90</sup> *Ibid.*, Article 28 (3). In all other cases, Member States may authorise each other to carry out inspections in accordance with the rules of the CFP.

national and local levels must be clearly defined. Finally, good governance means that it is based on sound scientific advice which delivers timely results.<sup>91</sup>

To achieve broad stakeholder involvement, an important new addition to the CFP in the 2002 Regulation is the establishment of 'Regional Advisory Councils' in Article 31 of the 'Decision-Making and Consultation' chapter. 'Regional Advisory Councils' are to be composed principally of 'fishermen and other representatives of interests affected by the Common Fisheries Policy' and set up in sea areas falling under the jurisdiction of at least two Member States. Regulation 2371/02 states that 'Regional Advisory Councils may be consulted by the Commission in respect of proposals for measures, such as multi-annual recovery or management plans. They may also be consulted by the Commission and by the Member States in respect of other measures. These consultations shall be without prejudice to the consultation of the STECF and of the Committee for Fisheries and Aquaculture.'<sup>92</sup> The 1992 CFP made no provisions for the involvement of such regional stakeholders.

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<sup>91</sup> *Ibid.*, Article 2 (2).

<sup>92</sup> Regulation 2371/02, *supra* note 18, Article 31 (4).

## **4 How have these key legislative changes influenced fisheries management**

### **4.1 Assessment of the success/extent to which key environmental elements have been translated into implementing instruments**

This section examines the implementing Regulations and provides an assessment of the extent to which key environmental principles have been incorporated. A list of all relevant Regulations proposed and adopted since 2003 is provided in Annex 2. This list includes a number of Regulations relating to the main provisions in Regulation 2371/02 including those relating to long-term management (e.g. recovery plans and multiannual plans), fishing effort, technical measures and the protection of species and habitats. Furthermore, the list includes a number of other Regulations aimed at addressing overcapacity, control and enforcement and decision-making. However, there are a number of proposals which are still under consideration and pending adoption.

#### **4.1.1 Emergency measures**

Commission emergency measures have been generally adopted prior to the establishment of a long-term recovery plan. These measures were necessary to adopt due to annual TACs being set above the level given in scientific advice. Examples of emergency measures include the establishment of closed or controlled areas and the improvement of selectivity of fishing gears. There is also a requirement to establish observer schemes to collect catch data. The hake and Baltic Sea cod recovery plans discussed below were both preceded by Commission emergency measures.<sup>93</sup>

The Commission emergency measures for the recovery of cod stocks in the Baltic Sea were established in the aftermath of the 2002 reform.<sup>94</sup> The measures for the anchovy stock in the Bay of Biscay effected a closure of the fishery for three months from 3 July 2005 and was later extended for another three months.<sup>95</sup>

At the request of the United Kingdom, the Commission, in August 2003, implemented emergency measures to prohibit the use of bottom-trawls in the Darwin Mounds, an area in the north west of Scotland. This measure was taken in order to protect coral aggregations.<sup>96</sup> The conservation of the habitat in question was under serious threat and therefore immediate action was required. It was feared that bottom-trawling would continue in the area concerned, before any measures could be adopted by the Council. In February 2004, this emergency measure was extended for another six

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<sup>93</sup> Commission Regulation (EC) No 1162/2001 of 14 June 2001 establishing measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e and associated conditions for the control of activities of fishing vessels, OJ L 159, 15.6.2001, p. 4–9; Commission Regulation (EC) No 677/2003 of 14 April 2003 establishing emergency measures for the recovery of the cod stock in the Baltic Sea, OJ L 097, 15/04/2003, P. 31.

<sup>94</sup> Regulation 677/2003, *ibid.*

<sup>95</sup> Commission Regulation (EC) No 1037/2005 of 1 July 2005 establishing emergency measures for the protection and recovery of the anchovy stock in ICES Sub-area VIII, OJ L 171, 2/7/2005, p. 24; Commission Regulation (EC) No 1539/2005 of 22 September 2005 extending the emergency measures for the protection and recovery of the anchovy stock in ICES sub-area VIII, OJ L 247, 23/9/2005, P. 9.

<sup>96</sup> Commission Regulation (EC) No 1475/2003 of 20 August 2003 on the protection of deep-water coral reefs from the effects of trawling in an area north west of Scotland, OJ L 211, 21/8/2003, p. 14–15.

months.<sup>97</sup> The Council ensured the permanency of this measure by adopting Regulation 602/2004.<sup>98</sup>

Recently, the Commission adopted emergency measures for bluefin tuna fishing in both the Atlantic Ocean and Mediterranean Sea. These entailed fishing prohibition in force from mid June 2008 against purse seiners registered in Greece, France, Italy, Cyprus, Malta and Spain.<sup>99</sup> This fishing prohibition was put in place after Commission inspectors had established that the bluefin tuna recovery plan<sup>100</sup> had been poorly complied with.

#### **4.1.2 Long-term approach to fisheries management**

##### *Multi-annual plans*

As mentioned earlier, two types of multi-annual plans are now used as crucial components of the long-term approach to fisheries management: management plans and recovery plans. Since 2002, the Commission has made limited progress in this respect.

Management plans are implemented to maintain stocks at safe biological levels (above limit spawning biomass) before stocks reach a critical level. However, certain fish stocks are already in a state of dangerous depletion due to a complex mix of overfishing, to only low numbers of fish surviving to a commercially acceptable size and, possibly, to environmental factors. In these cases, e.g. cod stocks in Community waters, recovery plans are developed and implemented as a mean to halt and ultimately reverse further decline.

During the years following the CFP reform, the Council has started to implement multi-annual plans by adopting three recovery plans for stocks with a status 'outside safe biological limits'. These plans focus on four distinct species: the North Sea cod recovery plan (2004),<sup>101</sup> the Northern hake recovery plan (2004)<sup>102</sup> and the Southern hake and Norway lobster recovery plan (2005).<sup>103</sup> More recently, the Council adopted in June 2007, the long awaited recovery plan for European eels.<sup>104</sup> Despite its name, this plan, is not adopted pursuant the 'recovery plan' provisions of Regulation 2371/02.

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<sup>97</sup> Commission Regulation (EC) No 263/2004 of 16 February 2004 Extending for Six Months the Application of Regulation (EC) No 1475/2003 on the Protection of Deep-Water Coral Reefs from the Effects of Trawling in an Area North-west of Scotland, OJ L 46, 17/02/2004, p. 11.

<sup>98</sup> Regulation (EC) No 602/2004 of 22 March 2004 amending Regulation (EC) No 850/98 as Regards the Protection of Deepwater Coral Reefs from the Effects of Trawling in an Area North west of Scotland, OJ L 097, 01/04/2004, p. 30.

<sup>99</sup> Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea, OJ L 155, 13/6/2008, p. 9–10.

<sup>100</sup> See *infra* note 105.

<sup>101</sup> Council Regulation (EC) No 423/2004 of 26 February 2004 Establishing Measures for the Recovery of Cod Stocks, OJ L 70, 9/03/2004, p. 8–11.

<sup>102</sup> Council Regulation (EC) No 811/2004 of 21.4.2004 Establishing Measures for the Recovery of the Northern Hake Stock, OJ L 150, 30/04/2004, p. 1–11.

<sup>103</sup> Council Regulation (EC) No 2166/2005 of 20 December 2005 Establishing Measures for the Recovery of the Southern Hake and Norway lobster Stocks in the Cantabrian Sea and Western Iberian Peninsula and amending Regulation (EC) No 850/98 for the Conservation of Fishery Resources Through Technical Measures for the Protection of Juveniles of Marine Organisms, OJ L 345, 28/12/2005, p. 5–10.

<sup>104</sup> Council Regulation (EC) No 1100/2007 of 18 September 2007 Establishing Measures for the Recovery of the Stock of European Eel, OJ L 248, 22/09/2007, p. 17–23.

Recovery plans targeting species outside Community waters have also been adopted: the Eastern Atlantic and Mediterranean bluefin tuna recovery plan (2007)<sup>105</sup> which implemented on a permanent basis the provisional bluefin tuna recovery plan recommended and managed by the International Commission for the Conservation of Atlantic Tunas (ICCAT),<sup>106</sup> and the Greenland halibut recovery plan, managed by the Northwest Atlantic Fisheries Organisation (NAFO).<sup>107</sup> This plan had already been implemented on a provisional basis as from 2003.<sup>108</sup>

Four multi-annual management plans have also been adopted with respect to three distinct species and four geographical areas: the Bay of Biscay sole plan (2006),<sup>109</sup> the Baltic Sea cod plan (2007),<sup>110</sup> the Western Channel sole plan (2007)<sup>111</sup> and the North Sea plaice and sole plan (2007).<sup>112</sup> A proposal for a multi-annual plan for herring in the West of Scotland is still under adoption.<sup>113</sup> Its adoption is scheduled mid December 2008.

ICES has assessed the status and limits for the exploitation of 126 marine fish stocks.<sup>114</sup> It concluded that 26 of these stocks are outside Safe Biological Limits (SBLs), and 20 of these have zero-TAC advice. In addition, 23 out of 59 (65 unknown) fish stocks and/or species groups from six regions require rebuilding to return the biomass to levels above the precautionary approach threshold, Bpa. Of these, 17 stocks and/or species groups have been identified as critically endangered and in need of recovery to within safe biological limits, or Blim.<sup>115</sup> Furthermore the Commission has at various times, listed the stocks it views as requiring recovery plans.<sup>116</sup> Whilst ICES has defined precautionary reference points (e.g. Bpa biomass reference limit set according the precautionary approach), the EC has yet to identify

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<sup>105</sup> Council Regulation (EC) No 1559/2007 of 17 December 2007 Establishing a Multi-annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean and amending Regulation (EC) No 520/2007, OJ L 340, 22/12/2007, p. 8–24.

<sup>106</sup> Council Regulation (EC) No 643/2007 of 11 June 2007 amending Regulation (EC) No 41/2007 as concerns the Recovery Plan for Bluefin Tuna recommended by the International Commission for the Conservation of Atlantic Tunas, OJ L 151, 13/6/2007, p. 1–16.

<sup>107</sup> Council Regulation (EC) No 2115/2005 of 20 December 2005 Establishing a Recovery Plan for Greenland Halibut in the Framework of the Northwest Atlantic Fisheries Organisation, OJ L 340, 23/12/2005, p. 3–6.

<sup>108</sup> Council Regulation (EC) No 2287/2003 of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, OJ L 344, 31.12.2003, p. 1–119; Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, OJ L 12, 14/1/2005, p. 1–151.

<sup>109</sup> Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay, OJ L 65, 7/3/2006, p. 1–4.

<sup>110</sup> Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97, OJ L 248, 22/09/2007, p. 1–10.

<sup>111</sup> Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel, OJ L 122, 11/5/2007, p. 7–10.

<sup>112</sup> Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea, OJ L 157, 19/6/2007, p. 1–6.

<sup>113</sup> COM (2008) 240 final, *Proposal for a Council Regulation establishing a multi-annual plan for the stock of herring distributed to the West of Scotland and the fisheries exploiting that stock*, 6/5/2008.

<sup>114</sup> ICES. 2006. Report of the ICES Advisory Committee on Fishery Management, Advisory Committee on the Marine Environment and Advisory Committee on Ecosystems, 2006, 68 pp.

<sup>115</sup> R.C. Wakeford, D.J. Agnew & C.C. Mees, Review of institutional arrangements and evaluation of factors associated with successful stock recovery plans, 2007. CEC 6<sup>th</sup> Framework Programme No. 022717 UNCOVER. MRAG Report, March 2007. 58pp.

<sup>116</sup> COM (2003) 344, *supra* note 149; COM (2002) 181 final, *Communication from the Commission on the reform of the Common Fisheries Policy ("Roadmap")*, 28/5/2002.

target reference points. The Commission's first policy statement,<sup>117</sup> confirmed its intention to adopt Maximum Sustainable Yield (MSY) targets for Community fisheries.<sup>118</sup> Such advice is in line with the global commitments made at the 2002 Johannesburg World Summit on Sustainable Development (WSSD) that fish stocks shall be maintained or restored to levels that can produce MSY by 2015.

To date no stock has yet recovered through the direct intervention of a recovery plan. Some stocks recovered either during the negotiation of the plan or by early implementation of the management approaches that were later agreed to be part of the plan. It can take up to three years from the time that a problem is identified relating to a specific stock until the plan is adopted and then another year before it is implemented.

### *Implementing the ecosystem approach*

The objective of an ecosystem approach was more clearly defined in the 2002 action plan on the integration of environmental protection requirements into the CFP.<sup>119</sup> This plan highlighted the commitments towards improving fishing methods, reducing discards, incidental by-catch and the impacts of fishing on the sea bed in implementing the approach.

In the last five years, the Commission has taken action and adopted a number of Regulations which contribute to the ecosystem-based approach to fisheries management. A list of these initiatives (including legislation adopted) is contained in a recent Communication.<sup>120</sup> The list highlights that the Commission has made slow progress in adopting Regulations in support of the ecosystem-based approach to fisheries management. In 2006, the Commission proposed a policy to reduce the exploitation of marine fish populations to MSY as laid down in the Communication on MSY.<sup>121</sup> In 2007, the Commission proposed a new discards policy<sup>122</sup> and in May/June 2008 has undertaken a consultation with stakeholders. In 2008, the Data Collection Regulation (DCR) was reviewed and will require the collection of data which will underpin the use of indicators supportive of the ecosystem approach.<sup>123</sup>

An important event was the recent adoption of Regulation 734/2008.<sup>124</sup> Prior to this Regulation, the Community had only adopted measures to close bottom fishing in areas within Community waters<sup>125</sup> and on the high seas within the framework of all

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<sup>117</sup> COM (2006) 499, Communication from the Commission to the Council - *Fishing opportunities for 2007, Policy Statement from the European Commission*, 15.9.2006.

<sup>118</sup> COM (2006) 360, Communication from the Commission to the Council and the European Parliament - *Implementing sustainability in EU fisheries through maximum sustainable yield*, 4.07.2006.

<sup>119</sup> COM (2002) 186, *supra* note 29.

<sup>120</sup> COM (2008) 187, Communication from the Commission to the Council and the European Parliament - *The role of the CFP in implementing an ecosystem approach to marine management*, 11.4.2008.

<sup>121</sup> COM (2006) 360 final, *supra* note 118.

<sup>122</sup> COM (2007) 136, Communication from the Commission to the Council and the European Parliament. *A policy to reduce unwanted by-catches and eliminate discards in European fisheries*, 28.3.2007.

<sup>123</sup> Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy, OJ L 60, 5.3.2008, p. 1–12.

<sup>124</sup> Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears, OJ L 201, 30.7.2008, p. 8–13.

<sup>125</sup> Regulation 602/2004, *supra* note 98; Council Regulation (EC) No 1568/2005 of 20 September 2005 amending Regulation 850/98, *supra* note.

existing RFMOs empowered to regulate bottom fisheries. This regulation seems to end the stalemate in the sensitive political debate as regards the scope of the Community's conservation competence. Member States' fishing vessels are authorised to operate only under a special fishing permit scheme. Compliance with the permit conditions is ensured by means of on-board observers and provisions regarding the operation of satellite-based VMS. The issuance of such permits is subject to an impact assessment of the authorised fishing activities. The use of bottom gears is prohibited in areas that have not undergone an appropriate scientific assessment as to the risks of significant adverse impacts. Where in the course of fishing operations, a fishing vessel encounters a vulnerable marine ecosystem, it must immediately cease fishing and may resume its operations only at an alternative site located at a minimum distance of five nm where no vulnerable marine ecosystems are found. The violation of specific conditions such as those relating to un-assessed areas, the operation of the VMS and the relocation of activities is included among the list of serious infringements contained in Regulation 1447/1999 establishing a list of types of behaviour which seriously infringes the rules of the CFP.<sup>126</sup>

All these initiatives, although not part of a comprehensive strategy to operationalise the ecosystem approach are specifically aimed at minimising the effects of fishing on marine ecosystems. Regulations on MSY levels, discards and technical measures are still pending consultations with stakeholders.

The Community has also taken action to implement the Habitats Directive (see section 6.). These initiatives aimed to protect sensitive habitats such as the closure of cold water coral reefs off the west coast of Ireland.<sup>127</sup> The Council adopted technical measures such as pingers to reduce the incidental by-catches of sea mammals.<sup>128</sup> The closure of the sandeel fishery to protect the seabird colonies has been retained.<sup>129</sup> The ban on destructive fishing practices and actions to combat IUU fishing are also important initiatives.<sup>130</sup> The already mentioned eel recovery plan was also adopted in implementation of the habitats Directive. By adopting Regulation 1967/2006, the council established a specific management framework for the Mediterranean fisheries. In it, the Community's attachment to the precautionary approach is underlined and it is explicitly stated that the strict protection afforded by the Habitats directive is to be extended to the High Seas. It also implements the main elements of the Action Plan on the conservation and sustainable exploitation of fishery resources in the Mediterranean Sea.<sup>131</sup>

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<sup>126</sup> Regulation 1447/1999, *supra* note 43.

<sup>127</sup> Council Regulation (EC) No 1533/2007 of 17 December 2007 amending Regulations (EC) No 2015/2006 and (EC) No 41/2007, as regards fishing opportunities and associated conditions for certain fish stocks, OJ L 337, 21.12.2007, p. 21–32.

<sup>128</sup> Council Regulation (EC) No 812/2004 of 26.4.2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, OJ L 150, 30.4.2004, p. 12–31.

<sup>129</sup> Commission Regulation (EC) No 1091/2006 of 13 July 2006 establishing a prohibition of fishing for sandeel in ICES zone IIa (EC waters), IIIa, IV (EC waters) by vessels flying the flag of a Member State other than Denmark and the United Kingdom, OJ L 195, 15.7.2006, p. 9–10.

<sup>130</sup> COM (2007) 604, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems, 17.10.2007; COM (2007) 605, Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears, 17.10.2007; COM (2007) 602 final, *Proposal for a Council Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing*, 17.10.2007.

<sup>131</sup> Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94, OJ L 36, 8.2.2007, p. 6–30

Further action, however, is still required to minimise the impacts of fishing on non-target species such as sharks and seabirds.<sup>132</sup>

### 4.1.3 Technical measures

Technical measures play a vital part in sustainable fisheries management and are particularly useful for protecting fish at certain stages of their life cycle such as the juvenile and reproductive stages.

In June 2004, under the initiative of the Irish Presidency, the Commission presented a Communication to the Council and the European Parliament: “Promoting more environmentally-friendly fishing methods: the role of technical conservation measures”.<sup>133</sup> Subsequently, the European Council recommended a revision of the Regulation<sup>134</sup> laying down technical measures for the Atlantic and the North Sea with the aim of simplification and consideration of regional characteristics. In 2006, the Council further endorsed a Commission Action Plan on simplification of Community legislation.<sup>135</sup> It agreed that all technical measures currently dispersed throughout a range of Regulations, including the annual Quota Regulation, be integrated into one Regulation. Now, two years later, the Commission has proposed such a Regulation,<sup>136</sup> bringing together technical measures for the conservation of fisheries resources in Atlantic and North Sea waters.

The priority of the new Regulation is to establish a new set of rules which are easy to understand, control and enforce. Importantly, it also aims to strike a balance between measures that are generally applicable in all areas and measures which are targeted at the geographical regions which are consistent with the RAC areas. This regionalised approach is aimed at improving the effectiveness of the measures. The Regulation also states that it must be evaluated every five years using data from the STECF and information from consultations with the RACs.

It is hoped that with this simplified and regionalised Regulation, the proposed technical measures will be more effective than previously. The Commission will now launch consultations with Member States and the RACs on the possible contents of the more detailed regional Regulations to complement this proposed Regulation.

In March 2004, the Council adopted a new Regulation incorporating the new conservation measures of a technical nature adopted by the CCAMLR.<sup>137</sup> In May 2007, the Council replaced its technical Regulation with respect to highly migratory species<sup>138</sup> in order to update and incorporate the measures agreed to under the

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<sup>132</sup> The 2003 Action Plan to integrate environmental protection into the CFP has the FAO IPOAs on sharks and seabirds, as a priority measure.

<sup>133</sup> COM (2004) 438, Communication from the Commission to the Council and the European Parliament - *Promoting more environmentally-friendly fishing methods: the role of technical conservation measures*, 21/06/2004.

<sup>134</sup> Regulation 850/98, *supra* note.

<sup>135</sup> COM (2005) 647 final, Communication from the Commission to the Council and the European Parliament - *2006-08 Action Plan for simplifying and improving the common fisheries policy*, 8.12.2005.

<sup>136</sup> COM (2008) 324 final, Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures, 04/6/2008.

<sup>137</sup> Regulations 3943/90 and 66/98 were repealed by Council Regulation (EC) No 601/2004 of 22 March 2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources, OJ L 97, 1/4/2004, p. 16–29.

<sup>138</sup> Council Regulation (EC) No 520/2007 of 7 May 2007 laying down technical measures for the conservation of certain stocks of highly migratory species and repealing Regulation (EC) No 973/2001, OJ L 123, 12/5/2007, p. 3–13.

International Dolphin Conservation Programme (IDCP), the Indian Ocean Tuna Commission (IOTC), Inter-American Tropical Tuna Commission (IATTC), the Fisheries Commission for the Western and Central Pacific Ocean (FCWCP). These measures concern, inter alia, authorised sizes and weights of fish, restrictions on fishing within certain areas and time periods, with certain gears, and on capacity.

Motivated by the need to minimise the impact of fishing activities on marine ecosystems, and consistency with the environmental policy, in particular with the Habitats Directive which gives strict protection status to cetaceans, the Council introduced the use of acoustic deterring devices in certain areas with high levels of by-catch of small cetaceans. The same Regulation also phased out driftnet fishing by 1 January 2008 in the Baltic Sea in order to protect the critically endangered population of harbour porpoise.<sup>139</sup>

Ending 2005, the Council adopted a new technical Regulation with respect to the wider Baltic Sea area with the aim of limiting fishing mortality and the environmental impact of fishing activities. The application of the previous Regulation had brought to light certain deficiencies which required the definition of target species and catch percentages applicable for different mesh size ranges and geographical areas when fishing with certain gears. This new regulation also implements the special measures with respect to the Gulf of Riga which is a unique and rather sensitive marine ecosystem.<sup>140</sup>

Three Regulations concerning the use of certain fishing gears have been adopted: for reasons of clarity and in order to facilitate uniformity in the practice of monitoring, the term driftnets was defined,<sup>141</sup> the trawling ban was extended to Polish waters<sup>142</sup> and fishing for sandeel with demersal trawl, seine or similar towed gears with a mesh size of less than 16 mm was prohibited from July to the end of 2005 in the North Sea and the Skagerrak.<sup>143</sup>

#### **4.1.4 Sustainable fishing - balancing fishing effort with available resources**

##### *Adjustment of fishing capacity including reference levels for fishing fleets*

In the new CFP, the ambition to bring capacity in line with available resources is emphasized. A new approach to fleet adjustment was introduced with national reference levels based on targets under the previous fleet management programme (MAGP VI) plus effort limitations under the recovery plans. Regulation 2371/02 provides for more rigorous monitoring of capacity through the revision of the fishing fleet register. Together, these provisions were intended to lead to a gradual downward revision of reference levels. However, actually reductions would rely on the uptake of

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<sup>139</sup> Regulation 812/2004, *supra* note 128.

<sup>140</sup> Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98, OJ L 349, 31/12/2005, p. 1–23.

<sup>141</sup> Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets, OJ L 182, 12/7/2007, p. 1–2.

<sup>142</sup> Council Regulation (EC) No 289/2005 of 17 February 2005 amending Regulation (EC) No 88/98 as regards the extension of the trawling ban to Polish waters, 22/2/2005, p. 1–1.

<sup>143</sup> Commission Regulation (EC) No 1147/2005 of 15 July 2005 prohibiting fishing for sandeel with certain fishing gears in the North Sea and the Skagerrak, OJ L 185, 16/7/2005, p. 19.

public aid offered for scrapping of vessels and again, this would depend heavily on effort limitations set out in the recovery plans.

### *Entry/exit scheme and overall capacity reduction*

In recognition of the limitations of TACs and technical conservation measures, controls on the number and activity of fishing vessels have grown in the EC. A core element of these controls is the vessel entry/exit regime that aims to cap the overall fleet capacity.<sup>144</sup> This is supported by a system for fishing licences and permits used to monitor the fleet and eventually to limit access to fisheries. Since 1995 all EU vessels have been required to hold a fishing licence. The system was tightened up in 2005 as part of the reform process to, *inter alia*, include more vessel information and relate licenses to the entry/exit regime.<sup>145</sup>

Funding to assist States with their capacity adjustments was provided by the Financial Instrument for Fisheries Guidance (FIFG) up to 2006, and is now covered by the 2007-2013 European Fisheries Fund (EFF), agreed in June 2006. The EFF is 'greener' than its predecessor and designed to both support the competitiveness of the EU fishing industry while also promoting measures to protect and enhance the environment. The EFF will run for seven years and has a total budget of around €3.8 billion. The EFF Regulation requires each Member State to adopt and submit to the Commission a national strategic plan covering their fisheries sector.<sup>146</sup> As one element, these national strategic plans must set out the priorities and objectives for the management and adjustment of fishing fleets and, in particular, "the adjustment of fishing effort and capacity with regard to the evolution of fisheries resources, the promotion of environmentally-friendly fishing methods and a sustainable development of fishing activities".<sup>147</sup> The EFF Regulation further requires each Member State to include in its national strategic plan its policy for adjusting fishing effort, showing how it will fulfil its obligation to "achieve a stable and enduring balance between such fishing capacity and their fishing opportunities".<sup>148</sup> The EFF Regulation places strong emphasis on the management of fishing effort, as well as fishing capacity, but it delegates responsibility for that management to the Member States. It remains to be seen whether this approach will be effective.

Under the reformed CFP, all Member States have continued to reduce the capacity of their fleets, mainly as a result of national decommissioning schemes, some of which reflect the arrangements agreed in recovery plans. Most Member States have also performed well relative to the entry/exit ceiling arrangements. The total EU fleet sizes at the end of each year have also been consistently below the ceiling levels. Although some Member States have clearly performed better than others, the system as a whole may be said to be working well. The question that remains is how far capacity must be reduced in order to solve the EU's chronic problem of over fishing.

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<sup>144</sup> Commission Regulation (EC) No 1438/2003 of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002, OJ L 204, 13/08/2003, p. 21–29.

<sup>145</sup> Commission Regulation (EC) No 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein, OJ L 203, 4/8/2005, p. 3–5.

<sup>146</sup> Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund, OJ L 223, 15.8.2006, p. 1–44, Article 15 (1).

<sup>147</sup> *Ibid.*, Article 15 (2) (a).

<sup>148</sup> *Ibid.*, Article 22.

The Commission's 2003 Scoreboard report recognises that the reduction targets under MAGP IV were too modest.<sup>149</sup> Although fishing capacity has been reduced since 2002, the reductions are minimal compared to the high levels of fishing pressure in most EC fisheries, specifically those for demersal species. With further increases in fleet efficiency and decreases in fish stocks since 2002, many fishing fleets are still too large for the stocks they target. Some Member States were reported by the Commission as doubting that the observed reductions would lead to a long-term balance between fleet capacity and available fishing opportunities.<sup>150</sup> Generally speaking, the Commission has noted that Member State reports tend to emphasise the implementation of national fleet management over any assessment of the balance between fishing fleet capacity and available fishing opportunities.<sup>151</sup>

In 2007, about four-fifths of stocks remain outside safe biological limits.<sup>152</sup> No attempt has been made here to re-estimate the reductions in capacity that will be required to achieve a balance. These figures on the state of fish stocks nevertheless make it clear that further progress is needed in this area.

The problems with fishing capacity are well recognised in the Commission's 2008 policy statement released in June 2007.<sup>153</sup> Since 2004, the Commission has rightly placed greater emphasis on managing fishing effort than fishing capacity. Earlier this year, the Commission launched a debate on how to simplify, improve and consolidate the existing effort management regimes.<sup>154</sup> This requires improved procedures for the certification of engine power and gives due consideration to the use of fishing gear characteristics as additional fishing capacity indicators. A suite of case studies, discussions with stakeholders and pilot projects is now planned to take these ideas forward. The proposals for clear national capacity targets to be set under the EFF national strategic plans are clearly also aimed at addressing these problems.

Despite the intent of the latest initiatives one fundamental problem has been identified by Brown.<sup>155</sup> Under the new CFP, Member States have no legal requirement to reduce their fleet capacity to any clearly agreed targets. The actual reductions in fishing capacity will hinge on Member States' choices of management instruments, and in particular the use of market or rights based measures and the relative levels of public aid that is provided (i.e. modernisation vs. decommissioning). Although Member States are required to "achieve a stable and enduring balance between fishing capacity and fishing opportunities"<sup>156</sup> the exact form of this relationship is undefined and thus open to interpretation. The majority of Member States in fact do not carry out this assessment.

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<sup>149</sup> COM (2003) 344, Communication from the Commission: *Compliance with the Rules of the Common Fisheries Policy: "Compliance Work Plan and Scoreboard"*, 11/6/2003.

<sup>150</sup> COM (2004) 779, Annual Report from the Commission to the Council and the European Parliament on *Member States' efforts during 2003 to achieve a sustainable balance between fishing capacity and fishing opportunities*, Brussels, 14/12/2004.

<sup>151</sup> COM (2005) 691, Annual Report from the Commission to the Council and the European Parliament on *Member States' efforts during 2004 to achieve a sustainable balance between fishing capacity and fishing opportunities*, 23/12/2005.

<sup>152</sup> COM (2007) 295, Communication from the Commission to the Council. *Fishing Opportunities for 2008, Policy Statement from the European Commission*, 6/6/2007.

<sup>153</sup> *Ibid.*

<sup>154</sup> COM (2007) 39, Communication from the Commission to the Council and the European Parliament on *improving fishing capacity and effort indicators under the common fisheries policy*, Brussels, 5/2/2007.

<sup>155</sup> Brown, J (2006) *Evolution of the EU Fisheries Subsidy Regime: Drivers and Approaches*. Paper presented to OECD Workshop on Subsidy Reform and Sustainable Development, Helsinki, Finland 20-21 June 2006. IEPP, London.

<sup>156</sup> Regulation 2371/02, *supra* note 18, Article 11(1).

Further to these EU wide systems, regional and fishery-specific effort control systems are increasingly employed. The first of these has been in place in the ‘western waters’ region (waters extending from the Atlantic waters around the Canary Islands and the Azores to the north and north-west of Ireland and the United Kingdom) since 1995,<sup>157</sup> and have since been developed for some Baltic Sea and deep-sea fisheries and some stocks subject to recovery and management plans. Annual effort ceilings are typically established for each Member State and special fishing permits required to limit the effort of an individual vessel.<sup>158</sup> Permits are issued prior to fishing, and detail the period and area to be fished.

#### *Reduction of fishing effort: Limits on number and types of vessels allowed to fish*

Regulation 2371/02 and Regulation 1438/03 require the Member States to submit to the Commission, before 1 May each year, a report on their efforts during the previous year to achieve a sustainable balance between fleet capacity and available fishing opportunities.<sup>159</sup> On the basis of this and the CFR, the Commission produces a summary for that year which is then presented to STECF and Advisory Committee on Fisheries and Aquaculture (ACFA).

#### *Fishing fleet registers*

In 2003, the Commission adopted Regulation 26/04 on the Community fishing fleet registers.<sup>160</sup> The Regulation determines the minimum information on ships flying the flag of a Member State which must be shown in the national register kept by that State. This Regulation lays down the obligations of Member State concerning the collection, validation and transmission of those data to the Commission as well as the Commission’s obligations regarding the management of the Community fleet register. Vessels would be identified by means of a unique Community Fleet Register (CFR) number which is permanently assigned to a vessel and cannot be reassigned to another one.

### **4.1.5 Compliance with the rules - control and enforcement**

Although not environmental elements, per se, it is still important to assess to what extent the Regulations on control and enforcement adopted since 2002 have been strengthened to ensure compliance with the rules in support of the other environmental objectives of the CFP.

Monitoring and enforcement of the CFP has been an acute point of criticism. The Commission recognized this in the run up to the 2002 CFP reform, highlighting the ‘unlevel’ playing field between Member States, poor coordination and lack of infringements. While misreporting, illegal landings, and lack of appropriate enforcement remain, the reform led to a number of improvements. Many of these

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<sup>157</sup> Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95, OJ L 289, 7/11/2003, p. 1–7.

<sup>158</sup> Regulation 1967/2006, *supra* note 131.

<sup>159</sup> Regulation 2371/02, *supra* note 18, Article 14; Regulation 1438/2003, *supra* note 144, Article 12.

<sup>160</sup> Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register, OJ L 5, 9.1.2004, p. 25–35. This Regulation was amended by Commission Regulation (EC) No 1799/2006 of 6 December 2006 amending Regulation (EC) No 26/2004 on the Community fishing fleet register, OJ L 341, 7/12/2006, p. 26–28.

were set out in the 2003 Compliance Work Plan<sup>161</sup> and the 2003-2005 action plan for co-operation in enforcement.<sup>162</sup>

In April 2005 the Council established the Community Fisheries Control Agency (CFCA).<sup>163</sup> An Agency of the Commission, its main task is to achieve the effective implementation of the CFP and to establish uniform inspections and enforcement throughout the Community. The CFCA does not change the responsibilities of Member States as its powers are largely limited to playing largely a coordinating role. A key role will be implementing 'control and inspection programmes' developed with Member States, therefore its effectiveness will depend to a large extent on the details of these.

The strengths of the current Community control system can be summarised as follows:

- Most Member States have adequate inspection hardware (marine platforms and aircraft) to support inspector deployment means available;
- Some Member States have expanded (United Kingdom), or are presently expanding, the number of inspectors, most specifically to cater for implementation of recovery plans (France, Ireland, Portugal);
- All Member States have adopted VMS satellite tracking and are integrating these into fully functional Fishery management Centres (FMCs);
- Some Member States have introduced computer cross checking procedures in order to integrate all monitoring mechanisms (United Kingdom, Denmark, Netherlands and Sweden);
- Some Member States have adopted Risk Analysis as a means of deterring regular offenders and coordinating inspection activities (Denmark, Ireland, Netherlands, Sweden, United Kingdom);
- The CFCA is actively coordinating Joint Deployment Plans in several fisheries including the North Sea, and the Baltic;
- Some member States have strengthened their national legislation to ensure procedures to allow for the application of administrative penalties (Denmark, France, Sweden, Portugal and the United Kingdom); others have increased the levels of penalties, as and when criminal proceedings are required (Ireland);
- Some Member States are applying stricter unilateral control systems for recovery species. These relate to the application of higher inspection benchmarks than set out in Community Regulations (Scotland, United Kingdom).

However, as discussed in section 4.2., there are still some gaps which need to be filled. The ongoing review of the control and enforcement regime may resolve some of these issues.

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<sup>161</sup> Communication from the Commission 2003/C 47/06, Improving scientific and technical advice for Community fisheries management, Brussels, 27/2/2003. Since 2003 the Commission has produced an annual 'name and shame' report comparing Member States' monitoring and enforcement performances. While undermined by the poor Member State data, it usefully serves as a platform for the Commission to highlight shortcomings in the system and its implementation.

<sup>162</sup> COM (2003) 344, Communication from the Commission: *Compliance with the Rules of the Common Fisheries Policy: "Compliance Work Plan and Scoreboard"*, 11/6/2003.

<sup>163</sup> COM (2004) 289 final, *Proposal for a Council Regulation Establishing a Community Fisheries Control Agency and Amending Regulation (EC) N° 2847/93 Establishing a Control System Applicable to the Common Fisheries Policy* (28 April 2004); Council Regulation (EC) N° 768/2005 of 26 April 2005 Establishing a Community Fisheries Control Agency and Amending Regulation (EEC) N° 2847/93 Establishing a Control System Applicable to the Common Fisheries Policy, OJ L 128, 21/5/2005, p.1-14.

### *Improved governance in decision-making*

The Regulation providing for the establishment of the RACs was adopted two years after the CFP review. Their establishment has taken another three years and is still ongoing. By 30 June 2007, six of the seven RACs had been established, although two of these - the South Western Waters RAC<sup>164</sup> and the Long-Distance RAC<sup>165</sup> - were only set up in spring 2007. The Mediterranean RAC is not yet in place.

The RACs are increasingly being consulted on a range of issues and provide input and feedback to the Commission. This includes the annual fishing opportunities published by the Commission which is now circulated earlier than the December Council to allow feedback from the RACs. The RACs have also provided advice and input on a number of environmental issues although some of the feedback from the RACs to the Commission (i.e. on the MSY targets) will require time and detailed work to be incorporated into the CFP system. RAC advice concerned: spatial management measures vis-à-vis pertinent ICES advice such as the proposed closures, bottom trawling, and four cold water coral reef sites in the Irish exclusive economic zone (EEZ).<sup>166</sup> The RACs recognise the need for coordination between environment and fisheries issues, and the relevance of the proposed Maritime Strategy (MS).

Their input on environmental issues is enhanced by the inclusion of NGOs as Members to the RAC. However, whilst some NGOs (e.g. the Royal Society for the Protection of Birds (RSPB) in the North Sea RAC)<sup>167</sup> have been able to participate in the meetings of the RACs, there are some capacity problems and difficulties in finding resources to participate in all the working group meetings. A more detailed evaluation of the RACs is provided in Section 5.

## **4.2 Gaps between what the Regulations were meant to bring about and what has actually been implemented**

Whilst the Commission has proposed a number of implementing Regulations and actions plans, not all proposals result in the adoption of a Regulation. However, the vast majority do. The issue is the time taken to get the proposal to the Regulation phase. In some cases, there is a long delay between the time that a proposal is made by the Commission to the time that it is adopted by the Council. This section looks at more closely at the Regulations and what they were meant to bring about and what has actually been implemented.

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<sup>164</sup> Commission Decision 2007/222/EC of 4 April 2007 declaring operational the Regional Advisory Council for the south-western waters under the common fisheries policy, OJ L 95, 5/4/2007, p. 52.

<sup>165</sup> Commission Decision 2007/206/EC of 29 March 2007 declaring operational the Regional Advisory Council for the High Seas/Long Distance Fleet under the Common Fisheries Policy, OJ L 91, 31/3/2007, p. 52.

<sup>166</sup> In 2007 the NWWWRAC which was established by Commission Decision 2005/668/EC of 22 September 2005 declaring operational the Regional Advisory Council for the North-Western Waters under the common fisheries policy, OJ L 249, 24.9.2005, p. 18–19; also in 2007 by the PRAC which was established by Commission Decision 2005/606/EC of 5 August 2005 declaring operational the Regional Advisory Council for Pelagic stocks under the Common Fisheries Policy, OJ L 206, 09/8/2005, p. 21.

<sup>167</sup> Commission Decision 2004/774/EC of 9 November 2004 declaring operational the Regional Advisory Council for the North Sea under the common fisheries policy, OJ L 342, 18/11/2004, p. 28.

#### 4.2.1 Conservation and sustainability

In 2006, only 3 recovery plans were in place, although 23 stocks required rebuilding. Seventeen stocks were overfished and the fishing mortality was still too high for 13 of the commercial stocks. The implementation of recovery plans in European waters has been a fairly new development. It is too early to evaluate the effectiveness of these plans and their associated measures although stakeholders and decision-makers have begun to comment and proceed with preliminary evaluations towards improving the plans. It is generally agreed that most plans to date have failed. Reasons given for their failure include:

- The lack of progressive reduction in fishing mortality to complement other measures in the plan;
- Ill-defined recovery process (e.g. unclear harvest control rules); unclear references and target points, as well as the lack of precise timeframes for subsequent action;
- The lack of socio-economic data to ensure efficient management options were used for recovery planning;
- The lack of data on the social impacts of existing recovery plans;
- Ineffective Monitoring, Control and Surveillance measures (MCS) to ensure compliance with the measures in the plans.

These issues should be taken into account in the preparation of new recovery plans.

Regardless of these shortcomings, it may be too early to draw conclusions on the success or failure of the recovery plans in Europe. It was expected that most stocks for which there are recovery plans would take up to 10 years to rebuild.

There is still a need for more consistent harvest control rules and to improve the timing of the decision-making process. The Commission has taken some positive steps as evident in its Communication in May 2006 where a series of proposals were outlined including proposals tabled earlier for TACs and quotas to allow for consultations with stakeholders. Since 2006, the Commission has published an annual policy statement in which it outlines the broad 'harvest rules' which it intends to apply to fish stocks but the Commission is yet to define harvest control rules for recovery plans (see section 4.1.3).

As mentioned in Section 4.3.1., the Commission has proposed a new technical Regulation for the North East Atlantic.<sup>168</sup> The Regulation covers a range of common permanent measures (minimum landing size; fishing gear; measures to reduce discards; measures for the protection of the environment; on board operations; and specific measures for certain species) as well as national and regional measures (emergency conservation measures taken by Member States; measures taken by Member States applying solely to fishing vessels flying their flag; and national and/or regional plans to reduce or eliminate discards). In particular it is targeting discards and includes provisions for Member States to implement real time closures of areas where strong concentrations of juveniles have been detected (these closures can last up to 10 days); a reduction in the number of species subject to minimum landing size to allow focus on the target species; general application of the NAFO 'move on' rule where vessels must change gear or move on when undersized fish account for more

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<sup>168</sup> COM (2008) 324, *supra* note 136.

than 10 % of catch of the target species; and greater flexibility in the application of by-catch rules to discourage discarding.

#### **4.2.2 Adjustment of fishing capacity**

For 2006, the data available from the Community Fishing Fleet Register (23 October 2006) showed that almost every Member State was within its maximum capacity ceilings at the end of 2006. Although some Member States slightly exceeded their entry/exit ceilings in 2006, as in previous years, the overall trend in EU fleet capacity has shown a steady decrease. The main strength in the current system, as pointed out by Member States in 2007, is that the entry/exit scheme and maximum fleet capacity ceilings are closely adhered to. Furthermore, a number of Member States stated that the present fishing effort reduction scheme has helped to achieve a better balance between fishing effort and available resources. By the end of 2006, the majority of Member States had comprehensive IT systems for fisheries management, specifically for inputting data for the fleet register, capacity management, licences, log-books, meaning that the quality of the reports has steadily improved since the presentation of the first report covering 2003.

Whilst the EU fleet continued its slow but steady reduction of fishing capacity at an annual rate of between 2 % and 3 %, this reduction appears too modest when compared with the big reductions in effort required for some major fish stocks, the steady increase in technology and the poor economic performance of large parts of the fleet.

The impact of fishing effort measures on capacity reduction has been low and this has meant that the approach adopted during the CFP reform, i.e. to use effort management as a main driving force for fleet adjustment has not yet yielded the expected results.

More recently, the Commission published its annual policy statement on fishing opportunities for 2009.<sup>169</sup> The Commission again underlined the fact that existing measures to limit fishing effort have not been successful in reducing fishing pressures. The key reasons are the number of complex derogations which offset reductions in days at sea and make it impossible to meet realistic reduction targets. In 2007, it was agreed that the kilowatt-days system would be more effective as it would allow Member States to determine the appropriate balance between fishing opportunities and fleet capacity, and to take measures to encourage low-discard fishing. In 2009, proposals on effort limitation will therefore be made on this basis.

#### **4.2.3 Control and enforcement**

The system was reinforced and the division of responsibilities between the Member States' authorities and the Commission clarified. This new legal framework applies throughout the fisheries chain both to structural and market policies as well as to fishing operations. Within this new legal framework the general distribution of responsibilities were not altered. Therefore the Member States still held the responsibility for the control and enforcement of the CFP and the Commission the responsibility for monitoring and enforcing the correct application of Community.

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<sup>169</sup> COM (2008) 331 final, Communication from the Commission - *Fishing Opportunities for 2009, Policy Statement from the European Commission*, 30/5/2008.

What changed was a greater onus on the responsibility of the Commission in monitoring the application of the CFP rules by the Member States.

The Court of Auditors report highlights some gaps to be filled and these are discussed in Section 7.

#### **4.2.4 Improved governance**

Council Decision 2004/585 provides the framework for the establishment of RACs under the CFP.<sup>170</sup>

In June 2008, the Commission published a review of the RACs.<sup>171</sup> This review was a year late, but the Commission justified the delay by stating that an earlier review in line with its obligation would have only covered four RACs and would have been incomplete. The review focussed on an evaluation of the main elements of the general framework established by the Council in 2004 and amended by Council Decision 2007/409/EC and an evaluation of the input of the RACs in the CFP decision-making process.<sup>172</sup> Key issues identified in the Commission review included the need to ensure the balance between representatives from the fishing sector and other interest groups including NGOs. There have been an increasing number of requests to extend the membership of the RACs. The Commission suggest that a broad sectoral composition of the RACs is the best guarantee to good and balanced advice, in line with the CFP objectives. The review by the Commission also highlights the need for the RACs to focus on more strategic issues beyond the annual quota setting exercise where their advice is usually based on short term economic interests of the majority of the existing members. Finally the Commission emphasises that the RACs should be involved in the long term development of the CFP. Section 5 (below) provides a more detailed evaluation of the extent to which environmental considerations are reflected in the work of the RACs. The Commission's findings in this respect will be included there.

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<sup>170</sup> Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy, OJ L 256, 3/8/2004, p. 17–22.

<sup>171</sup> COM (2008) 364, Communication from the Commission to the Council and the European Parliament - *Review of the functioning of the Regional Advisory Councils*, 17/6/2008.

<sup>172</sup> Council Decision 2007/409/EC of 11 June 2007 amending Decision 2004/585/EC establishing Regional Advisory Councils under the Common Fisheries Policy, OJ L 155, 15/6/2007, p. 68–70.

## **5 To what extent are environmental considerations reflected in the work of RACs, ICES and STECF**

### **5.1 Regional Advisory Councils (RACs)**

All RACs must have a general assembly that then appoints an executive committee of up to 24 members. Both these bodies must have two thirds of their seats filled with representatives from the fishing sector (defined as ‘catching sub-sector, including ship owners, small-scale fishermen, employed fishermen, producer organisations [including] processors, traders and other market organisations and women’s networks’,<sup>173</sup>) and one third from other interest groups (defined as ‘amongst others, environmental organisations and groups, aquaculture producers, consumers and recreational or sport fishermen’). Scientists from national research institutes or international bodies can be invited to participate as experts, while individuals from the Commission, from national and regional administrations of the Member States concerned, from ACFA and Regional Fisheries Management Organisations (RFMOs) are welcome as observers. Meetings of the general assembly and the executive committee are also normally open to the public.

The RACs are expected to set up a secretariat and working groups as necessary for their functioning. Decisions on recommendations from the executive committee must be made by consensus. Where no consensus can be reached, a majority vote can be used. RACs can submit recommendations and suggestions of their own or at the request of the Commission or Member States on matters relating to fisheries management but they have no managerial rights in themselves.

Decision 2004/585/EC states that seven RACs should be established. Six of these are now operational, with five having active websites:<sup>174</sup>

- North Sea RAC;<sup>175</sup>
- Pelagic stock in all areas;<sup>176</sup>
- North-western waters;<sup>177</sup>
- Baltic Sea;<sup>178</sup>
- Distant water fisheries;<sup>179</sup>
- South Western Waters;<sup>180</sup>
- Mediterranean Sea no website (still in the process of being established).

All of the current operational RACs have eNGOs amongst their members, as shown in Table 1.

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<sup>173</sup> Council Decision 2004/585/EC, *supra* note 170.

<sup>174</sup> [http://ec.europa.eu/fisheries/cfp/governance/racs\\_en.htm](http://ec.europa.eu/fisheries/cfp/governance/racs_en.htm)

<sup>175</sup> <http://www.nsrac.org/> (operational since November 2004).

<sup>176</sup> <http://www.pelagic-rac.org/> (blue whiting, mackerel, horse mackerel and herring) (operational since August 2005).

<sup>177</sup> <http://www.nwwrac.org/> (operational since September 2005).

<sup>178</sup> <http://www.bsrac.org/> (operational since March 2006).

<sup>179</sup> no website (operational since March 2007).

<sup>180</sup> <http://www.ccr-s.eu/EN/> (operational since April 2007).

**Table 1: eNGO General Assembly and Executive Committee membership of the RACs**

eNGO	North Sea RAC	Pelagic RAC (no General Assembly details)	NWW RAC (no ExCom details)	Baltic Sea RAC	Distant water RAC (no website, no info)	SWW RAC (120 General Assembly members)	Mediterranean RAC (not established yet)
Birdlife International	General Assembly & ExCom <sup>181</sup>		General Assembly				
European Bureau for Conservation & Development	General Assembly & ExCom	General Assembly & ExCom	General Assembly				
EUCC - The Coastal Union	General Assembly						
Greenpeace			Observer at one meeting	Observer at one meeting			
Living Sea	General Assembly						
Seas at Risk	General Assembly & ExCom	General Assembly & ExCom	Observer			General Assembly & ExCom	
The Fisheries Secretariat				General Assembly & ExCom			
WWF	General Assembly & ExCom	General Assembly & ExCom	General Assembly	General Assembly & ExCom		General Assembly & ExCom	

<sup>181</sup> ExCom stands for Executive Committee.

Despite the contribution of eNGOs to RACs, it must be remembered that they are only one fraction of the third of the General Assembly and Executive Committee that is designated for 'other interests'. If there are differences of opinion between the fisheries sector (who hold the two thirds majority) and the other interests, the fisheries sector inevitably wins at the vote. However, at a meeting between representatives of the North Sea RAC and the European Commission in December 2004, Joe Borg was quoted as saying "the ideal was a consensus view but if that could not be reached the Commission would be interested in both the majority and minority views."<sup>182</sup> This was played out in the North Sea RAC advice on cod TACs in 2006, when the majority were of the view that the 2006 TAC could be rolled over into 2007. The eNGOs, following ICES advice for zero catch, opposed this majority view and this was duly noted in the published position paper.<sup>183</sup>

All the operational RACs have held a considerable amount of meetings. Since being established in November 2004, the North Sea RAC and its five working groups have held 67 meetings, including inter-RAC meetings. The General Assembly meets once a year to approve the overall strategy of the North Sea RAC and to oversee the work of the Executive Committee who meet at least twice a year. There are six eNGOs who are members of the General Assembly and four who are Executive Committee members. Although there are no consistent records of attendees at the majority of the meetings for this RAC, three Executive Committee meetings between 2006 and 2007 show that eNGOs were in attendance and sometimes presenting information. BirdLife International was present at all three, the Worldwide Fund for Nature (WWF) at two and Seas at Risk and the European Bureau for Conservation and Development (EBCD) at one. eNGOs are also in evidence elsewhere. One of the first vice-chairs of the executive committee was a WWF representative, Helen Davies, and it was Dr Euan Dunn from BirdLife International, who, on behalf of the eNGOs, initiated the North Sea RAC's working group on spatial planning/MPAs. Environmental issues are on the agendas of all the executive committee meetings. For example of the nine executive committee meetings that have taken place, recovery plans- particularly for cod, have been on the agenda seven times, discards and closed areas e.g. marine protected areas (MPAs) three times and the change to using MSY has been discussed once. Peripheral meetings of the Working Groups (WG) have also discussed some of these issues.

The Pelagic RAC, having two working groups, has held 27 meetings since it came into operation in August 2005. Its executive committee currently has 19 members, of which three are eNGOs: EBCD, Seas at Risk and WWF. Of the 27 Pelagic RAC meetings, eleven were attended by at least one eNGO; WWF and Seas at Risk being the main participants. Of the nine executive committee meetings, eNGOs were definitely present at four, absent from two, yet the lack of attendee records mean it is impossible to tell for three. All of these meetings, except two, are recorded as having tackled environmental issues in their agendas such as the change to using MSY, which was discussed at five of the nine executive committee meetings.

The North West Waters RAC, which has established four working groups, has held 69 meetings since it entered into operation in September 2005. Three eNGOs are members of its 54 strong general assembly and one is recorded as one of the seven

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<sup>182</sup> [http://www.nsrac.org/meetings/ot/20041208/Report\\_ot20041208.doc](http://www.nsrac.org/meetings/ot/20041208/Report_ot20041208.doc)

<sup>183</sup> [http://www.nsrac.org/advices/wd20061128\\_Position\\_TAC\\_quota\\_2007.pdf](http://www.nsrac.org/advices/wd20061128_Position_TAC_quota_2007.pdf)

'observers' but there is no record of the executive committee membership. There are also no records of meeting attendees, so it is impossible to calculate the participation of eNGOs at meetings. However, from looking at the agendas or the meeting reports there is evidence to show that 47 of the 69 meetings incorporated an environmental issue. These include discussions on discards, the cod recovery programme and long-term management proposals. At the end of 2006, the NWW RAC started holding 'focus groups' on various topics. In November 2006, for instance, technical conservation measures were looked at and in March 2006, data collection and MSY was also studied. A meeting dedicated to MSY also took place in May 2007. At the annual General Assembly meeting in September 2007, there was open debate on the priority areas of work for 2007-8. These are listed below and show that some environmental concerns are taken into consideration:

- Technical conservation measures (TCMs) and discards;
- TACs and quotas advice and fishing effort;
- Stock recovery and management Plans for different species (cod, hake);
- Long-term management and MSY;
- MPAs - including SAC and SPA (Marine Natura sites);
- Improvement of quantity and quality of fisheries based scientific and economic data;
- Deepwater gillnets;
- IUU Fishing;
- Simplification of legislation.

The Baltic RAC with three working groups has held 39 meetings since its start in March 2006 and of the 31, where attendance has been monitored, 19 were attended by eNGOs. There are eNGOs on the executive committee (The Fisheries Secretariat and WWF) and these are the only two eNGOs that are also members of the general assembly. Of the ten executive committee meetings, all except one was attended by eNGO(s) but environmental discussion were only included at five. However at the executive committee meeting in Copenhagen in June 2007, where one eNGOs was present (WWF), a collective letter from the eNGOs to the commission was discussed. The letter was from eNGOS who had met to discuss their experiences of working within the RACs so far and important lessons learned.<sup>184</sup> One concern, outlined in the letter, stated that: 'as stakeholders in the 1/3 group, we are always in minority, which means that we are unable to take forward any proposal without the support of the 2/3 group. As a result, it is more difficult for us to be heard, and the return for investing the time and effort that effective work in the RACs demand is likely to be smaller. Many of our organisations struggle to find both the human and financial resources to participate effectively. We therefore welcome the Commission's proposal to make funding to the RACs permanent and hope that it will also keep membership fees and travel costs down.' The letter also mentioned the concern of RAC external representation in, for example, inter-RAC meetings. Normally the two RAC representatives that were attending were from the 2/3 fisheries sector and they requested that in future one should be from the 1/3 'other' sector. The Commission published a reply<sup>185</sup> essentially agreeing with the eNGOs, saying that 'the

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<sup>184</sup> <http://www.bsrac.org/archive/Dokumenter/EXCOM250607/NGO%20letter.pdf>

<sup>185</sup> <http://www.bsrac.org/archive/Dokumenter/EXCOM250607/Com%20response%20to%20joint%20NGO%20RAC%20letter%20Jan%202007.pdf>

Commission has always strongly encouraged RACs to nominate representatives from the 'one third' group' and they were willing to 'insist on the importance of ensuring that a RAC delegation in external meetings properly represents all interests involved in the RAC's work'.

The SWW RAC, with seven working groups, has held 32 meetings since it became operational in April 2007. It states that it has a general assembly of 120 members and lists 28 members of its executive committee (although officially the maximum is 24) with Seas at Risk and WWF as the two eNGOs represented. 13 of their 32 meetings have included an environmental agenda item such as discussion of MPAs or discards. Attendee lists are only present for 11 of the 14 meetings that have taken place in 2008 and of these 11, five were attended by eNGOs. Of the four executive committee meetings have taken place (three in 2007 and one in 2008) only two have included and environmental agenda item, both being on the subject of MPAs. The SWW RAC also participated in a joint RAC meeting on offshore MPAs in March 2008.

As highlighted in the Commission's review of the RAC (2008), the RACs have become active players in the CFP. The number of recommendations to the Commission is increasing, largely in response to requests from the Commission but the RACs have also been proactive in organising a number of 'own-initiative' meetings and seminars on issues such as rights-based management. Moreover the RACs are showing an interest in the integrated Maritime Policy and associated actions plans. However, the main input on short term issues with immediate economic impacts (annual quota setting exercise), has resulted in divisions among RAC members and eNGOs withdrawing from RAC discussion. The Commission has not always followed up on RACs' advice if it is incompatible with CFP objectives, if it departs from scientific advice or if it contradicts international obligations and long-term management plans.

## **5.2 International Council for the Exploration of the Sea (ICES)**

ICES was set up in 1902 and is an independent organisation based in Denmark. It has a community of more than 1600 marine scientists from 19 Member Countries and has a key role in coordinating and promoting marine science and research. ICES is not part of the EU institutions but functions in an advisory role to the Commission. ICES provides biological advice to the European Commission on the exploitation of fish and crustacean in the North East Atlantic. ICES also provides advice regarding marine environmental and ecological issues to HELCOM and OSPAR. Prior to 2002, fisheries advice was linked to the fisheries management under the CFP where ICES provided catch projections on the traditional single stock basis from which TACs were established. However, as far back as the 1990s, ICES advice was already evolving in response to the introduction of the precautionary approach, providing advice based on risk-avoidance rather than optimisation.

Since 2002, ICES has played a key role in providing support and relevant advice to the European Commission in their efforts to implement the new Basic Regulation. Specifically in relation to the ecosystem approach, ICES has developed ecological criteria within a fisheries context and continues to integrate this work into the advice it provides. Regarding long term management plans, since 2004 ICES has been developing and is currently implementing a framework for fisheries management advice that relates to longer term benefits rather than just short term risk avoidance.

Recognising that new management tools are required to address complex fisheries in an ecosystem context and given the limitations of the TAC system in managing EU fisheries, the EU has extended the use of effort and capacity-based management and closed areas and seasons. ICES has for several years emphasized the need to use effort based management for certain fisheries and continues to provide advice relating to these instruments.

ICES has always maintained that fisheries management cannot deal with single stocks in isolation but must be related directly to fisheries and only indirectly to the stocks, where most European demersal fisheries are mixed fisheries which exploit several stocks simultaneously. In 2003, ICES started the process of providing fisheries-based advice integrating mixed fisheries concerns. A key limitation has been the access to data on discards which is critical to evaluation of mixed fisheries.

The range of issues that ICES advises on continues to expand. ICES advice ranges from identifying closed areas to protect coldwater corals, to advice on how to reduce the number of mammals that are caught in fishing nets as well as advice on contaminant levels in the search such as mercury and PCBs.

In response to scientific developments and changing demands of clients, ICES has had to rethink their internal advisory structure. Following its 2007 annual meeting, ICES restructured its Advisory Committee system. Moreover the structures of the expert groups have also been reviewed and a fast track system for urgent requests for advice introduced. Specifically in recent years, the desire to implement the ecosystem approach has changed the way ICES provides advice and operates. Finally, several steps have also been taken to increase transparency and credibility. This includes expansion of the ICES website and opening up access to the Advisory Committee meetings to observers from clients, NGOs and RACs.

In the most recent Memorandum of Understanding signed between ICES and the EU, the Commission has expanded the list of items on which ICES should advise to include issues relating to the European Maritime Policy (MP) and the European Marine Strategy Framework Directive (MSFD).

Following a further and extensive consultation in 2007, the Management Committee for the Advisory Process of ICES (MCAP) proposed a new ICES advisory service:

- A single Advisory Committee (AC) that is responsible for the overall quality and appropriateness of advice;
- A professional Advisory Management Group which is responsible for the management and communication of advice
- A flexible review process using Review Groups (RG) that is responsible for the final drafts of the advice
- Expert groups (EG) that are responsible for bringing the scientific information together and drafting the advice and
- Research laboratories (RL) of ICES member countries that will have more responsibilities in providing required routine analyses

In 2006, ICES received a request from the European Commission to explore the possibilities of providing fisheries advice earlier in each year (in June). Previously,

the ACFM of ICES did so in May and October of each year. ICES revised its work programme, moving all its working groups to the spring and in fact the May 2008 advice was made up of updated advice from 2007 and new advice from 2008. It is hoped that the new timing of advice before the annual Council meetings will allow more stakeholder input and better understanding of the implications of different advice and more support for ICES advice.

### **5.3 Scientific, Technical and Economic Committee for Fisheries (STECF)**

The STECF is in effect, an advisory committee established to assist the Commission in the implementation of the CFP in the fields of marine biology, marine ecology, fisheries science, fishing gear technology and fishery economics. While the STECF has been in place since 1979, the framework for its operation agreed in 1993<sup>186</sup> was replaced in 2005 to take account of a shift in focus and emphasis in CFP objectives since CFP reform and EU enlargement<sup>187</sup>.

The new Decision has 16 articles and is far more detailed than its predecessor. Both Decisions are basically similar, although there are some fundamental differences quite apart from the level of detail. Under the old arrangements, the expertise of members was vaguely defined along the lines of 'biological, technical and economic factors'. This is now explicitly broadened to include, inter alia, marine biology; marine ecology; and nature conservation, and so reflecting the importance of an ecosystem-based approach to fisheries management. The STECF has changed the way in which it functions and instead of being purely responsive to the Commission, is now able to be more proactive in providing opinions to the Commission on a range of issues. Other changes since 2005 include voting on decisions and opinions - voting was not previously permitted. In addition STECF opinions must be published on the Commission's website for public access.

The STECF has to consist of no less than 30 members but no more than 35, whereas the old Decision states that there shall be not more than 28 members. The term of office has also increased from two to three years.

A new requirement for the STECF annual report to include broader economic factors affecting fisheries also reflects the heightened emphasis on economic issues in policy making.

The annual report has more specific remit in the 2005 Decision; it must cover not only the situation of the economic implications of fishery resources but also the 'developments in fishing activities, with reference to biological, ecological, technical and economic factors' and 'other economic factors affecting fisheries.'

STECF invites its members and external experts to attend its meetings and subgroup on research needs (SGRN) in their personal capacity. They act independently of

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<sup>186</sup> Commission Decision 93/619/EC relating to the institution of the Scientific, Technical and Economic Committee for Fisheries, OJ L 297, 2/12/1993, p. 25–26.

<sup>187</sup> Commission Decision 2005/629/EC of 26 August 2005 establishing a Scientific, Technical and Economic Committee for Fisheries, OJ L 225, 31/8/2005, p. 18–22.

Member States or stakeholders.<sup>188</sup> Members or experts participating in meeting cannot divulge information. Only the STECF is entitled to deliver advice to the Commission.

Furthermore, the Commission, in order to ensure transparency and participation of stakeholders in the decision-making process, has allowed the participation of stakeholders to be observers to the STECF meetings and subgroup meetings. There are some rules which apply, including when and how they can use the information from the STECF plenary and subgroup meetings. Some NGOs including WWF and RSPB as well as fishing industry representatives have been invited to attend STECF meetings and sub-group meeting as observers.

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<sup>188</sup> *Ibid.*, Article 13.

## 6 The implications of other directives/policies on implementation of the CFP

A number of recent broader environmental (marine and biodiversity) policies continue to influence or interact with the CFP including the habitats and birds Directives, the MSFD and the EU Maritime Policy. These are discussed in more detail below.

### 6.1 EU Maritime Policy

In June 2006, the European Commission launched a maritime policy Green Paper, entitled: 'Towards a future Maritime Policy for the Union: A European vision for the oceans and seas'.<sup>189</sup> This marked the beginning of a one year consultation. On 10 October 2007, the European Commission published its proposals for an Integrated Maritime Policy (IMP) which included a Communication<sup>190</sup> based on the stakeholder consultation which was launched in 2006 and also an accompanying IMP action plan. Some of the issues addressed by the Commission include the governance framework for delivering integrated maritime policies as developed by Member States and also policy making tools. The IMP identifies integrated spatial planning as an important tool and stresses the importance of ICZM and the MSFD.

One of the five 'action areas' for policy development concerned fisheries. The Communication states both that fisheries management 'must take more into account the welfare of coastal communities' and that the 'recovery of fish stocks will be energetically pursued'. It stresses the importance of extraction at MSY by 2015, which is in contrast to the target as listed under the MSFD (see 6.3). Specifically, the Commission will take action to eliminate discards, destructive fishing practices and IUU fisheries. It will also promote 'environmentally safe aquaculture'. The IMP is not a legislative document, so inter-institutional decision making will apply to any legislative instruments arising from it.

The Communication addresses a wide range of issues facing Europe's seas. Although it begins by stressing the importance of integrated decision making, it remains unclear how the Commission will address conflicts and synergies between the different policy priorities that have been identified. This will prove to be a major challenge as integrated approaches to maritime policy are taken forward. The document primarily focuses on the social and economic pillars of sustainable development and is virtually silent on the very high level of overfishing. It does discuss employment levels and how other economic activities affect fish stocks and hence the industry.

The IMP Communication stated that the Commission would propose guidelines on this issue in 2008 and these have now been published.<sup>191</sup>

The guidelines note the progress that the Commission itself has made towards integrated maritime governance. In 2005, it set up a Steering Group of Commissioners

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<sup>189</sup> COM (2006) 275 final, *Green paper - Towards a future Maritime Policy for the Union: A European vision for the oceans and seas*, 7/6/2006.

<sup>190</sup> COM (2007) 575, Communication from the Commission, *An Integrated Maritime Policy for the European Union*, 10/10/2007.

<sup>191</sup> COM (2008) 395, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - *Guidelines for an Integrated Approach to Maritime Policy: towards best practice in integrated maritime governance and stakeholder consultation*, 26/6/2008.

and an Inter-service Group for maritime affairs, as well as restructuring DG Maritime Affairs and Fisheries with a co-ordination unit, three units responsible for different regional seas, and a unit responsible for the external dimension of maritime affairs.<sup>192</sup>

The Communication also notes that some Member States are moving towards an integrated policy (France, Germany, the Netherlands, Portugal and Slovenia); having placed responsibility in a particular ministry (Greece and Spain); or having adopted other holistic approaches (Ireland, Sweden and the United Kingdom). The Communication notes that the optimal approach is not centralised decision-making, but co-ordination and that this requires a 'catalyst' to stimulate action and sufficient data to ensure a sound basis for decisions.

The Communication sets out a number of issues that need to be taken into account in developing an integrated approach:

- The need to avoid duplication of the regulatory powers of authorities at different governance levels and to replace overlapping decision making with a one-stop-shop approach;
- The need for improved co-ordination of planning of competing maritime activities in order to achieve strategic management (maritime spatial planning);
- The need for better co-ordination between the different Sectoral Social Dialogue Committees at EU level involved in maritime issues;
- Implementation of the ecosystem approach set out in the Marine Strategy Framework Directive (MSDF, see 6.3.);
- Development of a science-policy interface to inform integrated management;
- The need for reliable and comparable statistics at all governance levels; and
- The need to facilitate closer co-ordination on maritime surveillance between and within Member States.

The guidelines set out a series of actions that Member States should consider in developing integrated maritime governance:

- Member States should develop their own national maritime policies. This does not mean a single model of governance, given the diversity of situations, but should respond to the particular situation. It is important to set out the overall vision, goals and path to implementation which can guide the different relevant authorities in that country as well as guide interaction with stakeholders, EU institutions, etc. As with the EU maritime policy, national policies should be guided by the principles of subsidiary, competitiveness and economic development, the ecosystem approach and stakeholder participation.
- Member States should consider creating internal co-ordinating structures for maritime affairs within their governance frameworks. These should include a mechanism providing political guidance at the highest level (such as an inter-ministerial committee). Leadership responsibility should be assigned and this should have sufficient weight to ensure dialogue. Support from Parliament and, possibly, a supporting agency are important.

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<sup>192</sup> European Commission press release, *New organisation will boost implementation of EU integrated maritime policy and Common Fisheries Policy*, 27/03/2008.

[http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/2008/com08\\_28\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/2008/com08_28_en.htm)

- Sub-national levels of decision-making have a role to play. Coastal regions have unique know-how and insights and represent key interest in maritime issues. Many Member States are developing strategies for coastal management, and these need to be integrated within an overall integrated maritime policy. Where appropriate, it may also be useful to develop regional integrated maritime policies linked to the national policy.
- Active participation by maritime stakeholders in integrated national, regional or local maritime policies is highly recommended. The Communication notes the importance given to stakeholder involvement in taking forward the EU Integrated Maritime Policy and it recommends that actions are put in place by Member States to allow broad participation by stakeholders in the governance of maritime affairs, to increase the capacity of social partners and ensure transparency of decision-making. The Communication also recommends that economic operators should form 'maritime clusters' which can co-operate with other stakeholders.

The Communication ends by stressing the need for more efficient links at the regional seas level, as stressed by the IMP and the MSFD. As a result the Commission is preparing an EU Strategy for the Baltic Sea Region. This will include measures to implement an integrated maritime policy for the Baltic which 'will go beyond maritime policy'. It has also started work on a holistic approach to maritime policy in the Mediterranean and it aims to publish a policy paper on this in autumn 2008.

As of 31 March 2008, the Directorate General in charge of Fisheries and Maritime Affairs, (DG FISH), within the European Commission has become the Directorate General of Maritime Affairs and Fisheries, (DG MARE). This new approach will be undertaken using a regionalised policy encompassing both the CFP and IMP. Three new Directorates have been established each with geographical responsibilities:

- Arctic, Atlantic and outermost regions
- Mediterranean and Black Sea
- North Sea, Baltic Sea and landlocked countries

These three Directorates will be complemented by an overarching one in charge of coordination and policy development. The two existing Directorates responsible for external policy and resources and legal affairs have remained unchanged.

This reorganisation marks a further step in implementing an all-encompassing maritime policy for the Commission. It has been a leading theme in Commissioner Borg's agenda and speeches and the new regionalised structure of the DG should indeed enable more exchanges between the fisheries sector and maritime affairs. It is hoped that a more integrated regional approach will not jeopardize coordination across these sectors.

Importantly, the Mediterranean Sea is given more attention within this structure, partly reflecting the presence of two new Member States - Bulgaria and Romania - which have given the EC access to the Black Sea. This growing interest in the Mediterranean Sea from the Commission, also illustrated by the recent launch of the Joint Deployment Plan for Bluefin tuna in the Mediterranean Sea, may have been strengthened by the Slovenian Presidency, and is likely to be taken forward by the French Presidency from July 2008 onwards.

Meanwhile, one can argue that fisheries policy issues are very specific and cannot be simply merged with other maritime sector policies. Indeed, this reorganisation is likely to weaken the fisheries voice as opposed to other maritime sectors within the Commission's priorities and there may be a risk that the CFP priorities are not adequately addressed.

While it is still too early to conclude on the effectiveness of this reformed element of the Commission, it is bound to stimulate exchanges across maritime sectors within the new DG and deliver some interesting outcomes regarding the implementation of an IMP driven by an ecosystem-based approach.

## 6.2 EU biodiversity legislation

The Habitats and Birds Directive are key pieces of EU legislation in relation to the conservation of biodiversity, for both terrestrial and marine environments. The stated aim of the Habitats Directive<sup>193</sup> is to contribute towards the maintenance of biodiversity within the European territory of the Member States through the conservation of natural habitats and of wild fauna and flora. Although not limited to site protection, the Habitats Directive requires Member States to classify/designate protected sites. It extends many of the protection mechanisms established for birds in the Birds Directive.<sup>194</sup> Protection measures fall into two main categories: the conservation of habitats and the protection of species. Several marine and coastal habitats are to be protected. In addition, a number of marine species are given strict protection status, for instance all cetaceans.

Member States are required to establish priorities for sites in the light of the threats of degradation or destruction to which those sites are exposed. These could include threats arising from fishing activities. Member States must take appropriate steps to avoid the deterioration of natural habitats and the habitats of species, as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive.<sup>195</sup>

A combined network of the sites designated under the two Directives - Natura 2000 - was to be in place by 2004. Finalisation of sites, particularly in the marine environment, is seriously behind schedule. The Commission's Communication on 'Halting the Loss of Biodiversity by 2010 and Beyond' includes an action to have the marine network of sites completed by 2008 with management priorities established by 2012.<sup>196</sup>

Part of the delay was caused by confusion over the territorial scope of the Directives, i.e. whether they applied throughout the Member States' 200 nm EEZs. However, in Case C-6/04, the ECJ ruled that the United Kingdom was obliged to implement the

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<sup>193</sup> Habitats Directive, *supra* note 25.

<sup>194</sup> Birds Directive, *supra* note 28.

<sup>195</sup> Habitats Directive, *supra* note 25, Article 6 (2).

<sup>196</sup> COM (2006) 216 final, Communication from the Commission - *Halting the loss of biodiversity by 2010 - and beyond - Sustaining ecosystem services for human well-being*, 22/05/2006.

Habitats Directive beyond its territorial waters, i.e. beyond 12 nm.<sup>197</sup> This finding was also relevant for other Member States as work to identify sites in the broader marine environment is now underway.

In May 2004 Germany nominated ten NATURA 2000 sites in its EEZ of the North Sea and the Baltic Sea. By this step Germany covered approximately 31 % of its EEZ and by including the current nominations in the territorial seas 38 % of its total marine area by NATURA 2000 sites. The ICES project entitled "Environmentally Sound Fishery Management in Protected Areas [EMPAS]", which started in February 2006 and is funded by the German Federal Agency for Nature Conservation, aims to develop fisheries management plans for each of the ten German NATURA 2000 sites. The project will gather and analyse the available data and information about the fisheries in and around the NATURA 2000 sites of the German EEZ. The project is intended to provide guidance as to how the quality of fisheries data may need to be improved when used for the evaluation of potential conflicts between fisheries and nature conservation goals. After analyses and assessments of fishing activities and impacts on protected species and habitats, a fisheries management concept will be developed, which will comply with the demands of the ecosystem, and will not jeopardize the goods to be protected. The management concept will also safeguard or restore the favourable conservation state of these areas. Part of this concept may be concrete recommendations for fisheries management measures such as spatial and temporal regulation of the fishery (e.g. zoning measures), the introduction of sustainable fishing methods that better comply with ecosystem requirements, and other management measures (e.g. discard restrictions) in order to meet the objectives for the NATURA 2000 sites.<sup>198</sup>

Further to the Birds and Habitats Directives, EU legislation on waste and water<sup>199</sup> pollution also has implications for the fisheries sector. Emanating measures could mitigate the adverse effects of eutrophication, i.e. the enrichment of water by nutrients, especially compounds of nitrogen and/or phosphorus, causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned. This is of particular importance in estuaries and is detrimental to the status of the European eel stock.

### 6.3 Marine Strategy Framework Directive

In October 2005, the European Commission proposed<sup>200</sup> a new legislative instrument for the protection of Europe's seas - known as the Marine Strategy Framework Directive.<sup>201</sup> The Commission's intention was to fill a gap in the Community's

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<sup>197</sup> Case C-6/04, *Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland*, 2005 ECR I-9017.

<sup>198</sup> ICES, *Interim Report 2007 for the ICES/BfN-project: "Environmentally Sound Fisheries Management in Protected Areas" [EMPAS]*, 2008.

<sup>199</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, OJ L 135, 30.5.1991, p. 40–52; Commission Directive 98/15/EC of 27 February 1998 amending Council Directive 91/271/EEC with respect to certain requirements established in Annex I thereof, OJ L 67, 7/3/1998, p. 29–30.

<sup>200</sup> COM (2005) 505 final, Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy, 24/10/2005.

<sup>201</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy [Marine Strategy Framework Directive], OJ L 164, 25/6/2008, p. 19–40.

conservation policy, which at the time was largely focused on its land territory or freshwaters. The proposal formed the most important part of a broader strategy for marine protection, published at the same time.<sup>202</sup>

On the 17 June 2008, the Directive was adopted by the European Parliament and the Council. In adopting the Directive, Member States and the European Parliament have committed themselves to further foster the integration of environmental concerns into other relevant policies, such as the CFP. Moreover, the Directive requires the EC to propose fisheries measures that meet the requirements of the Directive. These may include the full closure to fisheries of certain marine areas to safeguard, for example, spawning, nursery and feeding grounds. In general, the aim is to meet the following targets by 2020:

- populations of all commercially exploited fish and shellfish must be within SBL, exhibiting an age and size distribution that is indicative of a healthy stock (note that this is a lesser requirement than that required to meet MSY);
- all elements of the marine food web must 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;
- biological diversity must be maintained and the quality and occurrence of habitats, and the distribution and abundance of species, are to be kept in line with prevailing conditions; and
- sea floor integrity is maintained at a level that ensures the safeguarding of structure and functions of the ecosystems.

## 6.4 Environmental Impact Assessment (EIA)

The EIA Directive requires the assessment of the direct and indirect environmental impacts of public and private projects, on among other things, water and fauna.<sup>203</sup>

The Directive lists projects for which an EIA is always compulsory (e.g. trading ports) and projects (e.g. fish farming) for which it is to be determined whether an EIA is required. Fishing operations themselves are not covered by the Directive. In June 2007, the Council adopted Regulation 708/2007.<sup>204</sup> This Regulation, which refers to the environmental integration principle of the EC Treaty, provides the framework to ensure adequate protection of aquatic habitats from the risks associated with the use of non-native species in aquaculture. This framework includes procedures for the analysis of the potential risks, the taking of measures based on the prevention and precautionary principles and the adoption of contingency plans where necessary. In cases where risks are not negligible and may affect other Member States, a Community system for consultation of interested parties and validation of permits prior to their granting by Member States has been set up. The STECF provides the

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<sup>202</sup> COM (2005) 504 final, Communication from the Commission to the Council and the European Parliament - *Thematic Strategy on the Protection and Conservation of the Marine Environment*, 24/10/2005.

<sup>203</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p. 40–48; Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ L 73, 14/3/1997, p. 5–15; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, OJ L 156, 25/6/2003, p. 17–25.

<sup>204</sup> Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture, OJ L 287, 1/11/2007, p. 25–28.

scientific advice in this consultation and the ACFA gives the advice of stakeholders. The national measures are subject to an EIA.

## 6.5 Strategic Environmental Assessment (SEA) Directive

The SEA Directive<sup>205</sup> requires SEAs for plans and programmes for certain sectors, including fisheries, based on criteria set out in the Directive. As fisheries management measures are established at Community level, the number of fisheries plans and programmes covered by the SEA Directive is quite limited. The first significant application of the SEA Directive to fisheries concerns the national EFF funding programmes.<sup>206</sup> Otherwise, given that the SEA Directive came into force in July 2004, its application to date has been very limited in the fisheries sector.<sup>207</sup>

Both the EIA and SEA Directives cover similar (but not identical) statutory stages, such as consultation, public participation and the production of an environmental report. As well as requiring an EIA/SEA for certain types of activities linked to the fisheries sector, they also require an EIA/SEA for other activities that might impact on fish stocks.

## 6.6 European Liability (EL) Directive

The EL Directive aims to make those causing damage to the environment (water, land and nature) legally and financially responsible.<sup>208</sup> By implementing the ‘polluter pays’ principle in this way, the Directive should ensure that environmental damage is repaired at the expense of the polluter, rather than the taxpayer. This should create a strong incentive for operators to avoid environmental damage in the first place. The Directive was adopted in April 2004. Member States have until 30 April 2007 to bring into force the appropriate laws and implementing Regulations.

The Directive distinguishes between two complementary situations, each one governed by a different liability scheme: occupational activities specifically mentioned in the Directive and other occupational activities. The first liability scheme applies to the dangerous or potentially dangerous occupational activities listed in Annex III to the Directive. These are mainly agricultural or industrial activities requiring a licence under the Directive on integrated pollution prevention and control, activities which discharge heavy metals into water or the air, installations producing dangerous chemical substances, waste management activities, etc. Under this first scheme, the operator may be held responsible even if he is not at fault. The second liability scheme applies to all occupational activities other than those listed in Annex III to the EL Directive, but only where there is damage, or imminent threat of damage, to species or natural habitats protected by Community legislation. In this case, the operator will be held liable only if he is at fault or negligent. Fisheries seem to fall in the second liability scheme. Consequently, in case of damage to the habitats or species

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<sup>205</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21/7/2001, p. 30–37.

<sup>206</sup> Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, OJ L 120, 10/5/2007, p. 1–80.

<sup>207</sup> Brown J and Hjerp P, (2006) The Application of Strategic Environmental Assessments in the UK Fisheries Sector. WWF UK

<sup>208</sup> Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30/4/2004, p. 56–75.

protected under the CFP for the purpose of the habitats Directive, the polluter could be held liable.

## 6.7 Integrated Coastal Zone Management

ICZM can be considered as taking a holistic and long term perspective to managing the coastal environment. Coastal zones are facing serious problems of habitat destruction, water contamination, coastal erosion and resource depletion, including fish species. This leads to an increasing conflict between uses, such as between aquaculture, coastal fishing and tourism. Coastal zones also suffer from serious socio-economic problems, such as unemployment which particularly affects coastal areas where there are few alternative employment opportunities besides fisheries.

In 2000 the Commission issued a communication on the implementation of ICZM in Europe.<sup>209</sup> Only one recommendation relating to ICZM was adopted in May 2002.<sup>210</sup>

The actions outlined in the communication could serve as an Community contribution towards the implementation of international agreements, including Chapter 17 of Agenda 21, the Jakarta Mandate on marine and coastal biodiversity under the Convention on Biological Diversity and the Code of Conduct for Responsible Fisheries of the Food and Agricultural Organisation (FAO), article 10 of which is entirely devoted to ICZM.

The recommendation lays down the principles that Member States should follow in undertaking national ICZM stocktaking and national ICZM strategies. It is important to note that the recommendation is non-binding, so it remains to be seen to what extent it will be implemented. Part of the recommended strategic approach is the 'protection of the coastal environment, based on an ecosystem approach', based on, inter alia, the 'use of a combination of instruments'. The Commission was to review the recommendation by 30 December 2006. The Commission did so mid 2007 and submitted an evaluation report to the European Parliament and the Council.<sup>211</sup> Meanwhile ICZM had also been addressed in the 2005 thematic Strategy on the Protection and the Conservation of the Marine Environment and the proposed maritime Strategy Directive.<sup>212</sup> It was identified as a crucial element of the IMP process which started in 2006.

In its 2007 Communication, the Commission underlines the particular exposure of coastal zones to the possible impact of climate change on Europe's coastal zones. It notes that the implementation of ICZM is a slow and long-term process. Most national strategies developed following the ICZM Recommendation were adopted in 2006 and their implementation is only starting. In the majority of Member States, the response to the EU ICZM Recommendation is part of a slow, but on-going process towards more integrated coastal planning and management. Given that the majority of coastal Member States have responded to the EU ICZM Recommendation, that most national

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<sup>209</sup> COM (2000) 547 final, *Communication from the Commission to the Council and the European Parliament on integrated coastal zone management: a strategy for Europe*, 27/9/2000.

<sup>210</sup> Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe, OJ L 148, 6/6/2002, p. 24–27.

<sup>211</sup> COM (2007) 308 final, *Communication from the Commission - Report to the European Parliament and the Council: an evaluation of Integrated Coastal Zone Management (ICZM) in Europe*, 07/6/2007.

<sup>212</sup> COM (2005) 504 & 505, *supra* note .

strategies were launched only in 2006 and that further developments are expected through the Marine Strategy Directive and the Green Paper on a future EU Maritime Policy and their follow-ups, the Commission considers that at this stage a new specific legal instrument to promote ICZM is not foreseen. This assessment will be reviewed in the context of the follow-up of the future MP and after the conclusion of the inter-institutional discussions over the Marine Strategy Directive, expected in 2008.

A key achievement of the ICZM Recommendation has been to codify a common set of principles that should underlie sound coastal planning and management. While the evaluation confirms the relevance of these ICZM principles, the implementation of the EU ICZM Recommendation also reveals varying interpretations and understanding of ICZM across Europe. To foster a more coherent and effective implementation of ICZM, the principles need to be made more operational and better communicated. The diversity of coasts, along with the different administrative systems between and within Member States, implies though that there are no readily available, one-size-fits-all solutions. Rather there is a need for a more systematic comparative analysis and increased exchange of experiences in Europe.

Based on some of the conclusions outlined above, the Commission considered that continued efforts to support ICZM are needed:

- coastal Member States are encouraged to implement their national ICZM strategies or to develop ones where the ICZM Recommendation has not yet been implemented, directed at a balanced environmental, social, economic and cultural development, and in partnership with the relevant stakeholders;
- to achieve a more coherent understanding and implementation of ICZM across Member States, guidance needs to be developed to clarify the principles underlying sound coastal zone planning and management and ways to operationalise them;
- as the MSDF and the related work of regional seas conventions are key for the development of a holistic approach to the sustainable development of the EU oceans and seas, it is essential to develop ICZM strategies in close co-ordination and co-operation with these instruments. By doing so, ICZM will become an important component also of the future IMP;
- while further support for the implementation of ICZM on-shore is necessary, more emphasis needs to be placed on cooperation at regional sea level, including coherence between plans, programs and management covering the terrestrial and the sea parts of the coastal zones;
- given the high vulnerability of coastal zones to risks and possible impacts related to climate change, strategies to adapt to these risks should be developed and implemented in full coherence with ICZM strategies and instruments dealing with specific natural or technological hazards;
- given the high vulnerability of coastal zones to risks and possible impacts related to climate change, strategies to adapt to these risks should be developed and implemented in full coherence with ICZM strategies and instruments dealing with specific natural or technological hazards;
- more efforts are needed for comparative analyses and the communication and promotion of good practices regarding ICZM, including between coastal regions. The gathering of relevant data and effective information sharing and -use in policy and decision-making also needs to be furthered. The development of common

indicators and a framework to assess the effectiveness and efficiency of ICZM will need to be continued.

## 7 Conclusions and recommendations

According to Article 35, the Commission is required to report before the end of 2012 to the European Parliament and the Council on the operation of the CFP with respect to conservation and sustainability, recovery plans, management plans and Member State measures applicable solely to vessels flying their flag. The reporting obligation also covers the adjustment of fishing capacity. The only issue on which the Council is expected to make a decision before 31 December 2012 is on the coastal access regime (article 17). This means that there is only a reporting requirement in the 2002 Regulation, in contrast to Regulation 3760/92 (article 14) and no legal obligation for substantially changing the conservation framework in 2012. This does not mean that in 2012, no major reform can result but it will depend on the discretionary powers of the Council. Member States may need to be convinced of the need for a substantive reform as some may view it too early to judge the effectiveness of the implementing regulations in support of the CFP objectives. However, this evaluation has indicated that whilst undoubtedly there have been progress in a number of areas, the current CFP has not yet achieved the delivery of the prudent and rational resource policy that it was set out to accomplish. It is therefore timely to undertake a review of some key elements and make the necessary changes to ensure that the CFP delivers sustainable fisheries past 2012.

### 7.1 Drivers for a review of key elements in 2012

The latest Communication on fishing opportunities, for 2009, highlights the lack of concrete progress since the 2002 CFP reform:<sup>213</sup> 'Five years after the last Reform of the Common Fisheries Policy, major obstacles continue to prevent the positive measures introduced, such as long-term planning, precautionary management and fuller consultation with stakeholders, from producing tangible results'. The current situation has shown little signs of improvement since 2002. This is confirmed by the scientific advice on the state of the stocks (see Table 2) which shows that the number of stocks outside safe biological limits is slightly less in 2008 than 2003 but more than in 2005-2007 and there has also been little change to the number of stocks inside SBL between 2003 and 2008.

**Table 2: State of the EU fish stocks for the period 2003-2008**

State of stock	2003	2004	2005	2006	2007	2008
Outside safe biological limits	30	29	26	26	26	28
Inside safe biological limits	12	10	14	11	12	13
Unknown due to poor data	48	53	53	57	58	55

Source: COM (2008)331

<sup>213</sup> COM (2008) 331 final, Communication from the Commission - *Fishing Opportunities for 2009, Policy Statement from the European Commission*, 30.5.2008.

The Commission itself has concluded that two problems are responsible for the current lack of progress. Firstly that TACs are consistently set too far above scientific advice to allow overfished stocks to recover (e.g. Table 2), and secondly, that the days-at-sea system of effort limitation is ineffective. So despite substantial efforts in other specific areas, there has been no overall improvement in the status of stocks since 2003.

In the run up to 2012, there will be growing pressure to address the challenges that have hampered progress towards achieving sustainable fisheries and environmental targets which were established in 2002. EU enlargement might continue, and with it the EU waters would grow. Although the EU already includes all of the European Seas, if Turkey joins the EU will become a significant player in the Black Sea beyond what it is now with only Bulgaria and Romania coastal Member States. This growth, together with the joining of Croatia, will increase the EU's role in the Mediterranean. The growing importance of the Black and Mediterranean Seas can be expected to deepen the trend towards regionalisation of the CFP. Management plans and cooperation at a regional level will become more prominent, and effective, as more countries join the EU.

With recent increases in oil prices however, economics is likely to continue to play a major role in any CFP reform. Government subsidies will continue to support the industry, and thus offset fuel price increases to some extent. Direct capacity enhancing subsidies will remain prohibited and over time the most pervasive modernisation aid, namely engine replacement, will be phased out. While this will reduce the number of new boats entering the fleet, money can be expected to be redirected by Member States into more indirect subsidies supporting operating costs, thus supporting existing vessels to continue fishing.

However, the environmental agenda which was a key driver in the run up the last reform is likely to continue to ensure that environmentally friendly fishing and greater restrictions across the EU on fishing as marine protected areas are designated and enforced. In addition, as the relationship between the CFP and the birds and habitats Directives is clarified, there will be pressure for designation of more marine Natura 2000 sites together with accompanying restrictions at the EU or United Kingdom level. Further conclusions and recommendations which could be considered in the 2012 reform are presented below.

## **7.2 Environmental objectives**

The last reform in 2002 resulted in the setting of key objectives but no specific environmental policy objectives. Furthermore whilst there is reference to the environmental principles, these should be more explicit in the CFP Regulation with specific provision leading to the duty to act. Elements of the precautionary approach and preventive action can be found indirectly in the technical measures but should be more explicit under the chapter on conservation measures.

**It is recommended that** elements of precautionary approach and preventive action should be made explicit in the conservation measures to ensure a more proactive approach towards conservation of EU marine environment.

Furthermore, the 2002 Regulation includes a provision for the progressive implementation of the ecosystem approach. Whilst there has been some progress,

more recently, through technical measures to address by-catch, discards and mitigate the impacts of fishing on non-target species and marine habitats, there is a need to be more active on sensitive habitats and vulnerable species. Progress has been hampered by an unclear definition of the ecosystem approach and indicators which can be used in fisheries management.

**It is recommended that** a precise definition of the ecosystem approach and a more strategic approach to the implementation of the approach with specific actions and timelines be laid out in a roadmap or action plan, to ensure the approach becomes fully operational.

### 7.3 Long term management

For 2009, the Commission is already proposing greater flexibility in changing TACs from year to year, to enable both more effective recovery measures for overexploited stocks, and greater benefit for fishers when stocks do recover - a more flexible approach to year-on-year changes in TACs. Specific proposals have already been made for reductions in TACs (see Commission annual policy statement 2009) and stakeholders and Member States are in the process of commenting on the Commission's proposal. While the proposal from the Commission is likely to be based on 'technical, social and economic advice' from the STECF and RAC, it is expected that the Council will continue to ignore their proposal and set TACs at higher levels (see Table 3).

**Table 3: ICES advice and Actual Quota set Fisheries Council for North Sea Cod**

Year	ICES Advice	TAC agreed by Council
2002	Lowest possible catch	49,300
2003	Closure	27,300
2004	Zero catch	27,300
2005	Zero catch	27,300
2006	Zero catch	23,205

Source: WWF, 2007

The situation is further exacerbated by the overshooting of the quotas on an annual basis. One positive development is the action<sup>214</sup> taken by the Commission in applying deductions to the quota allocations for herring and mackerel to the United Kingdom and Ireland for 2007-2012 due to the fact that they exceeded the quota allocation in the previous period. However this action by the Commission has already been challenged firstly by Ireland and secondly by Spain. In the first case Ireland challenged the Commission's decision to apply quota reductions by taking the Commission to the European Court of First Instance (ECFI) (Case T-172/07).<sup>215</sup> A similar case was taken to the ECFI in 2003, when Spain challenged the quota reductions (Case C-415/03).<sup>216</sup> Whilst in both cases, the applicants were unsuccessful, they highlighted that this action does not necessarily act as a deterrent to

<sup>214</sup> This action is in line with Article 23 (4) of the Regulation 2371/02

<sup>215</sup> Case T-172/07, Atlantic Dawn and Others v. Commission, Order of the Court of First Instance of 2 June 2008, [not yet reported].

<sup>216</sup> Case T-415/03, Cofradía de pescadores "San Pedro" de Bermeo and others v. Council, Judgement of the Court of First Instance of 19 October 2005, 2005 ECR II-4355.

quota overshooting. While political interference in annual decision-making continues and a lack of compliance with current quotas, the implementation of a long term management approach is even more critical.

**It is recommended that** multi-annual plans must be developed for all commercial fish stocks. To date, the Commission has made slow progress in implementing recovery plans for the most urgent stocks which have taken 2-3 years to negotiate and agree, but there is a need to develop recovery plans for the other stocks outside biological limits as a an absolute priority.

#### **7.4 Technical measures (including gear modifications, discard measures and closed areas)**

Efforts towards minimising the impacts of fishing on marine ecosystem continue with the establishment of further technical measures (Article 2 (1) Regulation 2371/02).

The Commission has proposed a new policy on discards which is outlined in the 2007 Communication<sup>217</sup> which is supported by an Impact Assessment in order to address the problem of discarding (each year between 20-60 % of the catch by weight is discarded in EU fisheries). These two documents set out a policy proposal and analysis of the discards problem and options to tackle the issue in European fisheries. However, these documents were only a first step. Five years after the CFP reform, the Commission is only now hoping to make concrete proposals for dealing with the discard problem in EU fisheries after a period of consultation.

In 2004, in respect of preventing the by-catch of cetaceans, Council Regulation 812/2004 was adopted and now requires pingers for vessels of 12 meters or over in defined EU fisheries and waters and during specific seasons. This Regulation entered into force on 1 July 2004 and represented a positive development, building on the driftnet bans that were set in the previous CFP period.

The use of MPAs to protect vulnerable habitats against the side effects of bottom trawling was established by the Council in a number of cases. Following ICES advice provided to the Commission, such closures were agreed for the Darwin Mounds North West of Scotland in 2004, the waters between 100 and 200 nm offshore around the Azores, Madeira and the Canary Islands in 2005.

**It is recommended that the Commission take further actions** to ensure the effectiveness of zones closed to fishing to protect spawning and nursery grounds, as well as non-target species and vulnerable habitats. These include research to support the designation of appropriate measures (closures and other restrictions) but these need to be supported by control and enforcement measures and sanctions for infringements. Furthermore, there is need to provide incentives including those of an economic nature to promote low impact fishing and the development of more pilot projects on alternative types of fisheries management techniques. These should be developed with stakeholders and the RACs.

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<sup>217</sup> COM (2007) 136, *supra* note 122.

## 7.5 Limiting effort

The impact of measures to reduce capacity has been generally poor. The Commission concluded that the approach adopted during the CFP reform, i.e. to use effort management as a driving force for fleet adjustment, has not yielded the expected results. This is due in part to the absence of effort management systems for several fisheries. 'Current limits on fishing effort, using a days at sea system, were also meant to reduce fishing effort in line with reductions in TACs and were instrumental in a number of long-term plans including those for cod. However, with a number of derogations, the system has proved ineffective and a more effective approach is needed. In December 2007, the Council agreed that a kilowatt-day (kW-day) system would be more effective. The Commission is now proposing a shift to a kilowatt-day system for fishing effort, which will be both easier to control and more flexible to implement. It is hoped that the operational programmes for the period 2007-2013 in the context of the European Fisheries Fund (EFF) would ease the transition towards a more efficient Community fleet in economic, social and environmental terms<sup>218</sup> but it is too early to judge the impact of the EFF.

Currently, there is no official information available regarding how much overcapacity fleets actually have with respect to safe biological limits of the available resources. The CFP regulation also requires Member States to describe their fleets in relation to available fishing opportunities.<sup>219</sup> However, most Member States usually report on national fleet management systems and trends in fleet capacity in relation to the entry/exit scheme. In other words, most Member States report on the absolute level of capacity rather than on the capacity in relation to the available fish stocks.<sup>220</sup> As a result, a number of Member States repeatedly claim that they have successfully reduced fishing capacity, without having set any clear parameters that indicate how much they must reduce to achieve a sustainable balance.

**It is recommended that** in addition to the annual advice on fishing opportunities, the Commission should advise on changes to capacity that is required to adjust current rates of fishing mortality for each stock relative to agreed reference points. This advice from the Commission would assist Member States in their efforts to adjust fishing effort.

## 7.6 Control and enforcement

Progress on tightening up the Community's control and enforcement regime has already been discussed in preceding sections. Whilst some of the achievements and developments are also noted, there are a number of outstanding issues which still need to be resolved in order to ensure better control and enforcement.

These have been already been identified by the Commission<sup>221</sup> and Court of Auditors<sup>222</sup> and are defined below:

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<sup>218</sup> COM (2007) 828, *Annual report from the Commission to the European Parliament and the Council on Member States' effort during 2006 to achieve a sustainable balance between fishing capacity and fishing opportunities*, 19/12/2007.

<sup>219</sup> Article 14 of Regulation 2371/2002 and Article 12 of Regulation 1438/2003.

<sup>220</sup> COM(2007) 828 final, *Annual Report from the Commission to the European Parliament and the Council on Member States' efforts during 2006 to achieve a sustainable balance between fishing capacity and fishing opportunities*.

<sup>221</sup> SEC (2007) 425, *Report from the Commission to the Council and the European Parliament, on the monitoring of Member States' implementation of the Common Fisheries Policy 2003-2005*, 10/04/2007.

- the lack of uniformity in the implementation of control policy at Member State level;
- unreliable catch reporting systems in most countries (shortcomings in national catch recording systems and weaknesses in the ability of the Commission to monitor catch uptake);
- large proportions of the fleet exempted from logbook obligations (under 10m), but in some cases catching significant quantities of recovery species (France, Spain, United Kingdom);
- the limited effectiveness of national inspections in some countries because of the use on non specialist inspectors (police, border guards and customs officers), the absence of general control standards (quality and quantity of inspections and a general lack of strategy and failure to adequately utilise risk based techniques to improve the targeting of non compliant activities);
- the inadequacy in following up infringements and imposing sanctions in most countries (national systems lacking severity);
- the limited means available to the Commission to apply pressure on the Member States.

The inadequate application of control measures as specified in the core Control Regulation (EC 2847/93) (i.e. additional to those cited above), or specific species recovery programmes include inadequate use of cross checking procedures i.e. for consistency between logbook, landing declarations, and sales notes, or log book, VMS tracking and vessel sightings; Failure of some fishers to comply with VMS, and inadequate definition of non corruptible VMS; inadequate enforcement of transport Regulations; inadequate enforcement of market and traceability Regulations; inadequate enforcement of third country landings; inadequate control of fishing gears in specific areas (North Sea blinders in beam trawl fisheries and the continued use of drift nets in the Mediterranean).

The inadequate application of control measures as specified in the species recovery programmes are of particular concern and include:

- Failure to appropriately evaluate catch declarations (Baltic cod);
- The lack of a strategy to secure compliance with effort limitation schemes (North Sea cod, southern hake and nephrops);
- VMS not used effectively to cross check prior notification of landings and fishing effort (North Sea cod);
- By-catch rules not systematically checked (North Sea cod);
- Reduced margins of tolerance (8 %) against catch estimates in the log book not properly enforced (All species recovery programmes);
- Inadequate control in the landings of undersized fish (Northern hake);
- No catch declaration system in place (Bluefin tuna).

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<sup>222</sup> European Court of Auditors, Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources, 28.12.2007.

In 2008, the Commission proposed modifications to the EU control and enforcement regime in a document was open to public consultation until May 2008. The consultation paper identified nine possible fields of action:

- rationalise the rules;
- strengthen the capacity of the Commission;
- harmonise sanctions;
- strengthen cooperation and assistance;
- develop a culture of compliance;
- use of modern technologies;
- adapt the mandate of the Community Fisheries Control Agency.

The Commission plans to propose a new Regulation which will present to the Council and which will hopefully address most of the issues identified by the Court of Auditors.

**It is recommended that** the Commission takes actions in all of these areas, in particular, those which would result in better compliance with conservation measures with the result of reducing the negative impacts of fishing on biodiversity. In particular, the harmonisation of sanctions and the use of technologies. The implementation of actions relating to these aspects would support other actions under the CFP, such as the implementation of recovery plans, the implementation of the multi-annual plans, the technical measures in particular the closed areas and measures to address discarding. It is also recommended that the cooperation and assistance through Joint Deployment Plans (JDP), along the lines of the recent JDPs for North Sea Cod and the joint inspection and surveillance campaign in support of the long-term management plan for cod in the Baltic Sea. The activities should be encouraged as a cost-effective means of control, monitoring and enforcing the EU regulations.

## 7.7 Decision-making processes

In some ways, it is too early to judge the effectiveness of the RACs. However, the Commission has already indicated that their experience with the RACs so far has been positive and this is the basis for increased funding to assist RACs to fulfil their duties.

The RACs are consulted on all key EU proposals and the shift in timing of the provision of scientific advice (see section 5) should improve communications further as this allows the RACs more time to submit recommendations and suggestions. All of the current operational RACs have environmental NGOs (eNGOs) as members. Although the level of their participation varies, their inclusion marks a positive step towards good governance. In one example, BirdLife International initiated the working group on spatial planning/marine protected areas (MPAs) in the North Sea RAC. The RACs will continue to evolve in response to growing demands. The Council has agreed to provide permanent EU funding for core RAC operations to ensure that the RACs continue to play a role in advising, in particular to cover 90 % of operating costs including personnel, meeting room facilities, equipment, materials and supplies, travel and accommodation expenses of experts attending Committee meetings, audits and interpretation and translation costs.<sup>223</sup>

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<sup>223</sup> Council Decision 2007/409/EC, *supra* note 172.

The success of the RACs is not only critical to the development of sustainable fisheries in Europe but also to the integration of environmental protection in EU fisheries management. As the Commission points out, it is too early to pass judgement on the RACs. However, in order to ensure a positive contribution to the development of the CFP towards 2012, it is important that the RACs remain transparent and fully committed to establishing their credentials on sound and balanced advice based on consultation with all stakeholders.

Now that the RACs are functional, it is recommended that efforts be spent on reflecting on the long term development of the CFP and developing ways of engaging all stakeholders including NGOs in their position statements and input into the CFP decision-making process. In addition, it is important that the RACs develop their relationship with NGOs and other sectors to ensure their input into environmental matters pertaining to the CFP and the Integrated Maritime Policy.

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## Annex 1 Highlighting key differences in CFP Regulation 3760/92 and 2371/2002

CFP 1992	CFP 2002
Preamble - 22 paragraphs	Preamble - 30 paragraphs
No Title	<i>Chapter I Scope and Objectives</i>
Article 1-3	Articles 1-3 (Scope, Objectives and Definitions)
<i>Title I Rules of Access to Water and Resources</i>	<i>Chapter II Conservation and Sustainability</i>
Articles 4-10	Articles 4-10 (Types of measures, Recovery plans, management plans, commission emergency measures, Member State emergency measures, Member State measures within the 12 nautical mile zone, Member State measures applicable solely to fishing vessels flying their flag)
<i>Title II Management and Monitoring Of Fishing Activity</i>	<i>Chapter III Adjustment of Fishing Capacity</i>
Article 11	Articles 11-16 (Adjustment of fishing capacity, reference levels for fishing fleets, entry/exit scheme and overall capacity reduction, exchange of information, fishing fleet registers, conditionality of community financial assistance and reduction of fishing effort)
<i>Title III General Provisions</i>	<i>Chapter IV Rules on Access to Waters and Resources</i>
Articles 12-21	Articles 17- 20 (General rules, Shetland box, review of access rules, allocation of fishing opportunities)
	<i>Chapter V Community Control and Enforcement System</i>
	Articles 21- 28 (Conditions for access to waters and resources and for marketing of fisheries products, responsibilities of Member States, inspection and enforcement, follow up on infringements, responsibilities of the Commission, evaluation and control by the Commission, cooperation and coordination)
	<i>Chapter VI Decision Making and Consultation</i>
	Articles 29-33 (Decision making procedure, Committee for fisheries and aquaculture, regional advisory councils, Regional Advisory Councils, Procedure for the establishment of Regional Advisory Councils, Scientific, Technical and Economic Committee for Fisheries)
	<i>Chapter VII Final Provisions</i>
	Articles 34-36 (Repeal, Review, Entry into force)

## Annex 2. List of outputs, communications, Regulations and action plans

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
<b>Framework Regulation</b>			
Proposal for a COUNCIL REGULATION on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2002.05.28	COUNCIL REGULATION (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2002.12.20
<b>Recovery plans</b>			
Proposal for a COUNCIL REGULATION establishing measures for the recovery of cod stocks COM/2003/0237	2003.05.06	Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks	2004.02.26
COM (2008) 162 final. Proposal for a Council Regulation amending Regulation (EC) No 423/2004 as regards the recovery of cod stocks and amending Regulation (EEC) No 2847/93	2008.04.02	No Regulation associated with this proposal	
Proposal for a COUNCIL REGULATION establishing measures for the recovery of the Northern hake stock COM/2003/0374	2003.06.27	Council Regulation (EC) No 811/2004 of 21.4.2004 establishing measures for the recovery of the Northern hake stock	2004.04.21
		Corrigendum to Council Regulation (EC) No 811/2004 of 21 April 2004 establishing measures for the recovery of the northern hake stock (OJ L 150, 30.4.2004)	2004.04.30
EXTERNAL - Press release: Commission welcomes "decisive action" by the North-west Atlantic Fisheries Organisation (NAFO) to rebuild Greenland halibut stocks Com 2003/0746 Final, Proposal for a Council Regulation fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters	2003.09.24	Council Regulation (EC) No 2287/2003 of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch	31.12.2003

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
and, for Community vessels, in waters where catch limitations are required		limitations are required	
Proposal for a COUNCIL REGULATION establishing a rebuilding plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation COM/2004/0640	2004.10.07	Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation	2005.12.20
Proposal for a COUNCIL REGULATION establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 COM/2003/0818	2003.12.23	Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms	2005.12.20
Press release: Joe Borg calls on international action to protect bluefin tuna	2006.10.06		
Proposal for a COUNCIL REGULATION amending Council Regulation (EC) No 41/2007 as concerns the recovery plan for bluefin tuna recommended by the International Commission for the Conservation of Atlantic Tunas COM/2007/0074	2007.02.27	Council Regulation (EC) No 643/2007 of 11 June 2007 amending Regulation (EC) No 41/2007 as concerns the recovery plan for bluefin tuna recommended by the International Commission for the Conservation of Atlantic Tunas	13.6.2007
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Development of a Community Action Plan for the management of European Eel.	2003.10.01		

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Proposal for a COUNCIL REGULATION establishing measures for the recovery of the stock of European Eel. COM/2005/0472	2005.10.06	Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel	2007.09.18
Proposal for a COUNCIL REGULATION Establishing a multi-annual recovery Plan for Bluefin tuna in the Eastern Atlantic and Mediterranean COM/2007/0169	2007.04.03	Council Regulation (EC) No 1559/2007 of 17 December 2007 establishing a multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean and amending Regulation (EC) No 520/2007	2007.12.17
		2008/323/EC: Commission Decision of 1 April 2008 establishing a specific control and inspection programme related to the recovery of bluefin tuna in the Eastern Atlantic and the Mediterranean (notified under document number C(2008) 1202)	22.4.2008
<b>Multi-annual plan</b>			
Proposal for a COUNCIL REGULATION establishing measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay	2003.12.23	Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay	2006.02.23
Proposal for a COUNCIL REGULATION establishing measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay	2003.12.23	Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel	2007.05.07
Proposal for a COUNCIL REGULATION establishing a management plan for fisheries exploiting stocks of plaice and sole in the North Sea	2006.01.10	Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea	2007.06.11

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Proposal for a Council Regulation Establishing a multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks	2006.07.24	Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97	2007.09.18
Proposal for a Council Regulation establishing a multi-annual plan for the stock of herring distributed to the West of Scotland and the fisheries exploiting that stock COM (2008) 240 final	2008.05.06	No Regulation associated with this proposal	
<b>Emergency measures</b>			
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 677/2003 of 14 April 2003 establishing emergency measures for the recovery of the cod stock in the Baltic Sea	2003.04.14
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 1475/2003 of 20 August 2003 on the protection of deep-water coral reefs from the effects of trawling in an area north west of Scotland	2003.08.20
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 263/2004 of 16 February 2004 extending for six months the application of Regulation (EC) No 1475/2003 on the protection of deep-water coral reefs from the effects of trawling in an area north-west of Scotland	2004.02.16
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 1037/2005 of 1 July 2005 establishing emergency measures for the protection and recovery of the anchovy stock in ICES Sub-area VIII	2005.07.01

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 1539/2005 of 22 September 2005 extending the emergency measures for the protection and recovery of the anchovy stock in ICES sub-area VIII	2005.09.22
No council proposal as autonomous COMMISSION regulation		Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and in the Mediterranean Sea	2008.06.12
<b>Technical measures</b>			
Proposal for a COUNCIL REGULATION laying down technical measures for the conservation of certain stocks of highly migratory species	2006.03.08	Council Regulation (EC) No 520/2007 of 7 May 2007 laying down technical measures for the conservation of certain stocks of highly migratory species and repealing Regulation (EC) No 973/2001	2007.05.07
COM/2002/0420 final , Proposal for a Council Regulation amending Regulation (EC) No 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species	2002.11.26		
Amended proposal for a Council Regulation amending Regulation (EC) N° 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species	2003.07.22	Council Regulation (EC) No 831/2004 of 26 April 2004 amending Regulation (EC) No 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species	2004.04.26
Proposal for a COUNCIL REGULATION laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98	2003.07.23	Council Regulation (EC) No 812/2004 of 26.4.2004 laying down measures concerning incidental catches of cetaceans in fisheries and	2004.04.26

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		amending Regulation (EC) No 88/98	
Proposal for a Council Regulation amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets	2006.09.19	Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets	2007.06.28
Proposal for COUNCIL REGULATION laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources	2002.07.03		
Amended proposal for a COUNCIL REGULATION laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources	2003.07.01	COUNCIL REGULATION (EC) No 600/2004 of 22 March 2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources	2004.03.24
Proposal for a COUNCIL REGULATION for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound and amending Regulation (EC) No 1434/98	2005.03.14	Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98	2005.12.21
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 88/98 as regards the extension of the trawling ban to Polish waters	2004.09.30	Council Regulation (EC) No 289/2005 of 17 February 2005 amending Regulation (EC) No 88/98 as regards the extension of the trawling ban to Polish waters	2005.02.17
No council proposal as autonomous COMMISSION regulation.		Commission Regulation (EC) No 1147/2005 of 15 July 2005 prohibiting fishing for sandeel	2005.07.15

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		with certain fishing gears in the North Sea and the Skagerrak	
No council proposal as autonomous COMMISSION regulation.		Commission Regulation (EC) No 622/2007 of 5 June 2007 establishing conditions for the experimental fishing for sand eel for 2007 in the North Sea	2007.06.06
Communication from the Commission to the Council and the European Parliament - Promoting more environmentally-friendly fishing methods : the role of technical conservation measures	2004.06.21	No Regulation associated with this proposal	.
Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures {SEC(2008)1977} {SEC(2008)1978} Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures {SEC(2008)1977} {SEC(2008)1978}	2008.06.04		
No council proposal as autonomous COMMISSION regulation.		Commission Regulation (EC) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets	2008.06.10
<b>Fishing effort</b>			
Com 2002/0190 Final, Proposal for a Council Regulation establishing an emergency Community measure for scrapping fishing vessels	2002.05.28	COUNCIL REGULATION (EC) No 2370/2002 of 20 December 2002 establishing an emergency Community measure for scrapping fishing vessels	2002.12.31
NO proposal		COMMISSION REGULATION (EC) No 1438/2003 of 12 August 2003 laying down	2003.08.13

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002	
Proposal for a COUNCIL REGULATION on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EEC) 2847/93	2002.12.16	Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95	2003.11.04
NO proposal		COMMISSION REGULATION (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register	2004.01.09
Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Part five : Provisions relating to the implementation of this Act - Title II : Applicability of the Acts of the Institutions - Article 57	23.9.2004	COMMISSION REGULATION (EC) No 916/2004 of 29 April 2004 amending Regulation (EC) No 1438/2003 laying down implementing rules on the Community Fleet Policy by reason of the Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union	2004.04.30
Proposal for a COUNCIL REGULATION on the management of fishing fleets registered in the outermost regions	2003.05.02	Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions	2004.03.30
Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the	2003.23.9	COUNCIL REGULATION (EC) No 1242/2004 of 28 June 2004 granting derogations to the new Member States from certain provisions of	2004.07.07

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Part five : Provisions relating to the implementation of this Act - Title II : Applicability of the Acts of the Institutions - Article 57		Regulation (EC) No 2371/2002 relating to reference levels of fishing fleets	
Proposal for a Council Regulation fixing the maximum annual fishing effort for certain fishing areas and fisheries	2004.03.12	Council Regulation (EC) No 1415/2004 of 19 July 2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries	2004.08.19
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2287/2003 as concerns the number of days at sea for vessels fishing for haddock in the North Sea and the use of bottom trawls in waters around the Azores, the Canary Islands and Madeira	2004.08.16	Council Regulation (EC) No 1811/2004 of 11 October 2004 amending Regulation (EC) No 2287/2003 as concerns the number of days at sea for vessels fishing for haddock in the North Sea and the use of bottom trawls in waters around the Azores, the Canary Islands and Madeira	2004.10.11
NO proposal		Commission Regulation (EC) No 2104/2004 of 9 December 2004 laying down detailed implementing rules for Council Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	2004.12.10
NO proposal		Commission Regulation (EC) No 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein	2005.08.04
NO proposal		COMMISSION REGULATION (EC) No 1570/2005 of 27 September 2005 correcting Regulation (EC) No 2104/2004 laying down	2005.09.28

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		detailed implementing rules for Council Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	
COM (2005) 422 final, Communication from the Commission to the Council and the European Parliament - Review of certain access restrictions in the Common Fisheries Policy (Shetland Box and Plaice Box)	2005.09.13		
COM/2005/0499 final , Proposal for a Council Regulation repealing Regulation (EC) No 3690/93 establishing a Community system laying down rules for the minimum information to be contained in fishing licences	2005.10.17	COUNCIL REGULATION (EC) No 700/2006 of 25 April 2006 repealing Regulation (EC) No 3690/93 establishing a Community system laying down rules for the minimum information to be contained in fishing licences	2006.05.09
		COMMISSION REGULATION (EC) No 1799/2006 of 6 December 2006 amending Regulation (EC) No 26/2004 on the Community fishing fleet register	2007.12.01
Proposal for a Council Regulation amending Council Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	2006.08.01	Council Regulation (EC) No 1646/2006 of 7 November 2006 amending Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	2006.11.07
Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded - PART FIVE: PROVISIONS RELATING TO THE IMPLEMENTATION OF THIS ACT - TITLE II: APPLICABILITY OF THE ACTS OF THE INSTITUTIONS - Article 56	2005.06.21	COUNCIL REGULATION (EC) No 783/2007 of 25 June 2007 granting derogations to Bulgaria and Romania from certain provisions of Regulation (EC) No 2371/2002 relating to reference levels of fishing fleet	2007.07.05

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Com (2006) 587 Final, Proposal for a Council Regulation amending Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2006.10.13	Council Regulation (EC) No 865/2007 of 10 July 2007 amending Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2007.07.10
		COMMISSION REGULATION (EC) No 1274/2007 of 29 October 2007 amending Regulation (EC) No 2104/2004 laying down detailed implementing rules for Council Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	2007.10.30
		COMMISSION REGULATION (EC) No 1277/2007 of 29 October 2007 amending Regulation (EC) No 1438/2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002	2007.10.30
COM(2008) 444 final, Proposal for a COUNCIL REGULATION amending Regulation (EC) No 639/2004 on the management of fishing fleets registered in the Community outermost regions	2008.07.09		
COM (2008) 453 final, Communication from the Commission to the European Parliament AND to the Council on promoting the adaptation of the European Union fishing fleets to the economic consequences of high fuel prices	2008.07.08		

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
<b>Marine ecosystems</b>			
Proposal for a COUNCIL REGULATION on the removal of fins of sharks on board vessels	2002.08.05	Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels	2003.06.26
COM (2003) 519 final, Proposal for a COUNCIL REGULATION amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in an area north west of Scotland	2003.08.27	Council Regulation (EC) No 602/2004 of 22 March 2004 amending Regulation (EC) No 850/98 as regards the protection of deepwater coral reefs from the effects of trawling in an area north west of Scotland	2004.03.22
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean	2004.02.03	Council Regulation (EC) No 1568/2005 of 20 September 2005 amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of fishing in certain areas of the Atlantic Ocean	2005.09.20
Report from the Commission to the Council and the European Parliament on the operation of Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels	2005.12.23		
Communication from the Commission to the Council and the European Parliament - Implementing sustainability in EU fisheries through maximum sustainable yield {SEC(2006) 868}	2006.07.04		
Com 2003/0589 Final, Proposal for a Council Regulation concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea and amending Regulations (EC) No 2847/93 and (EC) No 973/2001	2003.10.09	Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94	2006.12.21
COM (2007) 605 final, Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from	2007.10.17	Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable	2008.07.15

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
the adverse impacts of bottom fishing gears I		marine ecosystems in the high seas from the adverse impacts of bottom fishing gears	
<b>Control &amp; Enforcement</b>			
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 1936/2001 of 27 September 2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish	2002.07.24		
Amended Proposal for a COUNCIL REGULATION amending Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish	2003.07.14	Council Regulation (EC) No 869/2004 of 26 April 2004 amending Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish	2004.04.26
COM (2002) 356 final, Proposal for COUNCIL REGULATION laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources and repealing Regulations (EEC) No 3943/90, (EC) No 66/98 and (EC) No 1721/1999	2002.07.03		
Amended proposal for a COUNCIL REGULATION laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources	2003.07.01	COUNCIL REGULATION (EC) No 601/2004 of 22 March 2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources and repealing Regulations (EEC) No 3943/90, (EC) No 66/98 and (EC) No 1721/1999	2004.03.22

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
COMMUNICATION FROM THE COMMISSION Community action plan for the eradication of illegal, unreported and unregulated fishing	2002.05.28		
COM(2007) 602 final, Proposal for a Council Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing {SEC(2007) 1310} {SEC(2007) 1312} {SEC(2007) 1336}	2007.10.17	No Regulation associated with this proposal	
COM/2002/0453 final, Proposal for Council Regulation introducing a system for the statistical monitoring of trade in bluefin tuna, swordfish and bigeye tuna within the Community	2002.08.05	Council Regulation (EC) No 1984/2003 of 8 April 2003 introducing a system for the statistical monitoring of trade in bluefin tuna, swordfish and bigeye tuna within the Community	2003.11.13
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 3069/95 establishing a European Community observer scheme applicable to Community fishing vessels operating in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (NAFO)	2003.10.17	Council Regulation (EC) No 855/2004 of 29 April 2004 amending Regulation (EC) No 3069/95 establishing a European Community observer scheme applicable to Community fishing vessels operating in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (NAFO)	2004.04.29
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2791/1999 laying down certain control measures applicable in the area covered by the Convention on future multilateral co-operation in the north-east Atlantic fisheries	2003.06.13	Council Regulation (EC) No 770/2004 of 21 April 2004 amending Regulation (EC) No 2791/1999 laying down certain control measures applicable in the area covered by the Convention on future multilateral cooperation in the north-east Atlantic fisheries	2004.04.21
COM/2004/0289 final , Proposal for a COUNCIL DECISION on a Community financial contribution towards Member States	2003.11.20	2004/465/EC: COUNCIL DECISION of 29.4.2004 on a community financial	2004.04.29

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
fisheries control programmes		contribution towards Member States fisheries control programmes	
Proposal for a COUNCIL DECISION amending Decision 439/2000/EC of 29 June 2000 on a financial contribution from the Community towards the expenditure incurred by certain Member States in collecting data, and for financing studies and pilot projects for carrying out the common fisheries policy	2004.09.29	2005/703/EC: Council Decision of 6 October 2005 amending Decision 2000/439/EC on a financial contribution from the Community towards the expenditure incurred by certain Member States in collecting data, and for financing studies and pilot projects for carrying out the common fisheries policy	2005.10.06
COM/2004/0289 final, Proposal for a Council Regulation establishing a Community Fisheries Control Agency and amending Regulation (EC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy	2004.04.08	Council Regulation (EC) No 768/2005 [5] establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy provides for the operation of joint deployment plans.	26/04/2005
Council Regulation (EC) No 768/2005 [5] establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy provides for the operation of joint deployment plans.	2004.04.28	Commission Decision 2007/567/EC of 7 August 2007 on a Community financial contribution towards expenditure incurred by Member States in implementing the monitoring and control systems applicable to the common fisheries policy for 2007 (notified under document number C(2007) 3747)	22.12.2007
Proposal for a Council Regulation on electronic recording and reporting of fishing activities and on means of remote sensing	2004.00.00	COUNCIL REGULATION (EC) No 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing	2006.12.21

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
COM (2004) 167, Communication from the Commission to the Council and the European Parliament - Improving the monitoring of industrial fishing within the EU	2004.03.25		
Council Regulation (EC) No 2371/2002, Article 22(3) and Article 23(5)		Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems	30.4.2004
Proposal for a Council Regulation prohibiting imports of Atlantic swordfish ( <i>Xiphias gladius</i> ) originating in Sierra Leone and repealing Regulation (EC) No 2093/2000	2004.02.20	Council Regulation (EC) No 828/2004 of 26 April 2004 prohibiting imports of Atlantic swordfish ( <i>Xiphias gladius</i> ) originating in Sierra Leone and repealing Regulation (EC) No 2093/2000	2004.04.26
Proposal for a Council Regulation prohibiting imports of Atlantic bigeye tuna ( <i>Thunnus obesus</i> ) originating in Bolivia, Cambodia, Equatorial Guinea, Georgia and Sierra Leone and repealing Regulation (EC) No 1036/2001	2004.02.20	Council Regulation (EC) No 827/2004 of 26 April 2004 prohibiting imports of Atlantic bigeye tuna ( <i>Thunnus obesus</i> ) originating in Bolivia, Cambodia, Equatorial Guinea, Georgia and Sierra Leone and repealing Regulation (EC) No 1036/2001	2004.04.26
Proposal for a Council Decision amending Decision 2004/465/EC on a Community financial contribution towards Member States fisheries control programmes	2005.07.20	Council Decision 2006/2/EC of 21 December 2005 amending Decision 2004/465/EC on a Community financial contribution towards Member States fisheries control programmes	2005.12.21
COM/2005/0238 final, Proposal for a Council Regulation amending Regulation (EC) No 3317/94 as regards the transmission of applications for fishing licences to third countries	2005.06.06	Proposal withdrawn by Commission	
COM (2005) 566, Proposal for a Regulation of the European Parliament and of the Council on the submission of data on landings of fishery products in Member States	2005.11.11	Regulation (EC) No 1921/2006 of the European Parliament and of the Council of 18 December 2006 on the submission of statistical data on	2006.12.18

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		landings of fishery products in Member States and repealing Council Regulation (EEC) No 1382/91	
2005/429/EC: Commission Decision of 2 June 2005 establishing a specific monitoring programme related to the recovery of cod stocks (notified under document number C(2005) 1538)	2005.06.11	2007/429/EC: Commission Decision of 18 June 2007 amending Decision 2005/429/EC establishing a specific monitoring programme related to the recovery of cod stocks	21.06.2007
		Commission Regulation (EC) No 448/2005 of 15 March 2005 amending Council Regulation (EEC) No 3880/91 on the submission of nominal catch statistics by Member States fishing in the north-east AtlanticText with EEA relevance	2005.03.19
Proposal for a Council Regulation amending Regulation (EC) No 827/2004 as regards the prohibition of imports of Atlantic bigeye tuna from Cambodia, Equatorial Guinea and Sierra Leone, and repealing Regulation (EC) No 826/2004 prohibiting imports of blue-fin tuna from Equatorial Guinea and Sierra Leone and Regulation (EC) No 828/2004 prohibiting imports of swordfish from Sierra Leone	2005.04.05	Council Regulation (EC) No 919/2005 of 13 June 2005 amending Regulation (EC) No 827/2004 as regards the prohibition of imports of Atlantic bigeye tuna from Cambodia, Equatorial Guinea and Sierra Leone, and repealing Regulation (EC) No 826/2004 prohibiting imports of blue-fin tuna from Equatorial Guinea and Sierra Leone and Regulation (EC) No 828/2004 prohibiting imports of swordfish from Sierra Leone	2005.06.13
Com (2005) 114 Final, Proposal for a Council Regulation amending Regulation (EC) No 827/2004 as regards the prohibition of imports of Atlantic bigeye tuna from Cambodia, Equatorial Guinea and Sierra Leone, and repealing Regulation (EC) No 826/2004 prohibiting imports of blue-fin tuna from	2005.04.05	Council Regulation (EC) No 919/2005 of 13 June 2005 amending Regulation (EC) No 827/2004 as regards the prohibition of imports of Atlantic bigeye tuna from Cambodia, Equatorial Guinea and Sierra Leone, and	2005.06.18

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Equatorial Guinea and Sierra Leone and Regulation (EC) No 828/2004 prohibiting imports of swordfish from Sierra Leone		repealing Regulation (EC) No 826/2004 prohibiting imports of blue-fin tuna from Equatorial Guinea and Sierra Leone and Regulation (EC) No 828/2004 prohibiting imports of swordfish from Sierra Leone	
Council Regulation (EEC) No 2847/93, Articles 5(c) and 20a(3)		Commission Regulation (EC) No 356/2005 of 1 March 2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls	2005.03.02
Proposal for a Council Regulation laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation	2006.10.23	Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation	2007.10.22
Regulation 2371/02		Commission Regulation (EC) No 1042/2006 of 7 July 2006 laying down detailed rules for the implementation of Article 28(3) and (4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2006.07.08
COM (2006) 497, Proposal for a Regulation of the European Parliament and of the Council on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic	2006.09.14	Proposal withdrawn	
Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea	2006.06.14	Commission Regulation (EC) No 391/2007 of 11 April 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by	2007.04.19

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy	
COM(2006) 867 final, Proposal for a Council Regulation amending Council Regulation (EC) No 601/2004 of 22 March 2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources and repealing Regulations (EEC) No 3943/90, (EC) No 66/98 and (EC) No 1721/1999	2007.01.09	Council Regulation (EC) No 1099/2007 of 18 September 2007 amending Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources	2007.09.18
		Commission Regulation (EC) No 1566/2007 of 21 December 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing	2007.12.22
Regulation 2371/02		2007/166/EC: Commission Decision of 9 January 2007 adopting the list of Community inspectors and inspection means pursuant to Article 28(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy	2007.03.16
Proposal for a Council Regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.	2007.04.18	No Regulation associated with this proposal	

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Proposal for a Council Regulation amending Regulation No 1543/2000 establishing a Community framework for the collection and management of the data needed to conduct the Common Fisheries Policy	2007.06.29	No Regulation associated with this proposal	
COM (2007) 760, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (Recast)	2007.11.29	No Regulation associated with this proposal	
COM/2007/0763 final, Proposal for a Regulation of the European Parliament and of the Council on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (Recast)	2007.11.29	No Regulation associated with this proposal	
COM/2008/0333 final , Recommendation from the Commission to the Council in order to authorise the Commission to conduct negotiations for the elaboration of an international legally-binding instrument on port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing	2008.5.28	No Regulation associated with this proposal	
<b>TAC</b>			
Proposal for a COUNCIL REGULATION establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks	2002.03.01	COUNCIL REGULATION (EC) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep sea stocks	2002.12.16
Proposal for a COUNCIL REGULATION fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required	2002.12.11	Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for	2002.12.20

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		Community vessels, in waters where catch limitations are required	
		Council Regulation (EC) No 2340/2002 of 16 December 2002 fixing for 2003 and 2004 the fishing opportunities for deep-sea fish stocks	31.12.2002
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required	2003.04.03	Council Regulation (EC) No 671/2003 of 10 April 2003 amending Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.04.10
Proposal for a COUNCIL REGULATION amending, for the second time, Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required	2003.04.29	Council Regulation (EC) No 1091/2003 of 18 June 2003 amending for the second time Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.06.18
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.08.04	Council Regulation (EC) No 1754/2003 of 22 September 2003 amending for the third time Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where	2003.09.22

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		catch limitations are required	
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2341/2002 as regards fishing opportunities for anchovy and anglerfish in certain zones	2003.10.28	Council Regulation (EC) No 2192/2003 of 8 December 2003 amending Regulation (EC) No 2341/2002 as regards the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.12.08
Proposal for a COUNCIL REGULATION fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.12.03	Council Regulation (EC) No 2287/2003 of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2003.12.19
		Commission Regulation (EC) No 762/2004 of 23 April 2004 adapting certain fish quotas for 2004 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas	24.4.2004
Proposal for a Council Regulation Amending Regulation (EC) No 2287/2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required	2004.04.01	Council Regulation (EC) No 867/2004 of 29 April 2004 amending Regulation (EC) No 2287/2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations	2004.04.29

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		in catch are required	
		Commission Regulation (EC) No 820/2004 of 29 April 2004 amending Council Regulation (EC) No 2287/2003 as regards fishing opportunities for blue whiting in certain zones	2004.04.30
		Commission Regulation (EC) No 1645/2004 of 20 September 2004 amending Regulation (EC) No 2287/2003 as concerns fishing opportunities for capelin in Greenland waters	2004.09.20
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2287/2003 as concerns fishing opportunities in Greenland waters	2004.08.09	Council Regulation (EC) No 1691/2004 of 24 September 2004 amending Regulation (EC) No 2287/2003 as concerns fishing opportunities in Greenland waters	2004.09.24
Proposal for a Council Regulation amending Regulation (EC) No 2287/2003 as concerns fishing opportunities for herring in the Baltic Sea	2004.12.10	No Regulation associated with this proposal	
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2287/2003 as concerns fishing opportunities for Norway lobster in the North Sea	2004.12.08	No Regulation associated with this proposal	
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2287/2003 as regards fishing for Baltic cod	2004.05.24	No Regulation associated with this proposal	
Proposal for a COUNCIL REGULATION fixing for 2005 and 2006 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks, and amending Council Regulation (EC) No 2347/2002	2004.11.29	Council Regulation (EC) No 2270/2004 of 22 December 2004 fixing for 2005 and 2006 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks	2004.12.22
Proposal for a COUNCIL REGULATION fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters	2004.12.08	Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for	2004.12.22

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
and, for Community vessels, in waters where catch limitations are required		certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	
		Commission Regulation (EC) No 776/2005 of 19 May 2005 adapting certain fish quotas for 2005 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas	2005.02.24
Proposal for a Council Regulation amending Regulation (EC) No 27/2005, as concerns fishing opportunities in Greenland, Faroese and Icelandic waters and fishing for cod in the North Sea, and amending Regulation (EC) No 2270/2004, as concerns fishing opportunities for deep-sea sharks and roundnose grenadier	2005.04.18	Council Regulation (EC) No 860/2005 of 30 May 2005 amending Regulation (EC) No 27/2005, as concerns fishing opportunities in Greenland, Faroese and Icelandic waters and fishing for cod in the North Sea, and amending Regulation (EC) No 2270/2004, as concerns fishing opportunities for deep-sea sharks and roundnose grenadier	2005.05.30
		Council Regulation (EC) No 1300/2005 of 3 August 2005 amending Regulation (EC) No 27/2005, as concerns herring, mackerel, horse mackerel, sole and vessels engaged in illegal fisheries	10.8.2005
Proposal for a Council Regulation amending Regulation (EC) No 27/2005, as concerns herring, Greenland halibut and octopus	2005.10.12	Council Regulation (EC) No 1936/2005 of 21 November 2005 amending Regulation (EC) No 27/2005, as concerns herring, Greenland halibut and octopus	2005.11.21
Proposal for a Council Regulation amending Regulation (EC) No 27/2005, as concerns herring, mackerel, horse mackerel, octopus	2005.07.12	No Regulation associated with this proposal	

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
and vessels engaged in illegal fisheries			
Proposal for a Council Regulation fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2005.11.30	Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2005.12.22
Proposal for a Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2006	2005.11.24	Council Regulation (EC) No 52/2006 of 22 December 2005 fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2006	2005.12.22
Proposal for a Council Regulation amending Regulation (EC) No 51/2006, as concerns blue whiting and herring	2006.03.27	Council Regulation (EC) No 1591/2006 of 24 October 2006 amending Regulation (EC) No 51/2006 as regards provisions on vessels engaged in illegal, unreported and unregulated fisheries in the North-East Atlantic	2006.10.24
Proposal for a Council Regulation amending Regulations (EC) No 51/2006 and (EC) No 2270/2004, as regards fishing opportunities and associated conditions for certain fish stocks	2006.08.24	Council Regulation (EC) No 1782/2006 of 20 November 2006 amending Regulations (EC) No 51/2006 and (EC) No 2270/2004, as regards fishing opportunities and associated conditions for certain fish stocks	2006.11.20
Proposal for a Council Regulation fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks	2006.09.28	Council Regulation (EC) No 2015/2006 of 19 December 2006 fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks	2006.12.19

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Communication from the Commission to the Council - Fishing Opportunities for 2007 Policy Statement from the European Commission	2006.09.15		
Proposal for a Council Regulation fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2006.12.05	Council Regulation (EC) No 41/2006 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2006.12.21
Proposal for a Council Regulation amending Regulations (EC) No 1941/2006, (EC) No 2015/2006 and (EC) No 41/2007, as regards fishing opportunities and associated conditions for certain fish stocks	2007.04.20	Council Regulation (EC) No 2015/2006 of 19 December 2006 fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks	2006.12.22
Proposal for a Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2007	2006.09.05	Council Regulation (EC) No 1941/2006 of 11 December 2006 fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2007	2008.05.30
		Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy	2007.02.16

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
		Commission Regulation (EC) No 609/2007 of 1 June 2007 adapting certain fish quotas for 2007 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas	2007.06.02
		Council Regulation (EC) No 754/2007 of 28 June 2007 amending Regulations (EC) No 1941/2006, (EC) No 2015/2006 and (EC) No 41/2007, as regards fishing opportunities and associated conditions for certain fish stocks	2007.06.30
		Council Regulation (EC) No 1533/2007 of 17 December 2007 amending Regulations (EC) No 2015/2006 and (EC) No 41/2007, as regards fishing opportunities and associated conditions for certain fish stocks	2007.12.21
COM (2007) 295, Communication from the Commission to the Council - Fishing Opportunities for 2008 : Policy Statement from the European Commission	2007.06.06		
Proposal for a Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2008	2007.09.03	Council Regulation (EC) No 1404/2007 of 26 November 2007 fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2008	2007.11.26
Proposal for a Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Black Sea for 2008	2007.11.20	Council Regulation (EC) No 1579/2007 of 20 December 2007 fixing the fishing opportunities and the conditions relating thereto for certain fish stocks and groups of fish stocks applicable in the Black Sea for 2008	2007.12.20

<b>Proposal title in full</b>	<b>Date</b>	<b>Regulation title in full</b>	<b>Date</b>
Proposal for a Council Regulation fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2007.11.28	Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	2008.01.16
Com (2008) 377 Final, Proposal for a Council Regulation amending Regulations (EC) No 2015/2006 and (EC) No 40/2008, as regards fishing opportunities and associated conditions for certain fish stocks	20.6.2008	Council Regulation (EC) No 718/2008 of 24 July 2008 amending Regulations (EC) No 2015/2006 and (EC) No 40/2008, as regards fishing opportunities and associated conditions for certain fish stocks	2008.07.24
COM (2008) 331 final, Communication from the Commission - Fishing Opportunities for 2009, Policy Statement from the European Commission, 30.5.2008	30.5.2008		
Proposal for a COUNCIL REGULATION amending Regulation (EC) No 2340/2002 and Regulation (EC) No 2347/2002 as concerns fishing opportunities for deep sea species for the Member States which acceded in 2004	2004.10.20	Council Regulation (EC) No 2269/2004 of 20 December 2004 amending Regulations (EC) Nos 2340/2002 and 2347/2002 as concerns fishing opportunities for deep sea species for the new Member States which acceded in 2004	2004.12.20
Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech	23.9.2003	Council Regulation (EC) No 813 /2004 of 26.4.2004 amending Regulation (EC) No 1626/94 as regards certain conservation measures relating to waters around Malta	30.4.2004

Proposal title in full	Date	Regulation title in full	Date
Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union - Article 2			
Com 2008/0088, Proposal for a Council Regulation providing for the adaptation of cod fishing quotas to be allocated to Poland in the Baltic Sea (Subdivisions 25- 32, EC Waters) from 2008 to 2011	2008.03.13	Council Regulation (EC) No 338/2008 of 14 April 2008 providing for the adaptation of cod fishing quotas to be allocated to Poland in the Baltic Sea (Subdivisions 25-32, EC Waters) from 2008 to 2011	2008.04.14