

DELIVERING ON THE PROMISE OF SUSTAINABLE FISHING

GREENPEACE

**CHARTING OUT THE NEXT DECADE OF EU
FISHERIES POLICY**

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INTRODUCTION

Between 2008 and 2011, the European Commission first assessed the performance and delivery of EU fisheries management rules and then proposed a reform of the Common Fisheries Policy (CFP).

Five structural failings of the previous CFP were identified:¹

- a deep-rooted problem of fleet overcapacity;
- imprecise policy objectives resulting in insufficient guidance for decisions and implementation;
- a decision-making system that encouraged a short-term focus;
- a framework that did not give sufficient responsibility to the industry;
- lack of political will to ensure compliance; and poor compliance by the industry.

The reform was initiated against the backdrop of severe stock depletion. At the time of the first policy assessment, in 2008, 30% of the stocks for which information existed were assessed to be outside safe biological levels, meaning they had a reduced capacity for reproduction, and 80% of stocks were being overfished, i.e. fished above the fishing mortality that would allow stocks to recover to levels that can support a maximum sustainable yield (MSY).

The Commission warned that excessive fishing pressure had "eroded away the present and future productivity of the fish stocks"² and that social objectives such as employment had often been invoked as an excuse to advocate more generous fishing opportunities. The result had been "to further jeopardise the state of the stocks and the future of the fishermen."³

Fishing capacity in many EU fisheries was considerably higher than sustainable levels. In fact, it was estimated that subsidies and technological development had contributed to effective capacity increase of around "2 to 4% per year in many fisheries"⁴. The economic efficiency and profitability of the catch sector was low, leading to warnings against ill-conceived trade-offs between sustainability and jobs⁵.

The CFP reform has delivered substantial progress, in particular in relation to provisions on stock and fleet management and the allocation of access to fishing opportunities, but its success will critically rely on the political will of governments. It remains to be seen whether the reform and implementation of the new rules can effectively rectify past failing, encourage political will and improve decision-making and compliance within the CFP.

¹ European Commission (2009) Green Paper: Reform of the Common Fisheries Policy (COM(2009)163)

² European Commission (2008) Commission Working Document: Reflections on further reform of the Common Fisheries Policy http://www.cfp-reformwatch.eu/pdf/reflection_cfp_08_mid.pdf

³ European Commission (2009) Green Paper: Reform of the Common Fisheries Policy (COM(2009)163)

⁴ European Commission (2008) Commission Working Document: Reflections on further reform of the Common Fisheries Policy http://www.cfp-reformwatch.eu/pdf/reflection_cfp_08_mid.pdf

⁵ The Commission warned that "any compromises made to cushion the immediate economic and social effects of reductions in fishing opportunities [must] remain compatible with long-term ecological sustainability, including a move to fishing within MSY, eliminating discards and ensuring a low ecological impact of fisheries", European Commission (2009) Green Paper: Reform of the Common Fisheries Policy (COM(2009)163)

With this briefing, Greenpeace intends to focus action on a number of priorities which require speedy implementation, if the EU is to end overfishing, achieve sustainable, low-impact fishing and secure prospering coastal communities. In each section, we present our expectations and, where necessary, criticism of the new provisions.

THE MAIN PRIORITY IS STOCK RECOVERY

Expected course of action:

Greenpeace expects that during its quota decisions in 2014 the Council of EU Fisheries Ministers reduces fishing mortality to levels capable of restoring and maintaining fish stock biomass **above** MSY levels for all stocks. This deadline may only be deferred if the Council has documented that meeting it would seriously jeopardise the social and economic sustainability of relevant parts of the sector. In such exceptional cases, the Council should also provide a definitive timeline by which the fishing mortality for those stocks will be in line with the MSY objective. The European Commission and Parliament should scrutinise compliance and progress in achieving stock recovery annually. In addition, scientific and management bodies should update their data-collection, advisory and management procedures to support monitoring and the achievement of a good environmental status and ecosystem-based fisheries management, particularly in relation to mixed species fisheries.

Unlike its predecessor, the new CFP Regulation emphasises the need to restore fish stocks above biomass thresholds that can support the so-called maximum sustainable yield (MSY), i.e. levels that in theory can sustain catches indefinitely without compromising the reproductive capacity of the stock. While the 2002 Regulation merely aimed to prevent threats to the long-term viability of the stock by maintaining stock levels above so-called safe biological limits, i.e. above the red line that would commonly signify total collapse, the new Regulation recognises the benefits of preventing a systematic deterioration of stock levels as a result of fishing and of restoring and maintaining a good environmental status (in line with existing EU obligations under the Marine Strategy Framework Directive).

Moreover, unlike the 2002 Regulation, which sets the achievement of environmental sustainability on par with achieving social and economic objectives (see Commission assessment of structural failings), the new Regulation emphasises the need to ensure environmental sustainability, essentially as a prerequisite for securing social and economic benefits: the CFP “shall ensure” that fishing and aquaculture activities are environmentally sustainable in the long-term, while managing fishing activities in a way that is consistent with (and not contradictory to) achieving economic, social and employment benefits.

As before, fisheries management under the new CFP must conform with the precautionary approach to fisheries management (as defined by the UN Fish Stocks Agreement) and must now firmly implement (rather than progressively apply) the ecosystem-based approach so as to minimise adverse impacts of fishing on marine ecosystems.

In terms of recovery, the new CFP requires that for overfished stocks fishing mortality is lowered consistently with the objective to recover fish populations above the B_{MSY} threshold, as called for in Article 2.2. Greenpeace has consistently warned that keeping fish populations only at MSY levels is not desirable from either an environmental or an economic point of view. Utmost priority should therefore be given to recovering and maintaining fish stock biomass (B) to levels **above** the B_{MSY} threshold and to that end, fishing pressure (F) should be set **below** the so-called F_{MSY} reference limit.

The new rules do not prescribe a timeframe within which stock biomass should be recovered and therefore fall short of international commitments to achieve this recovery at least to B_{MSY} by 2015, where possible. However, it is reasonable to assume that fisheries management should be aimed at achieving stock recovery within the ten-year life span of this new Regulation. Provided external biological and environmental factors remain constant (which is rarely the case), the speed of recovery increases the greater the reductions in fishing mortality (F) below the F_{MSY} reference limit.

The new rules prescribe that from 2015 onwards fishing mortality should be set consistently with achieving a recovery above the B_{MSY} threshold, with the possibility to delay this deadline only in exceptional cases. The Council must justify exceptions by showing that a faster reduction in fishing mortality would “seriously jeopardise the social and economic sustainability of the sector” (see Recital 7). Moreover, it would not be acceptable to simply delay all difficult cases until 2020. The new Regulation specifically requires progress year-by-year and case-by-case (or in political language: progressively and incrementally). To ensure adequate compliance and progress towards achieving the stock recovery goal, the Commission is mandated to present an annual report to the Parliament and Council on progress on stock recovery.

Eliminating excess fishing capacity and shifting to low-impact fishing

Expected course of action:

Greenpeace expects that governments make substantial progress in improving the content and quality of their annual capacity assessments during 2014/2015, most notably by providing detailed, fleet-segment based analyses and projections of the fishing capacity of their fleet in relation to their available fishing opportunities. We also expect that governments publish the criteria they use to decide to whom they allocate fishing opportunities. These must include criteria to evaluate the environmental impact, selectivity and fuel consumption of different fishing methods, as well as the compliance levels of operators, the profitability, ownership and employment ratio and labour standards and benefits of different parts of the sector. These criteria, coupled with action plans to reduce overcapacity, should form the foundation of an effective capacity management aimed at minimising environmental impacts and promoting a shift to low-impact fishing. The new provisions should take implementation beyond a mere focus on aggregate data of gross tonnage (GT) and engine power (kW) to an integrated, outcome-orientated fleet management.

As before, the new CFP obliges governments to balance fleet capacity with the available fishing opportunities, and to assess and report the fishing capacity of their fleet annually. Capacity ceilings, a basic entry/exit scheme and regular reporting under the fleet register also continue to apply. However, the detailed fleet management provisions have been strengthened.

From January 2014 onwards, governments have to assess and report fishing capacity by fleet segment (rather than in aggregated form) and to do so in relation to their available fishing opportunities. They must separately identify the capacity of vessels that fish exclusively outside EU waters and in the EU outermost regions.

Moreover, the content and quality of the reports have to meet the standards agreed and published in Commission guidelines⁶. All national reports are due on 31 May of each year and have to be made public.

While governments remain free to choose their preferred mechanism to reduce excess fishing capacity, they are now required to draw up action plans for those fleet segments operating at overcapacity. These plans must outline how and by when overcapacity will be eliminated and should be presented as part of the annual report.

Moreover, governments are meant to take into account trends and the best scientific information to achieve “a stable and enduring balance” of their fleet’s fishing capacity. This suggests that future management decisions should consider projections of stock health and technological improvements in fishing methods ‘efficiency over time (technological creep); both are factors that are largely ignored in current fishing capacity management. The profitability of fleet segments will in future also form part of the assessments.

Profitability is relevant in more ways than just economically: many of the fuel-intensive mobile gear/haul fleets commonly rank amongst the least profitable in the EU,⁷ particularly if one takes into account subsidy payments and tax exemptions to the fleet. High fuel consumption and costs, the comparatively low value of the catch and intense competition amongst large fleets are generally to blame for their low profitability. Often, these characteristics also correlate with a higher impact on marine ecosystems.

The new Article 17 of the CFP requires governments to allocate fishing opportunities (i.e. access to quotas and fishing grounds and/or effort) based on environmental, social and economic criteria, moving away from a single focus on historic catch levels. These should include for example the fuel consumption, impact on the environment, history of compliance and the fleet segment’s contribution to the local economy. Moreover, governments are requested to apply the criteria in such a way that creates incentives for the use of selective and low-impact fishing methods.

Greenpeace is of the opinion that, if properly weighted and applied, the criteria should form the foundation of domestic and regional fleet management systems designed to eliminate overcapacity and minimise the overall impact of fishing activities by:

- i) targeting action to scrap excess fishing capacity on fleet segments that contribute most to overfishing and to adverse impacts on marine ecosystems; and
- ii) shifting access to fishing opportunities (and proportionally also fishing capacity) to fleet segments that use more selective, low-impact fishing methods, while maximising social and employment benefits for local communities.

Governments are investing a valuable public capital when they allocate access to fishing opportunities (in almost all cases free of charge) through licensing conditions and the allocation of quotas or fishing effort. The economic opportunities associated with this allocation hold a far greater potential for motivating change in the fishing sector than subsidies or other financial incentives.

⁶ DG Fisheries and Maritime Affairs Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities - the use of indicators for reporting according to Art.14 of Council Regulation 2371/2002, Version 2, June 2012

⁷ STECF (2013) *Annual Economic Report on the EU Fishing Fleet*. Scientific, Technical and Economic Committee for Fisheries of the EU

In fact, the new CFP recognises as much in Article 7, which foresees the use of “incentives, including those of an economic nature, such as fishing opportunities, to promote fishing methods that contribute to more selective fishing, to the avoidance and reduction, as far as possible, of unwanted catches, and to fishing with low impact on the marine ecosystem and fishery resources”, and similarly in Article 17.

Compared to previous legislation, the new Regulation gives a greater emphasis to the minimisation of the adverse impacts of fishing on marine ecosystems. Moreover, the new principles of good governance urge the use of impact assessments, which presumably includes environmental impact assessments, in relation to activities and decisions concerning the fleet.

For the first time, the new CFP defines low impact fishing as “utilising selective fishing techniques which have a low detrimental impact on marine ecosystems or which may result in low fuel emissions, or both”. The Regulation also covers new grounds by encouraging governments to consider fuel emissions and energy consumption as two factors in determining the environmental impact of different fleet segments (see definition of low impact fishing and Article 17).

Last but not least, Article 22 paragraph 4 of the new CFP Regulation, which applies in parallel to other provisions in the CFP and European Maritime and Fisheries Fund (EMFF) rules (see section on control and enforcement), adds weight to the objective of eliminating overcapacity by mandating the Commission to **interrupt or suspend subsidy payments** from relevant EU funds (e.g. the EMFF) for relevant fleet segments, if a country fails to submit a complete capacity report and/or implement their action plan(s).

In summary, the provisions on the management of fishing capacity, allocation of fishing opportunities and promotion of low-impact fishing, coupled with the general objectives to increase selectivity, promote coastal fishing and achieve a balanced fishing capacity mean that the new CFP foresees an integrated and efficient management of the fishing capacity and fleet structure, which should primarily benefit those in the fishing sector who fish in a more sustainable and socially responsible manner.

Minimising collateral damage from fishing by reducing by-catch and discards

Expected course of action:

The CFP foresees action to reduce by-catch and, for the first time, introduces a mechanism to reduce discards, the landing obligation. Greenpeace calls for compliance with the stated obligations but urges that more needs to be done to minimise and, where possible, eliminate incidental catches of fish, birds, mammals and reptiles. While a compulsory limit to the amount of discarding of fish and full mandatory accounting against the catch quota are helpful, Greenpeace is concerned that anything short of a complete discard ban will be prohibitively difficult to enforce. Moreover, we urge the EU to require the use of the best available methods and technology to minimise and, where possible, eliminate all unwanted catches, including of non-fish species, and thereby promote substitution of unselective fishing methods and gears.

The Commission's proposal for a discard ban became one of the most controversial and difficult points in agreeing on the new CFP. Large parts of the fishing industry rallied against it and the Fish Fight campaigns in the UK, France, Germany, Spain and Poland mobilised hundreds of thousands of people in support of the discard ban. Greenpeace, together with other NGOs, urged governments to support the discard ban, but to ensure that it was accompanied by effective measures to minimise by-catch of fish and non-fish species.

After lengthy negotiations, a watered-down version was agreed of the landing obligation and mandatory accounting against quotas, which allows fishermen to continue discarding part of their catch by making use of a number of significant loopholes:

- **scope:** the landing obligation only applies to species “which are subject to catch limits” (i.e. quotas) and, in the Mediterranean, to “species which are subject to minimum sizes as defined in Annex III to Regulation 1967/2006.”
- **the de minimis exemption** (i.e. exemption in relation to small/minimal amounts) mandates governments to allow fishermen to discard up to 5% of the annual catches of all species subject to a landing obligation “where scientific evidence indicates that increases in selectivity are very difficult to achieve” or “to avoid disproportionate costs of handling unwanted catches, for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage, to be established in a plan, of total annual catch of that gear.”
- **derogation allowing by-catch to be counted against the quota of a target species:** unwanted catches in excess of fishing quotas, or catches of species for which the country has no quota, may be deducted from the quota of the target species and therefore landed without constraint nor added pressure to avoid them in the first place, provided that they do not exceed 9 % of the quota of the target species and provided the stock of the by-catch species is within safe biological limits. Greenpeace is of the opinion that these provisions require urgent revision or clarification by means of implementing legislation to prevent having large amounts of unwanted catches of e.g. demersal species landed against the potentially substantial volume of 9% of pelagic quota.
- **year-to-year flexibility:** in addition, up to 10% above the permitted catch can be counted against the quota of the subsequent year and therefore landed without further restrictions to discourage above-quota catches. This effectively legalises a permanent borrowing against the future sustainability of the stock. This damage will never be “repaid”.

Complicated as these exemptions are on paper, the main challenge will be in judging and monitoring compliance with their real-life implementation. For instance, it remains unclear whether all exemptions must be administered in real time or whether they are applied retrospectively. How is an enforcement officer, onboard observer or representative of a civil society watchdog meant to verify whether a case of discarding falls within the permitted discard limits?

Moreover, the fact that the new landing obligation only applies to catches subject to catch limits (as well as those subject to a minimum size in the Mediterranean) will exclude fisheries with some of the highest discard rates, such as many deep sea fisheries. Also, landings are mandatory for fisheries in international waters, but not for those vessels operating in waters of third countries (unless the third country requires it). The provisions will be phased-in by region and fishery, starting on 1 January 2015 with most pelagic fisheries. Species for which there is a zero total allowable catch (i.e. species which must not be caught) and species for which scientific evidence demonstrates a high survival rate must not be landed. Equally, fish caught for use as live bait are obviously exempt from the landing obligation.

Greenpeace is concerned that preventing targeted fisheries for “unwanted catches” for profit, in particular for juvenile fish and certain high value species, will remain challenging. Moreover, while the new provisions foresee only restricted marketing possibilities for undersized fish, they do not restrict the sale of above quota fish (provided it complies with the minimum conservation reference size), therefore providing the wrong incentive. Greenpeace therefore urges the Commission and governments to establish a special joint enforcement task force to investigate and penalise the illegal sale of undersized fish.

The landing obligation will be beneficial from an environmental point of view if it translates into more selective fishing, so as to avoid unwanted catches in the first place. To that end, it is critical that the discard provisions (included either in multi-annual management plans or in discard plans) are properly designed, ensuring a shift to more selective gears, and establishing real-time closures and permanent fisheries protected areas for juveniles and spawning grounds (see also subsequent section).

Last but not least, revised requirements on data collection should lead to improvements in the availability and integration of biological, environmental and fisheries related data in support of an ecosystem-based management of fishing and other maritime activities. In this context, it is important to improve the public accessibility and timely provision of data. The Commission should step up its enforcement of data collection obligations, and penalise governments that fail to provide adequate data by suspending or interrupting subsidy payments.

Fish stock recovery areas, Natura 2000 & other nature conservation obligations

Expected course of action:

Greenpeace is concerned that several weaknesses and ambiguities in the provisions on the protection of fish stock recovery areas and Natura 2000 sites reflect lack of political will. It would be unacceptable to use these to open the door for further significant delays in securing the protection of sensitive marine areas.

Most, if not all, coastal states in the EU are significantly behind schedule in designating areas and securing their protection and recovery. We therefore urge the European Commission and EU governments to finalise them and to use their respective new powers under the CFP Regulation to immediately put in place fishing closures or restrictions where the conservation status of existing designated areas has deteriorated or is kept in sub-optimal conditions because of fishing. All fishing activities inside Natura 2000 sites (or in the vicinity of sites, where impacts occur in a radius surrounding the fishing activity) should undergo an environmental impact assessment to verify whether they contribute to the deterioration of the conservation status of the site in question.

We further urge governments to identify and designate important fish habitat as fish stock recovery areas, with the view to complete an integrated network of conservation and fish stock recovery areas as soon as possible. Given the enormous delays in complying with nature conservation legislation, including requirements for the protection of species, and relevant protected area provisions under the Mediterranean Regulation, we call on the Commission to initiate infringement procedures where insufficient progress has been made. The new provisions of the CFP must not be used as an excuse by governments or the Commission to delay action.

Unlike its predecessor, the new CFP Regulation contains explicit provisions for the designation of fish stock recovery areas, i.e. areas that are to be protected primarily because of their importance as fish habitats, in particular spawning and nursery areas. Similar but significantly stronger provisions are already set out in the Mediterranean Regulation, which prescribes that governments identify fisheries protected areas in national and international waters of the Mediterranean.

At the time of the CFP negotiations, it seemed reasonable to expect that the Council would accept an extension of the provisions in the Mediterranean Regulation to all waters of the EU. However, the text was weakened to the extent that one might think that governments in the EU are entirely insincere in pursuing the protection of important fish habitats for the benefit of sustainable fisheries management (as was agreed for instance in the context of the UN Convention on Biological Diversity)⁸.

Article 8 of the Regulation in summary requires governments to identify suitable areas “where possible” and to prepare “where appropriate” joint recommendations so that the Union can “endeavour” to establish protected areas in which fishing activities “may” be restricted or prohibited, and which “may” form part of a coherent network; all provided the Commission (“may”) be empowered in a multiannual plan (which in turn may take some years to agree) to establish such biologically sensitive protected areas. There is no reference to an alternative legislative process that might apply should the Commission not be empowered.

⁸ Convention on Biological Diversity, COP 7 Decision VII/5 *Marine and coastal biological diversity*, 2004.

Nonetheless, with this stand-alone article the Regulation adds emphasis to the relevance of protected areas for the explicit benefit of fisheries management and assumes a need for political action. Moreover, one might draw on Recital 22 to interpret these provisions further. This clarifies that “in order to facilitate the designation process, Member States should identify suitable areas, including areas that form part of a coherent network, and, where appropriate, should cooperate with one another” (emphasis added), and that “in order to establish protected areas more effectively, it should be possible for the Commission to be empowered to establish them in a multiannual plan,” suggesting that the areas would be protected even in the absence of an empowerment of the Commission (presumably by ordinary legislative procedure).

In addition to the provisions on fish stock recovery areas, the CFP Regulation specifies that technical measures may include “limitations or prohibitions on the use of certain fishing gears, and on fishing activities, in certain areas or periods” without specifying an objective (i.e other than the broader CFP objectives) for taking such measures.

The Regulation also tries to clarify (and perhaps ease?) how to implement fishing restrictions for compliance with protected area provisions under the EU’s Habitats, Birds and Marine Strategy Framework Directives. However, it is rather unclear what the specific provisions in Article 11 add to the powers and procedures set out in Articles 18 (on regionalisation), 19 (on national measures applying to own-flagged vessels) and 20 (on powers applying within the 12 nautical mile zone) - other than a different specification of the purpose of the respective powers. For instance, the powers granted to governments by means of paragraph 1 of Articles 11 and 19 are almost identical, except for the purpose and the exact scope of action.

While Greenpeace had advocated for a clear mandate for governments to notify and, after Commission endorsement, adopt the necessary measures to meet their obligations under the EU’s nature conservation legislation (while respecting safeguards such as the non-discriminatory nature of such measures), the new CFP settles on a more complicated patchwork of national powers to take measures with respect to own-flagged vessels and regionalised or co-decision procedures for measures that apply to other EU-flagged vessels.

Article 11 fails to provide a deadline for setting in place or initiating relevant measures, so it seems reasonable to assume that the deadlines of the respective nature conservation rules apply instead. However, in the case of areas designated under the Habitats and Birds Directives, governments are often many years behind the legal deadline by which they should have put in place management measures to secure the conservation status of those sites. For instance, Germany designated its first marine sites in 2004 and the Commission listed the sites and included them officially in the network of marine Natura 2000-sites in the German exclusive economic zone in 2007. The Habitats Directive requires that “appropriate measures” are taken immediately to prevent “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 this Directive.” Within 6 years after the designation of the site, a comprehensive set of measures must be put in place to maintain and restore the conservation status of the habitats and species for which the site has been designated. In the case of the German sites, this should have been in place by the end of 2013. Whether the procedures foreseen by the new CFP will lead to a quick resolution remains to be seen.

Last but not least, the new CFP Regulation, like its predecessor, foresees that technical measures are implemented to secure the protection of protected, threatened and/or endangered species, such as marine mammals, reptiles, plants, fish and seabirds protected under the Habitats and Birds Directives. Whether the revised provisions will improve the dismal level of compliance with such protection obligations is questionable however. Perhaps regionalised decision-making can make good for the lack of action at EU and national level.

In addition, the possibility to establish short-term real-time closures under Article 7 paragraph 2 d) may offer some temporary protection for animals where aggregations occur e.g. during their most critical life stages.

However, these provisions only apply to aggregations of endangered species, spawning fish, fish below minimum conservation reference size, and other vulnerable marine resources (emphasis added), whereby the term “vulnerable marine resources” has not been defined. Greenpeace is of the opinion that the possibility to establish real-time closures is important, but should equally apply to all protected, threatened and/or endangered species, i.e. not just “endangered” species.

Achieving compliance & effective enforcement

Expected course of action:

While, for the time being, the 2009 Control Regulation and the 2008 Regulation on illegal, unregulated and unreported (IUU) fishing will continue to form the basis for fisheries monitoring, control and enforcement in the EU, the new CFP Regulation adds a number of new dimensions to the available mechanisms and requirements. Greenpeace welcomes the decision to create an inter-institutional expert group on compliance. The group should perform its functions openly and transparently and should maintain a regular dialogue with fisheries surveillance, compliance and enforcement experts from public administrations, academia, civil society and the fishing industry. The expert group should, amongst other activities, oversee compliance with provisions under the Control Regulation relating to the establishment of national registers of infringements and point systems. We further ask the Commission to urgently step up action against governments that are failing to meet their obligations under the Control and IUU Regulations, by also invoking the new conditionality provisions in the CFP and EMFF Regulations. In addition, we ask the Commission to initiate and enable further joint enforcement schemes with the European Fisheries Control Agency and relevant governments, in particular to:

- i) secure compliance with nature conservation rules, catch reporting and the landing obligation;
- ii) secure compliance and accuracy in reporting of data that is relevant for the control of fishing capacity, such as engine power, gear, fishing area and pattern etc.;
- iii) strengthen control over the EU’s distant water and high seas fleets; and
- iv) secure compliance with import and marketing requirements.

The current lack of compliance at national level with control and enforcement mechanisms under the Control and IUU Regulations is unacceptable. While the level of systematic controls in ports and the application of sanctions seem to have improved, Greenpeace inquiries suggest that most Member States have failed to set up or are failing to maintain a register of infringements and point system for infringements. Further weaknesses of control relate to:

- i) catch documentation schemes, which are insufficiently strict to prevent fraud and falsification;
- ii) controls at sea and in ports, which are too few and insufficiently informed by intelligence regarding behaviour patterns of the industry (due to lack of personnel/budget and low inter-agency cooperation);
- iii) information on engine power and other relevant fleet data, which is being falsified; and
- iv) fraudulent fishing authorisations from third countries, which are being accepted at face value, and lack of overview of private agreements.

In order to achieve the CFP objectives, relevant legislation on control must be strictly implemented, to for example ensure a proper control over the distant-water fleets or compliance with the obligation on engine power certification.

Greenpeace is of the opinion that a culture of full transparency, public scrutiny and dialogue is the best way to encourage responsible behaviour and promote full compliance at national and fishermen levels. We therefore urge the European Commission and national administrations to publicly identify weaknesses in securing compliance and to publish the register of infringements, including sanctions, and the number of points received for serious infringements by vessel operators and licence holders.

The responsibility of control and enforcement and the establishment of effective, proportionate and dissuasive penalties remain with the governments, but the new expert group on compliance can usefully encourage best practices, aggregate information and data that is relevant in terms of cross-border policing and control of the sector, and offer advice on compliance at national level. It goes without saying that the group should work in an open, transparent and participatory manner.

Importantly, the new CFP and EMFF Regulations contain a number of new conditionality provisions which mandate the Commission to suspend or withhold EU funds if a country or operator/fishing company fails to comply with relevant legislation. Access to EU financial assistance for both countries and operators will generally be conditional upon compliance with the rules of the CFP. Moreover, governments may only grant access to subsidies if no penalties for serious infringements have been imposed against the recipient within a period of one year prior to the date of application. If a serious infringement occurs after an operator received funding, the recipient must consequently be temporarily or permanently banned from receiving public funds. The length of the ban will depend on the nature, gravity, duration and repetition of the infringement. Moreover, pending final adoption of the EMFF Regulation, recipients may have to pay back part or all of the funds they received if they have been charged with a serious infringement in a period of five years after the last EMFF payment.

Conditionality provisions can be an extremely powerful tool if national governments and the Commission are willing to use them. Their application has to be consistent and immediate to make effective use of their deterrent effect and to ensure a level playing field across the sector and countries. Greenpeace has repeatedly criticised the fact that neither the Commission, nor national governments have made use of similar provisions in the 2002 CFP Regulation (2371/2002). For instance, had the Commission complied with Article 16 of the 2002 Regulation, which only permitted granting EU structural funds (with the exception of scrapping funds) to countries that complied with their obligations under the 2002 Regulation to report and manage fishing capacity, the EU could have tackled its problem of overcapacity much more effectively.

Greenpeace and other NGOs have also published numerous examples⁹ of fishermen and companies that have received public aid and been convicted of fraud and/or IUU fishing; sometimes funds were even granted after the conviction.

⁹ See for example Oceana (2010) EU, Spanish and Galician fishing subsidies financing illegal unreported and unregulated fishing: Case study: Antonio Vidal Suárez, Manuel Antonio Vidal Pego http://oceana.org/sites/default/files/o/fileadmin/oceana/uploads/europe/downloads/OCEANA_April20_CasestudyVidal_E_NG.pdf and Greenpeace Inquirer (2011) Wide open to abuse http://www.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2011%20pubs/7/ocean_inquirer_v10_low_res.pdf

Sustainable fishing in the EU distant water fleet

Expected course of action:

Greenpeace has repeatedly highlighted the lack of sustainability, control and enforcement in the EU's distant water fisheries. We expect that from now on the EU strictly complies in its bilateral access agreements with the obligation to only catch a proportion of the surplus of allowable catches (as required by international law) and to respect human rights and the rights and interests of local populations, even in situations that might financially disadvantage the EU sector. The EU should further ensure that its presence and financial contribution result in improved capacity in the coastal State to effectively manage its fisheries.

We further expect that the EU steps up its efforts to control and monitor its fleet and nationals. In this context, governments must urgently strengthen their control over vessels and operators that are linked to beneficial owners which are registered in and/or nationals of the EU. We further expect the EU to meet international standards that promote a genuine link between fishing activities and its nationals. We also call on the EU to conduct its bilateral and multilateral relations with greater transparency and participation and urge EU flag states to improve their collaboration with civil society to ensure that human rights and the principles of sustainable fisheries management are being met.

The commitment to “ensure that Union fishing activities outside Union waters are based on the same principles and standards as those applicable under Union law in the area of the CFP” is an important and welcomed new pledge that should lead to significant changes in the way the EU practices fishing outside EU waters, e.g. with respect to implementing precautionary catch limits and ecosystem-based fisheries management. Likewise, the commitments to improve science, strengthen compliance committees in regional fisheries management organisations (RFMOs) and foster cooperation between those organisations, promote measures to eradicate IUU fishing, as well as to establish sustainable fisheries partnership agreements on the basis of the MSY and surplus principles and the respect for human rights firm up existing priorities and secure an improved legal basis for achieving equitable and sustainable fisheries management through the EU's bilateral and multilateral arrangements. Moreover, the use of an exclusivity clause in bilateral fisheries agreements, better monitoring of fishing activities and control of fishing licenses should improve fleet management and help prevent fraud and the deliberate undermining of flag and port state controls.

CONCLUSIONS

Significant progress has been made on paper as a result of the CFP reform. This is most evident in terms of improved standards of stock and fleet management and the management of access to fishing opportunities. At the same time, the new Regulation also contains unfortunate but deliberate ambiguities and weaknesses in some parts of the text, notably in relation to protected areas, species protection, minimisation of by-catch and elimination of discards.

Without question, the four biggest weaknesses of the new CFP are the lack of deadlines and procedural clarity with regards to adopting new multiannual fisheries management plans, the lack of a timeline for the recovery of fish biomass above MSY thresholds and the complexity and ambiguity of the provisions on the landing obligation and of the process that attempts to regionalise decision-making.

Greenpeace calls on EU governments to work with the European Parliament to secure the adoption of new multiannual plans as soon as possible. We further urge governments to act responsibly and resolutely in favour of sustainability and nature conservation, even in situations where the legislation does not present a firm obligation.

If they do so and comply with all of their obligations under the new CFP, the EU stands a good chance to end overfishing and overcome the structural failings identified.

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