



**Reform of the Common Fisheries Policy
WWF's Recommendations
for the European Union's external fleet**

Position Paper

- December 2010 -

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Preamble

Almost thirty percent of the fish reported landed by EU-flagged vessels is taken outside EU-waters.¹ Yet, to date the European Union has not specifically legislated about the fishing behaviour of the EU fleet that fishes on the High Seas or in third countries' Exclusive Economic Zones (EEZs). The current Basic Regulation for Common Fisheries Policy²(CFP) only refers to third countries when discussing their access to Community waters.

Management of the EU's external fleet is supposed to be done through Regional Fisheries Management Organisations (RFMOs) for the High Seas (where they exist), and via the bilateral access agreements with coastal states that the EU has concluded over the years.^{3,4,5} In the absence of a clear legislative mandate the Commission has issued various communiqués about the objectives that should drive external fleet management, including the need for a world wide presence for the EU fleet and supply security. The Commission itself now questions these objectives, noting that they may be less relevant today to guide policy, given the global nature of the industry.⁶

In short, the current CFP lacks both a specific mandate and the correct objectives to manage the EU external fleet. This needs to change in the upcoming reform.

WWF believes that for the 2012 reform of the CFP, an integral part should be the formal inclusion of rules and regulations managing EU's external fleet. All Member States' flagged vessels should be covered; regulations for the EU fleet should apply to all, irrespective of where they operate.

¹ Estimate for 2004-06. http://ec.europa.eu/fisheries/cfp/international/index_en.htm

² Council Regulation 2371/2002.

³ Since 2003 access agreements are called Fisheries Partnership Agreements (FPAs), laying down the conditions and obligations for both parties.

⁴ <http://eur-lex.europa.eu/en/legis/20100301/chap042010.htm>, Concerning the participation of the Community to the regional fisheries organizations (RFO); see also COM613 of 08/12/99 and Council Conclusions of 16 June 2000.

⁵ COM(2002) 637 final, Communication From The Commission on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, 23.12.200. It describes the objectives for EU long distance fleet fisheries, reaffirming that the external dimension of the CFP is one of its essential components. In 2004, the European Council of Fisheries Ministers adopted further conclusions on the management of EU access to third countries' waters. These conclusions contain non-binding commitments under the CFP on European external fleet policy (Council of the EU 11234/2/04 REV 2).

⁶ COM(2009)163 final; Green Paper – Reform of the Common Fisheries Policy.

Introduction

The EU should apply consistent and strong standards for fisheries, with adequate management regimes to ensure sustainability, consistently to all EU fleets, both in and outside EU waters.⁷ Fishing outside EU waters by EU vessels should be firmly anchored in the new CFP-2012.

The European Commission should actively advocate for sustainable fisheries positions in bilateral agreements with coastal states. In multilateral management regimes for international waters, the EU should operate under a strict mandate to improve the RFMOs and move them towards sustainable exploitation.

The European Commission has indicated its preference for phasing out Fisheries Partnership Agreements (FPAs) that have mixed fisheries agreements, and for only maintaining such agreements for tuna (and possibly arrangements for small pelagics). Since tuna are also regulated by tuna RFMOs under the United Nations Fish Stocks Agreement (UNFSA), an additional goal should be coherence between tuna FPAs and tuna RFMO agreements. The EU should identify allies in RFMOs to consistently promote its objectives and put them into practice.

In the paper that follows, WWF spells out six policy areas where we believe the European Union could and should improve its performance towards sustainable fisheries by its external fleets. An appendix to this paper proposes amendments to the text of the Basic Regulation, to lay the foundation for a reformed CFP that improves the management of Europe's external fleet. The six areas where WWF urges the EU to focus its reform efforts are:

1. Governance (Transparency and Policy Coherence)
2. Contractual responsibility (exclusivity and separate legislative instruments)
3. Reflagging (avoiding the 'shell game')
4. Long Term Management Plans
5. Respect for regional integrity in fishing access conditions
6. RFMOs

⁷ COM(2002) 637 final; see also "A Diagnosis of the EU fisheries sector," Commission Staff Working Document, Draft (hereafter "Diagnosis"), available from WWF, at 293-295.

1. Governance (Transparency and Policy Coherence)

To achieve the sustainable management of fisheries, it is critical that governance be improved. Both targeted funding and policy reform are needed.

The EU should earmark EU funding to coastal states in the FPAs for, *inter alia*:

- increasing governance and administrative capacity,
- encouraging regional cooperation,
- developing longer-term fisheries management and sustainable development strategies in the coastal state, and
- improving the scientific basis for providing management advice.

Transparency

Transparency is one of the pillars of sustainable fisheries and should not be compromised.⁸ Fisheries management is a public concern, so terms and conditions of management agreements need to be transparent and accessible to all interested parties. There is room for substantial improvement in this area. WWF fully supports the Commission in its endeavour to achieve full transparency of fisheries arrangements.

For example, *ex ante* and *ex post* evaluations of FPAs should remain compulsory as laid out in the Council Conclusions in 2004, but should be commissioned jointly by both parties (not only by the Commission), should be independently conducted, and should be made public in a timely fashion.⁹ Both the contracting coastal state and the EU should have the results available in ample time to make use of them in revising or renewing future agreements. The Commission can earmark funds for such evaluations. The ability to audit goes hand in hand with a transparent evaluation process: it implies that clauses and conditions need to be formulated in a way that enables an auditor to determine whether a particular condition has been met or not. The development and food security aspects should be included in these evaluations.

WWF agrees that all existing fishing access arrangements should be included in these evaluations, in accordance with the Commission's willingness to have this information made available by the coastal state. To further improve transparency through participation, the Commission could consider the example of the Scottish Conservation Credits Scheme (SCCS), which allows for the participation of civil society groups, and also promotes and rewards pro-conservation behaviours.

The determination of surplus fish resources remains a responsibility of the coastal state at present; this determination should become fully transparent. The Commission should make it a condition in access agreements that TACs for foreign fleets never exceed the pre-determined (and public) catch surplus, and fishing activities should cease immediately when pre-determined catch limits are reached.

In order to ensure that vessel owners' obligation to provide catch data are met, FPAs should set up an adequate Monitoring, Control and Surveillance (MCS) system (data to include: location, volume, effort, bycatch levels, etc.) or alternatively put cameras (Closed Circuit Television-CCTV) onboard as currently being piloted in various Member States. It is also essential that the EU contribute to the costs of data collection, dissemination and analysis (e.g., through the creation of a publicly-managed fund to avoid the appearance of bias). The Commission should only accept reliable data and assessments as the basis for surplus determinations.

⁸ FAO Code of Conduct for Responsible Fisheries, www.fao.org/docrep/005/v9878e/v9878e00.HTM

⁹ See Council Conclusions 11485/1/04 REV 1, 2004.

Policy Coherence

Policy coherence for development is a legal and policy objective for the EU, as outlined in the European Consensus on Development,¹⁰ and most recently in the Lisbon Treaty.¹¹ Since FPAs are most often negotiated with developing countries in ACP states which are also the partner governments eligible for support under the European Development Fund,¹² it is critical that policy coherence for development be pursued.

To improve coherence in the EU policy for its external fishing fleet, DG-Mare and DG-Development should become jointly responsible for fisheries agreements, which overlap with many aspects of development support and economic development in the coastal states. The EU should apply the principles of the FAO Code of Conduct for Responsible Fishing,¹³ its own communication on Policy Coherence for Development,¹⁴ and the EU-ACP Cotonou Agreement on partnerships with ACP countries.¹⁵ The EU should offer assistance to coastal states to include sustainable fisheries as key elements in their national strategies for economic development.

WWF also agrees with the Commission that FPAs should include conditions on human rights and democratic principles, including anti-corruption and auditing clauses. Equally, FPAs should enable unilateral suspension of fishing access when violations of FPAs are demonstrated or noted.

All FPAs should be consistent with, or contribute to, the objectives for poverty reduction and human development identified in the EU's Country and Regional Strategy Papers.^{16,17,18} There is continued need for the EU to support developing countries in the formulation and implementation of their own fisheries policies, including support for taking measures against illegal fishing and for compliance with EU and global standards and regulations, such as the EU's IUU regulation and the Port State Measures Agreement.¹⁹ This approach would fit well with the exclusivity clause that is already included in most FPAs (please see section 2 for more information on exclusivity clauses).

¹⁰ "The European consensus on development", (2006/C 46/01), 24/02/2006

¹¹ Title V of the Treaty on European Union and, in particular, Article 21(2) thereof, establishes the principles and objectives of the EU in international relations; Article 208 of the Treaty on the Functioning of the European Union (Lisbon Treaty) reaffirms that the EU shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

¹² African, Caribbean and Pacific Group of States.

¹³ <http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>

¹⁴ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - Policy Coherence for Development -

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0134:FIN:EN:PDF>

¹⁵ http://ec.europa.eu/development/geographical/cotonouintro_en.cfm

¹⁶ http://ec.europa.eu/development/geographical/methodologies/strategypapers10_en.cfm

¹⁷ http://ec.europa.eu/development/how/iqsg/documents_library_en.cfm

¹⁸ http://ec.europa.eu/development/geographical/methodologies/regiopapers_en.cfm

¹⁹ <http://www.fao.org/Legal/treaties/037t-e.pdf>

2. Contractual responsibility (exclusivity and separate legislative instruments)

Exclusivity

WWF is strongly in favour of maintaining the exclusivity clause of fishing arrangements with third countries,²⁰ meaning that, once the EU has concluded an agreement with that coastal state, no private fishing agreements between vessel owners and the coastal state governments should be allowed outside the agreement. All access by vessel owners who are registered in the EU should be in accordance with the conditions in the agreement.

Separating Access Agreements from Fishing Access Licenses

WWF agrees with the Commission's approach of separating the sustainable fisheries partnership agreement and the fishing access licence payments. A practical means for achieving this separation goal would be to introduce a transition period for transferring all payment responsibilities for access to the vessel owner. Currently, vessel owners contribute, on average, 35% of the license costs for access agreements. WWF proposes that, as these agreements come up for renegotiation, vessel owners' contributions be increased: to 50% by 2012, to 75% by 2013, and to 100% by 2014. All future agreements should stick to this timeframe and include provisions for it.

This position implies that the European Commission negotiates access conditions, rights and obligations (including the license costs) before access is granted. All information related to licences issued for community vessels must be regularly transmitted to the European Commission to ensure compliance with access agreements.

3. Reflagging

Reflagging of formerly EU fishing vessels to non-EU nations is an increasing barrier when working towards sustainable fisheries management. The EU should consider itself co-responsible, like any other flag state, for ensuring that global over capacity of the fishing fleet is reduced. The core problem of overcapacity is not addressed by reflagging vessels which then continue to overfish under another flag.

WWF recommends that the EU discourage reflagging when it would merely transfer rather than solve the global over capacity problem (e.g. in case of phasing out mixed agreements). For the external dimension, the EU policy should tackle capacity globally, and not only the EU component of this challenge, for example by promoting effective rights based management schemes for RFMOs.²¹

²⁰ As outlined in an oral presentation made by the European Commission on 28 April 2010 in a Commission seminar on "the external dimension in the future Common Fisheries Policy."

²¹ See, e.g., WWF, "The Adoption of Responsibly Adapted Rights Based Management to Safeguard the Health and Economic Performance of Global Tuna Fisheries," 2010.

4. Long Term Management Plans

EU's fisheries policy and the standards for the EU fishing fleet should be the same inside and outside community waters; hence in third country coastal waters and on the high seas.

Within the EU, WWF's envisions that the current politically-driven system of setting TACs and quotas will be replaced by a system where management decisions are based on mandatory, ecosystem-based "Long Term Management Plans" (LTMPs) for all EU fisheries, and these will be in place by 2015. The over arching objectives that would need to be met by these plans would be spelled out in the Basic Regulation. Then, the LTMPs themselves would spell out the means by which the objectives are to be met. These LTMPs, developed and implemented by key stakeholders in the fishery, would include environmental assessments, capacity assessments (and plans to reduce overcapacity where it is found to exist)²², targets for reducing adverse impacts of fishing, and the strategy for meeting those targets. The plans would apply the precautionary principle, use the best available science and include effective compliance mechanisms.

WWF detailed its vision for LTMPs for the Commission in October 2009.²³ This vision was directed at fisheries in EU waters, but should equally apply elsewhere. WWF supports LTMPs for all EU fishing activities wherever they operate.

To ensure consistency, the EU should only conclude bilateral agreements with coastal states when LTMPs are in place. WWF urges that a 10-year timeline be included in the CFP, after which all bilateral agreements would become conditional on an effective LTMP.²⁴ These LTMPs would apply to all fishing vessels in the EEZ, including domestic fleets, EU fleets and other foreign fleets.²⁵

For LTMPs in high seas and third countries' coastal waters to become effective, agreement amongst all fishing nations is needed; the EU should show global leadership in reaching such agreement.

While the EU's domestic LTMPs and those that evolve in bilateral and multilateral settings may never be identical, they should all reflect the same essential elements: an ecosystem based management approach, a clearly articulated and scientifically-based target for fishery abundance, capacity right-sizing mechanisms, and management measures to prevent damage to habitats and non target species.

²² Through well designed programs of access limitation, allocation of fishing privileges and transferable privileges, communities can ensure equitable participation by community members and help to reduce overcapacity. See "Catch Share Design Manual: A Guide for Fishermen and Managers," Bonzon et al., available at www.edf.org.

²³ 2012 Common Fisheries Policy Reform - *Long Term Management Plans and Regionalisation of EU Fisheries*. WWF-document, 15pp. http://assets.panda.org/downloads/ltmp_full_final.pdf

²⁴ They should also be tailored to existing Rights Based Management systems in third countries.

²⁵ In many instances, the LTMP will need to have a regional or multilateral perspective, with the appropriate boundary conditions. See Section 5.

5. Respect for regional integrity in fishing access conditions

The Commission favours a regional approach to fisheries management. WWF supports that position and recommends that regional measures be included when the EU negotiates FPAs. If the Commission follows through with its stated intention to phase out mixed fisheries and limit future fisheries agreements to tuna and possibly small pelagics, a regional approach to these agreements would be most practical for all parties involved.

Most tuna stocks are covered by RFMO arrangements, and in several areas coastal states have formulated joint regional access conditions in their EEZs. An example is in West Africa, where the Commission Sous-Régionale des Pêches (CSRPE), an inter-governmental organisation with seven coastal member states, has formulated a suite of regional minimum terms and conditions for fishing access. The European Commission should ensure that any new FPA is in complete accord with the regional conditions that are relevant for the area negotiated. In other words, terms for RFMOs and FPAs must be mutually coherent and must take into account these regional access conditions.

A second example is formed by the eight Parties to the Nauru Agreement (PNA) in the SW Pacific. The Nauru Agreement is a sub-regional agreement on terms and conditions for tuna purse seine fishing licenses in the region. The agreement currently has three implementing arrangements with rules for fishing in these countries.

WWF urges the European Commission to treat such initiatives with great respect and to endeavor to include regionally agreed minimum terms and conditions for fisheries access in (a) all future access arrangements for EU vessels and (b) RFMO arrangements in the respective regions.

6. RFMOs

Despite their inadequate performance, RFMOs are currently the only viable option for the sustainable management of fisheries in international waters on the high seas. In 2006, the UN General Assembly called upon RFMOs to increase their mandate from pure fisheries management to marine conservation and sustainable fisheries. Consistent with this Resolution,²⁶ WWF believes that the European Commission should be provided with an unequivocal negotiating mandate for RFMOs that solidly and consistently promotes sustainable fishing and marine conservation. This applies equally to RFMOs for tuna (e.g. ICCAT, IOTC) and for whitefish (such as NAFO). Not only should the Commission support initiatives for this strengthened and expanded mandate through CFP legislative changes, it should also actively seek allies in its effort to strengthen the RFMOs' performance. This includes seeking support for developing states, to enable them to participate on an equal footing in RFMOs.

There is currently a lot of pressure -- from the UN, concerned industry players, NGOs and others -- for RFMOs to improve their management performance. For example, the ISSF, a private initiative by the tuna canning industry, scientists and WWF, recommends that the global growth in tuna fishing capacity be curtailed and fleets reduced.²⁷ Success will require the use of new approaches including spatial planning, traceability mechanisms and rights-based management.

Exclusive fishing privileges are essential for RFMOs in order to prevent over fishing, achieve sustainability and maximum economic benefits of the fisheries. Open access creates perverse incentives for the "race to fish", whereas exclusive privileges can provide a positive incentive to preserve the fish. Of course, allocation of exclusive privileges must ensure equitable access; processes for distributing privileges must be designed justly and transparently.²⁸

Key to successful capacity controls and rights-based management is an effective and transparent monitoring, compliance and enforcement system. RFMO governance procedures requiring consensus for most decisions are not appropriate for matters of compliance and sanctions. The EU should be a global leader in pressing for the rapid adoption and implementation of the Port State Measures agreement, a global vessel registry and other tools to enhance compliance assurance.

Available sanctions may include but are not limited to:

- (1) Port closures and bans on transshipment;
- (2) Reductions in allocated quotas;
- (3) Trade or other commercial sanctions;
- (4) Removal of vessel officers' licenses or eligibility to fish;
- (5) Inclusion in IUU vessel lists; and
- (6) Agreements among RFMO members to seek enforcement in an international legal tribunal or other dispute resolution forum.

In short, there should be consistency not only in the standards for sustainable fisheries management but also for the control of the EU fleet whether it is fishing within or outside the EU's waters. Effective monitoring, control and enforcement are essential to the external dimension of the CFP.

²⁶ UNGA Resolution 61/105 of 8 December 2006 on Sustainable Fisheries

²⁷ See "Bellagio Framework for Sustainable Tuna Fisheries" at: <http://www.iss-foundation.org/bellagio>

²⁸ See, e.g., Catch Share Design Manual, supra n. 22.

Appendix: Suggested Amendments to the ‘scope and objectives’ of the CFP basic regulation²⁹

The scope and objectives of the revised CFP should include the external dimension of the EU fleet. WWF proposes the following amendments to 2371/2002:

EU Regulation 2371/2002	WWF's proposed amendments
<p>Article 1 Scope 1. The Common Fisheries Policy shall cover conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of Member States.</p>	<p>Article 1 Scope 1. The Common Fisheries Policy shall cover conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community EU waters or by Community EU fishing vessels outside EU waters or, without prejudice to the primary responsibility of the flag State, nationals of Member States.</p>
<p>Article 2 Objectives 1. The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.</p> <p>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.</p> <p>It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.</p>	<p>Article 2 Objectives 1. The Common Fisheries Policy shall ensure [that all] exploitation of living aquatic resources[, both within and outside EU waters, shall] provides sustainable economic, environmental and social conditions.</p> <p>[2.] For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve the marine ecosystem 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 progressively adopt and implementation of an eco-system-based long-term management plans for approach to fisheries management.</p> <p>[3. Subject to [1] and [2], It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities[, both within the EU and in coastal states where EU-fleets operate in their EEZs] and taking into account the interests of consumers.</p>

²⁹ Council Regulation 2371/2002.

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