

Changes to the December Council under the new CFP

How fishing opportunities will be set from 2014 onwards

Summary

Under the newly reformed Common Fisheries Policy (CFP), the legally mandated objective for fisheries management in the EU will be to manage stocks sustainably by reference to maximum sustainable yield (MSY), and the Council of Ministers will need to set fishing opportunities at levels which science advises will achieve this objective. This is in contrast to fisheries management practice so far, where the Council has often ignored scientific advice and set fishing opportunities at levels higher than can be sustained.¹

Background

Towards the end of every year, the European Commission, Council of Ministers, and national administrations gear up for the December Council meeting, which is when the majority of the following year's fishing opportunities for EU fish stocks are set.² The Commission bases the majority of its proposed fishing limits on the scientific advice produced by the International Council for the Exploration of the Seas (ICES), while the Council, granted power under the Treaty of the Functioning of the EU to set fishing opportunities,³ has routinely deviated from sustainable, MSY-based recommendations to increase, or avoid decreasing, fishing opportunities.⁴ Over the years this contributed to widespread overfishing of European stocks; at best an inefficient use of a valuable natural resource and at worst a dangerous gamble that threatens the integrity of marine ecosystems and the future of the EU fishing sector.⁵

The number of stocks for which the Council has chosen higher than advised fishing opportunities varies from year to year, although improvements have been made in recent years.

¹ From 1987-2011, total allowable catches (TACs) set by Council were on average 33% higher than scientific advice recommended, which modelling suggests increased dramatically the probability of stock collapse over a 40 year period (O'Leary, B.C., Smart, J.C.R., Neale, F.C., Hawkins, J.P., Newman, S., Milman, A.C., Roberts, C.M. (2011) Fisheries Mismanagement, *Marine Pollution Bulletin* 62(12):2642-2648).

² This includes stocks managed by annual fishing opportunities and stocks managed under multiannual plans, however the quota for multiannual management plan stocks should adhere to the agreed long-term opportunities.

³ Consolidated version of the Treaty on the Functioning of the European Union, Article 43(3) "The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities."

⁴ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy "The Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits" (Article 20(1)), although the CFP was meant to be guided by the principles of good governance, including "a decision-making process based on sound scientific advice which delivers timely results:"

⁵ O'Leary, B.C., Smart, J.C.R., Neale, F.C., Hawkins, J.P., Newman, S., Milman, A.C., Roberts, C.M. (2011) Fisheries Mismanagement, *Marine Pollution Bulletin* 62(12):2642-2648

For example, from 2004-2009 an average of half of fishing opportunities were set higher than advised, compared to 29% in 2013.⁶ This is likely to be a contributing factor in the decreasing number of stocks known to be overfished (from 94% in 2007 to 39% in 2013).⁷

However, the reformed CFP, which enters into force on 1 January 2014, contains a number of stronger, binding requirements, which will no longer allow the Council to set fishing levels above sustainable levels or ignore scientific advice. From next year, **the CFP will require fishing to be set at levels that restore and maintain “harvested species above levels which can produce the maximum sustainable yield”⁸ which will mean the Council should follow “the best available scientific advice”⁹.**

Managing fisheries under the reformed CFP

The reformed CFP addresses many failings of the previous CFP. Critically, as explained in more detail below, it contains a binding objective for fishing levels to be set by reference to MSY, guided by scientific advice. Additionally, the CFP must be coherent with EU environmental legislation, including the requirement under the Marine Strategy Framework Directive¹⁰ (MSFD) for management to allow marine ecosystems to achieve good environmental status by 2020.¹¹

Setting TAC/effort limits

The Commission's Green Paper on the CFP from 2009 states that "Ecological sustainability is... a basic premise for the economic and social future of European fisheries."¹² In other words, the social and economic pillars are based on the environmental sustainability of the system - not vice versa. It follows that **maintaining or protecting the integrity of the ecosystem that supports fisheries should be an essential objective of management strategies.**

The Council set fishing opportunities under the 2002-2013 CFP according to the following provision: “The Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits”.¹³

The wording of this provision does not specify the criteria the Council should consider in its decisions, the values their decisions should be based on, or the time-scales that should be

⁶ Communication from the Commission to the Council concerning a consultation on Fishing Opportunities for 2014. COM(2013) 319 Final, Brussels 30.5.2013

⁷ Ibid

⁸ Regulation (EU) No XXXX/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 2371/2002, (EC) No 639/2004 and Council Decision (EC) No 2004/585; Article 2(2).

⁹ Ibid; Article 4(b).

¹⁰ 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).

¹¹ Regulation (EU) No XXXX/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 2371/2002, (EC) No 639/2004 and Council Decision (EC) No 2004/585; Article 4(g).

¹² Green Paper, Reform of the Common Fisheries Policy COM(2009) 163 Final, p9.

¹³ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy; Article 20(1).

considered. This led in many cases to the decision to prioritise immediate economic and social concerns over longer-term measures to ensure sustainability of the resource, as demonstrated by the many instances of choosing higher fishing opportunities than advised. Although not often popular politically, long-term management for healthy and productive marine ecosystems (including stocks at or above MSY) has been shown to increase economic and social benefits (higher and more stable profits), as well as environmental benefits.¹⁴

In comparison, the rules for setting fishing opportunities under the reformed CFP are much more specific: (a) to ensure the continuation of relative stability for Member States, (b) take account of the new conditions imposed by the landing obligation, and (c) be **consistent with the objectives in Article 2(2)**, meeting the targets, time frames, and margins in Article 9(2) and Article 11(1)(b - c).¹⁵

For reference, Article 2(2) of the reformed CFP states:

“The Common Fisheries Policy shall apply the precautionary approach to fisheries management, and **shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.**”

In order to reach this objective of progressively restoring and maintaining populations of fish stocks **above** biomass levels capable of producing maximum sustainable yield, **the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible** and on a progressive, incremental basis at the latest by 2020 for all stocks.”
(Emphasis added)

It is clear from the first sentence that there is a binding legal commitment to managing fisheries according to the precautionary approach, and to manage the exploitation of fish stocks so that they are expected (based on the best available scientific knowledge) to recover and/or be maintained above a biomass level that can produce MSY. This objective is paramount, and all other provisions in the reformed CFP are subject to it (including Article -7 on conservation measures, Articles 9 and 11 on multiannual plans, and Article 16 on fishing opportunities).

In the second paragraph, the timeline to achieving this objective is outlined. By 2015, fishing opportunities must be set by Council at levels that will allow the recovery or maintenance of harvested species (those caught in fishing operations) above MSY biomass levels. Since **this represents a management target, not a biological target** (i.e. for fishing pressure to be at a certain level, not for the stock to be at a certain level), and has been an EU policy objective since 2006,¹⁶ **there should only be one legitimate reason why this should not be possible**

¹⁴ Commission Staff Working Paper – Impact Assessment accompanying Commission proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy [repealing Regulation (EC) No. 2371/2002].

¹⁵ Regulation (EU) No XXXX/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 2371/2002, (EC) No 639/2004 and Council Decision (EC) No 2004/585; Article 16(2).

¹⁶ Communication from the Commission to the Council and the European Parliament: "Implementing sustainability in EU fisheries through maximum sustainable yield." COM(2006) 360 final

for most stocks by 2015 – scientific uncertainty about MSY reference points. The “where possible” acknowledges it will take longer for some stocks to be exploited at MSY levels due to the current lack data needed to determine of MSY reference points. However, in such cases where insufficient data causes this uncertainty, management measures must ensure "at least a comparable degree of conservation of the relevant stocks"¹⁷ while these are developed.

Although the MSY approach presents some difficulties in mixed fisheries due to problems of selectivity (i.e. trying to avoid catching one species while targeting another), there is flexibility because stocks must be ‘above’ MSY – not ‘at’ MSY. This follows the acknowledgement in Commission Decision 2010/477/EU that not all stocks in a mixed fishery can be **at** MSY simultaneously, due to stock interactions (such as predator-prey relationships) and selectivity limitations, but it is clear from Article 2(2) that stocks must be at varying levels **above** MSY.¹⁸

Since 2006, it has been EU policy to bring European fisheries management in line with international commitments under the World Summit on Sustainable Development in Johannesburg (2002) to achieve MSY by 2015¹⁹ and ICES have already been providing advice on the basis of most stocks – those with adequate stock assessment models and current data – reaching MSY by this time.²⁰ The difference under the reformed CFP is that from 2014, this advice will have to be followed by the Council in relation to fishing opportunities (see below).

Following scientific advice

Article 4(b) of the reformed CFP clearly states that following scientific advice is an essential element of good governance which the CFP should adhere to: “**The Common Fisheries Policy shall be guided by the following principles of good governance: ... (b) [the] establishment of measures in accordance with the best available scientific advice**”. This places a stronger obligation on EU decision-makers to follow the recommendations of scientific advisory bodies with regard to setting fishing opportunities (and other management measures).²¹

In the majority of European waters (excluding the Mediterranean Sea), this advice is developed by ICES, which "integrates a precautionary approach, maximum sustainable yield, and an ecosystem approach into one advisory framework."²² Although the quantity and detail of the data available to ICES expert and advisory drafting groups varies, it is still likely to represent advice

¹⁷ Regulation (EU) No XXXX/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 2371/2002, (EC) No 639/2004 and Council Decision (EC) No 2004/585; Article 9(2)

¹⁸ Commission Decision of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters; Criteria and methodological standards for good environmental status (Annex), Part B, paragraph 3(1)

¹⁹ Communication from the Commission to the Council and the European Parliament Implementing sustainability in EU fisheries through maximum sustainable yield. COM (2006) 360 final, Brussels, 4.7.2006.

²⁰ General Contact of ICES advice, page 4 in ICES Advice 2013, Book 1

http://ices.dk/sites/pub/Publication%20Reports/Advice/2013/2013/1.2_General_context_of_ICES_advice_2013_June.pdf

²¹ The corresponding provision from the 2002-2013 CFP read “Article 2(2) The Common Fisheries Policy shall be guided by the following principles of good governance: (b) a decision-making process based on sound scientific advice which delivers timely results;”.

²² General Contact of ICES advice, page 4 in ICES Advice 2013, Book 1

http://ices.dk/sites/pub/Publication%20Reports/Advice/2013/2013/1.2_General_context_of_ICES_advice_2013_June.pdf

based on the **best available** scientific advice. Catch advice for stocks that have less data available includes a precautionary buffer to allow for this uncertainty.²³

Helping achieve good environmental status

Article 2(4) of the reformed CFP states:

“The Common Fisheries Policy **shall** in particular: (g) be coherent with the Union environmental legislation, **in particular the objectives of achieving a good environmental status by 2020** as set out in Article 1(1) of Directive 2008/56/EC, as well as other Union policies.”

The qualitative criteria for determining good environmental status that are most relevant to the CFP are: (a) that commercially exploited fish stocks exhibit healthy age and size distributions that are within safe biological limits, and (b) that all elements of marine food webs are capable of retaining their full reproductive capacity and occur at normal abundance and diversity.²⁴ Two indicators for these criteria are that fishing mortality is equal to or lower than F_{msy} (i.e. the fishing pressure at which the stock is capable of producing MSY),²⁵ and that the "spawning stock" biomass (SSB) is equal to or greater than the value of SSB_{msy} (i.e. the SSB that would produce MSY under F_{msy}).²⁶ This second indicator is particularly important because the first is already included as an objective of the CFP in Article 2(2) – however, the CFP does not explicitly contain a time-bound requirement for stocks to recover or be maintained at or above MSY stock levels.

The commitment in the reformed CFP to supporting the achievement of EU environmental legislation, including the MSFD, means that SSB_{msy} (and an age/size distribution indicative of a healthy stock) must be achieved by 2020.²⁷ The adoption of MSY exploitation levels by 2015 as required by Article 2(2) must therefore ensure that fish stocks also achieve the MSFD objectives by 2020 at the latest.

Conclusion

Taking all of the provisions discussed in this briefing into account, it is clear that from 2014, the December Council meetings will be very different. Ministers will be required to set fishing

²³ See 'ICES Implementation of Advice for Data-limited Stocks in 2012 in its 2012 Advice' for more information on ICES approach to providing advice on data-limited stocks

<http://ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2012/ADHOC/DLS%20Guidance%20Report%202012.pdf>

²⁴ 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); Annex 1, paragraphs (3) "populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock" and (4) "all elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity".

²⁵ Unless the value of F_{msy} is not known for the stock due to the lack of an analytic stock assessment model, in which case the ratio between catch and biomass index is to be used as a secondary indicator.

²⁶ Unless the value of SSB_{msy} is not known due to the lack of an analytic stock assessment or model, in which case the minimum SSB level at which there is a high probability that the stock is sustainable (i.e. able to replenish itself) under current conditions. If there are no SSB values available, then the secondary indicator should be the proportion of the stock that is sexually mature.

²⁷ Commission Decision of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters; Criteria and methodological standards for good environmental status (Annex), Part B, paragraph 3(2)

opportunities compatible with MSY exploitation levels by 2015 for all stocks with sufficient data (and ensuring a comparable degree of conservation of data limited stocks), guided by the best available scientific advice, and with the objective of achieving good environmental status – including stock sizes above MSY – by 2020 at the latest.

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