

## ClientEarth's response to the Commission communication concerning a consultation on fishing opportunities for 2015 under the CFP

ClientEarth is a public interest European environmental law organisation founded in 2006, with offices in London, Brussels and Warsaw. We aim to create practical solutions to key environmental challenges by supporting and promoting the development, implementation and enforcement of effective European Union (EU), and where appropriate international, regional, or local environmental law and policy.

ClientEarth  
The HotHouse  
274 Richmond Road  
London, E8 3QW  
United Kingdom

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ClientEarth welcomes the Commission's Communication concerning a consultation on fishing opportunities for 2015 under the CFP. Particularly, we welcome the alignment of the communication with the objectives of the new CFP, including that:

- fishing opportunities must be set to achieve biomass levels above that which would produce MSY by 2015 where possible and 2020 at the latest;
- fishing mortality be brought to sustainable levels (at or below  $F_{msy}$ ) in the shortest feasible time frame;
- in mixed fisheries it must be ensured that all stocks are managed according to the MSY objective, and;
- it must be ensured that the implementation of the landing obligation does not jeopardise the MSY objective or increase fishing mortality.

### State of stocks

We acknowledge the positive developments that have been made in some areas of fisheries management in the EU, for example the generally increasing number of stocks with full MSY assessments and quantitative advice, and the generally decreasing proportion of assessed stocks that are overfished. However, the number of stocks within safe biological limits decreased from 24 to 21 between 2013 and 2014. In the same time period, the number of stocks where their status relative to reference points was unknown due to poor data increased from 41 to 47. The number of stocks with scientific advice to stop fishing has been increasing since 2012, as has the percent higher TACs have been compared to sustainable catch limit advice. For example, we query why the MSY advice for Norway lobster stocks in the West of Scotland, Irish Sea and Celtic Sea only been implemented for 12 of the 19 stocks for which assessments are available?

It is evident from the Communication that the state of stocks in the Mediterranean have not seen the same improvement as some other areas, and that further measure are needed. Furthermore, it would have been helpful to know how many stocks – and which stocks – are in

the five data-limited classes. In future, we request that this information is included in the Communication, as to have this easily accessible would be useful to stakeholders.

### **Recommendations to contribute to ensuring that 2015 fishing opportunities will help meet the objectives of the new CFP**

We recommend a continued effort to increase the number of stocks with MSY-based reference that allow sustainable catch limits to be derived with a high level of certainty through quantitative assessments. As part of this effort, data collection programmes may need to be expanded and scientific advisory bodies may need greater capacity. Funding for such endeavours may be sought through the European Maritime and Fisheries Fund.

The evidence that some areas or stocks are still significantly overfished, such as the Mediterranean and western Baltic cod, suggests that new measures may be required, or that implementation of existing measures needs to be improved. We would support an increased effort to aid Member States participating in such fisheries to reduce catches to sustainable levels as required by the CFP.

The TAC for stocks with a presumption of stability should only have their TAC maintained at that set at previous years if it was set in accordance with the best available scientific advice. TACs for stocks in this category that had TACs set higher than scientific advice should be reduced so they are in line with the best evidence of sustainable catch levels.

Regarding deep-sea fisheries, we welcome the Commission's approach to follow the fisheries resolutions of the United Nations General Assembly (UNGA). We wish to highlight that the 2009 UNGA Fisheries Resolution 64/72 states that where scientific information to determine long-term sustainable catch limits is not available, fishing opportunities should not be allocated. According to Annex Ib of the Commission communication, the status of fishing mortality in relation to sustainable levels is unknown in 97% of deep-sea demersal catches (by weight) from the Atlantic. This rises to 100% for deep-sea pelagic catches in the Atlantic. We hope that following the Commission's declaration to follow the UNGA resolutions, no fishing opportunities will be set for deep-sea stocks that lack data or evidence with regard to long term sustainable catch levels (F<sub>msy</sub> reference points or appropriate proxies). This would affect 1 pelagic stock and 17 demersal stocks. Additionally, fishing mortality should be reduced for the 5 demersal stocks that are classified as overfished. Additionally, and in line with the shift to an ecosystem-based fisheries management approach, more information is needed on bycatch of non-target species in deep-sea fisheries, with measures implemented to reduce such unwanted catches.

### **Primary issues in need of further clarification**

The Commission's proposed approach to achieving the MSY objective is to bring fishing mortality (F) to sustainable levels (F<sub>msy</sub>) in the shortest "feasible" time-frame. We support this ambition, but would like to know what it will mean in practice. There are no biological or ecological reasons that exploitation rates that would put stocks on the path to recovery could not be achieved almost immediately with the adjustment of fishing mortality. However, there may be social and economic impacts from adopting F<sub>msy</sub>-based fishing opportunities in some fisheries.

This leads to another question; how will “seriously jeopardise social and economic sustainability” be interpreted when setting fishing opportunities? If a quantitative interpretation is not agreed on, there may be variable application of this derogation from reaching Fmsy by 2015 resulting in an unlevel playing field across EU waters.

We are concerned about the expression of MSY in terms of a range, even if ‘safeguard’ conservation reference points are included. Based on the definition of conservation reference points in the CFP, these may not be sufficiently precautionary to protect stocks from declining if “MSY” is chosen from the higher (fishing mortality) MSY range. Furthermore, how are the proposed ‘alternative conservation measures’ in multiannual plans to be determined through regionalisation? To be compliant with the CFP, they must be supported/based on the best available scientific evidence and in line with the primary objectives of the CFP.

We welcome the aspiration to manage stocks with no scientific data in a “systematic, predefined and transparent way”, but would like to know how this method will be developed, what it will be based on, and when it will be available.

Liane Veitch  
Science and Policy Advisor  
274 Richmond Road  
London, E8 3QW  
+44 203 030 5956  
lveitch@clientearth.org  
www.clientearth.org

Flaminia Tacconi  
Legal Advisor  
36 Avenue de Tervueren  
1040 Brussels  
+32 2 808 4322  
ftacconi@clientearth.org  
www.clientearth.org

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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#### Brussels

4ème Etage  
36 Avenue de Tervueren  
1040 Bruxelles  
Belgium

#### London

274 Richmond Road  
London  
E8 3QW  
UK

#### Warsaw

Aleje Ujazdowskie 39/4  
00-540 Warszawa  
Poland