

Common Fisheries Policy – evaluation

Response to the call for evidence

ClientEarth welcomes the opportunity to provide feedback to the Commission’s call for evidence for an evaluation of the Common Fisheries Policy (CFP). The CFP, governed by Regulation (EU) 1380/2013 (hereafter: the CFP Regulation), is vital to preserving the long-term sustainability of fisheries and aquaculture, to contributing to the protection of the marine environment and the availability of food supplies, and to providing a fair standard of living for fisheries and aquaculture communities.

According to ClientEarth’s assessment, the CFP Regulation can be – if well implemented – **effective** in meeting its objectives; **efficient** and proportionate in terms of cost-benefit; **relevant** to addressing the current and emerging needs; **coherent** with other EU actions; and can **add value** beyond what would have been achieved by EU Member States alone. However, there is great untapped potential to achieve the CFP’s objectives which would be released by fully **implementing** and **enforcing** its provisions as well as other EU environmental legislation in order to protect fishers, coastal communities and the environment.

This assessment builds on and is supported by previous reports stressing the need for full implementation and enforcement of the CFP Regulation, such as the following:

- The briefing “[Common Fisheries Policy: Mission not yet accomplished](#)” (2021) by **Birdlife, ClientEarth, the Fisheries Secretariat, Oceana, Our Fish, Seas At Risk and WWF** underlines that, while the CFP remains a good framework for fisheries management, it lacks adequate implementation, control and enforcement. It concludes that addressing these shortcomings is critical now and before any future revision of the policy is considered – and lists solutions for each of the shortcomings that are necessary and possible **without a revision**.
- The **Commission** concludes in 2023 in its Communication “[The common fisheries policy today and tomorrow](#)” (COM(2023) 103 final): “*The CFP reform of 2013 was a breakthrough. (...) A*

decade later, we see tangible progress towards more sustainable fisheries on the ground. Fishers, civil society, Member States and the EU have contributed to rebuilding critical EU fish stocks and to bringing the fleets to profitable levels. (...) However, several challenges remain for the CFP to be fully implemented. Faster and more structural transformation is needed to reduce environmental and climate impacts of fishing and aquaculture. This is necessary to restore a healthy marine environment and ensure food security, as well as to help the sector become more resilient, increase energy efficiency and contribute to climate neutrality quickly. This will help to save on fuel costs and thrive on green energy". In its "[Marine Action Plan](#)" (COM(2023) 102 final), the Commission stresses: "There is a need to renew the EU's collective commitment to marine conservation and secure a clear political commitment of all stakeholders and institutions to implement the environmental legislation effectively, use the current CFP policy tools and make them work".

- The recent briefing "[Healthy seas, thriving fisheries: transitioning to an environmentally sustainable sector](#)" (2024) published by the **European Environment Agency (EEA)** confirms: "A range of clear, proven, beneficial measures are available for the EU and its Member States to address the ongoing biodiversity, pollution and climate crises. Such measures include ensuring all harvested stocks are exploited at sustainable levels, promoting low-impact activities, and establishing a large-scale, well-designed and effectively-managed network of marine protected areas". Moreover, it underlines that "transitioning to sustainable fisheries requires the full implementation and enforcement of existing management tools, especially those targeted at reducing the negative impacts of these pressures on marine resources. This is vital for improving the social, economic and environmental dimensions of fisheries".

A healthy marine environment and abundant marine life are prerequisites for successful fisheries, fishers and coastal communities. The lack of implementation and enforcement of laws designed to guarantee these prerequisites – from the CFP to environmental legislation – must be urgently addressed. Both at national and EU level, enforcement bodies must significantly increase capacities and resources dedicated to tackling breaches of marine-related legislation. In particular, the Commission must support Member States and fishing operators in implementing and enforcing the CFP and, as the "guardian of the Treaties", use its power to initiate infringement proceedings where needed. When it comes to environmental legislation, the latest Commission has opened [less than 560 legal proceedings](#) against EU Member States since December 2019 – the lowest number in two decades. Therefore, we welcome the announcement made by the recently re-elected President of the European Commission, Ursula von der Leyen, in her [political guidelines](#) in July 2024 that each Commissioner will be tasked with focusing, among others, on better enforcement.

Transparency – a fundamental component of democracy and good governance – is essential for monitoring the implementation of the law and ensuring compliance with. Access to information is also crucial to enable the public (including civil society organisations) to follow and participate in the decision-making process. The ongoing lack of transparency, notably in the process of setting total allowable catches (TACs), impedes public scrutiny and makes it impossible to hold decision-makers accountable, and it ultimately creates a culture of mistrust. In 2019 the [European Ombudsman made a finding of maladministration](#) in this context, following ClientEarth's complaint about systemic failures on transparency in the Council decision-making process for TACs in the Northeast Atlantic and non-compliance with the Aarhus Convention. ClientEarth welcomes recent improvements in transparency, notably with the revision of Article 113 of the Fisheries Control Regulation on access to fisheries data. We encourage the Commission to make sure that those improvements are implemented and enforced.

Implementation, control and enforcement of the existing instruments of the CFP and its related laws and policies – not revising the CFP Regulation – will deliver the EU’s transition to sustainable fisheries. By way of example, we reiterate the urgent need to implement and enforce the CFP rules regarding maximum sustainable yield, the landing obligation, compliance with environmental law, and quota allocation, as well as the urgent need to stop environmentally harmful subsidies and redirect taxpayer’s money towards positive actions for sustainable fisheries – all in a transparent manner. For more examples and suggested solutions, please refer to our briefing “[Common Fisheries Policy: Mission not yet accomplished](#)” as well as our [model mission letter to the new EU Commissioner for the Ocean](#), drafted by Birdlife Europe & Central Asia, ClientEarth, Oceana, Seas At Risk, Surfrider Europe, and the WWF European Policy Office.

1 Maximum sustainable yield

Article 2 of the CFP Regulation requires that all stocks must achieve the “maximum sustainable yield” (MSY) exploitation rate by 2020 at the latest. In simple terms, the purpose of MSY is to define the largest catch (yield) that can be taken from a fish stock over an indefinite period, while still leaving enough fish in the sea to ensure sustainable stock development. Since the CFP reform in 2013, this legal obligation – which stems from international treaties,¹ has become the overarching objective of the CFP. This cornerstone for sustainable fisheries management is widely welcomed as it has helped reducing fishing pressure on stocks in the North-East Atlantic over the last ten years. In other EU seas, where the EU considerably disregarded MSY (such as the Baltic) or where “total allowable catch” does not apply (the Mediterranean), overfishing remains a highly concerning threat for marine ecosystems and coastal communities and contributes to climate change.

This overarching objective must also be implemented for the long-term social and economic sustainability of EU fisheries. Short-term commercial interests disregarding MSY cannot be tolerated, as they lead to **serious economic and social consequences**. As emphasised by the Commission in its [Communication on fishing opportunities for 2025](#) (COM(2024) 235 final), “[f]ishers are seeing *socioeconomic gains from the stocks that have been managed at healthier levels for some time*”.

The 2020 legal deadline to end overfishing for all harvested species and the objective to secure healthy and resilient fish populations, set out in Article 2(2) of the CFP Regulation, has been missed in all European sea basins. EU Member States and EU institutions must therefore ensure the implementation of Article 2(2) of the CFP Regulation, notably by following best available scientific advice as required by Article 3 of the Regulation.

In order for Member States and the EU to fulfil their obligations under the CFP and to achieve MSY exploitation rates for all stocks, we stress the need to apply the precautionary approach (Article 2(2) of the CFP Regulation) as well as the ecosystem-based approach (Article 2(3) of the CFP Regulation) to fisheries management. These approaches to fisheries management, which are among the main objectives of the CFP Regulation, are **essential to safeguarding the marine ecosystem as a whole**, given the different factors threatening the resilience and health of the ocean. So far, a single-stock approach to fisheries management still leads to overfishing, specifically in mixed fisheries, and therefore fails to overcome the current challenges faced by the ocean and the people who depend on it. As

¹ Both the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA) impose to fish all stocks at MSY.

explained in the [“Joint NGO feedback to the European Commission on the “Sustainable fishing in the EU: State of play and orientations for 2025” consultation”](#) (2024), in line with the precautionary and ecosystem-based approaches, fishing opportunities should be set below the best available scientific single-stock advice provided by International Council for the Exploration of the Seas (ICES), where this does not yet fully reflect ecosystem integrity and dynamics and/or is not explicitly geared towards rapid recovery above sustainable population levels. ClientEarth’s yearly report [“Taking stock 2023 – are TACs set to achieve MSY?”](#), also provides key pointers to help the Commission, the Member States, the Council as a whole as well as the UK and its devolved administrations to focus their attention on the overdue need to end overfishing, by setting science-based fishing limits genuinely following a precautionary and ecosystem-based approach.

Legal actions have been brought by different NGOs over the last few years (notably, Friends of the Irish Environment, Coalition Clean Baltic (CCB), Blue Marine Foundation and ClientEarth), demonstrating the lack of implementation of the CFP and the MSY obligation in particular. These legal actions have also stressed the highly negative impacts of these shortcomings on the ocean, specifically in the Mediterranean Sea and the Baltic Sea. By way of example, the entire Council of the EU is now facing court action initiated by ClientEarth and partners [for setting unsustainable limits in the North-East Atlantic for EU-only and EU-UK shared stocks for 2022](#); and by the CCB network because of [quotas in the Baltic for 2024](#).

2 Landing obligation

According to the landing obligation (LO) set out in Article 15 of the CFP Regulation, all catches (except those subject to exemptions) have to be landed to avoid discards of unwanted fish and to encourage fishers to fish more selectively. The obligation fully entered into force in 2019. It is widely recognised that non-compliance with the landing obligation persists across the Member States. However, setting TACs based on catch rather than landings advice, while non-compliance with the LO and therefore illegal discards at sea continue, allows for unsustainable catches that are potentially far above best available scientific advice (see [“The Unintended Impact of the European Discard Ban”](#), Borges, ICES Journal of Marine Science, 2020).

The [Communication on fishing opportunities for 2025](#) (COM(2024) 235 final) underlines that *“[t]here are incentives for non-compliance which need to be tackled through effective control and enforcement”*. The [revised Fisheries Control Regulation \(FCR\)](#), which entered into force in January 2024, aims to modernise the way fishing activities are controlled and CFP rules are observed. It adopted new registration and monitoring tools (in particular remote electronic monitoring (REM), including closed-circuit television (CCTV) cameras) intended to ease the implementation and the enforcement of the LO. The swift roll-out of REM across EU waters is key to ensuring that catches are fully documented and accounted for and that management measures (including TACs) are complied with.

It is therefore essential for the Commission to adopt an implementing act on REM targeting all fishing vessels at risk of non-compliance with the LO. The Commission must also allocate the necessary internal resources to carry out the audits required to assess the effective implementation of the LO in EU Member States. As already requested in a [letter to Commissioner Sinkevičius dated 6 June 2024](#), NGOs are also calling on the Commission and the Member States to be fully transparent and systematically inform civil society about these audit procedures, their results and the progress made towards full compliance. Where needed, the Commission must initiate infringement proceedings against Member

States and if necessary, take them to court. In this regard, it is of utmost concern that the Commission is [closing infringement proceedings](#) against five Member States for non-compliance with the LO despite the lack of clarity on the extent to which those Member States have effectively addressed compliance and control concerns.

In the absence of robust and comprehensive control, monitoring and enforcement, the Commission should **systematically factor in poor compliance with the LO** by proposing and setting TACs below the ICES maximum catch advice, to ensure that the agreed TACs do not lead to fishing mortality beyond sustainable levels. So-called quota “top-ups”, intended to cover catches that used to be discarded prior to the LO and now have to be landed, should not be applied while the LO is not effectively monitored and controlled. If such ill-advised “top-ups” continue to be used, TAC deductions need to be made in order to account for continued discards covered by LO exemptions. Such deductions need to be based on robust discard estimates; where information on discards is limited or uncertain, larger deductions need to be applied in line with the precautionary approach.

The Commission should also make access to quota “top-ups” conditional on vessels demonstrating compliance with the LO and full documentation of catch, notably through REM, supported by independent observer coverage as appropriate. Such “top-ups” were intended to allow fishers to legally land catches that would have been discarded prior to the LO, and therefore must not be made available to vessels that do not verifiably comply with the LO (see also the joint NGO [“Recommendations to the EU on the setting of fishing opportunities for 2024”](#)).

3 Coherence with EU environmental legislation

The CFP Regulation does not exist in isolation – Member States are also obliged to fulfil their obligations under Union environmental legislation relating to the marine environment. Coherence between the CFP and EU environmental legislation is absolutely key for safeguarding the sustainability of fisheries and protecting marine ecosystems. It also follows from the principles of consistency (Article 7 TFEU), environmental integration (Article 11 TFEU) and sincere cooperation (Article 4(3) TEU). In particular, the Commission’s [“Marine Action Plan”](#) (COM(2023) 102 final) sets out a wider range of actions and measures to improve coherence and coordination between environmental and fisheries policies at all levels, which still need to be fully implemented.

Among others, Articles 11 and 18 of the CFP Regulation provide for a tool to translate policy coherence into practice where conservation measures affecting fisheries need to be established: Member States are required to submit Joint Recommendations to the Commission to adopt conservation measures necessary for compliance with obligations under the Habitats Directive, the Birds Directive and the Marine Strategy Framework Directive (MSFD). The new Nature Restoration Law also refers to CFP Joint Recommendations to contribute to meeting targets regarding the restoration of marine ecosystems (Article 18 of the Regulation (EU) 2024/1991).

However, the Joint Recommendation procedure is still underused in practice. The European Court of Auditors highlighted in [“Marine environment: EU protection is wide but not deep”](#) (2020): *“We note that the EEA reported in 2020 that the Article 11 procedure often had the consequence that commercial fisheries interests were favoured over nature conservation requirements”*. The report [“Was Article 11 of the CFP doomed to fail?”](#) (produced by Ocean Future Collective for Oceana, 2021) has revealed several practical issues regarding process and timelines, arbitration and conflict resolution, and transparency and accountability. While it confirms that the legislative framework set out in Article 11 of the CFP

Regulation has the potential to reach the EU's environmental objectives, it makes specific suggestions for better implementation. The Commission stresses in this context the need for Member States to *“address the lack of sufficient resources for the work in regional groups, further increase stakeholder involvement, and strengthen the scientific base”* (see Communication [“The common fisheries policy today and tomorrow”](#) (COM(2023) 103 final)).

The Commission plays a very specific role in this context: First of all, it is the “guardian of the Treaties” that can and should initiate infringement proceedings against Member States not complying with their environmental obligations. Failure to make meaningful progress on the Joint Recommendations referred to in Article 11 of the CFP Regulation does not relieve Member States from their obligation to comply with environmental law. Member States which do not engage in good faith during the Joint Recommendation procedure are in breach of the Habitats or Birds Directives, or the MSFD, regardless of whether the site in question is located within their territory. This results from the shared responsibility among the Member States that have a direct management interest in the site concerned and the **principle of sincere cooperation**.

Second, Article 11 of the CFP Regulation provides for specific instruments for the Commission itself: the Commission has the power to submit legislative proposals where Joint Recommendations are not submitted in time or are insufficient (Article 11(3) subparagraph 2 of the CFP Regulation), and it has the obligation (*“shall”*) to adopt conservation measures in case of urgency and in the absence of a Joint Recommendation (Article 11(4) of the CFP Regulation). In addition, the Commission should also revise the Multi-Annual Plans for Fisheries Management to add clear and binding deadlines for the Joint Recommendation process. Instead of revising the law, the Commission should make use of these means.

The need for stricter implementation at national, regional and European level is illustrated by the example of the Dogger Bank marine protected area, which is an important sandbank ecosystem in the North Sea, spanning the waters of the UK, the Netherlands, Germany, and Denmark. Due to its ecological significance, it has enjoyed legal protection under the EU Habitats Directive since at least 2009. While the UK has succeeded in implementing a total ban on bottom contacting gear in the UK Dogger Bank marine protected area since its withdrawal from the CFP, we have not seen the equivalent ambition for the Dogger Bank in EU waters. A joint recommendation has been submitted, but it only provides for a complete ban on bottom-contacting gear in around one-third of the area and thus still undermines the requirements of the Habitats Directive. Despite a legal complaint filed by several NGOs, the Commission has not yet initiated infringement action or adopted emergency conservation measures (for more, see the reports by [Blue Marine Foundation](#), [ClientEarth and Marine Conservation Society](#); [Oceana](#); and the [Complaint to the Commission concerning alleged breach of Union legislation](#) by ClientEarth and WWF, supported by other organisations).

Further tools and instruments for fulfilling the obligation to integrate obligations between various Union policies are both crucial and possible within the current framework – such as the integration of the existing obligation to achieve good environmental status (GES) under the MSFD into fisheries management, in particular when setting fishing opportunities. As outlined in the recent [“Joint NGO recommendations on Baltic Sea fishing opportunities for 2025”](#) (2024), while the current ICES advisory framework indeed reflects the CFP's requirement to fish stocks at or below the MSY exploitation rate, *“it for example does not yet explicitly incorporate key requirements under the MSFD regarding population health and food web integrity. This means that the current ICES headline advice is neither geared towards ensuring that stocks exhibit ‘a population age and size distribution that is indicative of a healthy*

stock' (MSFD Descriptor 3), nor that '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' (MSFD Descriptor 4). It is for the ICES advice clients, such as the EU, to explicitly request ICES to fully reflect such important policy objectives in its advice on fishing opportunities, and, where such incorporation is not yet possible in the short-term, to provide sufficiently precautionary alternative catch options geared towards minimising the risk fishing poses to stock and ecosystem health".

The socio-economic need for a coherent policy approach is obvious. Breaches of environmental obligations not only put the living conditions of fishers at risk. Incomplete implementation of EU environmental laws also produces costs for the EU economy of around [EUR 55 billion every year](#) (health costs and direct costs to the environment). Moreover, conservation measures such as marine protected areas bring **economic benefits** for fisheries and tourism, as the recent study "[Evidence of economic benefits from marine protected areas](#)" (Costello, 2024) shows.

4 Quota allocation

Article 17 of the CFP Regulation requires Member States to use transparent and objective criteria, including those of an environmental, social and economic nature, when allocating their fishing quotas to vessels. This is another example of poor implementation by Member States: not only have there been gaps in transparency, but Member States also focus primarily on historical catch records when re-allocating fishing opportunities.

Allocating fishing opportunities according to a set of criteria is an **outstanding opportunity to guide the transition towards low-impact fisheries**. As confirmed by the Commission in its Communication "[The common fisheries policy today and tomorrow](#)" (COM(2023) 103 final), quota-allocation criteria can "*support small-scale and coastal fishers, which represent nearly 75% of all fishing vessels registered in the EU and nearly half of all employment in the fishing sector*". The "[Study on Article 17 of the common fisheries policy. Methodological considerations of an allocation of fishing quotas based on social and environmental criteria](#)" (VertigoLab, 2022) stresses the positive impact that quotas allocated in favour of environmental and social criteria can have on GDP and employment. And the Seas at Risk report "[Allocating fishing opportunities with environmental, social, and economic criteria in mind](#)" (2024) presents ten cases in nine Member States that feature good practices implementing measures in agreement with the objectives of Article 17.

Therefore, we urge Member States to make use of the criteria set out in Article 17 and the objectives of the CFP Regulation, in a transparent manner: allocation of fishing opportunities must favour fairness, sustainability, and the preservation of the ocean for future generations of fishers, by directing fishing opportunities towards low impact parts of the fleet and away from those with a high impact, questionable social and labour practices, and/or a history of non-compliance. The Commission should provide a precise definition of low-impact fishing, monitor compliance with Article 17 of the CFP Regulation, and ensure the Member States to make their allocation criteria public. For more see also "[Joint NGO feedback to the European Commission on the "Sustainable fishing in the EU: State of play and orientations for 2025" consultation](#)" (2024).

5 European Maritime, Fisheries and Aquaculture Fund

Challenging environmentally harmful subsidies is key to meeting the objectives of the CFP and ensuring the transition to decarbonised, economically and socially sustainable fisheries. We need to redirect taxpayers' money towards positive actions for this transition and, as a matter of priority, towards protecting and restoring the marine environment and small-scale and low-impact fishing practices.

Supporting small-scale and low-impact fishers can enhance the resiliency and competitiveness of the EU by promoting sustainable fisheries management, preserving marine biodiversity and ensuring food security in the long term. These fishers often employ environmentally friendly practices that minimise overfishing and protect ecosystems, aligning with the EU's sustainability commitments. By strengthening small-scale and low-impact fisheries, the EU can reduce dependence on imports, support local economies, and create jobs in coastal communities. This would not only enhance economic resilience but also foster social cohesion and the preservation of cultural heritage, making the EU's fisheries sector more adaptable and competitive in the global market.

To safeguard our marine ecosystems and facilitate the transition to sustainable fishing practices, we reiterate our recommendations made in our response to the Commission's parallel call for evidence for the European Maritime and Fisheries Fund 2014-2020 (EMFF) ex post evaluation and the European Maritime, Fisheries and Aquaculture Fund 2021-2027 (EMFAF):

- **Stop granting environmentally harmful subsidies;**
- **Allocate more funding for nature protection and restoration;**
- **Target funding for small-scale and low-impact fishing practices;**
- **Improve EMFAF access for small-scale and low-impact fishers.**

Please refer to ClientEarth's "[EMFAF 2021-2027 mid-term evaluation - response to the call for evidence](#)".

About ClientEarth

ClientEarth is a non-profit organisation that uses the law to create systemic change that protects the Earth for – and with – its inhabitants. We are tackling climate change, protecting nature and stopping pollution, with partners and citizens around the globe. We hold industry and governments to account, and defend everyone's right to a healthy world. From our offices in Europe, Asia and the USA we shape, implement and enforce the law, to build a future for our planet in which people and nature can thrive together.

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