



# **WWF Mid-Term Review of the EU Common Fisheries Policy**

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## **WWF Mid-Term Review of the EU Common Fisheries Policy**

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# WWF Executive Summary

This report examines EU's progress in implementing its Common Fisheries Policy (CFP), since the reform put in place in December 2002 and half-way through its mandate. Introduced to ensure European fisheries are managed in a sustainable way, the new regulation (2371/2002/EC) entered into force on 1 January 2003 and it may be reviewed before the end of 2012.

WWF has commissioned the independent consultants, MRAG Ltd, to do this report, which aims to provide an objective assessment of some of the CFP's key areas: (1) the annual process of **Total Allowable Catches (TACs) & quotas** negotiations; (2) the development of **multi-annual management and recovery plans**; (3) the adoption of an **eco-system basis** in EU fisheries management (including the control of discards); (4) the EU's relationship with **Regional Fisheries Management Organizations (RFMOs)**, using ICCAT and bluefin tuna as a case study; (5) the development of the **Regional Advisory Councils (RACs)**; and (6) the adjustment of **fishing capacity** in line with stock conservation. The report concludes that five years from its next reform, the EU Common Fisheries Policy still fails to achieve sustainable management of European fish stocks, mainly because the way fisheries quotas are set is fuelling the chronic problem of overfishing in Europe.

Section 2 of this report shows that **TACs and quotas**, agreed by the Fisheries Ministers, are very often in excess of the scientific advice given by the International Council for the Exploration of the Seas (ICES). Due to quotas being set too high and the rising practice of illegal fishing, there has been little sign of improvement of the EU fish stocks since 2002. The section states that the majority of European fisheries are not being sustainably managed and that while the Commission itself acknowledges that most stocks remain outside biological limits, it still frequently exceeds the advice of ICES in its TACs and quotas proposals to the Council. The section concludes that the tendency of the 'TAC machine', driven by the Commission and the Council, to set greater quotas than consistent with scientific advice has not been eliminated since 2003. This unveils the systematic failure of the EU management and decision making structure for fisheries.

Section 3 shows that the set-up of EU **multi-annual management and recovery plans**, even if adequate, has been too slow and their success often hindered by the EU reluctance to cut quotas. In fact, no stock has yet recovered through the direct intervention of an EU recovery plan because of the quotas issue. In the case of cod, the Council has only rarely adopted reductions in TACs that are consistent with the cod recovery plan, therefore the stock is yet not showing any sign of recovery.

Regarding the **ecosystem-based management** and discarding, Section 4 notes the lack of action to eliminate wasteful fisheries until now. The study shows that each year between 20% and 60% of catches are discarded in most EU fisheries, undermining both the effectiveness of conservation measures and the overall health of the ecosystem. It is there to note that some regulatory instruments currently in use lead inevitably to discards. For example, the reliance on TACs as the main management instrument in mixed fisheries leads to discards when above-quota quantities of some species are taken while there is still quota left over for others. Positive developments can however be noted, such as the formation of the RACs with their regional focus and the introduction of technical management measures to reduce discards.

Section 5 of the report confirms that the EU has been a supportive member of **ICCAT**, largely contributing to its bluefin tuna research programmes. Although the EC is actively involved in scientific research work on bluefin tuna, it has not always been supportive of the scientific recommendations made by the ICCAT scientific committee when setting TACs and closed season measures for Atlantic bluefin tuna. The section concludes that EC implementation and compliance with ICCAT recommendations since the reform of the CFP appear to be lacking.

Section 6 confirms that six of the intended seven **RACs** have now been successfully established. While RACs have not yet taken formal responsibilities for any regional, decentralized decision-making, it is clear that they are providing a valuable forum for discussion between stakeholders both on fishery management needs and potential solutions at appropriate regional-sea levels. Communications between the RACs and the EU bodies is reported to be good. The Commission's effort to improve the timetable for consultations about TACs has also been welcomed by the RACs.

Regarding the adjustment of **fishing capacity**, Section 7 shows that while most Member States have performed well in reducing their fleet capacity, the question remains as to how far capacity must still be reduced in order to solve the EU's chronic problem of overfishing. On fishing capacity relative to available fishing opportunities, the report notes that in 2007, about four-fifths of stocks remain outside safe biological limits.

Finally, the report raises serious concerns on whether the functioning of the CFP is "fit for purpose". It clarifies that whilst the framework may be sound, its operation by the Commission and the Council distorts the original legislative intent, especially when it comes to core questions of the setting of TACs and quotas and taking tough choices in the application of the precautionary principle. Therefore, the delivery of the reformed CFP gets a 'needs do better' from WWF.

# 1. Introduction

At the start of 2003, the European Union adopted a revised Common Fisheries Policy (CFP). This followed a period of consultation in which it was recognised that the existing CFP had not contributed to greater sustainability of fish stocks nor socio-economic security for fishermen. The primary causes of its failure to deliver sustainability were stated by the Commission in its aspirational “Green Paper on the Future of the Common Fisheries Policy” (COM(2001) 135) to be, *inter alia*:

- overcapacity in the fishing fleet,
- an over-dependence on output control,
- a systematic tendency for Council to set TACs higher than scientific advice,
- fragmented monitoring and control, and
- a tendency to ignore the ecosystem effects of fishing.

A number of solutions were suggested in the Green Paper, including a new set of CFP objectives<sup>1</sup> and significant initiatives in the following areas: implementation of multi-annual, ecosystem-oriented management; a system of tighter, more coordinated control and enforcement; improved governance through greater involvement of stakeholders; strengthening of the economic and social dimension of the CFP; and improved third party and multilateral cooperation on fisheries.

This paper examines some of these issues and asks whether the reforms introduced since 2003 (or, in some cases that were already under development at the time of the Green Paper in 2001) have contributed to the objectives of the CFP.

This report does not aim to deal comprehensively with all the initiatives that have been taken in recent years. Particular attention is instead paid to six main themes, identified as priorities by WWF:

- The consequences of Commission and Council actions for conservation, specifically regarding the annual TAC negotiations;
- The implementation of multi-annual management plans and recovery plans, most specifically for the Baltic/North Sea Cod;
- Ecosystem-Based Fisheries Management (EBFM) including control of discards;

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<sup>1</sup> See Annex 1, page 72.

- The relationship and support of the EU to RFMOs with specific attention to ICCAT and bluefin tuna;
- The actions of the North West Waters and North Sea Regional Advisory Councils (RACs) in supporting the CFP;
- As possible, given the availability of data, an assessment of the adjustment of fishing capacity in line with stock conservation.

The reformed CFP was adopted by the Fisheries Council on 20 December 2002, primarily in the form of Regulation (EC) No. 2371/2002 (EU Council, 2002a), which repealed and replaced the 1992 legislation (EU Council, 1992). A collection of other regulations, action plans and communications was also presented during 2002, and packaged as a ‘roadmap’ for the reform (CEC, 2002a) (see Box 1).

**Box 1. Elements of the 2002 CFP Reform, as listed in the CFP Roadmap**

<p><u>Council Regulations</u>, December 2002 ‘First package’:</p> <ul style="list-style-type: none"> <li>• Community structural assistance in the fisheries sector (2369/2002)</li> <li>• Emergency Community measure for scrapping fishing vessels (2370/2002)</li> <li>• Conservation and sustainable exploitation of fisheries resources (2371/2002)</li> </ul> <p><u>Community Action Plans and Strategies</u>:</p> <ul style="list-style-type: none"> <li>• European Aquaculture (Com 2002/511)</li> <li>• Mediterranean (Com 2002/535)</li> <li>• Environmental Protection (Com 2002/186)</li> <li>• Eradication of illegal fishing (Com 2002/180)</li> <li>• Measures to counter the social, economic and regional consequences of fleet restructuring (Com 2002/600)</li> <li>• Discards (Com 2002/656)</li> <li>• Single inspection structure (Com 2003/130)</li> </ul> <p><u>Communications</u>:</p> <ul style="list-style-type: none"> <li>• Communication from the Commission on the reform of the CFP (2002)</li> <li>• Partnership agreements with third countries (Com 2002/637)</li> <li>• Communication on improving scientific and technical advice for Community fisheries management (Com 2003/C 47/06)</li> <li>• Compliance workplan and scoreboard (Com 2003/344)</li> </ul>
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Sources: CEC, 2002a

As reflected in the revised objectives adopted for the CFP (see Box 2), the new policy focuses more clearly on those issues brought to the global agenda since 1992, in particular, the application of the precautionary approach and eco-system based management, and improved governance and decision making.

Box 2. Objectives of the 2002 CFP (Article 2. of Council Regulation 2371/2002)

1. The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. 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. 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.
2. The Common Fisheries Policy shall be guided by the following principles of good governance:
  - (a) clear definition of responsibilities at the Community, national and local levels;
  - (b) a decision-making process based on sound scientific advice which delivers timely results;
  - (c) broad involvement of stakeholders at all stages of the policy from conception to implementation;
  - (d) consistence with other Community policies, in particular with environmental, social, regional, development, health and consumer protection policies.

A summary table of Commission and Council responsibilities pursuant to Council Regulation No 2371/2002 is provided in Annex 2 of this report. This table illustrates the essential responsibilities of the EU institutions in relation to the sustainable exploitation of fisheries by reference to its most important regulations within the CFP framework.

Though Council Regulation No 2371/2002 is a pivotal instrument for the purposes of this report, it is useful to place it in its larger CFP context. The CFP itself is comprised of some 370 individual Regulations and Decisions divided into four main headings<sup>2</sup>. As such, like the fish and fishermen that it regulates, it is a continuously moving target. Given its largesse and complexity, the CFP may be difficult to follow for most key stakeholders. When added to this legislative complexity, the level of institutional fragmentation among international, regional, EU, national and sub-regional bodies (even for the distinct area of control and monitoring) makes coordination of the CFP's main objectives difficult.<sup>3</sup>

Against this backdrop, it may be wise to begin considering the reduction of regulatory complexity by reducing the number and volume of rules, which tend to be scattered over several legislative instruments (e.g., those related to enforcement). Greater harmonisation and simplification of data and reporting requirements to DG Fish may also be sensible. It is noted that the sheer number of types of management measures demands complexity. But perhaps, a

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<sup>2</sup> The four main headings are: structural measures; market organisation; conservation of resources (catch quotas and management of stocks, other conservation measures); and state aids. The figure of "370" excludes large numbers of amendments of these legislative instruments.

<sup>3</sup> At another layer of complexity still, is the need to situate the CFP within a larger marine environmental management framework as is being attempted in the Marine Strategy Directive. In the interest of ecosystem protection, the legal and institutional coordination of fishing, shipping, oil and other natural resource mining activities, and other uses of the marine environment is essential.



less prescriptive approach which sets results to be met by fishing fleets/nations along with uniform enforcement requirements may provide similar results with less legal complexity. As well, integrated management strategies should draw in all relevant references to relevant CFP legislative instruments in the interests of rule unification. Finally, the further development of the preliminary consultation process for decisions may reduce the number of hierarchical levels of complex legislation and may clarify when legislation is strictly necessary.

In the different sections of this report, the key commitments of Regulation 2371/2002 are outlined along with other legislation relevant to each of the priority areas covered by the project. Each section discusses the initiatives that have been taken by the Commission and the Council, the effect that these initiatives are having in meeting the objectives of the CFP, and actions that could be taken to ensure future effectiveness. The overall performance of the EU institutions in these areas is summarised using a simple traffic lights colouring scheme in Section 8 of the report. A short list of key action points is given in the final Section 9.

## 2. Commission and Council actions in setting TACs and taking advice for conservation

### 2.1 Background

#### *CFP process for setting fishing opportunities – the ‘TAC machine’*

Since the early 1980s, the CFP has been dominated by a system that attempts to control fish catches and fishing mortality rates by setting Total Annual Catches or TACs for each main commercial fish stock. Referred to as the ‘TAC machine’ by Schwach et al (2007), the cycle begins each year with the provision of stock assessments by ICES’ Advisory Committee on Fishery Management (ACFM) along with its corresponding advice on appropriate levels of fishing and possible management measures for the next year. Proposals on TACs are then made by the Commission of the European Community (CEC), after taking further advice from its scientific arm, the Scientific, Technical and Economic Committee for Fisheries (STECF), and after considering the wider social objectives of the fisheries. Final decisions on the coming year’s TACs are made by the Council of Ministers, and these TACs are split according to shares agreed for each country (based on historical allocation). The decisions for many important fish stocks are made at the annual Council meeting in December, but some stocks are also assessed and TACs set earlier in the year.

The TAC machine was designed to control overall catches at sustainable levels, and to divide catches between states, so as to ensure ‘relative stability’ for the industry. Such aims were not achieved in the initial two decades of the CFP. The Commission’s ‘State of the Resources’ report (CEC, 2001b), that was presented with the 2001 Green Paper, summarised the changes in fish stocks over the 1980s and 1990s as follows:

- *“almost all roundfish stocks have declined and the current harvest is in most cases not sustainable;*
- *several flatfish stocks are harvested at excessively high levels but some are close to sustainable levels;*
- *pelagic species and species subject to fishing for industrial purposes are in better condition but harvest rates need to be maintained at current levels or reduced to secure sustainability;*
- *several deep sea species show signs of over-exploitation and some might have reached critical levels;*

- *generally speaking, economical and biological benefits would accrue from lower exploitation of most stocks.”*

The Green Paper (CEC, 2001a) suggested that the poor state of resources was largely the result of setting annual catch limits in excess of those proposed by the Commission on the basis of scientific advice. The review by Hammer and Zimmerman (2004) confirmed that the final TAC agreed by Council in the years up to 2003 were on average 32% above the biological recommendations of ICES. Such deviations had developed over the years from around 20% in the mid 1980s, up to around 40% at the turn of the century.

Since the start of the reformed CFP in 2003, fish stocks have shown little tendency to recover or to increase inside safe biological limits (CEC, 2007d). This section examines the extent to which the EU’s ‘TAC machine’ has contributed to this situation. It is worth noting here that TACs equate in reality to total landings and not capture of fish which can be considerably higher in many EU fisheries (see Section 4.3 on discards).

### ***Legal basis***

The key commitments of the 2002 CFP (Council Regulation 2371/2002), relating to the setting of fishing opportunities, TACs and quotas, are listed below:

- **Article 4.** To achieve the objectives [of the CFP],... Council shall establish Community measures governing access to waters and resources ... taking into account available scientific, technical and economic advice and in particular of the reports drawn up by the STECF as well as in the light of any advice received from RACs....
- **Article 20(1).** 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. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.
- **Article 23(4).** When the Commission has established that a Member State has exceeded the fishing opportunities which have been allocated to it, the Commission shall operate deductions from future fishing opportunities of that Member State.

## 2.2 Analysis of progress to date

### *ICES advice on the state of fish stocks and TACs*

The annual reports in the 'ICES Advice' series<sup>4</sup> provide detailed evidence of the poor state of EU fish stocks. The situation shows little sign of improvement since 2002. As shown in Table 1, the percentage of catches taken from demersal fish stocks that are outside sustainable biological limits (SBLs) has been over 50% in all recent years. Many benthic (bottom living) and diadromous (salmon and sea trout) stocks are also outside SBLs. While some improvements are noticeable for pelagic fish stocks, the situation in industrial fisheries has declined recently with sandeel and Norway pout both moving outside their SBLs in 2003. These two species are important ecosystem components and provide prey for many species of fish and birds.

**Table 1. Percentage of the total catches in years 1994-2005 taken from fish stocks outside sustainable biological limits (SBLs) at the end of each following year.**

Catches during year:	Stock status at end of year:	Percentage of total catches taken from stocks outside SBLs					
		Benthic	Demersal	Diadromous	Industrial	Pelagic	All
1994	1995	31	53	100	0	48	35
1995	1996	28	49	100	0	32	26
1996	1997	42	59	100	0	26	26
1997	1998	39	74	100	0	37	32
1998	1999	39	61	100	0	6	10
1999	2000	32	82	100	0	42	38
2000	2001	53	66	100	0	43	37
2001	2002	Not available					
2002	2003	51	61	100	0	8	15
2003	2004	31	61	100	41	13	22
2004	2005	29	62	100	39	12	21
2005	2006	40	51	100	21	2	10

Sources: ICES, 2004; 2005; 2006 and (for last year) from ICES web site.

Species: Benthic: Nephrops, prawns, flatfish, anglerfish

Demersal: roundfish as cod, haddock, whiting, hake, etc

Diadromous: salmon, sea trout (eel is classified in other category)

Pelagic: herring, anchovy, sardine, horse mackerel (North Sea and southern), redfish

Industrial: sprat, sandeel, Norway pout

With its aim of maintaining fish stocks inside SBLs, ICES advice for many fish stocks is for significant reductions in fishing pressure. For those stocks that are well below their SBLs, zero catches are proposed until they return to safe levels, allowing for uncertainties. A zero-TAC advice was provided by ICES for between 12 and 24 stocks in the years 2003-2007 (CEC, 2007d). In its provision of such advice and the identification of SBLs, ICES follows the 'precautionary approach' adopted by UNCED (the United Nations Conference on Environment and Development) in 1992, as requested by the Commission, as codified for

global fisheries by the UN Fish Stocks Agreement and the FAO's Code of Conduct for Responsible Fisheries, both agreed in 1995.

### *Commission proposals for TACs*

Having considered the ICES advice, and having sought the views of the STECF, the European Commission publishes its proposals for the TACs of most fish stocks in late November or early December each year.

As shown in Table 2 and Table 3, the majority of TACs recommended by the Commission for the North Sea and Celtic Sea regions for 2006 and 2007 were larger than those proposed by ICES. In 2006, the Commission-proposed TACs were greater than those advised by ICES for 11 out of 16 stocks that could be compared in these sea areas. Larger TACs were proposed in 2007 for 13 out of 16 stocks.

This examination of the Commission's proposals is limited to two sea areas (those of the RACs prioritised in the study) and the two most recent years, due to the difficulty in collating the information required in making the comparisons. The process is complicated by ICES publishing its advice for some fish stocks in different area sub-divisions to those used subsequently by the EU in its allocation of quotas. The sub-stocks included in Table 2 and Table 3 are those where the same area divisions are used in both fora and where data were available from both sources.

It is clear that the majority of European fisheries are not being sustainably managed. The Commission's 2008 policy statement (CEC, 2007d) recognises that most stocks remain outside safe biological limits, creating high risks for the future of the fishing industry. Other analyses also point to a significant worsening of the situation. Beddington et al (2007) calculated that of about 40 NE Atlantic stocks managed by the EU for which stock status is known, the percentage severely depleted (biomass less than Blim) increased from 10% to 30% over the period 1995-2005. Fishing mortality is greater than Flim (a very severe situation) in about 20% of assessed stocks.

The Commission's 2008 policy statement also recognises that the TACs agreed each year (by Council) are much higher than those recommended by scientists, and calls for more serious efforts in both TACs and fishing effort management in order to put European fisheries back on a sustainable footing. While the following sub-section shows that part of the problem lies

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<sup>4</sup> <http://www.ices.dk/products/icesadvice.asp>

with the Council setting higher TACs than proposed by the Commission, this analysis shows that the Commission also frequently exceeds the advice of ICES (Table 2 and Table 3). While some of these differences are due to the Commission's adoption of long term recovery plans (see Section 3), it does not seem that these can explain all of the discrepancies in question.

**Table 2. Comparison of the advice submitted by ICES and the Commission for fish stocks in the North Sea and Celtic Sea regions for 2006.**

Species (Common Name)	ICES Fishing Zone	ICES Advice	Commission Proposals	% Difference
<b>Commission proposal &lt; ICES Advice</b>				
Common sole	Divisions VIII a,b	4,200	4,060	-3%
<b>Commission proposal = ICES Advice</b>				
Common sole	Celtic Sea Div. VII f,g	880	880	
Common sole	Division IIIa	900	900	
Common sole	Eastern Channel VII d	5,720	5,720	
Herring	VI a South and VII b,c	14,000	14,000	
<b>Commission proposal &gt; ICES Advice</b>				
Anglerfish	Divisions VIIb-k and VIIIa,b	33,900	33,918	/
Cod	Kattegat	0	850	[∞]
Cod	Skagerrak	0	3,315	[∞]
Common sole	West of Ireland Div. VII b,c	380	553	46%
Common sole	Western Channel VII e	240	940	292%
Plaice	Celtic Sea Div. VII f,g	390	405	4%
Plaice	Southwest of Ireland (Division VII h-k)	245	396	62%
Plaice	West of Ireland Div. VII b,c	65	136	109%
Skates & rays	North Sea	0	2,737	[∞]
Whiting	Divisions VIIe-k	10,800	18,360	70%
Herring	Celtic Sea	6,700	12,050	80%

Sources: CEC, 2005c; ICES, 2005.

**Table 3. Comparison of the advice submitted by ICES and the Commission for fish stocks in the North Sea and Celtic Sea regions for 2007.**

Species (Common Name)	ICES Fishing Zone	ICES Advice	Commission Proposals	% Difference
<b>Commission proposal &lt; ICES Advice</b>				
Common sole	Eastern Channel, VIId	6,440	6,220	-3%
<b>Commission proposal = ICES Advice</b>				
Anglerfish	VIIb-k and VIIa,b	36,000	36,000	
Common sole	Celtic Sea, VIIf, g	840	840	
<b>Commission proposal &gt; ICES Advice</b>				
Cod	Kattegat	0	638	[∞]
Common sole	North Sea, II, IV (EU waters)	10,800	15,020	39%
Common sole	West of Ireland: VIIb,c	64	65	2%
Common sole	Western Channel, VIIe	350	900	157%
Common sole	Southwest of Ireland: VIIh-k	287	553	93%
Herring	Vla South and VIIb,c	0	11,178	[∞]
Herring	Celtic sea and Division VIIj	0	7,184	[∞]
Horse mackerel	North Sea, IIa, IV (EU waters)	18,000	36,318	102%
Plaice	West of Ireland: VIIb,c	55	122	122%
Plaice	VIId, and VIIe	4,000	5,050	26%
Plaice	Celtic Sea Divisions VIIf and g	380	405	7%
Plaice	Southwest of Ireland: VIIh-k	196	337	72%
Skates & rays	North Sea, IIa, IV (EU waters)	0	1,510	[∞]

Sources: CEC, 2006e; ICES, 2006.

### *Council adoption of final TACs*

The differences between the Commission-proposed TACs and the final values adopted by Council are summarised in Table 4 and Table 5. This more complete analysis is based on the full lists of TAC proposals for each sub-stock published by the Commission in early December each year, which include the decisions taken by Council in the preceding year.

For the 2003 round, the first block of Table 4 shows that the Commission-proposed TACs were lower than those of the preceding year for 58 out of 71 comparable stocks (i.e. 81.7%). At the end of the Council discussions that year, the TACs adopted by Council were lower than the previous years in only 50% of cases (80 out of 160). While the Commission proposed increased TACs for only 2 out of the 71 stocks (2.8%), 29 of the Council's 160 final TACs were above those of 2002 (18.1%). For the 71 stocks with comparable data, the Council's final TACs were greater than the Commission's proposals in 43 out of 71 cases (60.6%).

Similar results were found in most of the four following years for the TACs of 2004 to 2007. The percentages of stocks for which TACs were reduced by Council were less than those proposed by the Commission in all five years. In 2005, the figures suggest that Council made

a stronger effort to follow the Commissions advice, with 77.8% of the TACs being the same and only 21% increased. By 2007, however, 53.9% of the Council's TACs were above the levels proposed for the same stocks by the Commission.

In examining these tables it may be noted that the 'total number of stocks compared' differ between the three blocks due to some cells being empty in the published tables. In several cases, such omissions are due to the Commission advice being '*pro memoria*' while awaiting bilateral discussions on shared TACs with countries outside EU. The results include all stocks for which comparable data were reported for both years.

The magnitude of the differences between the Commission proposals and the Council final TACs differ significantly between individual cases. As shown in Table 5, each year has some extreme cases with either reductions of 100% (i.e. decreasing the TAC to zero), or with increases in TACs of several hundred percent. The median<sup>5</sup> TAC reduction proposed by the Commission in 2003 was 32.6%, while the median reduction adopted by Council was only 20%. Since 2006, most of the reductions proposed by both the Commission and Council have been set at 15% of the previous years TAC, being the figure proposed by industry to limit the annual variability in catches between years.

For the many cases where the Council increased the TACs proposed by the Commission, the median increases were 29.6% and 30.4% in 2003 and 2004 respectively. In 2006, when fewer increases were proposed, the median value of those increases was also the lowest in the series at 15.7%. For the most recent 2006 – 2007 years, although the percentage of stocks with TACs increased by Council has risen again (Table 4), the median values of those increases are now less, at 17.6%, than in the earlier years, 2003 and 2004.

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<sup>5</sup> Median values – i.e. the middle value in a series ordered by size – are used here instead of mean values as they are less affected by the occasional extreme values and can also accommodate infinite values in the series, arising from divisions by zero.



**Table 4. Numbers of Commission-proposed TACs (second column) and final, Council-adopted TACs (fourth column) that were less than, equal to and greater than the TACs in the preceding year (first, second and third data rows in each block, respectively). The right-most columns similarly show the numbers of final Council-adopted TACs that were less than, equal to and greater than the TACs proposed by the Commission for that year.**

**2003 TACs**

A	Proposed TAC 2003		Final TAC 2003		Final TAC 2003	
B	Final TAC 2002		Final TAC 2002		Proposed TAC 2003	
Number of stocks where A < B	58	81.7%	80	50.0%	2	2.8%
Number of stocks where A = B	11	15.5%	51	31.9%	26	36.6%
Number of stocks where A > B	2	2.8%	29	18.1%	43	60.6%
Total number of stocks compared	71	100.0%	160	100.0%	71	100.0%

**2004 TACs**

A	Proposed TAC 2004		Final TAC 2004		Final TAC 2004	
B	Final TAC 2003		Final TAC 2003		Proposed TAC 2004	
Number of stocks where A < B	70	40.5%	52	30.8%	6	3.6%
Number of stocks where A = B	78	45.1%	67	39.6%	97	57.4%
Number of stocks where A > B	25	14.5%	50	29.6%	66	39.1%
Total number of stocks compared	173	100.0%	169	100.0%	169	100.0%

**2005 TACs**

A	Proposed TAC 2005		Final TAC 2005		Final TAC 2005	
B	Final TAC 2004		Final TAC 2004		Proposed TAC 2005	
Number of stocks where A < B	73	42.0%	60	33.5%	2	1.1%
Number of stocks where A = B	61	35.1%	68	38.0%	144	77.8%
Number of stocks where A > B	40	23.0%	51	28.5%	39	21.1%
Total number of stocks compared	174	100.0%	179	100.0%	185	100.0%

**2006 TACs**

A	Proposed TAC 2006		Final TAC 2006		Final TAC 2006	
B	Final TAC 2005		Final TAC 2005		Proposed TAC 2006	
Number of stocks where A < B	51	44.0%	44	34.1%	3	2.9%
Number of stocks where A = B	46	39.7%	41	31.8%	63	61.2%
Number of stocks where A > B	19	16.4%	44	34.1%	37	35.9%
Total number of stocks compared	116	100.0%	129	100.0%	103	100.0%

**2007 TACs**

A	Proposed TAC 2007		Final TAC 2007		Final TAC 2007	
B	Final TAC 2006		Final TAC 2006		Proposed TAC 2007	
Number of stocks where A < B	68	59.1%	37	31.6%	0	0.0%
Number of stocks where A = B	30	26.1%	56	47.9%	53	46.1%
Number of stocks where A > B	17	14.8%	24	20.5%	62	53.9%
Total number of stocks compared	115	100.0%	117	100.0%	115	100.0%

Sources: CEC, 2002e; 2003e; 2004e; 2005c; 2006d; EU Council, 2006a.

**Table 5. Largest and median reductions and increases in the Commission-proposed TACs (second column) and the final, Council-adopted TACs (third column) compared to the TACs in the preceding year. The right-most column similarly shows the largest and median reductions and increases in the final Council-adopted TACs compared to the TACs proposed by the Commission for that year.**

<b>2003 TACs</b>			
A	Proposed TAC 2003	Final TAC 2003	Final TAC 2003
B	Final TAC 2002	Final TAC 2002	Proposed TAC 2003
Largest reduction (in A relative to B)	-78.9%	-66.7%	-20.0%
Median reduction (in A relative to B)	-32.6%	-20.0%	-11.3%
Median increase (in A relative to B)	9.9%	11.3%	29.6%
Largest increase (in A relative to B)	15.9%	107.5%	90.0%

<b>2004 TACs</b>			
A	Proposed TAC 2004	Final TAC 2004	Final TAC 2004
B	Final TAC 2003	Final TAC 2003	Proposed TAC 2004
Largest reduction (in A relative to B)	-80.0%	-73.1%	-73.1%
Median reduction (in A relative to B)	-20.7%	-16.4%	-8.5%
Median increase (in A relative to B)	14.2%	22.1%	30.4%
Largest increase (in A relative to B)	101.5%	[1] 400.0%	[2] 400.0%

<b>2005 TACs</b>			
A	Proposed TAC 2005	Final TAC 2005	Final TAC 2005
B	Final TAC 2004	Final TAC 2004	Proposed TAC 2005
Largest reduction (in A relative to B)	-100.0%	-100.0%	-9.6%
Median reduction (in A relative to B)	-20.0%	-20.0%	-5.0%
Median increase (in A relative to B)	14.0%	15.0%	15.7%
Largest increase (in A relative to B)	188.3%	188.3%	500.0%

<b>2006 TACs</b>			
A	Proposed TAC 2006	Final TAC 2006	Final TAC 2006
B	Final TAC 2005	Final TAC 2005	Proposed TAC 2006
Largest reduction (in A relative to B)	-100.0%	-83.3%	-36.0%
Median reduction (in A relative to B)	-15.0%	-15.0%	-5.0%
Median increase (in A relative to B)	6.9%	12.8%	17.6%
Largest increase (in A relative to B)	70.1%	[3] 15177.8%	[3] 8879.6%

<b>2007 TACs</b>			
A	Proposed TAC 2007	Final TAC 2007	Final TAC 2007
B	Final TAC 2006	Final TAC 2006	Proposed TAC 2007
Largest reduction (in A relative to B)	-100.0%	-100.0%	0.0%
Median reduction (in A relative to B)	-20.0%	-15.0%	--
Median increase (in A relative to B)	13.5%	12.2%	17.6%
Largest increase (in A relative to B)	15.1%	[4] 673.0%	[4] 571.8%

Sources: CEC, 2002e; 2003e; 2004e; 2005c; 2006d; EU Council, 2006a.

- Notes: [1] Not including 2 (infinite) increases from preceding values of zero.  
 [2] Not including 1 (infinite) increase from preceding value of zero.  
 [3] Not including 1 (infinite) increase from preceding value of zero. The very large quoted TAC increase is for Northern prawn in NAFO Area 3L (where CEC had proposed an increase of 70%).  
 [4] The large quoted TAC increase is for haddock in Areas VIb, XII and XIV (where CEC had proposed an increase of 15%).

The Commission's 2007 policy statement confirms that the TACs adopted by Council have been substantially higher than those recommended by scientists, by an average of between 42% and 57% (CEC, 2007d). The above analyses suggest that the responsibility for these cases of 'over-setting' of the TACs rests with both the Commission and the Council.

### ***Over-fishing of TACs***

It is often stated that the over-setting of TACs is aggravated by the fact that a number of TACs are, in practice, consistently overshot. While the actual extent of over-fishing may be underestimated when there are significant levels of un-reported catches, discards or landings, the officially reported statistics on quota overruns suggest that these may contribute less to the problem than the over-setting of TACs.

The Commission's new 'Compliance Scoreboard's (CEC, 2003b, et seq) showed that the Member States' quotas were officially overrun in 4.3% of cases in 2001. Since then the percentage of quota overruns has decreased each year, down to 1.8% in 2004 (Table 6). The mean and maximum overruns have both increased over time but many of these relate to small absolute TACs.

The Commission (CEC 2003b) acknowledged that these official data "*might not reflect the situation correctly in all cases*" and that it is "*likely that some quota overruns may be worse than what they appear or are ignored*". Problems in this area include the limited number of inspections in some countries and the high levels of discarding in some fisheries. Taking the figures at face value, however, the total combined quota overruns are a relatively minimal 1-2.6% of the total combined quotas for the stocks concerned. As a percentage of the total TAC of all stocks, and in comparison with the overall increases in TACs made by the Commission and Council, these officially reported overruns are fairly negligible.

**Table 6. Number of quotas overrun each year by EU Member States.**

Year	2001	2002	2003	2004
Number of TAC-managed stocks (for which catches declared)	798	757	811	875
Number of quotas overrun	34	23	16	16
Percentage of quotas overrun	4.3%	3.0%	2.0%	1.8%
Mean overrun (among overrun stocks only) (%)	5.2%	7.4%	14.4%	10.1%
Maximum overrun (%)	33.3%	65.3%	78.3%	67.8%
Total combined overrun as a % of the total combined quotas of the overrun stocks	1.7%	1.0%	2.6%	2.2%

Source: CEC Compliance scoreboards (CEC, 2003b; 2004b; 2005a)

In some cases, where fish quotas have been overrun, the powers of Article 23(4) of Regulation 2371/2002 have been applied. Commission Regulation (EC) No. 147/2007 (CEC, 2007e), for example, reduces the quota allocations for the UK and Ireland for mackerel and herring in the years 2007 to 2012, due to over fishing by those countries in years 2001-2004.

### ***In conclusion***

It is clear that the tendency of the 'TAC machine' to set TACs greater than is consistent with scientific advice has not been eliminated since 2003. This is a failure not of the Commission, per se, but a systemic failure of the management and decision-making structure. Beddington et al (2007) reviewed a range of management systems and concluded that the most successful in pursuing sustainable fisheries policies were those that generated a sense of ownership from fishermen, including systems that allocated fishing rights such as IFQ/ITQ systems, and combined this with a system of management that used pre-defined decision rules and strong control to remove any possibility of interference in management objectives by parties having short-term rather than long-term interests in the fishery. Clearly the EU system still allows for, and suffers from, the latter. Regulation 2371/2002 was meant to solve these problems by defining multi-annual management plans and recovery plans in which decision rules were pre-agreed, so allowing little opportunity for council intervention. The EU's progress in these areas will be discussed in the following section.

### 3. Implementation of multi-annual management and recovery plans

- Some of this text is developed from a recent paper by Wakeford et al (2007) written for the EC-funded UNCOVER project -

#### 3.1 Regulatory framework

The CFP reform, initiated under Council Regulation 2371/2002, provide for two types of multi-annual plan for the EU's fisheries. The first type, a "recovery plan", applies to rebuilding stocks that are in danger of collapse, while a "management plan" will address the maintenance of stocks at safe biological levels. With the introduction of these plans, instead of taking decisions on very tight timescales, the Commission will have the opportunity to consult well in advance with affected parties in relation to plan objectives and their implementation. The precautionary approach is a key principle inherent in such plans. Plan objectives are established by the Council of the EU, according to the relevant stocks. Provision is made for considering the protection of ecosystems. Targets are set with indicative timeframes and plans may address either single fish stocks or a mixture of stocks as relevant.

Under such plans, TACs have continued to be set annually with the Commission basing its proposals for fishing possibilities on the best available scientific advice. Multi-annual plan objectives are reflected in the annual exercise of setting TACs. Other possible measures may include: limits on fishing effort, including but not limited to the time spent at sea by vessels; the application of technical measures such as minimum sizes for fish retained on board and/or landed; restrictions on the use, number or structure of fishing gears on board; and prohibitions on access to certain zones (temporarily or permanently) and on given times during the year in order to protect young fish.

Provision is also made for taking emergency measures as the need arises in order to protect fish stocks and marine ecosystems. If there is sufficient evidence of a serious threat to the conservation of a marine resource or marine ecosystem resulting from fishing activities, Article 6 of Council Regulation (EC) No 2371/2002 enables the Commission to take immediate action on a set of emergency measures, which may last not more than six months duration. A long-term management solution, however, is available through the development of a multi-annual recovery plan. Article 5 of Council Regulation (EC) No 2371/2002 requires the Council to adopt "*as a priority, recovery plans for fisheries exploiting stocks which are outside safe biological limits*", with the objective to "*ensure the recovery of stocks to within*

*safe biological limits*”. The plans must include “*conservation reference points such as targets against which the recovery of the stocks to within safe biological limits shall be assessed.*”

Article 6 (1) of Council Regulation (EC) No 2371/2002 states that “*The Council shall adopt management plans as far as necessary to maintain stocks within safe biological limits for fisheries exploiting stocks at/or within safe biological limits.*” While the requirement here is not as stringent as for recovery planning, the potential value of preventing such stocks from declining in the first place should not be overlooked.

### ***Regulation for Baltic Sea Cod***

In July 2006, the Commission adopted a Proposal for a Council Regulation establishing a multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks (CEC, 2006c). As of June 2007, much of that Proposal had been adopted by the Council subject to a small number of issues concerning the fishing effort system, derogations for small-scale fisheries and recovery of fishing days.

The plan addresses the two distinct cod stocks in the Baltic Sea each of which tend to be fished by the same fleets. The Eastern stock has been fished to the point where it is near collapse. The Western stock is slightly better off, but is still fished at a very high level with regard to long-term potential. In relation to the latter stock, chronic underreporting of real catch levels - by between 35 and 45% - continues according to ICES. The plan is designed to gradually reduce fishing mortality so as to provide long-term stability with respect to fishing possibilities. Progressive effort limitation is the main proposed solution.

### **3.2 Progress in developing recovery and management plans**

Very few EU stocks are managed with Harvest Control Rules (HCRs). Such rules are critical elements of recovery / management plans and should state clearly what management actions will be taken depending on the state of stocks relative to reference points or other indicators. ICES provides advice to the Commission consistent with a precautionary approach. ICES has developed a limit reference point to indicate the biomass level below which recruitment may be impaired (Blim). Taking into account the uncertainty inherent in any stock assessment, ICES further defines a higher precautionary reference point, Bpa (Biomass reference limit set according to the ‘precautionary approach’) such that when assessments indicate the spawning stock to be at Bpa there is a high probability that the true biomass is above Blim (usually this approximates a 10% probability level). The EU has not yet identified target reference points (e.g. Btarget, BMSY) although it has published a discussion paper on the idea (Memo/06/268,

and see also Section 3.5). The EC interprets  $SSB < Blim$  as “outside biological limits” and ICES defines  $Blim < SSB < Bpa$  as being “at risk” of reduced reproductive capacity.

The status and limits to exploitation of 126 marine fish stocks assessed by ICES are available from ACFM reports for 2006 and 2007 (ICES, 2006, 2007). Currently, 26 of these stocks are outside Safe Biological Limits (SBLs), and 20 of these have zero-TAC advice. At present 23 out of 59 (65 unknown) fish stocks and/or species groups from six regions<sup>6</sup> require rebuilding to return the biomass to levels above the precautionary approach threshold, Bpa. Of these, 17 stocks and/or species groups have been identified as critically endangered and in need of recovery to within safe biological limits, or Blim (Wakeford et al 2007). The Commission has, at various times, listed the stocks it views as requiring recovery plans (see Box 3).

**Box 3. Stocks listed in Commission documents as requiring recovery plans.**  
Cases in italics indicates stocks for which either a recovery or a multi-annual plan has been developed. For other stocks, the current status is given.

Listed in the 2003 Compliance Workplan (CEC, 2003b)

- *Cod in ICES12 zones IV, VI, IIIa (North Sea, West of Scotland, Skagerrak)*
- *Cod in ICES zones IIIa, VIIa, VIId (Kattegat, Irish Sea, Eastern Channel)*
- *Cod in ICES zones IIIc (Baltic)*
- *Hake – northern stock in ICES zones IIIa, IV, V, VI, VII VIIIa, b, d, e (North Sea,*
- *Cod West of Scotland, Skagerrak, Channel, Northern Bay of Biscay)*
- *Hake – southern stock in ICES zones VIIIc and IXa (Cantabrian Sea, Western*
- *Iberian peninsula)*
- Sole in ICES zones VIIe (Western Channel) (increased risk)
- *Sole in ICES zones VIIIab (Bay of Biscay)*
- Haddock in ICES zones VIb (Rockall) (full reproductive capacity)
- *Norway lobster in ICES zones VIIIc (Cantabrian Sea)*
- *Norway lobster in ICES zones IXa (Western Iberian peninsula)*

Listed in the 2002 ‘roadmap’ (CEC, 2002a)

- *Blue whiting (combined stock, I-IX, XII and XIV)*
- *Cod in Kattegat*
- *Northern hake in the North Sea*
- *Northern hake in Skagerrak and Kattegat*
- *Northern hake in Western waters (Vb, VI, VII, XII, XIV)*
- *Cod in North Western waters (Vb, VI, XII, XIV)*
- *Cod in the Irish Sea (VIIa)*
- Cod in western waters (VIIb-k, VIII, IX, X, CECAF) (outside SBL)
- Whiting in the Irish Sea (VIIa) (Unknown status)
- *Norway lobster in the Cantabrian Sea (VIIIc)*
- *Norway lobster in the Western Iberian region (IX, X, CECAF)*
- Norway lobster in the Bay of Biscay (VIIIabde) (unknown status)
- *Sole in the Northern part of the Bay of Biscay (VIIIab)*
- Haddock in the Irish Sea (VIIa) (unknown status)

Other stocks listed in the 2002 ‘roadmap’ as being outside safe biological limits

- Anglerfish in Norwegian Sea and North Sea (IIa, North Sea) (unknown)

<sup>6</sup> Barents & Norwegian Sea, Faeroe Plateau, Celtic Sea and West Scotland, North Sea, Bay of Biscay, Baltic Sea.

- Anglerfish in the Iberian region (VIIIc, IX, X, CECAF) (unknown status)
- Anglerfish in western waters (Vb, VI, XII, XIV) (unknown status)
- Anglerfish in the West of Ireland (VII) (full reproductive capacity)
- Anglerfish in the Bay of Biscay (VIIIabde) (full reproductive capacity)
- Horse mackerel in the western Iberian region (VIIIc, IX) (unknown)
- Horse mackerel in the West of Scotland, West of Ireland and Bay of Biscay (Vb, VI, VII, VIIIabde) (unknown)
- Megrims in the Bay of Biscay (VIIIabde) (unknown)
- *Sole in the Norwegian Sea and the North Sea (II, N. Sea)*
- Sole in the Celtic Sea (VIIfg) (unknown)
- Plaice in the Celtic Sea (VIIfg) (outside SBL)

Recovery plans have now been developed for 11 of these stocks<sup>7</sup>. For several others that are outside safe biological limits, a set of emergency measures have been adopted, like the closure for Bay of Biscay anchovy and the set of HCRs, close monitoring and closures for sandeel stocks. Some of the previously listed species are no longer outside safe biological limits and for these multi-annual plans have been developed instead (plaice and sole in the North Sea). But a significant number of stocks remain outside biological limits and have no management or recovery plans, some of which were not on the original lists above: Cod in Divisions VIIe-k, Herring in VIa south and VIIb&c, Plaice in the Celtic Sea, Whiting in Division VIIa for instance. However, stocks remain dynamic: Anglerfish in VIIb k and VIIa,b are now assessed as being at full reproductive capacity. A large number of stocks have unknown or undefined status. For Baltic Cod, for which a multi-annual plan is agreed rather than a recovery plan, this is explained as the fisheries for the eastern and western stocks being closely linked and only the eastern stock being outside safe biological limits.

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<sup>7</sup> See Table 7.



**Table 7 Status of recovery plans, multi-annual management plans and harvest control rules. Increased risk means “at increased risk of reduced reproductive capacity”, i.e.  $Blim < SSB < Bpa$ ; Outside SBL = outside safe biological limits, i.e.  $SSB < Blim$ .**

	Current status	Plan
<b>Recovery plans</b>		
Cod in Eastern Baltic	outside SBL	COM(2006) 411 (multi-annual/recover plan)
Cod in the Irish Sea	outside SBL	EC 423/2004
Cod in the Kattegat	outside SBL	EC 423/2004
Cod in the North Sea, Eastern Channel and Skagerrak	outside SBL	EC 423/2004
Cod to the west of Scotland	outside SBL	EC 423/2004
European eel	outside SBL	COM(2005) 472
Hake Northern	full reproductive capacity	EC 811/2004
Hake Southern	outside SBL	EC 2166/2005
Nephrops Division Ixa	not defined	EC 2166/2005
Nephrops Division VIIIc	not defined	EC 2166/2005
<b>Multi-annual management plans/ HCRs</b>		
Blue whiting		EU-Norway-Faroe Islands multi-annual plan
Sole in the Bay of Biscay	at risk	EC 388/2006
Plaice in the North Sea	at risk	COM(2005) 714
Sole in the North Sea	at risk	COM(2005) 715
Cod in Western Baltic	at risk	COM(2006) 411 (multi-annual/recover plan)
Haddock in the North Sea	full reproductive capacity	EU-Norway agreement
Herring in the North Sea	at risk	EU-Norway agreement
Northeast Atlantic Mackerel	probably full reproductive capacity	EU-Norway-Faroe Islands agreement
Saithe in the North Sea	full reproductive capacity	EU-Norway agreement
Sandeel North Sea	outside SBL	HCR in 41/2006 Annex IID

In general, EU recovery plans aim to rebuild the stock to safe biological limits within a 10 year period, have defined targets and harvesting rules, and involve a mixture of effort control, TAC setting and other control and management measures. They thus conform to the requirements of Article 5 of 2371/2002. When the stock has recovered, defined as when the quantity of mature fish has been greater than that decided upon by managers as being within safe biological limits for a period of two consecutive years, the idea is to move to a multi-annual plan: “*Council shall then decide on a proposal from the Commission to remove the stock from the recovery plan and to establish a management plan for that stock in accordance with Article 6 of Regulation (EC) No 2371/2002*”. The multi-annual plans implemented to date also have reference points and rules, which may be expressed in terms of effort (North Sea sole and plaice) or biomass levels (Biscay sole).

No stock has yet recovered through the direct intervention of an EU recovery plan, although a number have recovered either during the negotiation of the plan or by early implementation of the management approaches that were later agreed to be part of the plan. Northern hake started its recovery before the implementation of the recovery plan but may have been partially assisted by the restrictions on fishing young fish. Since 2003, fishing mortality on Bay of Biscay sole has been reduced to Fpa, through a combination of reduced TACs and apparently high compliance with these TACs, and this has allowed the stock to recover. The multiannual plan was agreed in 2006 (Council Regulation (EC) No 388/2006). In 2006, ICES anticipates that with continued low TACs the stock will recover to Bpa in 2008. North Sea haddock, subject to a long term management plan agreed between Norway and the EU since 1999, is also something of a success story. This stock has been at or above Bpa since 1994 except for the years 1999 and 2000. This has been assisted by the very large recruitment of 1999 (0+ fish). Since 1996, fishing mortality has been at or below Fpa, assisted by both the large 1999 cohort and the long term management plan objectives.

### 3.3 Analysis of the cod recovery plans

None of the cod stocks appear to be showing even any signs of recovery under the plans. There are a number of reasons for such poor success of recovery plans. Part of the problem has been that the requirement of Article 6 of Regulation 423/2004 (EU Council, 2004b) to aim for a 30% increase in SSB or a maximum of Fpa or a limited 15% interannual variation in TAC relies on the provision of scientific advice about the future state of the stock. Significant uncertainty in stock assessments, mostly created by uncertainty over removals, has meant that scientific advice on this point has only been forthcoming in a few years (Table 8; CEC, 2007f).

**Table 8** Calculated reductions in TAC required to generate a 30% increase in SSB, compared to the actual change (-ve = decrease) in TAC for each of the 4 cod stocks listed in EC 423/2004 (CEC, 2007f; ICES ACFM 2006, 2007).

	Kattegat	North Sea, Skagerrak, Eastern Channel	West of Scotland	Irish Sea
2004	29% [-41%]	Unknown [0%]	49% [-53%]	65% [10%]
2005	51% [-27%]	55% [0%]	Unknown [-15%]	93% [0%]
2006	Unknown [-15%]	Unknown [-15%]	Unknown [-15%]	75% [-16%]
2007	Unknown [-14%]	16% [-13%]	Unknown [-18%]	25% [-22%]

This lack of action in the absence of conclusive scientific advice runs directly contrary to the precautionary approach. Even though specific assessment advice became uncertain, it was absolutely clear to the Council throughout this period that all these cod stocks were severely depleted because all available indicators of stock size remained at historically low levels. The

continued lack of action, therefore, is not consistent with the intent of either the new CFP or the cod recovery plans.

Table 8 also shows that even when advice was available, the Council has only rarely adopted reductions in TACs that are consistent with the cod recovery plan. For the North Sea stock, a 55% reduction in quota was not adopted in 2005, nor a reduction of 16% in 2007 (although in the latter year a 12% reduction was adopted). Massive reductions in the Irish Sea have been indicated which, with the exception of 2007, have not been implemented. In the Kattegat, a 51% reduction was thought appropriate in 2005, but only a 27% reduction was implemented.

In the absence of advice on the 30% rule but in circumstances where SSB was very likely to be below Blim, it would be precautionary for the Council to adopt a 15% reduction in catch. This approach has been applied in the Kattegat and West of Scotland in recent years (the latter is the only area a consistent interpretation of the rules of EC 423/2004 appears to have been followed).

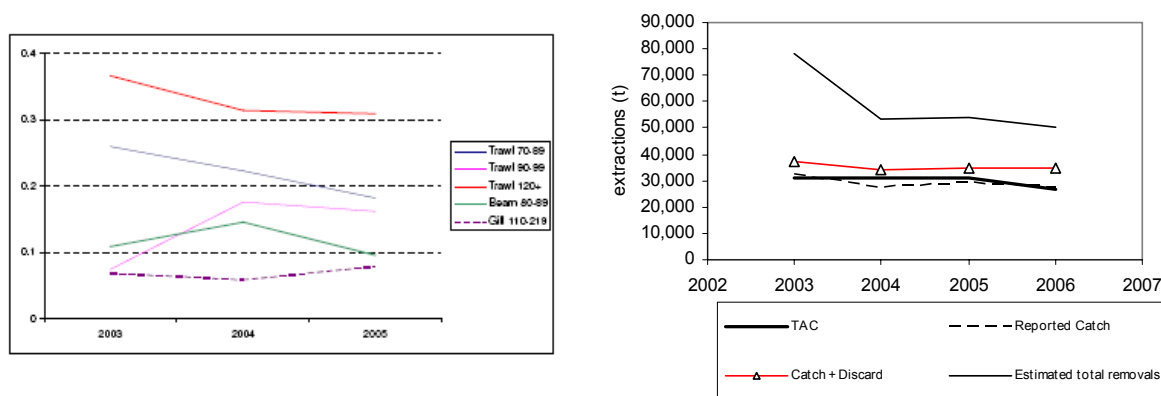
Article 7 of EC 423/2004 calls for more significant reductions in quota in the situation where SSB is below Blim, but these have yet to be implemented. There is also a flaw in EC 423/2004 at this point, because the exact harvest control rule (when SSB is lower than Blim) is not specified.

The harvest control rules (HCR) that were proposed for the recovery plans by the Commission in 2003 underwent rigorous testing by scientific consortia and the EC's Scientific, Technical and Economic Committee on Fisheries. In one of these studies, Kell et al. (2006) found that when biomass was significantly depleted, bounds of between 10 and 20% on the annual change in TAC within the HCR affected the ability to achieve management targets. The performance of the management strategy was also degraded when recruitment variability and assessment uncertainty were high. These problems with the HCR have been confirmed by Kelly et al. (2006) and the Commission (CEC, 2007d). Despite these results the recovery plan retains a limitation on annual TAC changes of 15% (except in "exceptional circumstances"). ICES has now concluded that since the recovery plan does not allow for a complete closure of the cod fishery, it is not consistent with the precautionary approach (ICES, ACFM, North Sea cod 2007).

But the most important reason for the failure is simply that fishing mortality has not declined as fast as it should have, nor in line with the expectation of the plans (Horwood et al, 2006). A number of studies have shown that this is due to an increase in by-catch and discarding in

fisheries not primarily targeting cod. There has been a large reduction in effort in the directed roundfish fishery (i.e. 100-119mm plus  $\geq 120$ mm mesh sizes) since 2000, but some of this effort has switched into other fisheries, notably the 70-79mm trawl French whiting fishery centred in the Eastern channel, the 80-89mm UK trawl fishery for *Nephrops* and the 90-99mm Danish and Swedish mixed demersal fishery in the Skagerrak. Cod catchability has increased in some of these fisheries, indicating a change in the way this fleet operates, e.g. an increase in targeting cod (STECF, 2007).

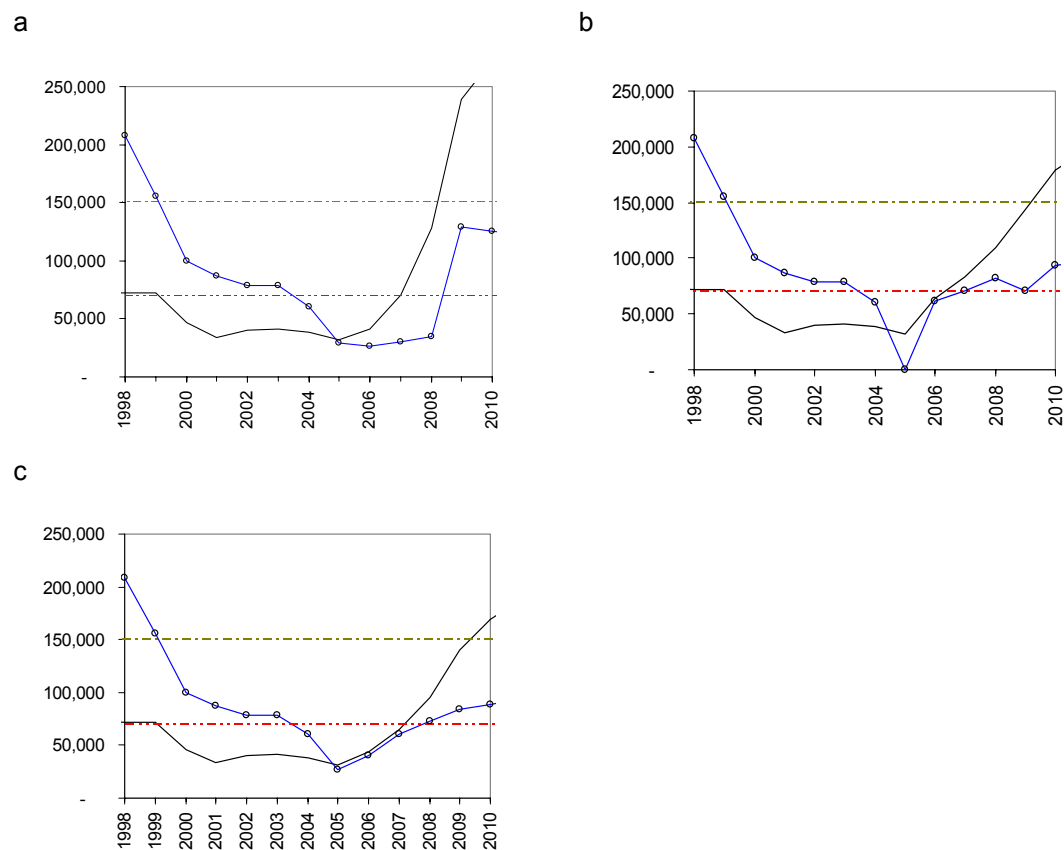
The latest assessments, which use only survey data and not fishery dependent (CPUE) data to estimate trends, indicate that for North Sea cod actual removals have been about twice the TAC (Figure 1). Recorded catch and estimated discards do not account for these additional removals, which might be due to increased natural mortality but are more likely, and generally assumed, to be due to fishing activity. As a result fishing mortality has stayed at about 0.8, twice that agreed by the EU and Norway to be the long-term objective for fishing mortality (0.4; note that this is lower than that assumed to be the long-term goal (0.65) in the recovery plan EC 423/2004; see ICES, 2007 for the latest assessment). This problem was exacerbated by the multiple derogations given to the non-targeting fleets (particularly the 80mm flatfish fishery) to allow them to continue to catch cod in significant quantities without penalty.



**Figure 1. Left: Proportions of estimated EU catch in numbers of cod (landings+discards) taken by major fleets. Right: reported catch and survey estimates of total removals of North Sea Cod. Source: STECF**

It is legitimate to ask whether cod could have recovered if fishing mortality had been correctly controlled. The answer is clearly yes (CEC, 2007f). Although cod recruitment is lower than it has been historically and is probably affected by environmental/ecosystem changes, it is not so low as to be the major cause of the recovery failure, nor is it too low to allow a recovery to Bpa. A simple model shows that had the Council followed the 30% SSB increase rule in 2005 followed by the rule allowing SSB to recover to Blim in 2006, the stock would be well on the way to recovery now (assuming observed recruitment). If Council had

been more radical and followed ICES advice for a closure the following 30% rule (2006) and 15% rules would have similarly put the stock in a good position (see Figure 2).



**Figure 2. Possible evolution of North Sea cod biomass (solid line) and catch (open circles) if the following control rules had been followed according to the cod recovery plan: a) an allowed 30% increase in stock biomass in 2005, followed by a recovery to Blim in 2006 and thereafter 15% increases in catch; b) a complete closure in 2005 followed by a 30% increase in SSB in 2006 and 15% increases in TAC thereafter; c) an applied F of 0.4 from 2005 onwards. All simulations use known recruitment for 2005 and 2006 and an average of the last 5 year's recruitment for 2007 onwards. Given the by-catch in other fisheries b) would not have been achievable, and a) would have required TACs to be set at 50% of the desired catch, i.e. at about 15,000 t. Bpa (green) and Blim (red) are shown as dashed lines.**

These calculations are easy to do with hindsight. The problem at the time was that the stock assessments, on which the harvest control rule in the recovery plan relied, were very uncertain. For this reason the Commission is now exploring rules that do not rely on accurate scientific advice in the future. Furthermore, the Council would have had to reduce quotas by half that indicated in Figure 2 to ensure with the additional discarding and changing fleet behaviour fishing mortality did not exceed that desired (or 0.4, which appears on its own to enable a recovery). Once again, the Commission has recognised this in its latest discussion document (CEC, 2007f) in which it proposes a “decoupling” of the different fisheries (target and by-catch) so that each would receive a quota, or to close the targeted fishery and to

restrict the uptake of the cod quotas only to by-catches in other fisheries. This would require significantly better management and control, such as indicated by the Commission's no-discard proposal for instance using scientific observers.

The reasons for failure of the cod recovery plans are complex but come down to 2 problems: 1) the reliance on scientific assessments when those assessments were being undermined by increasing uncertainty about the real level of removals from the stock; and 2) an inability to effectively reduce effort, both through a reluctance on behalf of the Council to follow scientific advice or the HCRs within the recovery measure (423/2004) and cut TACs sufficiently, and through the allowance, by derogation, for large amounts of cod to be caught and often discarded as by-catch in other fisheries which did not have effort as effectively restricted as the directed demersal cod fishery. These, and other reasons, are discussed in great detail in a number of recent reports. The Commission is aware of them and in line with the requirement for review by 16 March 2007 (EU 423/2004 Article 6(4)) has published a non-paper setting out a number of options for consultation. However, any new recovery plan regulation (to amend or replace 423/2004) could not come into effect until 2009, and thus the existing one should for now be made to work by the Council. This will mean that significant further reductions in fishing mortality are needed if recovery is to be effected.

Whilst these issues might have been foreseen, it has surprised almost everyone that the level of additional removals has been so high. However, experience in other fisheries worldwide (Wakeford et al, 2007; Caddy and Agnew, 2005) shows that unless fishing mortality is rapidly reduced across all fleets able to catch a recovering species, there will be significant incentive for fishermen to diversify into other gears and fisheries that allow continued fishing opportunities, and that this will inevitably lead to an increase in effective effort directed at the recovering species simply as by-catch (retained or discarded) in other fisheries.

### **3.4 Summary of progress against commitments**

The Commission and Council have agreed recovery plans for 10 stocks with a status outside safe biological limits, and multi-annual management plans or default Harvest Control Rules within bilateral agreements that may pass for multi-annual plans under the definition of EC 2371/2002 for a further 10 stocks. Of the 16 other stocks identified by the Commission at various times as in need of recovery planning, most are either not outside safe biological limits or have unknown status. It is important that these stocks are addressed, but it is probably a fair judgement that the Commission has acted on the requirement of Article 5 for the stocks of most urgent need. However, the speed of this action could be criticised, with the most recent recovery plans being addressed only this year (2007), 5 years after the adoption of 2371/2002, and all plans appear to take 2-3 years to negotiate and agree. The plans follow

the other requirements (targets, effort, control etc) required by 2371/2002. An overall conclusion of “adequate but slow” could be drawn here.

Due to the time taken in development, the implementation of a plan, which follows a year after its agreement, may take 4 years from identification of a problem. For this reason, it is essential that all EU stocks are covered by multi-annual management plans containing HCRs as soon as possible. Here the record is not as good as it could be, with rather few (only 20) of the 126 EU stocks having either recovery or multi-annual plans (or HCRs that could be interpreted to be multi-annual management strategies). An overall conclusion of “inadequate” could be drawn here, particularly as it is only through codification of these multi-annual plans, which should attempt to keep stocks at levels well above their limit reference point, that critical situations leading to stocks going beyond SBL might be avoided.

### **3.5 Recent initiatives**

Beddington et al (2007) confirm the need for clear management or recovery plans with an agreed decision control framework based on HCRs. Although Articles 5(3) and 6(3) of Council Regulation 2371 require that “*management/recovery plans shall be drawn up on the basis of the precautionary approach to fisheries management and take account of limit reference points recommended by relevant scientific bodies*”, Articles 5(4) and 6(4) only state that “*such plans may include ... harvesting rules ... to govern catch limits*”. It is suggested that this lack of force should be revised. Future plans prepared for EU fisheries should be much stricter in this area, both in specifying the HCRs and requiring their consistent implementation.

Recognising the need for firmer adoption of harvest control rules, and also for improved timing of the decision making process, allowing better stakeholder scrutiny of the Commission’s advice (House of Lords, 2005), the Commission has taken some positive recent steps to improve the mechanisms by which TACs are set.

The Commission’s May 2006 Communication (CEC, 2006a) outlined a series of proposals for improving consultation on EU fisheries management. It proposes that the Commission will in future table its proposals for TACs and quotas in September rather than December. For those stocks subject to annual quotas, the Commission also proposed to present a policy statement in April each year outlining the main principles which it intended to apply. Two such policy statements have since been released (CEC, 2006d and 2007d), outlining the broad ‘harvest rules’ which it intends to apply to fish stocks. Such policy statements provide a valuable basis for early debate with stakeholders in the RACs, and with Member States. However,

while such policy statements are useful in informing monitoring, compliance and enforcement activities, they should not be taken as the basis for extended lobbying campaigns around TACs and quotas. In due course, it may be expected that these policy statements will ease the negotiations of multi-annual management and recovery plans and also provide a better basis for TAC negotiations where plans do not exist. As recognised in the Commission's introduction to this new approach, "*Reaching agreement on the general principles to be applied well in advance should ensure that the TACs finally adopted are fully acceptable to all partners, and thus easier to enforce and control*"<sup>8</sup>.

Such positive steps should thus in the long term reduce the 'slippage' in the TACs as one moves from ICES to the Commission and finally to the levels set each year by the Council. Plans for HCRs, however, must be specified in agreed management or recovery plans and given firm legal backing. It is worth noting here that Article 20 of Regulation 2371/2002 does not require the Council to strictly follow any agreed reference points or HCRs, but rather to allocate fishing opportunities 'taking into account the interests of each Member State'. Stronger legal support for the concepts in the annual policy statements may be required.

The Commission's first policy statement (CEC, 2006d), giving its guidance for the 2007 fishing season, confirmed its intention to adopt Maximum Sustainable Yield (MSY) targets for EU fisheries (see also, CEC, 2006b). Such advice is in line with the global commitments made at the 2002 Johannesburg World Summit on Sustainable Development that fish stocks shall be maintained or restored to levels that can produce MSY by 2015. Putting aside the difficulties of setting MSY targets in multi-species fisheries, such policy statements are a valuable first step in providing defined *targets* for EU fisheries. ICES advice of October 2006 notes this significant process, and it is assumed that ICES' advice will from this year focus on such target reference points in addition to the limit reference points used in the past. ICES has rightly argued (e.g. ICES, 2004) that setting 'targets' for fisheries, based on the goals and objectives agreed with stakeholders, is the responsibility of fishery managers, not their scientific advisors. With most of the new RACs are up and running, it is expected that the next years will see much discussion on these important policy issues, and the specific targets and HCRs to be adopted for different fisheries. Whether MSY or other targets are adopted, managers must not forget the need to consider precaution in the setting of reference points, allowing for uncertainties in the advice and the risks of fishery collapse.

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<sup>8</sup> [http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/archives/com06/com06\\_23\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/archives/com06/com06_23_en.htm)



## 4. Ecosystem-Based Fisheries Management (EBFM)

### 4.1 Commitments in the 2002 Common Fisheries Policy

The importance of the “ecosystem approach” in managing the marine environment has been recognised by EU policy makers since at least 1997<sup>9</sup>. Such an approach is based on knowledge of the processes in, and the influences upon, ecosystems which are critical in maintaining the marine environment’s characteristic structure and functioning, productivity and biological diversity. The approach takes into account the interaction among food-webs of the ecosystems and also the need to protect the chemical, physical and biological environment necessary to the well-being of these ecosystems.

The 2001 Green Paper recognised the lack of current knowledge about such functioning of marine ecosystems but nevertheless proposed that the reformed CFP “*should do much more to integrate the environmental dimension into policy-making in a proactive manner.*”

The Council’s CFP Regulation 2371/2002 responded to the call with specific legal commitments, including the following key articles:

- **Article 2(1).** The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. 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...
- **Article 4(1) and 4(2)(g)(iv).** To achieve the objectives mentioned in Article 2(1), the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities....including specific measures to reduce the impact of fishing activities on marine eco-systems and non target species.

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<sup>9</sup> (a) For the proceeds of "Integration of Fisheries and Environmental Issues" -Historical ministerial meeting held in Bergen (Norway) in March 1997 as detailed on EC DG Fisheries website: [http://ec.europa.eu/fisheries/cfp/management\\_resources/environment\\_en.htm](http://ec.europa.eu/fisheries/cfp/management_resources/environment_en.htm)

(b) The Future of North Sea Fisheries - recommendations for tackling the crisis in fisheries and for establishing a sustainable long-term fishery policy – Seas At Risk, May 1996.

- **Articles 5(2) / 6(2).** [Recovery / Management] plans may include targets relating to other living aquatic resources and the maintenance or improvement of the conservation status of marine eco-systems.
- **Articles 5(3) / 6(3).** [Recovery / Management] plans ... shall ensure the sustainable exploitation of stocks and that the impact of fishing activities on marine eco-systems is kept at sustainable levels.
- **Article 7(1).** If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.
- **Article 8(1).** If there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities, in waters falling under the sovereignty or jurisdiction of a Member State where any undue delay would result in damage that would be difficult to repair, that Member State may take emergency measures, the duration of which shall not exceed three months.

While Regulation 2371/2002 clearly requires the adoption of an ecosystem approach, it is not very clear as to exactly what this means. Noting that Regulation 2371/2002 did not include a specific definition of the eco-system approach, we suggest that it should include the detection of both the direct *and indirect* impacts of fishing and the implementation of measures for their mitigation. Articles 4 and 5(3)/6(3) provide perhaps the strictest commitments in requiring the management of “*eco-systems and non-target species*” in addition to the more traditional focus on target species. The definition of the precautionary approach in Regulation 2371/2002 also emphasises the need to take management measures to conserve “*target species, associated or dependent species and non-target species and their environment*”. These have clear implications for discards.

The Commission’s intentions in this area were more clearly outlined in the 2002 Community Action Plan on the integration of environmental protection requirements (and the ecosystem approach) into the CFP (CEC, 2002b). This made a series of commitments towards improving fishing methods, and reducing discards, incidental by-catch and the impacts of fishing on the sea bed (see Annex to CEC, 2002b).

These included:

- A new set of technical measures specifically addressing discard reduction before 31 December 2003. This may include the setting of discard bans.
- A new set of technical conservation measures designed to reduce by-catch of cetaceans to levels guaranteeing favourable conservation status of cetacean populations, before 31 December 2002. Both by-catch and population sizes to be estimated on the basis of scientific advice.
- The designation of protected areas where bottom trawls and similar towed gear operating on the bottom are prohibited before 31 December 2004. Some of these measures may be taken in the context of Natura 2000 sites.
- The implementation of Community Action Plans to manage sharks and protect seabirds in the context of FAO IPOAs. *Propose* legislation before end of 2003.

The Commission in 2002 also issued a second action plan to reduce discards of fish (CEC, 2002d). This outlined the magnitude of the problem, and the reasons why discarding is so common in the EU, and evaluated the possibilities for reducing discarding. Based on the action plan, the Council requested the Commission to initiate pilot projects to assess such possibilities. The Plan also considered the possibility of a full legal ban on discarding in all or parts of EU waters from 2006. Recognising the potential complications with this option, the Plan proposed a series of consultations and investigations prior to any decision.

#### **4.2 Progress against commitments**

Since 2002, the EU has continued to produce communications and action plans relating to the concept of ecosystem-based management. These are outlined below. Some progress has also been made in terms of firm actions and legislation. Most initiatives in this area, however, are still in their infancy. The question of how to implement an ecosystem approach still remains, and this is an active research area under the CFP (see e.g. Anon, 2006; 2007). A Commission Communication is due to be published on this issue later this year. It also remains to be enlarged upon within the wider Marine Strategy Directive of the EU.

The Commission's plans for pilot projects were re-stated in its Communication on the role of technical conservation measures in promoting more environmentally-friendly fishing (CEC, 2004a). Although the Commission is aware of groups of European fishermen that are interested in developing pilot projects to reduce or eliminate discards at sea, few such pilot projects on this subject have so far been developed.

The Commission's recently released policy on by-catches and discards (CEC, 2007b) continues to raise issues for discussion and promotes further consultation (see following subsection). The policy notes that regulations in this area will not be developed and proposed until 2008.

Developments in this area are clearly linked to the parallel initiatives relating to an overarching European Marine Strategy. The Commission's Green Paper on a future EU Maritime Policy was launched in June 2006. The Strategy proposes the management of all human activities in the sea based on three central features: an Ecosystem Approach, Integrated Management and a Regional Focus for the coordination and delivery of management programmes.

Steps already taken in the fisheries sector such as the creation of the Regional Advisory Committees (RACs) will clearly assist with such regional management. ICES's annual advice is also now given on a regional ecosystem basis as well as considering the specific conditions of individual stocks. These changes must be seen as positive moves towards ecosystem based management. The advice in this area is still limited, however, by the complexity of the issue and the constraints of the existing research.

#### ***Minimising the impacts of fishing on marine eco-systems***

Efforts towards minimising the impacts of fishing on marine eco-systems, as required by Article 2(1) of Regulation 2371/2002, include the setting of technical measures. A range of measures designed to protect the juveniles of marine organisms had been set prior to the reform of the CFP (EU Council, 1998). Since 2002, these have been reinforced in certain areas. Recital 10 of Council Regulation, 2187/2005 (EU Council, 2005b), for example, recognizes that the Gulf of Riga is a "*unique and rather sensitive ecosystem, which requires unique measures to ensure sustainable exploitation of its resources and to minimize the impacts of fishing activities*". Chapter V of this Regulation limits the power of vessels permitted in this area and prohibits trawl fishing in waters less than 20m deep.

The proposed move to more precautionary management, particularly the adoption of targets around MSY, will also go some way to implementing an ecosystem approach. MSY targets will imply higher stock levels than Bpa for most species, greater proportions of large fish in the catch and fewer discards of undersized fish (CEC, 2006b). Fishing at MSY levels will also entail a reduction of fishing pressure generally, with benefits to by-catch species. Progress towards this aim, however, has been slow, as has progress with multi-annual plans

which are meant to include ecosystem considerations. We are not aware of any plans that explicitly consider targets or reference points that relate to ecosystem-level indicators.

Permanent spatial management measures to protect vulnerable habitats against the effects of bottom trawling were established by the Council in several cases, either by area specific regulation or inclusion into the annual fishing opportunities. Following ICES advice provided to the Commission, such closures were agreed for the Darwin Mounds North West of Scotland in 2004<sup>10</sup>, the waters between 100 and 200 nautical miles offshore around the Azores, Madeira and the Canary Islands in 2005 (EU Council 2005a) and those parts of the Rockall Bank that lie within Community waters in 2006<sup>11</sup>. For gear restrictions and other technical measures required to fulfil a Member State's obligation under the Habitats Directive, the Commission is currently exploring new procedures and consultation mechanisms, including a possible review of Council Regulation (EC) No 850/98<sup>12</sup>. The most recent test case in this respect is the request by Ireland to ban bottom trawling in four deep water coral sites within their jurisdiction.

The wider use of Marine Protected Areas (fisheries MPAs) is also promoted by many, including the North Sea Ministerial Conference's call for experimental closures of sufficient size<sup>13</sup> as potentially valuable policy element in ecosystem-based management. MPAs can be considered as a useful part of fisheries regulation, but not a universal solution. Unless the basic issues of capacity, regulation, and rights are solved, protected areas will simply displace the core problems into open areas elsewhere (Beddington et al, 2007).

### ***The use of emergency measures***

Threats to the marine eco-system arising from fishing may also be prevented by the setting of 'emergency measures', either by the Commission or by Member States under Articles 7(1) and 8(1) respectively of Regulation 2371/2002. It has not been possible under this short assessment to quantify the levels of threats currently acting on marine eco-systems. The types or magnitudes of threats that may be covered by these provisions are not clearly defined in the

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<sup>10</sup> Council Regulation (EC) No 602/2004 of 22 March 2004 amending Regulation (EC) No 850/98 as regards the protection of deepwater coral reefs from the effects of trawling in an area north west of Scotland.

<sup>11</sup> Council Regulation (EC) No 41/2006 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required.

<sup>12</sup> Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.

<sup>13</sup> Gothenburg Declaration, North Sea Ministerial Meeting on the Environmental Impact of Shipping and Fisheries, Gothenburg, Sweden, 4-5 May 2006, <http://www.sweden.gov.se/sb/d/6363>

legislation and will require the development of ecosystem-level indicators and reference points for rigorous application.

An example of the use of emergency measures is however available in the case of the deep water coral reefs of the Darwin Mounds, an area to the north west of Scotland, within the jurisdiction of the United Kingdom and identified as a potential offshore Natura 2000 site. Following a request by the UK, Commission Regulation 1475/2003 (CEC, 2003d) protected these reefs from the potentially damaging effects of trawling. Cold water coral reefs deserve protection according to the provisions of the EC Habitats Directive. But the Regulation also noted that such deep water corals are included by the OSPAR Convention in its list of species and habitats under threat or decline. It was adopted in the wake of the OSPAR Ministerial commitment to take immediate action to protect cold water coral reefs in the North-East Atlantic<sup>14</sup>. With the protection only applying for the maximum permitted duration of six months, the Commission took a further decision to extend the provisions for an additional six months in February 2004 263/2004 (CEC, 2004d). These measures have since been passed as permanent regulations (see above).

Before the Council provided permanent protection for deep water corals in defined waters of the Canaries, Madeira and the Azores in 2005 (“Atlantic Ocean Regulation”, see above) by prohibiting vessels from using any gillnet, entangling net or trammel net at depths greater than 200 metres or any bottom trawl or similar towed nets operating in contact with the bottom of the sea, an application for emergency measures from Portugal was considered by the Commission but preference given to a temporary Council regulation<sup>15</sup> instead. The need for measures to mitigate the fisheries impact on deep water ecosystems had arisen from the entry into force of the “Western Waters Regulation” in August 2004<sup>16</sup> providing access to most of the archipelagos’ waters to all Community vessels. Since the accession of Spain and Portugal to the EU, fisheries in the EEZs around the Canaries, Madeira and Azores had been managed by their regional authorities exclusively.

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<sup>14</sup> [http://www.ospar.org/eng/html/md/bremen\\_statement\\_2003.htm](http://www.ospar.org/eng/html/md/bremen_statement_2003.htm)

<sup>15</sup> Council Regulation (EC) No 1811/2004 of 11 October 2004 amending Regulation (EC) No 2287/2003 as concerns the number of days at sea for vessels fishing for haddock in the North Sea and the use of bottom trawls in waters around the Azores, the Canary Islands and Madeira.

<sup>16</sup> Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95.

### *Minimising the impacts of fishing on non-target species*

In relation to the commitments under Article 4(1) and 4(2)(g)(iv) of Regulation 2371/2002, the Commission has made some progress in minimising the impacts of fishing on some non-target species.

Building on the driftnet bans that were set during the previous CFP period, further positive actions have been taken in respect of preventing the by-catch of cetaceans. Council Regulation 812/2004 (EU Council, 2004c) required the use of ‘acoustic deterrent devices’, also known as pingers, to reduce such by-catches. Pingers are now required for vessels of 12 meters or over in defined EU waters, and during specific seasons. The Regulation entered into force on 1 July 2004 and also established the technical specifications of such devices.

The indirect effects of fishing have been mitigated for at least one species, sandeel, where kittiwake feeding areas have been protected.

Despite the Commission’s 2002 commitment (CEC, 2002b) to implement the FAO-proposed IPOAs on sharks and seabirds, the EU at this time still does not have action plans for either sharks or seabirds. National plans of action for sharks are currently in place in Australia, Japan, Malaysia, US, Canada, Ecuador, Mexico, Taiwan, and the UK (see FAO Fisheries Department web site). A draft plan for the Mediterranean has also been developed by UNEP. Draft or finalised national plans of action for seabirds are in place in Japan, South Africa, Australia, Canada, New Zealand, Brazil, the Falkland Islands and the US.

### **4.3 Discards**

Each year between 20% and 60% of catches are discarded in most EU fisheries (CEC, 2007b). Since most discards are dead on return to the water, this situation undermines both the effectiveness of conservation measures and the overall health of the ecosystem.

The Commission’s current policy on by-catches and discards is outlined in its 2007 Communication, COM(2007)136final (CEC, 2007b). According to the EU there is no comprehensive legislation as yet drawn up<sup>17</sup>. Hence, the 2007 policy statement remains as the latest EU Action on the subject.

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[http://ec.europa.eu/fisheries/cfp/management\\_resources/conservation\\_measures/reducing\\_by\\_catches\\_en.htm](http://ec.europa.eu/fisheries/cfp/management_resources/conservation_measures/reducing_by_catches_en.htm)

Based on this document, the implementation principles for a policy to progressively eliminate discards and reduce unwanted by-catches in European fisheries will be discussed with Member States and stakeholders in 2007. A sequence and plan for implementation for specific fisheries will be identified. According to this plan, regulations will then be developed and proposed from 2008.

Further to this Communication, the proposed regulatory instruments are a progressive introduction of a discard ban and supplementary measures such as encouragement to improve the choice of fishing gear, setting time periods for the closure of fishing grounds, quota flexibility and fees on or expropriation of unwanted by-catches.

The essential implementation principle underlying the Communication is to regulate what is caught in the first place rather than to regulate landings. The proposed policy will be that management is to be based upon requirements for specific outcomes – maximum acceptable impact – to be met rather than creating regulations codifying specific technical solutions. Such results-based management will, wherever possible, leave it to the industry to identify technical solutions which are economically and practically feasible and produce the required results.

It is important to note that some regulatory instruments which are currently used lead inevitably to discards. For example, the reliance on TACs as the main management instrument in mixed fisheries leads to discards when above-quota quantities of some species are taken while there is still quota left over for others. The use of minimum landing sizes also leads to discards, especially in mixed fisheries.

As to the future, new Regulations are proposed to be drawn up in 2008, as proposed in the latest policy statement (CEC, 2007b). Depending on the consultations, measures to progressively introduce a discard ban may be implemented. They may be based on current discard bans in other countries. A fishery-by-fishery tailored approach is proposed, whilst at the same time promoting initiatives for the elimination of discards in Regional Fisheries Management Organisations. Naturally, discard bans for specific species in single species fisheries would be easier to implement than a ban within a mixed fishery. Discards may be allowed where it can be proven that discarding does not have a long term detrimental affect on the ecosystem or the conservation of the species concerned.



The monitoring and analysis of by-catches in order to implement real time closures will require that data from all fleets are compiled and analysed on an ongoing basis and that a mechanism is established whereby a Community body can communicate with the relevant MS about the need to implement closures.

Observer schemes will play a major role in enforcement. Enforcement should be supplemented with encouragements to avoid unwanted by-catches and discarding. One possible encouragement is to introduce preferential status such as access to fisheries on the basis of track records of low by-catches.

## 5. EU relations with RFMOs – a case study of ICCAT and bluefin tuna

### 5.1 EC regulatory commitments and ICCAT Resolutions and Recommendations

In this sub-section we identify how Atlantic Ocean and Mediterranean bluefin tuna (BFT-E) have been regulated by the EC through participation in Regional Fisheries Management Organisations (RFMOs) with specific reference to ICCAT (the International Commission for the Conservation of Atlantic Tunas).

Community legislation related to RFMOs includes two basic types of acts:

- I. Those where the Community gains membership of the RFMO, either as a founding Party or as an acceding member, and;
- II. Implementing regulations transposing into Community law the conservation and management measures adopted by each RFMO, notably control and monitoring of fishing activities and related technical measures.

The European Community (EC) acceded to ICCAT following Council Decision (86/238/EEC)<sup>18</sup> and officially became a contracting party (CP) in 1997.

There are currently five active ICCAT recommendations and resolutions directly relevant to BFT-E, as detailed in Annex 4, which the EC is obliged to transpose into Community law or otherwise address as an ICCAT CP.

In relation to the fixing of fishing opportunities and associated conditions for BFT-E, the EC has variously passed the following Regulations: Regulation 2848/2000 (Annex 1F), Regulation 2555/2001<sup>19</sup>, Regulation 1811/2002 (Annex V), Regulation 2341/2002 (Annex V), Regulation 2287/2003 (Annex 1E) and Regulation 27/2005 (Annex 1E). The TACs set in these Regulations are provided in Table 9.

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<sup>18</sup> Council Decision (86/238/EEC) of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas

<sup>19</sup> The Annex for Regulation 2555/2001 is not given as it was subsequently amended by Regulation 1811/2002.

**Table 9. EC Compliance with TACs, taken from ICCAT compliance tables . (n/a – not available)**

Year	2000	2001	2002	2003	2004	2005
Initial EC TAC (MT)	18,590.0	18,590.0	None set	18,582.0	18,450.0	18,331
Adjusted EC TAC (MT)		18,562.0	18,590.0 <sup>20</sup>	19,231.7		18,331
EC Catch(MT)	19,475.0	17,912.3	18,129.0	16,607.3	17,284.3	n/a
EC Balance according to ICCAT Tables (Calculations from figures given) <sup>21</sup>	1,696.0 (-885)	649.7	2,157.0 (461)	2,624.4	1,165.7	n/a

An examination of the TAC-related EC catch levels (summarised in Table 9) demonstrates broad compliance by EC Member State fleets, with the exception of France. According to figures reported to ICCAT, the general trend is that the EC has a sound compliance record for BFT-E TACs set since 2000. By way of contrast to EC fleet compliance patterns, the ICCAT 2004/5 Report suggests that unadjusted catch rates for the following nations exceeded their quota allocations (years of infringement in parentheses): Japan (2000, 2004); Libya (2000, 2001); Tunisia (2002, 2004); and, Chinese Taipei (2002).

In relation to future TACs, an EU press release<sup>22</sup> provides details of the ICCAT agreement, reached at a meeting in Dubrovnik, in November 2006, to put in place a 15-year recovery plan for the overfished bluefin tuna in the eastern Atlantic and the Mediterranean (see CEC, 2007c). Among the main measures agreed at this meeting was a gradual reduction in the overall ICCAT TAC from 32,000 tonnes to 25,500 tonnes in 2010. Accordingly, for 2007<sup>23</sup>, the EU quota will be 16,779.55 tonnes followed by 16,249.92 tonnes for 2008; 15,679.75 tonnes for 2009; and, 14,539.41 tonnes for 2010.

The Council has released Regulation (EC) 643/2007 which implements the recovery plan recommended by ICCAT for bluefin tuna. It sets out Technical Measures, the following of which are the most relevant: a closed fishing season (related to locations and fishing

<sup>20</sup> Figure given for autonomous TAC set by the EC, as stated in ICCAT compliance table, analogous with Regulation 2555/2001. However, this EC TAC was amended to 20,286 tonnes (18,590 + stated 2000 surplus of 1,696) in Regulation 1811/2002. Using the amended figure, the balance in the ICCAT compliance table is correct.

<sup>21</sup> The discrepancy between Reporting Table balance figures and balance figures is calculated by subtracting the reported catch figure from the final TAC are highlighted.

<sup>22</sup> DG Fisheries Press corner and press release of 31 January 2007:

[http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/com07\\_06\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/com07_06_en.htm)

<sup>23</sup> The new EU quota now also includes the allocation for Cyprus and for Malta (155.06 tonnes and 356.45 tonnes respectively for 2007). Until now, both Cyprus and Malta fished bluefin tuna under the ICCAT 'others' heading. Following the accession of Cyprus and Malta to the EU in 2004, it had been decided that their allocation would be integrated into the EU bluefin tuna quota at the end of the 2002-2006 ICCAT Multi-Annual Management Plans (MAMP) for this stock.

methods)(Art 80e); a minimum size for bluefin tuna landed (Art 80f); and a limitation on by-catch (a maximum 8% of bluefin tuna landed weighing between 10 and 30 Kg) (Art 80i). This by-catch must be deducted from the quota assigned to the MS (discards of dead fish may not be included in the by-catch for quota calculation purposes).

Council Regulation 643/2007 also overtakes EU Regulation 41/2006 which regulated fishing opportunities and associated conditions for bluefin tuna that were fixed on a provisional basis pending an agreement on a final EU share of this stock under the ICCAT Convention. This was done in order to address remaining measures required to implement the recovery plan recommended by ICCAT.

## **5.2 EC support of ICCAT as an institution**

Since joining ICCAT, the EC has attended all regular and intercessional meetings of the ICCAT Commission and has paid its contributions on time, unlike many CPs (Contracting Parties). Additionally it has made various voluntary contributions, such as a recent sum of money to fund the ICCAT Manual. The EC has been intimately involved in the running of the Commission, being a member of all four Panels since becoming a Contracting Party (until 2007, when it left Panel III), having delegates holding the chair position for various bodies including, among others the Standing Committee for Research and Statistics (SCRS) (2001-2005, EC-Portugal) and Panel II (Since 1999, EC-France). The EC has also hosted a number of meetings such as the 19th Regular Meeting of the Commission (Seville, Spain, November 14-20, 2005) and 2<sup>nd</sup> Meeting of the Working Group to Develop Integrated Co-ordinated Atlantic Bluefin Tuna Management (Marseille, France May 17-20, 2004).

The EC also totally or partially finances a large number of research programmes on large migratory species, implemented jointly with Member States. EU has been and continues to be a major financial contributor to ICCAT's bluefin tuna research programmes.

In general, it plays a large role in scientific research. In February 2003 the EC adopted a communication on the improvement of scientific and technical advice for fisheries management. As an example of the quantity of work it carries out, from its 2004-5 agenda, the EC presented 41 scientific documents to the SCRS for 2005.

## **5.3 EC Influence on ICCAT Recommendations**

In 2002, the European Commission published its Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the Common Fisheries Policy (CEC, 2002c). Unfortunately, the Plan fails to place

sufficient emphasis on the precautionary principle, rather looking primarily to strengthening scientific advice and enforcement measures. The failure of the EC to implement the precautionary approach can be seen in its influence within ICCAT when setting TACs and closed season measures for Atlantic bluefin tuna (BFT).

Historically, ICCAT recommendations for the management of Atlantic bluefin tuna (BFT) have been in place since 1975 covering various issues such as catch limits, size of catch and by-catch, closed fishing areas/seasons and compliance. Nevertheless, serious concerns regarding the status of the stocks remain, with the most recent ICCAT Standing Committee for Research and Statistics (SCRS) Report (ICCAT, 2007) warning that unless the current regulatory scheme was modified to ‘impose greater control over the fisheries to improve compliance and reduce fishing mortality rates’, there was a ‘high risk of fisheries and stock collapse.’

Actual catch limits were first set for BFT in 1998 following an assessment of the stocks by the SCRS. They recommended that a TAC of 25,000 metric tonnes (MT) would halt the decline of the East Atlantic and Mediterranean stock of bluefin tuna (BFT-E) and that further reductions would be needed to rebuild it. However, the ICCAT Commission adopted a recommendation setting TAC in this area at 32,000MT for 1999 and 29,500MT for 2000. [Rec 98-4]

In 2002, catches for 1999 and 2000 were estimated at 32,454MT and 33,754MT respectively and the SCRS then advised that the TAC for BFT-E, should not exceed 26,000MT. However, the recommendation adopted, ‘Concerning a multi-year conservation and management plan for bluefin tuna in the East Atlantic and Mediterranean’ [Rec. 02-08], set the TAC at 32,000MT for 2003-2005. Some Contracting Parties (CPs) such as Canada and the USA did state strong opposition to this adoption, but stopped short of blocking it due to the existence of selected provisions that were expected to be beneficial to the stock.

The Commission’s failure to adopt scientific TAC advice has largely been attributed to the difficulties of running realistic stock assessments with limited data, giving rise to uncertain outputs. These do not then translate into definite recommendations, but rather are open to interpretation, allowing non-precautionary TACs to be adopted and the emphasis to be placed on strengthening scientific advice, through further research to understand the complex stock biology, as well as through improved data inputs from better reporting and compliance. In a recent open letter to the Atlantic bluefin Group and the SCRS in 2006, Alan Fonteneau, former SCRS Chairmen and bluefin tuna scientist, recommended that despite the scientific

uncertainties, the SCRS report should make firm management recommendations, using a precautionary approach.<sup>24</sup> This is in line with the UN Fish Stocks Agreement (UNFSA), signed by the EC in December 2003, which strongly codifies the precautionary principle in Article 6 & ANNEX II.

At the Regular Meeting of ICCAT in November 2006 however, the EC did not support the precautionary principle in the agreement of TACs for BFT. The advice in the 2006 SCRS Report specified that the only management measures to address the ‘high risk of [BFT] fisheries and stock collapse’ and to initiate recovery were, in combination to:

- close the Mediterranean to fishing during spawning season<sup>25</sup>; and
- decrease mortality on small fish through fully enforced increases in minimum size.

They gave a guidance figure for a TAC of 15,000MT, should these measures be fully implemented and suggested this could lead to catches of 45,000MT or more if followed for over ten years. The EC, among other Contracting Parties, advocated the combination of a more gradual reduction in TACs with more rigorous control and enforcement. In the end, the adopted ‘Recommendation by ICCAT to establish a multi-annual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean’<sup>26</sup> bases its TACs on the less precautionary EC approach, reducing TACs from 32,000MT to 25,500MT by 2010.

There is the further problem that the precautionary advice to close the Mediterranean BFT fishing during the spawning season, of which peak spawning is understood to be June-July, was not entirely followed. Although prohibition of fishing by longline vessels over 24m has been extended from being 1 June-31 July [Rec 0-08] to between 1 June-31 December; purse seine fishing, the most significant gear type in this area, previously prohibited from 16 July-15 August [Rec 02-08] (Rec 98-06 additionally closed purse seine fishing in the Adriatic 1-31 May, but Rec 02-08 superseded this), is still only prohibited from 1 July-31 December.

The only measure where precautionary advice was heeded, was that of increasing the minimum size of catch, with measures adopted to ensure the minimum size stipulated in the 2004 Recommendation 04-07 as 6.4kg and 10kg, without tolerance, in the East Atlantic and Mediterranean respectively, to 30kg with some exceptions for 8kg.

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<sup>24</sup> Col. Vol. Sci. Pap. ICCAT, 60(3): 1027-1034 (2007)

<sup>25</sup> Spawning dates differ even within the Mediterranean, but the bulk of spawning is thought to take place between mid-May and mid-July, with a strong peak in June

<sup>26</sup> Rec 06-05. <http://www.iccat.int/Documents%5CRecs%5Ccompendiopdf-e%5C2006-05-e.pdf>

#### 5.4 EC Adoption of ICCAT Recommendations

In the past, updates to EC legislation following amendments to ICCAT recommendations have been slow, meaning some recommendations become redundant. However, the EC has been quick to adopt the newest recommendations by ICCAT regarding the conservation of BFT, recognizing that the timeliness of adopting the outlined measures is imperative to their successful outcomes. The appropriate Council Regulation 643/2007 closely follows the ICCAT recommendations. It must now ensure that these measures are fully adhered to by CPs.

Just prior to the CFP's entry into force on 1 January 2003, ICCAT adopted a recommendation 'concerning at multi-year conservation and management plan for bluefin tuna' [Rec 02-08]<sup>27</sup>. This was a simple document defining some key mechanisms to achieve the objectives of the plan, such as TACs, timings of closed seasons/area, minimum size and data collection. Many of the key technical mechanisms that it included had already been adopted by the EC in May 2001, in EC Regulation 973/2001 'laying down certain technical measures for the conservation of certain stocks of highly migratory species'<sup>28</sup>. There were some slight differences because Regulation 973/2001 followed ICCAT recommendations pre-dating Rec 02-08. For example, Regulation 973/2001 included an additional closure of purse-seine (PS) fishing between 1-31 May and a minimum size of 6.4kg with 15% tolerance by numbers and 3.2kg no tolerance. In contrast, Rec 02-08 did not contain the PS closure in May and minimum sizes were 6.4kg but with 10% tolerance and 4.8kg no tolerance. The adjustment of these technical measures was slow to be transposed into EC legislation, only coming into effect in April 2004<sup>29</sup>. Similarly, ICCAT Rec 02-09, which stipulated contracting parties must develop specific plans in 2003-4 to reduce juvenile BFT catches in the Mediterranean, was only adopted in the same EC legislation from 2004.

More recently, the recommendations adopted by ICCAT at its regular meeting in November 2006 came too late in the year to transpose into European law through the 21 December 2006 Council Regulation for quotas and TACs (EC 41/2006<sup>30</sup>). Also, although overall TACs were adopted by ICCAT in November, allocations had not been set and these were only agreed at a special ICCAT meeting in Tokyo, Japan at the end of January 2007.

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<sup>27</sup> ICCAT Rec 02-08. Available at: <http://www.iccat.org/Documents/Recs/compendiopdf-e/2002-08-e.pdf>

<sup>28</sup> EC Reg 973/2001. Available at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_137/l\\_13720010519en00010009.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_137/l_13720010519en00010009.pdf)

<sup>29</sup> EC Reg 831/2004 Available at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l\\_127/l\\_12720040429en00330034.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_127/l_12720040429en00330034.pdf)

<sup>30</sup> EC Reg 41/2006. Available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l\\_015/l\\_01520070120en00010213.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_015/l_01520070120en00010213.pdf)

According to ICCAT rules, ICCAT recommendations and resolutions adopted only enter into force six months later, or if there is an official objection. Since Libya has entered a formal objection to BFT Rec 06-05, this would imply its entry into force on 12 August 2007. However the fishery for bluefin tuna by EC vessels starts in February and since the measures for the management and control of this fishery as agreed upon by ICCAT concern the whole of the fishing season, it would be necessary to apply the ICCAT measures from February 2007 in order to ensure the compliance with the Recovery Plan.<sup>31</sup>

## **5.5 EU Implementation of ICCAT Recommendations**

In general, EC implementation and compliance with ICCAT recommendations since the reform of the CFP appear to be lacking. Technical and compliance measures adopted in the recent Council Regulation 643/2007 must be closely adhered to for this situation to change.

Further to the issue of compliance, there are concerns regarding the accuracy of catch reporting and hence *actual* compliance with TACs. For example, the ICCAT SCRS Report in 2006 estimates that actual catch could be 43,000MT in the Mediterranean and 50,000MT in the East Atlantic and Mediterranean for the most recent years, much higher than CPs' reported landings of around 32,500MT in 2003/4 when the TAC was 32,000MT. These calculations are based on the number of vessels operating in the Mediterranean Sea and their respective catch rates.

Similarly a report by the WWF and TRAFFIC International (Willock and Lack, 2006) based on five parallel studies referring to the 2004 and 2005 fishing seasons, including official customs data and monitoring of the traffic of tuna container ships out of the Mediterranean, concludes that BFT catches were more than 40% over ICCAT quotas. It also notes that catch figures were deliberately under-reported at the official level and highlights three fleets including the EC (especially France)<sup>32</sup> as being responsible for most of these illegal, unregulated and unreported catches.

The SCRS 2006 Report<sup>33</sup> also reports that many of the fishing states of the EC have failed to supply ICCAT with certain data required for the proper functioning of the Convention (see Table 10 below for details)

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<sup>31</sup> That is, with the exception of the minimum size provisions which entered into force on 13 June 2007.

<sup>32</sup> The other fleets are Libya and Turkey.

<sup>33</sup> p21/244



**Table 10. Missing official data between 2000-2005 for Task 1 & Task 2 by species/flag, as of 6 October 2006.**

EC Cyprus	No size sampling for LL in 2000-2004 and for PS in 2004.
EC France	Except for PS size sampling in Med, no Task 2 were received for BB, gillnet, TW and UNCL gear.
EC Greece	No Task 2 (catch/effort & size) for PS 2000-2005. LL and handline Task 2 time series incomplete.
EC Ireland	No size sampling.
EC Italy	All Task 1 and Task 2 have to be separated by area (Ionian, Adriatic Tyrrhenian). No catch/effort for LL 2001-2005 No catch/effort for PS, sport, trap for 2000-2005.
EC Malta	No Task 2 (2002-2004) and no size for PS in 2005
EC Portugal	No effort for LL for 2000-2003. No effort for trap for 2000-2001 & 2003-2005.
EC Spain	No official Task 1 reported in 2005; no effort for trap; no catch/effort for troll. No Task 2 (catch/effort & size) for BB Med for 2003-2005. No Task 2 (catch/effort and size) for BB east for 2005. No Task 2 for LL Med for the last 3 years

## 6. Regional Advisory Councils (RACs)

### 6.1 Background

The consultations leading to the 2002 reform of the CFP showed that fishers, industry groups, NGOs and other interested parties all wanted to be more involved in the management of EU fisheries. Experience around the world has shown the potential benefits of involving stakeholders in management, both in taking advantage of their special knowledge of resources and to incorporate their views on the goals of management and the best means to achieve them. In response, the Commission's 2001 Green Paper proposed to create a network of Regional Advisory Councils (RACs) involving fishermen, scientists and other stakeholders on a regional level. These proposals were fully adopted by Council Regulation 2371/2002, and have since proven to be one of the successes of the reformed CFP.

In July 2004, the Council provided the enabling framework for the establishment of the RACs, in the form of Council Decision 2004/585/EC (EU Council, 2004a). This proposed the creation of seven RACs, five of which were to cover defined geographical regions of the EU waters. The two other RACs covered the more wide-ranging pelagic stocks, both within waters of the EU (outside the Baltic and Mediterranean), and in the high seas outside the EU.

The RACs were proposed to enable the fishing sector and other interested parties to work more closely with scientists in collecting reliable data and in improving scientific advice. Articles 31(5) of the Regulation 2371 encouraged the RACs to submit recommendations and suggestions on any aspects of their fisheries to the Commission or the Member States. Article 31(4) also provides for the Commission to consult the RACs regarding their proposals for measures such as recovery or management plans.

According to Article 11 of Council Decision 2004/585, the Commission is required to report to the European Parliament and the Council on the functioning of the RACs "*at the latest by 30 June 2007*". Sources in the Commission report that this is now largely done but will not be released until the autumn of 2007. In the absence of this detailed analysis, the following brief review looks at the RACs' progress to date, particularly regarding the extent and quality of their involvement in the EU management process.

## 6.2 Establishment of the RACs

Council Decision 2004/585/EC established the framework for the RACs in July 2004. Since that time, six of the proposed seven RACs have been established, the first one being the North Sea RAC in November 2004 (Table 11).

No proposal has so far been submitted for the Mediterranean Sea RAC. It has been suggested that the slow progress in this region is due to the prior existence of the FAO's General Fisheries Council for that area (Tony Hawkins, NSRAC Rapporteur, *pers. com.*). Any effective RAC for this sea area would need to include the many non-EU countries surrounding the Mediterranean as well as the EU coastal states, and would inevitably overlap with the functions of the GFCM.

**Table 11. Dates of establishment and supporting legislation for the RACs**

RAC	Date declared operational	Commission Decision
North Sea	9 November 2004	2004/774/EC
Pelagic stocks	5 August 2005	2005/606/EC
North-Western waters	22 September 2005	2005/668/EC
Baltic Sea	1 March 2006	2006/191/EC
South-Western waters	4 April 2007	2007/222/EC
High seas/long distance fleet	29 March 2007	2007/206/EC
Mediterranean Sea	Not yet declared	--

Council Decision 2004/585/EC provided start-up aid for the RACs on a degressive basis covering the first five years of their operation. Given the important contribution of the RACs to the development of the CFP, the Commission proposed an amendment to the Council Decision to declare them as “*bodies pursuing an aim of general European interest*”. This proposal was adopted by Council in June 2007 (EU Council, 2007), and enabled the EU to allocate permanent funding for the RACs operating costs of 250,000 euros per year.

## 6.3 RAC participation in decision making

With six of the seven RACs having been successfully established, it is time to ask whether they have been successful in improving communication between stakeholders on regional fisheries issues. In this regard, Council Regulation 2371/2002 provides some cause for concern as to the extent of collaboration and partnership that was intended. Article 31(4) proposes: “*Regional Advisory Councils may be consulted by the Commission in respect of proposals for measures, such as multi-annual recovery or management plans.... They may also be consulted by the Commission and by the Member States in respect of other measures. These consultations shall be without prejudice to the consultation of the STECF and of the Committee for Fisheries and Aquaculture.*” In contrast, Article 33 of the same regulation provides a much firmer commitment in terms of the interactions between the EU and its internal advisory body: “(1) *The STECF shall be consulted at regular intervals on matters*

*pertaining to the conservation and management of living aquatic resources, including biological, economic, environmental, social and technical considerations. (2) The Commission shall take into account the advice from the STECF when presenting proposals on fisheries management under this Regulation.”*

While this wording may be interpreted as limiting the obligation of the EU bodies to consult with the RACs, stakeholders generally report that the RACs have a good relationship with the Commission, and particularly with the EU Council. Commissioner Borg is reported to be an enthusiastic supporter of the RACs. Such strong support from the top has been shown elsewhere to be vital in developing meaningful participation with stakeholders. RACs have submitted a range of proposals and advice to the EU, and report having received positive feedback. In developing this interaction, the RACs have recognised the need to produce ‘well considered, evidence-based’<sup>34</sup> proposals in order to be really influential in EU decision making.

Websites have so far been established for four of the new RACs, those covering the Baltic Sea, North Sea, North-Western Waters and Pelagic Stocks. A quick review of these sites shows that they are active in organising relevant working groups and in producing publications representing their views. The North Sea RAC has been particularly productive, having been the first to be established, and having built on the foundations of the earlier Fisheries Partnership of the North Sea Commission. Annexes 5 and 6 of this report provide some summarised examples of the advice and opinions provided to date by the North Sea RAC and North West Waters RAC that are of relevance here. These examples give some sense of the positions that these RACs take vis-à-vis the implementation aspects of the CFP.

Although active, the RACs have had some difficulties in providing advice due to the short timescale between the Commissions’ release of its advice in early December, and the subsequent decisions on TACs by Council just before Christmas. Recent efforts by the Commission (CEC, 2003a; 2005b; 2006a) to simplify the management process and to follow a revised timetable for the consultations have, however, been well received. Increasingly, RACs are also consulted with regard to spatial management measures vis-à-vis pertinent ICES advice such as the proposed closures, to bottom trawling, of four cold water coral reef sites in the Irish EEZ (NNWRAC, 2007; PRAC 2007; ICES ACE 2007).

A further initial concern related to the balance of representation of different stakeholder groups in the RACs. Article 5(3) of Council Decision 2004-585-EC allocates two thirds of

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<sup>34</sup> See <http://www.nffo.org.uk/rac.html>

the seats in the RAC general assemblies and executive committees to representatives of the fisheries sector and one third to representatives of the other interest groups affected by the CFP. Such a bias towards fishers' representatives may mean that the advice of the RACs will always give the 'majority' view as being that of the fishers. While differences of opinion between these groups are evident in some RAC outputs (e.g. NSRAC, 2006; NNWRAC, 2007), it is suggested by some that these are infrequent occurrences and that a consensus view is reached on most issues (Tony Hawkins, NSRAC Rapporteur, *pers. com.*). The NGO stakeholders, indeed, are reported as acting as being useful moderators for some of the more extreme initial suggestions from the fishing industry members.

This report makes no quantitative analysis of the extent to which the RACs advice has been followed by the Commission or by Council. Some of the proposals of the RACs (such as those advocating EBFM over single-species MSY targets) will require time and detailed work to be incorporated into the CFP system. The RACs recognise the need for coordination between environment and fisheries issues, and the relevance of the proposed Maritime Strategy. While the RACs have not yet taken formal responsibilities for any regional, decentralised decision-making, it is clear that they are providing a valuable forum for discussion between stakeholders both on fishery management needs and potential solutions at appropriate regional-sea levels. The presence of RAC observers at ICES and STECF meetings, and the presence of National and EU administration representatives at RAC meetings can only improve understanding on all sides.

## 7. Fishing capacity

### 7.1 Background

#### *Key regulatory commitments of the 2002 CFP*

Three of the key commitments of the 2002 CFP (Council Regulation 2371/2002), as it relates to the management of fishing capacity, are listed below:

- **Article 11(1).** Member States shall put in place measures to adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities.
- **Article 12(1).** The Commission shall establish for each Member State reference levels expressed in GT and kW for the total fishing capacity of the Community fishing vessels flying the flag of that Member State in accordance with the procedure laid down in Article 30(2).
- **Article 14(1).** Each year the Commission shall present a summary of the results of Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities.

The following sections of this report show that Member States have mostly made good progress in maintaining and adjusting their fishing capacities within the targets set by the Commission under Article 12(1). This has also been well demonstrated by the Commission reports produced in compliance with Article 14(1). It is less clear however that the “*stable and enduring balance between fishing capacity and opportunities*” required by Article 11(1) has yet been reached.

#### *EU guidance on setting capacity targets*

Up to 2002, EU guidance on fishing capacity was based on the four Multi-Annual Guidance Programmes (MAGPs I to IV). In 2002, MAGP IV witnessed the end of aid for modernization, renewal and export of fishing vessels with previously dedicated funds delegated to reprogramming in other areas. In general, MAGPs have been characterized as too complicated and insufficiently ambitious as a tool to manage the fleet.<sup>35</sup> Therefore, the Commission has moved to a simpler system based upon limiting fishing capacity. Further to this point, “reference levels” are to be fixed, and when a new entry occurs, it must be accompanied by at least an equivalent withdrawal of capacity. In this regard, the Commission

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<sup>35</sup> See Communication from the Commission on the Common Fisheries Policy, 28.5.2002, COM (2002) 181 final.

has promised to enforce EU law against fleet operators that have ignored their obligations with regard to the withdrawal of fishing capacity.

Under the 2002 CFP, the MAGP approach of setting effort ceilings for each fleet segment has been replaced by a general rule that new capacity, expressed in terms of tonnage and power, introduced into the fleet cannot be higher than the capacity withdrawn from it at the same time.

As described in the first of the annual Fishing Capacity Reports (CEC, 2004c), from 1 January 2003 Member States have had to respect a strict entry-exit regime on the capacity of their fleets, measured in terms of both tonnage (GT) and power (kW). Any entry of capacity into the fleet of a Member State has to be compensated by the previous exit of at least the same amount of capacity. Exceptions to this rule apply only if the changes correspond to works to improve safety, hygiene or living and working conditions on board vessels. For entries of new vessels between 100 and 400 GT built with public aid (only possible until 31 December 2004), Member States have also had to withdraw 35% more capacity than that introduced. Another important rule included in the reformed CFP is that capacity leaving the fleet with public aid cannot be replaced, but must instead be subtracted from the Member State's 'reference levels' – their upper limits to capacity. In combination, these rules mean that the capacity of the Member State's fleets should not increase with respect to either the reference levels set at 1 January 2003 or to the levels at the start of each year<sup>36</sup>.

As has been indicated, Article 12 of Council Regulation 2371/2002 set the reference levels for the fleets of Member States as the sum of their global final objectives under MAGP IV. Since most Member States were well below their reference levels at the end of MAGP IV (i.e. December 2002), these controls were not initially very restrictive. The reference levels however do provide a useful mechanism to ensure that the benefits of spending public funds on decommissioning vessels can never be lost by the introduction of other vessels.

Since the reference levels are a legacy of MAGP IV (period 1997-2002), the Council decided that they would not apply to the Member States that joined the EU on 1 May 2004. For such new Member States, capacity of the national fleets cannot increase with respect to their levels at the time of their entry.

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<sup>36</sup> Some allowances were included for the initial years of the programme for cases where decisions had already been made by the national authorities between 1 January 2000 and 31 December 2002 for vessels to enter the fleet after 1 January 2003. These entries had to take place, however, within 3 years of the date of the administrative decision (i.e. at the latest by the end of 2005).

### ***EU funding to support capacity adjustment***

EU funding to assist states with their capacity adjustments was provided by the Financial Instrument for Fisheries Guidance (FIFG) up to 2006, and is now covered by the 2007-2013 European Fisheries Fund (EFF), agreed in June 2006.

As described on the EU Commission's web pages<sup>37</sup>, the EFF is designed to both support the competitiveness of the EU fishing industry while also promoting measures to protect and enhance the environment. Among other things, it will also help those fishing communities most affected by the necessary changes to diversify their economic base.

The EFF will run for seven years and has a total budget of around € 3.8 billion. Funding is available for all sectors of the fishing industry, but Member States are required to decide how they allocate funds between the different priorities they choose. Article 15 of the Council's EFF Regulation (EU Council, 2006b) requires each Member State to adopt and submit to the Commission a national strategic plan covering their fisheries sector. As one element, these national strategic plans must set out the priorities and objectives for the management and adjustment of fishing fleets and, in particular, "the adjustment of fishing effort and capacity with regard to the evolution of fisheries resources, the promotion of environmentally-friendly fishing methods and a sustainable development of fishing activities" (Article 15(2a)). Article 22 of the EFF regulation further requires each Member State to include in its national strategic plan its policy for adjusting fishing effort, showing how it will fulfil its obligation to "achieve a stable and enduring balance between such fishing capacity and their fishing opportunities" as laid down in Article 11(1) of Regulation (EC) No 2371/2002. The EFF Regulation rightly places strong emphasis on the management of fishing effort, as well as fishing capacity, but it delegates responsibility for that management from the EU to Member States. It remains to be seen whether this approach will be effective.

## **7.2 Achievements to date**

### ***Situation at the end of MAGP IV***

During the six years of the MAGP IV, the Community fleet (excluding the vessels registered in the French outermost regions) was reduced by 107,284 GT and 928,973 kW, representing reductions in capacity of 5.31% and 11.77% respectively. The degree to which the MAGP objectives have been achieved varies greatly between Member States (see CEC, 2003c for details), partly reflecting the different levels of FIFG aid they received.

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<sup>37</sup> See [http://ec.europa.eu/fisheries/cfp/structural\\_measures/arrangements\\_2007\\_2013\\_en.htm](http://ec.europa.eu/fisheries/cfp/structural_measures/arrangements_2007_2013_en.htm).



Compared to the reference levels set for the end of MAGP IV, the overall EU fleet (excluding vessels in the ‘outermost regions’ or overseas territories) was 80.9% of the 2002 objective for GT of 2,363,747. Similarly, the fleet was 86.3% of the 2002 objective for kW (8,070,904) (see Table 12). The relatively modest MAGP IV targets were substantially over-achieved in most Member States and in global terms for the EU as a whole. All Member States managed to bring their fleets within their objective both in tonnage and in power, with the exception of Belgium which remained outside its objective in GT by 4%.

**Table 12. Changes in fleet capacity for the EU-15 Member States, relative to the reference levels as reported for 31 December 2002 at the end of MAGP IV, and at the end of each following year**

Year	Fleet capacity in GT	% of previous year	GT reference level	% of GT reference level	Fleet capacity in kW	% of previous year	kW reference level (D)	% of kW reference level
2002	1,912,781		2,363,747	80.9%	6,966,645		8,070,904	86.3%
2003	1,837,862	96.1%	2,335,583	78.7%	6,744,930	96.8%	7,927,188	85.1%
2004	1,799,693	97.9%	2,298,288	78.3%	6,541,462	97.0%	7,785,251	84.0%
2005	1,748,597	97.2%	2,270,256	77.0%	6,361,162	97.2%	7,685,422	82.8%

Sources: CEC, 2003c; 2004c; 2005d; 2006b

### ***Performance in the new CFP***

Under the reformed CFP, all Member States have continued to reduce the capacity of their fleets, mainly as a result of national decommissioning schemes, some of which reflect the arrangements agreed in recovery plans.

According to the Community Fleet Register (as summarised in CEC, 2006f), for the three-year period 2003 – 2005, the overall capacity of the Community fleet of the EU-15 Member States was reduced by 117,000 GT and 499,000 kW, representing a net reduction of 6.27% of the tonnage and 7.28% of the power of the EU-15 fleet. Allowing for the adjustments of vessels re-measured in GT during this period, and for the few previously agreed additions to the fleet, the overall reductions to the fleet capacity during this time are as given in Table 12. With each year since the start of the new CFP in 2003, the total EU fleet capacity has been reduced by between 2.1 and 3.9%.

During 2003, 2004 and 2005 approximately 132,000 GT and 427,000 kW were withdrawn from the EU fleet with public aid. Such capacity reductions cannot be replaced and are reflected in the declining reference levels given for each year in Table 12 (columns 4 and 8). Even with these reductions in the reference levels, the fleet capacities at the end of each year have become smaller fractions of the reference levels each year (columns 5 and 9 in Table 12). In short, steady progress is being made, at least in global terms for the EU-15 Member States, as measured against the agreed reference levels.

In the new Member States, starting from 1 May 2004, fleet capacity has also been reduced, by 41,000 GT and 101,000 kW, representing reductions of 18% in tonnage and 18% in power compared to their fishing capacity on the accession date (CEC, 2006f).

Most Member States have also performed well relative to the entry/exit ceiling arrangements in the 2002 CFP. As should be expected, the entry/exit ceiling levels at the start of each year have reduced gradually over time (see columns 5 and 9 in Table 13 below), except in 2004 when the 10 new Member States joined the EU in May 2004. The total EU fleet sizes at the end of each year have also been consistently below the ceiling levels (see columns 6 and 10 in Table 13). Although some Member States have clearly performed better than others (see annual capacity reports for details), the system as a whole may be said to be working well. The question that remains is how far capacity must be reduced in order to solve the EU's chronic problem of over fishing.

**Table 13. Changes in total EU fleet capacity relative to the entry/exit ceilings as reported for 31 December each year since the 2002 CFP reform.**

Year	Member States	Fleet capacity in GT	% of previous year	GT Entry/exit ceiling	% of GT ceiling	Fleet capacity in kW	% of previous year	kW Entry/exit ceiling	% of kW ceiling
2003	EU-15	1,837,862	96.1%	1,877,191	97.9%	6,744,930	96.8%	6,840,577	98.6%
2004	EU-15	1,799,693	97.9%	1,834,606	98.1%	6,541,462	97.0%	6,720,972	97.3%
2005	EU-15	1,748,597	97.2%	1,811,953	96.5%	6,361,162	97.2%	6,689,812	95.1%
2004	EU-25	2,020,467		2,060,954	98.0%	7,085,273		7,280,249	97.3%
2005	EU-25	1,931,469	95.6%	2,016,752	95.8%	6,822,973	96.3%	7,201,566	94.7%

Sources: CEC, 2003c; 2004c; 2005d; 2006b

Note: Figures in grey duplicate those in Table 12 but are included here for easy reference.

### ***Fishing capacity relative to 'available fishing opportunities'***

The Commission's 2003 Scoreboard report (CEC, 2003b) recognises that the reduction targets under MAGP IV were too modest. Although fishing capacity has been reduced since 2002, the reductions are minimal compared to the high levels of fishing pressure in most Community fisheries, particularly for demersal species. With further increases in fleet efficiency and decreases in fish stocks since 2002, many fishing fleets are still too large for the stocks they target. Some Member States were reported by the Commission (CEC 2004c) as doubting that the observed reductions would lead to a long-term balance between fleet capacity and available fishing opportunities. Generally speaking, the Commission (CEC, 2005d) has noted that Member State reports tend to emphasise the implementation of national fleet management over any assessment of the balance between fishing fleet capacity and available fishing opportunities.

The EU's 2001 Green Paper recognised the many factors that determine the fishing mortality generated by a fleet, besides the tonnage and engine power of the vessels. Advances in technology and design mean that new vessels exert much more fishing effort than old vessels of equivalent tonnage and power. An effective fleet policy must recognise that the effective fishing effort is increasing every year due to the process known as 'technology creep'. Reduction rates in the national strategic plans being prepared for the EFF must compensate for such technology effects. Except where fishing effort is being partly controlled by limitations on fishing activity (e.g. by days at sea rules), targets for fishing fleet capacity should be set according to the ratio of the intended fishing mortality rates (e.g.  $F_{pa}$ ) over the current fishing mortality rate. Unless strict gear and vessel restrictions are put in place, targets for future years must take further account of technology creep. While it is clear that the multi-species aspects of EU fisheries and the differences in such ratios between different stocks will complicate such assessments, some such arrangements must be incorporated into the EFF fleet plans if that 'balance' is to be achieved.

In the mid term review of MAGP IV, CEC (2000) reported that 45 out of 67 well-studied stocks (i.e. 67%) were 'over-fished', meaning that they had a spawning stock biomass less than or equal to  $B_{pa}$  and a fishing mortality greater than  $F_{pa}$ . In broad terms, the number of stocks at risk has neither decreased nor increased since that time. In 2007, about four-fifths of stocks remain outside safe biological limits (CEC, 2007d). No attempt has been made here to re-estimate the reductions in capacity that will be required to achieve a balance. These figures on the state of fish stocks nevertheless make it clear that further progress is needed in this area.

The problems with fishing capacity are well recognised in the Commission's 2008 policy statement released in June 2007 (CEC, 2007d). Since 2004, the Commission has rightly placed greater emphasis on managing fishing effort than fishing capacity. Earlier this year, the Commission launched a debate on how to simplify, improve and consolidate the existing effort management regimes (CEC, 2007a). This requires improved procedures for the certification of engine power and gives due consideration to the use of fishing gear characteristics as additional fishing capacity indicators. A suite of case studies, discussions with stakeholders and pilot projects is now planned to take these ideas forward. The proposals for clear national capacity targets to be set under the EFF national strategic plans are clearly also aimed at addressing these problems.

While it is too early to foresee the effect that these latest initiatives will have, one fundamental problem has been identified by Brown (2006). Under the new CFP, Member States have no *legal* requirement to reduce their fleet capacity to any clearly agreed targets. The actual reductions in fishing capacity will hinge on Member States' choices of management instruments, and in particular the use of market or rights based measures and the relative levels of public aid that is provided (i.e. modernisation vs decommissioning). Although Member States are required by Article 11(1) to “*achieve a stable and enduring balance between fishing capacity and fishing opportunities*” the exact form of this relationship is undefined and thus open to interpretation. The majority of Member States do not carry out this assessment. While the new CFP rightly delegates powers to Member States to set their own objectives and priorities, it may be that some limits and bounds will be required to achieve effective results.

## 8. Summary of progress against key CFP commitments

The following tables summarise the progress achieved to date in implementing the key commitments of the 2002 CFP in each of the topic areas covered in this assessment. The right column adopts a ‘traffic light’ colouring scheme, with green shading indicating the most positive results, amber shading indicating partial progress, and red shading indicating little or no achievement.

The Article numbers refer to the main 2002 CFP document, Council Regulation 2371/2002. For the section on EU relations with RFMOs, and ICCAT, indicators are used from other relevant legislation and from the 2002 Mediterranean Action Plan (CEC, 2002c), since Council Regulation 2371/2002 does not provide specific guidance in this area.

### ***Commission and Council actions in setting TACs (Section 2)***

<p><b>Article 4.</b> ... Council shall <u>establish measures governing access to resources ... taking into account available scientific, technical and economic advice</u> and in particular of the reports drawn up by the STECF as well as in the light of any advice received from RACs...</p>	<p>TACs and quotas set each year by Council, but frequently in excess of the ICES advice and of Commission's proposals.</p>
<p><b>Article 20(1).</b> The Council, acting by qualified majority on a proposal from the Commission, shall <u>decide on catch and/or fishing effort limits and on the allocation of fishing opportunities</u> among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State <u>relative stability</u> of fishing activities for each stock or fishery.</p>	<p>TACs are set each year by Council, and divided as quota between Member States. Relative stability is achieved in terms of distribution of TAC shares between Member States, but not in terms of maintaining sustainable fish stocks or catches.</p>
<p><b>Article 23(4).</b> When the Commission has established that a Member State has exceeded the fishing opportunities which have been allocated to it, the Commission shall operate <u>deductions</u> from future fishing opportunities of that Member State.</p>	<p>Deductions applied in relevant cases, for example, to UK and Ireland regarding their 2007-2012 quota allocations for herring and mackerel (CEC, 2007e).</p>

### ***Multi-annual recovery plans and management plans (Section 3)***

<p><b>Article 5(1).</b> The Council shall adopt as a priority <u>recovery plans</u> for fisheries exploiting stocks which are outside safe biological limits.</p>	<p>Recovery plans are developed and adopted for 10 stocks in most urgent need, although preparation has been slow.</p>
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<p><b>Article 5(1).</b> The Council shall adopt as a priority <u>recovery plans</u> ... The recovery plans shall be multi-annual and indicate the expected time frame for reaching the targets established.</p>	<p>Recovery plans for cod have essentially failed due to implementation problems and the measures taken have not effectively reduced fishing mortality to necessary levels. Simple models demonstrate that recruitment to cod stocks over the last 5 years would have led to a recovery if the cod recovery plan had been applied correctly.</p>
<p><b>Article 6(1).</b> The Council shall adopt <u>management plans</u> as far as necessary to maintain stocks within safe biological limits for fisheries exploiting stocks at/within those limits.</p>	<p>Recovery and/or management plans prepared for only 20 of 126 EU stocks, but wider policy aspects have recently been addressed (CEC, 2006d; 2007d), and further progress are now expected.</p>
<p><b>Articles 5(2) / 6(2).</b> Plans ... shall include conservation <u>reference points</u> such as targets ... to maintain / ensure the recovery of stocks to within safe biological limits. Where more than one target is set, recovery plans shall specify the <u>order of priority</u> of these targets.</p>	<p>Plans do include reference points usually including target fishing mortality. These are kept under revision (eg NS cod F=0.4 in Norway-EU agreement, 0.65 in original recovery plan). MSY reference points are also now being considered.</p>
<p><b>Articles 5(3) / 6(3).</b> Plans shall be drawn up on the basis of the precautionary approach to fisheries management and take account of <u>limit reference points</u> recommended by relevant scientific bodies. Plans shall be <u>multi-annual</u> and indicate the expected time frame for reaching the targets established.</p>	<p>Recovery time frames are implied or stated explicitly in plans. Dependence on assessments did not take into account the significant increase in implementation uncertainty which has meant that HCRs could not be implemented effectively. In the absence of advice, the Council has <i>not</i> usually adopted a precautionary approach consistent with the cod recovery plans and CFP.</p>

#### ***Ecosystem-Based Fisheries Management (EBFM) (Section 4)***

<p><b>Article 2(1).</b> The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Community shall apply the <u>precautionary approach</u> in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to <u>minimise the impact of fishing activities on marine eco-systems</u>. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management...</p>	<p>Updated policy on by-catches and discards released in 2007, but firm actions awaiting consultations. Implementation linked to Marine Strategy initiatives. Eco-system level management will be assisted by regional focus of RACs and re-structured ICES advice. Positive actions in setting technical measures in some areas, but more attention needed to reduce impacts on sensitive habitats and species.</p>
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<p><b>Article 4(1) and 4(2)(g)(iv).</b> To achieve the objectives mentioned in Article 2(1), the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities...<u>including specific measures to reduce the impact of fishing activities on marine ecosystems and non target species.</u></p>	<p>Some positive examples – 2004 Regulation to prevent cetacean by-catch by use of ‘pingers’ and protection of kittiwake feeding areas – but enforcement poor. No compliance yet with FAO IPOAs for seabirds and sharks. Permanent closure to bottom trawling and other demersal fishing by Council Regulations: Darwin Mounds (2004) – Azores, Canary Islands, Madeira 2005 – Rockall Bank 2006</p>
<p><b>Articles 5(2) / 6(2).</b> [Recovery / Management] plans may include <u>targets relating to other living aquatic resources</u> and the <u>maintenance or improvement of the conservation status of marine eco-systems.</u></p>	<p>Not aware that any plans explicitly consider ecosystem targets except in reference to reducing discards of small fish.</p>
<p><b>Articles 5(3) / 6(3).</b> [Recovery / Management] plans ... shall ensure the sustainable exploitation of stocks and that the <u>impact of fishing activities on marine eco-systems is kept at sustainable levels.</u></p>	<p>Not aware that any plans yet developed focussing on impacts at an eco-system level.</p>
<p><b>Article 7(1).</b> If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.</p>	<p>In light of extensive ICES advice on the occurrence of and serious threats to sensitive habitats in EU waters, Member States as well as the Commission have taken very limited steps towards their conservation. Emergency measures have only been applied in one single instance (Darwin Mounds).</p>
<p><b>Article 8(1).</b> If there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities, in waters falling under the sovereignty or jurisdiction of a Member State where any undue delay would result in damage that would be difficult to repair, that Member State may take <u>emergency measures</u>, the duration of which shall not exceed three months.</p>	<p>Emergency measures adopted in 2003 (and subsequently extended for a further 6 months) by the Commission under Article 7(1) regarding the protection of the ‘Darwin Mounds’ deep sea coral eco-system.  Not aware of examples of the implementation of Article 8(1) at the national level by Member States.</p>

***EU relations with RFMOs / ICCAT, especially Bluefin Tuna (Section 5)***

<p><b>EU TAC implementing regulations</b> for Bluefin Tuna as guided by ICCAT<sup>38</sup>.</p>	<p>With the exception of France (for selected years), the EC has transposed and implemented yearly TACs since 2000.</p>
<p>The following rows relate to the Commission’s 2002 Community Action Plan for the Mediterranean (COM (2002) 535 final) (CEC, 2002c)</p>	

<sup>38</sup> Regulation 2848/2000 (Annex 1F); Regulation 2555/2001 (The Annex for Regulation 2555/2001 is not given as it was subsequently amended by Regulation 1811/2002); Regulation 1811/2002 (Annex V), Regulation 2341/2002 (Annex V), Regulation 2287/2003 (Annex 1E) and Regulation 27/2005 (Annex 1E).

<p><b>Mediterranean Action Plan, Section 2.2.</b> The Community will <u>actively promote</u> multilateral management of these stocks [fisheries targeting highly migratory fish]...</p>	<p>The EC has actively participated in the organisation, attending all regular meetings of the Commission and subsidiary bodies of which is a member, paying contributions punctually and volunteering to hosting meetings.</p>
<p>...including as necessary <u>catch limitations, technical measures and effort limitations</u>. (support for scientific recommendations)</p>	<p>The EC needs to better support scientific recommendations made by the ICCAT scientific committee. It could better promote the precautionary approach in ICCAT discussions regarding conservation recommendations, such as catch and effort limitations.</p>
<p>(transposing recommendations)</p>	<p>In the past, the EC has been slow to transpose various ICCAT recommendations into EC legislation, but recently has acted swiftly, recognizing that the timeliness for adopting the outlined measures is imperative to achieving successful compliance.</p>
<p>(catch reporting)</p>	<p>While official ICCAT records report the EC has been compliant with catch limitations, other evidence suggests this may not be true. Some Member States in particular appear to have been misreporting catches. The EC has also not fully met its data reporting responsibilities.</p>
<p><b>Mediterranean Action Plan, Section 5 (Table).</b> Reinforcement and support to the Regional Fisheries Organizations, <u>including scientific work</u></p>	<p>The EC is very actively involved in scientific research which reports in to ICCAT, funding or partially funding a large number of research programmes including those on bluefin tuna.</p>

### **Regional Advisory Councils (Section 6)**

<p><b>Article 31(1).</b> Regional Advisory Councils <u>shall be established</u> to contribute to the achievement of the objectives of Article 2(1) and in particular to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.</p>	<p>Six out of seven of the proposed RACs now established. No proposal yet received for a Mediterranean RAC, but this area covered already by FAO's GFCM.</p>
<p><b>Article 31(4).</b> Regional Advisory Councils <u>may be consulted</u> by the Commission in respect of proposals for measures, such as multi-annual recovery or management plans.</p>	<p>Communications between RACs and EU bodies reported to be good. Efforts made by EU to improve timetable for consultations (e.g. CEC, 2006a).</p>



<p><b>Article 31(5).</b> Regional Advisory Councils may:  (a) <u>submit recommendations and suggestions</u>, of their own accord or at the request of the Commission or a Member State, on matters relating to fisheries management to the Commission or the Member State concerned;  (b) <u>inform the Commission or the Member State concerned of problems</u> relating to the implementation of Community rules and submit recommendations and suggestions addressing such problems to the Commission or the Member State concerned;</p>	<p>Working groups formed and opinion documents published in several relevant areas (see RAC web sites).</p>
<p><b>Article 32.</b> The Council shall decide on the <u>[procedure for] establishment</u> of a Regional Advisory Council. A Regional Advisory Council shall cover sea areas falling under the jurisdiction of at least two Member States.</p>	<p>Process for establishment of RACs confirmed by Council Decision 2004/585/EC of 19 July 2004. Permanent EU funding of core RAC operations agreed by Council Decision 2007/409/EC of 11 June 2007.</p>

### ***Fishing Capacity (Section 7)***

<p><b>Article 11(1).</b> Member States shall ... <u>adjust the fishing capacity of their fleets</u> in order to achieve a <u>stable and enduring balance</u> between such fishing capacity and their fishing opportunities.</p>	<p>Mechanism in place, but 'balance' not yet achieved.</p>
<p><b>Article 12(1).</b> The Commission shall establish ... <u>reference levels</u> expressed in GT and kW for the total fishing capacity of the Community fishing vessels....</p>	<p>Reference levels established, but only based on MAGP IV targets as set in 1997. Updated each year to accommodate fleet adjustments and decommissioned vessels, but not adjusted to allow for increasing fishing power of vessels over time.</p>
<p><b>Article 14(1).</b> Each year the Commission shall <u>present a summary of the results</u> of Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities.</p>	<p>Summaries presented each year of fishing capacities (see CEC, 2004c et seq, and Compliance Scoreboard reports) but not of fishing opportunities (delegated to national responsibility).</p>

## 9. Key action points

Based on the analysis of this report, the following action points are recommended to improve the delivery of the CFP in the areas covered.

1. There is a need to integrate and simplify the fragmented system of legislation and institutions that are used to deliver the CFP. In this regard, the Commission should continue to press for clarification, simplification and greater accessibility of CFP-related legislation and institutions. The Commission-sponsored multi-annual action plans of perhaps five years duration seem to be a logical step forward provided that their overall aim is the simplification of the Community *Acquis* in relation to legal and institutional delivery of the CFP.
2. The reform of the CFP has not yet stopped political interference in the annual setting of TACs which remain above scientific advice for many stocks. To achieve the CFP objective of sustainable exploitation, the Commission and the Council must strengthen and formalise the decision making processes used in setting TACs and other management measures, preferably by adopting harvest control rules (HCRs) for each fishery.
3. Management or recovery plans should be agreed for all fisheries or fish stocks as appropriate. Such plans should be developed in collaboration with stakeholders including RAC members. They should include HCRs directing management actions depending on the status of the fishery relative to both limit and target reference points. HCRs and reference points should take into account uncertainties in assessments and the associated risks to long-term productivity, as required by the precautionary approach. It would be preferable if the Council interpreted Articles 5(4), 6(4) such that HCRs are a mandatory feature of management/recovery plans. The recovery plans should require pre-defined, precautionary action to be included in the HCR when scientific certainty is not sufficient to implement science-based targets within the HCR. HCR measures should be fully enforced in accordance with Part V of Council Regulation 2371/2002.
4. Until management plans are developed for all fish stocks, improvements must be achieved in the speed at which recovery plans are put in place for fish stocks which fall outside safe biological limits.

5. The 'ecosystem approach' should be specifically defined in terms of the key implications it holds for fisheries management. The lack of a clear definition is a key reason why the ecosystem approach has not been more firmly adopted.
6. As guided by recent EU-funded research projects, a number of indicators should be adopted and monitored in order to detect fishery impacts at the ecosystem level and to enable management actions to be taken where needed. Such ecosystem-level indicators should be incorporated into fishery management plans along with the management measures associated with particular reference values.
7. EU Plans of Action for seabirds and sharks should be developed and adopted as proposed by the FAO's 1999 International Plans of Action on these topics.
8. While recognising the strong support given by the EU to ICCAT's research and organisational needs, the Commission should better support ICCAT in implementing the precautionary approach, particularly in setting TACs for bluefin tuna.
9. The Commission should better assist Member States to 'achieve a stable and enduring balance between fishing capacity and fishing opportunities' (as required by Article 11(1) of Regulation 2371/2002) by giving annual guidance on fishing opportunities in terms of fishing capacity and fishing effort. In addition to setting fishing capacity reference levels as under the current system, the Commission should advise on the changes in capacity that would be required to adjust current rates of fishing mortality in each stock relative to the agreed precautionary reference points. Such guidance should compensate for the effects of 'technology creep' over time and allow for changes in ecosystem dynamics and sampling variability. Centralised EU-level advice in this area would assist Member States in their efforts to adjust fishing effort as required by Article 22 of the Council's EFF Regulation (1198/2006).

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## **Annex 1. Proposed new Objectives of the CFP (Green Paper, 2001)**

- to establish responsible and sustainable fisheries that ensure healthy marine ecosystems maintaining the quality, diversity and availability of marine resources and habitats. To that end there is an urgent need to strengthen and improve the conservation policy in order to reverse the current negative trends of many stocks.
- to contribute, through appropriate fisheries management action, to achieve the environmental objectives set out in Article 174 of the Treaty. Appropriate measures to reduce the negative environmental impact of other human activities, such as maritime transport, oiling and dredging should be envisaged as a complement to fisheries policy measures.
- to integrate health requirements into the CFP in order to protect public and animal health and safety and to ensure the stable supply of the European market at prices reasonable for the consumer.
- to bring fleet capacity into line as soon as possible with the availability and sustainability of the resources.
- to promote better governance by putting in place more transparent, accountable and flexible management and decision-making processes which involve stakeholders also at the regional and local levels and ensure that emergencies and conservation problems of a local nature are adequately addressed.
- to ensure effective enforcement of CFP rules through transparent arrangements which can guarantee a level playing-field across the Union.
- to secure an economically viable and self-sufficient fisheries and aquaculture sector which can be competitive in a globalised economy.
- to address the problems of structural adjustment that will result from a commitment to sustainable fisheries.
- to promote the responsible and rational exploitation of fishery resources in international waters and to develop partnerships with third countries in a manner coherent with Community development policy.
- to improve the quality and amount of relevant data to support decision-making and to promote multidisciplinary scientific research which will allow for obtaining timely and qualitative scientific information and advice on fisheries, associated ecosystems and relevant environmental factors.



## Annex 2. Responsibilities of the EU Commission and Council under the 2002 CFP (Council Regulation 2371/2002)

The table below provides an understanding of the main Commission and Council responsibilities in relation to conservation and sustainable exploitation of fisheries within the CFP. Where key references to other legislative instruments are linked to the delivery of Commission/Council responsibilities in this table they are provided below this table.

Chapter II	Conservation and Sustainability	
Article	Commission	Council
4(1) Types of Measures		Establish Community rules governing access to waters and resources and the sustainable pursuit of fishing activities
5(1) Recovery Plans		Adopt as a priority recovery plans for fisheries exploiting stocks which are outside safe biological limits
5(5)	Report on the effectiveness of the recovery plans in achieving the prescribed targets	
6(1) Management Plans		Adopt management plans as far as necessary to maintain stocks within safe biological limits for fisheries exploiting stocks at/within those limits
6(5)	Report on the effectiveness of the management plans in achieving the prescribed targets	
7(1) Commission Emergency Measures	At substantiated request of the MS or on its own initiative may decide on emergency measures given evidence of a serious conservation threat. These should last no more than 6 months and can be extended by the Commission no more than 6 months	
7(2)	A decision shall be within 15 working days of receipt of a MS request	
7(5)		Acting by qualified majority may take a different decision within one month of the date of receipt of the referral (allowed to be referred within 10 working days of Commission decision 7(4))
8(2) MS Emergency Measures	Confirm cancel or amend MS and RAC proposed measures within 15 working days of date of notification	

8(5)		Acting by qualified majority may take a different decision within one month of the date of receipt of the referral (allowed to be referred within 10 working days of Commission decision 8(4))
9(1) MS Measures within 12nm Zone	Included in consultation process before adoption of non-discriminatory measures by a MS for conservation, management and minimisation of effects of fishing on conservation	

<b>Chapter III</b>		<b>Adjustment of Fishing Capacity</b>
<b>Article</b>	<b>Commission</b>	<b>Council</b>
12(1) Reference Levels for Fishing Fleets	Establish for each MS reference levels for the total fishing capacity of community fishing vessels working under that MS flag (in accordance with 30(2))	
14(1) Exchange of Information	Present a summary of results of MS efforts to achieve a sustainable balance between fishing capacity and fishing opportunities	
15(3) Fishing Fleet Registers	Setup a Community Fishing Fleet Register based on information received in accordance with 15(2)	
16(1) Conditionality of Community Financial Assistance and Reduction of Fishing Effort	Suspend financial assistance to a MS (following hearing) due to non-compliance if proportionate with the level of non-compliance	
16(2)	Inform MS concerned if its fleet capacity exceeds what it is bound to by Arts 11, 13 and 15. Commission must verify reduction plan (conforming to 30(2))	

<b>Chapter IV</b>		<b>Rules on Access to Waters and Resources</b>
<b>Article</b>	<b>Commission</b>	<b>Council</b>
17(2) General Rules	Present to the Parliament and the Council a report by 31 December 2011 on the arrangements for MS to restrict fishing on waters within the 12nm baseline under their jurisdiction/sovereignty from ports on their adjacent coast	Make a decision before 31 December 2012 on the provisions of the arrangements set out in the Commission report
19(1) Review of Access Rules	Present to the Parliament and the Council by 31 December 2003 a report on the rules concerning access to waters and resources other than those referred to in 17(2) assessing the justification for these rules in terms of conservation and sustainable exploitation objectives	

19(2)		Decide on any necessary adjustment to the rules mentioned in 19(1) report, having regard to 17(1) by 31 December 2004
20(1) Allocation of Fishing Opportunities		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 MS and the conditions associated with those limits
20(2)		Decide on the allocation of new fishing opportunities when established by the Community
20(4)		Establish the fishing opportunities available to third countries in Community waters and allocate them to each third country

<b>Chapter V</b>	<b>Community Control and Enforcement System</b>	
<b>Article</b>	<b>Commission</b>	<b>Council</b>
22(1) Conditions for Access to Waters and Resources and for Marketing of Fisheries Products	In co-operation with MS carry out pilot projects on the obligation to transmit records on fishing (including landings and transshipments) electronically before 1 June 2004	Decide in 2004 on the obligation to transmit records on fishing (including landings and transshipments) electronically
23(3) Responsibilities of MS	In co-operation with MS carry out pilot projects on the obligation to set up a means of remote sensing before 1 June 2004	Decide in 2004 on the obligation to set up a means of remote sensing
23(4)	Operate deductions from the future fishing opportunities of a MS when it has found that a MS has exceeded the allocated opportunities (in accordance with 30(2))	
25(4) Follow-up of Infringements		Establish a catalogue of measures based on 25(2) and 25(3) provisions to be applied to MS relating to serious infringements (defined in Regulation (EC) No 1447/1999)
26(1) Responsibilities of the Commission	Evaluate and control application of the rules of the CFP by MS and facilitate co-ordination and co-operation between them	
26(2)	Inform in writing to a MS where based on evidence the rules of the CFP are not being complied with and set a deadline of 15 working days for the MS to comment and demonstrate compliance	

26(3)	Take preventative measures if evidence of a risk that fishing activities in a certain area could lead to a serious threat to conservation. The measures should not exceed 3 weeks duration and can be extended to a maximum of 6 months and shall be lifted when the risk no longer exists	
26(4)	Stop fishing activities when a MS quota, allocation or available share has been exhausted (on the basis of available information)	
26(5)	Control fishing activities in Community waters by third country fishing vessels with co-operation and co-ordination by MS	
27(1) Evaluation and Control by the Commission	May carry out audits inquiries verifications and inspections concerning application of the CFP rules by MS – MS are allowed comment on the above reports	
27(4)	Draw up an evaluation report every 3 years to be submitted to the Parliament and the Council on its actions under 27(1) and on the application of CFP rules by MS	
28(4) Co-operation and Co-ordination	Establish a list of Community Inspectors and means of inspection with regard to 30(2)	
31(4) Regional Advisory Councils	May consult RAC in respect of proposals for measures such as multi-annual management plans (MAMP) or multi-annual recovery plans	
32 Procedure for the Establishment of Regional Advisory Councils		Decide on the establishment of a RAC
33(3) Scientific Technical and Economic Committee for Fisheries	Take into account advice from STECF when presenting proposals on fisheries management under this Regulation	
35 Review	Report to the Parliament and the Council on the operation of the CFP in respect to Chapters II and III before the end of 2012	

**As regards Article 30(2), when reference is made to this paragraph then Articles 4 and 7 of Decision 1999/468/EC shall apply as follows:**

**COUNCIL DECISION (1999/468/EC)** of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission

**Article 4: Management Procedure**

1. Commission is assisted by a management committee composed of MS representatives and chaired by a Commission Representative

2. The Chair submits a draft of measures to be taken. There is a time-limit set on a decision by the committee depending on the urgency of the situation set by the Chair. The Chair does not vote and opinion shall be delivered by majority laid down in Article 205(2) if the Treaty which sets out how the Council is required to adopt a proposal from the Commission based on that decision. MS Votes shall be weighted in the manner set out in Article 205(2)(see Article 205(2) below)
3. The Commission (without prejudice to Article 8 – which states that if a proposal for implementation of measures exceeds the implementing powers provided for in the basic instrument then it must be reviewed) adopt measures which shall apply immediately. If they are not in accordance with the opinion of the committee this shall be reported to the Council who may defer the application of the measures (no longer than 3 months from it being reported)
4. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 3.

**Article 7: Safeguard Procedure**

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules of procedure which shall be published in the Official Journal of the European Communities. Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.
2. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.
3. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis. The European Parliament shall also be kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.
4. The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. The Commission also publishes an annual report on the working of committees.
5. The references of all documents sent to the European Parliament pursuant to paragraph 3 are made public in a register.

**As regards Article 205(2) (as updated) – When reference is made to this paragraph of the Treaty Establishing the European Community then where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows:**

Austria	10
Belgium	12
Bulgaria	10
Cyprus	4
Czech Republic	12
Denmark	7
Estonia	4
Finland	7
France	29
Germany	29
Greece	12
Hungary	12
Ireland	7

Italy	29
Latvia	4
Lithuania	7
Luxembourg	4
Malta	3
Netherlands	13
Poland	27
Portugal	12
Romania	14
Slovakia	7
Slovenia	4
Spain	27
Sweden	10
United Kingdom	29

**Further to Article 25(4) of Council Regulation No 2371/2002 see:**

**COUNCIL REGULATION (EC) No 1447/1999** of 24 June 1999 Establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy

- Annex I A. Failure to cooperate with the authorities responsible for monitoring
- B. Failure to cooperate with observers
  - C. Failure to observe the conditions to be met when fishing
  - D. Failure to comply during fishing operations
  - E. Failure to comply in connection with resources for monitoring
  - F. Failure to comply in connection with landing and marketing of fishery products

- Article 2(1) MS shall notify the Commission on a regular basis of the instances of behaviour that have been discovered and shall provide it with all information regarding action taken by the administrative and/or judicial authorities.
- 2(2) The Commission shall make the information it receives pursuant to paragraph 1 available to the European Parliament, the Council and the Advisory Committee of Fisheries.
- 2(3) The information notified under paragraph 1 and made available under paragraph 2 shall be treated in accordance with the provisions of Article 37 of Regulation (EEC) No 2847/93.
- 2(4) Detailed rules for the implementation of this Article, shall be laid down in accordance with the procedure in Article 36 of Regulation (EEC) No 2847/93.

**Further to Articles 2(3) and 2(4) of Council Regulation No 1447/1999 see:**

**COUNCIL REGULATION (EEC) No 2847/93** of 12 October 1993 Establishing a control system applicable to the common fisheries policy

**For the purposes of interpreting Article 2(3) Council Regulation (EC) No 1447/1999 Article 37 of this Regulation states the following:**

Article 37

1. Member States and the Commission shall take all necessary steps to ensure that the data received in the framework of this Regulation shall be treated in a confidential manner.
2. The names of natural or legal persons shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements.

The data referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural or legal persons.

3. The data exchanged between Member States and the Commission shall not be transmitted to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.

4. The data communicated or acquired in whatever form by virtue of this Regulation is covered by professional secrecy and shall benefit from the same protection accorded to similar data by the national legislation of Member State receiving them and by the corresponding provisions applicable to Community institutions.

5. The data referred to in paragraph 1 shall not be used for any purpose other than that provided for in this Regulation unless the authorities providing the data give their express consent and on condition that the provisions in force in the Member State of the authority receiving the data do not prohibit such use or communication.

6. Paragraphs 1 to 5 shall not be construed as obstacles to the use of the data, obtained by virtue of this Regulation, in the framework of legal actions or proceedings subsequently undertaken for the failure to respect Community fisheries legislation. The competent authorities of the Member State transmitting the data shall be informed of all instances where the said data are utilised for these purposes.

This Article shall not prejudice the obligations pursuant to international conventions concerning mutual assistance in criminal matters.

7. Whenever a Member State notifies the Commission that it has been established after the completion of an inquiry that a natural or legal person whose name has been communicated to it by virtue of the provisions of this Regulation has not been implicated in an infringement, the Commission shall, without delay, inform any party or parties to whom it has communicated the name of the said person, of the outcome of the said inquiry or proceedings. This person shall no longer be treated as being a person implicated in the irregularities in question on the basis of the first notification. The data stored in a form allowing identification of the person concerned shall be deleted without delay.

8. The provisions of paragraphs 1 to 5 shall not be construed as prohibiting the publication of any general data or any studies which do not contain individual references to natural or legal persons.

9. The data referred to in this Regulation shall be stored in a form allowing the identification of the persons concerned only as long as necessary for the fulfilment of the purposes in question.

10. The data received in the framework of this Regulation shall be available upon request to the natural or legal persons concerned.

**For the purposes of interpreting Article 2(4) Council Regulation (EC) No 1447/1999 Article 37 of this Regulation states the following:**

Article 36

Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Management Committee for Fisheries and Aquaculture, hereinafter called 'the Committee', set up by Regulation (EEC) No 3760/92, either on his own initiative or at the request of the representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the said draft within a time limit which the chairman may lay down according to the urgency of the matter under consideration. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit laid down in the preceding paragraph.



### **Annex 3. Key articles of the Commission-proposed Baltic Sea cod multi-annual plan (CEC, 2006c)**

[Article 4.] The plan shall ensure the sustainable exploitation of the cod stocks concerned by gradually reducing and maintaining the fishing mortality rates to the levels below:

- 1) 0.6 on ages 3 to 6 years for the cod stock in Subdivisions 22, 23 and 24, and
- 2) 0.3 on ages 4 to 7 years for the cod stock in Subdivisions 25 to 32.

[Article 5.] Each year, the Council shall decide by a qualified majority on the basis of a proposal from the Commission on the TACs for the following year for the cod stocks concerned.

[Article 6.] The Council shall adopt the TAC for the cod stocks concerned that, according to a scientific evaluation carried out by the Scientific, Technical and Economic Committee for Fisheries (STECF), is the higher of:

1. A TAC that would result in a 10% reduction in the fishing mortality rate in its year of application compared to estimated rate for the preceding year.
2. A TAC that would result in the level of fishing mortality rate defined in Article 4.

If the above choice would result in a TAC that exceeds that of the previous year by more than 15% the Council shall adopt a TAC which is 15% greater.

If the above choice would result in a TAC that is more than 15% below that of the preceding year, the Council shall adopt a TAC which is 15% less.

This shall not apply where a scientific evaluation carried out by the STECF shows that the fishing mortality rate in the year of application of the TAC will exceed a value of 1 per year from the ages 3 to 6 years for the cod stock in Subdivisions 22, 23 and 24 or a value of 0.6 per year for the ages 4 to 7 years for the cod stock in Subdivisions 25 to 32.

Article 8 details the procedure for setting periods when fishing is allowed.

With gear of mesh size equal to or larger than 90 mm or with bottom set lines

1. It shall be prohibited to fish with trawls, Danish seines or similar gear of a mesh size equal to or larger than 90 mm, with gillnets, entangling nets or trammel nets of a mesh size equal to or larger than 90 mm, or with bottom set lines:

- (a) from 15 March to 14 May in Subdivisions 22, 23 and 24, and
- (b) from 15 June to 14 September in Subdivisions 25 to 27.

2. The Council shall decide each year by a qualified majority on additional periods in the following year when fishing with the above gear is prohibited, in accordance with the following rules.

3. Where the fishing mortality rate for one of the cod stocks concerned has been estimated by the STECF to be at least 10% higher than the minimum fishing mortality rate defined in Article 4, the total number of days when fishing with the above gear is allowed shall be reduced by 10% compared to the total number of days allowed in the current year.

4. Where the fishing mortality rate for one of the cod stocks concerned has been estimated by the STECF to be less than 10% above the minimum fishing mortality rates defined in Article 4, the total number of days where fishing with the above gear is allowed shall be equal to the total number of days allowed in the current year, multiplied by the minimum fishing mortality rate defined in Article 4 divided by the fishing mortality rate estimated by STECF.

5. At the request of the Commission, MS shall provide a description of the system applied to ensure compliance with paragraph

6. Community vessels with an overall length of less than 12 metres shall be permitted to retain on board and land up to 10% cod by live weight when fishing with gillnets, entangling nets and/or trammel nets with a mesh size equal to or greater than 110 mm.

Article 11 details the special permitting system for fishing for cod in the Baltic Sea as follows:

11(1) All Community vessels of an overall length equal to or greater than eight metres carrying on board or using any gears for cod fishing in the Baltic Sea in accordance with Article 3 of Regulation (EC) No 2187/2005 shall hold a special permit for fishing for cod in the Baltic Sea.

11(3) Each Member State concerned shall establish and maintain a list of vessels holding a special permit for fishing for cod in the Baltic Sea and make it available on its official website.

Articles 27 and 28 make provision for the evaluation of this plan in conjunction with the STECF and the subsequent revision of minimum mortality rates set out in Article 4 as necessary.

## **Annex 4. Selected active ICCAT Resolutions and Recommendations related to Bluefin Tuna**

*2006-08 Resolution by ICCAT on Fishing Bluefin Tuna in the Atlantic Ocean*

This Resolution States that contracting parties should not increase their catch by large-scale longline tuna vessels from the 1999/2000 level in a set geographical area.

*2006-07 Recommendation by ICCAT on Bluefin Tuna Farming*

This Recommendation states that contracting parties must require that

1. Records are kept of transfer activities of Bluefin Tuna, including transfers for fattening and farming and to set-up and maintain a list of their flag vessels that fish for, provide or transport Bluefin tuna for farming purposes.
2. Ensure that a caging declaration is presented by the operator and that tuna farms and national scientific institutes obtain data on catches in order to improve statistics for stock assessment. Reporting of quantities of caged Bluefin Tuna as well as amounts sold (in tonnes).
3. Take appropriate measures to ensure the accuracy of information received and cooperate to ensure that quantities caged are consistent with catches reported for each fishing vessel.

Contracting Parties, non-contracting parties, entities and fishing entities (CPCs) must transmit each year the list of vessels in (1) as well as results of the program referred to in (2), the quantities of Bluefin Tuna caged during the previous year and the quantities marketed during the previous year.

The Commission is required to request that non-contracting parties that farm in the prescribed area to cooperate with the implementation of the recommendation. The Commission is meant to review the effectiveness of the measures referred to in the ICCAT Bluefin Tuna Statistical Document (BTSD). The Commission shall establish and maintain an ICCAT record of farming facilities for Bluefin Tuna (FFBs) authorized to operate within the Convention area. Each CPC that has FFBs located within its jurisdiction is meant to electronically submit the list of authorised FFB details and ensure that they comply with ICCAT measures.

*2006-06 Supplemental Recommendation by ICCAT Concerning the Western Atlantic Bluefin Tuna Rebuilding Program*

This Supplemental Recommendation states that CPCs must initiate a 20 year rebuilding program (1999-2018). CPCs should continue to take measures to prohibit any transfer of fishing effort between the Western Atlantic and the Eastern Atlantic. The annual TAC shall be 2100t (including dead discards) unless changed on SCRS (Standing Committee on Research and Statistics) Advice.

The annual TAC shall include the following allocations:

UK (in respect of Bermuda)	4 t
France (in respect of St. Pierre et Miquelon)	4 t
Mexico (incidental catch in longline fishery in the Gulf of Mexico)	25 t
USA (by-catch related to directed longline fisheries in vicinity of management area boundary)	25 t
Canada (by-catch related to directed longline fisheries in vicinity of management area boundary)	15 t

After subtracting the above amounts the remainder of the annual TAC will be allocated

as follows:

USA	1,190.12 t
Canada	496.41 t
Japan	380.47 t

As a result of meetings with the Commission and Recommendation 01-12 of ICCAT, a CPC may make a one time transfer of up to 15% of its TAC within a fishing year to another CPC. This transfer may not be retransferred.

CPCs will prohibit the landing of fish under 30kg or below 115cm fork length. They may grant tolerances for their capture provided that over a four-year averaged period the tolerance constitutes no more than 10% of the total allowed quota. CPCs must institute measures so that fisherman do not gain economically from fish capture and shall encourage tagging and release.

CPCs are required monitor and report on all sources of fishing mortality including discards and minimise discards as far as possible. They must also provide the best available data for the assessment of stock by SCRS including information on the widest range of age classes possible.

2006-05 *Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean*

This Recommendation states that each CPC must submit the list of traps authorised to fish East Atlantic and Mediterranean Bluefin Tuna

2001-09 *Resolution by ICCAT regarding the SCRS mixing report on Atlantic bluefin tuna*

This Resolution states that CPCs, in cooperation with their National Scientists and the SCRS should conduct scientific research throughout the Atlantic Ocean and the Mediterranean Sea that will contribute to the better understanding of Bluefin Tuna movement patterns.

2001-08 *Supplemental Recommendation by ICCAT on bluefin tuna research in the central North Atlantic Ocean*

This Supplemental Recommendation states that the Commission should continue to endorse the recommendation of the ICCAT Bluefin Year Program and the 2000 Workshop on the Biology of Bluefin Tuna in the Mid-Atlantic regarding new research in the central North Atlantic Ocean.

All CPCs should undertake to consider providing funding or logistical support in order for successful completion of the critical scientific research

Participants in the research will be exempt from the Commission's conservation measures for up to 15 MT bluefin tuna annually and also up to 15MT other tuna annually. The UK on behalf of Bermuda is required to assign exemptions so that research objectives are fulfilled as far as possible. The UK is meant to report to the Commission in this regard annually.

## **Annex 5. Examples of the Advice and Opinions of the North Sea RAC (NSRAC)**

### ***Position paper on 2007 TACs and associated measures (28 November 2006)***<sup>39</sup>

In relation to TACs and associated measures there was majority support for the view that the improving status of the cod stock would allow for a rollover of the TAC from 2006. A minority view was held that there should be a zero catch within the cod recovery zone.

There are plans to expedite the availability of scientific advice on which RACs base their advice from 2008. This is in line with a more long-term management approach compared to a short-term stock level based approach which was taken in the past.

This will also make NSRAC's advice more comprehensive and useful as currently it has insufficient time to produce detailed advice (e.g., related to socioeconomic impacts) and the Commission acts on ICES advice for the most part. ICES is better placed to give stock level advice as opposed to management advice as EIA can be performed by the RAC.

An improvement would be for the Commission to build in a socio-economic analysis of management options and to seek advice from RACs on stocks where ICES is unable to provide an assessment.

It was felt that limiting days at sea for the different types of fishing gear has an economic disbenefit as well as an ecological benefit. This needs to be investigated further as Commission previous practice of continuous cuts in days offers no long term solution for that business sector.

Cod recovery measures so far have resulted in a reduction in average mesh size. Improving selectivity and implementing measures to reduce discards should be used instead of just reducing days at sea to meet stock level/sustainability goals. Voluntary discard avoidance measures could be taken up by the industry to maintain the development of young cod numbers. Therefore, the NSRAC proposes to initiate a pilot scheme to this end.

In relation to the North Sea TACs for cod negative development in the cod stock appears to have been arrested. It was felt that the Overall Objectives of Cod Recovery have still not been met. A more restrictive TAC would lead to more discards, so a rollover of the 2006 TAC would be appropriate. It was noted that Skaggeirak cod development justified a 15% TAC increase.

The Commission stated in a July 2007 policy paper that, in the absence of a scientific assessment of a certain stock (by ICES), a 25% reduction in fishing effort would have to take place, but due to this year's data it would appear that a flexible approach is possible.

NSRAC welcomed the Commission Non-Paper on a MAMP for Plaice and Sole. It particularly welcomed the 2 stage approach adopted from previous NSRAC advice. However, it pointed out that a biomass target during the first phase and a mortality rate target should be set, rather than 2 targets for both phases. NSRAC also welcomed the Commission commitment to a socio-economic assessment of its proposal

NSRAC stated that it was concerned about the implicit suggestion that long term objectives should be set at the outset. NSRAC is currently undertaking research in this regard. A range of targets was seen to be more useful and stable. It was also felt that transitional support methods to assist fleets while reducing fishing effort for Plaice and Sole must be addressed

It was noted that increased regulation in the form of long term management plans for North Sea species, while a Cod Recovery plan is also in place should be considered and simplified where possible.

<sup>39</sup> [http://www.nsrac.org/advice/wd20061128\\_Position\\_TAC\\_quota\\_2007.pdf](http://www.nsrac.org/advice/wd20061128_Position_TAC_quota_2007.pdf)

### ***Opinion on proposals for management plan for plaice and sole (19 May 2006)***<sup>40</sup>

NSRAC representatives were invited to a European Commission Regional Workshop which formed the basis for this opinion paper. NSRAC stated its concern that the Commission in its proposed plan considers all fishing of those species to take place under one fishing method (beam trawling) which is not the case. It felt that a general approach rather than a Maximum Sustainable Yield (MSY) based approach should be used. In this regard, this MAMP should only be considered interim, as the timescale drawn up by the Commission prevents agreement on a sensible and long term plan by NSRAC.

NSRAC emphasised the necessity of facilitating effort reduction by offering state paid decommissioning schemes to relevant fleet segments. On this point, the Commission has engaged in dialogue with NSRAC on an ultimate target for fishing mortality for plaice and sole, but it was felt that it should also discuss the required rate of reduction and the means to be employed to achieve it. It is not possible currently to determine whether the 10% rate set by the Commission is appropriate or not.

NSRAC made the point that the Commission's proposal of further effort reductions on top of a reducing TAC for plaice and sole would result in severe costs for the industry.

NSRAC advised the Commission that the current practice where fishers deploying smaller mesh nets (under Annex IIa) are given more of the fishing effort (more fishing days at sea) is illogical and should be corrected.

NSRAC stated that an 8% tolerance proposed by the Council Regulation on the Fishery for Plaice and Sole in the North Sea is impossible to comply with and should be raised to 10% or higher.

### ***Position on the review of cod recovery measures (23 March 2006)***<sup>41</sup>

In relation to a Suggested Format for a Review of Cod the RAC considered that the review of cod recovery measures should be addressed through the following structure:

The Dynamics of the cod fishery

1 The current state of the cod stock in the North Sea including an examination of the assessments, the degree to which the information is robust, additional sources of information from the industry. Sub stock structure, genetic pressures.

2 Examination of the drivers affecting the state of the stocks

- fishing pressures over time
- predation
- environmental change
- other factors e.g. endocrine disruption

3 Impact of recent Management Measures

- TACs
- Mesh Changes
- Effort regime and Decommissioning
- Closed areas

4 Prognosis for cod

- Forward simulations based on assumptions of recruitment and fishing mortality

5 Recovery targets

- What should they be, if any? (F or SSB)
- What values should be realistically ascribed to these?
- Over what timescale should these targets be achieved?

<sup>40</sup> [http://www.nsrac.org/advice/wf20060519\\_Opinion\\_on\\_plaice\\_and\\_sole\\_management.pdf](http://www.nsrac.org/advice/wf20060519_Opinion_on_plaice_and_sole_management.pdf)

<sup>41</sup> [http://www.nsrac.org/advice/wd20060323\\_Position\\_cod\\_recovery.pdf](http://www.nsrac.org/advice/wd20060323_Position_cod_recovery.pdf)

## **Annex 6. Examples of the Advice and Opinions of the North Western Waters RAC (NWWRAC)**

### ***Position Paper on Simplification of the CFP (March 7 2006)***<sup>42</sup>

The NWWRAC stated adequate consultation and stakeholder involvement is required for effective governance and better regulation. Action should be taken where existing measures are too complex or conflict with other measures, or are too vague. This position supports the NSRAC's claim that socio-economic impacts of the proposed actions should be taken into account rather than just focusing on a target to avoid past mistakes. Post implementation assessment should also be part of the process.

NWWRAC proposed a fisheries based approach as the North Western region they cover is multi-species, multi-gear and multi-jurisdiction which makes understanding requirements for conformity complex at present. NWWRAC submitted that establishing Codes of Practice with Mandatory and non-Mandatory sections would allow for the development of best practice alongside fulfilment of legal requirements.

In NWWRAC's view, the Commission must ensure that appropriate mechanisms for elaborating explanatory material for the industry and stakeholders is put in place.

The NWWRAC welcomed the Commission's commitment to revisit the technical conservation rules, the effort control regime and other areas of legislation which are widely believed to work against the successful achievements of fisheries objectives.

### ***Opinion on EU Commission Proposed TACs and Quotas for 2006 (5 December 2005)***<sup>43</sup>

NWWRAC believes there are certain fisheries where the Commission could increase TACs to ensure more reliable landings data and a situation where declared landings figures and more correlated with actual catches reported. It would prefer to see a longer term management plan rather than a restrictive continuous reduction of TAC/Quotas based on unreliable data.

The Commission proposed the idea of frontloading (bringing forward discussion and decisions over future TACs/Quotas and dividing them by region for example) but the NWWRAC is disappointed that this methodology not been successful in the first instance.

Comments on the TAC/Quotas (below) have been divided by working group:

Working Group 1: (West of Scotland Area VI and Vb)

Nephrops TAC should be increased by 30% in accordance with effort capping. 'The Take' will not be increased by this. Data indicates positive growth in the population (burrow counts).

Monkfish TAC should be increased by 15% to improve the quality of fisheries data. 'The Take' will not be increased by this.

According to Working Group 1, The Cod Recovery Programme initiated for this area is not working and has little impact on the state of the stock.

Working Group 2: (Celtic Sea and Western Approaches ICES area VII (not VII a/d/e)

According to Working Group 2 a proposed TAC cut of 15% is unjustified because of the cut in mortality associated with the closure of certain cod fishing areas.

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<sup>42</sup> <http://nwwrac.org/publications-EN.xhtml>

<sup>43</sup> <http://nwwrac.org/publications-EN.xhtml>

NWWRAC stated its concerns about the practice of TAC cuts based on Member State uptake levels rather than on biological stock status. In its view for Megrin and Plaice the proposed 15% cut should be reviewed and increased. It was concluded that for Hake an increase of more than 3% would not have a detrimental effect.

Working Group 3: (English Channel ICES Area VIId+e)

NWWRAC accepted the proposed 9% increase in TAC for Sole and an associated 10% reduction in fishing effort.

Working Group 3 felt that The Commission proposal to cut the Plaice TAC by 15% in 2006 will lead to serious discarding. TACs should be brought more into line with those for Sole in this area.

Working group 4: (Irish Sea ICES Area VIIa)

Working Group 4 concluded that a lack of data and assessment of the cod recovery program implemented in 2000 is resulting in fishing opportunities for other stocks being held artificially low. ICES assessments for Plaice, Haddock and Nephrops were seen as favourable but a cut of 11-15% was proposed due to the state of Cod.





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