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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: Report from the Commission to the European Parliament, the Council, the  
Economic and Social Committee and the Committee of the Regions on  
Reporting Obligations under Council Regulation (EC) N°2371/2002 of 20  
December 2002 on the conservation and sustainable exploitation of fisheries  
resources under the Common Fisheries Policy

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Delegations will find attached Commission document COM(2011) 418 final.

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EUROPEAN COMMISSION

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**On Reporting Obligations under Council Regulation (EC) No 2371/2002 of 20 December  
2002 on the conservation and sustainable exploitation of fisheries resources under the  
Common Fisheries Policy**

## 1. INTRODUCTION

Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (CFP) obliges the Commission to report to the European Parliament and the Council on the operation of the CFP with respect to chapters II (*Conservation and Sustainability*) and III (*Adjustment of Fishing Capacity*) of that regulation before the end of 2012<sup>1</sup>. Under the same Regulation, the Commission is also obliged to report on the arrangements set out in Article 17 paragraph 2 on fishing restrictions in the 12 nautical miles waters by 31 December 2011<sup>2</sup>. This report complements the reporting in the Green Paper on the Reform of the Common Fisheries Policy<sup>3</sup>.

## 2. CHAPTERS II AND III

### 2.1. Chapter II – Conservation and Sustainability

Since 2002, multi-annual recovery and management plans with clear objectives and harvest rules have become the core of the conservation policy. They balance ecological requisites (state of the stocks and exploitation rates) and economic and social considerations (stability of catches). Effort management and specific inspection and monitoring provisions were introduced in these plans where relevant. Community plans were adopted for 17 stocks in the EU waters. There is also a plan for recovery of stocks of the European eel, and additional proposals currently under negotiation or preparation (see Annex I). By the end of 2010, around 25% of the stocks and 80% of the catches concerned (in tonnes) can be considered under multi-annual plans and harvest rules (either as Council Regulations, Commission/Council statements, as Commission proposals or as plans agreed with third parties, such as Regional Fisheries Management Organisations and Norway).

Council also adopted regulations on conservation in the Mediterranean Sea, on technical measures for the Baltic Sea, and on specific fishing effort provisions for the Western Waters. Since 2004, the deep-sea fisheries have been brought under bi-annual management of fishing opportunities. A high-grading ban was gradually introduced for the Atlantic, North Sea and Baltic Sea in 2009/2010. No agreement was possible with Council on a proposal for technical measures for the Atlantic and North Sea areas that would have allowed for simplification and adjustment to regional specificities.

The Commission presented Communications on improving scientific and technical advice; on the ecosystems approach to marine management; on the implementation of maximum sustainable yields; and on discards. Regarding integration of environmental considerations in the fisheries policy, concrete progress was achieved,

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<sup>1</sup> In accordance with article 35 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy .

<sup>2</sup> In accordance with article 17 paragraph 2 of Council Regulation (EC) No 2371/2002 of 20 December 2002.

<sup>3</sup> Communication from the Commission on the Reform of the Common Fisheries Policy - COM(2009) 163, 22.4.2009.

including the adoption of legislative measures. An overview of these initiatives is listed in the Communication on the ecosystem approach to marine management<sup>4</sup>. This includes a number of Natura 2000 areas where the CFP was asked to provide for the necessary rules on fishing activities. A limited number of measures were taken under Articles 7, 8 and 9 of the chapter.

Since 2006, the Commission has presented its working method for proposals for decisions on annual fishing opportunities. This offers transparency in the way the fishing opportunities are set. The 2010 Communication showed improvements in the situation since 2003: a decrease in the numbers of stocks outside safe biological limits, as well as in stocks for which a fishing closure has been advised. However, of the stocks for which robust data is available, over 60% is still fished beyond maximum sustainable yield. Progress has been made as regards the levels of Total Allowable Catches (TAC) adopted by Council, compared to sustainable catch levels: on average, Council exceeded advice by 45%, with peaks as high as 59% (2005) and 51% (2008), but the gap between the advice and the result has narrowed in the last two years, and the 23% gap in the decision for 2011 is unprecedented. There has been an increase in the number of stocks for which no scientific advice is available (see also Annex II)<sup>5</sup>.

From this overview it can be confirmed that:

- Multi-annual plans are more effective in taking a long-term perspective in managing stocks than the annual TAC decision-making, especially since Council has started to respect the rules of the plans for the TACs.
- Nevertheless, the framework resulting from the 2002 CFP reform has not curbed overfishing enough, so EU fisheries continue to see declining catches taken from EU waters.
- The very significant gap between the levels of TACs agreed in Council and sustainable catches confirms the prevalence of short-term concerns over long-term sustainability. This continues to put stocks at further risk, though the recent narrowing of the gap is a significant step forward.
- While vital to sound policy making, the knowledge base is under constant pressure, impeding progress in the coverage of stocks for which scientific advice is provided.
- Finally, the new CFP needs to provide the right tools for integrating the ecosystems approach fully into conservation and sustainability.

## 2.2. Chapter III – Adjustment of Fishing Capacity

In 2002, responsibility for adjusting the size of the fleet was devolved to Member States. From then on, targets for mandatory cuts to fishing capacity were no longer

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<sup>4</sup> Communication from the Commission to the Council and the European Parliament — The role of the CFP in implementing an ecosystem approach to marine management - COM(2008) 187, 11.4.2008.

<sup>5</sup> Communication from the Commission — Consultation on Fishing Opportunities - COM(2010) 241, 17.5.2010 -, and internal Commission figures for 2011.

set. Nevertheless, there were still global limits on fishing capacity per Member State, and these have been complied with. However, it is clear that there is still significant over-capacity, and this is still a serious problem. The devolution of fleet management to Member States has not led to sufficient cuts in fleet capacity, even if nominal capacity is within the ceilings set for Member States. Adjustment has been relatively slow, despite the poor state of stocks throughout the EU. The drop in fleet capacity decrease is nominal, and has stayed below what is considered the technological development rate of the fleet. As there are no real yardsticks for success, it has not been possible to verify what progress has actually been made. In short, the policy on adjusting the size of the fleet has not delivered satisfactory results.

There are two pillars to the fleet capacity management measures. One is the entry-exit regime, which requires new capacity to be balanced by withdrawing an equivalent amount, both in terms of tonnage and power. The other is a bar on replacing capacity withdrawn with public aid. These provisions were developed in implementing rules combining both pillars (with provisions allowing for a tonnage increase for safety reasons), so as to calculate fleet capacity ceilings for each Member State's fleet. Additional provisions were developed to manage the transition between the old and the new regimes. This is positive, as it prevents aggravation of the problem.

All Member States have complied with legal fishing capacity limitations. Though some had difficulties when the new rules came into force, today most Member States have fleets with capacity under the ceilings they are allowed. This margin averages 10% in tonnage and 8% in power. This means that reductions in the size of the fleet were partly achieved without public aid.

Specific treatment was introduced for fleets registered in the outermost regions of the European Union by means of Council Regulation (EC) No 639/2004<sup>6</sup>. This excluded fleets in these regions from the general fleet management rules, and set limits on capacity per fleet segment defined for Azores, Madeira, the French overseas departments and the Canary Islands. The regime has worked satisfactorily, although increases to capacity limitations for some segments were required.

Given that Member States have complied with fishing capacity management rules, Article 16 on the conditionality EU funds for the fleet has never been applied.

The reference levels under Article 12 are additional limits to fishing capacity, both in terms of tonnage and power. They do not apply to the Member States which joined the EU after 2003, and represent no additional constraint in relation to the capacity ceilings resulting from the entry-exit regime. The EU Fleet Register has performed well as a tool to monitor compliance with fishing capacity management rules.

Finally, Member States are obliged to report on fleet capacity, and this is an essential component of the policy. The results assessed are not satisfactory. Member States have reported to the Commission annually, providing information for the Commission's annual report on the state of the fleet. However, the reports might have

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<sup>6</sup> Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets in the Community outermost regions.

been expected to show an excess of fishing capacity, the most important issue at stake, and the data available is inconclusive. The reporting tool has not enabled precise estimates of excess fishing capacity per segment or fishery.

In view of the above, some conclusions can be drawn concerning the performance of the fishing capacity management provisions:

- Despite compliance with the fishing capacity management rules defined at EU level, there are still clear indications of over-capacity in the EU fleet, namely: excess of fishing mortality in some stocks, low profitability and low capacity utilisation.
- While tonnage is a reliable fishing capacity indicator, the Commission has serious concerns about the reported power of fishing vessels, as the data suggest under-declaration, making it extremely difficult to estimate fleet capacity accurately.
- The policy is static, in that it only establishes a ceiling, with no specific objectives for reduction. Compliance with nominal capacity limits under these ceilings does not mean that there is no persistent overcapacity. The system does not integrate technical progress into the management measures. However, due to technological progress, a static capacity ceiling leads to overcapacity.
- It has proven very difficult to set clear objectives for the size of the fleet and to monitor the balance between fishing capacity and fishing opportunities due to the complexity inherent in quantifying over-capacity. Determining an adequate level for the size of the fleet given a certain amount of fishing possibilities needs to take into account factors other than the biological and economic.

### **3. ARTICLE 17.2 – FISHING RESTRICTIONS IN THE 12 NAUTICAL MILES WATERS**

The authorisation for specific fishing restrictions under article 17 paragraph 2 of Council Regulation (EC) No 2371/2002 expires on 31 December 2012 with an obligation for the Commission to report to the European Parliament and the Council on the arrangements set out in the paragraph.

The objectives related to introduction (before entry into force of the CFP) of specific arrangements in the waters up to 12 nautical miles as formulated in Article 17(2) of Council Regulation (EC) No 2371/2002 were:

- conservation of fish resources through allowing only small-scale coastal fleets into the area. These fleets generally exert less fishing pressure in areas which may include the most sensitive EU waters, and include spawning areas, and
- preservation of coastal fleets' traditional fishing activities to maintain the social and economic infrastructure of these areas.

These specific restriction provisions were introduced in the CFP in 1983 and have been extended with every reform of the policy since.

Since 2002, the EU has taken in new members on two occasions. The Acts of Accession in 2004 (10 Member States) and 2007 (two Member States) make no

specific reference to the 12 nautical miles regime, and no amendments were proposed or made to Annex I of Council Regulation (EC) No 2371/2002.

Commission services surveyed the Member States concerned and affected by the regime. In addition to the arrangements listed in Annex I, eight Member States reported on the presence of arrangements under existing neighbourhood relations outside Annex I, most of which are reciprocal, although this is not a legal prerequisite. No requests were made to include these or other arrangements into Annex I of Council Regulation (EC) No 2371/2002 (Denmark and Germany have requested a corrigendum in 2008). Most of the new Member States plus Greece have not had specific reciprocal access arrangements in place. They restrict fishing in the 12 nautical miles area to their national fleets, and have no fishing activities in the 12 nautical miles area of other Member States. A number of Member States introduced specific (technical) conservation measures for vessels fishing within these areas, contributing to conservation as referred to in recital 11 in Council Regulation (EC) No 2371/2002.

Since 2002, the Commission was not informed of (real) problems or conflicts on specific restrictions, whether on setting them, or on their management and functioning. Member States were able to resolve problems without having to refer any of them to the Commission. The regime is very stable, and the rules have continued to operate satisfactorily. All Member States stressed the importance of the specific restrictions in the light of their original objectives in their reactions to the Green Paper on CFP reform. One Member State suggested extending the 6-12 miles regime to 10-20 miles to achieve the regime's objectives more effectively.

Considering the current conservation state of many stocks, and the continued sensitivity of coastal waters for conservation, as well as ongoing difficulties in coastal areas highly dependent on fisheries and unlikely to benefit from other economic development, the objectives for the specific regime appear to remain as valid as they were in 2002. Modifying current arrangements might disrupt the current balance that has developed since the introduction of the special regime.

### **Annex I – Recovery and/or Management Plans adopted by Council since 2003**

Council Regulation (EC) No.	Type of plan	Species (number of stocks)	Areas
423/2004	Recovery	Cod (4)	Kattegat, Skagerrak, North Sea, Eastern Channel, West of Scotland, Irish Sea
811/2004	Recovery	Northern hake (1)	Kattegat, Skagerrak, North Sea, Channel, West of Scotland, around Ireland, Bay of Biscay
2115/2005	Recovery	Greenland Halibut (1)	Northwest Atlantic
2166/2005	Recovery	Southern Hake (2) & Norway Lobster (1)	Cantabrian Sea, Western Iberian peninsula waters
388/2006	Management	Sole (1)	Bay of Biscay
509/2007	Recovery & Management	Sole (1)	Western Channel
676/2007	Recovery & Management	Plaice (1) & Sole (1)	North Sea
1098/2007	Recovery	Cod (2)	Baltic Sea
1100/2007	Recovery	European eel (1)	MS estuaries/rivers into ICES areas III-IX and Mediterranean
1559/2007	Recovery	Bluefin tuna (1)	Eastern Atlantic and Mediterranean
1300/2008	Recovery & Management	Herring (1)	West of Scotland
1342/2008	Recovery & Management	Cod (4)	Kattegat, Skagerrak, North Sea, Eastern Channel, West of Scotland, Irish Sea

**Annex II - Stocks under annual fishing opportunities in the North-East Atlantic and adjacent waters – 2003 - 2011**

Scientific advice about the state of the stock	No. of fish stocks									
	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Outside safe biological limits	30	29	26	26	26	28	27	22	19	26
Inside safe biological limits	12	10	14	11	12	13	12	15	15	13
The state of the stock is unknown due to poor data	48	53	53	57	58	55	57	60	61	56
Scientific advice about overfishing	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
The rate of fishing on the stock is known compared to maximum sustainable yield rate			34	23	32	33	35	39	35	33
The stock is overfished			32	21	30	29	30	28	22	27
The stock is fished at the maximum sustainable yield rate			2	2	2	4	5	11	13	6
Difference between TACs and sustainable catches	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Excess of TAC over sustainable catch (as advised by ICES/STECF according to the precautionary approach) in percentage of fish stocks	46%	49%	59%	47%	45%	51%	48%	34%	23%	45%
Summary of the scientific advice about fishing opportunities	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Stocks where stock size and fishing mortality can be forecast	40	34	40	31	29	30	34	36	36	34
Stocks where a scientific advice concerning fishing opportunities is available	59	52	54	65	61	62	63	55	55	58
Stocks where no scientific advice is available	31	40	39	29	35	34	33	42	40	36