

September 2010
Legislative Briefing

Concept paper: The proposed legal framework for a reformed Common Fisheries Policy including options for regionalisation

Executive Summary

1. Background

This concept paper aims to provide a brief description of the general requirements that the legislative framework for the post 2012 reformed Common Fisheries Policy (CFP) will need to fulfil to ensure a sustainable EU fisheries policy in future, both in relation to content and structure. It also demonstrates how both formal and less formal regionalised management systems could be facilitated in the new general regulation.

2. Relevant legal considerations

The paper starts by setting out some of the underlying legal conditions and considerations which will be important for a reformed CFP, particularly as they have arisen as a result of the Lisbon Treaty. Issues discussed include consideration of:

- the appropriate **legal base** for the new reformed CFP basic regulation, which we suggest is likely to be Article 43(2), TFEU. A joint legal base of both Article 43(2) and 43(3), TFEU may also be possible (though much more unlikely): both of these will entail a legislative process that involves the European Parliament and will therefore satisfy basic democratic requirements and address some of the criticisms relating to legitimacy, and resulting issues of compliance, that the CFP currently faces from a variety of sources;
- questions of **competence, subsidiarity and proportionality**, which are relevant because fisheries policy is subject to both shared competence (generally) and exclusive competence (in relation to the conservation of marine biological resources under the CFP); the application of these principles may well support fisheries management, at least in relation to some aspects, at Member State/regional level (and therefore a more regionalised approach);
- questions of **delegation** either through Article 2(1), TFEU in relation to areas of exclusive competence and by using the delegated procedure under Article 290 (but not in relation to measures passed with a legal base of Article 43(3)).

3. The reformed CFP basic regulation

As a result of the need for a comprehensive and unified CFP reform, we suggest that there should be one new basic regulation which sets out the management structure of the reformed CFP and the high level objectives that need to be satisfied by the new rules. In order to guarantee sustainable EU fisheries, we suggest that these should consist of:

- fundamental objectives: which should form the basis of any new fisheries management structure, for example, taking an ecosystems based approach, following scientific advice, consistency with other EU policy and legislation and others;
- basic management conditions: which should include (amongst others), for example, requirements for data to be collected that will allow the impact of fishing on all species (not just target species) to be assessed and managed, for the number of species caught (rather than landed) to be central to future fisheries management measures and for fisheries to be managed on a regionalised basis to implement the ecosystems based approach.

4. The need for a regionalised framework (on the basis of ecosystems regions)

From a scientific perspective and from the point of view of effective and sustainable fisheries management, a regionalised management framework on the basis of ecosystems regions is crucial. This is an approach already taken in the Marine Strategy Framework Directive¹ (MSFD).

5. The possible structure of a regionalised management framework

In this section, the paper explains how a regionalised management structure might be achieved from a legislative and administrative point of view. Certain aspects should, we suggest, be applied irrespective of the degree of regionalisation adopted. These include (amongst others):

- provision for the fundamental objectives and basic management conditions above in a new basic regulation, which also makes provision for new **regional management regulations** to be passed;
- new regional management regulations which will provide for the elaboration of regional management plans, involving, possibly, a regional management body.

Depending on the degree of regionalisation required, the new regional management plans and frameworks provided for in the new regional management regulations could take a variety of different forms based on:

- EU level and national management plans (like the Mediterranean Regulation²), leaving most 'regional' management and decisions to be taken at EU level, giving Member States and other regional bodies consultative status;
- empowering Member States to set up regional management bodies with whatever legislative and decision-making powers the EU's legislators are willing to delegate. This option could result in an entirely regionalised management system with a regionalised management body;
- regional management regulations which provide that fisheries management in a particular eco-region should be carried out by way of international regional management bodies and procedures, for example by amending and extending existing regional seas conventions. This model would be extremely complex and politically and legally difficult to achieve.

Under any of the approaches above, a system of monitoring and compliance will need to be in place to oversee regional management. A precise timetable for setting up regional management structures and for setting regional management rules and practices is also necessary, with penalties for non-compliance.

A regional governing body could either have advisory or decision-making functions depending on the regionalisation model chosen and should be made up of Member States' representatives with voting rights, as well as representatives from non EU countries (with observer status and possibly the right to comment and make observations) with input from other stakeholders, including industry stakeholders and civil society organisations (NGOs). Regional scientific advisory bodies would need to advise regional bodies on management plans. They should set a range of possible ways of allocating fishing opportunities, but always with a stated maximum ceiling which could not be exceeded. Public rights to access to environmental information in general, as well as to public participation procedures and access to justice as required under the Aarhus Convention would need to be guaranteed in relation to the regional management system and regional management body.

Whichever structure is chosen for regionalisation, it will be crucial that the basic regulation allows for flexibility in the way that fisheries are managed in different regions, as different models may be appropriate for a variety of reasons. As well as allowing for regional variations, the new basic regulation will need to allow fisheries management to evolve over time. Fisheries management measures will need to be able to adapt to changing environmental circumstances.

¹ Directive 2008/56/EC.

² Council Regulation (EC) 1967/2006.

Table of Contents

1. Background	4
2. Relevant legal considerations	4
2.1. <i>Legal bases</i>	4
2.2. <i>Competence, subsidiarity and proportionality</i>	5
2.3. <i>The delegated procedure</i>	6
2.4. <i>Consequences for possible regionalisation models</i>	7
3. The reformed CFP basic regulation	7
3.1. <i>One new basic regulation</i>	7
3.2. <i>Fundamental objectives</i>	7
3.3. <i>Binding EU fisheries management conditions</i>	10
3.4. <i>Other fisheries</i>	13
3.5. <i>Provision for secondary legislation</i>	13
4. The need for a regionalised framework (on the basis of ecosystems regions)	13
5. The possible structure of a regionalised management framework	14
5.1. <i>The necessary legislative structure</i>	14
5.2. <i>Different regionalisation models</i>	14
5.3. <i>Management bodies and their responsibilities</i>	17
5.4. <i>Other aspects of regionalisation</i>	20

1. Background

This paper aims to provide a brief description of the general requirements that the legislative framework for the post 2012 reformed Common Fisheries Policy (CFP) will need to fulfil, both in relation to content and structure, to ensure a sustainable EU fisheries policy in future. It also demonstrates how both formal and less formal regionalised management systems could be facilitated in the new general regulation. This paper is based on a long-term approach to fisheries management for which 2012 is merely the starting point of a reformed management system. It therefore looks beyond 2012 and considers how the legal structures put in place in this CFP reform could enable the evolution of fisheries management throughout the EU to ensure fisheries are managed sustainably in the future, including through the practical implementation of an ecosystems based approach.

Section 2 sets out the basic legal considerations that need to be considered in relation to the reform of the CFP, whether or not there is regionalisation. Section 3 explains why there needs to be one new basic regulation which sets out the binding fundamental objectives and management conditions on which the reformed CFP must be based, and describes some of the crucial fundamental objectives and management conditions. Finally, sections 4 and 5 set out some of the reasons which make (at least some degree of) regionalisation necessary, as well as some possible structures for a regionalised management framework.

2. Relevant legal considerations

2.1. Legal bases

In a change from Article 37, TEC, Articles 43(2) and 43(3) TFEU set out two different legal bases for fisheries management. Article 43(2) TFEU is the appropriate legal base for EU fisheries regulation in general. Article 43(3), TFEU introduces a different legal base restricted specifically to the fixing of prices, levies, aid and quantitative limitations, as well as the fixing and allocation of fishing opportunities, i.e. the setting and distribution of Total Allowable Catch limits (TACs) between Member States.

Article 43(2), TFEU requires the use of the ordinary legislative procedure which involves the European Parliament. Article 43(3), TFEU relies on a non-legislative procedure involving a direct proposal from the Commission to the Council without any involvement of the European Parliament.

The discussion paper at Appendix 1 explains that current fisheries legislation often combines rules on setting and distributing total allowable catch limits with rules on how such limits are to be set and how fishing effort is to be limited. For example legislation setting out multi-annual management plans aimed at achieving the sustainable exploitation of fish stocks in effect set framework rules for the allocation of fishing opportunities. Such legislation can deal with the specific fixing and allocation of fishing opportunities, but at the same time it deals with issues surrounding sustainability (e.g. how to determine when a fish stock is within safe biological limits), and with issues such as monitoring, surveillance and the evaluation of management measures,³ recording requirements, access restrictions and inspection,⁴ the preparation of management plans and even re-stocking.⁵

³ See for example Regulation 676/2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea or Regulation 509/2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel.

In the new basic regulation governing the reformed CFP it is unlikely that there will be any provisions directly fixing and allocating fishing opportunities. Any rules in this regard would be very general and, in any case, secondary to the regulation's main purpose. We therefore suggest that the **new basic regulation** should have **Article 43(2) as its overall (primary) legal base** (and also deal with measures that may otherwise be dealt with under Article 43(3) TFEU where those measures are incidental to the main purposes and objectives pursued by the basic regulation under Article 43(2)).

If Article 43(3), TFEU were to be interpreted more widely, or potentially in relation to subsidiary legislation with more mixed objectives, it may be possible (or necessary) to consider a **joint legal base of Articles 43(2) and 43(3) TFEU** if the measures dealt with in the two procedures are equal in importance and weight.⁶

Added administrative benefits of regulations based either on Article 43(2) only or on Article 43(2) and 43(3) TFEU jointly are that the legislative process becomes more democratic as the European Parliament is involved in all legislative decision making. This not only complies with the spirit of the Lisbon Treaty but it also addresses some of the criticisms relating to legitimacy, and resulting issues of compliance, that the CFP currently faces from a variety of sources.

Please see the paper attached at Appendix 1 for a more detailed discussion of these issues.

2.2. Competence, subsidiarity and proportionality

The Lisbon Treaty has not just made provision for two different legislative procedures in relation to fisheries; it has also introduced different rules on EU and Member State competence.

The Lisbon Treaty now expressly sets out what exclusive and shared competence actually mean:

- (i) **Exclusive competence:** Article 2(1), TFEU explains that only the EU may legislate and adopt legally binding acts in areas of exclusive competence. However, Article 2(1) also states that the EU can empower Member States to legislate and adopt legally binding acts themselves. Therefore it is possible (and often necessary) for Member States to pass legislation, even in areas of exclusive competence, as long as Member States have been empowered to do so by the Union.
- (ii) **Shared competence:** Article 2(2), TFEU says that in areas of shared competence both the Union and the Member States may legislate and adopt legally binding acts, but Member States can only exercise their competence to the extent that the Union has not exercised its competence (or to the extent that the Union has decided to cease exercising its competence).

Article 2(1), TFEU is potentially particularly important in relation to possible regionalisation models for the reformed CFP, as it shows that it is possible for the EU to empower Member States (and possibly a regional body acting through Member States), to legislate or adopt legally binding acts as regards regional fisheries management. This could, in theory, cover general fisheries management measures as well as fisheries conservation measures and even the fixing and allocation of fishing opportunities, if a basic regulation could be passed that contained such empowering language. Obviously there are a number of reasons, practical, political and otherwise, why this is not likely, particularly in relation to the fixing and allocation of fishing opportunities (which has, after all, been given additional strength by being expressly referred to

⁴ See Regulation 1098/2007 establishing a multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97.

⁵ See for example Regulation 1100/2007 establishing measures for the recovery of the stock of European eel.

⁶ However, the jurisprudence of the European Court of Justice shows clearly that exceptions to a general rule in EU law (Article 43(3), TFEU being the exception to the general rule set out in Article 43(2), TFEU), must be interpreted strictly and restrictively as otherwise the object of the underlying measure (policy) would be frustrated, see for example Case C-237/84 *Commission v Belgium* 2 CMLR 865; or Case-157/06 *Commission v Italy*, at para 23.

in the Treaty by reference to a separate and stand-alone legal act – see Article 43(3), TFEU discussed above). However, Article 2(1) is applicable and could be used as the basis for a whole number of regionalised management acts.

Generally, fisheries management is now subject to shared competence between the EU and Member States (see Article 4(2)(d) TFEU). However, the EU has retained exclusive competence in relation to the 'conservation of marine biological resources under the Common Fisheries Policy' (see Article 3(1)(d) TFEU)).

It should be noted that the conservation of marine biological resources under the CFP is not the same as the fixing and allocation of fishing opportunities, although the fixing and allocation of fishing opportunities may well be seen as an act of conservation of marine biological resources under the CFP and therefore subject to exclusive EU competence.

The complicating factor caused by having one policy area subject to different arrangements as regards competence is that legislation subject to exclusive competence and legislation subject to shared competence must satisfy different legal requirements under the Treaty:

- (i) In relation to areas of **shared competence only**: The Union 'shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action be better achieved at Union level' (Article 5(3) TEU and Protocol on the application of the principles of subsidiarity and proportionality). This is known as the **subsidiarity principle**.
- (ii) In relation to areas both of **exclusive and shared competence**: Union action must never 'exceed what is necessary to achieve the objectives of the Treaties' (Article 5(4) TEU). This is known as the **principle of proportionality**.

As already seen, breaking down a comprehensive system of fisheries management into different constituent parts (i.e. CFP (fish stock) conservation objectives and general fisheries management measures) is not easy or always even possible. This means that the new basic regulation regarding the CFP will probably need to satisfy both the subsidiarity and the proportionality principles.

It is clear that the current centralised fisheries management approach has not been successful in achieving its objectives and that it is moreover necessary to take a regionalised management approach to ensure an ecosystems based approach (see below). Therefore, it could be argued that the current system of centralised management could be considered unnecessary and, at least to some extent, disproportionate to achieving the aims of the CFP. It is possible that management at a regional level may be better suited both to achieving the objectives set out in the CFP and be fundamentally necessary to that end. Therefore, both the principles of subsidiarity and of proportionality potentially lend support to a regionalised management approach to fisheries, although this does not necessarily indicate the degree of regionalisation or 'delegation' or 'devolution' involved.

Section 5 below sets out possible options for regionalisation in this context.

2.3. The delegated procedure

Irrespective of the question of competence, Article 290 TFEU allows the new basic regulation to delegate to the Commission the power to adopt non-legislative acts to supplement or amend certain non-essential elements of the basic regulation. Many of the decisions of possible regional bodies in a regionalised CFP could probably be classed as supplementary and amending acts, for example (details of) management plans, as they would all be carried out in compliance with and indeed to implement the fundamental objectives set out in the basic regulation and to 'supplement' or 'amend' its basic management requirements. Therefore, regional management

bodies could submit at least some of their management decisions and proposed management measures to the Commission who could then follow the relevant procedure set out in Article 290 to pass the measure as a delegated act.

It is necessary to note in this context though, that the fixing and allocation of fishing opportunities and the fixing of prices and subsidies, for example, which all fall within Article 43(3) TFEU, cannot be used as the basis for delegated acts under Article 290 TFEU (as Article 43(3) does not, as is required for Article 290 TFEU to apply, give rise to 'legislative acts' as defined by the Treaty).

2.4. Consequences for possible regionalisation models

The considerations set out above show that, as long as the new basic regulation sets out clearly if, how and when there should be a delegation of powers (under Article 2(1), TEU) and/or if, how and when the delegated procedure should be applied (applying Article 290, TFEU), a regionalised framework is possible and it is possible to create a regional governance structure (including possible regional bodies) – either at EU or Member State/regional level - to implement EU measures and to legislate/adopt binding legal acts, as well as to propose measures that could be passed by a Commission proposal applying the delegated procedure under Article 290. Regionalisation options are discussed in section 5 below.

3. The reformed CFP basic regulation

3.1. One new basic regulation

As a result of the need for a comprehensive and unified CFP reform and the analysis above with regard to competence and legislative procedures, we suggest that there should be one new basic regulation which sets out the management structure of the reformed CFP and the high level objectives that need to be satisfied by the new rules. The new basic regulation would almost certainly have Article 43(2), TFEU as its legal base (see above and attached discussion paper at Appendix 1).

3.2. Fundamental objectives

The new basic regulation must set out the fundamental objectives for the reformed CFP, not just as aspirational goals, but as **binding requirements**. This means it must present the CFP's fundamental objectives in such a way that the EU and its Member States are obliged to take measures to achieve them by certain set dates (and possibly via a series of defined milestones which must also be achieved by certain dates).

The fundamental objectives need to include the following broad aims:

- (i) **Sustainability:** Fisheries management must be sustainable. All aspects of the new management framework must be tested against requirements of sustainability. A separate section of the new basic regulation should set out the tools to be used for assessing sustainability and ways to achieve sustainable fisheries management, for example as regards **access to fishing rights** on the basis of sustainable fishing practices, **incentives and rewards** for sustainable fishing practices (e.g. additional fishing allocations or subsidies) and penalties (e.g. penalty points, loss of licence and loss of fishing rights) for breaches of the CFP and other EU legislation. Subsidies which encourage overcapacity, overfishing or which set an incentive to break rules do not meet sustainability requirements and must be eliminated. Rules on **markets and prices** must also comply with the requirement for sustainable fisheries management and must not set false or perverse incentives. There must be robust rules on real-time fisheries closures.

- (ii) **Ecosystems based approach:** The ecosystems based approach must be applied in practice. This means that EU **fisheries must be managed on an ecosystems basis** (see section 4 below in which we explain why ecosystems management necessitates a regionalised management approach). It is therefore crucial that **access rights must be granted by reference to ecosystems regions**, but also that scientific assessments of fish stocks (including by taking account of more general ecological criteria) are carried out on a regional basis. Different licences with different fishing allocations must be used in different ecosystem regions and no transfers of fishing opportunities (or licences) must be allowed between regions. Because of the current lack of relevant scientific data, true ecosystems based management must be introduced in a **phased approach**, taking account of increased information as data is collected. (See Appendix 2 for an example of how this could be achieved using the Fishing Credits System). This must include the consideration and application of criteria for good environmental status under the Marine Strategy Framework Directive (MSFD⁷ - see also (iii) below).
- (iii) **Consistency with other EU policy and legislation:** The reformed CFP must be consistent with other EU policy areas and must comply with and integrate EU (as well as relevant international law) environmental requirements (in line with the integration principle – a binding principle of EU law that is required under Article 11, TFEU). Relevant EU law includes in particular:
- the practical application of the **precautionary principle** (which must be applied, for example, in the face of uncertainty when allocating fishing opportunities); an obligation to manage resources so as to **comply with the Marine Strategy Framework Directive**. This means taking ecological factors, such as the indicators of characteristics, pressures and impacts on marine environmental status set out in the MSFD, into account in fisheries management plans and when allocating fishing opportunities; in particular this includes the consideration of the descriptors⁸ which help to establish **good environmental status** (GES) under the MSFD, which include biological diversity at a regional ecosystem level⁹, populations of fish stocks within safe biological limits with mortality levels equal to or lower than MSY¹⁰, all elements of marine food webs (including large fish)¹¹, seafloor integrity¹² and contaminants in fish¹³;
 - an obligation to **comply with the Habitats and Birds Directives**, including a **prohibition of all potentially damaging fishing practices in Special Areas of Conservation** (and other Marine Protected Areas)¹⁴ unless strategic environmental assessments and/or appropriate assessments have shown that the fishing practice in question will not cause damage to protected habitats and species. This will also include an obligation to comply with all relevant international law requirements, including the UN Law of the Sea Convention,¹⁵ the UN Fish Stocks Agreement,¹⁶ the FAO Compliance Agreement,¹⁷ the Convention on Biological Diversity,¹⁸ Agenda 21,¹⁹

⁷ Directive 2008/56/EC.

⁸ See Decision 2010/447/EU on criteria and methodological standards on good environmental status of marine waters.

⁹ Ibid, Annex, Descriptor 1, see in particular also para 1.7.

¹⁰ Ibid, Annex, Descriptor 3, see particularly also para 3.1.

¹¹ Ibid, Annex, Descriptor 4, see particularly also para 4.2.

¹² Ibid, Annex, Descriptor 6.

¹³ Ibid, Annex, Descriptor 9.

¹⁴ For similar approach see the Mediterranean Regulation, Article 4.

¹⁵ United Nations Convention on the Law of the Sea, 1982.

¹⁶ The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

¹⁷ FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas 1993.

¹⁸ Convention on Biological Diversity 1992.

the OSPAR Convention,²⁰ the Helsinki Convention,²¹ the Barcelona Convention and the SPA and Biodiversity Protocol,²² the Bonn Convention,²³ the Espoo Convention,²⁴ and other customary law and voluntary codes of conducts including in particular the FAO Code of Conduct on Responsible Fisheries²⁵ and the Johannesburg Plan of Implementation (under the World Summit on Sustainable Development).²⁶

- (iv) **Scientific basis for setting fishing opportunities:** There must be an obligation for **fishing opportunities to be set in accordance with scientific advice**. This should apply whether catch limits and/or long-term management plans are used. Scientifically set maximum catch limits must not be exceeded. This must be laid down as a basic and binding condition of all future fisheries management in the new basic regulation under the reformed CFP. Any instruments that subsequently aim to set up rules for fixing or allocating fishing opportunities or which specifically allocate fishing opportunities (to Member States for example) must implement and comply with this high-level requirement.
- (v) **Clarification of access rights:** Access rights must be clearly defined, particularly in the Mediterranean, where the CFP should extend to all areas where a Member State has and/or exercises jurisdictional rights in accordance with the UN Law of the Sea Convention (as is the case for the MSFD for example²⁷). Historical fishing rights, if they are to continue, must be managed at a regional level as part of the wider regional management framework. The **right of common access** (including potentially within the 12 nm zone) **must be made subject to the new regionalised management framework and requirements to obtain licences and fishing allocations/rights** at a regional level and must apply to all European (and, subject to separate agreement, non-European) boats operating in the region.
- (vi) **Limit and target reference points:** International obligations to reduce fishing effort to fMSY (the fishing mortality that generates maximum sustainable yield) by 2015 must be complied with, but, as stated in the UN Fish Stocks Agreement²⁸, MSY should only be considered as an intermediate step towards achieving sustainability. Therefore fMSY must be a **ceiling limit reference point and not a target reference point** (taking a precautionary approach). Target reference points should become progressively more ecosystems based in their outlook, starting with a move to fMEY (the fishing mortality that generates **maximum economic yield**) for all commercial species and all other fish/shellfish species caught within each fishery under the CFP, and moving on to more holistic targets that are based also on a consideration of other ecosystems and ecological criteria (for example impacts on the food web/resilience and other ecological criteria²⁹), particularly for mixed fisheries where the achievement of MSY for each stock simultaneously would be very difficult. This move to a more ecological assessment of fish stocks is necessary because fish stocks are not only an economic 'resource' and food source that must be conserved for ongoing exploitation (under the CFP), but they are at the same time an integral part of the marine environment and of the marine ecology (under EU law). This is confirmed by the fact that fishing is subject to the requirements

¹⁹ Agenda 21, adopted at the UN Conference on Environment and Development in 1992 (Earth Summit in Rio de Janeiro), especially Chapter 17 on Protection of the Oceans.

²⁰ Convention for the protection of the marine environment of the North-East Atlantic; 1992.

²¹ Convention on the protection of the marine environment of the Baltic Sea area 1992.

²² The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention); adopted on 16 February 1976.

²³ Convention on the Conservation of Migratory Species of Wild Animals 1979.

²⁴ Convention on Environmental Impact Assessment in a Transboundary Context 1991 (Espoo Convention).

²⁵ FAO Code of Conduct for Responsible Fisheries 1995.

²⁶ Johannesburg Plan of Implementation of the World Summit on Sustainable Development.

²⁷ Directive 2008/56/EC; Article 3(1)(a).

²⁸ See footnote 15, at Annex II, Article 7.

²⁹ In particular also the MSFD descriptors already identified – see above.

of the MSFD and that fish species are protected under the Habitats Directive, for example. When calculating fishing ceiling limit and target reference points it is crucial that the targets set for each Good Environmental Status indicator under the MSFD (see above) are complied with.

3.3. Binding EU fisheries management conditions

To support these binding fundamental objectives, a number of **basic management conditions** must be set for EU fisheries management. Again, duties must be imposed for the EU/Member States to take the necessary measures to implement and comply with the relevant criteria (and milestones should be fixed for specific dates in relation to each one), including:

- (i) **Regionalised management:** EU fisheries must be managed on a **regionalised basis** to ensure that the ecosystems based approach is implemented (see section 4 below). This could be on the basis of an entire regional management structure with a regional body in charge of decision-making for the area, or by applying a less formal regional approach through Member States co-ordination or the Commission taking a regionalised approach and requiring advice from scientists and other bodies to be compiled on regionalised basis. However, licences and fishing opportunities must be allocated by reference to regions (see 3.2(ii) above). There must be co-ordination between regions in relation to migratory fish stocks.
- (ii) **Sustainable and ecosystems based management techniques, including:**
 - **Total Catch management:** Management plans and the allocation of fishing opportunities more generally must be based on total **catches**, not just on what is landed. This will help to prevent discards by enabling currently discarded (and therefore discounted) fish to be taken into account in the calculation of overall availability of fishing opportunities.
 - **All species considered:** All species which are or may be exploited (marine resources) must be considered in regional management plans and true Total Allowable Catches (rather than current TACs, which are in fact better described as total allowable landings) need to be made for all such species. This needs to be done in a phased approach as relevant data becomes available. Other non-fish or shellfish species which may be caught as bycatch also need to be accounted for and managed accordingly (for example marine mammals or birds, but excluding echinoderms for example). Impacts upon non-fish/shellfish species from fishing gear in terms of catch and non-catch mortality should be assessed on a regular basis, for example through environmental impact assessments and taking due account of the requirements of the MSFD in this regard.³⁰
 - **Discard ban:** In order to introduce effective total catch management, and monitoring of all fish and shellfish catch mortalities, **there must be a discard ban**. In this context, the new basic regulation should promote frameworks and projects that incentivise improved gear selectivity to avoid discards and those that promote the utilisation of discards in parallel with improved data collection, assessment and management of these species.
 - **Closure of protected sites to potentially damaging fishing:** Potentially damaging fishing practices must be prohibited in protected sites unless relevant strategic environmental assessments or, in specific cases, appropriate assessments show that no damage will be caused³¹. More generally, there must be provision in the

³⁰ E.g. consideration of Descriptor 6 in Decision 2010/477/EU which considers human pressures on the seabed and sea-floor integrity (including seafloor substrates for benthic communities).

³¹ And see for example Article 4, Mediterranean Regulation.

new basic regulation that strategic environmental assessments/environmental risk assessments must be carried out in relation to all potentially damaging fisheries (not just as regards protected sites). Impact assessment must be carried out on all species impacted by fisheries - i.e. non fish/shellfish species caught in net but also impacted by the gear on the seabed and on the effects of fishing on the marine environment (seabed disturbance, fishing litter, CO2 impact/vessel efficiency etc)³². Any activity that affects species managed under the CFP should also be assessed and managed, including the impacts of aquaculture escapees or non-native species on wild species caught in a fishery.

(iii) **Collection of scientific data**

- **Data requirements:** Scientific data must be collected on all marine resources/species caught, not just 'commercial' species. This should include species for which there are currently TACs and all bycatch and discards, so that they can be incorporated sensibly into (regional) fisheries management and fishing down the food chain, for example, can be avoided. Catch allowances can then be set with more accuracy and ecosystems based fishing allocation can ultimately take place (for example through the Fishing Credits System – see Appendix 2).
- **Improved fisher training:** Fisher training in the form of a vocational qualification for self sampling, needs to be enabled in order to allow fishers to help with scientific data collection in a format that can be used for stock and wider ecological assessment purposes and to enable the relevant scientific bodies to advise on management plans and/or set fishing opportunities on constantly improving data sets (as explored by the ICES workshop on fishers sampling of catches). This would enable a system that is able to harness the significant potential of the fishing industry itself to sample catches (subject to auditing), particularly in the face of national budgetary cuts for scientific research. Such training could also cover the basics of fisheries science to increase the understanding of scientific surveys and advice to the Commission. Better data and fisher involvement will lead to greater confidence in both the scientific research and the management measures based upon this research (including true total allowable catches).
- **Consistency with other EU policy:** Existing rules on data collection³³ must be expanded accordingly and information and data requirements and approaches contained in the revised CFP and the Integrated Maritime Policy and the Marine Strategy Framework Directive should be coordinated.

(iv) **Compliance and enforcement:** To achieve an effective culture of compliance, it is necessary to create a balanced and robust system of incentives and penalties, which should include the following requirements (not a comprehensive list, other additional measures will also be required):

- **Fully documented fisheries:** To enable all of the above goals to be met, to allow the **right incentives to be set** (i.e. for fishers to be able to prove that they have fished sustainably) and discourage cheating, a system of fully documented fisheries must be introduced, including video-monitoring, VMS, real-time electronic log-books and other electronic monitoring equipment, as well as observers.
- **Penalties: A robust system of penalties** for not complying with the new CFP rules and/or other relevant rules (for example in relation to environmental protection) is

³² Again, all the criteria to be considered in relation to good environmental status under the MSFD are relevant here, including the descriptors already mentioned, as well as, for example, descriptors 10 and 11.

³³ Regulation 199/2008 concerning the establishment of Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

required. This will necessitate amendments to the Control Regulation and the IUU Regulation³⁴. It is essential that a risk-benefit analysis is conducted, to ensure that the risk of being caught and its consequences outweigh the potential benefits of taking the risk to illegally fish.

- **Fishing licence allocation:** Fishing licences must be **limited in time** and be allocated on the basis of **sustainability criteria** specified in the new basic regulation or in secondary legislation (and must not lead to accrued rights or to an entitlement to compensation when the licence expires). Fishers should pay a **licence fee** to acquire the licence, which will contribute to the costs of management.
 - **Markets:** Rules on markets and price-setting, as well as aid and subsidies must be made on the basis only of rewarding sustainable fishing practices and must not lead to artificial or unrealistic incentives to overfish.
- (v) **Transparency and accountability:** Regionalised and EU **management frameworks need to be transparent** and based on stakeholder information and consultation with adequate **public access to review procedures**. This should include:
- **Periodic review and reporting requirements** on the part of Member States, regional bodies and EU institutions, say every two years, in order to review the **implementation of and compliance** with the new legal requirements (including fundamental objectives and basic management conditions), but also with any targets and requirements in secondary legislation. Provision needs to be made for what actions will be required (for example enforcement action through the European courts) if no or insufficient measures have been taken by Member States, EU institutions and other relevant EU/regional bodies to meet relevant targets and requirements.
 - Provisions that allow Member States, regional management bodies and other affected parties (including interested stakeholders) to hold law- and decision-makers to account through express **access to justice rights** in relation to all three pillars of the Aarhus Convention³⁵ (public rights of access to information, public participation and access to the courts) which should be available to use **in relation to all law-making and administrative decision-makers, including Member States, EU institutions and regional administrative and advisory bodies**, where they contribute to (regional and) EU fisheries management. In this context, provision needs to be made in the reformed CFP for possible regional management bodies and all stakeholders involved in them (or otherwise involved or interested in fisheries management in any way, including industry and environmental NGOs) to request the Commission to take infringement action. In addition, there should be rights for Member States, but also for the public, to **review any failure to comply with the fundamental objectives and basic conditions** described in this paper. In particular, the methods and basis for assessing fish stocks and setting fishing allowances should be accessible to the public, as should other regional management decisions.

³⁴ Council Regulations 1224/2009 and 1005/2008.

³⁵ The 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters. The Aarhus Convention has been signed by the EU and is therefore binding and an integral part of EU law, whether or not there has been EU implementing legislation (See Article 216(2), TFEU and Case T-115/94 *Opel Austria GmbH v Council* [1997] ECR II-39 ('*Opel*'), paras 49 and 101; see also Case C-181/73 *Haegeman v Belgium* [1974] ECR 449 ('*Haegeman*'), paras 3-5; Case 12/86 *Meryem Demirel v Stadt Schwabebisch Gmuend* [1987] ECR 3719 ('*Demirel*'), para 7. Case C 239/03 *Commission v France* [2004] ECR I-9325, para 25).

3.4. Other fisheries

It is crucial that the fundamental objectives and, where relevant, the basic management conditions must apply to all aspects of the CFP, including for example to aquaculture and EU international fisheries (e.g. Fishing Partnership Agreements). This means that the environmental and sustainability objectives of the reformed CFP should, for example apply to international fisheries agreements in the same way as to fishing within the EU. Future Fisheries Partnership Agreements and Protocols must move towards being concluded on a regional basis and incorporating the aims of the Cotonou Agreement,³⁶ covering trade, development and access rights in relation to fisheries and fish products.

Similarly, any future European Aquaculture Strategy will need to meet the same sustainability and environmental standards as the rest of the CFP and must be integrated into the CFP.

3.5. Provision for secondary legislation

Most of the fundamental objectives (section 3.2 above) and management conditions (section 3.3 above) will require further legislation to fill in details and to ensure their implementation. Where relevant, provision for such secondary legislation is to be made in the new basic regulation with a clear timetable for adoption and implementation.

Secondary legislation will be required, for example, in relation to Fishing Partnership Agreements, aquaculture, long-term management plans and/or regional management regulations (similar to the Mediterranean Regulation) – see below.

4. The need for a regionalised framework (on the basis of ecosystems regions)

From a scientific perspective and from a point of view of effective and sustainable fisheries management involving the practical implementation of an ecosystems based approach to fisheries management, a regionalised management framework on the basis of ecosystems regions is crucial:

- (i) An ecosystems based approach to fisheries management can only be achieved if management units are based on ecosystems regions. From a scientific point of view, management of the resource, including TACs and management plans, should apply by reference to ecosystems regions, rather than viewing fish stocks in isolation and basing assessments only on fish stocks.
- (ii) The reformed CFP must be consistent with the Marine Strategy Framework Directive, which introduces ecosystems regions (marine regions and sub-regions) into the management of EU marine waters as the correct and most effective approach to protect marine waters and marine ecology. As already noted, many ecological fisheries management conditions are covered by the MSFD which must also be applied and implemented through the CFP. Fisheries management must therefore be based on the marine regions and sub-regions defined in the MSFD, which necessitates a regionalised management approach of some description.
- (iii) Regionalised management on the basis of ecosystems enables an effective and efficient management plan to be introduced, including an effective total catch management system (see also section 3.3 (ii) above). This could include rights-based management with a limited ability to transfer quota rights within the ecosystems region (which could

³⁶ Partnership agreement between the members of the African, Caribbean and Pacific group of states of the one part, and the European Community and its member states of the other part; signed on 23 June 2000.

be within or between Member States), but not between ecosystem regions, and could be subject to an approach guaranteeing (an amended version) of relative stability.

- (iv) Regionalised management would allow fast, reactive management which could be adapted to suit different regions (for example as regards closed fishing areas/fishing protected areas³⁷) as long as those approaches comply with the fundamental principles and basic management conditions set out in the basic CFP regulation (discussed above).
- (v) A more regionalised approach may be required for fisheries management to satisfy the principles of subsidiarity and proportionality (Article 5, TEU, discussed in section 2 above). The framework for regionalisation and the level at which fisheries management decisions could best be taken in order to satisfy these principles needs to be considered (see section 5 below).

In ClientEarth's and the Marine Conservation Society's joint proposal for CFP reform, the Fishing Credits System (the FCS - see Appendix 2), we have suggested a way of managing fisheries and applying an ecosystems based approach.

However, whether or not the FCS is introduced, for the reasons set out above, management should at the very least be coordinated, to some extent, at the ecosystem regional level. It could, however, also be possible for management to be decentralised further (in accordance with agreed regionalised plans).

5. The possible structure of a regionalised management framework

5.1. The necessary legislative structure

Regionalised management under the reformed CFP could take a number of different forms.

First, irrespective of whatever regionalisation structure is pursued, it will obviously be necessary for the new basic regulation to provide the legislative structure and framework for regionalisation. Again, irrespective of the degree of regionalisation decided on, the most obvious way to set up the relevant structure is through providing - in the new basic regulation - for the use of **regional management regulations**.

If the model set out above is followed, the new basic regulation will provide the fundamental objectives and management conditions for the new CFP, as well as potentially much more specific conditions, which the regional management regulations will need to meet. If this new framework is to provide for more significant regionalisation and the delegation of decision-making and administrative functions to regional bodies, for example, then this will need to be clearly provided for in the new basic regulation in order to satisfy the legal framework requirements already mentioned above.

5.2. Different regionalisation models

The new regional management regulations should set down the relevant regional management plans, possibly further split into management plans for marine sub-regions. In fact, this is not so different from one of the approaches that already exists now under the CFP. The Mediterranean Regulation, for example, is already a form of regional management regulation in any case. Long-term management plans are similar too, except that they are currently based on fish stock management (single species or sometimes groups of species), rather than being linked to

³⁷ See for example the approach taken by the Mediterranean Regulation to Fishing Protected Areas – see Chapter III, Articles 5 - 7.

ecosystems regions. Taking an ecosystems based approach requires there to be regional management plans (and therefore regional management regulations) based on the marine regions and sub-regions of the MSFD (see section 4 above), and the current long-term management plans could be adapted to operate at regional levels and should then move from single species to multi-species to ecosystems based management.

Depending on the degree of regionalisation required, the new regional management plans contained in the new regional management regulations could take a variety of different forms:

- (i) Like the Mediterranean Regulation, they could provide for EU level and national management plans, leaving most 'regional' management and decisions to be taken at EU level, giving Member States and other regional bodies (e.g. Regional Advisory Councils, Regional Fisheries Management Organisations or scientific advisory bodies, such as the International Council for the Exploration of the Sea (ICES) consultative status, and requiring national management plans, for example, to be submitted to the Commission and/or the Scientific, Technical and Economic Committee for Fisheries (STECF) or an entirely different advisory body, for example, for evaluation and approval.
- (ii) Alternatively, they could attempt to go further and empower Member States to set up regional management bodies with whatever legislative and decision-making powers the EU's legislators are willing to delegate. As already discussed, general fisheries management measures may well be delegated in this way (according to the principle of subsidiarity and out of the necessity to guarantee ecosystems based management), but it is less likely that the legal acts provided for in Article 43(3) will be delegated in this way either because of political unwillingness (for example in relation to delegating the allocation of fishing opportunities) or because the appropriate level of regulation is at EU level (e.g. prices and subsidies). This option would result in an entirely regionalised management system with a regionalised management body made up, for example, of representatives of Member States (and representatives from non EU countries in the relevant region who have, at least, observer status), advised by regional scientific advisory boards with input from regional stakeholders/stakeholder groupings (including for example Regional Advisory Councils (RACs) and Members of the European Parliament). To ensure continuity and compliance, similar to arrangements with regard to Monitoring Committees in relation to Structural Funds, a representative of the Commission could participate in the regional management bodies in an advisory capacity.³⁸ The Structural Funds Regulation also shows a possible model for potential stakeholder involvement in management structures and bodies.³⁹ Structures could also be similar to those set up by the Magnuson Stevens Act in the US, but taking due account of the different legislative and administrative structures in the EU. The EU would be the empowering entity determining fundamental objectives and goals for fisheries management. The fundamental objectives and basic management conditions described above would be set at EU level, but practical and day-to-day management of fisheries and long-term regional management plans would take place at regional level. This would provide more flexibility for each region to find appropriate solutions for the region and would be entirely in line with the requirements of subsidiarity and proportionality.
- (iii) A final regionalisation model could go even further and, in the regional management regulations, provide that fisheries management in a particular eco-region should be carried out by way of international regional management bodies and procedures, for example by amending and extending existing regional seas conventions. Instead of using EU law to establish the necessary legal framework for regional fisheries management, it would also be possible to use international law, and in particular regional international

³⁸ Regulation 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, Article 64(2).

³⁹ Ibid, Article 11(1)(b) and (c).

conventions, to establish suitable management structures. Existing regional seas conventions (such as the Barcelona, OSPAR and Helcom Conventions⁴⁰), could be used as the basis for this management framework but, as these conventions do not currently regulate fisheries management, they would need to be amended to enable them to expand their role into regional fisheries management. Also, it would be necessary to allow for such management to be further 'regionalised' within the conventions' framework to ensure that management occurs on the basis of an ecosystem management unit. Obviously, this model would be extremely complex and politically and legally difficult to achieve, as it would require either entirely new regional fisheries management conventions or substantial and fundamental changes to existing regional seas conventions (with a partial ceding of power from the EU to international organisations to organisations whose members include non-EU states).

In any case, there will necessarily be a close link with other regional marine cooperation requirements, for example under the Marine Strategy Framework Directive, which are currently likely to be dealt with through existing bodies of the relevant regional seas conventions (e.g. OSPAR). It will be important to avoid duplication of effort in this regard (particularly for example in relation to the collection of data and scientific assessment and consideration of ecological criteria, such as the Marine Strategy Framework Directive's descriptors already mentioned above) and to find a way of co-ordinating between and co-operating with the existing regional (and international) bodies.

Under any of the approaches above, a system of checks and balances will need to be in place to oversee regional management (see above, section 3.3(v)). While clear and transparent governance structures and robust stakeholder involvement would help to enable scrutiny, specific aspects of regionalisation, for example the provision of scientific advice, may require closer supervision. This could be provided by a European Supervisory body, an existing body, such as STECF, or the European Commission itself. In addition, review procedures should include a right for regional bodies and their individual stakeholders to request the Commission to take infringement action. Also, regional management regulations and potential EU legislation on fisheries management, including regional management plans, should generally be addressed not only to the Member States, but also to the relevant regional management bodies and their stakeholders.

Whatever approach is used, it will be absolutely crucial for the new basic regulation to set out clear conditions which new EU legislative proposals need to comply with (including empowerment in line with Article 2(1) TFEU above or using the delegated procedure under Article 290 TFEU if relevant). It will also be important, either in the new basic regulation or in the regional management regulations, to have a precise timetable for setting up regional management structures and for setting regional management rules and practices, with penalties for non-compliance. In the period before these structures, rules and practices were introduced there would need to continue to be centralised management.

The basic regulation will also need to set out interim measures that would apply prior to the regional conventions coming into force and the regional management bodies becoming fully operational.

⁴⁰ Convention for the protection of the marine environment of the North-East Atlantic, 1992; Convention on the protection of the marine environment of the Baltic Sea area, 1992; The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention); adopted on 16 February 1976.

5.3. Management bodies and their responsibilities

Within any regionalised management system, the nature of the relevant regional management bodies, be they advisory only, or with delegated powers, as well as of other related bodies, and the involvement of stakeholders in the management process, will be absolutely crucial.

A regional governing body could either have advisory or decision-making functions depending on the regionalisation model chosen and should be made up of Member States representatives with voting rights, as well as representatives from non EU countries who are part of the region. Member States' representatives should be official representatives of the relevant Member States' governments and not representatives of any of the stakeholder groups, e.g. industry.

A regional governing body could be linked, formally or informally, with related existing bodies under the relevant regional seas conventions. Non-EU countries would either have observer status and the right to comment and make observations, or, if the body is established under international law, could be full signatories to the relevant convention and agree to be bound by the rules of the CFP.

The roles of regional governing bodies should be quite clearly defined in the basic regulation or other legislation. The body would receive scientific advice on management plans and catch limits and would either consult with relevant stakeholders and give them observer rights, or stakeholders could be involved in the decision-making process. A partnership concept as it exists in relation to Structural Funds could be pursued (see above).⁴¹ However, conditions will need to be that any regional management body with stakeholder input would need to ensure a fair and balanced representation of different stakeholder interests, without a preponderance of representatives from one type of stakeholder (e.g. fishing industry).

After the relevant consultation/input from stakeholders, the regional body would then either set the relevant plans and targets (if empowered to do so by the basic regulation), or, if further legislative action was required under an EU legislative framework, would submit recommendations/proposals to the Commission (to pass under the delegated procedure or, where necessary, under Article 43(2) and/or 43(3), TFEU) or to Member States (to legislate at domestic level).

The regional body should also be empowered to ask relevant Member States to implement real-time closures of fishing grounds in the region when required. Licences would be given to fishers by Member States (and other non EU states participating in the management system), but subject to rules set in the basic regulation, the relevant regional regulation and/or possibly by the regional governing body as well as other relevant EU rules.

Regional scientific advisory bodies would need to advise regional bodies on management plans. They should set a range of possible ways of allocating fishing opportunities, but always with a stated maximum ceiling which could not be exceeded. The scientific body would also have input into training requirements for self-sampling fishers and be in charge of gathering and analysing data (and tie in with other EU data collection obligations, for example obligations to monitor the environmental status of waters (including the health of fish stocks) under the MSFD and Integrated Maritime Policy). Where non-EU states also fish in a region, scientists should make allowance for the amount fished by non-EU states.

Although scientists should determine available resources for fishing opportunities, the involvement of other relevant stakeholders in other more general regional management processes needs to be guaranteed. As already mentioned, such other relevant stakeholders will need to include all countries bordering the marine region, as well as all countries involved in harvesting living resources in the region (and those affected by the harvesting of resources in

⁴¹ See footnote 39.

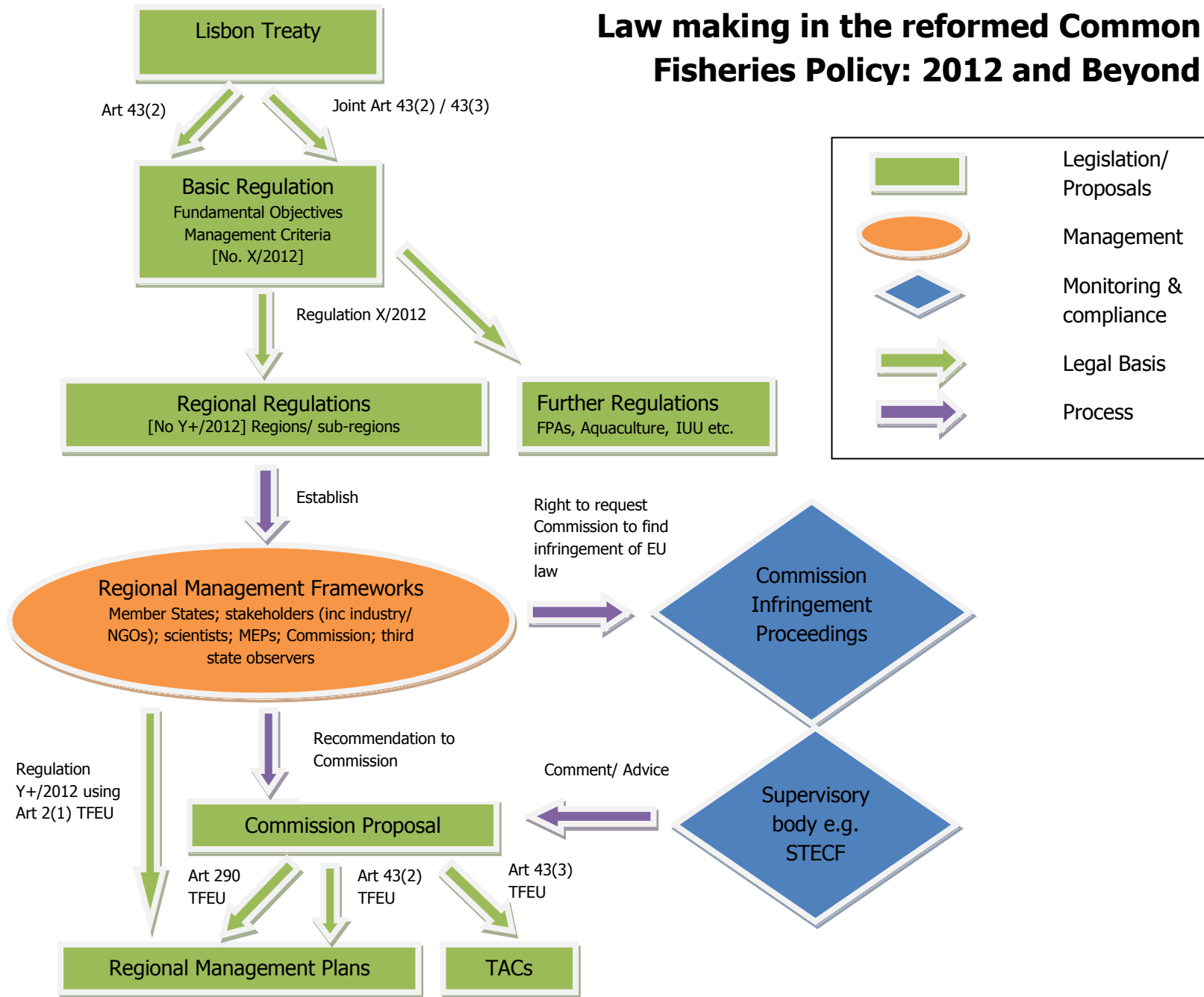
that region), but also possibly stakeholders whose non-fishing activities affect the region, e.g. through tourism, as well as the affected fishers/fishing industry (for example through Regional Advisory Councils (RACs)), appropriate nature protection/conservation bodies (whether governmental, quasi-governmental or non-governmental), seafood distributors, supermarkets, shipping, energy and aggregates industry, economists and possibly relevant consumer organisations.

No measures could ever be amended or agreed so as to be weaker than those required by scientific advice.

As already set out above in section 3.3(v) public rights to access to environmental information in general, as well as to public participation procedures and access to justice as required under the Aarhus Convention would need to be guaranteed in relation to the regional management system and regional management body. In addition, as already mentioned, a right to request the Commission to take infringement action should be provided for, as should robust evaluation processes.

Law making in the reformed Common Fisheries Policy: 2012 and Beyond

Proportionality Art 5(4), TEU; Subsidiarity Art 5(4), TEU; Member States empowered to adopt acts for areas of exclusive competence Art 2(1) TFEU



5.4. Other aspects of regionalisation

Whichever structure is chosen for regionalisation, it will be crucial that the basic regulation allows for flexibility in the way that fisheries are managed in different regions, as different models may be appropriate for a variety of reasons.

For multi-species fisheries involving discards, for example, approaches such as the Fishing Credits System proposed by ClientEarth and MCS may be most suitable, whereas in clean fisheries (for example pelagic fisheries), other systems may be suitable. It is important that the new basic regulation incorporates sufficient flexibility to allow Member States or regional management bodies to design fisheries management strategies that will suit the particular characteristics of the fisheries in their region. Interim management plans will need to include a combination of existing approaches (e.g. long-term management plans) and to set out how the change towards compliance with the underlying principles and conditions (e.g. catch allowances (instead of landing allowances), a discard ban and fully documented fisheries - see sections 3.2 and 3.3 above) will be achieved.

As well as allowing for regional variations, the new basic regulation will need to allow fisheries management to evolve over time. Fisheries management measures will need to be able to adapt to changing environmental circumstances and the impacts of changing uses of the seas, for example for the generation of clean energy. Regional fisheries management bodies will need to play a role in integrated maritime planning and should be able to adapt fisheries management measures to make use of maritime spatial planning tools as they become more widely available.

It will also be important for fisheries management measures to be able to adapt to make use of new technologies and improved data as they become available locally. This will mean the Control and IUU Regulations may need to be amended to ensure that, when combined with the basic regulation they set out the framework and requirements in relation to data recording, surveillance and enforcement, but do not prescribe the technologies that should be used.

The new basic regulation needs to contain the central over-riding principles and conditions which will need to be satisfied by any approach to ecosystems based management. These conditions are likely to be interpreted differently by different member states and different regions it is therefore extremely important that the basic regulation contains sufficient binding requirements to be able to secure sustainable ecosystems-based fisheries management throughout Europe.

ClientEarth

29 September 2010

Contact details		
<p>Sandy Luk Senior Lawyer Marine Programme</p> <p>t +44 (0)20 7749 5977 m +44 (0)7879 655779 e sluk@clientearth.org</p>	<p>Melissa Pritchard Marine Scientist</p> <p>t +44 (0)20 3030 5950 e mpritchard@clientearth.org</p>	<p>Rowan Ryrie Marine Biodiversity Lawyer</p> <p>t +44 (0)20 3030 5969 m +44 (0)7813 91543 e rryrie@clientearth.org</p>

The Hothouse
274 Richmond Road
London E8 3QW
t +44 (0)20 7749 5970
f +44 (0)20 7729 4568

Avenue de Tervueren 36
1040 Brussels
t +32 (0)2 808 34 65
f +32 (0)2 733 05 27

196 rue de Belleville
75020 Paris
t +33 (0)9 54 09 68 80

Aleje Ujazdowskie 39/4
00-540 Warszawa
t +48 22 3070190

info@clientearth.org
www.clientearth.org

Appendix 1 – ClientEarth Discussion Paper – Article 43, TFEU

(See attached as separate document)

Appendix 2: MCS/ClientEarth CFP reform proposal: The Fishing Credits System

(See attached as separate document)

See also at <http://www.clientearth.org/cfp-reform-proposal>

Please note: since preparing the attached paper on the Fishing Credits System we have developed our work on the legal bases of future fisheries legislation considerably. Please therefore refer to the discussion paper attached at Appendix 1 for details of our arguments relating to legal bases and a discussion of Article 43, TFEU and the main body of this paper for suggested legal frameworks with regard to the types of regulations needed in relation to the CFP reform.