

How energy taxation can end destructive fishing

The environmental, social and economic imperative for ending fuel subsidies in the fisheries sector

Summary

- 1. Fuel subsidies in fisheries artificially lower operating costs and distort the ocean economy, fuelling destructive and uneconomic fishing practices.**
- 2. Fuel subsidies fuel overfishing, and overfishing fuels climate change and biodiversity loss. Eliminating fuel subsidies would strengthen fish stocks' resilience to climate change, help restore ecosystems and enhance carbon sequestration.**
- 3. Fuel subsidies disproportionately benefit larger, polluting and more destructive fishing fleets leaving small-scale low-impact fishers with depleted fishing grounds.**
- 4. Maintaining fuel subsidies in the fisheries sector is inconsistent with the EU's internal and international commitments on climate and biodiversity. Fuel subsidies increase carbon emissions and support the destruction of marine ecosystems.**
- 5. The revision of the Energy Taxation Directive (ETD) and the current WTO negotiations on harmful fisheries subsidies is the perfect window of opportunity to eliminate fuel subsidies at both the EU and international levels. The EU must lead by example and steer the WTO negotiations away from fuel subsidies.**
- 6. Fuel subsidies support the economic marginalisation of small-scale, low-impact fishers. Harmful fisheries subsidies must be repurposed to protect and support their livelihoods, and existing funds and social schemes should be used to ensure a just transition.**

Background

“There is the sea — who shall exhaust the sea?”¹

Fish stocks have long been deemed inexhaustible,² being self-regulated by the environment and the economy: as fish stocks decreased, so did catch and profits, and ultimately fishing efforts, allowing fish stocks to replenish themselves until they were sufficiently abundant for profitable fishing efforts to resume.³ With the advent of heavily subsidised, large-scale fisheries (‘LSF’),⁴ we began to fish beyond this economic and biological equilibrium, leading to overfishing and the plummeting of global fish stocks.⁵ An estimated 34% of global stocks are being fished beyond sustainable limits.⁶ In Europe, this number goes up to 90% in the Mediterranean Sea, 87% in the Black Sea, and about 38% percent of in the North East Atlantic and Baltic Sea.⁷ As enshrined in its Common Fisheries Policy (‘CFP’), 2020 was the EU legal deadline to end overfishing. In spite of this, almost a third of the 2021 quotas established by the EU Council of Agriculture and Fisheries Ministers have been set above scientific recommendations. Healthy, productive and sustainable fisheries are an environmental, social and economic imperative. Yet, European taxpayers are still financing the depletion of fish stocks,⁸ threatening the livelihoods of those who depend on it as a main source of income and protein, while hindering the ocean’s resilience to climate change. Overfishing will persist so long as it is economically viable, which is why the European Union must put an end to what keeps it artificially profitable: harmful fisheries subsidies.

Fuel subsidies fuel overfishing

The adverse effects of certain fisheries subsidies have long been emphasised – Adam Smith himself had something to say about it.⁹ Based on their nature, fisheries subsidies have been categorised as either ‘beneficial’, ‘ambiguous’ or ‘capacity-enhancing/harmful’.¹⁰ The latter refers to subsidies that artificially lower operation costs and/or increase revenue, which in turn can foster overcapacity and lead to overfishing.¹¹ Because these capacity-enhancing subsidies “*mask the true costs of fishing*”,¹² they create a perverse incentive to fish at otherwise uneconomic levels and potentially beyond sustainable limits, shaking the economic and ecological balance and distorting the ocean economy.¹³ These subsidies are harmful to both the environment and the economy by damaging the productivity of fish stocks, and

¹ The *Oresteia*, 400 BC. John Shepherd, "Oceans of truth." *Nature* 388.6645 (1997): 843-843.

² Alastair Couper et al, *Fishers and plunderers: theft, slavery and violence at sea*. Pluto Press, 2015. p.11

³ Baltic Eye, "Researchers: EU is heading in the wrong direction with fisheries subsidies." (2020) Available at: <<https://balticeye.org/en/fisheries/study-on-harmful-fishery-subsidies/>>

⁴ LSF includes industrial and semi-industrial fisheries. Anna Schuhbauer et al. "How subsidies affect the economic viability of small-scale fisheries." *Marine Policy* 82 (2017): 114-121; p.117.

⁵ Bloom Association, "ENFAF Trilogue" (2020). Available at: <<https://www.bloomassociation.org/en/emfaf-trilogue/>>

⁶ FAO, "The State of World Fisheries and Aquaculture 2020" (2020) p.7. Available at: <<http://www.fao.org/3/ca9229en/ca9229en.pdf>>

⁷ STECF 'The 2020 Annual Economic Report on the EU Fishing Fleet (STECF 20-06)' (2020) EUR 28359 EN, ISBN 978-92-76-27164-2 ; STECF 'The 2019 Annual Economic Report on the EU Fishing Fleet (STECF 19-06)' (2019) EUR 28359 EN, ISBN 978-92-76-09517-0

⁸ UNCTAD, "Regulating Fisheries Subsidies". Available at: <<https://unctad.org/en/Pages/DITC/Trade-and-Environment/Regulating-Fisheries-Susidies.aspx>>

⁹ John Leazer, "A case for subsidies? Adam Smith and the eighteenth century Scottish herring fishery." *The Historian* 75.1 (2013): 47-68.

¹⁰ Daniel Skerritt et al. "A 20-year retrospective on the provision of fisheries subsidies in the European Union." *ICES Journal of Marine Science* (2020).

¹¹ Kieran Kelleher et al. "The sunken billions: the economic justification for fisheries reform". The World Bank, 2009.

¹² Mimako Kobayashi et al. "The sunken billions revisited: progress and challenges in global marine fisheries-overview." No. 106577. The World Bank, 2016.p. 27

¹³ Kelleher, supra note 11

therefore catch rates and profitability.¹⁴ There is now conclusive research that, despite certain claims, capacity-enhancing subsidies are not necessary,¹⁵ and that their removal is necessary to ensure the sustainability of marine resources.¹⁶

Amongst these harmful subsidies, fuel subsidies are the most directly linked to overfishing.¹⁷ Typically in the form of fuel tax exemptions, fuel subsidies reduce operating costs and increase fishing capacity, allowing fishers to go further and longer at sea than otherwise profitable. This enhanced capacity leads to overfishing in cases where stocks are being exploited beyond sustainable levels. This is worsened by the fact that fuel subsidies account for 22% of the \$22.2 billion dollars spent each year on capacity-enhancing subsidies globally, making them the most prevalent type of subsidy.¹⁸ As the second biggest subsidising political entity in the world, the EU is directly contributing to this, injecting more than \$2 billion in capacity-enhancing subsidies in 2018.¹⁹

Fuel subsidies disproportionately benefit large-scale fisheries

90% of the global capacity-enhancing subsidies, of which 96% are fuel subsidies, go to LSF.²⁰ Fuel typically accounts for 50-80% of fishing costs, which is why an estimated 54% of high-seas fisheries would be unprofitable without fuel subsidies.²¹ The reason behind this is self-explanatory – industrial fishing vessels go farther at sea, have more powerful engines and use more fuel-intensive fishing methods. They consequently require more fuel than their small-scale, coastal counterparts, which mainly operate within territorial waters.²² In the EU, the small-scale coastal fleet represents around 56% of the total days-at-sea and yet consumes only 6% of the fuel. In comparison, the EU distant-fishing fleets account for less than 2% of fishing days but consume 16.5% of the fuel.²³ This imbalance effectively means that fuel subsidies support the over-capitalisation of profit-seeking, fuel-intensive industrial fishing fleets to the detriment of small-scale, low-impact fishers;²⁴ the latter are merely hoping to make ends meet, yet only receiving about 16% of the total global subsidies.²⁵ In Europe, this number drops to 7%,²⁶ despite the fact that small-scale fisheries ('SSF') represent "*the most significant part of the EU fleet in terms of number of vessels*" and contributes most to employment.²⁷ This economic marginalisation of the small-scale sector must be addressed to ensure it remains economically viable, thereby protecting the jobs and the livelihoods it supports.²⁸

¹⁴Johanna Jacomina Heymans et al. "The impact of subsidies on the ecological sustainability and future profits from North Sea fisheries." *PLoS One* 6.5 (2011): e20239.; Munro, Gordon, and U R Sumaila. "The impact of subsidies upon fisheries management and sustainability: the case of the North Atlantic." *Fish and fisheries* 3.4 (2002): 233-250.

¹⁵ Andrés M Cisneros-Montemayor, U. Rashid Sumaila. "Busting myths that hinder an agreement to end harmful fisheries subsidies." *Marine Policy* 109 (2019): 103699.

¹⁶ Yutaro Sakai et al. "Fishery subsidies: the interaction between science and policy." *Fisheries science* 85.3 (2019): 439-447.

¹⁷ Sunken Billions p. 14

¹⁸ U. Rashid Sumaila et al. "Updated estimates and analysis of global fisheries subsidies." *Marine Policy* 109 (2019): 103695

¹⁹ Ibid, p. 8

²⁰ Schuhbauer, supra note 4

²¹ Enric Sala et al. "The economics of fishing the high seas." *Science Advances* 4.6 (2018): eaat2504.

²² STECF (2020), supra note 7

²³ STECF (2019), supra note 7

²⁴ SSF here includes subsistence and artisanal fisheries. 'Low-impact' refers to fisheries with a low environmental impact on marine habitats, low discard rates, and using selective, low-impact fishing gear. Low-impact fisheries are typically small-scale although SSF are not necessarily low-impact. Low-impact fisheries also have a high social and economic value within coastal communities.

²⁵ Schuhbauer, supra note 4

²⁶ Schuhbauer, supra note 4, at 117

²⁷ STECF (2020), supra note 7 at 43

²⁸ Anna Schuhbauer et al. "The global fisheries subsidies divide between small-and large-scale fisheries." *Frontiers in Marine Science* 7 (2020): 792.

This biased distribution is also a direct threat to marine ecosystems. Industrial fishing fleets often use highly destructive and unselective fishing methods, from bottom-trawling to purse seining, associated with habitat and sea-floor destruction and/or high rates of bycatch - an environmental disaster thus paid for by the general public.²⁹ As technology improves while catches continue to decrease, industrial fishing activities are forced to expand further and deeper, “*fishing down [the] marine food web*”, sometimes looking for previously unwanted fish species.³⁰ These degenerative practices are slowly transforming marine ecosystems into dead zones,³¹ leaving small-scale fishers with depleted fishing grounds, fighting for leftovers. Furthermore, In EU waters, small-scale fishers often struggle to access quotas (where applicable) and markets, due to legislative gaps in the CFP and marginalising quota-allocation systems.³² This distributive injustice between LSF and SSF is a ubiquitous problem around the globe, exacerbating the already unequal fisheries landscape,³³ leading SSF to be “*disregarded as increasingly irrelevant*” despite their crucial role for sustainable fisheries and the protection of livelihoods.³⁴ “*In a sustainable ocean economy, effective protection, sustainable production and equitable prosperity go hand in hand*”, but this triple win cannot be achieved while harmful subsidies persist and the status quo is maintained.³⁵

Ending overfishing is climate action

It is well-established that climate change has a direct impact on ocean health – but the opposite is also true.³⁶ On the one hand, the cumulative effect of ocean warming, acidification and deoxygenation caused by climate change has a detrimental impact on fish stocks and marine ecosystems.³⁷ On the other hand, the ocean is the largest carbon sink, absorbing more than a quarter of all anthropogenic carbon emissions.³⁸ Its capacity to help regulate the global carbon cycle directly depends upon the health of its ecosystems. From the crucial role of phytoplankton in the biological carbon pump all the way to the great whales sequestering an average of 33 tons of CO₂ each, increased biomass equals an increase in carbon sequestration.³⁹ This effectively means that a healthy, abundant ocean is a mitigation strategy in itself.⁴⁰ By cutting down on subsidies that facilitate overfishing, the EU would help fish stocks, marine ecosystems and habitats to recover, simultaneously enhancing carbon sequestration.⁴¹ Importantly, this would also help increase fish stocks’ resilience to climate change and keep the fishery sector afloat.⁴²

²⁹ Griffin Carpenter, Charles Millar, “*Fisheries Management Costs: How The Expense Of Scottish Fisheries Management Can Be Sustainably Funded*” (2020). P.5 Available at: <<https://neweconomics.org/uploads/files/Management-costs.pdf>>

³⁰ Daniel Pauly, “Beyond duplicity and ignorance in global fisheries.” *WIT Transactions on State-of-the-art in Science and Engineering* 64 (2013)

³¹ Ibid. at 530

³² Alicia Said, et al. “Small-scale fisheries access to fishing opportunities in the European Union: Is the Common Fisheries Policy the right step to SDG14b?.” *Marine Policy* 118 (2020): 104009; LIFE Platform, ‘Joint declaration of European artisanal and low impact fishers and shellfish harvesters’ (2012). Available at: <<https://lifeplatform.eu/our-mission/>>

³³ EJF, ‘Fisheries project in Ghana hears of conflict between local fishing communities and industrial vessels’ (2017). Available at: <<https://eifoundation.org/news-media/fisheries-project-in-ghana-hears-of-conflict-between-local-fishing-communities-and-industrial-vessels>>

³⁴ Said, supra note 34.

³⁵ Martin R Stuchtey et al, ‘Executive Summary: Ocean Solutions That Benefit People, Nature and the Economy’ (2020). Available at: <<https://www.oceanpanel.org/ocean-action/files/full-report-ocean-solutions-eng.pdf>>

³⁶ U. Rashid Sumaila, Travis C Tai ‘End overfishing and increase the resilience of the ocean to climate change.’ *Frontiers in Marine Science* 7 (2020): 523.

³⁷ IPCC, “Special Report on the Ocean and Cryosphere in a Changing Climate”, available at: <<https://www.ipcc.ch/srocc/>>

³⁸ Jamie Shutler, Andy Watson, “The oceans are absorbing more carbon than previously thought” (2020). Available at: <<https://www.weforum.org/agenda/2020/10/oceans-absorb-carbon-seas-climate-change-environment-water-co2/>> ; RA Houghton, “Balancing the global carbon budget.” *Annu. Rev. Earth Planet. Sci.* 35 (2007), 313–347.

³⁹ U. Rashid Sumaila, Travis C Tai, ‘End overfishing and increase the resilience of the ocean to climate change.’ *Frontiers in Marine Science* 7 (2020): 523.

⁴⁰ Ibid; Greenpeace, “How does overfishing make climate change worse?” (2020). Available at: <<https://www.greenpeace.org/new-zealand/story/how-does-overfishing-make-climate-change-worse/>>

⁴¹ Sumaila, supra note 41

⁴² Sumaila, supra note 41

Moreover, by subsidising an otherwise unprofitable, fossil-fuel intensive industry, the EU is directly supporting unnecessary carbon emissions. Harmful subsidies allow for the continuous increase in fleet size and capacity, leading to increased CO₂ emissions. But more boats does not mean more fish. Much to the contrary, it only means more pollution and competition - like using three cars to go and buy a single loaf of bread. This in turn puts pressure on authorities to set unsustainable quotas and increase subsidies, a vicious cycle which ends with the collapse of our fisheries.⁴³ Eliminating fuel subsidies that predominantly support highly polluting industrial fishing fleets would help reduce overcapacity, consequently reducing fossil fuel consumption and carbon emissions.⁴⁴

The opportunity: the revision of the Energy Taxation Directive

The ongoing revision of the EU Energy Taxation Directive ('ETD') is the perfect opportunity to put an end to fuel tax exemptions. The ETD, which was originally set to ensure the proper functioning of the internal market and avoid unfair competition, has failed to achieve these objectives and has grown flawed and inadequate in the light of the EU's internal and international commitments on climate and biodiversity.⁴⁵ The Commission notably identified "*overlaps, gaps and inconsistencies that significantly hamper the achievements of objectives in the field of energy, environment, climate change and transport*".⁴⁶ Accordingly, an ETD revision was proposed in the European Green Deal, which requires taxation to be aligned with the EU's climate objectives. The revision (which must therefore focus on environmental issues)⁴⁷ was recognised as a key tool to help deliver the EU's increased climate ambitions.⁴⁸

To do so, the revised ETD must ensure effective carbon pricing (in line with the polluter-pays principle found in article 191(2) of the TFEU) and the removal of fossil-fuel subsidies. Fuel in the fisheries sector is currently exempt from taxation by virtue of article 14(c).⁴⁹ The ETD evaluation recognised that mandatory sectoral exemptions might contradict other EU policies, and the Commission was specifically mandated to look at maritime fuel tax exemptions.⁵⁰ As discussed, these types of de-taxation schemes are harmful indirect subsidies which promote the consumption of fossil fuels and are therefore incompatible with the new purpose and priorities of the ETD, as proposed by the Green Deal. The results of a public consultation conducted as part of the revision process have also made clear that there is no public support for fossil fuel tax exemptions.⁵¹ Likewise, 48% of respondents stated that no sectoral exception for fisheries should be granted, with another 43% stating that they did not know/had no opinion.⁵²

Beyond the climate necessity to remove fisheries-fuel exemptions from the revised ETD, doing so would be a major step towards achieving the CFP's objective to combat overfishing. As we have already

⁴³ PEW Charitable Trusts, "Fleet Overcapacity is Driving Overfishing" (2011). Available at: <<https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2011/11/14/fleet-overcapacity-is-driving-overfishing>>

⁴⁴ Sumaila, supra note 41

⁴⁵ Commission Staff Working Document Evaluation of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (SWD(2019) 332 final. P.16

⁴⁶ Ibid.

⁴⁷ European Commission, 'Summary Report: Public consultation on the revision of the Energy Taxation Directive (ETD)' Ares(2020)7749862 - 18/12/2020; European Commission, "Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions: The European Green Deal" COM(2019) 640 final. p.5

⁴⁸ EC Report, Supra note 49

⁴⁹ ETD, Article 14(c)

⁵⁰ Green Deal, supra note 49 at 10

⁵¹ EC Report, supra note 49

⁵² EC Report, supra note 49

established, fuel exemptions drive overfishing by enabling otherwise unprofitable fishing activities. Well-designed taxes can provide a strong incentive towards more sustainable fishing practices, while generating revenue, which could then be used to support a fair and effective transition.⁵³

Since fuel subsidies help to artificially maintain fishers in the sector, a ban on fuel subsidies will inevitably result in job losses. These short-term socio-economic consequences have been a stumbling block to the elimination of capacity-enhancing subsidies.⁵⁴ But this is less of a dilemma than it may seem: fuel subsidies are a form of palliative care, not a cure. They merely delay an inevitable economic transition. If we fail to preserve fish stocks, the whole industry will eventually collapse. In other words, “*the starting point is that we must protect the fish. Because without fish, there will be no fishing*”.⁵⁵ The latest report by the High Level Panel for a Sustainable Ocean Economy is clear: rebuilding fish stocks and fishing sustainably make (business) sense, but require governments to repurpose subsidies and implement fishery reforms while “*providing resources to mitigate transition challenges*”.⁵⁶ The focus therefore should be to provide sufficient support to those affected, and particular attention should be given to the more vulnerable segment of the industry: small-scale fishers. Artisanal fishers are often the backbone of coastal communities, but are typically less economically resilient than their counterparts working in industrial fisheries. Providing them with sufficient support would not only protect their livelihoods, but also the cultural heritage and social fabric of these coastal communities.⁵⁷ One way to do so is by providing them with favourable access to quotas. Despite Article 17 of the CFP demanding that social, economic and environmental criteria are taken into consideration when allocating fishing opportunities, access inequities persist all across Europe,⁵⁸ as social and environmental outcomes are still being overlooked.⁵⁹ Sustainable fisheries require environmental externalities to be taken into account,⁶⁰ for instance by prioritising those willing to transition towards low-impact fishing,⁶¹ as called for by the CFP, or by phasing out fuel-tax exemptions and replacing them with alternatives (e.g. a landings tax) with a differentiated rate for low-impact fisheries.⁶² SSF also provide more jobs per tonne of fish landed, meaning that their revaluation would help create more employment opportunities.⁶³ Crucially, support must also be gender responsive, as women’s contribution to the fishing industry remains critically overlooked.⁶⁴ As for those whose livelihood will be lost and who will be forced to look outside of the fisheries sector, new and existing funds must be used to provide the technical and financial support necessary to ensure a just transition. On this point, the renewed European Maritime Fisheries and Aquaculture Fund (‘EMFAF’) and the soon-to-be-approved Just Transition Fund offer a great starting point.

In its 2021-2027 multiannual financial framework, the EU budgeted a **€6.1 billion EMFAF**, to support the implementation of the CFP and a prompt transition towards sustainable fisheries.⁶⁵ The EMFAF

⁵³ ClientEarth, ‘ClientEarth’s position on fuel subsidies in the fisheries sector’ (2020) p.5. Available at: <https://www.clientearth.org/latest/documents/clientearth-s-position-on-fuel-subsidies-in-the-fisheries-sector/>; EC Report, supra note 49

⁵⁴ Baltic Eye, Supra note 3

⁵⁵ Baltic Eye, Supra note 3

⁵⁶ Stuchtey, supra 37 at 11

⁵⁷ N Weeratunge at al. “Small-scale fisheries through the wellbeing lens.” *Fish*. 15 (2014), 255–279

⁵⁸ Said, supra note 34 at 2

⁵⁹ Griffin Carpenter, Richard Kleinjans, ‘Who Gets To Fish? The Allocation Of Fishing Opportunities In EU Member States’ (2018). Available at: <https://neweconomics.org/uploads/files/Management-costs.pdf>

⁶⁰ Stuchtey, supra note 37 at 97

⁶¹ Carpenter, supra note 30

⁶² Carpenter, supra note 30

⁶³ De Melo Alves Damasio, Ludmila, et al. “Size matters: fishing less and yielding more in smaller-scale fisheries.” *ICES Journal of Marine Science* 73.6 (2016): 1494-1502; p.1499

⁶⁴ Sarah Harper et al. “Valuing invisible catches: Estimating the global contribution by women to small-scale marine capture fisheries production.” *PloS one* 15.3 (2020)

⁶⁵ Under Current News, “New EU Maritime Fund Contains 6.1bn for Fisheries, Aquaculture.” (2020), available at: <https://www.undercurrentnews.com/2020/12/07/new-eu-maritime-fund-contains-e6-1bn-for-fisheries-aquaculture/>

(previously EMFF) will pay for most of the EU fisheries subsidies and in recent years has shown a positive trend away from capacity-enhancing subsidies.⁶⁶ As it stands, this new fund will put a greater emphasis on supporting small-scale coastal fisheries, notably through preferential financial treatment. Considering that 80% of EU funds currently benefit LSF through direct subsidies, this is a welcome development, yet not a guarantee for actual change: a significant part of the 2014-2020 EMFF was reportedly misspent, i.e. not used in accordance with the objectives of the CFP, for instance by financing harmful subsidies.⁶⁷ Member States and the Commission must do better with the new fund, despite the regrettable lack of safeguards in the EMFAF to prevent such misspending. The current EMFAF proposal is also a major step backwards, by bringing back harmful subsidies banned since 2004.⁶⁸ Such harmful fisheries subsidies wreck ecosystems and have no place in a fund whose underlying aim is to promote the sustainable use of marine resources. In addition to this, a previous vote to direct at least 25% of the EMFAF to conservation measures has also been overturned, currently leaving no specific budget for biodiversity protection, despite the need for ambitious investments in marine restoration measures.⁶⁹ The European Environmental Agency is clear: “*Marine biodiversity remains under threat in Europe’s seas*”, and the European Court of Auditors is calling for an increase in EMFAF funding for marine conservation and protection measures.⁷⁰ To ensure a healthy ocean by 2030, at least 50% of the fund should be used for restoration, better control, and better data collection. Overall, **these policy reversals fly in the face of scientific evidence, the CFP’s objective to end overfishing, the Green Deal and the Sustainable Development Goal (‘SDG’) 14.6**,⁷¹ and they weaken the EU’s credibility amidst the WTO’s fisheries subsidies negotiations, discussed below. The EU must lead by example if it truly supports transitioning “*towards stable, profitable and environmentally-friendly value chains*”.⁷²

Another key development in addressing the socio-economic impacts of the elimination of fuel subsidies is the Just Transition Fund (‘JFT’), a €17.5 billion fund being set up to support a socially fair and green European transition towards carbon neutrality. The JFT forms part of the EU Just Transition Mechanism established by the Green Deal, and echoes the EU’s vow to ‘leave no one behind’.⁷³ Its purpose is to address the environmental and socio-economic impacts of the energy transition, particularly in the most affected regions and populations. To do so, the funds will be used to promote the diversification of economic activities and support adaptation to a changing labour market.⁷⁴ The fund is therefore perfectly fit for purpose to support fishers affected by the ending of harmful fisheries subsidies, and should be used accordingly. With sufficient support and training, fishers can use their existing skillsets and knowledge to transition (partly or completely) to another sector, for instance within eco-tourism, marine protection or

⁶⁶ Skerritt, supra note 10

⁶⁷ LPO, Birdlife Europe, ‘The use of the European Maritime and Fisheries Fund (EMFF) in France in relation to the protection of the marine environment and its resources’ (2020). Available at: <https://www.birdlife.org/sites/default/files/lpo_report_use_of_emff.pdf>; SEO/BirdLife, ‘El uso del Fondo Europeo Marítimo y de Pesca (FEMP) en España entre 2014- 2018 y recomendaciones para el siguiente periodo’ (2020). Available at: <https://www.birdlife.org/sites/default/files/af_informe_aplicacion_femp_en_espana.pdf>

⁶⁸ Bloom Association, supra note 5

⁶⁹ WWF, “EU ‘sustainable’ fisheries Fund reintroduces harmful subsidies and ignores biodiversity crisis” (2020). Available at: <https://www.wwf.eu/wwf_news/media_centre/?uNewsID=1369416>

⁷⁰ EU Court of Auditors, “Marine environment: EU protection is wide but not deep” Special Report 26/2020

⁷¹ U. Rashid Sumaila, Sebastian Villasante, Frédéric Le Manach, “Fisheries subsidies wreck ecosystems, don’t bring them back” (Nature, 2019). Available at: <<https://www.nature.com/articles/d41586-019-02054-0>>; WWF, supra note 71

⁷² <https://www.consilium.europa.eu/en/press/press-releases/2020/12/04/informal-deal-on-european-maritime-and-fisheries-fund-for-the-period-2021-2027/>

⁷³ Green Deal, supra note 49 at 16

⁷⁴ European Commission, “Commission welcomes the political agreement on the Just Transition Fund” (2020). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2354>

research, even offshore wind farm maintenance. In other words, anywhere their marine expertise can be harnessed.⁷⁵

The EU's internal obligations to end fuel subsidies

As mentioned, the possible removal of fuel tax exemptions through the ETD revision would directly fulfil the EU's commitments on climate change and overfishing.

First and foremost, by adopting the Green Deal, the EU aims to transform itself into a “*climate-neutral, fair and prosperous society, with a modern, resource-efficient and competitive economy*”. The Green Deal objectives are inconsistent with fuel subsidies on numerous accounts. Firstly, **the Green Deal explicitly requires the removal of fossil-fuel subsidies through tax reforms**.⁷⁶ By lowering the price of fossil-fuel consumption, fuel-tax exemptions *de facto* qualify as fossil-fuel subsidies and must therefore be eliminated. Secondly, **ending fuel subsidies would reduce carbon emissions**. The Green Deal's underlying aim is to reach carbon neutrality by 2050. To this effect, the EU agreed in December 2020 to reduce its greenhouse gas emissions by at least 55% by 2030 (compared to 1990 levels). This newly set goal is a welcome development in the fight against climate change, although it falls short of the 65% emission cuts required to comply with the Paris Agreements (discussed below), according to the latest UNEP Emissions Gap Report.⁷⁷ Fuel tax exemptions artificially keep highly polluting fishing fleets with high carbon footprints afloat. A ban on fuel subsidies would therefore directly reduce emissions, hence supporting the Green Deal's objective. The possible inclusion of the maritime sector in the EU Emission Trading System is a clear indicator that the EU is working to decarbonise its fleets.⁷⁸ Furthermore, a ban would also help tackle overfishing, increasing fish biomass and carbon sequestration along the way, as discussed earlier. Thirdly, **a resource-efficient economy entails healthy, productive fish stocks**. In other words, we need to fish less to catch more, and ensure that all EU fisheries are harvested at levels that allow stocks to produce their maximum sustainable yield.⁷⁹ This will not be achieved so long as quotas are set beyond sustainable levels, encouraged by overcapacity enabled by fuel subsidies. Healthy fish populations are critical to ensure a sustainable food system as called for by the EU's Farm to Fork Strategy. Fourthly, **fuel subsidies supporting overfishing contravene the ‘do no harm’ principle**. At the heart of the EU Green Deal is its green oath to ‘do no harm’ to which all EU initiatives must live up.⁸⁰ Financing overfishing through fuel-tax exemptions that simultaneously contribute to climate change and biodiversity loss is a blatant violation of this principle.⁸¹ Finally, **the ‘leave no one behind’ vow embedded in the Green Deal echoes the need for a fair transition**. Redirecting European funding away from fuel subsidies and towards offering better support for small-scale, low-impact fishers would not only ensure healthier oceans; it will also increase the resilience of the communities at the forefront of climate change. All of the above also align with the Green Deal's objective to reform policies to ‘increase the value given to protecting and restoring natural ecosystems, to the sustainable use of resources and to improving

⁷⁵ Birdlife/Seas at Risk/Our Fish/ClientEarth et al, ‘Turning The Tide On Eu Seas With A Green Recovery’ (2020) p. 10. Available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2020-06-08-turning-the-tide-on-eu-seas-with-a-green-recovery-coll-en.pdf>

⁷⁶ Para 2.2.2; see also para 2.1.5

⁷⁷ CAN Europe, “Science shows 65% emission reduction by 2030 is feasible and pays off” (2020). Available at: <https://www.caneurope.org/publications/press-releases/1990-factsheet-science-shows-65-emission-reduction-by-2030-is-feasible-and-pays-off>

⁷⁸ European Parliament News, “Shipping industry must contribute to climate neutrality, say MEPs” (2020). Available at: <https://www.europarl.europa.eu/news/en/press-room/20200703IPR82633/shipping-industry-must-contribute-to-climate-neutrality-say-meps>

⁷⁹ Damasio, *supra* note 65

⁸⁰ At 2.2.5

⁸¹ Daniel Pauly, U. Rashid Sumaila, “No time for empty promises: Europe must lead on harmful fisheries subsidies” (2020). Available at: <https://www.euractiv.com/section/economy-jobs/opinion/no-time-for-empty-promises-europe-must-lead-on-harmful-fisheries-subsidies/>

human health'. The Green Deal requires the EU to lead by example while advocating for an adequate global response to climate change and biodiversity loss.⁸² Putting an end to its fuel de-taxation scheme in the fisheries sector would be an important step in this direction.

The above is supported by the fact that the objectives laid down in the Green Deal will soon become legal obligations. The proposed European Climate Law, one of the EU's big priorities for 2021, would turn the EU climate commitment as expressed in the Green Deal into a legally-binding target by establishing a legal framework and pathway to reach carbon neutrality by 2050. The Climate Law proposal reiterates the underlying objectives of the Green Deal: resource efficiency; a just and inclusive transition; reducing vulnerability and strengthening resilience (with a particular focus on vulnerable communities); and aligning policies with scientific evidence, *inter alia*. These considerations must guide the EU trajectory towards carbon neutrality.⁸³

Here again, it is easy to see how fuel-tax exemptions are incompatible with the Climate Law proposal, and how their elimination would support its objectives. The aims of the legislation are climate neutrality by 2050 and the "*reduction of greenhouse gas emissions and enhancement of removals by natural or other sinks in the Union*".⁸⁴ As demonstrated, eliminating fuel subsidies would contribute to both. To this effect, the Commission must review the consistency of existing EU policies and legislation with these objectives, which clearly call for the removal of fuel subsidies in the revised ETD.⁸⁵

The Climate Law also calls for the protection of "*the integrity of ecosystems and biodiversity against the threat of climate change*".⁸⁶ The climate and biodiversity crises are intertwined, and the EU aims not only to be a "*leader in the fight against climate change*", but also to "*lead the world by example and by action*" in tackling the global biodiversity crisis.⁸⁷ Each new report on the climate and biodiversity crises shows the increasing urgency and the risks associated with inaction.⁸⁸ The EU Biodiversity Strategy ('EUBS') aims to reverse the degradation of ecosystems and restore them, notably by achieving good environmental status of marine ecosystems, while supporting the effective implementation of the Convention on Biological Diversity. As mentioned, fuel subsidies directly support some of the most destructive fishing methods associated with high levels of bycatch, destroying ecosystems and depleting fish stocks. In accordance with the CFP, the EUBS requires an ecosystem-based approach to fisheries management, recognising the social, economic and environmental benefits of a thriving marine environment.⁸⁹ Ending fuel subsidies would directly support this objective while increasing marine ecosystems' resilience to climate change. Fish populations play a crucial role in marine ecosystems, and an adequate Fisheries Action Plan should be developed to ensure they can continue to do so. To this effect, actions must be taken against, *inter alia*, destructive fishing gear, non-target bycatch, insufficient monitoring and data collection, and the harmful fisheries subsidies which enable this.⁹⁰ Last but not least, the EUBS explicitly calls for a global ban on harmful fisheries subsidies through the ongoing World Trade Organisation ('WTO') negotiations on the matter, in line with Action 8 of the EU's International Ocean Governance agenda and its commitment to combat overfishing.

⁸² Green Deal, supra note 49 para. 3

⁸³ Climate Law, Art. 3

⁸⁴ Ibid, Art. 1

⁸⁵ Ibid, p.3

⁸⁶ Ibid, p.10

⁸⁷ EU Biodiversity Strategy, p.2. Available at: <https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu/eu-biodiversity-strategy-2030_en>

⁸⁸ Bradshaw, Corey JA, et al. "Underestimating the challenges of avoiding a ghastly future." *Frontiers in Conservation Science* 1 (2020): 9.

⁸⁹ EU Biodiversity Strategy, p.2

⁹⁰ Birdlife/ClientEarth/OurFish et al. 'Back to the source: saving Europe's biodiversity starts in the ocean' (2020). p. 2-5. Available at: <<https://www.ifaw.org/eu/resources/back-to-the-source-saving-europes-biodiversity-starts-in-the-ocean>>

WTO negotiations on harmful fisheries subsidies

A ban on fuel subsidies is not only required at the EU level: it is an international obligation. The question of fisheries subsidies is not novel to the global agenda, and there have already been significant efforts to address harmful subsidies.⁹¹ The WTO began to strengthen its disciplines on the matter in 2001, calling for the prohibition of subsidies contributing to overcapacity, overfishing and Illegal, Unreported and Unregulated ('IUU') fishing.⁹² In 2015, this call crystallised into UN Sustainable Development Goal 14.6, which mandated the WTO to secure an agreement ending such harmful fisheries subsidies by 2020 and to refrain from introducing new ones.

There are at least 25 reasons why the WTO must end harmful subsidies, and more than 170 leading organisations have come together urging world leaders to stop funding overfishing. Despite considerable progress, the WTO regrettably missed the 2020 deadline, unable to agree on a stabilised text. Still, a consensus must be reached promptly. As expressed by Santiago Wills, chair of the negotiations: "*The urgency is growing. While we talk, fish stocks continue to decline due to overfishing*".⁹³ Building on the current momentum, the negotiations will resume in 2021, and a work plan is currently under development.

This delay is partly attributed to the COVID-19 pandemic, but also stems from two particularly contentious points: special and differential treatment for developing countries (a recurrent matter in such negotiations) and crucially, whether to classify fuel tax exemptions as overcapacity-enhancing subsidies.⁹⁴

On the latter, the draft revised and consolidated text presented in November 2020 introduced a possible qualitative prohibition of subsidies contributing to overfishing and overcapacity.⁹⁵ An important exception to this rule was also amended: WTO members would be allowed to keep these subsidies in place if they demonstrate good stock-management systems, without having to prove their efficacy.⁹⁶ This would effectively give industrialised states with better management systems an unfair advantage, without guaranteeing a positive effect on fish stocks.⁹⁷ **Regardless, the exclusion of fuel subsidies from the list of prohibited subsidies would have a drastic effect on the overall effectiveness of the agreement.** As stated, in the Biodiversity Strategy, EU Member States agreed to combat overfishing by supporting the WTO negotiations.⁹⁸ The EU claims to be a leader in multilateral cooperation on sustainable development, environmental action and ocean governance,⁹⁹ and Commissioner Sinkevičius was specifically mandated to ensure that the EU plays a leading role in the WTO negotiations.¹⁰⁰ Yet, it has so far failed to do so.¹⁰¹ The reintroduction of previously banned harmful subsidies in the EMFAF has severely hindered the EU's stance in these negotiations. To remain credible and continue to be at the forefront of the fight against overfishing and climate change, the EU should fight for the inclusion of fuel subsidies

⁹¹ U. Rashid Sumaila, "Trade Policy Options for Sustainable Oceans and Fisheries. E15 Expert Group on Oceans, Fisheries and the Trade System—Policy Options Paper." *E15 Initiative, International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum*. 2016.

⁹² Doha Declaration, para. 28

⁹³ World Trade Organisation, "WTO members committed to keeping up momentum in fisheries subsidies negotiations" (2020). Available at: <https://www.wto.org/english/news_e/news20_e/fish_14dec20_e.htm>

⁹⁴ Friends of Ocean Action, "Missed Deadline To End Harmful Subsidies Will Drive More Overfishing: Leaders Must Urgently Push For Action Early In 2021, Says Un Ocean Envoy" (2020). Available at: <<https://www.weforum.org/friends-of-ocean-action/missed-deadline-to-end-harmful-subsidies-will-drive-more-overfishing-leaders-must-urgently-push-for-action-early-in-2021-says-un-ocean-envoy-9d76a57139>>

⁹⁵ ISSD, "WTO Members Continue Fisheries Talks as 2020 Deadline Looms" (2020). Available at: <<https://sdg.iisd.org/commentary/policy-briefs/wto-members-continue-fisheries-talks-as-2020-deadline-looms/>>

⁹⁶ UNCTAD, "How to craft a strong WTO deal on fishing subsidies" (2020). Available at: <<https://unctad.org/news/how-craft-strong-wto-deal-fishing-subsidies>>

⁹⁷ Ibid.

⁹⁸ At 4.2.1

⁹⁹ European Commission, "International Issues". Available at: <https://ec.europa.eu/environment/international_issues/index_en.htm>

¹⁰⁰ Ursula von der Leyen, "Mission Letter: Virginijus Sinkevičius". Available at: <https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-virginijus-sinkevicius_en.pdf>

¹⁰¹ Pauly, supra note 83

within the list of prohibited subsidies. Banning them at EU level through the revision of the ETD would send a clear message to the rest of the international community and restore the EU's image in these negotiations.

EU international ocean and sustainability commitments to end fuel subsidies

As reflected by the WTO negotiations, harmful fisheries subsidies are not only a European issue, but a global concern. The EU's international climate, ocean and sustainability commitments also point towards putting an end to fisheries fuel subsidies.

While the SDG target 14.6 is a clear-cut pledge to end harmful fisheries subsidies, it falls within the EU's broader commitment towards sustainable development, a principle enshrined in the Treaty on European Union. The 2030 Agenda for Sustainable Development and its 17 goals are the global roadmap towards protecting the planet, ending poverty and assuring a peaceful and prosperous future for all. When it comes to harmful subsidies and destructive fishing, the other targets found under SDG 14, *Life Below Water*, also directly or indirectly support the end of fuel subsidies. SDG 14.4 for instance, calls for the restoration of fish stocks and an end to destructive fishing practices. Likewise, SDG 14.2 requires strengthening the resilience of coastal marine ecosystems, while target 14.b supports better access to quotas for small-scale artisanal fishers. Many of these commitments have been included in the CFP and other related policies.¹⁰² Looking at the bigger picture, and in the light of our discussion above, other SDGs are also relevant to the debate. For instance, SDG 13 on climate action naturally requires the decarbonisation of the sector and the end of overfishing. SDG 2 on food security is another clear example, which directly calls for the effective implementation of the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries, which provides tools and principles to ensure food security, sustainable SSF and inclusive decision-making, and strengthens human rights.¹⁰³

At the UN level, 2021 marks the beginning of the Decade of Ocean Science for Sustainable Development, a global call to bridge the gap between ocean science and policy-making, and reverse the cycle of declining ocean health. This reaffirms the need for science-based adaptation and mitigation policies in ensuring a healthy future for our ocean and the livelihoods of those who depend on it, which includes the elimination of fuel tax exemptions. The current discussions on a global treaty on biodiversity beyond national jurisdiction also reflects the necessity for better ocean stewardship, guided by ocean science.

Finally, many of the EU's policies relevant to fuel subsidies are also a direct response to its legally-binding obligations under the Paris Agreement. As recognised by the EU Commission, the Paris Agreement implicitly requires the removal of fossil fuel subsidies,¹⁰⁴ given that they delay the energy transition and have a detrimental effect on the environment, which contravenes the Agreement's objectives.¹⁰⁵ In fact, all three objectives of the Paris Agreement are incompatible with fuel de-taxation schemes.¹⁰⁶ As discussed, eliminating fuel subsidies would help reduce EU carbon emissions, supporting the Agreement's climate

¹⁰² EU Biodiversity Strategy, Coastal and Marine Policy, Agenda on International Ocean Governance, *inter alia*.

¹⁰³ Philippa J Cohen et al. "Securing a just space for small-scale fisheries in the blue economy." *Frontiers in Marine Science* 6 (2019): 171. p.6

¹⁰⁴ European Commission, "Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee, The Committee Of The Regions And The European Investment Bank: Clean Energy For All Europeans" COM(2016) 860 final

¹⁰⁵ Heloisa Perera, "How fisheries negotiations can inform the WTO to carry forward fossil fuel subsidies reform" (ICTSD 2018). Available at: <<https://ictsd.iisd.org/opinion/how-fisheries-negotiations-can-inform-the-wto-to-carry-forward-fossil-fuel/>>

¹⁰⁶ Paris Agreement, Art. 2

mitigation objectives. Article 5 notably encourages parties to “*take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases*”, and therefore to fully harness the ocean’s carbon sequestration capacity. On adaptation, parties must strengthen resilience and reduce vulnerability to climate change.¹⁰⁷ The elimination of fuel subsidies, paired with effective support to low-impact fishers, would strengthen fish stocks’ and fishers’ adaptability and help protect ecosystems and the livelihoods of those at the forefront of climate change.¹⁰⁸ On sustainable finance, redirecting funding towards small-scale fisheries also aligns with the objective of “*making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*”. In its preamble, the agreement recognises the need to safeguard food security, and notes the importance of protecting marine ecosystems and biodiversity while ensuring a just transition and promoting climate justice, which consolidates our case against fuel subsidies disproportionately benefitting LSF while threatening the future of our seas and artisanal fishers.

In short: end harmful (fuel) subsidies, end destructive fishing

From the Portuguese *bacalhau* to the Scandinavian *gravlax*, fish are an integral part of European culture and the European diet. As the largest fish market, and the third largest carbon emitter, the EU has a leading role to play in addressing the two greatest threats to the ocean: overfishing and climate change. One way to address both is to **eliminate harmful fisheries subsidies, beginning with fuel tax exemptions**. The ongoing revision of the Energy Taxation Directive, and its new role as a tool to support the EU’s climate ambitions, offers a perfect window of opportunity for the EU to finally act upon its domestic and international commitments to eliminate fuel-tax exemptions. Doing so would help the EU combat overcapacity and overfishing and promote a sustainable future for European fisheries, while generating revenue along the way.¹⁰⁹ It has become clear that fuel subsidies fuel overfishing and disproportionately benefit destructive LSF, making their elimination an environmental, social and economic imperative. This necessity is echoed in numerous EU commitments at both domestic and international level, from the Common Fisheries Policy and the European climate and biodiversity strategies to the Sustainable Development Goals and the Paris Agreement. All converge towards putting an end to capacity-enhancing subsidies like the EU fisheries fuel de-taxation scheme, and to ‘*repurpose harmful subsidies to more equitable and sustainable uses*’.¹¹⁰ Each missed deadline puts European fisheries and those who depend on them in greater jeopardy. The EU must ensure a rapid conclusion of the WTO negotiations, and lead by example by revising the ETD to exclude fuel tax subsidies. The EU is already equipped to address the short-term socio-economic consequences of this policy change, and can use dedicated European funds and social schemes to protect and empower small-scale low-impact fishers and the livelihoods they support.

¹⁰⁷ Ibid, art. 7

¹⁰⁸ Ibid, art 7.2

¹⁰⁹ UNCTAD, ‘90% of fish stocks are used up – fisheries subsidies must stop’ (2018). Available at: <<https://unctad.org/news/90-fish-stocks-are-used-fisheries-subsidies-must-stop>>

¹¹⁰ Stuchtey, supra note 37 at 93

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