

# Surplus in UNCLOS and the new CFP

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# Surplus in international ocean law

## - Maximum sustainable yield

- Harvesting the surplus - concept of MSY
- Legal definition – UNCLOS Art 61
- EU track record
- Enforcement under UNCLOS
- Legal development

# Incorporation of MSY concept into the new EU CFP

- **Three criteria in Article 2.2:**
  - **Biomass:** “In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY...”
  - **Exploitation rate:** “the MSY exploitation rate shall be achieved”
  - **Time frame:** “by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks” “Later date(...) allowed only if achieving them by 2015 would seriously jeopardise the social and economic sustainability of the fishing fleets involved” (preamble, recital 7)

# Legal effect

- EU law obligation (in addition to UNCLOS obligation) to respect the MSY principle and limit fisheries to the surplus
- European Council bound to limit fishing opportunities to the surplus and to allow stocks to recover.
- Article 28 - same requirements shall apply in the external dimension
- However, potential conflict with other policy objectives

## Legal effect

- Council decisions on fishing opportunities (as well as FPAs) violating MSY principle could be challenged in the ECJ under Article 263 TFEU
- Aarhus convention - Possibilities for a more generous ECJ practice?
- Despite limited ways of enforcing MSY obligation, strong political message
- Upcoming case law development under UNCLOS?