



Reforming the Common Fisheries Policy

"Now is no time to be timid!"

After thirty years of the Common Fisheries Policy (CFP), fisheries in the EU are in a perilous state, with depleted stocks, the industry lurching between crisis and disaster, and the continued long-term decline of coastal communities. These trends were evident before the CFP was created in 1982 but the Policy has notably failed to redress the situation.

Action is urgently needed in the reform to redress this situation, for the importance of Europe in fisheries worldwide means that the reform is of global significance. Overfishing in European waters has led to depleted stocks, requiring increasing amounts of fish from outside the EU to satisfy the enormous demand - over 60% of fish consumed is imported or caught by European vessels in distant waters. But stocks outside Europe are depleted too, so there are fewer and fewer "distant waters" from which to obtain fish, leading to serious problems of food security in many regions, especially parts of Africa and Asia where local fishermen face increasing difficulties in supplying their local markets. Depleted stocks also lead to impoverished food webs that provoke wider ecological problems such as algal blooms, jellyfish blooms and sudden changes in species composition - ecosystem flips. Reduced marine biodiversity diminishes the ability of the oceans to compensate for other environmental problems, notably climate change and ocean acidification. The stakes truly are high.

The current situation is often described as a social and economic crisis. In fact, though, a more appropriate perspective is that years of over-fishing have created an environmental disaster that is provoking a socio-economic crisis. That change in perspective offers the clue to how to improve matters so as to promote the survival of coastal fishing communities and the fish stocks they, and future generations, depend upon for their livelihoods and food.

In July 2011, the European Commission published its proposals for a major reform of the CFP. The stakes in this reform are high, as the Commission is well aware, as noted in its introduction:

The plans will secure both fish stocks and fishermen's livelihood for the future while putting an end to overfishing and depletion of fish stocks. The reform will introduce a decentralised approach to science-based fisheries management by region and sea basin, and introduce better governance standards in the EU and on the international level through sustainable fisheries agreements.

The Greens fully endorse these ambitions. However, we feel that while the proposals contain some positive elements, in many ways they are either too vague to fully understand their implications or too timid, probably in an attempt to avoid antagonising some Member States and the fishing industry, which mostly wish to continue with the status quo.

Designing a New CFP - Questions to Ask

There are three fundamental questions that need to be borne in mind when designing a fisheries management regime such as the CFP:

- "How much fish can be safely taken from the sea?" Setting limits to fishing must be based on scientific analyses using the precautionary and ecosystem-based approaches to fisheries management, while eliminating, or at the very least minimizing the possibility of political interference.
- "How should the fish be caught?" Qualitative as well as quantitative restrictions are necessary to define the appropriate type and amount of capacity, or fishing power, in terms of vessels and gears allowed to participate in the multitude of fisheries in the EU and abroad.
- "Who should have the right to fish?" Fishing - exploiting a public good - is not an unconditional right. A qualitative approach to fleet management requires the use of environmental and social criteria for determining how to allocate the right to fish. Priority access to fish resources and fishing capacity should be based on a series of transparent environmental and social criteria, with preferential access being awarded to those who best comply with the criteria.

Consideration of these three questions has determined the position of the Greens on the major points of the reform of the CFP.

The Challenges of EU Decision-making

Since 1983 fisheries has been an exclusive competence of the EU. This is as it should be, for most fish stocks move among the waters under the jurisdiction of more than one Member State or between European waters and the high seas. So it is essential that Member States cooperate and agree to common conservation and management measures for their fisheries, which is best done with fisheries an exclusive competence of the EU.

Significant problems arise, however, with the methods used to make the necessary decisions. Since virtually all are taken at the level of the Council of Ministers, it has led to a sometimes absurd degree of micro-management, with extremely detailed and local regulations being decided by 27 national fisheries ministers, rather than at a more de-centralized level that is, presumably, better aware of the local needs and situations. It has even prevented individual Member States from taking stricter conservation measures than the CFP rules to try to improve the situation.

Worse, though, is that such a system is essentially decision-making by committee - there is no transparency and accountability and it is impossible to allocate responsibility for bad decisions. Ministers are experts at blaming "Brussels" for the serious problems besetting EU fisheries, ignoring the fact that it is they who adopt the regulations. This lack of accountability fosters a scandalous degree of irresponsibility in decision-making, including excessive TACs, gross over-capacity of the fleets, subsidies to promote over-fishing and other problems.

The EU model of decision-making has been a failure with respect to ensuring sustainable fisheries. A new model must be found while keeping fisheries an exclusive competence of the EU (see section *De-centralization of the CFP*).

The objectives of the CFP

A good, effective policy needs precise, coherent and concise objectives. No policy can be successful if what it is intended to achieve is not clear and understood by those who are to implement it. Unfortunately, the objectives of the CFP are ambiguous and contradictory.

The main objective of the CFP¹ is to provide "sustainable economic, environmental and social conditions". To that are added a variety of other objectives, including the precautionary approach and the ecosystem-based approach, though neither of these concepts is defined in a way that makes clear what is meant. Additional objectives include an economically viable and competitive fishery, a fair standard of living for those involved in the industry and the interests of consumers. Yet there is no prioritization among these objectives, many of which are contradictory. For instance, quota reductions in order to ensure environmental sustainability can be in conflict with the short term standard of living for those affected and the interests of consumers.

The Commission's proposal does not resolve the problem of conflicting objectives. In fact it adds more objectives, including a partial discard ban (which is more a technical measure) and the promotion of aquaculture, making it even more confusing. Yet as long ago as 1991 the Commission noted that:

*All the objectives for fisheries depend on the maintenance of the resources as a prior condition.*²

It is claimed that the Treaties do not allow a prioritization among environmental, economic and social sustainability. Yet the Treaty must not be used as an excuse to prevent the Union from sustainably managing the exploitation of fish stocks. Without abundant fish stocks, there can be no profitable fishing industry and no viable fishing communities. The Commission's analysis 20 years ago was correct - abundant fish stocks are a prerequisite for a viable and profitable fishing industry. Nonetheless, Ministers have consistently chosen to prioritize short term economic objectives over the conservation of fishery resources. The failure of the CFP to conserve either fish or jobs is a direct consequence of this approach.

The fishing industry is similar in one respect to other industries in that technological innovation leads to increased efficiency and the need for less labour. Fewer fishermen are needed to catch the same amount of fish than a few decades ago. More abundant fish stocks would boost employment, but the industrialization of fishing means that some jobs will continue to be lost. Adequate social policies are essential to address this.

There is one progressive element of the new objectives of the CFP proposed by the Commission and that is that:

*The Common Fisheries Policy shall apply the precautionary approach to fisheries management, and shall aim to ensure, by 2015, that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.*³

¹ Basic regulation 2371/2002, Art. 2.1

² Report 1991 from the Commission to the Council and the European Parliament on the Common Fisheries Policy. SEC (1991) 2288.

³ Proposal for the basic regulation COM (2011) 425, Article 2.2

The Greens believe that the revised CFP must specifically set environmental sustainability, based on the precautionary approach and an ecosystem-based approach, as a fundamental prerequisite for economic and social sustainability.

Maintaining fish stocks at levels above those that are capable of producing the maximum sustainable yield - fishing less intensely on more abundant stocks - is the best way to achieve the social and economic objectives of the CFP.

How much fish can be safely caught?

Ministers have routinely ignored scientific advice and set fishing quotas higher than scientific advice concerning what the fish stocks could sustain, in the name of protecting jobs. The result of this approach has been depleted fish stocks and an industry struggling to survive. In recent years some progress has been made in curbing this habit by the use of management plans which have been adopted for some of the most commercially important fish stocks. These plans include a detailed decision-making rule that establish the quotas for the stock directly, based on its level of abundance. Since the scope for political interference by Ministers is reduced, they have tended to respect these plans and consequently, some of those stocks are recovering.

The Commission is seeking to strengthen these plans in a number of ways, most importantly by proposing that the objective of the fisheries management plans be to allow stocks to recover to levels above those capable of producing "maximum sustainable yield" (MSY). Currently, the vast majority of stocks in the EU are being fished more intensively than this. Consequently, both total catches and catches per unit of fishing effort are lower than they could be if stocks were allowed to recover. The Commission's proposal is an important step in the right direction and the Greens fully support it. Unfortunately, the proposal sets no deadline for adopting management plans.

The Greens want to be more concise and more ambitious in setting targets. Fish stocks should be maintained at levels sufficiently above those capable of producing MSY so that they can fulfil their role in the marine ecosystem as predators or prey.

More abundant fish stocks bring significant economic benefits as well. In a detailed study commissioned by the Greens⁴, Sidney Holt, an eminent fisheries scientist, describes how small reductions in average sustainable catches compared to the MSY level are obtainable at significantly lower levels of fishing effort, and higher catch-rates, leading to much greater profitability for the fishing sector. For instance, a slight reduction to 95% of the MSY catch could be achieved with approximately half the amount of fishing, which would be an enormous saving for the industry, combined with much greater catch rates.

In fact, Dr. Holt demonstrates that the maximum gross profit for the industry, sometimes referred to as maximum sustainable economic yield (MSEY), is obtained from stocks permitted to remain at, or recover to, very substantially larger biomass levels than those required to produce MSY. The amount of fishing that is needed to catch MSEY is always well under half that required to catch MSY.

Maintaining fish stocks at abundant levels as the Commission proposes, above those capable of producing MSY, is the best means of putting fisheries on the path towards being profitable without the need for continued subsidies. Another recent

⁴ Reform of the EU Common Fisheries Policy (CFP) - How to Achieve Sustainable and Profitable Fishing by Sidney J. Holt, DSc. 25 February 2012.

study⁵ examined a sample of 43 European fish stocks and estimated that if they were built back up to the MSY level, that would inject 3.5 million tonnes of landings worth €3.2 billion per year and create 100,000 jobs at sea and on shore. This is also the best and simplest way to respect the precautionary approach and an ecosystem-based approach to fisheries management. Abundant fish stocks are far more resilient to environmental change and the effects of other human activities and are more fully able to fulfill their role as links in the marine food web.

In situations in which several species are caught in the same gear or regulated in the same management plan, sometimes referred to as mixed fisheries, the amount of fishing effort or the catches should be decided based upon the most vulnerable species.

Since so many fish stocks are currently over-fished, a policy of fishing less intensely than the effort needed to catch MSY would require short-term reductions in catches to allow the stocks to rebuild during a transitional period. But the more quickly the stocks are rebuilt, the more quickly the industry can improve its catch rates and return to profitability. Delaying the rebuilding of stocks means foregoing catches, revenues and jobs. It is thus essential that rebuilding begin immediately, by cutting fishing mortality to the level that will allow stocks to recover. This is what the Commission is proposing to do by 2015 and Greens support that approach.

The Marine Strategy Framework Directive⁶ requires that fish stocks be at levels of abundance capable of producing MSY by 2020. The tools and measures of the CFP must be used to ensure that this objective is reached. This means that management plans should be adopted to that end for all regulated species by 2015.

How should the fish be caught? The question of discards

The current situation, where vast quantities of fish and other species (birds, turtles, marine mammals, etc) are caught and thrown away, dead, is a scandal and people are quite rightly angry about it. Fish and other creatures are discarded for several reasons, some legal and some economic. Some discards are of species for which there is no profitable market, so the fishermen throw them away. Others are of small fish, below the minimum landing size intended to prevent the catching of immature fish that have not yet had the chance to reproduce. There are also fish of commercially important species that are caught above the quota, and existing legislation requires their discarding so as to respect the quota.

The current high levels of discards in the EU are due to two underlying causes. Historically, fishermen have been more interested in increasing the amount of fish that they catch, rather than improving the selectivity of their fishing so as to catch only what they are allowed, and are able, to sell. While the nature of fishing is such that catches of unwanted fish and other species can never be entirely eliminated, much improvement in fishing techniques could have been achieved by now, if the fishermen had been motivated to do so. There have been examples of fishermen endeavouring to improve their selectivity and so to reduce discards, but much resistance remains.

⁵ Jobs Lost at Sea - Overfishing and the Jobs that Never Were. new economics foundation. February 2012.

⁶ Directive 2008/56/EC; see also Commission Decision of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters.

This is compounded by the poor status of so many fish stocks today, requiring high levels of fishing effort that inevitably lead to large catches of unwanted fish and other species.

To remedy this, after many years of discussions, the Commission is finally proposing to ban the discarding of certain (but not all⁷) commercially exploited fish species - the fishermen would have to bring them back to shore. This would mean that better data on total catches should be available to improve stock assessments, and since bringing fish ashore that would otherwise be discarded will have economic costs for the fishermen in terms of sorting, storage and landing, the fishermen would be expected to change their fishing techniques so as to reduce bycatches.

In order to make certain there are real environmental benefits of the proposed partial discard ban and that it does not lead to new markets being created for discards, specific links must be established in the basic regulation between it and obligations to improve fishing techniques to increase selectivity. It is crucial to explicitly address the question of selectivity in the CFP, to adopt ambitious objectives in the basic regulation, in line with the principles of ecosystem-based management, to reduce the amount of unwanted fish and other species that must be disposed of, either discarded at sea or dealt with somehow on land.

Techniques are available to improve selectivity, including changes to fishing gear, seasonal closures of spawning areas, real-time closures to avoid juveniles and many others. Decisions on how best to use such options would be best made on a fishery-by-fishery basis in the context of management plans.

The scope of the ban needs to be expanded. Rather than listing a limited number of regulated species, phased in over a period of three years, the ban should be for all species, except those which have a demonstrated ability to survive a return to the sea, which will differ according to the gear type used.

Improved surveillance by Member States will also be needed to ensure respect for the new legislation. Controls at sea, on-board CCTV and observers, inspections at landing ports and other methods could be used, depending on the fishery.

All fish of regulated species that are landed must be deducted from TACs and quotas, but catch limits should not be increased to include fish that would have been discarded. Otherwise the motivation improving selectivity will be lost.

Methods of disposal of the fish, birds and dolphins brought ashore must not lead to incentives for fishers to continue business as usual or create new markets for small fish or different species or even producing fish meal for the aquaculture industry. One possibility would be to allow commercially valuable fish to be sold, with a small compensation to the fishers and the remainder of the proceeds to fund control measures.

Management plans are to be a fundamental pillar of the new CFP (see section *How much fish can be safely caught?*). Since the question of fishing gears and practices will be dealt with in the plans, it is logical to incorporate the timing and implementation of the discard ban into these plans. The full discard ban should be in place within five years of the entry into force of the new basic regulation.

The EU subsidy programmes currently have provisions for the funding of improvements to gear selectivity. This provision should be continued and expanded

⁷ Proposal for the basic regulation COM (2011) 425, Article 15.1 excludes at least ten species which are regulated by TACs from the discard ban.

in the new EMFF (see section *Paying for sustainable fisheries*), to change the gears and fishing practices of the EU fleets rapidly as possible.

The discard ban should be global in scope – in EU waters, on the high seas and in the waters of third countries.

The Commission's proposal has had the positive effect of concentrating minds on the issue of discards. However, the above are important issues that must be dealt with to avoid the discard ban being undermined by a resistant industry and destroying any possibility of achieving selective and sustainable fisheries.

In addition, the reduction in overall fishing effort that is required to allow stocks to recover to levels above those that can produce MSY (see section *How much fish can be safely caught?*) will also result in less unwanted fish having to be brought ashore, since less fishing will occur.

How should the fish be caught? Protecting marine biodiversity

Unsustainable fishing practices not only deplete target stocks, they also cause harm to other marine species and the sea floor. Certain gear types that contact the sea floor, such as motorized bottom trawls and dredges, are particularly harmful to certain communities, for instance stone and coral reefs, *Poseidonia* and maerl beds, as well as by suspension of particles such as sand or silt. In the North Sea, 130 years of bottom trawling has reduced much of what previously were hard bottoms, horse mussel and oyster beds, to soft bottoms of sand and mud. Very few marine areas in the world are now out of reach of modern industrial fishing. Even the deep sea is being increasingly trawled, as more easily accessible fish stocks are depleted.

Marine Protected Areas (MPAs) are useful not only to protect biodiversity in general but also as a fisheries management tool to build resilience in the ecosystems, to protect spawning grounds and habitats for juvenile fish. Fully protected areas, with no fishing, are also important for research purposes, since there are very few pristine areas in European waters to serve as comparisons.

International commitments on protection of ocean and coastal ecosystems, adopted in Nagoya 2010 (the Aichi Biodiversity Target 11, subsequently reaffirmed in Rio+20) are to effectively protect at least 10% of ocean and coastal areas. Today only 1% have some form of protection. This compares to recommendations by scientists that globally, 20-40% of oceans and coasts should be included in a network of MPAs⁸.

European legislation is already in place to protect marine biodiversity⁹, but no Member State has implemented their obligations yet. There is a particular problem in implementing fisheries-related measures to meet biodiversity obligations in Natura 2000 sites.

There is an urgent need to implement MPAs, both as no-take zones closed to fishing and the Natura 2000 network. The 2012 deadline¹⁰ to finalise the Natura 2000

8 Gell, F.R., Roberts, C.M., 2003. Benefits beyond boundaries: the fishery effects of marine reserves. *Trends in Ecology and Evolution* 18, 448–455.

9 Directives 1992/43/EEC (Habitats Directive), 2009/147/EC (Birds Directive) and 2008/56/EC (Marine Strategy Framework Directive)

10 Halting the loss of biodiversity by 2010 - and beyond COM(2006) 216 final

network of marine protected areas will not be met - both Member States and the Commission need to significantly speed up the process.

Management plans for fisheries, an essential element of the Common Fisheries Policy, must incorporate marine protected areas, designated and implemented by the Member States to achieve at least 20% of areas as fully protected, no fishing zones. This is an urgent requirement to fulfil the ecosystem-based approach, regardless of the adoption of management plans which are currently stalled in a conflict with Council.

Conflicts among users of the marine environment are increasing. This sectoral curse can be seen not only between fisheries and biodiversity conservation, for instance between establishing Natura 2000 sites and certain types of fishing, but between all sectors claiming marine space - windmills, sea traffic lanes, aquaculture, oil drilling, etc. Handling these conflicts is key to reaching management objectives. Using effective Maritime Spatial Planning (MSP) is one of best tools to help solve these sectoral conflicts.

Managing the fishing fleets

Few would today dispute that the EU's fishing fleets are too large and powerful for the fish that are available to be caught, even if most fishermen think that it is the fleets of other fishermen that should be reduced. A great deal of the excess fishing capacity is due to generous subsidies over a period of decades, ironically at the same time as there were other subsidies to scrap vessels and legal requirements for fleet reductions in the Member States. Much of it is also inappropriate, using gears that are either destructive to the marine habitat, especially the sea floor, or else unselective, catching fish and other species end up being discarded (see section *What about discards?*).

The size and composition of the fleets are among the most serious problems that the CFP must deal with in the current reform, for excess capacity inexorably leads to political pressure to set quotas too high and therefore unsustainable and/or illegal fishing. A glance at the TACs decided by fisheries ministers, frequently in excess of scientific advice, eloquently illustrates the strength of that pressure. Ministerial over-fishing, though, occurs far less frequently when fisheries management plans have been adopted, for they greatly limit the scope of ministers to ignore scientific advice.

Twenty years of programmes attempting to reduce this capacity¹¹ failed to achieve the appropriate balance between fleets and available resources, primarily because the Member States lacked the political will to impose the appropriate reductions and reconversions to their own fleets. The Commission largely abandoned a legislative approach to fleet management, instead transferring responsibility to the Member States, for which it was soundly criticised by the Court of Auditors in 2007¹².

In the current reform, the Commission proposes to remove the few restrictions that still exist on fleet capacity, a ceiling on the size of each Member State's fleet and an entry-exit regime that aims at no increase in capacity. Rather, the Commission makes the simplistic assumption that market forces will accomplish the necessary and appropriate reductions of the fleets and intends to impose, across the EU, a system of tradeable fishing rights. Such right-based scheme, however, is a very blunt tool for allocation of access to the fishery and is not appropriate to achieve the

¹¹ Multi-Annual Guidance Programmes

¹² Court of Auditors Special Report 7/2007

necessary restructuring of the fishing fleets (see section *Who should have the right to fish?*).

Instead, fleet restructuring needs to be planned and regulated, so that fleet size and composition are in balance with the resources can be sustainably be caught. The first essential step is a thorough assessment of the current capacity of the fleets of each Member State. Data on the tonnage and engine power exist but the latter are unreliable for almost all Member States and must be improved. Other parameters must be included in the assessment, including type and quantity of gear.

Determinations must be made of how much fish can be safely caught as well as the appropriate fleet capacity required to catch it in an economically viable manner. Fleet capacity ceilings must be established at appropriate levels and regularly revised downwards to take into consideration technological progress. In cases where there is excess capacity, legally binding programmes must be established with the first steps being the elimination of the most environmentally destructive fishing vessels and gears. Detailed decisions on which capacity is to leave the fishery should be made at the level of a particular fishery (see section *Regionalisation of the CFP*). Sanctions must be imposed by the Commission in situations where capacity is not reduced to the appropriate levels.

Incentives - both positive and negative - will be needed to encourage the necessary capacity restructuring and there are many from which to chose, to be applied at the EU level or more locally. The market is also increasingly demanding sustainably-caught fish.

All subsidies that encourage the maintenance of excess capacity should be terminated (see section *Paying for sustainable fisheries*). This includes scrapping subsidies, which often function as an "insurance" of future income rather than an incentive to leave the fishery. Other subsidies to terminate are the market intervention mechanisms, which do little to encourage better planning of activities by fishermen, and fuel subsidies, specifically the fuel tax exemption for fishing vessels.

The costs of fishing licences could be made dependent upon the type of fishing conducted, with the more environmentally-friendly practices having significantly lower fees. Another option is to grant preferential access to vessels that fish in a more sustainable manner. For instance, certain prime fishing areas could be reserved for vessels fishing with significantly more selective and low-impact gears and practices (see section *Who should have the right to fish?*).

These and other tools should be used at the appropriate level (EU, Member State, other) in order to not only reduce the fleets where necessary, but also to ensure that the capacity that remains is the least environmentally destructive and provides the greatest benefits to society. A market-based mechanism cannot accomplish that.

Who should have the right to fish?

Fish stocks are not commodities or private property, they are natural, renewable, publicly-owned resources and the right to exploit them carries responsibilities. The right to fish should be conditional upon acting in an environmentally and socially responsible manner. Since fishing can be conducted in ways that vary in their environmental sustainability, allocating access to the fishery is a powerful tool for improving the way in which fishing is done, for reducing its environmental impact and increasing the benefits the industry provides to society.

Allocation of the right to fish is thus one of the most fundamental issues in fisheries management.

The Commission is proposing to allow the market to determine who can fish, by obliging the Member States to set up a system of fishing rights (such as quotas) that would be allocated to ship-owners or other individuals or companies. These rights, referred to as Transferable Fishing Concessions (TFCs) would be freely tradeable within the Member State and would, under certain circumstances, be tradeable among individuals or companies between Member States. The scheme would also apply to EU activities outside EU waters, except for fishing opportunities obtained under bilateral agreements (see section *The external dimension*).

This is doubtless among the most controversial part of the Commission's proposal.

Several Member States already have their own national systems of tradeable rights for certain fisheries, but that has been a choice made by them, usually introduced in stages over a period of many years. The Commission is seeking to impose such a system on all Member States, within a period of one year (before the end of 2013) for all vessels greater than 12 metres and for vessels less than 12 metres using trawls or other towed gear. Such rights would be awarded for at least 15 years, possibly in perpetuity, effectively amounting to a compulsory privatization of marine resources.

The Commission defends its proposal by arguing that this approach will lead to the much-needed reductions in fleet capacity (see section *Managing the fishing fleets*).

However, experience shows that TFCs often lead to concentration of the right to fish in the hands of those able to afford the highest prices. Since the rights could be traded or sold, the system could even lead to financial speculation on quotas as has happened in some instances.

As a market-based system intended to allocate access to the fishery, this type of approach is not designed to reduce the fleets to the appropriate size, nor to ensure that the most environmentally damaging vessels are removed, leaving those that are able to fish sustainably.

Instead, Greens propose that the allocation of the right to fish should be based upon criteria rather than market forces – specifically, on the environmental and social aspects of the fishing. Fishermen should be required to demonstrate that their fishing operations do not damage the marine environment and make significant contributions to coastal fishing communities. Specific criteria could include the selectivity of the fishing gear, damage to the sea floor and habitat, fuel consumption and CO₂ emissions, contribution of the fishery to the local economy, employment provided, among others. Priority should be given to fishing for human consumption (as opposed to fishing for fish meal and oil) as well as to operators who comply with the rules. The discipline of environmental life cycle assessment offers a tool to quantify the various impacts of fishing from environmental, economic and social perspectives¹³

If fishing permits are granted based on historical participation in the fishery, with those who have had larger catches receiving the largest share of the quota, this will simply allow those who have been responsible for over-fishing in the past to continue fishing in the future.

¹³ See, for instance, Ziegler et al. 2008. Environmental life cycle assessment of Norway lobster (*Nephrops norvegicus*) caught along the Swedish west coast by creels, conventional trawls and species-selective trawls. Int. J. of Life Cycle Ass. 13(6):487-497,

The Commission's proposal should be amended so as to encourage Member States to use such criteria when they allocate the right to fish, rather than a market-based approach. A system of TFCs should not be imposed across the EU and under no circumstances outside EU waters. Systems of allocation should be adopted at a decentralized level, commensurate with the geographical scale of the fishery.

Finally, it is important to note that if the TFCs are not to be compulsory across the EU, then the Commission's proposal would contain nothing to address fleet capacity. That critical gap would need to be filled urgently (see section *Managing the fishing fleets*).

Regionalisation of the CFP

One of the major goals of the reform is to establish a policy that is less centralised, less dependent on detailed decisions taken by the Council and the European Parliament, so as to allow more opportunity for local and regional involvement in fisheries management. The current degree of micro-management has been identified as a major contributor to the failure of the CFP (see section *Problems with EU Decision-making*).

There is a clear need to delegate much of the detailed decision-making to the most appropriate level. This transfer should not be confined to a simple shift to the Member State level, since that is not always the best level to take decisions either - it has been the Member States, collectively, whose decisions have led to excessive quotas, generous subsidies, non-selective fishing, bloated fishing fleets. There are many types of decisions that would best be taken, based on widespread consultation, either between groups of Member States or within a single Member State.

The previous reform in 2002 created the Regional Advisory Councils but the RACs were designed to provide advice on management, not to take decisions themselves. They also comprise a very rigid view of what is the appropriate geographical scale for decision-making and a lack of balance in representation from the small-scale sector and civil society. Yet the Commission seems to be pushing for devolution of power to the RACs for lack of a clearer idea of what constitutes regionalisation.

The Commission's proposal states:

The Common Fisheries Policy shall be guided by the following principles of good governance:

a) clear definition of responsibilities at the Union, national, regional and local levels

....

d) broad involvement of stakeholders at all stages from conception to implementation of the measures;¹⁴

Clearly the proposal as written encourages the involvement of a wide variety of levels of government and other stakeholders.

Since fisheries is an exclusive competence of the EU, the Council and the European Parliament must make the basic decisions¹⁵ concerning, among other matters, the objectives and principles of the CFP, time frames for the achievement of objectives, criteria to determine access to fish resources, control of fishing and post-harvest

¹⁴ Proposal for the basic regulation COM (2011) 425, Article 4

¹⁵ except the famous "fixing and allocation of fishing opportunities" of TFEU 43.3

activities, so as to achieve a level playing field, structure and functioning of the market and eligible measures and conditionalities for subsidies;

Nevertheless, while it is essential to have common objectives, principles and criteria that apply across the EU in order to guarantee equivalent treatment and a level playing field, detailed decisions concerning the tools to be used to achieve those objectives should be delegated to the most appropriate level, which would vary according to the fishery involved.

The geographical range of fisheries to be managed under the CFP vary enormously - from discrete, local stocks such as *Nephrops* to western mackerel, ranging from the Bay of Biscay to Norway. All players in a particular fishery should be subject to equivalent rules and regulations, so the decisions concerning the best way to achieve the objectives and criteria should be taken at an equally wide range of levels. Depending on the fishery, that means making decisions at the level of the EU itself, a group of two or more Member States, a single Member State, or local regions within a Member State, depending on the geographical and biological characteristics of the stocks. Such a process is probably better thought of as decentralisation rather than regionalisation, since the term regionalisation has come to refer to sea basins or the geographical regions of the RACs, whereas decentralisation is a more flexible concept.

Consider the hake fishery, which is prosecuted by fishing vessels from numerous Member States. The general objectives of management for this stock, the time frame to reach them, control measures to be imposed, etc. would be decided by Council and Parliament, as well as the allocation of fishing opportunities among the Member States. The details of how to achieve those objectives (for instance the fishing gears allowed, the best way to improve selectivity and reduce environmental damage, criteria for entry into the fishery, allocation of fishing opportunities to communities or fishermen, etc.) are best left to the regional and local stakeholders. In the case of the hake fishery, this would include interests from a wide range of Member States from Ireland to Portugal: national and local governments, fishermen representing the full range of vessel sizes and types in the fishery, scientists, NGOs, and others.

Other fisheries are far more geographically local in scope, taking place entirely within the waters of a single Member State. In such cases, the same interests would be involved but from only one Member State.

De-centralisation must incorporate the ecosystem-based approach to management. The reform must promote greater coordination among the many EU policies concerning the marine environment and provide the means for achieving good environmental status by 2020. An essential tool in this process is marine spatial planning, in which all sectors having an interest in the geographical region in question (fishers, wind farms, tourism, aquaculture operations, ports, sea lanes, marine reserves, etc.) are brought together to discuss and resolve their different demands for use of the marine environment. This must not, however, lead to fisheries being marginalized for the benefit of such sectors as marine transport.

It should be noted that several examples exist of cooperation to achieve such local management measures, including improved *Nephrops* trawls in Brittany, a more selective trawl for flatfish in the UK and others.

The Treaty allows the EU to delegate power to the Member States, not to other bodies - neither regional governments within a Member State, nor non-governmental institutions. Delegation may only be to the Member States but

decision-making power can be delegated upon conditions. The co-legislators can impose certain requirements on the Member States, such as the extent to which various stakeholders must be consulted. A Member State cannot be obliged to follow the recommendations of any particular consultation, but they can be required to explain their reasons.

Under such a decision-making model, the co-legislators would decide on the objectives of management for a particular fishery, the time frame to achieve them, etc. They would delegate authority to one or more Member States, who would in turn be obliged to establish procedures for consulting certain types of stakeholders on the best way to achieve the EU requirements. Such consultations would be national or multinational, depending on the fishery. The Member State(s) would then adopt the recommendations or else justify to both the stakeholders and the EU as to why they did not adopt them. All management plans and other decisions agreed should be publicly available and evaluated by the Commission to ensure that they are properly implemented. Failure to implement the decisions or to achieve the objectives within specified time periods would lead to sanctions such as loss of access to fishing possibilities or public aid.

Such an approach offers several advantages over the traditional "micro-management by Bruxelles". It would:

- relieve the Council and Parliament from responsibility for onerous and highly technical decisions on myriad fisheries, leaving them to concentrate on overall objectives of management and other aspects of the CFP;

- allow those most involved in the fisheries a greater responsibility for the details of management for their fishery;

- more fully utilise the knowledge of the various stakeholders;

- contribute to a "level playing field" since all those involved in a fishery would be involved in the decisions.

Paying for sustainable fisheries

All of the EU structural and cohesion funds are being renewed in 2013, for a period of seven years, in the Multiannual Financial Framework. The one for fisheries is to be newly named European Maritime and Fisheries Fund (EMFF), to replace the current European Fisheries Fund (EFF).

It is critical that the EMFF be designed and implemented so as to support the policies and objectives of the CFP, especially the sustainable exploitation of marine resources. In these times of budget restraint, it is even more important that the entire EMFF be geared for supporting sustainability. Public aid should be restricted to investments that are in the public interest.

Considerable amounts of money from the structural funds used to be awarded to developing the fishing fleets, either by building new vessels or modernizing existing ones. Twenty years of such subsidies contributed significantly to the over-capacity that exists in many EU fisheries. Since 2004 funding is no longer available for building vessels, and pressure to reinstate it must be resisted.

In the new EMFF, the Commission is proposing some significant changes. Among them is the suggestion to terminate public aid for scrapping, which is still available under the current programme. In 2011, the European Court of Auditors criticized the scrapping aids for not having contributed to the reduction of fleet capacity. Indeed, if a ship-owner knows that a handsome subsidy will always be available to

leave the fleet in the future, there is good reason to stay on and hope that the situation improves. Such aid is not consistent with the promotion of sustainable fishing.

Aid for the modernization of fishing vessels is rarely in the public interest either. While the idea of paying a ship-owner to install a more energy-efficient engine that emits less CO₂ may be seductive, it is in reality impossible to ensure that the engine power is not increased at the same time, leading to an increase in fishing capacity.

Significant changes will be needed to the EU fishing fleets and if they are to be achieved, public aid would facilitate the transition.. It must, however, be limited to measures that reduce environmental impact of the fishing operations by such means as conversion of vessels and their gear to methods that are more selective or that inflict less damage to the sea floor.

Social support measures during the restructuring of the EU's fleets will be important. So far, such social support has been directed too much towards ship-owners and too little towards the crew and this imbalance must be redressed, through measures such as retraining for other economic activities, including giving value added to fisheries products.

Another historical problem has been that much aid has gone to big business and ship-owners and not enough to crewmembers or the small-scale enterprises (both fishing and other) that provide greater employment than large companies. Greater financing should be dedicated for financing local, innovative projects such as those done under Axis 4 in the EFF.

The external dimension of the CFP

The EU fleets operate worldwide with 28% of the fish caught by European fishing boats taken outside EU waters - 20% in international waters and 8% under agreements with other countries. The EU is also the world's largest importer of fish products (over 60% of fish consumed here). The Union thus has a special obligation to establish and respect high standards in the international arena.

The Commission has, for the first time, included minimal provisions in the basic regulation concerning the external dimension of the CFP. What is proposed is positive as far as it goes but far more is needed.

With respect to bilateral fisheries agreements with third countries, to be re-named Sustainable Fisheries Agreements (SFA), the Commission proposes that they be limited to seeking "surplus stocks", meaning fish that can be caught within the overall limit of MSY but that the domestic fleets of the third country cannot, or do not wish to catch. Putting such a restriction in the basic regulation is very positive, but the EU must ensure that reliable assessments of available resources are conducted and that the fishing activities of other countries are also within the overall MSY limit. It is also proposed to de-couple the financial compensation for access to fish stocks from money aimed at developing the fishing sector in the third country, such as improving surveillance, scientific advice, training, etc. This, too, is a good idea in order to reduce the incentive for the third country to offer access to more fish than can be caught sustainably in order to receive more money.

However, EU vessels fish in the waters of third countries outside the scope of bilateral fisheries agreements (private agreements, joint ventures, reflagged vessels, etc.). The Commission's proposal provides no means of ensuring that these other EU vessels operating in waters of countries with no bilateral agreement meet

the same standards. The Member States should be required to provide information to the Commission on the fishing activities of all vessels, either flying their flag or owned by companies based in that Member State, which operate in the waters of third countries. Such information should be publicly available.

Another practice is for EU ship-owners to operate under an SFA until it has exhausted its fishing possibilities and then to flag out, to avail itself of other possibilities. It subsequently returns to the EU register. Such flag-hopping should be prevented as it is in contravention of the spirit of the "exclusivity clause" in all EU bilateral agreements and encourages overfishing.

The EU is also very active on the high seas, beyond zones under national jurisdiction, where many, but not all, fisheries are regulated (in theory) by Regional Fisheries Management Organizations (RFMO). The Commission proposes that the principles that apply in the CFP to fisheries in European waters should also apply on the high seas.

There is an intense competition for access to fisheries on the high seas and it is critical to manage these fisheries (including the fleets) so as to restore them to *at least* levels capable of producing MSY¹⁶ and preferably above, as proposed by the Commission for EU fisheries.

Fair and equitable systems to allocate access to fishery resources among RFMO members are urgently needed, based on transparent environmental and social criteria, while ensuring that management and conservation measures are effectively implemented and enforced by all participants. Yet the Commission proposes the introduction of systems of rights-based management in RFMOs in order to combat overcapacity in the world's fishing fleets. Such an approach would have dangerous consequences, and could lead to the privatization of fish stocks while excluding the possibility of developing States to develop their fisheries in a sustainable manner. Indeed, the world's fleets need to be managed to eliminate overcapacity and overfishing, but in such a way as to promote the use of the most environmentally and socially beneficial fishing practices.

The EU must take the lead in pushing for better management by the existing RFMOs, such as by means of regular reviews of the performance of RFMOs, conducted by independent bodies, with the recommendations made in such reviews rapidly and fully implemented. Clear cases of lack of compliance by States should result in sanctions, including reductions in quotas, effort, capacity allowed, etc.

Finally, the coverage and mandates of RFMOs must be expanded so that all high seas fisheries are regulated and, where appropriate, coherent with fisheries management in neighbouring EEZs.

Aquaculture

A surprising amount of the seafood sold in stores in Europe comes from fish farms, especially salmon, trout, sea bass, sea bream, mussels and others. Aquaculture is often promoted as a clean, environmentally sustainable source of healthy food while also creating employment in coastal communities where there are few alternatives.

¹⁶ This has been a requirement under international law (UN Law of the Sea) since 1994 and was reaffirmed at the Earth Summit in Johannesburg in 2002

Unfortunately, this rosy picture glosses over some serious concerns over aquaculture that, if not addressed, mean that the industry would create more problems than it would solve.

Probably the greatest impact of aquaculture comes from what the fish eat. In the wild, carnivorous species such as salmon or trout eat other fish and in cages, it is the same. While the details differ according to the species being farmed and improvements are being made to develop alternative feeds for these farmed species, the main component of their food is other fish which has to be caught at sea. There is thus an entire industry devoted to catching fish in the oceans in order to create fish meal and fish oil to feed to fish in cages. It would seem to make much more sense to catch fish for direct human consumption.

The same problem does not arise with herbivorous species of fish and shellfish (such as carp, tilapia, mussels etc.) and so these species are more environmentally sustainable.

Other problems arising from aquaculture include the use of chemicals and medicines to control disease, increased nutrient loads in the local waters due to food that is not eaten, genetic pollution of local ecosystems when escapes inevitably occur and the transmission of diseases to local species. Most of these effects can be controlled by proper choice of the farm site and careful husbandry practices (including reduced caging densities) but proper regulatory supervision and controls are necessary, which does not always happen. Closed systems on land, with no release to the oceans, are a possible solution, especially those which consist of several species co-existing or combining horticulture in greenhouses with fish farming. Offal from fish processing operations can also be used to provide fish meal and oil.

In parallel with industrial farming, concerns over the animal welfare aspects of fish farming, with high densities in cages leading to stress, disease etc. have been expressed. Less industrial scale operations are needed.

It is also argued that aquaculture relieves the pressure on depleted wild stocks, allowing them to recover. Unfortunately, there is scant evidence in support of this. Take salmon as an example. Wild salmon has been severely depleted for many decades now, but the total production of farmed salmon in the North Atlantic runs to well over 1.2 million tonnes per year. If aquaculture really did substitute for wild salmon, allowing stock recovery, then one would expect wild salmon to be abundant. Yet the catches of wild salmon throughout the North Atlantic have been approximately 1.500 tonnes in recent years, having declined from 3.000 tonnes a decade ago.

Conclusions

The CFP has been blamed for many problems, but it must be remembered that it results from political compromise by Ministers. Moreover, full and proper implementation of the current CFP would have prevented much of the current crisis faced by both fish and the fishing sector. Member States have signally failed in the past to implement what they have agreed. This reform, and its implementation, will show whether they truly wish to have a sustainable fishery in Europe or whether they want to continue the downward spiral and sacrifice fish and the communities dependent upon fisheries.

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