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The Common Fisheries Policy

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Introduction

The Common Fisheries Policy (CFP) is one of the more controversial policies of the European Union. In 2013, it underwent radical reforms, which are now bedding in. This paper assesses the policy in the light of the 2013 reforms.

Background

Marine fisheries are by their nature a renewable and common resource, capable of being degraded or destroyed if not managed effectively. Recent studies show that global fish stocks with sustainable levels declined from 90 per cent in 1974 to 71.2 per cent in 2011 and that 28.8 per cent of fish stocks are estimated as being exploited at unsustainable levels and are therefore overfished.¹ The European Commission has estimated that European fish stocks are in significantly worse shape, with 88 per cent being over-fished.² Ensuring that viable fishing activity is sustainable over time requires active fisheries management to ensure fish stocks and 'fishing effort' are in broad balance.³ This is the underlying aim of the CFP, which comprises policies addressing conservation of fishery stocks, the structure of the EU fishing fleet, marketing of fishery products and fishing in third country and international waters. However, when most people comment on the CFP they address primarily its role in conserving stocks in EU waters.

Fisheries management is a challenge everywhere but the characteristics of EU fisheries make it particularly complex. EU fisheries are characterised by large numbers of stocks that migrate between the waters of different Member States and sometimes third countries.⁴ Fishermen from many Member States have historic rights to fish in each other's territorial waters dating back to well before the CFP was created and based on international legal obligations. Many stocks are found in "mixed fisheries" swimming together with other stocks (e.g. cod, haddock and whiting) with different physical and biological characteristics.

Given the transnational nature of fish stocks, fisheries policy was from an early stage a core EU function. The Treaties now explicitly require the Union to define and implement a CFP and they designate the conservation of marine biological resources an exclusive EU competence.⁵

¹ UNFAO, *The State of World Fisheries and Aquaculture: Opportunities and Challenges*, 19 May 2014, pp. 7, 37

² Based on data and assessments by the International Council for the Exploration of the Sea cited in European Commission, *Green Paper: Reform of the Common Fisheries Policy*, 22 April 2009, p. 7

³ 'Fishing effort' is defined in EU law as "the product of the capacity and the activity of a fishing vessel; for a group of fishing vessels it is the sum of the fishing effort of all vessels in the group": *Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC*, art. 4(21), 2013 OJ L 354/22, p. 31; The Scientific, Technical and Economic Committee for Fisheries measures fishing effort in three different ways: 1) days at sea; 2) gross tonnage of vessel multiplied by average days at sea; 3) engine power (kW) multiplied by average days at sea: see Anton Paulrud *et al.* (eds.), *The 2015 Annual Economic Report on the EU Fishing Fleet (Scientific, Technical and Economic Committee for Fisheries 15-07)*, European Commission Joint Research Centre, 10 July 2015, p. 419

⁴ The annual TAC regulation, for example, sets TACs for over 80 stocks covering 30 species in the waters surrounding the UK alone

⁵ *Consolidated Version of the Treaty on the Functioning of the European Union*, arts. 38 and 3 respectively, 2012 OJ L 326/47

Policy prior to the 2013 reforms

The first comprehensive CFP regulation dates from 1983, though the CFP's core underlying principle of common access to and exploitation of Member State waters was decided in 1970, prior to the UK's accession. That principle was significantly weakened by a derogation, originally included in the UK accession Treaty but which continues to this day, to enable Member States to limit fishing by other Member States' vessels in their 12 mile coastal zones. The 1983 policy introduced the CFP's primary mechanism for controlling fishing, namely limits on the total amount of a stock that could be caught annually (Total Allowable Catches or TACs) and quotas. The principle of quota allocation between Member States is "relative stability" whereby each country receives a share of the relevant TAC, based on historic catch records, and this share is fixed as a proportion irrespective of the size of the TAC. Thus, if a country had never fished a stock – e.g. Spain has no record of fishing for cod in the North Sea – it would get a zero quota for the stock concerned. These mechanisms and principles remain at the heart of today's CFP.

The policy has evolved since 1983, utilising a range of mechanisms to discourage overfishing, including limitations on fishing gear and net sizes; long term management plans for key stocks; minimum landing sizes to prevent young fish being sold; and incentives to reduce fishing capacity and fishing effort. In the main, the policy has failed to achieve its objective of sustainable fishing and has been widely criticised, by fishing interests, environmentalists and other commentators alike. Most EU fisheries are not being fished sustainably. Fishing communities have suffered from long term decline and under-employment. Compliance and enforcement problems have been rife. By 2011 the European Commissioner for Fisheries was describing it as a "failed policy"⁶, a view shared by the UK Government:

The current CFP has failed. It has not given us healthy fish stocks and it has not delivered a sustainable living for our fishing industry. Only genuine fundamental reform of this broken policy can turn around these failures.⁷

Why did this policy fail over such a long period? There are many views on this. Part of the answer lies in the difficulty experienced worldwide, and not just in Europe, of containing fishing effort at a time when technological development is continually improving the efficiency of fishing. But also, there lay at the heart of the CFP a series of poor incentives that ran counter to the policy's stated objectives, notably:

- The incentive upon fishermen inherent in the quota system to discard, that is to say throw back into the sea, dead fish for which they had no quota or market. This resulted in massive wastage of perfectly edible fish – 1.7 million tonnes per year – equivalent to 23 per cent of all catches, though the discard rate in some fisheries has been as much as 90 per cent of catches⁸;

⁶ Quoted in 'European Commission apologises for disastrous fishing policy', Bruno Waterfield, *Daily Telegraph*, 13 July 2011

⁷ HM Government, 'Richard Benyon responds to Common Fisheries Policy reform proposals', 13 July 2011

⁸ European Commission, *Impact Assessment Accompanying the document Commission proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*, SEC (2011) 891 final, 13 July 2011, p. 11; Jahn Petter Johnsen & Søren Eliassen, 'Solving complex fisheries management problems: What the EU can learn from the Nordic experiences of reduction of discards', *Marine Policy*, 35(2), 2011, pp. 130-139

- The politicised decision making process resulting in Ministers, under pressure from fishermen, bidding up annual TACs, contrary to scientific advice, as the best (short-term) way to maximise fishing opportunities;
- The incentive provided by subsidies to modernise fishing fleets to increase their capacity and efficiency, thus adding to the pressure on stocks;
- The disincentive to fishermen, resulting from micro-management from Brussels, to take responsibility for conservation, and thus their own long-term well-being.

Some reforms, especially long term management plans, which introduced greater discipline to decisions on TACs and other measures, do appear to be producing results. Thus, for example, North Sea cod and haddock stocks have been improving over the past decade and the latter stock is now certified by the Marine Stewardship Council as being sustainably fished.⁹ North Sea cod was this year taken off the “fish to avoid” list, though it has yet to reach certification as sustainably fished.¹⁰ But the overall performance of the policy has been poor.

The 2013 reforms

The 2013 reforms were jointly agreed by the Council and European Parliament, the first major piece of co-decision in this sector, and came into force on 1 January 2014. Their objective is to address the failings of the previous policy, build on its strengths and thus create a CFP that will result in sustainable fishing throughout EU waters, and indeed by EU vessels in external waters too. They are radical in a number of respects and provide a good example of active political and diplomatic engagement by the UK Government to achieve a positive outcome.

Whilst retaining the core conservation tools of TACs and quotas, multi-annual plans and fishing gear restrictions, the reforms introduce three new key elements:

- **A ban on discards, with associated obligation to land all fish caught, to be introduced progressively from 2015.** Effectively this means that all fish caught will be counted against quota, so fishermen will need to avoid catching unwanted species and they will have to have, or acquire by purchase or exchange, quota for all the fish they do catch. Whilst there are inevitable implementation issues to be addressed, especially in regard to mixed fisheries, this should be a win-win policy in terms of both conservation and fishermen's returns – fewer fish will be caught, but more will be marketed;
- **Introduction of a legal requirement for stocks to be exploited at the level of Maximum Sustainable Yield (MSY) or less, to be achieved by 2015 where possible and by 2020 for all stocks at the latest.**¹¹ The Commission and Council are legally obliged only to adopt measures that are consistent with

⁹ See Marine Stewardship Council, 'Scottish Fisheries Sustainable Accreditation Group (SFSAG) North Sea haddock', 15 December 2015

¹⁰ See Undercurrent News, 'MSC hopes to see certified North Sea cod on chippy menus', 29 September 2015

¹¹ "Maximum sustainable yield' means the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without significantly affecting the reproduction process": see *Regulation (EU) No 1380/2013*, *supra* n. 3, art. 4(1)(7)

scientific advice on MSY. Where there are insufficient data to determine MSY for a stock, it will be managed in accordance with the precautionary principle;

- **Empowerment of Member States with an interest in a fishery, after consulting local fishing, environmental and other interests, to submit joint recommendations on conservation measures to the Commission.** This “regionalisation”, which in effect returns certain competences to Member States, gives Member States and stakeholders with an interest in a specific fishery the opportunity to design conservation measures appropriate to that fishery, to encourage them to take ownership of the policy; and the Commission will adopt these provided they are consistent with the relevant governing legislation and/or multiannual plan.

Assessment and UK perspective

The reforms were welcomed in the UK by fishing and environmental interests alike, though many fishing interests were naturally concerned about implementation issues. Whilst the changes – notably the discards ban and MSY requirement – pose genuine challenges in terms of implementation, especially in mixed fisheries, and will require significant changes in fishing practices, there was widespread recognition that these were the right measures to tackle the CFP’s failings. It is as yet too soon to evaluate the success of the reforms, which will not be fully in place until 2020. The discard ban applied to pelagic species (herring, mackerel *etc.*) from 2015 and the UK Government has issued guidance for fishermen relating to the application of the ban to demersal species (cod, haddock *etc.*), which will apply in some waters as of 1 January 2016. At the December 2015 Agriculture & Fisheries Council, the Commission proposed TACs in line with MSY wherever they had sufficient data.¹² The application of MSY has thus made real, if limited, progress. Whilst certain TACs were increased by the Council (and duly attracted NGO criticism), Fisheries Commissioner Karmenu Vella supported the deal and declared the Union was on track towards its sustainability targets (MSY for all stocks by 2020).¹³

The UK and devolved governments all welcomed the 2013 reforms. UK Fisheries Minister George Eustice said:

The long fight to reform the broken Common Fisheries Policy and end the shameful practice of perfectly good fish being thrown dead back into the sea has been won [...] Today's vote signifies a new chapter for the CFP that will make fishing more sustainable, will end the centralised one-size-fits-all approach to decision-making, and will make discards a thing of the past.¹⁴

However, the CFP has long been a controversial policy in the UK, not least because of the perception that this country received a poor deal on fisheries upon its accession, and that this was then worsened by the practice of “quota hopping” whereby foreigners could buy UK flagged fishing vessels and licences and then fish against the UK’s quotas. This feeling

¹² European Council, *Outcome of the 3437th Meeting of the Agriculture and Fisheries Council*, PR CO 72, 15 December 2015

¹³ European Commission, ‘AGRIFISH Council Press Conference’, 16 December 2015; see also ‘Cod and haddock catches to increase under EU fishing quotas’, Arthur Neslen, *The Guardian*, 16 December 2015

¹⁴ HM Government, ‘New Common Fisheries Policy deal ends discards’, 10 December 2013

is compounded by the perception that the CFP has been more vigorously enforced in the UK than in other Member States. Yet this does not tally with the findings of the Court of Auditors, which noted that 90 per cent of infringements in the UK in 2005 were dealt with through warnings rather than court action.¹⁵ Furthermore, between 2008/09 and 2014/15, French fishing crews received 46 per cent more convictions and financial administration penalties than British crews, with the number of convictions meted out to British crews being on a downward trend since 2000.¹⁶ Some continue to argue that UK fishing interests would be better served were the UK to repatriate the CFP, if necessary by leaving the EU. This argument holds that the UK fishing industry would be better off – effectively that it would have better access to fishing opportunities – if the UK were to regain control of fishing in its 200 mile Exclusive Economic Zone. From this viewpoint, the CFP reform is not considered relevant or sufficient.

The argument however is based on some mistaken assumptions. It is based on the false premise that the UK would be free to set catch quotas for fish in its territorial waters independently, and reserve them all for UK vessels. The reality is that virtually all commercial stocks found in UK waters belong to stocks that are also found in the waters of other EU member states and/or Norway. Effective conservation of all those stocks would require joint management (including jointly agreed TACs and quotas) with the EU, and Norway as appropriate, just as Norway, under a longstanding framework agreement with the EU, currently has to agree with the EU the TACs for North Sea stocks that are also found in its waters.¹⁷ It may be that the UK would argue for increased quota shares for its vessels or reduced access for EU vessels in this context. But given that the relative stability settlement has endured for 30 years and was itself based on historic fishing patterns (many of which are based on international, non-EU legal obligations) it is difficult to see how the UK could sustain a convincing argument for any “better” allocation of fishing rights or access than that which currently operates. Indeed, the UK would lose (or have to pay for) fishing rights in North Norwegian waters that are currently largely “paid for” by transfers to Norway from other Member States’ fishing allocations in the annual EU-Norway agreements.¹⁸

It would also lose tariff-free access for fishery product exports to the EU market (worth just over £1 billion in 2014). Fishermen from Thanet, for example, sell some of their stock in Boulogne, an arrangement French fishermen would be unlikely to tolerate (duty free) if the UK left the EU.¹⁹ France is in fact the UK’s biggest fish export market, with fish exports to France being worth more than £345 million in 2013.²⁰

Conclusion

The latest round of reforms is genuinely radical and has focused on the three specific areas where the previous policy was weakest: a ban on one of the most unpopular features of the CFP – discards; scientific principles have been put at the heart of the new CFP in a legally

¹⁵ European Court of Auditors, *Special Report No. 7 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources*, 2007 C 317/1, p. 17

¹⁶ See HM Government, *Military Aid to Civil Authorities*, 20 August 2015

¹⁷ See *Agreement on Fisheries between the European Economic Community and the Kingdom of Norway*, 1980 OJ L 226/48

¹⁸ Andy Lebrecht, ‘Fisheries’ in John Drew & Martyn Bond (eds.), *The UK & Europe: Costs, Benefits & Options*, *The Regent’s Report 2013* (iCES/Regent’s University, 2013), p. 134

¹⁹ Laura Sandys in Chatham House, *UKIP, the Radical Right and the European Parliament Elections: Q&A*, 31 March 2014, p. 4

²⁰ Seafish, ‘Seafish Market Summary: UK seafood exports’, 15 October 2015

binding way; and certain powers have been transferred from Brussels to Member States. Stocks are showing some signs of recovery. The UK Government (along with the devolved administrations) championed reform and now, with the Commission and other Member States, needs to work hard at implementation to make it a success.

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Senior European Experts

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