10 FREEDOM FOR FISHERIES?

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The management of maritime fish stocks and fishing poses considerable problems for policymakers of any country because of the problem long recognised by economists as the tragedy of the commons (Hardin 1968). This arises when resources are accessible to many people ('non-excludable'), but what one person uses cannot be used by anyone else ('rival'); so it is rational for each person to consume as large a share of the resource as he or she can, without heed to the consequences of everyone else acting in the same way. In the case of fisheries, this means that each fisherman will fish as intensively as possible, because prudent fishing by one fisherman to protect the stock will almost certainly only lead to larger catches by other fishermen. This results in overfishing: that is, fishing at a higher level than is sustainable biologically, referred to as the maximum sustainable yield (MSY). It leads to depletion and possible destruction of the very fish stocks on which fishermen's livelihoods depend. Economic theory suggests that the best solution to the tragedy of the commons is to make it possible to exclude people from consuming the resource by assigning property rights, but in the case of sea fisheries this is not an easy matter. For a start, there has to be an assignment of property rights over the seas, and then there has to be some way of assigning property rights (or at least 'harvesting rights')[1] over

1 Harvesting rights are the right to take so much of the resource over a certain period and are not normally assigned in perpetuity.

the fish swimming in these seas. Another problem arises from the fact that fish stocks can migrate over national jurisdictions, so fisheries' management requires international cooperation and a mutual recognition between nations of fishing rights awarded.

These issues would have to be faced by the UK government, or the devolved administrations, if the management of our maritime fisheries were in national hands. Since the earliest days of UK membership of the EEC/EU, however, property rights over the fish in the seas around the UK have been ceded to the Community, and almost all aspects of fisheries are managed through the European Common Fisheries Policy (CFP). For more than 30 years, aspects of the CFP have been supposed to conserve fish in EU waters; nevertheless, by 2008 the European Commission itself estimated that, of the stocks of fish for which information was available, 80 per cent were being fished above MSY, compared with a global average of 25 per cent. Worse still, 30 per cent of these EU stocks being fished beyond MSY were now outside safe biological limits, meaning that stocks might be unable to recover (COM 2008). Alongside this, the contribution of the fishing industry (fishing, fish processing and aquaculture) to EU GDP had fallen from 1 per cent in the early 1970s to less than half a percent in 2009, and the number of people engaged in the industry throughout the EU had fallen from 1.2 million in 1970 to about 400,000 in 2009 (El-Agraa 2011).[2]

This European-wide pattern of industry decline is reflected in the UK. While landings into UK ports of the free-swimming pelagic fish (such as herring and mackerel) have fluctuated considerably since 1970 and showed an overall decrease of just 19 per cent to 2013, those for the more valuable seabed demersal fish (such as cod, plaice and haddock) have been in almost continuous decline, plummeting by 81 per cent from 778,600 tonnes

2 This decline is even sharper than it might seem, since the 1970 figures apply to the EU15 (the countries that made up the EU before the 2004/7 enlargement), whereas the 2009 figures apply to the EU27.

to 149,000 tonnes over the same period.[3] The size of the fleet has also fallen, both in response to the economic pressures resulting from falling catches and also because of EU and UK government encouragement to decommission vessels. Numbers of vessels fell from 8,667 in 1996 to 6,399 in 2013, with a resulting reduction in terms of capacity from 274,532 gross tonnage (GT) to 200,697 GT. The number of regular and part-time fishermen has shrunk too – from 19,044 in 1996 to 12,152 in 2013, and by nearly a half since 1970 (Marine Management Organisation 2014: Tables 3.7, 2.1 and 2.6).[4] UK fish consumption is falling, but, in spite of this, the industry is unable to satisfy demand. In 2013, the UK was a net importer of 286,000 tonnes of fish, with a value of £1.3 billion, equal to roughly one-third of total UK consumer expenditure on fish (ibid.: Tables 4.5 and 4.1).

From these figures, it seems that the CFP has served the UK fishing industry very badly. This chapter looks at the history of the CFP to try to understand why this should be. This is quite complex, but it falls fairly clearly into six time periods.

1957–69: the conception and early development of the CFP

Common European policies on fishing have their origins in the 1957 Treaty of Rome, which stated that there should be a common agricultural policy (the CAP) and, almost accidentally, defined agriculture to include the products of fisheries.[5] Initially, however, little attention was given to fisheries management.

3 These figures include landings into UK ports by non-UK-owned vessels and exclude landings by UK-owned vessels into non-UK ports. For more details, see Marine Management Organisation (2014).

4 Whilst the number of part-time fishermen continues to fall, there has, however, been a small increase in the number of regular fishermen since 2011.

5 For full details of the legal basis for the EEC/EU competence over fisheries and fish products, and how this has been amended by treaty changes over the years, see Churchill and Owen (2010).

But the development from 1962 onwards of a common market in fish (which entailed the removal of EEC internal barriers to trade and the implementation of a common external tariff) had implications for the six individual member states. In particular, France and Italy, who both had fairly inefficient fishing sectors previously protected by high import tariffs, were faced with steeply rising fish imports. These threatened domestic producers' profitability and, as a result, their governments began to agitate for a CFP that would include a structural fund to provide aid to enable the modernisation of their fishing fleets. Not much was done, however, until 1970, when the application to join the EEC of the UK and three other nations (Norway, Denmark and Ireland) with either big fishing industries or significant coastlines[6] led to a scramble to establish an *acquis communautaire* (body of Community law) in the area of fishing, which the new accession nations would have to accept if they were to join.

1970–82: the establishment of common Community waters

On 30 June 1970, on the eve of the formal accession negotiations, the EEC Council of Ministers hurriedly agreed two Regulations, which formed the basis of the first fully-fledged CFP. Council Regulation 2142/70 established the common organisation of fisheries markets, encouraging fishermen to band together to form Producers' Organisations (POs) that would centralise market supply in major centres and oversee quality and marketing. It also set up a market intervention system with the aim of establishing price floors for fish, similar to the price-support system of the CAP. The other Regulation (2141/70) met demands for structural aid for the industry by providing access to the European Agricultural

6 Ireland has a long coastline and thus had potential legal claims to sovereignty over a large area of sea, but at that time it had a relatively small fishing industry.

Guidance and Guarantee Fund (EAGGF) for funds to modernise fishing fleets. Most significantly, however, it established the principle of *equal access* to fishing grounds, thereby giving boats registered in one member state the same access to the maritime fishing grounds of any other member state as boats registered in that state. It meant that the EEC member states would no longer have control over their own fishing grounds. Rather, fishing waters would be a common Community resource, open to exploitation by all member states. This posed obvious dangers of increased overfishing, particularly as the initial proposals contained no conservation measures for fish stocks.[7] Largely because of fears about the potential cost of this to their fishing industry, the Norwegians decided in a referendum in 1972 (and again in 1994) not to join the Community after all.[8]

At the time Regulation 2141/70 was adopted, national sovereignty over fishing waters in Europe was largely governed by the 1964 European Fisheries Convention, which had given coastal states sovereignty over waters twelve nautical miles (nm) out to sea from their 'baselines'.[9] These 12 miles were divided into a 0–6 nm zone in which the coastal state had exclusive fishing rights, and a less exclusive 6–12 nm zone in which those foreign states that had 'habitually fished' in this zone between 1953 and 1962 could also fish in the same areas, roughly at the same rate as they had previously. Outside these zones lay the high seas over which no nation had exclusive fishing rights. Initially, then, the EEC equal access principle legally applied only to the 12-mile zones, and, because of huge resistance from the accession

7 At the last minute, a bland supplementary preamble was added to Regulation 2142/70, simply stating that 'implementation of the common organization must also take account of the fact that it is in the Community interest to preserve fishing grounds as far as possible'.

8 It was also one of the main reasons why Greenland, having gained autonomy from Denmark, withdrew from the EEC in 1985.

9 The low-water mark on the shore, or, in the case of bays, a straight line drawn across the bay.

nations and particularly their concerns about conservation of stocks, it was eventually agreed that this right should be partially derogated (put off) for a transitional ten-year period until 1983, when it would be reviewed again. During this period, equal access would not be allowed in the 0–6 nm zone, or in those parts of the 12 nm zone where it was deemed that coastal communities were especially dependent upon fishing.[10] In the 1983 reforms of the CFP, this derogation was extended to the full 12-mile zone, as a means of protecting coastal communities. Ironically, because of the recognition that there was better fish conservation in these waters, this derogation was renewed again in 2003 and, most recently, in the 2013 CFP reform.[11] Because of this, the UK still largely retains exclusive national fishing rights in 'inshore' waters, but this does not exclude these waters from other aspects of CFP regulation;[12] nor does it mean that these waters are legally safe from the equal access principle, which will be reviewed again in 2022.

The principle of equal access is, however, of great significance beyond the UK's inshore waters. By the 1970s, some coastal nations had extended their property rights over marine resources up to 200 nm from their baseline,[13] and, although this was not fully legalised until the 1982 UN Convention on the Law of the Sea, it was already clear by the mid-1970s that such 200 mile exclusive economic zones (EEZs) would almost certainly be upheld in international law. Iceland established a 200 nm EEZ in 1975, followed by the US, Canada and Norway in 1977. This had profound

10 Negotiations on that principle eventually excluded about one-third of the British coastline from equal access, although the historic rights of other member states to fish in these areas remained as before.

11 See Regulation (EU) Number 1830/2013, Preamble (19).

12 For instance, since conservation measures are an exclusive EU competence, member states must get agreement for any conservation measures they make in their inland waters.

13 Or, where the coastlines of two nations are closer than 400 nm, to the median point between them.

consequences for Northern European fisheries, especially the UK distant-water fleets, based in Scotland and North East England, which had traditionally fished in these waters, and which, from then on, would only be able to do so by negotiation and at reduced levels.[14] So, this trend towards 200 nm EEZs meant a significant diversion of fishing effort, not only by Community fishing fleets but also by similarly affected third-party states, into the northern waters around the EEC.

In 1976, responding to this perceived double threat on fish stocks, the EEC agreed that member states with coastlines bordering the North Sea and the North Atlantic should themselves simultaneously adopt 200 nm fishing zones on 1 January 1977. This was done by national legislation in each member state: in the case of the UK, by the Fishing Limits Act 1976.[15] Because of the equal access provision, however, this essentially extended EEC property rights over a vast area of sea.[16] Since by that time it was becoming obvious that many European fish stocks were overfished, two crucial questions immediately presented themselves: firstly, how to limit catches so that stocks might be conserved, and, secondly, how to allocate these limited fishing opportunities between the member states. A related important third issue was how to shrink the capacity of the Community fishing fleet (both in terms of tonnage and engine power), which was now recognised as being too large in relation to the fishing opportunities – a problem that had actually been made worse by the provision of European structural funds to modernise the fleet.

14 The negotiating text drafted at the conclusion of the third session of the UN Conference on the Law of the Sea (UNCLOS) in 1975 laid down that a coastal state would only be obliged to grant other states access to exploit the proportion of the available fish catch it was unable or unwilling to catch itself.

15 In fact, the UK would have created a 200-mile fishing zone unilaterally if need be: see Hansard, 20 October,1976, Col. 1459.

16 Fishing limits were also later extended in the West Atlantic, the Skagerrak and Kattegat and the Baltic, but not in the Mediterranean.

1983–92: the development of a fisheries management system

Given how much was at stake, it is perhaps not surprising that it took more than six years of squabbling between the nine member states to come to any agreement as to what should be done. Eventually, however, the EEC worked its way to a more comprehensive CFP, adopted in 1983, which defined the objectives of the new system as being to 'ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions' (Council 1983a). The main means for attempting to do this would be via the setting of an annual Total Allowable Catch (TAC) for each of the main commercial fish stocks.[17] This was to be formulated initially by the Commission in the light of available scientific advice,[18] and agreed by the Council of (fishery) Ministers. These TACs would then be divided into *national* quotas for each fish stock. The Regulation also gave the EEC the legal powers to introduce other 'technical' conservation measures, which included such things as closing areas of the sea to fishing at certain times of the year to protect spawning and immature fish; restrictions on the use of fishing gear, such as the type of nets used; and the minimum size of fish that could be landed.

To ensure all this was implemented, the CFP introduced control measures to police the system: these required all EEC skippers of boats over 10 metres to maintain standardised logbooks in which to record details of their catch; all member states to establish an inspectorate to check on fish landings; and the

17 That is, fish species in certain defined areas of the sea – thus, sole in different areas of the North Sea, for example, are regarded as different fish stocks from those off the West Coast of Scotland.

18 The basic Regulation also provided for the establishment of a Scientific and Technical Committee for Fisheries, now the Scientific, Technical and Economic Committee for Fisheries (STECF), in order to provide this information.

setting up of a small multinational team of fisheries inspectors (originally thirteen, now 25) within the Commission to run spot checks on the national procedures.

Clearly, so far as the UK was concerned, the most important aspect of the policy was how the division of TACs into national quotas would be made.[19] The 1983 'basic Regulation' 170/83 stated that this should be on the principle of 'relative stability', which meant that the proportional share of the catch of each fish stock taken by any EEC member state should stay roughly the same (Council 1983a). After intense negotiations, it was decided this would be based on the average of past catches in the reference period 1973–8, with some adjustment under the so-called Hague Preferences to give preferential treatment to regions particularly dependent upon fishing (some northern parts of the UK, Greenland and Ireland) and reflect the loss of catches by distant-water fleets as a result of the introduction of the 200-mile fishing zones by Norway and Iceland. Because of this, the relative stability principle has had a huge part to play in determining the fortunes of national fishing industries. In the case of the UK, in spite of our having contributed around 62 per cent of the waters of the 'common community pond', because so much British fishing during the reference period had been in distant waters, it ended up with a quota of just 37 per cent of the Community total by weight, and, because it was skewed heavily towards lower value fish, only 13 per cent in cash terms (Booker and North 2005).[20]

In spite of these measures, however, it was clear by the beginning of the 1990s that the CFP was failing in its management of

19 The very important related issue of how to divide a nation's quota amongst national fishermen was left for each member state to decide, and, over the years, quite different methods have emerged. For the present UK method, see the appendix to this chapter.

20 Similarly, Ireland, with an underdeveloped fishing industry in the 1970s, ended up with a quota amounting to a mere 4.4 per cent of the total. See Booker and North (2005: 251).

fish stocks. Four main problems can be identified, all largely the product of the tragedy of the commons playing itself out in new ways. In spite of reforms, these problems have been a feature of the CFP ever since. The first was the fact that effective implementation depended on fishermen's compliance with technical conservation measures, their keeping of accurate details of fish catches and landings[21] and determined monitoring and policing of the system by member states, including halting the catch of particular fish stocks once national quota limits had been reached. Since it was in the economic interest of both fishermen and member states not to comply, many did not, particularly as at that time virtually no penalties were imposed on member states breaching their quota allocation or failing to comply with technical conservation measures.

A second problem was that the TACs were set at too high a level. There were two reasons for this. First, in advising on TACs, the Commission lacked accurate data on fish catches (and therefore fish stocks), and it also had inadequate scientific advice. Second, in the Council meetings, fishery ministers regularly pushed TACs to levels above those advised by the Commission in order to avoid their own national quotas from being cut. In effect, it was the fisheries ministers who were contributing to the problem of the Commons, rather than the fishermen themselves.

The third major problem was the fact that TAC limits attempt to control fish *landings*, not the number of fish *caught*, including those discarded (usually dead) back into the sea. This practice of discarding arises for many reasons, including juvenile fish being caught under the specified legal landing size; legal but smallish fish being discarded in favour of higher-value larger fish, a practice known as 'high-grading'; and, in mixed fisheries, species of fish being caught as a 'by-catch' to the main target fish and being considered uneconomic to land, or there being no available quota for them.

21 Including in non-EEC ports, and offloading at sea into other vessels.

The fourth problem was that, in spite of an awareness that the size of the Community fishing fleet needed to correspond to fishing opportunities, the structural arm of the CFP was still providing funds for 'economically appropriate expansion' and modernisation of the fishing industry. This provided for subsidies from the EAGGF of 35–50 per cent of the costs of such investment (Council 1983b). From 1987 onwards, targets in the form of multiannual guidance programmes (MAGPs) were introduced to reduce fleet tonnage and engine power (Council 1986, 1990). However, as with the TACs, the Council set these at levels above those advised by the Commission. The result of this was that, over the period 1983 to 1991, fishing capacity actually *increased*, providing a strong economic incentive to continue to fish above quota.

All these problems were exacerbated by the entry of Portugal and, more especially, Spain into the EEC in 1986. At that time, Spanish fishermen had a fleet approximately three-quarters of the size by tonnage of the total of all the other EEC members. However, they added little to Community fish stocks, as their destructive fishing methods had virtually exhausted their own waters. To avoid Spain's complete disruption of the CFP, complex transitional arrangements were put in place, under which only a limited number of Spanish vessels would be allowed access to Community fishing grounds, and then not before 1 January 1995. It was planned that full integration would only take place in 2003. In return for this delay, Spain was given substantial aid from the EAGGF. This was supposedly to reduce the size of the fleet, but much of it was actually used to modernise boats and, hence, increase their fishing capacity. Spain also circumvented the interim ban from wider Community waters by 'quota-hopping': that is, setting up fishing businesses in other EEC countries, particularly the UK, and so qualifying for a share of those countries' quotas – a legal practice under the 'right of establishment' Community rules, even though the boats might be manned by

Spanish fishermen and the fish caught landed in Spain.[22] In any case, faced with a Spanish threat to veto the 1995 EU enlargement (when Sweden, Finland and Austria joined), from 1996 the Spanish fleet was allowed equal access to EU waters, so putting further pressure on fish stocks.

1993–2002: the introduction of vessel licensing and effort controls

In 1993, reforms of the CFP were introduced. These included multiannual plans for fisheries management, in the hope that these would avoid dramatic variations in TACs, and so allow the industry to plan ahead better; mandatory licensing of all Community fishing vessels; and regulation of fishing 'effort'[23] instead of, or in addition to, the TAC limits. None of this did much to improve fish conservation or the economic health of the fisheries sector. As the Commission's Green Paper (COM 2001) noted, there had been limited progress in adopting multiannual approaches. Effort management had proved unsuccessful, largely because it too was subject to bargaining by the fisheries ministers within the Council,[24] who continued to systematically fix both TACs and MAGPs above levels proposed by the Commission. In addition, there remained considerable variations between member states in the enforcement of the system and the imposition of penalties for infringement.

22 In spite of the requirement introduced in 1999 that British registered fishing vessels over 10 metres in length and landing over 2 tonnes of quota stocks annually must demonstrate an economic link with fishing communities in the UK, numerous vessels fishing against UK quota are part- or wholly owned by non-UK citizens.

23 That is, the product of the capacity of a fishing vessel and its activity, normally expressed in terms of days allowed at sea.

24 One of the constant criticisms made by the industry about effort management is that it has introduced yet more complex regulatory micromanagement into the system. And, because of the numerous derogations negotiated in Council, it has so far proved to be a very ineffective conservation measure.

Excess fleet capacity was a significant problem, particularly as structural aid, provided since 1994 under the Financial Instrument for Fisheries Guidance (FIFG), continued to enable fleet modernisation; this, because of 'technological creep' through improved fishing gear, was increasing the ability to harvest fish more than just fleet tonnage and engine power might suggest. Because of all this, many fish stocks, particularly demersal species such as cod, hake and whiting, were on average 90 per cent lower in the late 1990s than they had been in the early 1970s. They were now outside safe biological limits. At the same time, much of the fisheries sector was characterised by poor profitability and steadily declining employment, with jobs in fish catching, for instance, declining by 22 per cent overall in the period 1990–98 (COM 2002).

2003–13: reform of the CFP

As the 2002 Green Paper shows, the staff at the Commission seem to have long recognised the problems in the workings of the CFP (many of which continued to stem from the competing interests between EU member states, and the inability of some member states to take the need for conservation measures seriously). But they have been fairly helpless to do anything about them. The Commission held extensive consultations with stakeholders in the industry over the period 1998–2002; in response to their deep dissatisfaction with the system, the Council adopted yet another new basic CFP Regulation, which came into force at the beginning of 2003 (Council 2002). The main aspects of this were the following.

- The adoption of multiannual management or *recovery* plans for selected fish stocks (the latter, involving stocks deemed to be outside safe biological limits, might involve the closing of sea zones to fishing for periods of time).

- The replacement of MAGPs with an 'entry/exit' regime, whereby any new fishing capacity created with or without the use of EU public money should be matched with the withdrawal of at least the same amount of capacity.
- The introduction of tighter measures of control and enforcement. This included the installation of satellite-based monitoring systems on board all larger fishing vessels;[25] that fish could only be sold from a fishing vessel to registered buyers or at registered auctions (to help stamp out demand for 'black' or illegal non-quota fish); and tougher sanctions against infringements of the CFP, to be applied both by member states against fishermen, and by the EU Commission against member states. It also allowed for a greater degree of cooperation between member states on enforcement matters, which led to the creation of a Community Fisheries and Control Agency (CFCA), operational since 2007.
- The establishment of a Community Fleet Register (CFR), which means the Commission now holds regularly updated details on all commercial fishing boats, each of which is assigned a unique CFR number, so aiding control and enforcement and the entry/exit regime.
- The establishment of Regional Advisory Councils (RACs) to feed stakeholder advice to the Commission. These would cover distinct fishing zones and be made up primarily of representatives of the fisheries sector, but they would also include other interested parties, such as environmental groups.

By 2008, six RACs had been set up. They were generally considered a success, enabling much greater input from those with

25 The requirement applied to vessels longer than 18 metres as from January 2004, and to vessels longer than 15 metres as from January 2005 (Council 2002: Article 22).

detailed knowledge of local fishing conditions into the distant Brussels-based policymaking process. Other aspects of reform, however, failed. As far as the policy of multiannual management of fisheries was concerned, by 2008 only four recovery plans and four management plans had been adopted, and annual TACs (by this time set for around 130 commercial fish stocks) continued to be the main instrument of fisheries management. These were still being set on average about 48 per cent higher than MSY (COM 2008: 331). An added problem was that, even when scientific evidence pointed to the need for big reductions, existing EU rules meant TACs could not be reduced (or increased when stocks were recovering) by more than 15 per cent per annum. Crucially, too, member states had lacked the political will to speed up a reduction in fishing capacity: this continued to fall at roughly the same annual rate of between 2 and 3 per cent that it had over the previous decade. Even this small reduction was broadly offset by technological progress in fishing efficiency – some estimates put fishing overcapacity throughout the EU in 2008 at 40–50 per cent (House of Lords 2008: 23, 28).

This problem of overcapacity was made much worse by the continued misuse of the EU Structural Fund, supposedly mainly intended to aid vessel decommissioning or alternative employment for fishing communities. Of the €3.2 billion provided by the FIFG between 2000 and 2006, approximately €1.5 billion went to Spain (three and a half times the total sum given to the UK, Germany and Poland combined). Spain used 60 per cent of this for vessel construction and modernisation, thereby further increasing the size and power of the Spanish fleet (Poseidon Aquatic Resource Management 2010).[26] Finally, a damning report by

26 The FIFG was replaced in 2007 by the European Fisheries Fund, which provided financial assistance to the European fisheries sector of €4.3 billion over the period 2007–13, €1.12 billion of which went to Spain, compared with €134 million to the UK (COM 2014). The EFF has now been replaced by the European Maritime and Fisheries Fund (EMFF), which is planned to provide €5.7 billion over the period

the European Court of Auditors in 2007 found that the system of control, inspection and sanctions remained inadequate: catch data was neither complete nor reliable, the inspection system remained poor and few infringements were followed up with penalties sufficient to act as a deterrent. The report found the failure of the system was greatest in Spain, where, for example, quota monitoring ignored the catches by vessels under 10 metres in length, even though such vessels accounted for 67 per cent of the fleet. As the European Union Committee of the UK's House of Lords concluded in its extensive 2008 report:

> on most indicators the 2002 reform of the Common Fisheries Policy has failed: overcapacity in the fishing fleets of the Member States, poor compliance, uneven enforcement, and a stiflingly prescriptive legislative process all persist, while fish stocks remain depleted (House of Lords 2008: 6).

In more recent years, however, there have been small signs of improvement in conservation. By 2009, about 41 per cent of pelagic fish and 29 per cent of demersal fish were being managed under long-term management plans, and these enabled annual TACs to be varied by up to 30 per cent. The TACs were also being set slightly closer to the scientific advice, though they were still well above MSY. New monitoring and control procedures had been put in place, including better data collection and wider implementation of electronic logbooks, enabling real-time catch recordings (Council 2009). By 2010, it appeared that some fish stocks in the North East Atlantic were recovering, and by 2012 the percentage of stocks overfished in these waters had fallen from 94 per cent in 2005 to 47 per cent. It is notable, however, that 75 per cent of the stock in the Mediterranean remains overfished (COM 2013).

2014–20, over one-fifth of which will go to Spain, compared with 4.6 per cent to the UK. For details, see http://ec.europa.eu/fisheries/cfp/emff/index_en.htm (accessed 14 September 2015).

In 2009, the Commission published yet another Green Paper (COM 2009) inviting further debate on the ways the CFP might be much more radically reformed.[27] One of the most notable aspects of this was the Commission's recognition of the very poor economic health of the EU fisheries sector (in several member states, the cost of fishing to the public budget in terms of national and EU aid actually exceeded the total value of the fish caught) and, in an attempt to improve this, its desire to see fishing opportunities set at levels that could restore stocks to MSY (COM 2009: 7).[28] The other urgent and related[29] matter was to reduce discards. There are hugely varying estimates of how bad discarding under the CFP has been, but a paper produced by the Commission in 2007 estimated that, for the period 2003–5, discard rates were running at 20–60 per cent of the catch weight for typical fisheries exploiting demersal fish. Between 1990 and 2000, in the North Sea alone, it was estimated that around 500,000–880,000 tonnes of fish were discarded annually (COM 2007).[30] Another estimate by NUFTA[31] and Greenpeace (2008) suggested that around 1.3 million tonnes of fish were being discarded annually in the North East Atlantic. The Commission itself was keen to see an

27 For a detailed UK parliamentary discussion of the proposed reforms, see House of Commons (2010–12).

28 The other reason for this policy was that, at the 2002 World Summit on Sustainable Development, the EU had pledged to set fishing opportunities within MSY by 2015.

29 If stocks are fished beyond MSY, there are more likely to be fewer large mature fish, so more discards through 'high-grading' may take place.

30 The EU's STECF has systematically been collecting data under the data collection Regulation 1543/2000 (now the more stringent Regulation 199/2008) since 2002; the 2003–5 discard rate is based on these figures. However, they did not then have data for all sea areas; earlier figures are from the UN's Food and Agriculture Organisation (FAO).

31 NUFTA, the 'New Under Ten Fishermen's Association', is a UK campaigning organisation representing commercial fishermen with boats less than 10 metres in length and/or not belonging to the large fish Producer Organisations, which are referred to as 'the Sector'. Most of the UK's pelagic and demersal fish are caught by the Sector; about half the shellfish are caught by the 'under 10s'.

end to discards, and by 2011 there was mounting public pressure, particularly in the UK, for an immediate end to the practice.[32] This demand was eventually supported by Maria Damanaki, the EU Commissioner for Maritime Affairs and Fish, but it was opposed in the June 2012 Council meeting by a number of fisheries ministers, including the French and Spanish.

2014 onwards: last chance for the CFP?

Eventually, a compromise on discards was reached and enshrined in the December 2013 CFP new basic Regulation (COM and Parliament 1380/2013). This came into force at the beginning of 2014. The key aspects of these new proposals are the following.

- From 2015 onwards, starting with pelagic fish, a ban on discards is being gradually introduced on a fishery-by-fishery basis. This is referred to as the 'landing obligation' and means that, by 2019, all fish subject to quota will have to be landed and will count against quota; small fish below 'minimum conservation size' will not be allowed to be sold for human consumption. TACs may be raised slightly to take account of the fact that fish will no longer be discarded, and, because of possible greater demands on quota, the ability of member states to 'bank and borrow' against subsequent years' quotas is to be increased from 5 per cent to 10 per cent.[33]
- A legal commitment that exploitation rates within MSY should be achieved by 2015 where possible, and by 2020 at the latest, for all fish stocks.

32 Spearheaded by the celebrity chef Hugh Fearnley-Whittingstall and his 'Fish-Fight' campaign, which is estimated to have attracted 700,000 supporters.

33 There will be money available from the EMFF, the new fisheries structural fund set up in 2014, to facilitate the discard ban by, for example, enabling vessels to install new gear to reduce by-catches, and enabling Fish Producer Organisations (FPOs) to fund marketing campaigns to promote the consumption of lesser-known fish.

- A renewed commitment to the management of fish stocks under multiannual plans, which will be based on MSY targets and include conservation measures where necessary.
- A proposed new form of regional government, whereby member states with a direct interest in a fishery shall, in consultation with the RACs (renamed Advisory Councils), make joint recommendations to the Commission. The role of the Advisory Councils will also be strengthened, and four new ones will be established.
- Member states will be required to produce and publish an annual report on the capacity of their fleet, including whether there is any structural overcapacity. If there is, they will be required to produce an action plan with a clear timetable setting out how this will be addressed.

These changes to the CFP are significant, but the fact that the implementation dates for both the ban on discards and the requirement to fish within MSY have been delayed because of protests from some fisheries ministers could have serious consequences. The World Wide Fund for Nature (WWF) has argued, for instance, that the delay until 2020 in fully implementing fishing at MSY may be too late to save some fish stocks (WWF 2013).

Other problems remain: for instance, the regionalisation proposal is not truly one of subsidiarity, delegating decision-making powers down to the member states and relevant stakeholders, but maintains, and might even increase, the involvement of the Brussels bureaucracy (see House of Commons 2010–12: 9–13). In addition, since obligations under the Lisbon Treaty, which came into force in 2013, mean that CFP legislation now has to be agreed by both the Council of the EU *and* the European Parliament, legislative procedures surrounding the CFP may be even more cumbersome than, and as prone to competing national self-interest as, they have been to date. Indeed, it is not clear how the central problem of the CFP, the infighting to secure the highest possible

TAC for individual member states, has been overcome. So, there is no assurance that this latest reform, welcome though it is, will serve what remains of the UK fishing industry any better than the previous CFP has over the last 40 years.

It is difficult to avoid the conclusion that the UK would have done better to retain national control over its fisheries as, for example, Norway, Greenland and Iceland have done. Withdrawal from the CFP is almost certainly not an option whilst the UK remains a member of the EU. But if it were to choose to leave, then the UK could immediately rescind the EU's equal access principle over fishing waters and take control of the complete UK 200 nm zone, at the same time regaining complete sovereignty over inshore waters. With property rights firmly vested with the UK's own national government, fisheries management could then be carried out according to the long-term interest of UK nationals, taking on board the lessons learnt from the CFP and fisheries management systems in other parts of the world. The UK government already has in place its own detailed system for allocating national quotas (at present set by the EU) amongst competing UK fishermen. It also has a system of policing these harvesting rights[34] and for quite rigorously regulating the capacity of the industry (see the appendix to this chapter). In the short term, this system could easily be continued, the only crucial difference being that overall national quotas for each fish stock in UK waters would now be determined solely by the UK itself, based on best national and international scientific advice, rather than through bargaining by the fisheries ministers within Council of the EU meetings. It would also be national (rather than essentially European Commission) policy to determine the best conservation measures. In addition, it would be up to the UK government to decide on what terms (if at all) it wished to

34 Although inshore fishermen in Devon admit policing needs to be tighter and more patrol vessels are needed (author's discussions).

continue to allow fishing businesses owned by non-UK nationals to have access to UK harvesting rights. At present, for instance, 23 per cent of the English fishing quota is allocated to one giant Dutch-owned fishing vessel, the *Cornelis Vrolijk*, which lands its entire catch in the Netherlands (Greenpeace 2014).

Management of fisheries could be conducted at the most appropriate ecological unit for the fish stock concerned: probably sea basins (such as the North Sea, the Irish Sea, the Celtic Sea and the English Channel) for most demersal species, and larger areas for migratory pelagic fish, with the UK entering into bilateral arrangements over fish management and conservation with the EU or other nation states as appropriate, as Iceland, Greenland and Norway do at present.[35] Over the longer term, the UK might follow the examples of New Zealand and Iceland and experiment with ways of making the quota allocated to individual fishing vessels more fully tradable than it is at present (Gissurarson 2000; OECD 2011).[36] Both of these nations seem to have been far more successful in managing their fisheries than has the EU.

Appendix: the UK system for apportioning national fishing quotas

The UK divides the national quota it is allocated for each fish stock subject to TAC between *groups* of licensed fishing vessels largely on the basis of fixed quota allocation (FQA) units. These are abstract units of measurement based on vessels' historic share of national landings of this fish stock, usually the period

35 Norway, for instance, shares 90 per cent of its fisheries' harvest stocks with other nations, so national TACs are set in cooperation with Russia, Iceland, the Faroe Islands, Greenland and the EU.

36 In fact, as the method of allocating a national quota between fishermen is a national rather than an EU competence, there is nothing to stop the UK at present from making quota more fully tradeable between its fishermen. Individual EU member states have experimented with a variety of 'rights-based' quota management schemes (COM 2007).

1994–6. Essentially, they are a right to harvest fish. For vessels over 10 metres long, these FQAs are assigned to individual vessels' licences; for those under 10 metres, they are held as a block by the four fisheries administrations (see below). *The FQA units are not fixed allocations of quota to the vessel in question: they are used as a mechanism for allocating the quota.*

The UK government first divides the quota for each fish stock between the four devolved fisheries administrations (FAs): DEFRA/The Marine Management Organisation (England), Marine Scotland, The Welsh Government, and the Department of Agriculture and Rural Development (Northern Ireland). This is largely on the basis of the share of the UK FQA units held by the vessels registered with each of the FAs. Each FA has discretion as to how it allocates its share of the quota, but for England it is roughly as follows.

1. The total quota is apportioned between three groups:
   (a) 'The Sector' (vessels that are members of one of the 23 UK Producer Organisations).
   (b) The non-Sector pool (vessels over 10 metres that are not members of, or assigned to, a PO).
   (c) The 10-metres-and-under pool (the 'inshore fleet', vessels under 10 metres that are not members of a PO).

   For groups (a) and (b), this apportionment is on the basis of the FQA units assigned to vessels in the group; for group (c), it is based on the relative proportion of landings by this group in the period 2008–12. About 95 per cent of the UK's fishing quota is held by the Sector. Because of concern about the need to sustain the 78 per cent of the UK fishing vessels that make up the inshore fleet, are vital for local communities and which also practice the most sustainable fishing, there is now an 'underpinning' arrangement to top up the quota allocation of the 10-metres-and-under fleet to a guaranteed minimum level. Many consider this to be inadequate

and think that the underpinning arrangements need to be amended so as to provide more of the quota to smaller vessels.

2. The management of quota within these three groups is as follows:
   (a) POs are responsible for managing their own quota allocations and making sure they are not exceeded. Some set monthly catch limits; others issue annual vessel or company quotas.
   (b) Quota allocations for the non-Sector pool and the 10-metres-and-under fleet are managed by the fisheries administrations. Each vessel's licence sets out the stocks that the vessel is not permitted to fish. For the non-POs, it also sets out monthly catch limits for the stocks the vessel is able to fish and land, which may be varied during the year as the national quota limit is reached. Apart from fish stock under particular pressure, where monthly catch limits may also be set, individual vessels in the under-10-metre fleet are generally allowed to fish without restriction until the overall quota allocation for the group has been taken in full, but this may be varied within the year.

Very limited markets operate within this system.

1. Since, in order to control the size of the UK fleet, no new fishing licences are currently created, in order to licence a vessel for the first time, an old licence (referred to as a 'licence entitlement') sufficient to cover the size and power of the boat, and the type of fishing required, has to be bought from previous licence holders removing their vessels from the fishing fleet.
2. The FQA units attached to old licences may be traded separately.

3. Subject to various rules, some annual quota swapping, or 'quota leasing', can take place. The UK as a whole can swap its quota with another EU member state. The FAs can also swap their quotas between themselves and with other EU member states, as well as negotiate quota swaps for all three groups between themselves, with the other two groups or with another EU member state.

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