

Legal and institutional framework for the RACs  
challenges and constraints for its development within  
a reformed CFP

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# Nobel Prize 2009

- Professor Elinor Ostrom

“Rules that are imposed from the outside or unilaterally dictated by powerful insiders have less legitimacy and are more likely to be violated.

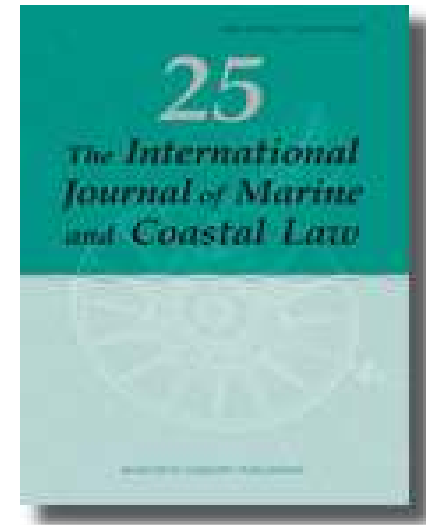
Likewise, monitoring and enforcement work better when conducted by insiders than by outsiders.”



- Key is stakeholder participation

# Overview

- I. History
- II. RACs
- III. Legal Constraints
- IV. Reform Options



# Origin of RACs

- Advisory Bodies in CFP
  - ACFA
  - Scientific, Technical and Economic Committee for Fisheries
- Green Paper 2002
  - Advisory bodies **not satisfactory** as unsuited to local conditions and emergency circumstances
  - Needed stakeholder led organisation(s)



# RAC Legal Framework

1. Council Regulation (EC) No 2371/2002
2. Council Decision 2004/585/EC
3. Commission Decisions...make operational



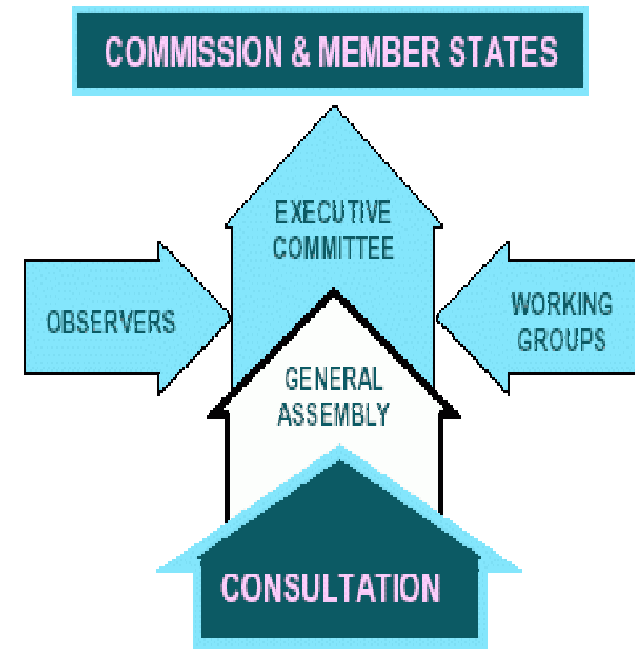
# General comments on legal framework

- Guided by principles of good governance
- Must conform with CFP
- Commission has discretion in seeking advice.....have right to accept or reject advice
- Intended to be **evolutionary** structure(s)



# Coverage, structure & composition

- Supra-national entities
- Ecosystem regions
- Equilibrium in membership
  - fisheries sector & other interest groups
  - Commission and MS observers
- Inter-RAC coordination



# RAC Objectives

- No list in regulation ....but aim is to integrate the views of stakeholders into the decision-making process
- Founding parties to provide a statement of objectives with their request to establish an RAC
- Must be compatible with the objectives, principles and guidelines of the CFP





# Legitimacy, Transparency & Efficiency

- Broad constituency
- Transparent procedures ...GA meetings open to public.....recommendations available immediately to the GA, the Commission, Member States and, upon request, to the public
- Consensus based approach & procedures for recording dissenting opinions
- Commission and, where relevant, the Member States must reply (3 months)
- Commission review of the functioning of the RACs (2008)...arrangements working well



## How has the CFP done so far?

“CFP characterised by overfishing, fleet overcapacity, heavy subsidises, low economic resilience and decline in the return for the industry”

**a framework that does not give sufficient responsibility to the industry**



2009 Green Paper

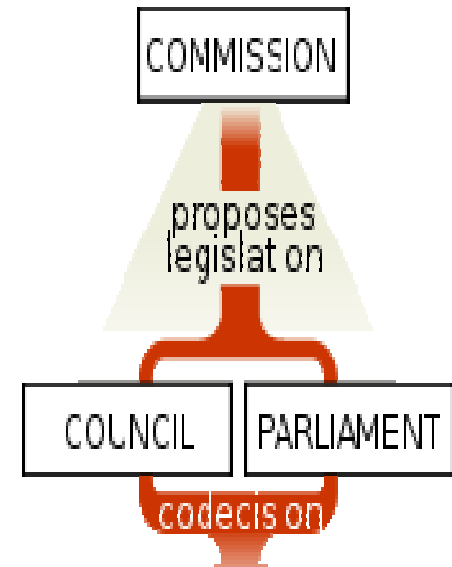
# Legal Constraints: Reform of Decision-Making

- Lisbon Treaty
- fisheries...exclusive competence ...in conservation of marine biological resources
- Fisheries are dealt with in Title III of the treaty under the chapeau "Agriculture and Fisheries"



## Legal Constraints: Reform of Decision-Making

- Law-making rests with European institutions
- Supremacy of EC law and Commission's right of initiative remains
- European Parliament ... extension of the ordinary legislative procedure to fisheries, apart from those establishing annual TAC/Quota opportunities
  - more democratic
  - slower...2 years



## Legal Constraints on Reform

- Reform measures will continue to be informed by principles of CFP
- Not possible to rely on principle of subsidiarity to enhance role of RACs



# Reform Proposals in 2009 Green Paper

- Lisbon Treaty changes EU procedures
- 2009 Green Paper
- Hierarchy for decision-making:
  - Fundamental principle and policy...rests with Council and Parliament
  - Implementation...Commission, MS, industry
- Two options
  1. More delegation to the Commission
  2. Delegation of implementation to MSs
  3. Other models?



# Option One

- Delegation to the Commission
  - Comitology procedure:
    - Committee for Fisheries and Aquaculture
  - Matters of detail...
  - Lisbon Treaty...extends powers of oversight to Parliament...equal footing with Council



# Option One

- **Advantages**

- MS Experts with experience
- Expeditious

- **Disadvantages**

- Micro-management
- Difficult to separate out technical detail from policy decisions
- Transparency?
- Limited resources available to the Commission
- No formal role for RACs under current arrangements ???





# Option Two

- Delegation of implementing decisions to Member States
- Regional management solution
- Principles at Council & EP level
  - Examples: MSY...fleet capacity... discards
- Member States implement decisions at marine region level



# Option Two

- **Advantages**

- Clear hierarchy.. allows Council, EP and Commission focus on policy
- Implementation by network of MSs
- Regionalisation & ecosystem approach
- Enhance advisory role of RACs
- Simpler & cheaper
- Respond to local conditions

- **Disadvantages**

- New set-up...resource requirements
- Role of ACFA?
- Requires clear demarcation of responsibility and MSs coordination



# Option Three!

- **Delegation of powers to autonomous regulatory agency (ies)**
- Not mentioned in 2009 Green Paper
- Lisbon Treaty enhances powers of Commission to sub-delegate powers to autonomous executive regulatory agencies established pursuant to the Treaties



# Considerations for RACs

- Seek mandatory legal right of consultation in new Basic Fishery Management Regulation
- Seek decision-making structures which reflect your interests



# Considerations for RACs

- Regionalisation
- Integrated Maritime Policy
- European Parliament





**Thank You!**

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