

North Western Waters Regional Advisory Council

Opinion on Commission's First Regulatory Package

Proposals on the Reform of the Common Fisheries Policy

November 2011

1. Introduction

As the CFP proposal package moves forward for adoption through the co-decision process, there will doubtless be extensive and detailed discussion over individual legislative provisions. Whilst the NWWRAC will play its role in this dialogue on specific components in the legislative proposals (insofar as this is relevant to the RAC's role and membership), we consider it important to make clear our position on the *general thrust* of the proposals, so the co-legislators are in no doubt what we, as a RAC, want from this reform, irrespective of the legal complexities and the political compromises that will shape the final outcomes.

2. Regionalisation

It is well understood now by many parties that the central reason that the Common Fisheries Policy has failed to deliver so many of its objectives over so many years, is that it is over-centralised, blunt and unresponsive. In retrospect, the question is why anyone believed that a top-down, command and control approach, amounting to a system of micro-management of many diverse fisheries, across 40 degrees of latitude, would deliver sustainable, well-managed fisheries. The Commission's Green Paper on CFP reform recognised that a more responsive CFP, with a high degree of participation from the principal stakeholders, and measures tailored to the specific characteristics of individual fisheries, would require a radical decentralisation of the CFP, beginning with a delegation of responsibility to the regional seas level.

For a majority within the NWWRAC, the decentralisation of decision-making within the Common Fisheries Policy should be without prejudice to the principle of relative stability. However, there is a minority that would wish to take the opportunity to review the relative stability allocation keys.

The NWWRAC recognises that achieving a transfer of decision-making responsibilities to the regional seas level will have to take account of a number of legal and political realities, including:

- The provisions in Lisbon Treaty for delegated responsibilities, including the Commission's right of initiative and co-decision making
- The Commission's assertion that there is no scope within the Treaties for the establishment of management bodies with legislative powers at regional seas level
- The scope (within the Treaties) for member states to cooperate at the regional seas level; this would mean engaging closely with the regional advisory councils and other stakeholders in the development of recommended multi-annual management plans (MAPs); MAPs would cover all the main elements required for effective management within a regionalised CFP
- The development of a coherent overarching system of principles and standards agreed by the co-legislators that would provide a framework for delegated responsibilities.

Achieving this enabling framework within the current reform would represent a significant advance on the current arrangements. The NWWRAC can foresee however, that there is enormous scope for the CFP reform to run into a damaging stalemate on the technicalities of regionalisation. There are legitimate fears about the Commission's ability to delegate detailed management responsibility; likewise, the European Parliament having recently had its decision making powers in fisheries augmented, must resist the temptation to micro-manage; and similarly, there are some member states who either don't want the responsibility, or cost, of active regional management. All of these could seriously derail this reform.

The NWWRAC would express, in the strongest possible terms, its wish to see progress to a decentralised Common Fisheries Policy, of which regionalisation is the first logical step, and would urge the co-legislators to work together to achieve this aim.

Failure to use this reform to decentralise decision-making within the CFP would lead to a decade of paralysis. At best this would inhibit progress towards an effective and rational management of EU fisheries; at worst it would see squander the progress that has been made through the establishment of the RACs.

It seems to us that even within the given legal constraints, an effective regional dimension to fisheries policy could be achieved through:

- Clear overarching principles and standards set by the European co-legislators
- Member states, stakeholders and scientists cooperating at the regional sea basin level to prepare comprehensive fisheries-based *multi-annual management plans* (MAPS)
- Agreed regional MAPs would be submitted to the Commission as recommendations by the relevant member states for adoption (perhaps after discussion and amendment) through due process
- The Commission, using *delegated powers*, would have authority to approve specified detailed content through some variant of comitology, again within a system of safeguards
- In some circumstances, where justified, it may be possible for cooperating member states to give legal force to specific measures through their own *national measures*.

All of this is new and many components are not without pitfalls. Nevertheless, the NWWRAC reaffirms that it is *vital* for the Commission and co-legislators to navigate their way through the legal constraints to find the political compromises in respect to their own roles along with the necessary funding that will deliver *an effective form of regional management* with full stakeholder involvement. There is a responsibility on all of the parties – Commission, European Parliament and member states to find a way forward. To fail will be to condemn European fisheries to a further decade within a dysfunctional system.

3. Transferable Fishing Concessions

The Commission has proposed a mandatory system of transferable fishing concessions (TFCs) to be operated by member states for all vessels over 12 metres, and vessels using mobile gear below 12 metres. Applying transferable fishing concessions to vessels below 12 meters would be at the discretion of the member state. TFCs would amount to a system of use-rights with notice of recall of 15 years.

Rights-based management systems have evolved in a number of member states and appear to be well adjusted to the realities and conditions in the fisheries to which they apply. Equally, many member states have retained a system of quota pools with monthly (or similar) catch limits. Both systems have merits and indeed, many examples exist in which various forms of hybrid coexist within a single management system (tradable concessions for one species; pool limits for other species).

Quota management is also the area of fisheries policy where delegated responsibilities have been developed furthest and been most successful, with producer organisations being in a position to tailor quota management to the conditions found in their fisheries in a way that centralised control finds difficult.

All this suggests that quota management is a complex area probably not suited to top-down policies and this lies at the heart of our concerns about the Commission's proposals. There is a spectrum of views about the merits or demerits associated with tradable fishing concessions within the NWWRAC and their practical application.

Whilst a majority within the NWWRAC would support the Commission's Proposal limiting TFCs to within individual member states, a minority would wish to see TFCs implemented in accordance with the Treaty principle of free movement of goods, meaning unrestricted transfer between companies of different member states.

The Commission's enthusiasm for transferable fishing concessions rests largely on its perception that it will be a way of addressing overcapacity in those fisheries where this remains a problem. Moreover, this would be achieved without public funding. And indeed, there is evidence that such an approach can work if carefully designed, although there are no guarantees that Transferable Fishing Concessions would deliver the "right" fleet capacity in quantitative or qualitative terms.

It is true that, whilst allocated fishing concessions can foster a more long-term perspective towards stock conservation, there is also much to be said for the flexibility associated with pooled quotas. Our concern is that a mandatory European system of tradable fishing concessions will, like all other top-down policies, prove to lack the flexibility and responsiveness to local conditions necessary for a fully effective system to work.

4. Small Scale Fisheries

Small scale fisheries are a vital component in European fisheries from a number of perspectives including economic, social, employment, and regional policy. The NWWRAC agrees however with the Commission that there is no case for a *differentiated regime* so far as management measures are concerned, partly because this would undermine the coherence of conservation measures but principally because it is simply impossible to conceive a single definition of "small-scale", "artisanal" or "inshore" that would be meaningful across all European fisheries and fleets. There are times and places in which it will be useful to use these categories to sub-divide the fleet but this can only realistically be done at member-state or sub-member state level, where it is possible to take account of all relevant circumstances.

There may be other ways in which specific support can be provided to strengthen the resilience of the small-scale fleet through the new financial instrument for fisheries.

However, care must be taken to avoid perverse outcomes that would undermine the sustainability of the inshore fisheries.

5. Multi-annual Management Plans

The NWWRAC considers that multi-annual fisheries-based management plans will be the principal vehicle for fisheries policy in the future. As such, a much more explicit commitment to multi-annual plans as the principal means through which regionalisation will be achieved is necessary.

As MAPs move from a simple set of harvest control rules for single stocks, to plans based on broader, more comprehensive, multi-species models, aligned with an ecosystem approach and with a potential improvement in the socio-economic assessment of selected measures, the incorporation of the views of stakeholder groups, such as the regional advisory councils, will be not only desirable but essential.

At least for demersal fisheries, the NWWRAC foresees that within a regionalised CFP, stakeholders and member states within a regional seas area will cooperate and collaborate very closely in the development and application of MAPS. Strands of this type of cooperation, involving fisheries scientists from ICES and the national laboratories can already be seen in much of RACs' current work. The addition of fisheries managers from the member states would complete the triumvirate necessary for effective regional management – stakeholders, fisheries managers and fisheries scientists.

Doubtless MAPS would be developed within a framework of principles and standards laid down at the European level by the co-legislators. The NWWRAC would like to reinforce the important point made on item 1 that if we are to break with the failures of the current CFP, it is essential that anything that smacks of prescriptive micro-management must be removed from the European level. Member States and stakeholders would be responsible for designing tailored, customised measures to deliver on these principles and standards on the basis of environmental data and capacity assessment. Such measures, which would allow for a rapid response to changing realities, would win a high degree of buy-in by all concerned.

6. Maximum Sustainable Yield

The NWWRAC shares the Commission's objective of achieving high yield fisheries on the stocks which the NWWRAC has advisory responsibility. There is however a range of views within the NWWRAC on how the reformed CFP should address the various obligations to achieve MSY by 2015.

The fishing sector cannot support the Commission's proposal to remove existing caveats and safeguards on the achievement of MSY by 2015, especially in multi-species. It is argued that the architects of the WSSD Declaration in Johannesburg specified, for good reason, that MSY should be achieved for depleted stocks by 2015, *where possible*.

Those words reflect a biological reality – that for a number of reasons, including predation patterns, it may not be possible to fish all stocks simultaneously at MSY. It is important for the credibility of the CFP to move to high yield fisheries in a progressive way without locking the policy into a legal framework approach that lacks scientific credibility and will create unnecessary rigidities leading to highly detrimental economic and social effects.

The counterview expressed by the Environmental NGO's welcomes the clear commitment under Article 2(2) to restore and maintain populations of harvested species above levels which can produce the MSY by 2015 and appreciates the inclusion of MSY goals in Articles 10, 11 and 14 of the proposal of Regulation on multi-annual plans and technical measures.

7. Discards policy

The NWWRAC has no difficulty in sharing the Commission's ambition to move decisively away from the large scale discarding that has wasted the resource, impeded the recovery of depleted stocks, undermined the quality of stock assessments and damaged the reputation of the fishing industry. Indeed much progress has been made already, especially in the last two years. It is important to build on these initiatives to reduce unwanted by-catch and discards particularly in mixed fisheries.

An effective approach to reducing discards requires caution and a fishery-by-fishery approach, (as recently advocated by the FAO) taking fully into account the range of reasons (regulatory, technical, economic, perverse incentives) that currently generate discards. Even in systems as operated in Norway where ostensibly there is a discard ban, care has been taken to provide sufficient flexibility to ensure that the practicalities of each fishery are fully taken into account.

It is important to locate discards policies within a broader approach to fisheries management focused above all on sustainable rates of fishing mortality and indeed within an ecosystem approach. The objective of any policy to tackle discards should be to as far as possible avoid unwanted catches in the first place, rather than searching for a mechanism to deal with unwanted catches after they have been landed.

Improved selectivity and progressive reduction of discards should clearly be an important component of the multi-annual management plans.

It is a matter of simple logic that sweeping away all discards generated by CFP regulations themselves will be key for moving in this direction.

8. Role of the RACs/ACs

It is universally acknowledged that the regional advisory councils have generally exceeded expectations placed upon them at the last reform of the CFP. By virtue of their composition and pivotal position between the regulatory system and specific fisheries, RACs (or ACs as we must now learn to call them) are uniquely placed to bring insight and experience to management decisions. RACs have however been constrained in the role that they play by the limited resources that are available to them and it is hoped that the new financial settlement for fisheries from 2013 will provide a sound basis for the development of coherent, evidence based RAC advice. Notwithstanding the positive role played by RACs to date, it is true to say that the current structure of centralised decision-making within the CFP has acted as a bottleneck that has led to many pieces of RAC advice being ignored or placed in a queue for action. The Commission has been incapable of dealing with the sheer quantity of the advice that is prepared and submitted.

This underlines the need for a stronger regional dimension to policy formulation and development. Potentially, RACs have a major role to play in a reformed CFP through engagement with member state authorities and fisheries scientists at the regional seas level to shape and agree policy recommendations. MAPs will clearly be the vehicle for this work.

Within a regionalised CFP with more a responsive and adaptive approach to fisheries management, it is to be hoped that RACs will be able to focus to a greater extent on the design and delivery of effective MAPs and other long-term issues. Less time should be spent on advising the Commission on technical matters *per se*, and more time spent in involving a wider range of grass roots stakeholders in the development and implementation of MAPs and facilitating regional cooperation.

9. Conclusions

The NWWRAC fears that the vision, of a regionalised and decentralised CFP advanced by the Commission in its Green Paper on CFP reform, with a significant transfer of responsibility from the centre to the marine regions and beyond to the stakeholders through various kinds of co-management, will not be realised. Nevertheless, it is precisely this approach that is required if we are to break free of a seriously dysfunctional command and control system that has impeded movement towards a more rational and effective management system.

The first priority of this reform should therefore be to give legislative effect and financial support to this vision. Achieving this shift would in itself represent a huge step towards achieving our other goals of moving towards a responsive system that delivers high yield, low discards, and reasonably stable fisheries within an ecosystem approach. The North Western Waters RAC is ready and prepared to play its part in a new dynamic CFP - if the framework that can release its full potential is achieved.

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