



## **Review of the Balance of Competences - Fisheries**

### **Response by the Institute for European Environment Policy**

#### **1 INTRODUCTION**

The Institute for European Environmental Policy (IEEP) is an independent research organisation concerned with policies affecting the environment in Europe and beyond. Our aim is to disseminate knowledge about Europe and the environment and to analyse and present policy options. We undertake research and consultancy on the development, implementation and evaluation of environmental and environment-related policies in Europe. We work closely with the full range of policy actors from international agencies and the EU institutions to national government departments, NGOs and academics.

We are a charity with offices in London and Brussels and a network of partners in other European countries. The London office of IEEP was founded in 1980, the Brussels office in 2001. A presence was established in Finland in 2008.

#### **2 SOURCES OF EVIDENCE**

The evidence underpinning the response that we are making to the consultation is drawn from several sources. These include:

- More than 30 years of experience of EU policy, primarily in the environmental domain, by staff, associates and trustees, stretching back to the 1970s. This has included an extensive range of activities, amongst them both academic and applied research work, sustained interaction with the European Institutions, national officials engaged in EU matters and other stakeholders from civil society, business, science, research and elsewhere. A number of published reports covering both specific issues and the broader generality of EU policies related to the environment. . Amongst the latter is the Manual of EU Environmental Policy in Britain, later published as the Manual of European Environmental Policy (IEEP, 2011).
- Experience gained in undertaking work relating to fisheries and marine legislation commissioned by various sponsors and clients, including different DGs within the European Commission. Relevant topics have included the impact assessment

associated with the most recent CFP reform, reviewing implementation of the CFP and EFF, examining issues where EU intervention might have a role, etc.

- Many of the observations below are difficult to reference to specific reports because they are responding to questions framed in very broad terms. Nonetheless we include some specific examples.

## ISSUES OF COMPETENCE AND NATIONAL INTEREST

Before providing answers to some of the detailed questions, we would like to clarify two overarching issues that we deem important for the overall Balance of Competences review process:

1. There is a need to ***distinguish between three different questions*** while performing the review: one relates to establishing the right level at which competences in a given sphere of policy should be established in principle (ie European, national, or global). A second concerns the relevant EU and Member State structures and institutions and their capacity to exercise competence in an appropriate way. The third is a different question about whether good policy decisions have been taken in the past by actors at those levels. This helps to clarify the point that bad decision-making in the past, as has arguably been observed at the EU level as well as nationally and regionally, does not necessarily imply that responsibility is allocated at the wrong level, and vice versa.
2. The second point of clarification relates to ***defining the UK's interest***, a phrase that is repeatedly used in the consultation documents. Given the UK is a part of the EU, it is clear that good outcomes for the EU are also good outcomes for the UK. In other words, entirely separating UK and EU interests is not helpful. Indeed, the debate over what would be appropriate for the 'national interest' in the fisheries context is problematic, from an environmental sustainability perspective at least, since the UK interest cannot easily be divisible from other neighbouring Member States' interests – they have shared fish stocks and thus a shared interest alongside some legitimate purely national concerns. There are situations in which, although some competences would be better being conferred at the Member State level for some countries from a purely nation-state perspective, actually moving the competence to the Member State level would not, overall, be advantageous for the environment and the wider public interest, neither in particular countries nor in the EU as a whole. This is because moving competences might well lead to a situation where more Member States would perform worse rather than better compared to a situation where environmental legislation is in the hands of the EU. The counterfactual is general.

In considering the national interest in the context of potentially different relationships between the UK and the EU it is perhaps most relevant to weigh up the advantages of pooling aspects of sovereignty in a policy domain, such as fisheries, allowing for the compromises this usually entails, with the alternative, of pursuing greater national autonomy outside the EU. The latter path has many implications, including a continued need to negotiate fresh relationships with the EU and a number of its policies given its role as a powerful neighbour. This is a different judgement to make than assessing whether a particular set of EU policies is better or worse than those which could have been made within any given period given current competences. It is this last question which often

receives the greatest attention but it should not be confused with the more fundamental issues of competence which the review appears intended to address.

### **3 QUESTIONS**

#### **Qu.1 Where should decisions be made?**

- At what level should decisions on fisheries management be made and what evidence is there for the benefits or disadvantages of acting at the EU level, regionally, or at Member State level?

The level at which decisions on fisheries management should be taken depends on the fisheries management issue in question and the type of decision required. With respect to establishing objectives for the conservation of marine biological resources and allocating large fishing opportunities, the primary reason for EU intervention and management is that EU Member States share a number of fish stocks, it is therefore necessary to manage these stocks jointly. An alternative, counter-factual system whereby all EU Member States would have to negotiate bilateral or multilateral agreements with all other countries with which they share a fishery would clearly be complex, burdensome and inefficient. In addition, there is no reason to suggest that such a system would produce more long-term or sustainable outcomes than the current CFP. The ongoing dispute between the EU and Iceland and the Faroe Islands over shared migratory mackerel is evidence itself that bilateral agreements are not necessarily going to prioritise sustainability or lead to efficient resolutions. The failure of negotiations between the EU and Norway, Iceland and the Faroe Islands led to the suspension of the Marine Stewardship Council certification of the stock. In addition there have been at least 15 rounds of talks attempting to resolve this issue (Scottish Fishermen's Federation and Scottish Pelagic Fishermen's Association, no date) indicating how burdensome bilateral negotiations could potentially be. In our opinion, if the UK were to attempt to negotiate agreements with all the countries with which it shared stocks it would be inefficient and costly, and might well give the same if not lower regard to the sustainability of stocks compared to the current arrangements.

The large number of stocks that are shared by EU Member States is also a reason for setting common standards at the supranational level, in order to create a level playing field for Member States and industry as well as pursuing sustainable management. Without a common agenda the incentives would not be there to act in the long-term interest, and standards would be reduced to the lowest level. The CFP is often criticised for having a governance structure which has led to short-term decision-making and the prioritisation of short-term economic gains over long-term economic, social and environmental sustainability (O'Leary et al, 2011; Daw and Gray, 2005). While these criticisms have some merit (most notably the poor track record of the Council in setting fishing opportunities in accordance with scientific advice), following the introduction of effort controls and more enforceable management measures during the 2002 reform exploitation rates have reduced continuously in the North East Atlantic. This has led to increases in biomass and demonstrates the potential for stock recovery in an area under sustained pressure from fisheries if appropriate measures can be agreed and implemented (Fernandes and Cook, 2013). Subsequently, the 2012 reform has introduced more regionalised decision making on

TACs and quotas, as well as legally binding commitments to fish at sustainable levels. Although the effectiveness of these reforms remains to be seen, it is likely that they will enable the recent reversal of fish stock decline and the rebuilding of stocks to continue, if not quicken over the next decade, of course from a low base.

Decisions relating to technical conservation measures, such as rules on gear types, minimum landing sizes, spatial measures, etc, have also historically been decided in Brussels. These measures are generally regarded as being too complex and difficult to understand, control and enforce (European Commission, 2011). For example, European legislation required all vessels engaged in the North Sea brown shrimp fishery to have sieve nets or separator grids fitted to their trawls in order to reduce bycatch and discarding of juvenile flatfish. However, effectiveness varied considerably between different fleets. The UK, Belgian and Dutch fisheries in southern Dutch coastal waters experienced benefits to fish stocks, but the measures were not considered to be effective in the Wadden Sea, as the size of juvenile flatfish caught there was smaller which meant they were not effectively sieved out (Suuronen and Sardà, 2007). Clearly one technical solution is not necessarily applicable in all sub-regions. Suuronen and Sardà (2007) also observed that many technical conservation regulations were enforced inconsistently and their implementation was often less restrictive than originally intended, and that trying to solve one problem frequently created new ones. Furthermore, successful use of technical conservation measures appears to depend largely on their acceptance by industry (Suuronen and Sardà, 2007).

In practice the issues related to failure of certain technical conservation measures do not relate entirely to the level of decision making, but to other factors such as implementation and enforcement. However, the example above demonstrates that a lack of understanding of the specific characteristics of stocks and fisheries is an important contributing factor, and this is likely to be exacerbated through reliance on a high level and centralised decision making framework.

Since the recent reform of the CFP the approach to technical conservation measures has been regionalised, with a framework regulation on broad technical measures being agreed at EU level (which would be less detailed than current technical measures). Member States, in conjunction fishermen, stakeholders and Advisory Councils will design national technical measures to manage stocks sustainably. Member States will discuss and agree on common measures at the regional sea-basin level and will subsequently enact them nationally. It remains to be seen whether this regional approach will achieve the outcome of effective technical conservation measures, but it clearly presents an opportunity to develop more informed and regional or locally appropriate solutions to fisheries management, while facilitating the harmonisation of objectives and enforcement.

Briefly considering the issue of whether the EU institutions have the capacity to exercise competence in an appropriate way, the ongoing deadlock between the European Parliament and Council regarding multi-annual plans has led to very significant delays to the adoption of management plans and threatens the implementation of the reformed CFP. This is clearly problematic, and the institutional arrangements have meant that decision-making is cumbersome, highly politicised, and not sufficiently attuned to very technical and scientific debates. This begs the question as to whether these sorts of delays and issues are an unintended but necessary outcome of the increased democratisation of decision-making

afforded through the increase in power given to the Parliament via the Lisbon Treaty. The answer to this is not obvious and nor is this just a fisheries policy issue; clearly there are going to be winners and losers across the span of EU policy as a result of the new regime. However, the increased transparency and accountability which is afforded to the decision-making procedure as a result of the greater role of the European Parliament should not be overlooked.

## **Qu. 2 Advantages and disadvantages**

- How does the EU approach to fisheries management, including recent reforms to the CFP, benefit the national interest, or act against the national interest?

It would be easy to assume that returning regulatory powers over fisheries to the national level would be entirely to the benefit of the UK and its national interest. However the position is more complex. Maintaining fish stocks in other countries' waters in a favourable state, particularly when those stocks are migratory and span UK waters, is a fundamental part of the UK's national interest. In several respects, the current (reformed) EU approach to fisheries management provides the better framework to ensure that sustainable levels of exploitation are implemented and enforced. This becomes clearer when considering the counterfactual whereby Member State(s) set their own fisheries objectives for waters under their control, in line with their own economic agenda. If this was the approach taken by other Member States with which the UK shared a stock it would not provide the UK or other countries with an incentive to act sustainably if it entailed forgoing short-term economic gain. Without a common agenda the incentives would not be there to act in the long-term interest. As a result standards might well be reduced to the lowest level in order to avoid giving others the opportunity to free-ride. Some transnational framework for shared waters and shared stocks is necessary although it would not have to be set at the EU level.

This is not to say that the current arrangements are satisfactory. In our view the objectives and procedures that have been decided at EU level are not as ambitious as they could have been. For example the objective of setting fishing levels at maximum sustainable yield levels by 2015 where possible and 2020 at the latest was only introduced in the recent reform, despite the 2015 deadline being an international obligation since 2002, and MSY being on the agenda for many years previously. In addition, the allocation of resources by relative stability and annual negotiations leads to political compromises and deals which don't reflect the nature of mixed and multispecies fisheries. This has led to increased rates of discarding as the quotas have not been aligned with the composition of catches. Nevertheless, we remain convinced that with their flaws the current institutional arrangements are better for the sustainability of fisheries (and thus the UK) than a complete renationalisation of powers to the UK and other governments.

## **Qu. 7 Future challenges and opportunities**

- Bearing in mind current EU arrangements and forthcoming reforms, what future changes would benefit the UK or help the UK to capitalise on future opportunities, while achieving our wider goals for fisheries management?

It remains to be seen how effective the most recent reforms of the CFP are going to be, so it would be premature to suggest further regionalisation at this point, although amendments may be appropriate in due course. In terms of future changes that could benefit the UK, it may be the case that further regionalisation and decentralisation of decision making would be advantageous, however it is too early to tell how successful the current framework will be and whether this will be the case. It is clear that the UK would not benefit from nationalising fisheries management completely due to the shared nature of the resource and the problems this would present (namely the incentives against long-term decision making, and the added burden of negotiating fisheries agreements with all countries with whom the UK shares stocks). We need a period to try the new framework and then develop further in the direction of regionalisation if this proves viable.

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