

# CFP Developments

ANALYSIS OF EU FISHERIES POLICY PROPOSALS AND COMMUNICATIONS



IEEP LONDON

Briefing No 17  
27 October 2003

## *Proposed Council Decision on Regional Advisory Councils (COM (2003) 607)*

### **Introduction**

The Commission has come forward with its proposed decision on regional advisory councils (RACs), which is arguably the most concrete manifestation thus far of a new approach to EU fisheries governance under the revised CFP. Although intended purely to advise the Commission and national fisheries managers, RACs should allow management issues to be considered in a more tailored and ecosystem-based way, while enhancing dialogue between different interests involved in any one maritime region.

In presenting this proposal, the Commission is aiming to define a common framework to govern the shape, membership, functioning and financing of RACs. There is a fine balance to be struck, on the one hand, between allowing RACs to be created through bottom-up stakeholder-led processes, and on the other, ensuring basic consistency between the EU's marine regions and respect of principles of good governance. The question is whether this balance has in fact been struck.

### **Background to the Proposal**

RACs were formally established as a legal concept in 2002, with the adoption of the new CFP Regulation 2371/2002. Article 31 sets out certain principles which require further development if they are to provide a general framework that will serve as a basis for the establishment of RACs by stakeholders; Article 32 of that Regulation specifies that the Council will decide on the establishment of a RAC. The main focus of RACs is defined with reference to Article 2 of Regulation 2371/2002. Thus, RACs are to support resource management, including progressive implementation of the ecosystem-based approach. They should aim to do so, taking full consideration of existing EU legislation regarding environmental and other issues.

The RAC idea arises out of calls for a more transparent, participatory, ecosystem-based and/or devolved approach to EU fisheries management. UK and Irish fishermen's groups, in particular, called for a more regionalised approach to the CFP. While RACs respond to these calls, they do so only in so far as regionalising stakeholder *advice* to the Commission and Member States; they fall short of creating regional decision-making fora.

IEEP  
BRIEFING



Despite their lack of legal ‘teeth’, RACs could turn out to be influential if their advice were allowed to drive the decision-making process. It is for this reason that industry and non-governmental groups have taken a close interest in their evolution.

### **Proposed Form and Content of RACs**

The Commission proposal aims to establish the basis for RACs, but without compromising the ability to tailor RACs to local or regional needs and styles. The main features of the Commission’s proposal are as follows.

#### *Establishment of RACs*

The preamble to the proposal indicates that RACs will correspond to management units based on ‘biological criteria’. The main text of the proposal does not give an indication of the criteria applied, instead simply providing for the establishment of RACs covering the following (predominantly geographical) areas:

- the Mediterranean Sea – Community waters,
- the Baltic Sea – ICES area IIIb, IIIc and IIId,
- the North Sea – covering area IV, IIIa and VIIId,
- North Western waters – areas V (excluding Va and only EC waters in Vb), VI, VII (excluding VIIId and VIIe),
- South Western waters – areas VIIe, VIII, IX and X, and CECAF division 34.1.2, ie around Madeira and the Canary Islands, and
- Pelagic stocks – blue whiting, mackerel, horse mackerel and atlanto-scandic herring, in all areas.

RACs can themselves create subdivisions, to deal with more specific fisheries or biological regions.

An earlier draft of the proposal had allowed for subsequent changes to be made to the list of RACs, but this option has since been removed. For financial, administrative or resource reasons, it may not be desirable to establish a large number of RACs. At the same time, the fewer and larger RACs are, the less successful they are likely to be in supporting participatory and ecosystem-based management. The Commission proposal - to split the north east Atlantic region into three areas - risks introducing a new layer in the policy-making process, but one that will not be sufficiently close to the stakeholders or ecosystems to make a difference.

#### *Procedure for establishing RACs*

According to draft Article 3, anyone with an interest in one of the RACs can submit a request to establish it, to the Commission and Member States concerned. Representatives of the fisheries sector or other interests groups can submit such a request, which would need to include a statement of objectives, operating principles, rules of procedure and a budget estimate for the RAC. Having assessed

and if necessary amended the request, the Commission is to adopt a decision specifying the date on which the RAC is to become operational. That decision is to be published in the Official Journal of the EU.

These provisions are relatively new, and provide more clarity for those wishing to propose the establishment of a RAC. The current wording would apparently allow one or more fisheries or environmental organisations, for example, to come forward with a request. However, what is less clear is which request would be accepted, if there were competing ones.

The current proposal contains a requirement for all 'Member States concerned' to check whether the request is compatible with the rules. However, they are also to transmit 'a recommendation' on the RAC to the Commission, which could be read as giving each Member State an opportunity to approve or disapprove the request to establish an RAC. This latter provision could be an important lever to ensure RACs represent different cultural and national interests, rather than simply reflecting the interests of the normally dominant players in each region.

### *Structure*

RACs would consist of a **general assembly** and an **executive committee**. The general assembly would oversee the work of the RAC, meeting at least once per year. There appear to be no limits on the size of the assembly, simply that its membership would be 'by common agreement between the Member States concerned', with European or national fisheries or other interest groups able to propose members to the Member State concerned.

One of the assembly's key functions is to appoint the twelve to 18 members of the executive committee. The executive committee, in turn, would manage the work of the RAC and adopt any recommendations and suggestions. In other words, the bulk of the work would take place in the executive committee. That said, the work of the executive committee would presumably need to be supported by working groups of some kind, details of which are not provided.

This two-tiered structure seems to be suitable, although the potentially large size of the general assembly could render decisions difficult, particularly regarding the selection of a suitable combination of executive committee members.

More significant perhaps is that the selection of general assembly members requires agreement from the Member States. Member States will therefore be selecting the RAC's general assembly or 'electorate', and will consequently play a critical role in ensuring an appropriate selection of and balance among general assembly members.

### *Membership and other participation*

According to the proposed Article 5, RACs are 'to be composed of representatives from the fisheries sector and other interest groups affected by the Common Fisheries Policy.' The fisheries sector here includes shipowners, small-scale fishermen, employed fishermen, producer organisations, processors, traders and

other market organisations and women's networks. Other interest groups are defined as environmental organisations and groups, aquaculture producers, consumers and recreational or sport fishermen.

Two thirds of the seats of the general assembly and of the executive committee are to be allotted to the fisheries sector (ie between eight and 12), and one third to other interests (ie between four and six). At least one representative of the catching sector from each Member State concerned is to be represented in the executive committee. A 'concerned Member State' is one that has fishing rights for regulated species in the area or fisheries covered by the RAC.

It is rather a curiosity that neither the aquaculture sector nor recreational sector is considered to fall within the definition of 'representatives of the fisheries sector', despite the increasingly important economic role played by both. The effect is to squeeze the number of environmental and consumer members who are the only types of 'public' interest groups listed under 'other interests'. In a small RAC, ie one with 12 members, only three would come from the 'other interests' category, which would mean that one group would have to be excluded.

It will also be challenging to choose the fisheries sector members, given the need to include one representative of the catching sector from each State concerned. In some areas, notably the Baltic Sea, this would mean that of the maximum 12 seats allotted to the fisheries sector, eight would immediately be taken up by the capture sector. One solution would be not to take a national approach in selecting members, but instead require *all* interest members to represent a number of countries. The implication is that the total number of representatives from the catching sector would be reduced.

#### *Other participants*

Apart from the twelve to 18 members, the proposed decision identifies additional participants for RACs. Scientists from institutes 'of the Member States' or international bodies 'shall' be invited to participate as experts. In addition, the following can participate as observers:

- national and regional administrations of the Member States, and Member States with no rights in the area;
- representatives of the Advisory Committee on Fisheries and Aquaculture; and
- representatives of third countries with a fishing interest in the area or fisheries covered by the RAC, when issues that affect them are being discussed.

Commission officials 'may be present' at any RAC meeting, but are not required to attend.

There appear to have been few objections to these participants, apart perhaps in relation to the Commission's role. Given that a major function of RACs is to advise the Commission, in response to requests, it is disappointing that the Commission is not required to attend each meeting, at least meetings of the executive committee.

Past experience has shown that minutes or reports from similar advisory bodies do not always capture, in a balanced way, the views of delegates. In the early days of the RACs, a Commission presence would also help ensure respect of the rules and impartiality of the chairperson. It would also develop joint ownership and understanding of the advice provided by RACs, as well as bringing parties closer together.

One of the reasons that has been given for the Commission not attending each meeting is associated with the financial cost. It should be recalled, however, that Commission officials do attend and participate in meetings of programme monitoring committees established to administer each of the EU's regional or sectoral Structural Funds programmes. It would therefore not seem unreasonable to also ensure one official participated in, and closely followed the workings of, each of the RACs.

### ***Functioning***

The proposal contains no general principles to guide the operation of RACs, with RACs simply required to 'adopt the measures necessary for their organisation'. The only relevant provision is that both general assembly and executive committee meetings are to be open to the public. Importantly, however, each RAC is to designate a chairperson by consensus, and he/she is in turn to act 'impartially'.

The success of individual RACs is likely to depend on this chairperson although it is unclear who will elect the chair – the executive committee or the general assembly – and what will happen if a decision cannot be made. There is also no indication of the length of term of the chair, and ways of dismissing a chair that does not act 'impartially'.

The lack of reference to principles of good governance or good administration is disappointing, particularly given the reference to good governance that is now included in the basic CFP Regulation 2371/2002. Apart from the requirement for meetings to be open to the public, there is little to ensure decisions are taken transparently, that all information will be made accessible to the public and that procedures will be put in place to handle complaints about unfair or unsuitable conduct. Similar provisions have or are being introduced at the Member State and Community level, as a consequence of the EU's signature of the 1998 Aarhus Convention. They should also be made explicit in this RAC proposal, which are, after all, Community bodies.

### ***Coordination between RACs***

The Commission proposal (Article 8) states that RACs shall coordinate their positions with a view to adopting joint recommendations on a particular issue that is 'of interest' to two or more of them.

This is an important provision, given that the ecosystem-based approach is to be



applied to RACs, and that the RAC boundaries will never reflect ecosystems precisely. However, it is perhaps disappointing that the proposal is for positions to be coordinated, rather than there being a more explicit requirement for joint working between relevant RACs.

### **Paying for RACs**

The provisions on financing have been elaborated in the last few months, such that RACs can now be granted start-up aid to cover the first three years of operating costs. The rate of Community co-financing would be reasonably high – as much as 85 per cent – but the Community contribution would be limited to €100,000 in year one, with degressive payments in the second and third years. The Commission would, in addition, conclude grant agreements to cover interpretation and translation costs associated with RAC meetings, amounting to a maximum of €200,000 per year.

The explicit provisions regarding financing are important, and an impact assessment attached to the proposal suggests that the funds will be made available for personnel costs, equipment, non-capital costs and supplies, dissemination of information, travel and accommodation of scientific experts and audits. From this, it appears that funding will not be available for travel and accommodation costs incurred by members. Certainly, the fact that additional funds will be available for interpretation and translation costs should nevertheless make a significant difference to the functioning of the RACs.

### **Annual report and review**

Annual reports can act as a useful source of information to stakeholders and the public on the work of RACs, both past and future. The proposal states that annual reports are to be sent to the Commission, Member States and ACFA before 31 March each year, though there is no explicit requirement for them to be made available to the public.

There is a requirement for a review of the RACs, three years after their establishment, with the Commission to send a report on their functioning and implementation to the European Parliament and Council. However, the review is only required once and is not linked to a revision of arrangements although the potential for such revisions is noted in the preamble. It is not clear what kind of structure the reports would take, or a procedure (eg by reference to a comitology committee) for agreeing such a structure.

### **Conclusions**

The proposal now goes to the Council for discussion, potential amendment and agreement. There are a number of issues that interest groups might wish to pursue in these negotiations. These could include:



- reinstating the provision allowing additional (ie smaller) RACs to be established, should that be desirable based on biological criteria and stakeholder interests.
- a clear reference to the objectives of RACs – ie to support delivery of ecosystem-based fisheries management.
- a requirement to apply principles of good governance in the administration of RACs, eg relating to transparency, access to information and the handling of complaints or disputes.
- detailed consideration also needs to be given to the issue of membership, either by increasing the maximum number of executive committee members to properly reflect relevant groups and issues, and/or by reducing the emphasis on both national and catching sector representation.

By addressing these issues, the proposal would strike a more appropriate balance between EU level safeguards and the desire to allow the bottom-up and stakeholder-led development of RACs.

CC  
27 October 2003