

Invest in Fish South West Report



Analysis of the Legal and Institutional Policies Relating to the South West

Contents

Acronyms and Terminology.....	2
Introduction.....	3
Context.....	4
Stakeholder Priorities.....	5
Priority Analysis.....	6
CFP withdrawal.....	6
Alternative to the TAC system.....	10
Improvements to the TAC system through better science by industry/ scientist collaboration.....	15
Days-at-sea restrictions.....	17
Temporal area closures for all and selected fishing methods.....	19
Summary and Conclusions.....	24
Additions.....	26
The Marine Bill.....	26
Marine Thematic Strategy.....	26
Maritime Policy Green Paper.....	27
Implications for Invest in Fish Southwest.....	27
References.....	29
Annex: Legal and Institutional Framework.....	30
International.....	30
European Union.....	42
United Kingdom.....	59

Acronyms and Terminology

The following provides a description of terminology used in this report.

ACFA – Advisory Committee on Fisheries and Aquaculture

CEFAS- Centre for Environment, Fisheries and Aquaculture Science

CFP – Common Fisheries Policy, The European Union’s instrument for the management of fisheries and aquaculture

EC – European Community

ECC – European Economic Community

ECJ – European Court of Justice

EEZ - Exclusive Economic Zone, an area in which a coastal state has sovereign rights over all the economic resources of the sea, seabed and subsoil.

EFF – European Fisheries Fund

EP – European Parliament

EU – European Union (EU)

FIFG – Financial Instrument for Fisheries Guidance

ICES – International Council for the Exploration of Seas

ITQs – Individual Transferable Quotas

MTS – Marine Thematic Strategy

RAC – Regional Advisory Council

RFO - Regional Fisheries Organisation

SAC – Special Area of Conservation

SFC – Sea Fisheries Committee

SPA – Special Protection Area

STECF – The Scientific, Technical and Economic Committee for Fisheries

TACs - Total Allowable Catch, the quantity of fish that can be taken from a stock each year. In the Europe, the figure is agreed by the Fisheries Council of Ministers each December for the following year. EU Member States are allocated a fixed proportion of the TAC as their national quota

Introduction

Invest in Fish South West is a stakeholder led project that seeks to develop a regional strategy for managing fisheries in the Celtic Sea, English Channel and Western Approaches that improves fish stocks in a way that will benefit the marine environment, regional economy and local communities. The project was launched on 28 April 2004 by HRH the Prince of Wales. To celebrate progress made within its first year, Invest in Fish South West will be releasing four reports over the next month. Each report discusses important findings from different research projects conducted within the context of the project to date.

Although these reports do not convey the collective views of Invest in Fish South West, they do provide a basis for discussion that will aid stakeholders in defining a fisheries management strategy. Relevant biological, economic and social data collected from these reports will also be inputted into the Invest in Fish South West's bio-economic model¹.

The reports and dates for release are as follows:

- *Imagining Change: a Survey of South West Fishermen* - by Invest in Fish South West - released 9 May 2005

- *The Motivation, Demographics and Views of South West Recreational Sea Anglers and their Socio-economic Impact on the Region* by Nautilus consultants – DATE TO BE DETERMINED

- *Analysis of the Interactions between Fishing and Marine Mammals* by the Sea Mammal Research Unit, SMRU - to be released 23 May 2005

- *Analysis of the Legal and Institutional Policies Relating to South West Fisheries* by The Institute of European Environmental Policy (IEEP) - to be released 30 May 2005

Editor's note

1. The Centre for the Economics and Management of Aquatic Resources at the University of Portsmouth, Cemare, and The Centre for Environment, Fisheries and Aquaculture Science, CEFAS are currently developing a bio-economic model to test the social, economic and environmental implications of different management options on behalf of Invest in Fish South West.

Context

Invest in Fish South West ultimately aims to define a fisheries management strategy that improves fish stocks while balancing the needs of the marine environment, regional economy and local communities. The project understands that in order for the strategy to be credible, it will have to be practical and attainable within the existing legal and institutional situation.

Since the launch of the Invest in Fish South West project, steering group members have been working closely with stakeholder groups (fishermen, recreational sea anglers, environmental NGOs, conservation organisations, fish processors, retailers and restaurateurs) to ascertain the most desired fisheries management options between all groups.

This report, conducted by the Institute for European Environmental Policy (IEEP)¹, reviews the plausibility of implementing fisheries management options proposed by stakeholder groups thus far, within the current legislative and institutional constraints and opportunities.

The report includes Annexes of analyses of the broader legal and institutional framework that is relevant to the development of recovery plans. This is broken into three levels: international law, EU law, and national and local legislation.

The project, and hence recovery options, relate to an area falling within Community waters. This includes both territorial waters and the UK EEZ/fisheries zone but not the high seas. Because the project is focusing on recovery options in relation to UK waters, i.e. territorial and fishing zone, the text does not consider legislation concerning Irish or French territorial waters or EEZs.

This report has been presented to the Invest in Fish South West Steering Group and will play an important role in its fisheries management debate. During the duration of the Invest in Fish South West project, and based on its latest findings, stakeholder groups may propose other fisheries management options that will also be reviewed by IEEP.

¹ The Institute for European Environmental Policy (IEEP) is an independent institute with its own research programmes. Based in London and Brussels, the Institute's major focus is the development, implementation and evaluation of EU policies of environmental significance, including agriculture, fisheries, regional development and transport.

Stakeholder Priorities

Invest in Fish SW will publish a list of future options at a later stage of the project. Based on initial IIFSW project consultations and IEEP discussions with key stakeholders, IEEP clustered major ideas and suggestions under six headings, from which the analysis follows:

Recovery Option	Details and Stakeholder Views
1. Common Fisheries Policy (CFP) Withdrawal	There is widespread dissatisfaction with the current management system, which leads to many stakeholders calling for CFP withdrawal. There is however recognition that the fisheries concerned would need managing in an international framework.
2. Alternative to the Total Allowable Catch (TAC) system	There is general contempt for the quota system, perceived as being based on deeply flawed science and the major cause of discards, conflict, resentment of the EU and poor economic returns.
3. Improvements to the TAC system through better science by industry/scientist collaboration	Some support was expressed for TACs if stock assessments could be shown to be realistic. To this end, there is general willingness amongst the fishing industry to work with scientists to help inform both the fishing industry and the science, providing scientists can be separated from their current perception as being allied with, and serving, the management 'anti-fishing' policy.
4. Temporal area closures for all and selected fishing methods	The support for area closures was specific. Seasonal closures in specified spawning and nursery areas were favoured together with zonal area management whereby areas are closed to specific gears. A subset of this is seasonal or short-term rotated closures allowing heavily fished areas to remain 'fallow' for short periods. There was very little support for large permanent closed areas. This is seen as a 'park making conservation goal' by green groups not sympathetic to the fishing industry, rather than an attempt to provide a long-term future for the industry. There were suggestions that large permanent closure may be acceptable if there were guarantees that there would be effective monitoring of their success, with an option to remove or modify them if positive results were not generated.
5. Days-at-sea restrictions	Suggested control of effort in the form of days-at-sea restrictions, often in conjunction with area closures, based on 'maximum' effort track records.
6. Transitional aid	To support the industry through the period of readjustment, there were widespread calls for transitional aid to compensate for the area closures-and-days-at-sea restrictions.

Priority Analysis

Priority	Law/legal basis	Required change	Likelihood	Time frame / political opportunity
CFP withdrawal	<p>The legal basis for the CFP is set out in the EC Treaty, and has subsequently been confirmed by the European Court of Justice. The CFP itself is set out in a large number of secondary laws (notably the basic Regulation 2371/2002).</p> <p>In order to 'withdraw from the CFP,' consideration could be given to changing UK commitments under the Treaty, by:</p> <p>a) securing changes to the wording in the Treaty so that CFP is rolled back or watered down, e.g. by removal of exclusive competence</p> <p>b) reducing the UK's obligations under the Treaty (i.e. partial withdrawal from the EU)</p>	<p>CFP withdrawal or amendment could be achieved in several key ways:</p> <p>a) Change Treaty wording on fisheries – the reference to fisheries in the Treaty could be removed or the text changed to make fisheries resource conservation an issue that is shared between EU and Member States. This would override case law, and would have the effect of allowing the UK to share competence in this area. The changes to the Treaties agreed in June 2004 (but not ratified) increase (rather than reduce/remove) such references.</p>	<p>a) & b) Treaty reform happens rarely; it is a slow process and requires unanimous agreement from all Member States (now 25) before entering into effect. The latest round of Treaty reforms were agreed in June 2004. These could lead to the introduction of a simplified procedure for future Treaty changes, but this is not yet clear. Either way, Treaty change is a major challenge and currently quite unlikely to achieve. It is not at all clear that the new European constitution will ever enter into force.</p> <p>c) UK withdrawal from the EU/EC – this is</p>	<p>Political opportunities for future Treaty change are uncertain, given the need to secure agreement from all 25 Member States. The new European constitution is unlikely to enter into force much before 2007 – if it enters into force at all.</p> <p>As for changes to legislation, the major CFP reforms are for the time being falling in 10 year cycles, although there is nothing preventing the Commission from proposing changes in the meantime.</p>

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	<p>c) withdrawing from the EU/EC entirely.</p> <p>Alternatively, changes could be sought to the CFP legislation, which would apply to all Member States, e.g. by:</p> <ul style="list-style-type: none"> • rolling back/water down existing measures, e.g. not renewing TACs or repealing technical measures. Even the basic Regulation could be repealed • increasing national powers under the CFP, e.g. allowing Member States more scope to adopt unilateral management measures, e.g. as is already the case for inshore fisheries (12nm). <p>But what would be the effect of such changes? The reason for EU legislation in fisheries, environment, internal market and anywhere else, is basically to secure measures</p>	<p>b) The UK could be given an opt-out to the CFP. It is not possible simply to pick and chose from EU policies, although some derogations have been secured in Treaties, by some countries, e.g. Denmark.</p> <p>c) Unilateral withdrawal from the CFP would normally require withdrawing from the EU in its entirety – the EU/EC is not ‘a la carte’. Withdrawal is currently not possible (only Greenland has left the CFP), but the draft European constitution, agreed in June 2004 but not yet in force, does allow for this.</p> <p>Rolling back/watering down the CFP:</p> <p>a) Repeal of secondary EU CFP legislation – legislation can be repealed more easily than Treaty change. All that</p>	<p>considered highly unlikely, although the prospect of a UK referendum on the new European constitution could result in a UK ‘no’ vote, and subsequently lead to calls and pressure for the UK to leave the EU. Still, this is considered unlikely, since there would be major implications for the UK economy, as well as environmental and to a lesser extent social policies which have all been significantly strengthened through EU laws. The prospect of a ‘no’ vote could also strengthen the UK’s arm in terms of securing a derogation, but still this is considered unlikely. Above all, if the UK pursued derogation it would probably do so in a more strategically important area of policy.</p> <p>Rolling back the CFP:</p>	

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	<p>to a) deal with issues that do not respect national boundaries (ie most environmental and fisheries measures), b) to create a level playing field for trade, and/or c) to support social and economic cohesion. Of course, this only works if measures are enforced properly across the EU/EC.</p> <p>If CFP measures were repealed or otherwise removed, and/or greater scope was provided for national management, then the UK would have an opportunity to step in to manage fish stocks in UK waters (12 nm and fisheries zone). The UK would also assume – under international law – legal <i>commitments</i> to look after its fish stocks. Given the UK's track record in environmental and resource management, and the strength of environmental interest groups, it would most likely respond by introducing at</p>	<p>is needed is a Commission proposal to that effect, followed by agreement in the Council. It is also possible that legislation simply lapses either because the Commission or the Council fail to adopt measures.</p> <p>In practice, failure to renew the TAC regulation, for example, would mean that there would be no TAC rules in place. If the basic Regulation were repealed, there would be no access restrictions, with rules reverting to pure equal access established by the Court. Inshore waters would be subject to equal access (foreign vessels fishing up to the beaches). It would not mean that the UK automatically assumed powers to manage fisheries; instead a vacuum would be created. Unless such rolling back were accompanied by changes to the competence status (i.e. change in the</p>	<p>a) EU legislation has gradually been strengthened since the European Economic Community (EEC) was created in 1957. It is unlikely that the Commission would propose to roll back legislation, since this would effectively reduce its remit/powers. However, the EU's recent enlargement to 25 Member States will put pressure on policies and there are already indications that some kind of 'thinning out' of legislation may follow. This would meet strong resistance from many quarters. Previous commitments to regulatory simplification at EU level have not resulted in significant reduction in legislation.</p> <p>b) This is perhaps the likeliest option of the</p>	

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	<p>least as stringent, but probably more stringent measures than those adopted under the CFP. It is quite probable that without the CFP, UK fisheries would benefit from more stringent protection than fish stocks in other countries' waters. But the move away from the CFP would result in a less level playing field for the UK sector.</p> <p>If there was a move towards greater shared fisheries management, as is done in inshore fisheries, there could be an opportunity for groups of countries, eg around the North Sea, to organise and develop policies together (known as 'enhanced cooperation'). This would mean that different regions could forge ahead if they so wished, as long as they built on/reinforced any EU legislation. While this would be preferable in terms of ecosystem based management, it would not</p>	<p>Treaty), the Member States would probably not be able to fill the vacuum.</p> <p>b) Further devolvement of fisheries conservation – the Commission could propose a further devolvement, so that Member States were able to adopt measures and control activities of UK and foreign fleets, in UK waters. It is possible that this could be accompanied by removal of the equal access principle.</p>	<p>four, but still rather unlikely and would probably be challenged by Spain, as being contrary to the Treaties/European Court of Justice (ECJ) ruling on equal access.</p> <p>In general, securing changes to secondary legislation is much more possible, but still very unlikely since the Commission – which would have to initiate proposals – is not likely to reduce EU legislation and powers. Even if powers were devolved to the Member States, as for inshore waters, this would still leave a basic level of management at EU level and would not allow for purely regionalised approaches.</p>	

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	address unfair competition arising in the market place, between fish caught in the North Sea and fish caught in other EU seas, for example.			
Alternative to the TAC system	The basic CFP Regulation (2371/2002, Article 20) states that the Council shall decide on catch and/or fishing effort limits based on a Commission proposal. However, there is no legal necessity for a quota system. Indeed, while TACs are set for the north east Atlantic and Baltic fisheries, no such system is in place for the fisheries of the Mediterranean Sea. A large number of north east Atlantic stocks are not covered by TACs, and it's only relatively recently that the North Sea has had most commercial stocks covered by TACs, in that case to prevent Spain and Portugal gaining	Some of the major alternatives and policy implications include ² : a) Individual transferable quotas (ITQs)– while often promoted as such ITQs are not considered an alternative to the quota system because they themselves are based upon TACs. An ITQ system would therefore require biological stock assessments and the scientific procedures underpinned by ICES would not necessarily change. Any expansion of an ITQ system to include stocks not presently subject to scientific stock assessments would also demand some	With work, the likelihood for reform of the quota system seems reasonably good. The EU legal framework is already in place and there is recognition across the EU and nationally that the current quota system is contributing to many problems. It should be noted however that the alternatives would not necessarily solve all of the present problems, such as shortcomings with the scientific stock assessment process. It should also be noted	EU level reforms would be more effective and ensure a level playing field. The CFP reform and related initiatives opened the door for alternatives to TACs, or at least ways of complementing them. These could be pursued, with pressure from industry, the European Parliament and/or a willing Council (Member State) Presidency – such as the UK Presidency in the second half of 2005. However, changes are more realistic at a UK level rather than an EU wide basis, at least in the short-term. Replacing the entire

² It is not intended to repeat previous extensive analysis and discussion of the issues surrounding the alternatives to the current quota system within the UK and the EU (eg Hatcher, Pascoe, Banks and Arnason, 2002; Frost and Lindebo, 2003; Rodgers and Valatin, 1997), but rather to provide an overview of the major alternatives and the policy implications.

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	<p>meaningful access to North Sea fisheries.</p>	<p>form of stock assessment. While ITQs may lead to improved or more efficient governance, as the property rights allocated to fishermen create incentives for resource husbandry, the problems of bycatch and discarding is likely to remain. The same monitoring, enforcement and control systems would also be required under an ITQ system as under the present quota system. Indeed, there would be pressure to step up monitoring and enforcement, to underpin the economic value of the tradeable quota.</p> <p>If ITQs are deemed an appropriate management system to pursue, the legal framework is already in place. They could be established on a EU, national, local or fishery specific basis. Under the basic CFP Regulation (2371/2002, Article 3)</p>	<p>that fisheries outside of the quota system are not necessarily faring any better than those within the quota system. There are also redistributive issues that would need to be addressed, to avoid ownership of quotas being concentrated in a few hands.</p> <p>a) Establishing a formal ITQ system in the UK is a matter of working through the national fisheries administration. The UK Prime Minister's Strategy Unit recommended in March 2004 that present Fixed Quota Allocation (FQAs) be developed into ITQs for all sectors in the UK, lending political weight to the idea.</p> <p>A EU-wide ITQ system is quite possible too, and was one of the issues flagged for greater</p>	<p>quota system with effort management, for example, would also raise issues surrounding preservation of relative stability.</p> <p>Pursuing national level reform would require working with the national administration systems. DEFRA is currently taking forward the UK Prime Minister's Strategy Unit recommendations on ITQs and effort control. For this purpose stakeholder working groups have been developed and consultations are ongoing in order to develop an action plan.</p>

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		<p>Member States may decide on the method of allocating quota amongst their vessels. Denmark and the Netherlands have had ITQ systems in place for a number of stocks for a number of years. The UK has introduced them 'by the back door'.</p> <p>b) Direct effort control – Controlling inputs (i.e. ITQs effort) can be used as an alternative to controlling outputs (ie fish/catch). The legal framework for this already exists, with it being used in a number of fisheries in several forms at a number of levels.</p> <p>The basic CFP Regulation includes effort limitation as one of the types of conservation measures that may be used (Article 4). In particular, effort limitation should be used as part of stock recovery plans where necessary to achieve the recovery objectives (Article</p>	<p>discussion during the CFP reforms. The EU emissions trading Directive, covering greenhouse gases, provides a possible model. Here, companies are given emission quotas, which they can trade – those not wishing to use up their full quotas can sell them to others in Europe, who need additional emission quotas.</p> <p>b) more extensive effort control in the form of days-at-sea is feasible given that it is already used under the EU cod recovery plan and catered for under the basic Regulation. However, in the recovery plans, this system is used in addition to, rather than in place of, quotas. Replacement would require a EU level approach, as a UK</p>	

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		<p>recovery objectives (Article 5). Indeed, days-at-sea limits are used as part of the cod recovery measures. A system of kilowatt-days-at-sea was originally proposed by the Commission although this was changed to the simpler days-at-sea system by the Council, following industry resistance.</p> <p>Effort can be limited in inshore shellfisheries through Sea Fisheries Committee (SFC) regulating orders, such as that of the Bury Inlet cockle fishery licensing and days-at-sea limitations. This does not require a change to policy as such but rather the development of new orders.</p> <p>c) Input and Output Taxes – Taxes can be used to increase the costs of fishing (input tax e.g. fuel duty) or to reduce returns (output tax e.g. fish levy) with the effect of reducing fishing</p>	<p>system alone would still necessitate the same stock and catch assessment systems with discarding from other Member States continuing to undermine management. The Strategy Unit recommended that effort management be explored with the Commission for mixed stocks that the UK participates in.</p> <p>c) EU fiscal measures have to be adopted on the basis of unanimity in the Council and are very difficult to agree. If such measures were adopted, they would normally require harmonised national tax levels rather than establishing a EU tax as such.</p> <p>The likelihood of a national taxation system for capacity management appears</p>	

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		<p>effort to some predetermined level. Determining the target level of fishing effort will doubtlessly require some form of scientific stock assessment. Target effort levels, and hence taxes, will also change with fluctuations in stocks. While annual Council quota negotiations may simply be substituted by annual tax negotiations, current economic shortcomings such as capital stuffing and the 'race for fish' can be overcome.</p> <p>Arguably, establishing a taxation system would ideally require a European wide approach to avoid circumvention of the system. The basic CFP Regulation (2371/2002, Article 3) provides for economic incentives promoting more selective or low impact fishing.</p> <p>EU taxes measures would</p>	<p>unlikely. While the Strategy Unit advocates cost recovery for industry advisory services, it notes that cost recovery should not be justified on the basis of capital control because it is not considered a reliable enough mechanism.</p>	

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		<p>normally require that Member States introduce national taxes, as is done for energy taxation.</p> <p>It is not entirely necessary to create a EU taxation system. Indeed, there is currently a levy on fish landings in the UK, which is used to fund the Sea Fish Industry Authority (SFIA). Established under the Fisheries Act (1981) this has remained unchanged since 1999. Any change requires consultation with industry and agreement from the UK Fisheries Ministers.</p>		
<p>Improvements to the TAC system through better science by industry/ scientist collaboration</p>	<p>TACs are decided by the Council based on a Commission proposal which, in turn, is based on advice from ICES and STECF.</p> <p>The Community framework for the collection and management of fisheries data is established under Regulation 1543/2000.</p> <p>Member States are</p>	<p>It must first be acknowledged that 'improving science' means different things to different groups. Scientists view this as meaning better 'numbers', i.e. discards and catch data, while industry interpret this as figures that better reflect their view, which tends to be that there are more fish on the ground than scientists say there is.</p>	<p>CEFAS and industry are fully aware of the need to improve fisheries science, with relationships perhaps at an all time low. Given that improved relationships and working processes underpin the Invest in Fish South West project this is an area in which progress should be</p>	<p>Industry/scientist collaboration is an ongoing issue.</p> <p>RAC proposals are expected once the Decision comes into force, which will follow its publication in the Official Journal. This is expected to be the beginning of July.</p>

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	<p>responsible for data collection. While data requirements are specified – some are mandatory and others not. Member States develop their own data collection programmes.</p> <p>Stakeholder opinion, including that of industry, is currently sought through Advisory Committee on Fisheries and Aquaculture (ACFA). Regional Advisory Councils (RACs) are envisaged as being a key forum for improved industry/scientist dialogue (Decision 585/2004; COM(2003)C47/06). Indeed, the Commission has indicated that where RACs come forward with unanimous recommendations for technical measures, the Commission will be minded to respond positively.</p>	<p>Improvements to the present data collection and TAC formulation system require changes to processes and, therefore, relationships more than policies.</p> <p>The Centre for Environment, Fisheries & Aquaculture Science (CEFAS) is part of the ICES network. It undertakes stock assessments and advises the UK government and the Commission. It is therefore necessary to develop CEFAS/industry relationships and collaboration as a first step.</p> <p>With the Council Decision on RACs in place the next step is to establish them. This requires a proposal from stakeholders to the Commission and Member States. The Commission evaluates the proposal against requirements and makes a decision on its</p>	<p>possible.</p> <p>Establishing RACs entails following the requirements in the Council Decision.</p> <p>RACs present a significant opportunity for improving dialogue and relationships amongst all stakeholders, including industry and scientists. The extent to which this is bourn out will depend on factors such as stakeholder commitment to the process, open and constructive dialogue and balanced stakeholder representation.</p>	

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		<p>establishment.</p> <p>RACs may be established for (a) North Western waters (Area V, VI, & VII, excluding Va and only EC waters in Vb, and (b) South Western waters (Area VIII, IX, X and CECAF divisions 34.1.1, 34.1.2 and 34.2.0, and pelagic stocks.</p> <p>It should be noted that RACs will not, however, address some of the deeper root causes of poor data of misreporting and discarding (eg common property resource and individual morality).</p>		
Days-at-sea restrictions	As discussed in point 2 above, the basic CFP Regulation (2371/2002) includes effort limitation as one of the types of conservation measures that may be used (Article 4). In particular, effort limitation should be used as part of stock recovery plans where necessary to achieve the recovery objectives (Article	<p>It is up to the Member States to decide how to distribute their quotas, and how to manage fishing effort. The UK could therefore seek to introduce wider days at sea restrictions for the UK sector.</p> <p>However, a EU approach might be considered</p>	It is possible for the UK to introduce days-at-sea limitations. The fundamental challenge is securing agreement from all stakeholders. To illustrate this point, the UK government introduced such a scheme in the early 1990's, which the National Federation of	Developing UK measures would require demonstrating to DEFRA that there is broad industry support for days-at-sea restrictions, especially given the historical resistance to such measures. The Strategy Unit process provides an opportunity for developing such a system.

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	<p>5) and days-at-sea limits are used as part of the cod recovery measures.</p>	<p>preferable. If this were the case, EU legislation would be needed, agreed by the Member States on the basis of a Commission proposal.</p> <p>Perhaps the most effective way of achieving this 'EU option' is within the context of stock recovery and management plans. Alternatively, one could work towards a separate EU regulation.</p>	<p>Fishermen Organisations (NFFO) challenged through the European Court of Justice (ECJ). Although the ECJ endorsed the legality of the scheme, MAFF dropped the scheme as it was considered politically unacceptable.</p> <p>More recently, the Strategy Unit recommended that effort management systems should be explored in detail, including a days-at-sea scheme.</p> <p>The challenge of establishing an EU scheme will be securing agreement from all the Member States, which again typically means agreement from key stakeholders in the Member States. With stakeholder agreement, the likelihood is considered good.</p>	<p>For EU level measures, one approach would be to work with stakeholders through RACs, or otherwise if not in place, plans could be proposed to the Commission. The Commission then develops an official proposal which the Council considers for adoption.</p> <p>This could happen at any time, but the most obvious opportunity is presented by the development of recovery and management plan proposals.</p>

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<p>Temporal area closures for all and selected fishing methods</p>	<p>The CFP framework Regulation (2371/2002, Article 4) provides for the use of zones and/or periods in which fishing activities are prohibited or restricted, including for the protection of spawning and nursery areas. Measures can also be adopted to reduce the impact of fishing activities on marine eco-systems and non-target species.</p> <p>The UK has been able to introduce temporal closures in the 0-6 nm zone. The ability of Member States to introduce measures out to 12 nm, and covering both national and foreign vessels is as yet untested. The legal basis for such measures is provided by the basic CFP Regulation (Article 9).</p>	<p>To be effective, area closures are likely to include waters beyond 12 miles. An EU approach is therefore likely to be necessary, in which case additional EU legislation is required.</p> <p>If measures concern UK territorial waters only, then bylaws established by the relevant nature conservation agencies could be used to prohibit or restrict i) the entry into or movement by persons or vessels; (ii) the killing, taking, destruction, molestation or disturbance of animals or plants, interference with the sea bed, or damage or disturb objects in the reserve; or iii) the depositing of rubbish in a Marine Nature Reserve (MNR) (designated under the Wildlife and Countryside Act 1981). It is not clear whether these powers could be used for temporal closures.</p> <p>In the longer term, there are strong arguments for reforming the Sea Fisheries Committee (SFC) bylaw making a process to enable more proactive and precautionary management. This includes the</p>	<p>In practice, the EU has a limited track record in the use of temporal closures under the CFP to manage fishing activities. Examples include the seasonal closure of an area off the Irish Sea to protect cod stocks (Regulation 304/2000) and similar various closures to protect spawning herring (Regulation 850/98). Both are established under the basic CFP Regulation. Further use of this type of measure would certainly depend on a Commission proposal and Council adoption. In practice, it is highly unlikely that EU agreement would be reached in the absence of scientific advice from ICES or equivalent body.</p> <p>Given that DEFRA reported in July 2004 on the fisheries enforcement review, it is not impossible that reform of bylaw procedures can be secured. Reform of the bylaw system was one of a number of key requests from the ASFC. The report lays out a</p>	<p>Scientific advice and recommendations may be put to the Commission at any time</p> <p>The Commission can also come forward with proposals at any time. However, requests from the Council and/or stakeholders would be useful to help initiate a process.</p> <p>The DEFRA enforcement review reported in July 2004 on options for change. DEFRA is consulting stakeholders on these options, providing an opportunity for working to improve the processes of establishing closed areas, whether through bylaws or otherwise.</p>

Priority	Law/legal basis	Required change	Likelihood	Time frame / political opportunity
Transitional aid	<p>FIFG (Financial Instrument for Fisheries Guidance) – the EU’s fund for the fisheries sector – requires Member States to develop multi-annual funding programmes for the sector, at either national or regional level, or both. In the south west of England, FIFG is programmed within the Objective One programme, alongside other EU funds. Objective One status is given to the EU’s poorest regions, and the greatest share of EU funding is targeted there. The rate of EU funding is much better in Objective One regions. All EU aid is made available on the basis that Member States and normally also private interests provide co-funding. The current funding period and rules run from 2000 to 2006.</p> <p>FIFG rules (Regulation 2792/1999, as amended) allow Member States to provide temporary aid to commercial fishermen and</p>	<p>Transitional aid is in principle available under FIFG, but the UK programmes offer much more limited opportunities, focusing only on more selective gear. The following shortcomings currently exist in relation to England.</p> <p>a) decommissioning aid – this is not available in England at present, but the Strategy Unit report recommended that it was made available again.</p> <p>b) Tie-up aid – is not available in England as this is not considered to represent value for money. According to EU rules, it is also not available for recreational vessels.</p> <p>Apart from getting the UK to use existing opportunities presented by FIFG, the whole EU funding framework is currently being re-examined, with a</p>	<p>With work, the likelihood of securing greater funding for decommissioning seems strong. Tie-up schemes are more difficult, given that they appear fundamentally to contradict English policy regarding value for money. If it could be demonstrated that tie-up schemes do represent value for money, then perhaps this option could be reconsidered.</p> <p>Directorate General Fish is currently exploring ways of getting more interesting projects funded under the existing (and future) FIFG, notably by exchanging experience between relevant authorities. This should improve chances of getting gear selectivity projects funded under the current rules.</p>	<p>There are two opportunities:</p> <p>a) Working with DEFRA to introduce additional measures under the current rules</p> <p>b) Feeding into discussions – at Commission/Council and UK level – on the new FIFG (or other) rules, post 2006. While the proposal was made in the summer, negotiations are likely to continue into the UK Presidency of the Council in the latter half of 2005.</p>

Priority	Law/legal basis	Required change	Likelihood	Time frame / political opportunity
	<p>ship owners who are forced to suspend their activities. Such aid can be allocated if there are unforeseeable circumstances, particularly those caused by biological factors, such as closing a fishery down (six months in total). Where EU recovery or management plans are introduced or where Commission or national emergency measures are adopted, compensation can be granted for one year, with the possibility of an extension for another year. Recent changes also allow funds to be used to support diversification into another fishery, following the introduction of a recovery plan. Compensation can also be granted where EU legislation imposes technical restrictions on the use of certain gear or fishing methods, but this aid is to cover technical adjustment and is not to be made available for more than six months.</p>	<p>proposal for a new regulation made in July 2004 (COM(2004)497). These would apply to funding for the 2007-2013 period.</p> <p>Whether current EU arrangements are considered sufficient for Invest in Fish South West or not, it will be important that these are at least 'defended' and built upon during the revision of FIGF.</p>	<p>As for changes to the rules themselves, these are being discussed and should result in a new European Fisheries Fund by 2007. There is interest in giving a stronger commitment to environmental projects under this next funding round.</p> <p>The UK is among the lead countries in terms of FIGF funding for sustainable development and should support sound initiatives at the national level as long as these are legally possible.</p> <p>Since its introduction, FIGF has been gradually improved and opportunities for funding innovative measures in support of sustainable fisheries have been strengthened. One could expect this trend to continue.</p>	

Priority	Law/legal basis	Required change	Likelihood	Time frame / political opportunity
	<p>In addition to this compensation, funding can be made available to 'voluntary' measures, particularly those of 'collective interest', as long as they serve the objectives of the CFP. The most relevant areas potentially eligible for support include the following:</p> <ul style="list-style-type: none"> • management and control of conditions of access to fisheries; • management of fishing effort; • more selective fishing gear and methods, and technical measures for conservation; • basic data collection and/or the preparation of environmental management models with a view to drawing up integrated coastal zone 			

Priority	Law/legal basis	Required change	Likelihood	Time frame / political opportunity
	<p>management plans;</p> <ul style="list-style-type: none"> • access to training; • design and application of systems to improve environmental impact; and • creation of added-value. <p>It is foreseeable that a Member State could fund a package of measures, including temporary tie-up schemes. However, even if this is permissible at EU level, each Member State has to make co-financing available before projects can go ahead. Therefore, every Member State has ultimate control about what to fund. Options should be further explored, at both Commission and UK level.</p>			

Summary and Conclusions

Of the six recovery options identified by stakeholders, two of them relate to changes to the TAC system (replacement or improvement), one to area closures, one to effort (days-at-sea) restrictions, another to financial aid/compensation and, finally, the more ambitious suggestion of CFP withdrawal. It is not appropriate to recommend which option should be opted for based purely on this analysis. Such a decision will certainly depend on the political and legislative environment surrounding each option, but the choice of whether to follow a path that requires significant legislative change over the long-term or whether to opt for an option that entails working within existing legislation, for example, will depend on other factors such as the relative costs and benefits of each option.

The good news is that none of the options are impossible to achieve. CFP withdrawal, however, is considered to be the least realistic of them all and the benefits questionable. Of the remaining five, they each provide realistic options for forming the backbones of stock recovery plans. In exploring each of the options, several points common to these five options arise:

- ***They are not mutually exclusive*** – choosing one option does not rule out all the others. Indeed, stock recovery is likely to be best achieved with a suite of measures rather than just one. Area closures could be used together with days-at-sea restrictions for example. The monitoring of these measures could be undertaken by industry in collaboration with scientists as part of a long-term programme of improving science and relationships. These measures could be supported with financial aid;
- ***Significant political support for change*** – there are a number of major reviews and changes underway into how the fishing industry and marine environment are managed. At UK level, the most notable consultations underway relate to the Prime Minister's Strategy Unit report and the DEFRA enforcement review provide a major opportunity for working with government to secure political support for recovery options and achieve legislative change where necessary. At EU level, the main political opportunity is provided by the discussion on the next funding arrangements for 2007-2013, as well as less prominent discussions and initiatives following up on the 2002 CFP reform
- ***Most require a EU approach*** – many of the options would be best pursued through the CFP at a EU level. This may be because management measures may need to apply to foreign vessels e.g. area closures, or because EU rules have important implications at a national or local level e.g. use of FIFG; and
- ***Policy framework exists*** – the provisions under the basic CFP Regulation (2371/2002) for recovery and management plans (Article 5 and 6) provide an ideal basis for developing and implementing the options at an EU level.

While stakeholder participation and buy-in underpins the whole Invest in Fish South West process, it is worth stressing that, regardless of the options finally selected, it will be extremely important that there is political and industry support, both domestically and from abroad. Most fisheries policy has an EU angle, and therefore demands coordination with other Member States and sector groups. Without this, political agreement and industry compliance is likely to be difficult to secure. The importance of buy-in is further illustrated by the Commission rejection of the UK request to close the English Channel bass pair trawl fishery in September 2004. This fishery is an example of the need to work

through the EU systems and, while there were other important factors in this case, the need to underpin arguments with convincing science.

It is encouraging that days-at-sea restrictions were suggested by stakeholders, given that some form of effort restriction is the most effective means of reducing fishing mortality and hence contributing to stock enhancement. However, industry resistance to days-at-sea restrictions in the UK in the 1990's, and more recently to the EU northern hake recovery plan, meant that such measures were not adopted.

Whatever fisheries management option is pursued, there is scope for using financial aid for purposes more than just compensation. EU, national or industry money can be used to 'make more of what we have'. Rather than investing in capital intensive projects geared towards increasing catches, which is dependent on a healthy and ultimately a 'under-fished' resource base, money can be used to improve management and increase incomes, and so aid *industry* recovery through other means (Newcombe *et al* 2000). Examples include improved competitiveness (reducing or marketing waste in the industry), marketing initiatives and payments for the provision of public goods eg data or litter collection. Indeed, the South West provides some prime examples of the use of financial resources in such innovative ways, including marketing of catch on the basis of local produce, Marine Stewardship Council (MSC) certified handline mackerel and eco-labelled handline caught bass. There is a lot of scope in this area, and much of it is relatively unexplored. The beauty of such approaches is that, while the inshore sector may often be particularly well suited to such schemes, larger vessels are still well placed to benefit. The framework for using EU and national funds in these ways already exists and the review of the European fisheries fund for the period 2007-2013 under way at present provides a major opportunity for improving this further for the future.

Additions

Since this report was written, there have been several policy developments relating to the marine environment at both the UK and EU level. The following analysis has thus been added by IEEP.

The Marine Bill

In September 2004 the Prime Minister announced the development of a Marine Bill to manage UK seas.³ Subsequently the Department of Environment, Food and Rural Affairs (Defra) published a five year strategy in December 2004, which included a commitment to a Marine Bill to provide 'a new framework for sustainable management of marine resources'.

According to the Defra strategy the Marine Bill will:

- allow all uses of the sea, including wildlife protection, offshore wind and other industries to develop harmoniously
- publish a framework for assessing the cumulative human impacts on the environment
- ensure the sustainable use and protection of marine resources applying the eco-system approach to its management and; and
- establish a new Integrated Marine Agency in line with the Environment, Food and Rural Affairs Select Committee's recommendation for a coordinating marine agency

At this stage however the Marine Bill is at the level of a political commitment, with the presentation of a bill expected no earlier than May 2007.

Marine Thematic Strategy

DG Environment of the European Commission is in the process of finalising a Thematic Strategy on the Marine Environment under the sixth Environmental Action Programme (Decision 1600/2002).

The overall aim of the Marine Thematic Strategy (MTS) is to promote sustainable use of the seas and conserve marine ecosystems. The Commission is expected to formally adopt the MTS during 2005.

In March 2005, an open consultation on the MTS was launched that suggests the disclosure of two key documents by the Commission later this year: a Communication on the marine environment and a proposal for a Marine Framework Directive.

At present it is envisaged that the Communication will briefly describe the state of the marine environment, the pressures acting on the marine environment and the need for action. The Communication will be of limited effects since it will not be legally binding and only reflects the policy of the European Commission.

³ Speech on Climate Change given on 14 September 2004.

The envisaged Marine Framework Directive will aim to protect, conserve and improve the quality of the marine environment through the achievement of good environmental status in European seas. For the purposes of implementation the Directive would define/establish ecosystem-based marine regions on the basis of their hydrological, oceanographic and bio-geographic features. For each region an implementation plan would have to be developed by coastal Member States, containing an assessment of the pressures and threats impacting on the marine environment and their costs. These plans would then outline a monitoring and assessment programme. Finally, there would be requirements under the Directive in relation to the monitoring and reporting details of which are unspecified as yet.

Maritime Policy Green Paper

The European Commissioner of Fisheries and Maritime Affairs is heading a Task Force to explore the future of EU Maritime Policy. It will prepare a Green Paper on the potential benefits from integration of sea-related policies, to be published in the first half of 2006.

The Green Paper will take an integrated approach, seeking coordination and collaboration on maritime affairs at both global and regional levels. The overall aim is to boost the economic potential of the sea, avoiding conflicts and enhancing synergies between various, industrial, technological and commercial maritime activities. External experts, including public authorities and NGOs are to be consulted on key issues and best practice, but will not be directly involved in the Task Force.

The Green Paper and the Thematic Strategy are different in that the former treats the socio-economic activities in the marine environment and the latter takes an entirely environmental perspective. Apart from the Thematic Strategy's focus on the environment, a key difference between the Green Paper and the Thematic Strategy appears to be the organisational changes that the Green Paper could lead to. Some expect that there may eventually be a separate DG for Maritime Affairs, although the advantages and disadvantages are not clear.

The two documents will also have different legal statuses. The Thematic Strategy in form of a Communication - will not be legally binding. The anticipated Marine Framework Directive, if it is adopted will be legally binding and will require transposition into national law. By contrast, the Green Paper is likely to be more concerned with general reflection about issues rather than production of binding Community law. Legal proposals may follow, but are not expected in the first instance.

The adoption of the directive, however, is likely to take several years. Furthermore, there are concerns that the Green Paper could serve to delay its adoption. Member States may wish to 'keep their options open' by deferring agreement on marine environmental objectives until they have a better view of the socio-economic potential of the EU's maritime sector and the associated implications of a rigorous environmental policy in this area.

Implications for Invest in Fish Southwest

All three of these policy developments have the potential to contribute to improved management of the marine environment – including fisheries – in the long-term. As such, Invest in Fish South West should contribute to their development, such as engaging in public consultation exercises and working with national administrations to develop positions at the UK and EU level.

More immediately, however, they do not have direct implications for working towards the objectives of Invest in Fish South West and the conclusions of the IEEP stand. Most notably, many of the stock recovery options identified would be best pursued through the Common Fisheries Policy (CFP) at an EU level. This may be because management measures may need to apply to foreign vessels, or because EU rules have important implications at a national or local level. Even with the conclusion of these policy developments, the CFP framework will continue to provide the basis for developing and implementing the recovery options at an EU level.

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Annex: Legal and Institutional Framework

Level	Relevance to fisheries management
International	The main sources of international law are international conventions, whether general or particular, establishing rules expressly recognized by the contesting parties; international custom, as evidence of a general practice accepted as law; and the general principles of law recognized by civilised nations. The EC has exclusive competence over the conservation of fisheries, and participates in international conventions to the exclusion of the Member States. The UK and EC have legal personality and are subject to provisions of international law.
Customary Law	This requires two elements: a constant general practice and the respective acceptance of the practice as binding law. International customary rules contain a binding commitment, whereas customary principles grant a relatively wide-scope for performance and need to be completed by application of law and legislation.
Fisheries	
UNCLOS - the United Nations Convention on the Law of the Sea of 1982/1994	The contemporary law of the sea is predominantly shaped by UNCLOS. It lays down a comprehensive regime of law and order in the world's oceans and seas; it is an umbrella convention which establishes rules governing all uses of the oceans and their resources. The UK and EC are party to UNCLOS.

Level	Relevance to fisheries management
Maritime Zones	<p>Territorial sea Art 55, 56, 57 - States entitled to establish EEZs of a maximum breadth of 200 nm from the baseline. In this zone, the coastal State enjoys functionally restricted rights, i.e. sovereign rights to explore and exploit, conserve and manage the natural resources, living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil; and jurisdictional rights with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment. However, the principle of the freedom of the high seas and its related freedoms (Art 87) also apply in the EEZ (see below). Art 76, 77 - The continental shelf comprises the seabed and subsoil extending beyond the territorial sea to the outer edge of the continental margin. The coastal State has sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources, which are exclusive but do not apply to superjacent waters and cannot interfere unjustifiably with the freedoms (see above). Art 86, 87 - The high seas are all parts of the sea not included in the EEZ, territorial sea or internal waters, or archipelagic waters. Here the freedom of the high seas prevails, meaning the freedom of navigation, freedom to lay pipelines and cables, freedom to construct artificial islands or other installations permitted under international law, freedom of fishing, and freedom of scientific research. The area covered by the project includes territorial waters of the UK, as well as the UK's fishing zone and continental shelf. The UK has not declared an EEZ.</p>

Level	Relevance to fisheries management
Conservation of living resources	<p>Art 61 & 62 - the conservation of living resources lies exclusively within the competence of the coastal State, which has the right and obligation to determine the allowable catch in its EEZ. The coastal State shall ensure proper conservation and management measures so that the maintenance of the living resources is not endangered by over-exploitation, and that populations of harvested species are maintained and restored at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and species requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards, whether regional, subregional or global. The effects on species, whether associated with or dependent upon the harvested species, shall be taken into consideration. The use of living resources is covered by Art 62 which requires that States promote the objective of optimum utilisation of the living resources in the EEZ. To this end, the coastal State shall determine its capacity to harvest the living resources of the EEZ, and give other States access to the surplus of the allowable catch, where the coastal State does not have the capacity to harvest the entire allowable catch. Special provisions apply to highly migratory species, catadromous and anadromous species and to marine mammals. The EEZ regime does not apply to sedentary species, ie those that are immobile, under the sea bed or unable to move except in constant contact with the seabed or subsoil. For these the continental shelf regime applies, ie exclusive rights of the coastal shelf to explore or exploit the resources.</p>

Level	Relevance to fisheries management
High seas fishing	Fishing is among the freedoms of the high seas. UNCLOS imposes a duty on States to cooperate with other States in taking measures necessary for the conservation of the living resources of the high seas. These should be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by environmental and economic factors, taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards. Consideration should also be taken of effects on species associated with or dependent upon harvested species, with a view to maintaining or restoring populations above levels at which their reproduction may become seriously threatened.
Part XII - rights, obligations and responsibilities of coastal States for the protection and preservation of the marine environment	Art 192 - 194 - general obligation to protect and preserve marine environment. States have the sovereign right to exploit natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment. States obliged to adopt measures necessary to prevent, reduce and control pollution from any source. Measures include those necessary to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Level	Relevance to fisheries management
Part XIII - scientific research	Art 238-240 - imposes a right to conduct, but also a duty to promote and facilitate the development and conduct of marine scientific research. This shall be for peaceful purposes, with appropriate scientific methods and means, not interfering with other legitimate uses of the sea, and be conducted in compliance with relevant regulations, including those for the protection and preservation of the marine environment. Art 246 - Coastal States have the right to regulate, authorise and conduct research in their EEZs and on their continental shelf, but research by non-coastal States should normally be permitted, unless it relates to exploration and exploitation of resources, involves drilling, the use of explosives or the introduction of harmful substances into the marine environment, or the construction, operation or use of installations, artificial islands and structures. Different provisions apply where research is undertaken by an international organisation of which the coastal State is a member.
UN Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement - UN FSA	This elaborates provisions of UNCLOS, relating to cooperation on the conservation and management of fisheries. The Agreement is legally binding and in force; the EC and Member States ratified in 2003.
Article 2	The aim is to ensure long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of UNCLOS.

Level	Relevance to fisheries management
Article 5	<p>Coastal States and States fishing on the high seas are obliged to, inter alia, adopt measures to ensure the long-term sustainability of straddling stocks and highly migratory stocks, and promote the objective of their optimum utilisation; ensure that measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors and taking into account fishing patterns, the interdependence of stocks and any generally recommended international standards; to apply the precautionary approach; to assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks; to adopt the necessary conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened; to protect biodiversity; to take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; and to implement and enforce conservation and management measures through effective monitoring, control and surveillance.</p>

Level	Relevance to fisheries management
Article 6	This article relates to the application of the precautionary approach, detailing steps to be taken in managing stocks. This includes: obtaining and sharing scientific information, and implementing improved techniques for dealing with risk and uncertainty; applying guidelines in Annex II and determining stock specific reference points and action to be taken should these be exceeded; take into account uncertainties; develop data collection and research programmes to assess the impact of fishing. If reference levels are approached, action is to be taken to make sure they are not exceeded. Stocks of concern are to be subject to enhanced monitoring to review their status and the efficacy of conservation and management measures. For new or exploratory fisheries, states are to adopt cautious management measures. If natural phenomena has an impact on fish stocks, emergency management measures are to be adopted so that fishing activity does not exacerbate the problem.
Article 7	This article requires that, with respect to straddling stocks, the States whose nationals fish for such stocks in adjacent waters, States are to agree measures necessary for the conservation of stocks in the adjacent high seas area. Similar provisions apply to highly migratory stocks. Measures adopted for the high seas and those adopted under national jurisdiction 'shall be compatible' in order to ensure conservation and management of straddling and highly migratory fish stocks. Thus, coastal States and States fishing on the high seas have a duty to cooperate. The Agreement has implications both for high seas stocks and for straddling stocks, e.g. cod and shellfish. It is therefore relevant to the project.
Article 8-13	The freedom of fishing on the high seas is restricted by this Article. Only States that are members of, or participants in, an Regional Fisheries Organisation (RFO) shall have access to resources to which RFO measures apply. If there is no RFO, then relevant States should work towards establishing one. Additional provision set out how to go about establishing

Level	Relevance to fisheries management
	RFOs, what they should do, and that transparency of RFOs is to be assured.
Article 14	There are requirements as regards data collection and provision of scientific information and cooperation in scientific research. Vessels are to provide relevant information, and States are to cooperate to strengthen research capacity and promote research for the benefit of all.
Article 18	Flag States have certain duties, as regards control, management and enforcement of their vessels, including requirements for verifying the catch of target and non-target species.
Article 23	Port States also have duties under the Agreement.
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas	This is a legal agreement, although it has not yet entered into force. The Community has ratified and therefore is committed to its implementation.
Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries - NEAFC	Establishes conservation and management measures for the area, excluding the Baltic and Mediterranean Seas. The EC is a party. Stocks currently managed or addressed by NEAFC are: redfish, mackerel, herring, blue whiting, deep-sea stocks, haddock and capelin. Article 9 of the Convention establishes a Vessel Monitoring System. Applies to the high seas, in practice, and therefore of importance to this project in so far as fisheries are straddling.

Level	Relevance to fisheries management
International Convention for the Conservation of Atlantic Tunas - ICCAT	Governs the management and conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. The EC is a party. ICCAT can make recommendations designed to maintain populations in order to ensure sustainable catch. Recommendations are binding on the contracting parties. It has adopted recommendations relating to trade in IUU related products.
Environment	
International Convention on the Regulation of Whaling - ICRW	The Convention allows for the adoption of regulations to conserve and utilise whale resources, and make recommendations to parties on all matters relating to whales, whaling or to the objectives of the convention. Parties have to take appropriate measures to ensure application of the provisions of the Convention.
OSPAR - the Convention for the Protection of the Marine Environment of the North-East Atlantic	The Convention aims to increase prevention and elimination of pollution of the marine environment and the protection of the marine environment against adverse effects of human activities. The UK and the EC have ratified the Convention which entered into force in 1998.
Annex V - On the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area	Art 2 - Contracting parties are required to take the necessary measures to protect and conserve the ecosystems and the biological diversity of the maritime area, and to restore, where practicable, marine areas which have been adversely affected. They are also to cooperate in adopting programmes and measures for those purposes for the control of the human activities identified by the application of criteria in Appendix 3, ie the extent, intensity and duration of the human activity under consideration; actual and potential adverse effects of the human activity on specific species, communities and habitats and on specific ecological processes; irreversibility or durability of these effects.
North Sea Ministerial Declarations	These comprise international 'soft' law, although they can have substantial effects. They apply to the North Sea.

Level	Relevance to fisheries management
Convention on the International Trade in Endangered Species - CITES	Introduction from the sea of any specimen of a species included in Appendix II (among which are forms of <i>acipenseri</i> and <i>salmonidae</i>) requires a prior grant of a certificate from a Management Authority of the State of introduction (Art. IV para. 6).
Convention on Migratory Species	Contracting Parties are to endeavour to provide immediate protection for migratory species included in Appendix I, among which are certain forms of <i>cetacea</i> and <i>pisces</i> (forms of <i>siluri</i>), and to conclude agreements covering the conservation and management of migratory species included in Appendix II, among which are certain forms of <i>cetacea</i> and <i>pisces</i> (forms of <i>acipenseri</i>). Range States of migratory species listed in Appendix I are to prohibit in principle the <i>taking</i> of animals belonging to such species. Range States of migratory species listed in Appendix II are to endeavour to conclude agreements where these would benefit the species. Each agreement should provide for, but not be limited to inter alia at a minimum, the prohibition, in relation to a migratory species of the Order <i>cetacea</i> , of any taking that is not permitted for that migratory species under any multilateral agreement; co-ordinated conservation and management plans; measures based on sound ecological principles to control and manage the taking of the migratory species; procedures for co-ordinating action to suppress illegal taking.
	Parties are to take appropriate and necessary legislative and European administrative measures to ensure the special protection of the wild fauna species specified in Appendix II, in particular to prohibit: all forms of deliberate capture and keeping and deliberate killing; the deliberate destruction or taking of eggs from the wild. Parties are to take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III, e.g. by closed seasons and/or other procedures regulating the exploitation, by temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels.

Level	Relevance to fisheries management
Agreement on the Conservation of Small Cetaceans of the Baltic and North Sea - ASCOBANS	Parties are to apply the conservation, research and management measures prescribed in the Annex, e.g. to establish the prohibition under national law of the intentional taking and killing of small cetaceans and the obligation to release immediately any animals caught alive and in good health.
Convention on Biological Diversity	States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. Contracting Parties are to identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories; to integrate consideration of the conservation and sustainable use of biological resources into national decision-making; to adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;
	Protected area is a geographically defined area which is designed or regulated and managed to achieve specific conservation objectives (Art. 2). Obligation of the Contracting Parties, as far as possible and as appropriate, to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity (Art. 8 a), in particular: to develop guidelines for the selection, establishment and management of such areas (Art. 8 b); to regulate and manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (Art. 8 c)).
Berne Convention	Contracting Parties are to adopt in-situ measures, in particular to regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; to rehabilitate and restore degraded

Level	Relevance to fisheries management
	ecosystems and to promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies; to endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components.
	Obligation of the Contracting Parties to protect habitats (Art. 4): to adopt the appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species and the conservation of endangered natural habitats (para. 1); to take into account in the planning and development policies conservation requirements of the areas protected under para. 1, so as to avoid or minimize as far as possible any deterioration of such areas (para. 2); to give special attention to the protection of areas that are of importance for the migratory species specified in Appendix II and III and which are appropriately situated in relation to migration routes, as wintering, staging, feeding, breeding or moulting areas (para. 3).

Level	Relevance to fisheries management	Opportunities	Weaknesses
European Union	The law of the EU consists of EU law and EC law, the latter adopted by the European Community. EC law is constituted by primary law (treaties, annexes and protocols) and secondary law (directives, regulations, decisions).	The EU Treaties and legislation are binding on the Member States and act as a powerful force in shaping (and frequently determining) UK policy. EU level intervention has been particularly important in fisheries and environmental matters, where international cooperation is particularly important and/or where national administrations have not always been willing to 'go it alone' due to competition/trade implications.	Member States have to comply with EU law which in some cases limits the ability to take different approaches than what may ideally be desirable at national level.
EC Treaty	Various provisions are relevant to fisheries.		Treaty provisions are revised rarely, and require agreement by the Member States.
Article 2 and 6 – Sustainable Development and environmental integration	Article 2 and 6 provide a strong and clear requirement for policies to be both sustainable and for environment to be integrated within policies, in order to deliver that sustainability.	Article 2 provides the legal basis for environmental measures to be taken in relation to all sector policies, including fisheries.	Both articles are difficult to 'enforce'. Moreover, Article 6 is being used to justify nature conservation measures under the CFP, and some argue that this makes e.g. cetacean measures, subject to exclusive EU competence. In other words, national powers to

Level	Relevance to fisheries management	Opportunities	Weaknesses
			safeguard nature are being eroded.
Article 32-38 - agriculture (including fisheries)	The legal basis is provided for the EU policies relating to fish products. The text of these articles was designed with agriculture in mind and so has limited relevance to fisheries.		The decision-making process for the CFP is set out in these articles, including the limited role of the EP in fisheries decision-making.
Article 5 - subsidiarity	This means that action should be taken at the lowest suitable level, and should discourage (its difficult to enforce) unnecessary EU intervention.		Subsidiarity does not apply in areas of exclusive competence, which therefore rules out subsidiarity for the conservation of resources.
Article 11 - closer cooperation	Member States can work in smaller groups, using the EU institutions, to forge ahead in some policy areas.	It should 'not affect' Community policies or actions, but could arguably build on such policies.	Closer cooperation is not permitted in most circumstances, including areas of EU exclusive competence.

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Article 175 – legal basis for Community environmental measures	This and other articles set out the main areas and principles (precautionary, polluter pays and preventative principles). The European Parliament has co-decision powers in relation to these articles. Despite the existence of an environment 'title', competence on environmental matters is shared between the Member States and the EU.		Although most environmental matters can be decided by qualified majority of the Council, fiscal measures cannot. This makes the use of economic instruments - at EU level - virtually impossible.
Article 12 - nationality	It is not possible to discriminate between different nationalities.	British fishermen cannot be discriminated against, purely on grounds of nationality.	UK fisheries policies cannot be seen to prefer UK fishermen above those of other countries. This was the issue dealt with by the Factortame cases.
Article 189 et seq	Provides for the EU institutions		The Treaty creates one Council, one Commission and one Parliament. Without changing the Treaty, it is difficult to see how these institutions would be able to operate a) at a regional level that does not involve all countries at all times and b) at the stakeholder level.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Article 249	Establishing the basic legal instruments of the EU	These are binding and enforceable on all Member States. Failure to implement at the national level can be challenged by the Commission, and can result in fines being imposed, eg in relation to French quotas.	
Secondary legislation			
CFP Basic or Framework Regulation 2371/2002	Sets out the main objectives, principles and instruments to be applied to the CFP and fisheries management specifically. It also has more specific provisions regarding implementing measures.		This is a framework law only, which means that it most respects it needs to be fleshed out by daughter legislation. Key provisions that are directly applicable relate to fleet management.
Article 5-6	Recovery and management plans	Recovery plans and management plans are to be adopted. These can be stock specific or multi-species, can include predetermined harvesting rules and should take account of the environmental impact of fishing. Recovery plans are to be adopted for stocks below Safe Biological levels; management plans for all other EU stocks.	It is difficult to hold the Council to these provisions, as seen with the cod and hake plans that have been agreed.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Article 7-8	National and Commission emergency measures can be taken which do not require recourse to the Council.	Measures are temporary only. Member State emergency measures cannot exceed 3 months; Commission measures six months. However, they can be renewed and it is not clear how many times they can be renewed (potentially again and again.)	
Article 9	Inshore measures going beyond the CFP	National measures can be adopted to manage stocks and to reduce environmental impacts, as long as these are not discriminatory. If other vessels are affected, RACs and relevant Member States have to be 'consulted'.	Measures cannot not be adopted if the EU has already agreed measures for the same area.
Article 10	National measures going beyond EU standards.	Member States can also take action if this only affects their own vessels, i.e. those flying their flag or people established in the Member States.	
Article 11-13	Fleet management - Member States are to 'adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities'. Member States are to ensure compliance		

Level	Relevance to fisheries management	Opportunities	Weaknesses
	<p>with national fleet 'reference levels' which set global tonnage and power ceilings, based on the targets under the previous fleet management programme that ran until the end of 2001 (MAGP IV). Any additional capacity removed with public aid will result in an equivalent reduction in the national reference level. An entry/exit ratio for the introduction of new vessels of one to one still applies, but exits supported by public aid cannot be replaced. For new vessels over 100 GT built with public aid, the entry/exit ratio is 1 to 1.35. Member States choosing to provide aid for new-builds will also see their reference level reduced by a one-off three per cent.</p>		
Article 17	Equal access to EU waters		This means that the UK cannot exclude other countries' vessels from UK waters.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Article 17	Inshore derogation	In the territorial waters, access is restricted to vessels that traditionally fish in those waters, from ports on the adjacent coast. This means that vessels need to be local, to some extent. However, there is an agreed list of countries and vessels that can access other Member States' inshore waters.	
Article 31-32	RACs - RACs are to be advisory bodies. Council Decision 585/2004 adopted in July elaborates this concept by defining a common framework to govern the shape, membership, functioning and financing of RACs.	This is a major opportunity both to strengthen the role of stakeholders in fisheries management, but also to bring management closer to reality, by focusing more on actual regional areas.	There is little scope for strengthening - formally - the powers of RACs, in the absence of (unlikely) Treaty change. It may also lead to regional variations, with some regions adopting or pressing for, eg, larger mesh sizes than others.

Level	Relevance to fisheries management	Opportunities	Weaknesses
<p>FIFG Regulation 2792/1999 as amended</p>	<p>This provides the basic rules for accessing aid for the sector. Aid is programmed at the national and regional levels, on a multi-annual basis. Access to aid is dependent on national and normally also private funds being available.</p>	<p>There is an opportunity to support decommissioning, and to fund new more selective gear, going beyond legislative requirements. Compensation monies are also potentially accessible for commercial operators, to help cope with new legal requirements and to support short term tie-up schemes and commercial vessels affected under recovery plans. The Invest in Fish South West project is itself a beneficiary of FIFG aid, and is among the most innovative projects supported in the EU.</p> <p>Importantly, there is an ongoing opportunity (2004/5) to influence the discussions on a new European Fisheries Fund that was proposed by the Commission in July 2004, and that will replace the FIFG from 2007 onwards. At the same time the Commission will be developing a strategic paper setting out how the European Fisheries Fund should be implemented, and this in turn is to be followed by discussions in the UK on a</p>	<p>Actual use of funds depends on national priorities and access to national funds.</p> <p>a) The FIFG and other Structural Funds are established by EU regulation which provides the basic parameters for using aid, but the Member States have a lot of scope to identify – within the EU rules – how they want to use aid, if at all. The UK emphasises value for money and it has consistently taken the line that vessel building, for example, is not value for money given overcapacity issues. It has therefore not offered funding for such measures.</p> <p>b) The UK agreed (under Thatcher) to a rebate arrangement - the so-called Fontainebleau Agreement, which means the following:</p> <ul style="list-style-type: none"> • The UK puts a certain

Level	Relevance to fisheries management	Opportunities	Weaknesses
		national CFP implementing strategy which the EFF would be used to deliver.	<p>amount of money in the EU budget</p> <ul style="list-style-type: none"> • some of the EU budget is allocated back to the UK, e.g. under FIGG • for every £1 of this allocation that the UK doesn't spend, it receives a 60 p rebate. <p>The result is that it's in the interest of the Treasury to keep the 60p back rather than having no control over the £1 spent. The agreement has therefore provided a disincentive for the UK to draw down EU funding.</p>
Technical measures Regulation 850/98, as amended.	Under the basic Regulation 2371/2002, the conservation and management policy can be delivered through the introduction of technical measures, including (but not limited to): (i) Measures regarding the structure of fishing gear. the number and size	The technical measures Regulation is a collection of measures agreed over the years. The Regulation already contains some measures that are relevant to the South West area. Additional measures can be proposed by the Commission and adopted by the Council, and this quite regularly. Among the more recent measures relate to cetacean bycatch.	The Regulation may not be sufficiently rigorous to actually ensure resource management, and therefore depends on additional national or voluntary initiatives. Alternatively, enforcement may be a problem, with some countries or regions paying more or less attention to compliance issues.

Level	Relevance to fisheries management	Opportunities	Weaknesses
	<p>of fishing gear on board, methods of use, composition of catches retained on board when fishing with such gear</p> <p>(ii) zones and/or periods in which fishing activities are prohibited or restricted including for the protection of spawning and nursery areas</p> <p>(iii) minimum size of individuals that may be retained on board and/or landed</p> <p>(iv) specific measures to reduce the impact of fishing activities on marine eco-systems and non target species.</p>	<p>The opportunity created by the Regulation relates:</p> <p>a) to proper implementation and enforcement of existing provisions, to ensure a level playing field</p> <p>b) introduction of new measures, to ensure better management/tailoring of fishing to meet resource and environmental requirements (such as under the habitats Directive)</p> <p>It is worth noting that technical measures can also be introduced – for a one year period – as part of the main TAC regulation. The Commission has proposed this in relation to bottom trawling around the Azores seamounts.</p> <p>It is also to be noted that the UK has some latitude to introduce its own measures, covering UK registered boats, inshore waters and emergency situations.</p>	

Level	Relevance to fisheries management	Opportunities	Weaknesses
		All three powers come with some safeguards, including consultation of the Commission to ensure measures affecting foreign vessels are not discriminatory.	
Habitats Directive 92/43	The aim of the Directive is the maintenance of a favourable conservation status for both 'natural habitats' and wild species of Community interest. A series of measures is to be taken which will result in the establishment of a 'coherent-European ecological network' of sites of Community importance to be known as Natura 2000. Member States are required to contribute to the network in proportion to the representation within their territories of the Annex I habitat types and habitats of Annex II species. To this end, they must designate sites in each category as 'special areas of conservation' (SACs). These are	The Directive is very powerful, even if its implementation is somewhat behind schedule.	The real implications for fisheries are still not fully known.

Level	Relevance to fisheries management	Opportunities	Weaknesses
	<p>defined as sites of Community importance designated by the Member States ' . . . through a statutory administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species to which the site is designated'.</p>		
Article 6 protection of sites	<p>Member States are subject to certain obligations to protect all those sites on the Commission's list of those of Community importance, irrespective of whether they have been designated as special areas of conservation (SACs).</p> <p>1. They must take 'appropriate steps' to avoid the deterioration of the habitats concerned and any disturbance of those species for which the 'areas' have been designated.</p>	<p>This means that designated areas are to be managed carefully so as to allow the maintenance of habitats and species, but not necessarily excluding extractive activities.</p>	<p>The question of whether fisheries licences or other management measures are 'plans or projects' is still not clear, although recent Commission advice is that it is. The European Court of Justice is due to rule on this imminently. The impact of bottom trawling or dredging on habitats is likely to attract increasing scrutiny.</p>

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	<p>2. All plans or projects which individually or in combination with others are likely to have a significant effect on sites, but are not directly connected to their management, are to be subject to an 'appropriate assessment' of the implications for the conservation value of the site. Given the results of this assessment and the considerations set out in (3) below the competent national authorities shall permit the plan or project only if they have established that it will not adversely affect the integrity of the site and, if appropriate, having consulted the general public.</p> <p>3. Where an assessment indicates that a plan or project will damage the conservation interest of a site and there are no alternative solutions, but it must be carried out for 'imperative reasons of overriding public interest', including those of a</p>		

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	<p>'social or economic nature', the Member State must take all compensating measures necessary to protect the overall coherence of Natura 2000. It must inform the Commission of the measures adopted.</p> <p>In the case of sites hosting priority habitat types or species the grounds for proceeding with damaging projects are restricted to those relating to human health or public safety, environmental improvements of primary importance or other imperative reasons of overriding public interest on which the Commission has given an opinion.</p> <p>Under Article 7 of the Directive these three obligations are extended to all Special Protection Areas (SPAs) designated under the birds Directive 79/409. Formally, these obligations replace any arising under the first sentence of Article</p>		

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	<p>4(4) of the birds Directive as from the date on which a Member State implements the habitat Directive or the date on which it classifies or recognises an SPA, where the latter date is later. This modification of the Directive was made in response to the European Court's judgement on the Leybucht case, referred to in Section 9.2. It should be noted that the concept of priority habitats and species is not found in the birds Directive, which has implications for obligation .3</p> <p>A fourth obligation applies only to SACs. Member States must establish the 'necessary conservation measures', involving appropriate management plans and statutory, administrative or contractual measures, if need be.</p>		

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Article 12	<p>Member States are obliged to establish a system of strict protection for both a list of animal species of Community interest (Annex IV (a)) and a parallel list of plant species (Annex IV (b)). Many of the species are the same as those listed in Annex II. For animal species all forms of deliberate capture or killing of specimens in the wild is to be prohibited. So too is deliberate disturbance, destruction or taking of eggs and deterioration or destruction of breeding sites or resting places. Member States also must prohibit the keeping of specimens from the wild, their transport and their sale or exchange or offers to do so. In addition they must set up a system to monitor the incidental capture or killing of the species listed. If necessary, further research or conservation measures must be taken to ensure that incidental take of this kind does not have a significant negative effect on the species.</p>		

Level	Relevance to fisheries management	Opportunities	Weaknesses
<p>birds Directive 79/409 - site protection</p>	<p>Establishment of protected areas – Special Protection Areas (SPAs) – for wild bird species and their habitats. Apart from management requirements, SPAs are subject to all the requirements applicable to SACs, including appropriate assessment of plans and projects. Sites are identified and classified by the Member States, and are not sent to the Commission as is the case for SACs. The UK suggests management schemes are introduced for all marine SPAs, even though this is not strictly required under the Directive.</p>		

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Species protection	<p>In addition to site-based measures, there is also a requirement for Member States to establish a general system of protection for all species of naturally occurring birds in the wild state, although hunting is permitted for Annex II species. Certain capture methods are prohibited. Member States can derogate from the general system of protection under certain circumstances.</p>		
United Kingdom	<p>The current body of UK legislation is complex. The Department for Environment, Food and Rural Affairs (DEFRA) is the national department responsible for the fisheries administration in England. This responsibility is met through issuing Acts, Orders and Statutory Instruments.</p> <p>There are twelve Sea Fisheries Committees (SFCs) which regulate</p>	<p>While there are tensions between the various management bodies, the combination of centralised and local management provides a system for different management approaches depending on what is most appropriate. The local system also offers the benefit of engaging with industry locally and drawing on local knowledge, from both administrators and industry.</p>	<p>In some cases EU law, with which the UK has to comply, limits the ability to take different approaches than what may ideally be desirable at national level.</p> <p>There is recognition from government, industry and wider stakeholders alike that the current institutional and legislative arrangements are not adequately resulting in sound resource and</p>

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	<p>local sea fisheries around virtually the entire coast of England and Wales out to 6 miles. They are funded by local authorities and part nominated by DEFRA. They regulate and enforce their own (and some national) requirements for fisheries and environmental purposes in in-shore waters. They were established in the last century and are empowered to make bylaws for the management and conservation of their districts' fisheries. In 1995 their powers were widened to include the control of fisheries in their districts for environmental reasons.</p> <p>The Environment Agency (EA) acts as a SFC in a number of estuaries and has other responsibilities in in-shore waters.</p>		<p>industry management. Resources are overstretched, mandates are overlapping and often unclear and legislation is, in many cases, dated and hence inappropriate. There are significant moves to reform the UK fisheries management system, headed by DEFRA.</p>

Level	Relevance to fisheries management	Opportunities	Weaknesses
Sea Fisheries Regulation Act 1966	<p>Principle legislation governing inshore fisheries. Consolidates the provisions of Sea Fisheries Regulation Acts 1888–1930, establishing Sea Fisheries Committees (SFCs) as the responsible bodies for the management and conservation of fisheries and shellfisheries out to six nautical miles. Establishes bylaw making and enforcement powers of SFCs within their districts. The purposes for which bylaws may be introduced are defined (Chapter 38, Section 5) as: (a) for restricting or prohibiting, either absolutely or subject to any exceptions and regulations, the fishing for or taking of all or any specified kinds of sea fish during any period specified in the bylaws; (b) for restricting or prohibiting ... any method of fishing for sea fish or the use of any instrument of fishing for sea fish or for determining the size of mesh, form and dimensions of any instrument of fishing for sea fish; (c) for the regulation, protection and development of fisheries for all or any specified kinds of shellfish, including: i. the fixing of the sizes and condition at which shellfish may not be removed from a fishery, and the mode of determining such sizes; ii. the obligation to re-deposit in specified localities any shellfish the removal or possession of which is prohibited by or in pursuance of any Act; iii. the protection of shellfish laid down for breeding purposes; iv. the protection of culch</p>	<p>Bylaws can be used to restrict fishing for any fish and shellfish species, use of any fishing gear, and fishing area or period. SFCs may appoint fishery officers who have the power to stop and search vessels and vehicles, examine and seize gear and seize fish. Together with the other relevant legislation, SFCs provide a system for local management measures to be established.</p>	<p>Powers are limited to waters out to six nautical miles. Bylaw development process is slow and cumbersome with little provision for precautionary approach to management. Specific limitations include: inability to remove or suspend rights of fishing through the introduction of licensing schemes; inability to take anticipatory, proactive measures to control new methods of fishing before they demonstrably begin to affect the fishery; and the insistence that bylaw applications must be based on affirmative scientific evidence. SFC districts cover only areas of water, leaving little room to exercise powers to stop and search vehicles. Note that DEFRA is consulting on reform options of enforcement systems in England and Wales inshore fisheries because legislation for inshore fisheries management in England and Wales is widely recognised as being inadequate. This includes the Sea Fisheries Regulation Act 1966, Sea Fisheries (Shellfish) Act 1967, Salmon and Freshwater Fisheries Act 1975 and the Environment Act 1995. Shortcomings include a dated system that has developed in a piecemeal fashion resulting in an uncoordinated legislative framework.</p>

Level	Relevance to fisheries management	Opportunities	Weaknesses
Sea Fish (Conservation) Act 1967	Main basis for the regulation of British vessels in British and foreign waters, landing of fish in Britain by any persons and the use of gear by any vessel in British waters.	The framework Act empowers Ministers to set Orders establishing measures for the 'improvement of resources' such as fish size limits, gear specifications (e.g. mesh size and material) and licensing of fishing vessels.	Sits within the framework of the Common Fisheries Policy (CFP): the degree to which the UK can impose controls in its own waters is limited to national vessels, as determined by the CFP. Creating Orders can be time consuming, requiring consultation periods. No provisions for developing strategic management or recovery plans.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Sea Fisheries (Shellfish) Act 1967	<p>A consolidation of previous Acts. Authorises the Minister to establish several and regulating orders for the establishment or regulation of shellfish fisheries. Holders of orders, which can include Sea Fisheries Committees (SFCs) and groups of fishermen, have exclusive rights of deposition, propagation, dredging for and taking shellfish.</p>	<p>Several orders afford the grantee exclusive rights of 'depositing, propagating, dredging or taking shellfish and permits them 'to make and maintain shellfish beds, to collect shells and remove them from one place to another'. Portions of the seabed may also be leased out to individuals as lays. Regulating orders offer SFCs certain important management opportunities not available through bylaws. Holders may 'carry into effect and enforce regulations and restrictions, levy tolls and royalties, deposit or propagate'. These apply to all areas not previously specified as a several fishery and to all persons engaged in the fishery. Regulating orders have greater flexibility than bylaws. Fishing methods and licence numbers may be controlled and they provide a platform for scientifically based management and forward planning.</p>	<p>Orders tend to lack the flexibility commonly credited to them: - licence numbers can only be reduced by natural wastage; - the operation of a two year rule before a licence can be withdrawn or reallocated inhibits the matching of fishing capacity to resources; licences cannot be varied to reflect actual or predicted stock levels therefore effort reduction relies mainly on varying the operating and closing dates for the fishery and restricting the number of days fishing per week; all licence holders must be treated equally: there is no opportunity to vary the conditions of the licence; changes to an Order requires usually extended 'renegotiation'; the ability to close access to fisheries is considered by SFCs to potentially be in conflict with the Human Rights Act 2000; and molluscs are not as well suited to management under orders as crustaceans due to their more mobile nature.</p>

Level	Relevance to fisheries management	Opportunities	Weaknesses
Salmon and Freshwater Fisheries Act 1975	Sets out the legislative framework for salmon, trout, eel and freshwater fisheries in inland and coastal fisheries (<6 nm). Prohibits the use of certain fishing methods, specifies restrictions on net fishing, establishes rules governing closed seasons and grants powers to water bailiffs for the purpose of enforcing these regulations.	Allows for the regulation of salmon and migratory trout fishing through licensing schemes for both rod and line and commercial net fishing. Orders can be used to limit net numbers. Bylaws can be set by the Environment Agency for the purposes of 'better protection, preservation and improvement' of salmon, trout and eel fisheries. This includes fixing closed seasons and specifying permitted gears	Orders require Ministerial approval, so are slow and unsuitable for reacting to immediate needs to control fishing effort.
Water Resources Act 1991	Imposes a duty on the Environment Agency to maintain, improve and develop salmon, trout and eel fisheries within 6 nm of the baseline within the powers afforded to it under the Salmon and Freshwater Fisheries Act 1975. Details the process of Ministers making orders.		
Sea Fisheries (Conservation) Act 1992	Amends the Sea Fisheries (Conservation) Act 1967 in areas relating to licensing of fishing and transshipment vessels, time spent at sea, and enforcement.	Conditions may be attached to licences for purposes not directly related to fishing (e.g. the environment) and to restrict the amount of permissible time spent at sea.	

Level	Relevance to fisheries management	Opportunities	Weaknesses
Sea Fisheries (Wildlife Conservation) Act 1992	Amends the Sea Fisheries (Conservation) Act 1967 to extend the powers available to fisheries managers (including Sea Fisheries Committees (SFCs) to restrict fishing for sea fish for marine environmental purposes.	Broadens the remit of the Minister and SFCs to have regard to the conservation of marine fauna and flora in discharging their functions. Provides a basis for a more environmentally integrated approach to fisheries management and the implementation of an eco-system based approach to management	The environment only has to be considered as a part of management functions. Does not specify <i>how</i> Ministers and relevant bodies should have 'regard' for the environment.
Conservation (Natural Habitats, etc) Regulations 1994 (SI NO 2716)	Requires Ministers and relevant bodies under the Sea Fisheries (Wildlife Conservation) Act 1992 to exercise their functions so as to ensure compliance with the habitats Directive (92/43/EEC).	Relevant authorities, including SFCs, may establish Special Areas of Conservation (SACs) management schemes under which bylaws may be exercised to meet habitat Directive requirements. Participation of these authorities through management groups is required. Introduces a system of protection and monitoring for certain species, including European river lamprey, the allis and twaite shad, and sturgeon.	The habitats Directive and this SI have weaknesses in their application to marine sites and species (see EU section)

Level	Relevance to fisheries management	Opportunities	Weaknesses
Environment Act 1995	Amends the Sea Fisheries Regulation Act 1966, the Sea Fish (Conservation) Act 1967 and the Water Resources Act 1991 to establish new order and bylaw making powers for Ministers and Sea Fisheries Committees (SFCs) and the Environment Agency respectively. Also establishes the Environment Agency (EA).	Fishing and use of gear types may be restricted through Orders and bylaws for specifically marine environmental purposes: '(a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas, or (b) of conserving flora or fauna which are dependent on, or associated with a marine or coastal environment.' Any bylaws set under these provisions must be done in consultation with the relevant nature conservation agencies (English Nature or Countryside Council for Wales)	Operates within the framework of the Sea Fisheries Regulation Act 1966 and the Sea Fish (Conservation) Act 1967 therefore shares their constraints.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Regulating and several orders	At the time of writing the only orders in place were in Devon and South Wales. There were none in place in Cornwall or the Isles of Scilly.	South Wales: Bury Inlet cockles Regulating Order has been in place since 1963. Under the order, vessels are restricted in number to 55 and are only permitted to fish five days per week. There are also two privately held several orders for shellfish of Swansea Bay, with a further two currently under application in the Milford Haven area. Devon: under the River Dart Wadderton Regulating Order areas are let out to fishermen to provide them with tenure to cultivate oysters and mussels. In these small areas access is limited to around 10 vessels.	Of limited interests to the Invest in Fish South West: each relate to very localised shellfish stocks, so not applicable to wider fisheries.

Level	Relevance to fisheries management	Opportunities	Weaknesses
Voluntary agreements and codes of conduct	<p>In the white fish sector there is nothing around Wales, Devon or Cornwall. Offshore Gentlemen's Potting Agreement established between fishermen of England, France, Belgium and the Channel Islands defines 'offshore boxes' in areas of the English Channel where potting may be practiced but not trawling (from Start Point in South Devon waters (between Plymouth & Brixham) out to the mid channel). Supporters meet once a year to discuss and renew the agreement. Inshore Potting Agreement - licence conditions legislate for a former Gentlemen's agreement designating potting-only areas within the six mile zone of south Devon. This applies only to UK vessels as foreign vessels have no access to these waters. An Isles of Scilly voluntary marine park was established by the Isles of Scilly Sea Fisheries Committee (SFC)</p>	<p>Non-statutory agreements are useful in that management measures can be introduced where there is no formal supporting framework in place. Measures can be introduced that go beyond legal requirements. These may be simple conflict resolution agreements such as area restrictions by gear type or agreements on the level or type of catch.</p>	<p>Voluntary agreements carry no legal weight so are dependent on voluntary compliance.</p>

Level	Relevance to fisheries management	Opportunities	Weaknesses
	<p>together with the local Council and Wildlife Trust. This is now managed by the Wildlife Trust. While it was originally intended to restrict scallop dredging it has been largely unsuccessful in achieving this and is now largely concerned with codes of practice for shore based activities such as bait collection. A voluntary shrimping season (1 July – 30 September) is in place and is generally respected. The Welsh assembly has the autonomy to introduce controls on national vessels operating within the 0-12 mile area. Welsh legislation is virtually the same as that of England, with only very slight variations occurring in shellfish and scallop fisheries. Bylaws created by Sea Fisheries Committees (SFCs) in Wales are authorised by the Welsh Assembly, as opposed to DEFRA.</p>		

Level	Relevance to fisheries management	Opportunities	Weaknesses
No-take zones in place	<p>Lundy no-take zone: 3.5km² area on the east side of Lundy Island, north Devon. Devon SFC bylaws restrict fishing activities in the area, prohibiting the removal of all fish and registered shellfish, and covering recreational fishers and divers. Sponges and some shellfish are not covered however, so it is not a no-take zone in the strictest of senses. In practice however, the area is being treated as a no-take zone by fishermen, commercial and recreational alike, with little exploitation of resources in the area. Skomer Island protected area: SFC bylaws prohibit certain types of fishing. St. Agnes no-take zone: established by the local Council, this initiative has reportedly had limited success.</p> <p>Lyme Bay reef: efforts underway to create marine protected areas for the Lyme Bay Reef area in Devon.</p> <p>The South West Fisheries Producer</p>	<p>These provide local examples and lessons for developing further no-take zones.</p>	<p>Limited to inshore waters and local vessels.</p>

Level	Relevance to fisheries management	Opportunities	Weaknesses
	<p>Organisation (SWFPO) and Devon Wildlife Trust (DWT) worked together to protect vulnerable areas where prolific shellfish grounds led to the reef being damaged by trawling (Lanes Ground and Saw Tooth Ledges). There is an agreement not to practice scallop trawling in these areas, which is occasionally revised in order to account for new entrants to the fishery. Further areas, including Beer Holme grounds, may be covered by an extension of the SWFPO/DWT agreement.</p>		