

Nordic Council of Ministers' Conference

Regionalisation of the EU's Common Fisheries Policy

Copenhagen, October 13<sup>th</sup>, 2009

## **Regionalising the Common Fisheries Policy: What kind of Institutional Solution?**

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### **Abstract**

Regionalisation has caught the imaginations of governments, stakeholders and academics, especially in northern Member States, as a potential driving force for reform of the Common Fisheries Policy. The scope for regionalisation, however, is limited by the provisions of the European Treaties which make no allowance for legislative powers to be exercised at the regional level. Realistically, it will have to rely on the delegation of decision making powers to Member States acting in concert. Against this background, the paper explores the opportunities for introducing effective systems of regionalisation through a series of questions concerning methodological approaches (best practice v first principles), how we construe the concepts of region and regionalisation, where to draw the boundaries between Commission and Member State responsibilities, and what do we want our systems to achieve. Four models are posited: an in-house solution (comitology); dispersal of DG staff to the regions; a standing conference of Member State administrations; and a newly styled RAC. These are briefly evaluated and the issue of regionalisation recontextualised in the emerging debate on CFP reform to determine their chances of adoption.

## **1. Why regionalise the CFP?**

A comprehensive common fisheries policy for the European Community has been in place for a little more than 25 years. At the time of its inauguration in 1982, the CFP was, in effect, a regional policy centred upon the North Sea but overlapping into neighbouring areas. Since 1982 the 'common pond' has expanded hugely through three major enlargements into southern Europe, the Baltic and the Mediterranean. But during those years of territorial expansion there has been little development of the basic institutional framework of governance. Today, we face a faintly ludicrous situation where the fisheries of one of the largest and most complex of maritime territories, stretching through 40° of latitude from the Gulf of Bothnia to the Canaries and 60° of longitude from the Azores to the eastern Mediterranean, is managed centrally from Brussels with an establishment probably no bigger than the planning department of an average sized local authority (Sissenwine and Symes, 2007).

There has been a heavy price to pay for these contrasting tendencies of spatial enlargement and unchanging systems of governance. Top-down decision making, burdened with responsibilities for micromanagement, is perceived as remote, overly bureaucratic, out of touch and subject to undue political interference through the actions of the Council of Ministers. The system of management has failed to keep pace with changing circumstances. Attempts to incorporate principles of good governance and make real progress with an ecosystem approach have been hindered. As a result, the CFP is failing to make significant progress towards securing ecologically sustainable, economically profitable and socially relevant fisheries.

If the Commission is to achieve the regime change it is looking for in 2012, real changes have to be made to the institutional structures that condition decision making. Two key issues must be addressed: fisheries management must take much closer account of the specificities of the regional ecosystems so as to advance the concept of an ecosystem based approach; and the process of decision making must be brought nearer to those most directly affected and harness the experience, knowledge and expertise of the fishing industries. Both conditions point to the need to regionalise the CFP. It may not be possible to alter the supremacy of the EU's central institutions (Commission, Council and Parliament) but it should be possible to ensure that detailed decisions – mostly to do with technical and tactical issues shaped by local conditions – are taken at regional level. The question is how?

## **2. What actually is on offer?**

The agenda for reform of the CFP, as set out in the Commission's Green Paper (2009), has won widespread approval among northern European member states (MS). At its heart – and, some would argue, the essential driving force of the reform process – is the concept of regionalisation: the idea of rebalancing responsibilities for fisheries management between the EU's central institutions and the regions through the transfer of tasks associated with micromanagement of fisheries from the centre to the MS. This seemingly radical principle is widely commended: governments are generally supportive and industry leaders, by and large, enthusiastic. Within the industry, though, there is a measure of caution, bordering on scepticism, as to what regionalisation may entail, fearing that it may prove another 'trompe l'oeil' so beloved of the architects of the CFP. And with good reason. Those of us about to be swept along on a wave of enthusiasm may need to temper our hopes with a more cautious reading of what is, in fact, on offer.

Students of the European Treaties will readily appreciate the legal constraints placed on the exercise of prescriptive powers at the regional level. The key to these constraints is the exclusive competence granted to the Commission in formulating policy for the conservation of living aquatic resources. Neither the principle of subsidiarity nor the concept of 'enhanced cooperation' among MS can apply in areas of exclusive competence (Baltic Sea 2020, 2009: 65-6). In practice, the Treaties make no provision for legislative powers to be exercised at the regional level and EU institutions would therefore be unlikely to recognise the legal competence of any regional management organisation (RMO) created at the instigation of MS.

As a result, the only practical means of regionalising the CFP on anything approaching a formal basis, is the rather roundabout and potentially insecure route of 'delegating competence' to MS. The Commission sees no impediments to this means of generating 'specific regional management solutions implemented by Member States, subject to Community standards of control' (Commission, 2009). More specifically the Green Paper points out that '*... this delegation would need to be organised at the level of marine regions because shared fisheries and shared ecosystems cover wide geographical areas and cannot be managed by individual Member States acting in isolation. Member States would therefore have to work together to develop the set-ups required ... [which would require] ... effective checks and balances by the Community to ensure that common standards are safeguarded when policy is implemented*' (Commission, 2009: 10-11).

The Green Paper also makes clear that regionalising the CFP is principally concerned with the **implementation** of Community policy – which may appear to lend support to those who fear reform will ultimately increase the burden of responsibility on MS and their fishing industries without necessarily extending their influence over how that policy is shaped. At present, implementation means putting into practice detailed regulations agreed by Commission and Council and ensuring effective controls and compliance mechanisms are in place. In theory, this offers little or no latitude to vary the nature of regulation to suit local conditions though in practice, as Gezelius and Raakjaer (2008) demonstrate, 'implementation drift' can often distort the original purpose of the regulation.

In future, assuming that the 'rebalancing of responsibilities' would involve EU institutions in the duties of metagovernance – setting the fundamental principles, objectives, standards and targets of management policy – and leave MS to determine how those principles etc are to be delivered in a particular region, 'implementation' will take on a very different interpretation. It will be the task of MS working together to develop specific regional management solutions and to regulate their fisheries accordingly, with standards set by Community policy. Given this interpretation, MS will inevitably assume a more proactive role in shaping the detailed approach to conservation policy. So too will MS fishing industries for whom the Green Paper anticipates increased involvement through results based management – and this will also need to be coordinated at a regional level.

It is important to note that were such an approach to be adopted, responsibility for negotiations with third countries over the exploitation of shared stocks would remain with the Commission as reserved business under the exclusive competence principle. At the very least, however, those negotiations would require prior consultation by the EU, on the one hand, and the regional body or relevant MS, on the other.

This somewhat cautious assessment helps us establish some of the parameters of what is

possible within the constraints of the EU's legal constitution. The scope for regionalisation remains extensive though its realisation depends not on creating an intervening regional authority but on the willingness of MS to work together to develop a coherent regional strategy for sustainable fisheries and then to secure its implementation. It would also require the willing consent of the Commission in accepting the regional recommendations for implementing Community policy, except where they are in clear breach of Community principles, standards or targets.

### **3. How to proceed?**

If we set aside – for the time being at least – the legal constraints outlined above, there are two basic methodologies for mapping out the choice of models for regionalising the CFP: the search for best practice and the use of first principles. The former worked well in Baltic Sea 2020's report on *Best Practice for Fisheries Management* (2009) directed towards towards the needs of the Baltic Sea, where the objectives were to identify the gaps in the overall management system and the means to fill them. Best practice can also be used very effectively to compare a range of alternative systems, as with the recent analysis of rights based management in the EU (MRAG *et al*, 2009).

Identifying best practice is commonly based on literature reviews, sometimes accompanied by more detailed case studies. It tends, therefore, to focus on the theoretical advantages and disadvantages of particular examples rather than their practical application, except where sufficient care is taken to demonstrate how each example works within the context of the overall management system. Moreover, the relevance of the exercise may depend on how far these contextual relations are analogous to those of the client state (in our case, the EU).

For our present purpose, there is a practical consideration in so far as there are very few examples of regionalising (as opposed to administrative decentralising) fisheries management. Attention is immediately drawn to the USA where eight distinctive and highly successful Regional Management Councils were established under the Magnusen-Stevens Act 1976. Their purpose is to recommend specific management measures in line with a set of ten 'national standards', through the medium of fishery management plans, to the federal agency responsible for management beyond the three mile limits. Contextually, the federal:regional system of management in the USA bears only a superficial resemblance to the situation in the EU. Extending the search further to include examples of international RMOs set up to regulate high seas fishing (eg NEAFC) or national systems of devolved management take us even further from the realities of the EU.

My own preference is for bespoke tailoring of solutions rather than the 'off the peg' approach that best practice sometimes encourages. Bespoke tailoring of solutions requires a combination of first principles – based on answers to the question: what do we want our system of regionalisation to deliver? - and careful measurements of what best suits the overall system of management and the specific circumstances of the region in question. This approach is developed in more detail in ensuing sections.

### **4. Some qualifying questions**

Before attempting to answer the question: what do we want our system of regionalisation to deliver?, there are several important qualifying issues to be considered:

- (i) Does our concept of region refer to a fixed geographical entity (and , if so, on what scale?) or to a more fluid set of geographical boundaries that may vary according to the matter under consideration?
- (ii) Are we looking for a suite of permanent, proactive regional organisations each capable of assuming a specified management role or a much looser, more transient, *ad hoc* arrangement that recognises the principle of cooperation between MS and can be called upon from time to time to resolve particular issues?
- (iii) Where are the boundaries between Community and MS responsibilities to be drawn? An important and controversial question refers to the annual (or preferably multi-annual) negotiation of fishing opportunities based on ICES stock assessments. To date this has been a principal function of DG Mare and is likely to remain a core responsibility for Commission and Council, though the industry is anxious to see this decided at a regional level. For practical as well as political reasons, it is difficult to see this being delegated to any quasi-independent body.
- (iv) To what extent is the new regionalised system expected to incorporate basic tenets of good governance including the opportunity for co-management and direct representation of stakeholders on decision making bodies?
- (v) Are we concerned with organisations whose remit is confined to fisheries *per se* or with a more broadly based organisation with responsibilities for integrated marine/maritime management which would include fisheries *inter alia*?

While the Green Paper makes clear that regionalisation refers specifically to fisheries policy, it also notes (p 19) that fisheries interact closely with other maritime sectors and increasingly such interactions will be handled within an integrated management approach. A case can be made, in the context of the Baltic for example, for fisheries management to be set within a broader ecosystem management approach aimed primarily at restoring the health of a seriously distressed ecosystem (Baltic Sea 2020, 2009; Symes and Österblom, 2009). However, for present purposes, our attention is focused on the concept of a permanent, proactive RMO dealing specifically with fisheries management in respect of a given regional sea (Baltic Sea, North Sea etc).

## 5. What is our system of regionalisation intended to achieve?

We are looking, therefore, for a system of regionalisation and a form of RMO that is capable of providing a coherent approach to fisheries management, incorporating Community standards while taking full account of ecological, economic and socio-cultural conditions in the region, and ensuring the fullest possible support from constituent MS, their fishing industries and other stakeholder interests. Put as succinctly as possible, the system is expected to deliver regionally specific means for implementing Community fisheries policy.

Our ideal system should therefore

- develop a medium/long term ***integrated management strategy*** for implementing Community policy for sustainable fisheries; in particular the strategy should seek *inter alia* to:
  - develop a comprehensive ecosystem based approach to fisheries management for the region;
  - implement Community standards relating to discards and incidental by-catch of non-commercial species;
  - optimise the economic returns and social benefits from the region's fisheries;

- explore opportunities for incentivising responsible fishing behaviour (including regional systems of rights based management); and
- identify ways and means of strengthening stakeholder inputs to the elaboration and implementation of the regional strategy;
- **recommend regionally specific measures** to be implemented by MS to facilitate the realisation of Community and regional policy;
- **coordinate MS fishing activities** in accordance with multi-annual (or annual) Community standards and targets;
- **monitor fishing activity** within the region to ensure compliance with Community standards, the regional strategy and fishery management plans;
- **coordinate MS fleet management strategies** with the overall aims and standards of Community conservation policy;
- **facilitate the pooling of scientific information** among MS and the development of a comprehensive regional data base for the fisheries; and
- **provide a first point of contact** for other national and regional organisations concerned with marine/maritime management planning.

## 6. Alternative models for regionalising the CFP

Given the expectations outlined above and bearing in mind that any RMO will necessarily be advisory in function, devoid of any legislative powers and confined to guiding the MS towards an agreed course of action compliant with Community norms, we can now posit some alternative models for regionalising the CFP. No attempt is made to describe their internal structures – these are likely to vary from one region to the next, as befits a system designed to take account of regional specificities. The four models are arranged in ascending order of 'innovation', though in practice the final example may seem remarkably close to what already exists, if somewhat altered in form and function.

Model A – *the 'inhouse solution'* – corresponds quite closely to one solution outlined in the Green Paper. DG Mare remains responsible for developing a regionalised approach to the CFP through its 'regional' directorates. The role of MS in shaping regionally specific measures is strengthened by greater use of the '*comitology*' procedure, whereby a committee comprising relevant MS and chaired by the Commission is convened to scrutinise draft proposals and make recommendations for their modification before submission to Council and Parliament for approval. The Commission and MS continue to receive expert regional advice through RACs. This solution comes closest to the *ad hoc* arrangements that recognise the principle of cooperation among MS without giving rise to a permanent organisational form. It involves no changes to existing structures or procedures and does very little to relieve the Commission of the burden of micromanagement or develop clear water between the roles of the Commission and MS. It would therefore do nothing to appease the growing antipathy of the EU's fishing industries to the CFP.

Model B – *the dispersal solution* – attempts to reduce the distance between the Commission and the industry that contributes significantly to this antipathy by dispersing those DG Mare staff working in the regional directorates to the regions where they form the core establishment of the RMOs. A smaller complement of senior staff remains in Brussels to develop and direct the CFP's overall strategy. The relocated staff would work alongside MS administrators, their expert advisers and representatives of the regional fishing industries to develop the regional strategy etc and would continue to receive expert advice from the RAC. Although this model would place DG staff much closer to those whose lives and livelihoods

are directly affected by the policy decisions and also expose them to the benefits of local knowledge, it is essentially a cosmetic solution that fails to redistribute the burden of micromanagement or create the hierarchy of functions that the Green Paper seeks.

By contrast, Model C – *the administrative solution* – makes a real attempt to separate the functions of the Commission and MS by establishing a standing conference of MS administrators meeting at regular intervals with their advisers to interpret and implement Community policy, without intervention from Commission or Council. In effect, the standing conference would become the principal recipient of the RAC's advice. As the standing conference would not include direct stakeholder representation and might therefore be seen as too bureaucratic in style, it could be in danger of failing to develop a sufficiently distinctive regional persona. Nevertheless, this administrative solution probably represents the kind of pragmatic solution the Green Paper is looking for.

Finally, Model D – *the new Regional Advisory Council* – requires the formation of a dedicated RMO with a permanent secretariat and fixed abode within the region that would help to give it a clear identity. Its broadly based representation, including major stakeholders, MS administrators and their scientific advisers is more likely to win the approval (and therefore compliance) of the fishing industries, though lack of executive function means that it falls short of providing a true co-management solution. It would supersede the existing RAC in so far as its membership now includes MS administrators and its terms of reference give it a more ambitious role. This enhanced role – developing a robust, medium/long term regional strategy and coordinating MS fishing activities in line with both Community policy and the region's strategy – makes it the most radical solution and signals an end to the old, centralised and monolithic CFP. But if it is to make a substantive impact on the regions fisheries, it will need substantial funding from the MS to cover both start-up and subsequent running costs. As a quasi-independent body it could face some difficulties in guaranteeing the full implementation of its recommendations by all MS.

None of these four alternatives would disrupt the basic system of decision making set out in the European Treaties. In the case of models A or B the decision making process remains unaltered. In models C and D, Community policy approved by the Council of Ministers would be interpreted and implemented by MS in the form of regulations and fishing plans agreed through the RMO and subject to the approval of the Commission.

## 7. Discussion

The description of the four models contains a general appraisal of their main strengths and weaknesses. It might be useful to extend this evaluation to reveal a little more detail. Table 1 summarises the expected performances in respect of 14 different attributes organised in 5 broad categories: overall impact; delivery of expectations (Section 5); other objectives from the Green Paper; good governance; and practical considerations. The scores are highly subjective – no doubt others would award different scores for each model (and attribute), but probably not to the extent of disturbing the overall performances.

As expected, the in-house solution attracts low scores in all categories except for practical considerations (cost, ease of implementation and delivery of decisions). In the case of the new RAC model, the situation is exactly reversed, accumulating high scores across all areas of qualitative advantage but low scores for practical issues. Neither result is at all surprising: the in-house model represents the *status quo*, 'no action required' solution while the new RAC is

specifically designed with the task of regionalising the CFP in mind. The points of interest revolve around models B and C. Both can be considered as providing modest leaps forward in terms of innovation; in general, the administrative option (C) outperforms the dispersal model (B) in all areas except 'delivery of expectations' and 'good governance' (equal footing). Overall, the analysis confirms the view that the new RAC would give the optimum theoretical solution, but at significant cost in terms of implementation and funding, with the administrative option offering a lower cost alternative but one that is less well equipped to perform the range of tasks associated with regionalisation. Model A, on the other hand, yields no perceptible improvement on the existing system.

The system of regionalisation must be capable of facilitating industry led initiatives for improving the prospects of sustainable fishing. These may vary from locally specific proposals, emanating from local associations, to multi-annual fisheries management plans that would put the industry at the heart of detailed, technical decision making. The latter may be developed at the regional or sub-regional level by, for example, Producer Organisations and refer to particular species, gear groups etc or to more broadly defined fisheries and a range of different gear groups. Such plans, designed to coordinate the actions of fishers and across fairly wide geographical areas, may also be linked to shore based activities (processing, marketing) to ensure that the optimum value arising from the region's fishing opportunities accrues at the regional or sub-regional level. Once again, Models C and D seem more likely candidates.

Evaluation – even in a much more sophisticated form than that attempted here – is no infallible guide to which system is eventually chosen. Scoring highly across the essential attributes does not guarantee selection. Practical considerations – simplicity, cost and convenience – often weigh heavily with those responsible for making the final choice. Not all regions are in an equal state of readiness to take on the tasks of regionalisation. Much may depend on whether the EU is willing to condone the idea of regionalising the CFP proceeding at different rates and in different forms. Reducing the choice of system to the lowest common denominator would greatly inhibit the flow of expected benefits and adopting the in-house solution would certainly make a mockery of the reform process and the claims that its outcomes would represent a quantum leap forward (Borg, 2009). Table 2 presents my own hunches as to the probability of adoption for each of the four models on offer.

There is, of course, rather more to regionalising the CFP than choosing a suitable suit of clothes in which to dress up the idea. Consideration of such details need to be fitted into the bigger picture of CFP reform. The wider debate is perhaps beginning to take shape, with southern European countries like Spain and Portugal less inclined to put their weight behind regionalisation. Here, regionalising the CFP may be seen as little more than window dressing or, worse, a thinly disguised form of protectionism intended to thwart the realisation of equal access. Ending relative stability in its present guise and reforming the basic mechanisms of conservation policy, with a relaxation of the very prescriptive TACs and quota in favour of a Europe wide rights based management system for effort management, are likely to be their priorities. Northern MS may be wary of this menu of reform measures, fearing their fishing interests might be compromised, and therefore inclined to use regionalisation as a counterweight to the loss of relative stability and an antidote to a European system of rights based management.

In the ensuing trade off, should the EU prove reluctant to allow different approaches to regionalisation, the likelihood of a radical solution will diminish and the odds on the in-house

and administrative options shorten. Were the EU willing to entertain a differential approach , however, it may even be possible to contemplate a situation in which an integrated, ecosystem led nRAC is adopted for the Baltic Sea, a somewhat narrower fisheries centred nRAC for the North Sea and possibly north western waters, while administrative or in-house options are implemented in other regions.

Finally, attention should be drawn to the fact that the present paper has not been concerned with the impacts that regionalising the CFP might have on either the institutional arrangements at MS level or the conduct of third country relations. These are important considerations and will need to be addressed in detail later. For present purposes, it is sufficient to point out that the repercussions of regionalisation may prove to be quite profound. MS will need to build new interactive relationships with neighbouring states to ensure the success of regionalisation and rethink their collective strategies in relation to ICES and other international organisations. In some instances – notably in Denmark and the UK where fishing interests are divided between two or more regional spheres of operation – internal structures and overall approaches may need to be rethought to take account of their fishing industries being subject to different regional strategies for sustainable fishing. Awareness of such considerations may, in fact, have a bearing on which of the models posited above is deemed the most appropriate.

## **8. Conclusion**

This paper has been all about the problems of the EU and its common fisheries policy. Regionalisation is posited, not as a cure for all fisheries management systems operating below par but as a means of addressing certain structural deficiencies in the EU's system of fisheries governance. For those caught up in the system the problems seem dispiriting, damaging and immovable. Regionalisation has captured their imagination as a possible route out of these difficulties. The chances of it being adopted in a meaningful way – and therefore proving successful in removing the barriers to sustainable fishing – are constrained by the very way in which the EU is constructed and its decision making organised. Nevertheless, regionalisation remains the best hope for delivering a greatly improved system of fisheries management, but it remains something of an unknown territory. The aim of the paper has not been to arrive at a definitive answer to the problems posed by regionalising the CFP but simply to map out a route – signposted by a series of leading questions – that should lead us to finding the appropriate answers.

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	A In-house	B Dispersal	C Administrative	D nRAC
<i>General</i>	1.0	1.3	2.0	3.0
Driver of reform	LOW	LOW	MEDIUM	HIGH
Promoting regional identity	LOW	LOW	MEDIUM	HIGH
'Quantum leap'	LOW	MEDIUM	MEDIUM	HIGH
<i>Delivering expectations</i>	1.0	2.3	2.0	3.0
Strategy	LOW	MEDIUM	HIGH	HIGH
Coordination	LOW	HIGH	MEDIUM	HIGH
Focal point	LOW	MEDIUM	LOW	HIGH
<i>Green Paper aims</i>	1.0	1.0	2.7	3.0
Separating responsibility	LOW	LOW	HIGH	HIGH
Operational objectives	LOW	LOW	MEDIUM	HIGH
Compliance	LOW	LOW	HIGH	HIGH
<i>Good governance</i>	1.0	1.0	1.0	3.0
Stakeholder participation	LOW	LOW	LOW	HIGH
Transparency	LOW	LOW	LOW	HIGH
<i>Practical considerations</i>	2.7	2.0	3.0	1.0
Ease of transition	HIGH	MEDIUM	HIGH	LOW
Cost implications	HIGH	MEDIUM	HIGH	LOW
Implementing decisions	MEDIUM	MEDIUM	HIGH	LOW
Overall score	1.4	1.5	2.2	2.6

Table 1 Alternative models of responsibilities: evaluation of benefits  
(Scores based on HIGH = 3; MEDIUM = 2; LOW = 1)

A In-house	B Dispersal	C Administrative	D nRAC
MEDIUM	LOW	HIGH	MEDIUM

Table 2: Alternative models of regionalisation: likelihood of selection