

# THE FISHERMEN'S ASSOCIATION LIMITED

## THE EUROPEAN COMMISSION'S GREEN PAPER ON REFORM OF THE COMMON FISHERIES POLICY

Response by The Fishermen's Association Limited  
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### INTRODUCTION

The CFP is the overarching policy that has caused 'Sea Clearances' for Scotland and other parts of the UK.

What is the real CFP? -- Equal Access to the Common Resource.

The European Court of Justice has recognised that the Community system of national quotas (based on Relative Stability as included in the 1983 Agreement) is a derogation from the general rule of equal conditions of access to fishery resources and the principle of non discrimination laid down in Article 40 of the Treaty of Rome.

The CFP is not the 1983 Agreement nor is the revised CFP of 2002.

The real CFP is equal access to the resource. Access to fishing grounds and the living resources within them, has been granted by Treaty to every member state in the EU.

### ILLUSION OF STAKEHOLDER INVOLVEMENT

The Green Paper gives the illusion of stakeholder involvement, "empowering the regional and local dimensions", decentralisation and involving fishermen directly in policy-making so that decisions are made closer to the people they affect.

### AMSTERDAM, MAASTRICHT AND LISBON TREATIES

The Amsterdam Treaty explicitly rules out any decentralisation of power to Member States. The principle of subsidiarity, introduced by the Maastricht Treaty, is an illusion.

*Notes 1 and 2*

It might be argued that fisheries fall within the policies the responsibility for which is shared between the EU and the Member States (shared competence) and whereas the Lisbon Treaty affirms this position as it enumerates fisheries among the shared

competences between the Union and the Member States (Art. 4 par. 2 d TFEU) **an exception is, however, made for the conservation of marine biological resources, which is an exclusive EU competence** (Art. 3 TFEU par. 1)

With exclusive competence for all marine living resources residing in Brussels how are you going to legally achieve decentralisation?

At best it will be a refinement of the current situation whereby the Member States act as Agents for the EU retaining certain responsibilities in the fields of implementation, application and control of the CFP, with the Commission being responsible for ensuring that there exists consistency in the Member States' actions in implementing the strategic decisions of the Council of Ministers, the Commission and the European Parliament (post Lisbon).

The CFP in practice has developed into a centralised common policy, and as a result, most of the decisions are taken on a Community level (by the Council acting by qualified majority), leaving little scope of manoeuvre to the Member States to act individually.

## **INTENTION OF CFP**

The EU's strategic aim for the fishing industries of the relevant individual Member States is the creation of a European Union fleet and the elimination of those of the Nation States. The grandiose vision in the Green Paper is nothing more than a smokescreen for an ever developing EU which wishes to control every aspect of fishing activity.

## **SOME AREAS OF CONCERN IN THE GREEN PAPER**

1. The main purpose of the reform is reducing overcapacity,
2. Promotion of a culture of compliance already started with the control reform
3. Revising the principle of 'relative stability', "as it has led fisheries ministers to focus on "their" immediate share rather than on the common good..... the present system of quotas is not carved in stone and solutions should be explored to make it more flexible and more tailored to the actual needs of national industries and markets."

### **1. Reduction in fleet capacity**

"The Green Paper portrays overcapacity as an endemic issue. This is a simplistic

view which ignores previous attempts of many Member States to match catching capacity with fishing opportunities. *Interim Report of Scottish Government's Inquiry into Future Fisheries Management September 2009*

### **FALs comment**

The UK has the most productive EEZ of any of the EU members, yet its fishing fleet has lost more vessels than any other state, - all in conformity to EC demands to decommission more and more boats. So instead of "opportunity", UK fishers are faced with a massive constraint on their operations.

The Commission had warned the industry on 11 June 1992 that the way forward, as envisaged by the Commission for the re-structure of the industry, would involve thousands of fishermen losing their jobs.

- **196 vessels over 10 metres in length left the Scottish fleet between 2001 and 2004.**
- **165 were unnecessarily scrapped as a result of the 2001-02 and 2003 decommissioning schemes**
- **Almost 1100 boats left the fleet in the 20 years after the UK joined the then Common Market.**

The UK fleet size is appropriate for the whole UK EEZ. The problem is that other EU fleets are fishing inside that EEZ.

## **2. Compliance**

Control of fishing effort has reached levels where hard working fishermen are treated like common criminals. The practice of "black fish" landings has been virtually eliminated and the introduction of further more restrictive measure will turn the industry against the technical and control regulations the rationale for which are based on imperfect science.

No measure that has no industry support will ever succeed. You must have full and broad participation not a top-down policing mentality. The laws and regulations need to be re-examined. Some of them are downright pointless and malicious.

Let representative bodies composed of respected or elected fishers and community leaders work out how measures may be complied with. A well run

system should use penalties as a last resort.

**Thoughts on:**

**Observers, CCTV, e-log books:** Is there any industry anywhere in the world that is subject to such constant 'big brother' intrusion and spying? You have log books, port catch inspection, position transponders and now the EU wants cameras on board each boat.

If you are determined to treat every fisherman like a would-be criminal, some will start to behave like that and there will always be ways to circumvent strict monitoring. It would be better to work with them and coastal communities like partners and treat them with a measure of respect and trust, with joint management rights and responsibilities.

Stop treating the fishing community like disobedient children or would-be criminals. The whole attitude is mis-placed.

### **3. Relative Stability**

The EUs objective is to remove discrimination (the principle of Relative Stability introduced in the allocation of fish quotas to Member States in 1983) is a prime example) and create an EU fleet operating in EU waters controlled by the EU.

The Green Paper advocates a Rights Based Management (RBM) approach to fisheries with the objective of reducing fleet capacity.

RBM is being developed in many of the world's fisheries, and can be an excellent tool to ensure some justice and equity in the allocation of resources or in ensuring continuing access for vulnerable groups.

Several governments have allocated **rights-based access** to fish resources, in perpetuity, to indigenous groups that would be vulnerable if their rights were to be made a marketable entity. So community quotas and other special arrangements have been organized in the USA for native Americans, and in New Zealand for Maori peoples.

However the main danger facing the UK is that EU / CFP interpretation of rights-based management lies in the assumption that these very rights might be bought and sold on an open market. Once that is permitted the system ceases to be rights-based and becomes market-based, with fishery sector jobs and

communities' economic futures being traded like any other commodity.

That is exactly what will happen if ITQ arrangements are developed to their ultimate end.

ITQs concentrate access to and control of national fish resources in the hands of big business and speculators. Its introduction (in whole or in part) was a major cause of the cod stock destruction of Canada, the huge fall in orange roughy and hoki stocks in New Zealand, and the destruction of scores of small scale fishing ports in Newfoundland, Iceland, and New Zealand. ITQs are environmentally risky at best and socially destructive at least. The only beneficiaries are a few fishing corporations and speculators, and that just in the short term.

A RBM system as interpreted and promoted by the Commission would be hindered by Relative Stability, which would return quota rights to each Member State each year. That is the reason the Commission advocates its removal.

*“The Green Paper identifies Relative Stability as a brake on far reaching reform”  
Interim Report of Scottish Government’s Inquiry into Future Fisheries Management  
September 2009*

That reform despite the window dressing in the Green paper is the attainment of the EUs ultimate objective for the fishing industries of all the maritime Member States - the creation of a European Union fleet and the elimination of those of the Nation States

### **EU Fisheries governance: Is a regional model appropriate?**

*FAL is indebted to David Thomson for the foregoing observations that were contained in his submission to the House of Lords Inquiry in to the CFP in 2008.*

*David Thomson is a consultant to the United Nations and the development banks on fishing. He has led numerous UN fisheries development projects in Africa, Asia and the Pacific. He is the author of several fisheries textbooks and of The Sea Clearances, a socio-economic study of the rundown of the Scottish fishing industry.*

“It could be, but only within strict limitations. Fisheries governance above all should be transparent, based on clearly stated objectives, and be participative, involving fully the fishing communities and the fishing industry stakeholders. Too often, consultations have been empty PR gestures with no genuine attempt to listen to those affected. Fisheries

governance should also be open to review and critique by competent, independent bodies.

There are a number of international examples. These include the SADC and ASEAN countries which have agreed regional fishery management policies. The USA has similar arrangements with Canada, Mexico, and the small states of the Caribbean and the Pacific. None of these countries have yielded their EEZs to any central management like the EU CFP. There are also the 3 main regional Tuna Commissions of the Indian, Pacific, and Atlantic Oceans, plus 2 in the Americas. (see [www.tuna-org.org](http://www.tuna-org.org) ).

In each of those cases, the participating governments retain full control over their 200 mile EEZs and their own fleets and their national fishery management systems. But they meet annually to agree on common approaches to the management of shared stocks. That works very well, guaranteeing cooperative management but preserving sovereign rights.

In contrast the EC / EU, under the Lisbon treaty will have unlimited control over all "marine biological resources" (the part referring to joint EU/national control of fishing does not reflect the reality). Marine biological resources extend by definition from whales and basking sharks to the last frond of seaweed. This control, to be exercised from the desk of the Fisheries Commissioner in Brussels, will extend from the Baltic through the north-eastern Atlantic, North Sea, Mediterranean, Aegean and Adriatic seas to the Black Sea. It takes no account of the vast differences in regional fish species, different fishing methods, local consumption patterns, local fisheries culture and local social and employment structures. That kind of regional model is a recipe for continued central control that is insensitive to local needs and local situations requiring tailored responses to particular issues.

The best fishery management system by far is one that is locally based and which the local stakeholders largely operate themselves with government taking only a supervisory role and providing the overall policy. Some examples can be found in the USA and Japan, where specific fisheries form their own rules and enforce their own members. The UN Agencies and several bilateral organizations and NGOs assist a number of developing countries to adopt this model."

Where else in the world has any group of fishing states considered or adopted a centrist EU type model that requires them to give up their sovereign rights over their national fisheries. The direct management of an individual industry is not a legitimate function of

the EU.

The real reform that requires to be considered and implemented is a scrapping of the EU fisheries policy and returning to national Governments control of fishing in national waters up to the limits of the 200 mile exclusive economic zones or median lines

Roddy McColl  
16 December 2009

### **The Fishermen's Association Ltd**

The Fishermen's Association Limited (FAL) was incorporated as a Company limited by guarantee on 12<sup>th</sup> September 1995. It is a UK fishing industry trade protection association with members representing both offshore and onshore interests.

It has some 250 members in Scotland, England and Northern Ireland. The Northern Ireland Fish Producers Organisation affiliated to FAL on 15 March 2003, the Scottish Ship Chandlers Association on 12 December 2003 and the South Devon & Channel Shellfishermen on 16 January 2004

**The Northern Ireland Fish Producers' Organisation Limited** was formed in 1977.

Member vessels range in size from 60 metre purse seiners to under 10 metre vessels. The majority of the membership is based in County Down in Bangor, Portavogie, Ardglass and Kilkeel but individual members are also based in Cumbria, Scotland, and Isle of Man and on the English East coast.

**South Devon and Channel Shellfishermen** was formed over 40 years ago. It is probably the largest shell fishermen's association in the UK. Its members come mainly from South Devon, but it also has members as far afield as Newlyn in Cornwall, Mudeford in Dorset and Guernsey in the Channel Islands.

**Scottish Ship Chandlers Association** is in its 55th year and represents 13 member firms from Shetland to East Lothian supplying chandlery items, wire and netting to the Scottish fishing industry. Members directly employ some 200 people.

The Association's Secretaries are McColl & Associates Limited. Roddy McColl is the Director responsible for managing FAL. He is a Scots lawyer with over 37 years of experience in fishermen's trade protection operations.

## NOTES

### **1. Article 3b Maastricht Treaty**



**“In areas which do not fall within its exclusive competence, the Community shall take action in accordance with the principle of subsidiarity only if and in so far as the objectives of the proposed action cannot be achieved by the Member States and can therefore by reason of the scale or effects of the proposed action be better achieved by the Community.”**

*However there was disagreement as to what this really meant*

- *the opportunity to withdraw EU authority from areas where the Member States were able to act alone*

OR

- *subsidiarity requiring to be read in the context of preserving the acquis communautaire.*

The Amsterdam Treaty settled the disagreement by explicitly ruling out any decentralisation of power back to the Member States.

## **2. Amsterdam Treaty Protocol on Subsidiarity Paragraph 2**

The application of the principles of subsidiarity and proportionality shall respect the general provisions and objectives of the Treaty, particularly as regards the maintaining in full of the **acquis communautaire** and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take in to account Article F(3) of the Treaty on European Union, according to which “ the Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

*This paragraph confirms that subsidiarity can do nothing to withstand the other provisions of the Treaty. It is powerless to diminish the acquis communautaire which decrees that once the Community has acquired a power it never gives it up.*

*The subsidiarity principle will not be allowed to bring about any devolution of powers from Brussels even in those areas where national or local authorities could act on their own.*

***The competence for the fisheries policy of the EU has been transferred to Brussels. Subsidiarity cannot be relied on to decentralise that.***