



HOUSE OF LORDS

Committee Office

House of Lords
London
SW1A 0PW

Tel: 020 7219 8663
Fax: 020 7219 6715
roperj@parliament.uk
www.parliament.uk/lords

Commissioner Joe Borg,
European Commission,
Directorate General for Maritime Affairs and Fisheries
“CFP Reform”
B-1049 Brussels,
Belgium

12 November 2009

Dear Commissioner,

**House of Lords EU Committee response:
European Commission consultation on Reform of the Common Fisheries
Policy**

This is a response by the House of Lords EU Committee to the European Commission’s Green Paper on “Reform of the Common Fisheries Policy” (COM(2009) 163). It draws substantially on the Committee’s Report of 22 July 2008 entitled “The Progress of the Common Fisheries Policy”,¹ a copy of which was sent to the Commission.

Summary

The Common Fisheries Policy clearly remains in need of major reform, having failed to deliver sustainable fisheries—whether from a biological or an economic point of view. The 2002 reform of the CFP has not succeeded in addressing longstanding deficiencies such as persistent overcapacity in the fishing fleets of the Member States, poor compliance, and uneven enforcement. Over-centralisation and a top-down management approach have served to alienate stakeholders and thus further undermined the policy.

On the most critical indicator—the state of fish stocks in Community waters, on which the livelihoods of the EU fishing industry ultimately depend—the 2002 reform of the Common Fisheries Policy has failed to turn the tide. Member States’ reluctance to trim national fishing fleets to a size commensurate with the fishing opportunities

¹ <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/146/146.pdf>

available—or even to allow market forces to do so—remains the root cause of failure in this respect. Fleet over-capacity prompts fisheries ministers to resist the conservation measures prescribed by scientific advice, and creates powerful economic incentives for illegal activity on the part of the fishing industry. Both serve to perpetuate a vicious cycle in which dwindling fish stocks are at risk of being in ever greater disproportion to the size of the fleet.

Looking forward, we believe that urgent action is necessary to break out of this cycle. Public aid should be channelled into attractive decommissioning schemes and into the economic diversification of fisheries-dependent coastal communities, so as to facilitate voluntary exits from national fleets, and promote the development of alternative employment opportunities. In the absence of such action, we hold out little hope that the new Control Regulation will deliver radical improvements.

We believe that there is a very strong case for moving towards a much greater degree of decentralised fisheries management, whereby strategic objectives set centrally are delivered through methods devised at a regional level. We envisage that this would promote both better management, adapted to regional circumstances, and better compliance, through the ex-ante influence of local stakeholders on the regulatory instruments selected. We regard the establishment of the Regional Advisory Councils as a promising step in this direction, and as the most welcome development to arise out of the 2002 reform of the Common Fisheries Policy.

We believe that the core objective of the Common Fisheries Policy should be to bring fishing capacity and fishing opportunities into balance, for which fisheries managers will need a toolkit of measures at their disposal: TACs, quotas, effort controls, and technical conservation measures, including closures. In our view, progress in achieving this balance is dependent upon a fundamental change of emphasis in management style: rather than attempting to micro-manage the implementation of the CFP's provisions from the centre, the Council and the Commission should learn to work more closely with regional management bodies, who should take the lead in devising strategies for delivering the desired outcomes. In our view, this should be the agenda driving the next reform of Common Fisheries Policy, due in 2012.

Fleet over-capacity and the use of market instruments (section 4.1)

The 2002 reform of the CFP—which handed responsibility for adapting fleet size to fishing opportunities back to Member States—has clearly failed to stimulate the fleet reductions that permanent under-utilisation of capacity and low levels of profitability indicate are required.

Public aid should be channelled into attractive decommissioning schemes and the diversification of employment opportunities in coastal regions. We see no role for taxpayer-funded modernisation of the fleet, even where it results in greater energy efficiency, as the economic advantages (reduced operating costs) of modernisation

programmes should be sufficient to stimulate private investment in a profitable industry.

To the extent that it allows fishermen to acquire the rights they need to run an efficient operation; prompts quota holders to take an interest in compliance; and promotes the right-sizing of fleet capacity through voluntary mechanisms, the trading of fishing rights is clearly beneficial. For these reasons, we regard further moves towards rights-based management at a national level as highly desirable. We note that this is a Member State competence, and should not require modification of the provisions of the CFP.

The decision-making framework (4.3)

The 2002 reform of the Common Fisheries Policy did not tackle the over-centralised and stiflingly prescriptive legislative process through which fisheries are managed in the EU. We recognise that the clamour for a “level playing-field” from Member States and stakeholders alike may over time have prompted policy-makers to micro-manage in ever greater detail. It is clear, however, that this approach has failed and should now be abandoned.

The division of labour we envisage is one where strategic decisions—on target mortality rates, for example, or maximum sustainable yield—continue to be taken centrally in Brussels, while decisions relating to delivery and implementation—determining how targets are to be reached—are delegated to regional forums. These should be organised to reflect the level at which outcomes can be measured, allowing local decision-makers to be held accountable by auditors at national and EU level. Based on these principles, technical conservation measures should not require uniform imposition.

Central monitoring of outcomes, backed by sanctions for poor performance, will be essential to the proper functioning of a more decentralised management system. We note the risk that a regional management model such as we have described might exacerbate enforcement problems. However, we believe that a double-tiered system of penalties, based on the suspension or withdrawal of fishing rights at individual level, and the imposition of fines on Member States who fail to deliver centrally agreed outcomes, could hardly be less effective than the discredited control and enforcement regime in force prior to the new Control Regulation.

The establishment of the Regional Advisory Councils has been the most positive development to flow from the 2002 reform of the Common Fisheries Policy. In our view, the development of the RACs demonstrates that it is possible to build a credible regional dimension into fisheries management under the CFP.

We favour the development of a policy process in which consensual advice from a RAC is normally heeded by the Commission and the Council. We recognise that the transfer of management responsibilities to Regional Advisory Councils might meet with resistance from certain Member States, and distance RACs from their

grassroots members. We therefore take the view that a formal transfer of powers may not be necessary to achieve the desired effect. However, RACs must be allowed to earn authoritative influence if stakeholders' engagement is to be secured and maintained.

Developing a culture of compliance (4.5)

We believe that a fruitful control regime should be based on measures that reward good behaviour, and thus work with fishermen's incentives. Ultimately we emphasise, however, that a culture of compliance can only develop in a fleet that is proportionate to the size of the resource on which it depends. Economic and conservation objectives are more closely aligned in a profitable fleet, whose members develop a vested interest in the enforcement of the rules. Furthermore, it is only when illegal activity has become the exception, rather than the norm, that risk-based, targeted enforcement can start to deliver results.

We welcome the recent agreement on the new Control Regulation, including the co-ordination of administrative penalties, the introduction of a penalty points system and the introduction of a link between effective compliance and access to Community funding.

In the period between introduction of the Control Regulation and agreement on the revised Common Fisheries Policy, careful consideration will need to be given to the future role of the Community Fisheries Control Agency. It may prove advisable to give the CFCA a role in monitoring and reporting on Member States' enforcement activities, as originally proposed by the Commission in its draft Control Regulation.

Making the most of our fisheries: management tools (5.2)

We support the principle of multi-annual management of fisheries, and believe that—if properly designed—management plans should facilitate both the industry and the regulators' activities. There is a clear need to co-ordinate across stock plans and management measures that affect the same fishery if plans are to prove workable and deliver results. This may require adaptation in the working practices of the Commission and the Council, and benefit from the input of the Regional Advisory Councils. With appropriate resourcing, we believe that stock plans affecting the same fishery could and should be developed in parallel, along the lines of "fisheries management plans" as cited in the Commission's Green Paper.

While we recognise that some degree of trial-and-error may have been inevitable in drawing up the first few recovery and management plans, we consider that yearly revisions to multi-annual plans undermine their very *raison d'être*. Automatic adjustments to plans based on fixed harvesting rules should be used to deliver an element of responsiveness without sacrificing predictability—providing that Member States can agree to suspend rules only in genuinely exceptional circumstances.

If the principle of relative stability is to underpin the CFP—as we believe it should—effort restrictions can only be used to complement TACs and quotas. However, we recognise that restrictions on fishing effort, rather than catches, appear to offer a more readily enforceable means of reducing fishing mortality. This tool therefore has significant untapped potential. The recent devolution of effort allocation to Member States is a welcome step. In our view, this represents a promising route through which to incorporate a greater element of subsidiarity into the CFP, creating a multi-tiered management system.

Allocating effort at national or sub-national level may in turn create opportunities to tie other conservation tools—such as closures and selectivity measures—into the effort allocation process, thereby aligning fishermen's incentives with conservation goals. Indeed, by rewarding fishermen for complying with technical conservation measures that would otherwise place them at a competitive disadvantage, public authorities can help the industry to tackle a collective action problem.

We believe that long-term management plans offer scope to deliver improvements in the way quotas have been working. We envisage that multi-annual plans could incorporate multi-annual TACs for stocks whose biomass does not vary significantly from year to year. We have already indicated that the alignment of TACs for species of fish that are caught together is necessary. An element of risk management should also be built into management plans, providing for pre-planned, automatic adjustments in catch restrictions triggered by predictable emergencies.

Discards pose a pressing challenge for fisheries managers. We support an incremental approach to the elimination of discards, based on maximum allowed by-catch limits and fishery-specific strategies for achieving them. We see scope for a division of labour whereby targets are set centrally and stakeholders in each fishery are left to devise their own methods of reaching them, similar to the national and regional approach suggested in the new Technical Conservation Measures Regulation.

We support the principle of a discard ban and therefore firmly endorse the Commission's aim of progressively reducing maximum allowed by-catch limits to zero. However, we recommend that, if by-catches are to be confiscated in order to protect the principle of relative stability, financial compensation should be made available to cover stowing and landing costs. Without such compensation, fishermen's incentives would in our view be misaligned, posing a serious challenge for those charged with enforcing a discard ban.

The Norwegian experience leads us to conclude that flanking measures designed to prevent situations in which fishermen are tempted to discard would be critical to the successful implementation and enforcement of a discard ban. This could include closures, as in Norway, but should also encompass mechanisms allowing fishermen to buy additional quota to cover their catches.

The knowledge base for the policy - Impact assessments (5.6)

High quality impact assessments must be carried out before management plans are adopted. These should be based on the best available data. The practical implementation of a plan should in our view receive detailed—and insofar as possible, objective—attention before the proposal reaches the Council. If amendments are adopted in Council, impact assessments should be updated accordingly. The aim would be to make carefully considered adjustments that facilitate compliance without compromising conservation goals.

I am copying this letter to Michael Connarty MP, Chairman of the House of Commons European Scrutiny Committee, Huw Irranca Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs, Alistair Doherty, Clerk to the European Scrutiny Committee, Paul Hardy, Legal Adviser to the European Scrutiny Committee, Les Saunders (Cabinet Office) and Malcolm Allan, Scrutiny Co-ordinator, Defra.

Yours — by
John Roper

The Rt Hon the Lord Roper
Chairman of the Select Committee on the European Union