

RESPONSE TO DEFRA'S CONSULTATION ON REFORM OF THE COMMON FISHERIES POLICY

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Introduction

Even though the reform is incomplete and the draft Regulations remain in a very real sense 'unfinished canvases', the package of proposals for reforming the CFP [COM(2011)425] and the common organisation of the markets [COM(2011)416] seem likely to fall short of the Commission's original ambition for 'fundamental and whole-scale reform' expressed in the Green Paper [COM(2009)163]. There remains a marked discrepancy between what the Commission believes its proposed reforms can deliver [COM(2011)417] and the actual scope for fundamental change outlined in the texts of the draft Regulations.

As the Appendix to this response indicates, several concerns that exercised the Commission in its far reaching Green Paper have not been followed up in the final proposals. These include a number of issues that go to the very core of the purpose, character and governance of fisheries policy, including precise policy objectives, developing a culture of compliance, relative stability and integration within a wider maritime policy context, *inter alia*. The extant proposals do signal important changes in key areas of the CFP – multiannual management planning, fleet capacity and the role of POs – but the overall package is unlikely to break the mould of centralised policy making, undertaken primarily by the Commission and implemented by MS. It fails, therefore, to create in its place a more flexible, interactive and appropriate system of decision making at the regional level that would help restore public and stakeholder confidence in the CFP.

The Commission's inability to deliver 'a clear hierarchy between fundamental principles and technical implementation' through decentralising decision making and a regionalised approach to fisheries policy illustrates the constraints, placed on the Commission's advocacy of changes to the decision making system and the delegation of its powers to MS, by the principle of exclusive competence. It also highlights the legal obstacles embodied in the European Treaties that confront any attempt at fundamental reform of the CFP.

Q1. Are the aims of the CFP set out clearly and appropriately ... with the right balance between the environmental, social and economic objectives?

Despite concerns in the Green Paper that the lack of precision and prioritisation of objectives implied a lack of suitable policy guidance, little has changed. There has been no attempt to further clarify the biological, economic and social objectives, nor to prioritise them. Their prioritisation can, however, be inferred from the content of draft Regulation COM(2011)425. The *biological objective* of sustainable fish stocks rightly assumes first priority and is addressed through the adoption of MSY as the goal of conservation policy with multi-annual management plans (MAPs) providing the principal mechanism for its delivery. The *economic objective* (providing the conditions for efficient fishing activities within economically viable and competitive fishing industries) is largely addressed through the proposed mandatory adoption of rights based management in the form of transferable fishing concessions (TFCs).

There is, by contrast, no attempt to define the *social objectives* and certainly no explicit measures for addressing issues of social sustainability in the draft Regulation. An assumption is made in COM(2011)417, and further elaborated in the Impact Assessment [SEC(2011)891], that implementation of the biological and economic objectives will also secure sufficient social benefits in the form of stable employment and improved incomes *in the longer term*. Social objectives are less about maintaining levels of employment in fishing and fishing related activities than about creating resilience and adaptive capabilities that will contribute to social renewal within the fisheries sector under conditions of economic uncertainty and environmental perturbations. More attention will need to be paid to minding the gap between introducing measures to reduce (and concentrate) fishing opportunities and the eventual realisation of higher catches, stable employment and increased earnings – the familiar ‘pay now, live later’ trap. Overall, social objectives appear to be relegated to the level of contingency measures to minimise further damage to the social sustainability of small scale fisheries and fishing dependent communities, and their specification left essentially to the MS.

Q2. What are your views on the proposed content of multi-annual plans and the process to deliver management measures under these plans?

We applaud the emphasis placed on MAPs as the mechanism for achieving sustainable fish stocks and the intention, where relevant, to shift the emphasis towards managing mixed fisheries rather than the individual component species through this mechanism. It will, however, require a determined effort to develop the appropriate science and methodologies for managing mixed fisheries and political sensitivity to guarantee both relative stability and an equitable solution to problems that may arise where the participating MS fishing fleets target different species within the fishery.

Draft Regulations 2011/425, Articles 9-11, provide a comprehensive statement of the objectives and content of MAPs. But the distribution of management responsibilities between the different levels of the management hierarchy warrants further careful consideration. The process for delivering MAPs are detailed under two headings: (a) *Union Measures* (A 9-11) which describe the functions of the Commission in developing the basic design, together with a technical measures framework (A14) and an obligation to land all catches (A15); and (b), under the somewhat ambiguous title of *Regionalisation* (A17-20), the delegated responsibilities of individual MS relating to the adoption of additional measures.

We would have expected MS, cooperating at a regional level, to be fully engaged in the design and operationalisation of MAPs. But the arrangements outlined in the draft Regulation do not appear to allow for this. The problem is twofold: First, the division of responsibility leaves very little scope for meaningful intervention by the MS; all the key activities involved in the formulation of the plans (A.11) remain exclusively in the hands of the Commission and the role of MS is confined to the adoption of additional measures and the possibility of choosing the combination of approved technical measures best suited to their fishing industries’ activities. Second, there is no indication as to how MS are to work together to ensure coherent management decisions (see Q4 below). In effect, therefore, the Commission remains wholly responsible for the micro-management of the EU’s fishery resources outside the 12 nm limits and the much needed regional input into multi-annual planning will be missing. In the absence of a regional management framework, the Commission will need to rely very heavily on inputs from the relevant regional Advisory Councils (ACs) at all stages

of the plan development. This will require not only a more proactive engagement with the ACs from the outset but also the fullest use of the resulting advice.

We also note the absence in A11 (Content of multiannual plans) any direct reference to measures, such as harvest control rules, that will allow the MAPs to progress throughout the plan period. Without such a mechanism, there is a risk that MAPs will revert to the dysfunctional annual review process.

Q3. Have the proposals got it right on ending fish discards? If not what changes might be necessary?

Draft Regulation 2011/425 (A15) outlines the Commission's proposals for the long overdue task of ending discards. This is likely to prove one of the CFP's biggest technical challenges. But once again the detailed procedures are missing. The obligation to land all catches is to be phased in over three 'instalments' beginning in January 2014 and due for completion in January 2016. Strategies for minimising the capture of undersized and overquota fish, involving a wide range of technical conservation measures, will presumably be built into each MAP and will therefore form an integral part of the management approach to the problematic mixed fisheries where most of the discards arise. What is perhaps surprising therefore is that the phasing of implementation is according to species not fisheries so that, for example, the obligation to land all catches of cod comes into force in January 2015 while for haddock and whiting – the other main species that make up the North Sea mixed fishery – the discard ban enters into force a year later.

What so far is missing – and in need of urgent attention by the Commission and MS administrations – are (i) clearly set out conditions for the disposal of unwarranted catches of undersized or overquota fish in ways that minimise the potential disturbance to quayside markets and yet exert sufficient deterrence to their capture; and (ii) indications as to how TACs and quota allocations may be adjusted to take account of the reduction in discards.

Q4. Do the proposals give sufficient flexibility to manage fisheries on a regional basis, with an appropriate voice for stakeholders. If not, what changes might be necessary?

Clearly not. There is at present an unbridgeable gap between the Commission's aspirations for regionalisation, as set out in COM(2011)417, and the stark reality of draft Regulation 2011/425. In the former, under the challenging heading '*Better governance through regionalisation*', the Commission refers to an ambitious plan in which regionalisation is 'continued all the way down, and would include more self-management for the fishing industry by increasing fishermen's involvement in the policies and acceptance of them...' By contrast in draft Regulation 2011/425, the title **Regionalisation** is a fiction and at best describes a very limited degree of delegated decision making for the MS.

In the context of the CFP, regionalisation should mean that the meta-governance functions of Community policy (deciding the principles, objectives, standards, overall strategy and broad targets) are provided at the EU level. These are then translated into more detailed plans at the level of the regional seas through the involvement of relevant MS working together within a well defined regional framework and in collaboration with the regional AC. Ideally, therefore, the design of individual MAPs should be the responsibility of regional management, working to a template set by the Commission.

Draft Regulation 2011/425, however, contains no hint of either framework or process. Both are essential if regionalisation is to gain structure and substance. Unless Council and Parliament are persuaded to find common ground in pressing for a greater degree of decentralisation than that currently proposed and a more formal structure for regional cooperation, a truly regionalised approach to the management of EU fisheries is unlikely to take shape.

Within draft Regulation 2011/425 there is no clear entry point for greater stakeholder involvement, other than through the ACs, and no visible means of introducing forms of results based management, though it can be argued that appropriate provision is made in draft Regulation 2011/426 on the common organisation of the markets, in relation to the newly defined roles of POs (see Q8 below).

Q.5 What are your views on the proposal to introduce ‘transferable fishing concessions’ for vessels over 10m and those which use towed gears? Are the provisions for MS to decide on allocations and set safeguards on trading appropriate/sufficient?

Given the CFP’s disastrous record in attempting to manage fleet capacity, it was perhaps inevitable that the Commission should propose the mandatory adoption of a rights based management system based on TFCs, though not in the pan-European form mooted in the early stages of the consultation. The proposal is presented to the industry on the basis of the economic objective of securing the economic viability of the catching sector [COM(2011)417], but the real reason for its inclusion is the failure of previous attempts to row back the excess fleet capacity that constantly threatens plans for the recovery of depleted stocks. The introduction of an effective market mechanism will relieve pressure on the Commission to reduce fishing capacity. But the design of the systems will need to ensure flexibility of operation and the introduction of basic safeguards to prevent problems of structural and geographical overconcentration of fishing opportunities and the decimation of the economically and politically more fragile small scale fishing sector. Ensuring that ‘ownership’ of TFCs remains in the hands of active fishermen, rather than banks, trading companies, agents or ‘slipper skippers’ is also of vital importance. Although the current proposals are for the trading of fishing rights to be contained within the MS (A31.1), the provision in A 31.2 for ‘a Member State to authorise the transfer of transferable fishing concessions to and from other Member States’ may be of concern to those who fear the predatory power of the more corporately organised segments of the EU’s fishing industries.

What is arguably more alarming is that the move to introduce a mandatory system of rights based management is an encroachment by the Commission on an area of fisheries governance hitherto regarded as the responsibility of the MS administrations and, therefore, an area of shared rather than exclusive competence. The lack of detailed prescription in draft Regulation 2011/425 is, therefore, to be welcomed: MS should be free to design their own TFC systems in ways that suit the development profiles of their own national and regional fishing industries. The outline specification of a system of TFCs contained in draft Regulation 2011/425, describing the allocation of TFCs and the opportunity to include the pooling of concessions for collective management (A28), the allocation of individual fishing opportunities (A29) and the conditions of transfer (A30-32) provide a sufficient basic framework within which the individual MS can design its own system. The conditions laid down in the draft Regulation should not seriously inhibit the UK government’s ongoing plans for the reform of its existing quota management system.

Q6. Are the proposals to develop the aquaculture industry necessary, and the steps suggested helpful?

Closer integration between the capture and culture elements of fisheries production is needed in relation to the principles, objectives, standards etc but most especially in relation to market management. Draft Regulation 2011/425 sets out in A43 a preliminary view in ‘non binding strategic guidelines’ for the further development of aquaculture activities, to be supplemented by ‘multi annual national strategies’ generated by MS. Both the EU guidelines and MS strategies will need to find a more appropriate balance between the promotion and development of aquaculture, on the one hand, and the management of environmental impacts and closer integration with capture fisheries at local, regional and national scales, on the other. A43 presently emphasises development of aquaculture to the apparent exclusion of environmental control.

The inclusion of an AC on aquaculture seems sensible, though whether a single, EU wide committee will be sufficient to address the diverse conditions for aquaculture found throughout the EU is debatable.

Q7. No comment

Q8. Do you think that quota management and marketing responsibilities for producer organisations should be brought out and strengthened in the legislation?

In principle the proposal to enhance the responsibilities and functions of POs is to be welcomed. For some considerable time POs have been an undervalued and underutilised resource for the effective delivery of CFP and COM objectives. Draft Regulation 2011/416 on the common organisation of the markets devotes considerable attention to the professional organisations (POs and inter-branch organisations) involved in first hand marketing of fish and fish products. It outlines their establishment, objectives and the measures available (As 6-8); the legal basis of recognition (A17); specific responsibilities in regard to ‘production and marketing planning’ (A32); and their roles in the stabilisation of the markets through a storage mechanism (A35, 36).

Unlike many other MS, POs in the UK have already undergone a major transformation in their functions; since the 1990s they have become increasingly involved in the quota management system and, in a more or less nominal way, the planning of their members’ fishing activities – to the detriment of their original function in respect of marketing. Although no details are given, the emphasis placed on POs in the field of integrated production and marketing planning could prove an effective means of increasing stakeholder involvement, improving regularity of supplies, enhancing the added value of the catch and ultimately maximising the social utility of fishery resources. The annual plans could form the basis for a system of results based management.

Once again, there is a strong argument to be made for allowing MS to create the appropriate architecture for the reformed POs, taking into account the size, structure and membership of the existing POs (which vary considerably both between and within MS) and the specific conditions of their fisheries and fishing industries. In the UK, for example, some initial restructuring of the POs may be needed to ensure sufficient critical mass and management capacity in order to exert a real impact on the behaviours of the catching and harvesting sectors. Consideration should also be given to how small scale fisheries are to be handled in

the context of integrated production and market planning, as outlined in the proposals for reform of the POs.

There is also a question of how well POs, originally designed to foster a collective ethos and exert a concerted influence in marketing their members' catches, will interact with a new culture of privatised use rights (TFCs), especially where some POs may become dominated by a relatively small number of expanding businesses.

Qs 9 and 10: no comment

Q 11. Do you think that intervention mechanisms should continue to be part of the new marketing regulation? (If so what form should this be in e.g. temporary or permanent?)

In principle, all forms of subsidy that contribute directly or indirectly to overproduction (including intervention) should be phased out. Several policy proposals arising from the current CFP/COM reviews, including those relating to quota management (TFCs) and enhanced planning roles for POs, should help to reduce overproduction and bring greater discipline to the activities of the catching sector and so assist in stabilising quayside markets and reducing the volatility of first sale prices. Such reforms will not, however, eliminate entirely the risks of overproduction and irregularity of supplies to the market – and these problems may, for a time, be intensified by the obligation to land all catches.

The proposal in draft Regulation 2011/426 to introduce a single mechanism for intervention – the storage mechanism described in As 35 and 36 – should be seen as a temporary, transitional measure and consideration might reasonably be given to a progressive reduction in the maximum trigger price, once the initial impacts of landing all catches has been absorbed.

Q12. Will these proposals place additional burdens and costs on stakeholders?

Despite the image of CFP reform presented by the Commission in its Green Paper as a simplifying and cost reducing exercise, all reforms necessarily incur some economic costs and additional burdens, usually borne by the stakeholders. The question is whether the additional costs are short term and eventually outweighed by increased economic benefits or represent a permanent burden on the industry for little or no return.

What the Commission was seeking to achieve in its reforms was a rebalancing of responsibilities for managing the fishery and a transfer of some of the costs of management from Brussels to the MS and their fishing industries. In this aim the Commission was only partially successful. It has failed to achieve a significant decentralisation of decision making and is thus left with carrying the burden of responsibility and cost for micro-managing the fishery. On the other hand, it has succeeded in transferring responsibility for managing fleet capacity to the industry in a win-win situation where the EU (and MS) are relieved of the costs of decommissioning etc and the industry finances rationalisation of the catching sector internally as successful, expanding businesses increase their position in the market by buying out the fishing rights of less successful enterprises. Similarly, the proposals to strengthen the role of POs in integrating production and marketing places an added burden on those organisations.

Implicit in these changes is the intention that a competitive, economically viable industry operating under the conditions of sustainable fisheries should increasingly absorb the real

costs of management. It also implies that in some instances organisations representing the interests of the industry (POs, FAs etc) will need to expand, develop and professionalise their management capabilities if they are to meet the demands now placed upon them. (We are unable to estimate what these overall costs might be, just as we are unable to calculate what future financial benefits might accrue as the result of the proposed reforms).

Conclusions

MS, the Council of Ministers and European Parliament are now faced with the considerable task of completing the reform process begun by the Green Paper. No doubt much of their energies will be devoted to individual proposals contained in the draft Regulation and to the need, in a number of the Commission's proposals, to give a clearer sense of direction and to provide more detail.

In formulating its own position, we believe the UK government should look to reinforce the principle of reducing the level of centralised decision making and delegating more responsibility to MS. Accordingly, we suggest that priority should be given to (a) strengthening the role of MS in the design and implementation of MAPs and developing a *modus operandi* that will give substance to the idea of regionalising the CFP; (b) ensuring that the detailed design of TFC systems is left primarily to the discretion of the MS; and (c) making certain that detailed rules governing the function of POs remain under the supervision of MS.

While attention is likely to remain focussed on particular issues, we would urge that time is given to considering the package as a whole; to the message it sends to both industry and the public as to the direction of change; to the interactions between the different proposals and the synergies (or lack of them) that will result; and to whether the unique system of governance of EU fisheries is appropriate to the task of securing the reform's successful implementation.

Appendix: The CFP Reform Process: from Green Paper to Draft Regulation

Green Paper COM (2003) 163	Consultation SEC(2010)428	Communication COM(2011)417	Draft Regulations COM(2011)425 and 416
1. Fleet overcapacity			
‘the fundamental problem of the CFP...use of market instruments may be more efficient and less expensive’	general agreement on the problem; most see RBM as solution but are cautious over systems involving transferable rights	‘introduces market based solutions for a strong profitable industry...achieving efficiency and reducing fishing capacity’	dReg 425, As 27-32 outline 'mandatory systems of transferable fishing concessions' As 34-36 refer to adjustment of fishing capacity and setting up national fleet registers
2. Imprecise policy objectives			
need to clarify and prioritise objectives to provide effective policy guidance	general agreement re priority for ecological sustainability; many oppose prioritisation, <i>a priori</i>	no direct reference	objectives remain largely unaltered and unprioritised - see dReg 425, A2.1; A3 (b)(d).
3. Decision making framework			
‘to create a clear hierarchy between fundamental principles, and technical implementation’; decentralised decision making and regionalisation	support for avoiding short term, top-down, centralised decision making; and for delegation of powers and regionalisation but divergence of views over implementation.	‘proposes an agenda that is ambitious as regards regionalisation and simplification...MS and stakeholders will take more responsibility for resource management [and] the coherence of such management in each sea basin’	in dReg 425, As 9-15 describe purpose and conduct of MAPs with As 17-20 referring to role of MS as ‘may be authorised...to adopt measures in accordance with the multiannual plans...for vessels flying their flag’; no reference to regional collaboration
4. Lack of incentivisation for responsible fishing			
giving more responsibility to stakeholders through co-management, results based management or self-management	support in principle for greater responsibility but uncertainty at industry level over the form; agreement on the important role of POs.	‘POs to become active players in the planning of fishing activities and stabilising markets’; ‘envisages actions to maintain and extend the role of ACs’	dReg 425,A4 includes reference to ‘broad involvement of stakeholders on all stages from conception to implementation of the measures’; A5S reestablishes ACs but gives no indication of how their roles are to be extended; see dReg 416 for detail of PO's functions

5. Developing a culture of compliance			
poor compliance; a weak control and enforcement	endorsement of new control regulation 1224/2099 but reservation over further powers	no direct reference	dReg 425, As 49 and 50 deal with control and enforcement and As 53 and 54 introduce conditionality in access to EU funding
6. Differentiated fishing regimes			
to help secure a future for coastal, small scale and recreational fisheries	widespread agreement on importance of SSF; divergence over differentiated approach with some preference for MS left to manage SSF through derogation on inshore waters	Several non-detailed references to 'specific measures to help manage SSF' but no proposal for a differentiated regime	no specific proposal re SSF (but text dealing with TFCs implies that MS may need to establish rules for protection of SSF)
7. MSY: making the most of our fisheries			
raising Q of whether CFP should move from managing stocks to managing fisheries	broad agreement on MSY as an agreed goal but doubts over whether FMSY is an interim or end target	MAPs seen as 'vehicle for long term political commitment to sustainable exploitation of resources'	dReg 425, As 9 <i>et seq</i> describe the central role to be played by MAPs in fulfilment of overall objective of sustainable fisheries and attainment of MSY
8. Relative Stability and access to inshore waters			
questions whether RS should be replaced by more flexible system	strong support for retaining RS; limited enthusiasm for attempting major changes to its application; support for retaining 12 nm limits	no reference to either issue	no change to RS though it is redefined in preamble to dReg 425 (paras 21, 22); principles governing access to 12 nm limits are reasserted in A6.

9. Trade and markets			
to counter low share of end price paid for fish and fish products; changes to intervention and PO roles suggested	COM as fundamental pillar of CFP; emphasis on strengthening the involvement of POs; simplification of intervention system supported (incl elimination of withdrawal mechanism)	'satisfying the real needs of informed consumers' by enhancing information available, voluntary labelling; POs to plan production and provide improved market intelligence	dReg416 places emphasis on giving POs a stronger role in ensuring catching sector activities are more market orientated; As 6-8 describe organisation and functions of POs. As 32 outlines their planning functions. As 35,36 outlines new 'storage mechanism' for stabilising markets
10. Integrating CFP into maritime policy			
issues of ecosystem approach, marine spatial planning	widespread support for implementation of IMP at sea basin level and alignment of CFP with environmental legislation	no specific proposals other than 'to develop CFP as part of broader maritime economy' and MSY seen as enabling a better contribution to achieving GES...in line with MFSD	no proposals
11. Knowledge base for CFP			
including need to promote synergies at EU, national and regional levels to integrate policy with wider maritime issues	consensus over basing CFP on best available science, participatory approach to research and need to improve quality and availability of scientific data	'envisages an integrated European information system...to allow for advanced fisheries management'	dReg 425, A37 describes data requirements for fisheries management; As 38,39 refer to multi-annual programmes for data collection and integrated research programmes (no details)
12. Public financial support			
present system at variance with CFP objectives (currently based on regional convergence goals); not designed to complement new policy directions	broad expression of need to continue financial support need for alignment of funding to assist long term economic and social sustainability; fleet restructuring remains a major challenge	'smarter financing': future support to be thoroughly reformed and simplified, including modernisation of intervention regime	dReg 425, As 53, 54 describe basic conditions for financial assistance to MS and operators; introduces idea of 'conditionality' proposing suspension of payments for non-compliance; dReg 416 describes new intervention support system (storage mechanism)