

CHAPTER 5 REGIONALISATION OF FISHERIES GOVERNANCE: AN EMPTY VESSEL OR A CORNUCOPIA OF OPPORTUNITY?

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Abstract

In May 2004 the Council of Ministers gave its final approval to the establishment of Regional Advisory Councils (RACs) to assist the Commission in developing appropriate policies for sustainable fisheries. The extent to which RACs are successful in giving fisheries policy a stronger sense of regional direction will depend on a range of factors including their structures, terms of reference, financial support, internal relations and the extent to which the Commission is willing and able to act upon their advice. Different interpretations of the role of RACs are beginning to emerge. Are they to act as technical committees dealing specifically with detailed fisheries regulation? Or should they serve as a wider point of reference for implementing the Commission's commitment to environmental integration and an ecosystem-based approach to fisheries management under the revised Common Fisheries Policy (CFP)? The chapter concludes that RACs could prove instrumental in transforming the style of fisheries management in Europe but that the path ahead is likely to be challenging and potentially difficult.

5.1 Introduction

One of the successes of the recent reform of the Common Fisheries Policy (CFP) from a British point of view was the decision to establish Regional Advisory Councils (RACs). The proposals appear to fall somewhat short of the aspirations of the National Federation of Fishermen's Organisations (NFFO) and the Scottish Fishermen's Federation (SFF) to see RACs granted greater executive powers. Nonetheless, the hope is that RACs will be in a position to influence the Commission and Member State governments in the development of regionally sensitive management policies. Somewhat surprisingly the Commission showed little inclination to fast track their implementation. Whether the delay was the result of more pressing business, nervousness on the part of the Commission as to what kind of demon it was releasing, or a desire to see the contentious cod and hake recovery plans settled before RACs were put in place, are moot points. A more likely explanation is that the Commission had not sufficiently thought through the role and structure of RACs at the time the final reform package was being presented to the Council of Ministers towards the end of 2002.

Late in 2003 the Commission published its detailed proposals in the form of a draft Regulation (EC 2003).¹ These revealed something of the intended scale, constitution, content and funding of RACs, but little about how the regional advice would be handled within the Brussels policy apparatus. Not until these essential parameters become

¹At the time of writing, the Regulation setting out the details of the structure of the RACs had not been published; it is understood that it will follow the draft proposals closely.

clearer - through practice rather than design - will the true purpose of RACs be evident. Nor will the question be answered as to whether the fishing industry has been duped into helping to prop up a failing system of management or handed a genuine opportunity to transform the process, content and outcomes of policy making. Much will depend on the extent to which RACs see their role essentially as technical committees reacting to policy proposals generated by the Commission, or regard themselves as empowered to take the initiative through 'own accord' recommendations presented to the Commission.

In itself, regionalisation changes very little beyond adding a new and potentially awkward feature to the institutional architecture of management. It need not imply any significant shift in the direction of management. On the other hand, it can serve both as a means of fine tuning policy to suit the particular conditions of the regional seas which make up the EU's 'common pond' and as a vehicle for developing a more integrated form of management based around an ecosystem approach which uses our expanding knowledge of ecosystem functioning to achieve the shared goals of sustainable fisheries and healthy marine ecosystems.

The aim of this chapter is to explore some of the tensions, risks and opportunities implicit in developing a regional perspective in the context of a reformed CFP. It begins by examining the role of regionalisation in policy implementation and the ways in which RACs may help in the delivery of the 'new' CFP, before looking more closely at possible undisclosed agendas for RACs and finally focusing on what could become a key issue, namely the relationship between regionalisation and environmental integration.

5.2 Regionalisation and the CFP

In its simplest terms the aim of a regionalised approach to fisheries management is to escape the imposition of a 'one size fits all' straightjacket, commonly associated with centralised direction of policy, by allowing for differentiation and diversification of the ways in which the living resources of the sea are managed. The CFP is no stranger to a regionalised approach. After all, the current regulatory system involving total allowable catches (TACs) and quotas is predicated on the management of spatially defined pressure stocks. But more strikingly the recovery plans currently being developed for cod stocks in the North Sea, West of Scotland and Irish Sea, considered by some to be the precursors to RACs, are prime examples of a spatially discrete management approach though not, it should be added, of integrated regional management. It is not yet clear how far the European Commission intends to further the cause of regionalisation through the setting up of RACs.

The problems of regionalisation focus largely on interrelated questions of scale, defining characteristics and the delineation of boundaries. Where the underlying purpose of regionalisation is to assist the implementation of centrally determined policy – as in the case of the CFP – the preference will be for fewer but larger regional units in order to reduce the disparities in the application of policy. In practice, the Commission has opted for predetermined 'regions' through the adoption of ICES areas used in stock assessment and the calculation of TACs and quotas. Such geometrical designs can only

offer a very crude approximation to verifiable regions based on the distribution of the major commercial fish stocks, natural ecosystems or patterns of fishing activity. But, in truth, drawing meaningful boundaries in the sea is an impossible task: the shifting distribution of fish populations and the dynamic nature of ecosystems mean that natural boundaries are both permeable and unstable. In a maritime context, therefore, regions are bound to be socially constructed rather than naturally occurring and their boundaries inevitably reflect a compromise between overlapping sets of distributions and ecosystems. But this does little or nothing to diminish their value in the implementation of policy. In fact a number of putative regional seas occurring wholly or partly within the EU's 'common pond' like the semi-enclosed Baltic, North, Mediterranean and Irish seas – despite being defined as ICES areas – do conform quite well to recognisable marine ecosystems. Elsewhere, along Europe's Atlantic coast the delineation of boundaries is likely to be more arbitrary and the results possibly less satisfactory.

Integrated regional management has been a feature of many traditional inshore areas such as those in the Pacific based on concepts of territorial use rights (Ruddle *et al* 1992) or – closer to home – the comprehensive administrative network of Sea Fisheries Committees initially established for England and Wales in the 1880s (Symes and Phillipson 1997). Much less common is the application of regional management to extensive offshore areas, made possible only by the declaration of Exclusive Economic Zones (EEZs) or Exclusive Fishing Areas (EFAs) in the second half of the 1970s. Indeed, leaving aside the short lived experiment in New Zealand abandoned in favour of rights based management in 1986, the only significant example is the United States.

In 1976 the *Magnuson Fishery Conservation and Management Act* laid the basis for the regional management of US marine fisheries requiring Fisheries Management Plans (FMPs) for the implementation and monitoring of national policy to be drawn up for each of eight newly designated regions. The rationale behind this move was that it is simply not possible to develop a single management plan covering all US fisheries given the very significant differences in fish stocks, fish behaviour and fishing activities between the east and west coasts and through several degrees of latitude from Alaska in the north to the Mexican border in the south. Subsequently, in a report to Congress outlining an agenda for the incorporation of an ecosystem-based approach into US fisheries management (NMFS 1999) it was proposed that the eight regional councils should prepare Fisheries Ecosystem Plans (FEPs) to complement the existing FMPs. According to Rosenberg (2003), the Regional Management Councils (RMCs) in the US have met with varying levels of success. While Alaska's adherence to scientific advice and a cautious approach to permissible levels of fishing effort have laid the foundations for a prosperous, relatively stable and essentially sustainable fishery, in New England the strength of vested interests on the Council has until recently prevented the issue of persistent overfishing from being tackled in an effective manner.

The Magnuson Act serves as both a guiding light and a warning beacon for the development of regional management in European waters. Just as, in the United States, FMPs are intended to ensure the implementation of national policy, so too in the EU high level management objectives, broad strategic goals and global targets set by the Commission and Council of Ministers can be more readily applied when full cognisance is taken of the particular conditions of the regional seas. On the other hand, there are features of the US situation which one would not wish to see repeated in the European context. In America, it can be argued that RMCs have become overly strong players.

The federal government finds it difficult to implement a management policy without the backing of the councils' recommendation. And because the administration has no authority to alter a FMP but can only refer it back to the council for amendment, the councils have the ability to delay the implementation of national policy if they so choose (Rosenberg 2003).

Rather more disturbing is the emergence in the United States of 'management by litigation'. A number of judgements in cases brought against the federal government for failure to manage stocks on a sustainable basis have contained rulings directing the management authorities to undertake specific courses of action in what are sometimes impossible time frames (McCay 1999). What may be good law does not necessarily make for good fisheries management.

Linked to the regionalisation of fisheries management is the recently revived concept of strategic spatial planning and management of the oceans, also viewed by some as an essential element in the implementation of an ecosystem-based approach to the management of the living resources of the sea. In this context, what strategic spatial planning can seek to achieve is a rational, well coordinated network of marine protected areas (MPAs). MPAs are defined by the IUCN (1994) as areas "dedicated to the protection or maintenance of biological diversity and natural and cultural resources and managed through legal or other effective measures". They embrace a range of situations varying from strict protection ('no take zones' or NTZs) to more permissive regimes where the emphasis is on sustainable exploitation rather than environmental protection. Closed areas are already commonly used for the protection of critical fish habitats (spawning and nursery grounds) to assist improved recruitment. But for purposes of environmental protection, the present system in Europe based largely on Special Areas of Conservation (SACs) under the EU Habitats Directive (EC 1992) is considered inadequate. The designated areas are seen by some as too small, largely confined to inshore waters and the level of protection weak. Networks of MPAs covering more extensive areas of sea are thought to offer considerable long-term benefits for both commercial fisheries and marine nature conservation (see, for example, Gell and Roberts 2003). Moreover, the development of a zoning system, deploying different levels of restriction in environmentally sensitive marine areas in order to define the level and type of use for fishing and other forms of exploitation, could help to ensure not only a more sustainable marine environment but also the peaceful coexistence of potentially conflicting uses.

Implicit in the concept of spatial planning and management is the extension of the principles of strategic environmental assessment (SEA) and environmental impact assessment (EIA) - already applied to other forms of maritime development including oil and gas extraction, wind farms and major aquaculture projects - to include fishing activities. SEAs are perhaps the more relevant to the present discussion: they refer to comparatively large geographical areas and involve the identification and assessment of environmental interactions arising from particular forms of activity (such as fishing) and the implementation of mitigation measures where the interactions are deemed to have negative impacts on the environment.

5.3 CFP reform and Regional Advisory Councils (RACs)

There can be little doubt that, on paper at least, the revised CFP marks a considerable advance on what has gone before. However, much will depend on the detailed interpretation of the new Regulations and proposed Action Plans and on the way decisions are implemented as to whether the rhetoric of policy reform is translated into new forms of management practice. The reform package (see Box 5.1) is not limited solely to the content of the ‘framework’ Regulation No 2371/2002 (EC 2002a) dealing with the conservation and sustainable exploitation of resources, and the amendments to arrangements for structural assistance to the fishing industry contained in Regulation No 2369/2002 (EC 2002b) which call a halt to the subsidised building of new fishing capacity from 2005. These basic Regulations are to be complemented by a raft of Action Plans, lacking the legal force of Regulations but outlining further policy developments in relation to environmental integration, sustainable aquaculture, discards and the socio-economic impacts of the reform package. In practical terms, the future development of Europe’s fishing industry will also be guided by the new financial framework, currently being constructed under the Financial Instrument for Fisheries Guidance (FIFG) for 2007 to 2013.

Box 5.1: Key elements of the new CFP

A Core legislation	<ul style="list-style-type: none"> · Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fishery resources under the CFP · Council Regulation (EC) No 2369/2002 amending Reg. (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector
B Contingent legislation	<ul style="list-style-type: none"> · Council Regulation (EC) 2370/2002 establishing an emergency Community measure for scrapping fishing vessels
C Action plans	<ul style="list-style-type: none"> · Biodiversity Action Plan for Fisheries: COM (2001) No 4 Vol iv · Communication setting out a Community Action Plan to integrate environmental protection requirements into the CFP: COM (2002) 186 final · proposed strategy for the sustainable development of European aquaculture · proposed action plans: <ul style="list-style-type: none"> (a) to counter the social, economic and regional consequences of restructuring the EC fishing industry (b) to reduce discards
D Other relevant considerations	<ul style="list-style-type: none"> · Sixth Environmental Action Programme · Communication from the Commission to the Council and the European Parliament: Towards a strategy to protect and conserve the marine environment COM (2002) 532 final · FIFG programme (2007-13)

Underlying the reform of the CFP is a number of fairly consistent messages which define the salient features of the ‘new’ policy approach. In the first place, there is the shift from a preoccupation with short term crisis management identified with the annual round of TAC fixing – which had induced considerable uncertainty and instability in the previous regime – to a system based on medium term (or multi-annual) planning.

However, a strategic long-term vision for the future of the Community's fisheries and fishing industries remains sadly lacking. Second, there is a much stronger commitment to the development of an environmentally responsible fisheries policy identified particularly in references to the incremental development of an ecosystem based-approach, emergency measures where threats to the conservation of resources and/or the marine ecosystem become evident, and to Action Plans for biological diversity, environmental integration and discards. And finally, there are signs of a tentative move towards a relaxation of the 'centralising tendency' in EU fisheries management through the creation of Regional Advisory Councils, though the move stops short of actual decentralisation or devolution of decision-making.

If the purpose of RACs is to assist the Commission in the achievement of the CFP's stated objectives – namely the sustainable exploitation of living marine resources, the application of the precautionary principle, the progressive implementation of an ecosystem-based approach and the creation of an economically viable and competitive fishing industry (EC 2002a:Article 2.1) – then there are grounds for arguing that the specific roles ascribed to RACs by the Commission are likely to fall short of their full potential. Box 5.2 suggests that the Commission sees these roles as restricted mainly to advice on matters included in Chapter II of the framework Regulation (Conservation and Sustainability). Specifically their roles are to advise on multi-annual management plans, the introduction of emergency measures and the management of fisheries in the 12nm fishing zone. Such a restrictive view of the RACs' core activities would seem to confirm a widely held view that RACs are conceived as technical rather than policy committees. There is, for example, no specific reference to RACs' involvement in relation to either the adjustment of fishing capacity (Articles 11-16) or, more remarkably, to the rules on access to fishing grounds and the allocation of fishery resources (Articles 17-20). These are precisely the kinds of policy areas where regionally based professional advice can make a significant contribution. Given the proper scope and structure, regionalised management can provide the essential framework for addressing the issues of sustainable fisheries and environmental integration. In the context of the CFP, however, the question which still needs answering is the underlying reason for the establishment of RACs.

5.4 RACs: The hidden agendas?

In seeking to explore the underlying reasons for introducing what could be an important new element into the architectural design of the CFP, three inter-related scenarios – good governance, policy process and institutional structures – are examined in detail.

5.4.1 RACs AS GOOD GOVERNANCE

According to the Commission's Green Paper (EC 2001a), one of the reasons for the failure of the CFP has been the lack of effective consultation and meaningful dialogue with the principal stakeholders. Thus the fishermen came to be seen as the object rather than the subject of fisheries management. Largely ignored in the formulation of policy, fishermen had become alienated from the policy process, engendering weak levels of

commitment to its outcomes and, in some instances, a cynical disregard for the regulatory measures. The need, therefore, was to turn this situation around, to engage fishermen more fully in the formulation and implementation of policy in the hopes not only of capturing the vital practical experience of fishermen but also of regaining the industry's confidence in the policy process.

Good governance features quite prominently in the new CFP (EC 2002a: Article 2.2) where the key principles are defined as:

- (i) a clear definition of responsibilities at Community, national and local levels
- (ii) a decision making process based on sound scientific advice which delivers timely results
- (iii) broad involvement of stakeholders at all stages of the policy from conception to implementation and
- (iv) consistence [sic] with other Community policies...

The juxtaposition of the second and third of these principles is interesting, particularly in view of the growing lack of confidence in the science of stock assessment felt by much of the fishing industry.

According to Rhodes (1996) modern concepts of governance also involve the "hollowing out of the state" and the transfer of some responsibility for management decisions from the state to responsible stakeholder-led organisations. In the eyes of the fishing industry, the involvement of 'non-accountable bureaucrats' in the Commission and 'self-seeking politicians' in the Council of Ministers lies at the heart of the CFP's failure. The horse-trading that reportedly takes place around the time of the December Council of Ministers meetings discredits the CFP as an objective, scientifically grounded and transparent policy in the eyes of most stakeholders. Politicians are no longer to be trusted: they are culpable of selling untested solutions on the basis of a quick fix, as with the development of the first generation of cod recovery plans introduced at the time of renegotiating the CFP. The industry therefore sees the transfer of key areas of decision making from Brussels to industry-based regional management organisations as a means of 'taking the politics out of fisheries management' and reestablishing the basis of a sound, transparent and workable management system. From the industry's perspective, however, RACs do not really provide this opportunity: they are advisory in function and involve no transfer of executive powers to stakeholder groups as the industry had originally hoped (SFF and NFFO 2000). Only the sources of professional advice are being decentralised and there are no guarantees as to how much influence RACs will be able to bring to bear on the final decision-making.

5.4.2 RACs AS PART OF A REFORMED POLICY PROCESS

Despite a tendency to regard the adherence to the principles of good governance as something of a cosmetic exercise in the presentation rather than the substance of the new CFP, it is arguable that RACs do have a potential to alter the ways in which advice is recruited, managed and translated into policy. Perhaps most immediately important is the opportunity to rebalance the contributions of science and practical experience.

Recent events concerning attempts to put in place stock recovery plans have widened the gap between fishermen and scientists not only over the assessment of the current

and future states of the cod stocks in the waters around the UK but also in relation to the interactions between cod and other commercial species in a mixed fishery. Though such variance can in part be accounted for by differences in the time horizons and levels of precautionarity adopted by fishermen and scientists, there is a disturbing lack of respect now shown by many fishermen for the science that must underpin policy decisions. There is a sense in which science has unwittingly obscured the wider truth. It has led us to believe in the past that we knew what was happening to the fish stocks and that scientific advice, correctly applied, could steer us away from the ultimate disaster. Since the science has become undermined by increasing uncertainty and from the time scientists started to become ‘prophets of doom’, the industry stopped believing in the science. It rejected both the message and the messenger and turned instead to divine providence. RACs offer the possibility of rapprochement and bridge building between the two protagonists, especially if they are able to incorporate some of the procedures for dialogue and mediation between the industry and those responsible for stock assessments already adopted by the North Sea Commission.

Hitherto, the European Commission has relied rather too heavily on a technocratic approach to fisheries management based on a largely unchallenged acceptance of scientific advice from ICES. Consultation with stakeholders has been limited to periodic meetings of the Advisory Committee on Fisheries and Aquaculture (ACFA). Otherwise the industry’s main hope of influencing the outcomes of decision making has lain with its ability to put pressure on the fisheries ministers to act in the industry’s interests at meetings of the Council of Ministers. The extent to which RACs can in the future open up a new and constructive channel of influence and make a real contribution to the policy process will depend on two unresolved factors: the scope which they are given (and which they also define for themselves) in terms of their remit; and the mechanisms adopted for handling regional advice within the Commission.

Although the specific tasks assigned to RACs (see Box 5.2) are rather narrowly defined, a good deal of latitude is granted in terms of ‘own account’ recommendations and a catch-all statement of “any other activities necessary to fulfil their functions’ (EC 2002a:Article 31.5). In effect, RACs will be in a position to set their own terms of reference. Rather less certain is a guarantee that the advice from RACs will be listened to and acted upon. Apart from a requirement that RACs “shall transmit an annual report to the Commission, the Member States ... and the Advisory Committee on Fisheries and Aquaculture” (EC 2003), there is no clear indication of the system for absorbing regional advice within the central decision making machinery. Moreover, there is no stated requirement for the Commission to take account of the advice it receives from RACs when formulating proposals for fisheries management and, therefore, no obligation on the part of the Commission to explain how the advice has been viewed and, in the event, why it may have been discounted.

Box 5.2. Council Regulation (EC) 2371/2002: The framework for the new CFP

<i>Article</i>	<i>Description</i>	<i>Detail</i>
1	Scope	... shall cover conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products ...
2	Objectives	... ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions ... apply the precautionary approach ... aim at a progressive implementation of an eco-system-based approach ... be guided by the principles of good governance.
5/6	Multi-annual plans	multi-annual recovery plans for stocks outside SBL and multi-annual management plans for other stocks, including the setting of catch targets, effort limitations and technical conservation measures.
7/8	Emergency measures	... evidence of a serious threat to conservation of living aquatic resources or to the marine ecosystem resulting from fishing activities and requiring immediate attention, the Commission ... may decide on emergency measures which shall last for not more than six months; ... in waters under the sovereignty or jurisdiction of Member State where any undue delay would result in damage that would be difficult to repair that Member State may take emergency measures ... not exceed three months.
9/10	MS measures within 12 nm zone	... non-discriminatory measures for conservation and management of fisheries resources and to minimise effect of fishing on the conservation of marine ecosystems within 12 nm of its baselines; ... where measures to be adopted are liable to affect vessels of other Member States ... be adopted only after the Commission, Member States and Regional Advisory Councils concerned have been consulted.
11/12	Adjustment of fishing capacity	Member States shall put in place measures to adjust fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities ... (involving) ... withdrawal of licence and fishing authorisations; ... Commission shall establish for each Member State reference levels ... for the total fishing capacity.
13/16	Entry and exit schemes	
17/18/19	Access rules	In the waters up to 12 nm from baselines ... member States shall be authorised ... to restrict fishing to vessels that traditionally fish in those waters from ports on the adjacent coast; ... for species of special importance in the [Shetland Box] ... fishing activity by Community vessels ... of not less than 26 m ... shall be governed by a system of prior authorisation [to be reviewed by 31 December 2003].

Box 5.2. (cont)

20	Allocation of fishing opportunities	The Council ... shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits ... in such a way as to assure ... relative stability of fishing activities...; each Member State shall decide on the method of allocating the fishing opportunities assigned ... inform the Commission of the allocation method.
21-28	Control and enforcement	
30	Committee for fisheries and aquaculture (ACFA)	The Commission shall be assisted by a Committee for Fisheries and Aquaculture (see Decision 1999/468/EC)
31,32	Regional Advisory Councils (RACs)	... shall be established to contribute to the achievement of the objectives ... and to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones ... composed principally of fishermen and other representatives of interests affected by the CFP, such as ... fisheries and aquaculture sector, environment and consumer interests and scientific experts from all Member States having fisheries interests in the sea areas ... may be consulted by the Commission in respect of proposals for measures ... without prejudice to the consultation of STECF and the Committee on Fisheries and Aquaculture ... may submit recommendations and suggestions of their own accord ... inform the Commission or the Member State ... of problems relating to the implementation of Community rules ... and conduct any other activities necessary to fulfil their functions ... Regional Advisory Councils shall inform the Committee for Fisheries and Aquaculture of their activities ... The Council shall decide on the establishment of a RAC [which] ... shall cover sea areas falling under the jurisdiction of at least two Member States.
33	STECF	... Scientific, Technical and Economic Committee for Fisheries shall be...consulted at regular intervals ...[and] the Commission shall take into account the advice from the STECF when presenting proposals on fisheries management.

For regional advice to make its greatest impact it must be disseminated to the widest possible audience including the Commission, relevant member states and the European Parliament, *inter alia*. For it to succeed it will need to engage the support of at least the majority of Member States directly involved.

5.4.3 RACs AS STRUCTURES

Central to the detailed design of RACs is the question of whether they are to function simply as technical advisory committees - a position favoured by the fishing industry - or to be considered as part of the essential apparatus for strategic regionalised management of marine resources. Only if they are portrayed in this broader context will they be able to exercise real influence over issues of sustainability, environmental integration and the future of fishing dependent communities. Despite some concessions to the principles of good governance in defining a relatively broad constituency of membership, the balance of evidence to date seems to point to the narrower view of their functions.

A key structural problem is how to contain the array of national and sectoral interests which seek representation on the RACs within a necessarily compact decision making body. One solution to the 'dilemma of numbers' lies in what can loosely be termed as a bi-cameral model (see Box 5.3). This involves an open annual conference, allowing all

relevant interest groups to meet, debate the issues and draw up an agenda for action, and a much smaller 'executive council' meeting throughout the year to respond to requests for comment and advice from the Commission and/or the member states and to formulate specific recommendations. The work of the 'executive council' could also be assisted by expert permanent or *ad hoc* working groups able to provide more detailed information.

The Commission's proposals, adopted by the Council of Ministers, follow the bicameral model quite closely but restrict access to the annual assembly to delegates nominated by the Member States, with the much smaller executive body chosen by delegates to the assembly. Two thirds of the seats on both the assembly and the executive are to be occupied by representatives of the fisheries sector (vessel owners, crew members, producers' organisations, processors and women's networks), with at least one seat for each member state with fishing interests in the area. Non-fishing interests, embracing aquaculture, recreational fisheries, marine conservation and consumers, are to take up the remaining one third of the available seats. Although the Commission's draft proposal (EC 2003) originally recommended that the executive body should comprise 12-18 members, it is widely expected that the final Regulation will see the upper limit raised to 24. Otherwise, it will be difficult to believe that the Commission has got its sums right. The size of each RAC should be determined by the complexity of the regional sea in question. A council of *circa* 15 members might be adequate for an area like the Irish Sea with only two coastal states involved (and a limited number of other member states with active fishing interests) but a council of twice that number may seem scarcely sufficient to encompass the range of interests represented in the North Sea (with at least seven coastal states as well as other member states and non-member states with fishing interests in the area).

Again, the size and balance of the councils should reflect the intended scope of activity. A small council with a strong majority of fishermen would suit the limited agenda of a technical advisory committee, but it is hard to imagine a council of 18 members, with only six representing non-fishing interests, being sufficiently well equipped to engage in a wider range of tasks.

For some time there has been a lively debate as to who precisely are the relevant stakeholders, how to balance the representation and how to select the members. There is general agreement that representatives of the fishing industry should form the largest single group and possibly occupy the majority of seats, though probably not to the extent favoured by the national fishing federations at 75 per cent (Beveridge and Morrison 2003). In the event, the Commission and Council of Ministers have resisted such claims. Despite recommendations from the influential Economic and Social Committee to restrict non-fishing interests to one fifth of the seats and an even more extreme view expressed by the European Parliament that non-fishing interests should be relegated to the status of observers, the original 66:33 allocation has prevailed. It is worth alluding once again to the situation in America where commercial fishing interests make up 49 per cent of voting members on the eight Regional Fishery Management Councils and recreational fisheries a further 33 per cent. Here, Okey (2003) argues that this skewed representation of interests has helped to generate perverse incentives for management decisions that conflict with sustainability goals.

Box 5.3: Regional Advisory Councils: Comparative structures

	<i>Commission Proposals</i>	<i>Irish Sea RAC</i>
Functions	<ul style="list-style-type: none"> · to advise Commission and Member States on matters relating to fisheries management with particular reference to multi-annual fishing plans, emergency measures and inshore management · own accord recommendations to Commission and Member States · inform Commission and MS re problems relating to implementation of Community rules 	<ul style="list-style-type: none"> · an independent ‘think tank’ responsible for (c) long term strategy for development of sustainable fisheries (d) integrated fisheries management plans · principal reference point for consultation by Commission and Member States in relation to proposals for regulation of fishing activities
Architecture	<ul style="list-style-type: none"> · an annual general assembly (two thirds of members represent fishing interests) · an executive council of 12-18 members (two thirds fishing interests) 	<ul style="list-style-type: none"> · an annual conference open to all stakeholders · an executive council of 12-15 members, supported by · expert working groups (fisheries; environment)
Membership	<ul style="list-style-type: none"> · all Member States having fishing interests in the sea area have a right to participate as members or observers 	<ul style="list-style-type: none"> · UK and Ireland as coastal states; France, Belgium and the Netherlands as other MS with active fishing interests
Composition of Executive Council	<ul style="list-style-type: none"> · membership should include b) representatives of the fisheries sector (66%) viz vessel owners, small scale fisheries, FPOs, aquaculture producers, processors and merchants c) ‘other interests’ (33%) viz environmental groups, consumers, recreational fishing and general interest (e) scientists from national/international institutions invited as experts (but not full members) 	<ul style="list-style-type: none"> · not more than two persons from the national administrations · not more than two scientists · not fewer than 8 representatives of the fisheries sector (including aquaculture, inshore fisheries, other commercial fisheries, processors etc) · two representatives of the environmental interests (NGOs and/or country agencies) · one representative of recreational fishing interests (ie: fishing interests 53%; non-fishing interests 47%)
Funding	EU funding for the first 5 years only, reducing from _200,000 in year 1 to _110,000 in year 5	European Commission (40%); Member States (40%); stakeholders (20%).
Sources	Council Regulation No 2371/2002; Draft Proposal COM(2003) 607 final	Symes <i>et al</i> (2002)

Representation of fishing interests could prove problematic for certain member states at least. In an industry more accustomed to fission rather than fusion and where strong differences of opinion between inshore and offshore sectors or different gear groups or neighbouring districts are quite normal, experience suggests that it will be difficult for all fishing interests to coalesce around a single nomination. This may cause difficulties for the selection of representatives, the mindset of those appointed and for the development of consensus within or between the different stakeholder groups. Although there are strong grounds for preferring seats to be occupied by active fishermen so as to

tap directly into their reservoirs of local knowledge, experience and good practice, it seems likely that in most cases those seats will fall by default to officials of fishermen's organisations who – though well versed in the arts of negotiation and the rough and tumble of fisheries politics – may lack the experience and practical expertise of professional fishermen.

Even more difficult is the definition of, and selection procedures for, the non-fishing interests. The range of relevant interests is itself difficult to delimit, bearing in mind the need to ensure that council members should add value to the discussions. They should certainly include environmental groups (either NGOs or official conservation agencies) and recreational fishing interests which in some areas may make a stronger contribution to the local and regional economies than the commercial fishing industry (Nautilus Consultants 2000). In both these instances, separate national representation may be unnecessary, though it will still be essential for the appointed members to have well-founded knowledge and experience of the particular regional sea. Some relief for the potential overcrowding of the councils is afforded by the decision that scientists and administrators should attend in the capacity of expert advisers rather than full members of the councils. This does, however, have the possibly unfortunate effect of distancing both the scientific community and the Member State administrations from any decisions which the council may eventually take.

Managing the work of the councils, ensuring that they do not disintegrate under the stress of internecine warfare, and framing advice in the form of strong consensus rather than weak compromise will call for inspired leadership on the part of the chairperson. To fulfil such credentials suggests that the chair would need to be appointed as an independent person with no history of allegiance to any one sectional interest within or outwith the fishing industry and, as far as possible, free from active political connections with any Member State involved. Notwithstanding, the Commission and Council of Ministers have determined that each RAC shall designate a chairperson – presumably from among its own membership – by consensus. Impartiality, therefore, may prove difficult to guarantee.

At this stage, estimating the annual operating costs of RACs can be little more than speculation. Costs will be determined by the workload and that, in turn, by the frequency with which they are called upon to give advice and by any self-imposed tasks. A high workload will probably require a dedicated secretariat and support staff or at least the means to buy in appropriate expertise. It is also worth noting that RACs may be required to make rapid responses ('within five working days') to the Commission or Member State concerning proposals for emergency measures. In 2004 the Council of Ministers agreed a five year schedule of funding for RACs from EU sources. The level of public funding will be reduced annually from a maximum of €200,000 (or 90 per cent of expected costs) in year 1 to €110,000 (50 per cent) in year 5. Thereafter RACs are intended to be self-funding, except for an additional yearly grant of €50,000 to cover costs of translation and interpretation. While there may be merit in self-funding as a means of ensuring value for money, it also serves to confirm the impression that the Commission sees RACs as low key rather than high profile additions to the institutional architecture.

However they are constructed, it is unlikely that RACs will conform to a standard pattern of behaviour. In some instances, partnerships between the key players may be

easily forged, leading to a more coherent view of the region's needs and a more proactive approach, while in others the emergence of a sense of partnership may be constrained by cultural differences, contentious issues or old rivalries. It is clear from the negotiations leading up to the revision of the CFP that the proposed introduction of RACs was received very differently across Europe. Attitudes varied from the strongly supportive views of the UK, Sweden and the Netherlands, through the more cautious responses of Denmark, Belgium and France, to the deeply suspicious if not openly hostile reactions of the fishing industry in Spain. Interestingly, some of the RACs will bring together representatives from Member States with rather contrasting perceptions of RACs and their functions.

5.5 RACs: The handmaidens of environmental integration?

One distinctive feature of the new CFP is the added emphasis on environmental issues. This is evident not only in its objectives (Article 2.2) but more especially in the constellation of action plans which will have a direct bearing on matters of environmental protection. This change of emphasis was partly foreshadowed in a Commission policy document on the integration of environmental protection requirements which stated that:

Conservation of marine ecosystems should be central to an environmentally integrated policy for fisheries. Action should be taken to conserve and, where possible, rebuild commercial fish stocks and non-commercial biota and habitats, but also with due attention to the consequences for the whole ecosystem, in order to restore their functionality and productivity when these have been damaged. Similarly...where non-commercial biota and habitats are threatened, action to remove threats should take account of its implications for fisheries and the wider productivity of the ecosystem. (EC 2001b:12)

It is reasonable to infer potentially strong links between the regionalisation of fisheries management and the means for delivering environmental integration. The 'regional seas' form a logical spatial framework, particularly in the case of the semi-enclosed Baltic, North and Irish seas which may be considered as reasonably self-contained ecosystems. Early advocacy of the ecosystem based approach to fisheries management in Europe was presented in the specific regional context of the North Sea:

In the management of living resources [an ecosystem approach] means...that the decisions are based upon the best scientific knowledge of the functions of the ecosystem, including the interdependence of species and the interactions between species (food chains) and the abiotic environment, as well as knowledge of the temporal development of the ecosystem...The North Sea should be seen as a whole and managed as one ecosystem. Any future ecosystem approach to the North Sea management would imply that management decisions are based on the precautionary approach, taking into account all ecosystem effects of human activities as well as the impact of the environment on its resources. (Svelle *et al*, 1997:101)

This 'whole ecosystem' approach has more recently been taken up in the JNCC's Irish Sea Pilot Project, commissioned by DEFRA. It has as its goal the development of a prototype for an integrated marine nature conservation framework at the regional scale.

In the context of the CFP and the emergence of a regional dimension there is a need to explore a little more fully the ideas of environmental integration and an ecosystem-based approach to see how far RACs may be able to assist in the implementation of the environmental agenda. Although in some respects the two concepts are quite closely related, they have very different objectives. Environmental integration is concerned with the broad commitment to ensuring that robust environmental protection measures are incorporated into all areas of EU policy. In a fisheries context, it seeks to minimise the negative impacts that fishing activities may have on the marine environment. This will involve a series of 'priority actions' (i) to reduce fishing pressure to sustainable levels; (ii) to improve fishing methods so as to reduce incidental bycatches; and (iii) to raise the level of understanding of marine ecosystems through monitoring and assessment (EC 2002c). To these one needs to add a fourth 'priority action' namely the regulation of fishing practice in environmentally sensitive areas through a coordinated network of MPAs.

The new CFP is also pledged to a progressive implementation of an ecosystem-based approach. Its application in fisheries management is not concerned with the conservation of threatened habitats and species *per se*. Nor does it necessarily imply a radical agenda of intervention. Instead, it seeks to use our developing knowledge and understanding of ecosystem behaviour to create sustainable fisheries through safeguarding the essential ecosystem processes and functions on which all living resources of the sea depend. This knowledge should permit the fine tuning of regulatory measures and lead eventually to abandoning the heavy handed system of TACs and catch quotas and placing greater reliance on technical conservation measures adapted to the specific requirements of particular ecosystems and the management needs of the commercial fisheries contained therein.

The successful accomplishment of environmental integration and the development of the ecosystem-based approach quite clearly call for spatial planning and management within a defined regional framework. As marine ecosystems are highly dynamic and as our understanding of their behaviours can be expected to increase rapidly over time, the system of spatial planning and management will need to be flexible and adaptive in style. In elaborating a possible model for an Irish Sea RAC, Symes *et al* (2002) suggested that its advisory role should comprise two distinct functions: first as an independent 'think tank' capable of developing a long term strategic vision for the region's fisheries and second as a reference point for consultation on technical proposals for fisheries management. In discharging the first of these functions, the RAC should be in a position to follow the US approach and develop both FMPs and FEPs - or rather, a single integrated management plan - for regional sea activities. It is, however, difficult to envisage RACs, as outlined in the previous section, having either the resources or the competence to undertake such activities. As a result, the tasks associated with environmental integration will be much harder to achieve.

5.6 Conclusions

In May 2004, approval was given for the establishment of five Regional Advisory Councils (Baltic Sea, Mediterranean Sea, North Sea, North Western Waters and South Western Waters) covering EU waters, together with two Sectoral Councils - one for pelagics (herring, mackerel, horse mackerel and blue whiting) and the other for distant water fisheries. Despite the fact that many in the industry remain sceptical of the potential for RACs to add real value to the management of EU fisheries, the response to the green light - at least in northern Europe - has been positive and immediate. It is likely that a North Sea RAC will be in place before the end of 2004. Discussions on a North Western Waters RAC are progressing, though significantly consideration is already being given to a sub-regional structure to take account of the area's diversity (*Fishing News*, 2 July 2004). And moves to establish the pelagic council have been initiated by the Northern Pelagic Working Group of the European Association of Producers' Organisations (*Fishing News*, 18 June 2004).

Such alacrity is encouraging. But have the fishing industries of the EU been duped, in the name of political correctness, into accepting a new element of the policy process which has more to do with the presentation of the CFP than with its fundamental reform? Or does the creation of RACs signal the intention to grant the industry – and other stakeholders – a real measure of influence over the formulation and implementation of policy at the regional level? Only time will tell.

The 'empty vessel' scenario posed in the title of this chapter will only be true if RACs are used simply to perpetuate a failing system of management. The Commission's reluctance to accede to the industry's wishes to be given direct responsibility for certain areas of management is understandable. RACs will need to prove themselves capable of embracing consensual politics in providing coherent, relevant and timely advice in a trans-national, regional setting. The risks of this limited experiment in regionalisation destabilising the overall management system are minimal; the ultimate responsibility of the central institutions of the EU in matters of decision-making remains undiminished.

Indeed the new European Constitution, still to be ratified, confirms the unchallenged supremacy of the Commission in the formulation of policy. Fisheries remains one of the very few areas of 'exclusive competence' for the Commission, along with monetary policy, commercial policy and the customs union - a rather strange set of bedfellows.

Risks to the political image of the fishing industry, on the other hand, are somewhat greater. The exposure of divisions within a region's industry in defence of vested interests and a consequent failure to make its mark on fisheries policy will diminish the industry's credibility concerning its commitment to sustainability. Collaboration, partnership and consensus are the essential ingredients of success - but forging partnerships between disparate national and sectoral interest groups may prove a difficult task, and certainly not one to be hurried. It is therefore easy to understand why the fishermen's federations in the UK argue the need to build up the strength of RACs through a number of small victories rather than attempt to scale the heights of major issues in the early days of their existence (Beveridge and Morrison 2003).

The metaphor of 'cornucopia' is equally misplaced. For those who assume that RACs

will immediately open wide the doors to a radically new approach to fisheries management the disappointment is likely to be much greater. Regionalisation can provide a new framework for fisheries management but it can only lead to the Holy Grail of sustainable fisheries in diverse, productive and well integrated ecosystems if it is allowed to become a vehicle for delivery of a more holistic approach embracing integrated management, precautionarity, an ecosystem-based approach, strategic long term planning and an ability to cope more effectively with scientific uncertainty. Such a radical agenda will be enormously difficult to manage politically, especially if the majority opinion on the RACs remains unconvinced of the benefits to be derived.

But the value of regionalisation is precisely that it allows things to be done differently, to jettison some of the historical ballast associated with an old style, command-and-control CFP built on a very narrow perception of management and trusting to a limited range of policy tools - dominated by TACs and catch quotas - which place unrealistic demands on the science of fish stock assessment. In time, RACs may open up a route towards the peaks of integrated management, but they will first have to negotiate the difficult terrain to be encountered in the foothills of a revised CFP.

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