

## ANNEX 2: REGIONALISATION NECESSARY TO IMPROVE GOVERNANCE

As active member in several of the Regional Advisory Councils (RACs), the Fisheries Secretariat and Seas At Risk would like to provide some input into the current debate and thinking about regionalisation and the RACs in the context of CFP reform. This paper highlights some of our experiences and concerns as members of the RACs, and we hope that they will be taken into account when the regional aspects of the future Common Fisheries Policy are outlined and discussed over the coming months.

### **The case for increased regionalisation**

The top-down, centralised micro-management approach that has been used in EU fisheries management to date has failed. It has not been adaptive or participative enough to deliver tailored measures or to ensure the right level of stakeholder buy-in. As a result, this valuable common resource is in many cases being overexploited and compliance with rules and regulations has frequently been low.

Therefore, a new regionalised approach is needed, where Member States, together with the fishing sector and other stakeholders, tailor the implementation of overarching objectives and targets set at the EU level, meeting requirements of the Common Fisheries Policy as well as wider environmental legislation under, for example, the Habitats and Birds directives and the Marine Strategy Framework Directive.

According to the Commission's Green Paper<sup>1</sup>, the current management framework results in short-term decisions because it does not distinguish between overarching principles and implementation – all decisions are taken at the highest political level. This also makes the policy inflexible, and with the co-decision procedure established under the Lisbon Treaty, this is truer than ever. The time period from proposal to decision may now stretch to over two years, making continued micro-management at the highest political level impossible.

As fisheries policy is an area of exclusive EU competence, the options for changing the decision-making framework are limited. One way to go would be a more extensive use of the so-called comitology procedure (the Commission drafts proposals in close consultation with Member States) when agreeing on more detailed management measures and implementing overarching targets. Another would be to implement regional management solutions through Member States, subject to Community standards and control.

### **The Commission's proposal**

To date, aspects of regionalisation are contained primarily in the proposed basic regulation, but are also covered in the proposal for a new EU funding mechanism – the European Fisheries and

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<sup>1</sup>COM(2009)163. Green Paper: Reform of the Common Fisheries Policy.

Maritime Fund<sup>2</sup>. The proposed basic regulation<sup>3</sup> essentially provides Member States with the opportunity to establish conservation measures under the framework of adopted multiannual plans (MAPs), as long as they are compatible with the overarching objectives of the CFP, as well as the scope and objectives of the MAP (Art. 17–20). Similar possibilities are set out under Chapter II on Technical Measures (Art. 21–24), where again under a technical measures framework, Member States would be able to adopt further measures applicable to vessels flying their flag.

Earlier this year, the Commission published a non-paper on regionalisation<sup>4</sup>, which provides two main reasons for increased regionalisation of the fisheries policy:

1. the need to move away from micromanagement at EU level; and
2. the need to ensure that rules are adapted to the specificity of each fishery and sea area (region).

The non-paper sets out Commission thoughts in more detail on how regionalisation can be implemented, focusing on the two paths established in the proposed basic regulation: MAPs and technical measures. While a framework MAP would still be agreed on the EU level through co-decision procedure, the Member States would operationalise the plan through national legislation, setting out the more detailed rules of implementation. The same route is envisaged for regional technical measures, under an EU framework.

According to the Commission, regionalisation would build on existing cooperation between Member States, where it exists, and countries could set up a coordinating system, enabling regional meetings to discuss and agree on measures. The importance of Member States working together is stressed in the non-paper, which also states that if Member States are unable to agree on appropriate and necessary measures, the Commission will step in through delegated acts or normal co-decision procedure. Finally, the Commission states that a vital element of regionalisation is increased sector responsibility to manage fisheries. Self-management of quota-take and marketing is to foster a culture of involvement, responsibility and compliance.

The current Regional Advisory Councils (RACs) are mentioned in a number of places in the proposed basic regulation, but also have their own section under Part XII Advisory Councils (Art. 52–54). Essentially, they will be renamed Advisory Councils (ACs), as some of the future organisations will not be dealing with specific sea areas but broader issues, such as aquaculture. They would continue to represent a mix of stakeholder interests, and would remain advisory in their nature. They would also continue to receive some EU funding under the new European Maritime and Fisheries Fund (EMFF). It seems, however, as if the Commission is planning to adopt delegated acts concerning the composition and the functioning of the ACs, such as the proportional representation of different stakeholders.

In terms of funding for regional management, several funding streams outlined in the new EMFF could be of relevance. The direct funding for the future ACs is provided under Chapter II<sup>5</sup> (Art. 84 and 88). The specific objectives under this chapter are to facilitate the implementation of the CFP as well as the Integrated Maritime Policy (IMP), in particular as regard to – among other things – the Advisory Councils. Article 88 specifies that the EMFF may support the operating

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<sup>2</sup>COM(2011) 804. Proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund.

<sup>3</sup>COM(2011) 425. Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy, Title III Regionalisation.

<sup>4</sup>European Commission non-paper on four subjects (2012). *CFP reform – regionalisation*

<sup>5</sup>COM(2011)804. Proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund, Chapter II: Accompanying measures for the Common Fisheries Policy and the Integrated Maritime Policy under direct management.

costs of the ACs, and that the ACs may also apply for EU support as bodies "pursuing an aim of general European interest".

Article 35, specifically sets out to ensure efficient implementation of conservation measures under regionalisation in the basic regulation, according to the process outlined above under MAPs (Art. 17) and technical measures (Art. 21). Other sections that could provide funding to support and strengthen both regional management efforts and stakeholder participation are also found under Title V<sup>6</sup>, covering advisory services (Art. 29), partnerships between scientists and fishermen (Art. 30) and promotion of human capital (Art. 31) through networking, exchange of experience and social dialogue.

There is little mention of regionalisation, except a referral to Member State's laws to limit the impact of fishing on the marine environment adopted in the context of regionalisation (Art. 36), dealing with funding for gear changes and modifications.

### **Comments and adjustments needed in the Commission's proposal**

We fully support a more regional approach to management of European fisheries; one better tailored to finding appropriate regional and local solutions to management issues. However, the elements in the European Commission's proposals leave a lot of unanswered questions regarding regionalisation. Even with the more recent non-paper from the Commission, it is still not sufficiently clear how regionalisation will work in practice and which institution would be responsible for what. Specifically, no clear regional structure is mentioned or modelled, nor an obligation to consult regionally (e.g. as under the Water Framework Directive, (WFD)).

The Commission has recently started talking about a 'seabasin' approach, which requires that the measures adopted for each fishery under the multiannual plans are co-ordinated effectively. This assumes building on existing co-operation among Member States, which today is rarely formalised. The Commission regards examples of this type of co-operation between Member States to be effective mechanisms, which can be further developed and expanded upon. This aspiration is, however, not adequately reflected in the legal language of the proposal and will require greater consideration.

Our conclusion is that the proposed basic regulation does not provide sufficient detail. Measures to achieve the overarching objectives within multiannual plans and technical measures also need to be supported by other legal instruments central to the CFP, such as the EMFF and the Common Market Organisation<sup>7</sup> (CMO), which is why it is important in terms of policy coherence that all three of these legislative instruments are looked at in unison.

Overall, there are a number of areas of concern. The current wording in the non-paper, poses two major risks, as much is left up to Member States and implementation through national law:

- 1) that implementation is unequal, resulting in a national rather than regional approach and going against the "level playing field" advocated in EU law, and
- 2) that some Member States may choose not to take any measures, simply awaiting a Commission response and not take real responsibility for finding regional solutions.

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<sup>6</sup>COM(2011)804. Proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund, Title V Measures financed under shared management, Chapter I Sustainable development of fisheries.

<sup>7</sup>COM(2011)416. Proposal for a Regulation of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products

Clarifications and changes needed in current proposal:

- Who will draft the national and fishery-level plans? This process needs to maximise the engagement of the stakeholders in an individual fishery, ideally through co-management procedures. Consultation and participation of stakeholders should be assured both in the drafting and implementation of these plans.
- All efforts at regionalisation are currently tied to EU-level frameworks for multiannual plans or technical measures regulations. All such efforts are currently stalled because of disagreement between Council and European Parliament over co-decision procedures. If this is not resolved, much needed management measures as well as regionalisation processes will continue to be delayed. It would be helpful if the Commission could set out a way forward for a regional level process, bypassing this stalemate.
- Member States sharing a fishery should be obliged to cooperate and ensure consistency of approach at fisheries level.
- Increased regionalisation is clearly going to create a greater workload and increasing costs for Member States in implementation. Yet, no funding is foreseen for this under the proposed EMFF. Funding for cross-boundary processes could be provided under Art. 30.
- EMFF support should also be available to support stakeholder participation in regional processes and for the establishment of co-management groups at fishery level.
- Consideration should be given to the role of different recipient groups, such as Producer Organisations, Fisheries Local Action Groups (FLAGs) and Advisory Councils, and how interlinkages between these groups and other stakeholders can be ensured to strengthen regional processes.

### **What we would like to see instead**

Regionalisation will not and cannot mean a complete relinquishing of responsibility from Brussels but it should mean greater flexibility and sharing the responsibility of implementation. We believe that effective regionalisation could be delivered by the adoption of fishery-based multiannual plans developed by co-management groups. These plans should deliver on the overarching objectives and targets of the Common Fisheries Policy (CFP), as well as relevant EU environmental legislation such as the EC Marine Strategy Framework Directive.

Based on successful management models elsewhere in the world, plans should be developed by stakeholder groups representative of the fishery which is the subject of the plan. There should be a balance of powers shared among resource users (including industry representatives from outside the catching sector, such as processors or retailers who can provide a market perspective), government, scientists, control agencies, environmental organisations and other interest groups. For fisheries involving more than one Member State, Member States will need to co-operate at fisheries level to develop plans.

These fishery-level stakeholder groups will facilitate effective engagement of all concerned because all members will have a long-term interest in the same fishery as their central concern. Some key elements will be essential to enhance the role of stakeholders in any fora and these include:

- Fair representation
- Transparency
- Good access to science
- Training in fisheries management

- Provision of incentives to stakeholders
- Holding stakeholders accountable for meeting their management responsibilities.
- Access to environmental justice

The regionally developed multiannual plan would then be submitted to the European Commission, which would assess whether, in the case of each plan, it meets the overall objectives and requirements agreed through co-decision procedure at EU level. If deemed to be the case, the plan would be adopted by the Commission as a delegated act.

We recognise that regionalisation may be easier to implement in some areas than others, and that therefore a gradual sea basin-based approach may be needed.

### **RACs in the context of CFP reform**

We acknowledge that the RACs represent a step forward in terms of sharing information and seeking stakeholder advice in fisheries management. They also provide a clear platform for enhancing dialogue and understanding between different stakeholders.

However, RACs suffer a number of weaknesses and in their current form and function we do not see them as an appropriate structure for the delivery of regional decision-making under the future Common Fisheries Policy. These weaknesses would need to be remedied for them to be playing a fully balanced and effective role in the reformed CFP. This is why the future tasks and composition of the RACs will have to be considered and developed along with the other structures and tools envisaged within the new framework of regionalisation.

We believe that RACs should retain an advisory function only. In an attempt to summarise our experiences of working in the RACs, we would like to make the following points:

- Effective stakeholder engagement is likely to work best when no single interest group is overly dominant. It is likely that management will be best developed and implemented by stakeholder groups that are more mixed and balanced than the current RACs. The stakeholder mix in the RACs needs to be reviewed – both in terms of overall structure (currently 2/3 industry and 1/3 “other interests”) and in terms of in which members belong to which group.
- RACs need to focus on long-term issues, such as MAPs and spatial planning, and spend less time on annual TACs and quota negotiations.
- There is a need for improved “house-keeping rules”: Many RACs do not have any provision concerning notification prior to meetings in their statutes. In other cases, it remains unclear at the end of meetings what has actually been decided.
- We also believe it would be helpful if Commission responses to RAC advice or position papers were more substantial and dealt with the points at hand in greater detail.