



Masteroppgave

NTNU
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Det humanistiske fakultet
Institutt for historie og klassiske fag

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Change and continuity: 40 years of reforming the Common Fisheries Policy

Masteroppgave i europastudier

Trondheim, våren 2013



**Change and continuity:
40 years of reforming the Common Fisheries Policy**

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Master's thesis in European Studies

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Trondheim, 2013

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Veileder for oppgaven: Hans Otto Frøland

Acronyms

CAP:	Common Agricultural Policy
CFP:	Common Fisheries Policy
EAGGF:	European Agricultural Guidance and Guarantee Fund
ECU:	European Currency Unit
EEZ:	Exclusive Economic Zone
EMFF:	European Maritime and Fisheries Fund
EU:	European Union
FIFG:	Financial Instrument for Fisheries Guidance
ICES:	International Council for the Exploration of the Seas
MAGP:	Multi-Annual Guidance Programme
MEP:	Member of European Parliament
MSY:	Maximum sustainable yield
NEAFC:	North-East Atlantic Fisheries Commission
RAC:	Regional advisory council
STCF:	Scientific and Technical Committee of the Fisheries
STECF:	Scientific, Economic and Technical Committee for Fisheries
TAC:	Total allowable catch
UNCLOS:	United Nations Conference on the Law of the Seas

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Chapter 1: Introduction

The European Union is currently in the last phases of negotiations regarding the adoption of a new reform of its Common Fisheries Policy (CFP). Even though previous reforms of this policy - in 1983, 1992 and 2002 – explicitly aimed at making the EU’s fisheries sector more sustainable, Europe’s fish stocks are today still not being managed at a sustainable rate. The Commission in 2009 acknowledged that 88 per cent of its stocks were overfished, whereas 30 per cent of the stocks were outside safe biological limits (Commission of the European Communities 2009: 7). How is it that these past three reforms did not succeed in their aim of setting up a sustainable fisheries management in Europe? And how likely is the current reform process to mend the structural and conservational problems which the past three reforms failed to mend? Through examining the CFP from the structural policy’s establishment in 1970 through the subsequent reforms and up to the present reform process, this paper aims to answer these questions.

Through looking at the content of each of the past reforms within the structural context of its adoption, this paper will assess to which degree the different CFP reforms have introduced any real change to the practice of fisheries management, and to which degree changes have been successful in responding to external and internal changes. Changes in the external milieu would i.a. include developments within international law of the seas or changes in stock sizes, whereas some internal changes would be new member states joining, changes within the fishing capacity of the EU fishing fleet or general changes of the EU’s policies or polity. This assessment of the history of past CFP reforms will then form the basis for a discussion on the prospects of a change resulting from the current on-going reform process.

The question of reform of the EU’s fisheries management regime is today as important as ever before. In the middle of the current reform process, the EU’s fishing industry is experiencing considerable financial challenges, with a sizeable portion of the fishermen’s income being subsidised by public funds; a report on this issue finds that (when including indirect fuel subsidies) 13 EU member states in 2009 received subsidies totalling to a larger amount than the total value of the landed fish in these states (Schroerer et al. 2011: 11). Many fish stocks remain at alarmingly low levels. At the same time public funds are also being used for market measures such as withdrawal prices and modernisation of the union’s fishing fleet. It is today hardly controversial to claim that the CFP has been an overall failure in light of its record on fisheries management (some recent studies since the last CFP reform reaching this conclusion

include i.a. Daw & Gray 2005; Froese & Quaas 2012; Villasante, Carme García-Negro, González-Laxe & Rodríguez-Rodríguez 2011; Mesnil 2012; Khalilian et al. 2010; Gray & Hatchard 2003).

However, the issue of meeting the challenges of their fisheries management is not just a matter of long-term economic concern, but also one of credibility as an actor within environmental protection and arguably also more general question of the appropriateness and value of having a supranational community-level policy. Lastly, the issue also concerns the possibility of further enlargement northwards; the EU's policy for fisheries management has been identified as an obstacle to future EU membership for Iceland and the Faroe Islands (EUobserver 2006; Prime Minister's Office 2004), whereas Norway has twice rejected EU membership in referenda, in both of which issues related to the CFP were considered to have contributed to the negative outcome of the polls (Emerson, Vahl & Woolcock 2002: 29). It is moreover acknowledged that issues related to the CFP and property of fish resources were important factors in Greenland's decision to secede from the Community in 1985 (Berglund 2006: 158). As such, the implications of the CFP are about more than just fish, and the EU has every interest in mending the failed conservation policy for its fish stocks through successfully reforming the CFP.

This paper aims to answer two questions which are closely linked to each other. The primary research question is related to the current reform process: *is the on-going CFP reform process likely to prove more successful than the previous reforms in setting up a more sustainable fisheries management policy within the EU?* As to answer this question, a question must be posed regarding the previous reforms of the CFP: *what explains the past reform processes' inability to set up a more sustainable fisheries management policy?*

1.1 Existing research

Much has been written about the CFP, its previous reforms and the current reform process and its feasibility. The issue at question encompasses different academic fields, including marine biology, political science, sociology, economy and history. Important works here include Gordon who in his 1954 article *The Economic Theory of a Common-Property Resource: the Fishery* argued that “[i]n the sea fisheries the natural resource is not private property; hence the rent it may yield is not capable of being appropriated by anyone. The individual fisherman

has no legal title to a section of ocean bottom". As consequence, as Gordon (1991: 243) notes, "the fish in the sea are valueless to the fisherman, because there is no assurance that they will be there for him tomorrow if they are left behind today". As result it could be argued to be rational for fishermen to overexploit fish resources, as this is the only way to ensure that they get their fair share of the fishing opportunities. The same logic was later applied by Hardin. In his 1968 article *Tragedy of the Commons*, Hardin explains how it can often be rational to act in an (irrational) unsustainable manner when exploiting the common good: "the oceans of the world continue to suffer from the survival of the philosophy of the commons" (Hardin 1968: 1244). Dietz, Ostrom & Stern (2003: 1907-8) criticise some of Hardin's scepticism, noting that there are multiple examples of common resources being exploited sustainably. There are also examples of goods not being common (i.e. either governed by a state or privatised), which have been unsustainably exploited. Given sometimes a lack of trust and of complete overview and information, it is not unreasonable to assume that it is likely easier to govern resources that are not common.

Some notable recent works on the topic of the CFP's evolution and reforms include Gezelius, Raakjær & Hegland (2010), writing about general aspects of fisheries management and reform in a historic perspective, where the issue of path dependence is also mentioned with respect to institutional inertia. They do however not offer any full comparative study of the development of the CFP through its past reforms. Nor do they devote large parts of their study to any detailed discussion of the on-going reform process. In his master's thesis, Oakes Berger (2010) writes about status-quo bias in reform of the CFP. The study, finished in 2010, does however not enter any detailed discussion on the 2011 reform proposal. With the 2002 reform as case study, this paper also does not go into much depth in assessing the previous reforms. The aim of Oakes Berger's study is however not very different from this study. Hegland (2004) likewise studies the evolution of the CFP from its inception and up to the 2002 reform.

Gray & Hatchard (2003) examined the 2002 reform process in detail, concluding that the reform was not likely to introduce any real change to Community fisheries management. O'Leary et al. (2011) examine the conducting of fisheries management within the framework of the CFP in a historical perspective, leading up to the latest reform proposal; in studying the TACs they find that politics rather than science is the main driver behind EU fisheries management. Villasante et al. (2011) also evaluate fisheries and quota-setting in a historic perspective, reaching the same conclusion as O'Leary et al. and note the imperative of

introducing a more sustainable management regime in the current reform round. Khalilian et al. (2010) examine the history and development of the CFP, concluding that it has failed in respect to biological, economical, legal and political objectives. Corten (1996) three years after the 1992 reform pointed to the problems facing Community fisheries management and in particular the political management, whose centralisation he questions. Surís-Regueiro, Varela-Lafuente & Garza-Gil (2011) study the evolution of the CFP in a historic perspective up to the current reform process with special focus on the structural policy of the CFP; their conclusion is that the CFP is suffering from inertia which is contributing to difficulties in reforming the policy, and moreover that not enough has been done in readjusting the structural capacity. They find it unlikely that the current reform process will be successful in introducing much change. Similarly, Markus (2010) also examines the on-going reform process with regards to subsidies and structural capacity; he also points to some of the harmful subsidies as obstacles to sustainable fisheries management. Froese (2011), in a sceptical viewpoint on the current reform-process, blames the failure of the CFP on political mismanagement and argues that “[t]here is no sign that the proposal will tackle the concentration of power with agriculture ministers or the excessive influence of the fishing lobby”. Payne (2000) examines the evolution of the CFP from the perspective of ‘nested institutions’, and argues that due to the nature of the policy as well as the many diverging interests of the member states, there is a bias towards maintaining status quo, even though this is a suboptimal solution for most of the actors involved.

While much has been written on the topic of the past and future evolution of the CFP, none of these have however done any research specifically on the importance of the main principles laid down in the first structural policy and the first conservation policy, *Council Regulations (EEC) 2141/70 and 170/83*, on the subsequent reforms leading up all the way to the current reform process, *COM(2011) 425 final Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*. While some studies (most notably: Hegland: 2004; Oakes Berger 2010; Gezelius et al. 2010) have conducted a diachronic study of the CFP, none of these includes the latest reform proposal. And while other studies do examine the on-going reform process in detail, none of these conducts a thorough study of the gradual evolution (or lack thereof) of the CFP during the past four decades, from the policy’s inception and up until the last reform proposal.

1.2 Theoretical approach: path dependence

In approaching the question of this study, theories of path dependence will be employed. Previous studies of the past reforms of the CFP have used this theoretical approach: Hegland (2004) employs theories of path dependence in his study of change in the CFP where he finds path dependence to be one of several explanations for the difficulties in reforming the CFP. In a more recent study, Hegland & Raakjær (2008) conclude that the failure of administrating and implementing the CFP can “to a large extent be explained by path dependence in the decision-making process”. Oakes Berger (2010), though not adhering to path dependence as formal approach, examines status-quo bias and structural inertia which are related concepts.

Path dependence has moreover been applied also towards explaining other areas of EU policy, such as the evolution of the Common Agricultural Policy (CAP), which shares many similar traits to the CFP. Lășan finds, when studying the past reforms of the CAP, that theories of path dependence possess much explanatory value; she concludes (2012: 84) that “[t]he reforms of the CAP can be seen as limited, constrained and incremental and this is exactly what historical institutionalists claim about institutions and policies that are path-dependent”. Lee (2010) also conducts a similar study, examining explanations for why the CAP has evolved the way it has. Lee argues that “[o]n the European level, the political cooperation of the EU shows characteristics of path dependence, as it is a unique case in the structuring and organisation of the citizenry despite fervent opposition” and moreover finds that the CAP “has persisted due to several self-reinforcing processes and variables that make it difficult if not impossible to reverse paths” (Lee 2010: 79, 68). A final example of the path dependence theory being employed to explain the EU’s historical development can be found in a study of the EU’s climate policy; Schunz (2012: 22) argues that “[p]ath-dependency arguments invoking a strongly ‘bounded’ adaptiveness on the part of the EU [...] seem therefore best suited to also capture the evolutionary logic of its foreign climate policy implementation [...]”. As such, the theory of path dependence seems to wield some explanatory value when discussing the evolution of EU politics, and makes a useful contribution to the discussion.

The theory of path dependence was however first applied to the field of economics. Path dependence can be described as a theory towards explaining why suboptimal or irrational solutions sometimes win against – in objective terms – better solutions. The theory has often been used to explain why certain technical solutions are chosen over others (classic textbook examples include the QWERTY-keyboard and the outcome of the format competition

between VHS and Betamax; in both examples the outcome cannot be entirely explained in terms of rational choices). In his work on the evolution of keyboard layouts and the success of the QWERTY design, David (1985: 335) refers to the ‘polya urn scheme’ as to explain the workings of path dependence: an urn contains balls of different colours; we continuously draw one ball from the urn and then return it back into the urn along with another ball of the same colour. This process serves to explain how small and random past events can influence future events.

Pierson (2000b: 253) discusses this scheme, noting that social scientists should find the importance of sequencing especially interesting: “[e]arlier events matter much more than later ones, and hence different sequences may produce different outcomes. In these processes, history matters”. The result is a system of *increasing returns* (or ‘positive feedback’). This means that moving down a certain path will increasingly offer incentives that make you continue along the given path. This can also be described as the effects being self-reinforcing. Arthur (1989: 116-17) further explains some other properties of a process of increasing returns : it is *non-predictable*: the importance of sequence and the randomness of events mean that it is difficult to predict how the ratio of balls will evolve; it can be *inflexible*: the farther in the process we go, the harder it is to turn (once there is a majority of one ball colour, chances are slim that you will draw another colour); *non-ergodicity*: accidental events early in a sequence matter and are remembered (once you draw a ball and add another ball of its colour to the urn, it will affect the chances of all future draws); it is *potentially inefficient*: when becoming locked in to a given path, the outcome may generate lower payoffs than other alternatives. Eventually in such a scheme, the mechanisms created by the system will no longer be able to change endogenously; Vergne & Durand (2011: 371-2) explains this: “without exogenous shocks, path dependence leads to lock-in, namely a situation with a very low potential for endogenous change”. As consequence, the system or institution is only likely to change in response to an exogenous crisis.

Page disagrees with David, Arthur and Pierson. In particular, Page (2006: 89-90) is of the opinion that “increasing returns is neither necessary nor sufficient for historical dependence”, rather Page focuses on *negative externalities* as drivers behind path dependence. Page moreover distinguishes between processes that are outcome-dependent, equilibrium-dependents, state-dependent, path-dependent, as well as path-dependent (ibid.: 92-97). Page uses the polya urn scheme throughout his discussion, and makes some convincing arguments: this process cannot actually be said to be dependent on sequence: if you have 20 red balls and

10 black balls in the urn, it does not matter in which order they were placed there. Jackson & Kollman (2012: 173) also agree with Page, advocating a clear definition for actual path dependence, arguing that “for equilibrium, or path, dependence, these processes must meet very stringent conditions, which means that true path dependence may occur rarely”. Vergne & Durand (2011: 370, 371) argue that “without contingency, path dependence reduces to the mere acknowledgement that increasing returns, externalities, or asymmetries are at play”, and moreover that “path dependence is less about how actual paths are chosen and more about how alternative paths get selected out”.

For the purpose of this paper however there is no need to adhere to the clear distinctions advocated i.a. by Page, Jackson & Kellman and Vergne & Durand; there is no need to distinguish between path dependent processes and phat dependent processes. It will not be argued in this study that the reforming of the CFP is a truly technically path dependent process as defined by Page. Rather, this study will employ path dependence as defined earlier, e.g. by Pierson (2000a), with a looser and more general approach to path dependence. Pierson (2000b: 263) lists four main steps for increasing returns, which are related to the properties listed above related to the polya urn scheme: 1. *multiple equilibria* (a wide range of outcomes are initially possible); 2. *contingency* (relatively small event, including accidents, can have large and enduring consequences); 3. *timing and sequencing are important* (early events generally matter more than later events); 4. *inertia* (once an increasing returns process has been established, this path emerged upon is generally difficult to alter).

Pierson (2000a: 490-1) describes how political institutions are usually change resistant and uses the term ‘institutional stickiness’; the EU is noted here as being an example of a polity which is particularly resistant to change. Vergne & Durand (2011: 366) define path dependence as “a property of a stochastic process triggered by contingent events and subject to self-reinforcement over time, which tightens actors’ choice sets”. Following this definition, this study will treat path dependence as a general theory on how past events narrow the range of future options through making one path more attractive (increasing returns) or other paths less attractive (negative externalities). Linked to both these is the concept of structural inertia, whereby an organisation becomes resistant to change even if external changes would normally force it to adopt a new policy.

Schreyögg & Sydow (2011: 322) list several examples of organisational path dependence: “the increasing commitment of organizational decision-makers to a decision that is already

recognized as suboptimal”; ”the routinization spiral underlying the development of bureaucratic organizations that, over time, become increasingly inert”. In theorising how organisational path dependence comes about, a process of three phases is proposed: in the first phase, a smaller or larger and often rational decision forms a ‘critical juncture’ which marks the start of a self-reinforcing process. In phase two a bias has been formed following the increasing returns resulting from the critical juncture. In the third phase, a ‘lock-in’ occurs whereby the organisation will have large difficulties adapting to changing external or internal environments due to constraints resulting from past choices (ibid: 323-5).

Schreyögg & Sydow moreover list other related features of organisational persistence: *organisational imprinting* (“[t]he idea of imprinting starts with the insight that organizations founded at one time typically have a different social structure from those formed at another time”); *commitment and sunk costs* (“expenses (money, time, passion, etc.) paid in the past, which can no longer be changed; they are irreversible (‘sunk’)”); *structural inertia* (“the (assumed) necessity of routinizing and institutionalizing organizational activities in order to secure reliability and accountability in performance and, finally, survival in basically competitive environments”); and *institutional persistence* (“the process of institutionalization as a response to normative, mimetic and/or coercive forces in general, and on the sedimentation of structure over a longer period of time”) (ibid.: 326-31). They argue however (contrary to Page) that only processes that are triggered by self-reinforcing mechanisms should be considered truly path dependent. Also here, there is no reason for this study to make a distinction between ‘true’ path dependence and ‘quasi’ path dependence. Summarised, the variant of path dependence which will be employed in this study is a more general approach, looking at the importance of past events and initial decisions on the later process of developing the policy, without adhering to the strict criteria advocated by some writers within this policy field.

1.3 Methodical approach and delimitations

The primary focus of this paper is on the conservation aspects of the CFP as well as aspects concerned with the structural and social policy where these affect issues of conservation through their implications on fleet capacity; other issues (such as the market policy of fish products, the social implications of the fisheries policy, international fisheries agreements or aquaculture) will only be discussed where these have direct implications on the resource

management aspects of the policy. Nor will this paper study the different national agendas for promoting one solution or the other within the reform processes; the scope of this paper is restricted to studying the development of the CFP through assessing the actual outcomes of the past reform processes, rather than a detailed study of these individual reform processes themselves.

The methodical approach will be primarily that of a sequential comparative analysis of the reforms setting up the CFP from its inception in 1970 up to the current reform proposal. The main documents here include the first structural policy of 1970 (Council of the European Communities 1970) which was slightly amended by the 1976 reform (Council of the European Communities 1976a), the first real fisheries management regulation which was introduced in 1983 (Council of the European Communities 1983a), the 1992 reform of this regulation (Council of the European Communities 1992), the 2002 reform (Council of the European Union 2002) which repealed both the 1992 regulation and the 1976 regulation, and finally, the current reform proposal (Commission of the European Communities 2011). As such, the focus is on the reforms themselves, rather than the day to day fisheries management. Through looking at the essential content of each of the past reforms, this paper will assess the actual amount of change and the amount of continuity each reform brought along.

This study will first and foremost use primary sources and the focus is on the main CFP reform documents. A range of other regulations are also necessary for this discussion; these include in particular those regulations and decisions implementing the content of the reform, such as regulations of structural adjustment and the regulations for conservation measures, as well as the documents setting up the various bodies introduced in the reforms. Moreover, a number of documents and reports originating from the Commission and related bodies will be examined, as these often provide important information on various aspects of the CFP, as well as assessments of the (Council's) conducting of the CFP. Documents originating from the Community are also examined where appropriate. Seeing as the European Parliament has held only a marginal role throughout the history of the CFP, and only consequential to the adopting of the Lisbon Treaty was granted any political decision-making authority through the ordinary legislative procedure, this study will not place much focus on documents originating from this institution. An exception here is in those parts of chapter five where the adoption process of the current reform proposal is discussed: given that the European Parliament now has an equal role within the decision making process to that of the Council, both institutions will be given due attention. The decision to overall prioritise the Council and the Commission over the

European Parliament and the Courts is meant to reflect the historic importance of the institutions (the Commission having monopoly on policy initiation and the Council, up until Lisbon, having had monopoly on adoption of the Commission's proposals), and is moreover a result of having to put focal restrictions to the study as to limit its length. Written from a political science perspective, this paper will avoid using and interpreting primary data and sources collected by marine scientist institutions such as the ICES. Rather, this study will support itself on data presented and interpreted by either the Commission and its bodies or by data presented in articles from recognised journals of marine policy.

The scope of this study does not allow for a complete examination and analysis of all aspects of the past forty years of fisheries management. The discussion and examination of the next chapters will therefore be limited to focussing on the general developments and main events; each of the following four chapters will be limited as to examine three main parts: the state of the Community's fish stocks (basically the amount of fish in Community waters), the state of the Community's fishing sector (basically how many fishing vessels and thereby how high the fishing capacity is), and finally how the Community has responded to these two factors through their decennial reforms since the CFP's inception some forty years ago.

Whereas some have argued that fisheries are unmanageable and to a large degree out of the control of man's activities, this study will assume, as do i.a. Cardinale & Svedäng (2008), that there is indeed a clear link between fishing activity and fish biomass, and that the fisheries are very much manageable, provided that there is political will to manage them. Despite the existence of overfishing within the management zones of many coastal states and on all continents, it should not be impossible for the EU to reach the conservation levels considered sustainable by scientists. This study will judge the CFP on account of its own accomplishments without necessarily comparing it to the merits of other states.

1.4 Structure and key arguments

The paper is structured as follows: chapter 2 will examine the establishment and set-up of the CFP from the 1970 regulation, which was reformed and repealed by a 1976 regulation, and up to the 1983 regulation. Where the 1970 regulation (*Regulation (EEC) No 2141/70 of the Council laying down a common structural policy for the fishing industry*) first made the decision to set up a common fisheries policy, 1976 (*Council Regulation (EEC) No 101/76*)

was the first (minor) reform of this policy. The 1983 regulation (*Council Regulation (EEC) No 170/83 establishing a Community system for the conservation and management of fishery resources*) was the first major reform of the CFP through the adding of conservational aims to the policy. Chapter 3 will present and discuss the 1992 reform of the CFP (*Council Regulation (EEC) No 3760/92 establishing a Community system for fisheries and aquaculture*) which repealed the 1983 regulation. In chapter 4 the 2002 reform (*Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy*) will be presented and discussed; this regulation would repeal not only the 1992 management regulation, but also the 1976 structural regulation. Chapter 5 will discuss the on-going reform process *COM(2011) 425 final Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*. The reform processes presented in each chapter will be placed within their structural context with regards to the state of the Community's fisheries management as well as the capacity (im)balance.

On the basis of the empirical material examined in chapters 2-5, chapter 6 will discuss and answer the two main questions of this study: *what explains the past reform processes' inability to set up a more sustainable fisheries management policy?*; and *is the on-going CFP reform process likely to prove more successful than the previous reforms in setting up a more sustainable fisheries management policy within the EU?* In answering the first of these questions, it will be argued that much of the failure to reform the CFP can be explained through theories of path dependence; the key principles of EU fisheries policy have so far remained untouched by all past reform processes, including the current reform proposal. It will however be argued that this only partly explains the general failure of the CFP; another explanation is found within the Council. The council, it will be argued, is not an ideal institution in which to conduct conservation policy. Relating to the second question, it will be argued that due to the failure of the current reform proposal to alter the CFP's key principles, and because the Council appears to continue to prioritise socio-economic issues over conservation issues, there is no evidence suggesting that the latest reform process will be any more successful than the past reforms in introducing a more sustainable fisheries management. Chapter 7 will briefly summarise the study's main findings.

Chapter 2: Origins and design: setting up the Common Fisheries Policy; 1970-1983

This chapter's topic is the establishing of the common fisheries policy, leading up to and including the policy's first reform in 1983. The initial establishment of a CFP in 1970, through *Council Regulation (EEC) 2141/70 laying down a common structural policy for the fishing industry*, was the result of different developments, primarily external to the EC. This first common policy for the fishing industry was primarily a structural policy, although it also included provisions for some conservation measures. This policy was later amended in 1976, through *Council Regulation (EEC) 101/76*. Even though the actual changes to the policy through this new regulation were negligible, the short period following the initial policy in 1970 had seen major changes to the international fisheries management regime through developments within international law of the seas within the United Nations framework. This leads up to the 1983 reform of the CFP, through *Council Regulation (EEC) 170/83 establishing a Community system for the conservation and management of fishery resources*. This reform formally added a new focus on the dimension of conservation policy.

The chapter aims to answer two questions: *why was the CFP initially set up and what were the main principles of the policy in this first reform in 1983?* Here it will be argued that, while there had indeed been plans on the table for the establishing of a common fisheries policy as part of the integration project, it was only when there were serious talk of enlargement (with the prospect members having vast fish resources) that the work towards a common policy gained impetus. As such, the policy was largely reactive, and based on national self-interest from the side of the initial six members. Following and because of this, it will be argued, the main principles of the initial policy as it was set up in the period 1970-1983, were those of equal access to fish resources, with TACs being distributed on the basis of a relative stability. Moreover, an important principle was the Community-wide provision of structural funds.

The structure of this chapter is divided into five parts as follows: the first part will deal with the general developments and changes in international law of the seas and within fisheries management that occurred during the decades before the setting up of the first CFP in 1970. The second part deals with the 1970 policy and its content and main principles. The third part discusses the events during the United Nations' third conference on the law of the seas and the 1976 reform. The fourth part deals with the 1983 reform and its content, whereas the fifth and final part offers a brief summary of the chapter while answering the two main questions.

2.1 General developments within international fisheries management

While the legal basis for a common fisheries policy had been provided for in the 1957 Treaty of Rome, the decision to establish a common fisheries policy was also influenced by a series of international agreements regarding fisheries management. These agreements were launched largely as result of a gradual acceptance that the fisheries management regime of the time was insufficient to prevent over-exploitation of the natural resources of the seas. Shortly following World War II, the 1946 *London Conference on Overfishing* was to be the first in a series of agreements and conventions seeking to establish a more sustainable fisheries management. The first of a series of three *United Nations Conventions on the Law of the Sea* (UNCLOS I, II & III) followed in 1958, where the *Convention on Fishing and Conservation of the Living Resources of the High Seas* stipulated that all states have a duty to adopt conservation measures for their fisheries. With the convention, the signatory states also accepted to “[render] possible the optimum sustainable yield” (articles 1-2). The 1959 *Northeast Atlantic Fisheries Convention* established the North-East Atlantic Fisheries Commission (NEAFC). This commission was given the power to introduce a wide range of fisheries conservation measures, and by a two thirds majority, its members would be able to make recommendations which according to the convention would be binding to all contracting states. However, the actual efficiency of this commission should probably not be exaggerated, as Gezelius et al. (2010: 474) point out: whereas governments like that of Norway already in the late 1950s had started expressing concern about overfishing, Norway’s domestic fisheries policy at this point still consisted of modernisation, and thereby also increasing the fishing capacity. Thus there was apparently not a very strong commitment to reforming the fisheries management regime at this point.

The NEAFC along with its north-west Atlantic counterpart, the International Commission for the Northwest Atlantic Fisheries (ICNAF) would eventually start recommending total allowable catches (TACs) for the northern Atlantic during the mid-1970s. The scientific basis for much of the fisheries management within the northeast Atlantic would be largely based on the data collected and compiled by the International Council for the Exploration of the Sea (ICES). In summary, this period brought more attention to the issue of sustainable fisheries management, at the same time as coastal states became ever more protective of reserving exclusive fishing rights along their coastlines.

2.2 The origins of a common fisheries policy: the 1970 regulation

The *Treaty of Rome* of 1957 laid the origins for common fisheries policy. Regarding a common policy for fisheries, the treaty does not go any further than stating that fisheries are a part of agricultural products, and that such products are to be part of the Common Market, and that the Community shall establish a common agricultural policy (European Economic Community 1957: article 38, line 1 & 4); in fact the word ‘fisheries’ is mentioned only once within the entire treaty. The timing of the introduction of the plans for a common fisheries policy was rather conspicuous: the Council adopted these plans on the very day before negotiations with the new applicant states for the EC’s first enlargement round (featuring four applicant states, all of which had considerable coastal lines and territorial waters – the UK, Denmark, Norway and Ireland) began. This decision was as such by some viewed “a blatant effort to reach an agreement among the Six on an issue of great interest of Britain and the other applicants before enlargement took place” (Dinan 2004: 136). Although there had been legal basis for the establishing of a common fisheries policy since the entry into force of the Treaty of Rome in 1958, the timing was indeed somewhat controversial.

Council Regulation (EEC) 2141/70 laying down a common structural policy for the fishing industry was adopted on October 20 1970. The actual background of this regulation and in particular its links to the applicant states have been subject to studies; in a study of the discussions and considerations leading up to the adopting of the regulation, Heyerdahl (2007: 63) argues that national self-interest was the primary push factor behind the policy, with the final outcome being a complex compromise between the six EC member states. In particular the Netherlands and Germany demanded a clause providing for free access to resources, whereas France, Italy and the Commission sought a common structural policy providing for funds through the European Agricultural Guidance and Guarantee Fund (EAGGF). The compromise can perhaps best be explained through the special situation with four applicant states, all having vast fish resources. Heyerdahl argues it was vital to agree on the general principles of a common policy before the membership negotiations with the applicant states started, because “[the applicant states] would never accept a common fisheries policy based on the principles of free access to the fish resources, as it was their own fish resources which would be subject to this free access” (ibid: 40; *my translation*).

The content of the regulation relevant to the topic of this study is as follows: articles 1 and 2 are arguably the most important part of the regulation. Article 1 provides for common rules

for fishing as well as a coordination of structural policies. Moreover, it encourages “rational use of the biological resources of the sea and of inland waters”. Article 2 provides for equal access and non-discrimination for all member states in community waters. Article 4 provides for an exemption from this principle of free access within three nautical miles of the base lines of each member state’s coastline. Article 5 allows for the Council, acting on a proposal from the Commission, to introduce conservation measures by restricting fishing within any or all parts of community waters if there is a risk of over-fishing. Article 10 states the purpose of the cooperation on structural policies as including i.a. “increased productivity through restructuring of fishing fleets and other means of production, in keeping with technical progress, and intensification of the search for new fishing grounds and new methods of fishing”. Finally, articles 12-14 set up a Standing Committee for the Fishing Industry as to implement the coordinated structural policy. Summarised, the main points this regulation include equal access to resources without discrimination and a coordinated structural policy, whereas it also contains provisions for the Council to initiate conservation measures if this is deemed necessary.

2.3 UNCLOS III and the 1976 reform

Shortly following the 1970 regulation, two developments in the international fisheries conservation regime introduced a big change to the issue of fisheries management. The UNCLOS III, initiated in 1973 and finished in 1982, would become very important for all fisheries management, as it allowed for coastal states to establish an exclusive economic zone (EEZ), stretching 200 nautical miles from the states’ coastal baseline. Allowing for each coastal state to regulate fisheries within these national zones, the common good of fish resources was now becoming less common and more manageable. The decision of the NEAFC to start issuing total allowable catch quotas further altered the conditions for fisheries management: not only had the EC now lost access to many rich fishing grounds, but restrictions were now also put as to how large quotas should be fished within the territorial waters of the EC member states. Furthermore, the three new members Denmark, UK and Ireland, having joined the EC in 1973, had in their accession agreement negotiated certain derogations from the general provisions of Article 2 of the 1970 regulation: the accession agreement grants to the three joining members a temporal right, until the end of 1982, to

reserve a six nautical miles limit from their coastal baselines for vessels traditionally fishing within these waters (European Communities 1972: article 100).

These events led to two important council decisions which must be seen in relation to the reforming of the CFP: the adoption of a common community EEZ (for the Atlantic waters of the EC) in 1977, and the following decision to have the Council set yearly TACs for the community as a whole, rather than having each member state set their own TACs. Initially the Council would only set TACs for the Community waters that were in the Atlantic. In a communication from the Commission to the Council (Commission of the European Communities 1974), the Commission expressed that the recent and on-going developments within the NEAFC and in the UNCLOS III, were of “no small significance to the Community fisheries” and suggested that the member states should cooperate more and adopt a common stance within international fisheries negotiations.

Council Regulation (EEC) 101/76 laying down a common structural policy for the fishing industry was only a minor amendment to the 1970 regulation; the only change was the removal of article 4 from the 1970 regulation, concerning derogation from the principle of free access within a three nautical miles limit from the member states’ coast lines. The rationale for this was that this provision had already been provided for within the act of accession, allowing for a general six nautical miles limit, as well as an extended 12 nautical miles limit for certain areas (European Communities 1972: article 100-101). These provisions applied not only to the joining members but to all members. As such, the 1976 regulation was not really a reform, as its only purpose was to accommodate for the issue of a national 6-12 miles limit resulting from the act of accession. However, shortly after the adopting of the 1976 regulation, another communication from the Commission, (Commission of the European Communities 1976), proposed that all member states should extend their national EEZs to the 200 mile limit, whereas the EC would conduct the actual management within these fisheries, setting the TACs and allocating these between the member states. These changes were adopted in a Council Resolution in November 1976 (Council of the European Communities 1976b). This resolution also introduced a principle of *relative stability*, which provided for the relative amount of the TACs of each species and each region should be allocated to each member state. As such, from 1977 on, there was already a proper common fisheries policy as we know it today, with a common community EEZ in which the Council was to manage the quotas. Moreover, this regulation also allowed for Council intervention in conservation measures in cases where certain stocks were assessed to be at risk.

2.4 Introducing conservation policy: the 1983 reform

According to article 103 of the act of accession, the Commission was to, by the end of 1982, issue to the Council a report on “the economic and social development of the coastal areas of the Member States and the state of stocks”. As such, a review or reform of the CFP was already required by 1983 at the latest. In 1979, the *Scientific and Technical Committee of the Fisheries* (‘STCF’; having been established to support the Commission through offering advice on issues related to measures necessary to ensure the conservation and balanced exploitation of fish resources (Commission of the European Communities 1979a)) issued its first report (Commission of the European Communities 1979b), where it expressed concern for a number of the commercial fish stocks within the EC’s jurisdiction. Moreover, the report suggested that member states are under-reporting catches in excess of their allocated catch quotas, while also noting that all discards fall outside of the recorded catches. Finally, the report urges that the Community “[arrives] at agreement on the development of the Common Fisheries Policy with the least possible delay” (paragraphs 7-8, 11, 9).

The resulting *Council Regulation (EEC) 170/83 establishing a Community system for the conservation and management of fishery resources* was a complete reform of the initial policy set up in 1970 and amended in 1976. The regulation did not repeal the 1976 regulation, as the 1976 structural policy was to coexist alongside with the separate fisheries conservation and management policy until the 2002 reform. From this point on, the CFP would consist of four main pillars: a structural policy, a market policy, a conservation policy and an external policy for managing international fisheries agreements. The political process for conducting CFP involved the Council making decisions on qualified majority vote on proposal from the Commission. This applied both for the day-to-day management of the CFP and for the reform processes. As the first major reform of the policy, it introduced a number of new measures. These include article 1 explicitly stating the primary objective of conservation: the CFP was to “ensure the protection of fishing grounds [and] the conservation of the biological resources”, but also to ensure “appropriate economic and social conditions”. In comparison, the 1976 regulation (article 1) merely called for “[encouraging] rational use of the biological resources of the sea and of inland waters”. Article 2 states that the conservation measures should be formulated in light of scientific advice and in particular on the basis of the reports by the STCF. The article also lists some possible conservation measures, including both input (effort) limitations and output (catch) limitations. Article 3 states that the TACs are to be set at community level whereas article 4 states that the quotas are to be distributed according to

the established relative stability. Article 6 continued the previous arrangement of member states being allowed to restrict access to the waters for the 12 mile limit having been introduced in 1970 and extended in the 1972 Act of Accession. Also, article 7 added some special restrictions to access to the area known as the ‘Shetland box’¹. Other content of the regulation included provisions for member states to exchange quotas amongst themselves, as well as sets some requirements for reporting of information, adoption of supervisory measures, continuation of the STCF and establishing of a *Management Committee for Fishery Resources* as well as for an evaluation (allowing for a reform) of the CFP within 10 years’ time, by 1992. The requirement to review the CFP was actually only related to the 12 mile derogation in which the member states would retain the right to restrict access to fisheries.

The technical measures called for in article 2 were provided in a related regulation (Council of the European Communities 1983b). For the topic of this paper, article 10.2 and article 11 are the most interesting parts of this regulation; these articles provide for the obligatory discarding of catches that are undersize or by-catch outside of a vessel’s quota. There seems to have been several rationales for a mandatory discarding practice; one of these was related to practicality:

“the EU had to adopt regulations that could be enforced and administered by all member states. Thus, in crucial cases, legal and administrative practicality took priority over sound conservation principles. This priority has been especially notable in relation to discarding: the need for simple administration and enforcement led the EU, unlike Norway, to set quotas for landed quantities of fish rather than for fish killed during fishing, which implied that fishermen were often required to discard catch.” (Gezelius, Raakjær & Hegland 2010: 478).

As Gezelius et al notes, whereas other countries like Norway would (later) introduce discard bans, the EC was not in a position to do so. Moreover, the CFP was to be a two-level policy in which the EC would set the overarching principles and guidelines, whereas the member states would be free to choose the policies with which to pursue these goals. This added to the problems of enforcing a common policy on other bases than a common output limitation like the TAC; this would presumably have created the need for a large number of national and commission civil servants to collect and process data on discards from all vessels of all member states. The job would have been practically impossible with ten member states in 1983, and even more so with 27 member states in 2013 (of which 22 are coastal states). It

¹ The ‘Shetland box’ covers the Shetland and Orkney fishing grounds. According to article 7, The box was introduced to protect “species of special importance ... which are biologically sensitive because of their exploitation characteristics”, and covers all species save blue whiting and Norway pout. These special restrictions limit the access of vessels above 26 meters in length to a certain number of vessels for each member state.

would also have been difficult, if not impossible, to have a conservation regime based primarily on input restrictions such as time spent on sea or similar, due to the differences in efficiency among the member states. This had been apparent since the very start of process of adopting a common policy: whereas the catches of the Netherlands in the mid-1960s corresponded to roughly 150 per cent of that of Italy, the amount of Dutch fishermen amounted to only about 4.5 per cent of that of the amount of Italian fishermen (Heyerdahl 2007: 20). Consequently, it would presumably have been very difficult to operate the CFP on the basis of input restrictions, as the more traditional fisheries of the South would have been very little profitable if put under the same input effort restrictions as the more modern and industrialised fisheries of the North.

2.5 Summary and conclusions

This chapter has looked at the developments leading up to the 1983 reform, with the aim of answering two questions: 1) *why was a common policy initially set up in 1970?;* and 2) *what were the main principles of the policy as it first emerged at the end of this establishing phase in 1983?* Looking at the pre-history of the CFP, there were largely three distinct factors which all provided incentive for establishing a common policy: the CFP was provided for in the Rome Treaty, and had as such been ‘on the table’ for a decade already in the late 1960s. Changes in international law and fisheries management, resulting in part from the gradual worldwide decline of fish stocks both allowed and called for more fisheries management measures. However, the four prospective new members, all having vast fish resources appears to have been the main driving force behind the policy, and the fact that the 1970 regulation was rather hastily adopted the very day before accession negotiations were to begin strongly suggests a link between the two. The 1970 regulation appeared as somewhat of a compromise, with provisions for equal access as well as a common structural policy for the modernisation of the Community’s vessels. As for the first question thus, the policy was largely reactive and to a considerable degree a result of national self-interest on the part of the initial six members.

Regarding the second question, related to the content of the policy as it emerged from the 1983 regulation, a few main principles can be identified. The principle established in 1970 of equal access to Community fisheries resources was continued in the 1976 regulation, and was as such still valid, albeit with the provisions of articles 6 and 7 in the 1983 regulation providing for a 12 mile coastal zone for each member state as well as for some special

provisions for the 'Shetland box'. An important issue related to this equal access, was the introduction of TACs to be set by the Council (on proposal from the Commission) and allocated among the member states on the principle of relative stability. The fisheries regulations introduced with the 1983 regulation contained a combination of input limitations (e.g. laying restrictions on mesh size, fishing gear and access to certain areas) and output limitations (the TACs allocated to each member state). Thus in summary, the main principles of the combined structural policy of 1976 and the conservation policy of 1983 provided for a community system of structural funds for the modernisation of the community fleet, and the establishing of a community common EEZ, in which the Council would handle the management regime and distribute the quotas on the principle of relative stability.

Chapter 3: First attempt at reforming the conservation policy: the 1992 reform

Whereas the previous chapter treated the establishing of the first structural policy, leading up to the first CFP regulation of 1983, this chapter will examine and discuss the subsequent reform: *Council Regulation (EEC) No 3760/92 establishing a Community system for fisheries and aquaculture* which entered into force in 1993. This reform replaced and repealed only the 1983 regulation, and as such did not alter any of the provisions of the 1976 regulation. While the 1983 regulation contained stipulations for a decennial review of the 12 mile derogation, the 1992 reform was also a response to other important factors. One was the accession of Spain and Portugal to the Community 6 years prior to the reform, carrying potentially large consequences for the CFP, as the two joining states led to a massive increase in fishing capacity to the Community without a relative increase of fish resources of corresponding size. This development was combined with an alarming decrease in Community fish stocks, with the stocks of North Sea cod reaching a then record low in 1993. The main purpose of the 1992 reform was as such to introduce more and better conservation measures within the CFP.

This chapter aims to answer two key questions: 1) *why had the 1983 reform failed to introduce a sustainable fisheries management within the community?*; and 2) *by which measures did the 1992 reform seek to remedy the situation?* It will be argued that the conservation measures introduced in the 1983 regulation were not efficient enough to ensure sustainable fisheries, largely because they did not directly restrict the actual fish mortality. And also because the TACs were not set on the basis of scientific advice, as stipulated in the 1983 regulation, but rather set on the basis of political objectives by the Council. Moreover, it will be argued that any conservation measures were at any rate destined to be largely offset by the 1976 structural policy which had the opposite objective of the 1983 conservation policy, as it sought to modernise and increase the fishing efficiency of the Community fleet. As for the 1992 reform, it will be argued that while introducing new conservation measures and stipulating a more sustainable fisheries management, it failed to put effective restraints on TACs through mandating objective scientific criteria adopted by scientists, rather than by politicians.

The structure of this chapter is divided into four parts: the first part will deal with the experiences of the 1983 regulation and the largely failed conservation measures. The second part deals with the structural changes relating to fleet capacity and the issues related to the

accession of the new member states. The third part presents and discusses the contents of the 1992 reform in light of the challenges it was meant to respond to. The fourth and last part will summarise the chapter while answering the two key questions of this chapter.

3.1 Fisheries management since 1983

In a comment published in the journal *Marine Policy* shortly after the 1983 regulation had been adopted, it was argued that “[the system of TACs] should work well, provided that the TACs are set at a level recommended by fisheries scientists...”, it was moreover expressed concern that “if Portugal and Spain becomes members of the EEC, the distribution of quotas will have to be re-opened and will be likely to prove difficult to agree on” and it was noted that “[t]he system of TACs and quotas will only prove effective, of course, if it is properly enforced” (Churchill 1983: 74). As it soon turned out, these concerns were not undue. The structural policy resulted in increasing transfers of public funds to the fishing industry with the explicit purpose of modernising the Community’s fishing fleet, whereas even with the 1983 conservation policy, the 1980s saw decreasing fish stocks in European waters. In short, the CFP had not managed to achieve its aims of promoting a “harmonious and balanced development of [the] industry” and a “protection of fishing grounds [and] balanced exploitation on a lasting basis” (Council of the European Communities 1976a: article 1; 1983a: article 1).

As for the conservation of Community fish stocks, there were some fundamental challenges with the measures introduced as part of the 1983 regulation. For instance, when article 2 of the 1983 regulation limits catches, it does not actually do so. This is because the technical measures introduced set a minimum size and made discards obligatory for undersized fish (Council of the European Communities 1983b: articles 10-11) while only the actually landed fish were counted towards the TAC quotas. Consequently, the catch limitations did not actually mean limitations on the amount of fish that could be caught as such, at least not in the sense that the upper limit of catches was the upper limit of fish mortality allowed.

The amount of discards can be assumed to have been considerable, at least for some of the species governed by the TAC regime: Karagiannakos (1996: 239) found in a study, based on numbers obtained from the ICES, that whereas the official landings of North Sea haddock in 1991 amounted to 44’000 tonnes, the estimated discards of the same species within the same

area were estimated to roughly 40'000 tonnes. And the problem was not restricted to area or species, a 1992 Commission report (Commission of the European Communities 1992a: 31) noted that in the Bay of Biscay/Celtic Sea, the quantity of hake discarded in 1985 was estimated to be 130 million, whereas the landings amounted to only 110 million. The total amount of discards and the mortality rate of the discarded fish are however difficult to assess and varies according to species and fishing method. Where the survival rate of discarded catches is high, it would be fully rational to discard the catches. In some cases there is very low survival rate though; in otter trawl fishery, discard mortality for cod and haddock has been estimated at 100 per cent (Diamond & Beukers-Stewart 2011: 233). The issue of obligatory discards has been a major problem within the EU conservation regime, and is so today still. Discards occur due to the fish not being of a kind that the vessel has quota for, or due to it being undersize. Moreover, discarding can also take place due to the catch being damaged, or because the fisher thinks he can exploit his quota or its cargo space better by continuing fishing for a different species or in hope of getting customarily larger more valuable fish. Though this practice of 'high grading' (discarding catches that are less valuable; non-obligatory discards of commercial species) has since been prohibited in Community waters (Council of the European Union 2009a), the problem of discards still persists and today forms a major part to the 2011 reform proposal.

Even without the apparent challenge of discards, the problem was also political. The first STCF report, dating back to 1979, also suggested, albeit somewhat indirectly, that there is a lack of political will to preserve the natural resources:

“[fish] resources are what the Common Fisheries Policy is all about. Debate about basic regulations, structural changes, technical measures for conservation or control and so on is an arid exercise if the resources are whittled away whether by neglect or by the absence of restraint” (Commission of the European Communities 1979b: paragraph 6.)

Thus the failure to prevent the decline of fish resources was related to several issues, both of a technical and of a political nature. And it is not at all clear how, at this point, the CFP through the existing legislation had contributed in improving fisheries management in Europe: indeed, as Corten (1996: 4) notes, “[t]he annual reports produced by ICES show that fishing mortality in most stocks has risen considerably since the introduction of the TAC and quota system, and that stocks of adult fish have declined”. In short: the 1983 management and conservation policy had not been successful in achieving its aims.

3.2 Structural changes since 1983

The 1983 regulation sought to mend some of the problematic issues resulting from the 1976 regulation. For instance, already in 1980 the fisheries policy was under criticism; Cunningham (1980: 230) makes an argument which is perhaps still true today: “[t]he problem is that interpretation of the objectives becomes difficult and subjective”. While the policy calls for a rational exploitation of biological resources, there is not necessarily any universal conception of what constitutes a rational exploitation. And what a politician, whose electorate consists in part of fishermen, deems rational may well vary from what fisheries management scientists deem rational. However, the 1983 regulation did not repeal the 1976 regulation, as such there would until the 2002 reform be two coexisting fisheries policies; one calling for the conservation of fish resources, the other promoting the (albeit ‘rational’) exploitation of said resources. Cunningham elaborates: “[i]n particular, it may be socially optimal to run a slightly higher risk of stock collapse if this enables the fulfilment of other important objectives, concerning, eg welfare or employment policy” (ibid: 231-2). And this forms the nucleus of the paradox of the CFP: the biggest threat to fisheries conservation in Europe is perhaps the fisheries conservation policy itself. Or rather, the mixing of social and market objectives within a conservation policy is the source of concern, in a regime where “politics always gets in the way of sustainable fisheries management” (Daw & Grey 2005: 191).

The multi-annual guidance programmes (MAGPs) having been set up following the 1983 reform had not been successful in adjusting the Community’s fishing capacity. Hegland & Raakjær (2008: 141, 142) describe the results of the first two programmes thus:

“MAGP I, in place from 1983 to 1986, set targets that were modest and basically aimed at keeping capacity constant. Nonetheless, all but two member states failed to reach their targets and overall fleet capacity continued to increase”; “MAGP II, in place from 1987 to 1991, reflected the experience of the first MAGP where only a few of the member states had reached their targets. The Commission outlined a programme where the reductions to be achieved over the period was as modest as 3 percent in tonnage and 2 percent in power. When the increased efficiencies coming from technological development are taken into consideration, this corresponded de facto to an increase in fishing capacity.”

Adding to this, the accession of Spain and Portugal to the EC in 1986 effectively increased the fishing capacity by 75 per cent while increasing the tonnage by 65 per cent (Symes 1997: 144); the Spanish and Portuguese EEZs were however relatively poor in resources. Moreover, Greenland had, after gaining home rule from Denmark, decided in a referendum to leave the Community and in 1985 Greenland with its fish resources left the EC. The Communities’

Court of Auditors in 1993 acknowledged that the overcapacity at this point was at roughly 40 per cent as compared to the available resources (1993: 13-14).

Combined with the declining fish stocks, the increase in fishing capacity should thus have provided a strong incentive to further reduce the Community's fishing capacity. Greece had joined the Community in 1981. However, since the TACs at this point only encompassed the Atlantic waters of the community, and as the act of accession of Spain and Portugal contained stipulations for a temporary delay of the full inclusion of these into the CFP (European Communities 1985: articles 157-60), these enlargements had not yet had much effect on CFP practices. Yet, as these member states (and in particular, Spain) would be fully included into the CFP, this was also a factor to consider when examining the need for reform of the CFP. By 1992 the next wave of enlargements was already approaching. The prospect of Norway joining would at this point be likely to increase the structural overcapacity of the Community (Commission of the European Communities 1993a: 17).

3.3 Contents of the 1992 reform

Like the 1983 regulation, the 1992 reform was also a conservation policy rather than a complete policy, and the 1992 reform only repealed the 1983 regulation, and not the 1976 structural policy. While the *Council Regulation (EEC) No 3760/92 establishing a Community system for fisheries and aquaculture* introduced several changes, it also kept some parts to the 1983 regulation more or less unchanged. The general objectives of the policy were left largely intact: the CFP was to “protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system, and in particular taking account of the needs of both producers and consumers” (article 2). As such, it went further than the 1983 regulation on stressing the conservation issues, but also added more non-conservation objectives to the CFP through adding a reference to producers and consumers. In a similar fashion, article 4 (corresponding to article 2 of the 1983 regulation), introduces more conservation measures in listing some new suggested measures, notably including restricting the number of vessels allowed to conduct fishing and introducing economic incentives to promote a more selective fishing. The same article also adds non-conservation objectives to this article though, as the measures

listed here would from now on be selected in part on the basis of socio-economic considerations.

While having been practically included in the CFP since shortly following the 1983 regulation, aquaculture also included in the 1992 reform. Article 5 provides for an obligation to introduce a system of fishing licences required to operate fishing vessels within Community waters. Such licences are to be issued and managed by the member states. Article 10 is new in that it explicitly allows for member states to introduce some national conservation measures within their sovereignty provided that these measures are no less stringent than the community measures, and that they apply only for fishermen of that nationality. Article 11 is also new and says that by 1994 at the latest, the Council was required to set down “detailed rules for the fisheries sector with a view to achieving a balance on a sustainable basis between resources and their exploitation”. Such a restructuring was to take into account “possible economic and social consequences” and is another example of how this reform explicitly introduced more socio-economic considerations to the CFP. Article 15 allows for the Commission to take action where the conservation of resources is jeopardised. The Council can however override any such decisions by a qualified majority. Article 19 states an obligation to take into account within the implementation of the CFP any special regimes resulting from international agreements.

Several of the provisions which were also extant in the 1983 regulation are continued in the 1992 reform also. Both committees provided for in the 1983 regulation are continued: the *Management Committee for Fishery Resources* is however renamed to the ‘*Management Committee for Fisheries and Aquaculture*’ to accommodate for the introduction of aquaculture into the CFP. Articles 6-7 are continued from the 1983 regulation, allowing for a 12 mile coastal zone in which member states would have more jurisdiction as to protect national fisheries, and also continuing the special restrictions applying to the ‘Shetland box’. Article 8,4 (ii) continues the principle of distributing quotas on the basis of a relative stability and article 9 continues the possibility of member states to swap quotas amongst themselves. The provisions for a Community system for supervision and control are also continued.

Summarised thus, there was some change and some continuity within the 1992 reform: notable new measures included the introduction of aquaculture into the CFP, the introduction of mandatory fishing licences, a provision for the Commission to take immediate action if the conservation of resources is at risk, whereas the member states are allowed to take some

national conservation measures, but only if there are no foreign vessels fishing within the areas or fish stocks affected by such measures. Provisions that are continued from 1983 include the managing of Community waters by the Council, acting primarily on qualified majority, the continued distribution of TACs by the Council on the principle of relative stability, continuation of 12 mile national zones and the 'Shetland box'. Moreover, several of the articles of the 1992 reform go further than the 1983 regulation in stressing the need for further conservation measures, but also go further in stressing the need to take into consideration socio-economic measures. The regulation as such provided much continuity and some change; with the possible exception of the fishing licences (which would at any rate only be effective if they were enforced properly and if the TACs were set at sustainable levels), the reform did not introduce any measures forcing any real change to the fisheries management regime.

3.4 Summary and conclusions

This chapter aimed to answer two main questions: 1) *why had the 1983 reform failed to introduce a sustainable fisheries management within the community?*; and 2) *by which measures did the 1992 reform seek to remedy the situation?* During the 1980s it had become apparent that the CFP was not sufficient to ensure a sustainable management of the Community's fisheries resources. Fish stocks were in decline, at the same time as the 1976 regulation was encouraging further pressure on the fish stocks through modernisation of the Community's fishing fleet. The consequence was a fleet and a fishing capacity exceeding the available fish stocks of the Community ever more. The full inclusion of the new Iberian members would also worsen this imbalance.

As for what measures the 1992 reform introduced to tackle these challenges, these were, as has been argued, not particularly convincing. The introduction of a licencing system would presumably serve to increase the manageability of the fish resources, but this measure would at any rate not be more effective than the efficiency of controls and enforcement of the licencing system. Moreover, as it has been suggested above, excessive allocating of TACs by the Council was also part of the problem; enforcement and access restrictions will only work as long as the TACs are within reasonable numbers to begin with. The new focus on aquaculture into the CFP would potentially remedy part of the problem through offering an alternative source of fish products as well as creating new jobs in fishery-dependent regions.

But even so, these measures did not amount to the degree of change needed for the CFP to become sustainable on a long-term basis. The key principles of equal access, relative stability and the Council having the last word in setting TACs were not changed by the reform. The answer to the second question must thus be that the remedies with which the 1992 reform sought to mend the challenges facing the Community's fisheries management regime, were in fact to a considerable degree the very same measures as had been introduced with the 1970 regulation and 1983 regulation. In summary, the 1992 reform brought more continuity than actual change.

Chapter 4: Merging the 1992 and 1976 regulations; the 2002 reform

In this chapter the 2002 reform of the CFP will be examined and discussed. The regulation, *Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy*, entered into force in January 2003. It would repeal not only the 1992 regulation, but also the 1976 regulation on the structural policy, thus including both policies within the same document. While the 1992 regulation provided for a new review of the 12 mile derogation in ten years' time, there were also other issues demanding attention, calling for a reform of the CFP; much like in 1992, the situation in 2002 was also one of structural overcapacity and declining fish stocks. The green paper preceding the reform acknowledged that the CFP was not living up to its conservational aims:

“many stocks are at present outside or almost outside safe biological limits. They are too heavily exploited or have low quantities of mature fish or both. At present, the situation for most stocks is not catastrophic. If current trends continue, however, many stocks will collapse. Improvement in the state of many fish stocks is urgent.” (Commission of the European Communities 2001: 8)

The aim of this chapter is to answer two key questions: 1) *why had the 1992 reform failed to introduce a sustainable fisheries management within the community?*; and 2) *by which measures did the 2002 reform seek to remedy the situation?*

The 2002 reform did contribute towards remedying the situation through a tightening of the structural assistance measures increasing fishing capacity, and also introduced new measures to the conservation regime. Most notable among such measures were the establishing of the regional advisory councils and the formulation of management and recovery plans. It will however be argued that the structural policies would still contribute to maintain a too large fishing capacity through keeping too many fishermen in business, thus also preventing the rebuilding of stocks. Moreover it will be argued that the 2002 reform, like its predecessor reform, did little to change the core of the fisheries conservation regime – that of managing the fishing mortality rates in a more sustainable way; like the 1992 reform, it failed to put effective restraints on TACs through introducing an (effective) obligation to follow objective scientific advice when setting these quotas.

The structure of this chapter is divided into four parts: the first part discusses the successfulness of the conservation measures introduced in the previous reform in 1992. Part two discusses the structural changes since the previous reform, as well as the development in

the union's fishing fleet. The third part discusses the content of the 2002 reform and assesses to which degree it represented a change from the regulations being repealed by it, whereas the fourth and final part summarises the chapter and answers its two key questions.

4.1 Fisheries management after the 1992 reform

Already in mid-1994, a mere one and half years following the entry into force of the previous reform of the EU's fisheries conservation policy, the Commission noted in a communication that "[s]tarting early in 1993, the Community's fishing industry has been experiencing one of its most serious recessions since the beginnings of the Community itself, if indeed it is not the worst in view of the generally adverse economic climate" and moreover that there was a "major lack of competitiveness among at least some sections of the Community fishing fleet" (Commission of the European Communities 1994a: 3). As such, the 1992 reform was already from the start apparently failing in achieving the aims of the Community's fisheries policy. And by the early 2000s, it was acknowledged by the Commission that

"[t]he quantities of mature demersal fish in the sea as assessed by the International Council for the Exploration of the Seas (ICES) [had], in many cases, declined significantly over the last 25 years. On average, these quantities were about 90 % greater in the early 1970's than in the late 1990's." (Commission of the European Communities 2001: 7)

With the adopting of the *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks* in 1995, the EU moreover committed itself to the "optimum utilization" of fish stocks, to base their fisheries management on "the best scientific evidence available" and to apply the "precautionary approach" to fisheries management (UN 1995: articles 5, 6). Moreover, the EU had acknowledged the *FAO Code of Conduct on Responsible Fisheries*, whereby it was agreed to "adopt appropriate measures, based on the best scientific evidence available, which are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield"² (FAO 1995: article 7). The 1992 regulation was to introduce a "rational and responsible exploitation on a sustainable basis" (article 2). Yet, as the Commission noted in 2001, the practical management of the Community's fisheries had not been in accordance with such regulations:

² "Maximum sustainable yield (MSY) is a theoretical concept used extensively in fisheries science and management. In fisheries, MSY is defined as the maximum catch (in numbers or mass) that can be removed from a population over an indefinite period. The concept of MSY relies on the surplus production generated by a population that is depleted below its environmental carrying capacity" (Maunder 2008: 2292).

“[t]he CFP has not made use of all the available tools foreseen by Regulation 3760/92. There has been limited progress in adopting multi-annual approaches and effort management has yielded poor results”; and moreover: “[t]he Council has fixed some TACs systematically at levels higher than those proposed by the Commission on the basis of the indications of scientific advice; over-fishing, discards and fleet over-capacity have also contributed to the current problems” (Commission of the European Communities 2001: 6).

With the Community’s stocks having been far larger at the time of the CFP’s inception, these were obviously not at MSY levels (as had been agreed to through the FAO code), and with the decline of these stocks, the fisheries management was apparently also not succeeding in enforcing a sustainable, or indeed rational, exploitation (as stipulated in the 1992 reform). The problem of high discard rates also persisted: a 2002 Commission report (Commission of the European Communities 2002: annex I) found that in the period 1976-1998, 20-60 per cent of the haddock catches in the North Sea were discarded. Apart from six EU member states around the North Sea, Norway is the only other country with the North Sea as part of its EEZ; Norway introduced a discards ban on haddock in 1987, so the EU fishing vessels and the CFP presumably bear the responsibility for most of these discards during the period from 1987 onwards. Thus the fisheries conservation regime was still not conducted in a successful fashion. And, as noted by Symes (1997: 145), this was starting to show in the balance of production and imports of fish products:

“[e]nlargement has implied not only a progressive expansion in the scale of the EC’s fishing industry but also a growing imbalance between production capacity and market demand. Today, some 60% of the EC’s prime demersal food fish supplies are imported: the original quest for self-sufficiency has foundered on the rocks of stock depletion”.

At the same time, the EU was spending ever larger sums on buying fisheries rights in third countries. This development was in particular an effect of the Iberian enlargement round and the budget for international fisheries agreements increased from 6 million ECU in 1981 to 280 million ECU in 1996 (Commission of the European Communities 1996a: 3).

Much in response to full inclusion of Spain and Portugal into the CFP (Council of the European Union 1994), effort limitations would be introduced. Such measures “must also provide for a reduction in that fishing effort if the development of resources necessitates a general reduction of fishing possibilities” (article 3.3). It does however also explicitly state that any measures must be taken in particular compliance with the principle of relative stability (article 3.2). However, in adopting these measures (Council of the European Union 1995), the Council reaffirmed the commitment to the principle of relative stability in ensuring that “effort levels shall, in no way, affect the relative stability of the different fisheries”

(article 3.2). This regulation introduces effort restriction through obligating member states to restrict their fishing effort to the level necessary “to take up fully its fishing possibilities, i.e. species subject to TAC’s, allocated or not, as well as species not subject to such limitations” (article 3.2). These effort limitations did as such seek to decrease the fishing pressure on the Community’s fisheries. Total fishing effort had however always been capped through the TACs allotted by the Council under the guidance of the principle of relative stability.

The failure of the implementing of a more sustainable fisheries management regime lies more on the hands of the Council than on those of the Commission. In two regulation proposals (Commission of the European Communities 1993b; 1994b) the Commission proposed first a three year plan involving a reduction of fish mortality for a number of species, then a system whereby if a member state exceeds its TAC for any of the species, that TAC would be reduced the following year, as to make up for the excess catch. The Council dismissed both proposals. Community fisheries management at the time of the 2002 reform was thus in a difficult situation: fish stocks were depleting and the economic situation for fishermen was increasingly difficult, while the community was spending ever larger sums on buying up external quotas for its fishermen. The responsible authority (the Council) was not willing or not able to efficiently limit the pressures on Community stocks even though they had bound themselves to do so both in the FAO agreement and in the past reform; the CFP was not achieving its conservational aims, and there was not many hard results to show for the previous reform.

4.2 Structural changes since 1992

Also with regards to the structural situation there were still challenges. The 1993 Maastricht Treaty had established the European Union, but this did not involve any notable changes for the conducting of the CFP. While the Single European Act and the Maastricht treaty had granted the European Parliament more decision-making powers in several fields connected to the single market, the CFP would still be an exclusive competence of the Council, with the European Parliament only being involved through the consultation procedure. Since 1992 the Community had also been enlarged with further three member states, Sweden, Finland and Austria. On the grounds that Spain and Portugal at the time of the 1995 enlargement were still not fully included in the CFP, the Commission had reached the conclusion that there would also have to be some delay before the new entrants could be allowed to fully join the CFP; the

EU could not offer better conditions for the joining states than for the states having joined in the previous enlargement round. The impact of the 1995 enlargement round would however not have any notable consequences for the CFP, and did not cause any significant change to the balance between capacity and resources.

More important for this imbalance was the full inclusion of Spain and Portugal into the CFP in 1996. As noted earlier, these two had been put under a temporary exclusion from certain provisions of the CFP, largely because of these states' large discrepancy between fishing capacity and available fishing resources. This discrepancy was also much the reason for the ever increasing budgets for purchasing fishing opportunities in third countries. The need for such agreements is proof of an unsuccessful policy for adjusting fishing capacity, as Symes (1997: 153) noted at the time:

“Currently, there are some 25 agreements providing fishing opportunities mainly in Central and Southern Atlantic waters for around a thousand EC registered vessels, predominantly from Spain and involving a budgetary commitment of c. 285 million ECU (US\$334 million) in 1993. The necessity for such arrangements provides yet further proof of the failure of certain elements of Europe's industries to adjust fully to the new political geography of ocean fisheries and the resulting imbalances between harvesting capacity and resource availability”

The Commission also acknowledged the problems arising from this imbalance:

“To achieve the objectives called for by the Treaty, the CFP must ensure a better balance between the resources available and the capacities of fisheries. Such a balance depends entirely on the reduction of fishing pressure. This reduction can only be achieved by a joint reduction in the number of vessels, in their levels of activity (evaluated in number of days fishing or presence in a given area, for example) and their effectiveness (which can vary with their size, their engine power or their equipment).”
(Commission of the European Communities 1999: 9)

Following the 1992 reform, the *Financial Instrument for Fisheries Guidance* (FIFG) was set up. The regulation setting the FIFG up did however list some somewhat opposing aims: objectives included both “to contribute to achieving a sustainable balance between resources and their exploitation” (i.e. catching less fish), while the same time as it was to “strengthen the competitiveness of structures and the development of economically viable enterprises in the sector” as well as to “improve market supply” (i.e. catching more fish) (Council of the European Communities 1993: article 1.2). These funds were thus to be given to measures either devoted to reducing pressures on fish stocks, or to measures devoted to making vessels more efficient at fishing these fish stocks.

In a 2003 study Surís-Regueiro et al. examines the allotting of structural funds within the community between 1994 and 1999, looking at the relative expenditure at decommissioning

and modernisation of vessels within the Atlantic part of the community. Within this period, the EU spent a total of 462 million euro on funding the decommissioning of vessels, whereas the spending on modernising and renovating vessels in the same period of time amounted to 436.6 million. Adding the national funds allotted to decommissioning and modernising, the respective amounts add to a total of 769 million euro and 560 million euro within the 1994-1999 period. In assessing the actual results of these structural funds, the study found that “[d]espite the fact that the fleet was reduced by nearly 8500 vessels and roughly 800,000 kW, the mean capacity has increased by 44,000 t, which is an average of 4000 t per country” (Surís-Regueiro et al. 2003: 537).

The MAGP III set the goals for restructuring for the period of 1993-1996. Also this MAGP was not very successful in adjusting the fishing capacity, as the Commission noted in a 1996 report:

“with an average reduction of 7% of fleet power over five years, these programmes are not as ambitious as the Commission would have liked, all the more so since this percentage includes reductions that some countries did not manage to carry out under previous programmes and does not offset productivity increases due to technical progress” (Commission of the European Communities 1996b: 20).

The Commission in the same report notes that MAGP III did, unlike MAGP I and MAGP II, lead to a decline in capacity, “overall the result will be highly inadequate” (ibid: 21). For the total period of 1991 to 2002, Hegland & Raakjær (2008: 148) in compiling data collected by the Commission and Eurostat, find that when excluding the members joining in 1995, the Community decreased its tonnage from roughly 2’010’000 tonnes to 1’900’000 tonnes, whereas the fleet’s combined power was decreased from 8’347’000 to 6’880’000 kW.

The EU was still using public funds to enhance its fleet’s fishing capacity in a time of large imbalance between fishing capacity and fish resources. This was one of the important issues that the 2002 reform aimed to remedy. In summary, the structural situation was much the same in 2002 as it had been in 1992: an overcapacity which had to be supported by Community assistance funds; the Community was moreover through the FIFG providing funds effectively aimed at further increasing fishing capacity.

4.3 Contents of 2002 reform

Consequently there was in 2002 still a need for reform the Community's fisheries policy. The Commission's green paper preceding the 2002 regulation acknowledged that "[the CFP's] shortcomings can be expressed in conservation, economic and political terms" (Commission of the European Communities 2001: 4). With the acknowledging that not only the fisheries management policy needed reform, but also the structural policy, the 2002 reform was to become the most comprehensive reform to date. While the reform did include some new provisions for conservation, as well as introduced tighter restrictions on structural measures increasing fishing capacity, it did not fundamentally change the CFP; the main features of the policy remained largely intact.

Regarding fisheries management and conservation, the 2002 reform brought along several new provisions which had not been in the 1992 regulation. However, the stated aims and objectives of the policy remained much the same, although they were reformulated. The reformulation of the general objectives was done in a manner much similar to that of 1992: while going further in stressing the need for introducing further conservation measures, it also introduced a stronger focus on socio-economic concerns:

"the community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interest of consumers". (article 2.1)

Thereby, while the aim of the CFP was to "protect and conserve living aquatic resources", it was also to "contribute to efficient fishing activities"; while aiming to conserve the fish resources, another aim of the policy was to become more efficient in fishing said resources. These aims were however to be guided by the principles of "a decision-making process based on sound scientific advice" (article 2.2). Further conservation measures were introduced, most importantly through the introduction of recovery plans and management plans. The recovery plans were to be adopted for species or stocks outside safe biological limits, whereas management plans were to be adopted for stocks already within safe biological limits³. The

³ 'safe biological limits' means indicators of the state of a stock or of its exploitation inside which there is a low risk of transgressing certain limit reference points.

Council would be responsible for adopting plans, whereas the Commission was to report on the effectiveness of the plans. Both kinds of plans should be

“drawn up on the basis of the precautionary approach⁴ to fisheries management and take account of limit reference points⁵ recommended by relevant scientific bodies. They shall ensure the sustainable exploitation⁶ of fish stocks and that the impact of fishing activities on marine eco-systems is kept at sustainable levels” (articles 5.3, 6.3).

Both management and recovery plans should however also be decided with regard to, among other, “the economic impact of the measures on the fisheries concerned” (articles 5.4, 6.4). These articles do not explicitly state whether economic or conservational impacts should be prioritised when adopting the different plans. The reform did not touch the issue of obligatory discards for undersize or extra-quota catches: consequently there would still not be any absolute connection between the TACs set by the Council and the fish mortality resulting from the Community’s fishing effort.

Moreover, the reform allowed for the Commission to still have the power to intervene in case of threat to conservation while the Council retained its power to lift such Commission emergency measures. The reform continued the committees set up in 1983 and in 1992 (the STECF and the *Management Committee for Fisheries and Aquaculture*, the latter one being renamed the ‘*Committee for fisheries and aquaculture*’ (CFA)). In addition, the 2002 reform also included provisions for setting up a number of *Regional Advisory Councils* (RACs). The RACs were to consist of fishermen and other representatives of the industry and of national or regional administrations. Like the STECF and the CFA, the RACs were also to submit information, advice and opinions to the Commission or to member states. The reform moreover introduced more elaborate provisions on cooperation between member states, on information, control, inspections and enforcement. The member states themselves remained responsible for control and enforcement. Larger vessels were obligated to carry a system allowing for radar or satellite detection for monitoring purposes. The principle of equal access to resources in Community waters was maintained. Provisions for the 12 mile coastal zones where member states would retain special national prerogatives were continued. The

⁴ ‘precautionary approach to fisheries management’ is defined as the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.

⁵ ‘limit reference points’ is defined as values of fish stock population parameters (such as biomass or fishing mortality rate), which should be avoided because they are associated with unknown population dynamics, stock collapse or impaired recruitment.

⁶ ‘sustainable exploitation’ is defined as the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine eco-systems.

‘Shetland box’ was also continued. The Council was still to be responsible for allotting TACs on proposal from the Commission; such allots would still be made with the use of qualified majority voting, and on the basis of the established principle of relative stability.

As for the structural policy, there was also some change and some continuity. Article 11 states that “Member States shall put in place measures to adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities”. As such, the 2002 regulation went further than the 1976 regulation in stressing the need for adjusting the Community’s fishing capacities. Moreover, ceiling reference levels are set (in GT and kW) for fishing capacity. Public aid is not to be permitted to support exits from the fleet, unless the fishing authorisations are also permanently withdrawn. A new ‘entry/exit scheme’ was designed to make sure that public aid does not support any net increase in fishing capacity. Thereby entry into the fleet with public aid requires exit from the fleet of the same capacity; the introduction of this ‘entry/exit scheme’ was the result of a realisation that the MAGPs were not an efficient tool towards adjusting fishing capacity (Hegland & Raakjær 2008: 149). Entry without public aid would also require to be compensated for by exit without public aid.

4.4 Summary and conclusions

The aim of this chapter was to answer two key questions: 1) *why had the 1992 reform failed to introduce a sustainable fisheries management within the community?*; and 2) *by which measures did the 2002 reform seek to remedy the situation?* As discussed above, the Community’s fisheries sector experienced growing challenges following the 1992 reform. The 1992 regulation’s aim “...to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis...” had not been successful. The failure of the 1992 regulation had been twofold, relating both to a failure of conserving resources through technical regulations and effective input or output limitations, as well as relating to a failure to reduce the structural capacity sufficiently. In essence, the situation in 2002 was much the same as it had been in 1992, with the important difference that the situation appeared even graver in 2002. Consequently, the reasons why the previous reform had been unsuccessful were much the same as the reasons why the 1983 reform had been unsuccessful.

As for the second question, relating to the contents of the 2002 reform, it has been shown that while the 2002 reform was a complete review of both structural and conservational aspects of the CFP, the key aspects of the policy remained largely untouched by the reform. In particular, the setting of the TACs and the fundamental principles of the fisheries policy, based on equal access to resources were continued. Discards were not prohibited, but would continue to be mandatory if the catch was too small or if there was no quota for it. Moreover, provisions for funding designed to modernise and thus increase the capacity of community fishing vessels were continued. The Commission's green paper preceding the 2002 reform noted as one of the positive traits of the CFP was that it had managed to "so far, avoid the total collapse of stocks that some areas of the world have occasionally witnessed" (Commission of the European Communities 2001: 4). This lack of willingness by the policy makers to acknowledge the (almost total) failure of the CFP could also be seen in the final 2002 regulation: the reforming of the CFP had once more been a rather half-hearted process. The same can be argued for the political bodies provided for in this reform: while now having the STECF, the CFA and the RACs, none of these were ever provided with any decision making powers to implement any changes or to directly formulate policy. Remembering that the Council consistently set TACs higher than Commission recommendations, it is not at all clear how setting up more scientific bodies should contribute to better management, as the problem at this point was not one of lack of good advice, but rather one of lack of willingness to adhere to such advice. Corten in 1996 made a comment on this issue:

"[w]hat makes the EU unique is the discrepancy between the large effort spent on research and management, and the scarcity of results. The EU has at its disposal one of the greatest reservoirs of scientific expertise in the field of fisheries [...] Still, the results were not forthcoming." (Corten 1996: 9)

Consequently the 2002 reform brought more continuity than change; fisheries management within the Community was in the 2000s conducted very much in the same way as during the 1990s and the 1980s.

Chapter 5: The 2011 reform process: towards sustainable fisheries management?

This chapter will discuss the current reform process, *COM(2011) 425 final: Proposal for Regulation of the European Parliament and the Council on the Common Fisheries Policy*. The reform was meant to be adopted in 2012, but this process has been delayed for various reasons. Under the current plans, the regulation is scheduled to be adopted later this year; the present Irish presidency has stated a goal of reaching political agreement on the reform before the end of presidency in June, although this aim seems increasingly unattainable. The reform is meant to repeal the 2002 regulation and is the most radical reform proposal of the CFP so far. While the 2002 regulation contained stipulations for another reform in 10 years' time, the current reform proposal is also a response to the continued challenges of the fishing industry, which to a large degree are the same as during the previous reform process: too few fish and too many fishermen. While introducing a number of new measures to deal with these challenges, the political feasibility of the Commission's reform proposal has however been put to question, with criticism being raised by member states and MEPs on the proposal being either too radical or not radical enough.

This chapter aims to answer two key questions: 1) *why did the 2002 reform fail to introduce a sustainable fisheries management?* and 2) *by which measures does the current reform proposal seek to remedy the situation?* Related to the second question, a discussion on the political feasibility of the current reform proposal will also be offered. It will be argued that the 2002 reform failed to introduce a sustainable fisheries management regime largely for the same reason as why the 1983 and the 1992 reforms failed; while it did introduce a better management, it did not contain any binding commitments to sufficiently reduce fish mortality. The 2011 reform proposal goes much further than any of the previous reforms in proposing a sustainable management regime; the most radical parts include a ban on discards as well as an obligation to reach MSY levels for all commercial stocks by 2015. It will be argued that the reform proposal could be an important step towards the quest for a sustainable fisheries management regime, as has been pursued ever since the 1983 regulation. The reform is however not likely by itself to be sufficient for introducing a long-term sustainability; without political will for change within the Council, the proposed regulation will not drastically change the conducting of fisheries management within the Community.

This chapter is divided into five parts and structured as follows: the first part will examine the fisheries conservation regime in light of the 2002 reform, discussing to what degree the previous reform has been successful in introducing a sustainable fisheries management. The second part discusses the structural changes since the past reform. The third part presents and discusses the content of the reform proposal, comparing it with the content of the previous reform. A fourth part will offer a brief discussion on the actual political feasibility of the reform proposal. A fifth and last part will summarise the chapter while answering its key questions.

5.1 Fisheries management after the 2002 reform

With the Community's fish stocks at alarmingly low levels, the 2002 reform had not yielded the results expected. As of 2009, the Commission acknowledged that some 88 per cent of its stocks were overfished, with some 30 per cent being outside safe biological limits (Commission of the European Communities 2009: 7). In a recent study, O'Leary et al (2011: 2644) find that

“The 2002 CFP reform was meant to improve decision-making but our analysis found no evidence of progress [...] other than a slight decrease in the percentage of TACs set higher than scientific advice and greater concordance with advice in the North-East Arctic area”

The decision at the 2002 reform not to introduce any binding commitments to set TACs at acceptable levels is in hindsight surprising. The green paper preceding the 2002 reform noted:

“[t]he current situation of resource depletion results, to a good extent, from setting annual catch limits in excess of those proposed by the Commission on the basis of scientific advice, and from fleet management plans short of those required. Poor enforcement of decisions actually taken has also contributed to over-fishing.” (Commission of the European Communities 2001: 4)

As has been argued in the previous chapter, the 2002 reform did not really contribute much to actually reforming those political processes that mattered (and still matter today): those pertaining to the setting of TACs and reducing fishing capacity. As Laxe (2010: 186) finds, the Council is still setting TACs on the basis of short-term political criteria while scientific advice and recommendations are relegated to second place. In other words, the CFP is still not very successful at sufficiently decreasing the size of quotas as to reduce fish mortality.

Several important changes did however occur as result of the 2002 reform. The introduction of recovery and management plans was to ensure that “the impact of fishing activities on

marine eco-systems is kept at sustainable levels”. These plans have however not been as successful as many would have hoped for. As there is no room for a full discussion on the overall success of all such plans here, some selected studies are presented below, which contribute to show some of the shortcomings of these plans. Svedäng & Gipperth (2011: 807) in a study on the effects of the Swedish management plan for eels find that the conservation of the Swedish eel stocks are worse off with the EMP than without it: it is argued that without EU subsidies, the industry as a whole would have reduced profitability which would likely have caused a reduce in fishing effort, as actors would have had to leave the industry due to lack of profit. Kraak et al. (2012) find that the cod management plan in operation since 2009 has overall not been successful, mainly because it fails to reduce fish mortality. It is however found that the plan has improved selectivity in fishing. Froese & Quaas (2012) criticise the political management and the failure to introduce effective plans for rebuilding the North Sea cod stocks. Another example is offered in (Froese & Proelss: 2010), where it is noted that the western Baltic cod stock was in 2009 already outside of safe biological limits, yet the management plan for 2010 still increased the TAC for this subpopulation. There are however also studies that point to successful management plans, such as Hegland & Wilson (2009) in examining the management plan for western horse mackerel. The success of these plans are still very much dependent on political will from the Council to reduce fishing input and output levels through effort reductions and lowering of TACs.

The 2002 reform had provided for RACs to be set up. Seven such councils were to be set up (Council of the European Union 2004: article 2): five of which were confined to a specific region or waters⁷. Hegland (2012: 26) describes the RACs as “among the most tangible results of the previous CFP reform”, but also notes that the CFP is maybe “the most top-down command and control fisheries regime in the developed world”. The RACs have an exclusively advisory role with no powers having been delegated from the Council, and the purpose was “to enable the Common Fisheries Policy to benefit from the knowledge and experience of the fishermen concerned and of other stakeholders and to take into account the diverse conditions throughout Community waters” (Council of the European Union 2002: preamble). However, there are challenges related to this: Suárez de Vivero, Rodríguez Mateos & del Corral (2008: 320) write about the *participation paradox*: “the greater the number of

⁷ This regulation provided for a RAC to be set up for each of the following: the Baltic Sea, the Mediterranean Sea, the North Sea, north-western waters, south-western waters, pelagic stocks and high seas/long distance fleet.

actors, the smaller the role each plays, and the lesser the importance of traditional sectors”, and go on to argue about co-management within the fisheries sector that “[t]he truth of the matter is fishers have progressively lost their decisionmaking capacity and political presence as they have had to compete with the viewpoints, objectives and strategies of other actors who have recently been invited to take a political part” (ibid: 323).

The problem of discards has persisted, but some progress has been made in this area. A 2002 Commission report recommended measures to reduce the number of discards (Commission of the European Communities 2002). Since then, numbers compiled by the STECF suggest that for the period 2003-2005, “[d]iscard rates are in the range of 20-60% of the catch weight for various typical fisheries exploiting demersal stocks” (Commission of the European Communities 2007: 4). Due to many of the discards being made as result of the catches being below market size, it is not unreasonable to assume that the discard percentage in numbers is higher than the weight percentage above. Kraak et al. (2012: 205) also note the problem of discards not being constrained by TACs. Moreover, as noted in (Diamond & Beukers-Stewart 2011: 233), discards also contribute to a loss of valuable scientific information. As discards amounts to a large quantity of unreported fish mortality, this complicates fish stock assessments.

A tangible change was however achieved in 2009 when a transitional ban on ‘high grading’ of cod within the North Sea and Skagerrak was introduced (Council of the European Union 2009b: annex iii: article 5b). This ban on high grading has since been extended and now applies for all ICES zones (Council of the European Communities 2009a). A more recent example on developments aimed at reducing unnecessary discards is a new obligation to cease fishing and move to a different fishing ground if by-catches make up more than 10 % undersized fish of certain species (EU Parliament and Council 2013). Practical challenges related to the technical restrictions within the management regime have however also likely contributed to the conservation failure. Khalilian et al. (2010: 1181) criticises the conducting of fishery policy within the EU, noting that

“[s]ome estimated 2000 rules and regulations are assigned to the CFP which are difficult to comprehend and often contradictory. For example, the legal mesh size under the CFP is small enough to catch fish below legal landing size”.

Although there has arguably been some improvement during the past decade, there are still challenges to the EU fisheries management regime.

5.2 Structural changes since 2002

The past decades has seen several important structural changes as regards the polity within which the CFP operates. Important changes since the 2002 reform include the 2004 and 2007 enlargement rounds. Twelve new member states have joined the Community, of which nine are coastal states; this increases the size of the Community's EEZ, although not to the same degree as the 1973 and 1986 enlargement rounds. This does however involve that the amount of ministers having to agree on common quotas and rules has risen from 15 in 1995 to 27 today. The Lisbon Treaty which entered into force in 2009 is likely to have large implications on the current reform process, as well as future reforms: in introducing the 'ordinary legislative procedure' also for the CFP, it gives the European Parliament shared and equal decision-making competence with the Council as regards most aspects of the CFP, including reforms. Consequently the Council and the Parliament have together agreed on management plans and technical measures for the past years since the coming into effect of the Lisbon Treaty. This new legislative procedure does however not extend to the allocation of fishing opportunities, such as the setting of TACs; this remains an exclusive privilege of the Council.

Related to the CFP are moreover other regulations which could have important implications on the fisheries policy. Van Hoof & van Tatenhove (2009) discuss the importance of such developments, especially the *Marine Strategy Directive* (MSD) and *Maritime Policy* (MP). They find that "[t]he MSD involves a move towards sustainable development with emphasis on ecological targets and little inclusion of socio-economic aspects" and moreover that "[t]he CFP is facing a general shift in locus from the national corporatist structure to the European and regional level, and a loss of competences with the introduction of the MSD and the integration under the MP" (ibid: 729, 731). The MSD obligates that "Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest" (EU Parliament and Council 2008: article 1). Depending on the interpretation of 'good environmental status', this could have direct effects on the conduct of fisheries management within the Community.

As regards structural overcapacity, MAGP IV (for the period 1997-2001) was meant to "effectively eliminate the chronic overcapacity of the fleet" (Commission of the European Communities 1996b: 22); it cannot be said to have achieved its aims. Although there has been improvements towards adjusting the capacity during the past decade, there is still an overcapacity. In a recent assessment by the STECF on the structural balance "[t]he main

finding is that significant improvement is needed over the next years in the way Member States evaluate the balance and manage their fleets” (Commission of the European Communities 2013: 2). The report moreover finds that “[i]n 2011 the number of vessels decreased by 2%, while tonnage and power decreased by 3.7% and 3.1% respectively. Reductions both in tonnage and in power were similar among Member States, with some variations”. This reduction may be too little to contribute to any actual decrease of fishing capacity: Villasante & Sumaila (2009: 721) argue that seeing as studies have found that fishing capacity due to technological innovations grows by roughly 4.4 per cent per year, “the structural programs of the CFP [has] allowed the EU fishing fleet to increase its effective fishing capacity over time”. According to numbers compiled by the organisation *fishsubsidy.org* for the period 1994 to 2006 “the majority (38%) of EU funding for vessels went on new construction, with another 14% spent on modernising existing fleets. In comparison, 36% of subsidies were spent on reducing fleet sizes (scrapping)” (Euractiv 2009). In summary, whereas much has changed regarding the EU polity during the last decade, EU policies have not succeeded in coming to terms with its structural overcapacity. The FIFG was in 2007 replaced by the *European Fisheries Fund* (EFF). The EFF is planned to be replaced after 2013 by the European Maritime and Fisheries Fund (EMFF).

5.3 Contents of the 2011 reform proposal

This section will present the content of the current reform proposal. Issues relating to the actual political feasibility of the different aspects of the proposal will not be discussed here as these will be discussed in the next section. In its general objectives, the proposal goes much further than the previous reform. It is to provide for

“long-term sustainable environmental, economic and social conditions and contribute to the availability of food supplies” and it “shall apply the precautionary approach to fisheries management, and shall aim to ensure, by 2015, that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield” (article 2).

The proposal moreover sets ‘principles of good governance’, which it is to follow; such principles include i.a. basing measures on ‘the best available scientific advice’ and a ‘long-term perspective’ (article 4). The proposal continues many aspects from the 2002 regulation. The principles of equal access to Community waters are continued along with the existing special provisions for a 12 mile national zone in which member states have an extended

degree of national sovereignty (article 6). The special management provisions regarding the ‘Shetland box’ are not proposed continued. This is much due to a Commission report finding that this box has not delivered any clear conservational results (Commission of the European Communities 2005: 4), and noted regarding the commercial stocks within the box that it

“could not demonstrate any positive effects of the box on the development of these stocks, which have generally declined in abundance since the box was introduced in 1983. Nor could the working group find clear evidence that the access restrictions were effective in limiting fishing effort.”

Some new special provisions for the Canary Islands, Madeira and the Azores are provided for. The Council is to continue to be responsible for setting and allotting TACs; the principle of relative stability as key to such allotments is also to be continued (article 16).

It is among the conservation measures that the most radical new aspects of the reform are to be found. Unlike the 2002 regulation, the current proposal does not include special provisions for management and recovery plans. Rather, articles 9-11 provides for multiannual plans which are to be adopted by the Council. Importantly, under such plans, an obligation is set to reduce fish mortality as to achieve a fish biomass above MSY levels for all commercial species by 2015. As such, it is the first reform proposal to mention the concept of fish mortality and spawning stock biomass. The fulfilling of such goals will include a massive recovery of fish stocks. While in 2009 the Commission regarded 88 per cent of the Union’s fish stocks to be MSY overfished, this percentage is to be reduced to zero by 2015. Article 14 introduces technical frameworks set to reduce catches that are unwanted due to undersize or wrong species. The most radical part of the proposal is article 15 containing an obligation to land all catches. This practice following from this article is as such the complete opposite of that having been obligated since 1983, when discarding of undersize or extra-quota catches was made obligatory. The proposal continues the provisions for certain special member state conservation measures, along with special Commission emergency measures. Article 12 requires fishing activities to be conducted so as to alleviate their impact on special areas of conservation. Articles 46-48 list certain measures for control and enforcement.

Articles 27-33 introduce transferable fishing concessions. The member states are to decide for themselves how this system of transferable concessions is to be implemented. According to the explanatory memorandum attached to the reform proposal, these fishing concessions are to “constitute a major driver for fleet capacity adjustments”. Articles 34-35 list further provisions for adjusting fleet capacity, continuing the arrangement of fleet capacity ceilings. The RACs are to be renamed ‘advisory councils’, seeing as not all councils are regional in

nature, while a new council for agriculture is to be established. Although not in the reform proposal, another advisory council (for the Black Sea, by 2015) is planned established.

5.4 Political feasibility of the Commission's reform proposal

The political feasibility of the Commission's proposal has been put to question. There are likely two different reasons for why adopting the proposal in its current form could prove difficult. First, the reform proposal goes further than any previous reform in its conservation measures, with some of its provisions being costly and difficult to introduce. And second, the new legislative procedure stemming from the Lisbon Treaty makes adoption more difficult, as both the Council and the European Parliament will together have to agree on a common position. Among the most difficult aspects of the reform proposal are the goal of reaching MSY levels by 2015, the obligatory discards and full commitment to articles 34 and 35 regarding structural adjustments.

At the Council's general approach which was concluded on February 27th 2013 (Council of the European Union 2013a), a wide range of changes were made to the original proposal. Some of these could have major implications for fisheries management within the Community. In relation to the MSY targets, the Council wishes to change the wording so that where the Commission's proposal proposed to "ensure, by 2015, that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield", the Council's general approach proposes to "ensure that exploitation of living marine biological resources restores and maintains populations of harvested species *at least* at levels which can produce the maximum sustainable yield. *This exploitation rate shall be achieved by 2015, where possible, and by 2020 for all stocks at the latest*". The Council moreover wishes to redefine the concept of MSY: where the Commission, in article 5, defined it as "the maximum catch that may be taken from a fish stock indefinitely", this is proposed changed to "the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without affecting significantly the reproduction process". In article 11 the Council wishes to remove the obligation to include targets defined in either fishing mortality rates or spawning stock biomass. The Commission emergency measures provided for in article 13 are proposed capped at maximum 6 months, whereas the original proposal required such measures to be temporal without any definition on length. In article

15, dealing with an obligation to land all catches, many changes are proposed, where the original proposal made up 1 page in the regulation, the Council's general approach has extended this article to 4 and half pages, mostly consisting of derogations from the discard ban. *De minimis* exemptions are proposed, allowing for up to 7 per cent discards, which are not to be counted against the TACs. In a later revised general approach, concluded on May 15th 2013 (Council of the European Union 2013b), the Council made some concessions to the Parliament on this point, proposing a max limit of 5 per cent discards, but with a phase-in time, allowing for slightly higher discard rates the first four years.

In article 27 the introduction of transferable fishing concessions is made optional, rather than obligatory. In article 34 the Council proposes that member states should “adjust the fishing capacity of their fleets to their prospective fishing opportunities”, whereas the Commission's proposal read “adjust the fishing capacity of their fleets in order to achieve an effective balance between such fishing capacity and their fishing opportunities. The general approach does however propose to include provisions which allow for ex-ante conditionality in accordance with the EMFF. In article 51 it is however proposed to offer more lenience towards non-compliance with regards to interruptions in Community funding; article 51.3, which in the Commission's proposal reads that no operators having received sanctions for serious infringements during the past year are eligible to receive financial assistance, is proposed removed by the Council. Moreover, in the general approach towards the adopting of the EMFF, member states within the Council have agreed to continue to grant subsidies towards capacity-enhancing purposes even though there is still overcapacity within the Union.

Within the European Parliament, the MEPs alone have proposed a total of almost 2550 amendments to the Commission's proposal. The results of the first voting of the European Parliament on the reform package, on February 6th 2013, gives an overview of the general positions of the different nationalities and political parties. The result was a strong majority in favour of the proposal with 75 per cent in favour and 21 per cent against. Among those MEPs opposing the proposal were primarily the members of the Southern block: only 52 per cent of the Spanish MEPs present voted in favour of the proposal, whereas 38 per cent of the French, 36 per cent of the Portuguese and 46 per cent of the Italian MEPs supported the proposal (data compiled by Votewatch 2013). Whereas the Council wishes to continue the practice of discards, the European Parliament in their vote decided a common stance on a total ban of discards. This reflects a resolution from 2008, where the European Parliament decided that it “[c]onsiders that high-grading, the practice of discarding good, legal fish for other fish that

might find a higher price in the market, should be banned, even though this would be difficult to enforce” (European Parliament 2008).

Europêche – an organisation of the EU’s fishing industry - has noted a certain scepticism towards a full discards ban, referring to it as “a simplistic and populist approach”; in a letter to the President of the European Parliament, the organisation moreover finds that reaching MSY levels by 2015 is “too rigid and unrealistic”, and proposes postponing this target till 2020 (Europêche 2013a; 2013b). On April 9th 2013, an open letter signed by 217 NGOs and representatives of business and civil society as the group Ocean2012 (2013) was sent to the EU’s fisheries ministers, urging them to endorse the European Parliament’s approach. The public awareness about and interest in the issue of CFP reform appear to have increased, which might affect the way ministers and MEPs vote. Most notably perhaps is the campaign ‘Hugh’s fish fight’, having raised the issue of discards; as of May 2013, their web site claims to have collected 859’000 signatures on their petition to end the practice of discards (Fish Fight 2013). This development in public awareness and interest might be of some importance: Daw & Gray (2005: 195) note that

“there are signs that public interest in fisheries management and issues of marine conservation has grown as a result of high profile fishery disputes and stock collapses and the increasing involvement of influential non-governmental organisations (NGOs) in fisheries, including WWF and Greenpeace. This means that those who are responsible for researching and managing fisheries are now held to account not only by the industry but also by the general public and environmentalists.”

Both legislative institutions, together with the Commission, are now engaged in trilogues. The latest development as of May 20th 2013 is the Council (on May 15th) having renegotiated a new mandate for a general approach. The Parliament now has to decide whether to accept or amend the latest proposal from the Council. It is uncertain when the two chambers will be able to reach agreement on a legislative text. While it is impossible to predict the exact contents of the outcome of these negotiations, there is reason to doubt whether the reform will be as radical as expected. Symes, Raakjær & Hegland (2012) noted in August 2012 that “after a promising start with the publication of an enlightened Green Paper in 2009, commitment to fundamental reform has lost momentum and the final outcome is likely to be disappointing.”

5.5 Summary and conclusions

This chapter has aimed at answering two key questions: 1) *why did the 2002 reform fail to introduce a sustainable fisheries management?*; and 2) *by which measures does the current*

reform proposal seek to remedy the situation? It has been argued that while there has been some progress during the past decade towards introducing a more sustainable fisheries management, the 2002 reform failed to effectively reduce fish discards. Its management plans and recovery plans have not succeeded in bringing all stocks to healthy levels, and 88 per cent of the Community's stocks were as of 2009 considered to be overfished. The past decade has seen many changes for the EU, but the chronic overcapacity within segments of the Community's fishing fleet has remained. As to answer the first question thus, the 2002 reform failed to sufficiently adjust the fleet's overcapacity and also failed at introducing a sustainable, science based, fisheries management. As for the second question, some new and potentially important measures have been identified within the current reform proposal, even though the key principles of the CFP remains untouched with the proposal. The Council has however amended these measures, and it is uncertain what will be the final outcome of the reform proposal; as of now, the reform proposal as amended by the Council is considerably different than the proposal adopted within the European Parliament.

Chapter 6: Change or continuity? Forty years of reforming the CFP and the road ahead

This study has traced the development of the CFP since its establishment in the period 1970 to 1983 and up to the current reform proposal. In doing this, due consideration has been given to changes in the external and internal milieu to which the policymakers responsible for managing and reforming the CFP have had to respond. In examining the decennial reform processes of the past 40 years, it has been suggested that these reforms have brought along more continuity than actual change. Consequently several of the principal parts of the CFP have escaped largely untouched by the different reform processes. Most notably those aspects of the CFP pertaining to the access to, and the distribution of, Community fishery resources remain in essence the same as ever, together with the role of socio-economic objectives within the fisheries policy.

This chapter is structured as follows: the first part will very briefly recap the development of the CFP during the past four decades and reiterate the main conclusions of the past chapters; even in the face of ever declining fish stocks and a notorious structural imbalance, the CFP reforms have resulted in little change. The following two sections will discuss the first main question of this study: *what explains the past reform processes' inability to set up a more sustainable fisheries management policy?* In doing so, the second part will examine the apparent continuity in light of the theory of path dependence; can path dependence explain the degree of continuity in reforming the CFP? It will be argued that path dependence only in part offers sufficient explanation for the lack of change, and the third part will examine some other explanations for the lack of reform and good governance within the CFP; issues relating to political priorities within the Council will be discussed here. A fourth part addresses the current reform proposal and will answer the second main question of this study: *is the on-going CFP reform process likely to prove more successful than the previous reforms in setting up a more sustainable fisheries management policy within the EU?* It will be argued that the reform will only lead to a change in fisheries management if the Council is able and willing to put long-term conservation issues above short-term socio-economic issues; the Council majority has however so far not displayed any signs of change in this regard. A fifth part will then briefly offer some concluding remarks.

6.1 Forty years of reform and continuity

As has been argued in the past chapters, the past reform processes of the CFP have led to more continuity than to actual change. This is consistent with the findings of Hegland (2012: 7), who notes that “[o]ne of the great paradoxes of the history of the CFP is the amount of ‘reform’ compared to the amount of ‘change’”. The 1970 regulation set up the first provisions for a common structural policy for the Community fisheries. This regulation was marginally altered through the 1976 regulation, whereas the 1983 regulation introduced a common policy for management of Community fish resources. In chapter 2 it has been argued that the establishing of the CFP at this point was largely reactive, as it was important to agree to a common policy before negotiations started with the four applicant states in 1970.

Consequently, the perhaps most important and basic principle within the conducting of fisheries management is the principle of equal access to Community fish resources. Having been adopted in the 1970 regulation, this principle was to become much more important; following the developments within UNCLOS III, the Council decided to establish a common EEZ for the Atlantic waters of the Community. This decision vastly increased the size of the newly established Community waters. Following these developments it was established that the Council was to set TACs for stocks within Community waters. The allotment of TACs by the Council was to be done on the basis of a relative stability, as established by a Council decision in 1976 and finalised in the 1983 regulation. Moreover the Community was to provide for structural funds for the fishery industry, as established by the 1970 regulation. Issues pertaining to the market for fish products within the Community have been outside of the scope of this study, as have also the international agreements of access fisheries.

Summarised, and as argued in chapter 2, the key principles of the CFP were the establishing of Community waters (EEZs) to which member states would enjoy equal access, TACs allotted by the Council on the basis of relative stability, as well as a Community funding scheme developed, in part, to modernise the Community’s fishing fleet.

With the 1992 reform, the 1983 regulation was repealed. As presented in chapter 3, there were several shortcomings of the initial CFP policy which the 1992 regulation sought to mend. The basic problem was one of too many fishing vessels and too few fish. The structural policy was contributing to an increasing of the Community’s fishing capacity, whereas the Council often would not take due consideration of the recommendations from the Commission and scientists regarding the size to which the yearly TACs should be capped. Moreover, without a discards ban and with quotas linked to the amount of fish landed – as opposed to the total amount of

fish caught, but discarded – there was no absolute link between TACs and fish mortality. As argued in chapter 3, the measures with which the 1992 reform sought to approach these shortcomings were largely inadequate. The reform did introduce certain measures, such as a licencing system and effort limitations together with a new focus on promoting of aquaculture as an alternative way of creating jobs for the sector as well as providing fish for the Community. The content of the 1992 reform was however not at all very innovative or radical. In summary, the 1992 reform brought much continuity and very little change.

With the 2002 reform, there was to be a complete overhaul of the CFP, and both the 1992 management regulation and the 1976 structural regulation were to be repealed. As discussed in chapter 4, the 1992 reform had not succeeded in introducing a sustainable fisheries management regime, and the industry was facing increasing challenges. There was still a considerable overcapacity within the Community's fishing fleet and the Council continued to consistently set TACs above those levels recommended by scientists. The structural funds of the EU were contributing to an increase of the Community's fishing capacity through the funding of building and modernisation. There was still no absolute link between TACs and fish mortality, as obligatory discards continued to cause a high amount of unnecessary fish mortality. Lack of control and enforcement was another shortcoming of the CFP.

As argued in chapter 4, the 2002 reform was a much more thorough reform process than the 1992 reform. The reform explicitly acknowledged the problems facing the industry and called for a more sustainable conservation regime as well as a cessation of subsidising an increased fishing capacity through new provisions for entry-exit scheme. The introduction of RACs were to increase stakeholder participation, thus presumably increasing both the quality of advice as well as encouraging more compliance from the industry on the rules laid down by the CFP. Moreover, the reform introduced management plans and recovery plans to the CFP. But as chapter 4 argues and concludes, these new provisions did not lead to any radical shifts in the conducting of fisheries management within the Community. While very conservation-minded in rhetoric, the reform failed to bring change to any of the key principles of the CFP. The conducting of fisheries management was still based on Community waters with equal access for all member states, TACs set by the Council on the principle of relative stability, while the reform failed to cut all Community funding increasing towards enhancing fishing capacity. As consequence, the 2002 reform process also resulted in more continuation than actual change; the key principles of the CFP were left untouched.

The current reform proposal also largely leaves the key principles of the CFP untouched. No radical changes have been introduced to Community fisheries management in the period since the adoption of the 2002 regulation and up until this day. While insufficient on its own, the ban on high grading was an important step in the right direction. However with a poor record of compliance, it is still uncertain what results this ban will yield. The current reform proposal is the most radical so far, as we saw in the previous chapter. Provided that the reform will be adopted roughly according to the last position of the Council, it will introduce some important new issues, most importantly related to MSY targets, a reduced amount of discards. If the Council's last position is adopted by the Parliament, the transferable fishing concessions will not be introduced for all member states. In summary, the core of the CFP and its key principles has up until today survived all reform processes, and shows a remarkable degree of continuity from the set-up phase in 1970-1983 and up to the current reform proposal.

6.2 Explaining the continuity: path dependence?

Having established that the different processes towards reforming the CFP have resulted in more continuity than actual change, this section will examine the degree to which this can be attributed to path dependence. The theory of path dependence, as presented introductorily in this paper, is useful for explaining several aspects of the CFP. It has been argued that the CFP is guided by a set of key principles having been set up in early years of the CFP. These include in particular the establishing of a common EEZ wherein there would be equal access to fish resources, the setting of TACs by the Council on the basis of relative stability, as well as the Community assuming financial responsibility for the income and competitiveness of its fishing sector through subsidies. Can the shortcomings of the CFP be explained by path dependence and the choices made during the set-up phase of the CFP from 1970-1983?

Symes (1997: 153) commented that the initial choices within the CFP would continue to affect the conducting of fisheries management:

“[I]n some respects, it can be argued that the CFP never stood a chance and was ill designed to face up to the exigencies of a rigorous downsizing of the industry. Conceived at a time of relative abundance of fish stocks, the CFP was finally born into a period when broader issues of sustainable development were still in their infancy. Moreover, the principles on which the CFP was founded are unaligned to conservation needs, and the policy process demonstrates a built-in antipathy to the precautionary approach.”

And it should be emphasised that the initial first policy within the CFP was the 1970 structural policy, allowing for equal access to Community waters while subsidising the fishery fleet as to increase its profitability and competitiveness. As such it is perhaps not strange that the Community has problems diverging from its initial path. Lee (2010: 79) concludes regarding the development of the CAP that “[w]hat is clear is that not all events in history can be explained in simple political or economic terms”. This appears to be very true also for the CFP. Consider the following: the CFP is generally an unpopular policy, and member states, fishers, environmentalist NGOs have all often criticised the policy. So why has the CFP not been changed? The answer to this question is probably at least partially the existence of a certain degree of path dependence where change is very difficult to achieve, as it would include reopening talks on distribution of competences, possibly renegotiating the principle of relative stability as well as withdrawing funding mechanisms.

Payne (2000: 308) writes that the CFP is an “example of ‘joint-decision trap’, in which the perpetuation of the status quo is in no one’s interest, but it represents ‘local optima’ in the context of cross-cutting national interests regarding the scope of the policy”. This can be seen as a feature of path dependence, where the cost of change due to different factors (such as the political effort required to fully renegotiate the policy) makes change an unattractive option; keeping the status-quo is less problematic than reforming the policy. And the modus operandi of fisheries management within the Community has to a remarkably small degree been influenced by the ever declining fish stocks. The Commission in a 1994 communication noted that whereas the world output of fish had increased during the past 10 years, output from the Community waters had actually declined (Commission of the European Communities 1994a: 7); yet no actions were made to drastically reduce fish mortality. Pierson (2000b: 255) explains the idea,

“[i]n contexts of complex social interdependence, new institutions and policies often generate high fixed costs, learning effects, coordination effects, and adaptive expectations [...] These activities increase the attractiveness of existing institutional arrangements relative to hypothetical alternatives.”

Payne (2000: 307) argues that when an issue-area is nested (linked) to other policy areas within the polity, this can be an obstacle to change, as decisions within the one policy area could have an effect on aspects of the other policy area. The idea that the Community should have an obligation towards ensuring a fair standard of living for those employed within agriculture (and fisheries), and also to contribute towards increasing productivity stems from article 39 of the Treaty of Rome. While this policy for the CAP has been known to create

‘wine lakes’ and ‘mountains of butter’, for the CFP it has contributed to an armada of fishing ships. Following Payne’s arguments on nested institutions, the practice of the Community providing capacity-enhancing subsidies (as it has during the past four decades, and as is likely to continue for at least one more decade, if the Council ministers get it their way) is difficult to turn not only because the fishers and some member states oppose it, but also because of the implications it would have on other policy areas (i.e. the CAP and the Community’s obligations towards its farmers).

And this structural policy is of great importance for the development of the CFP as well as for the conservation of the Community’s fish stocks. Villasante & Sumaila (2009) conducted a study on the adjustment of Community fishing capacity in a 20 year period from 1987 to 2006, while also taking into account increases in fishing capacity due to technological developments. Using what they refer to as a conservative estimate for increases in efficiency through technological developments, they find that in only three years of the 20 year period was the EU fleet’s fishing capacity reduced more through restructuring than it was increased through technological advances. Moreover, in several years of the period, the fleet was also increased both in terms of tonnage and fishing power. The study finds that “structural programs of the CFP allowed the EU fishing fleet to increase its effective fishing capacity over time” (ibid: 721). And the Community policy makers have been well aware of the severity of the problem. A line from a 1990 Commission report serves to illustrate the gravity the challenges at this point: “[t]he main problem in the fishing industry at the present time is THE SERIOUS IMBALANCE BETWEEN AVAILABLE RESOURCES AND FISHING CAPACITY” (Commission of the European Communities 1990: 3 -*capitalised and underlined in original text*). As repeatedly shown in chapters 2-5, the policy makers have not been willing or not been able to deal with the problem of overcapacity. And as long as the EU is to be financially responsible for its fishing industry being competitive and its fishers having a fair standard of living, it is difficult to introduce reforms towards adjusting the structural imbalance.

As for the setting of the TACs by the Council and on the basis of the principle of relative stability, Hegland & Raakjær (2008: 133) write that “[t]he question of dividing the TACs between the member states was the most sensitive part of the political negotiations leading to the agreement on the CFP”. Similarly to the discussion on the structural policy of the CFP above, the allocating of TACs can also be argued to follow the logic of path dependence: this would represent what Schreyögg & Sydow (2011) refer to as sunk costs and commitments.

The difficulties of setting up this principle leads to a very inert system: it is much easier for the policy managers to just continue this stability from year to year than to renegotiate it, even though it is perhaps not an optimum policy. Symes (2009: 101) asserts that relative stability is a ‘major feature’ of the CFP’s path dependence. He has moreover also noted that “[t]he countervailing concept of relative stability, although neutral in purpose, has in practice contributed to exploitative behaviour through the way in which member states have argued for quotas on the basis of preserving existing fishing capacity” (Symes 1997: 153).

Focusing on national quotas and access to resources, perhaps an explanation for the apparent failure of the CFP is best found if we go back all the way to the late 1960s; recalling what Heyerdahl found in his study, that the CFP was based on national self-interest. At the policy’s creation, it was made as a means of gaining access to more fishing grounds (presumably as to increase one’s fishing opportunities). It could appear as if the practical purpose of the policy has not changed that much during the past 40 years. As such one might argue that perhaps the reforms have not been unsuccessful, as the primary purpose of the CFP has, following the logic presented by Heyerdahl, always been one of increasing one’s fishing opportunities. In other words, the CFP was perhaps never really about preserving fish stocks, but rather about gaining access to such stocks? The primary objective of fishery ministers has never been to represent the fish; rather fishery ministers are expected to represent their states’ fishermen. Perhaps the CFP should best be seen as a framework for fishery ministers to negotiate towards increasing the TACs and structural subsidies of their states’ fishermen?

This argument is also in line with the theory of path dependence as regards the importance of sequence for the development of policies and institutions. As argued in chapter 2, the timing of the set-up of the 1970 structural policy, as well as its contents, were both very much related to the first enlargement round. It is in this regard interesting to consider how the CFP would look today if Spain and Portugal had been the ones joining in 1973; the inner six would presumably be less eager to introduce the principles of equal access and a Community structural policy for subsidising the member states’ fishing fleets. Indeed, if the inner six had not been able to reach agreement on the CFP prior to the entry of the 1973 entrants, then there might have been no common fisheries policy apart from a common market policy and perhaps a common policy for international agreements. The CFP has since 1970 been, and is still today, very much affected by the early events during the set-up phase of the policy, which in turn were results of the sequence of the Community’s enlargement rounds.

The current apparent irrationality of the CFP is a consequence of an institution and policy inert to change. Princen (2009: 36) describes this feature of the fisheries policy: “[t]he results of this system were, at best, mixed” he notes, quoting a former head of the European Commission’s Fisheries Conservation Unit: “On the basis of whether the conservation policy has achieved its political objectives, the conservation policy can only be adjudged a total success. [...] In contrast, it has been an almost total practical failure”. The CFP is a strange construct, and it does not appear fully rational: for forty years now it has been subsidising capacity enhancing measures, whereas for thirty years it has also subsidised capacity decreasing measures. This is not exclusive to the CFP though: (Lee 2010: 66) in studying the development of the CAP finds that the objectives are often so poorly planned that they contradict each other. This should not be very surprising though, as both the CFP and the CAP originates from the same articles in the Treaty of Rome. Consequently, the CFP is subsidising the decreasing of its fleet’s fishing capacity while at the same time also subsidises the increasing of fishing capacity. This kind of outcome is in line with what is to be expected from a path dependent system, as Scharpf notes:

“[i]n order to prevent decisions violating their own preferences, [member states] will insist on unanimity or qualified majority voting even though the outcomes are likely to be inefficient from a problem-solving perspective”. (2006: 849)

Thus path dependence does appear to wield some explanatory value with regards to the failure to reform the CFP. As argued above, and shown in chapters 2-5, the past reform processes have not changed the key principles of the CFP which were established in the period 1970-1983. Likewise, Hegland (2012: 8) also finds that “to a large extent it can be argued that the CFP rests today on the same fundamental principles as it did when adopted in 1983”. According to the path dependence theory, a locked-in path can often only be broken by exogenous shocks. Whereas the fish stocks still have not been rebuilt to pre-CFP levels, while the costs of international fisheries agreements have become rather high, this has not yet provided for a shock large enough to rock the key principles of the CFP. Gezelius, Raakjær & Hegland (2010: 481) note that “the EU arguably has the most institutionally inert resource conservation system and the system facing the most urgent need for change”, but add that whereas the EU has found it difficult to divert from its current path, “distributional obstacles to conservation system reform inevitably disappear when the resource disappears”. Consequently, if commercially important stocks within Community waters should collapse completely, a reform introducing more conservational measures is likely to come about.

6.3 Other obstacles to reform and good governance

Whereas path dependence can to some degree explain the failure to reform the CFP, it does not fully explain why the policy has failed to introduce a more sustainable fisheries management regime. While it has been argued that a radical reform is needed as to introduce a sustainable conservation regime, this is a simplification: if there were political will, there is nothing preventing the EU from exercising good governance in the CFP. Already with the 1970 regulation, the Council was given (article 5) the possibility to adopt conservation measures in cases where there is a risk of overfishing for certain stocks. Moreover, the Council has since the 1970s also been responsible for setting and allocating TACs for member states. Consequently, part of the explanation for the conservation failure within the CFP must be within the day to day conduction of fisheries management by the Council. As the past chapters have suggested, two main interrelated problems can be identified within the Council. Firstly: a leaning towards favouring short-term socio-economic aims, and secondly and more generally: a political system allowing, and perhaps even facilitating for, such behaviour. Though clearly irrational in the long run, fisheries ministers have been reluctant to efficiently deal with the challenges confronting them. This section will first present some of the political behaviour amongst the fisheries ministers which run counter to good governance, and then examine how the political system and decision-making process facilitates for this.

Many studies have over the years argued for rebuilding Europe's fish stocks. Examples include Quaas et al. (2012: 50) who argue that for most fisheries examined in their study, "fishing should be discontinued for a transition period devoted to stock rebuilding"; the study is based on the concept of 'shadow interest rates':

"the interest rate that fishermen have to pay when they continue fishing at low stock sizes instead of letting the stock grow to a more productive level. In doing so, they forgo future income and act as if they were borrowing money for consumption today that has to be paid back at a later date" (ibid: 46).

Moreover Norman-López & Pascoe (2011: 494) also find in their study that the benefits of rebuilding fish stocks offset the costs. Sumaila et al. (2012) also find there is much to be gained through allowing fish stocks to rebuild, despite the short-term costs of doing so. Rebuilding the stocks to MSY levels, as proposed by the Commission (but postponed by an unwilling Council and defined by the largest fishing nation in the Community as being 'populist'), would thus greatly increase the profitability of the fishing sector in a long-term perspective. When the Commission in the green paper on the latest reform find that 88 per cent of the Community's stocks are MSY overfished, this means that these 88 per cent would

have a higher (sometimes much higher) yield if they were allowed to rebuild. The Council has however almost consistently set TACs at higher levels than those recommended by scientists; O’Leary et al. (2011: 2644) find that “for some stocks TACs were routinely set more than 100% above scientific advice, and in one case – hake [...] – scientific advice was exceeded by 1100%”. So why is it so difficult to agree on reducing TACs? Or put differently, why is it so difficult to not exceed the TAC limits proposed by the scientists in the ICES?

The answer to this question is quite likely related to politics, as noted in a Commission report:

“Firstly, because decisions are focused on the short-term rather than the long term, it has hindered the proper discussion of long-term management. This was recognised in the reform process of the Common Fisheries Policy which resulted in the creation of a legal basis for long-term management” (Commission of the European Communities 2006: 5).

This again can probably be explained by domestic politics. As noted by Daw & Gray (2005: 196), fisheries ministers will always pay attention to their popularity at home. And “the significant gap between the levels of TACs agreed in Council and sustainable catches indicates the prevalence of short-term concerns over long-term sustainability” (Da Rocha, Cerviño & Villasante 2012: 1313). And with 27 member states there will always be an election in one or more member states. Khalilian et al. (2010) also note that “[t]he unwillingness to incorporate scientific advice into CFP policies is partly due to the discretionary decision process within the EU and due to electoral politics of fisheries ministers, who are concerned about their popularity at home”. From a realist and short-term perspective such behaviour can be quite rational: the primary concern of any career politician is to be re-elected, and seeing as fish, unlike people, do not vote, it is quite rational to prioritise socio-economic aims over conservational aims. The picture varies across the different member states though, as Hegland (2004: 100) argues that in crude terms, in the south there are votes in protecting the fishermen, whereas in north there are votes in protecting the fish. In a large and complex polity as the EU (unlike in a smaller nation state) it is also less likely that the long-term implications resulting from a neglect of fisheries conservation will be traced back to the decisions of the individual fisheries ministers. This fact probably contributes to facilitating a mismanagement of resources, as fisheries ministers are less likely to be held responsible for their voting behaviour in the Agriculture and Fisheries Council.

What further complicates the issue as Hegland (2004: 106) notes, is the relative distribution of votes in the Council between the two groups ‘friends of fish’ and ‘friends of fishing’,

complicates any radical change: with one group centred around Germany and United Kingdom, and the other around France and Spain, it is hard for any part to gather the required amount of votes that would allow for a radical reform in any direction. Both blocks are, as noted by Gezelius et al. (2010: 477-8), in effect minimum blocking coalitions. Payne (2000: 311) elaborates on the mechanism of such a system:

“[i]nterests of Member States regarding integration and fisheries policy created a null win-set for changing the CFP, even though the status quo has been ineffective at fisheries conservation, and alternative configurations would arguably advance the interests of all Member States by providing more fish in the long run”.

Moreover, the winners of the system are little likely to accept a reform that reduces their relative gains. The CFP as it works now involves through equal access to areas that would otherwise be part of other states’ national EEZs and through a common system of subsidies and common international agreements with third countries, some states are bound to be winners, while others are paying. This perhaps explains the forming of a primarily southern reform-averse group and a primarily northern pro-reform group of member states. Lășan (2012: 81) makes this argument in studying the CAP; in a redistributive system where there are national gains to be made, the net recipients are bound to be reluctant towards change. Recall, as presented in chapter two, how France and Italy were the ones insisting on having a common Community subsidising scheme and how these states were also the ones with the least efficient fishing fleets. The CFP might be one of the most integrated sectors of the European Union, but there is still enough room for national interests to be pursued within the policy. Symes (1997: 147) also argues that the CFP is an area for exercising national interests:

“individual members of the Council of Ministers are determined to protect the national interest and preserve the status quo through minimalist solutions constructed on a short-term basis. Nowhere is this more readily observed than in the annual negotiations over TACs and in the delays and compromises over the introduction of technical measures for conservation.”

In consequence of the issues discussed above, the CFP as an institution does not provide for an ideal political milieu in which to conduct fisheries conservation. With a legislative procedure of qualified majority voting and a plethora of differing national interests, most policies are based on the lowest common denominator. Oakes Berger (2010: 40) concludes in his study that “[i]n the face of a perfect storm of interests and institutions lining up against reform, it is impressive that even small reforms to the CFP have occurred”.

6.4 The current reform proposal; outlooks for change?

In light of the discussions in the two previous sections this section will answer the second main question of this study: *is the on-going CFP reform process likely to prove more successful than the previous reforms in setting up a more sustainable fisheries management policy within the EU?* Following the argumentation from the previous sections, the current reform proposal cannot be expected to introduce a definite change in EU fisheries management. It does not break with any of the problematic key principles and also does not place any effective restraints on the Council with regards to setting TACs; there are also no signs that a majority of the Council has shifted priorities from short-term socio-economic concerns towards more long-term conservation concerns. In chapter 5 it was argued that the current reform process does not break with the key principles of the CFP, and also does not introduce much change to the fisheries management regime. The most promising parts of the proposal include the obligation to reach MSY levels as well as the discards ban (which as of May 2013 appears to result in a discards reduction rather than a ban). There are however reasons to doubt whether these measures will contribute much towards the introduction of a sustainable fisheries management.

As noted in the previous chapter, while the Commission in its original proposal wanted to achieve MSY levels by 2015, the Council has amended this to reaching MSY levels by 2015 ‘where possible’, or by 2020. However, as has been discussed in the past chapters, the Council does not always follow up on its own policies. As discussed in chapter 4, the EU already in 1995 through the signing of the *FAO Code of Conduct on Responsible Fisheries* committed itself to restoring its stocks to MSY levels. Seeing as the Council has not put much effort into reaching this goal in the 18 years since committing to it, there is reason to question whether there will be any change in practice in the near future. As Khalilian et al. (2010: 1179) note in this regard, in relation to the MSY targets “no related action is suggested, such as drastically reducing catches of overfished stocks and increasing legal minimum sizes beyond size at first maturity”. Moreover, as noted in chapter 2, through the signing of the *Convention on Fishing and Conservation of the Living Resources of the High Seas* in 1958, the member states and the Community also committed themselves to reaching what was referred to as the optimum sustainable yield. Mesnil (2012: 475), in offering a thorough discussion on the role of MSY within the CFP, notes that it is quite interesting that the 2002 reform of the CFP did not even mention the provisions of the WSSD (the *World Summit of*

Sustainable Development) which was adopted only three months prior to the 2002 reform, and in which the EU (again) committed itself to reach MSY-levels by 2015 at the latest.

Regarding a reduction of discards, this is definitely a step in the right direction, but it is uncertain how much actual change this reduction will amount to. Whereas the Council wished to restrict discards to maximum 7 per cent (amended and reduced to 5 per cent in their latest general approach), this still does not necessarily imply a large commitment to changing the conduction of fisheries policy within the Community. As Naver (2013) notes, a reduction is not at all the same thing as a ban. This has to do with issues such as controlling and enforcement. Furthermore, as the problem of illegal landings still persists in 2013, the EU obviously is not able to control the fishing vessels at harbour; the outlooks for being able to effectively control the activities of fishing vessels at sea are arguably slim. When fishers can land and sell extra-quota catches and get away with it, they will presumably also be able to discard catches at sea also and get away with it. Moreover, 7 per cent discards as the Council wanted to allow, is still a large number. According to the Commission's own numbers, 7 per cent discards will amount to 335'000 tonnes fish dumped per year (ibid.). Demanding continuation of discards of hundreds of thousands of tonnes of fish per year does not really suggest a very large willingness within the Council to introduce a change in fisheries management. Finally, as noted by Bellido et al. (2011: 327):

“unless combined with measures to reduce catches of unwanted fish and/or to provide for their utilization, the benefit in terms of environmental conservation and sustainable marine and coastal zones management may be limited or negative. Rather than ensuring zero waste, the policy potentially transfers the problem of marine waste onto the land, where its safe disposal becomes a problem for local authorities.”

If the reduction just leads to more juvenile fish being dumped on land instead of on sea, the discards reduction will not amount to much. While definitely being a step in the right direction, the current reform proposal will not fully mend the challenge of discards, unless the Council agrees to the Parliament's amendment of a total discards ban for all commercial species.

Whereas both the 2002 reform and the current reform proposal emphasises that fisheries management should be conducted on the basis of a precautionary approach and on the basis of the best scientific advice, this does not necessarily imply that the Council will adhere to these principles. As demonstrated in the past chapters, the Council has consistently set TACs higher than recommended by ICES advice. The Commission has since 1977 (Commission of the European Communities 1977: annex b) committed itself to offering TAC recommendations to

the Council on the basis of the ‘best scientific advice’; the failure to set TACs at sustainable levels lies with the Council. And while “[n]on-application of the precautionary principle is the general norm” (Laxe 2010: 186), the Council has shown little interest in following the obligations it imposed on itself a decade ago. The EU also committed itself to the obligation to follow scientific advice and the precautionary approach at the *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks* in 1995. Again, the Council does not seem to follow up on its obligations. Symes (1997: 145-6) notes that

“[t]he CFP is nominally a science-based policy, although when scientific advice has been refracted through the political process, it may appear to shed little light on the final decisions”, and moreover that “[w]ithin the political process, the advice is often simply ignored or its alleged ambiguity is used as a pretext for compromise”.

In consequence of the issues discussed in this section, it is difficult to see how the current reform process will be much more successful in introducing a more sustainable fisheries management regime than the previous reforms. It fails to break with the key principles of the CFP, while also fails to put any effective constraints on the Council; seeing as the Council in practice still does not follow up on its international obligations, it is hard to see how the current reform proposal should change the policies of the Council. The Council’s proposed amendments of the Commission’s proposal regarding discards and MSY targets will likely further reduce the potency of the reform proposal.

6.5 Concluding remarks and unanswered questions

In this final section, some concluding thoughts on the EU’s approach to fisheries management will be offered, along with some unanswered questions related to the scope of this study. Claes & Tranøy (1999: 226) argue that the fisheries regime of the EU has moved in the complete opposite direction of the general development within international fisheries management of the post-war era. Whereas the developments within the UN framework, as we have seen in chapter 2, have given the coastal states larger zones of influence through the establishing of the EEZs, the EU has since the setting up of the CFP moved in the other direction, moving the newly gained national sovereignty over EEZs away from the coastal states and up to a supranational Community-level governance; thereby in effect reintroducing the concept of common waters with equal or free access. While the rationale for giving the coastal states more influence was to make the seas and resources more manageable, the CFP has become one of the most integrated and supranational of the EU’s policy areas. As

consequence, perhaps Hardin's views from 1968 regarding the tragedy of the commons still hold true? As has been argued in the previous sections, the EU system of fisheries management does not appear to promote a conservational approach. At any rate, after 40 years of common fishery policy and several reform processes, there are very few results to show to; fish stocks are worse off than prior to the policy's inception and the policy continues to subsidise measures increasing the efficiency of the fishing fleet.

Some (in theory) simple steps could be recommended as to mend an apparently broken CFP. O'Leary et al. (2011: 2647) suggest that

“scientific assessments should be used to set politically binding limits on catch sizes within which politicians can negotiate, not with nature, but with their peers to divide scientifically appropriate quotas among member states. If scientific advice continues to be sidelined, the 2012 reform of the CFP will once again fail to deliver sustainable and productive fisheries”.

This does make sense: instead of continuing to obligate that the Council bases its decisions on ‘the best available scientific advice’ or similar phrasings, why not just obligate that the Council shall *follow* the best available scientific advice? In other words, when the ICES recommends a given amount of catches for a species, then that will be the TAC for that year, including all discards and by-catches. Or alternatively, if the Council is unwilling to move the decision making from a democratic body to a technocratic body, there is another presumably simple solution: why not move the conservation pillar of the CFP over to the Council for environment? In fact, one could abolish the entire CFP through moving the pillar of international agreements over to the Foreign Affairs Council, the pillar of the market for fisheries products could be moved to the Competitiveness Council, whereas the structural policy could be moved to the Employment, Social Policy, Health and Consumer Affairs Council. Paradoxically, Community fisheries management would quite likely be more sustainable while conditions for the fisheries sector would probably also be better if the CFP was abolished; as of 2013 there are thus reasons for questioning the very *raison d'être* of the CFP.

Some interesting questions are unanswered in this study. A detailed study of the political debates within the Council, Commission and member states for each of the different reform processes has not been conducted. Nor has the study focused on the relative distribution of decision-making powers among the member states; could the development of the CFP perhaps be explained better purely in terms of national interests and political coalitions within Council groups? But as the study has looked at 40 years of reform, starting with only six

member states in 1970, increasing to 27 member states as of May 2013, it is not easy to see that any coalition of reform-averse member states should have existed throughout the period. It is therefore unlikely that any explanation for the lack of degree of change in the reform processes can be found within the domestic policies of the member states.

The study has not looked into the amendment proposals to see which actors – member states or political parties or others – have sought to change or sought to preserve certain aspects of the CFP. This might perhaps have offered some more insight into certain parts of the development of the CFP. Heyerdahl's study (2007) of the political processes leading up to the 1970 regulation identified some very different preferences among the initial six member states. Conducting a similar study on the current reform process would perhaps reveal some interesting findings about why the key principles of the CFP are so difficult to reform. Related to this point, the study has not examined who benefits from the CFP (states or other actors); who should be expected to work counter to reform processes. Do member states who are net recipients of funding or fishing opportunities through the CFP display a different view towards reforms than the net contributors?

Another important field left completely out of this study is the market policy for fish products. This could be expected to have effects on both the conservation policy as well as on the adjusting of the capacity imbalance; indirect public funding through market measures such as withdrawal prices effectively contributes in preventing unprofitable segments of the fleet from being scrapped. Finally the study has not examined the emergence of the CFP as part of the integration project in the sense of integrating for the sake of integrating, as part of the EU nation building process. These and other questions are left for future studies.

Chapter 7: Summary

This study set out to examine the EU's failure to reform its CFP during the past as to assess the likelihood of change emerging from the on-going reform process. Having studied the past 40 years of fisheries management and the reform processes during this period, little actual change has been discovered. The key principles introduced during the set-up phase in the period 1970-1983 have been surprisingly difficult to change, even in the face of sharply deteriorating fish stocks and chronic overcapacity within the Community's fishing fleet. While the Community as a polity has changed enormously and also incorporated 21 new members since 1970, the way fisheries policy is conducted has not changed much at all.

In answering the first of the study's two main questions - *what explains the past reform processes' inability to set up a more sustainable fisheries management policy?* - it has been argued that much of this continuity can be explained through theories of path dependence. This study has in particular identified the key principles regarding the setting of TACs by the Council, the principle of equal access to a common EEZ and the Community's structural policy as resilient. It seems that there are powerful mechanisms working against reform of these policies. Following the theory, the current path will continue to be resilient to change; it is not unlikely that an exogenous shock is required in order to break this path dependence.

Path dependence itself is however not sufficient to explain the failure of the CFP; indeed, the key principles themselves are not irreconcilable with good governance. The study has displayed a history of political mismanagement by the Council throughout the four decades of fisheries management. The Council has i.a. consistently set TACs higher than the levels recommended by scientific milieus. And some member states appear to be very conscious about the gains they collect from the redistribution within the CFP, and are hesitant to accept any reforms taking away from them these funds. In summary, the Council is not an ideal locus for conducting conservation policies.

And as has been argued, the Council has displayed little tendency towards changing their priorities, and have watered down the current reform proposal of the Commission through a delayed obligation to reach MSY levels and a continued acceptance of the practice of discards. By the looks of it, the Community will for at least one more decade also continue subsidising capacity-enhancing measures notwithstanding the current structural overcapacity. As regards the primary question of this study - *is the on-going CFP reform process likely to*

prove more successful than the previous reforms in setting up a more sustainable fisheries management policy within the EU? – this study has not found reasons to expect any radical change of the EU fisheries management regime. In short, the reform proposal fails to impose any effective constraints on the Council as regards sufficient reduction of fish mortality. The Council has also not been found to display any change from its prioritising of short-term socio-economic concerns. Conservation issues still come second in the Council's management of the CFP.

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