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COMMUNICATION FROM THE COMMISSION

on rights-based management tools in fisheries

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1. The issue

The Commission Communication on improving the economic situation in the fishing industry¹ stated that the current difficult economic situation of many parts of the Community fishing fleet calls for a different approach to fisheries management. The emphasis on sustainable fishing practices, with higher fish stock levels, should be explicitly linked to the objective of creating an environment where fishing vessels and fleets can be more efficient from an economic point of view.

It has been acknowledged that the large variety of management systems currently applied by the Community and by Member States lacks transparency, efficacy and in some cases overall coherence, which contributes to the economic difficulties of the fishing industry. This Communication seeks to examine management options with a view to improving the effectiveness of fisheries management while facilitating the achievement of the basic objectives that are being pursued by the Community and by Member States within the framework of the Common Fisheries Policy (CFP) - such as the conservation of fish stocks, maintenance of the “relative stability” of fishing possibilities of Member States, and a competitive fisheries sector. The aim is to launch a debate between Member States and the Commission on the future of rights-based management systems within the CFP.

In this Communication we define rights-based management (RBM) as a formalised system of allocating individual fishing rights to fishermen, fishing vessels, enterprises, cooperatives or fishing communities.

2. Background

From the end of free access to fishery resources, all management systems have introduced some form of access and/or use rights. This is also the case for the CFP which *inter alia* provides for the granting of national licences and quotas, the limitation of “days at sea” for certain fisheries and various measures to limit fleet capacity. Although the basic mechanisms of the CFP for allocating fishing rights among the Member States have proved to be efficient and durable, in many other respects the CFP has fallen short of its objectives, as is shown by the depleted condition of many fish stocks, particularly demersal stocks, and the poor economic performance of some parts of the fleet.

The management systems set up at Member State and Community levels, imposing ‘restricted’ access to fishing, have implicitly resulted in allocating an economic value to the right to fish. This economic value is directly or indirectly reflected in the various market transactions taking place in the fishing industry today. Examples of this are the sale or leasing of licences, fishing days and quotas in some Member States. More indirectly, the economic value of the right to fish is reflected in the difference in market prices of vessels with and without a licence.

In this way, markets in fishing rights *de facto* exist in most Member States. The economic value of these rights is at times substantial and can have a major effect on the development of the fisheries sector. Our aim should be a system that helps to formalise these economic values as individual fishing rights, so facilitating greater transparency, legal certainty, security, and ultimately greater economic efficiency for fishermen, which will also mean minimising the costs

¹ COM(2006) 103 final.

to the rest of society.

Against this background, it is necessary to open a discussion to share and improve knowledge in this field and to assess the need to act.

These elements were raised in the Roadmap² of the Commission's proposal for the reform of the CFP, where the Commission committed itself to produce a report on the scope for provisions within Community and/or national fisheries management systems for a system of tradable fishing rights, whether individual or collective.

3. The Community context

The Community fisheries sector is characterised by a multiplicity of management instruments and mechanisms. Fairly comparable situations are dealt with in sometimes very different ways depending on the Member State, the region or the fisheries concerned. These different approaches, even inside a Member State, constitute a considerable body of practical experience which should be evaluated and deserves to be shared.

Fisheries conservation, which is a pre-condition for the sustainability of marine ecosystems and continued economic activity in this sector, is at the present time the prime and immediate objective. This is consistent with the Community's commitment to both the Johannesburg (promoting maximum sustainable yield) and Lisbon agendas. A debate on rights-based management intends to examine whether better economic management of the fisheries sector can help to achieve this objective and, in particular, whether new and/or improved management systems for the economic aspects of fishing can be designed to promote greater effectiveness and efficiency. For example, a system of individual fishing rights or quotas, territorial use rights in fishing (TURFs) or effort rights can contribute to reducing the level of fishing capacity and thereby fishing pressure. All such management systems should thus be assessed in the light of their contribution to the objective of the CFP, namely "exploitation of resources that provides sustainable economic, environmental and social conditions" (Council Regulation (EC) n° 2371/2002).

The Community is responsible for limiting the total fleet size and for fixing catch and fishing effort levels, as well as for deciding on technical measures such as vessel/gear restrictions to give additional protection to fish stocks. National authorities distribute and manage licences, quotas and effort at the national and regional level. All these management interventions thus already help to define and characterise the rights of access and harvest of individual fishermen. Economic values can be attached to these rights but this often occurs in a non-transparent and unpredictable way.

4. Rights-based management (RBM) systems

There should be no confusion as to what a formalised RBM system can offer. It is no panacea for the problems facing fisheries. It is not a management tool in its own right, but a means to help fishermen perform better from an economic viewpoint. Hence, there will still be a need for conservation objectives to be sought through various fisheries management measures (e.g.

² Communication from the Commission on the reform of the Common Fisheries Policy (« Roadmap »), COM(2002) 181 final.

quotas). However, formalising fishing rights can simultaneously help society reach these objectives and to do so in a more cost-effective manner. It has been argued that economic sustainability will, in the longer term, also deliver improved biological sustainability, since a well-functioning RBM system should lead to an increased vested interest of fishermen and industry in the sustainability of the resource base.

It should be acknowledged from the outset that in theory any barriers to normal and free trade of rights (such as quotas) will lead to a situation where the allocation of quota will not be optimal in economic terms. Nevertheless, in political terms it is perfectly legitimate for each Member State to opt for a sub-optimal system that is compatible with its national goals. This can allow for trade-offs between conflicting objectives such as in the short term economic efficiency and the maintenance of employment, or to influence the allocation of fishing rights between different sub-sectors in the fishing industry, i.e. between artisanal and large scale fleets.

The most controversial aspect of RBM systems is the transferability of rights. The reasoning behind the tradability of rights is primarily economic: the efficiency of fishing enterprises improves following the exit of economically weaker vessels from the fleet while the transfer of quotas from less profitable to more profitable vessels introduces a price for using the resource. The introduction of a resource price may lead to large-scale buying of rights, resulting in concentration of ownership of quotas, geographical distribution of fishing activity and fleet composition. It should be noted that such concentration has already occurred and can be expected to continue irrespective of the existence of RBM systems, notably because fishing possibilities have been reduced to a level that makes fishing uneconomic for many vessels which are increasingly opting for national decommissioning schemes.

To counterbalance the risk of concentration, RBM systems can be designed to deter concentrations beyond a certain threshold, so as to preserve the geographical balance of fishing activities and to maintain to a large extent the current cultural, social and professional fabric. For example, when RBM systems are likely to affect small-scale inshore fishing activities which exploit the same resource and have a major impact on the local economy, there is a strong argument in favour of a prudent approach. Small-scale fisheries could be protected as a political priority, by some form of community development quota system, with the specific aim of protecting the interest of this part of the fishing industry against more capital-intensive competitors.

However, any mechanisms established to limit the negative effects that might result from an unregulated market, mainly in terms of concentrations and relocations, should be compatible with Community single market and competition rules. Experience has shown that vigilance is needed in this respect, as various mechanisms can be contradictory to Community rules. Any such mechanisms would have to be systematically subject to examination by the Commission.

RBM systems may also contribute to “highgrading” and discard problems which endanger resource sustainability and complicate assessment of the real level of catches. However, these challenges also exist under current management regimes and should not be regarded as exclusive to RBM systems. The Commission is currently preparing a policy initiative on discards which should help to mitigate any such effect of wider use of RBM systems. In this context, the need for improved enforcement and control of fishing activities is essential to the ultimate success of any management system that is in place.

5. Next steps

Given the recognition by the CFP of the principle of “relative stability” for the allocation of fishing possibilities between Member States, which is intended to ensure "a predictable share of the stocks for each Member State" (Council Regulation (EC) n° 2371/2002), there seems to be no possibility of moving to a Community-level RBM system, in which fishing rights would be freely tradable between Member States, at this stage. Any use of RBM systems in the current CFP should be developed at the Member State level, focusing on the tradability of fishing rights within the Member State. This would not, of course, prevent a Member State from deciding that its own RBM system should allow for exchange in quotas with nationals of other Member States, as is already the case.

Any Community-level debate on fisheries management systems has to focus on the analysis of current national systems and on the possibility of improving their efficiency by sharing best practice. It should be stressed again that each Member State is free to set its own objectives in terms of the economic, social and cultural dimensions of fisheries management.

Based on national, "bottom-up" approaches to considering whether RBM systems are appropriate it is important for each Member State to examine how its various objectives can be reached and what trade-offs between objectives can be expected. In this regard, the debate should further draw on industry opinion through the involvement of the Advisory Committee for Fisheries and Aquaculture (ACFA) and on the involvement of the Social Dialogue Committee in the Sea Fishing Sector, since a well functioning RBM will require strong governance at all levels.

More fundamentally, there may be a number of obstacles within Member States to the establishment of relatively uniform RBM systems. Because of custom and tradition some countries question the granting of access rights to a public resource to private interests, even temporarily. In addition, these rights must be integrated into the wide variety of legal frameworks in Member States.

Finally, a Community-level debate on RBM should also include consideration of transnational elements such as seeking synergies between Member States systems, or introducing exchanges of quotas between Member States. This raises the further concern of the potential impacts of any shift in geographical allocation of quota on the “relative stability” principle.

6. Initiating a debate

The need for a Community-level debate on the economic aspects of fisheries management is underlined by the new orientation of the CFP, in particular in relation to long-term sustainable development goals (as reflected in the recent Commission Communication on implementing an MSY strategy), recent initiatives to improve economic profitability of fishing fleets through rescue and restructuring aid, and the new European Fisheries Fund.

Furthermore, selling and buying of fishing rights already occur in some Member States, either within established markets or indirectly. Fishing rights thus already exist *de facto*, with often unclear effects on the industry and fishing communities. To start a debate on these matters is both important and urgent.

Commission discussions with industry and Member States have revealed particularly sensitive topics in the setting up of RBM systems. These include:

- The issue of "relative stability";
- Transferability of fishing rights, which may involve an excessive, and often irreversible, concentration of these rights;
- Initial allocation and durability of fishing rights;
- Possible adverse conditions for the small-scale fisheries sector when it coexists with industrial fishing enterprises;
- “High grading” and discard problems;
- The need for efficient enforcement controls.

These topics need to be addressed directly if a pragmatic debate on the future of rights-based management within the CFP is to be constructive. The Commission intends to inform this debate, within the limits of its resources, by a range of specific studies and expertise. The Commission plans to sum up the debate and assess the need for further action within 12 months of the adoption of this Communication.

The Commission will then report to the Council and the European Parliament and, if and when appropriate, make proposals or recommendations for follow-up.

7. Conclusion

The Commission considers it important to start reflecting on the issue of rights-based management tools in fisheries. Several experiences in this field exist in various Member States, and it is now important that we improve our understanding of how fishing rights are created and exist within the Community, that we share and discuss knowledge and good practices in this area and whether adjustments or new initiatives may be warranted with a view to better serving the general objectives of the Common Fisheries Policy. The Commission is looking forward to a pragmatic, transparent and fruitful debate amongst stakeholders and Member States.