REPORT

on rights-based management tools in fisheries
(2007/2111(INI))

Committee on Fisheries

Rapporteur: Elspeth Attwooll
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on rights-based management tools in fisheries
(2007/2111(INI))

The European Parliament,

– having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹,

– having regard to the Communication from the Commission on the reform of the Common Fisheries Policy ("Roadmap") (COM(2002)0181),

– having regard to the Communication from the Commission on rights-based management tools in fisheries (COM(2007)0073),

– having regard to Rule 45 of its Rules of Procedure,

– having regard to the report of the Committee on Fisheries (A6-0060/2008),

A. whereas, in its Green Paper on the reform of the Common Fisheries Policy (CFP), the Commission expressed the opinion that alternative management mechanisms can play a significant complementary role in Community fisheries management,

B. whereas the Commission has initiated a debate on Rights-Based Management (RBM) fisheries,

C. whereas a number of stakeholders have already submitted contributions to the debate,

D. whereas there have previously been a number of studies of RBM but none of them has covered all the coastal Member States of the EU,

E. whereas, however, a number of studies have considered the operation and effects of systems both within and outside the EU that allow the transfer of fishing rights for economic value,

F. whereas the Commission has now issued a call for tender for a study,

G. whereas the Commission has said that it has no current plans for altering existing management systems but has, equally, expressed its intention to introduce changes in the operation of the CFP and is therefore seeking valid alternatives,

H. whereas the current fisheries management systems in the European Union, specifically the system of TACs and quotas, do not provide an answer to the sector's problems, and it is necessary and fundamental to hold a wide-ranging debate on this question, assessing the

positive and negative aspects of their possible adoption,

I. whereas it is therefore important to consider ways in which improvements might be made in the operation of the CFP, in particular through the fisheries management policy, whose current shortcomings are evident,

J. whereas any changes will not amount to improvements unless they ensure that resources are exploited in a manner that provides sustainable economic, environmental and social conditions,

1. Welcomes the fact that the Commission has opened a debate on Rights-Based Management (RBM) in fisheries in anticipation of the necessary modification of the existing management policy;

2. Considers that marine biological resources are a common public good;

3. Believes that the rights involved should not be understood as property rights but as a kind of usufruct or a right to harvest and subject, accordingly, to appropriate limitations;

4. Recognises also, however, that there are separately identifiable systems of RBM that are based on different understandings:
   a) as to whom the right is to be allocated, as to the conditions of its transferability and as to its tradability for economic value,
   b) as to the extent of the right, particularly whether it is defined in terms of the location in which it is to be exercised, the quantity that can be fished or the effort that can be expended;

5. Welcomes the fact that the Commission has put out a call for tenders to allow for a full study of the various management systems;

6. Considers that the period of debate fixed is too short and calls for it to be extended to ensure that the various possibilities available are properly explored and studied, along with their consequences;

7. Recognises, however, even in advance of such a study, that it is evident that there is a wide variety of such systems in place and that most, if not all, employ some form of RBM, if this is taken in its widest sense; recognises, likewise, that experiments with management through fishing rights in Member States which have applied such systems have had very positive consequences in many respects, for example in terms of capacity reduction;

8. Considers that it is similarly evident that, at Community level and within at least some of the Member States, the forms of RBM employed are hybrid ones, in terms both of the allocation and transferability/tradability of the rights and of the way in which their extent is defined;

9. Notes the degree of complexity involved and the difficulties this poses for movement toward a single system, whether achieved through harmonising the practices of Member States or by its administration at Community level;
10. Nevertheless takes the view, that, as shown by the fact that rights-based management in fisheries has been introduced in many of the countries and regions which have the most significant fishing interests in the world, these difficulties are not insurmountable and, given that the system could prove highly positive for the management of certain Community fleets, consideration should at least be given to the possibilities for including it in the CFP;

11. Considers it necessary to ascertain the effects which changes, particularly the introduction of Community-wide Individual Transferable Quotas and other rights-based access, might have in relation to:

- relative stability and its role in maintaining the viability of fisheries-dependent communities,
- the degree of concentration of ownership of such rights and the resulting socio-economic consequences,
- advantages that could accrue to large companies at the expense of small-scale operators or community-based fisheries,
- the fear that additional costs may be involved, providing disincentives towards investment in vessels, gear, safety and working conditions,
- the likelihood of quotas being held at one remove from those actively engaged in fishing,
- the problems inherent in achieving an initial allocation and in conferring a windfall benefit on those to whom the allocation is made,
- the risk of an excessive concentration of rights;

12. Considers that these concerns must be addressed prior to any move toward a single system, for example, the possibility, as shown by existing precedents, of setting a limit on the accumulation of fishing rights;

13. Considers that emphasis should also be placed on the positive aspects of rights based management in fisheries, on which there is fairly widespread agreement, including the following:

- there is greater rationalisation of management, since right-holders are made directly responsible for management and compliance with the general rules, which generally produces a sector with greater entrepreneurial capacities that is less dependent on expert advice, brokering and public funding;
- monitoring is made simpler in fleets where the system is applied, since vessels with rights are accurately identified;
- discards are reduced, since it is possible to purchase fishing rights for species for which only a scant quota is available;
- fleets tend to make their businesses profitable, which generally leads to a reduction
in capacity through the elimination of the oldest and least efficient units,
- the simplest way of introducing the system would be by allocating quotas in line
with the relative stability of each Member State, so that this condition would not be
affected either;

14. Wonders also whether a single system of RBM would in any event be appropriate for
different types of fishery;

15. Draws attention in this context to: the different requirements of single species and multi-
species fisheries; and to the special situation of artisanal fleets;

16. Considers, in relation to the latter, that separate provision should be made for them, either
using criteria linked to geographical distance from the coast or by setting part of the quota
aside for them;

17. Welcomes, therefore, the fact that the Commission has no present intention of intervening
in current management systems;

18. Considers, however, that further consideration should nonetheless be given to the
advantages and disadvantages of different RBM systems;

19. Considers it necessary to prevent economic distortions in the fishing industry to the
detriment of small shipowners, in particular those representing artisanal fishing;

20. Acknowledges that such systems may promote economic efficiency, provided that they
are properly devised; points out that this efficiency is an objective of any economic policy
and it is in the CFP's interests to secure a profitable fishing industry that is less and less
dependent on public funds;

21. Considers that, given that fisheries is a common policy, fishing right management
mechanisms should be adopted at Community level that will make it possible to improve
the management of fishery resources;

22. Believes that economic efficiency is valuable insofar as it promotes the objectives of the
CFP;

23. Calls on the Commission accordingly to ensure that any studies which it initiates on RBM
should be directed at:

I. Providing a full picture and analysis of the systems of management currently in
operation within the Member States,

II. Looking at the basic understandings involved in RBM in terms of:
   a) to whom the rights may be allocated, to whom they may be transferred and
      whether they are tradable, together with any limitations in these respects, and
b) the extent of the rights, \textit{i.e.} whether they are defined in terms of location, quantity (output) or effort (input) or a mixture of these,

III. Assessing, using the evidence acquired from the existing systems of management, the effectiveness of each such understanding in achieving the objectives of the CFP in terms of:
   a) improving the livelihood of those engaged in the fishing industry,
   b) having a sustainable marine ecology in which fish stocks are conserved, and
   c) maintaining the viability of fisheries-dependent communities
   d) the extent to which the system has, since its inception, concentrated ownership of the right to fish and led to loss of employment,
   e) the economic efficiency of the fisheries sector,

IV. Examining these issues separately for different types of fisheries both inside and outside Community waters;

24. Urges the Commission to allow a longer period for debate on this issue;

25. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Regional Advisory Councils and the Advisory Committee on Fisheries and Aquaculture.
EXPLANATORY STATEMENT

The nature of the rights involved

The first issue to be addressed in relation to Rights Based Management (RBM) in fisheries concerns the type of rights under discussion. Many, understandably, object to their being designated property rights, since this implies private ownership of a public resource. At the same time, it is clear that such ownership is acquired in those fish that have been harvested.

The proper parallel, therefore, seems to be that of *usufruct*, a right to the fruits, which is a contractual right and governed, accordingly by the law of obligations and not by property law. This is significant in that *usufruct* involves an obligation not to damage the resource from which the fruits are taken. Similarly it is a right that can be limited in time and/or subject to other types of conditionality.

For example, under Roman law, whilst the holder of a *usufruct* could hire out or sell enjoyment of it, he could not pass on the *usufruct* as such, remaining liable to the owner for any damage done by the hirer or buyer. It is important, therefore, to note that limits can be placed on the transferability of the right as well as on the conditions under which the right as such is held.

Systems for allocating rights

Underlying the wide variety and apparent complexity of existing systems, are certain basic understandings.

First, there are those concerning the allocation and transferability of the right to fish.

• The right may be accorded both to communities and to individuals.
• It has the potential to be transferred from communities to individuals (and from individuals back to communities), between communities and from one individual to another.
• This transferability can, however, be limited in a number of ways. For example, an individual may only be able to transfer the right back to the community or to another individual within the same community.
• Transferability becomes tradability when the transfer is allowed for economic value
• The conditions under which the right is tradable help to determine the extent of that economic value.

Second, there are those concerning the extent of the right.

• This is usually defined by
  - the location in which the right can be exercised,
  - the quantity of fish that can be taken (the output from exercise of the right)
  - the effort permitted (the input allowed into the exercise of the right)
  - or by some mixture of these.
• Its extent may be further refined by specific rules, such as those prohibiting discards or introducing closed areas.
• The extent of the right at any given time is another factor in determining its economic value.

Both types of understanding are in operation at the level of the EU.

First, as a community, it allocates the right to other communities, in the form of the member states. It largely leaves further transfers to the member states, with these dividing the right between communities and/or individuals within them as they see fit.

It also permits exchanges between member states, although there is an increasing insistence on its own authority to reallocate fishing opportunities where these have been under-utilised.

In certain circumstances, at least, it regards the rights as tradable ones – for example, in negotiating quota exchanges and establishing fisheries partnership agreements with third countries.

Second, where the extent of the right is concerned, there is clearly a hybrid approach, with location being reflected in the principle of relative stability, quantity (output) being represented by TACs and quotas and effort (input) being delimited by rules concerning capacity, gear, days at sea and so on.

Most, if not all, member states also seem to have hybrid systems in terms of allocation and transferability of the right or of its extent or of both of these. The picture is, however, a very varied one. This is particularly so in respect of the degree to which and the manner in which any transferability of the right to fish is legally recognised.

Currently there is insufficient information on which to base an assessment of these and the Commission study is accordingly very welcome.

**How do the systems compare from the point of view of economic efficiency?**

An OECD study in 2006 looked at nine different RBM systems. It analysed each type with a view primarily to assessing its economic efficiency. This may be summarised as its capacity to prevent too many fishers chasing too few fish.

The following features of the rights were assessed: exclusivity, duration, quality of title, transferability, divisibility and flexibility. (Each feature was given the same weight – an approach that may be open to question even where economic efficiency alone is under consideration)

The four systems that scored most highly were territorial use rights (TURFs), community based catch quotas (CQs), individual transferable quotas (ITQs) and individual transferable effort quotas (ITEs)

Following from the points made in the previous section, ITQs and ITEs would be better named as tradable rather than transferable.
**How efficient is economic efficiency?**

At the macro level, economic efficiency is concerned with achieving a match between the numbers engaged in fishing and the availability of fish. Where the former exceeds the latter, transferability/tradability is seen as a mechanism for bringing about the appropriate reduction.

Tradability, in particular, can serve as a means of providing a compensatory value when the right to fish changes hands and so assist exits from fishing activities.

Short-term transferability/tradability is clearly also an efficient means of addressing exceeded quotas and quota deficits.

Whilst transferability is necessary for entry to fishing activities, there are some concerns that tradability may provide a barrier to this.

There are also concerns that the costs of acquiring the right to fish may detract from fishers’ ability to invest in other aspects of their activities, such as improvements to their vessels and gear.

Finally, unless properly controlled, tradability can lead to too great a concentration of the right to fish and also allow it to be held by individuals and organisations outwith the active fishing industry.

There are also economic issues relating to the public domain, such as cost recovery, transfer taxes and so on, since these can have an effect on economic efficiency.

**How far does economic efficiency contribute to the goals of the CFP?**

Economic efficiency is of value not in itself but only insofar as it contributes to the goals of the CFP. These may be summarised as:

- Improvements in the livelihood of those engaged in fishing activities
- The conservation of fish stocks in the context of a sustainable marine ecology and, linked with these, the steady and continuing supply of quality fish to the markets
- Maintaining the viability of fisheries dependent communities

The previous section has cast some doubt on the role of economic efficiency as a means of achieving the first of these objectives. In particular, the incurring of additional costs could have adverse effects for safety and working conditions.

Where the conservation of stocks is considered, it should be noted that there is no necessary connection between economic efficiency and an end to overfishing. There are some views that it leads fishers to act in their long term self interest in sustainability of stocks. But more evidence is needed in this regard. It is arguable that it depends on limiting transferability to those actively engaged in fishing, on the grounds that financial institutions would simply invest elsewhere when stocks ran out.
There are concerns, too, that economic efficiency might, in fact, lead to undesirable practices, such as discarding and high grading, as a way toward recouping the costs incurred in the acquisition of tradable rights.

In relation to the viability of fisheries dependent communities, the major issue is the effect of tradable rights on relative stability. The fear is that rights that were too widely tradable would, in a relatively short course of time, deprive them of the right to fish and, thus, of their main means of subsistence. This fear is particularly acute in relation to small-scale coastal fisheries.

**Conclusion**

There are clearly both advantages and disadvantages, actual and potential, involved in RBM. These vary according both to the nature of the system in operation and the particular ways in which the right is allocated, is made transferable/tradable and its extent is qualified.

The Commission has made it clear that it has no present intention of interfering with present management systems, which remain with the province of member states. Indeed, with the hybrid nature of these systems currently in place, a conversion to one single system, whether used only internally to the member states or operating at Community level, would be very difficult.

This does not just result from the different legal regimes in operation. It arises because of concerns about to the basis on which the initial allocation might be made, what compensation would be available for lost rights and with the fairness of creating a windfall benefit for those to whom the rights are reallocated.

Another issue is that, once entered on, certain types of RBM systems are effectively irreversible.

All this makes it imperative that no steps are taken, even at the level of exchange of best practice between member states, without much fuller information, consultation and analysis. Only in this way will it be possible to determine what best practice actually is.

Further, this kind of exercise might demonstrate that different systems are appropriate for different types of fishery.

**Recommendations**

Any studies of RBM initiated by the Commission should be directed to:

1. Providing a full picture and analysis of the systems of management currently in operation within the member states.
2. Looking at the basic understandings involved in RBM in terms of:
   c) to whom the rights may be allocated, to whom transferred and whether they are tradable, together with any limitations in these respects; and
   d) the extent of the rights, i.e. whether they are defined in terms of location, quantity (output) or effort (input) or a mixture of these.
3. Assessing, using the evidence acquired from the existing systems of management, the effectiveness of each such understanding in achieving the objectives of the CFP in terms of:
   f) improving the livelihood of those engaged in the fishing industry,
   g) having a sustainable marine ecology in which fish stocks are conserved; and
   h) maintaining the viability of fisheries dependent communities

4. Examining these issues separately for the different types of fishery engaged in both within and outwith Community waters.
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| Result of final vote | +: 21  
| | -: 3  
| | 0: 1  |
| Members present for the final vote | Alfonso Andria, Elspeth Attwooll, Marie-Hélène Aubert, Iles Braghetto, Luis Manuel Capoulas Santos, Paulo Casaca, Zdzisław Kazimierz Chmielewski, Avril Doyle, Emanuel Jardim Fernandes, Carmen Fraga Estévez, Duarte Freitas, Ioannis Gklavakis, Hélène Giudin, Pedro Guerreiro, Ian Hudghton, Heinz Kindermann, Rosa Miguélez Ramos, Marianne Mikko, Philippe Morillon, Seán Ó Neachtain, Struan Stevenson, Catherine Stihler, Margie Sudre, Cornelis Visser |
| Substitute(s) present for the final vote | Thomas Wise |
| Substitute(s) under Rule 178(2) present for the final vote | Francesco Ferrari |