



Institute for
European
Environmental
Policy

EU Fisheries Decision Making Guide

Report by

**Dirk Reyntjens
James Brown and
Catherine Bowyer**

January 2005

TABLE OF CONTENTS

1	Introduction.....	1
1.1	The Common Fisheries Policy – what is it and why is it important?	1
1.2	Types of EU legislation	2
1.3	Instruments for EU fisheries management.....	3
1.4	EU environmental policy	3
1.4.1	Integration processes.....	3
1.4.2	EU environmental legislation	4
1.4.3	Impact assessment and consultation	5
2	The EU Institutions	5
2.1	European Commission	5
2.1.1	Overview	5
2.1.2	DG Fisheries and Maritime Affairs	7
2.2	The Council of Ministers	7
2.3	Presidency	9
2.4	The European Parliament.....	11
2.5	The Court of Justice of the European Communities and the Court of Auditors.....	12
3	Developing policy	14
3.1	Scientific advice.....	14
4	Decision making procedures.....	16
4.1	Consultation procedure	16
4.2	Co-decision procedure	16
4.3	Management Committees	16
4.4	Advisory Committees	17
4.5	Regional Advisory Councils	18
4.6	The new EU Constitution or Treaty and its effect on fisheries policy.....	18
5	Influencing policy	19
5.1	Getting Informed.....	19
5.2	Influencing the Commission	20
5.3	Influencing the Council.....	20
5.4	Influencing the European Parliament.....	21
6	References.....	24

1 INTRODUCTION

The fisheries sector is increasingly accepted as being one of the most significant factors influencing the state of the marine environment. The overexploitation of marine fisheries has led to a widespread decline in stocks to levels which threaten their long-term recovery. There is also growing concern over the bycatch of other non-target fish species such as sharks, skates and rays, as well as sea turtles, benthic species and marine mammals, and damage to habitats from several types of fishing gear, but particularly dredging and beam trawling.

Intensive aquaculture production also places pressures on the environment, involving, for example, emissions of pollutants, releases of non-indigenous or genetically modified fish, as well as new pathogens, noise pollution and water abstraction.

1.1 The Common Fisheries Policy – what is it and why is it important?

Fisheries are not considered separately in the EC Treaty but as part of Agriculture. This does not take into account specificities of fisheries, in particular the nature of the resource base and the fact that access to it and ownership are difficult to define.

Fisheries Policy is an exclusive competence of the European Union (EU). This means that all decisions are taken at the level of the Union. Member States cannot intervene in fisheries management unless they are explicitly delegated back the powers to do so. At present the main area for which Member States have been given such powers relates to inshore fisheries (within maximum 12 nm). EU waters beyond these coastal waters are regarded as ‘one big pond’. The Common Fisheries Policy (CFP) provides *the* framework for European and national fisheries management activities. A focus on the CFP is therefore essential in any attempts to influence the management of European fisheries.

The CFP framework Regulation (2371/2002) – renewed in 2002 - sets out the basic objectives and instruments that can be deployed for fisheries management. However, the CFP as a whole consists of a collection of three to four hundred laws. They cover four major areas, which are:

1. conservation covering the management of the stocks and of the fleets as well as environmental and health issues;
2. structural policy covering the fisheries funding programme (currently the FIFG (Financial Instrument for Fisheries Guidance), and due to change to a new programme in 2007, the EFF (European Fisheries Fund));
3. markets; and
4. external policy covering the multi-lateral and bilateral fishing agreements.

In December 2002, the Council agreed to an important package of reforms to the CFP. Changes were made in the conservation and structural policies. These changes reflected:

1. a move towards a more long-term approach to fisheries management. Total Allowable Catches (TACs) and quotas are decided on a yearly basis. The

- revised CFP should lead to a shift away from annual decision-making, to multi-annual planning;
2. a new fleet policy to limit and gradually reduce over-capacity. Member States are given more responsibility to match capacity with fishing possibilities, as well as getting clearer incentive signals to reduce (not increase) capacity;
 3. a better application of the rules. This is to be achieved through an increased co-operation between national authorities and a more uniform control and sanction system throughout the EU; and
 4. improved governance. The aim is to involve stakeholders more closely into the policy making process. This is to be achieved through the setting up of Regional Advisory Councils (RACs).

From an environmental perspective, the new CFP framework Regulation, also referred to as the 'basic' conservation Regulation, provides for measures that will 'limit the environmental impact of the CFP'. It also refers to the application of the precautionary principle and the progressive implementation of an ecosystem-based approach to fisheries management.

1.2 Types of EU legislation

The types of Community 'legislation' are:

- Regulations;
- Directives;
- Decisions;
- Recommendations; and
- Opinions.

The last two have no binding force and so should not be regarded as legislative instruments (although Council Recommendations require consultation with the European Parliament (see section 4.1)).

A **Regulation** is a law directly applicable in the Member States. It therefore does not need to be incorporated into the laws of each EU Member State. It is mostly used for precise regulatory purposes. Regulations are the most common type of legislation used in fisheries management. They are also used in some environmental matters.

A **Directive** is binding on Member States as to the *results* to be achieved, but leaves the choice of form and methods of achieving these results to the Member States. It is therefore used for more general purposes, particularly where some flexibility is needed to take account of national systems and procedures. For this reason it is the instrument most commonly used for environmental matters.

A **Decision** is completely binding upon those to whom it is addressed eg an individual or group of Member States. It has been used in the fisheries and environmental field in connection with international conventions and with certain procedural matters. Specific examples include the establishment of Regional Advisory Councils (RACs) and the joining of Regional Fisheries Organizations.

The Treaties provide for the obligatory publication of these instruments in the Official Journal.

1.3 Instruments for EU fisheries management

In each of the main CFP areas a mixture of policy/instruments is used, although EU legislation in the form of regulations is the main choice. As noted above, regulations are directly applicable to (and legally binding on) Member States and its citizens therefore do not require national implementation measures to become effective. The actual form and content of regulations can vary significantly however.

Some of the existing regulations establish technical specifications, for example, in relation to required mesh-sizes. Recovery plans (and future management plans) are also adopted in the form of EU regulations. Other regulations are quite different in design, most notably those governing EU subsidies to the sector. These require Member States and regions to develop multi-annual sectoral or regional programmes and to come up with matching funding. The CFP also makes use of other types of legal instruments, eg decisions that are used to address individual Member States or when concluding bilateral agreements or to accede to international agreements.

Although not as commonly used in fisheries as other sectors, ‘softer’ forms of instruments such as voluntary agreements with sector associations, rights based instruments (such as Individual Tradable Quotas), and information-based instruments (eco-labelling) are employed in some cases. The instrument that is most difficult to deploy in the EU is fiscal measures since their adoption requires unanimous agreement among the Member States.

1.4 EU environmental policy

Even though the European Treaties provide a single strategic framework for all EU policies, the development and implementation of different policies is frequently mutually inconsistent if not actually contradictory in practice. The lack of coherence and integration is not uncommon in administrations, but is a particularly critical issue in EU policy due to the highly sectoralised approach of the key institutions.

It is important to note, and make the most of, processes that seek to improve integration (and coherence) between environment and fisheries policies, as well as important environmental legislation that can be used directly to support fisheries management initiatives. The EU’s nature conservation Directives are a good example of the latter.

1.4.1 Integration processes

- *Gothenburg EU Sustainable Development Strategy* - Heads of State and Government meeting in Gothenburg in June 2001 called for the 2002 CFP review to ‘address the overall fishing pressure by adapting the EU fishing effort to the level of available resources, taking into account the social impact and the need to avoid over-fishing’. The Summit also agreed to a new EU target to halt the loss in biodiversity by 2010. The Summit conclusions represent elements of the EU Sustainable Development Strategy (SDS). Progress on the EU SDS is monitored (to a limited extent) at the annual Spring Summits of EU Heads of State and

Government, based on an indicator relating to percentage of stocks below safe biological levels.

- *Cardiff integration process* – This process requires the development by the separate sectoral formations of the Council of Ministers of comprehensive strategies to integrate environmental concerns into their activities. The aim of this is to contribute to sustainable development. There have been various documents responding to this process in relation to fisheries management, but the most active is a 2002 Commission action plan to integrate environmental protection requirements into the CFP (COM(2002)186). This lists a number of guiding principles and measures to secure environmental integration in the sector, including setting up long-term management plans for the most important and most vulnerable fish stocks, the setting up of ‘no take zones’, incentives for stimulating practices adding value to environmental integration, etc. The plan is now effectively being used as a menu for developing CFP measures that mitigate environmental impacts.
- *Commission Biodiversity Action Plan for Fisheries* - The Biodiversity Action Plan (BAP) stems from the European Community Biodiversity Strategy adopted in 1998, in which the Commission promised to spell out precisely how it would achieve the objectives of the strategy, and implement the Convention on Biological Diversity adopted in Rio in 1992. The BAP (COM(2001)162) was produced by the Commission (led by DG Fish) in 2001, although it was subsequently overshadowed to a large extent by the Cardiff Process Action Plan (see above). The Fisheries BAP has been subject to review and future priorities, particularly for delivering the 2010 biodiversity target.
- *Towards a Marine Thematic Strategy* - The Communication Towards a Thematic Strategy to protect and conserve the marine environment (COM(2002)539), was published by the Commission in October 2002 under the 6th Environmental Action Programme. It marks the first step in the development of a strategy to address the variety of threats to the marine environment. A raft of measures to control and reduce pressures on the marine ecosystem already exists, but they have been developed on a sector-by-sector basis. This has resulted in a patchwork of policies and a complex system of institutional responsibilities at the national, regional, EU and international level. Working groups of a mixture of DGs and stakeholders, including one examining the ecosystem approach, are supporting work on the Thematic Strategy. The intention is to produce a full thematic strategy in 2005. This is increasingly likely to aim towards a marine framework Directive.

1.4.2 EU environmental legislation

- *Habitats and Birds Directives* – although not limited to site protection, the Directives require Member States to classify/designate sites containing habitats or habitats of species that are of Community interest. The combined network of sites – ‘Natura 2000’ - was to be in place by 2004. Work, particularly on marine sites, is seriously behind schedule but the Directives are nevertheless providing the main instrument (and driver) for EU nature conservation activities.

Part of the delay was caused by the disagreement over the territorial application of the Directives (ie whether they applied throughout the Member States' 200 nm exclusive economic zones (EEZs)). There is now political - but not legal - agreement that the Directives should apply in the EEZ, and work to map, identify and propose sites to the Commission is proceeding.

In addition to notifying sites, measures are needed to avoid the deterioration of proposed sites, notably by restricting certain fishing activities. Examples include the bottom-trawling ban agreed for the Darwin Mounds area. A legal opinion from the Commission suggests that, in future, Member States should send with their site proposals a list of fisheries management measures needed to protect sites. The Commission is then to respond by issuing emergency measures and proposals for long term measures.

1.4.3 Impact assessment and consultation

The Commission has established a system (COM(2002)276) to conduct an impact assessment (IA) on all its major proposals (regulatory or otherwise) having an economic, social or environmental impact. Originally, the procedure involved a two-stage process to assess social, economic and environmental impacts, with a first filtering stage leading to a decision as to whether to undertake an extended impact assessment. From 2005 all Commission proposals require the equivalent of an extended IA, but proportionate to the significance of the likely impacts.

In 2003 the first detailed impact assessments for policy being developed by the Commission were completed, although their quality was mixed. This process, in theory, involves the identification of different policy options and consultation on their impacts and the best way forward. This typically entails consulting stakeholders through the various committees (see below) and other ad hoc meetings. In practice, to date, impact assessments have been undertaken when the Commission's preferred option has already been chosen. However, they do still allow a formal dialogue with the Commission. The importance of this assessment process is still unclear, especially as the new Commission have yet to publish their work programmes for both 2005 and their full five year term.

It is believed that this procedure has been applied only three times to date in relation to fisheries, connected to proposals for:

- cetacean bycatch measures;
- a recovery plan for western channel and Bay of Biscay sole stocks; and
- a recovery plan Southern hake and the Norway lobster stocks in the Cantabrian Sea and Western Iberian waters.

In each case these Impact Assessments fell far short of the Commission's guidelines.

2 THE EU INSTITUTIONS

2.1 European Commission

2.1.1 Overview

The European Commission is the executive body of the EU, and is responsible for:

- developing proposals for new EU measures;
- implementing a number of EU policies; and
- ensuring that EU Treaties and legislation are respected.

Although it is staffed by national from the Member States, the work of the Commission is intended to be completely independent. Since November 2004, it consists of 25 Commissioners, one from each Member State, supported by numerous departments staffed by civil servants from across the EU. Commissioners are appointed for five-year (once renewable) terms. A Commissioner is proposed by his or her Member State then must be approved by the Council ie all other Member States and the European Parliament. The Commission President heads the Commission, and allocates jobs to the other 24 Commissioners. This ‘College’ of Commissioners formally constitute ‘the Commission’. They have ultimate responsibility for overseeing implementation and compliance with the Treaties and secondary legislation. The Commission also has some powers to adopt legislation, where the Council expressly delegates these. Importantly, the Commission has the sole right to initiate legislation.

A cabinet of personal staff supports each of the Commissioners. Personally selected by them, the Cabinet helps to organise a Commissioner’s work load, assist with decision making and oversee communication with other Commissioners. The bulk of the Commission staff, however, is divided into 36 departments known as Directorates-General (DGs) and ‘services’. Each DG and service is headed by a Director-General, who is equivalent in rank to the top civil servant in a government ministry. The Directors-General report to a Commissioner, each of whom has the political and operational responsibility for one or more departments. An overview of the DGs and services is given in Box 1

Box 1 A breakdown of Directorates-General and services

There are seventeen DGs dealing with the development of specific policies eg DG environment, agriculture and fisheries and maritime affairs; six departments (both DGs and services) dealing with external relations eg DG Trade and the Europe Aid Office; four general departments including Eurostat; and nine internal departments including DG Budget. This structure has evolved over time to respond to changing needs. The advent of the latest Commission in November 2004 saw, for instance, a change from DG Fisheries to a DG Fisheries and Maritime Affairs.

There is also a Secretariat General (Sec-Gen) headed by the Secretary-General reporting directly to the President of the Commission. Its role is to ensure the delivery of the Commission’s political priorities as defined by the President. It works pro-actively to deliver strategic planning and programming, guarantee effective internal policy coordination, manage the collegial decision-making process and coordinate the position of the Commission with other institutions.

Commission initiatives, whether in the form of general Communications or more specific proposals for Regulations, Decisions or Directives, are prepared by the relevant technical DG and are then discussed with other relevant Commission DGs and amended if necessary in a process known as interservice consultation. Proposals

for legislation are then checked by the Legal Service. Once the proposal is fully ready, it will be put on the agenda for a forthcoming Commission College meeting by the Sec-Gen. If there is agreement, the College will adopt the proposal and send it to Council and the European Parliament for their consideration. The decision to adopt a proposal by the College is made, in most cases, by simple majority voting. Until adopted by the College a document is a working paper and, except in cases of public consultation, difficult to get hold of.

Link to the European Commission: http://europa.eu.int/comm/dgs_en.htm

2.1.2 DG Fisheries and Maritime Affairs

The main role of the DG Fisheries and Maritime Affairs is to initiate and define new fisheries policy and to ensure that measures which have been agreed to, are put into practice by the Member States. The DG manages the Financial Instrument for Fisheries Guidance (FIFG). This provides financial support to achieving the main objectives of the CFP, and provides incentives to develop accompanying measures to the CFP in the framework of the EU cohesion policy. It also represents the Community in the relevant international and regional fisheries organisations, and in negotiating and managing fisheries agreements with third countries.

The DG Fisheries and Maritime Affairs is based in Brussels and has approximately 400 staff members working in five Directorates. The present Commissioner for Fisheries and Maritime Affairs is Dr Joe Borg, a former Maltese foreign minister.

- *Link to DG Fisheries and Maritime Affairs:*
http://europa.eu.int/comm/fisheries/policy_en.htm
- *Link to DG Fisheries organisational chart:*
http://europa.eu.int/comm/dgs/fisheries/organi/oganig_en.pdf
- *Link to Commissioner Joe Borg:*
http://europa.eu.int/comm/commission_barroso/borg/index_en.htm
- *Link to DG Environment:* http://europa.eu.int/comm/environment/index_en.htm
- *Link to DG sustainable development:*
http://www.europa.eu.int/comm/sustainable/index_en.htm

2.2 The Council of Ministers

The Council of Ministers is the EU's most powerful decision making body consisting of the relevant Ministers from Member State national governments. There are nine different configurations of the Council (although it is considered a single entity) including the Agriculture and Fisheries Council and the Environment Council. The European Council consists of the Presidents or Prime Ministers from each Member State. The Ministers attending a Council session will depend on the subject matter under discussion. The Agriculture and Fisheries Council meetings are generally held each month, while Environment Ministers meet formally four times a year. On fisheries issues, the Council can take decisions by qualified majority vote (QMV).

Under QMV Member States' votes are weighted roughly according to the size of their populations (see table below). The total number of votes is 321. The total number of

votes required for a qualified majority in the Council is 232, but these must be cast by a simple majority of Member States (ie 13 of 25). Any Member State can also request verification that these Member States represent at least 62 per cent of the total population of the EU. If this is not the case, then a qualified majority will be deemed not to have been attained.

With this arrangement, any decision may be blocked by three large Member States, plus one smaller one. The inclusion of a population threshold is a new requirement (from November 2004), although it is triggered only after a Member State explicitly invokes it.

The table below identifies the major marine capture fisheries interests of the Member States. It also compares their voting power in the Council with their track record on environmental matters (not only on fisheries). Finally, the Member States most active in defending the interests of their fisheries sector are indicated.

Member state	Votes in Council	Main marine fishing interests Inshore / offshore / distant waters	Promotion of fisheries interests in Council	Environmental 'leader' Greenest: 3 - Least green: 1
Austria	10	-		3
Belgium	12	Inshore / Offshore		2
Cyprus	4	Inshore		?
Czech Republic	12	-		?
Denmark	7	Fish meal and fish oil Inshore	X	3
Estonia	4	Inshore / offshore		?
Finland	7	Inshore		3
France	29	Distant Water Inshore Offshore	X	2
Germany	29	Inshore		2
Greece	12	Inshore		1
Hungary	12	-		?
Ireland	7	Inshore / offshore / distant water	X	2
Italy	29	Inshore / offshore	X	1
Latvia	4	Inshore / offshore		?
Lithuania	7	Inshore		?
Luxemburg	4	-		2
Malta	3	Inshore		?

Member state	Votes in Council	Main marine fishing interests <small>Inshore / offshore / distant waters</small>	Promotion of fisheries interests in Council	Environmental 'leader' <small>Greenest: 3 - Least green: 1</small>
Poland	27	Distant water / inshore / offshore		?
Portugal	12	Distant water / inshore	X	2
Slovakia	7	-		?
Slovenia	4	Inshore		?
Spain	27	Inshore / offshore / distant water	X	1
Sweden	10	Inshore		3
The Netherlands	13	Inshore / offshore / distant water	X	3
UK	29	Inshore / offshore	X	2

Preparation in Working Groups and COREPER

Every Member State has a Permanent Representation to the EU in Brussels, headed by a Permanent Representative with the rank of Ambassador. The Permanent Representatives prepare the activities of the Council and carry out the assignments given by the Council. The work of the Council is prepared by the Committee of Permanent Representatives (COREPER). COREPER is divided into two sub-committees, (COREPER I and COREPER II), with fisheries being dealt with by COREPER II.

2.3 Presidency

The Presidency or chairmanship of the Council currently rotates between Member States every six months. It is the responsibility of the Presidency (in consultation with the Commission) to chair and set the agenda for Council meetings and meetings of other Council working groups. It also provides the Presidency country with an opportunity to steer and drive the direction of policy development to some extent. Presidency policy priorities are spelt out at the beginning of each term, which typically include both environmental and fisheries priorities. Development of such priorities typically begins around a year in advance of the Presidency term. The national governments in question consult with its respective departments and stakeholders.

It has been estimated that a Presidency usually consists of 85 per cent ongoing business, ten per cent crises and five per cent priorities. Priorities, etc, are set by various fora and events. The most important may be the priorities that a Member State has when it holds the Presidency of the Council. However, many events have their own timetables for policy attention, eg the timetable for the review of the CFP or review periods within important Directives/Regulations. The scope for policy

development can also be influenced by events such as national elections in key Member States and institutional developments such as enlargements, European Parliament elections and changes within the Commission.

Luxembourg currently holds the presidency (January – June 2005). The rotation order of the presidencies is outlined in the table below. In order to ensure continuity Presidencies are increasingly working together and in 2004 the first multi-annual work programme for the presidencies between 2004 and 2006 was released. This outlines priority issues, setting a broad agenda for future activities. Another sign of this increased cooperation is that the Luxembourg and the UK have released a joint operational programme for their work in 2005.

Year	Presidency Country	
	1 st half	2 nd half
2005	Luxemburg	United Kingdom
2006	Austria	Finland

As of 2007 the formation of the Presidencies will change. Countries will work together in groups of three over an 18 month period. This is intended to allow greater support for some of the smaller and new Member States. The timetable for presidencies post 2007 is outlined below.

Year	Period	Country
2007	January – June	Germany
	July – December	Portugal
2008	January – June	Slovenia
2008	July - December	France
2009	January – June	Czech Republic
	July - December	Sweden
2010	January – June	Spain
	July - December	Belgium
2011	January – June	Hungary
2011	July - December	Poland
2012	January – June	Denmark
	July - December	Cyprus
2013	January – June	Ireland
	July - December	Lithuania
2014	January – June	Greece
2014	July - December	Italy
2015	January – June	Latvia
	July - December	Luxembourg
2016	January – June	Netherlands
	July - December	Slovakia
2017	January – June	Malta
2017	July - December	United Kingdom
2018	January – June	Estonia
	July - December	Bulgaria
2019	January – June	Austria
	July - December	Romania

Year	Period	Country
2020	January – June	Finland

- *Link to the Presidency of Ireland* <http://www.eu2004.ie>
- *Link to the Presidency of Netherlands* <http://www.eu2004.nl>
- *Link to the presidency of Luxembourg* <http://www.eu2005.lu>
- *Link to the Council* <http://ue.eu.int>
- *Link to Luxembourg and the UK's Joint operational programme -*
http://www.eu2005.lu/en/presidence/priorites_et_pgm/programme_pres/Operational_programme_2005.pdf
- *Link to the Multi Annual Programme for 2004 to 2006 -*
http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/misc/78355.pdf

2.4 The European Parliament

The European Parliament and the Council share the legislative and budgetary powers of the EU. The relative importance of these powers is determined by the legal basis of the issues being considered. In relation to budget decisions the Parliament's role depends in whether spending is 'compulsory' ie outlined in the Treaty eg on the CAP, or 'non-compulsory' eg the structural funds¹. If spending is compulsory, MEPs can only advise the Council as to how spending should be undertaken but the Council has the final say. However, the majority of spending is non-compulsory and on this the Parliament may increase spending within an agreed ceiling. MEPs can also reject the budget in its entirety, requiring the Commission to produce a new proposal.

The Parliament gives its opinion and proposes amendments to legislative proposals after the details have been examined in one of the Parliament's 17 committees. The formal powers and responsibilities of the committees are laid down in the EP rules of procedure. The importance or prestige of individual committees is largely a function of the powers the EP has in the particular area. The formal office holders within each committee are its chairmen and three vice-chairmen. The chairman presides over the meetings of the committee, speaks for it when sensitive votes are held in plenary and can contribute considerably to shaping legislation. Once a committee has decided to draw up a report or an opinion it nominates a rapporteur (when the committee bears primary responsibility) or a draftsman (when it has to give an opinion for another committee).

The Committee on Fisheries examines fisheries proposals, while the Committee on the Environment, Public Health and Food Safety examines environmental proposals. The Parliament plays a less significant role in the development of fisheries policy than most other areas, including the environment (see decision making procedures below). There are provisions for Parliamentary Committees to jointly examine proposals and one would expect the Fisheries and Environment Committees to work together on several key aspects of the CFP. In practice this mechanism has been little used.

¹ For a break down of expenditure re compulsory and non compulsory see Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure - <http://europa.eu.int/eur-lex/en/treaties/selected/livre612.html>

The Parliament has also a supervisory function. It approves the appointment of the President of the European Commission, and can formally censure the Commission, which would oblige it to resign. It supervises Commission spending and implementation of EU policies. MEPs can put written and oral questions to the Commission and to the Council. The Parliament can also establish temporary Committees of inquiry and hold public hearings on matters of public concern

The European Parliament is made up of 732 members (MEPs) directly elected. The elections are held every five years within the same four-day period. MEPs sit according to political groups or as non-attached members, and not by nationality.

There are currently seven political groups. Political groups have their own staff, the number determined by the group's size and the number of languages used in the group. Within the larger groups between two to three staff members observe and follow the work done by each committee, whereas one official might be responsible for observing the work of three or four committees in smaller groups.

Political groups play a pivotal role within the European Parliament in general and also within European Parliament committees in particular. For each committee they will appoint a coordinator whose function is to ensure that the political group is 'moving along the same track'. The co-ordinators of each group meet to distribute rapporteurships and discuss the committee's future agenda and political problems before they are discussed in committee. Committee co-ordinators can also play a central role in communicating the interests of the political group to the other institutions.

The Chair of the Fisheries Committee is Mr Philippe Morillon. He is a liberal and member of the Group of the Alliance of Liberals and Democrats for Europe, France.

- *Link to European Parliament Committee on Fisheries:*
http://www.europarl.eu.int/committees/pech_home.htm
- *Link to European Parliament Committee on Environment, Public Health and Food Safety:* http://www.europarl.eu.int/comparl/envi/default_en.htm
- *Link to Members of the European Parliament 6th term 2004 – 2009:*
http://www.db.europarl.eu.int/ep6/owa/p_meps.short_list

2.5 The Court of Justice of the European Communities and the Court of Auditors

The Court of Justice of the European Communities (CJEC) is the EU's court. It is made up of judges appointed jointly by the Member States. It rules on cases brought before it concerning, amongst others, the application of Community legislation. Although some cases are referred to the Court from national courts, most cases are brought by the Commission because Member States have failed to transpose and/or implement EU legislation. Individuals have very limited ability to bring cases directly to the Court, but must rely instead on complaining to the Commission or bringing cases at the national level.

Although the role of the CJEC is less visible, it is far from insignificant in the development of the CFP. For example, the Court has been called to judge on catch quotas, free circulation of capital, and the EC's authority regarding relations with third countries. More recently the CJEC was asked to interpret the habitats Directive and ruled that an activity may only be authorised in a Special Protection Area when it is certain that it will not negatively affect the environment. As such, its rulings can be expected to have significant implications for inshore, and potentially offshore, fisheries management, where the issuing of annual licences could be made conditional upon appropriate assessments. The prevailing view has often been that fishing licences restrict exploitation rather than permitting access. As a consequence, fishing licences have, at least in some quarters, been considered a management tool contributing to the management of protected areas, and thus not requiring an appropriate assessment under Article 6(3) of the habitats Directive. The Court ruling makes clear that this is not an acceptable interpretation of the Directive.

The mission of the European Court of Auditors (ECA) is to audit independently the collection and spending of European Union funds. Through this, it also assesses the way that the European institutions discharge these functions. The ECA thus assists the Parliament in its functions of overseeing the implementation of the budget. In the past this has influenced the CFP, most notably in 1998 when the ECA criticized the procedures and the very basis of the policy on aid for the establishment of joint fisheries ventures in third countries. This led directly to reforms adopted in 1999.

3 DEVELOPING POLICY

3.1 Scientific advice

Fisheries management in the EU is based on what has sometimes been called the ‘modern fisheries management model’. Specialised institutions produce formalised knowledge, which is then used as a basis for management decisions and implementation by a centralised bureaucracy. Within the EU, the main source of scientific knowledge is ICES (International Council for the Exploration of the Seas). ICES uses biological data collected by national research institutes from research programmes and landing records to assess the state of the main commercial stocks (stocks targeted by fishermen). The results of the assessment of the stocks in the northeast Atlantic is then examined by ICES’ Advisory Committee on Fishery Management (ACFM) which is made up of representatives from each country. Its findings represent the advice of ICES. The Commission’s own Scientific and Technical and Economic Committee on Fisheries (STECF), which is also made up of national experts, will then examine this advice and issue an opinion. The STECF Committee produces an annual report on the situation as regards fisheries resources and on developments in fishing activities. It also reports on the economic implications of the fishery resources situation. The most routine application of this process is the annual setting of TACs (see box 2).

Box 2 Annual TAC negotiations

1. ICES uses biological data collected by national research institutes from research programmes and landing records to undertake stock assessments for the main commercial fish stocks. These assessments are then examined by the ICES Advisory Committee on Fishery Management (ACFM) and advice is issued to the European Commission on TACs and associated management measures. The ACFM is made up of representatives from each country and its findings represent the advice of ICES.

2. The Commission subsequently consults its own advisory Scientific and Technical and Economic Committee on Fisheries (STECF), which is comprised of national experts, on this ICES advice. TACs are also discussed in the Advisory Committee for Fisheries and Aquaculture (ACFA), where stakeholder views are identified.

3. In the end, a Commission proposal is put to the Council, including the following year's TACs and the conditions under which they should be caught. After negotiations in the working groups and COREPER, the Council of Ministers then takes the final decision on TAC levels and any related measures (usually in late December). It is typical for the Council to adopt TACs different from those proposed. In the run up to Council meetings, industry and NGOs typically engage in intensive lobbying to try and influence the Ministers of their respective countries.

4. These annual TACs are subsequently divided between Member States according to fixed proportions following the ‘principle of relative stability’ based on historical catch records. The allocation between fishing units is left to the Member States.

It is important to note that the stock recovery plans currently in place for cod and northern hake, and those under development, each contain TAC rules. These are

intended to constrain the Council in the TAC levels that it can set to avoid significant fluctuations between years with a view to meeting agreed target levels and keeping stocks above minimum levels. It is yet to be seen to what extent the Council will respect these rules. However, they may be an important point around which to lobby with a view to holding the Council to account for them. Such TAC rules are also important provisions to secure for future recovery plans.

The Commission supports scientific research through multi-annual framework programmes. The 6th Framework programme covers the period from 2002 to 2006. It makes funds available for fisheries and aquaculture research under the area of scientific support to policies. The policy relevance of research is to be met by targeted calls, where detailed task descriptions explain the objectives and the resulting deliverables. In addition to this, the Commission has funds available for research of direct relevance to the CFP. Most of these are being used to support the collection of basic data for the assessment of EU fisheries.

- Link to ICES: <http://www.ices.dk/>
- Link to Cordis FP6 <http://fp6.cordis.lu/fp6/home.cfm>
http://europa.eu.int/comm/research/fp6/index_en.html

4 DECISION MAKING PROCEDURES

The role of each of the Community's institutions in developing items of EU legislation depends upon the Treaty article on which they are based. This determines whether the Council of Ministers makes decisions on the basis of unanimity or qualified majority; and the extent of the European Parliament's influence. The Commission can withdraw proposals at any time, although this is not frequently done.

4.1 Consultation procedure

The so-called consultation procedure applies to nearly all fisheries legislation. Under this procedure, the Council must wait for the opinion of the Parliament but is under no obligation to follow it. Given that fisheries policy is an area of exclusive community competence, the Council is therefore critical in the process of implementing the CFP reform. It also has greater powers over fisheries than in many other subject areas.

4.2 Co-decision procedure

Co-decision is the main legislative procedure in the EU but it has limited application to fisheries policy, applying only to Fisheries Partnership Agreements (under external arrangements) and the Financial Instrument for Fisheries Guidance (FIFG) (an instrument forming part of the EU cohesion policy issue).

Under co-decision, MEPs have wide powers to amend draft legislation. After the two Parliament readings, if Parliament does not agree with the Council's common position, representatives of the two institutions meet in a conciliation committee to negotiate a compromise text, which must be approved by both the Council (by QMV) and the Parliament (by simple majority). Failure of either institution to agree on the joint text means that the proposal falls. In the final analysis the Parliament may therefore reject draft legislation entirely, even though a majority of Member States is in favour of it.

Note that, if adopted, the draft constitution would extend co-decision to other areas of fisheries policy, so increasing the role of the European Parliament (see section 4.6).

4.3 Management Committees

The European Commission is assisted in its work by Committees: advisory, regulatory and management committees. These give to the Commission differing levels of control over the final decision.

At present there is no regulatory committee assisting the Commission in development of fisheries policy. Management committees assist the Commission in developing management measures that it needs to take. This includes measures relating to the application of the CFP or to the implementation of programmes with substantial budgetary implications. These committees are composed of representatives of the Member States and are chaired by a representative of the Commission. Reference to the full Council is possible in the event of disagreement between the Commission and a majority of Member State representatives. Three Management Committees assist the Commission in implementation of the CFP.

- I. The Committee for Fisheries and Aquaculture (CFA) provides opinion upon request on subjects dealing with the general implementation of the Common Fisheries Policy such as conservation measures, control and enforcement, some structural measures and data collection programmes.
- II. The Committee on Structures for Fisheries and Aquaculture (CFAS) is convened for issues dealing with EU fisheries aid (FIFG), in particular those related to joint enterprises, producer organisations and implementation rules.
- III. The Management Committee for Fisheries Products (MCFP) assists the Commission on subjects related to the common organisation of the markets in fishery and aquaculture products, such as the level of intervention schemes.

These committees meet once a month, and while three committees exist on paper, in practice they are generally comprised of the same national civil servants, each meeting sequentially over 2 days. Fisheries policy is generally developed through management committees much less than in other policy areas. This is perhaps because of the political nature of fisheries policy, which means that Council working groups largely take a lead. Even where management committees are delegated power under legislation, the Council working groups often lead with negotiations and effectively hand over outcomes to the committees for official adoption as a Commission decision or Regulation.

4.4 Advisory Committees

Two Advisory Committees assist the Commission. They are:

- I. The Scientific, Technical and Economic Committee for Fisheries (STECF) is a committee of scientific persons appointed and closely consulted by the Commission on fisheries management issues, including the annual setting of TACs and quotas, for high quality scientific advice.
- II. The Advisory Committee for Fisheries and Aquaculture (ACFA) is composed of representatives from European level stakeholder groups appointed by the Commission to engage stakeholders in the development and implementation of the CFP. Members include representatives of the production sector, the processing industry, trade in fishery and aquaculture products, consumers, the environment and development. Although created in 1971, membership of ACFA was originally restricted to industry interests and only relatively recently expanded (in 1999) to include 'non-professional organisations' representing the interests of consumers, the environment and development. It remains dominated by industry representatives however. ACFA works through plenary meetings and four working groups:
 - Group 1: Access to fisheries resources and management of fishing activities;
 - Group 2: Aquaculture: fish, shellfish and molluscs;
 - Group 3: Markets and Trade Policy; and
 - Group 4: General questions: economics and sector analysis.

The Commission is under no obligation to follow the advice of Advisory Committees.

4.5 Regional Advisory Councils

A Decision establishing a framework for Regional Advisory Councils was adopted by the Council in 2004 (2004/585). As the name suggests, these will be regional advisory bodies, almost like regional equivalents to ACFA, composed of a mix of different stakeholders but with no decision-making powers. The North Sea RAC has been established, with the others in the process of developing their memberships and constitutions.

Up to seven RACs may be established, covering the Baltic Sea, Mediterranean Sea, North Sea, north western waters, south western waters, distant water/high seas fisheries and small pelagic stocks (blue whiting, mackerel, horse mackerel and herring). Anyone with an interest in establishing one of the RACs can submit a request to the Commission and Member States concerned. This should include a statement of objectives, operating principles, rules of procedure and a budget estimate. Having assessed and if necessary amended the request, the Commission is to adopt a decision specifying the date on which the RAC will become operational.

RACs will consist of a general assembly and an executive committee of 24. As a rule general assembly and executive committee meetings will be public. However, the executive committee may decide by majority 'in exceptional circumstances' to meet in private. The industry will make up two thirds of the executive committee, with the remaining third made up of 'other interest groups'. This may include environmental interests, recreational fishermen or consumer representatives.

4.6 The new EU Constitution or Treaty and its effect on fisheries policy

A new Constitutional Treaty was drawn up to prepare the EU, including its institutions, for enlargement in 2004. Agreement was reached on the 260+ page document in July 2004. The text now awaits ratification by the 25 Member States before it can enter into force. As this will require national referendums in some Member States, the Constitution is not expected to come into force for several years. If adopted, it would replace the current Treaty of Rome upon which the Common Fisheries Policy is based.

In terms of its detail and implications, the Constitution would, for the first time, explicitly name 'the conservation of marine biological resources under the common fisheries policy' as an area subject to exclusive EU competence. As noted earlier, this contrasts with other aspects of environmental policy, where the EU and the Member States share responsibility.

Although elements of fisheries are already treated as exclusive, this is not set out in the Treaty of Rome. Perhaps significantly, the term 'marine biological resources' is not defined. Rather, the draft Constitution refers only to the CFP. As the details of the CFP are laid out only in secondary legislation, which could be amended at any time, some argue that the management of everything living in the sea could potentially become the exclusive responsibility of the EU at some point in the future.

Significantly, co-decision would be extended to the development of fisheries policy. This would mean that the Parliament would share control with the Council of Ministers. Decisions concerning the setting of TACs and quotas would however remain the sole responsibility of the Council. While it is likely to be several years before the Constitution enters into force, it should be noted that the implications of the extension of co-decision could be significant. It would create another level in the decision-making process. The Parliament has proved to be less than green recently in its opinions on RACs, the northern hake recovery plan and the Mediterranean Regulation for example. If this trend continues and the Constitution is adopted, those trying to influence the fisheries policy-making process would be forced to rethink their strategies and hence resourcing.

- *Link to the full Constitution text:* http://europa.eu.int/futurum/index_en.htm
- *Link to further information on ACFA*
http://europa.eu.int/comm/fisheries/dialogue/acfa_en.htm

5 INFLUENCING POLICY

5.1 Getting Informed

In order to influence EU policy it is important to be up to date with developments within the institutions ie the Commission, Council and Parliament. Internet resources for the institutions have developed greatly in recent years and should be the first point of call to identify issues of interest. However, it should be noted that some of the sites are more easily accessible than others ie the Commission resources are far easier to navigate than, say, the Council. There is a considerable amount of good information for those willing to persevere. Several key websites are of particular use. These include those listed above for the Commission, Parliament, Council and Presidency. However, there are several additional sites that provide useful information:

- Rapid – This is the Commissions press service where all official press releases are published, it is free, searchable and also allows users to subscribe to an email newsletter service with news being delivered on specified subjects on a daily or weekly basis - <http://europa.eu.int/rapid/>
- Oeil – This service, run by the European Parliament, allows you to track legislative proposals which are going through the decision making process - <http://wwwdb.europarl.eu.int/dors/oeil/en/default.htm>
- Prelex – This also allows legislative proposals to be tracked and is complementary to Oeil and is run by the European Commission - <http://europa.eu.int/prelex/apcnet.cfm>
- Eurolex – Adopted legislation and Commission Communications and Legislative Proposal text and details can be searched for on this site - <http://europa.eu.int/eur-lex/en/index.html>
- Official Journal – When legislation and Commission documents are adopted they are published in the Official Journal. Legislation is published in the ‘L’ series, and Communications and other documentation in the ‘C’ series - <http://europa.eu.int/eur-lex/lex/JOIndex.do?ihmlang=en>

Once these web based sources have been consulted there are additional ways of improving your knowledge. One of the most productive is contacting the institutions themselves to ask what is going on with a particular dossier. There are several points of contact depending on at what stage a dossier is at.

5.2 Influencing the Commission

The Commission is responsible for developing policy within the EU and, while the Council and the Parliament can request work be done on a particular area, it is normally within the Commission that ideas are generated. It is, therefore, crucial to make the Commission aware of a position or idea. There are several different levels at which impact can be made. There is obviously the Commissioners themselves. Although they are generally busy it can be useful to invite them to speak at high-level meetings etc. Working directly for each Commissioner is the Cabinet. This group of individuals is personally chosen by the Commissioner and work closely with him/her. Hence, they can be a useful way of influencing the thinking of the Commissioner and are particularly influential during the later stages of the development of a policy proposal. The Cabinets are important during the later stages of the interservice consultation process, when a dossier is agreed by all Directorates General (DGs). They can therefore be of importance when trying to influence a dossier produced by another DG ie if DG Fish is developing a proposal which raises environmental concerns the DG Environment Cabinet may be worth lobbying and vice versa.

The individuals working within the various units of a Commission DG do the majority of the policy development work (see organisational chart link, Section 2.1.2). It is worth developing a dialogue with relevant people within the units. Individuals are normally willing to provide details of work that is ongoing and in the pipeline. When a dossier is being developed an individual within the relevant DG, known as a desk officer, will be put in charge of its development. If a dossier is of particular interest it is worth getting in contact with the desk officer both for general information and influencing purposes and also as they will be in charge of any official consultations and the establishment of any ad hoc working groups in relation to the dossier.

In relation to consultations, the Commission is increasingly formally consulting the wider world as to how particular policies should be taken forward. Consultation calls are published on the Commission's website and are generally open to all. The format is normally that an initial policy has been developed and comments are requested in relation to specific questions. This process of consultation is becoming increasingly formalised as the use of impact assessment for dossiers takes shape (see section 1.4.3).

In addition to establishing contact with Commission officials another way of developing a relationship with the Commission is by tendering for work for them. The Commission issues calls for proposals in their Official Journal, and such studies are often used to support the development of policy.

5.3 Influencing the Council

The Council is less transparent than the Commission. However, it is an influential body at the final decision making stage of policy development, especially in relation

to fisheries policy. As the Council is composed of representatives from the Governments of all Member States the most effective way to influence discussions is to attempt to influence the thinking of Ministers and the appropriate civil servants from Member States. The most important civil servants are those working on the issues on a day-to-day basis in the Member State. Moreover, each Member State has a number of officials working on all policy areas based in the Permanent Representations in Brussels. They undertake the preliminary negotiations in order to reach agreements in Council. Perm Reps sit on Committees known as COREPER; minutes and agenda for such meetings are published on the Council's website. Contact details for Perm Reps can be found at <http://www.ukrep.be/permreps.html>.

COREPER occupies a pivotal position in the Community decision-making system, in which it is at one and the same time a forum for dialogue (among the Permanent Representatives and between them and their respective national capitals) and a body which exercises political control (by laying down guidelines for, and supervising, the working groups). The Member States are represented in the working groups either by staff from their Permanent Representation or by expert official. Most Permanent Representations have staff covering specifically fisheries matters.

In addition to amending and agreeing policy that has been developed by the Commission, the Council can also influence policy development by requesting the Commission or Member States to take action in a specific way.

As outlined above (see section 2.3) the Member State holding the rotating Presidency of the European Council can determine, to a limited extent, the agenda during its term of office. Work for a Member State's Presidency normally begins, at least, a year in advance of them taking over the helm. It is at this stage that work to identify priorities and hot topics is completed, hence it is worth identifying topics of interest to a Member State and lobbying the relevant government departments at this point.

5.4 Influencing the European Parliament

The European Parliament has a limited role in relation to most fisheries policy (see sections 4.1 and 4.2). However, the role of the Parliament has been progressively increasing over time and Commissioner Joe Borg has suggested that during his term as Fisheries Commissioner the opinions of the European Parliament, although not legally binding, will be taken into account.

One way of influencing the Parliament is to contact MEPs who have a particular interest in an issue. An individual MEP can submit written questions to the Commission and the Council, which can influence the thinking of the other institutions and also provide detailed information regarding eg implementation. A group of at least 37 MEPs, a Committee or a political group can submit an oral question at the plenary sessions. When trying to influence an MEP it is important to take into account the important role their Assistants play. MEP Assistants brief, write reports for and complete research for MEPs, hence are an important way of getting your message across.

When considering which MEPs to approach it is important to bear in mind that their influence varies. Certain MEPs will have considerable sway on the development of

specific reports as the rapporteur for a dossier. A rapporteur will be appointed to write a report outlining the issues and a proposed Parliamentary opinion. This report will then go to the appropriate Committee and then onto the Parliament. The real influencing opportunity is at rapporteur and Committee level - where the debates relating to a position are normally completed and a position settled. Details of rapporteurs are available on the Oeil website or are listed upon appointment in Committee meeting minutes. During their term of office an MEP will often focus his/her efforts on particular subjects; there are, therefore, benefits of being aware and building relations with such rapporteurs.

Another important way of influencing the agenda of the Committees is via their administrative staff. These civil servants support the work of the Committees and the head of the division often advises the Chair of the respective Committee. Administrators often have a longer term view of the Committee than its existing Members having an important role in briefing Members and assisting (along with MEP Assistants) with the drafting of rapporteur reports. There is also the higher-level Secretariat, which supports the whole Parliament. However, its influence over a specific dossier tends to be less than that of the Committee Administrators.

Box 3 Banning of drift-nets

Driftnets have been an endless source of conflict in the North Sea since the mid-nineteenth century. However, the debate on their prohibition started in the United States with a campaign by NGOs such as Greenpeace and the Earth Island Institute for the ban of the large nets used by East Asian fleets in the Pacific. The main criticism was that of substantial by-catch of marine mammals and seabirds. Greenpeace started a series of high visibility actions. During this campaign the environmental NGOs counted on the support of American and Canadian fishers who were not unsympathetic to an action tending to reduce the level of activity of their Asian competitors. This campaigning resulted first in the adoption by the US Congress of the 1987 Driftnet Impact Monitoring Assessment and Control Act, which reduced the maximum size of driftnets used in the USA's EEZ to 2.5 km. In 1988, the Marine Mammal Protection Act was amended. By then, Greenpeace had started to internationalise the campaign. In 1989, the Governments of the South Pacific imposed restrictions on driftnets. Greenpeace failed to mobilise FAO against the driftnets but succeeded in having the United Nations General Assembly adopt Resolution 44/225 of 15 March 1990 on large-scale pelagic drift-net fishing and its impact on living marine resources of the world's oceans and seas.

Around the same time in the North-East Atlantic, EC vessels from France had started using large drift-nets to catch albacore tuna, with Ireland and the UK following a couple of years later. Since the 1950s the albacore tuna fishery had largely been a seasonal pole and line fishery. In France this fishery had started to decline in the 1960s as a result of changes in fishing techniques and social context. French crews wanted to spend less time at sea. The new French vessels could not be seasonally converted to pole and line or line fisheries. The development of driftnets was spearheaded by official French research into an alternative for the pole and line fishery.

The UN Resolution was followed in 1992 by the adoption of an EC ban on 'large' drift-nets, ie greater than 2.5 kilometres in length (Regulation 345/92). However, there was continued concern over the nature and extent of bycatches of other species in the drift-net fishery, including species protected under EC and international law. Spanish fishermen also feared that the practice would affect the amount of fish left to be caught using more traditional and less intensive methods and this led to a high-profile conflict between Spanish and French fleets in the Bay of Biscay in 1994. Furthermore, there was evidence of widespread abuse of the ban by Mediterranean boats.

In 1994, a Commission proposal (COM(94)131) called for the eventual cessation of all fishing activities using drift-nets. While this found general support from environmentalists, as well as the European Parliament and Spain, there was insufficient support for such a move in the Council. The situation changed in 1997, however, when a new UK Government announced its support for a ban. Under its Presidency of the Council during the first half of 1998, the UK managed to secure agreement among a sufficient number of Member States. But it was only able to do so by excluding from the proposal drift-nets used to catch salmon and sea trout, and fisheries in the Baltic Sea, the Belts and the Sound, an exemption that was condoned on tactical grounds – better a partial ban than no ban at all. Mounting concern over continuing by-catch of the critically endangered harbour porpoise (*Phocoena phocoena*) and the increased environmental awareness in the Baltic Member States have now made it possible to extend restrictions to the Baltic Sea, the Belts and the Sound, phasing out drift-netting from 2005 and prohibit their use altogether from 2008.

6 REFERENCES

Haigh, N (ed) (2003) Manual of Environmental Policy: the EU and Britain, Release 24, Institute for European Environmental Policy, London, Maney Publishing.
<http://mep-online.com/index.html>

Key bodies and instruments influencing and advising the European decision making

