

THE 2002 REVIEW OF THE COMMON FISHERIES POLICY

Alex Wright

INTRODUCTION

Even though it will not come before the Council of Ministers until 2002, effectively the Review of the Common Fisheries Policy (CFP) is already well underway. Consequently Scotland's fishing industry is girding its loins for what will be a bruising ride if the 1992 Review is anything to go by. Then the Scottish Fishermen's Federation (SFF) faced down an assortment of ambushes and challenges from within the UK and the European Union (EU) but the outcome was by no means a foregone conclusion. Will the SFF be able to fight its corner once again, and will it be successful? The answer is likely to be yes and no, respectively. Given its lobbying skills it would be surprising if the SFF and its cohorts did not deliver a bravura performance but this time around the Federation may well have to endure a rougher passage than was the case 10 years ago. Technically, the Review is obliged to address much the same issues as its predecessor and at the time of writing there appears to be a consensus amongst the EU's fishermen that there should not be a radical overhaul of the CFP itself.

That said, politically, both in the EU and the UK, the context is markedly different today. For example, sustainability has long been one of the CFP's core principles but in practice until the 1990s the CFP was little more than a politico-economic mechanism that sub-divided a resource between the EU's fishing industries. That began to change during and after 1992 as alarm mounted over the possible collapse of stocks, and consequently the sector now has to contend with an increasingly influential environmental lobby,

*Alex Wright is a lecturer at the Department of Politics, University of Dundee, where he teaches Scottish and UK Politics, Public Policy and European Integration. He is the editor and a contributing author of **Scotland: the Challenge of Devolution** which is due to be published by Ashgate later this year.*

Scottish Affair

which argues that the CFP is intrinsically flawed. Furthermore, the political landscape has altered fundamentally in Scotland. Even though competence for fisheries primarily resides at the European tier and relations with the EU are 'reserved' to Westminster, inevitably Scotland's Parliament and the Executive will be concerned with the CFP. Two questions therefore arise as the SFF readies itself once again for battle in the European arena. Will this new institution be of any consequence as far as Scotland's fishing industry is concerned, and if so will it be friend or foe in the run-up to 2002?

Superficially the fishing sector is relatively inconsequential compared to whisky, electronics or financial services each of which are significant contributors to Scotland's GDP. In contrast the fishing industry's impact on Scotland's economy is modest and it could therefore be supposed that it would not be of immediate concern to MSPs and the Executive. Equally MSPs might be more amenable to the environmental lobby than the fishing sector because of the electoral potential. Yet over the last twenty-five years the fishing industry has enjoyed considerably more clout than its status merits. One explanation is that the SFF has been a formidable pressure group but that is only part of the picture. Another factor is that the CFP itself is remarkable in so far as it is one of the most emotive of the EU's policies. In part that can be attributed to a degree of public admiration hitherto for what is a demanding and potentially dangerous occupation in spite of rising concern about the environment. In addition there is the awareness, especially within Scotland, that some communities are highly dependent on the industry for their future well being. But all of this is overshadowed by the peculiar leitmotif of the CFP. Rightly or wrongly Euro-sceptic politicians and sections of the media have used this policy as a drumstick for their partisan views on European integration. They argue that not only is the UK increasingly impotent in the EU but also when competence is assigned to the supranational tier UK interests are not safe in Brussels' hands. Consequently the CFP has become one of the litmus tests of a government's capacity to defend the 'national interest' in the EU and in so doing it serves to legitimise the *raison d'être* of that government. By virtue of its infancy the Scottish Parliament is especially vulnerable in this respect and, as some in the Scottish Executive have found already, the fishing industry is quick to defend its turf. The 2002 Review, therefore, will not only reveal whether the SFF can still punch above its weight in the EU. It could also expose the saliency of the Scottish Parliament as it takes its first steps towards adolescence. In so doing it will raise deeper questions not just on the worth of devolution and whether

The 2002 Review of the Common Fisheries Policy

further autonomy is necessary but also the extent to which territorial empowerment exists within the Community¹.

THE CFP AND SCOTTISH FISHING INDUSTRY

The first framework regulation for the CFP was agreed in 1970, three years before the UK joined the EU. Although this measure primarily related to the marketing of fisheries products it introduced two key principles. Fish were to be treated as a Common Resource and there should be Open Access to the waters of the member states. However the UK eventually secured a 10-year derogation (i.e. temporary suspension) on open access in its Accession Treaty; it retained a 6 to 12 mile coastal belt. By the mid-1970s as the global supply of fish stocks declined, a number of states declared their own Economic Exclusion Zones. Ministers therefore decided at a meeting in the Hague during 1976 that the EU states bordering the North Sea and the Atlantic should unilaterally declare their own Economic Exclusion Zones from 1977 which would extend up to 200 miles or at a meridian point between them or third countries. This came to be known as the Hague Resolution and it effectively created a Community fishing zone in those waters. The Resolution proved to be especially significant for Scotland because ministers also agreed that fishing fleets in the North of Britain, Greenland and Ireland were a special case when regulations were being formulated under the CFP. This was referred to as the Hague 'Preference'. Although the Preference amounted to little more than a commitment in principle, potentially it was of value to Scottish fishermen. The Community had acknowledged that those regions, which were dependent on fishing, would get preferential treatment. They therefore stood to benefit after the quota system was introduced in 1983 since they would be assigned a higher proportion of the allocations and if there was to be a reduction in the levels of annual catches the Preference would also be taken into account.

Since the derogations lasted only for 10 years Scottish fishermen faced a number of dilemmas. First and foremost if the Community failed to reach an agreement by the time that the derogations lapsed in 1983, then fishing vessels from other member states would be permitted to fish right up to Scotland's beaches. If that were to happen the consequences could be devastating for the industry. Then there was the quota system. Since the most

¹ *In this article, the term Community refers to the EU, rather than 'Union' as this could lead to confusion with the UK.*

Scottish Affair

bountiful grounds lay in waters adjacent to their coast, Scottish fishermen argued that they should be awarded a commensurate proportion of the catch. So, although for a time doubts were still felt over the CFP's legitimacy, the two issues which occupied the minds of Scottish fishermen between 1977 and 1983 were the size of their quota and preferential fishing zones. The SFF therefore called for a fair share of the seven principal species. It also proposed that there should be a 12-mile exclusive limit around the Scottish coast and that there should also be North of Scotland 'boxes'. The 12 mile limit would have superseded the 6-12 mile derogation, whilst a box would have restricted access to the fishing grounds off Shetland, Orkney and the North coast of the Scottish mainland.

When the revised CFP was agreed in January 1983 most of the SFF's goals were realised, albeit with a few modifications. The UK's allocation of the quota was 37.3% - that was broadly in line with the SFF's aims. By this time the SFF had accepted that Scottish fishermen were not going to secure a 12-mile exclusive limit. Instead the arrangement would continue as with the 1970s derogation, whereby local fishermen had exclusive access in the 6-mile limit and preferential access up to 12 miles. Only those vessels from the other member states with an historic right to fish in the 6 to 12 mile band were allowed to do so. The principles of Open Access and Common Resource were offset by the need for 'Relative Stability'. Each year the Council of Ministers would adopt a Total Allowable Catch for the different species of fish but the member states were entitled to a fixed percentage of those species. In essence, therefore, Relative Stability equates to the national quotas. Ministers also agreed to a North of Scotland 'box' that was to be referred to as the 'Shetland Box'. As is usual with the EU nothing is set in stone. The CFP was to undergo a mid-term review ten years later with a further and more substantive review in 2002, when it was possible that the derogations and the Box would cease. It was this aspect of the policy that was to alarm some in the industry, as they believed that after 2002 all that they had fought for would come to nought.

THE 1992 REVIEW

Ostensibly the Review centred on a relatively narrow range of issues; these mainly related to the coastal 'bands' and the Shetland Box. However, there was always the possibility that the scope of the review would be widened. If that were to happen core elements of the 1983 framework regulation such as the principle of Relative Stability might be abandoned altogether. That of course would have been disadvantageous for Scottish fishermen as they had

The 2002 Review of the Common Fisheries Policy

an equitable slice of the quota. The pressure for change came from a number of sources. For example the Iberians treated the review as an opportunity to advance their own agenda. They wanted to be fully incorporated into the CFP in the 1990s and did not want to wait until 2002. One way of achieving this was the reform or removal of Relative Stability; so the SFF's primary objective was to retain the status quo. In addition elements within the European Commission and the European Parliament maintained that the CFP had manifestly failed to conserve fish.

In December 1990 the European Commission published a report on the CFP, which was intended to provide an outline of the subjects which were likely to be addressed by the review. This echoed the European Parliament's concern over excess fishing capacity. It also highlighted the shortcomings of the quota system, the lack of sufficient structural aid for the sector and the absence of effective monitoring of the fishing effort. The Commission therefore called for additional powers in order to redress these deficiencies. It also suggested that the quota system should be overhauled. There then followed a series of skirmishes between the Commission and the SFF with the latter vociferously lobbying the UK government. The Federation's relationship with the European Parliament was even more fractious inasmuch as a contingent of MEPs wanted a more substantial reform but in turn that was allied to attempts to incorporate the Iberians fully into the CFP.

The SFF enjoyed mixed success. When the European Commission produced its Final Report in December 1991 it appeared to support the continuance of the main elements of the CFP, including the 12-mile limit and the Shetland box. But the SFF expressed its concern that parts of the report mentioned that if it so chose the Council could change the Iberian accession arrangements from 1 January 1996 – something that eventually came to fruition. In the meantime the report was despatched to EUROPECHE (the pan-European umbrella body for the sector), and the Commission's Advisory Committee on Fisheries for their comments. It was at this point that the SFF's position was particularly under threat because the National Federation of Fishermen's Organisations (NFFO), the SFF's counterpart south of the Border, was opposed to the Hague Preference and the Shetland box. There then ensued a series of attempts by the NFFO to persuade a majority of the constituent members of these bodies (i.e. EUROPECHE and the Advisory Committee) to adopt an Opinion that would be contrary to the SFF's position. Although the status of these entities was purely advisory, if their constituent members had agreed a view that condemned the Box and the Preference, then the Commission, the European Parliament or the Council of Ministers could have acted accordingly. In the event not only were NFFO's proposals rejected, the

Scottish Affair

quota system, the Box and the Preference remained unchanged. Although the SFF won the day there is justification in the view that the retention of the Box in its entirety can also be attributed to astute lobbying by the Shetland Fishermen's Association (one of the SFF's constituent members). Its leaders established a temporary office in Brussels during the most critical period in order that they could both network behind the scenes and publicise their cause.

THE 2002 REVIEW

As we stand at the threshold of the 2002 review, the scene is set for a re-run of the events leading up to the last review. Once again the Box, the Preference and the derogations are all up for consideration and once more there are a number of other agenda items with the result that calls for more substantial change could emerge out of the blue. This review has long alarmed Scottish fishermen, and, amongst other things, it directly contributed to the split in the Industry during the mid-1990s when a splinter group formed a rival fishing association to the SFF (albeit that the 'association' is a pan-UK organisation and its Scottish membership is modest). Although its members had a mass of grievances, the origins of the splinter group can be traced to the fear that from 2002 the derogation on Open Access would cease with the result that fishermen from third countries could fish up to Scotland's beaches. A related concern was the perception that Relative Stability would also end. In effect, a free market would replace the system of national quotas, whereby individual fishermen – or more likely, powerful fishing conglomerates – could purchase fishing rights.

For the moment at least, if EU fishermen are to have their way, much will remain unchanged – although, as we shall see, it is always possible that there might be a more extensive reform of the CFP. At present few if any of the national fishing organisations across the EU would wish to see the derogations on Open Access lifted as their members benefit from this arrangement. Likewise there is something of a consensus over Relative Stability for two reasons in particular. Unless they are pressed, the EU's institutions have little desire to expend their energy on renegotiating fishing rights when so much is already happening within the Community – not least European Monetary Union, and the forthcoming Enlargement and Intergovernmental Conference. Second, for the most part no one can agree a better alternative to national quotas, though the Spaniards in particular would like to see a different mechanism as this would benefit their industry. Both the Box and the Preference face opposition, however, as was the case before.

The 2002 Review of the Common Fisheries Policy

It is likely that this will again come from the English federation and there is also a degree of support from the other fishing organisations in the EU.

In turn that raises the question as to whether the Box or the Preference amount to much. As far as the Box is concerned it is fair to argue that Shetland and Orkney are exceptional in that there is little in the way of alternative employment for fishermen if their traditional fishing grounds became something of a free-for-all. Moreover, ecologically this area is extremely sensitive; it could not sustain an increase in fishing effort. Consequently there is considerable justification for arguing that such a restriction is justified for biological reasons. Nonetheless this time around it is likely that both the industry and the Scottish Executive will be under even more pressure from the Box's detractors. The Hague Preference is rather more ephemeral in that it has only been used from time-to-time. As such it could be described as a 'fig leaf' for Scottish ministers on those occasions when the EU drastically reduced the Total Allowable Catch of a particular species. When that has happened in the past, and if Scottish fishermen stood to be affected, then the Preference has been invoked. Correspondingly although the overall catch for the EU is lower, their percentage of the cake is increased temporarily - as was the case in December 1998 (**Press and Journal** 1998). This has attracted opposition from the other member states, as well as from the NFFO because they do not enjoy the same privilege. Yet there is justification for the Preference to remain in situ after 2002. This is primarily because it serves to acknowledge Scotland's special status not just by virtue of the large proportion of the EU fisheries which are in Scottish waters but also because of the high level of dependency on fishing in parts of the country.

Environmental considerations are more contentious for the industry, however. Although the World Wildlife Fund submitted its own recommendations to the EU in 1992 these were largely ignored until later on. The reason, as has been mentioned earlier, was that the CFP was little more than a device to sub-divide fish stocks between the various member states. However, the 1992 Review did mark something of a sea change in so far as the Commission accepted that the policy was not working. In particular, stock levels of certain species were plunging and it was held that the quota system itself was to blame. The reason for that was that it placed no control on the amount of fish that were caught; instead it restricted the quantity of fish that were landed. Allied to that was the problem of discards whereby a non-target or over-quota species was caught inadvertently and had to be thrown back into the sea (or at least in theory). Not only did this attract the opprobrium of the Eurosceptics and their acolytes in the right wing media

Scottish Affair

because of the waste; it was also held up as an example of the crass stupidity of the Commission itself (**Sunday Telegraph** 1999). Yet the Commission was not to blame because it was the Council of Ministers (and hence the member states) that had agreed on a system of quotas in the first place. Even so there is widespread consensus that 'discarding' is economically and morally unacceptable. The problem is particularly acute for Scottish fishermen because of the likelihood of multi-species catches in their fishing grounds. Changing the shape or the size of the mesh of the fishing nets has long been the subject of debate. But agreement between the industry and policy makers on what would be most appropriate remains elusive not least because if the mesh were too big then catches would plummet. The Commission is therefore facing growing calls to draw up legislative proposals for the Council of Ministers, which would ensure that all catches would be landed. As this might lead to an increase in fishing effort, new mechanisms would have to be established to ensure that the quotas could still be policed effectively - the latter having to remain in situ due to the absence of an alternative, as mentioned above. The issue that would then arise is who would meet the cost of such an arrangement? It is partly for this reason that the Commission has dragged its heels over discarding to date.

All-in-all, aside from the Spanish, who wish to reform the CFP for partisan reasons, the greatest threat to the status quo is likely to come from environmental factors. Since the early 1990s the environmental agenda has shifted up a gear. In part this is because the CFP's defects had such a high profile that conservation groups took an increasingly close interest in what was happening to fish stocks and other elements of the marine eco-system. This was especially evident in relation to the extraction of sand eels which were effectively 'vacuumed up' by Danish vessels off Scotland's East Coast. For some years the EU claimed that it was powerless to act, although a number of environmental organisations argued that this was damaging the entire marine ecosystem (e.g. the RSPB, Scottish Wildlife Trust, WWF and Greenpeace). When the sand eel issue was not resolved satisfactorily that led to direct action on the high seas during the middle of the decade when Greenpeace activists clashed with the Danes. As a result, a comprehensive research programme was set in train to examine the sand eel stocks and ostensibly the EU became more amenable to the environmentalists' arguments.

Yet superficially it seemed that nothing had really changed in the years that followed. Fishermen continued to wield considerable influence over their respective Governments in the Council of Ministers; as a rule Ministers agreed higher catch-levels than those recommended by the European

The 2002 Review of the Common Fisheries Policy

Commission. So it could be suggested that the crisis in the sector was ultimately the fault of the fishermen themselves. As lobbyists they were too successful and they failed to accept that new technology led inherently to improved catches. It is possible, therefore, that the CFP will face a more far-reaching shake out than was originally envisaged. Even by 1995 there was an awareness that the North Sea in particular faced unsustainable pressure from a variety of sources and a conference was set up to consider this further. One consequence was that fishing was viewed as an environmental problem in its own right after delegates complained publicly about over-extraction. A year later, reports by the House of Lords and the UK government's Panel on Sustainable Development also warned of a major collapse in stocks. The resulting coverage in the media may well affect public support for the sector in the medium-term.

However, fishermen's leaders were critical of the Commission's use of the 'Precautionary Principle' for the first time in December 1998. The principle's origins can be traced to the Rio Summit at the beginning of the 1990s and as such it was an environmental measure that was 'imported' into fisheries. With regard to the CFP it is based on the premise that catch levels should be cut if current rates of extraction threaten the viability of one or more species of fish. The industry was highly critical for a number of reasons. Fishermen maintained that the principle was far too ambiguous and they believed that it was disproportionate because of the (alleged) unreliability of the data provided by marine scientists. A contributory cause of their unease was the lack of consultation by the Commission when the principle was first applied. An additional criticism was that if restrictions on fishing effort varied from year to year it was well nigh impossible for the industry to plan ahead; for example fishermen might be deterred from investing in a new vessel because of uncertainty over the return on their investment. Conversely there is the argument that, if it is adopted correctly, the precautionary approach will eventually iron out the peaks and troughs of stock levels. As a result catches and annual restrictions on effort should vary less from year to year. Certainly fishermen's leaders are well aware of the need for conservation of stocks if jobs are not to be imperilled. But there is less agreement as to how those two goals can best be reconciled, with the result that over the years there has been a growing stand off between environmentalists and the industry.

That said, from the industry's perspective, more worrying still are the possible consequences of global warming. For example there is the view that haddock are already at their temperature margin in Scottish fishing grounds and if the Gulf Stream changed direction that could have an enormous impact on catch levels. Conservation and environmental issues therefore remain

Scottish Affair

imponderables that could engender a root and branch re-assessment of the CFP just at the moment the new Scottish Parliament is set to prove its mettle.

THE SCOTTISH PARLIAMENT AND THE CFP

Fisheries occupy something of an anomalous position because each of the three tiers of authority has a measure of competence over this policy field, and that is indicative of the difficulties that lie ahead. As the CFP is an EU policy the framework legislation is decided at the European tier and because relations with the Community is a reserved power the UK government represents Scottish interests in the Council of Ministers. The Scottish Executive is responsible for implementing the CFP on behalf of the UK government. That appears clear-cut but the first question that springs to mind is how can the Scottish Executive seek to influence decision-making with regard to the CFP? The White Paper on the Scottish Parliament intimated that where necessary Scottish ministers will be present when the Council of Ministers meets but that is no different from before devolution. There is also the possibility that Scottish ministers might vote in the Council but a number of issues arise from that scenario. First, if they did vote, de facto, they would be acting as UK ministers, not Scottish ones, because they would be representing the UK in the Council. Second, if they did speak on behalf of the UK, technically they would only be answerable to the Scottish Parliament, rather than Westminster. Would the NFFO or its counterparts find that acceptable? In practice this issue may be irrelevant. At the time of writing, Scottish Ministers require the approval of the lead department before attending meetings in Brussels, and so they are unlikely to conflict with the overall UK position - albeit that this needs to be qualified inasmuch as a 'Concordat' between the Scottish Executive and Whitehall on fisheries has yet to be published.

The Concordats have rightly attracted considerable attention because they will act as the fulcrum between the UK and Scottish tiers of authority. The reason that they are so crucial is that they will determine the formal relationship between the two governments as far as their day-to-day relations are concerned. Administratively this matters because we now have one civil service straddling two distinct polities and there will be occasions in the future where their political leadership will be in conflict. The Concordats will endeavour to prevent such a divergence spilling over into the civil service itself. So in principle, officials in Scotland will be singing from the same hymn sheet as their colleagues in London. That is all very well, but the Scottish administration will be under pressure to fight Scotland's case more

The 2002 Review of the Common Fisheries Policy

firmly in Whitehall. This in itself will be a challenge because the Scottish Office had long enjoyed a distinguished record in that respect and in theory at least its lobbying was facilitated by the fact that the ministerial team in Scotland was a part of the UK government. Prior to the Parliament, if the situation arose where there was deadlock between the fisheries department in Scotland and the Ministry of Agriculture Fisheries and Foods in London, then Scottish civil servants could brief their ministers accordingly. If they so chose the latter could then broach the subject with their ministerial colleagues. This arrangement will be more vulnerable when two political parties that have radically different ideologies govern Scotland and the UK respectively (e.g. the SNP and Labour). If that were to happen then the Secretary of State for Scotland would act as a fail-safe.

For the time being Scotland retains its Secretary of State and this has its advantages. It follows that if there was a dispute between Holyrood and London then a minister who was a member of the UK Cabinet could take the issue up with the highest levels of government. Another possibility is that the Secretary of State could represent Scotland in the Council of Ministers. The difficulty here is that in effect this would be little more than the retention of the status quo prior to devolution. Moreover, the position of the Secretary of State is under threat. There is already a debate over whether such a post is necessary and it could well be the case that instead of a seat in the Cabinet the post holder may simply be a member of the Joint Ministerial Committee, the constituent members of that body being the political leadership of the devolved administrations and their UK counterparts. Alternately there might be just one Constitutional Affairs Secretary with collective responsibility for all the devolved administrations in the UK. Would any these outcomes be appropriate devices for resolving a crisis over the CFP? Only time will tell but that may be too late for Scottish fishermen in connection with the Review in 2002.

In the meantime there has already been some controversy over fisheries and devolution. It was the first non-administrative issue to be debated by MSPs. In June 1999, just weeks after the first elections for the Parliament, the SFF complained that 6,000 nautical miles of the North Sea that had traditionally been regarded as Scottish waters had been allocated to the English. Of greater concern is the manner by which this new arrangement came into force; its legal base was an Order by Council. Although this was perfectly legal because it was a by-product of the Scotland Act, the Order itself effectively circumvented the usual parliamentary mechanisms and was determined solely by a UK minister. That coincided with the creation of the new ministerial team at Holyrood and according to reports in the media, when it

Scottish Affair

became apparent that the new Scottish fisheries minister had not responded sufficiently robustly to this development, he was summoned to appear before his party's MSPs and explain himself. Apparently he was then instructed to consult with the SFF with a view to acting on this further, all of which illustrates the pressure that is going to emerge from Scottish parliamentarians themselves (**The Times** June 4 1999).

If the environmentalists or for that matter the English or the Spanish do succeed in shaping the EU's agenda on fisheries, and Scottish fishermen perceive that this would be detrimental to their interests, inevitably they will lobby MSPs. In the aftermath of the disputed boundary designation, the Scottish minister for fisheries is likely to be extremely sensitive to the SFF's overtures. But that individual then faces a conundrum because, as has already been described, Holyrood remains at the end of a chain stretching from Scotland to Brussels and the influence of Scottish ministers over EU policy is questionable. When the Parliament was in its infancy, MSPs came under intense pressure from the media to justify their salaries and long recesses. If they and their ministers are seen to be relatively powerless either individually or collectively then the question will inevitably arise as to why Scotland needed its own parliament in the first place. Even though such an argument is anachronistic in the light of the 1997 referendum, the fact that people will be judging the performance of MSPs will ensure that the latter will be kept on their toes. They will be particularly vulnerable to charges of complacency across a swathe of policy areas and this could be particularly so in the run up to the review of fisheries in 2002. The same applies to structural aid for the industry.

For too many years there has been a lack of finance for decommissioning and modernisation of the fleet because successive UK Governments were unwilling to offer sufficient funding (the UK is not alone in this respect). Likewise the EU's PESCA programme stalled partly because the Government did not provide matching finance as it was supposed to do under the principle of additionality and also because the programme itself was far too complex. In sum this is a cause for concern because if fishing effort is to be cut back substantially as a result of environmental considerations, and if the vessels that remain are to be efficient and safe, there must be a comprehensive and effective restructuring programme in situ. But as both EU structural aid and the CFP are reserved to the UK parliament it could well be that the government departments in London will insist that Scottish MPs should deal with this matter at Westminster not MSPs (**The Times** July 3 1999). So the 2002 review could be extremely illuminating if there was to be a repeat of the events that occurred in 1992, or worse. At the very least it should give us an

The 2002 Review of the Common Fisheries Policy

insight into how much power the new Scottish administration possesses over EU policy and in so doing it will shed some light on the regionalist credentials of the EU itself.

REGIONALISATION OF THE CFP

All sorts of accusations have been levelled at the EU over the years. For some it is little more than an oligarchy run by the French and the Germans. For others it has already become a super-state by stealth. Regardless of these views, there is a very real dilemma for the EU in an institutional sense. At present the Council of Ministers remains the supreme decision making body in the EU. Although it shares some of its decision making with the European Parliament, in so far as the latter increasingly has the authority to veto legislative proposals, that does not apply to the CFP. Despite the provisions of the Treaty on European Union which enables territorial governments to vote in the Council, this is something of a halfway house. They can only vote with the permission of the government of their member state (or by virtue of their constitution), with the result that some territorial governments participate directly in the Council, whilst others do not. Furthermore, the Council itself cannot adequately address a policy such as the CFP by virtue of the fact that the various seas and oceans are tantamount to distinct fishing 'zones' in their own right. Functionally it would be more rational if policy makers treated them as separate entities. Equally, as the government sponsored CFP Review Group acknowledged in 1996, 'repatriating' fisheries to member states simply would not make sense because quotas and conservation measures would still have to be negotiated with third countries unilaterally (an arrangement that had clearly failed by 1973).

Consequently, some in the industry have been calling for the 'regionalisation' of the CFP in the run up to 2002. There have been suggestions that the Council of Ministers could be reformed at the forthcoming Intergovernmental Conference. One option would be to create devolved committees within the Council itself so that what were in effect territorial rather than supranational issues could be handled on a restricted basis. For instance where the North Sea fisheries was being addressed this would be dealt with solely by the ministers from those states that directly had an interest in these waters. Accordingly, if the Scots had the lion's share of the UK's waters in this zone then it would be perfectly reasonable for a Scottish minister to vote, as opposed to a UK one. Another strand of opinion, more particularly the English, suggests that decision making could largely be reallocated from the Council of Minister to regional bodies. But would those fora be subject to

Scottish Affair

democratic control and accountability? Equally, some policy fields could be devolved to the Committee of the Regions. If that were to happen, which admittedly is extremely unlikely, it would mean that this body would have to acquire the authority to make decisions. In so doing, it would affirm that the EU itself applies the principle of subsidiarity as in article A of the Treaty of European Union (i.e. 'decisions are taken as closely as possible to citizens'). The difficulty with each of these proposals is that for the time being at least regionalism in the EU has run its course and it is unlikely to feature in the Intergovernmental Conference.

The Commission at least has the integrity to acknowledge publicly that there has been a break down in communication between it and fishermen across the EU and it has therefore set about reforming the Advisory Committee for Fisheries. In response Scottish fishermen have adopted a relatively modest strategy, the aim of which is to 'regionalise' this body. If that were to happen then the fishermen's delegates would be drawn from each of the five main fishing zones (e.g. the North Sea, Western Waters, Baltic, Mediterranean East and West). Even so, the committee is little more than a trans-European umbrella body for the sector and it lacks decision-making power with regard to the CFP's regulations. Consequently, it remains to be seen whether tinkering with the committee will offset the long-held belief within the Industry that Brussels is too remote and too intrusive. Moreover, beefing up sectoral fora in this way falls well short of regional empowerment and is symptomatic of the EU's attitude towards subsidiarity nearly a decade on from the 1992 Treaty of Union.

CONCLUSION

The CFP has for many years been a thorn in the side of the UK government and it would be quite remarkable if this was not so for the Scottish Parliament and the Executive. Although the Review looks set to be relatively uncontroversial at the time of writing, it is likely to become a bone of contention during the second half of 2000 and 2001. In part this will be because agendas that have hitherto remained largely hidden will become more explicit as the various players reveal their hands. In addition with over 70% of the UK fishing grounds located in Scottish waters it will inevitably be the subject of debate north of the border. Even today this field of policy has highlighted the ambiguities of the current constitutional arrangement and it will be interesting to see whether the inception of a parliament in Scotland will demonstrably increase the influence of Scottish fishermen in the EU.

The 2002 Review of the Common Fisheries Policy

Conversely there is unease within the industry that the Parliament might become an additional and unwelcome source of regulation. This is an understandable sentiment given the perception that both the EU and the UK government already interfere far too much in the sector. Indeed it does have some plausibility on the basis that the environmental lobby might secure widespread support from MSPs over the need for drastic cutbacks in fishing effort. That said there are grounds for optimism, as far as the industry is concerned. MSPs have already demonstrated their appreciation of the sensitivities involved in fisheries and they need to prove their worth. Providing fisheries still enjoys sufficient public support MSPs could therefore be an additional source of influence for the SFF, which has formerly relied on an amalgam of the Scottish Office, MPs and local authorities north of the border. If MSPs do respond favourably and they apply pressure to Scottish ministers the result will be extremely interesting. If it is clear that under the current constitutional arrangements the Parliament and Executive are too powerless in relation to the CFP (and more particularly the EU), that could contribute to calls for further constitutional change.

The UK, however, is not the only hurdle; so too is the EU. As more and more competence has been transferred upwards to the European tier of authority, it is not so much the governments of the member states that have become politically impotent. Quite the reverse is more accurate, despite the growing use of co-decision with the European Parliament. Thanks to the efficacy of the Council of Ministers, the governments continue to wield substantial power well beyond the public eye. For the most part, it is the 'regions' of the EU that have had to endure the loss of influence over the policies that affect them. This trend appeared to have been held in abeyance at Maastricht in 1992 but with the benefit of hindsight with one or two exceptions (e.g. the Länder) the territorial empowerment of the Community has been minimal as far as the EU's formal processes are concerned. Some now look northwards in the hope that the formation of a Scottish parliament will bring more pressure to bear on the EU. Most probably, however, any overtures from Scotland will be unrequited and instead there will be further fragmentation of the Council of Ministers into regional blocs (i.e. the Mediterranean states). Besides, as the next Intergovernmental Conference draws nigh, the Community has bigger fish to fry than territorial empowerment.

Primarily the Intergovernmental Conference will be a precursor to the forthcoming Enlargement, of which four of the first round of applicants has distinct fishing interests (i.e. Poland, Estonia, Slovenia and Cyprus). Once again another clutch of states will attain membership, some of whose populations are smaller than that of Scotland. Once more by virtue of their

Scottish Affair

direct representation in the Council of Ministers, relatively small political units will wield considerably more clout than Scotland has to date within the EU. Over the years the CFP is but one of a number of EU policies that have raised doubts over the influence of territorial government in Europe. If this were to persist, would Scotland be just one in a line of stateless nations and regions seeking statehood within the EU in the next decade, and if they were to ask, would they be admitted to the club?

REFERENCES

- CFP Review Group Report 1996, **Conclusions and Recommendations**, Volume I.
- CFP Review Group Report 1996, **Conclusions and Recommendations**, Volume 11.
- EEC 1983, Council Regulation (EEC) No 170/83 of 25 January 1983 **Establishing a Community system for the conservation and management of fishery resources.**
- EEC 1992, Council Regulation (EEC) No 3760/92 of 20 December 1992 **Establishing a Community system for fisheries and aquaculture.**
- EU 1992, **Treaty on European Union**
- EU 1999, **The Common Fisheries Policy.**
- European Commission, 1998, 2nd Thematic PESCA Conference. **The future of the Fisheries Structural Policy**, AB Associates Ltd
- European Commission, 1999, **Action Plan for closer dialogue with the fishing industry and groups affected by the common fisheries policy.**
- HMSO 1998, **Consultative Steering Group Report**, 1998, The Scottish Office
- NFFO 1996, **Coastal State Management: An Alternative to the Common Fisheries Policy**, A policy statement issued by the National Federation of Fishermen's Organisations, December 1996.
- Press and Journal**, 19 December 1998, Fisheries Minister lands 'good' quota deal for UK, by Bob Kennedy, p. 23.
- RSPB 1994, **Fisheries Management and the Marine Environment**, RSPB, Sandy.
- RSPB 1994, **Marine Life Campaigner**, Issue No 2, August 1994, RSPB, Sandy.
- Scotland Act 1998**, The Stationary Office Ltd.
- Scottish Office 1997, Cm 3658, **Scotland's Parliament**
- SFF, c1998, **The Fishermen's Charter.**
- Statutory Instrument 1999, No 1126, Constitution Law. Devolution, Scotland, The Scottish Adjacent Waters Boundaries Order 1999.
- Sunday Telegraph**, 27 June 1999, Brussels fish study trawls old waters, by Christopher Booker, p. 13.

The 2002 Review of the Common Fisheries Policy

The Scotsman 08 February 1996, Fleets 'must cut Back on catches to save stocks', by A. Brown, p. 5.

The Scotsman 16 January 1995, Trawling for a living, by A. Cramb, p. 2.

The Scotsman 26 June 1996, Greenpeace targets nets in 'eel war', by A Dalton, p.10.

The Times, 03 July 1999, MSPs warned off Westminster 'turf', by J. Allardyce, p. 2.

The Times, 04 June 1999, Lib Dem back benchers read the riot act to Scots Minister, by J Allardyce, p.1

WWF c1992, **Review of the Common Fisheries Policy**, WWF. Godalming.

INTERVIEWS

Officials at the Scottish Executive

Members of Scottish Fishing Organisations

Observer at the European Commission's 2nd Round of Consultations on the Reform of the CFP, Aberdeen, October 1998.

September 1999