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The Progress of the Common Fisheries Policy

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NOTE: References in the text of the report are as follows:

(Q) refers to a question in oral evidence

(p) refers to a page of written evidence

(Para) refers to a paragraph of written evidence

The evidence received in the course of this inquiry is published in Volume II (HL Paper 146-II)

FOREWORD—What this report is about

The Common Fisheries Policy has one of the most dismal reputations of any European Union policy. On several counts, that reputation is warranted: the regulatory regime governing fisheries in EU waters is intricate and extensive relative to the size of the fishing industry, and yet around 88 per cent of fish stocks in Community waters are over-fished, compared with a global average of 25 per cent. Meanwhile many segments of EU fishing fleets experience poor profitability, rendering them vulnerable to increases in operating costs—fishermen’s recent protests over the rising cost of marine diesel illustrate the predicament.

In this report, we conduct a mid-term review of the 2002 reform of the Common Fisheries Policy, and examine ongoing challenges facing fisheries managers. We seek to draw lessons for current and imminent legislative proposals affecting fisheries, and identify what we regard as the most promising avenues for future reform of the CFP.

We conclude that on most indicators, the 2002 reform of the Common Fisheries Policy has failed: overcapacity in the fishing fleets of the Member States, poor compliance, uneven enforcement, and a stiflingly prescriptive legislative process all persist, while fish stocks remain depleted.

Our analysis suggests that the root cause of poor performance on biological and economic indicators has been Member States’ reluctance to bring the size of their fishing fleets into line with the available fishing opportunities—or even to allow market forces to do so. We therefore urge Member States to resist calls for subsidies to offset fishing vessels’ rising operating costs, and we oppose any relaxation of the state aid regime for this purpose. Public aid should in our view be channelled into attractive decommissioning schemes and the economic diversification of fisheries-dependent coastal communities instead.

We observe that the current, over-centralised and top-down legislative process has served to alienate stakeholders and stretched the Commission’s resources to the limit, and therefore advocate a change in emphasis in management style. We favour a division of labour in which strategic decisions continue to be taken centrally in Brussels, but decisions relating to delivery and implementation are delegated to regional bodies, subject to central auditing of outcomes.

The establishment of Regional Advisory Councils is a welcome step in this direction, and the most promising development to arise out of the 2002 reform of the CFP. It has delivered notable improvements in stakeholders’ engagement in the policy-making progress, which we regard as essential to improving both the quality of the regulatory regime, and compliance with its provisions.

We dismiss the prospect of withdrawing from the CFP as a credible policy option. Unilateral withdrawal from the CFP would be incompatible with membership of the EU, while negotiated withdrawal would require unanimous agreement to a treaty amendment by all Member States. Attention should instead be directed at improving and reforming the policy that exists, and that is the focus of our report.

The Progress of the Common Fisheries Policy

CHAPTER 1: INTRODUCTION AND FACTUAL BACKGROUND

Purpose and Scope of this Inquiry, Structure of this Report

1. Our intention in conducting this inquiry has been to carry out a mid-term review of the implementation of the 2002 reform of the EU's Common Fisheries Policy, with a view to drawing lessons for future reform of the CFP, and for other legislative proposals currently being drawn up at EU and national level.
2. Recent and imminent proposals affecting fisheries include the proposal for a Council Regulation on Illegal, Unreported and Unregulated fishing (COM/2007/602), the proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures (COM/08/324), forthcoming proposals¹ to modernise and reform the control system applicable to the Common Fisheries Policy, and broader marine policy being formulated at the EU, national and sub-national level, such as the draft Marine Bill published by the UK Government on 3 April 2008.
3. While there appears to be considerable consensus on the failings of the Common Fisheries Policy, witnesses were also keen to remind us that those failings persist for good reason: fisheries management poses a number of singularly intractable challenges. Our report therefore begins with a brief recapitulation of some of these challenges, and a look back at the history and evolution of the CFP. We then move on to examine the main features of the 2002 CFP reform. We present the evidence we received on the impact of those changes (Chapter 2), and our witnesses' views on the ongoing challenges facing fisheries managers (Chapter 3). From that evidence, we draw our conclusions and recommendations, identifying what we regard as the most promising avenues for future reform.
4. The inquiry that led to this report was carried out by EU Sub-Committee D, whose Members are listed in Appendix 1. We received written evidence and heard oral evidence from a wide range of witnesses, who are listed in Appendix 2. We are grateful to them all for their contributions. We would also like to thank those who facilitated our visits to Peterhead and Brussels. We are particularly indebted to Professor John Pope, our Specialist Adviser on this inquiry. We make this report to the House for debate.

Managing Fisheries: Challenges

5. It is no coincidence that fisheries are often used to illustrate what economists call the "Tragedy of the Commons". The phenomenon arises in relation to the management of resources that are accessible to anyone (i.e. non-excludable) and competitive (rival) in consumption—such that what one person uses cannot be used by anyone else. Where a resource possesses these characteristics, it is rational for each consumer to consume as large a share of the resource as they

¹ A consultation paper was published by the Commission on 28 February 2008 and is available here: http://ec.europa.eu/fisheries/cfp/governance/consultations/consultation_280208_en.pdf

can, without heed for the consequences of everyone acting as they do. Restraint, it is assumed, would only benefit their less scrupulous peers.

6. In fisheries, this manifests itself as each fisherman facing a strong incentive to fish as intensively as possible, even if collectively this is likely to lead to the depletion of the stock that is being fished. Prudent harvesting by one fisherman, with a view to protecting the stock, will most likely only yield larger catches for other, less restrained, fishermen. The end result—the depletion of the stock—will be the same. Hence the incentive to grab one's share as quickly as possible while the resource is still available. Fishermen consequently face strong incentives to over-exploit the very resource on which their livelihoods depend.
7. The fundamental challenge for fisheries managers is to prevent this phenomenon from taking its natural course. A dramatic illustration of what happens when they fail was provided by the collapse of the cod stock off Newfoundland and the other Atlantic provinces of Canada in 1992. The depletion of that stock led to a fishing moratorium that deprived tens of thousands of people of their livelihoods. The stock has yet to recover fully.
8. Economic theory indicates that the solution to the Tragedy of the Commons phenomenon lies in assigning property rights to the resource. Fisheries, however, do not easily lend themselves to this approach. One complicating factor is that fish stocks are a renewable natural resource. Private ownership will therefore apply to the right to harvest (a proportion of) the resource, not to the resource itself, which is a public good. A further complication is that fish stocks are a mobile resource: shoals of fish can migrate across national jurisdictions. It is for this reason that fisheries management requires international cooperation, and international recognition of rights awarded.² Mixed fisheries—containing a range of species—create further difficulties, in that although ownership rights may be assigned on paper, it can be impossible in practice to target one species without also catching fish from another (so-called by-catch³). The demersal⁴ (sea-bed) fisheries around the UK, for example, are typically mixed fisheries.
9. Perhaps most challenging, however, is the enforcement of any type of rights-based management regime. In the EU, commercial fishing takes place over an enormous area, through tens of thousands of vessels, whose activities are difficult to monitor and costly to patrol.
10. Assigning rights to harvest a proportion of a given fish stock requires monitoring of the size of the stock itself from year to year. It is not possible to count every fish or to map in detail the distribution of fish stocks in national or EU waters. Management instead relies on scientific stock assessments, produced on the basis of surveys carried out by research vessels and catch data provided by the fishing industry. For some stocks, particularly non-commercial species, there is little specific information on stock levels or distribution available. Because managers want to decide on catch restrictions before fish are caught, scientists normally have to predict stock size one or two years in advance of the available data. Stock assessments prepared for EU waters are as thorough as anywhere in the world, but margins of error can still be as high as 40 per cent, and are amplified by misreporting of catches.

² Under the UN Convention on the Law of the Seas (UNCLOS), signed in 1982, Contracting Parties are obliged to co-operate.

³ By-catch refers to any organism that is caught in addition to the target fish.

⁴ Demersal fish stocks live near the bottom of the sea (e.g. cod, haddock, halibut). Pelagic fish stocks live in the upper layers of the sea (e.g. tuna, herring, mackerel).

11. This uncertainty is exacerbated by natural year-on-year fluctuations in the cohort of young fish entering the exploitable stock (“year-class strength”). Year-class strength is influenced by natural factors such as water temperature, food availability and the size of the parent stock. Climate change is expected to accentuate these natural fluctuations even further (Sir Alister Hardy Foundation for Ocean Science Memorandum, pp 5–6).
12. Fisheries managers also have to contend with what is known as “technology creep”: technological progress means that fishing vessels become more and more effective over time, so that the same number of vessels can catch more fish. This can result from faster or more powerful vessels being able to exploit a wider range of fishing grounds, or from the ability to locate and catch fish with greater ease due to improved technology.

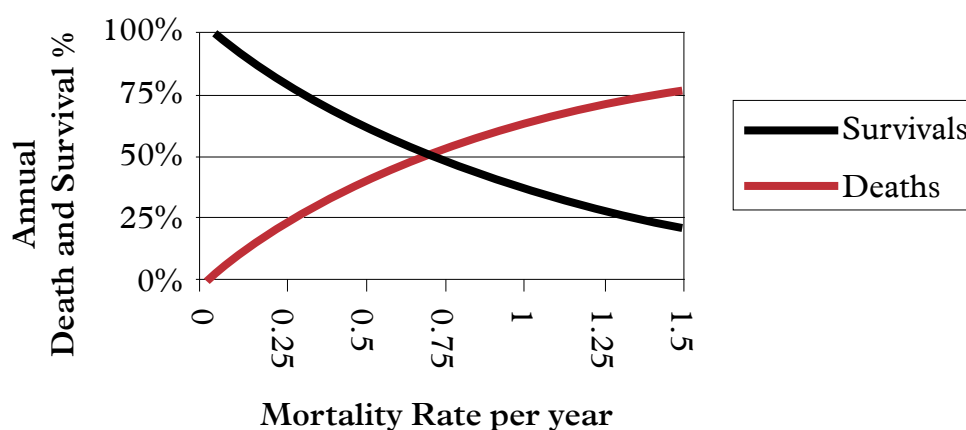
Managing Fisheries: Tools

13. A range of tools are available to fisheries managers seeking to restrict fishing activity to a level compatible with the sustainable exploitation of fish stocks, or to target fishing activity more selectively. Catch restrictions, in the form of Total Allowable Catches (TACs) or quotas are perhaps the best-known of these tools. Their intended effect is to limit fishing mortality (the number of deaths in a fish stock—see Box 1 below) by curbing the amount of fish of a particular species that a given individual or group can catch. Their main drawbacks are that they can be difficult for fishermen to adhere to, particularly in mixed fisheries; that they rely on high-quality stock assessments to measure the size of the stock and thus the proportion that can be caught; and that they are cumbersome to enforce, because they effectively require detailed record-keeping of fish caught and landed by individual vessels.

BOX 1

Fishing Mortality

Scientists measure the intensity of fishing through the fishing mortality rate. It is the variable that fisheries management seeks to control directly by limiting catches or fishing effort. The fishing mortality rate is related to the proportion of fish being killed in a year through a mathematical formula. It is a component, usually the major component of the total mortality rate on exploited ages of fish. Other components are caused by natural deaths, e.g. those due to predation or disease. The relationships of fish survivals and deaths in a year to total mortality rate are curvilinear; deaths progressively approach 100 per cent and survivals progressively approach 0 per cent as total mortality rate becomes large, as the graph below illustrates.



Were fishing mortality rate the only cause of death the graph would indicate the deaths it would produce over a year. However, since there are other causes the total deaths are prorated between those due to natural and to fishing causes. The virtue of using mortality rates as measures of fishing and other causes of death is that they are additive. Thus the fishing mortality rate might be expected to respond by the same proportion as changes in fishing effort (e.g. as total days fished) while the proportion killed would not.

14. Effort controls provide a second option. Their intended effect is to limit fishing mortality by curbing the number of vessels allowed to fish, or their power, or the amount of time (normally in days) that they are permitted to spend at sea. While they are in principle easier to adhere to and enforce, effort controls have their own drawbacks. One is that the relationship between fishing effort and fishing mortality cannot always be clearly defined, meaning that effort controls are a somewhat blunt instrument, particularly in mixed fisheries. A further difficulty is that if used alone, effort controls create an incentive to fish more efficiently, and to target the most valuable species in a given fishery, thus discouraging diversification and intensifying fishing pressure.

BOX 2

Discards

Discards occur when fish and other marine organisms are thrown back into the sea after being caught. Although a small proportion of fish of certain species survive the process, the vast majority are thrown back dead. Fishermen may throw fish overboard for a number of reasons, including:

- High-grading—when less valuable sizes of quota species are discarded so that the vessel can land a higher-value catch
- Unmarketable Species—when species of no commercial interest are thrown back overboard.
- Unmarketable Sizes—when immature fish below the minimum legal landing size are discarded.
- Insufficient quota—when species for which the fisherman has no quota, and therefore cannot land legally, are thrown back into the sea.

Discarding may thus be prompted by economic considerations or by regulatory factors. Whatever the cause, discarding undermines management by quotas, as the volumes of fish landed are not a precise reflection of the number of fish caught.

15. Technical conservation measures offer tools designed to target fishing activity more selectively, so that only the desired fish are caught and discards are avoided (see Box 2 above). This category includes direct restrictions on fishing gear (e.g. minimum mesh sizes designed to ensure that only mature fish are caught), and indirect incentives to use more selective types of fishing gear, such as minimum and maximum landing sizes for fish belonging to particular species. One drawback of technical conservation measures from the point of view of enforcement and competition is that they do not lend themselves to uniform, centralised imposition: different measures will be appropriate in different fisheries, but this can lead to an uneven playing field in terms of the restrictions placed on vessels fishing in different areas and for

different species. Moreover, compliance with technical measures normally has to be monitored at sea and is therefore expensive.

16. Fisheries managers may also choose to close particular sea areas to fishing activity. This can take a range of forms, for example the creation of marine protected areas, in which all human activity that may damage vulnerable marine habitats is prohibited, or be limited to temporary closures of nursery or spawning grounds that are important to the renewal of vulnerable fish stocks. Drawbacks of this type of measure include the need for detailed and reliable information on the location of such areas (which may change over time), and the risk of displacing fishing activity, creating intense fishing pressure in the waters immediately bordering a closed area, for example.
17. Owing to the drawbacks of each of these management tools, the general consensus is that fisheries managers need to have a “toolkit” of management measures at their disposal. This is the approach that has progressively been enshrined in the Common Fisheries Policy operated by the EU and its Member States.

The CFP: History & Evolution

18. The origins of the CFP lie in Articles 32 to 38 of the Treaty of Rome, which made provision for a Common Agricultural Policy explicitly encompassing fisheries, defined as “agricultural products” in Article 32. It was not until 1970, however, that the Council of Ministers adopted legislation establishing a Common Organisation of the Market in fisheries products, and established the principle of “equal access” for EC vessels to Member State waters, with the exception of a narrow coastal band reserved to local fishermen with a tradition of fishing in that area.
19. The accession of Denmark, Ireland and the United Kingdom—whose catches represented more than twice those of the six founding Members—to the EEC in January 1973 prompted a review of the principle of equal access. A ten-year derogation was introduced to extend exclusive national fishing rights to 6 nautical miles, and to allow other Member States’ vessels to fish in the 6 to 12 mile band only where this reflected historic access rights.
20. At that time, most of the world’s oceans were deemed to be high seas. International maritime law gave countries jurisdiction out to 12 nautical miles from their coastline, beyond which lay international waters. By 1976, however, international developments prompted Member States to lay claim to Exclusive Economic Zones (EEZs) of 200 nautical miles from their coastline. It was at this juncture that the European Community assumed responsibility for the development of fisheries policy within the EEZs of its Member States. Seven years of negotiations led to the adoption of a Council Regulation⁵ formally establishing a Common Fisheries Policy in 1983.
21. The 1983 Regulation organised the CFP around four components: market policy, structural policy, conservation policy and relations with third countries. Market policy was intended to establish marketing standards and stabilise markets, while taking into account consumers’ interests and the

⁵ Council Regulation 170/83 EC.

incomes of fishermen. Structural policy provided Community aid for investment in the European fishing fleet. Conservation policy was to allow for balanced exploitation of fishery resources. A menu of conservation measures that the Council could choose to impose were specified in the Regulation, including the option to set an annual TAC for a stock or group of stocks.

22. Member States' shares of the TAC were to be distributed "in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered." Under this principle of relative stability, which underpins the CFP to this day, Member States are allocated a fixed share of the Total Allowable Catch for a given fish stock, based on their fleet's past record of fishing activity.
23. The 1983 Regulation also provided for a renewal of the ten-year derogation from the principle of equal access: Member States were to retain exclusive fishing rights within 6 miles of their coast, while between 6 and 12 miles other Member States' vessels would only be allowed to fish where they could demonstrate historic access rights.
24. It is the renewal of this derogation that has provided the occasion for subsequent reforms to the basic framework of the CFP. A first major reform took place in 1992, with the adoption of Council Regulation 3760/92. It attempted to address what had emerged as a serious imbalance between the fishing capacity of Member States' fleets and available fishing opportunities. The reform consequently prescribed a reduction in the size of the Community's fishing fleet, accompanied by structural measures to alleviate the socio-economic impact of such reductions. The Regulation also introduced the concept of fishing effort—referring to the product of a vessel's capacity to catch fish and its activity. Restrictions on fishing effort, and specifically, limits on the time vessels are allowed to spend at sea, were added to the menu of conservation measures available to the Council. The 1992 reform also obliged Member States to operate national licensing regimes designed to regulate access to fisheries.
25. By the late 1990s, however, it had become clear that the reformed CFP had failed to stem the decline in fish stocks in Community waters. Many were at critically low levels, and some—notably cod—on the brink of collapse due to intense and unsustainable fishing pressure. Declining stocks were in turn putting the long-term viability of the fishing industry at risk.
26. In a "roadmap"⁶ for the reform of the Common Fisheries Policy published in May 2002, the European Commission identified what had emerged as the main shortcomings of the CFP (summarised in Box 3 below) and presented its proposals for reform. Later that year, in December 2002, EU Ministers agreed on a second major reform of the CFP, consisting of a new basic Regulation and new arrangements for Community structural aid to the fishing sector.⁷

⁶ COM (2002) 181, 28 May 2002.

⁷ Council Regulation 2371/2002 and Council Regulation 2369/2002, respectively.

BOX 3**Main Shortcomings of the Common Fisheries Policy in 2002**

The alarming state of many fish stocks: the Commission noted that stock sizes and landings had declined dramatically over the previous 25 years. For many commercially important demersal (sea-bed) stocks, the numbers of mature fish had halved between the early 1970s and the late 1990s. The Commission warned that if these trends were to continue, many Community fish stocks could collapse.

Over-capacity in the fishing fleet: the Commission pointed out that the fishing capacity of Member States' fleets was far in excess of that required to harvest the available fishery resources in a sustainable manner. Scientific advice was indicating that the rate of fishing mortality in the main Community fish stocks needed to be reduced by between one-third and one-half (depending on the area and type of fishery) to reach a sustainable level of fishing.

Economic fragility of the fisheries sector: the Commission stressed that most of the Community fisheries sector was experiencing poor financial profitability and steadily declining employment. 66,000 jobs had been lost in the catch sector over the period 1990 to 1998, a decrease of 22 per cent. Over the same period, employment in the fish processing sector had declined by 14 per cent.

Uneven enforcement: the Commission noted that the control and enforcement arrangements in place had been insufficient to create a level playing field across the EU, and concluded that this was undermining the credibility of the CFP.

Non-inclusive governance: the Commission recognised that stakeholders had not been sufficiently involved in shaping policy, and suggested that this had undermined support for, and compliance with, the conservation measures adopted under the CFP.

27. The new basic Regulation set broader objectives for the CFP, laying down that the Community should take measures to protect and conserve living aquatic resources, provide for their sustainable exploitation, and minimise the impact of fishing activities on marine ecosystems. It called for the progressive implementation of an ecosystem approach to fisheries management, but also stipulated that the CFP should contribute to "efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers."⁸
28. The new Regulation sought to promote a longer-term approach to fisheries management, which had thus far been conducted in annual cycles, by introducing the possibility of adopting multi-annual recovery and management plans for particular stocks. Recovery plans were to consist of multi-annual strategies to recover stocks outside safe biological limits (Article 5). Management plans were to consist of multi-annual strategies designed to maintain stocks within safe biological limits where they were already at or within those limits. At the time, this Committee warned that the

⁸ Council Regulation 2371/2002, Article 1.

fatal weakness of the new legislation lay in the absence of deadlines for when recovery plans would have to be established, allowing negotiations to continue indefinitely.⁹

29. As part of the 2002 reform of the CFP, it was also agreed that the Multi-Annual Guidance Programmes that had previously provided a framework for reducing fleet capacity would be replaced by an entry-exit regime, designed to ensure that entries to each national fleet were matched by exits—see Box 4 below.¹⁰ National fleet references designed to impose a ceiling on the size of member states' fleets were established for this purpose, and responsibility for matching fishing capacity to fishing opportunities was handed back to each Member State.

BOX 4

Licensing of Fishing Vessels

The fleet references established under the 2002 reform of the CFP are designed to ensure that national fleets cannot grow in either tonnage terms or kilowatt terms overall. Each vessel has a licence for its tonnage and engine power without which it is illegal to fish commercially.

In the UK, no new fishing licences are issued, and so new entrants to the industry need to transfer a licence entitlement from an existing licence holder. There are different categories of licence for the exploitation of different stocks. There is no administrative charge for licences in the UK. Instead, their value is set by the market.

30. The previous system, whereby national fleets were sub-divided into segments, with capacity or effort reduction targets assigned to each, had proved cumbersome to manage and failed to tackle chronic overcapacity. While the new regime calls on Member States to adjust the fishing capacity of their fleets to the available fishing opportunities, it does not set overall capacity reduction targets.
31. The 2002 CFP regulation upheld the basic principle that Member States have primary responsibility for the enforcement of the CFP in waters under their jurisdiction. However, the new basic regulation did provide for a greater degree of co-ordination and co-operation among Member States with regard to enforcement activities in Article 28. This Article has subsequently been used as the legal basis for the establishment of the Community Fisheries Control Agency. Agreed in 2005 and operational since 2007, the Agency is charged with co-ordinating Member States' control and inspection activities under the CFP and organising the deployment of pooled national control and inspection resources, with the aim of improving the effectiveness and uniformity of enforcement.¹¹
32. A further notable innovation introduced in 2002 was the provision for the establishment of Regional Advisory Councils in Article 31 of the new basic regulation.¹² These bodies were intended to secure greater stakeholder involvement in the CFP, by offering interest groups a channel through which

⁹ Select Committee on the European Union, 25th Report (2002–03): *Progress of Reform of the Common Fisheries Policy* (HL 109) Paragraph 15.

¹⁰ See also the Community Fishing Fleet Register: <http://ec.europa.eu/fisheries/fleet/index.cfm>

¹¹ Council Regulation 768/2005 EC of 26 April 2005.

¹² See also Council Decision 585/2004 EC.

to provide advice to the European Commission and Member States on fisheries management in a given area. The bodies were to cover sea areas under the jurisdiction of at least two Member States, and to be composed of all parties with an interest in fisheries management in that area, including the fishing industry, environmental and consumer groups, regional and national authorities and the Commission. Since the reform entered into force, six Regional Advisory Councils have become operational, spanning the North Sea, Baltic Sea, North Western Waters, South Western Waters, Pelagic stocks across all areas, and Distant Water fisheries. A Mediterranean RAC is also in the process of being established.

33. Significantly, however, the 2002 reform preserved two critical aspects of the CFP: waters up to 12 nautical miles from the coastline continue to be exempt from the principle of equal access to Member State waters. Meanwhile fishing opportunities continue to be distributed among Member States according to the principle of relative stability, using a distribution key based on historic fishing activity.

The Distribution of Fishing Opportunities

34. Under the CFP, fishing opportunities are set in the form of a TAC for each of the main commercial species. TACs are set annually, in the December Council of Fisheries Ministers, on the basis of a Commission proposal. The Commission proposal is itself based on scientific and management advice received from the International Council for the Exploration of the Sea (ICES). For most stocks, this advice consists of an assessment of the state of the stock, and a consequent recommendation regarding the TAC for that stock.
35. Traditionally, the Commission has received ICES' advice in October each year, and published its own proposals on TACs, effort controls and other management measures for the year ahead by the end of November or early December. Stakeholders and Member States then have less than a month to analyse the Commission's proposals before they are considered, amended and adopted in the Council of Agriculture and Fisheries Ministers held in late December each year. Negotiations among Ministers tend to focus on the overall size of the TAC for a given stock and the effort controls to be imposed—in other words on the management advice to be drawn from the scientific assessment.
36. Once set, TACs are divided up among Member States using a distribution key based on the principle of relative stability. Annual negotiations among Member States are thus not over how fishing opportunities are to be shared out among countries (national quotas), but about the total number of fish to be caught (the overall TAC for a given species).
37. Once Member States have been allocated their share of the TAC, it is up to each government to distribute its quota allocation among national fishing interests as it sees fit. Different approaches prevail in different Member States, for example with regard to whether quotas are allocated to individual fishermen, producers' organisations or cooperatives, and whether fishermen can hire or purchase quota from other fishermen. In the UK, national quotas are distributed on the basis of "Fixed Quota Allocation" (FQA) units held by groups of vessels or producers' organisations. These FQA units are based on vessels' historic landings during a fixed reference period (1994 to 1996 for

most stocks). In practice, vessels and producers' organisations can arrange to swap and lease quotas from each other during the year.

38. Member States can also swap and lease quotas in-year (i.e. between December Councils). At the end of the year, however, the original distribution—based on the principle of relative stability—will prevail when TACs are set again for the following year.

The Fisheries Sector

39. Not least owing to the challenges identified at the outset, the regulatory regime in place to govern fisheries in EU waters is intricate and extensive relative to the number of people involved in catching and processing fish, and the economic significance of those industries. The fishing (catch) sector's contribution to the Gross National Product of EU Member States is generally less than 1 per cent. Despite this, the fishing industry has a symbolic importance much greater than its economic significance in maritime nations, not least due to its importance in coastal communities. The EU fishing industry also has a leading position in world markets, as Box 5 illustrates.

BOX 5

Production and Trade in Fish and Fisheries Products

The EU is one of the largest fish producers in the world, producing almost 7 million tonnes of fish from marine fisheries and aquaculture in 2005 (82 per cent capture fisheries and 18 per cent aquaculture). This amounts to around 4 per cent of the world total in that year.

EU Member States are net importers of fish and fisheries products: they exported over 2 million tonnes of fish and fish products in 2006, and imported a further 6 million tonnes.

This imbalance between imports and exports is replicated in the United Kingdom, where 416 thousand tonnes of fish and fish products were exported in 2006, while imports rose to 753 thousand tonnes. In net terms, exported fish species were mostly mackerel, herring and salmon, while cod, haddock, tuna, shrimps and prawns were predominant among imported species.

UK vessels landed 614 thousand tonnes of fish and shellfish in 2006, worth £610 million—this represented a decrease in volume, but an increase in value over the previous year. The Scottish fleet's share of these landings was 62 per cent, while the English and Welsh fleets accounted for 32 per cent of landings, and the Northern Irish fleet for the remaining 6 per cent.

40. A study¹³ produced for the European Commission in 2006 showed that the catch, processing and aquaculture sectors combined usually provide less than 1 per cent of total employment in each EU Member State. Fishermen in Spain, Greece and Italy accounted for almost 60 per cent of those working in the catch sector in 2002/2003, with France and Portugal each representing a further 10 per cent of the EU total. The fish processing industry employed the largest number of people in Spain, France and the United Kingdom, followed by Germany and Poland. Employment in aquaculture was highest in France and Spain.

¹³ http://ec.europa.eu/fisheries/publications/studies/employment_study_2006.pdf

41. At regional level, however, the fisheries sector can constitute a significant source of employment in coastal communities where there are few alternative economic opportunities. The most fisheries-dependent regions in this respect are to be found in Spain (Galicia), France (Bretagne, Poitou-Charentes, Basse-Normandie), the United Kingdom (North East Scotland), Portugal (Algarve, Azores), and Greece as well as in Estonia, Latvia and Poland among the new Member States.
42. In the UK, 12,934 fishermen were (self-) employed in 2006, down 32 per cent in ten years. Of these, 55 per cent were based in England and Wales, 40 per cent in Scotland and just under 5 per cent in Northern Ireland. More people were employed in the UK's fish processing industry, which registered 18,180 employees in 2006, across around 570 businesses.¹⁴
43. Box 6 outlines the size and structure of the EU and UK fishing fleets.

BOX 6

Size and Structure of the Catch Industry

The EU fishing fleet comprised around 87,000 vessels in 2006, with Greece, Spain and Italy contributing 52 per cent of the total. UK vessels made up just under 8 per cent of the EU total, while Portugal and France accounted for a further 10 per cent and 9 per cent respectively.

In 2006, the UK fishing industry had 6,372 fishing vessels—a reduction of 21 per cent compared to the size of the UK fleet in 1996. The majority of vessels (4,896) were under ten metres in length, down 13 per cent over the previous ten years. The over ten metre sector had shrunk by 40 per cent since 1996, to 1,476 vessels.

The inshore fleet has the smallest boats, many of them under 10 metres in length. The whitefish fleet—pursuing demersal (sea bed) stocks—is composed of boats of intermediate size, typically between 20 and 25 metres in length. The pelagic fleet—pursuing fish that shoal in the upper layers of the sea—boasts the largest vessels, most of which are over 50 metres long.

Earnings per vessel tend to reflect vessel size, even though the larger vessels catch the lower-value species.

¹⁴ Source: http://www.mfa.gov.uk/statistics/documents/UKSeaFishStats_2006.pdf

CHAPTER 2: THE PROGRESS OF THE COMMON FISHERIES POLICY SINCE 2002

44. As part of our inquiry, we invited witnesses to set out their assessment of the impact of the various elements of the 2002 reform of the CFP. In this chapter, we review some of the responses received, and present the conclusions we have drawn from them. With these findings in mind, we move on—in the next chapter—to an examination of ongoing challenges facing fisheries managers, and identify the most promising avenues for future reform of the CFP.
45. The 2002 reform of the Common Fisheries Policy addressed four main elements of fisheries management: the time-scale over which fisheries are managed, through the introduction of recovery and management plans; structural policy; control and enforcement; and stakeholder involvement, through the establishment of Regional Advisory Councils. Each is the subject of a separate section below.

Recovery and Management Plans

46. Under the new basic¹⁵ Regulation governing the CFP, EU Member States acting through the Council may choose to adopt multi-annual management or recovery plans for particular stocks (see Paragraph 28 above). This innovation was introduced in an attempt to promote a longer-term approach to fisheries management, avoiding dramatic variation (usually cuts) in TACs from year to year. The aim was to allow the industry to plan ahead, but also to take the political sting out of the annual Council negotiations on TACs, as it was anticipated that Ministers might find it easier to accept cuts in TACs if they formed part of an ongoing management strategy and therefore did not come as a surprise to national fleets.
47. Six years on, only four recovery plans (for certain cod, hake and nephrops stocks) and four management plans (for certain plaice, sole and cod stocks) have been adopted. A further management plan (for West of Scotland herring) is in preparation, and an international recovery plan for blue fin tuna is being implemented in the Mediterranean. Meanwhile TACs continue to be set for around 130 fish species every year.

Witnesses' Views

Adoption of Plans

48. Almost all of our witnesses, including representatives of the catch industry, were supportive of the concept of multi-annual management of fisheries (NFFO, Q 181; SFF Q131; European Commission Memorandum, Q 1; DEFRA Memorandum, Para 3). The RSPB emphasised the importance of long-term strategies in breaking “the vicious cycle of annual horse trading that goes on in the Fisheries Council” (Q 207).
49. However, there was frustration at the slow pace with which recovery and management plans were being adopted. Dr Joe Horwood, Chief Fisheries Science Adviser to the Government, noted that while the Common Fisheries

¹⁵ Regulation 2371/2002 is often referred to as the “framework” or “basic” regulation governing the CFP.

Policy stipulates that fisheries should be managed either under a recovery plan or under a management plan, “we are not quite there yet” (CEFAS, Q 9). The RSPB put it less delicately, pointing out that “precious few of the European fish stocks have been subjected to either of these—about 16 per cent in total” (RSPB, Q 207). The Joint Nature Conservation Committee also observed that the plans were taking “a very long time to put in place ... and have taken a fair bit of effort” (JNCC Q 300). Meanwhile the UK Government recognised that most species “are still managed on an annual basis” (DEFRA Memorandum, Para 3).

50. The Commission conceded that the number of recovery and management plans adopted had been “limited”, even if those in place did focus on the main species. Officials attributed this to capacity shortages on all sides, explaining that “the capacity of the Commission to produce these plans, the capacity of stakeholders within RACs to examine Commission proposals and the capacity of Member States to try to discuss and digest these plans are very limited” (Q 583). They added that while the consultation of stakeholders was “a major step forward” for the CFP, it does require time, not only from the Commission but also from the stakeholders themselves, thereby drawing out the process.

Results Delivered

51. Meanwhile, the results produced by the handful of recovery plans adopted since 2002 appear to be mixed (European Commission Memorandum, Q 1). The Commission noted that for most of the cod stock, fishing mortality did not decrease as expected and the stocks have yet to recover. The Northern hake stock has recovered—with the help of good recruitment—but the Southern hake stock remains subject to high fishing mortality.
52. The UK Government’s assessment that recovery plans “have delivered some results” was a little more encouraging. It emphasised that the Northern hake stock had recovered, and that after significant reductions in fishing effort, the first indication of a recovery in the North Sea cod stock was becoming apparent (DEFRA Memorandum, Para 3). Dr Joe Horwood, Chief Fisheries Science Adviser to the Government, agreed that fishing pressure on cod in the North Sea “has been reduced very considerably”, and that fishing mortality was at “its lowest level for 40 years”. Dr Horwood nevertheless emphasised that this had come “at a huge cost, we have cut back our northern white fish fisheries by 60 to 70 per cent which has been a massive problem for the people involved”. By contrast there was “very little evidence of progress in the Irish Sea and to the west of Scotland” under the cod recovery plan (Q 9).
53. Robin Rosenkranz, Fisheries Counsellor for the Swedish government, suggested that one reason that recovery plans had “not worked” was that the “European fishing fleet is way too big ... compared to the fishing resource we have” (Q 774). He argued that with this “huge overcapacity”, it would be very difficult to make recovery plans work “because we will have this pressure. We will always have the exceptions, we will always have these socio-economic concerns” (Q 775).
54. Other witnesses were less pessimistic, suggesting that most plans had not been in place long enough to reach a conclusive verdict on their efficacy. Dr Euan Dunn of the RSPB thus maintained that “it is too early to say, in

most cases, whether these long-term management plans or recovery plans are working. The jury is out” (Q 207).

Reviewing Recovery and Management Plans

55. This has not stopped existing plans from being “reviewed and improved” (European Commission Memorandum, Q 1). Some witnesses expressed reservations about this process. The RSPB noted that the “cod recovery plan has already been opened up to revision after really being in place for quite a short time” (Q 207). The UK Government pointed out that the effort management regime (days at sea) under the cod recovery plan has been amended significantly almost every year since it was introduced in 2003, in each case with no or minimal evaluation of the effects of the previous year’s changes (DEFRA Memorandum, Para 3). They were concerned that there appears to be “no clear monitoring of success, which may make it unclear as to which policies are effective”.
56. Witnesses nevertheless offered a number of suggestions for improving the efficacy of recovery and management plans. One recurring recommendation was that plans should be adjusted automatically, on the basis of pre-ordained rules. The RSPB identified a need to “lock as much of the December Council as we can into fixed harvesting rules, so that the ministers cannot play politics with these recovery plans” (Q 207). The Joint Nature Conservation Committee took a similar view, proposing that recovery and management plans “should be more or less automatic: we get the signal from this particular indicator saying the environment or the fish stock is in such a state ... and then there is an almost automatic output” (Q 300). The Chief Executive of the Scottish Fishermen’s Federation also advocated a more automated approach: “If you know that the rules state that if x happens, if the spawning stock of biomass rises above level y , then there will be a maximum of a 15 per cent increase in the TAC or likewise a match of 15 per cent down, it sort of de-stings the political process”, he argued (Q 139). The UK Government, however, cast doubt on whether EU governments would be prepared to surrender their discretion to the extent required. They pointed out that the “Council of Ministers has demonstrated that it is not prepared to make automatic annual 15 per cent cuts in days at sea” (DEFRA Memorandum, Para 3).
57. The UK was also one of a number of Member States lamenting the fact that management plans have been based “almost solely on the biological parameters and have taken little account of social and economic factors.” Impact assessments “have been absent or of poor quality” and yet “impacts need to be properly understood to be sure that policies are not giving rise to unintended consequences”, the Government argued. They explained that this did not mean that conservation measures should be watered down simply because they will have an impact on the fleets affected, but that the ways in which fishing businesses might react to restrictions (e.g. by intensifying other activities or moving into different areas) needed to be borne in mind (DEFRA Memorandum, Para 3). Dr Horwood of CEFAS offered an illustration, pointing out that effort controls are implemented “on a vessel-based system”, meaning that when days at sea (effort levels) are cut, fishermen “cannot just sell up one boat and put two half days on one vessel to increase their own efficiency because then they will lose their days entitlement” (Q 9). This was “an element of economic efficiency that is not addressed by the current [cod recovery] plan”, he suggested.

58. The Spanish government expressed a more general dissatisfaction based on the impression that management and recovery plans have “lent more weight to biological criteria than to socio-economic issues”. It noted that the plans put in place were “lacking in information with regard to the socio-economic repercussions of their implementation” (Spanish government Memorandum, p 181). It reminded us that the CFP makes provision for socio-economic considerations, and emphasised that “these should not be forgotten or relegated to the background”. Sujiro Seam, Fisheries Counsellor for the French government, echoed these concerns, explaining that “we believe that right now, the emphasis is much more on the biological aspects than on the socio-economic aspects, at least when it comes to the proposals from the Commission”. The French government’s “role and our behaviour afterwards in the negotiation process is to try to put the balance right”. In practice this means that when specific plans like recovery and management plans are under discussion, “we consider that the objectives should be set at a level which allows recovery of the stock or management of the stock but at the same time allows our fishermen to conduct their business in a profitable manner”, Mr Seam told us (Q 722).
59. Commission officials suggested that the need to prepare impact assessments was one of the factors drawing out the process of adopting recovery plans. They explained that the preparation of impact assessments “is sometimes a complex exercise in which we have to evaluate economic consequences, and data for these evaluations are not necessarily at our disposal” (Q 583). They went on to point out that the economic information required to carry out such evaluations often simply does not exist. The Commission is trying to remedy this, in part through the Data Collection Regulation, but although it can collect recent data, historical data is still missing because there is no tradition of collecting such information (Q 584). Commission officials also identified “a certain shortage of well-trained people on the economic side” to carry out the necessary analysis within the Commission.
60. A third set of suggestions for the future development of recovery and management plans centred on improving co-ordination across management measures. Dr Horwood argued that “it is not a lot of good having a management plan for haddock if it is not really well aligned with the management plan for whiting and for cod, so there is a lot more work to be done in understanding how to develop management plans for fisheries as opposed to a nice simple management plan for a fish” (CEFAS, Q 9). Aaron Hatcher, a Senior Research Fellow at CEMARE, suggested that this might be done by trying “within reason, to set quotas in more or less the proportion in which the fish are going to appear in the fisherman’s net” (Q 72). Dr Horwood also emphasised the importance of aligning catch restrictions and effort controls, explaining with reference to the cod recovery plan that because the process of setting effort levels and catch restrictions “went on in a quasi-independent way”, it had not proved possible “to reduce the fishing effort to the level which the targets implied, even though the quotas are consistent with the plans” (CEFAS, Q 9).

Committee’s Conclusions

61. We support the principle of multi-annual management of fisheries, and believe that—if properly designed—recovery and management plans

should facilitate both the industry and the regulators' activities. We recognise that capacity constraints and the need for consultation have held back the speed with which recovery and management plans can be adopted, but believe that the current glacial pace of progress is unacceptable and must accelerate. **We therefore urge the Member States and the European Commission to attach greater priority to the adoption of recovery and management plans, and deploy their resources accordingly.**

62. We fully concur with those witnesses who emphasised the need to co-ordinate across plans and management measures that affect the same fishery if recovery and management plans are to prove workable and deliver results. This may require adaptation in the working practices of the Commission and the Council, and benefit from the input of the Regional Advisory Councils. With appropriate resourcing, we believe that plans affecting the same fisheries could and should be developed in parallel. This approach need not, therefore, draw out the process of adopting recovery and management plans even further.
63. We concur with the UK Government on the need for impact assessments to be carried out before management and recovery plans are adopted. These should be based on the best available data. The practical implementation of a plan should in our view receive detailed—and insofar as possible, objective—attention before the proposal reaches the Council. If amendments are adopted in Council, impact assessments should be updated accordingly. The aim would be to make carefully considered adjustments that facilitate compliance without compromising conservation goals.
64. While we recognise that some degree of trial-and-error may have been inevitable in drawing up the first few recovery and management plans, we consider that yearly revisions to multi-annual plans undermine their very *raison d'être*. **Automatic adjustments to plans based on fixed harvesting rules should be used to deliver an element of responsiveness without sacrificing predictability—providing that Member States can agree to suspend rules only in genuinely exceptional circumstances.**

Structural Policy

65. Although Article 11 of the basic CFP Regulation¹⁶ establishes national fleet references designed to impose a ceiling on the size of Member States' fleets, no mandatory capacity reductions were imposed as part of the 2002 reform. Instead, Member States were charged with adapting the size of their fishing fleets to their fishing opportunities. Article 14 of the Regulation charges the Commission with the task of presenting a yearly summary of the results of Member States' efforts to right-size their fleets. Member States are in turn obliged to send a yearly report to the Commission outlining their progress in this respect. Key conclusions from the Commission's latest report¹⁷ are summarised in Box 7 below:

¹⁶ Council Regulation 2371/2002 EC.

¹⁷ COM (2007) 828; SEC (2007) 1703, 19 December 2007.

BOX 7**Member States' efforts during 2006 to achieve a sustainable balance between fishing capacity and fishing opportunities**

The majority of Member States' reports did not analyse their fleets in relation to fisheries, as required by the Regulation, but instead described their fleet management systems and trends in national fleet capacity. The Commission recognises that it may have to provide more detailed guidelines in this respect.

During 2006 the fishing capacity of the EU fleet continued its slow but steady reduction at an annual rate of between two and three per cent—the trend for the last 15 years. The Commission notes that this reduction appears too modest when compared to the big reductions in effort required for some major fish stocks, steady technological creep, and the poor economic performance of large parts of the fleet.

The impact of fishing effort measures on capacity reduction has generally been low. The approach adopted during the 2002 CFP reform—to use effort management as the main driving force for fleet adjustment—has not yet yielded the expected results, the Commission notes.

It urges Member States to provide better incentives for capacity adjustment, and stresses that in this respect, European Fisheries Fund Operational Programmes offer an opportunity that cannot be missed.

66. Since the 2002 reform of the CFP, a new structural policy for the fisheries sector has been put in place through Council Regulation 1198/2006, establishing a European Fisheries Fund (EFF) for the period 2007 to 2013. Community financial assistance is disbursed on the basis of National Strategic Plans and Operational Programmes (OPs) that Member States submit to the Commission. In their Operational Programmes, Member States propose to assign funding to activities across five “priority axes” defined in the EFF Regulation. Box 8 outlines the types of actions that are eligible for funding.

BOX 8**European Fisheries Fund Priority Axes****Priority Axis 1: Measures to adapt the EU fishing fleet**

(888 million euros, 26.9 per cent of total)

Financial assistance is made available to fishermen and vessel owners affected by measures to combat over-fishing or protect public health. For example, aid can be made available for capacity reductions, improvements in the energy efficiency of vessels (including new engines) or the selectivity of gear, for improving product traceability and quality, or for facilitating the entry of young people into the industry.

Priority Axis 2: Aquaculture, inland fishing, processing and marketing

(1056 million euros, 32 per cent of total)

Financial assistance is made available for purchases that reduce the impact of fishing on the environment, improve human and animal health and safety, or improve the quality of produce. For example, aid can be made available to increase production or improve quality and hygiene in small and medium-sized enterprises.

Priority Axis 3: Collective Action

(929 million euros, 28.2 per cent of total)

Financial assistance is made available to projects which contribute to the sustainable development or conservation of resources, to improving the services offered by fishing ports, to strengthening markets in fishery products and to promoting partnerships between scientists and the fishing industry. For example, aid can be made available for the protection of aquatic fauna and flora, for the development of new markets and promotional campaigns, or for the dissemination of best practice.

Priority Axis 4: Sustainable development of coastal fishing areas

(314 million euros, 9.5 per cent of total)

Financial assistance is made available to support initiatives aimed at diversifying and stimulating economic development in areas affected by a decline in fishing activity. For example, aid can be made available for the development of fishing tourism and ecotourism.

Priority Axis 5: Technical assistance

(112 million euros, 3.4 per cent of total)

Financial aid is made available for the implementation of the administrative and audit requirements imposed by the EFF Regulation. For example, funds can be made available to cover the costs of information dissemination and publicity.

67. The future of structural policy under the CFP may in part depend on the outcome of ongoing World Trade Organization negotiations affecting fisheries subsidies. On 30 November 2007, the Chair of the WTO Negotiating Group on “Rules” circulated a draft text¹⁸ on the subjects covered by the “Rules” chapters of the WTO framework agreement, which include fisheries subsidies. If adopted, that draft agreement would prohibit subsidies that encourage overcapacity, and may thus lead to over-fishing, while permitting subsidies that help to remove capacity in excess of available fish resources. It is proposed that subsidies be categorised into “red” (prohibited) and “green” (allowed) boxes accordingly.

Witnesses’ Views*Capacity Reductions Since 2002*

68. In its written evidence to our inquiry, the Commission painted a discouraging picture. During the 5 years since the 2002 reform of the CFP entered into force, the total fishing capacity of the Community fleet has been reduced by approximately 2 per cent per year in terms of tonnage and power (European Commission Memorandum, Q 7). The reduction is “for the most part the result of public aid for decommissioning”, and the trend is “similar to the one observed during the previous 10 years ... when capacity reduction targets were in force.” In other words, handing back responsibility for

¹⁸ The November 2007 text is available here:

http://www.wto.org/english/tratop_e/rulesneg_e/rules_chair_text_nov07_e.htm

A note outlining the reactions of WTO delegations was published on 28 May 2008 and is available here:

http://www.wto.org/english/tratop_e/rulesneg_e/rules_may08_annexc_e.doc

reducing fleet capacity to Member States appears to have neither stemmed nor accelerated the rate of adjustment.

69. The Commission stressed that capacity reduction rates in the order of 2 per cent “are insufficient” because they do not compensate for technological progress “which is estimated to increase catching power at similar or higher rates” (Commission Memorandum, Q 7; Supplementary Memorandum, Q 6; JNCC Q 264; RSPB Q 234). “The harvest capacity of the fleet has therefore been stable at best, in spite of nominal capacity reductions” (Commission Supplementary Memorandum, Q 6).
70. According to the Commission, “a significant and permanent capacity under-utilisation and economic underperformance are commonly seen in most Community fleets, and these are clear signs of overcapacity” (Commission Memorandum, Q 7). It warned that “the result of continued overcapacity is excessive pressure on the resource base and strong economic incentives for non-compliance” (Commission Supplementary Memorandum, Q 6). This was graphically illustrated in the evidence given to us by the Swedish government’s Fisheries Counsellor, who explained that “it becomes a bit awkward” if vessels “can catch their annual quota in maybe 20 days, which is the case with the low quotas we have at the moment” (Q 791).
71. The Community Fisheries Control Agency’s Executive Director concluded that “the 2002 reform has not brought about an important reduction in capacity which is the most fundamental issue which we have to bring about” (Q 666). The Commission appeared to concur, pointing out that while the new system in place since 2002 ensures that nominal capacity cannot increase, “real reductions depend on the will of Member States to establish the balance between capacity and resources. We do not however see real political will among most Member States”. This was “indicated by the annual reports from Member States which in nearly all cases fail to analyse the relation between harvest capacity and resources” and by the low priority assigned to fleet capacity reductions in the EFF Operational Programmes submitted by Member States (Commission Supplementary Memorandum, Q 6).
72. Political reluctance in this respect may in part be attributable to a tradition of using fisheries policy “as an instrument of social policy in order to maintain levels of fishing employment”—a practice brought to our attention by Aaron Hatcher of CEMARE, (Q 161). Jürgen Weis, the German government’s Fisheries Counsellor, offered a more charitable interpretation, explaining that “over the last years ... we have agreed on reductions of [fishing] opportunities by 10 per cent or 20 per cent in certain fisheries and it is impossible to reduce the capacity at the same speed” (Q 719). Sweden’s Fisheries Counsellor also recognised that “after building up the fleet with taxpayers’ money for 30, 40, 50 years, suddenly we had to change the policy and cut it down to what it was 20, 30, 40 years before.” He acknowledged that this “is quite difficult for politicians if they come from coastal regions which have large fishing interests” (Q 780).
73. The UK Government presented a more upbeat assessment of capacity reductions since 2002, insisting that the Commission’s overall view that there is an excess of fishing capacity was “somewhat simplistic”, because it “looks at the position in the round and does not reflect the variety of results.” The

Government pointed out that the UK has “delivered a more than 60 per cent reduction in effort in its whitefish trawling fleet, and has reduced overall capacity by 11 per cent in tonnage terms and 8 per cent in engine power from January 2003 to January 2007” (DEFRA Memorandum, Para 43). They also emphasised that “all but two” Member States were operating within the overall fleet capacity limits set for them (DEFRA Memorandum, Para 41).

74. The Commission did recognise the existence of “some exceptions”, including the decommissioning that had taken place in the Scottish whitefish fleet. It suggested that while this had been “a painful exercise for those fishermen that decided to leave the industry and take the decommissioning premium, it has proven a successful move overall” (Supplementary Memorandum, Q 6). The Scottish Fishermen’s Federation appeared to share this assessment. Bertie Armstrong, Chief Executive of the SFF, explained that after two rounds of decommissioning that took out about 65 per cent of the capacity of the white fish fleet, “we are now seeing—and I offer this as evidence of right-sizing—a degree of optimism in the fleet: people are now making enough money to consider fleet renewal” (Q 161).
75. Decommissioning of vessels in the catch sector, together with lower TACs and stricter effort controls, has had a knock-on effect on the processing sector. Cliff Morrisson, Chair of the Food and Drink Federation’s Seafood Group and Technical Adviser to Foodvest, told us that there is no longer enough cod landed in the UK to make bulk processing economically viable (QQ 373–374). Throughout the EU, block producers (who produce fish blocks from which fish fingers, among other products, are made) have thus largely disappeared. Fish blocks are now more likely to be produced in China, we were told (Q 373). Andrew Charles of the Scottish Seafood Processors’ Federation testified to the decline in the processing industry in Scotland, and explained that what remains of the industry now “thrives on the back of farmed salmon” (Q 904).
76. The National Federation of Fishermen’s Organisations pointed out that “it would be entirely false to think that decommissioning has only taken place in the UK, there have been substantial decommissioning schemes elsewhere”—for example in Ireland, the Netherlands, Spain and Denmark (NFFO, Q 199). At least one Member State claims not to have a problem with overcapacity at all: the German Fisheries Counsellor told us that “at the moment our capacity is hardly sufficient to make full use of our fishing opportunities” (Q 718).

Prospects for Decommissioning

77. The Commission emphasised the importance of Member States making it “attractive for fishermen to leave the industry by putting in attractive and recurrent decommissioning schemes” (Commission Memorandum, Q 7). The European Fisheries Fund offers financial assistance for such programmes, but several witnesses emphasised that the sums available could not bring about the magnitude of change required. The RSPB explained that the “same pot of money” inherited from the Financial Instrument on Fisheries Guidance—the precursor to the EFF—will have to be distributed “across a hugely enlarged European Union”, resulting in “a cake which is going to have to be sliced much more thinly than its predecessor and that

literally means we are going to be able to do an awful lot less with it” (RSPB, Q 236). A further feature of the EFF is that it “gives much more subsidiarity to Member States on how they deploy the money”, meaning that it is up to Member States to choose whether to put EFF money into decommissioning (RSPB, Q 237). The Commission’s assessment was that Member States are not making sufficient use of this option (Supplementary Memorandum, Q 6). Commissioner Borg explained that on average, only 20 to 25 per cent of the funds available under the EFF were likely to be used to provide public aid for decommissioning, “and it took some convincing” (Q 650).

78. Other witnesses raised reservations about the efficacy of subsidised decommissioning programmes. The Joint Nature Conservation Committee, for example, warned that “the difficulty with subsidised capacity reduction is that there are quite a lot of vessels sitting around not doing a great deal, waiting for the subsidised capacity reduction to come along”. This means that “as soon as you get a subsidised capacity reduction you get a reduction in the available capacity rather than the used one” (JNCC Q 293). The NFFO, however, insisted that “decommissioning does work. It is not one-to-one but the reduction in the English fleet from 1993 onwards and in the Scottish fleet from 2001 ... has been a major contributor to the reduction of fishing mortality on cod” (NFFO, Q 199).
79. The attractiveness of the decommissioning schemes on offer may be affected by the availability of other subsidies that reduce vessels’ operating costs. The RSPB pointed out that the EFF “can be used to replace engines on fishing vessels” and argued there were “all sorts of ways of using that as a smokescreen to introduce a more efficient engine” (Q 235). It also identified *de minimis* state aid¹⁹ as “a de facto subsidy for fuel costs in the fishing industry”, and insisted that “if you are funding fuel, you are fuelling over-fishing” (Q 239). A different interpretation was offered by the French government, which insisted that France does “not have fuel subsidies”, but had instead put in place “a whole package” of subsidies designed to address the general situation of the sector, aiming to bring it back “to a reasonably profitable situation” (Q 724). France’s Fisheries Counsellor explained that in a second phase, the French government intended to introduce a “huge decommissioning plan” alongside modernisation subsidies focused on energy efficiency (Q 724). This had been prompted by an awareness that “with the currently high costs of the operation of fishing vessels and the limited stocks to fish we have too many boats” (Q 755).
80. A number of witnesses anticipated that energy prices would offer “a big incentive to reduce capacity” (Jürgen Weis, Q 708). Mr Weis, Germany’s Fisheries Counsellor, even suggested that this could “maybe change the conditions so much that it will be much easier to have a fundamental change of the European policy in the end” (Q 708). Sweden’s Fisheries Counsellor also identified “a huge change within the fishing fleets around Europe”, explaining that “with fuel prices and lack of resources there are probably more fishermen asking for decommissioning money than before” (Q 804). The Commission corroborated these observations, noting that increasing fuel

¹⁹ Community state aid rules for the fisheries sector allow Member States to grant companies up to €30,000 of aid over 3 years without requiring advance clearance from the Commission. See Regulation 875/2007 EC. At the time of writing, consideration was being given to whether the €30,000 ceiling should be applied per vessel, rather than per firm, with the cap on aid to firms raised to €100,000. See Commission Memo 08/415 of 17 June 2008.

prices had led to a situation where “for the first time we find ourselves in a situation where the industry is asking for adaptation and for decommissioning plans to be offered and the governments hesitate to take action” (Commission Supplementary Memorandum, Q 6).

81. A number of our witnesses expressed concern that ongoing WTO negotiations could limit Member States’ ability to grant aid to the fisheries sector, whether under the EFF or through national programmes. The Commission warned that the WTO proposals published in November 2007 “could prevent public authorities from granting support to the fishing sector to ensure the transition to a sustainable state”, such as aid to restructuring (Commission Memorandum, Q 9). Furthermore, “the proposed exceptions (‘green’ box) seem insufficient to allow for the implementation of cleaner technologies, including the replacement of engines, in order to limit emissions harmful for the environment.” The Spanish government expressed even stronger reservations, pointing out that under the draft text, “practically all the subsidies for developed countries are banned”. It too regarded the proposed exceptions as insufficient, noting that no exceptions had been proposed for artisanal²⁰ fishing and fishing for shellfish (Spanish government Memorandum, p 185). Dr Euan Dunn of the RSPB explained that “one of the hot issues in the WTO draft at the moment is looking at the extent to which small-scale fishing around the world should be seen as a special case.” The position defended by the European Commission in WTO talks is that the European Union’s fleets are made up of “something like 75 to 80 per cent small vessels, so they have been arguing to have the same rules applied to them as to developing countries.” He took the view that “this is a nonsense really”, and argued that there should be no special pleading in that respect for inshore fisheries (RSPB, Q 239).

Measuring Overcapacity

82. A separate problem identified by witnesses is the measurement of overcapacity. The UK Government pointed out that the Commission was “unable to state the extent of the reduction in capacity that might be needed”. Nor had it yet stated “how exactly Member States are to judge the balance between fishing opportunity and fishing capacity” (DEFRA Memorandum, Para 42, 44). Indeed the Government suggested that this “lack of guidance was a contributing factor to the UK report [on progress in achieving a balance between capacity and opportunities] being submitted late in 2007” (Memorandum, Para 45). Other Member States did appear to have a sense of the level of capacity reductions that might be required. The Swedish Fisheries Counsellor told us that the Commission’s assessment was of “about 40 or 50 per cent overcapacity” (Q 778). He also used profitability as an indicator, noting that “we have maybe eight per cent profitability ... why could we not have a profitability of 40 or 60 or 70 per cent like they have in New Zealand or Canada or Australia?”
83. The Commission did acknowledge a need to “establish methodologies to objectively determine what the adequate fleet size is, so that Member States

²⁰ Artisanal fishing is a term used to describe small-scale commercial or subsistence fishing, particularly when based on traditional techniques.

have common guidance for their analysis and reporting, and to enable the Commission to argue in favour of concrete capacity reductions” (Commission Supplementary Memorandum, Q 6). It went on to suggest that if “fleet overcapacity is clearly and openly displayed, Member States will be better motivated to take action.”

84. Aaron Hatcher of CEMARE expressed scepticism with regard to this endeavour, suggesting that “it is very difficult to see how that is going to produce anything worthwhile”. He insisted that “what really matters is the level of exploitation, the catches. If we can measure capacity according to output, which is what we mean by capacity, if we can really measure and control that, we can enforce a TAC, in which case there is no need to measure and enforce the capacity” (Q 86). Indeed he went so far as to argue that “over-capacity is really a symptom of the problem rather than a cause. It is ineffective management that allows capacity to get too big.” He thus maintained that “if you can control the level of outputs, then market forces will decide on the right level of capacity” (Q 89).²¹
85. The Commission recognised that “effective enforcement is one way to make overcapacity visible and reduce the economic incentives to maintain overcapacity.” Rather than waiting for Member States to summon the political will to reduce the size of their fleets, it could therefore “take action to better monitor and enforce compliance”, and “watch that rules on fuel subsidies are respected in order to avoid maintenance of fleet capacity which would no longer be able to operate economically” (Commission Supplementary Memorandum, Q 6).

Committee’s Conclusions

86. The 2002 reform of the CFP—which handed responsibility for adapting fleet size to fishing opportunities back to Member States—has clearly failed to stimulate the fleet reductions that permanent under-utilisation of capacity and low levels of profitability indicate are required. **We note with dismay that the Commission still detects scant political will among Member States to align the size of their fleets to the available resources.**
87. It may thus be left to the market to precipitate exits from national fleets—notably through fuel prices. **It is imperative that Member States should resist the temptation to offer subsidies that keep uneconomical businesses afloat. We are concerned that state aid rules are being misused in this regard and oppose any relaxation—whether temporary or permanent—of the *de minimis* regime.**²²
88. **Public aid should instead be channelled into attractive decommissioning schemes designed to ease the transition. We urge Member States to heed the Commission’s call for a greater emphasis to be placed on fleet capacity reductions in EFF Operational Programmes—this includes seizing the opportunity to re-programme allocations across axes.** In our view, EFF funds

²¹ Note that for market forces to work in the way envisaged by Mr Hatcher, fishing rights would have to be transferable.

²² At the time of writing, consideration was being given to whether the €30,000 ceiling on *de minimis* state aid should be applied per vessel, rather than per firm, with the cap on aid to firms raised to €100,000. See Commission Memo 08/415 of 17 June 2008.

should primarily be targeted towards decommissioning and the diversification of employment opportunities in coastal regions. We see no role for taxpayer-funded modernisation of the fleet, even where it results in greater energy efficiency, as the economic advantages (reduced operating costs) of modernisation programmes should be sufficient to stimulate private investment in a profitable industry. **To the extent that it would enshrine these principles, we would welcome a WTO agreement on fisheries subsidies along the lines proposed in November 2007.**

89. **We support the Commission's efforts to develop consensual methods of measuring overcapacity in the hope that this will prompt greater peer pressure, but are concerned that this endeavour should not be seized on as an excuse to postpone action.** Member States do not need the Commission to tell them which sectors of their fleets are characterised by under-utilised capacity or poor profitability.
90. While we recognise that more effective control and enforcement mechanisms could bring fleet size into balance through the operation of market forces, it is equally clear that overcapacity exacerbates enforcement problems. For that reason, we believe that the two must be tackled in parallel, not in sequence.

Control and Enforcement

91. The present CFP control regime has been in place since 1993. The legislative instrument that underpins it (Council Regulation 2847/1993) has been amended on a number of occasions in the intervening period, but it has not been subject to a comprehensive review. The control regime continues to rest on the basic principle that primary responsibility for enforcing the CFP's provisions lies with the Member States. The Commission can, however, bring infringement proceedings against Member States for failing to exercise their control obligations.
92. The Community Fisheries Control Agency (see Paragraph 31 above) is the main institutional innovation affecting the enforcement of the CFP introduced since the 2002 reform of the CFP. The Agency has been operationally active since January 2007. A further two legislative initiatives affecting control are currently in preparation. One is the draft Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.²³ The Commission has also announced its intention to present a legislative proposal for a new Control Regulation—replacing the 1993 instrument—in October 2008, with a view to its adoption by the summer of 2009. This overhaul of the CFP's control system has in part been prompted by a withering report from the European Court of Auditors on the control, inspection and sanctions systems relating to the rules on conservation of Community fisheries resources—see Box 9 below.²⁴

²³ Political agreement on the IUU Regulation was reached at the Agriculture and Fisheries Council of 23/34 June 2008.

²⁴ European Court of Auditors' Special Report No. 7/2007.

BOX 9**European Court of Auditors Report on control, inspection and sanction systems**

The European Court of Auditors is the “independent guardian” of the EU’s financial interests. It produces a number of Special Reports each year focusing on specific areas of EU spending. Its 2007 Report on control, inspection and sanctions relating to the CFP was timed to assess the control of the CFP five years after the adoption of the basic regulation in 2002, and to assist the Commission in recasting the control regulation.

The Court assessed systems in place in the Commission and in the six principal fishing Member States: Denmark, Spain, France, Netherlands, Italy and the United Kingdom (England and Wales). It concluded that:

- Catch data are neither complete nor reliable, due mainly to weaknesses in the Member States;
- The inspection systems do not provide assurance that infringements are effectively prevented and detected;
- The procedures for dealing with infringements are such that not every infringement is followed up and, even when they are, they do not always attract penalties (in the UK, 90 per cent of infringements identified in 2005 were not pursued through the Courts and led only to warnings)
- The deterrent effect of penalties is, on the whole, limited
- The Commission has insufficient instruments at its disposal to take action against Member States for failure to apply Community legislation
- Overcapacity detracts from the profitability of the industry and incites non-compliance.

It recommended that the present control, inspection and sanction systems must be strengthened considerably if the CFP is to achieve its objective of sustainable exploitation of fisheries resources.

Witnesses’ Views*Challenges and Deficiencies*

93. The fundamental challenge of enforcing the CFP was put to us most succinctly by Cephas Ralph, Director of Operations at the Scottish Fisheries Protection Agency (SFPA), who explained that “the job of catching fish generally takes place on a fishing vessel out at sea unobserved by anybody and, like most types of human activity, if it is unobserved by anybody then rules are theoretical rather than practical.” He suggested that the CFP had originally been devised “from a naïve scientific view of how quotas on fish stocks could be managed. It did not really give any thought to how the rules could be enforced and over time, when faced with wholesale breaking of the rules, the CFP has responded with more technical and complex rules” (SFPA, Q 547).
94. The Commission was equally unforgiving in its assessment, judging that the present control system “is inefficient, expensive, complex” and “does not produce the desired results” (Commission Memorandum, Q 5). However, it took the view that this was largely due to overcapacity and the fact that

harvest capacity is much larger than legal catch opportunities, creating “very strong economic drivers for illegal behaviour” (Supplementary Memorandum, Q 4). Better compliance could consequently only be achieved by “simultaneously removing the strong drivers for non-compliance ... and strengthening control and enforcement.”

95. According to the Commission, “national [control] systems are largely ineffective” and there are limited means at its disposal to put pressure on Member States to take their control obligations seriously (Commission Memorandum, Q 5). The result is uneven enforcement, which was identified as a concern by most of our witnesses, who emphasised the importance of “consistency in the effectiveness of control and enforcement across the Community” (DEFRA Memorandum, Para 32; SFF Memorandum Para 6). The UK Government accepted that this was primarily the responsibility of individual Member States, but saw a role for the Commission in “pursuing vigorously instances of Member States failing to exercise proper controls.” Meanwhile the SFF called for a level playing field across the Member States, arguing that “inequitable treatment exists not only in the field of regulation and compliance but also in very different treatment of past transgressions. This is one area where one size must be seen to fit all” (Memorandum, Para 6).

Current and Recent Initiatives

96. Although most of our witnesses identified serious deficiencies in the enforcement of the CFP, some more promising developments were also brought to our attention. The Commission noted that there had been certain progress, for example in strengthening cooperation among Member States, introducing a satellite monitoring system for the European fleet, and adopting electronic reporting of catches (Commission Memorandum, Q 5). The UK Government saw indications that the Commission had been performing its role in pursuing Member States that failed to exercise their responsibilities “increasingly effectively in recent years” (DEFRA Memorandum, Para 32). Harm Koster, Chief Executive of the Community Fisheries Control Agency, explained that the Commission had brought infringement proceedings against France, Spain and the UK in cases deemed “symbolic of the non-application of the Common Fisheries Policy” (CFCA, Q 665). Because France had already lost a similar court case in 1991, the Commission was able to request that a penalty be imposed by the European Court of Justice. France was thus fined around 80 million euros for failing to enforce rules on minimum landing sizes for hake (Q 665). Meanwhile the Spanish government emphasised that “the aspects mentioned in [the] European Court of Auditors’ report refer to the situation existing in 2005”. It pointed out that “three years after the verification mentioned in the report was made, some improvements have been made in the control systems, at least as far as the Spanish Administration is concerned, which are not reflected” (Spanish government Memorandum, p 184).
97. We were particularly encouraged by the evidence we saw and heard on a visit to Peterhead in North-East Scotland. Cephas Ralph, the SFPA’s Director of Operations, explained that Scotland had had “a very significant historic problem with black fish²⁵ which relatively recently we have been able to

²⁵ The term “black fish” refers to fish landed illegally.

overcome” (Q 530). He attributed that success to the confluence of several factors. A major decommissioning scheme had “removed the over-capacity in the fleet, so that removed the financial imperative on many of the operators to land illegal fish.” This was reinforced by legislation requiring the registration of buyers and sellers of first sale fish, which “for the first time ... put an onus and responsibility on the person buying fish to account for it in a way that we could come in and audit” and ensured that purchasers were “unable to claim ignorance of the source”. According to Mr Ralph, “that pretty much removed the demand side completely for black fish”. Cliff Morrison, Chair of the Food and Drink Federation’s Seafood Group, also hailed the registration of buyers and sellers as a success, while noting that the legislation had been 13 years in the pipeline: the relevant Directive was adopted in 1992, but it was not until 2005 that the registration of buyers and sellers was made compulsory in the UK. Even now, “not all Member States have yet put this legislation in place ... or are policing it as effectively as we are now” (Q 370).

98. By prompting reductions in the level of illegal activity, these two developments in turn paved the way for the introduction of targeted enforcement techniques. Mr Ralph explained that “if the vast majority of a population are breaking the law then targeting does not really work because essentially everyone is at it, but when you come down to a more normal situation where the majority of people are sticking to the law then you can begin to introduce tried and tested police targeting techniques” (Q 531). The SFPA was thus able to focus its efforts to “further reduce the levels of illegal activity”.

Culture of Compliance

99. Mr Ralph was not alone in emphasising the importance of capacity adjustments and demand-side measures in developing a culture of compliance. The CFCA’s Chief Executive stressed with reference to Scotland that “if there had not been the decommissioning of an important number of vessels it would have been impossible to create a culture of compliance because one of the elements of it is that a fisherman should have a viable living and must have the legal quantities to support a viable living” (Q 666). He also pointed out that when the Commission had brought infringement proceedings against the UK, it had issued a press release estimating “that about 50 per cent of the cod landed in the UK was black.” Large retailers’ response to the press release was to ask their providers to certify that they were only supplying legal cod, Mr Koster explained, creating “a big panic in Scotland because no supplier wanted to sign that he was only selling legal fish.” Since then the Scottish industry and authorities had done a very good job in fostering a culture of compliance, he added (Q 666).
100. Mr Ralph emphasised that the best indicator of this is that “in many of the cases where we have detected illegal activity it has been fishermen themselves who have come to us and told us that they have suspicions about some operators in particular, and that is an extremely healthy sign” (Q 532). He suggested that this could be ascribed to “those that are left ... demonstrating that they are aware that they have a huge stake in this industry” (Q 542). Sweden’s Fisheries Counsellor also told us that any number of control policies and controllers would never be as efficient as social control by the fishermen themselves (Q 782). He explained that the Swedish authorities had compiled statistical evidence on the number of unreported landings by

the Swedish fleet, and used that to adjust quotas downwards to factor in illegal landings: “we cannot prosecute anyone, but we are collectively penalising them by diminishing the quota” (Q 785). The intended effect would be to incite fishermen to control each other, as those who misreported their landings would incur a collective punishment that affected everyone. Mr Rosenkranz noted that the Polish authorities were trialling a similar experiment (Q 786).

BOX 10

The Scottish Conservation Credits Scheme

In February 2008, the Scottish Executive launched a Conservation Credits Scheme. In return for respecting a system of real-time closures and for signing up to conservation measures such as using more selective fishing gear, Scottish fishermen can receive the same number of days at sea as they received in 2007 (that is, avoid cuts in their days at sea). They can also use their days at sea allowance more flexibly, operating under hours at sea rather than days at sea, which allows them to conserve fuel and run their operations more efficiently.

101. Two other initiatives that attempt to realign fishermen’s incentives were brought to our attention by the Scottish Executive and the National Federation of Fishermen’s Organisations. The Scottish Executive is introducing a “Conservation Credits Scheme” (see Box 10 above), operating as part of the Cod Recovery Plan, which aims to achieve reductions in cod mortality “in ways other than blanket cuts [in days] at sea” (Q 469). Officials told us that the principle underpinning the scheme is to “reward people for doing the right thing, credit for your conservation measures”, by giving “people their 2007 days [at sea] back—so they are not getting a cut—in return for [observance of] real-time closures and selectivity measures. In due course we hope to give more days to people who have more selective gear ... we want to give a carrot for outcomes” (Q 469). Meanwhile the NFFO is advocating “Cod Avoidance Plans” (see Box 11 below) that “seek to optimise the fishing activities of the vessel by changing fishery, gear, place and period in order to avoid catching cod, thus contributing towards the Cod Recovery Plan. In exchange, the vessel, or vessels, will obtain a degree of freedom with respect to effort control” (NFFO Memorandum, p.41; NFFO Supplementary Memorandum).

BOX 11

Cod Avoidance Plans

The NFFO explains that the Cod Avoidance Plans it is advocating are designed to address the problem of fishing for species that are not subject to a recovery plan in mixed fisheries that also contain a recovery stock, in this case cod. It envisages that individual vessel operators could volunteer to prepare a Cod Avoidance Plan, demonstrating how it will fish for its allocated quota while avoiding catching cod above quota. The methods incorporated in a plan could include spatial avoidance, temporal or seasonal avoidance, and selective gear. If approved by the Member State authorities, the vessel would be exempt from effort restrictions for the year to which the plan applies. Vessels found to breach their targets would be obliged to revert to the normal effort regime and barred from submitting a Cod Avoidance Plan in the following year.

The Community Fisheries Control Agency

102. When asked to comment on the performance of the fledgling Community Fisheries Control Agency, most of our witnesses took the view that it was too early to assess the contribution it had made (e.g. Commission Memorandum, Q 5; SFPA, Q 555). The UK Government stressed that the Agency was still in its infancy and has a very strictly defined remit. It pointed out that “to date, only one joint deployment plan has been agreed and implemented, that for North Sea cod”, and added that while the results of the first exercises had been encouraging it was “too early to assess the impact of those exercises on control systems generally” (DEFRA Memorandum, Para 31). The CFCA’s Director, Harm Koster, agreed that it was “a little bit early” to have a full assessment of the operation of the Agency (Q 659).
103. Mr Koster nevertheless identified a number of ways in which joint operations and pooled resources appeared to be adding value. Taking Germany as an example, he explained that its territorial waters stretch into a tiny part of the North Sea, in which little cod fishing takes place. If the Cod Recovery Plan is to be implemented properly, he argued, it makes more sense to deploy Germany’s two inspection vessels in the northern North Sea, where most cod fishing takes place (Q 659). Mr Koster also pointed out that in joint operations, vessels operate across national borders, which “gives the industry much more of a feeling of a level playing field.” For an individual Member State this also has political advantages, he suggested, “because they will not have their own fishermen on their back who say, ‘Yes, but you are much more strict than your neighbour’, because this is a joint operation”.
104. The CFCA’s Director also identified areas for improvement. In the Baltic, he explained, “the sea campaigns which we do are not good enough”, because “the main problem is the landing inspections”. The Agency is thus asking Member States to exchange more inspectors to reinforce landing inspections, notably in Poland (Q 659). Meanwhile the SFPA’s Director of Operations pointed out that the Control Agency’s restricted mandate means that “it can only set up a joint deployment programme for stocks which are designated recovery stocks for which a specific recovery programme has been implemented by the EU.” Sometimes this can have “a big impact” in making countries work together for the first time, but in Scotland’s case it has largely formalised existing co-operation with Denmark and Norway, “so I think it would be very hard to measure any additional benefit for us”, he concluded (Q 555).

Review of the Control Regime

105. The Commission envisages that the review of the Control Regulation will result in “an extended mandate” for the CFCA, to include the development of cooperation between Member States and the Commission, extended responsibilities for the coordination of inspections on land, and cross-checking of data (Commission Supplementary Memorandum, Q 4). The Agency’s Director explained that extending the CFCA’s remit to include inspections on land needed to be considered because controls at sea were very expensive and not necessarily the most efficient way of controlling fisheries (Q 659). Meanwhile the SFPA’s Director of Operations suggested that the CFCA “should be allowed to set up joint deployment programmes across any species. It should not be limited to recovery stocks” (Q 557). Others were more cautious about

extending the Agency's mandate as part of the overhaul of the Control Regulation. The Spanish government, for example, took the view that "we will have to observe how it tackles the tasks that it is undertaking before thinking of assigning it further tasks and duties" (Spanish government Memorandum, p 184).

106. Among the Spanish government's priorities for the new control regime, by contrast, was a perceived need to "unify, to codify and simplify all the control legislation currently in force" and "lighten the workload", paying more attention to the "quality rather than quantity of data" (Spanish government Memorandum, p 184). The Commission accepted that the current regulatory framework is "fragmented and obsolete", and explained that it was aiming to "increase the cost-efficiency of the control policy, with a view to reducing administrative costs at the level of operators and at the level of administrations" (Supplementary Memorandum, Q 4). Other witnesses, however, had reservations about the extent to which this could be achieved. The German government's Fisheries Counsellor pointed out that "you can always cut red tape and say, 'I do not control any more and I trust you and the fishermen to do the right thing', but that will not solve the problems" (Q 708). Meanwhile Mr Koster conceded that "the rules are complicated" but insisted that "there are also very deliberate infringements" which could not be attributed to misunderstandings (Q 659).
107. As part of its overhaul of the CFP control regime, the Commission intends to "contribute to the development of a common culture of control through harmonised proportionate sanctions" (Commission Supplementary Memorandum, Q 4). The UK Government accepted that the level of financial penalties applied across the Community can vary widely, even within individual countries such as the UK.²⁶ But they saw this as a "reflection of the fact that decisions about the level of criminal penalties are a matter for the Courts and not one of Commission competence." By contrast, the Government did acknowledge that there could be "a place for the use of dissuasive administrative sanctions, including financial sanctions, within the controls system" (DEFRA Memorandum, Para 33). The French government's Fisheries Counsellor was more bullish, explaining that "we are in favour of more deterrent sanctions, even though we are very much aware of the difficulties of harmonising sanctions throughout the Union" (Q 727). He outlined the system of administrative sanctions that France had developed in response to the fine it had received in the undersized fish case, and noted that the Commission "considers that this system is more responsive and addresses infringements more adequately" (Q 730).
108. Other witnesses pointed out that the overhaul of the control system would only work if it formed part of a multi-pronged strategy to improve enforcement. The CFCA's Director, for example, noted that "the Commission will now propose again a reinforcement of control but we also need to work on other issues, such as capacity" (Harm Koster, Q 666). The SFPA's Director of Operations warned that "some of the

²⁶ By way of example, a Commission Report revealed that, in 2005, the average fine for fishing without a licence was €26,532 in France, €2,480 in the UK and €42 in Sweden. Communication from the Commission: Reports from Member States on behaviours which seriously infringed the rules of the CFP in 2005, COM (2007) 448 25.07.2007

proposals put forward by the Commission are essentially a ramping up and an introduction of greater complexity to that which is already there and my view is that that will not succeed. Simplifying the rules and matching the capacity will in my view succeed” (Q 547). Meanwhile Mr Koster emphasised the importance of working on the demand side: “if the big buyers insist on selling only legal fish I think also that will be very important” (Q 666).

Demand-Side Measures

109. Cliff Morrisson, Chair of the Food and Drink Federation’s Seafood Group and Technical Adviser to Foodvest, identified a number of ways in which market forces could help to stamp out illegal fishing. He pointed out that a company like Young’s, or any of the FDF Seafood Group’s major companies, has a long-term investment in seafood, and therefore needs to make sure that “it is here for tomorrow as well as today” (Q 369). The result was that companies had to take into account investors’ concerns as well as those of consumers. Indeed “it is very often the investors coming on the phone asking, ‘What is the state of the stocks? Are they in a perilous condition and what does this mean for our companies?’”(Q 368) Companies could in turn exert an influence in particular fisheries by threatening to pull out, Mr Morrisson explained. In the Baltic, for example, where illegal fish has been estimated at 40 per cent of the catch, there has been “a huge debate, not only by Young’s but by other major companies, as to whether they should stay in the Baltic or whether they should pull away totally from an EU fishery” (Q 395).
110. Retailers can also exert significant influence. Sainsbury’s told us that it had developed a traffic-light sustainability rating system for the species that it sources, as a result of which it now no longer sells any red-rated fish. It is also working with suppliers to move any amber-rated fish to green status (Sainsbury’s Memorandum, p 341). Marcin Rucinski, Fisheries Counsellor for the Polish government, suggested that public confidence was becoming more and more important as consumers took more interest in the legality of fish, and stressed the need to broaden responsibility “beyond just fishermen because they do not function in a world of their own” (Q 633).

Committee’s Conclusions

111. We refer readers to the European Court of Auditors’ report for a detailed catalogue of the many weaknesses in the control and enforcement system underpinning the CFP (see Box 9 above). We note that the Community and its Member States’ response to persistent failure in this respect has to introduce layer upon layer of regulation intended to counter fishermen’s adverse incentives, and to put in place penalties that Member States do not have the courage to impose.
112. **We believe that a more fruitful control regime should be based on measures that reward good behaviour, and thus work with, rather than counter to fishermen’s incentives.** We see particular promise in initiatives such as the Scottish Conservation Credits Scheme and the NFFO’s Cod Avoidance Plans. An alternative is the Swedish government’s attempt to adjust quotas by the estimated level of unreported landings, thus

creating incentives for fishermen to control each other to avoid collective punishment.

113. **Ultimately, however, we concur with those witnesses who emphasised that a culture of compliance can only develop in a fleet that is proportionate to the size of the resource on which it depends.** Economic and conservation objectives are more closely aligned in a profitable fleet, whose members develop a vested interest in the enforcement of the rules. Furthermore, it is only when illegal activity has become the exception, rather than the norm, that risk-based, targeted enforcement can start to deliver results.
114. We note and support Member States' reluctance to harmonise criminal penalties. **However, we believe that the co-ordination of administrative penalties is necessary.** A penalty-points system—whereby infringements are penalised with points, leading to the temporary, and eventually permanent, suspension of fishing rights—could in our view provide a promising basis for co-ordination, delivering the same effect across vessels and fleets.
115. We consider that the CFCA's activities have the potential to build trust among Member States in each others' enforcement activities, and to promote the spread of best practice. **We therefore support the extension of the CFCA's remit to include land-based inspections, and recommend that the Agency be allowed to co-ordinate joint deployment plans for all types of stocks, not just those subject to recovery plans.** We also see a role for the CFCA in monitoring and reporting on Member States' enforcement activities, with the aim of promoting transparency, and with it, peer pressure.
116. We received overwhelming evidence from our UK witnesses that the compulsory registration of buyers and sellers of first sale fish had all but eliminated demand for black fish. **We therefore urge all Member States to ensure that they have transposed the relevant EU legislation and are enforcing it rigorously.** We see considerable potential in harnessing the power of the market—including retailers and end-consumers as well as first sale buyers—to bring about change.

Regional Advisory Councils

117. Article 31 of the 2002 CFP Regulation paved the way for the creation of the Regional Advisory Councils. That article laid down the basic role and membership of the RACs, and was followed up by a 2004 Council Decision establishing the seven RACs, their procedures and financing mechanisms.²⁷ Since then, six of the seven RACs have become operational. Box 12 sets out further details. On 17 June 2008, the Commission published a Review of the functioning of the Regional Advisory Councils.²⁸

²⁷ Council Decision 2004/585 EC of 19 July 2004.

²⁸ Commission Communication COM (2008) 364, "Review of the functioning of the Regional Advisory Councils", 17 June 2008.

BOX 12**Regional Advisory Councils**

Six Regional Advisory Councils (RACs) have been established to date:

- North Sea: 32 Members covering 9 Member States (Belgium, Denmark, Germany, Spain, France, Netherlands, Poland, Sweden and UK)
- Pelagic: 60 Members covering 10 Member States (Denmark, Germany, Spain, France, Ireland, Netherlands, Poland, Portugal, Sweden and UK)
- North-Western Waters: 55 Members covering 6 Member States (Belgium, Spain, France, Ireland, Netherlands and UK)
- Baltic Sea: 42 Members covering 8 Member States (Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden)
- Long-Distance Fleet: 72 Members covering 12 Member States (Denmark, Germany, Estonia, Spain, France, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal and UK)
- South-Western Waters: 115 Members covering 5 Member States (Belgium, Spain, France, Portugal and Netherlands)

A seventh, Mediterranean RAC which would probably include Members from Bulgaria, Cyprus, France, Greece, Italy, Malta, Romania, Slovenia and Spain, is yet to be established.

The RACs have an annual budget of €250,000, the majority of which is spent on travel, meetings and the organisation of conferences. A proportion is spent on staff costs, but most RACs have less than two full-time staff.

118. The role assigned to the Regional Advisory Councils is to “advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.” Each RAC has a general assembly, and an executive committee appointed by the general assembly. The executive committee may have a maximum of 24 members and its role is to manage the work of the RAC and adopt its recommendations. In the general assembly and executive committee, two thirds of the seats must be allotted to representatives of the fisheries sector, such as producers’ organizations, and one third to representatives of the other interest groups with an interest in the CFP, such as environmental NGOs.

Witnesses’ Views*The Establishment of the RACs*

119. Almost all of our witnesses welcomed the establishment of the Regional Advisory Councils, viewing it as a means to secure greater stakeholder involvement in the policy process. Sweden’s Fisheries Counsellor, for example, described them as “extremely important” on the grounds that “having acceptance by the fishermen when we make decisions is one of the vital keys to having a system that works” (Q 793). The UK Government declared their strong support for the RACs, and their belief that “they have a vital role in producing a better quality of decision-making under the CFP” (DEFRA Memorandum Para 46). The Scottish Fishermen’s Federation took the view that in overall terms, the RACs had been “successful in raising stakeholder involvement”, while noting that “the process has yet to mature

- fully.” (SFF Memorandum, Para 10). The French government also made this qualification, noting that “we are very satisfied with the way the scheme is implemented in the areas where it is implemented” (Q 738). Sam Lambourn, Chairman of the North Western Waters RAC, concluded that “in terms of giving the grass roots access to the Commission and putting a human face to the Commission I think that has worked well, it is working well and it is very welcome” (Q 329).
120. Some witnesses also viewed the RACs as a promising precursor to a more regional approach to fisheries management (e.g. Scottish Executive Memorandum, Para 10.1).
121. As well as delivering greater stakeholder involvement, the RACs were welcomed as a channel through which stakeholders could engage with each other, sometimes for the first time. The NFFO noted that the RACs in which the UK participates “have made a promising start, and their growing maturity has enabled them to start the process of moving from confrontation among the stakeholders to cooperation” (NFFO Memorandum, p 41). The Joint Nature Conservation Committee observed that the RACs had “provided a mechanism for non-fishing interests to communicate with the fishing industry at a wider European level” (Dr Clare Eno, Q 294). The Spanish government also recognised “a clearly positive effect” in promoting cooperation among the fishing industries of the different Member States involved in each RAC (Spanish government Memorandum, p 186).
122. Most witnesses emphasised that there was wide variation in the development and performance of the RACs. The Scottish Fishermen’s Federation explained that “different RACs are at different stages of their development and each is unique in its circumstance.” For example, the “North Sea RAC had an assisted start given the experience of the North Sea Commission; the Pelagic RAC has the apparently simpler task of dealing with single-species fisheries, but the greater complication of dealing with coastal states outside the EU in almost every component pelagic fishery; the NWWRAC has the greatest cultural diversity.” The SFF anticipated that this would result “in development proceeding at different speeds” (SFF Memorandum Para 10).
123. The Mediterranean RAC has yet to be formally established, although the French government assured us that the parties involved were “right now in the process of deciding on the last elements which would allow formal establishment of that Regional Advisory Council” (Q 741). Hugo Anderson, Chair of the North Sea RAC, explained that the difficulties encountered in the Mediterranean stemmed from a number of factors, including the fact that “there has never been any cooperation in the Mediterranean area”, and that a great number of Member States fish in the Mediterranean (Q 319).

The Performance of the RACs

124. The Scottish Executive took the view that “certain RACs have been more successful than others in influencing and cooperating with the Commission. The role of the North Sea RAC on cod recovery has been a good example of what can be achieved.” (Scottish Executive Memorandum, Para 10.1). Other witnesses emphasised the quality of the advice provided by RACs to the Commission, and stressed that “they have done an excellent job with quite meagre support” (Dr Joe Horwood, CEFAS, Q 38). The Joint Nature Conservation Committee praised the “convening of some extremely good workshops” and suggested that “a lot of it is down to the sterling work that is

done by the secretariats of some of the RACs in essentially organising a somewhat unlikely group of individuals” (Q 294).

125. The RACs we heard from recognised that their power lay in providing consensual advice to Member States and the Commission. “Giving the Commission non-consensual advice is almost worthless ... the discipline is that you must reach consensus on your advice” (Q 310). They also emphasised the importance of using evidence to support their recommendations: “any advice we give has to be evidence-based. We are not lobbyists” (Q 305). Sam Lambourn noted that the North West Waters RAC had “given advice on certain specific issues—mainly technical—that has been accepted by the Commission”, and described this as “very satisfactory”. Other RACs have not always been so successful—the Pelagic RAC, for example, “gave some advice on herring in the North Sea which the Commission did not take and there were immediate questions as to what is the point of the Pelagic RAC if nobody is listening to us?” But Mr Lambourn emphasised that “generally speaking ... the Commission have been very supportive of the RACs” (Q 329). He nevertheless warned that “as a RAC we find we are being asked to advise the Commission on a number of issues and those numbers are increasing. We are finding that we are having to run harder to keep up” (Q 325). Hugo Anderson, Chair of the North Sea RAC, concurred, explaining that “our agenda is very much driven by the Commission’s agenda, with all the proposals they send out that they want recommendations on” (Q 343).
126. Some witnesses felt that the RACs’ agendas were overly dominated by short-term issues. Dr Euan Dunn of the RSPB argued that “there is still too much focus on the short-term issues, like TACs and quotas. I think the RACs’ agenda needs to preoccupy itself with the long-term management issues. That is where they will give added value, because the fishing organisations ... are already piling into the TACs and quotas every year and you wonder if the RACs can add much to what is already being done at national level.” He pointed out that the RACs “are an international forum. They can deal with boundary issues and trans-boundary issues and they should be looking at the big picture, the long-term management plans” (RSPB, Q 243). The Joint Nature Conservation Committee also took the view that because fishing interests dominate the Regional Advisory Councils, “they tend to be more interested in immediate concerns than horizon scanning”, citing the designation of Natura 2000 sites as an example of an agenda that the RACs had engaged with too late (Q 294). The Chairman of the North Western Waters RAC recognised that “we are much better as a RAC at dealing with longer and medium term issues” but explained that “our grass roots want us to deal with the issues that they are confronted with today and tomorrow” (Sam Lambourn, Q 310).

Composition of the RACs

127. Concerns were also expressed about the composition of the RACs, particularly about the representation of non-fishing interests, and the recreational, rather than commercial catch sector. The National Federation of Sea Anglers suggested that the composition of RACs “needs some rebalancing to enable everyone with a stake in EU marine resources, including Recreational Sea Anglers, to be involved” (Memorandum, Section 2). The Joint Nature Conservation Committee took the view that “there is still a limited extent of engagement and involvement in the RACs by

the environmental groups”. While recognizing that this was partly due to the limited manpower at their disposal, “it does mean that the environmental input is somewhat marginalised still” (Q 294). The Chair of the North Western Waters RAC explained that difficulties had been encountered in reaching consensus with the environmental NGOs, because “they have policy positions on various topics and it is very difficult for them to compromise without undermining their stated policy position” (Q 310). He emphasised the importance of the NGOs being able to negotiate and compromise on stated policy positions, “otherwise it is very difficult to have a constructive dialogue” (Q 338). He nevertheless encouraged the environmental NGOs to persist, arguing that “it has been a real education for some Member States’ representatives to sit down and talk to environmental NGOs” (Q 338).

128. The RAC representatives we heard from recognised that resources posed an obstacle to the adequate representation of non-fishing interests. Hugo Anderson of the North Sea RAC explained that “it is quite difficult to find someone who has the time to take part” (Q 334). Sam Lambourn noted that NGOs “simply do not have the resources to attend all the meetings in all the venues” (Q 338). Meanwhile Ann Bell, Executive Secretary of the North Sea RAC, lamented that it had been impossible to find a consumer organisation to take part in the North Sea RAC (Q 335). In its recent Communication, the Commission acknowledged that capacity constraints and difficulties in resourcing working group meetings had posed problems for environmental and development NGOs.²⁹
129. Some witnesses felt that the geographical remit of some RACs may be too large. The UK Government pointed out that “for the North Western Waters RAC in particular, the fact that it covers such a huge and diverse area has made managing the issues it addresses and arriving at consensus views particularly challenging.” (DEFRA Memorandum, Para 48). The RSPB also identified the North Western and South Western Waters RACs as potentially too big (Q 243). In its recent Communication, however, the Commission took the view that overall, the current geographical coverage of the RACs is satisfactory, and there is no need for additional RACs to be set up. It instead urged RACs to make full use of the possibility of establishing sub-divisions to deal with specific issues.³⁰

Resourcing of the RACs

130. The resourcing of the RACs was a further problem highlighted by our witnesses. Ms Bell explained that under a decision taken in 2007, the RACs will receive €250,000 per annum indefinitely, rather than seeing their Community funds phased out over five years as had been planned originally (Q 312). However, RACs still require an underwriter to release funds upfront before they can be claimed back from the Commission, and their limited budgets mean that they rely heavily on help in kind from Member States, the Commission and third parties (QQ 313–314). It was pointed out that not all RACs receive the same level of support from third parties, for example the Baltic RAC “does not have any organisation behind it financially so they cannot pay upfront” (Q 320).

²⁹ Commission Communication COM (2008) 364, “Review of the functioning of the Regional Advisory Councils”, 17 June 2008, Para 2.2.2.

³⁰ Ibid. Para 2.1.

131. The UK Government observed that the RACs do not have funding to commission their own research or new analysis or evidence, and explained that they had “sought to help fill this gap in the short term, either by providing government scientists, or by funding new research in support of the RACs’ work through DEFRA’s Fisheries Challenge Fund” (DEFRA Memorandum, Para 48). They nevertheless emphasised that “this is not a long term solution.” The RSPB also emphasised the importance of RACs being able to do their own research and lamented that the Councils were “far too dependent on hand-outs and the goodwill of a few Member States.” It confirmed that the North Sea and North Western Waters RACs benefit hugely from the support of DEFRA, which is “almost unique in the amount of support they have given—with the possible exception of Denmark to the Baltic RAC” (RSPB Q 243).
132. The NFFO expressed concern that “the funding of the RACs has not kept pace with the role that is expected of them.” It warned that without such support, it would be “difficult to continue the development of long-term management plans”, and called for more funding to be made available for the RACs (NFFO Memorandum, p 41). Sam Lambourn, Chair of the North Western Waters RAC, suggested that the future of the RACs “is going to be very much a matter of resources”. In his view, “the Commission will have to decide what it wants from these RACs. Does the Commission want good quality advice on an increasing number of subjects? If it does then it cannot be run on a free time, spare time basis by willing volunteers” (Q 346). Meanwhile Ann Bell of the North Sea RAC pleaded for “more flexibility within our budget”, explaining that RACs cannot transfer funds across budget lines during the course of the year, but are instead held to their original estimates of how much they will spend under each heading (Q 313).

The Future Role of the RACs

133. A minority of our witnesses expressed support for the prospect of the RACs taking on a greater role in future. The Scottish Executive, for example, wished to see “the role of RACs enhanced in the future in terms of genuine participation in fisheries management, such as the development of long term management plans and wider marine environmental policy issues” (Scottish government Memorandum, Para 10.1). The UK Government were more tentative in their views, but did “see scope for RACs to take on a greater role in the future”, judging that this could meet a need for “less prescriptive legislation at EU level and more scope for regional variation.” (DEFRA Memorandum Para 51). The Swedish government’s Fisheries Counsellor suggested that more powers could be transferred to the RACs on a case-by-case basis, “because if they do not feel they have an importance then we will lose them” (Robin Rosenkranz, Q 794).
134. Most of our witnesses, however, felt that it was too early to tell how the RACs might evolve. The Scottish Fishermen’s Federation felt that “they are not in a condition yet where they can make rules” (Q 162). The Joint Nature Conservation Committee also felt that they were not “ready to go there yet” (Q 296). The Chair of the North Western Waters RAC acknowledged that “some people are very concerned that we should have more management power rather than just advisory”, but took the view that “that is something perhaps we ought to earn.” He suggested that if RACs provided good quality advice “it is awfully close to decision” (Q 346). The North Sea RAC’s Executive Secretary agreed that “if we can provide good, scientifically based,

evidence-based advice to the Commission that has been agreed by consensus, it is very difficult for the Commission or any Member State to actually disagree with us” (Q 347).

135. Some witnesses however, expressed strong reservations about any future transfer of management responsibilities to the RACs. The French government’s Fisheries Counsellor, for example, insisted that “we are very much in favour of Regional Advisory Councils in terms of their advisory function, but we are not prepared to go for a further step whereby those Regional Advisory Councils would be given a decision-making or management power at this stage” (Q 738). He emphasised his government’s view that “it is not for the RAC to decide on legally constraining instruments, legally binding tools and implement them. The decision-making, the enforcement, the control and the sanction will rest with the public authorities in the Commission and the other institutions here in Brussels and the Member States concerned” (Q 742). The German shared some of these concerns, explaining that “we are not in favour of giving them real management responsibilities” (Q 697). Germany’s reservations were based on fears about the implementation of the policy, how RACs would integrate a control system, and whether they would have the power to sanction (Q 704). The Spanish government was even more nervous, proposing that “we must keep an eye on the RACs’ proposals since we could end up having a too decentralised and regionalist fisheries policy which opposes the principles of the Common Fisheries Policy” (Spanish government Memorandum, p 187). But it was not only among Member States that we detected reservations. The NFFO argued that “the RACs’ strong points are the involvement of the industry but also the involvement of other stakeholders, and they provide a forum, but if you are going to have a system in which the industry is taking responsibility then you could not have other stakeholders involved in that” (NFFO, Q 176). Oceana took the opposite view, arguing that the present composition of the RACs ensures that “environmental views will always be in a minority, with the fishing sector’s opinion always being in the majority”. This would “need to be resolved” if any decision-making power were given to the RACs, it suggested (Memorandum, Para 29).

Committee’s Conclusions

136. The evidence we received suggests that the establishment of the Regional Advisory Councils has been the most positive development to flow from the 2002 reform of the Common Fisheries Policy. **We commend all the parties involved—including the Commission, Member States and third parties that have lent RACs their support—for delivering notable improvements in stakeholders’ engagement in the policy-making process, thus beginning to address one of the traditional failings of the CFP. In our view, the development of the RACs demonstrates that it is possible to build a credible regional dimension into fisheries management under the CFP.**
137. We note that the implications of success have yet to register fully, particularly as regards resources. It seems clear to us that if RACs are to fulfil their potential as advisory bodies, they cannot be forced to rely on patronage to carry out their activities. **They should instead be equipped with a budget that allows them to function independently, for example by commissioning their own research. A review of the budget made**

available to RACs should factor in the pace at which their activities are developing, and examine whether existing budgets could be managed more flexibly. For their part, Regional Advisory Councils should take into account the manpower shortages affecting the representation of non-fishing and recreational fishing interests when determining their internal organisation and their meeting schedules.

138. **In the longer term, we favour the development of a policy process in which consensual advice from a RAC is normally heeded by the Commission and the Council.** We recognise that the transfer of management responsibilities to Regional Advisory Councils might meet with resistance from certain Member States, and distance RACs from their grassroots members. We therefore take the view that a formal transfer of powers may not be necessary to achieve the desired effect. **However, RACs must be allowed to earn authoritative influence if stakeholders' engagement is to be secured and maintained.**

CHAPTER 3: ONGOING CHALLENGES

139. In this chapter, we examine the key challenges that will need to be addressed as part of any future reform of the Common Fisheries Policy. We survey our witnesses' attitudes to these issues, and set out our own recommendations for the future of fisheries management under the CFP.

Management Tools

140. In its annual policy statement on fishing opportunities for 2009³¹, the Commission warned that Total Allowable Catches are consistently being set too far above scientifically recommended levels, and that the days-at-sea system of effort controls (see Paragraph 24 above) has proved ineffective. As a result, over-fished stocks are not being allowed to recover, and 88 per cent of EU stocks are over-fished—compared to a global average of 25 per cent. The Commission concluded that there has been no overall improvement in the state of the Community's fish stocks since 2003, when the last major CFP reform entered into force.
141. The Commission takes the view that TACs are being set too high due to short-term political pressures and due to the practice of limiting year-on-year variations in TACs to 15 per cent—a rule introduced to provide stability to the fishing industry. This has prevented the EU from acting decisively to protect stocks whose biological condition is so poor that they cannot respond to more gradual measures. With respect to the days-at-sea system of effort controls, the Commission argues that the large number of complex derogations introduced at the request of Member States have effectively neutralised the impact of the scheme, and made it almost unworkable. The reductions in effort achieved are far smaller than those that would have been required to bring about a significant reduction in fishing mortality.
142. The Commission is therefore proposing that in the next round of negotiations on fishing opportunities—due in December 2008—TACs be reduced by up to 20 per cent a year for stocks with a low level of biomass, and increased by up to 25 per cent a year for stocks that have achieved maximum sustainable yield. Where scientific advice recommends that catches should be reduced right down to zero, TACs should be reduced by at least 25 per cent. With respect to effort controls, the Commission proposes to extend the approach enshrined in the revised Cod Recovery Plan to all effort controls. It envisages that effort ceilings, expressed in kilowatt-days, should be set for groups of vessels or fleet segments. These ceilings would then be managed at national level, allowing Member States to decide on the balance between fleet capacity and fishing opportunities, and enabling them to distribute effort allocations in a way that promotes the attainment of other goals, such as reducing discards. The Commission has recently also published a proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures, and aims to implement the new arrangements from 2009.³²

³¹ IP/08/828, 30 May 2008.

³² COM (2008) 324.

Witnesses' Views

TACs and Quotas

143. A number of our witnesses expressed dissatisfaction at the way in which TACs and quotas—the main management tools used under the CFP—had been working. The Commission identified, first, “a general problem of lack of compliance with TACs”, observing that “quota overshoot by national fleets is a phenomenon that exists all round the Community” (European Commission Q 591). The RSPB corroborated this, noting that “TACs and quotas have been a pretty blunt instrument” and pointing out that “Total Allowable Catches are not really even that: they are total allowable landings” (Q 217).
144. The second weakness identified by the Commission is that the current system “sets individual TACs, individual catch limitations for individual species, when we know very well that fishermen do not catch individual species, they catch assemblies of species”. This means that the TACs for individual species may be out of proportion to each other, leading to discards (European Commission, Q 591). Dr Joe Horwood, Chief Fisheries Science Adviser to the UK Government, explained that “if we have an accuracy of plus or minus 20 per cent for each one of these species, it is really very difficult to get a package where at least one of them is not significantly off and is not causing quite a lot of discarding. It is certainly an imperfect conservation tool” (Q 15).
145. This was a view shared by the Joint Nature Conservation Committee, which noted that while output controls can work effectively for single-species fisheries, “when you transpose that to more complex mixed demersal fisheries then those exact same tools are not going to work; in fact they are going to be counterproductive because ... once fishermen have met the quota of one species they will continue to fish after other species to fill those quotas”. In these circumstances, “output controls are not going to deal with over-fishing and you are going to get excess catch and discards” (JNCC Q 260).
146. Most witnesses, however, expected that in spite of their drawbacks, TACs and quotas would continue to be used. The Commission made clear that they would be “extremely difficult to get rid of for a very simple reason, which is that they are the carriers of relative stability and relative stability is a principle that for most Member States has been a sacred principle of the Common Fisheries Policy” (European Commission, Q 591).

Effort Restrictions

147. The Commission has nevertheless responded to warnings from the scientific community that “TACs are not really controlling fishing mortality ... and that direct effort control is necessary” by introducing a system of effort restrictions (European Commission, Q 591). The expectation was that this would resolve some of the problems linked to multi-species fisheries, and that “it should in principle be easier to enforce and simpler to control.” Implementation of the scheme has, however, been disappointing in the Commission’s view. The regulation governing the effort limitation system applicable in the Community is “considered by everyone as overly complex” and “has become just as difficult to control as the TACs, if not more” (European Commission QQ 587, 591). Ernesto Peñas, Head of the

Commission's Fisheries Conservation Unit, put this down to negotiations in the December Council, in which "Member States, under pressure from the industry, request more special conditions, derogations ... and that results inevitably in a regulation that tends to be overly complex" (Q 587). Mr Peñas concluded that effort control "is an instrument that still carries tremendous potential for being very easy to control but the way it is applied now ... does not lend itself very much to good control" (Q 591). In an attempt to overcome these difficulties, the Commission has attempted to "devolve some of the technical details of what you can do to avoid by-catches [in this instance, of cod] to the industry itself or the Member State concerned" (Q 587).

148. Dr Horwood, Chief Fisheries Science Adviser to the UK Government, agreed that "conceptually, effort control has an awful lot of good going for it because you can regulate the amount of effort going into a fishery and then hopefully they can land it all". But he acknowledged that "our experience with the cod recovery shows that in truth this is not a simple process". Indeed, implementing effort control "is really hugely complicated", because of the "range of different sorts of vessels and gear which are exerting different sorts of fishing pressures" (Q 15). He went on to suggest that perhaps "a more reasonable answer is one where our fishing capacity, i.e. the basic size of the fleet, is much more in line with the size of the resource, so even if they [vessels] are working flat out they cannot cause a significant amount of damage to the stock".
149. A number of witnesses, however, did not accept that effort controls were desirable in principle, let alone in practice. Fisheries economist Aaron Hatcher of CEMARE, favoured quotas because "the ultimate aim is to have some leverage, some control, over what has been taken out of the fish stock, and it is generally preferable to try to do that directly rather than indirectly" (Q 59). He warned that if this is done indirectly, via effort controls, "we have to try and second-guess the relationship between those different types of input and catches, which is very difficult to do, and it imposes a lot of unwelcome regulation on the industry" (Q 59). The National Federation of Fishermen's Organisations seconded this, declaring its willingness to "dispense quite happily with effort control". It took the view that effort controls are "entirely counter-productive", because they "provide an incentive to increase the intensity of fishing when you are at sea" (QQ 173, 178). Barrie Deas, the NFFO's Chief Executive, went on to explain that vessels can adapt their behaviour in a number of undesirable ways (e.g. limiting their geographical range) to maintain their earnings when they are pushed for time at sea (Q 173). Mr Deas concluded that since the era of large-scale black fish seemed to have come to an end "the fundamental rationale for effort control is not there" (Q 178).
150. A further drawback to managing EU fisheries through effort control is that in the present context, effort controls cannot be used alone: Ernesto Peñas of the European Commission pointed out that a system of pure effort controls (landing everything that is caught) would not be feasible because it would not be consistent with the principle of relative stability (QQ 592–594). The result is that "we have introduced a new instrument, effort management, as recommended by the scientific community but we have not done away with the existing one and the problem then is that we have a kind of double system", he observed (Q 591). This outcome was also flagged up to us by the industry, which argued that simplification of the CFP is not aided by

“layering one measure on top of another, making it very difficult then to see which one is working” (SFF, Q 142).

Closures

151. This did not deter a number of our witnesses from endorsing other management measures that could be used to complement or temporarily substitute for catch restrictions and effort controls. The UK fishing industry and fisheries administrations have recently put in place a system of real-time closures in the North Sea, which a number of our witnesses highlighted as a promising development. The Scottish Executive explained that, where aggregations of cod were detected, the authorities were closing sea areas of 15 miles by 15 miles for 21 days to protect spawning and nursery areas (Q 450). The system has been put in place in cooperation with industry, which according to the Scottish authorities, is eager to take action, but does not want to take action in isolation—“they want others to do so too”. Fishermen are keen that such closures should operate in “real time, so they reflect the reality now” and that they should be “time limited, so they do not stay in place for ever” (Q 450). Initially the closures were voluntary, but since February 2008 compliance with the closures has been tied into a formal Conservation Credits scheme run by the Scottish Executive (see Box 10 above).
152. Scottish Executive officials reported that compliance with the closures had been “excellent”, especially as foreign vessels’ cooperation is voluntary (Q 450). They also emphasised that the closures were introduced and suspended much faster than current CFP procedures could allow for: “twenty-eight days is the fastest you could ever do an emergency measure [under the CFP] and by then we are saying in 21 days it [the aggregation] disperses” (Q 450). The officials went on to suggest that in due course, provisions might be introduced in the CFP to allow Member States, “subject to certain criteria, to introduce real-time closures which others respect”. They warned, however, that “because of the mutual suspicion in the Council”, there was a risk that real-time closures would be perceived as a protectionist measure.
153. The Joint Nature Conservation Committee welcomed the scheme, describing it as a “novel and innovative measure” (JNCC, Q 267). The RSPB also expressed support for temporary closures to protect spawning and nursery areas (QQ 220–221). Meanwhile the Scottish Fishermen’s Federation welcomed the Scottish authorities’ approach to the closures, premised on “the carrot of an inducement, by way of effort, to obey these rules and the penalty of losing that inducement if you break the rules” (Q 145). It pointed out that the system “has not been abused by other nations” (Q 143), but nevertheless favoured the prospect of real-time closures becoming “mandatory for all and not voluntary for all” (Q 157).
154. Some witnesses were careful to qualify their support. Dr Joe Horwood, Chief Fisheries Science Adviser to the UK Government, observed that “we have yet to see whether these real-time closures can actually provide a significant mechanism”, and pointed out that “the measures so far off the west of Scotland and the Irish Sea have not proved fruitful” (Q 20). The RSPB emphasised the importance of doing “a bit of modelling” to identify potential unintended consequences, taking account of “the fact that you cannot just shift fishing effort about and expect nothing to happen” (Q 216).

155. Others stressed that closures could only work alongside more conventional management measures. Aaron Hatcher of CEMARE explained that “if you relied on marine protected areas as your major management measure, you would have to close off something like three-quarters of the North Sea, or more, in order to achieve the sort of objectives that you would be looking at”. He therefore argued that closed areas “have a role to play, perhaps, in avoiding sensitive habitats, nursery grounds, spawning grounds at various times of year, but will never be a major plank in the management of fisheries” (Q 87). The Scottish Executive acknowledged this, recognizing that “we need other things and we need selectivity measures” (Q 458).

Selective Gear

156. Selectivity measures in fact also form part of the Scottish Conservation Credits Scheme. Officials explained that “the whole fleet is receiving in 2008 the same days at sea it received in 2007 and as a requirement of that the nephrops fleet will have to carry a square mesh panel of 110 millimetres” (Q 462). Their approach, we were told, was based on past experience that “if the industry does not like a technical measure it will find a way round it”, and was therefore designed to “go with the grain of the industry” and ensure that fishermen “share the objective we are trying to achieve” (Q 459). The UK Government confirmed that “changes to gear regulations that are not supported by the fishing industry can be difficult to enforce”. With industry involvement and general acceptance, on the other hand, “they can deliver useful improvements” (DEFRA Memorandum, Para 19).
157. This assessment was shared by environmental organisations and fishermen’s associations alike. Barrie Deas, Chief Executive of the NFFO, judged that the advantages of selective gear had not been fully exploited. He took the view that encouraging their adoption and use “is more of an economics and incentives issue than a technical issue”, and explained that this was why selective gear formed part of the Cod Avoidance Plans advocated by the NFFO (Q 184—see also Box 11 above). The Joint Nature Conservation Committee emphasised the need to consider technical conservation measures’ economic impact on stakeholders in order to “get buy-in and address the potential for poor compliance and poor acceptance by stakeholders” (Q 265). But it also stressed the need to monitor how effective such measures are after they are introduced, cautioning that “we have not seen very many successes as yet”. The JNCC went on to express its preference for “targets as opposed to micro-legislation, because if you give fishermen targets they are very resourceful, they will help achieve that and they will gain ownership of that technical conservation measure themselves” (Q 265).

Management Response Times

158. The Joint Nature Conservation Committee also drew our attention to what it perceived as a need for more responsive management. It noted that “the CFP at the moment has only got a number of timescales that one can take measures over: there is either the annual scale or the emergency scale” (Q 272). Dr Horwood of CEFAS observed that “things are an awful lot better than they were before they introduced in the new basic [CFP] regulation a power to introduce measures on an emergency basis, but it does seem that the system is still particularly sluggish”, particularly when

compared with the way animal diseases are handled (Q 12). The Sir Alister Hardy Foundation for Ocean Science pointed out that global warming could swiftly bring substantial changes, and therefore anticipated that management systems would need to adapt more rapidly than has occurred in the past (Memorandum, Para 6).

159. Dr Horwood and the JNCC also concurred on the desirability of introducing measures automatically in response to particular triggers. The JNCC offered the example of a bad (cold) winter from which it could be deduced that “the sole stock was going to be in bad shape”, and suggested that measures to respond to that should be “built into a long-term management plan as part of the ecosystem approach” (QQ 272–273). Meanwhile Dr Horwood argued that “you would expect any business to manage itself with appropriate risk plans and risk management plans, and this just does not seem to be a culture in the management of fisheries, where it would seem that there are predictable types of emergencies” that are not provided for in legislation (Q 12). He suggested that “if you have already got a plan on the shelf which says, ‘in the event of this, these are the actions that we will take’, and there is some way of triggering this plan so it does not come as a huge surprise to everybody even though it has occurred every ten years for the last 100 years”, emergency measures would be a lot easier to implement (Q 14).

Committee’s Conclusions

160. If the principle of relative stability is to underpin the CFP—as we believe it should—effort restrictions can only be used to complement TACs and quotas. However, we recognise that restrictions on fishing effort, rather than catches, appear to offer a more readily enforceable means of reducing fishing mortality. For this reason, we share the Commission’s assessment that this tool has significant untapped potential.
161. **We commend the decision to devolve effort allocation to Member States in the revised cod recovery plan, and strongly support the Commission’s proposal to extend this approach to all other effort controls for 2009.** In our view, this represents a promising route through which to incorporate a greater element of subsidiarity into the CFP, creating a multi-tiered management system.
162. Allocating effort at national or sub-national level may in turn create opportunities to tie other conservation tools—such as closures and selectivity measures—into the effort allocation process, thereby aligning fishermen’s incentives with conservation goals. Indeed, by rewarding fishermen for complying with technical conservation measures that would otherwise place them at a competitive disadvantage, public authorities can help the industry to tackle a collective action problem. **We commend the Scottish Executive for piloting a real-time closure scheme that incorporates all these considerations, and trust that its impact will be evaluated with a view to assessing whether more widespread use should be recommended.**
163. We believe that long-term management plans offer scope to deliver improvements in the way quotas have been working. **We envisage that multi-annual plans could incorporate multi-annual TACs for stocks whose biomass does not vary significantly from year to year. We have already indicated that the alignment of TACs for species of fish that are caught together is necessary. An element of risk management**

should also be built into management plans, providing for pre-planned, automatic adjustments in catch restrictions triggered by predictable emergencies.

Discards

164. Each year, between 10 and 60 per cent (depending on the fishery) of fish and other marine organisms caught in EC vessels' fishing gear are discarded (thrown back into the sea, usually dead—see Box 2 above).³³ Contrary to popular perception, however, the total tonnage of discarding has been going down quite dramatically over the last ten to fifteen years, not least as a result of declining source populations (RSPB Q 228). Research commissioned by DEFRA suggests that most discarding takes place for economic reasons, rather than as a result of the system of TACs and quotas (DEFRA Memorandum, Para 21). However, in individual instances where strong recruitment of a particular species has not been reflected in the relevant TAC (e.g. North Sea haddock in 2001, North Sea cod in 2007), this can be reversed.
165. Discarding evidently continues to pose a challenge for fisheries managers. In March 2007, the Commission published a Communication outlining a proposed policy to “reduce unwanted by-catches and eliminate discards in European fisheries” (COM 2007 136). The Commission has since announced its intention to come forward with an initial legislative proposal to decrease discards in two fisheries by October 2008. It then plans to proceed with regulations on other fisheries until its proposed policy is generally implemented (Commission Supplementary Memorandum, Q 9).

Witnesses' Views

Reducing Discard Levels

166. Our witnesses identified a number of ways in which discard levels could be brought down. The Commission made clear that “the main measure to reduce discards is ... to reduce exploitation”, explaining that discarding of under-sized fish “is due to the fact that most fish stocks are overexploited”, meaning that there are few large fish left in the sea. Landings for many stocks are consequently dominated by fish that have grown just above the minimum legal landing size, and in order to catch those fish, large amounts of smaller fish have to be caught and discarded (Commission Memorandum, Q 3).
167. The Scottish Executive indicated that it was putting the emphasis on looking for “ways we can incentivise fishermen to avoid catching the [discarded] fish in the first place” (Scottish Executive, Q 473). The Scottish Fishermen's Federation also proposed that the aim should be to avoid fish that ought not to be caught, for example through real time closures, “if you can work out where they are going to be”, and through gear selectivity “where that is possible” (SFF, Q 147). The UK Government warned that there was no single solution that would address all causes of discarding, but went on to list a number of partial measures that could be considered (DEFRA Memorandum, Para 22).

³³ See Commission Communication COM (2007) 136, p.4.

168. The Commission explained that “in the past, more selective fishing gear and fishing practices were promoted through direct regulation of the legal design of fishing gear.” Its assessment, however, was that “this has led to increasingly detailed and unenforceable regulation similar to what one would have if speed in traffic were regulated by specification of legal car designs and not by speed limits.” The Commission is therefore proposing to move towards “results-based management” with respect to discards (Commission Supplementary Memorandum, Q 9). It envisages that this would be based on a process whereby “maximum allowed by-catch limits (MABL) are established for each fishery, accompanied by a plan for annual reductions until these limits are achieved.” The intention would be to engage the industry in devising these plans, allowing the Commission and the Council to withdraw from detailed micro-management. Member States would be invited to use EFF funds to support adaptations that may become necessary. The Commission anticipates that the monitoring and control of such a scheme would require “both some observer coverage and comparisons of landings across vessels with and without observer coverage”, so as to gauge the level of discarding that may be taking place at sea (Commission Supplementary Memorandum, Q 9).
169. This outcome-oriented approach to reducing discards attracted support from a number of witnesses (e.g. RSPB, Q 218; DEFRA Memorandum, Para 22). The National Federation of Fishermen’s Organisations took the view that “moving away from highly prescriptive rules ... that create perverse results ... has to be one of our objectives” (Q 193). Like the Commission, it envisaged a “fishery by fishery” solution, in which the industry took ownership of the goals to be achieved, as in its proposed Cod Avoidance Plans (Q 188). It accepted that there would “have to be an element of an observer programme” or CCTV to monitor results and indicated that vessel operators would be willing to accept that (Q 188).

Banning Discards

170. The Commission indicated that in the longer term, it would aim to “move to a system where it is mandatory to keep fish on board”, i.e. to introduce a discard ban (Commission Memorandum, Q 3; Supplementary Memorandum, Q 9). It recognised that within a TAC-based system founded on the principle of relative stability, “you would not be allowed to sell this fish above your basic quota on the market”. It therefore envisaged that vessels would be “required to land [by-catch] but it would basically be confiscated”, providing “a strong driver to avoid catching it because there are costs involved in keeping fish on board which you are not paid for” (Q 595).
171. Among our witnesses, support for this long-term objective was more hesitant. The RSPB indicated that it would like to see trials—on a fishery-by-fishery basis—of a discard ban (Q 222). It emphasised that “we are not looking for 100 per cent perfection”—instead, the aim would be to leave it to fishermen to use their ingenuity to bring down discard rates progressively. A discard ban could also be beneficial to the extent that it would “create a level playing field across all the vessels and all the Member States” (Q 223). The RSPB anticipated that such a ban would need to be underpinned by “a degree of enforcement”, based on observer programmes, and that incentives would need to be put in place to induce fishermen to land fish of low marketable value (Q 224). In the RSPB’s view, landed by-catch would have to count against the TAC, as “they are all dead fish, they are all lost from the

- population”, but it expected that this element would be “one of the most contentious issues”, generating “a huge amount of resistance” (Q 227).
172. Dr Joe Horwood, Chief Fisheries Science Adviser to the UK Government, also welcomed the proposal for a discard ban, describing it as “extremely helpful in that it will scare people into deciding they must really do something about the issue.” But he expressed reservations about the prospect of requiring vessels to land all of their by-catch, warning that he “would not want to see markets developed for small fish” (Q 27). The Joint Nature Conservation Committee also qualified its support, explaining that “discard bans could work in the right place at the right time”, but warning that its members were not persuaded of the merits of “a complete discard ban across the piece” (Q 276).
 173. The Scottish Fishermen’s Federation was not persuaded of the merits of landing all by-catch, suggesting that it would be “better to put it back into the ecosystem, where it becomes an easy meal for a natural predator” than to “take it ashore and make fishmeal out of it or do something else that really has no commercial basis”. Indeed it suggested that “a small amount of discarding is almost inevitable” (Q 147).
 174. Most of our witnesses were simply not persuaded that a discard ban could be enforced. The Scottish Executive conceded that “it might just about be feasible if there were a clean fishery and a single jurisdiction”, but anticipated that in a mixed fishery with multiple jurisdictions, a discard ban would “throw up a lot of issues” (Q 470). Foremost among them, it suggested, was the “very important implication for enforcement ... that fishermen have no incentive to obey this discard ban.” Fisheries economist Aaron Hatcher also anticipated that the enforcement of a ban could prove challenging, and emphasised that “it is hard enough to enforce controls on what is actually landed in port. To enforce controls on what fishermen do at sea is extremely difficult” (Q 62). The JNCC pointed to anecdotal evidence from elsewhere showing that discard bans are “terribly difficult to enforce”, and also expressed concern that if a discard ban were to be introduced and ignored, it would effectively mean “losing that information, that data on catch is lost to the system. That makes it very hard, in what is already a difficult system to analyse scientifically” (Q 276).
 175. As well as sharing other witnesses’ concerns about the implications of a discard ban for control, the French government was uncomfortable with the impact such a ban could have on relative stability (Q 734). The German government pointed out that “if you have a complete discard ban and you have an obligation to land anything that is fished then it is very difficult to work with quotas” (Q 696).
 176. The evidence we heard from the Norwegian government, however, suggested that some of these difficulties could in principle be overcome. Norway operates a discard ban under which fishermen are obliged to land their by-catch in return for a small amount of financial compensation designed to cover landing costs (Q 820). Compensation is granted in order to provide fishermen with an incentive to land their by-catch rather than discard it, but it is set at a level low enough to ensure that they will not derive a profit from doing so.
 177. Norway also manages to reconcile its discard ban with a quota system. Paul Oma, Fisheries Counsellor for the Norwegian government, explained that

before quota is allocated to vessels, the authorities reduce the amount of quota to be distributed by the amount of by-catch they expected to be landed. When fish are landed for which the fisherman had no quota, it is then automatically deducted from the Norwegian quota (Q 820).

178. Norwegian officials did concede, however, that they devote “huge resources” to control at sea (Q 820). Norway thus disposes of 20 to 25 large inspection vessels, a number of smaller inspection vessels, and a force of 50 to 60 inspectors (Q 836). Infringements are prosecuted, and fines and administrative sanctions can be imposed (Q 833). The Norwegian authorities have also introduced flanking measures designed to assist in enforcing the discard ban. For example, areas deemed to be susceptible to discarding in trial hauls—e.g. because the percentage of juveniles in the catch is too high—can be closed temporarily or permanently by the authorities (QQ 820, 823).

Committee's Conclusions

179. Estimated discard levels of up to 60 per cent speak for themselves: discards pose a pressing challenge for fisheries managers. **We urge EU Member States to work towards eliminating discards, and support the incremental approach that the Commission has mapped out, based on maximum allowed by-catch limits and fishery-specific strategies for achieving them.** We again see scope for a division of labour whereby targets are set centrally and stakeholders in each fishery are left to devise their own methods of reaching them, subject to vetting and monitoring from the centre.
180. **We support the principle of a discard ban and therefore firmly endorse the Commission's aim of progressively reducing maximum allowed by-catch limits to zero.**³⁴ However, we recommend that if by-catches are to be confiscated in order to protect the principle of relative stability, financial compensation should be made available to cover stowing and landing costs. Without such compensation, fishermen's incentives would in our view be misaligned, posing a serious challenge for those charged with enforcing a discard ban.
181. **The Norwegian experience leads us to conclude that flanking measures designed to prevent situations in which fishermen are tempted to discard would be critical to the successful implementation and enforcement of a discard ban.** This could include closures, as in Norway, but should also encompass mechanisms allowing fishermen to buy additional quota to cover their catches—an issue that is addressed in more detail in the next section. Where this is not possible (for example where a low TAC leads to shortages of a particular quota), the feasibility of introducing convertible quota schemes—whereby fishermen are allowed to convert quota for one species and use it to land another—merits consideration. We recognise that such a system would put pressure on relative stability, but anticipate that a carefully calibrated exchange rate could contain the volume of quota converted.

³⁴ See Paras 168 and 170 above.

Rights-based Management

182. Fisheries economist Aaron Hatcher pointed out to us that the flexibility of a management system is of critical importance to reducing discards: “the more flexible the system is to help the fishermen balance their catches and quotas, the less incentive there is for fishermen to throw fish overboard because they do not have quota for it” (Q 61). The flexibility he describes could come from the permanent transfer of quota entitlements, or from temporary leasing or exchange of a given year’s quota.
183. Under the CFP, the distribution of fishing opportunities among national fishing interests—and the regulation of their subsequent exchange—is a Member State competence. In the UK, fishermen and producers’ organisations arrange quota exchanges and lease quota from one another—but see the legal position outlined in Box 13 below. In addition, DEFRA organises international quota swaps with other Member States, which result in exchanges of quota for different species to meet the in-year needs of the catch sector in different countries (DEFRA Memorandum, Para 18). Trade in quotas among Member States is restricted to temporary, in-year transfers because permanent transfers of quota entitlements across Member States would be inconsistent with the principle of relative stability.

BOX 13

Quota Management in the UK

National quotas obtained by the UK following December Council meetings are allocated to groups of vessels and producers’ organisations on the basis of FQA (Fixed Quota Allocation) units. These are based on vessels’ historic catches during a fixed reference period. Once allocated to a vessel, quotas are a permission to catch quota stocks. In a statement issued in October 2001 UK Fisheries Administrations insisted that formally, fishermen do not have property rights over FQA units or quota. This means that at present, the de-facto trade in quotas and quota entitlements that takes place in the UK is not formally endorsed by the UK authorities. The Scottish Executive is currently consulting Scottish stakeholders on proposals to grant user rights (“stewardship rights”) on a long-term basis, but not in perpetuity.

184. Rights-based management refers to any formalised system of allocating fishing rights. In February 2007, the European Commission published a Communication on rights-based management (RBM) tools in fisheries (COM 2007/73). It has since commissioned a study surveying the RBM tools currently applied in the EU, with results expected by the last quarter of 2008. Legislative action is not envisaged, except insofar as the Commission plans to “consider RBM in the context of the forthcoming CFP reform” due in 2012. (Commission Supplementary Memorandum, Q 10)

Witnesses’ Views

Allocating Fishing Rights

185. Fisheries economist Aaron Hatcher of CEMARE began by pointing out to us that all management is rights-based: “You have a right to fish at all if you have a licence; you have a right to a fixed amount of fish if you have a fixed quota.” He went on to emphasise that “as soon as you start managing fisheries, you are introducing rights, and the flip-side of that is that you are

denying rights to others” (Q 100). Mr Hatcher explained that under the present system, “the way in which the initial distribution of rights to fish has been made is basically to give the rights to those already in the industry in proportion to some indicator of their involvement in the fishery, usually their track record or catch history”. He pointed out that “once those rights have been given away in that way, then the economic value of the fishery has been parcelled up and handed from the public to the fishing industry”, and to that extent, the “profit [or resource rent] that can be earned from the fishery has been given away into private hands” (Q 103).

186. Mr Hatcher noted that this “is not the way we approach things with other natural resources, oil or gas, for example, where exploitation rights are generally either leased off or subject to royalties”. In those cases, it is usual for state, on behalf of the public, to try to capture some of that resource rent for the public good—a normative issue that is “not on the EU list of things to be thought about”, Mr Hatcher observed, referring to the fact that in the EU, the fishing industry does not lease fishing rights from the authorities, nor does it pay royalties in return for the right to exploit a public resource (Q 103).
187. However, the Commission did draw our attention to the thus far overlooked option of linking “longer term access rights closely to responsibilities”, making access to fisheries “contingent on a demonstration from the industry that the exploitation of public resources takes place within the standards set by society”, (Commission Memorandum, Q 11). According to the Commission, this would “reverse the burden of proof” relative to the present situation, in which it is up to the authorities to collect evidence to show that exploitation rules have not been respected.

Transferability of Fishing Rights

188. In its Communication on RBM tools, the Commission pointed out that in theory, any barriers to free trade of rights such as quotas will lead to a situation where the allocation of quota will not be optimal in economic terms.³⁵ Aaron Hatcher explained that “the likelihood that a fixed quota or set of fixed quotas is going to match exactly what a vessel needs in order to operate profitably and efficiently is very small; but by making quotas tradeable, the fishermen themselves can decide how much quota they need in order to operate in the way they want to operate” (Q 63). The development of a market for fishing rights may also facilitate enforcement, by incentivising quota-holders to take an interest in compliance (Q 84).
189. However, other witnesses raised a number of concerns about the potential impact of allowing fishing rights to be traded freely. The German government was hesitant about what it regarded as the privatization of a public resource: “marine biological resources are for the public good and therefore their use should only be based on rights to harvest them under special conditions and limitations, and not be considered a property right” (Jürgen Weis, Q 713). It was also concerned that such a system could lead to “an undesirable degree of concentration” of rights, potentially even “in the hands of individuals or companies that are not actively involved in fishing”, with adverse consequences for communities which depend on fisheries or artisanal fisheries (Q 714). For this reason, the French government was

³⁵ Commission Communication, p. 5.

firmly opposed to a system of individual transferable quotas, insisting that “we do not want to have a private market for quotas”, and pointing to experience from other countries suggesting that “the final result is a concentration of fishing rights within a minority, which is something we do not want to happen in France” (Sujiro Seam, Q 751).

190. In its Communication, the Commission noted that RBM systems can be designed to deter concentrations beyond a certain threshold.³⁶ Aaron Hatcher explained that “most ITQ systems do constrain tradeability to some extent”, for example “there are usually limits on how much quota of any particular stock can be owned by one company, there may be restrictions on tradeability within certain geographical zones, and there are various ways that social concerns have been built into quota management systems” (Q 106). Elspeth Attwool MEP drew our attention to the community transferable quotas system operating in the Shetland Islands, which in her view merits closer investigation (Q 671). Meanwhile the New Zealand government, which introduced an Individual Transferable Quota (ITQ) system in 1986, reported that its fishing industry “continues to be made up of a small number of large fishing companies plus many small scale companies and individual fishers” (Memorandum, Para 13)
191. The New Zealand government also noted that the introduction of its ITQ system had led to a substantial reduction in the number of fishing vessels in its fleet (Memorandum, Para 13). In its Communication on RBM tools, the Commission explained that the economic efficiency of fishing businesses is expected to improve where rights are tradeable because the least profitable vessels are likely to sell their quotas to more profitable vessels and exit the fleet.³⁷ The Swedish government explained that while it had previously shared some of the concerns raised by the French and German governments, it had been swayed by the prospect of harnessing this feature of RBM systems to its advantage. In particular, it had come to the recognition that “using the fisheries funds and the public money we have in the Community is not enough to decrease the fishing fleet to a sustainable level.” The Swedish government was therefore now considering whether some of the required capacity reductions could also be financed by the market by introducing rights-based management systems. The aim would be to “turn over the resource to the fishermen and allow them to decide whether they want to try to stay in the market or sell it for a reasonable price” (Q 801). The German government conceded that a tradeable quota system might have positive effects on the reduction of fleet capacity in many Member States, as well as facilitating control, and consequently explained that it had yet to formulate its overall verdict (Q 714).

National and International Transfers

192. Trading of fishing rights could in principle take place either within Member States or both within and across Member States. The Spanish government reported that it had experience of using tradeable rights in several fisheries, with good results, for example in its swordfish fisheries (Q 613). It consequently supports transferable rights at a national level and is “open to discussion” about transferability across Member States (QQ 613–615).

³⁶ Communication, p. 5.

³⁷ Ibid.

Aaron Hatcher pointed out that under the current provisions of the CFP, it is up to each Member State to manage national quotas as it sees fit, and that some—such as the Netherlands—have chosen to rely on an Individual Transferable Quota system (Q 114). He noted that in the UK, “the quota management system was never set up as a tradeable quota system, but the fishermen, if you like, have voted with their feet, or their wallets, and tradeability has developed despite the design of the system, rather than as a consequence” (Q 57). Barrie Deas, Chief Executive of the NFFO, took the view that the UK had “gone quite far down the road of quota trading, not in a particularly planned way ... it developed inadvertently”. He acknowledged that “it plays an important part”, and judged that “on the whole the industry, with the exception of the under-ten sectors, is content with the arrangements that are there” (Q 183).

193. By contrast, there is no provision in the Common Fisheries Policy for international trade in quota. Member States instead rely on bilateral agreements to exchange quota in-year. The French government emphasised that the exchange of quotas between Member States is “an important element to allow flexibility in the system” and “something we are very much in favour of” (Q 751). The Scottish Fishermen’s Federation was very concerned that this system should not mutate into an EU-wide quota trading system, where rights were transferred permanently rather than leased temporarily, thus unravelling the principle of relative stability. It cautioned that “a glance at the map of the UK industry and particularly the Scots industry” shows that “we have got what everybody else wants”. It consequently anticipated that a change to internationally tradeable quotas “would change the character of the European fishing industry” and transfer ownership “straight to identifiable other Member States” (Q 167).
194. In practice, however, it is already the case that under EU law, UK-based fishing businesses—and in practice, their fishing rights—can be bought by individuals or businesses in other EU Member States, subject to certain conditions (see Box 14 below on the *Factortame* case). The National Federation of Fishermen’s Organisations told us that while it had in the past pushed for measures to restrict so-called “quota-hoppers”, it now takes “an entirely different view”, and considers that EU fishing quotas are “an open market” (Q 202). By contrast to the Scottish Fishermen’s Federation, its assessment was that while Anglo-Dutch and Anglo-Spanish businesses had bought quota for the stocks of interest to them “you do not see either the Dutch or the Anglo-Spanish pushing further and further” (Q 202).

BOX 14

The Factortame Case

The Merchant Shipping Act 1988 and Merchant Shipping (Registration of Fishing Vessels) Regulations 1988 had the effect of ensuring that fishing vessels could only be registered as British (and thereby obtain the right to fish against British quotas) if a series of conditions were met: the vessel had to be managed, and its operations directed from the UK; and its owner(s), as well as anyone chartering, managing or operating the vessel, had to be either a British citizen resident and domiciled in the UK, or a UK-registered company whose principal place of business was the UK, and whose shareholders and directors were 75 per cent British.

Factortame Limited was a UK-registered company whose fishing vessels were registered as British before the 1988 legislation. Its directors were all Spanish nationals resident and domiciled in Spain, and its vessels therefore stood to lose their UK registration. The company brought a court case against the UK Government arguing that the Act contravened EC law, specifically: the right not to be discriminated against on the ground of nationality, the right of individuals and companies to establish themselves in business anywhere in the EU, and the right to participate in the capital of companies based in another Member State.

On 25 July 1991, the European Court of Justice ruled that the nationality requirements in the Merchant Shipping Act 1988 were discriminatory, contrary to the freedom of establishment provided for in the EC Treaty, and therefore violated Community law. It recognised the UK Government's right to introduce conditions ensuring that a "real economic link" existed between the UK and a UK-registered vessel, but insisted that such conditions had to concern only the management and direction of operations of the vessel. As a result of the ruling, the UK Government reformulated the criteria for registration, framing them in terms of economic benefits to fisheries-dependent coastal communities in the UK.

Committee's Conclusions

195. To the extent that it allows fishermen to acquire the rights they need to run an efficient operation; prompts quota holders to take an interest in compliance; and promotes the right-sizing of fleet capacity through voluntary mechanisms, the trading of fishing rights is clearly beneficial. **For these reasons, we regard further moves towards rights-based management at a national level as highly desirable.**³⁸ We note that this is a Member State competence, and does not require modification of the provisions of the CFP.
196. In the UK, a de-facto trade in fishing rights appears to have emerged through a piecemeal process that has been tolerated but not endorsed by the UK Fisheries Administrations.³⁹ The result is that the opportunity to link fishing rights to responsibilities—as advocated by the Commission—has not arisen. **We believe that the in-year trade in fishing rights among UK quota holders should be recognised by the UK authorities. A control system based on penalty points, under which rights are temporarily suspended and eventually withdrawn in response to infringements (see Paragraph 108 above), could serve to couple rights and responsibilities in the manner envisaged by the Commission.**
197. Permanent transfers of quota entitlements across Member States as well as within them would not be compatible with the principle of relative stability. For that reason, the prevailing practice of in-year leasing of quota between Member States must continue. **Member States should nevertheless seek**

³⁸ Note that recreational (as opposed to commercial) fishers' interests should not be overlooked in the design of RBM schemes.

³⁹ In a consultation document published on 21 May 2008, the Scottish Executive proposes to establish "stewardship rights", based on Fixed Quota Allocation units, that would confer formal recognition of fishing rights without granting them in perpetuity. See "Safeguarding Our Fishing Rights: The Future of Quota Management and Licensing in Scotland—A Consultation Paper".

to develop more effective ways of managing such in-year swaps, so as to ensure that the discarding of unavoidable by-catch is minimised.

Governance

198. The Commission has announced that in agreement with the current French Presidency of the EU, it intends to launch a debate on the future of the Common Fisheries Policy. An informal discussion between Ministers will take place in September 2008, and the Commission's services have started work on a mid-term evaluation of the reformed CFP (Commission Supplementary Memorandum, Q 11).

Witnesses' Views

Decentralising the CFP

199. Among the most scathing diagnoses of the CFP we heard in the course of our inquiry was that offered by the Scottish Executive, which described it as a "discredited policy" that is "top-down, prescriptive, one-size-fits-all, whether it is Shetland or the Bay of Biscay" (Q 445). The Scottish Fishermen's Federation's also regarded the CFP as "badly over-centralised and top-down" (Q 120). The National Federation of Fishermen's Organisations likened it to an "Eastern European pre-the Wall set of institutions" (Q 171).
200. These same witnesses argued that the level of micro-management required of the Commission under the present framework was stretching its capacity to the limit. The NFFO noted that "DG Fisheries does a good job in extremely difficult circumstances, it is not a huge number of people and yet ... they have got responsibility for fisheries over 40 degrees of latitude and very different kinds of fisheries" (Q 172). The SFF took the view that over-centralisation "presents an almost impossible job for the Commission and it manifests itself in difficulties and problems for a number of fisheries" (Q 120). The Scottish Executive's assessment was that "you get bad decisions because the Commission does not have the capacity to get it right in each of these places and it does not have the capacity to focus on different seas" (Q 445). The result, it argued, was that "you often get no decision because it does not have the capacity to look at the different areas or to change decisions which were taken a long time ago."
201. We consequently heard repeated calls for greater decentralisation of fisheries management under the CFP. The Scottish Fishermen's Federation indicated that it would wish to see "a regionalisation of decision-making, with the strategic decisions being taken centrally", and the decision-making process moved "as far as that is sensibly possible, to the stakeholder level". While goal-setting should continue to take place centrally, incentivisation and penalisation should rest with a decision-maker who has a straight dialogue with the relevant fishery, argued Bertie Armstrong, the SFF's Chief Executive (Q 142). He cited effort control under the Cod Recovery Plan as an illustration of what the SFF had in mind (Q 120). The NFFO agreed that the "principle of moving in that direction is a sound one." Chief Executive Barrie Deas recognised that there would be "a lot of work to do on the practicalities", but pointed out that the "system that we have now" had been given enough time to work (Q 175).

202. Nor were calls for greater decentralisation limited to the fishing industry. The UK Government favours “a more regional approach to decision-making with less micro-management from Brussels and more discretion to manage at regional level within an overall EU framework” (DEFRA Memorandum, Para 52). The Joint Nature Conservation Committee took the view that politicians should only be looking at “the balance of how much risk ... you want to place your fish stock at, how much damage would you allow the environment to take.” Once you have got that broad view, it argued, “then the expression of that in technical and in management terms” should not require politicians’ involvement (Q 300).

Repatriating the CFP

203. The Scottish Executive was among the most radical proponents of change. In the short term, it was looking for “a common approach across Europe rather than a common policy”, a “strategic direction” or “series of outcomes which they trust nation states to get on and deliver because it is in our interest to have flourishing fishing” (Q 456). In the medium and longer term, however, it was seeking “something that gives the nations around the North Sea, the nations with an interest in the West of Scotland fishery, primacy in terms of deciding the right policy for that area.” Its verdict was that “the Common Fisheries Policy does not deliver that and that is why we want to withdraw and why we have made that the priority of our European policy” (Q 444).
204. The Scottish Seafood Processors’ Federation also advocated withdrawal from the CFP, judging that “Scotland deserves a chance to manage its own fishery after the destruction that the Common Fisheries Policy has put on Scotland” (Q 937). The Fishermen’s Association Ltd. favoured the “restoration of national control” over fisheries within the UK’s exclusive economic zone (Q 842). It pointed out that the CFP currently includes a derogation⁴⁰ from the principle of non-discrimination and equal access enshrined in EU treaties, and suggested that it would be “naïve to believe that other Member States are going to be content for all time to allow a discriminatory principle to override EU law of equal access to the common resource” (Fishermen’s Association Ltd. Memorandum, p 261).
205. Elspeth Attwooll MEP expressed reservations about these positions, pointing out that “it is difficult to imagine having relative stability and historic fishing rights and holding those dear and saying that that is consonant with re-nationalisation, because if you look at the pure geography of the United Kingdom and the waters which we effectively share with other people and where, if the line were drawn, our fishers would then be fishing in other people’s waters, I cannot see that as the way forward” (Q 675). Meanwhile the Commission has indicated that a modification of the EC Treaty would be required to allow one Member State not to be subject to Common Fisheries Policy rules, and that any such modification would require the unanimous agreement of all Member States.⁴¹

⁴⁰ The six- and twelve-mile coastal bands reserved to national vessels or those with historic access rights rest on this derogation—see Chapter 1 for further details.

⁴¹ Answer given by Commissioner Borg on behalf of the European Commission to a written parliamentary question by Catherine Stihler MEP, 16 February 2005, E- 3587/2004.

The Commission's Vision

206. The Commission appears to be ready to respond to calls for greater decentralisation of policy-making. It anticipated that if the Lisbon Treaty were to enter into force, and co-decision between the European Parliament and the Council of Ministers with respect to fisheries policy consequently became the norm, it would become “impossible in practice to continue with a setup where both strategic decisions and decisions regarding very detailed implementation issues are taken at the political level.” It therefore recognised that it “may be necessary to move towards a setup where more technical implementation decisions are left to lower levels, within principles established in co-decision.” It also accepted that its resources were stretched, indicating that there were “limits to how far the services of the Commission can continue to be involved in implementation on as detailed a level as has been the case in the past” (Commission Supplementary Memorandum, Q 11).
207. The Commission declared itself willing to contemplate a regional management model provided that it was “part of a setup” comprising “clear objectives and principles decided in co-decision” as well as “Community standards for implementation” determined by the Commission. Implementation decisions could then be delegated to Member States, who would “need to organise themselves on a regional level”, but outcomes would have to be “subject to control” against centrally-determined standards and objectives (Commission Memorandum, Q 11). Indeed the Commission appeared to have already made the first step in this direction by reorganizing its services into three regional directorates covering the Western Atlantic, the North Sea plus the Baltic and the Mediterranean and Black Sea (Q 582).
208. A number of benefits might flow from the establishment of a hierarchy of management decisions and a clear demarcation of responsibilities, the Commission suggested. A clearer division of labour could “help to keep the policy better on track in the long term because lower level decisions will be accountable to decisions about principles taken at a higher level”. A contrast was drawn with the present setup, “where the competence for strategy and tactics are at the same level”, and it is consequently “possible for the Council to decide on a management plan in one Council meeting, and then deviate from it in another Council meeting where the fishing opportunities for next year are decided” (Supplementary Memorandum, Q 11).
209. The Commission also noted that the proposed division of labour “already exists today as regards control and enforcement”, which is the responsibility of Member States, subject to Community control. A clearer hierarchy of decisions could even form the basis “for more effective control and enforcement”, because Community-level standards against which performance can be measured would be required (Supplementary Memorandum, Q 11).
210. Most importantly, however, the Commission saw an opportunity to bring about a “reversal of the burden of proof” through a results-based management system. It envisaged that under such a framework, rights and responsibilities would be coupled, thereby motivating the industry to support the objectives of the policy, and turning incentives around from the present setup “where it pays to be irresponsible” (Commission Memorandum, Q 11—see also Para 187 above).

Stakeholders' Reservations

211. However, we detected stiff resistance in key quarters to the prospect of incorporating a greater regional dimension in the CFP. The Spanish government for example conceded that “it is true that the specific circumstances of each region and coastal area to which the CFP is applied must be taken into consideration”, but insisted that this did “not mean that we will have to resort to a regional approach.” It took the view that “a regional management model could endanger the CFP’s foundations and principles” and argued that it would therefore be necessary to search for “general and universal implementation models, leaving the regional approach and management for specific cases”. The regional model should be the exception, “and not the general rule” (Spanish government Memorandum, p 11). It envisaged, for example, that a revised Regulation on technical conservation measures should be “of a horizontal nature”, and should “refer to all sea areas and fishing zones” (Memorandum, p 183).
212. The Swedish government was also uneasy at the prospect of decentralising gear definitions and restrictions. Fisheries Counsellor Robin Rosenkranz told us that if one considered how selectivity measures could be “used, misused, abused, et cetera”, it was likely that devolving decisions on these measures would “create even more problems”. For example, if two Member States allowed different types of gear but each claimed that their chosen gear was very selective, “then we need an independent scientist to compare these measurements and, speaking of the control, this poor control agent who will have to look at 20 or 30 different gear [types]” (Q 797). He consequently concluded that his government would say “yes to decentralising, but looking at it on a case-by-case basis, because if not we will have a lot of difficulties.” He too cited effort allocation under the revised Cod Recovery Plan as a positive example of decentralisation (Q 797).
213. Meanwhile the French government declared itself “favourable to subsidiarity⁴² where it is possible but we are cautious with the coherence and equity of the system” (Q 744). Fisheries Counsellor Sujiro Seam explained that France is “very much in favour of a regional approach or even a fisheries approach where it is relevant, meaning that we have to take account of the specificities of the regions or the fisheries.” It has argued, for example, that a common fishing mortality target is not equally relevant to all the areas involved in the revised Cod Recovery Plan. However, “on some issues of principle we consider that the common approach should be preserved at the Community level, for example, for controls.” France would not tolerate uneven enforcement, he suggested, and would therefore defend a regional approach “for some issues”, but “for some other elements we are very much in favour of consistency across the board” (Q 745).
214. The German government largely echoed these views, indicating that regionalisation “may be good for some examples but primarily we support the primacy of the CFP, of common competence for a fisheries policy” (Q 698). Fisheries Counsellor Jürgen Weis argued that “the problem is not defining nice objectives and telling the Member States or the RACs or

⁴² In the EU context, subsidiarity refers to the principle that, with the exception of areas falling under exclusive Community competence, the EU should not take action unless it is more effective than action taken at national, regional, or local level. The principle is intended to ensure that decisions are taken as closely as possible to the citizen.

whatever organisation to try and reach them.” Instead, the problem lay with “the implementation of the policy and that is where we have the problems, in implementing the controls”. “That is why we would not like to give too many responsibilities to the RACs or to the Member States or to regions too soon”, Mr Weis explained (Q 700).

215. On this point, the UK Government was in agreement with its fellow Member States, noting that “a *more* regional management model could and should be appropriate and feasible, but it is essential that this remains within an overall EU framework to ensure things like consistency of control and enforcement standards and consistency of monitoring and data gathering” (DEFRA Memorandum, Para 52, italics in original).
216. The UK fishing industry too expressed concern that introducing a greater degree of subsidiarity might exacerbate enforcement problems. Barrie Deas, Chief Executive of the NFFO, explained that the “idea of responsibility and a less prescriptive system is very attractive but the big question is who goes to jail when it all goes wrong” (Q 174). The Scottish Fishermen’s Federation warned that even in the more devolved management system it was calling for, “some action really must be available centrally, otherwise the system will fall apart” (Q 146).
217. But perhaps the most pessimistic note was struck by Robin Rosenkranz, Fisheries Counsellor for the Swedish government, who explained that in discussions with his colleagues on a personal basis, “there is quite high awareness of the difficulties with the CFP”, there is “quite high knowledge of what is wrong”. However, “when you raise it to ministerial level, things become a bit different” (Q 765). “I am not saying we have created a monster”, he warned, “but we have created something which is very difficult to change” (Q 768).

Committee’s Conclusions

218. The 2002 reform of the Common Fisheries Policy did not tackle what many stakeholders—and this Committee—regard as the over-centralised and stiflingly prescriptive legislative process through which fisheries are managed in the EU. We recognise that the clamour for a “level playing field” from Member States and stakeholders alike may over time have prompted policy-makers to micro-manage in ever greater detail. **It is clear, however, that this approach has failed and should now be abandoned.**
219. **We were encouraged to hear that the Commission is ready to contemplate a move towards results-based management incorporating a greater degree of subsidiarity.** We note, however, that competing visions are on offer as to what this may entail in practice: witnesses were divided, for example, on whether a uniform approach to technical conservation measures—some of the most prescriptive legislation drafted under the CFP—continues to be necessary.
220. **The division of labour we envisage is one where strategic decisions—on target mortality rates, for example, or maximum sustainable yield—continue to be taken centrally in Brussels, while decisions relating to delivery and implementation—determining how targets are to be reached—are delegated to regional forums. These should be organised to reflect the level at which outcomes can be measured, allowing local decision-makers to be held accountable by auditors at**

national and EU level. Based on these principles, technical conservation measures should not require uniform imposition.

221. **Central monitoring of outcomes, backed by sanctions for poor performance, will be essential to the proper functioning of a more decentralised management system.** We note the risk that a regional management model such as we have described might exacerbate enforcement problems. **However, we believe that a double-tiered system of penalties, based on the suspension or withdrawal of fishing rights at individual level, and the imposition of fines on Member States who fail to deliver centrally-agreed outcomes, could hardly be less effective than the present, discredited control and enforcement regime.**
222. During the course of our inquiry, we heard forceful arguments in favour of withdrawing from the CFP. **We do not regard this as a credible policy option.** Unilateral withdrawal from the CFP is incompatible with membership of the EU. As indicated by the Commission, a negotiated withdrawal from the CFP would require unanimous agreement from all Member States to amend the EC Treaty, and subsequent ratification by all Member States of the amended Treaty. **In our view, this likelihood is not within the realm of practical policy. We consequently consider that withdrawal from the CFP is not only a false panacea, but a dangerous distraction from the more important task of reforming the policy.**

From 2002 to 2012: Reforming the CFP

223. **The Common Fisheries Policy clearly remains in need of major reform, having failed to deliver sustainable fisheries—whether from a biological or an economic point of view.** The Commission itself, backed by the Court of Auditors, recognises that the 2002 reform of the CFP has not succeeded in addressing longstanding deficiencies such as persistent overcapacity in the fishing fleets of the Member States, poor compliance, and uneven enforcement. Over-centralization and a top-down management approach have served to alienate stakeholders and thus further undermined the policy.
224. On the most critical indicator—the state of fish stocks in Community waters, on which the livelihoods of the EU fishing industry ultimately depend—the 2002 reform of the Common Fisheries Policy has failed to turn the tide. Our analysis suggests that Member States’ reluctance to trim national fishing fleets to a size commensurate with the fishing opportunities available—or even to allow market forces to do so—remains the root cause of failure in this respect. Fleet over-capacity prompts fisheries ministers to resist the conservation measures prescribed by scientific advice, and creates powerful economic incentives for illegal activity on the part of the fishing industry. Both serve to perpetuate a vicious cycle in which dwindling fish stocks are at risk of being in ever greater disproportion to the size of the fleet.
225. **Looking forward, we believe that urgent action is necessary to break out of this spiral. We urge Member States to resist calls for subsidies to offset fishing vessels’ rising operating costs.** The increase in the cost of diesel fuel is not a temporary phenomenon, indicating that state aid would only offer temporary relief to the industry, and that taxpayer-funded grants would consequently serve no ultimate purpose. Public aid should instead be channelled into attractive decommissioning schemes and into the economic

diversification of fisheries-dependent coastal communities, so as to facilitate voluntary exits from national fleets, and promote the development of alternative employment opportunities. In the absence of such action, we hold out little hope that a new control and enforcement regime will deliver radical improvements.

226. **We believe that there is a very strong case for moving towards a much greater degree of decentralised fisheries management, whereby strategic objectives set centrally are delivered through methods devised at a regional level.** We envisage that this would promote both better management, adapted to regional circumstances, and better compliance, through the ex-ante influence of local stakeholders on the regulatory instruments selected. **We regard the establishment of the Regional Advisory Councils as a promising step in this direction, and as the most welcome development to arise out of the 2002 reform of the Common Fisheries Policy.**
227. We believe that the core objective of the Common Fisheries Policy should be to bring fishing capacity and fishing opportunities into balance, for which fisheries managers will need a toolkit of measures at their disposal: TACs, quotas, effort controls, and technical conservation measures, including closures. In our view, progress in achieving this balance is dependent upon a fundamental change of emphasis in management style: rather than attempting to micro-manage the implementation of the CFP's provisions from the centre, the Council and the Commission should learn to work more closely with regional management bodies, who should take the lead in devising strategies for delivering the desired outcomes. **In our view, this should be the agenda driving the next reform of Common Fisheries Policy, due in 2012.**

CHAPTER 4: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Progress of the Common Fisheries Policy since 2002

Recovery and Management Plans

228. We support the principle of multi-annual management of fisheries, and believe that—if properly designed—recovery and management plans should facilitate both the industry and the regulators' activities. We recognise that capacity constraints and the need for consultation have held back the speed with which recovery and management plans can be adopted, but believe that the current glacial pace of progress is unacceptable and must accelerate. We therefore urge the Member States and the European Commission to attach greater priority to the adoption of recovery and management plans, and deploy their resources accordingly.
229. We fully concur with those witnesses who emphasised the need to co-ordinate across plans and management measures that affect the same fishery if recovery and management plans are to prove workable and deliver results. This may require adaptation in the working practices of the Commission and the Council, and benefit from the input of the Regional Advisory Councils. With appropriate resourcing, we believe that plans affecting the same fisheries could and should be developed in parallel. This approach need not, therefore, draw out the process of adopting recovery and management plans even further.
230. We concur with the UK Government on the need for impact assessments to be carried out before management and recovery plans are adopted. These should be based on the best available data. The practical implementation of a plan should in our view receive detailed—and insofar as possible, objective—attention before the proposal reaches the Council. If amendments are adopted in Council, impact assessments should be updated accordingly. The aim would be to make carefully considered adjustments that facilitate compliance without compromising conservation goals.
231. While we recognise that some degree of trial-and-error may have been inevitable in drawing up the first few recovery and management plans, we consider that yearly revisions to multi-annual plans undermine their very *raison d'être*. Automatic adjustments to plans based on fixed harvesting rules should be used to deliver an element of responsiveness without sacrificing predictability—providing that Member States can agree to suspend rules only in genuinely exceptional circumstances.

Structural Policy

232. The 2002 reform of the CFP—which handed responsibility for adapting fleet size to fishing opportunities back to Member States—has clearly failed to stimulate the fleet reductions that permanent under-utilisation of capacity and low levels of profitability indicate are required. We note with dismay that the Commission still detects scant political will among Member States to align the size of their fleets to the available resources.
233. It may thus be left to the market to precipitate exits from national fleets—notably through fuel prices. It is imperative that Member States should resist

the temptation to offer subsidies that keep uneconomical businesses afloat. We are concerned that state aid rules are being misused in this regard and oppose any relaxation—whether temporary or permanent—of the *de minimis* regime.

234. Public aid should instead be channelled into attractive decommissioning schemes designed to ease the transition. We urge Member States to heed the Commission's call for a greater emphasis to be placed on fleet capacity reductions in EFF Operational Programmes—this includes seizing the opportunity to re-programme allocations across axes. In our view, EFF funds should primarily be targeted towards decommissioning and the diversification of employment opportunities in coastal regions. We see no role for taxpayer-funded modernisation of the fleet, even where it results in greater energy efficiency, as the economic advantages (reduced operating costs) of modernisation programmes should be sufficient to stimulate private investment in a profitable industry. To the extent that it would enshrine these principles, we would welcome a WTO agreement on fisheries subsidies along the lines proposed in November 2007.
235. We support the Commission's efforts to develop consensual methods of measuring overcapacity in the hope that this will prompt greater peer pressure, but are concerned that this endeavour should not be seized on as an excuse to postpone action. Member States do not need the Commission to tell them which sectors of their fleets are characterised by under-utilised capacity or poor profitability.
236. While we recognise that more effective control and enforcement mechanisms could bring fleet size into balance through the operation of market forces, it is equally clear that overcapacity exacerbates enforcement problems. For that reason, we believe that the two must be tackled in parallel, not in sequence.

Control and Enforcement

237. We refer readers to the European Court of Auditors' report for a detailed catalogue of the many weaknesses in the control and enforcement system underpinning the CFP (see Box 9 above). We note that the Community and its Member States' response to persistent failure in this respect has to introduce layer upon layer of regulation intended to counter fishermen's adverse incentives, and to put in place penalties that Member States do not have the courage to impose.
238. We believe that a more fruitful control regime should be based on measures that reward good behaviour, and thus work with, rather than counter to fishermen's incentives. We see particular promise in initiatives such as the Scottish Conservation Credits Scheme and the NFFO's Cod Avoidance Plans. An alternative is the Swedish government's attempt to adjust quotas by the estimated level of unreported landings, thus creating incentives for fishermen to control each other to avoid collective punishment.
239. Ultimately, however, we concur with those witnesses who emphasised that a culture of compliance can only develop in a fleet that is proportionate to the size of the resource on which it depends. Economic and conservation objectives are more closely aligned in a profitable fleet, whose members develop a vested interest in the enforcement of the rules. Furthermore, it is only when illegal activity has become the exception, rather than the norm, that risk-based, targeted enforcement can start to deliver results.

240. We note and support Member States' reluctance to harmonise criminal penalties. However, we believe that the co-ordination of administrative penalties is necessary. A penalty-points system—whereby infringements are penalised with points, leading to the temporary, and eventually permanent, suspension of fishing rights—could in our view provide a promising basis for co-ordination, delivering the same effect across vessels and fleets.
241. We consider that the CFCA's activities have the potential to build trust among Member States in each others' enforcement activities, and to promote the spread of best practice. We therefore support the extension of the CFCA's remit to include land-based inspections, and recommend that the Agency be allowed to co-ordinate joint deployment plans for all types of stocks, not just those subject to recovery plans. We also see a role for the CFCA in monitoring and reporting on Member States' enforcement activities, with the aim of promoting transparency, and with it, peer pressure.
242. We received overwhelming evidence from our UK witnesses that the compulsory registration of buyers and sellers of first sale fish had all but eliminated demand for black fish. We therefore urge all Member States to ensure that they have transposed the relevant EU legislation and are enforcing it rigorously. We see considerable potential in harnessing the power of the market—including retailers and end-consumers as well as first sale buyers—to bring about change.

Regional Advisory Councils

243. The evidence we received suggests that the establishment of the Regional Advisory Councils has been the most positive development to flow from the 2002 reform of the Common Fisheries Policy. We commend all the parties involved—including the Commission, Member States and third parties that have lent RACs their support—for delivering notable improvements in stakeholders' engagement in the policy-making process, thus beginning to address one of the traditional failings of the CFP. In our view, the development of the RACs demonstrates that it is possible to build a credible regional dimension into fisheries management under the CFP.
244. We note that the implications of success have yet to register fully, particularly as regards resources. It seems clear to us that if RACs are to fulfil their potential as advisory bodies, they cannot be forced to rely on patronage to carry out their activities. They should instead be equipped with a budget that allows them to function independently, for example by commissioning their own research. A review of the budget made available to RACs should factor in the pace at which their activities are developing, and examine whether existing budgets could be managed more flexibly. For their part, Regional Advisory Councils should take into account the manpower shortages affecting the representation of non-fishing and recreational fishing interests when determining their internal organisation and their meeting schedules.
245. In the longer term, we favour the development of a policy process in which consensual advice from a RAC is normally heeded by the Commission and the Council. We recognise that the transfer of management responsibilities to Regional Advisory Councils might meet with resistance from certain Member States, and distance RACs from their grassroots members. We therefore take the view that a formal transfer of powers may not be necessary to achieve the desired effect. However, RACs must be allowed to earn authoritative influence if stakeholders' engagement is to be secured and maintained.

Ongoing Challenges

Management Tools

246. If the principle of relative stability is to underpin the CFP—as we believe it should—effort restrictions can only be used to complement TACs and quotas. However, we recognise that restrictions on fishing effort, rather than catches, appear to offer a more readily enforceable means of reducing fishing mortality. For this reason, we share the Commission’s assessment that this tool has significant untapped potential.
247. We commend the decision to devolve effort allocation to Member States in the revised cod recovery plan, and strongly support the Commission’s proposal to extend this approach to all other effort controls for 2009. In our view, this represents a promising route through which to incorporate a greater element of subsidiarity into the CFP, creating a multi-tiered management system.
248. Allocating effort at national or sub-national level may in turn create opportunities to tie other conservation tools—such as closures and selectivity measures—into the effort allocation process, thereby aligning fishermen’s incentives with conservation goals. Indeed, by rewarding fishermen for complying with technical conservation measures that would otherwise place them at a competitive disadvantage, public authorities can help the industry to tackle a collective action problem. We commend the Scottish Executive for piloting a real-time closure scheme that incorporates all these considerations, and trust that its impact will be evaluated with a view to assessing whether more widespread use should be recommended.
249. We believe that long-term management plans offer scope to deliver improvements in the way quotas have been working. We envisage that multi-annual plans could incorporate multi-annual TACs for stocks whose biomass does not vary significantly from year to year. We have already indicated that the alignment of TACs for species of fish that are caught together is necessary. An element of risk management should also be built into management plans, providing for pre-planned, automatic adjustments in catch restrictions triggered by predictable emergencies.

Discards

250. Estimated discard levels of up to 60 per cent speak for themselves: discards pose a pressing challenge for fisheries managers. We urge EU Member States to work towards eliminating discards, and support the incremental approach that the Commission has mapped out, based on maximum allowed by-catch limits and fishery-specific strategies for achieving them. We again see scope for a division of labour whereby targets are set centrally and stakeholders in each fishery are left to devise their own methods of reaching them, subject to vetting and monitoring from the centre.
251. We support the principle of a discard ban and therefore firmly endorse the Commission’s aim of progressively reducing maximum allowed by-catch limits to zero. However, we recommend that if by-catches are to be confiscated in order to protect the principle of relative stability, financial compensation should be made available to cover stowing and landing costs. Without such compensation, fishermen’s incentives would in our view be

misaligned, posing a serious challenge for those charged with enforcing a discard ban.

252. The Norwegian experience leads us to conclude that flanking measures designed to prevent situations in which fishermen are tempted to discard would be critical to the successful implementation and enforcement of a discard ban. This could include closures, as in Norway, but should also encompass mechanisms allowing fishermen to buy additional quota to cover their catches—an issue that is addressed in more detail in the next section. Where this is not possible (for example where a low TAC leads to shortages of a particular quota), the feasibility of introducing convertible quota schemes—whereby fishermen are allowed to convert quota for one species and use it to land another—merits consideration. We recognise that such a system would put pressure on relative stability, but anticipate that a carefully calibrated exchange rate could contain the volume of quota converted.

Rights-based Management

253. To the extent that it allows fishermen to acquire the rights they need to run an efficient operation; prompts quota holders to take an interest in compliance; and promotes the right-sizing of fleet capacity through voluntary mechanisms, the trading of fishing rights is clearly beneficial. For these reasons, we regard further moves towards rights-based management at a national level as highly desirable. We note that this is a Member State competence, and does not require modification of the provisions of the CFP.
254. In the UK, a de-facto trade in fishing rights appears to have emerged through a piecemeal process that has been tolerated but not endorsed by the UK Fisheries Administrations. The result is that the opportunity to link fishing rights to responsibilities—as advocated by the Commission—has not arisen. We believe that the in-year trade in fishing rights among UK quota holders should be recognised by the UK authorities. A control system based on penalty points, under which rights are temporarily suspended and eventually withdrawn in response to infringements (see Paragraph 108 above), could serve to couple rights and responsibilities in the manner envisaged by the Commission.
255. Permanent transfers of quota entitlements across Member States as well as within them would not be compatible with the principle of relative stability. For that reason, the prevailing practice of in-year leasing of quota between Member States must continue. Member States should nevertheless seek to develop more effective ways of managing such in-year swaps, so as to ensure that the discarding of unavoidable by-catch is minimised.

Governance

256. The 2002 reform of the Common Fisheries Policy did not tackle what many stakeholders—and this Committee—regard as the over-centralised and stiflingly prescriptive legislative process through which fisheries are managed in the EU. We recognise that the clamour for a “level playing field” from Member States and stakeholders alike may over time have prompted policy-makers to micro-manage in ever greater detail. It is clear, however, that this approach has failed and should now be abandoned.
257. We were encouraged to hear that the Commission is ready to contemplate a move towards results-based management incorporating a greater degree of

subsidiarity. We note, however, that competing visions are on offer as to what this may entail in practice: witnesses were divided, for example, on whether a uniform approach to technical conservation measures—some of the most prescriptive legislation drafted under the CFP—continues to be necessary.

258. The division of labour we envisage is one where strategic decisions—on target mortality rates, for example, or maximum sustainable yield—continue to be taken centrally in Brussels, while decisions relating to delivery and implementation—determining how targets are to be reached—are delegated to regional forums. These should be organised to reflect the level at which outcomes can be measured, allowing local decision-makers to be held accountable by auditors at national and EU level. Based on these principles, technical conservation measures should not require uniform imposition.
259. Central monitoring of outcomes, backed by sanctions for poor performance, will be essential to the proper functioning of a more decentralised management system. We note the risk that a regional management model such as we have described might exacerbate enforcement problems. However, we believe that a double-tiered system of penalties, based on the suspension or withdrawal of fishing rights at individual level, and the imposition of fines on Member States who fail to deliver centrally-agreed outcomes, could hardly be less effective than the present, discredited control and enforcement regime.
260. During the course of our inquiry, we heard forceful arguments in favour of withdrawing from the CFP. We do not regard this as a credible policy option. Unilateral withdrawal from the CFP is incompatible with membership of the EU. As indicated by the Commission, a negotiated withdrawal from the CFP would require unanimous agreement from all Member States to amend the EC Treaty, and subsequent ratification by all Member States of the amended Treaty. In our view, this likelihood is not within the realm of practical policy. We consequently consider that withdrawal from the CFP is not only a false panacea, but a dangerous distraction from the more important task of reforming the policy.

From 2002 to 2012: Reforming the CFP

261. The Common Fisheries Policy clearly remains in need of major reform, having failed to deliver sustainable fisheries—whether from a biological or an economic point of view. The Commission itself, backed by the Court of Auditors, recognises that the 2002 reform of the CFP has not succeeded in addressing longstanding deficiencies such as persistent overcapacity in the fishing fleets of the Member States, poor compliance, and uneven enforcement. Over-centralization and a top-down management approach have served to alienate stakeholders and thus further undermined the policy.
262. On the most critical indicator—the state of fish stocks in Community waters, on which the livelihoods of the EU fishing industry ultimately depend—the 2002 reform of the Common Fisheries Policy has failed to turn the tide. Our analysis suggests that Member States' reluctance to trim national fishing fleets to a size commensurate with the fishing opportunities available—or even to allow market forces to do so—remains the root cause of failure in this respect. Fleet over-capacity prompts fisheries ministers to resist the conservation measures prescribed by scientific advice, and creates powerful economic incentives for illegal activity on the part of the fishing industry.

Both serve to perpetuate a vicious cycle in which dwindling fish stocks are at risk of being in ever greater disproportion to the size of the fleet.

263. Looking forward, we believe that urgent action is necessary to break out of this spiral. We urge Member States to resist calls for subsidies to offset fishing vessels' rising operating costs. The increase in the cost of diesel fuel is not a temporary phenomenon, indicating that state aid would only offer temporary relief to the industry, and that taxpayer-funded grants would consequently serve no ultimate purpose. Public aid should instead be channelled into attractive decommissioning schemes and into the economic diversification of fisheries-dependent coastal communities, so as to facilitate voluntary exits from national fleets, and promote the development of alternative employment opportunities. In the absence of such action, we hold out little hope that a new control and enforcement regime will deliver radical improvements.
264. We believe that there is a very strong case for moving towards a much greater degree of decentralised fisheries management, whereby strategic objectives set centrally are delivered through methods devised at a regional level. We envisage that this would promote both better management, adapted to regional circumstances, and better compliance, through the ex-ante influence of local stakeholders on the regulatory instruments selected. We regard the establishment of the Regional Advisory Councils as a promising step in this direction, and as the most welcome development to arise out of the 2002 reform of the Common Fisheries Policy.
265. We believe that the core objective of the Common Fisheries Policy should be to bring fishing capacity and fishing opportunities into balance, for which fisheries managers will need a toolkit of measures at their disposal: TACs, quotas, effort controls, and technical conservation measures, including closures. In our view, progress in achieving this balance is dependent upon a fundamental change of emphasis in management style: rather than attempting to micro-manage the implementation of the CFP's provisions from the centre, the Council and the Commission should learn to work more closely with regional management bodies, who should take the lead in devising strategies for delivering the desired outcomes. In our view, this should be the agenda driving the next reform of Common Fisheries Policy, due in 2012.

APPENDIX 1: SUB-COMMITTEE D (ENVIRONMENT AND AGRICULTURE)

The members of the Sub-Committee that conducted this inquiry were:-

Earl of Arran
Lord Brooke of Alverthorpe
Viscount Brookeborough
Lord Cameron of Dillington
Earl of Dundee
Lord Greaves (up to May 2008)
Baroness Jones of Whitchurch
Lord Palmer
Lord Plumb
Lord Sewel (Chairman)
Baroness Sharp of Guildford
Viscount Ullswater
Lord Wallace of Tankerness

Declarations of Interest

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

- Sir Alister Hardy Foundation for Ocean Science
- * Mr. Hugo Anderson, Chair of the North Sea Regional Advisory Council
- * Ms. Elspeth Attwooll MEP
- * Miss Ann Bell, Executive Secretary, North Sea Regional Advisory Council
- John and Rosalind Brooks Angling School
- * Community Fisheries Control Agency
- * Department for Environment, Food and Rural Affairs
- * Mr. Mark Dougal, Chief Executive, North East Scotland Fishermen's Organisation, and board member of Seafood Scotland
- * Dr. Clare Eno, Senior Fisheries Adviser, Countryside Council for Wales
- * European Commission
- Fisheries Research Services
- * The Fishermen's Association Ltd
- * Professor Colin Galbraith, Director of Policy and Advice, Scottish Natural Heritage
- Greenpeace UK
- * Mr. Aaron Hatcher, Senior Research Fellow, Centre for Economics and Management of Aquatic Resources (CEMARE)
- * Dr. Joe Horwood, CEFAS Scientific Adviser and DEFRA Chief Fisheries Science Adviser
- * Mr. Ian Hudghton MEP
- Institute for European Environmental Policy
- * Mr. Sam Lambourn, Chairman, North Western Waters Regional Advisory Council
- * Mr. Cliff Morrison, Chair, Food and Drink Federation Seafood Group and Technical Adviser to Foodvest
- * Mr. Malcolm Morrison, Fishing Co-ordinator, Economic Development, Aberdeenshire Council
- * National Federation of Fishermen's Organisations
- National Federation of Sea Anglers
- New Zealand government
- New Zealand Seafood Industry Council
- * Norwegian government
- Oceana
- * Mr. Cephas Ralph, Director of Operations, Scottish Fisheries Protection Agency

- * Mr. Robin Rosenkranz, Fisheries Counsellor, Permanent Representation of Sweden to the EU
- * Royal Society for the Protection of Birds
- * Mr. Marcin Rucinski, Fisheries Counsellor, Permanent Representation of Poland to the EU
- * Sainsbury's plc
- * Scottish Executive
- * Scottish Fishermen's Federation
- * Scottish Seafood Processors Federation
- * Mr. Sujiro Seam, Fisheries Counsellor, Permanent Representation of France to the EU
- * SHOAL (Shetlands Ocean Alliance)
- * Spanish government
- * Spanish Institute of Oceanography
- * Mr. Struan Stevenson MEP
- * Ms. Catherine Stihler MEP
- * Mr. Mark Tasker, Head of Marine Advice, Joint Nature Conservation Committee
- * Dr. Tom Tew, Chief Scientist, Natural England
- * Mr. David Thomson
- * Mr. Jürgen Weis, Fisheries Counsellor, Permanent Representation of Germany to the EU
- * Mr. Chris White, Buchan Area Manager, Aberdeenshire Council

APPENDIX 3: CALL FOR EVIDENCE

Introduction

The House of Lords European Union Committee will be conducting an Inquiry, via its Environment and Agriculture Sub-Committee (Sub-Committee D), that aims to review the progress of the Common Fisheries Policy since it was reformed in 2002.

The Inquiry has been motivated by a recognition that the objectives of the 2002 CFP Reform—i.e. “to provide for sustainable exploitation of living aquatic resources and of aquaculture in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner”—have not been fully achieved. There is consequently a need to review that reform within the context of a number of initiatives at the EU and domestic levels.

Among those initiatives are the 2007 Communications from the Commission relating to discards, bycatch and rights-based management⁴³, the European Commission proposal for a Regulation on IUU (Illegal, Undeclared and Unregulated) fishing⁴⁴, the forthcoming European Commission proposal to modernise and recast the Control Regulation, broader discussions as regards a review of the CFP and decisions on marine legislation at the domestic and EU level.

The purpose of the Committee’s inquiry is to assess the application of the 2002 reform, within the context outlined above, looking at where the reform has been demonstrated to be successful and identifying weaknesses.

In light of the evidence taken, the Committee’s intention is that such an assessment and any recommendations emerging from it should feed into EU and domestic debates on future reform of the CFP and on relevant domestic legislation.

The issues

Against this background, the Committee hereby invites you to submit written evidence to the Inquiry. The Committee would find it helpful if, in addition to any general issues you may wish to raise, you would focus on a number of specific issues. It is recognised that those submitting evidence will not necessarily have an interest in all the questions and may therefore wish to be selective. The issues are:

Conservation/Management

1. Chapter II of Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁴⁵ introduced new methods of ensuring conservation and sustainability, including recovery plans, management plans and emergency measures. To what extent have these been effective?

⁴³ Communication on A policy to reduce unwanted by-catches and eliminate discards in European fisheries, COM (2007) 136, 28.03.2007 and Communication on rights-based management tools in fisheries, COM (2007) 73, 26.02.2007

⁴⁴ COM (2007) 602, 17.10.2007

⁴⁵ Council Regulation (EC) 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358 31.12.2002 p. 59–80)

2. A wide range of management tools are available to fisheries managers. What are your views on the following tools:

- Total Allowable Catches
- Effort limitation, including “days at sea”, marine conservation areas and real-time closures
- Rights-Based Management tools
- Technical Conservation Measures

3. To what extent have current management tools increased the levels of discards and bycatch? What is your view on how these problems can best be tackled?

4. Do you consider that fisheries management policies may need to adapt to climate change? If so, how might this be achieved?

Control and Enforcement

5. Chapter V of Regulation 2371/2002 lays down the responsibilities of the Member States and the Commission as regards the control and enforcement of the rules of the Common Fisheries Policy. The recent Court of Auditors Report on the control, inspection and sanctions systems relating to the rules on conservation of Community fisheries resources was very sceptical of the systems currently in place. What is your view of the efficacy of the systems in place? To what extent has the Community Fisheries Control Agency already assisted in improving matters?

6. The European Commission has regularly highlighted how serious infringements of the CFP are penalised differently across the Community. This was a matter that was also raised by the Court of Auditors⁴⁶ and sanctions were included in the recent Commission Proposal in IUU fishing. What is your view on the issue?

Structural Policy

7. Chapter III of Regulation 2371/2002 obliged Member States to put in place measures to adjust the capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and their fishing opportunities. To what extent has this been successful?

8. The new fisheries structural fund, the European Fisheries Fund (EFF), has now come into force. What has been your experience thus far with the new instrument?

9. What are your views on the possible impact on EU fisheries structural policy of WTO-level discussions as regards subsidies in the fishing sector?

Governance

10. As a result of Regulation 2371/2002, Regional Advisory Councils (RACs) were established to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones. What is your assessment of the success thus far of the RACs? What is your view on their future evolution?

11. How do you consider EU fisheries should ideally be governed? How appropriate and feasible do you consider a regional management model to be?

⁴⁶ European Court of Auditors, Special Report 7/2007 on the control inspection and sanctions systems relating to the rules on conservation of Community fisheries resources.

APPENDIX 4: GLOSSARY OF MAIN FISHERIES TERMS USED IN THE REPORT

Aquaculture	Fish farming, i.e. controlled breeding of fish or shellfish (typically in fresh water or sheltered coastal marine environments).
Black fish	Fish landed illegally.
By-catch	Any organism that is caught in addition to the target fish. Some by-catches are marketable although much is discarded.
Days at sea	See Fishing effort.
Demersal	Fish living near the bottom of the sea (e.g. cod, haddock, halibut, ling and turbot) (<i>cf</i> Pelagic).
Discards	Fish and other organisms disposed of at sea, usually dead.
Effort controls	See Fishing effort.
Fishing effort	The amount of fishing exerted by a fishing vessel. A reduction in fishing effort can be achieved by limiting the time spent on fishing (days at sea).
Fishing mortality rate	Mortality caused by fishing, in addition to natural mortality.
ITQ	Individual Transferable Quota.
JNCC	Joint Nature Conservation Committee
Nephrops	<i>Nephrops norvegicus</i> : Norwegian lobster, Dublin Bay prawn or langoustine.
Pelagic	Fish and other organisms living in the upper layers of the sea (e.g. tuna, herring, mackerel and pilchard) (<i>cf</i> Demersal).
RACs	Regional Advisory Councils.
Relative stability	The principle according to which the total volume of allowable catch is shared among Member States in fixed proportions, thus assuring each Member State relative stability of fishing activities.
TAC	Total Allowable Catch. Catch restrictions intended to curb the total amount of fish of a particular species that can be caught.
White fish	Fish with white flesh (mostly demersal) as opposed to oily fish such as herring and mackerel (mostly pelagic).

APPENDIX 5: RECENT REPORTS

Recent Reports from the Select Committee

Session 2007–08

Priorities of the European Union: evidence from the Minister for Europe and the Ambassador of Slovenia (11th Report, Session 2007–08, HL Paper 73)

The Treaty of Lisbon: an impact assessment (10th Report, Session 2007–08, HL Paper 62)

Recent Reports prepared by Sub-Committee D (Environment and Agriculture)

Session 2007–2008

The Future of the Common Agricultural Policy (7th Report Session 2007–2008, HL Paper 54)

Session 2006–2007

Water Framework Directive: Making It Work (27th Report Session 2006–2007, HL Paper 136)

European Wine: A Better Deal for All (30th Report Session 2006–2007, HL Paper 144)

European Wine: A Better Deal for All Final report with evidence (39th Report, Session 2006–2007, HL Paper 184)