International cooperation for sustainable fisheries in the Baltic Sea

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Abstract

The complexity of the political and ecological situation in the Baltic Sea area calls for strong international cooperation in order to achieve economically and socially sustainable, environmentally safe fisheries. Management needs to be flexible to allow for direct reactions and adjustments in case of any natural or anthropogenic adverse impacts. At the same time, a minimum of income stability from the transboundary, hence internationally shared, fish resources in the Baltic Sea should be guaranteed to local fishing communities.

The article under consideration analyses the past, present and future situation of fisheries management in the Baltic Sea. Emphasis is put on the functioning of the European Community's Common Fisheries Policy (CFP). In order to achieve sustainable fisheries, the conservation of stocks is of prime importance. The new CFP as of December 2002 provides for this objective by introducing long-term management and recovery plans, emphasising the necessity of a healthy marine ecosystem, and allowing for flexible management tools. It is therefore concluded that Baltic Sea fisheries management is likely to benefit, if the opportunities for improvement, which the new CFP regulation has enshrined, are realised.

Zusammenfassung

Aufgrund der komplexen politischen und ökologischen Situation in der Ostseeregion ist internationale Zusammenarbeit erforderlich, um die Fischereiwirtschaft in der Ostsee ökonomisch, sozial und ökologisch nachhaltig zu gestalten. Fische kennen keine nationalen Grenzen; daher ist die Bewirtschaftung dieser grenzüberschreitenden Ressource nur international zu regeln.

Anforderungen an das Fischereimanagement sind einerseits Flexibilität, andererseits auch ein gewisses Maß an Stabilität bezüglich des Fischereiaufwandes, um den ortsansässigen Fischern ein unteres Einkommen zum Überleben zu garantieren. Flexibles Management ist für den Fall von unvorhergesehenen (natürlichen oder anthropogenen) adversen Einflüssen Voraussetzung zur schnellen und direkten Implementierung kurzfristiger, restriktiver Maßnahmen zum Bestandsschutz.

Der vorliegende Artikel analysiert die vergangene, gegenwärtige und zukünftige Situation der Fischerei und des Fischereimanagements in der Ostsee. Besondere Bedeutung wird der neuen Gemeinsamen Europäischen Fischereipolitik (GFP) von Dezember 2002 eingeräumt, deren Ziele, Funktionen, Aufgaben und Strategien vorgestellt werden. Das Fischereimanagement in der Ostsee wird in Zukunft profitieren können, wenn die von der neuen GFP angebotenen Möglichkeiten und Maßnahmen von der Europäischen Kommission und von den EU-Mitgliedsstaaten realisiert werden.

1 Introduction

The Baltic Sea is surrounded by eight Member States of the European Community (EC) – namely Denmark, Germany, Poland, Lithuania, Latvia, Estonia, Finland, and Sweden – and the Russian Federation (Figure 1). The entire Baltic Sea is divided in the Exclusive Economic Zones (EEZ) and the territorial seas of the surrounding countries. Due to the small size of the Baltic Sea, no EEZ reaches its maximal length of 200 nautical miles (nm). Hence, there is virtually no high seas in the Baltic Sea area (irrespective of one small area around Poland). Since the accession of the Baltic countries to the EC on 1 May 2004, the EEZs of the EC member states are referred to as "European waters"; there is thus only one European Fishing Zone in the Baltic Sea, apart from a very small part (< 10%), which forms the Russian Exclusive Economic Zone. Within the 12 nm zone, the EC has reassigned the responsibility for coastal resources management to the individual coastal states[1].

Figure 1: Geopolitical map of the Baltic Sea.

As the Baltic Sea is a semi-enclosed ocean basin, water exchange is restricted. The Baltic Sea's marine fauna and flora is specially adapted to survive in these particular hydrographic conditions, which are characterised by moderately saline to brackish water in the South-Western and Southern parts and by very low-saline to freshwater in the North-Eastern and Northern parts. The hydrographic conditions are influenced by atmospheric conditions and

[1] "Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy", (2002) OJ L 358.

impact on the entire food-web, fisheries resources included[2]. In certain cases these environmental impacts on fish population dynamics can be more important than the impact caused by the fishing activity.

Due to its estuarine character, species diversity in the Baltic Sea is limited compared to other marine areas[3]. Only three marine and one anadromous fish species are important for commercial exploitation, namely Baltic cod, sprat, herring, and salmon[4]. The other fish species are of minor importance to the commercial fishery. Comparable to the status of many commercially exploited fish stocks worldwide[5], Baltic Sea fish stock assessments show a large decline of the cod biomass since the mid-1980s[6] (Figure 2). Recent estimates of spawning biomass being less than B_{lim} – the precautionary biomass level, below which recruitment is impaired – imply a reduced reproductive capacity of the stock[7]. Hence, the stock is classified "as being outside safe biological limits", posing concerns in the management advice for the fisheries in the Baltic Sea[8].

The complexity of the political and environmental/ecological situation calls for strong international cooperation in order to achieve economically and socially sustainable, environmentally safe and responsible fisheries. Management needs to be flexible to allow for direct reactions and adjustments in case of any natural or anthropogenic adverse impacts. At the same time, a minimum of income stability from the transboundary, hence internationally shared, fish resources in the Baltic Sea should be guaranteed to local fishing communities.

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2 Cf. H.-H. Hinrichsen, M. St.John, *et al.*, "Resolving the impact of short-term variations in physical processes impacting on the spawning environment of eastern Baltic cod: application of a 3-D hydrodynamic model", (2002) 32 *Journal of Marine Systems*, 281-294; Lehmann, W. Krauss, *et al.*, "Effects of remote and local atmospheric forcing on circulation and upwelling in the Baltic Sea", (2002) 54 A *Tellus*, 299-316.

3 HELCOM, "Fish", (visited 8 April 2005) *http://www.helcom.fi/environment2/biodiv/en_GB/fish/*

4 *Ibid*.

5 Cf. R.C. Buckworth, "World fisheries are in crisis? We must respond!" in: T. J. Pitcher, P. J. B. Hart and D. Pauly, *Reinventing Fisheries Management* (2001), 3-17; S.M. Garcia and C. Newton, "Current situation, trends and prospects in world capture fisheries", in: E. L. Pikitch, D. D. Huppert and M. P. Sissenwine, *Global trends: fisheries management* (1997), 3-27; J.A. Hutchings, "Collapse and recovery of marine fishes", (2000) 406 *Nature*, 882-885.

6 ICES, "Report of the Baltic Fisheries Assessment Working Group", (2003) *ICES CM 2003/ACFM:21*, 1-522.

7 *Ibid*., and ICES, "Report of the Baltic Fisheries Assessment Working Group", (2004) *ICES CM 2004/ACFM:22*, 1-522.

8 IBSFC, "Proceedings of the thirtieth session", (2004).

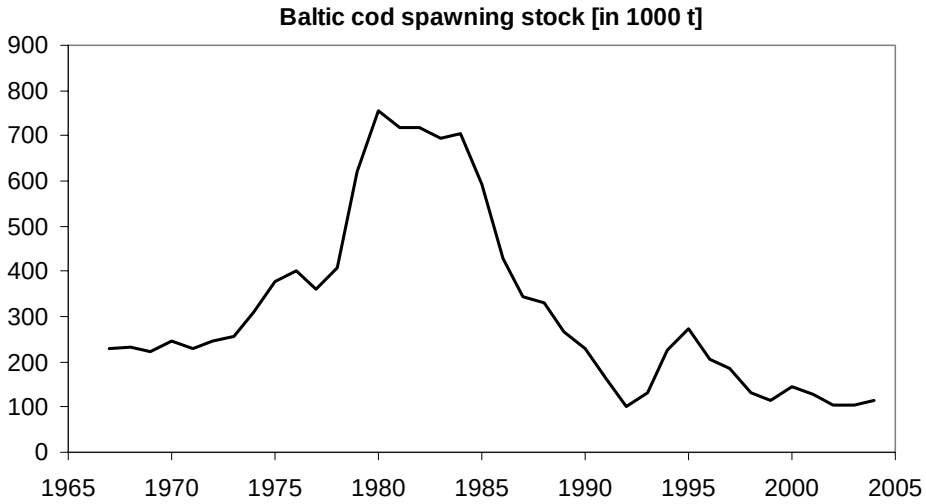

Figure 2: Development of the size of the Baltic cod spawning stock.

In this article, the situation and functioning of Baltic Sea fisheries management is analysed. Emphasis is put on the EC's Common Fisheries Policy (CFP), its evaluation and special implications for achieving sustainable fisheries in European waters in general and in the Baltic Sea in particular.

The text is organised as follows: In the following section, a definition of sustainable fisheries is presented. In Section 3, the historic and recent development of international cooperation for fisheries management in the Baltic Sea is depicted. Sections 4 and 5 deal with the structure, functioning, and operation of the current and future management authorities, respectively. The effectiveness of the CFP to achieve sustainability in fisheries is evaluated in Section 6. Section 7 concludes.

2 Sustainable fisheries

The International Baltic Sea Fisheries Commission (IBSFC), in close cooperation with the International Council for the Exploration of the Sea (ICES) and the Helsinki Commission (HELCOM), drafted a definition of sustainable fisheries for the "Sector Report on Fisheries" under the framework of the Action Programme of the "Baltic Agenda 21"[9]. Sustainability is defined, referring to the environmental, economic and social point of view: "*Sustainable, productive fisheries are achieved when appropriate management ensures a high probability of stocks being able to replenish themselves over a long period of time within a sound*

[9] IBSFC, "Sector Report on Fisheries - Contribution to "Baltic 21", Agenda 21 for the Baltic Sea Region", (1998) Baltic 21 Series No 4/98, 69.

ecosystem, while offering stable economic and social conditions for all those involved in the fishing activity."[10]. The environmental and ecological aspects of sustainable fisheries refer to maintaining biologically viable fish stocks, the marine and aquatic environment and associated biodiversity. Within these environmental limits, economic sustainability shall establish maximum fishing possibilities. Finally, the social aspect of sustainability concerns equity in the allocation and distribution of the direct and indirect benefits of fishery resources between local communities.

3 International Cooperation: History and recent development

From 1974 until present, the responsible fisheries management authority for the Baltic Sea has been the International Baltic Sea Fisheries Commission (IBSFC)[11]. The IBSFC was founded by seven parties: the Governments of the Republic of Finland, the Kingdom of Denmark, the German Democratic Republic, the Federal Republic of Germany, the Polish People's Republic, the Kingdom of Sweden and the Union of Soviet Socialist Republics. The pattern of membership of the Commission has changed over time, *inter alia* due to accession of member states to the EC. At present, the EC, Russia, Estonia, Latvia, Lithuania, and Poland are the IBSFC's contracting parties. Following the most recent enlargement of the EC on 1 May 2004, Estonia, Latvia, Lithuania, and Poland have requested to withdraw from the IBSFC. Since this will only take effect on 31 December 2005, there are currently still six members in the plenary, each party having a full vote according to Rule 2 of the Rules of Procedure for the Commission Representation[12]. Consequently, there are currently five "European" votes versus one vote of Russia.

Unofficially, the EC has already notified the IBSFC's depository – the Polish government – of the plan of the four Baltic nations to resign from the IBSFC on 31 December 2005. As there will be only two contracting parties left then, namely the EC and Russia, it is obvious that the IBSFC will be dismantled in the near future, and fisheries agreements will then draw on bilateral negotiations between Russia and the EC. Already since May 2004, the Common Fisheries Policy applies to roughly 90% of the Baltic Sea territory. Only about 10% of the Baltic Sea belong to Russian waters.

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10 *Ibid*.

11 Cf. <http://www.ibsfc.org> (last visited 11 April 2005).

12 Cf. <http://www.ibsfc.org/documentation/ibsfc_rules_of_procedure > (last visited 11 April 2005).

4 The International Baltic Sea Fisheries Commission (IBSFC)

The IBSFC was established pursuant to Article V of the "Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt", also known as the Gdansk Convention (signed 13.9.1973, entered into force 28.7.1974).

The IBSFC's objectives, scope, goals, measures, principles

The scope of the IBSFC, as defined in article I of the Gdansk convention, is to cooperate closely in order to achieve sustainable fisheries. As a consequence of this commitment, the "Action Program for Sustainable Development of the Fishery" was developed in the framework of "Baltic Agenda 21"[13]. The duty of the IBSFC is to coordinate fisheries management, to coordinate scientific research, to prepare recommendations, to collaborate with the international technical and scientific organisations and the official bodies of the Contracting States (Article IX). In Article X, possible measures for fisheries management are depicted. These have been translated into "IBSFC Fishery Rules" and include the following[14]:

a) regulation of fishing gear, appliances and catching methods;
b) regulation of the size limits of fish;
c) establishment of closed seasons;
d) establishment of closed areas;
e) improvement of / increase in the living marine resources, official reproduction and transplantation of fish and other organisms;
f) establishment of total allowable catch or fishing effort;
g) any other measures related to the conservation and rational exploitation of the living marine resources.

Moreover, the IBSFC has acknowledged to apply the *precautionary approach* to the management of living marine resources, as set out in the FAO "Code of Conduct for Responsible Fisheries"[15]. An absence of adequate scientific knowledge, which – particularly in the field of fisheries – arises due to many inherent uncertainties in fish stock assessments, should not be used as a reason for postponing or failing to take conservation management measures. The IBSFC has also approved of integrating fisheries and environmental protection, conservation and management measures by applying an *ecosystem approach*. This means that food-web interactions and ecosystem processes, functioning, productivity, and biological

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13 Cf. <http://www.ibsfc.org/baltic21/action_programme> (last visited 11 April 2005).

14 IBSFC, "Fishery Rules of the International Baltic Sea Fishery Commission", (2002).

15 Cf. <http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/005/v9878e/v9878e00.htm> (last visited 11 April 2005).

diversity, which are critical for maintaining an ecosystem's characteristic structure, shall be taken into account as far as scientific knowledge permits. Hence, the IBSFC aims at providing a healthy, functioning environment by minimising adverse impacts of fishing activities on species and habitats. As provided for in Article 7.5.3 of the FAO "Code of conduct for Responsible Fisheries", the IBSFC has furthermore endorsed the establishment of stock-specific "target reference points" and "limit reference points" to allow harvesting within safe biological limits, with the objective to achieve sustainability well before 2030[16]. Being a fisheries management authority, the IBSFC aims in general at achieving a balance between the harvesting capacity of fleets and the target reference points for stocks. At the time of signature in 1973, the Gdansk Convention was very innovative. It was actually signed before the start of the Third UN Conference on the Law of the Sea. The idea of an "Exclusive Economic Zone" had just been launched in 1972 by a Declaration of the Organisation of African States[17].

The IBSFC's decision making process

The representatives of the contracting parties meet in plenary meetings (sessions) once a year[18]. They may take decisions by "unanimous agreement" on the transmittal of proposals or recommendations under Article X of the Gdansk Convention[19]. Texts of recommendations, agreed upon during a Session, shall be adopted before the end of a Session. Amendments must be submitted within 30 days after the end of a Session. Finally, IBSFC recommendations shall be made binding to all Contracting Parties[20].

Several international organisations are observers of the IBSFC, e.g. the International Council for the Exploration of the Sea (ICES), a scientific organisation, and the Helsinki Commission - Baltic Marine Environment Protection Commission (HELCOM), an environmental organisation, established under the "Convention on the Protection of the Marine Environment of the Baltic Sea Area"[21].

The legal nature of the IBSFC's regulatory framework and shortcomings

The vocabulary applied in the IBSFC Fishery Rules emphasise their binding nature. However, most rules lack a penalty statement in case of infringement, except for Fishery Rule

16 Cf. <http://www.ibsfc.org/about/about_measures> (last visited 11 April 2005).

17 Cf. <http://www.oceanlaw.net/texts/yaounde.htm> (last visited 11 April 2005).

18 IBSFC Rule of Procedure 6.

19 IBSFC Rule of Procedure 5.2.

20 Cf. <http://www.ibsfc.org/documentation/ibsfc_rules_of_procedure> (last visited 11 April 2005).

21 Helsinki Convention, signed 1992, entered into force 17.1.2000.

3, Article 4, on the handling of overfishing of permitted landings: Landings in excess of the respective quotas shall lead to deduction from the corresponding quota in the following year[22].

Additionally, the binding character of the Gdansk Convention is flawed by explicitly providing for loopholes. Apart from a ninety days objection period[23], the Contracting parties are additionally given the possibility to withdraw or not accept a regulation "after the date of entry into force of a recommendation adopted by the Commission"[24]. Here, "any Contracting State may notify the Commission of the termination of its acceptance of the recommendation and, if that notification is not withdrawn, the recommendation shall cease to be binding on that Contracting State at the end of one year from the date of notification"[25]. Moreover, a "recommendation which has ceased to be binding on a Contracting State shall cease to be binding on any other Contracting State thirty days after the date on which the latter notifies the Commission of the termination of its acceptance of the recommendation"[26].

Further criticism refers to the lack of unified action to infringements among the Contracting Parties. Article XII transfers the task of implementation, control and punishment to the national authorities: "Each Contracting State shall take […] appropriate measures to ensure the application of the provisions of this Convention and of the recommendations of the Commission which have become binding for the Contracting State and in case of their infringement shall take appropriate action"[27].

5 The Common Fisheries Policy (CFP) of the European Community

The beginnings, development, and characteristics of the CFP before 2002

According to the provisions of a Common Fisheries Policy as established under the Treaty of Rome[28], the conservation and management of sea fishery resources is the exclusive competence of the European Community. These provisions are newly enshrined in Council

22 Cf. IBSFC Fishery Rule 3, Article 4, § 1, 2

23 IBSFC, Gdansk Convention, Article XI, § 2

24 IBSFC, Gdansk Convention, Article XI, § 4a

25 Ibid.

26 IBSFC, Gdansk Convention, Article XI, § 4b

27 IBSFC, Gdansk Convention, Article XII, § 1

28 Cf. Article 3 and Articles 32-38 of the Treaty establishing the European Community (Rome, 25 March 1957).

Regulation (EC) 2371/2002 of 20 December 2002, establishing a Community system for the conservation and sustainable exploitation of fisheries resources under the CFP[29].

The first Community system for conservation and management of fishery resources was established in Council Regulation (EC) 170/83[30]. Four main tasks were set out, which still apply:

1. manage and regulate conservation and exploitation of the resource
2. Structural measures
3. Common organisation of markets
4. Agreements with third countries

Total allowable catches (TACs) and quotas were enacted as the principal management tool. Additionally, new measures were introduced over time, during and following the first review process of the CFP in 1992, which resulted in a new framework for the CFP, established in Council Regulation (EC) 3760/92[31]. The log-book was introduced as control instrument, obliging fishermen to report fishing location, time, amount harvested, type, species of catch, and fishing gear applied. As a reaction to the perceived decline in Community fish stocks, multi-annual guidance programmes (MAGPs) were introduced in order to limit the activity at sea and to reduce the overcapacity of the fleets[32]. Moreover, technical regulations, such as minimal mesh size, minimum landing size, closed areas and seasons, were implemented.

Nonetheless, a downward trend of many fisheries due to management fallacies and a clear unbalance between fishing fleets and available fisheries resources have become apparent. This has led to biological overfishing of many commercial fish stocks of the Community and an under-utilisation of fishing capacity of the Member States' fleets. The CFP has thus been judged a failure[33]. The biggest problem of the system is its dependence on accurate fish stock assessments for setting TACs and the subsequent political bargaining on TACs higher than recommended during the decision making process at the Council of Ministers. The agreed

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29 "Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy", (2002) OJ L 358.

30 "Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources", (1983).

31 "Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture", (1992).

32 D. Symes, "The European Community's common fisheries policy", (1997) 35 *Ocean & Coastal Management*, 137-155, p.149.

33 *Ibid*.

TACs were often out of line with scientific recommendations and the need to reduce catches. The mismatch between the scientific TAC recommendations, the politically adopted TACs, and the actually landed quantity of fish is illustrated exemplarily in Figure 3 for Baltic cod. Consequently, the TACs did not promote stock recovery and even resulted in a decline of the stock size[34]. Another problem with TACs is the single-species nature: Single-species TACs are unable to work effectively in the mixed fisheries that characterise much of the Community's common pond[35].

Furthermore, the Community's system of control and enforcement was very ineffective, not able to counteract discarding and landing of blackfish. Enforcement, prosecution, and sanction was the Member States' duty, but there was no unified approach among the Member States until the reform of the CFP in 2002.

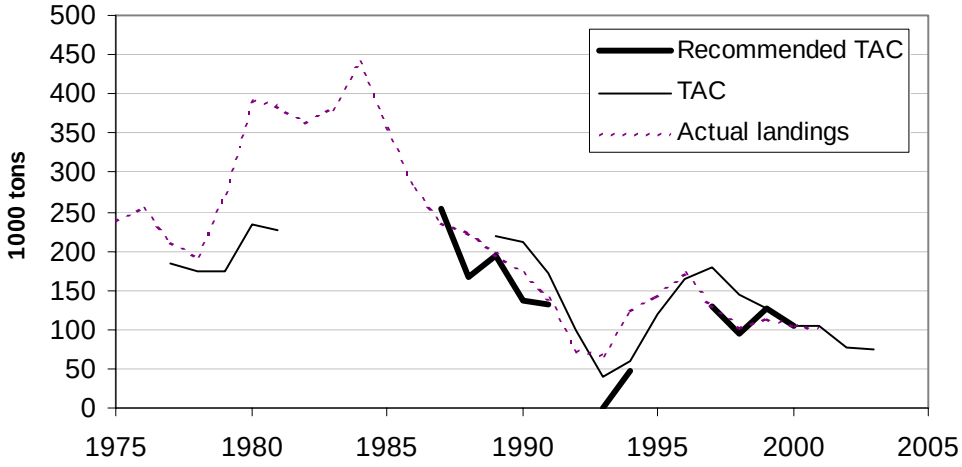

Figure 3: Recommended and agreed TACs for cod in the Baltic Sea and actual landings of Baltic cod[36].

The new CFP under Council Regulation (EC) 2371/2002 of 20 December 2002[37]

The CFP was reviewed again in 2002. This review resulted in a reform of the CFP's framework, which is now enshrined in Council Regulation (EC) 2371/2002 of 20 December 2002.

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34 See *supra*, p.3.

35 *Ibid*., p.147.

36 Source: L.G. Kronbak, "The Dynamics of an Open Access: The case of the Baltic Sea Cod Fishery - A Strategic Approach", (2002) IME working paper No. 31/02.

37 "Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy", (2002) OJ L 358.

The principal objective of the new CFP is to bring the fleet size in balance with the size of the resource. For that purpose, new management tools focus on reducing the size of the European fishing fleet, namely long-term management and recovery plans, decommissioning, a Community fleet register, entry-exit programmes, and emergency measures. The new Council Regulation (EC) 2731/2002 is subdivided into seven chapters, which will be discussed here.

Chapter I:

The scope of the new CFP is to provide for measures concerning:

1. Conservation, management, and exploitation
2. Limitation of environmental impact of fishing
3. Conditions of access to waters and resources
4. Structural policy and management of fleet capacity
5. Control and enforcement
6. Aquaculture
7. Common organisation of markets
8. International relations

The policy's basic principles are still non-discrimination and equal access, as modified by the concept of relative stability. The objective is to protect and conserve available and accessible living marine aquatic resources, to protect the marine environment, to provide for rational and responsible exploitation on a sustainable basis, while ensuring appropriate economic and social conditions for the sector, taking into account implications for the marine ecosystem, and in particular taking into account the needs of both producers and consumers. Finally, the aim is to provide good quality food to consumers. Chapter I moreover enshrines the precautionary approach and – if scientific knowledge is sufficient – an ecosystem-based approach. Fisheries management decisions shall be based on sound scientific advice. Emphasis is also put on the involvement of stakeholders. According to these formulations in Chapter I, the focus of the new CFP stresses the importance of achieving environmental sustainability of the fishery resource.

Chapter II:

In Chapter II, measures to achieve conservation and sustainability are presented, i.e., long-term management and recovery plans, and emergency measures. Multi-annual management plans shall be implemented for stocks whose biomass is above B_{lim}, whereas stocks whose biomass is below B_{lim} shall be managed by multi-annual recovery plans (Art. 6, IV d and 5, IV d).

Management and recovery plans may include:

- setting of harvesting rules, which consist of a predetermined set of biological parameters to govern catch limits
- measures based on biological limit & target reference points (targets for every species to be reached within several years)
- the consideration of biological characteristics (e.g. multi-species interactions, ecosystem effects, spawning period)
- the possibility to reduce capacity in the framework of recovery plans
- emergency Measures (Art. 7, Art. 8)
- TACs, fishing licences, technical measures.

Chapter II elucidates existing and additional new measures, focusing on stock conservation. Due to the abrogation of the MAGPs, there is no direct effort limitation scheme available anymore in the legal framework of the CFP. Indirectly, however, recovery plans allow for the reduction of fishing effort via restrictions of days at sea. This provision introduces flexibility to the management system. Nonetheless, the main management tool is still the setting of TACs, and its inherent problem of high susceptibility to uncertainty and poor quality of scientific advice remains. In spite of this disadvantage, the system has improved thanks to the implementation of long-term management plans. This tool will reduce the extent of political bargaining at the minister level in the European Council, because the TACs have to remain within a certain range to achieve the long-term management targets.

Chapter III:

Fleet policy and structural policy are grouped collectively in Chapter III. This indirectly serves as an economic approach to fleet management, as the use of public aid for capacity adjustment is of essential importance[38]. The chapter presents guidelines and rules for the necessary adjustment of the fishing fleet capacity in order to achieve a balance between fleet size and size of the resource. These are explicitly related to the withdrawal of aid for capacity renewal and the enhancement of aid for capacity reduction, for example, using decommissioning in cases where impacts of fishing effort reductions are severe. From an economic perspective, this adapted framework is of fundamental importance in relation to the adjustment of fleet capacity[39].

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[38] E. Lindebo, H. Frost, *et al.*, "Common Fisheries Policy reform - A new fleet capacity policy", (2002) No. 141, p.12.

[39] *Ibid*., p.12.

The new management system does not define specific capacity objectives. In contrast, the adjustment of capacity occurs indirectly via limitations on fishing effort defined under the long-term management and recovery plans. The main instrument to control fleet capacity is via a reference level for the capacity of the individual Member State, which is based on the objectives of the abrogated MAGP[40].

A new regime for fleet entry and exit is regulated in relation to the Community fleet register and to the reference levels of the fleet. If a Member State applies for financial aid for fleet modernisation, it has to withdraw an equal or even greater amount of capacity. Additionally, public aid for fleet renewal will only be granted, if the Member State's overall capacity is reduced (Art. 13.2).

Chapter IV:

The policy's principle of equal access to waters and resources in all Community waters is readopted in Chapter IV (Art. 17.1). Additionally, jurisdiction and sovereignty over the 12 nm zone is reassigned to the coastal state (Art. 17.2). The principle of "relative stability" in the allocation of fishing opportunities to each Member State is reaffirmed (Art. 20.1). The method of allocating a Member State's national quota to its fishermen is determined by the Member State itself (Art. 20.3).

Chapter V:

Chapter V establishes a community system to control and enforce the CFP in order to harmonise control and enforcement methods between the Member States. According to the subsidiary principle, the responsibility for control, inspection, and enforcement is reassigned to the Member States (Art. 23), whereas the Commission holds the right to control the enforcement activities and compliance of the Member States. The Member States' compliance is peer-reviewed by a compliance scoreboard.

The Council of the European Communities defined types of behaviour, which represent serious infringements of the rules of the CFP[41]. With respect to the follow-up of such infringements, Member States "shall ensure that appropriate measures are taken, including […] criminal proceedings […] where the rules of the Common Fisheries Policy have not been respected" (Art. 25.1). A catalogue prescribing concrete sanctions shall be established (Art. 25.4). Inspections shall follow a specific monitoring programme decided under Article 34c of

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40 *Ibid*., p.13.

41 "Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy" (1999), OJ L 167, p.5.

Regulation (EEC) No 2847/93[42]. In order to facilitate control, Community fishing vessels shall install the satellite vessel monitoring system (Art. 22.1b). The joint Commission inspection structure also includes a Community Fisheries Control Agency (CFCA), to be established in Spain[43].

Chapter VI:

In Chapter VI, the decision-making procedure as well as possibilities of consultation are exposed. A new element concerning consultation is the establishment of Regional Advisory Councils (RACs). Their main purpose is to involve all stakeholders and interest groups in the preparatory process on matters of fisheries management and to advise the Commission. The group of different stakeholders comprises Ministries responsible for fisheries, scientists, fishermen associations, industry, labour unions, consumer organisations, NGOs, etc.

In general, the decision-making process in the EC follows a strict scheme, which is illustrated in Figure 4. Recommendations by the European Commission are transformed into community law by regulations adopted by the Council of Ministers on a proposal from the European Commission. The regulations are binding and directly applicable in all Member States[44]. In case of infringement of fishery regulations[45], Article 31 of Council Regulation (EEC) No 2847/93 includes measures to be taken in the case of non-compliance with the rules in force[46]. The formal EC position is established following co-ordination within the framework of the entire Community (Fig. 4).

Chapter VII:

Final provisions are given in Chapter VII.

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42 "Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy" (1993), OJ L 261.

43 E. Mastracchio, "The role of a Community Fishery Control Agency", (2004) *International Fisheries Compliance Conference*.

44 Cf. Article 249 of the Treaty establishing the European Community (consolidated text) of 24 December 2002, OJ C 325 24.12.2002, p. 33

45 "Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy " (1999), OJ L 167.

46 Ibid.

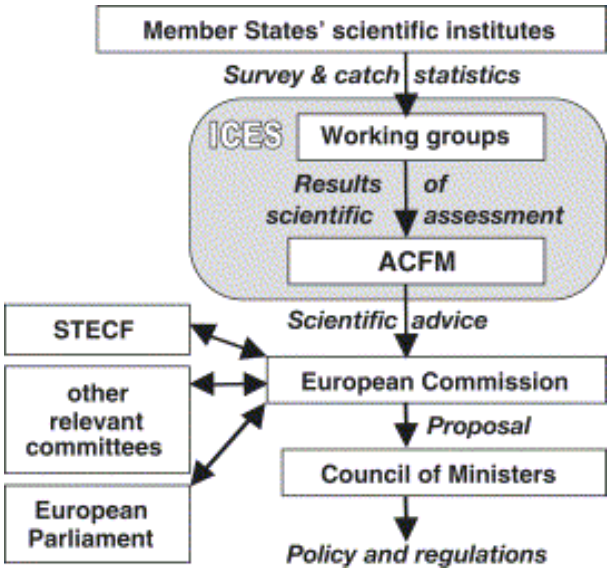

Figure 4. Route for the implementation of scientific research into fisheries policy within the European Community.

6 Evaluation of the new CFP with respect to achieving sustainable fisheries in the Baltic Sea

The latest reform of the CFP, enshrined in Council Regulation (EC) 2371/2002, has opened new doors for more effective and sustainable management of European fisheries. In contrast to the IBSFC rules and recommendations, the EC regulations are of a binding nature and do entail sanctions in case of infringement of the law. Regulation (EC) 2371/2002 has to be regarded as a framework regulation, providing wide, new opportunities to further develop and define new, specific rules concerning sustainable fisheries management. Therefore, many issues and aspects therein are not treated in detail, but the text rather calls for negotiations between the Commission and the Member States to prepare more specific and elaborate regulations. One of the issues remaining to be tackled in the future is, for instance, the development of a catalogue of specific sanctions. Nonetheless, examples exist of specific sanctions, which have already been implemented in Community law, e.g. the regulation and suspension of fishing activities, if a Member State has overfished its allocated quota[47].

An important and explicitly stated aspect that reveals improvement of the new CFP is the attempt to unify and harmonise the system of control and enforcement in the EC. Since the Community's fishery resources are transboundary and exploited by several Member States at

[47] Article 21 of "Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy" (1993), OJ L 261, Art. 21.

the same time, equity in control, enforcement, and prosecution is very important, for it can prevent cheating and contribute to better compliance.

Furthermore, a new opportunity and a major step forward is the introduction of Regional Advisory Councils. Although they will initially serve as advisory bodies to the European Commission only, a future expansion of their responsibilities towards regional management bodies is imaginable and possible. Corten[48] recommended such a delegation of administrative responsibility from Brussels to "regional units" as one possibility to increase the chances of successful management. Otherwise, due to the large geographical expansion of EC waters following past enlargements of the Union, the final result of centralised decision-making is often "a large number of complicated regulations which are not really suitable for any given situation"[49]. RACs present an opportunity to change this situation governed by centralised administration and management by decreasing the distance between managers and the national fisheries in each countries. By opening the management and decision-making process to all stakeholders in a regional advisory body, the EC may finally gain support of its regulations by fishermen and fishing industries.

Another overriding problem of the first two decades of the CFP, which – according to Corten – has produced "disappointing results" is the "fish stock management through quota regulations"[50]. Under the new CFP framework, quota management can be extended by effort limitation schemes via the establishment of long-term management and recovery plans. At present, no management plan has been established yet. Several recovery plans, however, have already been proposed by the European Commission, which explicitly limit days at sea for individual fisheries in addition to the TAC and quota regulations, e.g. for cod, hake, sole, and Norway lobster stocks[51]. The IBSFC has already agreed to establish a recovery plan for Baltic cod in 2001[52]. Once EC administration will fully be in place for the Baltic Sea fisheries, a recovery plan for Baltic cod is likely to be implemented quickly by modification and expansion of the IBSFC's preparatory work. Bilateral agreements with Russia should not hamper management efficiency, for this has already been proven successful with other

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48 Corten, "The widening gap between fisheries biology and fisheries management in the European Union", (1996) 27 *Fisheries Research*, 1-15, p.15.

49 *Ibid*., p.10.

50 *Ibid*., p.4.

51 Commission of the European Communities: COM(2003) 237 final; COM(2003) 374 final; Com(2003) 818 final; COM(2003) 819 final.

52 IBSFC Resolution XVII on Recovery Plan for the Baltic Cod.

partners, e.g. with Norway concerning fisheries in the Barents Sea[53]. The long-term nature of the management and recovery plans presents an additional advantage: The extent of political bargaining during the Council Meeting of Ministers every year in December to decide on TACs and quotas is limited, as quotas have to remain within the framework defined in the long-term plans.

Flexibility in management to spontaneously react to unforeseen environmental or anthropogenic impacts is explicitly taken account of in the new CFP by means of emergency measures. Furthermore, the CFP stresses the inherent necessity to conserve and protect not only the fisheries resources but also the ecosystems they dwell in. With special regard to the Baltic Sea environment, this emphasis is of crucial importance for Baltic Sea fisheries management due to the special hydrographic and environmental conditions in the Baltic Sea, the influence of climate variability on hydrographic conditions in light of global climate change, and the permanent threat to flora, fauna and the ecosystem posed by shipping.

Caveat

The optimism concerning improvement in fisheries management due to the establishment of the new CFP should be accompanied by a caveat. There are, of course, critical voices, who challenge that the new CFP represents an improvement towards sustainability[54]. These originate on one side from environmental activists and NGOs; on the other side, sympathisers of the fishing industry express their concerns, as well. The advantages and benefits of the CFP, as described in the previous paragraphs, can only be achieved if the European Commission and the Member States, acting via the Council and the Parliament, take the necessary actions in the right direction. As pointed out above, the CFP presents a rather general binding regulatory framework, whereas the extent to which improvement is achieved depends on the European Commission's initiative and willingness to take progressive action, transforming the general legal framework into specific regulations. Only if the Commission and the Member States are willing to take courageous steps, the CFP may lead to decentralisation and liberalisation of the system and a separation of powers among national and regional administrations, i.e., the application of the subsidiarity principle. Moreover, the

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53 Cf. <http://odin.dep.no/fkd/engelsk/p10001957/pressem/008041-070202/dok-bn.html> (last visited 12 April 2005).

54 Cf. T. Gray and J. Hatchard, "The 2002 reform of the Common Fisheries Policy's system of governance--rhetoric or reality?" (2003) 27 *Marine Policy*, 545-554; T. Daw and T. Gray, "Fisheries science and sustainability in international policy: a study of failure in the European Union's Common Fisheries Policy", (2005) 29 *Marine Policy*, 189-197.

stakeholders have to be willing to communicate and get involved with the administrators and managers.

7 Conclusions for management of the Baltic Sea fisheries

Future management of the Baltic Sea fisheries resources is likely to benefit from a switch away from IBSFC management to CFP-based EC management, if all, let alone some, of the opportunities for improvement, which the new CFP regulation as of December 2002 has enshrined, are realised. First of all, the commercial fish stocks in the Baltic Sea may benefit from a stronger emphasis on conservation and recovery. Secondly, the decommissioning scheme can help to reduce any overcapacity present in Baltic Sea fishing fleets. Additionally, old and ineffective vessels, which sometimes even pose threats to their crew, can be either scrapped or modernised, since the structural policy within the new CFP framework offers aid directed towards these purposes. Such money is not available in the IBSFC framework.

An evaluation of the effects of the CFP on fish stocks and on fisheries, however, depends on the point of view. Can one of the three pillars of sustainable fisheries be considered to be most important, and if yes, which one? In my view, the only basis for sustainable fisheries is a viable fish stock, because we cannot provide neither for sustainable resource exploitation nor for the allocation of the profits in a socially sustainable manner without the existence of viable fish stocks. Therefore, the conservation of stocks is of prime importance. The new CFP provides for this objective by introducing long-term management and recovery plans, emphasising the necessity of a healthy marine ecosystem, and allowing for flexible management tools.

The empowerment of the Community, mainly through control by the European Commission should be seen as positive, since fish stocks as well as the fishing activities in Community waters are transboundary. Hence, unification and harmonisation in control and enforcement is a prerequisite to the equality principle and is likely to result in better compliance of the Member States and also of the individual fishermen.

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