The EU Common Fisheries Policy

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The Common Fisheries Policy (CFP) remains extremely controversial, as shown by the House of Commons Debate on 19 December 1995. Many people blame it for the decline of the British fishing fleet. It is often suggested that the UK accepted unsatisfactory terms on joining the EEC, or at some later date. This paper described the development of the CFP over the past 25 years, and discusses the various controversial claims relating to it. Some of the other issues in fisheries have been covered in other papers :*Are we fishing the seas dry? (94/12)* and *The Spanish Fishing Industry (95/79)*

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CONTENTS

I Did the UK give away British Fishing Grounds on entry into the EEC ?

There was no Common Fisheries Policy (CFP) until shortly before the negotiations which eventually resulted in British entry into the EEC, and through a general derogation, the policy did not start to operate for another decade. Indeed it was not obvious that fisheries were covered by the Treaty of Rome. Article 3 listed some objectives to be included among the activities of the Community. One of these was "the adoption of a common policy in the sphere of agriculture". The fishing industry was held to come under the heading of "agriculture " via Article 38[1] The current version of the Treaty of Rome, as amended by the Treaty on European Union[2], has amended this passage to read "a common policy in the sphere of agriculture and fisheries".

Agreement was reached between the EEC-6 on 30 June 1970, the very day on which the entry negotiations were opened with the UK, Ireland, Denmark and Norway. It is often suggested that this was an attempt by the EEC-6 to gain access to the considerable waters and fish stocks offered by the UK and Norway. Fisheries were clearly going to be important in the access negotiations, particularly for Norway, which had its case for entry rejected by a referendum in 1972 as again in 1993. Fisheries policy either had to be agreed before the entry negotiations began, or not until they were completed, so the timing is not necessarily sinister.

Two Regulations were agreed in 1970, covering a common structural policy for the fishing industry[3] and on the common organisation of the market in fishery products.[4]

The preamble of the former Regulation explained the idea.

> Whereas, subject to certain specific conditions concerning the flag or the registration of their ships, Community fishermen must have equal access to and use of fishing grounds in maritime waters coming under the sovereignty or within the jurisdiction of Member States; whereas, however, exception to this rule may be permitted transitionally for certain types of fishing carried on by local populations whose livelihood depends principally on inshore fishing;

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[1] Article 38 (1) : The common market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.
[2] Treaty on European Union, Maastricht 1992, (Cm 2485)
[3] Regulation (EEC) no 2141/70 of 20 October 1970 laying down a common structural policy for the fishing industry (OJL 236)
[4] Regulation (EEC) No 2142/70 of 20 October 1970 on the common organisation of the market in fishery products.

The Articles of the Regulation amplified this basic principle.

Article 1

> Common rules shall be laid down for fishing in maritime waters and specific measures shall be adopted for appropriate action and the co-ordination of structural policies of Member States for the fishing industry to promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters.

Article 2

> 1 Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment of other Member States.
>
> Member States shall ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.

The derogation for coastal fishermen is very specific, limiting it to fishing within three miles of the coast and only lasting for five years after the coming into force of the Regulation. The possibility of conservation measures was, however, more accurately anticipated.

Article 5

> Where there is a risk of over-fishing of certain stocks in the maritime waters referred to in Article 2, of one or other Member State, the Council, acting in accordance with the procedure provided for in Article 43 (2) of the Treaty on a proposal from the Commission may adopt the necessary conservation measures.
>
> In particular, these measures may include restrictions relating to the catching of certain species, to areas, to fishing seasons, to methods of fishing and to fishing gear.

UK entry into the EC came in the middle of a worldwide move towards increased fishing limits. The traditional UK view was that limits should be very small, 6 or perhaps 12 miles, and there should be freedom for everybody to fish in the seas further from the coast. At the time of UK Accession negotiations, the British fishing industry was sharply divided as to what it wanted. The inshore fishermen wanted a system in which each Member State could retain a monopoly of its fishing within 12 miles. However, Mr Laing, the then Director General of the British Trawlers' Federation commented in 1971:[5]

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[5] M.Wise, The Common Fisheries Policy of the European Community, 1984, p.113

> It would seem that inshore fishermen on this issue can hardly look for the support of distant-water fishermen because the latter seek within the bounds of equity and properly observed conservation measures designed to preserve maximum sustainable yield - the utmost freedom of access to waters everywhere. Stated in this way, distant-water fishermen find Article 2 (i.e. the CFP's equal-access provision) perfectly acceptable.

However, fisheries limits increased worldwide in the 1970s, despite the efforts of British policy in the so-called "cod wars" against Iceland, trying to preserve the freedom to fish in waters more than 12 miles beyond the coast. By 1976 Iceland had established a 200-mile limit and that soon became standard practice. The UK was therefore never in a position to impose its own 200 mile limits. The British deep-sea fleet lost access to the important Icelandic waters, but did not gain the monopoly of its own waters in compensation. British fishermen wanted to expel other EC fishermen from waters within 200 miles of the UK in 1977, or at least to gain a large exclusive zone for themselves. Neither option was acceptable to other EC Member States.

When the Common Fisheries Policy started to operate in 1983, (after a 10-year derogation explained below) it recognised traditional fishing patterns. Access was limited to the individual country within 6 miles of the coast. Between 6 and 12 miles access was only granted to countries which had traditionally fished in those waters. Between 12 and 200 miles quotas, as a proportion of the total allowable catch, are based on historic catch levels. In other words, the UK did not lose any access to its waters which it had previously enjoyed. The importance of EC membership was that the UK was not allowed to expel foreign fishermen from its waters in the way that the Icelanders had expelled the British fishermen.

II EC-UK Negotiations from 1973 to 1982

The Accession Treaty had a ten-year derogation for all Member States before the CFP would come into force (Cmnd 5179 - II).[6]

Article 100

> 1 Notwithstanding the provisions of Article 2 of Regulation (EEC) no 2141/70 on the establishment of a common structural policy for the fishing industry, the Member States of the Community are authorised, until 31 December 1982, to restrict fishing in waters under their sovereignty or jurisdiction, situated within a limit of six nautical miles, calculated from the base lines of the coastal Member States, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area ...

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[6] This derogation explains one paradox whereby some people complain that the EC established the CFP just before British entry, while others say that it only started to operate a decade later.

> 3 If a Member State extends its fishing limits in certain areas to twelve nautical miles, the existing fishing activities within twelve nautical miles must be so pursued that there is no retrograde change by comparison with the situation on 31 January 1971...

Nobody really wanted at that stage to look at the real issue, which was what would happen when the limits were extended to 200 miles. Even in the Labour Government's renegotiation of the terms of entry in 1974/5, no attempt was made to change the access provisions. However, the move to large limits was irresistible, and the EEC tried to address it in 1976. The British fishing industry wanted a large exclusive zone - of at least 50 miles around the British coast - from which foreign fishermen would be expelled. Part of the problem was that British fishermen had not traditionally fished these waters to a great extent. It was estimated in 1976 that there was a potential catch of 3.5 m tonnes within the UK 200-mile median line, of which 2.8 m tonnes were within the 100-mile median line, and 2.5 m tonnes within the 50-mile median line. 1.1 m tonnes were within the 12-mile median line. However, the actual British catch within the 200-mile median line was only 0.67 m tonnes in 1973 while the total UK catch within all waters was 1.15 m tonnes in 1973.[7] Thus, less than a fifth of the potential catch within 200 miles of the UK coast was being caught by British fishermen.

Continental fishermen who had traditionally fished the waters within 200 miles of the British coast could not understand why they should be expelled, nor how this fitted in with Community law, so the hopes of the British industry proved unrealistic. After considerable disagreement, EEC Ministers agreed the Hague Resolutions of September 1976. These extended the fishing limits to 200 miles from the coasts as from 1 January 1977, and stated that the fishing rights of non-Community vessels in these areas would be decided by the Community as a whole. The agreement was vague, however, as to the arrangements for Community vessels.[8]

> (e) when conservation measures were needed in the waters of member states, they should be adopted by the Community as a single body but that, pending the agreement of an agreed Community fishery system incorporating such measures, individual member states could take on an interim basis appropriate measures to ensure the protection of the resources situated in the fishing zones off their coasts provided that such measures did not discriminate according to nationality and that member states sought the approval of the Commission before applying them;

There were two more specific resolutions at the end - that :

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[7] quoted in M.Wise, The Common Fisheries Policy of the European Community, 1984, p.166
[8] Quotations from the summary in Wise, op. cit. pp.157-8

> (g) Ireland's fishing industry be secured a continued and progressive growth...
>
> (h) Greenland and "northern parts" of the UK also had communities "particularly dependent" upon fishing and related industries and that "account should be taken of their vital needs" in "applying the CFP".

The British Government was pressing for a variable band going up to 50 miles in areas where there were fish, within which British fishermen would have exclusive rights.[9]

> **Sir Frederick Bennett** : To summarise the position, I understood from what the Minister said that we were standing firm on up to 50 miles. May I at least get the right hon Gentleman's assurance that in no circumstances shall we accept 12 miles ?
>
> **Mr. Crosland** : I can conceive of no circumstances in which this country - certainly under this Government - will accept 12 miles.

During 1977 British aims shifted to claims for dominant preference in the 12-50 mile belt. By the end of the year, the Government produced the following claims.[10]

> **1** an exclusive 12-mile national fishing zone around the UK within which the historic rights of other member states would be phased out after 1982 when the arrangements of the Treaty of Accession came to an end;
>
> **2** dominant preference for British fishermen in the 12- to 50-mile zone beyond, which would be expressed in a share of catch quotas in this area reflecting Britain's "60% contribution" to EEC fish resources;
>
> **3** a normal share of EEC catch quotas in areas beyond 50 miles and in third-country waters;
>
> **4** a 20% (demersal species) to 25% (pelagic species) share of future increases in Community Tacs arising as a result of successful conservation measures;
>
> **5** the right of coastal states to enforce conservation measures in their 200-mile/ median line zones;
>
> **6** the enforcement of Community quotas through effort limitation that would require, among other things, the issuing of licences to a restricted number of vessels specifying the amount of fishing time allowed on particular stocks in particular areas, and so on.

These demands were unacceptable to other EEC countries. The Commission's proposals for Total Allowable Catches (Tacs) and quotas for 1978 showed some improvement in the British share and benefits to Ireland (the latter in line with the Hague Resolutions). Ireland decided to drop its insistence on a 50-mile exclusive zone, but the UK was not satisfied. On 19

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[9] HC Deb 20 October 1976 c.1459
[10] op. cit. p.186

January 1978[11] the Minister of Agriculture, Mr Silkin, reported on failure to reach agreement at the Council of Ministers.

> Perhaps I should remind the House that the Government have three essential requirements - a preferential position for our fishermen within 50 miles; adequate and properly enforced conservation measures; and acceptable quotas.

The proposed 31% British share of the Community catch in all EEC waters still fell far short of the 45% demanded. In addition, much of the UK quota was made up of horse mackerel, an unexploited species that would be difficult to sell. There was also, of course, no recognition of the UK's claim to an exclusive 12-mile zone or of its "dominant preference" in the 12-mile to 50-mile zone.

Further disagreement was reported on 1 February 1978 when Mr Silkin reported that the previous standstill agreement had lapsed, but that the British were unwilling to accept the Commission's proposals on quotas, even for a limited period. There followed a legal limbo, with member countries other than the UK tacitly accepting the Commission's quotas.

In 1977 Ireland had attempted unilateral conservation action in its area, but this was seen by other member countries as discriminatory in practice, and referred to the European court which refused to support it. The UK introduced some unilateral measures in 1978 but they were less controversial, often in line with Commission objectives and mostly acceptable to other countries. However, in July 1980, the European Court ruled against the UK on the "Norway Pout Box" - an area of the North Sea in which the UK had tried to impose restrictions on the industrial fishing of Norway Pout, to protect young haddock and whiting stocks. Gradually, the negotiations began to move forward, in time for the Common Fisheries Policy to start operating in 1983.

Under the EU Common Fisheries Policy, the sea within 6 miles of the coast is reserved for the fishermen of the coastal state. Between 6 and 12 miles from the coast, access is only allowed to fishermen from countries which traditionally fished in that area. Between 12 and 200 miles from the coast, access is generally allowed to fishermen of any EU country, with a few exceptions.

Regulation operates via quotas and effort control. For each major type of fish, the Council of Ministers agrees a Total Allowable Catch (TAC) which is then divided into quotas for each fishing nation, according to the principle of "relative stability" so that it is based upon the proportion of catches taken in that area by the various countries before the CFP came into

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[11] HC Deb c.676

operation in 1983. Quotas were considered an insufficient method of control of fish stocks and were supplemented by "effort control", because fishermen aiming at one type of fish may catch another as well, and also because of the continuing problem of fraud. Effort control often amounts to decommissioning (paying fishermen to remove their boats from fishing), but may also mean a limitation on the number of days in the year when a fishing vessel may actually fish, or rules covering their gear.[12]

In other words, the EU CFP reflected the fishing patterns of the early eighties rather than allowing extra access to foreign fishermen.

III Spanish and Portuguese entry into the EC in 1986

It is sometimes claimed that the British Government made an error in allowing Spain to enter the EC and thereby to compete with British fishermen. That was not the understanding at the time and there were only two references to fisheries in the Second Reading Debate, followed by none in Committee. The first came from Sir Geoffrey Howe, then Foreign Secretary.[13]

> We have been able to preserve the balance of fishing opportunities under the common fisheries policy. Spain and Portugal are incorporated into the common fisheries policy for its duration. With certain limited exceptions, Spanish and Portuguese access to Community waters is limited to those areas and species to which they currently have access. The number of Spanish and Portuguese vessels fishing in Community waters will continue to be strictly controlled and subject to strict monitoring and reporting requirements. Effective fishing opportunities for united Kingdom fishermen remain undiminished.

Mr Maclennan also referred to fisheries.[14]

> There has been an important achievement on fisheries. The transitional phase that has been offered is important, but more important is the strict control of fishing, which is a part of the agreement leading to the accession of the two countries.
>
> Spain has the largest fishing fleet in Europe and constitutes perhaps a third of the total fleet of the whole of the European Community. As such, whether within or without the Community, it would constitute a major threat to fishing stocks if it were not subjected to a fishing regime which sought to prevent the depredation of the stocks. By bringing Spain into the fisheries regime, and now applying to Spain the regulations on, for example, mesh size,

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[12] There is a mass of detailed legislation of particular points of the policy, but the nearest to an overall law is Council Regulation (EEC) 170/83 establishing a Community system for the conservation and management of fishery resources (OJL 24).

[13] HC Deb 4 December 1985 c.317
[14] HC Deb 4 December 1985 c.335

> we are exerting a control which would not have been possible if Spain had remained outside the Community.
>
> It is also right that there should be a limitation on the number of vessels allowed to fish at any one time in the specified areas which have been agreed. It was a major negotiating achievement. It was very difficult to get, and I congratulate the Government on it.

The Treaty approving Spanish entry into the EC[15] contains several detailed articles on fisheries. Article 158 provides that 300 vessels, specified together with their technical characteristics in the list of names, known as the "basic list" may be authorised to fish in areas known as ICES Divisions Vb, VI, VII, VIII a, b, d, with the exception of one area. Only 150 standard vessels, of which 5 may be allocated only for fishing for species other than demersal, shall be authorised to fish at the same time provided that they appear on a periodical list adopted by the Commission, up to certain limits. Article 159m provides that the number of standard vessels may be increased on the basis of the development of overall fishing possibilities allocated to Spain for stocks subject to the TAC system, in accordance with the procedure laid down in Article 11 of Regulation (EEC) No. 170/83.

Article 161 lays down the share of TACs to be allocated to Spain. It covers Hake, Monkfish, Megrim, Norway Lobster, Pollack and Anchovy. There is also a fixed share for Blue Whiting and Horse Mackerel. More important, perhaps, is what is omitted. Spain was given no quota at all for the main commercial fisheries in EC waters of interest to British fishermen - such as cod, haddock, herring, plaice, or mackerel. The 150 vessels allowed to fish by the list system at any one time, implied some increase, since it compared with 118 in 1984 and 106 in 1985[16].

IV The current arrangements with Spain and Portugal

Spain and Portugal were very anxious in the early 1980s to join the EC to anchor their new democracies in an international organisation, so they accepted terms of entry that were unsatisfactory from a purely economic point of view. Since then, they have been working to improve their position. In particular, they insisted on better conditions, by the end of 1994, including full membership of the CFP from 1996, as a condition of their ratifying the entry of Austria and the Scandinavian countries into the EU. When settlement was reached, there was some criticism of the British Government for having agreed it. The issues, however, were more complex than they seemed.

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[15] Cmnd 9634

[16] *R.R.Churchill, EEC Fisheries Law*, 1987, p.138

Spain and Portugal naturally wanted full access to EU waters, but that would have greatly upset other states which are trying hard to reduce over-fishing. The principle of "relative stability" is being interpreted to mean that the entry of two new countries should not change the rights of the other member countries to national fishing quotas.

The final agreement came into force on 1 January 1996. Spanish fishing vessels were granted access to almost all EU waters, but not quotas, so they still have no right to fish there for cod, haddock or the other quota fish. The Minister (Mr Waldegrave)[17] stressed some positive features of the agreement, but regretted that some Spanish vessels (40 at a time) would be allowed into the Irish Box, to fish for non-quota fish. They would not be able to enter the Irish Sea or the Bristol Channel. He abstained on the vote over the Irish Box, but these issues are decided on majority voting so there was no question of a veto. Effort control measures were agreed in 1995.[18] They are based on kilowatt days (engine power times number of days). Precisely how member states implement this additional effort control will be up to them, but the Commission will retain the right to monitor the efficacy of the system applied in each member state. Spanish effort in the Irish Box, according to these proposals, would be set at 7.519 million kilowatt days. The figure has been calculated by multiplying 515kw (the "standard" power of a vessel) by 40 (the ceiling on the number of vessels allowed to fish in the area) by 365 (the number of days in a year)[19].

The point of view of Spanish fishermen, in very general terms, was expressed by J.R.Fuertes, director general of the Co-operative of Fishermen of the Port of Vigo, writing for a Spanish audience [20].

> Spain catches and produces around 1,400,000 tonnes of fishery products, and imports another 600,000 to satisfy the demand of her population. Fish is, then, a strategic sector whose direct and indirect effects carry over an infinity of complementary and subsidiary activities...It is national wealth. It is value added.
>
> It is certain that, in spite of having a coastal perimeter of 7,000 kilometres, our narrow continental platform determines that two thirds of our catch is taken in free international waters or in waters regulated by international conventions. The Spanish fleet has accumulated...an enormous volume of historic rights which on not a few occasions were cheerfully given away and wasted, as happened with our precipitous entry into the European Union.
>
> Those who suggest that little by little we stop maintaining our own fleet so as to comply with transnational formulas, as could be the joint ventures or mixed companies, offer us the recipe that, simply, we should give up for ever the national flag of our ships and surrender the little which remains for us to those who are more ready, or more bold, or who hold less scruples.

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[17] MAFF News Release 23 December 1994

[18] Council Regulation (EC) 2870/95 of 8 December 1995 amending Regulation (EEC) 2847/93 establishing a control system applicable to the common fisheries policy (OJL 301)

[19] *Eurofish Report* 8 June 1995 BB/1

[20] *EL Pais*, 20 April 1995

V What the position might be within the EU if there were no CFP

The CFP can be seen as a derogation from EC law rather than an extension of it. If one imagines the EC without a CFP, it is difficult to know just what would happen to fishing. If fishing were organised under national jurisdictions so that, for example, a Spanish fishing boat could be excluded from British waters, the Spanish fishermen could go to the European Court and claim that they had been discriminated against on the grounds of their nationality, citing Article 6 of the Treaty of Rome.

Article 6

> Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

It is difficult to see what defence the UK authorities would have. In other words, such a system might allow more foreign access to British waters than is the case at present. The national quotas seem very anomalous in terms of EC law, as shown by the Factortame case, which ruled that a Member State could not insist on a nationality requirement for a fishing vessel registered with it.

VI What the position might be with neither EU rules nor a CFP

If the EU did not exist, or if it did not cover fishing, the UK would have been forced into the 200 mile limit policy, as happened to some extent between 1977 and 1983. This would not have been entirely straightforward, because of the other nearby coastal states. Presumably some system of joint access would have to be set up in areas within 200 miles of more than one coastal state. That would include the channel, much of the North Sea, a large area around Eire and some areas near to the French Atlantic coast. Most fishing grounds would be covered by such arrangements. The 6-mile and 12-mile limits have meaning in terms of the CFP, but they would still be covered by such arrangements. In some areas, UK fishermen would lose access. Anywhere outside the UK but within 200 miles of another country, such as Spain, would be barred to UK fishermen.

VII Why Fisheries Decisions are taken by Majority Voting

Most agricultural policy is made under Article 43 of the Treaty of Rome, which requires unanimity in the establishment of the common agricultural policy, but qualified majority voting thereafter. Fishing entered the Treaty of Rome via inclusion with agriculture and much CFP business is undertaken under Article 43, with qualified majority voting, although other Treaty bases can be used, usually relating to trade and therefore also requiring majority voting.

ARTICLE 43

1 In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.

2 Having taken into account the work of the conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organizations by one of the forms of common organization provided for in Article 40 (2), and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this title.

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting unanimously during the first two stages and by a qualified majority thereafter, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3 The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organizations by the common organization provided for in Article 40 (2) if :

(a) the common organization offers Member States which are opposed to this measure and which have an organization of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialization that will be needed with the passage of time;

(b) such an organization ensures conditions for trade within the Community similar to those existing in a national market.

The current system of the CFP only operates until the year 2002. It could - perhaps -be argued that its replacement in 2003 would require the establishment of a common organisation of fishery products and, therefore, under Article 43 the Council would have to act with unanimity. It is difficult to know whether that would be considered a convincing argument

or whether another Treaty base would be used. To some extent, that depends upon the nature of the successor regime. A regime considered as contributing to free trade in fishery products within the Union could be introduced under 100A, which would result in qualified majority voting. In addition, if unanimity were required, that returns to the question of what would happen if no agreement were reached. The threat of having waters open to all would put enormous pressure on any country trying to block the arrangement.

VIII Quota hopping and the Factortame decision

Many people feel that the system of national quotas in the CFP implies that fishing vessels should be registered in the quota for the appropriate nationality, so that British vessels should have predominantly British crews. The Merchant Shipping Act 1988 was aimed at securing roughly that end. However, in 1991, the European Court of Justice ruled that UK legislation for the registration of fishing vessels contravened EC principles of freedom of establishment insofar as it imposed conditions of nationality, residence and domicile on legal and beneficial owners, charterers, managers and operators of the ships, or on the composition and directorship of shipowning companies.[21]

The case was of great general importance in establishing that British law had to be amended when it contravened EC law. In terms of fisheries, it was followed by a repeal of the merchant Shipping Act and a removal of the nationality requirements for crews or owners of fishing vessels. It may or may not be anomalous that Spanish vessels are registered as British and fish towards the British quota but it is perfectly legal, and in no sense represents cheating. Exact records are no longer kept of how many foreign-owned or foreign-crewed vessels are registered as British. The Ministry of Agriculture estimate that about 130 vessels owned by interests in other Member States are registered as British, of which about 100 are Anglo-Spanish and about 30 are Anglo-Dutch. By the same token, British ships could register as Spanish, but there would probably be little point, since the Spanish are so short of quota.

In another related development, Spanish fishermen are suing the British Government for damages to cover the period when they were excluded from the British register and hence the British quota by the Merchant Shipping Act. The Advocate General has ruled in favour of the Spanish fishermen, but a judgement of the full Court is still awaited.[22] Once again, general principles of European Law come into play. It is known that damages can be due when a Member State fails to implement a Directive (Francovich damages) but this claim goes further. The UK was not failing to implement a Directive, but was legislating in a way that was later ruled by the European Court to be contrary to European Law.

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[21] Financial Times Law Report 14 August 1991[C-6 9/90 (1991)]
[22] Financial Times 29 November 1995

IX The Argument against the CFP

Some people would argue that the problem with the CFP is not that it resulted in the loss of UK fishing grounds, but that it has a poor record on conserving fish. There are two particular problems. First, the setting of quotas is influenced by political pressure so that the end result is to allow too much fishing. EU fisheries scientists recommend Total Allowable Catches[23] to the European Commission, which then increases them before recommending them to the Council of Ministers. The Council of Ministers then normally further increases them before agreeing on figures. One reason for this is that each individual Member State feels that it is in its own interests to press for higher TACs (and therefore quotas) without feeling responsible for the general problem of overfishing.

The second, and closely related, problem relates to enforcement. Enforcement of rules on fishing gear rests with the coastal state, but enforcement of the rules on quotas and overfishing rests with the country with which the fishermen are registered. They have very little incentive to make enforcement really effective, because the benefits would be spread among all the countries of the EU.

It is therefore possible that fishing grounds controlled by a single country could be better conserved. However, that is far from certain, as the Canadian record shows. The gross overfishing of the Canadian cod fishery took place in the late eighties and early nineties while the waters were completely under Canadian Government control.

Fisheries conservation is a serious problem, whether in national or international waters.

[23] which are then divided into national quotas, according to the principle of relative stability, via a fixed formula.