

Up or Out: the changing role of Member States in EU Fisheries Management

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Abstract:

Increasingly European Fisheries Policy is being determined outside the Common Fisheries Policy. For example the Johannesburg Summit on Sustainable Development, setting harvest levels at MSY, the Marine Strategy Directive, defining good environmental quality, and the Marine Policy, integrating activities and sectors into one policy framework. In addition, with a goal for increased participation (for example within the Regional Advisory Councils) and setting policies at the regional level, the locus and focus of fisheries policy are changing.

With the current revision of the Common Fisheries Policy the debate is opened on how fisheries management should be shaped. In this article we will argue that with an increased attention for regional resource management and integration and participation across activities, stakes and stakeholders the Member States are faced with the question of where to position the State in fisheries management. Using the theory of multi-level governance, we will argue that the traditional position of Member States will no longer match the fabric of policy setting.

Keywords: Fisheries management, review CFP, multi-level governance, participation, regionalisation

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1. Overture

Traditionally in the EU fisheries is being managed under the Common Fisheries Policy, with fisheries being only one of the five subjects in which the Commission has exclusive competence (Hawkins, 2005). Hence, although implementation of the policies is left to the member states, the European Commission plays a central role in setting maritime policies and defining the role member states (MS) can play.

In recent years a number of Commission initiatives on EU marine policy have seen the light, among which the development of the Marine Strategy Directive (MSD, 2005) and the introduction of the Integrated Maritime Policy (MP in 2007). In addition, following the reform of the CFP in 2002, fisheries management has been redefined in terms of scope (from fish stocks to the more encompassing ecosystem) and partisanship (in terms of increased participation via the creation of Regional Advisory Councils). Additionally developments in the realm of research (Marine and Maritime Research strategy) and data collection (Data Collection Regulation) redefine the relative position of the Commission and the member states in terms of resources and location.

The central question of this paper is: what is the role and position of member states in the management of marine resources given the current developments of increased regionalisation, integration across stakes and stakeholders and participation?

In section 2 a theoretical framework for the analysis of multi-level governance is presented. The framework enables the description and analysis of the different

marine policy initiatives in terms of the shifting locus of governance from the traditional state level to sub-national and supranational levels. In section 3 we will present the different marine policy initiatives that affect the management of marine resources. In section 4 and 5 we will consider the effect of these changing policies on the role of member states and the consequence it will have on the position of member states in the management of marine resources. In chapter 6 we will draw some conclusions.

2. A framework to decipher multiple layers of governance

The concept of multi-level governance (MLG) attempts to capture the shifting locus of governance from the traditional state level to subnational and supranational levels. In general, MLG concerns the sharing of policy making competencies in a system of negotiation between nested governmental institutions at several level (supranational, national, regional and local) on the one hand, and private actors (i.e. NGOs, producers, consumers, citizens, scientists) on the other (van Tatenhove, 2003).

The major substantive steps taken in the European political and policy arenas as well as the institutional reforms within the EU, the changing relationships and the increased bargaining between the multiple levels of 'Brussels', the national capitals and subnational players link up with the more general trends of governance and sub-politicisation. Existing, more or less institutionalised networks in the European arena are opened up to include different layers of government as well as actors from market and civil society. Many of those lie outside the control of traditional member state executives. The result is a system of multi-level governance in which policies are prepared in a way that resembles neither traditional international politics nor policy

making in any of the member states. Instead, as a result of the mix of both 'old' and 'new' types of governance (Sbragia, 2000), a diversity of policy arrangements has emerged, stretching different layers of government, besides and within the formal circuits of policy-making.

The concept of MLG in the European Union has largely been developed in response to dominant state-centred approaches. Adherents of a state-centred perspective in the EU tend to consider national governments as the key actors in the EU system, devolving only limited authority to supranational institutions to achieve specific goals. This is reminiscent of realist conceptions of international relations, focusing on the interaction between unitary state actors. National governments in this view are located in domestic political arenas, and their negotiating positions are influenced by domestic political interests (cf. Moravcsik, 1993). In the MLG perspective, in contrast, national governments no longer prevail in European policy making (Hooghe *et al.*, 2001; Jordan, 2001; Jachtenfuchs, 2001). European institutions like the European Commission, the Parliament and – more indirectly – the Court of Justice each play a role on their own, and sub-national as well as private actors operate in both national and supranational arenas. In short, different types of actors at different levels share decision-making competencies.

To fully understand EU policy making in an MLG-setting one has to gain insight in the tension and interrelations between intergovernmentalist, supranational and transnational arenas within the EU (van Tatenhove, 2003; van Tatenhove *et al.*, 2006).

Each of these arenas has its own characteristics in terms of participants, policy arrangements and procedures. In the inter-governmental and supra-national arenas, the role of codified institutions such as national governments and EU institutions is dominant. Member States play a prominent role in the European Council and the Council of Ministers. The supra-national arena, consisting of the European Commission (EC), the European Parliament (EP) and the European Court of Justice (EJC), gained more influence on collective decision-making, involving a significant loss of control for individual national governments (Hooghe *et al.*, 2001). These institutions are codified arrangements that provide the official setting of EU politics, such as: the institutionalised interrelations between European institutions and national governments and formal decision making procedures.

The transnational arena consists of a diversity of formal and informal institutions and organisations. Examples of formal institutions in the transnational arena are the diversity of committees and European Agencies. With the institutional reforms of the last decades, there was a growing need for co-operation between the sub-national, national and supra-national levels, especially concerning the implementation of EU policies. The institutionalisation of a diversity of committee structures in all stages of the policy process gave in to the need to establish fora in which policy ideas could be deliberated upon, policy proposals could be discussed, and policy implementation could be monitored (van Tatenhove *et al.*, 2006). These committees differ with respect to membership (Member State and EU representatives, non-state actors), with respect to their formal position and with respect to their competences.

Another example of formal transnational institutions is the creation of European agencies dealing with regulatory policies, now also including fisheries control and

inspection. The first wave of these Agencies in the 1990s reflected a political compromise whereby the Council would allow for the transfer of additional authority and resources to the EU level only if the new bureaucratic structures created were subject to substantial intergovernmental controls (Keleman, 2002). Keleman showed that the growing legislative power of the European Parliament changed the politics of 'Eurocratic' structures; it asserted a more powerful role in the oversight of existing EU executive bodies and in the design of new ones. The agencies, with their information gathering, product-licensing and monitoring tasks, have a significant influence on regulation in the EU: they improve the Community's monitoring capacity and fulfil regulatory functions in administrative practices outside the Commissions direct control. Examples of informal trans-national institutions are 'epistemic communities' (Haas, 1992), 'Communities of Practice' (Wenger, 1998), 'best practices' or benchmarking. Communities of Practice are informal networks which create many opportunities for participants to learn from one another's experiences in policy practices. It is the shared learning and interest of its members which keeps such an informal community together (van Tatenhove *et al.*, 2006).

3. A changing stage

Since the 1980s the management of marine resources was basically arranged under the Common Fisheries Policy (CFP). The CFP encompasses different policy domains reflected in the four main policy pillars: Conservation policy, Structural policy, Market policy and International policy. Under a single umbrella one can find ecological aims, such as managing stocks and environmental impact of fisheries, next to economic aims, such as strengthening the competitiveness and the viability of operators in the sector and fostering the sustainable development of fisheries areas, as well as

market and consumer considerations. The unification of the CFP is found in its focus on fisheries.

Different actors are involved in fisheries policy at different levels. Of course, with fisheries being only one of the five subjects in which the Commission has exclusive competence (Hawkins, 2005) the Commission plays a central role in setting policies. However, implementation of policies is left to the individual Member States. This results in a structure that can be classified as being simultaneously inter-governmental, supranational and transnational. Inter-governmental as the CFP accommodates to solve the conflicting interests of the Member States; for example the sharing of resources (Jensen, 1999). Supra-national as the core competence lies with the Institutions of the European Union. Yet concurrently trans-national in its diversity of committees and European agencies in which co-operation between the sub-national, national and supra-national levels is shaped where policy ideas can be deliberated upon, policy proposals can be discussed and policy implementation can be monitored (van Tatenhove *et al.*, 2006). Examples of the latter are ACFA, the Advisory Committee on Fisheries and Aquaculture, created as early as 1971 to have stakeholder input into the implementation of the rules of the CFP and the formulation of analyses and joint positions, and of late, the establishment of the Regional Advisory Councils. But also more informal fora such as working groups and workshops are used.

The principle of subsidiarity, in which the State is seen to only interfere if the autonomous lower parts seriously fail to fulfil their tasks (Kickert, 2003), in fisheries management hence is interpreted in the European Treaty as fisheries management

being the sole competence of the EU (CFP). Paradoxically, subsidiarity impedes the command and control form of fisheries management under the CFP since the Commission can only command management but it does not control implementation.

In the last decade the primacy of the CFP to regulate marine natural resource management is being challenged. On one side with the establishment of the Natura 2000 agenda of bird and habitat directive and the establishment of the Marine Strategy Framework Directive (MSD), marine environmental policies are being shaped outside the CFP. On the other hand with the establishment of Regional Advisory Councils (RACs) and the Maritime Policy the arena for marine resource management is opened up to be more participatory and also opening up to more stakes and stakeholders.

Also EU policies increasingly are being shaped at the supranational level. A clear example of the later is the Johannesburg Plan of Implementation of 2002 in which the Commission and Member States signed up to the aim of achieving a maximum sustainable yield (MSY) for depleted stocks by 2015 at the latest. Hence a prime target of fisheries management, the level of the stocks, is not set by the member states of the EU alone, but is set at a world stage.

In the same year as the Johannesburg Summit for Sustainable Development the CFP was revised. Under this 2002 revision it was clearly attempted to make fisheries policy more participatory by establishing RACs. The 7 RACs are stakeholder fora consisting predominantly of representatives of the fisheries sector and representatives of other interest groups, including environmental organisations,

consumers and recreational fishermen. The RACs are primarily meant to function as advisory bodies towards the Commission but member states can also draw on the RACs for resolutions. The RACs are also mandated to issue resolutions on their own initiative. The Commission (or the member state authorities) is not obliged to follow a recommendation from a RAC and, therefore, in practice the advantage of following a recommendation from the RAC will always be weighed against other preferences of those receiving the recommendation (Hegland *et al.*, 2009).

The RACs are either organised along specific sea areas roughly corresponding to large marine ecosystems / regional seas (five RACs) or specific types of fisheries (two RACs). It is noteworthy that the introduction of RACs introduced a new political level in EU fisheries management which meant there was, for the first time, a close one-to-one match between a level of management in the governance system and a biological, ecological scale in the natural system (Hegland *et al.*, 2009).

Natura 2000, the ecological network of protected areas in the territory of the European Union, unites the Birds Directive, which requires the establishment of Special Protection Areas for birds, and the Habitats Directive which similarly requires Special Areas of Conservation to be designated for other species, and for habitats. Although not primarily focused on the marine environment, Natura 2000 areas are found in the coastal zone. By taking a river basin approach Natura 2000 takes a spatial oriented focus and with its regional signature it emulates an international stage.

Closely related to the Natura 2000 areas is the Marine Strategy Framework Directive (MSD). The main objective of the MSD is to achieve environmentally healthy marine waters by 2021. This will be achieved by establishing marine regions and sub-regions, which will be managed by member states in an integrated manner based on environmental criteria. In drawing up marine strategies for the waters within each marine region, member states will be required to cooperate closely. As such, like Natura 2000, the MSD has a regional and international stance.

In addition, Natura 2000 and MSD are both environmental directives. European policy-making, to the extent that it concerns directives, does not end at the last stage of the legislative process in the Council of Ministers. After adoption, directives are further shaped by the member states when they are put into national rules. In this process, and within the limits of Commission oversight, domestic actors can adopt an interpretation that somewhat deviates from the directive. In this way, EU policy-making is best described as a long chain of mutually dependent decisions that cuts across multiple levels of government (Steunenberg, 2006). The MSD directive has, in line with other environmental directives, been developed not by the DG responsible for fisheries, but by the Environmental DG. As with other environmental directives, the development and implementation of policies by the environmental departments results in a rather technocratic approach in which science defines a measurable standard to which a phenomenon has to comply. Policy implementation in that case evolves around steering on indicators (van Hoof *et al.*, 2009).

Whereas Natura 2000 and MSD take a spatial approach, the Maritime Policy takes a more integrative and activity oriented point of view. Sectoral approaches have shown

themselves to be inadequate and ineffective in the European context; use conflicts, negative externalities, and environmental degradation have increased, and the need for a comprehensive approach to ocean use management has become readily apparent to EU-decision makers (Juda, 2007). The Maritime Policy vision document – also called the Blue book – seeks to establish an all-embracing maritime policy aimed at developing a ‘thriving maritime economy in an environmentally sustainable manner’ (Commission of the European Communities, 2007), a vision for an integrated maritime policy that covers all aspects of our relationship with the oceans and seas. This innovative and holistic approach will provide a coherent policy framework that will allow for the optimal development of all sea-related activities in a sustainable manner (Commission of the European Communities, 2007). Being integrative the MP is envisaged to be embracing both the MSD and the CFP.

The MP policy initiative explicitly states that the MP requires a governance framework that applies the integrated approach at every level, as well as horizontal and cross-cutting policy tools. Hence, not only fisheries but also maritime transport, energy, surveillance and policing of the seas, tourism, the marine environment, and marine research are brought under one umbrella (Commission of the European Communities, 2007). This on one hand will affect the participatory aspects of policy formulation, for example as reflected in the RACs. On the other hand the MP, for example in its research paragraph (the Marine and Maritime Research strategy) builds on developments as witnessed under the Marine European Research Area Networks (ERA-NETs) of integration and regionalisation. Hence the MP opens up the arena for wider stakeholders and their representatives and provides a novel view on integration and regionalisation in marine resource management.

The Marine and Maritime Research Strategy (Commission of the European Communities, 2008) reflects the emphasis on an “integrated approach to cope with complexity (...) and to find coherent solutions for exploiting all the economic potential of the seas within an ecosystem-based approach” similar to that of the MP, promoting a governance model in which “marine and maritime stakeholders (are involved in; LvH, JvT) (...) strategic marine and maritime research issues at pan-European and regional levels (and; LvH, JvT) marine and maritime stakeholders, in partnership provide support measures to enable screening of marine and maritime technology expertise to promote rapid transfer at EU level”. Hence an emphasis again on integration and participation. And in fact in analysing the Marine and Maritime Research Strategy the conclusion that comes to mind is that the Commission strives for a repositioning of its role in marine and maritime research leaving direct funding of research to the member states, with the Commission in the role of supporter of the integrative aspects of research.

The more regional and cooperative view on funding was already noted with the development of the Marine ERA-NETs such as Marinera, Marifish, Amphora and Bonus. The ERA-NETs aim at the coordination and cooperation of national and regional research programmes with the Commission funding the additional costs related to the coordination.

A similar strive for regional cooperation is found in the discussions surrounding the Data Collection Regulation. The DCR establishes a Community framework for the

collection and management of the data needed to evaluate the situation as regards fishery resources and the fishing industry. The Member States shall be responsible for collecting the data (European Council, 2000). In the several regional coordination meetings the Commission promotes the discussion of further cooperation of member states in the implementation of data collection programmes, of course especially in the realm of data collection with sea going research vessels

4. A change of play

What we have witnessed above is that over the past 25 years in the European Union a change in interplay between actors involved in the management of marine resources has occurred. From the perspective of fisheries management on the one hand we observed a change in focus of the policy; EU marine resource management is no longer only about the management of fish stocks but increasingly incorporates both the more wider ecological setting (as reflected in Natura 2000 and MSD) as well as other than fisheries uses of the marine space.

Also there has been a shift in locus of marine resource management. No longer is marine resource management only a matter between the Commission and the Member States (MS), but there are more participants and via RACs the discussion is staged at a regional level. Also, with the Johannesburg Declaration, aims of policies are derived from a supranational stage.

Across all the policy initiatives described above we see tendencies of an increase in integration, participation and regionalisation. Integration in both the sense of integration over activities and sectors as well as in an integrated holistic view on the

marine (eco)system. Participatory in the sense that representatives of the activities and sectors are obtaining a formal position in the policy cycle. Although it can be argued that in the current set up the RACs, with no formal decisive power within the institution and the fact that advice rendered does not necessarily be incorporated in the further policy making process, have but a token role, the establishment of the institution is a clear incorporation and formalisation of participation in the policy process.

Regionalisation in the sense that explicitly in the Natura 2000 and MSD a regional spatial approach has been chosen. But also that in implementation it is clearly indicated that cooperation between states is required. And again, also the establishment of the RACs emulates a regional focus be it spatial (North Sea, Baltic, Mediterranean, North and South West waters) or on activity (Pelagic and Distant Waters RAC).

5. A change of character

If we take the change of play towards the role of the Member States a number of challenges are occurring. In the history of the European Union we can see a reluctance among the MS to devolve competence to the EU. Only for such matters as for example fishing and shipping, which by their very nature have a border crossing signature, decisive powers are rendered to the international fora.

With the process of increased attention for cooperation and integration at the regional level the Member States are challenged to jointly develop policies for a specific spatial area. This will require a form of unification of policy by member states.

Experiences in implementation of the CFP and interpretation of Natura 2000 and MSD show that differences are many amongst member states and that a clear and level playing field is not that easily developed.

Also with a call for increased cooperation at the regional level in policy implementation but also in for example research cooperation, it seems logical to devise a forum that addresses issues at this regional level not on a single issue and temporary basis but on a more permanent fashion. The developments of the Bonus ERA-NET are exemplary in this, showing prolonged (research) cooperation between the Baltic states.

With an aim of integration over diverse activities and sectors in fact the member states are challenged to bring under one umbrella a diverse set of aims and policies. The institutional framework for the protection of Europe's seas and oceans has become highly developed over the last 35 years, including milestones like the 1972 and 1974 Oslo and Paris Conventions (merged in 1992 into the OSPAR Convention on the Protection of the Marine Environment of the North-East Atlantic), the United Nations Convention on the Law of the Seas (UNCLOS), the 1992 Rio Agenda 21, the regional conventions for the protection of the Baltic Sea (HELCOM), the Black Sea, and the Mediterranean, as well as the Johannesburg Plan of Implementation (JPOI) of 2002. In addition, several international and EU initiatives focus on land-based sources of pollution with an impact on the marine environment like the IPPC Directive and the REACH initiative. Extensive environmental requirements for shipping developed under the auspices of the International Maritime Organization (IMO), and

the work under the Climate Change Convention is another important element (Kroepelien, 2007).

Not only are the member states challenged to bring together complex volumes of policy but also the differing signatures of different sectors. This is a process not easily implemented. The implementation of for example the MSD shows that incorporation of different government institutions and stakeholders in the implementation process is not straightforward. In the Netherlands we witness implementation of the MSD by the ministry of water management with hardly any direct participation in the process from both the Ministry responsible for fisheries management and the fisheries sector (van Hoof *et al.*, 2009).

As for participation, the RACs can be starting point for the establishment of a participatory forum for marine resource management policies. The RACs already do represent (some) stakeholders from the fisheries arena and have a regional focus. However, with a strive for more integration over sectors and activities, more stakeholders need be included in such a forum.

With increased complexity of issues to be covered by marine policy, with an intrinsic strive for integration, participation and regionalisation, it is perceived unavoidable that marine resource management decisions and implementation are not taken at the national level. Shipping presents an example of an activity that needs to be regulated at the supranational EU level. Fisheries presents an example of activities that need to be regulated not at member state level but at the same level of the ecosystem; hence at the regional level as currently reflected in the RACs.

6. Recitative

The arena of EU marine resource management is rapidly changing with developments such as the 2002 Common Fisheries Policy reform and the upcoming 2012 CFP reform, the implementation of Natura 2000 and Marine Strategic Framework directives and the thinking of an integrated Maritime Policy. In addition, with a goal for increased participation (for example within the Regional Advisory Councils) and setting policies at the regional level, the locus and focus of fisheries policy is changing.

For Member States these developments of integration, participation and regionalisation present several challenges. The most important question is the positioning of the Member State in the policy development process. With a change in locus of marine resource management, following a change in focus of the policy field, member states are no longer the most logical level of decision taking.

With increased cooperation between (regional) member states in developing and implementing marine resource management and research and a simultaneous development of participatory platforms at the regional level the member states will need to redefine their position and role. In this new world decisions are either taken at a central (EU) level or at a regional level. In order to match this restructuring of stakes and stakeholders, condensing at the regional level, the traditional position of Member States controlling the debate from the nation state will change. Hence, unless the Member States and the EU position themselves at the regional level, they

will find themselves outside the stage at which management of marine resources is concentrating.

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