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**THE REFORM OF THE COMMON FISHERIES POLICY AND THE ROLE OF INDIVIDUAL TRANSFERABLE QUOTAS IN THE CONSERVATION AND MANAGEMENT REGIME**

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ABSTRACT

Overcapacity and overcapitalisation of the fishing sector have been identified as the principal failure of the Common Fisheries Policy (CFP). This conclusion may be well important in the CFP Reform, 2012, and put again the discussion about the tools that can be used to get sustainable management and better cohesion.

The main purpose of this paper is to enter this debate, making the repertory of the maintained guidelines and of the fundamental changes that are introduced in this new reform, and discussing and evaluating their relevance and potentialities, as well as their difficulties and risk factors. A special attention is given to the possibility of introducing a more focused approach on Rights Based Management in the conservation and management of resources regime. The feasibility of introducing ITQs (Individual Transferable Quotas) in the context of European fisheries is discussed.

Key Words: Fisheries, Rights Based Management, Individual Transferable Quotas, Common Fisheries Policy.

**Introduction**

Besides some interesting results, the Common Fisheries Policy has not delivered the sustainable use of fish resources. Recently, the Pew Environment Group released a study that finds that E. U. fisheries have failed to reduce fleet capacity thus exerting fishing pressure on stocks at two/three time sustainable levels. Overcapacity and overcapitalisation of the sector was identified as the principal failure of the CFP. This conclusion may be well important in the CFP reform (2012) and put again the discussion about the tools that can be used to get sustainable management.

In a drafted “Green Paper” on the Reform, the European Commission was launching a wide, no-hold-barred consultation to the national administrations, stakeholders, researchers and other interested people. The objectives were to discuss the problems of the CFP and to explore the alternatives of change and the ways forward the new reform of fisheries policy.

The main purpose of this paper is to enter this debate, making the repertory of the maintained guidelines and of the fundamental changes that are introduced in this new reform, and discussing and evaluating their relevance and potentialities, as well as their difficulties and risk factors.

One important issue in the discussion of CFP reform is the introduction of ITQs (Individual Transferable Quotas) and other similar *rights based management* schemes. Our paper is also a contribution to this debate. The paper investigates the feasibility of introducing these new management regimes in the CFP.

The paper is made of 4 parts. In the first point we discuss the philosophy of intervention that was underlined in the initial options of the EU when the Common European Fisheries Policy was introduced (1983). Then we analyse the current situation of European fisheries and explain the necessity of a new reform of CFP. In the third point we discuss the maintained guidelines and the fundamental changes that are proposed in this new reform and, their problems and potentialities. Finally, in the fourth point we debate the feasibility of introducing a scheme of ITQs as a fundamental change in the regime of conservation and management of the fish resources.

**1) The Philosophy of Regulation in the initial “Blue Europe”**

The Management and Conservation Regime of fisheries in the European Union (the so-called “Blue Europe”) is, to a high degree, the result of an historic process with multiple compromises among national devices and political interests. But, to look at the CFP as a simple, empirical result, of a day-to-day experience, is an error. Understanding the current difficulties is not possible without paying attention to the philosophy of intervention underlined in the options of 1983, when “Blue Europe” was settled.

The analysis of basic documents and initial proposals of the Commission, in the 70s, allows identifying the philosophy and theoretical purposes that, implicitly or explicitly, were subjacent to the definition of the common fisheries management regime. Since the beginning, two basic alternatives for the formulation of the European fisheries policy were to be considered. At one extreme, a liberal policy that should only establish competition rules in a common market; at the other, a policy of effective intervention, administered at a superior level, which could manage the resources in a perspective of equilibrium between the dynamic, biological conditions of fish growth and the economic conditions of resource use.

The Commission choice on the second alternative was very clear: the necessity of a “comprehensive” fisheries policy was obvious. This choice rested upon the presupposition that free access (central to the Treaty of Rome) would lead to the overexploitation of the resources. This conviction was explicitly made: “The straightforward implementation of the principle of equal access is bound to result in the rapid exhaustion of resources; the consequences of such a situation would be unacceptable” (SEC (1975) 4503 final, p. 9).

That was a real problem for the Commission. Having the responsibility to assure the principles of the Treaty, it was out of discussion the opposition to the “equal access” principle. But, the fear of “fishing race” and “overfishing” justified an intervention policy that could regulate the market and obviate the perverse effects of open access.

For such a policy to be feasible, it needed a central authority. That involved a supranational management of resources.

Settled the philosophy of intervention, the discussion then turned to the management tools. The choice was on command and control instruments. The control of catches and selectivity in fisheries, with the establishment of TACs (total authorized captures) and quotas, and technical measures of conservation (closed seasons, closed areas, minimum dimensions of fish caught and so on) were the preferred forms of regulation. The motives of this option were based on several reasons that included an implicit evaluation of the advantages of this kind of controls vis-à-vis other regulation alternatives, namely, those usually designed as economic tools, like taxes or ITQs, whose principal objective is efficiency in resource use.

At least, five fundamental reasons made the justification of that choice.

First, the Commission recognised that a common policy had costs and generated a lot of administrative problems. The advantages of direct controls were clear. The design and control of these tools were simpler. The necessary biological information existed. The implementation of the regulation was a task that the Commission could not develop without the collaboration of the national administration services. The diversity of those, in terms of structure and efficiency, implied the existence of a simple and clear regulation, of unquestionable scientific hardness, as a pre-condition for an effective implementation.

Second, the political constraint. Taxes and other economic tools, which are very exigent in political negotiations, were simply abandoned. Direct controls are less exigent and facilitate the compromises.

Third, the problem of control and enforcement. The Commission has always given this question a central role in the Common Policy. Reasons are obvious. The Commission put the problem in ethics terms: “It’s the only way to assure that the sacrifices of some member states in the recovery of the stocks are not in vain because of the irresponsible action of others”. Once again, direct controls had advantages. Enforcement was easier with simple regulation that agents could understand, less costly in administrative terms, and, if there existed effective means of inspection, evasion was minimized.

Fourth, the Commission’s preoccupation with uncertainty in stock evolution and environmental and economic changes, made the need for flexible tools. The possible necessity of urgent actuation in situations of environmental crisis, gave the direct-control tools a strong advantage, because they were easier to manage and modify.

Finally, the Commission emphasised the objective of minimising the social costs of the fisheries policy. In an original proposal, from 1976, the Commission explicitly expressed that the management regime should assure “an equitable distribution of the limited resources between the member-states”, and “maintain, as far as it is possible, the level of employment and income in the coastal zones and in the areas mostly dependent on fisheries”. The European Parliament made pressure in this way, too, stating that the biological basis on which conservation and management regime should rest upon, could not be more than a starting point and, at least in the short run, the guarantees of employment and social inclusion were irreplaceable objectives. It is true that direct controls could not avoid the sacrifices of fishermen, unemployment and social tension. However, the reaction to other management economic tools that result in the abandonment of the less efficient producers could be worst.

 Facing these constraints, the answer was very clear: A system of TACs and quotas was a simpler solution for the problems of equitable distribution of fishing opportunities, depending only on distribution formula between member-states. This formula of definition and allocation of use rights in European fisheries is now dependent upon several factors, like the dependency on fisheries of some coastal areas and the level of employment. This is the so-calledPrinciple of Relative Stability that shapes the Common Fisheries Policy. It can be seen as a means of establishing a balance between the need of economic efficiency, in the long run, and the necessary social-economic equilibrium in the coastal areas, in the short run.

**2) Current Situation. The necessary Reform of CFP.**

Some elements of the CFP were reviewed in 2002. Now, the Commission decided to seize the opportunity of passing another decade to evaluate the results and undertake a new reform of this Policy.

Two fundamental causes explain the current state of European fisheries: the internal systemic weakness of the conservation regime and some external challenges.

CFP has not delivered sustainable exploitation of the resources. Conservation policy fails. Many stocks are outside safe biological limits; they’ve been exploited too heavily, particularly the *demersal* stocks. Fishing capacity went on growing. Illegal fishing and the lack of effective enforcement are also responsible features of this picture. This situation isn’t specific to the Community. Worldwide concern about overfishing and overcapacity in the fisheries sector is well documented. The economic fragility of the sector, reflected in poor profitability and declining employment, is the result of a special conjunction of over-investment, rising costs and diminishing resource stocks.

At the political level, the difficulties, associated with the design and implementation of a regulatory system, are substantial: many social constraints, the diversity of socio-economic structural conditions of the fisheries sector in the member states, the lack of involvement of the stakeholders in the management policy, and so on.

External challenges contribute, also, for this situation. The enlargement of European Union and the globalisation of the economy, the emergence of new players in world fisheries (especially coastal developing countries) and the increased focus on the environment are, perhaps, the most visible. In the international scene, the CFP is confronted with a “creeping jurisdiction” process - the slowly slide to the coastal countries’ jurisdiction of many resources which were usually “common-property”.

This picture is not entirely negative. CFP had positive results. It has managed the resources and contained conflicts at sea, provided some degree of stocks stability and avoided the collapse of many species and assured the availability of supplies to the Europeans. However, according to the Commission, these results have been achieved at a high price in terms of the long-term viability of the sector and with inefficiencies in the allocation of resources that, perhaps, could have been more profitable if they were addicted to other sectors in the global European economy. The critical problem is that the fleet profitability is jeopardised by the under-utilisation of investments. The excess capacity and a more-or-less constant value of landings shared between large numbers of actors, reduces the capacity of each vessel to earn an adequate income. In this context, the subsidy policy, artificially reducing the costs and risks of investment, promoted over-supply of capital in an already over-capitalised industry.

These conclusions were reflected in a study commissioned by the Pew Environment Group (see the Report of Poseidon Aquatic Management Ltd, 2010), to assess the economic, environmental and social impacts of the Financial Instrument for Fisheries Guidance, from 2000 to 2006. The study finds that E. U. fisheries have failed to reduce fleet capacity. The key objective of the policy, that was to bring the fishing capacity of the European fleet into the line with the available biological resources, was not attended. Overcapacity and overcapitalization of the sector was identified as the principal failure of the CFP. European fisheries subsidies amounted to 3,2 billion Euros.

So, a reform is needed. The necessity of a corrective intervention of public policy in order to approach the socially efficient solution in resource use is undeniable.

Last Reform of 2002 pretended to mark a new beginning for the CFP. The main changes implicated a long term approach in fisheries management; a simpler policy of fleet capacity, putting on the Member states the responsibility of reduction of the fishing effort and of adapting it to the existing resources; a better application and enforcement of common rules; and the stakeholders’ involvement.

But some problems subsisted. In the core, they had to do with the persistence of conflicts between objectives. One of the most relevant is the problem of the contradiction between decreasing fishing effort and the need of maintenance of jobs and of some socio-economic balance in the coastal areas. The maintenance of decent standards of living for fishermen would demand increases or, at least, the same level of captures. Such seems to be contradictory with the urgent need of stock recovery.

**3) The 2012 Reform of the CFP**

After a long process of discussion, the Commission published a draft that contains the fundamental guidelines for the next reform of 2012 (See COM (2011) 417 final). The fundamental purpose of this point is to make a balance of the aspects and principles that maintains and the new elements that are introduced or simply changed.

In what relates to the maintained principles and elements of the previous Conservation and Management regime, we highlight the following:

First, it is maintained the fundamental principle of equal access of all fishing vessels from Member states to all the resources of UE waters (article 6º, number 1), with the reservation of access for the nationals of each Member state, up to 2022, to the waters and resources in the area of the 12 miles (the so-called territorial sea), without prejudice of possible neighborhood agreements. That is, we find here, at the same time, the commitment with the equal access principle and the derogation of the basic principle of free access (Article 6, nº2).

The CFP reform maintains the limitation of the fishing activities in the area of 100 miles around Azores, Madeira and Canarias, up to 2022, for the embarkations registered in those areas of EU ultra-periphery.

Interesting is the maintenance of the Relative Stability principle and the key of quotas distribution based in the historic report of captures (with some capacity of trade among Member states). The system of TACs and Quotas is maintained as the basic regime of quantification of the fishing possibilities but these expressions disappear.

So, it seems that the fundamental principles: free access with partial derogation; a system of fishing possibilities distribution clearly assented on a perspective that wants to make the equilibrium between the economic efficiency of the fisheries in the long term with the social sustainability in the coastal areas in the medium term; all that is the center of the initial Regime, are not changed; even if the designations are substituted. Note that this does not mean that everything remains unchanged. The simple substitution of the concepts and “the names of things” reveal, perhaps, a new positioning between the problems with reflex in the future evolution of the Common policy.

Besides, the innovations appear, at several levels, in this reform proposal.

The central objective of CFP is to get sustainable European fisheries in environmental, economic and social terms (Note the order!). Up to 2015, the stocks will be explored in a Maximum Sustainable Yield (MSY) basis. Multi-annual plans permit the member states to establish conservation and management measures that tends in bill the relationship between the state of the stocks and the needs of the fisheries based in an eco-systemic approach and in the precaution principle.

An important aspect of discussion in this new reform is discarding i.e. sea-devolution. A gradual prohibition of devolutions is to be developed. That includes the rejection of species subject to capture limits. Fish with inferior dimension than the minimum dimension of fish caught that are stipulated cannot be sold for human consumption.

It is proposed the introduction of a system of *Rights Based Management* tools: the concession of transferable fishing permits from 2014 for drag-vessels and other fleet units with more than 9/12 ms. That is: transferable fishing concessions for large scale fleets with transferability at national level. The species that are included are the ones for which the fishing possibilities are established, with the exception of those that were considered in previous fishing agreements. The concessions invigorate powders for a minimum period of 15 years and institute the right of using individual fishing possibilities. They can be transferred or rented inside of a Member state and, if there is authorization, can even be transferred for another State Member. Each Member can constitute a reservation of 5% of fishing possibilities and can introduce taxes for the use of ITQs. The fundamental objective is that the more efficient companies will buy ITQs. The abandon of the weakest agents, will grant a final situation of a market having a reduction of the fleet without public supports to the vessels retirement.

The European Fisheries Fund will have an endowment of 6,7 million euros for the 2014-2020 period but there is a strong intention that inefficient subsidies are to be eliminated to the fleets.

In the domain of aquaculture, an Advice Board is created. The Member states should elaborate strategic programs to develop aquaculture and to eliminate administrative obstacles.

The role of OP (Producers Organizations) is reinforced, namely in terms of optimization of production, obviating undesirable captures, of finishing the system of retreats and reinforcing the storage mechanism for subsequent collocation in the market.

The UE will defend in the Regional and International Fisheries Organizations the same principles that are persecuted in the internal market. They also propose new mechanisms in the management of international fisheries as it is the possible case of taxes introduction in the access to the resources of the High Sea.

The Agreements with third countries are substituted by Sustainable Fishing Agreements, presupposing a larger financial participation of private vessels’ owners. The esteemed *Good Governance* will imply, also, a clear definition of the responsibilities at the different scales of decision and execution of CFP (local, regional national and international) and a wide participation of the stakeholders. A new encouragement in the control and enforcement of fishing activities and the main responsibility of the state with pavilion flag are also in those commitments.

**4) The role of Individual Transferable Quotas**

A major importance subject for the future of Common Fisheries Policy is the issue of Rights Based Management. All fisheries management systems in the world have introduced some form of use/access rights to face the problems derived from the “common property” nature of fisheries. The idea of creating markets for fishing rights as a means of internalizing the externalities received considerable attention by the founding fathers of Law and Economics and Fisheries Economics such as Coase, Scott and Christy.

To create a market of Individual Transferable Quotas (ITQs) means to confide in the self-regulation of such a system to conduct the fisheries to the economic efficiency and to promote inter-temporal sustainable use of resources. There are several possibilities of doing this. In general, after determining the TAC for a certain stock, one can divide this total amount in several unit quotas to be distributed between the fishing enterprises and a market for quotas can be created. The objective is that, after some time, the property rights will be driven to the most efficient agents, those that can allocate the resources in a perspective of optimal sustainable use along the time - because they are the “real owners” they will internalize the external effects.

Rights Based Management schemes have already been experimented worldwide in some specific fisheries and localizations. These experiences have a lot of teaching results about good practices of sustainable fisheries management and also about the limitations/ risks of these tools. The evaluation results of those experiences, made in several studies, are fundamental to explore the feasibility of these tools as instruments of conservation in the CFP:

These economic methods has a special advantage in the sense that they introduce mechanisms that should conduct the fisheries to the efficiency, eliminating the less efficient producers and changing, effectively, the agents’ behavior - ITQs are usually considered the best regulation choice on efficiency grounds. Granting the fisherman individual quotas may reduce the incentives to *race for fish*. We can expect benefits at the capacity level and fishing effort rationalization; reduced fleet size and optimal vessel configuration; flexible and extended fishing seasons; higher catch-per-unit of effort. This may, also, enhance the quality of landings and improve markets and safety operations by avoiding the landings glut, by reducing storage costs and so on.

But there are also a lot of problems. Professor Copes, in the mid 80s (when the first ITQs experiences were evaluated), referred the problems of property concentration and, of course, the consequent problem of unemployment. After a period of quotas trade in the market, the problem of monopolization of the sector is well documented in several fisheries: the number of owners tends to decline in time and there may be widening income disparities.

The unemployment is a huge difficulty of this method. The abandonment of the less efficient producers creates a lot of difficulties in some coastal areas where the mostly dependent on fisheries populations live. Given the poor inter-professional mobility of many fishermen, the introduction of these methods accelerates the social crisis in those depressed maritime worlds and put in danger some important cultures and ways of living.

We can also introduce other important issues. One relates with the mechanism design of this kind of methods. For example: How can we make the initial division and distribution of quotas? A “Grandfathering” system; auctions; other? Should the initial distribution take account of “historic catches”? And what about those companies that, in a certain moment, did not enter a certain fisheries, but has now a real interest in the business? For those who were in the initial distribution, the quotas seem like a “windfall gain”. Owners of initial quota will sell at a price representing the full present value of the stream of rents generated, that is, the ones wishing to enter will have to pay, in advance, the full value of resource rents – something like a “transaction gains trap”.

Also, the problems of monitoring: Usually, economists highlight these methods because they introduce some kind of self-regulation. In fact, the sense of ownership should give the property-rights users, the real perception that the results of their actions will affect the net economic benefits that results from resource utilization. So, they should manage the resources in a sustainable way. But, the reality shows that, without a government control policy, a lot of problems subsist, including data fouling and quota busting, discarding, more intensive utilization of best fishing grounds, etc.

According to Coase, this is not a problem, because what is important is the final result. But, what can we expect in the short time? What are the social and political reactions to these uncomfortable situations? And, of course, the problem of rents distribution: the issue of *equity vs. efficiency* always marking the debate in Economics. The economic theory proves the equivalence, in terms of efficiency, between the pigouvian tax and a scheme of ITQs, but the distribution gains between agents is still different. In the first case (pigouvian tax), the rents are optimized by the regulation Agency and, in the second (ITQs), rents and welfare gains are distributed between the private agents. Besides the theoretical discussion on efficiency grounds, still persist the practical questions: Rights based management can improve the efficiency in fisheries management; but, who will ultimately receive the gains of sustainable use of resources? How will be distributed the rents? Who are the winners, who are the losers? The winner takes it all?

Another important question that is posed by some ONGs is the lack of differentiation in the application of these schemes to different segment of European fisheries. In the case of Portugal, several ecologist organizations (Sciena and LPN, for example) put the specific problem of *artisanal* fisheries. These costal fisheries have no important effects on unsustainable fishing and the introduction of a scheme of ITQs could easily put the segment in a situation of monopolization and creating a real problem of large unemployment.

In another perspective, the idea of reducing the fishing effort without subsidies for vessels retirement is, of course, a result that the Commission can have expectations. But to explain this to the agents is very difficult and probably creates a huge political reaction. So it seems that this cannot be put in the discussion forums in a so “cruel” manner - some political sensibility is needed.

**Final Note**

Sustainability is at the heart of the proposed reform, not only in terms of fish stocks regeneration capacity but also in social terms. This is the bulk question: how to balance those objectives with latent contradiction. In this context, the role of Individual Transferable quotas in the Management and Conservation Regime still put more issues to discuss.

The principle of Relative Stability, which guides the allocation of fishing possibilities to the EU members, is, in a certain sense, an exemption from the internal market that is embedded in the CFP. However, there are signals[[1]](#footnote-1) that the agents circumvented this principle of territorial definition of rights. Perhaps, by setting up a transparent system for transfers of fishing rights, member states could more easily regulate and monitor such trade in use rights. We might think that a lot of inefficiencies are resulting from the actual regime of management and expect that in a new free regime of trade a clearly reduction in transaction costs would result. Of course, that would result in more economic efficiency but, the issue of introducing a more liberal property rights trade system will have to confront the distributional effects of such a Coasian proposal.

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1. ) See , for example , the so-called quota hoping case. Quota-hopping”, usually understood as the flagging of fishing vessels in order to fish against the catch quotas of another country, is a by-product of CFP. By purchasing vessels and quotas in different countries, some fisheries enterprises act like perfect multinational firms capturing fishing stocks that were supposed to belong to national fishing communities. [↑](#footnote-ref-1)