preferred method of resolving such questions is by modifications of the aids, rather than pursuing a state. It appears that until this instance, there had not been any major battle between the United Kingdom and the Commission over state aids.

13. See the European Community Bulletin, 9/74 (pp. 24-25), 2/75 (pp. 14-17), and 3/75 (p. 47).
14. 'Necessary progress in community energy policy (COM (72) 1200, also issued as EEC Bulletin Supplement no. 11 of 1972); 'Guidelines and priority actions under the community energy policy' (SEC (73) 1481, also EEC Bulletin Supplement no. 6 of 1973); '. . . initial implementation of guidelines and priority action . . .' (COM (73) 1320); '. . . implementation of guidelines and priority actions . . .' (COM (74) 10); 'Towards a new energy policy strategy for the Community' (COM (74) 550, also EEC Bulletin Supplement no. 4 of 1974); 'Energy for Europe: Research and Development' (SEC (74) 2592, also EEC Bulletin Supplement no. 5 of 1974); and 'Community Energy Policy: Objectives for 1985' (COM (74) 1960).
15. Directive 75/404/EEC. Directive 75/405/EEC. These were implemented in the United Kingdom by section 14 of the 1976 Energy Act.
16. EEC Regulation 3056/73. Decision 75/510/EEC. Under Regulation 3056 loans have been granted to aid UK North Sea gas production.
17. EEC Regulations 1055/72 and 1056/72. EEC Regulation 293/74. EEC Regulation 3254/74. EEC Regulation 388/75.
18. Directive 72/425/EEC. Directive 73/238/EEC. Directive 75/339/EEC.
19. 'Necessary progress in community energy policy', EEC Bulletin Supplement no. 11 of 1972, p. 7.
20. COM (74) 1960, p. 6.
21. Council resolution of 27 December 1974 (see EEC Bulletin no. 12 of 1974, pp. 14-17).
22. 'Community energy policy: objectives for 1985' (COM (74) 1960, of 27 November 1974).
23. Figures extrapolated from COM (76) 9 of 16 January: 'Report on the achievement of the Community energy policy objectives for 1985'.
25. See for example, the tenor of the reports of 18 July 1974 and 14 May 1975 of the House of Lords Select Committee on the European Community, and of the House of Commons debate of 3 December 1974 on Community energy policy.

CHAPTER VI

# The Changing Regime of North Sea Fisheries



D. J. Driscoll and N. McKellar

## A. Interdependence and fisheries

This chapter deals with the international politics of the changes that have taken place in North Sea fisheries regimes since 1945. It concentrates on dealings between states and on the institutions which states have established for the international management of fisheries. Broadly speaking, the story is one of transition by stages from a High Seas regime to coastal-state regimes. A High Seas regime is one under which fishing vessels of all nations are free to operate wherever they choose except in the territorial waters of foreign states. States may, however, make agreements between themselves to regulate their own vessels' operations on the High Seas (although participation in such arrangements is entirely voluntary) and to permit access by each other's vessels to particular areas of territorial sea, usually on a reciprocal basis. In the North Sea, national fishery zones were extended to a twelve-mile band around the coasts by the 1964 European Fisheries Convention.[1] As a result of recent extensions of fishery zones to a maximum of 200 miles, all North Sea fisheries are now subject to the jurisdiction of coastal states who claim the right to regulate all aspects of fishery operations therein, including access by vessels of other states. This regime of coastal-state regimes is not yet (August 1978) fully established because there remains a doubt whether the states of the European Community will be able to agree on precise rules to give each others' fishing vessels access to the fishing grounds they claim as their own, and to regulate a quota system and access by non-members' boats.

The need for international political arrangements for the regulation of High Seas fisheries arose originally from the crowded conditions of the fishing grounds of the North Sea and North-East Atlantic. The recovery and harvesting of the fish stocks in these grounds is characterised by a number of external diseconomies. The fishing effort required of one producer to maintain a given level of catch may be in-

creased as a result of the presence of others on the same grounds; in this way, an increase in the number of vessels engaged in a fishery increases the costs of each individual vessel. (An increase in the efficiency of some vessels can have a similar effect.) The fishing effort required of individuals may also have to be increased because of a decrease in the fish population. When these two effects are combined and one has intensified efforts by a growing number of vessels to take fish from a diminishing stock, the stock suffers from overfishing and the fishing industry tends to suffer from rising costs. These tendencies can not be reversed by individuals on their own. The condition has to be dealt with by joint action to reduce effort all round and, consequently, to allocate shares in the catch; in a High Seas fishery, this action has to be based on international agreement.[2]

This condition comes into the category of interdependence. By "interdependence" we mean, following KEOHANE & NYE (pp. 8-19), the extent to which one fishing industry is affected by the actions of others, either by the fishing effort of other industries or by the regulatory activities of other industries' governments.[3] In the early years of the period under review, interdependence was seen chiefly in the ways in which the catch prospects of one industry might be affected by the fishing activities of others. For example, the catch prospects of industries taking fish for human consumption were adversely affected by the operations of industries taking large quantities of fish of many types and all sizes for reduction to fish meal for animal feed or fertilizer. This sort of interdependence could be conceived of as a High Seas conservation problem, to be solved by limitations on fishing methods and effort imposed by international agreement on the vessels of states willing to adopt such restrictions. Thus the North East Atlantic Fisheries Commission (NEAFC), which is discussed below, can be seen as a political instrument for the management of the interdependence of industries from many nations. When industries and their governments became dissatisfied with the NEAFC regime, which did not result in stocks being maintained at the level of maximum sustainable yield, states turned one by one to the idea of national control of access to fishing grounds which had hitherto been undisputably open to fishermen of all nations, as a framework. for conservation of stocks by control of fishing effort.

The extension of national fishery zones has come about in various ways: by international agreement, as in the 1964 Convention; by unilateral action, such as by Iceland, eventually gaining international recognition; and, most recently, by concerted national actions taken in anticipation of the sanctioning of 200-mile exclusive economic zones (EEZ) by the United Nations Conference on the Law of the Sea UNCLOS). The net result of the process has been to make fishing



industries sensitive and vulnerable to the regulatory acts of foreign governments as well as to the market activities of foreign industries. Industries may, for example, be affected by being excluded from middle or distant waters, in which earlier capital investment, not yet written off, had equipped them to operate with optimum efficiency; or by the level of effort directed at migratory stocks on which they depend as the stocks pass through fishing grounds controlled by other countries. There is accordingly still a need for international political dealings to cope with these new problems of interdependence.

KEOHANE & NYE (p. 13) treat 'sensitivity' and 'vulnerability' as two separate dimensions of interdependence: 'sensitivity means liability to costly effects imposed from outside *before* policies are altered to try to change the situation. Vulnerability can be defined as an actor's liability to suffer costs imposed by external events even *after* policies have been altered.' All fishing industries operating or based in the North Sea have been sensitive and vulnerable to costly effects imposed by outsiders: the principal costs have stemmed from depletion of stocks and the 'enclosure' of High Seas fisheries. All the industries have also contributed something to both processes, by overfishing and by advocating enclosure measures when it has suited them; and the more each industry has sought to limit its sensitivity to the consequences of change by pressing its government for measures of protection, the more it has tended to increase the vulnerability of others.

Industries have pressed for effective measures of conservation in proportion to the degree to which they have felt themselves to be sensitive to the effects of stock depletion. The conservation measures adopted in the North Sea through NEAFC have not, however, proved sufficient to halt depletion, which has been accelerated by the technical improvements in catching that were being made at the same time. To reduce further their vulnerability to the effects of depletion, industries have gone on to advocate enclosure measures to safeguard better their own catch prospects. International political conflicts have arisen (as well as some intranational ones) because the enclosure measures favoured by one industry have created (or it has been feared that they would create) effects to which other industries were bound to be to some extent vulnerable. In other words, since the other industries could not see how they were to protect themselves fully against the deleterious consequences of these measures, they felt compelled to resist their implementation.

Iceland, Norway, Ireland and Great Britain can give some protection to their own industries by excluding foreign vessels from their extended zones, or by admitting them only on a reciprocal basis, and by imposing a strict conservation regime; but such a policy cannot do

much for the Danish, West German, Dutch and Belgian industries which have already fished out their own waters (with some help from other industries when these grounds were open to all comers). The exclusion policy cannot, however, be adopted by the United Kingdom and Ireland without raising wider and more serious political problems, since as members of the European Community they are arguably bound by Community law not to discriminate between vessels of Community states when regulating access to fishing grounds, and also to leave to the European Commission negotiations with non-members about reciprocal access. The problem is particularly acute because so great a part of the Community's fish stocks and fishing grounds are to be found within the limits claimed by the United Kingdom. British, and to some extent Irish, fishermen believe that complete national freedom of action in exclusive fishery zones would greatly reduce their vulnerability to past and future changes in other fishery areas, and they accordingly see the Common Fisheries Policy as a device which will strip them of this protection. Fishermen from elsewhere in the Community, on the other hand, see the British reluctance to accept implementation of the principle of common access as threatening to leave them vulnerable to whatever may occur in the future, since they have so few resources of their own.

This chapter deals only with international dealings and institutions, with the focus on the acts of governments. This leaves largely untouched the relations between governments and fishing industries. Fishing is a business undertaken by a curious mixture of big industrial enterprises and very small private concerns, but operators of all sizes have come to depend on governments for subsidies to help them adapt to changing conditions in the market. National measures on their own have seldom had the outcomes which governments and industries have intended (HOOD, *passim*) but, nevertheless, when a government is engaged in international fishery negotiations it has to have regard, not only to what it is conceding to or getting from other countries, but also to how any international agreement may affect its capacity to manage its own fishermen.

## B. The North-East Atlantic Fisheries Convention

*The Establishment of the Commission*

The direct antecedent of the North-East Atlantic Fisheries Convention was the 1946 'Over-Fishing' Convention.[4] Hardly had this convention entered into force, in 1954, when there was pressure for a new agreement to remedy its deficiencies, which had already become apparent: it did not, for example, extend to the herring family, yet it was the



herring which was in the greatest danger of being over-fished. So in 1955 the contracting states of the 1946 convention convened to consider the drafting of a new instrument; after consultations which took almost four years, they met on 24 January 1959 to sign the North-East Atlantic Fisheries Convention,[5] which they believed to be more suited to the needs of the day.

The new convention was recognized to be, and was, something of an improvement on the 1946 convention. It took four years, instead of eight, to enter into force. It extended to all fish stocks in the convention area, thus including herring, and the convention area itself was considerably enlarged.[6] The conservation measures that could be prescribed were added to: in addition to the powers to make regulations governing mesh and fish sizes, which had been provided in the earlier agreement, the Commission set up under the new Convention was empowered in Article 7 (1) to recommend closed seasons, closed areas, the use of proscription of certain types of gear and, subject to special procedures, total allowable catches (TACs). Finally, in Article 13 (3) the new Convention provided for the eventual adoption of an international scheme of enforcement.

*The Constitutional Structure of the Commission*

By mid-1976 the Commission was composed of sixteen member states.[7] Each member state might appoint as its delegation to the Commission not more than two Commissioners, one of whom voted on behalf of the state concerned (Articles 3 (2) and (8)), and these Commissioners could be assisted by whatever number of advisers the state wished. The Commission was empowered to appoint such staff as it might require (Article 3 (6)), but in fact the Commission had for years had a staff of only three – the Secretary and two typists. The Secretary had always been a British civil servant who spent three-quarters of his time working in the British Ministry of Agriculture, Fisheries and Food; this frugality was perhaps appropriate, as the 'secretariat' had no power of independent initiative.

The Commission had the duty, according to Article 6 (1):

(a) to keep under review the fisheries in the Convention area;

(b) to consider...what measures may be required for the conservation of the fish stocks and for the rational exploitation of the fisheries in the area;

(c) to consider, at the request of any Contracting State, representations made to it by a State which is not a party to [the] Convention for the opening of negotiations on the conservation of fish stocks in the Convention area or any part thereof; and

(d) to make to Contracting States recommendations, based as far as practicable on the results of scientific research and investigation, with regard to any of the measures set out in Article 7...

The Commission's principal task was to recommend, within the limits of the constitution, the conservation measures necessary to ensure the rational exploitation of the fish stocks in the Convention area. The Commission's recommendations with regard to conservation measures were binding, but only on those states which did not object to them, which largely cancelled out the effect of the system of plurality voting by which the Commission reached its decisions. Article 8(1) provided that the contracting states undertook 'to give effect to any recommendations made by the Commission', but further paragraphs went on to specify an objection procedure whose effect was to exempt objecting states from the obligation to implement any particular recommendation. Any state might object to a recommendation within ninety days, and in the event of objection it was not bound by the recommendation concerned (Article 8(2)). A second state might then object within sixty days on the basis of the first objection, and in that case it was not bound. If a third state should then object, within a further thirty-day period, all the other contracting states were relieved forthwith any obligation to give effect to that recommendation (Article 8(3)). It was no coincidence that almost as much attention was given to the objection procedure as to any other subject in the Convention, including the conservation measures. This was a clear indication that states were unwilling to let an international commission wrest from them their sovereign discretion to regulate fisheries as they saw fit. A similar concern for states' rights was shown in Article 13(1), which provided for flag-state jurisdiction as the initial means of implementing the Convention (i.e., each state was to police its own fishing vessels). Even when Article 13(3) was brought into play, with the introduction in 1972 of the Joint Enforcement Scheme, enforcement still proved very difficult.

*Conservation measures*

When NEAFC started work in 1963, it initially employed the fish and mesh-size restrictions which had been sanctioned by the Over-Fishing Convention. But it was soon seen that these restrictions would not be sufficient to prevent over-fishing of some stocks and that NEAFC would, if it was to be effective, have to make use of its last resort, the power to recommend the imposition of TACs and, consequentially, national quotas. In 1959 it had not been expected that use of this power would be urgently needed to save stocks, and it had been hedged about by special safeguards for states' rights. Its exercise required the



approval of two-thirds of the delegations in the Commission (not just the usual plurality) and also the consent of all the contracting states, so that an objection by even a single state, rather than three, would be enough to invalidate a recommendation. This conservative, rather than conservationist, bias in the NEAFC constitution was such that it was not until 1974 that the facts were sufficiently compelling for the parties to accept the need for TACs, by which time some stocks were very dangerously depleted. But even the power to set TACs did not prove to be an effective instrument for the international management of fisheries, since the TAC for each endangered stock had to be set year by year by bargaining between sovereign states and the agreements eventually reached were inadequately enforced. How the necessity of using TACs was finally accepted, and the practical outcomes of their introduction, are matters which are best examined stock by stock.

1. *North Sea herring*

The species in most urgent need of effective conservation measures was North Sea herring. Scientists had been sounding alarms about the state of the herring stocks since at least the end of the 1950s (see, for example, the report of the fifth NEAFC meeting, 5 *NEAFC Reports* 2-3), but NEAFC was slow to respond to their warnings. Some states with substantial economic interests in the herring fishery (not named in the NEAFC reports, but Denmark was a good example), found themselves prevented by their economic interests from accepting the logical consequences of the scientists' advice, namely that the catch should be drastically curtailed if it was not eventually to fail altogether. Naturally these states did not present their arguments in stark terms of economic self-interest, but rather stressed the 'incompleteness' of the scientific evidence (5 *NEAFC Reports* 11-12). After the problem had been debated for some years, an Ad Hoc Study Group was set up in May 1969. It reported to the next NEAFC meeting that the most effective way to conserve the herring would be to make use of the power to institute a TAC.

This was further than the NEAFC members were prepared to go, but it was decided at the May 1970 meeting to impose two closed seasons for herring in 1971 (in May and from 20 August to the end of September) (8 *NEAFC Reports* 14-15) and there was a closed season in each of the following years (1972, 1973 and 1974). The closures were subject to exemptions for quantities to be used for human consumption or bait. It was to be recognized later that the closures had been of so timid a character that they had had no impact whatsoever on fish mortality (13 *NEAFC Reports* 2) because the members had been unable to bring themselves to accept any closed season which would significantly interfere with established patterns of seasonal fishing.

In December 1973, NEAFC held the first of two special meetings to discuss the principles upon which national catch quotas within an overall TAC, might be based. The crucial question was whether states which had built up considerable herring fishings for reduction to fish-meal should be required to reduce their catches more than those whose fishermen had engaged in the fishery primarily to take herring for human consumption and who had already made voluntary sacrifices in the interests of conservation. Whatever TAC was set, it was apparent that it would be acceptable only if the national quotas could be seen to involve parity of sacrifice. It was, however, very difficult to get states to accept as fair any apportionment which would involve their own industries in a real measure of hardship; this made NEAFC set its first North Sea herring TAC far in excess of what its scientists thought advisable.[8] The Liaison Committee of scientists brought together by the non-government International Council for the Exploration of the Sea (ICES) had proposed a TAC for 1974/75 of between 310,000 and 390,000 tonnes. At the second special meeting on herring in March 1974 the chairman of the Liaison Committee reported that the pressure on stocks was even greater than had been estimated earlier and that the TAC recommended should be reduced by 30-40,000 tonnes. This figure was too low to permit national quotas acceptable to the states concerned and in the end, NEAFC set a TAC for 1974/75 of 494,000 tonnes.[9]

The damage to stocks was now so great that the major participants in the fishery, Denmark and Norway, fell a long way short of catching their quotas. Nevertheless, when NEAFC recommended by a majority in May 1975 that the TAC for an eighteen month period from 1 July be set at 254,000 tonnes and also that all *directed industrial* fishing for herring be banned in this period, the proposal failed because of objections by Denmark, Norway and Iceland. (The eighteen month period was introduced to allow NEAFC to adjust to working by calender years rather than 'seasons', but it was perhaps an unfortunate moment to choose to make the change, because it meant that if states accepted the proposal, they would be committing themselves to a prolonged period of reduced fishing for a preferred species. This may have been desirable from a conservationist point of view, but it did not ease NEAFC's political problems.) At the mid-term meeting in November 1975, the scientists had to point once again to the critical state of the herring stocks. The TAC proposed by NEAFC in May had been considerably in excess of their advice and now they urged that there should be no directed fishing at all for herring in 1976 and that no more than 40,000 tonnes be taken as by-catches with other species. The Commission, faced with the prospect of the total collapse of the fishery, was at last able to reach a political compromise that was more realistic in



conservationist terms than its previous best endeavours. The May recommendation of a ban on *directed industrial* fishing for herring was now approved unanimously and a TAC of 87,000 tonnes fixed for the first six months of 1976. At a further special meeting in April 1976 the TAC for the whole of 1976 was set at 160,000 tonnes.

In two years, NEAFC had come a long way from the 494,000 tonnes TAC which it had set for 1974/75. Fish stocks, however, have no appreciation of the problems of international politics and this decision was not enough to produce any real improvement in the condition of the species. The next year saw the introduction of national fishery zones covering the whole North Sea and full international agreement, though politically desirable, was no longer a legal necessity for the introduction of the total ban on herring fishing that was by then essential.

2. *White Fish*

NEAFC's failure to regulate North Sea herring fishing was repeated, *mutatis mutandis*, with the other stocks most in need of conservation. By the 1970s North Sea plaice were in danger of overexploitation due to the combined effects of poor year classes and the technical efficiency of Dutch beam trawlers. In 1973 ICES scientists recommended a 1974 TAC of 115,000 tonnes, but no agreement could be reached. The next year the scientists again recommended a TAC of 115,000 tonnes. The principal catchers, the Dutch, as the Danes had done with herring, had already cast doubt on the need for strict control despite the unanimity of the scientific advice. Throughout 1974 they argued that the national quotas for 1975 should accord them preferential treatment on the basis of their large catches in recent years,[10] even though these had been taken at a time when ICES scientists had been calling for restraint. In the end, to secure Dutch assent, the 1975 TAC was set well in excess of the scientific recommendation, at 126,000 tonnes. This was so high in relation to the level of the catch which could actually be expected from such a depleted stock that there was, in fact, no effective regulation of the fishery. The same pattern of events followed in 1975: ICES scientists recommended a 1976 TAC of 85,000 tonnes, but although other members said they would accept this, the Dutch indicated that their industry's heavy dependence on plaice would not permit them to accept a TAC much below the annual level of the stable fishery in the 1960s; nor would they agree to any reduction in their share of the TAC. As a consequence, NEAFC again set a TAC (of 99,900 tonnes) well in excess of the scientific recommendation.

During these years, the Dutch were equally prominent in the negotiations about a TAC for sole, a species, taken with plaice and of great importance to certain sections of the Dutch industry. In 1973

the stock was seriously depleted and, because of a recruitment failure, there was a real possibility that the fishery would collapse. The ICES scientists recommended a 1974 TAC of 6,000 tonnes, which the Dutch would not accept. The same proposal was made for the 1975 TAC. The negotiations showed how one state's insistence on (and interpretation of) 'parity of sacrifice' could result in NEAFC's finally submitting to its wishes, even if that meant setting a TAC which was virtually meaningless as a control on fishing effort. The majority of members favoured dividing the TAC in accordance with the '6:4 principle' i.e., 45% of the TAC would be divided in proportion to the national catches for the six years 1963-68, and 45% in proportion to th catches for the four years 1969-73, with 10% being held to make minor adjustments. While certain members were unhappy that this would mean that the Dutch would reap the benefit of their recent overfishing of the stock, the Dutch objected that the 6:4 formula would allow some states to *attempt* higher catches than they had recently taken in practice. To resolve the deadlock and appease the Dutch, NEAFC again set a TAC considerably in excess of the scientific recommendation.

NEAFC did better with stocks such as North Sea cod, which were stable and required only measures to maintain their stability; but it had not been formed to deal with them primarily. Several factors contributed to its failure to develop a regime for the effective conservation of threatened North Sea stocks, and to adapt it as the changing situation required. First, there was the bargaining behaviour of the member states, which has already been noted.[11] Underlying this were the pressures exerted by the industries which would have to cut back or modify their operations if conservation was to be effective. These changes were bound to be costly, particularly for those industries which had been equipped to carry out a specific task – such as industrial fishing – which it was now desirable to curtail. The reluctance of these industries to accept change was reinforced by the apparent scarcity of new openings for the employment of their capital equipment and labour force. The significance of earlier patterns of investment with respect to attitudes to regime change is suggested by the fact that whereas in the North Sea it was the British who were pressing for change (which their vessels and industry, geared to taking mature fish for human consumption, needed and could survive), in the Cod Wars the British resisted regime change to the utmost (and perhaps beyond) because of the threat which Icelandic actions posed to the employment of the heavily capitalized distant water fleet. And there are other examples.

In the North Sea the reluctance of certain governments and industries to accept stringent limitations on catches was eventually worn



down by the fact that stock depletion could no longer be ignored. This development was delayed, however, by two further factors. One was a degree of uncertainty about the actual condition of the stocks. There was no doubt in the minds of the scientists that there was an overwhelming case for drastic measures, but there was apparently just enough room for dispute about the facts for interested governments and industries to delay the moment when they would have to acknowledge them. The other was the advantage given to dissenting members of NEAFC by the terms of the Convention. No state was obliged to join NEAFC and any member could withdraw on giving twelve months' notice; more importantly, really effective measures required the unanimous consent of all members. The Danes and Dutch were much criticized for making full use of their right use to obstruct agreement; but they enjoyed this right because at bottom all states wished to uphold the sovereign equality of states in the management of High Seas fisheries. Furthermore, NEAFC negotiations were conducted in a political vacuum, not linked to other international issues, so that it was not possible to win over or coerce single dissentients by offering to grant or withhold favours in other issue areas.

The amount of altruism required of *all* states to make the NEAFC regime effective was so great that by the end of 1976 it was apparent that effective management of High Seas fisheries in the North Sea could not be achieved by means of a voluntarist international regime. One solution might have been to abandon within NEAFC, at least in part, that cardinal principle of international law – that a state can not be bound without its own consent. This would have allowed conservation measures to be adopted by some sort of majority voting. It so happened, however, that this point was never reached because at about this time, as part of a much larger process of ocean-law revision at UNCLOS III, there was a growing likelihood that North Sea states would soon be able to extend their fisheries jurisdiction and thereby take the major part of fisheries management into national control. This was in fact done in 1977 and the international politics of regulating North Sea fisheries were swallowed up in the politics of the European Community and in the Community's relations with its neighbours to the north and east.

*Enforcement*[12]

Although effective enforcement was seen as central to the success of the NEAFC regime (when they ratified, Belgium and the Netherlands declared that their acceptance of conservation measures was dependent upon the establishment of a satisfactory international enforcement scheme),[13] the organization was not really able to implement even those rules which it managed to make. The Joint Enforcement Scheme

(whose introduction was subject to approval by a two-thirds majority) was simply a scheme of mutual inspection. Fishery protection officers remained under the control of their national authorities but, when furnished with a NEAFC ticket, were authorized to inspect vessels belonging to any other member state which had accepted the scheme (as all members eventually did). If an inspector found a foreign vessel in breach of NEAFC regulation which *its* flag state had accepted, he reported the fact to *its* national authorities who retained complete discretion about whether or not to prosecute in any particular case (although members had a general duty to prosecute offences).

Enforcement of fishery regulations at sea is in any case fraught with difficulty. The vast area makes it easy for violations to go undetected and it is often possible for a skipper who is spotted fishing illegally to dump the evidence before the fishery protection vessel gets alongside. The inherent uncertainties of maritime policing gain special significance in an international organization, where mutual suspicions of cheating feed national jealousies: the Norwegians, for example, long suspected Russian skippers of using a small-mesh net with a special release mechanism which allowed the net to be cast off if a fishery protection vessel appeared to show interest in them (*Trawling Times,* July 1975). One effect of the Joint Enforcement Scheme was that it soon revealed how little taste some states had had for enforcing NEAFC regulations against their own fishermen. Table 6.1 illustrates the point, even though the figures are not complete. It gives the percentage of inspections which resulted in reports of apparent violations of NEAFC mesh-size regulations. Column I gives the percentage of inspections which gave rise to reports of apparent violations during the period when enforcement was solely the responsibility of national authorities, each flag state dealing with its own vessels; column II shows how the picture changed when vessels were visited by inspectors from other member-states under the Joint Enforcement Scheme.

Another interpretation of these figures might be that some countries' skippers were at first caught by surprise by the foreign inspectors, having got used to keeping a sharp look-out for their own country's patrols and being accustomed to their habits.

The discussion so far has been concerned with the *detection* of violations. The most extreme example of lack of enthusiasm to *prosecute,* once a violation had been detected, was provided by Ireland. Over the ten-year period 1964-1973 Ireland discovered 288 apparent violations by Irish vessels of NEAFC rules with regard to mesh size and taking undersized fish, yet prosecuted on only seven occasions. Whatever may be the discretionary leeway in the obligation to prosecute (Article 13 of the Convention provided that 'each Contracting



Table 6.1 *Percentage of fishery inspection visits resulting in reports of apparent violations of NEAFC mesh-size regulations*

| | I<br>1964 – 1973<br>from visits<br>by flag-state<br>inspectors | II<br>1972–1973<br>from visits<br>under the<br>Joint Scheme |
|---|---|---|
| Belgium | 8.8 | 6.0 |
| Denmark | 2.7 | 3.7 |
| West Germany | .6 | 20.4 |
| France | 6.7 | 44.7 |
| Iceland | 29.0 | 0.0 |
| Ireland | 12.0 | – |
| Netherlands | 5.8 | 10.0 |
| Norway | 8.5 | 14.8 |
| Poland | 4.3 | 0.0 |
| Portugal | 5.9 | – |
| Spain | 2.5 | 10.3 |
| Sweden | 1.4 | – |
| USSR | 3.8 | 26.9 |
| UK | 3.6 | 24.5 |

State shall take. . . in regard to its own nationals and its own vessels appropriate measures to ensure . . . the punishment of breaches of the said provisions and recommendations'), Ireland had clearly exceeded it.

The implication of such statistics is considerable and extends further than the enforcement of regulations about fishing methods. National catch quotas were enforced at harbour. If it was the case that some member states of NEAFC discriminated in favour of their own fishermen in their enforcement of such NEAFC rules as those about mesh sizes, this finding calls into question their willingness to enforce the most important of all NEAFC obligations, to keep catches within the limits set by the national catch quotas. In fact, awareness of this problem exacerbated fishing relations in the North-East Atlantic – as, for example, when twenty Portuguese trawlers were found cod fishing in the White Sea three weeks after Portugal had told a NEAFC meeting that her quota had been used up. The *Trawling Times* in July 1975 cited many such instances. The United Kingdom opened the May 1975 meeting with a vehement denunciation of the inadequacy of the conservation measures adopted to-date and of the enforcement practices of other member states (although no mention of this protest appeared in the annual report); and in April 1976, Captain

Reidar Stolpestrad, the head of Norway's Fishery Protection Service, said that Britain and Norway appeared to be the only member states of NEAFC who were adhering to their North-East Atlantic quotas in good faith. Norway believed that some states were exceeding their quotas by as much as 200%. The faithful observance of conservation measures depends, in great part, upon mutual trust. Where, as happened with NEAFC, it is feared that that trust is misplaced, then the whole conservation regime is itself endangered, as national fishermen flout conservation rules because they honestly believe that others must be doing so.

*The persistence of NEAFC*

By the end of 1976 the old NEAFC had become discredited: it had failed to adopt necessary conservation measures at the time they were needed and there was little confidence in the enforcement machinery. Above all, it was clear that the UNCLOS III negotiations would soon make it politically practicable for coastal states to extend their fisheries zones out to a maximum of 200 miles and so take into their own jurisdiction the major demersal and pelagic stocks for which NEAFC had hitherto had primary responsibility. Such is the persistence of bureaucratic routines, however, that every possible allowance was made for the marginal utility of a NEAFC in the future and a Working Group was appointed to consider what should be done. It decided that NEAFC ought to survive and a new convention was drafted in December 1977. It was identical in most respects to the old one, except that certain highly migratory species and anadromous stocks, which might still be encountered in what was to be left of international fishing waters, were no longer to be within the remit of the international organization. This had a certain logic because, although NEAFC was to keep most of its old form, it was to have a new function, namely that of providing a forum for consultation and exchange of information in the context of a regime which would give coastal states very full powers to regulate their own zones as they saw fit. So whereas the original NEAFC could make conservation recommendations based on the scientific need for them, the proposed NEAFC would be able to do so only at the request of the coastal state concerned and then only if the recommendation received its affirmative vote; without this, the recommendation would lapse. While the form would survive, even to the extent of NEAFC's remaining in London, at Great Westminster House, the essence of NEAFC as an organ of executive decision-making would be gone.

It should be added that, at the time of writing, it is not certain that NEAFC will, in fact, endure. This is because of a difficulty which has arisen over the proper parties to the treaty. Article 15(1) of the draft



convention provided that the convention would be open for signature, and for subsequent ratification, acceptance or approval, by the 'parties' represented at a diplomatic conference to be held in London. The conference was held in March 1978 and, on the last day of the conference, the Eastern-bloc states indicated that they would be unable to accept the European Community as a party to the treaty. The conference then broke up. A fisheries commission without the participation of the European Community or of the Eastern bloc would have little meaning, and there is now a real doubt as to whether the draft convention will even enter into force. In the next section we describe briefly the fishery negotiations between the European Community and the Soviet Union which, six months before the London Conference, had broken down on the same issue of Soviet recognition of the Community.

## C. The Common Fisheries Policy of the European Community

*Development of the regime*

When the European Economic Community was established in 1957, it was agreed that the creation of a common market would require the development of a number of common policies to eliminate barriers to market exchanges which were rooted in separate national policies. The Common Agricultural Policy (CAP) was to be one of the principal instruments for the development of the Community and it was to include fisheries (Treaty of Rome, Articles 3(d) and 38(1)). The evolution of the CAP proceeded product by product and the Community did not get round to dealing with fish until late 1970, by which time the subject had acquired a certain importance because of the negotiations with the four candidate countries, all of whom had important fishing interests. Two Regulations were adopted by the Council of Ministers on 20 October 1970, one to deal with the 'market' (2142/70), the other with 'structure' (2141/70). Both were adopted by the Six without consultation with the four candidates.[14] The former – which provided for the establishment of marketing standards, guide and intervention prices, a common external tariff and producer organizations, all similar to those set up for other sectors of the food industry – has not attracted much interest since; but the latter lies at the heart of all the subsequent controversy about the Common Fisheries Policy.

The essence of the structure regulation was that member states should not discriminate between their own vessels and vessels of other member states when regulating access to, or fishing operations in, fishing grounds within their jurisdiction. Article 2(1) provided:

> The system applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction must not lead to differences in treatment with regard to the other Member States.
>
> In particular, Member States shall ensure equal conditions of access to and exploitation of the fishing grounds situated in the waters referred to in the preceding paragraph, for all fishing vessels flying the flag of a Member State and registered in Community territory.

Member states thus retained the right to regulate operations within their fishing zones, so long as they did not discriminate directly against the fishermen of other member states. It was not, indeed, in the circumstances prevailing in 1970, a particularly severe limitation on national freedom of action and it even left a good deal of scope for indirect discrimination within the Community. This was because of the considerable differences in operating modes between different industries. The French, for example, were able to keep Dutch fishermen out of French inshore waters by the simple expedient of banning beam trawling; the prohibition applied equally to all fishing vessels but, as had been intended, it was the Dutch, the principal beam trawlermen operating in French waters, who were mainly affected (LAING, p.9).

It will be remembered that in 1970 coastal states' fishing zones did not extend beyond twelve miles, and the inshore waters of the Five (Luxembourg, the Sixth, has no coastline) were only of local significance. Nevertheless, to safeguard local interests, Regulation 2141 provided that for a transitional period of five years, access to certain grounds within territorial waters (three miles) might be limited 'to the local population of the coastal regions concerned if that population depends primarily on inshore fishing'. The inshore waters of the four candidate countries, however, were likely to be of considerable interest to the fishermen of the Five and so the candidate governments insisted that the transitional period should be extended to 1982 and that the derogation should apply to a wider area, six miles broad, or even twelve in certain prescribed areas (Act of Accession, Articles 100 and 101). Despite this concession, the new Policy helped to keep Norway out of the Community and encouraged the Faroese to ask for a limited association with it.

The whole character of the issue was transformed as states moved towards the declaration of 200-mile limits for their fishing zones. This raised the possibility that what had originally been a regime for inshore waters would become a regime for Community control over access to fishing grounds by all Community fishing vessels. Distant-water grounds would no longer be open, and access to them would only be obtainable



be means of negotiations conducted by the Commission. In these negotiations the Commission would also have to concede access to Community waters to non-Community vessels. Access to distant waters would have to be obtained for vessels from all the member states, yet in return the non-members would be seeking access primarily to British and Irish waters, since these were where the main stocks were. Apart from all this, the extension of limits threatened the industry with disruption, because distant waters had provided a high proportion of the weight of its catch, and a higher proportion of its value; home-ground stocks were badly depleted; and the less dense demersal stocks of the North Sea could not support the intensity of fishing which the distant waters vessels required for economic viability.

In the furore which ensued, it was frequently asserted that the Five had foreseen the extension of fishery limits and had pushed through Regulation 2141 just before Accession in order to secure for themselves a share in advantages which would otherwise have fallen to Britain and Ireland alone. It seems likely, however, that their intentions, while having something of this character, were more limited and that they coveted only the inshore stocks. In 1970 the British were still resisting the further extension of fishing limits and it was far from certain that UNCLOS III would produce changes; and NEAFC still seemed a viable organization whose role in the management of High Seas fisheries should be maintained. Be that as it may,the suspicion of sharp practice, as well as a corresponding resentment of self-righteous attitudes, added a considerable emotional charge to the attempts to renegotiate the Common Fisheries Policy, and may have contributed to the lack of success achieved to date.

Table 6.2 shows that the problem of the loss of distant-water grounds is exacerbated for the Community by the fact that this loss is not equally shared. West Germany is the greatest loser in percentage terms (67.8%); but the United Kingdom, whose extended fisheries zone contains the main grounds traditionally fished by, and therefore the bulk of the preferred fishing opportunities for, other member states, is the greatest loser in terms of both volume (378.600 tonnes) and value (158 million units of account). British fishermen feel that they are losing twice-over; first, to non-Community states, such as Iceland, who have extended their jurisdiction out to 200 miles; and then to Community partners, who, as a result of the Common Fisheries Policy, would be able to reap the benefits of Britain's own 200 mile fisheries zone. The perception of this compounded loss has caused British fishermen to goad the Government into pressing for a broad, exclusive coastal belt from which even Britain's partners would be excluded.

On 24 February 1976 the Commission submitted to the Council

Table 6.2 *Catches by zone and by country (1973 figures)*

| Country | Total (1 000 metric tonnes) | Catches in territorial waters and national zones adjacent to these waters (assuming a 200 mile limit) | | Catches in zones of other Member States (assuming a 200 miles limit) | | Catches in zones of non-Community countries (assuming a 200 mile limit) | |
|---|---|---|---|---|---|---|---|
| | =100% | 1 000m.t. | % | 1 000m.t. | % | 1 000m.t. | % |
| Belgium | 49.1 | 25.9 | 52.7 | 15.4 | 31.4 | 7.8 | 15.9 |
| Denmark (incl. Greenland) | 1 453.4 | 990.9 | 68.2 | 263.2 | 18.6 | 199.3 | 13.71 |
| German Federal Republic | 418.2 | 21.2 | 5.1 | 113.3 | 27.1 | 283.7 | 67.8 |
| France | 593.9 | 159.3 | 26.8 | 274.7 | 46.3 | 159.9 | 26.9 |
| Ireland | 80.1 | 72.0 | 89.9 | 8.1 | 10.1 | – | – |
| Netherlands | 220.4 | 78.6 | 35.7 | 134.8 | 61.2 | 7.0 | 3.1 |
| United Kingdom | 1 048.7 | 667.0 | 63.6 | 3.4 | 0.3 | 378.3 | 36.1 |
| Italy | 289.9 | 191.1 | 65.9 | | | 98.8 | 34.1 |
| Overal Total | 4 153.7 | 2 206.0 | 53.1 | 812.9 | 19.6 | 1 134.8 | 27.3 |

Source: EEC Commission



its first proposals for a revised Common Fisheries Policy (COM (76) 59 final). The essential points were: the fixing of Community TACs where this appeared necessary (e.g., for species fished at or near the maximum sustainable yield) and the adoption of appropriate conservation measures (e.g., mesh size, closed seasons) to protect immature fish and safeguard spawning; the adoption by the Council of a catch quota, within the TAC, to be assigned to each member state and also to designated non-members (with whom the Community would have negotiated agreements); and the establishment of exclusive twelve mile coastal belts which member states would be authorised to reserve 'to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area'. In effect, the Commission proposed the adoption of a NEAFC type regime for conservation and sharing stocks in the offshore areas, where the Community might hope to work more effectively than NEAFC. In the twelve mile belt covered by the 1964 Convention, coastal states would retain something of their former rights, but the 'historic rights' of certain states to fish in other states' coastal zones would disappear.

A clearer view of the factors which the Commission took into account may be gained by examining the method which it suggested for the calculation of TACs and quotas. It proposed that the Council should set each year a TAC for each species fished near, at or over the maximum sustainable yield. This TAC was to be derived from a three-stage calculation. The first step would be to add the permitted catch in the community 'pond' (TAC1) to the catch allocated to the Community in the zones of non-member states. From this total would be subtracted the catch allocated to non-member states in Community waters. This would give TAC2. Two subtractions were then to be made from TAC2: the first deduction was a Community reserve of 5% to meet 'special needs'; the second was the total coastal water catch of the species concerned. The remainder would be TAC3, which would be divided among member states in the same proportion as the historical catches of the member states over a reference period yet to be determined. Table 6.3 illustrates a hypothetical example of the process. The proposal on apportionment was not well received because, although it was simple, it was seen as rewarding those who by intensive fishing earlier had precipitated the conditions which made rationing necessary. In October 1977, the Commission reverted to a proposal more like the NEAFC 6:4 formula.

The proposal for a special twelve mile coastal belt created the greatest political difficulty. The Dutch and French, for example, had in the past been permitted to take a considerable portion of their entire catch within twelve miles of the British coast. To discontinue historic fishing rights and to restrict the fishing to vessels "which operate from

Table 6.3 *European Commission proposal on the method of calculating TACs and quotas for each species (February 1976)*

| | | |
|---|---|---|
| TAC1 | permitted Catch in Community pond | 100,000 |
| | *plus* Catch in non-Community waters | 10,000 |
| | *less* Catch allocated to non-members in Community waters | 6,000 |
| TAC2 | | 104,000 |
| | less 5% for 'special need' | 5,200 |
| | *less* Total Coastal Water Catch | 40,000 |
| TAC3 | | 58,800 |

*QUOTAS* would be allocated to member from TAC3 by dividing it in proportion to their catches of the species in an agreed reference period.

ports in that geographical area" would be tantamount to a run-down of the Dutch and French fishing industries. The British Government, on the other hand, were under severe pressure from the various sections of the fishing industry (and from the Scottish National Party) to secure an even larger belt than the twelve miles proposed by the Commission. Meeting in Edinburgh in April 1975, the various fishermen's organizations had agreed that Britain should press for a 200 mile limit fully enforceable against non-EEC states, and for a 100 mile limit fully enforceable against all states (*Trawling Times*, April 1975, 7; BUT).

The Commission's document was discussed by the Council of Ministers on 1 March 1976, when the British and the Irish sketched the positions they were to develop a month later. They argued that a coastal belt of only twelve miles was inadequate but did not, at that stage, give any suggestion of the extent of the coastal belt that they each desired. The very idea of a coastal belt was opposed by the French, Belgians, Danes and Dutch, the last two arguing with differing emphases, that a nationally exclusive coastal belt would violate the Treaty of Rome.

The British and Irish governments then developed presentations of their positions which might seem both responsive to the interests of national fishermen and reasonable to their Community partners. Both governments struck upon the idea of a variable coastal belt, with a breadth of between twelve and fifty miles which would vary according



to certain regional factors, such as the social and economic conditions prevailing in individual ports. This was an inspired attempt to circumvent the Danish and Dutch interpretations of the Treaty of Rome. If Britain, for example, were to be permitted to draw fifty-mile bands around areas of regional unemployment where much of the population is dependent on fishing (such as Hull, Grimsby, Lowestoft, Devon, Cornwall and most of Scotland), and if such lines were to be drawn rather generously, the effect would be to enclose the principal fishing grounds of interest to British fishermen: the mackerel grounds off Devon and Cornwall, the herring and blue whiting grounds off the West coast of Scotland, and the principal demersal and herring grounds in the North Sea. Yet such an arrangement, far from being a violation of the principle of non-discrimination, could be presented as the *implementation* of another fundamental principle, that of regional development.

The British and Irish governments chose to stake out their positions at the next Council of Ministers meeting on 4 May 1976, under the agenda item 'Any Other Business'. This agenda item is often used by a member state to indicate a change in position on an important matter, and the convention is that there is no discussion immediately following such a statement. Use of this device thus had two advantages: it might help to create an impression that Britain and Ireland at least were anxious to see movement in the negotiations; and it allowed them to make a proposal in definitive form which could not be made the object of immediate general attack. The two governments made use of the time won to canvass their proposals in the various capital cities, but although two British delegations toured Europe, no progress had been achieved by the autumn. By then, the failure to agree looked likely to have serious consequences. The member states faced the prospect of the imminent exclusion of their vessels from distant waters, since certain non-members, notably Norway were known to be ready to extend their jurisdictions in 1977. This meant that it was desirable that the Community should present a united front in negotiations on reciprocal access. Also, it was urgently necessary to find some basis for a conservation regime in 1977.

In October 1976 two important developments took place. The Commission came forward with a new framework for a Community system for the conservation and management of fishery resources. Although it was not accepted then or later, it would provide a basis for subsequent negotiations on these aspects of the Common Fisheries Policy. At the end of the month the Council of Ministers agreed to a formula which would permit the Community to engage in negotiations with non-members, and individual states to take non-discriminatory conservation measures within their own zones, pending final agreement on a common policy.

The main features of the Commissions proposal (submitted on 8 October, published in the *Official Journal* 28 October 1976) were:

(1) method of calculating TACs similar to that proposed the preceding February, except that the provision for an adjustment in respect of the 'total coastal water catch' was omitted;
(2) a method of apportionment which was based mainly on catch performances over an undefined reference period, but modified to take account of the vital needs of fishermen in Ireland and northern regions of the United Kingdom;
(3) a twelve mile belt under national control (to apply beyond 1982 subject to a review of the position by the Council before that date), but with members obliged to respect the historic rights of fishermen from other member states within these areas (e.g., Belgian historic rights in the Moray Firth); this qualification had been absent from the February proposals;
(4) all commercial fishing was to be regulated by licences, with the granting of permits conditional upon (a) the systematic registration of vessels and skippers and (b) the giving of undertakings to comply with all regulations;
(5) a system of sanctions for infringements of regulations.
(6) short-term economic measures to secure the permanent or temporary withdrawal of deep sea fishing capacity;
(7) intensified research directed towards the opening-up of new market opportunities: new species, new grounds, new techniques, new markets;
(8) assistance for the conversion of major fish-meal plants; and
(9) establishment of a Scientific and Technical Committee for Fisheries, and a Management Committee for Fishery Resources.

It was proposed that the first two of these elements should run until 1982, to give the Council time to monitor the results of their implementation. A novel feature of the Commission's approach, which, though constructive, did little good at the time, was that it recognized that it was not enough for an international regime to try to regulate the behaviour of a given fishing industry; it must also try to tackle the restructuring of the industry which its conservation measures implied, at the same time taking into account the social and regional aspects of restructuring.

When the Council met at The Hague at the end of October, the principal concern was about the Commission's lack of a mandate to negotiate with non-members. It soon became clear that the Irish Government, which, with no distant water fleet, had nothing to lose



from a continuing impasse, was willing to deny the Commission its mandate until such time as Ireland received guarantees with regard to the progressive development of her small fishing industry. Britain, on the other hand, was as keen as any member that the negotiations should get under way, so as to ensure some employment for British distant-water vessels. The Irish catch was in any case small in tonnage terms, and taken only in Irish and British waters (see table 6.2). So the Council gave way: Ireland was promised that whatever form the Common Fisheries Policy finally took, it would be formulated so 'as to secure the continued and progressive development of the Irish fishing industry'.

It was also decided at The Hague, and formally approved by the Council on 3 November, that, in the absence of a revised Common Fisheries Policy each member state could adopt, 'as an interim measure and in a form which avoids discrimination, appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts' (Annex VI to the Hague Resolution). The British and Irish governments have used this Resolution as the legal basis for their unilateral conservation measures which are discussed below.

Although these decisions were important, the meeting at The Hague had not found a way of breaking the stalemate in the negotiations. Then, on 27 June 1977, at a Council of Ministers meeting in Luxemburg, Britain shifted her principal demand from an exclusive variable belt to an exclusive twelve mile limit and an area of 'dominant preference' of up to fifty miles. This shift represented an attempt to put Britain's claim in rather more 'communitaire' language. Indeed, the claim was couched in language remarkably similar to the Commission's own proposal to grant local fishermen 'priority of access'. Yet it could be argued that it was still essentially a claim to the same resources as would have been gained by the earlier proposal of an exclusive variable coastal belt. Britain's apparent switch of policy also had the advantage of obscuring from the British electorate the precise nature of the government's position: British negotiators had long realized that a demand for an exclusive variable belt of up to fifty miles was not going to meet with success; but, as 'dominant preference' could mean anything the government chose it to mean, any reasonably satisfactory compromise could be presented domestically as the precise implementation of the government's demands. Whatever the meaning of 'dominant preference', Britain had begun to speak, at least rhetorically, the language of the Community, and Denmark, West Germany and the Netherlands indicated that the ultimate resolution of the fisheries issue had been brought closer.

The Commission submitted a revised scheme to the Council on 14 October 1977 (Proposal for a Council Regulation (EEC) Com. (77)

524 Final). The most important feature of the revised proposals was that for the first time (except for an earlier proposed allocation of zero TACs for herring), the Commission attempted to allocate catch quotas to each of the member states. They sought the best available scientific advice to determine TACs and then, with a few exceptions, stuck to them. In arriving at the model for allocation to member states of quotas within these TACs, the Commission made use of the NEAFC 6:4 keys, allowing 6 to 9% of a catch for giving coastal-state preferences. Even so, these keys did not quite meet the requirements of the Hague Resolution, under which the Irish catch might be doubled from its 1975 level in the three-year period 1977-1979 and provision was to be made for the vital needs of local communities in northern Britain which were particularly dependent upon fishing; but the Commission thought that, being well-known to all parties, the keys represented a useful starting point for discussions. The proposals related to internal, external, joint and special stocks: they thus covered stocks completely within the jurisdiction of member-states, those for which reciprocal arrangements had been made with non members, and stocks conjoint with the waters of other countries. Developing fisheries such as blue whiting and horse mackerel were given special consideration.

Losses in third-country waters by member states were to be compensated only to the extent that gains resulting from the exclusion of third countries from waters of member states were to be included in the cake available for share-out through the NEAFC keys described above. No specific provision for compensation for exclusion from traditional distant-water grounds, or for restrictions arising from conservation measures, was built in to the proposed allocations. The Commission argued that the extent of such losses could not be known until the conclusion of negotiations with third countries; and that the problem did not lend itself to solution through the application of keys. Furthermore, it would be impossible to offer compensation in the same species, which would mean that if compensation were given, it would not necessarily benefit the *fishermen* who had suffered the losses.

The proposals were unacceptable to the British, who considered that they did not allow adequately for the losses of fishing opportunities which Britain and West Germany had sustained in non-EEC waters, and that they made inadequate provision for the fishing-dependent communities of northern Britain. While Britain contributed more than 60 per cent of the Community's fish resources, under the current proposal the British fishermen's share would be a mere 21.6%. The British government went back to their old line, that the United Kingdom's needs could best be met by an exclusive belt of up to fifty miles, and indicated that the proposal remained on the table; but then they softened it by offering to explore the possible combination of a twelve



mile exclusive national band and beyond that, a belt out to fifty miles in which coastal state fishermen would be given a dominant preference.

The Irish government adopted a similar attitude to exclusive limits and this shared interest in preferential treatment for coastal fishermen formed a major topic for discussion at a meeting of the British and Irish Foreign Ministers. Further evidence of Anglo-Irish solidarity and isolation at this stage was demonstrated by the vote on the proposal to extend the regulation on the pout box. This originated as a unilateral United Kingdom measure banning fishing for Norway pout in a ninety mile wide strip of the North sea bounded by 50°N and 60°N and 4°W and the Grenwich meridian. Intended to come into operation on 21st February 1977, it was overtaken by EEC legislation effective from the same date until the end of March 1977. The EEC measure was reintroduced from 1 September to 15 October 1977, but its extension for the remainder of October applied to a smaller 'box' – the western bounding being 3°W instead of 4°W. Following the Council decision not to continue the prohibition beyond October, the United Kingdom reintroduced the ban as a unilateral measure, effective from 1 November in the reduced area covered by the EEC Regulation for the second half of October. The United Kingdom was thus able to give effect by national means to the wishes of the Commission and the unanimous opinions of the scientists which had been blocked in the Council. The British government's action had the support of British and Irish fishermen.

At the December 1977 meeting of the Council of Ministers, a rift appeared between the British and Irish positions, an outcome which may possibly have been desired by the Commission. The Commission proposed an improved offer to the United Kingdom: its quota should be increased to 29% of all species and 32% of the main species. When the British asked for more, for a share amounting to between 42 and 46% of 1978 TACs, the Irish Fisheries Minister, Brian Lenihan, described the claim as 'unreal' on the grounds that the fish were not available in sufficient quantities to permit such a 'sea lion's' share. At the same meeting the Irish were further appeased by a Commission proposal that the Community should provide £30 million to meet half the cost of five new fishery protection vessels and five medium-range aircraft to patrol Ireland's 130,000 square miles of sea.

Despite the British rejection of the December 1977 proposals, the other Ministers felt that there were some grounds for optimism. The British were at last specifying some of what they wanted in terms of actual amounts of fish. This suggested to some (quite erroneously, as it turned out) that they might be satisfied by adequate quotas within an overall Community TAC. There had also been some movement towards the British position on conservation. The British wanted an

approach which would include: a requirement of larger mesh sizes and a ban on vessels carrying large- and small-mesh nets on the same voyage; more comprehensive policies on beam trawling and on by-catches resulting from industrial fishing; and an enforcement scheme which would confer full jurisdiction on the coastal state (to replace flag-state jurisdiction) and include effort limitation to ensure adherence to quotas. For the first time the Danes appeared prepared to accept the need to scale down industrial fishing, and it was hoped that concessions on this might lead to a relaxation of British demands for 'dominant preference'. In order to foster the feeling that real progress might at last be possible, it was agreed to 'stop the clock' (or rather, the calendar) to give the Council a chance to adopt a revised Common Fisheries Policy by the end of the year. (There was also the practical point that this would allow the relatively disinterested Belgians to retain the chair – rather than the Danes – when the Commission returned with new quota proposals to take account of losses in 'Third Country' waters.) So when negotiations were resumed, the date in the Council was 47 December 1977; elsewhere it was 16 January 1978.

The two principal matters of interest in the January proposals, which were based on the Commission's October 1976 scheme, concerned national quotas and preferential treatment for coastal states.

The allocation proposals took more account of losses in 'third country waters', but the amounts claimed by the United Kingdom (213,000 tonnes) and West Germany (170,000 tonnes) in respect of these losses were reduced by 20% on the argument that catches in these waters would have declined in any case because of depletion of stocks and consequent conservation measures irrespective of the extension of limits. By including quantities of horse mackerel (a resource little exploited hitherto) the Commission was able to increase its October 1977 proposal for a 1978 TAC of 2.2 million tonnes, to 2.7 million tonnes. National allocations were related to the average catches for 1973-1976, but included allowances for the needs of regions heavily dependent on fishing; they would have resulted in an increased catch for Ireland (in line with the Hague Resolution), a British catch at about the same level as in the reference years, and reductions for all other member states of up to 30%.

On coastal-state preference, the Commission again proposed a twelve mile belt and stuck to their October 1976 belief that coastal states should be obliged to respect the historic rights of member states within this area. There was little in this to appeal to the United Kingdom government (which had objected when the Commission tacked the 'historic rights' provision onto its February 1976 scheme). The Irish, however, were able to discern in other proposals which the Commission had made on conservation a possible basis for compromise



on coastal states preference. One of the features of the October 1976 scheme had been a provision that vessels and skippers receiving licences would be obliged to keep to designated fishing areas. The Commission now proposed that this should be replaced by a requirement that recipients of licenses should be obliged to abide by 'fishing plans'. The Irish suggested that the 'fishing plans' might be drawn in such a way as to limit access to 'sensitive' areas; this could provide a Community solution to the British demand for 'dominant preference'. The British government were more enthusiastic about this idea than the British industry representatives on hand in Brussels, but they still had reservations about the vagueness of the Commission's proposals for the coastal belt after 1982. They also wanted quotas to be determined after exclusive or preferential access arrangements had been agreed.

Encouraged by the progress achieved, the Ministers agreed to hold a further Fisheries Council at the end of January 1978 to consider a more detailed presentation of the proposals; this would be before the expiry of the various conservation measures and interim agreements with non-members. They were also due to meet informally in the meantime at the 'Green Week' (agricultural trade fair) in West Berlin. It so happened that in the meantime the House of Commons voted, against the government's advice, to devalue the Green Pound by 7.5 rather than 5%; the West German, Dutch and Belgian governments refused to accept a devaluation on this scale; and the British Minister felt obliged to boycott the gathering in Berlin. The British boycott incensed the West German government, who had hoped to use the Green Week to demonstrate to the Soviet Union the unanimous support of their Community partners for their contention that West Berlin was 'Community territory'; and the Germans tried to use delaying recognition of the Green Pound devaluation to force a further moderation of British demands on fisheries (or so it was suspected at the time).

The atmosphere when the Sixth Fisheries Council met at the end of January was thus quite different from what had been expected. The interim agreement which the Eight brought from Berlin was rejected by the British government, mainly because it did not guarantee 'dominant preference' and because the proposed conservation measures were considered inadequate. The British government did not accept that 'fishing plans' would be practicable in the North Sea, where fisheries were intermingled, although such a control system might be feasible in other areas. They also vetoed a resolution proposed by the Eight, which would have obliged members only to apply national conservation measures as were in line with Commission proposals. The furthest the United Kingdom would go was to agree that any national conservation measures they introduced would conform with the Hague Resolutions. (These provided that such measures must be

non-discriminatory as between member states, consistent with the Treaties, and supported by scientific advice, and have been submitted for Commission approval; it was not a condition that Commission approval actually be given.)

Following this meeting, the British and Irish were divided from the rest of the Community and from each other. The Eight decided to press ahead with the Berlin agreement for an interim regime for the rest of 1978, and made arrangements for quotas and certain conservation measures. The United Kingdom Government indicated that they would exercise sole responsibility for the entire area which they claimed, subject only to the undertakings they had given to respect the Hague Resolutions. They announced their intention to take action in accordance with agreed procedures to maintain existing conservation measures (e.g. the North Sea herring ban) and stated that their right to take further appropriate conservation measures was unimpaired. (Ministry of Agriculture, Food and Fisheries, Press Notice No. 42/1978). They made good this claim when they went on to impose a total ban on herring fishing in the West of Scotland area (except in the Firth of Clyde, where they claimed the herring stock was separate) from 6 July 1978. The Irish parted company with the Seven by continuing to block negotiations with third countries (which the British were inclined to favour) until the basis of a Common Fisheries Policy had been settled. The Irish and British wanted a 'roll-over' of interim agreements with third countries until this settlement had been reached. At the Eighth Fisheries Council in June 1978, the Irish threatened even to veto further 'roll-over' arrangements unless they were given the surveillance and structural aid which the Commission had proposed for them the previous December.

By June 1978 fish was the subject of the deepest of all the disagreements between Britain and the rest of the Community (*The Times,* 3 July 1978). Some observers (*Financial Times,* 22 June 1978) suggested that the real battle now lay between the British determination to run a national policy behind a thin Community smoke screen, and the equally strong German determination to prevent this. It was argued that virtually all the British demands that could be met had been conceded. The United Kingdom Minister had succeeded in convincing his European partners that over 60% of the fish resources available to the member states were from British waters; that Britain had lost the most in absolute terms from losses in third country waters; that British demands for stricter conservation measures were mostly justified; that British fishermen should receive the sea lion's share of fish in the waters of community states; and even, perhaps, that they should concede *de facto* preferential rights in the twelve to fifty mile belt by the use of fishing plans.



The extensive debate both in the Fisheries Councils and the House of Commons had at least served to clarify the main British demands. John Silkin, the British Minister for Agriculture and Fisheries had given his definition of 'dominant preference' in a Parliamentary debate following the first January 1978 meeting of the Council of Ministers: 'I mean that the limitation of effort, the conservation measures, the management of that zone and the growth potential are dominantly preferential in favour of the coastal state,' (HC *Debates,* 19 January 1978). It was a qualitative rather than a quantitative definition, which left room for negotiation. In June, Silkin reiterated his position, using a formula which left no doubt that the British government were determined that British interests should be paramount off the United Kingdom's coasts:

> Our aims were – and remain – the conservation of the fish stocks within that belt [12-50 miles] and the satisfying of our own fishermen's requirements . . . any surplus after these two basic conditions had been met, would be available for our EEC partners or as part of a trade-off with third countries upon a reciprocal basis in which we could share [HC *Debates,* 22 June 1978].

At the June meeting of the Council, Fisheries Commissioner Gundelach gave a summary of what the rest of the Community thought the British wanted, in terms which revealed the disquiet which these demands provoked. He said that the British were seeking:

(1) the phasing out of historic rights in a manner which would result in a permanent exclusive coastal band of up to twelve miles;
(2) further quota increases for 1978, beyond the major sacrifices already made in favour of the United Kingdom at the earlier Fisheries Councils;
(3) an increased preferential position vis-a-vis other member-states in Norwegian waters north of 62°N and in Faroese waters;
(4) written guarantees that from 1982 Britain would get quotas for some species equal to nearly all of the TAC within the British 200 miles;
(5) a priority share (of 20% for demersal species and 25% for pelagic species) of any growth in fishing possibilities available to the Community as a result of conservation measures proving successful; and
(6) fishing plans of a kind which, by being based on access considerations, would lead quite certainly to flag discrimination.

The British had succeeded in winning some valuable concessions in

two years' haggling, but they had now run up against some fundamental difficulties. The other member states were prepared to agree to three-quarters of the stocks within the United Kingdom's 200-mile limit being allocated to her fishermen, and even to part of the rest remaining negotiable; but they would not sign away these stocks permanently and irrevocably. The Commission had expressed a willingness to interpret the Treaties flexibly and had indicated that further modifications to their proposals were possible if good Community reasons (such as regional development) could be found for showing even more preference; but they were not prepared utterly to disregard the Treaties and the doctrine of non-discrimination. Both these attitudes stood in the way of the United Kingdom's achieving 'dominant preference' in full measure. Following the July 1978 summit meeting of the European Council, it was reported that the French and Germans were keen on a high-level initiative to resolve the dispute; but even if the British Prime Minister had been ready for this, he was constrained by domestic electoral considerations. Nine of the twenty-two parliamentary constituencies containing fishing ports were held with a majority of less than 6% and could be won or lost with a 3% swing (not all of them held by Labour) (*Economist,* 26 January 1978). Given the volatile mood of the British electorate, the result in any one of these seats in the next General Election could determine the colour of the next government. The difficulty for the British government was that they could be criticized for doing nothing and missing the chance of a reasonable settlement; or they could be criticized for settling too soon, before the last concession had been extracted. In the autumn of 1978 there was still a remarkable unanimity among British political parties that the government should not abate its claims, and it seemed likely that the government would maintain their position at least until after the General Election, in the belief that if they then had to settle, any deal available before the election could still be had afterwards; there would then be four or five years in which the industry could forget the pain inflicted by change and compromise, and learn to appreciate the benefits of the new regime. On the other hand, it was also possible that, given the strength of popular feeling on the subject, and the pledges that were likly to be given in an Election campaign (and also perhaps in the European Assembly elections), even after the Election the new government would continue to hold out unless and until the condition of the fish stocks made agreement on a new international regime imperative.

*Community relations with non-members*

Despite the failure to agree among themselves on a Common Fisheries Policy, the members of the Community had had some success in



regulating their fisheries relations with non-members by common action following the general extension of fishing limits. Regulations governing access were made for Spain, Finland, Sweden, the Faroes and for two members of the Soviet bloc, Poland and East Germany. The most significant negotiations were with Norway and the Soviet Union.

Norway is the most important country with which the Community must maintain fisheries regulations, because of the interdependence of fishing operations in the two zones. This interdependence arises from the movement, or in some cases the intermixing, of stocks: almost all major Community pelagic stocks in the North Sea at some time during the year move into Norwegian waters. So substantial is the migratory pattern of a stock such as saithe that at the outset of the technical discussions it could not be readily agreed whether the stock was in fact primarily 'Norwegian' or 'Community' and it had eventually to be decided to treat the stock as equally distributed between the two areas. The Community's ability (or otherwise) to take effective measures of conservation must necessarily affect Norwegian fishermen, and *vice versa:* consequently Norway has been as anxious for the Community to establish a new Common Fisheries Policy as have most of its members.

As has been described, there was some difficulty in getting a mandate for the Commission to negotiate. The negotiations themselves, once they began, were relatively straightforward, especially with regard to the North Sea, where the principal problem was the scientific determination of the proportion of each migratory stock to be considered as belonging to Norway and to the Community. The principal difficulty arose with regard to quantifying the 'balance' of shared fishery interests. What Norway had taken over the past few years in tonnage terms from what were now Community waters approximated to the Community's catch in Norway's part of the North Sea. Hence the Norwegians argued that Community fishing north of the North Sea should be phased out. Any other result, they argued, would not constitute a 'balance'. This issue has still not been resolved although the Annex to the Draft Treaty between the Community and Norway anticipates achieving a 'mutually satisfactory balance' by 31 December 1982.

The Soviet Union and the countries of the Community had something to offer each other in fisheries negotiations, although they did not stand in a relationship of close interdependence. Community states, particularly Britain and West Germany, had an interest in securing continued access to the Barents Sea, while the Soviet fishing fleet was taking 20% of its catch in 1976 from what were soon to become 'Community waters'. There were, however, certain political difficulties between the two sides which had to be resolved before negotiations

could start. Since under Community law trade agreements had to be negotiated by the Commission on behalf of the Community as a whole (under mandates approved by the Council), the Council had decided that the Commission should have sole responsibility for negotiations on fisheries agreements with non-members. This put the Soviet Government in a dilemma: for two decades it had refused to establish formal relations with the Community, and it now had to decide whether it attached sufficient importance to its vessels' continuing to have access to Community fishing grounds to modify this policy. The Community was unlikely to evade the issue by allowing members to make separate agreements with the Soviet Union, partly because the goal of a Common Fisheries Policy required all fisheries agreements to be consistent with an overall scheme, and partly because it was at this time in any case anxious to bring East-West trade deals involving member states into line with Community law.

On 12 November 1976, nearly two months before extended limits were likely to come into force, the Netherlands government, which held the Presidency of the Council, invited Eastern European states to conclude framework agreements with the Community. The Soviet government ignored the invitation. By the end of January 1977, Soviet vessels were fishing so heavily within the extended Community limits that they were bound, if they continued, soon to exceed the restrictive quotas (about one-third of their recent catches) which the Community had declared unilaterally that they were entitled to take in the first three months of the year. On 23 January the Council decided to subject Eastern European vessels to a licensing system which would bear more stringently on their catching potential, and on 28 January the United Kingdom (which had taken over the Presidency) requested the Soviet government to submit the list of vessels which it wished to be licensed.

The Soviet government had no wish to submit to Community licensing, but neither could it ignore what was virtually an ultimatum, without running the risk of a confrontation at sea between its fishing fleet and ships of the Royal Navy (Soviet vessels were mainly in British waters). Negotiations offered a way out of this dilemma, but the Soviet government did not wish to enter them in a manner which sacrificed its recognition card, which it could hope to use with advantage later in the game. The Soviet Embassay in London was accordingly instructed to reply orally to the Foreign and Commonwealth Office that the Soviet Union would enter into negotiations with the United Kingdom as representative of the member-countries of the Community. After a further British *note verbale,* stressing the urgency of the matter, the Soviet Embassy informed the Foreign and Commonwealth Office, again verbally, on 10 February 1977, that a Soviet delegation was instructed to conduct negotiations on the fishery issue 'with Great



Britain representing the country members on the Community' and was ready to come for the talks 'to Brussels' on 15 February.

After some consideration of this ingenious formula, the Committee of Permanent Representatives decided not to press the recognition issue further in the preliminaries to the negotiations, and fairly substantial concessions were made to the Soviet position in the arrangements for the talks. They were held in the Charlemagne Building, the home of the Council, rather than in Berlaymont, the Commission headquarters; and the Community delegation was headed by the United Kingdom representative, as the holder of the Presidency. The Soviet delegation reciprocated by not objecting to the negotiations being actually conducted on the Community side by Commission representatives, and by agreeing at a later stage in the negotiations to certain technical talks being held in the Berlaymont Building. When the talks commenced on 16 February 1977, each side began by restating its position on recognition. The United Kingdom representative reiterated, but not provocatively, the legal competence of the Community to conclude fisheries agreements with non-members; and the Soviet Fisheries Minister, A. Ishkov, affirmed his government's wish to conclude an agreement 'with the members of the European Economic Community'.

Preoccupations with political symbolism went on to dog the substantive negotiations. The Community was determined as a matter of principle to follow its normal course of concluding a framework agreement before proceeding to the discussion of quotas. This was the logical order of events, and in this particular case it would have the additional advantage of compelling the Soviet Union to acknowledge the competence of the Community itself to make international agreements and so, in effect, to recognize the international personality of the Community. The Soviet government was equally determined not to be drawn down this road until it knew the size of the quotas the Community had in mind. Knowing the level of quotas which the member states wanted for themselves, the Soviet government would have been right to wonder whether their own share would be substantial enough to justify major political concessions. A further difficulty stemmed from the Community's desire, prompted by the West German government, to use a fisheries agreement to extract from the Soviet Union some sort of recognition of West Berlin's status as a *land* of the Federal Republic (a debateable proposition even in some Western minds). It was hoped that this could be done by having it included as a 'Community territory' in the fisheries agreement.

Given the well-known Soviet policy of hostility to the Community as an instrument of Western European unity, the Community could hardly have gone into the negotiations without raising the question of

recognition, for silence would have been interpreted by the Soviet government as acquiescence in non-recognition. In Soviet eyes, however, the Community was seeking concessions in the realm of security and high politics which were not justified by anything that could be offered in a fisheries deal. By May 1977 the negotiations were evidently blocked on these issues and by September the Soviet government had had enough. To break off the talks and signal their displeasure, the Soviet government adopted the same tactics as the Community had used to get them started. They announced at the end of the month that the Community countries could apply for licenses for *three* vessels to catch up to 1,840 tonnes of fish in the Barents Sea in October and November. As the British, West Germans and French between them had hitherto taken 55-60,000 tonnes there annually, this was clearly not an offer meant to be accepted. Then, to drive the point home, the few Community vessels actually fishing in the Barents Sea were told to leave. Although for a while the Commission professed to believe that the Soviet government would return to talks on a framework agreement, in fact the negotiations were dead.

It should be added that the negotiations had been about direct access to Community stocks by Soviet fishing vessels. Even without this agreement, the Soviet Union has continued to have access to Community fish supplies through the market, as have Eastern European countries (East Germany, Poland, Bulgaria, Roumania). Trading in caught fish with Eastern Europe has benefitted Community fishing industries more than extensive fisheries agreements would have done. The Eastern European buyers pay good prices and the Community fishermen do not have the expense of travelling to distant waters for part of their annual catch. The trade also benefits the conservationist cause in that the Eastern Europeans are more interested in buying fish for human consumption than for reduction to meal; their demand has helped to strengthen the non-industrial sections of the industry.

## D. An emergent regime?

In January 1977 it was hard to talk with any conviction of an international regime for the management of North Sea fisheries. NEAFC was still in existence, but the only remaining NEAFC TAC and other regulatory agreements were for a few small stocks (such as plaice and sole) and the Joint Enforcement Scheme had in effect given way to national controls in national areas. There was no effective Common Fisheries Policy although the Community had managed to improvise some conservation measures. Perhaps the most significant regulatory framework was provided by the Hague Resolution of October 1976, which permitted members of the Community to take whatever conservation measures they judged necessary in their own areas, provided that they were not discriminatory as between fishermen of member states and that they were based on scientific advice.



In December 1976 the European Commission proposed a number of TACs for 1977 which came closer than any proposed before to the actual recommendations of ICES scientists. Their scientifically realistic levels were only achieved, however, by assuming that the Norwegians would be satisfied with quotas so low that no Norwegian government could have accepted them. Once a realistic allowance was made for Norwegian aspirations, the TACs were as much in excess of scientific advice as NEAFC TACs had been. In fact the proposals were not implemented. Instead (with the exception of herring, which were to be protected by quotas and bans on herring fishing in the North and Celtic Seas) the members of the Community agreed to a standstill: no country would take more of a stock in 1977 than it had in 1976. From a conservationist standpoint this was far from ideal, because 1976 TACs and catches had been in excess of what the scientists had advised, and what was required was a reduction in catches, not stabilization. For example, ICES scientists wanted the 1977 TAC for North Sea haddock set at 165,000 tonnes, a reduction of 20% compared with the 1976 catch of 206,000 tonnes. So even if the standstill had been honoured, haddock would have been considerably overfished in 1977. In fact the standstill was not observed, and the 1977 catch exceeded the 1976 catch. Provisional figures for other fisheries, such as the British catch of West of Scotland mackerel, suggest that 1977 catches may have been up by as much as 50% on 1976 levels.

Under the Hague Resolution the British and Irish governments have taken stringent conservationist measures, when they have judged them necessary, to the extent of imposing short-term hardship on their own industries. The British total ban on herring fishing off the West of Scotland (excluding the Clyde) is the most obvious example. Both governments have, however, been accused of discriminating against fishermen from other member states and of acting in a manner not fully justified by scientific advice.

The first Irish attempt to use its powers under the Hague Resolution looked at one time as though it might give an opportunity to the European Court to intervene in the politics of the Common Fisheries Policy. Under domestic political pressure from Fianna Fail and the Irish fishery organizations, the Fine Gael and Labour Party coalition government (facing a general election which it would in fact lose) introduced conservation measures for the Irish zone on 10 April 1977. The introduction of the measures had been postponed twice in March, having originally been announced in February, because of pressure from the Commission and veiled threats from other member governments; the

Irish government could not, however, hold out any longer against the demands for protection of what the electorate had come to think of as a precious national resource. Despite the obvious political importance of what was being done, the details of the measures had been left to the Irish marine biologists and had not been closely scrutinized by the legal advisers in the Foreign Ministry. Perhaps as a consequence of this, they were open to attack as being in breach of the conditions laid down in the Hague Resolution.

As a measure of effort limitation, the marine biologists had selected the device of excluding all vessels of over 110 feet from certain zones in the Irish sector. The justification for this was that it is the largest vessels – which must catch fish with maximum efficiency to justify themselves economically – that tend to make the largest inroads into stocks. The difficulty from the point of view of Community law was that the ban had the effect of excluding nearly all the Dutch and French boats fishing off Ireland, while only two Irish fishing vessels exceeded the specified length, and it was not easy for the Irish government to claim that they had not foreseen or intended this result. A second criticism of the Irish measures was that they were not strictly based on scientific advice about specific risks to specific stocks. For the sake of convenience the areas subject to the ban did not relate precisely to areas of movement of endangered species; instead the biologists had selected the ICES statistical areas which held the stocks they wished to protect. These areas also contained a number of other stocks which were heavily fished by the Dutch and French, but about which little was known and which thus could not be said to be definitely in need of special protection. The Irish government could accordingly not point to a conservation case for preventing the Dutch and French from taking these species, and their measures had all the appearance of being deliberately discriminatory (cf. SUNDBERG-WEITMAN).

The Dutch government had the matter brought before the European Court. The British government privately feared that the Court might use the occasion to deliver a general defence of the principles of the Common Fisheries Policy as held by the Seven, basing itself on the Treaties and the 1970 Regulations. But the Court chose to confine itself to the immediate issues and, although it found that the Irish measures were discriminatory because they imposed conservationist restraints in Irish waters unequally as between Irish fishermen and other Community fishermen who had traditionally fished there, it did not rule against the right of members to impose regulations that were not (blatantly) discriminatory. So long as members were free to take national measures, they were less likely to feel compelled to accept a common regime in the form of a Common Fisheries Policy.

The agreement reached by the Eight at Berlin in January 1978 had



committed them to abide by the 1978 quotas proposed by the Commission at the first Fisheries Council held in that month. It is too early to assess the effectiveness of this informal agreement (informal because the United Kingdom refused to give the consent required to turn it into a binding Regulation), but it will not necessarily be more effective in the short-term than the NEAFC system (*Financial Times*, 3 August 1978).

To some extent the worst effects of the failure to adopt a Community conservation regime have been avoided by the piecemeal adoption of piecemeal arrangements. The Community has introduced a number of conservation measures, such as the ban on directed fishing for herring in the North Sea and the Norway pout box, although in a weaker form than the United Kingdom desired. Where the Community has failed to adopt measures, these have in many instances been applied nationally by the United Kingdom under the provisions of the Hague Resolution. Such recent measures have included the ban on herring fishing in the West of Scotland grounds (but not within the Firth of Clyde), reduction in the by-catch permitted in small-mesh fisheries, an extension from October 1978 through to March 1979 of the eastern boundary of the Norway pout box by $2^{o}$, and the prohibition of the use of nets of less than 70mm mesh for nephrop (prawn) fishing from the beginning of November. The Commission criticized the exemption of the Clyde herring fishery from the herring ban as discriminatory (only British boats are allowed to operate there); they claimed that the Clyde stock was a part of the migratory West of Scotland stock and that there was no case for its being treated differently from the rest of the stock. The British government had covered themselves as best they could from legal attack on this point by making sure that the exemption was covered by scientific advice, as required by the Hague Resolution.

The past ten years may be seen as a period of increasing regime turbulence in North Sea fisheries, with the persistent attempts to adapt the NEAFC system to changing conditions, the extensions of coastal state jurisdictions, and the inconclusive disputes over a Common Fisheries Policy. Regime turbulence is associated with expectations of eventual regime changes of a definitive character (regime stabilization) – expectations which affect behaviour during the period of unsettlement and thereby make their own contribution to the turbulence, as competing groups strive to win advantageous positions in what they imagine will be the new regime. In the case of North Sea and North-East Atlantic fisheries, two types of regime change were confidently expected by most sectors of the industry; and these expectations for a while had particular effects on the pattern of industrial activity and thereby on the condition of the fish stocks and the future structure of

the industry itself.

During the period when NEAFC was trying to expand its role to cope with the growing range of fishery problems that were being encountered in its area, it was generally expected that the number of stocks subject to catching restrictions would increase, that TACs would tend to become tighter and that regulations about fishing methods would become more stringent. Such expectations characteristically led to more intensive efforts on the part of the industry as a whole to catch fish, however much each individual sector perceived the general desirability of restraint. This was because, as has already been described, most fishermen believed that other fishermen were not abiding by regulations and were taking more than their allotted share, and because the NEAFC quota formula (the 6:4 formula) tended to reward those who had taken the most fish in the past, regardless of whether their catching record showed regard for the general good. Thus the whole process of adaptation in NEAFC and the behaviour to which the process gave rise had the effect of increasing rather than diminishing pressure on stocks. Moreover, as one stock became seriously depleted, fishing effort moved on to another, which then became subject to the same politically generated pressures.

The growing expectation in the 1970s that fishery limits would be extended had similar effects on stock depletion. Distant-water fleets would step up their activities the more likely it seemed that their days of free access to a distant fishery were numbered. This was partly because they no longer had the same interest in its future management, and partly because of their expectation that 'historic performance' would provide the basis of quota allocations in reciprocal access agreements.

By the mid-1970s the two processes were reinforcing each other, as well as reinforcing the effects of the weaknesses in the NEAFC system that have already been described. The same over-intensive approach to fishing was seen when extended national limits were introduced and most vessels in the distant-water fleets of Britain and West Germany had to find their fish in already crowded home waters, or be laid up.

The 'Western' stocks of mackerel, in waters which were to fall completely within the British, French and Irish fishery zones, provide a good illustration of how these political processes could affect a particular fishery. In 1970 the fishery for mackerel in Western grounds was mainly pursued by the French, who caught over half of the 65,000 tonne catch. The Soviet fleet took 13,500 tonnes (21%) and the British 4,4000 tonnes (7%). By 1975, when it was becoming likely that free Soviet access to Western waters would not last much longer, the Soviet catch had increased twelve times, to more than 165,000 tonnes, and the



Soviet fleet was taking about 57% of a total catch of 295,000 tonnes. In the same period the British catch had increased eleven times and they were taking 48,600 tonnes (16% of the catch). British vessels had first moved into large-scale mackerel fishing partly because of the restrictions on herring fishing and the shortage of herring in home waters. In 1977 the Scottish purse seiners and the pair trawlers were about to be joined by about fifty to sixty English distant water trawlers displaced from their customary northern waters. Scientific advice has been that strict limits should be set on the mackerel fishery, though not so strict as the local inshore fishermen would like since they cannot move their fishing operations on if their home stocks are fished out. The scientists recommended that the 1976 TAC should be held at the 1975 level, and the 1977 TAC reduced by 75,000 tonnes. Further research led to more optimistic opinions and current estimates of the stock are said to be such as to justify a TAC in excess of 400,000 tonnes from British waters alone. Current catches are worth £14 million out of the British industry's total earnings of £250 million but these gross figures disguise conflicts of interest between the big catching vessels and the inshore line fishermen, who are more concerned about continuity of employment than a high rate of return on capital employed. Eventually the United Kingdom Government will have to resolve these conflicts of interest in a manner consistent with the 'interests' of the stock. It will be interesting to observe whether it manages to adopt a more effective conservationist policy than NEAFC did when faced with similar problems.

Movement of effort from one stock to another is not new. In the past it has resulted mainly from increased efficiency in one fishery leading to overfishing, with the consequent need for capital and labour to move to find employment in another. The classic case is provided by the experience of the Norwegian fishing industry between 1955 and 1970. The development of purse seining led to serious depletion of the Atlanto-Scandia herring stock during this period; at the same time, however, the success of the purse seining technique led to steadily increasing financial yields per vessel, which led to further investment in purse seiners. When financial returns per vessel began to fall off as the stock declined, the expanded fleet of purse seiners had to move on, to North Sea herring, to mackerel and then to capelin, a diminutive relative of the salmon which forms an important part of the diet of cod. The next target stock for intensive fishing effort is probably the blue whiting off the west coast of the British Isles.

Technical improvements in fishing and the vagaries of stock reproduction will continue to require movements in fishing effort from time to time, however effective conservation measures may become. There may, however, be a decline in the effects of regime turbulence on stocks

and industrial operations. The most important regime change has now been accomplished – the extension of coastal state jurisdiction – and the consequent withdrawal of large distant water fleets to home grounds (or the scrap yard) has taken place. A start has been made on scaling down the industry to a size consistent with permitting the recovery of home stocks depleted over the past decades, and redeploying it on species, previously underutilised because spurned by the consumer. National enforcement measures are more effective than was the NEAFC Joint Enforcement Scheme, so there is less likelihood that regulations will be broken in the belief that such activity is a general practice, and more likelihood that breaches of regulations will be detected and punished. Consequently the pressures which in the past ten years led to such voracious assaults on fish stocks (the general belief that a last attempt had to be made to take the most advantage from disappearing opportunities) should no longer operate so strongly.

There is no early end in sight to the piecemeal regime which fills the gap left by the European Community's failure to conclude a Common Fisheries Policy. There are two possibilities for the medium term. One is the persistence of virtually autonomous national regimes covering the whole North Sea, loosely coordinated through the institutions of a scaled-down NEAFC and the European Community, with demands for a fully developed Common Fisheries Policy being gradually eroded by judicious swap arrangements and other deals between the coastal states. This would be unwelcome to the Commission as a falling-away from the goal of integration and as a concession to divisive nationalism. But it would not be untypical if this type of arrangement were eventually tolerated within the Community as an indefinite interim solution and it could acquire respectability as a means of defending regional, rather than nationalist, interests. There is already some experience of how it might operate, which has been discussed above.

The alternative possibility is that agreement will somehow be reached on a Common Fisheries Policy. We hesitate to say whether this is the more likely outcome, but it is possible to see how it might work in comparison with the NEAFC regime. As proposed by the Commission, the core of the regime would be the Council of Ministers supported by a Scientific and Technical Committee and a Management Committeee for Fishery Resources. The former would have tasks similar to those performed for NEAFC by the scientific Liaison Committee of ICES, and would probably draw upon the same group of marine biologists from member states who have hitherto participated in ICES work. The Management Committee would probably perform the same tasks as the NEAFC Commissioners and, again, the personnel would be much the same. TACs and quotas would be determined by



the Council, probably after bargaining in the Management Committee much the same as that which took place in NEAFC. Bargaining strategies and outcomes would, however, be significantly different if the Commission were able to persuade the Council that decisions should be taken by qualified majorities. As has been described, agreement in NEAFC on an effectively conservationist TAC for a particular stock was almost invariably frustrated by the need to appease *one* member. Qualified majority voting would not have been acceptable in NEAFC because stocks were dealt with in isolation – ie., a member voted down on a stock of particular interest to itself could not have been compensated in another stock – nor did NEAFC have the ability to help members with the industrial restructuring necessary to switch from one stock to another. Such bargaining as has already taken place within the Community has shown that the member states are capable of swapping advantages in one fishery for advantages in another and of offering each other assistance with the necessary measures, such as the temporary reduction of activity in one industrial sector, the development of processing and marketing techniques for species new to the consumer, or the redeployment of capital and labour.

Whether the medium-term future lies with national regimes, somehow coordinated, or with a Common Fisheries Policy, enforcement is likely to depend on the licensing of vessels and skippers which will involve strict supervision of all fisheries operations and the establishment of permitted landing points (MCKELLAR). Jurisdiction to prosecute offences would lie with national authorities under a system of national regimes, and so it would under a Common Fisheries Policy. Coastal states will find it in their interests to be vigorous in enforcement and prosecution; so on this score alone, any emergent regime is likely to lead to more effective management of fisheries than NEAFC was able to achieve.

## NOTES

1. Fisheries Convention, UNTS No. 8432, 9th March 1964.
2. At the end of 1976 (just before the proclamation of national fishery zones throughout the North Sea) North Sea grounds were fished by vessels from: Belgium, Denmark, Faroes, Finland, France, East Germany, West Germany, Iceland, Ireland, Netherlands, Norway, Poland, Spain, Sweden, the United Kingdom and the Soviet Union. (ICES *Bulletin Statistique* for 1976).
3. For further discussion of interdependence, see ROSECRANCE & STEIN, and KATZENSTEIN.
4. Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, 1964, 231 UNTS 199. For pre- NEAFC conservation, see NEGHOLM.

5. 486 UNTS 158; for membership, see n.7 below.
6. In the Atlantic, the southern boundary moved down from 48°N (the latitude of Brittany) to 36°N (the latitude of Gibraltar). In the north, the boundary moved eastwards from 32°E to 51°E to take in the Barents Sea and the waters off the coast of European Russia. In addition, the new area covered the Mediterranean north of 36°N and west of 5°36'W (roughly the longitude of Marseille), but excluded the Baltic Sea and the Belts.
7. Belgium, Denmark, Finland, France, East Germany, West Germany, Iceland, Ireland, Netherlands, Norway, Poland, Portugal, Spain, Sweden, the United Kingdom and the Soviet Union. At the 13 July 1976 meeting, Cuba attended as an observer and gave notice of her wish to join. It has been proposed that European Community members should in future be represented by the European Commission.
8. *NEAFC Reports,* Report of Special Meetings (December 1973 and March 1974) 4-8 and 41-49.
9. *Ibid.* 42.
10. 12 *NEAFC Reports* 13-15 and Report of the Mid-Term Meeting, November 1974, 13.
11. For a formal analysis of bargaining in NEAFC, see a forthcoming book on the politics of international regulation of Northeast Atlantic fisheries by Arild Underdal, University of Oslo and the Fridtjof Nansen Foundation.
12. See, generally, KOERS; BURKE, LEGATSKI & WOODHEAD; CARROZ & ROCHE.
13. *NEAFC Reports,* Report of the Special Meeting, November 1966, 1.
14. For an early assessment of how these Regulations would affect the United Kingdom, see LAING.

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