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CONCLUSION Open Access

Regionalisation - what will the future bring?

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Abstract

It is the contention of this special issue that regionalisation, in the sense of focusing important aspects of governance on the scale of marine eco-regions, can make a valuable contribution to the reform of the European Union's Common Fisheries Policy (CFP). Despite recent trials and tribulations associated with the current reforms, we remain firmly convinced of the merits of reforming the CFP around a process of devolving detailed, technical decision-making to some form of collective organisation of member states working together at the level of the regional sea. We remain hopeful that something more substantive will prevail by the end of 2012, perhaps in the form of non-statutory regional governance structures capable of implementing Community policy in a regionally sensitive and practical way. Though we believe that regional management is inevitable if the CFP is eventually to deliver sustainable fisheries, we acknowledge that in reality regionalising the CFP was always likely to proceed incrementally.

Review

It is the contention of this special issue that regionalisation, in the sense of focusing important aspects of governance on the scale of marine eco-regions, can make a valuable contribution to the reform of the European Union's Common Fisheries Policy (CFP). We believe that the arguments supporting this judgement have been substantiated in the preceding papers. Regionalisation can deliver two significant, if not indispensable, elements of setting the CFP on a sustainable course: the 'moving down' and 'moving out' of authority for fisheries management (Raakjær and Hegland 2012). In the context of regionalisation, 'moving down' refers to relieving the central EU institutions of certain management responsibilities and allowing lower level authorities to assume them. 'Moving out' implies increasing the involvement of stakeholders in the management process by transferring some areas of authorisation the public sector to public-private cooperative institutions or to the fisheries sector itself.

On their own, these elements do little to bring the CFP onto a more sustainable track. As Symes (2012) argues, regionalisation has to be seen as a vehicle for fundamental reform and not as an end in itself. Detailed proposals for a discard ban, currently under consideration by the European Commission, clearly lend themselves to regional deliberation and action. Unfortunately, the Commission's recently published proposals for reforming the CFP (Commission 2011a) would fail to commit member states to cooperation at the regional sea level on such issues.

In the concluding sections of his paper, Symes (2012) describes regionalisation of the CFP as a work in progress. The Commission's unambitious proposals for a new basic

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regulation simply delay the introduction of fundamental reform of the policy system. The case for regionalisation is seen as a logical outcome of the enlargement of the EU that has rendered decision-making both impractical and ineffective. Flexibility in addressing the problems is presently inhibited by the rigidity of the current decision-making system induced by the exclusive competence granted to EU institutions in dealing with fisheries management. The Commission's Directorate-General for Maritime Affairs (DG MARE) has been unable to translate its ambitious agenda for a redistribution of decision-making responsibilities into substantive proposals in the new draft regulation. This owes more to an interest (possibly supported by a constitutional imperative) to safeguard the integrity of the EU's political structures and the authority of the Commission in particular than to the exposure of flaws in the argument for regionalisation.

The purpose of the concluding remarks is not simply to summarise the findings from the foregoing papers but rather to try and elicit how these findings might inform present and future debates on reform of the CFP in general and the issue of regionalisation in particular. To do this we first reiterate why regionalisation forms such a key element in the structure of CFP governance and the relative merits of models for regionalisation discussed in this and earlier issues. We will then attempt to sketch out alternative answers to the question: what will the future bring for regionalisation? Does the current situation lead us to conclude that the case for regionalisation has been abandoned or postponed to a later date? Or is there still reason to believe that regionalisation might still lie at the heart of the 2012 reforms?

Why regionalisation?

The case for regionalisation is strong. Regionalised governance brings the scale of governance in line with the scale of most underlying physico-socio-biological phenomena and processes with which governance is interacting. It has the potential to contribute to the multiple objectives of CFP governance in relation to generic concerns for efficiency and legitimacy and to more targeted measures for dealing with regional specific fisheries. The advantages of regionalisation extend beyond the fisheries domain, enabling better integration of the different policies relating to the regional seas. Each of these benefits needs to be carried forward into the final stages of the political debate on reforming the CFP.

Improved legitimacy and efficiency

The evidence presented by Hegland et al. (2012b) demonstrates that regionalisation is useful in increasing the legitimacy of CFP governance. It facilitates a move towards more genuine mechanisms for co-management within the CFP and thereby provides for stronger involvement of stakeholders ('process legitimacy'). Enhanced stakeholder involvement should, in turn, lead to increasingly effective, tailor-made measures more closely aligned to the problems experienced ('content legitimacy'). Regionalisation is also perceived as helping to make governance more efficient. The CFP has long been suffering from excessive centralisation. EU central institutions have become overburdened with detailed issues (such as mesh sizes for specific fisheries) that more appropriate could be dealt with at the regional level. This problem could become even more

pronounced following ratification of the Lisbon Treaty that authorises the involvement of the European Parliament in co-decision making in fisheries policy.

Avoiding micro-management

The key function of regionalisation is to allow member states, working together, to shoulder the burden of micro-management by translating the principles, objectives, standards and targets of a common policy into specific management plans tailored to the ecological circumstances of the regional sea and adapted to the economic, social and cultural conditions of the fishing industries that exploit its waters. Responsibility for detailed actions is delegated to member states acting in concert through a clearly defined mechanism and a mutually agreed plan. This will enable the much criticised 'one size fits all' legislative framework at EU level, and often adjusted to a lowest common denominator, to be replaced by a system of informed decision-making very much closer to the specific problems, involving only those member states with a direct involvement in specific fisheries to take appropriate measures for the fulfilment of the common policy.

Fostering responsibility and accountability

A significant problem with the CFP is its failure to foster responsible behaviour by ensuring accountability. Raakjaer (2009) reminds us that no clear division can be made between political decisions and administrative implementation. Political decisions can be redefined and alternative aims pursued at the level of what should, in principle, be neutral administrative implementation. Gezelius et al. (2008) revealed how compliance with EU regulations becomes distorted through 'implementation drift' whereby political decisions made in Brussels are redefined at member state level. More specifically, Hegland and Raakjaer (2008) show how problems originate in the failure of the present two-tier political system in the EU to create incentives for responsible behaviour in shared fisheries because of a lack of accountability.

A key question is therefore whether collaboration between neighbouring member states and their fishing industries can provide sufficient incentives for the emergence of a 'culture of compliance' both within member states' administrations and across the fishing industry. Does the introduction of a third, intermediary level of governance increase the risk of 'implementation drift' – or can this be overcome by careful attention to institutional design? If the latter is true, regionalisation should ensure that those responsible for making the decisions are held accountable or, at the very least, can be readily identified.

Facilitating integration with environmental policy

Moving beyond the narrow domain of fisheries management, van Hoof et al. (2012) indicate how the integration of fisheries within a broader management context presents a major challenge. In comparison with several other areas of marine/maritime policy, the CFP currently scores low on regionalisation as a basis for further integration.

The shift towards ecosystem based management and more holistic management of multiple sectors is seen as a driver for regionalising the CFP. It increases the potential for integrating policies across all sectors and activities at the scale of the marine

ecosystem. However, the process of regionalising marine policy currently follows two distinct trajectories: one, haltingly, under the CFP and the other under the Marine Strategy Framework Directive (MSFD). To date, there has been little or no convergence in how regionalisation and integration are perceived in the two policy areas, because their development has been steered by separate Directorates-General within the Commission, respectively DG MARE and DG Environment. The fact that each policy is characterised by different institutional settings, stakeholder dynamics and power relations necessarily complicates the situation. Integrating the two policies would clearly be facilitated by regionalising the CFP so as to give marine ecosystems a more central position in relation to governance. Integration would also be facilitated if national competence within the MSFD was to be regionalised through cooperation between the relevant coastal states with competence within a marine eco-region. Hegland et al. (2012b) endorse this line of argument, suggesting that regionalisation is both a way to manage ecosystems and fishing fleets in accordance with regional needs and a means of securing greater policy integration.

Regionalisation has, in this special issue, mainly been discussed in contrast to centralised governance. There have however been voices in the debate about the CFP reform, which have argued for renationalisation of the fisheries policy. The reasons for regionalised governance being a preferable solution *vis-à-vis* nationalised solution have not been discussed here. The main argument against renationalisation of the fisheries policy – and of national management of many aspects of marine and maritime issues - is that important underlying physico-socio-biological processes operate at the scale of marine ecosystems and cannot be managed on a national scale in the first place whenever these ecosystems are shared across exclusive economic zones.

How to regionalise

A common thread running throughout the presentations that make up this special issue is the importance of creating an appropriate, well defined and explicit framework for regionalisation. Significantly, the Commission (2009, 2011a, b) leaves the architectural design of regionalisation very much to the reader's imagination. By contrast, several of the papers in this volume attempt to sketch the outlines of plausible, alternative models. They are no more than skeletal designs but sufficient to clarify some of the key issues. The question is which of these designs is best able to satisfy the conflicting demands of legal, political and management scrutiny.

For Symes (2012) the choice is between what he describes as a *de minimis* administrative model based on "a regional standing conference of member state administrations" meeting at regular intervals to interpret and implement Community policy, heavily reliant on advice from the Regional Advisory Council (RAC), or a dedicated "regional management organisation" with broad stakeholder membership and an independent secretariat. His preference for the former is based purely on pragmatic grounds of simplicity, cost and the fact that it enshrines the principle of delegating authority to member states. It, therefore, does not conjure up a separate entity that challenges the authority of either the European institutions or the member states.

Hegland et al. (2012a, b) present a more nuanced range of options that overlap Symes' basic choices but are differentiated on the basis of their structures, membership,

powers and relationship to EU institutions. All the models are in keeping with a system where the EU sets the principles, objectives and targets of the Community policy, the regional institutions devise specific plans for managing the fisheries accordingly and the member states are responsible for implementation through regulation of their own fishing activities. When subjected to scrutiny by RAC members with experience in, and a predisposition towards regional management, the balance of opinion favoured the more ambitious solutions (Regional Fisheries Management Organisation and Regional Fisheries Co-Management Organisation) rather than the simpler, pragmatic option (Co-operative Member State Council) overlapping with Symes' (Symes 2012) regional standing conference of member states. There was little support for either the *status quo* or a renationalisation of fisheries management that places the individual member state at the centre of the system.

Ounanian and Hegland's (2012) analysis of the achievement of RACs prompts a third approach to regionalisation. Demonstrating the value that RACs have already shown in facilitating information sharing, cultivating stakeholder relationships and providing evidence based advice. They argue that RACs have already proved their competence in developing a regional approach to fisheries management. The future for RACs is seen to be reaching a critical juncture. The Commission now needs to place more confidence in the RACs' advisory role through enhanced uptake of the advice received (Coers et al. 2012) if it is to avoid alienating RAC members who devote time, effort and expertise to generating well considered, sound scientific advice. The Commission could go further by promoting RACs as platforms for closer integration with other areas of marine policy. For some, RACs provide the essential building block for the new regional management bodies, though this is not a widely held view within the RACs themselves. Should regionalisation be given the green light, RACs would be assured of a continuing significant role, serving possibly more appreciative clients.

The question still remains: which of the various approaches outlined in the preceding papers offers the best solution? This is possibly the most crucial challenge for the regionalisation project, not only intellectually but also politically and legally. The creation of an 'intervening' organisation – even one with limited authority – is seen to pose a threat to the competences of the EU institutions and the member states. Yet without such an organisation to manage the process of collective decision-making at the level of the regional sea, effective regional management is not possible. In an ideal world, one would naturally strive for an institutional form that meets the criteria of strong stakeholder representation, interactive governance, transparency and accountability. But in the real world of legal constraints and political realities, it might be necessary to adopt a more pragmatic approach, opting for a simpler administrative model and hoping to generate greater synergies with a revitalised RAC in order to deliver the full benefits of regionalisation.

What will the future bring for regionalisation?

2012 will conclude another round of reform of the CFP; and for the first time decisions will be made jointly by the Parliament and Council of Ministers. At the start of 2012 there are limited grounds for optimism concerning regionalisation of the CFP. The Commission's proposals for reform (Commission 2011a) are devoid of commitment to

anything that could be interpreted as a genuine initiative to promote regionalisation with marine eco-regions at its core.

It is difficult to see how the Commission's proposals advance the process of regionalising the CFP and it is possible to interpret the Commission's rhetoric in its Communication (Commission 2011b) as a less than convincing cover up for its failure to deliver even the quite modest expectations built up in its earlier Green Paper (Commission 2009). Legal challenges to the notion of regionalisation have frequently been cited as the reason for this failure. There is, however, room for interpretation over the implications of the European Treaties in this matter and a tension is discernible between DG MARE's interpretation of what *can* be done to improve fisheries management and the Commission's Legal Services' assertion of what *should* be done in the interests of the EU institutions in general.

The Commission's proposals are not the end of the story as the Parliament and Council will now have their say; Parliament, in particular, has previously expressed its support for regionalisation (European Parliament 2010). Hopefully, the European Parliament through the co-decision process can find a more sustainable path for the future of the CFP. Our fear, however, is that the failure to recognise the advantages of regionalisation will cast a long shadow over the reform process. An opportunity to remedy the structural failings of the CFP, clearly identified in the Commission's 2009 Green Paper will, as a consequence, be missed. The future of the reform process is uncertain – the more so because we have no precedent as to the outcomes of the co-decision process to guide us. We therefore offer four alternative scenarios in relation to the future of regionalisation in the context of the CFP.

Regionalisation is postponed for yet another decade

A likely outcome of the present round of negotiations for reforming the CFP is that there will be little, if any, substantive action on regionalisation. The arguments in support of this contention have already been thoroughly rehearsed (see Symes 2012). To date, the Commission has been unable to provide a clear exposition of how regionalisation would work. Instead, it cites the terms of the Lisbon Treaty to explain why it is difficult, if not impossible, to elaborate a third level of decision-making between the EU institutions and the member states – a condition that will also weigh heavily with the co-decision process. As a result, changes to the decision-making system will at best be reduced to the delegation of a limited range of powers to member states for the introduction of technical measures in relation to their own vessels. Fundamental reform of the CFP, promised in the Green Paper, will have to await the next decennial review in 2022.

Regionalisation is formally introduced into the CFP's governance system

A second, but currently less likely, scenario is that the Parliament and Council find a means of circumventing the legal obstacles and formally adopting regional decision-making as part of the governance structure. This would require a complete overhaul of the Commission's current proposals for reform of the CFP. More importantly, if we are to believe the arguments put forward by the Commission's Legal Services, such a radical change will require amendments to the existing Treaties – a task that few would be

willing to undertake in the present climate of economic and financial uncertainty. Notwithstanding the compelling arguments for regionalising fisheries policy, it is unlikely that the Commission would be willing to entertain a thorough review of its powers in relation to fisheries conservation – one of the few areas of policy where the EU has exclusive competence – as the new regional institutions may compromise the Commission's prerogatives in some way.

Regionalisation materialises through informal collaboration

If we pay attention to the Communication from the Commission (2011b) rather than its proposals for reform of the CFP (2011a), there is reason to believe that the future for regionalisation may not be quite as bleak as that depicted above. The problem is how to convert the Commission's positive assessment into reality when the hardwired backing for such a change is missing from the basic regulation.

Following publication of the proposals for the new basic regulation (Commission 2011a), many stakeholders – ranging across national administrations, industry organisations, conservation groups and RACs – have expressed their concern that delegation of responsibilities and a regionalised approach to fisheries management need to be given more prominence. DG MARE has reiterated its belief that regionalisation will form a key element of the reformed CFP and a 'non-paper' on regionalisation has been drafted by the DG MARE. Behind these assertions lurks the suggestion of informal action to encourage the 'moving down' and 'moving out' of management decisions, ensuring a higher level of stakeholder involvement through the creation of partnerships rather than the consultative arrangements currently in place.

What might emerge is an informal system of regionalisation which we can best conceptualise as a set of non-statutory arrangements built on trust and reciprocity with an inbuilt hierarchy for transferring responsibilities downwards and outwards and a results based management approach to hardwire responsibility at the level of the fishing industry. The informal structures will allow member states jointly to ensure that such actions were compliant with the principles, objectives and targets of Community policy. This seems a rather insecure route for achieving regional management. If, in the end, all it means is that collective action is restricted to informal discussions between member states without *de facto* transferral of new competences, it is unlikely that the resulting form of regional management will be able to resolve the basic problems currently faced by the CFP (Raakjær 2009).

Regionalisation through delegation of powers to member states

Despite the widespread preference among stakeholders for formal institutional structures to support the regionalisation of the CFP, we have recently seen stakeholders arguing for a decentralised management structure with decision-making powers delegated to member states, advised by RACs with an enhanced mandate and improved scientific support (van Hoof et al. 2011). This model, based on informal politico-administrative structures, involves member states with fishing interests in a specific regional sea establishing a Decentralised Fisheries Management Board with the incorporation of the relevant RAC as a working group within the Board and given observer status at Board meetings.

This model, which fits quite nicely within Symes' (2012) *de minimis* solution, would foster a collaborative approach among member states, RACs and scientific institutions to develop multi-annual plans for the region's fisheries. It offers a high degree of flexibility within the present legal structures. But it comes at a cost. It would have to rely on voluntary agreements, soft law and recognition of its *de facto* 'authority' based on the quality of its inputs and outputs rather than on *de jure* authority in the implementation of its recommendations.

This approach and the 'informal collaboration' model previously described both suffer the disadvantage that they leave the member states to bear the additional financial costs – modest though these may be[a] – for what could be very little return. In the present economic climate, some member states may be reluctant to support the initiative for short-term budgetary considerations. It may be possible to seek financial support from the European Maritime and Fisheries Fund (EMFF) whose programme for 2014-20 is currently under discussion. An application for funding would be greatly strengthened if it were linked to proposals for closer integration with other areas of regionalised marine/maritime policy and preparation for marine spatial planning at regional and sub-regional levels. The fishing industry's level of preparedness for marine spatial planning presently lags behind that of the more powerful shipping, oil and gas and offshore energy interests (Ounanian et al. 2012).

Conclusion

This special issue represents the synthesis of several strands of research on regionalisation – in some instances developed over a decade or more and in others the result of more recent analyses of ecosystem based management and the present and future roles of RACs – in an attempt to provide a more comprehensive understanding of the complexities surrounding regionalisation of the CFP. Despite recent trials and tribulations associated with the current reforms, we remain firmly convinced of the merits of reforming the CFP around a process of devolving detailed, technical decision making to some form of collective organisation of member states working together at the level of the regional sea. DG MARE seemed to be of a similar mind when setting out its thoughts in the 2009 Green Paper. However, this line of thinking has been overruled by other forces at work within the Commission, which have succeeded in reducing the ambition for regionalisation of the CFP, as set out in the draft regulation, to little more than a token gesture.

If the regional project remains incomplete at the end of 2012 we will perhaps need to delve more deeply into the reasons for its failure. A reasoned analysis of the legal constraints (we have never been told precisely why the door to regionalisation has remained firmly shut), further examination of the responses to the Green Paper to achieve a clearer picture of the differing attitudes to regionalisation, and a close monitoring of the co-decision process involving Parliament and Council will all help to understand the political and legal contexts of CFP reform more fully.

Regionalisation is unlikely to be the only casualty of the 2012 reforms. Several other issues raised in the Green Paper, including some that featured in DG MARE's five structural failings, have failed to survive the reform process so far. It may be necessary to consider whether the conventions of path dependent change (see Gezelius et al.

2008; Symes 2009) reinforced by legal intractability and political conservatism, are so deeply engrained in the CFP that fundamental reform is simply out of the question.

Meanwhile, we remain hopeful that something more substantive will prevail by the end of 2012, perhaps in the form of non-statutory regional governance structures capable of implementing Community policy in a regionally sensitive and practical way. Though we believe that regional management is inevitable if the CFP is eventually to deliver sustainable fisheries, we acknowledge that in reality regionalising the CFP was always likely to proceed incrementally. The establishment of RACS in 2003 was first step in the provision of advice, and we hope that 2012 will at least lay the foundations for implementing Community policy at a regional level to be fully implemented in the 2022 reform.

Fisheries, like all other aspects of marine/maritime development, are best managed at the regional, ecosystem level. It is difficult to see how the goals of sustainable development for the seas around the EU can be achieved without debate, decision-making and action taking place within a common regional framework.

Endnotes

[a] These costs could be inflated were the Commission to determine that RACs, originally established as an instrument of Community policy making, were now acting principally in the interests of, and at the behest of, the member states rather than the Commission *per se*.

Competing interests
The authors declare that they have no competing interests.

Authors' contributions
All authors have read and approved the final manuscript.

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