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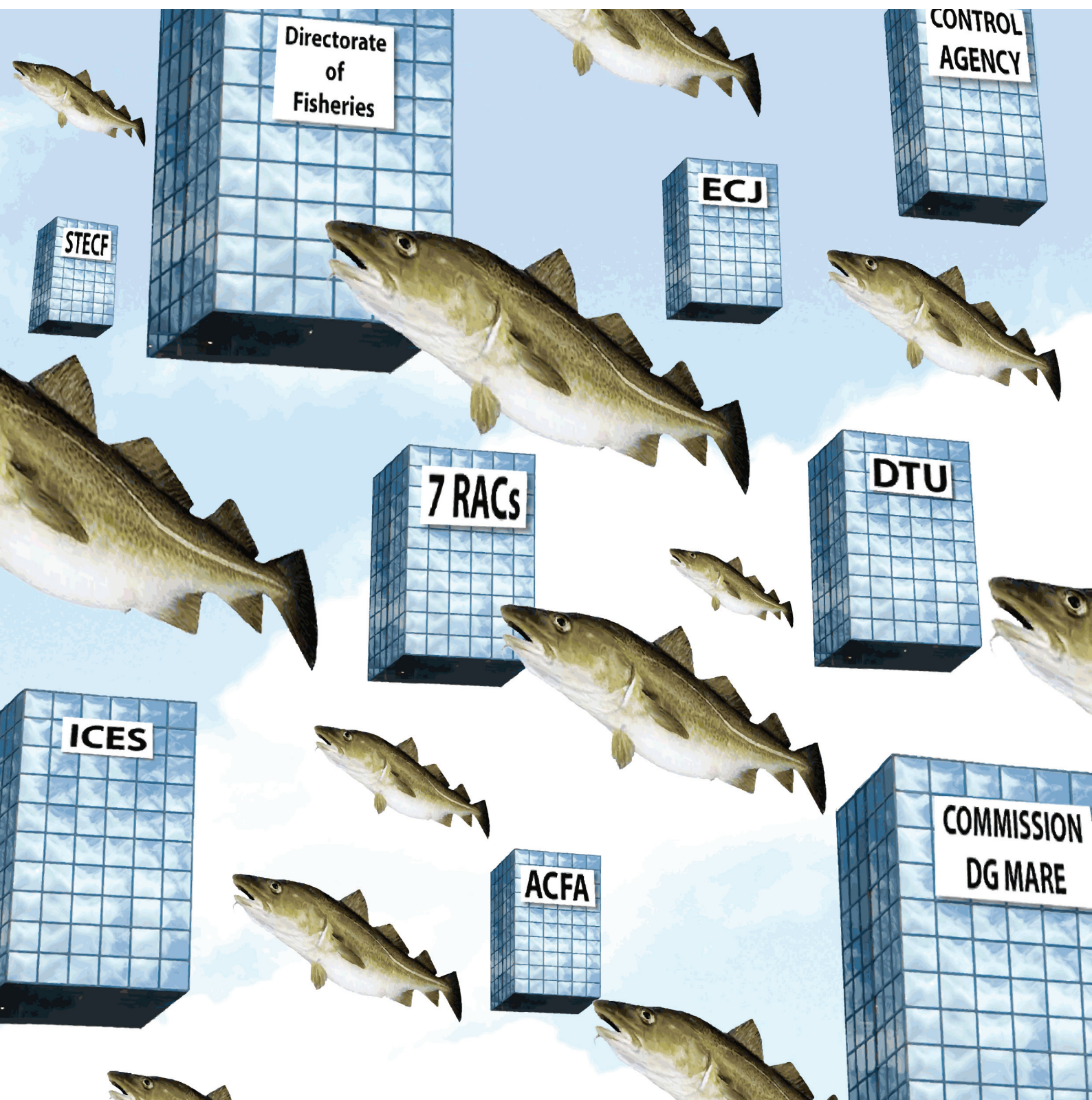
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**The Common Fisheries Policy and
Competing Perspectives on Integration**



The Common Fisheries Policy and Competing Perspectives on Integration

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The Common Fisheries Policy and Competing Perspectives on Integration

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Abstract

The theoretical debate over the dynamics of European integration is today, it can be argued, dominated by a (liberal) intergovernmentalist perspective stressing the centrality of the state and an alternative multi-level governance perspective stressing the extent to which new power centres, actors and interdependencies are emerging - with diminishing state control over the integration process as a possible result. This paper discusses the Common Fisheries Policy of the European Union with reference to these perspectives. The aim is to contribute to the understanding of the challenges of reforming the fisheries management framework. This paper argues that, although recent developments in the Common Fisheries Policy seem to a significant extent concurrent with the model/prescriptions of the multi-level governance perspective, the fisheries policy reform attempts remain restricted by broad member state opposition to giving up competencies and powers in specific topic areas of fundamental importance to effective fisheries management. In a concluding discussion this paper discusses the perspective of regionalisation of the Common Fisheries Policy in the light of the findings.

Keywords: European Union / EU, Common Fisheries Policy / CFP, intergovernmentalism, multi-level governance, policy reform.

Introduction

This paper discusses the European Union's (EU) fisheries policy and recent developments within it with reference to two theoretical perspectives: the state-centric intergovernmentalist perspective and the multi-level governance perspective. This discussion contributes to the deeper understanding of the apparent resilience to fundamental change that has been one of the defining characteristics of EU fisheries policy over the last 25 years.¹

Although the macroeconomic importance of the fisheries sector² is today relatively small in all EU member states, the public profile of the policy area remains high. Traditionally this derives from the cultural aspect of fishing, which is an integral part of many countries' national histories; however, today the high profile of the policy area is increasingly due to its effects on the marine environment. Furthermore, jobs in the fisheries sector are usually located in remote coastal areas where access to alternative occupations is limited. Consequently, the fisheries sector is in certain parts of Europe of crucial importance for local or regional economies.

¹ This paper was written as an assignment to complete a PhD course on *Multi-Level Governance* held by the Department of Political Science, University of Oslo, in September 2008. The paper was handed in 15 January 2009.

² In terms of EU policy, the fisheries sector consists of a catch industry (the fleet), a processing industry (incl. marketing and distribution) and an aquaculture industry. The subject matter of this paper is primarily policies directed towards the catch industry.

Supranationalism and Intergovernmentalism

For the last half century the debate on and study of European integration has basically been dominated by a dichotomy between two opposing schools of thought on the fundamental features of the process: a 'supranational' and an 'intergovernmental' perspective.

From the 'supranational' perspective it has been argued that the member states' governments once they instigated the integration process lost the ability to control it - that the process has taken on a life of its own. This perspective has its roots in the 'liberal' school of international relations. The supranational perspective was first applied to the European setting with Haas' (1958, 1961) neo-functionalism, which emphasised among other things functional dependencies and spill-over between policy areas (which would lead to integration spreading from one area to another and so forth), as well as the power and interests of supranational EU institutions and domestic non-state actors (and interactions between those) to explain why the European implementation process was an evolving process outside the control of member states' governments. However, the fundament of neo-functionalism was severely shaken by the slow-down/stand-still of European integration from the 1960s, which undermined the central concepts of functional dependencies and quasi-automatic spill-over; in fact the founder of the theory went as far as to declare neo-functionalism dead in 1975 (Haas 1975). Nonetheless, important parts of neo-functionalism, though not the idea of automatic spill-over, were later revitalised and developed further primarily by Sandholtz and others (Sandholtz and Zysman 1989, Sandholtz and Stone Sweet 1998), who explained the new momentum in European integration in connection with the adoption of the Single European Act in 1986 with reference to the influence of the Commission of the European Communities (Commission) and a supranational interest group, the European Round Table of Industrialists (Hix 1999, George 2004).

The opposing perspective, the 'intergovernmental', has continuously argued that the process of integration remains under the control of the member states' governments. Based on what is determined to be in their national interest they negotiate and decide on the pace and direction of European integration. Developments in European integration are, consequently, due to convergence of the interests of member state governments - not the power of non-state actors or supranational institutions. In terms of theoretical development, this perspective developed from the 'realist' school of international relations. The basic features of the realist school of thought were applied to the European setting first and foremost by Hoffman in the middle of the 1960s (Hoffman 1966), where the pace of European integration had slowed down and there seemed to be a strengthening of the intergovernmental features as opposed to the supranational features of the European experiment. Hoffman's theory was coined intergovernmentalism and adopted a state-centric view on the dynamics behind European integration, which was primarily depicted as the product of unitary states trying to protect their relatively stable geopolitical interests. States will be highly reluctant to give up sovereignty in areas of high politics, traditionally linked to geopolitical concerns, as opposed to areas of low politics, and this is a major explanation of the varying degrees of integration across policy areas. Intergovernmentalism was later refined and developed by Moravcsik (1993, 1995, 1998), who in his theory of liberal intergovernmentalism, which draws on both realist and liberal international relations theory, keeps the state-centric perspective but divides the EU decision process into two stages: In the domestic arena a pluralist political process involving domestic interest groups takes place upon which national government adopts a position. As a result - in contrast to the more 'realist' intergovernmentalism - liberal intergovernmentalism regards economic interests as more important than geopolitical and holds that national preferences change

over time. The government brings the national position into the negotiations with the other governments and the negotiations can in the interpretation of liberal intergovernmentalism produce positive-sum outcomes. Importantly, however, liberal intergovernmentalism keeps the state, which is regarded as a unitary actor, at the centre and supranational actors are thought to play minor roles, mainly as facilitators of interstate bargaining (Hix 1999, George 2004).

Multi-Level Governance

In recent years a new perspective, multi-level governance, has - since named by Marks in 1993 - claimed its space in the theoretical debate over EU policy making and European integration. Marks (1993: 392) defined the concept of multi-level governance as “*a system of continuous negotiation among nested governments at several territorial tiers*”. The term ‘multi-level governance’ includes both a vertical dimension and a horizontal dimension. ‘Multi-level’ refers to a vertical dimension where governments operating at different territorial levels are becoming increasingly interdependent. ‘Governance’ refers to a growing interdependence between governments and non-governmental actors at and across various territorial levels (Bache and Flinders 2004). This is a development that seemingly penetrates the member states’ central administrations. Thus, Egeberg (2006) describes how semi-independent national state agencies increasingly become ‘double-hatted’ in the sense of sharing the loyalty to the national government with a degree of loyalty to supranational EU institutions. This development challenges the intergovernmental notion of the state as a unitary actor with only one national position in relation to EU policy making.

In the following I will outline the understanding of multi-level governance to be employed in this paper. This I will do by outlining qualities of the governing/governance system and changes to it, which I understand as characteristics of multi-level governance. The qualities are primarily inspired by Bache and Flinders (2004), Bache (2008) and Marks and Hooghe (2004):

- Significant or increasing interdependence between various types of governmental and state actors as well as non-state actors in decision-making at various territorial levels (horizontal interdependence).
- Significant or increasing interdependence of actors (various types of governmental and state actors as well as non-state actors) across territorial layers (vertical interdependence).
- Lower territorial layers are (increasingly) not necessarily neatly nested in upper layers and there might be overlapping jurisdictions and memberships. This picture emerges because of the establishment of task-specific jurisdictions as opposed to general-purpose jurisdictions.
- Significant or increasing dispersion of power in the decision-making process from the central state governments to other empowered actors (various types of governmental and state actors as well as non-state actors) on various territorial levels.
- Significant or increased importance of informal or at least alternative tools (as opposed to classical centralised, command-control) for decision-making and policy coordination. These tools include regulatory agencies, benchmarking, name-and-shame, consensus-building, peer review, etc.
- Significant or increased difficulties of obtaining a clear picture of power relations among actors because of the use of informal tools for decision-making and policy coordination.

The degree to which these qualities or developments should be present in order for the process or situation to be a representation of multi-level governance is clearly up for debate and will probably also depend on the empirical context. However, as a minimum I would argue that it makes little sense to talk about multi-level governance unless some actors besides the central state governments are empowered in the governing/governance system - be it formally or informally - and that the central government to some extent must depend on these actors to fulfil its role. I will return to these qualities when I discuss and evaluate specific recent developments in EU fisheries policy in a later section of this paper.

As documented by Marks and Hooghe (2004), normative perspectives on how multi-level governance should be set up in practice are plentiful and to some extent contrasting. Based on a review of the current pool of literature on multi-level governance, they identify two fundamentally different visions of how multi-level governance should be organised. They name the two visions Type I and Type II. Type I is characterised by: general purpose jurisdictions, non-intersecting memberships, jurisdictions at a limited number of levels, and system-wide architecture. In contrast, Type II is characterised by: jurisdictions according to specific tasks, intersecting memberships, unlimited number of jurisdictional levels, and flexibility in design.³ In a comparison of the two visions, Marks and Hooghe (2004: 29) state:

“The main benefit of multi-level governance lies in its scale flexibility. Multi-level governance allows jurisdictions to be custom designed in response to externalities, economies of scale, ecological niches, and preferences. Both Type I and Type II multi-level governance deliver scale flexibility but they do so in contrasting ways. Type I multi-level governance does so by creating general-purpose jurisdictions with non-intersecting memberships. Jurisdictions at lower tiers are nested neatly into higher ones. Type II multi-level governance, by contrast, consists of special-purpose jurisdictions that tailor membership, rules of operation, and functions to particular policy problems.”

I will not at this point go further into a discussion of the two visions but rather return briefly to them in the final section of this paper, where I provide a short discussion of the perspectives of multi-level governance in relation to reforming the EU fisheries policy.

In relation to the integration theories discussed in the previous section, George (2004) argues that the multi-level governance perspective is in essence related to and compatible with the supranational perspective on EU integration and much less so with the intergovernmental perspective. This leads him to conclude that the original dichotomy in the theoretical discussions on EU integration persists today in a new form where liberal intergovernmentalism is confronted with a variety of (see Marks and Hooghe 2004) multi-level governance perspectives. Consequently, although it is debatable both if multi-level governance is actually a qualitative new perspective or merely a modern, updated continuation of the supranational perspective (as discussed by George 2004), as well as if multi-level governance qualifies as being more than merely a descriptive account of the EU with little explanatory value (as discussed by Jordan 2001), there seems to be a case for an integrated discussion of the EU's fisheries policy in relation to (liberal) intergovernmentalism and a multi-level governance perspective as two of the dominant theoretical perspectives on the EU.

³ In my reading, the analysis of Marks and Hooghe (2004) is primarily concerned with the institutional set-up for multi-level governance and less with perspectives on practices of multi-level governance decision-making, which I would argue is also an important feature.

The remainder of this paper will fall in four parts. Initially, an introduction to EU fisheries policy is provided. After this I present a traditional understanding of EU fisheries policy making as fundamentally intergovernmental in nature. Subsequently, in two subsections under the same section, I present two recent decisions in EU fisheries policy making in light of the different perspectives on the EU and discuss whether these decisions are indicative of a movement towards multi-level governance. Finally, I draw a few conclusions in relation to the set-up for future EU fisheries policy making and management.

EU Fisheries Policy

The Common Fisheries Policy (CFP), the fisheries policy framework of the EU, was in its present, comprehensive form - covering measures relating to markets, conservation, sector structures, external relations and control - basically completed in 1983 (Council 1983). Conservation of living aquatic resources (a main pillar under the CFP) is, as one of only a handful of policy areas, under the exclusive competence⁴ of the EU, which in this area governs primarily by means of regulations that are binding and directly applicable at member state level - and as such these legislative acts do not need to be transposed into national legislation.

The first acts relating to markets and fisheries sector structures were adopted as early as 1970 (Council 1970, 1970a). Since 1983 the policy has undergone reform in 1992/93 (Council 1992) as well as in 2002/03 (Council 2002) and the next major reform is scheduled for 2012/13. Over the years the primary focus of the CFP has, alongside the general development in fisheries management worldwide, increasingly gone from being that of ensuring efficient fishing fleets and well functioning markets for fish products to that of conserving the resource base, which the sector ultimately stands and falls with (Gezelius et al. 2008). The success in developing the sector has thus largely led to the challenge of conserving fish stocks.

Although it has been argued that the mere adoption and maintenance of an EU fisheries policy under the prevailing circumstances must be considered an institutional success (Holden 1994; Nielsen and Holm 2006), the output that the CFP has delivered *vis-à-vis* indisputable core objectives of fisheries management has been far from impressive. At present the situation is according to Sissenwine and Symes (2007) characterised by:

- a significant overcapacity in the EU member states' fleets compared to available resources;
- a poor profitability in large parts of the catch industry;
- overexploited stocks above what comparable regimes worldwide have been able to deliver;
- a lack of legitimacy of the management framework among industry stakeholders and conservationist non-governmental organisations (NGOs) alike;
- a continuation of environmentally destructive practices of fishing; and
- uneven and generally poor implementation and enforcement of conservationist fisheries legislation.

Consequently, although the CFP may possibly be considered an institutional success story, it is, I and many others would argue, a failure in terms of performance in nearly any other aspect. Paradoxically, the fact that the CFP can be regarded as an institutional success may in itself stand as an obstacle to decisive policy reforms since it is recognised that the fundamental political

⁴ Exclusive competence on behalf of the EU “means that the member states cannot adopt their own legislation within the area [...] unless that power has explicitly been given back to them” (Hegland and Raakjær 2008: 164).

compromises that the CFP rests on were long and hard in the making. One such compromise is the principle of *relative stability*, which stands as one of the fundamental features of the CFP. The relative stability, which was agreed in 1983 based on historical fishing patterns, outlines the fixed allocation keys to be used, after deciding on total allowable catches (TAC)⁵ for individual fish stocks in specific sea areas, to distribute the fishing opportunities into national quotas to the member states (Hegland and Raakjær 2008a). This allocation key ensures relative stability in relation to fishing opportunities between member states, but it is at the same time a complicating factor in terms of reforming the CFP, as any proposal from the Commission that directly or indirectly potentially impinges on the relative stability is *per se* highly contentious among the member states.

Although the magnitude of the failure cannot exclusively be blamed on the internal properties of the policy regime, which arguably in the EU is operating within a particularly complicated context of ‘mixed and multi-everything’⁶, there seems as of today to be a broad agreement on the fact that the policy regime seen in isolation has functioned far from optimally (e.g. Raakjær 2008; Sissenwine and Symes 2007; Gezelius and Raakjær 2008; Commission 2008; European Court of Auditors 2007).

The CFP is in many respects a distinct case of EU policy making and management and stands out among most EU policy areas in several ways:

- The CFP deals with the management of a renewable but nonetheless depletable natural resource, which is able to move unhindered across boundaries of national jurisdictions.
- The CFP is one of the most science dependent policies in the portfolio of the EU and there are high degrees of uncertainty involved.
- It is a high stakes policy area where effects of decisions can be read directly on the bottom lines of the users as subordinates of the management regime.
- The public profile of the policy area is high compared to its macroeconomic importance: traditionally because of the cultural aspect of fishing but today increasingly because of its environmental dimension.
- It stands as one of the most pronounced policy failures of the EU.
- Conservation of living aquatic resources is under the exclusive competence of the EU.

Figure 1 beneath depicts the system of the CFP⁷ with its main actors and the streams between them of knowledge, legal processes and policy/management interventions.⁸ Scientific bodies are depicted

⁵ The overall TACs are ultimately set by the relevant ministers in the Council of the European Union acting on a proposal from the Commission; the decision is in short based on a combination of scientific advice on the state of the stocks and socio-economic considerations.

⁶ The CFP have to stretch across more than 20 member states with very diverse fishing fleets; the fleets of the member states apply a multiplicity of fishing practices and gears; many of the important fisheries inside the EU are mixed fisheries (i.e. fisheries where multiple species are caught at the same time), a feature that is known to be a challenge for any fisheries management system as the fishermen are not able to control the composition of fish species in the catch.

⁷ Although the model includes a multiplicity of actors and interactions, the model is a simplified picture of the actual setting in which the CFP unfolds. Other streams of interactions as well as actors could have been added, which would of course add to the completeness of the model but at the same time detract from its ability to provide a clear picture.

⁸ A number of publications have within the last 10 years dealt in depth with respectively the knowledge, legal and policy/management systems related to the CFP. For an overview of the knowledge system underlying the CFP see Hegland (2006) and for a more in-depth analysis Wilson (2009); for legal aspects of the CFP see Berg (1999) and Long and Curran (2000); and for the management and policy issues, see for instance Sissenwine and Symes (2007), Lequesne

as triangles, legal bodies as hexagons, stakeholder bodies as eclipses, and policy/management bodies as 'soft' rectangles. The main institutional actors of the system are the EU and the member states (in Figure 1 Denmark is chosen as an example of an EU member state). However, neither the EU nor the member states are unitary bodies.

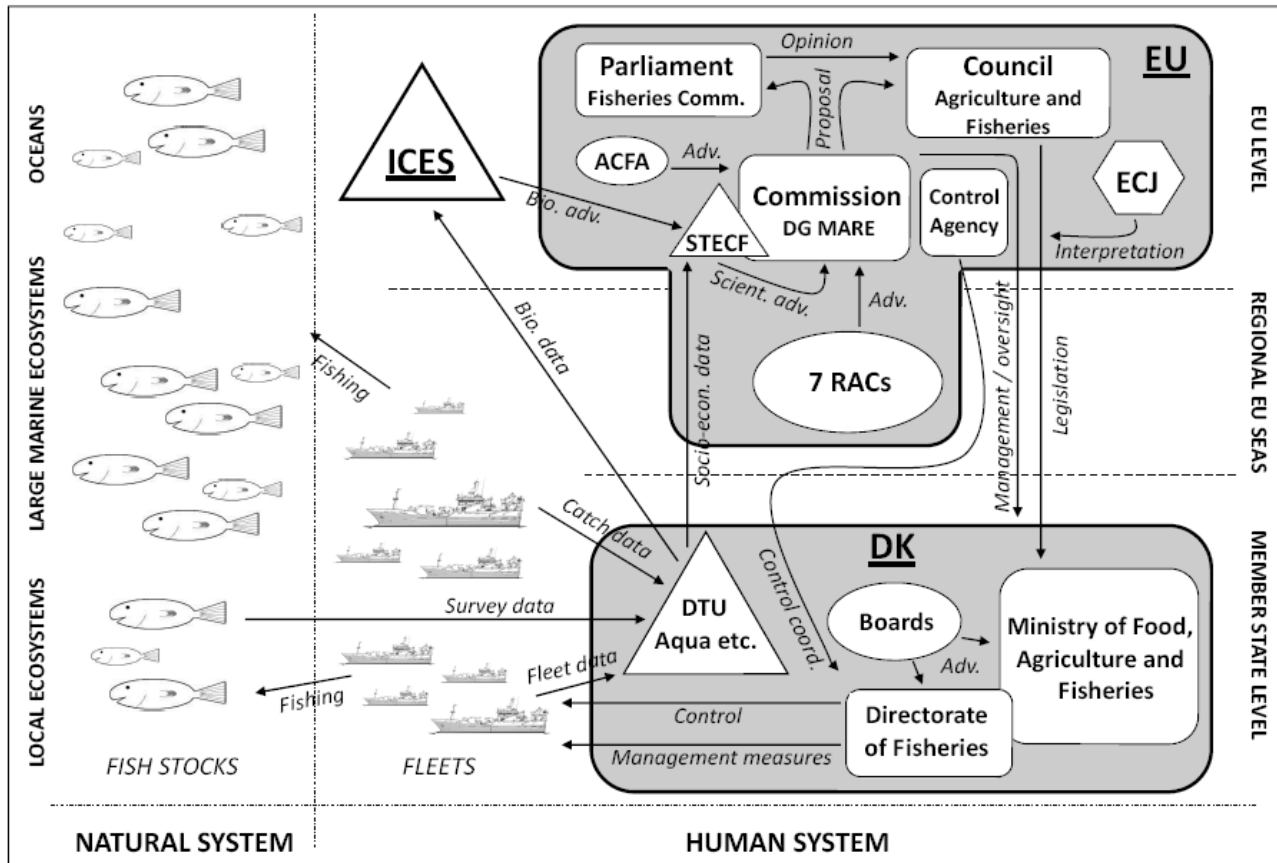


Figure 1: Regulation of EU Fisheries: Institutions and Streams/Types of Interactions (DK as example)
(Illustration of vessel from www.fiskerforum.dk)

The human system can be understood as operating on several political levels. In this model three levels have been included: EU supranational/intergovernmental level, EU regional seas level and EU member state level. However, it is possible to argue that above the EU level there is a global international level, on which the EU has signed a number of treaties, conventions and declarations dealing with fisheries policy and management among other issues. In the other end of the spectre it would in relation to a number of EU member states be relevant to add a regional and/or local level beneath the national level. In the example of Denmark, this is not particularly relevant as fisheries management in Denmark is highly centralised (Hegland and Raakjær 2008).⁹ However in contrast, the addition of a regional/local level in relation to for instance Spain would be unavoidable when discussing fisheries policy and management there.

(2004), Raakjær (2008), Gezelius and Raakjær (2008). Furthermore, a large number of articles on various aspects of the CFP have appeared in a number of academic journals, first and foremost *Marine Policy*.

⁹ Moreover, the level on which the users of the resource operate could be understood as a policy level - or, as Berg (1999) puts it, a level of governance. However, in my understanding the users are in the context of the CFP operating not on their own political level but rather on the other levels directly through the stakeholder bodies (eclipses) and indirectly by 'private' interaction with primarily the management/policy bodies (rectangles).

In the natural system, the policy levels described above have counterparts in different scales of the biological system of the sea. One such scale could be a fiord or a bay etc., and in the other end of the spectrum are oceans or ultimately the global marine eco-system. In between we have a relatively well-defined category of *large marine ecosystems* (LME)¹⁰, of which the North Sea is one example. The scales of the natural system are not, however, necessarily reflected by corresponding levels of policy-making/management in the decision-making and management system.

The most prominent interactions between the human fisheries system and the natural system goes through the extractive activities of the fishing fleets of the various member states, which target fish stocks connected to any scale of the natural system. Other interactions include the degradation of the marine environment resulting from destructive fishing practices.

Towards Multi-Level Governance in the CFP - or still Top-Down Management with the Member States at the Rudder?

The CFP can in many ways be argued to take form of a classical intergovernmentalist, state-centric command-and-control, top-down management system, where member states' ministers in the Council of the European Union (Council) exercise strong control over the fisheries management measures, which are developed and adopted¹¹ on the background of proposals from the Commission's Directorate-General for Maritime Affairs and Fisheries (DG MARE). The member states are responsible for the implementation of the rules and for monitoring compliance in relation to fishing activities taking place in waters under their jurisdiction, and they report back to the Commission, which is among other issues tasked with *"making sure that CFP rules are effectively implemented and that Member States set up and apply appropriate systems and rules to manage, control and enforce the limitations on fishing possibilities and fishing effort required by the CFP"* (DG MARE 2008).

Though situated at the top of the top-down structure together with the Council, the Commission has very weak powers in relation to direct control and monitoring of fishing activities compared to the member states. Gezelius et al. (2008) analyse with outset in the principal-agent approach the relationship between the EU (in that analysis treated as principal) and the member states (in that analysis treated as multiple agents) and document how the EU, represented by the Commission, is on crucial points in a weak position *vis-à-vis* the member states. One of the key findings of the analysis is the apparent inability of the EU to sanction member states whose implementation practices conflict with the intention of the rules or the with overall political goals *but are not directly against the rules* (in principal-agent terminology this can be referred to as *non-criminal agency drift*).¹² Usually non-criminal agency drift can be moderated by amending the framework

¹⁰ The concept of a large marine ecosystem was pioneered by the National Oceanic and Atmospheric Administration, United States Department of Commerce, and a large marine ecosystem/LME is defined as an area *"of the ocean characterized by distinct bathymetry, hydrology, productivity and trophic interactions"* (<http://www.publicaffairs.noaa.gov/worldsummit/lme.html>).

¹¹ If necessary by means of qualified majority vote (QMV).

¹² One example could be that for the most fundamental conservation measures under the CFP, the TACs and quotas, there are few incentives for the member states to catch their quotas in a conservationist manner, i.e. reduce discards (fish thrown back dead or dying in the sea because they are too small or the vessel does not have a quota for them), at least if the stocks in question are shared with other member states. Whereas the benefits of being able to fish even with high discard rates are reaped by the individual member state, the negative impact of the non-conservationist behaviour is shared among all the member states, who will receive lower quotas in the following year. This is a typical example of

that the agents operate under to change the incentive structure or make rules less open to interpretation. However, this has often not been possible under the CFP, which to a wide extent rests on sticky historical compromises. Moreover, the member states in the Council tend to be aligned in semi-permanent groups, each able to produce a blocking minority (Hegland 2004 and Raakjær 2008). Another key finding relates to the fact that the Commission largely relies on the member states themselves in the process of monitoring and overseeing their management efforts (although conservation NGOs can and do function as watchdogs). The Commission does not have the institutional capacity or legal mandate to genuinely monitor the member states and the member states in the Council are traditionally reluctant to transfer ‘police-like’ authorities to the Commission. Consequently, Gezelius et al. (2008: 217) conclude that *“it is hard to escape the fact that what seems to characterise the CFP from a principal-agent perspective seems to be strong incentives for the agents to drift away from conservation and weak powers on behalf of the principal to prevent this”*.

At the other end of the top-down process Lequesne (2004) argues that although administrations of sub-national regions in some member states do have management tasks *vis-à-vis* fisheries there is little evidence that these administrations interact directly with supranational EU institutions with loss of central state control over the fisheries policy agenda as a result. Moreover, the fishermen as recipients of the management measures are weakly represented in the upstream policy formulation processes. The fishermen do not have any direct say in fisheries management at EU level. Though the Commission is in its preparatory work supported by input from various sources, incl. stakeholder fora (see Figure 1 and discussion in the second subsection of this section), it is not obliged to include stakeholder input in its proposals. Moreover, the pan-European organisation that organises the fishermen’s organisations from the largest fishing nations in EU, *Europêche*, is weak due to limited institutional capacity and strong disagreements among its member organisations, and consequently its impact is limited. Instead the fishermen’s organisations prefer to lobby their national administrations individually, which reinforces the member states’ governments as central hubs in the process.

In the first part of this section, I have provided a short, general discussion of the overall framework of the CFP, which can to a large extent be understood as an expression of intergovernmentalism. In the second half of the section I will briefly discuss two specific, recent decisions in the CFP, namely the decision to establish the Community Fisheries Control Agency (CFCA) in Vigo and the decision to set up Regional Advisory Councils (RACs). These decisions are investigated with the aim of discussing the extent to which they represent (at least indications of) an emerging shift from one regime of EU fisheries policy making - namely an intergovernmentalist regime as described above - to a qualitatively new regime reflecting the criteria for multi-level governance, as I have outlined them in an earlier section of this paper.

Both decisions are, I will argue, at first sight broadly indicative of a development towards multi-level governance¹³ but at the same time, as will be demonstrated, they also illustrate the strong intergovernmentalist traits in the CFP, which, I would hold, at least in part stem from the ‘high politics nature’ of EU fisheries policy. High politics can be defined in various ways but in this context I define it as referring to policy areas, which are seen as pivotal or highly salient by the

the “tragedy of the commons” dynamic (Hardin 1968). The EU has so far been unsuccessful in putting an incentive structure in place to eliminate this problem (Gezelius et al 2008).

¹³ Bache and Flinders (2004a) stress the importance of keeping in mind that multi-level governance is both an analytical model and a normative concept.

member states' governments. Despite its modest macroeconomic importance, fisheries policy remains a policy area where the impact of conservation measures can be read directly on the bottom-line of key economic stakeholders, which might contribute to explaining why most EU member states' governments resist giving up control in the area. Drawing on more 'realist' intergovernmentalist perspectives it is furthermore worth noting that fisheries issues are to a significant extent also geopolitical issues, which are linked to access to resources as well access to geographical areas.¹⁴

The Community Fisheries Control Agency and Agencification

Among recent developments in the CFP, the establishment of the Community Fisheries Control Agency¹⁵ (CFCA) has been widely announced by the Commission as a significant step towards more uniform control and enforcement of fisheries management measures under the CFP. The establishment of the CFCA is an integral element in the progressive implementation of the 2002/03 reform of the fisheries policy framework, and the objective of the CFCA is to strengthen the uniformity and effectiveness of enforcement across the EU territory. This should be done by assisting with the organisation of operational cooperation and coordination of monitoring and enforcement activities among member states (Council 2005).

The emergence of independent agencies at EU level can be understood as a dispersion of power from the central state governments - one of the defining characteristics of multi-level governance. Egeberg, Martens and Trondal (Undated) provide findings on the process of 'agencification' at EU level and argue that this development is basically a development of "*transferring action capacity from the constituent states to a new centre at the supranational level*" (Egeberg, Martens and Trondal Undated: 3). However, they also describe how the degrees of competence actually vested with these agencies vary tremendously. Moreover, they mention that the Commission often considers the establishment of agencies a second-best alternative to be pursued only in cases where it is not possible to expand the Commission's own powers in the area. This interpretation seems highly relevant in relation to the establishment of the CFCA.

The perception - particularly among stakeholders, but also among experts (see for instance European Court of Auditors 2007) - of uneven and incomplete implementation of rules and control of fishing activities is widely regarded as an Achilles' heel of the CFP. The widespread perception of the existence of an uneven playing field is speculated to have led to a situation where the member states fail to enforce the rules as vigorously in relation to own vessels as they do in relation to vessels from other member states - in anticipation of other member states behaving in a similar manner and in recognition of the lacking mechanisms for ensuring that this does not happen. Although it can be questioned to what degree this is a true picture of the situation, there is little doubt that the lack of uniformity of enforcement of the rules and penalties for breaking the rules across the EU territory has contributed to discrediting the CFP among stakeholders. As a consequence, the Commission has over the last decades continuously argued for stronger control and enforcement powers to be vested with them. However, the member states have generally been reluctant to allow this, and the provisions for inspections carried out by the Commission remain very weak under the current framework. Hegland (2004) argues that a main explanation for this reluctance has been opposition to awarding police-like authorities to the Commission, since such authority remain strongly affiliated with the perception of a sovereign central state.

¹⁴ It should be stressed that the degree to which these areas are seen as high politics when discussing fisheries policy varies from member state to member state as recently documented by McLean and Gray (2009).

¹⁵ Operational from 2007 in Brussels and physically set up in Vigo, Spain, in 2008.

The powers of the CFCA are highly limited and it is specifically stated in its legal foundation that the agency does not have the power to impose additional obligations on the member states besides those outlined in the basic regulation of the CFP. Neither does the agency have any powers to sanction member states (Council 2005). The fact that this is a coordination unit rather than operating institution is underlined by a very limited budget, which does not even correspond to what Denmark alone spends on control activities (Hegland and Raakjær 2008a). With its staff of 49 as of 2008 (Community Fisheries Control Agency Undated) the agency is among the seven smallest agencies out of 30 examined in Egeberg, Martens and Trondal (Undated).

In practice the main task of the CFCA is to adopt ‘joint deployment plans’ (for specific stocks in specific sea areas) with the aim of coordinating the use of the different member states’ human and material resources related to control and inspection as well as solving issues related to how and when control and enforcement activities of one member state may take place in waters under the sovereignty and jurisdiction of another member state, among other things. A joint deployment plan should be developed as an agreement between the CFCA and the relevant member states and “*give effect to the criteria, benchmarks, priorities and common inspection procedures determined by the Commission...*” (Council 2005: art. 10). The relevant RAC(s) should be involved in developing the plan (Council 2005, Community Fisheries Control Agency Undated a). In the day-to-day work the agency will in practice often be working directly with semi-independent national state agencies. As an example, the Danish Directorate of Fisheries, whose primary tasks are control and enforcement, was extracted from the Danish Ministry of Fisheries in 1995 and is currently operating on the basis of a so-called performance contract signed with the ministry. This contract outlines the budget and the tasks to be undertaken within that budget. The fact that the directorate is not an integrated part of the ministry, but operates on the basis of a contractual arrangement, is considered to secure the necessary distance to the political system (Hegland and Raakjær 2008).

Based on my brief description above, the CFCA exhibits a range of multi-level governance characteristics, as I outlined them earlier in this paper. First of all, the CFCA can be seen as having resulted in some degree of transfer of action capabilities from the central state government to other actors, as the coordination activities that the CFCA engages in are carried out in collaboration with semi-independent national state agencies instead of in collaboration with the central state governments. As described above, the Danish Directorate of Fisheries is, as an example, placed at arm’s length from the political system. Secondly, the increased interdependence across territorial boundaries between the EU-level CFCA and the state-level agencies is in itself also a multi-level governance characteristic (vertical interdependence). Potentially this can, as described by Egeberg (2006), result in mixed loyalties on behalf of the state agencies - creating so-called ‘double-hatted’ state agencies. Thirdly, it is expressed that RACs should be involved in the development of joint deployment plans; this is an example of increased interdependence between governmental/state actors and non-state actors (horizontal interdependence). Finally, it could be mentioned that the agency should, among other things, employ benchmarks developed by the Commission as means to achieve its goals. The use of benchmarks is an example of the alternative tools employed to reach policy goals, which I have defined as a characteristic of the overall development towards multi-level governance.

Consequently, the establishment of the CFCA should, I would argue, be interpreted as a move toward multi-level governance in the CFP. However, at the same time I acknowledge that it remains highly uncertain to what extent the central state governments are actually giving up action

capabilities and to what extent they loose control over the process. Although the state agencies are at arm's length from the political system, they maintain close connections with and remain financially dependent on the central state government. Moreover, the CFCA cannot impose additional obligations on the member states on top of what the member states have agreed to in the basic regulation of the CFP. Any increase in obligations will thus have to be agreed among the member states in the Council. Although I do regard the creation of the CFCA as a multi-level governance development, I therefore also regard the development to be fully reconcilable with (liberal) intergovernmentalism in so far that it could be argued that the member states have agreed to nothing more than to set up an institution to facilitate cooperation to the benefit of all member states and that they remain in control of the process. To be able to say that the CFCA challenges the fundamental assumptions of liberal intergovernmentalism, more case-based, in-depth empirical studies are likely to be necessary.

The Regional Advisory Councils and the Wider Inclusion of Non-State Actors

The seven Regional Advisory Councils (RAC) recently set up under the CFP are stakeholder fora consisting of representatives of the fishing industry, conservation groups and other marine fisheries stakeholders. The RACs are either organised along specific sea areas roughly corresponding to large marine ecosystems (five RACs¹⁶) or specific types of fisheries (two RACs¹⁷). It is noteworthy that with the introduction of RACs and thereby a new political level in EU fisheries management there is for the first time an almost complete one-to-one match between a level of management in the governance system and a biological scale in the natural system (see Figure 1).

The RACs were established in response to a critique of the CFP arguing that local and regional stakeholders were not to a sufficient degree included in the decision-making process. The hope was that including local or regional stakeholders more and earlier in the process would lead to better decisions and a higher degree of compliance, due to a feeling of ownership over the rules (Hegland 2006). The RACs are, like the CFCA, among the youngest parts of the institutional framework for fisheries policy in the EU and also a result of the 2002/03 reform of the CFP; the North Sea RAC, the oldest of the RACs, began operating in 2004. Two thirds of the seats in a RAC are allocated to the fisheries sector and one third to other interests, incl. environmental NGOs. The members of the RACs are primarily from the countries facing up to the sea area covered by the specific RAC, but any member state can declare its interest in any sea area and thereby have stakeholders included in that RAC (Council 2004; Hegland and Wilson 2009).

RACs were proposed by the Commission as purely advisory bodies as a tentative step toward more stakeholder participation in developing EU fisheries policy. The idea is that the stakeholders on a RAC will seek a consensus about fisheries management and policy issues and thereby allow DG MARE to weight the political advantages of following the RAC's consensus against any differences between the consensus and other preferences of DG MARE (Hegland and Wilson 2009). The RACs provide recommendations to the DG MARE or to national authorities of involved member states, and the RACs are in this respect authorised to submit recommendations on request from the Commission or from member states, as well as of their own accord (Hegland 2006).

As with the CFCA, I would argue that the establishment of RACs must be regarded as a move towards multi-level governance. At least, the case of the RACs, as described above, exhibits several

¹⁶ Baltic Sea RAC, North Sea RAC, South Western Waters RAC, North Western Waters RAC and Mediterranean RAC.

¹⁷ Pelagic RAC and Distant Waters RAC.

multilevel-governance features. On the most fundamental level, the establishment of RACs constitutes the addition of completely new territorial layer to the CFP. I would regard this kind of 'scale-flexibility' and willingness to create task-specific jurisdictions as lying at the heart of multi-level governance. Moreover, the main tool of the RACs in relation to gaining an impact on the decision-making process remains the alternative instrument of consensus-building: in the first instance the RAC needs to build consensus among the various stakeholder groups within it; at the same time, however, the RAC needs to anticipate the Commission's position so that the RAC's consensus does not fall too far from that. If a consensus or a 'close-to-consensus' can be found between the RAC and the Commission, it could be argued that the member states (or smaller groups of member states) in the Council would find it politically too costly to overrule that consensus. It could be argued that this represents a dispersion of power from the central state governments to other actors, i.e. the Commission and the RACs, which are in turn becoming increasingly interdependent (vertical and horizontal interdependence)

However, although I will immediately beneath argue that the RACs do *de facto* possess some powers, it has to be mentioned that an alternative perspective could also be applied. Shortly after the reform in 2002/03 - and before any experiences on the workings of the RACs were available - Gray and Hatchard (2003) slashed the RACs as being extremely weak embodiments of stakeholder participation and argued that they were only going to have a "*miniscule role*" (Gray and Hatchard 2003: 547). Rather, Gray and Hatchard saw them as an example of window-dressing on behalf of the Commission. They furthermore argued that the RACs were likely created only with the aim of delivering "*instrumental benefits*" (Gray and Hatchard 2003: 548) in the form of better regulations¹⁸ and greater compliance - rather than being set up to allow stakeholders a real say. Although I to a significant extent understand their argumentation in light of the non-existing experiences with RACs at the time and the little direct formal power they got, in my opinion the last four years have shown that Gray and Hatchard painted too dark a picture. In particular they underestimated the ability of the RACs to put issues on the agenda by issuing recommendations of their own accord, as well as the power of consensus-building. Based on observations, document studies and interviews, Hegland and Wilson (2009) document the development process towards a long-term management plan for horse mackerel and argue that the RACs have significant potential. This process, which took place in the Pelagic RAC in 2006 and 2007, illustrates both the ability of the RAC - under the right circumstances and with the right allies - to shape the CFP agenda as well as the power of a consensus in later decision-making. At the same time, however, the authors also recognise that the Pelagic RAC case is atypical in the sense that the Pelagic RAC is one of the most homogeneous RACs and the industry stakeholders in it among the ones with the greatest institutional capacity. Other RACs might find themselves in a less favourable position, but the North Sea RAC, at least, has also exhibited quite an institutional momentum despite internal conflicts (Hegland and Wilson 2009).

Multi-Level Governance and the CFP: Concluding Thoughts

In the first half of the previous section I asked if the examples of the RACs and the CFCA were indicative of an emerging shift from one governance/governing regime to another in the CFP. Having - admittedly briefly - analysed the two cases, my answer would have to be: "*Yes, to some extent.*" However, the two cases do not, in my opinion, indicate that what we are seeing is a shift from an intergovernmentalist regime towards a multi-level governance regime. Rather, the two

¹⁸ It is unclear to me why Gray and Hatchard do not regard contributing to better regulations as real impact coming from the participation of RACs but that does not seem to be the case.

cases suggest to me that what we might be seeing in EU fisheries policy is the emergence of an intermediate regime, where multi-level governance characteristics are increasingly present - but without fundamentally challenging the underlying intergovernmentalist nature of the system. The multi-level governance system might so to speak be nested within a (liberal) intergovernmentalist system. In my view there is in principle nothing that hinders this interpretation. In this sense I also reject that multi-level governance and intergovernmentalism necessarily need to constitute a dichotomy, which was to some extent the conclusion of George (2004), which I discussed earlier in this paper. Compared to the dichotomy of the early days of EU integration studies, intergovernmentalism in the shape of liberal intergovernmentalism have moved towards the middle and supranationalism has in recent years from the other side done the same under the heading of multi-level governance.

In my account of multi-level governance earlier in this paper I also promised briefly to return to the normative perspectives. I shortly presented Type I and Type II multi-level governance, as described by Marks and Hooghe (2004), and promised to return to these different visions in the context of CFP reform. What strikes me as most interesting to briefly discuss in this context is the emerging regionalisation of the CFP; this process is presently represented by the RACs (and, notably, the shift towards an ecosystem approach to fisheries management, which I have not discussed in this paper). RACs are, I would argue difficult to categorise as pure Type I or II. Although they may be considered embodiments of task-specific jurisdictions (Type II), they are neither particularly flexible, varying in structure, or overlap. And that is perhaps the problem and the lesson to be learned. Maybe regionalisation of the CFP should be done more consequently along the lines of Type II multi-level governance. It might be a misconception that one single model of regionalisation (by RACs) fits the entire European space? As documented by Hegland and Wilson (2009), some RACs do seem to function; however, other RACs are much less well functioning. Maybe the answer is that the RACs model is only successfully applicable certain areas or certain fisheries? At least, this seems to be worth a discussion...

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