

## CHAPTER 1

# Why the common fisheries policy is important

### Europe and fisheries

#### The CFP as a key European policy

The Common Fisheries Policy (CFP) is, as one of the most integrated policies of the European Union, a showcase of European policy making. As such, its importance in the context of the European integration far exceeds the minor economic importance of the fisheries sector in the wider European economy.

For many years, the CFP has been subject to criticism from almost all walks of life in Europe and, more often than not, it has been a favourite example of bad European policy-making among Eurosceptics. Beyond politics, criticism of the CFP has also come very often from academia (Khalilian et al., 2010). As we will see, the Commission itself has often been very forthcoming in recognising the policy's shortcomings, in an exercise of transparency that has little comparison in other policy areas.

The tradition of CFP-bashing is as old as the policy itself. Yet, the policy has been remarkably resilient over its 30 years of existence. This apparent contradiction of a strongly criticised policy that has, however, ensured a remarkable continuity over the years constitutes a fascinating study.

The need for this policy is obvious. Fishery resources must be managed, like all natural resources. Given their migratory, trans-boundary nature, European fishery resources must be managed jointly

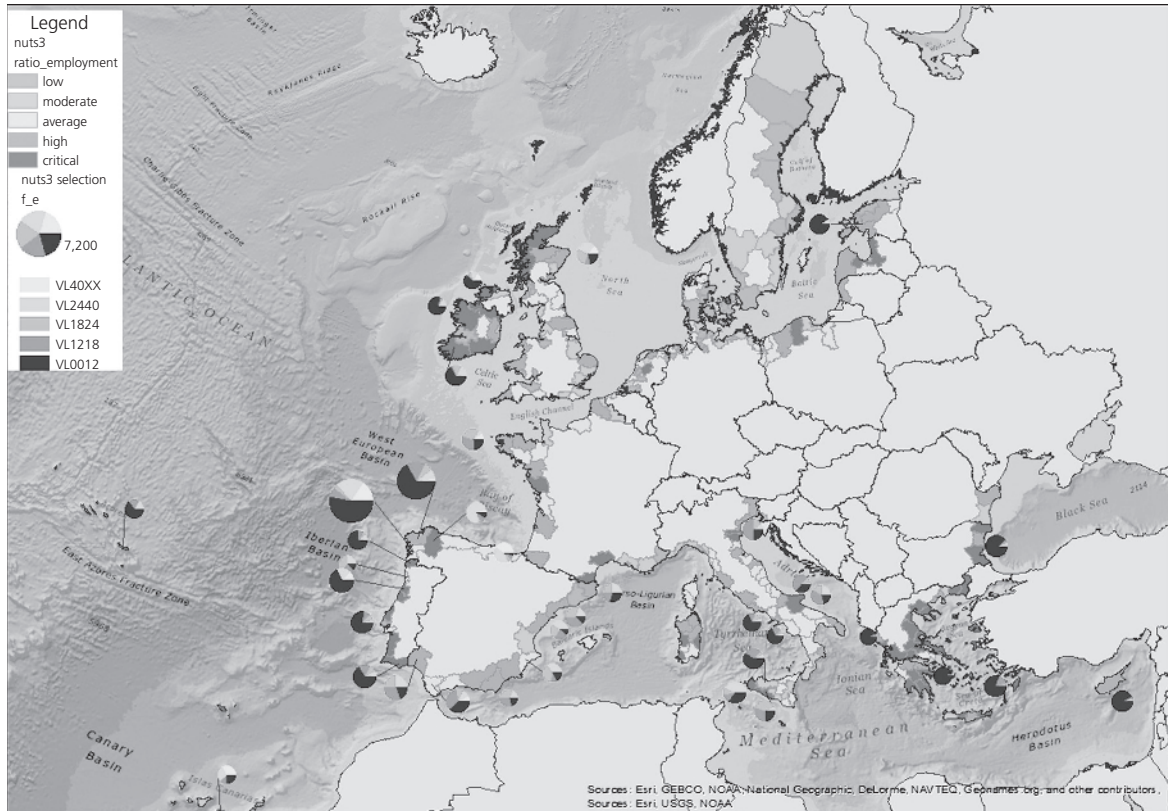
among the European countries involved. Thus, there is the need for a Common Fisheries Policy.

#### The fishing sector in Europe: some facts

The fisheries and aquaculture sector in the European Union is very significant in terms of fishery production in absolute terms. With landings of more than 6 100 000 tonnes *per annum*, the Union of 27 ranked fifth in the world, after China, India, Peru and Indonesia in 2012 in terms of the magnitude of catches (Facts and Figures of the Common Fisheries Policy, 2012, 2014), representing 3.5% of the world total production.

In relative terms, though, the European fishing sector represents a very low percentage of the overall European economy: its contribution to the European Gross Domestic Product (GDP) is only around 0.1%. By way of comparison, this figure jumps to 0.4% in Japan, 0.7% in Norway, close to 1% for Korea and up to 10% for Iceland. In the United States, the percentage goes down to 0.02%.

This percentage is much higher in certain fishery-dependent regions in Europe. For the Highlands and Islands (UK), Galicia (Spain), Ionian islands and Aegean Sea (Greece) the percentage exceeds 2% of GDP and for Peloponesos (Greece), Algarve and Azores (Portugal) and N-E Scotland (UK) it falls between 1 and 2% of total GDP (European Parliament, n.d.). Figure 1.1 provides a glimpse of fisheries-dependent regions in Europe.



**Figure 1.1** Fishery-dependent areas in Europe. © European Union. European Commission. Facts and figures on the Common Fisheries Policy – Basic statistical data – 2014 Edition. Luxembourg: Publications Office of the European Union. 2014 — 44 p. (See colour plate section for the colour version.)

The importance of fishing in certain coastal municipalities can reach values well over 30% of GDP and over 50% in employment, as is the case, for example, in certain coastal municipalities of Galicia (Penas, 2000), and in other European regions. The fishing activity has also a very important multiplying factor in the economy: ancillary activities such as ship-building, transport, fish mongering, fish processing and so on represent an important level of activity and employment in fishing areas. The economic importance of fisheries includes all these ancillary activities.

The EU market consumed 12.3 million tonnes of seafood in 2011, worth €52.2 billion. It is the first import market of seafood in the world with 29% of the global exchanges in value. *Per capita* fish consumption reached a plateau in recent years (2008–2011)

after years of very dynamic growth. Over time, Europe's own production has fallen increasingly short of the demand for fish products in its domestic market. The EU-27 exported 1 700 000 tonnes of fishery products, worth €2.7 billion in 2012 but imported more than 5 300 000 tonnes, worth €16.5 billion. The EU's self-sufficiency in seafood is today around 45%.<sup>1</sup>

Although the European fishing sector may be very small in terms of its overall economic weight in the European economy it can be much more significant for the regional economy in certain coastal areas of the Union. This helps to explain why, in many instances, the fishing sector and its associated policy, the CFP has become politically far more sensitive than its own economic significance would indicate. One of the reasons for this political importance is

the considerable weight of history in its development and the effects that these developments have on the cultures of the countries concerned.

The fisheries sector employs 116 000 people in the catching sector, 115 000 in the processing industry and 33 000 in aquaculture. These figures represent full time equivalents, since the number of people associated part-time to these industries is believed to be higher. The importance of these figures must be seen in a regional context: while this level of employment is relatively small for a population of more than 500 million people in the EU, it is fundamental for a number of European coastal regions, where the fishing and associated sectors are a very significant source of direct and indirect jobs.

In addition, these figures must be complemented by the employment related to ancillary activities referred to previously, as well as by the important level of part-time employment existing in many European areas, from the Spanish *marisqueo* (clam digging) or the French *pêche à pied* to Northern Europe's ice fishing, which represent significant levels of part-time or complementary economic activity with considerable social value.

### A historical background

Fishing is a very old economic activity in Europe and its development is closely related to many other historical events. This history has been described with considerable detail by some authors, for European fisheries in general since ancient times (López Veiga, 2000), for the fisheries sector since the Middle Ages (Roberts, 2007), or specifically for tuna fisheries (Doumenge, 1998), among others. This book on the other hand will only attempt to highlight certain examples of historical developments that have contributed to shape attitudes and traditions about fishing in Europe and to illustrate that many, if not most of the problems surrounding fisheries today already existed even several centuries back.

The image of all fishing before the twentieth century being artisanal and focused on local consumption is not real: fishing has been an industrial activity for a very long time. This long history has influenced consumption patterns as well as culture and traditions in the different European regions,

helping to establish a particular *ethos* around the fisheries issues that still today conditions social and political behaviour regarding this activity and its management by public authorities.

Let us look at some examples.

### Fish consumption

Harvesting and consumption of seafood dates back to the Palaeolithic period, around 40 000 years ago. Archaeologists have traced the consumption of fish in different pre-historical and historical times through the study of fish bones excavated in human settlements.

The Israelites were important consumers of fish, including smoked, salted and dried preparations and ancient Jerusalem had a 'Fish gate' named after a fish market nearby. The Greeks and Romans of antiquity were strong consumers of fish and fish products.<sup>2</sup> In ancient Greece, Bluefin tuna was already an expensive food item. In the Roman Empire, the consumption of many fish species was associated with wealth, as demonstrated by the numerous mosaics showing different Mediterranean fish. Along the North Sea shores, fish consumption was associated mainly with the Roman garrisons.

In Northern Europe, the Scandinavians developed a culture of fishing and consumption of fish due to the climatic conditions that limited their agriculture, while central Europe still relied much more on agriculture and livestock. The activity became an intensive one from the eighth and ninth centuries.

In the British Isles and central Europe, the consumption of marine fish was low, while freshwater fish was intensively exploited and consumed. But this changed dramatically in the eleventh century, when the overexploitation of freshwater fish and the intensive use of water courses for different uses provoked a collapse in these resources that, in turn, allowed for their replacement by marine fish, thus causing the first wave of development of marine fishing (beyond the traditional coastal activity) in central Europe (Roberts, 2007).

Certain fish and fish products were highly valuable food items in ancient times. The best example is that of the *garum* sauce, a delicacy in ancient Greece and in the Roman Empire, made of small fish and fish

guts, dried, salted and percolated. The sauce was used to season many dishes of affluent Romans. Its production and marketing became a very lucrative industry.

### **Fish for trade**

The idea of fish as a trade item is also very old. In ancient Israel, merchants imported pickled fish roe from Egypt, among other fish products. The *garum* sauce was the subject of intense trade in Greek and especially Roman times. The market for fish products in ancient Rome was so important that even attracted other products from Northern Europe: oysters (imported in barrels with seawater) and salmon (in snow or ice) were important trade items from Northern Europe to Rome.

The Middle Ages saw a reduction of trade in the Mediterranean basin due to the tension between the Christian west and Islamic east that affected also the fishing industries of the time. However, fishing industry and trade developed in the north of Europe through the expansion of the Hanseatic League, for which the herring became a major trade commodity. Herring from the North Sea could be found as far away as Constantinople. This trade was favoured throughout Western Europe by the limitations imposed by Christianity on the consumption of red meat.

Traditional salted cod (see next) has also been subject to international trade since the sixteenth century. And since the 1960s, the development of freezing has allowed an explosion in the world trade for frozen fish and fish products.

More recently, air transport has also allowed the development of an important and active worldwide market of fresh fish from around the world: in Spain, the main 'fishing port' is the airport of Vitoria, in the landlocked province of Alava.

### **Long-distance fishing**

The search for fish in distant waters is also very old in Europe. According to certain authors, Basque fishermen started catching whales relatively close to shore in the seventh century, and following exchanges with the Vikings on vessel construction, they ventured as far as Icelandic, Norwegian and

Faroese waters in search of whales already at the beginning of the eleventh century (Kurlansky, 1997).

The rich cod fishing grounds in North Eastern America were discovered also by Basque fishermen (Kurlansky, 1997). Following the discovery of Newfoundland by Giovanni Cabotto (renamed John Cabot) in 1497, its legendary abundance of codfish allowed French fishermen to start developing a fishing activity of this species, soon followed by the Portuguese. By 1517, around 50 vessels a year brought back preserved (salted) cod from this region. By 1600, England joined in this fishery which, by that time, represented already 150 shiploads of cod per year (Roberts, 2007).

Vessels from Spain and Portugal continue this fishery today but its impact is wider. In France, where this fishery was discontinued in the nineteenth century, it created a whole 'culture' and tradition that impinged upon social habits. To this day the French port of Saint-Malo keeps the memories and traditions of the old cod fishery in Canada as a fundamental cultural asset.

### **Fish processing**

The fish processing industry is also very old. Fish processing facilities have been found by archaeologists as far back as the fifth century B.C. in the Mediterranean and the Black Sea (Bekker-Nielsen, 2004). By Roman times, dried and salted fish were prepared on a large scale and trade in processed fish was very intensive across the empire during its peak.

Likewise, drying and smoking of fish was a well-developed fish processing technique in Nordic countries, already since ancient times. In the middle ages, Vikings were known for their trade in *stockfish* (dried cod) that they exchanged for barley to make beer.

Salting was primarily the way to preserve the cod caught in Newfoundland since the sixteenth century and the tradition of eating this fish is so deeply rooted that has become a commodity in some countries and even a national icon in Portugal. No longer necessary for fish conservation, the salting of cod has become a way to enhance the flavour and increase the added value of the product.

Smoking of fish is also a very old practice. Together with salting, it was the best way to preserve (fatty)

fish for consumption and trade. The Dutch fishery for herring, to be smoked and sold in barrels, developed into a very well developed industry in the sixteenth and seventeenth centuries and contributed to the creation of wealth leading to the Dutch *golden age*.

The canning industry is more than 200 years old. It started out in the beginning of the nineteenth century in France, when in 1810 Nicolas Appert won a competition to find ways of providing preserved food for the Napoleonic Army. Very soon, canned sardine became a favourite product. This industry was quickly extended to other European countries as well as to America. And it was there, in California, that the tuna canning industry was born in 1903, as an alternative to the Pacific sardine and has been a favourite food around the world ever since.

Today, the canning industry (for sardine, tuna and many other species) is an iconic one for certain countries (Spain, Portugal, Italy, France) and so is its equivalent (based on sprat) in some Baltic Sea countries, particularly Latvia.

### **Trawling**

There are historical records of fishing with trawl gear as far back as the fourteenth century. A very famous case: the petition to the British Parliament in 1376 to suppress the so-called 'wondyrchoum', a precedent to the beam-trawl used from wooden sailboats, is an indication of the use of trawl fishing already in the fourteenth century, as well as a remainder of the controversy that has often accompanied it.

Many different designs of trawl nets were used for centuries from sailing vessels, particularly in the UK, where different ports acquired historical predominance thanks to this kind of fishing. The port of Brixham acquired notoriety and predominance in the North Sea thanks to its fleet of wooden sailboats practising trawl fishing in the nineteenth century and the Dutch were also known in those years to use the 'dogger', a type of trawler that gave its name to the sandy 'Dogger Bank' in the North Sea.

The full development of the trawl fleets took place in the mid-1800s, notably in the UK, as a result of two parallel developments: the use of ice to chill the catches on board and allow for the handling of very

large amounts of fish and the development of railways to distribute quickly the abundant catch to different markets before it could deteriorate (Roberts, 2007).

In the wake of the industrial revolution, the introduction of the steam engine in fishing vessels and the subsequent introduction of this kind of engine in trawlers in the UK and France between the 1870s and the 1880s represented an important leap forward and marked the birth of the modern fishing fleets. Later on, after World War II, trawlers incorporated diesel engines.<sup>2</sup>

From the beginning, the adoption of more sophisticated, efficient and mechanised ways of fishing such as trawling, have been the subject of controversy, notably from those using other fishing gear who suffered from the increased competition from the new methods. Today's controversy over the use of trawling, raised in particular by environmental NGOs, is actually several centuries old.

### **Overfishing**

One may think that overfishing is a problem of modern times, resulting from the excessive development of the modern, mechanised and large scale fishing industry around the world. Yet, overfishing has existed since medieval times. Typically, local fishing exhausted local resources, leading fishers to look for more distant alternative fishing areas. In fact, overfishing is a problem that dates back to the pre-industrial era (Scarce, 2009).

However, the awareness about overfishing is relatively recent in history. Up to the 1800s, fishery exploitation generally consisted of unlimited fishing of available resources. When abundance diminished, other species were sought, or more distant fishing grounds were exploited. It is worth referring to the famous case of the Royal Commission set up in the UK in 1863 to inquire into the complaints against trawling, where the number of vessels had skyrocketed between 1840 and 1860. The Commission concluded by dismissing the case, indicating that management was not necessary and that trawling was a fishing practice that resulted in the production of large amounts of cheap fish, making this food affordable for the poor (Roberts, 2007).

In the late 1800s, however, the idea that marine resources were non-exhaustible started to make headway. In the early 1900s the idea of regulating the harvest started to develop but the lack of a sound scientific basis prevented effective management in practice. The modern notion of overfishing and the need for sustainable management started to develop in earnest only in the 1950s (Lackey, 2005).

The world has seen a number of cases where overfishing (particularly when pursued during unfavourable natural fluctuations) has led to the collapse of resources.<sup>3</sup> Some of these collapses have lasted decades, such as that of the Pacific sardine (*Sardinops sagax*), which supported a very important fishery in the 1920s, to disappear catastrophically in the late 1940s, for reasons that still today are not well understood but probably related to overexploitation and climate change. The fishery came back only in the 1990s. This case, among many others, shows that although fishery resources can collapse they can also bounce back, perhaps many years later. Furthermore, it illustrates that current scares about stock collapse are also nothing new in history.

### **Social conflict**

There are plenty of historical records about the conflict between artisanal, traditional fishing and industrialised fishing. As we mentioned previously, the introduction of new, more efficient gear can provoke social conflict and lead to changes in the dominance of certain ports over their competitors.

A classic example is that of the conflict, in Galicia, between local fishermen and investors from Catalonia (the so-called *fomentadores catalanes*) who settled in Galicia in the eighteenth century to develop a processing industry for sardine to take advantage of Galicia's abundant resources of this species. To ensure a steady, abundant supply of the fish for their industry, they introduced more modern, efficient fishing techniques. This, in turn, resulted in social conflict with the traditional, local fishermen practicing more artisanal methods, who believed the investors from outside Galicia altered the social balance and endangered the resource. The conflict was so difficult to resolve that it lasted more than a

century (from 1750 to 1890), in different forms and under different phases (Meijide Pardo, 2002).

Today, the processing industry for sardine in Galicia is an iconic industry defended by everybody regardless of its non-local origin. This illustrates that innovations in fisheries, particularly through foreign investment, can cause opposition and conflict. Over time, however, what was perceived as an intrusion by the local fishermen can end up becoming a widespread practice. It is important that innovations in fishing are looked at from this perspective.

These are just examples to better illustrate that the conflicts in fisheries today, in one way or another are conflicts that have existed in very similar forms for centuries. This also means that learning the lessons from the past remains important to resolving the problems facing today's fishing.

### **Aquaculture**

Aquaculture is a very old activity in the world. There is evidence of well-developed freshwater aquaculture in China 4000 years ago, based on carp. And the first treaty on fish farming, *The Classic of Fish Culture* was written in China in the fifth century B.C. From China this practice extended to India and neighbouring countries and during the Ming dynasty (the fourteenth to the seventeenth century) numerous works described the farming techniques in great detail.<sup>4</sup> Carp farming in ponds continues today in China, four millennia later.

In Europe, the Romans were active farmers of different species of fish, mainly freshwater species and the Roman tradition was developed in the middle ages with pond aquaculture for carp and trout. In central Europe, in the eleventh century, the gradual reduction of wild freshwater fish as a result of over-exploitation and urban development along water courses led to the development of intensive farming of fish in ponds, covering thousands of hectares in France, Silesia and Bohemia and managed largely by monks. Many of these, however, disappeared in the following centuries as a result of the availability of more abundant marine fish in the eleventh century (Roberts, 2007).

Marine fish farming developed much later. With the exception of very old aquaculture practices in Japan

and other areas, most of the current development of marine aquaculture for fish and molluscs only dates back to the twentieth century, since the previous high abundance and easy access to wild marine fish and molluscs made such developments unnecessary. In any case, freshwater fish farming is a centuries old tradition in many parts of Europe.

### **The importance of European fishing beyond economics**

The history of fishing in Europe is so rich that the fishing sector and, by extension, the Common Fisheries Policy (CFP) enjoys a visibility, for good or bad, that goes far beyond the importance of the fishing activity on the European economy. This is the result of several facts:

Firstly, the fisheries sector is highly concentrated geographically, unlike many other economic sectors that are dispersed all around Europe. The fishing activity is small in global terms but it is essential for certain coastal areas of Europe, where it constitutes the economic and social lifeblood of the local communities. In addition, certain historical activities, as we saw previously, have become over the centuries an icon of the local culture and identity. In these areas, the fishing activity goes beyond pure economics and affects the culture and tradition of the wider society, thus impinging upon national identity issues.

Secondly, the fishing activity still enjoys a somewhat romantic image, as a risky, adventurous activity that distinguishes it from other, normal sectors of the economy. This translates in some Member States into a tradition of paternalism and a sentiment that the sector should not be handled in strict economic terms. In the tradition of many European nations, the primary sector, responsible for the production of food and with traditionally high employment levels, is considered a strategic component whose interests cannot be measured in pure economic terms.

Thirdly, fisheries are somehow the 'last frontier' of national sovereignty in Member States. In a Union where free circulation of goods, citizens and capital are fundamental principles, it is surprising to see how in some cases, the investment of foreign operators in the fishing industry still raises opposition, as if

the fishing industry was the last bastion of the sovereignty and even the identity of European nations.

Several times in the history of the CFP, fisheries conflicts have resulted in gunshots being fired and even in a city hall being burned. This led *The Economist* to wonder, in 1994: 'what is about fish that makes democracies send gunboats?' (Schweiger, 2010).

This may be due to a large extent to the fact that international fisheries law was not settled at the time of the birth of the CFP. In fact, the basic rights and obligations of coastal States were still under intense (and conflicting) discussion among different countries in the world when the CFP was born. The declaration of a 200-mile Exclusive Fisheries Zone in 1977 (Council Resolution, 1977) was at the time a unilateral action in a world where such actions were still being taken without international agreement. International fisheries law only consolidated that right through the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which only entered into force in 1994. And still today, some countries such as the United States have not ratified it. The uncertainty of the international legal framework has influenced fisheries management around the world considerably and it continues to do so still today.

Furthermore, given its highly integrated nature the CFP is exposed to considerable public scrutiny. Unlike other policies, where the mixed responsibilities between the Union and Member States can dilute the political responsibilities, the fact that the CFP is traditionally decided 'in Brussels' (though not necessarily 'by' Brussels) puts it under the spotlight and makes it a favourite topic in the political discussion on European integration. As a consequence the CFP has become a showcase of European policy-making and governance.

Last but not least, the nature of fisheries management itself often involves difficult political decisions. A growing interest in the ecology of the oceans and the role of fisheries in this context means that a part of the population with no direct involvement in the sector has very firm views as regards its future development based on the protection of resources rather than the economic sustainability of the industry. The political impact that this body of opinion can exert in some Member States is considerable. On the

other hand, restrictions on fishing to ensure the sustainability of the activity are more often than not seen as political 'bad news' by the fisheries constituencies. But for some conservationists they may not go far enough. This results in the Union being regarded by all sides as a favourite scapegoat for all the unpalatable decisions that are made. This has often put the CFP in the centre of the attention of the political debate about European integration.

## **Fishing and national traditions: the difficult balance**

### **Fishing and the tragedy of the commons**

The management of fisheries has always been difficult, since fisheries generally represent the ultimate example of Garret Hardin's 'tragedy of the commons': the shared nature of the resources provides little incentives for individuals to be self-restrained in their exploitation (Hardin, 1968).

As a Malthusian, Garret Hardin disagreed with Adam Smith's theory of the 'invisible hand' that would lead individuals intending their own gain to promote the common good. Hardin believed that when individuals decide on the use of a 'common' (he used the example of herdsmen in a free-access grassland) they expect a gain and a loss but while the gain would be entirely for them, the loss (the reduced productivity through overgrazing) would be shared with others, so the ratio would look beneficial, leading to individual decisions that will eventually ruin all herdsmen through the collapse of the grassland: 'Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited ... Freedom in a common brings ruin to all.'

Hardin further concluded that the 'commons' (that is, the resources under free access) can only be sustained as such under conditions of low population density. The implication is that, to avoid their tragedy, the 'commons' must be managed under a system that replaces freedom of access by 'coercion', understood not as rules imposed by bureaucrats but as 'mutual coercion': decisions mutually agreed by the majority of people affected.

The 'common' of the fishery resource is typically shared but never perfectly assigned to individual 'owners', due to their mobility and to the impossibility of their assignment to a fixed territory. This means that any system of 'ownership' of a part of shared resources is always an imperfect solution, which does not entirely remove the reflex of benefiting from the resource before the neighbour does.

The solution to the tragedy of the 'common' fishery resource has not been subject to scientific studies until relatively recently and particularly not until the CFP was actually established. We have to wait until the 1990s, notably through the seminal work of Nobel Prize winner Elinor Ostrom (1990), for economic studies on how to develop the 'coercion' mechanisms referred to by Hardin.

In the case of the CFP, as well as the difficulties related to the common property of the fishery resources in every country, in conditions of generally high population density in most Member States (thus with considerable social pressure on the exploitation of the common) there is the added complexity of dealing with different countries with different traditions and interests. Since fishery resources under the CFP are managed under the principle of free access, European fishery resources constitute a 'common' shared among the different Member States and thus the potential for 'tragedy' exists if the access to the resource were free.

The world has seen a number of national fisheries management systems that work successfully. However, it is much more difficult to find success stories among the international bodies responsible for managing fishery resources involving different countries. In that sense, the CFP is unique, in that it is the only fully integrated fishery management system in the world regrouping many different countries. The relative merits of the CFP should therefore be looked at from this perspective and simplistic comparisons with the management of fisheries in individual, small and homogeneous countries are meaningless and misleading.

### **The importance of geography**

Attitudes towards fisheries and their management are strongly influenced by geographical factors. Anyone who has flown over the United States or



Japan can easily observe the difference between the seemingly endless surface of prime agricultural land in the former and the hilly and densely populated nature (resulting in a considerable shortage of agricultural land) of the latter. As a result, unlike the US, Japan developed historically a strong dependence on the sea as a source of food. Little wonder that the Japanese look at their seas as a sustainable source of protein and not as a nature sanctuary.

The difficulties of fisheries management are aggravated in cases where the ratio between natural resources and the populations depending upon them is low. Fisheries policy is largely the management of limited natural resources vis-à-vis the social pressure to exploit them. It follows that the higher the population density along the coast and the lower the economic alternatives for that population, the higher the social pressure on the resources and the more difficult and contentious the fisheries management.

The European coast is characterised by a very high population density. Although this is highly variable among Member States and regions, this density is in many areas greater than 500 inhabitants per square kilometre of the 10 km coastal band. This compares with an average of 80 inhabitants for the world as an average and of just 34 for the USA.

Bio-geographical differences are also crucial to explain the differences among fisheries. For example, the rich fishing grounds in the Atlantic have historically produced higher quantities of certain species (cod, herring, sardine), thus allowing for a large-scale approach to fisheries and processing, while the lower productivity and higher diversity of Mediterranean fisheries has traditionally conditioned more dispersed, artisanal activities. These differences have historically determined different approaches to the fishing activity, resulting in different traditions and a different 'culture' around fisheries and their management.

The width of the continental shelf in some cases also determines fishing practices, with countries with narrow continental shelves and a tradition of eating fish developing a historical activity in distant fishing grounds.

Finally, geographical isolation also plays a key role. In remote islands where there is little other economic activity, the importance of fishing achieves an

importance that makes this sector the real lifeblood of the local communities.

### **The importance of economics and culture**

Geography does not explain all. In Europe, it is possible to identify land-locked regions with a tradition of eating fish (e.g. Madrid claims a very high level of consumption of fish) and coastal ones that for a long time have largely ignored fish as a significant source of protein (e.g. Ireland until recent times). This is because in addition to geography, other economic and cultural factors have played a role, sometimes for centuries.

Consumption habits among European countries are even today very diverse, both in terms of *per capita* consumption of fish and in terms of the variety of fish appreciated by consumers. The EU-27 has a *per capita* consumption of 23.3 kg of fishery and aquaculture products *per annum*, higher than the world average of 17.8 kg. At the level of Member States, the difference is huge, with Portugal and Spain leading the *per capita* consumption (61.6 and 44.8 kg, respectively) and with Romania, Hungary and Bulgaria being at the opposite end with a *per capita* consumption around only 5 kg *per annum*. Only a few countries outside the EU, such as Japan (56.7 kg) or Norway (51.9 kg) have consumption levels of the same order of magnitude as those of Portugal and Spain (CFP, 2012).

The high consumer demand in certain countries determined the development of fishing activities and the establishment of old historical 'rights' for certain resources, while traditions of low consumption have resulted in a relatively recent development of the activity, focusing mainly on the export to the traditional markets.

Religion has also played a very important role. In southern European Member States with a catholic tradition the prohibition on eating meat on certain days of the year resulted in its substitution by fish protein. This turned these countries (Spain, Portugal, Italy) into significant consumers and importers of the fish that, at the time, was amenable to preservation through salting, drying or smoking. This also led to a centuries-old quest for fishery resources, either in domestic or distant fishing grounds, as an alternative to the forbidden red meat.

Finally, different levels of industrialisation and economic dependency on the fishing sector also influence traditions and approaches. All these differences among Member States and regions in Europe always have something in common: whether or not fisheries are small or large scale, they all consider these activities as a social asset, even a cultural one and not just an economic activity.

All these differences play a major role in shaping up different policy approaches but crucially, they also contribute to create a common policy, in the sense that there is a level of complementarity between Member States having the resources and those having the consumer markets for the fish.

### **Fisheries and international conflict**

Fishing has often been the source of conflict, of different kinds: between European nations, between fleets, between artisanal and large-scale interests and so on.

Conflicts between European nationals about rights to fish are very old. These conflicts have from the beginning been linked to much wider economic interests, particularly trade.

These conflicts were perhaps made clear and formulated in intellectual and legal terms at the beginning of the seventeenth century. In 1609 Hugo Grotius, a jurist of the Dutch Republic, formulated a new principle that the sea was an international area and all nations were free to use it for seafaring trade. In his *Mare Liberum*, Grotius claimed 'free seas', including the right to exploit fishery resources. The ultimate objective of Grotius was not related to fisheries but rather to the need for justification for the Dutch breaking up of various trade monopolies (notably by England, Spain and Portugal) to establish its own.

England, competing with the Dutch for domination of world trade at that time, opposed Grotius' ideas and claimed sovereignty over the waters around the British Isles. In his *Mare Clausum* (1635) John Selden endeavoured to prove that in practice the sea was virtually as capable of appropriation as terrestrial territory.

The need to resolve the growing controversy led maritime States to moderate their demands and base their maritime claims on the principle that their

sovereignty extended seawards from land. A workable formula was found by another famous Dutch lawyer, Cornelius Bijnkershoek in his *De Dominio Maris* (1702): restricting the maritime dominion of coastal States to the distance to which they could effectively protect it through cannon fire. This became almost universally accepted and was developed into the 3-mile limit of the territorial waters.

This later evolved in the last half of the twentieth century through gradual extension of the *Mare clausum* well beyond the 3 miles to 6 or 12 miles of the territorial waters and beyond that to the current 200-mile Exclusive Economic Zones (EEZs) under coastal State jurisdiction. The process is not necessarily settled forever: some States such as Chile have actively pursued policies of 'creeping jurisdiction' beyond their EEZs.

In one way or another, the differences between the opposing views of free access vis-à-vis territorialised rights has always produced tension and disputes in fishing, to the point that this conflict of interests strongly influenced the birth of the CFP and some of its features still today. The best-known case of this kind of tension was the so-called 'cod wars' between the United Kingdom and Iceland from the 1940s to the 1970s, which in the end were resolved through pressure from NATO in the context of the cold war (López Veiga, 2000). There have been many more such conflicts in the past. In addition, there have been endless minor conflicts erupting from time to time.

## **Fisheries and European law**

### **The CFP in the Treaty of Rome**

Fisheries policy did not feature in a specific chapter of the Treaty of Rome in 1958. At that time, Europe needed to increase agricultural output to feed a population still recovering from World War II and translated this need into a specific legal basis for an agricultural policy, but fisheries was not considered an area of present or even future action at European level. All six initial Member States exerted their jurisdiction only over the three nautical miles of their territorial sea (this was increased to 12 miles following the European Fisheries Convention of

1964), while a large amount of their fishing activity (particularly in the North Sea and the Atlantic façade) took place outside their jurisdictional waters, in what were at the time only partially regulated international waters.

As a consequence, the CFP was not considered worthy of an explicit legal basis in the Treaty of Rome. Instead, there was a clear basis for the establishment of a Common Agricultural Policy, with specific objectives spelled out in its Article 37. The fisheries sector only featured in this first Treaty through its Article 38(1) stating that the common market shall extend to agriculture and trade in agricultural products. These agricultural products being: ‘the products of the soil, of stock farming *and of fisheries* and products of first stage processing directly relating to these products’ (EEC Treaty, n.d.).

Since then, it was considered that, since fisheries products were part of the agricultural products, the objectives of the fisheries policy should be considered the same as those of the Common Agricultural Policy.

The legal basis for the Common Agricultural Policy has survived unchanged and these objectives remain identical under Article 39 of the ‘Lisbon Treaty’ of 2007 (Treaty on the functioning of the European Union (TFEU), 2007). These objectives are:

- 1 to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and optimum utilisation of the factors of production, in particular labour;
- 2 thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- 3 to stabilise markets;
- 4 to assure the viability of supplies;
- 5 to ensure that supplies reach consumers at reasonable prices.

While these objectives constitute a relatively coherent and complementary set for agricultural and fisheries policy, they are not necessarily so well adapted for certain aspects of fisheries management such as the conservation policy, where these different (and not hierarchical) objectives frequently contradict each

other, particularly in the short term. We must bear in mind that, while fisheries are a common pool of resources, agriculture is much more territorialised (even though Garret Hardin based his theory on examples on land, actually the fishery resources represent a much more clear example of a ‘common’ shared by many users).

For example, in fisheries the objective of increasing productivity can have opposite effects if we look at the short-term or the long-term: unlike agriculture, increased productivity of wild fisheries in the short term will lead to lower productivity in the long term. The same applies to the objective of ‘ensuring the viability of supplies’ to the European market, that can be seen under a very different perspective depending upon the time scale: many decisions in fisheries management require ‘fishing less today to fish more tomorrow’. When deciding on short-term measures, the Treaty does not provide any guidance on whether the short-term and long-term considerations must be combined. As a result, the tradition of the CFP is that the short-term considerations have prevailed.

Furthermore, the economics of fishing and agriculture are fundamentally different. In agriculture, more investment and more labour produce higher yields. In fisheries, more investment and more labour often leads to overfishing and lower yields. This distinction is not reflected in the EU Treaties.

Finding the adequate combination of these objectives and combining their delivery between short, mid and long-term, remains to this day the main conundrum of the CFP. Most decisions in the context of the CFP are related to this, either implicitly or explicitly. In this sense, the CFP is a continuous search for the best way to implement the objectives of Article 39. The resolution of these questions is encapsulated in the context of the discussions on long-term management plans, where the balance between short-term sacrifices and long-term gains must be spelled out.

### **Fishing in subsequent Treaties**

From the Treaty of Rome the legal basis for the CFP has evolved slowly and gradually (like many other EU policies) and, interestingly, it was the very

development of the policy that has often created the basis for the successive treaties to recognise.

The Single European Act, signed in 1986, did not modify the legal basis of the CFP. However, its two main contributions (the cohesion policy and the achievement of the internal market in 1992) did have an indirect influence on the CFP and other EU policies. The cohesion policy, with its emphasis on the promotion of economic development of the least developed Member States did result in a special treatment of the Member States concerned (initially, Ireland, Greece, Spain and Portugal) in terms of economic policy.

The Treaty of Maastricht, signed on 7 February 1992, provided for the first time a specific recognition of the CFP by providing for the establishment of a Common Fisheries Policy identified as separate from the Common Agricultural Policy. However, the general objectives of the policy remained unchanged from the Treaty of Rome. This Treaty simply recognised what was, already at the time, a clear reality: a specific policy with its own – important – *acquis*.

The Treaty of Maastricht also introduced the notion of ‘subsidiarity’ which, among other effects, clearly provided a basis for the Community to act in areas outside exclusive competence: ‘only insofar as the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community’ (Treaty of Maastricht, 1992).

This was indeed the case for certain parts of the CFP, in particular the control policy where, despite Member State competence, it can be argued that action at Community level is fully justified in monitoring a common policy (Long and Curran, 2008).

The Treaty of Amsterdam, concluded in June 1997, established four new priorities for the Union, none of which has a direct impact on the CFP: new emphasis on employment and citizens’ rights, removal of the last barriers to free circulation, the new security policy and the facilitation of the enlargement of the Union. However, the four priorities did, indirectly, have a bearing on the CFP, as for any other policy.

## The Treaty of Lisbon

The Treaty of Lisbon, signed on 13 December 2007, which entered into force on 1 December 2009, introduced two major elements on the legal basis of the CFP: the consolidation of the conservation and management of the marine biological resources as one of the five only exclusive competences of the Union and the application of co-decision between Council and the European Parliament as the ordinary legislative procedure for the CFP.

However, the Treaty of Lisbon did not modify the objectives of the CFP, which remained those of the Common Agricultural Policy in the Treaty of Rome in 1958. This is not surprising in the context of such a politically complex exercise. Including changes to the legal basis of the CFP would have created yet another obstacle to the adoption of the Treaty.

Despite the obvious differences between fisheries and agriculture and despite certain requests from the European Parliament in this regard (1995), the Treaties never created a specific set of objectives and instruments for the CFP as a separate policy from the CAP. This was considered unnecessary. Despite the specificity of fisheries management mentioned previously, it was understood that the general objectives of the CFP and the CAP were valid and did not need to be changed.

The Treaty of Lisbon, however, included the core business of this policy, the management of fishery resources, in the select list of exclusive competences of the Union. In particular, it included the CFP as a policy where the ordinary legislative procedure would be co-decision under Article 43(2) TFEU, with the exception of the adoption of fishing opportunities and reference prices under Article 43(3) TFEU, which remain under the sole responsibility of the Council. The change to co-decision established a new way of dealing with the CFP of which the consequences are still not clear today.

In Chapter 13 we will refer to the adaptation of the CFP to the new co-decision process and particularly with regard to the balance of power between the two co-legislators, Council and European Parliament, notably around long-term management plans and their relationship with annual fishing opportunities.

### Fisheries policy and European integration

Despite the non-specific treatment of the CFP in the early Treaties, the CFP has made a significant contribution to European integration. This may sound paradoxical, given the conflictive nature of this policy. However, it is precisely because the policy has been very conflictive that there have been many cases taken to the European Court of Justice. As a consequence, there is an abundant jurisprudence from the Court that has consolidated a number of Community principles, thus contributing to reinforce the European integration through case law (Sobrino Heredia and Rey Aneiros, 1997).

This was anticipated by certain authors who, already in 1983, stated that: 'The CFP, though relatively marginal to the Community's economic life, demonstrates many of the possibilities for and limits on the Community action and so has implications that go beyond the sector directly concerned' (Leigh, 1983).

The best example is perhaps the consolidation of the CFP as a field of exclusive competence of the Union, even before such exclusive competence was enshrined in the Treaties. Exclusive competence of the Union regarding fishery conservation measures was in fact consolidated by the Court through several key rulings already in the late 1970s (Schweiger, 2010).

The 'Kramer' case in 1976 clarified the most important aspects of Community competence relating to internal and external policy (Kramer et al., 1976), and the case of the Irish conservation rules in 1978 clearly established two principles that have become basic tenets of the CFP: the Community competence on the conservation of fishery resources and the importance of non-discrimination among Member States (European Court Reports, 1979).

Another example is the *Factortame I* and *II* cases, in 1990 and 1991, respectively, on the application of the UK's Merchant Shipping Act (which tried to exclude foreign investors from the UK fishing vessel register through requirements on nationality and residence). Important case law was set, to the effect that in areas of Community competence, the Court ruled that Community law prevails over national law (*Factortame I*) (The queen vs. Secretary of State for transport, *ex parte Factortame Ltd and others*, 1990), and consolidated Community rules on the freedom

of establishment (*Factortame II*) (The queen vs. Secretary of State for transport, *ex parte Factortame Ltd and others*, 1991).

In certain situations, the development of European integration has not even required cases in the Court: certain policy developments in the CFP have established precedents that only later on were incorporated into the text of the Treaties. For example, the exclusive competence of the Union for the negotiation of fishery agreements with third parties, today recognised in the Treaty (Article 3 (2) TFEU), was actually developed during the initial stages of the CFP, when the complicated negotiations among Member States, acceding countries and other third States made it preferable for Member States to recognise the advantages of such negotiations being carried out at Community level (López Veiga et al., 1993).

The role of the Court of Justice was by no means easy. In particular, the first of these rulings took place at a time where the basic rules of the CFP had not yet been laid down and in a field of high political sensitivity. The slow progress in agreeing to a CFP between 1976 and 1983 provided a time in which the Court advanced European integration before Member States in Council would agree to do so. In these cases the Court took a rather non-legalistic approach, focusing on the spirit of EU law and not just on the letter and attaching considerable importance to the requirements of Article 5 of the Treaty of Rome on the importance of the loyal cooperation among Member States (Farnell and Elles, 1984).

### Who decides what in the CFP?

For readers not familiar with the decision-making process of the European institutions, to understand the following pages requires some basic explanations, particularly on the question of 'who decides what', which is often perceived by outsiders as an arcane system full of jargon that only insiders can comprehend. Very often, the media and stakeholders refer to the decisions under the CFP as being decided by 'Brussels' or even 'the Brussels bureaucrats' in clear derogatory terms.

The CFP is an exclusive competence of the Union. Member States cannot legislate on matters pertaining to the common fishery resources. The legislation

to manage fishery resources and accompanying legislative instruments generally take the form of regulations. These regulations were for many years decided by the Council of Ministers (that means, by the Fisheries ministers of the Member States). The historical development of the CFP up to 2008 has been the result of decisions made by this body.

However, after the entry into force of the Treaty of Lisbon, the regulations of the CFP are decided by co-decision, that is, jointly by the Council of Ministers and the European Parliament, through a process of negotiation between them, with the participation of the European Commission as a facilitator. These negotiations are generally referred to as 'trilogue' (a discussion between three parties). Following the adoption of a regulation, its provisions become directly binding upon Member States and individual operators.

All regulations are adopted following a proposal from the EU's executive body, the European Commission. Therefore, the Commission has an important influence in the process by making the proposals. However, the final decisions on the CFP are taken by the Council of Ministers (meeting generally in Brussels or Luxembourg) and, as of 2009, jointly by the Council and the European Parliament. In that process the Commission maintains an important role to facilitate final agreement but the ultimate responsibility for the decisions under the CFP lies on the Council of Ministers and the European Parliament.

There is an important exception to the co-decision in the CFP: the adoption of catch limitations (Total Allowable catches or TACs, divided into national quotas according to relative stability). The adoption of annual catch limitations, together with the allocation of these limits in national quotas is an exclusive prerogative of the Council of Ministers: the European Parliament does not intervene in such decisions.

In this context the responsibility of the Commission is the presentation of proposals, the facilitation of the decisions by the legislators (Council and Parliament) and then certain aspects of the practical implementation. In addition, the Commission can also adopt implementing regulations, pieces of secondary legislation, on technical matters, upon specific mandate

of the legislator. When confronted with phrases such as 'Brussels decided...' it is important to bear in mind where the ultimate responsibility lies.

The use of regulations, instead of directives (a directive is an EU legislative instrument that is not directly applicable but has to be transposed into national legislation by Member States) is inseparable from the high level of technical detail that has characterised the CFP from its inception. This is a policy where the deeply rooted tradition is that of very detailed regulations being decided by ministers in the Council and where small technical details can easily become the subject of difficult political negotiations. Only the reform of the policy in 2013 is starting to change that.

Another clarification is the very name of the European Union, which under different Treaties, has evolved from European Economic Community (EEC) to European Community (EC) and to European Union (EU). For ease of reference, the book generally refers to the EU, except in the case of specific historical references where the official denomination of the time is used.

The two co-legislators, Council and Parliament, work very differently. In Council, Member States have a number of votes proportional to the population of the Member State (though the specific formula has changed with the Treaties). In fisheries, the Council decides by the so-called 'qualified majority', which requires a minimum percentage of all the votes. That means that decisions can be adopted by Council with a negative vote from some Member States.

This practice was rare in the early stages of the CFP, when the low number of Member States allowed for the search for unanimity. Furthermore, the use of the 'Luxembourg compromise' (a non-legal political compromise allowing a Member State to refuse a decision that would affect its fundamental national interest) was still common in the 1980s. But as the number of Member States has grown, it has become increasingly difficult to reach agreement by all Ministers and a qualified majority is increasingly used by Council to decide on fisheries matters.

The European Parliament works differently. There, the Fisheries Committee (composed largely of Parliamentarians with a fisheries constituency) makes

proposals on draft legislation, as amendments to the proposal from the Commission. The agreed proposed amendments have to be ratified by the Parliament at its plenary session. Often, the Plenary overrules the Fisheries Committee or introduces changes to their proposals, generally on the basis of wider political considerations beyond fisheries. The position adopted by the Plenary constitutes the mandate of the European Parliament to engage in the negotiations with the Council in the trilogue.

Both Council and Parliament may have to modify their negotiating positions to be able to agree on the final legislation. The Commission may also have to modify its initial proposals to facilitate the agreement.

### The importance of history

The previous pages illustrate that the CFP is a policy where the weight of tradition is very high. Reconciling the different, centuries-old traditions around fisheries issues into an agreed policy is, for historical reasons, very complex. As a consequence, once an agreement is reached, it tends to be extremely difficult to re-open and renegotiate.

As we will see in subsequent chapters, the policy has been evolving through the establishment of successive ‘layers’ of policy but while new layers have been established relatively easily, the removal of the old layers proves, still today, extremely challenging. The CFP can only be fully understood if we analyse it from a historical perspective. Table 1.1 summarises the development of the CFP over time, through the most important events that marked its history.

Since its inception in 1983 and through three successive reforms (in 1992, 2002 and 2013) the CFP has preserved a number of constant elements that have proven to be particularly resilient to change. This has produced a characteristic phenomenon, which appears every time there is a CFP reform in sight: while the policy is constantly criticised by everybody, when it comes to changing it many stakeholders, both institutional and private, show a preference for the *status quo*, at least in a number of key areas.

As we will see in Chapter 15, a typical reaction by stakeholders during consultations on CFP reform

**Table 1.1** Timeline of the most decisive events in the development of the CFP.

Year	Event
1958	Treaty of Rome
1967	First document on a future Common Fisheries Policy
1970	First structural and market regulations for the fisheries sector. Principle of free access to Community waters
1973	Enlargement to the United Kingdom, Denmark and Ireland
1977	Declaration of Exclusive Fisheries Zones by Atlantic Member States
1983	Birth of the CFP: TACs and Quotas and technical measures. First Multiannual Guidance Programmes (MAGPs)
1985	Greenland leaves the European Community
1986	Accession of Spain and Portugal
1992	First reform of the CFP
1994	Entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) First Mediterranean regulation
1995	Accession of Sweden, Finland and Austria (Norway votes against accession)
2001	Entry into force of the United Nations Fish Stock Agreement (UNFSA)
2002	Second reform of the CFP
2004	Enlargement to 10 new countries. First EU long-term recovery plan (cod stocks) Establishment of the first Regional Advisory Councils (RACs)
2006	Second Mediterranean regulation
2007	Accession of Romania and Bulgaria: CFP extended to the Black Sea. New financial instrument: EFF (2007–2013)
2009	Treaty of Lisbon: co-decision as the ordinary legislative procedure in the CFP
2013	Third reform of the CFP.
2014	New financial instrument: EMFF (2014–2020)
2015	First discard bans in force

has been: ‘I don’t like the CFP but please don’t change it’. This statement may look like a caricature but experience shows that it is much less so than it seems. Very often, those who criticise the policy and the Commission’s handling of it are the first to complain if the Commission itself presents in public a critical view of the policy, arguing that the ‘catastrophic’ picture painted by the Commission is

unjustified. Indeed, the tradition of the CFP is one of a strong attachment to the *status quo*, even if it is criticised so frequently.

Many of the complex features of the CFP exist to defend the interests of various groupings in a precarious balance. This also makes change difficult. While everybody can agree to dislike the complexity, each wants to keep his own safeguards.

True, the CFP reform in 2013 has witnessed many more statements than ever before about the need for 'radical change' but in general terms these changes have been much more about introducing new policy elements (discard ban, regionalisation) than about questioning the traditional ones (TACs and quotas, relative stability).

As we will see in Chapter 2, the considerable difficulties in the initial steps of setting up the policy have created an image of the CFP as a difficult and contentious policy and this tends to discourage any efforts to modify it substantially. If there are changes, these are generally introduced through new, additional legislative layers but rarely by questioning the past.

It is also true that fisheries management in general is a domain where novelties are scarce and difficult to introduce. In the case of Europe the possible introduction of substantial policy changes is always seen as a way to question the balance of interests established in the past and this results in a considerable resistance to change. This only underlines further the need to know the history of the policy, to know its successes and failures in order to better assess its future.

## Notes

- 1 [www.ec.europa.eu/fisheries/market-observatory](http://www.ec.europa.eu/fisheries/market-observatory)
- 2 <http://hulltrawler.net/History/History.htm>
- 3 <http://pinsky.marine.rutgers.edu/wp-content/uploads/2013/08/Pinsky-et-al.-2011-PNAS-w-supp.pdf>
- 4 [www.fao.org](http://www.fao.org)

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