

Master Thesis

# A Sea of Opportunities

The Netherlands, European Integration and the Common Fisheries Policy

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# Abstract

This thesis assesses the explanatory power of liberal intergovernmentalism in the context of Dutch policy towards the Common Fisheries Policy between 1976 and 1983. I construct a historical narrative based on new archival material to argue that commercial interests in resource conservation determined policy preferences of the Netherlands, and the pattern of ‘asymmetrical interdependence’ can account both for the substance of the final agreement, as well as for greater willingness on the part of the Netherlands to compromise. In line with theoretical predictions, the Netherlands attached great value to an agreement. Given the absence of unilateral policy alternatives, the Netherlands has endeavoured to advance an agreement, even to the extent that it offered further concessions on quota allocations and access conditions than was ultimately necessary. However, the history of the CFP has also shown how the institutional environment affects the calculus governments face by limiting unilateral policy alternatives. A convincing explanation must therefore also pay attention to the impact of institutional factors on the pattern of asymmetrical interdependence.



# Preface and acknowledgements

The politics of fish does not usually stir immediate excitement among readers of history. It is not love at first sight between the subject and its audience. Fishery politics is perhaps best characterized as an acquired taste. Yet, attentive readers will notice the richness of this topic. Firstly, international fishery management is an intensely politicised question, which is best illustrated with the resurgence of conflict over fishery resources during Brexit negotiations, or the refusal of Norway to accede to the European Community in the first place. Secondly, fishing still speaks to our collective imagination as our last hunter-gatherer activity. Third, stocks of fish are a unique resource in the sense that they are an international commons that cannot be subjected to borders. Finally, fishery management is a complex interplay between fishery management science and political economy.

Personally, I identify as a historian. During my academic career, I have written extensively on diplomatic history and economic history. This has several implications. It means I was largely unfamiliar with the language, methods and questions of European Integration Studies. Moreover, as a historian, I harbour a healthy scepticism towards the idea that explanations can be generalized to account for a great variety of cases. Notwithstanding my scepticism, the framework of Liberal Intergovernmentalism, as developed by Andrew Moravcsik, fits the history of the Common Fisheries Policy almost seamlessly. The Europeanisation of fishery management can be explained by a shared commercial interests in conservation measures on the part of the member states, and the precise distribution of benefits under this policy reflects their relative bargaining power. Nonetheless, I insist that careful attention must be paid to how the institutional environment shapes such negotiations.

Although theses may display the name of one author - my own - they are nearly always coproductions. I express my gratitude to Pieter van Eig and Tijmen de Lorm, for their advice on fishery management science and ecology, and to Sybren van der Velden, for his constructive commentary on legal sections. Moreover, without the efforts of Boris de Lorm to create a working environment conducive to completing this project, it might have lasted far longer. Finally, I would like to express my gratitude and indebtedness to Trineke Palm, my supervisor, for her patience and constructive commentaries during the process of writing this thesis.

Jan Ravensbergen  
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## List of abbreviations

ACFM	ICES Advisory Committee on Fishery Management
CCT	Common Customs Tariff
CFP	Common Fisheries Policy
COREPER	Committee of Permanent Representatives of the European Communities (French: <i>Comité des représentants permanents</i> )
EEC	European Economic Community
EEZ	Exclusive Economic Zones
EUA	European Unit of Account
ICES	International Council for Exploration of the Seas
NEAFC	North East Atlantic Fisheries Commission
MEY	Maximum Economic Yield
MSY	Maximum Sustainable Yield
TAC	Total Allowable Catch
UNCLOS III	Third United Nations Conference on the Law of the Sea
QMV	Qualified Majority Voting

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# Introduction

Brexit has reinvigorated the political salience of international fishery management. Under the Withdrawal Agreement, the UK remains bound by the rules of the Common Fisheries Policy (CFP) during the transitional period. Whereas UK Prime Minister Theresa May has claimed the UK “will become an independent coastal state with control over our waters so the fishermen will get a fairer share,” French President Emmanuel Macron has asserted that the deal gives the EU considerable leverage to force the UK to grant access to its waters.<sup>1</sup>

Conflicts over access rights to fishing grounds, measures for the conservation of fishing resources and allocation of national quotas to member states find their origin in the 1970s and were finally resolved on 25 January 1983 after six years of arduous negotiations.<sup>2</sup> These issues transformed fisheries management into an intensely politicised question of “who gets what, when and how”.<sup>3</sup> The Community’s final answer to those questions is contained in Council Regulations (EEC) no. 170/83 and no. 172/83.<sup>4</sup> These regulations provide for a science-based conservation system of setting a Total Allowable Catches (TAC) for specific stocks of fish combined with detailed rules governing quota allocations to individual member states in specific maritime zones. From the ‘principle of relative stability’ contained in this regulation follows that these rules continue to govern quota negotiations in the European Union to this day.<sup>5</sup> Although formally fishing in waters under the jurisdiction of other member states is governed by ‘the principle of equal access,’ in practice this principle is restricted by regional quota allocation and legal derogations.<sup>6</sup>

The CFP brought under one regime the management of fisheries within 200 miles off the coast of the seven member states of the Community and constituted a significant transfer of sovereignty. Under the CFP, member states were deprived of the right to take unilateral conservation

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<sup>1</sup> Politico, “No winners or losers yet in Brexit fish fight,” last modified Nov. 27, 2018. <https://www.politico.eu/article/brexit-fish-deal-europe-no-winners-or-losers-yet-in-fight/>, accessed on Feb. 9, 2019.

<sup>2</sup> The CFP consists of four policies. A structural policy and a common market organization were established in 1970, the framework for external fisheries policy in 1976. The subject of this thesis is the conservation policy, which was established on 25 January 1983.

<sup>3</sup> Lasswell, Harold, *World Politics and Personal Security*, (New York: The Free Press, 1965), 3.

<sup>4</sup> Council Regulation (EEC) No. 170/83 of 25 January 1983 (hereafter: “Regulation 170/83”); Council Regulation (EEC) No. 172/83 of 25 January 1983 (hereafter: “Regulation 172/83”).

<sup>5</sup> The ‘principle of relative stability’ means that national shares of TACs are to remain stable in the future, fixed at their 1982 reference levels contained in Regulation 172/83.

<sup>6</sup> The ‘principle of equal access’ maintains that vessels registered in one member state enjoy the same access rights to the maritime zones of any other member state as a vessel registered in the latter member state. This principle is restricted by Article 6 of Regulation 170/83, which allows member states to establish until 1992 an exclusive national fishing zone within 12 nautical miles off the coast. See: Churchill, Robin R. and Daniel Owen, *The EU Common Fisheries Policy: Law and Practice*, (Oxford: Oxford University Press, 2010), 5-10.

measures, which was confirmed by the European Court of Justice in a ruling in 1981.<sup>7</sup> The perceived importance of the sovereignty transferred is underscored by the 1973 decision of 53 percent of the Norwegian electorate to vote against accession, partly inspired by the perception that fishing policy would be less favorable than existing national regulations.<sup>8</sup>

Literature on the CFP has predominantly focussed on analyzing the performance of the policy in addressing overfishing, its legal foundations, and its economic impact.<sup>9</sup> Historical scholarship on the emergence of the CFP is limited quantitatively and qualitatively. Although useful, most accounts of the CFP are largely descriptive and lacking in analysis, or rely almost exclusively on evidence drawn from secondary sources to support attributions of cause of motivation.<sup>10</sup> Within the realm of political science, the analysis by Eugénia Da Conceição-Heldt suffers from serious shortcomings, ranging from avoidable factual errors to conclusions that are not supported by the evidence.<sup>11</sup>

Thus far, Michael Leigh's *European Integration and the Common Fisheries Policy* is the only attempt to provide a comprehensive explanation for the emergence of the CFP within the framework

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<sup>7</sup> Ibid., 9.

<sup>8</sup> Van Meurs, Wim et al. *The Unfinished History of European Integration* (Amsterdam: Amsterdam University Press, 2018), 91-92, 122.

<sup>9</sup> For an interdisciplinary review of the performance of the CFP in enhancing stock sustainability or improving the fishing industry's competitiveness, see: Khalilian, Setareh, et al. "Designed for Failure: A Critique of the Common Fisheries Policy of the European Union," *Marine Policy*, 34 (2010):6, 1178-1182; According to Tim Daw and Tim Gray, the CFP's failure results from an inadequate use of scientific evidence: Daw, Tim, and Tim Gray. "Fisheries Science and Sustainability in International Policy: A Study of Failure in the European Union's Common Fisheries Policy," *Marine Policy*, 29 (2005):2, 189-197; Dexter Payne ascribes the resource conservation failure to the institutional environment: Payne, Dexter C. "Policy-making in Nested Institutions: Explaining the Conservation Failure of the EU's Common Fisheries Policy," *JCMS: Journal of Common Market Studies*, 39 (2000):2, 202-3024; Alternatively, measures are enforced inadequately; see: Da Rocha, José-María, Santiago Cervino, and Sebastian Villasante, "The Common Fisheries Policy: An Enforcement Problem." *Marine Policy*, 36 (2012): 1309-1314; Churchill and Owen analyze the legal scope of the CFP. See: Churchill and Owen, *The EU Common Fisheries Policy*. For the economic shortcomings of the see CFP, see: Lagares, Encarnación Cordón, and Félix García Ordaz, "Fisheries Structural Policy in the European Union: A Critical Analysis of a Subsidised sector." *Ocean & coastal management*, 102 (2014): 200-211.

<sup>10</sup> See: Wise, Mark, *The Common Fisheries Policy of the European Community* (Grantham: Methuen, 1984); Farnell, John, and James Elles. *In Search of a Common Fisheries Policy* (Aldershot: Books etc., 1984); Driscoll, D.J. and N. McKellar, "The Changing Regime of North Sea Fisheries," In *The effective management of resources: The International Politics of the North Sea*, 125-167. Edited by Christopher M. Mason and F. Pinter (New York: Nichols Publishing Company, 1979).

<sup>11</sup> Although this list is not exhaustive, factual errors include: (1) the claim that Ireland was promised increased quota allocations at a meeting in Berlin in 1978 (page 290), while in fact this promise had already been included in The Hague Compromise of 1976; (2) claiming that Denmark vetoed a compromise in 1981 (page 291), while in fact France and the UK blocked decision making as well; (3) referring to Danish legislative elections of 1983 (page 294), while these elections took place in 1984 and did not influence the outcome of the negotiations early in 1983. Moreover, the author draws conclusions not supported by the evidence. For instance, the author argues that a system of TACs and national quota allocations was favored by the Commission, because it would require a centrally administered system of enforcement and monitoring and thus serve the Commission's interest in expanding its influence. Yet, the author presents no primary or secondary source materials to support this claim. Alternatively, TACs might be favored over other measures by member states, which is supported by evidence I present below (see chapter 4, page ). See: Da Conceição-Heldt, Eugénia, "Taking Actors' Preferences and the Institutional Setting Seriously: The EU Common Fisheries Policy." *Journal of Public Policy*, 26 (2006): 3, 279-299.

of theories of European integration. Leigh argues that “aspects of the Community’s development conform quite closely with the predictions of neo-functional integration theory”.<sup>12</sup> Neofunctionalist scholars conceive of the integration process as incremental, automatic and self-sustaining. Central to their theory is the concept of ‘spillover’. ‘Functional spillover’ occurs when functional integration in one sector creates pressures for integration of related sectors, in which incomplete integration undermines the effectiveness of existing policies.<sup>13</sup> An example is common pricing under the Common Agricultural Policy (CAP) which in turn required coordination of monetary policy.<sup>14</sup> Leigh argues that progress in the negotiations at various stages can be attributed to spillover effects. In 1966 demands for a CFP arose from the strains upon less efficient fishery industries caused by trade liberalisation. Moreover, the Council adopted policies under pressure from the impending enlargement negotiations. Finally, Leigh maintains that the Accession Treaty necessitated conservation measures after the extension of fishing limits to 200 nautical miles. Within the neofunctionalist framework, functionalist spillover is reinforced by ‘political spillover,’ as national elites promote further integration, and ‘cultivated spillover’ as administrators in supranational institutions engineer integration and engage in institution building.<sup>15</sup> Consequently, Leigh emphasizes the role of the Commission in brokering agreements and draws attentions to judgements by the European Court of Justice that advanced agreements. Neofunctionalism has drawn criticism for its failure to account for the stagnation that characterized the integration process during the 1960s and 1970s.<sup>16</sup> At a metatheoretical level, the theory has drawn criticism for its lack of a theoretical core clear enough to provide a sound basis for precise empirical testing.<sup>17</sup> Leigh too appears to adhere to a definition of ‘spillover’ that is too broad and he therefore incorrectly attributes developments to ‘spillover effects’ as conceptualised by neofunctionalist scholars.<sup>18</sup>

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<sup>12</sup> Leigh, Michael, *European Integration and the Common Fisheries Policy* (London: Croom Helm, 1983), 4.

<sup>13</sup> Lindberg, Leon N., *The Political Dynamics of European Economic Integration* (Stanford, California: Stanford University Press, 1963), 10.

<sup>14</sup> Van Meurs, Wim et al. *The Unfinished History of European Integration*, 76.

<sup>15</sup> Niemann, Arne and Demosthenes Ioannou, “European Integration in Times of Crisis: A case of Neofunctionalism?” *Journal of European Public Policy*, 22 (2015): 2, 198-199.

<sup>16</sup> For a classic critique of neofunctionalism see: Hoffman, Stanley, “Obstinate or Obsolete?: The Fate of the Nation-State and the Case of Western Europe,” *Daedalus*, 95 (1966): 3, 862-915.

<sup>17</sup> Moravcsik, Andrew, “Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach,” *JCMS Journal of Common Market Studies*, 31 (1993): 4, 476.

<sup>18</sup> A detailed discussion of Leigh’s argument is beyond the scope of this thesis, but his analysis of several key moments illustrate my claim. First, although demands for a CFP originally arose from the strains upon less efficient fishery industries caused by trade liberalisation, this does not imply that effective trade liberalisation necessitated Community spending on fisheries. Moreover, the Council adopted those regulations under pressure from the impending enlargement negotiations. Leigh maintains this constitutes spill-over. However, a fisheries policy was not necessitated by the impending accession of the four applicant states. Rather, the Community member states were keen to seize the moment and firmly inscribe the principle of equal access into the *acquis communautaire* (see: Chapter 2, page 21-22). Finally, Leigh maintains that provisions from Accession Treaty necessitated conservation measures after the extension of fishing limits to 200 nautical miles off the coast. Although the provisions of the Accession Treaty did carry unforeseen consequences (see chapter 4, page ),

The academic debate on the causes of European integration is often depicted as a conversation between neofunctionalism and liberal intergovernmentalism.<sup>19</sup> Liberal intergovernmentalist scholars argue that policy integration in the European Community can be analyzed as an intergovernmental regime designed to manage economic interdependence through negotiated policy coordination.<sup>20</sup> This thesis therefore proposes to present a critical discussion of liberal intergovernmentalism by assessing its explanatory power in the context of the emergence of the conservation pillar of the Common Fisheries Policy. It takes as its central research question *to what extent the theoretical framework of liberal intergovernmentalism can explain the policy of the Netherlands towards the negotiations on the conservation pillar of the Common Fisheries Policy between 1976 and 1983*. Within this framework of analysis, policy integration in Europe proceeds in three stages: domestic preference formation, interstate bargaining and institutional design.<sup>21</sup> Policy integration is firstly the product of convergence of national commercial interests in enhanced policy coordination. Secondly, the relative bargaining power of governments, determined by the pattern of asymmetrical policy interdependence, dictates the substance of agreements. Finally, institutions are shaped by a shared interest in enhancing the credibility of commitments. I therefore construct a historical narrative that is firmly grounded in archival research to answer two sub-questions related to two stages of European integration. These are: (1) *to what extent are the policy preferences of the Netherlands influenced by perceptions of the commercial interests of the national fishing sector?* And (2) *to what extent can the outcome of the negotiations be explained by the concept of asymmetrical policy interdependence?* A detailed discussion of the theory is presented in chapter 1.

There are good *prima facie* reasons to believe that the liberal intergovernmentalist framework can account for the emergence of the conservational pillar of the CFP. Firstly, the theoretical framework of liberal intergovernmentalism seeks to explain policy responses to externalities imposed by economic interdependence.<sup>22</sup> Exploitation of fish stocks typically creates policy externalities that require policy solutions at the regional level. Secondly, negotiations were concerned with resource allocation, with clearly observable distributional consequences within and among member states. Predictions of liberal intergovernmentalism are more determinate as interests are “more intense,

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conservation measures were necessitated by persistent overfishing. For an overview of Leigh’s arguments, see: Leigh, *European Integration and the Common Fisheries Policy*, 206-208.

<sup>19</sup> Rosamond, Ben, “The uniting of Europe and the foundation of EU studies: Revisiting the neofunctionalism of Ernst B. Haas,” *Journal of European Public Policy*, 12 (2005): 3, 237-254.

<sup>20</sup> The theoretical framework was introduced by Andrew Moravcsik in 1991 in: Moravcsik, Andrew, “Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community,” *International Organization*, 45 (1991): 1, 19-56. In 1993, he introduced the term liberal intergovernmentalism in: Moravcsik, “Preferences and Power in the European Community”. In 1998, Moravcsik published a detailed theoretical framework and five case studies: Moravcsik, Andrew, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, (London: UCL Press, 1998).

<sup>21</sup> Moravcsik, *The Choice for Europe*, 3.

<sup>22</sup> Moravcsik, “Preferences and Power in the European Community,” 485.

certain and institutionally represented”.<sup>23</sup> Thirdly, the interests of the fishing industry are well represented institutionally.<sup>24</sup> Fourthly, the negotiations were characterized by *de facto* unanimous voting procedures, an essential assumption underlying the theory.<sup>25</sup>

This study analyses the period between 1976-1983, restricts the analysis to domestic preference formation and interstate bargaining and adopts the singular national perspective of the Netherlands. This approach requires justification. Although development of the CFP can be traced to a 1966 Commission proposal, negotiations on a conservation policy began with the advent of 200-mile national fishing zones in 1976. Besides the availability of extensive archival material, the selection of the Netherlands is based on three considerations. First, from the geography of the Netherlands and the structure of its fishing industry, liberal intergovernmentalism generates unique set of predictions for the strategic behavior of the Netherlands. The Netherlands possessed a relatively large, modern and highly specialized catch industry and large interests in British waters, whereas the Dutch zone possessed few resources. This implies limited opportunities to redirect the national fishing effort, and therefore the Netherlands was willing to sacrifice 30 percent of its historical catch possibilities to advance a Community agreement. Second, following from its membership of the ‘Original Six’ the Netherlands had been in a position to shape the negotiations since the first Commission proposals were tabled in 1966. Finally, the scholarship on the policy of the Netherlands within the Community is fairly limited.<sup>26</sup> By adopting a Dutch perspective, this thesis also contributes to the scholarship on Dutch policy towards the integration process.

The central claim advanced by this thesis is that theoretical framework of liberal intergovernmentalism can sufficiently account for the policy of the Netherlands towards the negotiations on conservation policy. More precisely, a commercial interest in resource conservation determined policy preferences of the Netherlands, and the pattern of ‘asymmetrical interdependence’ can account for greater willingness on the part of the Netherlands to compromise on the margin. To the Netherlands, a final agreement on the CFP truly was a ‘sea of opportunities,’ as it would guarantee

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<sup>23</sup> Moravcsik, *The Choice for Europe*, 47.

<sup>24</sup> In the Netherlands, the interests of the fishing industry are formally represented by the Fisheries Board (*Visserijenschap*). This is a legally instituted public advisory organisation (*publiekrechtelijke bedrijfsorganisatie*) to represent the interests of the fishing industry. In the Netherlands, such organizations were widespread in the food and agriculture sector, and had been created to facilitate the incorporation of interest groups in the policy making process. The Fisheries Board was expected to advise the government on new policy proposals, and issue binding regulation for products under its control. See: Andeweg, Rudy B. and Galen A. Irwin, *Governance and Politics of the Netherlands*, (Hampshire: Palgrave Macmillan, 2014), 188-192.

<sup>25</sup> In January 1966, the member states concluded the ‘Luxembourg Compromise’ under which they recognized that each government was allowed to pronounce a veto if it was of the opinion that the matter at hand affected a ‘vital national interest’. Member states need not provide arguments for this opinion. Although qualified majority voting had been introduced, the practice of unanimity voting remained intact. See: Van Meurs, *The Unfinished History of European Integration*, 84.

<sup>26</sup> For a history of policy of the Netherlands towards the European integration process, see: Segers, Mathieu, *Reis naar het Continent: Nederland en de Europese Integratie, 1950 tot heden*, (Amsterdam: Prometheus, 2013).

access to the British zone, restore cherished stocks to profitable levels, and provided the stable investment environment the catch industry desired. However, any convincing explanation must also pay careful attention to how legal and institutional factors have shaped and shifted the pattern of asymmetrical interdependence. In this respect, the European Court of Justice has played a central role. Its judgement in landmark case 804/79 ‘Commission v United Kingdom’ undermined the credibility of threats to veto and minimised the significance of deadlock in the Council.

The next chapter introduces the theoretical framework and operationalizes central concepts. From the available secondary literature, I reconstruct a general chronology of the negotiations, as well as the policy positions of other member states. To reconstruct the perceptions of commercial interests in the Netherlands, I draw on archival material from the two most influential business interest organizations: the Dutch Fisheries Board (originally: *Visserijenschap*; hereafter: “the Board”) and the Foundation of Dutch Fisheries (originally: *Stichting van de Nederlandse Visserij*; hereafter: “the Foundation”).<sup>27</sup> Specifically, I use their policy documents, annual addresses, minutes from meetings and correspondence with the Fisheries Department of the Dutch Ministry of Agriculture.<sup>28</sup> Finally to reconstruct the policy process and the development of the negotiations, I draw on minutes and policy documents from the Dutch Coordinating Committee for European Integration and Association Problems, the European Affairs Council and the Council of Ministers.<sup>29</sup> By relying on primary source materials, I overcome one of the central weaknesses of earlier histories on the CFP.

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<sup>27</sup> *De Stichting van de Nederlandse Visserij* (“Foundation of Dutch Fisheries”) was a private organization founded in 1948 to represent the interests of several Dutch fishing associations.

<sup>28</sup> Both the Ministry and the Department (and the Directorate General to which it belongs) have seen minor changes made to their names. For simplicity, I will refer to the department as “Fisheries Department” and the Ministry as “Ministry of Agriculture”.

<sup>29</sup> The Coordinating Committee for European Integration and Association Problems (originally: *Coördinatie Commissie Europese Integratie en Associatieproblemen*; hereafter: “Coordinating Committee”) as a committee that consisted of cabinet members and high-ranking civil servants that prepared decision making for the European Affairs Council, a subcouncil of the Council of Ministers of the Netherlands.

# Chapter 1: Theorizing the Europeanisation of Fisheries Management

This chapter introduces the theoretical framework and related concepts necessary for answering the sub-questions that are derived from two central claims of liberal intergovernmentalism. The first claim is that domestic commercial interests determine national preferences for international policy coordination. Hence, I ask to what extent the policy preferences of the Netherlands regarding conservation policy are influenced by perceptions of commercial interests of the Dutch fishing sector. I integrate insights from fishery management science into the liberal intergovernmentalist framework of preference formation to draw two important conclusions. First, effective conservation of resources is in the commercial interests of the entire (international) fishing sector. Second, since exploitation of international fisheries necessarily causes negative policy externalities, an incentive for governments to coordinate policies exists.

The second claim is that the pattern of asymmetrical policy interdependence determines the relative bargaining power of states, which in turn determines the distribution of benefits of negotiated agreements. Accordingly, I ask to what extent the substance of the negotiated agreement on conservation policy can be explained by the concept of asymmetrical policy interdependence. I identify several factors that shape the pattern of asymmetrical policy interdependence and can explain substantive outcomes of negotiations.

Liberal intergovernmentalism assumes that states are instrumental, unitary externally and rational.<sup>30</sup> The instrumentality assumption means that nation states are the primary political instrument by which individuals and groups in civil society seek to influence international negotiations. The assumption that states are unitary externally means that states pursue stable interest within episodes of negotiations; they speak as if with a single voice. The rationality assumption means that states pursue a weighted, stable set of underlying preferences. According to Moravcsik, this assumption implies a division of negotiations into three stages: national preference formation, interstate bargaining and choice of institutions.<sup>31</sup>

## The First Stage: Domestic Preference Formation

The first stage of analysis seeks to provide a political economic account of national preference formation, with national preferences defined as “an ordered and weighted set of values placed on

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<sup>30</sup> Moravcsik, *The Choice for Europe*, 22-23.

<sup>31</sup> *Ibid.*, 18.

future substantive outcomes that might result from international political interaction”.<sup>32</sup> Preferences, unlike strategies or policies, are assumed exogenous to the specific international political environment.

Negative policy externalities play a central role in preferences for international policy coordination. Negative externalities occur where the policies of one state impose costs on the nationals of another and can be seen as the unintended consequences of national economic activity on foreign countries.<sup>33</sup> An incentive for international policy coordination exists when the configuration of domestic policies produces negative policy externalities for more than one country. Governments will seek cooperation where reciprocal policy adjustment can eliminate negative policy externalities more efficiently than unilateral responses.

Policy coordination often has distributional consequences and creates winners and losers within states. Within the framework of liberal intergovernmentalism, producer interests determine domestic preferences for policy coordination at the first stage. Politicians rely on the support from domestic constituents to stay in power. Among these, producers are more influential compared to consumers, taxpayers and future producers. Their relative influence is a result of more intense, certain and institutionally represented interests.<sup>34</sup> International policy coordination is therefore a means to secure commercial advantages for producers.<sup>35</sup>

Exploitation of fisheries necessarily causes negative policy externalities for states involved, for two reasons. First, the economic equilibrium level of fishing effort typically exceeds optimum management targets such as the Maximum Sustainable Yield (MSY) or the Maximum Economic Yield (MEY).<sup>36</sup> The MSY is the maximum sustainable level of fishing effort. Increasing fishing effort beyond this level results in overfishing and causes the depletion of a fishery. The second target, the MEY is the yield level that maximizes economic profits for producers. Theoretically this corresponds to a fishing effort at a lower level than the MSY. Effective conservation of stocks is in the interest of the entire international fishing sector. Second, most fisheries extend across several national fishing zones and prior to the establishment of Exclusive Economic Zones (EEZs) in the 1970s, fisheries were not subjected to any jurisdiction. It follows that fishing by one state negatively affects the ability of other states to exploit fisheries optimally. Since exploitation of fisheries produces negative externalities for all states involved, an incentive for international policy coordination exists.

Although effective conservation measures serves the commercial interests of the fishing sector, achieving yield levels consistent with the MSY or MEY has distributional consequences. First, conservation of overexploited stocks requires a sharp downwards adjustment of the present fishing

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<sup>32</sup> Ibid., 24.

<sup>33</sup> Moravcsik, “Preferences and Power in the European Community,” 486.

<sup>34</sup> Moravcsik, *The Choice for Europe*, 36.

<sup>35</sup> Ibid., 38.

<sup>36</sup> Charles, Anthony T., “Fishery Socioeconomics: A survey,” *Land Economics*, 64 (1988): 3, 280

effort, such that benefits accrue to the sector in the future. This distributes gains from present producers to future producers. However, we have assumed that the interests of present producers are more influential than those of future producers. This implies that present producers will resist conservation schemes that promote a rapid return to the yield levels MSY or MEY and instead advocate less stringent schemes that achieve restoration of stocks over a more prolonged period.

Second, downwards adjustment will impact hardest on fishermen with high levels of capitalization or specialization. High levels of capitalization may have been premised on the expectation of exploiting economies of scale. Under conservation schemes, highly capitalized industries will be incurring losses for a prolonged period of time. This problem is exacerbated by high levels of specialization, which prevent redirection of the fishing effort to alternative stocks that are not yet fully exploited. The Dutch catch industry of the 1970s was characterized by high levels of specialization and capitalization. Whereas the overall number of fishermen dropped during the 1970s, engine capacity - a measure for modernization and capitalization - grew by 54 percent between 1972 and 1974, compared to a Community average of 14 percent.<sup>37</sup>

Whereas Moravcsik predicts national preferences for policy coordination from the structure of economies, I relax this strict methodology. Instead, this study is concerned with how commercial interests are articulated by business representatives and how commercial interests influence policy making. Following Moravcsik, I assume that domestic fishermen influence policy through the two most influential organizations representing the industry: the Fisheries Board (“the Board”) and the Foundation of Dutch Fisheries (“the Foundation”).<sup>38</sup> Evidence from archival sources for their influence on policy preferences can be presented in three ways. Firstly, correspondence between business representatives and policymakers can demonstrate directly that business interests shaped policy preferences. Secondly, policymakers can refer to articulated business interests directly during discussions or in policy documents. Thirdly, a relationship between articulated commercial interests and policy preferences can plausibly be inferred, if two conditions are satisfied: articulation of interests must precede integration into policy preferences in time and policy makers must have received communication thereof.

## The Second Stage: Interstate Bargaining

Although agreements on conservation are mutually beneficial, governments have different preferences concerning the distribution of costs and benefits. The coordination of conservation policy involves reciprocal surrender of domestic policy autonomy and conflict emerges over the adjustment burden.<sup>39</sup>

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<sup>37</sup> Wise, *The Common Fisheries Policy of the European Community*, 37

<sup>38</sup> See note 24 (page 12) and note 27, (page 13).

<sup>39</sup> Moravcsik, “Preferences and Power in the European Community,” 492.

During the negotiations on conservation policy, these costs and benefits were reflected in the distribution of national quotas, as well as in access conditions and technical measures. Benefits can be derived from higher national quota allocations, while favorable access conditions to rich fishing grounds lower the costs of fishing. In negotiations, the configuration of domestic preferences defines the bargaining space of potentially ratifiable agreements.<sup>40</sup>

The liberal intergovernmentalist framework makes three assumptions about negotiations in the European Community. First, negotiations take place in a non-coercive system of unanimity voting. Second the negotiating environment is relatively information rich. Third, transaction costs are low relative to the benefits of cooperation.<sup>41</sup> In this negotiating environment, the distribution of benefits under an agreement is shaped by the relative power of governments, understood in terms of asymmetrical policy interdependence.<sup>42</sup> The pattern of asymmetrical policy interdependence is the pattern of relative intensity of national preferences, which is determined by the relative costs and benefits of agreements to remove externalities.<sup>43</sup> Governments with more attractive policy alternatives will favor an agreement less intensely and thus possess greater bargaining leverage.<sup>44</sup>

In the history of negotiations on conservation policy, the patterns of policy interdependence originated in three interrelated factors. First, the geography of fishing stocks determines the extent to which states can regulate their exploitation unilaterally and to what extent coordination with Community member states or non-Community members is required. Second, the structure of fishing sector determines to what extent losses can be sustained or alternative employment can be found. Adjustment to lower catch possibilities is more costly for highly specialized or capitalized industries. Moreover, prolonged insecurity is uncondusive to the investments such industries rely on. These industries will therefore prefer stability and have more intense preferences regarding outcomes that provide for access stocks necessary for their survival. Third, I propose that the institutional environment can shape and shift the pattern of policy interdependence. Existing legislation can limit the extent to which states can exercise jurisdiction over stocks within waters under their jurisdiction. Moreover, judgements emanating from the European Court of Justice can reshape the pattern of policy interdependence, by limiting unilateral policy alternatives.

The pattern of asymmetrical policy interdependence is reflected in credible threats of non-agreement, threats of excluding other governments and opportunities for issue linkage. First, a credible threat of non-agreement provides rational governments with their most fundamental source of bargaining power. Since governments evaluate potential agreements against alternatives, a rational government will veto any agreement that leaves its worse off than the institutional *status quo ante*, or

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<sup>40</sup> Moravcsik, *The Choice for Europe* 50.

<sup>41</sup> Moravcsik, "Preferences and Power in the European Community," 499.

<sup>42</sup> Moravcsik, *The Choice for Europe*, 52.

<sup>43</sup> Moravcsik, "Preferences and Power in the European Community," 499.

<sup>44</sup> *Ibid.*, 500.

unilateral policy alternatives. The credibility of such threats lies in the existence of superior alternatives. It follows that governments with greater domestic policy autonomy enjoy leverage over governments whose policies are ineffective.

Second, the credibility of threats of exclusion broaden the calculus governments face. Governments may threaten to cooperate with other member states or even with non-Community member states. Governments must then evaluate potential agreements not only against unilateral alternatives, but also against the potential negative consequences that joint policies of alternative coalitions might create.<sup>45</sup> In this situation, governments may agree to terms that leave it worse off than the status quo.<sup>46</sup>

Finally, if governments have differential preference intensities across issues, it may be to the advantage of both to exchange concessions. However, opportunities for linkage strategies are limited by opposition from domestic constituents. Linkage is therefore viable only in [x] situations: if gains and losses are internalized to the same groups, if benefits are concentrated but the costs are imposed on relatively diffuse and unorganized domestic constituents, and if the distribution of domestic costs is uncertain because the decision on the precise implementation is postponed.<sup>47</sup> Although conservation policy constituted the most important and contentious element of the CFP, it is closely linked to structural policy. Distributional consequences of access restrictions or quota reductions may be offset by financial aid for restructuring or modernization.

An assessment of the extent to which bargaining outcomes can be explained by the concept of asymmetrical interdependence must therefore reflect on the credibility of threats of non-agreement and threats of exclusion, and on the viability of issue linkages. Moreover, these threats require explanation based on the geographical, structural and legal factors I have identified above.

## The Third Stage: Institutional Choice

The third stage concerns the choice to delegate or pool sovereignty in supranational institutions. Sovereignty is pooled when governments introduce decision-making procedures other than unanimity, such as the qualified majority voting (QMV) procedures which apply to matters under the CFP. Sovereignty is delegated when supranational actors can take certain autonomous decisions.<sup>48</sup> On fisheries policy, the Commission enjoys the authority to propose legislation and act on behalf of the Community in negotiations on fishing rights with third states. Moravcsik contrasts three types of explanation for decisions to delegate or pool sovereignty: belief in federalist ideology, the need for technocratic coordination and the desire for more credible commitments. The federalist view

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<sup>45</sup> Moravcsik, *The Choice for Europe*, 64.

<sup>46</sup> Moravcsik, "Preferences and Power in the European Community," 503.

<sup>47</sup> Moravcsik, *The Choice for Europe*, 65.

<sup>48</sup> *Ibid.*, 67.

maintains that positions concerning the choice of institutions reflect federalist or nationalist beliefs.<sup>49</sup> The technocratic view maintains that the complexity of modern economic planning requires considerable technical and legal information and that centralized authorities are best placed to exploit informational technologies of scale.<sup>50</sup> According to the last type of explanation, pooling and delegation are strategies to pre-commit governments to a stream of future decisions by raising the costs of non-decision or noncompliance.<sup>51</sup>

Regarding fisheries management, the distinction between the latter two explanations is largely fictional. Both the need for technocratic expertise and management, as well as a need to increase the credibility of commitments have long been recognized.<sup>52</sup> For this reason and for practical purposes, the analysis in this thesis is restricted to the first and second stage of this framework.

The empirical chapters therefore analyze preference formation in terms of commercial interests, and interstate bargaining in terms of patterns of asymmetrical policy interdependence. Although member states face incentives to coordinate conservation policies, they will have different preferences regarding precise quota allocations, TAC levels, and national quota allocations. I will illustrate how these preferences were premised on perceptions of commercial interests. In the second stage, member states bargain over the precise distribution of costs and benefits under an agreement. I will illustrate how credible threats of non-agreement and exclusion shape agreements. Crucially, the credibility of such threats was shaped by the existing institutional environment, which is discussed in the next chapter.

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<sup>49</sup> Ibid., 70.

<sup>50</sup> Ibid., 71.

<sup>51</sup> Ibid., 73.

<sup>52</sup> The foundation of the International Commission for Exploration of the Seas (ICES) in 1902 reflected the need for technocratic management. Technical advice from the Advisory Committee on Fishery Management still informs the level of TACs in Commission proposals. Moreover, the failure of the North East Atlantic Fishery Commission to address overfishing has been attributed to its complex decision-making procedures that required near-unanimity. Hence, the need to pool sovereignty by majority voting procedures had already been established. See also: Wise, *The Common Fisheries Policy of the European Community*, 79-83

## Chapter 2: Prologue - International Fisheries in Context (1951-1975)

Between 1976 and 1983, discussions on the CFP centered on the three related questions of access to resources, resource conservation and resource allocation. These negotiations took place within an institutional environment that was shaped by Articles 100 through 103 of the 1972 Treaty of Accession.. Commitments under the Treaty of Accession limited the viability of unilateral policy alternatives. Specifically, the Treaty provided for conditions of equal access to all waters coming under the jurisdiction of member states, which necessitated cooperation among member states for effective conservation policies. The present chapter therefore seeks to explain the emergence of Community legislation on access to fishing grounds that existed pre-1976.

### The CFP in the Community of Six (1966-1970)

Between 1966 and 1970, discussions on the CFP were dominated by the issues of structural aid and access to national zones. A compromise was struck under which France lifted its objections to the principle of equal access to national fishing zones in return for structural Community aid to modernize outdated fleets.<sup>53</sup> These measures were contained in Council Regulation (EEC) 2141/70 and 2142/70. The ‘equal access principle’ maintained that “rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment of other member states. Member states shall ensure in particular equal conditions of access to and use of [their] waters.”<sup>54</sup> The regulations also provided for a market organisation with support prices and the provision of structural aids. In response to concerns about Norwegian industrial fishing which member states wanted to see curbed, article 5 transferred onto the Community the power to take necessary conservation measures where there is a risk of overfishing.

Demands for a CFP had been the result of increasing competitive pressures on French and Italian fishing industries. Before 1966, member states had still imposed tariffs on each other’s fish exports, with tariffs varying from 25 percent in France, to 0 percent in the Netherlands and West-Germany. Consequently, price levels in France were generally much higher than in other

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<sup>53</sup> In 1970, national zones extended 12 nautical miles off the coast under the European Fisheries Convention of 1964. In the inner six miles, the coastal state was given absolutely exclusive fishery rights. In the 6- to 12-mile zone, the exclusive rights of the coastal state were limited to the extent that states that had fished within this belt between 1953 and 1962 could continue to exercise these historical rights. See: Wise, *The Common Fisheries Policy in the European Community*, 75.

<sup>54</sup> Council Regulation (EEC) 2141/70 (hereafter: “Regulation 2141/70”), adopted on 20 October 1970, Article 2.

member states.<sup>55</sup> As differences in external and internal tariffs were gradually eliminated under the Community's Common Customs Tariff (CCT) in the 1960s, French and Italian industries faced greater foreign competition and the primary objective of France and Italy was thus to involve Community funds in the modernisation of their salt cod and tuna fleets.

When in 1968 the Commission responded to French and Italian demands with a formal proposal, a legalistic discussion developed, that actually reflected national commercial interests. The Commission argued that the equal access provision would best ensure application of the non-discrimination principle of the Treaty of Rome. France raised objections to this provision and put forward legal arguments that supposedly demonstrated conflict between such provisions and for non-discrimination principle contained in the Treaty of Rome.<sup>56</sup> West-Germany, together with the Netherlands and Belgium, countered these legal arguments and insisted that the Treaty of Rome Articles forbidding discrimination on grounds of nationality required equal access to national zones and territorial waters.<sup>57</sup>

It is important to distinguish here between negotiating strategy and policy preferences. France was well aware of the importance other member states attached to the equal access provisions before the enlargement negotiations with the UK, Ireland, Norway and Denmark, and used its reservations as leverage to gain agreement on structural aid, market support and external trading arrangements that would serve to protect the internationally uncompetitive fishermen of France. With a view to their relatively short coastline, West-Germany, the Netherlands and Belgium insisted on completion of a CFP based on equal access. Only this provision implied significant gains as it would provide for access to the fish-rich national zones of the four applicant states.<sup>58</sup> Community member states had recently been evicted from coastal areas under the European Fisheries Convention of 1964.<sup>59</sup> The proposal for structural funding, by contrast, implied financial transfers from West-Germany to the

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<sup>55</sup> Wise, *The Common Fisheries Policy in the European Community*, 86.

<sup>56</sup> The French argued that fishermen exercising activities in the waters of a member state of which they were not nationals would enjoy a commercial advantage if they were subject to less stringent laws concerning social security or permitted fishing gear. Instead, French negotiators maintained that 'the right of establishment' could best assure non-discrimination. This right would permit foreign vessels to fish in national waters provided they were registered in that Member State and thus subject to its laws.

<sup>57</sup> For an overview of the legal arguments see: Wise, *The Common Fisheries Policy in the European Community*, 94-97; or Leigh, *European Integration and the Common Fisheries Policy*, 27.

<sup>58</sup> The economic importance of access to coastal areas cannot be overstated. Several coastal areas may inhabit well-balanced stocks of valuable species. Herring, for instance, spawns in areas off the coast of the UK and Ireland, nursery areas are located off the coast of the Netherlands and Ireland, while feeding areas are situated around Ireland and between the UK and Norway. See: Wise, *The Common Fisheries Policy in the European Community*, 58-67. Second, inshore fishing requires smaller investments than acquiring a long-distance fleet. Securing access to larger national zones puts domestic inshore fishermen at an advantage.

<sup>59</sup> Under the 1964 European Fisheries Convention, exclusive national fishery zones had been extended from 3 to 6 miles, with fishing in a 6- to 12-mile zone reserved for those who can demonstrate historical rights. For an overview of the development of exclusive national fishing zones and the conflicts these discussions produced, see: *Ibid.*, 69-78.

French and Italian fleets.<sup>60</sup> Thus, West-Germany, the Netherlands and Belgium insisted that they would not support structural modernisation funds unless their fishermen could benefit from equal access to exclusive zones of the enlarged Community.

A compromise was struck on 30 June 1970, hours before the accession negotiations were scheduled to begin. Under this compromise France lifted its reservations about equality of access to fishing grounds on the condition that Community structural aid would be introduced to ensure a fair standard of living for fishermen affected by this provision. Equality of access was thus firmly inscribed into the *acquis communautaire* before enlargement negotiations began, serving the interests of all Community member states, including France. Because accepting the *acquis* was a principle of enlargement and any derogations could only be temporary, reaching an agreement on equal access held the prospect of access to the fish rich zones of the applicants.<sup>61</sup>

The original Common Fisheries Policy was thus a product of a commercial interests of the fishing industries of the original six member states of the Community. It is questionable whether a compromise would have been reached at this early stage in the absence of impending enlargement negotiations. At the same time, the equal access principle would cast its shadow over the enlargement negotiations that followed. At the time the full implications of both the equal access principle as well as article 5 on conservation measures went unnoticed, because the Community did not yet dispose of an extensive maritime zone. After the accession of the UK, Ireland and Denmark in 1973 and the advent of 200-mile Exclusive Economic Zones (EEZs) in 1976, however, the equal access principle and the Community's conservation powers would apply to a vast maritime area that inhabited the world's richest fishing grounds.<sup>62</sup>

## Enlargement and the CFP (1970-1972)

The Treaty of Accession, signed on 22 January 1972, contained four Articles on fisheries policy. Article 100 and 101 provided for a ten-year derogation to the principle of equal access contained in Article 2 of Regulation 2141/70.<sup>63</sup> They permitted the extension of national fishing zones to 12 nautical miles for certain areas, including the Faroe Islands, Greenland, and extensive parts of the Irish and British coasts.<sup>64</sup> Article 102 stipulated that from the sixth year of accession, the Council shall determine the conditions for fishing with a view to conservation of fishing resources. Finally, article 103 specified that before 31 December 1982, after which date the derogations in Article 100 and

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<sup>60</sup> Ibid., 95-98.

<sup>61</sup> Churchill and Owen, *The EU Common Fisheries Policy*, 5.

<sup>62</sup> Leigh, *European Integration and the Common Fisheries Policy*, 31,

<sup>63</sup> For the text of Articles 100 to 104 of the Treaty of Accession, see Appendix A2.

<sup>64</sup> A specification of the areas for which the limit of six nautical miles shall be extended to 12 nautical miles is given in Article 101 of the Treaty of Accession, see Appendix A2.

Article 101 would expire, the Council shall examine the provisions which could follow the derogations, based on a report from the Commission on the economic and social development of coastal areas.

The negotiations had essentially revolved around two questions: the extent of exclusive national zones, and the expiration date of the derogations to the principle of equal access. The four applicant states perceived this principle as a threat to their interests in different degrees, depending on the relative importance of the inshore and distant-water sectors of the industry. Norway's primary objective was to safeguard the 12-mile exclusive national fishing zone it had established in 1961 in order to protect its inshore industry with the aim of preventing depopulation of its vast coastal area, for economic, social, and strategic reasons.<sup>65</sup> Ireland's fishing industry was relatively undeveloped and lacked a distant-water fleet. Ireland therefore stood to gain from structural Community aid, but opposed a generalization of the principle of equal access.<sup>66</sup> Denmark proposed a differentiated access regime, under which Greenland and the Faroes would be granted an exclusive zone of 12 miles. For areas not heavily dependent on fishing, a regime of equal access conditions should apply, which served the interests of the catch industry of mainland Denmark, which depended on access to waters beyond its coastal zone.<sup>67</sup> Finally, the UK's primary objective was to secure access to Norwegian coastal areas for its trawler fleet. However, under pressure from its inshore industry, the UK aimed to negotiate derogations to the principle of equal access based on the London Convention of 1964.<sup>68</sup> This implied an exclusive national zone of six miles, which extended to 12 miles for areas heavily dependent on fishing. As a final argument for exclusive zones Norway, Ireland and the UK raised the need for adequate conservation measures, which required national jurisdiction over coastal stocks.<sup>69</sup>

Negotiations began in June 1971 and took place under pressure from the approaching signature date of the Treaty of Accession, which was scheduled for early 1972. A compromise was struck on 11 and 12 December between the Original Six on the one hand, and the UK, Ireland and Denmark on the other. The compromise provided for aforementioned derogations during a period of ten years. Most contentious proved the review clause. Whereas Norway, the UK and Ireland had demanded continuing assurances to their inshore fishermen, the Original Six would not yield. Unless the Council took decisions to the contrary, equal conditions of access, contained in Article 2 of Regulation 2141/70, would apply throughout the Community after 31 December 1982. Finally, to accommodate concerns about overfishing, Article 102 stipulated that the Council would agree on adequate measures within six years. The willingness on the part of the UK and Ireland to concede these concessions on the review clause is attributed to the greater importance they attached to other

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<sup>65</sup> Wise, *The Common Fisheries Policy of the European Community*, 109.

<sup>66</sup> *Ibid.*, 115-117.

<sup>67</sup> *Ibid.*, 117.

<sup>68</sup> Leigh, *European Integration and the Common Fisheries Policy*, 41.

<sup>69</sup> *Ibid.*, 42; Wise, *The Common Fisheries Policy of the European Community*, 140.

elements in the Accession Treaty.<sup>70</sup> Moreover, the British government knew itself assured of the support from the distant-water fleet, which had been persuaded that the CFP would provide access to the Norwegian zone.<sup>71</sup>

Norway, however, rejected the compromise, because it sought both a further southward extension of the area to which a 12-mile exclusive zone would apply as well as firmer guarantees concerning continued protection of its inshore fishermen.<sup>72</sup> After a further month of negotiations, the applicant states and member states agreed on a further southward extension (to Egersund) and a special protocol which recognized the great importance of the fishing industry to Norway and foresaw the possibility of an extension of the derogations beyond 1982. It was signed on 15 January 1972, just seven days before the signature date of the Treaty of Accession. Although the protocol was not legally binding, the Norwegian government presented it as a real guarantee domestically to appease anti-market forces.<sup>73</sup>

Whereas the UK, Ireland and Denmark eventually ratified the Treaty of Accession, the Norwegian electorate rejected the Treaty in a referendum with 53.5 percent of the vote. Norwegian fishermen voted solidly against accession, and the agreement on fisheries policy is thought to have tilted the balance in favour of the anti-market campaign.<sup>74</sup>

Combined, Regulation 2141/70 and Articles 100 through 103 of the Treaty of Accession defined the institutional environment within which negotiations on conservation policy would take place between 1976 and 1983. Although member states could exercise their right to veto under the Luxembourg Compromise, revision of the principle of equal access required a positive decision before 1982, which limited the possibility of unilateral policy alternatives. Unforeseen at the time however, the European Court of Justice would come to interpret Article 102 of the Treaty of Accession to mean that from 1 January 1979 onwards, the competence to adopt conservation measures had become exclusive to the Community. This further restricted the potential for unilateral policy alternatives and limited the viability of obstructionist strategies in the Council.

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<sup>70</sup> Wise, *The Common Fisheries Policy of the European Community*, 140.

<sup>71</sup> Leigh, *European Integration and the Common Fisheries Policy*, 46.

<sup>72</sup> *Ibid.*, 46.

<sup>73</sup> *Ibid.*, 49.

<sup>74</sup> Van Meurs, Wim et al. *The Unfinished History of European Integration*, 91-92, 122.

## Chapter 3: Compromise and Deadlock (1976-1979)

This chapter analyzes Dutch preference formation and interstate bargaining among Community member states from 1976 to 1979. The first section analyzes the negotiations on The Hague Compromise in 1976. The second section describes the deadlock that characterized the negotiations between 1977 and 1979. In each section, analysis proceeds in two stages. The first stage describes the influence business representatives wielded over preference formation in the Netherlands. The second stage analyzes the process of interstate bargaining in terms of patterns of asymmetrical policy interdependence, and the related credibility of threats to veto or exclude.

### UNCLOS III and The Hague Compromise (1976)

After the accession negotiations, the Hague Compromise of 30 October 1976 was the first major agreement in the development of the Common Fisheries Policy on the question of access to national fishing zones. Under this compromise, the Council decided on a concerted extension of the limits of national fishing zones to 200 nautical miles with effect from 1 January 1977. Moreover, the Council transferred onto the Commission the authority to conduct negotiations on access rights with certain third countries. Finally, the council recognized the particular socio-economic dependence on fishing of Greenland and “northern parts” of the UK and guaranteed Ireland an increase in national catch from 75,000 tonnes to 150,000 tonnes. Although no conservation measures were taken - notwithstanding Commission efforts to this end - the Council decided under Annex IV that that pending a Community agreement on conservation measures, individual member states could take appropriate measures within their zones on an interim basis provided that such measures were non-discriminatory and member states had sought the Commission’s approval.

The most acute interest in a concerted extension of fishery limits to 200 miles originated in the UK. The British government aimed to exclude foreign vessels from Community waters, which would serve two purposes. First, the UK wanted to provide its distant-water fleet, which was progressively excluded from third country waters, with new employment in Community waters. Second, the UK wanted exploit the Community’s bargaining power to negotiate favorable access agreements with third countries. Thus, authority to negotiate would have to be transferred onto the Commission.<sup>75</sup>

This progressive exclusion of the distant-water fleets of the Community found its origins in the advent of 200-mile Exclusive Economic Zones (EEZs) during the 1970s. In anticipation of the

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<sup>75</sup> Driscoll and McKellar, “The Changing Regime of North Sea Fisheries,” 147.

universal adoption of EEZs, the government of Iceland had announced the establishment of a 200-mile fishing limit with effect from October 1975.<sup>76</sup> The Norwegian, Canadian and American zones would be established early in 1977. Exclusion from these waters would require a major diversion of the Community fishing effort. Based on 1975 estimates by the Commission, 27 percent of Community catches in 1973 were obtained from third country waters and these were disproportionately higher value catches.<sup>77</sup> The direct losses to member states are presented in Table 1 and vary markedly. Whereas the West-Germany and the UK stood to lose 68 percent and 36 percent of national catches respectively, the Netherlands obtained a mere 3 percent of its national catch in third country waters. In absolute value terms, the UK would suffer the highest losses.

Table 1: Estimated potential losses for Community member states under a 200-mile fishing limit regime

	Loss in tonnes	% of national catch (1973)	Loss in million EUA	% of total EEC losses
UK	378,000	36%	158,884	50%
West-Germany	283,700	68%	89,619	28%
Denmark	199,300	14%	29,403	9%
France	159,900	27%	38,031	12%
Belgium	7,800	16%	2,240	0.7%
Netherlands	7,000	3%	1,751	0.5%
Ireland	-	-	-	-
Total EEC	1,134,800	27% of EEC catch in 1973	319,928	100%

Source: Wise, *The Common Fisheries Policy of the European Community*, 143-145

## Domestic preferences

Over the course of 1976, the Netherlands had developed a policy position on the three related issues of access to national zones, conservation and allocation. First, the Netherlands had hitherto been an ardent defender of the principle of unrestricted access to international waters. Consequently, in its conclusions of 15 and 22 June 1976, the Coordinating Committee for European Affairs

<sup>76</sup> In 1974, the third United Nations Conference on the Law of the Sea convened in Caracas and continued in New York and Geneva afterwards. A key problem in these discussions concerned the adoption of a 200-mile national (EEZs). By May 1975 most participants had accepted the principle that coastal states should exercise jurisdiction over the exploitation within natural resources within EEZs. Although negotiations in UNCLOS III remained deadlocked, it became clear that 200-mile EEZs would become the norm.

<sup>77</sup> Wise, *The Common Fisheries Policy of the European Community*, 143-145.

(Coordinating Committee) had judged it “untimely” and “undesirable” to establish 200-mile national fishing limits before negotiations in the United Nations had been completed.<sup>78</sup> Second, according to the same document, the Netherlands supported the principle of equal access as contained in Regulation 2141/70, and outright rejected “every conception of exclusive fishing zones that exceed provisions contained in the Accession Treaty.”<sup>79</sup>

Finally, the Netherlands supported adopting conservation measures at the Community level, and allocation of national quotas to member states based on historical catch performances. Since 1973, awareness had been growing in Dutch government circles of the need to adopt reduced Total Allowable Catches (TACs) for depleted stocks in the North Sea. In 1973, officials from the Ministry of Agriculture noted in internal communications that growth rates of fish stocks did not keep up with growth in catches and consequently that “in national and international circles the conviction grows that [conservation] measures should be extended to include multiple stocks of fish”.<sup>80</sup> The organisation that had been established to address overfishing, the North East Atlantic Fisheries Commission (NEAFC), failed to take the necessary conservation measures. In spite of growing evidence of overfishing well before the post-1965 decline in catch levels, TACs were set well in excess of scientific recommendations. By 1976 the herring crisis had become so acute that a total ban on industrial fishing of herring was adopted unanimously, and herring TACs were reduced from 494,000 tonnes in 1974-1975 to 160,000 tonnes.<sup>81</sup>

A letter dated 27 February 1976 from the Director General responsible for Fisheries to the Foundation of Dutch Fisheries (“the Foundation”) sheds further light on the preferences regarding potential outcomes of negotiations: “establishing Community zones is to be preferred over a situation in which the Dutch zone is confined to the ‘equi-distance-lines’ of neighbouring countries”.<sup>82</sup> Moreover, the adoption of 200-mile fishing zones by third countries implied an “unacceptable” intensification of the fishing effort in zones that had traditionally been fished by Dutch vessels, and consequently Community policies required revision. Although it was Dutch policy to refrain from

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<sup>78</sup> Nationaal Archief, Den Haag, Ministerraad, catalog reference number 2.02.05.02 (NL-HaNA, Ministerraad, 2.02.05.02), inv. number 1974, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated June 15 and 22, 1976.

<sup>79</sup> Ibid.

<sup>80</sup> Nationaal Archief, Den Haag, Ministerie van Landbouw, Natuur en Voedselveiligheid, Directie Visserijen en de Stichting Ontwikkeling en Saneringsfonds voor de Visserij, catalog reference number 2.11.58, inventarisnummer 125, (NL-HaNA LNV / Directie Visserijen, 2.11.58), inv.nr. 125. Minutes of a management meeting of the Fisheries Department, dated June 20, 1973.

<sup>81</sup> Driscoll and McKellar, “The Changing Regime of North Sea Fisheries,” 133.

<sup>82</sup> (emphasis mine) Nationaal Archief, Den Haag, Productschap Vis, catalog reference number 2.25.82, inventory number 20, (NL-HaNA, Productschap Vis, 2.25.82, inv. number 20), Letter from the Director General for Land Development and Fisheries of the Ministry of Agriculture to the Chairman of the Foundation of Dutch Fisheries.

extending national zones before the completion of negotiations, the Netherlands preferred a concerted extension of Community zones over unilateral measures by neighbouring countries.<sup>83</sup>

Dutch policy preferences were similar to articulated business interests. On the issue of access, the position of the Fisheries Board (“the Board”) had rather explicitly been communicated to representatives of the Ministry of Agriculture in May 1976: “[Fishing] industries will not be willing to agree to exclusive national fishing zones in the event the North Sea becomes a Community sea.”<sup>84</sup> Moreover, the Board voiced support for a letter dated 12 February 1976 from the Foundation of Dutch Fisheries (“the Foundation”) to the Minister of Agriculture requesting him not to offer concessions to the UK in violation of the equal access provisions of the Accession Treaty.<sup>85</sup> These positions are hardly remarkable, as the Dutch fishing sector depended strongly on access to British and Irish zones. According to Commission estimates, 61 percent of Dutch catches were obtained from the zones of other Community member states, particularly from British and Irish zones.<sup>86</sup> On the question of conservation, the Foundation had already come out in favor - be it reluctantly - of setting total allowable catches for plaice, sole and herring in 1974 - the year the first TACs were adopted by NEAFC - in a letter to the Minister of Agriculture, provided the government would offer financial support to the sector to compensate for financial losses.<sup>87</sup>

## Interstate bargaining

The Commission’s new thinking on access, conservation and allocation, first presented to the Council on 24 February and formally proposed in September, immediately proved unacceptable and deadlock ensued. The Netherlands judged these proposals favorably. On access, the Commission proposed a concerted introduction of 200-mile fishing limits, and an extension of the coastal belt reserved for inshore fishermen from 6 to 12 miles for an indefinite period. Traditional rights would gradually be eliminated. For third country access rights, the Commission wanted to establish framework agreements based on reciprocal fishing rights. Regarding conservation, the Commission proposed setting TACs for stocks, along with technical measures such as mesh size, permissible equipment and closed seasons and areas. Finally, to allocate as national quota of shares aforementioned TACs, the

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<sup>83</sup> Ibid.

<sup>84</sup> NL-HaNA, Productschap Vis, 2.25.82, inv. number 20, Minutes of a meeting between the Fisheries Board and representatives of the Fisheries Department, dated May 11, 1976.

<sup>85</sup> NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv.nr. 125, Letter to the minister of agriculture from the Foundation of Dutch Fisheries, dated Feb. 12, 1976.

<sup>86</sup> Wise, *The Common Fisheries Policy of the European Community*, 143-145.

<sup>87</sup> NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv.nr. 125, Letter from the secretary of the Board of the Foundation of Dutch Fisheries, Mr Boelmans Kranenburg, to the director of the Fisheries Department, Mr Tienstra, dated Oct. 30, 1974.

Commission proposed a system based on historical catches in a reference period to be determined and a priority allocation to British and Irish populations dependent on fishing.<sup>88</sup>

The outcome of the negotiations concerning extended zones, external relations and access diverged sharply from these proposals and can best be explained by the pattern of asymmetrical policy interdependence. On the issue of extended zones, two factors contributed to the substance of The Hague Compromise. First, for the UK, along with West-Germany, establishment of 200-mile national zones by third countries in 1977 necessitated a decision on the extension of limits before the end of 1976. Second, although the UK preferred a Community decision, it could credibly threaten to extend its limits unilaterally, since the British zone contained 60 percent of the Community's fish.<sup>89</sup> Most continental member states were therefore anxious to preserve access to the British zone and preferred a decision which would underline the *communautaire* character of these fishing limits. Thus, when the UK threatened an unilateral extension of its zone in May 1976, the government of the Netherlands decided in July 1976 to cease resisting a Community extension of fishing zones, on the condition that such limits were considered "*les limites de pêche de la Communauté*" and the non-discrimination principle would not be abandoned.<sup>90</sup>

On the issue of access, positions were irreconcilable. France, West-Germany, the Netherlands, Belgium and Denmark, strongly favored equal access conditions to fishing grounds and found support for these claims in Regulation 2141/70 as well as the provisions of the Accession Treaty. The UK and Ireland, on the other hand, under pressure from their inshore fleets, claimed a variable belt ranging between 12 and 50 miles off the coast reserved for inshore fishing.<sup>91</sup>

In the discussions, Ireland assumed a pivotal position. Its underdeveloped fishing industry lacked a distant-water fleet and Ireland could therefore credibly threaten to withhold agreement on arrangements with third countries. Ireland made its support for any agreement conditional on securing the doubling of catches and Community aid for the progressive development of its fishing industry.<sup>92</sup> The position of Ireland as 'spanner in the works' is also discussed among Dutch government officials. After a Council meeting of the Ministers of Foreign Affairs on 18 and 19 October, Dutch Minister Van der Stoep explained to his colleagues in the Council of Ministers of 22 October that Ireland had refused to negotiate its claim for an exclusive 50-mile zone, unless its demands were met. The Dutch government was of the opinion that a Community solution ought to be found for the Irish problem at the Council meeting of 28 and 29 September in The Hague. According to the Dutch, the real threat lay

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<sup>88</sup> For a detailed overview of the Commission's proposals, also on issues such as licensing, aid for structural reform, and Community action in international organisations, that are beyond the scope of this study, see Wise, *The Common Fisheries Policy of the European Community*, 149-157.

<sup>89</sup> *Ibid.*, 143-145.

<sup>90</sup> (emphasis mine) NL-HaNA, Ministerraad, 2.02.05.02, inv. number 1982, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated July 14, 1976.

<sup>91</sup> Leigh, *European Integration and the Common Fisheries Policy*, 70.

<sup>92</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 27.

in the possibility of unilateral measures on the part of the UK. Minister of agriculture Van der Stee pointed out that Irish catches constituted a mere 3 percent of Community catches and substantial increase could therefore be offered.<sup>93</sup>

The Hague Compromise, formally adopted by written procedure on 3 November, reflects this complex pattern of interests and credible threats to withhold agreement or take unilateral measures. To most member states, the agreement proved broadly satisfactory; the lack thereof on crucial issues did not. For the continental member states - the Netherlands included - the open access character of Community waters had not been affected, and the principle of non-discrimination had been reaffirmed. Moreover, these arrangements were in line with the articulated interests of Dutch Fishing industries. However, the looming spectre of 50-mile coastal belts would continue to haunt the negotiations, as the UK and Ireland had not abandoned their claims. Although the Council had decided to freeze catches in 1977 at 1976 levels, this would be inadequate to address the escalating conservation crisis affecting the Community's fishing grounds, which, as commentators have pointed out, "have no appreciation for the problems of international politics."<sup>94</sup>

## “Britannia waives the rules” (1977-1979)

During the negotiations that followed The Hague Compromise, a persistent stalemate developed that proved impossible to resolve. Three questions were central to these negotiations. First, what criteria should determine Community TACs for various species? Second, how should shares of TACs be allocated to member states? Third, by what conditions of access should apply: a regime of equal access or restricted access? Throughout, the UK adopted an isolated position by invariably demanding some form of preferential treatment on access and allocation that reflected its 'contribution' of 60 percent to the 'Community Pond' of fish. The UK's uninterrupted claims for large exclusive zones that ran counter to the provisions of the Accession Treaty and the Rome Treaty moved the Chairman of the Board to lament in 1978 that while in the past "Britannia had ruled the waves, today Britannia waives the rules".<sup>95</sup>

## Domestic preferences

On these three questions, the fisheries industry in the Netherlands had clearly articulated its interest. On TACs, the position of Dutch businesses began to reflect the relative intensity of the interests of

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<sup>93</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 1932, Minutes of the Council of Ministers, dated Oct. 22, 1976.

<sup>94</sup> Driscoll and McKellar, "The Changing Regime of North Sea Fisheries," 133

<sup>95</sup> NL-HaNA, Productschap Vis, 2.25.82, inv.nr. 21, Annual address over 1977 of the Chairman of the Fisheries Board, dated April 18, 1978.

present producers compared to future producers.<sup>96</sup> They challenged the Maximum Sustainable Yield (MSY) as the primary management target. Instead business representatives began to advocate setting higher TACs that would maintain employment, characterized as an approach that strikes “a balance between what is biologically desirable and economically feasible.”<sup>97</sup> In 1978, the Chairman of the Board asserted that “Dutch industry is well aware of the need to adopt policies to conserve herring stocks” but at the same time asserted he “could not understand the rejection of the request for quotas for herring in light of the agreement on allowing herring by-catches for Danish industrial fishing”.<sup>98</sup> Consequently, total or limited bans on fishing for herring were strongly rejected by the Board.<sup>99</sup>

On the issue of access, the Dutch government and industry continued to adopt the same initial position as in 1976. On 22 December, the Director of the Fisheries Department, Mr Tienstra, attended a meeting of the Board, to stake out the Dutch strategy for the negotiations to come. To the Netherlands, the British and Irish demands for 50-mile exclusive national zones were particularly worrying. In effect, given the configuration of the Irish and British 200-mile/median line zones, establishing 50-mile zones would reserve the greater part of the British zone for British fishermen.<sup>100</sup> As a consequence, Dutch herring fisheries would demise and other sectors would be reduced to one-third of their original size. Large exclusive zones were therefore to be rejected. Moreover, the Netherlands sought to avoid technical conservation measures, such as minimum mesh sizes. Opinions differed within the Community under the legality of such measures under Annex IV of The Hague Compromise. With striking foresight, Mr Tienstra feared such measures might be exploited to discriminate against Dutch vessels. Instead of access restrictions and technical measures, the Netherlands defended the position that TACs and quota allocation were the most effective instruments to address overfishing. Fortunately, the Netherlands knew itself assured of West-German support on those two issues.<sup>101</sup>

How well aware Dutch policy makers were of the interests of the Dutch catch industry is best illustrated by several policy documents that were drafted by the Fisheries Department in June 1977 in preparation of a meeting with the Minister of Agriculture, Fons van der Stee. The Ministry had prepared a detailed overview of fishing interests in Community waters. Table 2 and Figure 1 were contained in these files and show that 68 percent and 22.5 percent of Dutch herring catches were obtained within 50-miles off the British coast and Irish coast respectively. Herring catches within

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<sup>96</sup> See chapter 1, page 15-16.

<sup>97</sup> NL-HaNA, Productschap Vis, 2.25.82, inv.nr. 20, Annual address over 1976 of the Chairman of the Fisheries Board, dated April 21, 1977.

<sup>98</sup> NL-HaNA, Productschap Vis, 2.25.82, inv.nr. 21, Annual address over 1977 of the Chairman of the Fisheries Board, dated April 18, 1978.

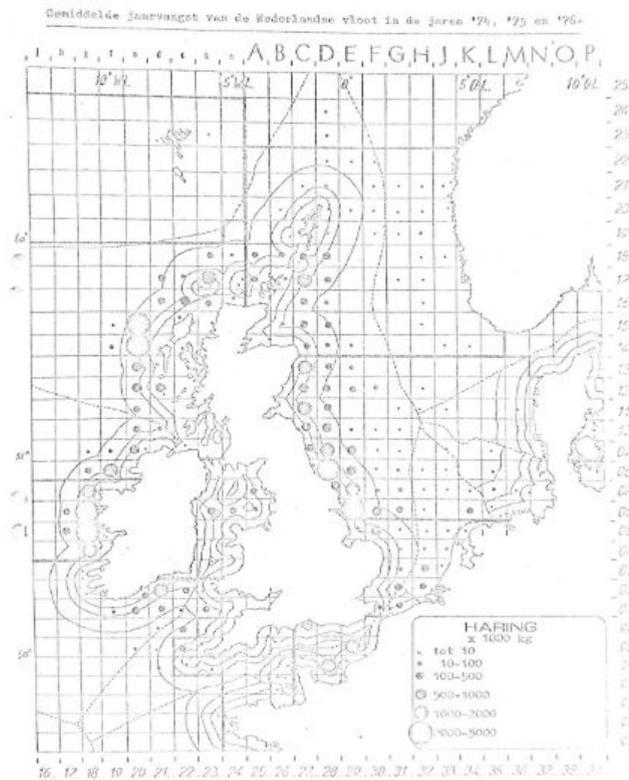
<sup>99</sup> Ibid.

<sup>100</sup> Wise, *The Common Fisheries Policy of the European Community*, 170.

<sup>101</sup> L-HaNA, Productschap Vis, 2.25.82, inv. number 20, Minutes of the meeting of the Fisheries Board, dated Dec. 22, 1976.

these zones constituted over one-fifth of total landings in 1974, 1975 and 1976. Demands for exclusive 50-miles zones therefore posed a serious threat to Dutch interests. Moreover, total interests in the 12-mile coastal zones of the UK and Ireland made up 4.7 percent of catches. A phasing out of historical rights ought to be prevented.

Figure 1: Average annual herring catches by Dutch vessels in 1974-1976 by maritime zone



Source: NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv. number 126, Files for the Fisheries Management meeting, dated June 26, 1977

As a final issue, Dutch businesses frequently criticised the failure of the Council to adopt a final agreement. The uncertainty this created prevented Dutch businesses from adequate planning and an agreement would allow the Dutch government to develop policies to mitigate the economic impact of reduced catch opportunities. In his annual address of 1977, the Chairman of the Board stated that “one cannot accept that the hassle in Brussels threatens the existence of an industry with a centuries-old history”.<sup>102</sup> In a letter to the Minister of Agriculture dated 13 December of the same year, the Board added that interim measures preclude Dutch businesses from developing long-term business plans.<sup>103</sup> Analytically, these concerns over ongoing uncertainty seem to confirm the prediction that highly specialized and capitalized industries prefer stability at an early stage over

<sup>102</sup> NL-HaNA, Productschap Vis, 2.25.82, inv. number 20, Annual address over 1976 of the Chairman of the Fisheries Board, dated April 21, 1977.

<sup>103</sup> NL-HaNA, Productschap Vis, 2.25.82, inv. number 20, Letter from the Fisheries Board to the Minister of Agriculture, dated Dec. 13, 1977.

uncertain future outcomes that might allocate larger quotas.<sup>104</sup> Overall, Dutch industries sought higher TACs, the allocation of a herring quota to the Netherlands, and unrestricted access to national zones, but with one important caveat. As negotiations wore on, Dutch industries became increasingly concerned about the persistent insecurity and to emphasized the need to reach an agreement.

Table 2: Average annual catches by Dutch vessels in 1974-1976 in tonnes

	Total Dutch catch	In third country waters	In EEC waters	UK			Ireland		
				Zones in nautical miles			Zones in nautical miles		
				0-12	12-24	24-50	0-12	12-24	24-50
Herring	58,975	232	58,743	6,485	12,927	20,719	502	10,227	2,658
In %		0.4%	99.6%	11.0%	21.9%	35.1%	0.9%	17.3%	4.5%
Mackerel	14,423	365	14,036	227	3,320	1,808	1105	2,592	2,019
In %		2.5%	97.5%	1.6%	23.0%	12.5%	7.7%	18.0%	14.0%
Haddock	2,500	917	1,583	5	43	156	-	8	1
In %		36.7%	63.3%	0.2%	1.7%	6.2%	-	0.3%	0.0%
Cod	22,909	660	22,329	26	225	831	-	12	-
In %		2.9%	97.1%	0.1%	1.0%	3.6%	-	0.0%	-
Whiting	12,537	673	12,864	22	193	648	70	221	69
In %		5.0%	95.0%	0.2%	1.4%	4.8%	0.5%	1.6%	0.5%
Plaice	54,612	728	53,894	83	603	3,651	-	1	-
In %		1.3%	98.7%	0.2%	1.1%	6.7%	-	0.0%	-
Sole	14,419	16	12,403	106	363	993	-	20	-
In %		0.1%	99.9%	0.7%	2.5%	6.9%	-	0.1%	-
Total	181,460	2,591	177,869	6,954	17,674	28,806	1,677	13,081	4,747
In %		2.0%	98.0%	3.8%	9.7%	15.9%	0.9%	7.2%	2.6%

Source: Nationaal Archief, Den Haag, ministerie van Landbouw, Natuur en Voedselveiligheid, Directie Visserij en de Stichting Ontwikkeling en Saneringsfonds voor de Visserij (1950-1980), catalog reference number 2.11.58 (NL-HaNA, LNV / Directie Visserij, 2.11.58), inv. number 126, Files for the Fisheries Management meeting, dated June 26, 1977

## Interstate bargaining

The technical measures Mr Tienstra had feared were indeed established unilaterally by UK in January in 1977 and announced by Ireland in February. The UK introduced four of such measures, of which the ban on herring fishing in the North Sea harmed Dutch interests the most. The British government

<sup>104</sup> See chapter 1, page 17.

emphasised that it operated strictly within Annex IV provisions on adopting unilateral conservation measures on an interim basis. Because all measures were adopted on biological grounds and did not discriminate neither in name nor practice, the Council formally adopted such measures in February 1977. The Irish measures which were to take effect from April proved more contentious. Ireland unilaterally introduced a ban on vessels exceeding 33 metres in large areas extending up to 150 miles from the Irish coast. The measure was non-discriminatory in name only, since the Irish fleet possessed only one vessel exceeding 33 metres, whereas all Dutch vessels that normally operated in these waters were longer.<sup>105</sup>

Between 1977 and 1979, the UK frequently found itself in an isolated position on the questions of allocation and access. In 1976 the UK had advocated a 50-mile exclusive belt reserved for the coastal state, initially with Irish support. In May 1977 this demand was dropped in favour of a demand for “dominant preference” in the 12- to 50-mile zone, without clear specification of this concept. At the end of 1977 the UK further specified these demands. The UK proposed phasing out historical rights in the 12-mile zone after 1982, ‘dominant preference’ for the coastal state in the 12- to 50-mile zone that reflected the British contribution of 60 percent of fish, and a normal share of Community TACs in the zone beyond 50 miles. Finally, the UK wanted to reserve the right to adopt national conservation measures in its zone.<sup>106</sup>

During 1977, continental member states therefore aimed to increase pressure on the UK by isolating the UK from Ireland. To the Netherlands finding a solution to Ireland’s problems was urgent in order to prevent the implementation of unilateral measures that would harm Dutch interests.<sup>107</sup> In October, both the UK and Ireland still rejected the Commission’s latest proposal, which provided for a British quota of 21.6 percent of Community catches. The proposal included scientifically-informed TACs for various species and a proposed allocation of quotas based on a member state’s historical catch performance in a reference period of ten years with emphasis on catches in the most recent four years - a method that had earlier found acceptance in the NEAFC. Moreover, the Commission aimed to reserve approximately 6-9 percent of catches for ‘Hague preference regions’. To the dismay of the UK and West-Germany, the Commission proposal only provided for a compensation for ‘jurisdictional losses’ to the extent that third countries could be excluded from Community waters.<sup>108</sup>

By early 1978 a rift between the UK and Ireland had materialized. At the December 1977 meeting the Commission had increased the British share to 32 percent of the main species. When the

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<sup>105</sup> Wise, *The Common Fisheries Policy of the European Community*, 182-183.

<sup>106</sup> *Ibid.*, 186.

<sup>107</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2352, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated March 29, 1977.

<sup>108</sup> Jurisdictional losses were losses that resulted purely from exclusion from the waters of third countries. These losses did not include losses that would have occurred regardless of exclusion because of measures to address overfishing.

UK rejected this proposal as well and demanded a share amounting to 42-46 percent instead, the Irish Fisheries Minister remarked that that this claim was “unreal” as there was insufficient fish available to permit such a “sea lion’s share”.<sup>109</sup> Later, at an informal meeting of Agriculture Ministers in Berlin in January 1978 - which the UK boycotted following a conflict with West-Germany over monetary policy - the seven continental member states managed to persuade Ireland to abandon its claim for 50-mile exclusive belts and accept a proposal the Commission had submitted earlier that month. The UK later rejected the proposal because it did not include ‘dominant preference’ and because it judged the idea of ‘fishing plans’ impracticable in the North Sea where many mixed fisheries existed.<sup>110</sup>

This proposal compensated for 100 percent of ‘jurisdictional losses’ of the UK and West-Germany and had the result of allocating to the UK a share similar to its catches in the 1973-1976 reference period, while Irish catches were increased and continental member states suffered significant losses; the Netherlands suffered the greatest loss at 30 percent of catches (see Table 3). However, exclusive zones would not exceed 12-miles and member states could continue to exercise their historical rights. To further appease the Irish, funds for inspections were promised.<sup>111</sup> Finally, the Irish had been particularly attracted to the idea of ‘fishing plans’ designed to regulate conservation of and access to fish stocks of a particular area without infringing on the general principles of equal access and non-discrimination.

Table 3: The Commission’s national quota proposal for 1978

	1973-76 average catches	% of EEC total	Commission’s 1978 proposal	% of EEC total	% change
West-Germany	440,000	9.6%	388,000	9.4%	- 11.9%
France	617,000	13.5%	576,000	13.9%	- 6.6%
Netherlands	220,000	4.8%	155,000	3.7%	- 30.0%
Belgium	48,600	1.0%	43,000	1.0%	- 11.0%
United Kingdom	1,041,000	22.7%	1,036,000	25.1%	- 0.5%
Denmark	1,746,000	38.1%	1,455,000	35.3%	- 16.6%
Ireland	77,000	1.7%	97,000	2.4%	+ 26.0%
EEC total	4,580,000		4,121,000		- 10%

Source: Wise, *The Common Fisheries Policy of the European Community*, 197

<sup>109</sup> Driscoll and McKellar, “The Changing Regime of North Sea Fisheries,” 147-49.

<sup>110</sup> Fishing plans could extend to areas beyond 12 miles off the coast and would normally relate to endangered stocks or stocks of which the exploitation is of special importance to coastal populations. Fishing plans were supposed to regulate conditions of access and were designed to conserve the stocks of a designated area and ensure priority access to fishermen based in ports adjacent to those areas, for instance by granting preferential licenses. For an overview, see: Wise, *The Common Fisheries Policy of the European Community*, 188-189.

<sup>111</sup> Driscoll and McKellar, “The Changing Regime of North Sea Fisheries,” 150-151.

Some in the Netherlands were ready to offer even further concessions to the UK to reach an agreement. On 13 January 1978 the Dutch Council of Ministers had agreed with the Coordinating Committee's conclusion that under the aforementioned proposal "the interests of Dutch fisheries mainly concern sole, plaice and herring and are served in a way that are not unsatisfactory".<sup>112</sup> Interestingly, the Coordinating Committee had proposed that the Netherlands could consider accepting phasing out of historical rights in the 12-mile coastal zone as well as preferential treatment for inshore fishermen in a zone up to 24 miles off the coast in an effort to reach a settlement.<sup>113</sup> It appears that Minister Van der Stee rejected this conclusion when he declared in the Council of Ministers that he was prepared not to avoid a confrontation with the UK, in particular since he knew himself assured of French support.<sup>114</sup>

An exchange of telex messages between Minister Van der Stee on the one hand and the Board and the Foundation on the other of 29 November 1978 further illustrates the close relationship between business interests and Dutch policy. Both organizations urged the Minister not to respond to British demands for an exclusive 12-mile coastal belt as well as British proposal to freeze fishing at the level of 1977 in the proposed 50-mile zone, which were considered "catastrophic for our fishermen" and would "imply sacrificing a large part of the cutter fleet and total liquidation of the herring fleet."<sup>115</sup> The Minister responded the same day that "he was not prepared to respond these disastrous demands, together with continental colleagues".<sup>116</sup> During the European Council of 4 and 5 December 1978, the Netherlands therefore categorically rejected the British proposal.<sup>117</sup>

Over the course of 1979 no progress was made towards an agreement. The negotiations were deadlocked over both access and quota allocations. Deadlock ensued because most parties to the negotiations lacked incentives to compromise. Continental member states, the Netherlands included, found support in the principle of non-discrimination in the Treaty of Rome, while the Accession Treaty had reaffirmed the principle of equal access. Any derogations from this principle were temporary and would expire by the end 1982. This would threaten the interests of the British inshore fishermen and might induce the UK to compromise. Thus, as long as the conservation crisis would not escalate further, continental member states would be able to exploit this approaching deadline to their

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<sup>112</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2396, Minutes of the Council of Ministers dated Jan. 13, 1978.

<sup>113</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2411, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated Jan. 11, 1978.

<sup>114</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2396, Minutes of the Council of Ministers dated Jan. 13, 1978.

<sup>115</sup> NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv. number 250, Telex message from the Foundation of Dutch Fisheries and the Fisheries Board to the Minister, dated Nov. 29, 1978.

<sup>116</sup> Ibid.

<sup>117</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 8947, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated Nov. 28, 1978.

benefit. For similar reasons, the Netherlands resisted British demands at establishing exclusive fishing zones that threatened its interests.

Moreover, continental member states exploited Ireland's interdependence in two ways. Firstly, member states were well aware that Ireland lacked the resources to modernize its fleet. This modernization was, in turn, necessary to actually land allocated catch quotas. Secondly, on the issue of access, the Community was well aware that Ireland lacked the inspection vessels necessary for surveillance of an extended zone. Ireland thus found itself in an interesting paradox. It depended on Community funds to enforce extended fishing limits, which themselves were judged "a-communautaire" by most member states.

The UK, however, depended least of all on other Community member states to address the central policy externality of overfishing. The first explanation is that British interests in Community waters other than its own were marginal, while 60 percent of the Community's stocks originated in the British zone. It would be impossible to achieve effective conservation policies without British support. Second, under Annex IV, the UK could adopt unilateral measures to conserve stocks of interest to the British fishing sector. The UK could therefore credibly threaten to veto any proposal that did not serve its interests on access and quota allocation.

## Chapter 4: Towards a Final Settlement (1979-1983)

Whereas between 1977 and 1979 a persistent stalemate had developed over the three questions of access to national zones, conservation of fisheries in these zones by Total Allowable Catches (TACs) and technical measures, and subsequent allocation of these TACs as national quotas, by spring 1982 a breakthrough had emerged when France and the UK settled on a compromise over access conditions. I will argue that this breakthrough was facilitated by three factors that reshaped the pattern of preferences and policy interdependence. First, the Commission exploited the judgement of the European Court of Justice in case 804/79 to minimize the significance of deadlock in the Council. Second, with the impending accession of Spain to the Community, France began to favor a limited application of the principle of equal access, which facilitated compromise with the UK. Third, the derogations to the equal access principle contained in the Treaty of Accession were to expire by 31 December 1982. This increased the urgency of concluding an agreement.

### Changing ‘the Rules of the Game’ (1979-1981)

The election of a more Europe-minded Conservative government presented new opportunities to advance negotiations. Firstly, the conflict between the UK and other member states over the British contribution to the Community budget, would provide opportunities for issue linkage, which is discussed later in this chapter. Secondly, the new Minister of Agriculture, Peter Walker, adopted a more flexible approach to the CFP, having criticised his predecessor, John Silkin, for his failure to deliver results. He dropped demands for ‘dominant preference’ within 50 miles in favor of ‘an adequate zone of exclusive access and preferential arrangements beyond. It would be mistaken, however, to attribute this flexibility to the election of a new Conservative government. It is more likely that the elections themselves can partially account for Mr Silkin’s intransigence, because many fishing seats were held with small majorities.<sup>118</sup> Archival evidence suggests that Mr Silkin had already expressed his willingness to offer similar concessions before the elections.<sup>119</sup>

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<sup>118</sup> Nine of twenty-two seats in the House of Commons were held with majorities of less than six percent. A swing of 3 percent to Labour in such constituents could result in five extra seats. See: Wise, *The Common Fisheries Policy of the European Community*, 201-202.

<sup>119</sup> The files of the Fisheries Department contain a report of an informal meeting between Mr Silkin and Olav Gundelach, Commissioner for Agriculture, dated 30 January 1979. According to this report the former was prepared to offer similar concessions. Mr Silkin had proposed to conduct bilateral negotiations with Ireland, France, Denmark and the Netherlands on outstanding issues, such as national conservation measures and a herring quota for the Netherlands. Moreover, he offered to maintain those historical rights that had been exercised, subject to fishing plans. In return, he asked Commissioner Gundelach not to challenge several unilateral measures before the European Court of Justice. See: NL-HaNA, LNV / Directie Visserij, 2.11.58, inv. number 126, memorandum on CFP developments, intended for a management meeting of the Fisheries Department, dated Feb. 16, 1979.

## Domestic preference formation

Although the Foundation of Dutch Fisheries (“the Foundation”) and the Fisheries Board (“the Board”) frequently asserted that the Netherlands had sustained the greatest losses following The Hague Compromise, they were less concerned with the specific distribution of national quotas between member states, than with raising the level of TACs to permit a sizable Dutch quota. To this end, they began to advocate determining TACs based on socioeconomic considerations and a ‘multi-species approach’. Citing the impact on employment figures, both organisations argued for setting TACs in excess of biological advice, to avoid “needless destruction of capital, liquidity problems and disruptions in market supply”.<sup>120</sup> The Foundation and the Board urged the Netherlands to draw attention to employment effects of setting low TACs. The policy memorandum for 1980 raised another argument against the practice of determining TACs. According to the Board and the Foundation, it would be impossible to consistently achieve stock sizes that correspond with the MSY for multiple species, since the growth rates of several species are related through competition and predation.<sup>121</sup> In their view, the UK exploited this ‘mono-species approach’ for political ends because it urged setting low TACs for stocks that were valuable to the Netherlands, such as herring, and permitted high TACs for cod.<sup>122</sup>

On the issue of specific quotas, the Foundation and the Board continued to emphasize the urgent need of allocating a herring quota to the Netherlands. Their policy memorandum for 1979 contained several arguments which the Netherlands could present to other member states and the Commission during Council meetings. A large section of the Dutch fleet was specialized in catching young herring and thus depended strongly on a quota for its survival. Moreover, whereas other member states could fish for herring elsewhere, the Dutch sector depended strongly on herring from the North Sea.<sup>123</sup> In the policy memorandum for 1980 the Board and Foundation therefore claimed that “the allocation of a herring quota in the North Sea in 1980 is necessary for the survival of the

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<sup>120</sup> NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv. number 250, Policy memorandum 1979 of the Fisheries Board and the Foundation of Dutch Fisheries, undated.

<sup>121</sup> Herring, for instance, predated on cod eggs, while cod predated on mature herring. A large stock of herring might reduce cod recruitment and contrariwise. For a comparison of mono-species and multi-species approaches see: Hollowed, Anne B., et al. "Are multispecies models an improvement on single-species models for measuring fishing impacts on marine ecosystems?." *ICES Journal of Marine Science* 57.3 (2000): 707-719.

<sup>122</sup> Nationaal Archief, Den Haag, Ministerie van Landbouw: Directie Visserijen (1980-1989), catalog reference number 2.11.99 (NL-HaNA, Visserijen 1980-1989, 2.11.99), inv. number 23, Policy memorandum 1980 of the Fisheries Board and the Foundation of Dutch Fisheries, dated Nov. 13, 1979.

<sup>123</sup> NL-HaNA, LNV / Directie Visserijen, 2.11.58, inv. number 250, Policy memorandum 1979 of the Fisheries Board and the Foundation of Dutch Fisheries, undated.

herring trawler fleet.<sup>124</sup> In 1981, this claim translated into a demand for allocating 10 percent of the herring TAC to the Netherlands.<sup>125</sup>

This configuration of interests permitted the Netherlands a degree of flexibility during the negotiations on methods for TACs and national quota allocations. Representatives of the Dutch catch industry were primarily concerned with obtaining quota levels considered necessary for the survival of the Dutch fleet, not with the specific distribution among member states. Obtaining a herring quota was considered most urgently necessary given the high level of specialization of Dutch trawlers. The Netherlands therefore focussed on setting TACs for herring in excess of recommendations by the International Council for the Exploration of the Seas (ICES). Since herring quotas were not yet included in Commission proposals, the Dutch delegation could adopt a flexible position towards them. Archival material from the period between 1979 and 1983 does not indicate that interests of businesses concerning access conditions had changed.

The presentation of arguments by industry representatives precedes integration into policy. Although this does not prove that commercial interests determined preferences, it is highly plausible. Throughout 1980 and 1981, Dutch officials therefore pursued a strategy of raising TACs and obtaining a herring quota. To this end the Netherlands had even opposed an ICES recommendation to set the TAC for herring at zero, because these recommendations inform Commission proposals for TACs.<sup>126</sup> Specifically, the Netherlands demanded at least 10.000 tons of herring, according to a letter from Mr Tienstra to the Commission dated 29 January 1981, which corresponded to approximately 25 percent of the Dutch catch of herring in 1976, and ten percent of the total herring TAC for 1981.<sup>127</sup>

The memorandum that was drafted in preparation for a meeting of 22 October 1981 between the Minister of Agriculture, Gerrit Braks, and Giorgios Conteorgeorgis, the new Commissioner for Fisheries, clarifies the Dutch position on TACs. The memorandum not only argued that TACs for various stocks should be raised on socioeconomic considerations, but also that ICES recommendations had deliberately been lowered because biologists anticipated that catching would exceed TACs. Instead, the Netherlands proposed that new TACs should no longer be based on recommendations by the ICES Advisory Committee on Fisheries Management (ACFM), but should take 1980-1981 catches as a reference point. These TACs could then be reduced by 10 percent if

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<sup>124</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 23, Policy memorandum 1980 of the Fisheries Board and the Foundation of Dutch Fisheries, dated Nov. 13, 1979.

<sup>125</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 23, Policy memorandum 1981 of the Fisheries Board and the Foundation of Dutch Fisheries, undated.

<sup>126</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 40, Information bulletin for the minister, dated May 8, 1980.

<sup>127</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 92, letter from the Director of the Fisheries Department, Mr Tienstra, to Carlos Trojan, the *Chef de Cabinet* of the European Commissioner for Parliamentary Relations and Competition, dated Jan. 29, 1980.

necessary on biological grounds.<sup>128</sup> Dutch efforts ultimately proved successful, as TACs for 1981 and 1982 were set in excess of biological recommendations.<sup>129</sup>

## Interstate bargaining

The flexibility the configuration of Dutch commercial interests permitted, translated in a relatively greater willingness to compromise on the part of the Netherlands. Since herring quotas were not included in discussions during the 1980s, the Netherlands could adopt a relatively flexible position towards quota proposals. Businesses in the Netherlands still suffered from the uncertainty surrounding a future agreement, and this made it imperative to advance an agreement. On the issue of access, the position of Dutch businesses had not changed.<sup>130</sup> Yet, over the course of 1980 the Netherlands also adopted a more flexible position towards access conditions. Since there existed no real threat of losing access rights in the near future - to the contrary - it is hard to explain willingness to offer further concessions using the concept of asymmetrical policy interdependence. It appears that the Netherlands preferred a compromise at an early stage over conditions of unrestricted access in a future arrangement. One explanation is that this would produce the stability conducive to investments in the fishing industry. However, no evidence exists to support this claim

By early 1980, several member states hoped that issue linkage between the dispute over the British budgetary question and the CFP could advance negotiations. At the European Council of december 1979, the British delegation had raised the issue of what the UK considered its excessively large net contribution to the Community budget. France therefore proposed a linkage between between concessions to the UK on the budgetary question with progress on agricultural questions and fisheries. An opportunity for a package deal presented itself with the joint Council sessions of 27 to 29 May of the Ministers of Agriculture and Foreign Affairs.

The liberal intergovernmentalist perspective predicts that linkage between two disparate issues is viable only if costs are imposed on relatively diffuse, unorganized or unrepresented domestic constituents, or if the decision on the precise implementation is postponed.<sup>131</sup> To the UK, concessions on the CFP would impose costs on a concentrated and well-represented constituency, whereas the benefits would accrue to taxpayers. The Council declaration that was adopted following the joint sessions in May therefore established a deadline of 1 January 1981 from which time a CFP should

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<sup>128</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 92, memorandum in preparation of meeting between the minister of agriculture, Gerrit Braks, and the European Commissioner for fisheries, Giorgios Conteogoris, dated Oct. 22, 1981.

<sup>129</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 115.

<sup>130</sup> In a 1982 communication intended for the Commission, the combined fishing industries of the Netherlands, Denmark and Belgium argued in favor of equal conditions of access. See: NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 93, Memorandum of the Fishing Industries of the Netherlands, Denmark and Belgium, March 22, 1982.

<sup>131</sup> See chapter 1, page 18; alternatively, see: Moravcsik, *The Choice for Europe*, 65-66.

take effect, but apart from several general guidelines, implementation was delegated to successive Fisheries Councils.

In the event, a compromise proved unattainable, because France lacked incentives incentives to compromise. The Fisheries Council of 15 December 1980 was the last opportunity to respect the deadline of 1 January 1981. The Commission had tabled a compromise on access and quotas that reflected the principles enunciated in the May Declaration. Access rights would be continued until 1992, but with a redefinition of historic rights to only include those which were ‘vital’. France rejected the proposal on access, which the Netherlands and other member states had been willing to consider. On TACs and quotas, the proposals allocated 31.6 percent of the total Community catch to the UK (see Table 4 on page 47). However, when the French delegation rejected the access compromise, the UK and Denmark refused to consider the quota proposals. French intransigence can be attributed to two factors. First, Presidential elections were scheduled in four months and President Valéry Giscard d’Estaing felt vulnerable to criticism of weakness towards the UK. Second, French fishermen depended strongly on access to British coastal zones.<sup>132</sup> Well aware that derogations to equal access would expire by the end of 1982, France insisted on “the Treaty and nothing but the Treaty”.<sup>133</sup>

During 1980, the Netherlands had broadcasted a greater willingness to compromise on the CFP than the French. This is illustrated by a conflict that developed between the Ministry of Agriculture and the Ministry of Foreign Affairs. Whereas the former sought to preserve the interests of Dutch fisheries in the coastal areas of the UK, the latter seemed more incline to offer concession to the UK. During a meeting of the Committee of Permanent Representatives (COREPER) in May, the Dutch permanent representative had suggested *à titre personnel* that fishing in the 12-mile zone could be reserved for inshore fishermen, if the Council could agree on the principle that every member state ought to be able to obtain its allocated catch quotas.<sup>134</sup> Because representatives of the Ministry of Agriculture objected starkly to this suggestion, the issue was referred to the Council of Ministers of 23 May. Here, Minister of Agriculture Braks defended his policy of rejecting demands for exclusive 12-mile fishing zones, because “Dutch fisheries possess significant interests in [British] waters”.<sup>135</sup>

Unfortunately, the resolution of this issue is not included in the minutes. However, two pieces of archival material dating from the later half of 1980 suggests that the conflict was settled in favor of

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<sup>132</sup> Approximately 10 percent of French national catch was taken within 12-miles from the British Isles. See: Wise, *The Common Fisheries Policy of the European Community*, 224.

<sup>133</sup> For an overview of the Anglo-French conflict on access in 1980 see: Leigh, *European Integration and the Common Fisheries Policy*, 81-85.

<sup>134</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 3003, Report on COREPER of May 14, 1980, contained in Conclusions of the Coordinating Committee for European Integration and Association Problems dated May 20, 1980.

<sup>135</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2967, Minutes of the Council of Ministers dated May 23, 1980.

Foreign Affairs by offering further concessions in light of the momentum created by the May declaration. First, regarding access, the Coordinating Committee concluded on 15 June upon recommendation by the Ministry of Foreign Affairs that “if the UK demonstrates flexibility on the matter [of access conditions], the Netherlands should contribute to a positive atmosphere to advance a solution”.<sup>136</sup> Second, regarding quota allocations, the Committee advocated to accept further reductions in allocated quotas for 1980 and 1981 if this increases the likelihood of finding a compromise solution.<sup>137</sup>

Notwithstanding Dutch willingness to offer concessions, business interests remained an important consideration. The Fisheries Council of 15 December 1980 was the last opportunity to respect the deadline of 1 January 1981. The Coordinating Committee’s conclusions in preparation for the Fisheries Council of 15 December 1980 emphasize the importance of evaluating the 1981 TACs based on the socioeconomic criteria advocated by Dutch businesses. Moreover, the conclusions draw attention to the importance of access to the UK zone given the interests of herring fisheries, although “the Netherlands should not block a decision on a total package because of [those] interests”.<sup>138</sup>

### The Court rules against the UK

Following the collapse of negotiations in December 1980, the Fisheries Council did not convene until after the French elections of May and June 1981. In preparation for the Fisheries Council of 26 October, the Dutch Coordinating Committee noted that the UK was prepared to recognize the historical rights of other member states in the British 12-mile zone, under certain conditions. However, since a compromise on TACs and quotas seemed elusive because of resistance by other member states, the Dutch delegation was instructed to strive for the largest possible quota for the Netherlands.<sup>139</sup>

One factor that induced the United Kingdom to be more forthcoming, was that between December 1980 and October 1981, the rules governing Council negotiations had changed substantially. Following the judgement of the European Court of Justice in case 804/79 ‘Commission v United Kingdom’ of 5 May 1981, the Commission issued a declaration on 27 July which stated that following the Council’s failure to establish a conservation system by 31 December 1978, the Commission had the duty to require that Member States pursue their fishing activities in accordance with Commission proposals.<sup>140</sup> In its declaration, the Commission cited recent jurisprudence

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<sup>136</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 2992, Conclusions of the Coordinating Committee for European Integration and Association Problems dated July 15, 1980.

<sup>137</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 3035, Conclusions of the Coordinating Committee for European Integration and Association Problems dated Nov. 11, 1980.

<sup>138</sup> Ibid.

<sup>139</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 3414, Conclusions of the Coordinating Committee for European Integration and Association Problems dated Oct. 20 and 21, 1981.

<sup>140</sup> Leigh, *European Integration and the Common Fisheries Policy*, 94.

emanating from the Court. Commentators believe this interpretation to have contributed to ending the stalemate in the negotiations.<sup>141</sup> In discussions, British representatives complained that the Commission used the Court to bring pressure on the UK to accept compromises.<sup>142</sup> The risk of contravening Community legislation was one factor that contributed to a more constructive attitude towards compromise on the CFP.<sup>143</sup>

Between 1978 and 1981 the Court had gradually altered the rules governing the adoption of national conservation measures, which limited the viability of unilateral policies. The Court had found that conservation measures can only be adopted unilaterally where there exists an established biological need, but also member states are obliged to take such measures if such measures were sufficiently supported by scientific evidence.<sup>144</sup> This judgement was based on an interpretation of the obligation of member states to cooperate in achieving the objectives of the Treaty, here taken to mean the conservation of fishery resources.<sup>145</sup>

Most decisive was the judgement in landmark case 804/79 'Commission v United Kingdom' delivered on 5 May 1981. The case had been brought before the Court by the Commission under Article 169 of the Treaty of Rome on 13 November 1979 over several unilateral conservation measures.<sup>146</sup> The Court's judgement had two major implications. First, the Court ruled that since 31 December 1982 the competence to adopt conservation measures had become exclusive to the Community. This follows from Article 102 of the Treaty of Accession. It was the view of the Court that this implied that since the expiration of the transition period in Article 102, the "power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Community".<sup>147</sup> Second, the Court held that failure of the Council to adopt conservation measures did not absolve member states from the duty which follows from Article 5 of the Treaty "to take appropriate measures to facilitate the achievement of the Community's tasks and to abstain from any measures which might jeopardize the attainment of the objectives of the Treaty".<sup>148</sup> According to the Court, "[t]his provision imposes on Member States special duties of action and abstention in a situation in which the Commission, in order to meet urgent needs of conservation, has submitted to the Council proposals which, although they have not been

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<sup>141</sup> Berg, Astrid. "Implementing and Enforcing European fisheries law: The implementation and the enforcement of the Common Fisheries Policy in the Netherlands," (PhD. diss., Utrecht University, 1999), 28, 31-22.

<sup>142</sup> Leigh, *European Integration and the Common Fisheries Policy*, 105.

<sup>143</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 103.

<sup>144</sup> European Court of Justice, 'Commission v United Kingdom,' Case 32/79

<sup>145</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 151.

<sup>146</sup> Article 169 of the Treaty of Rome (originally: Treaty Establishing the European Economic Community of 25 March 1957) reads: "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission the latter may bring the matter before the Court of Justice."

<sup>147</sup> European Court of Justice, 'Commission v United Kingdom,' Case 804/79, paragraph 17, 1072-73.

<sup>148</sup> Berg "Implementing and Enforcing," 31-32.

adopted by the Council, represent the point of departure for concerted Community action”.<sup>149</sup> Several commentators have interpreted this ruling to mean that, pending a Council agreement, unilateral Commission proposals can be regarded as legally binding Community rules when it comes to the issue of the conservation of fishing stocks.<sup>150</sup>

Crucially, the Commission and member states themselves held this interpretation to be true. Although some member states contested the Commission’s declaration, all member states agreed to a system of voluntary compliance with the Commission’s TAC’s proposals, which was formalized at the end of 1981.<sup>151</sup> In the Netherlands, officials from the Fisheries Department informed business representatives about the new situation during a meeting of the Board on 9 September 1981. Prior to this meeting, the Ministry had announced new measures to ensure compliance with TACs that had been proposed by the Commission on 24 July. Ministry officials confirmed that “these measures should be viewed as resulting from an obligation that is imposed by the Commission”.<sup>152</sup>

## Final Agreement among the Ten (1982-1983)

Following a series of secret bilateral meetings between the UK and France, a breakthrough emerged in the Spring of 1982. The UK withdrew its claims to preferential zones beyond the 12-mile limit and a phasing out of historical rights, in return for a precise definition of historical rights France would continue to enjoy and a limit on the number of trawlers permitted to fish in sensitive areas around Scotland and the Shetlands.<sup>153</sup>

This breakthrough is attributed to a variety of factors. First, the Commission’s declaration of 27 July 1981, in which the Commission required that member states conduct their fishing activities in line with Commission proposals pending a Council agreement on TACs and quota, reshaped the pattern of policy interdependence. It deprived the UK and other member states of the autonomy to adopt unilateral conservation measures and therefore necessitated cooperation. Thus, governments no longer evaluated potential alternative agreements against the status quo or unilateral alternatives, but only against Commission's alternative. Second, the impending accession of Spain to the Community altered French preferences. With the prospect of unrestricted access for Spanish vessels to the Bay of Biscay, France began to favor a limited application of the principle of equal access. Conflict had already occurred in this area, as Spain had challenged the legality of Community restrictions by

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<sup>149</sup> European Court of Justice, ‘Commission v United Kingdom,’ Case 804/79, 1057

<sup>150</sup> Leigh, *European Integration and the Common Fisheries Policy*, 94-95, 105, 200-202; Farnell and Elles, *In Search of a Common Fisheries Policy*, 152-156; Berg “Implementing and Enforcing,” 78. This interpretation was later reinforced by judgements in ‘R. v Tymen’ (Case 269/80) and ‘Ireland v Commission’ (Case 239/86).

<sup>151</sup> Leigh, *European Integration and the Common Fisheries Policy*, 95.

<sup>152</sup> NL-HaNA, Productschap Vis, 2.25.82, inv. number 23, Minutes of the meeting of the Board, dated Sep. 9, 1981.

<sup>153</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 123.

sending gunboats to accompany unlicensed vessels fishing in waters off the French coast.<sup>154</sup> This alteration in French preferences reshaped the bargaining space to the extent that it permitted compromise with the UK. Third, these changes were reinforced by the fast-approaching deadline of 31 December 1982, after which the derogations contained in the Treaty of Accession were to expire. Expiration of the derogations would change the calculus governments face, because compromises will have to be evaluated against a status quo that is less favorable.

Crucially, the conservation crisis had escalated further. Measures that had been adopted by the Council or unilaterally had been insufficient to avert the crisis. The 1978 Commission proposal had estimated total catch possibilities for the Community at 4,121,000 tonnes, which already implied a reduction in catches of 10 percent compared to the 1973-1976 reference period (see Table 3, page 35). In 1979, the Commission was forced to reduce this number by a further 4 percent to 3,964,000 tonnes.<sup>155</sup> However, by 1980, it had become clear that these reductions would not be sufficient, as the Commission proposed a further reduction of 12 percent, to 3,488,000 tonnes for all Community member states.<sup>156</sup> Absent a Council agreement on TACs, allocation of national quotas to member states and enforcement mechanisms, the necessary measures could not be enforced, and this would threaten the future livelihoods of all Community fishermen. This made an urgent solution imperative to the UK, as well as to other member states.<sup>157</sup>

The Commission proposal of June 1982 was based on the Anglo-French compromise. On access conditions, it provided for a continuation until 1992 of the derogations in the Treaty of Accession and authorized member states to extend the 6-mile limit to 12 miles for all coastal areas. Member states could continue to exercise those historical rights that had been judged 'vital' in the 6- to -12 mile zone, which amounted to a 30 percent reduction in historical rights.<sup>158</sup> Table 4 presents a simplified overview of the Commission proposal on quota allocations for the seven principal species. In reality, quotas were limited to specific stocks and maritime regions, and the precise allocational effect is therefore difficult to quantify. One trend is clear, however. The British share improved substantially at the expense of Denmark compared to the proposals that had been rejected during the Council meeting of December 1980. To prevent recurring annual conflict over fishery resources, the Commission introduced the 'principle of relative stability,' under which the 1982 share-out of stocks would serve as a reference allocation in the future.<sup>159</sup>

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<sup>154</sup> Wise, *The Common Fisheries Policy of the European Community*, 247-249.

<sup>155</sup> European Commission, COM (78) 669 final.

<sup>156</sup> Council Regulation (EEC) No. 754/80 of 26 March 1980

<sup>157</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 103-104

<sup>158</sup> Leigh, *European Integration and the Common Fisheries Policy*, 86-88.

<sup>159</sup> Wise, *The Common Fisheries Policy of the European Community*, 237.

Table 4: Allocation by member state of the seven\* principal species for consumption (cod, haddock, saithe, whiting, plaice, redfish and mackerel) in cod equivalent

	(1)		(2)		(3)		(4)	
	Oct. 1980		July 1981		June 1982		Jan. 1983	
	tons	%	tons	%	tons	%	tons	%
West-Germany	126,998	12.4	167,700	13.9	192,100	13.7	182,000	13.0
France	119,195	11.6	157,000	13.1	182,700	13.0	183,000	13.1
Netherlands	85,874	8.4	86,000	7.1	100,700	7.2	100,800	7.2
Belgium	21,295	2.1	23,000	1.9	28,900	2.1	28,900	2.1
United Kingdom	317,570	31.0	433,000	36.0	509,600	36.3	500,500	35.8
Denmark	324,517	31.6	290,000	24.1	330,500	23.5	344,000	24.6
Ireland	30,526	3.0	46,100	3.8	60,700	4.3	60,700	4.3
Community total	1,025,976		1,202,800		1,405,200		1,399,900	

\* The October 1980 proposal did not include mackerel

Source:

column (1): European Commission, COM (80) 651 Final, Oct. 23, 1980.

column (2): Wise, *The Common Fisheries Policy of the European Community*, 236

column (3) and (4): *ibid.*, 238

In the Netherlands, the Coordinating Committee concluded on 23 June 1982 that it was imperative to take a final decision on the CFP during the upcoming Council meeting.<sup>160</sup> This urgency was justified by the uncertainty that would follow the expiration of the derogations to the equal access principle contained in the Treaty of Accession, as well as the assumption of the Council Presidency by Denmark on 1 July. Since Denmark believed to derive few benefits from the CFP proposals the Presidency might obstruct decision making in the Council.<sup>161</sup> On the four issues of TACs, technical measures, national quotas and access, the Netherlands concluded that the Commission proposals “constitute a good starting point for discussions, which should be completed expediently”.<sup>162</sup> The Commission proposals had improved both the Dutch share of TACs, as well as the total level. Moreover, under the access proposal, the Netherlands could continue to exercise those historical rights it had exercised after the accession of the UK and Ireland. Thus, the proposals were considered acceptable.

<sup>160</sup> NL-HaNA, Ministerraad, 2.02.05.02, inv. number 3542, Conclusions of the Coordinating Committee for European Integration and Association Problems, dated June 23, 1982.

<sup>161</sup> In preparation for the June Fisheries Council, policymakers in the Netherlands already concluded that the Commission’s most recent CFP proposals would be largely unsatisfactory to Denmark for two reasons. First, the Commission proposals implied a significant reduction in Danish quotas, which would be hard to sustain given the high level of capitalization of the Danish fleet. Secondly, this high level of capitalization also implied that Denmark stood to gain little from side-payments taking the form of financial aid under the CFP’s structural policy. See: NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 92, Report from the Agricultural Attaché in the Dutch embassy in Copenhagen to the Fisheries Department on the Danish Fisheries Sector and the CFP, dated June 1, 1982.

<sup>162</sup> *Ibid.*

It was therefore not surprising that Denmark rejected the Commission proposals, and demanded a 30 percent share of quota allocations instead.<sup>163</sup> The remaining nine member states and the Commission pursued two strategies to obtain Denmark's approval. First, to satisfy Denmark's need for mackerel, on which its processing industry depended, its quota allocations were increased with 7,000 tonnes together for three years with a promise of future increases by 4,000 tonnes from third country waters and a programme to process mackerel catches of other member states in Denmark.<sup>164</sup> Second, the member states and the Commission exploited the Commission declaration of 27 July 1981 to issue an ultimatum to Denmark. If the Danish Minister for Fisheries, Henning Grove, failed to obtain his government's approval for the Commission proposal before 1 January 1983, other member states would implement it by national measures authorized by the Commission. Member states declared their willingness to close their fisheries to Danish vessels once its allocated quotas were reached.<sup>165</sup>

From an analytical perspective, the nine member states and the Commission exploited the pattern of asymmetrical policy interdependence. Their threat of excluding Denmark implied that Denmark would have to evaluate the Commission proposal not against the *status quo ante*, but against an outcome with similar effects on Danish commercial interests that had the additional effect of inflicting costs on its political reputation in the Council. In Denmark, this threat was well-understood. Legal experts from the Foreign Office outlined the "severe consequences" for the Danish catch industry if a compromise could not be reached.<sup>166</sup> Because the government could point to the additional quotas and assurances it had obtained, the government managed to convince parliamentary factions to support the Commission's final offer. Thus, on 25 January 1983, the Council finally adopted Regulation 170/83 and Regulation 172/83, which laid down rules governing conservation policy, national quota allocations and access conditions. Both the Anglo-French compromise on access and quotas of 1982 as well as Danish support for a final proposal had been facilitated by limits on the viability of unilateral policy alternatives.

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<sup>163</sup> Leigh, *European Integration and the Common Fisheries Policy*, 95.

<sup>164</sup> *Ibid.*, 97-98.

<sup>165</sup> Farnell and Elles, *In Search of a Common Fisheries Policy*, 126-127.

<sup>166</sup> NL-HaNA, Visserijen 1980-1989, 2.11.99, inv. number 92, Report from the Report from the Agricultural Attaché in the Dutch embassy in Copenhagen to the Fisheries Department on reports in the Danish press, dated Nov. 1, 1982.

## Conclusion

The agreement of 25 January 1983 ended six years of protracted negotiations over access conditions, resource conservation measures and national quota allocation under the Common Fisheries Policy (CFP). This final agreement established a delicate equilibrium between the varying interests of member states and continues to govern negotiations in the Council of Ministers to date. The history of these negotiations appear to confirm the central premises of liberal intergovernmentalism. The CFP was the product of a shared commercial interests of member states in effective conservation policies, and the precise distribution of benefits reflected the relative bargaining power of member states, understood in terms of asymmetrical policy interdependence. Following from the precise configuration of domestic commercial interests and its relatively high level of policy interdependence, the Netherlands has frequently shown itself more concerned with facilitating a compromise, than with the precise distribution of benefits under this agreement.

The first sub-question concerned the influence of domestic commercial interests on preferences and policies. At this first stage, the commercial interests of the Dutch fishing sector determined the preferences and related policies of the Netherlands towards the three questions of access, conservation and allocation under the CFP. First, the Netherlands has endeavoured to protect the historical access rights of its fishing industry to the coastal areas of the UK and Ireland. Second, business representatives and government officials have advocated adopting less stringent conservation measures, that balanced biological with socioeconomic objectives such as full employment. Third, following from the high-level of specialization of the Dutch fleet, business representatives were primarily concerned with obtaining the allocation of sufficient herring quotas. The negative consequences of protracted insecurity concerning a final outcome formed the final constraint on Dutch policies, to the extent that the Netherlands favored a compromise at an early stage, over potentially more beneficial future outcomes.

The second sub-question concerned the extent to which substantive agreements reflected the pattern of asymmetrical policy interdependence. Credible threats of non-agreement and exclusion reflect this pattern. I have shown how preferences of the least forthcoming states formed the binding constraint on agreements and how threats of non-agreement determined the rhythm of the negotiations. The negotiations proceeded in three stages. First, in 1976, Ireland exploited its relative independence to extract concessions from the UK and other member states, whereas threats of unilateral extensions by the UK induced other member states to agree to The Hague Compromise. Second, between 1977 and 1980, both continental member states and the UK lacked incentives to compromise. The UK could comfortably threaten to exercise its veto and adopt conservation measures

unilaterally in the meantime. Continental member states on the other hand knew themselves supported by the Treaty of Accession, which would provide for a change in the status quo if the Council failed to take a decision to the contrary. Finally, the period between 1980 and 1983 witnessed a change in both the institutional environment as well as the economic environment. Both facilitated compromise. Denmark's intransigence during the final stages of the negotiations was overcome by credible threats of exclusion.

The Netherlands possessed a highly capitalized and specialized fishing industry, that was large relative to the fishing grounds under its jurisdiction. In line with liberal intergovernmentalist theory, the Netherlands attached great value to an agreement on conservation policy. Given the absence of unilateral policy alternatives, the Netherlands has endeavoured to advance an agreement, even to the extent that it was willing to offer further concessions on quota allocations and access conditions than was ultimately necessary.

This history has highlighted a central shortcoming of liberal intergovernmentalism as well. I have shown how the institutional environment affects the calculus rational governments face and how it limits unilateral policy alternatives. In this respect, the framework proposed by Moravcsik is too narrow, since it only incorporates structural economic factors. Any analysis must allow for the possibility that consequences of decisions are sometimes unforeseen. In the case of the European Community in particular, the role of the European Court of Justice in shaping the institutional environment cannot be ignored. Although this diminishes the independent predictive power and generalizability of liberal intergovernmentalism, the impact of these external actors can be incorporated into an analysis in terms of patterns of asymmetrical policy interdependence.

The history of negotiations on the CFP can contribute to three strands of literature. First, I have demonstrated that liberal intergovernmentalism wields sufficient explanatory power to account for emergence of the CFP, with the important caveat that the extent to which institutional factors limit the viability of policy alternatives must be incorporated into the analysis. Second, whereas earlier histories of the Common Fisheries Policy have relied exclusively on secondary sources and public documents, this thesis has overcome this weakness by presenting a narrative that is firmly grounded in archival research. Finally, regarding the history of the Netherlands and the European integration process, its conclusions are more limited. If anything, this history seems to confirm Mathieu Segers' thesis that policy towards the integration process has gradually become more oriented towards continental member states and based on economic considerations.

Yet, the narrative still leaves questions unanswered. I identify three possible directions of future research. First, a comprehensive history of the CFP would benefit from a multinational perspective. Reconstruction of policy making in the most interested states such as the UK, France and Denmark could provide answers to important questions. Among these are, for instance, how the May

1981 judgment of the Court influenced policy making within the UK, or why France rejected the Commission's proposals in December 1980. Secondly, a broader range of issues could be incorporated into the primary analysis, including market organization, structural policy and external policy. This would also require analysis of a more extended time horizon, since negotiations date back to 1966. Finally, it would be recommendable to follow Moravcsik's approach to the letter and generate hypotheses a priori based on the structural identities of national economies and industries and test these empirically.

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Council Regulation (EEC) No. 170/83 of 25 January 1983 Establishing a Community System for the Conservation and Management of Fishery Resources

Council Regulation (EEC) No. 172/83 of 25 January 1983 Fixing for Certain Fish Stocks and Groups of Fish Stocks Occuring in the Community's Fishing Zone, Total Allowable Catches for 1982, the Share of these Catches Available to the Community, the Allocation of that Share between the Member States and the Conditions under which the Total Allowable Catches may be Fished

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# Appendices

Appendix 1: Council Regulation (EEC) No. 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof, Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Council of the European Communities has agreed that the Member States should act in concert to extend their fishing zones to 200 nautical miles with effect from 1 January 1977 along their North Sea and North Atlantic coastlines, without prejudice to action of the same kind in respect of other fishing zones within their jurisdiction, in particular in the Mediterranean ; whereas, since that time and on this basis, the Member States concerned have also extended their fishing limits in certain areas of the West Atlantic, the Skagerrak and the Kattegat and the Baltic Sea ; whereas, in this context, in view of the over-fishing of stocks of the main species, it is essential that the Community, in the interests of both fishermen and consumers, ensure by an appropriate policy for the protection of fishing grounds that stocks are conserved and reconstituted ; whereas it is therefore desirable that the provisions of Council Regulation (EEC) No. 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry be supplemented by the establishment of a Community system for the conservation and management of fishery resources that will ensure balanced exploitation;

Whereas this system should in particular include conservation measures which may involve, by appropriate means, limitations of the fishing effort, rules for the use of resources, special provisions for inshore fishing and supervisory measures;

Whereas measures regulating fishing effort may include restrictions, established by species or group of species, on catches, with overall catches being limited by reference to a stock or group of stocks;

Whereas the overall catch should be distributed among the Member States;

Whereas conservation and management of resources must contribute to a greater stability of fishing activities and must be appraised on the basis of a reference allocation reflecting the orientations given by the Council;

Whereas, in other respects, that stability, given the temporary biological situation of stocks, must safeguard the particular needs of regions where local populations are especially dependent on fisheries

and related industries as decided by the Council in its resolution of 3 November 1976, and in particular Annex VII thereto;

Whereas, therefore, it is in this sense that the notion of relative stability aimed at must be understood;

Whereas there should be special provisions for inshore fishing to enable this sector to cope with the new fishing conditions resulting from the institution of 200-mile fishing zones; whereas, to this end, Member States should be authorized to maintain in an initial stage until 31 December 1992 the derogation regime defined in Article 100 of the 1972 Act of Accession and to generalize up to 12 miles the limit of six miles prescribed in that Article; whereas, pursuant to the Act of Accession, these measures constitute the arrangements succeeding those provided for up to 31 December 1982; whereas this regime, after possible adjustments, will be applicable for a further period of 10 years and after this period the Council will be asked to decide upon the provisions which could follow;

Whereas it is necessary to specify the rights which each Member State may enjoy during this period in accordance with this regime;

Whereas specific arrangements of fishing effort should be agreed for certain sensitive regions, taking into consideration the problem of certain coastal fisheries as well as the need to regulate fishing activity in a coastal band;

Whereas, to that end, there is need, among other things, to institute a licensing system;

Whereas the creation of a Community system for the conservation and management of fishery resources should be accompanied by the institution of an effective system of supervision of activities in the fishing grounds and on landing;

Whereas, with a view to the preparation of the scientific and technical information to be used to assess the situation regarding the biological resources of the sea as well as the conditions for ensuring the conservation of stocks, a Scientific and Technical Committee of an advisory nature should be set up under the auspices of the Commission;

Whereas, to facilitate implementation of this Regulation, a procedure should be laid down for close cooperation between the Member States and the Commission within a Management Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

In order to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions, a Community system for the conservation and management of fishery resources is hereby established.

For these purposes, the system will consist, in particular, of conservation measures, rules for the use and distribution of resources, special provisions for coastal fishing and supervisory measures.

#### *Article 2*

1. The conservation measures necessary to achieve the aims set out in Article 1 shall be formulated in the light of the available scientific advice and, in particular, of the report prepared by the Scientific and Technical Committee for Fisheries provided for in Article 12.
2. The measures referred to in paragraph 1 may include, in particular, for each species or group of species:
  - a. the establishment of zones where fishing is prohibited or restricted to certain periods, types of vessel, fishing gear or certain end-uses;
  - b. the setting of standards as regards fishing gear;
  - c. the setting of a minimum fish size or weight per species;
  - d. the restriction of fishing effort, in particular by limits on catches.

#### *Article 3*

Where, in the case of one species or a group of related species, it becomes necessary to limit the catch, the total allowable catch for each stock or group of stocks, the shares available to the Community as well as, where applicable, the total catch allocated to third countries, and the specific conditions for taking these catches, shall be fixed each year.

The shares available referred to in the first subparagraph shall be increased by the total of Community catches outside the waters under the jurisdiction or sovereignty of the Member States.

#### *Article 4*

1. The volume of the catches available to the Community referred to in Article 3 shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered.
2. On the basis of the contents of the report referred to in Article 8, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall enact provisions effecting the adjustments that it may prove necessary to make to the distribution of the resources among Member States in consequence of the application of paragraph 1.

#### *Article 5*

1. Member States may exchange all or part of the quotas in respect of a species or group of species allocated to them under Article 4 provided that prior notice is given to the Commission.
2. Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them. Detailed rules for the application of this paragraph shall be adopted, if necessary, in accordance with the procedure laid down in Article 14.

#### *Article 6*

1. As from 1 January 1983 and until 31 December 1992, Member States shall be authorized to retain the arrangements defined in Article 100 of the 1972 Act of Accession and to generalize

up to 12 nautical miles for all waters under their sovereignty or jurisdiction the limit of six miles laid down in that Article.

2. In addition to the activities pursued under existing neighbourhood relations between Member States, the fishing activities under the arrangements established in paragraph 1 of this Article shall be pursued in accordance with the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where these activities are pursued and the species concerned.

#### *Article 7*

1. For species of special importance in the region referred to in Annex II (A) which are biologically sensitive because of their exploitation characteristics, fishing activities will be governed by a licensing system managed by the Commission on behalf of the Community.
2. Vessels which comply with the minimum characteristics laid down in Annex II (C) and which exercise their activity on the species specified in Annex II (B) shall be subject to the system referred to in paragraph 1.

Where the fishing effort of vessels which do not comply with the minimum characteristics provided for in the first subparagraph is likely to jeopardize the satisfactory development of the stocks concerned as a result of a significant increase in such activity as compared with that carried out on the date of entry into force of this Regulation, the minimum characteristics specified in Annex II (C) may be reduced or specific measures adopted to monitor such activity.

3. For each Member State, the number of vessels referred to in the first subparagraph of paragraph 2 which may exercise their activity simultaneously is specified in Annex II (D). The activity of these vessels within the meaning of paragraphs 1 and 2 is subject to a radio communication procedure designed to inform the competent monitoring authorities of their movements on entering and leaving the aforementioned region.
4. The specific monitoring measures referred to in the footnote to Annex II shall be adopted without prejudice to the provisions of Article 11 of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain supervisory measures for fishing activities by vessels of the Member States and of Article 8 (2) of Council Regulation (EEC) No 171/83 of 25 January 1983 laying down certain technical measures for the conservation of fishery resources.
5. The detailed rules for the application and the procedure for the establishment of licences and the communication of the movements of vessels shall be determined in accordance with the procedure laid down in Article 14.

#### *Article 8*

1. Before 31 December 1991, the Commission shall submit to the Council a report on the fisheries situation in the Community, the economic and social development of the coastal areas and the state of the stocks and their likely evolution.

2. On the basis of this report and taking account of the objectives set out in Article 4 (1), the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall decide on the adjustments to be made to the arrangements referred to in Articles 6 and 7.
3. The Commission shall submit to the Council, during the 10th year following 31 December 1992 , a report on the economic and social situation of coastal regions, on the basis of which the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall decide on the provisions which, once the 10-year-period mentioned in this paragraph has expired, could follow the arrangements referred to in Articles 6 and 7.

#### *Article 9*

1. Member States shall supply the Commission, at its request, with all the information relevant to the implementation of this Regulation.
2. The Commission shall each year forward to the European Parliament and the Council a report on the application of measures taken pursuant to this Regulation.

#### *Article 10*

Supervisory measures shall be adopted to ensure compliance with this Regulation and with the measures adopted in implementation thereof.

#### *Article 11*

The . measures referred to in Articles 2, 3 , 4 ( 1 ), the second subparagraph of Article 7 (2), Articles 7 (4) and 10 shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

#### *Article 12*

The Commission shall set up under its auspices a Scientific and Technical Committee for Fisheries. The Committee shall be consulted at regular intervals and shall draw up an annual report on the situation with regard to fishery resources, on the ways and means of conserving fishing grounds and stocks and on the scientific and technical facilities available within the Community.

#### *Article 13*

1. A Management Committee for Fishery Resources, hereinafter called 'the Committee', is hereby established, consisting of representatives of the Member States, under the chairmanship of a representative of the Commission.
2. Within the Committee the votes of the Member States shall be weighted in accordance with Article 148 (2) of the Treaty. The chairman shall not vote.

#### *Article 14*

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion on such measures within a time limit which the chairman may fix on the basis of the urgency of the questions under consideration. An opinion shall be adopted by a majority of 45 votes.
3. The Commission shall adopt measures which shall be immediately applicable. However, if these measures are not in accordance with the Committee's opinion, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures on which it has decided for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month.

*Article 15*

The Committee may examine any other question referred to it by its chairman either on his own initiative or at the request of the representative of a Member State.

*Article 16*

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

## Appendix 2: Articles 100 through 103 of the Treaty Concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community

### Section 2

#### **Fishing Rights**

##### *Article 100*

1. Notwithstanding the provisions of Article 2 of Regulation (EEC) No 2141/70 on the establishment of a common structural policy for the fishing industry, the Member States of the Community are authorized, until 31 December 1982, to restrict fishing in waters under their sovereignty or jurisdiction, situated within a limit of six nautical miles, calculated from the base lines of the coastal Member State, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area; however, vessels from other regions of Denmark may continue to fish in the waters of Greenland until 31 December 1977 at the latest.

Member States may not, insofar as they avail themselves of this derogation, adopt provisions dealing with conditions for fishing in those waters which are less restrictive than those applied in practice at the time of accession .

2. The provisions laid down in the preceding paragraph and in Article 101 shall not prejudice the special fishing rights which each of the original Member States and the new Member States might have enjoyed on 31 January 1971 in regard to one or more other Member States; the Member States may exercise these rights for such time as derogations continue to apply in the areas concerned. As regards the waters of Greenland, however, the special rights shall expire on the dates laid down for these rights.
3. If a Member State extends its fishing limits in certain areas to twelve nautical miles, the existing fishing activities within twelve nautical miles must be so pursued that there is no retrograde change by comparison with the situation on 31 January 1971.
4. In order to permit a satisfactory overall balance of fishing operations to be established within the Community during the period referred to in the first paragraph, the Member States need not make full use of the opportunities presented by the provisions of the first subparagraph of paragraph 1 in certain areas of the maritime waters under their sovereignty or jurisdiction.
5. The Member States shall inform the Commission of the measures which they adopt for this purpose; on a report from the Commission, the Council shall examine the situation and, in the light thereof, shall, where necessary, address recommendations to the Member States.

#### *Article 101*

The limit of six nautical miles referred to in Article 100 shall be extended to twelve nautical miles for the following areas:

1. *Denmark:*

- The Faroe Islands
- Greenland
- The west coast, from Thyboron to Blaavandshuk.

2. *France*

The coasts of the départements of Manche, Ile-et-Vilaine, Côtes du Nord, Finistère and Morbihan.

3. *Ireland*

- The north and west coasts, from Lough Foyle to Cork Harbour in the south-west
- The east coast, from Carlingford Lough to Carnsore Point, for crustaceans and molluscs (shellfish).

4. *Norway*

The coast between Egersund and the frontier between Norway and the Union of Soviet Socialist Republics.

5. *United Kingdom*

- The Shetlands and the Orkneys
- The north and east of Scotland, from Cape Wrath to Berwick
- The north-east of England, from the river Coquet to Plamborough Head
- The south-west from Lyme Regis to Hartland Point (including twelve nautical miles around Lundy Island)
- County Down.

#### *Article 102*

From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

#### *Article 103*

Before 31 December 1982, the Commission shall present a report to the Council on the economic and social development of the coastal areas of the Member States and the state of stocks. On the basis of that report, and of the objectives of the common fisheries policy, the Council, acting on a proposal from the Commission, shall examine the provisions which could follow the derogations in force until 31 December 1982.

### Appendix 3: Council Regulation (EEC) No. 2141/70 of 20 October 1970 laying down a common structural policy for the fishing industry

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 7, 42, 43 and 235 thereof; Having regard to the proposal from the Commission; Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the establishment of a common organisation of the market in fishery products must be supplemented by the establishment of a common structural policy for the fishing industry;

Whereas sea fisheries form the most important part of the fishing industry as a whole; whereas they have their own social structure and fish under special conditions;

Whereas, subject to certain specific conditions concerning the flag or the registration of their ships, Community fishermen must have equal access to and use of fishing grounds in maritime waters coming under the sovereignty or within the jurisdiction of Member States; whereas, however, exception to this rule may be permitted transitionally for certain types of fishing carried on by local populations whose livelihood depends principally on inshore fishing;

Whereas the Community must be able to adopt measures to safeguard the stocks of fish present in the waters in question;

Whereas it is important that the fishing industry should develop along rational lines and that those who live by that industry should be assured of a fair standard of living; whereas, to that end, Member States should be authorised to grant financial aid so that these aims may be achieved in accordance with Community rules to be laid down; whereas, moreover, common action to achieve these aims may be financed by the Community, if it relates to the aims referred to in Article 39 (1) (a) of the Treaty;

Whereas the establishment of a Standing Committee for the Fishing Industry will facilitate the development and implementation of a common structural policy for this industry by co-ordinating the policies of Member States and by ensuring constant co-operation between these States and the Commission; whereas, moreover, a constant exchange of information between Member States and the Commission is essential for the effective co-ordination of these policies and must serve as a basis for any measures which may be adopted to improve the structures in question;

whereas in particular the Commission must express its opinion on the projects and programmes envisaged by Member States in this Connection;

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Common rules shall be laid down for fishing in maritime waters and specific measures shall be adopted for appropriate action and the co-ordination of structural policies of Member States for the fishing industry to promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters.

#### *Article 2*

1. Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment of other Member States.

Member States shall ensure in particular equal Article 6 conditions of access to and use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.

2. Member States shall notify other Member States and the Commission of the existing laws and administrative rules and regulations in the field referred to in the first subparagraph of paragraph 1 together with those arising out of application of the provisions referred to in the second subparagraph of that paragraph.
3. The maritime waters referred to in this Article shall be those which are so described by the laws in force in each Member State.

#### *Article 3*

Member States shall notify other Member States and the Commission of any alterations they intend to make to fishery rules laid down pursuant to Article 2 .

#### *Article 4*

1. By way of derogation from the provisions of Article 2, access to certain fishing grounds situated within a limit of three nautical miles calculated from the base lines of the Member State bordering on the areas concerned may be limited, for certain types of fishing and for a period not exceeding five years from the time of entry into force of this Regulation, to the local population of the coastal regions concerned if that population depends primarily on inshore fishing.
2. The fishing areas and types of fishing referred to in paragraph 1 shall be specified by the Council, acting by qualified majority on a proposal from the Commission.

#### *Article 5*

Where there is a risk of over-fishing of certain stocks in the maritime waters referred to in Article 2, of one or other Member State, the Council, acting in accordance with the procedure provided for in Article 43 (2) of the Treaty on a proposal from the Commission may adopt the necessary conservation measures.

In particular, these measures may include restrictions relating to the catching of certain species, to areas, to fishing seasons, to methods of fishing and to fishing gear.

#### *Article 6*

1. From the entry into force of this Regulation Member States shall co-ordinate their structural policies for the fishing industry

To that end they shall notify the Commission each year of:

- the structural situation, taking into account regional conditions and regional development policies;
  - liaison between structures of the fishing industry and market policy;
  - the nature and extent of measures, for structural improvement planned for the current year;
  - annual and multi-annual programmes and projects for research and scientific and technical assistance adopted by the public authorities or financially assisted by them and any other information enabling efforts made in this field, and in particular financial outlay by public authorities, to be assessed.
2. After consulting the Committee referred to in Article 12, the Commission shall decide the form and date of submission of the documents to be supplied by Member States

#### *Article 7*

1. Each year the Commission shall submit a report to the European Parliament and to the Council on structures for the fishing industry.
2. That report shall include :
  - a. a review of the structural situation of the fishing industry and the policies followed by Member States, and an inventory of the measures adopted within the framework of these policies;
  - b. a study on the nature, geographical distribution, scope and financing of these measures, together with their effectiveness in relation to the objectives of the common fisheries policy and the probable outlets for fishery products in the long term.
  - c. information concerning co-ordination on a Community scale of structural policies for the fishing industry, covering;
    - Measures adopted;
    - Community financing;
    - Results of the measures and financing;
  - d. a review of the situation regarding research and scientific and technical assistance in each Member State.

#### *Article 8*

Measures to co-ordinate the policies of Member States on research and scientific and technical assistance for the fishing industry shall be adopted in accordance with the procedure laid down in Article 43 ( 2) of the Treaty

#### *Article 9*

1. Member States may grant financial aid in so far as the operations to which this relates contribute to the achievement of the aims referred to in Article 10.2.
2. Common rules fixing the conditions for granting the aid referred to in paragraph 1 shall be laid down before 1 June 1971 in accordance with the procedure laid down in Article 43 (2) of the Treaty.

#### *Article 10*

1. To promote the rational development of the fishing industry within the framework of economic growth and social progress and to ensure an equitable standard of living for the population which depends on fishing for its livelihood, specific measures for appropriate action pursuant to Article 1 must contribute to:
  - increased productivity through restructuring of fishing fleets and other means of production, in keeping with technical progress, and intensification of the search for new fishing grounds and new methods of fishing;
  - adaptation of production and marketing conditions to market requirements, particularly through development of canning and processing installations, to make the activities of producers organisations more effective;
  - the improvement, in step with technical progress, of the standard and conditions of living of the population which depends on fishing for its livelihood.
2. The provisions of paragraph 1, in so far as they relate to the objectives set out in Article 39 (1) (a) of the Treaty, may be the subject of common action within the meaning of Article 6 (1) of Council Regulation (EEC) No 729/701 of 21 April 1970 on the financing of the common agricultural policy.

#### *Article 11*

1. Without prejudice to the provisions of Article 3, Member States shall send the following documents to the Commission in good time, in so far as they refer to structural improvements for the fishing industry:
  - as far as possible, drafts of provisions which have been laid down by law, regulation or administrative action, or, failing this, a description of the general lines of the measures proposed;
  - proposed multi-annual plans and regional programmes.
2. The Commission:
  - may express its opinion on the provisions which have been laid down by law, regulation or administrative action, and on multi-annual plans and regional programmes of which it is notified pursuant to Article 6;
  - must express its opinion on these when a Member State so requests.

#### *Article 12*

1. A Standing Committee for the Fishing Industry (hereinafter called the 'Committee') is hereby established to promote the co-ordination of structural policies for the fishing industry and to ensure close and constant co-operation between Member States and the Commission.
2. The Committee shall be composed of representatives of each Member State. It shall be under the chairmanship of a representative of the Commission.
3. Secretarial services shall be provided for the Committee by the Commission.
4. The Committee shall adopt its own rules of procedure.

#### *Article 13*

For the fishing industry as a whole, the Committee shall be required:

- to ensure that Member States and the Commission are kept mutually informed of structural policies and in particular of measures ' governing sea fishing;
- to study structural policies of Member States and measures and programmes provided for by the latter to improve structures in this field;
- to assist the Commission in the preparation of Parts ( a) and (d) of the report on structures for the fishing industry provided for in Article 7;
- to deliver opinions at the request of the Commission on structural problems of the fishing industry.

#### *Article 14*

Where Council Regulation No 17/64/EEC<sup>1</sup> of 5 February 1964 on conditions for obtaining aid from the European Agricultural Guidance and Guarantee Fund and texts resulting therefrom refer to the Standing Committee on Agricultural Structures, the latter shall be replaced for all problems relating to the fishing industry by the Standing Committee for the Fishing Industry.

#### *Article 15*

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities. The rules laid down by this Regulation shall apply from 1 February 1971, except for the provisions of Article 10, which may apply from the date of entry into force of this Regulation.