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A communicative turnaround: Shifting the burden of proof in European fisheries governance

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ABSTRACT

Current and prospective changes in European fisheries governance suggest not only a "communicative turn" but a complete turnaround in the relationships between government, science, and the fishing industry. At the heart of these changes are the so-called *Regional Advisory Councils* (RACs) and the idea of partially replacing the burden of proof on the resource users (fishing industry). This change entails new forms of interaction between fishers' representatives, other stakeholders (e.g. NGOs), policy-makers and scientists. By drawing on experiences from the Baltic Sea RAC, the analysis focuses on two aspects of fisheries governance: *institutional design* and the *process* of negotiation and decision-making. It is concluded that to allow for a partial shift in the burden of proof, stakeholder organisations such as RACs need to adapt both institutionally as well as process-wise to enable a more constructive and responsible fisheries governance system.

1. Introduction

Recent reforms of the European Unions (EU) *Common Fisheries Policy* (CFP) suggest a paradigm shift in fisheries governance that entails a turnaround in the communicative relationships between various stakeholders and fisheries management. The current CFP builds upon a highly centralised, top-down and almost exclusively science-based governing process. Recent changes in this governance structure allow for more stakeholder participation via the so-called *Regional Advisory Councils* (RACs). Proposals of a "reversed burden of proof" (RBP) on the resource users (the fishing industry) would involve new ways of interaction, including how knowledge is communicated and verified among the involved parties: scientists, fishers and other stakeholders (e.g. non-governmental organisations—NGOs).

The concept of an RBP in fisheries governance under the CFP has been put forth in the recent Green Paper [1]. According to this model, it is the responsibility of the industry and not national or international governing agencies to demonstrate that fisheries operate responsibly in return for fishing access. An RBP therefore entails a substantial shift in the way that fisheries are governed: instead of agencies such as the European Commission or national governments having to prove that a fishing plan (e.g. a catch quota) does irreversible harm to the ecosystem, it is up to the resource users (the fishing industry) to demonstrate in advance that such an activity is not likely to inflict serious damage. This shift in management responsibility imposes various challenges and risks but also new opportunities for a more sustainable governance of the seas. It is still unclear to what extent and how an RBP, coupling rights and responsibilities to the industry will be introduced and implemented in European fisheries governance. However, because this topic has been addressed in various policy and academic circles as a promising way forward [2–6], particularly in the advent of the next CFP reform, this paper explores the possible consequences of an RBP by focusing on the EU fisheries system.

The paper follows two recent CFP reform processes (2002 and 2012) and addresses the changing role of stakeholders under the shift from a traditionally linear science–policy interface towards a more interactive governance system that involves actors beyond scientists and policy-makers: fishers, NGOs and other interest groups. Two aspects of reforming fisheries governance under the CFP are considered: *institutional design* and the *process* of deliberation, negotiation and decision-making. Although the RACs were initially created to give the industry greater influence over fisheries management, they are not intended to fulfil the role of reversing the burden of proof. However, in the current EU system, they are the only stakeholder-led organisations that can assume such a role.

Drawing upon lessons from the Baltic RAC, this paper discusses the potential role of the RACs under an RBP. It asks whether and

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how the former (design), the latter (process), or both must be reformed to undertake such a responsibility. Aside from institutional design, the processes of communicative interactions between the different stakeholder groups, and especially between fishers and scientists, seem to account for the most serious obstacles to a new governance system with an RBP. Overall, this fact might be a crucial hindrance for shifting the burden in practice: if proposals for an RBP were implemented, stakeholders from fisheries and NGOs would be heavily dependent on fruitful communication and cooperation not only among their own particular constituency but especially with other stakeholder groups. To prove a specific management strategy workable, the fishing industry would need to cooperate more directly with scientists. This arrangement would also be necessary for policy-makers and management agencies that would require the science system's assistance in evaluating proposals advanced by the industry. Under an RBP, the scientific community would thus have to serve more than one master (i.e. the government). This task would perhaps not be achievable through a single scientific institutional instrument such as the *International Council for the Exploration of the Seas* (ICES). Instead, the science system would need one way to communicate directly with the industry and another to interact with government agencies, the EU and other interest groups (see below).

The following section of this paper discusses the theoretical context of an RBP, i.e. the issue of science versus other areas of expertise and how they interact in policy-making processes. The subsequent two sections present the major changes in the European governance system resulting from the 2002 CFP reform with the RACs and the 2012 reform with the proposed RBP. In the discussion section, issues pertaining to institutional design and the process implications of a shifting burden of proof are addressed. This latter section questions what such a shift towards an incremental establishment of an RBP can possibly involve for the relationship between science and other stakeholders and how the science system as well as other stakeholder organisations, such as RACs, would need to adapt to these changes. The conclusion section summarises the conditions for the success or failure of an RBP within the current (2012) CFP.

2. Theoretical context

The role of science in fisheries governance has traditionally followed a linear model. It builds upon the assumption that natural science can be directly applied to political decision-making (Fig. 1). Despite insights from the social sciences as well as from the practical experiences in various domains of policy-making about the inappropriateness of such an "ideal causal chain" of science advice in management [7], this model continues to play a predominant role in the policy framework of the current CFP. One consequence is that economic and social perspectives have largely been ignored in fisheries governance [8,9].

During the second half of the 20th century, fishers' knowledge was dismissed as of local character, anecdotal, and interest-driven and therefore unreliable for fisheries management decision-making. To the contrary, scientific knowledge in general was regarded as politically unbiased, trustworthy, universally applicable and therefore more legitimate as the basis of governance [10]. After the 2002 reform and the "preliminary skirmish" over the RBP [11] in the context of the new reform process for 2012, the introduction of stakeholder involvement in EU fisheries with the RACs deviates from the linear model.

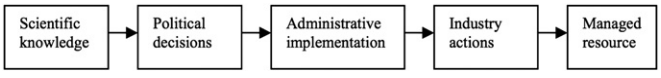

Fig. 1. The ideal causal chain of fisheries management, building on a line of coordinated events (taken from [7]).

Over the last two decades, the "lay-expert divide" in the use of knowledge has become a major focus in social science research and particularly the field of *Science and Technology Studies* (STS) [12–16]. In recent years, it has also become an important topic of fisheries social research reflecting upon the preeminent epistemology of science in fisheries governance [17,18]. The so-called "modern model", which builds upon the idea that science can "speak truth to power" by providing value-free, objective input to politics [19], has resulted in a strict demarcation between the institutions of science and those of politics in most science-dependent domains of Western politics. With respect to fisheries, Holm and Nielsen [20] provide a revealing analysis of how this artificial demarcation has shaped an institutional division of labour between science (ICES' annual fish stock assessments) and politics (annual quotas as regulation measures) in European fisheries governance under the founding period of the CFP. Yet, the idea of separating science from policy-making is now increasingly brought into question. For instance, Bäckstrand [21, p. 650] calls for a rethinking of "the notion of the expert, the boundaries between local and global knowledge, the implications of radical uncertainty, the scope for public participation in science, and the relationship between democratic politics and specialized expertise".

The move towards an RBP by involving the industry and other stakeholders more actively and responsibly in fisheries governance does require such a fundamental rethinking of the role of science and other knowledge cultures along with their integration into policy-making. An RBP requires the science system to substantially change from giving advice to politics "from the top", i.e. as the sole purveyor of objective knowledge, towards a role that implies multiple, more horizontally aligned tasks for science and scientists. This change not only calls for the science system to consider more seriously the socio-economic aspects of fisheries and to set standards for regional objectives in the preparation of fishing plans. It would also mean that science becomes a mediator for knowledge communication and information in cases of arbitration or litigation [11]. Therefore, new arenas and channels for communication and mediation need to be established between science and other stakeholders, such as the RACs. This shift is crucial in addressing questions of knowledge validation and legitimation from the different perspectives, e.g. of authorities, researchers, environmentalists and the resource users (fisher groups).

The institutional pathways provided at present for the communication between these different parties all connect via the EU Commission as the central organisation of the CFP and are far from sufficient for an RBP. To create a new and more devolved system (or even a partial RBP), new avenues for more direct communication and interactive learning processes must be developed, most of all between the stakeholder/user groups (e.g. in the RACs) and scientists (mainly from ICES). Stakeholders in the RACs, for example, have frequently addressed this issue, arguing that the current working mode of approaching the Commission to seek assistance from scientists is inadequate, and they urge for opportunities to address science and scientists more directly (Linke pers. observation).

New approaches for communication and learning between fishers and scientists remain challenging, as both parties employ different avenues for knowledge production and work within distinct epistemic frameworks. This situation creates problems of interpreting and communicating different observations and information, e.g. concerning the status of fish stocks. Fishers use their experiences of catch rates per unit of fishing effort (CPUE),