

Sustainable fisheries in the ASEAN region – Lessons from the EU’s Common Fisheries Policy?

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Abstract:

Fisheries is one of the areas with a special demand for cross-border cooperation. Marine life is moving and sharing the same oceans regardless of boundary delimitation by humans. Fish are common-pool resources that may lead to over-exploitation of coastal States and insufficient management. As globalization is facing increasing challenges, regionalization demonstrates the potential to effectively address many transboundary issues. Current international fisheries management has attracted criticisms, among which the poor incentives for countries to attend and comply with the rules are notable. For instance, with the development of vessels, fishing facilities, and skills, illegal, unreported, and unregulated (IUU) fishing which is violated by many international legal instruments, has become a critical issue faced by the international community. For that reason, the European Union (EU) has taken strict action against fisheries vessels and IUU – supporting countries through the mechanism of “yellow card”, even “red card” on aquatic products imported into the EU, based on meeting EU standards for IUU fishing. Not only Vietnam but many countries in ASEAN have also been punished by such cards from the EU. Not only has this measure had a huge impact on the export industry of each country, but it also has a negative effect on ASEAN as a whole. In that context, establishing and developing an ASEAN cooperation mechanism to improve cross – border fisheries management is very meaningful. This article aims to explore whether the incorporation of fisheries policies into the ASEAN region can be a solution to improve cross-border fisheries management. Through a detailed exploration of the development, problems, and future of the Common Fisheries Policy (CFP) of the European Union, this paper concludes that the evolution and implementation of the CFP provide some precious lessons for the ASEAN region. An appropriately designed regional fisheries scheme would help to improve ASEAN regional fisheries management. Economic incentives, a good institutional design, and financial and scientific support are critical factors in favor of adopting common fisheries policies under the ASEAN region frameworks. Thereby, ensuring that the activities of the fishing and aquaculture sectors in the ASEAN region are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social, and employment benefits.

Keywords: fisheries, sustainable fisheries, fisheries cooperation, ASEAN

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1. Introduction

Nowadays, the world's population is more than three times larger than it was in the mid – twentieth century. The global human population is estimated to reach over 10 billion by 2050 from its current level of 8 billion³, with most of the increase occurring in developing countries. Ensuring an adequate food supply for this population faces many challenges whenever in the context of climate change, economic uncertainty, and increasing competition for natural resources. Therefore, food production will need to rise approximately 70–100% from the current production level by 2050⁴. This rising will help guarantee the demand for food without having to make significant price increases. Fish, representing 20% of all animal protein supply⁵, will be a prominent future contributor to global food and nutrition security. Global demand for seafood continues to rise, driven by population growth, higher incomes, urbanization, growing international fish trade, and increasing relative preference for seafood protein⁶. Preliminary estimates for 2015 showed that global annual per capita fish consumption reached a new record high of more than 20 kg⁷.

However, fish production around the world is not homogeneously distributed. The reason is fish – a part of marine life is moving and sharing the same oceans regardless of boundary delimitation by humans. In 2014, Asia accounted for 70.8% of global fish production (88.9% of aquaculture and 56.5% of capture production), excluding aquatic plants. China alone produced 37.5% and consumed 37.1% of the world's food fish⁸. South Asia accounted for 9.3% of the global fish supply, with India and Bangladesh as the region's top producers, while Southeast Asia accounted for 18.3%⁹. Africa, Latin America, Europe, and North America accounted for 6.2%, 8.1%, 10%, and 4% respectively.

In recent decades, fishing sustainability has been subject to the intense international debate. The significant investment in exploited fisheries due to the high demand for fish and fishery products

³ [UN] United Nations. 2022. Department of Economic and Social Affairs, Population Division, World population prospects: The 2022 revision < <https://population.un.org/wpp/>> Accessed 15 October 2022.

⁴ Godfray HC, Beddington JR, Crute IR, Haddad L, Lawrence D, Muir JF, Pretty J, Robinson S, Thomas SM and Toulmin C. 2010. Food security: The challenge of feeding 9 billion people. *Science* 327:812–18.

⁵ [FAO] Food and Agriculture Organization. 2015. Statistical pocketbook: World food and agriculture. Rome: FAO. Accessed 15 October 2022. <http://www.fao.org/3/a-i4691e.pdf>

⁶ Naylor RL. 2016. Oil crops, aquaculture, and the rising role of demand: A fresh perspective on food security. In press. *Global Food Security*.

⁷ [FAO] Food and Agriculture Organization. 2016. The state of world fisheries and aquaculture 2016: Contributing to food security and nutrition for all. Rome: FAO <<http://www.fao.org/3/a-i5555e.pdf>> Accessed 15 October 2022.

⁸ FishStatJ. 2016. Database and software for fishery statistical analysis. United Nations FAO <<http://www.fao.org/fishery/statistics/software/fishstatj/en>> Accessed 15 October 2022.

⁹ Ibid.

all over the world has caused the depletion of fisheries resources to be a certain threat as the exploitation has been done without proper management and anticipation¹⁰. As a result, the world fish stocks are under pressure: according to the United Nations Food and Agriculture Organization (FAO), as of 2013, almost 90% of global fish stocks were being fully or over-exploited, including 31.4 percent estimated as overfished, 58.1 percent as fully fished and 10.5 percent as underfished¹¹. Moreover, fishing practices can also cause physical damage to the environment. The heavy impact exerted by modern fisheries on marine ecosystems has raised concerns about sustainability, not only from the traditional viewpoint of single-species fisheries but also from that of ecosystems¹². A further risk to sustainability, not yet seriously considered in fisheries management, is genetic change in individual stocks in response to the selective effects of fishing¹³, which may adversely affect long-term yield and other stock properties¹⁴.

In summary, the long-term sustainability of fisheries has been threatened by over-exploitation, modifications of the ecosystem as well as conflicts in management. Thereby, this often leads to declining income and employment, especially in rural areas. In that context, the improve cross-border fisheries management needs to be focused on and implemented promptly. The incorporation of fisheries policies among countries or regions in the world will contribute to limiting, and minimizing the overfishing and contamination of the marine environment are elements that contribute to a reduction in fish stock and catches.

2. Overview on fisheries cooperation among ASEAN country

Fish is a regional commodity that is shared globally. In the ASEAN region, fisheries is an important sector and contribute across the three pillars of the ASEAN Communities (Political-Security Community, Economic Community, and Socio-cultural Community)¹⁵. It accounts for 18% of the global fisheries production and 40% of the animal protein supplies of the population. It is also an important source of export earnings valued at US\$ 1.95 billion in 2018 and a source of income and livelihood for more than 10 million people directly engaged in fishing and

¹⁰ Melda Kamil Ariadno, Sustainable Fisheries in Southeast Asia, Year 1 Vol. 3, September - December 2011 INDONESIA Law Review, p.292-293.

¹¹ UN Food and Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture: Contributing to Food Security and Nutrition for All*, Rome, 2016, p.6.

¹² Jennings, S. and M. J. Kaiser. 1998. The effects of fisheries on marine ecosystems. *Adv. Mar. Biol.* 34: 201–352.

¹³ Stokes, T. K. and R. Law. 2000. Fishing as an evolutionary force. *Mar. Ecol. Prog. Ser.* 208: 307–309.

¹⁴ Law, R. 2000. Fishing, selection, and phenotypic evolution. *ICES J. Mar. Sci.* 57: 659–668.

¹⁵ Resolution on Sustainable Fisheries for Food Security for the ASEAN region Towards 2020.

aquaculture¹⁶. Fisheries are critical to ASEAN food security and should be a major focus of regional cooperation¹⁷.

The fisheries sector is part of the broader cooperation of the ASEAN Committee on Food, Agriculture, and Forestry (COFAF) established in 1977. Under the Cooperation in Food, Agriculture and Forestry in ASEAN, the ASEAN Sectoral Working Group on Fisheries (ASWGF_i) was established to oversee the development and implementation of the relevant programme and activities in the fisheries sector with the support from the following sub-working groups¹⁸:

- i) ASEAN Fisheries Consultative Forum (AFCF) provides a platform to discuss and address common problems on fisheries management and development faced by AMS;
- ii) ASEAN Shrimp Alliance (ASA) provides a platform for government and private sector to formulate and harmonize shrimp production and certification standards, and to discuss issues affecting shrimp production and trade;
- iii) Fisheries Consultative Group of the ASEAN-SEAFDEC Strategic Partnership (FCG/ASSP); and
- iv) the Expert Working Group on ASEAN Good Aquaculture Practices (EWG-GAqP)¹⁹.

The cooperation among the ASEAN Member States (AMSs) is also set up under the ASEAN mechanism, in which activities under wide-range of fisheries disciplines have been undertaken under the ASEAN Fisheries Consultative Forum (AFCF) mechanism since 2008. Furthermore, in 2015, the ASEAN Economic Community Blueprint 2025 (the AEC Blueprint 2025), Strategic Plan for ASEAN Cooperation in Food, Agriculture and Forestry (2016-2025), ASEAN Integrated Food Security Framework (AIFS) and Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS) 2015-2020, also set the framework for the Fisheries Strategic Plans of Action for ASEAN Cooperation in Fisheries. Besides, in the fisheries sector, ASEAN adopted a Resolution and Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2020 (RES & POA) at the ASEAN-SEAFDEC Conference in 2011. The document is also used as reference to develop SPA for ASEAN Cooperation in Fisheries²⁰.

¹⁶ Strategic Plan of Action on ASEAN Cooperation on Fisheries 2021 – 2025, p.2, <http://www.seafdec.org/documents/2020/11/23fcg_wp05-3.pdf> Accessed 16 October 2022.

¹⁷ Strategic Plan of Action on ASEAN Cooperation on Fisheries 2016 – 2020, p.4, <<https://asean.org/wp-content/uploads/2016/10/Strategic-Plan-of-Action-on-ASEAN-Cooperation-in-Fisheries-2016-2020.pdf>> Accessed 16 October 2022.

¹⁸ Ibid n 16.

¹⁹ Fisheries Cooperation, Association of Southeast ASEAN Nations, <[community/enhanced-connectivity-and-sectoral-development/asean-food-agriculture-and-forestry/fisheries-cooperation/](https://asean.org/wp-content/uploads/2016/10/Strategic-Plan-of-Action-on-ASEAN-Cooperation-in-Fisheries-2016-2020.pdf)> Accessed 16 October 2022.

²⁰ Ibid n 17 [5].

In general, the ASEAN countries recognized the importance of the fisheries sector for the food security, livelihoods, and well-being of the ASEAN people and its contribution to sustainable development and realization of the ASEAN Community by 2015. In particular, strengthening cooperation in the fisheries sector will help to reduce fish production and climate change. At the same time, to avoid conflicts in fisheries management, a common fisheries policy need to be approached with, thereby maintaining sustainable fisheries in the ASEAN region.

3. Challenge for ASEAN's fisheries in the current context

At present, approximately 12% of the world's population relies upon fisheries and aquaculture for their livelihood, and over half of the world's people get a significant source of their animal protein from fish and seafood²¹. The fisheries sector is one of the priority sectors for ASEAN economic integration. ASEAN is at the frontline of the global trend of meeting expanding seafood demand out to 2050. Accordingly, in 2014, 10 ASEAN countries together accounted for 18.3% (30.6 million tons) of world fish production (167.3 million tons)²². Indonesia, Vietnam, and Myanmar are among the top 10 fish-producing countries globally. The ASEAN region has a combined gross domestic product (GDP) of more than USD 2.6 trillion, growing 4.7% per annum, and a population of 632 million in 2015 (8.6% of the world's population)²³.

During the past several decades, the growing international, regional and national demand for fish and fisheries products has led to continual development and modernization of fishing technology. Unfortunately, this increased demand and the corresponding technology response have resulted in the over-exploitation of many fishery resources in Southeast Asia. Much of the problem of overfishing and overstressed aquatic ecosystems in this region is attributable to illegal, unreported, and unregulated (IUU) fishing together with the plethora of effects of climate change. Most of the region's fish stocks are heavily exploited, while marine ecosystems such as mangroves and seagrasses, and coral reefs are severely degraded. Moreover, overfishing and destructive fishing threaten the diverse marine ecosystem's sustained existence in this region. It has been estimated that fishing stocks are roughly a tenth of what they were a decade ago, and continue to diminish at an alarming rate²⁴. To improve these challenges that the AMSs are facing in cross-border fisheries management, especially the increasing concerns on IUU fishing, the incorporation of fisheries policies into the ASEAN region is considered as a solution at this time.

²¹ Kim J.DeRidder, Santi Nindang, Southeast Asia's Fisheries Near Collapse from Overfishing, <<https://asiafoundation.org/2018/03/28/southeast-asias-fisheries-near-collapse-overfishing/>>, Accessed 16 October 2022.

²² Ibid n 8.

²³ ASEAN statistics, <<http://www.asean.org/resources/category/asean-resources-kit>> Accessed 16 October 2022.

²⁴ Ibid n 17 [8].

Therefore, ASEAN member countries have recently made initiatives to adopt cooperation mechanisms to develop fisheries in a modern, responsible, sustainable and effective manner. Several fisheries policy frameworks have been developed and voluntarily implemented by the AMSs, namely the Regional Code of Conducts on Responsible Fisheries (RCCRF); the Resolution and Plan of Action on Sustainable Fisheries for Food Security for the ASEAN region Towards 2020 adopted in 2011... Furthermore, the Joint ASEAN-SEAFDEC Declaration on Regional Cooperation for Combating IUU Fishing and Enhancing the Competitiveness of ASEAN Fish and Fishery Products was recently adopted by ASEAN- SEAFDEC Member Countries and endorsed by the Senior Officials Meeting (SOM) during the High-level Consultation organized on 3 August 2016, Thailand²⁵.

More recently in 2019, ASEAN members established an ASEAN IUU Fishing Network to enhance regional cooperation by setting up a practical and operational tool to exchange information and intelligence in real time. The ASEAN IUU Fishing Network brings together ASEAN countries through this regional exchange platform to enhance collaboration on the adoption and implementation of IUU actions as well as to share information, coordinate law enforcement and draw up measures for sustainable fishing in the region²⁶.

These policies will be made in response to the challenges of the changing environment and the emerging issues including climate change and the growing gap between the increased demand for fish and fishery products and ASEAN's ability to supply these products sustainably, and taking into account the imperative to minimize the impacts caused by the increasing pressures on fisheries and globalization of trade that are resulting in increased IUU fishing, the depletion of coastal fish resources, habitat degradation, negative impacts of aquaculture, and increased conflicts among resource users that further jeopardize the food security and livelihoods of ASEAN people, in particular, the poor and disadvantaged²⁷.

Nonetheless, the fisheries policy frameworks of the ASEAN region have still not been effective. Herein, across the region, 64% of the fisheries resource base is at a medium to high risk from overfishing, with Cambodia and the Philippines among the most heavily affected. The economic

²⁵ Somboon Siriraksophon, Directive on Development of The Common Fisheries Policy for ASEAN, Policy and Program Coordinator SEAFDEC Secretariat, p.2, <http://www.seafdec.org/documents/2017/03/49cm_wp06-2.pdf> Accessed 16 October 2022.

²⁶ Report on work in the Fight against Illegal, Unreported and Unregulated Fishing in Asia and the Pacific, FAO Regional Conference for Asia and the Pacific, p.4, <<https://www.fao.org/3/nb845en/nb845en.pdf>> Accessed 16 October 2022.

²⁷ Resolution on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2020, The Ministerial Session for the ASEAN-SEAFDEC Conference on Sustainable Fisheries for Food Security Towards 2020 "Fish for the People: Adaptation to a Changing Environment", p.1, <<https://asean.org/wp-content/uploads/images/documents/D110617-AdoptedResolution.pdf>>, Accessed 16 October 2022.

losses from IUU fishing for three Southeast Asian countries are large, typically some 20% of the total value of fish landed in those countries and represent a significant loss to the economy of these countries. Indonesia has the largest economic loss in ASEAN, contributing USD 3 billion loss a year. It is followed by Vietnam, which records USD 1.6 billion losses a year (Havoscope, 2019)²⁸. On this background, ASEAN recognizes the increasing concerns about the challenges it faces and emphasizes the importance of an appropriately regional fisheries scheme that will improve ASEAN regional fisheries management.

4. An initiative from EU - European Union Common Fisheries Policy

4.1. Development of the EU CFP

Fisheries is one of the areas with a special demand for cross-border cooperation. Marine life is moving and sharing the same oceans regardless of boundary delimitation by humans. Fish are common-pool resources that may lead to over-exploitation of coastal States (the tragedy of the commons) and insufficient management (the free-rider problem)²⁹. The European Union (EU) has been the most successful regional regime so far in the world, which experienced over 60 years of integration, developing from economic integration to political and social integration. African, Latin American, and Asian countries have all learned from their experience concerning regional cooperation and coordination. Although it confronts significant problems further advancing the agendas on political and security issues, its experience dealing with cross-border issues still deserves special attention³⁰. Fisheries management has been a Union-level issue. A series of legislation and institutes have been established, providing a good example for examining the effect of adopting a common fisheries policy in a regional framework.

The EU Common Fisheries Policy (CFP) is a set of rules for the conservation of marine biological resources and the management of fisheries and fleets exploiting them³¹. Originally, the CFP was a part of the common agricultural policy (CAP), with the same objectives such as increasing productivity, stabilizing the markets, providing a source of healthy food, and ensuring reasonable prices for consumers. Over time, the CFP obtained a separate identity: specific legislation and

²⁸ Went Chiat Lee, K.Kuperan Viswanathan, Framework for Managing Illegal, Unreported and Unregulated Fishing in ASEAN, Asian Fisheries Science 33 (2020), p.66, <https://www.researchgate.net/publication/340364289_Framework_for_Managing_Illegal_Unreported_and_Unregulated_Fishing_in_ASEAN>, Accessed 16 October 2022.

²⁹ Sumaila, U.R.; Bellmann, C.; Tipping, A. Fishing for the future: An overview of challenges and opportunities. *Mar. Policy* 2016, *69*, 173–180.

³⁰ Shuo Li, Incorporation of Fisheries Policy into Regional Blocs?—Lessons from the EU’s Common Fisheries Policy, p.7, <<https://doi.org/10.3390/fishes7030102>>, Accessed 16 October 2022.

³¹ Development of an ASEAN General Fisheries Policy Feasibility Study, p.99, <<https://asean.org/wp-content/uploads/15.-AGFP-Feasibility-Study-report-28ASWGF1.pdf>>, Accessed 16 October 2022.

structural policy for fisheries, in particular the common market organization, was introduced in 1970³². The CFP experienced a gradual development and has been through a series of updates around every ten years, the most recent of which took effect on 1 January 2014. Accordingly, the CFP has been consolidated with several amendments concentrating on fisheries management and structural support in the following years³³.

Although the CPF had experienced lots of amendments with the achievement of the enlargement scope of the CPF, highlighting the principles of “good governance³⁴”, and specifying many rules concerning measures and enforcement. However, the previous CPFs still did not live up to expectations in the short term as the deterioration of some stocks continued to increase. At the same time, it highlighted some problems that had remained unnoticed until then, such as that of discards³⁵. In that situation, the EU carried out another reform concerning its fisheries policy. Three pillars, including the regulations concerning the Common Fisheries Policy (Regulation No. 1380/2013³⁶), the common organization of the markets (Regulation No. 1379/2013³⁷), and the

³² Common fisheries policy (CFP), European Commission, <https://oceans-and-fisheries.ec.europa.eu/policy/common-fisheries-policy-cfp_en#revision-of-the-fisheries-control-system>, Accessed 16 October 2022.

³³ Ibid n 30.

³⁴ Chang, Y.C. International legal obligations in relation to good ocean governance. *Chin. J. Int. Law* **2010**, 9, 589–605.

³⁵ The common fisheries policy: origins and development, <https://www.europarl.europa.eu/factsheets/en/sheet/114/the-common-fisheries-policy-origins-and-development>

³⁶ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and Repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013. Available online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1380>> Accessed 22 August 2022.

³⁷ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Organisation of the Markets in Fishery and Aquaculture Products, Amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and Repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013. Available online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1379>>, Accessed 22 August 2022.

European Maritime and Fisheries Fund (EMFF) (Regulation No. 508/2014³⁸), are supporting the current EU fisheries regime³⁹.

The CFP covers fishing activities in EU waters, and the activities of EU fleets operating in the waters of third countries. It applies to all the Member States (MSs) of the European Union. It is based on the 2013 Regulation with an amendment made in 2019. The 2013 reform introduced the principles of the maximum sustainable yield (MSY)⁴⁰. It adjusted the emphasis of the CFP's management of fish stocks from avoiding stock collapse to maximizing long-term yield.

The principal objective of the CFP is to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. Through a precautionary and ecosystems-based approach, the objective is for all fish stocks to be exploited at sustainable levels based on MSY by 2020 at the latest⁴¹. Other objectives of the CFP include: the collection of scientific data; eliminating discards through a landing obligation; conditions for economically viable and competitive fish catching and processing sectors; matching fleet capacity with fish resource availability; developing sustainable aquaculture; a fair standard of living for those who depend on fishing activities; ensuring a level-playing field for fisheries and aquaculture products marketed in the EU; promoting coastal fishing activities taking into account socio- economic aspects and coherence with environmental legislation⁴².

Generally speaking, existing CFP concentrates more on the concept of sustainability, quantifiability, and incentives of stakeholders.

³⁸ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L 149, 20.5.2014. Available online: <<https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A32014R0508&qid=1651116823617>> Accessed 22 August 2022.

³⁹ Article 1 of Regulation 170/83. Available online: <<https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A31983R0170>>, Accessed 22 August 2022.

⁴⁰ Article 2 (2) of Regulation 1380/2013. Available online: <<https://eurlex.europa.eu/legalcontent/EN/LSU/?uri=celex%3A32014R0508>>, Accessed 22 August 2022.

⁴¹ Ibid n 35.

⁴² Ibid n 31.

4.2. Content of the EU CFP

The CFP is based on “a vast mass of legislation” covering most aspects of the industry⁴³. The EU has developed a complete, systematic fisheries policy framework⁴⁴. Both EU institutions and the MSs are playing important roles in it, collectively or individually⁴⁵. The CFP is an exclusive competence of the EU and the legislation normally takes the form of regulations. The Commission performs as an initiator and facilitator of the legislation and is responsible for negotiating with third States. It plays an important role in financial assistance and administrative work. It is also responsible for monitoring and guaranteeing the implementation of the CFP. It receives advice from the Advisory Councils (ACs)⁴⁶ and the Scientific, Technical, and Economic Committee for Fisheries (STECF)⁴⁷. Herein, fishing opportunities are allocated to the MSs and as long as the quota determined at the EU level is not exceeded, the implementation is to be conducted at the national level and EU institutions do not have the power to act on behalf of MSs⁴⁸. In terms of monitoring and inspection, a European Fisheries Control Agency (EFCA) was established in accordance with Council Regulation No. 768/2005⁴⁹. Its primary role is to organize coordination and cooperation between national control and inspection activities.

⁴³ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the Conservation and Sustainable Exploitation of Fisheries Resources under the Common Fisheries Policy, OJ L 358, 31.12.2002. Available online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002R2371>> Accessed 22 August 2022.

⁴⁴ Hegland, T.J. The Common Fisheries Policy and Competing Perspectives on Integration. 2009. Available online: http://vbn.aau.dk/files/18148509/Hegland_MLG_paper_for_publication_20med_20omslag_1.pdf Accessed 18 September 2022.

⁴⁵ Articles 11-24 of Regulation 1380/2013. Available online: http://vbn.aau.dk/files/18148509/Hegland_MLG_paper_for_publication_20med_20omslag_1.pdf Accessed 18 September 2022.

⁴⁶ Hatchard, J.; Gray, T.S. From RACs to Advisory Councils: Lessons from North Sea discourse for the 2014 reform of the European Common Fisheries Policy. *Mar. Policy* 2014, 47, 87–93. <<https://www.sciencedirect.com/science/article/abs/pii/S0308597X14000530?via%3Dihub>> (accessed 22 September 2022).

⁴⁷ The Scientific, Technical and Economic Committee for Fisheries (STECF) Is a Scientific Body Established by the Commission Providing Scientific Advice to the Commission. For More Information, See STECF Website. Available online: <https://stecf.jrc.ec.europa.eu/> Accessed 22 September 2022.

⁴⁸ Frost, H.; Andersen, P. The common fisheries policy of the European Union and fisheries economics. *Mar. Policy* 2006, 30, 737–746. <<https://www.sciencedirect.com/science/article/abs/pii/S0308597X06000029?via%3Dihub>> Accessed 22 October 2022.

⁴⁹ Council Regulation (EC) No 768/2005 of 26 April 2005 Establishing a Community Fisheries Control Agency and Amending Regulation (EEC) No 2847/93 Establishing a Control System Applicable to the Common Fisheries Policy, OJ L 128, 21.5.2005, pp. 1–14; Now Replaced by Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency, OJ L 83, 25.3.2019, pp. 18–37. Available

When the reformed CFP approved by EU policymakers in 2013 came into force the next year and established updated rules for conserving fish stocks and managing European fishing fleets. The CFP basic regulation⁵⁰, agreed upon by the Council of the EU and the European Parliament, articulates a range of objectives in Article 2 and articulates principles of good governance in Article 3.

Overall, Article 2 spells out the broad goal to ensure that fishing activities are:

- Environmentally sustainable in the long term.
- Managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

To ensure the activities of the fishing and aquaculture sectors are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social, and employment benefits, the CFP reform is renewed with the most important points are as follows⁵¹:

Firstly, Sustainable fisheries management. In the EU region waters, all vessels must be licensed to fish, and there are compulsory maximum fleet capacity ceilings and national schemes in place for the EU MSs for the purpose of managing and adjusting fishing capacity. Especially, total allowable catches (TACs) for individual species are set based on scientific advice. TACs, which can be transferred, are divided into quotas and distributed among the MSs of the EU based on pre-defined shares of the stocks for each MS⁵².

The EU has exclusive competence in the conservation of marine biological resources under the CFP (with the Union sharing competences for other components of the CFP with MS). However, the CFP gives MS the chance to play an active role in designing fisheries conservation measures (so-called regionalisation), and prescriptive top-down decisions have been replaced by results-based management with more input from the bottom up⁵³.

online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0473>> Accessed 22 October 2022.

⁵⁰ European Union, “Regulation (EU) No. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, Amending Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and Repealing Council Regulations (EC) No. 2371/2002 and (EC) No. 639/2004 and Council Decision 2004/585/EC,” *Official Journal of the European Union* L 354, 28.12.2013 (2013): 22-61, <<http://data.europa.eu/eli/reg/2013/1380/oj>> Accessed 22 October 2022.

⁵¹ Ibid n 35 [4].

⁵² Achieving sustainable fisheries through CFP reform, p.2, <https://www.nwwac.org/fileupload/Image/DEFRA_CFP_Reform_Discussion_Paper_Sept09_EN.pdf> Accessed 22 October 2022.

⁵³ Ibid n 31 [100].

Secondly, Fisheries controls. To ensure that the rules of the CFP are followed in practice, a control system has been designed to: monitor that only the allowed quantities of fish are landed and combat illegal fishing; allow data collection for managing fishing opportunities; clarify the respective roles of EU countries and the Commission; ensure harmonized application of rules and sanctions across the EU; enable tracing and checking of fisheries products throughout the supply chain, from net to plate⁵⁴.

Thirdly, IUU fishing. EU policy on combatting IUU fishing is embodied in the EU IUU regulation that entered into force on 1 January 2010. It concerns EU MSs and non-EU countries alike and applies to all vessels that commercially exploit fisheries resources destined for the EU market⁵⁵. It requires countries wishing to export to EU MS to have in place catch certification schemes and to issue catch certificates to verify that fish entering the EU market is not coming from IUU sources, so that only marine fisheries products validated as legal by the competent flag state or exporting state can be imported to or exported from the EU⁵⁶.

Fourthly, Aquaculture. The CFP articulates that aquaculture should contribute to the preservation of the food production potential on a sustainable basis throughout the Union so as to guarantee long-term food security, including food supplies, as well as growth and employment for Union citizens, and to contribute to meeting the growing world demand for aquatic food⁵⁷. EU countries set up multiannual plans to promote aquaculture, and an Aquaculture Advisory Council (a stakeholder-led organisation) provides the European institutions and the MS with recommendations and advice on issues related to the sustainable development of the sector⁵⁸.

Fifthly, International dimension⁵⁹. Outside of the EU, the EU represents its MS in Regional Fisheries Management Organisation (RFMOs) and supports decision-making by RFMOs in support of sustainability. To ensure sustainable fishing by EU vessels in the waters of other countries outside of the EU, fishing under Sustainable Fisheries Partnership Agreements (SFPAs) ensures that EU vessels are only allowed to target surplus resources i.e. resources that are not over-

⁵⁴ EU fisheries policy – latest developments and future challenges, *the European Parliament's Committee on Fisheries*, p. 102, <[https://www.europarl.europa.eu/RegData/etudes/STUD/2019/629202/IPOL_STU\(2019\)629202_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/629202/IPOL_STU(2019)629202_EN.pdf)> Access 22 August 2022.

⁵⁵ Article 16 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008R1005-20110309&from=EN>> Accessed 16 October 2022.

⁵⁶ Ibid n 31 [102].

⁵⁷ Article 2.1 CFP.

⁵⁸ Ibid n 31 [102].

⁵⁹ Article 29 CFP.

exploited, and the partner country is not willing to fish or not capable of fishing. There is a dedicated Regulation on the sustainable management of the EU's external fishing fleet.

Moreover, the common organisation of the markets in fishery and aquaculture products is part of the reform package, and the new EMFF⁶⁰ will serve as a financial tool to help implement the CFP and the common organisation of the market in fishery and aquaculture products⁶¹.

5. Evaluation of the CFP and some suggestion for ASEAN

5.1. Impact of the EU CFP

In 2017, the STECF has recently published its annual report⁶² on the performance of the CFP as regards the progress on the situation of the fish stocks and exploitation levels. STECF report evidences positive trends in many fish stocks across Europe. For instance, when stating that amongst the almost 70 stocks fully assessed, the proportion of overexploited stocks decreased from more than 70% to close to 40% over the last ten years. In addition, the report points out that the proportion of the assessed stocks outside the safe biological limits follows the same decreasing trend, from 65% in 2003 to 38% in 2015. Concerning the exploitation rates of fish stocks, the STECF report also brings good news since around half of the stocks assessed have reached sustainable levels, in line with the objectives set in the CFP, well before the deadline given (i.e. before 2020). As regards the trend in biomass, the report shows improvement in all EU waters, except for the Mediterranean and Black sea. For the fully assessed stocks, the biomass ratio in 2015 is around 35% higher than in 2003.

As can be seen from the report, the status of most of the target stocks is very good. Numerous successful stories are found in many fisheries in the North East Atlantic as reflected in the graphs annexed to this press release. The fisheries of many of these stocks are certified under the MSC standard which in itself is proof of the health status and the sound management of these stocks. A very remarkable example is the Plaice in the North Sea, also MSC certified, which counts with the highest level of biomass ever reported (226.008 tonnes in 2002 compared to 945.709 tonnes in 2016). The report also shows the need to improve factual knowledge of high-quality stocks which have not been studied in detail so far⁶³.

Moreover, in terms of the key environmental objective of the CFP of sustainable fisheries and the number of stocks overfished or fished within MSY proportions by year, in the North-East Atlantic

⁶⁰ Article 25 CFP.

⁶¹ Ibid n 54 [20].

⁶² Ibid n 47 [7].

⁶³ Success story for European fisheries and policies, European Association of Fish Producers Organizations (EAPO), 12th April 2017, <<https://europeche.chil.me/attachment/03ea1b9d-21c5-4bc3-b930-73766520d27d>> Accessed 16 October 2022.

and adjacent waters, the number and proportion of stocks fished in accordance with the CFP MSY objective has been increasing steadily over recent years, around 60% of stocks which have scientific assessments are exploited within sustainable levels, total allowable catches are increasingly being set in line with MSY advice, and average biomass increased by 35% between 2003 and 2015. However, in the Mediterranean where total allowable catches are not used, overfishing of most stocks is the norm and average biomass declined by 20% between 2003 and 2014⁶⁴. These data show that while there have been improvements in the environmental status of stocks in recent years, and some specific actions in the Mediterranean in recent years towards tackling overfishing, there remain significant regional differences, and further room for improvement.

For the past 22 years, the EU fishing fleet capacity has successfully been reduced to better match capacity with resource availability. Fleet capacity has declined in terms of both tonnage and engine power, in recent years at an average rate of around 2% p.a. in terms of vessel numbers, kW and GT. Despite accession of more States to the EU, the number of EU vessels in 2017 was 83,117 which was 20,717 fewer than in 1996. These changes both support the improved environmental performance but also allow for improved environmental performance to feed through into improved economic performance for the EU fishing fleet⁶⁵. Revenues have increased slowly but steadily over the last decade, but other economic indicators such as gross value added and profits have shown a marked improvement. Net profit as a proportion of fishing income for example increased steadily from 6% in 2009 to 11% in 2015. In 2016 the EU fleet registered record-high net profits of EUR 1.35 billion, up from EUR 789 million in 2015, as a result of a combination of higher average fish prices, continued low fuel prices, improved status of some important stocks, and technological advances⁶⁶. But as with environmental performance, economic performance is generally better in the North Sea, North-East Atlantic and Baltic than for those fleets fishing in the Mediterranean and Black Sea. The economic situation of certain small-scale coastal fleets, in particular in the Mediterranean, continues to be of concern, in contrast with the overall improvement in the EU large-scale and distant-water fleets⁶⁷.

In terms of the social impacts of the CFP, the numbers of people employed in fishing has decreased on average by 9% since 2008. This was to be expected given the need to reduce fleet capacity and vessel numbers to achieve the CFP MSY objective⁶⁸. On the other hand, and correspondingly,

⁶⁴ Ibid n 31 [101].

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid n 31 [101].

⁶⁸ Annual report on balance between fishing capacity and fishing opportunities for 2018, p.5, <https://oceans-and-fisheries.ec.europa.eu/system/files/2019-09/2018-fleet-capacity-report-croatia_en.pdf>, Accessed 16 October 2022.

average wages for fishing crew (in most areas apart from the Mediterranean) have benefitted as a result and have increased in line with increased economic performance.

Other positive impacts of the EU CFP include a processing sector that is generally profitable with an annual turnover of around EUR 28 billion, a stable aquaculture sector that is important in some MSs (especially the UK, France, Spain, Greece, and Italy), active engagement by the EU in supporting sustainability at the international level through its engagement with RFMOs, there are increased levels of data sharing between MS, and increasingly EU MSs are working together on joint control operations⁶⁹.

In addition, a key achievement of the CFP since its inception has been the avoidance of conflict, fixing agreed sharing of fisheries resources among the MSs, and allowing the development of conservation rules applicable to all. Such rules can in principle also be developed on a regional basis. Where the CFP integration goes even deeper is in the adoption of a common, rules-based dispute settlement procedure through the European Court of Justice, financial support for the development and adjustment of the fisheries sector, and market-based interventions which would be difficult to implement in the absence of common agreement and rules⁷⁰.

Overall, the EU CFP has brought fisheries management under an agreed international legal framework allowing for the peaceful and orderly settlement of disputes, the assignment of rights over fisheries resources, and the development of common rules for fishing. This has allowed orderly policy development. The EU CFP has brought about continued and sustained improvements since 1987 of benefit to the catching sector, aquaculture producers, processors, and consumers. These improvements have been possible because of a strong science-based underpinning decision-making, and policy updating (based on impact assessments and evaluations), and because of increasingly effective implementation. The benefits of regional action, of wide stakeholder involvement in decision-making, of reducing fleet capacity, and of exploiting stocks at MSY levels based on scientific assessment and advice, suggest that such approaches could also generate benefits for the AMSs⁷¹.

Therefore, the EU CFP is comprehensive in terms of its coverage of different issues. It has brought about continued and sustained improvements over the past 10-15 years of benefit to the catching sector, aquaculture producers, processors, and consumers. These improvements have been possible because of periodic amendments/changes in policy content (based on impact assessments and evaluations), and because of increasingly effective implementation. Some competencies (like

⁶⁹ Rasmus Nielsen, Arina Motova, The Economic Performance of the EU Aquaculture Sector (STECF 14-18), p.33, <<https://stecf.jrc.ec.europa.eu/documents/43805/839433/STECF+14-18+-+EU+Aquaculture+sector.pdf>>, Accessed 16 October 2022.

⁷⁰ Ibid n 31 [102].

⁷¹ Ibid n 31 [38].

marine conservation) rest at the EU level, with others (such as aquaculture development) remaining at the MS level⁷².

The impact of the EU CFP is also spread into the ASEAN region. Accordingly, to improve ASEAN regional fisheries management, the Plan of Action to Implement the ASEAN-EU Strategic Partnership (2018-2022) and (2023-2027) was released. Under this Plan of Action, ASEAN and the EU will pursue cooperation in conformity with their respective MSs' obligations under international law, and in accordance with their respective MSs' domestic laws, regulations and policies in the fisheries sectors⁷³. Moreover, the EU region is also supporting relevant activities under the ASEAN Network for Combating IUU fishing (AN-IUU) in accordance with its Cooperation Framework, Terms of Reference and Rules of Procedure (CFTORROP).

5.2. Some serious problem of the EU CFP

CFP is the EU's instrument for the management of fisheries, aimed at enhancing the sustainability of fish stocks and the economic competitiveness of the fishing industry. This policy has brought a great impact and certain initial successes for the EU region. However, for a short time, neither the living aquatic resources nor the profits of the fishing industry have benefited from it, with 88% of the stocks being overfished and the profit margins of fishermen continuously in decline⁷⁴. In this case, the European CFP has, to date, failed to implement a regime aimed at achieving a healthy, sustainable fisheries sector for some reasons⁷⁵:

First of all, there is no specialized policy to regulate fisheries management activities. Herein, when measuring the CFP, the Treaty on the Functioning of the EU (FEU Treaty), which organizes the functioning of the Union and determines the areas of exercising its competencies (cf. Art.1(2)) does not contain a single competence title for fisheries. Rather, the existing competence of the Community to enact fisheries management measures is integrated with the provisions of the common agricultural policy (Art. 38 FEU Treaty). Accordingly, agricultural objectives differ significantly from that of a management scheme that applies to sea areas and resources that move across State and regime boundaries⁷⁶. Therefore, the inclusion of the CFP in the common

⁷² Ibid n 31 [102].

⁷³ Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027), p.11, Accessed 16 October 2022, <<https://www.eas.europa.eu/sites/default/files/documents/Plan%20of%20Action%20to%20Implement%20the%20ASEAN-EU%20Strategic%20Partnership%20%282023-2027%29.pdf>> Accessed 16 October 2022.

⁷⁴ Commission of the European Communities (EC). Green paper: reform of the common fisheries policy [COM(2009) 163 final]. Brussels: The European Commission; 2009.

⁷⁵ Setareh Khalilian et al, Designed for Failure: A Critique of the Common Fisheries Policy of the European Union, Marine Policy (2010), p.3.

⁷⁶ Ibid n 73 [4].

agricultural policy does not take sufficient account of the factual differences which exist between the two fields. Against this background, it is unlikely that fishing regulations satisfy the particularities of the subject matter.

Secondly, the measures CFP set out are not consistent with the principles of primary European law. In this case, the conformity of certain CFP measures with the requirements of primary European law (i.e., the FEU Treaty) is questionable. As mentioned above, the reason for this is questionable due to the factual differences which exist between the CFP and the common agricultural policy. In particular, it must be doubted whether the majority of EU fisheries regulations and directives, which have to a considerable extent worsened rather than prevented the decline of fish stocks in European waters, meet the requirements of the precautionary principle as laid down in Article 191 FEU Treaty. In many cases, States and fishermen oppose stricter conservation measures by arguing that there is not enough scientific evidence and data to justify such measures. However, a reasonable application of the precautionary principle within the context of European law would entail that the burden of proof with regard to the sustainability of fisheries lies on the fishing industry itself⁷⁷.

Thirdly, the lack of transparency of the existing fisheries management measures as well as of the decision – making process in the Council is obvious. Some estimated 2000 rules and regulations are assigned to the CFP which are difficult to comprehend and often contradictory. For example, the legal mesh size under the CFP is small enough to catch fish below legal landing size⁷⁸.

Fourthly, the TAC annually set by the Council and the national quotas distributed to the MSs according to the principle of relative stability depend on effective control and enforcement, which has been continuously at low levels⁷⁹. Although the legal foundations of the CFP are part of the treaty provisions on agriculture, Article 11 FEU Treaty obliges the Union organs to integrate environmental protection requirements into the definition and implementation of all Union policies and activities referred to in Article 7 of the FEU Treaty. This means that the organs of the Community are obliged to respect the precautionary principle also within the context of the CFP. Overall, the reasons for the failure of the CFP are the incompatibility of the CFP with the FEU Treaty in general and the precautionary principle, in particular, is at least questionable. Moreover, the lack of transparency of its regulations as well as insufficient control and enforcement of its provisions add to the failure of the CFP. In summary, the CFP is characterized by opaque decision – making with little approval by the public. This leads to a culture of non – compliance that undermines the CFP even further.

⁷⁷ Ibid.

⁷⁸ Froese R, Stern-Pirlot A, Winker H, Gascuel D. Size matters: how single species management can contribute to ecosystem-based fisheries management. *Fisheries Research* 2008;92:231–41.

⁷⁹ Ibid n 73 [5].

5.3. Suggestion for ASEAN

Since the new policy took effect eight years ago, the EU has made significant progress in some areas, but much remains some serious problems have to be resolved, particularly in setting all catch limits no higher than the levels recommended in the best available scientific advice⁸⁰. Besides, the policy context for fisheries in the EU and the ASEAN region is different, in that the EU has exclusive competence in the conservation of marine biological resources, while ASEAN does not, and fisheries conservation and management remains the competency of the sovereign AMSs. Nevertheless, the EU CFP has become increasingly devolved with many remarkable achievements. So the evolution and implementation of CFP will be a lesson for ASEAN under the establishment and development of common fisheries policies under the ASEAN region frameworks.

Within this context, the author recommended the following advice for ASEAN to improve its regional fisheries management:

- (i) Completing the legal framework to regulate fisheries policies in the region in a synchronous and comprehensive manner. ASEAN countries need to coordinate in the legal field and share best practices such as how to manage the requirement for sustainable fishing practices in other countries. Countries that already have their own national plans of action for IUU fishing can harmonize these plans into common regional practice. In overlapping maritime areas, disputes over jurisdiction should be considered a priority concern. Because these disputes will create obstacles to the regional cooperation necessary on the basic establish the framework for building sustainable fishing in the region.
- (ii) Strengthen regional cooperation on enforcement to address IUU fishing and improve overall sustainable fisheries management. More often than not, IUU fishing and crimes committed in the fishing industry are transnational and highly organized. Implement pivotal activities to maintain the sustainability of resources while preserving each country's sovereignty such as joint monitoring, surveillance and control, and follow-up investigative initiatives.
- (iii) To improve sustainable fisheries management, Information-sharing between agencies involved in fisheries management within a country and between countries is critical. Further assessments pertaining to shortfalls in country-level implementation and technical capacity are needed to develop effective capacity-building programs. Thereby, countries in the ASEAN region could address identified gaps and create accountable departments and reliable networks across the region.

⁸⁰ Andrew Clayton, Lessons From Implementation of the EU's Common Fisheries Policy, <<https://www.pewtrusts.org/en/research-and-analysis/reports/2021/03/lessons-from-implementation-of-the-eus-common-fisheries-policy>>, Accessed 16 October 2022.

6. Conclusion

Each day, fisheries issues and trends in the ASEAN region impact the food and livelihood security of millions of primarily poor people, both positively and negatively. With the nature transboundary in nature due to fish stock distributions, habitat linkages, and global trade, increasing fishing effort severely impacts marine and coastal biodiversity and ecosystem resilience, while fueling social problems and illegal activities that destabilize maritime security and increase civil conflict. Therefore, a common fisheries regional policy can be an effective way of resolving all these problems and improving regional fisheries management. An ideal fisheries policy should foster the sustainable use of fish stocks, provide for coherent laws and regulations that yield adequate economic incentives, and guarantee consistent enforcement of the legal framework.

In common, the EU's Common Fisheries Policy (CFP) would be one of the lessons learned that needs to study and understand for application to the ASEAN region. The CFP aims to ensure that fishing and aquaculture are environmentally, economically, and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities. Although it is important to maximize catches, there must be limits.

Development of a Common Fisheries Policy for ASEAN requires several inputs not only regional policy harmonization alone, but it should be based on the scientific data/information particularly stock assessment at a sub-regional or regional level as well as the risk assessment that suggests management measures recommendations. Especially, economic incentives, a good institutional design, and financial and scientific support are critical factors in favor of adopting common fisheries policies under the ASEAN region frameworks.

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