Chapter 9

The Promises and Pitfalls of Participation: What Voice for the Regional Advisory Councils?

Joan O’Mahony
London School of Economics

Introduction

Participation in the decision-making of the European Commission’s Directorate General (DG) for fish can be characterised as having moved over the last few decades from ‘civic choice’ to ‘civic voice’ to ‘civic action’ (O’Mahony and Coffey 2007). The 1980s provided limited opportunity to a limited set of social actors to contribute their opinion on matters that, it was often argued, had largely been decided. It was only in the 1990s that the engineering of participation could be said to have begun in earnest. Opportunity for comment and even dialogue on fisheries governance was opened up to a far greater set of ‘stakeholders’: not only to fishers, but also to environmental and consumer organisations. Additionally, such opportunity

---

1 I would like to thank Beate Kohler-Koch, Frank Vibert, and Jim Ottaway for their very helpful comments. This paper develops aspects of O’Mahony and Coffey (2007).
for participation was institutionalised through the allocation of funding to the consultative body: the Advisory Committee on Fisheries and Aquaculture. However, in recent years, the reform of the Common Fisheries Policy has ushered in an entirely new forum for participation by setting up the Regional Advisory Councils (RACs). These bodies are charged with designing and submitting recommendations to the Commission on the operation of the Common Fisheries Policy for the geographical areas they cover. Regional Advisory Councils, therefore, for Commission-sponsored bodies, operate with an unusual degree of autonomy.

RAC membership is composed of national fishing organisations from at least two member states along with non-governmental organisations and, critically, with scientists, who attend as experts. The Commission has justified the creation of the RACs on two grounds. First, that the RACs will improve the quality of the scientific advice to the Commission: members of the RACs are able to call experts to RAC meetings and work with them to offer advice and guidance tailored to the areas their RACs cover. Second, that allowing local fishers greater participation would improve buy-in to the rules governing fish management. Fishers, the Commission argued

‘(…) have been calling for greater and earlier involvement in the CFP process. Participation means responsibility and there is no doubt that by being more involved in the decision-making process, the fisheries sector should gain a feeling of ownership towards the management rules and a desire to see them implemented.’ (Commission 2005:1)

---

2 For example, the membership of the North Sea Regional Advisory Council is as follows. Following the general framework laid down by the Commission, which stipulates that the executive body of each RAC comprises 24 members, an interim executive committee of the North Sea RAC recommended that membership be composed of a catchers organisation from each North Sea country (in some cases not one but two), hence from Belgium, France (2), Denmark (2), Germany, Netherlands (2), Poland, Spain, Sweden, United Kingdom (2) and of three Green NGOs, a consumer NGO, an Aquaculture producer, a Fisher-recreational group, the North Sea Women’s Network, the European Organisation for Fish Traders, the European Association of Fishing Ports and Auctions and the European Transport Worker’s Federation, and one other organisation.
The Regional Advisory Councils are marked by a number of distinctive characteristics. The dominant feature is that they be stakeholder-led. Thus, they are not in themselves created by the Commission; rather the Commission, in legislating a general framework, creates the enabling conditions for interested parties to establish an RAC and apply to the Commission for operational recognition and funds. This confers on the bodies a degree of civic legitimacy.

Second, the bases of the Councils are not national territories but geographical and, in one case, biological ones; there are seven RACS covering, respectively: the Baltic, the Mediterranean and the North Sea; the north-western and south-western waters, pelagic stocks and high-seas/long-distance fleets.

Third, despite the adjective ‘advisory’, it was always envisaged that the regional advisory councils would do more than merely advise. By initiating plans and making recommendations to the Commission on how the Common Fisheries Policy could best work, their role would be closer to one of co-management.

What follows here is a brief consideration of the promises and pitfalls of institutional engineering, and the gains and challenges of this particular instance of the opening of EU governance to civil society.

Why the Engineering?

For long, fishers have complained to the Commission that their views were not taken into account in decisions on the management of fish stocks. In addition, the environmental stakeholders argued that they too should be consulted. The Common Fisheries Policy was seen as top-down and centralised, and where opportunities to participate were extended, they were
regarded as too few and coming too late. In short, there was in DG Fish the usual ingredient of dissent that generally precedes reform of governance structures. However, dissent in itself has never been able to explain the timing of institutional reform nor to explain why new institutions look the way they do. While many of the Directorates have in recent years introduced new opportunities for participation, it is only in DG Fish that a forum such as the RACs exists. I suggest that the varying nature of both the regulatory object and the regulatory public in each DG will play a part in determining how governance reform proceeds. Importantly, in DG Fish there is at least consensus on what the object of regulation is. Scientists, environmentalists, and fishers are all agreed, albeit for very different reasons, that there must be a sustainable level of fish. And this agreement makes it more likely that a body that goes beyond simple dialogue can come into being.

In other DGs, however, reaching a stakeholder agreement on what the regulatory or policy object is has proved far more elusive. For example, in DG Trade the members of the Civil Society Dialogue remain at some ideological odds over what the purpose of trade policy is. And far from being viewed as a dialogue, the predominant experience is that the forum is a platform for the mere exchange of information or the communication of positions, rather than any genuine interaction (Slob and Smaakman, 2007:13). Attempts at influence, to persuade or convince others, run predominantly on vertical lines between individual forum members and the Commission, rather than between the forum members themselves. No doubt the situation is promoted in part by the secrecy which is commonly regarded as ‘the nature’ of trade. For example, Slob and Smaakman note that most participants in the Civil Society Dialogue “understand that the Commission is not always able to give all information with regard to its position due to the very nature of negotiations” (54). Additionally, some business associations pointed out “that the presence of certain CSOs at the meeting prevented them from discussing
certain issues, which gave away too much strategic information” and another respondent remarking on the lack of trust between the business and NGO representatives added that “perhaps it is because the Commission is there as well, and you do not want to compromise your position in front of the Commission” (Slob and Smaakman: 53).

A further factor supporting the extension of participation opportunities to fishers is the very real (rather than imagined or hoped for) benefits this can bring to policy. Agreeing on fish stock estimates is a critical affair: not getting the calculations correct, not reaching a ‘fair’ estimate can cause great unnecessary hardship to fishers, or alternatively cause great risk to fish. But uncertainties make the science surrounding sustainable fisheries extremely difficult. There is no scientific consensus on how to establish optimum levels of exploitation of fish stocks. A much-cited 1993 article in the journal Science is pessimistic about the prospects for achieving such a consensus.

The great difficulty in achieving consensus concerning past event and a fortiori in prediction of future events is that controlled and replicated experiments are impossible to perform in large-scale systems. Therefore there is ample scope for differing interpretations. There are great obstacles to any sort of experimental approach to management because experiments involve reduction in yield (at least for the short term) without any guarantee of increased yields in the future. (Ludwig et al. 1993:17)

A further problem that Ludwig et al highlight is that any experiments that can be conducted would adversely affect the fisheries industries. This problem, they go on to say, is also compounded by difficulties modelling environmental changes such as global warming, where the time scales involved are so long that it is impossible to gather enough observational data (36).

The belief that maximum sustainable yields may in principle be calculated on the basis of experimental evidence has, they claim, perpetuated a dangerous
myth of sustainability: that “science or technology (if lavishly funded) can provide a solution to resource or conservation problems” (36). Once one abandons this belief, it is possible to decide upon appropriate action, involving a precautionary approach to fish stocks management and taking into account the motivations of the fisheries industries. Thus, the gaps in scientific knowledge and the meagre prospects for scientific understanding of the problems of fish stocks management create a need for the involvement of the fishing industries in policy-making: management of the resource gives way to management and self-management of the exploiters of the resource.

The genuine advantages that can accrue to the Commission through deepening the involvement of stakeholders in the case of DG fish may not so clearly exist in other policy areas. Again to turn to DG Trade, though the stated mission of the Civil Society Dialogue is to “develop a confident working relationship between all interested stakeholders in the trade policy field”3 it is unclear to the actors involved what such a working relationship would involve or would look like. More often, the process has been a one-way opportunity for the Commission to educate CSOs as to the complexity of the trade negotiation process. Dür and De Bièvre note that NGO representatives saw the meetings as “briefings rather than of dialogue [and that] business associations…referred to it as a monologue” (2007: 86).

A final contributing factor to the formation of the Regional Advisory Councils is of course geography and proximity. As Kohler-Koch recently pointed out, in the case of the RACs it makes sense to the people involved that the forums exist where they do, and the fact that the issue can be regionalised makes it possible to give ownership to a specific community. There are other activities or industries, for example in areas of agriculture and farming, where stakeholders cannot be split up according to regions. This

3 http://trade.ec.europa.eu/civilsoc/index.cfm
makes it difficult to translate the RAC experience across the Commission (Kohler-Koch 2006).

The Regional Advisory Councils: a greater say?

One of the reasons the RACs were set up was to give fishers and other stakeholders a greater say in decision-making. Assessing the success of the RACs, or of similar bodies, in terms of this goal is, of course, an important exercise, but it is an exercise beset with difficulties. Indeed, the history of political sociology and political science is a history of the difficulties in agreeing on what a ‘greater say’, a ‘greater voice’, or ‘greater influence’ might look like or how it might be measured. Bearing in mind the newness of these bodies I suggest a number of ways in which one can give a preliminary ‘yes’ to the question of whether the RACs gave its stakeholders a greater say.

First, the RACs were initially set up with limited and temporary funding to be allocated on a digressive basis. However, in June 2007 Council amended RAC legislation and had the RACs declared as bodies pursuing an aim of general European interest. This move ensured permanent funding to the RACs of 250,000 each year (Commission of the European Communities 2007). In terms of voice then, this institutionalises a significant degree of independence from the Commission, along with the advantages of stability that permanent funding confers. Stakeholder energy does not have to be devoted to raising new funds, and stakeholders can speak and interact against a background no longer subject to the political vicissitudes of short-termism.

Second, the RACs do not merely respond to advice issued by the Commission, they also take the initiative, issuing their own advice papers and recommendations in critical areas of fishing. Moreover, the Commission is obliged to respond to any RAC advice within a time period of three weeks.
This obligation of the Commission to issue a reasoned and written response and the fact that initial advice and responses to such advice are published, therefore allowing internal and external stakeholders and commentators a further ‘say’, creates a situation of reciprocal accountability. In short, it influences or creates a different way of doing things. As the National Federation of Fishermen’s Organisations put it: “If RACs produce well considered, evidence based advice that is subsequently not followed by the Commission, then the Commission will have to provide a very good explanation of why not”.

Third, when the Commission created the conditions for the RACs, it set out to engineer not just participation, but also consensus. RACs were urged that, where possible, recommendations should be issued unanimously, and in doing so that they would find a more willing Commission ear. In short, the RACs ushered in not just ‘more voice’ but a louder voice, a collective or consensual voice. I suggest that the fact that the Commission insisted that dissent has to be traced and recorded and published makes it less likely to appear: participants have to think before they dissent, and others have to listen intelligently before they disagree.

Fourth, and critically, I suggest the improved ‘voice’ of the RACs lies also in their discussions and comments on what it means to have a voice, or to ‘have a say’. That is, where the Commission has issued an advice paper and asked for a response from a RAC, one often finds not only a response from the RAC to the issue in hand but also a critique on the Commission’s timing, or a critique of the Commission’s manner of introducing an issue, and suggestions about how the agenda could be better set in future. I suggest that the prospects for a stronger voice are therefore enhanced because of the fact that the agenda itself is frequently a point of contention, that RACs are

---

4 http://www.nffo.org.uk/rac.html
sensitive to and willing to comment on ‘the rules of the game’, and that they are clearly aware that the timing and place of voice is at least as important as content.

Fifth, the RACS create conditions not only for voice, but also action. To give just one example: the North Sea Regional Advisory Council came up with a new method of managing fish stocks in the Kattegat (an effort management scheme) as an alternative to the existing and highly contentious techniques of total allowable catches’ and quota systems. The Commission agreed promptly to the trial of the new scheme.

In sum, the RACs create ‘a greater say’ in so far as opportunities for voice are institutionalised, answerable, promote consensus, and offer scope for action and not voice alone. Most critically, the RACs are bodies that are poorly captured by conventional understandings of the notion of influence. In the case of the RACs it is not just about influence in terms of an Actor A trying to influence Actor B. For sure, it is about power, but often a power to, rather than power over. They are not bodies that are merely attempting to have ‘influence’ over someone else. Instead they try actively to create something new: imaginative ways of managing the populations of fish so central to their way of life.

Nancy Fraser, in a well-known criticism of Habermas’s conception of the public sphere, provided a useful distinction between strong publics and weak publics. ‘Weak publics’, she argues, were publics “whose deliberative practice consists exclusively in opinion formation and does not also encompass decision making” (Fraser, 1992:134). The distinction has been implicit in discussions on the place of the public within new governance regimes, with many arguing that without decision-making powers participants have reduced incentives towards reaching consensus. I suggest
that RACs resemble the concept of a strong public rather than a weak one. The possibility that dialogue leads to real action and change lends real meaning to opportunities for the exchange of views; this is one of the reasons why consensus is so often present in the advice and recommendations of the RACs. Nevertheless, a comparative glance at the papers issued by the RACs show a good degree of consensus but some variation, with some RACs tending more towards consensus than others, the North Sea RAC being a good example of the former. One reason for this is perhaps the fact that the North Sea RAC was born out of a pre-existing fishers’ organisation in the North Sea and that therefore there was already in place experience of dialogue and cooperation.

**Regional Advisory Councils - Promises and Pitfalls, Accountability and Representation**

Consultation with the public is now commonplace across the General Directorates of the European Commission. Genuine participation is rarer. The RACs at the least have the makings of bodies with the potential to offer real, sustained, repeated opportunities for dialogue, the outcome of which can have an evident impact on what people do. The RACs are new bodies and it is too early to judge whether they will deliver on the myriad of promises they offered to their diverse supporters. For the Commission one of those promises is the hope that the RACs can revive the decline in support for the Common Fisheries Policy. Whether they do will depend in part on the ability of the Commission to translate into action in a timely manner recommendations from the RACs. Indeed, the importance of showing how opportunities for voice are reflected in specific courses of action was returned to frequently in the CONNEX December 2006 Brussels workshop, where

---

5CONNEX, Research Group 4: The Constitution and Consequences of Representation: Models and Measures of Representation and Evaluation in the DGs, the Advisory Bodies, and
participants argued that it will be difficult to sustain willingness to participate if there is no evidence that participation either has an impact or has definite potential to lead to impact.

In the case of the RACs, however, there are reasons to expect that the Commission both will, and will have to, actively engage with the advice given by the RAC members. First, the fact that the RACs are well equipped with expert knowledge and benefit from expert-input makes them a highly credible stake-holding forum. Importantly, this strengthens the Commission’s hand, for it is a credibility that the Commission will be able to appeal to in the face of opposition from national governments. Furthermore, the Commission will, as the National Fishermen’s Organisation pointed out be induced to translate good advice into action because a (moderate) level of political accountability has been introduced: the official recognition and role attributed to the RACs give them a degree of publicity and puts them in a ‘credible’ position to exert pressure through naming and shaming. In short, the main ingredients of Boven’s accountability regime are present:

Accountability is a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences. (Bovens 2007: 450)

Another issue discussed at the CONNEX workshop in Brussels was the related one of legitimacy and representativeness: the argument that participation has to be representative for the process to be acceptable and effective. Traditional representative mechanisms generally produce an ‘information shortfall’ which government can compensate for through the engineering of participation (Dunleavy and O’Leary, 1987: 292, 312–). Such organised participation is invaluable to decision-makers for the refined

responses (information and elaborated perspectives) it produces on specific issues. And organised participation can also meet democratic expectations that not only actors should be represented in debate but also the full spectrum of positions. However, democratic expectations vary greatly and in consequence feelings generally run high over the whole issue of who and what is being represented; a point illustrated well by the Civil Society Dialogue in DG Trade. There, Slob and Smaakman’s evaluation of the process revealed just how thorny an issue representation is:

‘Many DG trade officials stressed that they were formally accountable only to the Member States and to the European Parliament. They are seen to constitute the representative democracy of Europe. [...] In some cases officials openly questioned the representativeness for civil society of the CSOs participating in the dialogue. Many businesses and membership CSOs openly questioned the legitimacy of the NGOs. They argued that where they represented a ‘tangible’ constituency, NGOs often had no such membership base [...] Several of the NGO representatives lamented the fact that certain business representatives were part of the dialogue as they did not see them as representatives of civil society. One respondent argued “[the actual balance of participants] doesn’t matter to me. In a dialogue it is the force of the argument that matters”’ (2007: 53-54).

This perhaps gives some sense of just why the issue of representation has become of marked importance recently to the Commission. The Commission’s response to the problem has been the clear message that “participation comes with responsibility” (cited Kohler-Koch: 2007:18), that is, “the claims put forward by a civil society organisation should be representative of the concerns of their membership or their constituency; CSOs should be responsive and held accountable” (Kohler-Koch, 2007: 18). This is an area where there are potential pitfalls for the RACs. Work remains to be done in terms of openness and transparency, thus improving effectiveness and, in consequence, augmenting legitimacy. For example, a look at the website of one executive member of the North Sea RAC, the Irish Seal Sanctuary, reveals nothing about the governance of this voluntary
organisation. While the website is replete with pictures of seals and requests for volunteers and donations, there is no information about the management of the organisation, about decision-taking, about accountability for donations and funding, about numbers of members, or indeed about its membership of the RAC. It remains to be seen whether this lack of transparency can be offset by the open manner in which elections to RACs executive committees are carried out, or by the fact that as non-voting, consensual bodies, the RACs can be regarded more than the sum of the parts. The danger is however that where the Commission adopts RACs recommendations and those recommendations are seen as contentious, the spotlight may turn on the executive/decision-making bodies of the Regional Advisory Councils, and on how they are constituted.

I conclude by suggesting that future research on the General Directorates needs to look at what the comparative experience is: how participatory ‘success’ is determined and the extent to which it depends on the particular issue, how regulatory objects and regulatory publics determine the participatory path, and what opportunities there are for cross-DG organisational learning.
References


O’ Mahony, Joan; Coffey, Clare (2007), From Civic Choice to Civic Voice: the Changing role of Society in European Fisheries Governance, in: Journal of Civil Society, 3 (3): 239-251.

Slob, Anneke; Smaakman, Flor (2007), A Voice, not a Vote: Evaluation of the Civil Society Dialogue at DG Trade, Rotterdam, ECORYS.