

R.R. CHURCHILL

EEC Fisheries Law



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EEC FISHERIES LAW

by

R.R. Churchill

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EEC FISHERIES LAW

Preface

In 1970 the EEC adopted its first legislation to implement its Common Fisheries Policy. Since that time the Policy has developed considerably, particularly after 1977 when EEC Member States extended their fishing limits to 200 miles: correspondingly, there has been a significant growth in the volume of EEC fisheries law. As a result there is now an extensive body of EEC law dealing with nearly all aspects of fishing, and the Community has largely, though not entirely, taken over from its Member States the responsibility for regulating the fishing industries of the EEC.

The aim of this book is to give a critical analysis of the whole body of fisheries law which has so far been adopted by the EEC. In particular, it seeks to determine the division of competence between the Community and its Member States in relation to the regulation of fishing, to describe the fisheries law which the Community has adopted, and to assess the effectiveness of that law in the light of its stated or presumed objectives. The first three chapters deal with a number of preliminary background and procedural matters. Chapter 1 considers the special characteristics which fisheries have which distinguish them from other economic activities as the object of regulation by public authorities. This is followed by a quick sketch of the fishing industries of EEC Member States and a brief account of the evolution of EEC fisheries law in order to facilitate understanding of the analysis of the substantive law which follows in later Chapters. Chapter 2 explains the processes by which EEC fisheries law is made, while Chapter 3 explores the scope of this law, seeking to ascertain to what kinds of aquatic creatures, geographical areas and persons it applies.

The substantive law is the subject of the remaining chapters. The waters of EEC Member States contain extensive fishery resources which are capable of making a permanent and important contribution to the EEC's food supplies if properly managed. Chapter 4 looks at the Community's system of fisheries management and asks how effective it is in practice. Apart from fishing in Community waters, EEC vessels also fish in the waters of third States or on the

high seas: the extensive relationships which the Community has developed with third States and international fishery commissions to regulate such fishing are the subject of Chapter 5. Chapter 6 looks at various questions relating to the structure of EEC fishing fleets, in particular examining Community aid for modernising vessels and for adjusting the EEC's fish-catching capacity to the resources available, as well as considering the permissibility of national subsidies to the fishing industry. Chapter 7 looks at the measures the Community has taken to regulate the marketing of fish. The EEC is one of the world's largest traders in fish products: the law regulating such trade is the subject of Chapter 8. The final chapter attempts a general evaluation of EEC fisheries law, both in terms of its substance and considered more broadly as a regulatory system. From the latter viewpoint EEC fisheries law may have lessons for other areas of regulation by the EEC. In general, the law in this book is stated as at October 1, 1986.

It should be made clear that in describing and analysing the EEC's substantive fisheries law, this book is concerned only with the basic principles of the law and does not go into fine detail. Thus someone wishing to find out, for example, the minimum size of lemon sole which may legitimately be caught or the reference price for dogfish will look in vain for that information in this book.

In the past three or four years no less than three full-length books in English on the EEC's Common Fisheries Policy have appeared.¹ Some explanation is therefore owed as to why yet another book on EEC fisheries is being inflicted on students of EEC fisheries questions. The three books mentioned were written by political scientists and a geographer and were primarily concerned with tracing the political and economic factors governing the evolution of the Common Fisheries Policy to the point where a fully-fledged Policy was adopted at the beginning of 1983. As the summary of its contents given above suggests, this book is written from a rather different perspective and differs from the other books in a number of ways. First, it is devoted primarily to a legal analysis of the Common Fisheries Policy. The existence of the three books mentioned has meant that I have not had to say nearly as much about the political, economic and social background to EEC fisheries law as would otherwise have been necessary. A second difference is that this book discusses certain topics – such as marketing and trade – which are treated but scantily in the other books and indeed in the existing periodical literature – doubtless because these topics have less political appeal than resource management. Yet these matters are of equal concern to the fishing industry, and it will be argued

¹ M. Leigh, *European Integration and the Common Fisheries Policy*, Beckenham, 1983; J. Farnell and J. Elles, *In Search of a Common Fisheries Policy*, Aldershot, 1984; and M. Wise, *The Common Fisheries Policy of the European Community*, London, 1984.

in this book that management, structural policy, marketing and trade are all interlinked, so that one should not consider these topics in isolation from one another. A final point of difference is that while the other books cover events only up to the adoption of the revised Common Fisheries Policy at the beginning of 1983, this book is able to look at the subsequent operation in practice of the revised Policy and consider its effectiveness. It is also able to give an account of the arrangements that have been made in respect of Portugal and Spain, which became members of the EEC at the beginning of 1986.

Although this book is written from a legal perspective and is primarily concerned with legal questions, it is hoped that it will be of interest and accessible not just to lawyers but to those from other disciplines who are interested in EEC fisheries questions. It is also my hope that some parts of this book may be of interest to students of Community law generally. The way in which the EEC regulates the fishing industry and manages an important natural resource, and the relationship between its competence to do so and that of its Member States, is not without relevance for other areas of EEC law.

In writing this book I have had assistance from many people. First, I would like warmly to thank Professor E.D. Brown, my colleague in the Law Department at UWIST and the supervisor of the doctoral thesis of which this book is an updated and extensively revised version, for his unfailing encouragement and help over many years. Secondly, I am grateful for the knowledge and understanding of the Common Fisheries Policy which I have gained by talking over a period of years with many people (too numerous to mention individually) involved with the operation of the Policy: for any inaccuracies and limitations that appear in this book I am of course solely responsible. Last but not least I would like to thank Mrs. Zoë Selley and Mrs. Dawn Morgan for coping so cheerfully with all the typing involved in the production of this book.

Cardiff, December 1986

Robin Churchill

List of Abbreviations

A.F.D.I.	Annuaire Français de Droit International
A.J.I.L.	American Journal of International Law
Art.	Article
B.Y.I.L.	British Yearbook of International Law
Bull. E.C.	Bulletin of the European Communities
CCT	Common Customs Tariff
C.D.E.	Cahiers de Droit Européen
CECAF	Fisheries Committee for Eastern Central Atlantic
C.M.L.R.	Common Market Law Reports
C.M.L. Rev.	Common Market Law Review
Cmd.	Command Paper (of the United Kingdom)
COM	Communication from the Commission to the Council
Dec.	Decision
Dir.	Directive
EAGGF	European Agricultural Guidance and Guarantee Fund
E.C.R.	European Court Reports
ECU	European Currency Unit
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFTA	European Free Trade Association
E.L.R.	European Law Review
E.P. Doc.	European Parliament Working Document
FAO	Food and Agriculture Organisation
GATT	General Agreement on Tariffs and Trade
GRT	Gross Registered Tonnes
G.U.	Gazzetta Ufficiale della Repubblica Italiana
H.C. Deb.	Debates of the House of Commons (of the United Kingdom)
H.C. Paper	House of Commons Paper
H.L. Deb.	Debates of the House of Lords (of the United Kingdom)
H.L. Paper	House of Lords Paper

ICES	International Council for the Exploration of the Sea
ICJ Rep.	Reports of Judgements, Advisory Opinions and Orders of the International Court of Justice
I.C.L.Q.	International and Comparative Law Quarterly
I.L.M.	International Legal Materials
J.C.M.S.	Journal of Common Market Studies
J.O.	Journal Officiel des Communautés Européennes
J.O.R.F.	Journal Officiel de la République Française
L.I.E.I.	Legal Issues of European Integration
MEY	Maximum Economic Yield
MSY	Maximum Sustainable Yield
NAFO	Northwest Atlantic Fisheries Organisation
NEAFC	North-East Atlantic Fisheries Commission
N.Y.I.L.	Netherlands Yearbook of International Law
O.D.I.L.	Ocean Development and International Law
OECD	Organisation for Economic Co-Operation and Development
O.J.	Official Journal of the European Communities
Reg.	Regulation
R.G.D.I.P.	Revue Générale de Droit International Public
R.M.C.	Revue du Marché Commun
R.T.D.E.	Revue Trimestrielle de Droit Européen
S.I.	Statutory Instrument (of Ireland and the United Kingdom)
Stb.	Staatsblad (of the Netherlands)
TAC	Total Allowable Catch
U.K.T.S.	United Kingdom Treaty Series
UN Legis- lative Series B/15	United Nations Legislative Series. National Legislation and Treaties relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas and to Fishing and the Conservation of the Living Resources of the Sea (1970). ST/LEG/SER.B/15.
UN Legis- lative Series B/16	United Nations Legislative Series. National Legislation and Treaties relating to the Law of the Sea (1974). ST/LEG/SER.B/16.
UN Legis- lative Series B/19	United Nations Legislative Series. National Legislation and Treaties relating to the Law of the Sea (1980). ST/LEG/SER.B/19.
U.N.T.S.	United Nations Treaty Series
W.Q.	Written Question (asked by a member of the European Parliament)

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