SCOTTISH DEMOCRATIC ALLIANCE

Scotland and the EU Common Fisheries Policy

How it happened

When the United Kingdom, Ireland, Denmark and Norway applied for membership of the six-member European Communities (EEC, ECSC and Euratom) in 1970, covetous eyes among the existing members turned to methods of obtaining free access to the rich and well-conserved fishing grounds of the new applicants.

Accordingly, someone, apparently French, instructed the legal service of the Council of Ministers to find a way to justify such a move. The legal experts searched the Treaty of Rome (all Community legislation had to be based on specific articles of the Treaty) and discovered that the only reference to fish was in Article 38, and that covered only "trade in fisheries products". A number of articles covering agriculture and other economic aspects were ruled out as irrelevant, and the conclusion was that the Community's legal foundation could provide no justification for a policy of equal access, let alone a fishery "policy".

Powerful fisheries interests were determined to force the issue, however, and they attempted to justify it with an interpretation of Article 235, which authorised other legislation that complied with the "objectives" of the Treaty. Since, however, EEC involvement in the fishing industry was nowhere legitimised by the Treaty, the use of Article 235 to justify legislating for a nonexistent "objective" clearly provided no legal basis for a policy of open access.

On 30 June 1970 a hastily convened meeting of the agriculture ministers of the Six adopted the principle of "equal access to a common resource" in what was already described as "Community waters" right up to the beaches. The four applicant states deposited their applications later that same day. The intention was to present them with a fait accompli, with the principle of open access entrenched in Community legislation that would have to be accepted without argument or negotiation. There was no administrative, management, ecological or environmental necessity for the move, which was motivated by nothing other than pure unadulterated greed.

When EEC Council Regulation 2141/70 officially established the principle of open access to all members' waters it cited as its judicial base four articles of the Treaty of Rome, three of which had already been rejected by the EEC's own legal experts, and including the notorious Article 235, the use of which was nothing but a confidence trick of the worst kind. The Regulation did not mention Article 38, which only dealt with trade in fisheries products, despite which Foreign Office officials, and UK Prime Minister Edward Heath personally, for years asserted that this article was the basis for the policy of open access and the future Common Fisheries Policy.

When active negotiations opened in Brussels the EEC's sleight of hand on fisheries was immediately noticed by the fishing industry and MPs, and there were vociferous protests from every quarter. Heath, with his eye on the Charlemagne Prize, brushed them all off contemptuously. He consistently lied to Scotland and to the House of Commons, as well as concealing vital information that should have been the subject of public consultation with the fishing community before any such drastic constitutional step was taken.

Irritated by the pressure, Heath sent instructions to Sir Con O'Neil, the chief UK negotiator in Brussels, that he was to "swallow the lot, and swallow it now", in O'Neil's words. Heath thereby outflanked the fishing industry, and forestalled any action it could take. There were no discussions with Scotland.

Heath's foreign policy reasons for throwing the Scottish fishing industry to the sharks remain partially obscure to this day. There is no doubt that Scotland's interests came well down his list of priorities, and that his craving for entry into the three European economic Communities led him to regard Scottish industry generally as something that could be written off.

The conspiracy of silence on the implications was confirmed by the notorious minute by D.K. Rowand in the Scottish Office archives, advocating that no explanations should be made public because "in the wider context" the Scottish fishing industry "must be regarded as expendable".

His motives for treating the Scottish fishing industry with such contempt are, however, perfectly clear. Edward Heath was well aware of what this would mean for Scotland.

In round figures, one quarter of the UK fishing industry was located in England with 50 million inhabitants, and three quarters in Scotland with 5 million people, a 30X disparity in economic, social, cultural, ecological and environmental importance. All the usable Conservative votes were to be found south of the border, and Scotland could be written off for political purposes.

The Scottish fishing industry was not even run from London. It was controlled by the Scottish Department of Agriculture and Fisheries in Edinburgh. Scottish fishery cruisers flying the Scottish flag patrolled the Scottish waters, and the whole system was regulated under Scots law. For countless centuries a balance had been maintained between conservation and exploitation of fish stocks.

And despite this, Scotland, caught between the two poles of Brussels intrigue and London treachery, was sacrificed with cold deliberation in one of the most disgraceful conspiracies ever to afflict it out of a long list of similar oppressive moves by London.

Since then, the CFP has been belatedly legitimised by the Maastricht and Lisbon treaties after decades of illegality. The original principle of uncontrolled open access to all "Community" waters by all member states' vessels created such economic, environmental and ecological havoc that a huge complex of rules had to be introduced as derogations from the principle in an unsuccessful attempt to stem the damage. Instead of tackling the problem at its roots – unrestricted open access – the EU continued to seize more and more competence over fishing and national waters, especially through the Lisbon Treaty. Recent talks on "revision" of the CFP have demonstrated that the EU has no intention of giving up any significant power of decision over Scottish waters and their resources.

The UK Government consistently refused to allow Scottish representatives anywhere near fisheries negotiations in Brussels, especially after the entry of Spain and Portugal into the CFP. The Spaniards noticeably kept their mouths shut on the subject of Gibraltar as soon as they were in a position to plunder Scottish waters with no genuine restrictions, and the UK does not want the boat rocked. Meantime, in national referendums, the Norwegians have twice rejected the EEC entry terms negotiated by their own government, and still have a fishing industry to call their own.

The swathe of havoc that the CFP has driven through the Scottish national economy has destroyed two thirds of the Scottish offshore fleet, with job losses approaching 100,000 afloat and ashore, and between a quarter and a third of a million "expendable" people hit by it overall, including dependents. It has destroyed centuries-old fishing communities the length and breadth of the country, with devastating economic, social and cultural consequences.

The annual loss to the Scottish economy as a result of the EU's destruction of wealth creation capacity in the fishing industry was calculated in 2008 to be over £1,500 million. It has certainly increased substantially since then, and must now be in the region of £2,000 million every year. It was an appalling frontal attack by London and Brussels on a nation of only 5 million people.

Brussels intrigue and London treachery are the jaws of a pincer grip in which Scotland is helpless without the relevant power of decision. Constitutional independence of both London and Brussels is the one and only way of breaking out of that grip, and of regaining power over our own territorial waters and their environmentally sustainable exploitation. Fortunately, the opportunity to achieve that freedom from external exploitation will come in 2014 with the referendum on independence.