Prawo Morskie 2016, t. XXXII
ISSN 0860-7338

PAWEŁ CHYC*

THE COMMON FISHERIES POLICY AS A PART OF THE GLOBAL OCEAN PROTECTION

INTRODUCTION – THE COMMON FISHERIES POLICY – DEVELOPMENT FACTORS

The key consequence of an obligation included in Article 192 of the United Nations Convention on the Law of the Sea (UNCLOS) is a requirement of the States to undertake measures for the protection and preservation of the marine environment embracing conservation of the high seas living resources. The coordination of such action between the States is extraordinarily significant here, since the protection of the marine environment has an international nature by virtue of an international feature of the marine resources exploitation[1]. On that account, within the scope of the marine environment protection, international law undeniably plays the most important role. In this area, the Common Fisheries Policy (CFP) of the EU constitutes, on a regional scale, a crucial part of the international cooperation, although the CFP beginnings exhibited more utilitarian than ideological dimension.

The Common Fisheries Policy is an instrument used for conservation and management of fish resources in the sea areas belonging to the EU. For six decades, CFP has undergone the meaningful modification and development serving the adaptation of the EU fishery policy to the need of the sustainable development of the maritime economy[2]. Since the beginning of the formation of the EU frameworks, an awareness of the aspiration to the joint market has triggered off the

* Paweł Chyc, PhD, Inspector at the Appeal Maritime Chamber in Gdynia, academic lecturer, shipbroker.

[1] L. Kramer, *Casebook on EU Environmental Law*, Oxford 2002, p. 12.

[2] R. Churchill, D. Owen, *The EC Common Fisheries Policy*, Oxford University Press, New York 2010, p. 3.

need for conducting a balanced fishery economy in the sea areas by the Member States. The limitations of the sea potential and an increasingly higher demand for sea natural resources as well as the pressure on the economic development have been the reasons for such an elevated pursuit. The origin of the CFP should be traced back to Article 38 of the Treaty of Rome (1957) establishing the European Economic Community, where fishery products were regarded as the part of the Common Agricultural Policy. However, the need for a detailed regulation of the resource protection produced in a very short time a distinction between the CFP and the Common Agricultural Policy.

Without any doubt, the reason for the growth of an interest in the fishery policy lays also in a prospect of the accession to the European Economic Community (EEC) of Denmark, Ireland and the Great Britain – the countries boasting a developed fishery industry[3]. A coherent and complementary instrument protecting the European fishery market inside the EEC was introduced in 1957. It provided a framework of the external customs barriers – which significantly improved the economic situation of individual fishermen within the European Community. The common fisheries policy, after all, was distinguished in 1976 pointing at the differences between the fishery and the agriculture policies, in particular showing a limited nature of living resources in the economic context[4]. For that purpose, the Directorate-General for Maritime Affairs and Fisheries (also known in short as DG MARE) was established[5].

The year 1976 marked itself as a moment of starting work on the comprehensive management system in fishery[6]. EEC realized that the establishment of the joint market in the scope of fishery would allow – among others – to reduce a fishing fleet and level up the disproportion of fishing resulting from the seasonal price fluctuations. This could also facilitate further an extension of the possibility of sales and stabilize the prices of fish reserves, but above all, set in motion

[3] See: Carmen Paz Martí Dominguez, *The Common Fisheries Policy: origins and development*, Fact Sheets on the European Union – 2016 –http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/050301/04A_FT(2013)050301_EN.pdf – 10 June 2016. Also: M. Ruciński, *Wspólna Polityka Rybacka UE – podstawowe elementy i reforma z 2002 r.* [in:] J. Horbowy, E. Kuzebski, *Wpływ funduszy strukturalnych UE na stan floty i zasobów w rybołówstwie bałtyckim*, WWF Polska, Warszawa 2004, p. 12.

[4] The guiding principle of the European decision-makers to the large degree paid more attention to the economy than to the protection of the marine environment.

[5] By now, it has been a principal body of the European Commission responsible for the implementation of the Common Fisheries Policy and the Integrated Maritime Policy – Directorate-General for Maritime Affairs and Fisheries – http://ec.europa.eu/dgs/maritimeaffairs_fisheries/index_en.htm (04.05.2016).

[6] P. Trzpis, *Wspólna Polityka Rybacka Unii Europejskiej* [in:] B. Koszel (ed.), *Rocznik Integracji Europejskiej* nr 1, Poznań 2007, p. 139.

the institutionalised attempts to keep the European fishery stock on the plateau, ensuring the appropriate regeneration of resources. The result of work in progress, initiated in 1976, reflected itself in a principal Council Regulation (EEC) No 170/83 on establishing a Community system for the conservation and management of fishery resources, which carried fundamental meaning for the European fishery[7]. The literature clearly suggests that since that very moment a "Common Fisheries Policy"[8] has arisen.

Regulation No. 170/83 – as the primary act forming the fisheries management system – contained a number of regulations concerning preservation of biological marine resources as well as their sustainable exploitation[9]. However, particular attention should be paid to the regulation mechanism of the so-called total allowable catches (TAC)[10] obliging the Commission to annual determining fishery limits for the definite species of fish. The TAC system allotted certain limits to individual Member States according to the criterion contained in Article 4 of Regulation No. 170/83 which stipulated that the division of fishing limits "shall be distributed between the Member States in a manner which ensures each Member State relative stability of fishing activities for each of the stocks considered"[11]. The literature indicates that the vague expression of the "relative stability of fishing activities" meant in practice that the Commission was taking into consideration the following elements: past catches, preferential treatment for regions traditionally dependent on fishery activity and losses of catch resulting from excluding the possibility of individual fishing fleets from areas of third States as a result of an introduction of a 200-mile exclusive economic zone[12].

Regulation No. 170/83 was enacted in the package with other regulations, amongst which the following ones should be pointed at Regulation No. 171/83 of 25 January 1983 laying down certain technical measures for the conservation of fishery resources, Regulation No. 174/83 of 25 January 1983 allocating among Member States catch quotas available in 1982 to the Community under the Agreement on fisheries between the Community and Canada and Regulation No. 176/83 of 25 January 1983 allocating catch quotas between Member States for vessels fishing in Swedish waters[13]. It is also worth accentuating that the period

[7] See: Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, OJ 1983 L24/1.

[8] P. Trzpis, *op. cit.,* 139.

[9] See: Reg 170/83, Article 1. Also: Carmen Paz Martí Dominguez, *op. cit.,* 2.

[10] TAC – catch limits (expressed in tonnes or numbers) that are set for most commercial fish stocks within the European Union.

[11] See: Reg 170/83, Article 4.

[12] R. Churchill, D. Owen, *op. cit.,* 9.

[13] These regulations are presented sequentially 170/83 – 181/83 – http://eur-lex.europa.eu/

between years 1973–1983 was a time of changes of CFP against the creation of a "new" law of the sea in Montego Bay[14]. The consecutive years raised challenges connected with the accession of Spain and Portugal to the EC[15], as well as an issue of the consolidation of the fisheries management system[16].

In 1991, the Commission reviewed CFP with regard to the mechanism envisaged in Article 8 of Regulation No. 170/83. In the report, the Commission shed light on the weakness of the fishery sector including overcapacity of the European fishing fleet and overfishing resulting in the impossibility of fishing in accordance with the principle of the sustainable development[17]. The Commission also emphasized an economic instability of the fishery market resulting from an overinvestment, rapidly growing costs of running a fishery business and shrinking resources. As a result, an additionally adverse impact on a fragile situation of the European fishery sector at the turn of 80's and 90's had a dropping business operation profitability and with it a desire to raise the effectiveness of the fishery through practice violating the principle of sustainable fishing[18]. When the prices obtained from catches were advantageous, the Member States felt encouraged to start investing in the fishing sector, with a significant contribution of the European funds. Thus, the common fisheries policy became a victim of its own successes, since the Community policy financing the fishery sector through the structural funds, in fact, compounded the negative situation in the fishery[19].

As a consequence of the Commission's report (1991), the EU was able to diagnose causes adversely influencing the European fishery policy. Above all, it was necessary to implement more efficient mechanisms compelling the application of fishing limits (so-called TAC – total allowable catches). Earlier, the TAC system had not been able to ensure protection to the European resources against overfishing as a result of the lack of communication with fishery business entities, as well as in the face of pressure coming from the Member States with over-developed fleet. In response, the Council adopted in December 1992 a new key Regulation No. 3760/92 establishing a Community system for fisheries and aquaculture replacing Regulation No. 170/83[20]. Regulation No. 3760/92 reflected to quite a large

legal-content/EN/TXT/PDF/?uri=OJ:L:1983:024:FULL&from=PL (4 May 2016)

[14] For more detailed studies see: R. Churchill, D. Owen, *op. cit.*, pp. 6–8.

[15] The Iberian fishing fleets were very large – e.g. Spanish fleet was 75% of the size of the combined fishing fleets of all Member States. See: R. Churchill, D. Owen, *op. cit.,* p. 11.

[16] R. Churchill, D. Owen, *op. cit.,* p. 3.

[17] R. Churchill, D. Owen, *op. cit.*, pp. 11–14.

[18] Ch. Grieve, *Reviewing the Common Fisheries Policy – EU Fisheries Management for the 21st Century*, IEEP, London 2001, pp. 2–4.

[19] P. Trzpis, *op. cit.*, p 140.

[20] Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture. See: OJ 1992 L389/1. Also: Carmen Paz Martí Dominguez, *op. cit.*, p. 2.

extent decisions of a previous Regulation No. 170/83, among others, in respect of TAC fishery limits.

It also contained significant additions embracing conclusions of the Commission resulting from the report of 1991. Primarily, a new wording of "sustainable development" was entered into CFP[21], which probably was engendered under the influence of the so-called Earth Summit 1992 (United Nations Conference on Environment and Development – UNCED), which was held in Rio de Janeiro from 3 to 14 June 1992, that is a few months before the adoption of Regulation No. 3760/92[22]. Moreover, it is worthwhile to distinguish Article 11 of Regulation No. 3760/92 that called on the Council to "set the objectives and detailed rules for restructuring the Community fisheries sector with a view to achieving a balance on a sustainable basis between resources and their exploitation"[23]. Article 5 implemented the requirement of creating by the Member States the systems granting appropriate fishing licences. Next, Article 14(2) provided for the mechanism checking the functioning of Regulation No. 3760/92 after the decade before the European Parliament and the Council in the scope of the EC fishery situation. In particular, it pertained to the economic and social situation of the coastal regions. In reliance upon the said report, the Council was supposed to arrive at a decision until 31 December 2001 on possible amendments to the Common Fisheries Policy[24].

In effect, this is exactly what happened, as in March 2001, the Commission presented the suite of documents in it, so-called a *Roadmap*, which led to passing Regulation No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. Moreover, the Commission adopted the so-called "*Green Paper"* formulating core premises of a new Common Fisheries Policy[25]. A fundamental demand contained in the *"Green Paper*" was the implementation of the long-standing fishery management plans replacing the previous annual plans[26]. Presumably, the long-term approach was to minimize the adverse effects of temporary decisions on establishing annual TAC. For each of the species of fish, the long-standing strategies were developed in reliance upon the data pointing at the possibilities of the fish resources regeneration. The Commission also suggested an implementation of the selective fishing tools that would limit random catch of undesirable species.

---

[21] Reg 3760/92, art. 2 – *"[...] the general objectives of the common fisheries policy shall be [...] to provide for rational and responsible exploitation on a sustainable basis[...]".*

[22] For more details see: R. Churchill, D. Owen, *op. cit.,* p. 14.

[23] Reg 3760/92, Article 11.

[24] See: Reg 3760/92, Article 14.2.

[25] *Green Paper on the Future of the Common Fisheries Policy*, COM (2001) 135, 20 March 2001.

[26] See: Carmen Paz Martí Dominguez, *op. cit.*, p. 3.

Additionally, the Commission postulated a further reduction of the fishery fleet, *inter alia,* through witholding totally the EU subsidies for the construction of new boats, and also indicated the need for including the fishing entities in the decision-making processes.

For that purpose, the Regional Advisory Councils (RAC) were established, which were supposed to provide every entity involved in the fishery industry with an opportunity to formulate and communicate certain recommendations concerning the development of CFP. Moreover, RAC's objective was to encourage the fishery sector to participate in the decision-making processes which the fishery sector is directly subject to. Through such ongoing forums, all the parties concerned should be able to cultivate a dialogue and cooperation between the EU and the stakeholders towards development of the CFP[27]. In this respect, the Council Decision 2004/585/EC of 19 July 2004, establishing Regional Advisory Councils under the Common Fisheries Policy,[28] proved the most significant legislation. At present, seven advisory councils are operating as part of the CFP: for the Baltic Sea, for the Mediterranean Sea, for the North Sea, for north-western waters, for south-western waters, for the long distance fleet and for pelagic stocks[29].

The Baltic Sea Advisory Council (BSAC) was established in 2006 and it is composed of stakeholders from eight EU countries: Sweden, Finland, Estonia, Latvia, Lithuania, Poland, Germany and Denmark. Moreover, two-thirds of the seats are occupied by the commercial fishing industry. Its central aim is delivery of recommendations and advice for EU fisheries regulations regarding the specificity of Baltic stores. The BSAC applies a consensus-building process and is particularly involved in transmitting stakeholders' views of the development of the yearly TAC standard. The Baltic Sea Advisory Council is encouraging a proper governance of the height of catches through the stimulation of the sense of joint responsibility of fishermen for marine resources. The Regional Advisory Councils – as an institution serving the cooperation between EU and fishery business – are, thereby, a pillar of the reform of the CFP of 2002[30].

The reform of 2002 failed to satisfy short-term expectations, since the condition of the EU living resources was still deteriorating. Simultaneously, the reform revealed certain problems never noticed so far, e.g. a problem associated with discards. In 2009, the Commission opened public consultations on the reform

[27] See: http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv:c11128 (25.05.2016). Also: Carmen Paz Martí Dominguez, *op. cit.*, p. 3.

[28] Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy – OJ 2004 L 256.

[29] Pelagic stocks live in waters that are neither close to the bottom nor near the shore (eg. blue whiting, mackerel, horse mackerel, herring or boarfish).

[30] See: http://www.bsac.dk/ (25.05.2016).

of CFP in order to implement new principles which should be applied to the EU fishing sector in the 21st century. After a long debate in the Council and Parliament, on 1 May 2013 an agreement was reached on a new system of the fishery based on the three main pillars:

– new CFP (Regulation (EU) No 1380/2013);
– common organization of the markets in fishery and aquaculture products (Regulation(EU) No 1379/2013);
– new European Maritime and Fisheries Fund (EMFF) (Regulation (EU) No 508/2014)[31].

A new Regulation (EU) No 1380/2013 (so-called *Basic Regulation*[32]) is laying down contemporary rules and provisions for the Common Fisheries Policy and it was adopted at the end of 2013. *Basic Regulation* defines, *inter alia,* the scope of CFP (Article 1), the measures for the conservation of marine biological resources and the principle of sustainable exploitation (Articles 9–17), management of fishing capacity (Articles 21–24), the role and function of the Advisory Councils (Articles 44 and 45 and in Annex III). Furthermore, the new CFP takes into account the need for a long-term character of action, among others, in the so-called multispecific management analysing the entire ecosystem, as well as it implements a discard ban as one of the most unacceptable practices in European fishing[33].

To sum up, at present, in the EU perspective, provisions of Articles 38–43 of the Treaty on Functioning of the European Union (TFEU) constitute the legal grounds for CFP. Article 38 stipulates that the internal market includes agriculture, fisheries and trade in agricultural products, and "agricultural products" mean, inter alia, the products of fisheries[34]. Article 39 determines the purposes of the Common Agricultural Policy of the EU (including CFP), among which it is worth pointing at: increasing efficiency of production, ensuring the appropriate producers' standard of living, stabilization of markets, ensurance of availability of supplies and reasonable prices. The remaining Articles establish common organization of agricultural markets (Article 40), provide for coordination of efforts in research and vocational training (Article 41), and also lay down the rules on competition (Article 42). Articles 43 and 44 relate to, among others, the internal rules of the common organization of agricultural markets[35].

---

[31] Carmen Paz Martí Dominguez, *op. cit.*, p. 3.

[32] http://www.bsac.dk/ (14 June 2016).

[33] See: Carmen Paz Martí Dominguez, *op. cit.*, p. 4.

[34] See: Article 38.1 of the Treaty on the Functioning of the European Union – OJ C 83 of 30March 2010.

[35] See: Carmen Paz Martí Dominguez, *op. cit.*, p. 3.

1. INFLUENCE OF THE JUDICATURE ON THE EUROPEAN FISHERY

Whilst analysing the CFP development, it seems impossible to omit the European case-law and its influence on the formation of EU politics of the law in this regard. Without a doubt, the judgments of the Court of Justice of the European Union in Luxembourg (CJEU) carried a great importance, confirming binding the EU with customary law of the sea, in it with international norms protecting the maritime living resources. The first judgment which implicitly recognized such a binding nature was a CJEU case No. C-146/89 (Commission v. United Kingdom)[36], issued after signing UNCLOS by the EU, but before the Convention coming into force in 1994. The Court in that judgment relied on the rules of international law concerning the principles of establishing the territorial sea range, expressed in the Geneva Conventions (1958) and in UNCLOS (1982)[37]. The fact of invoking by the Court in Luxembourg both these conventions constitutes and reinforces recognition of the customary nature of the treaty norms applied in the statement, and thereby confirms a codifying character of both these conventions[38].

However, the direct confirmation of binding the EU with customary law of the sea was expressed in the next judgment in the Poulsen case[39]. The Court has held in it that the EU pursuing its own competences in the fishery, must take into consideration the international regulations, in particular the right of innocent passage through territorial sea and the freedom of navigation in the exclusive economic zone[40]. Judges, emphasizing that UNCLOS at that moment still failed to come into force, indicated that many provisions of that Convention were perceived as the expression of the contemporary customary law. Next, in the case E.A. Mondiet S.A. v. Armement Islais SARL[41], judges in Luxembourg expressly emphasised the need for the holistic approach towards the issues related to the protection of seas in the face of the fact that the EU holds the same jurisdiction as the Member States

[36] CJEU case No. C-146/89 Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland.

[37] See: paragraphs 2–4 of case No. C-146/89 Commission v United Kingdom. The Court is using expressions: "*According to the general rules of international law, as consolidated*...[in the conventions]".

[38] C. Mik, *Konwencja NZ o Prawie Morza z 1982 roku w prawie Unii Europejskiej* [in:] C. Mik, K. Marciniak (ed.), *Konwencja NZ o Prawie Morza z 1982 r. W piętnastą rocznicę wejścia w życie*, Toruń 2009, pp. 80–81.

[39] CJEU case No. C-286/90 *Anklagemyndigheden v. Peter Michael Paulsen, Diva Navigation Corp*.

[40] See: paragraphs 1–6 and paragraph 25 of case No. C-286/90 *Anklagemyndigheden v. Peter Michael Paulsen, Diva Navigation Corp*.

[41] CJEU case No. C-405/92 *E.A. Mondiet S.A. v Armement Islais SARL*.

towards the ships flying a flag of one of the Member States[42]. Thus, the Member States should also be involved in the protection of living resources appearing at high seas, which implicates the duty of international cooperation[43].

In the CJEU *Kramer* case[44], the Court explained the issues of the external maritime competences of the EU with reference to the Convention of 1982 before formal binding with UNCLOS. Judges stated that the EU powers in the sphere of the maritime relationships resulted from the competence to create the derivative regulations[45]. In view of the said arrangements, the Court acknowledged that – in the same vein as in case of the Member States – the EU can take steps to preserve living resources at high seas adjoining the maritime areas falling under the partial jurisdiction of the Member States. The Court highlighted thereby that the EU external maritime competences in the fishery are a natural extension of the internal competences. This judgment allowed the EU (in the period before formal binding with UNCLOS) to determine the treaty capacity of the EU, which had a significant effect on the functioning of the EU system in the international environment protection mechanisms[46]. UNCLOS, since its ratification by the EU in 1998, has constituted an integral part of the EU law[47]. At present, in pursuance of the declaration of the accession to UNCLOS in relation to the Member States, since 1998, the EU has had an exclusive competence regarding the protection and management of the marine biological resources and international maritime trade. However, the competences shared with the Member States pertain to scientific research, safety of the navigation, maritime transport and prevention of environmental pollution at sea[48].

2. SELECTED ASPECTS OF CFP OPERATIONS

The sector-specific approach towards seas associated with the principle of the sovereignty of States without doubt has deep roots implanted in practice. At

[42] See: paragraphs 12–13 of the case No. C-405/92 *E.A. Mondiet S.A. v. Armement Islais SARL*.

[43] See: paragraphs 13–14 of the case No. C-405/92 *E.A. Mondiet S.A. v Armement Islais SARL*.

[44] CJEU case No. C-405/92 *C. Kramer, H. van den Berg i Kramer en Bais*.

[45] See: paragraphs 19–20 of the case No. C-405/92 *C. Kramer, H. van den Berg i Kramer en Bais*.

[46] C. Mik, *op. cit.*, pp. 86–87.

[47] Council Decision of 23 March 1998 No. 98/392/EC concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof, OJ L 179 , 23 June 1998.

[48] J. Symonides, *Konwencja Narodów Zjednoczonych o Prawie Morza – w 30 lat od jej przyjęcia* (in:) *Prawo morskie*, t. XXVIII, Gdansk 2012, p. 12.

present, such approach dividing the individual sea areas seems largely ineffective in the marine stock management both on the regional and global scale, and is downright hampering and harmful to the protection of the marine environment. To make a point, it is worth referring to the problems connected with exhausting some marine living resources, which problems demand the strongly and closely integrated solutions on an international scale[49].

It should be mentioned in this place that creating specific conditions to take further actions guaranteeing sustainable development of the EU fishery sector may shape and tailor a clear objective of a new CFP in the long-term perspective that goes well beyond the current ten-year-old periods. Alternatively, an example of reducing the Baltic codfish population, in particular its west Baltic numbers shows how ineffective the current efforts are towards reconstructing the correct quantity of this species in the Baltic sea to maintain reproduction capacity. So far, the reason for this state of affairs has rested, among others, on the numbers of the seal population, oxygen deficiency in the Baltic floor (where codfish is spawning), but above all, on illegal practices and lack of regard for the food chain in the EU policy through an uncontrolled feed fishing that reduces pelagic fish resources[50]. On that account, the need for the extension of the fishery sector management model poses a real serious contemporary challenge for the communities in respective regions of the world[51]. This, indeed, also appears to be extremely problematic for the Polish fishery, where cod fishing constitutes the main activity.

The example of the Baltic codfish shows how significant for the effective marine resources protection the departure from the monospecific management model is – including exclusively one species – for the integrated resource management that embraces, among others, functioning of the food chains. Moreover, for a long time, it has been shown that the particularism of individual states and the sector-like mechanisms of marine resources protection failed to raise the effectiveness of such protection, and in certain instances, even made it impossible. Therefore, it undeniably requires an amendment to the approach for the benefit of operations towards an integrated region-oriented management, specifically – the creation of a global maritime administration[52].

---

[49] H. Wang, *Ecosystem Management and Its Application to Large Marine Ecosystems: Science, Law and Politics* [in:] Ocean Development & International Law 2004, Vol. 35, 46.

[50] Which are a food source for the Baltic codfish.

[51] See: I. Menn, *The cod fishery in the Baltic Sea: unsustainable and illegal*, Greenpeace International, Amsterdam 2006, pp. 6–15.

[52] See: Z. Brodecki, D. Pyć, *Odpowiedzialność prewencyjna w prawie morza* [in:] A. Kozłowski, B. Mielnik (ed.), *Odpowiedzialność międzynarodowa jako element międzynarodowego porządku prawnego*, University Press of Wroclaw, Wroclaw 2009, pp. 15–16.

Without a doubt, the most significant role in the protection of marine stocks play such control procedures as: central monitoring, control and compliance authority (at sea and on land), including a transparent and mandatory vessel monitoring system for all active vessels[53]. However, a particular competence of the individual states would not allow for an effective living resources protection due to either the absence of the uniform supervision, or the procedural multitude. For that reason, Article 3 TFEU formulates an exclusive competence of the EU, among others, in the conservation of the marine biological resources under the common fisheries policy aimed at providing a coherent policy of the protection of the marine resources and implementing effective management instruments. The exclusive competences obviously divest the EU Member States of an influential sphere of sovereignty within the scope of fishery regulation. Nonetheless, equally obvious seems the fact that without such a transfer of competence, the marine resources would in quite a short time lose their regeneration capacity, while the fishery industry in certain regions might lose the *raison d'etre*. Hazards resulting from the absence of any administrative operations taken by the determined communities in respect of marine resources protection are very well illustrated by the Garrett Hardin's well-known microeconomic concept, where the individual profit of one of the participants in the community is leading to losses for the community as a whole, which constitutes a social trap termed the *"Tragedy of the Commons"*[54].

The European system of the marine resources management is an example of implementing the concept of the regional management enforced by the so-called *Agenda 21*[55], which initiated models of cooperating, among others, in an integrated management of seas and oceans, postulating the creation of a global forum for discussion. The concept of the regional management (the zone management, managing in the sea region) serves such purpose, put into practice in the form of the regional instruments of the marine environment protection. Another example of the concept of the regional management is an area of the Australian coral reef

[53] I. Menn, *op. cit.*, p. 15. See also: D. Pyć, *Prawo Oceanu Światowego. Res usus publicum*, University of Gdansk, Gdansk 2011, pp. 175–182.

[54] G. Hardin, *The Tragedy of the Commons*, Science, Vol. 162, No. 3859 (13 December, 1968), pp. 1243–1248.

[55] *Agenda 21* is a programming document, concerning the sustainable development of the mankind and the resource protection of the natural environment on the global scale. This document was accepted at the UN Conference on Environment and Development in Rio de Janeiro in 1992 (so-called Earth Summit 1992). This program is presenting the way of drawing up and implementing programs of the sustainable development through action in the international, regional and domestic perspectives in order to achieve cohesion in the solving of problems associated with the protection of the natural environment and the development of mankind. The program is being carried out by over 170 countries (in it Poland). See: https://sustainabledevelopment.un.org/outcomedocuments/agenda21 (30 June 2016).

sea park (Great Barrier Reef Marine Park Authority – GBRMPA) which divides the entire area of the park into the fishery and nonfishery zones[56]. Still further example of managing in the sea regions is the Baltic Marine Environment Protection Commission (HELCOM), whose purpose is to monitor and protect the natural environment of the entire Baltic Sea, also outside the EU jurisdiction.

Moreover, as practice shows, another negative consequence of the sectoral approach to the European fishery issues is noticeable in the absence of any coordination of maritime administrations of the EU Member States in observance of CFP rules, in it the application of Regulation No 1224/2009[57]. This problem expressly pertains to the situation when ships flying a flag of one of the EU Member States are violating the EU legislation in the sea areas belonging to other Member States. As a result, a double penalty may be imposed on a ship's operator for the same breach of law, both by the flag state of the vessel, and by the state on whose areas a ship violated the provisions. Meanwhile, subsequent punishing in the EU area of the same subject for the same act for a solely coercive purpose may amount to the contravention of the *ne bis in idem* rule belonging to the fundamental general rules of law of the European Union. The underlying principle derives from the CJEU case law in Luxembourg as well as from the Article 54 of the Convention Implementing the Schengen Agreement[58]. At EU law, this principle entails the consequences also with regard to the administrative law[59].

Obviously, an implementation of the appropriate instruments of the marine resources management requires their large-scale integration. Currently, managing seas even on the national level is often divided between various organisations, ministries, or departments of the civil administration. Poland is an example of a State where the fishery is assigned to the Ministry of Agriculture, mining undersea minerals is a domain of the Ministry of the Environment, and a general supervision of the maritime administration is overseen by the Minister competent for the maritime affairs. Insofar as the introduction of the intersectoral mechanisms of coordination on the national level is an expression of the efficient government, on the international level, it is quite a challenge due to the lack of any superior authority. The demand for the creation of a global forum for discussion in matters of seas and oceans suggests the establishment of *sui generis* government for ocean (Ocean Assembly), comprehensively approaching problems of seas and oceans[60].

---

[56] See: D. Pyć, *Prawo Oceanu Światowego...*, 42.

[57] Council Regulation (EC) No. 1224/2009 establishing a community control system for ensuring compliance with the rules of the common fisheries policy.

[58] See: OJ 2000 L 239 .

[59] B. Van Bockel, *The Ne Bis in Idem Principle in EU Law*, Kluwer Law International BV, 2010, 2, pp. 14–16.

[60] See: D.L. VanderZwaag, N. Oral, *International Ocean Governance in the 21st Century* [in:]

In this spirit, operations of the EU should be positively appraised, in particular CFP's recent reforms in the so-called multispecific management, with respect to the interactions among defined species of fish and the functioning of food chains across the entire region. It may eventually turn out to be the factor that markedly slows down the process of a noticeable decrease in the cod population in the Baltic Sea.

CONCLUSIONS

For centuries, seas and oceans of the world have not only been the shipping routes, but also the essential sources of acquiring food. Food acquired from seas and oceans constitutes circa 20% of the world demand for the proteins, and in the face of limited the food resources on the land, the sea seems to be a natural direction of any further exploitation[61]. Due to an ever-increasing demand for the marine living resources, it is a sustainable use and management of these sources for the sake of the Global Ocean productivity that seem to be strongly and urgently required. It is necessary that the sustainable management be predicated on scientific research, through e.g. introducing eco-friendly fish farms limiting the resource exploitation living at large[62]. However, amongst these postulates, there arise international disputes in relation to the principles of the sea use and exploitation. The reason for it is, on the one hand, reducing the sea potential, and on the other, an increasing pressure on the particularist economic development. The need for designing a common policy of managing the marine resources in all regions of the world requires efforts that would go beyond domestic economic interests, otherwise the entire international community will suffer an ignominious defeat. Linking all these factors finds expression in the process of evolution of the law of the sea in the direction of an integrated managing of the Global Ocean through the holistic, eco-system-based and precautionary approach[63]. In the absence of a uniform definition of an integrated managing of the Global Ocean, it seems possible to point at broadly understood universalization of the law of the sea, seen as the process of extending the comprehensive approach towards the issues associated with the human activity on seas[64]. The European fishery policy,

---

The International Journal of Marine and Coastal Law 2008, Vol. 23, 395.

[61] *The state of world fisheries and aquaculture*, FAO 2008, 62.

[62] See: http://www.greenpeace.org/ (15 July 2016).

[63] See: D. Pyć, *Prawo Oceanu Światowego...*, 97–105 and 145.

[64] M. Hayashi, *The 1994 Agreement for the Universalization of the Law of the Sea Convention* (in:) *Ocean Development and International Law*, Vol. 27 (1996), pp. 31–39.

in spite of its shortcomings and imperfections, comes to offer the first draft of the fishery protection carried out on such a large scale. The foregoing policy is still evolving to clearly and hopefully show that the integrated and effective fishery management is feasible and workable above and beyond any potential divisions.