

Contents

<i>Acknowledgements</i>	ix
<i>List of abbreviations</i>	x
<i>Table of cases</i>	xii
<i>Table of legislation and other instruments</i>	xvi
1. Introduction	1
European Union waters	2
The Court of Justice and the internal market	6
The Court of Justice and the external market	8
The Court of Justice and the review of policy implementation	10
Better regulation through integrated maritime policy	16
The Commission's analysis of the Common Fisheries Policy in 2001	18
The Common Fisheries Policy reforms	19
Current prospects	21
Organisation of the book	22
2. International treaties and instruments: The right to exploit the living marine resource	27
Regulating the seas	27
UN Convention on the Law of the Sea	28
High seas governance of fisheries	29
Governance in the Exclusive Economic Zones	31
Environmental protection and sustainability outside the LOSC	33
Sustainability and the seas under Agenda 21	35
Ecosystem management for the environment under the CBD	37
Limitations of marine environmental protection	39
The UNFSA and the precautionary approach	41
From resource exploitation to resource use	46
Conclusions	49

3. The reform of the Common Fisheries Policy	51
The organisation of EU fisheries	51
The foundations of the Common Fisheries Policy	52
The first twenty years of the Common Fisheries Policy	55
The Common Fisheries Policy 2002–2013	58
Constitutional reform under the Lisbon Treaty	60
Proposals for reform	61
Proposed property rights for the in situ resource	63
The basic Fisheries Regulation for the period 2014 to 2020	68
The objectives of the new Fisheries Regulation	69
Management measures	71
Discards	72
Conservation and sustainable exploitation	74
Data collection	76
Environmental protection	77
Adjustment and management of fishing capacity	79
Control and enforcement	80
Funding the fisheries sector	83
Measures to address overcapacity	83
Solidarity and social cohesion under fisheries	89
Evidence-based policy	90
Overcapacity and the Court's protection of private interests	94
Conclusions	102
4. The reform of the Common Fisheries Policy: Good governance	104
Article 3(a): Clear definition of responsibilities at the Community, national and local levels	105
Union competence	107
National competence	108
Local competence	110
Regional competence	119
Article 3(b): The taking into account of regional specificities, through a regionalised approach	120
Article 3(c): The establishment of measures in accordance with best available scientific advice	122
Article 3(h): Consistency with other Union policies	125
Article 3(j): Coherence between the internal and external dimension of the CFP	128
Article 3(f): Appropriate involvement of stakeholders, in particular Advisory Councils, at all stages – from conception to implementation of the measures	135
Participatory democracy	139

Participatory democracy in practice – the North Sea Advisory Council	141
Participation and regulatory capture	144
Conclusion	146
5. Precautionary fishing	149
Introduction	149
Precaution in international law	151
Precaution under the TFEU	153
Precaution and the Common Fisheries Policy	159
The EU's external fisheries policy	161
The EU's internal management of stocks	165
Precaution and the Commission	166
Precaution and the legislature	170
Precaution under the 2013 Fisheries Regulation	171
Precautionary management and the ecosystem-based model	173
Precautionary fishing through the Maximum Sustainable Yield principle	175
Devising a Maximum Sustainable Yield measure	176
Conclusion	180
6. Sustainable fishing	182
Introduction	182
Resource sustainability under international law	183
The First Principle of the CFP: Sustainable exploitation	186
Rational and responsible exploitation: The 1992 Regulation	186
Sustainable exploitation: The 2002 and 2013 Regulations	192
Sustainable exploitation through enforcement	195
The public interest in sustainable exploitation	197
The Second Principle of the CFP: Relative stability	203
Relative stability and equality	207
Sustainable fishing and decision-making	210
Conclusion	213
7. Ecosystem management: Integrating environmental protection into marine management	216
Introduction	216
Marine ecosystem decline	217
Ecosystem management under environmental law	219
Integrated Maritime Policy	223

The Marine Strategy Framework Directive	226
Good environmental status	228
MSFD and fisheries	230
Implementation of the IMP	232
Progress towards good environmental status for the seas	233
Ensuring a coherent implementation of the MSFD	235
The North East Atlantic Fisheries Convention	237
Integrating environmental protection: The 7th Environmental Action Programme	241
Conclusion	242
8. The EU's use of market-based instruments to plug a regulatory gap	245
Introduction	245
The polluter-pays and user-pays principle	247
The new model for shared resource regulation	249
MBIs in EU law: The Water Framework Directive	251
Implementation	254
Enforcing recovery of costs for water services	254
Environmental Liability Directive: The transfer of costs	258
Implementation	261
Financial security	263
Financial security through insurance and funds	265
Conclusion	269
9. Alternative solutions	270
Introduction	270
The Commission's exposition of the problem	271
The problem of external costs	274
Internalising externalities through property rights	276
Aligning capacity with resource	278
A fishing fund	281
Conclusion	283
10. Change for sustainability	285
Concluding remarks	285
<i>Index</i>	289