



NSRAC Comments on the Proposal for an Omnibus Regulation

21th March 2014

1. Context

- 1.1 This advice paper presents initial comments from the NSRAC on the proposed Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009 and repealing (EC) No 1434/98 as regards the landing obligation.
- 1.2 Following the adoption of the new framework regulation and the decision to introduce a discard ban in important fisheries, the European Commission in December 2013 tabled the above proposal, known as the “Omnibus Regulation”. The proposal is focused exclusively on removing immediate contradictions between existing EU fisheries regulations and the requirements contained in the forthcoming landings obligation whilst more detailed rules and practices are being developed.
- 1.3 This document has been approved by the Executive Committee of the NSRAC.

2 General Comments

- 2.1 The aim of the proposed Omnibus Regulation is to clean up, remove or amend provisions within the current regulations on technical conservation measures, management measures and controls that oblige fishermen to discard, and especially those which run contrary to the introduction of the Landings Obligation enshrined within the new framework regulation.
- 2.2 It is understood that the proposal is intended to be a temporary “sticking plaster”, intended to modify current legislation before the January 1st 2015 deadline for the initial discard ban in the pelagic fisheries and the fisheries for industrial purposes. It is also understood that more comprehensive modifications will be required in the coming years as the work on different discard plans proceeds and further inconsistencies in the regulations are encountered. The new regulation anticipates more extensive changes through the preparation of a new framework regulation on technical conservation measures.

- 2.3 Unfortunately, the Commission's proposals do not live up to the expectations of the NSRAC. The proposed clean up of regulations is disappointingly limited. We had been led to believe that the landings obligation would require an entirely new approach to fisheries management based on a shift to a results-based focus with reduced micro-management. A precondition for this new approach would involve the removal of all current fisheries management requirements that in practice often result in discarding. It is apparent however, that this Omnibus Regulation if adopted will not resolve any of the outstanding problems: it is simply adding a further layer of rules. Discard behaviours can have many drivers. However, it is clear that it is the current rules that drive much of the discarding that takes place in the North Sea fisheries, including a failure to set TACs that match the abundance of the various commercial fish stocks. Catch composition rules are also a major cause of regulatory discarding but the proposal does not include any substantial change to those rules. Furthermore, the Commission is introducing a number of new control measures that will result in significant economic costs and regulatory overload for the industry, as well as considerably extra workload for employees on board fishing vessels, thus possibly endangering safe operations of fishing vessels and safety at work. The new regulation continues the over-centralised policy of prescriptive micro-management.
- 2.4 The introduction of the discard ban within the reformed Common Fisheries Policy presents an enormous challenge to the Commission and to the fishing industry. To avoid misunderstanding it is important that the same definitions and terminology are used in the document, regardless of whether technical measures, management measures or control measures are being discussed. Currently, it appears that there has been little or no discussion between those responsible for preparing different parts of the document.
- 2.4 It follows from article 15 of the framework regulation that the discard ban is to be introduced in *fisheries targeting certain species*. The proposed amendments in the Omnibus Proposal should be aimed at introducing the discard ban *in fisheries* – and not for particular *species*. Unfortunately, several of the proposals within the Omnibus Regulation amending technical measures have adopted a *species approach* and not a *fisheries approach*; creating concern and confusion about the scope of the proposals. To illustrate this, it follows from the wordings of the proposed new article 19, point 2 in Regulation No. 850/98 that catches of herring and other pelagic species caught in a demersal fishery will have to be retained on board and landed from 1st January 2015, although the discard ban is not to be introduced into the important demersal fisheries until 1st January 2016.
- 2.5 If the discard ban is not introduced carefully and pragmatically it will generate high costs for the fishing industry. There will be high financial and other costs associated with landing all catches; all discards will have to be recorded, prior notification of landings is required, there are provisions for remote sensing, separate stowage of different kinds of catch is required. In terms of documentation of catches there is no provision for flexibility. The industry is in no way guaranteed higher earnings following the introduction of the discard ban. However, additional bureaucracy and a heavier workload are certainly guaranteed – with no financial compensation but with restrictions on the use of the discards. Implementing the discard ban will constitute a major challenge, especially for smaller vessels and businesses and the regulatory

framework should provide adequate support to mitigate the socio-economic impact of the discard ban. Some fishers may not be able to cope. There is a particular risk that the additional rules and micro-management introduced by the proposed Omnibus Regulation will cause fishers to think that this will be the way their operations will be managed in the future; and that the discard ban will herald a very bleak future for them.

- 2.6 When introducing the discard ban it is very important that fishermen do get time to adapt to the new policy. New provisions on control must not be introduced from day one. In a transition period fishermen should be assisted and receive training to understand how to comply with the provisions that supports the discard ban - instead of just being fined or assigned number of penalty points as a result of an infringement on the rules of the common fisheries policy.
- 2.7 The actual provisions being proposed with respect to the discard ban must be supported by a rigorous analysis of the impacts, in terms of costs, benefits and dis-benefits, upon the fishing industry.

3. Chapter 1: Technical Measures in the North Sea and the Skagerrak (proposed amendments to Regulation 850/98)

- 3.1 As already stressed it is essential that the same language and definitions methodology be used when introducing measures to promote the discard ban. It is difficult to understand the proposal for a definition of “unintended catches” to be placed in Article 3. It is questionable whether such a definition is really necessary. However, if the term is to be used it should correspond to the common perception of what unintended catches actually are. Unintended catches are wider than simply catches that are prohibited. There is also a need to make it clear that these are unintended catches of commercial species. Other by-catch species such as benthos should not be included.
- 3.2 The NSRAC cannot support the retention of the current catch composition rules proposed by the Commission. These rules have been one of the major causes of regulatory driven discards in the North Sea fisheries. These rules assume that fishes are always caught in convenient ratios – whereas fishers generally do not know the proportions of fish that will be caught. With a discard ban there is no need to retain catch composition rules, as set out in Article 4. With these rules innovation will be impossible and prescriptive micromanagement will continue. Fishers should be able to choose their own working methods with appropriate nets and mesh sizes to achieve the required results. Furthermore, it is not clear why the Commission is proposing in Article 4 to disallow fishing using a mesh size different from those listed in the annexes. Why should fishers be prevented from selecting different mesh sizes – as long as the different alternatives are as effective in terms of selectivity? When all catches must be registered, landed, and documented there is no reason why individual fisherman should not exercise their own choice of mesh size.
- 3.3 The proposed wordings of Articles 4 to 15 are confusing and ambiguous. It follows from the current wording that when the catch compositions rules cannot be complied with, or catches are in excess of permitted percentages, then by-catches shall be

landed and counted against quotas. But how is this to be administered? Will it restrict how national quotas are being managed? What quotas are being referred to – the national quota or the quota of the individual fisherman? What if a fisher does not have required quota? In this context, it is crucial to state whether the fisher, master of the vessel, or the vessel owner is to have sanctions applied if the catch composition rules are not complied with. If a breach of the permitted catch percentages is considered a serious infringement of the Common Fisheries Policy then this will cause major problems for the fisheries, sufficient to close them down.

- 3.4 The NSRAC agrees that any fisheries must be covered with adequate quotas when introducing the discard ban. Therefore, the intentions behind the new Article 15 3 is understandable, however, the wordings of Article 15 3 that before a specific fishing trip begins the masters of vessels shall ensure they “*have quotas for stocks subject to catch limits that are sufficient to cover their likely catch composition and the permitted percentages during that trip*” is going too far. With such wording a large part of the fleet will not be able to go fishing. This proposal is too rigidly formulated, unenforceable and unworkable. There is a potential for every kind of fish to become a choke species. This kind of unworkable provision has already been discussed when dealing with the proposed Skagerrak discard ban. No appropriate solution came up during any of the discussions held.
- 3.5 As already highlighted, the proposed new Article 19 2 creates confusion between a discard ban on *fisheries* and a discard ban on *species*. As the text is written catches of herring and other pelagic species caught in a demersal fishery will have to be retained on board and landed from 1st January 2015, although the discard ban is not to be introduced in the important demersal fisheries until 1st January 2016. This widening of the scope of the ban through the new Omnibus Regulation is not acceptable.

4. Chapter 2: Control Measures (proposed amendments to Regulation 1224/2009)

- 4.1 As mentioned earlier, the proposed changes to the control provisions will significantly increase the level of bureaucracy, and the workload for the fisheries sector. This problem is exemplified by the proposal in Article 14 (1) to remove the existing 50 kilograms *de minimis* limits of logbook entries, so that: “*..masters of Union fishing vessels of 10 metres' length overall or more shall keep a fishing logbook of their operations, indicating specifically **all quantities of each species** caught and kept on board.*”

This provision will, according to the NSRAC fisheries representatives, in practice be physically impossible to comply with. It will increase the workload considerably to a degree that makes no sense for fishermen. However, for many fishing trips it will not be possible for fishermen at sea to make a correct registration of each individual fish, especially for large catches. For example, it can be very difficult to distinguish between juveniles, say of saithe and whiting or between different types of flat fish

The Commission also proposes in Article 14 (3) that the permitted margins of tolerance of fish retained on board shall be 10% for all species. However, for quantities of less than 50 kilograms the margins of tolerance are to be set at 20%. But the level of 50

kilograms is arbitrary and does not in any way solve the problems fishermen already experience with the margin of tolerance set for the first 50 kg. Therefore, it is the essential view of the NSRAC fisheries representatives that in introducing a discard ban the margins of tolerance in the logbook must be set at 20% for all catches. The NGO representatives prefer to have a level set at 10%, but with an incremental fine, depending on the deviation from the margin of tolerance.

Again, if it is considered a serious infringement of the Common Fisheries Policy when fishermen do not register their catches correctly or they are not within the margins of tolerance for log book registration then this will cause major problems for the fisheries, sufficient to closing them down.

- 4.2 Furthermore, the proposal for a new Article 49a that for vessels greater than 12 m catches that do not meet the MCSR must be placed in separate boxes, compartments or containers separately for each stock will have a significant technical and economic impact upon the fishing fleet. Essentially, the vessels will have to bring many more boxes with them on each trip. Thus storage will be a logistical challenge and this could as well negatively affect safety onboard fishing vessels. Furthermore, according to EU provisions on food hygiene fish caught for human consumption must be stowed away from fish for non-human consumption. This implies that many fishermen will have to invest in changing the storage facilities on board their vessels.
- 4.3 Again, the formulation of the new Article 49 seems to focus on implementing a discard ban for species and not for fisheries. It also follows from the current text that demersal fisheries should store catches of (undersized) herring, mackerel and horse mackerel from January 1st 2015. Clarification of these provisions is needed.
- 4.4 The proposal for a highly detailed text in Article 25a of "Electronic remote monitoring" does not follow the text of the basic regulation, which suggests that it is the Member States that are responsible for ensuring "detailed and accurate" documentation. It should be the Member States and not the Commission that lay down provisions on the responsibilities of fishers concerning remote electronic systems or on access to the information collected. The text in Article 25a should be clarified, so that it is left to Member States to ensure adequate documentation.
- 4.5 A position paper in July 2013 from the NSRAC emphasised the need for adjustments to the Control Regulation. The paper stressed that it is important that new controls do not make the industry less efficient and do not simply move costs from the control authorities to the industry. The need for major adjustments to the control regulation has become even more pressing and important with the introduction of the discard ban.

5. Final Remarks

- 5.1 We all have an interest in getting the discard ban implemented in a sensible and practical way. This will take time. As we move forward, the Commission, Member States and the RACs will encounter other inappropriate and inconsistent provisions in the regulations, which will need to be cleaned up. Pragmatism is needed. Simple mechanisms are required to ensure that the regulatory framework can be amended and replaced where this proves necessary. A long, drawn-out, decision-making process will hinder the successful implementation of the discard ban.