

The North Sea Advisory Council



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Development of a new framework for technical measures in the reformed CFP

Response by the North Sea Advisory Council to the Commission Public Consultation

1.0 Introduction

1.1 The Commission is consulting on a new technical measures framework regulation that would take into account the reforms in the CFP – in particular, the changes include:

- The arrival of a regionalised CFP
- Greater input from stakeholders, notably through the Advisory Councils
- The requirements of the landings obligation
- A shift away from micro-management
- Movement towards results-based management, where objectives are set at a high level but achieved through detailed implementation at lower levels
- The alignment, as far as possible, of economic incentives with management objectives, bringing a high level of compliance
- Clearer and simpler regulations
- More selective fishing
- Better alignment with broader environmental policy objectives and integration of the ecosystem approach into fisheries management

2.0 Background

2.1 The implementation of the current EU Technical Conservation Regulation (EC 850/98) has brought problems:

- Almost immediately after the regulation came into force its broad scope and blanket nature gave rise to demands from specific fisheries for necessary exemptions and derogations. These magnified the complexity already inherent in the regulation.
- A range of additional technical measures was brought in for various purposes, including the cod recovery measures. These gave rise to additional complexity. A rushed attempt to bring all technical measures under a single consolidated text, prior to co-decision, foundered. Attempts to streamline the EU technical measures regime and put in place a new technical measures regulation have gone nowhere.
- The catch composition rules (which are at the heart of the regulation's approach to setting mesh sizes) gave rise to significant levels of discards
- The purpose of the regulation was undermined by other management measures, notably the effort control rules, which created perverse outcomes contrary to improved selectivity
- STECF in evaluating the value of technical measures came to the conclusion that the overall effect of management measures, including the Technical Conservation Regulation, had been a *reduction* in the average size of mesh size in use in the North Sea. This perverse outcome resulted from the fact that although there had been a significant increase in the mesh size for vessels targeting large bodied demersal species (from 90mm to 120mm), there had simultaneously been a flight of vessels from the whitefish to the *Nephrops* fishery (with an 80mm minimum mesh size.) The overall effect was a shift of mesh size in the opposite direction to that intended.
- The regulation has been the subject of many revisions and amendments and as a result lacks coherence and comprehensibility to both fishers and control authorities.

2.2 Now, we have reached a completely new position. The reformed CFP is based on the principle of results-based management. The focus of past technical measures on regulating the inputs and specifying details of what can and cannot be used is now to be replaced by measures for achieving the intended and desired results. The NSAC fully supports this change in approach.

2.3 A central change under the CFP reform is the move to regionalisation. This is an important opportunity to introduce simplification of the rules and regulations. Regionalisation is especially relevant for taking decisions on the use of technical measures as management tools.

3.0 Transitional Arrangements

- 3.1 The Commission's view is that a new framework regulation for technical measures is required to provide ***“clarity and legal certainty whilst regionalisation (of technical measures) develops”***. It is envisaged that the ***“content of the framework regulation would diminish as plans are adopted and regionally designed measures take the place of the corresponding body of rules”***. The central idea is that the new regulation would provide temporary underpinning whilst regional multi-annual management plans, including appropriate technical measures, are developed by regionally cooperating member states.
- 3.2 We question whether this incremental *belt and braces* approach is appropriate when the landings obligation is being implemented as a *big bang*. We appreciate that an overall *adaptive* approach, capable of legislating and implementing post-landings obligation adjustments where necessary, is a prerequisite for the implementation of the landings obligation. But this should not be confused with the need for a comprehensive clear-out of redundant technical and control measures. The majority of these regulations, if retained, will only serve to undermine the smooth transition to a fisheries management policy centred on the landings obligation and focused on results-based management.
- 3.3 On 31st December 2015 it will still be illegal to *retain* on board certain demersal species. After midnight it will be illegal to *discard* those same fish (subject to various exemptions and flexibilities). The fishing industry representatives of the NSAC suggest that simultaneously, almost all EU technical measures will be rendered redundant by this change. **The current technical measures will be replaced by major economic pressures on fishing businesses to reduce unwanted catches of quota species through the use of more selective gears and avoidance strategies.** The landings obligation itself will drive selectivity, leaving behind the old prescriptive approach to technical measures. Fishers must now be given maximum freedom to decide on selective measures, as they are now to be held accountable for what they catch. We are not convinced by the argument that EU technical measures should be retained, even on a transitional basis, within this radically different context. There is a likelihood that maintaining a layer of EU level technical measures would:
- Repeat the failures of the pre-reform CFP by maintaining a detailed and prescriptive approach to technical measures
 - Continue to place responsibility for decisions on technical measures with those least aware of the likely consequences
 - Increase the complexity of the new regime
 - Detract from the regionalisation agenda
 - Cause confusion
 - Achieve little or nothing in terms of enhanced selectivity

The environmental NGO representatives of the NSAC and the recreational anglers have a different position, namely that some core common standards will need to be

retained and some new ones set in the light of an enhanced CFP commitment to an ecosystem-based approach (examples listed in 3.4), both during and following the transition into the landings obligation. The NGOs and recreational anglers agree, however, that far fewer prescriptive technical measures will be required under a results-based management system, and that in most cases, the development of prescriptive technical measures, especially those relating to gear, will be best done at the regional level. It must be stressed, however, that for all stakeholders to have confidence in results-based management, there must be results which can be verifiably monitored and quantitatively measured against the objectives and targets outlined in both the multiannual plans and the overarching Commission policy guidance, with the ability for the Commission to take appropriate measures or – if needed - impose penalties should fisheries fail to meet these objectives.

- 3.4 It is the view of the NSAC's fishing industry representatives that if any prescriptive technical measures really are required, even on a transitional basis, **the appropriate place for these to be determined is at the regional level**, where measures can be tailored to specific fisheries and local conditions. The Commission must not restrict the regions in what they have to do. Things will go wrong if the Commission tries to deal with actual risks. The regions must be trusted to deal with technical measures. Given the experience with Regulation 850/98, the prospect that a new EU technical regulation would be capable of delivering effective selectivity measures seems remote. Everything in recent history would suggest the opposite.

The NGO representatives and the recreational anglers agree with the sector that many of the technical measures will be made redundant with the implementation of the landings obligation, yet consider there remains a strong need for some overarching objectives and minimum common standards to apply across the EU. Some measures, primarily conservation measures relating to non-commercial by catch species and habitat protection, should remain regulated at a high level (e.g. agreed through co-decision) to ensure that these are interpreted, implemented, monitored and enforced consistently across all member states. This will help achieve a more level playing field with respect to such measures and assist in the alignment of technical measures with the new CFP and its unprecedented linkage with environmental legislation. Examples of such measures include:

- Prohibition of specific gears: e.g. driftnets, dynamite fishing, and detailed specifications for possible other controversial gear such as pulse trawls.
- Which habitats and ETP (endangered, threatened and protected) species are to be protected and/or prohibited from exploitation under the nature conservation directives.
- Temporal or spatial closures applicable to certain gears/fishing activities in certain habitats or targeting certain species.
- Methods for defining Minimum Conservation Reference Sizes
- Definitions (e.g. for groups of gears, reference gears and ecosystem-based management, cross-reference to best practice technical guidelines, e.g. FAO for reducing incidental catch of seabirds and cetaceans in fisheries).

The Commission's desire for 'simplification' of the new regulation should not be at the expense of adequately addressing the enhanced environmental dimension as called for by the new CFP.

4.0 Trials and Pilots

4.1 Many initiatives in recent years, involving fishers themselves, have pointed the way forward by achieving improved selectivity and reducing discards. It is likely that introduction of the landings obligation will generate a whole new range of unintended consequences. We emphasise that it is of the utmost importance that in the interim period, before the demersal discard ban comes into force in January 2016, a major programme of trials and pilots will have to be undertaken by industry together with science. These should highlight both potential problems and possible solutions likely to be encountered both by individual fishing vessels and member states in implementing the landings obligation. Research and trials must explore both the opportunities for improving selectivity and avoidance of unwanted species, as well as improving the post capture survival of such species caught. **Funding and additional quota to undertake vital research and pilot projects must be granted by fast track, and given a very high priority.**

5.0 NSAC Overview

5.1 The broad approach outlined in the Commission's consultation paper signals a move in the direction most strongly supported by the NSAC. That is, a move away from micromanagement and towards a results-based approach, with scope for measures to be tailored to specific fisheries at regional level through fisheries management plans. Fishers want to take part in initiatives to promote sustainable development of the fisheries.

5.2 However, the Commission seems to lack the courage of its own convictions. By making the case for the retention of *minimum common standards* at EU level, the fishing industry representatives of the NSAC are of the view that the Commission is undermining the benefits that would accrue from:

- A decentralised approach in which member states, working together with stakeholders at a regional seas level, determine the most appropriate technical measures for their fisheries through the preparation of fishery management plans.
- The improvements in selectivity that might be expected to arise from adaptation of fishing patterns/gear to the landings obligation. A reduction of unwanted catch is expected to arise from the requirement to land all quota species, as excess catch would count against quota and give rise to onshore disposal costs.
- The benefits that would arise from abandoning all regulations that generate discarding or obstruct vessels' ability to meet the landings obligation (such as effort controls).

Technical Measures

- 5.3 The key to an effective set of technical conservation measures is to influence the mind-set of the person in the wheelhouse. That mind-set is often determined by the economic consequences of the gear used or fishing strategies adopted. The poor economic outcomes inadvertently created in the past by the imposition of poorly thought-out technical measures have often caused failure to meet the required objectives.
- 5.4 It is this fundamental insight, along with an appreciation of the diversity of fisheries in an area such as the North Sea, which determines the NSAC view. Notwithstanding the need for certain conservation measures as noted by the NGO representatives (in 3.4), the continuing setting of minimum standards at a European level creates wasted effort and is ultimately a backward step.
- 5.5 Within STECF discussions on selectivity it has been said on more than one occasion that more has been achieved in terms of improved selectivity in the last four years than in the previous twenty years. This is because a series of initiatives (for example, the Catch Quota Trials or the 50% Project) have improved selectivity by aligning incentive structures with management objectives and illustrated the potential of the new approach. This is exactly the approach that should be broadened, extended and deepened. The landings obligations and the EMFF provisions in this respect will provide plenty incentives for fishers to reduce discards and by-catches.
- 5.6 The Commission proposes a *belt and braces* approach which threatens to undermine the coherence and delivery of both the landings obligation and the technical measures regime. This suggests a lack of confidence in the reformed CFP. The lack of trust between the regulators and the regulated was one of the central features of the old, discredited approach to technical measures. Rebuilding that trust, with appropriate oversight and monitoring, should lie at the heart of the new arrangements.
- 5.7 There is certainly no need for a common European framework of technical measures. Those measures that do prove necessary must be decided on a regional level and must be arrived at through discussion with stakeholders in the context of fishery management plans. However, the NGO and recreational angling representatives believe that a number of minimum common standards for technical measures – such as those noted in 3.4 – must remain within a common European framework.

Integrating the ecosystem approach into fisheries management

- 5.8 The new CFP pursues better alignment with broader environmental and ecological policy objectives, as included in the Marine Strategy Framework directive (MSFD) and NATURA 2000. The obligations of these directives are to be met through actions by member states. Member states must create frameworks for implementing conservation measures to protect the species and areas most at risk. Full and effective implementation of the provisions of these directives with respect to fishing

activities is best met through the cooperation of member states around the North Sea. The e-NGOs are of the view that measures to protect ecosystems from the effects of fishing must be brought in at a regional level through fishery management plans, agreed with stakeholders. Increasing demand for certified sustainable and 'green rated' seafood products, means the value and sale of fisheries products is often under-pinned by the conditions and status of local ecosystems, with responsible and healthy fisheries generally having greater market access, thus providing additional incentive for sustaining biodiversity through (e.g.) reduced by-catches.

6.0 Summary

- 6.1 We will face many challenges in implementing the landings obligation. The Commission has asked: ***“How and what incentives can be built into regionally designed technical measures?”*** Our answer is that these incentives are to a large extent provided by the landings obligation itself. As the consultation paper recognises, the landings obligation will ***“drive increased selectivity and adaptation of fishing strategies to avoid and minimise unwanted catches”***. The landings obligation will move the CFP beyond its current prescriptive approach, which historically has proven to be such a dismal failure in terms of achieving improved selectivity, and which has been a major driver for discarding. The landings obligation will lead directly to the elimination, reduction and avoidance of unwanted catches. If further steps are required to improve selectivity and introduce avoidance measures those steps must involve fishers themselves.
- 6.2 The Commission has asked: ***“how best do we ensure technical measures are adaptable and responsive to changing conditions in fisheries”***. Our answer is that if any supplementary measures are required to fill gaps in the landing obligation then these must be determined at a regional level. Technical regulations are best achieved through fishery management plans, arrived at through discussions with stakeholders. In terms of presenting technical measures, it is time for the Commission, Council of Ministers and European Parliament to leave the stage.
- 6.3 Co-decision is absolutely the wrong place for deciding on mesh size, net configuration or twine thickness.
- 6.4 The new CFP is based on the principle of management by result. Beginning from 1st January 2016 selectivity and technical measures should be:
- Determined at individual vessel level as a rational response to the incentives and imperatives created by the landing obligation
 - Supplemented, if necessary, by measures determined at regional level
 - Only in the most unusual and exceptional circumstances should technical measures be determined through co-decision. However, the NGO and recreational angling representatives indicate that a number of minimum common standards should remain subject to co-decision
- 6.5 The North Sea Advisory Council is willing to meet with the Commission to assist in developing these ideas more fully.