



CONSEIL CONSULTATIF POUR
LES EAUX OCCIDENTALES
SEPTENTRIONALES

NORTH WESTERN
WATERS
ADVISORY COUNCIL

CONSEJO CONSULTIVO PARA
LAS AGUAS
NOROCCIDENTALES

EU Transparency Register Id. No: 8900132344-29

Recommendations

on the report of the NWW MS Control Expert Group: 'Recommended measures to achieve compliance with the landing obligation in demersal fisheries in North Western EU Waters'

2 December 2016

Background

The Control Expert Group (CEG) of the North Western Waters Member States (NWW MS) has prepared a report 'Recommended measures to achieve compliance with the landing obligation in demersal fisheries in North Western EU Waters' ([link](#)) with their recommendations to ensure compliance with the Landing Obligation.

The NWWAC discussed the report at a meeting in Edinburgh (7th July 2016), and an initial response was sent to the CEG ([link](#)). A specific Focus Group was then established to examine the report in detail and provide additional feedback.

General remarks

The NWWAC appreciates the request for advice on control of the landing obligation in NWW fisheries, considering that each policy is only as effective as it is enforceable and success of management measures depends on the buy-in of those affected by it. As the designated regional stakeholder body in the area, the NWWAC would have appreciated to be consulted before the report was finalised and recommendations were made to the NWW MS high level group (HLG).

Relationship and Consultation between the NWWAC, CEG and HLG

Stakeholder consultation can inform managers in implementation bodies such as control agencies about the many aspects of day-to-day fishing operations which are complex and differ throughout the region. Advisory Councils are excellently suited to advise on the regional consequences of management measures given the expertise represented. Many of these are unintended consequences which, if consulted upon, could be forewarned by the sector. The NWWAC considers that the CEG report would have benefited from stakeholder consultation before finalising their recommendations.

For future development of CEG reports, the NWWAC suggests it would be useful if the AC were to be consulted on a draft report, before the CEG send their final report to the HLG. The HLG could then

ask the AC to formally comment on the final report. This in the view of the AC is a far more efficient and effective way of actively engaging with the stakeholders on control issues and could help avoid some of issues (see below) which have arisen with the present set of recommendations from the CEG.

Buy-in

Ensuring a culture of compliance requires a regulation that is enforceable, workable and understandable and depends to a large extent on the buy-in of those affected by the CFP and related regulations, and the competency and resources of the authorities enforcing the rules. Anomalies and contradictions between different regulations and the approach to implementation taken by different countries can negatively affect the culture of compliance, although we recognise this does not justify non-compliance. The acceptance of a regulation will be boosted when the implementation effects are considered fair, when the imposed regulations are perceived as meaningful and when the regulation takes into consideration traditional fishing patterns and practices.

Level-playing field

One of the most important tools to ensure buy-in of the rules of the CFP is the establishment of a level-playing field, both between EU vessels and between EU and third country vessels fishing in EU waters. Introduction of technologies such as the Vessel Monitoring System (VMS), the Electronic Reporting System (ERS) and the Automatic Identification System (AIS) have improved the level of compliance. However, crucial to the further success is that actions taken following infringements must be applied equally to vessels operating under an EU flag and vessels operating under a third country flag, thereby preventing discrimination and unfair competition. Technical measures as well as administrative requirements, such as penalty points, the transmission of position data at regular intervals and the electronic completion and transmission of fishing logbook data, must be met by third country fishing vessels operating in EU waters to the same extent as is obligatory for EU fishing vessels. It is crucial that all vessels fishing in union waters respect both technical and spatial requirements with regards to selectivity and avoidance.

The NWWAC is keen to understand what discussion has taken place with third countries fishing in the NWW region in regard to Monitoring Control and Enforcement. The experience of the members of the AC indicates that fisheries control practice from within the EU and outside, including the control activities of the landing obligation to date, is far from being a level playing field. The NWWAC is committed to supporting the Member States and the Commission in realising this ambition.

Harmonisation of implementation between Regions and between Member States

The NWWAC has noted there are substantial differences in the implementation of the control regulation in Member States as outlined in a report prepared for the EU Parliament's PECH Committee (on the social and economic impact of the penalty point system ([link](#))).

Enforcement may be hampered by for example:

- Differences in the defining characteristics of the fisheries sector (fleet, fishing gear, fishing grounds and target species), which vary significantly between sea basins, Member States and fleet segments;
- Contradictions may also arise due to several different interpretations by inspectors (EU Parliament¹ report “How to make fisheries controls in Europe uniform” (2015/2093 (INI) and “The CFP-infringement procedures and imposed sanctions throughout the EU (2014))”;
- The methods of control and the tools used are not necessarily the same in all MS;
- Proceedings after alleged infringements and sanctions differ throughout the European Union: for the same infraction, the sanction may be either administrative or penal depending on the MS involved and in either case the level of sanction may differ between MS and may also differ between fleets dealt with in a MS. The NWWAC recommends that MS take the initiative for an extensive standardisation of control methods, warnings, follow-up, and ultimately sanctions imposed to minor and serious offences in order to put an end to the inequities existing at present. For example, Member States have the responsibility to adopt national criteria to determine what constitutes a serious infringement of the CFP rules. Once a serious infringement is determined, legal consequences arise such as the attribution of penalty points or the obligation to impose a sanction of a certain level. With different national criteria determining what constitutes a serious infringement, there is a lack of level playing field for fishing operators throughout the EU and this absence of equal treatment hampers the establishment of a culture of compliance;
- Implementation differences between regions should also be looked into.

Evaluation of the CEG recommendations

Recommendation 1:

Specific targeted comprehensive compliance programmes, harmonised at the regional level, will be necessary to generate the necessary changes in demersal fisheries and ultimately achieve compliance with the LO. Key components might include purpose-designed leaflets describing fisher’s obligations, translated into the various languages and made available through the websites of the various control authorities; promotional campaigns to provide clarity on the practical ramifications for fishermen; and clarifications to be provided to fishermen on the benefits of logging discards.

NWWAC comment:

The NWWAC agrees with the principle of this recommendation, but would like to receive more concrete information on such compliance programs and emphasises that a level playing field must also be realized in this regard. ECFA should have a clear role in this recommendation, as difficulties might arise when attempting to harmonize across Member States.

The NWWAC would also like to stress the importance of training of fishers and fishing operators in order to ensure that all the actors understand what is required.

¹ See: - How to make fisheries controls in Europe uniform ([link](#))
- The CFP-infringement procedures and imposed sanctions throughout the EU ([link](#))

Recommendation 2:

The NWW control group recommends a common approach to non-direct human consumption.

NWWAC comment:

This recommendation is considered out of date as there has been more clarification given from the Commission.

Recommendation 3:

NWW Compliance and Control strategies should be implemented in a harmonious manner and without conflict with strategies implemented in adjacent regions particularly NS and SWW.

NWWAC comment:

The NWWAC strongly agrees that a uniform, cross-border approach is required in terms of compliance and control strategies. It is recommended that the same strategies be used between areas, this will provide a less complicated environment for fishers to operate within.

Recommendation 4:

The activities and cooperation between member states in the region will need to be coordinated. A dedicated role for EFCA should be foreseen to facilitate this process of regional coordination, including for fisheries not covered by a SCIP/JDP.

NWWAC comment:

The NWWAC fully agrees with this recommendation and recommends that the financial and human resources are given to ECFA to fulfil this.

Recommendation 5:

Data exchange systems should be developed within the region to optimise risk analysis by all control authorities. A useful starting generality would be that all relevant fishing data which might augment the accuracy of risk analysis should be available to all relevant authorities as rapidly as possible.

NWWAC comment:

The NWWAC agrees with this recommendation and suggests it could be linked to the increased role of EFCA suggested in Recommendation 4. The NWWAC notes further clarification is needed to identify which authorities will coordinate this work and ensure it is done.

Recommendation 6:

The EFCA platform should be used as the central exchange hub, and repository of all data which might inform risk analysis. In addition to raw data sharing e.g. logged vessel catches, automated analytical systems capable of detecting patterns consistent with compliance risks should be developed to provide real-time risk analysis information to the various state authorities in the region.

NWWAC comment:

The NWWAC notes that this recommendation originates from the Pelagic CEG report and the NWWAC would like to seek clarification on how meaningful this recommendation is for the demersal fisheries.

Recommendation 7:

Automated algorithms should be developed under the framework of the EFCA coordination to interrogate existing ERS and VMS data, and identify variances in catches logged which might indicate risks of non-compliance with LO. Member States will have to run the algorithms.

NWWAC comment:

Similar to recommendation 6, the NWWAC seeks clarification as to how meaningful this recommendation is for the demersal fisheries.

Recommendation 8:

Costs of implementing controls systems designed around implementation of the LO should be subject to a specific assessment by EFCA using methodologies developed assessing JDP costs. Such LO cost assessment should begin after an appropriate time-lag to allow for transition, at the latest end 2018.

NWWAC comment:

The NWWAC supports this recommendation, but would like to see all costs included in the assessment, including costs for vessels.

Recommendation 9:

At-sea inspection procedures should be developed and harmonised within the region. These procedures should incorporate agreed best practice in verifying compliance with the LO.

NWWAC comment:

The NWWAC fully supports this recommendation. Furthermore, in securing a level playing field the NWWAC underlines the need for such inspection procedures to be aligned and coordinated between the different regional control groups and consistent with EU standards. The AC envisages a coordinating role here for EFCA.

Recommendation 10:

Landing control procedures should be developed and harmonised within the region. These procedures should specifically incorporate agreed best practice in verifying compliance with the LO, with special attention to the handling of fish below MCRS.

NWWAC comment:

The NWWAC supports this recommendation, but considers it important that it applies to a wider region than the NWW since some vessels, while fishing in the NWW, land their catches at ports outside the NWW including non-EU countries.

Recommendation 11:

Assuming individual MS decide on the de-minimis management procedures for their flag vessels, such information should be available to the control authorities of all regional MS. Information will be on the level of detail as available and needed for consideration of the coastal- and port state authorities.

NWWAC comment:

The NWWAC considers that this recommendation is outdated at this stage because individual MS have not decided on individual approaches to managing the *de minimis* exemption, but the NWWAC would like confirmation that there are systems in place that allows control authorities to identify the vessels by area and species for which the *de minimis* applies.

Recommendation 12:

Where CCTV systems are operational on vessels, coastal state input to risk-based review of footage by Flag State authorities should be facilitated to maximise effectiveness. Control authorities within the region should collaborate to ensure maximal sharing of experience in implementation of REM/CCTV and harmonisation of deployment strategies across the region.

NWWAC comment:

The NWWAC agrees with this recommendation however, it is our understanding that the exchange of CCTV data is dependent on cooperation between flag and coastal states.

Recommendation 13:

For those vessels with CCTV on board, programs should be put in place for the provision of haul-by-haul information where appropriate, not transmitted but retained on-board and provided along with the CCTV data.

NWWAC comment:

The NWWAC understands the purpose of this recommendation. However, the NWWAC wants to highlight that in some fisheries, at certain times, it will not be feasible to provide haul-by-haul catch composition information due to overlapping handling time of catches, e.g. in beam trawls and high volume demersal trawl fisheries. In those circumstances other effective and efficient control systems should be put in place.

Recommendation 14:

Dedicated programmes to measure compliance should be implemented to assess compliance with the landing obligation. A reference fleet should be created for the fleet segments, most predominantly in the high and very high risk categories, by the installation of REM systems on board or an observer program covering the fishing trip, or a combination of both (MCS 11 Strategy Option 3). Appropriate methodologies for data gathering and analyses should be developed to give shape to compliance evaluation.

NWWAC comment:

The NWWAC agrees in principle with this recommendation, but significant work is required to identify the precise modalities, i.e. what and how are the concrete parameters that will be measured in order to assess compliance? The NWWAC request to be involved in the process of determining sensible programs/in the evaluation process.

As an element of REM, CCTV may be seen as a controversial tool by some fishermen. As such, the NWWAC suggests that good communication will be needed to ensure buy-in on the use of this technology by the industry. Additionally, the use of CCTV and distribution of footage must comply with EU and national privacy laws.

Recommendation 15:

In the approach of securing continuous control of the vessels in the very high risk category (option 1), the vessels should be installed with REM/CCTV systems, supplemented by data analysis and inspections at-sea and after landing. Sufficient means should be made available for the analysis of footage.

NWWAC comment:

The NWWAC agrees that there is a need for full control of high and very high risk vessels. First, the risk categories should be defined (this needs to be addressed as the report is very unclear on how this should be achieved) and only then can decisions be made as to which tools would be most appropriately implemented. Assuming that the high and very high risk vessels can be identified, the NWWAC suggests that in order to ensure detailed and accurate documentation of catches in all fishing trips, tools should be selected which are cost effective and appropriate to those vessels. Such tools could include: observers, closed-circuit television (CCTV), VMS, sea, air and onshore controls amongst others. The comments regarding the use CCTV and CCTV footage made in recommendation 14 are also relevant in this context.

Recommendation 16:

The low, medium and high risk categories should be subject to existing control practises. They should be part of the program for compliance evaluation, as described in recommendation 14. Strategies to verify compliance with LO in low risk vessels should include application of data-analysis and inspection protocols, to specifically address LO risks.

NWWAC comment:

The NWWAC agrees with this recommendation. The NWWAC would like to point out that the 'high' risk category appears in both recommendation 14 and 16. We propose to delete the high risk category from recommendation 16.

Recommendation 17:

In order to ensure enforceability and hence compliance throughout the region, those Control recommendations proposed by CEG which are subsequently ratified by the HLG should be enacted within an EU legal instrument, directly applicable in the region, when this is not already the case.

NWWAC comment:

The NWWAC agrees with this recommendation. Furthermore, in securing a level playing field the NWWAC underlines the need for harmonisation within and between regions, consistent with EU standards.

Recommendation 18:

NWW Control authorities should consider harmonised approaches to assessing gravity of LO non-compliances. This issue is wider than the LO only.

NWWAC comment:

The NWWAC fully agrees that a harmonized approach to assessing the gravity of LO-related infringements is urgently needed. For example, the points-based system should be consistently applied, i.e. the number of points to be applied for infringements should be consistent between Member States. Furthermore, in securing a level playing field the NWWAC underlines the need for inspection procedures to be aligned and coordinated with control groupings in all regional bodies.

Recommendation 19:

Facilitate a direct dialogue between the control authorities and the scientific community, with the primary topic of the complementarity of data gathering and data analysis.

NWWAC comment:

Although the NWWAC understands the need of the CEG for increased observer data to monitor the actual catch composition, the NWWAC would like to stress the need for a clear distinction between scientific observer data and control observer data. Experience by some NWWAC members illustrated that the use of scientific observer data for control purposes has badly harmed the relationship between the industry and science. That relationship is vital to improving the quality of data required for fish stock assessments which in turn is essential for effective implementation of the landing obligation. It is essential that the good working relationship between the scientists and fishers is not put in jeopardy by the perception that the scientists on board the fishing vessels are also acting as control inspectors. The AC suggests that CEG should communicate with the scientific community to see how additional control monitoring data could be used to improve fish stock assessments.

Evaluation of the existing Control regulation

The Control Regulation ((EC) 1224/2009) is currently going through an evaluation process and the Commission may decide that it will revise this text.

In light of this possible revision, the NWWAC suggests that a meeting be arranged between the AC, the NWW CEG, the European Commission, with individual Member States control authorities attending as soon as possible. This would be the opportunity to discuss the evaluation process as well as concerns related to the implementation of the current regulations.