



## **North Western Waters Regional Advisory Council**

### **REPORT**

#### **FOCUS GROUP ON IMPLEMENTATION OF LANDINGS OBLIGATION**

**Wednesday 18 September 2013**

**15:30 - 17:30**

**The Coach House - Dublin Castle**

**Chairman: Luc Corbisier**

**Rapporteur: Alexandre Rodríguez**

#### **1. Welcome**

The Focus Group Chairman, Luc Corbisier, welcomed all participants to the first ever working group on this matter and gave their opening remarks, and explained the rationale and background for this meeting.

He reminded the attendees that Commissioner Borg had launched the idea of a discard ban in 2007/2008 but at that time a failure to reach political agreement, meant the Commission shelved its proposal

The compromise text adopted by EP-Council on a CFP Basic Regulation dated 14 June 2013 sets out the provisions for the introduction of the landing obligation in EU fisheries It presents a challenge for all RAC; in balancing political opinions with legal implementation.;

He summarised some of the key features and challenges of the future landing obligation:

- Art 15 of the Basic Regulation contains one exception applying to live bait;
- Minimum Landing Sizes will become minimum conservation reference sizes; what is the difference?
- Fisheries must be fully documented to ensure compliance of the measures;



- According to Art 17, there is the possibility of developing a regionalised approach to implementation through multiannual or discard plans. Under this regionalised approach Member States must consult with the relevant Advisory Councils;
- The regulation includes provision for a “*de minimis*” exemption which allows for a level of legal discarding on the basis of certain conditionalities being met. But how to interpret this is not at all clear;
- There are flexibility mechanisms to allow transfer of quotas among species and also interannually. But again the wording in the regulation leaves room for interpretation?

In the positive, it talks about flexibility in the implementation. In the negative the text is subjective and open to interpretation.

He invited the audience to reflect about the two strands of work in this group: one short term related to improvement of selectivity and reduction of by-catches and discards; and a medium/long term one related to the development of regional discards plans.

- Adoption of Agenda

The agenda was adopted by consensus.

## **2. Exchange of views on implementation of landings obligation for demersal fisheries in north western waters**

### **2.1. EC legislative framework, timetable and work plan - Dominic Rihan (DG MARE)**

Dominic Rihan gave a presentation titled “*Landing Obligation Re-visited*” which is available for consultation on the NWWRAC website<sup>1</sup>

He highlighted the timetable and made the following remarks:

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<sup>1</sup> Direct link here:

[www.nwwrac.org/admin/publication/upload/DG\\_MARE\\_Landing\\_Obligation\\_REVISITED\\_Sept2013.pdf](http://www.nwwrac.org/admin/publication/upload/DG_MARE_Landing_Obligation_REVISITED_Sept2013.pdf)



- The first timeline in the regulation has a start date but no date. Therefore the landings obligation for pelagic and industrial fisheries will come into force from 1 January 2015;
- The implementation of the landings' obligation in the North Sea, North Western and South Western Waters should be effective within the period 2016-2019;

It is up to MS with the RACs to see how best to use the transitional period: an example might be to develop a discard plan for cod fisheries in 2016, then extend to haddock and whiting in 2017, etc.

Mr. Rihan made it clear that it is not the intention of the Commission to define neither the timetable nor the fisheries and the list of species to be implemented for landings' obligation, as this will be work of the Member States concerned in coordination with the Advisory Councils should carry out in developing regional joint recommendations.

When developing a discards plan, he suggested that both Members States and the Advisory Councils should look at the existing fisheries, define a list of (target and by-catch) species, identify discards problems, and gather information on those species with high survival rates.

Regarding governance issues of implementation:

- The "*Plan A*", the development of multiannual management plans in which landings obligation would be embedded would be the preferred option. However, and in accordance with articles 7 and 8 of the CFP Basic Regulation, this would need to be passed by co-decision procedure, i.e. based on a proposal from the Commission that would then be negotiated by the Council and the European Parliament. Embedded in the basic regulation is the possibility for regionalisation of conservation measures for the implementation of the multiannual plan (including discard measures) that could be developed by Member States in consultation with the Advisory Council. However, the prospects of such plans being developed in the short-term are restricted by an ongoing institutional impasse between the EP and Council regarding the interpretation of the extent of powers in management plans. A task force comprising the three institutions will meet in October to try to solve this impasse.
- The "*Plan B*" would consist in drafting (regional or species-focused) discards plans (with duration of 3 years).



The same elements for implementation of the landing obligation as can be included in MAPs would apply here but the scope of such plans is restricted to these elements, so there is a clear limitation in the elements to be included (e.g. additional technical measures). Member States shall work in cooperation and consult the Advisory Councils, with the Commission acting as facilitator of the dialogue. The Member States should submit joint recommendations that have the endorsement of the Advisory Council to the Commission. The European Commission would adopt these recommendations as a Commission Regulation.

No negotiation procedure would be involved at the Council and EP level. However, if Commission has good reasons to reject the joint recommendations as some elements are not consistent with recovery of the stocks then then the recommendations in their totality must be rejected- it is all or nothing! Member States and the Advisory Councils can of course continue to work on the joint recommendations and submit them at any time...

- The “*Plan C*” – This is known as “*fall back*” position. In this case the Commission is obligated to adopt de minimis provisions where no multiannual plan or discard plan is in place when the landing obligation enters into force.

In presenting joint recommendations Mr. Rihan stressed that a limited, Impact Assessment (IA) will probably be required to support the discard plan. How to do this is still under discussion. The Commission will be asking for guidance from STECF to further develop this.

Finally he stressed that the landings’ obligation for demersal species in North Western Waters will start in 1 January 2016 and must be finalised by 1 Jan 2019. The first joint recommendations should therefore be agreed by around June 2015 for demersal species in NWW and submitted to the Commission by then to evaluate them (through STECF) and prepare the corresponding Commission regulation.

- Exchange of views from the floor:

The Chairman (Luc Corbisier) asked what would happen if in one region you have implementation of discards plans under different categories (A, B and C). He also indicated that a MAMP might be able to cover only some species but not all of them.

Mr. Rihan acknowledged the high number of fisheries occurring in the area of coverage of the NWWRAC. However, under regionalisation it is really up to the Member States and Advisory Councils to agree on the scope of the plan. In summary, he urged the NWWRAC as a first step to consider how to best define the fisheries included under their remit.



He clarified that the issue of quota flexibility is outside the remit of the discard plan (i.e. specific rules for using such flexibility mechanisms should not form part of the plan).

- “Omnibus” Regulation: State of play

M Rihan then provided an overview of the "omnibus" regulation. He explained this is purely a technical alignment of existing rules to remove any legal obstacles on technical measures and control regulations that might impede the implementation of the landings' obligation. In essence, this is a short term solution and there is little scope for changes. The Omnibus Regulation is expected to be adopted in October 2013.

The Commission does intend to come forward with a proposal for a new technical measures framework to address the current deficiencies in these regulations and also to align them with the new CFP. A consultation period for the introduction of a new technical measures framework regulation will start soon and the Commission is planning to table a proposal in June/July 2014.

**ACTION: Any future discards plan has to be driven by Member States and Advisory Councils. In view of this, the NWWWRAC will send a letter addressed to all concerned Members States inviting them to work together in the preparation and development of discards plan on a regional basis.**

## 2.2. Preliminary conclusions of the STECF Expert Working Group (EWG) 13-16 on Implementation of Landings' Obligation (Varese, 9-13 September 2013)

In absence of Dr Norman Graham (Chair of the STECF EWG on Landing Obligation), Mr Rihan reported on the outcomes of this meeting in his capacity as DG MARE focal point at the meeting.

The process of interpreting the terms and defining the elements in how the landings obligation can be implemented have already kicked off. Dialogue and active engagement between MS and RACs is encouraged in order to identify the practical problems and constraints. In particular, it is crucial to achieve a common understanding.

The STECF EWG 13-16 meeting had around 40 participants, composed of scientists, control authorities, policy makers and fishing industry representatives.



Five topics were discussed there:

### 1. Fish survival

- Three main methodologies for conducting survival experiments were identified i.e. captive observations, vitality/reflex assessments and tagging/biotelemetry experiments.
- The definition of high survival in Article 15 is subjective and is likely to be species and fishery specific and dependent on the management objective. Results from short term experiments may underestimate true survival in the longer-term. Therefore care should be taking in interpreting the results of short-term survival experiments in terms of long-term stock benefits.
- Landing discards that would otherwise survive can have negative stock impacts. Maintaining catches within desired levels may result in reduced fishing opportunities to compensate for loss in stock contribution.
- “Avoiding unwanted capture in the first instance should have precedence over exemptions based on survival arguments.

### 2. “De minimis” rules and quota allocation/flexibility

- There are many ways to interpret the working of the de minimis exemptions in the regulation and this has substantial bearing on the potential impact of using this mechanism.
- Inter-species quota flexibility can be applied beneficially as a means of simply "balancing the books" by covering catches with low or no quota entitlements. However, it can also result in substantive unintended consequences if used speculatively for instance when used to exchange the quota from a high volume/low value species to a low volume/high value.
- The inter-species quota flexibility stipulates that the recipient non-target stock(s) must be within safe biological limits. Many stocks fall into the ‘data-limited’ category for which a) reference points and b) assessments are not available. In practice this will limit the scope (applicable species) until reference points or agreed proxies are made available.



- The cumulative effects of de minimis and quota flexibility offers considerable scope to generate large catches of a species with the attendant risk that fishing mortality would rise. The order in which the provisions are applied (and multiple application of the provisions) has also a profound effect.

### 3. Data issues

- Analysis of both STECF and ICES catch data for 85 stocks has led to the formation of three distinct groups: (I) stocks where ICES indicates that discarding is considered negligible and STECF estimates that discarding is less than 10% (34 stocks); (II) stocks for which detailed data on catch is available from both ICES and STECF (23 stocks); and (III) for which either ICES or STECF indicate that significant (>10%) discarding occurs and currently ICES does not present discard data in the advice sheets (28 stocks).
- For category I stocks category II stocks, ICES can provide catch advice. For category III stocks, it is much more difficult.
- For some stocks (e.g. West of Scotland Cod) the target fishing mortality has been reduced considerably in an attempt to control catches. This has made landings very restrictive and has led to large-scale discarding of over-quota fish as catches well exceed allocated TACs. In such circumstances managers should carefully consider how to handle such stocks when moving from landings to catch quotas. If the catch quota allocated is derived from the total catches then there is a real danger of over exploitation.
- Where a very large proportion of catch are discarded (e.g. plaice, dab), managers should consider if setting catch quotas which are multiples of the current landings is the appropriate management response for these stocks. If the discard rate is seriously underestimated setting TACs could result in creating an unintended choke species and conversely, if seriously overestimated, could lead to unintended overexploitation.

### 4. Control and monitoring

- The ability for Member States to control, monitor and enforce the landing obligation is key to successful implementation of the landing obligation and has a direct bearing on the provision of reliable catch statistics.



- The current system for documentation of landings works reasonably well as a data capture system but the current scope requires broadening to improve resolution
- The effectiveness of the control activities (control observers, REM systems; at-sea patrols) can be enhanced by considering the risk of non-compliance, and then targeting appropriate control activities to verify compliance. Integrating information from the different sources can be used in a risk analysis framework, using pre-defined expected baselines, and using disparate data to detect potential outliers. Control can then be focussed on the 'outliers'.
- Effective compliance requires a 'level playing field' in terms on monitoring, control and enforcement of the landings obligation and note that sanctions need to be proportionate not only to offence, but also to the risk of detection.

#### 5. Discard plans

- Discard plans are limited to a few restricted elements and can be considered as a "fall-back" position to the implementation of multi-annual management plans.
- A number of issues need consideration in developing discard management plans (i) Definition of management units (regional areas); (ii) issues with third countries e.g. Norway; (iii) defining Minimum Conservation Reference Sizes; (iv) need for criteria evaluate discard plans (Impact Assessment indicators) and; (v) outlining a process for developing discard management plans.
- Further work is needed to develop a template for such plans.

Mr. Rihan clarified that there will not be an official report of the conclusions of this meeting until it is adopted at the November Plenary of STECF. However, a draft may be available within the coming weeks. He also reported that STECF is likely to organise a second EWG before the end of the year.

- Exchange of views from the floor

The Chairman warned that any discards plan in EU waters should not be a "copy-paste" exercise based on the Norwegian approach.

Barrie Deas participated as NWWRAC representative at the STECF EWG. Most people found that reflecting on how to bring a landing obligation into reality was a very daunting exercise.



There was achieved recognition that this meeting was only a start point in understanding how to implement it. This is a very difficult issue to reach an unambiguous understanding of complex concepts such as (high) survival rates, species interactions, quota flexibility, etc.

The NWWRAC industry members made the following conclusions:

- A pragmatic and sensible approach is the only way to design/implement a regional/multispecies/mixed fisheries discards plan;
- Any additional or new cost burdens should be proportionate to the revenue generated by that fishery;
- Securing support of industry is essential to make sure that economic incentives are aligned with management objectives;
- There was divergence of views within the industry/RACs on the idea of reference fleets as a low cost alternative and adopting a risk focused approach for control; cameras and observers onboard could be considered for a proportion of the fleet so results could be extrapolated to the rest with the condition that the fleet profile/characteristic are homogeneous;
- The Norwegian approach has been introduced in a span of 25 years with a high pragmatism and gradually; the EU wants to achieve it in 5 years across all species!
- Quid pro quo, industry is keener to look at fresh arrangements with different eye. There is a certain expectation because fish previously discarded will now count against its quota. This is hoped to help to improve selectivity quickly.
- Problem of choke species cannot be disregarded or underestimated. The sequency and sight of quota uplifts is expected to lead to a great deal of tension and conflict;
- It does not make much sense to land or "kill" fish that survives; further studies on discard survival rates are required;
- We are facing a major communications exercise;

Emiel Brouckaert agreed with the Commission that it will be up to MS and RACs to set a timetable for the ban. However, we could find in the situation that some demersal species in North Western waters will be subjected to discards ban without RACs-MS being ready before 1-1-2016.

Dominic Rihan answered that this was a matter of defining correctly the fisheries affected.

Daniel Lefèvre asked if when defining the pelagic fisheries we are talking about target species or is a whole range of all species caught including by-catches of demersal fleets.

Dominic Rihan replied that while he had no definitive answer in his opinion the scope should on the targeted pelagic fisheries, not pelagic species caught as by-catch in demersal species fisheries. The latter would be covered under the subsequent demersal areas as indicated in the timetable in the Basic Regulation. This was a logical approach.



Jacques Pichon showed concern that the “de minimis” rules are not clear and could lead to different interpretations. They may also create problem for relative stability. The Commission should provide guidelines to how to understand this requirement. He agreed with Barrie that any removal of discards should be done gradually. He posed a question in relation to which species could benefit from the survival exemption: have we thought about the possibility of having a clear rate?

Dominic Rihan acknowledged that there are different ways of interpreting de minimis rules. The STECF meeting was a start to find an unambiguous solution. Survival rates are a complex issue: another dimension is the short term vs. long term survival rates. Several factors play there. He suggested looking first at those species that from experience have high survival rates, depending on the gear utilized.

Mike Park said that STECF meeting in Varese was a good start but a continuous dialogue is necessary. One of the key problems is how to set appropriate quota uplifts at the appropriate time. At some point the Commission will have to assess the risk of law breaking and what the level of removals is. He also pointed out the fact that discussions should start as well with third countries as Norway to have a homogeneous implementation within and outside EU waters.

Mr. Rihan said that we do not have sufficient reliable discards data for most stocks. However, there are discards data that will allow the setting of catch quotas. He informed that the issue of data and information will be discussed further by ISCES by the ICES ASC and then further in October at a meeting between the Commission and ICES with the view of agreeing a new MoU before the end of the year.

He said he could not give any indication about the time when quota uplifts will be introduced, as this will be decided at political level. He agreed we need to sit with Norway to discuss implementation aspects.

Bertie Armstrong made it clear that Plan C will never work for the industry as this is a reiteration of a blunt “*top-down*” prescriptive approach. He also asked about the Norwegian approach to haddock VIa and wondered about the proposed discard ban for the Skagerrak?

Mr. Rihan replied that it Norway will have to be involved in the development of regionalised measures. How and when they should be involved however is still open to discussion. There is a political will to move forward.

On the Skagerrak at the Council, some MS requested that the flexibility mechanisms included in the Basic Regulation should be incorporated into the Skarregak proposal. This was presented to Norway recently.



Norway was not positive towards this proposal and they said it's not what we agreed. In particular they did not like the inter-species quota flexibility provision. This proposal is now on hold pending further discussion.

### **3. Work ahead / next steps**

Alexandre Rodríguez (Secretariat) explained that a EC workshop will take place on 25 of October to continue discussions on this issue and that a report on the outcomes of this meeting and the EC workshop would be made at the next Working Group meetings in Paris in November. The NWWRAC Secretariat will initiate discussions and establish contacts with other RAC Secretariats and Member States, and follow up news from the Commission and STECF on a clearer definition of the elements/components of the landing obligation.

He also encouraged members to provide necessary information on the fisheries/species involved to start thinking on design of a work plan.

Barrie Deas said that the priority should be to initiate work jointly with MS in a systematic way where we are heavily involved in the evolution and shaping of this policy. We need to think very carefully about how much we do in our own and rather put emphasis on working collaboratively with Member States. ICES/STECF are still defining their thinking so.

Luc Corbisier reminded that control issues will become very important and pleaded for a pragmatic approach from all actors involved in the implementation measures.

Jacques Pichon agreed with the comments made and indicated that this is a work that will take years, similar to the framework in the Celtic Sea. It is essential to set priorities and work with Member States from the start. We must work on a schedule that must be similar and coordinated between the North Western and South Western Waters RACs;

The Commission stated that it is essential that a solid link is forged between MS and RACs to avoid duplication of work, exchange views and share conclusions. It is the Commission's intention to stay in the background as much as possible but keen to see developments. Ideally an intergovernmental group for North Western Waters similar to that of BALTFISH would be a good initiative.

Marc Ghiglia asked what STECF is exactly doing in defining the fisheries.

Mr. Rihan reiterated that the STECF Has not been asked to define fisheries as this should be done under regionalisation. The Pelagic RAC has already done some good work on this.



Emiel Brouckaert requested to put in the agenda for next meeting an item on explaining what MS is doing in relation to the implementation of discards plan.

**ACTIONS:**

**If agreed by the Executive Committee, the NWWRAC will submit a letter to MS to inform them on our views on regionalisation and offering our cooperation and requesting to be involved from the outset.**

**The NWWRAC will consider a list of fisheries that will be dealt with at each respective geographical Working, and will invite ICES, STEC, Member States and Commission to attend and participate.**

The Commission suggested to the NWWRAC to concentrate on thinking on a regional discards plan template. STECF may be able to provide some guidance in developing this,

**4. Summary of conclusions and actions by the Chairman**

The Chairman, Luc Corbisier, recapitulated on the conclusions and reminded the actions agreed. He expressed his thanks to the participants at the meeting, the interpreters, the technical staff in Dublin Castle and the Secretariat for their assistance.

**The meeting was adjourned at 17:00.**



## ANNEX I. LIST OF PARTICIPANTS

<b>NWWRAC MEMBERS</b>		
<u>Name</u>	<u>Surname</u>	<u>Organisation</u>
Luc	Corbisier	SDVO – <b>Focus Group Chair</b>
Bertie	Armstrong	NWWRAC Chairman
Emiel	Brouckaert	Rederscentrale Belgium
Richard	Brouzes	Copeport Marée OPBN
Thomas	Bryan-Brown	Manx Fish Producers' Organisation
Kara	Brydson	RSPB – Birdlife International
René-Pierre	Chever	CDPMEM Finistère
Alan	Coghill	Scottish Fishermen's Federation
Juan Carlos	Corrás Arias	Pescagalicia-Arpega-Obarco
Debbie	Crockard	Seas at Risk
John	Crudden	European Anglers Alliance – Rapporteur
Dave	Cuthbert	New Under Ten Fishermen's Association
Bruno	Dachicourt	France Peche Durable et Responsable
Barrie	Deas	National Federation of Fishermen' Organisations
Lyndsey	Dodds	World Wildlife Fund UK
Purificación	Fernández	ANASOL – ARVI ( <i>replacing Hugo González</i> )
Marc	Ghiglia	UAPF – <b>GA President</b>



<b>NWWWRAC MEMBERS (cont.)</b>		
<b><u>Name</u></b>	<b><u>Surname</u></b>	<b><u>Organisation</u></b>
André	Gueguen	OPOB – Pêcheurs de Bretagne
Béatrice	Harmel	CPRMEM Basse Normandie
Francois	Hennuyer	FROM Nord
Daniel	Lefèvre	CRPMEM Basse Normandie France
Jesús A.	Lourido García	Puerto de Celeiro S.A.
John	Lynch	Irish Fishermen's Organisation
Geert	Meun	Dutch Fisheries Organisation
Eduardo	Míguez	European Association of Fishing Ports and Auctions
Jennifer	Mouat	SWFPA
Eibhlín	O'Sullivan	Irish South & West FPO
José Luis	Otero González	Lonja de La Coruña, S.A.
Mike	Park	Scottish Whitefish Producers' Association
Jacques	Pichon	ANOP – Pecheurs de Bretagne
Mercedes	Rguez. Moreda	Organización de Productores Pesqueros de Lugo
Delphine	Roncin	CRPMEM Nord / Pas de Calais / Picardie
Jane	Sandell	Scottish Fishermen's Organisation
Despina	Symons	European Bureau for Conservation and Development
Dominique	Thomas	CME OP
Paul	Trebilcock	Cornish FPO



<b>NWWRAC MEMBERS (cont.)</b>		
<b><u>Name</u></b>	<b><u>Surname</u></b>	<b><u>Organisation</u></b>
Caitlín	Uí Aodha	Irish South & East FPO Ireland
John	Ward	IFPO Ireland
John	Woodlock	Irish Seal Sanctuary
<b>NWWRAC OBSERVERS</b>		
<b><u>Name</u></b>	<b><u>Surname/s</u></b>	<b><u>Organization</u></b>
John	Daly	Irish Seal Sanctuary
Evangelia	Georgitsi	RAC Coordinator - DG MARE European Commission
Iain	Glasgow	DEFRA – United Kingdom
Robert	Griffin	DG MARE - European Commission
Laurent	Markovic	DG MARE – European Commission
Rémi	Méjeczazé	Ministère de l'écologie, du développement durable et de l'énergie – MS France
Colm	Ó Súilleabháin	DAFM – MS Ireland
Dominic	Rihan	<b>DG MARE – European Commission - Presenter</b>
Liane	Veitch	Client Earth
Borja	Velasco	MAGRAMA – MS Spain
Ilaria	Vielmini	AquaTT



<b>NWWRAC SECRETARIAT</b>		
Conor	Nolan	NWWRAC Executive Secretary
Joanna	McGrath	Executive Assistant, Administration and Finances
Alex	Rodríguez	Executive Assistant, Policy and Communication