

To: NWWRAC
From: Barrie Deas
Subject: Landings Obligation

Report on the Second Meeting of the STECF Expert Working Group on the EU Landings Obligation held in Dublin on 26th to 28th November 2013

Health warning: This report is a subjective summary of complex discussions over 3 days. It is intended to provide RAC members with insight into the process and discussions. The definitive report will be the one produced by the Expert Working Group, once endorsed by STECF

The Expert Working Group, with stakeholder observers from the RACs, continued its work on the preparation of guidelines for implementation of the discard ban begun in Varese, Italy in September 2013. The report of the first meeting was adopted by STECF at its November plenary and is available [here](#).

The purpose of the final report is to assist in the process through which regional seas member states will formulate joint recommendations under Articles 15 (discards) and 18 (regionalisation) of the CFP basic Regulation. The aim will be to provide the regional groups with guidelines on the development of discard plans and to clarify the type of information expected to be provided by regional groups which could be useful for the Commission's authorisation of a discard plan once submitted, or its subsequent evaluation by STECF or equivalent body.

General

The Commission acknowledged that implementation of the landings obligation gave rise to a host of potential problems. A good start in providing guidelines had been made in Varese but more questions had been generated than answered.

The Terms of Reference to STECF were focused on:

- exemptions under the *de minimis* (where improved selectivity is very difficult and costs of compliance are disproportionate)
- exemption under the high survival conditions
- documentation of catches under the landings obligation
- minimum conservation reference sizes
- choke stocks

There was a growing recognition amongst those working on the implementation of the discard ban, that Article 15 of the Basic CFP Regulation was open to multiple interpretations which presented an obstacle to the provision of clear guidelines. Interpretation of the Regulation was not STECF's role although it was free to identify and highlight any ambiguities.

The Commission stressed that discard plans (which have a life span of 3 years) are *plan B*, in that full multi-annual management plans remained the preferable option for the delivery of fisheries policy at a regional seas level. However, it is well known that progress towards comprehensive multi-annual management plans has been stalled by the inter-institutional dispute at European level over jurisdiction. Therefore the current focus was on the preparation of discards plans by the due dates in the phased approach. These would subsequently be incorporated into full multi-annual plans.

It should be noted that in its terms of reference STECF was not asked to consider quota flexibility (inter-annual or inter-species) which are allowed for in the Basic Regulation and may be expected to be a central part of any discard plan recommendations.

Landing Obligation

The meeting was reminded that the landing obligation should be seen in its connection to other aspects of the CFP; notably article 2 in relation to MSY and Article 1 which outlines the objectives of the CFP in relation to the achievement of economic, social employment benefits and the availability of food supplies, as well as sustainable fishing in the long term.

Advisory Councils

RAC representatives were invited to update the meeting on the work being done in the various advisory councils on implementation of the landings obligation. Different RACS were at different stages but all were concerned to avoid two parallel work streams in which the RACs and member states worked separately.

It was noted that the Scheveningen Group of North Sea member states had invited the North Sea RAC and the Pelagic RAC to participate in forthcoming meetings on the landings obligation. An initial meeting of North Western Waters member states had been held in Dublin.

In the Baltic, the *Baltfish Group* is quite advanced in its work on the landings obligation and the development of a discard plan. The Baltic RAC has been invited to participate in this work on a number of a regular basis.

Concern was expressed that the phased approach, whilst necessary could mean that the approach set for the pelagic species could predetermine the approach for other species groups simply by virtue of being first in the queue.

Definition of Fisheries/ Definition of management units

There was extensive discussion about how separate fisheries should be defined for the purposes of the landings declaration. Such a definition could apply at a number of different levels

- fleet
- vessel
- method
- species
- catches
- trip

This seemingly arcane subject is actually quite important where target species, fishing gear, area of operation can and do change quite frequently. The issue can become acute around boundary issues and where conditions are more or less favourable on one side of a more or less arbitrary line. Threshold effects in the past have encouraged fleet migrations, alterations in vessel design and size, altered fishing behaviours and blocked the use of optimal gears; and it is therefore important to be as alert as possible when setting definitions to minimise the scope for unintended consequences. Discussion circled around whether fishing trips should be predefined by the master's entry in the logbook or by assessing the results of the trip. The scope for vessels to jump management unit was also discussed. The landings obligation, and specifically any derogations, could create new incentives to jump categories to avoid the implications of the discard ban. If a right to discard is created through exemptions, then thought must be given to how that valuable right is allocated amongst individual businesses.

High Survival Exemptions

It was agreed that STECF would not go further than its previous report where ways of determining survival had been described. The Committee had concluded that it could go no further in indicating what constituted "high" survival because this was not an exclusively scientific question. The role of STECF would be to indicate what sort of information that member states might be expected to present in seeking an exemption for species with a high survival rate.

There would be a trade-off between providing an exemption and removing the incentive to avoid unwanted catches. It was likely that regionally defined thresholds would emerge, adapted to the specifics of the fisheries concerned.

The guidelines would indicate to member states the criteria that would be looked for when granting an exemption. Member states would be expected to provide information on:

- Spatial pattern of the fleet
- Temporal pattern
- Gear types
- Catch composition

- Operational characteristics
- Variation within the defined fleet
- Discard profile
 - Rate
 - Age composition
 - Seasonal/temporal variation

STECF would also provide guidance on:

- Experimental approaches to survival rates
- Experiment design
- Representativeness
- Trials and data handling
- Analysis and statistical methods
- Consideration of age/length structure of catch
- Completeness of data

De Minimis

STECF felt hampered in its work in that because of the ambiguity of the regulation it could not tell whether the 5% *de minimis* (which would allow discards up to that percentage to continue) applies to the TAC, to the member state, to the vessel or to an aggregate regional quota share. From the discussion it was clear that although some believed that the Commission would have to provide clarification on this issue, in fact it had no legal basis to provide a definition of *de minimis*.

Although there was a feeling that *de minimis* should not apply at vessel level, the meeting was reminded that the vessels would have to be told something about what they could and couldn't do and it looked very much like two allocations were emerging:

1. the vessel's normal quota allocation against which catches would be landed and counted
2. the vessel's discard quota up to which the vessel could discard a specific exempted species up to a given amount

Guidance for regional member states:

- What catch records are required to justify a *de minimis* exemption (by species)?
- What additional costs will be involved (additional labour for sorting catch)?
- What level of aggregation?
- What level of applicability?
- Which fleet segments/gear

Concern was expressed from some quarters that the landings obligation and specifically the speculative application of the *de minimis* exemption could prevent the CFP from achieving its objectives in regard to MSY.

STECF would not expect a large number of applications for *de minimis* because it should be used as a default or safety valve after all other avenues to reduce discards (selectivity/avoidance, quota flexibility etc) had been applied.

Documentation of Catches

Whilst STECF takes the view that the EU logbook will remain the primary source of documentation on catches and discards, there is a push from some control authorities for additional information namely:

- Removal of the exemption for catches of species below 50kgs
- Recording on a haul by haul basis

Recording total catch is already a logbook requirement but full compliance is patchy.

As the landings obligation will apply to all vessels irrespective of size, and carries an obligation to provide detailed and precise information on discards, this potentially carries significant implications for that part of the under-10m fleet that is not currently obliged to carry log books.

It was recognised that following an absolutist control agenda could bury the whole fishing industry in reporting obligations and there was a considerable amount of interest in a fishery-by-fishery, risk-based approach, which would limit additional obligations to high-risk categories.

The European Fisheries Control Agency is to hold a meeting in January to discuss issues surrounding the recording of discards; the control tools which each discard plan will require for satisfactory implementation; and the implications of regionalisation for an even playing field.

It is clear that from an exclusively control perspective every derogation or flexibility from the landings obligation potentially weakens enforcement (In the same way that if the whole population was obliged to stay indoors, the crime rate could be expected to fall).

From an enforcement perspective, the challenges will arise from:

- Non-TAC discards
- High survival returns
- Prohibited species returns
- Minimum Conservation Reference Sizes (market destination)

Equally, a perfect catch documentation system would impose an intolerable reporting burden which would require sorting by species and catch estimates by species before discarding. Regional member states will have to give consideration to a control regime that strikes a balance between effectiveness and proportionality.

STECF was reminded that the current 10% margin of tolerance between on-board *estimate* and *definitive* landing declaration is an example of a current regulation which generates multiple technical infringements daily but which would clog the courts if acted upon.

The Regulation requires detailed and accurate information on discards. But ultimately, there will have to be a compromise between a reasonable administrative burden and a fully controllable system. Self-sampling and risk analysis are two ways in which the gap could be closed.

Minimum Conservation Sizes

Within the context of the landings obligation regional member states will have to decide whether to apply to minimum conservation sizes at the same size as minimum landing sizes. The latter will be important because they will determine the destination of the catch – human consumption market or fishmeal (or some other non-human consumption outlet) and therefore the economic value of the catch.

As these decisions will normally be made at the regional level, STECF's role is to provide guidelines on what sort of documentation member states should provide to justify their choices.

By phasing-in or staggering the application of the discard ban new incentives will be created and managers will have to be alert to these effects.

It was clear that defining a fishery “by intent” rather than by fishing gear was not legally tractable. The guidelines would have to provide managers with options for defining their management units: some would be by species, some by an assemblage of species, some by gear and assemblage of species.

Boundary issues would be bound to arise because fishing activity is a continuum.

Comments:

- There is no reason not to exploit juveniles as long as the fishing mortality is consistent with the management objectives
- It may be desirable to apply a minimum size to limit the exploitation rate on younger year classes to avoid recruitment overfishing to stay within MSY
- There could be market or societal/ethical reasons why member states might wish to retain a minimum size to dissuade vessels from targeting
- As long as the price for juveniles remains low, there in fact is unlikely to be a driver for targeting

Choke Stocks

Although there are still enormous obstacles to be overcome, it is possible to see how quota flexibility, exemptions under the *de minimis* and for high survival species, with a degree of pragmatism and collaboration, could be made to work under the landings obligation.

When it comes to choke stocks, however, the gap is so wide it is difficult to envisage how the landings obligation will be adapted to make it consistent with an economically viable fishing fleet or functioning quota management system, unless there are radical and profound changes.

Irish Sea Example

Research commissioned by Seafish and undertaken by consultants *Poseidon* suggested that in the Irish Sea nephrops fishery, whiting would be the principal choke stock and when the whiting quota was exhausted it would halt uptake of the other quotas (principally of course nephrops) *after only 10 days*.

North Sea Example

The *Poseidon* research suggested that the choke stocks for the North Sea would be hake, whiting, saithe and cod but in truth there are multiple candidates for choke stocks and these will vary considerably, and in possibly unpredictable ways over time.

Expenditure on quota leasing to avoid the choking effect could be expected to increase by 250%

Issues raised with regard to choke stocks included:

- TAC uplift
- The refinement of national management measures to reduce the scope for choke stocks
- Where TACs are set without a robust assessment an additional way to set a TAC is required
- The first choke stock that emerges is not the only one
- Zero TAC species are going to be choke stocks
- Stocks where there is no assessment and no reference points will become choke stocks. There is great pressure therefore on ICES to deliver workable and relevant management advice
- At a practical level, how do you distinguish between small whiting and o-group pout on deck
- Although international swaps are envisaged as one way to reduce the impact of choke stocks, it is likely that each member state will want to retain quota it might have otherwise swapped in order to use as currency to avoid its own choke stocks.
- The way in which TAC uplift is allocated could help or hinder the choke stock problem
- ICES averages of discards estimates will be used for quota uplift but if a member state discards at a higher rate it will face problems earlier
- The level of incentive to make fishing more selective (and to be non-compliant by continuing to discard TAC species) increases with how much higher the vessels discard rate is
- Chokes will include core species
- Chokes are difficult to identify in real time
- One part of the solution could be more flexibility in setting Fmsy by taking account of mixed fishery dimensions

- There could be a spatial dimension to choke stocks where uptake in one part of a management area affects the fishery in another part
- The incentives for improved selectivity are the same incentives for non compliance

Without major changes (such as reducing the number of TACs or grouping TACS) the provisions of article 15 provide serious obstacles to the delivery of the primary objectives of the CFP, specifically MSY by 2015 or even 2020.

Transition

The issues of managing the transition to the landings obligation were expressed at various points throughout the meeting. Clearly initial quota uplift on the basis of inadequate discard estimates, pragmatic and risk-informed enforcement, proportionate documentation and control, managing choke stocks, economic viability, adjustment to new selectivity norms, and the application of reasonable exemptions area all pose major challenges. There is a need for an adaptive approach which allows scope for lessons to be learned and management to be adjusted accordingly in an iterative process.

Barrie Deas
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