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**The Conservation of Fisheries Resources and the Protection of Marine Ecosystems through Technical Measures**

The European Parliament has asked for our views on the issues surrounding how, in a results-oriented approach to gear selectivity and technical conservation, results could be measured. They have specifically asked for our advice of the Commission’s ideas on *Selectivity Performance Indicators and the specific rules governing the use of specific mesh sizes.*

**Background**

The NSAC and NWWAC for many years have argued that a highly prescriptive approach to technical conservation was self-defeating. We were pleased, therefore, that when it was published, the Commission’s proposal for a new Technical Conservation Regulation embraced a results-based approach. Specifically, the proposal acknowledged that more could be achieved by providing a framework which sets high level objectives, whilst leaving extensive flexibility for vessel operators, fisheries administrators and gear technologists, within the member states, to design and adopt selectivity measures adapted to the specifics of their regional fisheries.

One of the main drivers for a new technical conservation regulation has been the need to make technical measures compatible with the provisions of the landings obligation. Under a fully functioning landings obligation there should be no need for a technical conservation regulation. Each vessel could use whatever gear it wanted, so long as total catches are fully accounted for and TACs and quotas are fully observed. It is widely acknowledged, however, that we are some years away from such a fully functional system and in the meantime the Commission and co-legislators will need to have assurance that the selectivity profiles across European fisheries are, at the very least, not getting worse. This was and remains the background for the Commission’s original proposal that selectivity metrics should be measured against a single criterion that no more that 5% of catches should be below minimum conservation size. Such a metric was recognised to be rather blunt and the figure of 5% likely to be inappropriate for some fisheries However, as the criteria would not apply at vessel level and would function to send a signal that the member states concerned should address the issue over time, many in the ACs believed that this was a reasonable solution in the circumstances. The ACs’ support for the Commission’s original proposal was expressed in previous communications to the co-legislators.

**Impasse**

It is clear from the Commission non-paper that a stalemate seems to have developed regarding quantitative targets. The Council and the European Parliament, having for different reasons, disagreed with the 5% approach, have not yet come to agreement with the Commission on a way forward. To break the deadlock in the co-decision process, the Commission has suggested a new approach based on the concept of *selectivity performance indicators* as described in their non-paper.

The key features of such an approach would be:

* Optimum selectivity indicators would be developed by ICES for specific stock
* Selectivity in each stock would be measured against performance indicators
* Performance indicators would apply to a limited number of key indicator species to allow for practicability
* Optimum criteria would be aspirational rather than obligatory and would be used as a yardstick to measure progress rather than a mandatory target
* Monitoring and management measures would thus serve separate functions

**Advisory Council Views**

 The NSAC and NWWAC:

* Emphasise their continuing support for a decisive move away from a highly prescriptive approach to technical conservation and towards a framework which sets achievable quantitative objectives thus allowing vessel operators, administrators at the regional seas level to design and implement technical measures tailored to the contours of its own fleets: a results based approach.
* Accept that until the landings obligation could be considered to be a fully functioning system, oversight and intervention and a suite of basic technical measures should be retained.
* Regret that the trialogue process has not to date been able to deliver a workable compromise solution
* Suggest that there is no perfect solution available and therefore some degree of compromise will be necessary
* Consider that the concept of *selectivity performance indicators* is a relatively novel and untested approach for most stakeholders (we are in discussion with the Commission on how the concept would or could work at the operational level)

On balance, nevertheless, we consider that as an aspirational, quantitative, science-based, solution, that would trigger work on further selectivity measures by the relevant member states, where and when necessary, selectivity performance indicators could have merit and, if accepted, could remove an important impediment to the adoption of the new regulation. While the NWWAC and the NSAC continue to support the Commission’s original proposal on targets, as a compromise, we support for the alternative proposed in the Commission Services non-paper.

**Selectivity, MSY and TACs**

The NWWAC and the NSAC consider that insufficient attention has been given to the link between optimum selectivity and higher MSY based quotas. Stocks fished at optimum selectivity levels would, all other things being equal, lead to a higher biomass and therefore higher MSY based TACs. At vessel level the operator is primarily concerned to ensure that as high a proportion of marketable catch is retained as possible – because this is a critical factor for the economic viability of each fishing trip and therefore for the fishing business as a whole. This tends to underpin an understandable resistance to gear modifications which improve selectivity but reduce marketable catch. Highly selective gear has tended to be introduced in response to external pressure: a reduced TAC, or even more intrusive management measures, such as effort control.

However, if the link between optimum selectivity and higher quotas was quantified and presented to the fishing industry, in our view, this could inject a new dynamism into a trade-off that over time could improve the exploitation pattern of some fisheries considerably, leading to higher quotas: a win-win situation. The NWWAC and NSAC therefore consider that if the selectivity performance indicators were to be adopted, then it would be beneficial if the scientific advice on which they are based also indicated the potential benefits in terms of increased fishing opportunities associated with achieving the performance indicators.

**Regulation 850/98**

One of the most important reasons why it is necessary to replace the current technical conservation regulation (Reg EU 850/98) is its incompatibility with the landing obligation which comes fully into force for the demersal fisheries on 1st January 2019. The reliance on catch compositions at the heart of the regulation created an incentive at vessel level to discard fish, where the catch does not meet the catch composition required for that gear.

The worst outcome would be to fail to move past 850/98, knowing that is incompatible with the landing obligation and indeed, is a major impediment to its implementation.

We would reiterate our concern that the new regulation should be careful to avoid replicating or creating new perverse incentives. It is now a matter of historic record that the catch composition rules that lay at the heart of Reg 850/98 generated an incentive to discard fish.

The rigidity of the current arrangements and their resistance to adaption and innovation to match the dynamism of fisheries, have been amongst their principal weaknesses. It is very important that the new approach embraces innovation and change rather than constraining and limiting it. It will be important that the new Regulation is flexible enough to deal with changed scientific perceptions. In this sense, selectivity performance indicators based on ICES advice would be considerably more adaptable than something written in regulatory stone.

**Rules governing the use of specific mesh sizes**

Designing a framework that can allow for the use small meshes to target small-bodied species always presents a challenge when they occupy the same marine space as configurations of large bodied species. Both the NWWAC and the NSAC acknowledge the need for conditions that specify what mesh sizes can be used and under which circumstances. We have long advocated for the simplification of the current approach. In this regards, we continue to support the original Commission proposal which avoids the use of catch composition rules. Regarding the Council General Approach, we consider that the reintroduction of catch composition rules in such a format would be difficult to accommodate within the landing obligation and could potentially lead to a deterioration in current standards. This would be a retrograde step. While we have a number of concerns regarding the alternatives being presented by the Council Presidency, they would at least offer a much stronger disincentive to use smaller mesh sizes. We consider incentivising improvements in selectivity as a priority, not the opposite

**Caveat**

**This is a new approach, within a new approach. As such there is understandable concern that what appears reasonable and workable (although still somewhat opaque) in a Commission non-paper, could become rigid and inflexible as the process passes into law. The use of hard selectivity targets as a legal requirement would be against the spirit of the results-based approach and could be expected to fail at the implementation stage, as so many top-down technical measures have failed before.**

**We would therefore make absolutely clear that our support for to the use of selectivity indicators within the technical conservation regulation would be contingent upon their employment to *measure results* in relation to optimum exploitation patterns, *not to introduce any particular selectivity profile as a legal requirement.***

**Summary**

In summary, the NSAC and the NWWAC, have some misgivings about the complexity and novelty of the new concept of *selectivity performance indicators* and the way that it has been introduced, late in the co-decision process. Nevertheless, we recognise the need for compromise and consider that as a dynamic, aspirational, quantitative, science-based, metric, it could provide the necessary means to assess selectivity trends in each fishery.

Its adoption would certainly be preferable to a failure to move beyond Reg 850/98, which is incompatible with the provisions of the landing obligation.