



NSRAC Position Paper

Response to the Commission's proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures

Background

The present Commission proposal (Com (2008) 324 final) should be read along with the four regional non-papers subsequently circulated. Together the Proposal and non-papers comprise the Commission's long awaited revision to the existing technical conservation rules (EC/850/98 plus amendments and various parts of recovery plans and the TACs and Quota Regulation).

The main features of the new approach are:

- A comprehensive package of measures; the stated purpose of which is to protect juvenile fish, protect certain species or ecosystems, and reduce discards
- Consolidation of technical rules currently scattered through disparate parts of EC fisheries legislation
- Simplification of the technical conservation rules
- A regionalised approach where measures are tailored to meet the characteristics found in different RAC areas
- A differentiation between broad guiding principles and detailed rules, reflected in a new hierarchy of decision making in which the former would be the responsibility of the Council of Ministers and the latter of the Commission and management committee

NSRAC Comment

1. General comments

- 1.1 The NSRAC has followed the evolution of the Commission's approach and has contributed through this process in a number of ways, principally through:

- Dialogue with the Commission at a number of meetings of the NSRAC Demersal Working Group
- Participation in the 2007 Dublin Seminar on Technical Conservation Measures

The present position paper is principally focussed on the main features of the overarching approach proposed by the Commission; separate comment will be required on North Sea specific measures.

2. Structure of the Regulation

- 2.1 Council Regulation 850/98 with all its amendments and supplements (including 2056/2001) is complicated and unclear to both fishing operators and those charged with inspecting the fisheries. There is often confusion about its interpretation and application and in some instances it results in discarding and other undesirable practices by specifying target species percentages and minimum sizes. The NSRAC welcomes the new approach proposed by the Commission. The Commission has taken account of the wishes of the industry for a simpler regulation, with provision for a regional dimension.
- 2.2 The Commission is proposing to create a hierarchy in which the Council of Ministers only deals with broad guiding principles. The rationale for this is that the Council is not an ideal place for detailed consideration of highly technical rules; either because of limited technical knowledge or through time constraints. Should co-decision making with the European Parliament be delivered through the Lisbon Treaty, then fisheries legislation will take around two years to go through the legislative process. The Commission's solution is to reserve only high level decisions to the Council. Lower level decisions will be taken by the Commission using a procedure established under the Lisbon Treaty and known as "comitology". Committees would be established as forums for discussion, consisting of representatives from Member States and chaired by the Commission. The committees would enable the Commission to establish dialogue with national administrations before implementing measures.
- 2.3 There are two difficulties with this approach. The first is the loss of democratic scrutiny and accountability and the second is that the division between low level and high level decisions is far from clear-cut.
- 2.4 Technical measures can have a major impact on the viability of fishing fleets and currently, democratic oversight (albeit imperfect) is provided by the Council of Ministers. Co-decision making is an attempt to address the democratic deficit in European politics; the Commission's apparent response is to attempt remove a large area of decision making from precisely that scrutiny. That is a matter of concern to the NSRAC.
- 2.5 On the other hand there is a clear case for devolving decisions to the lowest practical level (subsidiarity). The establishment of technical measures is an obvious candidate for tailoring and fine tuning at a lower level than the Council of Ministers.

- 2.6 Our conclusion is that 'comitology' on its own is not acceptable. Devolution of decision-making on technical measures should be accompanied by safeguards on democratic scrutiny. This could possibly be achieved by allowing democratic oversight of lower level technical measures by Ministers from the appropriate regional Member States, rather than the whole Council. Currently, it is not clear what role the fishing industry or the RACs will play in the 'comitology' procedure. Whatever procedure is adopted it is important that the RACs should play a part in decision-taking.

3. Main Drivers

- 3.1 We have considerable sympathy for the main themes in the Commission's approach. Technical measures can demonstrably make a significant contribution to protecting juveniles through deferral of first capture. They can also play a role in protecting specific species, and the broader ecosystem. This is therefore a very important piece of legislation with wide and significant consequences.
- 3.2 It goes without saying that there is a need to consolidate the various technical rules into a single comprehensible set of documents, to remove duplication and scope for confusion. The Proposal's intention to consolidate and simplify a set of rules that has confused fishermen and enforcement officers alike is therefore very welcome.
- 3.3 Likewise, in proposing an approach where there is a strong regional dimension, the Commission has demonstrated that it has responded to the RAC's insistence that measures must, as far as practicable, be tailored to the features of specific fisheries.

In all these objectives:

- consolidation,
- clarification,
- simplification,
- a strong regional dimension and
- reduction of discards,

The NSRAC endorses the Commission's approach. The acid test is however the extent to which the specific measures deliver these objectives.

4. Discards

- 4.1 The NSRAC shares the Commission's objective of reducing discards. One of its principal concerns about the Commission's proposal is an apparent lack of consistency and coherence with its approach on discards. This applies to:
- The retention of a catch composition approach to mesh size. Put bluntly, as fish in mixed fisheries do not swim in fixed percentage groups the approach which has been adopted requires discarding if fisheries are to remain compliant.

- The one net rule, which removes an important flexibility, and in some circumstances will make it necessary for vessels to continue to fish with inappropriate gear; again discarding will result if vessels are to remain compliant.
- The results based approach so evident in the Commission's discard paper is entirely absent here.

The NSRAC suggests that an integration of the two very different approaches seen in the discard regulation and the technical conservation regulation is required.

5. Minimum Landing Sizes

- 5.1 The Commission proposes a radical reduction in the number of species subject to a minimum landing size on the grounds that minimum landing sizes for species that are not being directly targeted can only lead to discarding of those fish that are below the MLS. Even if one accepts this logic it is difficult to understand its application to the list of species for which a MLS has been set.

The NSRAC has specific concerns about the removal of the minimum landing sizes for the following species:

- Haddock
- Whiting
- Lobster
- Crab

NGO members, and some fishers, believe that there is a case for retaining a minimum landing size for plaice. However, retention of the MLS for this species is considered contentious by the Dutch fishing industry.

6. Real Time Closures: Article 10

- 6.1 The NSRAC fully supports real time closures as avoidance measures that can demonstrably reduce fishing pressure in areas and at times when there are aggregations of juveniles especially exposed to fishing pressure. We have, in particular, supported the real time closures applied in Scottish, English and Danish waters during 2009 as part of an industry based partnership with the management authorities.
- 6.2 The Commission proposes that where the quantity of undersized fish caught exceeds 10% of the total quantity of the catches in any one haul, the vessel shall move away to a distance of at least five nautical miles from any position of the previous haul before continuing fishing. Furthermore, if the vessel cannot comply with the catch composition rules in any one haul, the vessel must move a minimum of 10 nautical miles from the previous haul.
- 6.3 Although committed to real time closures as an effective and useful tool, the NSRAC does not believe that the measures laid down in Article 10 would translate into a practical, viable arrangement. The approach adopted seeks to

apply a set of universal rules that could apply in all areas, and apply equally to all categories of vessel. Whilst this has a superficial sheen of equity, in fact it would be a cumbersome piece of legislative machinery that would undermine industry support for RTCs that has been painstakingly been built up. In particular:

- In certain zones it would be impossible to comply with the separation distances
- Vessels with limited range would not be able to comply (there are no exclusions based on socio-economic criteria)
- The trigger criteria for a closure are too severe, leading to the undermining of the industry support that is a precondition for this approach

7. Passive Gear

- 7.1 The NSRAC has a number of concerns relating to the proposed rules for static gear. These include immersion or 'soak' times for gill nets: a provision for *force majeure* is required to cover, for example, instances when weather conditions makes recovery of the gear dangerous.

8. Square Mesh Panel in a Targeted Whiting Fishery

- 8.1 The Commission has imported its ideas for improving the selectivity in the whiting fishery through a 120mm square mesh panel. It is already clear that there are other options available tailored to the specific characteristic of the different whiting fisheries, that could generate broadly equivalent improvements in selectivity without the loss of marketable sized whiting implied by the Commission's proposal. Trials of these options during 2008 should inform this discussion.

9. Targeted Saithe Fishery

- 9.1 The Commission's proposal would require vessels currently using 110mm mesh size to target saithe to increase the mesh size to 120mm. The point has already been made that the saithe fishery in the North Sea meets all the criteria for a well managed, stable fishery at or around some proxy for MSY. As an increase in the mesh size would be costly at a time when the industry is facing severe economic stress, and it would achieve little in terms of sustainability of the fishery, this is a change that should be deferred.

10. Minimum Landing Sizes for Shellfish

- 10.1 It is not at all clear why the lobster has been removed from the list of species protected by a minimum landing size. On the supposition that a MLS for lobster will be retained, the illustrative diagram relating to the minimum landing size for lobster in EC 850/98 was useful and should be retained.

- 10.2 The suggested minimum landing size for edible crab would terminate some historic fisheries for crab where there is clear evidence for a smaller regional stock variation.

11. Twine Sizes: Article 6

- 11.1 Twine sizes do have an effect on the selectivity of towed nets; however they are also one of the most difficult items to legislate for because of variations in the fishery, not least the size and power of the vessel. Contrary to the Commission's stated approach to limit its ambition to introducing a new structure to the technical conservation regulation, rather than improving selectivity, at this juncture, article 6 makes provision for an increase in maximum twine size from double 5mm to double 6mm. This causes a problem for some classes of vessel.

12. Natura 2000

- 12.1 The NSRAC accepts that there has to be a vehicle for dealing with management measures for Natura 2000 sites and that a mechanism using the TAC and Quota Regulation is not appropriate. The proposed Council Regulation concerning the Conservation of Fisheries Resources through Technical Measures does provide a framework for introducing spatial measures, including those for N2000 sites. However, the inclusion of a detailed and complex set of measures specifically relating to N2000 areas would not be appropriate and would not be acceptable to the fishing industry. Nor would it be acceptable for amendments to the regulations to repeatedly come forward in the future to match management plans for each of the Natura 2000 areas.
- 12.2 The fishing sector of the NSRAC suggests that the Commission should give consideration to the introduction of a completely new regulation, covering both the measures applying to N2000 areas and the control of fishing in those areas

13. Scallop dredges

- 13.1 The NGOs believe that scallop dredging represents a significant and growing impact to the marine environment. In addition to reductions of effort, the NGOs would like to see the introduction of technical measures for scallop dredges, aimed at reducing the environmental impact of this method of fishing.

14 Specific and Detailed Commentary on the Text

- 14.1 Article 3 – Definitions. Paragraphs (c) and (d) should include Scottish seine. Paragraph (f) uses the same definition of strengthening bag as the original regulation 3440/84. It would be clearer if the wording were more explicit as regards the length and width of the cod-end, e.g. by saying: "It shall have at least the same dimensions (stretched length and width)"

- 14.2 Article 6 – Towed gear. Paragraph 2 (c) permits round-straps but does not indicate any limits to the number or the length. Similar comments apply to the text for for lifting strap length. Para 3 (a) is not necessary as long as the maximum number of open meshes around the cod-end and extension is specified. So, if there are 100 open meshes as a maximum it does not matter if at some point there are only 80 open meshes since the only effect will be to make the cod-end more selective. Para 3 (b) is unenforceable since there is no definition of the length of a bar. Hence it is not possible to check whether the bars are approximately equal or not. To measure bar length, it will be necessary to define where the centre of a knot is and this is very difficult. The use of approximately in Para 3 (c) is not helpful if there is an intention to enforce this regulation. Para 3 (e) defines the maximum limits for single and double twine. These are less rigorous than in some existing EU and national regulations such as in the Irish Sea (6mm single and 4mm double) or UK for *Nephrops* (4mm single). Twine thickness does have an effect on selectivity and the new regulations should not permit less selective gears. There are related issues if strengthening bags are to be banned e.g. in the UK *Nephrops* fisheries using 4mm single twine. Para 4 seems to contradict the principle that for a given species the regulations should be similar in adjacent areas.
- 14.3 Article 19 – Scientific research. Para 2(b) suggests that any fish landed from scientific trials must be sold for fishmeal. There is a case for the marketable component of such fish to be sold for human consumption, partly because good fish would otherwise be wasted and partly because it can subsidise the scientific work and/or give additional income to fishermen. A compromise might be that any legal-sized fish caught during scientific trials aboard commercial fishing vessels should be allowed to be sold for human consumption.

15. In conclusion

- 15.1 The above provides the NSRAC's comments on the Commission's overarching proposal for a Council Regulation. A separate commentary will be submitted on the Commission's non paper on measures for the North Sea.



Hugo Andersson
NSRAC Chair