

## **Draft**

### **North Sea Regional Advisory Council 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 the Commission and management committee

#### **North Sea RAC Comment**

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

- Dialogue with the Commission in a number of meetings of the NSRAC Demersal Working Group
- Participation in the Dublin Seminar on Technical Conservation held on //???/???

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

#### **Structure of the Regulation**

The Commission's rationale for creating a hierarchy in which the Council only deals with broad guiding principles is that, either through the level of technical knowledge or time constraints, the Council of Ministers is not an ideal place for detailed consideration of highly technical rules. Should co-decision making with the European Parliament be delivered through the currently stalled Lisbon Treaty, fisheries legislation will take around two years to transit the legislative process.

The Commission's solution is to reserve only high level decisions to the Council with comitology procedure dealing with the lower level decisions.

There are two difficulties with this approach. The first is the loss of democratic scrutiny and accountability and the second is that the division of low level and high level decisions are far from clearcut.

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.

On the other hand there is a clear case for devolving decisions to the lowest practical level (subsidiarity) and technical measures is an obvious candidate for tailoring and fine tuning at a lower level than the Council of Ministers. Our conclusion is therefore that comitology on its own is not acceptable but that 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 to ministers from the regional member states, rather than the whole Council.

### Main Drivers

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.

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 confused fishermen and enforcement officers alike is therefore very welcome.

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.

We share too the Commission's objective of reducing discards.

In all these objectives, consolidation, clarification, simplification, a strong regional dimension and reduction of discards we endorse the Commission's approach. The acid test is however the extent to which the specific measures deliver these objectives.

## Discards

One of our 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 baldly, as fish in mixed fisheries do not swim in fixed percentage groups the approach requires discarding to be 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 to remain compliant
- The results based approach so evident in the Commission's discard paper is entirely absent here.

We would suggest that an integration of the two radically different approaches seen in the discard regulation and the technical conservation regulation is required.

## **Minimum Landing Sizes**

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.

We have specific concerns about the removal of the minimum landing sizes of the following species:

- Haddock
- Whiting
- Saithe
- Plaice
- Lobster
- Crab

## Article 10. Real Time Closures

The NSRAC fully supports real time closures as a form of avoidance measure 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.

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.

Although committed to real time closures as an effective and useful tool, we do not think that the measures laid down in Article 10 of the Commission's proposal 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 we consider that it would be a cumbersome piece of legislative machinery that would undermine the industry support for RTCs that has been painstakingly 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

#### Passive Gear

We have a number of concerns relating to the proposed rules for static gear. These include:

- Immersion times for gill nets: A provision for *force majeure* is required to cover instances when weather conditions makes recovery of the gear dangerous

#### Square Mesh Panel in a Targeted Whiting Fishery

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. The trials of these options during 2008 should inform this discussion.

#### Targeted Saithe Fishery

The Commission's proposal would require vessels currently using 100mm mesh size to target saithe to increase the mesh size to 120mm. The point has 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 this is a change that should be deferred.

#### Minimum Landing Sizes Shellfish

- It is not at all clear why 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
- 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

#### Article 6 Twine Sizes

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.

#### Natura 2000

### **Specific and Detailed Commentary on the Text**

#### Article 3 – Definitions

Paras (c) and (d) should include Scottish seine.

Para (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 codend, e.g. by saying: "It shall have at least the same dimensions (stretched length and width) ...."

#### **Article 6 – Towed gear**

Para 2 (c) permits roundstraps but does not indicate any limits to the number or the length. Similarly for the lifting strap length.

Para 3 (a) is not necessary as long as the maximum number of open meshes around the codend and extension is specified. So if you have 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 codend 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.

### **Article 19**

Para 2(b) suggests that any fish landed from scientific trials must be sold for fishmeal. There is a case that the marketable component of such fish should 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.

### **Conclusion**

The above provides our preliminary comments on the Commission's overarching proposal for a Council Regulation. Work is in progress on a commentary on the Commission's non paper on measures for the North Sea.