

The North Sea Regional Advisory Council



NSRAC

NORTH SEA REGIONAL ADVISORY COUNCIL RESPONSE TO THE COMMISSION COMMUNICATION ON REDUCING UNWANTED BY-CATCHES AND ELIMINATING DISCARDS IN EUROPEAN FISHERIES:

The problem

1. The problem this Commission communication seeks to address is that European fishing vessels discard (ie dump over the side of the boat, usually dead) large volumes of edible fish and some other marine species, a huge waste of a natural resource, and with impacts on biodiversity. Estimates prepared for the Commission by STECF of levels of discarding in EU waters indicate that these can be considerable.
2. Discarding arises from a mixture of market and regulatory reasons (these are set out in Annex A).

Commission proposals

3. The Commission's extravagant language in describing the undoubted problem of discards as unethical has been unhelpful and is at variance with the more gradual and pragmatic approach advocated in the body of the paper itself. It is important to recognise that the fishing industry's reputation can be seriously damaged by such statements in ways that take much time to rebuild.
4. The ideas set out in the Commission Communication centre around a proposal to ban the practice of discarding, introducing a ban gradually over a number of years, fishery by fishery, and accompanied by other changes to the regulatory system to facilitate compliance with it. The main thrust of the Commission's argument is that while there are further changes that could be made to technical regulation of fishing gear to improve its selectivity, the results from previous incremental improvements of this sort have been limited, and that what is needed is a change in the whole approach from one which specifies permitted technologies in often minute detail to one which specifies the required outcome (ie no discarding) and leaves it to the industry to develop technical solutions that will enable them to achieve that. This would change the balance of incentives so that fishermen would have a direct interest in employing their ingenuity to find ways of minimising discarding, rather than to find ways of circumventing the current raft of technical regulation.
5. This would represent a huge change in both philosophical approach and practice compared to the way the CFP regulates the fishing industry at present.

A large number of associated changes in current regulations would be necessary to make it possible. For example:

- Minimum Landing Sizes (MLSs) would need to be abolished.
- So-called 'catch composition rules' which, for example, specify that in certain fisheries cod may not represent more than 5% of the catch, and which like MLSs, can often only be complied with by discarding, would also have to be abolished.
- The way the EU operates catch limits through quotas would also have to change fundamentally. With a discard ban under which vessels would be required to land their entire catch, there would need to be a system which allowed vessels to acquire quota retrospectively as happens in other jurisdictions which ban discarding. This happens to some extent at present through Producer Organisations (Pos) but would be needed to a far greater extent with a discard ban in place. TACs – currently a misnomer as they are a control on landings, not catches – would become genuine limits on catches.
- There would need to be outlets available for the disposal of non-marketable fish landed.

It will be recognised that an outright ban without accompanying measures, at its most extreme, would mean vessels carrying the totality of its catch back to port with inevitably adverse safety and health implications.

It is in recognition of these major consequential changes that the Commission is proposing a gradual approach to applying a discard ban.

6. The Commission puts significant weight on the need to simultaneously introduce into the CFP regulatory system the concept of 'real time closures' of fishing grounds in cases where fishing vessels encounter large aggregations of juvenile fish. This is a recognition of the fact that the best way of making a discard ban a practical proposition is to avoid fishing vessels catching significant numbers of undersized fish in the first place. Given that the main driver for discarding is catches of fish of no or low market value, a requirement to incur the costs of keeping, storing, landing and disposing of such material for no economic return – possibly at the expense of marketable fish commanding a good price – would, with the current composition of catches, place a huge burden on member state enforcement authorities, because it would be a requirement completely at odds with the economic incentives on fishermen to maximise the value of catches and time spent at sea. So while such a system would in theory create a desirable shift in incentives on fishermen to avoid catches of undersized and juvenile fish (because these would count against their quotas), this would only operate if full compliance with it was achieved, and in practice the risk would be that the most powerful incentive created would be for non-compliance.

7. Finally, the Commission notes that high levels of discarding are a symptom of high fishing pressure which has produced stocks with high proportions of small fish, and that part of the answer is a move to lower overall levels of fishing. This is consistent with the Commission's long term plans to move to management plans for each stock based on the objective of maximum sustainable yield (MSY), consistent with the EU's international commitments. So the proposal to ban

discarding progressively, fishery by fishery, as individual management plans are adopted, is logical in that context.

Discussion

Experience with discard bans elsewhere

8. A limited number of countries already operate discard bans, including in Europe, Iceland and Norway. Annex B sets out a summary of the mechanisms in place to support the discard bans in these countries. Iceland is the only country in Europe that appears to have all the regulatory and market mechanisms in place to operate a full discard ban successfully. It should be noted that Iceland's waters contain significantly less mixed fisheries than those of the EU, depending mainly on only four or five key species.

9. The example of Norway is interesting. While it has a complete discard ban on paper, it does not appear to have all the necessary mechanisms in place to deal with the consequences of such a ban (e.g. approved outlets for landed non-marketable fish), and anecdotal evidenced from EU fishermen who fish in Norwegian waters, is that although enforcement by the Norwegian Coastguard Service is generally among the most severe in Europe, its enforcement of the discard ban is at best partial. Nonetheless, the threat of enforcement action is always there and levels of discarding in Norwegian waters is generally lower than in the EU. There seems to be an unwritten understanding between the authorities and the Norwegian industry that they will not be pursued for discarding small quantities, but if vessels are flagrantly flouting the ban, they will be dealt with severely. The Communication seems to have been strongly influenced by the Norwegian example.

Assessment

10. This is probably the most revolutionary Communication to have emerged from DG Fish in recent years. Over the years the CFP has developed a regulatory regime that involves excessive micro-management of almost every fishing activity in a way that is complex and burdensome for businesses and for member state administrations, without always having been notable effective. This Communication represents an attempt to break out of this mould and to regulate for outcomes rather than attempting to regulate the detail of technologies and processes.

11. It is also a radical departure in the sense that it explicitly acknowledges the economic incentives on fishermen to discard and seeks to set a policy framework that aligns those economic incentives with the desired management objective. This may not sound particularly radical. But DG Fish has over the years tended to combine an exclusive focus in biological advice regardless of the practical and economic consequences with an unwillingness to face up to the fact that subsidising new fishing capacity was creating powerful economic forces driving the need to catch more fish which was in turn undermining their stock conservation policies. The 2002 CFP reform ended the subsidising of new capacity in 2004, but we are still living with the effects for the previous policy. Against this background, the attempt in this Communication to focus on the

economic incentives for discarding and on re-settling the management systems to change the incentives, is a wholly new approach.

12. The Commission has not proposed a discard ban lightly. It is evident from the Communication and from the accompanying impact analysis that the Commission have worked through the implications that arise from a discard ban in some detail. They do not claim that it is a complete answer to the problem, but acknowledge the importance of accompanying practical measures to help fishing vessels avoid unwanted by-catches in the first place and of the need to examine the specific situation of each fishery. They also acknowledge that experience in other jurisdictions cannot necessarily be transplanted easily into the EU context. Acknowledging these caveats, their central conclusion is that overall options involving a discard ban are likely to be more effective than options which do not.

13. The combination of regulating for outcomes, concern to get economic incentives right and sensitivity to the practical constraints, is encouraging. This approach is well aligned with the need for better regulation, CFP simplification and an ecosystem approach.

14. All of that said, the key issue the Communication probably does not do justice to, is the control and enforcement implications of a discard ban although the problem is acknowledged¹, it is not given a prominence which suggests the Commission have fully appreciated the seriousness of the challenge. Given the nature of many EU fisheries, it is clear that at the point at which any discard ban is introduced, it is likely to have an immediate and severe impact on the profitability of fishing and may significantly increase the price of certain species where the by-catch is high. The compensating gains from better survival of the juvenile fish and healthier stocks would only be felt gradually over time. This suggests that in practice, any ban will depend heavily on draconian enforcement if it is to be effective.

15. It is acknowledged that there has been a dramatic improvement in the level of compliance under the impact of cod recovery measures. However the level of enforcement that would be required at sea across the EU to make a discard ban effective, would imply a further stepping up of enforcement activity beyond what any member state could deliver today. There is a danger that the Commission have relied too heavily on the Norwegian experience. Impressive as that experience is, the sort of informal understanding between the authorities and the industry there referred to in paragraph 9 above which underpins it, would not readily translate into a multi-national jurisdiction like the EU, which depends heavily on the letter of the Community law to determine what is enforced.

¹ "Discard bans are much easier to apply and enforce in clean fisheries – which result in much less by-catch of other commercial species – than in mixed/multi species fisheries, which are very common in EU waters." (Impact Assessment, section 6.4)

16. The introduction of a discard ban may have implications for biodiversity since, in the short term at least, it will result in the removal from the sea of material which is currently a food source for larger fish, mammals and birds. Any adverse effects should be reduced as the fishing industry adjusts to practices to minimise the number of unmarketable and small fish taken. There should also be benefits for biodiversity to the extent that a ban drives significant development or more selective gear.

Conclusions

1. Overall it is not clear that the Commission's conclusion that options involving a discard ban are likely to be more effective than options which do not is justified by the evidence. It is possible that a dramatic reduction in levels of discarding could be achieved through some of the other measures proposed in the Communication, such as real time closures and the application of long term management plans in which discard reduction is an integral part, without the real enforcement problems a ban would bring. It may be that the Commission's real objective is to secure agreement to some of those measures.

2. Against the background outlined above the NSRAC:

- shares the Commission's desire to reduce discards;
- welcomes the Commission's intention to align incentives with the reduction of discards;
- emphasises that although much can be learned from the experience of other countries because of the complexity of EU fisheries in the North Sea it will not be possible or desirable to slavishly follow the approaches more or less successfully applied elsewhere;
- sees the development of fishery by fishery long term management plans as the probable vehicle for implementing fishery by fishery reduction of discards;
- stresses that an outright ban on discards would require a massive and unrealistic enforcement level;
- highlights the need to avoid perverse incentives such as creating a market for small fish.

As we move from this discussion on the principles of a discard ban and discard reduction to the implementation of specific policies the most immediate priorities must be to find an effective means of engagement between the RACs, the Commission, Member States and scientists on a fishery by fishery basis.

ANNEX A

Some of the main factors giving rise to discarding are:

- i. *No or low market value of certain species* – e.g. in a recent scientific study of discarding, the top 10 species discarded included boarfish and dragonet for which there is little or no commercial outlet. This is something that can change over time: another heavily discarded species is gurnard which is now steadily building a market, and 40 years ago monkfish was routinely regarded as unmarketable and discarded but is now one of the most valuable marine fisheries.
- ii. *Small fish not commercially worthwhile or below regulatory minimum landing sizes (MLSs)* – for most fish species small individuals command lower prices as well as having higher handling costs and may therefore not be worth retaining commercially. In addition EU Common Fisheries Policy legislation sets regulatory MLSs for many of the main commercial species (but not all) in order to discourage targeting of immature fish for stock conservation reasons.
- iii. Linked to (ii), *poor selectivity of regulatory minimum mesh sizes* – CFP legislation sets minimum mesh sizes (ie regulates the size of the holes in the nets) for most of the main fisheries in EU waters, which are set to try and avoid catches of fish below minimum landing sizes, however the highly mixed nature of fisheries in most European waters makes it impossible to get this right for all species simultaneously. For example, the minimum mesh size generally used if fisheries targeting sole is 80mm, which is effective for catching sole above MLS of 24 cm, but which also tends to catch immature plaice and cod below the MLSs of 27cm and 35cm respectively for these larger bodied species.
- iv. *Quota limits on landings* – fishermen will sometimes discard otherwise marketable fish because they have reached their quota limit for that species. Again this is a consequence of mixed fisheries, in that fish of the species for which quota is exhausted will probably continue to be caught while fishing for other species for which quota is still available. There have been cases where this phenomenon has resulted in high levels of discarding of particular species when a successful recruitment results in big increases in catchability of the species, without a corresponding increase in the Total allowable Catches (e.g. North Sea haddock in 2001 and monkfish in the south west in 2003-04). But apart from cases such as these, which have produced peaks in discarding, fishermen will generally plan their fishing operations to use their quota allocations as efficiently as possible and evidence from our research programme suggest that market reasons rather than quota limits are the main cause of discarding.
- v. Finally, *'highgrading'* – fishermen will sometimes discard marketable fish which is both above the MLS and within quota, a practice which results from a combination of market reasons and quota limits. This arises with species such as cod for which quota limits are highly restrictive and for which there is a premium price for larger fish, creating an incentive for

fishermen to discard marketable fish but lower price bracket fish in order to use their limited quota to land fish commanding the highest price.

A handwritten signature in cursive script that reads "Hugo Andersson".

Hugo Andersson
Chair of NSRAC

ANNEX B

Mechanisms associated with operation of discard bans in Iceland and Norway

	Iceland	Norway
1. Management system which limits catches by TAC, species by species	√	√
2. Flexible TAC system: (a) Vessels able to acquire quota post-landing for over quota species caught, (b) and able to count catches of one species against quota for another	√ √	√ x
3. Facility for disposal of some non-marketable landed catches to fisheries research establishment	√	x
4. Management system includes real time closures to protect aggregations of juvenile fish	√	√
5. Effective enforcement	√	?