

The North Sea Advisory Council



The Implementation of the EU Landings Obligation for the Demersal Fisheries of the North Sea: Exemptions & Other Issues

1 Introduction

- 1.1 The original NSAC *Vision* paper laid down the general principles and broad approach that the North Sea Advisory Council considered should be used to shape the implementation of the EU landings obligation.
- 1.2 That paper was followed by an advice paper, prepared in December 2014 for the North Sea cooperating member states (through the Scheveningen Group), intended to assist with the preparation of a joint recommendation for a discard plan for the North Sea demersal fisheries.
- 1.3 The December paper provided detailed and specific advice on the phasing of the Landing Obligation. The NSAC concluded, by a majority, that a *species approach* should be adopted for phasing the introduction of the landings obligation in the North Sea demersal fisheries. The *species approach* favoured by the NSAC reflects the views of a majority of members, with minority views favouring a *fisheries approach* being supported by Rederscentrale, Deutscher-Fischerei-Verband, and Scottish Fishermen's organisations.
- 1.4 The current paper provides advice on other issues that relate to the preparation of a discard plan for the North Sea demersal fisheries. The issues now addressed are:
 - Exemptions on the basis of high survivability
 - Provisions for *de minimis* exemptions
 - Documentation of catches
 - Fixing of Minimum Conservation Reference Sizes
 - Identification of potential indicators for future impact assessments
- 1.5 The implementation of the Landing Obligation will have major economic implications for the North Sea demersal fisheries. Fishing businesses will incur additional costs through

employing additional crewmembers to handle the catch and modifications to fishing vessels to store the additional catches. There must be a full in-depth impact assessment of the implications for the different fisheries in order to ascertain effects upon the fishing industry. Exemptions from the provisions of the Landing Obligation will be crucially important in determining whether fisheries continue to be economically viable.

2 Exemptions on the basis of high survivability

- 2.1 Article 15 paragraph 2(b) of the regulation allows for the possibility of exemptions from the landing obligation for species for which "scientific evidence demonstrates high survival rates". In an expert group report (EWG 13-16) STECF pointed out that there is currently no objective means to define 'high survival' rates. This is a subjective term and is dependent on the survival rate at age, the age composition of the overall catch, the relative contribution that discards make to total mortality of the stock, and the handling of fish in the fishing gear and on board. The NSAC believes it is not possible simply to select a single percentage survival value and apply this to all species, though MCS and WWF do see merit in this. ICES scientists have provided some guidance on the conduct of experiments to measure survivability, as clear scientific data are required to enable sound decisions to be taken.
- 2.2 Earlier research has shown that not all discards of all species die. In some cases, the proportion of discarded fish that survive can be substantial, depending on the species, fishery and other technical, biological and environmental factors. A review of discard survival for STECF has summarised experimentally derived estimates of discard survival rates with respect to species and fisheries/métiers. This has shown, however, that estimates of survival can vary considerably even for the same species. The report emphasises that instead of simply asking, "Can we discard this species?" it may be necessary to ask, "When, where and under what conditions can we discard this species?"
- 2.3 The NSAC recognises that better scientific data are required to enable decisions to be taken on survivability. Many studies are currently underway and are yet to be completed. It may be necessary to delay the introduction of the discard ban for some species in the absence of full evidence on survivability. Where data are lacking the NSAC proposes that the primary guiding principles should be:
 - a) Whether exempting fisheries will remove the incentive to reduce discards, which is considered to be the primary objective of Article 15, and
 - b) Whether the exemption will result in a significant decrease in fishing mortality; in both the short-term and long-term.

Where there is evidence of high survival in a fishery, priority should be given to avoiding any overall increase in fishing mortality. Arriving at the optimum decision should be undertaken case-by-case, taking into account:

- The conservation status of the stock concerned (with account taken of the survival rate at age, the age composition of the overall catch, and the relative contribution that discards make to total mortality of the stock)

- Current scientific evidence on survival from that particular fishery
- The possibility of achieving adequate monitoring and control of any granted exemption
- The removal of any incentive to avoid unwanted catch, through improved selectivity and other measures, that use of the high survival exemption would bring
- The need to maintain a level playing field with respect to similar fisheries in different Member States.

2.4 The process necessary in arriving at a decision will include:

- A preliminary list of candidate species by gear and by area
- A filtering/validation process to assess the quality, relevance and quantity of information available to inform the decision
- Where appropriate, initiation of further pilot projects to address any serious data gaps
- Decisions on any conditionality to be applied to vessels operating in a fishery with a high survival exemption (such as full documentation of catches and discards)
- Consideration of the monitoring measures that might be applied.

2.5 The process should:

- Take into account current scientific opinion, as expressed by ICES and STECF
- Recognise that current scientific advice on this subject is both patchy and evolving
- Take fully into account fishers' knowledge of particular fisheries
- Take into account that a number of pilot projects in the member states are under way and although it would be wise to limit expectations about what these can deliver in the time permitted, equally it will be important to incorporate the lessons learnt into advice when it is available
- Take into account that the phasing of the landing obligation will either assist or hinder the quality of the information base used for these decisions.

2.6 The NSAC is aware that only a short time was now available for providing advice on exemptions. Currently, decisions have to be taken in the absence of full scientific data. The NSAC advances the following species for preliminary consideration for high survival exemptions, based on existing data:

Species potentially eligible for exemption subject to defined conditions, subject to review when further scientific evidence becomes available

Nephrops
Plaice
Dab
Sole
Lemon sole
Turbot
Megrin
Brill
Flounder
Skates and rays
Sea bass

Member States have started addressing data deficiencies through pilot projects from which the first results are expected in the spring of 2015. However, these pilot projects will take time to yield results. Also, there is currently little information available for some species, including anglerfish, and little or no research is being done on the survival of these fishes. The NSAC suggests that work on these data-deficient species of fish should begin as soon as possible. The NSAC supports steps being taken by Member States to coordinate their work by identifying any deficiencies in the overall programme and addressing any gaps in information.

- 2.7 The NSAC supports the need for an evidence-based approach in determining exemptions but points out that because of the truncated timetable that has been set for implementation of the Landing Obligation there is insufficient time to gather the data required. A pragmatic approach will be required if implementation is to be successful. For this reason the NSAC has emphasised that implementation of the landing obligation for plaice and sole should only take place after the results of the different pilot projects are known.
- 2.8 The position with the gadoid species and some of the prohibited species is more clear, as survival rates are known to be low for those species that have swim bladders. With regard to *Nephrops* and some flatfish species, these are potentially eligible for exemption, subject to evidence being provided of:
- Ongoing long-term high survival rates
 - The introduction of fishing protocols to optimise survival rates
- 2.9 Based on the advice from STECF, the NSAC maintains that it is not particularly useful to define “high survival species”, in relation to an arbitrary percentage, above which an exemption would be granted and below which it would not be granted. There is a need to evaluate carefully any trigger level that is selected, as the trigger level will need to be different for different species under different conditions. The condition of the fish and therefore the prospects for survival are likely to vary both spatially and temporally: it will be necessary to take a number of factors into account. Equally, we currently have little

knowledge of the *potential* for fishing practices to adapt under the landings obligation to increase survival rates through shorter tows, better treatment on deck, faster return to the sea etc. In the past there has been no incentive to develop these features. A more flexible, pragmatic yet science-based process is required to ensure that the exemption process keeps up with emerging knowledge.

- 2.10 The criteria employed should relate to whether the released fish contribute to the surviving biomass and to what degree. The precepts of good fisheries management should take precedence over a narrow interpretation of the landings obligation. In the Norwegian legislation, which applies to those EU vessels that fish in the Norwegian sector, Article 48 of the Fisheries Regulation requires that all catches of fish must be landed. However, this does not apply to: “legally caught fish that are alive when released at sea“. The decision on whether fish are alive is left to fishers’ discretion.
- 2.11 The Marine Conservation Society and the WWF have adopted a minority position with respect to establishing a minimum benchmark for survivability. Both see merit in setting a minimum standard for high survivability that would apply to all species as it is felt this would more fairly and objectively allocate exemptions under this category

3 Provisions for *de minimis* exemptions

- 3.1 Under the CFP basic regulation up to 5% of total catches may continue to be discarded. The regulation provides for *de minimis* exemptions of up to 5% of total annual catches of all species subject to the Landing Obligation. The *de minimis* exemption shall apply in the following cases:
- Where scientific evidence indicates that increases in selectivity are very difficult to achieve; or
 - To avoid disproportionate costs of handling unwanted catches, for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage, to be established in a plan, of total annual catch of that gear.

The NSAC emphasises that these are crucial provisions, and that it will be important for NSAC to be involved in any discussions of *de minimis* exemptions. It will also be important to ensure that there is a level playing field between fleets in different Member States in applying the exemptions.

- 3.2 *De minimis* exemptions will allow continued discarding at sea. It is likely that it will be used sparingly, as any percentage will be deducted from the TAC for that stock at the beginning of the year of application. However, *de minimis* exemptions may provide an important tool for dealing with both target species and choke species, where disproportionate costs may be incurred as a result of the Landing Obligation. Those costs will result from increased crew workload and also changes made to the structure of vessels to enable additional fish to be stored.
- 3.3 Monitoring of *de minimis* exemptions will be critical to ensure this flexibility in the CFP is not abused. Monitoring will also help to ensure that all fleets are operating on a level

playing field. As with high survival exemptions, the NSAC considers that it will be important to put in place an explicit process, to deal with candidate species/fisheries as they arise. *De minimis* exemptions are perhaps the element of the landings obligation that will be developed most productively through engagement between the NSAC and the Scheveningen Group, taking into account ongoing work within STECF and other scientific fora.

3.4 At this stage we envisage that the process of evaluating fisheries for *de minimis* will require:

- Initial candidate scenarios for the specific fisheries proposed, supported by evidence to justify the use of *de minimis* based on the two conditions outlined in Article 15(5)(c)
- Decisions that follow the best available scientific advice
- Subsequent monitoring arrangements

In drawing up *de minimis* exemptions it would be sensible to be mindful of STECF's list of information it considers necessary to judge the merits of a *de minimis* exemption. Of primary importance is specifying the actual level of *de minimis* to be applied and how that is to be implemented/distributed.

3.6 There may be a particular problem in defining disproportionate handling costs, which have a bearing on the *de minimis* exemptions. It is difficult to estimate these costs in advance, but it might be possible to draw up rules for deciding how these costs might be estimated, with advice from STECF. The NSAC would like the Commission to collect further information to support a clearer definition of disproportionate handling costs, and to assist with any decisions that might be made.

3.7 There are some clear and simple instances for applying *de minimis* exemptions in the demersal fisheries. In general, industrial species and pelagic species should fall under this exemption. In addition, so should the so-called "stickers"; for example, shrimps, small flatfish or small *Nephrops* that can become entangled in the meshes of the fishing gear. It is important that fishers should not be obliged to handle each and every one of these small, entangled items regardless of the costs. It is of course important that a level playing field is secured in the application of any exemptions for this purpose.

3.8 One of the positive features of the landings obligation should be the creation of economic incentives that will encourage vessel operators to reduce unwanted by-catch, to the extent that this is possible. Therefore, in setting exemptions it will be important to strike the right balance between maintaining this incentive and addressing those fisheries where further selectivity is not technically or economically realistic.

3.9 The NSAC is not yet in a position to advise on those species and fisheries to be subject to *de minimis* provisions. It recognises that decisions on the fisheries and candidate species for *de minimis* exemptions must be left until decisions have been taken on phasing and survivability.

4 Documentation of catches

- 4.1 Effective monitoring, control and enforcement will be an essential component for successful implementation of the landing obligation. Whilst enhanced reporting represents an opportunity to greatly increase scientific knowledge and thus improve the knowledge basis of fisheries policy, the control regime will need to be adapted to the practical and economic realities of fishing and must focus primarily on achieving compliance with the landings obligation. There will need to be a shift in focus from monitoring and control on land to monitoring and control at sea.
- 4.2 Under the landing obligation all estimated discards above 50 kg live weight must be recorded. A project has been launched by the Control Agency to look at discard recording. Initial studies on the pelagic fisheries will now be extended to the North Sea and North West Waters. The Agency will be working with the Scheveningen Control Experts Group to prepare for the documentation of catches.
- 4.2 Monitoring the discard ban will be very challenging. Fisheries requiring exemptions can expect to be subject to enhanced monitoring of catches, perhaps through observers at sea programmes and/or remote electronic monitoring by means of CCTV. Full documentation and monitoring of catches and discards is important, but the reporting requirements within the Landing Obligation represent a major increase in the reporting burden for masters and crews of fishing vessels. A balance needs to be reached between relevant documentation and full documentation. There is a requirement for documentation to be proportionate and clearly related to the overall risk to sustainability of the fisheries. Documentation is not required in all circumstances. The NSAC wishes to engage with the Scheveningen Control Experts Group to discuss the challenges and issues involved in the documentation of catches.

5 Fixing of Minimum Conservation Reference Sizes

- 5.1 Lists of Minimum Conservation Reference Sizes (MCRS) are being prepared for different areas and fisheries. A starting point is the translation of Minimum Landing Sizes (MLS) into MCRS values. However, this does not necessarily mean that MLS can simply be converted to MCRS. There is a need for harmonisation and rationalisation of approach. Article 15.10 states that “Minimum conservation reference sizes may be established with the aim of ensuring the protection of juveniles of marine organisms”. There is support from the eNGOs for MCRS values to be set as close as possible to the length at maturity, as an incentive to improve avoidance of juveniles. However, the regulation goes further, as Article 15.11 states that “the use of catches of species below the minimum conservation reference size shall be restricted to purposes other than direct human consumption, including fish meal, fish oil, pet food, food additives, pharmaceuticals and cosmetics”. Some fishers have queried whether there is a need to apply the MCRS in this way for marketing purposes, as the fish that have been caught are effectively dead. There is a need to examine more closely why MCRS values need to be set, and on what basis they might be decided. A request will be sent to the Commission from the NSAC asking for a seminar on the setting of MCRS values, to involve all stakeholders. It will need to be a broad forum, including those involved in the

sale of fish, and is needed to contribute to a wider discussion on the setting of Minimum Conservation Reference Sizes for the North Sea. Does the setting of an MCRS really contribute to protecting juveniles or is it simply concerned with conserving the value of the catch? Has the Landing Obligation made the setting of Minimum Landing Sizes redundant?

- 5.2 Currently there is a mismatch between Minimum Landing Sizes for *Nephrops* in the North Sea and for the Skagerrak/Kattegat. The majority position within the NSAC supports a suggestion from Danish fishers' representatives that there should be harmonisation of MCRS values for *Nephrops* across the North Sea, at the lowest level of the two sizes. The current minimum landing size is 13 cm compared to just 8.5 cm in the North Sea. There is no biological justification for such a large MCRS in the Skagerrak and Kattegat and the MCRS should be harmonised at the level of the North Sea. Alternatively, the MCRS in the Skagerrak and Kattegat could be set at 0 cm, as the catches of small *Nephrops* are very limited, but unavoidable no matter how selective the fishing gear.
- 5.3 The CNPMM has adopted a minority position on this point. They believe it is too early to agree a change in the designated sizes, without further discussion. The Marine Conservation Society and the WWF have also adopted a minority position. They suggest that it would make more sense to harmonise the MCRS for both regions at a length corresponding to the length at maturity of *nephrops*, implying a small increase in the North Sea MCRS and a reduction in the Skagerrak and Kattegat MCRS . Furthermore, the MCS, WWF and the European Anglers Alliance propose that the MCRS values for all species should always be set at or above the length at which they reach maturity. Further, the EAA wishes to underline the important role that the MCRS plays in the current discussions on sea bass management, where the EAA advocates a higher MCRS than the current length of 36 cm.

6 Identification of potential indicators for future impact assessments

- 6.1 The Landing Obligation is the biggest change in the CFP since its inception. But it has yet to be subjected to any serious impact assessment. The Commission and some individual Member States may subsequently carry out their own *post hoc* impact assessments of the Landing Obligation to evaluate whether discards have been reduced and to assess the overall impact of the policy, including impacts on the science base, and any increases in the costs to fishing businesses. The NSAC supports the implementation of *post hoc* impact assessments as it follows from the Omnibus Regulation. The NSAC will wish to monitor closely the results of any assessments that are carried out. It will be important to establish clear indicators of the success or otherwise of this major change to fisheries legislation, and also to examine the additional costs that have been incurred by the fishing industry.