



NSAC Advice Ref. 05-1617

This consensus paper was approved by the NSAC Executive Committee via a written procedure on the 17th February 2017.

Brief Commentary on the EU Technical Conservation Regulation

Following recent discussions, the North Sea Advisory Council (NSAC) is issuing this paper in advance of publishing an advice paper on the Technical Conservation Regulation. This is in order to relay our immediate concerns and observations regarding the development of the Regulation. Full NSAC advice on this subject will be issued as soon as possible.

The NSAC is eager to see the introduction of a new technical conservation regulation that is compatible with the other legislative components of the CFP, as soon as possible.

Commission Proposal

The NSAC has broadly welcomed the Commission's novel approach to technical measures contained in its *proposal on the conservation of fisheries resources and the protection of marine ecosystems through technical measures 2016/0074(COD)*

Regulation 850/98

The rules and requirements contained in the current technical measures framework regulation, Regulation (EC) No. 850/98, have proven to be complex and often very difficult to achieve. The existing regulation has also been difficult for fishermen to understand and it has been difficult to enforce. In some respects, it has generated perverse outcomes, most notably by generating a pattern of regulatory discards. Some important parts of Regulation 850/98 are incompatible with the CFP basic regulation, Regulation (EU) 1380/2013, and specifically, the EU landing obligation. Most specifically, the current regime provides an impediment to the evolution of technical solutions as fishing vessels find ways to reduce their unwanted catch to comply with the landing obligation.



Regionalisation

The Commission's proposal offers a radical break from the failures resulting from the current system, providing the prospect of a more dynamic and flexible approach, compatible with the overall policy objectives within the CFP basic regulation. This is achieved by making provision for the adoption of fisheries specific technical rules, where these are necessary, at regional seas level. Central to that approach is the alignment of the proposal with Article 18 of the CFP regulation. This provides a legal basis for Joint Recommendations on technical measures to be made by regionally cooperating Member States and to be adopted by the Commission through delegated acts.

Shift away from micro-management

The NSAC has been strongly supportive of a decisive shift away from prescriptive micro-management, which fails in many respects to deal with regional nuances, towards an approach focused on results and outcomes, within a system incorporating safeguards. There remain a number of aspects of the Commission's proposal that lack clarity or precision on how this can be achieved and we will be commenting on these features in due course. However, these lower level concerns should not detract from understanding our support for the Commission's general approach, which in many respects reflects directional advice from this Advisory Council and also the results of extensive consultation by the Commission.

Sensitive Species and Habitats

The technical measures framework applies not just to the exploitation of marine biological resources but to the interaction of fishing activities with marine ecosystems. This means technical measures have a clear role to play in minimising the negative environmental impacts of fishing on marine biodiversity and marine ecosystems as a whole, which includes sensitive species and habitats. The NSAC supports the inclusion of technical measures that provide protection for these marine ecosystems, species and habitats, to be built upon through regionalised decision-making and consultation of stakeholders. We recognise that providing for such measures is also in line with the CFP objective of coherence with Union environmental legislation.

Strengths

As we see it, the strengths of the Commission's proposal lie in:

- The scope for responsive, adaptive management through regionalised policy formulation, avoiding the need for co-decision on many detailed technical rules



- The potential for a shift away from complex prescriptive rules towards a results- based management approach
- A framework that is open to a bottom-up approach, enabling those with appropriate expertise to participate in the development of solutions more suited to local conditions
- Recognition that the increased involvement of the relevant stakeholders should result in robust technical measures that are more clearly understood by these stakeholders
- Facilitating the effective implementation of the CFP by providing clear objectives with regard to environmental protection and legislation in general
- The attempt to speed up the process of addressing measures which are failing or where changes are needed, however improvements can still be made.
- The removal of obstacles that have to date obstructed more selective ways of fishing
- The removal of a number of closed areas for which the purpose was unclear (although this seems to have little relevance to the North Sea)
- Confirmation that the Commission is to drop its plan to ban small-scale drift nets in favour of a regional evidence (results) based approach
- Simplification
- Recognition of the important role of technical measures in the protection of marine ecosystems as a whole, including sensitive species and habitats.

Compatibility

It is extremely important that technical rules are compatible with other elements of the CFP, most importantly the landing obligation and the forthcoming Multi-Annual Plan for Demersal Fisheries in the North Sea.

Concerns

It has been clarified that the Commission's proposal in so far as it deals with a target of catches below MCRS not exceeding 5% is applied at stock rather than vessel level. This is an important point as it avoids an element of catch composition incompatible with the landing obligation.

However, the NSAC remains doubtful whether the target of 5% will be the right figure in all fisheries. This is a new and untested part of the proposal and we are of the view that it needs more thought and assessment to determine if a common threshold can be used for all fisheries or whether such a threshold should be determined at a regional seas level in close cooperation with stakeholders. We also recognise that an effective system of monitoring by Member States will be required to ensure this target is being met. The NSAC agrees that monitoring and targets are prerequisites for an effective results-based approach, but there is clearly room for clarification of the detail of how this would work in practice.



Even if mesh sizes presented in the regional annexes of the proposal seem to be simplified compared to the existing technical measures regulation, and to offer more flexibility within the context of the landing obligation, many of the mesh sizes proposed are not in line with current practices. Furthermore, those mesh sizes refer to the "directed fishing" definition (Article 6 of the proposal), and it is unclear how this definition applies in practice. The NSAC is concerned that the proposal would require fishermen to adapt to new rules for which the basis is unclear without considering what would be a reasonable timeframe to implement change. The NSAC therefore hopes that Member State discussions will lead to a balance between simplification, improved selectivity, and continuity of fishing practice, particularly where vessels are currently using smaller mesh sizes than the 120mm baseline.

As a matter of principle technical rules should be sufficiently flexible to support gear innovation aimed at improving selectivity.

A specific concern relates to the rule in Article 9. If this is implemented, it would prevent fishermen from increasing cod-end mesh size if they encounter large amounts of small fish. The NSAC is concerned that this could be counterproductive and requests that the rationale for this provision is made clear.

Conclusion

This short paper may be considered as a timely intervention to signal our strong support for the essential approach contained in the Commission's proposal; and to voice our concern that as this proposal passes through the legislative process, we should not lose a coherent and effective approach to technical conservation that escaped us with Regulation 850/98.

We will continue to work on our more detailed contribution which will be submitted shortly.

