



NSAC Advice Ref. 09-1617

Response to the Technical Conservation Framework Regulation

This consensus paper was approved by the NSAC Executive Committee on the 3rd April 2017 via a written procedure.

1.0 **Background to this Advice**

1.1 A proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conservation of fishery resources and the protection of marine ecosystems through technical measures was proposed by the Commission in March 2016. The proposed Regulation amends Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repeals Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005.

1.2 The Commission categorises technical measures as:

1. Measures that regulate the operation of the gear;
2. Measures that regulate the design characteristics of the gears that are deployed;
3. Minimum sizes below which fish must be returned to the sea;
4. Measures that set spatial and temporal controls (e.g. closed/limited entry areas and seasonal closures) to protect aggregations of juvenile or spawning fish; and
5. Measures that mitigate the impacts of fishing gears on sensitive species (e.g. marine mammals, seabirds and turtles) or closed areas to protect sensitive habitats (e.g. cold water coral reefs).



2.0 General Comments

- 2.1 The NSAC respects the work done by the Commission in preparing the proposal and is pleased that earlier NSAC advice on a number of key issues has been influential in shaping the approach adopted. The NSAC has published advice on the proposal, “NSAC Advice 05-1617 Brief Commentary on the EU Technical Conservation Framework”¹, which was published on 17th February 2017.

Within this advice, the NSAC summarise what they consider to be the strengths of the Commission’s proposal:

- 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

2.2 Landing Obligation

The landing obligation represents a paradigm shift in the management of European fisheries management, creating an economic incentive to reduce unwanted catch of quota species. Technical adaptations to reduce unwanted catch can therefore be expected to be one of the most important ways to respond to the progressive implementation of the landing obligation for all stocks subject to catch limits. The NSAC notes that the availability of such technical solutions is not, however, evenly distributed across all fleets and as such, some fleets are likely to experience difficulties in reducing unwanted catch to meet the requirements of the landing obligation.

¹ <http://www.nsrac.org/advice/approved/advice-and-opinions-nov-2016-oct-2017/>



2.3 Technical Measures

However, in theory, the application of the landing obligation should mean that there is less need for prescriptive technical measures aimed at reducing unwanted catches of species subject to catch limits. If adequately implemented, the landing obligation itself provides a strong incentive to avoid such catches in the first place. Each vessel will have an economic interest in adapting its operations and gear geometry to reduce unwanted catch that would have little or no economic value, and instead aim to use quota to land more valuable catch. For stocks subject to the landing obligation the industry believes that the current proposal therefore represents something of a *belt and braces* approach but recognises that this reflects pressures during the transitional phase.

2.4 Biological and Economic Forces

The dynamic biological and economic forces at play in our fisheries mean that it is inherently important that the technical rules in place provide the flexibility to adapt and respond quickly to change, while maintaining consistent levels of ecosystem protection across Union waters. Regionalisation should provide for a much more responsive approach than the existing technical measures regulation (Regulation 850/98), which is inherently less flexible. Measures developed with stakeholder input are more likely to result in achieving the objectives and meeting the targets in the framework. The NSAC therefore emphasises that regional Member State groups should be the primary source of decision-making, with the involvement of fisheries and other stakeholders throughout the process.

2.5 Results Based Approach

The NSAC has been strongly supportive of a decisive shift away from prescriptive management, which fails in many respects to deal with regional nuances, towards an approach focused on results and outcomes, within a system incorporating safeguards.

As part of the move from the current system of largely prescriptive technical measures towards a more results based approach, it is essential that the desired results are clearly defined in terms of objectives and quantitative targets, and that the effectiveness of the adopted measures in achieving the latter can be reliably measured. Choosing appropriate, quantifiable metrics will therefore be crucial to monitor progress towards the objectives and quantitative targets set out in the proposed Regulation.

The Commission's proposal outlines a results based approach at the EU-MS level, in that according to Article 34, it is up to MS to demonstrate that the objectives and targets have been attained. There was initial concern throughout the NSAC over the specific metric proposed in Article 4 on Targets: *Ensure that catches of marine species below minimum conservation reference size do not exceed 5% by volume.*



At first glance this target seemed to apply at vessel level, opening up all of the difficulties seen in the catch composition approach in Regulation 850/98. In discussion with the Commission, it has however been clarified that this figure was instead intended to apply at the stock level. This target would therefore mean that catches below MCRS must not exceed 5% by weight in relation to all catches of each stock, across all fisheries, rather than 5% of the catches of an individual vessel or trip. Although this addresses some of the NSAC's previous concerns, some still remain. For example, there are still questions over whether 5% is the right threshold for all stocks and fisheries and how that target level should best be expressed. In addition, it is essential that for the target to work in the way envisaged by the Commission, the Member States must put in place a strong system of monitoring to ensure that this target is being met and, if necessary, take enforcement action. This may involve monitoring at both fleet and vessel level in order to inform management actions.

The NSAC nevertheless believes that the Commission proposal can go further in the context of results based management, notably by strongly encouraging pilot projects at the MS-industry level. As outlined in the Commission's 2009 Green Paper, "*Instead of establishing rules about how to fish, the rules focus on the outcome and the more detailed implementation decisions would be left to the industry. Public authorities would set the limits within which the industry must operate, such as a maximum catch or maximum by-catch of young fish, and then give industry the authority to develop the best solutions economically and technically. Results based management would relieve both the industry and policy-makers of part of the burden of detailed management of technical issues. It would have to be linked to a reversal of the burden of proof: it would be up to the industry to demonstrate that it operates responsibly in return for access to fishing.....Giving the industry more responsibility requires that safeguard mechanisms are in place and implemented by the Community*".

Although the Commission proposal offers regionalisation as a catalyst for a simplified and more tailored approach to using technical measures, there are no specific mechanisms outlined that will necessarily lead to a move away from prescriptive decision-making at the regional level. The NSAC notes that reducing the amount of prescriptive rules is especially important in the context of the landing obligation, where added flexibility for fishermen to innovate and optimise fishing activities and allow them to reduce unwanted catches.

We would hope that the future framework will be ambitious in embracing the possibility of transitioning towards a more genuine results based approach down to the MS-industry level, as foreseen by the 2009 Green Paper. This would require a legal framework that encourages and assists Member States to pursue pilot projects with the fishing industry to examine/establish workable results based mechanisms that explore how measurable targets and objectives can be attained and demonstrated through a system of full documentation by the industry, which may lead to fewer technical rules applying. This would depend on STECF and Commission evaluation and approval. Such pilots should have the potential to achieve the objectives and targets with the necessary safeguards in place. Since EMFF-funded pilots are national projects, it would be beneficial (especially where fisheries are shared), that attempts



are made to harmonise pilot projects through regional cooperation, aided by stakeholder input from the Advisory Councils.

2.6 Minimum Conservation Reference Sizes

Minimum Conservation Reference Sizes will play a different role to *Minimum Landing Sizes*. The latter defined the size below which the fish must be returned to the sea. In the context of the landing obligation, the former represents the dividing line between fish landed and sold for human consumption and those landed and sold/disposed of for non-human consumption use. This has opened a debate over the appropriate balance between minimising incentives to target juveniles and optimising the economic return from fisheries. This debate is ongoing and goes beyond the scope of the North Sea but it is likely that there will be requests to change the MCRSs over time as the landing obligation is progressively implemented. Such requests are likely to be based on factors such as biology and markets. At present we note that some of the proposed baseline (i.e. European level) MCRSs depart from the current rules. Our understanding was that the Commission's intention with this Proposal was a change in governance rather than a shift in selectivity requirements, both in terms of mesh sizes and MCRSs, and we would value clarification as to why these changes were introduced; for example harmonisation between areas or biological considerations such as growth rates at a local scale.

2.7 Technical Measures and Protection of Marine Ecosystems

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.

2.8 Recreational Fisheries

We consider that recreational fisheries should be restricted to a degree equivalent to that of commercial fisheries. This recognises the need for fisheries to be sustainable and that all fishing activities can have an impact on the achievement of the CFP's objectives. The NSAC supports that recreational fisheries are subject to rules on prohibited gears and MCRS and recommends that they should also be subject to area closures



3.0 **Comments on the Articles within the Proposal**

3.1 **Basic Principles**

The North Sea, in terms of catch composition, number of primary and secondary target species, gear types and vessel sizes, represents a middle ground between the simpler fisheries to the north and the more complex fisheries located in waters to the south and west. Nevertheless, the North Sea demersal and benthic fisheries do contain a considerable degree of specificity and variation. It is possible to identify at least 93 different possible configurations of target species/gear type/area in the North Sea fisheries. This fact alone is sufficient to account for why Regulation 850/98, which attempted to use a single legislative instrument to apply technical conservation rules across many varied and diverse fisheries, is now considered to be in need of urgent replacement. The progressive implementation of the landing obligation in the North Sea is a further critically important reason why a new approach is required as a matter of urgency.

Good governance should allow a sufficient transition period when new technical rules are introduced, to allow industry time to adapt.

3.2 **Governance**

In general terms, the NSAC is of the view that the optimum place to make technical conservation rules for the North Sea, is as close as possible to the specific fishery concerned. The potential for a regionalised and much more tailored approach to the application of technical conservation rules has been explicitly provided for in article 18 of the CFP Basic Regulation 1380/2013. Article 18 allows for measures that are more closely aligned to the fisheries concerned, and provides a more tailored technical conservation regime delivered through the regional annexes.

A much greater focus on results and outcomes than on detailed prescriptive legislation, is another facet of the Commission's proposal in which we are strongly in favour. Our experience to date suggests that this type of approach would work well in the North Sea.

The baselines in the North Sea Annex V are therefore an important, albeit transitional, component in the shift to a new model. Regional member states, working closely with stakeholders in the North Sea Advisory Council, will subsequently refine, modify and develop the technical conservation regime towards an optimum exploitation pattern. We strongly welcome this change in approach as outlined above.

Having set the broad legislative framework through co-decision, we consider that the clarity and effectiveness of the technical conservation regime would be best served if the role of the co-legislators is limited to an oversight and monitoring role, rather than one of direct intervention in technical detail for which they are poorly equipped and for which the co-decision process is too cumbersome to deliver.



3.3 Metrics

We acknowledge that the monitoring and oversight role in a results-based approach requires some quantitative means to assess progress towards targets. The Commission's proposal is that a tractable way of providing oversight is through a target of a maximum of 5% by weight of fish caught and landed below the minimum conservation reference size. The NSAC doubts whether 5% will be the right figure for all stocks and fisheries. This is an untested part of the new approach and we are of the view that it will need more thought and assessment before it is finally decided that a common threshold that can apply to all stocks and fisheries is feasible or whether such a threshold should be determined at regional seas level in close cooperation with stakeholders.

It is of the utmost importance that in order to avoid conflicts between the catch composition rules and landing obligation requirements, that the 5% target is set at a broad level rather than a legal requirement at individual vessel.

3.4 Norway

As an independent coastal state, Norway sets its own technical conservation rules for vessels operating in its waters. The EU likewise determines the technical conservation regime for vessels operating in its waters. Nevertheless, there is good reason to seek opportunities to harmonise technical rules where this is considered desirable by both sides. This points to the desirability of an ongoing dialogue between the EU and Norway as part of the annual negotiations for an annual reciprocal fisheries agreement.

3.5 Selectivity (including slipping / high grading)

The aim of the landing obligation is to improve selectivity in fishing practices. The NSAC highlights, therefore, that the technical measures framework should facilitate such improved selectivity and reduce any obstacles to this as far as possible. Whilst the proposal moves in the right direction, NSAC members still have concerns about some aspects, as outlined below.

Article 9 places general restrictions on the use of towed gears. The Article is perhaps stipulating conditions too tightly, and this could inhibit the development of more selective fishing gears. In particular, Article 9(1), which states that "*No part of any towed gear shall be constructed of a mesh size smaller than the codend mesh size*". This statement should be removed completely, as some parts of fishing gears play no part in the selection of fish. Smaller mesh sizes may be employed in those parts of the gear without affecting selectivity adversely. Further to this, there is a risk that such restrictions will prevent fishers from making seasonal increases to the mesh size in their codends (where most of the selectivity takes place) because it would oblige them to change the whole trawl. In Article 9(2), which states that "*Whenever more than one net is towed simultaneously by a fishing vessel or by more than one fishing vessel, each net shall have the same mesh size*" there is no definition of the term "net" and it is not clear whether it encompasses the different "bags" that may be present within a



fishing gear to promote selectivity. These “bags” may be specifically intended to employ different mesh sizes. There are trials currently taking place within the small mesh fishery for *Nephrops* in Scotland where separation of the catch during towing allows for the use of different mesh size in the lower and upper cod ends (80mm - 120mm). A similar system has been in effect for several years in the fishery for *Pandalus* in Skagerrak. Note that if this provision is changed then the codend definition in Article 6(1)(30) might also have to be changed, as this says that a codend can only have one mesh size.

Some of the restrictions on the use of towed gears should be developed by agreement at a regional seas level by Member States and in close collaboration with the Advisory Councils, rather than stipulated in detail from the top down. Article 9 (3) however should remain unchanged.

Article 16(1) refers to “slipping”, and stipulates that the practice of slipping should be prohibited. The NSAC notes that force majeure conditions (weight, weather) should still allow some slipping to be possible. There are dangers in applying a complete prohibition on slipping in demersal fisheries, where slipping may be necessary to release large hauls of unregulated and prohibited species. Slipping also may be necessary for safety reasons to avoid endangering vessels under IMO rules because unexpectedly heavy loads in the cod end/dredges can also endanger crew members and the vessel itself. High loads can cause lifting derricks to break, injuring crew members. Attempting to lift a heavy mass on board may result in loss of vessel stability, risking capsizing.

Other interest group representatives highlight that the exception from the prohibition on high grading and slipping in Article 16(2) should not apply to catches of species which are exempt from the landing obligation for reasons of high survival. Allowing high grading for stocks under this exemption will increase fishing mortality, and this mortality will be unaccounted for. This article must be amended so that the high grading prohibition continues to apply to species subject to a high survival exemption.

3.6 Integration of CFP Elements

The different legislative requirements under the Common Fisheries Policy are not well aligned with each other. The landings obligation represents a paradigm shift and it is clear that the other components have yet to be adapted to the new realities that follow from the requirement to land all regulated species. TAC setting rules, the MSY timetable, enforcement policy, Relative Stability and not least, the technical conservation regime, all currently provide serious challenges to the full implementation of the landings obligation. Where such challenges exist, there are likely to be problems with the implementation of the landing obligation and therefore these must be addressed at the earliest opportunity, with any legislative conflicts removed.

The current proposal is an attempt to provide a technical conservation regime that is broadly aligned with the landings obligation. Providing vessel operators with the flexibility to adapt their gear configurations to reduce unwanted catch should be a central overarching objective.



3.7 **Equivalence**

The NSAC supports the principle of equivalence, however the meaning of “equivalent” in Article 18 (3) is unclear and the means for assessing equivalence of new measures compared to existing measures should be elaborated upon. Whilst recognising that this is a difficult subject to address the agreed approach should be practical, not complicated and should not result in unnecessary delay to the use of more selective gears.

3.8 **Innovation**

All members of NSAC agree that innovation is to be supported, particularly as innovation with respect to fishing gears will be an important dimension of adapting to the landing obligation. We therefore support the move in the technical measures proposal to allow more flexibility for innovation and the development of innovative gears. It is especially important that any gear innovations are assessed in a transparent, timely and efficient way by authoritative experts. Impact assessment must consider cumulative ecosystem impacts and consider all potentially affected habitats and species. STECF is the appropriate body to evaluate these assessments and it is important that it is adequately resourced and staffed with qualified individuals. Where an STECF assessment indicates that an innovative gear causes negative impacts, taking all factors into account, including cumulative impact and comparison to conventional gear, the use of that gear should not be permitted. In any event, delays to the process should be minimised so that gears with increased selectivity and lower impacts can be introduced at the earliest stage possible.

3.9 **Emergency Powers**

NSAC recognises that there will be situations where measures need to be introduced in order to take immediate action to protect marine species and ecosystems. Currently, Article 12 of the CFP Basic Regulation provides for the adoption of emergency measures in the case of a serious threat to the conservation of marine biological resources or to the marine ecosystem. These measures can apply for a maximum period of six months. The Commission is restricted to introducing emergency measures only in the very limited circumstances of a serious threat to marine species and ecosystems. It has built upon this by introducing provisions in its proposal for a technical conservation measures regulation that allow it to introduce additional safeguard measures. NSAC recognises that it may be necessary to take immediate action in wider circumstances than envisaged in Article 12 of the Basic Regulation, specifically in the circumstances set out in the Commission’s proposal: to address unexpected changes in stock patterns as a result of recruitment levels and to provide protection for spawning fish and shellfish when stocks are at very low levels. The NSAC supports the introduction of such measures where scientific advice indicates these are necessary. However, whilst recognising the potential need for safeguard



measures to apply in wider circumstances, the NSAC has some concerns about the proposed maximum duration of three years, particularly in the context of regionalisation.

3.10 **Prohibited Species**

The NSAC recognises that higher levels of protection are needed for a number of specific marine species, meaning that the deliberate catching, and retention, of these species should be prohibited. Annex I of the Commission's proposed technical conservation measures framework regulation contains a list of prohibited species. The NSAC supports a list of prohibited species that is based on best scientific advice that could be amended without undue delay. We are of the view that clear criteria should be developed to establish when a species is eligible for entry into the prohibited species list, including the need for scientific evidence. We will be writing to the Commission in the near future to ask for further clarity on this issue.

