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Subject: Recommendations on control of the landing obligation

Dear Dr Mossink,

I am pleased to submit to you the Pelagic AC's recommendations on the preliminary advice from the North Western Waters Control Expert Group on control of the landing obligation in pelagic fisheries (enclosed in annex I). Furthermore I enclose a list of issues encountered with the implementation of the pelagic landing obligation per country, complimented by possible mitigation measures (annex II).

Please note that all recommendations have been unanimously endorsed by the Executive Committee and I am looking forward to present the advice at the HLG meeting on 25 November 2015.

Yours sincerely,

A handwritten signature in black ink that reads 'Ian Gatt' with a small flourish below it.

Ian Gatt
Chairman Pelagic AC

Annex I:

Recommendations on the preliminary advice from the North Western Waters Control Expert Group on control of the landing obligation in pelagic fisheries

General remarks

The Pelagic AC highly appreciates the request for advice on control of the landing obligation in pelagic fisheries. We firmly believe that each policy is only as effective as it is enforceable and its success depends on the buy-in of those affected by it. As such the Pelagic AC is the main stakeholder body to be consulted given that it brings together the EU catching and processing sector, environmental NGOs, recreational fishermen and others affected by the Common Fisheries Policy.

In April 2014 the Pelagic AC published an extensive document providing advice on the implementation of the landing obligation in pelagic fisheries to the Member States and the Commission¹. This recommendation also included a chapter on control, monitoring and enforcement (MCE). While at this stage the Pelagic AC did not feel comfortable enough to provide detailed recommendations on the MCE instruments to be used, it strongly advocated the need for a level-playing field for both EU and non EU fishing vessels. The call upon Member States and the Commission to guarantee such a level playing field is now stronger than ever before. The Pelagic AC is keen to understand what discussion has taken place with third countries fishing in the NWW region in regard to MCE of pelagic fisheries². Fisheries control practice from within the EU and outside, including the control activities of the landing obligation so far, demonstrate that a level playing field is far from being implemented and the Pelagic AC is committed to support the Member States and the Commission in realizing this ambition.

Detailed recommendations

Recommendation 1

Legal ambiguity should be systematically removed through the implementation of the 'omnibus regulation' and allied changes to enable a robust regulatory framework supporting the landing obligation.

Pelagic AC comment:

The Pelagic AC fully agrees with this recommendation.

Recommendation 2

The interface between the LO and ABP provisions should be addressed to provide clarity on systems required to ensure undersized fish are restricted to the purposes other than direct human consumption.

Pelagic AC comment:

ABP provisions should not apply to undersized fish caught in pelagic fisheries since this would make the operation of pelagic fisheries impossible. Under the ABP provisions special operating permits are required and it is stipulated that animal by-products must not be handled in the same premises as

¹ <http://www.pelagic-ac.org/media/pdf/20140429%20PRAC%20land%20obl%20recom.pdf>

² To our knowledge no efforts have been to integrate Norwegian and Faroese authorities into the regional discussions, although both stocks and fishing grounds are shared.

human consumption products. However, in reality it will only become apparent whether undersized fish has been caught once the catch has been sorted and graded in the factory. For pelagic vessels classifying undersized fish as animal by-product would create the same problem in relation to complying with food safety regulations since the catch is being sorted, graded and frozen on-board the vessel. Furthermore, the Pelagic AC understands that under the Omnibus Regulation Article 1, point 11, 10% of undersized catch may be used for human consumption, which would create additional difficulties if undersized fish is classified as animal by-product. The Pelagic AC really requires clarity on this point. Not classifying undersized fish as animal by-product, however, does in no way mean that this fish should be used for human consumption, other than the amount exempted under the Omnibus Regulation. In this respect it is important to note that the Omnibus Regulation under Article 1, point 11, goes further than this because it stipulates that for undersized pelagic fish up to the amount of 10% of the catch, article 15 of 1380/2013, does not apply at all, i.e. may be discarded. The Pelagic AC believes it is important that authorities should make provisions that the pelagic fleet is able to apply this exemption of the landing obligation. As a general principle the Pelagic AC advocates that good quality pelagic fish should not be downgraded to ABP status.

Recommendation 3

Specific targeted comprehensive compliance programs, harmonized at the regional level, will be necessary to generate the necessary changes in NWW pelagic fisheries and ultimately achieve compliance with the LO. Key components might include purpose-designed leaflets describing fisher's obligations, translated into the various languages and made available to the control authorities of all regional MS.

Pelagic AC comment:

The Pelagic AC agrees with the principle of this recommendation, but would like to receive more concrete information on such compliance programs and emphasize that a level playing field must also be realized in this regard. Purpose-designed leaflets and other information should also be made available to non EU fishers fishing in EU waters and should hence be translated into Norwegian and Faroese.

Recommendation 4

Clarification should be developed on the actual requirements around de minimis allowances, in particular quantitative limit considerations for individual vessels. Assuming individual MS decide on the de minimis management procedures for their flag vessels, such information should be available to the control authorities of all regional MS.

Pelagic AC comment:

This recommendation has been included under the heading "a culture of compliance". The Pelagic AC agrees that information on de minimis management should be available to the control regional authorities, but disagrees that this recommendation would contribute to creating a culture of compliance. In order to create a culture of compliance it is of the utmost importance to establish a level playing field and to suggest concrete actions that clearly indicate MS intentions to treat fishermen equally across EU waters, independent of whether they are flying under the flag of a MS or a non-EU country.

Moreover, while the Pelagic AC understands the desire for allocating de minimis exemptions from a control point of view, this would reduce flexibility. Fisheries are not always predictable and a de minimis is a legal tool to cope with bycatch that could not be prevented nor predicted. Therefore, MS should carefully consider how to handle implementation and control of a de minimis exemption by

including flexibility measures which are consistent with provisions of Article 15 of the Common Fisheries Policy³ in the use of a de minimis.

Recommendation 5

Clarification should be provided to fishers on the benefits of logging discards.

Pelagic AC comment:

The Pelagic AC regards this recommendation as rather weak. Instead of merely stating that fishers should be provided with clarification on the benefits of logging discards, it would have been more valuable to actually list the benefits. From a pelagic fisher's point of view these benefits might consist of better science and a justification for exemptions from the landing obligation. Regarding better science it can be argued, however, that according to ICES discarding in pelagic fisheries is negligible and this information would hence not improve scientific advice. Instead of emphasizing only the benefits of logging discards, the benefits of logging all catches, both at sea and at shore, should be stressed. At the same time it must be ensured that the same logging requirements apply across all EU countries and EU vessels as well as non EU vessels fishing in EU waters.

Recommendation 6

Promotional campaigns to provide clarity on the practical ramifications for fishers should be produced.

Pelagic AC comment:

Regarding recommendation 6 the Pelagic AC would again like to stress the importance of establishing a level playing field. It is not sufficient to only provide clarity on the practical ramifications for fishers, but it must also be made clear that all fishers are treated in the same way.

Recommendation 7

NWW Compliance and Control strategies should be implemented in a harmonious manner and without conflict with strategies implemented in adjacent regions particularly NS and SWW.

Pelagic AC comment:

The Pelagic AC strongly agrees that a harmonious approach is needed in terms of compliance and control strategies across the NWW, SWW and NS. It is even recommended that the same strategies should be used in these areas in regards to pelagic fisheries to prevent a situation in which a fisher has to change its operation because he crossed the border between those areas.

Recommendation 8

Data exchange systems should be developed within the region to optimize risk analysis by all control authorities. A useful starting generality would be that anything which might augment the accuracy of risk analysis should be available to all relevant authorities as rapidly as possible. Explicit enhancements over EU requirements exist around

- Vessel/fleet authorization details including fishing opportunity and LO-exemption access [This point not universally supported]
- Gramme-size data from inspections, and processing or sales records at sea or on land
- Official control findings, including compliant inspections

³ Regulation 1380/2013

Pelagic AC comment:

The Pelagic AC acknowledges that vessel/fleet authorization details including fishing opportunity and LO-exemption access is in theory a valuable, albeit in reality a highly problematic idea, especially from an individual vessel point of view. Vessels are members of Producer Organizations (PO) and as such quota swaps are constantly ongoing between vessels of the same PO, but also between POs within and across countries. This means that a vessel's and a fleet's fishing opportunities regularly change and might even change at the moment of inspection. The introduction of the LO might have further increased the use of quota swaps. The Pelagic AC therefore considers the first bullet point of this recommendation as impossible to realize.

However, the Pelagic AC does support the other two bullet points. Gramme-sizes are considered an especially powerful control tool, which is being addressed in more detail under recommendation 12.

Recommendation 9

The EFCA Fisheries Information System (FIS) should be used as the central exchange hub, and repository of all data which might inform risk analysis. In addition to raw data sharing e.g. logged vessel catches, automated analytical systems capable of detecting patterns consistent with compliance risks should be developed to provide real-time risk analysis information to the various state authorities in the region.

Pelagic AC comment:

The Pelagic AC supports this recommendation.

Recommendation 10

The NWW Pelagic SCIP/JDP and the coordination role of EFCA should be leveraged to support the implementation of the landing obligation in pelagic fisheries in NWW. This established SCIP should serve as a key platform to maximizing the risk basis, control coordination, and ultimate effectiveness of available controls. This could include where appropriate, e.g. when continuous monitoring is not deployed, at-sea inspection work including boarding from patrol vessels and aerial surveillance, as well as landing controls and subsequent marketing controls.

Pelagic AC comment:

The Pelagic AC supports this recommendation, but would also like to point out that results from the existing EFCA JDP for pelagic fisheries in NWW are already available and should serve as basis for risk analysis.

Recommendation 11

At-sea inspection procedures should be developed and harmonized within the region, through the work of the NWW Pelagic SCIP. These procedures should incorporate agreed best practice in verifying compliance with the LO.

Pelagic AC comment:

The Pelagic AC supports this recommendation. Furthermore, in securing a level playing field the Pelagic AC underlines the need for such inspection procedures to be aligned and coordinated with control groupings in all regional bodies.

Recommendation 12

Information on gramme sizes obtained through inspections at-sea and after landing, should be shared amongst all of the authorities in a region, to optimize risk-based deployment of at-sea controls.

Pelagic AC comment:

The Pelagic AC considers live information on gramme sizes is a powerful control tool and advises that a system based on the collection and haul by haul transmission of gramme size information should be mandatory for all fleets involved, both EU and non EU. Given the sensitivity of these data from a market aspect, however, there must be a clear understanding that these data have to be treated confidentially and should only be available to the control authorities and for risk analysis (in conformity with article 112 and 113 of Council Regulation 1224/2009)⁴.

Recommendation 13, 14 and 15

Consideration should be given to CCTV/REM systems being supported by the provision of haul to haul information where appropriate, not transmitted but retained on-board and available upon inspection by Coastal State and submitted along with CCTV footage to the flag state.

Coastal State input to risk-based review of CCTV footage by Flag State should be facilitated to maximize effectiveness of CCTV/REM systems.

Whilst initial deployment of CCTV (REM) solutions is likely to involve on-board recording to media subsequently accessible by Flag States, advancing technology should be explored to maximize availability of these data, either bilaterally or potentially to relevant authorities across the region.

Pelagic AC comment:

Risk based control systems and schemes are the basis for any efficient and effective system of control and compliance. The Pelagic AC recommends that the NWW in coordination with other regional groupings and authorities in relevant Coastal States develop a comprehensive and uniform basis for risk based analysis of fishing vessels and fishing operations. The Pelagic AC further recommends that a uniform and internationally agreed basis for risk based analysis should be the basis for developing adequate and targeted control measures and tools applied uniformly in all fleets targeting stocks in the respective areas.

Recommendation 16

Automated algorithms should be developed under the framework of the EFCA coordination of the SCIP/JDP to interrogate existing ERS and VMS data, and identify variances in catches logged by vessels which might indicate risks of non-compliance with the LO.

Pelagic AC comment:

The Pelagic AC supports this recommendation, but would like to add that gramme size data should be included in this recommendation under the conditions as set out in the comments under recommendations 13, 14 and 15.

Recommendation 17

Port procedures should be developed and harmonized within the region through the work of the NWW Pelagic SCIP/JDP. These procedures should specifically incorporate agreed best practice in verifying compliance with the LO.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:pe0012>

Pelagic AC comment:

The Pelagic AC supports this recommendation, but considers it important that this recommendation applies to a wider region than the NWW since some vessels, while fishing in the NWW, land their catches at ports outside the NWW including Norway and Faroe Islands.

Recommendation 18

Costs of implementing control systems designed around implementation of the LO should be subject to a specific assessment by EFCA using methodologies developed assessing JDP costs. Such LO costs assessment should begin after an appropriate time-lag to allow for transition, in the order of 2 years.

Pelagic AC comment:

The Pelagic AC supports this recommendation, but would like to see the costs for vessels included in the assessment.

Recommendation 19

Control authorities within the region should collaborate to ensure maximal sharing of experience in implementation of CCTV/REM and harmonization of deployment strategies across the region.

Pelagic AC comment:

The Pelagic AC agrees that deployment strategies across the region have to be harmonized.

Furthermore, the Pelagic AC considers the haul by haul collection and transmission of real-time gramme size data an effective tool in securing both real time, at sea and at landing monitoring of fishing operations. Collection of and collection protocols for registering gramme size data provide the essential tool for risk analysis and risk profiling. The Pelagic AC recommends that a risk based system centered around the collection and haul by haul transmission of gramme size information should be mandatory for all fleets involved, both EU and non EU.

Recommendation 20

All available control tools should be considered as parts of a complimentary matrix to deter and detect noncompliance with the LO.

Pelagic AC comment:

The Pelagic AC supports this recommendation.

Recommendation 21, 22 and 23

The inherent high risk category of vessels should have continuous monitoring of compliance in all fishing trips through the installation of CCTV/REM systems, supplemented by data analysis and inspections at-sea and after landing.

Transient high risk vessels should be the focus for available Control Observer deployment. Non-observed trips should be prioritized for at-sea official controls applying SCIP-agreed LO inspection protocols.

Strategies for verification of compliance with LO in intermediate risk vessels should include application of SCIP-designed data analysis and inspection protocols, to specifically address LO risks. A risk-based sample of fishing trips should be subject to continuous monitoring of compliance through deployment of control observers.

Pelagic AC comment:

The Pelagic AC considers it inappropriate to define high risk vessels on the basis of pumping capabilities and the Pelagic AC does not accept this simplistic basis for the NWW risk assessment. Fishing vessels that do not have pumping equipment on-board can as easily slip or discard catch. Compliance with the LO depends solely on the behavior of the skipper, not on the technical specifications of the vessel. High risk vessels are those vessels operated by a skipper not abiding by the law and for those vessels Pelagic AC supports the idea of continuous monitoring of compliance in all fishing trips.

Recommendation 24

Strategies to verify compliance with LO in low risk vessels should include application of SCIP-designed data analysis and inspection protocols, to specifically address LO risks.

Pelagic AC comment:

The Pelagic AC supports this recommendation

Recommendation 25

In order to ensure enforceability and hence compliance throughout the region, those control recommendations proposed by CEG which are subsequently ratified by the HLG should be enacted within an EU regulation directly applicable in the region.

Pelagic AC comment:

The Pelagic AC agrees with this recommendation.

Recommendation 26

NWW control authorities should consider harmonized approaches to assessing gravity of LO non-compliances, and the resultant need for sanctions.

Pelagic AC comment:

The Pelagic AC fully agrees that harmonized approaches to assessing the gravity of LO non-compliance are urgently needed. A situation in which one Member State takes a different approach than another Member State must be avoided under all circumstances.

Recommendation 27

Dedicated programs to measure compliance should be implemented to assess compliance with the LO in pelagic fisheries, with view to first iteration for NWW pelagics in 2017.

Pelagic AC comment:

The Pelagic AC agrees in principle with this recommendation, but would like to receive more information regarding how compliance will be measured, i.e. what are the concrete parameters that will be measured in order to assess compliance? Control of the LO should be seen as an adaptive process during which different options have to be explored that could provide workable solutions. Furthermore, the Pelagic AC would like to be part of the evaluation process.

Annex II: Experiences with the landing obligation in pelagic fisheries

General remarks

Provided below is a summary of issues identified per country by members of the Pelagic AC in relation to the implementation of the landing obligation in pelagic fisheries. This summary is by no means exhaustive, but draws attention to the most pressing issues and offers a good starting point for further reflection.

Denmark – RSW vessels

The control authorities have evaluated the implementation of the landing obligation in the pelagic sector. They have reported that there are no issues of concern in relation to compliance and that there have been no infringements related to the implemented landing obligation.

The main issues for the Danish sector is of legal and administrative nature and deals with how to manage fisheries for sandeel, sprat and Norway pout previously regulated by now obsolete “minimum percentage of target species” provisions. Industry and authorities are dealing with these issues in close collaboration.

France – general

Reporting obligations remain unclear, e.g. in regards to the uptake of de minimis exemptions. Fishermen are unsure how possible de minimis exemptions are applied, e.g. on individual vessel or Member State basis. It is therefore of the utmost importance to provide clarification on reporting obligations to fishermen using simple language that is easy to understand.

France – freezer-trawlers

The following issues have been identified on French freezer-trawlers, but might be transferable to freezer-trawler vessels in general.

- Does fish not destined for human consumption have to be sorted species by species? This is currently being done, (e.g. mackerel is not being mixed with boarfish or horse mackerel).
- A small amount of fish will fall onto the deck when hauling the net on-board or be trapped in the cod-end. Does this fish have to be brought into the factory deck?
- A situation can occur in which at the end of a fishing trip it becomes apparent that the last catch is bigger than what the vessel can hold, e.g. the catch could be 60 tonnes while there is only space for 50 tonnes. This is very difficult to estimate before the catch is being taken on-board. How should the remaining 10 tonnes be treated?
- Fish frozen for non-human consumption must not be packed (no plastic, no cartons) because the fish meal factories do not want any packaging. Consequently, the fish blocks move on the pallets in the cargo hold which creates a highly dangerous situation for the crew. How could this problem be solved?

Germany – freezer-trawlers

It has been noted in Germany that the interpretation of different regulations varies from Member State to Member State leading to confusion amongst skippers regarding which interpretations are correct. Several specific issues have also been identified:

1. Germany does not have quota to cover bycatch of hake and boarfish and obtaining such quota from other Member States is hardly possible.
2. There is a regulation on how to deal with boarfish bycatch in the horse mackerel fishery (5% rule), but this regulation is missing in the mackerel fishery.
3. Different minimum conservation reference sizes in the mackerel fishery (see below)
4. Discarding meshed fish that has fallen on deck is forbidden. At the same time this fish must not enter production facilities as this would otherwise violate veterinary regulations. A solution to this problem is urgently needed.
5. On pelagic trawlers it is forbidden to discard fish from production areas. At the same time some species can and must be legally discarded. How should this contradiction be solved? German inspectors have already noticed this issue.

Ireland – RSW vessels

Discards and bycatch can only be detected at factory level. Therefore it is not possible to report information on discards and bycatch during the fishing trip. This information can only be provided once the catch has been sorted in a factory.

For this year there has been a zero TAC set for herring in area VIa south, VIIb,c. How should bycatches of herring in VIa south, VIIbc in other pelagic fisheries be dealt with?

Netherlands, UK, France, Germany – freezer-trawlers

Hereunder is a list of issues identified for pelagic freezer-trawler vessels and relevant for vessels from The Netherlands, Germany, UK and France.

1. Bycatch of species for which no quota or not sufficient quota is available and for which it is very difficult or impossible to obtain quota. An example that has become apparent during this year in the pelagic fisheries in western waters is western hake (HKE/571214). For this bycatch no de minimis exemption has been defined. Inter-species flexibility cannot be applied either because ICES has not defined the PA reference points for his stock.
2. In area IVa mackerel can be caught in large quantities. This can be mackerel of TAC area MAC/2a34 or mackerel of TAC area MAC/2cx14 with the special condition MAC/*04a-EN (western mackerel to be caught in IVa). The minimum conservation reference size (MCRS) for western mackerel is 20 cm and for North Sea mackerel is 30 cm. The argumentation behind this difference in MCRS lies in the (far) past and it has not been able to retrieve it. The question is what MCRS applies to mackerel caught in IVa. 30 cm for all mackerel caught in IVa, independent if this is coming from MAC/2cx14 or MAC/2a34 quota? Applying an MCRS of 30 cm in IVa (which is the case at the moment) means that mackerel catches sized less than 30 cm are defined as below minimum size and can therefore not be used for direct human consumption. The value of non-human consumption mackerel is much lower. Mackerel with a size of for instance 27 cm is perfectly fit for human consumption. The solution must be sought in a downward revision of the MCRS for North Sea mackerel.

3. The Omnibus regulation stipulates under point 11 that article 15 of the CFP (1380/2013) shall not apply to undersized sardine, anchovy, herring, horse mackerel and mackerel, within a limit of 10 % by live weight of the total catches retained on board of each of those species. This means de facto that 10% of the total pelagic catches of these species, and on the condition that these are below MCRS, can be discarded, or, when not discarded, can be destined for direct human consumption. Although the Omnibus regulation has been published in May 2015 the pelagic freezer-trawlers do not apply this derogation to the landing obligation during their operation out of fear that control authorities in Member States are not aware of this derogation. This derogation could be the solution for the issue raised under point 2.
4. Before the introduction of the landing obligation pelagic freezer-trawlers all had a so-called discards chute through which catches of fish below minimum landing size or over-quota catches or catches of prohibited species were discarded. Since the introduction of the landing obligation and subsequent inspections at sea all pelagic freezer-trawlers have sealed off their discards chutes. This means that all catches are now retained on board. However, there are still catches that can or must be discarded. Such as catches under a de minimis exemption, bycatches of forbidden species and bycatches of species that do not fall under the landing obligation. On a pelagic freezer-trawler these catches become apparent mostly during the processing activities at factory deck level. Therefore, it is practically very cumbersome / difficult to throw these catches back to sea. This violates labor conditions on-board and creates problems for safety at sea for the crew concerned.
5. Quota uplift.

Quota uplifts as essential part of the implementation of the landing obligation – widely discussed at this moment in the demersal realm - have not played a role at all during the introduction of the pelagic landing obligation. Quota uplifts for species that are caught and bycaught in pelagic fisheries with the aim to ease the introductory difficulties can be a solution of bycatch problems in the pelagic landing obligation and should be discussed.
6. 'Waste' from the fishing operation.

During the various phases of a fishing operation – including the processing at factory deck level – a small portion of fish is not usable because it could be defined as a 'waste' product. This could be meshed fish, or remains of fish after cleaning the (buffer) tanks, or fish that has fallen out of the processing lines or fish that has been eaten by predators (mammals or birds). These are usually small amounts of fish and because this fish cannot be used anymore for direct human consumption it should be accepted by control authorities that this fish may be thrown back to into the sea.

Scotland - RSW vessels

No significant problems have occurred to date with the implementation of the pelagic landing obligation. Scottish RSW vessels have fished mackerel in January-February, blue whiting in March-April, herring in the summer and the mackerel fishery is again commencing in the autumn. Many vessels land mackerel in Norway and have not encountered any major issues. Small bycatches of horse mackerel in the quarter 1 mackerel fishery have been graded out. Marine Scotland stated that all whitefish bycatches must be covered with quota swaps. One vessel accidentally caught spurdog which is a zero TAC species and it remains unclear how to handle such catches. One Scottish pelagic vessel has been piloting CCTV since 2013 in a joint project with Marine Scotland Compliance. A small

vessel had to discard mackerel because of safety issues. This was detected by an inspection airplane, but the case was classified as *force majeure*.

Spain – purse-seine vessels

To date no problems have been reported in Spanish pelagic (purse-seine) fisheries thanks to the de minimis and high survivability exemptions. Due to low bycatch rates these exemptions are sufficient to allow a smooth implementation of the landing obligation.

Sweden

The introduction of the landing obligation in the Swedish pelagic fishery has on the whole been less troublesome than expected. A reasonably good and healthy relationship with the competent authority and others has ensured a relatively smooth introduction of the landing obligation. One problem, however, is in terms of catches and quota coverage. Since ITQ only applies in the pelagic fisheries in Sweden, there is no option to have quotas on the species that may be bycatch. This is a problem that must be solved in due course. A need for better selectivity has been identified in the herring fishery during autumn when bycatch of saithe may occur. Therefore, a project has been initiated aiming at finding a sorting grid to drastically reduce the bycatch of saithe. Experience to date with this grid are very good and people are hopeful that the project will lead to positive results. From a control perspective, it is still a major problem with the way samples are to be taken. This requires clarification, but has in itself nothing to do with the introduction of the landing obligation. Nevertheless, this issue deserves immediate attention.