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Subject: Recommendations on control of the landing obligation

Dear Ms Colliander,

I am pleased to submit to you the Pelagic AC's comments and recommendations on the "report on evaluation of different control methods for monitoring compliance with the pelagic landing obligation" submitted by the Scheveningen Control Experts Group to the High Level Group in August 2014 (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 next HLG meeting of the Scheveningen Group.

Yours sincerely,

A handwritten signature in black ink that reads 'Ian Gatt' with a small flourish at the end.

Ian Gatt
Chairman Pelagic AC

Annex I:

Recommendations on the “report on evaluation of different control methods for monitoring compliance with the pelagic landing obligation” submitted by the Scheveningen Control Expert Group in August 2014

General remarks

The Pelagic AC appreciates the sharing of the above mentioned report and wishes to comment on the recommendations provided by the Scheveningen Control Expert Group (CEG). 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 both among EU-fishing vessels and between 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 North Sea in regards to MCE of pelagic fisheries². Fisheries control practice from within the EU and outside, including the control activities of the landing obligation so far, demonstrates 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. Unfortunately, the report of the Scheveningen CEG fails to give consideration to this issue and therefore we would like to repeat our concerns in relation to control of third country vessels fishing in the North Sea.

Furthermore, we would like to emphasize the need for better collaboration between the Scheveningen Group and the Pelagic AC. We have only recently, in October 2015, received the report of the CEG even though it had been finished in August 2014. Not once during the work of the Scheveningen CEG has input been sought from the Pelagic AC despite the relevant expertise available within the AC. Thanks to this expertise the Pelagic AC has identified the mandatory collection of gramme sizes as a powerful, additional control tool which should be considered by the Scheveningen Group. Therefore we would like to request that the Scheveningen CEG is tasked to evaluate the potential implementation of mandatory gramme size collection. This tool can easily be implemented and would provide a real-time picture of the situation on the fishing grounds. Any discrepancy in gramme size data could easily be detected and should immediately trigger additional controls.

Finally we would like to repeat our request to set up a regional sub-group dealing exclusively with the widely distributed stocks. Rather than having three regional groups dealing with the same stocks and thereby risking incompatible or confusing rules, there should be one regional sub-group dealing with Northeast Atlantic mackerel, Western horse mackerel, blue whiting, Atlanto-Scandian herring, North Sea herring, herring in area IIIa and boarfish.

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

² To our knowledge there have been no efforts to integrate Norwegian authorities into the regional discussions.

Detailed recommendations

Recommendation 1: Mandatory collection of gramme sizes

Gramme sizes collected on a haul by haul basis offers a real-time monitoring tool that can be rapidly implemented without much effort. It is a cost-efficient, yet highly effective tool. The mandatory collection of gramme sizes should therefore be added as a control tool to the table in annex A of the Scheveningen CEG report.

Recommendation 2: Combination of control tools

The Scheveningen CEG should be tasked to look at combinations of different control tools rather than evaluating them in isolation.

Recommendation 3: Risk evaluation by vessel type

Risk evaluation by vessel type as listed in annex B should be reconsidered. Rather than categorizing vessels by length and impact it would be better to categorize them by gear and species, because some gears and species are more likely to trigger discarding than others.

Recommendation 4: Risk impact and likelihood of herring fisheries

According to scientific advice from ICES³ and STECF⁴ herring fisheries are generally very clean fisheries. Yet, they are scored higher in terms of risk impact and the same in terms of risk likelihood as the sprat fishery. However, the sprat fishery is known to have periodic herring bycatch problems while the fishery is quite large and hence the impact of discarding on the stock would be at least as high as in the case of herring. Furthermore, it is recommended to differentiate between different herring stocks.

Recommendation 5: Set-up meeting between the Pelagic AC and the inter-regional group

During the Pelagic AC's control focus group meeting on 28 January 2016 we have been informed of the existence of an "inter-regional group" consisting of the Scheveningen Group, the NWW group, the SWW group and EFCA. This inter-regional group seems to come close to fulfilling the role of the "pelagic sub-group" as requested by the Pelagic AC on numerous occasions, except that it is missing participation by the Baltic regional group, i.e. BALTFISH. We therefore strongly recommend setting up a meeting between this inter-regional group, BALTFISH and the Pelagic AC.

Recommendation 6: Harmonization of control rules across regions

We would like to emphasize again the importance of harmonized control rules and monitoring methods across regions. We foresee that this can be realized either through a specific regional sub-group dealing exclusively with straddling pelagic stocks or by coming together in an inter-regional group (see recommendation 5).

Recommendation 7: Close collaboration between the CEG and the Pelagic AC

Rather than discussing CEG reports after they have been finalized it is strongly recommended that a close collaboration between the CEG and the Pelagic AC will be established to enable the CEG to profit from the expertise and views different stakeholders can provide.

³ ICES Advice 2015, Book 9: Widely distributed and migratory stocks

⁴ Scientific, Technical and Economic Committee for Fisheries (STECF) – Landing Obligations in EU Fisheries - part 3 (STECF-14-06). 2014. Publications Office of the European Union, Luxembourg, EUR 26610 EN, JRC 89785, 56 pp.

Recommendation 8: Include control elements in discard plans

None of the pelagic discard plans currently in force includes elements of control despite the Pelagic AC's strong advocacy for uniform measures across regions and in relation to third country vessels. We therefore strongly recommend that in future versions of the discard plans control elements will be included. Furthermore we seek clarification on the legal possibility on the inclusion of control elements in Commission Delegated Acts

Recommendation 9: Level-playing field

To achieve a high degree of compliance with the landing obligation Member States must guarantee a level-playing field that includes third country vessels fishing in EU waters. Until now a level-playing field has not been implemented in regards to pelagic fisheries as witnessed by substantial discrepancies between the regional pelagic discard plans. While for example the discard plan in south western waters⁵ includes a de minimis in the pelagic trawl fishery for mackerel and horse mackerel in ICES area VIII, this de minimis exemption has not been granted in the north western waters⁶ nor in the North Sea pelagic discard plan⁷ despite the fact that all three plans cover the same mackerel and horse mackerel stock and that the fishing methods are the same.

Recommendation 10: Risk assessment based on gramme sizes

Control Authorities should carry out a risk assessment by analysing mandatorily collected gramme size information and other data available to control inspectors. Where the mandatory reporting of the gramme sizes shows that a vessel/vessels are in a high risk category those vessel/vessels shall be subject to additional monitoring and control requirements such as closed-circuit television (CCTV), observers, additional electronic reporting requirements (VMS and ERS) and others.

⁵ Commission Delegated Regulation (EU) No 1394/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in south-western waters

⁶ Commission Delegated Regulation (EU) No 1393/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in north-western waters

⁷ Commission Delegated Regulation (EU) No 1395/2014 of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea.

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 (northern North Sea) 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 (i.e. western mackerel to be caught in area IVa). The minimum conservation reference size (MCRS) for western mackerel (MAC/2cx14) is 20 cm and for North Sea mackerel (MAC/2a34) 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 area IVa. Should it be 30 cm for all mackerel caught in IVa, independent if it is coming from MAC/2cx14 quota or from MAC/2a34 quota or should the MCRS vary which the source of the mackerel caught in IVa? The question is relevant in light of the obligation to land all mackerel caught (independent of size) and the fact that mackerel below MCRS has a different status. A solution to this issue therefore must be sought by Member States.

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.
7. Article 22 of the Technical Measures Regulation stipulates that a vessel has to leave the so-called mackerel box if it has more than 15% of mackerel by weight in its catch. The consequence of this is that the vessel that has more than 15% mackerel on board has to leave the mackerel box. In the horse mackerel fishery in that area it can happen that mackerel is unintentionally caught. Under the landing obligation this mackerel bycatch has to be kept on-board the vessel which can lead to the situation that at a certain point more than 15% of the catch consists of mackerel. At that moment the vessel has to leave the mackerel box and its fishing grounds for horse mackerel to catch horse mackerel in another area before being allowed to enter the mackerel box again. Given the enormous size of the mackerel box this can lead to prohibitively high costs and difficulties.

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 when discovered in the processing factory. Clarification in this regard is urgently needed. One Scottish pelagic vessel has been piloting CCTV since 2013 in a joint project with Marine Scotland Compliance.

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.