



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
POLICY DEVELOPMENT AND CO-ORDINATION
COMMON FISHERIES POLICY AND AQUACULTURE

Brussels,

Mr. Sean O'Donoghue
Chairman Working Group II
Pelagic Advisory Council
Louis Braillelaan 80
2719 EK Zoetermeer
The Netherlands

Dear Mr. O'Donoghue,

Thank you for your letter dated 11 November 2016, in which you requested clarification on potential incompatibility between the landing obligation and provisions in the Animal By-product Regulation¹. Over the past few weeks, Commission services have exchanged views with Member States on this issue and concluded that the fact that a fish is damaged during the fishing operation does not automatically mean that it is unfit for human consumption or other uses.

Indeed, it appears that a number of different situations may occur:

1. Damaged fish can be declared fit for human consumption if it complies with sanitary requirements² and freshness criteria;
2. Damaged fish fit for human consumption but not intended for human consumption for commercial reasons may, at any time, in accordance with Articles 2(1)(b) and 10 of Regulation 1069/2009, be declared as Animal By-Product of Category 3 material. This could be used, amongst others, for the production of fishmeal for feeding of farmed animals.
3. Only damaged fish that has been declared unfit for human consumption because it does not comply with the sanitary requirements (susceptible of contamination, subject to decomposition or spoilage so as to present an unacceptable risk to public or animal health) cannot be processed into feed for farmed animals. It would be declared as Animal By-Product of Category 2 material, in accordance with Articles 2(1)(a) and 9 of Regulation 1069/2009.

Regarding Animal By-Products legislation (ABP) in relation to fish below minimum conservation reference sizes (mcrs), it is important to note that undersize fish is not automatically an animal by-product. If the fish is fit for human consumption, and handled according to food hygiene rules, then it can remain in the food chain. The confusion seems to lie in the term "direct human consumption" which is not defined in the new CFP. Further discussion may be needed on this term and how it can be differentiated from use of what

¹ Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002.

² In particular, with food hygiene regulations: Regulation (EC) 852/2004 on the hygiene of foodstuffs ; Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin and Regulation (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

could be called "indirect" human consumption (e.g. food additives, fish oils), some of which are already identified as legitimate uses of fish below mcrs in Article 15(11) of the CFP. There is no exhaustive list of these 'indirect' uses but it is clear from the current legislation that undersize fish with destination for such uses have to be stored and handled throughout the product chain as food products.

Regarding the storage and handling of undersize fish in ports and markets, under the ABP legislation the operator (e.g. the fishermen, the trader, the processor) can decide when (in the chain) a product is classified as an animal by-product. Once this classification is made it is irreversible. On this basis it seems generally advisable for a fisherman to handle such fish on board as food until the decision is made to classify this as ABP. The provisions under the Union control regime allow for this. If a fisherman chooses to classify his catches as ABP he becomes responsible for following the process for the handling and disposal of the fish (until the produce changes ownership).

Products destined to the food chain must follow food hygiene legislation regarding handling, storage and approval/registration. Once they are declared ABP products they should follow the procedures set out in Regulation 1069/2009. The Commission is examining the need for better clarification about these obligations to operators in the ABP legislation.

I hope this provides clarity and please do not hesitate to contact us if you have further questions.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Elisa ROLLER', with a stylized, cursive script.

Elisa ROLLER