ADVICE

IMPLEMENTATION OF THE LANDING OBLIGATION (LO) OUTSIDE EU WATERS

PROPOSAL FOR A DELEGATED ACT OF DEROGATION IN NAFO FISHERIES

LDAC Response to European Commission´s consultation to stakeholders

Status: Adopted by Consensus on 9 September 2016

1. Introduction / Overall Context

The proposed regulatory text of the Commission ("*Delegated Act*") responds to the provisions of Article 15.2 of the Basic Regulation of the CFP (EU) No. 1380/2013 and establishes a derogation from the landing obligation for such NAFO stocks in which a specific legal conflict occurs with such articles under NCEM which authorize or require discards in certain cases.

For the three cases identified, in the opinion of the LDAC, the project properly reflects the incompatibility of such NCEM rules with the LO: the requirement not to retain on board redfish in zone 3M once the Olympic quota has been completed (NCEM Art 5.3 (c)), the maximum limits to retentions and authorised by-catches involving the obligation to discard the excess (NCEM Art. 6), with the particular case of capelin as a species under a moratorium (NCEM Art. 6.3 (d)), and the mandatory discard of catches with sizes below the minimum included in Annex I.D (NCEM Art. 14).

In all such cases, the priority of the international standard is recognised, and it is made clear that NAFO rules continue to apply, by specific derogation from the obligation to land under Article 15 of the Basic Regulation.

However, the proposal does not cover other situations in which a conflict or a lack of legal certainty may arise between an obligation under NAFO's NCEM of not retaining on board, and the obligation to land at a port as provided for under Community legislation. This might entail a clash of rules leading to the appearance of the so-called "Choke species", which could limit the activity of vessels and potentially preventthe normal catch of the allocated quotas.

2. Listing and case study of potentially limiting species ("*choke species*")

The origin of these problems might come from one/more of the following causes:

a) The effects of the asymmetry in the distribution of quotas between NAFO Contracting Parties and, in turn, the distribution of quotas allocated by NAFO to the EU, based on the relative internal stability between the Member States participating in the fishery.

The quota allocation shows major imbalances, and many cases of zero quota for by-catches, as may be seen in the table in Annex I which includes the quotas allocated to each EU Member State for 2016. The actual allocation of keys for almost all NAFO main fish stocks dates from the 90s, and the composition of the active fishing fleets today on the fishing grounds is dramatically different of that of 20-25 years ago. The LD AC requests that efforts are undertaken within the EU to improve the situation regarding the allocation of quota among Member States, where possible, being aware that this relates to relative stability.

Furthermore, these decisions are taken always on a single stock basis, not taking into account the unavoidable mixed nature of most of the fisheries. This is reflected in the actual Annual NAFO Quota Table (NAFO/FC Doc. 16/01 Annex I A), where many void spaces can be seen in the quota basket of most of the Contracting Parties.

Other quota distributions recognized in the domestic legislation of some Member States between different fleets (for example: 3M cod in the Spanish fleet with the express prohibition to retain on board for vessels lacking quota) ought to be included in this section, which may lead to additional cases of zero quota for some vessels of a Member State.

b) Incomplete knowledge of actual discards:

Although scientists recognise that data on discards are generally available, they also consider that such data are limited and therefore difficult to assess due to the lack of sufficient knowledge covering all areas and all seasons. The data drawn from observer campaigns is patchy since their coverage in time and space is limited (besides, the behaviour of vessels does not enable to draw conclusions because it changes according to the quotas available).

The catch report (CAT) is one of the documents that every fishing vessel in NAFO should transmit electronically every day to its FMC, and it contains the quantity of catch retained and the quantity discarded by species for the preceding day (NCEM Article 28 – Monitoring of Catch).

The CATs from previous years are not useful as they contain very limited information, given that discards were not being reported since it was not mandatory. Moreover, they do not properly identify the origin nor the area, and the by-catch authorized in each circumstance should be taken into account. It is true that from January of the present year the information on a haul by haul basis is compulsory, but this will require some time to process and perform an analysis enabling to draw conclusions. The new data that will be available from 2017 on would hopefully give a much better view and information.

In summary, there are limitations of the information contained in the historic CATs, in particular with regard to the confidence and reliability of the historical data in terms of discards reporting (composition of species, its weight and percentages of overall catches; and origin). The LD AC asks that all efforts are undertaken to improve the data situation on discards to allow for improved management.

c) The difficulties to implement the flexibilities provided for under the LO (i.e. *de minimis*, for high survival rates, and inter-species) in an international environment, given the lack of sufficient scientific data and the potential incompatibility between such rules and NAFO's NCEM rules.

The general NAFO standard rules on by-catch allow to keep on board a part of the by-catch for which the vessel has no quota, having a limitation of 10%, as general rule and the excess should be discarded.

However, scientists in some cases recommend reducing this figure for conservation purposes, which, in the new context of the LO, may also contribute to the emergence of "choke" species. Normally, the Scientific Council does not quantify the recommended by-catch rates, but uses in its evaluations a standard expression like: "*Bycatches of xxxxx should be kept to the lowest possible level and restricted to unavoidable bycatch in fisheries directing for other species*"[1]. It is then the Fisheries Commission who sets these limits in the NCEM Article 6 – Bycatch Retention on Board of Stocks Identified in Annex I.A as Bycatch When No Directed Fishery is Permitted (See NAFO/FC Doc. 16/01)

To illustrate the implications of these recommendations with a management example, for those NAFO stocks for which the fishery is closed, this limit is generally reduced to 5% and in some areas, and for certain species, at the request of the Scientific Council the limit is further reduced down to 4% -3% or even eliminated in certain cases. It often happens, with stocks under recovery that are already close to the Blim, that the by-catches increase and, if the limit continues low, the need for discarding is bigger.

It must be remembered that, in the past, the EU waived the small quota of Yellowtail flounder in 3NO it had been allocated, in order to benefit from the by-catch rule. The problem lies in that, in many cases, NAFO rules of by-catch (see Article 6 of the NCEM NAFO/FC Doc. 16/01) cannot be applied i.e.: if an EU´s vessel has a certain by-catch of a specie for which she has not quota, but other EU country has still quota available, the discard obligation reappears again and enters in conflict with the LO.

In the Technical paper "*Management of Discards in EU Fisheries Beyond EU Waters*" (henceforth, EU Study on Discards in non EU waters), developed under a specific contract for the provision of advice on the management of discards in EU fisheries beyond EU waters (Phases I and II), financed by the EU Commission and coordinated by the MRAG, IEO and AZTI, with the collaboration of IPIMA (Portugal), and IRD (France), some of the complexities of implementing the EU landing obligation in areas beyond EU waters are explored.

[1] See for example NAFO SCS Doc. 16/05, 08, 09, 10, 11, 12, 13, 14, 15

It should be noted that this study covers all the external fisheries beyond the EU waters, and that only a part of the document is devoted to NAFO. The aforesaid report says in Page XIV: *The data of highest quality were considered to be generated by observer schemes. However, scientific observer data were only available for a very small number of the métiers across the RFMOs (e.g. NAFO) and only for some vessels within those métiers. For all other métiers data on discards were based on logbook data, where available; vessels operating in some RFMOs (e.g. NAFO, NEAFC, ICCAT) are not required to record discards in detail for all species, and in some cases no reporting is required at all.*

The above arguments leads to the need for an analysis fishery by fishery in order to identify the species that define each fishery as well as the accidental catches, with a view to phased implementation of the LO. This must be within the time frames laid down in the basic regulation for demersal fisheries in international waters, i.e. the species that define the fisheries must be subject to the LO from 1/1/2017 and all other species not covered by Article 15(a) of the CFP from and 1/1/2019 A gradual, phased implementation allows the time to better assess the effects of the implementation of the LO and define possible exemptions or additional flexibility measures but the species should be subject to the LO as soon as possible and phasing should avoid a 'big bang' in 2019.

3. Targeted fisheries for the European long-distance fleet in NAFO

The knowledge on the 5 major targeted fisheries to be considered in the NAFO area is limited in terms of discards as data shown below apply only to the Spanish fleet, as it has not been possible to access the data for other fleets.

EU Study on Discards in non EU waters, Phase I page 45, states that "*The best available information on discarding in NAFO métiers is the Spanish Scientific Observers data, which covers around the 20% of the Spanish total effort in the NRA. Discard information is collected as auxiliary information to the catch length distribution and hence there is no formal sampling in place to study discarding. Spanish Scientific Observers data does however prove a reasonably clear picture of the catch and discards composition of the different EU métiers working in the NRA. Due to the lack of the sampling design it is difficult to conclude anything about seasonal and temporal patterns in discarding.*"

The same study, Phase I, acknowledges however that the Spanish data could be a sufficient and valid support to know the catch and discards composition of the different NAFO's métiers (page 41): *In NAFO there is no official haul by haul data available to map the activity of the different métiers. Spanish NAFO observer data available allows mapping of activity of the Spanish fleet by mesh size (DCF level 6). The fishery footprint for DCF level 6 métiers in the 2011-2013 period, based on NAFO observer data from the Spanish fleet (extracted from NAFO SCS Doc. 14/06; 13/07 and 12/09) is shown in Figure 10. The Spanish fleet is involved in all of the EU fisheries and métiers in NRA. The effort of the Spanish fleet in the NRA is more than 40% of the total EU fleet effort, thus the footprint of the Spanish fishery should be very similar to the EU fleet footprint in the NRA.*

Finally, the EU study Phase II, in page 45, insist then in the need of collecting more information in order to have more complete data: *Improving data on discards: In order for existing input and output measures to be more efficient at reducing bycatch, it would be necessary to collect commercial catch independent information in real time to know the catch composition in the different areas. The NAFO observer program could be a key tool for discard and bycatch data collection and to control the implementation of the management measures. These data would not necessarily be needed for implementing gear modifications, which may be adopted by fishers generally.*

The pending question to solve here would be to identify the real reasons behind the actual discards, and the possible causes others than Art 6.3 NCEM alone that may point to a real obligation to discard, due to conflicts between NAFO and EU's regulations. The LD AC therefore requests that that efforts are undertaken to improve the data situation as outlined above by diversifying the collection of data where possible.

Analysis of the 5 main métiers or targeted fisheries for the European long distance fleet in NAFO based on Spanish discard data:

3.1. Greenland halibut (GHL) (NAFO_001_GLH) in 3LN: GHL would be the only species that defines the fishery which is quite clean, with relatively low accidental catches and by-catches, mostly consisting of deep-sea species, grenadiers and sharks - which have no catch limits- though also including some regulated species: witch flounder, plaice, cod and skate. It varies greatly with the seasons and depth. Current discards are almost nil, although there are small sizes of regulated species: redfish, cod, plaice, skate, witch flounder and forkbeard.

3.2. Redfish (NAFO_001_RED): The activity is performed in three areas, 3M (Olympic fishing), 3LN, and 3-O. In all three, redfish is the species defining the fishery. There are accidental catches of cod, Greenland halibut, plaice, yellowtail flounder, skate and witch flounder, and discards of the main species by size (there is no minimum size), and also small discards of plaice, skates, and witch flounder, possibly for exceeding the by-catch allowance. Changing the strategy for the fishery in 3M would bring about improvements because the start of the Olympic fishing early in the year mostly affects smaller sizes.

3.3. Cod (NAFO_001_COD): The fishery is only open in 3M and cod is the species that defines the fishery. There are some discards due to minimum size (NCEM Art. 14) and high levels of by-catch of redfish, with some discard at 2%. Technical measures could improve catch composition: tests with sorting grids are pending in order to improve selectivity and reduce discards by size.

3.4. Skates (NAFO_002) 3N (SKA): Skate is the species that defines the fishery, and some discards of this species are currently recorded, probably due to size, which ought to be analysed considering that the mesh size has been increased up to 280 mm. Levels of accidental catches are high. Discards due to size are recorded (NCEM Art. 14): yellowtail flounder, plaice, and cod. The potential opening of plaice in 3N would lead to an even more complex situation.

3.5. Shrimp (NAFO_003): The fishery takes place in two areas, 3L and 3M, both of which are currently under a moratorium, with no prospect of re-opening soon. Despite the use of the sorting grid, which is mandatory, there are discards of very small-sized redfish (+/- 4%), although it varies much depending on the year.

4. Final considerations and recommendations

- The problem of discarding very small redfish is common to several fisheries and it is due to the lack of a minimum size for this species. In order to redress this issue, it would be appropriate to propose an interim *de minimis* exemption for this species, subjected to develop the relevant scientific justification and evidence of disproportionate costs before its implementation.

- In all cases, the targeted species themselves ought to be considered as the species that define each one of the fisheries for which the LO comes into force on 1/1/2017, while the remainder of species caught would be considered "other" species covered by catch limits, and they would be phased in to the LO gradually, as potential additional measures that may affect them are defined, as soon as possible before 1/1/2019.

- If this approach is accepted, it would be necessary that the entire process be guided by a group of Member States that have a direct stake in the management and are affected by such measures. This group should be established in accordance with the provisions of Article 18.1 of the Basic Regulation of the CFP (which also applies to European Member States with EU flag long distance fleet) and should be able to issue joint recommendations to be submitted to the Commission, together with the necessary scientific studies to support them.

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ANNEX I. TABLE OF NAFO TAC AND QUOTAS 2015 (broken down by Member State)

Stock	Est.Catch 2015	TAC EU15	Germany	Spain	Est+Lat+LT	France	Poland	Portugal	UK	Total EU	TAC EU16	TAC 2016	Rec. TAC 2017
G. Halibut 2+3JKLMNO	14,872	6,709	303	4,067	360			1,700		6,768	6,430	14,799	14,079
Cod 3M*	13,982	7,867	649	1,993	465	278	528	2,734	1,298	7,867	7,945	13,931	15,436
Cod 3L	2,108	0						0	0	0	0	0	0
Cod 3NO*	586	0		0	xx					0	0	0	0
American plaice 3LNO	1,259	0								0	0	0	0
American plaice 3M*	268	0								0	0	0	0
Witch flounder 3L	200	0								0	0	0	0
Witch flounder 3NO	389	133	0	0	288	0	0	0		133	288	2,172	2,225
Redfish 3M*	6,944	7,813	513	233	4,713			2,354		7,813		7,000	7,000
Redfish 3LN	10,244	1,896	354	0	1,542					1,896	1,896	10,400	14,200
Redfish 3O	8,364	7,000		1,771				5,229		7,000	7,000	20,000	20,000
White hake 3NO*	464	588		255				333		588	588	1,000	300
Capelin 3NO*	0	0			xx					0	0	0	0
Skates 3LNO	3,399	4,408		3,403	345			660		4,408	4,408	7,000	4,700
Yellowtail flounder 3LNO*	6,911	0		0				0	0	0	0	17,000	23,600
Squid 3+4	14	611			128		227			611	611	34,000	34,000
Shrimp 3L	0	0							0	0	0	0	0
Shrimp 3M	0	0							0	0	0	0	0
Alfonsino													

*Skate: Estonia 283, Lithuania 62; *Redfish 3LN: Estonia 514, Lithuania 514, and Latvia 514; *Cod 3L: Canada´s catches according to Statlant 21A: 1,940 t

*Redfish 3M: Estonia 1,571, Lithuania 1,571, Latvia, 1,571; *Squid: Estonia 128, Lithuania 218, Latvia 218;