



To:
Maria Damanaki
European Commissioner
Maritime Affairs and Fisheries
B-1049 BRUSSELS
Belgium

Pelagic RAC
Treubstraat 17
PO Box 72
2280 AB Rijswijk
The Netherlands

Tel: +31 (0)70 336 9624
Fax: +31 (0)70 399 3004
E-mail: info@pelagic-rac.org
<http://www.pelagic-rac.org>

Date: 1 May 2013
Our reference: 1213PRAC72
Subject: Implementation of a landing obligation

Dear Ms Damanaki¹,

On 25 April 2013 the Pelagic RAC, following a request by the European Commission, held a joint Working Group I and II meeting to discuss the implementation of a landing obligation for pelagic and industrial fisheries foreseen to enter into force on 1 January 2014. This meeting was attended by members of the Pelagic RAC, delegates of eight Member States and the European Commission, ICES and representatives of national marine research institutes.

First of all we would like to emphasize the Pelagic RAC's willingness and motivation to continue and enhance its efforts in advising the European Commission and the Member States on implementing the landing obligation in a realistic, operational and sustainable way, both ecologically and economically. During the discussion at our meeting it became clear, however, that many uncertainties still exist regarding the practical consequences of a landing obligation, among both Commission officials and members of the Pelagic RAC. For your information the draft minutes of the morning session of our meeting are attached in annex I of this letter reflecting on the most important issues yet to be solved.

We are deeply concerned that if the landing obligation is to come into force **and** be implemented on 1 January 2014 it will be deficient in terms of practicality and usability due to the inadequate regulatory context in which the implementation will have to take place. We therefore strongly recommend postponing implementation until all relevant regulation has been aligned to the new concept. We furthermore would like to draw your attention to the necessity of granting fishermen at least 6 months notice to become

¹ This letter has also been sent to Mr Simon Coveney (Council of the EU) and Ms Ulrike Rodust (European Parliament).

familiar with the new regulation and the organisations the same amount of time to educate their members.

We hope that you give these concerns your urgent attention and are looking forward to working together with the Commission on a successful implementation of a landing obligation in the pelagic and industrial fisheries on all relevant aspects: practical fisheries operation, economical optimization, level playing field in enforcement and monitoring and consistency in regulations.²

Yours sincerely,

Handwritten signature of Iain MacSween in black ink.

Iain MacSween
Chairman Pelagic RAC

Handwritten signature of Christian Olesen in blue ink.

Christian Olesen
Chairman Working Group I

Handwritten signature of Sean O'Donoghue in black ink.

Sean O'Donoghue
Chairman Working Group II

² Please note that this letter is not supported by WWF. While WWF acknowledges the various difficulties and uncertainties associated with the proposed landing obligation for pelagic fisheries, WWF would need more time to properly consult its network on the matter.

Annex I: draft minutes WG I and II 25 April 2013, morning session

Participants:

Christian Olesen (chairman), Sean O'Donoghue (chairman), Alex Wiseman, Angus Cragg, Barbara Lewkowska, Barbara Schoute, Bent Pallisgaard, Björn Åsgård, Brian Isbister, Carian Emeka, Carl Jesper Hermansen, Christine Absil, Claus Reedtz Sparrevohn, Dominic Rihan, Eibhlin O'Sullivan, Eric Roeleveld, Esben Sverdrup, Frank Minck, Frans van Beek, Frederik Schutyser, Fredrik Lindberg, Gerard van Balsfoort, Ian Gatt, Ignacio Fontaneda López, Jerome Nouis, Jesper Raakjaer, Jesper Juul Larsen, John Ward, Jose Beltran, Jürgen Weis, Karin Linderholm, Laurent Markovic, Lesley Duthie, Martin Pastoors, Maurice Clarke, Miren Garmendia, Nico Bogaard, Paul McCarthy, Reine J. Johansson, Remi Mejeceze, Rob Banning, Sarunas Zableckis, Simon Collins, Uwe Richter, Verena Ohms, William Stewart

1) Opening by the chairmen, Christian Olesen and Sean O'Donoghue

Sean O'Donoghue opened the meeting and welcomed the participants. He noted the large group of people which reflected the enormous interest in the topic going to be discussed and gave people the opportunity to introduce themselves.

Christian Olesen then explained that the reason for this joint Working Group I and II meeting was a request received from the Commission to advise on the practical implementation of the discard ban. He summarized that the Council had decided to introduce a landing obligation for all pelagic and industrial fisheries starting in January 2014 and that the Parliament reached the same decision excluding boarfish. With discussions in the trilogues ongoing it seems currently likely that an agreement will be reached by June even though the details of a landing obligation are still uncertain with the implementation being left to the Commission and stakeholders. He recapitulated that at the previous Pelagic RAC meeting Fuensanta Candela asked the Pelagic RAC for help regarding the implementation of a discard ban. She had explained that the Commission is going through all documentation to check where current regulations are in conflict with a landing obligation and therefore will have to be changed. Christian Olesen said that the purpose of today's meeting was to decide on how to proceed with the process. He emphasized the enormous amount of work that still has to be done and the uncertainties the Pelagic RAC is going to have to cope with given it is the first RAC that starts this discussion.

2) Approval of the agenda

To be as effective as possible Christian Olesen suggested separating the meeting in two sessions: a morning session during which a political discussion could take place identifying general problems related to a discard ban and an afternoon session which would take a discard ban as given and aim at a practical discussion specifically dealing with the stocks in the remit of the Pelagic RAC. He emphasized that this meeting was going to be a scoping meeting to prepare the foundation for future work and no detailed advice would be given today.

3) Commission's presentation on discard proposal and update on the trilogues discussions on discards (Dominic Rihan)

Sean O'Donoghue invited Dominic Rihan from the European Commission to give a presentation on the current state of affairs.

Dominic Rihan introduced himself by saying that before joining the Commission he was working as a national expert in Ireland in gear technology. He was happy to present an overview of the current state of the CFP and willing to answer any questions. However, he also pointed out that he was not involved in high level discussions and hence might not know everything. He explained that a general approach had been agreed in June 2012 and that the Council reached a position on discards in February 2013. There was also a plenary vote in the European Parliament in February and the trilogues began in March. He also pointed out that there are many meetings taking place at the moment and that all parties were optimistic to reach an agreement in June 2013. The trilogues process was furthermore supported by a technical working group and a drafting working group which was working on the exact text of the CFP. So far consensus has been reached on many issues and there seems room for flexibility on others. However, a number of issues remain to be argued about. These include MSY, fleet management, regionalisation, multiannual plans and the discard ban. Regarding the discard ban the Council wants it to apply to quota species whereas the Parliament wants it to apply to all harvested and regulated species except for boarfish. The timing suggested by the Council also differs from what has been suggested from the Parliament in the sense that the Council favours a more gradual introduction. While the Council proposed an exemption for protected species and those with a high survival chance, the Parliament proposed an exemption for life bait and species with a high survival rate. Furthermore the Council suggested a 7% de-minimis rule whereas the Parliament is against such a rule. The Council also foresees multiannual and discard plans, which equal multiannual plans without a harvest control rule, to manage fisheries in the future while the Parliament only talks about multiannual plans. The Council recommended 10% year to year quota flexibility, 10% inter-species flexibility and that 5% of demersal fish are not counted against quota for a two year period. The Parliament on the other hand only recommended 3% inter-species flexibility and 5% year to year quota flexibility. Both Council and Parliament agree that fish below conservation reference size should not be used for human consumption, but the Parliament wants to allow use for charitable purpose. The Council wants TACs to reflect discards while the Parliament argues for proportionate control. Dominic Rihan concluded that the different positions are not far away from each other and that there is willingness to find an agreement. Nevertheless he pointed out that some of the issues will need further negotiation. He then moved on addressing the implementation issues of a landing obligation. He stressed that the Commission wants regionalization to be the driver as opposed to another top down approach. He said the main implementation issues regard the TAC setting for 2014, practical and operational issues associated with different fisheries, exemptions, technical measures and control issues. Subsequently he introduced what he referred to as omnibus regulation. This regulation combines technical and control measures and will remove all obligations to discard. He expected a new proposal for technical measures to be available in 2014. He concluded his presentation by listing issues the Pelagic RAC should concentrate on in the future including data issues (which kind of data is available/which is not?), defining fisheries, identifying practical and operational issues whereby he emphasized that the Commission will be flexible as long as good evidence is provided, technical measures, e.g. are the different conservation reference sizes really useful and how the discard ban can be controlled.

Sean O'Donoghue thanked Dominic Rihan for his presentation and invited participants to ask questions. He pointed out that he was very concerned about the date for introducing a landing obligation. He considered it unrealistic to have re-alignment of technical measures and control by the end of the year. While the new CFP says one thing existing regulation say something else. Therefore Sean O'Donoghue wanted to know what would happen legally if on 1 January 2014 the re-alignment has not taken place yet.

Dominic Rihan replied that the 2014 date is an issue to be considered by Council and Parliament. He emphasized that the Commission is flexible regarding the starting date. In legal terms he was not sure what would happen, but thought that there are legal provisions which could deal with a lack of political agreement. However, he pointed out that there is currently no plan B and he considered it useful if the Pelagic RAC would raise this as an issue.

Sean O'Donoghue remarked that it was at least somewhat comforting that the Commissioner has said before that the starting and implementation date do not necessarily have to be the same. He considered implementing a landing obligation at a later point as the way forward.

Christian Olesen mentioned that he sees another problem regarding marketing standards, because it says that catches should be uniform in species. Dominic Rihan agreed that this was a problem the Commission is aware of and will have to look into.

Sean O'Donoghue raised a question regarding the de-minimis rule suggested by the Council. He wanted to know how this rule would operate in practice if, e.g. in mixed fisheries one species is caught that has to be landed in 2014 and another one that has to be landed in 2015.

Dominic Rihan answered that this was a very difficult question and that there is an expert working group from STECF looking into the implementation issues of a de-minimis rule. He admitted that nobody was yet able to understand all the issues that mixed fisheries will run into and that the Commission is just as much in the dark as everybody else is.

Sean O'Donoghue continued the discussion by wanting to know how a de-minimis rule could be dealt with if the details were not spelled out.

Dominic Rihan explained that the idea is to implement a de-minimis rule through multiannual or discard plans. He said that the regulation will provide a limit only, but that the details will be specified in the plan.

However, Sean O'Donoghue pointed out that if the institutional battle between Council and Parliament regarding multiannual plans is not resolved a de-minimis rule could not be applied and maybe other rules neither. Dominic Rihan admitted that this was correct.

Christian Olesen wondered whether the de-minimis rule would apply on a stock-by-stock, catch-by-catch or Member State level. He wanted to know what exactly it means to have 7% de-minimis. As an example he mentioned a vessel targeting herring but accidentally catching 100 tons saithe instead. 100 tons is not a percentage of anything. So, what does 7% de-minimis refer to?

Dominic Rihan could not give a clear answer to this question yet. He said that 7% would probably refer to the whole TAC, but he did not know how this is going to be dealt with in detail.

Gerard van Balsfoort pointed out that pelagic fisheries have relatively low discards and therefore the de-minimis rule might be very important. He therefore considered it inevitable to already have a clear idea what a de-minimis rule will entail if an agreement is to be reached in June. He also said that everybody is expecting to have additional quota to account for discards while nobody really knows what the discard percentage is. He considered it impossible to gain reliable data before 2014 or 2015 and urged all

institutions to work together to get these data. He also addressed the problem that the Pelagic RAC is predominantly dealing with shared stocks and getting additional quota to account for discards would have to be agreed upon by the Coastal States. He was worried that in the end the EU would have to increase TACs autonomously. Regarding a regional approach he wanted to know whether the Commission would leave it to the Member States to implement multiannual and discard plans.

Dominic Rihan explained that in the Skagerrak Norway agreed to an increase in TAC as long as this was science-based. However, he realized that the situation will be more difficult with more Coastal States involved and he did not know what would happen if other Coastal States disagreed on a TAC increase. He made clear that in an international agreement the EU could not autonomously increase the TAC. Regarding the implementation of multiannual plans he pointed out that the Commission is trying to move away from a co-decision process in which Council and Parliament argue about things they should not argue about. The best-case scenario foresees an advice supported by both Member States and RACs which the Commission could then follow.

Reine Johansson remarked that people generally consider the Skagerrak as an easy example, but he wanted to emphasize that the Skagerrak is a very complex area and that it should be implemented in the North Sea. He considered it a huge project because of two regulations applying to it.

Sean O'Donoghue wanted to know how widely distributed stocks will be dealt with when ICES gives advice for 2014 taking into account discards.

Barbara Schoute explained that ICES has been asked to provide as much as possible advice on what discards would be. ACOM decided already last year to give advice on catch and where possible split this up between landings and discards assuming that discard patterns are stable over the years. For some stocks ICES has done calculations, but for other stocks ICES has no idea what the discard percentage is and therefore will not be able to provide advice on that.

Dominic Rihan assured that the Commission will ask the Member States to provide more data and fill in the gaps.

Esben Sverdrup echoed what Reine Johansson said about Skagerrak and pointed out that he was pleased about the Commission approaching the Pelagic RAC regarding the discard ban. Stakeholders had not been involved when a discard ban was introduced in the Skagerrak and he considered this a big mistake which must not be repeated in the future.

Jesper Juul Larsen said that the project was too ambitious to be implemented until 2014. He pointed out that the technical rules cannot be changed fast enough and that in fact fishermen will have only one month to come up with an applicable implementation system because they have to wait for the end of the peak fishing season. He also wanted to know where ICES gets discard data from as he did not consider them reliable.

Sean O'Donoghue agreed that it will not be possible to implement a discard ban until 2014, but that there is a difference between a law coming into force and being physically implemented.

Christian Olesen raised another issue that will need more thought, namely the chance of survival. He pointed out that the Commission is only thinking in terms of species. However, much depends on how the fish is caught. He urged making provisions in the regulations that will allow fishermen to evaluate their catch and possibly release it. As an example he named purse-seining where the survival rate is 98% if the fish is released on time and referred to the Norwegian legislation that allows fishermen to release fish from a purse seine if it has been hauled less than 7/8.

Dominic Rihan agreed that this was a very good and important point which should be taken into account. He said that STECF will look into this and that cases like the one described by Christian Olesen might get exemptions.

After the coffee break Ian Gatt continued the discussion by assuming that the Commission will try to achieve a harmonized scheme for all fisheries in all areas, so that Member States will not come up with their own rules. He also addressed another issue that nobody seemed to have thought about so far. He explained that sometimes a catch might unexpectedly be too large to bring it on-board completely. In favourable conditions a close-by vessel might be able to help out and take some of the fish on-board. However, he wanted to know what would happen if that was not possible due to e.g. bad weather conditions.

Dominic Rihan ensured that the Commission is striving for a level-playing field with all Member States being subject to the same regulations. He also suggested that the Pelagic RAC should write a document which lists all the critical elements that should be taken into account in a discard ban.

Sean O'Donoghue wanted to know how far the revision of the control regulation has progressed and Dominic Rihan explained that this is part of the omnibus regulation for which June is the timetable. However, he reminded that the alignment is a separate exercise.

Gerard van Balsfoort remarked that there are two types of fisheries: fresh and freezer-trawler. A discard ban will have different effects on both fisheries once the fish is taken on-board. It is foreseen that all fish has to be landed and documented included the fish which otherwise would be thrown overboard. He pointed out that keeping all fish on-board will be very costly if the fish has to be stored and frozen in its original form. One solution might be to process the fish into fishmeal which on the other hand will make documentation more difficult. He invited all institutions including the control agency to think along on how to handle this.

Christian Olesen raised yet two other problematic issues which the Commission will have to think about. Firstly he said that pumping fish on-board goes very fast and makes it impossible to estimate how many tons of species A is in a catch of X tons of species B. Since everything is sorted afterwards he wanted to know why the 10% tolerance rule cannot be applied to total volume and not individual species. Secondly he explained that 20 years ago sorting machines have been banned in RSW vessels. He asked for re-introducing sorting machines which would make things more efficient and easier for the fishermen as they could sell mackerel to mackerel buyers and herring to herring buyers etc.

Dominic Rihan replied that it is important to record mortalities and control catches. As long as one knows how much tons of which species have been caught it should not matter whether that represents 10, 15 or 20%. Regarding sorting machines he said that the Commission will have to look into this.

Jesper Raakjaer stated that mixed landings will increase costs for the processing industry in terms of increased costs for grading and subsequent lower capacity utilisation in production which in turn most likely will lead to lower fish prices, as the processing plants cannot shoulder such costs. He urged the Commission to also consider the economic consequences of this.

Reine Johansson pointed out that a new standard for sampling has to be set up in order to deal with the discard ban. He pointed out the importance of doing things right from the start.

Rob Banning said that maximum mesh sizes do not make sense. The bigger the mesh size the more selective the gear. Therefore he pressed for getting rid of maximum mesh sizes. Dominic Rihan said that as a gear technologist he agrees with maximum mesh size in pelagic fisheries being meaningless. He would rather leave this decision to the individual fishermen and said that when the Commission will propose technical measures these kinds of issues will be addressed too.

Sean O'Donoghue did not understand what the Parliament means with 3% inter-species flexibility. Dominic Rihan was not completely sure about this either, but thought that the idea was to limit transfers of species in one area to species in another area.

Carl Jesper Hermansen expressed his disappointment with the whole process. He said that after an enormous amount of meetings and effort put into the reform of the CFP very little has yet come out of it. He pointed out that the third countries the Pelagic RAC is dealing with have different rules and he found it hard to believe that agreement will be reached anytime soon. So far the only result is that all fishermen are wondering if they will be able to survive with what they are doing in the future.

Given how much uncertainty there is regarding what and how to implement, Eibhlin O'Sullivan asked the Commission representatives to report back that 1 January 2014 is a completely unrealistic date for implementing the landing obligation. She pressed for a uniformed and harmonized approach among all Member States, but was afraid that due to the time pressure things will be implemented differently depending on the individual Member State.

Esben Sverdrup referred to Skagerrak where some Member States are exempt from having cameras on-board. He considered this totally unacceptable and also pressed for a uniformed approach. Furthermore he wanted to know whether species flexibility is referring to effort. Dominic Rihan explained that species flexibility is a measure to balance the books, e.g. if a fisherman has quota for mackerel but an issue with herring catches, he could transfer some of his mackerel quota to herring. Reine Johansson was afraid that this is an easy way to set your own quota which would create problems.

Jose Beltran doubted the functionality of a discard ban with so many players involved. He also wanted to know if anybody has considered the consequences for the ecosystem. He pointed out that many species live from discards and he wondered what will happen to those species. He agreed that the discard issue had to be solved and that discards had to be drastically reduced. However, eliminating them altogether did not make sense to him.

Jesper Juul Larsen said that most management plans have emergency measures dealing with very low stock sizes. However, he also argued for having such emergency measures for cases in which a stock explodes. Dominic Rihan replied that these kinds of effects will have to be built into management plans in the future.