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This consultation paper is presented as a basis for comments and do not prejudge the final form of any decision to be taken by the Commission.

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**COMMISSION NON-PAPER**

**On the implementation of the policy to reduce unwanted by-catch and eliminate discards in European fisheries**

## **1. INTRODUCTION**

In March 2007 the Commission has issued a "Communication on a policy to reduce unwanted by-catch and eliminate discards in European fisheries"<sup>1</sup>. During 2007 the RACs, ACFA, some NGOs, some national fishers associations as well as the Council of Ministers gave opinions on the policy proposed in that Communication and the European Parliament issued its resolution on 31 January 2008.

In this Communication the Commission announced to propose specific legislation as from 2008 and a sequence and plan for implementation. The purpose of this non-paper is to consult stakeholders on possible ways to reach the objective of eliminating discards over time.

The management options and targets proposed in this consultation paper are presented as a basis for comments and do not prejudge the final form of any decision to be taken by the Commission.

## **2. THE GENERAL APPROACH**

As stated in the Communication the new discard policy aims to remove the practice of discarding in (all) European fisheries. The overall objective of reducing unwanted by-catch and gradually eliminating discards should be achieved fishery by fishery, by using discard bans and supplementary measures to reduce by-catch. However, management measures taken at Community level should focus on establishing what outcomes should be achieved rather than on the means to achieve them. Unnecessary detail and extensive technical regulations should be avoided. The approach therefore will be to require specific results (maximum allowed levels of unwanted by-catch / discards), and it is then the task of the industry to apply the best available and possible solutions in each fishery to comply with the target levels in line with a results-based management. In addition, the respective minimum requirements for monitoring, data collection and follow-up will be set.

The new policy to reduce unwanted by-catch and to gradually eliminate discards must be seen as an integral part of fisheries management in general and serve the overarching goals of moving to long-term management based on ecosystem considerations and reaching maximum sustainable yield by 2015. By improving the knowledge about the real impact of each fishery on the stocks it also aims at enhancing the scientific base for future management decisions.

Starting with the two fisheries which are the subject of this non-paper, this approach will be gradually extended to all other European fisheries. This will take a period of 5-10 years presumably, and the Commission intends to propose later in the year 2008 a roadmap for implementation.

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<sup>1</sup> COM(2007)136 final

### 3. RESULTS OF THE CONSULTATION ON THE COMMUNICATION

As stated above, the 2007 Communication launched a comprehensive consultation process during which stakeholders (RACs, ACFA, NGOs, national or European fishers associations) and the Institutions (Resolution by the European Parliament and Conclusions by the Council) gave their valuable input. Here are some of the main messages received:

- It is widely recognised that discarding is a waste of resources and there is general agreement that it should be reduced to lowest levels and ultimately eliminated;
- The fishing industry is able and willing to play an active part in the assessment of the problem in each fishery, in the search for solutions and in the implementation of discard reduction policies and of discard mitigation, for example through cooperation with scientists and by contributing with their practical knowledge and information;
- The approach should be gradual and fishery by fishery, for example in the form of long-term plans, on the basis of a thorough evaluation in each case, involving scientists, managers and stakeholders;
- Work on and research into the improvement of selectivity of fishing gear and pilot projects should continue and should be (co-) funded by the EFF;
- Several submissions welcomed in particular the suggested change from a 'micromanagement' approach to a 'result-based' management, which is an incentive for the fishing industry to come up with solutions;
- All agree that several problems have to be tackled, such as space needed on board for keeping unwanted catch, how to deal with landings of non-marketable fish, possible consequences on the markets, the need for some flexibility in the quota system, potential implications for relative stability, feasibility in a Community context of real-time closures, observer schemes and costly control and enforcement regimes to make discard bans work, the lack of trust amongst fishermen, question of compensation for handling un-wanted catches and of (financial or other) incentives etc.;
- Some were more critical based on the perception that the Commission advocates an 'outright discard ban' instead of a reduction / mitigation strategy.

Some specific recommendations were also made:

- Recommendation to highlight and share best practice by Member States and the fishing industry and to organise a seminar on that (Pelagic RAC)
- Recommendation to describe and to document fleet practices similar to what is required in established quality labels (like MSC), which could result in a Codes of Practice (Pelagic RAC)
- Proposal to establish regional working groups (fishermen, market/processors, scientists, managers) to develop discard reduction strategies including the design of observer programmes (North Western Waters RAC)
- Proposal to look into new means of improving enforcement such as the electronic logbook and the use of other new technologies (European Parliament)

- Recommendation to involve scientists in control and enforcement action (ACFA).

Apart from these formal contributions to the consultation process the Commission received a lot of correspondence from the wider public, but also from local or national MPs, MEPs, fishermen or representatives from civil society, showing that there is an increased interest and concern about the discard problem.

#### 4. PROPOSED METHODOLOGY

For the fisheries described in chapter 5 the current level of total discards, expressed in weight and, where appropriate, in numbers, is set as a starting point (base line), based on available data. This starting point is a basic assumption that will be adapted, if necessary, after the first year of implementation. For each of the fisheries are then set a final target and intermediate targets for discard reduction per management period (e.g. yearly)<sup>2</sup>. Where appropriate such levels and targets are also set for discarding of certain species or groups of species in that fishery.

The final target (maximum allowed by-catch level) will be established on basis of three considerations – 1) that the allowed level should be small (e.g. not more than 15%) in any fishery, 2) that the reduction relative to the present level should be significant and 3) that specific and stronger measures should be taken to reduce the by-catch of recovery stocks and sensitive species where such occur. This means that in fisheries which presently have high discard levels, an important effort from the industry will be required to reduce by-catches while fisheries with low levels presently will be required to improve, but the reduction required may not be as large in relative terms. However, all fisheries must contribute to by-catch reduction, and largest pressure will be put on those fisheries which presently are responsible for the largest relative discards.

Minimum requirements for monitoring the development of total catch and discards are also proposed to ensure the necessary follow-up and to measure compliance. For the first year of implementation specific monitoring requirements will be set in order to get the necessary information for adapting the baseline.

Some additional provisions are made to allow for landing of unwanted bycatch and their inclusion, where applicable, in the quota system. The proposed new regulation on technical measures in the Atlantic and the incoming new control regulation will contain the relevant general provisions concerning discards that will be discussed in that context.

*Options for discussion:*

1. Should the targets refer to all finfish and crustaceans in the (by-) catch occurring in the fishery or to commercial / quota species only?
2. Should the approach follow a gradual reduction of discards in a fishery or should discarding be made illegal (discard ban)?

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<sup>2</sup> **Definition of Management period:** A management period is a time period for which a reduction target is set. It can be 1, 2 or more years.

## 5. FISHERIES

Both the *Nephrops* fisheries and the flatfish beam trawl fishery in the North Sea have been repeatedly highlighted as amongst those with highest discard rates<sup>3</sup>, and these high discard rates have been confirmed by a recent STECF report. Following the criteria mentioned under the previous chapter it seems therefore logical to start with fisheries with relatively high discard rates. However, this approach will be extended to other fisheries, as stated in chapter 2, and even to fisheries where the knowledge on discards is poor, in order to reach a level playing field and to ensure that all fisheries improve on reducing their impact on environment and stocks.

### 5.1. Bottom trawling targeting *Nephrops* in Area VII

#### 5.1.1. Description of the fishery / scope:

All Community fishing vessels operating a bottom trawl in ICES area VII and targeting *Nephrops* in accordance with the relevant provisions in Community and national law and holding a special fishing permit for that fishery.

#### 5.1.2. Targets (starting point / base line) and Maximum allowable by-catch limit (MABL)<sup>4</sup>

The total discard rate is assumed to be 50% by weight and 60% by numbers. These values may be reviewed as necessary in light of new scientific data. The maximum allowed limit of unwanted by-catch for this fishery should be no more than 10% by weight and 15% by numbers of the total catch. The maximum limits stated in the previous paragraph shall be achieved within 5 years.

During the first two years the amount of discards shall be reduced by at least 50% compared to the rates stated in the first paragraph. During the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> year the amount of discards should be reduced in such a way that the overall reduction is at least 60%, 70% and 80% respectively compared to the rates stated in the first paragraph (see Table 1).

Table 1: Reduction targets for *Nephrops* fisheries in ICES area VII to reach MABL over 5 years

	Weight	numbers
Starting point	50%	60%
Year 1	25%	30%

<sup>3</sup> For example M Rochet, I Peronnet, V Trenkel (2002) An analysis of discards from the French trawler fleet in the Celtic Sea. ICES Journal of Marine Science 59: 538-552 and TL Catchpole, CLJ Frid, TS Gray (2005) Discards in North Sea fisheries: causes consequences and solutions. Marine Policy 29: 421-430, amongst many others;

<sup>4</sup> **Definition of MABL:** the Maximum allowed by-catch limit refers to finfish and crustaceans caught in a fishing operation and not wanted by the vessel owner for whatever reason; it may be discarded or brought ashore and put to the uses to be defined in Community legislation, without generating an economic benefit for the vessel owner. Finfish and crustaceans caught in a fishing operation and not wanted by the vessel owner which exceeds the MABL may not be discarded and have to be brought ashore under the provisions defined in Community legislation.

Year 2		
Year 3	20%	25%
Year 4	15%	20%
Year 5	10%	15%

## 5.2. Beam trawling for flatfish in Areas IV and VIIId

### 5.2.1. Description of the fishery:

All Community fishing vessels operating a beam trawl in ICES area IV and sub-area VIIId and targeting flatfish in accordance with the relevant provisions in Community and national law and holding a special fishing permit for that fishery.

### 5.2.2. Targets (Starting point / base line) and Maximum allowed by-catch limit (MABL)

The total discard rate is assumed to be 70% by weight and 80% by numbers. These values may be reviewed as necessary in light of new scientific data. The discards of **plaice** are assumed to be 50% by weight and 80% by numbers.

The maximum allowed limit of unwanted by-catch for this fishery should be no more than 15% by weight and 20% by numbers of the total catch. The maximum allowed limit of unwanted by-catch for plaice in this fishery should be no more than 15% by numbers.

The maximum limits stated in the previous paragraph shall be achieved within 6 years.

During the first two years the amount of discards shall be reduced by 40% compared to the rates stated in the first paragraph, as adapted after the first year. During the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> year the amount of discards should be reduced in such a way that the overall reduction is at least 50%, 60%, 70% and 80% respectively compared to the rates stated in the first paragraph, as adapted after the first year (Table 2).

The discards of **plaice** shall be reduced by the same percentages, in numbers of all plaice caught.

*Table 2: Reduction targets for flatfish fisheries by Beam Trawlers in ICES area IV and sub-area VIIId to reach MABL over 6 years*

	Weight	numbers
Starting point	70%	80%
Year 1	40%	50%
Year 2		
Year 3	35%	40%
Year 4	25%	30%

Year 5	20%	25%
Year 6	15%	20%

*Options for discussion concerning point 5 in general:*

3. Concerning the timeframe there are 3 options to consider for achieving the final target per fishery: fast – medium - slow. Should the targets set out above be achieved faster or slower than proposed?
4. Concerning the final targets per fishery, should they be lower / higher?
5. What could be the criteria for setting a final target in a given fishery?

*Options for discussion concerning the fisheries:*

6. Should there be specific / additional reduction targets for sensitive species such as for example recovery species?
7. Should there be discard bans for sensitive species?
8. How could such specific protection of recovery species and sensitive species best be implemented?

## **6. MEASUREMENT OF COMPLIANCE**

### **6.1. Application of targets to Member States' fleets**

The discard targets set out under 5.1.2. and 5.2.2 apply to the total catches of all vessels of a Member State holding a special fishing permit for the fisheries concerned. Member States can apply the reduction targets to individual vessels or to groups of vessels.

Notwithstanding the minimum requirements for monitoring as set out in paragraph 7, Member States or groups of vessel owners may take additional measures to ensure compliance with the targets. They should inform the Commission and the other Member States involved in that fishery about such measures not later than two months after their adoption.

### **6.2. Responsibilities**

Member States shall ensure that the vessels / groups of vessels holding a special fishing permit for the fisheries concerned change their fishing methods and activities in such a way that, by the end of each management period, the target is achieved globally for the respective Member State's fleet. Vessel owners or groups of vessel owners are required to demonstrate that by-catches are reduced to the set levels. Upon request by the Member State, where their vessel is registered vessel, owners shall accept the presence of observers on board in accordance with chapter 7.

*Options for discussion:*



9. Should the targets apply to individual vessels only?

10. Should the technical adaptations to achieve the targets be spelt out at Community level or should this be left to the fishing sector?

### **6.3. Landings of unwanted catch**

Vessel owners should land unwanted catch if they have not managed to change their fishing method and patterns sufficiently to comply with the annual targets during the management period. Such landings may only be sold or given to a body designated by the Member State (fulfilling the minimum criteria as laid down by Community law). Unwanted catch retained on board must be stowed separately from landings, unless there are observers on board. Community fishing vessels may not transfer their catches to any other vessel before landing. Landings of unwanted bycatch must take place in a designated Community port, after authorisation by port authorities.

*Options for discussion:*

11. How much, if any, of possible proceedings of such landings should be given to vessel owners?

## **7. MONITORING AND IMPLEMENTATION RESPONSIBILITIES**

### **7.1. Special monitoring programme for the first year**

For the first two years (at least) of the implementation a special monitoring programme should be set up in order to establish the basic data needed in each fishery and to review, if necessary, the assumed starting level of discards. The special monitoring programme should be conducted according to the methodology outlined in the Data Collection Regulation<sup>5</sup> with the necessary precision level and at matrix level 6 and comply with the minimum requirements to be laid down at Community level.

Member States shall ensure that at least 15% of all fishing trips in the fisheries described above are carried out with the presence of at least 1 observer (or surveillance equipment) on board to supervise the sampling, catch and discard registration in accordance with the specific sampling scheme.

Member States shall ensure that vessels where the monitoring is carried out are chosen randomly and that the trips observed cover the relevant time and space patterns to be laid down at Community level.

Vessel owners can participate on a voluntary basis in a reference fleet. Reference fleets form part of an enhanced observer programme within the meaning of chapter 12 of Annex II of Council Regulation 40/2008 and must be composed of at least 15% of the vessels holding a special fishing permit for the fisheries concerned. The observed trips of the reference fleet

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<sup>5</sup> Council Regulation 199/2008 and Commission Regulation xxx/2008

shall be considered when assessing Member States' compliance with the minimum number of observed trips provided that all requirements are fulfilled. *Options for discussion:*

12. - Should the cost for the observer schemes be paid by Member States only or should the fishing industry contribute to such expenses?
13. - Should reference fleets be counted against the Member States' obligations in terms of observer coverage or should their contribution to monitoring efforts be additional?

## **7.2. Monitoring programme for subsequent management period after the two first years**

The monitoring programme should be conducted according to the methodology outlined in the Data Collection Regulation<sup>6</sup> with the necessary precision level and at matrix level 6 and comply with the minimum requirements to be laid down at Community level.

Member States shall ensure that at least 10% of all fishing trips in the fisheries concerned are carried out with the presence of at least 1 observer (or surveillance equipment) on board to carry out the sampling scheme.

Vessel owners or groups of vessel owners are invited to participate in a reference fleet as described above, to set up and participate in self sampling programmes and to take other initiatives to support the monitoring programmes in place for a given management period.

## **7.3. Reporting requirements**

Member States shall ensure a real time or close-to real time follow up of compliance with the targets referred to under 5.1.2 and 5.2.2. Upon request they shall make available to the Commission the latest data on compliance resulting from the special monitoring programme and from the monitoring programme for the subsequent management periods. They shall report to the Commission not later than by 15 February each year on compliance with the target of the previous year.

## **8. INSPECTION AND CONTROL**

Member States shall set up specific inspection and control programmes to ensure compliance with the targets referred to under 5.1.2 and 5.2.2. These programmes shall fulfil the minimum requirements to be laid down at Community level.

Commission inspections will be carried out according to the rules and procedures laid down in the future control regulation. The Control Agency will include the evaluation of discards in their standard training programmes designed for inspectors. It will also be involved in coordinating Member States' efforts on control and inspections regarding the legislation on discard reduction, by designing joint deployment schemes and by ensuring the exchange of best practices.

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<sup>6</sup> Council Regulation 199/2008 and Commission Regulation xxx/2008

Emphasis will be put on organising control and inspections in such a way that catches and landings from observed and unobserved trips are compared, as are those of vessels who participate in a reference fleet and of those who do not.

*Options for discussion:*

14. Which mechanisms for control are useful in the context of by-catches?
15. How can new technologies best be used for monitoring and control in this context?
16. Should the relevant provisions on the use of electronic logbooks, in particular those concerning the recording and reporting of fishing activities and on means of remote sensing, be anticipated from what is foreseen in the legislation?

## **9. FOLLOW-UP**

Where a Member State has failed to comply with the targets referred to under 5.1.2 and 5.2.2, a deduction in its annual effort or quota for the target species or, where appropriate, of the discarded species shall be applied in the year following the non-compliance with the target. The deduction shall be of:

- 0% in case the overshoot of the limit is < 10% of the target
- 8% in case the overshoot is between 10 and 20% of the target
- 15% in case the overshoot is > 20% of the target. *Options for discussion:*

17. Should these proposed deductions be proportionate to the by-catches?
18. Should there be other forms of sanctions?
19. Should such sanctions rather apply at individual or at national level?
20. Should specific technical measure be compulsory if the targets are not reached?

## **10. OTHER ISSUES TO BE ADDRESSED**

Specific provisions in current Community legislation which for example prohibit retaining on board unwanted catch, for whatever reason, need to be changed or adapted to allow for landing of such unwanted catch. These changes will be done by including a derogation to all such prohibitions in the discard legislation.

Provisions for real time closures and the requirement to move fishing grounds in case of concentration of juveniles are made in the proposal on technical measures. They should be applied and used, *mutatis mutandis*, in all other Community waters and, where appropriate, in waters where Community vessels are active.

Relevant provisions concerning special permits, the keeping on board of catches, transhipments etc. will be part of the proposal for a new control regulation.

*Options for discussion*

21. Should the landings of unwanted by-catch be counted against the quotas?
22. Should a specific by-catch quota be set for species under catch limitations?
23. What role could the industry play in determining areas for real time closures?

## **11. EXPECTED BENEFITS**

Firstly, by setting concrete targets for reduction of discards, by breaking them down to intermediate targets, and by setting the appropriate requirements for monitoring of compliance with those targets, the new discard policy will help to achieve better knowledge about what exactly is taken from the sea in the fishery concerned. This knowledge may contribute to improve the scientific basis on which future stock management decisions will be built on.

Secondly, the existence of binding targets and the resulting obligation to land what may not be discarded will lead to more avoidance of unwanted catch. The resulting benefit for the stocks in biological and ecosystem terms is obvious – it will contribute to make stocks healthier and more robust to other (environmental) changes. But this biological health will also turn into clear economic benefits for the fishing sector. For example, trials have shown that reducing the by-catch of hake in the Bay of Biscay *Nephrops* fishery<sup>7</sup> could save up to over 14 million undersized individuals during one year of being caught and discarded. This fish, left in the sea to grow and spawn, would increase the biomass and contribute, a few years down the line, to a bigger resource for exploitation.

Thirdly, since the implementation of this policy relies heavily on the changes of behaviour and fishing methods and on solutions brought about by the fishing sector, it will also contribute to improve the governance of fisheries policy and management in general. This will in turn enhance the sense of participation and ownership and make all stakeholders conscious of their common responsibility for the resource and its sustainable exploitation.

Finally the reduction and gradual elimination of discards will improve the product quality and value in each fishery since there is clearly a strong consumer interest in fish and seafood that is fished sustainably and in a way where the impact on ecosystems and on the environment is minimal.

## **12. GOVERNANCE**

The fishing industry is responsible for adapting fishing activities and methods in a way to comply with the set targets. Instead of imposing what technical means have to be used to achieve the reduction of unwanted catch vessel owners and fisher's associations are invited to participate actively in the research for solutions and to give input on technical measures, management issues and implementation, including monitoring, control and enforcement. Furthermore active participation at local, regional, national and European level is needed in order to use to the full all opportunities for cooperation. Thus, and by sharing experiences and best practices, the industry is expected to be at the forefront for further progress, timely implementation and satisfactory compliance levels with CFP rules in general.

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<sup>7</sup> <http://www.comite-peches.fr/site/index.php?page=affiche&type=savoirplus&id=57>

The concerned RAC's in particular, but also other forms of cooperation or structures should play an active role throughout the implementation process.

*Options for discussion*

24. In what ways could stakeholder involvement in the implementation be ensured?
25. Should a permanent advisory structure on discard elimination be established for each fishery?
26. How could the involvement at different levels (local/ regional/ Member States) be best organised?

### **13. POSSIBLE ASSISTENCE UNDER THE EUROPEAN FISHERIES FUND**

It is one of the main objectives of the European Fisheries Fund (EFF) to ensure sustainable exploitation of fisheries resources and to minimise the impact of fishing on the environment. Member States and the fishing sector are invited to use all possibilities offered by the EFF to support the implementation of the policy to reduce and eliminate discards. Such support could include, for example,

- the co-financing of gear replacement,
- the co-financing of equipment and of modernisation works to keep on board catches which fishers are no longer authorised to discard,
- premiums for small scale fisheries to improve fisheries management and management of access to resources and to encourage the use of technological innovations,
- the financing of relevant training for fishers and owners of fishing vessels,
- collective actions aiming at the elimination of discards as well as pilot projects aiming at developing and testing methods to reduce discards,
- measures to bring added-value to species and by-products that are little used by the processing and marketing sectors, providing they are directed towards human consumption,
- additional measures eligible for support within the framework of fisheries areas development.