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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 324 final

Brussels, 3rd June 1983

REPORT OF THE COMMISSION TO THE COUNCIL

on by-catches in fisheries

(Response to the Council Declaration of 25 January 1983
concerning Article 4 of Regulation (EEC) 172/83)

COM(83) 324 final

By-catches: request of the Danish government to allow sorting in all circumstances.

1. The Danish government has requested that Council Regulation (EEC) 172/82 of 25/1/83 (1) be amended to permit the sorting of permitted by-catches of human consumption species from the catches of species used for reduction to meal and oil, whether a member State has a quota for the human consumption species or not.

The Council of 25/1/83 noted the request from the Danish government that the present by-catches rules should be changed.

This paper examines the arguments of the Danish government and the probable consequences of implementing its request and draws the conclusions of the Commission.

2. The Danish Government appears to base its case on four main arguments, which are that sorting:
 - (i) would not result in adverse conservation effects,
 - (ii) would make control of the by-catch regulations easier,
 - (iii) would result in a better utilisation of resources, because the by-catch can only be used for reduction to meal and oil under existing regulations,
 - (iv) would allow the sorted fish to be sold for human consumption purposes at a higher price than that sold for reduction thus avoiding the adverse economic effect of the existing regulations which is critical for the Danish fleet fishing for species used for reduction to meal and oil.
3. The first argument of the Danish Government is based on the fact that, for the zones in which Denmark does not have a quota, by-catches are not included in the scientific assessments and are therefore additional to the TAC (see Annex I). The Commission agrees that this is a correct statement.

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(1) OJ No L 24 of 27 January 1983, p. 30.

The Commission considers, however, that the conclusion drawn by the Danish Government from this statement of fact is based on an incorrect analysis of the effects of changing the regulation.

Given that there is a significant economic advantage in selling the by-catches for human consumption purposes, a change in the regulation would provide fishermen with a very strong economic incentive to fish directly for human consumption species up to the permitted limits and to claim these catches as "by-catches". In many fisheries, the true by-catch is much less than the permitted limit of 10%; for example it is 1-2% in the fishery for sandeel.

Such "by-catches" would have to be deducted from existing TACs for human consumption species in order to maintain the conservation objectives of the Common Fisheries Policy. Thus, accepting the argument of the Danish Government and following it to its logical conclusion would result in a reduction of the shares of other Member States in the TACs.

4. The Danish Government considers that sorting would permit both fishermen and fisheries inspectors to control more easily the 10% permitted by-catch. The Commission considers that this is not the crucial question in relation to control. As stated in paragraph 3, the proposed change in the regulations would provide a very strong economic incentive to fish directly for human consumption species up to the permitted limit of 10% and to claim that all these fish were by-catches. In the opinion of the Commission the crucial control question is whether, if the regulation were changed as requested, it would be possible to determine effectively whether human consumption species had been caught legitimately as an incidental by-catch in the same haul of the net as species caught for reduction to meal and oil or whether they had been taken illegitimately in a directed fishery for human consumption species at a different time and, possibly, place to the species caught for reduction to meal and oil. In this context "to determine effectively" means "to the point of obtaining a legal sanction against an infringement of the regulation".

Information provided to the Commission on the proportion of boats inspected at sea which are found to have infringed the existing by-catch regulations indicates that the probability of inspection at sea is too low to provide an effective deterrent. The existing regulations rest on proving the factual issue of whether the by-catch exceeds or does not exceed the permitted 10 % of human consumption species. Under the proposed changes it would be necessary to prove that part or all of the human consumption by-catch had been caught as a by-catch in a directed fishery. It would be impossible to prove this either at sea or on landing.

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With the existing fisheries, the total potential for such illegitimate catches is of the order of 129.000 t in the North Sea (ICES sub-area IV) and 16.500 t in the areas west of the United Kingdom, south and west of Ireland and west of France (ICES sub-areas VI, VII and VIII). (Annex II).

5. The Danish Government refers to the better utilisation and to the economic advantages which would result from using the sorted by-catches for human consumption purposes.

It is the case that the quotas for human consumption species available to Denmark in the North Sea do not limit the sorting of by-catches. The limitation affects, in fact, only the areas where Denmark does not have a quota, ICES sub-areas VI, VII and VIII.

Even if it is assumed that the maximum allowable by-catch of species listed in Annex V of Council Regulation (EEC) 171/83 (1) is taken in all fisheries and that it consists entirely of fish suitable for human consumption, in the case of Denmark the wasted resources on which it bases its case would total at maximum, 3.300 t (Annex II, Table 2).

The real figure would be much less because:

- part of the by-catches in the Norway pout and sprat fisheries would consist of fish which are too small to sort,
- the percentage by-catch in the sandeel and blue whiting fisheries would ordinarily be much less than 10%,

Finally, while it would be economically advantageous to Danish fishermen to sell sorted by-catch for human consumption purposes, the predictable abuse of this concession would be to the economic disadvantage of fishermen of other Member States, whose quotas would have to be reduced for the reasons described in paragraph 3.

6. The Commission considers that the Danish Government, in failing to consider the likely outcome of the proposed change in the regulation, also does not fully appreciate the wider political implications for the Community.

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(1) OJ No L 24 of 27 January 1983, p.1.

In the view of the Commission, these are:

- that the consequences would run counter to the political foundations of the Common Fisheries Policy as the concept of relative stability as described in Article 4 (1) of Council Regulation (EEC) 170/83 would be nullified because illegitimate "by-catches" would benefit those Member States which carry out the industrial fisheries to the disadvantage of those which do not;

7. The Commission considers that fisheries for species used for reduction to meal and oil already benefit from provisions made in the regulation which are to the disadvantage of the directed fisheries for human consumption species (Annex III).
8. The Danish Government also draws attention to the by-catch of cod allowed in the Greenland redfish fishery to Member States that have a quota for redfish but no quota for cod in that geographical area.

The question of taking a cod by-catch when fishing for other human consumption species in Greenland waters falls outside the remit of the Council Declaration on by-catches of 25 January 1983 which is concerned with by-catches of human consumption species when fishing for species used for reduction. Apart from this important distinction the fact is that the cod by-catch possibility was created during the years when directed fishing for cod was reserved to Greenland fishermen only (1978-1981). This reservation could only be tolerated if, in the course of fishing for other abundant human consumption species, a by-catch of cod within reasonable limits was also tolerated for other Member States.

9. The Commission concludes that if the request of the Danish Government were accepted, it would:

- (1) result in uncontrollable abuse of the by-catch provisions,
- (2) require, in order to avoid adverse conservation effects, deduction of the predicted by-catches from the TAC before quota allocations were made,
- (3) result in a redistribution of resources between Member States,
- (4) affect fundamentally the basis of the Common Fisheries Policy with politically unacceptable consequences.

The Commission cannot therefore recommend accepting the request of the Danish Government.

Effects of the inclusion or exclusion of by-catches from the scientific assessments.

To achieve the conservation objectives of the Common Fisheries Policy, catches must be limited to the TACs agreed by the Council.

To ensure this, estimated by-catches are deducted from the shares of the TACs available to the Community for those stocks for which the scientific assessments include the by-catches (North Sea haddock and whiting).

For other stocks, for which information on the quantities caught as by-catches is not available, the TACs do not include by-catches. Consequently, it is not necessary to make any deductions. If the by-catches were included in the assessments, the TACs would be bigger but the estimated by-catches would then have to be deducted from them and the share of the TAC available for the human consumption fisheries would remain unchanged. No additional fish would be available in the human consumption fisheries.

The potential for illegal by-catches.

An illegitimate by-catch is defined as human consumption species which have been caught in a directed fishery for these species and not incidentally together with the species used for reduction to meal and oil, although claimed to be so caught. The potential is 10 % of the total weight of both types of species (i.e. one ninth of the tonnage of the industrial species caught).

The total potential for the North Sea fisheries (ICES sub-area IV) is 129.305 t of which the share of Denmark is 119.608t (Table 1).

For the area west of the United Kingdom, west and south of Ireland and west of France (ICES sub-areas VI, VII and VIII) the total potential is 41.194 t (Table 2).

If the request of the Danish government were allowed, there would be no limit to the by-catches of species which can be fished with small mesh nets (Article 3 of Council Regulation (EEC) 171/83 but which are not listed in Annex V of this regulation.

Under existing regulations it is not permitted to retain on board any percentage of such by-catches (Article 4 of Council Regulation 172/83) if a member State does not have a quota, but allowing the Danish request would make it necessary to introduce a new regulation to fix a limit to such by-catches.

In order to achieve the conservation objectives of the Common Fisheries Policy, potential illegitimate catches in excess of quotas would have to be deducted from the TACs, or the Community shares of the TACs, before quota allocations were made. The potential by-catch species are cod, haddock, saithe and whiting, the proposed 1983 quotas for which are shown in Tables 1 and 2.

Existing provisions in the fisheries for species which are used for reduction to meal and oil

Part of the by-catch taken in the fisheries for species used for reduction to meal and oil consists of small, immature fish, some of which would have survived to be caught as large, edible fish in the fisheries for human consumption purposes. As the by-catch is unavoidably caught when fishing for certain industrial species, it would not be possible to fish for the majority of species which are used for reduction to meal and oil, if a by-catch was not permitted. The Commission recognizes that fishing for industrial species is a legitimate fishing activity and that it is logical to make use of these resources, which would otherwise be wasted. To allow these fisheries to be carried out, the Council permitted nets with small meshes to be used (Article 3 and Annex II of Regulation 171/83 for certain species (Article 3 and Annex II of Council Regulation (EEC) 171/83 subject to a maximum by-catch limit of 10% of human consumption species or of Sepia (1). Similar provisions apply to herring which is taken as a by-catch (2). These provisions strike a balance between the economic disadvantage to the fisheries for human consumption species resulting from the losses to these fisheries caused by the by-catch and the economic advantage of permitting the fisheries for industrial species.

Additionally, the Council has agreed by its declaration of 25/1/83, that if a member State has a quota for a species and that its quota is not exhausted or, if there is a Community share of a TAC not allocated between member States and that share is not exhausted, its fishermen may sort out and land by-catches of fish suitable for human consumption. This recognizes that it would be a waste of valuable resources to convert such fish into meal and oil. The Council could accept such landings only because they count against the quota or Community share of the TAC (Article 4 of Council Regulation (EEC) 172/83) and therefore, do not nullify the conservation objectives of the Community.

(1) Council Regulation (EEC) 171 /83 of 25/1/83; Article 8 (1) and Annex V

(2) Council Regulation (EEC) 172 /83 of 25/1/83; Article 8

Table 1

Average catches (1977-81) of the four main species caught with Article 3 nets in ICES sub-area IV (North Sea) and potential maximum by-catches of Annex V species at 10 %. (1)

Species	EEC	D	F	NL	B	UK	DK	IRL
Blue whiting	22.849	367	0	0	0	215	21.718	549
Norway pout	240.411	0	0	25	0	2.749	237.459	178
Sandeel	591.888	0	0	0	0	30.604	561.274	10
Sprat	308.585	4.869	455	2	1	47.242	256.017	0
Total	1.163.734	5.236	455	2	1	80.810	1.076.468	0
Potential by-catch at 10 % (1)	129.305	582	51	3	0	8.979	119.608	82
species (2)	559.450(3)	54.020	79.950	37.180	13.520	293.850	80.930	0

(1) The by-catch is defined as the weight of the by-catch species expressed as a percentage of the total weight of both the by-catch species and the species used for reduction to meal and oil: that is, one ninth of the latter. For example:

$$\frac{129.305}{(1.163.734 + 129.305)} \times 100 = 10 \%$$

(2) Proposed Community shares of the TACs for 1983 for cod, haddock, saithe and whiting (COM(83) 213).

(3) excluding 5.500 t of haddock and 22.180 t of whiting

Table 2

Average catches (1977-81) of the five main species caught with Article 3 nets in ICES sub-areas VI, VII and VIII (west of the United Kingdom, west and south of Ireland and west of France) and potential maximum.

SPECIES	EEC	D	F	NL	B	UK	DK	IRL
Actual catches								
Blue whiting	22.267	2.755	0	1.166	0	5.279	12.691	376
Norway pout	9.811	0	0	1.456	0	1.101	7.254	0
Sandeel	1.527	0	265	0	0	1.240	22	0
Sprat	26.244	2.274	946	2.943	0	9.306	4.355	6.420
Horse mackerel (1)	88.588	2.163	0	72.515	5	8.641	5.264	0
Total	148.437	7.192	1.211	78.080	5	25.567	29.586	6.796
Potential by-catch at 10 %	16.494	799	135	8.676	1	2.841	3.287(2)	755
EEC share of TACs less actual catches								
Blue whiting	216.884(3)	NOT	ALLOCATED	BETWEEN	MEMBER	STATES		
Horse mackerel	5.412							
Potential by-catch at 10 %	24.700							
Total potential by-catches	41.194							
Directed catch of by-catch species (4)	174.670	2.410	57.640	240	1.160	78.020	0	35.200

(1) Figures reported by member States for 1982

(2) Maximum actual loss of human consumption species (see paragraph 5)

(3) 262.000 t less actual catches in sub-areas IV, VI and VII

(4) Proposed 1983 TACs and quotas for cod, haddock, saithe and whiting (COM(83) 213)