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Marine Policy

journal homepage: www.elsevier.com/locate/marpol

New modes of fisheries governance: Implementation of the landing obligation in four European countries



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ARTICLE INFO

Article history:

Received 26 August 2015

Received in revised form

28 October 2015

Accepted 3 November 2015

Keywords:

Fisheries governance

Landing obligation

Legitimacy

Stakeholder participation

ABSTRACT

Fisheries policy is increasingly influenced by civil society organizations. The newest example of this is the formulation of the landing obligation, a regulation that should reduce the contested practice of discarding unwanted fish. In this paper the implementation process of the landing obligation in four European countries is compared. From this comparison it becomes clear that fishers are working on diminishing discards. However it also shows that for the legitimacy, and the effectiveness of policy it is not only vital to increase the influence of civil society actors, but also the participation of resource users. Their views, knowledge, and cooperation are vital for a successful implementation of the regulation. Otherwise, resistance become too high, and regulation becomes more symbolic than a tool for change.

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1. The increasing influence of civil society actors on fisheries governance

1.1. New modes of fisheries governance

For a long time fisheries policy was a (biological) science based, state centered activity. The focus on scientific evidence gave power to a select group of fisheries experts. As result of this, the decision making process was not very transparent for non-specialists cf. [1]. The influence of civil society actors (NGOs, institutions that represent citizens), and the industry on policy making was very limited.

Although this is still for a large part the case, also many changes have taken place. In several countries co-management systems have been introduced [2,3], and one of the outcomes of the reform

of the European Common Fisheries Policy (CFP) in 2002 was the establishment of Regional Advisory Councils (RACs, in the new regulation from 2014 Advisory Councils (AC)¹). “In that way the knowledge and experience of stakeholders was to a certain extent incorporated into the formulation and implementation of fisheries management measures by the European institutions [4–6]”.

Hence, fisheries policy making processes are changing from a state centered process to a more open, complex, and interactive process in which various public and private actors participate, solve problems, and strive for solutions [7]. The political system is increasingly characterized by multi-level and multi-actor features. This all leads to an increasing interweaving of state, market and civil society in new fisheries governance arrangements. Many non-governmental organizations (NGOs) that sometimes by-pass the state in their attempts to influence policy making and implementation, have emerged [8,9]. An example of this is the Marine Stewardship Council (MSC), a sustainability certification,

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¹ In the Advisory Councils (ACs), different stakeholder groups are represented. In general 2/3 of the seats belong to the fishing sector (including fishermen's organizations, trade unions, etc.) and 1/3 other interest groups (including environmental NGOs, foundations, consumer groups, etc.). Therefore, the ACs normally represent a wide range of stakeholders.

established by Unilever, and WWF in 1996.

1.2. Fisher's influence on the decision making process

The most recent proof for changes in the policy making process can be found in the implementation of the landing obligation (LO). After years of public debates about discards (mainly driven by NGOs), the final push to make this new regulation seems to have come from more than 650,000 people who signed a petition calling for “discards” to be banned following a series of programs by television chef Hugh Fearnley-Whittingstall [10].

For fishers it is difficult to see that NGOs and citizens are not only criticizing their ways of producing, but that ‘laymen’ (in the perception of fishers) now also have an influence on policy formulation. Fishers were not involved in the decision process to introduce the LO, but during the implementation stage Member States can involve fishers. According to the Common Fisheries Policy (CFP), the adoption of specific discard plans or the adoption of minimis exemptions to the LO should be based on a regionalization process. This whole process obviously has implications for the legitimacy of the new regulation, and subsequently on the willingness to comply with it [11,12].

1.3. The implementation process of the landing obligation

For the effectiveness of the regulation, it is important to understand how fishers are responding to the new regulation, especially in the more complex, mixed fisheries that have larger quantities of discards. Management measures can create unintended incentives for fishers, and the behavior of fishers ultimately determines the success/failure of the measure [13]. In this sense, it is frequently observed that the higher the fisher's involvement in the decision making process, the higher the success of the measure adopted [14,15]. Taking into account these aspects could help improving the implementation of the LO within Europe. Therefore, this paper focuses on the implementation of the LO in four European countries:

- 1) the Netherlands,
- 2) France
- 3) Greece, and
- 4) Spain

By making a comparison between four countries it is aimed to understand how fishers are acting in practice, which factors can contribute to the success of the discard ban, and which factors could be acting as barriers. The results are based on case study work done in the EU FP 7 project SOCIOEC, and the French CAR-Rejet project. Before going to the case studies, we first explain the background of the new LO regulation.

2. A landing obligation should solve the discarding problem in European fisheries

2.1. Incentives for discarding in European fisheries

The CFP has been under heavy criticism because of high bycatch rates and related discarding of unwanted species or undersized specimen in many European fisheries. The critics are usually quick to point out that valuable fish is wasted (‘constitute a substantial waste’ Reg. (EU) 1380/2013 (justification point 26). Secondly, fish thrown overboard can most likely not be harvested later or at least spawed.

However, the reason for discarding is not simply that fishers like to catch unwanted fish and throw it away. The incentives for

discarding mainly lie in economics and regulations. The economic incentives are provided by low valued quota species, which are discarded (high-grading) in the expectation to catch more valued fish later [16]. The regulation of mesh size and minimum landing size provide an incentive to discard undersized fish [17,18]. TAC regulations also create an incentive for fishers to discard the over-quota caught fish, especially in mixed fisheries [19,20]. Because of these reasons, discarding became a normal practice in EU fisheries, all fishers are discarding, though some more than others.

Fishers across Europe have taken a number of initiatives to decrease discards, but the initiatives are still scattered across Europe. In the meantime public opinion was quickly building up against this practice [21]. Therefore it was of no surprise that a LO was proposed, and included in the new regulation (Reg. 1380/2013 Art. 15). With the LO the bycatch and discard problem would be addressed at least to a certain extent, as fish will have to be landed and counted against the quota.

The article 15 on the LO includes dates when the discard of certain species or in certain fisheries will be forbidden. The Commission proposed a gradual approach in three steps: pelagic species started implementing in 2014, most valuable demersal species (cod, hake and sole) in 2015, and other species in 2016. The LO covers the listed species, regardless of how they are managed [21].

2.2. The basis for the implementation of the landing obligation: Article 15 of the new CFP

The final text of Article 15 is long and contains a number of exemptions and flexibility tools. These tools raise issues for implementation, catch forecasting, stock assessment and control and monitoring. The possible exemptions include species not covered by catch limits, species where high survivability can be demonstrated, prohibited species, limited volumes of permissible discards which can be triggered under certain conditions, the so called de minimis exemptions, as well as inter-species and inter-annual quota flexibility mechanisms. The main reason for including them is the fear that fishers would have to stop fishing well before they exhausted the quota of the target species.

The normal procedure is that provisions for the LO are included in long term management plans, with a foreseen duration of six years [22]. As there is a legal dispute between the Council and Parliament on the contents of the management plans, first so-called discard plans have to be developed. The discard plans are additionally the first fisheries regulation ever, to be implemented via a regional approach. Art. 18 of the basic regulation provides for Member States around a regional sea to agree on a regulation, propose it to the European Commission, which then will implement it via a delegated act.

For most of the demersal fisheries the first discard plans have to be put into place by January 1st 2016. For the Mediterranean the date was set for the 1st of January 2017.

2.3. First adopted Discard plans: initial lack of involvement of the Advisory Councils (ACs)

The European Commission adopted in October 2014 via delegated acts² the first five discard plans for:

- Certain small pelagic species in the Mediterranean Sea
- Pelagic fisheries in the North-Western waters
- Pelagic fisheries in the South-Western waters

² Commission Delegated Regulations (EU) No. 1392/2014, No. 1393/2014, No. 1394/2014, No. 1395/2014, No. 1396/2014 of 20 October 2014.

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