

PROJECT N° 96/080 : THE COSTS AND BENEFITS OF COMPLIANCE WITH REGULATIONS IN NORTHERN EU FISHERIES

KEY WORDS

Fisheries offences, compliance, fisheries regulation, Denmark, Germany, Netherlands, Scotland.

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OBJECTIVES

The study examined the issue of fisheries offences within the European Union.

APPROACH AND METHODOLOGY

The study covered four countries: Denmark, Germany, Netherlands and the UK (Scotland). An examination was made of the incentives for committing an offence. The options available to fishery managers when attempting to limit non-compliance were evaluated. All four countries are required to comply with the same EU fisheries policy and yet all have different experiences when dealing with compliance. The analysis examined the activities of the respective industries, the different enforcement agencies controlling the industry and the ability of the judiciary in dealing with offences.

The study also examined fishermen's perceptions of non-compliance and the financial incentives involved when committing offences.

Differences in national approach to fisheries monitoring and control in each of the four subject countries were examined by means of an analysis of strengths, weaknesses opportunities and threats (or 'SWOT' analysis), together with an economic evaluation of the benefits of non-compliance. This led to a number of core recommendations intended to potentially improve the national systems with a view to establishing greater consistency between the countries concerned. Recommendations were made that relate specifically to improving the levels of compliance, the administration of sanctions and establishing more transparent regimes for the application of sanctions.

MAIN FINDINGS AND CONCLUSIONS

Each country studied has the freedom to decide on the most appropriate means of ensuring compliance with EU regulations. This has led to different approaches in the application of monitoring and control, the administration of sanctions (either through the courts or via

administrative penalties) and levels of compliance. These differences are highlighted in the report.

Of the four countries, Denmark had the maximum level of compliance. Scotland had the lowest level, relative to the other three countries. However, within the various countries:

- There are different levels of compliance according to the different types of offence (some are more supportive of technical measures than others (Scotland, Denmark).
- Some are almost fully compliant with quota restrictions (Netherlands).
- Some are generally compliant with most measures except where they doubt the logic of the legislation: Bornholm fishermen (the over-complexity of regulations) and Scottish fishermen (the licence restrictions east and west of the 4 degrees line).
- Some consider legislation to be too complex (German and Danish fishermen in the Baltic).

This indicated that there are different reactions to different forms of regulation. The overriding influential points appeared to be:

- The perceived strengths of the enforcement system (chances of being caught).
- The perceived financial gains against the ability of the enforcement/judicial scheme to deal with them (the expected illegal gain against the penalty and sanction).
- The behaviour of other fishermen (peer pressure).
- The perceived support for the regulation (including regulations which are considered irrational and as such do not command significant levels of condemnation).

Other influential factors were found to be:

- The prospects of being convicted: (the quality of the personnel who obtain the evidence and the efficiency of the legal system).
- The awareness of penalties.
- The time between the offence and conviction.
- The lack of criminalisation.
- The ability of the industry to operate their own control regime (quota management).

A further influential factor appeared to be the extent to which pressures are placed on the efficiencies on the enforcement agencies. Undertaking enforcement activities where fisheries are continually expanding tends to cause greater pressure on the authorities. Such a situation might occur where policy makers have for example been reluctant to impose a decommissioning scheme or where fleet activities are increasing (Scotland). In contrast, the task of enforcement is made simpler when the fleet is in decline (Denmark and Germany), thus enabling more efficient deployment of resources.

In regard to a way forward, section III of the report highlights the key SWOT in the application of enforcement in a number of northern European fisheries. The benefit of the analysis is that it has facilitated an identification of the key advantages and disadvantages in the various country systems. Some are mutually consistent whilst others are unique. Furthermore, section IV has analysed the appropriateness of the fines linked to financial gain and an assessment of risk.

The analysis enables the formulation of a number of recommendations that should lead to an improvement in the efficiency of the different enforcement regimes. Some of these are already adhered to by the national administrations. It is nevertheless presumed that since these

administrations are charged with the principal role of ensuring that fishing vessel owners/operators comply with EU policy there may also be cause to increase the levels of consistency in the application of EU fisheries law between these countries.

It should also be noted that these recommendations are the views of the consultants. The current statutory barriers to change including aspects of national and community law have not been fully taken into account, although it is perceived that these possess considerable barriers to change.

The study offers a number of recommendations for future action. These are:

Recommendation 1: Establish a schedule for the application of fines at EU level. This should allow for separate fines to deal with low-scale administrative infringements (delays in the submission of logsheets) and higher-scale fines that are linked to the perceived severity of the offence and the financial gain involved. The severity of fines should be jointly determined through the creation of a Joint Enforcement Committee made up of the industry, the policy makers and the enforcement agencies.

Penalties should take account of the financial gain associated with each offence and each type of vessel. These could be linked to the following:

- For a first-time offence – a fine equivalent to the total value added from the trip as well as the confiscation of fish (and/or gear).
- For subsequent repeat offences – a fine equivalent to the total value of the trip sales as well as the confiscation of fish (and/or gear).

The downside to these proposals is that judges may be reluctant to impose penalties that are at variance with offences that occur on land. If this is the case, it may be preferable to try to impose penalties in the form of licence suspensions that would be equivalent to the financial gain.

Recommendation 2: The ability to apply administrative sanctions should be extended to the enforcement agencies concerned. These sanctions should be applied according to the agreed schedules as outlined in Recommendation 1. Administrative sanctions should, however, retain the right to appeal to a panel made up of various independent representatives. The potential problem is that the appeals procedure will be used as a means of delaying the implementation of the sanction.

Recommendation 3: Responsibility for an offence should be extended to the receiver (first-hand buyer).

Recommendation 4: Details on fines should be published on a regular basis in a way that is accessible to the fishermen.

Recommendation 5: The PO quota management system should be encouraged in all countries concerned. POs should, however, demonstrate that they are capable of imposing sanctions if required. Failure to do so should result in a withdrawal of their recognised status. All traded volumes should be traceable to the vessel concerned. Similarly, the PO should by compulsion be fully appraised of the source and destination of all quantities sold. This will require clearer links with the auction houses and other exchange mediums.

Recommendation 6: The practical implications for enforcing regulations should be reviewed, not only with the enforcement agencies, as is the current practice, but with the fishermen's organisations. Such dialogue could be organised through the Joint Enforcement Committee. The initial tasks of such a Committee should re-address the practicalities of applying control measures on mis-reporting, the conflicts in the application of separate regulations concerning the same subject (discards), the frequency of licence amendments and technical measures, such as the implementation of by-catch restrictions and the use of inlets.

