

(Lack of) catch documentation under the landing obligation and how exemptions may defeat rather than prove the rule

The landing obligation, or ‘discard ban’, has been fully in force across European Union (EU) fisheries since January 2019. This means that EU fishers and those from non-EU countries fishing in EU waters have to bring to shore almost everything they catch, rather than throwing unwanted fish back into the sea – with a few important exemptions. The purpose of this key policy introduced as part of the latest reform of the Common Fisheries Policy (CFP) in 2013 was to:

- gradually eliminate the wasteful practice of discarding;
- avoid and minimise unwanted catches by being a driver for more selective fishing methods; and
- provide a robust picture of total catches, including those that used to be discarded.

However, the success of the discard ban in achieving these goals depends on its effective implementation, especially in terms of compliance and reliable monitoring. Much like the success of a diet depends on actually following the diet plan, counting all the calories you eat and factoring every snack you allow yourself into your daily calorie allowance.

And that is the crux of the matter. Almost two years after the phasing in of the discard ban was completed, compliance, as far as we know, is quite poor. To make matters worse, the many exemptions from the rule make it even more difficult to monitor what is really happening out at sea, and whether discarding that is still happening is legal. The lack of robust catch documentation also makes it harder to take discards into account when setting fishing limits. This in turn puts the sustainability of fishing limits at risk.

This briefing gives EU decision-makers an overview of reporting requirements regarding catches and discards, and highlights issues related to exemptions. It also provides recommendations for how decision-

makers should address these issues, especially when setting Total Allowable Catches (TACs). Click [here for more details on TAC-setting in the context of the landing obligation](#).¹

Catch reporting requirements under the Common Fisheries Policy

There are a range of rules on catch reporting within the CFP Basic Regulation² and associated legislation, such as the Control Regulation³ and its Implementing Regulation.⁴ A detailed explanation of all these provisions would be too lengthy in this briefing. What follows is an overview of the key requirements:

- Under the Control Regulation, masters of EU vessels 10 metres in length or more must complete a fishing logbook, recording in it all quantities of each species caught and kept on board above 50 kilograms (kg) live-weight equivalent.⁵ Vessels below 10 metres are not subject to this requirement, but instead to sampling plans,⁶ to decrease the administrative burden for fishers;
- All catches falling under the landing obligation ‘*shall be brought and retained on board the fishing vessels, recorded, landed and counted against the quotas where applicable, except when used as live bait*’;⁷
- Catches under so-called *de minimis* exemptions (i.e. allowing a certain amount of fish to be thrown back)⁸ specified in discard or multiannual plans ‘*shall be fully recorded*’.⁹ Further provisions on catch documentation can also be included in multiannual or discard plans,¹⁰ but so far this has not happened;
- ‘*For the purpose of monitoring compliance with the landing obligation, Member States shall ensure detailed and accurate documentation of all fishing trips and adequate capacity and means, such as observers, closed-circuit television (CCTV) and others*’;¹¹
- All estimated discards above 50 kg for any species not subject to the landing obligation, as well as those falling under an exemption from the landing obligation, must be recorded in fishing logbooks.¹²

In summary, vessels of 10 metres in length or more have to record (1) all catches above 50 kg of live-weight equivalent falling under the landing obligation, and (2) all discards falling under any kind of exemption.

Importantly, discards exempted from the landing obligation also need to be accounted for (i.e. deducted) when setting TACs in order to make sure the TACs do not allow for overfishing.¹³

1 Also see ClientEarth’s briefing: ClientEarth (2020). Setting Total Allowable Catches (TACs) in the context of the Landing Obligation. July 2020. <https://clientearth.azurewebsites.net/latest/documents/setting-total-allowable-catches-tacs-in-the-context-of-the-landing-obligation/>.

2 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy. This Regulation is referred to as ‘CFP Basic Regulation’ throughout this briefing.

3 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. This Regulation is referred to as ‘Control Regulation’ throughout this briefing.

4 Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015.

5 Article 14(1) of the Control Regulation.

6 Article 16 of the Control Regulation.

7 Article 15(1) of the CFP Basic Regulation.

8 *De minimis* exemptions can be adopted in discard plans based on scientific evidence that increases in selectivity are very difficult to achieve, or to avoid disproportionate costs of handling unwanted catches (*ibid.*, Article 15(5)(c)).

9 The CFP provides for the adoption of multiannual plans which ‘shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield in accordance with Article 2(2)’ (Article 9(1) of the CFP Basic Regulation). Article 15(5) specifies which elements (including exemptions) such multiannual plans can contain. Where no multiannual plan is in place, discard plans can be developed by the regional Member States, covering the same elements on a temporary basis.

10 Article 15(5)(c) and 15(5)(d) of the CFP Basic Regulation.

11 Article 15(13) of the CFP Basic Regulation.

12 Article 14(4) of the Control Regulation, as amended by the Omnibus Regulation (Regulation (EU) 2015/812 of the European Parliament and the Council of 20 May 2015). This explicitly covers exemption discards both under Article 15(4) (i.e. prohibited species, exemptions based on evidence of high survival chances after discarding, and for predator-damaged catches) and under Article 15(5) (i.e. *de minimis* exemptions).

13 This has repeatedly been highlighted for example by the Scientific, Technical and Economic Committee for Fisheries which provides expertise to the European Commission, and the Commission itself: For example: STECF – 61st Plenary Meeting Report (PLEN-19-02). Publications Office of the European Union, Luxembourg.

Current situation: many exemptions, many reporting gaps

Despite all these rules on what should be reported and accounted for, the reality of catch documentation is quite different.

First of all, there are a lot of exceptions to the rule, such as exemptions from the landing obligation or reporting thresholds (e.g. based on vessel size or for catches below the 50 kg limit). These diminish the scope both of the landing obligation itself and of the reporting of catches. According to ClientEarth's analysis, 48% and 55% of the TACs agreed for 2019 and 2020 respectively were subject to one or more exemptions. If the landing obligation were a kind of cheese, it would clearly be Swiss, with more holes appearing every year as Member States request new and broader exemptions.¹⁴ To stick with our food analogy: this is similar to going on a diet with lots of exceptions for your favourite snacks that you do not really want to give up. The more exceptions there are, the harder it becomes to keep track of what you can still legally discard – or which snack you are still allowed to eat. This makes it difficult to monitor compliance.

There is also a 'margin of tolerance' regarding catch reporting accuracy, which means that fishers can systematically underreport their catches without being punished, as long as they do not exceed this margin. This is like eating an extra praline off the record every day. It seems OK on a single day, but after two weeks you have eaten the whole box – and it adds up.

Secondly, it is widely recognised that compliance with the landing obligation overall remains poor.¹⁵ As long as monitoring, control and enforcement remain at best patchy, illegal discarding is likely to continue – even though it is difficult to quantify the extent of it. This in turn casts doubt on the information on catch levels feeding into scientific stock assessments, thus potentially undermining the basis of the [scientific advice](#) based on which decision-makers set fishing limits. This is like regularly following your midnight cravings but keeping all those nocturnal snacks off the record, and then wondering why four months into your diet you have still not lost a single kilo.

Thirdly, illegal discards are not accounted for in the setting of Total Allowable Catches (TACs). TACs are mostly based on full catch advice (albeit with some deductions for legal exemption discards), assuming everything that has to be landed is indeed landed. As we explain in more detail in [our recent briefing](#),¹⁶ this can lead to substantial catches beyond scientifically advised sustainable levels if there is full TAC uptake while illegal discarding continues. Legal exemption discards are, in principle, factored into TAC-setting, i.e. deducted when TACs are agreed, based on the Commission's proposal. However, due to the many exemptions and the fact that these usually apply only to a part of the fleet, the calculations behind these deductions are difficult to follow – and the data they are based on are often unreliable, due to insufficient reporting.¹⁷ Failing to properly account for discards (legal or illegal) when setting TACs leads to overfishing – just like eating snacks without counting their calories against your daily allowance will mean you put on rather than lose weight.

2019, ISBN 978-92-76-09515-6, doi:10.2760/31279, JRC117461, p. 76. Commission letter to the regional groups from 7 September 2018, file number 4757268 on https://www.asktheeu.org/en/request/access_to_information_regarding_4#incoming-21327.

14 See for example STECF PLEN 19-02 (see footnote 13 for full reference), p. 36, 76 and 77.

15 See for example COM(2020) 248 Final. Communication from the Commission to the European Parliament and the Council. Towards more sustainable fishing in the EU: state of play and orientations for 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:248:FIN>.

16 ClientEarth (2020). Setting Total Allowable Catches (TACs) in the context of the Landing Obligation. July 2020.

<https://www.documents.clientearth.org/library/download-info/setting-total-allowable-catches-tacs-in-the-context-of-the-landing-obligation/>.

17 See for example Scientific, Technical and Economic Committee for Fisheries (STECF) – Fisheries Dependent Information – FDI (STECF-19-11). Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-14096-2, doi:10.2760/230618, JRC119066. P. 78ff.

<https://stecf.jrc.ec.europa.eu/documents/43805/2574024/STECF+19-11+-+FDI.pdf/456fc3cb-c000-4197-b255-25b58e896bd4>.

And finally, the extent and impact of the issues raised above can be substantial, given the number and scope of exemptions, the gaps in reporting, and the large amount by which TACs have been increased since the landing obligation began to be phased in from 2015. As [our recent briefing](#) illustrates, this increase in TACs was a result of ‘topping up’ the TACs to reflect the shift from regulating landings before 2015 (knowing discarding was still happening) to regulating total catches (assuming that all catches, except those under exemptions, are now landed).¹⁸ Due to these ‘quota top-ups’, TACs in 2020 were on average 50% higher than the landings-based scientific advice.^{19,20} Failing to effectively monitor and account for all these extra catches would mean that quite a lot of fish still might be caught and secretly discarded on top of what scientists advise is sustainable.

This is like moving from a diet which allowed you only 1000 calories per day for your main meals (knowing that you would still eat up to 500 calories in snacks), to a diet which allows you 1500 calories in total, no cheating, but where you eat 500 extra calories in snacks anyway, because you always have. With the first diet option, your additional snacking is not a problem (as long as you don’t increase it), because your daily allowance takes into account your snack intake. But if you choose the second diet option and use your now bigger calorie allowance of 1500 on bigger meals while continuing to secretly raid the fridge at night, you will end up exceeding your daily calorie allowance by 500 calories, or 33%.

Recommendations for catch documentation and TAC-setting

The above illustrates clearly that the sustainability of fishing limits and the resulting catch levels depends to a large extent on:

- recording all catches reliably,
- ensuring compliance with the landing obligation, its exemptions, and fishing limits, and
- factoring any discards (whether legal or not) into the fishing limits.

In the same way, a diet will only help you effectively lose weight if you keep track of your calorie intake, stick with your daily allowance and make sure anything you eat, including snacks, is accounted for in your diet plan – and if you are being honest about how much you are really eating.

The more exceptions you make – exemptions from the landing obligation or reporting requirements, or exceptions from your diet – the more complicated it becomes to keep track. This makes robust reporting and monitoring even more important in order to tell legal discards (or snacks) apart from illegal ones.

Finally, if you choose a diet that covers your entire daily food intake (including snacks), over one that only covers your main meals (and assumes a certain ongoing level of snacking), you must not eat any additional snacks on top of that – or you will retain the weight. In reverse, this means if you cannot trust yourself to resist some additional late-night snacking, you should choose a diet that already factors that in and will save you from yourself. As for fisheries, this means: if you opt for a full landing obligation and set your fishing limits based on the assumption that everything that legally has to be landed will be landed, you have to make sure that there are no additional unreported catches beyond that. And if you cannot ensure that, then you must not set fishing limits based on this assumption.

Likewise, any catches that do not fall under the landing obligation have to be taken off the total catch allowance. So if the fishing industry were to push for the scope of the landing obligation to be decreased,

¹⁸ For further details on this topic, please refer to [ClientEarth’s recent briefing](#), see footnote 1 for full reference.

¹⁹ Lisa Borges (2020). The unintended impact of the European discard ban. ICES Journal of Marine Science, IN PRESS, DOI: 10.1093/icesjms/fsaa200.

²⁰ Our Fish (2020). Science Briefing: EU fisheries management system likely to implode: the unintended impact of not enforcing the ban on fish discards.

<https://our.fish/publications/science-briefing-eu-fisheries-management-system-likely-to-implode-the-unintended-impact-of-not-enforcing-the-ban-on-fish-discards/>.

meaning a return to more discarding, they should also expect fishing limits to decrease again, possibly substantially: in the worst case to pre-landing obligation levels, based on scientific advice on landings – not catches.

In summary, decision-makers involved in implementing the landing obligation and/or setting TACs should:

- Ensure robust documentation of and accountability for all catches, including both landings and discards, particularly where exemptions apply. In practical terms, this means that EU decision-makers should as part of the ongoing revision of the Control Regulation, ensure that all fishing vessels, including the ones below 10 metres, electronically report all their catches, and that the 50 kg threshold, below which catches do not have to be recorded, has to be removed;
- Ensure compliance with the landing obligation and respect for agreed fishing limits, notably through the installation of Remote Electronic Monitoring on board fishing vessels; funding from the European Maritime and Fisheries Fund (EMFF) is available and should be used to support this; Member States should report comprehensively on how they are controlling the landing obligation, based on predefined baselines and indicators, possibly subject to approval by the Commission;
- Factor any exemption discards into TAC-setting in a transparent manner: any TAC for catches subject to one or more exemption needs to be decreased by the exemption amount;
- Only adopt exemptions which are sufficiently supported by scientific evidence, particularly including the anticipated discard and mortality levels that are needed to properly account for them in TAC-setting: reliable information on the discard and mortality levels is essential to ensure the right amount is deducted from the TACs so that exemption discards do not lead to overfishing; where there is uncertainty around the exemption amount, a precautionary larger deduction should be made in order to be on the safe side;
- Regularly review existing exemptions to make sure that the appropriate deductions are applied;
- Set fishing limits in a precautionary way: where full compliance cannot be guaranteed, potential illegal discards should be accounted for, and/or access by vessels to that part of the fishing limits covering previous discards should be conditional on demonstrated compliance; and
- Communicate clearly to the fishing industry that any decrease in the scope of the landing obligation, for example through exemptions, would mean a decrease in fishing limits.

Continuing to act as if everyone was following the rules, and turning a blind eye on illegal discards, would be a sure way of defeating the purpose of the landing obligation and making fisheries less, not more sustainable. It is time to admit we are cheating on our diet, and that we will not reach our goals until we account for every calorie.

Jenni Grossmann

Science and Policy Advisor, Fisheries

+44 (0)303 050 5943

jgrossmann@clientearth.org

www.clientearth.org

Brussels

Beijing

Berlin

London

Warsaw

Madrid

Los Angeles

Luxembourg

ClientEarth is a charity registered in England and Wales, number 1053988, company number 02863827.