



Dear Sir or Madam,

We are aware that your Ministry is currently developing a joint recommendation for a demersal discard plan in the North Sea and North Western Waters (discard plan JR) as part of the regional Member State group. We write to you and the representatives of the other Member States involved in this group to highlight key points that should be reflected in the discard plan JR and would appreciate the opportunity to discuss these further at the earliest possible date. We will also write to Minister Eustice and other fisheries ministers, to ask them to pay particular attention to the upcoming discard plan JRs.

Our organisations have been providing input to European decision-makers, Advisory Councils and regional Member State groups throughout the last few years, to achieve one of the main objectives of the reformed Common Fisheries Policy (CFP): the minimisation of unwanted catches. The landing obligation (LO), as the CFP's main tool to gradually eliminate discards, has a clear role to play here, and its successful implementation depends on the development by the regional Member State groups of scientifically sound discard plan JRs in accordance with the objectives and requirements of the CFP.

We acknowledge the challenges posed by the LO, particularly for mixed fisheries. However, a strong commitment from Member States, EU decision-makers, the fishing industry and other stakeholders to the LO's effective implementation, rather than to finding ways 'around' it, is vital to continue to drive positive change towards improved selectivity and the avoidance and reduction of unwanted catches. As the discard plan JRs play a vital role in this context, it is essential that they set out concrete measures to improve selectivity, and ensure that the exemptions and flexibilities for which they provide do not allow for unsustainable exploitation.

To this end, we outline below a number of key priorities and recommendations and urge you to follow these in the development of the discard plan JRs for 2019:

**1. The discard plan JRs for 2019 must cover all species subject to catch limits.**

Article 15 of the CFP basic regulation<sup>1</sup> is clear that from January 2019 at the latest, the landing obligation must apply to all catches of all species which are subject to catch limits. As a result, the discard plan JRs for 2019 must be unambiguous in scope, covering all of these species and ensuring that the original intention of the co-legislator is upheld, irrespective of recent efforts to put forward a narrower interpretation of the species list.

**2. Member States should proactively include concrete measures in the discard plan JRs to improve selectivity and reduce unwanted catches, drawing upon findings of existing and ongoing trials<sup>2</sup> and developing further methods and tools as appropriate.**

We note that previous discard plans have primarily been lists of exemptions, and not holistic plans outlining how to reduce unwanted catches. We therefore welcome the commitments made by Member States during the 2017 December Council to take action in relation to certain stocks,<sup>3</sup> recognising the dire state they are in and the need to support their recovery, for example through selectivity improvements.

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<sup>1</sup> Regulation 1380/2013 on the Common Fisheries Policy

<sup>2</sup> See for example [https://ec.europa.eu/fisheries/cfp/fishing\\_rules/landing-obligation-in-practice\\_en](https://ec.europa.eu/fisheries/cfp/fishing_rules/landing-obligation-in-practice_en)

<sup>3</sup> Final Presidency compromise in agreement with the Commission, 15687/17, 13 December 2017, <http://data.consilium.europa.eu/doc/document/ST-15687-2017-INIT/en/pdf>, p. 13 onwards

**3. Member States should not include an exemption request in the discard plan JR unless the legally-required supporting evidence, including all information recommended as necessary by STECF,<sup>4</sup> is available. Hence, they should not propose new, or re-include existing, ‘provisional’ exemptions where the relevant evidence is still lacking.<sup>5</sup>**

All requested exemptions must be sufficiently underpinned by scientific evidence and supporting information required by the legislation.<sup>6</sup> When gathering this evidence, Member States should follow STECF’s recommendations as to the required information.<sup>7</sup> If any of the following conditions are not met, the exemption should not be included.

- a. High survival exemptions must be supported by studies which take *‘into account the characteristics of the gear, of the fishing practices and the ecosystem’*, as required by Art. 15(4)(b), and STECF guidance on how relevant survivability studies should be conducted should be followed.<sup>8</sup>
- b. For *de minimis* exemptions, the anticipated absolute *de minimis* amount must be reliably quantified in the exemption request, so that it can be accounted for in TAC-setting as outlined by STECF.<sup>9</sup>
- c. As conditions may vary considerably depending on multiple factors including area, season and fleet, relevant evidence needs to be presented for the specific situation that the exemption is being requested for. The results from one study must not be extrapolated to other areas, seasons or fisheries, unless it is reliably demonstrated that the underlying conditions are equivalent. The same applies if the scope of an existing exemption is extended in the following year, for example to other areas or gear types.<sup>10</sup>

**4. Member States should not request *de minimis* exemptions, particularly combined *de minimis* for more than one species, to address choke issues related to quota limitation. This would exacerbate, rather than improve, the situation.**

Discussions in the regional groups and Advisory Councils have explored the potential of *de minimis* exemptions, either for individual species or combined for more than one species, to mitigate anticipated choke issues. *De minimis* exemptions may help alleviate issues related to storage capacity or disposal, for example.

However, we strongly advise against this approach in choke situations arising from quota limitation, as it would not only fail to solve the problem, but instead is likely to exacerbate it: if Member States propose a *de minimis* exemption, they should expect the resulting TAC to be lower than it otherwise would be. This is because, as STECF highlighted, *‘any de minimis discard quantities should (and have*

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<sup>4</sup> See for example Scientific, Technical and Economic Committee for Fisheries (STECF) - STECF-14-01: Landing Obligation in EU Fisheries - part II. 2014. Publications Office of the European Union, Luxembourg, EUR 26551 EN, JRC 88869, 67 pp.

<sup>5</sup> For example, the exemptions in the following Articles of the North Sea, NWW and SWW demersal discard plans for 2018 are based on requests with insufficient supporting information according to STECF’s evaluation in 2017: North Sea: Art. 6(h) and 6(f); NWW: Art. 4(1)(b), 5(a), (b) and (c); SWW: Art. 3(1)(a). Summary of STECF’s conclusions in STECF – 55<sup>th</sup> Plenary Meeting Report (PLEN-17-02); Publications Office of the European Union, Luxembourg; EUR 28359 EN, pp. 25 onwards.

<sup>6</sup> This evidence must demonstrate that survival rates are high (Art. 15(4)(b)), or – for *de minimis* exemptions – that selectivity improvements are very difficult to achieve (Art. 15(5)(c)(i)) or costs associated with handling unwanted catches would be disproportionate (Art. 15(5)(c)(ii)).

<sup>7</sup> STECF-14-01, see footnote 3 for full reference.

<sup>8</sup> *Ibid.*, see footnote 3 for full reference.

<sup>9</sup> STECF-PLEN-17-02 (see footnote 4 for full reference), e.g. pp. 22, 38.

<sup>10</sup> For example, certain areas were added to *de minimis* exemptions in Art. 2(1)(a), 3(e) and 3(g) in the NWW demersal discard plan for 2017 without additional supporting information having been provided.

been) deducted from the catch opportunities arising from FMSY based catch advice'.<sup>11</sup> STECF also pointed out that combined exemptions for more than one stock are 'likely to reduce the fishing opportunities for all other fleets catching these stocks [, meaning that] any flexibility granted to some groups of vessels could have negative implications for other groups of vessels',<sup>12</sup> and that therefore Member States 'should be aware it will mean the eventual TAC will be much lower'.<sup>13</sup>

**5. The discard plan JRs should include concrete provisions with clear instructions on the documentation of discards under both *de minimis* and high survival exemptions, to provide for the collection of accurate discard data.**

We are very concerned about the apparent deterioration of discard data<sup>14</sup> at a time when such data are needed more than ever. If discards under an exemption are not fully and accurately recorded, stock assessments and resulting advice will not be reliable, and TACs based on this will allow for fishing above sustainable levels, jeopardising the achievement of the CFP's MSY objective.<sup>15</sup>

Importantly, recording of discards is legally required both for *de minimis* and high survival exemptions.<sup>16</sup> Reliable estimates of high survival discards are essential in order for the (in some cases considerable) residual mortality to be accounted for.

If they are to contribute to achieving the purpose of the LO of improving selectivity and minimising unwanted catches, the discard plan JRs need to be subject to strict scrutiny, in line with the points outlined above. As a Member State representative, you have the opportunity to contribute to the development of an ambitious discard plan JR that provides a strong basis for successful implementation of the LO in 2019.

Our organisations are ready to provide further input on how the Member States can best fulfil this responsibility and we would welcome the opportunity to discuss the issues raised in this letter, as well as potential solutions, in person.

Yours sincerely,



Monica Verbeek  
Executive Director  
Seas At Risk



Catherine Weller  
Head of Biodiversity Programme  
ClientEarth

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<sup>11</sup> STECF-17-08, Evaluation of the landing obligation joint recommendations (STECF-17-08). Publications Office of the European Union, Luxembourg, 2017, doi:10.2760/149272, p. 96.

<sup>12</sup> *Ibid.*, p. 27

<sup>13</sup> *Ibid.*, p. 39

<sup>14</sup> For example, the Commission's report on the implementation of the landing obligation in 2016 commented on the 'lack of accurate reporting of fish discarded under the exemptions in place' (SWD(2017) 256 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017SC0256>, p. 18). Moreover, in the European Parliament 'Public Hearing on the State of Play of the Implementation of the Landing Obligation and Allocation of Quotas by the Member States' on 24 April 2017 ([http://www.europarl.europa.eu/cmsdata/117542/Veronika%20Veits\\_DG%20Mare.pdf](http://www.europarl.europa.eu/cmsdata/117542/Veronika%20Veits_DG%20Mare.pdf), slide 8) it was stated that 'discard rates [...] are still missing or possibly deteriorating'.

<sup>15</sup> Article 2(2) of Regulation 1380/2013 on the Common Fisheries Policy

<sup>16</sup> Article 14(4) of Council Regulation (EC) No 1224/2009, as amended by Regulation (EU) 2015/812.