

London, 23 August 2018

Re: Outstanding issues regarding landing obligation exemptions requested for the 2019 discard plans

Dear Ms Clark,

The recent evaluation of the joint recommendations (JRs) for demersal discard plans for 2019 and beyond by the Scientific, Technical and Economic Committee for Fisheries (STECF)<sup>1</sup> has raised important concerns about a number of the exemptions from the landing obligation requested in these JRs. We outline below our key recommendations for addressing these concerns and ensuring that the final discard plans adopted by the Commission are in line with the Common Fisheries Policy (CFP)<sup>2</sup>'s objectives, in particular the minimisation and avoidance of unwanted catches. We would appreciate the opportunity to discuss these points with you in further detail.

For your information, please also find attached a letter (Annex I), dated April 2018, which was sent to fisheries ministries in all Member States active in the North Sea, North Western Waters and South Western Waters regional groups and provides a comprehensive overview of our key recommendations, prior to STECF's evaluation.

### **Transparency of the decision-making process leading to the adoption of discard plans**

We were pleased to see the Commission's recent letters to the Scheveningen Group<sup>3</sup> and the North Western Waters regional group<sup>4</sup>, which clearly outline the Commission's planned approach to the exemptions requested for the North Sea and North Western Waters and its expectations for what Member States need to do to strengthen the basis for these exemptions. Increased transparency in the process leading from the initial JR to the final delegated act is essential for improved stakeholder engagement and understanding of the process. To this end, we urge the Commission to document and make publicly available, in a timely manner, any communication related to its decisions on the content of discard plans (including any other letters that may have been sent to other regional groups), including through the Advisory Councils.

### **The Commission's position on exemption requests – our recommendations**

We strongly support the Commission's clear request to the Member States to provide evidence to support certain exemptions for which STECF found the supporting information insufficient or, if this is not provided, to adjust or withdraw these exemptions (see comments in Annex II). The revised version of the Scheveningen Group's JR<sup>5</sup> at least partially addresses a number of the Commission's requests and conditions. This demonstrates the importance of the Commission's intervention for ensuring evidence-based exemptions and commitments to ongoing improvements, for instance in selectivity and survivability.

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<sup>1</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – Evaluation of the landing obligation joint recommendations (STECF-18-06). Publications Office of the European Union, Luxembourg, 2018.

<sup>2</sup> Regulation (EU) No 1380/2013 on the Common Fisheries Policy, referred to as 'CFP basic regulation' throughout this letter.

<sup>3</sup> Dated 24 July 2018. We received this through the Secretariat of the North Sea Advisory Council (NSAC).

<sup>4</sup> Dated 24 July 2018. We received this through the Secretariat of the North Western Waters Advisory Council (NWWAC).

<sup>5</sup> Dated 3 August and received through the Secretariat of the NSAC.

However, we have also identified several cases where the Commission's planned approach as documented in its letters failed to fully reflect the concerns raised by STECF<sup>6</sup>. We provide a list of these cases, highlighting missing information and aspects that need to be clarified in Annex III, and urge the Commission to review its position on these specific exemptions in the light of our findings.

**As we have outlined in previous correspondence, an exemption, temporary or otherwise, must not be adopted unless the supporting evidence required by Article 15(4) of the CFP basic regulation (including all information recommended as necessary by STECF<sup>7</sup>) has been provided.**

However, the Commission's letters to the regional groups indicate that it is nevertheless prepared to adopt such exemptions, despite the absence of required evidence, albeit on a 'temporary' basis for up to 3 years. We urge the Commission to follow the recommendations outlined below should it decide to take this approach:

- **The following conditions must be attached to any exemptions granted in the absence of required evidence, as a minimum:**
  - Implementation of fully documented fisheries to ensure collection of reliable data on catches and discards under both *de minimis* and high survival exemptions;
  - Provision of additional supporting information within a set period (as soon as possible but not exceeding a year) which addresses all gaps and shortcomings identified by STECF;
  - The regional groups must clearly indicate which Member States are active in the fisheries for which an exemption is requested and whether they intend to use it; they must then provide reliable and disaggregated catch and discard data for all relevant fleets using the STECF's templates<sup>8</sup>;
  - A clear and binding roadmap for how selectivity and/or survivability (as applicable) will be maximised in the fisheries for which an exemption is sought, with concrete measures and timeframes. This should be subject to review by STECF and be adjusted in accordance with its conclusions;
  - Specification in the discard plans of catch and handling procedures that must be followed to maximise survivability, where applicable, in line with STECF's findings.
- **Where these conditions are not met, the relevant exemptions must be amended or removed.**
- **Moreover, any 'temporary' exemptions should be limited to one year, subject to a review by STECF of the situation and of progress made in relation to the respective conditions.**<sup>9</sup> The Commission should then decide based on the results of this review, whether the exemption should be continued, modified or removed. We also strongly support the STECF EWG's conclusion that a procedure needs to be put in place to update existing exemptions in the light of new information or circumstances<sup>10</sup>.

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<sup>6</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) – 58<sup>th</sup> Plenary Meeting Report (PLEN-18-02); Publications Office of the European Union, Luxembourg.

<sup>7</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>8</sup> This information is crucial to allow the anticipated discard quantities under the requested exemption to be reliably estimated, and, for *de minimis* exemptions, to be factored into TAC-setting.

<sup>9</sup> E.g. p. 30 of STECF PLEN-18-02 (see footnote 6 for full reference): 'STECF re-iterates the concerns of the EWG 18-06 regarding the duration of the exemption and notes that no further justification for the length of the exemption (3 years) has been provided'.

<sup>10</sup> STECF PLEN-18-02 (see footnote 6 for full reference), p. 49.

## Future requests for and use of exemptions - further recommendations

STECF raised a number of additional concerns in its evaluation and we make the below recommendations on this basis. These will become increasingly relevant as we move towards full implementation of the landing obligation from 2019 onwards, particularly if the number of exemption requests continues to increase:

- **It must be ensured that STECF has the necessary capacity and resources to maintain a high level of scrutiny, in particular if they are to process a growing number of exemption requests<sup>11</sup>. As part of this, STECF must be provided by the regional groups with all relevant supporting information in a timely manner and using the recommended templates.** This is crucial to avoid situations in which information is unclear or incomplete, or submitted only after the relevant EWG meeting has taken place. In this situation, the information can only be evaluated directly by the STECF Plenary, which cannot conduct a thorough review<sup>12</sup>.
- **The Commission must take a strong position on insufficiently supported exemption requests, requiring that the regional groups provide any missing information before the exemptions is granted.** This is crucial in the light of the decreasing quality of information submitted to support *de minimis* exemptions<sup>13</sup>, as noted by STECF. This includes the lack of economic data provided, which prevents STECF from conducting a full evaluation<sup>14</sup>.
- **The collection of catch documentation data, as well as monitoring, particularly of combined *de minimis* exemptions, must be urgently improved<sup>15</sup>.** We share STECF's concerns about the continued lack of reporting on discards under exemptions, which '*will likely have a significant impact on the quality of scientific advice and may compromise the achievement of the MSY objective*'<sup>16</sup>, as well as the failure of the JRs to address this.
- **The Commission must explicitly factor dead discard quantities into its decisions on whether to grant 'high survival' exemptions<sup>17</sup> and on which conditions to attach. This requires reliable recording of such discards,** particularly since STECF notes that dead discard quantities can be high in situations of medium survivability in high discarding fisheries<sup>18</sup> and in many cases much higher than corresponding *de minimis* discards.
- **The Commission must develop a method for factoring dead 'high survival' discards into its TAC proposal,** as is the case for *de minimis* quantities, if necessary with the help of STECF or ICES. If dead 'high survival' discards are not accounted for, there is a risk of increased fishing mortality<sup>19</sup>, jeopardising the achievement of the CFP's objectives.

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<sup>11</sup> The STECF EWG noted that due to this high number of requests '*it was not possible for EWG 18-06 to apply the same level of scrutiny to each proposal as in previous years*', p. 18 of STECF PLEN-18-02 report (see footnote 6 for full reference).

<sup>12</sup> '*The supporting evidence dealt with by plenary could not be scrutinised and checked for consistency in such depth and detail as carried out by the dedicated EWG*', p. 9 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>13</sup> The EWG highlighted that the quality of supporting information submitted for many *de minimis* exemption requests '*had fallen, making it difficult to make any evaluation at all*'. p. 18 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>14</sup> P. 48 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>15</sup> STECF referred to '*the need to improve the collection of catch documentation data*', (p. 18 of STECF PLEN-18-02) and '*for enhanced monitoring to ensure the combined *de minimis* cases operate appropriately*' (p. 49 of STECF PLEN-18-02, see footnote 6 for full reference).

<sup>16</sup> P. 19 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>17</sup> P. 20 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>18</sup> P. 19 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>19</sup> P. 50 of STECF PLEN-18-02 (see footnote 6 for full reference).

- **STECF should be asked to quantify the extent to which discards allowed under exemptions - based on past, current and anticipated future volumes – affect the coverage of the landing obligation.** We share STECF's concern that the increase in exemptions could '*diminish the overall objectives of the Landing Obligation*'<sup>20</sup>. Tracking the volumes of exemption discards over time (both actual discards and those anticipated under new exemption requests) could serve as a crucial indicator of actual landing obligation coverage, which could help to assess progress towards minimising unwanted catches.
- **Member State groups must increase their efforts to improve selectivity, especially in light of the scarcity in the JRs of concrete measures to this end**<sup>21</sup>. We agree with STECF that '*the avoidance of unwanted catch through improved selectivity or other means should be the primary focus in implementing the landing obligation*'<sup>22</sup>, and support the Commission in encouraging the Member States to develop and implement concrete measures in this regard.

We will continue to engage with the relevant Member State representatives on the topics discussed in this letter, to encourage them to submit any missing information, modify or withdraw the relevant exemption requests accordingly, and to commit to and meet any conditions linked to the exemptions. However, in light of the above, we would also welcome the opportunity to discuss the Commission's approach to landing obligation exemptions both now and in the future and look forward to hearing from you with your availability.

Yours sincerely,



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## List of Annexes

**Annex I:** Technical letter to ministries in Member States active in the North Sea and North Western Waters regional groups, sent on 12 April 2018.

**Annex II:** List of exemption requests which the Commission intends to reject, based on its letters to the Scheveningen and North Western Waters regional groups. This includes an overview of information to be provided and conditions to be met in order to address STECF's outstanding concerns, before these exemptions can be adopted, should they be resubmitted in future.

**Annex III:** List of exemption requests which the Commission intends to approve, based on its letters to the Scheveningen and North Western Waters regional groups. This includes an overview of information to be provided and conditions to be met in order to address STECF's outstanding concerns, before these exemptions can be adopted.

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<sup>20</sup> P. 49 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>21</sup> The JRs only '*contained few measures to increase selectivity*'. P. 20 of STECF PLEN-18-02 (see footnote 6 for full reference).

<sup>22</sup> P. 21 of STECF PLEN-18-02 (see footnote 6 for full reference).