

To land or not to land – that is the “discard ban” question

Considerations regarding the landing obligation in the new CFP

There has been a lot of press recently about what the impacts of the landing obligation (or “discard ban”) will be under the new Common Fisheries Policy (CFP), a lot of which has been negative and focused on expected problems instead of constructive solutions. While some of these concerns are unquestionably valid – we agree there’s still some uncertainties that need to be ironed out – we also think it’s important to remember that **no one thought the old system of landing quotas and mandatory discarding of marketable fish was working**. Everyone, from environmental groups to industry representatives, agreed that the regulatory system that was contributing to such a waste had to be changed. Now that a new system has been agreed, with the changes to be phased in over the next five years (for the main commercial species, anyway), all of these stakeholders should be working together with regulators on how to address the remaining problems and issues, so that this new approach will work “on the water” to reduce unwanted catches. This stakeholder input and collaboration will be particularly important when regional groups of Member States draft proposed discard plans under the regionalisation framework provided by Article 18 of the new CFP.¹

The purpose of this briefing is to highlight some important considerations that we think everyone needs to keep in mind when discussing the landing obligation:

- **The ultimate objective behind the landing obligation is to continue reducing fishing mortality** (the number of fish killed from fishing). This will help stocks recover to levels where they will be more productive (their “Maximum Sustainable Yield”, or MSY) as well as more profitable in the long term.
- **In some fisheries, the industry has already made significant gains in reducing their level of discards**. This shows that selectivity can be improved to reduce unwanted catch. Initiatives such as these focus on ‘*avoiding and reducing, as far as possible, unwanted catches*’, which is precisely the objective underlying the landing obligation (Art 2(5.a)). Developing new measures to further reduce unwanted catches, or increasing the uptake of existing ones, can and should be supported by national governments and EU public funding.

¹ Author’s note: All articles cited refer to the reformed Common Fisheries Policy; [Regulation \(EU\) No 1380/2013](#).

- **Despite the common shorthand, the “ban” on discarding does not apply to all stocks or all fisheries**, as explained below:
 - The obligation applies to stocks or fisheries with ‘*catch limits*’ (this means Total Allowable Catches/quotas or effort controls). In the Mediterranean - where they don’t have catch limits - the ban will apply to species that have sized-based restrictions (called minimum landing sizes under the old CFP, and minimum conservation reference sizes in the new CFP).
 - If they wish, regionally cooperating Member States can submit a request for an exemption from the landing obligation on the basis of scientific evidence of ‘*high survivability*’ of a particular species, ‘*taking into account the characteristics of the gear, of the fishing practices and of the ecosystem*’ (Article 15(4.b)). There are still many uncertainties about how this exemption is to be applied, many of which have been discussed by expert working groups of the Scientific, Technical and Economic Committee for Fisheries (STECF), who have produced three reports on the landing obligation (see for reference [STECF-13-23](#), pg 22; [STECF-14-01](#), pg 25; [STECF-14-06](#), pg 20). Guidelines on acceptable methods for estimating discard survival are in development by an expert group of fisheries scientists (ICES’ [WKMEDS](#)).
 - In fisheries where the landing obligation does apply, regionally cooperating Member States can request a derogation from the policy, a ‘*de minimis exemption*’, under one of two conditions: on the basis of scientific evidence that further selectivity in the fishery is ‘*very difficult to achieve*’, or to ‘*avoid disproportionate costs*’. As with the high survival exemption discussed above, there has been lots of discussion on how these two conditions are to be interpreted and applied by regulators (for examples, see reports cited above). Importantly, the latest STECF expert working group suggested that in order for this provision to comply with the requirements of the new CFP, specifically the MSY objective in Article 2, any allowable discards under the de minimis exemption should be subtracted from the catch advised according to the MSY approach ([STECF-14-06](#), pg 32). This is the only way to ensure that this aspect of the landing obligation will support the ultimate objective of reducing/maintaining fishing mortality as needed.
 - Protected species will continue to be discarded if they are caught. Since this will often mean death or damage for these animals, the focus needs to be even more on avoiding catching them in the first place. Better collection of data on where the risks for these species are the highest (both geographically and for different fishing methods) would enable mitigation measures to be more targeted and therefore likely more efficient and effective.
- Additionally, two types of quota flexibility are included in the landing obligation provision in an attempt to ease the transition from landing quotas to catch quotas. However, although these flexibilities have the possibility to be helpful in the short term, they also have the potential to be harmful in the long-term. Depending on how they are used by Member States, they could seriously jeopardise EU progress towards reducing overfishing and making fisheries more sustainable. The “inter-species” quota flexibility

allows 9% of the “target species” quota to be used to land a species the Member State doesn’t have quota for (provided it is thought to be within “safe biological limits”; Article 15(8)). The “inter-annual” quota flexibilities allows for 10% of the current year’s quota to be “borrowed” from the subsequent year’s allocation. Considering that sustainable fishing levels (the MSY objective described in Article 2(2)) are now a legal requirement, both Member States and the EU are going to have to be very careful about how these flexibilities are managed, to make sure they are complying with the law. Failure to do so could result in legal challenges.

- Concerns have been voiced by some representatives of the fishing industry with regard to issues that “choke species” (species in mixed/multi-species fisheries whose small allowable catch may “choke” the fishery) will present in light of the landing obligation. Currently, such species are discarded when their quota is used up, while fishing continues. When the landing obligation applies to these species/fisheries, such discarding cannot legally occur. Fortunately, a change in how quotas are allocated (making them more reflective of the expected ‘catch composition’ in the fishery), the flexibilities and exemptions covered above, and innovative developments in fishing techniques and gears (supported by EU and nationally available public funding) should go a long way in helping minimise problems due to such species. For example, **it is expected that the portion of catch that was previously discarded under the old "total allowable landing" limits will now be included in the true "total allowable catch" limits that will control fishing under the landing obligation.** This newly available "quota uplift", while subject to some issues of its own (mainly with regard to distribution among Member States, and possibly within Member States as well), is also likely to help alleviate the problem.

In conclusion – rather than being a blanket ban on discarding, what the new CFP establishes is a partial landing obligation, covering species subject to catch limits, with a number of exemptions and flexibilities that will need to be applied sensibly and lawfully to produce good results (see [STECF-14-01](#), pg 30, for catch flowchart). In particular, there are built-in mechanisms for dealing with issues like species that have a high chance of survival after discarding, and choke species in mixed fisheries. Although there are likely to be some difficulties, and these should be anticipated as much as possible, we have faith in the ingenuity and innovation of the fishing industry to make the best of the opportunities available to them within this new framework (including EU public funding) to achieve the goal of this new measure and further reduce unwanted catches.

Most importantly, the flexibilities and exemptions in the landing obligation must not undermine the fundamental CFP target of restoring and/or maintaining stocks above levels associated with their maximum sustainable yield; to do so would be a breach of this new law.

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