

# STECF EXPERT WORKING GROUP EWG 13-16

## EWG on a Landing Obligation in EU Fisheries

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### Background

Article 15 of the new CFP Basic Regulation (BR) recently agreed by the European Parliament and the Council, introduced a discard ban or landing obligation. This represents a fundamental shift in fisheries policy. The final text agreed by the Council and European Parliament includes a number of exemptions and flexibility tools that raise issues for implementation, catch forecasting, stock assessment and control and monitoring. The European Commission has requested STECF and ICES to consider these issues. At a scoping meeting involving STECF and the ICES Secretariat held during the summer plenary of STECF these issues were discussed and a draft work plan agreed between STECF and ICES of how to address them.

### Exemptions issues relating to the discard ban

#### Survival

Article 15 paragraph 2(b) of the BR provides for an exemption from the landing obligation for the following:

*“species for which scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem;”*

This raises three issues:

- **Demonstration:** It is considered that Member States are likely to undertake survival studies to avail of this exemption. In the short-term based on previous STECF advice in 2012, which identified methodological and operational limitations in many earlier studies, there will be a requirement for the provision of guidelines or identification of best practice for undertaking discard-survival studies. In developing such guidelines consideration should also be given to

providing a predefined list of species and fisheries that could be considered for exemption.

- **Definitions of high:** There is currently no objective means to define ‘high survival rates’. Therefore there is a need to develop an objective framework which will provide managers with a range of the likely impacts of different options depending on the definition used. There is a need to articulate what the impacts would be if a proportion of the landed catch that would have discarded might otherwise have survived and how this may affect estimates of fishing mortality, SSB and associated reference points.

- **Control and Enforcement Issues:** There are risks associated with such a derogation to discard from a control and enforcement perspective. There are also implications for TAC setting procedures and monitoring of catch uptake that need to be considered.

STECF suggests that this would be best dealt with by the STECF Expert Group (EWG 13- 16).

In the longer term there is a need for continued methodological development and the provision of a detailed manual for undertaking such survival experiments.

The above point is more appropriate for ICES and will be taken forward for consideration at the ICES ASC (SCICOM/WGFTFB).

De minimis Exemptions and Quota flexibility Tools

Article 15 paragraph 3(c) provides for a further exemption (*de minimis*) from the landing obligation as follows:

*“3(c) provisions for de minimis exemptions of up to 5% of total annual catches of all species subject to an obligation to land as set out in paragraph 1. The de minimis exemption shall apply in the following situations:*

*i) where scientific evidence indicates that increases in selectivity are very difficult to achieve; or*

*ii) to avoid disproportionate costs of handling unwanted catches, for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage, to be established in the plan, of total annual catch of that gear.*

*Catches under this provision shall not be counted against the relevant quotas, however, all such catches shall be fully recorded.”*

Two issues need to be addressed:

- **Issues surrounding definitions of *de minimis*:** It is unclear what is intended by the legislation and clarification is required on how this provision should be interpreted. The potential impacts of *de minimis* exemptions will vary considerably across species depending on how *de minimis* is applied in practice. A range of scenarios are possible and these should be illustrated by example.
- **Issues surrounding the conditionalities:** The regulation allows for *de minimis* exemptions with two conditionalities (i.e. “improvements in selectivity are considered to be very difficult” or “to avoid disproportionate costs of handling unwanted catches”). There is no objective means to define what constitutes “very difficult” or “disproportionate costs of handling”. Therefore there is a need (i) to identify appropriate metrics that can be applied and (ii) to identify appropriate threshold or trigger levels based on these metrics.

Article 15 paragraphs 4a and 4b provide for quota flexibility mechanisms through inter annual and inter species quota flexibility as follows:

1. *“4a. As a derogation from the obligation to count catches against the relevant quotas in accordance with paragraph 1, catches of species that are subject to an obligation to land and that are caught in excess of quotas of the stocks in question, or catches of species in respect of which the Member State has no quota, may be deducted from the quota of the target species provided that they do*

*not exceed 9 % of the quota of the target species. This provision shall only apply where the stock of the non-target species is within safe biological limits.*

*2. 4b. For stocks subject to a landing obligation, Member States may use a year-to-year flexibility of up to 10% of their permitted landings. For this purpose, a Member State may allow landing of additional quantities of the stock that is subject to the landing obligation provided that such quantities do not exceed 10% of the quota allocated to that Member State. Article 105 of the Control Regulation shall apply.”*

- **Issues surrounding inter-species quota flexibility:** Similar to the de minimis exemption, it is unclear what is intended by the legislation. Depending on the implementation, the potential impacts will vary considerably across species. These impacts are best illustrated by means of worked examples.

Clause 4b (inter-annual flexibility) is not considered an issue and will not be addressed by ICES or STECF in the short term.

Clauses 3c and 4a both involve flexibility that has the potential to increase catches of an individual species in excess of the TAC allocation. Both mechanisms should be considered together as the impacts could be cumulative.

STECF suggests that analysis of these provisions is best dealt with by the STECF Expert Group (EWG 13-16) and where possible should be illustrated through worked examples to provide guidance on the potential magnitude of the issues. Once this has been established, ICES will consider the potential impact of this in the provision of future catch advice at a later meeting (to be arranged).

Catch estimation

Article 16 paragraph 1 bis states the following:

*“Article 16.1bis When a landing obligation for a fish stock is being introduced, fishing opportunities shall be set taking account of the change from setting fishing opportunities to reflect landings to setting fishing opportunities to reflect catches on the basis that for the first and subsequent years, discarding of that stock will no longer be allowed.”*

Provisional work has highlighted significant differences in catch (particularly discard) estimates contained in ICES (Intercatch) and the STECF effort databases. There is a clear need and desire from the Commission to provide an agreed single estimate of catch. STECF EWG 13-16 will evaluate the scale of the issue through a historic comparison of catch estimates, disaggregated into landings and discards, from the STECF and ICES data sources for advised TAC species. This will require the provision of catch data from both sources and will require resources for this to be undertaken. This would be best done through an *ad hoc* contract with the datasets prepared in time for the September STECF EWG meeting. EWG 13-16 will report on these differences and by example articulate why these differences occur.

Based on the results from the comparison between data sets, stocks/TACs will be categorised depending on the extent of discarding, availability and the utility of the information.

There will almost certainly be a need for a joint STECF-ICES follow up meeting (to be arranged) to resolve the issues and to progress towards an agreed methodology. This meeting could also consider the implications for assessments and catch advice.

This combination of meetings will be used to inform the European Commission on the extent of discard information and how this can be applied in the provision of catch advice.

#### Control, monitoring and enforcement

Recitals 48a and 49 of the BR set out the principles for control and enforcement in the CFP:

*(1) “Recital (48a) In order to ensure compliance with the rules of the Common Fisheries Policy, effective system of control, inspection and enforcement, including the fight against IUU fishing activities, should be established.*

*(2) Recital (49) The use of modern, effective technologies should be promoted in the framework of the Union system for control, inspection, and enforcement. Member States and the Commission should have the possibility to conduct pilot projects on new control technologies and data management systems.”*

Specific to the landing obligation Article 15 paragraph 8 states:

*“Article 15.8 Member States shall ensure detailed and accurate documentation of all fishing trips and adequate capacity and means for the purpose of monitoring compliance with the obligation to land all catches, inter alia such means as observers, CCTV and other. In doing so, Member States shall respect the principle of efficiency and proportionality.”*

The introduction of the landing obligation, signals a significant change from the current control system which has a high level of on-shore monitoring, to a system where at-sea monitoring and control will be required in order to monitor compliance. This raises the following issues that should be considered:

- There is no definition of what constitutes “*detailed and accurate documentation*” nor is there a quantified definition of what constitutes “*adequate capacity and means*”.
- It is recognised that there is a legal requirement to record discards in EU logbooks currently, but there appears to be no evidence that the validity of the data actually recorded has been evaluated. Such an evaluation could be undertaken by comparing the estimates from observer programmes with the EU logbook data and would provide a useful insight into current documentation of catches.
- There are a number of tools available to support the delivery of accurate catch and auxiliary (e.g. effort) data. Each tool has advantages and disadvantages in terms of the information they provide.
- Exemptions (e.g. *de minimis* and survival) as well as inter-species quota flexibility have control and enforcement implications if not properly documented.
- Currently, the discarded component of catches is monitored mainly for scientific purposes using DCF funded observer programmes. In this case observers are not authorised to enforce regulations. Typically, observer coverage is ~1% of total

effort and therefore cannot be considered adequate for ensuring compliance. Given that not all species are covered by article 15, there will be a continued requirement for at-sea monitoring programmes but the role of scientific observers in respect of species that are covered is still unclear. There are a number of possible implications for current observer programmes, including vessel access and bias in catch estimates.

STECF suggests that this would be best dealt with by the STECF Expert Group (EWG 13-16). The pros and cons of the relevant control tools will be described and how that could contribute to compliance of the landings obligation and the provision of detailed and accurate documentation.

Support for the development of discard plans

Article 15 paragraph 3a provides for the development of regional discard plans as follows:

*“3a. Where no multiannual plan or no management plan in accordance with Article 18 of Regulation (EC) No 1967/2006 for the fishery in question is adopted, the Commission may adopt a specific discards plan on a temporary basis under the rules stipulated under Article 17. Member States may cooperate in accordance with Article 17 with a view to the Commission adopting a specific plan, for no more than a 3 year period, on the landing obligation and specifications in paragraph 3 (a)-(e), by means of delegated acts in accordance with the procedure in Article 55 or in the ordinary legislative procedure.”*

The supporting information and specific content of discard plans has not yet been defined. To assist Member States in formulating joint recommendations that will form the basis of the discard plans there is a need to develop guidelines. These should articulate the information and minimum acceptable standards for the elements of the discard plans:

- a) definition of fisheries and timelines for implementation.
- b) exemptions on the basis of high survivability;
- c) provisions for *de minimis* exemptions
- d) provisions on documentation of catches; fixing of minimum conservation reference sizes.

STECF suggests that this would be best dealt with by the STECF Expert Group (EWG 13- 16).

EWG 13-16 will use the outcomes of topics considered above to provide preliminary considerations on the specific content requirements for discard plans. Further work will be required to provide more detailed guidance.

### **Ecosystem Issues**

The obligation to land all catches may have broader ecosystem impacts, particularly in terms of energy flows within the ecosystem and direct impacts on scavenging species. This issue should be dealt with by the appropriate ICES working groups. In the context of the Black Sea and Mediterranean, this will need to be considered by the appropriate scientific bodies covering these areas e.g. GFCM.

## **Terms of Reference**

Based on the outcome of the scoping meeting the terms of reference for EWG 13-16 are as follows:

### **Survival**

1. Develop guidelines or identification of best practice for undertaking discard-survival studies.
2. Develop an objective framework to define high survivability which will provide managers with a range of the likely impacts of different options depending on the definition used.
3. Assess the impacts if a proportion of the landed catch that would have been discarded might otherwise have survived and how this may affect estimates of fishing mortality, SSB and associated reference points.
4. If possible define a predefined list of species and fisheries that could be considered for exemption on high the basis of high survivability.

### **De minimis and Quota flexibility tool**

1. Explore the potential impacts of de minimis exemptions and inter species quota flexibility provisions through worked examples assuming a range of different interpretations.
2. Identify appropriate metrics that could be applied to define the two conditionalities ((i.e. “improvements in selectivity are considered to be very difficult” or “to avoid disproportionate costs of handling unwanted catches”). Identify appropriate threshold or trigger levels based on these metrics.
3. Consider the potential cumulative impacts on the catches of individual species in excess of TAC allocations of de minimis and quota flexibility mechanisms.

### **Catch estimation**

1. Evaluate the scale of differences in catch estimates used by ICES and STECF and identify the causes for these differences.
2. Categorise stocks/TACs depending on the availability and quality of discard data based on the analysis above.

### **Control, monitoring and enforcement**

1. Define what constitutes "detailed and accurate documentation and "adequate capacity and means".
2. Provide an insight into the current documentation of catches by comparing the estimates from current scientific observer programmes with EU logbook data.
3. Describe the pros and cons of relevant control tools and describe how they can contribute to compliance with the landing obligation and the provision of detailed and accurate documentation of catches.
4. Consider the control and enforcement implications of exemptions for high survivability, de minimis and also inter-species quota flexibility.



5. Consider the implications for current "at-sea" monitoring programmes under the landing obligation.

### **Development of Discard Plans**

1. Develop guidelines to assist Member States in formulating joint recommendations that will form the basis of regional discard plans.

It is acknowledged that there are a wide range of issues associated with the implementation of the landing obligation and EWG 13-16 may not be able to consider all of these terms of reference. Therefore this should be viewed as the first in a series of meetings. It should provide support through the development of principles and guidelines where appropriate and identify areas that require further work. It will be supported by complementary meetings/workshops convened by ICES.

#### **Annex:**

[http://stecf.jrc.ec.europa.eu/documents/43805/44880/08-06\\_SG-MOS+08-01+-+Reduction+of+discarding+practices\\_JRC49008.pdf](http://stecf.jrc.ec.europa.eu/documents/43805/44880/08-06_SG-MOS+08-01+-+Reduction+of+discarding+practices_JRC49008.pdf)

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[http://stecf.jrc.ec.europa.eu/documents/43805/432011/12-11\\_STECF-12-20+Defining+selectivity+under+TM+regulation\\_JRC76897.pdf](http://stecf.jrc.ec.europa.eu/documents/43805/432011/12-11_STECF-12-20+Defining+selectivity+under+TM+regulation_JRC76897.pdf)

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[http://ec.europa.eu/fisheries/reform/impact\\_assessments\\_en.htm](http://ec.europa.eu/fisheries/reform/impact_assessments_en.htm)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0417:FIN:EN:PDF>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0425:FIN:EN:PDF>

[http://stecf.jrc.ec.europa.eu/documents/43805/594118/2013-07\\_STECF-PLN-13-02\\_JRCxxx.pdf](http://stecf.jrc.ec.europa.eu/documents/43805/594118/2013-07_STECF-PLN-13-02_JRCxxx.pdf)