



THE
PEW
CHARITABLE TRUSTS

Implementing the Landing Obligation in Demersal Fisheries Input into Defra Consultation

25 September 2014

The Defra consultation letter seeks “*input to identify where the use of the survivability or de minimis exemptions will be needed in England under a demersal landing obligation*”. The Pew Charitable Trusts does not propose any specific exemptions, but would like to highlight some important considerations that apply in assessing whether exemptions are justified under the Common Fisheries Policy (CFP) Regulation and in light of the scientific evidence presented in each case:

Implementation objectives

1. Reducing unwanted catch must be the objective in the first instance, before considering exemptions. Exemptions must not jeopardise the CFP’s objective to ensure that exploitation restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.

De minimis exemptions

2. Any request for de minimis exemptions under Article 15 (5)(c) of the CFP Regulation must specify, and provide evidence for, the justification being used in order that it can be considered properly. Any proposal for an exemption must state clearly the grounds on which it is sought, whether the justification stems from the difficulty in improving selectivity, or disproportionate cost.
3. De minimis is foreseen as an exception for particularly defined cases. It is therefore our position that only specific fisheries or metiers can be exempted, on the basis of fishery by fishery or metier-specific scientific evidence.
4. The level of mortality associated with de minimis exemptions should be taken into account in stock assessments and each year’s Total Allowable Catches (TACs).

High survival exemptions

5. Scientific evidence presented to prove high survival rates should be based on long-term studies (such as ex tagging studies). When conducted properly this method has been demonstrated to produce reliable estimates of long-term discard mortality. Short-term estimates of mortality are unlikely to take account of long-term or in situ effects, such as predation and secondary infections. Moreover, discarding practices are likely to vary from vessel to vessel or crew to crew and may not be maintained at the optimal standards to

promote the highest survival of the discards, as observed during the experiments used to make the initial short-term survival estimates.

6. Any high survival exemption must set out the specific conditions under which the exemption may apply. Conditions may include specifications on gear configuration, or practical considerations such as trawling speed and time, or time spent sorting catch.
7. Where the rate of post-discarding survival is less than 100 per cent, the residual level of mortality should be taken into account in stock assessments and each year's TACs.

Monitoring, control and enforcement

8. Effective monitoring, control and enforcement (MCE) is essential for the implementation of the landing obligation. At the same time, enhanced reporting represents an opportunity to greatly increase scientific knowledge and thus improve the knowledge basis of fisheries policy. The Pew Charitable Trusts emphasises the need to shift focus from monitoring and control on land to monitoring and control at sea.
9. Full catch documentation must be made a precondition for fisheries activities operating under landing obligations. Pew would like to point to a number of challenges and issues when discussing potential exemptions and concrete measures for monitoring and controlling demersal fisheries:
 - a) *Minimum standards*: Article 15.13 of the CFP Regulation stipulates that “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”. To support a level playing field, Member States should agree on minimum standards for MCE measures, ideally within the framework of discard plans themselves.
 - b) *Full catch documentation*: Monitoring the discard ban will be challenging, in particular with the use of any flexibility mechanism. Therefore, in addition to existing reporting obligations, full documentation of all catches should be a precondition for allowing any use of exemptions to the landing obligation. This means fisheries requiring exemptions should already have an effective full catch monitoring programme in place, i.e., an observers at sea and/or remote electronic monitoring (REM) programme monitoring of all fishing trips.¹ Only if it can be demonstrated that the inclusion of certain small-scale vessels under these two types of monitoring schemes violates the “principle of efficiency and proportionality”, then operators must adopt a self-sampling scheme, including information on length, accounting for 100 per cent of catch with full documentation. All self-sampling should be audited.
 - c) *Risk-based approach to control*: Respecting the principle of efficiency and proportionality, control efforts should be done in a risk-based manner: Resources should be focussed on those sections of the fishing fleet with higher probability of non-compliance and the potential harm from not complying.
 - d) *Fishing opportunities*: CFP Article 17 requires Member States to employ transparent and objective criteria, including environmental, social, and economic, when allocating fishing opportunities. Such criteria should be used as an incentive for selective fishing and also

¹ Establishing observers at sea and REM programmes presents challenges and shortcomings, so a combination of the two methods might be necessary to satisfy the reporting needs.

to support effective monitoring and control, e.g., including the presence of CCTV and/or observers as one of the criteria used for the allocation of fishing opportunities.

- e) *Funding*: The EU Maritime and Fisheries Fund provides increased financial support for monitoring and control measures. Within their operational plans, Member States should allocate appropriate funding to MCE measures, including funds to deploy observers on board and/or REM monitoring programmes. Effective use of all provisions that make EU financial support conditional on implementation of the CFP will contribute to the creation of a level playing field in any fishery.
- f) *Sanctions*: There needs to be a common and strong legal framework, with an appropriate sanctioning system, in order to achieve adequate compliance across regions and to dissuade fishermen from discarding. In line with the European Commission's draft omnibus regulation (COM[2013]889 final), violation of the landing obligation should be defined as a serious infringement of the CFP. Member States' point systems for serious infringements as referred to in Article 42(1)(a) of Regulation (EC) No 1005/2008 are a good starting point for ensuring compliance.