



EAPO Response to Joint Recommendation of the North Western Waters High Level Group Discard Plan for Demersal Fisheries in North Western Waters

2017 Joint Recommendations

Member States have now published their joint recommendations for a discard plan for demersal fisheries in north western waters for 2017. These recommendations include additional species (Pollack and Megrin). The recommendations also include the reduction of the catch thresholds currently associated with certain rules, the effect being to draw many more vessels into the landing obligation requirements.

EAPO have consistently and explicitly drawn attention to the fact that the application of the Demersal Landing Obligation (LO) to a system of TACs and quotas (that is mediated through Relative Stability allocation keys), gives rise to the prospect of repeated and serious chokes; these have the potential to cause great socio-economic disruption and damage, and in the worst cases denial of access to principal economic quotas.

We are pleased that the member states concerned have recognised this genuine threat and have convened workshops in Copenhagen and Edinburgh to begin to address different aspects of the choke issue.

These meetings, in aggregate, have provided some early foundations for developing potential measures to mitigate some of the real challenges the chokes present. Much work needs to be done, most particularly in identifying potential chokes, the reasons and defining the most appropriate mitigation for each case.

It is of vital importance that development of a comprehensive safety net of contingency measures to ensure that the problem of premature closures is reduced to manageable proportions is taken forward as a priority.

We understand that the second half of 2016 will be devoted to work on a *Chokes Action Plan* for Western Waters. We welcome this initiative, offer our experience and knowledge, and would draw attention to the unique and important role played by Producer Organisations in managing quotas, initiating domestic and international quota swaps and transfer; and providing advice both to fishermen and member state regulatory authorities.

EAPO Position

We feel it is important to clearly transmit the EAPO position on choke species once again. The implementation of the landings obligation is pushing ahead without the thorough impact assessment that would normally be expected as part of good governance and duty of care.

Even without a comprehensive impact assessment, it is completely foreseeable that as things stand the landings obligation, even if all the quota flexibilities and exemptions are applied, will result in serious chokes that will jeopardise the economic viability of the fleets concerned. This alone is not a reason to forsake the landings obligation but it is strong reason to proceed with extreme caution. What is required is an *adaptive* approach that learns as it goes and clears obstacles before it is applied.

It would, in our view, be utterly irresponsible for member states and the Commission to proceed to add new species to the landings obligation without making clear how chokes are going to be addressed. We understand that there are different types of choke with different roots and different solutions and we stand ready to work with the member states in trying to address these issues but we cannot countenance putting our name to the inclusion of additional species that would in effect lead to the ruin of our industry.

Without a clear understanding of what is going to be done to mitigate the foreseeable problem of serious chokes that will prevent our members from catching their principle economic quotas, we are adamant that member states should not take a further step into the dark.

Sooner or later it will be necessary for all of the management authorities to recognise the reality that the landings obligation, as currently configured is incompatible with the current policy regime which is largely based on the system of TACs and quotas.

It is our firm view that member states should address these issues *before* committing to adding further species in 2018 and 2019.

That said the following additional points are worth noting:

1. We welcome the work and effort that member states are involved in to address the very real challenges chokes
2. Similarly, high survival and de-minimis exemptions will be of critical importance, and it is important that the underpinning means of providing evidence to support applications is flexible and sufficiently resourced for the task
3. In the implementation of such a fundamental change to the way the CFP has operated to date, it will be important to continuously review progress and to assess whether the current legislative framework is *fit for purpose*. In

particular, in order to implement the LO fully, it may be (probably essential) necessary to re-interpret and/or review legislation in the following areas:

- Technical Conservation Rules
- MSY timetable
- Article 15 of the CFP Basic Regulation, including survival and de-minimis exemptions.
- Principle of Relative Stability in respect of the allocation of quota uplifts
- Zero TAC species . quota or prohibited list

Revision of the technical measures regulations to accommodate the LO is already under way and it may be that pragmatic policy decisions will reduce the need for other major legislative change. Nevertheless, we think that it is important to bear in mind that the compatibility of the different components of the CFP is a non-negotiable foundation for good governance.

Interpretation of Article 15 of Common Fisheries Policy (Regulation (EU) No 1380/2013

While Article 15 introduces the obligation to land all catches, it also provides exemptions and derogations to that obligation. While these options will not solve the problem of choke species, the interpretation of their application has the potential to mitigate the most significant of the negative effects. These deviations from the basic requirement to land all catches are applicable at the regional level or the Member State level, with interspecies flexibility (ISF) applicable at MS level but under the auspices of an agreement at the regional level.

Article 15, paragraph 4(b)

This paragraph states that the LO shall not apply to 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.

It is EAPO's view that survival derogation should be generally applied to species for which there is an indication of survival when returned to the sea after removal from the fishing gear. This principle is essential to avoid that unwanted catches under an obligation to land are discarded ashore and that mortality of mainly juvenile fish is unnecessarily increased. Obtaining the required scientific evidence of high survival rates should be given more time. Several projects are already aiming at determining survivability and many fishermen are willing to continue their assistance to obtain such scientific evidence whilst the survival exemption is in application.

Article 15, paragraph 4(c)

This paragraph provides for de-minimis exemptions where scientific evidence confirms that selectivity is very difficult or there are disproportionate costs of handling unwanted catch.

Up to 5% of total annual catches of all species subject to the LO could be exempted in this way. The possible reasons for applying this exemption are described as (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 a plan, of total annual catch of that gear.

It is EAPO's view that both the interpretation of the basis of the above mentioned percentage and of the reasons in a correct but most flexible way, this provision could provide a significant route through which chokes can be avoided. It is understood that in such interpretation safeguards are necessary in order to prevent that fishing mortality of a species subject to the de-minimis exemption would increase substantially. We urge member states to make sure that the full potential of the de-minimis provision is deployed in future Discard Plans.

Article 15, paragraph 8

This paragraph enables by catches of a species for which an MS has no quota to be deducted from the quota of the target species, provided that the quantity does not exceed 9% of the quota of the target species.

EAPO broadly supports the principles that have already been agreed at the regional level but has serious reservations on the use of this mechanism due to its potential effects on stocks and fishermen. It is worthwhile to further reflect on the right use.

Going Forward

The key to progress in implementing the LO in a way that does not create an unmanageable log-jam in 2019, is to create confidence that the means and political will are available to deal with chokes as they arise.

Some are relatively simple and straightforward to apply, some will need political will and possibly legislative change. Choke Action Plans, detailing how chokes are to be identified and forecasted, and the available means to resolve different types of chokes should now be member states' priority. The EAPO stands ready to contribute to this work.

(EAPO NWW WG . 30 June 2016)