



Department
for Environment
Food & Rural Affairs

From George Eustice MP
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Sir William Cash MP
Chairman
European Scrutiny Committee
14 Tothill Street
House of Commons
London
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11th January 2019

Dear Sir Bill

**13457/18: COMMISSION DELEGATED REGULATION (EU) .../... of 18.10.2018
establishing a discard plan for certain demersal fisheries in North-Western waters
for the period 2019-2021**

**13413/18: COMMISSION DELEGATED REGULATION (EU) .../... of 18.10.2018
specifying details of implementation of the landing obligation for certain demersal
fisheries in the North Sea for the period 2019-2021**

Thank you for your report of 5 December 2018 in relation to our Explanatory Memoranda on the above regulations.

I shall respond to each of your questions in turn.

0.8 On the substance of the plans, we would welcome confirmation that the Government considers them in all respects to be in line with scientific evidence and advice. We note that the North Sea highly survivable exemptions for plaice and for skates and rays are in place for a year and include a requirement for additional evidence to be supplied, which will be assessed by 1 August 2019. This provisional exemption suggests a degree of uncertainty. We ask for the Government's assessment as to how robust it considers the process for deciding on highly survivable exemptions in particular to be. We ask too for how long a species must be able to survive before being returned to the sea in order to be considered highly survivable.

The UK is committed to using the best possible scientific evidence and advice to substantiate its approach to sustainable fishing.

Process for determining what constitutes a highly survivable exemption

Unwanted catches taken by commercial fishing vessels have historically been returned to the sea. The percentage of these unwanted fish that survive after being released is called the discard survival rate. There are potential exemptions from the discard ban for species which demonstrate high discard survival rates. Exemptions are awarded by the EU

Commission on the basis of supporting scientific evidence reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF).

The potential to gain exemptions created a demand for practical guidelines on how to conduct, and critically review, discard survival assessments. Consequently, in 2014 the International Council for the Exploration of the Sea (ICES) established the Working Group on Methods to Estimate Discard Survival (WGMEDS). Chaired by a UK (Cefas) scientist, WGMEDS developed this guidance, which has been followed to generate robust estimates of discard survival, to better understand the factors which affect survival rates, and to provide a framework for STECF to critically review estimates used to support proposed exemptions.

Evidence gaps

Estimating discard survival rates is challenging and is done by either monitoring fish in tanks or attaching electronic tags to released fish. Consequently, the number of fish used to derive estimates can be low (typically in the hundreds). The factors that affect survival are not fully understood, therefore, while the estimates produced are robust for the fishing operations observed, they may not represent the full range of conditions in a fishery. This is the reason why many of the exemptions awarded are conditional on additional evidence being provided to give further confidence that estimates are representative of the full fishery.

Skates and rays

Skates and rays are managed with a combined species quota. Conducting discard survival assessments for all combinations of area, fishing gear and species is not practically viable. Therefore, a proposed exemption was supported with estimates which showed variability in survival between species and fishery, with an average survival estimate of 45%. A review of the evidence stated that, while the estimates provided were robust, more work is needed to fill data gaps and provide a more complete picture of survival across different skate and ray species in different fisheries. Therefore, while the considerable evidence available shows survival levels that justify exemption, given the scope of the exemption, additional evidence will give confidence that it is appropriate for all species and fisheries.

Plaice

For plaice in the North Sea, the requirement for more evidence relates only to the beam trawl fishery – which includes electric pulse trawlers. In this case, the evidence is assessed to be robust, and shows a discard survival rate of around 20%. This level of survival is much less than that used to support all other exemptions, which are based on estimates of around 50% survival or higher. The level of survival needed to achieve an exemption is not defined in the regulation. The justification accepted for this exemption is actually based on the potential for improved survival, rather than existing high survival levels. Therefore, this decision sets a precedent for exempting vessels from the landing obligation on the basis that discard survival levels can be improved.

Length of time a species must be able to survive before being returned to the sea in order to be considered highly survivable

There is no fixed exposure time against which survival is tested. The survival experiments are run on animals that have been exposed to a “normal” fishing routine in terms of processing the catch. Fish are put into the survival experiments at the point at which they would have been discarded – this means that for any particular haul, fish will

enter the experiment after a range of exposure periods. Consideration for a "high survival" exemption will therefore draw on the survival rates of fish across the range of exposure times experienced in normal fishing practices for the fleet in question.

0.9 The Government appears to be content with the plans, noting that they have been developed with other Member States, devolved administrations, scientists and stakeholders. On the other hand, the Minister suggests that the UK will in the future (after the post-Brexit implementation period) be able to prepare better plans as it would no longer be restricted by the "Common Fisheries Policy (CFP) toolbox". It would be helpful if the Minister could set out:

- **How much of the content of the plans reflects UK suggestions**

North Sea Discard Plan

The UK proposed the following exemptions which were subsequently accepted by the regional group and Commission and included in the discard plan for the North Sea:

- Norway lobster (*Nephrops norvegicus*) caught with pots and bottom trawls in ICES subarea 2a, 3a and 4.
- Plaice (*Pleuronectes platessa*) caught with nets, Danish seines and bottom trawls in ICES subarea 3a and 4; and in ICES subareas 2a and 4 in specific circumstances. This exemption is provisionally applicable until 31 December 2019, apart from the exemption referring to bottom trawls, which has been restricted to the period of 1 November – 30 April. This exemption has a wider scope than the exemption the UK proposed on plaice as it also incorporates the exemptions proposed by other Member States.
- Skates and rays (*Rajiformes*) caught by any fishing gear in the North Sea region. Further evidence has been requested to support this exemption and for one species it has been restricted to a period of one year.
- Common sole caught with beam trawls in ICES subarea 4.
- All species caught with pots and fyke nets in ICES subarea 3a and 4. This recommendation originally just applied to nephrops and its scope was later expanded to cover all species. The recommendation was proposed by the UK in conjunction with another Member State.

North Western Waters (NWW) Discard Plan

The UK proposed the following recommendations for the NWW discard plan:

- Norway lobster (*Nephrops norvegicus*) caught by bottom trawls in ICES subarea 7 and caught by otter trawls in ICES division 6a.
- Plaice (*Pleuronectes platessa*) caught by otter trawls and trammel nets in certain divisions of ICES subarea 7 and caught by beam trawls across ICES subarea 7. The UK's original recommendation originally only applied to otter trawls and trammel nets and its scope was later expanded to cover beam trawls following a recommendation proposed by another Member State. The exemption on beam trawls has been restricted to a period of one year.

- Skates and rays (Rajiformes) caught by any fishing gear in the NWW region. The UK proposed this recommendation in conjunction with the Dutch. Further evidence has been requested to support this exemption and for one species it has been restricted to a period of one year.
- Common sole (*Solea solea*) caught by otter trawls within 6 nautical miles of the coast and outside nursery areas in ICES division 7d.
- All species caught by static gear (pots, traps or creels) across the NWW region. This recommendation originally just applied to nephrops and its scope was later expanded to cover all species. The recommendation was proposed by the UK in conjunction with another Member State.
- *De minimis exemption for catches of undersized whiting in the Irish Sea (ICES division VIIa) using cod ends between 70-99mm.*
- *De minimis exemption for up to a maximum of 2% of the total annual catches of bycatch of undersized haddock by vessels using large mesh eliminator trawls with 120mm codends and other bottom trawls fishing with 120mm codends in the Irish Sea (ICES division VIIa).*

Following detailed discussions between the UK, other Member States and the Commission, certain exemptions which had insufficient scientific evidence about their impact, or were considered to be ineffective, were not included in the final version of the discard plans. Furthermore, based on the UK's suggestions, certain exemptions which were too broad when first drafted, were restricted.

- **What UK suggestions were rejected**

STECF identified concerns over the use of *de minimis* exemptions for undersized haddock and whiting in the Irish Sea (see the last two bullet points, italicised, in the section above).

STECF concluded that the *de minimis* exemption for whiting would have only provided a partial solution to the issue of discards and other (technical) measures were needed. For the *de minimis* for haddock, STECF identified, on the basis of updated evidence, a very low rate of discarding of undersized catch and queried the need for a *de minimis*.

Following STECF evaluation, the NWW Advisory Council, in consultation with the UK, decided to withdraw both requests and these exemptions were not included in the final NWW discard plan.

- **Any aspects that were unsuccessfully contested by the UK**

The UK did not unsuccessfully contest any aspect of the discard plans.

Additional evidence will be gathered and reviewed in 2019 to understand the impact of the exemptions in the discard plans and to ascertain whether new joint recommendations need to be proposed in due course.

- **Over which elements of the plans the UK has outstanding concerns**

The UK is aware of the challenge of enforcing the full landing obligation from 2019 in a way that will reduce the wasteful practice of discarding, but also minimise the risk of choke.

Through the North Sea and North Western Waters regional groups, Defra and the devolved administrations are working together with other Member States, the Commission and the Advisory Councils to facilitate the practical implementation of the landing obligation by developing solutions to prevent choke situations in the UK's fisheries in 2019 and beyond.

The UK Government is also committed to improving compliance to support the continuing reduction of discards and ensure the exemptions outlined in the discard plans are adhered to. Enforcement and surveillance is therefore being adapted for the full landing obligation from 2019 to include:

- a) More detailed inspection of catches at sea in high risk fisheries. This involves:
 - Recording of the last hauled catch to assess the catch profile as opposed to simply looking at what has been retained on board;
 - Ensuring any legitimate discards are recorded;
 - Ensuring that juvenile fish are recorded and counted against quota;
 - Ensuring that the gear in use meets new standards of selectivity.
- b) Ensuring that all catches are correctly recorded after landing and that juvenile fish do not go to direct human consumption.
- c) Using data sources, including scientific data, to evaluate levels of compliance.
- d) Facilitating compliance through adapted quota management interventions such as:
 - Managing pool quotas to balance catch and bycatch;
 - Working with POs (Producer Organisations)¹ to ensure quota is accessed by fleets facing choke.

We are exploring ways to further improve at sea monitoring and expect that remote electronic monitoring (REM) will become much more widely used in future. We are working with Cefas, the Marine Management Organisation and Marine Scotland Science to develop a future REM policy. REM will ensure there is effective control and enforcement of vessel activity, and will be an important method of data collection that could help fisheries management to be more adaptive and flexible.

The UK continues to be of the opinion that REM and the use of CCTV is the most effective means of monitoring and enforcing the landing obligation at sea.

- **What ideas would be helpful outside of the CFP toolbox**

The Government remains fully committed to ending the wasteful discarding of fish and wants to continue working with other EU Member States to address this issue. However, once we have left the EU and the CFP, we will have the flexibility to do this in a way which reflects the nature of UK waters and UK fisheries. Whilst we may continue to use many of the tools in the CFP toolkit, we will also have the opportunity to be creative and adopt new measures that will reduce discarding whilst also preventing choke.

For example, the provision in the Fisheries Bill for a discard prevention charging scheme will give vessels the option to pay a charge to land catch in excess of quota, but will be priced in

¹ A PO is an officially-recognised organisation which guides the activities of their members who are owners of fishing fleet(s) and tries to align the supply of fish stock with demand and creates added value for landed catch

such a way that it is financially preferable to adopt more sustainable practices and avoidance measures to reduce unwanted bycatch.

- **To what extent the UK has proposed that those ideas be integrated into the CFP toolbox**

Defra is working with Member States and the European Commission to review how new measures can be developed to address choke risks which cannot be solved by the existing flexibilities under the CFP toolbox. The Commission is open to dialogue with Member States who have demonstrated that they have looked at all the available tools in the current CFP regulation and shown that they are insufficient for addressing the risk of choke.

0.10 We are separately scrutinising the Commission's proposal for fishing opportunities in 2019 and note that the Government's focus is to ensure that the fishing opportunities are aligned with the discard ban. It would be helpful if the Minister could assist us in explaining the relationship between the three year discard plans on the one hand and the annual fishing opportunities regulation on the other. Might it not be the case, for example, that decisions made on the latter would have implications for aspects of the discard plan? If so, how would such implications be taken into account?

During our annual negotiations at December Council, a commitment by the UK and other Member States with a fisheries interest in the NWW region was made to produce discard reduction plans to reduce bycatches of cod and plaice in the Celtic Sea, whiting in the Irish Sea and West of Scotland cod and whiting through selectivity and/or avoidance measures. These plans are to be submitted to the Commission by 30 April 2019. We expect these plans to compliment and potentially build upon the three year discard plans, but whether these stock specific discard reduction plans will be incorporated into the formal NWW discard plan or sit alongside it has yet to be decided.

0.11 We turn now to the post-Brexit implementation period lasting at least until 31 December 2020, and potentially until 31 December 2022 as the Withdrawal Agreement does not exclude fisheries from any extension of the implementation period. During that period, the UK will apply EU law adopted both before its withdrawal and after if applicable. We have cited above examples of exemptions in these plans that are proposed for one year, but there are others in both plans. To what extent does the Minister consider it likely that the plans will be amended for 2020 to reflect experience and new information? Should there be any such amendments, does the Minister accept that they would apply to the UK?

During the implementation period, current fisheries rules, including any new rules adopted during the implementation period, will continue to apply to the UK.

Additional evidence will be gathered and reviewed in 2019 to understand the impact of the exemptions in the discard plans and to ascertain whether new joint recommendations need to be proposed in due course to amend the plans. If recommendations are proposed they will need to be submitted jointly by Member States of the North Sea or NWW regional group to the Commission. The Commission will then decide whether to adopt them in the plans, in consultation with the relevant advisory councils and scientific bodies, such as STECF.

0.12 We have tried and failed to elicit information from the Department on how the UK will be involved in fisheries decision making during the implementation period but have been unable to get beyond expectations. With less than four months to go before the UK leaves the EU and its institutions, does the Minister still only "expect" the UK to be involved or has he worked out specific arrangements with the Commission? We ask that he share with us the latest details on how the UK will be involved, or at the very least the process in which the Government is engaged with a view to establishing working arrangements.

A discussion between the UK and the Commission is necessary to establish the detailed working arrangements during the implementation period. This includes how the UK will input into new fisheries legislation during the implementation period and the role of UK stakeholders and the Government in the relevant Advisory Councils. The UK has requested such a dialogue with the Commission, but these discussions are not likely to take place until there is certainty that the UK will enter an implementation period.

However, the Withdrawal Agreement is clear that:

- There will be a process of bilateral consultation between the UK and the EU ahead of negotiations with coastal states and ahead of Fisheries Council;
- The UK may be invited to attend international negotiations;
- The agreement also includes an obligation on both sides to act in good faith.

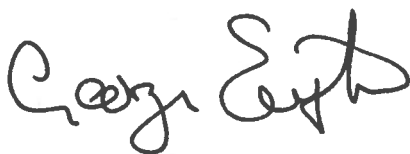
As soon as further discussions with the Commission have taken place, I will provide an update to the Committee on how the UK will be involved in the fisheries decision making process during the implementation period.

0.13 Finally, we noted last year the valuable role of the regional Advisory Councils, allowing UK stakeholders to work with stakeholders from other EU countries to identify potential fisheries management issues and solutions. It is our understanding that UK stakeholders will no longer participate in the Advisory Councils after 29 March 2019. To what extent have any other arrangements been made for continued structured stakeholder engagement in fisheries decision making during - and after - the implementation period?

We are working closely with the industry and other stakeholders to establish what advisory models and other structured stakeholder engagement we need after we leave the EU.

As soon as further discussions with the Commission have taken place, I will provide an update to the Committee on how the UK will continue to engage with stakeholders during and after the implementation period.

I am copying this letter to Lord Boswell, Chairman of the European Union Committee. I am also copying this letter to the Clerks of the Commons and Lords Committees, Lynn Gardner and Chris Johnson respectively; Les Saunders, Department for Exiting the European Union; and Tess Hanneman, Defra Scrutiny Coordinator.



GEORGE EUSTICE MP