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### ***Taking Stock of the Implementation of the Landing Obligation: lessons from the Baltic Sea***

On Monday 24 April, the European Parliament Fisheries Committee will host a hearing on the “*State of Play of the Implementation of the Landing Obligation and Allocation of Quotas by the Members States*” (<http://www.europarl.europa.eu/cmsdata/116944/programme-landing-obligation-publichearing-240417.pdf>) .

To contribute to these discussions, LIFE’s Baltic Coordinator, Marcin Ruciński, takes a look at the lessons learned from the implementation of the Landing Obligation in the Baltic Sea, currently in its third year of implementation. It is also a good moment to look into its practical consequences for the Baltic Sea fisheries, from the perspective of small-scale fishers, and draw some conclusions for its further implementation. Furthermore, since the Baltic Sea was the first EU Region to implement Landing Obligation, the practicalities and lessons learnt there are of particular importance and interest for other EU Regions.

#### **Real effort is needed to adjust fishing practices and change industry conduct, rather than lowering regulatory standards**

A closer look at the Common Fisheries Policy Basic Regulation<sup>1</sup> reveals that Landing Obligation is a means to reducing unwanted catches and gradually eliminating discards. At best, this should happen with an extensive preparation for a comprehensive discard ban, with steps taken towards changing the fishing practices and thus reducing unwanted catches.

Certain regulatory changes went in a different direction. The first of EU discard plans, applicable for the Baltic Sea<sup>2</sup> and adopted in late 2014, temporarily decreased the minimum conservation reference size (MCRS) for cod from 38 to 35 cm until the end of 2017. One of the reasons cited by the lawmaker to substantiate this reduction of regulatory standards was to “reduce current levels of discarding”<sup>3</sup>. However, ICES Advice for 2017, published 31 May 2016 estimates the discard rate for the Eastern Baltic cod stock at “approximately 15%”, much more than before the introduction of Landing Obligation in the Baltic Sea, adding that the figure “is considered an underestimate” and that “the available information suggests that modification

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<sup>1</sup> See Recitals 26, 29 (first sentence) of EU CFP Basic Regulation 1380/2013

<sup>2</sup> Commission Delegated Regulation 1396/2014

<sup>3</sup> Recital 6 of Regulation 1396/2014 i.a. states that “*there may be sound biological reasons for decreasing the current minimum size of 38 cm to reduce the current levels of discarding*”

of the selectivity properties of the [towed] gear takes place, leading to a higher proportion of smaller fish being caught”<sup>4</sup>.

LIFE urges regulators to take this situation into account when deciding whether the temporary Baltic cod MCRS decrease is to be kept or not. It is also necessary to bear in mind that small-scale, low impact fishers rely on the quality, rather than quantity of their catch: the entry into the most valuable market segment is guaranteed by the fish larger than 40 cm.

For these reasons, LIFE advocates increasing the MCRS of cod to at least 38 cms.

Implementing the Landing Obligation should not be based on a lowering of the regulatory standards to maintain the status quo in some parts of the industry, particularly trawl fleets. Bringing about a real change in gear selectivity patterns and industry conduct at sea, i.e. a genuine effort to avoid unwanted catches, would result in a much more effective implementation of the Landing Obligation in LIFE’s view.

### **Adequate at-sea monitoring and inspection must take place.**

It is of paramount importance to ensure the appropriate levels of at-sea monitoring of Landing Obligation, if it is to be successfully implemented. European Fisheries Control Agency (EFCA) located in Vigo, has undertaken a total of 618 “last haul inspections”<sup>5</sup> in the Baltic Sea between 2014 and 2016, carried out specifically to monitor the implementation of the Landing Obligation. The results have shown significant catches of cod below minimum conservation reference size (BMS) in trawl fisheries, up to 11.91% of the total catch. Inspections of gillnet fisheries, on the other hand, show a very small amount of BMS cod in inspected catches, the highest observed rate of 1,20%<sup>6</sup>. It is no surprise then that demersal trawl fleets are labelled with high risk of non-compliance by the Agency.

The above data, together with ICES estimates cited above, show the necessity of high level of at-sea monitoring when implementing the Landing Obligation. Confining the applicable control policy to just auditing documents is not sufficient. Borges et al.<sup>7</sup> makes clear that *“The implementation of a discard ban requires high levels of at-sea monitoring and effective control, and in all the cases studied, an increase in existing programmes. For poor (or even absent) monitoring and control, as was the case in Chile and New Zealand, discard bans may in fact increase discards, due to associated management measures that strongly limit fishing activity and incentivize discarding, such as TACs and ITQs. To counter these effects, incentives may be used to promote more selective fishing.”*

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<sup>4</sup> ICES catch advice for Eastern cod for 2017, last paragraph on page 3. Available at <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2016/2016/cod-2532.pdf>

<sup>5</sup> The method used by EFCA inspectors consists in inspecting at sea the last haul and comparing the catch composition and size distribution with the results recorded in previous hauls. More information at <https://www.efca.europa.eu/en/content/landing-obligation>

<sup>6</sup> Presentation by EFCA Executive Director at joint BALTFISH-BSAC-EFCA Seminar on implementation of the Landing Obligation, Hamburg, 9 March 2017. Available at <http://www.bsac.dk/getattachment/Meetings/BSAC-meetings/BALTFISH-BSAC-EFCA-Workshop-on-implementation-of-t/FromEFCA-BSAC-EFCA-BALTFISH-presentation-9-March-2017.pdf.aspx?lang=en-GB>. More documents from the Workshop <http://www.bsac.dk/Meetings/BSAC-meetings/BALTFISH-BSAC-EFCA-Workshop-on-implementation-of-t>

<sup>7</sup> Lisa Borges, Luis Cocas, Kåre Nolde Nielsen, “Discard ban and balanced harvest: a contradiction?” ICES Journal of Marine Science, published April 19, 2016. Available at <https://academic.oup.com/icesjms/article/73/6/1632/2459122/Discard-ban-and-balanced-harvest-a-contradiction>

This view is confirmed by results of a survey among Danish fisheries inspectors, where more than 83% of those interviewed have pointed out to enforcing the Landing Obligation as the main challenge for its effective implementation. The widely tested Fully Documented Fisheries schemes using CCTV technology to ensure Remote Electronic Monitoring may be a part of the answer, but they have their limits because of a possibility to by-pass the cameras, concerns about their intrusiveness, possible malfunctions and running costs<sup>8</sup>.

Borges et al. also hint at the link between ITQs and increased discard rates in the absence of adequate monitoring and control. Here in Europe, transferability of quotas has been proposed to address the problem of choke species. However, invariably the vital quota interests of small-scale, low impact fishers tend to be overlooked in making these “grand bargains”. Often advertised as good for everyone, in reality ITQ-based quota management systems benefit the financially strongest fleet segments, at the cost of i.a. jobs and well-being of these coastal communities where small-scale, low impact fishers tend to predominate. The matter has been recently examined in a LIFE report on ITQs<sup>9</sup>.

**Further investigate survivability of unwanted catches in passive gears, and make exemptions to Landing Obligation where survival rate of discards is high.**

Salmon and cod caught with trap-nets, creels/pots, fyke-nets and pound nets are already exempted in the Baltic Sea discard plan due to a positive assessment by STECF. However, STECF advised that further work should be undertaken to confirm whether the lower mortality assumption was valid as well as on handling practices and prevailing environmental conditions<sup>10</sup>.

There are a number of research activities into the survivability of demersal fish caught in passive gears used by small-scale, low impact fishers. To begin with, it is highly important to abide by the “right gear, right place, right time” principle, which allows the small-scale fishery to be of truly low impact nature. The traditional fishers’ knowledge is that survivability rates in passive gears may be quite high, depending i.a. on the species targeted, depth, time spent by the fish in the gear and the way it is handled on board. This traditional knowledge could be very useful in planned and ongoing research activities.

LIFE strongly recommends that there is an organized exchange of information between fishers and scientists and, where practicable, coordination of research activities, so that any future survivability exemptions are underpinned by the highest possible degree of scientific and fishers’ knowledge. While full respect for regional and local specificities must be assured, allowing a Europe-wide dialogue between scientists and fishers can only be beneficial for the quality of research and will help avoid having scientists “re-invent the wheel” in different parts

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<sup>8</sup> Kristian S. Plet-Hansen, Søren Q. Eliassen, Lars O. Mortensen, Heiðrikur Bergsson, Hans J. Olesen, Clara Ulrich, “Remote electronic monitoring and the landing obligation – some insights into fishers’ and fishery inspectors’ opinions”, *Marine Policy* (76) 2017, 98-106. Available at <http://www.sciencedirect.com/science/article/pii/S0308597X16306030>

<sup>9</sup> Anon, “Rights-based Management and Small Scale Fisheries in the EU: Human Rights Versus Property Rights A LIFE Position Paper on ITQs, December 2016. Available at <http://lifeplatform.eu/wp-content/uploads/2016/12/LIFE-Statement-on-ITQs.pdf>

<sup>10</sup> See Regulation 1396/2014, Recital 5

of the EU. Such an exchange would be further facilitated by using the guidelines on survivability trials, elaborated by STECF in 2014<sup>11</sup>.

**Innovate to improve gear selectivity and reduce environmental impact, but weed out bad practice.**

It is important to depart from the current construction of Baltic Sea technical measures, which are a prime example of micro-management at EU level<sup>12</sup>. This regulation, among other factors, has led to some fishers adopting circumvental measures. As ICES put it, *“The available information suggests that modification of the selectivity properties of the gear takes place, leading to a higher proportion of smaller fish being caught”*<sup>13</sup>.

On the other other hand, the EU should not relax its approach to the point of complete liberalization, especially when some in the industry are seen to be *“modifying the selectivity properties”* of their gears. This would put the implementation of Landing Obligation at risk of contributing to excessive fishing mortality, and simply replacing discarding at sea by discarding on land.

A robust balance is therefore needed between giving fishers the freedom to innovate with fishing gear designs to increase selectivity and decrease negative impact on the environment, and ensuring that the design and actual use of the gear in practice achieves the improved results intended. Indeed, the Technical Measures framework Regulation proposed by the Commission last year states that *“certain common rules defining restrictions on the use of towed gears and on the construction of codends should be established to prevent bad practice that leads to unselective fishing”*<sup>14</sup>.

LIFE recommends that this could be done through ensuring that:

- the process of gear design fulfils the requirements of scientific review, transparency and public scrutiny;
- it is possible to effectively control the correctness of gear use in commercial fisheries, so that its innovative selective properties and lower environmental impact are not circumvented.

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<sup>11</sup> STECF report „Landing Obligation in EU fisheries”, part 1, pages 22-50. Available at [https://stecf.jrc.ec.europa.eu/documents/43805/610582/2013-11\\_STECF+13-23+-+Landing+obligation+in+EU+Fisheries-part1\\_JRC86112.pdf](https://stecf.jrc.ec.europa.eu/documents/43805/610582/2013-11_STECF+13-23+-+Landing+obligation+in+EU+Fisheries-part1_JRC86112.pdf)

<sup>12</sup> See Appendices 1 and 2 to Annex II of Council Regulation 2187/2005

<sup>13</sup> ICES catch advice for Eastern cod for 2017, last paragraph on page 3. Available at <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2016/2016/cod-2532.pdf>

<sup>14</sup> See Commission proposal 2016\_134, Recital 12. Available at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-134-EN-F1-1.PDF>