

DRAFT**Outline of a discard plan for the Baltic Sea**

Member States, the Commission, the BS-RAC and stakeholders have cooperated on the issue of the implementation of the discard ban in the BALTFISH Forum and High Level Group as well as in technical meetings. In November 2012, the High Level Group (HLG) endorsed a set of recommendations (time schedule, choke species problems, control etc.), which was sent to the Commission, the BS-RAC and Member States.

In May 2013 the Council and European Parliament reached political agreement on the Reform of the Common Fisheries Policy outlining the specific time frame for introduction of the discard ban as well provisions for possible exemptions and the general framework for regional cooperation. An additional BALTFISH technical meeting was held in Copenhagen 13 June 2013 in order to prepare a final set of regional positions for a discard plan for the Baltic Sea with subsequent discussions at the 27-28 August 2013 meeting in Riga and Stockholm 3 December 2013.

On this basis, BALTFISH recommends that a discard plan for commercial fisheries in the Baltic Sea should be based on the elements outlined below. In the following the articles refer to the Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy unless otherwise stated.

Cooperation within BALTFISH covers fisheries management in the following geographical areas for the Baltic Sea: ICES zones IIIb, IIIc, and IIId.

Issues addressed in the following:

1. Species to be included in the discard ban from 2015
2. Exemptions for certain types of fisheries
3. Year-to-year flexibility and inter-species flexibility
4. Selectivity
5. Minimum landing size/minimum conservation reference size and selective fishing for cod and salmon
6. De minimis rule
7. Fishing effort
8. Fixing of fishing opportunities
9. Technical measures
10. Provision on documentation
11. Control measures
12. Evaluation

1. Species to be included in the discard ban from 2015

Table 1: Species to be included in the discard ban as of 1 January 2015

Species	Notes
Cod	
Herring	

Plaice	The discard ban for plaice will enter into force as of 1 January 2015. This will also apply for by-catch of plaice in the cod fishery.
Salmon	
Sea trout [with the exception of Estonian, German and Finnish territorial waters]	<p>Article 15 paragraph 3 in the Basic Regulation 1380/2013 allows Member States to propose species to be covered by the landing obligation in addition to the ones listed in Article 15 paragraph 1.</p> <p>Finland, Germany and Estonia wants to exempt sea trout in their territorial waters from the landing obligation.</p> <p>Finland justifies the exemption with reference to the poor state of the populations in Finnish waters (see ICES advice 2013) and expert judgment which indicates that the bycatch of many small sea trout successfully can be released from gill nets. There is no provision in the Basic Regulation 1380/2013 that would hinder a discard ban for an additional species to cover only a part of the Baltic Sea.</p> <p>Estonia notes that during the cold water period the viability of undersized sea trouts accidentally by-caught with gill nets in Estonian coastal fishery is good and negative impact to sea trout populations originating from Estonian, Finnish and Russian rivers can be prevented.</p> <p>Germany takes the view that the recovery plans for sea trout in its coastal waters will probably be jeopardized by a discard ban.</p> <p>Poland has expressed concern regarding gear exemptions from the discard ban for the sea trout.</p> <p>There is no provision in the Basic Regulation 1380/2013 that would hinder a discard ban for an additional species to cover only a part of the Baltic Sea.</p>
Sprat	

The question of including other non-quota species such as flounder, turbot and brill in the landing obligation will be further discussed in light of scientific advice concerning survivability – presently not available. To this end, STECF notes in its review of available information on survival of discards in the Baltic Sea that the results are highly variable between studies as well as within individual studies. The review concludes that at present it is not possible to provide a reliable list specifying the survival rate of discards by species and by fishing gear (STECF Plenary Report, July 2013).

Scientific advice is at the earliest expected to be available in 2014.

Pending further data and discussion, recommendations to include additional species besides sea trout will not be contained in this paper.

2. Exemptions for certain types of fisheries

Fish caught by certain passive gears could be exempted from the ban taking into account the characteristics of the gear, fishing practices, ecosystems and scientific evidence of survivability of the discarded fish when endorsed by STECF or ICES.

Table 2: Exemptions

Species	Gear type
Salmon	<u>Trap-nets, creels/pots, fyke-net, pound nets</u>
Sea trout	<u>Trap-nets, creels/pots, fyke-net, pound nets</u>

Cod	<u>Trap-nets, creels/pots, fyke-net, pound nets</u>
Plaice	<u>Trap-nets, creels/pots, fyke-net, pound nets</u>

When further scientific advice is available and sufficient scientific evidence is provided additional species could be exempted from the landing obligation.

The need for a technical meeting with national experts with the view to evaluate and review certain species and gear could be further considered pending advice from ICES/STECF.

3. Year-to-year flexibility and inter-species flexibility

Member States should be able to apply the inter-species flexibility (9 %) and the year-to-year flexibility (10 %) according to Article 15.8 and 15.9 as a supplement to voluntary quota swaps between Member States in order to accommodate possible choke species problems. Further measures to alleviate choke species problems can be discussed as part of the evaluation process (see point 12) based on solid documentation of the fishery.

Inter-species flexibility must be administered as part of the national quota management. In order to assess the functioning of the inter-species flexibility mechanism, this provision should be subject to evaluation after one year to allow for possible amendments if deemed necessary.

A STECF working group is dealing with the implementation of the discard ban (inter alia the inter-species flexibility rules). Conclusions from this work should be taken into consideration when evaluating the function of the flexibility mechanism.

4. Selectivity

Improved selectivity of fishing gears is a primary and important tool to avoid discards. Member States underline their continued focus on identifying ways towards a more selective fishery in the Baltic Sea Region.

In this regard, the EU Commission organized a technical meeting to present findings in terms of technical solutions to minimize discards in the Baltic cod fisheries based on the project LOT1¹, 4 September 2013. The meeting did not result in conclusive recommendations on measures. For gear currently in use, it was concluded that further technical development and tests with new gear is essential for achieving better selectivity in the cod fisheries. In addition, the introduction of the discard ban in itself is seen as a driving force for developing more selective gears. In light of the LOT1 workshop and recalling Article 14 (concerning pilot projects), BALTFISH should discuss how solutions and work on selective gears should be enhanced in the Baltic Sea, and thus undertake work on identifying possible ways towards a more selective fishery in

¹ Lot1 - Collaboration between the scientific community and the fishing sector to minimise discards in Baltic cod fisheries MARE/2010/11".

order to further minimize catches of small size cod in the Baltic Sea whilst at the same time securing an economically viable fishery.

While a continued focus on development of more selective gears shall be maintained, it could also be further discussed how a business from "discarded fish" is advanced, e.g. by supporting research into the use of landings previously discarded or other measures.

5. Minimum landing size/minimum conservation reference size and selective fishing for cod and salmon

The discard rate of cod in the Baltic Sea is estimated by ICES to be in the order of 10 % by weight in later years with a small increase in 2012 in the Eastern Baltic. By far the majority of the discarded cod are below minimum landing size. The survival of discarded cod is very low and in the assessment all discarded cod are assumed dead.

STECF concludes that it is likely that a reduction of the minimum landing size will have a positive impact on the economic performance of the fisheries while at the same time not cause an increased mortality for cod (STECF Plenary Report, July 2013). Furthermore, it was concluded at the LOT1 technical meeting that based on information on catch compositions with respect to size of the cod caught, at present the most efficient and speedy way to minimize discard of cod would be to lower the minimum landing size from 38 cm to 35 cm.

A BALTFISH common position on the MLS was agreed in October 2013:

"As a part of the regime and technical measures for implementation of a discard ban in the Baltic Sea, Member States of BALTFISH agree to an urgent need for inclusion of respective proposal in the relevant EU Regulation to introduce the minimum conservation reference size (MCRS) and set this for cod in the Baltic Sea as soon as possible at 35 cm in order to optimize the utilization of unavoidable landings of cod that were previously discarded. The introduction of MCRS will be supplemented with further work in BALTFISH on identifying possible ways towards a more selective fishery in order to further minimize catches of small size cod in the Baltic Sea. Such selective measures shall be based on sound scientific advice and – if deemed appropriate - introduced at the same time as the introduction of the discard ban."

In order to contribute to the follow up on the joint statement concerning salmon from the BALTFISH Common Proposal on TAC and Quota in the Baltic Sea for 2014 and in the October 2013 Council:

"Member States concerned will consider possibilities for targeted fisheries management measures covering sea and inland waters and control efforts that support the recovery of weak salmon stocks. Member States concerned will consider such measures when preparing for the adoption of the 2015 salmon TAC for the Main Basin and Gulf of Bothnia."

A list of measures to reduce catches of undersized salmon and to support the recovery of weak salmon stocks should be considered and assessed scientifically (ICES/STECF), among others including:

- a reduction of the salmon long line effective fishing season with the aim of reducing catch of undersized salmon.

- a reduction and the function of the minimum conservation reference size (MCRS) in the commercial fisheries. STECF has noted that a reduction of the MCRS would be an efficient way of reducing unwanted catch. The current MLS is 60 cm in subdivision 22- 30 and 32 and 50 cm in subdivision 31.
- a minimum distance between the point and the shaft of at least 19 mm of the hooks on the drifting lines and anchored lines when fishing for salmon and sea trout.
- other targeted fisheries management measures that support the recovery of weak salmon stocks.

6. De minimis rule

In general a de minimis rule should be used as a last resort when other possibilities (e.g. quota swaps, year-to-year flexibility, inter-species flexibility) are exhausted.

Article 15 (5c) provides for a de minimis exemption of up to 5 % of total annual catches subject to the discard ban in situations where selectivity is difficult to increase or to avoid disproportionate costs of handling unwanted catches. Problems in the Baltic Sea could relate to e.g. damaged/polluted fish, selectivity limitations, and/or disproportionate handling cost.

In the Baltic, seal-damaged fish is a well known problem, and counting seal-damaged fish against the quotas would pose problems for several fisheries. As a working suggestion BALTFISH has recommended that a general de minimis rule for seal damaged fish of 5 % is applied to allow discard of seal-damaged fish in these situations, although these catches still have to be fully recorded.

There is a need for evaluating - and possibly quantifying - scientifically the amount of seal damage in different fisheries. In addition, other issues need to be further explored, in particular to what extent the rules in Regulation (EC) No 1069/2009² on animal by-products might be applicable and the implications of these rules for the different fisheries. Furthermore, questions in regard to control when applying the de minimis rule is an area that needs to be discussed further. For the time being no other candidates for de minimis in the Baltic Sea than seal damaged fish has been brought forward.

Fish damaged by seals shall be recorded in order to establish information and data on the scope of the problem. When recorded the damaged fish can be either brought ashore or thrown into the sea. Catches of fish damaged by seals shall not be counted against the quota as long as the 5 % de minimis limit is not exceeded.

Retention on board of damaged fish requires space for storage and could also be subject to separate storage in order to observe specific hygienic provisions.

² Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)

7. Fishing effort

STECF (2012) has concluded that current enforcement in place in the Baltic Sea appears to be sufficient to control total outtake and fishing mortality in the Baltic, thus not requiring simultaneous limitation of effort.

On this basis, the days at sea scheme should be abolished as soon as possible. This should be reflected in the discard plan for the Baltic Sea by making the necessary modifications in the "Omnibus" proposal or other relevant legislation.

8. Fixing of fishing opportunities

When all catches subject to the landing obligation are landed and counted against quotas, the TAC-levels should be in line with Article 16.2. of the Basic Regulation and adjusted based on scientific advice from ICES, who provides catch advice on all commercial fish stocks, including assessment and evaluation of catches of possible choke species (see point 3 and 12). The catch advice will take into consideration that discarding of certain fish stocks will no longer be allowed. The fixing of the TAC-levels shall be in line with the objectives of the Common Fisheries Policy where the maximum sustainable yield exploitation rate, MSY, is achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks

In case of choke species problems which cannot be accommodated by the available instruments further measures to alleviate such problems could be considered as part of the evaluation (see point 12).

9. Technical measures

A number of additional technical measures and issues need to be scrutinized when discussing the introduction of the landing obligation. Thus, the below mentioned items will be adjusted in the "Omnibus" proposal as well as the "Framework Regulation" in relation to amendments of technical rules. It is noted that article 10 of the Basic Regulation only allows for objectives for conservation and technical measures to be included in the discard plan. As a transitional measure, it might be necessary to replace those technical measures by updating the rules on permitted gears, minimum mesh sizes and mandatory selection devices.

- These could e.g. include (Council Regulation 2187/2005): Articles 3.3, 3.6, 4, 12, 14, 15, 17, 18 and 24 contain or may contain regulations which are in direct or indirect contradiction to the discard ban.
- Article 3.3 and 3.6 contain landing restrictions which may be contradictory towards the discard ban.
- Article 4 and the adherent appendix contain restrictions concerning the handling of by catch on board.
- Article 12 calls for discarding of by-catch over certain limits.
- Article 14 and the adherent appendix contain minimum landing size.
- Article 15 calls for discarding of undersized catch.

- Article 15 prohibition of high grading
- Article 17 entails a ban against keeping salmon and trout during high season.
- Article 18 entails a ban against keeping eel which have been caught with active gears.
- Article 24 entails restrictions on handling of catch during scientific surveys. The regulation could be functional even under a discard ban, but the minimum landing size must be amended.
- Abolishment of minimum target percentages and maximum by-catch limitations in relevant fisheries (Annex II and Annex III of Council Regulation 2187/2005)

The three Regulations (EC no 1088/2007; 39/2013; 40/2013) contain quota regulations stating that vessels fishing in the Baltic Sea need to have catch quotas in order to keep the catch on board. The regulations are in conflict with the landing obligation, and needs to be revised. They also contain restrictions in effort which may counteract a selective fishery.

According to article 8.2 of the cod plan (EC no 1098/2007) cod shall not be retained on board when fishing with drift lines during the closed season. Since the ban is not specified to a specific species, the ban should not be included in the exemptions in the CFP Basic Regulation article 15.4.

In the area of control the control regulation (EC no 1221/2009) entails obligations for declaring catch quantity by species in the log book, in article 14.2. In case where exemptions from the landing obligation according to CFP Basic Regulation article 15.5 (b) are foreseen, it may be necessary to clarify how the catches should be recorded.

In addition the following Articles of the Control Regulation needs to be scrutinized:

- Article 14.4 specifies an obligation to record discard of by catch restricted to catches over 50 kg live weight per species. This may be contradictory to the CFP regulation article 15.5.
- Article 15 entail directions on declarations in the e-log book and have the same issues as above.
- Article 16 and article 25 refers to declaration of catches by vessels without log books and landing declarations and has thus no detailed catch reporting for each fishing trip.
- Article 35.2 entails regulation regarding MS decisions on dates for quota stop and the following prohibition to land.
- Article 44.3 and 49.2 entails restrictions on handling of catch on board the vessel which may be a problem if an exemption according to CFP article 15.3 is enforced.
- Article 49.1 is affected in the same way as for article 14 and 15 above.
- Article 56.3 entails a request to form sale batches before first sale of the catch. The regulation and definitions of a batch according to article 4.20

may need to be adjusted for the sale of catches under the minimum conservation reference size.

- Article 60 and 61 call for weighing of species by species which may constitute a problem when exemptions according to CFP article 15.5 is enforced.

10. Provision on documentation

All species shall be recorded with the correct species name in order to quantify the exact catches. When applying the inter-species flexibility provision catches may be counted against the quota of another species..

11. Control measures

Control and enforcement measures were discussed during a working group meeting for control experts in Hamburg 23 September and in Stockholm 2 December 2013. At the Hamburg meeting, Sweden was tasked to develop a background paper. The paper developed by Sweden outlining two scenarios for control of the discard ban in order to find the best solution for the Baltic Sea fisheries, was discussed at the Stockholm meeting. The paper compared the scenarios, and the recommendation from the group was to continue the work on control issues, with the aim to ensure high compliance.

BALTFISH Member States agreed on the outcome of the WG that the implementation of the obligation to land all catches should be controlled by the use of the existing and where justified - new control instruments. The possibilities to use different control measures should be further examined to ensure a high compliance. The tools used for control should be simple, transparent and cost-effective and tailored on the basis of risk management. A level playing field in the Baltic Sea should be maintained and this is of outmost importance for a successful implementation of the discard ban.

The WG further emphasized the need to use best available science in the development of a common control strategy and to maintain close cooperation with industry and other stakeholders, in particular the Baltic Sea AC. This will ensure a high degree of understanding, involvement and responsibility by all parties and is of outmost importance for a successful implementation of the discard ban. In this context possibilities for the introduction of measures for a bottom-up approach should be reviewed in particular.

In order to further develop a proper discard control strategy for the Baltic Sea fisheries the work should follow an adaptive approach, including the following issues:

- the development of a discard atlas
- the development of a risk analysis (fisheries by fisheries, and if relevant by management area)
- the development of common indicators for monitoring compliance level, and
- the operation of different enforcement tools (appropriate for the particular type and scale of fisheries)

To make the best use of ongoing work within BALTFISH the group concluded that in particular the risk analysis could be done in close cooperation with the regional risk analysis planned by EFCA.

This work will proceed in parallel with the introduction of the discard ban.

12. Evaluation

The discard ban constitutes a new regime in European fisheries management. Consequently, it seems appropriate to evaluate the functioning of the discard plan after one or no later than two years depending on the urgency for amendments and adjustment of the plan in place. In terms of fishing practices the introduction of the landing obligation constitutes an incremental process which most likely will demonstrate needs for adjustments within a relative short period of time.

It is important that as much information as possible is collected concerning the different elements allowing for swift responses and adjustments for ensuring appropriate implementation of the measures.

Elements to be evaluated could include the following parameters:

- The effect of the reduction of minimum conservation reference size for cod
- The effects of relevant measures concerning salmon and sea trout
- Assessment and evaluation of catches of possible choke species
- The functioning of the de minimis rule for seal damaged fish
- The impact of the discard ban on fishing behavior as well as the economic costs/benefits for the fishermen.
- Possible development of more selective fishing gear
- Progress on control options
- An assessment of the compliance with the discard ban
- The exemptions
- Other elements