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Fixes for choke species: a view from the fishing industry

Following work with the North Sea Advisory Council and other bodies, fishing sector representatives considered possible solutions to the so-called 'choke species' problem. This paper summarises their conclusions.

We recall that choke species are fish species for which quotas are so limited relative to local or general abundance that the imposition of a landing obligation (LO) in a mixed fishery is liable to result in fishing vessels having to cease operations well before they have caught their main quota allocations. The inevitable outcome of a choke situation is the bankruptcy of the fishing operations concerned.

Key points

1. While the **exemptions** and '**flexibilities**' provided for in Article 15 of the reformed CFP's basic regulation can overcome some choke situations, they **are not nearly enough** to cope with all of them.
2. An insistence on a narrow, rigid interpretation of Article 15 would result in the **wholesale bankruptcy** of much of the European fishing fleet operating in mixed fisheries.
3. It follows that Article 15 contradicts Article 2.1 of the same basic regulation, which among other things requires fishing and aquaculture to be managed "in a way consistent with the objectives of achieving **economic, social and employment benefits.**" STECF warned of precisely this conflict in early 2014.
4. Resolving the contradiction between these two provisions of the reformed CFP requires **a political decision** to either amend the legislation or interpret it in a more pragmatic way that is apparently the case at present.
5. Given that new or amended legislation is unlikely, we recommend (a) dealing with **high-volume choke species** by interpreting *de minimis rules* in a sympathetic way and/or abandoning TACs for those species, and (b) dealing with **low-volume choke species** by grouping bycatch into an 'others' category.

These points are discussed in more detail below.

1. Article 15 exemptions and flexibilities

Article 15 of Regulation (EU) 1380/2013 (the 'basic regulation') provides not just for the LO but also for flexibilities in managing quota and exemptions in applying that rule. Among other things, both are intended to address choke species problems, either by permitting continued discarding or by making additional quota available to cover landings of these species.

Quota flexibilities:

- Inter-species flexibility (Art. 15.8)
- Year-to-year flexibility (Art. 15.9)

Exemptions to the LO:

- Prohibited species (Art. 15.4.a)
- Species with high survival rates (Art. 15.4.b)
- Catches falling under *de minimis* exemptions (Art. 15.4.c)

Given that by definition, neither the prohibited species nor survivability provisions apply to choke species, we considered the remaining three 'fixes' for the problem.

Inter-species flexibility

This provision allows inter-species transfers of quota between donor (target) and recipient (non-target) species. It allows for catches in excess of quotas or catches of species for which a participating unit in the fishery has no quota. The provision limits the transfer to 9% of the quota of the target species and conditional on the recipient non-target species being within safe biological limits¹.

It is our view that the purpose of inter-species flexibility should be to avoid choke scenarios and should be seen as an additional instrument in the fishery manager's toolbox – instead of only being able to swap and lease, managers would be able to swap, lease or 'convert' where applicable. Whether the conversion would be 'tonne for tonne' or based on some other criteria e.g. swap currency, would need careful consideration, as would the need to have a limit on the amount of new quota created for the recipient stock.

¹ 'stock within safe biological limits' means a stock with a high probability that its estimated spawning biomass at the end of the previous year is higher than the limit biomass reference point (Blim) and its estimated fishing mortality rate for the previous year is less than the limit fishing mortality rate reference point (Flim);

De minimis

We view *de minimis* as a useful intervention when a situation reaches the stage where it's not possible to lease, swap or convert, and we are faced with a choke situation. We very much view the range of exemptions as a sequence.

De minimis exemptions are granted either when “increases in selectivity are very difficult to achieve” or “to avoid disproportionate costs of handling unwanted catches” (Art. 15.5.c). We cannot emphasise strongly enough that choke species would not arise if selectivity was anything other than difficult. Indeed, with the present state of technology, selecting out certain choke species can legitimately be regarded as impossible.

There was early agreement in our group that *de minimis* provisions may be helpful in choke situations, but not if they are interpreted as narrowly as they have been to date. We return to this point in (5) below.

Year-to-year flexibility

We view year-to-year flexibility as a very useful facility that can help move the industry away from a very rigid ‘use it or lose it’ approach.

That said, its application for resolving choke situations is not obvious, partly because the 10% transferability is not nearly enough to cover all of them and partly because deferring an issue is not the same as resolving it.

2. The outlook for the European fleet

Because of the choke species problem, the outlook for the European demersal fleet under the impending LO is particularly dramatic. As a recent [Seafish study](#)² explained, “*Even considering the benefit of the most generously defined policy levers [i.e. flexibilities and exemptions], the analysis shows that a significant volume and value of quota could remain uncaught as a result of the landing obligation*”.

Under what it refers to as its worst-case scenario, Seafish assesses that “*In 2019... the fleet segments in Scotland would catch and land 51% (£99.9 million) of the value of available TAC, which would leave 49% (£97.7 million) of the available TAC value in the sea.*”

We firmly believe that without a fix to the choke species problem, a significant part of the European fleet will fail due to reduced revenues.

Fishermen continue to look at bridging the gap through the development of technical measures and the development of a new spatial and temporal awareness. But the magnitude of the change required and time available to deliver that change leaves the sector an insurmountable challenge.

3. Article 2.1

² Seafish, *Landing Obligation Economic Impact Assessment, Interim Report Two*, August 2015.
http://www.seafish.org/media/Publications/Seafish_LOEIA_Interim_Report_2_Scenario_Analysis_310815_FINAL.pdf

According to Article 2.1 of the basic regulation, the CFP “*shall ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies*” (emphasis added).

We cannot see how the collapse of a large proportion of the European demersal fleet can be reconciled with this provision, especially as many of these vessels provide isolated coastal and island communities with their sole economic activity and the backbone of their social structure.

4. A political decision

In January 2014, STECF warned that “Objective 1 of the CFP requires that fishing should deliver economic and social benefits... Article 15 of CFP reform might prove inconsistent with this objective if many vessel businesses cannot continue to trade and much of the quota remains uncaught due to the effects of choke species.”³

It is our view that Article 15 would indeed prove inconsistent with ‘Objective 1’ and Article 2.1, and as there is no legal basis to assert that one of the articles in the basic regulation prevails over another, a political decision will have to be made to either change the legislation or alter the way that legislation is interpreted. **There would seem to be little alternative.**

5. Possible fixes – re-interpreting the rules

(a) High-volume choke species

We believe that a re-interpretation of the meaning of *de minimis* provisions in Article 15 is a credible means of dealing with high-volume choke species under existing legislation.

The critical wording is as follows: “*up to 5% of total annual catches of all species subject to the landing obligation*” (Art. 15.5.c).

So far, this rule has been taken to mean 5% of the species in question rather than 5% of the total annual catch of all species subject to the LO, and this was the basis on which STECF evaluated the species presented as candidates by the High Level Groups⁴.

De minimis would have little meaningful impact on the choke species problem unless it is interpreted more pragmatically:

1. Provisions for *de minimis* exemptions of up to 5 % of total annual catches of all species subject to the landing obligation.

³ STECF, *Landing Obligation in EU Fisheries – part II (STECF-14-01)*

⁴ STECF, *Landing Obligation - Part 5 (STECF-15-10)*.

2. Provision for any additional mortality to be taken account of in the stock assessment in the year following its application, not deducted from the in-year allocation.

An alternative or complementary approach would be provision for High-Level Groups to remove what they declare to be a choke species from the TAC regime entirely, and until such time as it could no longer be regarded as such. Naturally, such a move could not be taken unless the HLG was satisfied that the removal of a TAC posed no threat to the sustainability of the species in question.

The group agreed that a continued in-year monitoring and assessment processes would be required to deal with unforeseen choke situations.

(b) Low-volume choke species

Here we refer to lesser or by-catch species not catered for in Article 15. NSAC has for some time advocated the pooling or grouping together of a host of lesser species such as halibut, brill, turbot, lemon sole and witch flounder into one group of 'others'.

Such an approach provides real potential for solving the issue of low-volume choke situations, as it removes very rigid limits on the landing of species that are usually an unavoidable bycatch.

It has been suggested that such an approach could follow that used by Norway who introduced such a system having identified a similar set of issues after introducing their own discard ban in the 1980s. It is worth noting that Norway continues to modify its 'others' list. For example, monkfish have only very recently been removed from it, and the Norwegian authorities continue to monitor developments with hake.

There are of course differences between Norwegian and EU fisheries, not least the number of different countries involved and the fact that what may be a target species for one MS may be a bycatch for another. Norway does not have to deal with this level of complexity, but the rationale behind such an approach is still valid.

Managing some of these lesser stocks within an 'others' category may present difficulties regarding the sustainable harvesting of single stocks, although the absence in some cases of data and reference points would make this a challenge in any case and it would at least complement efforts to decouple bycatch from target species in mixed-fishery multiannual plans.

Incidental bycatch of lesser species is unavoidable in almost every fishery, and an insistence on MSY harvesting for every single one will guarantee failure at the first hurdle.

We should accept that maintaining significant commercial fisheries requires an element of common sense in dealing with low-volume bycatch.

In conclusion

We urge EU policymakers and fisheries managers to take the following steps:

- to acknowledge the **contradiction** that exists between the objectives described in Article 2.1 and the socio-economic harm that would be caused by a narrow interpretation of Article 15.
- to use interspecies flexibility as a means of solving choke issues and to regard it as an additional instrument that fisheries managers can call on in any part of the year;
- for high-volume choke species, to **re-interpret the *de minimis* rules** and/or enable High-Level Groups to **remove species from the TAC regime** altogether;
- for low-volume choke species, to **group bycatch into an others category**.

Europêche represents the fisheries sector in Europe. Currently, the Association comprises 13 national organisations of fishing enterprises from the following 9 EU Member States: DE, DK, ES, FR, IT, MT, NL, PL, UK.

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