

Deliverable D7.5

DiscardLess

Strategies for the gradual elimination of discards in European fisheries

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Executive Summary

This Policy Brief provides an overview of the current status, initial experiences, barriers, and opportunities with regard to applying the LO in mixed demersal fisheries in the North Sea, North Western Waters and South Western Waters. This area covers the DiscardLess case studies of the North Sea/West of Scotland, Celtic Sea, Eastern Channel & Bay of Biscay. Mixed demersal fisheries provide the biggest challenge for implementation of the LO due to the difficulty of matching quotas with catches for multiple species which are caught simultaneously but in varying proportions.

The Policy Brief is written for policy makers, the fishing industry, NGO's and citizens with an interest in fisheries management and is based on policy documents, stakeholder interviews, meetings and literature.

Box 1: Report Highlights

- The overwhelming issue for industry stakeholders in mixed demersal fisheries remains the choke problem. Despite intense efforts to come up with solutions involving national and transnational workshops a significant number of fisheries will have residual choke problems even after all available mitigation measures are applied. The assessment of which mitigation measures can have the greatest effect and how is slowly moving from a qualitative to a quantitative approach. This issue is dealt with in further detail in D4.4.
- Quota distribution is a significant issue for choke scenarios i.e. there may be enough quota but it may not be available to those who need it most. Accordingly flexibility in quota allocation and swapping is key.
- Significant changes in management in order to deal with residual chokes, for example by removing a stock from the TAC process, may only be permitted when all other available measures under Article 15 are applied.
- In 2016 only 1 member state reported a choke closure, reflecting that a very significant gap in the implementation of the LO remains
- For environmental NGOs an increasingly important issue is the lack of recording of unwanted catches and controls. Some NGOs cite the example of the Baltic as a cautionary tale, as they claim discard rates there have increased since the implementation of the LO. The ACs generally favour a risk based approach leading to stronger controls for identified high-risk vessels.
- The issue of how to deal with catches below MCRS remains a hypothetical one as very small quantities of unwanted catches have been landed across these fisheries.
- Industry fears about the potential negative impact of providing discard data and subsequent decrease in observer coverage in some Member States is an issue for science.

Box 2: The methods/approaches followed

- Interviews with a broad range of stakeholders from Commission level, through national administrators, industry and NGO representatives and individual fishermen.
- Attendance at relevant national, regional and EU meetings.
- Analysis of relevant policy statements, regulatory documents and academic literature.
- Review of first 2 years of the LO in demersal fisheries and guidelines for improved implementation over coming years.

Box 3: How these results can be used and by who?

- The policy brief on experiences with the LO in mixed demersal fisheries is of interest to stakeholders at all levels in EU fisheries as the question of what is actually happening with the LO in other fisheries and regions is asked regularly. The experiences of the first 2 years reported in the policy brief were taken from interviews from fishermen, industry reps, control officers, NGOs and EU commission staff.
- In addition the guidelines and future implications outlined in the policy brief are relevant to policy makers and higher level stakeholders as they seek to build on previous successes and avoid past mistakes with the broadening of the LO to other fisheries.
- The policy briefs will be presented for selected target audiences and are available on the project website.

Box 4: Policy Recommendations

- A major policy challenge is to catalyse action at the management level (see also D4.4). A top-down process could be used whereby failure to implement measures available in Article 15 would preclude the MS from the potential use of other measures such as the removal of choke problem stocks from the TAC system. This process could also link applied measures to discard reduction targets, as MSs currently are not required to demonstrate such reductions.
- This top-down process must be matched by a bottom-up process, realigning incentives for fishers to provide data in support of discard mitigation. Without this the quality of scientific data will be negatively effected and implementation will be overly reliant on control and enforcement rather than collaboration.
- The issue of overcoming short-term losses without going out of business is key for fishers. Some NGOs have proposed specific cases where industry should only receive support if they have implemented effective selectivity measures. A more general application of this approach could incentivise progress while reducing industry fears of bankruptcies.
- The first amendment to the LO was made in recognition of the fact that it is taking longer to develop multi-year management plans than originally envisaged. Similarly, it may be recognised that LO implementation takes longer than originally hoped for. This amendment also shows that difficulties with making changes to Article 15 may be more political than legal in nature.

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Glossary

AC: Advisory Council

CMT: Choke Mitigation Tool

EFCA: European Fisheries Control Agency

IQF: Inter-species Quota Flexibility

JR: Joint Recommendation

LO: Landing Obligation

MAP: Multi-Annual Management Plans

MC: Monitoring and Control

MS: Member State

NSAC: North Sea Advisory Council

NWWAC: North Western Waters Advisory Council

REM: Remote Electronic Monitoring

STECF: Scientific, Technical and Economic Committee for Fisheries

SWWAC: South Western Waters Advisory Council

1. Purpose and Scope of the Policy Brief

This Policy Brief provides an overview of the current status, initial experiences, barriers, and opportunities with regard to applying the LO in mixed demersal fisheries in the North Sea, North Western Waters and South Western Waters. This covers the DiscardLess case studies of the North Sea/West of Scotland, Celtic Sea, Eastern Channel and Bay of Biscay. Mixed demersal fisheries provide the biggest implementation challenge for the LO due to the difficulty of matching quotas with catches for multiple species, which are caught simultaneously but in varying proportions.

Policy brief number 1 (D7.1) covered the first 12 months of the LO in Baltic and pelagic fisheries while policy brief number 2 (D7.2) looked ahead at the main issues facing Mediterranean fisheries in advance of the implementation of the LO there and made some relevant policy recommendations.

The Policy Brief is written for policy makers, the fishing industry, NGO's and citizens with an interest in fisheries management and is based on policy documents, stakeholder interviews, meetings and literature.

2. Key elements of the LO for mixed demersal fisheries

Scope: The LO applies to all catches of species which are subjected to Total Allowable Catch (TAC) limits or, in the Mediterranean, to a minimum landing size (MLS). Species that are not subject to TACs or MLS can still be discarded.

Minimum Conservation Reference Size (MCRS): The LO requires that fish under the MCRS are landed but prohibits their use for direct human consumption. Catches of all fish, including fish below the MCRS must be recorded and counted against quotas.

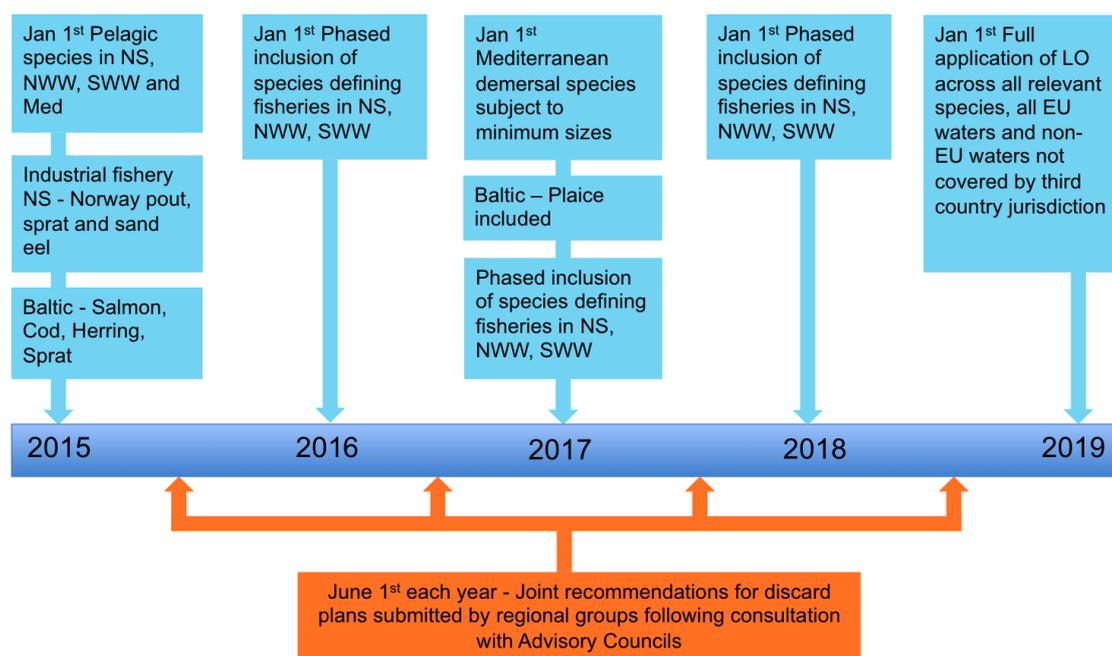
Exemptions: Species and fisheries can be exempted based on evidence of high survival rates for discarded fish. Further, up to 5% of the total catch of a species may be discarded if it is shown that selectivity increases are difficult to achieve or that handling of unwanted catches is overly costly (*de minimis* exemptions).

Discard plans: In the absence of multiannual plans groups of member states organised at a regional level develop discard plans in consultation with advisory councils. These plans are submitted as “joint recommendations”, which detail the species to be included in the LO, at which times and also any exemptions. Following review of the joint recommendations by the Scientific, Technical and Economic Committee for Fisheries (STECF) the plans are adopted by the European Commission either in full or with amendments.

Quota flexibility: The LO requires that fishermen have access to quotas to cover their catches or they have to cease fishing (see “choke species problem” below). Accordingly, there are rules that allow for some conditional transfer of quota between years and between species.

Timelines: The LO is phased in from 2015 to 2019. It began with Baltic and pelagic fisheries where its application was expected to be less complicated and by Jan 1st 2019 it will cover all species subject to quota or MCRS (Figure 1).

Figure 1: Timeline for when and where the Landing Obligation applies



3. Governance context

The main participants in developing recommendations for discard plans and implementing the Commission regulations are the Advisory Councils (AC) and the Member State High Level Groups (HLG). The ACs are the main forum for representation of interest groups (mainly fishing industry and environmental NGOs), and advise the European Commission and Member States on the management of fisheries in their regional seas. The HLGs are made up of fisheries administrators from the member states in those regional seas and make Joint Recommendations (JR) for discard plans following consultation with the ACs.

In the North Sea, the HLG is known as the Scheveningen Group, comprising of Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom. The Scheveningen Group receives advice from the North Sea Advisory Council (NSAC). In North Western waters, the AC is the NWWAC and the high level group is comprised of Belgium, France, Ireland, the Netherlands, Spain and the United Kingdom. In South Western waters the AC is the SWWAC and the member state group is mainly represented by Spain, France and Portugal.

The process of submitting Joint Recommendations as the basis for regional discard plans was intended to be a temporary process until Multi-Annual Management Plans (MAP) for each region were in agreed and adopted.

In the first case of an amendment to Article 15 of the CFPⁱ, described by the Commission in a letter to the SWWACⁱⁱ as an emergency amendment, the Commission introduced a three year extension for the submission of JRs, recognising that it is taking longer to develop multi-year management plans than originally envisaged.

4. Discard plans adopted for NS, NWW and SWW

A total of 10 discard plans have been adopted by the Commission following Joint Recommendations in NWW, SWW and the North Sea, but five of these are no longer in forceⁱⁱⁱ. There are currently three discard plans covering the three regions focused on in this report.

- Commission Delegated Regulation (EU) 2016/2374 of 12 October 2016 establishing a discard plan for certain demersal fisheries in South-Western waters. This plan has been the subject of two amendments^{iv}.
- Commission Delegated Regulation (EU) 2018/46 of 20 October 2017 establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018. In force.
- Commission Delegated Regulation (EU) 2018/45 of 20 October 2017 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa for the year 2018. In force.

5. Stakeholder perspectives on the application of the LO

5.1 Choke species

The most pressing and significant issue facing LO implementation in mixed fisheries is undoubtedly the problem of dealing with choke situations and the potential negative effects on fishing fleets.

What is a choke species?

“A choke species is a species for which the available quota is exhausted (long) before the quotas are exhausted of (some of) the other species that are caught together in a (mixed) fishery” (Zimmermann et. al 2016)^v.

The NSAC has developed a four tier system for categorising choke problems depending on whether the choke problem is due to internal MS quota allocation, quota allocation between MS, insufficient quota across the EU or due to economic issues with the enforced carrying of low value fish^{vi}.

The NWWAC analysed the issue of choke species by developing a Choke Mitigation Tool (CMT) which identifies choke situations for key stocks^{vii}. The CMT also helps to assess qualitatively what mitigation tools, included in Article 15 of the CFP, are appropriate for individual stocks and to what extent they can mitigate choke situations.

The CMT assigns a high, medium or low risk category to stocks based on the extent to which catches are in excess of quotas and the ability of available tools to mitigate resulting chokes.

Table 1: High and Moderate risk stocks identified using the Choke Mitigation Tool in North West Waters.

NWW High Risk Stocks	NWW Moderate Risk Stocks
Whiting VIIb-k;	Hake VI and VII
Sole VIIf,g	Cod VIIb-k
Plaice VIIf,g;	Haddock VIa
Cod VIa;	Haddock VIb
Whiting VIa;	Haddock VIIa
Cod VIIa;	
Whiting VIIa	
Plaice VIId,e	

The NSAC and SWWAC are conducting risk analyses using similar approaches. While the NWWAC have taken a very stock specific approach, the most recent paper on managing fisheries under the LO from the NSAC covers which mitigation measures may work in a general sense rather than for specific stocks or fisheries.^{viii}

Attempts to move from a qualitative assessment of the effect of mitigation measures to a more quantitative approach are now emerging. A STECF Expert Working Group was convened in March 2018 to quantitatively assess the effect of various selectivity measures on high and moderate choke risk stocks in NWW.

Regardless of the method of categorising choke problems, all ACs are agreed that some residual choke problems will persist even when all available measures are applied. The ACs are looking to both the Member States and the Commission for guidance on how these residual chokes can be dealt with. The following text from a NSAC Demersal Working Group meeting in Feb 2018 clearly illustrates the uncertainty that exists around how to deal with residual chokes: “We should continue to flag up our concern about chokes and would also need to identify how any residual problems might be dealt with as not all the red chokes could be adequately dealt with. In some cases, the stock quotas were not sufficient to resolve discard problems. What can be done with quotas to resolve these problems? It was pointed out that the Scheveningen Group was currently not willing to look at the use of quotas in this context, because of Relative Stability problems.”

This uncertainty was also summarised at a recent LO seminar by Mike Park of the Scottish White Fish Producers Association when he described the challenge as needing to satisfy legal, societal and market demands without going out of business but at this point they are still not sure how^{ix}.

For some non-target species with small TACs there are discussions about removing these species from the TAC system. An example is whiting in the Irish Sea. The value of whiting landings from the Irish Sea in 2016 was approximately €50,000, whilst the Nephrops fishery was estimated to be worth close to €40 million. The UK and Ireland combined landed approximately 7,700 tonnes of Nephrops but only 31 tonnes of whiting^x. However the Commission are concerned with what management measures, which would have to be compliant with the CFP, would replace the TAC approach. The Commission, however, is concerned that new measures may not be considered until all measures available under Article 15 are fully implemented^{xi}.

Additionally, NGOs are unhappy with the fact that removing the TAC does not reduce discards and they cite the case of North Sea dab and flounder to demonstrate that this just hides the discard issue for such species^{xii}.

Despite all of the discussion of how to deal with chokes in 2016 according, only one member state reported a choke closure, reflecting that a very significant implementation gap remains.

5.2 Technical measures

There is significant interaction between the LO and technical measures rules and the ACs have responded to Commission proposals for a new Technical Measures regulation^{xiii}. Some of the LO relevant issues raised in these responses included:

- A requirement for maximum flexibility at regional and vessel level “to allow fishermen to innovate, to adapt their gear to reduce unwanted catch”.
- One of the pillars of 850/898 (the existing technical measures regulation) was catch composition rules – these are viewed as fundamentally incompatible with the LO as “vessels cannot logically be legally required to retain on board and not retain on board, the same fish”.
- The NSAC favoured outcome from the technical measures process is one that “maximises scope for rapid regional and sectoral adaptation to meet the demands of the landing obligation”.

The Commission themselves have stated that they favour a results or solution-based approach but that there are some pressures to move back towards a more prescriptive approach^{xiv}.

5.3 Control issues

Some LO specific issues have been raised by stakeholders on the revision of the EU Fisheries Control System proposed by the European Commission.

The NWWAC position included^{xv}:

- The NWWAC agrees that there is a need for full control of high-risk vessels. The risk categories, however, should be defined (it remains unclear on how this should be achieved).
- Assuming that high-risk vessels can be identified, the NWWAC suggests that in order to ensure the detailed and accurate documentation of catches of all fishing trips, tools should be selected which are cost effective and appropriate to those vessels. Such tools could include: observers, closed-circuit television (CCTV), VMS, sea, air and onshore controls, amongst others.
- Dedicated programmes to measure compliance should be implemented to assess compliance with the landing obligation;
- Appropriate methodologies for data gathering and analyses should be developed to allow for the development of a compliance evaluation process.
- As an element of remote electronic monitoring (REM), CCTV may be seen as a controversial tool by some fishermen. As such, the NWWAC suggests that good communication will be needed to ensure buy-in on the use of this technology by the industry. Additionally, the use of CCTV and the distribution of footage must comply with EU and national privacy laws.

The NSAC position^{xvi} included the following points:

- The NSAC supports Monitoring and Control (MC) measures being founded on a risk-based approach. A risk analysis must be made using the most up-to-date and relevant data and information, including the knowledge of pressure points related to ongoing choke situations.
- The NSAC recognises the lack of support from the majority of fishermen for the landing obligation and the limited willingness to comply as a major challenge.

The lack of effective control of the LO is becoming an increasingly important issue for NGOs. This has been raised in numerous recent seminars on the LO including a DG MARE organised seminar in Nov 2017 and a Pew organised workshop in February 2018.

In its Advisory Board Meeting report from Sept 2017, the European Fisheries Control Agency pointed out that it has no Specific Control and Inspection Programme (SCIP) or Joint Deployment Programme (JDP) for demersal species in Western Waters but it does support Member States on the risk management strategy. The lack of an SCIP/JDP may be a weakness in the overall LO implementation and control context.

5.4 Industry-Science collaboration

An issue which is mentioned frequently by fishers is that they are concerned that discard data provided by them could have a negative impact on them in the long term. This concern is manifested in declining observer coverage in some MS and regions^{xvii}, which in turn could have a negative impact on the quality of scientific data on discards. A situation where industry are not incentivised to provide fisheries data represents a backward step in the collaborative process necessary for improved fisheries management. Unless a way is found to get fishermen back on board with collaborative data collection this issue is likely to remain as a significant barrier to successful implementation of the LO.

5.5 SWWAC specific issues

The SWWAC raised some specific issues in a recent opinion document submitted to the Commission^{xviii}.

The majority position outlined communicated some very clear statements on their difficulties with the LO. Their proposals included:

- the necessity for tools to ensure that crews are compensated for losses associated with unwanted catches.
- A greater flexibility and application of common sense in granting exemptions as all of the requests for information sought by STECF are not “humanly or financially possible” to provide.
- simplification of the exemption process by for example granting survival exemptions to all hook or pot fisheries.
- Fixed multi-year TACs should be applied.
- Further extension and implementation of the LO beyond 2018 should be deferred until agreement can be reached on the points above.

A minority position was also outlined which highlighted disagreement by some groups, including environmental NGOs, about compensation schemes for additional work due to the LO as this could reduce incentives to improve selectivity. Furthermore one NGO, IFSUA, “*considers that only vessels that have implemented effective measures to be more*

selective should be able to benefit from the mechanisms (provisions, incentives) to be implemented.”

5.6 European Parliament and Commission views

Due to the diversity of viewpoints within MEPS in the European Parliament it is difficult to ascertain any consensus views on the Landing Obligation. Alain Cadec, chair of the European Parliament Fisheries subcommittee has regularly expressed his dissatisfaction with the policy, most recently at an EP workshop on the LO and choke species in multispecies fisheries in May 2018 when he stated “The diagnosis is very clear: uncertainty, difficulty, complexity... I don’t regret voting against the Landing Obligation”^{xix}. These views are not shared by all MEPs particularly those belonging to the Greens/EFA group. The European Parliament has commissioned a number of research reports on the Landing Obligation including reports on choke species problems in the North Sea, North Western waters and South Western waters^{xx xxii}

A representative of the European Commission in a recent interview for the DiscardLess project raised a number of relevant points regarding the Landing Obligation and mixed fisheries. Regarding the possibility of measures in addition to those already contained in Article 15, ICES was asked by the Commission to examine the effect of removing TACs for some stocks, which were likely to cause significant choke problems. The ICES advice found that some of stocks causing the greatest choke problems would be at risk of being fished unsustainably if removed from the TAC process^{xxiii}. An example of this is Whiting in the Irish Sea which is a bycatch in the Nephrops fishery. Furthermore the possibility of any further amendments to the LO was currently remote given the emphasis on and uncertainty surrounding fisheries and wider aspects of the Brexit negotiations. Interviews conducted for this project reveal also that the management enthusiasm in certain MS for the use of electronic monitoring to aid LO implementation is not matched in others. As such it may be that REM solutions are likely to be applied on a discretionary basis within those MS favouring their use.

6. Relevant information from the DiscardLess project

- Policy Brief on LO implementation in Baltic and pelagic fisheries^{xxiv}.
- Policy Brief on LO implementation challenges in Mediterranean fisheries.
- Case study descriptions with further detail on discard issues for the North Sea/West of Scotland, Celtic Sea, Eastern Channel, Bay of Biscay case studies^{xxv}.
- Selectivity manual including 64 factsheets, which provide brief descriptions of many of the catch comparison and selectivity trials that have taken place in European fisheries^{xxvi}.
- Discardless Deliverable 4.1: “Initial avoidance manuals by case study including tactical, strategic and gear based approaches agreed by scientists and fishers.
- Discardless Deliverable 5.1: “Report on current practices in the handling of unavoidable, unwanted catches” which describes evolution of discard bans in non-EU countries.

7. Conclusions

The overwhelming issue for industry stakeholders in mixed demersal fisheries remains the choke problem. Despite intense efforts to come up with solutions involving national and transnational workshops a significant number of fisheries will have residual choke problems even after all available mitigation measures are applied. The assessment of which mitigation measures can have the greatest effect and how is slowly moving from a qualitative to a quantitative approach. This issue is dealt with in further detail in D4.4.

A significant issue with a lot of choke scenarios is the distribution of the quota i.e. there may be enough quota but it may not be available to those who need it most. Accordingly flexibility in quota allocation and swapping is key.

Significant changes in management approach in order to deal with residual chokes, for example by removing a stock from the TAC process, may only be possible when all other available measures under Article 15 are applied.

According to the MS reports on the LO, only 1 member state reported a choke closure in 2016 so evidently a very significant LO implementation gap still exists.

For environmental NGOs, an increasingly important issue is the lack of recording of unwanted catches and controls. Some NGOs cite the example of the Baltic as a cautionary tale, as they claim discard rates there have increased since LO implementation. The ACs generally favour a risk based approach leading to stronger controls for high risk vessels where they can be identified.

The issue of how to deal with unwanted (under MCRS) catches remains hypothetical as very small quantities of unwanted catches have been landed across these fisheries.

For science the effect of industry fears about the potentially negative impact of providing discard data and subsequent decrease in observer coverage in some Member States is an issue.

A major policy challenge now is to catalyse action at the management level (as discussed also in D4.4). This could take the form of a top-down process whereby failure to implement at least some of the measures available in Article 15 would preclude MS from being able to apply for the use of other more innovative measures such as the removal of choke problem stocks from the TAC system. This process could also link measures applied to discard reduction targets as currently there is no obligation on MS to demonstrate such reductions but merely to document what measures have been applied.

This top-down pressure will also have to be matched by a bottom-up realigning of the incentives for fishers to provide data in support of discard mitigation. Without this the quality of scientific data will be negatively effected and implementation will be overly reliant on control and enforcement rather than a collaborative approach.

The issue of overcoming short-term losses without going out of business is key for fishers. Some NGOs have proposed specific cases where industry should only receive supports if they have implemented effective selectivity measures. A more general application of this approach could incentivise progress while reducing industry fears regarding bankruptcies.

The first amendment to the LO was made in recognition of the fact that it is taking longer to develop multi-year management plans than originally envisaged. Could a similar recognition that LO implementation may likewise take longer than originally hoped for take place also? This amendment also shows that difficulties with making changes to Article 15 may be more political than legal in nature.

8. References

- ⁱ Regulation (EU) 2017/2092 of the European Parliament and of the Council of 15 November 2017^[1] amending Regulation (EU) No 1380/2013 on the common fisheries policy.
- ⁱⁱ Translation of the note ARES(2017) 4798602 of the 02/10/2017 of the European Commission.
- ⁱⁱⁱ These include:
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- Commission Delegated Regulation (EU) 2015/2439 of 12 October 2015 establishing a discard plan for certain demersal fisheries in south-western waters.
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