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The Rt Hon Lord Teverson
Chairman
EU Energy and Environment Sub-Committee
House of Lords
London
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Dear Robie

**Response to the Energy and Environment Sub-committee report:
The EU fisheries landing obligation: six months on.**

Thank you for your report of the 16 July 2019 on the progress of the implementation and enforcement of the EU landing obligation over the last six months. I am grateful to the Committee for reviewing progress and taking the time to make subsequent recommendations.

Please find attached the Government response to the report.

GEORGE EUSTICE MP

Government Response to House of Lords Report on the EU Fisheries Landing Obligation: six months on

Introduction

The Government is grateful to the EU Energy and Environment Sub-Committee for its report – The EU fisheries landing obligation: Six months on.

The Government remains fully committed to ending the wasteful discarding of fish, acknowledging the impact this can have on fisheries management and the marine environment. Whilst progress has been made during the first six months of the full implementation of the landing obligation, the government recognises that challenges remain, most notably around chokes in mixed fisheries, accurate data collection and control and enforcement.

To tackle these challenges, the Government has worked in close collaboration with the Marine Management Organisation¹ (MMO) and the fishing industry to develop measures to strengthen its control and enforcement approach. The Government has also engaged with the European Commission and other EU Member States through the North Sea and North Western Waters regional groups to continue developing solutions to problems as they arise.

Once we have left the EU, the UK will wish to maximise the opportunities of exit by finding new and creative ways to tackle the specific issues the fishing industry faces in UK waters specifically, including in relation to strengthening our enforcement and compliance approach. This will include developing management approaches which are not available under the Common Fisheries Policy, and taking account of best practice from elsewhere around the world. The Fisheries White Paper – ‘Sustainable Fisheries for Future Generations’ – charts the course for a sustainable and profitable fishing industry post-Brexit.

Responses to the specific recommendations raised by the Committee are outlined below:

¹ Each Devolved Administration is responsible for enforcing the landing obligation in their respective administration.

For example, the MMO is responsible for enforcing the landing obligation in England. Marine Scotland is responsible for management implementation of the landing obligation in Scotland, with enforcement by Marine Scotland Compliance, and supported by scientific evidence and advice from Marine Scotland Science. And the Environment Agency Wales and the Department of Agriculture, Environment and Rural Affairs are responsible for enforcing the landing obligation in Wales and Northern Ireland respectively.

The Impact of the Landing Obligation

8. The landing obligation, which to a large extent prohibits the previously common practice of discarding fish at sea, is both a significant change and a significant challenge for the fishing industry. Despite this, new rules seem to have had little impact since they came into force in full six months ago.

Since its introduction, the Government has worked with the catching sector, the wider industry and other Member States to implement the landing obligation. The progress made during the phasing-in period can be seen in the Delegated Acts (discard plans for the North Sea and North Western Waters) from 2015 to 2019.

There has also been considerable work and progress in quantifying and detailing the challenges facing industry in implementation of the landing obligation and in developing solutions to mitigate their impact. Such solutions include both enhancing and promoting the use of selectivity measures and maximising the use of quota management flexibilities to ensure quota is used to mitigate choke risks. This work has been instrumental in preparing the industry for the landing obligation, ensuring they have the knowledge and the tools to manage its impact.

Going forward, we will continue to work closely with key stakeholders to find solutions to the various challenges, including through further evidence based exemptions, technical measures, quota management, increased monitoring and improved data collection.

Choke Risks

13. Given the widespread expectation that the landing obligation would result in vessels having to stop fishing within the first few months of this year, we are surprised to note that there appear to have been no instances of such 'choke' to-date.

The Government is fully aware of the risks posed by choke species. As a result, we have worked closely, and continue to do so, with regulators, scientists, the industry and other stakeholders, including eNGOs, to ensure risks are fully understood and mitigation measures are in place where practical.

In our previous response, we indicated that through this collaborative approach, a number of measures have been undertaken to mitigate the risk of choke. We believe they have been effective and have helped to avoid these risks from materialising. These approaches are listed below again for ease:

- the Government has developed, and continues to maintain, a detailed understanding of the choke status of all stocks, including the key contributing factors to those risks. That knowledge is being used to inform prioritisation of mitigation strategies, some of which are detailed below,
- the Government has used this understanding of choke risk to feed into the North Sea and North Western Waters regional groups' process, securing evidence based exemptions to the landing obligation in key areas. These exemptions exempt stocks from being landed and counted against quota,

- the MMO has published guidance on the tools that are available to the fishing industry to help reduce or avoid choke risks,
- the policy approach for England to reserve (formerly 'uplift') quota for 2019, was designed to help mitigate choke risks and encourage more sustainable fishing practices, by directing a proportion of quota towards the non-sector, and setting aside another proportion to incentivise participation in schemes that encourage the uptake of highly selective gears and/or improved data collection,
- compliance is facilitated through effective quota management, including managing pool quotas to balance catch and by-catch, or working with Producer Organisations to ensure quota is accessed by fleets facing choke.

In addition to this, significant effort has been put in to developing measures to avoid unwanted by-catch, and thereby avoid choke. For example, the European Maritime and Fisheries Fund (EMFF) has funded a large number of projects to support the implementation of the landing obligation. For instance, in England, to increase gear selectivity, the EMFF has funded 305 projects (with an EMFF grant value of £3.3m), and has also funded a hundred projects (with an EMFF grant value of £11m), to make changes to the infrastructure of ports and harbours, so that all catches can be landed where subject to the discard ban.

The Defra founded ASSIST (Applied Science to Support the Industry in delivering an end to discards) programme has also been a significant investment in preparing the industry for the landing obligation, using workshops, gear trials and evidence to secure exemptions. In Scotland, a similar initiative (GITAG - Gear Innovation and Technology Advisory Group) was set up and funded primarily around selective gear design.

Choke risks have also been mitigated through informal approaches, with anecdotal evidence showing that some fishermen have begun adapting their fishing techniques to avoid unwanted by-catch. Such practices include, using trawls that have a shallower opening so that unwanted fish are not caught when targeting Nephrops in the North Sea, and also avoiding fishing at night when catches of unwanted haddock are highest in the Celtic Sea.

19. The consensus among witnesses was that swapping and trading quota, both within the UK and between Member States, will be key to preventing chokes occurring later in the year.

The Government is aware of the importance of being able to swap and trade quota in the existing system, particularly in relation to the sustainable management of choke stocks. For example, 1357 swaps took place domestically in 2018 with 262 taking place internationally.

Once we leave the EU, the UK will not have automatic access to international quota swaps. However, negotiating a fairer share of quotas will be a priority as this will provide increased opportunities to UK fishers, as well as allowing them to improve management of their choke risks. Being able to exchange quota between fishers domestically will continue to be a key tool to manage choke risks.

20. There are concerns, however, that there is a greater reluctance to swap quota this year, causing the value of quota to rise and increasing the risk that it will be unobtainable by those who need it.

The evidence does not support these concerns. Our data show that 618 domestic swaps took place between January and July in 2019. This compares to 663 swaps in the same period in 2018. The figure for international swaps are 127 for the same period in 2019 and 152 in 2018. This means the number of swap transactions is slightly lower in comparison to last year. However, the total tonnage being swapped has actually increased. It has gone up from 123,228.68 tonnes in 2018 to 134,008.81 tonnes in 2019 for the same period.

To contextualise these figures, it should be noted that various factors affect the number and tonnage of swaps each year and fluctuations are common. The value of quota also fluctuates, with some stocks increasing in price and others decreasing. It is difficult to isolate specific reasons for increases and decreases in value. Given the relatively small decrease in the number of swaps and the increase in tonnage swapped, it is likely that different factors influence such changes.

21. We therefore restate the recommendation of our previous report that the Government should work with the devolved administrations to put formal mechanisms in place to avoid vessels choking where there is sufficient quota available elsewhere in the UK, and to make the case to the European Commission for a similar mechanism at EU level. This should include specific consideration of the constraints experienced by the under ten metre fleet.

The Government fully recognises the importance of working collaboratively across the UK with devolved administrations to address challenges in relation to the implementation of the landing obligation. We have always worked closely with devolved administrations and industry in relation to quota management and continue to do so. For example, the domestic quota swapping arrangements allow for quota to be moved around the UK to those who need it thus helping to mitigate the risk of choke. In addition, we have agreed principles which set out the process the UK fisheries administrations will follow when considering the implications of requests for International Quota Swaps in light of current choke threats.

Since 2016, to help under 10 metre vessels meet the landing obligation the English under 10 metre fleet has received extra quota for many stocks. This was top sliced from the English share of the uplift quota at a rate of 100 tonnes plus 10%. The MMO also monitors landings of quota stocks and compares the amount caught and landed against total quota allocation. This is used to inform decisions about whether to both approve quota swaps, whatever the segment of the fleet, as well as when the swap is occurring both within England, or, for example, between an English Producer Organisation and a PO from Scotland, Wales or Northern Ireland. This helps to ensure swaps are undertaken in a way which helps mitigate the risk of choke for all fishers involved.

Enforcement and Compliance

30. The landing obligation was expected to result in an increased volume of undersized fish being brought to shore. This has not happened, but it is unclear whether this is due to improvements in fishing gear that allow fishers to avoid catching these fish, or whether fishers are ignoring the landing obligation and continuing to discard them.

31. We welcome the improvement in selective gear technology, and would strongly encourage its continued development and take-up. Given the importance of more selective fishing, the Government and devolved administrations must urgently consider how they can track the extent of selectivity improvements in the UK fleet, including monitoring the sales of selective fishing gear, and work with other Member States to develop an EU-wide indicator.

32. The lack of historic data on discards means the UK has no baseline against which to judge the impact of the landing obligation. The UK Government and devolved administrations should urgently consider how they will improve catch data, to enable them to monitor future progress.

38. Given the important ecological reasons for the introduction of the landing obligation, it is concerning both that the Government believes illegal discarding is still taking place and that it does not know the extent of compliance.

39. The Government and devolved administrations must urgently take steps to put robust mechanisms in place to monitor and enforce compliance. We also urge the Government to seek to persuade the Commission and Member States to agree measures to improve monitoring and compliance across the EU.

47. Enforcement agencies are taking a range of actions in an attempt to monitor compliance with the landing obligation. None of the currently used mechanisms, however, are sufficient to determine levels of noncompliance or to provide sufficient evidence for enforcement action. This challenge is compounded by a lack of data.

48. Monitoring at sea was a known challenge of the landing obligation and, as we stated in our previous report, it is extremely disappointing that effective monitoring mechanisms were not in place from 'day one' of the rules coming fully into force, given that the Regulation was agreed six years ago.

54. We remain of the view that remote electronic monitoring is the only way to monitor compliance with the landing obligation, and restate our disappointment that Member States did not use the lengthy phasing-in of the landing obligation to agree on its use across the EU.

56. It may be contentious for the UK to insist on the universal use of remote electronic monitoring as a condition of fishing in its waters post-Brexit. Nevertheless, we believe that the UK should commit to mandating the use of

remote electronic monitoring on all vessels fishing in UK waters after it leaves the EU.

58. The fishing industry does not, as yet, seem to have come under pressure from their buyers to prove compliance with the landing obligation. If and when this happens, however, it could provide a driver for fishers to adopt remote electronic monitoring voluntarily.

61. We are concerned that many of our witnesses, including the Minister, feel the fishing industry will need to be given incentives in order to comply with the landing obligation. While we would support a communication campaign that emphasises to fishers the benefits of compliance, it is a legal requirement that fish stocks subject to the landing obligation are not discarded. Incentivising fishers by offering rewards to those that comply could lead to the inappropriate conclusion that compliance is voluntary.

68. Limits are set on the amount of each type of fish that fishers can catch, to ensure the health of fish stocks for future years. The EU's limits are now set on an assumption of 100% compliance with the landing obligation, making the need for an effective mechanism to monitor compliance even more pressing.

The Government recognises the importance of effective monitoring, control and enforcement of the landing obligation. For this reason, extensive work has been undertaken to enhance our approach in 2019. Whilst the landing obligation was initially introduced in 2015, it only came into full effect in 2019 with only some sectors of the industry only now being impacted by the requirements. For that reason, much of 2018 and the early months of 2019 were focused on ensuring fishers had the right information to be able to comply with the new requirements

Practical guidance translating the EU discard plans has been made available to industry each year. This explains the exemptions in place and technical measures that must be used, including guidance on the newly introduced EU technical conservation measures. Measures include improved selectivity requirements for nets to reduce unwanted catches of juvenile fish, as well as reducing unwanted catches of cod, haddock and saithe. Such measures will be strictly enforced as the MMO will inspect nets at sea and in port, including by measuring mesh sizes and checking for selectivity panels.

To supplement this guidance, fisheries administrations across the UK continue to engage closely with the industry through regular, face-to-face meetings, social media and routine engagement between fishers and inspectors. As part of its face-to-face engagement, in England, Defra and the MMO have formed a Landing Obligation Forum with representatives from the National Federation of Fishermen's Organisations (NFFO) and the UK Association of Fish Producer Organisations (UKAFPO), to share experiences and identify and resolve emerging issues.

We have also facilitated conversations between key stakeholders, including representatives from the catching fleet, processors, retailers and eNGOs to discuss

issues relating to the implementation of the landing obligation, and how they can be resolved.

Ahead of the full implementation of the landing obligation in January 2019, fishing vessel licence conditions were amended to reflect the requirements of the landing obligation, and where relevant, operators were written to and made aware of their legal obligations. Following this initial period of education, the MMO is now moving towards a more enforcement-centred approach. Ensuring industry is aware of the requirements of the landing obligation will remain important, but control and enforcement efforts will be increased to identify non-compliance and to improve the accuracy of catch recording, particularly in high risk fisheries. The MMO is recording and monitoring the instances of non-compliance to identify patterns where advice has been provided, but actions from industry are not changing. It will take time to develop a fully-fledged system for recording such incidences, but such data will inform risk assessments and MMO's future enforcement approach.

At this point in the year, through our contact with industry and from MMO's data on discarding activity, we are seeing increased engagement with the requirements of the landing obligation and believe there is greater effort being made to comply. For example, MMO has reported that the market for stocks below minimum conservation reference is slowly growing, such as for pot bait, and infrastructural changes are being made, with storage bins being increasingly installed at landing stages.

The lack of undersize fish being landed should not be taken as evidence of non-compliance as there are now a number of de minimis exemptions in place for undersize catch. These exemptions are deducted from the Total Allowable Catch (TAC) so they have no effect on mortality, they simply recognise that in some instances, the costs of handling undersize fish are disproportionate to the value of the catch. There are still some fisheries which have not yet been fished under landing obligation rules due to their seasonality, MMO is receiving questions from different sectors of the industry about how to increase levels of compliance in those fisheries. There are also fisheries in which undersize fish comprise a proportion of the total catch due to selective nature of fisheries.

We are stepping up enforcement in 2019 to include 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,
- ensuring that all catches are correctly recorded after landing and that juvenile fish does not go to direct human consumption,
- using data sources such as scientific data to evaluate levels of compliance,
- facilitating compliance through adapted quota management interventions such as:

- managing pool quotas to balance catch and by-catch,
- working with Producer Organisations to ensure quota is accessed by fleets facing choke.

Between 2018 and 2019, the MMO has more than doubled the number of inspections of landings, and also nearly doubled the number of inspections at sea (for full list of data on inspections please see the annex A). Through these inspections, inspectors can see the true catch composition in any given fishery and assess the extent to which the landing obligation is being complied with. Inspections are also an opportunity to remind fishers about the need to record discards and to assess compliance with gear requirements.

The roll out of the under 10m catch reporting system and the introduction of inshore vessel monitoring systems will see an improvement in data across this segment of the fleet.

The UK Fisheries Enforcement and Control Co-ordination Group (UKFECCG) was established in 2015 to support fisheries administrations to collaborate and effectively manage the UK's approach to ensuring effective control and enforcement, and to share best practice.

We continue to explore the potential use of Remote Electronic Monitoring (REM), alongside other monitoring and enforcement tools, as a cost-effective and efficient way of monitoring fishing activity and ensuring compliance.

Some trials on REM have already been undertaken and have produced positive results. For example, REM has been deployed in a number of fisheries throughout the UK since 2011 and produced positive results. In addition, REM has continued to be deployed in the English North Sea as part of a Fully Documented Fisheries (FDF) scheme, managed by the MMO. The findings have been positive, with discard rates of FDF vessels reduced to negligible levels. The UK has engaged with other Member States on REM through the Regional Groups and Control Expert Group but securing agreement across all Member States remains challenging because of technical issues and legal concerns by some around privacy and data protection. The Government will continue to consider the opportunities for using REM more widely.

When the UK leaves the EU it will be in the position of being able to place requirements on foreign vessels who wish to fish in our waters as a condition of access. Our White Paper made clear that we will seek to deliver objectives around sustainability by attaching such conditions, which could include the use of REM for some sectors.

Exemptions

69. It is critical that the catch limits set reflect any exemptions that allow for continued discarding, and that information about how limits are calculated is easily, publicly available to allow for sufficient scrutiny. We urge the Government to raise these concerns with the European Commission.

75. The aim of the landing obligation is to eliminate discarding. Although we recognise that exemptions have helped reduce the risk of choke, we remain concerned that their scale undermines this overriding aim, and we therefore urge the Government to work with other Member States to continually challenge and reduce the use of exemptions.

The Government acknowledges the potential for a large number of exemptions to undermine the landing obligation's aim to eliminate discarding, and this is something we have consistently relayed to other Member States through discussions in the North Sea and North Western Waters Regional Groups.

Where new exemptions or amendments to existing exemptions are proposed, the Government continues to provide evidenced based input on such proposals. For example, the UK played a leading role in the development of the skates and rays roadmap, which aims to strengthen the evidence base supporting the high survivability exemption. Recognising the importance of this exemption for some parts of the fishing industry, but also the scale of the evidence gaps, we advocated a prioritised approach across the regional groups when commissioning new scientific research. This ensured that the exemption continues to exist only where most needed and where supported by robust evidence.

We also worked extensively with a wide range of stakeholders, including industry and other Member States, to undertake a number of scientific studies and gear trials, to ensure that any exemptions proposed by the UK are justified with strong evidence. The UK has generated evidence to support nine exemptions under the high survivability provision for species that show substantial rates of survival when returned to the sea (these are for pelagic species caught by purse seiners, and sole, plaice and skates and rays caught in defined fisheries). The survival rates are more than 50% in each case.

Where stocks are subject to de minimis exemptions, the amount to be discarded under these exemptions is deducted from the EU Total Allowable Catch (TAC), reducing the amount of quota remaining for other fishing opportunities before it is allocated to the relevant Member States. In turn, the exemptions do not increase mortality rates and the resulting quantity of fish removed from the population overall is still within Maximum Sustainable Yield (MSY) limits.

The Government acknowledges that the calculations for setting limits for exemptions are in some cases complex, difficult to follow and use multiple data sources, such as from ICES (International Council for the Exploration of the Sea) and STECF (Scientific, Technical, and Economic Committee for Fisheries)). Since the landing obligation first started, the EU has sent its detailed calculations to EU Member States to be reviewed

and checked. These calculations are reviewed and scrutinised by our fisheries science advisors in the Centre for Environment, Fisheries and Aquaculture Science. Any concerns on the calculations are then raised by government with the EU for review and clarification. The data used for the calculations are publicly available via STECF reports or public data databases.

By-Catch Reduction Plans

81. Allocating a small amount of quota to cover accidental bycatch of stocks that would otherwise have a zero catch limit may be a necessary measure. But given the imperative that the catch of these stocks be kept to an absolute minimum, we share the disappointment expressed by some of our witnesses that robust bycatch reduction plans were not in place before the landing obligation came fully into force.

82. The Government should work with other Member States and the European Commission to ensure bycatch reduction plans are implemented as quickly as possible. These plans should include a requirement for remote electronic monitoring and the use of more selective fishing gears on vessels allocated the bycatch quota, to ensure strict compliance with the quota limits and whatever bycatch reduction measures are agreed.

The requirement to have by catch reduction plans (BCRP) in return for bycatch quotas on the five stocks given zero TAC advice by ICES, was decided at December Council in 2018. The intention was for this to be developed and implemented by the North Western Waters regional group in 2019.

The plan was submitted to the European Commission at the start of June 2019 but it is the UK view that it was not ambitious enough given it largely amounted to a collation of existing measures contained in the new technical conservation regulation and the North Western Waters delegated act (discard plan).

The UK Government argued strongly in favour of strengthening the BCRP at regional group meetings, but faced resistance from other Member States. For example, the proposals put forward by the UK for selectivity measures aimed at reducing mortality of Celtic Sea cod and West of Scotland cod and whiting, were by far the most ambitious of all proposals.

STECF evaluated the proposed BCRP and concluded that it was not expected to reduce by-catches of the relevant stocks over and above the measures already in place, and did not contain any elements of monitoring or control.

The Government agrees that more can and should be done in relation to the BCRP. We will continue to work collaboratively with other Member States and the European Commission to address the concerns raised.

Maximum Sustainable Yield

86. This Committee wishes to see fishers and fishing communities flourish. If fishing is permitted above the maximum level that scientific advice states is sustainable, however, the long-term damage to fish stocks could pose a serious threat to the fishing industry.

87. We therefore restate our position that catch limits, and exemptions to the landing obligation, should be set in line with scientific advice and urge the Government to work with other Member States to accelerate progress in this area.

The UK Government remains fully committed to sustainable fisheries management and Maximum Sustainable Yield. We also remain committed to use the best available scientific advice to inform management decisions.

Annex A

The table below outlines the number of inspections of landings and at sea undertaken by MMO between 2016 – July 2019.

Please note that there are other inspection platforms which have been used by MMO periodically over the last few years, but which are not covered by the data outlined in the table below.

Type	2016	2017	2018	To July 2019
Shoreside vessel inspection	1783	1420	1260	3020
Premise Insepction	886	815	655	1590
Vehicle Inspection	117	260	271	950
At Sea Inspections	325	267	190	289