



# The control of the Landing Obligation in Denmark

A report by

**AQUAMIND**

for ClientEarth.





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## Executive Summary and Key findings

The Common Fisheries Policy (CFP) places a clear obligation on Member States and fishers to account for and land all catches. With some exemptions, the 'landing obligation' (LO) applies to all fish stocks subject to catch limits and to Minimum Conservation Reference Size (MCRS) requirements.

On the basis of information supplied by the Danish government, it can be concluded that existing operational efforts and quality of control do not allow the Danish government to fulfill its obligations under European Union (EU) law:

- The Danish Fisheries Agency ("the Agency") detected only 3 infringements of the landing obligation in each of 2017 and 2018. These infringements were not discovered through active at-sea inspections but on the basis of fishers' own reporting of discards. The Agency states that **"it is very difficult to document illegal discards"**.
- Less than 1% of catches in the important cod fishery are subject to inspections at sea. Given the importance and scale of the LO this cannot be considered adequate.

From monitoring fishers' compliance with the landing obligation, it can be concluded that:

- Denmark has implemented exemptions to the landing obligation. In 2018, 382 tonnes of fish were discarded legally in accordance with the exemptions related to *de minimis* catches and catches of undersized fish with a high survival rate.
- Last-haul inspections indicated a general behaviour of illegal discarding of catches under MCRS.
- Illegal discarding of fish above MCRS – known as 'high-grading' – was documented in Danish trials from 2008-2015. Given the development in fishing patterns it is fair to assume that high-grading is still practiced outside the Eastern Baltic.

**The general conclusion is that Denmark has neither established the necessary control measures in accordance with EU law<sup>1</sup> nor a mechanism that accounts for all catches including discards within a reasonable margin of error, as also required by law.<sup>2</sup>**

The European Commission is the "Guardian of the Treaties". The Commission has not taken sufficient steps to ensure that Member States comply with the landing obligation. Member States that may take the lead in complying with the rules will disadvantage their fishers compared to Member States not complying. Equal competition – a level playing field – between EU fishers is a core policy objective. It is therefore the Commission's responsibility to roll out a catch account and control scheme that applies horizontally to all Member States.

Furthermore, the Commission has proposed and the Council adopted increased Total Allowable Catches (TAC) that presumed that no unaccounted discards would take place. This assumption has been contradicted by the Commission itself:

“ There is a consensus among actors in fisheries control, that traditional means of control, such as inspections at sea and aerial surveillance, are not effective to monitor the Landing Obligation. Levels of non-compliance are expected to increase in 2019 with the full introduction of the LO. Closed circuit television has been identified to be the only effective control tool to ensure control and enforcement of the LO at sea and to provide a deterrent to illegal discarding.

**Commission's SCIP paper<sup>3</sup>**

The Commission's proposal for TACs for 2020 will be discussed at the Council of Ministers for Fisheries on 16–17 December 2019. The subsequent agreed regulation will fix the catch opportunities and the conditions for their use. At this stage it is uncertain whether the Commission and the Council will require Member States to accurately account for all catches through a statistical account that includes discards or through fully documented fisheries as previously trialed in the TAC regulation.



# 1. Danish fisheries

## 1.1. Background

Denmark is one of the biggest fishing nations in the EU. In 2018, the Danish Fisheries Agency registered 64,000 landings amounting to 1,098,348 tonnes of fish with a sales value of 549,453,000 Euros. About 50 harbours registered landings of more than 1 million DKK (134,000 Euros).<sup>4</sup>

Danish fisheries cover a broad selection of demersal and pelagic stocks and catches of species for fishmeal. In addition, there is a coastal fishery of mussels that is not regulated by EU TAC.

Fisheries are mostly managed by Transferable Fishing Concessions that allow for a high degree of transferability of quota holdings between vessels. This is an essential feature that gives fishers a flexible tool to match catches taken with their quota portfolio.

## 1.2. The Common Fisheries Policy

The Common Fisheries Policy (CFP) was first established in 1983. It obliged fishers to discard juvenile fish and fish for which they did not have a quota, since these were not allowed to be landed. It was assumed that fishers would then only fish for adult fish for which they had a quota. This turned out to be a wrong assumption, and unaccounted discarding became the signature of a failed CFP.

The CFP was reformed in 2013. It now requires that all catches of stocks subject to catch limits taken by fishers are counted against their quotas and that all fish must be landed, unless exemptions apply.<sup>5</sup> This policy has been phased-in from 2015 and it is, with some exemptions, in full effect from January 2019.

Moving the policy from a discard regime to a regime where all catches must be counted requires careful implementation and proper control schemes. Accordingly, the law requires:

“ For the purpose of monitoring compliance with the landing obligation, Member States shall ensure detailed and accurate documentation of all fishing trips and adequate capacity and means, such as observers, closed-circuit television (CCTV) and others.”<sup>6</sup>

However, this has not happened. The Commission has stated that reporting on discards is insufficient and that compliance with the landing obligation remains weak. Commission and EFCA (European Fisheries Control Agency) audits indicate a general lack of compliance, compounded by difficulties in effectively controlling compliance by conventional means.<sup>7</sup> Even though non-compliance with the landing obligation is defined as a serious infringement under EU law,<sup>8</sup> the Commission has failed to ensure that Member States account for and land all catches.

The Commission is expected to put forward a proposal<sup>9</sup> for a mandatory but limited use of Remote Electronic Monitoring (REM) in a revised fisheries Control Regulation. The adoption of the new regulation and its operational implementation may take several years.

An immediate solution is for the Commission and the Council to set aside a reserve of Member State quotas for 2020 to cover discards and allow Member States to draw on this reserve on condition of adequate catch documentation through for example REM or last-haul catch correction for selected stocks (chapter 2.3).

## 2. Danish implementation of the Landing Obligation

ClientEarth has obtained information from the Danish Ministry of Environment and Food, and from DTU Aqua – the National Institute of Aquatic Resources – regarding the Danish implementation of the landing obligation (LO) and the effects on eliminating discards.

### 2.1. Guidelines, control and sanctions for fishers

The Danish Fisheries Agency has issued three guidelines to ensure that fishers and inspectors are familiar with the obligations to account for and land all catches and that they are informed about exemptions and requirements regarding the registration of catches.<sup>10</sup>

They include the following topics:

- Species covered by the LO and exemptions from the LO;
- Logbook entries and transmission of catches including catches covered by exemptions from the LO;
- Handling and storing of fish under MCRS.

Fish under MCRS must be counted against quotas and landed, however they may not be sold for human consumption. Such fish has a low value or even a net cost if it has to be dumped after landing. Fish just above MCRS that may be sold for consumption typically have a low value compared to fully grown fish. This means that fishermen have a strong incentive to discard fish below MCRS and also an incentive to discard small sellable fish – so called high-grading – depending on the vessels' quota availability.

The agency has not issued guidelines for the inspectors' operational control of the landing obligation. Given that inspections at sea are carried out by only three vessels (Denmark having an active fishing fleet of more than 1,500 active fishing vessels<sup>11</sup>), and that observing infringements of the landing obligation is difficult, it is doubtful if the Danish inspection system meets its legal obligations.

In 2017 the Agency found three infringements of the landing obligation. Two of the cases were sanctioned by court decision, but no administrative sanctions or points for serious infringements were assigned. The third case is still being considered.

In 2018 the Agency found three infringements of the landing obligation. Two cases were administratively sanctioned, but no points for serious infringements were assigned and no court decisions were made. Two cases are still being considered.

All three infringements found in 2017 were for vessels where the size composition at landing differed from the size composition found in the same vessels through last-haul monitoring at sea. This suggests that vessels, having delivered size composition figures at sea, did not refrain from discarding before reporting the size composition of the landed fish.

The Agency has registered inspections in the fishery for cod. The frequency of control of the landed cod has been consistent in recent years – at 3% (**Table 1**). The at-sea control covered less than 1%.

The Agency has begun an initiative regarding the handling of violations and the assignment of points in context of violations of fisheries law in general. Violations of the landing obligation are included in the initiative.

**Table 1** Danish inspections for cod

	2015	2016	2017
No of landings	36,788	35,929	31,538
No of inspections at landing	956	992	972
Frequency of control (Inspections/landings)	3%	3%	3%
Amount caught (tonnes)	22,812	20,392	16,617
Amount covered by inspections at landing (tonnes)	1,001	1,292	1,019
Amount covered by inspections at sea (tonnes)	296	313	260

## 2.2. Reported discarding

According to EU Regulations, discarding may take place *inter alia* under the *de minimis* rule and for species with high survival.

The *de minimis* rule allows up to 5%<sup>12</sup> of total annual catches of all species subject to the landing obligation to be discarded '**where scientific evidence indicates that increases in selectivity are very difficult to achieve**' or '**to avoid disproportionate costs of handling unwanted catches, for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage, to be established in a plan, of total annual catch of that gear**'.<sup>13</sup>

The high survival exemption allows fishers to discard catches of '**species for which scientific advice demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem**'.<sup>14</sup>

Catches permitted to be discarded do not count against quotas but must be fully recorded.

**Table 2** shows a marked increase in recorded Danish discards in the years 2016-2018, though this does not necessarily mean that overall discard levels as such have increased.<sup>15</sup> It is also important to note that the figures merely show the magnitude of recorded discards, but do not indicate to what extent non-recorded discarding, either legal or illegal, takes place.

**Table 2** Recorded discards according to the EU exemptions and survival rules (kg)

Year	<i>De minimis</i>	Discarded catch	Total
2016	947	11,653	12,600
2017	18,126	75,802	93,928
2018	24,716	357,405	382,121
<b>Total</b>	<b>43,789</b>	<b>444,860</b>	<b>488,649</b>



### 2.3. Unreported discarding

The important general conclusion, from the discussion that follows, is that fishing patterns have not changed following the phasing in of the landing obligation. **This means that sizeable amounts of illegal discarding continue to take place in the EU.**

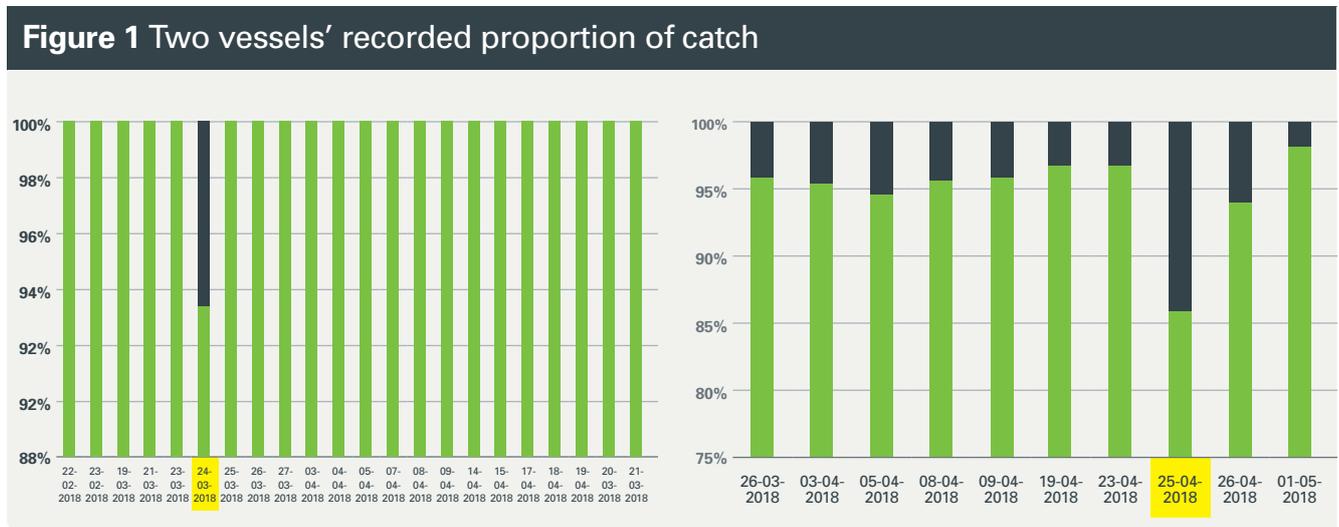
The International Council for the Exploration of the Sea (ICES) estimates the extent of unreported discarding – also termed ‘unwanted catches’ – in the context of its yearly catch advice for each fish stock. The estimates are based on national scientific observer programmes and they are uncertain.

In 2018 the Danish Fisheries Agency conducted at-sea last-haul inspections according to guidelines issued by EFCA. The aim was to assess compliance with the landing obligation based on the share of fish found to be under MCRS. On average the share of cod under MCRS was found to be 13% in the Baltic and 6% in the North Sea. By contrast, the shares found to be registered in logbooks would typically be under 1%.

**Figure 1** below shows two vessels’ recorded proportion of catch found to be smaller than MCRS (black) and larger than MCRS (green) as found by inspections on different days. The days highlighted in yellow are those when inspections took place. The first vessel appears to consistently discard all catches under MCRS when not inspected; the second vessel continuously records some discards. Both vessels demonstrate significantly higher catches of below-MCRS fish when subject to a last-haul inspection.

According to the Agency this indicates a general behavior by Danish fishers of discarding catches smaller than MCRS and not reporting it.

**Table 3** shows that the number of last-haul inspections remained the same over the 2015–2017 period, thereby failing to keep pace with the increase in vessels which in that time have become subject to the landing obligation.



**Table 3 Number of last-haul inspections in Denmark**

Region	2015	2016	2017
North Sea	26	78	73
Baltic	103	91	103

Source: <https://fiskeristyrelsen.dk/media/10166/aarsrapport-fiskerikontrol-2017.pdf>

The last-haul monitoring did not register the share of the smaller fish still larger than MCRS (typically size 4 and 5 according to EU market norms). These sizes are of a lower value than larger fish and may sometimes be discarded – so called ‘high-grading’. High-grading has previously been shown to be occurring in Denmark.<sup>16</sup> Assuming ‘high-grading’ is also occurring, the total share of cod discarded under the last-haul monitoring will be higher than the recorded 13% and 6% figures given above.

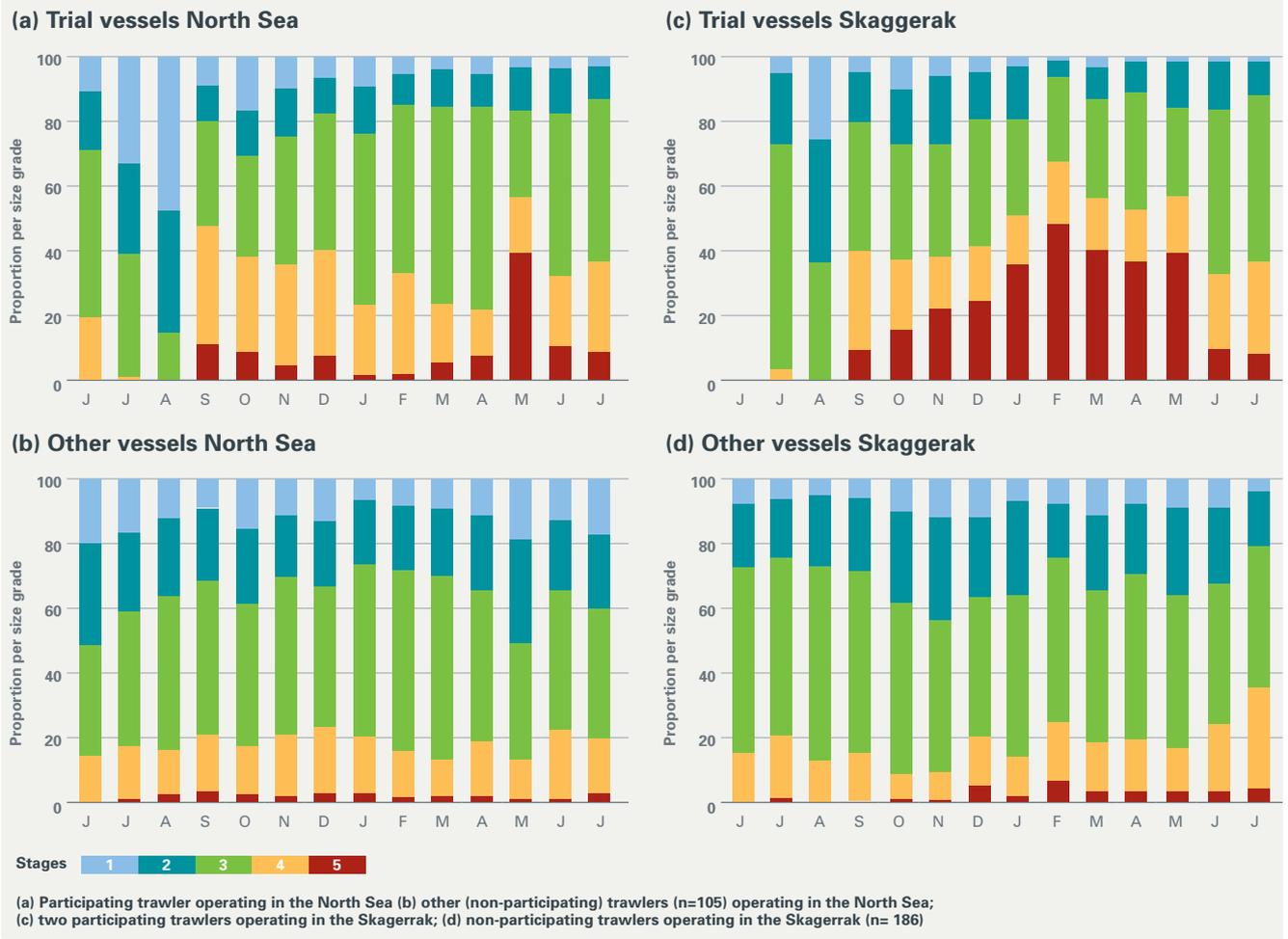
Denmark was the first nation in Europe to promote the use of Catch Quota Management (CQM) for Fully Documented Fisheries with Remote Electronic Monitoring (REM) including CCTV camera systems. Large-scale trials took place from 2008 to 2015. This showed that landings of grade 4 and 5 fish were significantly higher for vessels in these trials than for comparable vessels not being monitored. The clear implication is that high-grading (which has been unlawful throughout) was at that time widespread - and there is little to suggest the situation is different today.

Vessels in the trials had to count all catches, including fish smaller than MCRS, against their quota. Fish smaller than MCRS were discarded in accordance with EU law before the reform of the CFP.

The distributions of size grades in the monthly cod landings in the North Sea and the Skagerrak, were compared between three demersal trawlers in the trial and 105 vessels outside the trial.

Before the trial (June–August 2008), grades (or ‘stages’) 4 and 5 made up less than 20% of the total cod landings of the trial vessel fishing in the North Sea (**Figure 2a**). This increased to 35% during the trial period, so the vessel retained more of the smaller (but still legal) cod after entering the scheme on 1st September, indicating a stop in high-grading (i.e. unaccounted discarding of cod above the minimum landing size) during the trial. No such change was observed for non-participating trawlers fishing in the North Sea, which landed less than 18% of grades 4 and 5 (**Figure 2b**). An even clearer picture is seen in the results from the Skagerrak. There, the landings of size grades 4 and 5 constituted 65% of all cod landed by the trial vessels in February (**Figure 2c**), whereas the rest of the fleet landed just 25% (**Figure 2d**).



**Figure 2** Proportion of cod landings by fish size grade and month (June 2008 – July 2009)


These results reveal that high-grading was common among vessels not involved in the pilot study. Even before the CFP reform, high-grading was illegal and, given the control has not changed, the indication is that illegal discards of fish above MCRS are still taking place. Furthermore, discards of fish under MCRS was obliged before 2015.

The insignificant proportion of small cod in the landings of non-participating vessels compared with those within the experiment indicated high-grading of cod as a common practice in the fishery; there is no reason to believe that the trial vessels were targeting smaller cod than the others. On the contrary, when the results were presented to participating fishers, they explained that they were more aware of catch compositions than before the experiment, and more often than normal, had changed fishing grounds to avoid small cod.<sup>17</sup>

A number of factors influence the level of discards. In cases where strong year-classes recruit to the stock, the share of fish around MCRS will increase and discarding is likely to follow. On the other hand, when quotas are not fully utilised, as for cod in the Eastern Baltic, fishers will not benefit from high-grading and not even from discarding fish below MCRS if these fish were allowed to be sold for consumption and not dumped in the harbour at a cost.

## 2.4. Commission failure to police Member State compliance

The obligation to account for all catches from quota regulated stocks does not lie with fishers only. Member States are obliged to account for all catches, including catches that are not reported by fishers, and to develop a pathway towards legal compliance with the LO. This follows from Member States' general obligation to ensure compliance with EU regulations and, specifically, from the requirement that 'all catches shall be charged against the quotas applicable to the flag Member State'.<sup>18</sup> The situation was underlined in a 2015 statement of the Commission to the European Parliament.<sup>19</sup>

Despite this obligation, Denmark has not submitted to the Commission unreported catches found through last-haul monitoring.

Furthermore, it is concerning that the Commission, for its part, has not opened a case on the matter nor obliged Member States to establish a reliable accounting mechanism to address the existing deficiencies, even though last-haul monitoring, for example, can be implemented as a means to establish a statistical account, and REM can be employed with relative short notice for vessels with substantial quota portfolios.



### 3. Looking forward: Danish considerations for 2020

Denmark changed from a liberal to a social democratic government on 27 June 2019. The Danish Ministry for Fisheries holds the view that the establishment of a fully documented fishery through REM is the most efficient solution to control the landing obligation. The previous government established the legal basis for the mandatory use of REM, but held the position that REM should only be introduced in a way that would ensure a level playing field between fishers across the EU as a whole. In other words, if other EU fishers are able to profit from unaccounted discarding the same opportunity should be left open to Danish fishermen

The position of the new minister is not clear. It may be revealed in the context of the TAC negotiations for 2020 whether Denmark will push for an across-the-board mechanism for Member States to follow in 2020.

In communications with the author, the ministry has stated that it will improve control of the landing obligation through:

- A more efficient last-haul control;
- An increased number of last-haul controls of vessels with low levels of under-MCRS fish landed;
- Informing selected vessels of their catch composition before and after the last-haul control; and
- Dialogue with the industry on the use and results of last-haul controls.

The ministry at the same time notes that only a few infringements are observed even as DTU Aqua points to a continued high level of discarding.

DTU Aqua is the Danish science institute responsible for monitoring Danish fisheries. This monitoring is carried out at a level comparable to other EU Member States; around 0.5 % of catches. The general impression formed by DTU Aqua is that fishing patterns and discards are unchanged. Following the coming into force of the landing obligation, the “refusal rate” – meaning fishers that refuse to take observers on-board – has increased throughout the EU.

Intensified last-haul monitoring will improve statistical evidence of discarding and improve catch account at Member State level. It will not however be capable of establishing infringements unless fishers choose to land catch compositions that do not match the composition at a last-haul control.

To put this sad state of affairs in perspective, Denmark is likely to be one of the EU Member States doing the most in relation to establishing the landing obligation as a provision to take seriously. The Commission and the Council must ensure that those Member States accounting for all catches are not disadvantaged if Denmark is to continue taking the lead in documenting and fully accounting for the exploitation of common fisheries resources.



## Endnotes

- 1 Article 15, Council Regulation 1380/2013 (CFP Basic Regulation) and Council Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.
- 2 Ibid., Article 33(5) of the Control Regulation (1224/2009) (which provides that ‘all catches shall be charged against the quotas applicable to the flag Member State’).
- 3 [http://www.nwwac.org/\\_fileupload/Correspondence/Year%2013/SCIPs-Stakeholders'%20consultation.pdf](http://www.nwwac.org/_fileupload/Correspondence/Year%2013/SCIPs-Stakeholders'%20consultation.pdf)
- 4 [http://webfd.fd.dk/stat/danske\\_havne/danske\\_havne18\\_2.pdf](http://webfd.fd.dk/stat/danske_havne/danske_havne18_2.pdf)
- 5 Article 33 of the Control Regulation (Reg. 1224/2009), Article 15, CFP Basic Regulation
- 6 Article 15, CFP Basic Regulation
- 7 COM (2019) 274 final
- 8 Reg.1224/2009, Art 90
- 9 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0368>
- 10 <https://fiskeristyrelsen.dk/erhvervsfiskeri/fiskerireformen/discardforbud/>
- 11 [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/2017\\_dnk\\_msar\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/2017_dnk_msar_en.pdf)
- 12 With some variation, e.g. up to 7% in the first years of the landing obligation’s application: see Art. 15(c)(i) and (ii) of the CFP Basic Regulation
- 13 Art. 15(5)(c)(i) and (ii) of the CFP Basic Regulation, respectively.
- 14 Art. 15(4)(b), CFP Basic Regulation
- 15 This is because the landing obligation was gradually phased in throughout this period, along with an increasing number of exemptions being adopted, meaning that the amount of discards subject to exemptions and associated reporting requirements increased as well.
- 16 Demonstrated in the Danish Catch Quota Management trials, 2012, Dalskov et al ([https://en.mfvm.dk/fileadmin/user\\_upload/ENGLISH\\_FVM.DK/Themes/Yield\\_of\\_fish/Danish\\_report\\_on\\_Catch\\_Quota\\_Management\\_2012.pdf](https://en.mfvm.dk/fileadmin/user_upload/ENGLISH_FVM.DK/Themes/Yield_of_fish/Danish_report_on_Catch_Quota_Management_2012.pdf))
- 17 ICES Journal of Marine Science; doi:10.1093/icesjms/fsr065. 2011; ICES Journal of Marine Science (2015), 72(6), 1848–1860. doi:10.1093/icesjms/fsv028
- 18 Control Regulation, Article 33(5)
- 19 No E-000088/2015 (extract): “Catch information must be recorded all along the chain from capture to first sale. Member States must ensure detailed and accurate documentation of all fishing trips, and adequate capacity and means for this reporting. If a Member State does not submit aggregated catch reports or if the Commission finds that the quota has been exhausted, the fishing activities for the stocks are prohibited. If a Member State has exceeded the allocated quota, the Commission can make deductions from future quotas in accordance with the rules of the Control Regulation and the official guidelines published by the Commission”.

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