

Case ID: IESS.22.029

Description: Consideration of the effectiveness of the law and systems surrounding the bycatch and discard of fish.

Cod has been fished for centuries in Scotland and has had varied fortunes during that time. Accordingly to the scientific analysis of fish population numbers as reported in the International Council for the Exploration of the Sea's stock assessments¹, the West of Scotland cod stock collapsed in the late 1990s and since 2004 the scientific advice has been for no catches for this stock². Despite this advice, evidence confirms that over the last two decades significant numbers of cod have been caught accidentally in fisheries which have been targeting other species. This is what is known as 'bycatch'.

Bycatch fish were previously discarded at sea, however this practice changed following the 2013 reform of the Common Fisheries Policy (CFP) and the introduction of a 'landing obligation'³ or 'discard ban' for all stocks subject to quota limits or total allowable catches (TACs) along with some exemptions that can be applied in certain circumstances.

Within mixed fisheries operational difficulties can occur with the landing obligation most notably around the occurrence of 'choke species'⁴ and the potential for certain species with zero and low TACs, like West of Scotland cod, to prevent fishing vessels from functioning effectively if solutions are not put in place. Subsequently, in 2019 the Scottish Ministers decided to put in place bycatch provisions for West of Scotland cod. Under these rules no direct targeting of this species should be

¹ [Stock assessment graphs \(ices.dk\)](https://www.ices.dk)

² [Cod \(Gadus morhua\) in Division 6.a \(West of Scotland\) \(figshare.com\)](https://www.figshare.com)

³ The landing obligation means that no commercial fishing vessel can return any quota species of any size to the sea once caught. This includes discarding. Once caught, all quota species must be landed and counted against quota.

⁴ A choke species is one that is caught incidentally while targeting other species and, if caught in excess of its quota limits, can trigger a halt to fishing on the target species.

undertaken but instead a bycatch quota limit would be used to allow and manage bycatch landings (rather than allocating quota to vessels).

Environmental Standards Scotland (ESS) received a representation concerning the Scottish Government's Marine Directorate's duty to protect and improve the sustainability of fisheries and health of Scotland's marine environment. The representation raised concerns over:

- the transparency of catch quotas
- the level at which bycatch quota is set and the way in which it is used
- the enforcement of bycatch quota rules
- the recording and accounting of the amount of fish discarded

We have assessed the issues raised in the representation, and given the complex nature of the representation and existing uncertainties we have determined that progressing to full investigation at this stage is justified.

Ground of investigation

Our investigation will accordingly focus on **the effectiveness of the current arrangements to execute compliance with statutory requirements relating to the sustainable management of cod stocks and fisheries in Scotland.**

ESS will provide regular updates on its website during the course of the investigation and will publish the outcome of this work once concluded.

Frequently asked questions

Who will ESS seek information from during its investigation?

Public authorities are under a duty to co-operate with ESS and we have significant powers to require information from them. Given the number of actors involved, there may be a number of public authorities holding information relevant to our investigation. Although the Scottish Government and Marine Directorate are the bodies under investigation, ESS will also obtain relevant information from any public authority which we identify as holding it. We are also keen for anyone who believes they have relevant information to get in touch with us.

How will you investigate?

The investigation will progress through various stages, from initial planning to devising lines of enquiry and seeking information, after which all of the information we receive will be carefully analysed. We will thereafter draw our conclusions, seeking expert advice should this be considered necessary.

How long will the investigation take?

As the nature and complexity of each investigation is different, providing a general timescale is difficult. Having said this, we will endeavour to work as quickly and efficiently as possible and will provide relevant parties with an estimate of the completion date of each investigation as soon as we can.

Will parties be updated on the progress of the investigation?

Yes – all relevant parties to an investigation will be regularly updated on our progress. A dedicated staff member will also be available should relevant parties have any questions or queries in this regard.

Will you issue a report of your findings?

Yes – ESS intends to work openly and transparently. At the conclusion of our investigations we will issue draft reports to relevant parties for comment, after which we will finalise and publish on our website.

What are the possible outcomes of your investigation?

Our governing legislation requires us to set out how we intend to engage with the public authorities we investigate with a view to swiftly resolving matters without recourse to our formal powers (what we call ‘informal resolution’). As informal resolution can be a relatively quick and efficient way of securing appropriate outcomes, we will actively consider this option throughout the life of an investigation. ESS also has significant formal enforcement powers and, where we find a public authority has not complied with environmental law, we can issue a compliance notice which the public authority must implement. We can also issue improvement reports which must be acted upon through the submission of an improvement plan to Parliament.

Can the public authority chose not to comply with ESS’ decision to take enforcement action?

Our governing legislation allows a public authority to appeal only our decision to issue a compliance notice. Public authorities have 21 days from the date of us issuing a compliance notice to appeal to a sheriff. In the absence of an appeal, the compliance notice must be implemented by the public authority.

March 2024