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## COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 October 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 12.10.2016  
establishing a discard plan for certain demersal fisheries in South-Western  
waters

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Delegations will find attached document C(2016) 6444 final.

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EUROPEAN  
COMMISSION

Brussels, 12.10.2016  
C(2016) 6444 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 12.10.2016**

**establishing a discard plan for certain demersal fisheries in South-Western waters**

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## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

A key objective of the new Common Fisheries Policy (CFP), as set out in Regulation (EU) 1380/2013 is the progressive elimination of discards in all EU fisheries. Discarding constitutes a substantial waste of resources and negatively impacts on the sustainable exploitation of resources as well as the economic viability of fisheries. The landing obligation in Union waters applies as of 1 January 2016 to certain demersal fisheries. The reformed policy also provides for increased regionalisation, which is intended both to move away from micromanagement at Union level, and also to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

The new CFP provides for a series of provisions to facilitate the implementation of the landing obligation. There are generic flexibility provisions which can be applied by Member States in the context of quota management. In addition, the new CFP provides for specific flexibility mechanisms that need to be implemented through multiannual plans, or in the absence of multiannual plans, in the so-called discard plans. Those discard plans are envisaged as a temporary measure with a maximum duration of three years. They are based on joint recommendations agreed by groups of Member States from the same region or sea basin.

This delegated act covers species which define demersal fisheries in the South-Western waters (SWW) as set out in Article 15(1)(c) of Regulation (EU) No 1380/2013. In accordance with Article 15(5) of Regulation (EU) No 1380/2013, a discard plan may contain the following elements:

- specific provisions on fisheries or species covered by the landing obligation;
- specification of exemptions to the landing obligation if fisheries or species meet certain criteria related to high survivability;
- provisions for *de minimis* exemptions as specified in Article 15(5)(c) of Regulation (EU) No 1380/2013;
- provisions on documentation of catches;
- the fixing of minimum conservation reference sizes (MCRS);
- technical measures.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on the Joint Recommendation (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Spain, France, the Netherlands and Portugal) who have a direct management interest in the relevant fisheries in this region.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

For the purpose of implementing the regionalised approach the SWW Member States agreed that the chair of the group, Portugal, should submit to the Commission a JR. Accordingly, the

JR was submitted to the Commission services on 31 May 2016. It contained, *inter alia*, the following elements:

- A description of the fisheries covered by the discard plan;
- An exemption for high survivability;
- A number of *de minimis* exemptions.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the SWW Member States having a direct management interest, and taking account of the views of the South Western Waters Advisory Council, which is concerned by the fisheries covered by the JR. For all of these elements the JR included supporting documentation underpinning the exemptions and other provisions set out in the JR.

The JR was developed by the Member States concerned, cooperating in a regional setup, working together on a technical level under the guidance of a high level group of fisheries Directors and in close consultation with interested parties.

During the development of the JR the South Western Waters Advisory Council was consulted in relation to measures envisaged in the JR. Furthermore, the Member States group aimed at consistent approach, as far as possible, with the implementation of the landing obligation in other sea basin areas, especially in the North Western Waters. Important elements of the JR are *de minimis* exemptions for sole and hake and a high survivability exemption for Norway lobster.

The main elements of the final joint recommendation submitted to the Commission by the Member States relating to the application of the landing obligation to the fisheries concerned and the *de minimis* as well as high-survivability exemptions were evaluated by the relevant Scientific, Technical and Economic Committee for Fisheries (STECF) Expert Working Group and during the STECF plenary meeting of 4-8 July 2016<sup>1</sup>.

Regarding the *de minimis* exemption for hake, the STECF concluded that clarifications provided some additional information on métiers involved and the number of vessels under the landing obligation and not under the landing obligation, but little additional information on catches and discard rates for different métiers. The additional selectivity information provided did not contain additional evidence to demonstrate that selectivity is very difficult to achieve for the métiers involved. Hence, additional work should be carried out in order to improve the justification for this exemption. The Member States concerned have undertaken to improve selectivity in the fleets concerned and to submit additional supporting information for the assessment of the STECF. Therefore, this exemption should be granted for 2017, i.e. one year only, and under the condition of providing improved information to support this exemption.

Regarding the high survival exemption for nephrops, the STECF commented that additional survival information has been provided supporting this exemption. The latest experiments show survival rates in the range of the survival rate observed in the previous work. Further

<sup>1</sup>

[https://stecf.jrc.ec.europa.eu/documents/43805/1471816/2016-07\\_STECF+16-10+-Evaluation+of+LO+joint+recommendations\\_JRCxxx.pdf](https://stecf.jrc.ec.europa.eu/documents/43805/1471816/2016-07_STECF+16-10+-Evaluation+of+LO+joint+recommendations_JRCxxx.pdf)

studies are planned and should provide further information on likely survival rates in this fishery.

The JR mentioned the need to exempt certain catches on account of legislation related to fisheries products unfit for human or animal consumption, i.e. Regulation (EC) No 853/2004 and Regulation (EC) No 1881/2006. However, such an exemption appears to be outside the scope of discard plans under Article 15(5) of Regulation (EU) No 1380/2013 for JRs in the context of the Common Fisheries Policy. Therefore, this exemption has not been included in this regulation.

The JR also mentioned the exemption for fish damaged by predators. However, this exemption is already covered by Article 15(4)(d) of Regulation (EU) No 1380/2013 and does not need to be implemented by a delegated act.

On the basis of the evaluation by STECF and by the Commission, and following clarification of certain points of the JR, the Commission considers that the JR complies with Article 15(6) of Regulation (EC) No 1380/2013 as outlined above.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

#### **Summary of the proposed action**

The main legal action is to adopt measures that would facilitate the implementation of the landing obligation.

The Regulation specifies the species and fisheries to which specific measures would apply: i.e. *de minimis* exemptions and the high survivability exemption.

#### **Legal basis**

Article 15(6) and Articles 18(1) and (3) of Regulation (EU) No 1380/2013.

#### **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union.

#### **Proportionality principle**

The proposal is within the scope of the delegated powers provided to the Commission by Article 15(6) of Regulation (EU) No 1380/2013 and does not go beyond what is necessary to achieve the purpose of that provision.

#### **Choice of instrument**

Proposed instrument: Commission Delegated Regulation.

Other means would not be adequate for the following reason: The Commission has been granted powers to adopt a discard plan by means of delegated acts. Member States having a direct management interest submitted their joint recommendation. Measures provided in the joint recommendation and included in this proposal are based on the best available scientific advice and fulfil all the relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

## **COMMISSION DELEGATED REGULATION (EU) .../...**

**of 12.10.2016**

### **establishing a discard plan for certain demersal fisheries in South-Western waters**

**THE EUROPEAN COMMISSION,**

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC<sup>2</sup>, and in particular Articles 15(6) and 18(1) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of a delegated act for a period of no more than three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) By Delegated Regulation (EU) 2015/2439<sup>3</sup>, the Commission established a discard plan for certain demersal fisheries in South-Western waters for the period 2016-2018 following a joint recommendation submitted by Member States in 2015.
- (4) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South-Western waters. On 31 May 2016 those Member States submitted a joint recommendation to the Commission after consultation of the South Western Waters Advisory Council. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). The measures included in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013, they may be included in this Regulation.
- (5) As regards the South-Western waters, according to Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies to the species that define the fisheries at the latest from 1 January 2016.

<sup>2</sup> OJ L 354, 28.01.2013, p. 22.

<sup>3</sup> Commission Delegated Regulation (EU) 2015/2439 of 12 October 2015 establishing a discard plan for certain demersal fisheries in south-western waters (OJ L 336, 23.12.2015, p. 36).

- (6) Delegated Regulation (EU) No 2015/2439 established provisions for introduction of the landing obligation for certain demersal fisheries in South-Western waters for the period 2016-2018.
- (7) In accordance with the new joint recommendation submitted by Member States in 2016, the discard plan from 2017 should cover the fisheries of common sole, hake, anglerfish and Norway lobster (only inside the stocks' distribution areas referred to as 'functional units') in ICES divisions VIIIa, b, d, e, Norway lobster in ICES divisions VIIIC and IXa (only inside functional units), common sole and plaice in ICES division IXa, hake in ICES divisions VIIIC and IXa, anglerfish in ICES divisions VIIIa, b, c, d, e and IXa.
- (8) The joint recommendation suggested that an exemption from the landing obligation be applied to Norway lobster caught by trawls in ICES subareas VIII and IX, as existing scientific evidence indicates possible high survival rates, taking into account the characteristics of the gears targeting this species, the fishing practices and the ecosystem. The STECF in its evaluation concluded that the latest experiments show survival rates in the range of the survival rate observed in the previous work. Further studies are planned and should provide further information on likely survival rates in this fishery. Therefore, this exemption should be included in this Regulation for the year 2017, with a provision asking the Member States concerned to submit further data from ongoing trials to the Commission to allow the STECF to fully assess the justification for the exemption.
- (9) The joint recommendation includes three *de minimis* exemptions from the landing obligation for certain fisheries and up to certain levels. The evidence provided by the Member States was reviewed by the STECF. The STECF concludes that the joint recommendation contained reasoned arguments related to the difficulty of increasing selectivity combined with disproportionate costs of handling unwanted catches. In light of the above it is appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the joint recommendation and at levels not exceeding those allowed under Article 15(1) of Regulation (EU) No 1380/2013.
- (10) The *de minimis* exemption for common sole, up to a maximum of 5% of the total annual catches of this species by vessels targeting this species in ICES divisions VIIIa and VIIIb with beam trawls and bottom trawls, is based on the fact that viable increases in selectivity are very difficult to achieve. The STECF concluded that the supporting information is sufficient to justify this exemption. Therefore, this exemption should be included in this Regulation.
- (11) The *de minimis* exemption for common sole, up to a maximum of 3% of the total annual catches of this species by vessels targeting this species in ICES divisions VIIIa and VIIIb with trammel nets and gillnets, is based on the fact that viable increases in selectivity are very difficult to achieve. The STECF concluded that the supporting information is sufficient to justify the exemption claimed. Therefore, this exemption should be included in this Regulation.
- (12) The *de minimis* exemption for hake, up to a maximum of 7% in 2017 and 6% in 2018 of the total annual catches of this species by vessels targeting this species in ICES subareas VIII and IX with trawls, is based on the fact that viable increases in

selectivity are very difficult to achieve. The STECF concluded that additional selectivity information provided did not contain additional evidence to demonstrate that selectivity is very difficult to achieve for the métiers involved. Therefore, additional work should be carried out in order to improve the justification for this exemption. This exemption should therefore be included in this Regulation for 2017, i.e. for one year only, and under the condition that Member States provide improved information to support this exemption that would be assessed by the STECF.

- (13) Delegated Regulation (EU) 2015/2439 should therefore be repealed and replaced by a new Regulation.
- (14) Since the measures provided for in this Regulation impact directly on the economic activities linked to and the planning of the fishing season of Union vessels, this Regulation should enter into force immediately after its publication. It should apply from 1 January 2017,

HAS ADOPTED THIS REGULATION:

*Article 1*  
***Implementation of the landing obligation***

The landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply in ICES subareas VIII, IX, X and CECAF zones 34.1.1, 34.1.2, 34.2.0 to the fisheries set out in the Annex to this Regulation.

*Article 2*  
***Survivability exemption***

- 1. The exemption from the landing obligation provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 for species for which scientific evidence demonstrates high survival rates shall apply to Norway lobster (*Nephrops norvegicus*) caught in ICES subareas VIII and IX with trawls (gear codes<sup>4</sup>: OTB, OTT, PTB, TBN, TBS, TB, OT, PT and TX).
- 2. Member States having a direct management interest in south-western waters shall submit, before 1 May 2017, additional scientific information supporting the exemption laid down in paragraph 1. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 September 2017.

*Article 3*  
***De minimis exemptions***

- 1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded:

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<sup>4</sup> Gear codes used in this Regulation are defined by the Food and Agriculture Organisation of the United Nations.

- (a) for hake (*Merluccius merluccius*), up to a maximum of 7% in 2017 and up to 6% in 2018 of the total annual catches of this species by vessels using trawls and seines (gear codes: OTT, OTB, PTB, OT, PT, TBN, TBS, TX, SSC, SPR, TB, SDN, SX and SV) targeting that species in ICES subareas VIII and IX;
  - (b) for common sole (*Solea solea*), up to a maximum of 5% of the total annual catches of this species by vessels using beam trawl (gear code: TBB) and bottom trawls (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT and TX) targeting that species in ICES divisions VIIIA and VIIIB;
  - (c) for common sole (*Solea solea*), up to a maximum of 3% of the total annual catches of this species by vessels using trammel nets and gillnets (gear codes: GNS, GN, GND, GNC, GTN, GTR and GEN) targeting that species in ICES divisions VIIIA and VIIIB.
2. Before 1 May 2017, Member States having a direct management interest in the South-Western waters shall submit to the Commission additional discard data and any other relevant scientific information supporting the exemption laid down in paragraph 1(a). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information before 1 September 2017.

#### *Article 4* ***Vessels subject to the landing obligation***

Member States shall determine, in accordance with the criteria laid down in the Annex to this Regulation, the vessels subject to the landing obligation for each particular fishery.

Vessels that were subject to the landing obligation in certain fisheries in 2016 shall remain subject to the landing obligation in those fisheries.

Before 31 December 2016, the Member States concerned shall submit to the Commission and other Member States, using the secure Union control website, the lists of vessels determined pursuant the paragraph 1 for each particular fishery set out in Annex. They shall keep those lists updated.

#### *Article 5* ***Repeal***

Delegated Regulation (EU) 2015/2439 is repealed.

#### *Article 6* ***Entry into force***

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2017 until 31 December 2018.

Article 4 shall apply from the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12.10.2016

*For the Commission  
The President  
Jean-Claude JUNCKER*