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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:	14 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 14.10.2016 amending Commission Delegated Regulation (EU) No 1394/2014 establishing a discard plan for certain pelagic fisheries in South-Western waters

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Delegations will find attached document C(2016) 6500 final.

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Encl.: C(2016) 6500 final



Brussels, 14.10.2016  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 14.10.2016**

**amending Commission Delegated Regulation (EU) No 1394/2014 establishing a discard  
plan for certain pelagic fisheries in South-Western waters**

## 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 2015 in pelagic 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.

The delegated act covers certain pelagic 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 fixing of minimum conservation reference sizes.

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 the proposal to modify the minimum conservation reference size for horse mackerel (*Trachurus spp.*) in ICES divisions VIIIc and IX.

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 and of the Pelagic Advisory Council, which are concerned by the fisheries covered by the JR. For all of these elements the JR included supporting documentation underpinning proposed measures.

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.

Under the aforementioned regional set-up the South Western Waters Advisory Council was consulted throughout the process given the specificities of the horse mackerel fishery involving a large number of small-scale fishermen represented in this Advisory Council and the nature of the adjustment to the pelagic discard plan limited to existing conditions. The Pelagic Advisory Council was consulted at a later stage.

The main element of the final joint recommendation submitted to the Commission by the Member States relating to the change in the minimum conservation reference size for horse mackerel in ICES division VIIIc and subarea IX was evaluated by the relevant STECF Expert Working Group and during the STECF plenary meeting of 4-8 July 2016<sup>1</sup>.

Currently the applicable minimum conservation reference size for horse mackerel established in Regulation (EC) No 850/98 is 15 cm, while Regulation (EU) 2016/72 provides that for horse mackerel stocks in ICES division VIIIc, in subarea IX, in subarea X and Union waters of CECAF in waters adjacent to the Azores and in Union waters of CECAF in waters adjacent to Madeira, no more than 5% may consist of horse mackerel between 12 and 15 cm. Catches of a horse mackerel below 15cm is a historically established pattern in the dependent fisheries and it is particularly observed in the historic xávega artisanal beach sein fishery in ICES division IXa, on which certain local communities depend.

The STECF concluded that changing the minimum conservation reference size for a small part of the stock as suggested by the joint recommendation is associated with a low risk of changing the long-established exploitation pattern whereby juvenile age classes are targeted. This exploitation pattern combined with moderate exploitation rates does not seem to be detrimental to the dynamics of the stocks concerned.

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 minimum conservation reference size for horse mackerel in ICES divisions VIIIc and IX.

#### **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**

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<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)

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 14.10.2016**

**amending Commission Delegated Regulation (EU) No 1394/2014 establishing a discard plan for certain pelagic 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) Commission Delegated Regulation (EU) No 1394/2014<sup>3</sup> establishes a discard plan for certain pelagic fisheries in South-Western waters in order to facilitate the implementation of the landing obligation by means of certain flexibility mechanisms.
- (4) In accordance with Article 15(5)(e) of Regulation (EU) No 1380/2013, discard plans may contain the fixing of minimum conservation reference sizes.
- (5) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South-Western waters. After having consulted the South Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 30 May 2016 a joint recommendation to the Commission suggesting that, by way of derogation from Annex XII to Council Regulation (EC) No 850/1998<sup>4</sup>, the minimum conservation reference size for horse mackerel (*Trachurus*

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

<sup>3</sup> Commission Delegated Regulation (EU) No 1394/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in south-western waters (OJ L 370, 30.12.2014, p. 31).

<sup>4</sup> Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125, 27.4.1998, p. 1).

*spp.*) in ICES division VIIIc and subarea IX be fixed at 12cm for 5% of the respective quotas of Spain and Portugal. In addition, the joint recommendation suggested that within that limit of 5% of the quota of horse mackerel, in the xávega artisanal beach sein fishery in ICES division IXa, 1% of the quota of Portugal may be caught with the size below 12cm.

- (6) Scientific contribution was obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). The STECF concluded that reducing the minimum conservation reference size as suggested by the joint recommendation is associated with a low risk of changing the long-established exploitation pattern the fisheries concerned. That exploitation pattern combined with moderate exploitation rates does not seem to be detrimental to the dynamics of the relevant stocks. At the same time the STEFC pointed out that the control of catches with different size limits may be challenging and, if not properly controlled, mortality may increase. In addition, it is important that the percentage limits established for the lower sizes are respected. Therefore, it is important that the Member States concerned put in place appropriate control measures regarding the fisheries concerned.
- (7) The measures included in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013 and may therefore be included in the discard plan for certain pelagic fisheries in the South-Western Waters.
- (8) Delegated Regulation (EU) 1394/2014 should therefore be amended accordingly.
- (9) 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*

- (a) In Article 4 of Regulation (EU) No 1394/2014, the following paragraph is added:

"By way of derogation from Annex XII to Regulation (EC) No 850/1998, the minimum conservation reference size for horse mackerel (*Trachurus spp.*) caught in ICES division VIIIc and ICES subarea IX shall be 12 cm for 5% of the respective quotas of Spain and Portugal in those areas. Within that limit of 5%, in the xávega artisanal beach sein fishery in ICES division IXa 1% of the quota of Portugal may be caught with the size below 12cm."

#### *Article 2*

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.

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

Done at Brussels, 14.10.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*