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## PROPOSAL

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

date of receipt: 23 October 2017

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

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 23.10.2017  
amending Delegated Regulation (EU) 2017/86 establishing a discard plan  
for certain demersal fisheries in the Mediterranean Sea

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Delegations will find attached document C(2017) 6981 final.

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Encl.: C(2017) 6981 final



Brussels, 23.10.2017  
C(2017) 6981 final

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

**of 23.10.2017**

**amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

A key objective of the Common Fisheries Policy (CFP) is the progressive elimination of discards in all EU fisheries. Designed to make better use of the available resources, it responds to public pressure to end the practice of throwing marketable fish back into the sea.

The CFP provides for an exception to the landing obligation for those species for which scientific evidence demonstrate high survival rates, in the sense of Article 15(4)(b) of the Commission Regulation (EU) No 1380/2013. The said Regulation provides as well for specific flexibility mechanisms or de minimis exemptions where scientific evidence indicates that increases in selectivity are very difficult to achieve or to avoid disproportionate costs of handling unwanted catches.

The details of the implementation of the landing obligation shall be specified in multiannual plans as per Articles 9 and 10 of the same Regulation.

In the absence of multiannual plans, the Commission shall be empowered to adopt the so-called discard plans in accordance with Article 18 of the said Regulation. 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 on the basis of regional cooperation or 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 basin.

The landing obligation for the demersal fisheries in the Mediterranean Sea applies as of 1<sup>st</sup> January 2017. So far no multiannual plans in the sense of Article 15(4)(b) of the Commission Regulation (EU) No 1380/2013, nor management plans in accordance with Article 18 of Regulation (EC) No 1967/2006<sup>1</sup> (the Mediterranean Regulation) have been adopted in the Mediterranean. Therefore, Commission Delegated Regulation (EU) No 2017/86<sup>2</sup> of 20 October 2016 established a discard plan for certain demersal fisheries in the Mediterranean Sea, which is applicable from 1 January 2017 until 31 December 2019.

This proposal amends the above delegated act by:

- extending the scope of the Western Mediterranean Sea to the GFCM Geographical Sub-Area (GSA) 12;
- expanding the application of survivability exemption to Norway lobster (*Nephrops norvegicus*) caught with all bottom trawls in the Western Mediterranean Sea, applicable for 1 year;
- expanding the application of Regulation to all mullets species (*Mullus* spp., i.e. covering both red mullets and surmullets);

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<sup>1</sup> Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94

<sup>2</sup> Commission Delegated Regulation (EU) 2017/86 of 20 October 2016 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea (OJ L 14, 18.1.2017, p.4)

- adding a new period of reference for landing obligation for hake and mullets: landing obligation for these species applies to vessels catching more than 25% of hake / mullets in 2015 and 2016;
- extending the application of survivability exemption for mollusc bivalves (scallop, carpet clams, Venus shells) in the Western Mediterranean and for common sole in the Adriatic Sea for the year 2018;
- applying the de minimis exemption for hake and mullets up to 1% of the total annual catches of these species by vessels using also trammel nets (currently gillnets only), in line with the annex of the Regulation.

Pursuant to Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on 2 Joint Recommendations (JR) developed and submitted to the Commission by the Member States concerned, who have a direct management interest in the relevant fisheries in the following regions: France, Italy and Spain for the Western Mediterranean (Pescamed High-Level-Group) and Croatia, Italy and Slovenia for the Adriatic Sea (Adriatica High-Level-Group). The elements proposed above derive from these two Joint Recommendations.

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

On 2 June 2017, Pescamed members France, Italy and Spain submitted to the European Commission their recommendation for a ‘Discard Plan for Demersal Fisheries in the Western Mediterranean (2018)’<sup>3</sup>. On 28 June 2017, the Adriatica members Croatia, Italy and Slovenia submitted to the European Commission additional data on the survival rates of the common sole in the Adriatic Sea (GSA 17) from the years 2015 and 2016<sup>4</sup>. Finally, on 6 July 2017, Pescamed submitted additional information, as requested by the Commission<sup>5</sup>.

Elements related to the implementation of the landing obligation and specific provisions included in the joint recommendations for the Mediterranean Sea discard plan have been discussed and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF) in its plenary session of 10-14 July 2017<sup>6</sup>.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, the above joint recommendations are the result of discussions between relevant Member States having a direct management interest, and taking account the views of the Mediterranean Advisory Council (MEDAC), which is concerned by the fisheries covered by the joint recommendations.

## 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.

### Legal basis

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

<sup>3</sup> Ares(2017)3130907, 22/06/2017

<sup>4</sup> Ares(2017)3246290, 28/06/2017

<sup>5</sup> Ares(2017)3401771, 06/07/2017

<sup>6</sup> STECF 55th Plenary meeting report is available at <https://stecf.jrc.ec.europa.eu/reports/plenary>

**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 23.10.2017

## amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea

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>7</sup>, and in particular Articles 15(6) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in Union fisheries through the introduction of a landing obligation.
- (2) In order to implement the landing obligation, 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) 2017/86<sup>8</sup> has established a discard plan for certain demersal fisheries in the Mediterranean Sea applicable from 1 January 2017 until 31 December 2019, following three joint recommendations submitted to the Commission in 2016 by a number of Member States having a direct management interest in the Mediterranean Sea (Greece, Spain, France, Croatia, Italy, Cyprus, Malta and Slovenia respectively). Those three joint recommendations concerned respectively the Western Mediterranean Sea, the Adriatic Sea, and the South-Eastern Mediterranean Sea.
- (4) According to Article 15(1)(d) of Regulation (EU) No 1380/2013, the landing obligation applies for the demersal fisheries in the Mediterranean Sea at the latest from 1 January 2017 to species that define the fisheries.
- (5) On 2 June 2017, France, Italy and Spain submitted to the Commission a new joint recommendation for a "Discard Plan for Demersal Fisheries in the Western Mediterranean (2018)" after consultations within the regional Pescamed High-Level Group. The same Members States submitted additional information and data on 5 July 2017 at the request of the Commission.
- (6) The new joint recommendation submitted by France, Italy and Spain for the Western Mediterranean proposes that the survivability exemption, provided for by Article 3 of Regulation (EU) 2017/86 be also applied to the fisheries of Norway Lobster

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<sup>7</sup> OJ L 354, 28.01.2013, p. 22.

<sup>8</sup> Commission Delegated Regulation (EU) 2017/86 of 20 October 2016 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea (OJ L 14, 18.1.2017, p.4)

(*Nephrops norvegicus*) caught with all bottom trawls in the Western Mediterranean Sea. It also proposes that the application of the survivability exemption for scallop (*Pecten jacobaeus*), carpet clams (*Venerupis* spp.) and Venus shells (*Venus* spp.), all caught with mechanised dredges (HMD), be extended to the Western Mediterranean Sea.

- (7) Furthermore, the same joint recommendation suggests to extend the definition of the Western Mediterranean Sea for the purposes of this discard plan by including the General Fisheries Commission of the Mediterranean (GFCM) Geographical Sub-Area (GSA) 12.
- (8) That joint recommendation also proposes to redefine the mullet fishery by including all Red mullets (*Mullus* spp.) i.e. red mullet and surmullet.
- (9) The same joint recommendation suggests to update the period of reference to the years 2015 and 2016 for determining the volume of landings per vessel for hake and red mullets in the context of the implementation of the landing obligation.
- (10) Finally, the joint recommendation suggests that the survivability exemption, established for mollusc bivalves (namely scallop (*Pecten jacobaeus*), carpet clams (*Venerupis* spp.) and Venus shells (*Venus* spp.)) in the Western Mediterranean be applied also in the years 2018 and 2019.
- (11) On 28 June 2017 Croatia, Italy and Slovenia submitted to the Commission a new joint recommendation for the Adriatic Sea providing new data on the survival rates of the common sole (*Solea solea*) for the years 2015 and 2016 after consultations within the regional Adriatica High-Level Group.
- (12) The new joint recommendation submitted by Croatia, Italy and Slovenia proposes that the survivability exemption for common sole in the Adriatic Sea be applied also in the years 2018 and 2019.
- (13) Those joint recommendations were assessed by the Scientific, Technical and Economic Committee for Fisheries (STECF) on 10-14 July 2017<sup>9</sup>. The STECF concluded in its evaluation that the information provided by Member States is not complete regarding the survival rates of common sole, scallop, carpet clams, Venus shells and Norway lobster. As the evidence on the survival rates of these species is not conclusive, the Commission considers that the survivability exemption allowed under Article 15(4)(b) of Regulation (EU) No 1380/2013 should be included in this Regulation for one year only. The Member States concerned should undertake to submit in good time the relevant data to the Commission to allow STECF to fully assess the justifications for the exemption and the Commission to carry out a review.
- (14) In the light of these considerations, the proposed amendments to the discard plan for certain demersal fisheries in the Mediterranean Sea are compatible with the existing conservation measures in the area.
- (15) The measures proposed by the new joint recommendations are in line with Article 15(4) and Article 18(3) of Regulation (EU) No 1380/2013 and may thus be included in the discard plan established by Delegated Regulation (EU) 2017/86.
- (16) Commission Delegated Regulation (EU) 2017/86 should be amended accordingly.
- (17) Since the measures provided for in this Regulation impact directly on the planning of the fishing season of Union vessels and on related economic activities, this Regulation

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<sup>9</sup> STECF 55th Plenary meeting report is available at <https://stecf.jrc.ec.europa.eu/reports/plenary>

should enter into force immediately after its publication. It should apply from 1 January 2018.

HAS ADOPTED THIS REGULATION:

### *Article 1*

Delegated Regulation (EU) 2017/86 is amended as follows:

1. In Article 2, point (c) is replaced by the following:

" 'Western Mediterranean Sea' means GFCM Geographical Sub-Areas 1, 2, 5, 6, 7, 8, 9, 10, 11.1, 11.2 and 12."
2. Article 3 is amended as follows:

paragraph 1 is replaced by the following:

"The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013 for species for which scientific evidence demonstrates high survival rates shall apply in 2018 to:

  - (a) common sole (*Solea solea*) caught with rapido (beam trawl), (TBB) (\*) in GSAs 17 and 18;
  - (b) scallop (*Pecten jacobaeus*) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;
  - (c) carpet clams (*Venerupis* spp.) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;
  - (d) Venus shells (*Venus* spp.) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;
  - (e) Norway lobster (*Nephrops norvegicus*) caught with all bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX) in the Western Mediterranean Sea.

(\*) Gear codes used in this Regulation refer to the codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 122, 30.4.2011, p.1). For the vessels whose LOA is less than 10 metres, gear codes used in this table refer to the codes from the FAO gear classification. "

paragraph 2 is replaced by the following:

"Common sole (*Solea solea*), scallop (*Pecten jacobaeus*), carpet clams (*Venerupis* spp.), Venus shells (*Venus* spp.) and Norway lobster (*Nephrops norvegicus*) caught in the circumstances referred to in paragraph 1 shall be released immediately in the area where they have been caught."



paragraph 3 is replaced by the following:

"By 1 May 2018, Member States having a direct management interest in the fisheries in the Mediterranean Sea shall submit to the Commission additional discard data to those provided for in the Joint Recommendations of 2 and 28 June as well as 6 July 2017 and any other relevant scientific information supporting the exemption laid down in paragraph 1. For Norway lobster (*Nephrops norvegicus*), Member States shall submit data that would provide additional proof for survival rates in the summer months. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information by July 2018 at the latest."

3. In Article 4 (a) points (i) and (ii) are replaced by the following:

- (i) for hake (*Merluccius merluccius*) and red mullets (*Mullus* spp.), up to a maximum of 7% for 2017 and 2018 and up to a maximum of 6% in 2019 of the total annual catches of these species by vessels using bottom trawls; and
- (ii) for hake (*Merluccius merluccius*) and red mullets (*Mullus* spp.), up to a maximum of 1% of the total annual catches of these species by vessels using gillnets and trammel nets."

4. Table 1 of the Annex is replaced by the text in the Annex to this Regulation.

#### *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 2018.

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

Done at Brussels, 23.10.2017

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