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COVER NOTE

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

date of receipt: 20 October 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 20.10.2014
establishing a discard plan for certain pelagic fisheries in South Western
waters

Delegations will find attached document C(2014) 7540 final.

Encl.: C(2014) 7540 final



Brussels, 20.10.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 20.10.2014

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 'basic regulation' of the Common Fisheries Policy (CFP)¹ 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 will apply as of 1 January 2015 to small pelagic fisheries, large pelagic fisheries, industrial fisheries and all of the main fisheries in the Baltic Sea. 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 developed as joint recommendations agreed by groups of Member States from the same region or sea basin.

This delegated act covers species subject to catch limits caught in small and large pelagic fisheries and fisheries for industrial purposes in the South Western Waters (SWW), comprising ICES subareas VIII, IX, X and CECAF areas 34.1.1, 34.1.2, 34.2.0, as per Article 15(l)(a) 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).

¹ http://ec.europa.eu/fisheries/reform/index_en.htm

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. Portugal, Spain, France, Belgium and the Netherlands) who have a direct management interest in the relevant fisheries in this region ("the SWW Member States").

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach the SWW Member States agreed by consensus that the chair of the group, France, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 30 June 2014. It contained the following elements:

- A description of the fisheries covered under the discard plan;
- An exemption for purse seine fisheries for anchovy, horse mackerel and mackerel in ICES subareas VIII, IX, X, CECAF 34.1.1, 34.1.2 and 34.2.0 on the basis of high survivability.
- A de minimis exemption for the industrial pelagic trawler fishery targeting blue whiting in ICES zone VIII and processing that species on board to obtain surimi base;
- A de minimis exemption for the albacore tuna pelagic trawl fishery in ICES subarea VIII
- A de minimis exemption for anchovy, mackerel and horse mackerel in the pelagic trawl fishery in ICES subarea VIII;
- A de minimis exemption for anchovy, mackerel, horse mackerel and jack mackerel in the purse seine fishery in ICES Subareas VIII, IX, X, CECAF 34.1.1, 34.1.2 and 34.2.0;
- Fixing the MCRS for anchovy in ICES subarea IX to 9cm;
- Fixing the MCRS for anchovy in CECAF area 34.1.2 to 9cm.

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 three relevant Advisory Councils (ACs), namely the South Western Waters AC (SWW AC), the Pelagic AC (PEL AC) and the Long-Distance AC (LD AC), which are 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.

Direct consultations between the ACs and experts and fisheries managers from the national administrations of the SWW Member States were held on 20 May, 6 June and 12 June 2014. Representatives from the Commission also participated. At these three separate meetings the ACs were afforded the opportunity to present and discuss their recommendations for implementation of the landing obligation and also to discuss with the SWW Member States. At a further meeting of the 20 June 2014, the SWW Member States presented their draft JR to the three ACs. Subsequently the ACs submitted their comments to the SWW Member States on the draft JR.

There was large degree of consensus between two of the ACs and the SWW Member States. The SWW AC and LD AC both agreed with the need for an exemption for purse seine fisheries based on high survivability. The SWW AC also supported the fixing of the MCRS for anchovy and had issued a previous advice to this effect. The SWW AC and LD AC also supported the de minimis exemptions proposed in the JR. Both the SWW AC and the LD AC recommended an exemption for all catches caught in hook and line fisheries on the basis of high survivability. However, the Member States did not include this in their JR as their assessment suggested unwanted catches in these fisheries were very low and therefore did not warrant a specific exemption. The ACs also pointed out several inaccuracies in the scope of the fisheries included in the draft JR, which the SWW Member States rectified in the final JR submitted.

The PEL AC issued a comprehensive set of recommendations on pelagic fisheries within their remit in April 2014. For the fisheries relating to the SWW, the recommendations of the PEL AC were partially taken on board for several of the de minimis exemptions proposed. However, the PEL AC did raise some concerns that as some of the stocks they deal with straddled different regions, there was danger that different rules would be applied to the same stock in different sea basins. As far as possible the SWW Member States have taken this on board across the regions to avoid this situation. The PEL AC also recommended that the discard plan should take account situations of "force majeure" where circumstances relating to safety issues of the crew and vessel do not allow compliance with the landing obligation. The MS noted this but concluded that it was reasonable such circumstances were not referred to in the 'basic regulation' so therefore were outside the scope of the discard plan. The PEL AC also made some general comments on documentation of catches. The SWW Member States chose not to take on board these comments based on the fact that control and monitoring measures in relation to the implementation of the landing obligation will be dealt with nationally.

The SWW Member States have also taken note of the advice from the Scientific Technical and Economic Committee for Fisheries (STECF) which has provided guidance to SWW Member States on all of the elements of discard plans at specially convened Expert Working Group meetings (EWG 13-23², EWG 13-17³ and EWG 14-06⁴) held in September 2013, December 2013 and February 2014. Invited experts along with observers from the ACs and MS participated in these meetings. In addition, they have also used the advice provided by an ICES Workshop on Methods for Estimating Discard Survival⁵ (WKMEDS) that met in February 2014.

The main elements of the JR submitted to the Commission by the Member States are related to the specification of the discard plan in terms of the fisheries involved, provisions on exemption on the basis of high survivability and on *de minimis* exemptions, and establishment of MCRS. These elements were evaluated by STECF during its plenary meeting of 7-14 July 2014⁶. The issue of setting the MCRS for anchovy in CECAF 34.1.2 was previously considered by STECF in 2013⁷.

On the specific elements STECF concluded that in general most of the information requirements proposed by EWG 14-01 to support the proposed exemptions were given in the JR.

² http://stecf.jrc.ec.europa.eu/documents/43805/610582/2013-11_STECF+13-23+-+Landing+obligation+in+EU+Fisheries-part1_JRC86112.pdf

³ http://stecf.jrc.ec.europa.eu/documents/43805/633247/2014-02_STECF+14-01+-+Landing+obligations+in+EU+fisheries+-p2_JRC88869.pdf

⁴ http://stecf.jrc.ec.europa.eu/documents/43805/675595/2014-04_STECF+14-06+-+Landing+obligations+in+EU+fisheries_p3_JRC89785.pdf

⁵ <http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2014/WKMEDS/WKMEDS%20Report%202014.pdf>

⁶ http://stecf.jrc.ec.europa.eu/documents/43805/812327/2014-07_STECF+PLEN+14-02_Final+Report_JRCxxx.pdf

⁷ http://stecf.jrc.ec.europa.eu/documents/43805/535909/2013-04_STECF+PLEN+13-01_JRC81549.pdf

For the exemption for the purse seine fishery on the basis of high survivability, STECF concluded that, assuming the results of the survival study are representative of survival rates under commercial fishing operations, the proportion of slipped fish surviving would likely be greater than 50%. The survival rates provided by the study referred to in the JR vary but are generally high, which according to the study is due to the fact that crowding time related to slipping, under real fishing conditions in these fisheries, is estimated to be less than 5 minutes in duration, whereas the study demonstrates high survival in these fisheries for crowding times less than 10 minutes. This exemption would therefore not affect the prohibition in force (Article 19 b(2) of Regulation (EU) No 850/1998⁸ prohibits the release of mackerel, herring or horse mackerel before the net is fully taken on board a fishing vessel resulting in the loss of dead or dying fish), since the release of the fish will occur at a stage of the fishing operation where the fish would have a high survival rate after release. STECF did advise that further work to confirm that the experimental conditions are representative of commercial fishing operations should be undertaken. STECF notes that in addition to this exemption a de minimis exemption has also been proposed for this fishery. STECF concluded that this exemption is supported by reasoned arguments which demonstrate the difficulties of improving the selectivity in this fishery.

For the proposed de minimis exemption for the blue whiting pelagic trawl fishery with on board processing of the catches that produce surimi base in ICES subarea VIII, STECF concluded that the exemption is sufficiently well argued with respect to the difficulty of improving the selectivity and with respect to the additional handling costs that the vessel is likely to incur.

As regards the de minimis exemption for the albacore tuna pelagic pair trawlers in ICES subarea VIII, the exemption appears justified insofar as it is based on the disproportionate cost of separate handling of unwanted catches, in this case damaged fish (in particular separate handling on board and when landing). That need appears to exist for fish of all sizes. Since the STECF indicated the risk of so-called highgrading, the regulation clarifies that the exemption is without prejudice to the prohibition of highgrading (Article 19a of Regulation 850/1998)⁹.

For the proposed de minimis exemption for the anchovy pelagic trawl fishery in the Bay of Biscay (ICES divisions VIII a,b,d,e), STECF concluded that the exemption is well argued for mackerel and horse mackerel given the difficulties of improving selectivity with other measures apart from those currently in place. For the case of anchovy, since the STECF indicated the risk of so-called highgrading, the regulation also clarifies that the exemption is without prejudice to the prohibition of highgrading (Article 19a of Regulation 850/1998)¹⁰.

⁸ 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).

⁹ 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).

¹⁰ 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).

STECF concluded that the proposed setting of MCRS of anchovy at 9 cm as compared with the current minimum landing size of 11 cm, given the size maturity of this species, will keep the fishery directed to mature individuals of anchovy, so it would not impact on juvenile anchovy. STECF also concluded that the offsetting of the MCRS for anchovy at this level in both areas would increase the level of catches that could be sold for human consumption without increasing fishing mortality. Furthermore, STECF considered that setting the MCRS in the waters concerned at a level aligned with the MCRS in other areas (the JR include an MCRS for anchovy of 9 cm precisely for the sake of consistency with the MCRS for anchovy set by Regulation (CE) N° 1967/2006 for the neighbouring Mediterranean sea) may have benefits for control and enforcement.

The JR also 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.

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 submitted complies with Article 15(6) of Regulation (EU) 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. exemptions based on high survivability, de minimis exemptions and a minimum conservation reference size for certain catches of anchovy.

Legal basis

Article 15(6) and Articles 18(1) and (3) of Regulation of the European Parliament and of the Council (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 Art 18(5) of Regulation (EU) No 1380/2013.

COMMISSION DELEGATED REGULATION (EU) No .../..

of 20.10.2014

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 the 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/EC¹¹, 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) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South Western waters. Those Member States have submitted a joint recommendation to the Commission containing specific measures, after consultation of the Pelagic Advisory Council, the Long-Distance Advisory Council and the South Western Waters Advisory Council. Scientific contribution was obtained from relevant scientific bodies. The measures included in the joint recommendation comply with Article 15(6) of Regulation (EU) No 1380/2013 and therefore, in accordance with Article 18(3) of Regulation (EU) No 1380/2013 they should be included in this Regulation.
- (4) As regards the South Western Waters, according to Article 15(1)(a) of Regulation (EU) No 1380/2013 the landing obligation should apply to all vessels engaged in small pelagic and large pelagic fisheries in relation to species caught in those fisheries which are subject to catch limits at the latest from 1 January 2015.

¹¹ OJ L 354, 28.01.2013, p. 22.

- (5) In accordance with the joint recommendation, the discard plan should cover certain small pelagic and large pelagic fisheries, namely the fisheries for horse mackerel, mackerel, sprat, anchovy, albacore tuna, blue whiting and jack mackerel in ICES zones VIII, IX and X and in CECAF zones 34.1.1, 34.1.2 and 34.2.0 from 1 January 2015.
- (6) The joint recommendation includes an exemption from the landing obligation for anchovy, horse mackerel, jack mackerel and mackerel caught in purse seine fisheries in ICES areas VIII, IX and X and CECAF areas 34.1.1, 34.1.2 and 34.2, based on scientific evidence of high survivability, in accordance with Article 15(4)(b) of Regulation (EU) No 1380/2013. Scientific evidence supporting high survivability was provided in the Joint Recommendation, which made reference to a specific scientific study on fish survival from slipping in purse seine fisheries of European Southern waters. The study found that survival rates depend on the crowding time and the density of fish within the net, which are typically limited in these fisheries. This information was reviewed by the STECF (at its second plenary meeting in 2014). STECF concluded that, assuming the results of the survival study are representative of survival rates under commercial fishing operations, the proportion of slipped fish surviving would likely be greater than 50%. A prohibition of the release of mackerel and herring before the net is fully taken on board a fishing vessel, resulting in the loss of dead or dying fish, is set out in Article 19b(2) of Regulation (EU) No 850/1998¹². This survivability exemption does not affect the prohibition in force, since the release of the fish will occur at a stage of the fishing operation where the fish would have a high survival rate after release. Therefore such an exemption should be included in this Regulation.
- (7) The joint recommendation also includes four *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, which concluded that the joint recommendations contained reasoned arguments related to the increase of costs in handling unwanted catches, supported in some cases with a qualitative assessment of the costs. In light of the above and in the absence of differing scientific information, 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(5) of Regulation (EU) No 1380/2013.
- (8) The *de minimis* exemption for blue whiting (*Micromesistius poutassou*), up to a maximum of 7% in 2015 and 2016, and 6% in 2017, of the total annual catches in the industrial pelagic trawler fishery targeting that species in ICES zone VIII and processing that species on board to obtain surimi base, is based on the fact that increased selectivity cannot be achieved, and that costs of handling the unwanted catch is disproportionate. STECF concludes that the exemption is sufficiently well argued. Therefore, the exemption concerned should be included in this Regulation.

¹²

OJ L 125, 27.04.1998, p. 1.

- (9) The *de minimis* exemption for up to a maximum of 7% in 2015 and 2016, and 6% in 2017 for albacore tuna (*Thunnus alalunga*) of the total annual catches in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES zone VIII, is based on the disproportionate costs of handling the unwanted catch. These are costs of storage and handling at sea and on shore. STECF in its evaluation mentioned the risk of highgrading. However, this exemption is without prejudice to Article 19a of Regulation 850/1998¹³. Therefore, the exemption concerned should be included in this Regulation.
- (10) The *de minimis* exemption for up to a maximum of 5% in 2015 and 2016, and 4% in 2017, of the total annual catches in the pelagic trawl fishery for anchovy (*Engraulis encrasicolus*), mackerel (*Scomber scombrus*) and horse mackerel (*Trachurus* spp.) in ICES zone VIII is based on the difficulty to improve selectivity in this fishery. STECF concludes that the exemption is well argued for mackerel and horse mackerel and notes a partial risk of highgrading for anchovy. This exemption is however without prejudice to Article 19a of Regulation 850/1998¹⁴. Therefore, the exemption concerned should be included in this Regulation.
- (11) A final *de minimis* exemption is for the purse seine fishery in ICES zones VIII, IX and X and in CECAF areas 34.1.1, 34.1.2 and 34.2.0 targeting the following species: up to a maximum of 5% in 2015 and 2016, and 4% in 2017, of the total annual catches of horse mackerel (*Trachurus* spp.) and mackerel (*Scomber scombrus*); and up to a maximum of 2% in 2015 and 2016, and 1% in 2017, of the total annual catches of anchovy (*Engraulis encrasicolus*). STECF concludes that this exemption is supported by reasoned arguments which demonstrate the difficulties of improving the selectivity in this fishery. Therefore, the exemption concerned should be included in this Regulation.
- (12) Finally, the joint recommendation includes a minimum conservation reference size (MCRS) of 9 cm for two fisheries for anchovy with the aim of ensuring the protection of juveniles of that species. The STECF evaluated this measure and concluded that it would not impact negatively on juvenile anchovy, that it would increase the level of catches that could be sold for human consumption without increasing fishing mortality, and that it may have benefits for control and enforcement. Therefore, the MCRS for anchovy in the fisheries concerned should be fixed at 9 cm.

¹³ 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).

¹⁴ 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).

- (13) Since the measures provided 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 2015 in order to comply with the time- frame set out in Article 15 of Regulation (EU) No 1380/2013. In accordance with Article 15(6) of that Regulation, this Regulation should apply for no more than 3 years,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation specifies the details for implementing the landing obligation, provided for in Article 15(1) of Regulation (EU) No 1380/2013, from 1 January 2015 in the South Western waters, as defined in Article 4(2)(d) of that Regulation, in the fisheries set out in the Annex to this Regulation.

Article 2
Survivability exemption

By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to catches of anchovy, horse mackerel, jack mackerel and mackerel in artisanal purse seine fisheries. All such catches may be released, provided that the net is not fully taken on board.

Article 3
De minimis exemptions

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

- (a) for blue whiting (*Micromesistius poutassou*), up to a maximum of 7% in 2015 and 2016, and 6% in 2017, of the total annual catches in the industrial pelagic trawler fishery targeting that species in ICES zone VIII and processing that species on board to obtain surimi base;
- (b) up to a maximum of 7% in 2015 and 2016, and 6% in 2017 for albacore tuna (*Thunnus alalunga*) of the total annual catches in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES zone VIII;
- (c) up to a maximum of 5% in 2015 and 2016, and 4% in 2017, of the total annual catches in the pelagic trawl fishery for anchovy (*Engraulis encrasicolus*), mackerel (*Scomber scombrus*) and horse mackerel (*Trachurus* spp.) in ICES zone VIII;

- (d) In the purse seine fishery in ICES zones VIII, IX and X and in CECAF areas 34.1.1, 34.1.2 and 34.2.0 targeting the following species: up to a maximum of 5% in 2015 and 2016, and 4% in 2017, of the total annual catches of horse mackerel (*Trachurus* spp.) and mackerel (*Scomber scombrus*); and up to a maximum of 2% in 2015 and 2016, and 1% in 2017, of the total annual catches of anchovy (*Engraulis encrasicolus*).

Article 4

Minimum conservation reference size

The minimum conservation reference size for anchovy (*Engraulis encrasicolus*) caught in ICES subarea IX and CECAF area 34.1.2 shall be 9 cm.

Article 5

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 2015 until 31 December 2017.

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

Done at Brussels, 20.10.2014

For the Commission

The President

José Manuel BARROSO