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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 12.10.2015 establishing a discard plan for certain demersal fisheries in North-Western waters

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Delegations will find attached document C(2015) 6833 final.

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Encl.: C(2015) 6833 final



Brussels, 12.10.2015  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 12.10.2015**

**establishing a discard plan for certain demersal fisheries in North-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 will apply 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 developed as 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 North-Western waters (NWW) 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, Ireland, Spain, France, the Netherlands and the United Kingdom) 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 NWW Member States agreed that the chair of the group, Ireland, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 28 May 2015. 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 NWW Member States having a direct management interest, and taking account of the views of the North Western Waters Advisory Council (NWW AC), 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 as a result of four meetings of the technical group (on 14 January, 17-18 February, 10 March and 14-15 April) and in five meetings of the Directors' Group (on 4 February, 4 March, 1 April, 7 and 21 May).

Direct consultations between the Advisory Council and experts and fisheries managers from the national administrations of the NWW Member States were held in the first half of 2015. Representatives from the Commission and the NWW Member States also participated. The NWW AC was given the opportunity to present and discuss their recommendations for implementation of the landing obligation during meetings of the Technical and Directors groups.

Furthermore, NWW Member States consulted the Scheveningen Group (Member States in North Sea fisheries), so as to aim for a consistent approach across the North Sea and the NWW.

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 STECF Expert Working Group and during the STECF plenary meeting of 6-10 July 2015<sup>1</sup>.

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<sup>1</sup> [http://stecf.jrc.ec.europa.eu/documents/43805/1099561/2015-07\\_STECF+PLEN+15-02\\_JRCxxx.pdf](http://stecf.jrc.ec.europa.eu/documents/43805/1099561/2015-07_STECF+PLEN+15-02_JRCxxx.pdf)

The STECF were content with the information provided in support of the high survivability exemption for Norway lobster in pots and creels.

As regards the two *de minimis* exemptions for sole, STECF concludes that the exemptions are supported by information indicating that further selectivity is difficult to achieve.

As regards the two *de minimis* exemptions for *Nephrops*, STECF is content with the information provided to support the exemption because of disproportionate costs (*Nephrops* in area VIa) or because it is difficult to improve selectivity (area VII).

As regards the three *de minimis* exemptions for whiting, Member States should deliver more discard data, and collect further scientific arguments on these specific exemptions. The provided information will be evaluated by STECF after one year in order to confirm the application of the exemption.

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 12.10.2015**

**establishing a discard plan for certain demersal fisheries in North-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) Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom have a direct fisheries management interest in the North-Western waters. Those Member States have submitted a joint recommendation to the Commission after consultation of the North Western Waters Advisory Council. Scientific contribution was 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 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.

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

- (4) As regards the North-Western waters, according to Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation should apply to the species that define the fisheries which are subject to catch limits at the latest from 1 January 2016. In accordance with the joint recommendation, the discard plan should cover fisheries which define the highly mixed cod, haddock, whiting and saithe fishery, Norway lobster (*Nephrops*) fishery, mixed common sole and plaice fishery, and hake fishery from 1 January 2016.
- (5) The joint recommendation suggested that an exemption for landing obligation be applied to Norway lobster caught by pots, traps or creels in ICES division VIa and subarea VII, as scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem. STECF concluded that the exemption was grounded. Therefore, the exemption concerned should be included in this Regulation.
- (6) The joint recommendation includes seven *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 in general concluded that the joint recommendation contained reasoned arguments that further improvements in the selectivity are difficult to achieve and/or regarding disproportionate 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(1) of Regulation (EU) No 1380/2013.
- (7) The *de minimis* exemption for common sole, up to a maximum of 3% in 2016-2018 of the total annual catches of this species by vessels using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption is well defined and therefore, the exemption concerned should be included in this Regulation.
- (8) The *de minimis* exemption for whiting, up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of less than 100mm to catch whiting in ICES divisions VIId and VIIe, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that sufficient evidence is provided to support the exemption, but that additional information should be sought to evaluate the *de minimis* volume. Therefore, this exemption can be included in the Regulation only with a provision asking the Member States concerned to submit further data to the Commission to allow STECF to fully assess the current discard level compared to the volume of the *de minimis* requested.



- (9) The *de minimis* exemption for whiting, up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of not less than 100mm to catch whiting in ICES divisions VIIb – VIIj, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that sufficient evidence is provided to support the exemption, but that additional information should be sought to evaluate the *de minimis* volume. STECF further noted that further selectivity studies were ongoing. Therefore, this exemption is included in the Regulation, with a provision asking the Member States concerned to submit further data to the Commission to allow STECF to fully assess current discard rates in the fisheries concerned.
- (10) The *de minimis* exemption for whiting, up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of less than 100mm to catch whiting in ICES divisions VII (excluding VIIa, VIId and VIIe), is based on the fact that increases in selectivity are very difficult to achieve. STECF noted that the basis for this exemption has little quantified information on selectivity. STECF concluded that additional information should be sought to evaluate this *de minimis* exemption. Therefore, this exemption can be included in the Regulation only with a provision asking the Member States concerned to submit further data to the Commission to allow STECF to better assess the information supporting this exemption.
- (11) The *de minimis* exemption for Norway lobster, up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES subarea VII, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption was grounded. Therefore, the exemption concerned should be included in this Regulation.
- (12) The *de minimis* exemption for Norway lobster, up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES division VIa, is based on the fact that increases in selectivity are very difficult to achieve and there is supporting quantitative information on disproportionate costs of handling unwanted catches. STECF concluded that the exemption was grounded. Therefore, the exemption concerned should be included in this Regulation.
- (13) The *de minimis* exemption for common sole, up to a maximum of 3% in 2016 – 2018 of the total annual catches of this species by vessels using gear with increased selectivity in ICES divisions VIId, VIIe, VIIf and VIIg, is based on the fact that increases in selectivity are very difficult to achieve. STECF noted that the exemption is to compensate for the use of a more selective gear and the *de minimis* exemption requested is to cover residual discards. Therefore, the exemption concerned should be included in this 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 2016 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*  
**Scope**

This Regulation specifies the details for implementing the landing obligation, provided for in Article 15(1) of Regulation (EU) No 1380/2013, and shall apply from 1 January 2016 in the North-Western Waters, as defined in Article 4(2)(c) of that Regulation, in the fisheries set out in the Annex to this Regulation.

*Article 2*  
**Survivability exemption**

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 pots, traps or creels (Gear codes<sup>3</sup> FPO and FIX) in ICES division VIa and subarea VII.

*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:
  - (a) for common sole (*Solea solea*), up to a maximum of 3% in 2016, 2017 and 2018 of the total annual catches of this species by vessels using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg;
  - (b) for whiting (*Merlangius merlangus*), up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of less than 100 mm to catch whiting in ICES divisions VIId and VIIe.

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<sup>3</sup> Gear codes used in this Regulation are defined by the Food and Agriculture Organisation of the United Nations.

- (c) for whiting (*Merlangius merlangus*), up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of not less than 100mm to catch whiting in ICES divisions VIIb – VIIj.
  - (d) for whiting (*Merlangius merlangus*), up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using bottom trawls of less than 100 mm to catch whiting in ICES subarea VII, except divisions VIIa, d and e.
  - (e) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES subarea VII;
  - (f) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 7% in 2016 and 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES division VIa;
  - (g) for common sole (*Solea solea*), up to a maximum of 3% in 2016, 2017 and 2018 of the total annual catches of this species by vessels using gear with increased selectivity (TBB gear with mesh size of 80-199mm) in ICES divisions VIId, VIIe, VIIf and VIIg.
2. By 1 May 2016, Member States having a direct management interest in North-Western waters shall submit to the Commission additional discard data and any other relevant scientific information supporting the exemptions laid down in paragraph 1(b), (c) and (d). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information by 1 September 2016 at the latest.

*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.

By 31 December 2015, 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*  
***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 2016 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, 12.10.2015

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