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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:	12 October 2015
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 South-Western waters

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Delegations will find attached document C(2015) 6835 final.

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Encl.: C(2015) 6835 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 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 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 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, Spain, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 27 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 SWW Member States having a direct management interest, and taking account of the views of the South Western Waters Advisory Council (SWW 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, 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 (in the second half of 2014 and the first half of 2015) both the SWW AC and Commission representatives were consulted on a regular basis. The SWW AC was given the opportunity to present and discuss its position in relation to measures envisaged in the JR. Generally speaking the SWW AC expressed its satisfaction in relation to its participation in the consultation process. 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 STECF Expert Working Group and during the STECF plenary meeting of 6-10 July 2015<sup>1</sup>.

STECF found that generally speaking the supporting information is sufficient to justify the measures proposed, but noted that further information would be needed to be able to better assess the survivability exemption for Norway lobster and the *de minimis* exemption for hake.

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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)

As regards the *de minimis* exemption for hake in bottom trawl fisheries in ICES Subareas VIII and IX and the survivability exemption for Norway lobster, Member States should 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. Specifically for the survivability exemption for Norway lobster, the Regulation specifies that the exemption is valid for 2016 only.

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 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) 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 after consultation of the South 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 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. In accordance with the joint recommendation, the discard plan should cover the fisheries of common sole, hake 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, and hake in ICES divisions VIIIc and IXa.
- (5) 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 concludes that more studies are needed to corroborate the existing findings, and notes that such studies are underway and planned. Therefore, this exemption should be included in the Regulation for the year 2016, with a provision asking the Member States concerned to submit further data to the Commission to allow STECF to fully assess the justifications for the exemption.
- (6) 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.
- (7) 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 the exemption claimed. Therefore, the exemption concerned should be included in this Regulation.
- (8) 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, the exemption concerned should be included in this Regulation.



- (9) The *de minimis* exemption for hake, up to a maximum of 7% in 2016 and 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 existing supporting information presented demonstrates that increasing selectivity in the fisheries concerned would lead to losses of marketable fish that would make the fisheries potentially uneconomic. Moreover, STECF pointed out that it should be supplemented by further selectivity studies in the relevant fisheries. Therefore, this exemption should be 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 the justifications for the exemption.
- (10) 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 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**

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 in 2016 to Norway lobster (*Nephrops norvegicus*) caught in ICES subareas VIII and IX by trawls (gear codes<sup>3</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, by 1 May 2016, 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 by 1 September 2016.

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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.

*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 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, TB, OT, PT and TX) targeting this species in ICES divisions VIIIa and VIIIb;
  - (b) 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 this species in ICES divisions VIIIa and VIIIb;
  - (c) for hake (*Merluccius merluccius*), up to a maximum of 7% in 2016 and 2017 and up to 6% in 2018 of the total annual catches of this species by vessels using trawls (gear codes: OTT, OTB, PTB, OT, PT, TBN, TBS, TX, SSC, SPR, TB, SDN, SX and SV) targeting this species in ICES subareas VIII and IX.
  
2. By 1 May 2016, 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(c). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information by 1 September 2016.

*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*