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COVER NOTE

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

date of receipt: 24 November 2017

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

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 24.11.2017
amending Delegated Regulation (EU) No 1393/2014 establishing a discard
plan for certain pelagic fisheries in North-Western waters

Delegations will find attached document C(2017) 7678 final.

Encl.: C(2017) 7678 final



Brussels, 24.11.2017
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 24.11.2017

**amending Delegated Regulation (EU) No 1393/2014 establishing a discard plan for
certain pelagic fisheries in North-Western waters**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the new 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 also foresees 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 basin.

The landing obligation in the North-Western Waters (NWW) applies as of 1st January 2015. So far neither multiannual plans nor management plans for pelagic species under the framework of the CFP have been adopted. Commission Delegated regulation (EU) No 1393/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in North-Western Waters¹ expires as of 31 December 2017. However, Regulation (EU) No 1380/2013 (the Basic Regulation) on the CFP² foresees the possibility to adopt for a period of no more than 3 years and renewable once a specific discard plan to support the implementation of a landing obligation. It is crucial to ensure that the specific provisions implementing the landing obligation continue to apply after the expiration of the discard plans. Therefore Article 15(6) of Regulation (EU) No 1380/2013 was amended in order to extend the validity of discard plans by another period of three years. Therefore provisions established in the Delegated Regulation No 1393/2014 are proposed to be extended only for three years, i.e. until 31 December 2020.

This proposal specifies the details for the implementation of the landing obligation in the NWW as circumscribed in Article 15 (6) of the Basic Regulation, namely:

- provisions for *de minimis* exemptions;
- specification of exemptions to the landing obligation if fisheries or species meet certain criteria related to high survivability.

In accordance with Article 18 of the Basic Regulation, the proposal is based on the joint recommendation (JR) developed and submitted to the Commission by Member States concerned, namely, Belgium, France, Ireland, the Netherlands, Spain and the United Kingdom.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach the NWW High-Level Group (Belgium, France, Ireland, the Netherlands, Spain and the United Kingdom) agreed that the chair of the group, Belgium, should submit to the Commission a joint recommendation. Accordingly, the JR was submitted to the Commission services on 31 May 2017. 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 and of the Pelagic Advisory Council, which are concerned by the fisheries covered by the JR.

¹ OJ L 370, 30.12.2014, p.25.

² OJ L 354, 28.01.2013, p.22.

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.

Elements related to the implementation of the landing obligation and specific provisions included in the joint recommendations for the NWW discard plan have been discussed and reviewed by the relevant Scientific Technical and Economic Committee for Fisheries (STECF) Expert Working Group and during the STECF plenary meetings of 10-14 July 2017³.

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 and it fixes the level of *de minimis* exemptions applicable to avoid disproportionate costs of handling unwanted catches. The Regulation also provides for the high survivability exemption for the catches of mackerel and herring in the ring net fishery.

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.

³ [2017-07_STECF_PLEN_17-02_JRCxxx.pdf](#)

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

of 24.11.2017

amending Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic 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/EC⁴, 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 and renewable once on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Commission Delegated Regulation (EU) No 1393/2014⁵ established a discard plan for certain pelagic fisheries in the North Western waters in order to facilitate the implementation of the landing obligation by means of certain flexibility mechanisms.
- (4) Belgium, France, Ireland, the Netherlands, Spain and the United Kingdom have a direct fisheries management interest in the North Western waters. After having consulted the North Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 31 May 2017 a joint recommendation to the Commission.
- (5) Exemptions from the obligation to land all catches may be specified in accordance with Article 15(5)(b) of Regulation (EU) No 1380/2013 in relation to species for which scientific evidence demonstrates high survival rates ('survivability exemptions').
- (6) The joint recommendation suggests to apply, under certain conditions, a survivability exemption in 2019 and 2020 for mackerel and herring caught in the ring net fishery targeting non-quota species in ICES divisions VIIe and VIIf. The evidence provided by the Member States to justify that exemption was reviewed by Scientific, Technical and Economic Committee for fisheries (STECF). STECF concluded that the evidence supporting the suggested exemption was similar to that justifying other exemptions included in previous discard plan and had been previously assessed by STECF.

⁴ OJ L 354, 28.12.2013, p. 22.

⁵ OJ L 370, 30.12.2014, p. 25.

Exemptions from the obligation to land all catches may furthermore be specified in accordance with Article 15(5)(c) of Regulation (EU) No 1380/2013 where scientific evidence indicates that increases in selectivity are very difficult or where handling unwanted catches entails disproportionate costs ('*de minimis* exemptions').

- (7) The joint recommendation suggests a *de minimis* exemption for up to a maximum of 6 %, in 2018, and 5 %, in 2019 and 2020, of the total annual catches of blue whiting (*Micromesistius poutassou*) in the industrial pelagic trawler fishery targeting that species in ICES divisions Vb, VI, and VII and processing that species on board to obtain surimi base. The Member States concerned provided evidence to demonstrate that increased selectivity cannot be achieved and that costs of handling the unwanted catch are disproportionate. STECF reviewed the suggested exemption and concluded that it is sufficiently well argued. Therefore, the suggested exemption may be included in Delegated Regulation (EU) No 1393/2014.
- (8) The joint recommendation suggests to apply a *de minimis* exemption for up to a maximum of 6 %, in 2018, and 5 %, in 2019 and 2020, of the total annual catches of albacore tuna (*Thunnus alalunga*) in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES division VII. The Member States provided evidence to demonstrate that costs of storage and handling unwanted catches at sea and on shore are disproportionate. The evidence provided by the Member States was reviewed by STECF. In its evaluation STECF mentioned the risk of highgrading. In this regard it should be noted that, pursuant to paragraph 3 of Article 19a of Council Regulation (EC) No 850/1998⁶, the prohibition of discarding does not apply to catches of species which are exempted from the landing obligation in accordance with Article 15(4) of Regulation (EU) No 1380/2013. Therefore, the suggested exemption may be included in Delegated Regulation (EU) No 1393/2014.
- (9) The joint recommendation suggests to apply in 2018, 2019 and 2020 a *de minimis* exemption for up to a maximum of 1 % of the total annual catches of mackerel (*Scomber scombrus*), horse mackerel (*Trachurus ssp.*), herring (*Clupea harengus*) and whiting (*Merlangius Merlangus*) in the small pelagic fisheries carried out by midwater trawlers (OTM and PTM) up to 25 m in length overall and targeting mackerel, horse mackerel and herring in ICES division VIIId. The scientific evidence provided by the Member States in order to support the suggested exemption was reviewed by STECF. STECF noted that the *de minimis* exemption may provide an incentive for the fleets involved to adapt their behaviour and continue research on ways to improve selectivity. Therefore, the exemption concerned may be included in Delegated Regulation (EU) No 1393/2014.
- (10) The duration of the discard plan should consequently be extended until 31 December 2020.
- (11) Article 2 of the Delegated Regulation (EU) No 1393/2014 provides respectively for a survivability exemption for mackerel and herring caught in the purse seine fisheries. This measure was positively evaluated by STECF in 2014. The Commission considers that the evidence on which that evaluation was based remains valid for the next three years. Therefore it is appropriate to extend the application of the measure until 2020.

⁶ 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).

- (12) Delegated Regulation (EU) No 1393/2014 and its Annex should be amended accordingly.
- (13) 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. Considering that the discard plan established by Delegated Regulation (EU) No 1393/2014 expires on 31 December 2017, this Regulation should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 1393/2014 is amended as follows:

- (1) In Article 2, the following paragraph 6 is added
 - "6. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply in 2019 and 2020 to catches of mackerel and herring in the ring net fishery targeting pelagic species not subject to quotas in ICES divisions VIIe and VIIf, if the requirements set out in paragraphs 1 to 5 of this Article and in Article 4 of this Regulation are met *mutatis mutandis*."
- (2) In Article 3, the heading is replaced by the following: "*De minimis* exemptions in the years 2015, 2016 and 2017".
- (3) The following Article 3a is inserted:

"Article 3a

***De minimis* exemptions in the years 2018, 2019 and 2020**

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

- (a) up to a maximum of 6%, in 2018, and 5%, in 2019 and 2020, of the total annual catches of blue whiting (*Micromesistius poutassou*) in the industrial pelagic trawler fishery targeting that species in ICES divisions Vb, VI and VII, and processing that species on board to obtain surimi base;
 - (b) up to a maximum of 6%, in 2018, and 5%, in 2019 and 2020, of the total annual catches for albacore tuna (*Thunnus alalunga*) in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES subarea VII;
 - (c) up to a maximum of 1%, in 2018, 2019 and 2020, of the total annual catches of mackerel (*Scomber scombrus*), horse mackerel (*Trachurus spp.*), herring (*Clupea harengus*) and whiting (*Merlangius merlangus*) in the fishery carried out with pelagic trawlers up to 25 meters in length overall, using mid-water trawl (OTM and PTM) and targeting mackerel, horse mackerel and herring in ICES division VIIId."
- (4) In Article 5, the second paragraph is replaced by the following:

"It shall apply from 1 January 2015 to 31 December 2020."
 - (5) 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, 24.11.2017

For the Commission
The President
Jean-Claude JUNCKER