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COVER NOTE

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

date of receipt: 30 November 2017

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

No. Cion doc.: C(2017) 7875 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 30.11.2017
amending Commission Delegated Regulation (EU) 2015/98 on the
implementation of the Union's international obligations, as referred to in
Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament
and of the Council, under the International Convention for the Conservation
of Atlantic Tunas, regarding the Mediterranean stock of swordfish

Delegations will find attached document C(2017) 7875 final.

Encl.: C(2017) 7875 final



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

of 30.11.2017

amending Commission Delegated Regulation (EU) 2015/98 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas, regarding the Mediterranean stock of swordfish

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Reasons for and objective of the proposal

The Common Fisheries Policy, or CFP, provides for the phased-in introduction of a landing obligation to end the problem of fish discards. This obligation is set out in Article 15(2) of Regulation (EU) No 1380/2013¹ of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (the Basic Regulation).

Commission Delegated Regulation (EU) 2015/98² deals with implementing the European Union's international obligations as outlined in Article 15(2) of the Basic Regulation and defines a series of derogations from the obligation to land fish. In doing so, it seeks to ensure that the relevant European Union (EU) rules are in line with the EU's international obligations and that the EU complies with decisions adopted by regional fisheries management organisations (RFMOs) such as the International Commission for the Conservation of Atlantic Tunas (ICCAT) or the Northwest Atlantic Fisheries Organisation.

At the 2016 ICCAT Annual Meeting in Vilamoura (Portugal), the ICCAT CPC's³ took a decisive step to address the alarming situation of Mediterranean swordfish (*Xyphias gladius*). It adopted a 15-year recovery plan in ICCAT Recommendation 16-05.

The purpose of this proposal is to amend Commission Delegated Regulation (EU) 2015/98. This will enable the EU to comply with ICCAT Recommendation 16-05 establishing a multiannual recovery plan for Mediterranean swordfish, so that the landing obligation in Article 15(1) of the Basic Regulation does not apply to EU vessels in Mediterranean swordfish fisheries.

Detailed explanation of the specific provisions of the proposal

Article 15 of the Basic Regulation establishes a landing obligation (or a discard ban) for all catches of species for which catch limits apply. Moreover, in the Mediterranean, catches of species for which minimum sizes apply and which are caught during fishing activities in EU waters or by EU fishing vessels outside EU waters where no other country has sovereignty or jurisdiction must be brought and retained on board, recorded, landed and counted against the fishing quotas.

Article 15(2) of the Basic Regulation states that the landing obligation does not affect the EU's international obligations. The Commission is empowered to adopt delegated acts to implement such international obligations in EU law. These include in particular, derogations from the landing obligation.

The EU is a CPC to ICCAT. ICCAT Recommendation 16-05 establishes a multiannual recovery plan for Mediterranean swordfish that entered into force in June 2017 and is binding upon EU Member States.

ICCAT Recommendation 16-05 lays down the obligation to discard swordfish on board vessels that exceed their allocated quota and/or their maximum level of permitted by-catches.

¹ OJ L 354, 28.12.2013, p 22.

² OJ L 16, 23.1.2015, p. 23.

³ The CPCs are ICCAT contracting parties, cooperating non-contracting parties, entities or fishing entities.

This includes vessels engaged in sport and recreational fishing. Mediterranean swordfish that have been caught and are below the minimum size will also have to be discarded, unless they fall within the by-catch limits established by Member States in their annual fishing plans.

Point (1) of Article 1 amends the title of Article 5 of Delegated Regulation (EU) 2015/98 to read 'Swordfish in the Atlantic Ocean'. In this way swordfish stocks in the Atlantic Ocean and the swordfish stock in the Mediterranean Sea are dealt with separately in two distinct articles.

Point (2) of Article 1 introduces an exemption from Article 15(1) of Regulation (EU) No 1380/2013, so that Mediterranean swordfish may be discarded in the cases outlined in ICCAT Recommendation 16-05.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Member States have repeatedly asked the Commission to come forward with this proposal to ensure consistency in complying with the EU's international obligations and upholding the principles of the Common Fisheries Policy.

Member State administrations were consulted at a meeting of the Committee of Fisheries and Aquaculture on 8 September 2017.

The Mediterranean Advisory Council (MEDAC) has been informed about this amendment at the meeting of 10 October 2017.

As this delegated act is based on the empowerment provided for in Article 15(2) of the Basic Regulation and does not present a new policy initiative, there was no need to carry out an impact assessment.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Legal basis

Article 15(2) of Regulation (EU) No 1380/2013.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union (see Article 3(1)(d) of the Treaty on the Functioning of the European Union). The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal will ensure that EU law on discards is in line with the EU's international obligations and that the EU complies with the decisions taken by the RFMOs to which it is a contracting party. This will be done without going further than is necessary to achieve the desired objective.

Choice of instrument

The instrument chosen is a Commission delegated regulation, as referred to in Article 15(2) of Regulation (EU) No 1380/2013.

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amending Commission Delegated Regulation (EU) 2015/98 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas, regarding the Mediterranean stock of swordfish

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 Article 15(2) thereof,

Whereas:

- (1) To protect juvenile swordfish, paragraphs 15 and 17 of Recommendation 16-05 of the International Commission for the Conservation of Atlantic Tunas (ICCAT) provide for a minimum size for swordfish caught in the Mediterranean. Catches and by-catches of swordfish below this minimum size, including in sport and recreational fisheries, should not be kept on board the fishing vessel, transhipped, transported, stored, landed, sold, displayed or offered for sale.
- (2) Furthermore, under paragraph 17 of Recommendation 16-05, vessels actively fishing for swordfish must discard incidental catches of swordfish below the minimum size that exceed 5 % of their total swordfish catch.
- (3) For sport and recreational fisheries, paragraphs 23 and 26 of ICCAT Recommendation 16-05 establish that it should be prohibited to catch, retain on board, tranship or land more than one Mediterranean swordfish per vessel per day. Necessary measures should be put in place to ensure, to the greatest extent possible, the release of Mediterranean swordfish caught alive during sport and recreational fishing, especially juveniles.
- (4) Paragraph 30 of ICCAT Recommendation 16-05 establishes that vessels not authorised to fish actively for Mediterranean swordfish may keep on board swordfish catches not exceeding a maximum by-catch limit per vessel and per fishing operation. Member States should establish that by-catch limit in their annual fishing plans and report it to the Commission. Vessels not authorised to fish actively for Mediterranean swordfish should not retain on board by-catches of Mediterranean swordfish exceeding the limits in the national annual fishing plans.
- (5) To ensure consistency between ICCAT Recommendation 16-05 and European Union law, the landing obligation in Article 15(1) of Regulation (EU) No 1380/2013 should not apply to Union vessels participating in Mediterranean swordfish fisheries.

⁴ OJ L 354, 28.12.2013, p. 22.

- (6) Commission Delegated Regulation (EC) 2015/98⁵ should be amended to include new provisions reflecting the fishing conditions established in ICCAT Recommendation 16-05.
- (7) In line with the timeframe laid down in Article 15(1) of Regulation (EU) No 1380/2013, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/98 is amended as follows:

- (1) Article 5 is amended as follows:
- (a) The title of Article 5 is replaced by the following:
- ‘Swordfish in the Atlantic Ocean’;
- (b) Paragraph 1 is deleted;
- (c) Paragraph 2 is replaced by the following:
- " 2. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, it shall be prohibited to target, retain on board or tranship, land, transport, store, display or offer for sale, sell or market swordfish (*Xiphias gladius*) below the minimum size, as set out in Annex IV to Regulation (EC) No 520/2007."
- (2) A new article 5a is inserted as follows:

‘Article 5a

Mediterranean swordfish

- (1) By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, it shall be prohibited to target, retain on board, tranship, land, transport, store, sell, display or offer for sale catches and by-catches of swordfish (*Xiphias gladius*), including from sport and recreational fisheries:
- (a) measuring less than 100 cm lower jaw fork length; or
- (b) weighing less than 11,4 kg of round weight or 10,2 kg of gilled and gutted weight.
- (2) Notwithstanding paragraph 1, catching vessels fishing actively for swordfish may retain on board, tranship, transfer, land, transport, store, sell, display or offer for sale incidental catches of swordfish below the minimum size, provided such catches do not exceed 5% by weight or number of pieces of the total swordfish catch of such vessels.
- (3) By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, catching vessels not fishing actively for swordfish shall not retain on board swordfish exceeding the by-catch limit that Member States establish in their annual fishing plans for the total catch on board by weight or number of pieces.

⁵ Commission Delegated Regulation (EU) 2015/98 of 18 November 2014 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (OJ L 16, 23.1.2015, p 23.)

- (4) By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, it shall be prohibited to catch, retain on board, tranship or land of more than one swordfish per vessel per day for sport and recreational fisheries. Member States shall take the necessary measures to ensure and facilitate the release of swordfish caught alive in the framework of sport and recreational fishing.’

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 30.11.2017

For the Commission
The President
Jean-Claude JUNCKER