



Council of the
European Union

Brussels, 24 June 2021
(OR. en)

10175/21

PECHE 227
DELACTION 134

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 June 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2021) 4330 final
Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 22.6.2021 supplementing Regulation (EU) 2016/1139 concerning the specifications for the landing obligation as regards salmon in the Baltic Sea for the period 2021-2023

Delegations will find attached document C(2021) 4330 final.

Encl.: C(2021) 4330 final



Brussels, 22.6.2021
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 22.6.2021

supplementing Regulation (EU) 2016/1139 concerning the specifications for the landing obligation as regards salmon in the Baltic Sea for the period 2021-2023

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

One of the central objectives of the Common Fisheries Policy (CFP) is the progressive elimination of discards in all European Union (EU) fisheries through the implementation of a landing obligation under Regulation (EU) No 1380/2013 on the CFP¹ (hereinafter “CFP Basic Regulation”). This is designed to make better use of the available resources, and responds to public expectation to end the practice of throwing marketable fish back into the sea. High levels of discards were identified as an important driver of the lack of environmental sustainability of the CFP in the impact assessment² carried out for the last reform of the CFP. Discards remain a problem in many Baltic Sea fisheries.³

The landing obligation in the Baltic Sea covers all species subject to catch limits pursuant to Article 15(1) of the CFP Basic Regulation. That Regulation also provides for a series of provisions to facilitate the implementation of the landing obligation, notably specific flexibility mechanisms that need to be activated either through multiannual plans or, in the absence of multiannual plans, in so-called discard plans. These discard plans are a temporary measure of a duration of three years and renewable once. Such temporary discard plans covering Baltic salmon were adopted in 2014⁴ and 2017⁵. The latest discard plan expires on 31 December 2020.

In order to facilitate the implementation of the landing obligation, Article 7(1)(a) of the multiannual plan for the Baltic Sea⁶ as modified by Regulation (EU) 2020/1781⁷ empowers the Commission to adopt, upon a joint recommendation submitted by Member States, exemptions from the application of the landing obligation for all species subject to the landing obligation and covered by the multiannual plan, including salmon, if scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach, the Member States around the Baltic Sea established a regional Baltic Sea Fisheries Forum (BALTFISH).

¹ 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 (OJ L 354, 28.12.2013, p.22).

² http://ec.europa.eu/fisheries/reform/sec_2011_891_en.pdf.

³ International Council for the Exploration of the Sea (ICES) Advice 2020 – Baltic Sea Ecoregion Fisheries Overview of 3 December 2020; ICES Advice 2020 – Baltic Sea Ecoregion Ecosystem overview of 10 December 2020.

⁴ Commission Delegated Regulation (EU) No 1396/2014 of 20 October 2014 establishing a discard plan in the Baltic Sea (OJ L 370, 30.12.2014, p. 40).

⁵ Commission Delegated Regulation (EU) 2018/211 of 21 November 2017 establishing a discard plan as regards salmon in the Baltic Sea (OJ L 41, 14.2.2018, p. 1).

⁶ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks (OJ L 191, 15.7.2016, p. 1).

⁷ Regulation (EU) 2020/1781 of the European Parliament and of the Council of 25 November 2020 amending Regulation (EU) 2016/1139 as regards fishing capacity reduction in the Baltic Sea, and Regulation (EU) No 508/2014 as regards permanent cessation of fishing activities for fleets fishing for Eastern Baltic cod, Western Baltic cod and Western Baltic herring (OJ L 400, 30.11.2020, p. 1).

During its work on the joint recommendations, BALTFISH consulted the Baltic Sea Advisory Council (BSAC).

BALTFISH submitted a joint recommendation on 12 May 2020 requesting to prolong the existing high survivability exemption for salmon, except for salmon caught by pontoon traps not equipped with an attached knot-less bag. Moreover, the total amount of released salmon should be kept at a low level.

The STECF Expert Working Group 20-04 of 18-22 May 2020⁸ assessed the submitted documents. STECF noted that according to the joint recommendation the level of salmon discarded over the period 2017-2019 from gears covered by the existing exemption was between 0.7-4.3%. The new information provided in support of the joint recommendation relates primarily to pontoon traps with an attached knotless bag. As regards pontoon traps, STECF noted that the submitted study indicated a survival rate of 29% for pontoon traps not equipped with an attached knot-less bag and of 52% when equipped with such a bag. STECF also noted that the study claimed that the (relatively high) mortality rate was attributed to an exceptionally high natural mortality (22%) that occurred in the study area. STECF noted that the evidence suggested that pontoon traps equipped with an attached knot-less bag had the potential to be gentler with salmon released after handling. In the case of trap-net fisheries, STECF stated that it was possible to gently remove salmon from the gear's "fish bag" one by one (by hand) and release them. In addition, STECF referred to a study⁹ on survivability of salmon caught with trap-nets that was provided where the capture/release survival rate was estimated at 89%. Furthermore, STECF noted that in a previous assessment of 2014¹⁰ it had stated that for traditional trap-nets and fyke-nets evidence indicated that immediate discard mortality was typically less than 10%. However, STECF concluded that there was not enough evidence as regards creels/pots and pound nets while deeming it reasonable to assume that mortality would also be low.

Following the STECF assessment, the Commission asked BALTFISH to reconsider the need of an exemption given the very low level of discarded salmon, and in case of an affirmative reply, to spell out what BALTFISH considered a low level of released salmon. BALTFISH replied on 15 September 2020, sending an updated joint recommendation dated 8 September 2020, highlighting that the exemption provided an incentive to use more selective and low impact gears when fishing for other species than salmon. Moreover, the joint recommendation noted that the exemption would potentially decrease by-catches of birds and mammals, and in some regions would allow protecting wild salmon stocks by releasing wild salmon caught and only keeping reared salmon. Finally, the exemption would ease the quota management, notably by enabling fishermen to release wild salmon while keeping reared salmon. BALTFISH furthermore suggested limiting the exemption to 8% of each Member State's annual quota for salmon. This limitation would further reduce any potential negative impact of this exemption on the stock.

Furthermore, BALTFISH sent a second update of the joint recommendation dated 16 March 2021 to take into account STECF's aforementioned assessment EWG 20-04 regarding creels/pots and pound nets. Creels/pots are no longer included in the joint recommendation. Regarding pound nets, BALTFISH explained that pound nets were a subcategory of trap nets

⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/2694823/STECF+20-04+-+Eval+JRs+LO+and+TM+Reg.pdf/6176f9ad-0855-4985-b7de-64685862b6cb>.

⁹ Siira et al., Survival of Atlantic salmon captured in and released from a commercial trap-net: Potential for selective harvesting of stocked salmon, Elsevier, Fisheries Research (80), 2006, 280-294.

¹⁰ <https://stecf.jrc.ec.europa.eu/documents/43805/812327/STECF+PLEN+14-02.pdf/e29cf181-8d63-40ef-8050-6d980b12528f?version=1.4&download=true>.

and were included in the 2006 study assessed by the STECF in 2014 though pound nets were not explicitly mentioned. Moreover, further studies were ongoing and relevant data would be provided for an STECF assessment by May 2023. Finally, BALTFISH modified the limitation of the exemption to 8% of the annual catches of salmon from each Member State's quota of salmon. In the context of the consultation of the Fisheries and Aquaculture Expert Group it was pointed out that, as referred in the joint recommendation, the scope of the exemption should be modelled after the one adopted in 2014 rather than the one of 2017 since salmon is potentially by-caught in all Baltic fisheries using the exempted gear types.

On the basis of the evaluation by STECF, the updated joint recommendation and an internal assessment by Commission services, the Commission considers that the joint recommendation submitted is in line with Article 7(1)(a) of Regulation (EU) 2016/1139 as outlined above and in line with Article 15(4)(b) of Regulation (EU) No 1380/2013. The derogation should however be limited in time and the additional information suggested by STECF should be provided in time before the expiry of this derogation. The provided information will be taken into account when assessing a possible prolongation of the derogation for the various gear types.

The survivability exemption for salmon on the basis of Commission Delegated Regulation (EU) 2018/211 expired on 31 December 2020. The exemption has a direct impact on the planning of the fishing season of Union vessels and on related economic activities. In order to ensure legal continuity, it is therefore appropriate to apply this Regulation retroactively as from 1 January 2021.

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 exemptions based on high survivability.

Legal basis

Article 7(1)(a) of Regulation (EU) 2016/1139 of the European Parliament and of the Council.

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 7(1)(a) of Regulation (EU) 2016/1139 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 was granted powers to adopt exemptions from the landing obligation based on high survivability by means of delegated acts. Member States having a direct management interest submitted their joint recommendation. Measures provided in the latter and included in this proposal are based on the best available scientific advice and fulfil all the requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

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

of 22.6.2021

supplementing Regulation (EU) 2016/1139 concerning the specifications for the landing obligation as regards salmon in the Baltic Sea for the period 2021-2023

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007¹, and in particular Article 7(1)(a),

Whereas:

- (1) Regulation (EU) No 1380/2013² aims to eliminate progressively discards in all Union fisheries through the implementation of a landing obligation for catches of species subject to catch limits.
- (2) In accordance with Article 15(1)(a) of Regulation (EU) No 1380/2013, the landing obligation applies in fisheries for salmon in the Baltic Sea from 1 January 2015.
- (3) Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission, in the absence of multiannual plans established pursuant to Article 9 of that Regulation, to adopt discard plans specifying details of the implementation of the landing obligation for an initial period of three years that may be renewed for another period of three years. Those discard plans are to be adopted on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (4) Commission Delegated Regulation (EU) No 1396/2014³ established a discard plan concerning fisheries for salmon, herring, sprat and cod in the Baltic Sea. That discard plan included an exemption from the landing obligation notably for salmon on account of high survival rates demonstrated for this species as provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013. Regulation (EU) No 1396/2014 expired on 31 December 2017. The said exemption for Baltic salmon was renewed by Commission Delegated Regulation (EU) 2018/211⁴, which expired on 31 December 2020.
- (5) Regulation (EU) 2016/1139 establishes a multiannual plan for stocks fished in the Baltic Sea and provides for the details for the implementation of the landing obligation

¹ OJ L 191, 15.7.2016, p. 1.

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy of 11 December 2013, 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 (OJ L 354, 28.12.2013, p. 22).

³ Commission Delegated Regulation (EU) No 1396/2014 of 20 October 2014 establishing a discard plan in the Baltic Sea (OJ L 370, 30.12.2014, p. 40).

⁴ Commission Delegated Regulation (EU) 2018/211 of 21 November 2017 establishing a discard plan as regards salmon in the Baltic Sea (OJ L 41, 14.2.2018, p. 1).

of those stocks, including salmon. Article 7(1)(a) of that Regulation empowers the Commission to adopt delegated acts in order to supplement that Regulation by specifying details of the landing obligation relating to high survivability rates.

- (6) Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden have a direct fisheries management interest in the Baltic Sea. On 12 May 2020, those Member States submitted a joint recommendation⁵ to the Commission, after consulting the Baltic Sea Advisory Council. Scientific contributions were obtained from relevant scientific bodies. The joint recommendation was updated on 8 September 2020 and on 16 March 2021.
- (7) The amended joint recommendation suggests that the exemption from the landing obligation for salmon caught with certain passive gears provided for by Commission Delegated Regulation (EU) 2018/211 should continue to apply after 31 December 2020. It provides an incentive to use more selective and low impact gears when fishing for other species than salmon. Moreover, the exemption would potentially decrease by-catches of birds and mammals. In some regions it would also ease the quota management and allow the protection of wild salmon stocks by releasing wild salmon caught and only keeping reared salmon. However, creels/pots should no longer be exempted and regarding pontoon traps only those equipped with an attached knot-less bag (“Vittjanpåse”) should be included. Moreover, the joint recommendation suggests that the exemption should be limited to 8% of the annual catches from each Member State’s quota for salmon in order to further reduce any potential negative impact of that exemption on the stock. Finally, in the context of the consultation of the Fisheries and Aquaculture Expert Group it was pointed out that, as referred in the joint recommendation, the exemption should cover salmon caught in all fisheries using the relevant passive gears.
- (8) The Scientific, Technical and Economic Committee for Fisheries (STECF) reviewed the scientific evidence provided with the joint recommendation.⁶ STECF recalled its past assessment⁷ made for trap nets and fyke nets, while recalling that more information was needed to confirm the survivability assumptions made for creels/pots and pound nets. On that basis, the updated joint recommendation no longer includes creels/pots. Furthermore, the Member States explained that previously submitted data included pound nets, while pound nets were not explicitly mentioned in the relevant study, and that further studies were being undertaken. The Member States therefore committed to submitting more information regarding survival rates for salmon caught in pound nets before the expiry of this delegated act. Considering that STECF in its past assessment stated that pound nets operate in a similar way to trap nets and fyke nets and that the Member States have committed themselves in the joint recommendation to carrying out further research, the exemption should continue to apply. As regards pontoon traps, STECF noted that those with an attached knot-less bag had the potential to be gentler than those without such a bag. The results show that the survival rate of salmon caught by pontoon traps equipped with an attached knot-

⁵ "BALTFISH High Level Group Joint Recommendation on a derogation from the landing obligation in the Baltic Sea establishing a discard plan as regards salmon in the Baltic Sea (ICES Subdivisions 22-32)", transmitted on 12 May 2020. Updated versions of 8 September 2020 sent on 15 September 2020, and of 16 March 2021.

⁶ <https://stecf.jrc.ec.europa.eu/documents/43805/2694823/STECF+20-04+-+Eval+JRs+LO+and+TM+Reg.pdf/6176f9ad-0855-4985-b7de-64685862b6cb>.

⁷ <https://stecf.jrc.ec.europa.eu/documents/43805/812327/STECF+PLEN+14-02.pdf/e29cf181-8d63-40ef-8050-6d980b12528f?version=1.4&download=true>.

less bag was 52%, though the survival rate might potentially be significantly higher depending on the environmental circumstances. Further research projects are ongoing.

- (9) The measures suggested by the joint recommendation comply with Article 15(4)(b) of Regulation (EU) No 1380/2013 and can therefore be included in this Regulation in line with Article 18(3) of Regulation (EU) No 1380/2013 and Article 7(1)(a) of Regulation (EU) 2016/1139. However, based on STECF's assessment this exemption should be temporary only, and the Member States concerned should provide in due time before the expiry of this Regulation the relevant additional information and data suggested by STECF.
- (10) Given the above, the duration of this Regulation should be limited to three years, in order to ensure an updated assessment of the exemption and of the development of the fisheries concerned.
- (11) Since the exemption granted by Commission Delegated Regulation (EU) 2018/211 expired on 31 December 2020, in order to ensure legal continuity, this Regulation should apply with effect from 1 January 2021. For reasons of legal certainty and as a matter of urgency, this Regulation should enter into force on the day following that of its publication.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

This Regulation lays down rules and applies to the landing obligation relating to salmon caught in the Baltic Sea for the period 2021-2023.

Article 2
Definitions

For the purposes of this Regulation, the following definition shall apply:

'Baltic Sea' means ICES divisions IIIb, IIIc and III d, as specified in article 4(2)(b) of Regulation (EU) No 1380/2013.

Article 3
Exemption for species with high survival rates

1. The exemption for species with high survival rates referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to salmon caught with fyke nets, pound nets and all other types of trap nets, except pontoon traps without an attached knotless bag.
2. The exemption referred to in paragraph 1 shall be limited to not more than 8% of total annual catches of salmon from each Member State's quota of salmon.
3. Salmon caught in accordance with the exemption established in paragraph 1 shall be released immediately back into the sea.

Article 4
Final provisions

By 1 May 2023, Member States having a direct management interest shall submit to the Commission additional scientific information allowing an assessment of the

representativeness and quality of the discard survival estimate of salmon caught with pound nets and pontoon traps equipped with an attached knot-less bag, including information on the post-release mortality.

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 2021 until 31 December 2023. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22.6.2021

For the Commission
The President
Ursula VON DER LEYEN