



Brussels, 20.10.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 20.10.2014

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 'basic regulation' of the Common Fisheries Policy (CFP)¹ 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 2015 to small pelagic fisheries, large pelagic fisheries, industrial fisheries and all of the main fisheries in the Baltic Sea. 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 subject to catch limits caught in small and large pelagic fisheries and fisheries for industrial purposes in the North Western Waters (NWW), comprising ICES areas Vb, VI and VII as per Article 15(1)(a) 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).

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, France, Ireland, Spain, the Netherlands and the United Kingdom) who have a direct management interest in the relevant fisheries in this region ("the NWW Member States") and it covers certain pelagic fisheries in NWW which will from 2015 be subject to the landing obligation.

¹ http://ec.europa.eu/fisheries/reform/index_en.htm

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, Spain, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 10 July 2014. It contained the following elements:

- A description of the fisheries covered under the discard plan;
- A de minimis exemption for the industrial pelagic trawler fishery targeting blue whiting in ICES zone VII and processing that species on board to obtain surimi base;
- A de minimis exemption for the albacore tuna pelagic trawl fishery in ICES subarea VII;
- A de minimis exemption for mackerel, horse mackerel, herring and whiting in the pelagic trawl fishery by vessels up to 25 metres in length in ICES division VII d;
- A de minimis exemption for boarfish in the pelagic freezer trawler fishery targeting horse mackerel in ICES subareas VI and VII.

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 Pelagic AC (PEL AC) and the North Western Waters AC (NWW AC), which are 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.

Direct consultations between the ACs and experts and fisheries managers from the national administrations of the NWW Member States were held on 19 February, 8 April, 20 May and 5 June 2014. Representatives from the Commission also participated. At these four separate meetings the ACs (including the Long Distance AC) were afforded the opportunity to present and discuss their recommendations for implementation of the landing obligation and also to discuss with the NWW Member States.

There was large degree of consensus between two of the ACs and the NWW Member States. The NWW AC supported the de minimis exemptions proposed in the JR. The PEL AC recommended other measures (interspecies flexibility, enforcement measures, “force majeure” cases and technical measures) which were deemed outside the scope of the JR by NWW Member States.

The NWW Member States have also taken note of the advice from the Scientific Technical and Economic Committee for Fisheries (STECF) who have provided guidance to NWW Member States on all of the elements of discard plans at specially convened Expert Working Group meetings (EWG 13-23², EWG 13-17³ and EWG 14-06⁴) held in September 2013, December 2013 and February 2014. Invited experts along with observers from the ACs and MS participated in these meetings. In addition the NWW Member States have also used the

² http://stecf.jrc.ec.europa.eu/documents/43805/610582/2013-11_STECF+13-23+-+Landing+obligation+in+EU+Fisheries-part1_JRC86112.pdf

³ http://stecf.jrc.ec.europa.eu/documents/43805/633247/2014-02_STECF+14-01+-+Landing+obligations+in+EU+fisheries+-+p2_JRC88869.pdf

⁴ http://stecf.jrc.ec.europa.eu/documents/43805/675595/2014-04_STECF+14-06+-+Landing+obligations+in+EU+fisheries_p3_JRC89785.pdf

advice provided by an ICES Workshop on Methods for Estimating Discard Survival⁵ (WKMEDS) that met in February 2014.

Furthermore, NWW Member States consulted the Scheveningen Group (Member States in North Sea fisheries) in May 2014 so as to aim for a consistent approach across the North Sea and the NWW.

The main elements of the final joint recommendations submitted to the Commission by the Member States relating to the application of the landing obligation to fisheries involved and the de minimis exemptions were evaluated by STECF during its plenary meeting of 7-14 July 2014⁶.

On the specific elements STECF concluded that in general most of the information requirements proposed by EWG 14-01 to support the proposed exemptions were given in the JR.

For the proposed de minimis exemption for the blue whiting pelagic trawl fishery with on board processing of the catches that produce surimi base in ICES areas Vb, VI and VII, STECF concluded that the exemption is sufficiently well argued with respect to the difficulty of improving the selectivity and with respect to the additional handling costs that the vessel is likely to incur.

As regards the de minimis exemption for the albacore tuna pelagic pair trawlers in ICES subarea VII, the exemption appears justified insofar as it is based on the disproportionate cost of separate handling of unwanted catches, in this case damaged fish (in particular separate handling on board and when landing). That need appears to exist for fish of all sizes. Since the STECF indicated the risk of so-called highgrading, the regulation clarifies that the exemption is without prejudice to the prohibition of highgrading (Article 19(a) of Regulation 850/1998).

The proposed de minimis exemption for mackerel, horse mackerel, herring and whiting in the pelagic trawl fishery by vessels up to 25 metres in length in ICES division VIIId is based on the difficulty to increase selectivity, and on disproportionate costs of handling and storage. STECF argued that vessels deploying both bottom trawls and midwater trawls within the same fishing trip could be considered active in both pelagic and demersal fisheries, for which the landing obligation will apply as from 1 January 2016 only. The recommendation therefore clarifies that for the purpose of applying the landing obligation, this fleet segment should be considered pelagic. For the proposed de minimis exemption for boarfish in the pelagic freezer trawler fishery targeting horse mackerel in ICES subareas VI and VII, STECF concluded that the exemption is sufficiently well argued with respect to the difficulty of improving the selectivity, on the basis of qualitative assessments, while acknowledging that no quantitative scientific evidence exists to support the exemption.

The JR also 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.

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<http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2014/WKMEDS/WKMEDS%20Report%202014.pdf>

⁶

http://stecf.jrc.ec.europa.eu/documents/43805/812327/2014-07_STECF+PLEN+14-02_Final+Report_JRCxxx.pdf

Subsequently, the chair of the NWW group of Member States sent a supplement to the original joint recommendation, proposing to include two additional exemptions into the discard plan for the NWW. A first exemption from the landing obligation is for herring and mackerel purse seine fisheries in area VI, based on high survival. This exemption was included in the joint recommendation for a discard plan for the North Sea (to cover the entire North East Atlantic), and the scientific justification was accepted by the STECF. The STECF concluded that, assuming the results of survival studies are representative of survival rates in commercial fishing operations, the proportion of slipped fish surviving would likely be greater than 70%. However, they advised that further work to confirm that the experimental conditions are representative of commercial fishing operations should be undertaken. The second proposed exemption included in the supplement is an exemption on grounds of high survivability for purse seine fisheries in areas VIIe and VIIh (Iroise Sea). However, this exemption is outside the scope of this delegated act, as it refers to a fishery which targets species not under fishing opportunities for which the landing obligation would not enter into force on 1 January 2015. That exemption could be covered by a future discard plan, provided it is in line with the criteria under Article 15(4)(b) of Regulation (EU) 1380/2013.

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.

Legal basis

Article 15(6) and Articles 18(1) and (3) of Regulation of the European Parliament and of the Council (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 Art 18(5) of Regulation (EU) No 1380/2013.

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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/EC⁷, 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 Pelagic Advisory Council, the Long-Distance Advisory Council and the North Western Waters Advisory Council. Scientific contribution was obtained from relevant scientific bodies. 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.
- (4) As regards the North Western Waters, according to Article 15(1)(a) of Regulation (EU) No 1380/2013 the landing obligation should apply to all vessels engaged in small pelagic and large pelagic fisheries in relation to species caught in those fisheries which are subject to catch limits at the latest from 1 January 2015.
- (5) In accordance with the joint recommendation, the discard plan should cover certain small pelagic and large pelagic fisheries, namely fisheries for mackerel, herring, horse mackerel, blue whiting, boarfish, greater silver smelt, albacore tuna and sprat in ICES zones Vb, VI and VII, from 1 January 2015.
- (6) The joint recommendation includes an exemption from the landing obligation for mackerel and herring caught with purse seines under certain conditions based on scientific evidence of high survivability in accordance with Article 15(4)(b) of

⁷ OJ L 354, 28.01.2013, p. 22.

Regulation (EU) No 1380/2013. Scientific evidence supporting high survivability was provided by the Scheveningen Group in the joint recommendation for a discard plan for the North Sea, which made reference to a specific scientific study on fish survival from slipping in purse seine fisheries. The study found that survival rates depend on the crowding time and the density of fish within the net, which are typically limited in these fisheries. This information was reviewed by the STECF. STECF concluded that, assuming the results of the survival study are representative of survival rates under commercial fishing operations, the proportion of slipped mackerel surviving would likely be around 70%. The densities would also be lower than the density where mortality of herring was observed to increase. A prohibition of the release of mackerel and herring before the net is fully taken on board a fishing vessel, resulting in the loss of dead or dying fish, is set out in Article 19b(2) of the Regulation (EU) No 850/1998. This survivability exemption does not affect the prohibition in force, since the release of the fish will occur at a stage of the fishing operation where the fish would have a high survival rate after release. Therefore this exemption should be included in this Regulation.

- (7) The joint recommendation includes four *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 concluded that the joint recommendations contained reasoned arguments related to the increase of 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(5) of Regulation (EU) No 1380/2013.
- (8) The *de minimis* exemption for blue whiting (*Micromesistius poutassou*), up to a maximum of 7% in 2015 and 2016, and 6% in 2017, of the total annual catches in the industrial pelagic trawler fishery targeting that species in ICES zone VIII and processing that species on board to obtain surimi base, is based on the fact that increased selectivity cannot be achieved, and that costs of handling the unwanted catch is disproportionate. STECF concludes that the exemption is sufficiently well argued. Therefore, the exemption concerned should be included in this Regulation.
- (9) The *de minimis* exemption for up to a maximum of 7% in 2015 and 2016, and 6% in 2017 for albacore tuna (*Thunnus alalunga*) of the total annual catches in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES zone VII, is based on the disproportionate costs of handling the unwanted catch. These are costs of storage and handling at sea and on shore. STECF in its evaluation mentioned the risk of highgrading. However, this exemption is without prejudice to Article 19a of Regulation 850/1998⁸. Therefore, the exemption concerned should be included in this Regulation.
- (10) To avoid disproportionate costs of handling unwanted catches, like storing, labour, icing, and taking into account the difficulty to increase selectivity in the pelagic fishery targeting mackerel, horse mackerel and herring in ICES division VIIId, the joint recommendation includes a *de minimis* exemption from the landing obligation for this mixed fishery . This exemption is based on scientific evidence provided by the

⁸ 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).

Member States involved in the joint recommendation and was reviewed by the STECF. STECF found that the JR presents reasoned qualitative arguments in support of this exemption on the grounds of disproportionate costs of handling unwanted catches. Therefore, this exemption should be included in this Regulation.

- (11) The *de minimis* exemption of up to a maximum of 1% in 2015 and 0.75% in 2016 of the TAC of boarfish (*Caproidae*) in the fishery targeting horse mackerel (*Trachurus spp.*) with pelagic freezer trawlers using midwater trawls in ICES zones VI and VII is based on the difficulty to increase selectivity, and the disproportionate costs of handling (separating wanted from unwanted catches). STECF concludes that the exemption is supported by reasoned qualitative arguments on the difficulty of improving selectivity in this fishery and reasonable arguments regarding additional handling costs. Therefore, the exemption concerned should be included in this Regulation.
- (12) In order to ensure appropriate control, specific requirements for documentation of catches under the exemption based on survivability covered by this Regulation should be laid down.
- (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. It should apply from 1 January 2015 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
Subject matter

This Regulation specifies the details for implementing the landing obligation, provided for in Article 15(1) of Regulation (EU) No 1380/2013, from 1 January 2015 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

- (1) By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to catches of mackerel and herring in the purse seine fisheries in ICES area VI, if all of the following conditions are met:
 - the catch is released before a certain percentage (set out in paragraphs 2 and 3 below) of the purse seine is closed ("the point of retrieval").
 - the purse seine gear are fitted with visible buoys clearly marking the limit for the point of retrieval,
 - the vessel and the purse seine gear is equipped with an electronic recording and documenting system when, where and extent to which the purse seine has been hauled for all fishing operations.
- (2) The point of retrieval shall be 80% closure of the purse seine in fisheries for mackerel and it shall be 90% closure of the purse seine in fisheries for herring.

- (3) If the surrounded school consists of a mixture of both species the point of retrieval shall be 80% closure of the purse seine.
- (4) It shall be prohibited to release catches of mackerel and herring after the point of retrieval.
- (5) The surrounded school of fish shall be sampled before its release to estimate the species composition, the fish size composition and the quantity.

Article 3

De minimis exemptions

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

- (a) for blue whiting (*Micromesistius poutassou*), up to a maximum of 7% in 2015 and 2016, and 6% in 2017, of the total annual catches in the industrial pelagic trawler fishery targeting that species in ICES zones Vb, VI and VII and processing that species on board to obtain surimi base;
- (b) up to a maximum of 7% in 2015 and 2016, and 6% in 2017 for albacore tuna (*Thunnus alalunga*) of the total annual catches in the albacore tuna directed fisheries using midwater pair trawls (PTM) in ICES sea areas VII;
- (c) up to a maximum of 3% in 2015 and 2% for 2016 of the total annual catches of mackerel (*Scomber scombrus*), horse mackerel (*Trachurus spp.*), herring (*Clupea harengus*) and whiting (*Merlangius merlangus*) in the pelagic fishery with pelagic trawlers up to 25 meters in length overall, using mid-water trawl (OTM), targeting mackerel, horse mackerel and herring in ICES zone VIIId;
- (d) up to a maximum of 1% in 2015 and 0.75% in 2016 of the TAC of boarfish (*Caproidae*) in the fishery targeting horse mackerel (*Trachurus spp.*) with pelagic freezer trawlers using midwater trawls in ICES zones VI and VII.

Article 4

Documentation of catches

Quantities of fish released under the exemption provided for in Article 2 and the results of the sampling required under Article 2(5) shall be reported in the logbook.

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 2015 until 31 December 2017.

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

Done at Brussels, 20.10.2014

For the Commission
The President
José Manuel BARROSO