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

of 12.10.2016

establishing a discard plan for certain demersal fisheries in North-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 applies 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 based on 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 North-Western waters (NWW) 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, Ireland, Spain, France, the Netherlands and the United Kingdom) 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 NWW Member States agreed that the chair of the group, France, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 3 June 2016. 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 NWW Member States having a direct management interest, and taking account of the views of the North Western Waters Advisory Council, 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 as a result of meetings of the technical group and in meetings of the Directors' Group.

Direct consultations between the Advisory Council and experts and fisheries managers from the national administrations of the NWW Member States were held in the first half of 2016. Representatives from the Commission and the NWW Member States also participated. The North Western Waters Advisory Council was given the opportunity to present and discuss their recommendations for implementation of the landing obligation during meetings of the technical and Directors' groups.

Furthermore, NWW Member States aimed for a consistent approach across the North Sea and the NWW.

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 Scientific, Technical and Economic Committee for Fisheries (STECF) Expert Working Group and during the STECF plenary meeting of 4-8 July 2016¹.

Existing exemptions which were favourably assessed last year and for which there is no change in application were continued. This applies to the survival exemption for nephrops (caught in pots, traps and creels in VI and VII), and the *de minimis* exemptions for sole and nephrops. In other instances, the STECF has noted that no complete set of information has yet been submitted for any of the *de minimis* requests. The STECF has provided further guidance on future submission of supporting information. No information has yet been provided on the use of *de minimis* in 2016 in demersal fisheries by Member States.

The STECF noted that requests continue to be presented on a national basis, rather than as regional requests; for example, the three *de minimis* exemptions for whiting, which were provisionally accepted last year, are provided with information only for particular fleet segments and this information does not automatically apply to other segments which would also benefit from the exemption.

Regarding the survivability exemption for sole in inshore fisheries, the STECF has evaluated the basis for this exemption and concluded that the exemption could be provided for fleets which meet the operating conditions examined in the trial. The exemption is to be supported by further scientific trials.

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.

¹ https://stecf.jrc.ec.europa.eu/documents/43805/1471816/2016-07_STECF+16-10+-+Evaluation+of+LO+joint+recommendations_JRCxxx.pdf

The JR also mentioned the exemption for fish damaged by predators. 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.

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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/EC², 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) By Delegated Regulation (EU) 2015/2438³, the Commission established a discard plan for certain demersal fisheries in North-Western waters for the period 2016-2018 following a joint recommendation submitted by the Member States in 2015.
- (4) Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom have a direct fisheries management interest in the North-Western waters. On 3 June 2016, those Member States submitted a new joint recommendation to the Commission after consultation of the North Western Waters Advisory Council. Scientific contributions were 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 18(3) of Regulation (EU) No 1380/2013 and may be included in this Regulation.
- (5) As regards the North-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 which are subject to catch limits at the latest from 1 January 2016. The joint recommendation established the fleets that would be subject to the landing obligation in the mixed fisheries for cod, haddock, whiting and saithe; in the fisheries for Norway lobster; in the mixed fishery for common sole and plaice; in hake and pollack fisheries.

² OJ L 354, 28.01.2013, p. 22.

³ Commission Delegated Regulation (EU) 2015/2438 of 12 October 2015 establishing a discard plan for certain demersal fisheries in north-western waters (OJ L 336, 23.12.2015, p. 29).

- (6) Delegated Regulation (EU) No 2015/2438 established provisions for introduction of the landing obligation for certain demersal fisheries in North-Western waters for the period 2016-2018.
- (7) In accordance with the new joint recommendation submitted by Member States in 2016, the discard plan should cover from 2017 further species which define the highly mixed cod, haddock, whiting and saithe fishery, Norway lobster fishery, mixed common sole and plaice fishery, hake and pollack fisheries. By-catch species should also be covered in certain fisheries.
- (8) The joint recommendation suggested that an exemption from the landing obligation be applied to Norway lobster caught by pots, traps or creels in ICES division VI and subarea VII, for which scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem. The STECF concluded that the exemption is grounded. Therefore, this exemption should continue to be included in this Regulation.
- (9) The joint recommendation suggested that an exemption from the landing obligation be applied to catches of sole below the minimum conservation reference size caught by 80-99mm otter trawl gears in ICES division VIId within six nautical miles from the coast and outside identified nurseries areas in the fishing operations meeting certain specific conditions. The scientific evidence demonstrates high survival rates, taking into account the characteristics of gear and of the ecosystem. The STECF noted that survival is dependent on a number of factors and recommended caution in extending the trial results to other fisheries and that further relevant trials should be undertaken to support this request. Therefore, this exemption should be included in this Regulation for 2017 under the condition that the fleet using this exemption operates under comparable conditions to those of the trial, and that Member States concerned undertake additional trials. The results of these additional trials should be assessed by the STECF in 2017.
- (10) The joint recommendation includes seven *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 in general concluded that the joint recommendation contained reasoned arguments that further improvements in selectivity are difficult to achieve and/or regarding disproportionate 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 include these *de minimis* exemptions in this Regulation 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.
- (11) The *de minimis* exemption for common sole, up to a maximum of 3% in 2017-2018 of the total annual catches of this species by vessels using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption is well defined and therefore, this exemption should be included in this Regulation.
- (12) The *de minimis* exemption for whiting, up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land whiting and using bottom trawls and seines of less than 100mm and pelagic trawls to catch whiting in ICES divisions VIId and VIIe, is based on the fact that increases in selectivity are very difficult to achieve.

- (13) The *de minimis* exemption for whiting, up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land whiting and using bottom trawls and seines of not less than 100mm to catch whiting in ICES divisions VIIb – VIIj, is based on the fact that increases in selectivity are very difficult to achieve.
- (14) The *de minimis* exemption for whiting, up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land whiting and using bottom trawls and seines of less than 100mm to catch whiting in ICES subarea VII (excluding VIIa, VIId and VIIe), is based on the fact that increases in selectivity are very difficult to achieve.
- (15) As regards the three *de minimis* exemptions for whiting, Delegated Regulation (EU) No 2015/2438 required Member States concerned to submit to the Commission additional scientific information supporting the exemption. The STECF commented that, while complete evidence is still required, the additional information addresses some concerns of the STECF. The STECF highlighted the need for a more coherent approach to this stock. Based on the scientific evidence reviewed by STECF and considering that the further evidence supporting the exemption has improved, this exemption can be continued and should be included in this Regulation.
- (16) The *de minimis* exemption for Norway lobster, up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES subarea VII, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption was grounded. Therefore, this exemption should be included in this Regulation.
- (17) The *de minimis* exemption for Norway lobster, up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of this species by vessels obliged to land Norway lobster in ICES subarea VI, is based on the fact that increases in selectivity are very difficult to achieve and there is supporting quantitative information on disproportionate costs of handling unwanted catches. STECF concluded that the exemption was grounded. Therefore, this exemption should be included in this Regulation.
- (18) The *de minimis* exemption for common sole, up to a maximum of 3% in 2017 and 2018 of the total annual catches of this species by vessels using TBB gear with mesh size of 80-119 mm with increased selectivity in ICES divisions VIId, VIIe, VIIf, VIIf and VIIh, is based on the fact that increases in selectivity are very difficult to achieve. STECF noted that the exemption is to compensate for the use of a more selective gear and the *de minimis* exemption requested is to cover residual discards. Therefore, this exemption should be included in this Regulation.
- (19) Delegated Regulation (EU) 2015/2438 should therefore be repealed and replaced by a new Regulation.
- (20) 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 2017,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

The landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply in ICES zones V (excluding Va and only Union waters of Vb), VI and VII to 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:
 - (a) to Norway lobster (*Nephrops norvegicus*) caught in pots, traps or creels (Gear codes⁴ FPO and FIX) in ICES subareas VI and VII;
 - (b) in 2017 to catches of common sole (*Solea solea*) below the minimum conservation reference size caught with otter trawl gears (Gear codes OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with cod end mesh size of 80-99mm in ICES division VIIId within six nautical miles of the coast and outside identified nursery areas in the fishing operations meeting the following conditions: vessels with the maximum length of 10 meters, maximum engine power of 180 kW, when fishing in waters with the depth of 15 meters or less and with limited tow durations of no more than 1:30 hours. Such catches of common sole shall be released immediately.
2. Before 1 May 2017, Member States having a direct management interest in the North-western waters shall submit to the Commission any additional scientific information supporting the exemption laid down in paragraph 1(b). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess that information before 1 September 2017.

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 whiting (*Merlangius merlangus*), up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of less than 100 mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV OT, PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES divisions VIIId and VIIe.
 - (b) for whiting (*Merlangius merlangus*), up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of not less than 100mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV OT,

⁴ Gear codes used in this Regulation are defined by the Food and Agriculture Organisation of the United Nations.

PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES divisions VIIb – VIIj.

- (c) for whiting (*Merlangius merlangus*), up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of less than 100 mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV OT, PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES subarea VII, except divisions VIIa, VIId and VIIe.
- (d) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of that species by vessels obliged to land Norway lobster in ICES subarea VII;
- (e) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 7% in 2017 and up to a maximum of 6% in 2018 of the total annual catches of that species by vessels obliged to land Norway lobster in ICES subarea VI;
- (f) for common sole (*Solea solea*), up to a maximum of 3% in 2017 and 2018 of the total annual catches of that species by vessels using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg;
- (g) for common sole (*Solea solea*), up to a maximum of 3% in 2017 and 2018 of the total annual catches of that species by vessels obliged to land common sole and using TBB gear with mesh size of 80-119 mm with increased selectivity, such as a large mesh extension, in ICES divisions VIId, VIIe, VIIf, VIIg and VIIh.

Article 4

Vessels subject to the landing obligation

1. Member States shall determine, in accordance with the criteria laid down in the Annex to this Regulation, the vessels subject to the landing obligation in each particular fishery.

Vessels that were subject to the landing obligation in certain fisheries in 2016 shall remain subject to the landing obligation in those fisheries.

2. Before 31 December 2016, 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 to paragraph 1 for each particular fishery set out in the Annex. They shall keep those lists updated.

Article 5

Repeal

Delegated Regulation (EU) 2015/2438 is repealed.

Article 6

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 2017 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, 12.10.2016

For the Commission
The President
Jean-Claude JUNCKER