



Council of the
European Union

Brussels, 23 October 2017
(OR. en)

13591/17

PECHE 399
DELACT 202

COVER NOTE

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 20 October 2017 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |

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| No. Cion doc.: | C(2017) 6990 final |
| Subject: | COMMISSION DELEGATED REGULATION (EU) .../... of 20.10.2017 establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018 |

Delegations will find attached document C(2017) 6990 final.

Encl.: C(2017) 6990 final



Brussels, 20.10.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 20.10.2017

establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018

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.

Delegated Regulation (EU) 2015/2438 established provisions for introduction of the landing obligation for certain demersal fisheries in North Western waters for the period 2016-2018 and was repealed and replaced by the Delegated Regulation (EU) 2016/2375. The current delegated act will repeal and replace the Delegated Regulation (EU) 2016/2375.

This delegated act covers species which define demersal and deep sea fisheries in the North-Western waters (NWW) as set out in Article 15(l)(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, Belgium, should submit to the Commission a JR. Accordingly, the

JR was submitted to the Commission services on 31 May 2017. 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 2017. 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 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 10-14 July 2017¹.

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 common sole (undersized only) caught with trawl gears in area VIId, and the *de minimis* exemptions for sole, nephrops and whiting.

As regards the high survivability of common sole (undersized only) caught with trawl gears in ICES area VIId, the STECF has noted that the nursery areas referred to in the Regulation should be defined and the information on the location of the nursery areas should be provided.

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.

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.

¹ [2017-07_STECF PLEN 17-02_JRCxxx.pdf](#)

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.

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

of 20.10.2017

establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018

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) In order to implement the landing obligation, 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) Commission Delegated Regulation (EU) 2016/2375³, established a discard plan for certain demersal fisheries in North-Western waters for the period 2016-2018, following a joint recommendation submitted by Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom in 2016.
- (4) Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom have a direct fisheries management interest in North-Western waters. After consulting the North Western Waters Advisory Council, those Member States submitted on 31 May 2017 a new joint recommendation to the Commission concerning a discard plan for certain demersal and deep sea fisheries in North-Western Waters for the year 2018. Scientific contribution was obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF)⁴. The measures suggested by the new joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013 and may therefore be included in this Regulation.

² OJ L 352, 12.10.2016, p. 39.

³ Commission Delegated Regulation (EU) 2015/2438 of 12 October 2015 established a discard plan for certain demersal fisheries in north-western waters for the period 2016-2018 (OJ L 336, 23.12.2015, p. 29), and was repealed and replaced by the Commission Delegated Regulation (EU) 2016/2375 of 12 October 2016 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2016-2018 (OJ L 352, 23.12.2015, p. 39)

⁴ [2017-07_STECF_PLEN_17-02_JRCxxx.pdf](#)

- (5) According to Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies in North-Western waters, at the latest from 1 January 2016, to species that define the fisheries which are subject to catch limits. The new joint recommendation specifies the fleets which are to comply with 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 and in the fisheries for hake, megrim and pollack.
- (6) In accordance with the new joint recommendation, the discard plan for the year 2018 should cover, in addition to the fisheries specified in Delegated Regulation (EU) 2016/2375, (i.e. the highly mixed cod, haddock, whiting and saithe fishery, Norway lobster fishery, mixed common sole and plaice fishery, hake, megrim and pollack fisheries) the saithe fisheries in ICES divisions VI and Vb, and VII. By-catch species should also be covered in certain fisheries.
- (7) The new joint recommendation further suggests that the landing obligation be applied as from 2018 to deep sea fisheries using trawls and seines to catch black scabbard fish, blue ling and grenadiers in ICES subarea VI and ICES division Vb.
- (8) The new joint recommendation suggests, for the year 2018, a survivability exemption, as referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013, for Norway lobster caught by pots, traps or creels in ICES division VI and subarea VII, 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, that exemption should be included in the discard plan for 2018.
- (9) The new joint recommendation suggests, for the year 2018, a survivability exemption, as referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013, for common sole below the minimum conservation reference size caught by 80-99 mm otter trawl gears in ICES division VIIId within six nautical miles from the coast and outside identified nurseries areas. The STECF has noted that the nursery areas referred to in the Regulation should be defined. Therefore, that exemption should be included in the discard plan for 2018 under the condition that Member States concerned undertake additional trials and provide for the information on the location of the nursery areas.
- (10) The new joint recommendation suggests, for the year 2018, 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 concluded that the joint recommendation contained reasoned arguments that further improvements in the 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 those *de minimis* exemptions in the discard plan for 2018 in accordance with the percentages 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 suggested for whiting, up to a maximum of 6% of the total annual catches of that species by vessels using bottom trawls and seines of less than 100mm and pelagic trawls to catch whiting in ICES divisions VIIId and VIIe, is based on the fact that increases in selectivity are very difficult to achieve.
- (12) The *de minimis* exemption suggested for whiting, up to a maximum of 6% of the total annual catches of that species by vessels 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.

- (13) The *de minimis* exemption suggested for whiting, up to a maximum of 6% in 2018 of the total annual catches of this species by vessels 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.
- (14) As regards those three *de minimis* exemptions suggested for whiting, Delegated Regulation (EU) No 2016/2375 required Member States concerned to submit to the Commission additional scientific information supporting the exemptions. The STECF commented that, while complete evidence is still required, the additional information submitted 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 STEFC and considering that the evidence supporting the exemption has improved, that exemption should be included in the discard plan for 2018.
- (15) The *de minimis* exemption suggested for Norway lobster, up to a maximum of 6% of the total annual catches of that species by vessels fishing for 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 is grounded. Therefore, that exemption should be included in the discard plan for 2018.
- (16) The *de minimis* exemption suggested for Norway lobster, up to a maximum of 2 % of the total annual catches of that species by vessels fishing for 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 is grounded. Therefore, that exemption should be included in the discard plan for 2018.
- (17) The *de minimis* exemption suggested for common sole, up to a maximum 3% of the total annual catches of this species by vessels using TBB gear with mesh size of 80-199mm with increased selectivity in ICES divisions VIIId, VIIe, VIIIf, VIIIg and VIIH, is based on the fact that increases in selectivity are very difficult to achieve. STECF noted that the exemption is intended to compensate for the use of a more selective gear and to cover residual discards. Therefore, that exemption should be included in the discard plan for 2018.
- (18) The *de minimis* exemption suggested for common sole, up to a maximum of 3% of the total annual catches of that species by vessels using trammel and gill nets to catch common sole in ICES divisions VIIId, VIIe, VIIIf and VIIg, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption is well defined. Therefore, that exemption should be included in the discard plan for 2018.
- (19) The scope of certain provisions of Delegated Regulation (EU) 2016/2375 is limited to the year 2017. That Regulation should therefore be repealed and replaced by a new Regulation with effect from 1 January 2018.
- (20) As the measures provided for in this Regulation have a direct impact on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force immediately after its publication. It should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In ICES zones V (excluding Va and only Union waters of Vb), VI and VII, the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal fisheries and deep sea fisheries in accordance with this Regulation.

Article 2

Definitions

'Flemish Panel' means the last tapered netting section of a beam trawl, the anterior of which is directly attached to the cod-end. The upper and lower netting sections of the panel must be constructed of at least 120mm mesh as measured between the knots and the panel must have a stretched length of at least 3m.

Article 3

Species subject to the landing obligation

The landing obligation shall apply in each fishery as set out in the Annex, subject to the exemptions set out in Articles 4 and 5.

Article 4

Survivability exemption

1. The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply:
 - (a) to Norway lobster (*Nephrops norvegicus*) caught in pots, traps or creels (Gear codes⁵ FPO and FIX) in ICES subareas VI and VII;
 - (b) 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 VIId 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 221 kW, when fishing in waters with the depth of 30 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 2018, 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 2018.

⁵ Gear codes used in this Regulation are defined by the Food and Agriculture Organisation of the United Nations.

Article 5
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 6% 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 6% 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, 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 6% in 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 6% of the total annual catches of that species by vessels obliged to land Norway lobster and fishing for Norway lobster in ICES subarea VII;
 - (e) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 2% of the total annual catches of that species by vessels obliged to land Norway lobster and fishing for Norway lobster in ICES subarea VI;
 - (f) for common sole (*Solea solea*), up to a maximum of 3% of the total annual catches of that species by vessels obliged to land common sole and using trammel and gill nets to catch common sole in ICES divisions VIIId, VIIe, VIIf and VIIg;
 - (g) for common sole (*Solea solea*), up to a maximum of 3% of the total annual catches of that species by vessels obliged to land common sole and using TBB gear with mesh size of 80-199mm with increased selectivity, such as a large mesh extension, to catch common sole in ICES divisions VIIId, VIIe, VIIf, VIIg and VIIh.

Article 6
Vessels subject to the landing obligation

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

Vessels that were subject to the landing obligation in certain fisheries in 2017 shall remain subject to the landing obligation in those fisheries.
2. Before 31 December 2017, 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 7

Repeal

Delegated Regulation (EU) 2016/2375 is repealed.

Article 8

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 2018 until 31 December 2018.

However, Article 6 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, 20.10.2017

For the Commission

The President

Jean-Claude JUNCKER