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

of 21.11.2017

**amending Delegated Regulation (EU) No 1394/2014 establishing a discard plan for
certain pelagic fisheries in South-Western waters**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Common Fisheries Policy (CFP) is the progressive elimination of discards in all EU fisheries. Designed to make better use of the available resources, it responds to public pressure to end the practice of throwing marketable fish back into the sea. The CFP also foresees 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 basin.

The landing obligation in the South-Western Waters (SWW) applies as of 1st January 2015. So far no multiannual plans nor management plans for pelagic species under the framework of the CFP have been adopted. Commission Delegated Regulation (EU) No 1394/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in South-Western Waters¹ expires as of 31 December 2017. However, Regulation (EU) No 1380/2013 (the Basic Regulation) on the CFP² foresees the possibility to adopt for a period of no more than 3 years and renewable once a specific discard plan to support the implementation of a landing obligation. This proposal specifies the details for the implementation of the landing obligation in the SWW as circumscribed in Article 15 (6) of the Basic Regulation, namely:

- provisions for *de minimis* exemptions.

In accordance with Article 18 of the Basic Regulation, the proposal is based on the joint recommendation (JR) developed and submitted to the Commission by Member States concerned, namely, Belgium, France, the Netherlands, Portugal and Spain.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach the SWW High-Level Group (Belgium, France, the Netherlands, Portugal and Spain) 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 2 June 2017. In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the SWW Member States having a direct management interest, and taking account of the views of the South Western Waters Advisory Council and of the Pelagic Advisory Council, which are concerned by the fisheries covered by the JR.

The JR was developed by the Member States concerned, cooperating in a regional setup, working together on a technical level under the guidance of a high level group of fisheries Directors and in close consultation with interested parties.

Elements related to the implementation of the landing obligation and specific provisions included in the joint recommendations for the SWW discard plan have been discussed and reviewed by the relevant Scientific Technical and Economic Committee for Fisheries (STECF) Expert Working Group and during the STECF plenary meetings of 7-14 July 2014³ and 4-8 July 2016⁴ and revised at STECF plenary of 10-14 July 2017⁵.

¹ OJ L 370, 30.12.2014, p. 31.

² OJ L 354, 28.12.2013, p.22.

³ http://stecf.jrc.ec.europa.eu/documents/43805/675595/2014-04_STECF+14-06+-+Landing+obligations+in+EU+fisheries_p3_JRC89785.pdf

⁴ https://stecf.jrc.ec.europa.eu/documents/43805/1471816/2016-07_STECF+16-10+-+Evaluation+of+LO+joint+recommendations_JRCxxx.pdf

⁵ https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02_JRCxxx.pdf

The scientific evidence supporting high survivability was reviewed by the STECF (at its plenary meeting in 2014). STECF concluded that, assuming the results of the survival study are representative of survival rates under commercial fishing operations, the proportion of slipped fish surviving would likely be greater than 50 %.

A minimum conservation reference size (MCRS) of 9 cm for two fisheries for anchovy with the aim of ensuring the protection of juveniles of that species was evaluated by STECF in 2014. STECF concluded that it would not impact negatively on juvenile anchovy and it would increase the level of catches that could be sold for human consumption without increasing fishing mortality, and that it may have benefits for control and enforcement. Therefore, the MCRS for anchovy in the fisheries concerned was fixed at 9 cm.

The four *de minimis* exemptions were reviewed by STECF in 2014, 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, the *de minimis* exemptions were established 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.

In 2016 STECF has concluded that reducing the minimum conservation reference size for horse mackerel as suggested by the joint recommendation is associated with a low risk of changing the long-established exploitation pattern the fisheries concerned. That exploitation pattern combined with moderate exploitation rates does not seem to be detrimental to the dynamics of the relevant stocks.

In 2017 STECF has noted that no new information was provided in terms of *de minimis* volumes already recorded.

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 and it fixes the level of *de minimis* exemptions applicable to avoid disproportionate costs of handling unwanted catches.

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/EC¹, and in particular Article 15(6) and Article 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 and renewable once on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Commission Delegated Regulation (EU) No 1394/2014² established a discard plan for certain pelagic fisheries in South-Western waters in order to facilitate the implementation of the landing obligation by means of certain flexibility mechanisms.
- (4) In accordance with Article 15(5)(c)(ii), that discard plan provided i.a. for certain exemptions from the obligation to land all catches, on account of disproportionate costs of handling unwanted catches for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage of total annual catch of that gear ('de minimis exemptions').
- (5) According to Article 5 of Delegated Regulation (EU) No 1394/2014, the discard plan expires on 31 December 2017.
- (6) Belgium, France, the Netherlands, Portugal and Spain have a direct fisheries management interest in the South-Western waters. After having consulted the South Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 2 June 2017 a joint recommendation to the Commission.
- (7) The joint recommendation suggested to extend the duration of *de minimis* exemptions established in the discard plan at the following revised discard levels:

¹ OJ L 354, 28.01.2013, p. 22.

² Commission Delegated Regulation (EU) No 1394/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in south-western waters (OJ L 370, 30.12.2014, p. 31).

- up to a maximum of 6 % in 2018, and 5 % in 2019 and 2020 of the total annual catches blue whiting, caught in the industrial pelagic trawler fishery in ICES division VIII;
 - up to a maximum of 6 % in 2018, and 5 % in 2019 and 2020 of the total annual catches of albacore tuna, caught in the large pelagic fisheries using midwater pair trawlers in ICES division VIII;
 - up to a maximum of 4 % in 2018, 2019 and 2020 of the total annual catches of anchovy, mackerel and horse mackerel, caught in pelagic trawl fishery in ICES division VIII;
 - up to a maximum of 4 % in 2018, 2019 and 2020 of the total annual catches of horse mackerel, jack mackerel and mackerel, and 1 % in 2018, 2019 and 2020 of the total annual catches of anchovy, caught in the purse sein fishery in ICES divisions VIII, IX, X and CECAF divisions 34.1.1, 34.1.2, 34.2.0.
- (8) In order to justify the suggested *de minimis* exemptions, the Member States provided evidence concerning disproportionate costs of handling unwanted catches in the relevant fisheries. That evidence was reviewed by the Scientific Technical and Economic Committee for Fisheries (STECF) Expert Working Group, which concluded that the joint recommendations contained reasoned arguments related to the 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 extend the duration of the *de minimis* exemptions in accordance with the percentage levels proposed in the joint recommendation and at levels which do not exceed those allowed under Article 15(1) of Regulation (EU) No 1380/2013.
- (9) Articles 2 and 4 of the Delegated Regulation (EU) No 1394/2014 provide respectively for a survivability exemption for anchovy, horse mackerel, jack mackerel and mackerel caught in artisanal purse seine fisheries and for a specific minimum conservation reference size for anchovy. Those measures were positively evaluated by STECF in 2014. The Commission considers that the evidence on which that evaluation was based remains valid for the next three years. Therefore it is appropriate to extent the application of those measures until 2020.
- (10) Delegated Regulation (EU) No 1394/2014 should therefore be amended accordingly.
- (11) 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. Considering that the discard plan established by Delegated Regulation (EU) 1394/2014 expires on 31 December 2017, this Regulation should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 1394/2014 is amended as follows:

- (1) Article 3 is replaced by the following:

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) up to a maximum of 6 % in 2018, and 5 % in 2019 and 2020 of the total annual catches of blue whiting in the industrial pelagic trawler fishery, which targets blue whiting in ICES division VIII using midwater trawls (OTM) and processes that species on board to obtain surimi base;
- (b) up to a maximum of 6 % in 2018, and 5 % in 2019 and 2020 of the total annual catches of albacore tuna in the large pelagic fisheries which target albacore tuna in ICES division VIII using midwater pair trawls (PTM);
- (c) up to a maximum of 4 % in 2018, 2019 and 2020 of the total annual catches of anchovy, mackerel and horse mackerel in the pelagic trawl fishery which targets anchovy, mackerel and horse mackerel in ICES division VIII using midwater trawls (OTM);
- (d) up to a maximum of 4 % in 2018, 2019 and 2020 of the total annual catches of horse mackerel, jack mackerel and mackerel, and 1 % in 2018, 2019 and 2020 of the total annual catches of anchovy in the fishery which targets horse mackerel, jack mackerel, mackerel and anchovy in ICES divisions VIII, IX, X and CECAF divisions 34.1.1, 34.1.2, 34.2.0 using purse seines (PS)."

(2) In Article 5, the second paragraph is replaced by the following:

"It shall apply from 1 January 2015 to 31 December 2020."

Article 2

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.

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

Done at Brussels, 21.11.2017

For the Commission
The President
Jean-Claude JUNCKER