



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

**of 20.10.2017**

**amending Delegated Regulation (EU) 2016/2374 establishing a discard plan for certain demersal fisheries in South-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.

The discard plan for Demersal fisheries has been implemented by Commission Delegated Regulation (EU) 2016/2374 of 12 October 2016, establishing a discard plan for certain demersal fisheries in south-western waters that specify the details for implementing the landing obligation provided for in Article 15 of the Regulation (EU) 1380/2013.

This delegated act includes fisheries of black scabbardfish and red seabream in addition to the species covered by Regulation (EU) 2016/2374, which define demersal fisheries in the South-Western waters (SWW) as set out in Article 15(1)(c) of Regulation (EU) No1380/2013.

This delegated act covers species which define demersal fisheries in the South-Western waters (SWW) as set out in Article 15(1)(c) of Regulation (EU) No1380/2013. 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, Spain, France, the Netherlands and Portugal, further referred to as "SWW Member States") having 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 SWW 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 2 June 2017 and contained the following elements:

- description of a new fishery to be covered by the discard plan, i.e. fisheries of blue whiting (*Micromesistius poutassou*) caught with bottom trawls and seines in ICES divisions VIIIc and IXa;
- information on gear codes and of the associated mesh size for anglerfish (*Lophiidae*) caught in ICES divisions VIII a, b, d, e and ICES divisions VIIIc and IXa.

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, which is concerned by the fisheries covered by the JR. For all of these elements the JR included supporting documentation underpinning the exemptions.

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.

During the development of the JR the South Western Waters Advisory Council was consulted in relation to measures envisaged in the JR. Furthermore, the Member States group aimed at consistent approach, as far as possible, with the implementation of the landing obligation in other sea basin areas, especially in the North Western Waters.

According to Commission Delegated Regulation (EU) 2016/2374<sup>1</sup>, Member States having a direct management interest in South-Western waters shall submit to the Commission before 1 May 2017, additional scientific information supporting the following exemptions:

- survivability exemption applying to Norway lobster (*Nephrops norvegicus*) caught in ICES subareas VIII and IX with trawls;
- *de minimis* exemption applying to hake (*Merluccius merluccius*) targeted by vessels using trawls and seines in ICES subareas VIII and IX.

SWW Member States provided the above-mentioned additional information within the regulatory deadline. The provided scientific information was assessed by the relevant Expert Working Group of the Scientific, Technical and Economic Committee for Fisheries (STECF) and approved at the STECF plenary meeting of 10-14 July 2017<sup>2</sup>.

Regarding the high survival exemption for Norway lobster, the STECF commented that sufficient additional information has been provided supporting this exemption.

Regarding *de minimis* exemption for hake, the STECF concluded that additional information and clarifications provided by Member States demonstrate that selectivity is very difficult to achieve for the métiers involved.

Therefore, both exemptions should be granted for the year 2018.

On the basis of the evaluation by STECF and by the Commission, and following additional information 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.

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<sup>1</sup> Article 2(2) and Article 3(2)

<sup>2</sup> [2017-07 STECF PLEN 17-02 JRCxxx.pdf](#)

### **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.

#### **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/EC<sup>3</sup>, 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) 2016/2374<sup>4</sup> established a discard plan for certain demersal fisheries in South-Western waters following a joint recommendation submitted by Belgium, Spain, France, the Netherlands and Portugal in 2016.
- (4) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in South-Western waters. On 2 June 2017 those Member States submitted a new joint recommendation to the Commission, after consultation of the South Western Waters Advisory Council, suggesting certain amendments to the discard plan.
- (5) The new joint recommendation was reviewed by STECF<sup>5</sup>. The measures suggested by that joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013 and may thus be included in the discard plan.
- (6) The new joint recommendation suggests that the fisheries of blue whiting (*Micromesistius poutassou*) caught with bottom trawls and seines in ICES divisions VIIIc and IXa be also included in the discard plan established by Regulation (EU) 2016/2374.

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<sup>3</sup> OJ L 354, 28.01.2013, p. 22.

<sup>4</sup> Commission Delegated Regulation (EU) 2016/2374 of 12 October 2016 establishing a discard plan for certain demersal fisheries in South-Western waters (OJ L 352, 23.12.2016, p. 33).

<sup>5</sup> [2017-07 STECF PLEN 17-02 JRCxxx.pdf](#)

- (7) The new joint recommendation also suggests to amend the definition of the fishery for anglerfish (*Lophiidae*) in ICES divisions VIII a, b, d and e and ICES divisions VIIIc and IXa, as set out in the discard plan, by adding a gear code for trammel nets (GTR) and lowering the mesh size for all set nets from 200 to 170 mm.
- (8) The new joint recommendation suggests furthermore to maintain the exemption from the landing obligation granted by the discard plan for Norway lobster caught by trawls in ICES subareas VIII and IX, as existing scientific evidence indicates possible high survival rates, taking into account the characteristics of the gears targeting that species, the fishing practices and the ecosystem. The STECF in its evaluation concluded that the latest experiments and studies, completed by the additional information provided by Member States, show a sufficient evidence on survival rates. Therefore, that exemption granted twice (for the year 2016 and for the year 2017) should be maintained in the year 2018.
- (9) The *de minimis* exemption set out in the discard plan for hake, up to a maximum of 6 % in 2018 of the total annual catches of that species by vessels targeting that species in ICES subareas VIII and IX with trawls, is based on the fact that viable increases in selectivity are very difficult to achieve. The STECF concluded that additional selectivity information provided by Member States did contain additional evidence to demonstrate that selectivity is very difficult to achieve for the métiers involved. However, additional work should be carried out in order to improve the justification for this exemption. That exemption should therefore be extended to the year 2018, and under the condition that Member States provide improved information to support this exemption that would be assessed by STECF.
- (10) Delegated Regulation (EU) 2016/2374 should 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. It should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Delegated Regulation 2016/2374 is amended as follows:

- (1) In Article 3(1), point (a) is replaced by the following:

"(a) for hake (*Merluccius merluccius*), up to a maximum of 6% in 2018 of the total annual catches of this species by vessels using trawls and seines (gear codes: OTT, OTB, PTB, OT, PT, TBN, TBS, TX, SSC, SPR, TB, SDN, SX and SV) to catch hake in ICES subareas VIII and IX.";

- (2) In Article 3(2) the year "2017" is replaced by the year "2018";

- (3) The Annex is replaced by the text set out in the Annex to this Regulation.

#### *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,

*For the Commission*

*The President*

[...]