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COMMISSION DELEGATED REGULATION (EU) No .../..

of 18.12.2017

**laying down specifications for the implementation of the landing obligation as regards
cod and plaice in Baltic Sea fisheries**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

One of the central objectives of the Common Fisheries Policy (CFP) is the progressive elimination of discards in all European Union (EU) fisheries through the introduction of a landing obligation under Regulation (EU) No 1380/2013 on the CFP.¹ This is designed to make better use of the available resources, and responds to public expectation to end the practice of throwing marketable fish back into the sea. High levels of discards are identified as an important driver of the lack of environmental sustainability of the CFP in the impact assessment² carried out for the last reform of the CFP.

The landing obligation in the Baltic, in line with Article 15(1)(a) of the CFP covers all species subject to catch limits caught in small pelagic fisheries, which are fisheries for herring and sprat and in fisheries for industrial purposes in the Baltic, from 1 January 2015. It also applies, in accordance with Article 15(1)(b) of the new CFP to catches in fisheries for salmon from that date. Moreover, under the same provision, it applies from 1 January 2015 for species which define the fisheries and from 1 January 2017 for all other species in fisheries in Union waters of the Baltic Sea for other species subject to catch limits. Cod is considered as a species defining certain fisheries in the Baltic Sea. Plaice is caught mainly as a by-catch in certain cod fisheries and is subject to catch limits. Therefore, the landing obligation applies to cod from 1 January 2015 and to plaice from 1 January 2017.

The CFP also provides for a series of provisions to facilitate the implementation of the landing obligation. The CFP provides for specific flexibility mechanisms that need to be activated through multiannual plans, or in absence of multiannual plans in so called discard plans. These discard plans are foreseen as a temporary measure of a duration of three years. These discard plans are developed on the basis of joint recommendations agreed by groups of Member States from the same region or sea basin.

The Regulation (EU) No 1396/2014 established the first discard plan covering the landing obligation for the stocks of cod, herring, sprat, salmon and plaice in the Baltic Sea. The regulation was adopted in 2014 and is applicable until the end of 2017.

The Regulation (EU) 2016/1139 establishing the first multiannual management plan after the reform of the CFP was adopted in 2016 covering the stocks of cod, herring and sprat. This Regulation contains provisions also applicable to plaice stocks.

The Regulation (EU) 2016/1139 provided the empowerment to the Commission to adopt delegated acts in accordance with Article 18 of Regulation (EU) No 1380/2013 laying down specific provisions linked to landing obligation, i.e.:

- (1) Exemptions from the landing obligation for species with high survival rates once they are released back to the sea.
- (2) De-minimis exemptions from the landing obligation: a) provided that the scientific advice indicates that the further increases in the fishing gear selectivity would be difficult to achieve; or b) in order to avoid disproportionate costs of handling the unwanted catches.
- (3) Provisions on documentation of catches.

¹ OJ L 354, 28.01.2013, p.22.

² http://ec.europa.eu/fisheries/reform/sec_2011_891_en.pdf

- (4) The fixing of minimum conservation reference sizes (MCRS) to ensure the protection of juveniles of marine organisms.

The multiannual management plan (Regulation (EU) 2016/1139) does not cover the stocks of salmon, therefore for this stocks the landing obligation should continue to be implemented by adoption of the separate delegated act based on Article 15(6) of Regulation (EU) No 1380/2013.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach the Member States around the Baltic Sea established a regional Baltic Sea Fisheries Forum (BALTFISH). The principles and working methods of the BALTFISH were established in a Memorandum of Understanding (MoU), which was signed on 13 December 2013 by the ministers responsible for fisheries in each of the EU Member States around the Baltic Sea.

During its work on two joint recommendations the BALTFISH consulted the Baltic Sea Advisory Council (BSAC) and other stakeholders. Elements of the Baltic Sea discard plan were discussed with BSAC during a technical meeting held in Copenhagen on 13 June 2013 and BALTFISH Forum seminars held in Riga on 29 April 2014 and in Berlin on 26 April 2017.

The BALTFISH has also taken note of the advice from the Scientific Technical and Economic Committee for Fisheries (STECF) which has provided guidance to Member States on all of the elements of discard plans at specially convened Expert Working Group meetings (EWG 13-23³, EWG 13-17⁴, EWG 14-06⁵ and EWG 17-03⁶) held in 2013, 2014 and 2017. Invited experts along with observers from the ACs and MS participated in these meetings.

The main elements of the final joint recommendations (JR) submitted to the Commission relating to the definition of the fisheries involved, exemptions based on high survivability and fixing MCRS for cod were evaluated by STECF during its plenary meetings of 7-14 July 2014⁷ and 10-14 July 2017⁸.

On the specific elements STECF concluded that in general most of the information necessary to assess the elements specifying the implementation of the landing obligation was provided in both JR.

For the exemption on the basis of high survivability for cod and plaice caught with trap-nets, creels/pots, fyke-nets and pound nets STECF concluded that based on the fact that such gears operate by trapping fish inside a static for the netting structure, as opposed to entangling or hooking for example, it seems reasonable to assume that mortality for these gears will also be low, typically less than 10%. However, STECF advised that further work to confirm whether this assumption is valid and on handling practices, prevailing environmental conditions should be undertaken. Also in case of exemption related to plaice discards more detailed

³ <https://stecf.jrc.ec.europa.eu/documents/43805/610582/STECF+13-23+-+Landing+obligation+in+EU+Fisheries+-+p1.pdf>

⁴ <https://stecf.jrc.ec.europa.eu/documents/43805/633247/STECF+14-01+-+Landing+obligations+in+EU+fisheries+-+p2.pdf>

⁵ <https://stecf.jrc.ec.europa.eu/documents/43805/675595/STECF+14-06+-+Landing+obligations+in+EU+fisheries+-+p3.pdf>

⁶ https://stecf.jrc.ec.europa.eu/c/document_library/get_file?uuid=d54c2307-f95c-45e1-a03b-5fab23a9f82d&groupId=43805

⁷ http://stecf.jrc.ec.europa.eu/documents/43805/812327/2014-07_STECF+PLEN+14-02_Final+Report_JRCxxx.pdf

⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>

information would be useful to assess the representativeness and quality of the discard survival estimate attained.

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 853/2004⁹ and Regulation (EC) No 1881/2006¹⁰. 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.

For the proposed minimum conservation size for cod STECF concluded that there might be sound biological reasons for reducing the minimum size to reduce the current levels of discarding. Under the landing obligation, setting a MCRS for cod at 35 cm would reduce the level of catches that may not be sold for human consumption. There were no arguments in respect to first spawning that would support having a MCRS of 38 cm in the Baltic.

On the basis of the evaluation by STECF and internal assessment by Commission services, and following clarification of certain points of the JR, the Commission considers that both JR submitted is in line with Article 15(6) of Regulation (EU) 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, exemptions based on high survivability and it fixes the minimum conservation reference size for cod.

Legal basis

Articles 7 of Regulation of the European Parliament and of the Council (EU) 2016/1139.

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 7(1) of Regulation (EU) 2016/1139 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 JR. Measures provided in the JR 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.

⁹ OJ L 139, 30.04.2004, p. 55.

¹⁰ OJ L 364, 20.12.2006, p. 5.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Regulation (EU) 2016/1139 of the European Parliament and of the Council establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007¹, and in particular Articles 7,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council² 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) According to Article 15(1)(a) of Regulation (EU) No 1380/2013, the landing obligation applies from 1 January 2015 in fisheries for herring and sprat and in fisheries for industrial purposes..
- (3) According to Article 15(1)(b) of Regulation (EU) No 1380/2013, in Baltic Sea fisheries other than those covered by Article 15(1)(a) of that Regulation, the landing obligation applies from 1 January 2015 to species which define the fisheries and from 1 January 2017 to all other species subject to catch limits. Cod is considered as a species defining certain fisheries in the Baltic Sea. Plaice is mostly caught as a by-catch in certain cod fisheries. In accordance with Article 15(1)(b) of Regulation (EU) No 1380/2013 the landing obligation applies in consequence to cod from 1 January 2015 and to plaice from 1 January 2017.
- (4) Article 15(6) of Regulation (EU) No 1380/2013 provides that, where no multiannual plan is adopted for the fishery in question, the Commission may adopt a discard plan specifying details of the implementation of the landing obligation on a temporary basis.
- (5) Commission Regulation (EU) No 1396/2014³ established a discard plan as regards fisheries for salmon, herring, sprat and cod in the Baltic Sea. That discard plan includes i.a. an exemption from the landing obligation for cod and salmon on account of high survival rates demonstrated for those species, as provided for in Article

¹ OJ L 191, 15.7.2016, p. 1

² 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 (OJ L 354, 28.12.2013, p. 22).

³ Commission Delegated Regulation (EU) No 1396/2014 of 20 October 2014 establishing a discard plan in the Baltic Sea (OJ L 370, 30.12.2014, p. 40).

15(4)(b) of Regulation (EU) No 1380/2013. Regulation (EU) No 1396/2014 expires on 31 December 2017.

- (6) Regulation (EU) 2016/1139 establishes a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks. The multiannual plan also contains provisions applicable to the plaice stock. Article 7(1) of Regulation (EU) 2016/1139 empowers the Commission to adopt provisions linked to the landing obligation by means of a delegated act on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (7) Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden have a direct fisheries management interest in the Baltic Sea. On 31 May 2017 those Member States submitted a joint recommendation⁴ to the Commission, after consulting the Baltic Sea Advisory Council and obtaining scientific contribution from relevant scientific bodies.
- (8) The joint recommendation proposes that the exemption from the landing obligation for cod and plaice caught with trap-nets, creels/pots, fyke-nets and pound nets, as well as, the minimum conservation reference size for cod, provided for by Regulation (EU) No 1396/2014, continue to apply after 31 December 2017.
- (9) The joint recommendation is based on scientific evidence of high survivability, provided by the Baltic Sea Fisheries Forum (BALTFISH) and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF).
- (10) STECF stated that more detailed information on plaice would be useful to assess the representativeness and quality of the discard survival estimate. However STECF concluded that, based on the fact that such gears operate by trapping fish inside a static netting structure, as opposed to entangling or hooking for example, it may be reasonably assumed that mortality for these gears will be low.
- (11) The measures included in the joint recommendation comply with Article 15(6) of Regulation (EU) No 1380/2013 and should therefore, in line with Article 18(3) of Regulation (EU) No 1380/2013, be included in this Regulation.
- (12) According to Article 15(10) of Regulation (EU) No 1380/2013 and to Article 7(d) of Regulation (EU) 2016/1139 minimum conservation reference sizes (MCRS) may be established with the aim of ensuring the protection of juveniles of marine organisms. A minimum size of 35 cm for cod introduced by Regulation (EU) No 1396/2014 should continue to apply, taking into account that STECF has concluded that there may be sound biological reasons to have the MCRS fixed at 35 cm.
- (13) Regulation (EU) 2016/1139 does not establish a time limitation for the application of the survivability exemptions from the landing obligation. It is however appropriate to ensure that the impact of such exemption is reviewed regularly on the basis of the best scientific advice available. In case of new evidences, the exemption should be revised accordingly.
- (14) According to Article 16(2) of Regulation (EU) 2016/1139, the power to adopt delegated acts with regards to the landing obligation is conferred on the Commission for a period of five years from 20 July 2016. It is therefore appropriate to revise the

⁴ "BALTFISH High Level Group Joint Recommendation on the Outline of a Discard Plan for the Baltic Sea", transmitted on 31 May 2017.

impact of the survivability exemptions from the landing obligation in the third year of application of this Regulation.

- (15) Since Regulation (EU) No 1396/2014 expires on 31 December 2017, this Regulation should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

This Regulation specifies the details for implementing the landing obligation, as regards cod and plaice caught in the fisheries for herring, sprat and cod in the Baltic Sea.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'Baltic Sea' means ICES divisions IIIb, IIIc and III d, as specified in Annex III to Regulation (EC) No 218/2009 of the European Parliament and of the Council⁵.

Article 3
Survivability exemption

1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to cod and plaice caught with trap-nets, creels/pots, fyke-nets and pound nets in the fisheries for herring, sprat and cod.
2. Such species caught without an available quota or below the minimum conservation reference size in the circumstances referred to in paragraph 1 shall be released back into the sea.

Article 4
Minimum conservation reference sizes

The minimum conservation reference size for cod in the Baltic Sea shall be 35 cm.

Article 5
Final provisions

1. By 1 March 2019, Member States having a direct management interest shall provide the Commission with information allowing to assess the representativeness and quality of the discard survival estimate of plaice caught with trap-nets, creels/pots, fyke-nets and pound nets.
2. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the information referred to in paragraph 1 by 1 August 2019 at the latest.

⁵ Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (OJ L 87, 31.3.2009, p. 70).

Article 6
Revision of survivability exemption

The Commission shall, on the basis of advice from STECF, evaluate the impact of the survivability exemption on the stocks concerned and on the fisheries exploiting those stocks in the third year of application of this Regulation.

Article 7
Entry into force

This Regulation shall enter into force on the third 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, 18.12.2017

For the Commission
The President
Jean-Claude JUNCKER