

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/2033

of 18 October 2018

establishing a discard plan for certain demersal fisheries in South-Western waters for the period 2019-2021

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 ⁽¹⁾, 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 an initial period of no more than three years that may be renewed for a further total period of three years, on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South-Western waters. By Delegated Regulation (EU) 2015/2439 ⁽²⁾, the Commission established a discard plan for certain demersal fisheries in South-Western waters for the period 2016-2018, which was repealed and replaced by Commission Delegated Regulation (EU) 2016/2374 ⁽³⁾, following a joint recommendation submitted by Belgium, Spain, France, the Netherlands and Portugal in 2016. Delegated Regulation (EU) 2016/2374 was amended by Commission Delegated Regulation (EU) 2018/44 ⁽⁴⁾.
- (4) On 31 May 2018 Belgium, Spain, France, the Netherlands and Portugal submitted a new joint recommendation to the Commission after consulting the South Western Waters Advisory Council. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF) ⁽⁵⁾. On 11 September 2018 an expert group meeting attended by representatives of 28 Member States, the Commission as well as the European Parliament as an observer took place and the measures concerned were discussed.
- (5) Delegated Regulation (EU) 2016/2374 included an exemption from the landing obligation for Norway lobster caught by bottom trawls in International Council for the Exploration of the Seas (ICES) subareas 8 and 9,

⁽¹⁾ OJ L 354, 28.12.2013, p. 22.

⁽²⁾ Commission Delegated Regulation (EU) 2015/2439 of 12 October 2015 establishing a discard plan for certain demersal fisheries in south-western waters (OJ L 336, 23.12.2015, p. 36).

⁽³⁾ 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).

⁽⁴⁾ Commission Delegated Regulation (EU) 2018/44 of 20 October 2017 amending Delegated Regulation (EU) 2016/2374 establishing a discard plan for certain demersal fisheries in South-Western waters (OJ L 7, 12.1.2018, p. 1).

⁽⁵⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

as existing scientific evidence indicated 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 ⁽¹⁾ concluded that the latest experiments and studies completed in 2016-2018 show survival rates in the range of the survival rate observed in the previous work. Therefore, considering that the circumstances have not changed, that survivability exemption should be maintained in the South-Western waters demersal discard plan for the period 2019-2021.

- (6) For skates and rays caught with all gears in ICES subareas 8 and 9, detailed scientific evidence on survival rates is not available for all fleet segment and combinations that benefit from the exemption. However, with a few exceptions, survival rates are considered to be generally robust, but further detail is required. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted but Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. Member States having a direct management interest should submit as soon as possible before 31 May each year: (a) a roadmap developed in order to increase survivability and to fill in the data gaps identified by STECF, to be annually assessed by STECF, (b) annual reports on the progress and any modifications or adjustments made to the survivability programmes.
- (7) When considering the survival rates of skates and rays, cuckoo rays (*Leucoraja naevus*) were found to have a considerably lower survival rate than other species, with less robust scientific understanding. However to exclude this species altogether from the exemption would prevent fishing and continued, accurate data collection. Therefore, the Commission considers this exemption should only be granted for 1 year and that new studies and improved survivability measures should be developed as a matter of urgency and provided to STECF for assessment as soon as possible before 31 May 2019.
- (8) The new joint recommendation also suggests a survivability exemption for red seabream caught with artisanal gear 'voracera' in ICES division 9a. The Member States provided scientific evidence in order to demonstrate discard survival rates of red seabream. The evidence was submitted to STECF which concluded that the exemption is well justified. That exemption should therefore be included in the new discard plan for the years 2019-2021.
- (9) The new joint recommendation also suggests a survivability exemption for red seabream caught with hooks and lines in ICES subarea 10. The Member States provided scientific evidence in order to demonstrate the survival rates of red seabream in that fishery. The evidence was submitted to STECF which concluded that the exemption is well justified. That exemption should therefore be included in the new discard plan for the years 2019-2021.
- (10) Delegated Regulation (EU) 2016/2374 included *de minimis* exemptions from the landing obligation pursuant to Article 15(5)(c) of Regulation (EU) No 1380/2013 for common sole caught with beam trawls and bottom trawls in ICES divisions 8a and 8b and for common sole caught with trammel nets and gillnets in ICES divisions 8a and 8b. The evidence provided by the Member States for those exemptions in the new joint recommendation was reviewed by the STECF ⁽²⁾. The STECF concluded that the joint recommendation contained reasoned arguments related to the difficulty of increasing selectivity combined with disproportionate costs of handling unwanted catches. Therefore, considering that the circumstances have not changed, the *de minimis* exemptions should be maintained in the South-Western waters demersal discard plan for the period 2019-2021.
- (11) Delegated Regulation (EU) 2016/2374 included a *de minimis* exemption from the landing obligation pursuant to Article 15(5)(c) of Regulation (EU) No 1380/2013 for hake caught with trawls and seines in ICES subareas 8 and 9. The evidence provided by the Member States for that exemption was reviewed by the STECF, which concluded ⁽³⁾ that more trials should be performed in order to assess the selectivity improvement. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted provisionally, but Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. Therefore, the *de minimis* exemption should be granted provisionally until 31 December 2019. The Member States concerned should undertake additional trials and provide information as soon as possible before 31 May 2019 for the assessment of the STECF.
- (12) The new joint recommendation contains new *de minimis* exemptions for:
 - alfonsinos caught with hooks and lines in ICES subarea 10,
 - great forkbeard caught with hooks and lines in ICES subarea 10,

⁽¹⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

⁽²⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

⁽³⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

- horse mackerel caught with trawls and seines in ICES subareas 8 and 9,
 - horse mackerel caught with gillnets in ICES subareas 8, 9 and 10 and Fishery Committee for the Eastern Central Atlantic (CECAF) areas 34.1.1, 34.1.2, 34.2.0,
 - mackerel caught with trawls and seines in ICES subareas 8 and 9,
 - mackerel caught with gillnets in ICES subareas 8, 9 and 10 and CECAF areas 34.1.1, 34.1.2, 34.2.0,
 - anchovy caught with trawls and seines in ICES subareas 8 and 9,
 - boarfish caught with trawls and seines in ICES subareas 8 and 9,
 - megrim caught with trawls and seines in ICES subareas 8 and 9,
 - megrim caught with gillnets in ICES subareas 8 and 9,
 - plaice caught with trawls and seines in ICES subareas 8 and 9,
 - plaice caught with gillnets in ICES subareas 8 and 9,
 - anglerfish caught with trawls and seines in ICES subareas 8 and 9,
 - anglerfish caught with gillnets in ICES subareas 8 and 9,
 - whiting caught with trawls and seines in ICES subareas 8 and 9,
 - whiting caught with gillnets in ICES subareas 8 and 9,
 - pollack caught with trawls and seines in ICES subareas 8 and 9,
 - pollack caught with gillnets in ICES subareas 8 and 9,
 - great forkbeard caught with trawls and seines in ICES division 9a,
 - red seabream caught with trawls and seines in ICES division 9a,
 - sole caught with trawls and seines in ICES division 9a.
- (13) Member States provided information for the *de minimis* exemptions for alfonosinos and great forkbeard caught with hooks and lines in ICES subarea 10. STECF reviewed that evidence and concluded that the information provided contained reasoned arguments demonstrating that further improvements in selectivity are difficult to achieve or imply disproportionate costs in handling unwanted catches. It is therefore appropriate to include these *de minimis* exemptions in the new discard plan for the years 2019-2021.
- (14) The information provided by the Member States needs to be completed as regards the new *de minimis* exemptions for these species individually:
- horse mackerel, mackerel, anchovy, boarfish, megrim, plaice, anglerfish, whiting, pollack caught with trawls and seines in ICES subareas 8 and 9;
 - megrim, plaice, anglerfish, whiting and pollack caught with gillnets in ICES subareas 8 and 9;
 - horse mackerel and mackerel caught with gillnets in ICES subareas 8, 9 and 10 and CECAF areas 34.1.1, 34.1.2, 34.2.0; and
 - great forkbeard, red seabream and sole caught with trawls and seines in ICES division 9a.
- Under those circumstances, these individual exemptions for each species should be limited to 1 year and the Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. These *de minimis* exemptions should be granted provisionally until 31 December 2019. The Member States concerned should undertake additional trials and provide information as soon as possible before 31 May 2019 for assessment by STECF.
- (15) To ensure reliable estimations of levels of discarding for the purpose of the setting of the total allowable catches (TACs), Member States should, in cases where the *de minimis* exemption is based on extrapolation of data-limited situations and partial fleet information, ensure provision of accurate and verifiable data for the whole fleet covered by this *de minimis* provision.
- (16) The measures suggested by the new joint recommendation are in line with Article 15(4), Article 15(5)(c) and Article 18(3) of Regulation (EU) No 1380/2013 and may thus be included in this Regulation.

- (17) Under Article 18 of the Regulation (EU) No 1380/2013, the Commission has considered both the STECF's assessment and the need for Member States to ensure the full implementation of the landing obligation on the 1 January 2019. In several cases, exemptions require continued fishing activity and data collection in order to address the comments made by the STECF. In these cases, the Commission considers it to be a pragmatic and prudent approach to fisheries management, to allow exemptions on a temporary basis, on the understanding that not to do so, would prevent necessary data collection indispensable for the proper and informed management of discards in view of full entry into force of the landing obligation.
- (18) 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 2019,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In ICES subareas 8, 9, 10 and Fishery Committee for the Eastern Central Atlantic (CECAF) areas 34.1.1, 34.1.2, 34.2.0 the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal species in accordance with this Regulation for the period 2019-2021.

Article 2

Definitions

'Voracera' means an artisanal fishing gear, locally designed and built mechanized hook line, used by the artisanal fleet targeting red seabream in the South of Spain in ICES division 9a.

Article 3

Survivability exemption for Norway lobster

1. The exemption from the landing obligation for species for which scientific evidence demonstrates high survival rates, as provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013, shall apply to Norway lobster (*Nephrops norvegicus*) caught in ICES subareas 8 and 9 with bottom trawls (gear codes ⁽¹⁾: OTB, OTT, PTB, TBN, TBS, TB, TBB, OT, PT and TX).
2. When discarding Norway lobster caught in cases referred to in paragraph 1, the Norway lobster shall be released whole, immediately and in the area where it has been caught.

Article 4

Survivability exemption for skates and rays

1. The exemption from the landing obligation for species for which scientific evidence demonstrates high survival rates, as provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013, shall apply to skates and rays (*Rajiformes*) caught with all gears in ICES subareas 8 and 9. When discarding skates and rays caught in that area, they shall be released immediately.
2. Member States having a direct management interest shall submit yearly additional scientific information supporting the exemption laid down in paragraph 1. The Scientific, Technical and Economic Committee for Fisheries shall assess the provided scientific information before 1 August every year.

⁽¹⁾ Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common fisheries policy. For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

3. The exemption referred to in paragraph 1 shall apply to Cuckoo ray until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019, additional scientific information supporting that exemption. The Scientific, Technical and Economic Committee for Fisheries shall assess the provided scientific information before 1 August 2019.

Article 5

Survivability exemption for red sea bream

1. The exemption from the landing obligation for species for which scientific evidence demonstrates high survival rates, as provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013, shall apply to red seabream (*Pagellus bogaraveo*) caught with the artisanal gear *voracera* used in ICES division 9a and to red seabream (*Pagellus bogaraveo*) caught with hooks and lines in ICES subarea 10.

2. When discarding red sea bream caught in cases referred to in paragraph 1, the red seabream shall be released immediately.

Article 6

De minimis exemptions

1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded pursuant to Article 15(5)(c) of that Regulation:

- (a) for hake (*Merluccius merluccius*), up to a maximum of 6 % in 2019 of the total annual catches of that species by vessels using trawls and seines (gear codes: OTT, OTB, PTB, OT, PT, TBN, TBS, TX, SSC, SPR, TB, SDN, SX, SV) in ICES subareas 8 and 9;
- (b) for common sole (*Solea solea*), up to a maximum of 5 % of the total annual catches of that species by vessels using beam trawl and bottom trawls (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT and TX) in ICES divisions 8a and 8b;
- (c) for common sole (*Solea solea*), up to a maximum of 3 % of the total annual catches of that species by vessels using trammel nets and gillnets (gear codes: GNS, GN, GND, GNC, GTN, GTR and GEN) in ICES divisions 8a and 8b;
- (d) for alfonsinos (*Beryx spp.*), up to a maximum of 5 %, of the total annual catches of that species by vessels using hooks and lines (gear codes: LHP, LHM, LLS, LLD) in ICES subarea 10;
- (e) for great forkbeard (*Phycis blennoides*), up to a maximum of 3 % of the total annual catches of that species by vessels using hooks and lines (gear codes: LHP, LHM, LLS, LLD) in ICES subarea 10;
- (f) for horse mackerel (*Trachurus spp.*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (g) for horse mackerel (*Trachurus spp.*), up to a maximum of 3 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8, 9 and 10 and and CECAF areas 34.1.1, 34.1.2, 34.2.0;
- (h) for mackerel (*Scomber scombrus*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (i) for mackerel (*Scomber scombrus*), up to a maximum of 3 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8, 9 and 10 and and CECAF areas 34.1.1, 34.1.2, 34.2.0;
- (j) for anchovy (*Engraulis encrasicolus*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;

- (k) for boarfish (*Caproidae*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (l) for megrim (*Lepidorhombus* spp.), up to a maximum of 5 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (m) for megrim (*Lepidorhombus* spp.), up to a maximum of 4 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8 and 9;
- (n) for plaice (*Pleuronectes platessa*), up to a maximum of 5 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (o) for plaice (*Pleuronectes platessa*), up to a maximum of 4 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8 and 9;
- (p) for anglerfish (*Lophiidae*), up to a maximum of 5 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (q) for anglerfish (*Lophiidae*), up to a maximum of 4 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8 and 9;
- (r) for whiting (*Merlangius merlangus*), up to a maximum of 5 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (s) for whiting (*Merlangius merlangus*), up to a maximum of 4 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8 and 9;
- (t) for pollack (*Pollachius pollachius*), up to a maximum of 5 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TBN, TBS, TBB, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES subareas 8 and 9;
- (u) for pollack (*Pollachius pollachius*), up to a maximum of 4 % in 2019 of the total annual catches of that species by vessels using gillnets (gear codes: GNS, GND, GNC, GTR, GTN) in ICES subareas 8 and 9;
- (v) for great forkbeard (*Phycis blennoides*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TB, TBN, TBS, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES division 9a;
- (w) for red seabream (*Pagellus bogaraveo*), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TB, TBN, TBS, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES division 9a;
- (x) for sole (*Solea* spp.), up to a maximum of 7 % in 2019 of the total annual catches of that species by vessels using beam trawl, bottom trawls and seines (gear codes: OTB, OTT, PTB, TB, TBN, TBS, OT, PT, TX, SSC, SPR, SDN, SX, SV) in ICES division 9a.

2. The *de minimis* exemptions set out in the paragraph 1 points (a) and (f)-(x) shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries shall assess the provided scientific information before 1 August 2019.

Article 7

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 2019 until 31 December 2021.

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

Done at Brussels, 18 October 2018.

For the Commission
The President
Jean-Claude JUNCKER
