

Commission Delegated Regulation (EU) 2018/2036 of 18 October 2018 amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea

COMMISSION DELEGATED REGULATION (EU) 2018/2036

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amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea

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 Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits and, in the Mediterranean, also catches of species subject to minimum sizes as defined in Annex III to Council Regulation (EC) No 1967/2006⁽²⁾.
- (2) According to Article 15(1)(d) of Regulation (EU) No 1380/2013, the landing obligation applies for demersal fisheries in the Mediterranean Sea at the latest from 1 January 2017 to species that define the fisheries and at the latest from 1 January 2019 to all other species.
- (3) 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 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.
- (4) Commission Delegated Regulation (EU) 2017/86⁽³⁾ established a discard plan for certain demersal fisheries in the Mediterranean Sea applicable from 1 January 2017 until 31 December 2019, following three joint recommendations submitted to the Commission in 2016 by a number of Member States having a direct management interest in the Mediterranean Sea (Greece, Spain, France, Croatia, Italy, Cyprus, Malta and Slovenia). Those three joint recommendations concerned respectively the Western Mediterranean Sea, the Adriatic Sea and the South-eastern Mediterranean Sea.
- (5) Commission Delegated Regulation (EU) 2017/86 was amended by Commission Delegated Regulation (EU) 2018/153⁽⁴⁾ following two joint recommendations

submitted by the relevant Member States having a direct management interest and concerning the Western Mediterranean Sea and the Adriatic Sea.

- (6) On 4 June 2018, France, Italy and Spain submitted to the Commission a new joint recommendation for a Discard Plan for Demersal Fisheries in the Western Mediterranean ('the new joint recommendation for the Western Mediterranean') after consultations within the regional Pescamed High-Level Group. The joint recommendation was amended on 27 August 2018.
- (7) On 7 June 2018 Cyprus, Greece, Italy and Malta submitted to the Commission a new joint recommendation for a Discard Plan for Demersal Fisheries in the South Eastern Mediterranean ('the new joint recommendation for the South-Eastern Mediterranean') after consultations within the regional Sudestmed High-Level Group. The joint recommendation was amended on 28 August 2018.
- (8) On 8 June 2018, Croatia, Italy and Slovenia submitted to the Commission a new joint recommendation for a Discard Plan for Demersal Fisheries in the Adriatic Sea ('the new joint recommendation for the Adriatic Sea') after consultations within the regional Adriatica High-Level Group. The joint recommendation was amended on 29 August 2018.
- (9) The three new joint recommendations were assessed by the Scientific, Technical and Economic Committee for Fisheries (STECF) during its summer Plenary on 2-6 July 2018⁽⁵⁾.
- (10) Under Article 18 of 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 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.
- (11) The new joint recommendation for the Western Mediterranean Sea suggests extending until 31 December 2021 the application of the survivability exemptions, as provided for in Article 15(4)b of Regulation (EU) No 1380/2013, for scallop (*Pecten jacobaeus*), carpet clams (*Venerupis* spp.) and Venus shells (*Venus* spp.) caught with mechanised dredges (HMD). Delegated Regulation (EU) 2017/86 introduced that survivability exemption. When assessing the new joint recommendation, the STECF noted that no additional supporting information had been provided. However, there is a body of scientific evidence in the literature demonstrating survival for those species. As high survival rates can occur and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, the Commission considers that the survivability exemption should therefore be continued, considering that circumstances have not changed.

- (12) The new joint recommendation for the Western Mediterranean Sea suggests extending until 31 December 2021 the application of the survivability exemption for Norway lobster (*Nephrops norvegicus*) caught with bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX). Commission Delegated Regulation (EU) 2018/153 introduced that survivability exemption. The new joint recommendation initially suggested applying this exemption except during the months of July, August and September, which would be subject to a new *de minimis* exemption. The STECF considered there was no evidence to support a *de minimis* exemption during the summer months and formulated no further comments. However, there is scientific evidence demonstrating survival for that species in this and other regions. As high survival rates can occur and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, the Commission considers that the survivability exemption applicable for the whole year should therefore be continued.
- (13) The new joint recommendation for the Adriatic Sea proposes extending the survivability exemption for common sole (*Solea solea*) caught with rapido (TBB). Commission Delegated Regulation (EU) 2017/86 introduced that survivability exemption. The STECF did not assess this new request. However, an ad-hoc study on survivability of that species is ongoing in GSA17 in the Adriatic Sea. The Commission considers therefore that the exemption should be continued for one year only. The Member States concerned should provide the relevant data by 1 May 2019 in order to allow further assessment by the STECF.
- (14) The three new joint recommendations suggest applying the survivability exemption to Norway lobster (*Nephrops norvegicus*) caught with pots and traps (FPO, FIX) in the Western Mediterranean Sea, in the Adriatic Sea and in the South-eastern Mediterranean Sea. The STECF considered that specific information to support this exemption had not been provided. The Commission considers therefore that the exemption should be introduced for one year only. The Member States concerned should provide additional relevant data by 1 May 2019 in order to allow a further assessment by the STECF.
- (15) The three new joint recommendations suggest applying the survivability exemption to red seabream (*Pagellus bogaraveo*) caught with hooks and lines (LHP, LHM, LLS, LLD, LL, LTL, LX) in the Western Mediterranean Sea, in the Adriatic Sea and in the South-eastern Mediterranean Sea. The STECF considered that further evidence should be provided to fully support the exemption proposed. The Commission considers therefore that the exemption should be introduced for one year only. The Member States concerned should provide additional relevant data by 1 May 2019 in order to allow a further assessment by the STECF.
- (16) The three new joint recommendations suggest applying the survivability exemption to lobster (*Homarus gammarus*) and crawfish (*Palinuridae*) caught with nets (GNS, GN, GND, GNC, GTN, GTR, GEN) and pots and traps (FPO, FIX) in the Western Mediterranean Sea, in the Adriatic Sea and in the South-eastern Mediterranean Sea. The STECF considered that the survival study for crawfish provided by the Member States concerned is a reasonably robust study which shows short-term survival rates, noting however that the sample size was small. Further scientific evidence should be

provided both for crawfish and for lobster. The Commission considers therefore that the exemption should be introduced for one year only. The Member States concerned should provide additional relevant data by 1 May 2019 in order to allow a further assessment by the STECF.

- (17) The new joint recommendations for the Adriatic Sea and the South-eastern Mediterranean Sea propose applying the survivability exemption to Norway lobster (*Nephrops norvegicus*) caught with bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX) in the Adriatic Sea and in the South-eastern Mediterranean Sea. The new joint recommendation initially suggested applying this exemption except during the months of July, August and September, which would be subject to a new *de minimis* exemption. The STECF considered there was no evidence to support a *de minimis* exemption during the summer months and formulated no further comments. However, there is scientific evidence demonstrating survival for that species in other regions. As high survival rates can occur and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, the Commission considers that the survivability exemption applicable for the whole year should therefore be introduced.
- (18) The three new joint recommendations further propose extending the application of the *de minimis* exemption, as provided for in Article 15(4)(c) of Regulation (EU) No 1380/2013 to hake (*Merluccius merluccius*) and mullets (*Mullus* spp.), up to 6 % in 2019 and 2020 and up to 5 % in 2021 of the total annual catches of those species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT and TX), and up to 1 % in 2019, 2020 and 2021 of the total annual catches of those species made by vessels using gillnets and trammel nets (GNS, GN, GND, GNC, GTN, GTR, GEN), in the Western Mediterranean Sea, in the Adriatic Sea and in the South-eastern Mediterranean Sea. Commission Delegated Regulation (EU) 2017/86 introduced a *de minimis* exemption for those species. Based on the scientific evidences provided at that occasion in the joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, the high number of species in the fishing operations, the fishing patterns and the particularities of the Mediterranean Sea (e.g. predominance of small-scale fisheries), the Commission considered that it was appropriate to establish such *de minimis* exemptions in order to avoid disproportionate costs of handling unwanted catches. The STECF did not assess the new recommendation concerning bottom trawls. When assessing the new joint recommendation for gillnets and trammel nets, the STECF noted that the information provided by the Member States concerned was not complete enough. However, considering that circumstances have not changed, the Commission considers that the *de minimis* exemption should be continued with the percentage levels mentioned above.
- (19) The new joint recommendation for the Adriatic Sea suggests extending the application of the *de minimis* exemption to hake (*Merluccius merluccius*) and mullets (*Mullus* spp.), up to 1 % in 2019, 2020 and 2021 of the total annual catches of those species made by vessels using the ‘rapido’ gear (TBB) and to common sole (*Solea solea*) up to 3 % in 2019, 2020 and 2021 of the total annual catches of that species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT and TX) in the Adriatic Sea. Commission Delegated Regulation (EU) 2017/86 introduced a *de minimis*

exemption for those species. Based on the scientific evidences provided in the joint recommendation at that occasion and reviewed by STECF and taking into account the characteristics of the gear, the high number of species in the fishing operations, the fishing patterns and the particularities of the Mediterranean Sea (e.g. predominance of small-scale fisheries), the Commission considered that it was appropriate to establish such *de minimis* exemptions (up to 1 % for hake and mullets and up to 3 % for common sole) in order to avoid disproportionate costs of handling unwanted catches. When assessing the new joint recommendation, the STECF considered that there was no specific information provided to support a big increase of the percentage levels applied. Considering that circumstances have not changed for applying the current percentage level, the Commission considers that this exemption should be continued with the percentage levels mentioned above.

- (20) The new joint recommendation for the South-eastern Mediterranean suggests extending the application of the *de minimis* exemption to deep-water rose shrimp (*Parapenaeus longirostris*), up to 6 % in 2019 and 2020 and up to 5 % in 2021 of the total annual catches of that species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT and TX) in the South-eastern Mediterranean Sea. Commission Delegated Regulation (EU) 2017/86 introduced a *de minimis* exemption for that species. Based on the scientific evidences provided in the joint recommendation at that occasion and reviewed by STECF and taking into account the characteristics of the gear, the high number of species in the fishing operations, the fishing patterns and the particularities of the Mediterranean Sea (e.g. predominance of small-scale fisheries), the Commission considered that it was appropriate to establish such *de minimis* exemption in order to avoid disproportionate costs of handling unwanted catches. The STECF did not assess the new recommendation. Considering that circumstances have not changed, the Commission considers that this exemption should be continued with the percentage levels mentioned above.
- (21) The new joint recommendations for the Western Mediterranean suggest applying the *de minimis* exemption to European seabass (*Dicentrarchus labrax*), annular seabream (*Diplodus annularis*), sharpnout seabream (*Diplodus puntazzo*), white seabream (*Diplodus sargus*), two-banded seabream (*Diplodus vulgaris*), groupers (*Epinephelus* spp.), striped seabream (*Lithognathus mormyrus*), Spanish seabream (*Pagellus acarne*), red seabream (*Pagellus bogaraveo*), common pandora (*Pagellus erythrinus*), common seabream (*Pagrus pagrus*), wreckfish (*Polyprion americanus*), common sole (*Solea solea*), gilthead seabream (*Sparus aurata*) and deep-water rose shrimp (*Parapenaeus longirostris*), up to 5 % in 2019 of the total annual catches of those species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX); up to 3 % in 2019 of the total annual catches of those species, except for deep-water rose shrimp, caught by vessels using gillnets and trammel nets (GNS, GN, GND, GNC, GTN, GTR, GEN); and up to 1 % in 2019 of the total annual catches of those species, except for red sea bream and deep-water rose shrimp, made by vessels using hooks and lines (LHP, LHM, LLS, LLD, LL, LTL, LX).
- (22) The new joint recommendations for the Adriatic Sea suggest applying the *de minimis* exemption to European seabass (*Dicentrarchus labrax*), annular seabream (*Diplodus*

annularis), sharpsnout seabream (*Diplodus puntazzo*), white seabream (*Diplodus sargus*), two-banded seabream (*Diplodus vulgaris*), groupers (*Epinephelus* spp.), stripped seabream (*Lithognathus mormyrus*), Spanish seabream (*Pagellus acarne*), red seabream (*Pagellus bogaraveo*), common pandora (*Pagellus erythrinus*), common seabream (*Pagrus pagrus*), wreckfish (*Polyprion americanus*), gilthead seabream (*Sparus aurata*) and deep-water rose shrimp (*Parapenaeus longirostris*), up to 5 % in 2019 of the total annual catches of those species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX); up to 3 % in 2019 of the total annual catches of those species, except for deep-water rose shrimp but including common sole, caught by vessels using gillnets and trammel nets (GNS, GN, GND, GNC, GTN, GTR, GEN); and up to 1 % in 2019 of the total annual catches of those species, except for red sea bream and deep-water rose shrimp but including common sole, made by vessels using hooks and lines (LHP, LHM, LLS, LLD, LL, LTL, LX).

- (23) The new joint recommendation for the South-eastern Mediterranean Sea suggests applying the *de minimis* exemption to European seabass (*Dicentrarchus labrax*), annular seabream (*Diplodus annularis*), sharpsnout seabream (*Diplodus puntazzo*), white seabream (*Diplodus sargus*), two-banded seabream (*Diplodus vulgaris*), groupers (*Epinephelus* spp.), stripped seabream (*Lithognathus mormyrus*), Spanish seabream (*Pagellus acarne*), red seabream (*Pagellus bogaraveo*), common pandora (*Pagellus erythrinus*), common seabream (*Pagrus pagrus*), wreckfish (*Polyprion americanus*), common sole (*Solea solea*), and gilthead seabream (*Sparus aurata*), up to 5 % in 2019 of the total annual catches of those species caught by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX); up to 3 % in 2019 of the total annual catches of those species made by vessels using gillnets and trammel nets (GNS, GN, GND, GNC, GTN, GTR, GEN); and up to 1 % in 2019 of the total annual catches of those species, except for red seabream, made by vessels using hooks and lines (LHP, LHM, LLS, LLD, LL, LTL, LX).
- (24) Finally, the three new joint recommendations suggest applying the *de minimis* exemption to anchovy (*Engraulis encrasicolus*), sardine (*Sardina pilchardus*), mackerel (*Scomber* spp.) and horse mackerel (*Trachurus* spp.), up to 5 % in 2019 of the total annual by-catches of those species made by vessels using bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX), in the Western Mediterranean Sea, in the Adriatic Sea and in the South-eastern Mediterranean Sea.
- (25) The STECF noted that the exemptions mentioned in recitals (21), (22) and (23) cover a broad group of species with a wide range of discard rates and that specific information to fully support the exemptions requested had not been provided. However, the Commission points out that those exemptions apply to groups of species which cover the rest of species subject to minimum sizes as defined in Annex III to Regulation (EC) No 1967/2006 and which are not, at this stage, subject to catch limits; therefore, Article 15(8) and (9) of Regulation (EU) No 1380/2013 are not applicable. In addition, those species are caught at the same time, at highly varying quantities, which makes a single stock approach challenging. Those species are furthermore caught by small scale fishing vessels and landed at many different landing points spread out geographically along the coast; therefore, there is a high likelihood of disproportionate costs of handling

unwanted catches in the first years of full implementation of the landing obligation. It is also to be taken into consideration that the exemptions are in principle below the maximum allowed limits. In this context, the Commission considers that those *de minimis* exemptions should be introduced for one year only. Member States should submit by 1 May 2019 the relevant data to allow STECF to fully assess the justifications for the exemptions and the Commission to carry out a review.

- (26) Finally, the Commission notes that Member States undertake to increase the selectivity of the fishing gears in accordance with the results of current research programmes in order to reduce and limit unwanted catches and particularly catches below minimum conservation reference sizes.
- (27) The Commission also notes that in line with the joint recommendation for the Western Mediterranean Sea, the concerned Member States encourage the use of cod-end trawls and/or extension fitted with a T90 50 mm mesh size and the continuation of real time closures trials.
- (28) The measures suggested by the new joint recommendations 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 the discard plan established by Delegated Regulation (EU) 2017/86.
- (29) The *de minimis* exemptions for small pelagic species in fisheries targeting those species are set out in Commission Delegated Regulation (EU) 2018/161⁽⁶⁾. By contrast, *de minimis* exemptions for by-catches of small pelagic species made in demersal fisheries should be included in Delegated Regulation (EU) 2017/86.
- (30) Commission Delegated Regulation (EU) 2017/86 should therefore be amended accordingly.
- (31) Since the measures provided for in this Regulation impact directly 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 2019,

HAS ADOPTED THIS REGULATION:

- (1) [OJ L 354, 28.12.2013, p. 22.](#)
- (2) Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 ([OJ L 409, 30.12.2006, p. 11](#)).
- (3) Commission Delegated Regulation (EU) 2017/86 of 20 October 2016 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea ([OJ L 14, 18.1.2017, p. 4](#)).
- (4) Commission Delegated Regulation (EU) 2018/153 of 23 October 2017 amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea ([OJ L 29, 1.2.2018, p. 1](#)).
- (5) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (6) Commission Delegated Regulation (EU) 2018/161 of 23 October 2017 establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea ([OJ L 30, 2.2.2018, p. 1](#)).