Commission Implementing Regulation (EU) 2020/1243 of 1 September 2020 on extending the derogation from Council Regulation (EC) No 1967/2006 as regards the minimum distance from the coast and the minimum sea depth for boat seines fishing for transparent and Ferrer's gobies (Aphia minuta and Pseudaphia ferreri) and Lowbody picarel (Spicara smaris) in certain territorial waters of Spain (Balearic Islands)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1243

of 1 September 2020

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THE EUROPEAN COMMISSION,

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

Having regard to Council 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[(1)], and in particular Article 13(5) thereof,

Whereas:

(1) Article 13(1) of Regulation (EC) No 1967/2006 prohibits the use of towed gears within 3 nautical miles of the coast or within the 50 m isobath where that depth is reached at a shorter distance from the coast.

(2) At the request of a Member State, the Commission may allow a derogation from Article 13(1) of Regulation (EC) No 1967/2006, provided that a number of conditions set out in Article 13(5) and (9) are fulfilled.

(3) A derogation from the first subparagraph of Article 13(1) for the use of boat seines fishing transparent and Ferrer's gobies (*Aphia minuta* and *Pseudaphia ferreri*) and Lowbody picarel (*Spicara smaris*) in the Spanish territorial waters of the Balearic Islands was granted for the first time until 31 December 2016 by Commission Implementing Regulation (EU) No 1233/2013[(2)]. That derogation was based on an additional derogation from the minimum mesh size adopted by Spain pursuant to Article 9(7) Regulation (EC) No 1967/2006 because without it, the relevant fishery could not have taken place and would have had to close.

(4) An extension of the derogation was granted until 31 December 2019 by Commission Implementing Regulation (EU) 2019/662[(3)], taking into account the management plan for the fisheries to which the derogation applied established by Spain pursuant to Article 19 of Regulation (EC) No 1967/2006.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1243. (See end of Document for details)*

(5) On 3 September 2019, the Spanish authorities requested the Commission to extend the derogation from the first subparagraph of Article 13(1) beyond 31 December 2019. Spain provided a draft of the new management plan for the period 2019-2022 that will be regulated by the existing national rules[(4)]. Spain provided up-to-date information to justify the renewal of the derogation.

(6) The Scientific, Technical and Economic Committee for Fisheries (STECF) assessed the draft management plan in November 2019[(5)] and the request for extending the derogation in March 2020[(6)].

(7) The STECF concluded that the management plan for boat seines in the Balearic Islands in the period 2016-2019 was properly implemented and that the conditions upon which the derogation regarding the minimum distance from the coast and depth was granted in 2016 continued to be fulfilled. STECF notes that the fishing gear appears to be highly selective.

(8) The STECF suggested certain adjustments, notably by setting a seasonal TAC in line with the recent catches and by clarifying the possible overlap in two bays between the Jonquiller fishery targeting gobies and seagrass beds.

(9) In light of the STECF's evaluation, the Commission notes that the Spanish authorities committed in a letter sent to the Commission on 4 June 2020[(7)] to aligning the seasonal Total Allowable catch (TAC) with the average catches observed over recent years and to launching a scientific study to clarify whether the fishery interacted with seagrass beds in the two bays concerned. Spain also committed to banning the fishery in the two bays concerned at least until the STECF has assessed the scientific study and to inform the Commission on the follow-up of the above commitments.

(10) The derogation requested by Spain complies with the conditions laid down in Article 13(5) and (9) of Regulation (EC) No 1967/2006.

(11) There are specific geographical constraints given the limited size of the continental shelf and the spatial distribution of the target species, which is exclusively limited to certain zones in the coastal areas at depths of less than 50 meters.

(12) The fishery has no significant impact on the marine environment, since boat seines are hauled in the water column. Due to the use of echo sounders, the fishery is highly selective with few bycatches. Besides, unwanted catches are immediately released alive with very high survivability.

(13) The derogation requested by Spain affects a limited number of 55 vessels.

(14) The fishery cannot be undertaken with another gear, as boat seines are the only regulated gear allowed to capture these three target species with a schooling behaviour in shallow coastal waters.

(15) The request covers vessels registered in the maritime census managed by the Directorate-General for Fisheries and Marine Environment of the Balearic Islands which have a track record in the fishery of more than five years and operate under the management plan regulating boat seines fishing for transparent and Ferrer's gobies

(*Aphia minuta* and *Pseudaphia ferreri*) and Lowbody picarel (*Spicara smaris*). Those vessels are included on a list communicated to the Commission in line with the requirements of Article 13(9) of Regulation (EC) No 1967/2006.

(16) The management plan guarantees no future increase in the fishing effort, as fishing authorisations will be issued only to specified 55 vessels, each limited to 12 m in size and 198,5 kW in power. In addition, a maximum cumulated tonnage and power are set, and the fishery will close until the next fishing season if the seasonal TAC is reached.

(17) The fishing activities concerned fulfil the requirements of Article 4(1) of Regulation (EC) No 1967/2006, which allows fishing above protected habitats if fishing is operated without touching the seagrass bed under certain conditions.

(18) Moreover, the fishery concerned could not have taken place without a derogation from the minimum applicable mesh size.

(19) However, because the fishery concerned is highly selective, has a negligible effect on the environment and is not affected by the provisions in Article 4(5) of Regulation (EC) No 1967/2006, Spain authorised in the past the derogation from the minimum mesh size based on Article 9(7) of Regulation (EC) No 1967/2006.

(20) Article 9 of Regulation (EC) No 1967/2006 was deleted by Regulation (EU) 2019/1241 of the European Parliament and of the Council[8]. However, according to point 4, part B of Annex IX to Regulation (EU) 2019/1241, derogations from minimum mesh sizes adopted on basis of Article 9 of Regulation (EC) No 1967/2006, that were in force on 14 August 2019, can continue to apply, provided they do not lead to the increase in catches of juveniles. This extended derogation complies with the conditions laid down in Article 15(5) and in point 4 of Part B of Annex IX to Regulation (EU) 2019/1241, as it does not lead to a deterioration of selectivity standards, in particular in terms of an increase in the catches of juveniles existing on 14 August 2019 and aims at achieving the objectives and targets set out in Articles 3 and 4 of that Regulation.

(21) The fishing activities concerned fulfil the recording requirements laid down in Article 14 of Council Regulation (EC) No 1224/2009[9].

(22) The fishery concerned take place at a very short distance from the coast and therefore does not interfere with the fishing activities of other vessels.

(23) The fishery concerned is regulated in the Spanish management plan to ensure that catches of species mentioned in Annex IX to Regulation (EU) 2019/1241 are minimal.

(24) Boat seines do not target cephalopods.

(25) The Spanish management plan includes measures for the monitoring of fishing activities, as provided for in the third subparagraph of Article 13(9) of Regulation (EC) No 1967/2006.

(26) The derogation requested should therefore be granted.

(27) Spain should report to the Commission in due time and in accordance with the monitoring plan provided for in the Spanish management plan.