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

of 18 October 2018

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 jacobeus*), 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*), 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*), 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*