Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98

REGULATION (EU) 2015/812 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2015

amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(3)] established as one of its objectives the gradual elimination of discards through the introduction of a landing obligation for catches of species subject to catch limits and species subject to minimum sizes in the Mediterranean. Certain provisions of existing regulations establishing technical and control measures are contradictory to the landing obligation and oblige fishermen to discard fish. In order to remove the incompatibilities between those regulations and the landing obligation, and to make the landing obligation operational, those provisions should be amended or repealed.

(2) In particular, in order to ensure the implementation of the landing obligation, Council Regulation (EC) No 850/98[(4)] should be amended by requiring that all unintended catches of marine organisms of species subject to the landing obligation and caught in excess of catch composition limits be landed and counted against quotas; by replacing minimum landing sizes for marine organisms subject to the landing obligation with minimum conservation reference sizes; by requiring that all unintended catches of marine organisms of species subject to the landing obligation and caught in excess of by-catch limits in specific areas, at specific times and for specified gear types, be landed

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and counted against quotas; and by making it clear that the prohibition on highgrading is not to apply where exemptions are introduced under the landing obligation.

(3) In addition, in order to ensure legal certainty, the provisions relating to an area closure for the protection of juvenile haddock in ICES division VIb should be amended.

(4) In order to ensure the implementation of the landing obligation, Council Regulation (EC) No 2187/2005[(5)] should be amended by requiring that all unintended catches of marine organisms of species subject to the landing obligation in the Baltic Sea and caught in excess of catch composition limits be landed and counted against quotas; by replacing minimum landing sizes for marine organisms of species subject to the landing obligation with minimum conservation reference sizes; and by prohibiting the catching of salmon and sea trout at specific times and in specific areas except with trap-nets.

(5) In order to ensure the implementation of the landing obligation, Council Regulation (EC) No 1967/2006[(6)] should be amended by replacing minimum sizes for marine organisms of species subject to the landing obligation with minimum conservation reference sizes, without undermining the concept and implementation of existing minimum catching sizes.

(6) In order to ensure the implementation of the landing obligation, Council Regulation (EC) No 1098/2007[(7)] should be amended by requiring that, when fishing with drifting lines, gillnets, entangling nets and trammel nets in specified areas and at specified times, all unintended catches of cod be landed and counted against quotas.

(7) In line with scientific advice provided by the Scientific, Technical and Economic Committee for Fisheries (STECF), according to which the rule on effort limitation in the existing management plan for cod in the Baltic Sea is not required to meet the objectives of the reformed Common Fisheries Policy in respect of the stocks subject to the landing obligation, fishing effort limits for cod stocks in the Baltic Sea should be removed.

(8) In order to ensure the implementation of the landing obligation, Council Regulation (EC) No 254/2002[(8)] should be amended by requiring that, in the trawl fishery for queen scallop, all unintended catches of marine organisms of species subject to the landing obligation and caught in excess of by-catch limits be landed and counted against quotas.

(9) In order to ensure the implementation of the landing obligation, Council Regulation (EC) No 2347/2002[(9)] should be amended by requiring that unintended catches of deep-sea species subject to the landing obligation be landed and counted against quotas.

(10) In order to ensure monitoring and enforcement of the landing obligation, Council Regulation (EC) No 1224/2009[(10)] should be amended by requiring data on catches below the minimum conservation reference size to be recorded separately, by requiring catches to be stowed separately and by including provisions on the marketing of catches below minimum conservation reference sizes and on the deployment of control observers.

(11) As discards constitute a substantial waste and affect negatively the sustainable exploitation of marine organisms and marine ecosystems, and as compliance by operators with the landing obligation is essential for its success, infringements of

the landing obligation should be categorised as serious under Regulation (EC) No 1224/2009. The landing obligation represents a fundamental change for operators. Accordingly, it is appropriate to postpone for 2 years the application of the rules on serious infringements as regards infringements of that type.

(12) The introduction of the landing obligation in combination with certain new inter-annual quota flexibility rules, requires adjustment of the rules on the deduction of quotas and fishing effort.

(13) The development of parallel activities specifically devoted to catching marine organisms that are below the minimum conservation reference size for uses other than human consumption should be prevented, and Regulation (EU) No 1379/2013 of the European Parliament and of the Council[(11)] should be amended to reflect that principle.

(14) Regulation (EU) No 1380/2013 established the concept of minimum conservation reference sizes with the aim of ensuring the protection of juveniles of marine organisms. As regards the species subject to the landing obligation, fish below such minimum conservation reference sizes may not be used for direct human consumption. Regulation (EU) No 1379/2013 provides for the adoption of common marketing standards, including minimum marketing sizes. In order not to jeopardise the purpose of the minimum conservation reference sizes, such minimum marketing sizes should correspond to the minimum conservation reference sizes for the species in question. It is therefore necessary to align the minimum marketing sizes to the minimum conservation reference sizes.

(15) Regulation (EU) No 1380/2013 should expressly allow discard plans to include technical measures which are strictly linked to the implementation of the landing obligation and which aim to increase selectivity and reduce unwanted catches as much as possible.

(16) Fish which have been damaged by predators such as fish-eating marine mammals, predatory fish or birds, can constitute a risk to humans, to pets and to other fish by virtue of pathogens and bacteria which might be transmitted by such predators. Consequently, the landing obligation should not apply to catches of such damaged fish, which should be immediately disposed of at sea.

(17) Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, as well as Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, should therefore be amended accordingly.

(18) Since the catch composition rules and associated restrictions on the use of herring contained in Council Regulation (EC) No 1434/98[(12)] are no longer relevant under the landing obligation, as all herring subject to the landing obligation is to be landed and counted against quotas and any herring below the minimum conservation reference size is to be used for purposes other than direct human consumption, that Regulation should be repealed.

(19) The word ‘Community’ used in the enacting terms of Regulations (EC) No 850/98, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 2347/2002 and (EC) No 1224/2009

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should be changed in order to take into account the entry into force, on 1 December 2009, of the Treaty of Lisbon,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 850/98

Regulation (EC) No 850/98 is amended as follows:

(1) in point (c) of Article 4(2), point (b) of Article 46(1) and in Annex I, footnote (5), the noun 'Community', or the corresponding adjective, is replaced by 'Union', with any necessary grammatical changes being made;

(2) Article 1a is deleted;

(3) in Article 3, the following point is added:

(i) unintended catches shall mean incidental catches of marine organisms which, under Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council[13], must be landed and counted against quotas either because they are below the minimum conservation reference size or because they exceed the quantities permitted under the catch composition and by-catch rules.;

(4) Article 4 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

Fishing for any species listed in Annexes I to V using a mesh size smaller than the range specified for the target species listed in those Annexes shall be prohibited.;

(b) in paragraph 4, the following subparagraph is added:

Points (a) and (b) of the first subparagraph shall not apply to unintended catches of species subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013. Those unintended catches shall be landed and counted against quotas.;

(5) in Article 7(5), the following subparagraphs are added:

The first subparagraph shall not apply to unintended catches of crustaceans of the genus *Pandalus* subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013. Those unintended catches shall be landed and counted against quotas.

Fishing for crustaceans of the genus *Pandalus* using nets with a mesh size in the range of 32 to 54 millimetres without the equipment specified in the first subparagraph shall be prohibited.;

(6) in Article 10, the following paragraph is added:

Point (b) of the first paragraph shall not apply to unintended catches of species subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013. Those unintended catches shall be landed and counted against quotas.;

(7) in Article 11(1), the following subparagraph is)added:

Point (a) of the first subparagraph shall not apply to unintended catches of species subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013. Those unintended catches shall be landed and counted against quotas.;

(8) Article 15 is replaced by the following:

Article 15

1 Where marine organisms of a species subject to the landing obligation are caught in excess of permitted percentages or quantities specified in Articles 20(2), 21(2), 22(2)(b), 27(2), 29(4)(b), 29b(2), 29b(4), 29d(5)(d), 29d(6)(d), 29d(7)(c), 29f(1), 34b(2)(c) and 34b(10) of this Regulation and Annexes I to VII, X and XI hereto, Article 15 of Regulation (EU) No 1380/2013 shall apply. Those unintended catches shall be landed and counted against quotas.

2 Marine organisms of a species not subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013 which are caught in excess of permitted percentages specified in Articles 20(2), 21(2), 22(2)(b), 27(2), 29(4)(b), 29b(2), 29b(4), 29d(5)(d), 29d(6)(d), 29d(7)(c), 29f(1), 34b(2)(c) and 34b(10) of this Regulation and Annexes I to VII, X and XI hereto, shall not be landed but shall be returned immediately to the sea.;

(9) Article 17 is replaced by the following:

Article 17

A marine organism is undersized if its dimensions are below the minimum conservation reference size specified in Annexes XII and XIIa for the relevant species and the relevant geographical area, or a minimum conservation reference size otherwise fixed in accordance with Union law. Except where minimum conservation reference sizes have been established in an act adopted in accordance with Article 15(6) of Regulation (EU) No 1380/2013, the minimum conservation reference sizes established in Annexes XII and XIIa to this Regulation shall apply.;

(10) the following Article is inserted:

Article 18a

Procedure for establishing minimum conservation reference sizes in the context of discard plans

The Commission shall be empowered, for the purpose of adopting the acts referred to in Article 15(6) of Regulation (EU) No 1380/2013 and for the duration thereof, to establish minimum conservation reference sizes for species subject to the landing obligation set out in Article 15 of that Regulation. Such sizes shall be established by means of a delegated act adopted in accordance with Article 48a of this Regulation and Article 18 of Regulation (EU) No 1380/2013 with the aim of ensuring the protection of juveniles of marine organisms and may derogate, where appropriate, from the minimum conservation reference sizes established in Annexes XII and XIIa to this Regulation.;

(11) Article 19 is replaced by the following: