COMMISSION IMPLEMENTING REGULATION (EU) 2019/662

of 25 April 2019

extending the derogation from Council Regulation (EC) No 1967/2006 as regards the minimum distance from coast and the minimum sea depth for boat seines fishing for transparent goby (*Aphia minuta*), Ferrer's goby (*Pseudaphia ferreri*) and Lowbody picarel (*Spicara smaris*) in certain territorial waters of Spain (Balearic Islands)

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 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) of that Regulation was granted until 6 December 2016 by Commission Implementing Regulation (EU) No 1233/2013 ([2]).

(4) On 9 August 2016, the Spanish Authorities requested the Commission to extend the derogation beyond the end of the period of application of Regulation (EU) No 1233/2013. Spain provided up-to-date information justifying the extension of the derogation.

(5) The Scientific, Technical and Economic Committee for Fisheries (STECF) assessed the derogation requested by Spain and the related draft management plan during its 53rd plenary session held in October 2016 ([3]).

(6) STECF noted that the new draft management plan for 2016-2019 was significantly improved in comparison to the previous management plan adopted in 2013. However, STECF indicated certain aspects that required further justification and clarification, notably regarding the increase of flexibility of the fleet census; operation over *Posidonia* seagrass beds; separation of waters around Mallorca into two management areas; increase of seasonal TAC and extension of fishing season for picarel.

(7) In light of the STECF evaluation, the Commission requested additional data and clarifications, which Spain submitted to the Commission on 19 June and 6 November 2017, together with a scientific study ([4]). Spain withdrew 2 proposals for modification of the management plan: separation of waters around Mallorca into two management areas and extension of the fishing season for picarel.

(8) Spain adopted the management plan by Decree ([5]) in accordance with Article 19(2) of Regulation (EC) No 1967/2006.

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

([1]) OJ L 409, 30.12.2006, p. 11.
([2]) Commission Implementing Regulation (EU) No 1233/2013 of 29 November 2013 establishing a derogation from Regulation (EC) No 1967/2006 as regards the minimum distance from 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) (OJ L 322, 3.12.2013, p. 17).
([3]) STECF 53rd plenary meeting report (PLEN-16-03, JRC103924): https://stecf.jrc.ec.europa.eu/reports/plenary
([4]) Study on boat seines fishing with '*gerretera*' gear in the Ibiza Island, 30.5.2017 (Estudio de la pesca de '*gerret*' con artes de tirada en la Isla de Ibiza, 30.5.2017)
([5]) Decreto 19/2019, de 15 de marzo, por el que se establece el Plan de Gestión Pluriinsular para la Pesca con Artes de Tiro Tradicionales en aguas de las Illes Balears (BOIB Nº 035, 16.3.2019, p. 9442).

(10) 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 metres.

(11) The boat seines fishery cannot be undertaken with other gears and has no significant impact on the marine environment. This fishery is selective, since the seines are hauled in the water column and do not touch the seabed.

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

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

(14) The management plan guarantees no future increase in the fishing effort, as fishing authorisations will be issued only to specified 55 vessels and a total maximum ceiling of tonnage and power will be set.

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

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

(17) Since the fishing activities concerned are selective, have a negligible effect on the environment and are not affected by provisions in Article 4(5) of Regulation (EC) No 1967/2006, they are eligible for the derogation to the minimum mesh size referred to in Article 9(7) of Regulation (EC) No 1967/2006. Therefore, the minimum mesh size rules set by Article 9(3) do not apply.

(18) The requirements of Article 8(1)(h) of Regulation (EC) No 1967/2006 are not applicable since they relate to trawlers.

(19) The activity of boat seines is regulated in the Spanish management plan to ensure that catches of species mentioned in Annex III to Regulation (EC) No 1967/2006 are minimal and that the fishing activities do not target cephalopods.

(20) The Spanish management plan includes measures for the monitoring of fishing activities, in accordance with the third subparagraph of Article 13(9) of Regulation (EC) No 1967/2006 and with Articles 14 and 15 of Council Regulation (EC) No 1224/2009 ([6])

(21) The requested extension of derogation should therefore be granted.

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

(23) The duration of the extension of derogation should be limited in order to allow prompt corrective management measures in case the report to the Commission shows a poor conservation status of the exploited stock, while providing scope to improve the scientific basis for an improved management plan.

(24) Since the derogation granted by Implementing Regulation (EU) No 1233/2013 expired on 6 December 2016, this Regulation should apply from 6 December 2016.

(25) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

([6]) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Derogation

Article 13(1) of Regulation (EC) No 1967/2006 shall not apply in territorial waters of Spain adjacent to the coast of the Autonomous Community of the Balearic Islands, to fishing for transparent goby (*Aphia minuta*), Ferrer's goby (*Pseudaphia ferreri*) and Lowbody picarel (*Spicara smaris*) by boat seines which are used by vessels:

(a) registered in the maritime census managed by the Directorate-General for Fisheries and Marine Environment of the Balearic Islands;

(b) having a track record in the fishery of more than five years and not involving any future increase in the fishing effort provided; and

(c) holding a fishing authorisation and operating under the management plan adopted by Spain in accordance with Article 19(2) of Regulation (EC) No 1967/2006.

Article 2

Monitoring plan and reporting

Spain shall communicate to the Commission, by June 2019, a report drawn up in accordance with the monitoring plan established in the management plan referred to in Article 1(c).

Article 3

Entry into force and period of application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 6 December 2016 until 31 December 2019.

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

Done at Brussels, 25 April 2019.

For the Commission
The President
Jean-Claude JUNCKER