



Brussels, 22.10.2015  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 22.10.2015**

**establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

A key objective of the new 'basic regulation' of the Common Fisheries Policy (CFP)<sup>1</sup> (the new CFP) is the progressive elimination of discards in all EU fisheries. Discarding constitutes a substantial waste of resources and negatively impact on the sustainable exploitation of resources as well as the economic viability of fisheries. The landing obligation in Union waters will apply as of 1 January 2016 to certain demersal fisheries in the North Sea. The reformed policy also provides for increased regionalisation, which is intended both to move away from micromanagement at Union level, and also to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

The new CFP also provides for a series of provisions to facilitate the implementation of the landing obligation. There are generic flexibility provisions which can be applied by Member States in the context of quota management. In addition, the new CFP provides for specific flexibility mechanisms that need to be implemented through multiannual plans, or in the absence of multiannual plans, in the so-called discard plans. Those discard plans are envisaged as a temporary measure with a maximum duration of three years. They are developed as joint recommendations agreed by groups of Member States from the same region or sea basin.

This delegated act covers main species which define the demersal fisheries in the North Sea, the Skagerrak and the Kattegat as well as the EU waters of IIa that are covered by the landing obligation as of 1 January 2016 as per Article 15(1)(c) of Regulation (EU) No 1380/2013. In accordance with Article 15(5) of that Regulation and Article 47 of Regulation (EC) No 850/98, a discard plan may contain the following elements:

- specific provisions on fisheries or species covered by the landing obligation;
- specification of exemptions to the landing obligation if fisheries or species meet certain criteria related to high survivability;
- provisions for *de minimis* exemptions;
- provisions on documentation of catches;
- the fixing of minimum conservation reference sizes (MCRS);
- technical measures.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on the joint recommendation (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom) who have a direct management interest in the relevant fisheries in this region.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

For the purpose of implementing the regionalised approach the North Sea Member States having a direct management interest agreed by consensus on the joint recommendation for the discard plan for demersal fisheries in the North Sea. The chair of the Scheveningen group, France, submitted to the Commission services a JR for the demersal fisheries on 4 June 2015.

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<sup>1</sup> OJ L 354, 28.01.2013, p.22.

On 3 July 2015 further clarifications to the JR were provided. JR contained, *inter alia*, the following elements:

- A description of the fisheries covered by the discard plan;
- An exemption due to the high survivability;
- A number of *de minimis* exemptions;
- A provision fixing of minimum conservation reference sizes (MCRS);
- A number of provisions on specific technical measures in the Skagerrak.

In accordance with the procedure described in Article 18 of Regulation (EU) No1380/2013, this JR is the result of discussions between the North Sea Member States having a direct management interest and taking account of the views of the North Sea Advisory Council which are concerned by the fisheries covered by the JR. Long Distance Advisory Council was invited to closely cooperate with the regional Group, but it declined participation. For all of these elements the JR included supporting documentation underpinning the exemptions and other provisions set out in the JR.

During the work on the joint recommendation there has been regular and detailed engagement between the Scheveningen Group and the NSAC. The NSAC has been invited to attend, in part, each meeting of the Scheveningen High Level Group and the Technical group, and Member State representatives attended the meetings of the Advisory Council. Additionally, NSAC was asked for initial advice on the different elements of the discard plan. The NSAC provided advice in December 2014 to introduce the landing obligation on species by species over the period 2016-2018 and in April 2015 concerning high survivability, *de minimis* exemptions and setting minimum conservations reference sizes. The Group presented full draft discard plan to the NSAC for a formal consultation on 18 May 2015 and the NSAC presented its response at the HLG meeting on 29 May 2015. The majority view within the NSAC is that the hybrid approach to phasing will lead to suboptimal outcomes in comparison to a well-designed species approach. The group could not follow the species approach proposed by the NSAC as it was considered not in line Article 15 of the Regulation (EU) No 1380/2013.

Furthermore, HLG consulted the North Western Waters Member States so as to aim for a consistent approach across the North Sea and the NWW.

The main elements of the final joint recommendations submitted to the Commission by the Member States relating to the application of the landing obligation to the fisheries concerned, like the *de minimis* and high-survivability exemptions, and fixing MCRS were evaluated by the relevant STECF Expert Working Group (EWG 15-10) and during the STECF plenary meeting of 6-10 July 2015<sup>2</sup>.

STECF found that generally speaking the supporting information is sufficient to justify the measures proposed. The STECF were content with the information provided in support of the high survivability exemption for Norway lobster in pots, but noted that further information would be needed to be able to better assess the survivability exemption for Norway lobster caught with trawls. Therefore, Member States should collect further scientific arguments on this specific exemption. The provided information will be evaluated by STECF after one year in order to confirm the application of the exemption.

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<sup>2</sup> [http://stecf.jrc.ec.europa.eu/documents/43805/1099561/2015-07\\_STECF+PLEN+15-02\\_JRCxxx.pdf](http://stecf.jrc.ec.europa.eu/documents/43805/1099561/2015-07_STECF+PLEN+15-02_JRCxxx.pdf)

As regards the de minimis exemptions, STECF concludes that the exemptions are supported by information indicating that further viable increase of selectivity is difficult to achieve or handling of catches would result in disproportionate costs.

For the proposed minimum conservation size for cod STECF concluded that proposed MCRS is above the L50 maturity sizes.

Proposed technical measures to increase gear selectivity and reduce unwanted catches and thus support the implementation of the landing obligation in the Skagerrak have largely been assessed previously by STECF.

On the basis of the evaluation by STECF and by the Commission, and following clarification of certain points of the JR, the Commission considers that the JR submitted complies with Article 15(6) of Regulation (EU) No 1380/2013 as outlined above.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

#### **Summary of the proposed action**

The main legal action is to adopt the measures that would facilitate the implementation of the landing obligation.

The Regulation specifies species and fisheries to which specific measures would apply: i.e. high survivability and the de minimis exemptions, setting of MCRS and technical measures.

#### **Legal basis**

Articles 15(6), 18(1) and (3) of Regulation (EU) No 1380/2013 and Articles 18a and 48a of Regulation (EC) No 850/98.

#### **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union.

#### **Proportionality principle**

The proposal is within the scope of the delegated powers provided to the Commission by Article 15(6) of Regulation (EU) No 1380/2013 and Article 18a of Regulation (EC) No 850/98 does not go beyond what is necessary to achieve the purpose of those provisions.

#### **Choice of instrument**

Proposed instrument: Commission Delegated Regulation.

Other means would not be adequate for the following reason: The Commission has been granted powers to adopt a discard plan by means of delegated acts. Member States having a direct management interest submitted the joint recommendation. Measures provided in the joint recommended and included in this proposal are based on the best available scientific advice and fulfil all relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

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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<sup>3</sup>, and in particular Article 15(6) and Article 18(1) and (3) thereof, and to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms<sup>4</sup>, and in particular Article 18a and Article 48a thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of delegated acts for a period of no more than three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the North Sea. Those Member States have submitted a joint recommendation to the Commission after having consulted the North Sea Advisory Council and the Long Distance Advisory Council. Scientific contribution was obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). The measures included in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013.
- (4) For the purposes of Regulation (EU) No 1380/2013, the North Sea comprises ICES zones IIIa and IV. As some demersal stocks relevant to the proposed discard plan are also to be found in Union waters of ICES Division IIa, Member States recommend that this Division is covered by the discard plan.
- (5) As regards the North Sea, in accordance with Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies to the species that define the fisheries which are subject to catch limits at the latest from 1 January 2016 in the mixed fisheries for cod, haddock, whiting and saithe; in the fisheries for Norway lobster; in the mixed

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<sup>3</sup> OJ L 354, 28.12.2013, p. 22.

<sup>4</sup> OJ L 125, 27.4.1998, p. 1.

fishery for common sole and plaice; in the fisheries for hake and in the fisheries for Northern prawn. In accordance with Article 15(5) of Regulation (EU) No 1380/2013, the discard plan identifies the species which have to be landed as from 1 January 2016. These species are saithe, haddock, Norway lobster, common sole, plaice, hake and Northern prawn. This discard plan also establishes an obligation to land bycatches of Northern prawn.

- (6) The joint recommendation suggested that two exemptions from the landing obligation be applied to Norway lobster caught, respectively, with pots and with certain bottom trawls (OTB, TBN<sup>5</sup>) in ICES Division IIIa. Based on the scientific evidence provided in the joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, the Commission considers that those exemptions should be included in this Regulation. Member States should submit additional data in order to enable STECF to further assess the survival rates of Norway lobster caught with the trawls concerned and the Commission to review the relevant exemption after 2016.
- (7) The joint recommendation includes five *de minimis* exemptions from the landing obligation for certain fisheries and up to certain levels. The evidence provided by the Member States was reviewed by the STECF, which in general concluded that the joint recommendation, supported in some cases with a qualitative assessment of the costs, contained reasoned arguments that further improvements in selectivity are difficult to achieve and/or imply disproportionate costs in handling unwanted catches. As such conclusion is not contradicted by differing scientific information, it is appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the joint recommendation, within the limits of Article 15(5)(c) of Regulation (EU) No 1380/2013.
- (8) The *de minimis* exemption suggested in the joint recommendation for common sole and haddock combined, up to a maximum of 2% of the total annual catches of Norway lobster, sole and haddock in the fishery for Norway lobster by vessels using bottom trawls with a species selective grid in ICES Division IIIa, is based on the fact that increases in selectivity are very difficult to achieve. The STECF concluded that the supporting information is sufficient to justify the exemption claimed. Therefore, the exemption concerned should be included in this Regulation.
- (9) The *de minimis* exemption suggested in the joint recommendation for common sole, up to a maximum of 3% of the total annual catches of this species by vessels using trammel and gill nets to catch common sole in ICES Division IIIa, Subarea IV and Union waters of ICES Division IIa, is based on the fact that increases in selectivity are very difficult to achieve. . STECF concluded that the supporting information is sufficient to justify the exemption claimed. Therefore, the exemption concerned should be included in this Regulation.
- (10) The *de minimis* exemption suggested in the joint recommendation for common sole smaller than 19cm, up to a maximum of 3.7% of the total annual catches of this species by vessels using beam trawl with a mesh size of 80-90mm in ICES Subarea IV

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<sup>5</sup> Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EC) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common fisheries policy. For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

South of 55/56°N, is based on the fact that increases in selectivity are very difficult to achieve and that there is supporting quantitative information on disproportionate costs of handling of unwanted catches. The Commission considers that it is appropriate to include that exemption in this Regulation. Member States should submit additional data as regards the costs concerned, in order to enable the Commission to review that exemption after 2016..

- (11) The *de minimis* exemption suggested in the joint recommendation for common sole, up to a maximum of 7% of the total annual catches of this species by vessels using beam trawls with increased selectivity in ICES Subarea IV, is based on the fact that increases in selectivity are very difficult to achieve. The STECF concluded that the supporting information is sufficient to justify the suggested exemption. Therefore, the exemption concerned should be included in this Regulation.
- (12) The *de minimis* exemption suggested in the joint recommendation for Norway lobster smaller than minimum conservation reference size, up to a maximum of 6% of the total annual catches of this species by vessels using certain bottom trawls in ICES Subarea IV and Union waters of ICES Division IIa, is based on the fact there is supporting quantitative information on disproportionate costs of handling and disposal of unwanted catches. The STECF concluded that the supporting information is sufficient to justify the suggested exemption. Therefore, the exemption concerned should be included in this Regulation.
- (13) Article 18a of Regulation (EC) No 850/98 empowers the Commission to establish, for the purpose of adopting discard plans and for the species subject to the landing obligation, a minimum conservation reference size (MCRS) with the aim of ensuring the protection of juveniles of marine organisms. MCRS may derogate, where appropriate, from the sizes established in Annex XII to that Regulation. Currently, for Norway lobster a MCRS of 130 cm is established in that Annex XII . Scientific evidence reviewed by the STECF supports the setting of MCRS for Norway lobster at 105cm. In particular, STECF concluded that the proposed MCRS is above the average maturity size and that the risk to the population of reducing the MCRS in ICES Division IIIa is small.
- (14) Discard plans may also include technical measures regarding fisheries or species covered by the landing obligation. In order to increase gear selectivity and reduce unwanted catches in the Skagerrak, it is appropriate to provide for a number of technical measures, which were agreed between the Union and Norway in 2011,<sup>6</sup> and 2012<sup>7</sup> .
- (15) In order to ensure appropriate control, specific requirements for the Member States to establish lists of vessels covered by this Regulation should be laid down.
- (16) As the measures provided for in this Regulation have a direct impact on the economic activities linked to and the planning of the fishing season of Union vessels, it should enter into force immediately after its publication. It should apply from 1 January 2016 in order to comply with the time-frame set out in Article 15 of Regulation (EU) No 1380/2013. In accordance with Article 15(6) of that Regulation, this Regulation should apply for no more than one year,

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<sup>6</sup> Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.

<sup>7</sup> Agreed record of fisheries consultations between the European Union and Norway on measures for the implementation of a discard ban and control measures in the Skagerrak area, 4 July 2012.

HAS ADOPTED THIS REGULATION:

*Article 1*

**Scope**

This Regulation specifies the details for implementing the landing obligation, provided for in Article 15(1) of Regulation (EU) No 1380/2013, in the North Sea and in Union waters of ICES Division IIa that shall apply in the fisheries set out in the Annex to this Regulation.

*Article 2*

**Survivability exemption**

1. The exemption from the landing obligation provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013, for species for which scientific evidence demonstrates high survival rates, shall apply to the following catches of Norway lobster:
  - (a) catches with pots (FPO);
  - (b) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 90mm equipped with:
    - species selective grid with bar spacing of maximum 35mm, or
    - a top panel of at least 270 mm mesh size (diamond mesh) or at least 140 mm mesh size (square mesh).
2. Norway lobster caught in cases referred to in paragraph 1(a) and (b) shall be released immediately and in the area where it has been caught.
3. By 30 April 2016, Member States having a direct management interest in the North Sea shall submit to the Commission additional scientific information supporting the exemption laid down in paragraph 1(b).

*Article 3*

**De minimis exemptions**

1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded:
  - (a) for common sole and haddock combined, up to a maximum of 2% of the total annual catches of Norway lobster, common sole and haddock in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) of mesh size equal to or larger than 70 mm equipped with a species selective grid with bar spacing of maximum 35mm in ICES Division IIIa;
  - (b) for common sole, up to a maximum of 3% of the total annual catches of this species by vessels using trammel nets and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) in the ICES Division IIIa, Subarea IV and Union waters of ICES Division IIa;
  - (c) for common sole smaller than 19cm, up to a maximum of 3.7% of the total annual catches of this species by vessels using beam trawls (TBB) of mesh size



80-90mm in the southern part of the North Sea ( ICES Subarea IV South of 55/56°N);

- (d) for common sole below minimum conservation reference size, up to a maximum of 7% of the total annual catches of this species by vessels using beam trawl (TBB) of mesh size equal to or larger than 80 and less than 119 mm with increased mesh size in the extension of the beam trawl in ICES Subarea IV.
  - (e) for Norway lobster below minimum conservation reference size, up to a maximum of 6% of the total annual catches of this species by vessels using bottom trawls (OTB, TBN, OTT, TB) of mesh size equal to or larger than 80 mm and less than 99 mm in ICES Subarea IV and Union waters of ICES Division IIa.
2. By 30 April 2016, Member States having a direct management interest in the North Sea shall submit to the Commission additional scientific information supporting the exemption laid down in paragraph 1(c).

#### *Article 4*

##### **Minimum conservation reference size**

By way of derogation from the minimum conservation reference size established in Annex XII to Regulation (EC) No 850/98 and for the purposes of this Regulation, the minimum conservation reference size of Norway lobster in ICES Division IIIa shall be as follows:

- (a) total length of 105 mm;
- (b) carapace length of 59 mm.

#### *Article 5*

##### **Specific technical measures in the Skagerrak**

1. The carrying on board or the use of any trawl, Danish seine, beam trawl or similar towed net having a mesh size of less than 120 mm shall be prohibited.
2. By way of derogation from paragraph 1, trawls with at least 90 mm cod end may be used, provided they are equipped with:
  - (a) a square mesh panel of at least 140 mm;
  - (b) a diamond mesh panel of at least 270 mm placed in a four panel section and mounted with a joining ration of three meshes of 90 mm to one mesh of 270 mm; or
  - (c) a sorting grid with no more than 35 mm bar spacing.

The derogation provided for in points (a) and (b) of the first subparagraph shall apply provided the panel of the trawl is:

- at least 3 metres long;
  - positioned no more than 4 metres from the cod line; and
  - the full width of the top sheet of the trawl (i.e. from selvedge to selvedge).
3. By way of derogation from paragraph 1, the following trawls also may be used:

- (a) trawls with at least 70 mm square mesh cod end equipped with a sorting grid with no more than 35 mm bar spacing;
  - (b) trawls with minimum mesh sizes of less than 70 mm when fishing for pelagic or industrial species, provided the catch contains more than 80% of one or more pelagic or industrial species;
  - (c) trawls with at least 35 mm cod end when fishing for *Pandalus*, provided the trawl is equipped with a sorting grid with a maximum bar spacing of 19mm.
4. A fish retention device may be used when fishing for *Pandalus* in accordance with paragraph 3(c), provided there are adequate fishing opportunities to cover by-catch and that the retention device is
- constructed with a top panel of a minimum mesh size of 120 mm square mesh;
  - at least 3 metres long; and
  - at least as wide as the width of the sorting grid.

#### *Article 6*

##### **List of vessels**

Member States shall determine, in accordance with the criteria laid down in the Annex to this Regulation, the vessels subject to the landing obligation for each particular fishery.

By 31 December 2015 they shall submit to the Commission and other Member States, using the secure Union control website, the lists of vessels established pursuant to paragraph 1 for each particular fishery set out in the Annex. They shall keep those lists updated.

#### *Article 7*

##### **Entry into force**

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

It shall apply from 1 January 2016 until 31 December 2016.

However, Article 6 shall apply as from the date of entry into force of this Regulation.

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

Done at Brussels, 22.10.2015

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*