



Brussels, 13.3.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.3.2019

amending Delegated Regulation (EU) 2018/2035 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Regulation (EU) No 1380/2013 of the Common Fisheries Policy (CFP)¹ is the progressive elimination of discards in all EU fisheries. As of 1 January 2019 the landing obligation has started to apply to all catches of species subject to the catch limits in the North Sea. The basic regulation also provides for increased regionalisation, to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

Regulation (EU) No 1380/2013 stipulates that details of the implementation of the landing obligation and specific flexibility mechanisms need to be established through multiannual plans or, in their absence, through 'discard plans'.

Regulation (EU) 2018/973² establishing the multiannual management plan for demersal stocks in the North Sea and the fisheries exploiting those stocks was adopted in 2018 covering the demersal stocks in the North Sea.

For all stocks of species in the North Sea to which the landing obligation applies under Article 15 of Regulation (EU) No 1380/2013, Article 11 of Regulation (EU) 2018/973 provides the empowerment to the Commission to adopt delegated acts in accordance with Article 16 of this Regulation and Article 18 of Regulation (EU) No 1380/2013 in order to supplement the Regulation (EU) 2018/973 by specifying details of that obligation as provided in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

Regulation (EU) 2018/2035³ specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021 was adopted in 2018. Previous to Regulation (EU) No 2018/2035, discard plans for demersal fisheries in the North Sea were in force for the years 2016, 2017 and 2018.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on the joint recommendations (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Denmark, France, Germany, 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 have agreed by consensus on a JR for the discard plan for demersal fisheries in the North Sea. The chair of the regional group of North Sea Member States ('Scheveningen Group'), Germany, submitted the JR for the demersal fisheries to the Commission on 30 May 2018 with a further amendment of the JR on 30 August 2018. Based on these two joint recommendations, Commission has adopted Regulation (EU) No 2018/2035. Due to corrections needed to the JRs of 30 May 2018 with a further amendment of the JR on 30 August 2018, the chair of the regional group of North Sea Member States ('Scheveningen Group'), Germany, submitted the additional JRs for the demersal fisheries to the Commission on 6 November and 19 December 2018 and requested an amendment of Regulation (EU) No 2018/2035 to correct some errors of a technical nature contained in the previously submitted JRs. They contained, *inter alia*, the following elements:

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 179, 16.07.2018, p. 1-13.

³ OJ L 327, 21.12.2018, p. 17.

- provisions on the introduction of the landing obligation for certain stocks in certain fisheries;
- several corrections on existing high survivability or *de minimis* exemptions.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, these JRs are the result of discussions between the North Sea Member States having a direct management interest and takes into account the views of the North Sea Advisory Council (NSAC) which is the Advisory Council covering the fisheries covered by the JR, as well as the Pelagic Advisory Council (PELAC). For all of these elements the JR includes supporting documentation underpinning the exemptions and other provisions it sets out.

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, MCRS and technical measures.

Legal basis

Article 11 of Regulation (EU) 2018/973.

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 11 of Regulation (EU) 2018/973 and 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 JR. Measures provided for in the JR 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) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008⁴, and in particular Article 11 thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁵ 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 9 of Regulation (EU) No 1380/2013 provides for the adoption of multiannual plans containing conservation measures for fisheries exploiting certain stocks in a relevant geographical area.
- (3) Such multiannual plans specify details of the implementation of the landing obligation and may empower the Commission to further specify those details on the basis of joint recommendations developed by Member States.
- (4) On 4 July 2018, the European Parliament and the Council adopted Regulation (EU) 2018/973 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks. Article 11 of that Regulation empowers the Commission to adopt delegated acts specifying details of the landing obligation on the basis of joint recommendations developed by Member States.
- (5) Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council and the Pelagic Advisory Council, Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom submitted on 30 May 2018 a joint recommendation to the Commission concerning details of the implementation of the landing obligation for demersal fisheries in the North Sea. The joint recommendation was amended on 30 August 2018.

⁴ OJ L 179, 16.7.2018, p. 1.

⁵ 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 (OJ L 354, 28.12.2013, p. 22).

- (6) Based on that joint recommendation, Commission Delegated Regulation (EU) 2018/2035⁶ established a discard plan applicable to those fisheries for the years 2019-2021.
- (7) Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom submitted additional joint recommendations on 6 November 2018 and 19 December 2018 for corrections in the previous joint recommendation of 30 May 2018 as amended on 30 August 2018.
- (8) According to Article 18(2) of Regulation (EU) No 1380/2013, the Commission is to facilitate the cooperation between Member States, including, where necessary, by ensuring that a scientific contribution is obtained from the relevant scientific bodies. Prior to the adoption of Delegated Regulation (EU) 2018/2035, scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). The new joint recommendations contain corrections of a technical nature for which the scientific information remains the same. The additional type of the gear, included in a joint recommendation, falls under the same trawls' category. Since the OTT trawl included in the new joint recommendation is a type of bottom trawl gear, it has the same impact as the other bottom trawl gears. Therefore, the scientific advice remains the same. As regards the wording of *de minimis* correction, the current wording establishes that the percentages of the *de minimis* should be calculated on the basis of the total annual catches of species under the landing obligation below the minimum reference size. The percentages of *de minimis* should however rather be calculated on the basis of the total annual catches of whiting and cod.
- (9) Article 16(4) of Regulation (EU) 2018/973 provides that the Commission, before adopting a delegated act, is to consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The measures provided for in the new joint recommendations are in accordance with the opinion of the Fisheries Expert group, consisting of representatives of 28 Member States, the Commission, as well as the European Parliament as an observer.
- (10) The joint recommendation of 6 November 2018 suggests the inclusion of the fishing gear OTT within the gear code lists for trawls in certain fisheries. The technical correction clarifies that certain exemptions for vessels using trawls also apply to bottom twin trawls (two trawls rigged together, trawled by one vessel). As the text of the joint recommendation received on 30 May 2018 already mentioned “trawls” which implies that all trawls including twinrigs are being covered, it is necessary to add the respective gear code.
- (11) The joint recommendation of 19 December 2018 suggests a correction of an error concerning certain calculation factors in *de minimis* exemptions for :
 - (a) whiting and cod below minimum conservation reference size caught with bottom trawls in ICES division 4c;
 - (b) whiting and cod below minimum conservation reference size caught with bottom trawls in ICES divisions 4a and 4b.
- (12) Delegated Regulation(EU) 2018/2035 should be amended accordingly.

⁶ Commission Delegated Regulation (EU) 2018/2035 of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021 (OJ L 327, 21.12.2018, p.17).

- (13) As the measures provided for in this Regulation have a direct impact on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force immediately after its publication. Considering that the discard plan established by Delegated Regulation (EU) 2018/2035 entered into force on 1 January 2019, this Regulation should retroactively apply from 1 January 2019,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2018/2035 is amended as follows:

- (1) in Article 3(1)(b), the introductory sentence is replaced by the following:
“catches with bottom trawls (OTB, OTT, TBN) fitted with:”
- (2) in Article 6(1), point (c), is replaced by the following:
“(c) plaice caught with bottom trawls (OTB, OTT, PTB) with a mesh size of at least 120 mm when targeting flatfish or roundfish in winter months (from 1 November to 30 April).”;
- (3) Article 9 is amended as follows:
 - (a) in point (c), the introductory sentence is replaced by the following:
“in the fishery for Norway lobster by vessels using bottom trawls (OTB, OTT, TBN) with a mesh size equal to or larger than 70 mm equipped with a species-selective grid with a bar spacing of maximum 35 mm in Union waters of ICES division 3a:”;
 - (b) in point (d), the introductory sentence is replaced by the following:
“in the fishery for Northern prawn by vessels using bottom trawls (OTB, OTT) with a mesh size equal to or larger than 35 mm equipped with a species selective grid with a bar spacing of maximum 19 mm, and with unblocked fish outlet, in Union waters of ICES division 3a:”;
 - (c) point (e) is replaced by the following:
“(e) in the mixed demersal fisheries by vessels using bottom trawls or seines (OTB, OTT, SDN, SSC) with a mesh size of 70-99 mm (TR2) in Union waters of ICES division 4c:

a combined quantity of whiting and cod below minimum conservation reference size, which shall not exceed 6% in 2019 and 5% in 2020 and 2021 of the total annual catches of whiting and cod; the maximum amount of cod that may be discarded shall be limited to 2% of those total annual catches;”;
 - (d) point (f) is replaced by the following:
“(f) in the mixed demersal fisheries by vessels using bottom trawls or seines (OTB, OTT, SDN, SSC) with a mesh size of 70-99 mm (TR2) in Union waters of ICES divisions 4a and 4b:

a combined quantity of whiting and cod below minimum conservation reference size, which shall not exceed 6% in 2019 of the total annual

catches of whiting and cod; the maximum amount of cod that may be discarded shall be limited to 2% of those total annual catches;"

(e) in point (g), the introductory sentence is replaced by the following:

in fisheries by vessels using bottom trawls (OTB, OTT, TBN, PTB) with a mesh size of 90-119 mm, equipped with Seltra panel, or bottom trawls (OTB, OTT, TBN, PTB) with a mesh size equal to or larger than 120 mm, in Union waters of ICES division 3a:".

Article 2

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 2019.

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

Done at Brussels, 13.3.2019

For the Commission
The President
Jean-Claude JUNCKER