



Brussels, 1.10.2019
C(2019) 7048 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 1.10.2019

specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Common Fisheries Policy (CFP), as set out in Regulation (EU) 1380/2013¹ is the progressive elimination of discards in all EU fisheries. Discarding constitutes a substantial waste of resources and negatively impacts on the sustainable exploitation of resources as well as the economic viability of fisheries. The landing obligation in Union waters applies from 1 January 2019 to all catches of species subject to the catch limits. The CFP also provides for increased regionalisation, which is intended to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

Regulation (EU) No 1380/2013 stipulates in its Article 15 that details of the implementation of the landing obligation and specific flexibility mechanisms need to be established through multiannual plans and, if necessary, further specified, based on joint recommendations agreed by groups of Member States from the same region or sea basin.

Commission Delegated Regulation (EU) No 2018/2034² established a demersal discard plan in the North-Western waters for the period 2019-2021. It was amended by Commission Delegated Regulation (EU) 2019/905³. Previous to Regulation (EU) No 2018/2034, discard plans for demersal fisheries in the North-Western waters were in force for the years 2016-2018.

This delegated act repeals and replaces the current North-Western waters demersal discard plan (Delegated Regulation (EU) 2018/2034).

Regulation (EU) 2019/472⁴ establishing the multiannual management plan for stocks fished in the Western Waters and adjacent waters and the fisheries exploiting those stocks was adopted in 2019 covering the demersal stocks in the North-Western waters.

Regulation (EU) 2019/1241⁵, which establishes regional technical measures for the North-Western waters in Annex VI, came into force only on 14 August 2019, and does not provide for transitional measures as regards the procedure for the adoption of delegated acts amending such regional technical measures. The joint recommendation was submitted by Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom and assessed by the STECF before the entry into force of Regulation (EU) 2019/1241 and therefore did not refer to Regulation (EU) 2019/1241. Nevertheless, in view of these exceptional circumstances, the Commission considers that on the basis of information available to it at this stage in the joint recommendation and STECF assessment there does not appear any element indicating that the proposed technical measures would fail to comply with the requirements established for technical measures in Article 15 of Regulation (EU) 2019/1241.

For all stocks of species in the North-Western waters to which the landing obligation applies under Article 15(1) of Regulation (EU) No 1380/2013, Article 13 of Regulation (EU) 2019/472 provides the empowerment to the Commission to adopt delegated acts in accordance with Article 18 of that Regulation and Article 18 of Regulation (EU) No 1380/2013 in order to supplement the Regulation (EU) 2019/472 by specifying details of that obligation as provided in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

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

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 327, 21.12.2018, p.8-16.

³ OJ L 145, 4.6.2019, p. 2-3.

⁴ OJ L 83, 25.3.2019, p. 1-17.

⁵ OJ L 198, 25.07.2019, p. 105.

Member States concerned (i.e. Belgium, Spain, France, Ireland, the Netherlands 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 NWW Member States agreed that the chair of the group, France, should submit to the Commission a JR. Accordingly, the JR was submitted to the Commission services on 6 June 2019. Additional information has been provided at a later stage. After the Scientific, Technical and Economic Committee for Fisheries (STECF) assessment, the NWW Member States revised the JR on 22 August 2019.

It contained, *inter alia*, the following elements:

- A description of the fisheries covered by the discard plan;
- A number of exemptions for high survivability;
- A number of *de minimis* exemptions;
- Provisions on specific technical measures.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the NWW Member States having a direct management interest, and taking account of the views of the North Western Waters Advisory Council (NWW AC) and Pelagic Advisory Council (PELAC), that are concerned by the fisheries covered by the JR. For all of these elements the JR included supporting documentation underpinning the exemptions and other provisions set out in the JR.

The JR was developed by the Member States concerned as a result of meetings of the technical group and in meetings of the Directors' Group.

Direct consultations between the Advisory Council and experts and fisheries managers from the national administrations of the NWW Member States were held in the first half of 2019. Representatives from the Commission and the NWW Member States also participated. The NWW AC and PELAC were given the opportunity to present and discuss their recommendations for implementation of the landing obligation during meetings of the technical and directors groups.

Furthermore, NWW Member States aimed for a consistent approach across the North Sea and the NWW.

The elements of the final joint recommendation submitted to the Commission by the Member States relating to the application of the landing obligation to the fisheries concerned and the *de minimis* as well as high-survivability exemptions were evaluated by the relevant STECF Expert Working Group and during the STECF plenary meeting of 1-5 July 2019⁶.

The JR mentioned the need to exempt certain catches on account of legislation related to fisheries products unfit for human or animal consumption, i.e. Regulation (EC) No 853/2004 and Regulation (EC) No 1881/2006. However, such an exemption is outside of the scope of measures under Article 15(5) of Regulation (EU) No 1380/2013 for JRs in the context of the Common Fisheries Policy. Therefore, this exemption has not been included in this regulation.

⁶ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

The JR also mentioned the exemption for fish damaged by predators. This exemption is already covered by Article 15(4)(d) of Regulation (EU) No 1380/2013 and does not need to be implemented by a delegated act.

The JR also mentioned the need to record the catches of the species subject to the landing obligation. This is an obligation under Article 15(1) of Regulation (EU) No 1380/2013 and the documentation of catches is already covered under Regulation (EU) No 1224/2009, so-called 'Control regulation'. Therefore, it was not included in this delegated act.

The Commission is mindful that the nature of fisheries can change over time. It is therefore important to clarify that where exemptions have previously been granted, this does not mean they will automatically be renewed. As the catch composition, fishing technology or fishing behaviour of the fleets covered by an exemption may have changed, it is necessary that established exemptions are reviewed again by the STECF after 3 or 5 years from being initially granted and that Member States will have to provide again justification and scientific data for review by the STECF.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

The Regulation specifies the species and fisheries to which specific measures would apply: i.e. *de minimis* exemptions and the high survivability exemptions.

Legal basis

Article 13 of Regulation (EU) 2019/472 and Article 15 of Regulation (EU) No 2019/1241.

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 13 of Regulation (EU) 2019/472 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 relevant measures by means of delegated acts. Member States having a direct management interest submitted their joint recommendation. Measures provided in the joint recommendation and included in this proposal are based on the best available scientific advice and fulfil all the relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

COMMISSION DELEGATED REGULATION (EU) .../...

of 1.10.2019

specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008⁷, and in particular Article 13 thereof,

Having regard to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005⁸, and in particular Article 15(2) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁹ 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) Commission Delegated Regulation (EU) 2018/2034¹⁰ established a discard plan for certain demersal fisheries in the North-Western waters for the period 2019-2021,

⁷ OJ L 83, 25.3.2019, p. 1-17.

⁸ OJ L 198, 25.07.2019, p. 105.

⁹ 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).

¹⁰ Commission Delegated Regulation (EU) 2018/2034 of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021 (OJ L 327, 21.12.2018, p. 8).

following a joint recommendation submitted by Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom.

- (5) On 19 March 2019, the European Parliament and the Council adopted Regulation (EU) 2019/472¹¹ establishing a multiannual plan for stocks fished in the Western Waters, and for fisheries exploiting those stocks. Article 13 of that Regulation empowers the Commission to adopt delegated acts in order to supplement this Regulation by specifying details of the landing obligation for all stocks of species in the Western Waters to which the landing obligation applies under Article 15(1) of Regulation (EU) No 1380/2013, as provided for in points (a) to (e) of Article 15(5) of that Regulation (EU) No 1380/2013, on the basis of joint recommendations developed by Member States. Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom have a direct fisheries management interest in the North-Western waters. After consulting the North Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 6 June 2019 a new joint recommendation to the Commission concerning a discard plan for certain demersal fisheries in the North-Western Waters for the period 2020-2021. The joint recommendation was amended on 22 August 2019.
- (6) The new joint recommendation submitted by the Member States proposed continuation of a number of additional technical measures that aim to increase selectivity and reduce unwanted catches for fisheries or species covered by the landing obligation that were introduced pursuant to Article 15(5)(a) of the Regulation (EU) No 1380/2013 for the years 2019-2021 by Delegated Regulation (EU) 2018/2034.
- (7) On 14 August 2019 a new Regulation (EU) 2019/1241 on the conservation measures of fisheries resources and the protection of marine ecosystems through technical measures came into force. It establishes in Annex VI specific provisions regarding technical measures in North Western Waters, which also include rules on mesh sizes, associated conditions and by-catches. In addition, point 3 of Annex VI of this Regulation refers to Delegated Regulation (EU) 2018/2034. Article 15 of Regulation (EU) 2019/1241 empowers the Commission to adopt delegated acts in order to amend, supplement, repeal or derogate from the technical measures set out in the Annexes to Regulation (EU) 2019/1241, including when implementing the landing obligation.
- (8) Regulation (EU) 2019/1241 does not provide for transitional measures. Therefore, to ensure compatibility between this Delegated Regulation and Regulation (EU) 2019/1241, it is necessary to apply the conditions established in Regulation (EU) 2019/1241, whilst at the same time taking into account the exceptional circumstances involved. Based on the information provided by the Member States, the Scientific, Technical and Economic Committee for Fisheries (STECF) assessed the joint recommendation and concluded¹² that the proposed changes to increase selectivity in the North Western Waters are reasonable and represent an increase in selectivity compared to the gear defined previously. This joint recommendation was developed and submitted by the Member States and assessed by the STECF before the entry

¹¹ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ L 83, 25.3.2019, p. 1).

¹² <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

into force of Regulation (EU) 2019/1241 and therefore did not refer to that Regulation. Nevertheless, in view of the exceptional circumstances, the Commission considers that on the basis of information available to it at this stage in the joint recommendation and STECF assessment there does not appear to be any element indicating that the additional proposed technical measures would fail to comply with the requirements established for technical measures in Article 15 of Regulation (EU) 2019/1241.

- (9) To increase gear selectivity and reduce unwanted catches in the Celtic Sea, Irish Sea and West of Scotland, it is therefore appropriate to include a number of selective measures for demersal fisheries. Those technical measures should therefore apply for the period 2020-2021.
- (10) Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF)¹³. The Commission presented the measures concerned for a written consultation of the expert group, consisting of 28 Member States and European Parliament as an observer.
- (11) In the cases where the relative amount of dead discards are comparatively low, 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 the collection of data which are essential for the proper and informed management of discards with a view to implementing fully the landing obligation.
- (12) Delegated Regulation (EU) 2018/2034 included a survivability exemption from the landing obligation, as referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013, for Norway lobster caught by pots, traps or creels in ICES¹⁴ subareas 6 and 7, based on scientific evidence which demonstrated high survival rates. That evidence was evaluated in previous years and the STECF concluded¹⁵ that the exemption is justified. The new joint recommendation suggests the continuation of that exemption. Considering that the circumstances have not changed, that exemption should continue to apply for the period 2020-2021.
- (13) Delegated Regulation (EU) 2018/2034 included a survivability exemption for common sole below the minimum conservation reference size (MCRS) caught with 80-99 mm otter trawl gears in ICES division 7d within six nautical miles from the coast and outside identified nursery areas, based on scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF has concluded¹⁶ that the evidence was sufficient. The new joint recommendation suggests the continued application of the exemption. Considering that the circumstances have not changed, that exemption should continue to apply for the period 2020-2021.
- (14) Delegated Regulation (EU) 2018/2034 included a survivability exemption for Norway lobster caught using bottom trawls with a mesh size equal to or larger than 100 mm and for Norway lobster caught with bottom trawls with a mesh size of 70-99 mm in combination with selective gear options (TRI and TR2 fisheries) in ICES subarea 7. Member States provided scientific evidence in order to demonstrate high

¹³ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

¹⁴ International Council for the Exploration of the Sea

¹⁵ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

¹⁶ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

discard survival rates for Norway lobster in that fishery. The evidence was submitted to the STECF which concluded¹⁷ that the survival study made with Seltra trawl provided sufficient data, but that the overall effect on the extensive fishery of Norway lobster with other fishing gears remains difficult to assess. The STECF noted that assuming that a relatively high survival rate applies to all gears, a relatively low discard rate is implied in that fishery. That exemption should therefore apply for the period 2020-2021.

- (15) Delegated Regulation (EU) 2018/2034 included a survivability exemption for Norway lobster caught in ICES division 6a, within twelve nautical miles of the coast, using otter trawls with a mesh size of 80-110 mm. Member States provided scientific evidence in order to demonstrate high discard survival rates for Norway lobster in that fishery. The evidence was submitted to STECF which concluded that the survivability study is robust and indicates a relatively high survival rate. That exemption should therefore apply for the period 2020-2021.
- (16) Delegated Regulation (EU) 2018/2034 included a survivability exemption for skates and rays caught with any gear in ICES subareas 6 and 7, pending the submission of detailed scientific evidence on survival rates for all fleet segments and combinations of gears, areas and species. However, with a few exceptions, the STECF considers the survival rates to be generally robust¹⁸, but notes that further details are required. In order to collect the relevant data, fishing needs to continue. The exemption may therefore be granted, but Member States should be required to submit relevant data allowing the STECF to fully assess the justification and allowing the Commission to carry out a review. Member States having a direct management interest should submit by 1 May each year: (a) a roadmap developed in order to increase survivability and to fill in the data gaps identified by the STECF, to be annually assessed by the STECF, (b) annual reports on the progress and any modifications or adjustments made to the survivability programmes.
- (17) When considering the survival rates of skates and rays, cuckoo rays (*Leucoraja naevus*) were found to have a considerably lower survival rate than other species. Furthermore the scientific understanding of the survival pattern of that species appears to be less robust. However, to exclude this species from the exemption would prevent fishing and continued, accurate data collection. Relevant evidence was submitted to the STECF which concluded¹⁹ that two new studies have been started on survival experiments concerning Cuckoo ray, but that more observations will be needed to make a definitive judgement on the survival rates in 1 or 2 years. Therefore, this exemption should be granted for two years and new studies and improved survivability measures should be developed as a matter of urgency and provided to the STECF, for assessment, as soon as possible and not later than by 1 May.
- (18) Delegated Regulation (EU) 2018/2034 included a survivability exemptions for plaice caught with trammel nets or otter trawls in ICES divisions 7d, 7e, 7f and 7g. Member States provided scientific evidence in order to demonstrate high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF which concluded that survivability study is robust and indicates a relatively high survival rate. That exemption should therefore apply for the period 2020-2021.

¹⁷ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

¹⁹ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

- (19) Delegated Regulation (EU) 2018/2034 included a survivability exemption for the species caught in pots, traps and creels in North Western Waters (ICES subareas 5, 6 and 7). Member States provided scientific evidence in order to demonstrate high discard survival rates for species caught in that fishery. The evidence was submitted to the STECF which concluded that the survival of the species discarded from trap and pot fishing is likely to be substantial. That exemption may therefore apply for the period 2020-2021.
- (20) The new joint recommendation suggests an extension of a survivability exemptions for plaice caught in ICES divisions 7a to 7k by vessels using beam trawls, with a maximum engine power of 221 kW, a maximum length of 24 meters, fishing within 12 nautical miles of the coast and with tow durations of no more than 1:30 hours, and by vessels using beam trawls with an engine power of more than 221 kW, using a flip-up rope or benthic release panel. Member States provided scientific evidence in order to demonstrate high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF, which concluded²⁰ that the scientific information is of good quality. The STECF, however, pointed out that the data do not cover all the Member States concerned and that in that fishery survivability is affected by many factors and is highly variable. The STECF noted that new vitality evidence was provided on plaice at the point of discarding in the English South West beam trawl fishery. Member States have developed a three-year project to generate directly observed survival estimates for plaice in ICES divisions 7d, 7f, 7g, however, ICES divisions 7h, 7j, 7k are not covered. That project will contribute to delivering the roadmap and the evidence needed to evaluate the suggested exemption. The STECF noted that Member States should describe how the suggested exemption is linked to the By-catch Reduction Plan for the plaice stocks in ICES divisions 7h, 7j, 7k. Under those circumstances, the exemption should be limited to one year as regards the plaice in ICES divisions 7h, 7j, 7k to still allow the collection of data and the Member States should be required to submit relevant data allowing the STECF to fully assess the justification and allowing the Commission to carry out a review. That exemption may therefore be applied to plaice in ICES divisions 7h, 7j, 7k until 31 December 2020 and the Member States concerned should undertake additional trials and provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF.
- (21) The new joint recommendation suggests a survivability exemption for plaice caught with Danish seines in ICES division 7d. Member States provided scientific evidence in order to demonstrate high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF which concluded²¹ that the data of the study on survival rates are reliable and give robust survival estimates for that fishery. That exemption should therefore be included in the new discard plan for the years 2020-2021.
- (22) Delegated Regulation (EU) 2018/2034 included *de minimis* exemptions from the landing obligation for certain fisheries. The evidence provided by the Member States was reviewed by the STECF which concluded²² that documents submitted by the Member States contained reasoned arguments demonstrating difficulties in increasing selectivity and disproportionate costs in handling unwanted catches, supported in some cases by qualitative assessments of the costs. Considering that the

²⁰ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

²¹ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

²² <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

circumstances have not changed, it is appropriate to continue the *de minimis* exemptions, in accordance with the percentages proposed in the new joint recommendation, for:

- whiting caught by vessels using bottom trawls and seines with a mesh size equal to or larger than 80 mm (OTB, OTT, OT, PTB, PT, SSC, SDN, SPR, SX, SV, TBN, TBS, TB, TX), pelagic trawls (OTM, PTM) and beam trawls (BTT) with a mesh size of 80-119 mm (BT2) in ICES divisions 7b to 7k,
- common sole caught by vessels using TBB gear with a mesh size of 80-119mm and with increased selectivity (Flemish panel) in ICES divisions 7d, 7e, 7f, 7g and 7h,
- common sole caught by vessels using trammel and gill nets to catch common sole in ICES divisions 7d, 7e, 7f and 7g.

(23) The new joint recommendation suggested *de minimis* exemptions from the landing obligation for:

- horse mackerel caught by vessels using bottom trawls, seines and beam trawls in ICES subarea 6 and ICES divisions 7b to 7k,
- mackerel caught by vessels using bottom trawls, seines and beam trawls in ICES subarea 6 and ICES divisions 7b to 7k,
- common sole caught by vessels using beam trawls with a mesh size of 80-119 mm (BT2) with increased selectivity (Flemish panel) in ICES divisions 7a, 7j and 7k,
- demersal mixed fishery caught by vessels targeting brown shrimp and using beam trawls with a mesh size equal to or greater than 31 mm in ICES division 7a,
- megrims below MCRS caught by vessels using bottom trawls with a mesh size of 70-99 mm and beam trawls with a mesh size of 80-119 mm in ICES subarea 7,
- boarfish caught by vessels using bottom trawls in ICES divisions 7b-7c and 7f to 7k,
- greater silver smelt caught by vessels using bottom trawls with a mesh size equal to or greater than 100 mm in ICES division 5b (EU waters) and ICES subarea 6;
- haddock caught by vessels using bottom trawls with a mesh size greater than or equal to 80 mm in ICES divisions 7b-7c and 7e to 7k;
- haddock below MCRS caught by vessels using bottom trawls with a mesh size up to 119 mm in ICES division 6a.

(24) The evidence by the Member States on the new *de minimis* exemptions regarding horse mackerel and mackerel caught by vessels using bottom trawls, seines and beam trawls in ICES subarea 6 and ICES divisions 7b to 7k was reviewed by the STECF, which concluded²³ that evidence that landing unwanted catches has associated costs, is not sufficient to demonstrate that those costs are disproportionate. Improving selectivity in the relevant fisheries should be the priority as it will reduce the costs for handling unwanted catches. The STECF also noted that the introduction of the specific technical measures for vessels operating with bottom trawls or seines in the Celtic Sea protection zone may reduce the unwanted catch of horse mackerel, mackerel and other species. The effectiveness of those measures should be monitored. Given the need to continue fishing activity in order to ensure the necessary data collection, those exemptions may be granted for one year, but Member States should be required to submit the relevant data allowing the STECF to

²³ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

assess fully the justification and allowing the Commission to carry out a review. The Member States concerned should undertake additional trials and provide information as soon as possible, and not later than by 1 May 2020, for assessment by the STECF. Those exemptions should therefore be applied provisionally until 31 December 2020.

- (25) The evidence provided by Member States on the new *de minimis* exemption for common sole caught by vessels using beam trawls with Flemish panel in ICES divisions 7d, 7e, 7f, 7g and 7h was reviewed by the STECF, which concluded²⁴ that the data for other Member States than Belgium and Ireland would be needed. Also the effectiveness of the Flemish panel used in the trials conducted by Member States may be limited and not ensure the reductions of unwanted catches observed in those trials. The STECF notes that additional information to evidence this would be useful, accepting that the Flemish panel as currently used does improve selectivity for the common sole. Given the need to continue fishing activity in order to ensure the necessary data collection with regards to the areas 7h, 7j, 7k that new exemption may be granted for one year, but Member States should be required to submit the relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. The Member States concerned should undertake additional trials and provide information as soon as possible, and not later than by 1 May 2020, for assessment by the STECF. That exemption should therefore be applied provisionally until 31 December 2020.
- (26) The evidence provided by the Member States on the new *de minimis* exemption regarding demersal mixed fishery made by vessels targeting brown shrimp and using beam trawls in in ICES division 7a, was reviewed by the STECF which concluded²⁵ that justification for the exemption is that significant increases in selectivity are very difficult to achieve and that the cost of handling the unwanted catch are disproportionate. However, the STECF notes that limited qualitative information is provided to support the exemption and that the information provided might be not representative. Given the information provided, discards may be very low and not require a *de minimis* deduction. That exemption may therefore apply for the period 2020-2021.
- (27) The evidence provided by the Member States on the new *de minimis* exemption for megrim below the MCRS caught by vessels using bottom trawls and beam trawls, and boarfish and greater silver smelt caught by vessels using bottom trawls was reviewed by the STECF which concluded²⁶ that limited data was provided by the Member States and the evidence that landing unwanted catches has an associated cost is not sufficient to demonstrate that those costs are disproportionate. The STECF notes that improving selectivity in the relevant fisheries should be the priority as it would reduce the costs for handling unwanted catches. Given the need to continue fishing activity in order to ensure the necessary data collection, those exemptions may be granted for one year, but Member States should be required to submit relevant data allowing the STECF to fully assess the justification and allowing the Commission to carry out a review. The Member States concerned should undertake additional trials and provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. Those exemptions should therefore be applied provisionally until 31 December 2020.

²⁴ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

²⁵ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

²⁶ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

- (28) The evidence provided by the Member States on the new *de minimis* exemption for haddock caught by vessels using bottom trawls with a mesh size greater than or equal to 80 mm in ICES subareas 7b-7c and 7e to 7k was reviewed by the STECF which concluded²⁷ that information provided shows that improvements in selectivity for haddock are difficult to achieve without substantial short-term losses in marketable catches. STECF notes that specific technical measures in the Celtic Sea protection zone are expected to reduce unwanted catches of haddock to a lesser extent, but it is too early to evaluate the possible achievements. Given the need to continue fishing activity in order to ensure the necessary data collection, that exemption may be granted for one year, but Member States should be required to submit relevant data allowing the STECF to fully assess the justification and allowing the Commission to carry out a review. The Member States concerned should undertake additional trials and provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. That exemptions should therefore be applied provisionally until 31 December 2020.
- (29) The evidence provided by the Member States on the new *de minimis* exemption for haddock below MCRS caught by vessels using bottom trawls with a mesh size up to 119 mm in the West of Scotland Nephrops fishery ICES division 6a was reviewed by the STECF which concluded²⁸ that the justification for the analysis is based on an analysis of disproportionate cost of handling unwanted catches. STECF notes that the costs seem to be reasonable, however there is no objective means to assess whether they are realistic or can be considered disproportionate. Given the need to continue fishing activity in order to ensure the necessary data collection, that exemption may be granted for one year, but Member States should be required to submit relevant data allowing the STECF to fully assess the justification and allowing the Commission to carry out a review. The Member States concerned should provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. That exemptions should therefore be applied provisionally until 31 December 2020.
- (30) To ensure reliable estimates of discard levels for the purpose of setting total allowable catches (TACs), Member States should, in the cases where the *de minimis* exemption is based on extrapolation of data-limited situations and partial fleet information, provide accurate and verifiable data for the whole fleet covered by that exemption.
- (31) Under Article 18 of the Regulation (EU) No 1380/2013, the Commission has considered both the the STECF's assessment and the need for Member States to ensure the full implementation of the landing obligation. In several cases, continued fishing activity and data collection is necessary in order to address the comments made by the STECF. In those cases, it is appropriate to follow a pragmatic and prudent approach to fisheries management by granting exemptions on a temporary basis. Not granting such exemptions would prevent the collection of data which are necessary for the proper and informed management of discards with a view to implementing fully the landing obligation.
- (32) Following the new joint recommendation, it is appropriate to repeal Delegated Regulation (EU) 2018/2034 and to replace it with a new act.

²⁷ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

²⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

- (33) 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. It should apply from 1 January 2020,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In ICES Subareas 5 (excluding 5a and including only Union waters of 5b), 6 and 7, the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply in demersal fisheries in accordance with this Regulation for the period 2020-2021.

Article 2

Definitions

1. 'Flemish panel' means the last tapered netting section of a beam trawl whose:
 - posterior is directly attached to the cod-end;
 - upper and lower netting sections are constructed of at least 120 mm mesh as measured between the knots;
 - stretched length is at least 3 m.
2. 'Seltra panel' means a selectivity device which:
 - (a) consists of a top panel of at least 270 mm mesh size (diamond mesh) or a top panel of at least 300 mm mesh size (square mesh), placed in a four-panel box section, in the straight section of a cod end;
 - (b) is at least 3 metres long;
 - (c) is positioned no more than 4 metres from the cod line; and
 - (d) is the full width of the top sheet of the box section of the trawl (i.e. from selvedge to selvedge).
3. 'Netgrid selectivity device' means a selectivity device consisting of a four panel section inserted into a two-panel trawl with an inclined sheet of diamond mesh netting with a mesh size of at least 200mm, leading to an escape hole in the top of the trawl;
4. 'CEFAS Netgrid' means a Netgrid selectivity device developed by The Centre for Environment, Fisheries and Aquaculture Science for catches of Nephrops in the Irish Sea;
5. 'Flip-flap trawl' means a trawl equipped with a netting grid developed to reduce the capture of cod, haddock and whiting in Norway lobster fisheries;
6. 'Flip-up rope' means a gear modification on demersal beam trawls to help prevent stones and boulders entering the trawl and causing damage to both gear and catches;
7. 'Benthos release panel' means a panel of larger mesh or square mesh netting fitted into the lower panel of a trawl, usually a beam trawl to release any benthic material and seabed debris before it passes into the codend;
8. 'Celtic Sea Protection Zone' means the waters inside ICES divisions 7f, 7g and the part of 7j that lies North of latitude 50° N and East of 11° W.

Article 3
Survivability exemption for Norway lobster

1. The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to:

- (a) Norway lobster (*Nephrops norvegicus*) caught in pots, traps or creels (gear codes:²⁹ FPO and FIX and FYK), in ICES subareas 6 and 7;
- (b) Norway lobster (*Nephrops norvegicus*) caught with bottom trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a mesh size equal to or larger than 100 mm in ICES subarea 7;
- (c) Norway lobster (*Nephrops norvegicus*) caught with bottom trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a mesh size of 70-99 mm in combination with highly selective gear options, as set out in Articles 9(2) and 10(2) of this Regulation, in ICES subarea 7;
- (d) Norway lobster (*Nephrops norvegicus*) caught with otter trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a mesh size of 80-110 mm in ICES division 6a within twelve nautical miles of the coast.

2. When discarding Norway lobster caught in the cases referred to in paragraph 1, the Norway lobster shall be released whole, immediately and in the area where it has been caught.

Article 4
Survivability exemption for common sole

1. In ICES division 7d, within six nautical miles of the coast but outside identified nursery areas, the survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to catches of common sole (*Solea solea*) below the minimum conservation reference size made using otter trawl gears (gear codes: OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a cod end mesh size of 80-99 mm, by vessels:

- (a) having a maximum length of 10 meters and a maximum engine power of 221 kW; and
- (b) fishing in waters with the depth of 30 meters or less and with tow durations of no more than 1:30 hours.

2. When discarding common sole caught in the cases referred to in paragraphs 1, the common sole shall be released immediately.

Article 5
Survivability exemption for skates and rays

1. The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply skates and rays (*Rajiformes*) caught by any fishing gear in the North Western Waters (ICES subareas 6 and 7).

2. Member States having a direct management interest shall submit, every year as soon as possible and not later than by 1 May, additional scientific information supporting the

²⁹ Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EU) 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.

exemption laid down in paragraph 1. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess that scientific information by 31 July every year.

3. When discarding skates and rays caught in the cases referred to in paragraph 1, the skates and rays shall be released immediately.

Article 6

Survivability exemption for plaice

1. The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to:

- (a) plaice (*Pleuronectes platessa*) caught in ICES divisions 7d, 7e, 7f and 7g with trammel nets (gear codes: GTR, GTN, GEN, GN);
- (b) plaice (*Pleuronectes platessa*) caught in ICES divisions 7d, 7e, 7f and 7g with otter trawls (gear codes: OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX);
- (c) plaice (*Pleuronectes platessa*) caught in ICES divisions 7a to 7k by vessels having a maximum engine greater than 221 kW, and using beam trawls (TBB) fitted with a flip-up rope or benthic release panel;
- (d) plaice (*Pleuronectes platessa*) caught in ICES divisions 7a to 7k by vessels using beam trawls (TBB), having a maximum engine power of 221 kW or a maximum length of 24 meters, which are constructed to fish within 12 nautical miles of the coast and with average tow durations of no more than 1:30 hours;
- (e) plaice (*Pleuronectes platessa*) caught in ICES division 7d with Danish seines (gear code: SDN).

2. The exemptions referred to in points (c) and (d) of paragraph 1 shall be provisionally applicable until 31 December 2020 for plaice caught in ICES divisions 7h, 7j, 7k. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting those exemptions as regards the plaice caught in ICES divisions 7h, 7j, 7k. The Scientific, Technical and Economic Committee for Fisheries shall assess that information by 31 July 2020.

3. When discarding plaice caught in the cases referred to in paragraph 1, the plaice shall be released immediately.

Article 7

Survivability exemption for species caught in pots, traps and creels

1. In ICES subareas 5 (excluding 5a and including only Union waters of 5b), 6 and 7 the survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to species caught with pots, traps and creels (gear codes: FPO, FIX, FYK).

2. When discarding fish caught in the cases referred to in paragraph 1, the fish shall be released immediately.

Article 8

De minimis exemptions

1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded pursuant to Article 15(5)(c) of that Regulation:

- (a) for whiting (*Merlangius merlangus*), up to a maximum of 5% of the total annual catches of that species by vessels using bottom trawls and seines with a mesh size equal to or greater than 80 mm (OTB, OTT, OT, PTB, PT, SSC, SDN, SPR, SX, SV, TBN, TBS, TB, TX), pelagic trawls (OTM, PTM) and beam trawls (BT2) with a mesh size of 80-119 mm in ICES divisions 7b to 7k;
- (b) for common sole (*Solea solea*), up to a maximum of 3% of the total annual catches of that species by vessels using trammel and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) to catch common sole in ICES divisions 7d, 7e, 7f and 7g;
- (c) for common sole (*Solea solea*), up to a maximum of 3% of the total annual catches of that species by vessels using TBB gear with a mesh size of 80-119 mm equipped with Flemish panel, to catch common sole in ICES divisions 7d, 7e, 7f, 7g and 7h;
- (d) for haddock (*Melanogrammus aeglefinus*), up to a maximum of 5% in 2020 of the total annual catches of that species by vessels using bottom trawls, seines and beam trawls (OTB, OTT, OT, PTB, PT, SSC, SDN, SPR, SX, SV, TBB, TBN, TBS, TB, TX) with a mesh size greater than or equal to 80 mm in ICES divisions 7b, 7c and 7e to 7k;
- (e) for horse mackerel (*Trachurus spp.*), up to a maximum of 7% in 2020 of the total annual by-catches of those species, caught in demersal mixed fisheries, by vessels using bottom trawls, seines and beam trawls (OTB, OTT, OT, PTB, PT, SSC, SDN, SPR, SX, SV, TBB, TBN, TBS, TB, TX) in ICES subarea 6 and ICES divisions 7b to 7k;
- (f) for mackerel (*Scomber scombrus*), up to a maximum of 7% in 2020 of the total annual by-catches of that species, caught in demersal mixed fisheries, by vessels using bottom trawls, seines and beam trawls in ICES subarea 6 and ICES divisions 7b to 7k;
- (g) for common sole (*Solea solea*), up to a maximum of 3% in 2020 of the total annual catches of that species by vessels using beam trawls with a mesh size of 80-119 mm (BT2) with increased selectivity (Flemish panel) in ICES divisions 7a, 7j and 7k,
- (h) for megrim (*Lepidorhombus spp.*) below MCRS, up to a maximum of 5% in 2020 of the total annual catches of those species by vessels using bottom trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a mesh size of 70-99 mm (TR2) and beam trawls (TBB) with a mesh size of 80-199 mm (BT2) in ICES subarea 7,
- (i) for boarfish (*Caproidae*), up to a maximum of 0,5% in 2020 of the total annual catches of that species by vessels using bottom trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) in ICES divisions 7b,7c and 7f to 7k,
- (j) for greater silver smelt (*Argentina silus*), up to a 0,6% in 2020 of the total annual catches of that species by vessels using bottom trawls (OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a mesh size equal to or greater than 100 mm (TR1) in ICES division 5b (EU waters) and ICES subarea 6;
- (k) for haddock (*Melanogrammus aeglefinus*) below minimum conservation reference size, up to a maximum of 3% in 2020, of the total annual catches of that species by vessels using bottom trawls with a mesh size up to 119 mm (OTB, OTT, OT, TBN, TB) in the West of Scotland Norway lobster (*Nephrops norvegicus*) fishery in ICES division 6a;

- (l) in the demersal mixed fishery carried out by vessels targeting brown shrimp and using beam trawls (TBB) with a mesh size equal to or greater than 31 mm in ICES division 7a:

a combined quantity of fish species below MCRS, which shall not exceed 0,85% of the total annual catches of plaice and 0,15% of the total annual catches of whiting in the demersal mixed fisheries.

2. The *de minimis* exemptions set out in points (d) to (k) of paragraph 1 shall be applicable until 31 December 2020. Member States having a direct management interest shall submit as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries shall assess that scientific information before 31 July 2020.

Article 9

Specific technical measures in the Celtic Sea Protection Zone

1. Fishing vessels operating with bottom trawls or seines in the Celtic Sea Protection Zone shall use one of the following gear options:

- (a) 110 mm cod-end with 120 mm square mesh panel³⁰;
- (b) 100 mm T90 cod-end;
- (c) 100 mm cod-end with 160 mm square mesh panel;
- (d) 120 mm cod-end.

2. By way of derogation from paragraph 1, vessels operating with bottom trawls or seines with catches comprising more than 5% of Norway lobster shall use one of the following gear options:

- (a) 300 mm square mesh panel with a cod-end of at least 80 mm mesh size; vessels below 12 meters in length over all may use a 200 mm square mesh panel;
- (b) Seltra panel;
- (c) Sorting grid with a 35 mm bar spacing as referred to in Annex VI Part B to Regulation (EC) 2019/1241;
- (d) 100 mm cod-end with a 100 mm square mesh panel;
- (e) Dual cod-end with the uppermost cod-end constructed with T90 mesh of at least 90 mm and fitted with a separation panel with a maximum mesh size of 300 mm.

3. By way of derogation from paragraph 1, vessels operating with bottom trawls or seines with catches comprising more than 55% of whiting or 55% of anglerfish, hake or megrim combined, shall use one of the following gear options:

- (a) 100 mm cod-end with a 100 mm square mesh panel;
- (b) 90 mm T90 cod-end and extension;
- (c) 80 mm cod-end with a 160 mm square mesh panel;
- (d) 80 mm cod-end with a 2 m multiplied by 100 mm squared mesh cylinder.

³⁰ As referred to in Annex VI Part B of Regulation (EU) 2019/1241.

4. By way of derogation from paragraph 1, vessels operating with bottom trawls or seines with catches comprising less than 10% of gadoids (*Gadidae*) in ICES division 7f East of 5° West, shall use 80 mm cod-end fitted with a 120 mm square mesh panel.

5. A selective gear or device assessed by the STECF as having the same or higher selectivity characteristics for cod, haddock and whiting than the gear options set out in paragraphs 1 to 4 may be used as an alternative to those gear options.

Article 10

Specific technical measures in the Irish Sea

1. Fishing vessels operating with bottom trawls or seines in ICES division 7a (Irish Sea) shall comply with the technical measures set out in paragraphs 2, 3 and 4.

2. Vessels operating with bottom trawls or seines with a cod-end mesh size equal to or larger than 70 mm and smaller than 100 mm and with catches comprising more than 5% of Norway lobster shall use one of the following gear options:

- (a) 300 mm square mesh panel; vessels below 12 meters in length over all may use a 200 mm squared mesh panel;
- (b) Seltra panel;
- (c) Sorting grid with 35 mm bar spacing as referred to in Annex VI Part B to Regulation (EC) 2019/1241;
- (d) CEFAS Netgrid;
- (e) Flip-flap trawl.

3. Vessels equal to or greater than 12 meters in length over all operating with bottom trawls or seines with catches comprising more than 10% of haddock, cod and skates and rays combined, shall use one of the following gear options:

- (a) 120 mm cod-end;
- (b) an eliminator trawl with 600 mm large mesh panels and a 100 mm cod-end.

4. Vessels equal to or greater than 12 meters in length over all operating with bottom trawls or seines with catches comprising less than 10% of haddock, cod and skates and rays combined shall apply a cod-end mesh size of 100 mm with a 100 mm squared mesh panel. This provision shall not apply to vessels with catches comprising more than 30 % of Norway lobster or more than 85% of Queen scallops.

5. A selective gear or device assessed by the STECF as having the same or higher selectivity characteristics for cod, haddock and whiting than the gear options set out in paragraphs 1 to 4 may be used as an alternative to those gear options

Article 11

Specific technical measures in the West of Scotland

1. From 1 July 2020, fishing vessels operating with bottom trawls or seines in ICES divisions 6a and 5b, within the Union waters, East of 12°W (West of Scotland) shall comply with the following technical measures:

- (a) mandatory use of a square mesh panel (positioning retained) of at least 300 mm for vessels deploying a cod-end mesh size less than 100 mm; for vessels below 12 m in length over all and/or with engine power of 200 kW or less, the panel

overall length may be 2 m and the panel 200 mm in Norway lobster (*Nephrops norvegicus*) fisheries;

- (b) mandatory use of a square mesh panel (positioning retained) of at least 160 mm for vessels deploying a cod-end mesh size of 100-119 mm and if catches comprising more than 30% of Norway lobster (*Nephrops norvegicus*).

2. A selective gear or device assessed by the STECF as having the same or higher selectivity characteristics for cod, haddock and whiting than the measures set out in paragraph 1 may be used as an alternative to those measures.

Article 12

Repeal

Delegated Regulation (EU) 2018/2034 is repealed.

Reference to Regulation (EU) 2018/2034 in Annex VI, Part B, point 3 of Regulation (EU) 2019/1241³¹ shall be construed as reference to Articles 9 and 10 of this Regulation.

Article 13

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 2020 until 31 December 2021.

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

Done at Brussels, 1.10.2019

For the Commission
The President
Jean-Claude JUNCKER

³¹ OJ L 198, 25.07.2019, p. 105