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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 20.10.2017 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES division IIa for the year 2018

Delegations will find attached document C(2017) 6997 final.

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Brussels, 20.10.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 20.10.2017

establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES division IIa for the year 2018

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the 'basic regulation' of the Common Fisheries Policy (CFP)¹ is the progressive elimination of discards in all EU fisheries. As of 1 January 2016 the landing obligation has started to apply to certain demersal fisheries in the North Sea. The basic regulation also provides for increased regionalisation, which is intended 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 basic regulation 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'. Those discard plans are envisaged as a temporary measure with a maximum duration of 3 years. They are developed as joint recommendations agreed by groups of Member States from the same region or sea basin.

This delegated act replaces the current North Sea demersal discard plan (Regulation (EU) No 2016/2250²). 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 have agreed by consensus on the 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'), the Netherlands, submitted the JR for the demersal fisheries to the Commission on 31 May 2017, including:

- provisions on the introduction of the landing obligation for certain stocks in certain fisheries;
- several exemptions due to high survivability;
- a number of *de minimis* exemptions;
- a provision fixing of minimum conservation reference sizes (MCRS);

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 340, 15.12.2016, p.2-8.

- a number of provisions on specific technical measures in the Skagerrak.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is 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 which is the Advisory Council covering the fisheries covered by the JR. For all of these elements the JR includes supporting documentation underpinning the exemptions and other provisions it sets out.

During the work on the JR there was regular and detailed engagement between the Scheveningen Group and the NSAC. The NSAC was invited to attend meetings of the Scheveningen High Level Group and the technical group, and Member State representatives attended the meetings of the NSAC. Additionally, the NSAC was asked for advice on the different elements of the discard plan. On 30 March the NSAC provided advice on the implications for cod, plaice, saithe and whiting in 2018, identifying potential quota limiting issues. On 10 May 2017, the NSAC submitted additional advice on the phasing in of the landing obligation for plaice, where the AC suggests introducing the landing obligation for plaice in January 2019. The reason is to give additional time to complete research, trials on testing of gear and other measures that will improve selectivity and reduce discarding, and to finalise an additional group of projects which aim at establishing the survival rates of discarded plaice. A full draft of the Joint Recommendation was sent to NSAC before the High Level Meeting on 24 May 2017, and discussed with NSAC representatives at that meeting.

All elements of the final JR submitted to the Commission which differed from the 2017 discard plan were evaluated by the relevant Expert Working Group (EWG 17-03) of Scientific, Technical and Economic Committee for Fisheries (STECF) and during the STECF plenary meeting of 10-14 July 2017.

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

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 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.

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

of 20.10.2017

establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES division IIa for the year 2018

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/EC³, and in particular Article 15(6) thereof,

Having regard 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 organisms⁴ and in particular Article 18a 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) In order to implement the landing obligation, Article 15(6) of that Regulation 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. After consulting the North Sea Advisory Council, those Member States submitted on 3 June 2016 a joint recommendation to the Commission concerning a discard plan for demersal fisheries in the North Sea. Based on that joint recommendation, Commission Delegated Regulation (EU) 2016/2250⁵ established a discard plan applicable to those fisheries
- (4) After consulting the North Sea Advisory Council, Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom submitted on 31 May 2017 a new joint recommendation to the Commission concerning a new discard plan for demersal fisheries in the North Sea. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). On 8 September an expert group meeting attended by representatives of 28 Member States, the Commission as well as the European Parliament as an observer took place and the measures concerned were discussed.

³ OJ L 354, 28.12.2013, p. 22.

⁴ OJ L 125, 27.4.1998, p. 1.

⁵ OJ L 340, 15.12.2016, p. 2

- (5) Following a new joint recommendation, it is appropriate to repeal Delegated Regulation (EU) 2016/2250.
- (6) The measures suggested in the new joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013.
- (7) For the purposes of that Regulation, 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, the Member States concerned recommend that ICES Division IIa be also covered by the discard plan.
- (8) The new discard plan for the year 2018 should include the provisions laid down in Delegated Regulation (EU) No 2016/2250 regarding the species to be landed and should specify additional species and fisheries to which the landing obligation should apply in 2018.
- (9) Delegated Regulation (EU) No 2016/2250 introduced survivability exemptions, as provided for by Article 15(4)(b) of Regulation (EC) No 1380/2013, for catches of Norway lobster made with pots and with trawls when using certain selectivity devices in ICES Division IIIa. The Member States provided for the scientific evidence which demonstrated the high survival rates for catches of Norway lobster with the bottom trawls. That information has been submitted and STECF has concluded that the information is sufficient. The new joint recommendation suggests the continued application of those exemptions. They should therefore be included in the new discard plan for the year 2018.
- (10) Delegated Regulation (EU) 2016/2250 introduced a survivability exemption for catches of Norway lobster in ICES subarea IV for certain gears on the condition that a netgrid selectivity device is used. That Delegated Regulation required Member States having a direct management interest in the North Sea to submit to the Commission additional scientific information supporting the exemptions for the bottom trawls specified. The information has been submitted and STECF has concluded that it only substantiates an exemption in winter months and in certain areas (ICES functional units). Therefore, that exemption should be included in the new discard plan for the year 2018 but limited to winter months and certain ICES functional units.
- (11) The new joint recommendation includes a survivability exemption for fish bycatch in the fishery carried out with pots and fyke nets as well as for catches of common sole with otter trawls.
- (12) Based on the scientific evidence provided in the new joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, those survivability exemptions should be included in the new discard plan for the year 2018.
- (13) Delegated Regulation (EU) No 2016/2250 established *de minimis* exemptions for:
 - common sole caught with trammel nets and gillnets in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Subarea IIa,
 - common sole caught with certain beam trawls equipped with a Flemish panel in ICES Subarea IV,
 - Norway lobster caught with certain bottom trawls in ICES Subarea IV and Union waters of ICES Division IIa.

The new joint recommendation suggests the continued application of those *de minimis* exemptions. It is therefore appropriate included those exemptions in the new discard plan.

- (14) The new joint recommendation suggests a *de minimis* exemption for common sole, haddock, whiting, cod and saithe combined for catches with certain bottom trawls in ICES division IIIa, a *de minimis* exemption for sole, haddock, whiting, cod and saithe combined for catches with creels in ICES division IIIa, a *de minimis* exemption for whiting and cod caught with bottom trawls in ICES division IVc and a *de minimis* exemption for whiting for catches with certain bottom trawls in ICES division IIIa.
- (15) On the basis of compelling evidence provided by Member States for those *de minimis* exemptions as reviewed by the STECF, which concluded that those exemptions contained reasoned arguments that further improvements in selectivity are difficult to achieve or imply disproportionate costs in handling unwanted catches, it is appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the new joint recommendation, within the limits set out in Article 15(5)(c) of Regulation (EU) No 1380/2013.
- (16) 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, minimum conservation reference size with the aim of ensuring the protection of juveniles of marine organisms. Those minimum conservation reference sizes may derogate, where appropriate, from the sizes established in Annex XII to Regulation (EC) No 850/98. For Norway lobster in ICES Division IIIa it is appropriate to maintain the minimum conservation reference sizes set out in Delegated Regulation (EU) No 2015/2440, i. e. a total length of 105 mm and a carapace length of 32 mm. A minimum tail length of 59 mm should be added, based on the new joint recommendation and STECF's assessment which states that such tail length corresponds to the existing values for total length and carapace length.
- (17) Discard plans may also include technical measures for fisheries or species covered by the landing obligation. To increase gear selectivity and reduce unwanted catches in the Skagerrak, it is appropriate to maintain a number of technical measures, which were agreed between the Union and Norway in 2011⁶, and 2012⁷ and to authorize the use of the SepNep selectivity device.
- (18) To ensure appropriate control, specific requirements for the Member States to establish lists of vessels covered by this Regulation should be laid down.
- (19) 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 until 31 December 2018 in order to comply with the time-frame set out in Article 15 of Regulation (EU) No 1380/2013.

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

⁷ 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

Implementation of the landing obligation

In ICES subarea IV (North Sea), ICES division IIIa (Kattegat and Skagerrak) and Union waters of ICES division IIa (Norwegian Sea) the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal fisheries in accordance with this Regulation.

Article 2

Definitions

1. For the purpose of this Regulation the following definitions shall apply:

- (1) 'Seltra panel' means a selectivity device which:
 - consists of a top panel of at least 270 mm mesh size (diamond mesh) placed in a four-panel section and mounted with a joining ratio of three meshes of 90 mm to one mesh of 270 mm, or of a top panel of at least 140 mm mesh size (square mesh);
 - is at least 3 metres long;
 - is positioned no more than 4 metres from the cod line; and
 - is the full width of the top sheet of the trawl (i.e. from selvedge to selvedge).
- (2) '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.
- (3) 'Flemish Panel' means the last tapered netting section of a beam trawl whose:
 - anterior is directly attached to the cod-end;
 - upper and lower netting sections are constructed of at least 120mm mesh as measured between the knots;
 - stretched length is at least 3m.
- (4) 'SepNep' means an otter trawl which
 - is constructed within the mesh size range of 80 to 99 + \geq 100mm:
 - is fitted with multiple cod-ends of mesh sizes ranging from at least 80 to 120mm attached to a single extension piece, the uppermost cod-end being constructed with a mesh size of at least 120mm and fitted with a separation panel with a maximum mesh size of 105mm; and
 - may also be fitted with an optional selection grid with a bar spacing of at least 17mm provided it is constructed in such a way so as to allow the escape of small Nephrops.

Article 3

Species subject to the landing obligation

The landing obligation shall apply to the species referred to in the Annex to this Regulation, subject to the exemptions set out in Articles 4 to 7.

Article 4

Survivability exemptions for Norway lobster

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to the following catches of Norway lobster:

- (a) catches with pots (FPO⁸);
- (b) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm;
- (c) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 90 mm equipped with a seltra panel;
- (d) in winter months (October to March), catches in the functional units Farn Deeps (FU6), Firth of Forth (FU8) and Moray Firth (FU9) with bottom trawls (OTB, TBN) with a mesh size of at least 80 mm equipped with a netgrid selectivity device.

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

Article 5

Survivability exemption for common sole

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to catches of common sole below minimum conservation reference size made within six nautical miles of the coast in ICES area IVc and outside identified nursery areas, with otter trawls (OTB) with cod end mesh size of 80-99mm.

2. The exemption referred to in paragraph 1 shall only apply to vessels with a maximum length of 10 meters, a maximum engine power of 221 kW, when fishing in waters with a depth of 30 meters or less and with limited tow durations of no more than 1:30 hours.

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

Article 6

Survivability exemption fish bycatch in pots and fyke nets

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to catches of cod, haddock, whiting, plaice, sole, hake and saithe with pots and fyke nets (FPO, FYK).

⁸ 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.

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

Article 7

De minimis exemptions

By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded pursuant to Article 15(4)(c) of that Regulation:

- (a) in the fisheries by vessels using trammel nets and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Division IIa:
a quantity of common sole which shall not exceed 3 % of the total annual catches of that species;
- (b) in the fisheries by vessels using beam trawl (TBB) of mesh size 80-119 mm with increased mesh size in the extension of the beam trawl, Flemish panel, in ICES Subarea IV:
a quantity of common sole below minimum conservation reference sizes, which shall not exceed 6 % of the total annual catches of that species;
- (c) in the fisheries by vessels using bottom trawls (OTB, OTT, TB, TBN,) of mesh size 80-99 mm in ICES Subarea IV and Union waters of ICES Division IIa:
a quantity of Norway lobster below minimum conservation reference sizes, which shall not exceed 2 % of the total annual catches of that species;
- (d) 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 35 mm in ICES Division IIIa:
a combined quantity of common sole, haddock, whiting, cod and saithe below minimum conservation reference sizes, which shall not exceed 4 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn, cod and saithe;
- (e) in the fishery for Northern prawn by vessels using bottom trawls (OTB) with a mesh size equal to or larger than 35 mm equipped with a species selective grid with bar spacing of maximum 19 mm, with unblocked fish outlet, in ICES Division IIIa:
a combined quantity of common sole, haddock, whiting, cod, plaice and saithe below minimum conservation reference sizes, which shall not exceed 1 % of the total annual catches of Norway lobster, common sole, haddock, whiting, cod, saithe and plaice and Northern prawn;
- (f) in the mixed fishery for sole, whiting, plaice and species without catch limits by vessels using bottom trawls (OTB, OTT, SDN, SSC) of mesh size 70-99 mm in ICES Division IVc:
a combined quantity of whiting and cod below minimum conservation reference sizes, which shall not exceed 6 % of the total annual catches of Norway lobster, haddock, sole, Northern prawn, whiting, plaice, saithe and cod; the maximum amount of cod that may be discarded shall be limited to 2% of those total annual catches;

- (g) in the fisheries by vessels using bottom trawls (OTB, OTT, TBN) with a mesh size of 90-119 mm, equipped with Seltra panel, or with a mesh size of 120mm and above in ICES Division IIIa:

a quantity of whiting below minimum conservation reference sizes, up to a maximum of 2% of the total annual catches of Nephrops, cod, haddock, whiting, saithe, common sole, plaice and hake.

Article 8

Minimum conservation reference sizes

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

- (a) total length of 105 mm;
- (b) tail length of 59 mm;
- (c) carapace length of 32 mm.

Article 9

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 in the Skagerrak.
2. By way of derogation from paragraph 1, the following trawls may be used:
 - (a) trawls with a cod end of a mesh size of at least 90 mm, provided they are equipped with a seltra panel or a sorting grid with no more than 35 mm bar spacing.
 - (b) trawls with a cod end of at least 70 mm mesh size (square mesh) equipped with a sorting grid with no more than 35 mm bar spacing;
 - (c) trawls of 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;
 - (d) trawls with a cod end of at least 35 mm mesh size when fishing for Northern prawn, provided the trawl is equipped with a sorting grid with a maximum bar spacing of 19 mm.
3. A fish retention device may be used when fishing for Northern prawn in accordance with paragraph 2(d), provided there are adequate fishing opportunities to cover by-catch and that the retention device is:
 - (a) constructed with a top panel of a minimum mesh size of 120 mm square mesh;
 - (b) at least 3 metres long; and
 - (c) at least as wide as the width of the sorting grid.

Article 10

SepNep

By derogation from Article 4 of Regulation (EC) No. 850/98 it shall be permitted to use the SepNep nets.

Article 11

Repeal

Regulation (EU) No 2016/2250 is repealed.

Article 12

Entry into force and application

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 2018 until 31 December 2018. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20.10.2017

For the Commission

The President

Jean-Claude JUNCKER