Commission Delegated Regulation (EU) 2019/2239 of 1 October 2019 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021

COMMISSION DELEGATED REGULATION (EU) 2019/2239

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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 1300/2008[(1)], 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 2187/2005[(2)], and in particular Article 15(2) thereof,

Whereas:

(1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(3)] 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) 2018/2034[(4)] established a discard plan for certain demersal fisheries in the North-Western waters for the period 2019-2021, following a joint recommendation submitted by Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom.

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(5) On 19 March 2019, the European Parliament and the Council adopted Regulation (EU) 2019/472 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 concluded[(5)] 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 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

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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)[(6)]. 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 esssential 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 ICES[(7)] subareas 6 and 7, based on scientific evidence which demonstrated high survival rates. That evidence was evaluated in previous years and the STECF concluded[(8)] 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 concluded[(9)] 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 discard survival rates for Norway lobster in that fishery. The evidence was submitted to the STECF which concluded[(10)] 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.

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(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 robust[(11)], but notes that further details are required. In order to collect the relavant 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 concluded[(12)] 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.

(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

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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 concluded[(13)] 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 concluded[(14)] 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 concluded[(15)] 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 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,