Commission Delegated Regulation (EU) 2019/2238 of 1 October 2019 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021

COMMISSION DELEGATED REGULATION (EU) 2019/2238

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008[(1)], and in particular Article 11 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 eliminate progressively discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.

(2) Article 9 of Regulation (EU) No 1380/2013 provides for the adoption of multiannual plans containing conservation measures for fisheries exploiting certain stocks in a relevant geographical area.

(3) Such multiannual plans specify details of the implementation of the landing obligation and may empower the Commission to further specify those details on the basis of joint recommendations developed by Member States.

(4) On 4 July 2018, the European Parliament and the Council adopted Regulation (EU) 2018/973 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks[(4)]. Article 11 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 North Sea to which the landing obligation applies under Article 15(1) of Regulation (EU) No

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1380/2013, as provided for in points (a) to (e) of Article 15(5) of that Regulation on the basis of joint recommendations developed by Member States.

(5) Commission Delegated Regulation (EU) 2018/2035[(5)] specified details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021, following a joint recommendation submitted by Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom which have a direct fisheries management interest in the North Sea.

(6) Those Member States, after consulting the North Sea Advisory Council and the Pelagic Advisory Council, submitted on 29 May 2019 a new joint recommendation to the Commission concerning details of implementation of the landing obligation for demersal fisheries in the North Sea. The joint recommendation was amended on 7 August 2019.

(7) The new joint recommendation submitted by the Member States suggests continuation of a number of additional technical measures agreed between the Union and Norway in 2011[(6)], and 2012[(7)] and authorizing the use of the SepNep selectivity device. These measures aim to increase selectivity and reduce unwanted catches for fisheries or species covered by the landing obligation and were introduced pursuant to Article 15(5)(a) of the Regulation (EU) No 1380/2013 for the years 2019-2021 by Delegated Regulation (EU) 2018/2035.

(8) 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 V specific provisions regarding technical measures established at regional level for the North Sea, which also include rules on mesh sizes, associated conditions and by-catches. Article 15 of that Regulation 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.

(9) 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) positively assessed[(8)] the information provided by the regional group in support of the technical measures included in the joint recommendation This joint recommendation was developed and submitted by the Member States and assessed by STECF before the new technical measures regulation was adopted, 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 proposed technical measures would fail to comply with the requirements established for technical measures in Article 15 of Regulation (EU) 2019/1241.

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(10) To increase gear selectivity and reduce unwanted catches in the Skagerrak it is therefore appropriate to include the technical measures submitted by the Member States. These measures should apply for the period of 2020-2021.

(11) As set out in Regulation (EU) 2018/973, the North Sea comprises ICES[(9)] divisions 2a, 3a and subarea 4.

(12) Scientific contributions were obtained from relevant scientific bodies and reviewed by the STECF[(10)]. 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.

(13) For some stocks, such as plaice, the STECF identified that survival rates of individual fish may not be as robust as that found for other species. However, the Commission considered the relative impact of this exemption on the overall stock, compared to individual fish, and balanced it against the need to continue fishing activity to provide data collection in order to address the comments made by the STECF. 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.

(14) Delegated Regulation (EU) 2018/2035 included a survivability exemptions for common sole below minimum conservation reference size (MCRS) caught by trawls in ICES division 4c, based on scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF concluded[(11)] that the evidence was sufficient. The STECF pointed out that no new information on the location of nursery area was provided[(12)]. Since currently there are no identified nursery areas, the exemption may be included in this Regulation, but Member States should submit the relevant information as soon as such areas are identified. Considering that the circumstances have not changed, that exemption should continue to apply under this Regulation.

(15) Delegated Regulation (EU) 2018/2035 included a survivability exemption, as provided for by Article 15(4)(b) of Regulation (EU) No 1380/2013, for catches of Norway lobster made with pots in ICES divisions 2a, 3a and ICES subarea 4, based on the scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF concluded[(13)] that the evidence was sufficient. Considering that the circumstances have not changed, that exemption should continue to apply under this Regulation.

(16) Delegated Regulation (EU) 2018/2035 included a survivability exemption for catches of Norway lobster made in ICES subarea 4 and ICES divisions 2a and 3a with certain gears on the condition that a netgrid selectivity device was used. That exemption was was granted on a condition that the Member States submit data on the fisheries of the west coast of the North Sea. There has been no new evidence submitted to the STECF on high survivability. The Member States stated that no additional data was needed as

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in 2018 the STECF noted that the supporting scientific information was robust[(14)] on the survival estimates covering the west coast of the North Sea. However, the STECF raises issues[(15)] concerning East coast Norway lobster and Pandalus fisheries, as this information is missing and the assessment can not be made on Norway lobster survival in those fisheries. Under those circumstances, the exemption may be applied until 31 December 2020 and Member States having a direct management interest should submit data on the fisheries of the East coast of the North Sea for the STECF assessment as soon as possible and not later than by 1 May 2020.

(17) Delegated Regulation (EU) 2018/2035 included a survivability exemption for the by-catch of species subject to catch limits in the fishery carried out with pots and fyke nets, based on the scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF concluded[(16)] that the available data indicates that mortality of discarded fish is likely to be low, however the actual catches in the fishery are negligible. Since the catches are not significant and considering that the circumstances have not changed, the exemption should continue to apply under this Regulation.

(18) Delegated Regulation (EU) 2018/2035 included a survivability exemption for plaice in the fishery carried out with gillnets and trammel nets in ICES division 3a and ICES subarea 4. The 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[(17)] that reasonable information was provided showing the considerably high survivability. That exemption should therefore be included in this Regulation.

(19) Delegated Regulation (EU) 2018/2035 included a survivability exemption for plaice in the fishery carried out with Danish seines in ICES division 3a and ICES subarea 4. The 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[(18)] that the data of the study on the survival rates are reliable, albeit additional measures could be used in order to enhance survivability, as the decrease of survivability is significant if the sorting time of the plaice is longer than 30 minutes. That exemption should therefore be included in this Regulation.

(20) Delegated Regulation (EU) 2018/2035 included a survivability exemption for catch and by-catch of plaice in the fishery targeting flatfish or round fish carried out with trawls in ICES division 3a and ICES subarea 4 in winter months. The 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[(19)] that the survival rates in the supporting study decreased if the sorting time was greater than 60 minutes in the summer months, therefore a low survival rate of plaice in summer justifies the exemption being restricted to winter months. That exemption should therefore be included in this Regulation.

(21) In delegated Regulation (EU) 2018/2035 a survivability exemption for skates and rays caught with all fishing gears in ICES divisions 2a and 3a, and ICES subarea 4, was granted despite that the detailed scientific evidence on survival rates was not available

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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[(20)], but further details are required. Given the need to continue fishing activity in order to ensure the necessary data collection, that exemption should be granted, but Member States should be required to submit relevant data allowing the STECF to assess fully 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.

(22) 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[(21)] that two new studies have been started on survival experiments concerning Cuckoo ray, but 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.

(23) The new joint recommendation suggests a survivability exemption for catches of plaice below the minimum conservation reference size (MCRS) caught with 80-119 mm beam trawl gears (BT2) in ICES division 2a and ICES subarea 4 for the period 2020-2021:

— for plaice caught with gears equipped with the flip-up rope or Benthos release panel (BRP) and caught by vessels with an engine power of more than 221 kW,

— for plaice caught by the vessels of Member States implementing the roadmap for the Fully Documented Fisheries,

— for flatfish caught with beam trawl gears (BT2) and by vessels with an engine power of not more than 221 kw or less than 24 m in length overall, which are constructed to fish in the twelve miles zone, if the average trawl duration is less than ninety minutes.

The evidence was submitted to the STECF which concluded[(22)] that in the new research projects, commited to be carried out in 2020-2021, the new observations will enable the STECF to make a sound judgement on the survival of discarded place caught with the beam trawls. Future research plans within the roadmap presented are detailed and ambitious in addressing the uncertainties regarding the factors affecting discard survival for plaice. However, more knowledge of factors that can explain the observed variability in previous survival estimates is necessary. Therefore, the exemption should be granted, but with an obligation for Member States to submit relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. Member States having a direct management