Commission Delegated Regulation (EU) 2019/2237 of 1 October 2019 specifying details of the landing obligation for certain demersal fisheries in South-Western waters for the period 2020-2021

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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/EC[(1)], and in particular Articles 15(6) and 18(1) and (3) thereof,

Having regard 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[(2)], and in particular Article 13 thereof,

Whereas:

(1) Regulation (EU) No 1380/2013 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 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.

(5) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South-Western waters. By Delegated Regulation (EU) 2016/2374[(3)], the Commission established a discard plan for certain demersal fisheries in South-Western waters, which was repealed and replaced by Commission Delegated Regulation (EU) 2018/2033[(4)] following a joint recommendation submitted by Belgium, Spain, France, the Netherlands and Portugal in 2018.

(6) On 31 May 2019, Belgium, Spain, France, the Netherlands and Portugal submitted a new joint recommendation to the Commission after consulting the South Western Waters Advisory Council and Pelagic Advisory Council, the joint recommendation was amended on 9 August 2019. Scientific contributions were obtained from the relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF)[(5)]. The measures concerned were presented for a written consultation of the expert group, consisting of 28 Member States and European Parliament as an observer, by the Commission.

(7) Delegated Regulation (EU) 2018/2033 included an exemption from the landing obligation for Norway lobster caught with bottom trawls in the International Council for the Exploration of the Seas (ICES) subareas 8 and 9 and for red seabream caught with the artisanal gear '*voracera*' in ICES division 9a, as existing scientific evidence indicated possible high survival rates, taking into account the characteristics of the gears targeting that species, the fishing practices and the ecosystem. The STECF in its evaluation[(6)] concluded that the latest experiments and studies completed in 2016-2018 show Norway lobster survival rates in the range of the survival rate observed in previous assessments. The evidence to demonstrate discard survival rates of red seabream was submitted by Member States to the STECF which concluded[(7)] that the exemption is well justified. Therefore, considering that the circumstances have not changed, those survivability exemptions should be maintained in the South-Western waters demersal discard plan for the period 2020-2021.

(8) In Delegated Regulation (EU) 2018/2033 a survivability exemption for skates and rays caught with any gears in ICES subareas 8 and 9 was granted pending the submission of detailed scientific evidence on survival rates for all fleet segments and combinations of gears, areas and species. The STECF considers that Member States have collected vitality information which provides a certain indication on survivability[(8)], but that further details are required. In order to collect the relevant data, fishing needs to be continued. 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.

(9) 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. Evidence on vitality and direct discard survival for cuckoo rays was provided by the Member States. The STECF reviewed that evidence and concluded[9] that the data shows variable vitality for cuckoo ray but is not representative for commercial fishing conditions and does not exclude that cuckoo ray survivability is close to zero. Therefore, that exemption should only be granted for 2 years for the cuckoo ray caught with trammel nets in ICES subareas 8 and 9 and for 1 year for the cuckoo ray caught with trawls in ICES subarea 8. The results of the ongoing 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 2020 for the cuckoo ray caught with trawls in ICES subarea 8 and not later than by 1 May every year for the cuckoo ray caught with trammel nets in ICES subareas 8 and 9.

(10) Delegated Regulation (EU) 2018/2033 included *de minimis* exemptions from the landing obligation pursuant to Article 15(5)(c) of Regulation (EU) No 1380/2013 for common sole caught with beam trawls and bottom trawls in ICES divisions 8a and 8b and for common sole caught with trammel nets and gillnets in ICES divisions 8a and 8b. The evidence provided by the Member States for those exemptions was reviewed by the STECF[10]. The STECF concluded that the joint recommendation contained reasoned arguments demonstrating difficulties in increasing selectivity and disproportionate costs of handling unwanted catches. Therefore, considering that the circumstances have not changed, the *de minimis* exemptions should be maintained in the South-Western waters demersal discard plan for the period 2020-2021.

(11) Delegated Regulation (EU) 2018/2033 provisionally included a *de minimis* exemption from the landing obligation pursuant to Article 15(5)(c) of Regulation (EU) No 1380/2013 for hake caught with trawls and seines in ICES subareas 8 and 9. The evidence provided by the Member States for that exemption in the new joint recommendation was reviewed by the STECF, which concluded[11] that selectivity trials have not identified more selective devices available at this stage. The STECF noted that the information available shows a substantial increase in cost of handling unwanted catches. An additional study on disproportionate costs is being carried out by Member States, including for hake catches. In order to collect the relevant data, fishing needs to be continued. 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. The Member States concerned should undertake additional trials and provide information as soon as possible and not later than by 1 May every year for assessment by the STECF.

(12) The new joint recommendation suggests an extension of a survivability exemption for red seabream caught with hooks and lines in ICES subarea 8 and ICES division 9a in addition to an existing exemption for that species in ICES subarea 10. The Member States provided scientific evidence in order to demonstrate high survival rates of red seabream in ICES subarea 8 and ICES division 9a in that fishery. The additional

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/2237. (See end of Document for details)*

evidence on survival rates in ICES subarea 8 and ICES division 9a was submitted to the STECF which concluded[12] that there are limitations in the method used, as regards in particular including a short monitoring period, which are likely to result in an overestimation of survival rates. Further studies are needed to generate robust survival estimates. The exemption may be 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) annual reports on the progress and any modifications or adjustments made to the survivability programmes to be annually assessed by the STECF.

(13) Delegated Regulation (EU) 2018/2033 included a *de minimis* exemption for alfonsinos caught with hooks and lines in ICES subarea 10. The STECF reviewed the evidence submitted by the Member States and concluded[13] that the information provided contained reasoned arguments demonstrating that further improvements in selectivity are difficult to achieve or imply disproportionate costs in handling unwanted catches. Considering that the circumstances have not changed, it is appropriate to include those *de minimis* exemptions in the new discard plan for the years 2020-2021.

(14) The new joint recommendation contains *de minimis* exemptions for:

— horse mackerel caught with trawls and seines in ICES subareas 8 and 9,

— horse mackerel caught with gillnets in ICES subareas 8, 9 and Fishery Committee for the Eastern Central Atlantic (CECAF) zones 34.1.1, 34.1.2, 34.2.0,

— mackerel caught with trawls and seines in ICES subareas 8 and 9,

— mackerel caught with gillnets in ICES subareas 8 and 9 and CECAF zones 34.1.1, 34.1.2, 34.2.0,

— megrim caught with trawls and seines in ICES subareas 8 and 9,

— megrim caught with gillnets in ICES subareas 8 and 9,

— plaice caught with trawls and seines in ICES subareas 8 and 9,

— plaice caught with gillnets in ICES subareas 8 and 9,

— anglerfish caught with trawls and seines in ICES subareas 8 and 9,

— anglerfish caught with gillnets in ICES subareas 8 and 9,

— whiting caught with trawls and seines in ICES subarea 8,

— whiting caught with gillnets in ICES subarea 8,

— pollack caught with trawls and seines in ICES subareas 8 and 9,

— pollack caught with gillnets in ICES subareas 8 and 9.

(15) The evidence provided by the Member States on the new *de minimis* exemptions for horse mackerel and mackerel caught with trawls and seines in ICES subareas 8 and 9 was reviewed by the STECF, which concluded[14] that the relevant trials did not show that by-catches could be reduced. The STECF noted that an additional work has been planned by the Member States to support the exemptions on the basis of disproportionate handling costs. Given that the selectivity is difficult to achieve, the exemption for that fishery may be granted for one year and 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. 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.

(16) The evidence provided by the Member States on the new *de minimis* exemptions for megrim, plaice, anglerfish, whiting and pollack caught with trawls and seines in ICES subareas 8 and 9 was reviewed by the STECF which concluded[(15)] that completion of a Spanish study on disproportionate handling costs may provide additional evidence to support the exemption for anglerfish and megrim. The STECF noted that Member States should commit to undertake further work to justify the exemptions for whiting and pollack. Given that selectivity is difficult to achieve, the exemptions may be granted for one year, 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. 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.

(17) The evidence provided by the Member States on the new *de minimis* exemptions for horse mackerel and mackerel caught with gillnets in ICES subareas 8 and 9 and CECAF zones 34.1.1, 34.1.2, 34.2.0 was reviewed by the STECF, which concluded[(16)] that the information regarding difficulties in improving selectivity is credible given the nature of the fisheries. The STECF noted that a study on disproportionate costs in Spanish gillnet fisheries is ongoing and that the assessment of that study should take place once it is finished. Given that selectivity is difficult to achieve, the exemptions for that fishery may be granted for one year and Member States should be required to submit relevant data allowing the STECF to fully assess the justification of those exemptions 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.

(18) The evidence provided by the Member States on the new *de minimis* exemptions for megrim, plaice, anglerfish, whiting and pollack caught with gillnets in ICES subareas 8 and 9 was reviewed by the STECF, which concluded[(17)] that the potential scale of any marketable losses resulting from an increase in selectivity in these fisheries has not been quantified and that it is not clear how that potential scale would vary across particular gillnet fisheries. The STECF noted that Member Staes should provide specific information for each gillnet fishery involved. Given that selectivity is difficult to achieve, those exemptions may be granted for one year, 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. 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.