Commission Delegated Regulation (EU) 2019/2201 of 1 October 2019 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak

COMMISSION DELEGATED REGULATION (EU) 2019/2201

of 1 October 2019

supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak

THE EUROPEAN COMMISSION,

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

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[(1)], in particular Article 15(2) thereof

Whereas:

(1) 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, Skagerrak and Kattegat, 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 for the purpose of real-time closures and moving-on proivsions.

(2) Regulation (EU) 2019/1241 establishes the framework of technical measures that should contribute to achieving the CFP objectives to fish at maximum sustainable yield levels, reduce unwanted catches and eliminate discards, and contribute to the achievement of good environmental status as set out in Directive 2008/56/EC[(2)] of the European Parliament and of the Council. Such technical measures should specifically contribute to the protection of juveniles and spawning aggregations of marine species through the use of selective fishing gear and measures for the avoidance of unwanted catches.

(3) Regulation (EU) 2019/1241 does not provide for transitional measures. Therefore, to ensure compatibility between this Delegated Regulation, and Commission Regulation (EU) No 724/2010[(3)] and Regulation (EU) 2019/1241 that has repealed in section 3 of

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Title IV of Chapter IV of Regulation (EC) No 1224/2009[(4)], 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.

(4) Based on the information provided by the Member States, the Scientific, Technical and Economic Committee for Fisheries (STECF) positively assessed[(5)] 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 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.

(5) Where Member States having a direct management interest in a fishery consider that measures are needed to ensure the protection of aggregations of juveniles through real time closures of fishing areas, the Commission is empowered to adopt according to Article 15(2) Regulation (EU) 2019/1241 such measures by means of delegated acts upon a joint recommendation submitted by those Member States.

(6) Article 19 of Regulation (EU) 2019/1241 sets out specific elements to be included in a joint recommendation in relation to the creation of real-time closures.

(7) According to paragraph (1)(d) of Article 19 of Regulation (EU) 2019/1241, a joint recommendation submitted in relation to the creation of real-time closures shall include control and monitoring arrangements. The Agreed Record of the Conclusions between the European Union and Norway of 6 September 2018 lays down the procedures and sampling methodology for the adoption of real-time closures for Northern prawn (*Pandalus borealis*) in the Skagerrak.

(8) Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the Skagerrak fisheries. After consulting the North Sea Advisory Council, those Member States submitted on 7 March 2019 a joint recommendation to the Commission for a delegated act implementing the measures set out in that Agreed Record into Union law. The joint recommendation was amended on 26 August 2019.

(9) The Fisheries Expert Group was consulted on the joint recommendation on 31 July 2019.

(10) STECF considered that the real-time closures system proposed has potential positive conservation benefits in line with the objective of Regulation (EU) 2018/973 of the European Parliament and of the Council[(6)]. Therefore, it would seem appropriate to introduce it into the Skagerrak as per the specifications set out in the joint recommendation as submitted by the Scheveningen group. The effectiveness's of the real-time closures system should be subject to careful monitoring and evaluated according to the review mechanism set out in the JR. A specific monitoring programme

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of the size selective combination Nordmøre grid to ensure it consistently maintains catches of small Pandalus below the trigger level should be built into the system.

(11) The joint recommendation suggests that vessels fishing for Northern prawn using demersal trawls within a mesh size range 35-69 mm equipped with Nordmøre sorting grids with a maximum bar spacing of 19mm should be allowed to continue fishing for that species in areas subject to real time closures.

(12) Regulation (EU) No 724/2010 lays down detailed rules for the implementation of real-time closures of certain fisheries in the North Sea and Skagerrak. Article 7 of Regulation (EU) No 724/2010 provides that, when the percentage of juveniles in a catch reaches a certain trigger level, the coastal Member State concerned is to prohibit fishing in the area concerned with any fishing gear other than:pelagic trawls, purse seines, driftnets and jiggers targeting herring, mackerel, and horse mackerel; pots; scallop dredges; and gillnets.

(13) The STECF has evaluated demersal trawls within a mesh size range 35-69 mm targeting Northern prawn equipped with Nordmøre sorting grids with a maximum bar spacing of 19mm and concluded that those trawls are highly selective and effective at reducing by-catches of juvenile fish specimens[7]. In light of that advice, it is appropriate to add the use of that fishing gear in the Northern prawn fishery to the list of exempted gears set out in Article 7(1) of Regulation (EU) No 724/2010.

(14) While STECF confirms the effectiveness of Nordmøre grids in reducing by-catches of juvenile fish specimens, it further notes that in terms of minimising catches of juvenile Northern prawn, the effectiveness of gear fitted with a combination Nordmøre grid needs to be ascertained. Based on the STECF opinion, it is appropriate to provide for specific monitoring programmes in order to verify that this gear consistently maintains the proportion of catches of juvenile Northern prawn at a low level.

(15) STECF confirms the conservation benefits of using gears fitted with Nordmøre grids when used to target Norway lobster (*Nephrops norvegicus)*. In light of that advice, and recognising its proven ability to minimise by-catches of cod, it is appropriate to add the use of that fishing gear in the Norway lobster fishery to the list of exempted gears in Article 7(1) of Regulation (EU) No 724/2010.

(16) STECF notes however, that the effectiveness of such devices in the Norway lobster fishery is dependent on the length structure of the by-catch species encountered during fishing operations and that this structure will determine whether trigger catch levels are reached. To ensure that this gear consistently maintains by-catches of juvenile specimens below the trigger level, and to permit Member States to collect additional data as indicated by STECF, fishing operations using such gears in closed areas should be subject to a dedicated monitoring programme.

(17) On the substance, in the light of all the above findings, the Commission considers it to be a pragmatic but at the same time prudent approach to fisheries management to add this gear to the list of gears exempted in Article 7(1) of Regulation (EU) No 724/2010 to allow exemptions on a temporary basis, on the understanding that not to do so, would prevent the collection of data. Further, Nordmøre grids used in *Nephrops* fisheries have

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a proven ability to minimise cod by-catches to very low levels. Given the current status of the North Sea cod stock, the Commission considers therefore the use of such gears as appropriate to reduce unwanted catches of cod as far as possible.

(18) Considering that Regulation (EU) 2019/1241 has repealed in section 3 of Title IV of Chapter IV of Regulation (EC) No 1224/2009[8] the empowering provision on the basis of which Commision Regulation (EU) No 724/2010 was enacted, thereby impeding the possibility of further amendments to that act, given that it is necessary to provide for the implementation of the measures contained in the Agreed Record as submitted in the joint recommendation, it is appropriate to adopt the requisite changes through the inclusion of a corresponding provision by way of this Delegated Regulation.

(19) The measures suggested by the joint recommendation are in line with Article 18(3) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council[9] and with Article 15(2), (4) and (5) and Article 19 of Regulation (EU) 2019/1241, and may thus be included in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes detailed rules for the implementation of real-time closures of fisheries in the Skagerrak for the protection of juveniles of Northern prawn *(Pandalus borealis*).

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) ‘Skagerrak’ means the area bounded on the west by a line drawn from the Hanstholm lighthouse to the Lindesnes lighthouse and on the south by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from this point to the nearest point on the Swedish coast;

(b) ‘haul’ means the activity between the deployment and retrieval of a net.

(c) ‘Joint Deployment Plan’ means a plan specified under a Specific Control and Inspection Programme established pursuant to Article 95 of Regulation (EC) No 1224/2009.

(d) ‘Juveniles of Northern Prawn’ means-specimens of Northern prawn *(Pandalus borealis*) smaller than 14,8 mm carapace length. Carapace length shall be measured as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace.

(e) ‘Nordmøre grid’ is a selectivity device inserted in a trawl which consists of an inclined grid with an escape exit. The device allows the passage of shrimp or Nephrops whilst excluding unwanted by-catches of fish by guiding them out of the escape exit.

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Article 3

Catch trigger level

The catch level which triggers real-time closures of fisheries under this Regulation shall be 20 % by weight of juveniles of Northern prawn compared to the overall catch of Northern prawn, in a haul.

Article 4

Inspections

1 The source of information to monitor trigger catch levels shall be inspections at sea undertaken by competent control authorities on fishing vessels targeting Northern prawn (*Pandalus borialis*) with demersal trawls with a mesh size of at least 32mm.

2 The coastal Member State, and/or the Member State participating in a joint operation under a Joint Deployment Plan, shall identify areas and time periods where there is a risk of reaching the catch trigger level.

3 Inspections shall be carried out, in particular, in the areas identified in accordance with paragraph 2, to measure whether the percentage of juveniles of Northern Prawn reaches the catch trigger level.

4 Control authorities shall inspect catches of Northern prawn using the sample procedure outlined in Annex I.

5 Inspection details and the quantity of juveniles of Northern prawn in the sample shall be recorded in a sampling report as set out in Annex II. The sampling report form, presented in Annex II shall be duly completed immediately after the sample has been measured.

6 If the quantity of Northern prawn in a haul is less than 100 kg, that haul shall not be taken as a basis for recommending a closure.

Article 5

Trigger level notifications

1 When the results of the samples collected in accordance with Article 4(4) from at least two hauls taken within a time span of 96 hours show that the quantity of juveniles of Northern prawn reaches the catch trigger level, the sampling report(s) referred to in Article 4(5) shall be completed immediately and sent to the contact point of the coastal Member State, which shall consider whether a RTC should be established. The transmission of the sampling reports may be complemented by a recommendation from the control authorities responsible for the inspections to establish a RTC.

2 If the proportion of juveniles of Northern prawn is more than 40 % of the overall catch of that species, control authorities may recommend a real time closure on the basis of one sample.