Commission Delegated Regulation (EU) 2018/46 of 20 October 2017 establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018

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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 Article 15(6) and Article 18(1) and (3) 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 Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of a delegated act 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) Commission Delegated Regulation (EU) 2016/2375[(2)], established a discard plan for certain demersal fisheries in North-Western waters for the period 2016-2018, following a joint recommendation submitted by Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom in 2016.

(4) Belgium, Ireland, Spain, France, the Netherlands and the United Kingdom have a direct fisheries management interest in North-Western waters. After consulting the North Western Waters Advisory Council, those Member States submitted on 31 May 2017 a new joint recommendation to the Commission concerning a discard plan for certain demersal and deep sea fisheries in North-Western Waters for the year 2018. Scientific contribution was obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF)[(3)]. The measures suggested by the new joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013 and may therefore be included in this Regulation.

(5) According to Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies in North-Western waters, at the latest from 1 January 2016, to species that define the fisheries which are subject to catch limits. The new joint recommendation specifies

the fleets which are to comply with the landing obligation in the mixed fisheries for cod, haddock, whiting and saithe, in the fisheries for Norway lobster, in the mixed fishery for common sole and plaice and in the fisheries for hake, megrim and pollack.

(6) In accordance with the new joint recommendation, the discard plan for the year 2018 should cover, in addition to the fisheries specified in Delegated Regulation (EU) 2016/2375, (i.e. the highly mixed cod, haddock, whiting and saithe fishery, Norway lobster fishery, mixed common sole and plaice fishery, hake, megrim and pollack fisheries) the saithe fisheries in ICES divisions VI and Vb, and VII. By-catch species should also be covered in certain fisheries.

(7) The new joint recommendation further suggests that the landing obligation be applied as from 2018 to deep sea fisheries using trawls and seines to catch black scabbard fish, blue ling and grenadiers in ICES subarea VI and ICES division Vb.

(8) The new joint recommendation suggests, for the year 2018, a survivability exemption, 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 division VI and subarea VII, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem. The STECF concluded that the exemption is grounded. Therefore, that exemption should be included in the discard plan for 2018.

(9) The new joint recommendation suggests, for the year 2018, a survivability exemption, as referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013, for common sole below the minimum conservation reference size caught by 80-99 mm otter trawl gears in ICES division VIId within six nautical miles from the coast and outside identified nurseries areas. The STECF has noted that the nursery areas referred to in the Regulation should be defined. Therefore, that exemption should be included in the discard plan for 2018 under the condition that Member States concerned undertake additional trials and provide for the information on the location of the nursey areas.

(10) The new joint recommendation suggests, for the year 2018, seven *de minimis* exemptions from the landing obligation for certain fisheries and up to certain levels. The evidence provided by the Member States was reviewed by the STECF, which concluded that the joint recommendation contained reasoned arguments that further improvements in the selectivity are difficult to achieve and/or regarding disproportionate costs in handling unwanted catches, supported in some cases with a qualitative assessment of the costs. In light of the above and in the absence of differing scientific information, it is appropriate to include those *de minimis* exemptions in the discard plan for 2018 in accordance with the percentages proposed in the joint recommendation and at levels not exceeding those allowed under Article 15(1) of Regulation (EU) No 1380/2013.

(11) The *de minimis* exemption suggested for whiting, up to a maximum of 6 % of the total annual catches of that species by vessels using bottom trawls and seines of less than 100 mm and pelagic trawls to catch whiting in ICES divisions VIId and VIIe, is based on the fact that increases in selectivity are very difficult to achieve.

(12) The *de minimis* exemption suggested for whiting, up to a maximum of 6 % of the total annual catches of that species by vessels using bottom trawls and seines of not less than

100 mm to catch whiting in ICES divisions VIIb-VIIj, is based on the fact that increases in selectivity are very difficult to achieve.

(13) The *de minimis* exemption suggested for whiting, up to a maximum of 6 % in 2018 of the total annual catches of this species by vessels using bottom trawls and seines of less than 100 mm to catch whiting in ICES subarea VII (excluding VIIa, VIId and VIIe), is based on the fact that increases in selectivity are very difficult to achieve.

(14) As regards those three *de minimis* exemptions suggested for whiting, Delegated Regulation (EU) 2016/2375 required Member States concerned to submit to the Commission additional scientific information supporting the exemptions. The STECF commented that, while complete evidence is still required, the additional information submitted addresses some concerns of the STECF. The STECF highlighted the need for a more coherent approach to this stock. Based on the scientific evidence reviewed by STEFC and considering that the evidence supporting the exemption has improved, that exemption should be included in the discard plan for 2018.

(15) The *de minimis* exemption suggested for Norway lobster, up to a maximum of 6 % of the total annual catches of that species by vessels fishing for Norway lobster in ICES subarea VII, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption is grounded. Therefore, that exemption should be included in the discard plan for 2018.

(16) The *de minimis* exemption suggested for Norway lobster, up to a maximum of 2 % of the total annual catches of that species by vessels fishing for Norway lobster in ICES subarea VI, is based on the fact that increases in selectivity are very difficult to achieve and there is supporting quantitative information on disproportionate costs of handling unwanted catches. STECF concluded that the exemption is grounded. Therefore, that exemption should be included in the discard plan for 2018.

(17) The *de minimis* exemption suggested for common sole, up to a maximum 3 % of the total annual catches of this species by vessels using TBB gear with mesh size of 80-199 mm with increased selectivity in ICES divisions VIId, VIIe, VIIf, VIIg and VIIh, is based on the fact that increases in selectivity are very difficult to achieve. STECF noted that the exemption is intended to compensate for the use of a more selective gear and to cover residual discards. Therefore, that exemption should be included in the discard plan for 2018.

(18) The *de minimis* exemption suggested for common sole, up to a maximum of 3 % of the total annual catches of that species by vessels using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg, is based on the fact that increases in selectivity are very difficult to achieve. STECF concluded that the exemption is well defined. Therefore, that exemption should be included in the discard plan for 2018.

(19) The scope of certain provisions of Delegated Regulation (EU) 2016/2375 is limited to the year 2017. That Regulation should therefore be repealed and replaced by a new Regulation with effect form 1 January 2018.

(20) 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 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In ICES zones V (excluding Va and only Union waters of Vb), VI and VII, the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal fisheries and deep see fisheries in accordance with this Regulation.

Article 2

Definitions

'Flemish Panel' means the last tapered netting section of a beam trawl, the anterior of which is directly attached to the cod-end. The upper and lower netting sections of the panel must be constructed of at least 120 mm mesh as measured between the knots and the panel must have a stretched length of at least 3 m.

Article 3

Species subject to the landing obligation

The landing obligation shall apply in each fishery as set out in the Annex, subject to the exemptions set out in Articles 4 and 5.

Article 4

Survivability exemption

1 The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply:

a to Norway lobster (*Nephrops norvegicus*) caught in pots, traps or creels (Gear codes[4] FPO and FIX) in ICES subareas VI and VII;

b to catches of common sole (*Solea solea*) below the minimum conservation reference size caught with otter trawl gears (Gear codes OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with cod end mesh size of 80-99 mm in ICES division VIId within six nautical miles of the coast and outside identified nursery areas in the fishing operations meeting the following conditions: vessels with the maximum length of 10 m, maximum engine power of 221 kW, when fishing in waters with the depth of 30 m of less and with limited tow durations of no more than 1:30 hours. Such catches of common sole shall be released immediately.

2 Before 1 May 2018, Member States having a direct management interest in the North-western waters shall submit to the Commission any additional scientific information supporting

the exemption laid down in paragraph 1(b). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess that information before 1 September 2018.

Article 5

De minimis exemptions

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

(a) for whiting (*Merlangius merlangus*), up to a maximum of 6 % of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of less than 100 mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV, OT, PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES divisions VIId and VIIe;

(b) for whiting (*Merlangius merlangus*), up to a maximum of 6 % of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of not less than 100 mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV OT, PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES divisions VIIb-VIIj;

(c) for whiting (*Merlangius merlangus*), up to a maximum of 6 % in of the total annual catches of that species by vessels obliged to land whiting and using bottom trawls and seines of less than 100 mm (OTB, SSC, OTT, PTB, SDN, SPR, TBN, TBS, TB, SX, SV OT, PT and TX) and pelagic trawls (OTM, PTM) to catch whiting in ICES subarea VII, except divisions VIIa, VIId and VIIe;

(d) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 6 % of the total annual catches of that species by vessels obliged to land Norway lobster and fishing for Norway lobster in ICES subarea VII;

(e) for Norway lobster (*Nephrops norvegicus*), up to a maximum of 2 % of the total annual catches of that species by vessels obliged to land Norway lobster and fishing for Norway lobster in ICES subarea VI;

(f) for common sole (*Solea solea*), up to a maximum of 3 % of the total annual catches of that species by vessels obliged to land common sole and using trammel and gill nets to catch common sole in ICES divisions VIId, VIIe, VIIf and VIIg;

(g) for common sole (*Solea solea*), up to a maximum of 3 % of the total annual catches of that species by vessels obliged to land common sole and using TBB gear with mesh size of 80-199 mm with increased selectivity, such as a large mesh extension, to catch common sole in ICES divisions VIId, VIIe, VIIf, VIIg and VIIh.

Article 6

Vessels subject to the landing obligation

1 Member States shall determine, in accordance with the criteria laid down in the Annex, the vessels subject to the landing obligation in each particular fishery.

Vessels that were subject to the landing obligation in certain fisheries in 2017 shall remain subject to the landing obligation in those fisheries.