Commission Delegated Regulation (EU) 2018/45 of 20 October 2017 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa for the year 2018

COMMISSION DELEGATED REGULATION (EU) 2018/45

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establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa for the year 2018

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) thereof,

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms[(2)] and in particular Article 18a 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 that Regulation empowers the Commission to adopt discard plans by means of delegated acts for a period of no more than 3 years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.

(3) Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council, those Member States submitted on 3 June 2016 a joint recommendation to the Commission concerning a discard plan for demersal fisheries in the North Sea. Based on that joint recommendation, Commission Delegated Regulation (EU) 2016/2250[(3)] established a discard plan applicable to those fisheries

(4) After consulting the North Sea Advisory Council, Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom submitted on 31 May 2017 a new joint recommendation to the Commission concerning a new discard plan for demersal fisheries in the North Sea. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). On 8 September an expert group meeting attended

by representatives of 28 Member States, the Commission as well as the European Parliament as an observer took place and the measures concerned were discussed.

(5) Following a new joint recommendation, it is appropriate to repeal Delegated Regulation (EU) 2016/2250.

(6) The measures suggested in the new joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013.

(7) For the purposes of that Regulation, the North Sea comprises ICES zones IIIa and IV. As some demersal stocks relevant to the proposed discard plan are also to be found in Union waters of ICES Division IIa, the Member States concerned recommend that ICES Division IIa be also covered by the discard plan.

(8) The new discard plan for the year 2018 should include the provisions laid down in Delegated Regulation (EU) 2016/2250 regarding the species to be landed and should specify additional species and fisheries to which the landing obligation should apply in 2018.

(9) Delegated Regulation (EU) 2016/2250 introduced survivability exemptions, as provided for by Article 15(4)(b) of Regulation (EU) No 1380/2013[(4)], for catches of Norway lobster made with pots and with trawls when using certain selectivity devices in ICES Division IIIa. The Member States provided for the scientific evidence which demonstrated the high survival rates for catches of Norway lobster with the bottom trawls. That information has been submitted and STECF has concluded that the information is sufficient. The new joint recommendation suggests the continued application of those exemptions. They should therefore be included in the new discard plan for the year 2018.

(10) Delegated Regulation (EU) 2016/2250 introduced a survivability exemption for catches of Norway lobster in ICES Subarea IV for certain gears on the condition that a netgrid selectivity device is used. That Delegated Regulation required Member States having a direct management interest in the North Sea to submit to the Commission additional scientific information supporting the exemptions for the bottom trawls specified. The information has been submitted and STECF has concluded that it only substantiates an exemption in winter months and in certain areas (ICES functional units). Therefore, that exemption should be included in the new discard plan for the year 2018 but limited to winter months and certain ICES functional units.

(11) The new joint recommendation includes a survivability exemption for fish by-catch in the fishery carried out with pots and fyke nets as well as for catches of common sole with otter trawls.

(12) Based on the scientific evidence provided in the new joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, those survivability exemptions should be included in the new discard plan for the year 2018.

(13) Delegated Regulation (EU) 2016/2250 established *de minimis* exemptions for:

— common sole caught with trammel nets and gillnets in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Subarea IIa,

— common sole caught with certain beam trawls equipped with a Flemish panel in ICES Subarea IV,

— Norway lobster caught with certain bottom trawls in ICES Subarea IV and Union waters of ICES Division IIa.

The new joint recommendation suggests the continued application of those *de minimis* exemptions. It is therefore appropriate included those exemptions in the new discard plan.

(14) The new joint recommendation suggests a *de minimis* exemption for common sole, haddock, whiting, cod and saithe combined for catches with certain bottom trawls in ICES Division IIIa, a *de minimis* exemption for sole, haddock, whiting, cod and saithe combined for catches with creels in ICES Division IIIa, a *de minimis* exemption for whiting and cod caught with bottom trawls in ICES Division IVc and a *de minimis* exemption for whiting for catches with certain bottom trawls in ICES Division IIIa.

(15) On the basis of compelling evidence provided by Member States for those de minimis exemptions as reviewed by the STECF, which concluded that those exemptions contained reasoned arguments that further improvements in selectivity are difficult to achieve or imply disproportionate costs in handling unwanted catches, it is appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the new joint recommendation, within the limits set out in Article 15(5)(c) of Regulation (EU) No 1380/2013.

(16) Article 18a of Regulation (EC) No 850/98 empowers the Commission to establish, for the purpose of adopting discard plans and for the species subject to the landing obligation, minimum conservation reference size with the aim of ensuring the protection of juveniles of marine organisms. Those minimum conservation reference sizes may derogate, where appropriate, from the sizes established in Annex XII to Regulation (EC) No 850/98. For Norway lobster in ICES Division IIIa it is appropriate to maintain the minimum conservation reference sizes set out in Delegated Regulation (EU) 2015/2440[(5)], i.e. a total length of 105 mm and a carapace length of 32 mm. A minimum tail length of 59 mm should be added, based on the new joint recommendation and STECF's assessment which states that such tail length corresponds to the existing values for total length and carapace length.

(17) Discard plans may also include technical measures for fisheries or species covered by the landing obligation. To increase gear selectivity and reduce unwanted catches in the Skagerrak, it is appropriate to maintain a number of technical measures, which were agreed between the Union and Norway in 2011[(6)], and 2012[(7)] and to authorise the use of the SepNep selectivity device.

(18) To ensure appropriate control, specific requirements for the Member States to establish lists of vessels covered by this Regulation should be laid down.

(19) 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

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2018/45. (See end of Document for details)*

should enter into force immediately after its publication. It should apply from 1 January until 31 December 2018 in order to comply with the time frame set out in Article 15 of Regulation (EU) No 1380/2013,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In ICES Subarea IV (North Sea), ICES Division IIIa (Kattegat and Skagerrak) and Union waters of ICES Division IIa (Norwegian Sea) the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal fisheries in accordance with this Regulation.

Article 2

Definitions

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

(1) 'Seltra panel' means a selectivity device which:
- consists of a top panel of at least 270 mm mesh size (diamond mesh) placed in a four-panel section and mounted with a joining ratio of three meshes of 90 mm to one mesh of 270 mm, or of a top panel of at least 140 mm mesh size (square mesh),
- is at least 3 metres long,
- is positioned no more than 4 metres from the cod line, and
- is the full width of the top sheet of the trawl (i.e. from selvedge to selvedge).

(2) 'Netgrid selectivity device' means a selectivity device consisting of a four-panel section inserted into a two-panel trawl with an inclined sheet of diamond mesh netting with a mesh size of at least 200 mm, leading to an escape hole in the top of the trawl.

(3) 'Flemish Panel' means the last tapered netting section of a beam trawl whose:
- anterior is directly attached to the cod-end,
- upper and lower netting sections are constructed of at least 120 mm mesh as measured between the knots,
- stretched length is at least 3 m.

(4) 'SepNep' means an otter trawl which:
- is constructed within the mesh size range of 80 to 99 +≥ 100 mm,
- is fitted with multiple cod-ends of mesh sizes ranging from at least 80 to 120 mm attached to a single extension piece, the uppermost cod-end being constructed with a mesh size of at least 120 mm and fitted with a separation panel with a maximum mesh size of 105 mm, and
- may also be fitted with an optional selection grid with a bar spacing of at least 17 mm provided it is constructed in such a way so as to allow the escape of small *Nephrops*.

Article 3

Species subject to the landing obligation

The landing obligation shall apply to the species referred to in the Annex to this Regulation, subject to the exemptions set out in Articles 4 to 7.

Article 4

Survivability exemptions for Norway lobster

1 The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to the following catches of Norway lobster:

a catches with pots (FPO[8]);

b catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm;

c catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 90 mm equipped with a seltra panel;

d in winter months (October to March), catches in the functional units Farn Deeps (FU6), Firth of Forth (FU8) and Moray Firth (FU9) with bottom trawls (OTB, TBN) with a mesh size of at least 80 mm equipped with a netgrid selectivity device.

2 When discarding Norway lobster caught in cases referred to in paragraph 1, the Norway lobster shall be released whole, immediately and in the area where it has been caught.

Article 5

Survivability exemption for common sole

1 The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to catches of common sole below minimum conservation reference size made within 6 nautical miles of the coast in ICES area IVc and outside identified nursery areas, with otter trawls (OTB) with cod end mesh size of 80-99 mm.

2 The exemption referred to in paragraph 1 shall only apply to vessels with a maximum length of 10 metres, a maximum engine power of 221 kW, when fishing in waters with a depth of 30 metres or less and with limited tow durations of no more than 1.30 hours.

3 When discarding common sole caught in cases referred to in paragraph 1, the common sole shall be released immediately.

Article 6

Survivability exemption fish by-catch in pots and fyke nets

1 The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to catches of cod, haddock, whiting, plaice, sole, hake and saithe with pots and fyke nets (FPO, FYK).