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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document C(2018) 6793 final.

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Brussels, 18.10.2018
C(2018) 6793 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 18.10.2018

**specifying details of implementation of the landing obligation for certain demersal
fisheries in the North Sea for the period 2019-2021**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Regulation (EU) No 1380/2013 of the Common Fisheries Policy (CFP)¹ is the progressive elimination of discards in all EU fisheries. As of 1 January 2016 the landing obligation has started to apply to certain demersal fisheries and from 1 January 2019 to all catches of species subject to the catch limits in the North Sea. The basic regulation also provides for increased regionalisation, to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

Commission Regulation (EU) No 1380/2013 stipulates that details of the implementation of the landing obligation and specific flexibility mechanisms need to be established through multiannual plans or, in their absence, through 'discard plans'.

Regulation (EU) No 2018/45² established a demersal discard plan in the North Sea. The regulation is applicable until the end of 2018. Previous to Regulation (EU) No 2018/45, discard plans for demersal fisheries in the North Sea were in force for the years 2016 and 2017.

Regulation (EU) 2018/973³ establishing the multiannual management plan for demersal stocks in the North Sea and the fisheries exploiting those stocks was adopted in 2018 covering the demersal stocks in the North Sea.

For all stocks of species in the North Sea to which the landing obligation applies under Article 15 of Regulation (EU) No 1380/2013, Article 11 of Regulation (EU) 2018/973 provides the empowerment to the Commission to adopt delegated acts in accordance with Article 16 of this Regulation and Article 18 of Regulation (EU) No 1380/2013 in order to supplement the Regulation (EU) 2018/973 by specifying details of that obligation as provided in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on the joint recommendation (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom) who have a direct management interest in the relevant fisheries in this region.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach, the North Sea Member States having a direct management interest have agreed by consensus on the JR for the discard plan for demersal fisheries in the North Sea. The chair of the regional group of North Sea Member States ('Scheveningen Group'), Germany, submitted the JR for the demersal fisheries to the Commission on 30 May 2018. Additional information has been provided at a later stage. After the Scientific, Technical and Economic Committee for Fisheries (STECF) assessment, the Scheveningen Group revised the JR on 30 August 2018. It contained, inter alia, the following elements:

- provisions on the introduction of the landing obligation for certain stocks in certain fisheries;
- several exemptions due to high survivability;

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 7, 12.01.2018, p.6-12.

³ OJ L 179, 16.07.2018, p. 1-13.

- a number of *de minimis* exemptions;
- a provision fixing of minimum conservation reference sizes (MCRS);
- a number of provisions on specific technical measures in the Skagerrak.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the North Sea Member States having a direct management interest and takes into account the views of the North Sea Advisory Council (NSAC) which is the Advisory Council covering the fisheries covered by the JR, as well as the Pelagic Advisory Council (PELAC). For all of these elements the JR includes supporting documentation underpinning the exemptions and other provisions it sets out.

During the work on the JR there was regular and detailed engagement between the Scheveningen Group, the NSAC and the PELAC. In order to have a continuous consultation during the process, the NSAC has been invited to attend, in part, meetings of the Scheveningen High Level Group and, together with the PELAC, the technical Group. Additionally, on 16 April 2018 the draft JR was sent to the NSAC and the PELAC for consultation. On 26 April 2018 the NSAC adopted the advice on ‘comments on the implementation of the landing obligation in the North Sea demersal fisheries – joint recommendation for a delegated act for 2019’. The NSAC advice was presented and discussed with the NSAC representative in the technical Group on 3 May 2018.

All elements of the final JR submitted to the Commission which differed from the 2018 discard plan were evaluated by the relevant Expert Working Group (EWG 18-06) of STECF and during the STECF plenary meeting of 2-6 July 2018⁴.

The Commission is mindful that the nature of fisheries can change over time. It is therefore important to clarify that where exemptions have previously been granted for the duration of a discard plan (i.e. 3 or 5 years) this does not mean they will automatically be renewed in a following discard plan. As the catch composition, fishing technology or fishing behaviour of the fleets covered by an exemption may have changed, it is necessary that established exemptions are reviewed again by STECF after 3 or 5 years from being initially granted and that Member States will have to provide again justification and scientific data for review by the STECF.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

The main legal action is to adopt the measures that would facilitate the implementation of the landing obligation.

The Regulation specifies species and fisheries to which specific measures would apply: i.e. high survivability and the *de minimis* exemptions, MCRS and technical measures.

Legal basis

Article 11 of Regulation (EU) 2018/973.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union.

Proportionality principle

⁴ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

The proposal is within the scope of the delegated powers provided to the Commission by Article 11 of Regulation (EU) 2018/973 and does not go beyond what is necessary to achieve the purpose of those provisions.

Choice of instrument

Proposed instrument: Commission Delegated Regulation.

Other means would not be adequate for the following reason: The Commission has been granted powers to adopt a discard plan by means of delegated acts. Member States having a direct management interest submitted the JR. Measures provided for in the JR and included in this proposal are based on the best available scientific advice and fulfil all relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

COMMISSION DELEGATED REGULATION (EU) .../...

of 18.10.2018

specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021

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 1342/2008⁵, and in particular Article 11 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) Article 9 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁶ 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) In the absence of a multiannual plan, Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to implement the landing obligation through discard plans on the basis of joint recommendations developed by Member States.
- (5) Belgium, Denmark, France, Germany, 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 31 May 2017 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) 2018/45⁷ established a discard plan applicable to those fisheries in the year 2018.
- (6) 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. Article 11 of that Regulation empowers the Commission to adopt delegated acts specifying details of the landing obligation on the basis of joint recommendations developed by Member States.

⁵ OJ L 179, 16.7.2018, p. 1.

⁶ OJ L 354, 28.12.2013, p. 22.

⁷ OJ L 7, 12.01.2018, p. 6-12.

- (7) After consulting the North Sea Advisory Council and the Pelagic Advisory Council, Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom submitted on 30 May 2018 a new joint recommendation to the Commission concerning details of the implementation of the landing obligation for demersal fisheries in the North Sea. The joint recommendation was amended on 30 August 2018.
- (8) As set out in Regulation (EU) 2018/973, the North Sea comprises ICES divisions 2a, 3a and subarea 4.
- (9) Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF)⁸. On 11 September 2018 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.
- (10) For some stocks, such as plaice, the STECF identified that survival rates of individual fish may not be as robust as that found in other species. However the Commission had considered the relative impact of this exemption on the overall stock, compared to individual fish, and balanced this against the need to continue fishing activity to provide data collection in order to address the comments made by the STECF. In cases where the relative amount of dead discards are relatively 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 necessary data collection indispensable for the proper and informed management of discards in view of full entry into force of the landing obligation
- (11) Delegated Regulation (EU) 2018/45 provided for survivability exemptions for catches of common sole below minimum conservation reference size (MCRS) made by trawls in ICES division 4c, based on scientific evidence which demonstrated discard survival rates. That evidence has been evaluated in previous years and STECF has concluded⁹ that the evidence was sufficient. The new joint recommendation suggests the continued application of the exemption. STECF pointed out that no new information on location of nursery areas was provided¹⁰. 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 will be identified.
- (12) Delegated Regulation (EU) 2018/45 included a survivability exemption, as provided for by Article 15(4)(b) of Regulation (EC) 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 the survival rates. That evidence has been evaluated in previous years and STECF has concluded¹¹ that the evidence is sufficient. The new joint recommendation suggests the continued application of the exemption. Considering the circumstances have not changed, that exemption should therefore be included in this Regulation.
- (13) Delegated Regulation (EU) 2018/45 included a survivability exemption for catches of Norway lobster made in ICES subarea 4 with certain gears on the condition that a netgrid selectivity device was used. That exemption was limited to winter months and certain ICES functional units. The new joint recommendation suggests the continued

⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

⁹ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

¹⁰ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹¹ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

application of that exemption and its extension to ICES divisions 2a and 3a. The Member States provided updated scientific evidence in 2018 in order to demonstrate survival rates for Norway lobster caught with bottom trawls fitted with a cod-end larger than 80 mm or at least 70 mm and equipped with specific selectivity devices. The evidence was submitted to STECF, which raised concerns¹² on the survival estimates covering the west coast of the North Sea and on whether those estimates are representative for the whole area. However, STECF pointed out that the supporting scientific information was based on a robust approach and the validation technique used in the context of the wider fleets is reasonable. Under those circumstances, the exemption may be applied until 31 December 2021, but Member States having a direct management interest should submit data on the fisheries of the west coast of the North Sea.

- (14) Delegated Regulation (EU) 2018/45 included a survivability exemption for the bycatch of species subject to catch limits in the fishery carried out with pots and fyke nets, based on the scientific evidence which demonstrated the survival rates. That evidence has been evaluated in previous years and STECF concluded¹³ 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 may be included in this Regulation.
- (15) The new joint recommendation suggests 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 discard survival rates for plaice in that fishery. The evidence was submitted to STECF which concluded¹⁴ that reasonable information was provided showing the considerably high survivability. That exemption should therefore be included in this Regulation.
- (16) The new joint recommendation includes 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 discard survival rates for plaice in that fishery. The evidence was submitted to STECF which concluded¹⁵ that the data of the study on the survival rates are reliable, albeit additional factors 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 may therefore be included in this Regulation.
- (17) The new joint recommendation suggests a survivability exemption for catch and bycatch 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 advice in order to demonstrate discard survival rates for plaice in that fishery. The evidence was submitted to STECF, which concluded¹⁶ that the survival rates in the supporting study have 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.

¹² <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹³ <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>

¹⁴ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹⁵ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹⁶ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

- (18) The new joint recommendation suggests a survivability exemption for catches of plaice below MCRS made with beam trawl gears in ICES subarea 4 and ICES division 2a. Member States provided scientific evidence in order to demonstrate discard survival rates in that fishery. The evidence was submitted to STECF which concluded¹⁷ that survivability in that fishery is affected by many factors and is highly variable. STECF also had doubts that given the indicative relatively high discard rates and relatively low survival rates, it is likely that significant quantities of plaice discarded will not survive. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted, but Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. Under those circumstances, the exemption may be applied provisionally until 31 December 2019. Member States having a direct management interest should submit: (a) a roadmap developed in order to increase survivability, to be scientifically assessed by STECF, and (b) annual reports on the progress and modifications / adjustments made to the survivability programme.
- (19) For skates and rays caught with all fishing gears in ICES divisions 2a and 3a, and ICES subarea 4, detailed scientific evidence on survival rates is not available for all fleet segments and combinations that benefit from the exemption. However, with a few exceptions, survival rates are considered to be generally robust, but further detail is required. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted, but Member States should have the obligation to submit relevant data allowing 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 31 May each year: (a) a roadmap developed in order to increase survivability and to fill in the data gaps identified by STECF, to be annually assessed by STECF, (b) annual reports on the progress and any modifications or adjustments made to the survivability programmes.
- (20) 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, with less robust scientific understanding. However to exclude this species altogether from the exemption would prevent fishing and continued, accurate data collection. Therefore, the Commission considers this exemption should only be granted for 1 year and that new studies and improved survivability measures should be developed as a matter of urgency and provided to STECF for assessment as soon as possible before 31 May 2019.
- (21) Delegated Regulation (EU) No 2018/45 included *de minimis* exemptions for:
- common sole caught with trammel nets and gillnets in ICES divisions 2a and 3a, ICES subarea 4,
 - common sole caught with certain beam trawls equipped with a Flemish panel in ICES subarea 4,
 - combined catches of common sole, haddock, whiting, cod, saithe, plaice, herring, Norway pout, greater silver smelt and blue whiting made with certain bottom trawls in ICES division 3a,
 - combined catches of common sole, haddock, whiting, cod, saithe and hake made with creels in ICES division 3a,

¹⁷ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

- whiting caught with certain bottom trawls in ICES division 3a,
 - whiting and cod caught with bottom trawls in ICES division 4c.
- (22) Member States provided evidence supporting those *de minimis* exemptions. The STECF¹⁸ reviewed that evidence and concluded¹⁹ that the documents submitted by the Member States 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 therefore appropriate to continue the *de minimis* exemptions in accordance with the percentage level and the necessary modifications suggested in the new joint recommendation pursuant to Article 15(5)(c) of Regulation (EU) No 1380/2013.
- (23) The new joint recommendation suggests a *de minimis* exemption for:
- plaice caught with certain bottom trawls in ICES subarea 4,
 - all species subject to catch limits caught with beam trawls in ICES divisions 4b and 4c,
 - whiting and cod caught with bottom trawls in ICES divisions 4a and 4b,
 - ling caught with certain bottom trawls with a mesh size greater than or equal to 120 and ling caught with certain bottom trawls with a mesh size between 100 and 119 mm in ICES subarea 4,
 - whiting caught with certain beam trawls in ICES subarea 4,
 - horse mackerel caught with bottom trawls (OTB, OTT, PTB, TBB) in ICES subarea 4,
 - mackerel caught with bottom trawls (OTB, OTT, PTB, TBB) in ICES subarea 4.
- (24) Member States provided scientific evidence supporting the new *de minimis* exemptions based on difficulties to improve selectivity and disproportionate costs of handling the catches. That evidence was reviewed by STECF during its plenary session on 2-6 July 2018.
- (25) As regards the exemption for whiting and cod caught with bottom trawls in ICES divisions 4a and 4b STECF has concluded that relevant data from certain Member States was missing. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted provisionally until 31 December 2019, but Member States should have the obligation to submit relevant data allowing 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 before 31 May 2019 for assessment by STECF.
- (26) On the basis of evidence provided by Member States, STECF considered that it is appropriate to establish *de minimis* exemptions for plaice caught with certain bottom trawls in ICES subarea 4.
- (27) STECF concluded that reasonable data was provided to grant a *de minimis* exemption in fisheries for brown shrimp with beam trawls in ICES divisions 4b and 4c.

¹⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>

¹⁹ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

- (28) As regards the *de minimis* exemption for ling caught with certain bottom trawls with a mesh size between 100 and 119 mm in ICES subarea 4, STECF considered it difficult to assess definitely the impact of improving selectivity in the fishery concerned. STECF noted that relevant data from certain Member States was missing. However STECF acknowledged that the gear used in the relevant fishery is already selective and that improving selectivity further will render the fisheries uneconomic. In order to collect this data, fishing would need to continue and as such, the Commission considers that the exemption should be granted provisionally until 31 December 2019, but Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. Member States should submit (a) data showing that improvements in selectivity are very difficult to achieve in the relevant fisheries and (b) additional catch or fleet information on the fleets of other Member States who may also be active in the fisheries. The Member States concerned should undertake additional trials and provide information as soon as possible before 31 May 2019 for assessment by STECF.
- (29) On the basis of evidence provided by the Member States and as concluded by STECF, a *de minimis* exemption should be granted for ling caught with certain bottom trawls with a mesh size greater than or equal to 120 mm in ICES subarea 4.
- (30) STECF noted in its conclusions that detailed information was provided for the *de minimis* exemption for whiting caught with certain beam trawls in ICES subarea 4. However STECF indicated limits in the improvement on selectivity for whiting and noted that the approach used to calculate the *de minimis* may restrain the selectivity of whiting, as all unwanted catches of whiting could potentially be discarded. Under those circumstances the exemption should be applied at the level of the observed discards (2%) and the Member States should have the obligation to submit relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review yearly. The Member States concerned should undertake additional trials and provide information for assessment by STECF as soon as possible before 31 May every year.
- (31) The evidence provided by the Member States on the new *de minimis* exemptions regarding horse mackerel and mackerel caught by vessels using bottom trawls, seines and beam trawls was reviewed by the STECF, which concluded that further information needs to be provided. Given the need to continue fishing activity and data collection to provide this information, individual exemptions for each species should be limited to 1 year and Member States should have the obligation to submit the relevant data allowing STECF to fully assess the justification and allowing the Commission to carry out a review. The Member States concerned should undertake the additional trials and provide information as soon as possible before 31 May 2019 for assessment by STECF. These exemptions should therefore be applied provisionally until 31 December 2019.
- (32) To ensure reliable estimations of levels of discarding for the purpose of the setting of the total allowable catches, Member States should, in cases where the *de minimis* exemption is based on extrapolation of data-limited situations and partial fleet information, ensure provision of accurate and verifiable data for the whole fleet covered by this *de minimis* provision.
- (33) According to Article 15(5)(a) of Regulation (EU) No 1380/2013, the details of implementation of the landing obligation may include technical measures referred to in Article 7(2) of that Regulation. 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 2011²⁰, and 2012²¹ and to authorize the use of the SepNep selectivity device.

- (34) The measures suggested by the new joint recommendation are in line with Article 15(4), Article 15(5)(c) and Article 18(3) of Regulation (EU) No 1380/2013, and Regulation (EU) 2018/973, in particular Article 11 thereof and may thus be included in this Regulation.
- (35) Under Article 18 of the Regulation (EU) No 1380/2013, the Commission has considered both the STECF's assessment and the need for Member States to ensure the full implementation of the landing obligation on the 1 January 2019. In several cases, exemptions require continued fishing activity and data collection in order to address the comments made by the STECF. In these cases, 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 necessary data collection indispensable for the proper and informed management of discards in view of full entry into force of the landing obligation.
- (36) According to Article 16(2) of Regulation (EU) 2018/973, the power to adopt delegated acts with regards to the landing obligation is conferred on the Commission for a period of five years from 5 August 2018. It is therefore appropriate to revise the impact of the survivability and *de minimis* exemptions from the landing obligation in the third year of application of this Regulation.
- (37) 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 2019 until 31 December 2021,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

In Union waters of the North Sea (ICES divisions 2a, 3a and subarea 4) the landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply to demersal fisheries which are subject to catch limits in accordance with this Regulation for the period 2019-2021.

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);

²⁰ Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.

²¹ Agreed record of fisheries consultations between the European Union and Norway on measures for the implementation of a discard ban and control measures in the Skagerrak area, 4 July 2012.

- 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:
- posterior 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 3m.
- (4) 'SepNep' means an otter trawl which:
- is constructed within the mesh size range of 80 to 99 + \geq 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 furthermore 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 Norway lobster.

Article 3

Survivability exemptions for Norway lobster

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of the North Sea (ICES divisions 2a, 3a and subarea 4) to the following catches of Norway lobster:

- (a) catches with pots (FPO²²);
- (b) catches with bottom trawls (OTB, TBN) fitted with:
 - (1) a cod-end larger than 80 mm; or
 - (2) a cod-end with a mesh size of at least 70 mm equipped with a species selective grid with a bar spacing of maximum 35 mm; or
 - (3) a cod-end of at least 35 mm equipped with a species selective grid with a bar spacing of maximum 19 mm.

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.

²² Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common fisheries policy. For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

3. Member States having a direct management interest shall submit, every year as soon as possible before 31 May, additional scientific information supporting the exemption laid down in paragraph 1(b). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August every year.

Article 4

Survivability exemption for common sole

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of ICES division 4c, within six nautical miles of the coast but outside identified nursery areas, to catches of common sole below minimum conservation reference size made using otter trawls (OTB) with a 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 meters and a maximum engine power of 221 kW, fishing in waters with a depth of 30 meters or less and with 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 5

Survivability exemption for bycatch of all species subject to catch limits in pots and fyke nets

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of ICES division 3a and ICES subarea 4 to catches of all species subject to catch limits made with pots and fyke nets (FPO, FYK).

2. When discarding fish caught in cases referred to in paragraph 1, the fish shall be released immediately and below the sea surface.

Article 6

Survivability exemption for catch and bycatch of plaice

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of ICES division 3a and subarea 4 to:

- (a) plaice caught with nets (GNS, GTR, GTN, GEN);
- (b) plaice caught with Danish seines;
- (c) plaice caught with bottom trawls (OTB, PTB) with a mesh size of at least 120 mm when targeting flatfish or roundfish in winter months (from 1 November to 30 April).

2. When discarding plaice caught in cases referred to in paragraph 1, the plaice shall be released immediately.

Article 7

Survivability exemption for plaice below the minimum conservation reference size

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of ICES division 2a and ICES subarea 4 and to catches of plaice below the minimum conservation reference size made with 80-119 mm beam trawls (BT2).

2. The exemption referred to in paragraph 1 shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019 additional scientific information supporting that exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August 2019.

3. When discarding plaice caught in cases referred to in paragraph 1, the plaice shall be released immediately and below the sea surface.

Article 8

Survivability exemption for skates and rays

1. The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in Union waters of the North Sea (ICES divisions 2a, 3a and subarea 4) to catches of skates and rays with all fishing gears.

2. Member States having a direct management interest shall submit every year as soon as possible before 31 May additional scientific information supporting the exemption laid down in paragraph 1. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August every year.

3. The exemption set out in paragraph 1 shall apply to Cuckoo ray until 31 December 2019. Member States having a direct management interest shall submit, as soon as possible before 31 May 2019, additional scientific information supporting that exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August 2019.

4. When discarding skates and rays caught in cases referred to in paragraph 1, the skates and rays shall be released immediately and below the sea surface.

Article 9

De minimis exemptions

By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded pursuant to Article 15(4)(c) of that Regulation:

(a) in fisheries for common sole by vessels using trammel nets and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) in Union waters of ICES divisions 2a and 3a, and ICES subarea 4:

a quantity of common sole below and above the minimum conservation reference size, which shall not exceed 3 % of the total annual catches of that species;

(b) in fisheries for common sole by vessels using beam trawl (TBB) of mesh size 80-119 mm equipped with a Flemish panel, in Union waters of ICES subarea 4:

a quantity of common sole below minimum conservation reference sizes, which shall not exceed 6 % of the total annual catches of that species in 2019 and 5 % the rest of the period;

(c) in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) with a mesh size equal to or larger than 70 mm equipped with a species-selective grid with a bar spacing of maximum 35 mm in Union waters of ICES division 3a:

a combined quantity of common sole, haddock, whiting, cod, saithe and hake below the minimum conservation reference size, which shall not exceed 4 % of the total

annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn, cod, saithe and hake;

- (d) in the fishery for Northern prawn by vessels using bottom trawls (OTB) with a mesh size equal to or larger than 35 mm equipped with a species selective grid with a bar spacing of maximum 19 mm, and with unblocked fish outlet, in Union waters of ICES division 3a:

a combined quantity of common sole, haddock, whiting, cod, plaice, saithe, herring, Norway pout, greater silver smelt and blue whiting below minimum conservation reference size, which shall not exceed 5 % of the total annual catches of Norway lobster, common sole, haddock, whiting, cod, saithe, plaice, Northern prawn, hake, Norway pout, greater silver smelt, herring and blue whiting;

- (e) in the mixed demersal fisheries by vessels using bottom trawls or seines (OTB, OTT, SDN, SSC) of mesh size 70-99 mm (TR2) in Union waters of ICES division 4c:

a combined quantity of whiting and cod below minimum conservation reference sizes, which shall not exceed 6 % of the total annual catches in 2019 and 5% in 2020 and 2021 of species below minimum reference size that would fall under landing obligation; the maximum amount of cod that may be discarded shall be limited to 2% of those total annual catches;

- (f) in the mixed demersal fisheries by vessels using bottom trawls or seines (OTB, OTT, SDN, SSC) with a mesh size of 70-99 mm in Union waters of ICES divisions 4a and 4b:

a combined quantity of whiting and cod below minimum conservation reference size, which shall not exceed 6 % of the total annual catches in 2019 of species below minimum reference size that would fall under landing obligation; the maximum amount of cod that may be discarded shall be limited to 2% of those total annual catches;

the *de minimis* exemption set out in this point (f) shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August 2019;

- (g) in fisheries by vessels using bottom trawls (OTB, OTT, TBN) with a mesh size of 90-119 mm, equipped with Seltra panel, or bottom trawls (OTB, OTT, TBN) with a mesh size equal to or larger than 120 mm, in Union waters of ICES division 3a:

a quantity of whiting below minimum conservation reference sizes, up to a maximum of 2% of the total annual catches of Norway lobster, cod, haddock, whiting, saithe, common sole, plaice and hake;

- (h) in the fisheries for Norway lobster by vessels using bottom trawls with a mesh size of 80-99 mm, equipped with a SepNep, in Union waters of ICES subarea 4:

a quantity of plaice below the minimum conservation reference size, which shall not exceed 3 % of the total annual catches of saithe, plaice, haddock, whiting, cod, Northern prawn, common sole and Norway lobster;

- (i) in the fisheries for brown shrimp by vessels using beam trawls in Union waters of ICES divisions 4b and 4c:

- a quantity of all species subject to catch limits, which shall not exceed 7% in 2019 and 2020, 6% in 2021 of the total annual catches of all species subject to catch limits;
- (j) in the demersal fisheries by vessels using bottom trawls (OTB, OTT, PTB) with a mesh size between 100 and 119 mm catching ling in Union waters of ICES subarea 4:
- a quantity of ling below minimum conservation reference size, which shall not exceed 3% of the total annual catches of ling in that fishery;
- the *de minimis* exemption set out in this point (j) shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit before 31 May 2019, additional scientific information supporting that exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August 2019;
- (k) in the demersal fisheries by vessels using bottom trawls (OTB, OTT, PTB) with a mesh size equal to or greater than 120 mm catching ling in Union waters of ICES subarea 4:
- a quantity of ling below minimum conservation reference size, which shall not exceed 3% of the total annual catches of ling in that fishery;
- (l) in the demersal mixed fishery by vessels using beam trawls with a mesh size of 80-119 mm in Union waters of ICES subarea 4:
- a quantity of whiting below minimum conservation reference size, which shall not exceed 2% of the total annual catches of plaice and sole;
- Member States having a direct management interest shall submit every year, as soon as possible before 31 May, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August every year;
- (m) in the demersal mixed fishery with bottom trawls (OTB, OTT, PTB, TBB) with a mesh size between 80 and 99 mm in ICES subarea 4:
- a quantity of horse mackerel, which shall not exceed 7% in 2019 of the total annual catches in that fishery of horse mackerel;
- the *de minimis* exemption set out in this point (m) shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information before 1 August 2019;
- (n) in the demersal mixed fishery with bottom trawls (OTB, OTT, PTB, TBB) with a mesh size between 80 and 99 mm in ICES subarea 4:
- a quantity of mackerel, which shall not exceed 7% in 2019 of the total annual catches in that fishery of mackerel;
- the *de minimis* exemption set out in this point (n) shall be provisionally applicable until 31 December 2019. Member States having a direct management interest shall submit as soon as possible before 31 May 2019, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for

Fisheries (STECF) shall assess the provided scientific information before 1 August 2019.

Article 10

Specific technical measures in the Skagerrak

1. The carrying on board or the use of any trawl, Danish seine, beam trawl or similar towed net having a mesh size of less than 120 mm shall be prohibited in the Skagerrak.
2. By way of derogation from paragraph 1, the following trawls may be used:
 - (a) trawls with a cod end having a mesh size of at least 90 mm, provided they are equipped with a seltra panel or a sorting grid with no more than 35 mm bar spacing.
 - (b) trawls with a cod end having a mesh size of at least 70 mm (square mesh), equipped with a sorting grid with no more than 35 mm bar spacing;
 - (c) trawls with a minimum mesh sizes of less than 70 mm when fishing for pelagic or industrial species, provided the catch contains more than 80 % of one or more pelagic or industrial species;
 - (d) trawls with a cod end of at least 35 mm mesh size when fishing for Northern prawn, provided the trawl is equipped with a sorting grid with a maximum bar spacing of 19 mm.
3. A fish retention device may be used when fishing for Northern prawn in accordance with paragraph 2(d), provided there are adequate fishing opportunities to cover by-catch and that the retention device is:
 - (a) constructed with a top panel with a minimum mesh size of 120 mm square mesh;
 - (b) at least 3 metres long; and
 - (c) at least as wide as the sorting grid.

Article 11

SepNep

In accordance with Article 9(1)(a) of Regulation (EC) No 2018/973, it shall be permitted to use the SepNep nets.

Article 12

Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2019 until 31 December 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.10.2018

*For the Commission
The President
Jean-Claude JUNCKER*