

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

13457/18

C(2018) 6789 final

COMMISSION DELEGATED REGULATION (EU) .../... OF 18.10.2018 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS FOR THE PERIOD 2019-2021

Submitted by the Department for Environment, Food and Rural Affairs

22 November 2018

SUBJECT MATTER

1. Since 1 January 2015, all commercial pelagic¹ stock subject to catch limits, have had to be landed and counted against quota. Since then, on an annual basis, the demersal² stocks subject to catch limits have also been phased in. From 1 January 2019, in line with the Common Fisheries Policy (CFP), the landing obligation³ will apply to all catches from both demersal and pelagic fisheries, subject to catch limits (also known as the full landing obligation).
2. This delegated act sets out specific provisions to facilitate the full implementation of the Landing Obligation (from 1 January 2019) for species which define demersal and deep sea fisheries in the North Sea. In the absence of multiannual plans⁴, those provisions need to be implemented through discard plans⁵.
3. This discard plan was developed as a joint initiative by the Member States with a direct management interest in the North Sea (i.e. Belgium, Denmark, France, Germany, the Netherlands, Sweden and the UK). The Commission recently adopted this discard plan by means of a delegated act.
4. The discard plan is a temporary measure (for a duration of 3 years and renewable for a period of another 3 years, subject to review).

¹ Pelagic fish species which aggregate in the upper water column or the pelagic zone of the sea— being neither close to the bottom nor near the shore

² Demersal fish species are those which aggregate close to the seabed

³ The landing obligation requires all catches of regulated commercial species on-board a fishing vessel to be landed and counted against fishing quota

⁴ Multiannual plans (MAP) are strategic and long term regional fisheries management plans for eliminating the wasteful practice of discarding and moving towards ecosystem level management

⁵ Discard plans are short term regional fishery management plans which are in place in the absence of long term MAPs. Discard Plans cover the non-national decisions relating to the discard ban, such as the timeline that the discard ban will cover stocks and exemptions to the discard ban.

SCRUTINY HISTORY

5. The Parliamentary scrutiny history relevant to this document is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

6. Responsibility for overseeing the successful implementation of the delegated act lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The three devolved administrations all have fishing interests in the NWW region and have been consulted in the preparation of this Explanatory Memorandum.
8. Representatives from the devolved administrations have actively contributed to the UK's participation in the NWW Regional Group, through which the discard plan was developed. This group is composed of EU Member States with a direct management interest in relevant fisheries in the NWW region.

LEGAL AND PROCEDURAL ISSUES

9.

i. Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

Articles 15(6) and 18(1) and (3) of Regulation of the European Parliament and of the Council (EU) No 1380/2013.

ii. European Parliament Procedure

The Parliament (and the Council) can revoke the delegated act at any time if they have a majority.

iii. Voting procedure

Qualified Majority Voting.

iv. Impact on United Kingdom Law

The proposed Regulation would be directly applicable and no further legislative action would be required to implement the basic proposal.

v. Application to Gibraltar

Not applicable.

vi. Fundamental rights analysis

No fundamental rights issues arise from this Document.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

10. This proposal will not affect the European Economic Area Agreement.

SUBSIDIARITY

11. This proposal falls under the exclusive competence of the European Union and therefore the Subsidiarity principle does not apply.

12. The discard plan was developed as a joint initiative by the Member States with a direct management interest in the NWW region.

POLICY IMPLICATIONS

13. This delegated act will replace the existing Delegated Regulation (EU) 2018/46), which was also based on the joint recommendations of the same Member States for the year 2018. The provisions in the discard plan, which will facilitate the implementation of the landing obligation, include exemptions to the landing obligation for certain fish species or certain fisheries and specific technical measures.

14. In summary, the survivability exemptions⁶ included in this delegated act apply to (with additional conditions not detailed here):

- a. Norway lobster (*Nephrops norvegicus*) caught by bottom trawls⁷ in ICES subarea 7 and caught by otter trawls⁸ in ICES division 6a.
- b. Common sole (*Solea solea*) caught by otter trawls outside nursery areas in ICES division 7d.
- c. Plaice (*Pleuronectes platessa*) caught by otter trawls and trammel nets⁹ in certain divisions of ICES subarea 7 and caught by beam trawls¹⁰ across ICES subarea 7. This latter exemption has been restricted to a period of one year.
- d. Skates and rays (*Rajiformes*) caught by any fishing gear in the NWW region. Further evidence has been requested to support this exemption and for one species it has been restricted to a period of one year.
- e. All species caught by static gear (pots¹¹, traps or creels¹²) across the NWW region.

⁶ A survivability exemption allows fishermen to return to the sea their catch of a stock that has a scientifically-proved high chance of survival

⁷ A bottom trawl is a fishing technique which involves towing a trawl (i.e. a fishing net) along the sea floor

⁸ In otter trawling a large net is dragged along the bottom or up in the water column behind a towing vessel. The mouth of the net is held open by two large "doors" which are attached to either side of the net.

⁹ A trammel net is a fishing net with three layers of netting

¹⁰ A beam trawl is where a large net attached to a heavy metal beam is dragged across the sea bed behind a boat

¹¹ A pot (or trap) structure used for catching fish

¹² A creel is a wicker basket for catching fish

15. In summary, the *de minimis*¹³ exemptions included in the delegated act apply to (with additional conditions not detailed here):
- a. Whiting (*Merlangius merlangus*) caught by various different demersal towed gear types and pelagic trawls across most of ICES subarea 7.
 - b. Common sole caught by trammel and gills nets¹⁴ and beam trawls in the Channel and southern Celtic Sea (parts of ICES subarea 7).
 - c. Haddock (*Melanogrammus aeglefinus*) and cod (*Gadus morhua*) caught by bottom towed gears in the Celtic Sea and western Channel (parts of ICES subarea 7). These exemptions have been restricted to a period of one year.
 - d. Horse mackerel (*Trachurus* spp.) and mackerel (*Scomber scombrus*) caught by bottom towed gear in the Celtic Sea and Channel (parts of ICES subarea 7) and ICES subarea 6. These exemptions have been restricted to a period of one year.
16. The technical measures included in the delegated act also define highly selective gear specifications for certain fisheries operating in the Irish Sea and Celtic Sea Protection Zone.
17. Parliament voted to trigger Article 50 and leave the European Union. Until we leave the EU, all the rights and obligations of EU membership remain in force. The outcome of our negotiations with the EU on a future partnership will determine what arrangements apply in the future.
18. When we leave the EU in March 2019, the UK will also become an independent coastal State under international law. Whilst we will remain fully committed to ending the wasteful discarding of fish, we will have the flexibility to introduce measures not contained within the CFP toolkit to reduce discarding whilst preventing choke¹⁵. Under an implementation period, the existing body of EU regulations will continue to apply until December 2020.

CONSULTATION

19. As detailed in sections above, the discard plan was developed by Member States in the NWW regional group in consultation with the relevant advisory councils and scientific bodies. The Commission's Scientific, Technical and Economic Committee for Fisheries (STECF) were consulted.
20. Defra also consulted the fishing industry and environmental NGOs and these consultations informed the position that the UK took in the regional discussions.

¹³ A *de minimis* exemption is applied where scientific evidence indicates that selectivity is very difficult to achieve or where the costs of handling unwanted catch are disproportionate

¹⁴ Gill nets are vertical panels of netting normally set in a straight line

¹⁵ Choke is a situation where the exhaustion of one quota prevents fishing continuing for other species.

21. As the delegated act is applicable to all UK registered vessels fishing within the NWW, the devolved administrations actively contributed to its development. The devolved administrations also consulted their respective industry stakeholders.
22. Generally industry were supportive of the delegated act as it would provide the flexibility required to practically implement the landing obligation.

IMPACT ASSESSMENT

23. A UK impact assessment was conducted as part of the Defra consultation on the original discard plan for the pelagic landing obligation in 2014.

FINANCIAL IMPLICATIONS

24. The Commission produced financial implications for the reform of the CFP proposal at the European level in 2011.

TIMETABLE

25. The pelagic landing obligation under the reformed CFP came into full force on 1 January 2015. Since 1 January 2015, on an annual basis, the demersal stocks that have to be landed have been phased in.
26. The full landing obligation, covering both demersal and pelagic fisheries, will come into force on 1 January 2019.
27. The delegated act establishes a discard plan for certain demersal fisheries in NWW for the period 1 January 2019 to 31 December 2021. It was adopted on 18 October 2018.



GEORGE EUSTICE MP
MINISTER OF STATE FOR AGRICULTURE, FISHERIES AND FOOD
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 18.10.2018 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS FOR THE PERIOD 2019-2021

EM 14939/17: COMMISSION DELEGATED REGULATION (EU) NO .../.. OF 24.11.2017 AMENDING DELEGATED REGULATION (EU) NO 1393/2014 ESTABLISHING A DISCARD PLAN FOR CERTAIN PELAGIC FISHERIES IN NORTH-WESTERN WATERS

14939/17 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) NO.../... OF AMENDING DELEGATED REGULATION (EU) NO 1393/2014 ESTABLISHING A DISCARD PLAN FOR CERTAIN PELAGIC FISHERIES IN NORTH-WESTERN WATERS

DATE EM SIGNED: 18/12/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 9;10/1/2018)	CLEARED (BUT SENT FOR INFORMATION TO ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1677 - 10/1/2018

EM 13591/17: COMMISSION DELEGATED REGULATION (EU) .../... OF 20.10.2017 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL AND DEEP SEA FISHERIES IN NORTH-WESTERN WATERS FOR THE YEAR 2018

EM 13591/17 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) .../.... ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL AND DEEP SEA FISHERIES IN NORTH-WESTERN WATERS

DATE EM SIGNED: 10/11/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
POLITICALLY IMPORTANT CLEARED FURTHER INFORMATION REQUIRED (AGENDA FOR REPORT NO 3;29/11/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1672 - 21/11/2017

EM 12936/16: COMMISSION DELEGATED REGULATION (EU) .../... OF 4.10.2016 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

EM 12936/16 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

EM 13272/16: COMMISSION DELEGATED REGULATION (EU) .../... OF 12.10.2016 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

EM 13272/16 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) .../.... ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

DATE EM SIGNED: 26/10/2016

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (REPORT 17; 01/11/2016)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1634 - 01/11/2016

EM: 13017/15 COMMISSION DELEGATED REGULATION (EU) OF 12.10.2015 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

13017/15 ADD 1 ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) .../.... ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

EM 13334/15: COMMISSION DELEGATED REGULATION (EU) NO .../.. OF 22.10.2015 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

13334/15 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

DATE EM SIGNED: 09/11/2015

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS POLITICALLY IMPORTANT (REPORT 09), 18/11/2015	CLEARED AT CHAIRMAN'S SIFT 1600 - 18/11/2015

EM 14543/14: COMMISSION DELEGATED REGULATION (EU) NO .../.. OF 20.10.2014 ESTABLISHING A DISCARD PLAN FOR CERTAIN SMALL PELAGIC FISHERIES AND FISHERIES FOR INDUSTRIAL PURPOSES IN THE NORTH SEA

EM 14543/14 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) NO .../.. OF XXX ESTABLISHING A DISCARD PLAN FOR CERTAIN SMALL PELAGIC FISHERIES AND FISHERIES FOR INDUSTRIAL PURPOSES IN THE NORTH SEA

EM 14549/14: COMMISSION DELEGATED REGULATION (EU) NO .../.. OF 20.10.2014 ESTABLISHING A DISCARD PLAN FOR CERTAIN PELAGIC FISHERIES IN NORTH WESTERN WATERS

EM 14549/14 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) NO .../.. OF XXX ESTABLISHING A DISCARD PLAN FOR CERTAIN PELAGIC FISHERIES IN NORTH WESTERN WATERS

DATE EM SIGNED: 13/11/2014

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS POLITICALLY IMPORTANT REPORT NO. 20 19/11/2014	SIFTED TO SUB-COMMITTEE D AT CHAIRMAN'S SIFT 18/11/2014 CLEARED BY LETTER 26/11/2014

EM 18021/13: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATIONS (EC) NO 850/98, (EC) NO 2187/2005, (EC) NO 1967/2006, (EC) NO 1098/2007, NO 254/2002, (EC) NO 2347/2002 AND (EC) NO 1224/2009 AND REPEALING (EC) NO 1434/98 AS REGARDS THE LANDING OBLIGATION

18021/13 ADD 1 ANNEXES 1-3 TO THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATIONS (EC) NO 850/98, (EC) NO 2187/2005, (EC) NO 1967/2006, (EC) NO 1098/2007, NO 254/2002, (EC) NO 2347/2002 AND (EC) NO 1224/2009 AND REPEALING (EC) NO 1434/98 AS REGARDS THE LANDING OBLIGATION

DATE EM SIGNED: 15/01/2014

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT 24/01/2014	CLEARED BY CORRESPONDENCE ON 13/03/2014