

Commission Delegated Regulation (EU) 2018/2035 of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021 (repealed)

COMMISSION DELEGATED REGULATION (EU) 2018/2035

of 18 October 2018

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of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021 (repealed)

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 1342/2008<sup>(1)</sup>, and in particular Article 11 thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council<sup>(2)</sup> 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 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) 2018/45<sup>(3)</sup> 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

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Commission to adopt delegated acts specifying details of the landing obligation on the basis of joint recommendations developed by Member States.

- (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)<sup>(4)</sup>. 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 concluded<sup>(5)</sup> 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 provided<sup>(6)</sup>. 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 (EU) 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 concluded<sup>(7)</sup> 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 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 concerns<sup>(8)</sup> 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 concluded<sup>(9)</sup> 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 concluded<sup>(10)</sup> 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 concluded<sup>(11)</sup> 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 concluded<sup>(12)</sup> that the survival rates in the supporting study have decreased if the sorting time was greater than 60 minutes

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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.

- (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 concluded<sup>(13)</sup> 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) 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,
  - 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 STECF<sup>(14)</sup> reviewed that evidence and concluded<sup>(15)</sup> 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.

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- (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.
- (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 2011<sup>(16)</sup>, and 2012<sup>(17)</sup> 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:

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- (1) [OJ L 179, 16.7.2018, p. 1.](#)
- (2) 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 ([OJ L 354, 28.12.2013, p. 22](#)).
- (3) 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 ([OJ L 7, 12.1.2018, p. 6](#)).
- (4) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (5) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (6) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (7) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (8) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (9) <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>
- (10) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (11) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (12) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (13) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (14) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (15) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (16) Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.
- (17) 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.



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