

Commission Delegated Regulation (EU) 2019/2238 of 1 October 2019
specifying details of implementation of the landing obligation for
certain demersal fisheries in the North Sea for the period 2020-2021

COMMISSION DELEGATED REGULATION (EU) 2019/2238

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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⁽¹⁾, and in particular Article 11 thereof,

Having regard to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005⁽²⁾, and in particular Article 15(2) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁽³⁾ aims to eliminate progressively 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) 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⁽⁴⁾. Article 11 of that Regulation empowers the Commission to adopt delegated acts in order to supplement this Regulation by specifying details of the landing obligation for all stocks of species in the North Sea to which the landing obligation applies under Article 15(1) of Regulation (EU) No

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1380/2013, as provided for in points (a) to (e) of Article 15(5) of that Regulation on the basis of joint recommendations developed by Member States.

- (5) Commission Delegated Regulation (EU) 2018/2035⁽⁵⁾ specified details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021, following a joint recommendation submitted by Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom which have a direct fisheries management interest in the North Sea.
- (6) Those Member States, after consulting the North Sea Advisory Council and the Pelagic Advisory Council, submitted on 29 May 2019 a new joint recommendation to the Commission concerning details of implementation of the landing obligation for demersal fisheries in the North Sea. The joint recommendation was amended on 7 August 2019.
- (7) The new joint recommendation submitted by the Member States suggests continuation of a number of additional technical measures agreed between the Union and Norway in 2011⁽⁶⁾, and 2012⁽⁷⁾ and authorizing the use of the SepNep selectivity device. These measures aim to increase selectivity and reduce unwanted catches for fisheries or species covered by the landing obligation and were introduced pursuant to Article 15(5)(a) of the Regulation (EU) No 1380/2013 for the years 2019-2021 by Delegated Regulation (EU) 2018/2035.
- (8) On 14 August 2019 a new Regulation (EU) 2019/1241 on the conservation measures of fisheries resources and the protection of marine ecosystems through technical measures came into force. It establishes in Annex V specific provisions regarding technical measures established at regional level for the North Sea, which also include rules on mesh sizes, associated conditions and by-catches. Article 15 of that Regulation empowers the Commission to adopt delegated acts in order to amend, supplement, repeal or derogate from the technical measures set out in the Annexes to Regulation (EU) 2019/1241, including when implementing the landing obligation.
- (9) Regulation (EU) 2019/1241 does not provide for transitional measures. Therefore, to ensure compatibility between this Delegated Regulation and Regulation (EU) 2019/1241, it is necessary to apply the conditions established in Regulation (EU) 2019/1241, whilst at the same time taking into account the exceptional circumstances involved. Based on the information provided by the Member States, the Scientific, Technical and Economic Committee for Fisheries (STECF) positively assessed⁽⁸⁾ the information provided by the regional group in support of the technical measures included in the joint recommendation. This joint recommendation was developed and submitted by the Member States and assessed by STECF before the new technical measures regulation was adopted, before the entry into force of Regulation (EU) 2019/1241 and therefore did not refer to that Regulation. Nevertheless, in view of the exceptional circumstances, the Commission considers that on the basis of information available to it at this stage in the joint recommendation and STECF assessment there does not appear to be any element indicating that the additional proposed technical measures would fail to comply with the requirements established for technical measures in Article 15 of Regulation (EU) 2019/1241.

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- (10) To increase gear selectivity and reduce unwanted catches in the Skagerrak it is therefore appropriate to include the technical measures submitted by the Member States. These measures should apply for the period of 2020-2021.
- (11) As set out in Regulation (EU) 2018/973, the North Sea comprises ICES⁽⁹⁾ divisions 2a, 3a and subarea 4.
- (12) Scientific contributions were obtained from relevant scientific bodies and reviewed by the STECF⁽¹⁰⁾. The Commission presented the measures concerned for a written consultation of the expert group, consisting of 28 Member States and European Parliament as an observer.
- (13) For some stocks, such as plaice, the STECF identified that survival rates of individual fish may not be as robust as that found for other species. However, the Commission considered the relative impact of this exemption on the overall stock, compared to individual fish, and balanced it against the need to continue fishing activity to provide data collection in order to address the comments made by the STECF. In the cases where the relative amount of dead discards are comparatively 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 the collection of data which are essential for the proper and informed management of discards with a view to implementing fully the landing obligation.
- (14) Delegated Regulation (EU) 2018/2035 included a survivability exemptions for common sole below minimum conservation reference size (MCRS) caught by trawls in ICES division 4c, based on scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF concluded⁽¹¹⁾ that the evidence was sufficient. The STECF pointed out that no new information on the location of nursery area was provided⁽¹²⁾. 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 are identified. Considering that the circumstances have not changed, that exemption should continue to apply under this Regulation.
- (15) Delegated Regulation (EU) 2018/2035 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 high discard survival rates. That evidence was evaluated in previous years and the STECF concluded⁽¹³⁾ that the evidence was sufficient. Considering that the circumstances have not changed, that exemption should continue to apply under this Regulation.
- (16) Delegated Regulation (EU) 2018/2035 included a survivability exemption for catches of Norway lobster made in ICES subarea 4 and ICES divisions 2a and 3a with certain gears on the condition that a netgrid selectivity device was used. That exemption was granted on a condition that the Member States submit data on the fisheries of the west coast of the North Sea. There has been no new evidence submitted to the STECF on high survivability. The Member States stated that no additional data was needed as

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- in 2018 the STECF noted that the supporting scientific information was robust⁽¹⁴⁾ on the survival estimates covering the west coast of the North Sea. However, the STECF raises issues⁽¹⁵⁾ concerning East coast Norway lobster and *Pandalus* fisheries, as this information is missing and the assessment can not be made on Norway lobster survival in those fisheries. Under those circumstances, the exemption may be applied until 31 December 2020 and Member States having a direct management interest should submit data on the fisheries of the East coast of the North Sea for the STECF assessment as soon as possible and not later than by 1 May 2020.
- (17) Delegated Regulation (EU) 2018/2035 included a survivability exemption for the by-catch of species subject to catch limits in the fishery carried out with pots and fyke nets, based on the scientific evidence which demonstrated high discard survival rates. That evidence was evaluated in previous years and the STECF concluded⁽¹⁶⁾ 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 should continue to apply under this Regulation.
- (18) Delegated Regulation (EU) 2018/2035 included 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 high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF which concluded⁽¹⁷⁾ that reasonable information was provided showing the considerably high survivability. That exemption should therefore be included in this Regulation.
- (19) Delegated Regulation (EU) 2018/2035 included 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 high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF which concluded⁽¹⁸⁾ that the data of the study on the survival rates are reliable, albeit additional measures 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 should therefore be included in this Regulation.
- (20) Delegated Regulation (EU) 2018/2035 included a survivability exemption for catch and by-catch 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 evidence in order to demonstrate high discard survival rates for plaice in that fishery. The evidence was submitted to the STECF which concluded⁽¹⁹⁾ that the survival rates in the supporting study 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.
- (21) In delegated Regulation (EU) 2018/2035 a survivability exemption for skates and rays caught with all fishing gears in ICES divisions 2a and 3a, and ICES subarea 4, was granted despite that the detailed scientific evidence on survival rates was not available

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for all fleet segments and combinations of gears, areas and species. However, with a few exceptions, the STECF considers the survival rates to be generally robust⁽²⁰⁾, but further details are required. Given the need to continue fishing activity in order to ensure the necessary data collection, that exemption should be granted, but Member States should be required to submit relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. Member States having a direct management interest should submit by 1 May each year: (a) a roadmap developed in order to increase survivability and to fill in the data gaps identified by the STECF, to be annually assessed by the STECF, (b) annual reports on the progress and any modifications or adjustments made to the survivability programmes.

- (22) 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. Furthermore, the scientific understanding of the survival pattern of that species appears to be less robust. However, to exclude this species from the exemption would prevent fishing and continued, accurate data collection. Relevant evidence was submitted to the STECF which concluded⁽²¹⁾ that two new studies have been started on survival experiments concerning Cuckoo ray, but more observations will be needed to make a definitive judgement on the survival rates in 1 or 2 years. Therefore, this exemption should be granted for two years and new studies and improved survivability measures should be developed as a matter of urgency and provided to the STECF for assessment as soon as possible and not later than by 1 May.
- (23) The new joint recommendation suggests a survivability exemption for catches of plaice below the minimum conservation reference size (MCRS) caught with 80-119 mm beam trawl gears (BT2) in ICES division 2a and ICES subarea 4 for the period 2020-2021:
- for plaice caught with gears equipped with the flip-up rope or Benthos release panel (BRP) and caught by vessels with an engine power of more than 221 kW,
 - for plaice caught by the vessels of Member States implementing the roadmap for the Fully Documented Fisheries,
 - for flatfish caught with beam trawl gears (BT2) and by vessels with an engine power of not more than 221 kw or less than 24 m in length overall, which are constructed to fish in the twelve miles zone, if the average trawl duration is less than ninety minutes.

The evidence was submitted to the STECF which concluded⁽²²⁾ that in the new research projects, committed to be carried out in 2020-2021, the new observations will enable the STECF to make a sound judgement on the survival of discarded plaice caught with the beam trawls. Future research plans within the roadmap presented are detailed and ambitious in addressing the uncertainties regarding the factors affecting discard survival for plaice. However, more knowledge of factors that can explain the observed variability in previous survival estimates is necessary. Therefore, the exemption should be granted, but with an obligation for Member States to submit relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. Member States having a direct management

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interest should submit by 1 May each year: (a) a roadmap developed in order to increase survivability and to fill in the data gaps identified by the STECF, to be annually assessed by the STECF, (b) annual reports on the progress and any modifications or adjustments made to the survivability programmes.

- (24) The new joint recommendation suggests a survivability exemption for turbot caught by TBB gears with a cod end more than 80 mm in ICES subarea 4. The Member States provided scientific evidence in order to demonstrate high discard survival rates for turbot in that fishery. The evidence was submitted to the STECF which concluded⁽²³⁾ that no new survival evidence was presented and the previously submitted studies were based on the gear type different than beam trawl, therefore they are not representative. However, more research is committed by the Member States to observe the survival of discarded turbot caught by beam trawls and to provide more detailed information of survivability in the new project, foreseen to be carried out until 2021. Given the need to continue fishing activity in order to ensure the necessary data collection, that exemption should be granted, but Member States should be required to submit, in the indicated timeframe, the relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. That exemption should be applied provisionally until 31 December 2020.
- (25) The new joint recommendation suggests an extension of application of a survivability exemption for plaice caught with trawls with a mesh size of at least 120 mm when targeting flatfish or roundfish in ICES division 3a and ICES subarea 4 for summer months. In Delegated Regulation (EU) 2018/2035 the same exemption was granted only for the winter months (from 1 November to 30 April). The new joint recommendation suggests also new survivability exemptions for:
- plaice caught with trawls with a mesh size of at least 90-99 mm equipped with Seltra panel targeting flatfish or roundfish in Union waters of ICES division 3a,
 - plaice caught with trawls with a mesh size of at least 80-99 mm targeting flatfish or roundfish in Union waters of ICES subarea 4.
- (26) The Member States provided scientific evidence in order to demonstrate high discard survival rates for plaice in that fishery. The STECF observed⁽²⁴⁾ that methods for estimates of survival are variable between studies and noted that smaller plaice, caught more frequently with smaller codend meshes, are indicated to have lower survival levels. However, for the plaice survivability during summer months the full scientific report on the whole area would enable a representative assessment. Therefore, the Commission considers that this exemption should only be granted for one year and the new studies and improved survivability measures should be developed as a matter of urgency and provided to the STECF for assessment as soon as possible and not later than by 1 May 2020.
- (27) Delegated Regulation (EU) 2018/2035 included *de minimis* exemptions for:
- common sole caught with trammel nets and gillnets in ICES divisions 2a and 3a, ICES subarea 4,

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- 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 certain bottom trawls 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,
 - 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.
- (28) Member States provided evidence supporting those *de minimis* exemptions. The STECF⁽²⁵⁾ reviewed that evidence and concluded⁽²⁶⁾ 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 appropriate to continue these *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.
- (29) The new joint recommendation provided additional scientific evidence for the extension of *de minimis* exemptions for:
- 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,
 - whiting caught with beam trawls (BT2) in ICES subarea 4,
 - whiting and cod caught with bottom trawls (OTB, OTT, SDN, SSC) in ICES divisions 4a and 4b.
- (30) The new joint recommendation suggested *de minimis* exemptions for:
- ling below the MCRS caught with longlines in ICES subarea 4,
 - combined catches of industrial species (sprat, sandeel, Norway pout and blue whiting) caught in demersal mixed fishery and fishery for shrimp with trawls using selectivity devices in ICES division 3a and ICES subarea 4.
- (31) Member States provided scientific evidence supporting those existing and new *de minimis* exemptions based on difficulties to improve selectivity and disproportionate costs of handling the catches. That evidence was reviewed by the STECF during its plenary session on 1-5 July 2019⁽²⁷⁾.
- (32) The additional evidence provided by the Member States on the *de minimis* exemptions regarding horse mackerel and mackerel caught by vessels using bottom trawls and beam trawls was reviewed by the STECF which concluded that further information needs to

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be provided for most of the Member States. Given the need to continue fishing activity in order to ensure the necessary data collection to provide that information, individual exemptions for each species should be limited to one year and Member States should be required to submit the relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. The Member States concerned should undertake the necessary work to collect and process needed data or additional trials and provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. Those exemptions should therefore be applied provisionally until 31 December 2020.

- (33) The evidence provided by the Member States on the *de minimis* exemption regarding a combined quantity of sprat, sandeel, Norway pout and blue whiting in demersal mixed fisheries caught by vessels using trawls was reviewed by the STECF which concluded that there is no quantitative evidence to support the assertions of small discards and the exhaustion of options to improve the selectivity. The STECF noted that achieving additional selectivity improvements would be difficult in such fisheries and *de minimis* is needed to cover the residual unwanted catches. Given the need to continue fishing activity in order to ensure the necessary data collection to provide that information, the exemption for combined *de minimis* should be limited to one year and Member States should be required to submit the relevant data allowing the STECF to assess fully 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 and not later than by 1 May 2020, for assessment by the STECF. Those exemptions should therefore be applied provisionally until 31 December 2020.
- (34) The evidence provided by the Member States on the *de minimis* exemption regarding whiting below the MCRS caught with beam trawls was reviewed by the STECF which concluded that evidence stating that landing unwanted catches has an associated cost is not sufficient in itself to demonstrate that those costs are disproportionate. STECF noted that improving selectivity in the relevant fisheries should be the priority as this will reduce the costs for handling unwanted catches. Given the need to continue fishing activity in order to ensure the necessary data collection to provide that information, the *de minimis* exemption should be limited to one year and Member States should be required to submit the relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. In addition, Member States are expected to report on the uptake of further selectivity measures. The Member States concerned should undertake the additional trials and provide all relevant information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. This exemption should therefore be applied provisionally until 31 December 2020.
- (35) The evidence provided by the Member States on the *de minimis* exemption regarding whiting and cod below the MCRS caught with bottom trawls was reviewed by STECF which concluded that there is no possibility to evaluate whether the estimates on the disproportionate costs are correct. STECF noted that improving selectivity in the relevant fisheries should be the priority as this will reduce the costs for handling unwanted catches. Given the need to continue fishing activity in order to ensure the necessary data collection to provide that information, the *de minimis* exemption should

be limited to one year and Member States should be required to submit the relevant data allowing the STECF to assess fully the justification and allowing the Commission to carry out a review. In addition, Member States are expected to report on the uptake of further selectivity measures. The Member States concerned should undertake the additional trials and provide information as soon as possible and not later than by 1 May 2020, for assessment by the STECF. This exemption should therefore be applied provisionally until 31 December 2020.

- (36) The evidence provided by the Member States on the new *de minimis* exemption regarding ling below the MCRS caught with longlines was reviewed by the STECF which concluded that achieving additional selectivity improvements would be difficult in such fisheries. In addition, the STECF noted that given that the *de minimis* volume is likely to be small, the exemption would have no impact on the overall fishing mortality, provided the catches discarded are recorded. Given that the selectivity is difficult to achieve, the exemption for that fishery should be limited to one year and Member States should be required to submit the relevant data allowing the STECF to assess fully 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 and not later than by 1 May 2020, for assessment by the STECF. Those exemptions should therefore be applied provisionally until 31 December 2020.
- (37) To ensure reliable estimations of levels of discarding for the purpose of the setting of the total allowable catches, Member States should, in the 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 that exemption.
- (38) 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 with Regulation (EU) 2018/973, in particular Article 11 thereof, and may thus be included in this Regulation.
- (39) 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 second year of application of this Regulation.
- (40) Delegated Regulation (EU) 2018/2035 should be repealed and replaced by a new Regulation.
- (41) 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 2020,

HAS ADOPTED THIS REGULATION:

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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 2020-2021.

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);
 - 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 3 m.
- (4) ‘Benthos release panel’ means a panel of larger mesh or square mesh netting fitted into the lower panel of a trawl, usually a beam trawl to release any benthic material and seabed debris before it passes into the codend;
- (5) ‘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.

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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 the Union waters of the North Sea (ICES divisions 2a, 3a and subarea 4) to the following catches of Norway lobster (*Nephrops norvegicus*):

- a catches with pots (FPO⁽²⁸⁾);
- b catches with bottom trawls (OTB, OTT, 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 the cases referred to in paragraph 1, the Norway lobster shall be released whole, immediately and in the area where it has been caught.

[^{F13} The exemption referred to in paragraph 1(b)(1) and (3) shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit as soon as possible and not later than on 1 May 2020, additional scientific information supporting the exemption laid down in paragraph 1(b) (1) and (3). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July 2020.]

Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2020/1758 of 28 August 2020 amending Delegated Regulation \(EU\) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea.](#)

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 the Union waters of ICES division 4c, within six nautical miles of the coast but outside identified nursery areas, to catches of common sole (*Solea solea*) below the 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 the cases referred to in paragraph 1, the common sole shall be released immediately.

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Article 5

Survivability exemption for by-catch 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 the 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 the cases referred to in paragraph 1, the fish shall be released immediately and below the sea surface.

Article 6

Survivability exemption for catch and by-catch of plaice

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

- a plaice (*Pleuronectes platessa*) 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.

2 The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to:

- a plaice caught with trawls (OTB, PTB) with a mesh size of at least 90-99 mm equipped with Seltra panel targeting flatfish or roundfish in the Union waters of ICES division 3a;
- b plaice caught with trawls (OTB, PTB) with a mesh size of at least 80-99 mm targeting flatfish or roundfish in the Union waters of ICES subarea 4.

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

[^{F14} The exemptions referred to in paragraphs 1(c) and 2 shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption laid down in paragraph 1(c) and 2. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July 2020.]

Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2020/1758 of 28 August 2020 amending Delegated Regulation \(EU\) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea.](#)

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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 the 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), if the plaice is caught:

- a with gears equipped with the flip-up rope or Benthos release panel (BRP) and caught by vessels with an engine power of more than 221 kW; or
- b by the vessels of Member States implementing the roadmap for the Fully Documented Fisheries,

2 The exemption referred to in paragraph 1 shall also apply for flatfish caught with beam trawl gears (BT2) by vessels with an engine power of not more than 221 kw or less than 24 m in length overall, which are constructed to fish in the twelve miles zone, if the average trawl duration is less than ninety minutes.

3 Member States having a direct management interest shall submit every year, as soon as possible and not later than by 1 May, additional scientific information supporting the exemptions laid down in paragraphs 1 and 2. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July every year.

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

Article 8

Survivability exemption for turbot

1 The survivability exemption referred to in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply in the Union waters of ICES subarea 4 to catches of turbot (*Scophthalmus maximus*) with beam trawls with a cod-end larger than 80 mm (TBB).

2 The exemption referred to in paragraph 1 shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, 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 by 31 July 2020.

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

Article 9

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 the Union waters of the North Sea (ICES divisions 2a, 3a and subarea 4) to skates and rays caught with any fishing gears.

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

2 Member States having a direct management interest shall submit every year, as soon as possible and not later than by 1 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 by 31 July every year.

3 When discarding skates and rays caught in the cases referred to in paragraph 1, the skates and rays shall be released immediately.

Article 10

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 the Union waters of ICES subarea 4:
a quantity of common sole below the minimum conservation reference sizes, which shall not exceed 5 % of the total annual catches of that species;
- (c) in the fishery for Norway lobster by vessels using bottom trawls (OTB, OTT, 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 the 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, OTT) 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 the 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 the 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) with a mesh size of 70-99 mm (TR2) in the Union waters of ICES division 4c:
a combined quantity of whiting and cod (*Gadus morhua*) below the minimum conservation reference size, which shall not exceed 5 % in 2020 and 2021 of the total annual catches of whiting and cod; the maximum amount of cod that may be discarded shall be limited to 2 % of those total annual catches;

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (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 (TR2) in the Union waters of ICES divisions 4a and 4b:
- a combined quantity of whiting and cod (*Gadus morhua*) below the minimum conservation reference size, which shall not exceed 6 % in 2020 of the total annual catches of whiting and cod; 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 shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;
- (g) in fisheries by vessels using bottom trawls (OTB, OTT, TBN, PTB) with a mesh size of 90-119 mm, equipped with Seltra panel, or bottom trawls (OTB, OTT, TBN, PTB) with a mesh size equal to or larger than 120 mm, in the Union waters of ICES division 3a:
- a quantity of whiting below the 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 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 the minimum conservation reference size, which shall not exceed 2 % of the total annual catches of plaice and sole;
- the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;
- (i) in the fisheries for Norway lobster by vessels using bottom trawls with a mesh size of 80-99 mm, equipped with a SepNep, in the 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;
- (j) in the fisheries for brown shrimp by vessels using beam trawls, in the Union waters of ICES divisions 4b and 4c:
- a quantity of all species subject to catch limits, which shall not exceed 7 % in 2020 and 6 % in 2021 of the total annual catches of all species subject to catch limits made in those fisheries;
- (k) in the demersal mixed fishery with bottom trawls (OTB, OTT, PTB, TBB) with a mesh size between 80 and 99 mm (TR2, BT2) in ICES subarea 4:
- a quantity of horse mackerel (*Trachurus spp.*), which shall not exceed 7 % in 2020 and 6 % in 2021 of the total annual catches of horse mackerel made in that fishery;

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the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July 2020;

- (l) 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 (*Scomber scombrus*), which shall not exceed 7 % in 2020 and 6 % in 2021 of the total annual catches of mackerel made in that fishery;

the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;

- (m) in the demersal mixed fishery with trawls (OTB, OTM, OTT, PTB, PTM, SDN, SPR, SSC, TB, TBN) with mesh sizes above 80 mm in ICES division 3a and ICES subarea 4 and in the fishery for Northern prawn carried out using gears with a sorting grid with a maximum bar spacing of 19 mm or equivalent selectivity device and a fish retention device with mesh sizes above 35 mm in ICES division 3a and 32 mm in ICES subarea 4:

a combined quantity of sprat, sandeel, norway pout and blue whiting, which shall not exceed 1 % of the total annual catches made in mixed demersal fishery and in the fishery for Northern prawn;

the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;

- (n) in the demersal fishery for hake by vessels using longlines (LLS) in ICES subarea 4:

a quantity of ling (*Molva molva*) below the minimum conservation reference size, which shall not exceed 3 % of the total annual catches of ling made in that demersal fishery;

[^{F1}the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;]

- (o) [^{F2}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.]

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F1** Substituted by Commission Delegated Regulation (EU) 2020/1758 of 28 August 2020 amending Delegated Regulation (EU) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea.
- F2** Inserted by Commission Delegated Regulation (EU) 2020/1758 of 28 August 2020 amending Delegated Regulation (EU) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea.

Article 11

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 that more than 80 % of the catch consists 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 12

SepNep

It shall be permitted to use the SepNep nets.

Article 13

Repeal

Delegated Regulation (EU) 2018/2035 is repealed.

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 14

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 2020 until 31 December 2021.

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

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (1) [OJ L 179, 16.7.2018, p. 1.](#)
- (2) [OJ L 198, 25.7.2019, p. 105.](#)
- (3) 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](#)).
- (4) 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 ([OJ L 179, 16.7.2018, p. 1](#)).
- (5) 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 ([OJ L 327, 21.12.2018, p. 17](#)).
- (6) Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.
- (7) 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.
- (8) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (9) International Council for the Exploration of the Sea.
- (10) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (11) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (12) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (13) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (14) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (15) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (16) <https://stecf.jrc.ec.europa.eu/documents/43805/1780485/STECF+PLEN+17-02.pdf>
- (17) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (18) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (19) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (20) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (21) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (22) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (23) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (24) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (25) <https://stecf.jrc.ec.europa.eu/documents/43805/1099561/STECF+PLEN+15-02.pdf>
- (26) <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>
- (27) <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>
- (28) Gear codes used in this Regulation are set out 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 Regulation are set out in the FAO gear classification.

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/2238. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.