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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 13.3.2019 amending Delegated Regulation (EU) 2018/2034 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021

Delegations will find attached document C(2019) 1838 final.

Encl.: C(2019) 1838 final



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

of 13.3.2019

amending Delegated Regulation (EU) 2018/2034 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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

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

Regulation (EU) 2018/2034² established a demersal discard plan in the North-Western waters for the years 2019-2021. Previous to Regulation (EU) No 2018/2034, discard plans for demersal fisheries in the North-Western waters were in force for the years 2016, 2017 and 2018.

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

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach the NWW Member States agreed and submitted to the Commission a JR on 14 November 2018. It contained, *inter alia*, the following elements:

several corrections on established technical measures, high survivability exemptions and definitions of the gears.

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the NWW Member States having a direct management interest, and taking account of the views of the North Western Waters Advisory Council (NWW AC) that is concerned by the fisheries covered by the JR. For all of these elements the JR included supporting documentation underpinning the exemptions and other provisions set out in the JR.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

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

Legal basis

Article 15(6) and Articles 18(1) and (3) of Regulation (EU) No 1380/2013.

Subsidiarity principle

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 327, 21.12.2018, p. 8.

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

Proportionality principle

The proposal is within the scope of the delegated powers provided to the Commission by Article 15(6) of Regulation (EU) No 1380/2013 and does not go beyond what is necessary to achieve the purpose of that provision.

Choice of instrument

Proposed instrument: Commission Delegated Regulation.

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

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THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (/EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC³, and in particular Articles 15(6) and 18(1) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) In order to implement the landing obligation, Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of a delegated act for an initial period of no more than three years that might be renewed for a further total period of three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom have a direct fisheries management interest in the North-Western waters. After consulting the North Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 31 May 2018 a joint recommendation to the Commission concerning a discard plan for certain demersal fisheries in the North-Western Waters for the period 2019-2021. The joint recommendation was amended on 30 August 2018.
- (4) Based on that joint recommendation, Commission Delegated Regulation (EU) 2018/2034⁴ established a discard plan for certain demersal fisheries in the North-Western waters for the years 2019-2021.
- (5) On 14 November 2018, Belgium, Spain, France, Ireland, the Netherlands and the United Kingdom submitted a new joint recommendation suggesting three corrections to the discard plan established by Delegated Regulation (EU) 2018/2034.
- (6) According to Article 18(2) of Regulation (EU) No 1380/2013, the Commission is to facilitate the cooperation between Member States, including, where necessary, by ensuring that a scientific contribution is obtained from the relevant scientific bodies. Prior to the adoption of Delegated Regulation (EU) 2018/2034, scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). The new joint

³ OJ L 354, 28.12.2013, p. 22.

⁴ OJ L 327, 21.12.2018, p. 8.

recommendation suggests corrections of a technical nature which are covered by the scientific contribution already obtained.

- (7) The Interinstitutional Agreement of 13 April 2016 on Better Law-Making, point 28, provides that the Commission, before adopting a delegated act, is to consult experts designated by each Member State. The measures suggested in the new joint recommendation are in accordance with the opinion of the Fisheries Expert group, consisting of representatives of 28 Member States, the Commission, as well as the European Parliament as an observer.
- (8) Firstly, the new joint recommendation suggests to correct the definition of ‘Seltra panel’ set out in Delegated Regulation (EU) 2018/2034 since that definition is not in line with the joint recommendation of 31 May 2018.
- (9) Secondly, the new joint recommendation suggests to delete the requirement to use highly selective gears in the fisheries for Norway lobster caught with otter trawls, since that requirement was erroneously included in the joint recommendation of 31 May 2018 and, as a consequence, in Delegated Regulation (EU) 2018/2034.
- (10) Finally, the new joint recommendation suggests to exclude the demersal Queen scallops fishery from the scope of certain technical measures designed to improve selectivity in the Irish Sea since the joint recommendation of 31 May 2018 and, as a consequence, Delegated Regulation (EU) 2018/2034 did not intend to include that fishery in the scope of those technical measures.
- (11) Delegated Regulation (EU) 2018/2034 should therefore be amended accordingly.
- (12) 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. Considering that the discard plan established by Delegated Regulation (EU) 2018/2034 applies from 1 January 2019, this Regulation should retroactively apply from 1 January 2019,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2018/2034 is amended as follows:

- (1) In Article 2, paragraph 2 is replaced by the following:
- (2) "2. ‘Seltra panel’ means a selectivity device which:
 - (a) consists of a top panel of at least 270 mm mesh size (diamond mesh) or a top panel of at least 300 mm mesh size (square mesh), placed in a four-panel box section, in the straight section of a cod end;
 - (b) is at least 3 metres long;
 - (c) is positioned no more than 4 metres from the cod line; and
 - (d) is the full width of the top sheet of the box section of the trawl (i.e. from selvedge to selvedge)."
- (3) In Article 3(1), point (d) is replaced by the following:
- (4) "(d) Norway lobster (*Nephrops norvegicus*) caught with otter trawls with a mesh size of 80-110 mm in ICES division 6a within twelve nautical miles of the coast."

(5) In Article 10(4), the second sentence is replaced by the following:

"This provision shall not apply to vessels with catches comprising more than 30 % of Norway lobster or more than 85% of Queen scallops."

Article 2

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

It shall apply from 1 January 2019.

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

Done at Brussels, 13.3.2019

For the Commission
The President
Jean-Claude JUNCKER