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

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 21.8.2020 amending Regulation (EU) 2019/1241 of the European Parliament and of the Council as regards technical measures for certain demersal and pelagic fisheries in the North Sea and in the South Western Waters

Delegations will find attached document C(2020) 5641 final.

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Brussels, 21.8.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 21.8.2020

amending Regulation (EU) 2019/1241 of the European Parliament and of the Council as regards technical measures for certain demersal and pelagic fisheries in the North Sea and in the South Western Waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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

Regulation (EU) 2019/1241² came into force on 14 August 2019. It establishes the framework of technical measures that should contribute to achieving the CFP objectives to fish at maximum sustainable yield levels, reduce unwanted catches and eliminate discards, and contribute to the achievement of good environmental status as set out in Directive 2008/56/EC³ of the European Parliament and of the Council. Such technical measures should contribute to the protection of juveniles and spawning aggregations of marine species through the use of selective gear. Annex V of this Regulation establishes regional technical measures for the North Sea in and Annex VII for the South-Western Waters.

Where the Commission has been granted powers to adopt measures by means of delegated acts, Article 18 of the Basic Regulation provides that Member States with a direct management interest may submit joint recommendations (JR) to achieve the objectives of the relevant Union conservation measures, the multiannual plans or the specific discard plans. Upon agreeing a JR the Member States may propose to the Commission to translate it into a delegated act.

Article 15(2) of Regulation (EU) 2019/1241 empowers the Commission to adopt delegated acts in accordance with Article 29 of this Regulation and Article 18 of Regulation (EU) No 1380/2013 to amend, supplement, repeal or derogate from the technical measures set out in the Annexes. Article 10(4) empowers the Commission to adopt delegated acts in accordance with Article 29 to amend the list set out in Annex I (prohibited species). Article 2(2) empowers the Commission to adopt delegated acts in order to amend that regulation by providing that the relevant provisions of Article 13 or parts A or C of Annexes V to X also apply to recreational fisheries.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on joint recommendations (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Denmark, Germany, France, the Netherlands and Sweden for the North Sea; and Belgium, Spain, France, the Netherlands and Portugal for the South-Western Waters) who have a direct management interest in the relevant fisheries in these regions.

¹ OJ L 354, 28.12.2013, P.22.

² OJ L 198, 25.07.2019, P. 105.

³ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

For the purpose of implementing the regionalised approach, the North Sea Member States and the South-Western Waters Member States having a direct management interest have agreed on joint recommendations for technical measures in the North Sea and the South-Western Waters, respectively. The chair of the regional group of North Sea Member States ('Scheveningen Group'), Belgium, submitted the JR for technical measures to the Commission on 4 May 2020. Likewise, the chair of the regional group of South Western Waters, France, submitted the JR on technical measures to the Commission on 4 May 2020. These JRs contained, inter alia, the following elements:

- specific technical measures for certain fisheries in the North Sea;
- protection of certain species;
- minimum conservation reference sizes for certain species;

In accordance with the procedures described in Article 15(2) of Regulation (EU) No 2019/1241, that JRs are the result of discussions among the North Sea Member States and South Western Waters Member States having a direct management interest. The JRs gather as well the views of the North Sea Advisory Council (NSAC), South-Western Waters Advisory Council (SWWAC) and Pelagic Advisory Council (PELAC). In accordance with Article 15(6) of Regulation (EU) No 2019/1241, the JRs are to provide supporting documentation underpinning the exemptions and other provisions it recommends.

During the work on the JRs there was a regular and detailed engagement between the Scheveningen Group, the NSAC and the PELAC; and between the South Western Waters Member States and the SWWAC and PELAC. In order to have a continuous consultation during the process, the SWWAC and NSAC were invited to attend, in part, meetings of the respective Regional Group and, together with the PELAC, the respective technical Group. Additionally, on 20 April 2020 the draft JR was sent to the NSAC and the PELAC for consultation, and on 24 of April 2020 to the SWWAC and PELAC.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

The main legal action is to adopt technical measures that would facilitate the implementation of the landing obligation, contribute to the elimination of discards, reduce the level of unwanted catches, include additional conservation measures and set minimum conservation reference sizes for certain species in recreational fisheries.

The Regulation specifies species and fisheries to which specific measures would apply: i.e. technical measures.

Legal basis

- (1) Articles 2(2), 15(2) and 10 (4) of Regulation (EU) 2019/1241. The proposals for new technical measures in the joint recommendations aim to amend Annexes I, V and VII of Regulation (EU) 2019/1241 and their adoption requires the use of separate empowerments. However, there is a substantive link in accordance with point 31 of

the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴. Given all these measures are technical measures aiming to contribute to conservation of fishing resources in a particular region, they are proposed in one joint recommendation submitted by the Member States for having the direct management interest in the same region, and aim at amending annexes of the same legislative act.

Subsidiarity principle

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(2) and Article 10 (4) of Regulation (EU) 2019/1241 and does not go beyond what is necessary to achieve the purpose of those provisions.

Choice of instrument

Proposed instrument: Commission Delegated Regulation.

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

⁴ OJ L 123, 12.5.2016, p. 1–14

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amending Regulation (EU) 2019/1241 of the European Parliament and of the Council as regards technical measures for certain demersal and pelagic fisheries in the North Sea and in the South Western Waters

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 2187/2005¹, and in particular Articles 2(2), 10(4) and 15(2) thereof,

Whereas:

- (1) 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 entered into force. It establishes in Annex I a list of prohibited species, in Annex V specific provisions regarding technical measures established at regional level for the North Sea and in Annex VII specific provisions regarding technical measures established at regional level for the South Western Waters.
- (2) Article 2(2) of Regulation (EU) 2019/1241 empowers the Commission to adopt delegated acts in accordance with Article 15 and Article 29 to amend this Regulation by providing that the relevant provisions of Article 13 or parts A or C of Annexes V to X also apply to recreational fishing.
- (3) Article 10(4) of Regulation (EU) 2019/1241 empowers the Commission to adopt delegated acts in accordance with Article 29 to amend the list of prohibited species, set out in Annex I.
- (4) Article 15(2) of Regulation (EU) 2019/1241 empowers the Commission to adopt delegated acts in accordance with Article 29 of this Regulation and Article 18 of Regulation (EU) No 1380/2013 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.

¹ OJ L 198, 25.07.2019, p. 105.

- (5) Annex I sets out the list of prohibited species. Annex V and Annex VII of Regulation (EU) 2019/1241 set out specific technical measures for the North Sea and for the South Western Waters, respectively.
- (6) Belgium, Denmark, Germany, France, the Netherlands and Sweden have a direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council and the Pelagic Advisory Council, those Member States submitted on 4 May 2020 a joint recommendation to the Commission for a delegated act.
- (7) Belgium, Spain, France, the Netherlands and Portugal have a direct fisheries management interest in the South Western Waters. After consulting the South Western Waters Advisory Council and the Pelagic Advisory Council, those Member States submitted on 4 May 2020 a joint recommendation to the Commission for a delegated act.
- (8) This Regulation aims at incorporating into one single act existing provisions on technical measures that were in the past adopted as part of the discard plans for the North Sea and South-Western Waters, and newly proposed technical measures.
- (9) Based on the information provided by the Member States, the Scientific, Technical and Economic Committee for Fisheries (STECF) positively assessed the evidence provided by the regional groups in support of the technical measures included in both joint recommendations².
- (10) The measures included in this Regulation have been evaluated in accordance with Article 2(2), 10, 15 and Article 18 of Regulation (EU) 2019/1241. Member States provided evidence to demonstrate that the proposals comply with Articles 15(4) and (5) of Regulation (EU) 2019/1241.
- (11) The Fisheries Expert Group was consulted on the joint recommendation on 28 July 2020. The European Parliament attended the meeting as an observer.
- (12) The joint recommendation submitted by the Member States with an interest in the North Sea (NS joint recommendation) suggested to include berried lobster in the list of species in Annex I of Regulation (EU) 2019/1241 for which there is a prohibition to fish for, retain on board, tranship, land, store, sell, display or offer for sale. The STECF analysed the evidence presented by the Member States and concluded that there is compelling evidence to support the introduction of this measure. The STECF noted that similar measures have been taken in other areas and have produced long-term economic benefits from increased landings of lobster due to stock recovery. The proposed measure should therefore be included in this Regulation.
- (13) The NS joint recommendation suggested increasing the minimum conservation reference size for European lobster in the Swedish exclusive economic zone (EEZ) in ICES division 3a. The STECF pointed out that despite no specific evidence for this request, the measure represents an increase of the minimum conservation reference size. With such a measure, the stock will be exploited at a lower intensity, with obvious subsequent benefits for the conservation of the stock. The proposed measure should therefore be included in this Regulation.

² <https://stecf.jrc.ec.europa.eu/documents/43805/2694823/STECF+20-04+-+Eval+JRs+LO+and+TM+Reg.pdf>, pages 165-169 (North Sea) and 219-220 (South Western Waters).

- (14) The NS joint recommendation also suggested to harmonise the minimum conservation reference size for seabass caught in recreational fisheries in ICES division 3a and ICES subarea 4 with the minimum conservation reference size of seabass for commercial fisheries, as included in Article 10, paragraph 5 of Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters³. The STECF noted in its report 20-04 that given recreational fisheries contributes to the overall fishing mortality, applying the minimum conservation reference size for commercial fisheries also to recreational fisheries is a positive management measure. The proposed measure should therefore be included in this Regulation.
- (15) The NS joint recommendation further suggested the continuation of a number of additional technical measures agreed between the Union and Norway in 2011⁴ and 2012⁵. Certain of these specific technical measures were already included in Annex V of Regulation (EU) 2019/1241, others were included pursuant to Article 15(5)(a) of the Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁶ for the years 2019-2021 in Commission Delegated Regulation (EU) 2019/2238⁷. These measures aim at increasing selectivity and reduce unwanted catches for fisheries or species covered by the landing obligation and should be incorporated into Annex V of Regulation (EU) 2019/1241. These measures should therefore be included in this Regulation.
- (16) The NS joint recommendation suggested also continuation of the use of SepNep nets permitted by Delegated Regulation (EU) 2019/2238. The STECF concluded that the information presented was detailed and credible and supporting evidence of the effectiveness of the SepNep was provided. The device was analysed by STECF in previous years and its conclusion remains valid⁸. On the basis of the provided information STECF also concluded that the SepNep complies with Article 15(5) of Regulation 2019/1241 as an equivalent selectivity device in the context of the technical provisions set out for Nephrops directed fisheries and will not lead to deterioration of selectivity standards. The measure should therefore be included in this Regulation.
- (17) The NS joint recommendation also suggested a seasonal closure for commercial and recreational fishery for European lobster in the Swedish exclusive economic zone (EEZ) in ICES division 3a. The STECF analysed the evidence provided by the Member States and noted that, although no specific supporting information was provided allowing to quantify its potential benefit, the measure will represent a reduction in fishing mortality that is likely to have positive benefits on lobster stocks in combination with the other measures proposed. The proposed measure should therefore be included in this Regulation.

³ OJ L 25, 30.1.2020, p. 1–156

⁴ Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.

⁵ 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.

⁶ OJ L 354, 28.12.2013, p. 22–61

⁷ OJ L 336, 30.12.2019, p. 34–46.

⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/1710831/STECF+17-08+-+Evaluation+of+LO+joint+recommendations.pdf>

- (18) The NS joint recommendation suggested a prohibition to fish lobster with gears other than lobster pots in the Swedish exclusive economic zone (EEZ) in ICES division 3a. STECF concluded that, although no specific supporting information was provided allowing to quantify its potential benefit, banning the use of gillnets for targeting lobster and crawfish has had positive effects in other areas and that the measure is likely to have positive benefits on lobster stocks. This measure should therefore be included in this Regulation.
- (19) The joint recommendation submitted by the Member States with an interest in the South Western Waters (SWW joint recommendation) suggested maintaining the minimum conservation reference size of the horse mackerel caught by a small artisanal fishery in Xávega region in ICES division 8c and subarea 9 that is currently included in Commission Delegated Regulation (EU) 1394/2014⁹. The STECF referred to its previous assessment where it assessed this measure positively and concluded¹⁰ that, with the conditions laid down in the joint recommendation, the proposal was not likely to change the historical exploitation pattern of the stock. Given that the conditions of this request have not changed and that the STECF noted that the exploitation pattern has been stable for at least 20 years, this measure should therefore be included in this Regulation.
- (20) The SWW joint recommendation suggested to harmonise the minimum conservation reference size for the following species caught in recreational fisheries in the South Western-Waters with the minimum conservation reference size applicable to commercial fisheries: haddock, saithe, pollack, hake, megrim, sole, plaice, whiting, ling, blue ling, mackerel, herring, horse mackerel, anchovy and sardine. The joint recommendation suggested higher minimum conservation reference sizes for cod, red seabream and seabass for recreational fisheries. The STECF analysed the evidence provided and concluded¹¹ that given recreational fisheries contributes to the overall fishing mortality, applying the minimum conservation reference size for commercial fisheries also to recreational fisheries is a positive management measure. This measure should therefore be included in this Regulation.
- (21) In order to optimise exploitation patterns, increase gear selectivity and reduce unwanted catches it is therefore appropriate to adopt the technical measures submitted by the Member States.
- (22) 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. Given that certain technical measures adopted as part of discard plans expire at the end of 2020, this Regulation should apply from 1 January 2021,

⁹ Commission Delegated Regulation (EU) No 1394/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in south-western waters. OJ L 370, 30.12.2014, p. 31–34

¹⁰ <https://stecf.jrc.ec.europa.eu/documents/43805/1471816/STECF+16-10+-+Evaluation+of+LO+joint+recommendations.pdf>, pages 86-87.

¹¹ <https://stecf.jrc.ec.europa.eu/documents/43805/2660523/STECF+PLEN+20-01.pdf>, pages 154-155.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2019/1241 is amended as follows:

(1) In Annex I, the following point is added:

“(q) berried female European lobster (*Homarus gammarus*) in ICES divisions 3a, 4a and 4b”;

(2) Annex V is amended as follows:

(a) Part A is amended as follows:

(i) The following entry is added to the table:

“European lobster (<i>Homarus gammarus</i>)	90 mm (Carapace length) in the Swedish exclusive economic zone in ICES division 3a”
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(ii) The following point is inserted below the table:

- “1. The minimum conservation reference sizes specified in this Part for seabass (*Dicentrarchus labrax*) in the North Sea and European lobster (*Homarus gammarus*) in Swedish exclusive economic zone in the Skagerrak and Kattegat (ICES division 3a) shall apply to recreational fisheries.”;

(b) The following points are added in Part B:

- “1.3. By way of derogation from the specifications in the table, a fish retention device may be used in Northern prawn fisheries in the Skagerrak (ICES division 3an) provided that there are adequate fishing opportunities to cover by-catch and that the retention device is:
 - constructed with a top panel with a minimum mesh size of 120 mm square mesh;
 - at least 3 meters long; and
 - at least as wide as the sorting grid.”;
- “1.4. The use of SepNep** as referred to in Annex I of this Regulation shall be permitted as an equivalent selectivity device in the directed fisheries for Norway lobster (*Nephrops norvegicus*).”;

** ‘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.;

(c) The following point is added to Part C:

“7. Measures on European lobster in ICES division 3a

7.1. In the Swedish exclusive economic zone of ICES division 3a, European lobster (*Homarus gammarus*) may only be fished with lobsterpots (FPO).

The lobsterpot shall have at least two circular escape openings with a diameter of at least 60mm which are situated in the lower part of each compartment of the lobsterpot. Lobster accidentally caught with other fishing gear shall not be harmed and shall be promptly released back into the sea.

7.2. It shall be prohibited to fish for, retain on board, tranship and land European lobster (*Homarus gammarus*) in the Swedish exclusive economic zone of ICES division 3a:

- a) in commercial fisheries during the period 1 January to first Monday after 20 September;
- b) in recreational fisheries during the period 1 December to first Monday after 20 September.

When caught accidentally during these periods, specimens of European lobster shall not be harmed and shall be promptly released back into the sea.”;

(3) Part A of Annex VII is amended as follows:

(a) In footnote 7, the first sentence is replaced by the following:

“The minimum conservation reference size for horse mackerel (*Trachurus* spp.) caught in ICES division 8c and ICES subarea 9 shall be 12 cm for 5 % of the respective quotas of Spain and Portugal in those areas. Within that limit of 5 %, in the xávega artisanal beach sein fishery in ICES division 9a, 1 % of the quota of Portugal may be caught with the size below 12 cm.”;

(b) The following point is added below the table:

“1. The minimum conservation reference sizes specified in this Part for haddock (*Melanogrammus aeglefinus*), saithe (*Pollachius virens*), pollack (*Pollachius pollachius*), hake (*Merluccius merluccius*), megrim (*Lepidorhombus spp.*), sole (*Solea spp.*), plaice (*Pleuronectes platessa*), whiting (*Merlangius merlangus*), ling (*Molva molva*), blue ling (*Molva dipterygia*), mackerel (*Scomber spp.*), herring (*Clupea harengus*), horse mackerel (*Trachurus spp.*), anchovy (*Engraulis encrasicolus*) and sardine (*Sardina pilchardus*) shall apply to recreational fisheries in the South Western Waters. However, the following minimum conservation reference sizes shall apply in ICES subarea 8 to the following species caught in recreational fisheries:

Cod (<i>Gadus morhua</i>)	42 cm
Red seabream (<i>Pagellus bogaraveo</i>)	40 cm
European seabass (<i>Dicentrarchus labrax</i>)	42 cm

”.

Article 2
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 2021.

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

Done at Brussels, 21.8.2020

For the Commission
The President
Ursula VON DER LEYEN