REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/2250

of 4 October 2016

establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa

THE EUROPEAN COMMISSION,

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

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/EC ([1]), and in particular Article 15(6) thereof,

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms ([2]) and in particular Article 18a 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) Article 15(6) of that Regulation empowers the Commission to adopt discard plans by means of delegated acts for a period of no more than three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.

(3) Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom have direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council, those Member States have submitted on 3 June 2016 a joint recommendation to the Commission concerning a new discard plan for certain demersal fisheries in the North Sea. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). On 14 July an expert group meeting consisting of 28 Member States and the Commission as well European Parliament as an observer, took place and the measures concerned were discussed.

(4) The measures included in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013.

(5) For the purposes of that Regulation, the North Sea comprises ICES zones IIIa and IV. As some demersal stocks relevant to the proposed discard plan are also to be found in Union waters of ICES Division IIa, the Member States concerned recommend that ICES Division IIa be also covered by the discard plan.

(6) As regards the North Sea, in accordance with Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies at the latest from 1 January 2016 in:

— mixed fisheries for cod, haddock, whiting and saithe,

— fisheries for Norway lobster,

([1]) OJ L 354, 28.12.2013, p. 22.
([2]) OJ L 125, 27.4.1998, p. 1.

— mixed fishery for common sole and plaice,

— fisheries for hake, and

— fisheries for Northern prawn.

In accordance with Article 15(5) of Regulation (EU) No 1380/2013, Commission Delegated Regulation (EU) 2015/2440 [1] identified the species which have to be landed as from 1 January 2016. Those species are saithe, haddock, Norway lobster, common sole, plaice, hake and Northern prawn. Delegated Regulation (EU) 2015/2440 also established an obligation to land bycatches of Northern prawn. This Regulation should reinstate the provisions regarding the species to be landed from Delegated Regulation (EU) 2015/2440 and should specify additional species and fisheries to which the landing obligation applies in 2017 and 2018.

(7) The Member States concerned claim that the fishing effort rules set out in Chapter III of Council Regulation (EC) No 1342/2008 [2] constitute an obstacle to the successful implementation of the landing obligation for cod due to the fact that the fishing effort regime set out in that Chapter would hamper the flexibility needed to adapt fishing patterns, such as choice of area and gear, once the landing obligation is introduced. Regulation (EC) No 1342/2008 is currently subject to a revision process by the co-legislators. To prevent the fishing effort regime and the landing obligation for cod from applying simultaneously, the landing obligation for cod should apply only once the fishing effort regime ceases to be applicable.

(8) Delegated Regulation (EU) 2015/2440 introduced an exemption from the obligation to land all catches for species for which scientific evidence demonstrates high survival rates ('high survivability exemption') for catches of Norway lobster in ICES division IIIa under the condition that pots or certain bottom trawls are used. That Delegated Regulation required Member States having a direct management interest in the North Sea to submit to the Commission additional scientific information supporting the exemptions for the bottom trawls specified. That information has been submitted and STECF has concluded that the information is sufficient. Therefore, that exemption should be included in the new discard plan.

(9) The joint recommendation includes a high survivability exemption for catches of Norway lobster in ICES subarea IV for certain gears on the condition that a netgrid selectivity device is used.

(10) The joint recommendation includes a high survivability exemption for catches of common sole in ICES subarea IV with certain gears and on certain conditions that favour the survivability of sole.

(11) Based on the scientific evidence provided in the joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, these exemptions should be included in this Regulation for the year 2017. Member States should submit additional data in order to enable STECF to further assess the survival rates of Norway lobster and common sole caught in ICES subarea IV with the trawls concerned and to enable the Commission to review the relevant exemption.

(12) Delegated Regulation (EU) 2015/2440 introduced *de minimis* exemptions for

— common sole caught with trammel nets and gillnets in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Subarea IIa,

— common sole caught with certain beam trawls in ICES Subarea IV,

— Norway lobster caught with certain bottom trawls in ICES Subarea IV and Union waters of ICES Division IIa, and

— common sole and haddock combined caught with certain bottom trawls in ICES Division IIIa.

The joint recommendation suggests the continued application of those exemptions. They should therefore be included in the new discard plan.

[1] Commission Delegated Regulation (EU) 2015/2440 of 22 October 2015 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa (OJ L 336, 23.12.2015, p. 42).

[2] Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 (OJ L 348, 24.12.2008, p. 20).

(13) The joint recommendation includes a *de minimis* exemption for common sole, haddock and whiting combined for catches with certain bottom trawls in ICES division IIIa, a *de minimis* exemption for sole, haddock and whiting combined for catches with creels in ICES division IIIa and, for 2018, a *de minimis* exemption for whiting caught with bottom trawls in ICES division IVc.

(14) The Commission, on the basis of compelling evidence provided by Member States for those exemptions as reviewed by the STECF, which concluded that those exemptions contained reasoned arguments that further improvements in selectivity are difficult to achieve and/or imply disproportionate costs in handling unwanted catches, considers it appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the joint recommendation, within the limits set out in Article 15(5)(c) of Regulation (EU) No 1380/2013.

(15) Article 18a of Regulation (EC) No 850/98 empowers the Commission to establish, for the purpose of adopting discard plans and for the species subject to the landing obligation, minimum conservation reference size (MCRS) with the aim of ensuring the protection of juveniles of marine organisms. Those minimum conservation reference sizes may derogate, where appropriate, from the sizes established in Annex XII to Regulation (EC) No 850/98. For Norway lobster in ICES Division IIIa it is appropriate to maintain the minimum conservation reference sizes set out in Delegated Regulation (EU) 2015/2440, i.e. a total length of 105 mm and a carapace length of 32 mm. A minimum tail length of 59 mm should be added, based on the Joint Recommendation and STECF's assessment which states that such tail length corresponds to the existing values for total length and carapace length.

(16) Discard plans may also include technical measures for fisheries or species covered by the landing obligation. To increase gear selectivity and reduce unwanted catches in the Skagerrak, it is appropriate to maintain a number of technical measures, which were agreed between the Union and Norway in 2011 ([1]), and 2012 ([2]).

(17) To ensure appropriate control, specific requirements for the Member States to establish lists of vessels covered by this Regulation should be laid down.

(18) As the measures provided for in this Regulation have a direct impact on the economic activities linked to and the planning of the fishing season of Union vessels, this Regulation should enter into force immediately after its publication. It should apply from 1 January 2017 until 31 December 2018 in order to comply with the time-frame set out in Article 15 of Regulation (EU) No 1380/2013,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

The landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply in ICES subarea IV (North Sea), ICES division IIIa (Kattegat and Skagerrak) and Union waters of ICES division IIa (Norwegian Sea) to the fisheries set out in the Annex to this Regulation.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

(1) 'Seltra panel' means a selectivity device consisting 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). The panel is at least 3 metres long, 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).

([1]) Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.

([2]) 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.

(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.

Article 3

Specific rules on the landing obligation for cod

Notwithstanding Article 1, the obligation to land catches of cod pursuant to this Regulation shall apply only if Regulation (EC) No 1342/2008 or Chapter III thereof is repealed prior to 1 January 2017.

Article 4

Survivability exemptions for Norway lobster

1. The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013, for species for which scientific evidence demonstrates high survival rates, shall apply to the following catches of Norway lobster:

(a) catches with pots (FPO ([1]));

(b) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm;

(c) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 90 mm equipped with a seltra panel;

(d) in 2017, catches in ICES Division IV with bottom trawls (OTB, TBN) with a mesh size of at least 80 mm equipped with a netgrid selectivity device.

2. Norway lobster caught in cases referred to in paragraph 1 shall be released whole, immediately and in the area where it has been caught.

3. Before 1 May 2017, Member States having a direct management interest in the North Sea shall submit to the Commission additional data to those provided for in the Joint Recommendation of 3 June 2016 and any other relevant scientific information supporting the exemption laid down in paragraph 1, point d. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information before 1 September 2017.

Article 5

Survivability exemption for common sole

1. The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013, for species for which scientific evidence demonstrates high survival rates, shall apply in 2017 to catches of common sole below minimum conservation reference size made within six nautical miles of the coast in ICES area IVc and outside identified nursery areas with otter trawls (OTB) with 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, a maximum engine power of 180 kW, when fishing in waters with a depth of 15 meters or less and with limited tow durations of no more than 1:30 hours.

3. Common sole caught in cases referred to in paragraph 1 shall be released immediately.

([1]) Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 of 8 April 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 (OJ L 112, 30.4.2011, p. 1). For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

4. Before 1 May 2017, Member States having a direct management interest in the North Sea shall submit to the Commission additional scientific information supporting the exemption laid down in paragraph 1. The STECF shall assess that information before 1 September 2017.

Article 6

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) for common sole, up to a maximum of 3 % of the total annual catches of this species by vessels using trammel nets and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Division IIa;

(b) for common sole below minimum conservation reference size, up to a maximum of, in 2017, 7 % and, in 2018, 6 % of the total annual catches of this species by vessels using beam trawl (TBB) of mesh size 80-119 mm with increased mesh size in the extension of the beam trawl in ICES Subarea IV;

(c) for Norway lobster below minimum conservation reference size, up to a maximum of 6 % of the total annual catches of this species by vessels using bottom trawls (OTB, TBN, OTT, TB) of mesh size 80-99 mm in ICES Subarea IV and Union waters of ICES Division IIa;

(d) in 2017, for common sole and haddock combined, below minimum conservation reference size, up to a maximum of 2 % of the total annual catches of Norway lobster, common sole, haddock and Northern prawn in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) of mesh size equal to or larger than 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm in ICES Division IIIa;

(e) in 2018, for common sole, haddock and whiting combined, below minimum conservation reference size, up to a maximum of 4 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) of mesh size equal to or larger than 70 mm equipped with a species-selective grid with bar spacing of maximum 35 mm in ICES Division IIIa;

(f) for common sole, haddock and whiting below minimum conservation reference size combined, up to a maximum of 1 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Northern prawn by vessels using bottom trawls (OTB) with a mesh size equal to or larger than 35 mm equipped with a species selective grid with bar spacing of maximum 19 mm, with unblocked fish outlet, in ICES Division IIIa.

(g) for common sole, haddock and whiting combined, up to a maximum of 0,5 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Norway lobster conducted with creels (FPO), in ICES division IIIa.

(h) in 2018, for whiting, up to a maximum of 7 % of the total annual catches of Norway lobster, haddock, sole, Northern prawn, whiting, plaice, saithe and cod in the mixed fishery for sole, whiting and species without catch limits by vessels using bottom trawls (OTB, OTT) of mesh size 70-99 mm in ICES Division IVc.

Article 7

Minimum conservation reference size

By way of derogation from the minimum conservation reference size established in Annex XII to Regulation (EC) No 850/98, the minimum conservation reference size of Norway lobster in ICES Division IIIa shall be as follows:

(a) total length of 105 mm;

(b) tail length of 59 mm;

(c) carapace length of 32 mm.

Article 8

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 also be used:

(a) trawls with a cod end of 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 of at least 70 mm mesh size (square mesh) equipped with a sorting grid with no more than 35 mm bar spacing;

(c) trawls of minimum mesh sizes of less than 70 mm when fishing for pelagic or industrial species, provided the catch contains more than 80 % of one or more pelagic or industrial species;

(d) trawls with a cod end of at least 35 mm mesh size when fishing for Pandalus, 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 Pandalus in accordance with paragraph 2(d), provided there are adequate fishing opportunities to cover by-catch and that the retention device is

— constructed with a top panel of a minimum mesh size of 120 mm square mesh,

— at least 3 metres long, and

— at least as wide as the width of the sorting grid.

Article 9

List of vessels

Member States shall determine, in accordance with the criteria laid down in the Annex to this Regulation, the vessels subject to the landing obligation for each particular fishery. By 31 December 2016 they shall submit to the Commission and other Member States, using the secure Union control website, the lists of all saithe targeting vessels, as defined in the Annex, established pursuant to the first sentence. They should keep those lists updated.

Article 10

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 2017 until 31 December 2018.

However, Article 9 shall apply as from the date of entry into force of this Regulation.

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

Done at Brussels, 4 October 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Fisheries subject to the landing obligation:

Fishing gear (1) (2)	Mesh size	Species concerned
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	≥ 100 mm	In 2017 and 2018: all catches of saithe (if caught by a saithe targeting vessel (3)), plaice, haddock, whiting, cod, Northern prawn, common sole and Norway lobster.
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	70-99 mm	In 2017 and 2018: all catches of Norway lobster, common sole, haddock and Northern prawn In 2018: all catches of whiting.
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	32-69 mm	In 2017 and 2018: All catches of Northern prawn, Norway lobster, common sole, haddock and whiting.
Beam trawls: TBB	≥ 120 mm	In 2017 and 2018: All catches of plaice, Northern prawn, Norway lobster, common sole, cod, haddock and whiting.
Beam trawls: TBB	80-119 mm	In 2017 and 2018: All catches of common sole, Northern prawn, Norway lobster and haddock. In 2018: all catches of whiting.
Gillnets, trammel nets and entangling nets: GN, GNS, GND, GNC, GTN, GTR, GEN, GNF		In 2017 and 2018: All catches of common sole, Northern prawn, Norway lobster, haddock, whiting and cod (4)
Hooks and lines: LLS, LLD, LL, LTL, LX, LHP, LHM		In 2017 and 2018: All catches of hake, Northern prawn, Norway lobster, common sole, haddock, whiting and cod
Traps: FPO, FIX, FYK, FPN		In 2017 and 2018: All catches of Norway lobster, Northern prawn, common sole, haddock and whiting.

(1) Gear codes used in this Table refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011.
(2) For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.
(3) Vessels are considered as saithe targeting if, when using trawls with mesh size ≥ 100 mm, they have had annual average landings of saithe of ≥ 50 % of all landings by the vessel taken in both EU and third country zone of the North Sea over the period of x – 4 to x – 2 where x is the year of application; i.e. 2012-2014 for 2016, 2013-2015 for 2017 and 2014-2016 for 2018. If a vessel has been considered as a saithe targeting vessel in one year it shall continue to be considered as such in the following years.
(4) The landing obligation for cod caught with gillnets, trammel nets and entangling nets shall not apply in ICES area IIIaS.