II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/2324

of 23 August 2021

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 Celtic Sea, the Irish Sea and the West of Scotland

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) No 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 ([1]), and in particular Article 2(2), Article 10(4) and Article 15(2) thereof,

Whereas:

(1) On 14 August 2019, Regulation (EU) 2019/1241 (the "Technical Measures Regulation") on the conservation measures of fisheries resources and the protection of marine ecosystems through technical measures entered into force. It establishes in Annex VI specific provisions regarding technical measures established at regional level for the Union waters of North Western Waters.

(2) Belgium, Spain, France, Ireland and the Netherlands have a direct fisheries management interest in the North Western Waters. These Member States submitted a first joint recommendation in May 2020. The Scientific, Technical and Economic Committee for Fisheries (STECF) assessed the joint recommendation in July 2020. Following the STECF advice, the Commission invited Member States to align the joint recommendation with the scientific evaluation. As a consequence, Member States submitted a revised joint recommendation on 14 December 2020.

(3) Pending the adoption of the measures proposed in the joint recommendation by delegated act, remedial measures within the meaning of the Western Waters MAP, that aimed at decreasing by-catches of cod and whiting in the Celtic Sea and adjacent areas, and additional technical measures aiming to reduce gadoid bycatches in the Irish Sea and West of Scotland were established in Articles 15 to 17 of Council Regulation (EU) 2021/92 ([2]). These measures were functionally linked to the TAC levels for target species caught in mixed fisheries, as, without those measures such TAC levels would have had to be reduced to allow the by-catch stocks to recover.

([1]) OJ L 198, 25.7.2019, p. 105.

([2]) Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 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 waters (OJ L 31, 29.1.2021, p. 31).

(4) Part of the North Western Waters is no longer EU waters requiring therefore the EU and the UK to engage in consultations on common measures. While the EU and the UK did not reach agreement on aligned functionally linked technical measures it is necessary to continue with the application of existing functionally linked technical measures established in Articles 15 to 17 of Regulation 2021/92 that allowed setting the TACs of target species at levels proposed in that Regulation without jeopardising the state of the unavoidable bycatch stocks in Union waters, and acknowledging that reaching this agreement at the beginning of 2022 will be a priority for the EU. Any technical measures established in agreement with third countries for 2022 will have to be implemented into the EU law through applicable legal framework.

(5) In parallel to the on-going negotiations with the UK, the concerned Member States Belgium, Spain, France, Ireland and the Netherlands submitted a new joint recommendation on 30 April 2021 that reproduces the joint recommendation submitted in 2020, with the inclusion of a new specification in ICES division 7a (Irish Sea). This joint recommendation proposed to maintain these measures in place while agreement with the UK has not been reached.

(6) 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 Western Waters, technical measures corresponding to the measures established in Article 15 to 17 in Regulation 2021/92, and in addition measures on a new fishing gear for the Irish Sea included in the joint recommendation of 2021.

(7) The measures in this Regulation applicable to Union waters are in pursuit of the objectives set out in Article 494(1) and (2) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ([3]), and have regard to the principles referred to in Article 494(3) of that agreement. They are without prejudice to any measures applicable in waters of the United Kingdom of Great Britain and Northern Ireland.

(8) Based on the information provided by the Member States, the STECF assessed ([4]) ([5]) the evidence provided by the regional groups in support of the technical measures included in the joint recommendation.

(9) The measures included in this Regulation have been evaluated in accordance with Articles 2(2), 15 and 18 of Regulation (EU) 2019/1241. Member States provided evidence to demonstrate that the proposals comply with Article 15(4) and (5) of Regulation (EU) 2019/1241.

(10) The Fisheries Expert Group was consulted on the joint recommendation on 16 July 2021.

(11) The joint recommendation suggested specific measures to reduce bycatches of cod and whiting in the Celtic Sea and adjacent areas based on the remedial measures that were in place in 2020 ([6]). These specific measures concern bottom trawls and seines in ICES divisions from Union waters of 7f, 7g, the of 7h North of latitude 49° 30′ North and the part of 7j North of latitude 49° 30′ North and East of longitude 11° West, as well as vessels fishing with bottom trawls whose catches measured before any discards consist of at least 20 % of haddock. The STECF concluded ([7]) that the proposed gears are more selective than the measures described in Regulation (EU) 2019/1241. The proposed measures should therefore be included in Regulation (EU) 2019/1241.

([3]) OJ L 149, 30.4.2021, p. 10.
([4]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([5]) https://stecf.jrc.ec.europa.eu/documents/43805/2874177/STECF+21-05+-+Ev+JRs+LO+and+TM+Reg.pdf/caa87b65-ea4a-491a-8e59-4111e01e1c1d
([6]) OJ L 25, 30.1.2020, p. 1.
([7]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf

(12) The joint recommendation suggested specific conditions for the Celtic Sea in relation to the catch composition, and in particular when the by-catches of cod do not exceed 1,5 %. The STECF is reluctant to establish conditions based on bycatch thresholds given the poor status of the stocks in these areas. However, the STECF also noted ([8]) that even if the 1,5 % cod bycatch rule were not exceeded by any trip, the alternative gears specified in the joint recommendation would still be more selective than the baseline gears in Regulation (EU) 2019/1241. The proposed measures should therefore be included in Regulation (EU) 2019/1241.

(13) The joint recommendation suggested specific technical measures for bottom trawls and seines in Union waters of ICES divisions from 7f to 7k and in the area West of 5° W longitude in ICES division 7e. The STECF concluded that these measures are more selective than the measures proposed in Regulation (EU) 2019/1241. These measures should therefore be included in Regulation (EU) 2019/1241.

(14) The joint recommendation suggested specific conditions in the Celtic Sea when the catch comprises more than 30 % of Norway lobster. The STECF concluded ([9]) that overall, the proposed options are more selective or at least equivalent to gears specified in the derogations for directed fishery of Regulation (EU) 2019/1241. In relation to the dual codend, the STECF had assessed an underpinning study in previous reports ([10]) and concluded that in principle it has the potential to reduce bycatch of unwanted species while maintaining catches of target species. Member States should provide additional specifications for assessment of the STECF no later than by 1 May 2022. These measures should therefore be included in Regulation (EU) 2019/1241.

(15) The joint recommendation suggested specific conditions in the Celtic Sea when catches comprise more than 55 % of whiting or 55 % of anglerfish, hake or megrim combined. Although the STECF is reluctant to introduce conditions in relation to catch composition ([11]), it concludes that the proposed measures are still more selective than the baseline introduced by the Technical Measures Regulation. These measures should therefore be included in Regulation (EU) 2019/1241.

(16) The joint recommendation suggested specific technical measures in the West of Scotland. The STECF concluded that the proposed gears are likely to improve the selectivity of cod, haddock and whiting. These measures should therefore be included in Regulation (EU) 2019/1241.

(17) The joint recommendation suggested specific technical measures in the Irish Sea for bottom trawls or seines with a cod-end mesh size equal to or larger than 70 mm and smaller than 100 mm and with catches comprising more than 30 % of Norway lobster. The STECF concluded ([12]) that these gears are likely to reduce the catches of cod, haddock and whiting in comparison to the measures laid out in the Technical Measures Regulation. These measures should therefore be included in Regulation (EU) 2019/1241.

(18) The joint recommendation suggested specific technical measures in the Irish Sea for vessels equal to or greater than 12 meters in length overall operating with bottom trawls or seines with specificities on catch composition for haddock, cod and skates and rays combined. In general, the STECF considered ([13]) ([14]) that the gears proposed in the joint recommendation are more selective than the gears described in the Technical Measures Regulation. These measures should therefore be included in Regulation (EU) 2019/1241.

([8]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([9]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([10]) https://stecf.jrc.ec.europa.eu/documents/43805/2492225/JRC117511+STECF+19-08+-+Evaluation+LO+JRs.pdf
([11]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([12]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([13]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf
([14]) https://stecf.jrc.ec.europa.eu/documents/43805/2874177/STECF+21-05+-+Ev+JRs+LO+and+TM+Reg.pdf/caa87b65-ea4a-491a-8e59-4111e01e1c1d

(19) This joint recommendation, includes for 2021 the specification for a fishing gear for bottom trawls and seines in ICES division 7a (Irish Sea) on the basis of equivalent selectivity as the baseline fishing gear as set by Regulation (EU) 2019/1241 for that area and fishery. The STECF assessed the new scientific evidence underpinning the change in joint recommendation in June 2021 concluding for a similar selectivity characteristics of the gear as compared to the baseline fishing gear.

(20) The joint recommendation suggested to harmonise the minimum conservation reference size (MCRS) for several species caught in recreational fisheries in the North Western-Waters with the minimum conservation reference size applicable to commercial fisheries. A number of species included in the joint recommendation for harmonisation of the MCRS are classified by ICES as being depleted, or ICES considers that recreational fisheries impacts significantly their overall fishing mortality. Furthermore, a number of those same species straddles from South Western Waters (SWW) and North Sea (NS) into North Western Waters, and in SWW and NS the MCRS for those species have already been harmonized between commercial and recreational fisheries. The STECF analysed the evidence provided and concluded ([15]) that this measure is likely to reinforce the protection of juvenile marine fish species. These measures should therefore be included in Regulation (EU) 2019/1241.

(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 fishing vessels and on related economic activities, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2019/1241 is amended in accordance with the Annex to this Regulation.

Article 2

Point 2 and point 3 in the Annex shall apply from 30 December 2021 until 31 December 2022.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 23 August 2021.

For the Commission
The President
Ursula VON DER LEYEN

([15]) https://stecf.jrc.ec.europa.eu/documents/43805/2684997/STECF+PLEN+20-02.pdf

ANNEX

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

(1) Part A is amended as follows:

(a) footnote number 6 is replaced as follows:

"([6]) By way of derogation from Article 15 of Regulation (EU) No 1380/2013, the minimum conservation reference sizes of sardine, anchovy, herring, horse mackerel and mackerel shall not apply within a limit of 10 % by live weight of the total catches retained on board of each of those species.

The percentage of sardine, anchovy, herring, horse mackerel or mackerel below the minimum conservation reference size shall be calculated as the proportion by live weight of all marine organisms on board after sorting or on landing.

The percentage may be calculated on the basis of one or more representative samples. The limit of 10 % shall not be exceeded during transhipment, landing, transportation, storage, display or sale.";

(b) the text below the table is deleted.

(c) the following point is added under the table:

"1. The minimum conservation reference sizes specified in this Part for cod (*Gadus morhua*), 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 dypterygia*), mackerel (*Scomber spp.*), herring (*Clupea harengus*), horse mackerel (*Trachurus spp.*), anchovy (*Engraulis encrasicolus*), bass (*Dicentrarchus labrax*), sardine (*Sardina pilchardus*) and red seabream (*Pagellus bogaraveo*) shall apply to recreational fisheries in the North Western Waters.";

(2) in Part B, the following points 1.3 to 1.6 are added:

"1.3. This point applies by way of derogation from points 1.1 and 1.2

1.3.1 The following shall apply to vessels fishing with bottom trawls and seines in ICES divisions 7f, 7g, the part of 7h North of latitude 49° 30′ North and the part of 7j North of latitude 49° 30′ North and East of longitude 11° West:

(a) Vessels fishing with bottom trawls or seines shall use gear with one of the following mesh sizes:

(i) 110 mm cod-end with 120 mm square-mesh panel;

(ii) 100 mm T90 cod-end;

(iii) 120 mm cod-end;

(iv) 100 mm with 160 mm square-mesh panel;

(b) in addition, vessels fishing with bottom trawls whose catches weighed before any discards consist of at least 20 % of haddock shall use:

(i) a fishing gear that is constructed with a minimum of one meter spacing between the fishing line and ground gear, or

(ii) any means proven to be at least equally selective for avoidance of cod, according to the assessment by ICES or the STECF, and approved by the Commission.

Member States may exempt from the application of point (b) vessels fishing with bottom trawls whose catches, weighed before any discards, consist of less than 1,5 % of cod, provided those vessels are subject to a progressive increase of observer coverage at sea up to at least 20 % of all their fishing trips. Member States that make use of this exemption shall report to the Commission each year before 1 December the number and catch-composition of vessels making use of this provision.

Member States may exempt from the application of points (a) and (b) vessels that use an alternative highly selective gear provided that the technical attributes of those gears result in the same or higher selectivity as the gears specified in those points, and result in catches of less than 1 % of cod, according to an assessment made by the STECF. Such a gear or device shall comply with the requirements of Article 15(4) and shall be approved by the Commission.

1.3.2 By way of derogation from points 1.1, 1.2 and 1.3.1:

(a) vessels operating with bottom trawls or seines with catches comprising more than 30 % of Norway lobster shall use one of the following gears:

(i) 300 mm squared mesh panel; vessels below 12 meters in length over all may use a 200 mm square mesh panel;

(ii) Seltra panel;

(iii) Sorting grid with a 35 mm bar or a similar Netgrid selectivity device;

(iv) 100 mm cod-end with a 100 mm square mesh panel;

(v) until 31 July 2022, dual cod-end with the uppermost cod-end constructed with T90 mesh of at least 90mm and fitted with a separation panel with a maximum mesh size of 300mm;

Member States may allow the use of device in point (v) until the end of December 2022, provided that the technical attributes of this device result in the same or higher selectivity as the other gears specified in points 1.2. and 1.3.1, according to an assessment made by the STECF based on the information provided by the Member States no later than 1 May 2022. Such device shall comply with the requirements of Article 15(4) and shall be approved by the Commission.

(b) vessels operating with bottom trawls or seines with catches comprising more than 55 % of whiting or 55 % of anglerfish, hake or megrim combined, shall use one of the following gears:

(i) 100 mm cod-end with a 100 mm squared mesh panel;

(ii) 100mm T90 cod-end and extension.

1.4. Points 1.4.1 and 1.4.2 shall apply by way of derogation from point 1.2.

1.4.1. The following shall apply to fishing vessels operating with bottom trawls or seines in ICES divisions 6a and 5b, within the Union waters, East of 12°W (West of Scotland) in Norway lobster (*Nephrops norvegicus*) fisheries:

(a) vessels shall use of a square mesh panel (positioning retained) of at least 300 mm for vessels deploying a cod-end mesh size less than 100 mm; for vessels below 12 m in length over all and/or with engine power of 200 kW or less, the panel overall length may be 2 m and the panel 200 mm;

(b) vessels with catches comprising more than 30 % of Norway lobster shall use a square mesh panel (positioning retained) of at least 160 mm for vessels deploying a cod-end mesh size of 100-119 mm.

By way of derogation from letters (a) and (b) of point 1.4.1, the use of an alternative fishing gear shall be permitted provided such gear results in at least the same or higher selectivity for cod, haddock and whiting, according to an assessment made by the STECF. Such gear shall comply with the requirements of Article 15(4) and shall be approved by the Commission.

1.4.2. The following shall apply to fishing vessels operating with bottom trawls or seines in ICES division 7a (Irish Sea):

(a) vessels operating with bottom trawls or seines with a cod-end mesh size equal to or larger than 70 mm and smaller than 100 mm and with catches comprising more than 30 % of Norway lobster shall use one of the following gears:

(i) 300 mm square mesh panel; vessels below 12 meters in length over all may use a 200 mm squared mesh panel;

(ii) Seltra panel;

(iii) Sorting grid with 35 mm bar spacing;

(iv) CEFAS Netgrid;

(v) Flip-flap trawl;

(b) vessels equal to or greater than 12 meters in length overall operating with bottom trawls or seines with catches comprising more than 10 % of haddock, cod and skates and rays combined, shall use 120 mm cod-end;

(c) vessels equal to or greater than 12 meters in length over all operating with bottom trawls or seines with catches comprising less than 10 % of haddock, cod and skates and rays combined shall apply a cod-end mesh size of 100 mm with a 100 mm square mesh panel. This provision shall not apply to vessels with catches comprising more than 30 % of Norway lobster or more than 85 % of queen scallops.

(d) Vessels operating with bottom trawls or seines may use a 100mm T90 cod-end.

By way of derogation from letters (a) to (d) of point 1.4.2, the use of an alternative fishing gear shall be permitted provided such gears result in at least the same or higher selectivity for cod haddock and whiting. Such gears shall be assessed by the STECF and approved by the Commission and shall fulfil the criteria set by Article 15(4).

1.5. The catch percentages in points 1.3 and 1.4 shall be calculated as the proportion by live weight of all marine biological resources landed after each fishing trip, according to Article 15 of Regulation (EU) No 1380/2013 and Article 27(2) of this Regulation.

1.6 Measures in points 1.3 to 1.5 shall be applicable until 31 December 2022."

(3) in Part C, the following points are added:

"10. Restrictions on fishing with bottom trawls and seines in the Celtic Sea

10.1 It shall be prohibited for vessels to fish with bottom trawls and seines in the following zones:

(a) ICES divisions from 7f to 7k,

(b) in the area West of 5° W longitude in ICES division 7e and

(c) in ICES divisions 7b and 7c.

This prohibition shall not apply to vessels in case:

(i) they use a cod-end mesh size of at least 100 mm, or

(ii) their by-catches of cod do not exceed 1,5 %, as assessed by the STECF, when fishing outside the areas mentioned in point 1.3 of Part B.

By derogation from letter (i), when fishing vessels operate in the areas specified in point 10 (1) (c), they may use an alternative fishing gear with the same or higher selectivity as the cod-end mesh size of at least 100 mm for mixed demersal fisheries, according to an assessment by the STECF. Such gear shall comply with the requirements of Article 15(4) and shall be approved by the Commission.

10.2 Measures in point 10.1 shall be applicable until 31 December 2022."