



## **Joint Recommendation of the Scheveningen Group Discard Plan for Demersal Fisheries in the North Sea**

### **1. Background**

One of the main elements of the reform of the Common Fisheries Policy (CFP) applying from 1 January 2014 is the gradual introduction of landing obligations for all catches taken from stocks subject to catch limits. To this end, Regulation (EU) no. 1380/2013 (the “Basic Regulation”) sets out the timeframes for the relevant fisheries as well as provisions for possible exemptions. At the same time this regulation defines the general framework for regional cooperation on conservation measures.

Member States may cooperate in accordance with Article 18 in drawing up joint recommendations (JR) for “discard plans”. These are to contain details of the implementation of the landing obligation, and may be adopted on a temporary basis for no more than three years, where no multiannual plan has been adopted for the fishery in question. Upon agreeing a JR the Member States may propose them to the Commission for them to be adopted as a delegated act. If Member States cannot reach agreement on a JR that is in line with the objectives of the CFP then the Commission is empowered to adopt delegated acts for discard plans containing only provisions for *de minimis* exemptions.

### **2.1. Scheveningen High-Level Group**

Following Article 18 of the Basic Regulation, the Fisheries Directors of the North Sea Member States cooperating in the Scheveningen Group since 2004 established a High Level Group (HLG) in December 2013 and agreed on a Memorandum of Understanding setting out the principles and working methods of the Group. Members of the Group are Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom. The group is chaired by an annual chair, with Sweden chairing from 1 January 2016 to 31 December 2016.

A Scheveningen technical group developed a first draft for a North Sea JR for demersal fisheries taking into consideration the guidance produced by the Scientific, Technical and Economic Committee for Fisheries (STECF). Coordination with work ongoing in the North Western Waters Group was established in order to ensure a consistent approach to implementation of the landing obligation as far as possible, as many fishing vessels operate between the two areas.

### **2.2. Consultation with relevant Advisory Councils**

The group is aware of the importance of meaningful input from stakeholders in the process of drawing up the discard plans, especially in relation to identifying challenges and solutions as well as formulating exemptions, in light of Article 18(2) of the Basic Regulation.

With this in mind the North Sea Advisory Council (NSAC) was invited to closely cooperate with the Scheveningen group. There has been regular and detailed engagement between the Scheveningen group and the NSAC throughout the development of the joint recommendation. In order to have a continuous consultation during the process, the NSAC has been invited to attend, in part, meetings of the Scheveningen High Level Directors group and the Technical group. Additionally, Member State representatives have attended the meetings of the Advisory Council.

In its Work Programme for the North Sea from October 2015 to August 2016 the Scheveningen Group has sought recommendations in writing from the NSAC regarding the phasing of the landing obligation. The NSAC on 18 December 2015 adopted its advice on phasing of the landing obligation in 2017-2018.

On 24 February 2016 the NSAC adopted advice on other elements regarding the implementation of the landing obligation. The NSAC advice has been presented and discussed with the Scheveningen HLG and the technical group. The advice is summarised under the relevant sections of this JR.

On 3 May 2016 the contents of the draft Joint Recommendation were presented to the NSAC representatives for discussion. The NSAC submitted advice on the implications of implementing the landing obligation for cod, whiting and haddock in 2017 & 2018.

A full draft of the Joint Recommendation was forwarded to NSAC before the HLG on 25 May, and discussed with NSAC representatives at that meeting.

The Scheveningen group remains committed to working in close cooperation with the NSAC during the full implementation of the demersal landing obligation in the North Sea area.

### **2.3. Implementing authority**

On the basis of the authority granted by Article 15.6 and 18.1 of the Basic Regulation to the European Commission to adopt discard plans by means of delegated acts, the Member States of the North Sea submit a joint recommendation, as per Article 18(1) of Regulation (EU) No 1380/2013, to the European Commission for a specific discard plan for demersal fisheries in the North Sea.

### **2.4. Extent of discarding in North Sea Demersal Fisheries**

The available information on discards in demersal fisheries (STECF; ICES; NSAC, JRC) suggests that discards in the different fisheries vary significantly from close to 0% up to more than 40% of average catch in weight. The Scheveningen Group in 2014 produced a

Demersal Discard Atlas detailing catch compositions, landings data and discards estimates for 2010-2012. Data was sourced from that reported by individual countries.

Discard rates (percentage of catch discarded relative to total volume caught) are estimated to vary between species, fisheries and over time. Discard rate data also varies greatly in quality (measured as the percentage of data derived from reported data instead of from being filled in by assuming average discard ratios from other country submitted data). This may impact on the ability of such data to be used in calculating quota uplifts; however, whilst considering possible limitations, the data has allowed the informed development of this JR.

### **3. Objectives and scope of the discard plan**

#### **3.1. Objectives**

The discard plan shall establish provisions for any of the specifications referred to in points (a) to (e) of Article 15(5) of the Basic Regulation, including specific descriptions of any exemptions gained.

It is the position of Member States that increased selectivity, where possible, is the most desirable way to deliver compliance with the landing obligation.

The securing and use of exemptions is to be considered following the acceptable uses specified in Article 15(4) of Regulation (EU) No 1380/2013, further specified under paragraphs 5(b) and (c), and will be based on a thorough, evidence-based process.

The Member States of the North Sea consider it desirable to achieve, where possible, consistency between the recommendations for specific discard plans being drafted by regional groups in EU waters.

#### **3.2. Scope**

This JR will apply to demersal fisheries subject to catch limits in the North Sea as defined in Article 4(2)(a) of Regulation (EU) no 1380/2013 comprising ICES sea areas IIIa and IV. Additionally, under Article 15(1)(c)(iv) the Scheveningen Group recommends that the discard plan also covers the Union waters of ICES area IIa as the TAC areas for the relevant demersal stocks also comprise this area. Throughout this JR reference to the North Sea hence means Union waters of areas IIa, IIIa and IV, unless otherwise stated.

This JR will apply to all fishing vessels engaging in the specified demersal fisheries in the North Sea without prejudice to rules applicable outside the aforementioned Union waters under Member State jurisdiction. It is to be noted that part of the North Sea lies within the Norwegian zone. This part being subject to Norwegian legislation, it cannot be a part of this plan.

#### 4. Introduction of the landing obligation

In line with Article 15 of Regulation (EU) No 1380/2013 all catches taken from the relevant fisheries as defined in this JR as fisheries targeting species listed in the fisheries definition tables below made during fishing activities in the North Sea shall be brought and retained on board the fishing vessels, recorded, landed and counted against the quotas where applicable, except when used as live bait.

In its advice from December 2015, the NSAC has highlighted that it has found it difficult to make recommendations on phasing without further information on the revision of the cod recovery plan or knowledge of how the problems raised by choke species will be addressed.

The landing obligation will be implemented in stages, based on a regionally-agreed interpretation of the Basic Regulation. This states that, from 1<sup>st</sup> January 2016 there will be a landing obligation for the species which define the fisheries in the North Sea for:

- Cod, haddock, whiting and saithe,
- Norway lobster (*Nephrops*),
- Common sole and plaice,
- Hake,
- Northern prawn.

The landing obligation shall only apply to any catches of those species when caught in a fishery defined by that species. However, at the agreement of the Member States certain bycatches of the listed species are also to be introduced before 2019.

For the purposes of this JR, the following approach, as given in the fisheries definition table A, to the implementation of the landing obligation for demersal species is being recommended for 2017-2018.

Quota adjustments should be based on the best available data on discard levels for the different management areas. For the North Sea, Skagerrak and Kattegat this would mean that fleet specific estimations of discard levels (including but not limited to STECF data) should be used.

Table B below outlines the current intention for implementing the landing obligation for other species in the demersal fisheries from 2018, ensuring full implementation by 1<sup>st</sup> January 2019. This table will be subject to further consideration by the regional group.

The Scheveningen Group will follow the development of the introduction of the demersal landing obligation closely, including provisions to amend the Cod Recovery Plan, research into survivability and selectivity, and any advice from the North Sea Advisory Council, before proposing final recommendations for future years.

The gear codes used in Tables A and B refer to those mentioned in the annex XI of the 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, plus those gear codes from the FAO classification if the codes used by some vessels whose LOA is less than 10 metres are not specified in the aforementioned regulation . The acronyms are explained in Annex A.

These tables are intended to be exhaustive.

The obligation to land all catches shall not apply in cases for which there is a specific exemption, as detailed in section 5 of this JR.

The obligation to land all catches shall also not apply in cases where catches as part of a normal operational procedure is released, e.g. when cleaning the gear by rinsing it in the sea or disposing of debris that builds up in the codend.

Table A: Fisheries Definition Table for 2017-2018, to be included in the discard plan for 2017-2018:

<b>Gear Category</b>	<b>Segment</b>	<b>Landing Obligation</b>
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	≥100mm	All catches of saithe (if caught by a saithe targeting vessel*), plaice, haddock, whiting, cod**, Northern prawn, sole and <i>Nephrops</i> to be landed.
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	70-99mm	All catches of <i>Nephrops</i> , haddock, sole and Northern prawn to be landed.  2018: All catches of whiting to be landed.
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	32-69mm	All catches of Northern Prawn, <i>Nephrops</i> , sole, haddock and whiting to be landed.
<b>BEAM TRAWLS:</b> TBB	≥120mm	All catches of plaice, Northern prawn, <i>Nephrops</i> , sole, cod**, haddock and whiting to be landed.
<b>BEAM TRAWLS:</b> TBB	80-119mm	All catches of sole, Northern prawn, <i>Nephrops</i> and haddock to be landed.  2018: All catches of whiting*** to be landed.
<b>GILLNETS, TRAMMEL NETS &amp; ENTANGLING NETS:</b> GN, GNS, GND, GNC, GTN, GTR, GEN, GNF		All catches of sole, Northern prawn, <i>Nephrops</i> , haddock, whiting and cod**^ to be landed.
<b>HOOKS &amp; LINES:</b> LLS, LLD, LL, LTL, LX, LHP, LHM		All catches of hake, Northern prawn, <i>Nephrops</i> , sole, haddock, whiting and cod** to be landed.
<b>TRAPS:</b> FPO, FIX, FYK, FPN		All catches of <i>Nephrops</i> , Northern prawn, sole, haddock and whiting to be landed.

\*See point 4.1.4 and Annex N.

\*\*The obligation to land catches of cod shall only apply once Regulation (EC) No 1342/2008 is repealed or once that Regulation is amended with a repeal of Chapter III thereof and clarification that the Regulation is without prejudice to article 16(2) of Regulation (EC) No 1380/2013. As a further condition, the landing obligation shall only be introduced in accordance with Table A if the quota adjustment following Art. 16(2) in Regulation (EC) No. 1380/2013, is based on the discard rates for the management areas separately and according to relative stability.

\*\*\* De minimis exemption for bycatches of whiting to be added in 2018.

^ Except in IIIaS (Kattegat).

Table B: Fisheries Definition Table for 2018-2019 (not to be included in the discard plan):

<b>Gear Category</b>	<b>Segment</b>	<b>Landing Obligation</b>
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	≥100mm	2018: any bycatches of saithe to be landed. 2019: all catches of all quota species to be landed.
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	70-99mm	2018: any bycatches of plaice, saithe and cod to be landed. 2019: all catches of all quota species to be landed.
<b>TRAWLS:</b> OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	32-69mm	2018: any bycatches of plaice, saithe and cod to be landed. 2019: all catches of all quota species to be landed.
<b>BEAM TRAWLS:</b> TBB	≥120mm	2018: any bycatches of saithe to be landed. 2019: all catches of all quota species to be landed.
<b>BEAM TRAWLS:</b> TBB	80-119mm	2018: any bycatches of plaice, saithe and cod to be landed. 2019: all catches of all quota species to be landed.
<b>GILLNETS, TRAMMEL NETS &amp; ENTANGLING NETS:</b> GN, GNS, GND, GNC, GTN, GTR, GEN, GNF		2018: any bycatches of plaice and saithe to be landed. 2019: all catches of all quota species to be landed.

<b>HOOKS &amp; LINES:</b> LLS, LLD, LL, LTL, LX, LHP, LHM		2018: any bycatches of plaice and saithe to be landed. 2019: all catches of all quota species to be landed.
<b>TRAPS:</b> FPO, FIX, FYK, FPN		In 2018 any bycatches of plaice, saithe and cod to be landed. 2019: all catches of all quota species to be landed.

## 4.1 Explanation of approach

The information below explains the rationale for the phased introduction of the landing obligation.

### 4.1.1. Cod

There are conflicts between the Cod Recovery Plan (CRP) and the landing obligation.

The main issue concerns the fishing effort regime of the CRP, which hampers the flexibility in order to adapt fishing patterns, such as choice of area and gear. Such flexibility is essential in order to have a successful implementation of, and adaptation to, the landing obligation, and that also facilitates economically viable fisheries.

A further issue of the implementation of the landing obligation arises from the TAC variation constraint in Articles 7(5) and 8(5) of the plan, according to which TACs may not vary by more than  $\pm 20\%$  from year to year. An application of the 20% cap would not be sufficient to cater for the transition from a landing quota regime to a catch quota regime. Currently, it is not clear to what extent this rule would apply.

On 1 December 2015 the Court of Justice annulled Council Regulation (EU) No 1243/2012 (the "annulled amendment") that amended the 2008 cod recovery plan (Regulation (EC) No 1342/2008). However, the Court maintained the effects of the annulled amendment until the entry into force of a new regulation based on Article 43(2) TFUE, the latest by 31 December 2016. Work is currently being undertaken between the EU institutions to amend the plan.

The NSAC has advised that cod should not be covered by the landing obligation until such time as the cod recovery plan has been removed or amended to address problems with the plan in relation to the landing obligation.

Given this the Scheveningen Group recommends that the landing obligation for cod shall be introduced in accordance with table A, once Regulation (EC) No 1342/2008 or is repealed or once that Regulation is amended with a repeal of Chapter III thereof and clarification that that the Regulation is without prejudice to article 16(2) of Regulation (EC) No 1380/2013, on 1 January 2017 or on 1 January 2018 at the latest.

As a further condition, the landing obligation shall only be introduced in accordance with table A if the quota adjustment following Art. 16(2) in Regulation (EC) No. 1380/2013, is based on the discard rates for the management areas separately and distributed amongst Member States according to relative stability.

As the CRP has triggered considerable improvements in selectivity and cod avoidance through Art 11(2) of the plan and through national measures adopted in accordance with Art. 13 the Scheveningen Member States are committed to continuing, or further developing, these measures while the landing obligation is introduced for all catches of cod.

#### **4.1.2. Haddock**

Haddock was introduced to the landing obligation from 2016 for all large mesh otter trawl  $\geq 100$  mm and in IIIa also for vessels using 70-99 mm mesh. The Scheveningen Group recommends that the landing obligation for the bycatches of haddock should be introduced in 2017 across all other gears.

#### **4.1.3. Whiting**

It has been acknowledged, including by the NSAC, that whiting is for most of the fleets a bycatch in North Sea fisheries. In order to allow more time for fleets to make practical adjustments to improve selectivity, the Scheveningen Group recommends a phased introduction of whiting to the landing obligation for 2017-2018 as specified in Table A.

#### **4.1.4. Saithe**

Saithe was introduced to the landing obligation for the targeted fishery in 2016. The Scheveningen Group recommends the continued application of the landing obligation for saithe in the targeted fishery in 2017, for those vessels that are identified as targeting saithe by their Member State. A vessel shall be identified as targeting saithe if, when using trawls with mesh  $\geq 100$ mm, they have had annual average landings of saithe of  $\geq 50\%$  of all landings by the vessel taken in both EU and third country zones of the North Sea (ICES Areas IIIa, IV and EU waters of IIa, see section 3.2) over the period of  $x-4$  to  $x-2$  where  $x$  is the year of application; i.e. 2013-2015 for 2017.

By 31 December 2016 Member States shall submit for 2017 to the Commission and other Member States, using the secure Union control website, the lists of all saithe targeting vessels. Vessels subject to the landing obligation for saithe during 2016, shall remain subject to the landing obligation for saithe during 2017.

The Scheveningen Group recommends that the by-catches of saithe by all other vessels and gears is included in the landing obligation from 2018.

#### **4.1.5. Norway Lobster (*Nephrops*)**

*Nephrops* was introduced to the landing obligation in 2016 for all smaller mesh otter trawl vessels with a mesh of 80-99 mm in IV and with a mesh of 70-99 mm in IIIa and for all vessels using pots in all areas.

The Scheveningen Group recommends that the landing obligation for by-catches of *Nephrops* be introduced in 2017 across all other gears.

#### **4.1.6. Common sole and plaice**

The flatfish fishery consists of large mesh trawl vessels targeting plaice and smaller mesh trawl vessels and nets targeting sole. The Scheveningen Group recommends the continued application of the landing obligation in these targeted fisheries as specified in table A.

It has been acknowledged that bycatch of undersized plaice in the smaller mesh trawl is high. Several studies in both Belgium and the Netherlands have been conducted in order to try to improve selectivity. It is difficult to significantly improve the selectivity without losing the target species to the extent that the sole fishery becomes unprofitable. So far efforts to improve selectivity have led to the introduction of a “Flemish panel” in the whole beam trawl fleet using 80-119 mm mesh sizes and a large part of the Dutch beam trawl fleet using 80-119 mm mesh sizes. With the Flemish panel bycatches of undersized sole decrease with approximately 40%. At this point it is unclear to what extent by-catches of plaice decrease with this panel. The implementation of a landing obligation for plaice in the smaller mesh trawl fisheries at this point will result in high costs for the fishermen.

Although the sector is currently working on numerous projects to improve both selectivity of the gear in several fisheries, it is clear that for the smaller mesh trawl fisheries a major innovation would be needed to address the by-catch problem. It is not realistic to expect such an innovation before 2017. Future considerations will be given to the survival of plaice so as to strengthen the available scientific knowledge of survival.

For these reasons the Scheveningen Group further recommends the introduction of the landing obligation for by-catches of sole to be introduced for all gears as from 2017 and by-catches of plaice for all gears as from 2018.

#### **4.1.7. Hake**

Hake was introduced to the landing obligation in 2016 for hooks and lines. Hake has been identified as a possible choke species due to the low TAC and the recovery of the stock. For this reason, the Scheveningen Group recommends the continued application of the landing obligation for vessels using hooks and lines in 2017 and recommends that the landing obligation is to be introduced for all other gears as from 2019.

#### **4.1.8. Northern prawn**

Northern prawn was introduced to the landing obligation in 2016 for all vessels using trawls with 32-69mm mesh. The landing obligation for bycatches of Northern prawn was also

introduced across all other gears in 2016. The Scheveningen group recommends the continued application of the landing obligation for Northern prawn for all gears in 2017 and onwards.

## **5. Exemptions**

Situations where the landing obligation shall not apply are specified in Article 15(4) of the Basic Regulation.

### **5.1. High Survivability**

The NSAC has previously advanced *Nephrops*, Flatfish and Elasmobranchs for preliminary consideration for high survival exemptions. As further scientific evidence emerges the NSAC will review this list of suggested exemptions.

The Scheveningen Group recommends the following exemptions for reason of high survivability. The exemptions will be examined and reviewed for 2018, taking into account experience in the fisheries and the most recent scientific advice.

#### **5.1.1 *Nephrops* caught using pots**

On the basis of scientific evidence and rationale provided in Annex B, C and Ci the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to *Nephrops* in ICES area IIIa and IV, and EU waters of IIa, caught with pots (FPO).

A number of scientific studies show survival rates in the range of 84 to 99% when the catch is sorted during the creel hauling process and discarded *Nephrops* are returned to the same location as where they are caught.

Fisheries for *Nephrops* using pots only takes place in the Scottish and Swedish fisheries. The Scottish fisheries for *Nephrops* using pots accounts for around 1,638 tonnes, about 9% of total landings, and mainly takes place in coastal waters around Scotland.

The Swedish fisheries for *Nephrops* using pots accounts for around 350 tonnes and about 30 % of total Swedish *Nephrops* landings, and mainly takes place in coastal areas in Skagerrak and Kattegat.

Discard rates for *Nephrops* in the fisheries using pots is estimated at less than 10%.

The exemption was evaluated by STECF in 2015 and is included in the current delegated act, article 2.1(a).

### **5.1.2 *Nephrops* caught with trawl gears in area IIIa**

On the basis of scientific evidence and rationale provided in Annex C and Ci the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to *Nephrops* in ICES area IIIa

- i) when caught 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, or
- ii) when caught with bottom trawls (OTB, TBN) with a mesh size of at least 90 mm equipped with a top panel of at least 270 mm mesh size (diamond mesh) or at least 140 mm mesh size (square mesh);

For *Nephrops* caught using trawls with mesh size 70-89 mm (square mesh) equipped with species-selective grid and with a standard SELTRA codend (90 mm diamond mesh with a 270 mm diamond mesh window), the estimated average yearly survival rate for discards from Swedish fleets operating in the Skagerrak and Kattegat is 55 % for GRID and 46 % for SELTRA.

Discard rates for *Nephrops* in the fisheries using trawls is estimated at 45.9 % by weight in ICES area IIIa (using 2010-2014 data). The reduced MCRS in 2016 is expected to result in catches of undersized *Nephrops* of 9.4% (based on 2010-2014 data).

*Nephrops* should be discarded swiftly and in the area where they have been caught. *Nephrops* may only be discarded whole.

### **5.1.3 *Nephrops* caught with trawl gears in area IV**

On the basis of scientific evidence and rationale provided in annex D and Di the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to *Nephrops* in ICES area IV caught with bottom trawls (OTB, TBN) with a mesh size of at least 80mm equipped with a Netgrid selectivity device comprising a four panel box section inserted into a two-panel trawl with an inclined sheet of netting (see annex D for a full description and diagram).

A study conducted in fishing grounds off the North East of England (area IVb) reported a survival rate of 62%. This study shows comparable results to one conducted by Sweden for a similar exemption that has been approved for area IIIa (see paragraph 5.1.2). As both of these studies show comparable results using the same methods when using selective trawls in this fishery, when considered together, they support extrapolation to the wider North Sea area.

*Nephrops* should be discarded swiftly and in the areas where they have been caught.

Discard rates for *Nephrops* in the fisheries using trawls is estimated at less than 9.6% by weight in ICES area IV (using 2014 data).

#### **5.1.4 Sole (undersized only) caught with trawl gears in area IVc**

On the basis of scientific evidence and rationale provided in annex E, Ei, Eii and Eiii the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the landing obligation shall not apply to common sole:

- i) of length less than the MCRS of 24cm;
- ii) caught by vessels using 80-99mm otter trawl gears;
- iii) within 6 nautical miles of the coast in ICES area IVc; and
- iv) where coastlines and fishing operations meet the conditions specified in Annex E.

A study conducted in the South Eastern English trawl fishery demonstrated survival rates for undersized sole in excellent condition of 69.4% and for undersized sole in good condition of 50.4%. This gave an average survival rate of 51% for undersized sole based on the catch profile in the study.

This exemption is intended for a specific fishery (in IVc) experiencing particular environmental conditions and where selectivity is very difficult to improve. The inshore vessels in this fishery catch sole in shallow water, where the marine conditions are similar to those in the study. The short tows (of approximately 1 to 1.5 hours) conducted in shallow water are characteristics which have been shown to improve survival rates in other studies.

Discard rates of undersized sole in the English South East inshore otter trawl fishery are estimated to be on average 1% of total catches, or 4% of total sole catches.

#### **5.2. De minimis**

The NSAC was in its advice adopted on 24 February 2016 not yet in a position to advise on those species and fisheries to be subject to de minimis provisions.

The Scheveningen Group recommends the following exemptions for reason of *de minimis*.

The supporting evidence is included in annexes F to L.

The exemptions will be examined and reviewed for 2018 with the objective of reducing and, over time, phasing out these provisions where possible. In reviewing, the Scheveningen group will take into account experience in the fisheries, progress on the Cod Recovery Plan, phasing in of additional species under the Landing Obligation and the results from scientific and technical trials.

### **5.2.1. Fish bycatch caught in *Nephrops* targeted trawl fishery**

On the basis of scientific background and rationale provided in Annex F and Fi the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following catches below MCRS may be discarded.

- for 2017 for common sole and haddock combined, up to a maximum of 2 % of the total annual catches of species under landing obligation (*Nephrops*, common sole, haddock and Northern prawn),
- for 2018 for common sole, haddock and whiting combined, up to a maximum of 4 % of the total annual catches of species under landing obligation (*Nephrops*, common sole, haddock whiting and Northern prawn) in the fishery for *Nephrops* conducted 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 in ICES area IIIa,

The request for an exemption for de minimis is based on article 15.5.c.i), due to difficulties to further increase the highly selective properties of the gear concerned. The species in question for de minimis represent small but unavoidable by-catches. As *Nephrops* is the only income for users of this gear, they are particularly vulnerable for the potential losses an increase in selectivity would risk to cause.

A de minimis exemption of 2% for haddock and sole in 2017 would correspond to total quantities of 23.1 t (based on a 2010-2014 baseline of discarded and caught quantities for the species subject to the landing obligation- see annex Fi for specifications). Per species this would mean approximately 10.9 t of haddock and 12.2 t of sole in 2017.

A de minimis exemption of 4% for haddock, sole and whiting in 2018 would correspond to total quantities of 46.3 t (based on a 2010-2014 baseline of discarded and caught quantities for the species subject to the landing obligation- see annex Fi for specifications). Per species this would mean approximately 4.9 t of haddock, 5.5 t of sole and 35.8 t of whiting in 2018.

The exemption, as requested for 2017, was evaluated by STECF in 2015 and is included in the current delegated act, article 3.1(a).

### **5.2.2. Common sole caught in nets**

On the basis of scientific background and rationale provided in Annex G and Gi a *de minimis* exemption is recommended for common sole (*Solea solea*) for vessels using trammel nets and gill nets of a maximum of 3% of the total annual catches of common sole caught by vessels using these gears (gear codes: GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) to catch common sole in the North Sea (ICES Areas IIIa, IV and EU waters of IIa) as scientific evidence indicates that increases in selectivity are very difficult to achieve. The exemption was evaluated by STECF in 2015 and is included in the current delegated act, article 3.1(b).

A de minimis exemption of 3% is requested for sole (*Solea solea*) for the vessels using net gears (trammel nets and/or gillnets) in the North Sea (IVa, b and c) for the period of application of the discard plan. According to the North Sea discard atlas (Table A.3.1, page 64), the catches of sole in the net fishery in the North Sea were on average 1.072t (including 4t of catches discarded) in 2010-2012. Based on these figures, and only for illustrative and informative purposes, a de minimis of 3% would represent a maximum amount of allowed discard for sole of 32.16 t. This amount is very limited when compared to the whole TAC for sole in ICES sea areas IIa and IV (13 262 t for 2016)."

### **5.2.3 Common sole caught by beam trawls with a mesh size of 80-119mm with increased mesh sizes in the extension of the beam trawl**

For the sole fishery using TBB 80-119 mm gear with increased mesh sizes in the extension of the beam trawl in area IV of the North Sea, a de minimis exemption is recommended as per Article 15(5)(c) of Regulation (EU) no 1380/2013 as outlined in annex H and Hi.

When in the spirit of the landing obligation and in an attempt to reduce the occurrence of unwanted catches of sole, for vessels deploying a more selective TBB gear 80-119mm with increased mesh sizes in the extension of the beam trawl (Flemish panel), a de minimis exemption of 7% of the total catches will apply in 2017, and 6% in 2018 and 2019 for catches under the MCRS.

For the fishing sector concerned, the sole fishery is the mainstay of its income. Taking into account that further increases in selectivity are very difficult to achieve without losing further marketable fish, it is necessary to ensure the economic viability of the fishing industry and to avoid disproportionate costs with the implementation of the landing obligation. The exemption was evaluated by STECF in 2015 and is included in the current delegated act, article 3.1(d).

### **5.2.4. *Nephrops* caught by bottom trawls with a mesh size of 80-99mm**

On the basis of scientific background and rationale provided in Annex I the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, *Nephrops* below MCRS up to a maximum of 6% of the total annual catches of *Nephrops*, caught in fisheries conducted with bottom trawls (OTB, TBN, OTT, TB) with a mesh size of 80-99mm in ICES area IV and EU waters of IIa.

Should an exemption for high survivability (5.1.2) for *Nephrops* in IIIa (Skagerrak and Kattegat) not be granted, this de minimis shall also apply for ICES area IIIa, in fisheries conducted with bottom trawls (OTB, TBN, OTT, TB) with a mesh size of 70-99 mm.

The request for an exemption for de minimis is based on article 15.5.c.ii, to avoid disproportionate costs of handling unwanted catches for the fisheries concerned, due to the cost of disposing of *Nephrops* below MCRS. The unwanted catches do not represent more than 5% of the total annual catch of that gear.

A de minimis of 6 % would represent a maximum amount of allowed discards of *Nephrops* of 519 t, in the Scottish fisheries, based on average figures 2012-2014.

The exemption was evaluated by STECF in 2015 and is included in the current delegated act, article 3.1(e).

### **5.2.5 From 2018: Whiting caught using bottom trawls < 100 mm (TR2)**

In the framework of the landing obligation in accordance with article 15 of regulation (EU) No 1380/2013, a de minimis exemption is requested for whiting (*Merlangius merlangus*) below MCRS up to a maximum of 7% of the total annual catches of species that would fall under landing obligation in 2018: *Nephrops*, haddock, sole, Northern prawn, whiting and, as bycatches, plaice, saithe and cod for the trawl fishery using TR2 in ICES area IIIa<sup>1</sup>, IV, and EU-waters of IIa. Further information is provided in Annex J, Ji, Jii and Jiii.

The request for an exemption for de minimis is based on article 15.5.c.i) and ii), due to difficulties to improve selectivity in a short term period and disproportionate costs that a full landing obligation would imply on this fishery.

The estimated total catches of those species combined for the French TR2 fleet is 2791 tonnes (cf. Table 3); indeed, *Nephrops*, sole, Northern prawn and saithe are not caught by French TR2 in the North Sea (only by TR1 for saithe), so they are not included for an estimation of the volume of total catches used to calculate what represents a 7% de minimis exemption for whiting.

A 7% de minimis for whiting on total annual catches of species under landing obligation would thus represent around 195,4 tonnes in 2018 for the French TR2 fleet.

This amount is very limited compared to the whole TAC for whiting in ICES sub areas IIa and IV (13 678 tonnes for 2016).

### **5.2.6 Fish bycatch caught in Northern prawn trawl fishery with sorting grid, with unblocked fish outlet**

On the basis of scientific background and rationale provided in Annex K and Ki the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, for common sole, haddock and whiting below MCRS combined, up to a maximum of 1 % of the total annual catches of species under landing obligation (Norway lobster, common sole, haddock, whiting and Northern prawn) in the

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<sup>1</sup> Background information including annex needs update if fishery in area IIIa is included.

fishery for Northern prawn conducted with bottom trawls (OTB) with a mesh size of at least 35 mm equipped with a species selective grid with bar spacing of maximum 19 mm, with unblocked fish outlet, in ICES area IIIa, may be discarded.

The request for an exemption for de minimis is based on article 15.5.c.i), due to difficulties to further increase the highly selective properties of the gear concerned. As Northern prawn is the only income for users of this gear, they are particularly vulnerable for the potential loss an increase in selectivity would risk to cause.

A de minimis exemption of 1 % for haddock, sole and whiting in 2017 would correspond to total quantities of 5.2 t in 2017 (based on a 2010-2014 baseline of discarded and caught quantities for the species subject to the landing obligation- see annex Ki for specifications). Per species this would mean approximately 1.0 t of haddock, 0,3 t of sole and 3,8 t of whiting in 2017.

### **5.2.7 Fish bycatch caught in *Nephrops* targeted creel fishery**

On the basis of scientific background and rationale provided in Annex L and Li the Scheveningen group recommends that by way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, for common sole, haddock and whiting combined, up to a maximum of 0,5 % of the total annual catches of species under landing obligation (Norway lobster, common sole, haddock, whiting and Northern prawn) in the fishery for *Nephrops* conducted with creels (FPO) in ICES area IIIa, may be discarded.

The request for an exemption for de minimis is based on article 15.5.c.i), due to difficulties to further increase the selectivity of the gear concerned. As *Nephrops* is the only income for users of this gear, they are particularly vulnerable for the potential loss an increase in selectivity would risk to cause.

A de minimis exemption of 0,5 % for haddock, sole and whiting in 2017 would correspond to total quantities of 1.8 t in 2017 (based on a 2012-2014 baseline of discarded and caught quantities for the species subject to the landing obligation- see annex Li for specifications). Per species this would mean approximately 0 t of haddock, 0.4 t of sole and 1.4 t of whiting in 2017.

## **6. Documentation of catches**

In accordance with Article 15(5)(d), specific discard plans can make provisions on documentation of catches.

Catches of species subject to catch limits shall be recorded with the correct scientific species name and/or with the appropriate codes in order to quantify the exact catches, in accordance with the Control Regulation. Documentation should be sufficiently rigorous to enable robust scientific assessments to be undertaken and to allow the application of control methods.

All discards under de minimis exemptions shall be recorded in accordance with the Regulation (EU) No 1224/2009 with appropriate codes denoting species discarded. The utilisation of the de minimis exemption shall be monitored by the competent authority.

The Scheveningen Group may wish to take account of any advice issued by relevant experts groups relating to the documentation of catches in due course including on the matter of fully documenting discards under de minimis exemptions.

## **7. Minimum Conservation Reference Sizes (MCRS)**

In the North Sea and Skagerrak/Kattegat the MCRS are given in Annex XII of Council Regulation (EC) No. 850/98. The MCRS differs for most species between the North Sea and Skagerrak/Kattegat and for this reason the Scheveningen Group considered harmonizing the differing sizes. The majority of the Scheveningen Group members prefer not to harmonize at the moment. The NSAC has not recommended any changes to MCRS.

The Scheveningen group recommends that the MCRS for *Nephrops* in area IIIa should be 105 mm full length (32 mm carapace length and 59 mm tail length) taking into account available information on length at maturity, survivability and discard rates in the fishery, as well as incentives to further increase selectivity.

## **8. Technical rules**

According to Article 15(5)(a) of the Basic Regulation technical specific provisions regarding fisheries or species covered by the landing obligation, such as the technical measures referred to in points (a) to (e) of Article 7(2), aimed at increasing gear selectivity or reducing or/and, as far as possible, eliminating unwanted catches can be included in the discard plan.

The NSAC has no specific technical measures to propose that are linked to implementation of the landing obligation.

The Scheveningen group recommends that the measures referred to in Annex M be included in the discard plan. The measures proposed shall apply to Skagerrak only, e.g. ICES area IIIaN.

These measures were agreed between EU and Norway (in 2011<sup>2</sup>, and repeated in 2012<sup>3</sup>) in order to increase gear selectivity and reduce unwanted catches, and thus support the

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

implementation of a discard ban in Skagerrak that had been agreed between the parties. The technical measures agreed were included in a proposal<sup>4</sup> for a regulation of the European Parliament and of the Council with the purpose to implement a landing obligation in Skagerrak as of 1 January 2013.

However, decision for an EU-regulation implementing a discard ban in Skagerrak in advance of the revised CFP could not be reached. As a transitional arrangement, in order to increase selectivity and harmonise to Norwegian legislation, the technical measures have been introduced within Danish and Swedish national legislation since 2013<sup>5</sup>.

The technical rules were evaluated by STECF in 2015 and are included in the current delegated act, Article 5.

## 9. Adaptation of the Joint Recommendation

Taking into account that the landing obligation constitutes a wholly new regime in the management of fisheries in Europe, and that joint recommendations for specific discard plans are a new management tool, this JR shall remain open to revision and adaptation throughout its duration. It is considered to be the joint responsibility of the Commission and Member States to maintain oversight of the implementation of the provisions of the discard plan following this JR and to call into question any element which may be in need of revision and adaptation at any time.

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3

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.

4

13264/12 PECHE 315 CODEC 2029 - COM(2012) 471 final; Proposal for a Regulation of the European Parliament and of the Council on certain technical and control measures in the Skagerrak and amending Regulation (EC) No 850/98 and Regulation (EC) No 1342/2008.

5

Swedish national legislation: HVMFS 2004:36.

Danish national legislation: Order No. 278 of 24 April 2015 on regulation of fishing activities