

COMMISSION DELEGATED REGULATION (EU) 2019/2201**of 1 October 2019****supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak**

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 2187/2005 ⁽¹⁾, in particular Article 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 came into force. It establishes in Annex V specific provisions regarding technical measures established at regional level for the North Sea, Skagerrak and Kattegat, which also include rules on mesh sizes, associated conditions and by-catches. Article 15 of that Regulation empowers the Commission to adopt delegated acts in order to amend, supplement, repeal or derogate from the technical measures set out in the Annexes to Regulation (EU) 2019/1241, including for the purpose of real-time closures and moving-on provisions.
- (2) Regulation (EU) 2019/1241 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/EC ⁽²⁾ of the European Parliament and of the Council. Such technical measures should specifically contribute to the protection of juveniles and spawning aggregations of marine species through the use of selective fishing gear and measures for the avoidance of unwanted catches.
- (3) Regulation (EU) 2019/1241 does not provide for transitional measures. Therefore, to ensure compatibility between this Delegated Regulation, and Commission Regulation (EU) No 724/2010 ⁽³⁾ and Regulation (EU) 2019/1241 that has repealed in section 3 of Title IV of Chapter IV of Regulation (EC) No 1224/2009 ⁽⁴⁾, it is necessary to apply the conditions established in Regulation (EU) 2019/1241, whilst at the same time taking into account the exceptional circumstances involved.
- (4) Based on the information provided by the Member States, the Scientific, Technical and Economic Committee for Fisheries (STECF) positively assessed ⁽⁵⁾ the information provided by the regional group in support of the technical measures included in the joint recommendation. This joint recommendation was developed and submitted by the Member States and assessed by STECF before the entry into force of Regulation (EU) 2019/1241 and therefore did not refer to that Regulation. Nevertheless, in view of the exceptional circumstances, the Commission considers that on the basis of information available to it at this stage in the joint recommendation and STECF assessment there does not appear to be any element indicating that the additional proposed technical measures would fail to comply with the requirements established for technical measures in Article 15 of Regulation (EU) 2019/1241.

⁽¹⁾ OJ L 198, 25.7.2019, p. 105.

⁽²⁾ 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).

⁽³⁾ Commission Regulation (EU) No 724/2010 of 12 August 2010 laying down detailed rules for the implementation of real-time closures of certain fisheries in the North Sea and Skagerrak (OJ L 213, 13.8.2010, p. 1).

⁽⁴⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 43, 22.12.2009, p. 1).

⁽⁵⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

- (5) Where Member States having a direct management interest in a fishery consider that measures are needed to ensure the protection of aggregations of juveniles through real time closures of fishing areas, the Commission is empowered to adopt according to Article 15(2) Regulation (EU) 2019/1241 such measures by means of delegated acts upon a joint recommendation submitted by those Member States.
- (6) Article 19 of Regulation (EU) 2019/1241 sets out specific elements to be included in a joint recommendation in relation to the creation of real-time closures.
- (7) According to paragraph (1)(d) of Article 19 of Regulation (EU) 2019/1241, a joint recommendation submitted in relation to the creation of real-time closures shall include control and monitoring arrangements. The Agreed Record of the Conclusions between the European Union and Norway of 6 September 2018 lays down the procedures and sampling methodology for the adoption of real-time closures for Northern prawn (*Pandalus borealis*) in the Skagerrak.
- (8) Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the Skagerrak fisheries. After consulting the North Sea Advisory Council, those Member States submitted on 7 March 2019 a joint recommendation to the Commission for a delegated act implementing the measures set out in that Agreed Record into Union law. The joint recommendation was amended on 26 August 2019.
- (9) The Fisheries Expert Group was consulted on the joint recommendation on 31 July 2019.
- (10) STECF considered that the real-time closures system proposed has potential positive conservation benefits in line with the objective of Regulation (EU) 2018/973 of the European Parliament and of the Council ⁽⁶⁾. Therefore, it would seem appropriate to introduce it into the Skagerrak as per the specifications set out in the joint recommendation as submitted by the Scheveningen group. The effectiveness of the real-time closures system should be subject to careful monitoring and evaluated according to the review mechanism set out in the JR. A specific monitoring programme of the size selective combination Nordmøre grid to ensure it consistently maintains catches of small *Pandalus* below the trigger level should be built into the system.
- (11) The joint recommendation suggests that vessels fishing for Northern prawn using demersal trawls within a mesh size range 35-69 mm equipped with Nordmøre sorting grids with a maximum bar spacing of 19mm should be allowed to continue fishing for that species in areas subject to real time closures.
- (12) Regulation (EU) No 724/2010 lays down detailed rules for the implementation of real-time closures of certain fisheries in the North Sea and Skagerrak. Article 7 of Regulation (EU) No 724/2010 provides that, when the percentage of juveniles in a catch reaches a certain trigger level, the coastal Member State concerned is to prohibit fishing in the area concerned with any fishing gear other than: pelagic trawls, purse seines, driftnets and jiggers targeting herring, mackerel, and horse mackerel; pots; scallop dredges; and gillnets.
- (13) The STECF has evaluated demersal trawls within a mesh size range 35-69 mm targeting Northern prawn equipped with Nordmøre sorting grids with a maximum bar spacing of 19mm and concluded that those trawls are highly selective and effective at reducing by-catches of juvenile fish specimens ⁽⁷⁾. In light of that advice, it is appropriate to add the use of that fishing gear in the Northern prawn fishery to the list of exempted gears set out in Article 7(1) of Regulation (EU) No 724/2010.
- (14) While STECF confirms the effectiveness of Nordmøre grids in reducing by-catches of juvenile fish specimens, it further notes that in terms of minimising catches of juvenile Northern prawn, the effectiveness of gear fitted with a combination Nordmøre grid needs to be ascertained. Based on the STECF opinion, it is appropriate to provide for specific monitoring programmes in order to verify that this gear consistently maintains the proportion of catches of juvenile Northern prawn at a low level.
- (15) STECF confirms the conservation benefits of using gears fitted with Nordmøre grids when used to target Norway lobster (*Nephrops norvegicus*). In light of that advice, and recognising its proven ability to minimise by-catches of cod, it is appropriate to add the use of that fishing gear in the Norway lobster fishery to the list of exempted gears in Article 7(1) of Regulation (EU) No 724/2010.

⁽⁶⁾ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008 (OJ L 179, 16.7.2018, p. 1).

⁽⁷⁾ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf>

- (16) STECF notes however, that the effectiveness of such devices in the Norway lobster fishery is dependent on the length structure of the by-catch species encountered during fishing operations and that this structure will determine whether trigger catch levels are reached. To ensure that this gear consistently maintains by-catches of juvenile specimens below the trigger level, and to permit Member States to collect additional data as indicated by STECF, fishing operations using such gears in closed areas should be subject to a dedicated monitoring programme.
- (17) On the substance, in the light of all the above findings, the Commission considers it to be a pragmatic but at the same time prudent approach to fisheries management to add this gear to the list of gears exempted in Article 7(1) of Regulation (EU) No 724/2010 to allow exemptions on a temporary basis, on the understanding that not to do so, would prevent the collection of data. Further, Nordmøre grids used in *Nephrops* fisheries have a proven ability to minimise cod by-catches to very low levels. Given the current status of the North Sea cod stock, the Commission considers therefore the use of such gears as appropriate to reduce unwanted catches of cod as far as possible.
- (18) Considering that Regulation (EU) 2019/1241 has repealed in section 3 of Title IV of Chapter IV of Regulation (EC) No 1224/2009 ⁽⁸⁾ the empowering provision on the basis of which Commission Regulation (EU) No 724/2010 was enacted, thereby impeding the possibility of further amendments to that act, given that it is necessary to provide for the implementation of the measures contained in the Agreed Record as submitted in the joint recommendation, it is appropriate to adopt the requisite changes through the inclusion of a corresponding provision by way of this Delegated Regulation.
- (19) The measures suggested by the joint recommendation are in line with Article 18(3) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽⁹⁾ and with Article 15(2), (4) and (5) and Article 19 of Regulation (EU) 2019/1241, and may thus be included in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes detailed rules for the implementation of real-time closures of fisheries in the Skagerrak for the protection of juveniles of Northern prawn (*Pandalus borealis*).

Article 2

Definitions

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

- (a) 'Skagerrak' means the area bounded on the west by a line drawn from the Hanstholm lighthouse to the Lindesnes lighthouse and on the south by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from this point to the nearest point on the Swedish coast;
- (b) 'haul' means the activity between the deployment and retrieval of a net.
- (c) 'Joint Deployment Plan' means a plan specified under a Specific Control and Inspection Programme established pursuant to Article 95 of Regulation (EC) No 1224/2009.
- (d) 'Juveniles of Northern Prawn' means specimens of Northern prawn (*Pandalus borealis*) smaller than 14,8 mm carapace length. Carapace length shall be measured as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace.
- (e) 'Nordmøre grid' is a selectivity device inserted in a trawl which consists of an inclined grid with an escape exit. The device allows the passage of shrimp or *Nephrops* whilst excluding unwanted by-catches of fish by guiding them out of the escape exit.

⁽⁸⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 43, 22.12.2009, p. 1).

⁽⁹⁾ 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 (OJ L 354, 28.12.2013, p. 22).

*Article 3***Catch trigger level**

The catch level which triggers real-time closures of fisheries under this Regulation shall be 20 % by weight of juveniles of Northern prawn compared to the overall catch of Northern prawn, in a haul.

*Article 4***Inspections**

1. The source of information to monitor trigger catch levels shall be inspections at sea undertaken by competent control authorities on fishing vessels targeting Northern prawn (*Pandalus borealis*) with demersal trawls with a mesh size of at least 32mm.
2. The coastal Member State, and/or the Member State participating in a joint operation under a Joint Deployment Plan, shall identify areas and time periods where there is a risk of reaching the catch trigger level.
3. Inspections shall be carried out, in particular, in the areas identified in accordance with paragraph 2, to measure whether the percentage of juveniles of Northern Prawn reaches the catch trigger level.
4. Control authorities shall inspect catches of Northern prawn using the sample procedure outlined in Annex I.
5. Inspection details and the quantity of juveniles of Northern prawn in the sample shall be recorded in a sampling report as set out in Annex II. The sampling report form, presented in Annex II shall be duly completed immediately after the sample has been measured.
6. If the quantity of Northern prawn in a haul is less than 100 kg, that haul shall not be taken as a basis for recommending a closure.

*Article 5***Trigger level notifications**

1. When the results of the samples collected in accordance with Article 4(4) from at least two hauls taken within a time span of 96 hours show that the quantity of juveniles of Northern prawn reaches the catch trigger level, the sampling report (s) referred to in Article 4(5) shall be completed immediately and sent to the contact point of the coastal Member State, which shall consider whether a RTC should be established. The transmission of the sampling reports may be complemented by a recommendation from the control authorities responsible for the inspections to establish a RTC.
2. If the proportion of juveniles of Northern prawn is more than 40 % of the overall catch of that species, control authorities may recommend a real time closure on the basis of one sample.

*Article 6***Closure of fisheries**

1. On the basis of the sampling reports referred to in Article 4(4), the coastal Member State concerned may prohibit fishing for Northern prawn with demersal trawls with a mesh size of at least 32mm in an area defined in accordance with Article 7 ('the closed area').
2. Notwithstanding paragraph 1, trawl vessels targeting Northern prawn with a size selective Nordmøre grid as referred to in Annex III may be allowed to fish for Northern prawn in the closed area. Vessels wishing to use that exemption shall notify their intention and gear use to the Fisheries Monitoring Centre of the coastal Member State before entering the closed area.
3. Vessels using a size selective Nordmøre grid as referred to in Annex III and operating within a closed area shall be subject to a specific monitoring programme to be established by Member States in order to verify the proportion of juveniles of Northern Prawn in the overall catch of that species. The results from those programmes shall be transmitted to the Commission no later than 6 months following the starting date of the programme and 12 months thereafter.

4. If the inspection of a vessel using a size selective Nordmøre grid as referred to in Annex III in a closed area shows a catch of juveniles of Northern prawn which reaches the trigger catch level, that vessel shall move out of the closed area for the remainder of the closure period.

5. However, the vessel may return to the closed area after adjusting the gear and remain in the area, provided it obtains the permission of the competent control authorities. In that case, the next haul of the vessel shall be inspected by the control authorities in order to ensure that the catch of juveniles of Northern prawn do not reach the trigger catch level.

Article 7

Geographical extent of the closed area

The geographical boundaries of a closed area shall be established on the basis of the following criteria:

- (a) The area definition shall take into account, in particular, the haul trajectories that led to the closure decision, the depth curves, the catch composition and the fishing activity;
- (b) The closed area shall not exceed 50 square nautical miles.

Article 8

Duration of the real time closure

1. The real time closure shall enter into force at 24.00 hours Universal Coordinated Time (UTC) on the day of decision. The adoption of the decision should be timed to provide sufficient time for vessels operating in the vicinity of the area to be informed in accordance with Article 7.

2. The area shall be closed for 14 days after which it shall automatically cease to apply at midnight UTC.

Article 9

Neighbouring coastal states

1. Coastal Member States may seek cooperation with neighbouring Coastal States to initiate a real time closure using sample results originating from both sides of the border.

2. If the area to be closed straddles the territory and the waters under the sovereignty or jurisdictions of two or more Coastal Member States, the Coastal Member State shall without delay inform the neighbouring Coastal Member State and third countries of the findings and the decision to close the relevant area. The neighbouring Coastal State may then consider a closure in its waters.

3. A coastal Member State may invite neighbouring Coastal States to take samples on its behalf in waters under their sovereignty or jurisdiction.

Article 10

Information

1. After deciding a real time closure in accordance with Article 6, the coastal Member State shall without delay:

- (a) post a notification of the real time closure on its website including a map, coordinates and the underlying sampling report(s), and
- (b) inform vessels in the vicinity of the closed area to the extent possible, and
- (c) inform, by means of electronic notification, the Directorate of Fisheries in Norway, the Commission and the Fisheries Monitoring Centres in relevant Member States and third countries whose fishing vessels are authorised to operate in the area concerned. The notification shall contain information on the date and time when the closure enters into force, the coordinates delimiting the closure and the relevant web address containing additional information.

2. Member States shall take the necessary measures to ensure that their Fisheries Monitoring Centres inform the vessels flying their flag that are affected by the real-time closure.

3. Upon request, the coastal Member State concerned shall provide the Commission with the detailed sampling reports and justifications underlying the real-time closure decided in accordance with Article 7.

Article 11

Demersal trawlers with Nordmøre grids

1. Without prejudice to Article 7 of Regulation (EU) No 724/2010, demersal trawlers utilising the following gears are exempt from the prohibition on fishing emanating from the fulfilment of the conditions stipulated in that provision:

- demersal trawls within a mesh size of at least 32 mm targeting Northern prawn (*Pandalus borealis*) which are equipped with a Nordmøre sorting grid with a maximum bar spacing of 19mm without a fish retention device;
- demersal trawls with a mesh size greater than 70mm targeting Norway lobster (*Nephrops norvegicus*) equipped with a Nordmøre grid with a maximum bar spacing of 35mm without a fish retention device.

2. Flag Member States of vessels using gears referred to in paragraph 1 and operating within a real time closure shall establish a specific monitoring programme to verify that catches do not reach the trigger level. If catches reach the trigger level, those vessels shall move out of the closed area for the remainder of the closure period. The results from those programmes shall be transmitted to the Commission no later than 6 months following the starting date of the programme and thereafter every 12 months. If the results from such programmes show that catches exceed the trigger levels, then these gears should no longer be exempted.

Article 12

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

It shall apply from 1 January 2020.

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

Done at Brussels, 1 October 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

SAMPLING METHODOLOGY

Samples shall be taken and measured in accordance with following provisions.

1. Whenever possible, samples shall be taken and measured in close cooperation with the master of the fishing vessel and his crew. The master of the fishing vessel and his crew shall be encouraged to participate in the process. They shall also be encouraged to share any information that could be relevant with respect to the delimitation of a closed area.
 2. The total catch in the haul shall be used as the basis for the catch composition estimation.
 3. A sample shall be taken in accordance with following procedure:
 - a) The sample must be taken in such a way that it reflects the catch composition of *Pandalus* in the haul. To achieve that, the skipper, or a person he designates, shall assist when the sample is taken.
 - b) The minimum size of the sample shall be 2 kg or 1 litre of *Pandalus*.
 4. The quantity of *Pandalus* under trigger length shall be calculated as a percentage of the total number of *Pandalus* in the sample.
 5. The sampling report form, presented in Annex II shall be duly completed immediately after the sample has been measured.
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ANNEX II

REAL-TIME CLOSURES — SAMPLING REPORT TO THE COASTAL STATE

PANDALUS in relation to trigger length.

| | | | | | | |
|--|--|------------------------------|---------------------|-------------------------|--|---|
| Inspection/ observation details | Inspection platform | Inspector/observer name | | Inspector/observer name | Date and time ⁽¹⁾ of inspection/observation | Position ⁽²⁾ of inspection/observation |
| | | | | | | |
| Fishing ves- sel details | Name | Call sign | Registration number | Flag state | Type of gear Single/Dou- ble | Mesh size mm |
| | | | | | | |
| Selection measures | Grid (for sorting out Pandalus) | Grid, mm | Other | | Collection bag | Mesh size in collection bag |
| | | | | | | |
| Fishing op- eration de- tails | Start | Date and time ⁽¹⁾ | | Position ⁽²⁾ | | |
| | | | | | | |
| | Stop | Date and time ⁽¹⁾ | | Position ⁽²⁾ | Duration of fishing op- eration ⁽³⁾ | |
| | | | | | | |
| Catch details | Estimated total catch in the haul (kg) | | | | | |
| | Estimated Pandalus catch in the haul (kg) | | | | | |
| | Size of Pandalus sample (kg/litre) | | | | | |
| | Total number of Pandalus in sample | | | | | |
| | Number of Pandalus below trigger length in sample | | | | | |
| | % of undersized Pandalus (number below the trigger length/total number) | | | | | |
| Observa- tions and additional information | Additional information from other sources, e.g. received from master. | | | | | |
| Inspector Signature | Not required if completed electronically and transmitted to coastal state by email | | | | | |

⁽¹⁾ dd/mm/yy hh mm (local time 24 hours).⁽²⁾ e.g. 56°24' N 01° 30' E.⁽³⁾ hh mm.

*ANNEX III***SELECTIVE GRID IN THE FISHERY FOR PANDALUS TO BE ALLOWED IN THE RTC**

Bottom trawl with a mesh size in the extension piece and codend of at least 35 mm, equipped with a sorting grid with a maximum bar spacing of 19 mm in the upper part of the grid and a minimum bar spacing of 9,5 mm in the lower part of the grid. Behind the lower part of the grid is an unblocked outlet to the seafloor. Mesh size of at least 35 mm applies posterior to the sorting grid.
