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2016/0260 (NLE)

Proposal for a

COUNCIL REGULATION

**fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks
applicable in the Baltic Sea**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In accordance with Regulation (EU) No 1380/2013 of 11 December 2013 on the Common Fisheries Policy, the exploitation of living marine biological resources shall restore and maintain populations of harvested species above levels which can produce the maximum sustainable yield. One important tool in this respect is the annual fixing of fishing opportunities in the form of total allowable catches (TACs) and quotas.

The objective of this proposal is to fix, for the commercially most important fish stocks in the Baltic Sea, the fishing opportunities for Member States for 2017. With a view to simplifying and clarifying the annual TAC and quota decisions, fishing opportunities in the Baltic Sea have been fixed by a separate Regulation since 2006.

- **Consistency with existing policy provisions in the policy area**

The proposal establishes quotas at the levels consistent with the objectives of Regulation (EU) No 1380/2013 of 11 December 2013 on the Common Fisheries Policy. It takes into account the recent changes introduced by the Regulation (EU) 2015/812 which abolished the fishing effort system in the Baltic Sea.

- **Consistency with other Union policies**

The proposed measures are in accordance with the objectives and rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 43(3) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the Union's exclusive competence as referred to in Article 3(1)(d) TFEU. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the proportionality principle for the following reasons.

The Common Fisheries Policy is a common policy. According to Article 43(3) TFEU it is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities.

The Council Regulation in question allocates fishing opportunities to Member States. Having regard to Article 16(6) and (7) and Article 17 of Regulation (EU) No 1380/2013, Member States are free to allocate such opportunities among regions or operators according to the criteria set in the mentioned Articles. Therefore, Member States have ample room for manoeuvre on decisions related to the social/economic model of their choice to exploit their allocated fishing opportunities.

The proposal has no new financial implications for Member States. This particular Regulation is adopted by the Council every year, and the public and private means to implement it are already in place.

- **Choice of the instrument**

Proposed instrument: Regulation.

This is a proposal for fisheries management on the basis of Article 43(3) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Baltic Sea Advisory Council (BSAC) was consulted on the basis of the Communication from the Commission concerning Consultation on the Fishing Opportunities for 2017 under the Common Fisheries Policy COM(2016) 396 final). The scientific basis for the proposal was provided by the International Council for the Exploration of the Sea (ICES). The preliminary views expressed on all the fish stocks concerned were considered and taken into account as far as possible in the proposal without contradicting existing policies or causing any deterioration in the state of vulnerable resources.

The scientific advice on catch limitations was also discussed with MS in the regional forum BALTFISH in June 2016.

- **Collection and use of expertise**

The scientific organisation consulted was ICES.

The Union asks ICES each year for scientific advice on the state of important fish stocks. The advice received covers all Baltic stocks for which TACs are proposed.

- **Impact assessment**

The total amount of the Baltic fishing opportunities expressed in tonnes proposed for 2017 will increase by 14% when compared to 2016 and will be set at the level of approximately 705 thousand tonnes¹. When calculated on the stock basis, an increase is observed in quotas of central, western, Gulf of Bothnia herring and sprat stocks – on average by 18%, Main Basin salmon – 10%, plaice – 95%. While decreases are observed for Gulf of Riga herring stock – by 21%, Gulf of Finland salmon – by 28% and eastern cod stock – by 38%.

The proposal reflects not only short-term concerns but is also part of a longer-term approach whereby the level of fishing is gradually reduced to and maintained at long-term sustainable levels. The approach taken in line with the proposal will therefore, in the medium to long term, result in a stable fishing effort and higher quotas. The long term effects of the approach are expected to lead to more sustainable fishing activities and increased landings

- **Regulatory fitness and simplification**

The proposal continues to provide for simplification of administrative procedures for public authorities (EU or national), as it contains provisions similar to those of the 2016 Regulation on the fishing opportunities in the Baltic Sea.

The present regulation simplifies the fisheries management as it no longer limits the fishery by way of establishing fixed number of days at sea that fishing vessels could spend fishing in previous years. This will reduce the administrative burden on the MS. As concluded by scientists the absence of the fishing effort limitation will not jeopardise the stock status as the effective monitoring of the quota uptake is sufficient to control the fishing pressure on the stocks.

¹ Excluding eastern cod and salmon stocks

The proposal concerns an annual Regulation for the year 2017 and therefore does not include a revision clause.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The monitoring of the use of fishing opportunities in the form of TACs and quotas has been established by Council Regulation (EC) No 1224/2009.

- **Detailed explanation of the specific provisions of the proposal**

The proposal fixes for 2017 the fishing opportunities for certain stocks or groups of stocks for Member States fishing in the Baltic Sea.

The landing obligation for stocks caught in certain fisheries became applicable from 1 January 2015. In the Baltic Sea these fisheries cover stocks under TACs and quotas in this Regulation, namely: small pelagic fisheries (herring and sprat stocks), salmon fisheries (salmon stocks), as well as, cod fisheries (cod stocks), where the species define the fishery. From 1 January 2017 catches of all species in fisheries in Union waters of the Baltic Sea subject to catch limit, i.e. also of species that do not define the fisheries but are covered by TACs, e.g. plaice, will be covered by the landing obligation. With introduction of the landing obligation, in accordance with Article 16(2) of Regulation (EU) No 1380/2013, the fishing opportunities proposed shall reflect the change from amount landed to amount caught. Such change has been exercised for 2015 fishing opportunities regulation and is no longer applicable for the stocks mentioned above with the exception of plaice stock. The fishing opportunities for plaice stock will reflect the change from amount landed to amount caught starting from 2017.

The new multiannual plan for the fisheries in the Baltic Sea has entered into force on 20 July 2016². Under the provisions of this plan, the fishing opportunities shall be fixed in accordance with the targets of the plan and shall comply with target fishing mortality ranges set out therein. In cases when the stock's biomass is below the reference points established in the plan, the fishing opportunities shall be fixed at a level corresponding to the fishing mortality that is reduced proportionally taking into account the decrease of the stock's biomass.

The fishing opportunities should also be fixed in accordance with Articles 16(1) (referring to the principle of relative stability) and 16(4) (referring to the objectives of the Common Fisheries Policy and the rules provided for in multiannual plans).

The proposed figures reflect current scientific advice and consultation with the Baltic Sea Advisory Council. Where relevant, in order to set the EU quotas for stocks shared with the Russian Federation, the respective quantities of these stocks were deducted from the TACs advised by ICES.

The TACs and quotas allocated to Member States are shown in Annex I to the Regulation.

² Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007, OJ L 191, 15.7.2016, p. 1–15

All five pelagic stocks (four stocks of herring and one sprat stock), plaice and Main Basin salmon in the Baltic Sea are to be fished at MSY levels in 2017; therefore the TACs proposed correspond either to both parts of the MSY fishing mortality range as referred to in Articles 4(2), (3) and (4) of the Regulation (EU) 2016/1139 or MSY approach used by ICES. The TACs for Gulf of Finland salmon and eastern cod correspond to the approach developed by ICES which is applied to data limited stocks. The advice and the TAC for western cod stock are still to be clarified by scientific institutions.

Council Regulation (EC) No 847/96 introduced additional conditions for year-to-year management of TACs, including flexibility provisions under Articles 3 and 4 for precautionary and analytical stocks respectively. Under its Article 2, when fixing the TACs, the Council shall decide to which stocks Articles 3 and 4 shall not apply, in particular on the basis of the biological status of the stocks. More recently, the flexibility mechanism was introduced for all stocks covered by the landing obligation by Article 15(9) of Regulation (EU) No 1380/2013. Therefore, in order to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of living marine biological resources and hinder the achievement of the objectives of the Common Fisheries Policy, it should be clarified that Article 3 and 4 of Regulation (EC) No 847/96 apply only where Member States do not use the year-to-year flexibility provided for in Article 15(9) of Regulation 1380/2013.

Proposal for a

COUNCIL REGULATION

fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 43(3) of the Treaty provides that the Council is to adopt measures on the fixing and allocation of fishing opportunities, on a proposal from the Commission.
- (2) Article 6 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council³ requires that measures for the conservation and sustainable exploitation of marine biological resources be adopted taking into account available scientific, technical and economic advice including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries ('STECF') and other advisory bodies, as well as any advice received from Advisory Councils established for the relevant geographical areas or fields of competence and including any joint recommendations made by Member States.
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be allocated to Member States in such a way as to ensure the relative stability of fishing activities of each Member State for each stock or fishery and having due regard to the objectives of the Common Fisheries Policy (CFP) set out in Regulation (EU) No 1380/2013.
- (4) The total allowable catches (TACs) should therefore be established, in line with Regulation (EU) No 1380/2013, on the basis of the available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation with stakeholders.
- (5) The fishing opportunities for stocks subject to specific multiannual plans should be established in accordance with the rules laid down in those plans. Consequently, catch limits for the cod, herring and sprat stocks in the Baltic Sea should be established in accordance with the rules laid down in Regulation (EU) No 2016/1139⁴.

³ 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).

⁴ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting

- (6) Due to changes in the biology of the eastern cod stock, the International Council for the Exploration of the Sea ('ICES') has not been able to establish the biological reference points for cod stocks in ICES subdivisions 25-32, and has instead advised that the TAC for that cod stock be based on the data limited approach. The absence of biological reference points made it impossible to follow the rules for fixing and allocating the fishing opportunities for cod stock in those subdivisions set out in Regulation (EU) No 2016/1139, As failing to fix and allocate fishing opportunities could seriously threaten the sustainability of the cod stock, it is appropriate, therefore, in order to contribute to the achievement of the objectives of the CFP, to fix the TAC on the basis of the data limited approach, at a level corresponding to the approach developed and advised by ICES.
- (7) Regulation (EU) No 1380/2013 sets the objective of the CFP to achieve the maximum sustainable yield exploitation rate by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.
- (8) The use of fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009⁵, and in particular to Articles 33 and 34 thereof concerning the recording of catches and fishing effort, and to the transmission of data on the exhaustion of fishing opportunities to the Commission. This Regulation should therefore specify the codes relating to landings of stocks subject to this Regulation that are to be used by Member States when sending data to the Commission.
- (9) Council Regulation (EC) No 847/96⁶ introduced additional conditions for year-to-year management of TACs including, under Articles 3 and 4, flexibility provisions for precautionary and analytical TACs. Under Article 2 of that Regulation, when fixing the TACs, the Council is to decide to which stocks Articles 3 or 4 shall not apply, in particular on the basis of the biological status of the stocks. More recently, the year-to-year flexibility mechanism was introduced by Article 15(9) of Regulation (EU) No 1380/2013 for all stocks that are subject to the landing obligation. Therefore, in order to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of living marine biological resources, hinder the achievement of the objectives of the CFP and deteriorate the biological status of the stocks, it should be established that Articles 3 and 4 of Regulation (EC) No 847/96 apply to analytical TACs only where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.
- (10) In order to avoid interruption of fishing activities and to ensure the livelihoods of Union fishermen, this Regulation should apply from 1 January 2017. For reasons of urgency, this Regulation should enter into force immediately after its publication,

those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007, OJ L 191, 15.7.2016, p. 1–15

⁵ 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 343, 22.12.2009, p. 1](#)).

⁶ Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas ([OJ L 115, 9.5.1996, p. 3](#)).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation fixes the fishing opportunities for certain fish stocks and groups of fish stocks in the Baltic Sea for 2017.

Article 2

Scope

This Regulation shall apply to Union fishing vessels operating in the Baltic Sea.

Article 3

Definitions

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

- (1) 'ICES' means International Council for the Exploration of the Sea;
- (2) 'Baltic Sea' means ICES zones IIIb, IIIc and IIId;
- (3) 'subdivision' means an ICES subdivision of the Baltic Sea as defined in Annex I to Council Regulation (EC) No 2187/2005⁷;
- (4) 'fishing vessel' means any vessel equipped for commercial exploitation of marine biological resources;
- (5) 'Union fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Union;
- (6) 'stock' means a marine biological resource that occurs in a given management area;
- (7) 'total allowable catch' (TAC) means the quantity of each stock that can be caught over the period of a year, for fisheries that are subject to a landing obligation pursuant to Article 15 of Regulation (EU) No 1380/2013;
- (8) 'quota' means a proportion of the TAC allocated to the Union, a Member State or a third country.

⁷

Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound ([OJ L 349, 31.12.2005, p. 1](#)).

CHAPTER II

FISHING OPPORTUNITIES

Article 4

TACs and allocations

The TACs, the quotas and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

Article 5

Special provisions on allocations of fishing opportunities

The allocation of fishing opportunities among Member States, as set out in this Regulation, shall be without prejudice to:

- (a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;
- (b) deductions and reallocations made pursuant to Article 37 of Regulation (EC) No 1224/2009;
- (c) additional landings allowed under Article 3 of Regulation (EC) No 847/96 or under Article 15(9) of Regulation (EU) No 1380/2013;
- (d) quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96 or transferred under Article 15(9) of Regulation (EU) No 1380/2013;
- (e) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

Article 6

Conditions for landing of catches and by-catches

1. Catches of species which are subject to catch limits and which have been caught in fisheries specified in Article 15(1) of Regulation (EU) No 1380/2013 are subject to the landing obligation, as established in Article 15 of that Regulation.
2. The stocks of non-target species within the safe biological limits referred to in Article 15(8) of Regulation (EU) No 1380/2013 are identified in the Annex for the purpose of the derogation from the obligation to count catches against the relevant quota provided for in that Article.

CHAPTER III

FINAL PROVISIONS

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States send data relating to quantities of stocks caught or landed to the Commission, they shall use the stock codes set out in the Annex to this Regulation.

Article 8

Flexibility

1. Except where specified otherwise in the Annex to this Regulation, Article 3 of Regulation (EC) No 847/96 shall apply to stocks subject to precautionary TACs and Article 3(2) and (3) and Article 4 of that Regulation shall apply to stocks subject to an analytical TAC.
2. Article 3(2) and (3) and Article 4 of Regulation (EC) No 847/96 shall not apply where a Member State uses the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013.

Article 9

Entry into force

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

It shall apply from 1 January 2017.

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

Done at Brussels,

For the Council
The President