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2017/0147 (NLE)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EU) 2017/127 as regards certain fishing opportunities**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

Council Regulation (EU) No 2017/127 fixes for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union vessels, in certain non-Union waters. These fishing opportunities are usually amended several times during the period in which they are in effect.

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

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

- **Consistency with other Union policies**

The measures proposed are consistent with other Union policies, in particular with the policies in the field of environment.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union.

The Union's obligations for sustainable exploitation of living aquatic resources arise from obligations set out in Article 2 of the new basic regulation of the CFP.

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

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

- **Proportionality**

The proposal complies with the proportionality principle for the following reason: the CFP is a common policy. According to Article 43(3) of the Treaty it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

- **Choice of the instrument**

Proposed instrument: regulation.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

The Proposal takes into account the feedback from the stakeholders, Advisory Councils, the national administrations, fishermen organisations and non-governmental organisations.

- **Collection and use of expertise**

The Proposal is based on the scientific advice of the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF).

- **Impact assessment**

The scope of the fishing opportunities regulation is circumscribed by Article 43(3) of the Treaty.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

#### **4. BUDGETARY IMPLICATIONS**

The proposed measures will have no budgetary implications.

#### **5. OTHER ELEMENTS**

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

The proposed amendments seek to modify Regulation 2017/127 as described below.

##### Seabass

Currently catches of seabass are prohibited, with a derogation applying to a limited number of vessels fishing with specific gears. The derogation *inter alia* covers vessels that have recorded catches of sea bass over the period from 1 July 2015 to 30 September 2016 using hooks and lines or fixed gillnets, provided that they continue fishing using the same gear categories. As the historic catch record is linked to a specific vessel, this may cause practical problems when the operator replaces the vessel, as the new vessel would not have a historic catch record and thus would not be covered by the derogation. Therefore, it should be clarified that in such cases the entitlement may be transferred to another vessel, while not increasing the number of Union fishing vessels subject to this derogation and their overall fishing capacity. Transfers of entitlements to another vessel should be implemented in accordance with the national rules in place, due to the fact that Member States apply different systems for such transfers.

##### Sandeel

In 2017 ICES in its advice and following the 2016 benchmark amended the sandeel management areas. Some of these revised management areas do not coincide with the Union waters in the North Sea. Sandeel management area 3r is mainly located in the Norwegian waters, however part of it also appears in the Union waters, with some important fishing banks straddling across the management areas 2r and 3r. On this basis, it is appropriate to ensure that EU fishermen can access sandeel banks located in the Union waters of the management area 3r, by extending the fishing opportunities established for management area 2r to include also the Union waters of the management area 3r.

##### Sprat

ICES provides its annual advice for sprat (*Sprattus sprattus*) in the North Sea covering the period 1 July to 30 June. It is therefore appropriate to let the TAC for sprat follow the advice

year. According to ICES advice, catches of sprat in the North Sea should be no more than 170 387 tonnes in the period from 1 July 2017 to 30 June 2018. The fishing opportunities for sprat should therefore be set accordingly.

#### Mediterranean swordfish

During the 2016 ICCAT Annual Meeting held in Vilamoura Portugal, the ICCAT Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities (CPCs) took a decisive step to address the alarming situation of Mediterranean swordfish through the adoption of a 15 years Recovery plan (ICCAT Recommendation [16-05]).

The European Union, by letter addressed to the ICCAT Secretariat in December 2016, confirmed that it would implement the provision of ICCAT Recommendation [16-05] as of 1 January 2017. Furthermore, the European Union confirmed that it would implement the closure period referred to under paragraph 11 of ICCAT Recommendation [16-05] during the period 1 January to 31 March, starting in 2017.

With the adoption of the Recommendation [16-05] ICCAT set a TAC for Mediterranean swordfish of 10 500 tonnes. The TAC was however not allocated to the CPCs of ICCAT and hence the Union's share was at the time of publishing Council Regulation (EU) 2017/127 undetermined. ICCAT established a Working Group in order to define a fair and equitable allocation scheme of the TAC for Mediterranean swordfish, and to establish a CPC quota for 2017 plus the mechanism for managing the TAC.

During the meeting of this Working Group in Madrid 20-22 February 2017 an agreement was reached between the Parties on the quota allocation for 2017 and a compromise was found for managing the quota uptake for 2017. As part of that compromise, the Union's share was fixed at 70.756% of the ICCAT TAC, amounting 7 410.48 tonnes in 2017.

It is appropriate to transpose into EU law the Union's share and to define the quotas for Member States, based on the historic catches during a reference period of 2012-2015, which was considered reliable.

#### Northern prawn

In March 2017 ICES issued the advice for catches of Northern prawn (*pandalus borealis*) in ICES division IVa East and subdivision 20 (northern North Sea, in the Norwegian Deep and Skagerrak). Following the consultations with Norway, it was decided that the allocation of Northern prawn for the EU in Skagerrak would be 3 856 tonnes.

#### Associated by-catches

Council Regulation (EU) 2017/595 amending Regulation (EU) 2017/127 as regards certain fishing opportunities (the first amendment to the fishing opportunities regulation) removed the fishing opportunities table for Common dab and European flounder for Union waters of IIa and IV. Therefore, it is appropriate to remove Common dab from the footnotes where it is mentioned as associated species, whose by-catches were counted under the same quota subject to a certain percentage ceiling.

Proposal for a

## COUNCIL REGULATION

### amending Regulation (EU) 2017/127 as regards certain fishing opportunities

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) Council Regulation (EU) 2017/127<sup>1</sup> fixes for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union vessels, in certain non-Union waters.
- (2) The derogation allowing catches of sea bass with certain gear categories is linked to the historic record of catches with those gears, it should be clarified that this entitlement to the derogation is maintained when fishing vessels are replaced, while ensuring that the number of vessels covered by the derogation and their overall fishing capacity do not increase.
- (3) In 2017, the International Council for the Exploration of the Sea (ICES) in its advice and following the 2016 benchmark amended the sandeel management areas. The sandeel management area 3r is mainly located in the Norwegian waters, however part of it also appears in the Union waters, with some important fishing banks straddling across the management areas 2r and 3r. It is appropriate to ensure that EU fishermen can access sandeel banks located in the Union waters of the management area 3r. The fishing opportunities established for management area 2r should thus also include the Union waters of the management area 3r.
- (4) On 27 March 2017, ICES issued advice for catches of Northern prawn (*Pandalus borealis*) in ICES division IVa East and ICES subdivision 20 (northern North Sea, in the Norwegian Deep and Skagerrak). On the basis of that advice and following consultations with Norway, it is appropriate to fix the Union share of Northern prawn in Skagerrak at 3 856 tonnes and to amend the Union quota in the Norwegian Deep.
- (5) According to ICES advice of 7 April 2017, catches of sprat (*Sprattus sprattus*) in the North Sea should be no more than 170 387 tonnes for the period from 1 July 2017 to 30 June 2018. The fishing opportunities for sprat should be set accordingly.
- (6) Council Regulation (EU) 2017/595<sup>2</sup> deleted the fishing opportunities table for common dab (*Limanda limanda*) and European flounder (*Platichthys flesus*) for Union

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<sup>1</sup> Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 24, 28.1.2017, p. 1–172)

<sup>2</sup> Council Regulation (EU) 2017/595 of 27 March 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities (OJ L 81, 28.3.2017, p. 6–13)

waters of ICES division IIa and subarea IV set out in Annex IA to Regulation (EU) 2017/127. Therefore, it is appropriate to delete Common dab from the footnotes in Annex IA to Regulation (EU) 2017/127 which refer to Common dab as associated by-catch species.

- (7) At its Annual Meeting in 2016, the International Commission for the Conservation of Atlantic Tunas (ICCAT), adopted Recommendation 16-05 setting the total allowable catch (TAC) for Mediterranean swordfish (*Xiphias gladius*) of 10 500 tonnes, and establishing a Working Group for defining a fair and equitable allocation scheme of the TAC for Mediterranean swordfish, to fix the quota allocated to Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities (CPC) for 2017 and to define the mechanism for managing the TAC.
- (8) The Union, by letter addressed to the ICCAT Secretariat on 23 December 2016, confirmed that it would implement the ICCAT Recommendation 16-05 as of 1 January 2017. In particular, the Union confirmed that it would implement the closure period for Mediterranean swordfish referred to in paragraph 11 of ICCAT Recommendation 16-05 during the period from 1 January to 31 March, starting in 2017. It is therefore appropriate to introduce such closure as a condition functionally linked to the fixing and allocation of fishing opportunities for Mediterranean swordfish.
- (9) The Working Group established by ICCAT recommendation 16-05 met on 20-22 February 2017 and proposed an allocation key as well as a compromise for managing the quota uptake for 2017. As part of that compromise, the Union's share was fixed at 70,756% of the ICCAT TAC, amounting to 7 410,48 tonnes in 2017. It is therefore appropriate to transpose into EU law the Union's share and to define the quotas for Member States. The allocation has been based on historic catches during a reference period of 2012-2015.
- (10) The catch limits provided for in Regulation (EU) 2017/127 apply from 1 January 2017. The provisions of this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application is without prejudice to the principles of legal certainty and protection of legitimate expectations as the fishing opportunities concerned have not yet been exhausted.
- (11) Regulation (EU) 2017/127 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Amendments to Regulation (EU) 2017/127*

1. The following sentence is added to the third subparagraph of Article 9(2):  
"In case of a replacement of a Union fishing vessel, the entitlement may be transferred to another vessel provided that the number of Union fishing vessels subject to this derogation and their overall fishing capacity do not increase."

Annexes IA and ID to Regulation (EU) 2017/127 are amended in accordance with the Annex to this Regulation.

*Article 2*

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*