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2020/0037 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2019/1838 as regards certain fishing opportunities for 2020 in the Baltic Sea and other waters, and correcting and amending Regulation (EU) 2020/123 as regards certain fishing opportunities for 2020 in Union and non-Union waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

Council Regulation (EU) 2019/1838 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea needs to be amended to allow scientific fishing during the spawning closure periods established for the two cod stocks. Council Regulation (EU) No 2020/123 fixing for 2020 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).

- **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 Council Regulation (EU) 2019/1838 and Regulation (EU) 2020/123 as described below.

Council Regulation (EU) 2019/1838 establishes for the two Baltic cod stocks closure periods during the spawning period to ensure undisturbed spawning with a view to higher recruitment. At the same time, it is essential to allow scientific investigations to be undertaken during these closure periods. The interruption of the data time series would have a very negative impact on the scientific assessment of the stocks which is the basis for setting fishing opportunities.

Sandeel is a short-lived species and the scientific advice becomes available in the second half of February, while the fishery starts already in April. In Council Regulation (EU) 2020/123 the total allowable catch (TAC) limits were set at zero. Therefore, they should be amended in line with the latest scientific advice from ICES.

The 6th regular session of the Southern Indian Ocean Fisheries Agreement (SIOFA), which took place on 1-5 July 2019, decided on bottom fishing measures and effort limitation in the Agreement Area. The measures agreed in that session have to be implemented in the law of the Union. The current implementing measures are to be updated to reflect the measures agreed at the meeting.

At its annual meeting in November 2019, the International Commission for the Conservation of Atlantic Tunas (ICCAT) decided on new reporting obligations for tropical tunas. Member States are required to transmit monthly catches for some vessels for bigeye tuna, yellowfin tuna and skipjack tuna. Those measures are to be implemented in the law of the Union and the references are to be included by amending Regulation (EU) 2020/123.

- **Consultation of the United Kingdom**

As this Regulation is to be adopted during the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the Commission will consult the United Kingdom in accordance with Article 130(1) of that Agreement.

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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) 2019/1838¹ fixes for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea. It establishes spawning closure periods for the two Baltic cod stocks. Ensuring uninterrupted time series of comparable data on fish stocks is an essential element for the scientific assessment of those stocks. It is therefore appropriate to allow during the respective closure period fishing operations conducted exclusively for the purpose of scientific investigations and in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241². Regulation (EU) 2019/1838 should therefore be amended accordingly.
- (2) Council Regulation (EU) 2020/123³ fixes for 2020 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.
- (3) At its annual meeting in July 2019, the Southern Indian Ocean Fisheries Agreement (SIOFA) decided on bottom fishing measures and effort limitation in the Agreement area. Those measures were implemented in Union law by Regulation 2020/123. However, further changes should be made to ensure that implementing rules properly reflect the decisions taken by SIOFA. At its annual meeting in July 2019, the Southern

¹ Council Regulation (EU) 2019/1838 of 30 October 2019 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Baltic Sea and amending Regulation (EU) 2019/124 as regards certain fishing opportunities in other waters (OJ L 281, 31.10.2019, p. 1).

² 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 (OJ L 198, 25.7.2019, p. 105).

³ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 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 25 of 30.1.2020, p. 1).

Indian Ocean Fisheries Agreement (SIOFA) adopted five interim protected areas in which specific rules apply for fishing vessels in order to protect benthic ecosystems.

- (4) In Regulation (EU) 2020/123, the total allowable catch (TAC) for sandeel in ICES divisions 2a and 3a and ICES subarea 4, was set at zero. Sandeel is a short-lived species and the relevant scientific advice, provided by the International Council for the Exploration of the Sea (ICES), becomes available in the second half of February, while the fishery starts on 1 April.
- (5) The catch limits for sandeel in ICES divisions 2a and 3a and ICES subarea 4 should be amended in line with the latest scientific advice from ICES, issued on 27 February 2020.
- (6) At its annual meeting in November 2019, the International Commission for the Conservation of Atlantic Tunas (ICCAT) decided on new reporting obligations for tropical tunas. Member States are required to transmit monthly catches for large longline vessels (overall length of 20m or greater) and for purse seine vessels, fishing for bigeye tuna (*thunnus obesus*), yellowfin tuna (*thunnus albacares*) and skipjack tuna (*katsuwonus pelamis*) in the Atlantic Ocean. When catches reach 80% of the quota, Member States are required to transmit the catches for these vessels on a weekly basis.
- (7) Those measures are to be implemented in Union law by amending accordingly the total allowable catch (TAC) tables for bigeye tuna and yellowfin tuna in the Atlantic Ocean set out in Regulation 2020/123. Although no TAC is established in Regulation 2020/123 for skipjack tuna, the references to this species are to be included in the relevant comparative tables of Latin names and common names for the purpose of reporting obligations.
- (8) Regulation (EU) 2020/123 should therefore be corrected and amended accordingly.
- (9) The catch limits provided for in Regulation (EU) 2020/123 and Regulation (EU) 2019/1838 apply from 1 January 2020. The provisions introduced by this amending 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.
- (10) The United Kingdom has been consulted in accordance with Article 130(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EU) 2019/1838

The Annex to Regulation (EU) 2019/1838 is amended in accordance with the Annex I to this Regulation.

Article 2

Correction of Regulation (EU) 2020/123

In Article 46 of Regulation (EU) No 2020/123, paragraphs 1 and 2 are replaced by the following:

'Article 46

Limits to bottom fishing

“Member States shall ensure that vessels flying their flag that are fishing under the SIOFA Agreement Area:

- (a) limit their annual bottom fishing effort and/or catch to their average annual level for those years where their vessels were active in the Area, over a representative period for which data declared to the Commission exists;
- (b) do not expand the spatial distribution of bottom fishing effort, excluding line and trap methods, beyond areas fished in recent years;
- (c) are not authorised to fish in the interim protected areas of Atlantis Bank, Coral, Fools Flat, Middle of What, Walter’s Shoal, as defined in the Annex IK, except for line and traps methods and the condition of having a scientific observer on board at all times while fishing in those areas.”

Article 3

Amendment of Regulation (EU) 2020/123

“Annexes I, IA, ID and IK are amended in accordance with the Annex II to this Regulation.”

Article 4

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 2020.

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

Done at Brussels,

*For the Council
The President*