EUROPEAN
COMMISSION

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2022/0182 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2022/109 fixing for 2022 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) 2022/109[1] set a provisional total allowable catch (TAC) for northern prawn (*Pandalus borealis*) in ICES division 3a (Kattegat/Skagerrak) for the period from 1 January to 31 December 2022, pending the publication of the final ICES advice. Moreover, Regulation 2022/109 set at zero the provisional TACs for sprat in ICES division 3a (Kattegat/Skagerrak), division 2a (Norwegian Sea) and subarea 4 (North Sea), for the period from 1 July 2022 to 30 June 2023, pending the publication of the ICES advice. In addition, Regulation (EU) 2022/109 set a provisional TAC for sprat in ICES divisions 7d and 7e (English Channel), for the period from 1 January 2022 to 30 June 2022, pending the publication of the ICES advice.

The definitive fishing opportunities for northern prawn in ICES division 3a are agreed by the Union and Norway. The fishing opportunities for sprat in ICES division 3a and in ICES division 2a and ICES subarea 4 for the period from 1 July 2022 to 30 June 2023 are agreed by the Union, Norway and the United Kingdom. The definitive fishing opportunities for sprat in ICES divisions 7d and 7e are agreed by the Union and the United Kingdom. The advice from the International Council for the Exploration of the Sea (ICES) for those TACs was published on 9 May. The fishing opportunities for those TACs are therefore marked *pm* pending the outcome of those consultations. As soon as the outcome of those consultations is known, Commission services non-papers setting out the relevant fishing opportunities will be submitted to the Council. The Council should then set the relevant fishing opportunities.

Regulation (EU) 2022/109 sets at zero the TAC for anchovy (*Engraulis encrasicolus*) in ICES subareas 9 and 10 and Union waters of the Fishery Committee for the Eastern Central Atlantic (CECAF) 34.1.1 for the period from 1 July 2022 to 30 June 2023, pending the scientific advice for that period. ICES will issue its advice for the stock only in June 2022. In order to ensure that fishing activity may continue until the definitive TAC is set on the basis of the latest scientific advice, a provisional TAC of 10 061 tonnes for July, August and September 2022, based on the catches in the third quarter of 2021, should be established.

As no agreement was found on a final allocation key by the Member States concerned, Regulation (EU) 2022/109) attributed to Member States, for the first half of 2022, an initial portion (50%) of the Union quota for yellowfin tuna (*Thunnus albacares*) in the IOTC (Indian Ocean Tuna Commission) Area of Competence for 2022.

A final allocation key for the Union quota for yellowfin tuna in the IOTC area is still to be agreed by the Member States concerned and the remaining portion of that Union quota for 2022 is still to be allocated. The fishing opportunities for that stock are therefore marked *pm* pending an agreement on the final Union internal allocation by the Member States concerned. As soon as the outcome of discussions between the Member States concerned is known, a Commission services non-paper setting out the relevant fishing opportunities will be submitted to the Council. The Council should then set the relevant fishing opportunities before the end of the period of application of the initial attribution on 30 June 2022.

[1] Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 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 21, 31.1.2022, p. 1).

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

The measures proposed are consistent with the objectives and rules of the CFP 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 the 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 CFP Regulation.

- **Subsidiarity**

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

- **Proportionality**

The proposal will allocate fishing opportunities to Member States in accordance with the objectives of Regulation (EU) No 1380/2013[2]. Pursuant to Articles 16 and 17 of Regulation (EU) No 1380/2013, Member States are to decide how the fishing opportunities allocated to them may be allocated to vessels flying their flag in accordance with certain criteria for the allocation of fishing opportunities. Therefore, Member States have the necessary margin of discretion to exercise while distributing the allocated TACs relating to the social/economic model of their choice to exploit the fishing opportunities covered by the proposal.

- **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**

During the consultations with Norway regarding northern prawn, and during the consultations with the United Kingdom and Norway regarding sprat, the Commission will inform and consult with stakeholders, notably representatives of non-governmental organisations and of fishing industry organisations. The Commission will also maintain contact with Member States' administrations through intensive coordination.

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[2] 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).

- **Collection and use of expertise**

For northern prawn and sprat, the proposal will be based on the available scientific advice of the ICES and the outcome of consultations with the United Kingdom and Norway.

- **Impact assessment**

As regards northern prawn and sprat, the proposal essentially implements internationally agreed measures. Any elements that are relevant for assessing possible impacts of the fishing opportunities will be dealt with in the preparation and conduct phase of international negotiations in which the Union's fishing opportunities are agreed with third parties.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposed measures will have no budgetary implications.

5. OTHER ELEMENTS

In the Agreed Record of fisheries consultations between the Union and Norway for 2022, the parties agreed to establish a preliminary TAC for northern prawn in ICES division 3a, noting that the relevant advice would be updated in early 2022, in accordance with the long term management strategy for that species (LTMS). ICES has recently undertaken a benchmarking exercise of the assessment methodology used for this stock and this benchmark may result in changes of the reference points used in the LTMS. The parties agreed to consult on establishing a definitive TAC for 2022 after publication of the updated ICES advice on 9 May 2022, and taking into account any adjustments to the LTMS that may be required.

Sprat is a short-lived species. Hence the fishing opportunies should be set quickly after the publication of the ICES advice, which has been issued on 9 May, so as to allow the fisheries to start. The fisheries will start on 1 July 2022. Since April 2019, ICES issues a single advice for sprat in ICES division 3a (Kattegat/Skargerrak) on the one hand, and for sprat in ICES division 2a (Norwegian Sea) and ICES subarea 4 (North Sea) on the other hand, as they are considered to be a single biological stock, although their management continues to be split into two areas. In 2022, ICES changed the publication date of its advice for sprat in the divisions 7d and 7e (English Channel) to align it with that of sprat in ICES division 3a (Kattegat/Skargerrak), ICES division 2a (Norwegian Sea) and ICES subarea 4 (North Sea), to align it better with the fishing season and so as to incorporate the latest survey data into the assessment.

At its 2021 annual meeting, the IOTC adopted revised catch limits for yellowfin tuna, which are no longer limited to purse seiners, and now include all gears involved in the yellowfin tuna fishery. Regulation (EU) 2022/109 implemented those revised catch limits in Union law. Following the annual meeting, the Commission undertook technical consultations with the Member States concerned to facilitate an agreement on the Union internal allocation key for yellowfin tuna that includes all gears. However, no agreement was found on a final allocation key by the concerned Member States until March 2022. Against this background, and considering the need to provide the Union fleet operating in the IOTC area with fishing opportunities, Regulation (EU) 2022/109 attributed, for the first half of 2022, an initial

portion (50%) of the Union quota for yellowfin tuna in the IOTC area for 2022 to Member States.

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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) 2022/109[1] fixes for 2022 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.

(2) Regulation (EU) 2022/109 sets a provisional total allowable catch ('TAC') for northern prawn (*Pandalus borealis*) in ICES division 3a (Kattegat/Skagerrak), pending the publication of the final scientific advice provided by the International Council for the Exploration of the Sea ('ICES'). A definitive TAC for that stock should be set in line with that final advice and the outcome of consultations between the Union and Norway.

(3) Regulation (EU) 2022/109 sets provisional zero TACs for sprat (*Sprattus sprattus*) in ICES division 3a (Kattegat/Skagerrak) and in ICES division 2a (Norwegian Sea) and in ICES subarea 4 (North Sea) for the period from 1 July 2022 to 30 June 2023, pending the publication of the relevant scientific advice provided by the ICES. Definitive TACs for those management areas should be set in line with this advice and with the outcome of consultations between the Union, Norway and the United Kingdom.

(4) Regulation (EU) 2022/109 sets a provisional TAC for sprat in ICES divisions 7d and 7e (English Channel) for the period from 1 January to 30 June 2022, pending the publication of the relevant scientific advice provided by the ICES for the period from 1 July 2022 to 30 June 2023. In 2022, ICES issued its advice on 9 May 2022. A definitive TAC for that stock should be set in line with the advice and with the outcome of consultations between the Union and the United Kingdom.

(5) Regulation (EU) 2022/109 sets at zero the TAC for anchovy (*Engraulis encrasicolus*) in ICES subareas 9 and 10 and Union waters of CECAF 34.1.1 for the period from 1 July 2022 to 30 June 2023, pending the scientific advice for that period. ICES will issue its advice for that stock in June 2022. In order to ensure that fishing activity may

[1] Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 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 21, 31.1.2022, p. 1).

continue until the definitive TAC is set on the basis of the latest scientific advice, a provisional TAC of 10 061 tonnes, based on the catches in the third quarter of 2021, should be established for July, August and September 2022.

(6) Regulation (EU) 2022/109 implemented in Union law the revised catch limits for yellowfin tuna (*Thunnus albacares*) in the IOTC ('Indian Ocean Tuna Commission') Area of Competence. The revised catch limits are no longer limited to purse seiners and now include all gears involved in the yellowfin tuna fishery. Moreover, since an agreement among the Member States concerned had not yet been found on the most appropriate way to share the revised catch limits, Council Regulation (EU) 2022/109 attributed, for the first half of 2022, an initial portion (50%) of the Union quota for yellowfin tuna in the IOTC area for 2022 to Member States.

(7) The remaining portion of the Union quota for yellowfin tuna in the IOTC area for 2022 should therefore be allocated in line with the outcome of discussions between the Member States concerned on the sharing of the Union quota for that stock, and before the end of the period of application of the initial attribution on 30 June 2022.

(8) Regulation (EU) 2022/109 should therefore be amended accordingly.

(9) The catch limits provided for in Regulation (EU) 2022/109 apply from 1 January 2022. The provisions introduced by this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased or have not yet been exhausted. Given the urgency to avoid interruptions of fishing activities, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment of Regulation (EU) 2022/109

Regulation (EU) 2022/109 is amended in accordance with the Annex to this Regulation.

Article 2
Entry into force and date of application

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 2022.

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

Done at Brussels,

For the Council
The President