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2021/0017 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2021/XXX as regards certain provisional fishing opportunities for 2021 in Union waters and non-Union waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 15-16 December 2020, the Council reached a political agreement on fishing opportunities for 2021. The Council agreed that provisional TACs for stocks shared with third countries should be set until those consultations are concluded in compliance with the EU legal framework and international obligations or, if they cannot be concluded successfully, until the Council sets unilateral EU TACs in 2021.

The provisional TACs aim to ensure continuation of sustainable EU fishing activities. These provisional fishing opportunities should in no circumstances stand in the way of setting definitive fishing opportunities in accordance with international agreements and the outcome of consultations, the EU legal framework and the scientific advice. As a general approach, they should correspond to 25% of the Union share of the fishing opportunities set for 2020. The Union share of those fishing opportunities was calculated according to the principle of relative stability and The Hague Preferences. This approach is without prejudice to an approach that may be taken in the future international agreements. It was decided that in a very limited number of cases (for some TACs of mackerel, blue whiting and horse mackerel) a different percentage should be used where the stocks are predominantly fished in the beginning of the year.

The monthly catch data of the past years as reported to the Commission indicates that some other pelagic and demersal stocks are predominantly fished in the beginning of the year. Therefore, on the basis of that catch data and in accordance with the scientific advice, a higher percentage corresponding to the Union share of the fishing opportunities set for 2020 should be established for the corresponding TACs, if it is without prejudice to an approach that may be taken in the future international agreements and/or consultations.

The Council on 15-16 December 2020 reached a political agreement on fishing opportunities for 2021. The corresponding Council Regulation is expected to be adopted in mid-January 2021 by written procedure. The publication of that Regulation in the Official Journal usually takes place before the end of January. At this stage it is therefore not possible to include the exact reference to that Council Regulation that will be amended.

• 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 basic regulation of the CFP and the relevant multiannual plans.

- **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 throughout the year and their feedback is taken into account when setting the fishing opportunities.

- **Collection and use of expertise**

The Proposal is based on the scientific advice[1] 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.

[1] http://www.ices.dk/community/advisory-process/Pages/Latest-advice.aspx

5. OTHER ELEMENTS

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

The proposed amendments seek to modify Council Regulation (EU) 2021/XXX[2] as explained below. The TACs that Union fishing fleets prodominantly fish in the beginning of the year and for which provisional TACs can be fixed at a higher percentage by applying an exception from a general approach (25% of the TAC fixed for 2020) if it does not prejudge the outcome of international negotiations and/or consultations are listed in the table below:

TAC	The percentage of the 2020 quotas used as a basis to set a provisional TAC
Norway lobster in Porcupine Bank	55%
Sole in 7d (Eastern Channel)	40%
Plaice in 7d and 7e (Channel	45%
Undulate ray in 7d and 7e (Channel)	60%
Whiting in 7b-k (Celtic Sea)	40%
Cod in Norwegian waters of 1 and 2	50%
Blue whiting TACs	70%
Atlanto-scandian herring (subareas 1 and 2)	85%

In order to establish the list of stocks for which a higher percentage should apply instead of 25%, the Commission has based itself on the requests expressed by Member States and analysed the quota uptake of the Member State concerned in the first quarter of the last three years (2018-2020). The Commission then also compared the increased TACs with the potential defnitive TACs. Without prejudice to the upcoming consultations with the third countries, these potential definite TACs have been calculated on the basis of the scientific advice (in cases indicated in the Basic Regulation or the relevant multianual plan – for the MSY, and in other cases – based on the precautionary approach) and taking into account the Union shares established in the EU-UK Trade and Cooperation Agreement (TCA).

On the basis of the analysis of all theses elements, it is concluded that the Member States requests to increase the provisinal TACs are justified, as they are in accordance with both the ICES advise, the applicable EU legal framwork and the TCA. These increases will enable EU fishing vessels to use the fishing opportunities to which they are entitled and of which they would be otherwise deprived, due to the seasonality of fishing of the stocks concerned.

[2] COM(2020)668 Proposal for a COUNCIL REGULATION fixing for 2021 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

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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) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[3] requires that conservation measures 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.

(2) 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. In accordance with Article 16(4) of Regulation (EU) No 1380/2013, fishing opportunities should be fixed in accordance with the objectives of the Common Fisheries Policy (CFP) established in Article 2(2) of that Regulation and for stocks subject to specific multiannual plans the TACs should be established in accordance with the rules laid down in those plans. In accordance with Article 16(1) of that Regulation, fishing opportunities should be allocated to Member States in such a way as to ensure relative stability of fishing activities of each Member State for each fish stock or fishery.

(3) The total allowable catch (TAC) should therefore be established, in line with the CFP legislative framework, on the basis of available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, in particular at the meetings of the advisory councils.

(4) Due to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union, a large number of stocks have become shared stocks. The Commission will undertake bilateral consultations with the United Kingdom, bilateral consultations with Norway and trilateral consultations with the United Kingdom and Norway on the basis of the draft Union position to be endorsed by the Council. As the above-mentioned consultations have not yet been concluded, the Council should, in full respect of the United Nations Convention on the Law of the Sea

[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).

(UNCLOS), rights and obligations of the coastal states as well as their sovereignty and jurisdiction, establish provisional TACs to be fished in Union and international waters, and waters to which the Union vessels are granted access by third countries.

(5) On 15-16 December 2020, the Council reached a political agreement on fishing opportunities for 2021. The Council agreed that provisional TACs for stocks shared with third countries should be set until those consultations are concluded in compliance with the EU legal framework and international obligations or, if they cannot be concluded successfully, until the Council sets unilateral EU TACs in 2021.

(6) The provisional TACs established in Regulation (EU) 2021/XXX that reflects the political agreement reached in the Council aim to ensure continuation of sustainable EU fishing activities. These provisional fishing opportunities should in no circumstances stand in the way of setting definitive fishing opportunities in accordance with international agreements and the outcome of consultations, the EU legal framework and scientific advice. As a general approach, they correspond to 25% of the Union share of the fishing opportunities set for 2020. However, in a very limited number of cases a different percentage should be used where the stocks are predominantly fished in the beginning of the year. This approach is without prejudice to the Union shares etablished in the Trade and Cooperation Agreement between the European Union and the United Kingdom[4], which will be used to set definitive TACs.

(7) The list of stocks, for which a percentage higher than 25% should apply, should be based on the analysis of the quota uptake in the first quarter of the last three years (2018-2020) by the Member States that requsted a higher provisional TAC. Provisional TACs should not exceed potential defnitive TACs, which, without prejudice to the upcoming consultations with the third countries, have been assessed in accordance with the scientific advice and taking into account the Union shares established in the Trade and Cooperation Agreement. These increases in provisional TACs are in accordance with the ICES advise, the applicable EU legal framework and the Trade and Cooperation Agreement. They will enable EU fishing vessels to use the fishing opportunities to which they are entitled and of which they would be otherwise deprived, due to the seasonality of fishing of the stocks concerned.

(8) The monthly catch data of the past years as reported to the Commission indicates that some other pelagic and demersal stocks are predominantly fished in the beginning of the year. Therefore, on the basis of that catch data and in accordance with the scientific advice, a higher percentage relative to the Union share of the fishing opportunities set for 2021 should be established for the corresponding TACs, without prejudice to an approach that may be taken in the future international agreements and/or consultations.

(9) Regulation (EU) 2021/XXX should therefore be amended accordingly.

(10) The catch limits provided for in Regulation (EU) 2021/XXX apply from 1 January 2021. The provisions introduced by this Regulation concerning catch limits should therefore enter in force as soon as possible and apply retroactively from 1 January 2021. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations as the fishing opportunities concerned are increased and have not yet been exhausted. In view of such urgency, this Regulation should enter into force immediately after its publication,

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[4] Trade and Cooperation Agreement between the European Union and the European Atomic energy Community, of the one part, and the United Kingdom of Great Britain and the Northern Ireland, of the Other Part (OJ L 444, 31.12.2020, p. 14)

HAS ADOPTED THIS REGULATION:

Article 1
Amendment of Regulation (EU) 2021/XXX

Regulation (EU) 2021/XXX is amended as follows:

(a) Annex IA is amended in accordance with Part A of the Annex to this Regulation;

(b) Annex IB is amended in accordance with Part B of 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 2021.

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

Done at Brussels,

For the Council
The President