



Brussels, 29.8.2017
COM(2017) 461 final

2017/0212 (NLE)

Proposal for a

COUNCIL REGULATION

**fixing for 2018 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 (CFP), the exploitation of living marine biological resources shall restore and maintain populations of harvested species above levels which can produce the maximum sustainable yield (MSY). One important tool in this respect is the annual fixing of fishing opportunities in the form of total allowable catches (TACs) and quotas.

The Regulation (EU) 2016/1139 of 6 July 2016 establishing a multiannual management plan for the stocks of cod, herring and sprat in the Baltic sea and the fisheries exploiting those stocks further specifies the values of fishing mortalities expressed as ranges which are used in this proposal in order to reach the objectives of the CFP, especially reaching and maintaining the MSY.

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 2018. 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 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 2018 under the Common Fisheries Policy COM(2017) 368 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 and status of the stocks were also discussed with MS in the regional forum BALTFISH in June 2017.

- **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 and TACs are proposed for the commercially most important ones.

- **Impact assessment**

The proposal is part of a long-term approach whereby the level of fishing is adjusted to and maintained at long-term sustainable levels. This approach will result in a stable fishing pressure, higher quotas and hence an improved income for fishermen and their families. The increased landings are expected to be beneficial for the fishing industry, consumers, processing and retail industry as well as for the rest of the ancillary industry linked to commercial and recreational fishing.

Decisions taken on the Baltic fishing opportunities over the past years have already succeeded in rebuilding some stocks (with an increase of the biomass for pelagic stocks by 50% between 2012 and 2016) and in rebalancing fishing capacity and fishing opportunities. Progress is still necessary however to rebuild demersal stocks, some of them still under safe biomass limits, and to bring all stocks under MSY.

Taking the above into account, the Commission proposal would decrease quotas of western, Gulf of Bothnia and Gulf of Riga herring, eastern cod and plaice stocks – on average by 32%. An increase is proposed for Central herring and sprat stocks by 25% and 0.5% respectively. The amount of the Baltic fishing opportunities for salmon stocks expressed in number of pieces of fish will increase from 106.413 to 116.099 fish. This represents an increase by 9% when compared to 2017. A roll-over is proposed for the western cod stock.

The impact of the proposals for 2018 will therefore be highly differentiated by type of fishery. All in all, the Commission proposal leads to a level of approximately 647 thousand tonnes for the Baltic fishing opportunities, a reduction by 7% compared to 2017.

- **Regulatory fitness and simplification**

The proposal remains flexible in application of quota exchange mechanisms which were already introduced in the previous years' Regulations concerning fishing opportunities in the Baltic Sea. There are no new elements or new administrative procedures proposed for public authorities (EU or national) which could increase the administrative burden.

The proposal concerns an annual Regulation for the year 2018 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 2018 the fishing opportunities for certain stocks or groups of stocks for Member States fishing in the Baltic Sea. For the first time, it also establishes a species for which fishing is prohibited. This concerns the stock of European eel.

Fishing opportunities

The new multiannual plan for the fisheries in the Baltic Sea has entered into force on 20 July 2016¹. 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 are proposed 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).

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 to the Regulation.

All five pelagic stocks (four stocks of herring and one sprat stock), western cod, plaice and Main Basin salmon in the Baltic Sea are to be fished at MSY levels in 2018. The fishing opportunities of all stocks subject to the Baltic MAP are set at the target fishing mortality ranges consistent with achieving maximum sustainable yield in 2018: the proposed quotas for three herring stocks in the western and Central Baltic and Gulf of Riga correspond to the

¹ 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

fishing mortalities matching both parts of the MSY fishing mortality range as referred to in Articles 4(2) of the Regulation (EU) 2016/1139. For two stocks, i.e. western herring and western cod the fishing opportunities correspond to the fishing mortality within the range as referred to in Article 5(2), (3) of the Regulation (EU) 2016/1139.

The TACs for Gulf of Finland salmon and eastern cod correspond to the approach developed by ICES which is applied to data limited stocks.

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.

European eel

The European eel life cycle is complex, as it is a long-lived fish which is widely dispersed: recent evidence suggests that eels spawn in the Sargasso Sea and their larvae arrive with the ocean currents to the continental shelf of Europe and North Africa, where they transform into glass eels and enter continental waters.

During the *continental* (brackish and/or freshwater) part of their lifecycle, the mortality factors affecting eels depend on regional conditions. Council Regulation 1100/2007 establishing measures for the recovery of European eel (the Eel regulation) obliges Member States with significant eel habitats to implement eel management plans which can ensure that a sufficient amount of adult eels can leave the river basins and reach the open seas so that they can spawn and the stock can recover. The national eel management plans may (but do not have to) include marine waters.

Recent data has however shown that 57% of those silver eels that have reached the open seas are caught by commercial and recreational fishing in the Baltic Sea. The Eel regulation obliges Member States that operate eel fisheries in EU waters to reduce efforts and/or catches by 50% compared to the 2004-2006 average, unless their management plans also cover marine waters. None of the Baltic Sea Member States achieve that objective.

The recurrent scientific advice states that: "... when the precautionary approach is applied for European eel, all anthropogenic impacts (e.g. recreational and commercial fishing on all stages, hydropower, pumping stations, and pollution) decreasing production and escapement of silver eel should be reduced to – or kept as close to –zero as possible."²

In light of the state of the stock, which is listed in CITES Annex II, the 50% reduction in effort or catches prescribed in the Eel regulation is not in line with the objectives of the 2013 CFP for sustainable exploitation of resources. Given the ICES advice it is important that all fisheries that target spawners should cease until there is a clear evidence of improvement of the state of the stock. Given this severe ICES advice, it is therefore appropriate pending longer term solutions to prohibit any fishery of European eel in the Baltic Sea in 2018.

² ICES Advice on fishing opportunities, catch and effort, Northeast Atlantic. ICES advice 2016, Book 9, published 28 October 2016

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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) 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 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 in the light of any advice received from Advisory Councils established for the relevant geographical areas or fields of competence and 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) Article 2 of Regulation (EU) No 1380/2013 provides that the objective of the CFP is to achieve the maximum sustainable yield (MSY) exploitation rate by 2015 where possible and, on a progressive, incremental basis at the latest by 2020.
- (5) The total allowable catches (TACs) should therefore be established, in accordance 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 having regard to the opinions expressed during the consultation with stakeholders.
- (6) Regulation (EU) 2016/1139 of the European Parliament and of the Council⁴ establishes a multiannual plan for the stocks of cod, herring and sprat in the Baltic 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).

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

and for the fisheries exploiting those stocks ('the plan'). The plan aims to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield. To that end, the target fishing mortality for the stocks concerned, expressed in ranges, is to be achieved as soon as possible and, on a progressive, incremental basis, by 2020. It is appropriate that the catch limits applicable in 2018 for the cod, herring and sprat stocks in the Baltic Sea are established with a view to achieving the objectives of the plan.

- (7) According to the plan, when scientific advice indicates that the spawning stock biomass of any of the stocks concerned is below the reference points of spawning stock biomass set out in Annex II to Regulation (EU) 2016/1139, all appropriate remedial measures are to be adopted in order to ensure the rapid return of the stock concerned to levels above the level capable of producing the maximum sustainable yield. The International Council for the Exploration of the Sea (ICES) has indicated the biomass of Western stock of Baltic cod (*Gadus morhua*) and of Western herring (*Clupea harengus*) to be below the conservation reference points set out in Annex II to that Regulation. Consequently, it is appropriate that fishing opportunities for Western Baltic cod and for Western herring are set below the fishing mortality range in Annex I, column B to Regulation (EU) 2016/1139, at such a level that takes into account the decrease in the biomass. To that end, it is necessary to take into account the timeline for the achievement of the objectives of the CFP in general and of the plan in particular in view of the expected effect of the remedial measures taken, whilst at the same time adhering with the objectives of achieving economic, social and employment benefits as set out in Article 2 of Regulation (EU) No 1380/2013.
- (8) As regards the Western stock of Baltic cod, further remedial measures should be taken. Maintaining the currently applicable eight-week closure period would continue to provide protection for spawning aggregations of cod. According to scientific advice, recreational fisheries for the Western stock of Baltic cod contribute significantly to the overall fishing mortality of that stock. Taking into account the current status of that stock, it is appropriate to maintain certain currently applicable measures on recreational fisheries. More particularly, a daily bag limit per fisherman should apply that should be more restrictive during the spawning period. This is without prejudice to the principle of relative stability applicable to commercial fishing activities.
- (9) As regards the Eastern stock of Baltic cod (*Gadus morhua*), due to changes in its biology, the ICES has not been able to establish biological reference points. It is therefore appropriate, in order to contribute to the achievement of the objectives of the plan, to fix the TAC for Eastern Baltic cod in accordance with the precautionary approach as established in Article 9(2) of Regulation 1380/2013.
- (10) As regards the Gulf of Bothnia herring, ICES conducted an evaluation of the stock using the latest data and the most up-to-date information and revised the fishing mortality ranges corresponding to MSY. While there is a discrepancy in fishing mortality ranges established in the scientific advice and in the plan, which was also based on the best scientific advice available at the time of its adoption, the plan is legally binding and in force and it should be therefore followed for setting the fishing opportunities for this stock.

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

- (11) As regards European eel stock, the ICES advised that all anthropogenic mortalities including recreational and commercial fisheries should be reduced to zero, or kept as close to zero as possible. It is therefore necessary to implement this advice by establishing a prohibition on fishing for this species in the Baltic Sea.
- (12) The use of the 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.
- (13) Council Regulation (EC) No 847/96⁶ (4) 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.
- (14) In order to avoid interruption of fishing activities and to ensure the livelihoods of Union fishermen, this Regulation should apply from 1 January 2018. For reasons of urgency, this Regulation should enter into force immediately after its publication,

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 2018.

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)

Article 2

Scope

1. This Regulation shall apply to Union fishing vessels operating in the Baltic Sea.
2. This Regulation shall also apply to recreational fisheries where they are expressly referred to in the relevant provisions.

Article 3

Definitions

For the purposes of this Regulation, the definitions referred to in Article 4 of Regulation (EU) No 1380/2013 apply. In addition, the following definitions apply:

- (1) 'ICES' means International Council for the Exploration of the Sea;
- (2) 'Baltic Sea' means ICES zones IIIb, IIIc and IIId;
- (3) 'stock' means a marine biological resource that occurs in a given management area;
- (4) 'subdivision' means an ICES subdivision of the Baltic Sea as defined in Annex I to Council Regulation (EC) No 2187/2005⁷;
- (5) 'total allowable catch' (TAC) means the quantity of each stock that can be caught over the period of a year;
- (6) 'quota' means a proportion of the TAC allocated to the Union, a Member State or a third country;
- (7) 'recreational fisheries' means non-commercial fishing activities exploiting marine biological resources such as for recreation, tourism or sport.

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;

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](#)).

- (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.

Article 7

Measures on recreational fisheries for cod in subdivisions 22-24

1. In recreational fisheries, no more than five specimens of cod may be retained per fisherman per day in subdivisions 22-24.
2. By way of derogation from paragraph 1, no more than three specimens of cod may be retained per fisherman per day in subdivisions 22-24 in the period from 1 February 2018 to 31 March 2018.
3. Paragraphs 1 and 2 are without prejudice to more stringent national measures.

Article 8

Prohibitions

1. It shall be prohibited for Union fishing vessels to fish for, to retain on board, to tranship or to land European eel (*Anguilla anguilla*).
2. Recreational fishing for European eel (*Anguilla anguilla*) shall be prohibited.

CHAPTER III

FINAL PROVISIONS

Article 9

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 10

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 11

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 2018.

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

Done at Brussels,

For the Council
The President