# **COMMISSION SERVICES NON PAPER**

# 31 MAY 2023

This document serves as a basis for discussion at the Working Party on Fisheries Policy. It cannot in any circumstances be regarded as the official position of the Commission.

It is intended solely for those to whom it is addressed.

Updates to Commission proposal for a Council Regulation amending 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, and Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks [COM(2023) 276]

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# 1. AMENDMENTS IN RELATION TO SPRAT IN THE NORTH SEA AND IN THE SKAGERRAK AND KATTEGAT

#### EXPLANATORY NOTE

Pending the publication by the International Council for the Exploration of the Sea (ICES) of its scientific advice, Council Regulation (EU) 2023/194<sup>1</sup> provisionally sets at zero the total allowable catches (TACs) for sprat (*Sprattus sprattus*) for the period from 1 July 2023 to 30 June 2024 in: (i) EU and UK waters of ICES subarea 4 and division 2a (North Sea); and (ii) EU and Norwegian waters of ICES division 3a (Skagerrak and Kattegat).

On 20 April 2023, ICES published its scientific advice<sup>2</sup> for sprat in ICES subarea 4 and division 3a for the period from 1 July 2023 to 30 June 2024. Following the publication of that advice, the EU, UK and Norway held trilateral consultations on: (i) the level of the fishing opportunities for that stock for that period; and (ii) the level of the TACs for sprat for that period in ICES subarea 4 and ICES division 2a and in division 3a.

Those consultations were conducted on 12 May 2023, on the basis of the EU position outlined in the Commission services non-paper endorsed by the Council on 4 May 2023.

The outcome of those consultations was documented in an Agreed Record. The EU, UK and Norway agreed to set the TACs for sprat for the period from 1 July 2023 to 30 June 2024 in ICES subarea 4 and ICES division 2a and in division 3a in line with the ICES advice, at the level of 117 320 tonnes and 26 278 tonnes. It is therefore proposed to set those TACs at the levels agreed with the UK and Norway.

#### AMENDMENTS TO THE RECITALS

Recital (4) is replaced by the following:

"(4) On 12 May 2023, the Union, the United Kingdom and Norway held consultations on; (i) the level of the fishing opportunities for sprat (*Sprattus sprattus*) in ICES subarea 4 and division 3a for the period from 1 July 2023 to 30 June 2024; as well as (ii) the level of the TACs for sprat for that period in Union and United Kingdom waters of ICES subarea 4 and division 2a and Union and Norwegian waters in ICES division 3a. Those consultations were conducted on the basis of the Union position endorsed by the Council on 4 May 2023. Those TACs should therefore be set at the levels agreed with the United Kingdom and Norway."

#### **AMENDMENTS TO THE ANNEXES**

In point 2 of Annex I, point (c) is replaced by the following:

<sup>&</sup>lt;sup>1</sup> Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks (OJ L 28, 31.1.2023, p. 1).

<sup>&</sup>lt;sup>2</sup> https://doi.org/10.17895/ices.advice.21975365.v1

"

(c) the table for sprat and associated by-catches (*Sprattus sprattus*) in ICES division 3a is replaced by the following:

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Species:	Sprat and associated by-catches Sprattus sprattus		Zone:	3a (SPR/03A.)	
Denmark	17 608	(1)(2)(3)	Analytical T	AC	
Germany	37	(1)(2)(3)			
Sweden	6 662	(1)(2)(3)			
Union	24 307	(1)(2)(3)			
TAC	26 278	(2)			
(1)	and haddock counted against the	quota pursuant	to this provision	haddock (OTH/*03A.). By-catches of whiting and by-catches of species counted against the 3 shall, together, not exceed 9 % of the quota.	
(2)	This quota may only be fished from 1 July 2023 to 30 June 2024.				
(3)	Transfers of this quota may be effected to United Kingdom and Union waters of 2a and 4. However, such transfers shall be notified in advance to the Commission and to the United Kingdom.				

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In point 2 of Annex I, point (d) is replaced by the following:

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(d) the table for sprat and associated by-catches (*Sprattus sprattus*) in United Kingdom and Union waters of ICES subarea 4 and United Kingdom waters of ICES division 2a is replaced by the following:

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Species:	Sprat and associated by-catches Sprattus sprattus		Zone:	United Kingdom and Union waters of 4; United Kingdom waters of 2a (SPR/2AC4-C)
Belgium	1 341	(1)(2)	Analytical	TAC
Denmark	106 144	(1)(2)	-	
Germany	1 341	(1)(2)		
France	1 341	(1)(2)		
Netherlands	1 341	(1)(2)		
Sweden	1 330	(1)(2)(3)		
Union	112 838	(1)(2)		
Norway	0	(1)		
Faroe Islands	0	(1)(4)		
United Kingdo	om 4 482	(1)		
TAC	117 320	(1)		

The quota may only be fished from 1 July 2023 to 30 June 2024.

(3) Including sandeels.

Up to 2 % of the quota may consist of by-catches of whiting (OTH/\*2AC4C). By-catches of whiting counted against the quota pursuant to this provision and by-catches of species counted against the quota pursuant to Article 15(8) of Regulation (EU) No 1380/2013 shall, together, not exceed 9 % of the quota.

#### 2. AMENDMENTS IN RELATION TO HADDOCK AND WHITING IN THE NORTH SEA

#### **EXPLANATORY NOTE**

Regulation (EU) 2023/194 sets the TACs for haddock (*Melanogrammus aeglefinus*) and whiting (*Merlangius merlangus*) in EU, UK and Norwegian waters of ICES subarea 4 and UK waters of ICES division 2a (North Sea) for 2023, at the level agreed with the UK and Norway on 9 December 2022.

In the Commission services non-paper of 22 March 2023 updating the Commission proposal of 7 March 2023<sup>3</sup> for a Council Regulation amending Regulation (EU) 2023/194, it was proposed to allocate quotas to Sweden based on shares of the overall EU quotas for haddock and whiting in EU, UK and Norwegian waters of ICES subarea 4 and UK waters of ICES division 2a, as set out in Article 121(1) of the Act concerning the conditions of accession of Sweden to the EU<sup>4</sup> ("the Act"), as adjusted by Council Decision (95/1/EC, Euratom, ECSC)<sup>5</sup>. That Commission proposal was subsequently split, leaving aside the updates included in that non-paper.

However, the shares established in that Act are not fixed. Quotas under those TACs should therefore be allocated to the Member States: (i) in accordance with the principle of relative stability; and (ii) subject to the adaptations necessary due to the withdrawal of the UK from the EU<sup>6</sup>. It is therefore proposed to maintain the Member States' quotas for respectively haddock and whiting in EU, UK and Norwegian waters of ICES subarea 4 and UK waters of ICES division 2a as established by Regulation (EU) 2023/194.

#### **AMENDMENTS**

Updates introduced by the Commission services non-paper of 22 March 2023 are not to be included in the Commission proposal of 30 May 2023<sup>7</sup> for a Council Regulation amending Regulation (EU) 2023/194.

<sup>3</sup> Commission proposal of 7 March 2023 for a Council Regulation amending Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks [COM(2023) 114].

<sup>&</sup>lt;sup>4</sup> Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ C 241, 29.8.1994, p. 9).

<sup>&</sup>lt;sup>5</sup> Decision 95/1/EC of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995, p. 1).

<sup>&</sup>lt;sup>6</sup> Annex 36(A) to the 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 Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10).

<sup>&</sup>lt;sup>7</sup> Commission proposal of 30 May 2023 for a Council Regulation amending 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, and Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks [COM(2023) 276].

#### 3. AMENDMENTS REGARDING YEAR-TO-YEAR FLEXIBILITIES OF TACS

#### **EXPLANATORY NOTE**

Council Regulation (EC) No 847/96<sup>8</sup> introduces conditions for year-to-year flexibility of TACs, including flexibility provisions for precautionary and analytical TACs (Articles 3 and 4). Pursuant to Article 2, second indent, of that Regulation, the Council must decide the stocks to which Articles 3 and 4 are not to apply, on the basis of the biological status. In accordance with Article 14(3) of Regulation (EU) 2023/194, Article 3 of Regulation (EC) No 847/96 applies to all stocks subject to a precautionary TAC, and Articles 3(2) and (3) and Article 4 of that Regulation applies to all stocks subject to an analytical TAC in 2023, except where otherwise specified in Annex I to Regulation (EU) 2023/194.

Given that year-to-year flexibility in 2023 is allowed under Regulation (EU) 2023/194 and that the biomass is below the limit biomass reference point ('B<sub>lim</sub>'), the year-to-year flexibility pursuant to Articles 3(2) and (3) and Article 4 of Regulation (EC) No 847/96 should be prohibited for the following stocks:

- herring (*Clupea harengus*) in ICES divisions 7a south of 52°30'N; 7g, 7h, 7j and 7k;
- whiting (Merlangius merlangus) in ICES divisions 7b, 7c, 7d, 7e, 7f, 7g, 7h, 7j and 7k.

Moreover, given that year-to-year flexibility in 2023 is allowed under Regulation (EU) 2023/194 and that ICES does not define conservation reference points but recommends zero catches or suspending the targeted fishery, the year-to-year flexibility pursuant to Article 3 of Regulation (EC) No 847/96 should be prohibited for the following stocks:

- blue ling (*Molva dypterygia*) in international waters of ICES subarea 12;
- blue ling in UK and international waters of ICES subarea 2; UK and EU waters of subarea 4:
- blue ling in EU waters of ICES division 3a;
- northern prawn (*Pandalus borealis*) in UK and EU waters of ICES subarea 4; UK waters of ICES division 2a;
- red seabream (*Pagellus bogaraveo*) in ICES subareas 6, 7 and 8.

### AMENDMENTS TO THE RECITALS

The following recital is inserted:

"(5a) Given that the biomass of several stocks is below the limit biomass reference point ('B<sub>lim</sub>') or ICES does not define conservation reference points but recommends zero catches or suspending the targeted fishery, the year-to-year flexibility pursuant to Articles 3 and 4 of Council Regulation (EC) No 847/96<sup>9</sup> should be prohibited in 2023."

<sup>&</sup>lt;sup>8</sup> 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).

<sup>&</sup>lt;sup>9</sup> 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).

Recital (10) is replaced by the following:

"(10) The provisions of this Regulation amending certain provisions of Regulation (EU) 2023/194 should apply from 1 January 2023, in line with the application period of those amended provisions. The provisions of this Regulation concerning fishing opportunities for anchovy, Northern prawn and sprat should apply from 1 July 2023. The provisions of this Regulation concerning ICCAT and amending certain provisions of Regulation (EU) 2022/109 should apply from 1 January 2022, in line with the application period of those amended provisions. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are either increased or quantities withheld upon Member States requests pursuant to Article 4(2) of Regulation (EC) No 847/96 have not yet been transferred,"

#### AMENDMENTS TO THE ARTICLES

Article 3 is replaced by the following:

#### "Article 3

# Entry into force and application

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023.

#### However:

- (a) Article 2 shall apply from 1 January 2022;
- (b) In Annex I, point 1 and points (b) to (e) of point 2 shall apply from 1 July 2023."

#### AMENDMENTS TO THE ANNEXES

In Annex I, the following point is inserted:

- "(2a) In Part B of Annex IA:
  - (a) in the tables for herring (*Clupea harengus*) in ICES divisions 7a south of 52°30'N; 7g, 7h, 7j and 7k; and whiting (*Merlangius merlangus*) in divisions 7b, 7c, 7d, 7e, 7f, 7g, 7h, 7j and 7k, the following is inserted:
    - 'Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.';
  - (b) in the tables for blue ling (*Molva dypterygia*) in international waters of ICES subarea 12; blue ling in United Kingdom and international waters of subarea 2; United Kingdom and Union waters of subarea 4; blue ling in Union waters of ICES division 3a; northern prawn (*Pandalus borealis*) in United Kingdom and Union waters of subarea 4; United Kingdom waters of 2a; and red seabream (*Pagellus bogaraveo*) in subareas 6, 7 and 8, the following is inserted:

'Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.';"

#### 4. AMENDMENTS REGARDING CODES

#### **EXPLANATORY NOTE**

Codes for several conditions regarding Norwegian quotas under TACs included in Part B of Annex IA to Regulation (EU) 2023/194, establishing in what areas Norway may fish quantities available to it, are missing or are incorrect.

#### AMENDMENTS TO THE RECITALS

The following recital is inserted:

"(5b) Codes for several conditions regarding Norwegian quotas under TACs included in Part B of Annex IA to Regulation (EU) 2023/194, establishing in what areas Norway may fish quantities available to it, are missing or are incorrect and should be amended."

#### AMENDMENTS TO THE ANNEXES

In Annex I, the following point is inserted:

- "(2b) In Part B of Annex IA:
  - (a) in footnote 2 of the table for herring (*Clupea harengus*) in Union, United Kingdom and Norwegian waters of ICES subarea 4 north of 53°30' N, the code is replaced by the following: 'HER/\*04B-C';
  - (b) in footnote 2 of the table for cod (*Gadus morhua*) in ICES subarea 4; United Kingdom waters of ICES division 2a; the part of division 3a not covered by the Skagerrak and Kattegat, the following code is inserted: 'COD/\*3AX4-EU';
  - (c) in footnote 2 of the table for haddock (*Melanogrammus aeglefinus*) in ICES subarea 4; United Kingdom waters of ICES division 2a, the following code is inserted: 'HAD/\*04-EU';
  - (d) in footnote 1 of the table for whiting (*Merlangius merlangus*) in ICES subarea 4; United Kingdom waters of ICES division 2a, the following code is inserted: 'WHG/\*04-EU':
  - (e) in footnote 4 of the table for blue whiting (*Micromesistius poutassou*) in United Kingdom, Union and international waters of ICES zones 1, 2, 3, 4, 5, 6, 7, 8a, 8b, 8d, 8e, 12 and 14, the following code is inserted: 'WHB/\*46AB7-EU', and '2a,' is deleted;
  - (f) in footnote 5 of the table for blue whiting (*Micromesistius poutassou*) in United Kingdom, Union and international waters of ICES zones 1, 2, 3, 4, 5, 6, 7, 8a, 8b, 8d, 8e, 12 and 14, the following code is inserted: 'WHB/\*46AB7', and '2a,' is deleted;

(g) in footnote 1 of the table for plaice (*Pleuronectes platessa*) in ICES subarea 4; United Kingdom waters of ICES division 2a; the part of division 3a not covered by the Skagerrak and the Kattegat, the following code is inserted:

'PLE/\*3AX4-EU'."

#### 5. AMENDMENTS IN RELATION TO ICCAT

#### **EXPLANATORY NOTE**

Fishing effort limits for EU vessels fishing for bluefin tuna (*Thunnus thynnus*) in the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention area and maximum input and capacity for EU farms of bluefin tuna in that area are based on the fishing plans, the fishing capacity management plans and the farming management plans transmitted by Member States to the Commission each year. In 2023, ten Member States<sup>10</sup> transmitted such plans to the Commission within the time limits set out in Articles 6(1) and 10(1) of Regulation (EU) 2016/1627 of the European Parliament and of the Council<sup>11</sup>.

After compiling and integrating those plans, the Commission transmitted on 15 February 2023 the Eastern Atlantic and Mediterranean bluefin tuna fishing, farming, inspection and capacity management plan (the 'EU plan') for 2023 to the ICCAT Secretariat for discussion and approval by ICCAT in accordance with Articles 6(2) and 10(2) of Regulation (EU) 2016/1627. Following the approval of the EU plan by ICCAT on 8 March 2023, Council Regulation (EU) 2023/730<sup>12</sup> set the EU fishing effort limits and the EU maximum input and farming capacity in line with that plan.

Following the adoption of Council Regulation (EU) 2023/730, five Member States transmitted modifications to their annual farming management plans to the Commission within the legal deadline. Based on those modifications, the Commission transmitted the modified EU plan to the ICCAT Secretariat on 9 May 2023. ICCAT published the modifications to the EU plan on 11 May 2023. It is therefore proposed that the EU maximum farming input and capacity are amended in line with those modifications to the EU plan.

#### **AMENDMENTS TO THE RECITALS**

The following recital is inserted:

"(7a) Five Member States transmitted modifications to their farming management plan to the Commission in accordance with Article 6(3) of Regulation (EU) 2016/1627 of the European Parliament and of the Council<sup>13</sup>. Based on those modifications, the Commission transmitted the modified Union farming management plan for 2023 to the ICCAT Secretariat on 9 May 2023 and ICCAT published those modifications to the Union plan on

Denmark, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Malta and Portugal.

Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

Council Regulation (EU) 2023/730 of 31 March 2023 amending Regulation (EU) 2023/194 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks, and Regulation (EU) 2022/109 (OJ L 95, 4.4.2023, p. 1).

Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

11 May 2023. The Union maximum farming input and capacity should be amended in line with those modifications."

#### **AMENDMENTS TO THE ARTICLES**

In Article 1, the following point is inserted:

"(c) Annex VI is amended in accordance with Annex Ia to this Regulation."

#### **AMENDMENTS TO THE ANNEXES**

The following Annex is inserted:

#### "ANNEX Ia

In Annex VI to Regulation (EU) 2023/194, point 6 is replaced by the following:

'6. Maximum bluefin tuna farming capacity and fattening capacity for each Member State and maximum input of wild-caught bluefin tuna that each Member State may allocate to its farms in the eastern Atlantic and Mediterranean

Table A

Maximum tuna farming capacity and fattening capacity					
	Number of farms	Capacity (in tonnes)			
Greece	2	2 100,00			
Spain	4	11 852,00			
Croatia	4	7 880,00			
Italy	2	19 370,00			
Cyprus	0	0			
Malta	6	16 579,65			
Portugal	2	500,00			

Table B

Maximum input of wild caught bluefin tuna (in tonnes)			
Greece	649,00		
Spain	8 237,93		
Croatia	2 947,00		
Italy	1 100,00		
Cyprus	0		
Malta	11 842,61		
Portugal	350,00		

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#### 6. AMENDMENTS IN RELATION TO NORWAY LOBSTER IN THE PORCUPINE BANK

#### **EXPLANATORY NOTE**

Since 2011<sup>14</sup>, the Council has established a special condition in its fishing opportunities regulations for the TAC for Norway lobster (*Nephrops norvegicus*) in International Council for the Exploration of the Sea (ICES) subarea 7 (Celtic Sea). That special condition limits the quantities of catches that may be taken in Functional Unit 16 of ICES subarea 7 (Porcupine Bank) within the limits of the quotas allocated to Member States under that TAC.

Regulation (EU) 2023/194 contains such special condition in the form of a footnote, which reads: 'within the limits of these quotas, no more than the quantities given below may be taken in the following zone: Functional Unit 16 of subarea 7'. In the case of Spain, the quantities of Norway lobster that Spanish vessels may take in the Porcupine Bank amounts to 1 142 tonnes. That amount exceeds the Spanish quota under the TAC, which is set at 981 tonnes, by a total of 161 tonnes.

Pursuant to the wording of the special condition, the quantity that that a Member State may take in the Porcupine Bank cannot exceed its quota under the TAC. Therefore, in the interest of legal certainty, it is proposed to specify that the amount that Spain may take in the Porcupine Bank amounts to 981 tonnes. This would result in 161 tonnes of the EU quota in the Porcupine Bank remaining unallocated, which could be made available by Council to the other Member States, namely France and Ireland.

#### AMENDMENTS TO THE RECITALS

The following recital is inserted:

"(2a) Regulation (EU) 2023/194 establishes a special condition for the TAC for Norway lobster (*Nephrops norvegicus*) in ICES subarea 7 (Celtic Sea), whereby the quantities of catches that may be taken in Functional Unit 16 of ICES subarea 7 (Porcupine Bank) is limited to a certain amount within the limits of the quotas allocated to Member States under that TAC. The quantity of catches that Spanish vessels may take in the Porcupine Bank cannot be greater than the Spanish quota for ICES subarea 7. In the interest of legal certainty, it is therefore appropriate to specify that the quantity of catches of Norway lobster that Spanish vessels may take in the Porcupine Bank in 2023 is 981 tonnes."

#### **AMENDMENTS TO THE ANNEXES**

In point 2 of Annex I, the following point is inserted before point (a):

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Council Regulation (EU) No 57/2011 first established such a special condition. Council Regulation (EU) No 1106/2011 then amended that Regulation (EU) No 57/2011 as regards the allocation of quotas to Member States under that special condition, establishing a new allocation key for that special condition. That new allocation key differed from the allocation key for the TAC, in that it shows an increased share for Spain and decreased share for the UK and to a lesser extent for France.

# (a1) the table for Norway lobster (*Nephrops norvegicus*) in ICES subarea 7 is replaced by the following:

Species:	Norway lobster		Zone: 7
	Nephrops norvegicus		(NEP/07.)
Spain	981	(1)	Analytical TAC
France	3 974	(1)	
Ireland	6 027	(1)	
Union	10 982	(1)	
United Kingdon	m 7 371	(1)	
TAC	18 353		
(1)	•	its of	these quotas, no more than the quantities given below may be taken in the
	following zone:		
_	Functional unit 16 of su	barea	7 (NEP/*07U16)
Spain	981		
France	715		
Ireland	1 374		
Union	3 231		
United Kingdon	m 556		