

COMMISSION SERVICES NON-PAPER

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Updates to Commission Proposal COM (2021)491 for a Council Regulation fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea, and amending Regulation (EU) 2021/92 as regards certain fishing opportunities in other waters

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A. Amendments to the Commission Proposal regarding fishing opportunities for western Baltic cod

1. Recital 7 is replaced by the following

“The International Council for the Exploration of the Sea (‘ICES’) published its annual stock advice for Baltic stocks on 28 May 2021. It indicated that the biomass of western Baltic herring in subdivision 20 to 24 was only 54% of the limit spawning stock biomass reference value, below which there might be reduced reproductive capacity (‘ B_{lim} ’). Furthermore recruitment remains at historically low levels. ICES therefore published for the fourth consecutive year an advice for zero catches. In accordance with Article 5(2) of Regulation (EU) 2016/1139, all appropriate remedial measures are to be adopted to ensure a rapid return of the stock concerned to levels above the level capable of producing MSY. Moreover, that provision requires further remedial measures to be adopted.. If the fishing opportunities for western Baltic herring were to be set at the level indicated in the scientific advice, the obligation to land all catches in mixed fisheries with by-catches of western Baltic herring would lead to the phenomenon of ‘choke species’. In order to strike the right balance between, on the one hand, allowing fisheries to continue in view of otherwise potentially severe socioeconomic implications, and, on the other, the need to achieve a good biological status for the stock, taking into account the difficulty of fishing all stocks in a mixed fishery at MSY at the same time, it is appropriate to establish a specific TAC for by-catches of western Baltic herring. However, fishing operations conducted for the exclusive purpose of scientific investigations and in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241 of the European Parliament and of the Council¹ should be allowed to target western Baltic herring. The level of the TAC should be such that mortality is not increased and that it provides incentives for improvements in selectivity and avoidance.

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2. Recital 9 is replaced by the following:

“As regards western Baltic cod, the scientists had estimated for several years already that the spawning stock biomass was below the reference point, below which specific and appropriate management action is to be taken ($B_{trigger}$). Increasingly strict management measures have therefore been adopted in recent years. This year ICES decided to perform a more in-depth assessment of the stock’s situation and hence postponed its advice to 10 September 2021. That assessment revealed that the stock’s biomass is less than half of the previous estimate and that for more than 10 years it has been mostly below B_{lim} . The current biomass is estimated to be about half of B_{lim} . Recruitment has been historically low since 2018. ICES estimates that with a 53% probability the stock biomass should increase slightly above B_{lim} in 2023 even with some catches. In such a situation, pursuant to Article 5(2) of Regulation (EU) 2016/1139, remedial measure should be taken and the fishing opportunities set in a way to ensure the rapid return of the stock to a level above the level capable of producing MSY. The

¹ 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).

level of advised catches is so low that it cannot sustain both, a directed fishery and the unavoidable by-catches in other fisheries, most notably in demersal flatfish fisheries. Therefore, it is appropriate to set a TAC limited to unavoidable by-catches in other fisheries to avoid the above-mentioned phenomenon of ‘choke species’, with an exception for fishing operations conducted for the exclusive purpose of scientific investigations and in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241. Moreover, further remedial measures functionally linked to the fishing opportunities were adopted in the past in the form of spawning closures and limitations to recreational fishing. Given the further severe deterioration of the stock, it is appropriate to extend the spawning closure to 15 January to 31 March in order to cover the period during which cod aggregates before spawning. Regarding recreational fishing, contrary to previous years ICES was not in a position to provide a split between commercial and recreational catches, because of the low level of total advised catches. Moreover, ICES states that the post-release mortality in the sea-based recreational fishery is 11.2%, while it is considered to be 100% in the land-based recreational fishery. It is therefore necessary to decrease the bag limit to the minimum in order to remain within the catch levels advised by ICES. Moreover, it is appropriate to no longer exempt recreational fisheries from the spawning closure period. Furthermore, recreational catch-and-release fishing should be limited to sea-based recreational fishing using artificial fishing bait.”

3. Recital 17 is replaced by the following:

“Moreover given that the biomass of the stock of (i) eastern Baltic cod, (ii) western Baltic herring and (iii) western Baltic cod is below B_{lim} and that only by-catch and scientific fisheries are permitted in 2022, Member States have undertaken not to apply the year-to-year flexibility provided in Article 15(9) of Regulation (EU) No 1380/2013 for these stocks in 2022 so that catches in 2022 will not exceed the TAC set for eastern Baltic cod, western Baltic herring and western Baltic cod.”

4. Article 7, paragraph 3 is replaced by the following:

“It shall be prohibited to fish with any type of fishing gear in subdivisions 22 and 23 from 15 January to 31 March and in subdivision 24 from 15 May to 15 August.”

5. In Article 8, paragraph 1, “[pm] specimens” is replaced by “one specimen”.

6. The following new paragraph 1a is added to Article 8:

“Recreational catch-and-release fishing for cod shall be prohibited in subdivisions 22 and 23 and in subdivision 24 within six nautical miles measured from the baselines, with the exception of sea-based fishing performed with artificial fishing bait.

”

7. Article 8, paragraph 2 is replaced by the following:

“By way of derogation from paragraphs 1 and 1a, recreational fisheries for cod shall be prohibited in subdivisions 22 and 23 and in subdivision 24 within six nautical miles measured from the baselines in the period from 15 January to 31 March.”

8. In the Annex, table 6 relating to the fishing opportunities for cod in ICES subdivisions 22-24 is replaced by the following:

“

Table 6

Species:	Cod <i>Gadus morhua</i>	Zone:	Subdivisions 22-24 (COD/3BC+24)
Denmark	141 ⁽¹⁾		
Germany	69 ⁽¹⁾		
Estonia	3 ⁽¹⁾		
Finland	3 ⁽¹⁾		
Latvia	12 ⁽¹⁾		
Lithuania	8 ⁽¹⁾		
Poland	38 ⁽¹⁾		
Sweden	50 ⁽¹⁾		
Union	324 ⁽¹⁾		
TAC	324 ⁽¹⁾	Analytical TAC Article 3(2) and (3) of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.	

⁽¹⁾ Exclusively for by-catches. No directed fisheries are permitted under this quota.

By way of derogation from the first paragraph, fishing operations conducted for the exclusive purpose of scientific investigations may be directed to cod provided that those investigations are carried out in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241.

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B. Amendments to the Commission Proposal regarding Regulation (EU) 2021/92

Explanatory Note

- 1) In Recital 14 of Council Regulation (EU) 2021/1239, Member States agreed not to use inter-annual transfers of quota for cod (*Gadus morhua*) in 7d from 2020 to 2021 due to the poor biological status of the stock, and in line with the Agreed Record signed between the EU, the UK and Norway. However, the fishing opportunities table for cod included a reference to the articles 3 and 4 of Regulation (EC) No 847/96 on inter-annual transfers, allowing such transfers from 2021 to 2022. Therefore, the references to articles 3 and 4 must be corrected to reflect the fact that they shall not apply.
- 2) In 2021, the EU does not have access to fishing its mackerel (*Scomber scombrus*) quota in Norwegian waters of the North Sea. The area delineations in the fishing opportunities table for mackerel in the North Sea should be updated to refer to EU and United Kingdom waters, while the area flexibility footnote allowing quota holders to fish their quota in Norwegian waters of 4a should be deleted. The quota for Denmark in the special condition for inter-area flexibility in United Kingdom and international waters of 3a, 5b, 6, 7, 8d, 8e 12 and 14 must also be corrected to represent the inter-area flexibility percentage of 60% agreed by the EU and the UK in the Written Record for 2021.
- 3) Furthermore, to cater for the absence of access to Norwegian waters, the fishing opportunities table for mackerel in Norwegian waters of 2a and 4a must be updated to allow for the fishing of this mackerel quota into the Union and United Kingdom waters of the North Sea. Both relevant fishing opportunities tables belong to the same mackerel stock in the North Sea and concern the same quota allocated to Denmark.
- 4) In 2021, ICES area descriptions of various TACs have been adjusted following the Trade and Cooperation Agreement signed between the EU and the UK to reflect the new divide between Union and United Kingdom waters. The TAC for “other species” in Union waters of 2a, 4 and 6a north of 56° 30' N is a zonal access quota exchanged by the EU to Norway allowing Norway to catch other species (defined as species not specifically mentioned in the annexes of the Agreed Record) in EU waters. As waters of 2a are no longer EU waters, the reference must be removed and the zone updated accordingly.
- 5) A placeholder for capelin in Greenlandic waters is inserted, and an amendment regarding fishing authorisations for Venezuela.

Amendments to the enacting terms

1. The following new recital 18a is added:

“In Regulation (EU) 2021/92, the fishing opportunities table for mackerel (*Scomber scombrus*) in the North Sea refers to waters of 3a and 4; United Kingdom waters of 2a; Union waters of 3b, 3c and Subdivisions 22-32 in line with the TCA. However, in 2021, consultations on mackerel between the Coastal States did not lead to an agreement on access arrangements between the EU, the UK and Norway. Therefore, the EU does not have access to fishing its mackerel quota in Norwegian waters of the North Sea.”

2. The following new recital 18b is added:

“In 2021, the Union concluded negotiations with the UK on fishing opportunities and management measures for certain TACs for 2021, including for mackerel, which enables the Union to fish its mackerel quota in UK waters. As a result, the relevant fishing opportunities tables should be amended accordingly to reflect the fishing area delimitations in the waters of the North Sea to United Kingdom and European Union waters.”

3. The following new recital 18c is added:

“In 2021, the EU does not have access to fishing its mackerel (*Scomber scombrus*) quota in Norwegian waters of the North Sea. In Regulation (EU) 2021/92, the fishing opportunities table for mackerel in Norwegian waters of 2a and 4a is therefore void, and the quota of 13 359 tonnes allocated to Denmark, which is part of the overall mackerel quota attributed to Denmark in the North Sea, must be fished in Union and United Kingdom waters of the North Sea. A footnote is inserted in the relevant fishing opportunities table to allow for Denmark to fish this quota in Union and United Kingdom waters of the North Sea.”

4. The following new recital 18d is added:

“[placeholder for capelin in Greenlandic waters]”

5. The following new recital 18e is added:

“Fishing licenses are granted by the Commission to vessels flying the Venezuelan flag in order to allow them to fish for snapper in European waters off the coast of French Guiana. The proposed amendment aims at ensuring continuity of fishing operations during the authorisation process in between two years under certain conditions.”

6. The following new recital 18f is added:

“Council Regulation (EU) 2021/92 should therefore be amended accordingly”

7. Article 12 is replaced by the following:

“

Amendments to Regulation (EU) 2021/92

(1) In Annex IA, the fishing opportunities table for Norway pout and associated by-catches in ICES division 3a and the United Kingdom and European Union waters of ICES subarea 4 and United Kingdom waters in ICES division 2a is replaced by the following:

“

Species:	Norway pout and associated by-catches		Zone:	3a; United Kingdom and European Union waters of subarea 4; United Kingdom waters of 2a (NOP/2A3A4.)
	<i>Trisopterus esmarkii</i>			
Year	2021	2022		
Denmark	116 447 (1)(3)	pm (1)(6)		Analytical TAC
Germany	22 (1)(2)(3)	pm (1)(2)(6)		Article 3 of Regulation (EC) No 847/96 shall not apply
The Netherlands	86 (1)(2)(3)	pm (1)(2)(6)		Article 4 of Regulation (EC) No 847/96 shall not apply

Union	116 555	(¹)(³)	pm	(¹)(⁶)
United Kingdom	11 745		pm	
Norway	0	(⁴)	pm	(⁴)
Faroe Islands	0	(⁵)	pm	(⁵)
TAC	Not relevant			

- (1) Up to 5 % of the quota may consist of by-catches of haddock and whiting (OT2/*2A3A4). By-catches of haddock and 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) Quota may be fished in United Kingdom and European Union waters of ICES zones 2a, 3a and 4 only.
- (3) Union quota may only be fished from 1 November 2020 to 31 October 2021.
- (4) A sorting grid shall be used.
- (5) A sorting grid shall be used. Includes a maximum of 15 % of unavoidable by-catches (NOP/*2A3A4), to be counted against this quota.
- (6) Union quota may be fished from 1 November 2021 to 31 October 2022.

“

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8. The following new paragraph 2 is added to Article 12:

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- (2) In Annex IA, the fishing opportunities table for cod in ICES division 7d is replaced by the following:

“

Species:	Cod <i>Gadus morhua</i>	Zone:	7d (COD/07D.)
Belgium	33	(¹)	Analytical TAC Article 3 of Regulation (EC) No 847/96 shall not apply Article 4 of Regulation (EC) No 847/96 shall not apply
France	649	(¹)	
Netherlands	19	(¹)	
Union	701	(¹)	
United Kingdom	71	(²)	

TAC 772

- (1) Special condition: of which up to 5 % may be fished in 4, that part of 3a not covered by the Skagerrak and Kattegat and United Kingdom waters of 2a (COD/*2A3X4).
- (2) Special condition: of which up to 5 % may be fished in United Kingdom and Union waters of 4, that part of 3a not covered by the Skagerrak and Kattegat and United Kingdom waters of 2a (COD/*2A3X4)

“

“

9. The following new paragraph 3 is added to Article 12:

“

- (3) In Annex IA, the fishing opportunities table for mackerel in United Kingdom and European Union waters of ICES areas 2a, 3 and 4 is replaced by the following:

”

Species :	Mackerel <i>Scomber scombrus</i>	Zone:	United Kingdom and European Union waters of areas 2a, 3 and 4 (MAC/2A34.)
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Belgium	544	(1)(2)(3)	Analytical TAC
Denmark	18 666	(1)(2)(3)	Article 8(2) of this Regulation applies
Germany	567	(1)(2)(3)	
France	1 713	(1)(2)(3)	
The Netherlands	1 724	(1)(2)(3)	
Sweden	5 108	(1)(2)(3)(3)	
Union	28 322	(1)(2)(3)	
Norway	Not relevant	(4)	
United Kingdom	Not relevant	(1)(2)(3)	
TAC	852 284		

(1) Special condition: up to 60 % may be fished in United Kingdom and international waters of 2a, 5b, 6, 7, 8d, 8e, 12 and 14 (MAC/*2AX14).

(2) Within the limits of the abovementioned quotas, no more than the quantities given below may also be taken in the two following zones:

	Norwegian waters of 2a (MAC/*02AN-)	Faroese waters (MAC/*FRO1)
Belgium	0	0
Denmark	0	0
Germany	0	0
France	0	0
The Netherlands	0	0
Sweden	0	0
Union	0	0

3) ~~May also be taken in Norwegian waters of 4a (MAC/*4AN.)~~

(3) Special condition: including the following tonnage to be taken in Norwegian waters of 2a and 4a (MAC/*2A4AN):

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When fishing under this special condition, by-catches of cod, haddock, pollack, whiting and saithe are to be counted against the quotas for those species.

(4) To be deducted from Norway's share of the TAC (access quota). This amount includes the following Norwegian share in the North Sea TAC:

0

This quota may be fished in 4a only (MAC/*04A.), except for the following amount, in tonnes, which may be fished in 3a (MAC/*03A.):

0

Special condition: within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zones:

	3a	United Kingdom and European Union waters of 3a and 4bc	4b	4c	United Kingdom and international waters of 2a, 5b, 6, 7, 8d, 8e, 12 and 14
	(MAC/*03A.)	(MAC/*3A4BC)	(MAC/*04B.)	(MAC/*04C.)	(MAC/*2A6.)
Belgium	0	0	0	0	326
Denmark	0	4130	0	0	11 200
Germany	0	0	0	0	340
France	0	490	0	0	1 028
The Netherlands	0	490	0	0	1 034
Sweden	0	0	390	10	3 065
Union	0	5110	390	10	16993
United Kingdom	0	Not relevant	0	0	Not relevant
Norway	0	0	0	0	0

“

10. The following new paragraph 4 is added to Article 12:

“

(4) In Annex IA, the fishing opportunities table for mackerel in Norwegian waters of ICES areas 2a and 4a is replaced by the following:

”

Species:	Mackerel <i>Scomber scombrus</i>	Zone:	Norwegian waters of 2a and 4a (MAC/2A4A-N)
Denmark	13 359 ⁽¹⁾	Analytical TAC	
Union	13 359 ⁽¹⁾		
TAC	Not relevant		
(1)	In 2021, this quota may only be fished in United Kingdom and European Union waters of areas 2a, 3 and 4 (MAC/*2A34X).		

“

11. The following new paragraph 5 is added to Article 12:

“

(5) In Annex IA, the fishing opportunities table for other species in Union waters of ICES areas 4 and 6a north of 56°30'N is replaced by the following:

”

Species:	Other species	Zone:	Union waters of 2a, 4 and 6a north of 56° 30' N (OTH/2A46AN)
Union	Not relevant	Precautionary TAC	
Norway	1 000 ⁽¹⁾⁽²⁾		
Faroe Islands	0 ⁽³⁾		
TAC	Not relevant		
(1)	Limited to 2a and 4 (OTH/*2A4-C).		
(2)	Species not covered by other TACs.		
(3)	To be fished in 4 and 6a north of 56° 30' N (OTH/*46AN).		

“

12. The following new paragraph 6 is added to Article 12:

“

(6) In Annex IB, the fishing opportunities table for Capelin in Greenland waters of 5 and 14 is replaced by the following:

“

Species:	Capelin <i>Mallotus villosus</i>	Zone:	Greenland waters of 5 and 14 (CAP/514GRN)
Denmark	to be established	Analytical TAC	

Germany	to be established		Article 3 of Regulation (EC) No 847/96 shall not apply
Sweden	to be established		Article 4 of Regulation (EC) No 847/96 shall not apply
All Member States	to be established	(1)	Article 7a of this Regulation shall apply
Union	to be established	(2)	
Norway	to be established	(2)	

TAC	Not relevant		
(1)	Denmark, Germany and Sweden may access the "All Member States" quota only once they have exhausted their own quota. However, Member States with more than 10% of the Union quota shall not access the "All Member States" quota at all. Catches to be counted against this shared quota shall be reported separately (CAP/514GRN_AMS).		
(2)	For a fishing period from 20 June 2021 to 15 April 2022.		

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13. The following new paragraph 7 is added to Article 12:

“

(7) In Annex V, Part B the following new footnote 2 relating to Venezuela is added to the table setting the maximum number of fishing authorisations for third country vessels fishing in Union waters:

“

(2) Fishing activities are authorised on an annual calendar basis. However, a fishing vessel can continue its fishing activities up to 3 months after expiry of its fishing authorisation provided that the operator:

- initiated the renewal process of his fishing authorisation
- fulfilled all his contractual and information communication obligations

This extension expires upon entry into force of the Commission decision delivering a new fishing authorisation or notification of the refusal of the new fishing authorisation to that vessel.

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“