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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 August 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL REGULATION fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea

Delegations will find attached document COM(2018) 608 final.

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EUROPEAN
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Brussels, 31.8.2018
COM(2018) 608 final

2018/0320 (NLE)

Proposal for a

COUNCIL REGULATION

**fixing for 2019 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 2019. 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.

- **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 2019 under the Common Fisheries Policy COM(2018) 452 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 2018.

- **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 bringing fishing mortality in line with MSY for all stocks except one and in rebuilding stocks and rebalancing fishing capacity and fishing opportunities. Progress is still necessary however to rebuild all stocks, some of them still under safe biomass limits, and to bring all stocks in line with MSY.

Taking the above into account, the Commission proposal would decrease fishing opportunities for Western Baltic herring by 63%, for Central herring by 26%, for Gulf of Bothnia herring by 7%, for Eastern Baltic cod by 15% and for Gulf of Finland salmon by 1%. The Commission proposal would increase fishing opportunities for Gulf of Riga herring by 7%, for sprat by 3%, for plaice by 43%, for Western Cod by 31% and for main basin salmon by 15%.

The impact of the proposals for 2019 will therefore be highly differentiated by type of fishery. All in all, the Commission proposal leads to a level of approximately [609 thousand tonnes for the Baltic fishing opportunities, a reduction by 9.7% compared to 2018].

- **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 2019 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 2019 the fishing opportunities for certain stocks or groups of stocks for Member States fishing in the Baltic Sea.

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

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

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) of Regulation (EU) No 1380/2013 of 11 December 2013 on the Common Fisheries Policy.

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.

The proposed TACs for the herring stocks in the Gulf of Riga and the Gulf of Bothnia, as well as the proposed TACs for sprat, Western Baltic cod and main-basin salmon correspond to the MSY fishing mortality range as referred to in Article 4(2) and Annex I, Column A of Regulation (EU) 2016/1139. For Central Baltic herring, the TAC is set a level that corresponds to a fishing mortality range as referred to in Article 4(4) and Annex I, Column B of that regulation, in order to limit variations in fishing opportunities between consecutive years. For Western Baltic herring the stock size estimated by ICES is below the minimum spawning stock biomass reference point (MSY $B_{trigger}$) as defined in Annex II, Column A of Regulation (EU) 2016/1139. Moreover, following a re-estimation of the appropriate reference points by ICES, according to the latest ICES advice², the stock size is below the limit biomass reference point (B_{lim}).

Article 5(2) of Regulation 2016/1139 requires, when scientific advice indicates that the stock is below the minimum spawning biomass reference point as set out in Annex II, column A, all appropriate remedial measures shall be adopted to ensure a rapid return of the stock concerned to a level capable of producing MSY. To achieve such a level, fishing opportunities for the stock concerned shall be fixed at a level consistent with the fishing mortality that is reduced below the range set out in Annex I, column B to Regulation 2016/1139. Taking into account the decrease in biomass of Western Baltic herring, the Commission proposes to use article 4(3) of Regulation 2016/1139 and set the TAC at a lower level than those set out in Annex I, column A. This corresponds to a TAC of 6 404 t (-63%), to allow for a quicker recovery of the stock as according to ICES this TAC level allows for an increase in biomass of 9,3 % by 2019.

The Commission considers that the fishing mortality ranges set out in Annex I and conservation reference points in Annex II to Regulation 2016/1139 no longer correctly reflect the best scientific advice available. Regulation (EU) 2016/1139 is to be brought in line with up to date science by provisions proposed in Article 17 of Commission proposal COM (2018)149³.

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

² <http://ices.dk/sites/pub/Publication%20Reports/Advice/2018/2018/her.27.20-24.pdf>

³ Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for fish stocks in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulation (EU) 2016/1139 establishing a multiannual plan for the Baltic Sea, and repealing Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) 509/2007 and (EC) 1300/2008

The TAC for plaice corresponds to a combination of the MSY advice for the stock in subdivisions 21 to 23 and to the ICES approach for data limited stocks for the stock in subdivision 24 to 32. 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.

Proposal for a

COUNCIL REGULATION

fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea

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 6 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹ 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 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.
- (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. 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.
- (3) 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.
- (4) 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 socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in having regard to the opinions expressed during the consultation with stakeholders.

¹ 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).

- (5) Regulation (EU) 2016/1139 of the European Parliament and of the Council² establishes a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea 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 2019 for the cod, herring and sprat stocks in the Baltic Sea are established in line with the objectives of the plan.
- (6) The International Council for the Exploration of the Sea (ICES) has indicated the biomass of Western Baltic herring in subdivision 20 to 24 to be below the conservation reference points of the spawning stock biomass as set out in Annex II, column A to Regulation 2016/1139. In accordance with Article 5(2) of that Regulation all appropriate remedial measures shall be adopted to ensure a rapid return of the stock concerned to a level capable of producing MSY. 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. Accordingly, and in line with Article 4(3) of Regulation (EU) 2016/1139, it is appropriate that fishing opportunities for Western Baltic herring are set below the fishing mortality range in Annex I, column A of that Regulation, as such a level takes into account the decrease in the biomass.
- (7) As regards the Western Baltic Sea cod stock, scientific advice indicates that recreational fisheries contribute significantly to the overall fishing mortality of that stock. Taking into account the current status of that stock, it is appropriate to maintain a daily bag limit per fisherman. This is without prejudice to the principle of relative stability applicable to commercial fishing activities.
- (8) As regards the Eastern Baltic cod stock, the ICES has not yet been able to establish biological reference points, following changes in the biology of the stock. 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.
- (9) The use of the fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009³, 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

² 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

³ 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](#)).

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.

- (10) Council Regulation (EC) No 847/96⁴ 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.
- (11) In order to avoid interruption of fishing activities and to ensure the livelihoods of Union fishermen, this Regulation should apply from 1 January 2019. 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 2019.

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.

⁴ 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 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) 'subdivision' means an ICES subdivision of the Baltic Sea as defined in Annex I to Council Regulation (EC) No 2187/2005⁵;
- (2) 'total allowable catch' (TAC) means the quantity of each stock that can be caught over the period of a year;
- (3) 'quota' means a proportion of the TAC allocated to the Union, a Member State or a third country;
- (4) '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;
- (b) deductions and reallocations made pursuant to Article 37 of Regulation (EC) No 1224/2009;

⁵ 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](#)).

- (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

The stocks of non-target species within the safe biological limits referred to in Article 15(8) of Regulation (EU) No 1380/2013 which qualify for the derogation from the obligation to count catches against the relevant quota are identified in the Annex.

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. Paragraphs 1 is without prejudice to more stringent national measures.

CHAPTER III

FINAL PROVISIONS

Article 8

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 9

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 10

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 2019.

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

Done at Brussels,

For the Council
The President