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2016/0260 (NLE)**

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Updates to the Commission's proposal 2016/0260 (NLE) for a Council Regulation fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea - Commission non-paper

Delegations will find attached the above-mentioned document that will be discussed in the Working Party on Internal and External Fisheries Policy on 15 September 2016.

NON PAPER

14 September 2016

This document serves as an information following discussions in the meetings of the Working Party on Internal and External 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 the Commission's proposal

for a Council Regulation

**fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks
applicable in the Baltic Sea**

(COM(2016)545 final)

2016/0260 (NLE)

1. INTRODUCTION

Cod in subdivision 22-24

Regulation (EU) 2016/1139 of the European Parliament and of the Council 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 establishes conservation reference points expressed as minimum spawning stock biomass and as limit biomass and sets the appropriate safeguard measures in case the stock size falls below such critical biomass levels.

According to the scientific advice provided by ICES on 31 May 2016, the biomass of the western cod stock in 2016 is estimated to be below $MSY B_{trigger}$ and below B_{lim} . Furthermore the stock's biomass has been below $MSY B_{trigger}$ since 1994 and below B_{lim} since 2008. The fishing mortality is well above not only the maximum sustainable yield level but also above the precautionary levels. This indicates that the stock has been overfished for a number of consecutive years and the reproductive capacity of it has been seriously impaired leading to potential stock collapse. This is demonstrated by the fact that the recruitment of the stock has been low since 1999 and in 2016 it is estimated to be the lowest in the time series used for the assessment of the stock. These together raise the risk of even more severe damage to the stock.

According to Article 5 of the Regulation (EU) 2016/1139 specific measures shall be activated to safeguard the full reproductive capacity of a stock whose spawning biomass has fallen below conservation reference points. These measures aim, in the legislator's intention, to safeguard stocks against serious harm and as a basis for the sustainable future of the fisheries that depend on them. Article 5 provides that:

"2. When scientific advice indicates that the spawning stock biomass of any of the stocks concerned is below the minimum spawning stock biomass reference point as set out in Annex II , column A, to this Regulation, all appropriate remedial measures shall be adopted to ensure rapid return of the stock concerned to levels above the level capable of producing MSY . In particular, by way of derogation from Article 4(2) and (4) of this Regulation and in accordance with Article 16(4) of Regulation (EU) No 1380/2013, to achieve such levels, fishing opportunities for the stock concerned shall be fixed at a level consistent with a fishing mortality that is reduced below the range set out in Annex I, column B, to this Regulation, taking into account the decrease in biomass of that stock.

3. When scientific advice indicates that the spawning stock biomass of any of the stocks concerned is below the limit spawning stock biomass reference point as set out in Annex II, column B, to this Regulation, further remedial measures shall be taken to ensure the rapid return of the stock concerned to levels above the level capable of producing MSY, which may include, by way of derogation from Article 4(2) and (4) of this Regulation and in accordance with Article 16(4) of Regulation (EU) No 1380/2013, suspending the targeted fishery for the stock concerned and the adequate reduction of fishing opportunities."

Therefore, in order to protect the stock of the western Baltic cod from further serious harm and in order to maintain it as a basis for the fisheries that exploit it, "all appropriate remedial measures" shall be adopted to ensure rapid return of the stock to levels above the level capable of producing MSY and in addition, "further remedial measures" must be adopted since the stock has been below the limit reference value. In addition, according to ICES stock biomass is forecasted to remain below precautionary and minimum spawning stock biomass in 2018 even if the commercial fishery is closed. Accordingly, Regulation (EU) 2016/1139 states that the ICES' approach for such situations needs to be followed meaning that the fishing mortality is to be reduced to a value that does not exceed an upper limit equal to the F_{msy} point value multiplied by the spawning stock biomass in the TAC year, divided by $MSY B_{trigger}$ (Recital 13).

It has been pointed out by a number of stakeholders, in particular by small-scale fishermen, that Member States collectively under Article 8 of the Regulation (EU) 2016/1139 could propose a number of such further remedial measures. Suggestions for such measures include: temporary restriction of bottom trawling for cod, especially for trawls using certain gears; national allocation of fishing opportunities mainly for passive gears; increases in mesh size for towed gear to minimise cod catches; extended closure periods (February and March; the by-catches of cod during the closure and non-closure periods would have to be recorded and counted against the quota); regulation of recreational fisheries.

The Commission however notes that to date, no measures prescribed under Article 5(4) and (5) of Regulation 2016/1139¹ have been agreed by the Member States concerned by way of a joint recommendation. Member States are urged to consider these ones urgently.

The recreational fishery in certain Member States constitutes a significant part of the fishing mortality of the western cod stock. The balance between the two fisheries activities is a management decision. In the absence of any effective and binding management measures for recreational fisheries, the Commission assumes, as advised by ICES, that those fisheries will continue at the current level. Therefore, this non-paper concerns commercial catches in line with the ICES advice for the commercial part of the total catches.

The Commission remains open to consider legally binding limitations of recreational fishing as an element of a balanced, overall approach that is inspired by a sense of solidarity. It appears that the introduction of a spawning closure period in February and March for recreational fishing would reduce recreational catches by at least 290 tonnes. A binding bag limit of 3 cod per day could reduce recreational catches by up to 1320 tonnes, a bag limit of 5 cod per day by up to 900 tonnes.

To take into account the mixing of the western cod stock - as assessed above - with the eastern cod stock in subdivision 24, the following calculation needs to be made. According to ICES, the proportions of commercial catches of the western stock taken in subdivisions 22-23 and subdivision 24 have been quite stable since 1994, amounting to 69% and 31%, respectively, on average during the three most recent years. Assuming the geographical distribution of the commercial catch in 2017 remains according to those proportions, the distribution of the TAC for commercial catches should be 633 tonnes in subdivisions 22-23 and 284 tonnes in subdivision 24. The additional amount of eastern cod fished in subdivision 24 is estimated to be 671 tonnes, assuming the same ratio of 2.36 of catches between eastern and western cod in subdivision 24 as observed during 2013-2015. This gives a total allowable catch in 2017 of 1588 tonnes for cod in subdivisions 22-24.

The Commission also remains open to consider a possible split of the TAC for sub-divisions 22-24 into two TACs, one for sub-divisions 22-23 and one for sub-division 24. Such a split might make it easier to adopt specific management measures and restrictions in sub-divisions 22-23 where cod spawns and requires special protection. The Commission invites the Member States concerned to consider what quota distribution keys would be necessary in such a case, prior to possibly making a proposal.

¹ Article 5 of the Regulation (EU) 2016/1139 also provides that:

4. Remedial measures referred to in this Article may include:

- (a) Commission measures in case of a serious threat to marine biological resources in accordance with Article 12 of Regulation (EU) No 1380/2013,
- (b) Member State emergency measures in accordance with Article 13 of Regulation (EU) No 1380/2013,
- (c) measures pursuant to Articles 7 and 8 of this Regulation.

5. The choice of measures referred to in this Article shall be made in accordance with the nature, seriousness, duration and repetition of the situation where the spawning stock biomass is below the levels referred to in paragraph 1.

The Regulation (EU) 2016/1139 applies to the eastern Baltic cod. It further states that in cases when the reference points are not available for stocks subject to the Baltic multiannual plan, the precautionary approach should apply (Recital 17).

The MSY approach cannot be used as the assessment faced quality concerns that could not be properly addressed by scientists. Therefore ICES could not establish the reference points of the stock biomass and of the fishing mortality. Instead the advice is based on evaluation of biomass fluctuation in the last five years which constitutes the precautionary approach to stock assessment and forms the basis for the advice.

Therefore the Commission's proposal for a Council Regulation fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea shall be amended accordingly:

2. AMENDMENTS TO RECITALS

2.1 The new Recital (6a) and Recital (6b) shall be introduced:

- "(6a) The conservation reference point for the western cod stock has been established by Regulation (EU) 2016/1139. In 2016, ICES estimated that the biomass of the western cod stock is below the set conservation reference point. Therefore under the terms of Article 5(3) of the same Regulation remedial measures shall be taken to ensure the rapid return of the stocks concerned to levels above the level capable of producing MSY which may include suspending the targeted fishery and the adequate reduction of fishing mortality.
- (6b) Under the terms of Article 5(5) of the same Regulation the choice of remedial measures shall be made in accordance with the nature, seriousness, repetition of the situation where the spawning stock biomass is below the set conservation reference points. In 2016, ICES estimated that the biomass of the western cod stock has been below the conservation reference point since 2008. Therefore in order to ensure the rapid return of the stock to levels capable of producing MSY it is appropriate to apply the both measures mentioned in recital (6a)."

3. AMENDMENTS TO ANNEX

3.1 The table in Annex pertaining to cod species in zone: Union waters of Subdivisions 25-32 shall be replaced by the following:

Species:	Cod Gadus morhua	Zone:	Union waters of Subdivisions 25-32 (COD/3DX32.)
Denmark	5 726		
Germany	2 278		
Estonia	558		
Finland	438		
Latvia	2 129		
Lithuania	1 403		
Poland	6 594		
Sweden	5 801		
Union	24 927		
TAC	Not relevant	Precautionary 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.	

3.2 The table in Annex pertaining to cod species in zone: Subdivisions 22-24 shall be replaced by the following:

Species:	Cod Gadus morhua	Zone:	Subdivisions 22-24 (COD/3BC+24)
Denmark	694	(1)	
Germany	339	(1)	
Estonia	15	(1)	
Finland	14	(1)	
Latvia	57	(1)	
Lithuania	37	(1)	
Poland	185	(1)	
Sweden	247	(1)	
Union	1588	(1)	
TAC	1588	(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⁾ This quota may be fished from 1 January to 1 February and from 1 April till 31 December 2017