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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches

COUNCIL DECISION (EU) 2021/…

of …

concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 29 April 2021 the Council adopted Decision (EU) 2021/689[1] on the conclusion of 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[2] (the 'Trade and Cooperation Agreement'). The Trade and Cooperation Agreement entered into force on 1 May 2021.

(2) Under Article 494 of the Trade and Cooperation Agreement, the Union and the United Kingdom (the 'Parties') agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties. The Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield (MSY).

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[1] Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2).

[2] OJ L 149, 30.4.2021, p. 10.

(3) Pursuant to Article 498 of the Trade and Cooperation Agreement, the Parties are to hold annual consultations to agree on total allowable catches (TACs) for shared stocks.

(4) The Commission should carry out the annual consultations on behalf of the Union and on the basis of Union positions to be established by the Council in accordance with the relevant Treaty provisions.

(5) The regular and full involvement of the Council and its preparatory bodies in the process of annual consultations with the United Kingdom on fixing fishing opportunities for the stocks in question should be ensured by means of extensive coordination and cooperation between the Council and the Commission, in accordance with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union (TEU).

(6) The European Parliament is to be immediately and fully informed pursuant to Article 218(10) of the Treaty on the Functioning of the European Union (TFEU).

(7) Article 2(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council[1] requires the Union to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

(8) Article 2(2) of Regulation (EU) No 1380/2013 requires the Union to apply the precautionary approach to fisheries management and to aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels that can produce MSY.

[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).

(9) Article 2(5), point (j), of Regulation (EU) No 1380/2013 requires that fisheries management be coherent with the objective of achieving a good environmental status as set out in Directive 2008/56/EC of the European Parliament and of the Council[1]. Article 2(5), point (a), of Regulation (EU) No 1380/2013, read in conjunction with Article 7(1), point (d), of that Regulation, further requires the Union to gradually eliminate discards by, *inter alia*, promoting fishing methods that contribute to more selective fishing and to the avoidance and reduction, as far as possible, of unwanted catches, as well as fishing with low impact on marine ecosystem and fishery resources.

(10) Article 3, point (c), of Regulation (EU) No 1380/2013 provides that the Union is to take management and conservation measures based on the best available scientific advice.

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1 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

(11) Article 28 of Regulation (EU) No 1380/2013 provides that the Union is to conduct its external fisheries relations in accordance with the objectives and principles set out in Articles 2 and 3 of that Regulation and is to, inter alia, actively support and contribute to the development of scientific knowledge and advice. Article 28 of Regulation (EU) No 1380/2013 also provides that the provisions on external policy set out in Part VI of that Regulation are without prejudice to specific provisions adopted under Article 218 TFEU.

(12) Article 33 of Regulation (EU) No 1380/2013 lays down principles and objectives of the management of stocks of common interest to the Union and third countries, as well as provisions concerning agreements on exchange and joint management.

(13) In view of the evolving nature of fishery resources covered by the Trade and Cooperation Agreement and the need for the Union's position to take account of new developments, including new scientific and other relevant information presented before or during the annual consultations, provisions should be laid down for the year-to-year specification of the Union position in those consultations. Those provisions should be in accordance with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) TEU.

(14) Pursuant to point 2(c) of Annex II to Council Decision (EU) 2021/1765[1], the Union may seek to record matters agreed by the Parties following consultations under Article 498 of the Trade and Cooperation Agreement.

(15) It is therefore appropriate to establish the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom, as the outcome of those consultations should be implemented into Union law,

HAS ADOPTED THIS DECISION:

[1] Council Decision (EU) 2021/1765 of 5 October 2021 on the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by 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 355, 7.10.2021, p. 135).

Article 1

1. The position to be adopted on behalf of the Union in the annual consultations with the United Kingdom on fishing opportunities for shared stocks**,** including deep-sea stocks, under Article 498 of 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 (the 'Trade and Cooperation Agreement') is set out in the Annex to this Decision.

2. The specification of the Union's position, as referred to in paragraph 1, shall be conducted on an annual basis in accordance with Article 2.

Article 2

1. The regular and full involvement of the Council throughout the annual consultations shall be ensured by means of extensive coordination and cooperation between the Council and the Commission.

2. Before the start of and throughout the annual consultations with the United Kingdom, the Commission shall take the steps necessary to ensure that the position to be expressed on behalf of the Union takes account of the latest scientific advice and other relevant information available, in accordance with the principles and orientations set out in the Annex. The position shall be reflected in the written record documenting the arrangements made between the Union and the United Kingdom resulting from the consultations under Article 498 of the Trade and Cooperation Agreement.

3. To this effect, the Commission shall send to the Council, sufficiently in advance of the annual consultations and, where necessary, in the course of those consultations, a written document, based on the advice and information referred to in paragraph 2, setting out the particulars of the proposed specification of the Union's position for discussion and endorsement of the details of the position to be expressed on the Union's behalf. The Council shall remain seized of the matter throughout the process, and the Commission shall send to the Council, in sufficient time before signature of the written record referred to in paragraph 2, the Union's position for approval of the detailed results of the annual consultations.

4. The process referred to in this Article shall include *in situ* coordination meetings, presentations, debriefings and discussions, and the full involvement of national delegations in the annual consultations, including as part of the Union delegation, and, when needed, in technical meetings.

5. If, in the course of the annual consultations, it is impossible for the Union to reach an agreement with the United Kingdom, and in order for the Union's position to take account of new elements, the Commission shall refer the matter to the Council.

6. If, after the conclusion of the annual consultations, it is appropriate to amend the TACs in the year or years for which they were agreed, the Commission shall, in sufficient time and on the basis of the latest scientific and other relevant information and in accordance with the principles and orientations set out in the Annex, submit to the Council a new written document setting out the particulars of the proposed specification of the Union's position regarding such amendment, for discussion and endorsement of the details of the position to be expressed on the Union's behalf, before the signature of a written record.

Article 3

This Decision shall apply until 30 June 2027. It shall be assessed as necessary and, where appropriate, revised by the Council upon a proposal from the Commission. A review shall in any event take place by 30 June 2023.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Council
The President

ANNEX

THE POSITION TO BE ADOPTED ON BEHALF OF THE UNION
IN THE ANNUAL CONSULTATIONS WITH THE UNITED KINGDOM
TO AGREE ON TOTAL ALLOWABLE CATCHES

1. PRINCIPLES

In the framework of the annual consultations with the United Kingdom, the Union shall:

(a) seek to ensure that the fishing opportunities agreed are consistent with international law, and in particular with the provisions of the 1982 United Nations (UN) Convention on the Law of the Sea and of the 1995 UN Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

(b) seek to ensure that the Union's international commitments are respected;

(c) seek consistency and synergy with the policies that the Union is pursuing as part of its bilateral fisheries relations with other third countries and within regional fisheries management organisations, and ensure consistency with its other policies, in particular in the fields of external relations, employment, the environment, trade, development, and research and innovation;

(d) ensure that the TACs and other functionally linked measures are set in a way which is consistent with the Trade and Cooperation Agreement and fully take into account any measures or guidance established by the Specialised Committee on Fisheries (SCF);

(e) seek to ensure that TACs are jointly determined in accordance with the common fisheries policy (CFP) objective of ensuring that fisheries are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, including the core conservation objective of the CFP, namely MSY, as well as with the applicable multiannual plans;

(f) seek alignment with the Council conclusions of 19 March 2012 on a communication from the Commission on the external dimension of the CFP;

(g) seek to ensure non-discriminatory rules for the Union fleet based on the same principles and standards as those applicable under Union law;

(h) seek to establish timelines for the annual consultations on fishing opportunities;

(i) seek to ensure consistency with the Union's environmental legislation, in particular with Directive 2008/56/EC, as well as with other Union policies.

2. ORIENTATIONS

The Union is to make every effort to reach an agreement with the United Kingdom on fishing opportunities (TACs and their functionally linked measures), based on the approach outlined below.

In doing so, the Commission shall work closely with the Council during the annual consultations, in order to:

(a) seek to establish TACs based on the best available scientific advice, in order to achieve the MSY exploitation rate;

(b) seek to establish TACs under the precautionary approach to fisheries where such scientific advice on MSY exploitation rates is not available;

(c) seek to prevent overexploitation of the relevant stocks by setting TACs at a level similar to earlier years where no scientific advice is available;

(d) seek to combine different scientific advice for establishing the TACs, including where such advice combines MSY and precautionary advice, for TACs with a mismatch between the advice area and the management areas, or where TACs combine more than one species, and seek an appropriate way of taking into account advice when establishing the TACs for skates and rays;

(e) seek to establish TACs with MSY assessment and F_{MSY} advice in accordance with the MSY objective of the CFP and the applicable multiannual plans; where the multiannual plans allow for the use of the F_{MSY} ranges as provided by the International Council for the Exploration of the Sea (ICES), the Union should seek to make use of those provisions, if the conditions set out in those multiannual plans are fulfilled;

(f) seek to set TACs based on the precautionary approach corresponding to the headline advice in the ICES scientific advice sheet with precautionary advice for: (i) by-catch stocks (under multiannual plans); (ii) target stocks (under multiannual plans) where ICES provides precautionary advice only; and (iii) TACs with multiannual precautionary advice, where stability should be pursued;

(g) seek to take into account the difficulty of fishing all stocks in a mixed fishery at the MSY level at the same time, and in particular where it is difficult to avoid the phenomenon of choke species, including TACs with 0-catch advice for either target or by-catch TACs; the Union should seek, where relevant under the multiannual plans, to accompany the TAC level with remedial measures in the relevant sea basins;

(h) seek to establish TACs for scientific or monitoring purposes in line with the scientific advice;

(i) seek consistency with the Union's applicable law in relation to specific species and stocks;

(j) seek convergence on the species for which fishing is to be prohibited, based on scientific advice, including the general prohibition on fisheries on deep-sea sharks;

(k) seek agreed approaches on the method and application of the adjustments to the agreed TACs following the application of exemptions to the landing obligation (*de minimis* and survivability exemptions from the obligation to land all catches); the Union should seek the highest possible level of agreed approaches for such exemptions in a manner consistent with Article 15 of Regulation (EU) No 1380/2013;

(l) seek agreement on the approach for the conservation of northern seabass, based on ICES scientific advice;

(m) seek to agree on other functionally linked measures to TACs, in particular with regard to existing special conditions and inter-area flexibilities, in line with Regulation (EU) No 1380/2013, in particular Article 15(8) and (9) thereof;

(n) seek to identify, based on the best available scientific advice, and in accordance with Article 499(4) of the Trade and Cooperation Agreement, the stocks to be regarded as 'special stocks' for the purpose of establishing provisional TACs where the annual consultations can not be concluded in a timely manner in accordance with Article 498(2) of the Trade and Cooperation Agreement;

(o) seek to agree joint requests to ICES where a need for additional advice is identified;

(p) seek to ensure that TAC levels, in accordance with scientific advice, are established in time for the start of the fishing year for sandeel, sprat and Norway pout in the North Sea, where the fishing year does not follow the calendar year;

(q) seek to continue the existing provisional quota-swap mechanism until the SCF establishes a permanent mechanism.