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NOTE

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Subject: Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters

- Written comments by France, Sweden and Poland

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (08.08.2024)

Delegations will find attached written comments by the French, Swedish and Polish delegations on the abovementioned proposal.

COMMENTS FROM FRANCE

Les autorités françaises remercient la Commission pour la transmission de sa proposition de règlement et du non papier complémentaire, présentés en groupe « pêche » les 7 et 21 septembre.

Bien que non concernées directement par les possibilités de pêche en mer Baltique, les autorités françaises souhaitent faire part à la Commission de leurs commentaires écrits sur ces propositions.

Ces commentaires pourront être complétés ultérieurement, au fil des discussions et analyses internes sur ce sujet.

Les autorités françaises notent la proposition de la Commission relative aux stocks de hareng de mer baltique, en particulier le hareng de Botnie (HER/30/31) et le hareng de Baltique centrale (HER/3D-R30) dans un état inquiétant et pour lesquels la Commission propose la fermeture de la pêche ciblée, sur la base de l'article 4.6 du règlement n°2016/1139 portant plan pluriannuel pour la gestion des stocks de Baltique.

En ce qui concerne le hareng de Botnie, la biomasse du stock se situe désormais en dessous de *Btrigger* (alors que juste au-dessus l'année dernière) et la probabilité qu'elle passe sous le point de référence *Blim*¹ est de 9% dans cet avis du Comité international pour l'exploration de la mer (CIEM). La Commission indique donc que cette probabilité nous contraint désormais à appliquer les article 4.6 et 4.7 du plan en fermant la pêche ciblée et en appliquant un total admissible de captures (TAC) accessoires de 1 000 tonnes (soit -99 % par rapport au TAC 2023).

Le hareng de Baltique centrale a longtemps fait l'objet d'incertitude quant à son statut mais au terme d'un benchmark en 2023 le CIEM a estimé que sa biomasse était en dessous du point de référence *Blim* depuis plusieurs années.

Tout comme le hareng de Botnie, et sur la même base, la Commission propose de fermer cette pêche ciblée en appliquant un TAC de captures accessoires (-60% par rapport au TAC 2023 pour le hareng de baltique central) afin de permettre la continuité de la pêche ciblée de sprat dans cette zone de la mer Baltique.

¹ Le point de référence *Blim* est la biomasse au-dessous de laquelle il pourrait y avoir une réduction de la capacité de reproduction.

Tout d'abord, cette proposition de la Commission intervient alors même que l'avis du CIEM (résumé de l'avis – « *headline advice* » anglais) recommande l'application du plan avec une fourchette de tonnage de capture entre 48 824 tonnes et 63 049 tonnes² pour le hareng de Botnie et entre 41 706 tonnes et 52 459 tonnes³ pour le hareng de Baltique centrale. Ce résumé de l'avis se réfère donc à une pratique et un cadre existants utilisés jusqu'alors qui permettent à l'Union de préserver la continuité d'autres pêcheries liées (pêcherie mixte) en appliquant des baisses limitées pour ce genre de stock ou encore en proposant des fourchettes de capture inévitables totales sur une année.

Jusqu'alors, la pratique de la Commission dans ses propositions et du Conseil dans ses décisions sur ce type de stock, avait pour objectif de suivre les avis scientifiques en les combinant avec les impératifs socio-économiques des différentes pêcheries impliquées. Cela résultait notamment de l'application de la valeur basse de la fourchette FRMD⁴ permettant de fixer des possibilités de pêches de captures accessoires au sein des pêcheries mixtes. Dans plusieurs exemples passés cela était proposé en application des articles combinés :

- 4.2, 4.4 et 5 pour les stocks relatifs au plan pour la mer Baltique (Règlement UE 2016/1139);
- 4.3, 4.5 et 8 pour les stocks relatifs au plan pour les eaux occidentales (Règlement UE 2019/472);
- 4.3, 4.5 et 7 pour les stocks relatifs au plan pour la mer du Nord (Règlement UE 2018/973).

Les autorités françaises souhaitent exprimer leur forte inquiétude à propos de ce changement d'interprétation des avis scientifiques du CIEM qui ne prend pas en compte les aspects socio-économiques du sujet et ne favorise pas la prévisibilité nécessaire au secteur. Cette interprétation de l'avis sur la base d'une information spécifique (taux de probabilité de passage en dessous de *Blim*) dans son contenu, et n'existant pas pour tous les stocks dans le même état, rend cette nouvelle doctrine instable et surtout non évaluée en termes d'impact pour les flottes de l'Union.

Elles soutiennent également la demande, formulée au groupe pêche du 21 septembre par les Etats membres, d'éclaircissements de la part de la Commission sur ce changement de paradigme opéré au printemps et ses fondements. Cette discussion doit être élargie aux délégations ne disposant pas de possibilités de pêche en mer Baltique, mais potentiellement confrontées à des propositions similaires pour d'autres bassins.

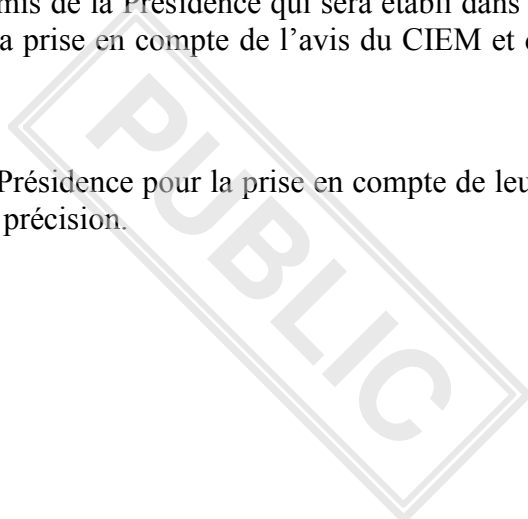
² « ICES advises that when the EU multiannual plan (MAP) for the Baltic Sea is applied, catches in 2024 that correspond to the F ranges in the plan are between 48 824 (corresponding to Flower × SSB2024/MSY Btrigger) tonnes and 63 049 tonnes (corresponding to FMSY × SSB2024/MSY Btrigger). »

³ « ICES advises that when the EU multiannual plan (MAP) for the Baltic Sea is applied, catches in 2024 that correspond to the F ranges in the plan are between 41 706 (corresponding to FMSY lower × SSB2024/MSY Btrigger) and 52 459 tonnes (corresponding to FMSY × SSB2024/MSY Btrigger). The current advice applies to all catches from the stock, including those taken in Subdivision 28.1. »

⁴ Fourchette de FRMD : une fourchette de valeurs au sein de laquelle tous les niveaux de mortalité par pêche, dans les limites de ladite fourchette déterminées de manière scientifique, dans des situations de pêcheries mixtes et conformément aux avis scientifiques, entraînent des rendements maximaux durables (RMD) à long terme, dans les conditions environnementales existantes moyennes, sans affecter sensiblement le processus de reproduction des stocks concernés

En conséquence, les autorités françaises ne sont pas en mesure de soutenir la proposition de la Commission en l'état. Elles seront attentives au compromis de la Présidence qui sera établi dans ce cadre afin de garantir la prévisibilité pour le secteur et la prise en compte de l'avis du CIEM et du plan de gestion de manière cohérente et justifiée.

Les autorités françaises remercient la Commission et la Présidence pour la prise en compte de leurs commentaires et se tiennent à leur disposition pour toute précision.



COMMENTS FROM SWEDEN

Sweden is grateful for the opportunity to provide written comments to the proposal on fishing opportunities for the Baltic Sea for 2024 and may come back with further additional comments. Sweden's general position is that fishing opportunities should be decided in accordance with the objectives and principles of the Common Fisheries Policy and consequently that the MSY-objective, scientific advice, and the precautionary approach should form the basis for decisions. Sweden is furthermore supportive of additional conservation measures in line with the multiannual plans.

Sweden, however, finds the proposal for allocation of the herring TAC to the mixed pelagic fisheries not to be proportionate, as a by-catch quota will have severe negative socio-economic effects for Sweden's coastal areas as well as for our cultural heritage and food supply. The Baltic Sea has few stocks and removing the cornerstone fishery for Sweden's smaller rural areas all along our Baltic Sea coastline, while prioritising the large-scale vessels, is therefore not acceptable.

The proposal on herring will result in a complete closure of the small-scale coastal fisheries which fish for human consumption, whereas the large-scale fleet with a mixed fishery (i.e. sprat and herring) will be allowed to continue fishing. In addition, it is difficult to understand how the allocation of herring to a certain fleet segment or type of vessel will improve the status of the herring stocks in the Baltic Sea as we believe that the stock is primarily affected by the level of fishing as well as other pressures.

Sweden is in favour of long-term sustainable fisheries and precautionary quotas based on scientific advice. But Sweden is of the opinion that national quotas is a Member State's prerogative to allocate between the fleet segments (based on article 17 in the CFP).

COMMENTS FROM POLAND

Polish written comments on the Proposal for a Council Regulation fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters (COM(2023) 492 final) and Commission services non-paper (2023/0301(NLE))

Poland thanks the European Commission for preparing the Proposal for a Council Regulation fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters.

It is important for Poland that the decision regarding fishing opportunities in the Baltic Sea for 2024 will be made in accordance with ICES scientific advice and will taking into account the objectives of the Common Fisheries Policy, including the socio-economic consequences of the decisions taken.

Use of article 4(6) of Baltic multiannual plan (MAP)

Poland does not agree with the application of Art. 4(6) of Baltic multiannual plan (MAP), as a legal justification for the proposal to disallow directed fishery of central Baltic herring. Applying art. 4(6) is questionable whereas its literal interpretation indicates that its use is possible in order to prevent the spawning stock biomass from falling below the Blim level. As specified in the ICES advice, the central herring stock is currently below the Blim, therefore the application of Art. 4(6) will not result in stock remaining above this level. Article 4(6) also does not constitute a legal basis for establishing a quota intended solely for by-catch.

Reference to Art. 4(6) is also not part of the actual ICES advice. ICES mentioned this MAP provision in *Issues relevant for the advice*. This chapter, however, is not part of the advice. ICES is providing sustainable fishing quotas for central Baltic herring stock and is not suggesting that the Art. 4(6) should be applied.

Poland would like to state that Art. 4(6) should be considered as a general rule intended to protect fish stocks and its direct application is only possible when the stock is above Blim.

In case the fish stock is below the Blim, Art. 5(2) should be applied as the first sentence of this provision clearly indicates this.

Art. 5(2) of MAP regulation clearly specifies the actions to be taken if the stock is below the Blim. Failure to use Art. 5(2) when the stock is below Blim may raise legal doubts as to when this provision should be applied.

It should also be noted that Art. 5(2) is a specific rule in relation to the general rule of Art. 4(6) and in this case, the *lex specialis* principle should be applied - specific subject matter overrides a law governing only general matters – which means that art. 5(2) should be applied when setting central Baltic herring fishing opportunities.

Herring 25–29 and 32

The proper use of scientific advice provided by ICES is one of the most important elements of the decisions on fishing opportunities that will be taken by the EU Council and ICES advises that when the EU multiannual plan (MAP) for the Baltic Sea is applied, catches of central Baltic herring in 2024 should be between 41 706 and 52 549 tonnes. Scientific advice clearly indicates that direct central Baltic herring fishery is possible in 2024.

The consequences of closing the direct central Baltic herring fishery would be extensive for the entire Baltic Sea fishery and could lead to the degradation of this fishery without the possibility of its reconstruction in the future and, among others, to the loss of many jobs in the coastal communities.

Even though the proposal is expected to have significant economic, environmental or social consequences it is without an impact assessment, which is worrying. Impact assessment should be a very important element of the proposal and should be prepared in accordance with Interinstitutional Agreement on Better Law-Making or European Commission's Better Regulation agenda. Impact assessment would allow Member States and the Commission to have a thorough analysis of the costs and benefits of the proposal.

Poland considers that directed fishing for central Baltic herring should be allowed in 2024, in line with ICES advice.

Herring 22-24 and Cod 22-24

The proposal to reduce the by-catch quota for western herring and western cod is worrying due to the possibility of a choking species situation.

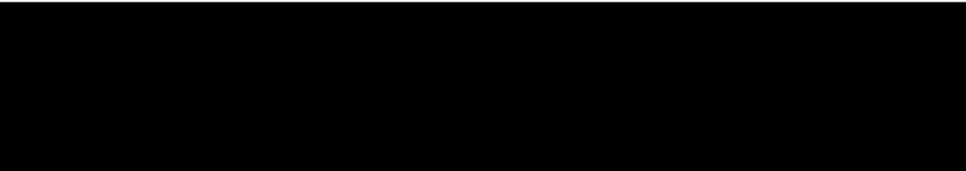
The occurrence of a choking species situation may lead to a situation in which fishing for other fish species may be prevented, resulting in the exclusion of the entire SD 24 from fishing.

Poland considers it necessary to establish a western herring and western cod quota for by-catch at a level that would certainly guarantee the possibility of catching other fish species and would allow to avoid choking species situation.

Sprat 22-32

Poland understands that the proposed sprat quota is a consequence of the proposal to close directed central Baltic herring fishery. However, as Poland considers that directed fishing for central Baltic herring should be allowed in 2024, the fishing quota for sprat should be set within the range proposed in ICES advice.

The sprat stock is in good condition, spawning-stock size is above MSY Btrigger, Bpa, and Blim, and setting a fishing quota higher than proposed will not lead to a decline in the stability of the stock and may help avoid a decline in fishermen's income.



Poland strongly hopes that as part of the work within BALTFISH, it would be possible to develop a common position regarding the fishing opportunities in the Baltic Sea for 2024, that will be presented to the Council and the Commission.