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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Preparation of the bilateral EU-UK consultations on fishing opportunities for 2021 and, for deep-sea stocks, for 2021 and 2022 - Commission non-paper

Delegations will find attached a revised Commission non-paper, as received from the European Commission services.

INFORMAL NON-PAPER

This document cannot in any circumstances be regarded as the official position of the Commission. It is intended solely for those to whom it is addressed.

Subject: Preparation of the bilateral EU-UK consultations on fishing opportunities for 2021 and, for deep-sea stocks, for 2021 and 2022

Preparation of the consultations

Fisheries relations with the United Kingdom are of major importance for the European Union. Following its departure from the EU, the UK has become an independent coastal State. This means that a significant number of fish stocks which were formerly considered exclusive Union fish resources, are now shared resources under international law. Consequently, this implies a major change in the mechanism for setting of the fishing opportunities for many shared fish stocks that have always been negotiated by the Council of Ministers. This comes with a change in the process of (and the preparation of) the setting of the fishing opportunities, with changing the mechanism for setting of TACs shared with the third country, but in full respect of the relevant competences of concerned Institutions, notably the Commission and the Council and without prejudice to the applicable legal and institutional competences.

In accordance with the EU-UK Trade and Cooperation Agreement (TCA), which applies provisionally as of 1 January 2021, the Commission will engage in consultations with the UK (and with Norway, where relevant) on the setting of the fishing opportunities for 2021 (and 2021-2022 for TACs in the deep sea) on behalf of the Union.

After conclusion of these consultations with the UK on the setting of fishing opportunities and related provisions, namely remedial measures for the Celtic Sea fisheries as envisaged in the applicable EU legislation for different shared stocks and TACs (total allowable catch) pursuant to Article FISH. 6(2),

FISH.6. 4 (a), (b), (c) and (d) and 6(8) of the Trade and Cooperation Agreement by way of a written record, the Commission will submit the conclusions from these consultations to the Council in the form of a proposal. The Council has the power to decide on the fishing opportunities under Article 43(3) of the TFEU.

Respecting the powers of the institutions, the Commission will ensure full coordination with the Council during all stages of the consultation, in the preparation, the conduct and the conclusion and debriefing on the consultations. In line with a long-standing practice, the Commission will ensure full and effective coordination *in situ* with the Council during the consultations with the UK (and with Norway, where relevant).

This non paper aims to contribute to effective coordination with the Council in the preparation of the consultations with the UK. It takes full account of the non paper submitted to the Council on the North Sea stocks formerly managed with Norway only, and which will become shared stocks between the three coastal States, UK, Norway and EU.

The Commission seeks the views of the Council on the approach and elements presented in this non paper as presented by Commission Services and further discussed during the Working Party. To assist the Commission in the annual consultations for 2021 (and 2022), the Council is therefore asked to give its input.

The Commission will seek endorsement of the Union position in the consultations within the Council at the appropriate level, including guidance before consultations with the UK are concluded.

The Commission services will consult the fisheries Working Party in a timely manner before each round of consultations, including by presenting the way forward for the next round, and will report to it after each round of consultations. Member States delegates will be invited to participate as members of the EU delegation. In situ coordination will be ensured.

Through a first technical meeting, and following technical meetings as required, the Commission will provide more details on the different stocks, in particular on the approach for the TAC levels and other

issues of importance, to facilitate Council Working Party endorsement and guidance on the Union position for the consultations.

Based on this non paper, the input from the Working Party, and the technical meeting, the Commission may engage in exploratory consultations on the fishing opportunities with the UK.

Consultations with the United Kingdom on fishing opportunities for 2021 (and 2022)

The EU and the UK have agreed, in the TCA, on a system of annual consultation and cooperation, in line with UNCLOS. The TCA applies provisionally as of 1 January 2021. Such consultations will be based on the agreed objectives and principles as detailed in the TCA.

The non paper presents a more detailed strategy for the consultations with the UK on the setting of fishing opportunities and related provisions, namely remedial measures for the Celtic Sea fisheries as envisaged in the applicable EU legislation for different shared stocks and TACs (total allowable catch) pursuant to Article FISH. 6(2), FISH.6(4) (a), (b), (c) and (d) and 6(8) of the TCA. The EU position presented in the non paper is based on the best available scientific advice and in accordance with the objectives of the Common Fisheries Policy (Regulation (EU) 1380/2013) and the applicable multiannual management plans for stocks concerned.

The EU and Norway annually consult and cooperate on the sustainable management of the many shared resources in the North Sea and the north-western part of the North-East Atlantic.

In representing the Union, the Commission intends to pursue fishing opportunities in line with the objectives, principles and provisions under the Common Fisheries Policy throughout the consultations. This implies firstly the pursuit of setting fishing opportunities based on *best available scientific advice*. Together with the multi-annual plans for the North Sea and for the western waters (which cover the Union waters concerned for the consultation with the UK and Norway) these provide additional elements and considerations: F_{MSY} including ranges, precautionary approach, accounting for mixed fisheries situations, avoidance of choke

situations, remedial measures and special conditions and flexibilities – all seeking to ensure sustainability, to facilitate sustainable use of the fishing opportunities, and to create stability in a period of transition after the UK departure.

The Union position should, in as far as possible, also consider agreed exchanges of quotas with the UK, during the consultation, as a contribution to further stabilization of the fisheries.

The Union will seek to ensure full consistency between the bilateral EU-UK and the trilateral EU-UK-NO fishing opportunities and related provisions.

Detailed approach to the consultations on fishing opportunities

For the consultation on the 2021 (and 2022) fishing opportunities between the Union and the UK, the Commission considers that the Union should take the following approach:

- *Follow the ICES advice.*

In line with the core conservation objective of the Common Fisheries Policy (**maximum sustainable yield, MSY as set in Article 2 of CFP and the applicable Multiannual Plans**), TACs should be jointly determined in line with this objective, for stocks with F_{MSY} advice (advice with levels of fishing opportunities expressing fishing pressure that delivers the maximum sustainable yield). The target stocks under the respective multiannual plans should be subject to this approach in as far as F_{MSY} advice is available, including F_{MSY} ranges as provided by ICES.

For **stocks with precautionary TAC advice**, the Union seeks to agree TACs taking into account the corresponding ICES headline advice. This is mainly for by-catch stocks (under the multiannual plans), but also for some targeted fish stocks, where ICES has not been able to provide MSY advice for scientific reasons. For stocks with multi-annual precautionary advice (2019-2020, 2020-2021), the same approach should be followed (headline advice, for instance boarfish, ling in the North Sea and ling in areas 6-14), with the exception of tusk (NS, 5/6/7, and 1/2/14), where the low uptake allows for a TAC level below the advice.

For a very limited number of **TACs with no ICES advice**, with no identified risk of overexploitation, the Union would seek a roll over (western Channel herring, plaice and sole West of Scotland among others).

Not all **ICES advice matches the management unit/approach**. Some TACs are composed of more than one species, while others cover several ‘stocks’ in one TAC. The Union should seek to agree on TACs, which seek to combine the different advices (sometimes both MSY and precautionary advice) in a sustainable way. Clear candidates are North Sea lemon sole and witch, North Sea turbot and brill, *nephrops* and sandeel.

- *Mixed fisheries considerations and avoidance of choke situations.*

The CFP and the multiannual plans contain considerations and provisions for the management of mixed fisheries and avoidance of choke situations. In the pursuit of the setting agreed TACs for the shared stocks, the Union will take into account these specificities.

The most pressing situation is for TACs where ICES provided a 0 catch advice. If followed in mixed fisheries, this would paralyze legitimate fisheries for other species caught in the mixture. To avoid such situations, different approaches have been developed, notably the introduction of small bycatch-only TACs – sometimes in combination with some remedial measures, where warranted for under a multiannual plan (see below).

Celtic Sea cod, whiting and haddock are part of a mixed fisheries complex, and are target TACs under the western waters multiannual plan, together with other valuable species like anglerfish, megrim, and hake. Cod and whiting are below the so-called Blim (risking impairment to the reproductive capacity), while haddock is in a healthy state. Cod has received 0-catch advice since 2019, and again has a 0-catch advice for 2021 (it will not grow above Blim in 2022 even with 0 catches). Whiting is below Blim, but fishing in the Fmsy range will bring the stock above Blim in 2022.

Remedial measures are needed for the stock recovery of both cod and whiting; the Union will seek to agree on such measures in line with measures adopted in the Fishing Opportunities regulation for 2021 and anticipating a Joint Recommendation of the north-western waters Member States Group with remedial measures for 2021. The recovery approach would include a by-catch-only TAC for cod (similar as but down from 850 tonnes in 2020). The TAC for whiting would be sought in the lowest range of FMSY, for haddock a roll over would ensure sufficient reduction of the pressure on cod, and it would also contribute to reduced discarding of haddock. The Union would continue to apply the internal quota exchange mechanism for these stocks, as agreed in the 2019 TAC Regulation

For haddock West of Scotland, a healthy stock with decreasing fishing mortality but still being fished above sustainable levels, the TAC level should be considered in conjunction with the need to reduce all bycatches of cod, for which a 0 TAC is advised. The Union should seek a TAC that allows for such reductions, in the order of a roll over.

Another approach has been the setting of a scientific or sentinel TAC for two specific TACs with 0 catch advice (herring 5b6b6aN, and herring 7ghk). The Union seeks to agree with the UK on similar approaches this year, to take into account the issues identified above.

Where stocks with precautionary advice (normally by-catch TACs) can be identified as risking to choke the fisheries for target stocks, the Union seeks to take into account the provisions under the multiannual plans and the CFP Regulation.

- *Remedial measures.*

For target stocks that have fallen below the lowest limit reference points in the multiannual plan, these plans foresee remedial measures. During consultations, the Union should seek to integrate such remedial measures in agreement with the UK, for both EU and UK waters. This is the case for the Celtic Sea roundfish fisheries, as detailed below.

- *Take exemptions from the landing obligation into account.*

The landing obligation applies to all fisheries in Union waters, for the stocks determined in the CFP Regulation. The Union intends to continue the application of exemptions to the landing obligation, based on Commission Acts. Consequently, the volumes corresponding to the *de minimis*/high survival exemptions need to be subtracted from the Union's quota share. The Union should consult the UK in pursuit of convergence on this approach among the parties.

- *Specific management issues of relevance to the consultations*

Other stocks of specific interest

Certain stocks have been subject to specific consideration and approaches in the 2020 TAC Regulation. The Union seeks to agree with the UK on a continuation of these approaches as adopted for 2021, for picked dogfish; for tusk in areas 5, 6, 7; for greater silver smelt in areas 5, 6, 7; for ling 1 and 2; and the protection of the European eel stock.

The Union will seek a general prohibition for the fisheries for *deep-sea sharks*.

The UK and the EU share the *northern seabass* stock, and joint management will need to be sought. While fishing pressure is reduced, the stock biomass is only just above Blim, with uncertain recruitment (influx in the fishable biomass). Stock management in previous years has combined a prohibition plus exemptions (specific vessel catch limits for particular vessel categories), seasonal prohibitions to keep seabass on board, hook and line vessel catch limits, by-catch allowances for gillnetters and bag limits and catch-and-release for recreational anglers. The Union seeks to agree with the UK on a similar approach for 2021.

- *Possible improvement of the joint management*

The Fisheries Heading of the TCA provides a stable framework for joint management of the shared resources. However, the number of TACs to be set together is unprecedentedly high. In pursuit of improved joint management between the EU and the UK of these shared resources, the Commission intends to engage with the UK to explore different simplification elements.

- From positive past experiences, the Union may engage with the UK to seek an agreed approach on the establishment of a so-called *list of stable TACs*. This list has been applied in the past for very specific situations: for TACs of very little volume, with low uptake, with very little economic importance and,

importantly, where ICES does not identify threats to the conservation status of the stock if the TAC is fixed for a longer period. The list should be accompanied with a safeguard that in case ICES considers that a continued stable TAC is no longer ensuring the conservation of the stock, it should be removed from the list.

- Equally, the Union could start exploring with the UK for more economically important TACs a multi-annual approach to TAC setting. This would be for cases where such a multiannual TAC does not threaten the conservation status of the stock nor does it jeopardize the optimum use of the stock by the fisheries.
- Finally, the Union position may launch consultations with the UK on delegation of management of identified stocks to one of the parties. Candidate TACs would be the ones where one of the two parties holds the over-large majority of the fishing rights (quota shares).

While these approaches could contribute to the rationalization of the joint management of the shared resources, the Commission does not envisage concrete conclusions before in-depth discussion with and endorsement by the Council on any of these possible approaches. However, the Commission considers it important and relevant to engage in this management rationalization dialogue with the UK.

It is emphasised that the final decision on the fishing opportunities for the European Union will be set upon a Commission's proposal submitted to the Council that has the ultimate competence to set fishing opportunities under Article 43(3) of the Treaty.
