Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	7 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 114 final
Subject:	Proposal for a COUNCIL REGULATION amending Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks

Delegations will find attached document COM(2023) 114 final.

Encl.: COM(2023) 114 final

EUROPEAN
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Brussels, 7.3.2023
COM(2023) 114 final

2023/0061 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Regulation (EU) 2023/194[1] fixes for 2023 the fishing opportunities for certain fish stocks, applicable in EU waters and, for EU fishing vessels, in certain non-EU waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks. Those fishing opportunities are amended several times during the period in which they apply to take account of the latest scientific advice and developments.

• Consistency with existing policy provisions in the policy area

The measures proposed are consistent with the objectives of the common fisheries policy (CFP).

• Consistency with other Union policies

The measures proposed are consistent with other EU policies, in particular with the policies in the field of the environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union (TFEU).

• Subsidiarity

The proposal falls under the exclusive EU competence as referred to in Article 3(1)(d) TFEU. Therefore, the subsidiarity principle does not apply.

• Proportionality

The proposal allocates fishing opportunities to Member States in accordance with the objectives of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy[2]. Pursuant to Articles 16 and 17 of Regulation (EU) No 1380/2013, Member States shall decide how the fishing opportunities available to them may be allocated to vessels flying their flag in accordance with certain criteria for the allocation of fishing opportunities. Therefore, Member States have the necessary margin of discretion when

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1 Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks (OJ L 28, 31.1.2023, p. 1).

2 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).

distributing the allocated total allowable catches (TACs), in line with the social/economic model of their choice to exploit the fishing opportunities available to them.

- **Choice of the instrument**

Regulation.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Commission has consulted stakeholders, in particular through the Advisory Councils, and Member States on its approach to the various proposals for fishing opportunities, on the basis of its annual Communication *Towards more sustainable fishing in the EU: state of play and orientations for 2023* (COM(2022) 253 final).

Stakeholders' responses to that annual Communication set out their views on the Commission's evaluation of the state of the resources and on the appropriate management response. The Commission considered the responses when formulating this proposal.

- **Collection and use of expertise**

The Commission consulted the International Council for the Exploration of the Sea (ICES) on the methodology to be used. ICES scientific advice is based on a framework developed by its expert groups and decision-making bodies, and is issued in line with its framework partnership agreement with the Commission.

- **Impact assessment**

The scope of this proposal is circumscribed by Article 43(3) of the TFEU.

This proposal seeks to avoid short-term approaches in favour of long-term sustainability. It therefore takes account of initiatives by stakeholders and Advisory Councils if they have been positively reviewed by ICES and/or the Scientific, Technical and Economic Committee for Fisheries (STECF). The Commission's CFP reform proposal was based on an impact assessment (SEC(2011) 891) that considered that achieving the MSY objective was a necessary condition for environmental, economic and social sustainability.

As regards fishing opportunities for stocks that are jointly managed with non-EU countries and RFMOs fishing opportunities, this proposal essentially implements internationally agreed measures. Any elements that are relevant to assessing possible impacts of the fishing opportunities are dealt with in the preparation and conduct of international negotiations in which the EU's fishing opportunities are agreed with non-EU countries.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The proposal respects fundamental rights and in particular those recognised by the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The proposed measures will have no budgetary implications.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The proposal seeks to modify Regulation (EU) 2023/194 as described below.

Anchovy in the Bay of Biscay

Regulation (EU) 2023/194 sets a provisional TAC for anchovy (*Engraulis encrasicolus*) in ICES subarea 8 (Bay of Biscay) for the period 1 January to 30 June 2023, pending publication of the scientific advice for that stock for 2023 by ICES.

Following the publication of the ICES scientific advice[3] for anchovy in ICES subarea 8 on 16 December 2022, the definitive TAC for that stock for 2023 should be set. The TAC should be set at the level of 33 000 tonnes, the amount indicated in that scientific advice.

Sandeel

Regulation (EU) 2023/194 provisionally sets at zero the TAC for sandeel and associated by-catches (*Ammodytes spp.*) in UK and EU waters of ICES subarea 4 (North Sea), UK waters of ICES division 2a and EU waters of division 3a (Skagerrak and Kattegat) for 2023, pending publication of the scientific advice for that stock for 2023 by ICES.

ICES is expected to publish its scientific advice for sandeel in ICES subarea 4 and divisions 2a and 3a for 2023 on 28 February 2023. Following the publication of that advice, bilateral consultations between the EU and the UK on the level of the TAC for 2023 for this stock listed in Annex 35 of the Trade and Cooperation Agreement (TCA)[4] will be held pursuant to Articles 498(2), (4) and (6) of the TCA. Pending the formal outcome of those bilateral consultations, the TAC for sandeel in ICES subarea 4 and divisions 2a and 3a for 2023 is marked *pm* (*pro memoria*) in this proposal. As soon as the formal outcome of those bilateral consultations is known, the Commission services will update this proposal by means of a non-paper proposing the relevant TAC for 2023.

Northern prawn and whiting in the Skagerrak and Kattegat

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[3] https://doi.org/10.17895/ices.advice.19772356

[4] 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 149, 30.4.2021, p. 10).

Given that, in December 2022, bilateral consultations between the EU and Norway on two shared and jointly managed stocks in the Skagerrak had not yet concluded, Regulation (EU) 2023/194 sets provisional TACs for Northern prawn (*Pandalus borealis*) and whiting (*Merlangius merlangus*) in ICES division 3a (Skagerrak and Kattegat) for the period 1 January to 31 March 2023.

The definitive TACs for Northern prawn and whiting in ICES division 3a for 2023 should be set before the expiry of the provisional TACs on 31 March 2023. Pending the formal outcome of bilateral consultations between the EU and Norway, those TACs are marked *pm* (*pro memoria*) in this proposal. As soon as the formal outcome of those bilateral consultations is known, the Commission services will update this proposal by means of a non-paper proposing the relevant definitive TACs for 2023.

Greenland halibut and cod in the northeast Arctic

Given that, in December 2022, discussions on the implementation of the EU-Norway political understanding in relation to fisheries in ICES areas 1 and 2 were ongoing, Regulation (EU) 2023/194 sets provisional EU quotas for Greenland halibut (*Reinhardtius hippoglossoides*) in international waters of ICES subareas 1 and 2 (northeast Arctic) and for cod (*Gadus morhua*) in Svalbard waters and international waters of ICES subarea 1 and division 2b for the period 1 January to 31 March 2023.

EU quotas for Greenland halibut in international waters of ICES subareas 1 and 2 and for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b for 2023 should be set before the expiry of the provisional EU quotas on 31 March 2023. Pending the outcome of bilateral discussions on the implementation of the EU-Norway political understanding, those EU quotas are marked *pm* (*pro memoria*) in this proposal. As soon as the outcome of those bilateral discussions is known, the Commission services will update this proposal by means of a non-paper proposing the relevant EU quotas for 2023. When setting the EU quota for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b, the historic EU share for that stock should be taken into account.

SPRFMO

In Regulation (EU) 2023/194, TACs in the South Pacific Regional Fisheries Management Organisation (SPRFMO) Convention area are marked *to be established* and current measures functionally linked to the TACs are provisionally maintained, pending the outcome of the 2023 annual meeting of the SPRFMO held from 6 to 15 February 2023. Pending the outcome of that annual meeting, those TACs are marked *pm* (*pro memoria*) in this proposal. As soon as the outcome of that annual meeting is known, the Commission services will update this proposal by means of a non-paper proposing the relevant TACs for 2023 and if relevant proposing amendments to the measures functionally linked to the TACs.

ICCAT

Fishing effort limits for EU vessels fishing for bluefin tuna (*Thunnus thynnus*) in the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention area and maximum input and capacity for EU farms of bluefin tuna in that area are based on information provided in the annual fishing plans, the annual fishing capacity management

plans and the annual farming management plans for bluefin tuna of Member States. Member States transmit those plans to the Commission by 31 January each year, pursuant to Article 6(1) of Regulation (EU) 2016/1627 of the European Parliament and of the Council[5]. The fishing effort limits and maximum farming input and capacity are then reported by the Commission to the ICCAT Secretariat, through the EU fishing and capacity management plan, for discussion and approval by ICCAT pursuant to Article 6(2) of Regulation (EU) 2016/1627. Pending submission of the EU plan to ICCAT and approval of that plan by ICCAT, the EU fishing effort limits and the EU maximum farming input and capacity for 2023 are marked *pm* (*pro memoria*) in this proposal. As soon as the EU plan is approved by ICCAT, the Commission services will update this proposal by means of a non-paper proposing the relevant fishing effort limits and maximum farming input and capacity for 2023.

[5] Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

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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) Council Regulation (EU) 2023/194[6] fixes for 2023 the fishing opportunities for certain fish stocks applicable in Union waters and, for Union fishing vessels, in certain non-Union waters. The total allowable catches (TACs) and measures functionally linked to the TACs set by Regulation (EU) 2023/194 should be amended to take into account the publication of scientific advice as well as the outcomes of consultations with third countries and RFMOs meetings.

(2) Regulation (EU) 2023/194 sets a provisional TAC for anchovy (*Engraulis encrasicolus*) in ICES subarea 8 for the period from 1 January 2023 to 30 June 2023, pending the availability of the scientific advice for that stock for 2023. The International Council for the Exploration of the Sea (ICES) published its scientific advice[7] for that stock for 2023 on 16 December 2022. The definitive TAC for that stock for 2023 should be set in line with that advice.

(3) Regulation (EU) 2023/194 provisionally sets at zero the TAC for sandeel and associated by-catches (*Ammodytes spp.*) in United Kingdom and Union waters of ICES subarea 4, United Kingdom waters of ICES division 2a and Union waters of division 3a, pending publication of the scientific advice for that stock for 2023 by ICES. The definitive TAC for that stock for 2023 should be set following the publication of the scientific advice and in line with the formal outcome of the subsequent bilateral consultations between the Union and the United Kingdom on the

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6 Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks (OJ L 28, 31.1.2023, p. 1).

7 https://doi.org/10.17895/ices.advice.19772356

level of the TAC for that stock pursuant to Article 498(2), (4) and (6) of the Trade and Cooperation Agreement (TCA)[8].

(4) Regulation (EU) 2023/194 sets provisional TACs for Northern prawn (*Pandalus borealis*) and whiting (*Merlangius merlangus*) in ICES division 3a for the period 1 January 2023 to 31 March 2023, pending the formal outcome of bilateral consultations between the Union and Norway. The definitive TACs for those stocks should be set before the expiry of the provisional TACs on 31 March 2023. Those TACs should be set in line with the formal outcome of the bilateral consultations between the Union and Norway.

(5) Regulation (EU) 2023/194 sets provisional Union quotas for Greenland halibut (*Reinhardtius hippoglossoides*) in international waters of ICES subareas 1 and 2 and for cod (*Gadus morhua*) in Svalbard waters and international waters of ICES subarea 1 and ICES division 2b for the period 1 January 2023 to 31 March 2023. The Union quotas for those stocks for 2023 should be set before the expiry of the provisional Union quotas on 31 March 2023. The Union quotas for those stocks for 2023 should be set in line with the outcome of bilateral discussions on the implementation of the Union-Norway political understanding in relation to fisheries in ICES areas 1 and 2. The EU quota for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b should be allocated to the Member States in accordance with Council Decision 87/277/EEC[9] subject to the adaptations necessary due to the withdrawal of the United Kingdom from the Union[10].

(6) In Regulation (EU) 2023/194, TACs in the South Pacific Regional Fisheries Management Organisation (SPRFMO) Convention area are marked *to be established* and current measures functionally linked to the TACs are provisionally maintained, pending the outcome of the 2023 annual meeting of the SPRFMO held from 6 to 15 February 2023. Those TACs should be set and the measures functionally to the TACs should be amended in line with the outcome of the SPRFMO 2023 annual meeting.

(7) Fishing effort limits for Union vessels fishing for bluefin tuna (*Thunnus thynnus*) in the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention area and maximum input and capacity for Union farms of bluefin tuna in that area are based on information provided in the annual fishing plans, the annual fishing capacity management plans and the annual farming management plans for bluefin tuna of Member States. Member States transmit those plans to the Commission by 31 January each year, pursuant to Article 6(1) of Regulation (EU) 2016/1627 of the European Parliament and of the Council[11]. The fishing effort limits and maximum farming input and capacity are then reported by the Commission to the ICCAT Secretariat, through the Union fishing and capacity management plan, for discussion and approval by ICCAT pursuant to Article 6(2) of Regulation (EU) 2016/1627. The

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8 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 149, 30.4.2021, p. 10).

9 Council Decision 87/277/EEC of 18 May 1987 on the allocation of the catch possibilities for cod in the Spitsbergen and Bear Island area and in Division 3M as defined in the NAFO Convention (OJ L 135, 23.5.1987, p. 29).

10 Annex 36(E) to the TCA.

11 Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

Union fishing effort limits and Union maximum framing input and capacity for 2023 should be set in line with the Union plan approved by ICCAT.

(8) Regulation (EU) 2023/194 should therefore be amended accordingly.

(9) The fishing opportunities provided for in Regulation (EU) 2023/194 apply from 1 January 2023. The provisions introduced by this Regulation concerning fishing opportunities should therefore also apply from 1 January 2023. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased. Given the urgency to avoid interruptions of fishing activities, this Regulation should enter into force on the day of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment of Regulation (EU) 2023/194

Regulation (EU) 2023/194 is amended as follows:

(1) Article 7 is deleted;

(2) Annexes IA, IB, IH and VI are amended in accordance with the Annex to this Regulation.

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Article 2
Entry into force and application

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023 to 31 December 2023.

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

Done at Brussels,

For the Council
The President