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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters

COUNCIL REGULATION (EU).../2022

of ...

**amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities
for certain fish stocks and groups of fish stocks applicable in Union waters
and for Union fishing vessels in certain non-Union waters**

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) 2022/109¹ fixes for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters.
- (2) On 21 December 2021, the Union agreed with the United Kingdom on the setting of a large number of total allowable catches (TACs) for 2022 for stocks listed in Annex 35 to the Trade and Cooperation Agreement between the Union and United Kingdom (TCA)². The outcome of the consultations was documented in the Written Record, which was endorsed by the Council on 21 December 2021 and signed on the same day by the Head of Delegation of the United Kingdom and by the Commission representative on behalf of the Union, in accordance with Article 498(6) of the TCA and Council Decision (EU) 2021/1875³.

¹ Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (OJ L 21, 31.1.2022, p. 1).

² 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).

³ Council Decision (EU) 2021/1875 of 22 October 2021 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 (OJ L 378, 26.10.2021, p. 6).

- (3) The Written Record is a result of consultations conducted by the Union with the United Kingdom in accordance with Article 498(2), Article 498(4), points (a) to (d), and Article 498(6) of the TCA, with the objectives and principles set out in Articles 2, 3, 28 and 33 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹, Articles 4 and 5 of Regulations (EU) 2019/472² and 2018/973³ of the European Parliament and of the Council, and Decision (EU) 2021/1875. The Union position was based during the consultations on the best available scientific advice as provided by the International Council for the Exploration of the Sea (ICES) in accordance with Article 494(3), point (c), of the TCA.
- (4) It is therefore necessary to replace the provisional TACs that were established in Regulation (EU) 2022/109 in accordance with the fishing opportunities agreed in the Written Record and to implement other measures functionally linked to the fishing opportunities also agreed in the Written Record.

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).

² Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ L 83, 25.3.2019, p. 1).

³ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008 (OJ L 179, 16.7.2018, p. 1).

- (5) Such fishing opportunities for 2022 will allow for long-term environmentally sustainable fishing activities, managed with the aim of achieving economic, social and employment benefits and contributing to the availability of food supplies, including the promotion of a level playing field for Union operators where stocks are shared with the United Kingdom.
- (6) There are certain stocks for which ICES, while assessing them against maximum sustainable yield (MSY), has issued scientific advice for no catches. If TACs for those stocks were established at the level indicated in such scientific advice, the obligation to land all catches both in the Union and United Kingdom waters, including by-catches from those stocks, in mixed fisheries, would lead to the phenomenon of ‘choke species’. In order to balance the need for the continuation of those mixed fisheries in view of the potentially severe socio-economic implications of complete interruption of those fisheries with the need to achieve a good biological status for those stocks, and taking into account the difficulty of fishing all stocks in a mixed fishery at MSY at the same time, the Union and the United Kingdom agreed that it is appropriate to establish specific TACs for by-catches for those stocks. Those TACs should be set at a level which decreases mortality for those stocks and provides incentives for improvements in selectivity and avoidance. The levels of the fishing opportunities for those stocks should be established in accordance with the Written Record in order to ensure a level playing field for Union operators while providing for the significant recovery of the biomass of those stocks.

- (7) Since the biomass of certain blue ling (BLI/12INT, BLI/24, BLI/03A), cod (COD/5BE6A, COD/7XAD34), herring (HER/7G-K) and whiting (WHG/07A) stocks are below the biomass reference points (B_{lim}), the Union and the United Kingdom agreed in the Written Record that it is necessary that Member States do not apply Article 15(9) of Regulation (EU) No 1380/2013 in respect of those stocks for transfers from 2021 to 2022, so that catches in 2022 do not exceed the TAC established for those stocks. The Union and the United Kingdom also agreed that the same applies for one stock of picked dogfish (DGS/15X14), which is a prohibited species under Article 18(1), point (o), of Regulation (EU) 2022/109.
- (8) The Union sought with the United Kingdom to find the highest possible level of convergence in the application of the landing obligation, including *de minimis* and survivability exemptions, to ensure adherence to conservation objectives and a level playing field. The fishing opportunities that were agreed with the United Kingdom for stocks of species to which the landing obligation applies take into account the fact that discarding is in principle no longer allowed. The amounts that, by way of exception, may continue to be discarded during the operation of the landing obligation were therefore deducted from the advice figure for total catches as provided by ICES.

- (9) The Union and the United Kingdom agreed to continue the approach developed for the conservation of the northern stock of European seabass (*Dicentrarchus labrax*), as set out in Article 11 of Regulation (EU) 2021/92¹. According to that approach, the overall fishing pressure on the stock is to remain below, or equal to, that advised by ICES. Therefore, catch limitation measures should continue to be established for 2022 for that stock in ICES divisions 4b, 4c, 7a, and 7d to 7h. In light of the advice provided by ICES, the Union and the United Kingdom agreed to increases in catch limits for fishing activities using hooks and lines, and fixed gillnets. The Union and the United Kingdom also agreed a change from monthly to bi-monthly limits for trawls and seines. The Union and the United Kingdom also agreed to prioritise the improvement of the ICES assessment tool for European seabass to allow for forecast calculations on the basis of MSY models. The Union and the United Kingdom further agreed that it is necessary to maintain the existing catch limitation measures applicable to recreational fishing. Since the provisional catch limits are now being replaced with catch limits for the full year, the relevant catch limitation measures should also cover the period from 1 April to 31 December 2022.

¹ Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 31, 29.1.2021, p. 31).

- (10) Regulation (EU) 2022/109 provides for a rollover of 2022 seasonal closures for sandeel (*Ammodytes* spp.) fisheries using certain towed gear in ICES divisions 2a and 3a and in ICES subarea 4. Since the provisional TAC, covering the period from 1 January to 31 March 2022, will now be replaced with a definitive TAC for the full year, the applicable closure period should also cover the period from 1 August to 31 December 2022.
- (11) In Regulation (EU) 2022/109, the TAC for sandeel in ICES divisions 2a and 3a and in ICES subarea 4 was set at zero pending the publication of the relevant scientific advice, provided by ICES, which became available on 25 February 2022. In accordance with the procedure provided for in the TCA, the Union has held bilateral consultations with the United Kingdom on the level of fishing opportunities for sandeel in ICES divisions 2a and 3a and in ICES subarea 4 for 2022. The Union and the United Kingdom have agreed on a total allowable catch of 167 558 tonnes, to be distributed across all seven sandeel management areas. The Union and the United Kingdom have also agreed to monitoring TACs in management areas 1r and 4, and to the continuation of footnotes with by-catch percentages for whiting and mackerel catches. In addition, the Union and the United Kingdom have agreed that the banking of unutilised quota between years should apply at the management area level. Finally, in the case of sandeel in the management area 4 (SAN/234_4), the Union and the United Kingdom further agreed that no more than 800 tonnes of unutilised quota allocated for 2021 can be fished in 2022.

- (12) Regulation (EU) 2022/109 provides for fishing opportunities for 2022 for North Sea herring (*Clupea harengus*). Those fishing opportunities should be adjusted to bring them into line with the historic allocation key for Sweden as set out in Article 121(1) of the Act concerning the conditions of accession of the Kingdom of Sweden to the European Union¹, as modified by Council Decision 95/1/EC, Euratom, ECSC².
- (13) Regulation (EU) 2022/109 sets a provisional TAC for anchovy (*Engraulis encrasicolus*) in ICES subarea 8 applying from 1 January 2022 to 30 June 2022, pending the availability of scientific advice. ICES released the scientific advice for that stock for 2022 on 17 December 2021. The TAC for that stock for 2022 should therefore be amended in line with that advice.
- (14) Regulation (EU) 2022/109 established for the first quarter of 2022 a provisional Union quota of 4 500 tonnes for Union fleets fishing for cod (*Gadus morhua*) in Spitzbergen (Svalbard) waters and international waters of ICES subarea 1 and division 2b. As the discussions with Norway on equal and non-discriminatory access to Svalbard waters for Union fleets fishing for cod in that area are ongoing, it is appropriate that the Union extend the period of application of that Union quota of 4 500 tonnes until 30 April 2022.

¹ Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ C 241, 29.8.1994, p. 9).

² Decision 95/1/EC, Euratom, ECSC of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995, p. 1).

- (15) The Union quota for Mediterranean albacore (*Thunnus alalunga*) was provisionally determined on 10 February 2022 by the International Commission for the Conservation of Atlantic Tunas (ICCAT) Working Group dedicated to establishing the allocation key at ICCAT level, as per paragraph 3 of the ICCAT Recommendation 21-06, and will be subject to endorsement by ICCAT at its annual meeting in 2022. The Union quota for Mediterranean albacore and its internal allocation should be implemented in Union law. Moreover, the Union notified ICCAT of its choices of closure periods and reference year for the capacity limitation to be applied with respect to the Union's Mediterranean albacore fishery. Those choices should be implemented in Union law.
- (16) Fishing effort limits for Union vessels fishing for bluefin tuna (*Thunnus thynnus*) in the ICCAT Convention Area and maximum input and capacity for farms of bluefin tuna are based on information provided in the annual fishing plan, the annual capacity management plan and the annual farming management plan for bluefin tuna. Member States transmit those plans to the Commission, in accordance with Article 6(1) of Regulation (EU) 2016/1627 of the European Parliament and of the Council¹. The fishing effort and maximum input and farming 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. ICCAT endorsed the Union fishing and capacity management plan on 3 March 2022. The fishing effort and maximum input and farming capacity contained in that plan should be implemented in Union law.

¹ 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).

- (17) The quotas for individual Member States for certain stocks were established on the basis of the total Union quota for 2022 as determined by ICCAT before any carry-overs of unused quotas. The Union quota for fishing opportunities for those stocks were adjusted during the ICCAT annual meeting in November 2021 in accordance with several ICCAT recommendations under which the Union is allowed, upon request, to carry over a set percentage of its unused quota of fishing opportunities from 2020 to 2022. The quotas for individual Member States for those stocks should take into account the carry-overs of unused Union quotas allowed by ICCAT before the start of the fishing seasons for these stocks. Therefore, the quotas for northern albacore (*Thunnus alalunga*) (ALB/AN05N), for southern albacore (ALB/AS05N), for bigeye tuna (*Thunnus obesus*) in the Atlantic Ocean (BET/ATLANT), for swordfish (*Xiphias gladius*) in the Atlantic Ocean, north of 5° N (SWO/AN05N) and for swordfish in the Atlantic Ocean, south of 5° N (SWO/AS05N) should be amended to reflect such adjustment, taking into account the principle of relative stability. Furthermore, certain measures functionally linked to the fishing opportunities should be maintained in order to respect the Union's international commitments.
- (18) The numbers in point 6 of Annex VI to Regulation (EU) 2022/109 should be amended in order to reflect agreements concluded between certain Member States to temporarily transfer between themselves, exclusively for year 2022, certain amounts of bluefin tuna farming capacity and input. Those changes have been notified to ICCAT in the Union farming plan and do not affect the total farming capacity and input capacity of the Union in the ICCAT Convention Area.

- (19) At its 10th annual meeting in 2022, the South Pacific Regional Fisheries Management Organisation (SPRFMO) adopted catch limits for jack mackerel (*Trachurus murphyi*) and maintained exploratory fisheries for toothfishes (*Dissostichus* spp.). Those measures should be implemented in Union law.
- (20) At its 2021 annual meeting, the Indian Ocean Tuna Commission (IOTC) revised the previously adopted conservation and management measures. Regulation (EU) 2022/109 already implemented those measures in Union law, except for the revised catch limits for yellowfin tuna (*Thunnus albacares*). The IOTC Secretariat confirmed the revised catch limits for yellowfin tuna on 17 December 2021 after the end of the period of objection. The revised catch limits are no longer limited to purse seiners, and now include all gears involved in the yellowfin tuna fishery. Those revised catch limits should be implemented in Union law. Since an agreement among the involved Member States has not yet been found on the most appropriate way to share the revised catch limits, only an initial portion of the Union quota should be attributed and the remaining portion should be attributed via a subsequent amendment of Regulation (EU) 2022/109 once an agreement among the Member States has been reached.

- (21) In order to protect certain species from being fished, the Union and the United Kingdom agreed to maintain the existing lists of prohibited species.
- (22) Regulation (EU) 2022/109 should therefore be amended accordingly.
- (23) The catch limits provided for in Regulation (EU) 2022/109 apply from 1 January 2022. The provisions introduced by this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased or have not yet been exhausted. Given the urgency to avoid interruptions of fishing activities, this Regulation should enter into force on the date of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2022/109 is amended as follows:

- (1) Article 7 is deleted;
- (2) Article 11 is replaced by the following:

‘Article 11

Measures on European seabass fisheries in ICES divisions 4b and 4c and ICES subarea 7

1. It shall be prohibited for Union fishing vessels, as well as for any commercial fisheries from shore, to fish for European seabass (*Dicentrarchus labrax*) in ICES divisions 4b and 4c and in ICES subarea 7 or to retain on board, tranship, relocate or land European seabass caught in that area.
2. The prohibition set out in paragraph 1 shall not apply to by-catches of seabass in shore-based commercial netting activities. This exemption applies to historic numbers of beach nets set at pre-2017 levels. Shore-based commercial netting activities shall not target seabass and only unavoidable by-catches of seabass may be landed.

3. By way of derogation from paragraph 1, in January 2022 and from 1 April to 31 December 2022, Union fishing vessels in ICES divisions 4b, 4c, 7d, 7e, 7f and 7h may fish for, retain on board, tranship, relocate or land European seabass caught in that area with the following gear and within the following limits:
- (a) using demersal trawls¹, for unavoidable by-catches not exceeding 760 kilogrammes per two calendar months (January and April; May and June; July and August; September and October; November and December) and 5 % of the weight of the total catches of marine organisms on board caught by the vessel concerned per fishing trip;
 - (b) using seines², for unavoidable by-catches not exceeding 760 kilogrammes per two calendar months (January and April; May and June; July and August; September and October; November and December) and 5 % of the weight of the total catches of marine organisms on board caught by the vessel concerned per fishing trip;
 - (c) using hooks and lines³, not exceeding 5,95 tonnes per vessel;
 - (d) using fixed gillnets⁴, for unavoidable by-catches not exceeding 1,5 tonnes per vessel.

¹ All types of demersal trawls (OTB, OTT, PTB, TBB, TBN, TBS and TB).

² All types of seines (SSC, SDN, SPR, SV, SB and SX).

³ All long lines or pole and line or rod and line fisheries (LHP, LHM, LLD, LL, LTL, LX and LLS).

⁴ All fixed gillnets and traps (GTR, GNS, GNC, FYK, FPN and FIX).

The derogations set out in the first subparagraph, point (c), shall apply to Union fishing vessels that have recorded catches of European seabass using hooks and lines over the period from 1 July 2015 to 30 September 2016.

The derogations set out in the first subparagraph, point (d), shall apply to Union fishing vessels that have recorded catches of European seabass using fixed gillnets over the period from 1 July 2015 to 30 September 2016.

In the case of a replacement of a Union fishing vessel, Member States may allow the derogations to apply to another Union fishing vessel provided that the number of Union fishing vessels subject to each of the derogations and their overall fishing capacity do not increase.

4. The catch limits set out in paragraph 3 shall not be transferable between vessels and, where a bi-monthly limit applies, from one calendar two-month period to another.

For Union fishing vessels using more than one gear in two calendar months, the lowest catch limit set out in paragraph 3 for either gear shall apply.

Member States shall report to the Commission all catches of European seabass per type of gear no later than 15 days after the end of each month.

5. In recreational fisheries, including from shore, in ICES divisions 4b, 4c, 6a and 7a to 7k:
 - (a) from 1 January to 28 February 2022 and from 1 to 31 December 2022:
 - (i) only catch-and-release fishing with a rod or a handline for European seabass shall be allowed;
 - (ii) it shall be prohibited to retain, relocate, tranship or land European seabass caught in that area;
 - (b) from 1 March to 30 November 2022:
 - (i) not more than two specimens of European seabass may be caught and retained per fisher per day;
 - (ii) the minimum size of European seabass retained shall be 42 cm;
 - (iii) fixed nets shall not be used to catch or retain European seabass.
6. Paragraph 5 shall be without prejudice to more stringent national measures on recreational fisheries.?’;

- (3) Article 15 is replaced by the following:

‘Article 15

Closed fishing seasons for sandeels

Commercial fishing for sandeels (*Ammodytes* spp.) with demersal trawl, seine or similar towed gears with a mesh size of less than 16 mm shall be prohibited in ICES divisions 2a and 3a and in ICES subarea 4 from 1 January to 31 March 2022 and from 1 August to 31 December 2022.’;

- (4) in Article 31, paragraph 4 is replaced by the following:

‘4. The maximum number of supply vessels shall be three supply vessels in support of not less than ten purse-seine vessels, all flying the flag of a Member State. This provision shall not apply to Member States using only one supply vessel.’;

- (5) Annex IA is amended in accordance with Annex I to this Regulation;
- (6) Annex IB is amended in accordance with Annex II to this Regulation;
- (7) Annex IC is amended in accordance with Annex III to this Regulation;
- (8) Annex ID is amended in accordance with Annex IV to this Regulation;

- (9) Annex IH is replaced by the text appearing in Annex V to this Regulation;
- (10) Annex IJ is replaced by the text appearing in Annex VI to this Regulation;
- (11) Annex II is amended in accordance with Annex VII to this Regulation;
- (12) Annex VI is amended in accordance with Annex VIII to this Regulation.

Article 2

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

It shall apply from 1 January 2022.

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

Done at ...,

For the Council

The President
