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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Problems in implementation of the provisions of Article 14 of the Fisheries Control regulation for permitted margin of tolerance (MOT) in pelagic fishery *- Information from the Latvian and Lithuanian delegations*

Delegations will find attached a note from the Latvian and Lithuanian delegations on the abovementioned subject.

AGRIFISH COUNCIL

29 April 2024

PUBLIC

AOB

Problems in implementation of the provisions of Article 14 of the Fisheries Control regulation for permitted margin of tolerance (MOT) in pelagic fishery

(information from the Latvian and Lithuanian delegations)

Amendments to the Fisheries Control Regulation (EU) 2023/2842[1] entered into force on 9 January 2024. It amends, among other provisions, the Article 14 of the Fisheries Control Regulation by introducing significant changes to the permitted margin of tolerance (MOT) and the previous approach of its' application.

Latvia and Lithuania would like to turn the attention to a major problem which appears with the conditions provided for calculation of the MOT for those species whose catch is 2% or just above from total catch. Fishers have firmly stated that minor by-catch of species such as three-spined stickleback (GTA), fourhorn sculpin (TGQ), smelt (SME), eelpout (ELP), round goby (NBU) etc. is in most cases very likely in herring and sprat fisheries (this fact is also confirmed by fisheries inspectors and scientists). These species are unregulated or even invasive to the Baltic Sea (for example round goby), so they would not be particularly protected. The amount of by-catch of such species in the catches of small pelagic species (herring and sprat) is minimal. For example, based on the electronic recording and reporting system (ERS) logbooks and landing declarations data, used in the analysis for the Latvian catches, unregulated species constitutes only 1,95 % from the total 58 395 t catch in pelagic fishery in 2023. However, there is a high probability of committing an infringement caused from the initial visual determination of the amount of catch at sea when estimated data are sent to the control authorities before vessel entering port and landing the fish.

Fishing practices show that the allowable MOT level cannot be met for catches of small size unregulated species in a very large number of fishing acts (on average 72 % of all cases where such species have been recorded as a 2% or just above by-catch). This fact is confirmed by 2023-year logbooks' data analysis obtained from Latvian fisheries information system when figures are compared between the estimated catch of these fish reported in the logbook against those data recorded after landing and sorting.

[1] Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control.

Member States concerned draw attention to the vital importance of evaluation and assessment of this problem with recognition of small catches of small size fish in a big catch volume, where the species are unregulated, low value and presented only as a purely minor by-catch. It would not be proportionate and adequate to create a MOT infringement risk for fishers due to such species. We are of the opinion that unregulated species which have no commercial value or are even invasive in the region concerned should not be the target of the control framework and should not give case of an infringement if their quantity within high volumes of total catches at sea and on board cannot be estimated within sufficient precision as regarded by allowable MOT level (+/- 10% for any by-catch species). A high risk of error in such circumstances and the subsequent finding of an infringement are not justified and proportionate to the needs of regulated species protection. Moreover, these are very insignificant amounts of by-catches of different small size fish species, which appear in fishermen's catches, and which are difficult to estimate in the large volume of total catches.

Latvia and Lithuania consider that such species which have no intention or incentive from fishers' side to be unreported should be excluded from estimated reporting or at least criteria must be determined that such mistakes shall not be considered as a serious infringement.

Considering mandate provided to the European Commission (further – Commission) in the Control regulation for adoption of the Implementation regulation, we believe that the Commission has enough power within its' mandate to assess the legal aspects and adopt special provisions for the unregulated species in the context of MOT requirements.

In the light of the considerations mentioned above and the conclusions from the Latvian 2023 Logbook and Landing data comparison, we call for the solution to apply special MOT conditions to unregulated species where the amount is insignificant (2% or just above) in total catch. Therefore, **Latvia and Lithuania invite the Commission:**

- given problematic situation and critical catch data discrepancy in logbooks and landing declarations which shows that MOT infringement cases for unregulated species in the Baltic Sea pelagic fisheries are inevitable, **to assess the possibility to adjust the requested provisions by providing necessary solutions, or include specific provisions in the Implementing act, or propose any other scenarios how the Commission could solve this problematic issue.**
- **to assess justification and proportionality for small size unregulated species to apply for them the Annex IV criteria for determination that an operation constitutes a serious infringement** in accordance with Article 90(3) of the Control Regulation and specific criteria for actions that: "Failing to fulfil obligations to accurately record estimates of quantities within the permitted margin of tolerance, in accordance with Article 14(3) and (4) and Article 21(3) of this Regulation and Article 13 of Regulation (EU) 2016/1139".

Latvia and Lithuania believe that existing legislation[2] describes and makes it clear that the purpose of those control requirements is not to protect or conserve unregulated species, but rather to preserve regulated species at a sustainable level. **Consequently, the measures in the Implementing Regulation of the Commission (or other solution) should specially contribute to the achievement of the objectives pursued for stock protection and landing obligation of regulated species.**

If this problem is not addressed by the Implementing Regulation or within other solution, then under current conditions, practically all fishers will be in the role of potential offenders without deliberate misconduct.

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[2] 1) Article 14(4) of the Control Regulation (No 2023/2842) provides: By way of derogation from paragraph 3, **in the case of fisheries referred to in Article 15(1), point (a)**, first and third indents, of Regulation (EU) No 1380/2013 **for species which are landed unsorted** the following margins of tolerance shall apply: [..] **At the same time Article 15 (1)(a)** of the CFP Regulation refers to the species which are subject to catch limits caught (**not to the unregulated species**).

2) The purpose of the landing obligation under the CFP Regulation (as reflected both in the preamble and in Article 15(1) of the Regulation) is to reduce current high levels of unwanted catches and to phase out discards. Unwanted catches and discards represent a significant waste of resources and have a negative impact on the sustainable exploitation of marine biological resources and marine ecosystems and the financial viability of fisheries. **The obligation to land all catches of species (the "landing obligation") subject to catch quotas should be introduced and gradually implemented**.