Council of the European Union

Brussels, 30 May 2023
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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 May 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 276 final
Subject:	Proposal for a COUNCIL REGULATION amending 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, and 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) 276 final.

Encl.: COM(2023) 276 final

EUROPEAN
COMMISSION

Brussels, 30.5.2023
COM(2023) 276 final

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Proposal for a

COUNCIL REGULATION

amending 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, and 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

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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

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 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 while achieving the MSY objective was a

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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).

necessary condition for environmental, economic and social sustainability, those three objectives cannot be achieved in isolation.

As regards fishing opportunities for stocks that are jointly managed with non-EU countries, 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 Iberian waters

Regulation (EU) 2023/194 provisionally sets at zero the TAC for anchovy (*Engraulis encrasicolus*) in ICES subareas 9 and 10 (Iberian waters and waters around the Azores) and EU waters of Committee for Eastern Central Atlantic Fisheries (CECAF) division 34.1.1 (east of Madeira and of the Canary islands) for the period from 1 July 2023 to 30 June 2024, pending the publication by ICES of its scientific advice.

ICES is expected to publish on 21 June 2023 its advice for that stock and for that period. In order to allow fishing to continue until the definitive TAC for that stock is set on the basis of that scientific advice, a provisional TAC at the level of 4 564 tonnes for the period from 1 July to 30 September 2023 should be established. That level corresponds to the catches of that stock in the third quarter of 2022.

Northern prawn in the Skagerrak and Kattegat

On 17 March 2023, the EU and Norway agreed on a TAC for Northern prawn (*Pandalus borealis*) in EU and Norwegian waters of ICES division 3a (Skagerrak and Kattegat) for the period from 1 January to 30 June 2023. Regulation (EU) 2023/194, as amended by Council

Regulation (EU) 2023/730[3], therefore sets a TAC for Northern prawn in ICES division 3a for that period.

ICES is expected to publish on 9 June 2023 its scientific advice for Northern prawn in ICES divisions 3a and 4a east for the period from 1 July 2023 to 30 June 2024. Following the publication of that scientific advice, the EU and Norway will hold bilateral consultations on the level of the TAC for Northern prawn in ICES division 3a for that period. Pending the formal outcome of those bilateral consultations, the TAC for Northern prawn in ICES division 3a for the period from 1 July 2023 to 30 June 2024 is marked *pm* (*pro memoria*) in this proposal. As soon as the formal outcome of those consultations is known, the Commission services will update this proposal by means of a non-paper proposing that TAC for that period.

Sprat in the North Sea and in the Skagerrak and Kattegat

Pending the publication by ICES of its scientific advice, Regulation (EU) 2023/194 provisionally sets at zero the TACs for sprat (*Sprattus sprattus*) for the period from 1 July 2023 to 30 June 2024 respectively in EU and UK waters of ICES subarea 4 and division 2a (North Sea) and in EU and Norwegian waters of ICES division 3a (Skagerrak and Kattegat).

ICES is expected to publish on 20 April 2023 its scientific advice for sprat in ICES subarea 4 and division 3a for the period from 1 July 2023 to 30 June 2024. Following the publication of that advice, the EU, UK and Norway will hold trilateral consultations on: (i) the level of the overall fishing opportunities for that stock for that period; as well as (ii) the level of the TACs for sprat in ICES subarea 4 and division 2a and in ICES division 3a for that period. Pending the formal outcome of those trilateral consultations, the TACs for sprat for the period from 1 July 2023 to 30 June 2024 respectively in ICES subarea 4 and division 2a and in ICES division 3a are marked *pm* (*pro memoria*) in this proposal. As soon as the formal outcome of those consultations is known, the Commission services will update this proposal by means of a non-paper proposing those TACs for that period.

Sprat in the English Channel

Regulation (EU) 2023/194 provisionally sets at zero the TAC for sprat in EU and UK waters of ICES divisions 7d and 7e (English Channel) for the period from 1 July 2023 to 30 June 2024, pending publication by ICES of its scientific advice.

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[3] Council Regulation (EU) 2023/730 of 31 March 2023 amending Regulation (EU) 2023/194 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, and Regulation (EU) 2022/109 (OJ L 95, 4.4.2023, p. 1).

ICES is expected to publish on 20 April 2023 its scientific advice for sprat in ICES divisions 7d and 7e for the period 1 July 2023 to 30 June 2024. Following the publication of that advice, the EU and the UK will hold bilateral consultations on the level of the TAC for that stock listed in Annex 35 of the Trade and Cooperation Agreement (TCA)[4] pursuant to Articles 498(2), (4) and (6) of the TCA for that period. Pending the formal outcome of those bilateral consultations, the TAC for sprat in ICES divisions 7d and 7e for the period from 1 July 2023 to 30 June 2024 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 that TAC for that period.

Regional Fisheries Management Organisations

Articles 15 and 17 of Regulation (EU) 2022/2056[5] of the European Parliament and of the Council prohibit to retain on board, tranship, store on a fishing vessel or land any oceanic whitetip shark (*Carcharhinus longimanus*) and any silky shark (*Carcharhinus falciformis*) whole or in part in the area covered by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). In order to avoid overlapping provisions on the same subject matter, it is appropriate to delete Article 45 of Regulation (EU) 2023/194.

Under several International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, the EU may, upon request, carry over a percentage of its unused quota of stocks in the ICCAT Convention Area from the penultimate or the preceding year to a given year, according to rules for each ICCAT stock as laid down by ICCAT. Council Regulation (EU) 2022/109[6], as amended by Council Regulation (EU) 2022/515[7], set EU quotas for ICCAT stocks for 2022 in line with the outcome of the 2021 ICCAT annual meeting, which takes into account the carry-overs of unused EU quotas, where applicable. Moreover, Regulation (EU) 2023/194, as amended by Regulation (EU) 2023/730, sets EU quotas for those ICCAT stocks for 2023 in line with the outcome of the 2022 ICCAT annual meeting, which takes into account the carry-overs of unused EU quotas, where applicable. The withholding of Member States quotas to be transferred to the following year in accordance

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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).

5 Regulation (EU) 2022/2056 of the European Parliament and of the Council of 19 October 2022 laying down conservation and management measures applicable in the Western and Central Pacific Fisheries Convention Area and amending Council Regulation (EC) No 520/2007 (OJ L 276, 26.10.2022, p. 1).

6 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).

7 Council Regulation (EU) 2022/515 of 31 March 2022 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 (OJ L 104, 1.4.2022, p. 1).

with Article 4 of Council Regulation (EC) No 847/96[8] should therefore not be permitted, and Regulations (EU) 2022/109 and (EU) 2023/194 should be amended accordingly.

[8] Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

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amending 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, and 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

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[1] 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.

(2) Regulation (EU) 2023/194 sets at zero the TAC for anchovy (*Engraulis encrasicolus*) in International Council for the Exploration of the Sea (ICES) subareas 9 and 10 and Union waters of Committee for Eastern Central Atlantic Fisheries (CECAF) division 34.1.1 for the period from 1 July 2023 to 30 June 2024, pending the publication by ICES of its scientific advice for that stock for that period. In order to allow fishing to continue until the definitive TAC for that stock is set on the basis of that scientific advice, a provisional TAC at the level of 4 564 tonnes for the period from 1 July to 30 September 2023 should be established. That level corresponds to the catches of that stock in the third quarter of 2022.

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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).

(3) Regulation (EU) 2023/194 sets a TAC for Northern prawn (*Pandalus borealis*) in Union and Norwegian waters of ICES division 3a for the period from 1 January to 30 June 2023. The TAC for that stock for the period from 1 July 2023 to 30 June 2024 should be set following the publication by ICES of its scientific advice for that stock for that period. That TAC should be set in line with the formal outcome of the subsequent bilateral consultations between the Union and Norway on the level of that TAC for that period.

(4) Regulation (EU) 2023/194 provisionally sets at zero the TACs for sprat (*Sprattus sprattus*) for the period 1 July 2023 to 30 June 2024 respectively in Union and UK waters of ICES subarea 4 and division 2a and in Union and Norwegian waters of ICES division 3a, pending the publication by ICES of its scientific advice for sprat in ICES subarea 4 and division 3a for that period. The definitive TACs for that stock for the period 1 July 2023 to 30 June 2024 should be set following the publication of that scientific advice. Those TACs should be set in line with the formal outcome of the subsequent trilateral consultations between the Union, the United Kingdom and Norway on: (i) the overall fishing opportunities for that stock for that period; and (ii) the level of the TACs for sprat respectively in ICES subarea 4 and division 2a and in ICES division 3a for that period.

(5) Regulation (EU) 2023/194 provisionally sets at zero the TAC for sprat in Union and United Kingdom waters of ICES divisions 7d and 7e for the period from 1 July 2023 to 30 June 2024, pending publication by ICES of its scientific advice for that stock for that period. The definitive TAC for that stock for that period should be set following the publication of that scientific advice. That TAC should be set in line with the formal outcome of the subsequent bilateral consultations between the Union and the United Kingdom on the level of the TAC for that stock for that period pursuant to Article 498(2), (4) and (6) of the 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[2].

(6) Articles 15 and 17 of Regulation (EU) 2022/2056[3] of the European Parliament and of the Council prohibit to retain on board, tranship, store on a fishing vessel or land any oceanic whitetip shark (*Carcharhinus longimanus*) and any silky shark (*Carcharhinus falciformis*) whole or in part in the area covered by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). In order to avoid overlapping provisions on the same subject matter, it is appropriate to delete Article 45 of Regulation (EU) 2023/194.

(7) Under several International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, the Union may, upon request, carry over a percentage of its unused quota of stocks in the ICCAT Convention Area from the penultimate or the

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[2] OJ L 149, 30.4.2021, p. 10.

[3] Regulation (EU) 2022/2056 of the European Parliament and of the Council of 19 October 2022 laying down conservation and management measures applicable in the Western and Central Pacific Fisheries Convention Area and amending Council Regulation (EC) No 520/2007 (OJ L 276, 26.10.2022, p. 1).

preceding year to a given year, according to rules for each ICCAT stock as laid down by ICCAT. Council Regulation (EU) 2022/109[4] and Regulation (EU) 2023/194 set Union quotas for ICCAT stocks respectively for 2022 and 2023 in line with the outcome of the ICCAT annual meetings in the preceding year, which takes into account the carry-overs of unused Union quotas, where applicable. The withholding of Member States quotas to be transferred to the following year in accordance with Article 4 of Council Regulation (EC) No 847/96[5] should therefore not be permitted.

(8) Regulations (EU) 2023/194 and (EU) 2022/109 should therefore be amended accordingly.

(9) In order to allow fishing to continue on 1 July 2023, this Regulation should enter into force without delay.

(10) The provisions of this Regulation concerning fishing opportunities should apply from 1 July 2023, except for the fishing opportunities for Northern prawn in ICES division 3a, which should apply from 1 January 2023. The provisions of this Regulation concerning WCPFC and ICCAT and amending provisions of Regulation (EU) 2023/194 should apply from 1 January 2023, in line with the application period of those amended provisions. The provisions of this Regulation concerning ICCAT and amending provisions of Regulation (EU) 2022/109 should apply from 1 January 2022, in line with the application period of those amended provisions. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are either increased or quantities withheld upon Member States requests pursuant to Article 4 of Regulation (EC) No 847/96 have not yet been transferred,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment of Regulation (EU) 2023/194

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

(a) Article 45 is deleted;

(b) Annexes IA and ID are amended in accordance with Annex I to this Regulation.

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[4] 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).

[5] Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

Article 2

Amendment of Regulation (EU) 2022/109

Annex ID of Regulation (EU) 2022/109 is amended in accordance with Annex II to this Regulation.

Article 3

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 July 2023.

However:

(a) Point (a) of Article 1 and Points 2(a) and 3 of Annex I shall apply from 1 January 2023;

(b) Annex II shall apply from 1 January 2022.

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

Done at Brussels,

For the Council
The President