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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 May 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL REGULATION amending Regulation (EU) 2019/124 as regards certain fishing opportunities

Delegations will find attached document COM(2019) 243 final.

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EUROPEAN
COMMISSION

Brussels, 24.5.2019
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2019/0117 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2019/124 as regards certain fishing opportunities

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EU) No 2019/124 fixes for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union vessels, in certain non-Union waters. These fishing opportunities are usually amended several times during the period in which they are in effect.

- **Consistency with existing policy provisions in the policy area**

The measures proposed are designed in accordance with the objectives and the rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

- **Consistency with other Union policies**

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

The Union's obligations for sustainable exploitation of living aquatic resources arise from obligations set out in Article 2 of the new basic regulation of the CFP.

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) of the Treaty. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the proportionality principle for the following reason: the CFP is a common policy. According to Article 43(3) of the Treaty, it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

- **Choice of the instrument**

Proposed 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 Proposal takes into account the feedback from the stakeholders, Advisory Councils, the national administrations, fishermen organisations and non-governmental organisations throughout the year and their feedback is taken into account when setting the fishing opportunities.

- **Collection and use of expertise**

The Proposal is based on the scientific advice¹ of the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF).

- **Impact assessment**

The scope of the fishing opportunities regulation is circumscribed by Article 43(3) of the Treaty.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposed measures will have no budgetary implications.

¹ <http://www.ices.dk/community/advisory-process/Pages/Latest-advice.aspx>

5. OTHER ELEMENTS

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

The proposed amendments seek to modify Regulation 2019/124 as described below.

Fishing effort for vessels in the context of the recovery of certain Southern hake and Norway lobster stocks in ICES divisions 8c and 9a excluding the Gulf of Cádiz

The Western Waters Multiannual Plan, which entered into force on 26 March 2019, repealed the Recovery plan for Southern hake and Norway lobster. The effort limits in Annex II of the fishing opportunities regulation were set in accordance with that recovery plan. As the stocks concerned will be managed in line with the provisions of the Western Waters Multiannual Plan by setting catch limits within MSY ranges, it is no longer necessary to continue setting effort fishing effort limits for the fleets fishing for those stocks. Annex II should therefore be repealed.

Whiting in the Irish Sea (ICES division 7a)

The Commission has requested and received updated scientific analysis from ICES on the level of "unavoidable by-catches" of whiting in the Irish Sea. This analysis provides a higher level of expected by-catches of whiting in other target fisheries, should those fisheries be exploited in line with MSY. However, the updated catch advice for whiting in 7a still recommends zero catches for 2019 with fishing mortality and biomass still at unsustainable levels. Therefore, the Commission proposal strikes a balance of allowing an increase in the total allowable catch for whiting, to prevent early closure of fisheries, whilst allowing the spawning stock biomass to increase.

Norway lobster in ICES division 8c

On 28 March, ICES issued the advice for sentinel fishery of Norway lobster in functional unit 31, in ICES division 8c. According to the ICES advice, catches should be zero since underwater television surveys to monitor the stock abundance are conducted without removing animals. However, ICES recommended that, if an underwater television survey cannot be conducted, a sentinel fishery to collect catch per unit effort data on Norway lobster in functional unit 31, in ICES division 8c, could be established. ICES advises that the catches of Norway lobster should not be more than 0,7 tonnes. The fishing opportunities for Norway lobster should therefore be amended to provide for that sentinel fishery.

Northern prawn in ICES divisions 3a and 4a East

On 28 March 2019 ICES issued the advice for catches of Northern prawn (*pandalus borealis*) in ICES divisions 3a and 4a East (Skagerrak, Kattegat, and the northern North Sea in the Norwegian Deep). Following the consultations with Norway, it was decided that the allocation of Northern prawn for the EU in Skagerrak would be 2 010 tonnes.

Saithe in the North Sea

On 22 February 2019, ICES issued updated advice for catches of saithe (*Pollachius virens*) in ICES subareas 4 and 6 and in division 3a. Following this advice and after the consultations with Norway, the TAC for saithe should be amended accordingly, in line with the maximum sustainable yield.

Sprat in the North Sea

On 12 April 2019, ICES issued its annual advice for sprat (*Sprattus sprattus*) in the North Sea. According to ICES advice, catches of sprat in the North Sea should be no more than XXX tonnes in the period from 1 July 2019 to 30 June 2020. The fishing opportunities for sprat should therefore be set accordingly.

Effort limits in the ICCAT Convention Area

At its 21st special meeting in 2018, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted Recommendation 18-02 establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean. That Management Plan follows the advice from the Standing Committee on Research and Statistics to establish a multiannual management plan for the stock in 2018 since the current status of the stock no longer require the emergency measures introduced under the recovery plan for bluefin tuna (Recommendation 17-17 amending Recommendation 14-04). The Management Plan takes into account the specificities of the different types of gear and fishing techniques. Therefore, the provisions on effort limits and maximum input in tuna farms are revised.

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2019/124 as regards certain fishing opportunities

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) 2019/124² fixes for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union vessels, in certain non-Union waters.
- (2) The Western Waters Multiannual Plan³, which entered into force on 26 March 2019, repealed the Recovery plan for Southern hake and Norway lobster⁴. The fishing effort limits in Annex II of Council Regulation (EU) 2019/124 were set in accordance with that recovery plan. As the stocks concerned will be managed in line with the provisions of the Western Waters Multiannual Plan by setting catch limits to achieve target fishing mortality in line with the ranges of F_{msy}, it is no longer necessary to continue setting fishing effort limits for the fleets fishing for those stocks. Annex II should therefore be repealed.

² Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 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 29, 31.1.2019, p. 1)

³ 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).

⁴ Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 345, 28.12.2005, p. 5).

- (3) The International Council for the Exploration of the Sea (ICES) issued scientific advice for no catches for whiting (*merlangius melagnus*) in the ICES division 7a (the Irish Sea). The by-catch TAC for that stock for 2019 has been set to strike the right balance between continuing fisheries in view of the potentially severe socio-economic implications, and the need to achieve a good biological status for those stocks, taking into account the difficulty of fishing all stocks in a mixed fishery at maximum sustainable yield at the same time. The updated scientific analysis from the International Council for the Exploration of the Sea (ICES) on the status of whiting (*merlangius melagnus*) in ICES division 7a and its unavoidable by-catches in other fisheries provided for the status quo scenario estimating corresponding catches at 1 385 tonnes. Following this scientific analysis, the Total Allowable Catch (TAC) should be amended to reflect an amount that will minimise the risk of an early fisheries closure, whilst allowing the spawning stock biomass to continue recovering. The level of the TACs should also reflect that the mortality for that stock is not increased and that it provides incentives for improvements in selectivity and avoidance.
- (4) In December 2018, the Member States concerned agreed that they would cooperate in the North-Western Waters Member States Group and in close cooperation with the North Western Waters Advisory Council to prepare a multi-annual by-catch reduction plan. This plan should ensure that by-catches of the five stocks in question, including whiting in the Irish Sea, for which the International Council for the Exploration of the Sea (ICES) has issued zero catch advice for 2019, are reduced through selectivity or avoidance measures. The Commission intends to submit this plan for the Scientific, Technical and Economic Committee for Fisheries (STECF) Plenary Session in July 2019, in order to assess its effectiveness. If the STECF assessment shows that the by-catch reduction plan will not achieve the desired effect of reducing fishing mortality on by-catches, the Commission will consider alternative measures to reduce the fishing mortality for the stocks concerned.
- (5) According to the ICES advice of 28 March, catches of Norway lobster (*Nephrops norvegicus*) in functional unit 31, in ICES division 8c should be no more than 0,7 tonnes for the period from 1 January 2019 to 31 December 2019. The fishing opportunities for Norway lobster in functional unit 31 in ICES division 8c should be set accordingly.

- (6) On 28 March 2019, ICES issued advice for catches of Northern prawn (*Pandalus borealis*) in ICES divisions 3a and 4a East (Skagerrak, Kattegat, and the northern North Sea in the Norwegian Deep). On the basis of that advice and following consultations with Norway, it is appropriate to fix the Union quota for Northern prawn in ICES division 3a at 2 010 tonnes, in line with the maximum sustainable yield.
- (7) On 22 February 2019, ICES issued updated advice for catches of saithe (*Pollachius virens*) in the North Sea. Following this advice and after the consultations with Norway, the TAC for saithe should be amended accordingly, in line with the maximum sustainable yield.
- (8) According to the ICES advice of 12 April 2019, catches of sprat (*Sprattus sprattus*) in the North Sea should be no more than XXX tonnes for the period from 1 July 2019 to 30 June 2020. The fishing opportunities for sprat in ICES division 2a (Norwegian Sea) and ICES subarea 4 (North Sea) should be set accordingly.
- (9) At its 21st special meeting in 2018, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted Recommendation 18-02 establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean. That Management Plan follows the advice from the Standing Committee on Research and Statistics to establish a multiannual management plan for the stock in 2018 since the current status of the stock no longer require the emergency measures introduced under the recovery plan for bluefin tuna (Recommendation 17-17 amending Recommendation 14-04). The Management Plan takes into account the specificities of the different types of gear and fishing techniques. Therefore, it is appropriate to to revise the provisions on effort limits and maximum input in tuna farms.
- (10) The catch limits provided for in Regulation (EU) 2019/124 apply from 1 January 2019. The provisions of this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application is without prejudice to the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned have not yet been exhausted.
- (11) Regulation (EU) 2019/124 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2019/124 is amended as follows:

- (1) In Article 9, point (a) is deleted;
- (2) Annex IA to Regulation (EU) 2019/124 is amended in accordance with the Annex to this Regulation;
- (3) Annex IIA is deleted;
- (4) Annex IV is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2019.

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

Done at Brussels,

For the Council
The President