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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 771 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 as regards the targets for fixing fishing opportunities

Delegations will find attached document COM(2023) 771 final.

Encl.: COM(2023) 771 final



EUROPEAN
COMMISSION

Brussels, 6.12.2023

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2023/0449 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 as regards the
targets for fixing fishing opportunities**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Parliament and the Council adopted Regulations (EU) 2016/1139¹, (EU) 2018/973² and (EU) 2019/472³ establishing multiannual plans for certain stocks fished in the Baltic Sea, the North Sea and the Western Waters, and for fisheries exploiting those stocks ('the MAPs'). The MAPs are one of the main instruments to achieve the objectives of the common fisheries policy ('CFP').

In accordance with the principles, objectives and content set out in Articles 9 and 10 of Regulation (EU) No 1380/2013 ('the CFP Regulation')⁴, the MAPs set out targets and measures for the long-term management of certain stocks and fisheries at sea basin level, including safeguards and remedial actions where needed. In addition, the MAPs provide for flexibility by allowing the fixing of fishing opportunities within the 'range of F_{MSY} ', as defined in Article 2(2) of the Baltic and Western Waters MAPs, and in Article 2(1) of the North Sea MAP.

The MAPs contain an identical provision in Article 4(6) of the Baltic and North Sea MAPs and Article 4(7) of the Western Waters MAP, which provides that 'fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim} ' ('the 5% rule')⁵.

However, under certain circumstances relating to the status of a given fish stock and the short-term forecast for its biomass development, the application of the 5% rule may result in a situation that would be inconsistent with the other rules of the MAPs governing the fixing of fishing opportunities and have potentially severe socioeconomic implications.

On the one hand, the 5% rule may mean that fishing opportunities cannot be set and the targeted fishery must be suspended. On the other hand, the safeguard provisions in the MAPs require the adoption of remedial measures to bring the stock above $B_{trigger}$, based on a case-by-case assessment on the appropriateness for choosing such measure, in accordance with the criteria set out in the MAPs. Moreover, the MAPs refer to the possibility, and not the

¹ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191, 15.7.2016, p. 1).

² 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).

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 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).

⁵ Article 2(7) of the North Sea MAP and Article 2(8) of the Baltic and Western Waters MAPs define ' B_{lim} ' as 'the spawning stock biomass reference point provided for in the best available scientific advice, below which there may be reduced reproductive capacity'.

obligation, to suspend the targeted fishery, provided that such a measure is considered appropriate in accordance with the criteria set out in the MAPs.

For those reasons, it is therefore appropriate to delete the 5% rule in the MAPs.

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

The proposal is consistent with the CFP Regulation and will ensure the internal consistency of the rules of the MAPs governing the fixing of yearly fishing opportunities by the Council.

- **Consistency with other Union policies**

The proposal is consistent with other Union policies, in particular with the policies in the field of the environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal amends the MAPs and is therefore based on the same legal basis, namely Article 43(2) of the Treaty on the Functioning of the European Union (TFEU).

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

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

- **Proportionality**

The objective of this proposal is to ensure the internal consistency of the rules of the MAPs governing the fixing of yearly fishing opportunities by the Council. The proposed modification is necessary to do so and the most suitable measure to achieve this objective.

- **Choice of the instrument**

Given that the proposal amends existing regulations, the most appropriate legal instrument is a regulation.

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

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

Not applicable.

- **Stakeholder consultations**

In 2023, the Commission discussed the 5% rule with stakeholders, notably the Baltic Sea Advisory Council and the regional CFP group of EU Member States of the Baltic Sea ('BaltFish'). The majority of stakeholders expressed their deep concerns about the consistency of the 5% rule with the other rules of the MAPs governing the fixing of fishing opportunities and its potentially severe socio-economic implications.

- **Collection and use of expertise**

Each year, the Union seeks scientific advice on the state of important fish stocks from the International Council for the Exploration of the Sea ('ICES')⁶. ICES scientific advice is based on an internal advice framework developed by its expert groups and decision-making bodies, which incorporates a precautionary approach based on a risk of no more than 5% in the long term that a stock falls below B_{lim} ⁷. Moreover, ICES scientific advice is issued in line with the framework partnership agreement with the Commission.

- **Impact assessment**

The objective of this proposal is to ensure the internal consistency of the rules of the MAPs governing the fixing of yearly fishing opportunities by the Council. The proposed amendment of the MAPs is necessary to do so and the most suitable measure to achieve this objective. This is a targeted and limited amendment of a specific provisions of the MAPs, which aims to address an internal inconsistency in those regulations. Given that there are no policy options, no impact assessment or public consultation is necessary.

- **Regulatory fitness and simplification**

The proposal contains no new rules or new administrative procedures proposed for (Union or national) public authorities that could increase administrative burden. It also has no link with regulatory burdens, micro-enterprises, SMEs or digital matters.

- **Fundamental rights**

The proposal does not have any foreseeable consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

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

See Section 1 'context of the proposal' above.

⁶ <http://www.ices.dk/advice/Pages/Latest-Advice.aspx>

⁷ ICES Advice 2015, Book 6, p.4 "EU request to ICES to provide FMSY ranges for selected North Sea and Baltic Sea stock", https://ices-library.figshare.com/Articles/report/EU_request_to_ICES_to_provide_FMSY_ranges_for_selected_North_Sea_and_Baltic_Sea_stocks/18629411/1

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 as regards the targets for fixing fishing opportunities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) One of the objectives of the common fisheries policy (CFP), as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁹, is to ensure that exploitation of marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield (MSY). According to Regulation (EU) No 1380/2013, the MSY exploitation rate had to be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.
- (2) To achieve the objectives of the CFP, Regulations (EU) 2016/1139¹⁰, (EU) 2018/973¹¹ and (EU) 2019/472¹² of the European Parliament and of the Council established

⁸ OJ C , , p. .

⁹ 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, <http://data.europa.eu/eli/reg/2013/1380/2023-01-01>).

¹⁰ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191, 15.7.2016, p. 1, <http://data.europa.eu/eli/reg/2016/1139/2020-12-01>).

¹¹ 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, <http://data.europa.eu/eli/reg/2018/973/2019-08-14>).

¹² 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, <http://data.europa.eu/eli/reg/2019/472/2019-08-14>).

multiannual plans for the long-term management of certain stocks in the Baltic Sea, the North Sea, and the Western Waters, for fisheries exploiting those stocks and, where those stocks extend beyond the Western Waters, in their adjacent waters ('the MAPs').

- (3) In accordance with Article 10(1)(c) of Regulation (EU) No 1380/2013, the MAPs set quantifiable targets in the form of target fishing mortality rates. These rates provide for flexibility by establishing a range of values (F_{MSY} ranges with upper and lower limits) consistent with reaching and maintaining MSY for the target stocks.
- (4) Fishing opportunities are set within those F_{MSY} ranges. Those ranges are based on scientific advice from the International Council for the Exploration of the Sea ('ICES') or a similar independent scientific body recognised at Union or international level, and determined in such a way that all levels of fishing mortality within the range result in MSY in the long term without significantly affecting the reproduction process for the stock in question.
- (5) In accordance with Articles 2(2) of Regulations (EU) 2016/1139 and (EU) 2019/472, and Article 2(1) of Regulation (EU) 2018/973, the F_{MSY} range is calculated to deliver no more than a 5 % reduction in long-term yield compared to the MSY and it is capped so that the probability of the stock falling below B_{lim} is no more than 5%.
- (6) Article 4(6) of Regulations (EU) 2016/1139 and (EU) 2018/973, as well as Article 4(7) of Regulation (EU) 2019/472, further provide that 'fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim} ' ('the 5% rule').
- (7) Under certain circumstances relating to the status of a given fish stock and the short-term forecast for its biomass development, the application of the 5% rule may result in a situation that would be inconsistent with the other rules of the MAPs governing the fixing of fishing opportunities and have potentially severe socio-economic implications.
- (8) When scientific advice indicates that for a given year the spawning biomass of the targeted stock or, in the case of Norway lobster stocks, the abundance of specific stocks, are below MSY $B_{trigger}$, the safeguard rules set out in Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 provide that all appropriate remedial measures shall be adopted to ensure rapid return of the stock concerned to levels above those capable of producing MSY. In particular, fishing opportunities shall be set at levels consistent with a fishing mortality that is reduced below the upper range of F_{MSY} , taking into account the decrease in biomass.
- (9) The safeguard rules in the MAPs also provide that further remedial measures are to be adopted where the spawning stock biomass of the targeted stock or, in the case of Norway lobster stocks, the abundance of specific stocks, is below B_{lim} , in order to ensure rapid return of the stock concerned to levels above those capable of producing MSY. In this context, Article 5(2) of Regulation (EU) 2016/1139, as well as Article 7(2) of Regulations (EU) 2018/972 and (EU) 2019/472), refer specifically not only to the suspension of the targeted fishery, but also to other possible measures such as the adequate reduction of fishing opportunities, the adoption of emergency measures or of technical measures.
- (10) The MAPs further provide that the choice of measures in both cases is to be made in accordance with the nature, seriousness, duration and repetition of the situation. The MAPs therefore require the suspension of the targeted fishery only if, according to the

criteria in the MAPs, it is considered to be the appropriate remedial measure required to ensure the rapid return of the stock to levels above those capable of producing MSY.

- (11) Therefore, on the one hand, the 5% rule may mean that fishing opportunities cannot be set and the targeted fishery must be suspended. On the other hand, the safeguard provisions in the MAPs require the adoption of remedial measures to bring the stock above B_{trigger} , based on a case-by-case assessment on the appropriateness for choosing such measure, in accordance with the criteria set out in the MAPs. Moreover, the MAPs refer to the possibility, and not the obligation, to suspend the targeted fishery, provided that such a measure is considered appropriate in accordance with the criteria set out in the MAPs.
- (12) It is therefore necessary to address this inconsistency in the legal framework by deleting the provisions in Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 providing that fishing opportunities shall in any event be fixed in such a way as to ensure that the probability of the stock falling below B_{lim} is no more than 5%.
- (13) Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) 2016/1139

Article 4(6) of Regulation (EU) 2016/1139 is deleted.

Article 2

Amendment to Regulation (EU) 2018/973

Article 4(6) of Regulation (EU) 2018/973 is deleted.

Article 3

Amendment to Regulation (EU) 2019/472

Article 4(7) of Regulation 2019/472 is deleted.

Article 4

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President