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2021/0036 (NLE)

Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the consultations with the United Kingdom to agree on total allowable catches for 2021 and for certain deep sea stocks for 2021 and 2022

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing total allowable catches (TACs) for the year 2021 and for certain deep sea stocks for the years 2021-2022.

2. CONTEXT OF THE PROPOSAL

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 ('the TCA Agreement')¹, provisionally entered into force on 1 January 2021².

The Union and the United Kingdom ('Parties') agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties.

Both Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.

Pursuant to Article FISH.6 of the TCA, the Parties are to hold consultations to agree on TACs for the following year.

Therefore, the Commission will engage, on behalf of the Union, in consultations with the United Kingdom on the setting of the fishing opportunities for shared stocks for 2021 and for 2021-2022 for certain deep sea stocks.

Regulation (EU) No 1380/2013 of the European Parliament and of the Council³ provides that the Union is to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. It also provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels, which can produce the maximum sustainable yield.

It further provides that the Union is to take management and conservation measures based on best available scientific advice, to support the development of scientific knowledge and advice, to gradually eliminate discards and to promote fishing methods that contribute to more

¹ OJ L 444, 31.12.2020, p. 14–1462.

² Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 444, 31.12.2020, p. 2–10.

³ 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).

selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fishing with low impact on marine ecosystem and fishery resources.

Besides, Article 28 of Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations. According to its Article 33, the Union shall also make every effort to reach common arrangements for fishing of shared stocks with a view to making the sustainable management possible.

Building on the approach in the Commission non-paper submitted to the Council on 7 January 2021 (doc. 5031/21) and the revised non-paper, with additional clarifications on the process, submitted to the Council on 14 January 2021 (doc. 5031/1/21 REV 1), and taking account of the guidance of the Council as articulated in document 5543/21 of 26 January 2021, it is appropriate to establish the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing TACs for shared stocks for the year 2021 and for certain deep sea stocks for the years 2021-2022.

During the entire consultation process, the regular and full involvement of the Council is to be ensured at appropriate junctures by means of an extensive coordination and cooperation between the Council and the Commission during this process. The Commission will seek endorsement of the Union position in cooperation with the Council at the appropriate level, including guidance before consultations with the UK are concluded. The Commission services will discuss with the Fisheries Working Party in a timely manner before each round of consultations, including by presenting the way forward for the next round, and will report to it after each round of consultations. Member States delegates will be invited to participate as members of the EU delegation. In situ coordination will be ensured.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be taken on behalf of the Union at the meetings for consultations with the United Kingdom in view of establishing the TACs for shared stocks for 2021 and certain deep-sea stocks for 2021 and 2022.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

It is appropriate to establish the position to be taken on the Union's behalf on the arrangements made between the Parties implementing the TAC on the fishing opportunities within the applicable EU legal framework.

4.1.2. Application to the present case

Pending the ratification and entry into force of the EU-UK Trade and Cooperation Agreement ('TCA'), the TCA applies provisionally as of 1 January 2021. In line with the TCA, the Union needs to consult with the United Kingdom on the joint management of shared marine biological resources for 2021, notably shared fish stocks. Such obligation is in line with Article 63 of the UN Convention on the Law of the Sea (UNCLOS).

Consultations between the Union and the United Kingdom are to take place as the parties need to seek an arrangement pursuant to Article FISH.6(2), FISH.6(4) (a) to (d) and FISH.6(6) of the TCA on the fishing opportunities and intrinsically linked conditions for the calendar year 2021 and for 2021-2022 for certain deep-sea stocks, as of 1 January 2021.

While the Union has set fishing opportunities from 1 January 2021 as established by the Council⁴, these should be agreed with the United Kingdom under article FISH.6 TCA.

The envisaged acts do not supplement or amend the institutional framework of the TCA. Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a Decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If that act pursues two aims or has two components, and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the Decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the setting of fishing opportunities.

Therefore, the substantive legal basis of the proposed Decision is Article 43(3) TFEU. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 43(3) TFEU, in conjunction with Article 218(9) TFEU.

⁴ 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, pp. 31–192.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 ('the TCA')⁵, was signed on 30 December 2020 by the Union acting upon authorisation by Council Decision (EU) 2020/2252⁶ and is provisionally applicable as of 1 January 2021.
- (2) Under Article FISH.2 of the TCA, the Union and the United Kingdom agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties. Both Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.
- (3) In line with the TCA, the Union needs to consult with the United Kingdom on the joint management of shared marine biological resources, notably shared fish stocks.
- (4) Pursuant to Article FISH.6 of the TCA, the Union and the United Kingdom are to hold consultations to agree on total allowable catches ('TACs') for shared fish stocks for 2021 and for certain deep-sea stocks for 2021 and 2022.
- (5) The annual consultations related to fisheries should be carried out by the Commission on the basis of Union positions which are to be established by the Council in accordance with the relevant Treaty provisions.
- (6) The Commission should engage therefore in consultations with the United Kingdom on the setting of such fishing opportunities. The regular and full involvement of the

⁵ OJ L 444, 31.12.2020, p. 14–1462.

⁶ Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 444, 31.12.2020, p. 2–10.

Council in this process is to be ensured by means of an extensive coordination and cooperation between the Council and the Commission.

- (7) The European Parliament should be immediately and fully informed about all stages of the procedure, as provided for in Article 218(10) TFEU in order to allow it to exercise fully its prerogatives in accordance with the Treaties.
- (8) The consultation and reporting requirement should be compatible with the Commission' external representation powers and ensure swift and timely outcome of the consultations. The established working method should also respect the Commission's right of initiative.
- (9) It is for the Council to establish the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing TACs for shared stocks for the year 2021 and for certain deep sea stocks for the years 2021-2022.
- (10) Article 2(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁷ provides that the Union is to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.
- (11) Article 2(2) of Regulation (EU) No 1380/2013 also provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels, which can produce the maximum sustainable yield. In addition, fisheries management should be coherent with achieving Good Environmental Status under the Marine Strategy Framework Directive (Article 2(5)(j)). Article 2(5) further provides that the Union is to, to support the development of scientific knowledge and advice, to gradually eliminate discards and to promote fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fishing with low impact on marine ecosystem and fishery resources. Article 3(3) of Regulation (EU) No 1380/2013 provides that the Union is to take management and conservation measures based on best available scientific advice. Besides, Article 28 of that Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations, and Article 33 of that Regulation (EU) No 1380/2013 provides for the principles and objectives of management of stocks of common interest to the Union and third countries and agreements on exchange and joint management.
- (12) While the Union has set fishing opportunities from 1 January 2021⁸ in accordance with article FISH 7 TCA, these should be agreed with the United Kingdom.
- (13) It is appropriate to establish the position to be taken on the Union's behalf during the consultations, as the result of the consultations should be implemented into the Union law,

⁷ 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.

⁸ 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, pp. 31–192.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the consultations with the United Kingdom on the setting of fishing opportunities for shared stocks for 2021 and for 2021-2022 for certain deep sea stocks is set out in Annex I and II.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



Brussels, 11.2.2021
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ANNEXES 1 to 2

ANNEXES

to the

proposal for a Council Decision

establishing the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing TACs year for the year 2021 and for certain deep-sea stocks for the years 2021-2022

ANNEX 1

The position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing total allowable catches (TACs) for shared stocks for the year 2021 and for certain deep-sea stocks for the years 2021-2022

1. PRINCIPLES

In the framework of the consultations with the United Kingdom, the Union shall:

- (a) Seek to ensure that the TACs agreed are consistent with international law, and in particular with the provisions of the 1982 United Nation ('UN') Convention on the Law of the Sea, the 1995 UN Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;
- (b) Seek to ensure that the Union's international commitments are respected;
- (c) Seek consistency and synergy with the policy that the Union is pursuing as part of its bilateral fisheries relations with third countries, and ensure coherence with its other policies notably in the field of external relations, employment, environment, trade, development, research and innovation;
- (d) Seek that total allowable catches are jointly determined in line with the core conservation objective of the Common Fisheries Policy, maximum sustainable yield (MSY) and the applicable Multiannual Plans);
- (e) Seek alignment with the Council Conclusions of 19 March 2012 on the Commission Communication on the external dimension of the common fisheries policy¹;
- (f) Seek consistency with the Commission Communication: Towards more sustainable fishing in the EU: state of play and orientations for 2021 (COM/2020/248 final)²;
- (g) Aim to ensure a level playing field for the Union fleet based on the same principles and standards as those applicable under Union law, and to promote the uniform implementation of those principles and standards;
- (h) seek to establish timelines for the annual consultations for fishing opportunities in 2021.

2. ORIENTATIONS

The Union shall, where appropriate, endeavour to reach agreement with the United Kingdom for the fishing opportunities (TACs and their intrinsically linked measures) for 2021 and for 2021 and 2022 for certain deep-sea stocks, based on the following approach.

The Union shall, where necessary, consider how for individual cases or issues a specific approach may need to be developed while delivering results that contribute to the overall objective of sustainable management of the fisheries and marine biological resources in correspondence with the objectives of the CFP. In doing so, the Commission will work closely with the Council during consultations for the further development of the approach, which contributes to the objectives of the CFP and which delivers sustainable fisheries in its three dimensions (environmental, economic and social):

¹ 7087/12 REV 1 ADD 1 COR 1.

² Communication from the Commission to the European Parliament and the Council, Towards more sustainable fishing in the EU: state of play and orientations for 2021, 16.6.2020 COM(2020) 248 final, 16.6.2020.

- (a) seek to set TACs on the basis of the best available scientific advice, which would bring or maintain the achievement of the maximum sustainable yield exploitation rate, and, where such advice is not available under the principle of precautionary approach to fisheries;
- for TACs for western Channel herring, plaice and sole West of Scotland, saithe in western waters, no scientific advice from the International Council for the Exploration of the Sea (ICES) was received. Therefore, the Union should seek a roll-over of the TAC for 2020, as no risk of overexploitation was identified.
 - For the TAC of lemon sole and witch, of turbot and brill, of sandeel and of *nephrops*, there is a mismatch between the ICES advice area and the management area. Some TACs are composed of more than one species, while other advice assesses different stocks of the same species covered in one TAC. For these TACs, the Union should seek a combination of different best available advices, including where advice combines MSY and precautionary advice, similar to earlier years.
- (b) seek TAC levels in accordance with the CFP MSY objective and the applicable multiannual plans for 27 TACs with MSY assessment and F_{MSY} advice;
- Where the multiannual plans allow for the use of the F_{MSY} ranges as provided by ICES, the Union should seek to make use of these provisions, if the conditions set out in the multiannual plans are fulfilled, seeking the optimum level in light of the quantitative and qualitative elements in the advice.
 - The Union should seek to take into account the difficulty of fishing all stocks in a mixed fishery at the MSY level at the same time, and in particular where it is very difficult to avoid the phenomenon of choke species. This is the case for the following TACs:
 - Celtic Sea cod (0 TAC advice). This stock is assessed below the limit value for reproduction, and neither fishing at F_{MSY} levels, nor 0 catches in 2021 would sufficiently contribute to the return of the stock to above the limit value in 2022. The Union should seek the creation of a by-catch TAC at levels that would avoid the choking of the fishery for other species, while respecting the need for further protection of this vulnerable Stock. Whiting in the Celtic Sea is also below the limit value, but fishing in the lower part of the F_{MSY} range will bring the stock back to levels above the minimum. Given the need to keep the fishing pressure on these two stocks reduced, the TAC for haddock should be agreed in the lower parts of the fishing mortality related to MSY, possibly through a roll-over of the TAC for 2020.
 - The Union will seek to accompany the TAC level with *remedial measures*, as developed under the regionalisation and submitted by Member States as joint recommendations for implementation in 2021.
 - Both herring with 0 TAC advice (7ghk – MSY advice, and 5b6b6aN – precautionary advice) have been kept at low levels of fishing in the past, with fishing limited to levels that support the further scientific assessment. The Union should seek continuation of this approach with scientific/sentinel TACs at levels corresponding to past years.

- (c) seek agreement based on the precautionary approach corresponding headline advice in the ICES advice sheet for 43 TACs with precautionary advice;
- Precautionary advice is given mostly for by-catch stocks (under multiannual plans). There are some target stocks (under the multiannual plans) where ICES has not been able to provide MSY assessment. These TACs should also be agreed upon based on the precautionary advice.
 - A limited number of TACs receive multiannual precautionary advice (e.g. boarfish, ling in the North Sea and ling in the Western waters). For these TACs, the Union should seek stability of the TACs for the corresponding years. Given the very low uptake in the corresponding fisheries, the Union could agree to a low TAC (below the ICES advice) for three TACs for tusk (North Sea, areas 5/6/7, and areas 1/2/14).
 - West of Scotland cod (0 TAC advice). This stock is in a similar state as the Celtic sea stock. A by-catch TAC is justified here to avoid choking of the fisheries, mainly haddock. To keep the fishing pressure in the fishery reduced, the haddock TAC West of Scotland (MSY advice) should be agreed along the lines of the approach to haddock in the Celtic Sea, in the lower part of the FMSY fishing mortality range, possibly through a roll over.
- (d) seek consistency with the Union's specific approach in particular in relation to picked dogfish, greater silver smelt and the European eel stock;
- (e) seek confirmation and prolongation of the list of prohibited species, as developed over time and based on scientific advice, namely the general prohibition for the fisheries on deep-sea sharks;
- (f) seek to agree with the UK on the method and application of the adjustments to the agreed TACs following the application of exemptions (de minimis and survivability exemptions to the obligation to land all catches). It should seek the highest possible level of convergence of such exemptions;
- (g) seek agreement on continuation of the approach developed for the conservation of the northern seabass, notably the implementation of measures as included in the Fishing Opportunities Regulation for 2021 ensuring that the overall fishing pressure remains based on the scientific advice provided by ICES;
- (h) seek to agree on other measures, functionally linked to the TACs in line and to the extent as adopted under the Fishing Opportunities Regulation, in particular maintaining special conditions, as set out in the footnotes to TAC tables and inter-area flexibilities as established under the Fishing opportunities for 2020 and 2021;
- (i) seek to agree on inter-annual flexibilities in line with the CFP regulation, in particular its Article 15(9);
- (j) engage on exploratory basis in discussions to facilitate sufficient access for sustainable continuation of the fishing activity for non-quota species not prejudging the EU position to be taken for the Specialised Fisheries Committee competent under the Agreement to adopt such measures;
- (k) engage on exploratory basis in discussions on quota transfers similar to the quota transfers between the EU and Norway, and on in-year quota swapping possibilities;
- (l) support measures developing and promoting the use of tools (technologies, information exchange systems, registers, etc.) to support and facilitate the

implementation of the Agreement, and ensure that they are compatible with those developed within the Union for addressing similar purposes;

- (m) support measures aimed at strengthening transparency, dialogue and cooperation with relevant stakeholders, on matters related to the implementation of the Agreement.

ANNEX 2

Specification of the Union's position to be taken at the meetings of the Parties during the yearly TAC consultations

The Union shall, while considering in particular approach to individual stocks, measures functionally linked to fishing opportunities or management measures requiring a specific approach, deliver results that contribute to the overall objective of sustainable management of the fisheries and marine biological resources in correspondence with the objectives of the CFP and which delivers sustainable fisheries in its three dimensions (environmental, economic and social). In doing so, the Commission will work closely with the Council during consultations and keeping the European Parliament informed in accordance with article 218(9) and (10) TFEU.

The regular and full involvement of the Council during the entire negotiation process shall be ensured by means of an extensive coordination and cooperation between the Council and the Commission during this process. This includes in situ coordination meetings, presentations, debriefs and discussions, full involvement of national delegations in the consultations including as part of the EU delegation, as well as technical meetings when needed. During the negotiations, the Commission shall take into account the position of the national delegations expressed as part of this coordination process.

The consultation and reporting requirement cannot hinder procedurally the Commission's external representation prerogatives nor risk to adversely impact the outcome of the consultations. The above mentioned cooperation requirements shall respect the Commission's right of initiative.

During the consultations, the position to be expressed on the Union's behalf takes account of the latest scientific and other relevant information, in accordance with the principles and orientations set out in Annex I. This should be appropriately reflected in the written record documenting the arrangements made between the Parties as a result of consultations under Article 6 FISH TCA.

To this effect, and based on that information, the Commission shall transmit to the Council in sufficient time before a signature of the written record the particulars of the proposed specification of the Union's position for endorsement of the detailed results of the consultation.

If in the course of meetings of the Parties to the Agreement it is impossible to reach an agreement on the specification of the position on the definitive TACs or any other functionally linked measures to the fishing opportunities, including on the spot, in order for the Union's position as set out in Annex I to take account of new elements, the matter shall be referred to the Council or its preparatory bodies.