Council Regulation (EU) 2019/1838 of 30 October 2019 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea and amending Regulation (EU) 2019/124 as regards certain fishing opportunities in other waters

COUNCIL REGULATION (EU) 2019/1838

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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) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(1)] requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries and other advisory bodies, as well as advice received from Advisory Councils established for the relevant geographical areas or fields of competence and joint recommendations made by Member States.

(2) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be allocated to Member States in such a way as to ensure the relative stability of fishing activities of each Member State for each stock or fishery and having due regard to the objectives of the Common Fisheries Policy (CFP) set out in Regulation (EU) No 1380/2013.

(3) Regulation (EU) No 1380/2013 provides that the objective of the CFP is to achieve the maximum sustainable yield (MSY) exploitation rate by 2015 where possible and, on a progressive, incremental basis, at the latest by 2020 for all stocks.

(4) The total allowable catches (TACs) should therefore be established, in accordance with Regulation (EU) No 1380/2013, on the basis of available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as having regard to the opinions expressed during the consultation with stakeholders.

(5) Regulation (EU) 2016/1139 of the European Parliament and of the Council[(2)] establishes a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and for the fisheries exploiting those stocks (‘the plan’). The plan aims to ensure that exploitation

of living marine biological resources restores and maintains populations of harvested species above levels which can produce the MSY. To that end, the target fishing mortality for the stocks concerned, expressed in ranges, is to be achieved as soon as possible and, on a progressive, incremental basis, by 2020. It is appropriate that the catch limits applicable in 2020 for the cod, herring and sprat stocks in the Baltic Sea are established in line with the objectives of the plan.

(6) The International Council for the Exploration of the Sea (ICES) indicated that the biomass of western Baltic herring in ICES subdivisions 20-24 continued to be below the limit spawning biomass reference point below which there may be reduced reproductive capacity (B_{lim}). In its annual stock advice of 29 May 2019, ICES therefore issued scientific advice for no catches. In accordance with Article 5(2) of Regulation (EU) 2016/1139, all appropriate remedial measures should therefore to be adopted to ensure a rapid return of the stock concerned to levels above the level capable of producing MSY. Moreover, that provision requires further remedial measures to be adopted. To that end, it is necessary to take into account the timeline for the achievement of the objectives of the CFP in general, and of the plan in particular, in view of the expected effect of the remedial measures adopted, whilst at the same time adhering to the objectives of achieving economic, social and employment benefits as set out in Article 2 of Regulation (EU) No 1380/2013. Accordingly, and in line with Article 4(4) and 5(2) of Regulation (EU) 2016/1139, it is appropriate that fishing opportunities for western Baltic herring are set below the fishing mortality ranges, so as to take into account the decrease in the biomass.

(7) As regards the eastern Baltic cod stock, ICES was able to provide an analytical assessment for the first time in several years. ICES estimated that the biomass was below B_{lim} and would stay below B_{lim} in the medium term even with no fishing at all. ICES therefore issued scientific advice recommending no catches in 2020. However, ICES was not in a position to determine the values of the fishing mortality ranges. Based on the stock assessment and in order to react as quickly as possible, the Commission adopted Implementing Regulation (EU) 2019/1248[(3)] establishing emergency measures to alleviate a serious threat to the conservation of the eastern Baltic cod (*Gadus morhua*) stock. In accordance with Article 5(2) of Regulation (EU) 2016/1139, the fishing opportunities for 2020 need to be set in a way to ensure the rapid return of the stock to a level above the level capable of producing MSY.

(8) If the fishing opportunities for eastern Baltic cod were to be set at the level indicated in the scientific advice, the obligation to land all catches in mixed fisheries with by-catches of eastern Baltic cod would lead to the phenomenon of 'choke species'. In order to strike the right balance between, on the one hand, allowing fisheries to continue in view of otherwise potentially severe socioeconomic implications, and, on the other, the need to achieve a good biological status for the stock, taking into account the difficulty of fishing all stocks in a mixed fishery at MSY at the same time, it is appropriate to establish a specific TAC for by-catches of eastern Baltic cod. However, fishing operations conducted for the exclusive purpose of scientific investigations and in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241 of the European Parliament and of the Council[(4)] should be allowed to target cod. The level

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EU) 2019/1838. (See end of Document for details)*

of the TAC should be such that mortality is not increased and that it provides incentives for improvements in selectivity and avoidance.

(9) In November 2019 ICES is expected to issue advice on the level of unavoidable by-catches of eastern Baltic cod in fisheries not targeting eastern Baltic cod. If the level advised by ICES is different from the level set in this Regulation, the TAC for eastern Baltic cod should be amended to ensure that it is set in line with the ICES advice and covers only unavoidable by-catches from that stock in other fisheries.

(10) Moreover, Article 5(2) of Regulation (EU) 2016/1139 states that further remedial measures are to be taken to ensure the rapid return of the stock to levels above the level capable of producing MSY. Scientific advice indicates that spawning closures in particular can have additional benefits for a stock that cannot be achieved by TAC alone, for example increased recruitment through undisturbed spawning. Given the status of the eastern Baltic cod stock, it is appropriate to extend the scope and timeframe of the existing summer spawning closure for eastern Baltic cod. Furthermore, scientific advice indicates that the relative importance of recreational fisheries of eastern Baltic cod depends on the TAC level. Given the very substantial reduction of the TAC, the quantities caught in recreational fisheries are considered substantial. It is therefore appropriate to prohibit recreational fishing of cod in ICES subdivisions 25 and 26 where eastern Baltic cod is most abundant.

(11) As regards the western Baltic cod stock, scientific advice indicates that recreational fisheries contribute significantly to the overall fishing mortality of that stock. Taking into account the current status of that stock and the reduction of the TAC, it is appropriate to reduce the daily bag limit per fisherman. This is without prejudice to the principle of relative stability applicable to commercial fishing activities. Moreover, scientific advice indicates that the western and eastern cod stocks mix in ICES subdivision 24. In order to protect the eastern cod stock and ensure a level playing field with the eastern Baltic cod management area, it is appropriate to limit the use of the TAC in ICES subdivision 24 to by-catches of cod except for fishing operations conducted for the exclusive purpose of scientific investigations and in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241. Furthermore, there should be an exemption for small-scale coastal fishermen fishing with passive gears in areas up to six nautical miles measured from the baselines where the water depth is less than 20 meters since western cod is predominant in those shallow coastal areas. Accordingly, and in order to ensure a level playing field with ICES subdivisions 25 and 26, recreational fishing of cod in ICES subdivision 24 should be prohibited beyond six nautical miles measured from the baselines. Finally, given the fragile status of the stock and the fact that scientific advice indicates that spawning closures in particular can have additional benefits for a stock that cannot be achieved by TAC alone, for example an increased recruitment through undisturbed spawning, it is appropriate to re-introduce a winter spawning closure for commercial fishing activities.

(12) In order to guarantee the full use of coastal fishing opportunities, it is appropriate to introduce a limited inter-area flexibility for salmon from ICES subdivisions 22-31 to ICES subdivision 32 for the Member State that has requested that flexibility.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2019/1838. (See end of Document for details)*

(13) According to ICES advice, 32 % of catches in the salmon fishery is misreported, in particular as sea trout catches. As most of the sea trout in the Baltic Sea is exploited in coastal areas, it is appropriate to prohibit fishing for sea trout beyond four nautical miles and to limit by-catches of sea trout to 3 % of the combined catch of sea trout and salmon in order to contribute to the prevention of misreporting of salmon catches as sea trout catches.

(14) Given that the spawning stock biomass of sprat is above the MSY $B_{trigger}$ (spawning stock biomass), it is appropriate to fix the TAC in accordance with the upper range of FMSY in order to limit variations in fishing opportunities between consecutive years in accordance with point (c) of Article 4(5) of Regulation (EU) 2016/1139.

(15) The use of the fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009[(5)], and in particular to Articles 33 and 34 thereof concerning the recording of catches and fishing effort, and to the transmission of data on the exhaustion of fishing opportunities to the Commission. This Regulation should therefore specify the codes relating to landings of stocks subject to this Regulation that are to be used by Member States when sending data to the Commission.

(16) Council Regulation (EC) No 847/96[(6)] introduced additional conditions for year-to-year management of TACs including, under Articles 3 and 4, flexibility provisions for precautionary and analytical TACs. Under Article 2 of that Regulation, when fixing the TACs, the Council is to decide to which stocks Articles 3 or 4 shall not apply, in particular on the basis of the biological status of the stocks. More recently, the year-to-year flexibility mechanism was introduced by Article 15(9) of Regulation (EU) No 1380/2013 for all stocks that are subject to the landing obligation. Therefore, in order to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of living marine biological resources, hinder the achievement of the objectives of the CFP and cause the biological status of the stocks to deteriorate, it should be established that Articles 3 and 4 of Regulation (EC) No 847/96 apply to analytical TACs only where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.

(17) Moreover given that the biomass of the stock of eastern Baltic cod is below B_{lim} and that only by-catch and scientific fisheries are permitted in 2020, Member States have undertaken not to apply Article 15(9) of Regulation (EU) No 1380/2013 for this stock in 2020 so that catches in 2020 will not exceed the TAC set.

(18) Based on new scientific advice, a preliminary TAC for Norway pout in ICES division 3a and Union waters of ICES division 2a and ICES subarea 4 should be established for the period from 1 November 2019 to 31 October 2020.

(19) On 1 October 2019, ICES issued revised advice for common sole (*Solea solea*) in ICES divisions 7f and 7g (Bristol Channel, Celtic Sea). On the basis of that advice, the TAC for that stock could be increased. The increase should be limited to 20 %, in order to take account of the fishing capacity for that stock until the end of 2019.

(20) In the fishing opportunities table for toothfish in SPRFMO Convention Area under Council Regulation (EU) 2019/124[(7)], the reporting code should be corrected.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EU) 2019/1838. (See end of Document for details)*

(21) In order to avoid the interruption of fishing activities and to ensure the livelihoods of Union fishermen, this Regulation should apply from 1 January 2020. However, this Regulation should apply to Norway pout in ICES division 3a and Union waters of ICES division 2a and ICES subarea 4 from 1 November 2019 until 31 October 2020. The TAC for common sole in ICES divisions 7f and 7g and the TAC for toothfish in the SPRFMO Convention area under Regulation (EU) 2019/124 apply from 1 January 2019. The increase in the TAC for common sole and the change in reporting code for toothfish should therefore apply with effect from that date. Such retroactive application is without prejudice to the principles of legal certainty and protection of legitimate expectations as the fishing opportunities exceed those initially fixed under Regulation (EU) 2019/124. For reasons of urgency, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation fixes the fishing opportunities for certain fish stocks and groups of fish stocks in the Baltic Sea for 2020 and amends certain fishing opportunities in other waters fixed by Regulation (EU) 2019/124.

Article 2

Scope

1 This Regulation shall apply to Union fishing vessels operating in the Baltic Sea.

2 This Regulation shall also apply to recreational fisheries where they are expressly referred to in the relevant provisions.

Article 3

Definitions

For the purposes of this Regulation, the definitions referred to in Article 4 of Regulation (EU) No 1380/2013 apply.

In addition, the following definitions apply:

(1) ‘subdivision’ means an ICES subdivision of the Baltic Sea as defined in Annex III to Council Regulation (EC) No 218/2009[8];