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

COUNCIL REGULATION (EU) 2019/124

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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) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.

(2) 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 (STECF) and other advisory bodies, as well as any advice received from Advisory Councils.

(3) 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. In accordance with Article 16(4) of Regulation (EU) No 1380/2013, fishing opportunities should be fixed in accordance with the objectives of the Common Fisheries Policy (CFP) established in Article 2(2) of that Regulation. In accordance with Article 16(1) of that Regulation, fishing opportunities should be allocated to Member States in such a way as to ensure relative stability of fishing activities of each Member State for each fish stock or fishery.

(4) The total allowable catch (TAC) should therefore be established, in line with Regulation (EU) No 1380/2013, on the basis of available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, in particular at the meetings of the Advisory Councils.

(5) In accordance with Article 15 of Regulation (EU) No 1380/2013, the full landing obligation is to apply at the latest from 1 January 2019. When a fishery falls under the landing obligation, all species in that fishery subject to catch limits should be landed. Article 16(2) of Regulation (EU) No 1380/2013 provides that, when the landing obligation in respect of a fish stock is introduced, fishing opportunities are to be

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fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches. On the basis of the joint recommendations submitted by the Member States and in accordance with Article 15 of Regulation (EU) No 1380/2013, the Commission adopted a number of delegated Regulations laying down details for the implementation of the landing obligation in the form of specific discard plans applicable on a temporary basis for a maximum period of three years.

(6) The fishing opportunities for stocks of species falling under the landing obligation from 1 January 2019 should take into account the fact that discarding will in principle no longer be allowed. Therefore, the fishing opportunities should be based on the advice figure for total catches (instead of the advice figure for total landings), as provided by the International Council for the Exploration of the Sea (ICES). The amounts that, by way of exception, may continue to be discarded during the operation of the landing obligation should be deducted from that advice figure for total catches.

(7) There are certain stocks for which ICES has issued scientific advice for no catches. If the TACs for those stocks are set at the level indicated in the scientific advice, the obligation to land all catches in mixed fisheries with by-catches from these stocks would lead to the phenomenon of 'choke species'. In order 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, it is appropriate to establish specific TACs for by-catches for those stocks. The level of these TACs should be such that mortality for these stocks is not increased and that it provides incentives for improvements in selectivity and avoidance. In order to guarantee to the extent possible the use of fishing opportunities in mixed fisheries in accordance with Article 16(2) of Regulation (EU) No 1380/2013, it is appropriate to establish a pool for quota exchanges for those Member States that have no quota to cover their unavoidable by-catches.

(8) In order to progressively reduce unwanted catches of the stocks concerned, Member States should as from 2019 implement multiannual by-catch reduction plans in the relevant fisheries with a view to progressively reducing unwanted catches of the stocks concerned by taking national measures and, where appropriate, by cooperating at regional level in order to submit joint recommendations to the Commission in 2019. These by-catch reduction plans are to be evaluated by STECF and reviewed two years after their entry into application. In addition, all vessels benefitting from these specific TACs should implement full catch documentation as from 2019.

(9) According to scientific advice, European seabass (*Dicentrarchus labrax*) in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions 4b, 4c, 7a, and 7d to 7h) remains in a perilous state. Spawning-stock biomass has been declining since 2005 and is now below Blim. Fishing mortality has increased over the time-series, peaking in 2013 before a rapid decline to below the fishing mortality that results in the maximum sustainable yield (FMSY). Recruitment was estimated to be poor since 2008, with the exception of the 2013 and 2014 year-class estimates which show average recruitment.

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ICES advises that when the maximum sustainable yield (MSY) approach is applied, total removals in 2019 should be no more than 1 789 tonnes, which is an increase compared to the 2018 advice. Therefore, higher catches could be allowed for hooks and lines fishery for this species. It is also appropriate to continue the set of measures for unavoidable by-catches of European seabass with certain other gears, while providing a limited increase in the catch allowances. Measures for managing recreational fisheries for European seabass should be adapted, taking account of the significant impact of such fisheries on the stocks concerned. Within the limits of the scientific advice, the catch-and-release practice and bag limit should continue, but should be applied for a longer period.

(10) As regards the European eel (*Anguilla anguilla* L.) stock, the ICES has advised that all anthropogenic mortalities, including recreational and commercial fisheries, should be reduced to zero, or kept as close to zero as possible. Moreover, the General Fisheries Commission for the Mediterranean (GFCM) adopted Recommendation GFCM/42/2018/1 establishing management measures for European eel in the Mediterranean Sea. It is appropriate to establish a level playing field across the Union and hence to establish also for the Union waters of the ICES area as well as brackish waters such as estuaries, coastal lagoons and transitional waters a consecutive three-month closure period for all fisheries of European eel at all life stages. As the fishing closure period should be consistent with the conservation objectives set out in Council Regulation (EC) No 1100/2007[(2)] and with the temporal migration patterns of European eel, for the Union waters of the ICES area it is appropriate to set it in the period between 1 August 2019 and 29 February 2020.

(11) For some years, certain TACs for stocks of elasmobranchs (skates, sharks, rays) have been set at zero, with a linked provision establishing an obligation to immediately release accidental catches. The reason for that specific treatment was the poor conservation status of those stocks and the assumption that discarding, because of high survival rates, would not raise fishing mortality rates and would be beneficial for the conservation of those species. As of 1 January 2019, however, catches of those species have to be landed, unless they are covered by any of the derogations from the landing obligation provided for in Article 15 of Regulation (EU) No 1380/2013. Point (a) of Article 15(4) of that Regulation allows such derogations for species in respect of which fishing is prohibited and which are identified as such in a Union legal act adopted in the area of the CFP. Therefore, it is appropriate to prohibit the fishing of those species in the areas concerned.

(12) Pursuant to Article 16(4) of Regulation (EU) No 1380/2013, for stocks subject to specific multiannual plans the TACs should be established in accordance with the rules laid down in those plans.

(13) The North Sea multiannual plan was established by Regulation (EU) 2018/973 of the European Parliament and of the Council[(3)] and entered into force in 2018. Fishing opportunities for stocks listed in Article 1 of that Plan should be established in accordance with targets (ranges of FMSY) and safeguards in compliance with conditions provided for in that Plan. The ranges of FMSY have been identified in

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the relevant ICES advice. Fishing opportunities for by-catch stocks in the North Sea should be established in accordance with the precautionary approach, as set out in Article 5(2) of Regulation (EU) 2018/973. In order to limit variations in fishing opportunities between consecutive years, in accordance with point (c) of Article 4(5) of that Regulation, it is appropriate to use the upper range of FMSY for common sole in ICES division 2a and subarea 4.

(14) The TACs for stocks of sole in the Western Channel and of bluefin tuna in the Eastern Atlantic and the Mediterranean should be established in accordance with the rules laid down Council Regulation (EC) No 509/2007[(4)] and Regulation (EU) 2016/1627 of the European Parliament and of the Council[(5)]. The objective for the Southern hake stock as set out in Council Regulation (EC) No 2166/2005[(6)] is to rebuild the biomass of the stocks concerned to a level that is within safe biological limits, while staying in line with the scientific data. In accordance with scientific advice, in the absence of definitive data on a target spawning stock biomass and while taking into account changes in safe biological limits, it is appropriate, in order to contribute to the achievement of the objectives of the CFP, to fix the TAC on the basis of the maximum sustainable yield advice provided by ICES.

(15) As a result of a benchmark exercise on the stock of herring to the west of Scotland, ICES has provided advice for the combined herring stocks in divisions 6a, 7b and 7c (West of Scotland, West of Ireland). The advice covers two separate TACs (for divisions 6aS, 7b and 7c on the one hand, and for divisions 5b, 6b and 6aN on the other). According to ICES, a rebuilding plan has to be developed for those stocks. Since, according to scientific advice, the management plan for the northern stock[(7)] cannot be applied to the combined stocks and it is not possible to set separate fishing opportunities for those two stocks, a TAC should be established to permit limited catches in a commercially operated scientific sampling programme.

(16) For stocks for which there is no sufficient or reliable data in order to provide size estimates, management measures and TAC levels should follow the precautionary approach to fisheries management as defined in point (8) of Article 4(1) of Regulation (EU) No 1380/2013, while taking into account stock-specific factors, including, in particular, available information on stock trends and mixed fisheries considerations.

(17) Council Regulation (EC) No 847/96[(8)] introduced additional conditions for year-to-year management of TACs including, under Articles 3 and 4 of that Regulation, 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 Article 3 or 4 of that Regulation is not to 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 marine biological resources, hinder the achievement of the objectives of the CFP and deteriorate the biological status of the stocks, it should be established that Articles 3 and 4 of

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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.

(18) Where a TAC relating to a stock is allocated to one Member State only, it is appropriate to empower that Member State in accordance with Article 2(1) of the Treaty to determine the level of such TAC. Provisions should be made to ensure that, when fixing that TAC level, the Member State concerned acts in a manner fully consistent with the principles and rules of the CFP.

(19) It is necessary to establish the fishing effort ceilings for 2019 in accordance with Article 5 of Regulation (EC) No 509/2007, and Articles 5, 6, 7 and 9 of, and Annex I to, Regulation (EU) 2016/1627.

(20) In order to guarantee full use of fishing opportunities, it is appropriate to allow for the implementation of a flexible arrangement between certain TAC areas where the same biological stock is concerned.

(21) For certain species, such as certain species of sharks, even a limited fishing activity could result in a serious conservation risk. Fishing opportunities for such species should therefore be fully restricted through a general prohibition on fishing those species.

(22) At the 12th Conference of the Parties of the Convention on the Conservation of Migratory Species of Wild Animals, held in Manila from 23 to 28 October 2017, a number of species were added to the lists of protected species in Appendices I and II of the Convention. Therefore, it is appropriate to provide for the protection of those species with respect to Union fishing vessels fishing in all waters and non-Union fishing vessels fishing in Union waters.

(23) The use of fishing opportunities available to Union fishing vessels set out in this Regulation is subject to Council Regulation (EC) No 1224/2009[(9)], and in particular to Articles 33 and 34 of that Regulation, concerning the recording of catches and fishing effort and the notification of data on the exhaustion of fishing opportunities. It is therefore necessary to specify the codes to be used by Member States when sending data to the Commission relating to landings of stocks subject to this Regulation.

(24) It is appropriate, following advice from the ICES, to maintain a specific system to manage sandeel and associated by-catches in Union waters of ICES divisions 2a and 3a and ICES subarea 4. Given that the ICES scientific advice is expected to become available only in February 2019, it is appropriate to set the TAC and quotas for that stock provisionally at zero until such advice is released.

(25) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway[(10)] and the Faroe Islands[(11)], the Union has held consultations on fishing rights with those partners. In accordance with the procedure provided for in the agreement and protocol on fisheries relations with Greenland[(12)], the Joint Committee has established the level of fishing opportunities available for the Union in Greenland waters in 2019. It is therefore necessary to include those fishing opportunities in this Regulation.