Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 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, and amending Regulation (EU) 2017/127

COUNCIL REGULATION (EU) 2018/120

of 23 January 2018

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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 in the light of 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 (TACs) 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) The landing obligation referred to in Article 15 of Regulation (EU) No 1380/2013 is introduced on a fishery-by-fishery basis. In the region covered by this Regulation, when a fishery falls under the landing obligation, all species in that fishery subject to catch limits should be landed. From 1 January 2016, the landing obligation applies to

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the species that define the fisheries. 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 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 specific discard plans applicable on a temporary basis for a maximum period of three years, in preparation for the full implementation of the landing obligation.

(6) The fishing opportunities for stocks of species falling under the landing obligation from 1 January 2018 should compensate for former discards and be based on scientific information and advice. In order to ensure fair compensation for the fish that has been previously discarded and that will have to be landed from 1 January 2018, a top-up should be calculated according to the following methodology: the new landings figure should be calculated by subtracting from the International Council for the Exploration of the Sea (ICES) figure of total catches the amounts that will continue to be discarded during the operation of the landing obligation; a top-up applied to the TAC figure should be proportional to the change between the new calculated landings figure and the previous ICES landings figure.

(7) According to scientific advice, European seabass (*Dicentrarchus labrax*) in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions 4b, 4c and 7a, 7d–7h) remains in a perilous state and the stock continues to decline further, despite the measures taken in previous years. Those measures have not delivered the desired reduction in commercial fishing mortality (only – 17 % instead of the expected – 50 %). Recreational fishing mortality on the Northern stock is now considered to be far more significant than previously calculated and is estimated to have exceeded that from commercial sources in 2016. That also includes post-release sources of mortality. Therefore, the fishing mortality of the Northern stock has to be decreased significantly in order to allow for a small increase in the biomass.

(8) In order to mitigate the social and economic impact of the above measure, only limited fisheries with certain gears could be permitted, while providing for a two-month closure to protect spawning aggregations. Whilst there could be certain unavoidable by-catches from other fishing gears, the stock status is so severe that it is not possible to allow all by-catches to be landed, and any encounters with the stock should be avoided. Also, there will be a need of further restrictions on recreational fishing, with only catch-and-release fishing allowed during the entire year. Taking into account ICES advice to further reduce fishing pressure on the stock of European seabass in the Bay of Biscay, a lower daily bag limit for recreational fisheries should also be fixed in that area.

(9) As regards European eel (*Anguilla anguilla*) stock, the ICES has advised that all anthropogenic mortalities should be reduced to zero, or kept as close to zero as possible. In the light of that advice, it is appropriate to establish a temporary prohibition to fish for European eel of an overall length of 12 cm or longer in Union waters of ICES area including in the Baltic Sea, to protect spawners during their migration.

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(10) 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 is that the conservation status of those stocks is poor and, because of their high survival rates, discards will not raise fishing mortality rates for them, but are deemed as beneficial for the conservation of those species. As of 1 January 2015, however, catches of those species in pelagic fisheries 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. Article 15(4)(a) 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.

(11) 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. Consequently, the TACs for stocks of sole in the Western Channel, of plaice and sole in the North Sea and of bluefin tuna in the Eastern Atlantic and the Mediterranean should be established in accordance with the rules laid down in Regulations (EC) No 509/2007[(2)], (EC) No 676/2007[(3)] and (EU) 2016/1627[(4)]. The objective for the Southern hake stock as set out in Council Regulation (EC) No 2166/2005[(5)] is to rebuild the biomass of the stocks concerned to 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 as defined in Regulation (EU) No 1380/2013, to fix the TAC on the basis of maximum sustainable yield advice, as provided by ICES.

(12) As a result of the benchmark exercise, as regards 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 6aS, 7b and 7c on the one hand, and for 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[(6)] cannot be applied to the combined stocks and it is not possible to set separate fishing opportunities for those two stocks, a TAC is established to permit limited catches in a commercially operated scientific sampling programme.

(13) 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 Article 4(1)(8) 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.

(14) Council Regulation (EC) No 847/96[(7)] 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,

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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 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.

(15) 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.

(16) It is necessary to establish the fishing effort ceilings for 2018 in accordance with Article 5 of Regulation (EC) No 509/2007, Article 9 of Regulation (EC) No 676/2007, and Articles 5, 6, 7 and 9 of, and Annex I to, Regulation (EU) 2016/1627.

(17) In order to guarantee full use of fishing opportunities, it is appropriate to allow for the implementation of a flexible arrangement between some of the TAC areas where the same biological stock is concerned. In addition to existing inter-area flexibilities, it is appropriate, in particular, to introduce a limited inter-area flexibility for ling from ICES subareas 6 to14 to Union waters of subarea 4 and for skates and rays between division 7d and Union waters of division 2a and subarea 4.

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

(19) At the 11th Conference of the Parties of the Convention on the Conservation of Migratory Species of Wild Animals, held in Quito from 3 to 9 November 2014, a number of species were added to the lists of protected species in Appendices I and II of the Convention, with effect from 8 February 2015. 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.

(20) The use of fishing opportunities available to Union fishing vessels set out in this Regulation is subject to Council Regulation (EC) No 1224/2009[8], 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.

(21) 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

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and ICES subarea 4. Given that the ICES scientific advice is expected to become available only in February 2018, it is appropriate to set the TAC and quotas for that stock provisionally at zero until such advice is released.

(22) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway[9] and the Faroe Islands[10], 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[11], the Joint Committee has established the level of fishing opportunities available for the Union in Greenland waters in 2018. It is therefore necessary to include those fishing opportunities in this Regulation.

(23) At its annual meeting in 2017, the North-East Atlantic Fisheries Commission (NEAFC) adopted conservation measures for the two redfish stocks in the Irminger Sea. Those measures should be implemented in the law of the Union.

(24) At its annual meeting in 2017, the International Commission for the Conservation of Atlantic Tunas (ICCAT) maintained at the same level the TACs for South Atlantic albacore and for yellowfin tuna. The ICCAT Commission also adopted TAC increases for Eastern and Mediterranean bluefin tuna and Northern albacore. The 2018 TAC for Northern albacore for Spain already reflects a deduction of 945,56 tonnes for overfishing which occurred in 2016. That overfishing was compensated at the ICCAT level by fishing opportunities from other Member States (France, Ireland, Portugal and the United Kingdom). An additional payback by Spain will therefore be needed to fully compensate those Member States.

(25) In 2018, the TAC for Mediterranean swordfish is decreased in line with the ICCAT Recommendation 16-05. As it is already the case for the stock of Eastern and Mediterranean bluefin tuna, it is appropriate that catches in recreational fisheries of all other ICCAT stocks should be subject to the catch limits as adopted by the ICCAT. Furthermore, Union fishing vessels of at least 20 metres length fishing for bigeye tuna in the ICCAT Convention Area should be subject to the capacity limitations adopted by ICCAT in the ICCAT Recommendation 15-01. All those measures should be implemented in the law of the Union.

(26) At its 36th annual meeting in 2017, the Parties to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted catch limits for both target and by-catch species for the period from 1 December 2017 to 30 November 2018. The uptake of the quotas during 2017 should be considered when setting fishing opportunities for 2018.

(27) At its annual meeting in 2017, the Indian Ocean Tuna Commission (IOTC) adopted new catch limits for yellowfin tuna (*Thunnus albacares*) that do not affect the Union catch limits in IOTC. It also reduced possibilities for using fish-aggregating devices (FADs) and supply vessels. As the activities of supply vessels and the use of FADs are an integral part of the fishing effort exerted by the purse-seine fleet, that measure should be implemented in the law of the Union.