Council Regulation (EU) 2016/2285 of 12 December 2016 fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and amending Council Regulation (EU) 2016/72

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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).

(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. Fishing opportunities should be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery and having due regard to the objectives of the common fisheries policy established by Regulation (EU) No 1380/2013.

(4) The fishing opportunities for deep-sea species as defined in point (a) of Article 2 of Council Regulation (EC) No 2347/2002[(2)] are decided on a biennial basis.

(5) The total allowable catches ('TACs') should be established on the basis of available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, and in particular the advisory councils concerned.

(6) Fishing opportunities should be in accordance with international agreements and principles, such as the 1995 United Nations agreement concerning the conservation and management of straddling stocks and highly migratory fish stocks[(3)], and the detailed management principles laid down in the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organization of the United Nations, according to which, in particular, a regulator should

be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.

(7) The latest scientific advice from the International Council for the Exploration of the Sea (ICES) and from STECF indicates that most deep-sea stocks are still harvested unsustainably and that fishing opportunities for those stocks, in order to assure their sustainability, should be further reduced until the evolution of the stocks shows a positive trend.

(8) In view of the ICES advice, it is appropriate for the TAC for red seabream in the North-Western waters to be made a by-catch-only TAC.

(9) Significant catches of red seabream are taken from the relevant Fishery Committee for the Eastern Central Atlantic (CECAF) and General Fisheries Commission for the Mediterranean (GFCM) areas, which border on ICES subarea IX. Given that ICES data for those adjacent areas are incomplete, the scope of the TAC should remain limited to ICES subarea IX. Nevertheless, with a view to preparing future management decisions, provisions should be made for data reporting for those adjacent areas.

(10) ICES advises that there should be no catches of orange roughy until 2020. In the past, TACs have been established for orange roughy (those TACs have been set at zero since 2010). It is appropriate for the fishing, retaining on board, transhipping and landing of that species to be prohibited, as the stock is depleted and is not recovering. ICES notes that there have been no directed Union fisheries for orange roughy in the North-East Atlantic since 2010.

(11) According to the advice provided by ICES, limited on-board observations show that the percentage of roughhead grenadier has been less than 1 % of the reported catches of roundnose grenadier. On the basis of those considerations, ICES advises that there should be no directed fisheries for roughhead grenadier and that by-catches should be counted against the TAC for roundnose grenadier in order to minimise the potential for species misreporting. ICES indicates that there are considerable differences, of more than an order of magnitude (more than ten times), between the relative proportions of roundnose and roughhead grenadier reported in the official landings and the observed catches and scientific surveys in the areas where the fishery for roughhead grenadier currently occurs. There is very limited data available for this species, and some of the reported landing data are considered by ICES to be species misreporting. As a consequence, it is not possible to establish an accurate historical record of catches of roughhead grenadier. Therefore, any by-catches for roughhead grenadier should be limited to 1 % of each Member State's quota of roundnose grenadier and counted against that quota, in line with the scientific advice.

(12) ICES advises that directed catches of deep-sea sharks should be set at zero. However, ICES also indicates that the currently applicable restrictive catch limits lead to misreporting of unavoidable by-catches of deep-sea sharks. In particular, directed artisanal deep-sea fisheries for black scabbardfish that use longlines have unavoidable by-catches of deep-sea sharks, which are currently discarded dead. In view of those facts, and in order to collect scientific information on deep-sea sharks, a restrictive by-

catch allowance for 2017 and 2018 should be introduced on a trial basis by permitting limited landings of unavoidable by-catches of deep-sea sharks in directed artisanal deep-sea fisheries for black scabbardfish that use longlines. Longlines are recognised as a selective fishing gear in such fisheries. Member States concerned should develop regional management measures for the fishing of black scabbardfish and establish specific data-collection measures for deep-sea sharks to ensure close monitoring of the stocks. Fixing a Union by-catch allowance for deep-sea sharks in Union and international waters of ICES subareas V, VI, VII, VIII and IX, in Union and international waters of ICES subarea X and in Union waters of CECAF 34.1.1, 34.1.2 and 34.2 is without prejudice to the principle of relative stability as regards deep-sea sharks in those areas.

(13) In accordance with Council Regulation (EC) No 847/96[(4)], the stocks that are subject to various measures referred to therein should be identified. Precautionary TACs should apply for stocks for which no scientifically-based evaluation of fishing opportunities is available specifically for the year in which the TACs are to be set; analytical TACs should apply otherwise. In view of ICES and STECF advice for deep-sea stocks, those for which a science-based evaluation of the relevant fishing opportunities is not available should be subject to precautionary TACs.

(14) In accordance with Article 3(1) of Regulation (EC) No 847/96, on 15 September 2016 Portugal submitted a request addressed to the Commission to increase the 2016 anchovy TAC in ICES subareas IX and X and in Union waters of CECAF 34.1.1 to 15 000 tonnes. In its advice of 21 October 2016 ICES confirmed the exceptionally good state of that anchovy stock and the fact that catches of 15 000 tonnes in 2016 may be considered sustainable. Council Regulation (EU) 2016/72[(5)] should therefore be amended accordingly.

(15) The fishing opportunities for anchovy in ICES subareas IX and X and in Union waters of CECAF 34.1.1 provided for in Regulation (EU) 2016/72 apply from 1 January 2016. The amending provisions set out in this Regulation should also apply from that date. Such retroactive application does not prejudice the principles of legal certainty and protection of legitimate expectations as the fishing opportunities concerned are increased compared to the opportunities established in Regulation (EU) 2016/72.

(16) In order to avoid the interruption of fishing activities and to ensure the livelihood of the fishermen of the Union, this Regulation should apply from 1 January 2017. For reasons of urgency, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation fixes for the years 2017 and 2018 the annual fishing opportunities available to Union fishing vessels for fish stocks of certain deep-sea species in Union waters and in certain non-Union waters where catch limits are required.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2016/2285. (See end of Document for details)*

Article 2

Definitions

1 For the purposes of this Regulation, the following definitions shall apply:

a ‘Union fishing vessel’ means a fishing vessel flying the flag of a Member State and registered in the Union;

b ‘Union waters’ means the waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories listed in Annex II to the Treaty;

c ‘total allowable catch’ (TAC) means the quantity that can be taken and landed from each fish stock each year;

d ‘quota’ means a proportion of the TAC allocated to the Union or a Member State;

e ‘international waters’ means waters falling outside the sovereignty or jurisdiction of any State.

2 For the purposes of this Regulation, the following zone definitions shall apply:

a ICES (International Council for the Exploration of the Sea) zones are the geographical areas specified in Annex III to Regulation (EC) No 218/2009 of the European Parliament and of the Council[(6)];

b CECAF (Committee for Eastern Central Atlantic Fisheries) zones are the geographical areas specified in Annex II to Regulation (EC) No 216/2009 of the European Parliament and of the Council[(7)].

Article 3

TACs and allocations

The TACs for deep-sea species caught by Union fishing vessels in Union waters or in certain non-Union waters, the allocation of such TACs among Member States and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

Article 4

Special provisions on the allocation of fishing opportunities

1 The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

a exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;

b deductions and reallocations made pursuant to Article 37 of Council Regulation (EC) No 1224/2009[(8)];

c reallocations made pursuant to Article 10(4) of Council Regulation (EC) No 1006/2008[(9)];

d additional landings allowed pursuant to Article 3 of Regulation (EC) No 847/96;

e quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96;

f deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

2 Article 3 of Regulation (EC) No 847/96 shall apply to stocks subject to precautionary TAC whereas Article 3(2) and (3) and Article 4 of that Regulation shall apply to stocks subject to analytical TAC, except where otherwise specified in the Annex to this Regulation.

Article 5

Conditions for landing catches and by-catches

Fish from stocks for which TACs are established shall be retained on board or landed only if the catches have been taken by fishing vessels flying the flag of a Member State having a quota and that quota is not exhausted.

Article 6

Prohibition

It shall be prohibited for Union fishing vessels to fish for orange roughy (*Hoplostethus atlanticus*) in Union and international waters of ICES subareas I, II, III, IV, V, VI; VII; VIII, IX, X, XII and XIV, and to retain on board, to tranship or to land orange roughy caught in that area.

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States submit to the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 8

Amendment to Regulation (EU) 2016/72

In Annex IA to Regulation (EU) 2016/72, the entry in the table for anchovy in ICES subareas IX, X and in Union waters of CECAF 34.1.1 (ANE/9/3411) is replaced by the following:

Species:	**Anchovy*Engraulis encrasicolus***	Zone:	**IX and X; Union waters of CECAF 34.1.1(ANE/9/3411)**
Spain	7 174		
Portugal	7 826		
Union	15 000		
TAC	15 000		Precautionary TAC