Council Regulation (EU) 2016/72 of 22 January 2016 fixing for 2016 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) 2015/104

COUNCIL REGULATION (EU) 2016/72

of 22 January 2016

fixing for 2016 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) 2015/104

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 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

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2016/72. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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 2016 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 2016, 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; subsequently 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, sea bass (*Dicentrarchus labrax*) in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions IVb, IVc and VIIa, VIId–VIIh) is in a perilous state and stock continues to decline. The conservation actions to prohibit fishing for sea bass in ICES divisions VIIb, VIIc, VIIj and VIIk should be maintained and should include ICES divisions VIIa and VIIg, with the exception of the waters within 12 nautical miles of the baseline under the sovereignty of the United Kingdom. Spawning aggregations of sea bass should be protected and no catches should be allowed in the entire distribution area of the stock for the first six months of the year. Due to incidental and unavoidable by-catches of sea bass by vessels using demersal trawls and seines, such by-catches should be limited to 1 % of the weight of the total catch of marine organisms on board. Further restrictions of catches are needed to protect sea bass outside the spawning periods, therefore monthly catch limits should apply in ICES divisions IVb and IVc, as well as VIId, VIIe, VIIf and VIIh, and in the UK territorial sea in ICES divisions VIIa and VIIg. Catches of recreational fishermen should be limited further.

(8) For some years, certain TACs for stocks of elasmobranchs (skates, sharks, rays) have been set at 0, with a linked provision establishing an obligation to immediately release accidental catches. The reason for this 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 these 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 foreseen 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

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) 2016/72. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

in the area of the Common Fisheries Policy. Therefore, it is appropriate to prohibit the fishing of those species in the areas concerned.

(9) 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, of cod in the Kattegat, to the west of Scotland, the Irish Sea, the North Sea, Skagerrak and the Eastern Channel and of bluefin tuna in the Eastern Atlantic and the Mediterranean should be established in accordance with the rules laid down in Council Regulations (EC) No 509/2007[(2)], (EC) No 676/2007[(3)], (EC) No 1342/2008[(4)] (the 'Cod Plan') and (EC) No 302/2009[(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 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 Common Fisheries Policy as defined in Regulation (EU) 1380/2013, to fix the TAC on the basis of maximum sustainable yield advice, as provided by ICES.

(10) As a result of the recent benchmark exercise, as regards the stock of herring to the west of Scotland, ICES has provided advice for the combined herring stocks in Divisions VIa, VIIb and VIIc (West of Scotland, West of Ireland). The advice covers two separate TACs (for VIaS, VIIb and VIIc on the one hand, and for Vb, VIb and VIaN on the other). According to ICES, a rebuilding plan has to be developed for these stocks. Since, according to scientific advice, the management plan for the northern stock[(7)] cannot be applied to the combined stocks, it is appropriate, in order to contribute to the achievement of the objectives of the Common Fisheries Policy as defined in Regulation (EU) 1380/2013, to fix the TACs on the basis of the maximum sustainable yield advice.

(11) 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.

(12) Council Regulation (EC) No 847/96[(8)] 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 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

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2016/72. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

TACs only where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.

(13) 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 Common Fisheries Policy.

(14) It is necessary to establish the fishing effort ceilings for 2016 in accordance with Article 5 of Regulation (EC) No 509/2007, Article 9 of Regulation (EC) No 676/2007, Articles 11 and 12 of Regulation (EC) No 1342/2008 and Articles 5 and 9 of Regulation (EC) No 302/2009, while taking into account Council Regulation (EC) No 754/2009[9].

(15) 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.

(16) In the light of the most recent scientific advice from ICES and in accordance with the international commitments in the context of the North East Atlantic Fisheries Convention (NEAFC), it is necessary to limit the fishing effort on certain deep-sea species.

(17) 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.

(18) At the 11th Conference of the Parties of the Convention 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.

(19) The use of fishing opportunities available to Union fishing vessels set out in this Regulation is subject to Council Regulation (EC) No 1224/2009[10], 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.

(20) For certain TACs Member States should be allowed to grant additional allocations for vessels participating in trials on fully documented fisheries. The aim of those trials is to test a catch-quota system in fisheries that are not yet under the landing obligation set out in Regulation (EU) No 1380/2013, i.e. a system where all catches should be landed and counted against quotas in order to avoid discards and the waste of otherwise usable fish resources they entail. Uncontrolled discards of fish are a threat to the long term sustainability of fish as a public good and thus to the Common Fisheries Policy objectives. By contrast, catch-quota systems inherently present the fishers with

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) 2016/72. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

an incentive to optimise the catch selectivity of their operations. For the purpose of monitoring compliance with the conditions to which the fully documented fisheries trials are subject, Member States should ensure detailed and accurate documentation of all fishing trips and adequate capacity and means, such as observers, closed-circuit television (CCTV) and others. In doing so, Member States should respect the principle of efficiency and proportionality. For the use of CCTV systems, the requirements of Directive 95/46/EC of the European Parliament and of the Council[(11)] should be complied with.

(21) In order to ensure that trials of fully documented fisheries can effectively evaluate the potential of catch-quota systems to control the absolute fishing mortality of the stocks concerned, it is necessary for all fish caught in those trials, including those under minimum landing size, to be counted against the total allocation assigned to the participating vessel, and for fishing operations to cease when that total allocation has been fully utilised by that vessel. It is also appropriate to allow transfers of allocations between vessels participating in the fully documented fisheries trials and non-participating vessels provided that it can be demonstrated that discards by non-participating vessels do not increase.

(22) It is appropriate, following advice from the ICES, to maintain a specific system to manage sandeel in Union waters of ICES divisions IIa and IIIa and ICES subarea IV. Given that the ICES scientific advice is expected to become available only in February 2016, it is appropriate to set the TAC and quotas for this stock provisionally at zero until such advice is released.

(23) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway[(12)] and the Faroe Islands[(13)] 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[(14)], the Joint Committee has established the level of fishing opportunities available for the Union in Greenland waters in 2016. It is therefore necessary to include these fishing opportunities in this Regulation.

(24) At its Annual Meeting in 2015, NEAFC adopted a conservation measure on the redfish stock in the Irminger Sea fixing for 2016 the TAC and quotas for the contracting parties, including the Union.

(25) At its Annual Meeting in 2015, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted for the 2016-2018 period a decrease of the TAC and quotas for bigeye tuna and an extension of the TACs and quotas for blue and white marlins. Furthermore, it confirmed for 2016 TACs and quotas previously established for bluefin tuna, North-Atlantic swordfish, Southern-Atlantic swordfish, Southern-Atlantic Albacore and North- Atlantic Albacore. As it is already the case for the stock of bluefin tuna, it is appropriate that catches in recreational fisheries performed on all other ICCAT stocks included in Annex ID also be subject to the catch limits adopted by that organisation in order to guarantee that the Union does not exceed its quotas. All these measures should be implemented in the law of the Union.