# Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements

## COUNCIL REGULATION (EU) No 40/2013

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## fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements

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) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy[(1)] requires that Union measures governing access to waters and resources and the sustainable pursuit of fishing activities be established taking into account available scientific, technical and economic advice and in particular reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF), as well as in the light of any advice received from Regional Advisory Councils.

(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 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 in Regulation (EC) No 2371/2002.

(3) For certain total allowable catch (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, 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 an incentive to optimise the catch selectivity of their operations. In order to achieve a rational management of discards, a fully documented fishery should cover every operation at sea, rather than what is landed at port. The conditions for Member States to grant such additional allocations should therefore include an obligation to ensure the use of close circuit television cameras (CCTV) associated to a system of

sensors (jointly referred to as "CCTV system"). This should enable the recording, in detail, of all retained and discarded parts of catches. A system based on human observers operating in real time on board would be less efficient, more costly, and less reliable. Consequently, the use of CCTV systems is, at this time, a prerequisite for the achievement of discard reduction schemes such as fully documented fisheries. In the use of such system, the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(2)] should be complied with.

(4) 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.

(5) The TACs should be established 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 Regional Advisory Councils concerned.

(6) 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 North Sea, of plaice in the North Sea, of cod in the North Sea, Skagerrak and the eastern Channel, of bluefin tuna in the eastern Atlantic and the Mediterranean and of herring in the West of Scotland should be established in accordance with the rules laid down in Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea[(3)]; Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock[(4)]; Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks[(5)] (the 'Cod Plan'); and Council Regulation (EC) No 302/2009 of 6 April 2009 concerning a multiannual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean[(6)].

(7) 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 (i) of Article 3 of Regulation (EC) No 2371/2002, while taking into account stock-specific factors, including, in particular, available information on stock trends and mixed fisheries considerations.

(8) In accordance with Article 2 of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas[(7)],

the stocks that are subject to the various measures referred to therein should be identified.

(9) 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.

(10) It is appropriate, following advice from the International Council for the Exploration of the Sea (ICES), to maintain and revise a system to manage sandeel in EU waters of ICES divisions IIa and IIIa and ICES subarea IV.

(11) It is necessary to establish the fishing effort ceilings for 2013 in accordance with 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 Regulation (EC) No 754/2009 of 27 July 2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008[(8)].

(12) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway[(9)], the Faroe Islands[(10)] and Iceland[(11)], the Union has held consultations on fishing rights with those partners. The consultations with Norway have not been finalised and the arrangements for 2013 are only expected to be concluded in early 2013. In order to avoid the interruption of Union fishing activities, whilst allowing for the necessary flexibility for the conclusion of those arrangements early in 2013, it is appropriate to establish the fishing opportunities for stocks subject to those arrangements on a provisional basis. It has not been possible to conclude consultations with either the Faroe Islands or Iceland on fisheries arrangements for 2013. In accordance with the procedure provided for in the agreement and protocol on fisheries relations with Greenland[(12)], the Joint Committee has established the concrete level of fishing opportunities available for the Union in Greenland waters in 2013. According to the decision of the Joint Committee, quotas for capelin available to the Union in Greenland waters of ICES subareas V and XIV are to be automatically increased if a catch level of 70 % of the initial quota is achieved.

(13) The Union is a contracting party to several fisheries organisations and participates in other organisations as a cooperating non-party. Moreover, by virtue of the 2003 Act of Accession, fisheries agreements previously concluded by the Republic of Poland, such as the Convention on the Conservation and Management of Pollock resources in the central Bering Sea, are managed by the Union as from the date of accession of Poland. Those fisheries organisations have recommended the introduction for 2013 of a number of measures, including fishing opportunities for EU vessels. Those fishing opportunities should be implemented in the law of the Union.

(14) Regional Fisheries Management Organisations (RFMO) may allow for quota transfers and exchanges between Contracting Parties. To facilitate such quota transfers and exchanges between the Union and other Contracting Parties, Member States should be authorised to discuss with other Contracting Parties to the RFMO and, as appropriate, establish possible outlines of an intended quota transfer or exchange. The Commission

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EU) No 40/2013. (See end of Document for details)*

should exchange the consent to be bound by such quota transfer or exchange with the other Contracting Party and notify the quota transfer or exchange to the RFMO. The fishing opportunities received or transferred under such quota transfer or exchange should be considered as fishing opportunities allocated to, or deducted from the allocation of the Member State concerned including for the purposes of applying the relevant provisions of Council Regulation (EC) 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy[13]. However, such *ad hoc* quota transfer or exchange should not change the existing distribution key for the purpose of allocating fishing opportunities among Member States in accordance with the principle of relative stability of fishing activities.

(15) At its 34th Annual Meeting in 2012, the Northwest Atlantic Fisheries Organisation (NAFO) adopted a number of fishing opportunities for 2013 of certain stocks in Subareas 1-4 of the NAFO Convention Area. In that context, NAFO adopted a procedure for increase of the TAC for white hake in NAFO Subdivision 3NO fixed for 2013, if certain conditions related to the situation of this stock are met. A Contracting Party to NAFO may notify to the Executive Secretary of NAFO that higher than normal catches per unit of effort have been observed for the stock of white hake in NAFO Subdivision 3NO. If the in-year 2013 TAC increase is confirmed by NAFO, it should be implemented into the law of the Union.

(16) At its 83nd Annual Meeting in 2012, the Inter-American Tropical Tuna Commission (IATTC) adopted conservation measures for yellowfin tuna, bigeye tuna and skipjack tuna. IATTC also adopted a resolution on the conservation of oceanic whitetip sharks. Those measures should be implemented in the law of the Union.

(17) At its Annual Meeting in 2012, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted a revised multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean according to which the Union quota was increased. Furthermore, the closed fishing season for some fishing gears has been replaced by an open season and moved back by ten days. In addition, a one year extension of the existing TAC and quotas for Southern-Atlantic swordfish was adopted, as well as a new plan for rebuilding populations of blue and white marlins. As a result, the Union quota for Southern-Atlantic swordfish remains the same as in 2012, whereas the Union quota for blue marlin was consistently increased to take into account the artisanal fishery in the outermost regions of the Union. The Union quota for white marlins remained stable. Those measures should be implemented in the law of the Union.

(18) At its Annual Meeting in 2012, the Indian Ocean Tuna Commission (IOTC) did not modify its measures regarding fishing opportunities as currently implemented in the law of the Union. The currently applicable measures adopted by the IOTC should be implemented in the law of the Union.

(19) The first Annual Meeting of the South Pacific Regional Fisheries Management Organisation (SPRFMO) will be held from 28 January to 1 February 2013. Until such

Annual Meeting is held, it is appropriate that the current interim measures remain in place, as implemented by Regulation (EU) No 44/2012.

(20) At its Annual Meeting in 2012, the South East Atlantic Fisheries Organisation (SEAFO) did not modify the TACs for Patagonian toothfish, orange roughy, alfonsinos and deep-sea red crab agreed for 2011 and 2012 at its annual meeting in 2010. The currently applicable measures adopted by SEAFO should be implemented in the law of the Union.

(21) 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.

(22) The 9th Annual Meeting of the Western and Central Pacific Fisheries Commission (WCPFC) in 2012 did not modify its measures regarding fishing opportunities as currently implemented in the law of the Union, with the exception of a strengthening of the closed area for fish aggregation devices (FAD) fishing. The revision of this closed area for FAD fishing requires that the Union as a Contracting Party to WCPFC decides on one of two available options for additional measures for strengthening the closed area. Until such a decision is taken, the currently applicable measures adopted by the WCFPC should continue to be implemented in the law of the Union.

(23) At its Annual Meeting in 2012, the Parties to the Convention on the Conservation and Management of Pollock resources in the central Bering Sea did not modify its measures regarding fishing opportunities. Those measures should be implemented in the law of the Union.

(24) At its Annual Meeting in 2012, the Parties to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted catch limits for both target and by-catch species. Those measures should be implemented in the law of the Union.

(25) Certain international measures which create or restrict fishing opportunities for the Union are adopted by the relevant RFMOs at the end of the year and become applicable before the entry into force of this Regulation. It is therefore necessary for the provisions that implement such measures in the law of the Union to apply retroactively. In particular, since the fishing season in CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources) Convention Area runs from 1 December to 30 November, and thus certain fishing opportunities or prohibitions in the CCAMLR Convention Area are laid down for a period of time starting from 1 December 2012, it is appropriate that the relevant provisions of this Regulation apply from that date. Such retroactive application will be without prejudice to the principle of legitimate expectations as CCAMLR members are forbidden to fish in the CCAMLR Convention Area without authorisation.

(26) In accordance with the declaration by the Union to the Bolivarian Republic of Venezuela ("Venezuela") on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of Venezuela in the exclusive economic zone (EZZ) off the coast of French Guyana[(14)], it is necessary to fix the fishing opportunities for snappers available to Venezuela in EU waters.