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Proposal for a

**COUNCIL REGULATION**

**fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2023 and amending Regulation (EU) 2022/109 as regards certain fishing opportunities in other waters**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In line with Regulation (EU) No 1380/2013 of the European Parliament and of the Council<sup>1</sup> on the Common Fisheries Policy (the ‘CFP Basic Regulation’), the exploitation of living marine biological resources must restore and maintain populations of harvested species above levels which can produce the maximum sustainable yield (MSY). An important tool in this respect is the annual fixing of fishing opportunities in the form of total allowable catches (TACs) and quotas.

Regulation (EU) 2016/1139 of the European Parliament and of the Council<sup>2</sup> laying down the multiannual plan (MAP) for the Baltic Sea further specifies target fishing-mortality ranges. These ranges are used in this proposal to reach the objectives of the common fisheries policy (CFP) and in particular to reach and maintain MSY.

This proposal aims to fix Member States’ fishing opportunities for 2023 for the commercially most important fish stocks and groups of fish stocks in the Baltic Sea. This proposal also aims to regulate marine recreational fisheries to the extent required to conserve the fish stocks covered by this regulation. To simplify and clarify the annual TAC and quota decisions, fishing opportunities in the Baltic Sea have been fixed by a separate regulation since 2006.

- **Consistency with existing policy provisions in the policy area**

The proposal sets quotas at levels consistent with the objectives of the CFP Basic Regulation.

- **Consistency with other Union policies**

The proposal is in line with the CFP objectives and rules, and is consistent with the Union’s policy on sustainable development.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 43(3) of the Treaty on the Functioning of the European Union (TFEU).

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<sup>1</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

<sup>2</sup> Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191, 15.7.2016, p. 1).

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the Union's exclusive competence as referred to in Article 3(1)(d) TFEU. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

The proposal complies with the proportionality principle for the below reasons.

The CFP is a common policy. Under Article 43(3) TFEU, the Council must adopt measures on the fixing and allocation of fishing opportunities.

This proposal for a Council Regulation allocates fishing opportunities to Member States. Under Article 16(6) and (7) and Article 17 of the CFP Basic Regulation, Member States are free to allocate such opportunities among regions or operators according to the criteria set in those Articles. Therefore, Member States have ample room for manoeuvre when deciding on their preferred social/economic model for using their allocated fishing opportunities.

The proposal has no new financial implications for Member States. The Council adopts this type of regulation every year, and the public and private means to implement it are already in place.

- **Choice of instrument**

Proposed instrument: regulation.

This is a proposal for the fixing and allocation of fishing opportunities based on Article 43(3) TFEU.

### **3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

Based on the Commission Communication *Towards more sustainable fishing in the EU: state of play and orientations for 2023* (COM(2022) 253 final), the Baltic Sea Advisory Council was consulted. The International Council for the Exploration of the Sea (ICES) provided the scientific basis for the proposal. The preliminary views expressed by stakeholders on all fish stocks concerned were taken into account as far as possible without contradicting current policies or causing any deterioration in the state of vulnerable resources.

Scientific advice on catch limitations and status of the stocks was also discussed with Member States at the BALTFISH regional forum in June 2022.

- **Collection and use of expertise**

ICES, which is a scientific organisation, was consulted.

The Union seeks scientific advice on the state of important fish stocks from ICES each year. The advice received covers all Baltic stocks and TACs are proposed for the commercially most important stocks.<sup>3</sup>

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<sup>3</sup> <http://www.ices.dk/advice/Pages/Latest-Advice.aspx>.

- **Impact assessment**

The proposal is part of a long-term approach where fishing is adjusted to and maintained at long-term sustainable levels. This approach is expected to result over time in a stable fishing pressure, higher quotas and therefore an improved income for fishers and their families. Increased landings are expected to benefit the fishing industry, consumers, the processing and retail industry, and the rest of the industry linked to commercial and recreational fishing. In this context, and particularly for the Baltic Sea, the link between sustainable fisheries and a healthy marine environment needs to be stressed. The Biodiversity Strategy and the related initiatives, notably the upcoming Action Plan for fisheries and the marine environment, are tools to achieve this objective.

Until 2019, decisions on the Baltic fishing opportunities succeeded in bringing fishing mortality for stocks with an MSY advice in line with the MSY ranges at the moment of TAC setting for all stocks, except for western Baltic herring. Seemingly, these decisions also succeeded in rebuilding stocks and rebalancing fishing capacity and fishing opportunities. However, in 2019, it became apparent that eastern Baltic cod has been under severe pressure. ICES estimates that this stock will most probably remain depleted in the years to come. In 2021 it became apparent that the western Baltic cod stock has in fact also been below sustainable levels (i.e. below  $B_{lim}$ ) for many years, and ICES underlined that several salmon populations are very weak. Finally, since 2020, the biomass of central Baltic herring has been below healthy levels (i.e. below  $B_{trigger}$ ) and in 2022, Bothnia herring came very close to that limit. Therefore, further progress is still needed to rebuild all stocks and to bring them in line with MSY.

ICES published its scientific advice for the Baltic stocks on 31 May 2022, except for its advice for western Baltic herring, which was published on 30 June 2022. ICES estimates that the biomass of western Baltic herring and of eastern and western Baltic cod is still below safe biological limits. The biomass of central Baltic herring is still below healthy limits. Eastern Baltic cod and salmon in the Gulf of Finland receive precautionary advice. The remaining eight stocks receive an MSY advice:

- sprat, herring in the Gulf of Riga, and plaice are at healthy levels;
- herring in the Gulf of Bothnia has dropped to just above healthy levels; and
- western cod, western and central Baltic herring are below healthy levels;
- the various salmon populations in the main basin remain in highly differing conditions.

Taking the above into account, it is proposed to carry over: (i) the fishing opportunities for salmon in the Gulf of Finland; (ii) the regionalised approach taken to salmon in the main basin; and (iii) the by-catch TACs for western Baltic herring, and western and eastern Baltic cod. The proposal would increase the fishing opportunities for central herring by 14% and for plaice by 25%. The proposal would decrease the fishing opportunities for herring in the Gulf of Bothnia by 28%, for herring in the Gulf of Riga by 4% and for sprat by 20%.

Therefore, the economic impact of the proposal for 2023 will be a reduction in fishing opportunities for all Member States. All in all, the proposal leads to a level of approximately 402 000 tonnes for the Baltic fishing opportunities, representing a 15.6% reduction when compared to the 2022 fishing opportunities.

- **Regulatory fitness and simplification**

The proposal remains flexible in the application of quota exchange mechanisms already laid down by regulations on fishing opportunities in the Baltic Sea in previous years. There are no new rules or new administrative procedures proposed for (Union or national) public authorities that could increase the administrative burden.

The proposal concerns an annual regulation that applies to 2023 and therefore does not include a revision clause.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of the use of fishing opportunities in the form of TACs and quotas was put in place by Council Regulation (EC) No 1224/2009.

- **Detailed explanation of the specific provisions of the proposal**

The proposal fixes fishing opportunities for certain stocks or groups of stocks for Member States fishing in the Baltic Sea for 2023.

Regulation (EU) 2016/1139 laying down the multiannual plan (the ‘MAP’) for the Baltic Sea entered into force on 20 July 2016. The MAP lays down fishing opportunities must be fixed in line with the objectives thereof and must comply with the target fishing-mortality ranges provided in the best available scientific advice, in particular from ICES or a similar independent scientific body. For stocks benefiting from an MSY advice, Article 4(3) of the MAP provides that the TAC is in principle to be set at or below the fishing mortality resulting in MSY (i.e. ‘ $F_{MSY}$  point value’ and ‘ $F_{MSY}$  lower range’, respectively). However, under Article 4(4) of the MAP, the TAC can also always be set below the  $F_{MSY}$  ranges. Under the conditions set out in Article 4(5) of the MAP, the TAC for healthy stocks may be set above the  $F_{MSY}$  point value (‘ $F_{MSY}$  upper range’). For stocks with a biomass below healthy limits, i.e. the spawning stock biomass reference point below which measures have to be taken to rebuild the stock above levels capable of producing MSY (‘ $B_{trigger}$ ’), Article 5(1) of the MAP provides that appropriate remedial measures must be taken to ensure the rapid return of the stock to healthy levels. In particular, the TAC must be set at a reduced level below the upper  $F_{MSY}$  range, taking into account the decrease in biomass. Under Article 5(2) of the MAP, if a stock’s biomass is even below safe biological limits, i.e. the spawning stock biomass reference point below which the stock may have a reduced reproductive capacity (‘ $B_{lim}$ ’), additional remedial measures are to be taken. Remedial measures may in particular include suspending the targeted fishery for the stock concerned and the adequate reduction of fishing opportunities for those stocks or other stocks in the fisheries. Other remedial measures may also be adopted but should be functionally linked to the fishing opportunities. The choice of measures should be made in accordance with the nature, seriousness, duration and repetition of the situation.

According to the CFP Basic Regulation, fishing opportunities for stocks receiving precautionary advice must be set at levels ensuring at least a comparable degree of conservation. Recital 8 of the CFP Basic Regulation states that management decisions relating to mixed fisheries should take into account the difficulty of fishing all stocks in a mixed fishery at MSY at the same time, in particular where scientific advice indicates that it is very difficult to avoid the phenomenon of ‘choke species’ by increasing the selectivity of the fishing gears used.

Fishing opportunities are proposed in line with Article 16(1) (referring to the principle of relative stability) and Article 16(4) (referring to the CFP objectives and the rules provided for in multiannual plans) of the CFP Basic Regulation.

To set Union quotas for stocks shared with the Russian Federation, the respective quantities of these stocks were deducted from the TACs advised by ICES. The TACs and quotas allocated to Member States are set out in the Annex to the proposal.

For western Baltic herring, the stock size estimated by ICES slightly increased but remains at merely 59% of  $B_{lim}$ . ICES estimates that the biomass will remain below  $B_{lim}$  at least until 2025 even with no fishing at all. Recruitment has been low for many years and is still at a historic low. As none of the catch scenarios would bring the biomass above  $B_{lim}$  in the near future, ICES reiterates, for the fifth year in a row, its advice to allow zero catches. In 2021, the Council decided to close the directed fishery except for purely scientific fisheries and small-scale coastal fisheries, pursuant to Article 5(2) and Article 4(4) of the MAP. The Council also decided then to set a TAC for unavoidable by-catches to avoid choking other fisheries. Given that these remedial measures have not had the time to result in an improved stock status yet, the Commission proposes to keep the directed fishery closed and to maintain the TAC level.

For eastern Baltic cod, ICES is still unable to determine the values of the  $F_{MSY}$  ranges. Therefore, it issued precautionary advice for 2023. For the fourth year in a row, ICES advises to allow zero catches. ICES estimates that the stock size continues to be below  $B_{lim}$  and that it will remain below it in the medium term, even with no fishing at all. Moreover, ICES estimates that the biomass has hardly increased in 2021 and that recruitment is still historically low. Given the depleted stock situation, severe measures have been adopted since 2019. The directed fishery for eastern Baltic cod has been closed except for purely scientific fisheries, and the TAC is limited to unavoidable by-catches to avoid choking most of the other fisheries in the Baltic Sea. Further remedial measures functionally linked to the fishing opportunities were adopted in the form of a spawning closure covering the peak spawning period and the potential spawning areas. Exceptions apply to purely scientific fisheries, certain small-scale coastal fisheries using passive gears, and pelagic fisheries for human consumption carried out outside of the main potential spawning areas. Moreover, recreational fishing has been banned in the main distribution area since 2020, because the quantities caught would be substantial when compared to the by-catch TAC. Given that these remedial measures have not had the time to result in an improved stock status yet, the Commission proposes to maintain them and keep the TAC level unchanged.

For western Baltic cod, ICES had estimated for many years that the stock was fragile and its size below  $B_{trigger}$ . Therefore, fishing opportunities were substantially decreased and accompanying measures were adopted, such as spawning closures and restrictions of recreational angling. Every year, it was forecast that the stock would recover the following year, but this has not happened so far. In 2021, ICES noticed that there had been significant inconsistencies in its previous assessments. Therefore, it undertook a more in-depth assessment. This assessment showed that the stock has actually even been below  $B_{lim}$  for most

of the last 10 years. Therefore, ICES advised to significantly lower the total catches. The Council decided to close the directed fishery except for purely scientific fisheries, and to limit the TAC to unavoidable by-catches to avoid choking other fisheries. Existing further remedial measures functionally linked to the fishing opportunities were maintained or strengthened. The spawning closure covering the peak spawning period and the potential spawning areas was maintained with exceptions for purely scientific fisheries, certain small-scale coastal fisheries using passive gears, pelagic fisheries for human consumption carried out outside of the main potential spawning areas, and fishing with dredges for bivalve molluscs in certain shallow waters. Moreover, the spawning closure period was extended to cover recreational angling. Outside of that period, the bag limit for recreational angling was reduced to one fish per angler per day.

In this year's advice, ICES states that the 2022 recruitment is estimated to be slightly higher than in previous years. However, the stock biomass has further decreased and currently stands at merely 38% of  $B_{lim}$ . Nevertheless, the catch advice for the  $F_{MSY}$  point value is to increase the total catches (like in 2021, ICES is not able to provide a separate catch advice for commercial and recreational catches) and estimates that the biomass will be above  $B_{lim}$  in 2024. At the same time, ICES highlights that its short-term forecast is much more uncertain than usual because the assessment model does not factor in certain (probably substantial) unknown mortality factors. Therefore, ICES stresses that with catches at the  $F_{MSY}$  point value, there is a high risk for the biomass to actually remain below  $B_{lim}$  in 2024. Given the very low stock size, ICES' considerations, and the history of uncertainties in the stock assessment, the Commission proposes to take a prudent approach by keeping the TAC level and the current remedial measures unchanged.

In 2020, ICES estimated that the biomass of central Baltic herring had fallen below  $B_{trigger}$ . In 2021, it decreased even further and came close to  $B_{lim}$ . Fishing opportunities were substantially reduced; the stock has increased again but remains below  $B_{trigger}$ . There has been no strong recruitment since 2015 and the main driver for the current fishing opportunities is the strength of the 2019 year class. However, the estimation of this year class fluctuates. In 2020, ICES estimated that the 2019 year class was strong, last year that it was below average and this year that it is above average. On that basis, ICES advises to increase the fishing opportunities substantially, while stressing that the stock relies on a single year class, the strength of which is uncertain. Therefore, the Commission proposes to take a prudent approach and to set the fishing opportunities at the lowest point of the  $F_{MSY}$  range, in line with Article 5(1) of the MAP.

The assessment of herring in the Gulf of Bothnia has been subject to some uncertainties in recent years. The biomass has been continuously decreasing since 2010. In 2019, ICES had to downgrade its advice to ICES data category 3 precautionary advice due to strong retrospective bias. After some in-depth work, ICES upgraded the advice again to ICES data category 1 MSY advice in 2021. It estimated that the biomass was finally increasing again and advised to increase the fishing opportunities substantially. ICES now estimates that the stock's biomass has actually been much smaller in the last years and has fallen to a level just above  $B_{trigger}$ . ICES indicates that this development is likely due to the shrinking size of herring, a phenomenon already observed for some time by certain coastal fishers. While the weight-at-age ratio has been low for the last 15 years, it decreased further in 2021. The only catch scenario advised by ICES that would keep the stock above  $B_{trigger}$  in 2024, is the lowest point of the  $F_{MSY}$  range. Given the stock's negative development and to avoid that the stock falls below  $B_{trigger}$ , the Commission proposes to set the fishing opportunities at the  $F_{MSY}$  lowest point.

The ICES advice for herring in the Gulf of Riga contains no specific constraints so the proposed TAC is the  $F_{MSY}$  point value.

According to ICES the biomass of sprat is healthy but the past fishing pressure has been above  $F_{MSY}$ . Moreover, ICES advises to consider multispecies interactions as sprat is an important forage species for cod. Therefore, the Commission proposes to set the TAC in the  $F_{MSY}$  lower range, in line with Article 4(3) of the MAP.

The TAC for plaice is a combination of: (i) the MSY advice for the stock in subdivisions 21, 22 and 23; and (ii) the MSY advice for the stock in subdivisions 24 to 32, which was upgraded to ICES data category 2 MSY advice this year. Both stocks are developing well, but multispecies interactions should be taken into account. Cod is an unavoidable by-catch in plaice fisheries, and by-catch levels can be significant, particularly as long as more selective fishing gears are not used. The Commission proposes to maintain the fishing opportunities for both Baltic cod stocks at a very low level. Therefore, the Commission proposes to set the TAC for plaice in the  $F_{MSY}$  lower range, in line with Article 4(3) of the MAP.

For many years ICES has stated that the status of salmon river stocks in the Baltic Sea is very heterogeneous, some being healthy but others very weak. For salmon in the main basin, ICES used to provide an MSY advice; for salmon in the Gulf of Finland an advice based on the approach developed for data-limited stocks. Following an in-depth assessment of the stock, ICES decided to apply this approach to the main basin as well in 2020. Following further work, ICES provided an MSY advice again in 2021. However, this advice stated for the first time that all commercial and recreational salmon catches in the main basin, which are inherently mixed fisheries catching salmon from healthy and weak river stocks, should be stopped to protect the weak river stocks. However, ICES at the same time also considered that continuing the existing directed fishery in the coastal areas of the Gulf of Bothnia and the Åland Sea during the salmon summer migration would still be precautionary. Therefore, the Council decided to close the directed salmon fishery in the main basin and to set a by-catch TAC for unavoidable by-catches, with an exemption for purely scientific fisheries, while keeping the directed salmon fishery open during the summer period in those northern coastal areas. The Council also adopted further remedial measures functionally linked to the fishing opportunities. Fishing with longlines beyond four nautical miles measured from the baselines was prohibited. Moreover, in recreational fisheries, a daily bag limit of one fin-clipped salmon per angler applies where and when the directed commercial fishery is closed. For salmon in the Gulf of Finland, the Council set the TAC according to the ICES precautionary advice. In 2022, due to the Russian war of aggression against Ukraine, the relevant ICES working group was not able to meet and ICES decided to carry over its advice for salmon in the main basin and its advice for salmon in the Gulf of Finland. On this basis, the Commission proposes to keep the two TAC levels unchanged and to maintain the current remedial measures, while making explicit that recreational catch-and-release techniques are not allowed because ICES considers that the post-release mortality is too high to protect the weak populations.

Council Regulation (EC) No 847/96 laid down further conditions for year-to-year management of TACs, including, under its Articles 3 and 4, flexibility provisions for stocks subject to precautionary and analytical TACs, respectively. Its Article 2 stipulates that when fixing the TACs, the Council must decide to which stocks Articles 3 and 4 should not apply, in particular based on the biological status of the stocks. More recently, the flexibility mechanism was introduced for all stocks covered by the landing obligation under Article 15(9) of the CFP Basic Regulation. Therefore, to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of living marine biological resources and hinder achieving the CFP objectives, it should be clarified that Articles 3 and 4



of Regulation (EC) No 847/96 only apply where Member States do not use the year-to-year flexibility provided for in Article 15(9) of the CFP Basic Regulation.

The Commission also proposes to amend Council Regulation (EU) 2022/109 to set a TAC for Norway pout, for which the fishing year starts on 1 November 2022. The TAC level is marked as 'pm' (pro memoria) pending the publication of the ICES advice expected in early October 2022 and the consultations with the United Kingdom.

Proposal for a

## COUNCIL REGULATION

### **fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2023 and amending Regulation (EU) 2022/109 as regards certain fishing opportunities in other waters**

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) Regulation (EU) No 1380/2013 of the European Parliament and of the Council<sup>4</sup> 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 and other advisory bodies, advice from advisory councils set up for the relevant geographical areas of competence, and joint recommendations made by Member States.
- (2) The Council is to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked to these fishing opportunities, as appropriate. Under Article 16(1) of Regulation (EU) No 1380/2013, fishing opportunities should be allocated among Member States in such a way as to ensure the relative stability of fishing activities of each Member State for each stock or fishery.
- (3) Regulation (EU) No 1380/2013 provides that the objective of the Common Fisheries Policy is to achieve the maximum sustainable yield (MSY) exploitation rate by 2015 where possible and, on a progressive, incremental basis, at the latest by 2020 for all stocks. The objective of the transitional period until 2020 was to balance the achievement of MSY for all stocks with the possible socio-economic implications of the possible adjustments of related fishing opportunities.
- (4) Therefore, in accordance with Regulation (EU) No 1380/2013, total allowable catches (TACs) should be set based on the available scientific advice, taking into account biological and socio-economic implications while ensuring fair treatment between fishing sectors and taking into account the opinions expressed during consultations with stakeholders.
- (5) Regulation (EU) 2016/1139 of the European Parliament and of the Council<sup>5</sup> lays down a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and for the

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<sup>4</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

<sup>5</sup> Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting

fisheries exploiting those stocks (the ‘MAP’). The MAP aims to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels that can produce MSY. Article 16(4) of Regulation (EU) No 1380/2013 provides that, for stocks subject to specific multiannual plans, the fishing opportunities are to be fixed in accordance with the rules laid down in these multiannual plans.

- (6) In accordance with Article 4(1) of Regulation (EU) 2016/1139, the fishing opportunities for stocks listed in Article 1 of that Regulation had to be fixed to achieve fishing mortality at MSY, expressed in ranges, as soon as possible and, on a progressive, incremental basis, at the latest by 2020. Therefore, the catch limits applicable in 2023 to the relevant stocks in the Baltic Sea should be set in line with the objectives of the MAP.
- (7) The International Council for the Exploration of the Sea (ICES) published its annual stock advice for Baltic stocks on 31 May 2022, except for its advice for western Baltic herring, which was published on 30 June 2022. ICES indicates that the biomass of western Baltic herring in ICES subdivisions 20 to 24 slightly increased but is only 59% of the limit reference point for the spawning stock biomass, below which reproductive capacity might be reduced ( $B_{lim}$ ). Furthermore, recruitment remains at historically low levels. Therefore, ICES published for the fifth consecutive year a zero-catch advice for western Baltic herring. Pursuant to Article 5(2) of Regulation (EU) 2016/1139, all appropriate remedial measures should be adopted to ensure a rapid return of the stock concerned to levels above the level capable of producing MSY. Article 5(2) of that Regulation also requires further remedial measures to be adopted. Therefore, in 2022, the directed fishery for western Baltic herring was closed and a very low TAC was set for unavoidable by-catches of western Baltic herring to avoid the phenomenon of ‘choke species’. However, targeting western Baltic herring was allowed for fishing operations carried out for the exclusive purpose of scientific investigations, in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241 of the European Parliament and of the Council<sup>6</sup>, and for small-scale coastal fishers fishing with certain passive gears. Given the ICES advice and the unchanged stock situation, it is appropriate to maintain the level of fishing opportunities and the functionally linked remedial measures.
- (8) As regards the eastern Baltic cod stock, ICES has been able to base its precautionary advice on a more data-rich assessment since 2019. ICES estimates that the biomass of the eastern Baltic cod stock continues to be below  $B_{lim}$  and has hardly increased since 2021. Therefore, ICES published, for the fourth consecutive year, a zero-catch advice for eastern Baltic cod. Since 2019, strict conservation measures have been adopted in the Union. Pursuant to Article 5(2) of Regulation (EU) 2016/1139, the directed fishery for eastern Baltic cod was closed and a TAC for unavoidable by-catches of eastern Baltic cod was set at a very low level to avoid the phenomenon of ‘choke species’. Moreover, further remedial measures functionally linked to the

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those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191, 15.7.2016, p. 1).

<sup>6</sup> Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.7.2019, p. 105).

fishing opportunities were adopted in the form of spawning closures and the prohibition of recreational fisheries in the main distribution area. Given the ICES advice and the unchanged stock situation, it is appropriate to maintain the level of fishing opportunities and the functionally linked remedial measures.

- (9) As regards the western Baltic cod stock, scientific estimates have indicated for several years that the spawning stock biomass was below the limit reference point, below which specific and appropriate management action is to be taken ( $B_{\text{trigger}}$ ). Therefore, increasingly strict management measures were adopted in recent years. In 2021, ICES decided to perform a more in-depth assessment, which revealed that for more than 10 years the biomass of the western Baltic cod stock has actually been mostly below  $B_{\text{lim}}$ . Therefore, pursuant to Article 5(2) of Regulation (EU) 2016/1139, the directed fishery for western Baltic cod was closed and a very low TAC was set for unavoidable by-catches of western Baltic cod to avoid the phenomenon of ‘choke species’. Moreover, further remedial measures functionally linked to the fishing opportunities were adopted in the form of an extended spawning closure, which also covers recreational fisheries, and the further reduction of the daily bag limit in recreational fisheries. This year, ICES revised the stock’s biomass downwards and despite a slight increase last year the biomass is estimated to be less than 40% of  $B_{\text{lim}}$ . Because of slightly increased recruitment estimates and unclear additional mortality factors, which ICES is currently unable to include in its assessment model, the advice for the fishing mortality resulting in MSY ( $F_{\text{MSY}}$ ) is to increase the total catches. However, ICES stresses that its short-term forecast is highly uncertain and that, given the unclear additional mortality, there likely is a 66% probability for the stock’s biomass to remain below  $B_{\text{lim}}$  in 2024 if the fishing opportunities are set at the  $F_{\text{MSY}}$  point value. Furthermore, like in 2021, ICES is not able to provide separate catch advice for commercial and recreational catches. Given the declining stock situation and the uncertainty around the advice for catches at the  $F_{\text{MSY}}$  point value, it is appropriate to take a precautionary approach and to maintain the level of fishing opportunities and the functionally linked remedial measures.
- (10) In 2020, ICES estimated that the biomass of central Baltic herring had fallen below  $B_{\text{trigger}}$ , and in 2021 that it had come close to  $B_{\text{lim}}$ . This year, ICES estimates that the biomass has increased but still remains below  $B_{\text{trigger}}$ . The stock relies on the 2019 year class only, and the estimation of its strength has varied substantially since 2020. Therefore, it is appropriate to set the fishing opportunities in accordance with Article 5(1) of Regulation (EU) 2016/1139.
- (11) The biomass of herring in the Gulf of Bothnia has been continuously decreasing since 2010. In 2019, ICES decided to provide an advice based on the approach developed for data-limited stocks, due to strong retrospective bias in the stock assessment. Following an in-depth analysis, ICES was again able to provide an MSY advice in 2021. The updated advice for 2021 was to increase the fishing opportunities for 2021 substantially, based on the estimation that the biomass was finally increasing. The ICES advice for 2022 was to slightly decrease fishing opportunities. However, in the advice for 2023, ICES revised the stock’s biomass significantly downwards. According to ICES, this smaller biomass is most probably due to the continuous decrease of the herring’s size. ICES estimates that the stock’s biomass is now just above  $B_{\text{trigger}}$ . The only catch scenario advised by ICES that would keep the stock above  $B_{\text{trigger}}$  in 2024, is the lowest point of the  $F_{\text{MSY}}$  range. Given the stock’s negative development and to avoid that the stock falls below  $B_{\text{trigger}}$ , it is appropriate to set the fishing opportunities at the  $F_{\text{MSY}}$  lowest point.

- (12) According to the ICES advice on plaice, cod is by-caught in plaice fisheries. According to the ICES advice on sprat, sprat is caught in a mixed fishery with herring and is a prey species for cod. It is appropriate to take these multispecies interactions into account and to set the fishing opportunities for plaice and sprat respectively in the lower  $F_{MSY}$  range.
- (13) On salmon in ICES subdivisions 22 to 31, ICES has stated for several years that the status of the river stocks was very heterogeneous. In 2021, following an in-depth analysis, ICES advised that all commercial and recreational catches in the main basin, which are inherently mixed fisheries catching salmon from healthy and weak river stocks, should be stopped to protect the weak river stocks. However, ICES considered that the existing directed fishery in the coastal areas of the Gulf of Bothnia and the Åland Sea could continue during the salmon summer migration. Therefore, a specific TAC was set for by-catches of salmon in these areas, with the exemption of: (i) fishing operations carried out for the exclusive purpose of scientific investigations, in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241; and (ii) coastal fisheries north of latitude 59°30'N between 1 May and 31 August. Further remedial measures functionally linked to the fishing opportunities were also adopted, in the form of restrictions to the use of longlines and a daily bag limit in recreational fisheries. In 2022, ICES carried over its advice from 2021. Therefore, it is appropriate to maintain the level of fishing opportunities and the functionally linked remedial measures while clarifying that recreational catch-and-release techniques are not allowed.
- (14) To ensure the full use of coastal fishing opportunities, a limited inter-area flexibility for salmon between ICES subdivisions 22 to 31 and ICES subdivision 32 was introduced in 2019. Given the unchanged fishing opportunities for these two stocks, it is appropriate to maintain the current flexibility.
- (15) Prohibiting fishing for sea trout beyond four nautical miles measured from the baselines and limiting by-catches of sea trout to 3% of the combined catch of sea trout and salmon have played a large part in substantially reducing previously significant misreporting of catches in the salmon fishery, in particular as sea-trout catches. Therefore, it is appropriate to maintain the relevant provision to maintain a low level of misreporting.
- (16) Measures on recreational fisheries of cod and salmon, and measures for the conservation of the sea trout and salmon stocks should be without prejudice to more stringent national measures under Articles 19 and 20 of Regulation (EU) 1380/2013.
- (17) The use of the fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009<sup>7</sup>, and in particular its Articles 33 and 34 on the recording of catches and fishing effort, and the transmission of data on the exhaustion of fishing opportunities to the Commission, respectively. Therefore, this Regulation should specify the codes relating to landings of stocks subject to this Regulation that Member States are to use when sending data to the Commission.

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<sup>7</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

- (18) Council Regulation (EC) No 847/96<sup>8</sup> laid down additional conditions for year-to-year management of TACs, including, under its Articles 3 and 4, flexibility provisions for stocks subject to precautionary and analytical TACs, respectively. Article 2 of Regulation (EC) No 847/96 stipulates that, when fixing the TACs, the Council is to decide to which stocks Articles 3 and 4 should not apply, in particular based on the biological status of the stocks. More recently, Article 15(9) of Regulation (EU) No 1380/2013 introduced the year-to-year flexibility mechanism for all stocks that are subject to the landing obligation. Therefore, to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of living marine biological resources, hinder achieving the objectives of the Common Fisheries Policy, and cause the biological status of the stocks to deteriorate, it should be made explicit that Articles 3 and 4 of Regulation (EC) No 847/96 only apply to analytical TACs where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.
- (19) The biomass of the stock of eastern Baltic cod, western Baltic cod and western Baltic herring is below  $B_{lim}$  and only by-catch, scientific fisheries and, for western Baltic herring, certain small-scale coastal fisheries are permitted in 2023. Therefore, the Member States having a quota share of the relevant TAC have committed not to apply the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 to these stocks in 2023, so that catches in 2023 will not exceed the TAC set for eastern Baltic cod, western Baltic herring and western Baltic cod. Furthermore, south of latitude 59°30'N, the biomass of almost all salmon river stocks is below the limit reference point for smolt production ( $R_{lim}$ ) and only by-catch and scientific fisheries are permitted in 2023. Therefore, the relevant Member States have made a similar commitment on year-to-year flexibility related to main-basin salmon catches in 2023.
- (20) Council Regulation (EU) 2022/109<sup>9</sup> sets fishing opportunities for Norway pout until 31 October 2022 in ICES division 3a, United Kingdom and Union waters of subarea 4, and United Kingdom waters of 2a. The fishing period for Norway pout is from 1 November to 31 October. To enable the start of the fishery on 1 November 2022, and based on new scientific advice and following consultations with the United Kingdom, it is necessary to set a preliminary TAC for Norway pout in ICES division 3a, United Kingdom and Union waters of subarea 4, and United Kingdom waters of ICES division 2a from 1 November 2022 to 31 December 2022. This preliminary TAC should be set in line with ICES advice published on [7 October 2022]. Regulation (EU) 2022/109 should therefore be amended accordingly.
- (21) To avoid the interruption of fishing activities, the provisions of this Regulation relating to the the Baltic Sea should apply from 1 January 2023. The catch limits provided for in Regulation (EU) 2022/109 apply from 1 January 2022. However, this Regulation should apply to Norway pout in ICES division 3a, United Kingdom and Union waters of ICES subarea 4, and United Kingdom waters of ICES division 2a from 1 November 2022 until 31 October 2023 as this is the fishing season of Norway pout. For reasons of urgency in view of the need to continue sustainable fishing

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<sup>8</sup> Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

<sup>9</sup> Council Regulation (EU) 2022/109 of of 27 January 2022 fixing for 2022 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 (OJ L 21, 31.1.2022, p. 1)

activities and to start the relevant fisheries on time for the opening of the fishing seasons, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### **Subject matter**

This Regulation fixes the fishing opportunities for certain fish stocks and groups of fish stocks in the Baltic Sea for 2023 and amends certain fishing opportunities in other waters fixed by Regulation (EU) 2022/109.

#### *Article 2*

##### **Scope**

1. This Regulation applies to Union fishing vessels operating in the Baltic Sea.
2. It also applies to recreational fisheries where they are expressly referred to in the relevant provisions.

#### *Article 3*

##### **Definitions**

For the purposes of this Regulation, the definitions laid down in Article 4 of Regulation (EU) No 1380/2013 apply.

In addition, the following definitions apply:

- (1) ‘subdivision’ means an International Council for the Exploration of the Sea (ICES) subdivision of the Baltic Sea as defined in Annex III to Regulation (EC) No 218/2009 of the European Parliament and of the Council<sup>10</sup>;
- (2) ‘total allowable catch’ (TAC) means the quantity of each stock that can be caught over the period of a year;
- (3) ‘quota’ means a proportion of the TAC allocated to the Union, a Member State or a third country;
- (4) ‘recreational fisheries’ means non-commercial fishing activities exploiting marine biological resources such as for recreation, tourism or sport.

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<sup>10</sup> Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (OJ L 87, 31.3.2009, p. 70).

## **CHAPTER II**

### **FISHING OPPORTUNITIES**

#### *Article 4*

##### **TACs and allocations**

The TACs, quotas and conditions functionally linked to these, where appropriate, are set out in the Annex.

#### *Article 5*

##### **Special provisions on allocation of fishing opportunities**

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 Regulation (EC) No 1224/2009;
- (c) additional landings allowed under Article 3 of Regulation (EC) No 847/96 or under Article 15(9) of Regulation (EU) No 1380/2013;
- (d) quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96 or transferred under Article 15(9) of Regulation (EU) No 1380/2013;
- (e) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

#### *Article 6*

##### **Conditions for landing of catches and by-catches**

The stocks of non-target species within the safe biological limits referred to in Article 15(8) of Regulation (EU) No 1380/2013, that qualify for the derogation from the obligation to count catches against the relevant quota, are identified in the relevant TAC tables in the Annex to this Regulation.

#### *Article 7*

##### **Closures to protect cod spawning**

1. It shall be prohibited to fish with any type of fishing gear in subdivisions 25 and 26 from 1 May to 31 August.
2. By way of derogation from paragraph 1, that prohibition shall not apply in the following cases:
  - (a) for fishing operations conducted for the exclusive purpose of scientific investigations provided that these investigations are carried out in full



- compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241;
- (b) for Union fishing vessels of less than 12 metres in length overall that fish with gillnets, entangling nets or trammel nets, with bottom set lines, longlines, drifting lines, handlines and jigging equipment or similar passive gear in areas where the water depth is less than 20 metres according to the coordinates on the official sea chart issued by the competent national authorities;
  - (c) for Union fishing vessels that fish in subdivision 25 for pelagic stocks for direct human consumption, using gears with a mesh size of 45 mm or less, in areas where the water depth is less than 50 metres according to the coordinates on the official sea chart issued by the competent national authorities, and whose landings are sorted.
3. It shall be prohibited to fish with any type of fishing gear in subdivisions 22 and 23 from 15 January to 31 March and in subdivision 24 from 15 May to 15 August.
4. By way of derogation from paragraph 3, that prohibition shall not apply in the following cases:
- (a) for fishing operations conducted for the exclusive purpose of scientific investigations provided that these investigations are carried out in full compliance with the conditions set out in Article 25 of Regulation (EU) 2019/1241;
  - (b) for Union fishing vessels of less than 12 metres in length overall that fish with gillnets, entangling nets or trammel nets, with bottom set lines, longlines, drifting lines, handlines and jigging equipment or similar passive gear in areas where the water depth is less than 20 metres according to the coordinates on the official sea chart issued by the competent national authorities;
  - (c) for Union fishing vessels that fish in subdivision 24 for pelagic stocks for direct human consumption, using gears with a mesh size of 45 mm or less, in areas where the water depth is less than 40 metres according to the coordinates on the official sea chart issued by the competent national authorities, and whose landings are sorted;
  - (d) for Union fishing vessels that fish with dredges for bivalve molluscs in subdivision 22, in areas where the water depth is less than 20 metres according to the coordinates on the official sea chart issued by the competent national authorities.
5. Masters of fishing vessels as referred to in paragraph 2, point (b) or (c), and paragraph 4, point (b), (c) or (d), shall ensure that their fishing activity can be monitored at any time by the control authorities of the competent Member State.

#### *Article 8*

##### **Measures on recreational fisheries of cod in subdivisions 22 to 26**

1. In recreational fisheries, no more than one specimen of cod may be retained per fisher per day in subdivisions 22 and 23, and in subdivision 24 within six nautical miles measured from the baselines. However, from 15 January to 31 March recreational fisheries of cod shall be prohibited in these areas.

2. Recreational fisheries of cod shall be prohibited in subdivision 24 beyond six nautical miles measured from the baselines, and in subdivisions 25 and 26.
3. This Article is without prejudice to more stringent national measures under Articles 19 and 20 of Regulation (EU) No 1380/2013.

#### *Article 9*

##### **Measures on recreational fisheries of salmon in subdivisions 22 to 31**

1. Recreational fisheries of salmon, including catch-and-release fishing of salmon, shall be prohibited in subdivisions 22 to 31. Any specimen of salmon accidentally caught shall be released back into the sea immediately.
2. By way of derogation from paragraph 1, recreational fisheries of salmon shall be allowed under the following cumulative conditions:
  - (a) no more than one specimen of adipose fin-clipped salmon may be caught and retained per fisher per day;
  - (b) all specimens of any fish species retained shall be landed whole.
3. By way of derogation from paragraphs 1 and 2, north of latitude 59°30'N recreational fisheries of salmon shall be allowed from 1 May to 31 August in areas within four nautical miles measured from the baselines.
4. This Article is without prejudice to more stringent national measures under Articles 19 and 20 of Regulation (EU) No 1380/2013.

#### *Article 10*

##### **Measures for the conservation of the sea trout and salmon stocks in subdivisions 22 to 32**

1. It shall be prohibited for Union fishing vessels to fish for sea trout beyond four nautical miles measured from the baselines in subdivisions 22 to 32 from 1 January to 31 December 2023. When fishing for salmon beyond four nautical miles measured from the baselines in subdivision 32, by-catches of sea trout shall not exceed 3% of the total catch of salmon and sea trout on board at any moment or landed after each fishing trip.
2. Fishing with longlines beyond four nautical miles measured from the baselines in subdivisions 22 to 31 shall be prohibited.
3. This Article is without prejudice to more stringent national measures under Articles 19 and 20 of Regulation (EU) No 1380/2013.

#### *Article 11*

##### **Flexibility**

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

2. Article 3(2) and (3) and Article 4 of Regulation (EC) No 847/96 shall not apply where a Member State uses the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013.

## Article 12

### Data transmission

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

## CHAPTER III

## FINAL PROVISIONS

## Article 13

### Amendment to Regulation (EU) 2022/109

In Part B of Annex IA to Regulation (EU) 2022/109, the table on the fishing opportunities for Norway pout and associated by-catches in ICES division 3a, the United Kingdom and Union waters of ICES subarea 4 and the United Kingdom waters of ICES division 2a shall be replaced by the following:

Species:	Norway pout and associated by-catches <i>Trisopterus esmarkii</i>			Zone:	3a; United Kingdom and Union waters of subarea 4; United Kingdom waters of 2a (NOP/2A3A4.)
Year	2022	2023			
Denmark	49 478	(1)(3)	<i>pro memoria</i> (pm)	(1)(6)	Analytical TAC
Germany	9	(1)(2)(3)	pm	(1)(2)(6)	Article 3 of Regulation (EC) No 847/96 shall not apply
Netherlands	36	(1)(2)(3)	pm	(1)(2)(6)	Article 4 of Regulation (EC) No 847/96 shall not apply
Union	49 524	(1)(3)	pm	(1)(6)	
United Kingdom	10 204		pm		
Norway	0	(4)	pm	(4)	
Faroe Islands	0	(5)	pm	(5)	
TAC	59 728				

  

(1)	Up to 5% of the quota may consist of by-catches of haddock and whiting (OT2/*2A3A4). By-catches of haddock and whiting counted against the quota pursuant to this provision and by-catches of species counted against the quota pursuant to Article 15(8) of Regulation (EU) No 1380/2013 shall, together, not exceed 9% of the quota.
(2)	Quota may only be fished in United Kingdom and Union waters of ICES zones 2a, 3a and 4.
(3)	May only be fished from 1 November 2021 to 31 October 2022.
(4)	A sorting grid shall be used.
(5)	A sorting grid shall be used. Includes a maximum of 15% of unavoidable by-catches (NOP/*2A3A4), to be counted against this quota.
(6)	May be fished from 1 November 2022 to 31 December 2022.

*Article 14*

**Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023.

However, Article 13 shall apply from 1 November 2022 until 31 October 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*