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2018/0365 (NLE)

Proposal for a

**COUNCIL REGULATION**

**fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks  
in the Black Sea**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

Regulation (EC) No 1380/2013 of the European Parliament and the Council 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 seeks to ensure that living aquatic resources are exploited under sustainable economic, environmental and social conditions. One important tool in this respect is the annual fixing of fishing opportunities.

The objective of this proposal is to fix, for the commercially most important fish stocks in the Black Sea, the fishing opportunities for Member States for 2019.

For sprat, the proposal is based on the scientific advice for an autonomous quota, in order to maintain the current level of fishing mortality.

For turbot, the proposal transposes the TAC and quotas as established by the General Fisheries Commission for the Mediterranean (GFCM) in the recommendation (GFCM/41/2017/4) on a multiannual management plan for turbot fisheries in the geographical subarea 29 (Black Sea).

- **General context**

- The Communication from the Commission to the European Parliament and the Council on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2019 [COM(2018) 452 final of 11.06.2018], outlines the background to the proposal.
- The fishing opportunities should be fixed in accordance with Articles 16(1) (referring to the principle of relative stability) and 16(4) (referring to the objectives of the Common Fisheries Policy and the rules provided for in multiannual plans) of the Regulation (EC) No 1380/2013 of the European Parliament and the Council on the Common Fisheries Policy.

Black Sea stocks exploited by Bulgaria and Romania are shared with non-EU countries, Turkey, Ukraine, Georgia and Russian Federation.

Until 2017 there have been no Total Allowable Catches (TAC) decided at regional level between EU and non-EU countries. Every year since 2008 the European Union has been fixing autonomous quotas for turbot and sprat stocks in order to help ensure that the CFP rules are applied. However, since 2018 a regional TAC is being applied for turbot fisheries for two years 2018-2019 with a temporary allocation of quotas and transposed in the EU Regulation for the Black Sea, in line with the GFCM/41/2017/4 recommendation, adopted at the 41<sup>st</sup> annual session of the GFCM in 2017.

The fisheries exploiting **sprat** are of high socio-economic significance for the Black Sea riparian countries. According to the official reported landings included in the 2017 Black Sea report of the Scientific, Technical and Economic Committee for Fisheries (the STECF), the share of EU countries in the Black Sea sprat landings represented 4,5% in 2014, 3,12% in

2015 and 2,93% in 2016 of the total landings. According to the 2017 GFCM annual session report, the stock of sprat in the Black Sea is sustainably exploited. However, it is necessary to maintain the current level of fishing mortality to ensure the sustainability of the stock of sprat in the Black Sea, i.e. at 11.475 tonnes.

The fisheries exploiting **turbot** are of high socio-economic significance for the Black Sea riparian countries. The recommendation GFCM/41/2017/4 established a regional TAC for turbot at 644 tonnes for 2018 and 2019, with a temporary allocation of quotas to all Black Sea riparian countries. The recommendation contains a revision clause that permits to revisit the TAC and quotas in 2018, if the scientific advice does not confirm the continuation of the constructive evolution of fishing mortality. The 7th annual session of the GFCM Working Group on Black Sea, held on 11-13 July 2018, confirmed the continuation of the constructive evolution of fishing mortality of turbot stock. For the EU the allocated quota was fixed at 114 tonnes in 2018 and in 2019. The TAC and quotas for turbot, the management of fishing effort and the limitation of fishing days to 180 per year, and the currently applicable two months closure period, from 15 April to 15 June, should be implemented in this Regulation.

In accordance with Article 2 of Council Regulation (EC) No 847/96<sup>1</sup>, it is proposed that Articles 3 and 4 do not apply to the stocks covered by this Regulation. However, in accordance with Article 15(9) of Regulation (EU) No 1380/2013 year-to-year flexibility envisaged therein applies to stocks covered by the landing obligation.

- **Existing provisions in the area of the proposal**

Fishing opportunities and their allocation to Member States are regulated annually. The latest such legal act is Council Regulation (EU) 2017/2360<sup>2</sup> of 11 December 2017 fixing for 2018 the fishing opportunities for certain fish stocks applicable in the Black Sea.

In addition to the annual fishing opportunities, the following measures relevant to the Black Sea fisheries covered by this proposal should be mentioned. The Commission proposal for the transposition of the recent GFCM Recommendations was adopted on 22.03.2018<sup>3</sup> and is under ongoing co-legislative procedure within the European Parliament and the Council. It should be noted also that the following elements are intrinsically linked to the annual fishing opportunities and are taken into account in this proposal:

- Minimum conservation sizes and minimum mesh sizes regarding the turbot fishery in the Black Sea are established by Regulation (EU) No 227/2013 of the Council and the European Parliament of 13 March 2013<sup>4</sup> amending Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and Council Regulation (EC) No 1434/98 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption.
- Recommendation GFCM/37/2013/2 establishing a set of minimum standards for bottom-set gillnet fisheries for turbot and conservation of cetaceans in the Black Sea

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<sup>1</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>2</sup> OJ L 337, 19.12.2017, p.1

<sup>3</sup> COM(2018)143 final of 22 March 2018

<sup>4</sup> OJ L 78, 20.3.2013, p.1

adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 37<sup>th</sup> Session (Split, May 2013).

- Recommendation GFCM/39/2015/3 establishing a set of measures to prevent, deter and eliminate illegal, unreported and unregulated fishing in turbot fisheries in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 39<sup>th</sup> Session (Milan, May 2015).
- Recommendation GFCM/41/2017/4 on a multiannual management plan for turbot fisheries in the Black Sea (geographical subarea 29) adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 41<sup>th</sup> Session (Budva, October 2017).
- The Bucharest Declaration<sup>5</sup> endorsed in the context of a GFCM organised high-level meeting on fisheries governance in the Black Sea in October 2016. The conference adopted this Declaration, which underlines the need for common and collaborative approaches among riparian States to improve Black Sea fisheries sustainability.
- The Sofia Ministerial Declaration<sup>6</sup> signed on 7 June 2018 in the context of a High Level Conference on Black Sea fisheries and aquaculture, which concretizes the commitments of the Bucharest Declaration and establishes a specific plan of action for the next 10 years in the Black Sea for the fisheries sustainability.
- The GFCM (2017-2020) mid-term strategy towards the sustainability of Mediterranean and Black Sea Fisheries<sup>7</sup>, which adopted, inter alia, a set of actions to strengthen fisheries governance at multilateral level in the Black Sea.
- Bulgaria and Romania supported and participated actively in the implementation of the GFCM control and inspection pilot project for turbot fisheries established by the recommendation GFCM/41/2017/4. The GFCM pilot project was developed by the European Fisheries Control Agency, and Bulgaria and Romania collaborated actively with EFCA allowing the joint operation to take place in their respective EEZs.
- The implementation of commitments provided by Bulgaria and Romania in December 2017, in the context of the fishing possibilities 2018 Regulation to improve their management in turbot and piked dogfish in 2018 by implementing a set of measures, to improve control, to fight IUU fishing and to improve data collection is efficient. Both Bulgaria and Romania implemented a series of actions, i.e. to reduce the risk of undeclared catches, by recording all turbot and piked dogfish catches (even for quantities less than 50 kg), to increase the rate of inspections (at sea, in the market, on land, joint inspections), to support and further improve scientific advice with regard to fisheries and biological data on Black Sea stocks.

- **Consistency with other policies and objectives of the EU**

The proposed measures are in accordance with the objectives and rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

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<sup>5</sup> See as retrieved from <http://www.fao.org/gfcm/meetings/blackseaconference2016/en/>

<sup>6</sup> See as retrieved from [https://ec.europa.eu/fisheries/black-sea-countries-pledge-promote-sustainable-fisheries-and-aquaculture\\_en](https://ec.europa.eu/fisheries/black-sea-countries-pledge-promote-sustainable-fisheries-and-aquaculture_en)

<sup>7</sup> See as retrieved from: <http://www.fao.org/gfcm/reports/statutory-meetings/detail/en/c/454522/>

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **• Collection and use of expertise**

The scientific organisation consulted is the Scientific, Technical and Economic Committee for Fisheries (STECF) and the General Fisheries Commission for the Mediterranean (GFCM) Working Group on the Black Sea (WGBS).

The Union asks STECF for scientific advice on the state of important fish stocks. The STECF gives its advice following the terms of reference that it receives from the Commission. The recent and accurate advice at the time of the discussion of this proposal at the Council will cover the Black Sea stocks for which quotas are proposed.

The ultimate objective is to bring and maintain the stocks to levels that could deliver Maximum Sustainable Yield (MSY). This objective has been incorporated expressly in the basic Regulation of the CFP, whose Article 2(2) states that this objective “shall be achieved by 2015 where possible, and [...] by 2020 for all stocks”. This reflects the commitment taken by the Union regarding the conclusions of the 2002 World Summit on Sustainable Development in Johannesburg and its related Plan of Implementation.

### **• Consultation of interested parties**

Interested parties were consulted via the Communication from the Commission to the European Parliament and the Council on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2019 [COM(2018) 452 final of 11.06.2018]. The scientific basis for the proposal is provided by the STECF. All STECF reports are available on the DG MARE website.

### **• Impact assessment**

At EU level, the risk of negative impact on the recovery of the turbot stock population is curtailed by additional recording, control and monitoring measures introduced and implemented by Romania and Bulgaria in line with their commitments given by these Member States in the context of the adoption of the Regulation fixing for 2018 the fishing opportunities for certain fish stocks in the Black Sea.

At multilateral level, the risk of negative impact on the recovery of the stock population is curtailed by a number of new actions: 1) the Sofia Ministerial Declaration signed on 7 June confirming the commitment of Black Sea riparian countries to act collectively on the basis of a concrete action plan towards sustainability of Black Sea fisheries, 2) the adoption at the 41<sup>st</sup> GFCM annual session and subsequently the implementation of the GFCM Regional Plan of Action to fight IUU fishing, 3) the implementation at multilateral level of the GFCM BlackSea4Fish project based on regional cooperation in scientific data, surveys and assessments, 4) the adoption at the 41<sup>st</sup> GFCM annual session and subsequently the implementation of the multiannual management plan for turbot fisheries in the Black Sea (GSA 29). The plan has set a multilateral Total Allowable Catch and its temporary allocation to the Black Sea riparian countries for 2018 and 2019. A substantial element of the multiannual management plan is the implementation of the joint inspection and control pilot project at sea. The revision clauses inserted in the plan will permit to revisit the TAC and quotas, if the scientific advice does not confirm the continuation of the constructive evolution of fishing mortality. In addition the plan foresees a TAC permanent allocation scheme and a

permanent inspection programme by 2020. This plan will contribute to combat efficiently the IUU activity and manage properly the turbot stock at regional level.

The proposal reflects not only short-term concerns but it is also part of a longer term approach whereby the level of fishing is gradually adapted to long-term sustainable levels.

The approach taken in the proposal might therefore, in the medium term, result in reduced fishing effort but stable or increasing quotas in the long term. The long-term consequences of the approach are expected to be a reduced impact on the environment as a consequence of the adaptation in fishing effort and to fishing opportunities. The sustainability of fishing activities will increase in the long term.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The proposal establishes the catch limitations applicable in the Black Sea to Union fisheries, in order to achieve the objective of the Common Fisheries Policy of ensuring fisheries at levels that are biologically, economically and socially sustainable.

- **Legal basis**

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union.

The Union's obligations for sustainable exploitation of living aquatic resources arise from obligations set out in Article 2 of the basic regulation of the CFP.

- **Subsidiarity principle**

The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) of the Treaty on the Functioning of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason.

The Common Fisheries Policy is a common policy. According to Article 43(3) TFEU it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

The proposed Council Regulation allocates fishing opportunities to Member States. Having regard to Article 16(6) and (7) and Article 17 of Regulation 1380/2013, Member States are free to allocate such opportunities among vessels flying their flag as they see fit. Therefore, Member States have ample room for manoeuvre on decisions related to the social and economic models of their choice to exploit their allocated fishing opportunities.

The proposal has no new financial implications for Member States. This Regulation is adopted by the Council every year, and the public and private means to implement it are already in place.

- **Choice of instruments**

Proposed instruments: Regulation.

This is a proposal for fisheries management on the basis of Article 43(3) TFEU and in accordance with Article 16 of Regulation (EU) No 1380/2013.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implications for the Union budget.

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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<sup>1</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 (STECF).
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities by fishery or group of fisheries in the Black Sea including certain conditions functionally linked thereto, as appropriate. Article 16(4) of Regulation (EU) No 1380/2013 provides that fishing opportunities be fixed in accordance with the objectives of the Common Fisheries Policy (CFP) established in Article 2(2) of that Regulation. Article 16(1) of Regulation (EU) No 1380/2013 provides that fishing opportunities 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) At its 41<sup>st</sup> Annual Meeting in 2017, the General Fisheries Commission for the Mediterranean adopted recommendation GFCM/40/2017/4 on a multiannual management plan for turbot fisheries in geographical sub-area 29 (Black Sea). The recommendation establishes the Total Allowable Catch (TAC) for turbot for two years (2018-2019) with a temporary allocation of quotas. That measure should be implemented in the law of the Union.
- (5) The fishing opportunities should be established on the basis of the available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair

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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)

treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders.

- (6) In accordance with the scientific advice provided by STECF, it is necessary to maintain the current level of the fishing mortality to ensure the sustainability of the stock of sprat in the Black Sea.
- (7) The use of fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009<sup>2</sup> and in particular to Articles 33 and 34 thereof concerning the recording of catches 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.
- (8) In accordance with Article 2 of Council Regulation (EC) No 847/96<sup>3</sup>, the stocks that are subject to the various measures referred to therein must be identified.
- (9) As regards the turbot stock, further conservation measures should be taken. Maintaining the currently applicable two months closure period, from 15 April to 15 June, would continue to provide protection for the stock during the spawning season of turbot. Managing the fishing effort and limiting the fishing days to 180 per year, would have a positive conservation impact on the turbot stock.
- (10) In order to avoid interruption of fishing activities and to ensure the livelihood of Union fishermen, it is important to open the fisheries concerned in the Black Sea on 1 January 2019. For reasons of urgency, this Regulation should enter into force immediately after its publication.
- (11) Fishing opportunities should be used in full compliance with the applicable law of the Union,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **Subject matter, scope and definitions**

#### Article 1

#### **Subject matter**

This Regulation fixes for 2019 the fishing opportunities available to Union fishing vessels flying the flag of Bulgaria and Romania for the following stocks:

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<sup>2</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community 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).

<sup>3</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).

(a) Sprat (*Sprattus sprattus*) in the Black Sea

(b) Turbot (*Psetta maxima*) in the Black Sea;

## Article 2

### Scope

This Regulation shall apply to Union fishing vessels flying the flag of Bulgaria or Romania and operating in the Black Sea.

## Article 3

### Definitions

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

- (a) "GFCM" means General Fisheries Commission for the Mediterranean;
- (b) "Black Sea" means the geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011 of the European Parliament and the Council<sup>4</sup>;
- (c) "Fishing vessel" means any vessel equipped for commercial exploitation of marine biological resources;
- (d) "Union fishing vessel" means a fishing vessel flying the flag of a Member State and registered in the Union;
- (e) "Stock" means a marine biological resource that occurs in a given management area;
- (f) 'Total Allowable Catch' (TAC) means the quantity of each stock that can be caught over the period of a year;
- (g) "Union autonomous quota" means a catch limit autonomously allocated to Union fishing vessels in the absence of an agreed TAC;
- (h) "Analytical quota" means a Union autonomous quota for which an analytical assessment is available;
- (i) "analytical assessment" means a quantitative evaluation of trends in a given stock, based on data about the stock's biology and exploitation, which scientific review has indicated to be of sufficient quality to provide scientific advice on options for future catches.

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<sup>4</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 347, 30.12.2011, p. 44).

## **CHAPTER II**

### **Fishing opportunities**

#### Article 4

#### **Allocation of fishing opportunities**

1. The Union autonomous quota for sprat, the allocation of such quota among Member States, and the conditions functionally linked thereto, where appropriate, are set out in the Annex.
2. The TAC for turbot, applicable in Union waters and for Union fishing vessels and the allocation of such TAC among Member States and the conditions functionally linked hereto, where appropriate, are set out in the Annex.

#### Article 5

#### **Special provisions on allocations**

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

#### Article 6

#### **Management of fishing effort for turbot**

Union fishing vessels authorised to fish for turbot in the Black Sea, irrespective of the vessels' length overall, shall not exceed 180 fishing days per year.

## **CHAPTER III**

### **Final provisions**

#### Article 7

##### **Data transmission**

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States send 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

##### **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 2019.

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

Done at Brussels,

For the Council  
The President