

Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2017/127

COUNCIL REGULATION (EU) 2018/120

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.
- (2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁽¹⁾ requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF) and other advisory bodies, as well as in the light of any advice received from Advisory Councils.
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. In accordance with Article 16(4) of Regulation (EU) No 1380/2013, fishing opportunities should be fixed in accordance with the objectives of the Common Fisheries Policy (CFP) established in Article 2(2) of that Regulation. In accordance with Article 16(1) of that Regulation, fishing opportunities should be allocated to Member States in such a way as to ensure relative stability of fishing activities of each Member State for each fish stock or fishery.
- (4) The total allowable catch (TACs) should therefore be established, in line with Regulation (EU) No 1380/2013, on the basis of available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, in particular at the meetings of the Advisory Councils.
- (5) The landing obligation referred to in Article 15 of Regulation (EU) No 1380/2013 is introduced on a fishery-by-fishery basis. In the region covered by this Regulation, when a fishery falls under the landing obligation, all species in that fishery subject to catch limits should be landed. From 1 January 2016, the landing obligation applies to

the species that define the fisheries. Article 16(2) of Regulation (EU) No 1380/2013 provides that, when the landing obligation in respect of a fish stock is introduced, fishing opportunities are to be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches. On the basis of the joint recommendations submitted by the Member States and in accordance with Article 15 of Regulation (EU) No 1380/2013, the Commission adopted a number of delegated Regulations laying down specific discard plans applicable on a temporary basis for a maximum period of three years, in preparation for the full implementation of the landing obligation.

- (6) The fishing opportunities for stocks of species falling under the landing obligation from 1 January 2018 should compensate for former discards and be based on scientific information and advice. In order to ensure fair compensation for the fish that has been previously discarded and that will have to be landed from 1 January 2018, a top-up should be calculated according to the following methodology: the new landings figure should be calculated by subtracting from the International Council for the Exploration of the Sea (ICES) figure of total catches the amounts that will continue to be discarded during the operation of the landing obligation; a top-up applied to the TAC figure should be proportional to the change between the new calculated landings figure and the previous ICES landings figure.
- (7) According to scientific advice, European seabass (*Dicentrarchus labrax*) in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions 4b, 4c and 7a, 7d–7h) remains in a perilous state and the stock continues to decline further, despite the measures taken in previous years. Those measures have not delivered the desired reduction in commercial fishing mortality (only – 17 % instead of the expected – 50 %). Recreational fishing mortality on the Northern stock is now considered to be far more significant than previously calculated and is estimated to have exceeded that from commercial sources in 2016. That also includes post-release sources of mortality. Therefore, the fishing mortality of the Northern stock has to be decreased significantly in order to allow for a small increase in the biomass.
- (8) In order to mitigate the social and economic impact of the above measure, only limited fisheries with certain gears could be permitted, while providing for a two-month closure to protect spawning aggregations. Whilst there could be certain unavoidable by-catches from other fishing gears, the stock status is so severe that it is not possible to allow all by-catches to be landed, and any encounters with the stock should be avoided. Also, there will be a need of further restrictions on recreational fishing, with only catch-and-release fishing allowed during the entire year. Taking into account ICES advice to further reduce fishing pressure on the stock of European seabass in the Bay of Biscay, a lower daily bag limit for recreational fisheries should also be fixed in that area.
- (9) As regards European eel (*Anguilla anguilla*) stock, the ICES has advised that all anthropogenic mortalities should be reduced to zero, or kept as close to zero as possible. In the light of that advice, it is appropriate to establish a temporary prohibition to fish for European eel of an overall length of 12 cm or longer in Union waters of ICES area including in the Baltic Sea, to protect spawners during their migration.

- (10) For some years, certain TACs for stocks of elasmobranchs (skates, sharks, rays) have been set at zero, with a linked provision establishing an obligation to immediately release accidental catches. The reason for that specific treatment is that the conservation status of those stocks is poor and, because of their high survival rates, discards will not raise fishing mortality rates for them, but are deemed as beneficial for the conservation of those species. As of 1 January 2015, however, catches of those species in pelagic fisheries have to be landed, unless they are covered by any of the derogations from the landing obligation provided for in Article 15 of Regulation (EU) No 1380/2013. Article 15(4)(a) of that Regulation allows such derogations for species in respect of which fishing is prohibited and which are identified as such in a Union legal act adopted in the area of the CFP. Therefore, it is appropriate to prohibit the fishing of those species in the areas concerned.
- (11) Pursuant to Article 16(4) of Regulation (EU) No 1380/2013, for stocks subject to specific multiannual plans the TACs should be established in accordance with the rules laid down in those plans. Consequently, the TACs for stocks of sole in the Western Channel, of plaice and sole in the North Sea and of bluefin tuna in the Eastern Atlantic and the Mediterranean should be established in accordance with the rules laid down in Regulations (EC) No 509/2007⁽²⁾, (EC) No 676/2007⁽³⁾ and (EU) 2016/1627⁽⁴⁾. The objective for the Southern hake stock as set out in Council Regulation (EC) No 2166/2005⁽⁵⁾ is to rebuild the biomass of the stocks concerned to within safe biological limits, while staying in line with the scientific data. In accordance with scientific advice, in the absence of definitive data on a target spawning stock biomass and while taking into account changes in safe biological limits, it is appropriate, in order to contribute to the achievement of the objectives of the CFP as defined in Regulation (EU) No 1380/2013, to fix the TAC on the basis of maximum sustainable yield advice, as provided by ICES.
- (12) As a result of the benchmark exercise, as regards the stock of herring to the west of Scotland, ICES has provided advice for the combined herring stocks in Divisions 6a, 7b and 7c (West of Scotland, West of Ireland). The advice covers two separate TACs (for 6aS, 7b and 7c on the one hand, and for 5b, 6b and 6aN on the other). According to ICES, a rebuilding plan has to be developed for those stocks. Since, according to scientific advice, the management plan for the northern stock⁽⁶⁾ cannot be applied to the combined stocks and it is not possible to set separate fishing opportunities for those two stocks, a TAC is established to permit limited catches in a commercially operated scientific sampling programme.
- (13) For stocks for which there is no sufficient or reliable data in order to provide size estimates, management measures and TAC levels should follow the precautionary approach to fisheries management as defined in Article 4(1)(8) of Regulation (EU) No 1380/2013, while taking into account stock-specific factors, including, in particular, available information on stock trends and mixed fisheries considerations.
- (14) Council Regulation (EC) No 847/96⁽⁷⁾ introduced additional conditions for year-to-year management of TACs including, under Articles 3 and 4 of that Regulation, flexibility provisions for precautionary and analytical TACs. Under Article 2 of that Regulation,

when fixing the TACs, the Council is to decide to which stocks Article 3 or 4 of that Regulation is not to apply, in particular on the basis of the biological status of the stocks. More recently, the year-to-year flexibility mechanism was introduced by Article 15(9) of Regulation (EU) No 1380/2013 for all stocks that are subject to the landing obligation. Therefore, in order to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of marine biological resources, hinder the achievement of the objectives of the CFP and deteriorate the biological status of the stocks, it should be established that Articles 3 and 4 of Regulation (EC) No 847/96 apply to analytical TACs only where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.

- (15) Where a TAC relating to a stock is allocated to one Member State only, it is appropriate to empower that Member State in accordance with Article 2(1) of the Treaty to determine the level of such TAC. Provisions should be made to ensure that, when fixing that TAC level, the Member State concerned acts in a manner fully consistent with the principles and rules of the CFP.
- (16) It is necessary to establish the fishing effort ceilings for 2018 in accordance with Article 5 of Regulation (EC) No 509/2007, Article 9 of Regulation (EC) No 676/2007, and Articles 5, 6, 7 and 9 of, and Annex I to, Regulation (EU) 2016/1627.
- (17) In order to guarantee full use of fishing opportunities, it is appropriate to allow for the implementation of a flexible arrangement between some of the TAC areas where the same biological stock is concerned. In addition to existing inter-area flexibilities, it is appropriate, in particular, to introduce a limited inter-area flexibility for ling from ICES subareas 6 to 14 to Union waters of subarea 4 and for skates and rays between division 7d and Union waters of division 2a and subarea 4.
- (18) 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.
- (19) At the 11th Conference of the Parties of the Convention on the Conservation of Migratory Species of Wild Animals, held in Quito from 3 to 9 November 2014, a number of species were added to the lists of protected species in Appendices I and II of the Convention, with effect from 8 February 2015. Therefore, it is appropriate to provide for the protection of those species with respect to Union fishing vessels fishing in all waters and non-Union fishing vessels fishing in Union waters.
- (20) The use of fishing opportunities available to Union fishing vessels set out in this Regulation is subject to Council Regulation (EC) No 1224/2009⁽⁸⁾, and in particular to Articles 33 and 34 of that Regulation, concerning the recording of catches and fishing effort and the notification of data on the exhaustion of fishing opportunities. It is therefore necessary to specify the codes to be used by Member States when sending data to the Commission relating to landings of stocks subject to this Regulation.
- (21) It is appropriate, following advice from the ICES, to maintain a specific system to manage sandeel and associated by-catches in Union waters of ICES divisions 2a and 3a

and ICES subarea 4. Given that the ICES scientific advice is expected to become available only in February 2018, it is appropriate to set the TAC and quotas for that stock provisionally at zero until such advice is released.

- (22) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway⁽⁹⁾ and the Faroe Islands⁽¹⁰⁾, the Union has held consultations on fishing rights with those partners. In accordance with the procedure provided for in the agreement and protocol on fisheries relations with Greenland⁽¹¹⁾, the Joint Committee has established the level of fishing opportunities available for the Union in Greenland waters in 2018. It is therefore necessary to include those fishing opportunities in this Regulation.
- (23) At its annual meeting in 2017, the North-East Atlantic Fisheries Commission (NEAFC) adopted conservation measures for the two redfish stocks in the Irminger Sea. Those measures should be implemented in the law of the Union.
- (24) At its annual meeting in 2017, the International Commission for the Conservation of Atlantic Tunas (ICCAT) maintained at the same level the TACs for South Atlantic albacore and for yellowfin tuna. The ICCAT Commission also adopted TAC increases for Eastern and Mediterranean bluefin tuna and Northern albacore. The 2018 TAC for Northern albacore for Spain already reflects a deduction of 945,56 tonnes for overfishing which occurred in 2016. That overfishing was compensated at the ICCAT level by fishing opportunities from other Member States (France, Ireland, Portugal and the United Kingdom). An additional payback by Spain will therefore be needed to fully compensate those Member States.
- (25) In 2018, the TAC for Mediterranean swordfish is decreased in line with the ICCAT Recommendation 16-05. As it is already the case for the stock of Eastern and Mediterranean bluefin tuna, it is appropriate that catches in recreational fisheries of all other ICCAT stocks should be subject to the catch limits as adopted by the ICCAT. Furthermore, Union fishing vessels of at least 20 metres length fishing for bigeye tuna in the ICCAT Convention Area should be subject to the capacity limitations adopted by ICCAT in the ICCAT Recommendation 15-01. All those measures should be implemented in the law of the Union.
- (26) At its 36th annual meeting in 2017, the Parties to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted catch limits for both target and by-catch species for the period from 1 December 2017 to 30 November 2018. The uptake of the quotas during 2017 should be considered when setting fishing opportunities for 2018.
- (27) At its annual meeting in 2017, the Indian Ocean Tuna Commission (IOTC) adopted new catch limits for yellowfin tuna (*Thunnus albacares*) that do not affect the Union catch limits in IOTC. It also reduced possibilities for using fish-aggregating devices (FADs) and supply vessels. As the activities of supply vessels and the use of FADs are an integral part of the fishing effort exerted by the purse-seine fleet, that measure should be implemented in the law of the Union.

- (28) The annual meeting of the South Pacific Regional Fisheries Management Organisation (SPRFMO) will be held on 30 January — 3 February 2018. It is appropriate that the current measures in the SPRFMO Convention Area are provisionally maintained until such annual meeting is held.
- (29) At its annual meeting in 2017, the Inter-American Tropical Tuna Commission (IATTC) adopted a conservation measure for yellowfin tuna, bigeye tuna and skipjack tuna for 2018-2020 and amended the existing conservation measure for 2017 for those species. It is appropriate to implement those measures in the law of the Union.
- (30) At its annual meeting in 2017, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) confirmed the TAC for the Southern bluefin tuna for the period 2018-2020 adopted at the annual meeting in 2016. The currently applicable measures on allocation of fishing opportunities adopted by CCSBT should be implemented in the law of the Union.
- (31) At its annual meeting in 2017, the South East Atlantic Fisheries Organisation (SEAFO) did not amend the conservation measure for biennial TACs for Patagonian toothfish, deep sea red crab, alfonsinos and pelagic armourhead adopted in 2016. The conservation measure for the biennial TAC for orange roughy in Division B1 was not revised and remains in force in 2018. The currently applicable measures on allocation of fishing opportunities adopted by SEAFO should be implemented in the law of the Union.
- (32) At its 14th annual meeting, the Western and Central Pacific Fisheries Commission (WCPFC) adopted conservation and management measures for tropical tunas. Those measures should be implemented in the law of the Union.
- (33) At its 39th annual meeting in 2017, the Northwest Atlantic Fisheries Organisation (NAFO) adopted a number of fishing opportunities for 2018 for certain stocks in Subareas 1-4 of the NAFO Convention Area. Those measures should be implemented in the law of the Union.
- (34) At its 40th annual meeting in 2016, the General Fisheries Commission for the Mediterranean (GFCM) adopted catch and effort limits for certain small pelagic stocks for the years 2017 and 2018 in the geographical subareas 17 and 18 (Adriatic Sea) of the GFCM Agreement Area. Those measures should be implemented in the law of the Union. The maximum catch limits established in Annex II are fixed exclusively for one year and without prejudice to any other measures adopted in the future and any possible allocation scheme between Member States.
- (35) Taking into account the particularities of the Slovenian fleet and their marginal impact on the stocks of small pelagic species, it is appropriate to preserve the existing fishing patterns and to ensure access of the Slovenian fleet to a minimum quantity of small pelagic species.
- (36) Certain international measures which create or restrict fishing opportunities for the Union are adopted by the relevant Regional Fisheries Management Organisations (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 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 2017, it is appropriate that the relevant provisions of this Regulation apply from that date. Such retroactive application does not prejudice the principle of legitimate expectations as CCAMLR members are forbidden to fish in the CCAMLR Convention Area without authorisation.

- (37) As regards the fishing opportunities for snow crab around the area of Svalbard, the Treaty of Paris of 1920 grants equal and non-discriminatory access to resources for all parties to that Treaty, including with respect to fishing. The Union's view of that access, as regards fishing for snow crab on the continental shelf around Svalbard, has been set out in two *notes verbales* to Norway dated 25 October 2016 and 24 February 2017. In order to ensure that the exploitation of snow crab within the area of Svalbard is made consistent with such non-discriminatory management rules as may be set out by Norway, which enjoys sovereignty and jurisdiction in the area within the limits of the said Treaty, it is appropriate to fix the number of vessels that are authorised to conduct such fishery. The allocation of such fishing opportunities among Member States is limited to 2018. It is recalled that in the Union primary responsibility for ensuring compliance with applicable law lies with the flag Member States.
- (38) In accordance with the declaration by the Union addressed to the Bolivarian Republic of Venezuela on the granting of fishing opportunities in Union waters to fishing vessels flying the flag of Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana⁽¹²⁾, it is necessary to fix the fishing opportunities for snapper available to Venezuela in Union waters.
- (39) Given that certain provisions are to be applied on a continuous basis, and in order to avoid legal uncertainty during the period between the end of 2017 and the date of entry into force of the Regulation fixing the fishing opportunities for 2018, it is appropriate that the provisions concerning prohibitions and closed seasons continue to apply at the beginning of 2019, until the entry into force of the Regulation fixing the fishing opportunities for 2019.
- (40) In order to ensure uniform conditions for granting an individual Member State an authorisation to benefit from the system of managing its fishing effort allocations in accordance with a kilowatt-day system, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹³⁾.
- (41) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to the granting of additional days at sea for permanent cessation of fishing activities and for enhanced scientific observer coverage as well as to establish the formats of spreadsheet for the collection and transmission of information concerning transfer of days at sea between fishing vessels flying the flag of a Member State.
- (42) In order to avoid the interruption of fishing activities and to ensure the livelihood of the fishermen of the Union, this Regulation should apply from 1 January 2018,

except for the provisions concerning fishing effort limits, which should apply from 1 February 2018, and certain provisions concerning particular regions, which should have a specific date of application. For reasons of urgency, this Regulation should enter into force immediately after its publication.

- (43) Fishing opportunities should be used in full compliance with the applicable law of the Union.
- (44) According to the updated scientific advice from ICES, annual catches of turbot in ICES subarea 4 should be not more than 4 952 tonnes for the years 2017-2019. It is therefore appropriate to amend the TAC for turbot and brill in the North Sea to allow higher catches of those species also in 2017. Council Regulation (EU) 2017/127⁽¹⁴⁾ should therefore be amended accordingly.
- (45) The TAC for turbot and brill in the North Sea (ICES divisions IIa and IV) provided for in Regulation (EU) 2017/127 applies from 1 January 2017. The amending provisions set out in this Regulation should also apply from that date. Such retroactive application does not prejudice the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased compared to the opportunities established in Regulation (EU) 2017/127,

HAS ADOPTED THIS REGULATION:

- (1) 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).
- (2) Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel (OJ L 122, 11.5.2007, p. 7).
- (3) 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 (OJ L 157, 19.6.2007, p. 1).
- (4) Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).
- (5) Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 345, 28.12.2005, p. 5).
- (6) 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 (OJ L 344, 20.12.2008, p. 6).
- (7) 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).
- (8) 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).
- (9) Agreement on fisheries between the European Economic Community and the Kingdom of Norway (OJ L 226, 29.8.1980, p. 48).
- (10) Agreement on fisheries between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faeroe Islands, of the other part (OJ L 226, 29.8.1980, p. 12).
- (11) Fisheries Partnership Agreement between the European Community on the one hand, and the Government of Denmark and the Home Rule Government of Greenland, on the other hand (OJ L 172, 30.6.2007, p. 4) and Protocol setting out the fishing opportunities and financial contribution provided for in that Agreement (OJ L 293, 23.10.2012, p. 5).
- (12) OJ L 6, 10.1.2012, p. 9.
- (13) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
- (14) Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 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 24, 28.1.2017, p. 1).