



21.3.2024

WORKING DOCUMENT

on the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 as regards the targets for fixing fishing opportunities, COM(2023)771 of 6.12.2023

Committee on Fisheries

Rapporteur: Pierre Karleskind

At the Shadows meeting on 29.02.2024, it was decided that the Chair would draft a working document, so the Committee work of the 9th legislature could be continued in the 10th legislature, if the new Conference of Presidents decides so.¹

The European Commission adopted its proposal for a **Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/1139, (EU) 2018/973 and (EU) 2019/472 as regards the targets for fixing fishing opportunities** on 6.12.2023. It proposed a deletion of the “5 % rule” in certain multiannual plans (MAPs) (Baltic Sea, Northern Sea and the Western Waters), which means the deletion of Articles 4(6) of Regulations (EU) 2016/1139² and 2018/973³ and Article 4(7) of Regulation (EU) 2019/472⁴.

These articles are identical and they read⁵: “*Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5% probability of the spawning stock biomass falling below Blim*”⁶.

In short, this “5 % rule” is included in the MAPs as part of the overall system of rules which sets out targets and measures for the long-term management of certain stocks and fisheries at sea basin level. The Commission argues that the rule, under certain circumstances related to the status of a given fish stock and the short-term forecast for its biomass development, may result in a situation that would be inconsistent with the other rules of the multiannual plans, notably other safeguard measures to be taken.

Concerns in relation to the procedure of the proposal

- Committee presentation

The Commission presented the proposal in the PECH committee meeting on the 07.12.2023, less than 24 hours after its publication. Members of the PECH Committee simply did not have time to assess, understand, or prepare questions for the Commission’s presentation.

¹ See Rule 240 RoP (“unfinished business”)

² 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, <http://data.europa.eu/eli/reg/2016/1139/2020-12-01>)

³ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008 (OJ L 179, 16.7.2018, p. 1, <http://data.europa.eu/eli/reg/2018/973/2019-08-14>)

⁴ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ L 83, 25.3.2019, p. 1, <http://data.europa.eu/eli/reg/2019/472/2019-08-14>)

⁵ See, for instance, Article 4(7) of Regulation (EU) 2019/472

⁶ ‘Blim’ is defined as “...the spawning stock biomass reference point provided for in the best available scientific advice, in particular by ICES..., below which there may be reduced reproductive capacity”, see for instance Art. 2(8) of Regulation (EU) 2016/1139

- Council's request for urgent procedure

On the 20.12.2023, the Council agreed on a mandate and decided to request that the Parliament, using an urgent procedure, should approve the changes made by the Council to the proposal. This request was subsequently notified to the Parliament on the 04.01.2024. Since the rules stipulates that such a request should be put to the vote at the very next plenary session, a proper discussion in the PECH committee was not possible to organise. The request was put to the vote and rejected on the 16.01.2024.

Many Members expressed the importance of considering the opinions of stakeholders and to have the necessary time to understand the practical implications of the proposal for fishers, especially small-scale fishers and recreational fishers. Members also regretted that this procedure would prevent them from considering the feedback from the Commission public consultation which ended on the 31.01.2024.

It can be noted that further dialogue and consultations between the institutions prior to deciding on requests for urgent procedure would have been preferable. In the spirit of good cooperation better dialogue and collaboration would have built a better understanding and paved the way for a more constructive work between the institutions on this issue.

- Stakeholder consultation and EESC opinion

The Commission launched, *after the adoption of the proposal*, a public consultation which was open until the 31.01.2024. The conclusion of the consultation was transmitted to the Parliament on the 15.02.2024 in the form of a letter.

Based on the responses to the public consultation⁷, three respondents representing the fishing and processing sector supported the Commission proposal, while the remaining 20 respondents did not support the proposal, many asking the Commission to withdraw the proposal. The Baltic Sea Advisory Council membership is split along the same lines. The respondents representing NGOs/environmental organisations considered that instead of deleting the “5 % rule” the provision should be modified to establish clearer and more stringent rules. They also expressed regrets that the proposal was not accompanied by a comprehensive impact assessment.

On 17.1.2024, the European Economic and Social Committee adopted its mandatory opinion, supporting the Commission proposal⁸.

Concerns and questions in relation to the content of the proposal

- The goal of the “5 % rule”

The MAPs set out targets and measures for the long-term management of certain stocks and

⁷ See the Commission's “Have your say” website: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14057-Fisheries-correction-to-multiannual-plans/feedback_en?p_id=32435157&page=2

⁸ <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/targets-fixing-fishing-opportunities>

fisheries at sea basin level, including safeguards and remedial actions where needed. In addition, the MAPs provide for flexibility by allowing the fixing of fishing opportunities within a range based on the advice from ICES.

The “5 % rule” was included to be triggered in order to safeguard stocks which are in such a bad state that, from a fisheries management perspective, urgent steps need to be taken to not endanger these stocks any further. The Commission needs to further clarify its proposal and underlying objectives regarding the removal of articles 4(6) and 4(7) in the respective MAPs to fully understand how actions to support recovery of stocks should be done in other ways.

- Socioeconomic implications

The Commission argues that the application of the “5 % rule” may result in a situation that would be inconsistent with the other rules of the MAPs governing the fixing of fishing opportunities and have potentially severe socioeconomic implications.

The Common Fisheries Policy stipulates that we need to take into account all three pillars of sustainability (i.e. environmental, economic, and social). On the one hand, this “5 % rule” could be an extra factor of TAC’s volatility and hinder the fishing sector ability to invest and plan for their future. On the other hand, as mentioned by the Stockholm university, the result of unsustainable high quotas is “in the longer term depleted fish stocks and poor earnings for fishers”⁹.

- Level playing field

We also need to keep in mind the **issue of a level playing field**. Cooperation with third countries like Norway and the UK in relation to restrictions on fisheries for shared stocks is essential in order for measures to be sufficient and effective. It could be considered that the EU has a larger chance to engage constructively with third countries to achieve effective measures linked to article 5, rather than a complete ban as foreseen in 4(6) or 4(7).

- Impact assessment

It is of concerns that an impact assessment was not made before the adoption of the proposal by the Commission and that no scientific assessments for example by ICES about the consequences of a deletion of the safeguard for fish stocks was requested.

Such an impact assessment should also consider the importance of maintaining a level playing field, especially regarding our relationship with third countries like Norway and the UK.

- Other safeguards

The Commission and certain stakeholders are of the opinion that other elements of the MAPs are sufficient to protect fish stocks, for example in Articles 5, 7 and 8 in the respective MAPs. Those articles include a broad range of remedial measures and safeguards that Member States can use, for instance, to stop fishing activities for a set time period or to increase oxygen in dead zones.

⁹ <https://www.su.se/stockholm-university-baltic-sea-centre/news/the-commission-wants-to-remove-the-5-rule-for-baltic-sea-fisheries-1.697370#:~:text=Paragraph%204.6%20and%20the%20%225,the%20collapse%20of%20fish%20stocks>

In this regard it is important to receive further explanations from the Commission on the links between the “5 % rule” (Articles 4(6) and 4(7) in the MAPs) and the other safeguards (Articles 5, 7 and 8 in the respective MAPs), especially in the light that these other safeguards only apply when the stock is already below Blim. It could be considered that the proposed deletion of the provisions therefore could go against the precautionary principle that is a fundamental pillar of EU legislation and the concept of sustainability preventing subsequent costs, both environmentally and economically.

- The impact on the TAC negotiations

The negotiations on TAC and quota for next year will start this fall. If the revision of the three MAPs is not finalised before then, a repetition of last year’s situation would be foreseen. Some Members underline that last year’s scientific advice by ICES on Central Baltic herring and Skagerrak sole made a reference to the “5 %-rule”, but did not in any way advise a closure of targeted fisheries. It should be remembered that all fishing opportunity agreements are **based on scientific advice from ICES**, regardless of whether this rule is removed or not.

Considerations for the work going forward

For this proposal to go forward, it is clear that more information and clarification on the implication of the proposal is important.

Stability, predictability and sustainability for our fishers are all very important aspects in order for their activity to be both environmentally and economically sustainable. It would therefore be of importance to consider a broader approach to this issue, including considering alternative options to achieve the same objectives as set out by the proposal.

These alternative options could include a broader revision of MAPs, or a wider revision of how fishing opportunities are decided, like the inclusion of multiannual quotas. Considering that the proposal only seeks to address problems that in certain circumstances might appear it would be worth considering options that would specifically address these circumstances instead of proposing a simple deletion.

It is worth noting that this piece of regulation has been proposed by the Commission after the decision by the Council to ignore the “5%” rule, leading to a breach of a regulation of the Parliament and the Council.

It will be for the PECH committee in the new mandate to consider the further explanations and feedback given from the Commission and all concerned stakeholders and in line with the Parliament’s rules of procedure to consider which procedure would be most appropriate to apply to this file.