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Our reference: 1617/PAC 24
Subject: Extending the footnotes in the 2017 TAC and Quota Regulation with the objective to solve by-catch problems in pelagic fisheries under the landing obligation

Dear Mr Aguiar Machado,

Since the introduction of the pelagic landing obligation on the 1st of January 2015 the pelagic fisheries have registered relatively small by-catches of (often demersal) non-target species. It has proven increasingly difficult, even impossible, to cover these by-catches by acquiring quota through international swaps. Some of the very minor by-catches in pelagic fisheries can be solved in the end-of-year technical exercises between Member States authorities and the European Commission, whereby small quantities of by-catches may be counted against other quota in the same area available to these Member States. For more substantial by-catches in pelagic fisheries, however, this end-of-the year approach is not suitable.

In order to avoid conflicts between the demersal sector and the pelagic sector, a framework for handling unwanted by-catches must be developed.

There are three possible solutions within the framework of the Common Fisheries Policy:

- 1) *Use of top-ups of the TAC for the species that are by-caught as described in Art. 16 (2) of Regulation (EU) 1380/2013.*

Although the Pelagic AC has recommended to seriously look into the option to handle unwanted by-catches in pelagic fisheries by the use of TAC top-ups, the regional groups dealing with the pelagic discard plans do not consider this a viable option for the pelagic landing obligation.

- 2) *Use of the so-called 'interspecies flexibility' as described in Art 15 (8) of Regulation (EU) 1380/2013.*

Member States have the discretionary authority to introduce for their fleet the possibility to count (by-)catches of species that are subject to the landing obligation and that are caught in excess of quotas of the stocks in question, or catches of species in respect of which the Member State has no quota, against the quota of the target species provided that they do not

exceed 9% of the quota of the target species. This provision shall only apply where the stock of the non-target species is within safe biological limits.

3) *Use of footnotes in the TAC and Quota Regulation.*

Footnotes are already in place for a number of stocks. The footnote provisions allow unwanted by-catches of a certain species to be counted against the quota of the targeted species. The level of by-catch that may be counted against the quota of the targeted species is based on average registered levels of by-catch in those fisheries.

The use of the interspecies flexibility has the disadvantage of a Member State deciding on its own to introduce this possibility for its fleet while another Member State could decide not to. This would create differences in treatment between pelagic fleets that are operating in the same fisheries, thereby undermining a level-playing field.

The advantage of using the footnote approach is that it would apply to all fleets in the same manner as other provisions in the TAC and Quota Regulation – including the existing footnotes. Moreover, footnotes already exist and it is merely a matter of editing, extending and/or adding certain footnotes. Thirdly, the footnote provisions are based on registered by-catches of the relevant species in the specific fisheries and the allowed by-catch levels are set in accordance with these registered levels, thereby not increasing fishing mortality. The interspecies flexibility on the other hand can be set at a level of up to 9%.

Proposal

The Pelagic AC recommends using option 3 (footnotes) to transitionally solve the problem of reporting and counting small by-catches in pelagic fisheries in a situation where the landing obligation is in place, thereby avoiding potential conflicts between fleet segments. The use of footnotes should be viewed as a temporary solution to the problem of by-catches in absence of an updated discard or management plan that would solve this problem in another manner.

Concretely, the Pelagic AC has edited the footnotes in the proposed TAC and Quota Regulation for 2017 allowing pelagic fishermen to cover minor by-catches through the target quota of their fisheries. These edits are listed in annex I hereunder.

Furthermore, the Pelagic AC considers it a crucial condition that these by-catches are reported in the logbooks in such a way that the European Commission (FIDES) and ICES can calculate the amount of by-catches in the various pelagic fisheries on a species-by-species basis to provide that the measure does not lead to an increase of the fishing mortality of the species in question and to ascertain that the allowed by-catch levels are set in accordance with the registered levels.

In case you have any questions regarding this recommendation please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink on a light grey rectangular background.

Verena Ohms
Executive Secretary Pelagic AC

Annex I: Pelagic AC proposal on footnotes in the TAC and Quota Regulation for 2017

Species:	Herring ⁽¹⁾ <i>Clupea harengus</i>	Zone:	Illa (HER/03A)
Denmark	(2) (4)	Analytical TAC	
Germany	(2) (4)	Article 7(2) of this Regulation applies	
Sweden	(2) (4)		
Union	(2) (4)		
Norway			
Faroe Islands	(3)		

TAC

- (1) Catches of herring taken in fisheries using nets with mesh sizes equal to or larger than 32 mm
- (2) Special condition: up to 50% of this amount may be fished in Union waters of IV (HER/*04-C.).
- (3) May only be fished in the Skagerrak (HER/*03AN.).
- (4) Without prejudice to the landing obligation catches of saithe, haddock, hake, mackerel and whiting may be counted against up to 2% of the quota (OTH/*03A.) provided that not more than 9% in total of this quota for herring is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Species:	Herring ⁽¹⁾ <i>Clupea harengus</i>	Zone:	Union and Norwegian waters of IV North of 53°30'N (HER/4AB.)
Denmark	(3)	Analytical TAC	
Germany	(3)	Article 7(2) of this Regulation applies	
France	(3)		
The Netherlands	(3)		
Sweden	(3)		
United Kingdom	(3)		
Union	(3)		
Norway	(2)		

TAC

- (1) Catches of herring taken in fisheries using nets with mesh sizes equal to or larger than 32 mm. Member States shall report separately their catches of herring in IVa (HER/04A.) and IVb (HER/04B.).
- (2) Catches taken within this quota are to be deducted from Norway's share of the TAC. Within the limit of this quota, no more than the quantity given below may be taken in Union waters of IVa and IVb (HER/*4AB-C.).
- (3) Without prejudice to the landing obligation catches of saithe, haddock, hake, mackerel and whiting may be counted against up to 2% of the quota (OTH/*4AB.) provided that not more than 9% in total of this quota for herring is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Special condition:

within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zone:

Norwegian waters south of 62°N
(HER/*04N-) ⁽¹⁾

Union

⁽¹⁾ Catches of herring taken in fisheries using nets with mesh sizes equal to or larger than 32 mm.

Species:	Herring <i>Clupea harengus</i>	Zone:	Union and international waters of I and II (HER/1/2-)
Belgium	(1) (5)	Analytical TAC	
Denmark	(1) (5)		
Germany	(1) (5)		
Spain	(1) (5)		
France	(1) (5)		
Ireland	(1) (5)		
The Netherlands	(1) (5)		
Poland	(1) (5)		
Portugal	(1) (5)		
Finland	(1) (5)		
Sweden	(1) (5)		
United Kingdom	(1) (5)		
Union	(1) (5)		
Faroe Islands	(2) (3)		
Norway	(2) (4)		

TAC Not established

- (1) When reporting catches to the Commission the quantities fished in each of the following areas shall also be reported: NEAFC Regulatory Area and Union waters.
- (2) May be fished in Union waters north of 62°N.
- (3) To be counted against the catch limits of the Faroe Islands.
- (4) To be counted against the catch limits of Norway.
- (5) Without prejudice to the landing obligation catches of saithe, haddock, hake, mackerel and whiting may be counted against up to 1% of the quota (OTH/*1/2-.) provided that not more than 9% in total of this quota for herring is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Special condition:

within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zones:

Norwegian waters south of 62°N and the fishery zone around Jan Mayen (HER/*2AJMN)

0

II, Vb north of 62°N (Faroes waters) (HER/*25B-F)

Belgium	(4)
Denmark	(4)
Germany	(4)
Spain	(4)
France	(4)
Ireland	(4)
The Netherlands	(4)
Poland	(4)
Portugal	(4)
Finland	(4)
Sweden	(4)
United Kingdom	(4)

Species:	Herring ⁽¹⁾ <i>Clupea harengus</i>	Zone:	IVc, VIId ⁽²⁾ (HER/4CXB7D)
Belgium	(3) (4)	Analytical TAC	
Denmark	(3) (4)	Article 7(2) of this Regulation applies	
Germany	(3) (4)		
France	(3) (4)		
The Netherlands	(3) (4)		
United Kingdom	(3) (4)		

Union

TAC

- (1) Exclusively for catches of herring taken in fisheries using nets with mesh sizes equal to or larger than 32 mm.
- (2) Except Blackwater stock: reference is to the herring stock in the maritime region of the Thames estuary within a zone delimited by a rhumb line running due to south from Landguard Point (51° 56' N, 1° 19,1' E) to latitude 51° 33' N and hence due west to a point on the coast of the United Kingdom.
- (3) Special condition: up to 50 % of this quota may be taken in IVb (HER/*04B.).
- (4) Without prejudice to the landing obligation catches of saithe, haddock, hake, mackerel and whiting may be counted against up to 2 % of the quota (OTH/*4CXB7D.) provided that not more than 9% in total of this quota for herring is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Species:	Herring <i>Clupea harengus</i>	Zone:	VIIg ⁽¹⁾ , VIIh ⁽¹⁾ , VIIj ⁽¹⁾ , VIIk ⁽¹⁾ , (HER/7G-K)
Germany	(2)	Analytical TAC	
France	(2)	Article 7(2) of this Regulation applies	
Ireland	(2)		
The Netherlands	(2)		
United Kingdom	(2)		
Union	(2)		

TAC

(1) This zone is increased by the area bounded:

- to the north by latitude 52° 30'N,
- to the south by latitude 52° 00'N,
- to the west by the coast of Ireland,
- to the east by the coast of the United Kingdom.

(2) Without prejudice to the landing obligation catches of haddock and whiting may be counted against up to 5 % of the quota (OTH/*HER/7G-K.) provided that not more than 9% in total of this quota for herring is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Species:	Horse mackerel and associated by-catches <i>Trachurus spp.</i>	Zone:	Union waters of IVb, IVc and VIId (JAX/4BC7D)
Belgium	(3)	Precautionary TAC	
Denmark	(3)		
Germany	(1) (3)		
Spain	(3)		
France	(1) (3)		
Ireland	(3)		
The Netherlands	(1) (3)		
Portugal	(3)		
Sweden	(3)		
United Kingdom	(1) (3)		
Union			
Norway	(2)		

TAC

- (1) Special condition: up to 5 % of this quota fished in division VIId may be accounted for as fished under the quota concerning the following zone: Union waters of IIa, IVa, VI, VIIa-c, VIIe-k, VIIIa, VIIIb, VIId and VIIIe; Union and international waters of Vb; international waters of XII and XIV (JAX/*2A-14).
- (2) May be fished in Union waters of IVa but may not be fished in Union waters of VIId (JAX/*04-C.).
- (3) Without prejudice to the landing obligation, catches of boarfish, mackerel, hake and whiting may be counted against up to 5% of the quota (OTH/*4BC7D.) provided that not more than 9% in total of this quota for horse mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Species:	Horse mackerel and associated by-catches <i>Trachurus spp.</i>	Zone:	Union waters of IIa, IVa; VI, VIIa-c, VIIe-k, VIIIa, VIIIb, VIIIc and VIIIe; Union and international waters of Vb; international waters of XII and XIV (JAX/2A-14)
Denmark	(1) (3)	Analytical TAC	
Germany	(1) (2) (3)		
Spain	(3) (5)		
France	(1) (2) (3) (5)		
Ireland	(1) (3)		
The Netherlands	(1) (2) (3)		
Portugal	(3) (5)		
Sweden	(1) (3)		
United Kingdom	(1) (2) (3)		
Union			
Faroe Islands	(4)		

TAC

- (1) Special condition: up to 5 % of this quota fished in Union waters of IIa or IVa before 30 June 2015 may be accounted for as fished under the quota concerning the zone of Union waters of IVb, IVc and VIId (JAX/*4BC7D).
- (2) Special condition: up to 5 % of this quota may be fished in VIId (JAX/*07D.). Under this special condition, and in accordance with footnote (3), by-catches of mackerel, hake, boarfish and whiting shall be reported separately under the following code: (OTH/*07D.)
- (3) Without prejudice to the landing obligation, catches of mackerel, hake, boarfish and whiting may be counted against up to 5% of the quota (OTH/*2A-14.) provided that not more than 9% in total of this quota for horse mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.
- (4) Limited to IVa, VIa (north of 56° 30' N only), VIIe, f, h.
- (5) Special condition: up to 50% of this quota may be fished in VIIIc (JAX/*08C2). Under this special condition, and in accordance with footnote (3), by-catches of boarfish and whiting shall be reported separately under the following code: (OTH/*08C2).

Species:	Norway pout and associated by-catches <i>Trisopterus esmarki</i>	Zone:	IIIa; Union waters of IIa and IV (NOP/2A3A4.)
Denmark	(1)	Analytical TAC	
Germany	(1) (2)	Article 3 of Regulation (EC) No 847/96 shall not apply	
The Netherlands	(1) (2)	Article 4 of Regulation (EC) No 847/96 shall not apply	
Union	(1) (3)		
Norway	(4)		
Faroe Islands	(5)		

TAC

- (1) Without prejudice to the landing obligation, catches of whiting, blue whiting, and greater silver smelt may be counted against up to 5 % of the quota (OTH/*2A3A4.) provided that not more than 9 % in total of this quota for Norway pout is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.
- (2) Quota may be fished in Union waters of ICES zones IIa, IIIa and IV only.
- (3) Union quota may only be fished from 1 January to 31 October 2016.
- (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.

Species:	Mackerel <i>Scomber scombrus</i>	Zone:	IIIa and IV; Union waters of IIa, IIIb, IIIc and Subdivisions 22-32 (MAC/2A34.)
Belgium	(1) (4)	Analytical TAC	
Denmark	(1) (4)	Article 7(2) of this Regulation applies	
Germany	(1) (4)		
France	(1) (4)		
The Netherlands	(1) (4)		
Sweden	(1) (2) (4)		
United Kingdom	(1) (4)		
Union	(1) (2) (4)		
Norway	(3)		

TAC Not relevant

- (1) Within the limits of the abovementioned quotas, no more than the quantities given below may also be taken in the two following zones:

Norwegian waters of IIa (MAC/*02AN-)

Faroese waters (MAC/*FRO1)

Belgium

Denmark

Germany

France

The Netherlands

Sweden

United Kingdom

Union

- (2) Special condition: including the following tonnage to be taken in Norwegian waters south of 62° N (MAC/*04N-):

When fishing under this special condition, by-catches of cod, haddock, pollack and whiting and saithe are to be counted against the quotas for these species.

- (3) To be deducted from Norway's share of the TAC (access quota). This amount includes the following Norwegian share in the North Sea TAC :

This quota may be fished in IVa only (MAC/*04A.), except for the following amount, in tonnes, which may be fished in IIIa (MAC/*03A.):

- (4) Without prejudice to the landing obligation catches of saithe, haddock, hake, herring and whiting may be counted against up to 2 % of the quota (OTH/*2A34.) provided that not more than 9% in total of this quota for mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Special condition: within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zones:

	IIIa	IIIa and IVbc	IVb	IVc	VI, international waters of IIa, from 1 January to 15 February 2017 and from 1 September to 31 December 2017
	(MAC/*03A.)	(MAC/*3A4BC)	(MAC/*04B.)	(MAC/*04C.)	(MAC/*2A6.)
Denmark					
France					
The Netherlands					
Sweden					
United Kingdom					
Norway					

Species:	Mackerel <i>Scomber scombrus</i>	Zone:	VI, VII, VIIIa, VIIIb, VIIIc and VIIIe; Union and international waters of Vb; international waters of IIa, XII and XIV (MAC/2CX14-)
Germany	(4)	Analytical TAC	
Spain	(4)		
Estonia	(4)		
France	(4)		
Ireland	(4)		
Latvia	(4)		
Lithuania	(4)		
The Netherlands	(4)		
Poland	(4)		
United Kingdom	(4)		
Union	(4)		
Norway	(1) (2)		
Faroe Islands	(3)		

TAC Not relevant

- (1) May be fished in IIa, VIa north of 56° 30' N, IVa, VIId, VIIe, VIIf and VIIh (MAC/*AX7H).
- (2) The following additional amount of access quota, in tonnes, may be fished by Norway North of 56°30' N and counted against its catch limit (MAC/*N5630):
- (3) This amount shall be deducted from the Faroe Islands' catch limit (access quota). It may be fished only in VIa north of 56° 30' N (MAC/*6AN56). However, from 1 January to 15 February and from 1 October to 31 December this quota may also be fished in IIa, IVa north of 59° (EU zone) (MAC/*24N59).
- (4) Without prejudice to the landing obligation catches of saithe, haddock, hake, herring and whiting may be counted against up to 2 % of the quota (OTH/*2CX14-) provided that not more than 9% in total of this quota for mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Special condition: within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zones and periods:

	Union waters of IIa; Union and Norwegian waters of IVa. During the periods from 1 January to 15 February 2017 and from 1 September to 31 December 2017	Norwegian waters of IIa	Faroese waters
	(MAC/*4A-EN)	(MAC/*2AN-)	(MAC/*FRO2)
Germany			
France			
Ireland			
The Netherlands			
United Kingdom			
Union			

Species:	Mackerel <i>Scomber scombrus</i>	Zone:	VIIIc, IX and X; Union waters of CECAF 34.1.1 (MAC/8C3411)
Spain	(1) (2)	Analytical TAC	
France	(1) (2)		
Portugal	(1) (2)		
Union			

TAC Not relevant

- (1) Special condition: quantities subject to exchanges with other Member States may be taken in VIIIa, VIIIb and VIIIc (MAC/*8ABD.). However, the quantities provided by Spain, Portugal or France for exchange purposes and to be taken in VIIIa, VIIIb and VIIIc shall not exceed 25 % of the quotas of the donor Member State.
- (2) Without prejudice to the landing obligation catches of saithe, haddock, hake, herring and whiting may be counted against up to 2 % of the quota (OTH/*8C3411-) provided that not more than 9% in total of this quota for mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.

Special condition: within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the following zone:

VIIIb (MAC/*08B.)

Spain
France
Portugal

Species:	Mackerel <i>Scomber scombrus</i>	Zone:	Norwegian waters of IIa and IVa (MAC/2A4A-N)
Denmark	(1)	Analytical TAC	
Union	(1)		

TAC Not relevant

- (1) Without prejudice to the landing obligation catches of saithe, haddock, hake, herring and whiting may be counted against up to 2 % of the quota (OTH/*2A4A-N.) provided that not more than 9% in total of this quota for mackerel is accounted for by these catches and by-catches of those species. This provision shall not apply where a Member State uses the flexibility provided in Article 15(8) of Regulation (EU) No 1380/2013.