



**ROYAL NORWEGIAN  
MINISTRY OF FOREIGN AFFAIRS**

The Royal Ministry of Foreign Affairs presents its compliments to the Delegation of the European Union and has the honour to refer to European Union Council Regulation 2021/92 of 28 January 2021 fixing for 2021 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.

As the coastal State, Norway notes with surprise and concern that the European Union (EU), in the said quota regulation, has allocated itself a total of 28 431 tons of cod to be fished in ICES area I and IIb, for practical purposes in the Fisheries Protection Zone around Svalbard (FPZ), and thereby not respecting Norway's regulation adopted on 18 December 2020, which allocated 17 885 tons of cod to EU vessels in the FPZ. The Norwegian regulation has been communicated to the European Commission in a note verbale of 23 December 2020 and further explained in a non-paper delivered 21 January 2021.

The European Union has no right under international law to establish fishing quotas in waters under Norwegian jurisdiction in contravention of Norwegian regulations. Any internal regulations of the EU cannot under international law exceed the relevant quotas accorded to EU vessels by Norway as the coastal State.

As between the parties to the United Nations Convention on the Law of the Sea concluded at Montego Bay on 10 December 1982 (hereinafter referred to as the Convention), the Convention governs the rights and jurisdiction of the coastal State and the rights and freedoms of other States, including in maritime areas around Svalbard. The European Union and all its member States are parties to the Convention. The developments that have occurred in the customary international law in the matter are also reflected in the relevant provisions of the Convention.

Delegation of the European Union to Norway  
OSLO

As the coastal State, Norway is entitled, in accordance with the Convention and customary international law, to exercise *inter alia* fisheries jurisdiction in a maritime area up to 200 nautical miles from the baselines from which the breadth of the territorial sea around Svalbard is measured. For this purpose, the Fisheries Protection Zone around Svalbard was established in 1977. Under international law, Norway is the sole State that has the powers to establish fishing quotas within the said zone.

As parties to the Convention, the European Union and all its member States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention and other rules of international law in so far as they are not incompatible with part V of the Convention. Norway expects other States and the European Union to comply with these laws and regulations, in accordance *inter alia* with the rules contained in Articles 58 and 62 of the Convention.

Norway has previously, on several occasions, expressed the expectation that all the member States of the European Community/Union will act in full compliance with their obligations under international law in the FPZ as well as in any other area under Norwegian jurisdiction. It has also expressed the expectation that they take the necessary steps to ensure compliance by their vessels with the conservation measures and other terms and conditions established in the laws and regulations enacted by Norway as a coastal State in accordance with international law. It is moreover recalled that, without prejudice to the responsibility of an international organization, a State member of such an organization may itself incur international responsibility for internationally wrongful acts committed by the organization, notably if it should seek to avoid complying with one of its own international obligations by taking advantage of the fact that the organization has competence in relation to the subject matter of that obligation, thereby prompting the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

The stock of Arctic cod is a shared fish stock between two coastal States, Norway and the Russian Federation. This fish stock has been managed by the Joint Norwegian-Russian Fisheries Commission since 1976. The two coastal States have consistently adopted a precautionary approach and acted on the basis of advice from the International Council for the Exploration of the Sea (ICES). At its 50<sup>th</sup> session in October 2020, a total

cod quota of 34 864 tons was set aside for fishing by non-coastal States in the FPZ.

As explained in the Norwegian non-paper delivered 21 January 2021, the arrangements for third party fisheries in the FPZ date back to the establishment of the Zone in 1977. Based on the actual fishing activities undertaken by third parties that had habitually fished in the FPZ area in the period 1967-1976, prior to the establishment of the Zone, Norway has, since the establishment of the Zone, unilaterally accorded a quota to such third parties. As a result, the EU was accorded a quota, which allowed for the continuation by Union vessels of the ongoing fishing activities from before the establishment of the FPZ.

The United Kingdom of Great Britain and Northern Ireland has withdrawn from the European Union. As a consequence, Norway will no longer take the United Kingdom's historical fishing activities into account when establishing the third party quota for the EU, and the EU will no longer benefit from fishing activities carried out by United Kingdom flagged vessels in the reference period prior to establishment of the FPZ.

In the ten year reference period (1967-76) prior to the establishment of the FPZ in 1977, vessels from EU member State caught on average 3,77% of the Total Allowable Catch (TAC), of which United Kingdom vessels' activity represented 45,57%.

The quota allocated to the EU by Norway for 2021 is established by taking the historical percentage of TAC caught by EU member States in the reference period and deducting the United Kingdom's historical share of this which leaves the EU 27 with 2,052% of TAC, which again equals the allocated 17 885 tons. Whatever internal allocation the EU may have applied over the years since 1977, that departed from the historic allocation formula, cannot be taken into account by Norway.

Since 1977 balanced exchange of quotas has gradually replaced continuation of historical fishing as a management principle. Norwegian management reflects the development in the law of the sea and modern resource management.

It is evident that any lack of consideration for the broader consequences of side-stepping and challenging coastal State rights, and the principles upon which Norway has allocated a quota to the EU, would have potential consequences for other third parties and would set a precedent that

seriously undermines the basis for sustainable management of the fishery resources in the area.

Norway appreciates its constructive cooperation with the EU on fisheries-related issues and notes that the EU in other circumstances and together with Norway is a strong defender of the law of the sea. Norway expects the EU as well as its member States to comply with their obligations under the Convention, and to respect the regulations adopted by Norway in accordance with the Convention.

Any fishing activity carried out by EU vessels in contravention of Norwegian regulations or exceeding quotas established by Norway is illegal. Norway notes that effective and consistent control and enforcement measures within the framework of international law are absolute prerequisites for a responsible resource management and necessary to combat illegal, unreported and unregulated fishing. Vessels fishing illegally in Norwegian waters will be arrested and prosecuted.

The Royal Ministry of Foreign Affairs avails itself of this opportunity to renew to the Delegation of the European Union the assurance of its highest consideration. *HS*

Oslo, 8 February 2021

