



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Fisheries

2012/0208(COD)

8.5.2013

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms

(COM(2012)0432 – C7-0211/2012 – 2012/0208(COD))

Committee on Fisheries

Rapporteur: Rareș-Lucian Niculescu

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms

(COM(2012)0432 – C7-0211/2012 – 2012/0208(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0432),
 - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0211/2012),
 - having regard to Articles 290 and 291 of the Treaty the Functioning of the European Union,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 14 November 2012¹,
 - having regard to its resolution of 22 November 2012 on the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 11, 15.01.2013, p. 86.

² Texts adopted, P7_TA(2012)0448.

Amendment 1

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) In order to **apply certain provisions of Regulation (EC) No 850/98**, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the following:

- the division of regions into geographical areas;
- **to amend** rules concerning the conditions for the use of certain mesh size combinations;
- **to adopt** detailed rules for obtaining the percentage of target species taken by more than one fishing vessel, in order to ensure that such percentages are respected by all the vessels involved in the fishing operation;
- **to adopt** rules concerning the technical descriptions and method of use of authorised devices that might be attached to the fishing net, and which do not obstruct or diminish the effective mesh opening of the net;
- conditions under which vessels exceeding eight meters length overall shall be permitted to use beam trawls within certain waters of the Union;
- measures designed to address unexpectedly small or large recruitments of juveniles, changes in migration patterns or any other changes in the conservation status of fish stocks, with immediate effect.

Amendment

(3) In order to **enable certain provisions of this Regulation to be updated efficiently to reflect technical and scientific progress**, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the following:

- the division of regions into geographical areas;
 - **the amendment of** rules concerning the conditions for the use of certain mesh size combinations;
 - **the adoption of** detailed rules for obtaining the percentage of target species taken by more than one fishing vessel, in order to ensure that such percentages are respected by all the vessels involved in the fishing operation;
 - **the adoption of** rules concerning the technical descriptions and method of use of authorised devices that might be attached to the fishing net, and which do not obstruct or diminish the effective mesh opening of the net;
 - conditions under which vessels exceeding eight meters length overall shall be permitted to use beam trawls within certain waters of the Union;
 - measures designed to address unexpectedly small or large recruitments of juveniles, changes in migration patterns or any other changes in the conservation status of fish stocks, with immediate effect.
- acts determining which gears are to be considered to have equivalent high selectivity for the fishing of Norway lobster in ICES sub-area VI.**

- acts excluding specific fisheries of a Member State, in ICES sub-areas VIII, IX and X, from the application of certain provisions for gillnets, entangling nets and trammel nets, with a very low level of shark by-catches and of discards.

Or. en

Justification

More detailed precisions for the delegation of powers are needed.

Amendment 2

Proposal for a regulation

Article 1 – point 1

Regulation (EC) N° 850/98

Article 2 – paragraph 3

Text proposed by the Commission

3. The regions referred to in paragraph 1 may be divided into geographical areas, in particular on the basis of the definitions referred to in paragraph 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning the division of regions **into geographical areas** for the purpose of identifying geographical areas where specific technical conservation measures apply.

Amendment

3. The regions referred to in paragraph 1 may be divided into geographical areas, in particular on the basis of the definitions referred to in paragraph 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning the division of regions for the purpose of identifying geographical areas where specific technical conservation measures apply.

Or. en

Justification

The proposed text is redundant.

Amendment 3

Proposal for a regulation

Article 1 – point 7a (new)

Regulation (EC) N° 850/98

Article 29d – paragraph 7

Text proposed by the Commission

Amendment

(7a) In Article 29d, paragraph 7 is replaced by the following:

"7. By way of derogation from paragraph 1, it shall be permitted to fish for Norway lobster within the area set out in that paragraph, provided that:

(a) the fishing gear used incorporates a sorting grid in accordance with points 2 to 5 of Annex XIVa, or a square-mesh panel as described in Annex XIVc, or is another gear with equivalent high selectivity;

(b) the fishing gear is constructed with a minimum mesh size of 80 millimetres;

(c) at least 30 % of the retained catch by weight is Norway lobster.

The Commission shall, on the basis of a favourable opinion by STECF, adopt delegated acts, determining which gears are to be considered to have equivalent high selectivity for the purpose of point (a)."

Or. en

Justification

The matters concerned do not deal with uniform conditions for the application of the regulation as required by Article 291 TFEU. Actually, they are exceptions and thereby amendments in the meaning of Article 290 TFEU.

Amendment 4

Proposal for a regulation

Article 1 – point 8

Regulation (EC) N° 850/98

Article 34 – paragraph 6

Text proposed by the Commission

6. **Technical** rules for measuring **engine power and** gear dimensions **shall be determined by means of an implementing act**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Amendment

6. **The Commission shall adopt implementing acts laying down technical** rules for measuring gear dimensions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Or. en

Justification

Articles 39, 40 and 41 of the 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 already provide a framework for the monitoring, certification and verification of engine power of fishing vessels.

Amendment 5

Proposal for a regulation

Article 1 – point 8a (new)

Regulation (EC) N° 850/98

Article 34b – paragraph 11

Text proposed by the Commission

Amendment

(8a) In Article 34b, paragraph 11 is replaced by the following:

"11. After consulting STECF, the Commission shall be empowered to adopt delegated acts excluding specific fisheries of a Member State, in ICES sub-areas VIII, IX and X, from the application of paragraphs 1 to 9, where information provided by Member States shows that those fisheries result in a very low level of shark by-catches and of discards."

Justification

The matters concerned do not deal with uniform conditions for the application of the regulation as required by Article 291 TFEU. Actually, they are exceptions and thereby amendments in the meaning of Article 290 TFEU.

Amendment 6**Proposal for a regulation****Article 11 – point 11**

Regulation (EC) No 850/1998

Article 48 a (new) – paragraph 2

Text proposed by the Commission

2. The **delegation of powers** referred to in Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) shall be conferred for **an indeterminate** period of **time**.

Amendment

2. The **power to adopt delegated acts** referred to in Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6), **29d(7), 34b(11)** and 45(1) shall be conferred **on the Commission** for a period of **three years** from ...*. **The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**

*** OJ: please insert the date of the entry into force of this Regulation.**

Or. enen

Justification

It seems more appropriate to limit the delegation in time and to oblige the Commission to report on its exercise in order to have a regular evaluation and questioning of the use of the delegation.

Amendment 7

Proposal for a regulation

Article 11 – point 11

Regulation (EC) No 850/1998

Article 48 a (new) – paragraph 3

Text proposed by the Commission

3. The delegation of powers referred to in Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) may be revoked at any time by the European Parliament or by the Council. A decision *of revocation* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of powers referred to in Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6), **29d(7), 34b(11)** and 45(1) may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 8

Proposal for a regulation

Article 11 – point 11

Regulation (EC) No 850/1998

Article 48 a (new) – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6), **29d(7), 34b(11)** and 45(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two** months at the initiative of the European Parliament or **of** the Council.

Or. en

EXPLANATORY STATEMENT

The general context

The Treaty of Lisbon has introduced a new hierarchy of norms comprising three levels. At the first level are the legislative acts which are adopted by the legislators in accordance with the ordinary legislative procedure, where the European Parliament and the Council decide as equal co-legislators (see Article 294 of the Treaty on the Functioning of the European Union - TFEU), or in accordance with special legislative procedures. Furthermore, the legislator may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act (so-called delegated acts, defined in Article 290 (1) of the TFEU), which form the second level of norms. Legally binding Union acts may also confer implementing powers on the Commission where uniform conditions for implementing these Union acts are needed. On that basis the Commission adopts so-called implementing acts (see Article 291 of the TFEU), constituting the third level.

The choice of which type of act to use is not always clear cut. Delegated acts and implementing acts, compared to legislative acts, have the advantage of providing the possibility to react swiftly to a new situation. Whereas the ordinary legislative procedure and the use of delegated acts guarantee the participation of Parliament on an equal footing with the Council, the use of implementing acts entails the de facto exclusion of Parliament, since its right of scrutiny does not oblige the Commission to follow Parliament's position.

The Commission proposal

In the context of the alignment of Regulation (EC) No 850/98 to the new rules of the TFEU, the Commission has prepared a draft proposal classifying the powers currently conferred to the Commission by that Regulation into measures of delegated nature and measures of implementing nature. In general, the changes proposed concern only the types of acts to be adopted and do not modify the content of the measures.

The Commission proposes to be empowered to adopt delegated acts concerning the division of regions into geographical areas, the rules for the use of mesh size combinations, the rules for obtaining the percentage of target species taken by more than one fishing vessel in order to ensure that such catch compositions are respected by all the vessels involved in the fishing operation, the rules concerning the technical descriptions and method of use of authorised devices that might be attached to the fishing net, and which do not obstruct or diminish the effective mesh opening of the net, the conditions under which vessels exceeding eight meters length overall shall be permitted to use beam trawls and the measures designed to address unexpectedly small or large recruitments of juveniles, changes in migration patterns or any other changes in the conservation status of fish stocks, with immediate effect.

The Commission proposes to confer implementing powers to the Commission for the technical rules for measuring mesh sizes, the square-meshed netting and twine thickness, the technical rules related to the construction of netting materials, the listing of devices that may obstruct or otherwise diminish the effective mesh opening in a fishing net, the transmission of lists of vessels to which a special fishing permit to use beam trawls has been issued, the

technical rules related to measuring engine power and gear dimensions, the obligation of Member States to ensure that levels of fishing effort are not exceeded in certain areas of ICES Division IXa, and the temporary measures where the conservation of stocks of marine organisms calls for immediate action.

On 6 February 2013 the EP adopted an Annex to its Resolution on the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms¹. In this Annex, The European Parliament declared that the provisions of this Regulation regarding implementing acts were the result of a delicate compromise. In order to achieve a first reading agreement before the expiry of Regulation (EC) No 850/98 by the end of 2012, the European Parliament accepted the possibility of using implementing acts in certain specific cases in Regulation (EC) No 850/98. The European Parliament stressed, however, that those provisions are not to be taken or used as a precedent in any regulation adopted in accordance with the ordinary legislative procedure, in particular the Commission proposal for a regulation amending Council Regulation (EC) No 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.

The rapporteur's view

The rapporteur is globally satisfied with the choices made by the Commission where it proposes changes. Nevertheless, in opinion of the rapporteur some matters proposed as implementing acts do not deal with uniform conditions for the application of the regulation as required by Article 291 TFEU. Actually, they are exceptions and thereby amendments in the meaning of Article 290 TFEU, and, in consequence, they should qualify as delegated acts.

On the other hand, the rapporteur considers that Articles 39, 40 and 41 of the 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 already provide a framework for the monitoring, certification and verification of engine power of fishing vessels and thereby, this matters should not be considered as implementing acts.

In addition, the rapporteur is of the opinion that where delegated acts are proposed, the delegation should be limited in time in order to allow for a regular evaluation of its use.

¹ P7_TA(2012)0448 and P7_TA(2013)0044