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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks calls for the performance of the management measures to be evaluated in the third year of implementation of the plan. The Scientific, Technical and Economic Committee for Fisheries (STECF) evaluated the plan in 2011. The STECF report stated that the cod plan has not achieved its objectives and that they are unlikely to be achieved by 2015. Furthermore, the report revealed that there are flaws in the design of the Regulation and problems with its implementation. In the light of this advice and of the opinions received from RACs and the Member States, the Commission is proposing an amendment to the Regulation. The proposal for the amendment of the Regulation does not cover all the problems identified since this amendment is intended as an interim solution pending the development and implementation of a mixed-fishery plan for North Sea fisheries as anticipated in the reform. Mixed-fishery plans represent a novel approach and the scientific tools required to develop, evaluate and assess the impact of such plans are not yet fully developed. At present, it is anticipated that these tools will become available later this year. This will then permit the start of the development and impact assessment process, through a series of meetings involving scientists and stakeholders during 2013. Given that mixed-fishery plans will involve trade-offs between fishing opportunities for different stocks caught in the same fisheries, it is likely that further consultation will be required to determine the final configuration of a North Sea plan. This means that it will not be possible to table a North Sea mixed fishery plan before 2014. The development of mixed-fishery plans for the other areas where there are cod stocks covered by the current cod plan will take longer, thus reinforcing the need for an amendment of the current cod plan which will address the most pressing needs as an interim solution.

The main considerations justifying this amendment are the following:

- The need to limit the scope in order to avoid increasing the effort by using different calculation methods

By applying different methodologies for calculating fishing effort when setting national baselines and when calculating annual effort usage, some Member States have benefitted from higher levels of fishing effort than the plan is meant to allow.

The amendment clarifies that whilst different calculation methods are available, Member States must use the same method to calculate their annual effort usage as the method they applied when setting national effort baselines.

The proposed amendment is, therefore, necessary to ensure that the plan works as intended. This will lead to an improved management of the cod stocks and their long-term sustainability.

- The need to introduce flexibility

The TAC setting rules of the plan require estimates of certain parameters describing the state of the stock, in particular estimates of fishing mortality rates and stock biomass. In some geographical areas there is insufficient information to apply those rules, so the plan foresees

automatic reductions of 25% in the TAC and effort in such circumstances. What was intended to be a rule to be applied in exceptional circumstances has proved to have become the norm in certain areas, which would lead within a few years to the effective closure not just of the cod fisheries but also of the other fisheries using the same gears in these areas. In some cases this is not an appropriate response to the scientific advice. It is therefore important to modify the rule about what to do in circumstances where the normal harvest rule cannot be applied, allowing more flexibility to reflect the scientific advice on a case by case basis.

Additionally, Member States and stakeholders have expressed serious concerns about further effort reductions and their social and economic impacts on the industry.

The amendment proposes a procedure for TAC and effort setting in the absence of the necessary information to apply the normal harvest rule. It proposes to take a case-by-case, and therefore a more flexible, approach though remaining firmly based on available scientific advice. This will ensure the possibility to pursue the fisheries whilst maintaining a precautionary approach.

The amendment also proposes to allow Council to decide each year whether or not to apply further annual fishing effort reductions, once the fishing-effort baseline has been reduced for four consecutive years. This aims to address concerns on the on-going nature of effort reductions in light of its social and economic impact on industry.

- The need to clarify and to simplify the procedure for applying Articles 11 and 13.

The procedure for excluding from the fishing-effort regime those fishing activities that catch insignificant quantities of cod has proved to be extremely cumbersome, creating a considerable administrative burden and requiring constant recalculations of the total allocated effort in order to avoid an increase in fishing effort by the vessels that remain included in the effort regime. The amendment seeks to simplify the procedure, first by fixing the final date for the submission of any request to amend the effort baseline and secondly by making successful requests generally applicable to all vessels satisfying the same criteria without requiring Member States to submit separate requests. Some fleets that are excluded would not qualify for exclusion in accordance with proposed amendment therefore transitional measures are introduced.

A further simplification is proposed, drawing from the enhanced accountability possible through the use of fully documented fisheries, where all catches are counted against quota. The proposal is to exempt vessels participating in fully documented fisheries trials from the effort regime. The STECF has assessed this as an acceptable management option.

The French version of Article 13(2)(b) reads differently from other languages, causing different implementation of the regulation. To ensure uniform implementation of this regulation, this provision should be clarified and amended. The proposed version corresponds to the French version, which is less restrictive in terms of implementation. Only vessels that do not target cod and that comply with the 5% catch composition rule throughout the management period should be eligible for this derogation.

-The need to reduce cod discards

One of the main concerns with the current regulation is that TACs have not constrained cod catches. This has resulted in a considerable proportion of over-quota catches being discarded. In some fisheries, Member State cod-avoidance and discard-reduction measures have been

partly successful in addressing this problem. But there is evidence of considerable levels of discards in some fisheries where the Member States concerned have not acted, even if action was suggested by the plan.

In the light of the Commission's proposals to eliminate discards under a reformed CFP, and the large support for this expressed both by Member States and many stakeholders, there is a need to ensure that all EU legislation supports discards elimination rather than de facto allowing it.

The amendment proposes to strengthen the obligation on Member State to take action where data confirms high level of discards in certain fisheries.

- The need to specify the level of required monitoring and control

The derogations from the plan provided for by Articles 11 and 13 represent a risk if not properly implemented. Poor implementation could undermine the success of the plan. STECF assessed the implementation of these derogations and pointed out the need to strengthen the monitoring, and control as well as the requirement for full documentation as basic justification for the derogation.

The proposal addresses this risk by requiring Member States to assign a 'very high risk' level, as described in the control framework of the CFP, to those vessels benefiting from the derogations. The proposal also requires Member States to include adequate measures in their national control action programmes to ensure compliance with the required conditions. These modifications specify existing requirements and are applicable only if Member States use the derogation.

- The need to align with the Treaty on the Functioning of the European Union

The cod plan pre-dates the entry into force of the Lisbon Treaty. Given its continued application until it is replaced by a new mixed-fisheries plan, its procedures need to be brought in line with the decision-making provisions applicable since the entry into force of the Treaty on the Functioning of the EU. The proposed amendment aligns the plan with the new comitology procedures.

Accordingly, a draft proposal for amending Regulation (EC) No 1342/2008 has been prepared.

The Commission is asked to adopt this proposal as soon as possible, and to forward it to the Council and the European Parliament.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The changes introduced by the amendment are essentially those deemed necessary to implement the plan as originally intended. The changes will reduce the administrative burden for the Member States, the Commission and the scientific bodies charged with providing appropriate advice.

The proposal has been drafted after consultations with Member States and stakeholders. These consultations are summarised in the table below:

STECF/ICES	Evaluation of the plan (open to stakeholders) Endorsed by the plenary	June 2011 July 2011
Commissions	Meeting with stakeholders on results of the evaluation and possible option for Impact Assessment	October 2011
Council	Member States strongly request to freeze the fishing effort and exclude vessels involved in fully documented fishery project from effort regime	December 2011
Commission	Meeting with stakeholders on possible improvements of implementation of the cod plan	March 2012
STECF plenary	Assessment of the preliminary options	April 2012
Bilateral meetings with Member States	Attempt identify the specific problems of Member States	May/June 2012
STECF effort working group	Review of the functioning of the effort regime	June 11-15 2012
STECF working group on multiannual plan (with stakeholder participation)	Assessed modified options and advice on what would be needed to address the shortcomings indicated in the evaluation report to improve the performance of the plan.	18-22 June 2012
COM workshop on fishing effort management	General	July 5 2012

3. LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

The main legal action is as far as possible to improve and clarify the provisions of the Regulation (EC) No 1342/2008 that were identified in the evaluation as problematic, in particular:

- Changes to Article 4 aims at closing the unintended possibility for Member States to deploy higher levels of effort than the plan was meant to allow simply by changing the methods used for the calculation of effort when establishing the baselines and when calculating usage.
- In Article 9 a procedure for TAC setting in the absence of the necessary information to apply Article 7 or 8. Instead of automatic reductions of 25% it is proposed to take

a case-by-case, and therefore a more flexible, approach though remaining firmly based on available scientific advice.

- The former Article 11 is split into Article 11, Article 11a and 11b. Instead of exempting groups of vessels specified by each Member State, exemptions are now based on criteria that would be generally applicable for any vessels that meet them, regardless of the Member State to which they belong. The amended Article also avoids the need for constant adjustments of the baseline by Council.
- Transitional measures will ensure that vessels groups already excluded will be subject to the criteria in force at the time of exclusion.
- A new Article 11c is introduced. Vessels involved in the fully documented fishery trials, where all catches are counted against quota, are exempted from fishing effort regime.
- In Article 12(4) the changes are made on the same grounds as for Article 9.
- New paragraph 6 is introduced in Article 12. This paragraph foresees the possibility for the Council to decide not to apply further fishing effort reductions, once the fishing-effort ceiling has been reduced for four consecutive years.
- In Article 13 a rewording is made in order to remove differences in interpretation between language versions. It is now made clear that the condition that cod catch are less than 5 % of the total refers to the catch composition over the management period, not per trip.
- In Article 14 the Member State obligation to address the discard issue is strengthened since it is not the case under the current ruling, and level of control and monitoring is specified according to risk based management.
- Changes to Article 32 bring the Committee procedure in to line with the rules of the Treaty on the Functioning of the European Union and regulation (EU) No 182/2011.

- Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

- Subsidiarity principle

The proposal falls under the exclusive competence of the European Union.

- Proportionality principle

The proposal amends measures which already exist in Council Regulation (EC) No 1342/2008; accordingly, no concern with regard to the principle of proportionality arises.

- Choice of instrument

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

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amending Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The scientific evaluation of the performance of Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks² carried out by the Scientific, Technical and Economic Committee for Fisheries (STECF) has shown a number of problems with the application of that Regulation.
- (2) Member States have used different methodologies to calculate effort during the reference years and to calculate reported effort consumption within the plan. This has allowed a higher level of deployed effort than intended by the plan, which should therefore be rectified.
- (3) The lack of analytical assessments in some geographical areas precludes the application of the harvest control rules, resulting in an automatic 25% annual reduction of TAC and effort. Since the implementation of the plan, fishing-effort allocations for the areas concerned have been reduced significantly. The scientific evaluation carried out by the STECF suggests that in some cases it would be more appropriate to use metrics other than fishing mortality for setting the TAC, rather than automatic TAC and effort reductions.
- (4) The plan foresees scope to exclude vessels whose activities do not contribute significantly to cod mortality. To avoid that the effort associated with those activities

¹ OJ C , , p. .

² OJ L 348, 24.12.2008, p. 20.

is redirected to cod-fishing activity, the baseline effort has to be decreased. To avoid the administrative burden of constant recalculations of the baseline effort each time it is decided to exclude certain activities, it is desirable to establish clear criteria for exclusion, so that the baseline effort levels can be fixed definitively.

- (5) In order to facilitate more selective fishing activities in the fully documented fisheries where all catches are counted against quota, it is appropriate to exempt the vessels, when participating in those trials, from the fishing effort regime.
- (6) Allocations of the maximum allowable fishing effort have been significantly reduced for the main cod catching gears since the entry into force of the plan. This may have a significant economic and social impact on the fleet segments that use the same gears but which fish principally for species other than cod. To address those social and economic issues a mechanism to suspend further fishing effort adjustments should be introduced.
- (7) As a certain language version of Article 13(2)(b) reads differently from the other versions, it is necessary to amend the text of that provision in order to ensure its uniform application.
- (8) Given the high levels of cod discards that have been observed during the period of implementation of the plan, it is necessary that Member States take appropriate action to minimise discards, *inter alia* by allocating their fishing opportunities amongst vessels in such a way as to match quotas to expected catches to the greatest degree possible.
- (9) The derogations from the plan provided for by Articles 11 and 13 represent a risk for the success of the plan if they are not properly implemented. An assessment of the implementation of those derogations revealed the need to strengthen the monitoring, control and full documentation requirements which justify them. Considering that Union fisheries control framework is risk based, a specific "very high level" of risk should be assigned to activities under derogations.
- (10) 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 policy³ repealed a number of Articles of Regulation (EC) No 1342/2008 that referred to Annexes II and III. Since there are no other references to Annexes II and III in Regulation (EC) No 1342/2008, those Annexes should be deleted.
- (11) Regulation (EC) No 1342/2008 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1342/2008 is amended as follows:

- (1) Article 4 is replaced by the following:

³ OJ L 343, 22.12.2009, p. 1

‘Article 4

Calculation of fishing effort

1. For the purposes of this Regulation, the fishing effort deployed by a group of vessels shall be calculated as the sum of the products of capacity-values in kW for each vessel and the number of days each vessel has been present within an area set out in Annex I. A day present within an area shall be any continuous period of 24 hours or part thereof during which a vessel is present within the area and absent from port.

2. When calculating a day present within an area Member States shall use the same method used to establish the effort baseline referred to in Article 12(2)(a).’

(2) Article 9 is replaced by the following:

‘Article 9

Special procedure for setting TACs

1. Where there is insufficient information to set the TACs in accordance with Article 7, the TACs for cod stocks in the Kattegat, the west of Scotland and the Irish Sea shall be set at a level indicated by scientific advice. However, if the level indicated by scientific advice is more than 20% greater than the TACs in the previous year, they shall be set at a level 20% greater than the TACs in the previous year, or if the level indicated by scientific advice is more than 25% less than the TACs in the previous year they shall be set at a level 25% less than the TACs in the previous year.

2. Where there is insufficient information to set the TACs in accordance with paragraph 1, the TACs for cod stocks in the Kattegat, the west of Scotland and the Irish Sea shall be set at a level corresponding to:

(a) a 25% reduction compared to the TAC in the previous year,

or, if scientific advice so recommends,

(b) a reduction not exceeding 25%, compared to the TAC in the previous year, together with other appropriate measures.

3. Where there is insufficient information to set the TACs in accordance with Article 8, the TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel shall be set by applying mutatis mutandis paragraphs 1 and 2 of this Article, unless consultations with Norway result in agreement on a different level of the TAC.’

(3) In Article 11, paragraphs 2 and 3 are deleted

(4) The following Articles 11a, 11b, 11c and 11d are inserted:

Article 11a

Exclusion of fishing effort deployed in certain areas, depth or by certain gears

1. Fishing effort deployed by a vessel during a trip may be excluded by the Member States when counting the deployed effort against the maximum allowable fishing effort if:

(a) the entire fishing activity of that trip by the vessel concerned is carried out outside cod-distribution areas as listed in accordance with paragraph 2

or

(b) the entire fishing activity of that trip by the vessel concerned is carried out at a depth greater than 300 m;

or

(c) during that trip the fishing vessel concerned has only one regulated gear on board and that gear is listed in accordance with paragraph 2.

2. Based on the information provided by Member States pursuant to paragraph 3, and in accordance with scientific advice, the Council shall establish a list of areas outside cod-distribution and a list of gears the technical attributes of which result in cod catches of less than 1,5 % of the total catches measured by weight.

3. Member States shall provide appropriate information to allow the Commission to assess whether an area or a gear shall be on the list of areas and the list of gears referred to in paragraph 2.

4. Detailed rules concerning the format and procedure for the transmission to the Commission of the information referred to in paragraph 3 may be adopted by means of implementing acts in accordance with the procedure referred to in Article 32.'

Article 11b

Adjustment of the baseline for the calculation of the maximum allowable fishing effort

1. Fishing effort referred to in Article 11a(1) that contributed to the establishment of the baseline referred to in Article 12(2)(a) shall be deducted from the baseline pursuant to this Article.

2. Requests for the adjustment of the baseline referred to in paragraph 1 shall be submitted by Member States to the Commission by [within one year from adoption of this amendment - will be filled with concrete date].

3 The adjusted baseline shall be used to recalculate the maximum allowable fishing effort level for the effort group concerned by applying the annual percentage adjustments applied since the entry into force of the plan.

4. The exclusion of fishing effort referred to in Article 11a may be applied to the relevant effort group only after the maximum allowable fishing effort has been recalculated in accordance with this Article.

5. Detailed rules concerning the format and procedure for the transmission to the Commission of the requests referred to in paragraph 2 may be adopted by means of implementing acts in accordance with the procedure referred to in Article 32.'

'Article 11c

Exclusion of vessels participating in trials of a fully documented fishery

1. Fishing effort deployed by a vessel when participating in trials of a fully documented fishery whereby all cod catches including discards are counted against the quota may be excluded by the Member States from the fishing effort regime.

2. When paragraph 1 is applied, Member States shall adjust the maximum allowable fishing effort set pursuant to Article 12(1) for the effort group concerned by deducting an amount of effort equivalent to the amount of effort deployed by the participating vessel in the year before its exclusion from the fishing effort regime.

3. Member States shall notify to the Commission any adjustment of the maximum allowable fishing effort made pursuant to paragraph 2. The notification shall include details of the vessels excluded and the amount of fishing effort deducted both at aggregated and at vessel level.

4. Transfers of cod quota to and from the vessels excluded from the fishing-effort regime in accordance with paragraph 1 shall be prohibited.

5. Detailed rules concerning the format and procedure for the notification referred to in paragraph 3 may be adopted by the Commission by way of implementing acts in accordance with the procedure referred to in Article 32.'

'Article 11d

Transitional measures on exclusions

Exclusions from the fishing effort regime that were already in force prior to [__ - *will be filled with concrete date*] shall continue to apply for as long as the conditions under which those exclusions were granted remain fulfilled. Member States shall provide annually to the Commission any relevant information enabling it to establish that those conditions remain fulfilled.'

(5) Article 12 is amended as follows:

(a) Paragraph 4 is replaced by the following:

'4. For aggregated effort groups where the percentage cumulative catch calculated according to paragraph 3(d) is equal to or exceeds 20%, annual adjustments shall apply. The maximum allowable fishing effort of the groups concerned shall be calculated as follows:

- (a) where Articles 7 or 8 apply, by applying to the baseline the same percentage adjustment as that set out in those Articles for fishing mortality;
- (b) where Article 9(1) applies, by applying the same percentage adjustment in fishing effort as the adjustment of the TAC compared with the previous year;
- (c) where Article 9(2) applies, by applying a reduction not exceeding 25 %, compared to the maximum allowable fishing-effort for the effort groups concerned in the previous year, together with other appropriate measures.

(b) The following paragraph 6 is added:

‘By way of derogation from paragraph 4, the Council may, where the maximum allowable fishing effort has been reduced for four consecutive years, decide not to apply an annual adjustment to the maximum allowable fishing effort in the subsequent year or in subsequent years.’

(6) In Article 13(2) point (b) is replaced by the following:

‘(b) results in a catch composition, including discards, of less than 5 % cod over the management period’

(7) In Article 14 the following paragraphs 5 and 6 are added:

5. Where the scientific data indicate that more than 10% of the total cod catches for a particular effort group consist of discards, or where the quota allocation does not correspond to the expected catches and is likely to result in cod discards, the Member State concerned shall take immediate measures to minimise cod discards.

6. Member States shall establish and include in their national control action programmes, as provided for in Article 46 of Regulation Council (EC) No 1224/2009⁴, systems to ensure compliance with the conditions referred to in Articles 11a, 11b, 11c and 13. Member States shall assign a ‘very high risk’ level to vessels operating pursuant to those Articles in their risk-based management as referred to in Article 5 of Regulation 1224/2009.

(8) Article 32 is replaced by the following:

‘Article 32

Committee procedure

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established by Article 30 of Regulation (EC) No 2371/2002. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’

(9) Annexes II and III are deleted.

⁴ OJ L 343, 22.12.2009, p. 1

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President