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REPORT

on the proposal for a Council regulation amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean
(COM(2004)0058 – C5-0074/2004 – 2004/0020(CNS))

Committee on Fisheries

Rapporteur: Sérgio Ribeiro

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean
(COM(2004)0058 – C5-0074/2004 – 2004/0020(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2004)0058)¹,
 - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0074/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0037/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 1 A (new)

(1a) Article 2 of Regulation (EC) No 2371/2002 also stipulates that the principles of good governance by which the Common Fisheries Policy should be guided include a decision-making process based on sound scientific advice and broad involvement of stakeholders at all

¹ Not yet published in OJ.

stages. This implies that the Regional Advisory Councils shall be consulted on the management of fisheries in those areas where Community measures addressing conservation and management are proposed.

Justification

It would be inappropriate not to refer to the procedural requirements of the CFP Framework Regulation (EC) 2371/2002.

Amendment 2
RECITAL 3 A (new)

(3a) The protection of these areas from the adverse impact of fishing is entirely consistent with, and required under, Articles 5 and 6 of the 1995 UN Fish Stocks Agreement, in particular the provisions requiring the application of the precautionary approach and the protection of biodiversity in the marine environment.

Amendment 3
RECITAL 4

(4) According to scientific evidence, recovery from damage to these habitats produced by trawl gear towed through the bottom is either impossible or very difficult and slow. It is therefore appropriate to prohibit the use of **bottom trawls and similar** gear in areas where these habitats are still in a favourable conservation status.

(4) According to scientific evidence, recovery from damage to these habitats produced by trawl gear towed through the bottom is either impossible or very difficult and slow. It is therefore appropriate to prohibit the use of **fishing** gear **likely to cause real damage to coral reefs** in areas where these habitats are still in a favourable conservation status.

Justification

It should be made clear that the Commission's measures apply to fishing gear which damages coral reefs.

Amendment 4

ARTICLE 1

Article 30, paragraph 4 a (new) (Regulation (EC) No 850/98)

4a. The Regional Advisory Councils shall be consulted on the implementation of paragraph 4.

Justification

It would be inappropriate not to refer to the Framework Regulation for the new CFP, Council Regulation (EC) No 2371/2002.

Amendment 5

ARTICLE 1

Article 30, paragraph 4 b (new) (Regulation (EC) No 850/98)

4b. The ban laid down in paragraph 4 and the definition of coordinates contained in subparagraphs (a) and (b) thereof shall be reviewed, in the light of new scientific information available, two years after its entry into force.

Justification

The Commission has based its proposal on a series of rather inconclusive scientific reports. These studies could be completed in two years' time, and it would then be possible to define the areas more precisely and assess what progress has been made in protecting the sea bottom.

EXPLANATORY STATEMENT

Subject

The aim of this Commission proposal is to protect the Atlantic deep-water coral reefs from trawling in certain areas of the Atlantic Ocean, those around the Azores, Madeira and the Canary Islands. In order to achieve this objective, the measure proposed by the Commission is to include a ban on the use of trawls in the areas concerned by way of an amendment to the existing technical measures regulation (Regulation (EC) No 850/98).

As stated in Article 2(1) of Regulation (EC) No 2371/2002, ‘the Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions’, an objective which the rapporteur shares and which entails a rigorous assessment of the economic, environmental and social impact of proposed legislation under the CFP. Nevertheless, the principle of protecting the environment cannot be accepted absolutely and unconditionally on the basis of an unrestricted, unbalanced and disproportionate precautionary principle which would eliminate or drastically restrict the possibility of exploiting resources through fishing. With regard to the environment, every effort must be made to minimise the impact of fishing activities on marine ecosystems, without forgetting other activities which also have an impact such as maritime transport and pollution. In economic and social terms, and with regard to the areas concerned by the proposed regulation, it must be borne in mind that these are highly sensitive outermost regions with a fragile economy where fishing and traditional fishing communities can account for more than 10% of the active population, as in the Azores.

Although your rapporteur fully supports the aim of protecting the deep-water coral reefs, bearing in mind that these are threatened and vulnerable habitats which need special protection (as is recognised by the OSPAR Convention and UNICPOLOS) in the areas concerned, he is not convinced that the best way to guarantee it is by amending the technical measures regulation, which would be a last resort.

It should be stressed that, with their national jurisdictions over their exclusive economic zones (EEZs), the Member States have succeeded in managing and conserving resources in their waters, bearing in mind that, if only because of their proximity, it is the Member States that are most aware of the state of stocks in their waters and their specific ecosystems, which are sometimes ‘under attack’ when the opening of access for fleets from other countries increases the pressure on fishery resources. This is particularly true of Portugal and Spain, whose access derogations flowing from the accession treaties came to an end following the reform of the CFP.

As the Commission states in its explanatory memorandum, ‘the Community fishing zone around the Azores, Madeira and Canary Islands contains several known or potential deep water habitats that have so far been preserved from trawling due to the special access regime defined in Council Regulation (EC) No 2027/95. As this regime will cease to apply in 2004, it is now important [to] guarantee a continuity of the protection of these areas as part of Community legislation’.

The rapporteur wishes to highlight that until recently, the deep-water habitats in question -

coral aggregations, thermal vents and carbonate mounds - have been protected through national bans on bottom trawling in Spain and Portugal, as well as through restrictions on access to the waters concerned from other Member States. Restrictions of access have been based on the exclusive economic zones granted to these countries.

For this reason, the rapporteur is concerned at the attribution of exclusive competence for the 'conservation of marine biological resources' under Article 12 of the 'constitutional treaty' now in the process of being ratified, since it will tend to marginalise the competence of national and regional authorities which have in the past succeeded in preserving resources which are now under threat and whose protection is sought.

According to Article 9 of the Framework Regulation (EC) No 2371/2002, Member States may take non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effect of fishing on the conservation of the marine eco-systems within the zones where they have exclusive fishing rights, provided that the Community has not adopted measures addressing conservation and management specifically for this area. This provision should not be interpreted so that the Community does not respect the national provisions or the provisions relating to the national exclusive zones, while adopting technical conservation measures relating to these areas. For the rapporteur, the fundamental question underlying the proposal seems to concern the relationship between the competences of the Community and those of the Member States under the CFP. As regards the appropriateness of the conservation measures to be chosen under the new CFP, important questions of principle arise from the Commission's proposal concerning the need to respect the national jurisdictions covering the exclusive economic zones.

It must be remembered that an underlying reason for having exclusive national coastal zones limited to traditional fisheries is to conserve traditional fisheries in these ecologically fragile areas. As to the proper Community measures to be taken to protect the European deep-water coral reefs, it is essential that all the relevant stakeholders, and in future the Regional Advisory Councils concerned, are consulted in time and regularly on the management of the sites. The rapporteur therefore considers it more appropriate to define the areas in which the ban applies as being the three respective EEZs of the Azores, Madeira and the Canaries as defined in Regulation No 2027/95.

State of coral reefs as part of the wider European problem

Offering a home to live stands of *Lophelia pertusa* and other cold water corals, the coral reefs provide a habitat for various species of larger sessile or hemi-sessile invertebrates, such as sponges and brisingiids. The reefs help to maintain up to 300 different species of wildlife, including deep-sea fish, and are a vital focus for fish reproductive cycles. It is noted that the density of fish in the area would appear no higher than in the background. Nevertheless the importance of this and other coral reefs must be appreciated. It has been estimated that 65% of fish species in the sea are dependent on reefs at some point in their life. At a time when some fish stocks are said to be dwindling to the point of collapse, we should not ignore the role that habitats such as this play in helping to sustain the marine environment.

The vulnerability of cold water coral reef habitats has been recognised on several occasions, such as the Declaration of the Joint Ministerial Meeting of the OSPAR and Helsinki Commissions in June 2003, as well as in several ICES reports. The deep-water habitats are

also defined as habitats of Community interest in the so-called 'habitats directive' (Directive 92/43/EC of 21 May 1992).

The Commission's proposal is part of its wider protection plan for the European coral reefs, preceded by a ban on the use of bottom trawl gear in an area north west of Scotland, the so-called 'Darwin Mounds', established by Council Regulation (EC) No 602/2004 of March 2004, amending Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms. This decision was preceded by the Commission's emergency measures pursuant to Article 7 of Regulation (EC) No 2371/2002.

Given the importance of protecting deep-water coral reefs, the rapporteur supports the Commission's intentions for a comprehensive strategy to protect the European coral reefs, but is concerned about the correctness of the measures taken, as well as the need to fully involve the fishing industry in this process.

Risks to the sites

The ICES 2000 report on deep-sea fisheries management states that bottom trawling is considered to be particularly destructive on seamounts, the deep-sea floor and on the slope of the continental shelf, due to their general sensitivity. On the other hand, it states that the impact of trawl gear on the deep-sea bed has barely been investigated. The research has so far focused on the effect of trawl gear on seamounts and at particular sites on the continental slopes, but there is no systematical investigation on the impact of trawl gear on the deep-sea floor.

According to the ICES 2002 report, recent information shows that deep-water trawling does take place in areas of deep-water biogenic habitats. This ICES report advises that the only proven method of preventing damage to deep-water biogenic reefs from fishing activities is through spatial closures to towed gear that potentially impacts the bottom. Regarding the current situation, the Commission has confirmed that it is not aware of deep-sea trawling going on in the areas around the Azores, Madeira and the Canary Islands.

After consultation, the rapporteur takes the view that the ban should be extended to cover fishing gear which is likely to cause real damage to deep-water coral reefs, in particular bottom gillnets.

The Commission's proposal and interim measures proposed by the Commission

The Commission's proposal seeks to amend Article 30 of Regulation (EC) No 850/98 to prohibit the use of bottom trawl or similar towed nets that operate in contact with the bottom of the sea in the areas around the Azores, Madeira and the Canaries, defined by latitudes and longitudes. In addition to this proposal dated 3 February 2004, the Commission proposed, on 16 August 2004, interim measures to protect the same areas. The interim measures are proposed through an amendment to the 2004 TAC regulation, Regulation (EC) No 2287/2003, which fixes the technical conditions on fishing that should be implemented in 2004. The ban only affects specific types of fishing activity. According to the Commission, the fishing industry will not suffer major consequences, since the ban on trawling already exists, and because only the gear in contact with the bottom will be banned.

Whilst recognising the need to avoid postponing the adoption of measures to preserve the environment, which was left unprotected outside the 100-mile limits of the EEZs of the Azores, Madeira and the Canary Islands when the special access regime defined in Regulation (EC) No 2027/95 came to an end, the rapporteur is surprised at these interim measures, given that no new circumstances have arisen between 3 February and 16 August to justify urgent or emergency action, and he regrets the fact that the Commission appears to have jumped the gun in an ongoing institutional procedure in which Parliament will continue to play its part up to the end, as is its right and its duty.

17.11.2004

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Fisheries

on the proposal for a Council regulation amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean
(COM(2004)0058 – C5-0074/2004 – 2004/0020(CNS))

Draftsman: Satu Hassi

SHORT JUSTIFICATION

The Commission is proposing to prohibit the use of bottom trawls, or any other gear that comes in contact with the sea floor, in the waters around the Canary Islands, Madeira and the Azores. This would serve to protect these deep-water habitats formed by aggregations of deep-water coral (*Lophelia pertusa*), thermal vents and carbonate mounds, as these habitats are known to contain high levels of marine biodiversity and to be very vulnerable to damage by physical contact with fishing gear.

The new Basic Regulation of the Common Fisheries Policy ¹ specifically requires that the Community adopt measures to reduce the environmental impact of fishing. The proposal from the Commission thus deserves to be warmly welcomed by the Parliament, quickly adopted by Council and then implemented by Member States.

The protection of deep-water corals and other sensitive deep-sea marine habitats has become an issue of increasing concern by the scientific community world-wide. In a report prepared for the Helsinki Commission, the OSPAR Commission and the Directorate General for Fisheries of the European Commission, the International Council for the Exploration of the Seas advised that “*the only proven method of preventing damage to deep-water biogenic reefs from fishing activities is through spatial closures to towed gear that potentially impacts the bottom.*” ² Acting on the advice from ICES, the European Community and the relevant Member States, together with the other contracting parties of the Oslo and Paris Convention for the Protection of the Marine Environment of the North-East Atlantic, committed to “*take*

¹ Regulation (EC) 2371/2002

² Report of the ICES Advisory Committee on Ecosystems. ICES Cooperative Research Report No. 254. International Council for the Exploration of the Sea, December 2002. pg 28.

*immediate measures to protect coral reefs from further damage due to use of active fishing gear on the reefs. Furthermore, we shall ensure that steps are taken by 2005 to identify additional threats to the cold-water reefs and that measures are taken to protect the reefs against these threats."*¹ Adoption of the proposal by the Commission proposal would serve to implement the OSPAR commitment as well as relevant Community legislation such as the Habitat and Species Directive.

In relation to the threat posed by bottom trawl fishing to deep-sea biodiversity on the high seas, the Committee on the Environment, Public Health and Consumer Policy notes the call by the UN General Assembly in 2003 to "*investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction*".² The Committee further notes that the 7th Conference of Parties to the Convention on Biological Diversity, which met in February 2004, called upon the UN General Assembly and States individually to take urgent short-term and long-term measures to protect deep-sea biodiversity on the high seas from destructive practices.³

The Committee holds the view that the European Union position should be to support UN General Assembly action consistent with the Commission proposal to protect these habitats within Community waters. At the very least, a moratorium on bottom trawl fishing in high seas areas is warranted until legally binding regimes are in place to protect deep-sea biodiversity from high seas bottom trawling and to conserve and manage the demersal fisheries of the high seas consistent with the UN Convention on the Law of the Sea, the 1995 UN Fish Stocks Agreement, the Convention on Biological Diversity and other relevant instruments.

This is entirely consistent with the obligations undertaken by the European Community and Member States as contracting Parties to the UN Fish Stocks Agreement, in particular the obligation to apply the precautionary approach widely and to protect biodiversity in the marine environment contained in the Articles 5 & 6 of the 1995 UN Fish Stocks Agreement.

The only suggestion that your rapporteur would make to improve the Commission's laudable proposal would be to request further scientific studies to see what other areas in EU waters would deserve similar protection, and a couple of amendments to that effect are proposed.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Fisheries, as the committee responsible, to incorporate the following amendments in its

¹ The Bremen Statement, adopted at the Ministerial Meeting of the Parties to the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic, in June 2003. Paragraph 12

² United Nations General Assembly Resolution on Oceans and the Law of the Sea. A/RES/58/240. Paragraphs 51 and 52. 12 December, 2003.

³ Decision VII/5 of the Seventh Conference of Parties to the Convention on Biological Diversity on Marine and Coastal Biological Diversity, paras 57-62. February 2004.

report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
RECITAL 1 A (new)

(1a) Article 2 of Regulation (EC) No 2371/2002 states that the principles of good governance guiding the common fisheries policy shall include a decision-making process based on sound scientific advice and the broad involvement of stakeholders at all stages of the policy. This means that the Regional Advisory Councils should be consulted on fisheries management in the areas in which Community conservation and management measures are proposed.

Justification

It would be incorrect not to refer to the procedural criteria established in the CFP framework regulation (Regulation (EC) No 2371/2002).

Amendment 2
RECITAL 3 A (new)

(3a) The protection of these areas from the adverse impact of fishing is entirely consistent with, and required under, Articles 5 and 6 of the 1995 UN Fish Stocks Agreement, in particular the provisions requiring the application of the precautionary approach and the protection of biodiversity in the marine environment.

¹ Not yet published in OJ.

Amendment 3
RECITAL 4

(4) According to scientific evidence, recovery from damage to these habitats produced by trawl gear towed through the bottom is either impossible or very difficult and slow. It is therefore appropriate to prohibit the use of **bottom trawls and similar** gear in areas where these habitats are still in a favourable conservation status.

(4) According to scientific evidence, recovery from damage to these habitats produced by trawl gear towed through the bottom is either impossible or very difficult and slow. It is therefore appropriate to prohibit the use of gear **which may cause real damage to coral reefs** in areas where these habitats are still in a favourable conservation status.

Justification

It should be clarified that the Commission's measures refer to gear which is damaging to coral reefs.

Amendment 4
ARTICLE 1

Article 30, paragraph 4, introductory part (Regulation (EC) No 850/98)

4. **Vessels shall be prohibited from using** any bottom trawl or similar towed nets operating in contact with the bottom of the sea in the areas bounded by a line joining the following coordinates:

4. **The use of gear which may cause real damage to coral reefs and their habitats, especially** any bottom trawl, **bottom gillnet** or similar towed nets operating in contact with the bottom of the sea, **shall be prohibited** in the areas bounded by a line joining the following coordinates:

Justification

This amendment clarifies the scope of the prohibition, defining the areas where it is to apply within the limits of Regulation (EC) No 2027/95, under which the habitats concerned have hitherto been preserved (cf. the explanatory memorandum of COM(2004) 0058 - 2004/0020 (CNS) regarding the proposal for a regulation concerned by this opinion).

Amendment 5
ARTICLE 1

Article 30, paragraph 4 a (new) (Regulation (EC) No 850/98)

4a. The Regional Advisory Councils shall be consulted on the implementation of paragraph 4.

Justification

It would be inappropriate not to refer to the framework regulation for the new CFP (Regulation (EC) No 2371/2002).

Amendment 6

ARTICLE 1

Article 30, paragraph 4 b (new), (Regulation (EC) No 850/98)

4b. By 31 December 2005 the Commission shall present to the European Parliament and the Council a report assessing the conservation status of the areas listed in paragraph 4, as well as of other areas of similarly sensitive deep water habitat in EU waters. On the basis of this report the Council shall decide on any necessary additions to the list in paragraph 4.

PROCEDURE

Title	Proposal for a Council regulation amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean
References	COM(2004)0058 – C5-0074/2004 – 2004/0020(CNS)
Committee responsible	PECH
Enhanced cooperation	
Draftsman Date appointed	Satu Hassi 20.9.2004
Discussed in committee	25.10.2004 16.11.2004
Date amendments adopted	16.11.2004
Result of final vote	for: 42 against: 0 abstentions: 0
Members present for the final vote	Georgs Andrejevs, Liam Aylward, Johannes (Hans) Blokland, John Bowis, Hiltrud Breyer, Dorette Corbey, Avril Doyle, Edite Estrela, Jillian Evans, Anne Ferreira, Karl-Heinz Florenz, Cristina Gutiérrez-Cortines, Satu Hassi, Mary Honeyball, Caroline F. Jackson, Dan Jørgensen, Eija-Riitta Korhola, Holger Krahmer, Urszula Krupa, Peter Liese, Linda McAvan, Riitta Myller, Péter Olajos, Frédérique Ries, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, Kathy Sinnott, Jonas Sjöstedt, María Sornosa Martínez, Anja Weisgerber and Åsa Westlund.
Substitutes present for the final vote	María del Pilar Ayuso González, Luis Manuel Capoulas Santos, David Casa, Jutta D. Haug, Karsten Friedrich Hoppenstedt, Henrik Lax, Guido Podestà, Pál Schmitt and Bart Staes.
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE

Title	Proposal for a Council regulation amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean	
References	COM(2004)0058 – C5-0074/2004 – 2004/0020(CNS)	
Legal basis	Article 37 EC	
Basis in Rules of Procedure	Rule 51	
Date of consulting Parliament	16.2.2004	
Committee responsible Date announced in plenary	PECH	16.9.2004
Committee(s) asked for opinion(s) Date announced in plenary	ENVI	16.9.2004
Not delivering opinion(s) Date of decision	–	–
Enhanced cooperation Date announced in plenary	–	–
Rapporteur(s) Date appointed	Sérgio Ribeiro	28.7.2004
Previous rapporteur(s)	–	
Simplified procedure Date of decision	–	–
Legal basis disputed Date of JURI opinion	–	–
Financial endowment amended Date of BUDG opinion	–	–
Discussed in committee	4.10.2004	
Date adopted	24.11.2004	
Result of final vote	for:	22
	against:	0
	abstentions:	4
Members present for the final vote	Stavros Arnautakis, Elspeth Attwooll, Luis Manuel Capoulas Santos, Giorgio Carollo, Paulo Casaca, Zdzisław Kazimierz Chmielewski, Antonio De Poli, Carmen Fraga Estévez, Ioannis Gklavakis, Ian Stewart Hudghton, Heinz Kindermann, Rosa Miguélez Ramos, Philippe Morillon, Seán Ó Neachtain, Neil Parish, Sérgio Ribeiro, Struan Stevenson, Catherine Stihler, Margie Sudre, Daniel Varela Suanzes-Carpegna	
Substitutes present for the final vote	Simon Coveney, Giovanni Claudio Fava, Duarte Freitas, Henrik Dam Kristensen	
Substitutes under Rule 178(2) present for the final vote	Ilda Figueiredo, Satu Hassi, Manuel Medina Ortega	
Date tabled - A6	25.11.2004	A6-0037/2004

