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*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock (COM(2011)0760 – C7-0432/2011 – 2011/0345(COD))

Committee on Fisheries

Rapporteur: Struan Stevenson

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 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock

(COM(2011)0760 – C7-0432/2011 – 2011/0345(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0760),
 - 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 (C7-0432/2011),
 - 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 18 January 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A7-0145/2012),
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.

Amendment 1

Proposal for a regulation – amending act

Recital 1

Text proposed by the Commission

(1) Council Regulation (EC) No 1300/2008 establishing a multi-annual plan for the stock of herring distributed to the West of

Amendment

(1) Council Regulation (EC) No 1300/2008 establishing a multi-annual plan for the stock of herring distributed to the West of

¹ OJ C 68, 6.3.2012, p.74.

Scotland and the fisheries exploiting that stock empowers the Council to follow-up and revise the maximum fishing mortality rates and associated spawning stock biomass levels specified *in Article 3(2) and referred to in Articles 4(2), 4(5) and 9 thereof*.

Scotland and the fisheries exploiting that stock empowers the Council to follow-up and revise the maximum fishing mortality rates and associated spawning stock biomass levels specified *therein*.

Justification

Maximum fishing mortality rates and associated spawning stock biomass levels are not only specified in Article 3(2) of Regulation (EC) No 1300/2008, but also in some of its other provisions, e.g. in Article 4(3).

Amendment 2

Proposal for a regulation – amending act Recital 2

Text proposed by the Commission

Amendment

(2) In accordance with Article 290 of the Treaty the Commission may be empowered to supplement or amend non-essential elements of a legislative act by means of delegated acts.

deleted

Justification

This recital is redundant.

Amendment 3

Proposal for a regulation – amending act Recital 3

Text proposed by the Commission

Amendment

(3) In order to *allow for an efficient achievement of* the targets set in the multi-annual plan and *for a swift* reaction to changes in stock conditions, the power to revise maximum fishing mortality rates and associated spawning stock biomass levels, when scientific data indicate that these values are no longer appropriate to reach

(3) In order to *ensure that* the targets set in the multi-annual plan *are achieved efficiently* and *that the* reaction to changes in stock conditions *is swift*, 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 to* revise maximum

the objective of the plan, *should be delegated to the Commission in accordance with Article 290 of the Treaty.*

fishing mortality rates and associated spawning stock biomass levels, when scientific data indicate that these values are no longer appropriate to reach the objective of the plan. *It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*

Justification

Recitals (5) and (6) should be attached to this Recital (3) as they are linked to the adoption of delegated acts.

Amendment 4

Proposal for a regulation – amending act Recital 4

Text proposed by the Commission

(4) Since herring *in the west of Scotland* is a *migrating* species, the specification of the area it currently inhabits should serve to *identify* it from other stocks, but should not prevent this plan *for* applying in the event that *the species* changes its mobility patterns. *Articles 1 and 2 should be modified accordingly.*

Amendment

(4) Since herring is a *migratory* species, the specification of the area *that the stock of herring distributed to the west of Scotland* currently inhabits should serve to *distinguish* it from other stocks, but should not prevent this plan *from* applying in the event that *that stock* changes its mobility patterns.

Justification

Some changes are made for linguistic reasons. Regulation (EC) No 1300/2008 only applies to the particular herring stock in the area west of Scotland, not the whole species of herring. It is not necessary to explicitly specify that Articles 1 and 2 should be modified.

Amendment 5

Proposal for a regulation – amending act Recital 5

Text proposed by the Commission

Amendment

(5) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. *deleted*

Justification

This recital is moved to Recital (3).

Amendment 6

Proposal for a regulation – amending act Recital 6

Text proposed by the Commission

Amendment

(6) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council. *deleted*

Justification

This recital is moved to Recital (3).

Amendment 7

Proposal for a regulation – amending act Recital 7

Text proposed by the Commission

Amendment

(7) At the occasion of this amendment, a mistake in the heading of Article 7 should be corrected. *deleted*

Justification

This recital does not seem necessary; the mistake should simply be corrected as it is obvious.

Amendment 8

Proposal for a regulation – amending act

Article 1 – point 1

Regulation No 1300/2008

Article 1

Text proposed by the Commission

Amendment

This Regulation establishes a multi-annual plan for the fisheries exploiting the stock of herring in the **West** of Scotland.

This Regulation establishes a multi-annual plan for the fisheries exploiting the stock of herring in the **area west** of Scotland.

Justification

The same definition should be used as the one given in Article 2(e) of Regulation (EC) No 1300/2008 (see following amendment).

Amendment 9

Proposal for a regulation

Article 1 – point 2

Regulation (EC) No 1300/2008

Article 2 – point (e)

Text proposed by the Commission

Amendment

(e) “stock *of herring* in the *West* of Scotland” means the stock of herring (*clupea harengus*) which inhabits Union and international waters of ICES *divisions* Vb, ***VIa*** and VIb.

(e) “*herring* stock in the *area west* of Scotland” means the stock of herring (*clupea harengus*) ***distributed to the west of Scotland*** which *currently* inhabits Union and international waters of ICES *zones* Vb and VIb ***and the part of ICES zone VIa which lies east of the meridian of longitude 7°W and north of the parallel of latitude 55°N, or west of the meridian of longitude 7°W and north of the parallel of latitude 56°, excluding the Clyde.***

Justification

The current definition seems more appropriate than the one proposed by the Commission, which would only refer to Scottish waters. The purpose of the modification of Regulation (EC) No 1300/2008 is not to extend the geographical area of application of the latter. The current restriction concerning ICES zone VIa has thus been re-introduced. The word "currently" is supposed to keep the Regulation applicable even in case of migration of the stock. The exchanging of 'east' and 'west' is necessary to rectify the longstanding inaccuracy of the coordinates of the area of application.

Amendment 10

Proposal for a regulation – amending act

Article 1 – point 3

Regulation No 1300/2008

Article 7

Text proposed by the Commission

Amendment

Where scientific data *indicates* that *the values for* the fishing mortality rates and associated spawning stock biomass levels specified in Article 3(2), Article 4(2) to 4(5) and Article 9 are no longer appropriate to reach the objective set *forth* in Article 3(1), *the Commission* shall *fix* new values for *such* rates and levels *by means of delegated acts in accordance with Article 9a*.

Where *the Commission, on the basis of advice from STECF and possibly other scientific data and after consulting fully with the Pelagic Regional Advisory Council, finds* that the fishing mortality rates and associated spawning stock biomass levels specified in Article 3(2), Article 4(2) to 4(5) and Article 9 are no longer appropriate to reach the objective set *out* in Article 3(1), *it shall adopt delegated acts in accordance with Article 9a fixing* new values for *those* rates and levels.

Justification

The Commission should be obliged to use scientific data from the STECF and to consult the Pelagic Regional Advisory Council before taking any decision on adopting delegated acts fixing new values for fishing mortality rates and spawning stock biomass levels.

Amendment 11

Proposal for a regulation – amending act

Article 1 – point 4

Regulation No 1300/2008

Article 8

Text proposed by the Commission

Amendment

Every four years from 18 December 2008, the Commission shall evaluate the operation and performance of the multi-annual plan. Where *appropriate*, the Commission *may propose adaptations to the multi-annual plan or adopt delegated acts in accordance with Article 7.*

1. At least every four years from 18 December 2008, the Commission shall evaluate the operation and performance of the multi-annual plan. ***For the purpose of this evaluation, the Commission shall seek the advice of STECF and of the Pelagic Regional Advisory Council.*** Where *necessary*, the Commission ***shall make appropriate proposals, for adoption in accordance with the ordinary legislative procedure, for the amendment of the multi-annual plan.***

2. Paragraph 1 shall be without prejudice to the delegation of power in Article 7.

Justification

The STECF and the Pelagic Regional Advisory Council should be mandatorily involved in the process of evaluating the multi-annual plan. It should be explicitly stated that any amendment to the multi-annual plan, apart from the exception specified in Article 7, would have to be adopted via the ordinary legislative procedure. Delegated acts are limited as to their scope to the modification of fishing mortality rates and spawning stock biomass levels and may be adopted only if the conditions specified in Article 7 are fulfilled.

Amendment 12

Proposal for a regulation – amending act

Article 1 – point 5

Regulation No 1300/2008

Article 9 a (new) – paragraph 2

Text proposed by the Commission

Amendment

2. The *delegation of power* referred to in Article 7 ***and 8*** shall be conferred for ***an***

2. The power ***to adopt delegated acts*** referred to in Article 7 shall be conferred

indeterminate period of *time* from [dd/mm/yyyy] [insert date of entry into force of *this* regulation].

on the Commission for a period of *three years* from [entry into force of *the* Regulation]. *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.*

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 13

Proposal for a regulation – amending act

Article 1 – point 5

Regulation No 1300/2008

Article 9 a (new) – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Articles 7 and 8** 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 a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in **Article 7** 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.

Justification

It should be clear that the power to adopt delegated acts is conferred on the Commission only on the basis of Article 7. Article 8 does not delegate any power to the Commission.

Amendment 14

Proposal for a regulation – amending act

Article 1 – point 5

Regulation No 1300/2008

Article 9 a (new) – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Articles 7 and 8** 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 **Article 7** 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.

Justification

It should be clear that the power to adopt delegated acts is conferred on the Commission only on the basis of Article 7. Article 8 does not delegate any power to the Commission.

EXPLANATORY STATEMENT

The Commission proposal

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. It is the ordinary legislative procedure and delegated acts that guarantee the participation of Parliament in the decision-making process on an equal footing with the Council.

Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock (the *Plan*), having been adopted before the entry into force of the TFEU, contains some provisions, namely Articles 7 and 8, which confer decision-making powers on the Council while this is not possible any longer under the TFEU.

The Commission has thus suggested aligning the Regulation to the new treaty framework by replacing the current Council decisions 1) by delegated acts concerning the adaption of fishing mortality rates and associated spawning stock biomass levels to scientific findings, and 2) by legislative acts adopted according to the ordinary legislative procedure concerning all other changes to be made to the Plan. This latter point is, however, not fully clear, as the newly proposed Article 8 could be interpreted also as meaning that the Commission may adopt delegated acts to adopt other changes to the Plan.

At the occasion of this alignment, the Commission also suggests some other changes, in particular moving the designation of the geographical area that is inhabited by the herring stock in question from Article 1 ("Subject matter") to Article 2 ("Definitions"). Moreover, the currently complex evaluation procedure (evaluation of the achievement of the targets of the Plan every year on the one hand and evaluation of some specific aspects and of the performance and operation of the Plan every four years on the other hand) is reduced to a simpler evaluation of the operation and performance of the Plan taking place every four years. The rapporteur notes that the Scientific, Technical and Economic Committee for Fisheries (*STECF*) as well as the Pelagic Regional Advisory Council (*PRAC*) do not appear any more

in the Commission's proposal.

The rapporteur's view

This Regulation might be the first act in the fisheries sector to be aligned to the TFEU. It is therefore of particular importance to find a legally well-founded solution safeguarding Parliament's rights created by the Treaty of Lisbon. Furthermore, the solution adopted for this Regulation may have an influence on the decision-making procedure that will be applicable to other multi-annual plans.

The rapporteur globally agrees with the Commission's proposal in that it suggests the use of delegated acts to adapt fishing mortality rates and associated spawning stock biomass levels to scientific findings, and the ordinary legislative procedure in order to make other changes to the Plan. The simplification of the evaluation procedure seems reasonable, as does the Commission's intention to keep the Plan applicable even if the stock migrates into another area.

However, the rapporteur would like to suggest some amendments to the Commission's proposal.

1) Delegated acts

First of all, it is essential to strictly define the circumstances under which the Commission may adopt delegated acts (adaption of fishing mortality rates and associated spawning stock biomass levels to scientific findings) and to distinguish this case from the other changes that may be made to the Plan. This distinction is not obvious in the Commission's proposal, taking into account the formulation of the proposed Article 8 ("The Commission may propose adaptations to the multi-annual plan or adopt delegated acts in accordance with Article 7") and the references that are made to Article 7 and Article 8 jointly, e.g. in Article 9a(2), 9a(3) and 9a(5), as well as in the explanatory memorandum.

The rapporteur therefore suggests deleting all references to Article 8 from Article 9a. Article 7 should be mentioned in a new Article 8(2) in order to clarify that if the fishing mortality rates and associated spawning stock biomass levels given in Articles 3(2), Article 4(2) to 4(5) and Article 9 are found to be no longer appropriate, these figures are to be changed by the Commission by using delegated acts, even though these findings were made during the evaluation taking place every four years.

Secondly, the rapporteur is of the opinion that the delegation should be limited in time in order to allow for a regular evaluation of its use.

2) Ordinary legislative procedure

The rapporteur considers it important to insert an explicit reference to the ordinary legislative procedure into Article 8. The use of this procedure might seem obvious, but stating explicitly that this procedure has to be used in order to modify any part of the Plan apart from the aspects falling under Article 7 creates legal certainty, also with regard to other multi-annual plans to be aligned or adopted in the future.

3) Role of the STECF and of the PRAC

Although the rapporteur agrees with the simplification of the evaluation procedure, i.e. the deletion of the yearly evaluation, he does not agree with the suggestion not to explicitly mention the STECF and the PRAC. On the contrary, the rapporteur believes that these bodies have and should continue to have a central role. The Commission should therefore be obliged to ask for the advice of these bodies, both before adopting delegated acts under Article 7 and before proposing amendments to the Plan in accordance with the ordinary legislative procedure.

4) Geographical area of application of the Plan

First of all, the rapporteur suggests leaving the current designation of the geographical area which is inhabited by the herring stock unchanged, since only a part, and not all of ICES zone VIa is relevant, as has been confirmed also by the Commission. Furthermore, the rapporteur does not see the advantage of simply moving the designation of this geographical area from Article 1 to Article 2, i.e. into the definition of the stock. If the stock migrated to another area, the Regulation would have to be modified if the designation of the geographical area were contained in Article 2 just as it would have to be if the designation of the area were included in Article 1, since the definition would in that case cease to be correct. However, the rapporteur does not see any inconvenience either in introducing the designation of the geographical area into the definition section contained in Article 2. Nevertheless, the rapporteur would like to add the word "currently" to the definition, in order to make it more flexible. The definition would then designate the stock that inhabited the area in question at the time the Regulation was adopted. Even if the stock migrated away, the fact that it had at the date of entry into force of the Regulation inhabited that area would still be exact and sufficient to identify it.

PROCEDURE

Title	Amending Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock		
References	COM(2011)0760 – C7-0432/2011 – 2011/0345(COD)		
Date submitted to Parliament	22.11.2011		
Committee responsible Date announced in plenary	PECH 30.11.2011		
Committee(s) asked for opinion(s) Date announced in plenary	ENVI 30.11.2011		
Not delivering opinions Date of decision	ENVI 20.12.2011		
Rapporteur(s) Date appointed	Struan Stevenson 10.1.2012		
Discussed in committee	25.1.2012	27.2.2012	20.3.2012
Date adopted	24.4.2012		
Result of final vote	+: –: 0:	25 0 0	
Members present for the final vote	Antonello Antinoro, Kriton Arsenis, Alain Cadec, Chris Davies, João Ferreira, Carmen Fraga Estévez, Pat the Cope Gallagher, Dolores García-Hierro Caraballo, Marek Józef Gróbarczyk, Carl Haglund, Ian Hudghton, Iliana Malinova Iotova, Werner Kuhn, Isabella Lövin, Gabriel Mato Adrover, Guido Milana, Maria do Céu Patrão Neves, Crescenzo Rivellini, Ulrike Rodust, Raül Romeva i Rueda, Struan Stevenson, Catherine Trautmann, Jarosław Leszek Wałęsa		
Substitute(s) present for the final vote	Diane Dodds, Barbara Matera, Jens Nilsson, Nikolaos Salavrakos		
Date tabled	25.4.2012		