



EUROPEAN COMMISSION

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2011/0222 (NLE)

Proposal for a

COUNCIL REGULATION

amending Council Regulations (EU) No 57/2011 and (EC) 754/2009 as regards the protection of the species "porbeagle", certain TACs and certain fishing effort limits set for the United Kingdom, Germany and Ireland

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Regulation (EU) No 57/2011 fixes for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters. The Regulation is usually amended several times during the period in which it is in effect.

One of the amendments proposed concerns the implementation of the cod management plan (Council Regulation (EC) No 1342/2008) regarding vessels excluded or included in the effort regime. Part of this issue is dealt with in Regulation 57/2011 (effort limits per gear group in Annex IIA), but the actual decision regarding the inclusion or exclusion of vessel groups under the effort regime of the plan is dealt with in Council Regulation (EU) No 754/2009. Accordingly, this latter regulation needs to be amended as well, and the necessary amending provisions are contained in this proposal.

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

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposed amendments are:

1. Regulation (EU) No 57/2011 regulates porbeagle as a prohibited species in international waters in Article 8 (with a prompt release obligation for accidental catches) and as a stock with a 0 TAC in certain Atlantic ICES zones in Annex IA (with no provision regarding accidental catches). This situation results in some areas within EU waters where porbeagle remains unregulated, meaning that catches are unrestricted. Given the status of this species and the discussions underway regarding the possibility of its listing under the CITES convention (Appendix III) it is necessary to implement a consistent protection for porbeagle in all areas. To achieve this, the proposal foresees :
 - (a) introducing a 0 TAC for porbeagle in the Mediterranean (in Annex ID of the Regulation). This ensures no catches are allowed in the waters under the jurisdiction of Mediterranean Member States (the waters beyond the national jurisdiction being now covered by the general prohibition in international waters)
 - (b) amending the description of the existing 0 TAC in Annex IA to include all EU waters of the ICES and CECAF zones of the Atlantic, and
 - (c) in both cases (a) and (b) mentioned above, to provide for consistent obligations of promptly release of catches.
2. The cod management plan (Council Regulation (EC) No 1342/2008) establishes an effort regime for this stock which is based on regular data to be provided by Member States to

the Commission and the Scientific, Technical and Economic Committee for Fisheries (STECF). On the basis of the STECF advice regarding Member States data, the Commission may then propose to exclude certain groups of vessels from the fishing effort regime established in the cod plan. The essential condition for such an exclusion is that the vessels concerned should catch no more than 1.5% of cod. Member States must report annually on the excluded vessels in order for the Commission to ascertain (based on STECF advice) that the 1.5% cod catches limit is maintained. Otherwise, the cod plan foresees that the Council shall re-include the vessels concerned in the effort regime. In this respect, and by following the procedures established in the cod plan and its implementing rules, the proposed amendment to Regulation (EU) No 57/2011 contains:

- (a) The exclusion of certain Irish vessels operating in the West of Scotland and using bottom trawls of mesh size equal to or larger than 100 mm.
 - (b) The re-inclusion of two groups of DE vessels heretofore excluded from the cod plan effort regime.
 - (c) The re-inclusion of two groups of UK vessels heretofore excluded from the cod plan effort regime.
3. The amendments proposed also include an upward revision of the TAC for Celtic Sea cod for the remainder of 2011, in light of new and improved scientific advice from ICES and STECF, and a the inclusion of a new TAC for haddock in Svalbard (Barents Sea) in parallel to the existing cod TAC for the same area. The EU quota is not allocated to Member States for the time being, without prejudice to the adoption of an allocation key in the future.
4. The amendment also implements technical correction regarding the scope of the temporary fishing restriction in the Porcupine Bank, i.e. Article 13 of Regulation 57/2011. Since this Article mentions Norway lobster among the stocks covered by this restriction, there must be a cross-reference in the Norway lobster entry concerned (Norway lobster in VII).

Proposal for a

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amending Council Regulations (EU) No 57/2011 and (EC) 754/2009 as regards the protection of the species "porbeagle", certain TACs and certain fishing effort limits set for the United Kingdom, Germany and Ireland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,¹

Whereas:

- (1) Council Regulation (EU) No 57/2011² fixes for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters.
- (2) The scientific assessment of cod in the Celtic Sea has improved, and has confirmed that the advice on which the current TAC is based underestimated the strong year class of 2009 and thus the dynamic increase in biomass for this stock. Further to the new selectivity measures planned by the North Western Regional Advisory Council (NWRAC), which would reduce the risk of haddock and whiting discards in this cod fishery, it is appropriate to adapt the TAC for cod in the Celtic Sea to the new scientific advice for the remainder of 2011.
- (3) Article 8 of Regulation (EU) No 57/2011 prohibits fishing for porbeagle in international waters (with a prompt release obligation for accidental catches). Annex IA to that Regulation fixes the total allowable catches for portbeagle at 0 tonnes in certain ICES zones (with no provision regarding accidental catches). As a consequence in some areas within Union waters catches of porbeagle are unrestricted. Given the status of this species and the discussions underway regarding the possibility of its listing under the CITES convention (Appendix III) it is necessary to implement a consistent protection for porbeagle in all areas.
- (4) Since 1986, a cod fishery in international waters of I and IIa (Barents Sea) has been exploited by means of an autonomous quota established by the EU. In order to maintain the EU's consistent approach towards sustainable fisheries management, a

¹ **REFERENCE TO BE INCLUDED**

² Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters, OJ L 24, 27.1.2011, p. 1–125

directed haddock quota should be established in the same area, which would also cover by-catches taken in the cod fishery. The EU 2011 quota level should be established, without prejudice to any permanent allocation key which could be agreed in the Council for 2012, and should be based upon a 10-year average (from 2001 to 2010) of Member State catches, using data provided by those Member states with a track record in the fishery, namely France, Germany, Ireland, Poland, Portugal, Spain and the United Kingdom.

- (5) Council Regulation (EC) No 1342/2008 of 18 December 2008 establishes a long-term plan for cod stocks and the fisheries exploiting those stocks.
- (6) According to Article 11 of Regulation (EC) No 1342/2008 the Council may, on the basis of information provided by Member States and assessed by the Scientific, Technical and Economic Committee for Fisheries (STECF), exclude certain groups of vessels from the fishing effort regime established in that Regulation, provided that appropriate data is available on cod catches and discards by the vessels concerned, that the percentage of cod catches does not exceed 1,5 % of the total catches of the group of vessels and that the inclusion of the group in the effort regime would constitute an administrative burden disproportionate to its overall impact on cod stocks.
- (7) Based on that Article 11, Council Regulation (EC) No 754/2009³ excluded certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008.
- (8) Ireland provided information on cod catches by a group of vessels operating in the West of Scotland using bottom trawls of mesh size equal to or larger than 120 mm with square mesh panels in the area stated in point 6.1 of Annex III in Council Regulation (EC) No 43/2009 and using 100 mm mesh size elsewhere in the West of Scotland. On the basis of that information, as assessed by the STECF, it can be established that cod catches, including discards, by that group of vessels do not exceed 1,5% of their total catches. Moreover, the control and monitoring measures in place ensure the monitoring and control of the fishing activities of that group of vessels. Finally, the inclusion in the fishing effort regime of that group constitutes an administrative burden disproportionate to the overall impact of that inclusion on cod stocks. It is therefore appropriate to amend Regulation (EC) No 754/2009 in order to exclude that group of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008. The effort limits set for Ireland in Regulation (EU) No 57/2011 should be amended accordingly.
- (9) A group of vessels from Germany is currently excluded from the application of the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008. On the basis of information provided by Germany in 2011, STECF was not in a position to assess whether the conditions set out in Article 11 of Regulation (EC) No 1342/2008 remained fulfilled in the 2010 management period. It is therefore appropriate to re-include this group of German vessels in the abovementioned fishing effort regime. Regulation (EC) No 754/2009 should be amended accordingly.

³ Council Regulation (EC) No 754/2009 of 27 July 2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008, OJ L 214, 19.8.2009, p. 16–17

- (10) Two groups of vessels from the United Kingdom are currently excluded from the application of the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008. On the basis of information provided by the United Kingdom in 2011, STECF was not in apposition to assess whether the conditions set out in Article 11 of Regulation (EC) No 1342/2008 remained fulfilled in the 2010 management period. It is therefore appropriate to re-include those two groups of United Kingdom vessels in the abovementioned fishing effort regime. Regulation (EC) No 754/2009 should be amended accordingly.
- (11) Regulation (EU) No 57/2011 applies, in general, from 1 January 2011. However, the fishing effort limits laid down Regulation (EU) No 57/2011 apply for a one-year period starting from 1 February 2011. As a consequence, the provisions of this Regulation concerning catch limits and allocations should apply from 1 January 2011 and the provisions of this Regulation concerning fishing effort limits should apply from 1 February 2011. Such retroactive application will be without prejudice to the principle of legal certainty as the fishing opportunities concerned have not yet been exhausted. Since modifications of effort regimes have a direct influence on the economic activities of the fleets concerned, this Regulation should enter into force immediately after its publication.

HAS ADOPTED THIS REGULATION:

Article 1
Amendment to Regulation (EU) No 57/2011

Regulation (EU) No 57/2011 is amended as follows:

- (1) In Annex IA, the entry for cod in VIIb, VIIc, VIIe-k, VIII, IX and X; EU waters of CECAF 34.1.1 is replaced by the following:

"Species:	Cod <i>Gadus morhua</i>	Zone:	VIIb, VIIc, VIIe-k, VIII, IX and X; EU waters of CECAF 34.1.1 (COD/7XAD34)
Belgium	240	Analytical TAC Article 12 of this Regulation applies.	
France	3 934		
Ireland	780		
The Netherlands	1		
United Kingdom	424		
EU	5 379		
TAC	5 379"		

- (2) In Annex IA, the entry for porbeagle in EU and international waters of III, IV, V, VI, VII, VIII, IX, X and XII is replaced by the following:

"Species:	Porbeagle <i>Lamna nasus</i>	Zone:	French Guyana waters, Kattegat; EU waters of Skagerrak, I, II, III, IV, V, VI, VII, VIII, IX, X, XII and XIV; EU waters of CECAF 34.1.1, 34.1.2 and 34.2 (POR/3-1234)
Denmark	0	(1)	Analytical TAC
France	0	(1)	
Germany	0	(1)	
Ireland	0	(1)	

Spain	0	(1)
United Kingdom	0	(1)
EU	0	(1)
	0	(1)
TAC	0	(1)

(1) Catches of this species shall be promptly released unharmed to the extent practicable.”

(3) In Annex IA, a new entry for Haddock in I and IIb is inserted as follows:

"Species:	Haddock	Zone:	I and IIb
	<i>Melanogrammus aeglefinus</i>		HAD/1/2B.
EU	5 121	(1)(2)	Analytical TAC
			Article 3 of Regulation (EC) No 847/96 does not apply
TAC	Not relevant		Article 4 of Regulation (EC) No 847/96 does not apply

(1) Except Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Romania, Slovakia, Slovenia and Sweden.

(2) The allocation of the share of the haddock stock available to the Union in the zone Spitzbergen and Bear Island is entirely without prejudice to the rights and obligations deriving from the 1920 Treaty of Paris.”

(4) In Annex IA, the entry for Norway lobster in VII is replaced by the following:

"Species:	Norway lobster	Zone:	VII
	<i>Nephrops norvegicus</i>		(NEP/07.)
Spain	1 306	(1)	Analytical TAC
France	5 291	(1)	Article 13 of this Regulation applies
Ireland	8 025	(1)	
United Kingdom	7 137	(1)	
EU	21 759	(1)	
TAC	21 759	(1)	

(1) Of which no more than the following quotas may be taken in VII (Porcupine Bank – Unit 16) (NEP/*07U16):

Spain	377
France	241
Ireland	454
United Kingdom	188
EU	1 260”

(5) The following entry is added to Annex ID:

“Species:	Porbeagle	Zone:	Mediterranean
	<i>Lamna nasus</i>		(POR/AE045W)
EU	0	(1)	
TAC	0	(1)	

(1) Catches of this species shall be promptly released unharmed to the extent practicable.”

(6) Appendix 1 of Annex IIA is amended as follows:

- (a) In table (b), the column concerning Germany (DE) is replaced by the following:

Regulated gear	"DE
TR1	1 166 735
TR2	436 666
TR3	257
BT1	29 271
BT2	1 525 679
GN	224 484
GT	467
LL	0"

- (b) In table (d) the columns for Germany (DE), Ireland (IE) and UK are replaced by the following:

Regulated gear	"DE	IE	UK
TR1	12 427	107 088	1 377 697
TR2	0	479 043	3 914 022
TR3	0	273	16 027
BT1	0	0	117 544
BT2	0	3 801	4 626
GN	35 442	5 697	213 454
GT	0	1 953	145
LL	0	4 250	630 040"

Article 2

Amendment to Regulation (EC) No 754/2009

In Regulation (EC) No 754/2009, Article 1 is amended as follows:

(a) points (c), (d) and (f) are deleted;

(b) the following point (h) is added:

"(h) the group of vessels flying the flag of Ireland, participating in the fishery indicated in the request from Ireland dated 11 March 2011, operating in the West of Scotland using bottom trawls of mesh size equal to or larger than 120 mm with square mesh panels in the area stated in point 6.1 of Annex III to Regulation (EC) No 43/2009 and using 100 mm mesh size elsewhere in the West of Scotland."

Article 3

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

Article 1(1), (2), (3), (4) and (5) shall apply from 1 January 2011.

Article 1(6) and Article 2 shall apply from 1 February 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the Council
The President