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Proposal for a

COUNCIL REGULATION

**fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain
deep-sea fish stocks**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Deep-sea stocks are fish stocks caught in waters beyond the main fishing grounds of continental shelves. They are distributed on the continental slopes or associated with seamounts. Most of these species are slow-growing and long-lived, which makes them particularly vulnerable to fishing activity. Another important element in a deep-sea species' vulnerability to fishing is whether it can be targeted in local aggregations, particularly at the time of spawning. This is the case for orange roughy, blue ling and alfonsoinos.

As for all wild fish stocks, leaving deep-sea fisheries unrestricted leads to a race by fishing undertakings to take possession of a free resource, without having sufficient regard to the sustainable level of exploitation. This has been clearly the case for some deep-sea species before the European Union started regulating these stocks in 2003. For example, the valuable stocks of orange roughy in North-Western waters and red seabream in the Bay of Biscay are now depleted. Therefore, limiting the fishing activity is a necessary public intervention in order to prevent the erosion of income for fishermen, to develop exploitation towards higher long-term yields, and to reduce the impact on the ecosystem and the food web as a consequence of sudden reductions in the size of certain fish populations. In the case of deep-sea species, public intervention is of particular importance due to the fact that the recovery from depletion might take a very long time or might not even be possible.

The International Council for the Exploration of the Sea (ICES) provides a thorough review of the biological status of deep sea stocks every two years. The latest ICES advice was published in June 2016. This proposal for fixing fishing opportunities also includes elements based on the further review undertaken by the Scientific, Technical and Economic Committee for Fisheries (STECF) in July 2016. Advice from both ICES and STECF indicates that most deep-sea stocks in this proposal are still harvested unsustainably and that fishing opportunities for those stocks, in order to assure their sustainability, should be further reduced until the evolution of the stocks shows a positive trend. This provides the basis for fixing fishing opportunities for deep sea stocks in accordance with the principle embodied in Article 3(c) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, whereby decision-making under the Common fisheries Policy must be guided, among others, on scientific advice.

General context

Fishing for deep-sea species has been regulated in the EU since 2003 in terms of total allowable catches (TACs) per species and area, and in terms of maximum fishing effort deployable in the North-East Atlantic. For 2015 and 2016 the total allowable catches of certain deep sea species were established in Council Regulation (EU) No 1367/2014 of 15 December 2014 fixing for 2015 and 2016 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks¹.

The fixing and sharing of fishing opportunities falls exclusively within the competence of the Union. The obligations concerning sustainable exploitation of living aquatic resources are set out in Article 2 of Regulation (EU) No 1380/2013. In particular, Article 2(2) of that Regulation establishes a precautionary approach to fisheries management (as defined in Article 4(1)(8) thereof) and provides that the Common Fisheries Policy shall aim at restoring and maintaining

¹ OJ L 366, 20.12.2014, p. 1.

maximum sustainable yield (MSY). Furthermore, in accordance with Article 16(4) of that Regulation, fishing opportunities must be fixed in accordance with the objectives of Article 2(2).

Furthermore, deep-sea fishing opportunities should be established in accordance with international agreements, inter alia the 1995 United Nations agreement concerning the conservation and management of straddling fish stocks and highly migratory fish stocks ("the 1995 UN Fish Stocks Agreement"). In particular, caution is important when information is uncertain, unreliable or inadequate. Pursuant to Article 6(2) of the 1995 UN Fish Stocks Agreement the absence of adequate scientific information is not to be used as a reason for postponing or failing to take conservation and management measures. The TACs proposed also follow the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organisation of the United Nations, which have been confirmed by successive Resolutions of the UN General Assembly (Resolutions 61/105 in 2007, 64/72 in 2009, and most recently, 70/235 in 2015).

While a number of deep-sea stocks are exploited also by other fishing nations, in particular Norway, Iceland, the Faroes Islands, Russia and Morocco, and while it is necessary to seek agreement on harmonised management measures together with those fishing nations or, as far as stocks inhabit international waters, within the North-East Atlantic Fisheries Commission (NEAFC), unilateral measures applicable to vessels of the European Union are needed until those agreements are reached. These will avoid the negative consequences of unregulated fisheries and the depletion of stocks, as described above.

Existing provisions in the area of the proposal

The existing provisions in the area of the proposal are established in Council Regulation (EU) No 1367/2014 and applicable until 31 December 2016. They are linked to Council Regulation (EC) No 2347/2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks².

- **Consistency with existing policy provisions in the policy area**

The measures proposed are designed in accordance with the objectives and the rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The TFEU establishes under Article 43(3) that the Council shall adopt measures "on the fixing and allocation of fishing opportunities" on a proposal from the Commission. This proposal is limited to the fixing and allocation of fishing opportunities and conditions functionally linked to the use of those fishing opportunities.

Therefore, this proposal puts forward, by way of a Council Regulation the catch limitations for Union fishing fleets concerning the commercially most important deep-sea species in Union and international waters of the North-East Atlantic, in order to achieve the objective of the Common Fisheries Policy of ensuring fisheries at levels that are environmentally, economically and socially sustainable. The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) TFEU. The subsidiarity principle therefore does not apply.

² OJ L 351, 28/12/2002, p. 6–11

- **Proportionality**

The proposal complies with the proportionality principle for the following reason: the Common Fisheries Policy is a common policy. According to Article 43(3) TFEU it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

Having regard to Article 16(6) of Regulation (EC) No 1380/2013 Member States are free to allocate fishing opportunities, when they are not subject to a system of transferable fishing concessions, among regions or operators in line with Article 16(7) and the criteria set out in Article 17. Therefore, Member States have room for manoeuvre on decisions related to the social/economic model of their choice to exploit their allocated fishing opportunities.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The proposal has been developed based on the principles and guidance set out in the Communication from the Commission concerning a Consultation on Fishing Opportunities for 2017 COM(2016) 396 final, in which the Commission explained its views and intentions concerning its proposals for fishing opportunities in 2017 for all stocks. In the context of that Communication, the Commission carries out a wide consultation of stakeholders, civil society, Member States and the public at large.

4. BUDGETARY IMPLICATIONS

The proposal has no new financial implications for Member States. This Regulation is adopted by Council every two years, and the public and private means to implement it are already in place.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

In all stocks covered in this proposal, with the exception of one stock of roundnose grenadier, available information does not allow scientists to fully assess the stock status, neither in terms of population size nor fishing mortality. There are several reasons for this: these species are often very long-lived and slow-growing, making it extremely difficult to structure the stock into age classes and to assess the effect of fishing on the stock through changes in the length or age structure of catches. The frequency of recruitment of young fish to the stocks is not known. The stocks are widely distributed in depths that are difficult to examine for practical reasons. Data from scientific surveys are often not available due to the reduced commercial importance of these stocks, or do not cover the whole distribution area. Fishing activities are sometimes only partly focusing on these species and some fisheries have a relatively short history.

The catch limits proposed are coherent with the principles set out in the Communication from the Commission concerning a Consultation on Fishing Opportunities for 2017 mentioned above. This Communication sets out the Commission's views on how to fix fishing opportunities, and such rules have been followed in the development of this proposal in respect of the TAC entries it contains, as follows:

- Where scientific advice is provided based on comprehensive data and quantitative analysis and forecasts according to the ICES "MSY framework" TACs should be set according to scientific advice. This is the case for the TAC entry proposed for roundnose and roughhead grenadier in North-Western Waters. The TACs for roughhead and roundnose grenadier are the subject of a court case³, and the 4 TACs remain in "pm" in this proposal until later in the year.
- Where indicative scientific advice is provided based on qualitative analysis of available information (even if this is incomplete or incorporates expert judgement) this should be used as a basis for TAC decisions. Accordingly, the proposal contains 10 TAC cuts and one rollover. ICES advice for red seabream in areas VI, VII and VIII is for zero catches in 2017 and 2018. Since by-catches may be unavoidable, the TAC is made a by-catch only TAC. The TAC for red seabream in area IX is extended to cover also the area of CECAF where important catches take place. The TAC in area IX is not limiting fishing mortality sufficiently unless it is extended to cover also CECAF.
- For one stock of black scabbardfish advice has not yet become available. For deep-sea sharks, ICES will only release scientific advice by October 2016. Therefore, 3 TAC entries for deep-sea sharks and one stock of black scabbardfish are marked as "pm" in this proposal, and will be updated after its adoption by the Commission.
- The three TACs for orange roughy are deleted (these have been zero TACs since 2010) and the species is made a prohibited species. The stock is depleted and is not recovering. ICES notes that there have been no directed EU fisheries in the Northeast Atlantic since 2010.

³

Case C-128/15, Kingdom of Spain against the Council of the European Union.

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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,

Whereas:

- (1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.
- (2) Regulation (EU) No 1380/2013 of 11 December 2013 of the European Parliament and of the Council on the Common Fisheries Policy¹ requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery and having due regard to the objectives of the Common Fisheries Policy established by Regulation (EU) No 1380/2013.
- (4) The fishing opportunities for deep-sea species as defined in Article 2(a) of Council Regulation (EC) No 2347/2002² are decided on a biennial basis.
- (5) The total allowable catches (TACs) should be established on the basis of available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, and in particular the Regional Advisory Councils concerned.
- (6) Fishing opportunities should be in accordance with international agreements and principles, such as the 1995 United Nations agreement concerning the conservation and management of straddling stocks and highly migratory fish stocks³, and the detailed management principles laid down in the 2008 Inter-national Guidelines for

¹ OJ L 356, 22.12.2012, p. 22.

² Council Regulation (EC) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002, p. 6).

³ Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 16).

the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organisation of the United Nations, according to which, in particular, a regulator should be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.

- (7) The latest scientific advice from the International Council for the Exploration of the Sea (ICES) and from STECF indicates that most deep-sea stocks are still harvested unsustainably and that fishing opportunities for those stocks, in order to assure their sustainability, should be further reduced until the evolution of the stocks shows a positive trend.
- (8) The ICES has further advised that no catches be taken from the stock of red seabream in Western waters, and in Western waters the TAC for that species is made a by-catch only TAC. Important catches of red seabream are taken from the CECAF area 34.1.11 which borders on ICES subarea IX . The scope of the TAC currently set for ICES subarea IX should therefore be extended to CECAF area 34.1.11 in order to effectively limit all catches of this stock of red seabream.
- (9) ICES also advises that there should be no catches of orange roughy until 2020. In the past, TACs have been established for orange roughy (those TACs have been set at zero since 2010) . Now it is appropriate to establish a prohibition to fish for, retain on board, tranship or land that species since the stock is depleted and is not recovering. ICES notes that there have been no directed Union fisheries for orange roughy in the Northeast Atlantic since 2010.
- (10) [recital to be updated as result of Court case on this issue] Scientific advice and recent discussions in the North East Atlantic Fisheries Commission (NEAFC) indicate that catches of roundnose grenadier may be misreported as catches of roughhead grenadier. In this context, it is appropriate to establish TACs covering both species while enabling a separate reporting for each of them.
- (11) [recital to be updated after ICES releases its advice] The main commercial species of deep sea sharks are considered depleted. Therefore, no directed fishing of deep sea sharks should take place.
- (12) In accordance with Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas⁴ the stocks that are subject to various measures referred to therein should be identified. Precautionary TACs should apply for stocks for which no scientifically-based evaluation of fishing opportunities is available specifically for the year in which the TACs are to be set; analytical TACs should apply otherwise. In view of ICES and STECF advice, for certain deep-sea stocks no science-based evaluation of the relevant fishing opportunities is available. Those stocks should therefore be subject to precautionary TACs.
- (13) In order to avoid the interruption of fishing activities and to ensure the livelihood of the fishermen of the Union, this Regulation should apply from 1 January 2017. For reasons of urgency, this Regulation should enter into force immediately after its publication,

⁴ OJ L 115, 9.5.1996, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation fixes for the years 2017 and 2018 the annual fishing opportunities available to Union fishing vessels for fish stocks of certain deep-sea species in Union waters and in certain non-Union waters where catch limits are required.

Article 2
Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) “Union fishing vessel” means a fishing vessel flying the flag of a Member State and registered in the Union;
 - (b) “Union waters” means the waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories listed in Annex II to the Treaty;
 - (c) “total allowable catch” (TAC) means the quantity that can be taken and landed from each fish stock each year;
 - (d) “quota” means a proportion of the TAC allocated to the Union or a Member State;
 - (e) “international waters” means waters falling outside the sovereignty or jurisdiction of any State.
2. For the purposes of this Regulation, the following zone definitions shall apply:
 - (a) ICES (International Council for the Exploration of the Sea) zones are the geographical areas specified in Annex III to Regulation (EC) No 218/2009⁵;
 - (b) CECAF (Committee for Eastern Central Atlantic Fisheries) areas are the geographical areas specified in Annex II to Regulation (EC) No 216/2009⁶.

Article 3
TACs and allocations

The TACs for deep-sea species caught by Union fishing vessels in Union waters or in certain non-Union waters, the allocation of such TACs among Member States and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

Article 4
Special provisions on the allocation of fishing opportunities

1. The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

⁵ Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (OJ L 87, 31.3.2009, p. 70).

⁶ Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (OJ L 87, 31.3.2009, p. 1).

- (a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;
 - (b) deductions and reallocations made pursuant to Article 37 of Council Regulation (EC) No 1224/2009⁷
 - (c) reallocations made pursuant to Article 10(4) of Council Regulation (EC) No 1006/2008⁸;
 - (d) additional landings allowed pursuant to Article 3 of Regulation (EC) No 847/96;
 - (e) quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96;
 - (f) deductions made pursuant to Articles 105, and 107 of Regulation (EC) No 1224/2009.
2. Except where otherwise specified in the Annex to this Regulation, Article 3 of Regulation (EC) No 847/96 shall apply to stocks subject to precautionary TAC whereas Article 3(2) and (3) and Article 4 of that Regulation shall apply to stocks subject to analytical TAC.

Article 5

Conditions for landing catches and by-catches

Fish from stocks for which TACs are established shall be retained on board or landed only if the catches have been taken by vessels flying the flag of a Member State having a quota and that quota is not exhausted.

Article 6

Prohibition

It shall be prohibited for Union fishing vessels to fish for, orange roughy (*Hoplostethus atlanticus*) in Union and international waters of ICES subareas I, II, III, IV, V, VI; VII; VIII, IX, X, XII and XIV, and to retain on board, to tranship or to land orange roughy caught in that area.

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States submit to the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 8

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

It shall apply from 1 January 2017.

⁷ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 22.12.2009, p. 1).

⁸ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (OJ L 286, 29.10.2008, p. 33).

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

Done at Brussels,

For the Council
The President