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Delegations will find attached Commission document SWD(2012) 203 final.

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COMMISSION STAFF WORKING PAPER
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Commission's proposal for a REGULATION of the European Parliament and of the Council establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks in the North-East Atlantic and repealing Council Regulation (EC) No 2347/2002 of 16 December 2002

{COM(2012) 371 final}

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Introduction

Since 2002 the Union has in place a specific access regime (Regulation (EC) No 2347/2002) for fishing vessels engaged in deep-sea fisheries, made of four components: Capacity restriction, data collection, effort monitoring, and control. The access regime is due to a regular review. The review started in 2007 with a Commission Communication. The main phase of consultation was in 2009 and 2010.

The overhaul of the access regime is based on certain assumptions concerning the CFP reform process. A legislative proposal overhauling the access regime is scheduled for the first semester 2011.

Problem

The deep-sea fisheries in the North-East Atlantic are partly dominated by traditional coastal fleets (Portugal, Spain), partly dominated by large nomadic trawlers (France, Spain). They account for only 1% of landings from the North-East Atlantic.

Deep-sea fisheries have only since 2003 been subject to detailed management on fishing opportunities (total allowable catch, fishing effort maxima). Before this, the fishery developed largely unregulated and showed typical symptoms of the "race to fish" problem, namely the depletion of stocks. In the case of deep-sea fisheries, due to the specific vulnerability to fishing, the stock depletion can occur in a short period of time, and recovery might take very long or fail. The stocks' biological state is largely unknown. Some are considered depleted; the fisheries are in general not sustainable. Fishing opportunities are decreasing.

In summary, the problems can be structured as follows:

Main problems:

- the high vulnerability of these stocks to fishing; many of them will only sustain fishing pressure over a longer period that is economically not viable;
- fishing with bottom trawls destroys or risks destroying irreplaceable benthic habitats (vulnerable marine ecosystems) which represent main sources of biodiversity in the deep sea. The extent of destruction that already occurred is unknown;
- fishing with trawls for certain deep-sea species produces medium to high levels of undesired catch of deep-sea species;

- determining the sustainable level of fishing pressure via scientific advice is particularly difficult.

Shortcomings of the current regime:

- The scope of fleets concerned is too large and too inflexible (lack of effectiveness as the regime is not targeted enough)
- After the adoption of the new control regulation¹, the regime is partly redundant and the link to the control standards is unclear (lack of coherence);
- The separate data collection is of very limited use to scientific advisory bodies, although constituting an administrative burden (lack of effectiveness and lack of coherence with the Data Collection Framework).

Objectives

General objective

General objective of the proposal is to ensure sustainable exploitation of deep-sea stocks according to the concept of Maximum Sustainable Yield, thereby limiting the environmental impact as much as possible. As long as data and method have not achieved the requisite quality level allowing a management towards MSY, the fisheries have to be managed according to the precautionary approach.

Specific objectives

- To comply with scientific advice on precautionary catch levels; to facilitate the future development of MSY-management for these data-poor stocks;
- To reduce the impact of bottom gears on the seafloor in order to reduce the risk of damage to VMEs;
- To reduce the level of undesired catch;
- To ensure the collection of all data needed for improving scientific advice.
- To focus the rules on the métiers that are targeting deep-sea species and make the métier-definition adaptable to evolving scientific advice and fleet behaviour;
- To make the access regime coherent with the control regulation;
- To harmonise the special data collection with the general standards and ensure follow-up.

Options

5 options were considered for developing the initiative. Status quo, banning all deep-sea fisheries and regulating by technical measures only options were discarded for their major disadvantages. The two options retained were:

Option 3– ban gears that are most harmful to the deep-sea ecosystem

¹ Regulation (EC) No 1224/2009.

The fishing gears which are posing the main ecological problems, namely bottom trawls and gillnets², are banned from deep-sea fisheries. The technical solution would consist in either banning those gears from the fleets that are allowed to target deep-sea species or by banning those gears from operating deeper than at a certain. The other problems of deep-sea fisheries and the access regime would be tackled by adaptations to the existing rules: not allow fishing opportunities to be fixed higher than precautionary advice; allow testing of MSY-rules; specify the data collection standards for deep-sea fisheries as part of the existing Data Collection Framework and allow the Commission to close the fishery if data is not collected; abolish separate effort reporting; distinguish by-catch from targeted fisheries for management and allow Commission to fine-tune the list of relevant species and catch thresholds; abolish redundant control provisions and specify the enhanced control standards which apply according to the control regulation (equivalent to control of multi-annual plans).

Option 4 – access conditional on international management standards for the High Sea

A fourth option would incorporate management standards developed by UN/FAO for fishing on the bottom of the High Sea. The main new elements would be: Conduct impact assessments before allowing bottom fishing; identify where VMEs occur or are likely to occur; establish protocols of VME encounters. For discard reduction, which is a topic not addressed by those standards, this option 4 would either oblige vessels to drastically reduce discards, or move towards a mandatory regime of regional effort management where all catches have to be retained on board. The other problems would be tackled as described in option 3.

Impact assessment of retained options

The two retained options were compared in regard of their outcomes relative to the policy objectives, the efficiency and coherence:

Outcomes

For the specific objectives a), d), e), g) and h), the options provide the same solution and are therefore considered equivalent:

a) (- To comply with scientific advice on precautionary catch levels; to facilitate the future development of MSY-management for these data-poor stocks -): By regulating in co-decision that recurrent decisions on the allocation of fishing opportunities cannot go beyond what is scientifically advised as a precautionary level of catches or fishing effort, it will be ensured that the scientific advice on precautionary management is adhered to. As the rule only applies to the precautionary framework, it leaves open the possibility to develop harvest rules scientifically based on MSY in the future, and following those harvest rules in recurrent decisions on the allocation of fishing opportunities.

d) + h) (- To ensure the collection of all data needed for improving scientific advice; to harmonise the special data collection with the general standards and ensure follow-up -): By enlarging the general data collection requirements towards fishing depth, VMS position and logbook entries haul by haul, the additional data considered necessary by scientists would be

² In view of their high levels of undesired catch and lost fishing gear continuing fishing in the deep water, gillnets were already made subject o transitional technical measures which have resulted in practice in these gears currently not targeting deep-sea species.

collected in the deep-sea metier. By linking this data collection to recurrent notification exercises (VMS position, electronic logbook reports), the administrative burden for the fishing undertakings can be kept to a minimum. By incorporating the data collection on the deep-sea metier into the standards of the general data collection, it will be ensured that the data collected responds to the recurrent statistical validity requirements, can be compared across Member States. The obligation to sample deep-sea metiers according to a specific metier definition is needed because otherwise the biological data from the commercial fishery would sometimes be submerged in larger, more disaggregated metiers. This obligation could be transferred into a reviewed data collection regulation (2012) in case it will be decided to incorporate metier-specific requirements.

e) (- to focus the rules on the metiers that are targeting deep-sea species and make the metier-definition adaptable to evolving scientific advice and fleet behaviour -): By defining a metier of deep-sea fishing (10% of deep sea catches per fishing day), the special fishing authorisations can be split into two categories, one for vessels targeting deep sea species, one for vessels the catches of which are limited to y-catches only. All vessels would be subject to the limit on vessel capacity in the fishery and on landing in designated ports, but the other obligations and rules of the access regime would only apply to vessels targeting deep-sea species, thus repairing one of the shortcomings of the existing regime. The Commission would be empowered to modify or detail the list of deep-sea species and the metier-definition according to scientific advice and regional fishing pattern, thus allowing for an evolution of the regime according to the reality of the fisheries and the improving scientific knowledge.

g) (- To make the access regime coherent with the control regulation -): The new control regulation contains a number of provisions similar to the existing access regime. Alignment can be achieved by discontinuing those provisions. In addition, the access regime could strengthen the control regulation's instrument of closing a fishery when essential provisions of the conservation measure are not complied with, by stipulating that the data collection obligations are to be considered also as essential conservation measures in the particular case of deep-sea species.

Concerning VME protection (objective b), the banning of bottom trawls (option 3) from targeted fishing is considered more effective than implementing the High-Sea standards related to VME-protection (prior impact assessment, encounter protocols, search for VME occurrence). Bottom trawls would no longer be present on the deep-sea grounds, irrespective of the results of a risk assessment. Risk assessment according to the international standards is influenced by the notion of "intensity of prior presence", and this would give rise to qualification problems³.

Concerning the reduction of unwanted catches (objective c), option 3 is also considered more efficient. It bans harmful gear from these fisheries directly, whereas option 4 poses ever increasing conditions on the use of bottom gears. Thus, option 4 makes it very burdensome to use bottom gears, which in economic terms makes it less attractive, while option 3 forces the operators to use less harmful gear. A further relative disadvantage of option 4 is that it relies on implementation and control of several additional measures in parallel, while the fisheries administrations are facing cost-cutting exercises imposed by the need for fiscal discipline and need thus to concentrate their control effort on economically important fisheries. Option 3 is also considered more effective, being a particularly restrictive policy on this subject in fisheries where the species caught are particularly vulnerable to fishing. The ecosystem approach to

³ See Communication COM(2010) 651, p. 6.

fisheries management, a concept already valid under the current CFP, is put into practice for fisheries that operate in the most fragile ecosystems. Within option 4, the move towards regional effort levels is preferred over discard reduction targets, in view of affirmative scientific advice on the utility of effort management in deep-sea fisheries.

Within the more effective option, the sub-option which introduces the ban via restricted fishing authorisations is considered more effective than the sub-option which would ban the gears from a certain depth. There are three reasons for this: First, a spatial approach would require control of depth levels at which gears are employed, and such a control instrument is currently not implemented. Second, the depth limits would have to be established according to scientific advice on local occurrence of deep-sea species, because those inhabit varying depth ranges. Third, the distribution area of deep-sea species overlap with the distribution area of other species on the lower part of the continental shelf; therefore a depth-criterion would constrain also fisheries which are not considered for this measure. By contrast, the sub-option 'fishing authorisation' would refer to the catch composition during the trip, and information on the catch composition becomes in future more reliable through the obligation to send electronic logbook information.

Efficiency

Regarding efficiency, option 3 gets a higher rating than option 4. This is because option 3 bans harmful gear from these fisheries directly, whereas option 4 poses ever increasing conditions on the use of bottom gears. Thus, option 4 makes it very burdensome to use bottom gears, which in economic terms makes it less attractive, while option 3 forces the operators to use less destructive gear. A further relative disadvantage of option 4 is that it relies on implementation and control of several additional measures in parallel, while the fisheries administrations are facing cost-cutting exercises imposed by the need for fiscal discipline and need thus to concentrate their control effort on economically important fisheries.

Within option 3, the sub-option on spatial limitation is considered less efficient because it needs an additional control effort related to fishing depth, while national administrations are in the process of implementing the new control regulation which in itself puts extreme strain on them.

Coherence

Concerning coherence, option 3 is more appreciated than option 4. On the one side, the banning of harmful gear is a policy already developed. The discard ban forthcoming under the CFP reform is being anticipated by phasing out gears which have shown to have very high discards of species that are most vulnerable to fishing. The ecosystem approach to fisheries management, a concept already valid under the current CFP, is put into practice for fisheries that operate in the most fragile ecosystems. The intentional limitation in regulatory detail is in line with the reform's simplification approach. The CFP reform's move towards regional management could be translated by giving an option for a voluntary move towards regional effort management for those gears that are allowed to remain in the fishery.

On the other side, the option introducing High Sea standards is coherent with an existing policy protecting the same type of species, although in a different economical/fleet context.⁴ The negative appraisal comes from two considerations: 1) In EU waters, VMEs receive protection also through the development of sites of NATURA 2000 under the Habitats Directive. The CFP reform will introduce a procedure for putting into practice the fisheries part of these conservation measures. This approach is based on the idea of creating a positive list of unique communities of biodiversity which will be directly protected, while the international concept is based on the idea of risk mitigation and avoidance strategies. Both are not incompatible but could lead to duplication of work. 2) The addition of new administrative requirements to the fishery, without assurance on the result, is not coherent with the simplification-approach intended by the CFP reform.

Monitoring and evaluation

For the monitoring of progress, indicators for the following policy fields have been suggested:

Policy area	Possible progress indicator	Data gathering / evaluation arrangement
Sustainable fixing of	Number of stocks which are managed according	Commission service

⁴ Only large capital-intensive vessels are able to undertake long journeys on the High Sea, while in costal waters of the deep like in Portugal, a large amount of artisanal vessels prosecutes the fishery.

fishing opportunities	to the precautionary advice received from ICES/STEFCF; Number of stocks for which exploratory MSY-rules are being tested	
Discard reduction	Trends in discards of deep-sea metiers	Technical reports from STECF based on data collection under the access regime and DCF.
Protection of VMEs	Accomplish phase-out of bottom trawls in deep-sea fisheries by the end of the transition period. Spatial profile of bottom trawlers concerned moves towards shallower waters	Monitoring of fishing authorisations of Member States, Member States to assess VMS-traces and catch composition protocols of vessels concerned
Data gathering and channelling is adapted to scientific needs and aligned with the general data collection policy.	Reduction in fish stocks for which ICES working group on deep sea species reports unavailability of commercial fisheries' data	ICES advice