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NOTE

from: General Secretariat of the Council
to: Working Party on Internal and External Fisheries Policy

No. Cion prop.: 11915/12 PECHE 249 CODEC 1776 - COM(2012)0298 final

Subject: Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and repealing Council Regulation (EC) No 1288/2009

Delegations will please find attached a copy of the draft report to be voted on by the European Parliament's Committee on Fisheries report on 8/9 October 2012. The above subject to be dealt with at the Working Party on Internal and External Fisheries Policy on 27-28 September 2012.



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Fisheries

2012/0158(COD)

29.8.2012

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and repealing Council Regulation (EC) No 1288/2009 (COM(2012)0298 – C7-0156/2012 – 2012/0158(COD))

Committee on Fisheries

Rapporteur: Pat the Cope Gallagher

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 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and repealing Council Regulation (EC) No 1288/2009 (COM(2012)0298 – C7-0156/2012 – 2012/0158(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0298),
- 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 (C7-0156/2012),
- 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.....¹,
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Fisheries (A7-0000/2012),

1. Adopts its position at first reading hereinafter set out;
2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In the light of advice from STECF, the area closure to protect juvenile haddock in ICES Division VIb should be maintained.

Or. enJustification

Recital 11 is in the wrong order it should be before recital 9 to follow the order of the articles.

¹ OJ C 0, 0.0.0000, p. 0.

Amendment 2

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In the light of advice from ICES and STECF certain technical conservation measures in the West of Scotland (ICES Division VIa), Celtic Sea (ICES Divisions VIIf,g) and Irish Sea (ICES Division VIIa) to protect **Rockall haddock**, cod, haddock and whiting stocks should be maintained to contribute to the conservation of fish stocks.

Amendment

(9) In the light of advice from ICES and STECF certain technical conservation measures in the West of Scotland (ICES Division VIa), Celtic Sea (ICES Divisions VIIf,g) and Irish Sea (ICES Division VIIa), to protect cod, haddock and whiting stocks should be maintained to contribute to the conservation of fish stocks.

Or. en

Justification

Rockall haddock is incorrectly associated with the Irish Sea VIIa cod. Rockall haddock is covered in recital 11.

Amendment 3

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) In the light of advice from STECF, the area closure to protect juvenile haddock in ICES Division VIb should be maintained.

Amendment

deleted

Or. en

Justification

Recital 11 is in the wrong order it should be before recital 9 to follow the order of the articles.

Amendment 4

Proposal for a regulation

Article 1 - paragraph (2)

Regulation No 850/98

Article 19a – paragraph 1

Text proposed by the Commission

Amendment

1. Any species subject to quota caught during any fishing activity in Regions 1 to 4 specified in Article 2 of this Regulation shall be brought aboard the vessel and subsequently landed.

deleted

Or. en

Justification

This provision which is an obligation to land all catches is actively being discussed under the reform of the Common Fisheries Policy and since it is the stated intention as outlined in the explanatory memorandum of the Commission to revise Regulation (EC) No 850/98 after and in accordance with the Common Fisheries Policy reform which is currently in the process of negotiation it is not appropriate to include this article at this stage. The proposed technical measures are transitional technical to allow time to develop a new framework for technical measures.

Amendment 5

Proposal for a regulation

Article 1 - paragraph (2)

Regulation No 850/98

Article 19a – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Undersized marine organisms shall be returned immediately to the sea. Theretention on board, transshipment, landing, transportation, storage, sale, display or offering for sale of undersized marine organismsshall be prohibited..

Or. en

Justification

The proposed technical measures are transitional technical to allow time to develop a new framework for technical measures. In light of this it is appropriate that these transitional technical measures should prohibit the landing of undersize marine organisms as provided for in the existing Regulation (EC) No 850/98.

Amendment 6

Proposal for a regulation

Article 1 - paragraph (2)

Regulation No 850/98

Article 19a – paragraph 2

Text proposed by the Commission

Amendment

2. The provisions referred to in paragraph 1 are without prejudice to the obligations set out in this Regulation or in any other fisheries regulation. **deleted**

Or. en

Justification

This article is now redundant given that article (19a 1.)is deleted.

Amendment 7

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 1

Text proposed by the Commission

Amendment

1. It shall be prohibited to conduct any fishing activity for cod, ***haddock*** and whiting within that part of ICES Division VIa that lies ***to the east or to the south of those rhumb lines which sequentially join the following coordinates which shall be measured according to the WGS84 system:***

– 54o30' N, 10o35' W

1. It shall be prohibited to conduct any fishing activity for cod and whiting within that part of ICES Division VIa that lies ***within the following area which consists of the following ICES Statistical rectangles or any part thereof:***

– 54o30' N 10o00' W

– 55o20' N, 09o50' W	– 55o00' N 10o00' W
– 55o30' N, 09o20' W	– 55o00' N 09o00' W
– 56o40' N, 08o55' W	– 58o00' N 09o00' W
– 57o00' N, 09o00' W	– 58o00' N 08o00' W
– 57o20' N, 09o20' W	– 58o30' N 08o00' W
– 57o50' N, 09o20' W	– 58o30' N 07o00' W
– 58o10' N, 09o00' W	– 59o00' N 07o00' W
– 58o40' N, 07o40' W	– 59o00' N 06o00' W
– 59o00' N, 07o30' W	– 59o30' N 06o00' W
– 59o20' N, 06o30' W	– 59o 30' N 06o00' W
– 59o40' N, 06o05' W	– 59o30' N 05o00' W
– 59o40' N, 05o30' W	– 60o00' N 05o00' W
– 60o00' N, 04o50' W	– 6o00' N 04o00' W
– 60o15' N, 04o00' W	

Or. en

Justification

The defined area is inappropriate and should either be changed or removed. This is based on latest STECF comments on the Evaluation of the Cod Recovery Plan and regarding the West of Scotland Management Line. The defined area is also invalidated by the fact that the Commission have introduced emergency measures to remove haddock from the by-catch provisions in area VIa and a zero TAC has been set for cod in 2012 in VIa. In addition it has been shown that this line has not had the desired effect of reduced fishing mortality on cod even though there has been a significant reduction in effort.

Amendment 8

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Paragraph 29d – paragraph 3 - introductory part

Text proposed by the Commission

3. By way of derogation from paragraph 1, it shall be permitted to conduct fishing activities using inshore static nets fixed with stakes, scallop dredges, mussel dredges, handlines, mechanised jigging, draft nets and beach seines, pots and creels

Amendment

3. By way of derogation from paragraph 1, it shall be permitted to conduct fishing activities using inshore static nets fixed with stakes, scallop dredges, mussel dredges, handlines, mechanised jigging, ***gill and tangle nets***, draft nets and beach

within the specified areas and time periods, provided that:

seines, pots and creels within the specified areas and time periods, provided that:

Or. en

Justification

Gill nets and tangle nets were used by the small inshore vessels to catch crustacea and the lesser spotted dogfish, saithe and haddock in the specified area in area VIa before the enactment of Annex III and the Appendices to Annex III to Regulation (EC) No 43/2009. These nets are not used to catch cod or whiting and will have almost zero impact on these stocks. Haddock is no longer a by-catch under the Commission emergency measures and should therefore be allowed to be caught by gill nets. The inshore fishermen involved are unnecessarily deprived of earning an income and have suffered severely over the last four years.

Amendment 9

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 3 – point (a)

Text proposed by the Commission

(a) no fishing gear other than inshore static nets fixed with stakes, scallop dredges, mussel dredges, handlines, mechanised jigging, draft nets and beach seines, pots and creels are carried on board or deployed; and

Amendment

(a) no fishing gear other than inshore static nets fixed with stakes, scallop dredges, mussel dredges, handlines, mechanised jigging, ***gill and tangle nets***, draft nets and beach seines, pots and creels are carried on board or deployed; and

Or. en

Justification

Gill nets and tangle nets were used by the small inshore vessels to catch crustacea and the lesser spotted dogfish, saithe and haddock in the specified area in area VIa before the enactment of Annex III and the Appendices to Annex III to Regulation (EC) No 43/2009. These nets are not used to catch cod or whiting and will have almost zero impact on these stocks. Haddock is no longer a by-catch under the Commission emergency measures and should therefore be allowed to be caught by gill nets.

Amendment 10

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 3 – point (b)

Text proposed by the Commission

(b) no fish other than mackerel, pollack, saithe and salmon, or shellfish other than molluscs and crustaceans are retained on board, landed or brought ashore.

Amendment

(b) no fish other than mackerel, pollack, saithe, ***haddock, lesser spotted dogfish (Scyliorhinus Canicula)*** and salmon, or shellfish other than molluscs and crustaceans are retained on board, landed or brought ashore.

Or. en

Justification

Gill nets and tangle nets were used by the small inshore vessels to catch crustacea and the lesser spotted dogfish, saithe and haddock in the specified area in area VIa before the enactment of Annex III and the Appendices to Annex III to Regulation (EC) No 43/2009. These nets are not used to catch cod or whiting and will have almost zero impact on these stocks. Haddock is no longer a by-catch under the Commission emergency measures and should therefore be allowed to be caught by gill nets.

Amendment 11

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 5 – point (d)

Text proposed by the Commission

(d) no more than **10 %** of the retained catch by weight is comprised of any mixture of cod, ***haddock*** and/or whiting;

Amendment

(d) no more than **3 %** of the retained catch by weight is comprised of any mixture of cod and/or whiting;

Or. en

Justification

Haddock is no longer a by-catch under the Commission emergency measures and zero TAC has

been set for cod for 2012, with 1,5 % by-catch. The 3 % is intended to cover both cod and whiting.

Amendment 12

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 7 – point (a)

Text proposed by the Commission

(a) all nets on board the vessel are constructed with a minimum mesh size of **120 mm** for vessels more than 15 metres overall length and of 110 mm for all other vessels;

Amendment

(a) all nets on board the vessel are constructed with a minimum mesh size of **110 mm** for vessels more than 15 metres overall length and of 100 mm for all other vessels. ***For vessels of less than 15 metres overall length, where the verified percentage of cod catches is less than 1,5 %, the mesh size shall comply with the mesh size ranges indicated for target species laid down in Annex I to Regulation (EC) No 850/98;***

Or. en

Justification

The use of existing mesh size of 120mm+120mm Square Mesh Panel causes major difficulties for fishermen operating in the mixed fisheries (megrim, monkfish and hake) off northwest Donegal. These vessels target megrim, monkfish and hake and there is a very low by-catch of, cod and whiting. Catch data from trials has shown that the 110mm+120 Square Mesh Panel will deliver equivalent conservation benefits for whiting, while observer data shows cod catches to be very low in this area less than 1.5% by-catch provision. For small vessels less than 15metres that have negligible catches of cod and whiting it is necessary to allow these vessels to use the existing mesh ranges provided for in Annex I of Council Regulation No 850/98. These vessels have extremely low catches of cod and whiting and in most instances have zero catches.

Amendment 13

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 7 – point (b)

Text proposed by the Commission

Amendment

(b) no more than **30 %** of the retained catch by weight is comprised of **any** mixture of cod, ***haddock*** and/or whiting;

(b) no more than **3 %** of the retained catch by weight is comprised of mixture of cod and/or whiting;

Or. en

Justification

Haddock is no longer a by-catch under the Commission emergency measures and zero TAC has been set for cod for 2012, with 1,5 % by-catch. The 3 % is intended to cover both cod and whiting.

Amendment 14

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. From 1 January to 31 March, and from 1 October to 31 December, it shall be prohibited to conduct any fishing activity using any of the gears specified in Annex I to Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks¹ in the area specified in ICES rectangle 39E3 enclosed by sequentially joining with rhumb lines the following coordinates which shall be measured according to the WGS84 system:

- longitude 7°00 W, latitude 55°00 N,

- longitude 6°00W, latitude 55°00 N

- longitude 6°00W, latitude 55°30 N

- longitude 7°00 W, latitude 55°30 N;

The master of a sea-fishing vessel or another person on board shall not cause or permit a person on board to attempt to fish for, land, tranship or have on board

fish caught in the specified area.

From 1 January to 31 December it shall be prohibited to conduct any cod and whiting fishing activity in the areas specified in ICES rectangle (47E3 and 46E2) in the northern part of ICES Division VIa. The master of a sea-fishing vessel or another person on board shall not cause or permit a person on board the boat to attempt to fish for, land, tranship or have on board cod and whiting caught in the specified area."

¹ OJ L 348, 24.12.2008, p. 20.

Or. en

Justification

Scientific advice has identified these ICES rectangles as important areas where there is a high concentration of juveniles or spawning cod. Closure of these areas to all fishing would have a real impact in reducing cod catches and would contribute to reducing the major discarding issue that exists in the cod fishery in area VIa. Ireland has already introduced the closure specified in paragraph 1 above.

Amendment 15

Proposal for a regulation

Article 1 - paragraph (6)

Regulation No 850/98

Article 29d – paragraph 10a (new)

Text proposed by the Commission

Amendment

10a. In the light of annual advice from ICES and STECF, the Commission may adopt implementing acts amending the coordinates of the area specified in paragraph 1 to reflect scientific advice on the state of cod and whiting stocks within that area..

Or. en

Justification

The existing defined area is inappropriate and ineffective as already highlighted in amendment six. Depending on advice from ICES and STECF a new defined area may or may not be appropriate. The following amendments are assuming that new defined area will be established in light of advice from ICES and STECF. Should ICES and STECF advise that a new defined area is no longer valid then all of article 29d is redundant.

Amendment 16

Proposal for a regulation

Article 1 - paragraph (9)

Regulation No 850/98

Paragraph 34a – paragraph 2 – point (a) – indent 1 a (new)

Text proposed by the Commission

Amendment

– are of only one of the permitted mesh size ranges: and

Or. en

Justification

This indent was a necessary part of the original text which was omitted in the Commission's proposal.

Amendment 17

Proposal for a regulation

Article 1 - paragraph (12)

Regulation No 850/98

Annex I

Text proposed by the Commission

Amendment

Article 34 fa

(12) In Annex I, footnote 6 to the table is deleted.

(12) In Annex I:

(a) new rows are inserted in the table as follows:

Target species	Mesh size range (millimetres)										
	<16	16 to 31	32 to 54	55 to 69	70 to 79	80 to 99	≥ 100				
	Minimum percentage of target species										
	95	90/60	60	30	90/60	90	35	30	70	None	
<i>Myctophiformes</i>	x										
<i>Stomiiformes</i>	x										

(b) footnote 6 to the table is deleted.

Or. en

Justification

The default mesh size for species not covered in the tables of 850/98 is 100mm. To avoid the same problem that happened with boarfish where it was necessary to introduce a specific amendment. This amendment provides an appropriate mesh size for other small pelagics of the orders Myctophiformes and Stomiiformes.

Amendment 18

Proposal for a regulation

Article 1 - paragraph (12) a (new)

Regulation No 850/98

Annex II

Text proposed by the Commission

Amendment

Article 34 fa

(12a) In Annex II, new rows are inserted in the table as followed:

Target species	Mesh size range (millimetres)							
	16 to 31		32 to 54		55 to 59		60 to 69	≥ 70
	Minimum percentage of target species							
	50%	90%	90%	90%	30%	70%	70%	None
<i>Myctophiformes</i>	<i>x</i>							
<i>Stomiiformes</i>	<i>x</i>							

Or. en

Justification

The default mesh size for species not covered in the tables of 850/98 is 100mm. To avoid the same problem that happened with boarfish where it was necessary to introduce a specific amendment. This amendment provides an appropriate mesh size for other small pelagics of the orders Myctophiformes and Stomiiformes.

EXPLANATORY STATEMENT

The technical conservation measures for fishery resources are among the key elements of a regionalised approach to fisheries management and come on top of the annual/ biannual decisions on catch possibilities. Technical measures lay down the rules on fishing zones and fishing gear used as opposed to quantities (fishing effort) and/or catches (TACs and quotas) authorised.

Technical conservation measures are rules, which our fishermen throughout the European Union must follow on a daily basis when undertaking a fishing expedition in order to ensure that how and where fishing activity is carried out it is done so in a sustainable manner. The measures relate to minimum landing sizes, minimum net mesh sizes, zones and closed seasons, limiting by-catch, the criteria to use more selective fishing gears and measures designed to protect the marine environment and have thus a considerable impact in achieving the objectives of the Common fisheries policy (CFP).

Since the Treaty on the Functioning of the European Union (TFEU) entered into force, only measures on setting and dividing up fishing opportunities may be defined by the Council. 'Associated conditions' (technical measures) which govern the use of fishing possibilities, without being functionally related to them, must be adopted by Council and Parliament in co-decision.

Council regulation 850/98 "for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms" - the basic regulation on technical measures - was intended to be amended in order to provide for a permanent technical measures framework in line with the TFEU but failed to reach political agreement.

In order to ensure that the measures laid down in Council regulation 43/2009 "fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required" would remain in place from 1 January 2010, Council adopted regulation 1288/2009 establishing transitional technical measures from 1 January 2010 to 30 June 2011 (period of 18 months). A further transitional extension of the validity of the measures was done under regulation 579/2011 of the European Parliament and the Council (for another period of 18 months) .

The present Commission proposal intends to extend the rules on technical measures for yet another transitional period until a regionalised framework for technical measures in accordance with the CFP has been adopted. As the CFP will not enter into force by 1 January 2013 when the current transitional technical measures will expire according to Article 2 (2) of regulation 579/2011, the Commission proposes once more an interim solution by amending the basic legal act without concrete terminability. By adopting the Commission proposal, the 2009 and 2011 regulations will be repealed.

Besides the extension of validity of the current technical measures, the proposed text contains an update on existing measures due to STECF advice and NEAFC recommendations as well as measures to reduce discards in the North-east Atlantic as agreed with Norway and the Faroe Islands in 2010 which had not yet been transposed into EU law.

It is unfortunate that the Parliament is presented yet another proposal on transitional technical measures rather than a permanent solution was found in due time. The European fishermen need legal clarity and the word "temporarily" should not be lead ad absurdum.

However, your rapporteur fully recognises the need for these measures, which are designed to ensure that fish stocks are fished in a sustainable manner and the ecosystems in which they live are maintained. Nonetheless, these measures must be formulated and designed with the evolving nature of fisheries management and scientific advice. He therefore suggests a few additional changes in order to complete the update by taking into account further advice by STECF and ICES on area definitions and management analyses as well as regarding the new Commission emergency measures. The rapporteur notes that poorly conceived or inappropriate technical measures can result in unsustainable fishing practices and in certain circumstances can endanger the lives and safety of fishermen, which is totally unacceptable. This is particularly the case with some of the existing measures on restrictions on fishing for cod, haddock and whiting in ICES Subarea VI where the scientific advice is that the defined area is inappropriate. The amendments proposed by the rapporteur are supported by clear scientific evidence and target specific articles, which are obsolete and/or contrary to sustainable fisheries management and require immediate attention.

Your rapporteur believes, that the present proposal on technical measures should not pre-empt decisions regarding landing obligations to be taken within the basic regulation of the CFP and the temporary nature of the legal act should be clearly linked to the envisaged regionalised framework for technical conservation measures once the new CFP has been adopted. Technical measures need to be carefully designed for specific cases and zones and cannot be seen as general rules applicable throughout all member states in an equal way, a regionalised approach is thus indispensable.

Transitional technical measures have been in place since the 1 January 2010 and expire on 31 December 2012. The rapporteur is fully aware that it leaves little time for the European Parliament and Council to reach a political agreement on one of the most complex and important aspects of the CFP. Nevertheless, the rapporteur is determined to work with all stakeholders to ensure that appropriate and effective transitional measures can be in place before the end of this year.
