



EUROPEAN
COMMISSION

Brussels, 11.10.2013
COM(2013) 702 final

2013/0337 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulations (EC) No 754/2009, (EU) No 1262/2012, (EU) No 39/2013 and (EU) No 40/2013 as regards certain fishing opportunities

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Regulations (EU) No 39/2013 and (EU) No 40/2013 fix, for 2013, fishing opportunities for certain fish stocks and groups of fish stocks applicable in EU waters and, for EU vessels, in certain non-EU waters. Fishing opportunities contained in those Regulations are usually amended several times during the period in which they are in effect.

Regulation (EU) No 1262/2012 fixes, for 2013 and 2014, the fishing opportunities for EU vessels for certain deep-sea fish stocks.

As for Regulation (EC) No 754/2009, it excludes certain groups of vessels from the fishing effort regime for cod laid down in Chapter III of Regulation (EC) No 1342/2008. When an excluded group of vessels needs to be re-included in Regulation (EC) No 754/2009, the relevant provision thereof needs to be amended, as well as the effort limits shown in Annex IIA of the two fishing opportunities regulations mentioned above.

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

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposed amendments seek to modify the four Regulations mentioned above as follows:

- Re-inclusions of groups of vessels in the effort management regime for cod. 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 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 amendments provide for the re-inclusion of one group of French vessels and one group of Spanish vessels heretofore excluded from the cod plan effort regime through amending Regulations (EC) No 754/2009, (EU) No 39/2013 and 40/2013.
- Two errors are corrected in this proposal. The first one concerns the TAC entry for Tusk in Norwegian waters of IV in Regulation (EU) No 40/2013, which should have been amended earlier in 2013, in accordance with the results of the consultations held between the EU and Norway. The second one refers to the Norwegian share of its blue whiting quota that can be fished in EU waters. A calculation mistake must be corrected in the figure introduced as part of the first amendment to the 2013 fishing opportunities set out in Regulation (EU) No 40/2013.
- In 2010, the Western and Central Fisheries Commission (WCPFC) banned the targeted fisheries of south Pacific albacore in the WCPFC Convention Area south of

20°S. Although no EU vessels have targeted this stock neither prior to nor since 2010, it is appropriate to complete the regulatory framework applicable to EU vessels registered at the WCPFC set out in Regulation (EU) No 40/2013.

- At its Annual Meeting in 2013, the Indian Ocean Tuna Commission (IOTC) adopted a Resolution aiming at the protection of oceanic whitetip sharks and applicable to fishing vessels on the IOTC Record of Authorised Vessels, or authorised to fish for tuna or tuna-like species managed by the IOTC on the high seas fisheries. The measure also provides for a more lenient regime as regards fishing opportunities for artisanal fisheries, i.e. vessels engaged in fishing activities solely in their Exclusive Economic Zones (EEZs). This IOTC measure must be added to the existing measures regarding thresher sharks of the all the species of the family *Alopiidae* set out in Regulation (EU) No 40/2013. In addition to this, an error must be corrected in point 2 of Annex VI for EU vessels authorised to fish for swordfish and albacore in the IOTC Convention Area.
- The Commission requested the International Council for the Exploration of the Sea (ICES) to advise whether it is appropriate to revise the list of deep-sea sharks laid down in Council Regulation (EU) No 1262/2012 fixing for 2013 and 2014 the fishing opportunities for EU vessels for certain deep-sea fish stocks. In July 2013 ICES advised that there is sufficient scientific information to exclude blackmouth catshark (*Galeus melastomus*) from that list and include all species belonging to the genus *Centrophorus* spp.

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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) Council Regulation (EC) No 2371/2002¹ requires that Union measures governing access to waters and resources and the sustainable pursuit of fishing activities be established taking into account available scientific, technical and economic advice and in particular reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF), as well as advice received from Regional Advisory Councils.
- (2) By Council Regulation (EC) No 754/2009², the Council excluded certain groups of vessels from the fishing effort regime laid down in Chapter III of Council Regulation (EC) No 1342/2008³. The allowable fishing effort for vessels subject to that regime is currently fixed by Annex IIA to Council Regulation (EU) No 39/2013⁴ and Annex IIA to Council Regulation (EU) No 40/2013⁵.
- (3) A group of vessels flying the flag of Spain and fishing in the West of Scotland is currently excluded from the application of the fishing effort regime laid down in Regulation (EC) No 1342/2008. On the basis of information provided by Spain in 2013, the STECF was not in a position to assess whether the conditions set out in Regulation (EC) No 1342/2008 remained fulfilled in the 2012 management period. It is therefore appropriate to re-include this group of Spanish vessels in that fishing effort regime. Regulations (EC) No 754/2009 and Annex IIA to Regulation (EU) No 39/2013 should therefore be amended accordingly.

¹ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

² 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).

³ Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 (OJ L 348, 24.12.2008, p. 20).

⁴ Council Regulation (EU) No 39/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements (OJ L 23, 25.1.2013, p. 1).

⁵ Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non- EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements (OJ L 23, 25.1.2013, p. 54).

- (4) A group of vessels flying the flag of France and fishing in the North Sea is currently excluded from the application of the fishing effort regime laid down in Regulation (EC) No 1342/2008. On the basis of information provided by France in 2013, the STECF assessed that catches for those vessels exceeded the established threshold. It is therefore appropriate to re-include that group of French vessels in that fishing effort regime. Regulation (EC) No 754/2009 and Annex IIA to Regulation (EU) No 40/2013 should therefore be amended accordingly.
- (5) Council Regulation (EU) No 1262/2012⁶ fixes catch limits for 2013 and 2014 as regards a list of deep-sea sharks. The Commission requested the International Council for the Exploration of the Sea (ICES) to advise whether it is appropriate to revise that list. ICES concluded that there is sufficient scientific information supporting the exclusion of blackmouth catshark (*Galeus melastomus*) and the inclusion of all species of the genus *Centrophorus* (*Centrophorus spp.*) on the list of deep-sea sharks. Regulation (EU) No 1262/2012 should be amended accordingly.
- (6) At its Annual Meeting in 2013, the Indian Ocean Tuna Commission (IOTC) adopted a Resolution aiming at the protection of oceanic whitetip sharks and applicable to fishing vessels on the IOTC Record of Authorised Vessels by prohibiting, as an interim pilot measure, to retain on board, tranship, land or store any part or whole carcass of oceanic whitetip shark. The resolution provides for an exception for artisanal fisheries, namely fishing vessels engaged in fishing operations within the Exclusive Economic Zone (EEZ) of the Member State whose flag they fly. Article 23 of Regulation (EU) No 40/2013 should be amended accordingly.
- (7) At its Annual Meeting in 2010, the Western and Central Pacific Fisheries Commission (WCPFC) adopted a recommendation limiting the number of vessels actively fishing for south Pacific albacore in the Convention Area south of 20°S. Consequently, it should be ensured that EU vessels continue to operate without targeting that species in the WCPFC Convention Area south of 20°S. A new paragraph should be added to Article 29 of Regulation (EU) accordingly.
- (8) Fishing opportunities for EU vessels in Norwegian waters and for Norwegian vessels in EU waters are established each year in the light of consultations on fishing rights held in accordance with the bilateral agreement on fisheries with Norway⁷. Pending the conclusion of those consultations on the arrangements for 2013, Regulation (EU) No 40/2013 fixed provisional fishing opportunities for the stocks concerned. On 18 January 2013, the consultations with Norway were concluded, and Council Regulation (EU) No 297/2013⁸ amended the relevant provisions of Regulation (EU) No 40/2013. However, the stock of tusk in Norwegian waters of IV was erroneously excluded from Regulation (EU) No 297/2013. Furthermore, the amount of blue whiting that Norway can fish in EU waters of II, IVa, V, VI north of 56° 30' N and VII west of 12° W did not reflect the agreed record after consultations with that country. Annex IA to Regulation (EU) No 40/2013 should be amended accordingly.

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⁷ Agreement on fisheries between the European Economic Community and the Kingdom of Norway (OJ L 226, 29.8.1980, p. 48).

⁸ Council Regulation (EU) No 297/2013 of 27 March 2013 amending Regulations (EU) No 44/2012, (EU) No 39/2013 and (EU) No 40/2013 as regards certain fishing opportunities (OJ L 90, 28.3.2013, p. 10).

- (9) An error was identified in the number of vessels and the capacity allocated to the EU and authorised to fish for swordfish and albacore in the IOTC Convention Area. Annex VI of Regulation (EU) No 40/2013 should be amended accordingly.
- (10) The provisions of this Regulation concerning fishing effort limits should apply from 1 February 2013. The provisions concerning catch limits and allocations should apply from 1 January 2013, except for the new provisions regarding WCPFC and IOTC, which should apply from the date of entry into force of this Regulation. 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 upon its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 754/2009

In Article 1 of Regulation (EC) No 754/2009, points (b) and (j) are deleted.

Article 2

Amendments to Regulation (EU) No 1262/2012

The Annex to Council Regulation (EU) No 1262/2012 is amended in accordance with the text set out in Annex I to this Regulation.

Article 3

Amendments to Regulation (EU) No 39/2013

Annex IIA to Regulation (EU) No 39/2013 is amended in accordance with the text set out in Annex II to this Regulation.

Article 4

Amendments to Regulation (EU) No 40/2013

Regulation (EU) No 40/2013 is amended as follows:

- (1) Article 23 is replaced by the following:

“Article 23

Sharks

1. Retaining on board, transshipping or landing any part or whole carcass of thresher sharks of all the species of the family *Alopiidae* in any fishery shall be prohibited.
2. Retaining on board, transshipping or landing any part or whole carcass of oceanic whitetip sharks (*Carcharhinus longimanus*) in any fishery shall be prohibited, except for vessels under 24 metres overall length engaged solely in fishing operations within the Exclusive Economic Zone of the Member State whose flag they fly, and provided that their catch is destined solely for local consumption.
3. When accidentally caught, species referred to in paragraph 1 and 2 shall not be harmed. Specimens shall be promptly released.”

- (2) Article 29 is replaced by the following:

“Article 29

Conditions for bigeye tuna, yellowfin tuna, skipjack tuna and south Pacific albacore fisheries

1. Member States shall ensure that the number of fishing days allocated to purse-seine vessels fishing for bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*) and skipjack tuna (*Katsuwonus pelamis*) in the part of the WCPFC Convention Area in the high seas and located between 20° N and 20° S does not increase.
 2. EU vessels shall not target south Pacific albacore (*Thunnus alalunga*) in the WCPFC Convention Area south of 20°S.”
- (3) Annex IA is amended in accordance with the text set out in Annex III to this Regulation.
- (4) Annex IIA is amended in accordance with the text set out in Annex IV to this Regulation.
- (5) Annex VI is amended in accordance with the text set out in Annex V to this Regulation.

Article 5

Entry into force

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

However, Article 4(3) and (5) shall apply from 1 January 2013 and Article 1, Article 3 and Article 4(4) shall apply from 1 February 2013.

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

Done at Brussels,

For the Council
The President

ANNEX I

In Part 1 of the Annex to Regulation (EU) No 1262/2012, point 2 is replaced by the following:

“2. For the purposes of this Regulation, 'deep-sea sharks' means the following list of species:

Common name	Alpha-3 code	Scientific name
Deep-water catsharks	API	<i>Apristurus</i> spp.
Frilled shark	HXC	<i>Chlamydoselachus anguineus</i>
Gulper sharks	CWO	<i>Centrophorus</i> spp.
Portuguese dogfish	CYO	<i>Centroscymnus coelolepis</i>
Longnose velvet dogfish	CYP	<i>Centroscymnus crepidater</i>
Black dogfish	CFB	<i>Centroscyllum fabricii</i>
Birdbeak dogfish	DCA	<i>Deania calcea</i>
Kitefin shark	SCK	<i>Dalatias licha</i>
Greater lanternshark	ETR	<i>Etmopterus princeps</i>
Velvet belly	ETX	<i>Etmopterus spinax</i>
Mouse catshark	GAM	<i>Galeus murinus</i>
Bluntnose six-gilled shark	SBL	<i>Hexanchus griseus</i>
Sailfin roughshark (Sharpback shark)	OXN	<i>Oxynotus paradoxus</i>
Knifetooth dogfish	SYR	<i>Scymnodon ringens</i>
Greenland shark	GSK	<i>Somniosus microcephalus</i> ”

ANNEX II

In Annex IIA to Regulation (EU) No 39/2013, the column for Spain (ES) in Table (d) of Appendix 1 is replaced by the following:

“Regulated gear	ES
TR1	249 152
TR2	0
TR3	0
BT1	0
BT2	0
GN	13 836
GT	0
LL	1 402 142”

ANNEX III

Annex IA to Regulation (EU) No 40/2013 is amended as follows:

(a) the entry for tusk in Norwegian waters of IV is replaced by the following:

"Species:	Tusk <i>Brosme brosme</i>	Zone:	Norwegian waters of IV (USK/04-N.)
Belgium	0	Analytical TAC	
Denmark	165	Article 3 of Regulation (EC) No 847/96 shall not apply.	
Germany	1	Article 4 of Regulation (EC) No 847/96 shall not apply.	
France	0		
The Netherlands	0		
United Kingdom	4		
Union	170		
TAC	Not relevant		

(b) the entry for blue whiting in EU waters of II, IVa, V, VI north of 56° 30'N and VII west of 12° W is replaced by the following:

"Species:	Blue whiting <i>Micromesistius poutassou</i>	Zone:	EU waters of II, IVa, V, VI north of 56° 30' N and VII west of 12° W (WHB/24A567)
Norway	99 408 ^{(1) (2)}	Analytical TAC	
TAC	643 000		

⁽¹⁾ To be counted against Norway's catch limits established under the Coastal States arrangement.

⁽²⁾ Special condition: the catch in IV shall be no more than 24 852 tonnes, i.e. 25 % of Norway's access quota."

ANNEX IV

In Annex IIA to Regulation (EU) No 40/2013, the column for France (FR) in Appendix 1 is replaced by the following:

“Regulated gear	FR
TR1	1 505 354
TR2	6 496 811
TR3	101 316
BT1	0
BT2	1 202 818
GN	342 579
GT	4 338 315
LL	125 141”

ANNEX V

In Annex VI to Regulation (EU) No 40/2013, point 2 is replaced by the following:

- “2. Maximum number of EU vessels authorised to fish for swordfish and albacore in the IOTC Convention Area

Member State	Maximum number of vessels	Capacity (gross tonnage)
Spain	27	11 590
France	41	5 382
Portugal	15	6 925
United Kingdom	4	1 400
Union	87	25 297”