

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 793/2013

of 20 August 2013

establishing measures in respect of the Faeroe Islands to ensure the conservation of the Atlanto-Scandian herring stock

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing ⁽¹⁾, and in particular Article 4 thereof,

Whereas:

(1) The stock of Atlanto-Scandian herring (also referred to as Norwegian spring-spawning herring) is the largest herring stock of the world. It produced catches of the order of 1 million to 2 million tonnes. However, heavy exploitation due to overfishing led the stock to collapse and to the cessation of all fisheries for more than two decades between the early 1970s and the mid 1990s, with very severe consequences for the fleets that exploited that stock.

(2) The stock of Atlanto-Scandian herring was managed, since the recovery of the stock and the re-opening of the fishery in 1996, following consultations among the five parties whose economic exclusive zone (EEZ) is visited by this fish during its migration cycle: the Russian Federation, Norway, the Faeroe Islands, Iceland and the European Union (hereinafter 'the coastal States').

(3) Since 2007, the arrangements agreed during the coastal States' consultations included definitive rules on the sharing of the total allowable catch and a commitment to maintain the relative stability of the shares for future years. The shares agreed for the stock of Atlanto-Scandian herring were 5,16 % for the Faeroe Islands, 14,51 % for Iceland, 6,51 % for the Union, 61 % for Norway and 12,82 % for the Russian Federation. Furthermore, the coastal states also had a long-standing agreement to review and revise the commonly agreed management arrangements only jointly, on the basis of new scientific advice and by a given date.

(4) To facilitate the setting of total allowable catches, the coastal States had agreed and implemented, on the basis of the available scientific knowledge, a long-term management plan consistent with the precautionary approach, intended to keep harvesting within safe biological limits and designed to ensure sustainable fisheries.

(5) This long-term management plan aimed at avoiding that the stock would fall below the biomass level of 2 500 000 tonnes and to make all efforts to maintain it above 5 000 000 tonnes, the level believed to produce maximum sustainable yield. This was to be done by restricting harvesting in a manner consistent with a fishing mortality of 0,125. It was agreed that, if the biomass level fell below the level of 5 000 000 tonnes, the fishing mortality should be reduced in order to ensure a rapid recovery of the stock.

(6) In September 2012 the International Council for the Exploration of the Seas (ICES) recommended, in accordance with the precautionary approach set out in the management plan, that the total allowable catch (TAC) for the five coastal States should be no more than 619 000 tonnes in 2013, which represents a decrease of 26 % compared to the TAC fixed for 2012.

⁽¹⁾ OJ L 316, 14.11.2012, p. 34.

- (7) In the coastal State consultations held from October 2012 through January 2013 in order to negotiate the arrangements for 2013, the representatives of the Faeroe Islands consistently and repeatedly stated their refusal to continue the current sharing arrangement. Arrangements for 2013 were finally concluded 18 January 2013 by just four coastal States, in order to maintain a coordinated management of the stock by coastal States as far as possible. The agreed record of those consultations, dated 23 January 2013, states that: 'The Delegations expressed their concern that the Faeroe Islands have withdrawn from the Coastal States agreement without prior notification'. Given the impossibility to agree an arrangement with five parties due to the Faeroese withdrawal from the consultations, it was agreed amongst the remaining four parties to take account of the fishing interests of the Faeroe Islands by setting aside their traditional share, i.e. the share that the Faeroe Islands have held since the 2007 arrangement, which corresponded to 31 000 tonnes (5,16 % of the TAC).
- (8) In the course of the coastal state consultations leading up to 23 January 2013, the representatives of the Faeroe Islands did not make any demand for a precise share, they did not make any written or oral proposal for a new sharing arrangement, they did not seek to engage with the four other parties, and they did not make any effort to cooperate in discussing an arrangement for 2013.
- (9) The Fisheries Minister of the Faeroe Islands announced in a statement of 26 March 2013 that a catch limit of 105 230 tonnes had been set unilaterally for the Faeroese fleet, which represents 17 % of the recommended TAC or more than three times the share that would correspond to an application of the previously agreed arrangements and an increase by 145 % of their share in 2012. That unilateral announcement is to be assessed in the light of the above-mentioned scientific advice to reduce catches in 2013 by 26 %. With that announcement, the Faeroe Islands also *de facto* abandoned the jointly agreed management plan.
- (10) By those actions, the Faeroe Islands have failed to cooperate with the Union and with the other coastal States in the management of a stock of common interest, the Atlanto-Scandian herring, and have failed to comply with the obligations under Article 61(2), Article 63(1) and (2) and Articles 118, 119 and 300 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and Articles 5 and 6 and Article 8(1) and (2) of the United Nations Agreement for 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 (UNFSA).
- (11) If the catch limits set out by the four coastal States and the Faeroe Islands were reached, the total catch would amount to 692 290 tonnes, which would constitute an overfishing compared to the recommended TAC. According to the assessments and catch forecasts made by ICES when delivering advice for the management of the 2013 fishing season ⁽¹⁾, such a catch would lead the spawning stock biomass (SSB) at the beginning of 2014 to a level of 4 200 000 tonnes, well below the level of 5 000 000 tonnes that is expected to produce maximum sustainable yield.
- (12) Furthermore, new publicly available scientific evidence provided by ICES in May 2013 ⁽²⁾ confirms that the the long-term management plan as currently designed (aiming at a fishing mortality of 0,125) is precautionary whilst an increase of the target fishing mortality to a value of 0,15, which happens to be equivalent to that resulting from the increase of the Faeroese share, makes the plan become non-precautionary, with associated increased risk of stock collapse.
- (13) According to Article 3 of Regulation (EU) No 1026/2012, a country may be identified as a country allowing non-sustainable fishing where: (a) it fails to cooperate in the management of a stock of common interest in full compliance with the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the United Nations Agreement for 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 of 4 August 1995 (UNFSA), or any other international agreement or norm of international law; and (b) either: (i) it fails to adopt necessary fishery management measures; or (ii) it adopts fishery management measures without due regard to the rights, interests and duties of other countries and the Union, and those fishery management measures, when considered in conjunction with measures taken by other countries and the Union, lead to fishing activities which could result in the stock being in an unsustainable state.

⁽¹⁾ <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2012/2012/her-noss.pdf>

⁽²⁾ <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2013/Special%20requests/NEAFC%20NSS%20herring%20MP.pdf>

- (14) As a result of the above considerations, the Faeroe Islands meet all the criteria to be identified as a country allowing non-sustainable fishing and therefore the Commission may hence adopt the measures provided for in Regulation (EU) No 1026/2012.
- (15) The Commission, pursuant to Article 6 of Regulation (EU) No 1026/2012, decided to notify the Home Government of the Faeroe Islands and the Government of Denmark, by decision of 17 May 2013 ⁽¹⁾ and letter of the same date, its intention to identify the Faeroe Islands as a country allowing non-sustainable fishing, indicating the reasons for that identification and describing the possible measures that may be taken pursuant to that Regulation. The Home Government of the Faeroe Islands acknowledged receipt of the letter the same day.
- (16) By 17 June 2013, the Home Government of the Faeroe Islands responded to the notification contesting the arguments put forward by the Commission with its own arguments, namely, that they have not withdrawn from the consultations, that they continue to be committed to finding a negotiated solution to the sharing of the stock and that the EU has not the right to use coercive measures. However, but did neither express any intention to amend its decision on the unsustainable catch limits for 2013 nor it did give any clear justification for their high catch limit for 2013, beyond a not-substantiated allegation of 'an increased occurrence of this stock in recent years in maritime areas under Faeroese jurisdiction'.
- (17) The Commission examined the existing scientific literature on the subject and only found statements pointing to occasional occurrence of herring in Faeroese waters for longer time in the season, but did not find any reference allowing to interpret this phenomenon as a stable or permanent increase in abundance. As to the argument advanced by the Faeroe Islands that the stock will fall below MSY in 2014 in any case, and not as a consequence of their increased unilateral share, it should be noted that, according to the latest scientific advice (see recital 12 above), while the stock may recover to MSY, it will remain longer below that level and under a higher danger of stock collapse if the current target fishing mortality is increased to a value equivalent as that resulting from the increased Faeroese share.
- (18) The Commission, following a detailed analysis of the arguments of the Home Government of the Faeroe Islands, concluded that these do not constitute a rebuttal of the reasons of the Commission's notification or an objective reason to justify the lack of cooperation of this country. That conclusion, taken together with the unwillingness to rectify the unilateral catch limits for 2013, leads the Commission to conclude that the Faeroe Islands continue to meet the criteria to be identified as a country allowing non-sustainable fishing.
- (19) Therefore, the Commission considers that it is necessary to adopt measures pursuant to Article 4 of Regulation (EU) No 1026/2012.
- (20) Those measures need to be effective and proportionate to achieve their conservation objective and should prevent the Faeroe Islands to take advantage of the Union markets, ports and facilities to maintain its unsustainable fishery for herring.
- (21) In addition, the Commission has evaluated the environmental, trade, economic and social effects in the short and long terms of the measures which may be adopted pursuant to Article 4(1) of Regulation (EU) No 1026/2012, as well as the administrative burden associated with their implementation.
- (22) On the basis of that evaluation it appears appropriate to adopt, as a first step, certain measures listed in points (c), (d), (e) and (i) of Article 4(1) of Regulation (EU) No 1026/2012. Should those measures prove ineffective and should the Faeroe Islands continue to allow non-sustainable fishing, further measures may be established.
- (23) The Faeroese fishery for herring, conducted by mid-water trawlers, can be a directed fishery in the colder months of the year, but it is a mixed fishery in late spring and summer, when herring and mackerel are caught in similar quantities. Both species can be caught by the same vessel in the same haul, in the same fishing trip or in the same fishing grounds along the season. Mackerel is thus an associated species with herring. Consequently, by continuing to catch and export mackerel, the Faeroe Islands would be led to also continue to catch high amounts of herring, which is a necessary by-catch, even if herring could not be exported to the Union. Therefore, by not including also mackerel imports in the measures the effectiveness of a ban on the imports of herring would be undermined as a means to prevent further damage to the sustainability of the

⁽¹⁾ Decision C(2013) 2853 of 17.5.2013.

herring stock. Mackerel cohabits with herring to such an extent that, while fishing for mackerel in fisheries under the control of Faeroe Islands, there is always a risk to catch herring. Therefore, all mackerel caught under the control of the Faeroe Islands is susceptible of having been caught together with herring. As a consequence, in order for trade measures to be effective, they should cover both herring and mackerel.

- (24) In assessing the proportionality of the measures, and in particular in deciding whether restrictions on the trade of the main species caught during the herring fishery should be limited to a certain amount or should prohibit all imports, the Commission examined whether alternative measures other than a total ban of imports of all products made from or containing herring or mackerel could be envisaged as more proportionate measures. Three possible alternatives have been assessed: (i) a quantitative restriction of all products, limiting the imports to the traditional exchanges, (ii) a total ban of only fresh, frozen and canned fish, not including more elaborated products such as fish meal and oil, and (iii) an import ban limited to herring and herring products only. While the first of these three options could be highly effective given the high importance of fish meal exports from Faeroe Islands into the EU, it is taken as too burdensome at this stage, especially taking into account that, on the one hand, it may affect sectors of the Faeroese fishing industry not directly related to the pelagic catching sector and, on the other hand, it will create a high administrative burden associated to the analysis of fish meal and oil samples in specialised laboratories in order to determine their composition by species. The third alternative, as said above, is considered inefficient as long as its potential economic consequences can easily be offset by mackerel exports. The second alternative offers therefore the best balance between the means and their desired effects and there are no less onerous measures to achieve the necessary result.
- (25) In assessing the proportionality, the Commission also examined whether the other measures than import restrictions, and notably restrictions on the use of ports, are necessary. Because the use of ports for refuelling, landing, exchange of crews, repairs and rest constitute routine and necessary activities linked to the catching of herring, the Commission concluded that such measures are also necessary and no alternative less restrictive measures are possible to avoid that the fleets of the Faeroe Islands takes advantage of EU facilities to prosecute unsustainable herring fisheries.
- (26) In evaluating the environmental, trade, economic and social effects of the measures in the short and long term, as well as the administrative burden associated

with their implementation, it can be concluded that the measures are reasonable and will not have unacceptable effects or create an undue burden. The environmental effects of the measures are sound because they are expected to contribute to improving the sustainability of the stock of herring. Their trade effects will be moderate because, although immediate economic effects are to be expected, alternative exchange mechanisms can be found in the medium term and at the end no shortage in supplies is to be expected within the EU. The economic and social effects are expected to be moderate in the short term, since they will be associated to trade effects; however, in the medium and long terms, if the measures achieve the desired effects, will necessarily be very positive especially for a number of fleets whose economic dependence from pelagic fish is high. The administrative burden from the measures will be relatively low if one considers that most of the control means, including personnel, necessary in order to enforce the measures in Member States exist already.

- (27) Finally, the Commission examined the compatibility of the measures with international law and concluded that they relate to the conservation of an exhaustible fish stock and aim at the avoidance of over-exploitation of the stock made effective, since the measures aim to maintain the Atlanto-Scandian herring stock within safe biological limits. The measures are made effective in conjunction with the Union's own conservation measures (Article 5(1)(b) of Regulation (EU) No 1026/2012). In particular, the Union has reduced its catches by 26 %, in line with the recommendation by the International Council for the Exploration of the Seas (ICES), and the Union is applying fully the conditions and limitations of the long-term management plan, which has been agreed and applied by the coastal states since 1999 and has been confirmed again by the ICES in May 2013 as consistent with the precautionary approach and as the right management approach to keep harvesting within safe biological limits. Furthermore, there is no conclusive scientific evidence pointing to a higher share in the Atlanto-Scandian herring fishery to which the Faeroe Islands would be entitled; therefore, a reduction of their catches as recommended by the ICES for 2013 would have been appropriate.
- (28) Consequently, the measures to be adopted as a first step should include: (a) the prohibition of imports of herring and mackerel from the Atlanto-Scandian stocks as well as of fishery products containing or made of such fish and (b) restrictions on the use of Union ports by vessels fishing for the Atlanto-Scandian herring and mackerel stocks under the control of the Faeroe Islands and by vessels transporting fish or fisheries products stemming from that fishery. In order to facilitate the enforcement of the measures applicable to vessels conducting fisheries on the relevant herring or mackerel stocks or transporting fish or fishery products stemming from those stocks, Member States should be provided with lists of

those vessels. In order to determine whether herring or mackerel have been caught under the control of the Faeroe Islands, use should be made of the catch certification scheme set out in Chapter III of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 ⁽¹⁾.

- (29) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation identifies the Faeroe Islands as a country allowing non-sustainable fishing of the Atlanto-Scandian herring stock and establishes measures in respect of the Faeroe Islands to ensure the long-term conservation of that stock.

Article 2

Scope and objectives

This Regulation shall apply to the fishery for Atlanto-Scandian herring conducted under the control of the Faeroe Islands. It has the objective of ensuring long-term sustainability of the stock of Atlanto-Scandian herring.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'Atlanto-Scandian herring stock' means the stock of herring (*Clupea harengus*) in ICES (International Council for the Exploration of the Sea) subareas I, II, V, XII and XIV ⁽²⁾.
- (b) 'Atlanto-Scandian herring' means fish from the Atlanto-Scandian herring stock.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁾ As specified in 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).

- (c) Mackerel is fish from the species *Scomber scombrus* that has been caught in the areas occupied by Atlanto-Scandian herring.

- (d) 'Caught under the control of the Faeroe Islands' means caught by vessels flying the flag of the Faeroe Islands, or by vessels flying the flag of another State which have been authorised to fish in the Faeroe Islands' exclusive economic zone or have been chartered by a Faeroese firm or by Faeroese authorities.

Article 4

Identification

The Faeroe Islands shall be identified as a country allowing non-sustainable fishing of the Atlanto-Scandian herring stock.

Article 5

Measures

1. It shall be prohibited to introduce into the territory of the Union, including for transshipment purposes at ports, fish or fishery products set out in Annex which consist of, are made of, or contain Atlanto-Scandian herring or mackerel caught under the control of the Faeroe Islands.

2. The use of Union ports by vessels flying the flag of the Faeroe Islands that fish for Atlanto-Scandian herring or mackerel and by vessels transporting the fish or the fishery products stemming from Atlanto-Scandian herring or mackerel that have been caught either by vessels flying the flag of that country or by vessels authorised by it while flying another flag shall be prohibited. This prohibition shall not apply in cases of *force majeure* or distress within the meaning of Article 18 of the 1982 United Nations Convention on the Law of the Sea for services strictly necessary to remedy those situations.

Article 6

Implementation

1. The competent authorities of the Member States shall make use of the catch certification scheme laid down in Chapter III of Regulation (EC) No 1005/2008 to identify any product covered by the prohibition set out in Article 5(1) of this Regulation.

2. In order to facilitate the implementation of the prohibition set out in Article 5(2), Member States shall be provided with indicative lists of vessels that, according to reliable sources of data, have fished or are currently fishing for Atlanto-Scandian herring or mackerel under the control of the Faeroe Islands.

*Article 7***Entry into force**

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

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

Done at Brussels, 20 August 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

List of fish and fishery products whose introduction in to the territory of the Union is prohibited

Species	Products (Harmonised System (HS) nomenclature)
Herring (<i>Clupea harengus</i>)	ex 0302 41
	ex 0302 90
	ex 0303 51
	ex 0303 90 90
	ex 0304 59 50
	ex 0304 86
	ex 0304 99 23
	ex 0305 42
	ex 0305 59 30
	ex 0305 61
	ex 0305 72
	ex 0305 79
	ex 1604 12
	ex 1604 20 90
Mackerel (<i>Scomber scombrus</i>)	ex 0302 44
	ex 0303 54
	ex 0304 49 90
	ex 0304 89 49
	ex 0304 99 99
	ex 0305 49 30
	ex 1604 15
ex 1604 20 50	