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COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0091 (CNS)

Proposal for a

COUNCIL REGULATION

**establishing a multi-annual plan for the stock of herring distributed to the West of
Scotland and the fisheries exploiting that stock**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

The objective of this proposal is to establish a multi-annual plan for the herring stock to the West of Scotland and the fisheries on that stock so as to ensure that the exploitation of the stock is in conformity with the objective of providing a high yield and sustainable economic, environmental and social conditions.

Scientific advice from the Scientific, Technical and Economic Committee for Fisheries (STECF), based on the advice of the International Council for the Exploration of the Sea (ICES) has indicated that the stock could be managed in a way that is consistent with a high and sustainable yield by managing the rate of fishing mortality to 0.25 per year when the size of the stock is greater than 75 000t but at a rate of fishing mortality of 0.2 per year when the size of the stock is below 75 000t but above 50 000t.

- General context

During the 2002 reform of the Common Fisheries Policy, the Commission and Council agreed to implement progressively multi-annual plans and recovery plans concerning fisheries resources of interest to the Community. Plans have been established concerning most stocks of cod in Community waters, two stocks of hake, two stocks of *Nephrops* and two stocks of sole. A further plan concerning the stocks of plaice and sole in the North Sea has also been adopted.

Also in 2002, the Member States were signatories to the Implementation Plan of the World Summit on Sustainable Development (Johannesburg). That Implementation Plan includes a commitment to exploit fisheries according to maximum sustainable yields.

The stock of herring with the largest Community interest is the North Sea herring. This stock has been subject to a multiannual management arrangement established jointly with Norway since 1997. The results have been generally satisfactory, and it is appropriate to establish a similar multi-annual plan governing the exploitation of the stock of herring to the West of Scotland. This intention has been endorsed by the Council Declaration of December 2005 inviting the Commission to come forward with a proposal concerning a multi-annual management plan for the stock of herring in the EC and international waters of Zones Vb and VIb and the northern part of Zone VIa, i.e. the West of Scotland area.

- Existing provisions in the area of the proposal

Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, sets the general framework for sustainable exploitation of fisheries resources, and identifies the situations in which the Council shall adopt management plans and recovery plans.

- Consistency with the other policies and objectives of the Union

The proposal's objective of sustainable development is consistent with the Community's environmental policy, especially the elements of that policy dealing with protecting natural habitats and preserving natural resources.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The proposal is based on several consultations with Member States as well as representatives for stakeholders in the Pelagic Regional Advisory Committee.

The Commission issued a non-paper setting out the main elements relevant to managing the fishery for herring to the West of Scotland to be included in a multi-annual plan. This was presented to the Pelagic Regional Advisory Council on 20 June 2006.

Summary of responses and how they have been taken into account

- Collection and use of expertise

Scientific/expertise domains concerned

ICES and STECF have been requested to provide scientific advice on the long-term management of the fisheries where possible. Such advice was received from ICES in October 2005 and endorsed by STECF in November 2005 concerning long-term management and harvest rules for the West Scotland herring. The proposal is based on the advice received.

Summary of advice received and used

Advice concerning the state of the stock in 2007 indicates that the stock is slightly overexploited with respect to maximum sustainable yield.

A harvest rule establishing a method for setting TACs for this stock in a way that is consistent with high yields and sustainable exploitation has been recommended by the scientific agencies.

The relevant stakeholders' representative body – the Pelagic Regional Advisory Council – has provided the formal opinion that the multi-annual plan should be adopted, subject to certain technical issues.

Means used to make the expert advice publicly available

The advice from ICES and STECF is publicly available on their respective websites (www.ices.dk and fishnet.jrc.it/web/stecf).

- Impact assessment

The proposed measures would, if implemented, result in more stable TACs for this stock and would allow better forwards planning by the catching sectors concerned.

The implementation of the multi-annual plan does not imply radical changes in the fishing mortality rate nor in the annual catches compared to recent levels.

3) LEGAL ELEMENTS OF THE PROPOSAL

- Legal basis

The multi-annual plan contains provisions for actions to be taken should the stock fall below 75 000 tonnes. It is appropriate to base the multi-annual plan directly on Article 37 of the Treaty rather than on Article 6 of Council Regulation (EC) No 2371/2002. The wider objectives of the Common Fisheries Policy are defined in Article 2 of the Common Fisheries Policy and include ensuring the exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

- Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The herring stock distributed West of Scotland is exploited by several Member States who retain historic fishing rights. Actions taken by these Member States separately will not be sufficient to guarantee the exploitation of the herring stock in accordance with the objectives of the Common Fishery Policy. Action on Community level is therefore required.

The fisheries on herring West of Scotland have until now been managed by total allowable catches supported by technical measures. Advice from scientific agencies, supported by advice from stakeholders, indicates that better management would result from setting total allowable catches in the framework of a multi-annual plan.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- Review/revision/sunset clause

The proposal includes an Article providing both for review and for revision.

- Detailed explanation of the proposal

The proposed target fishing mortality rates are based on scientific advice from STECF and ICES and reflect the current biological situation in the West of Scotland area. A revision clause is included in the proposal to ensure that the target fishing mortality rates can be amended if appropriate in the light of new scientific information and advice.

The multi-annual plan contains provisions for a review every four years to verify the performance and appropriateness of the management arrangements

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy³ requires that, to achieve that objective, the Community is to apply the precautionary approach in taking measures to protect and conserve the fisheries resources, to provide for their sustainable exploitation and to reduce to a minimum the impact of fishing on marine ecosystems.
- (2) Recent scientific advice from the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) indicate that the stock of herring (*Clupea harengus*) in the seas to the West of Scotland is slightly over fished with respect to maximum sustainable yield.
- (3) It is appropriate to establish a multi-annual plan with the objective of ensuring that the stock will be exploited on the basis of maximum sustainable yield and under sustainable economic, environmental and social conditions.
- (4) The plan should aim at a progressive implementation of an ecosystem-based approach to fisheries management, and should contribute to efficient fishing activities within an economically viable and competitive fisheries industry, providing a fair standard of living for those who depend on fishing West of Scotland herring and taking the interests of consumers into account.
- (5) Scientific advice from the Scientific, Technical and Economic Committee for Fisheries (STECF) and the International Council for the Exploration of the Sea (ICES) indicates

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ L 358, 31.12.2002, p. 59

that the stock of herring in the seas to the West of Scotland, if exploited at a fishing mortality of 0.25 when the stock size is above 75 000 tonnes and at a fishing mortality of 0.2 when the stock is less than 75 000 tonnes but more than 50 000 tonnes, will be sustainable and will provide a reasonably high yield.

- (6) That advice should be implemented by establishing an appropriate method for fixing the total allowable catches (TACs) for the West Scotland herring stock at a level consistent with an appropriate long-term fishing mortality and with respect to the size of the fish stock.
- (7) To ensure stability in the fishing possibilities, it is appropriate to limit the variation in the TACs from one year to the next when the size of the stock is above 75 000 tonnes.
- (8) Control measures are needed in addition to those laid down in Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits⁴, Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁵ and Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish⁶ in order to ensure compliance with the measures laid down in this Regulation.
- (9) The multi-annual plan should be deemed to be a management plan within the meaning of Article 6 of Regulation (EC) No 2371/2002,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes a multi-annual plan for the fisheries exploiting the stock of West Scotland herring (*Clupea harengus*) in international and Community waters of ICES zones Vb and VIb, and that part of ICES zone VIa that lies west of the 7°W meridian and north of the 55°N parallel, or east of the 7°W meridian and north of the 56°N parallel, excluding the Clyde (hereinafter together referred to as "the area West of Scotland").

⁴ OJ L 171, 6.7.1994, p. 7

⁵ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁶ OJ L 276, 10.10.1983, p. 1

Article 2

Definitions

1. For the purposes of this Regulation, the definitions laid down in Article 3 of Regulation (EC) No 2371/2002 shall apply.
2. The following definitions shall also apply:
 - (a) the International Council for the Exploration of the Sea (ICES) zones are as defined in Regulation (EEC) No 3880/91 of 17 December 1991 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic⁷;
 - (b) 'total allowable catches' (TAC) means the quantity that can be taken and landed from the stock each year;
 - (c) 'VMS' means a satellite-based Vessel Monitoring System (VMS) operated in accordance with Commission Regulation (EC) No 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems⁸.

CHAPTER II OBJECTIVE AND TARGETS

Article 3

Objective and targets

1. The multi-annual plan shall ensure the exploitation of the herring stock in the area West of Scotland on the basis of maximum sustainable yield.
2. The objective in paragraph 1 shall be attained by:
 - (a) maintaining the fishing mortality rate at 0.25 per year on appropriate age-groups when the spawning stock is above 75 000 tonnes;
 - b) maintaining the fishing mortality rate at no more than 0.2 per year on appropriate age-groups when the spawning stock is below 75 000 tonnes but above 50 000 tonnes;
 - (c) providing for the closure of the fishery in the event that the spawning stock should fall below 50 000 tonnes.
3. The objective set out in paragraph 1 shall be attained within a maximum variation in TAC of 15% per year when the spawning stock is above 75 000 tonnes.

⁷ OJ L 365, 31.12.1991, p. 1. Regulation as last amended by Commission Regulation (EC) No 448/2005
⁸ OJ L 333, 20.12.2003, p17

CHAPTER III

TOTAL ALLOWABLE CATCHES

Article 4

Setting of TACs

1. Each year, the Council shall decide by qualified majority on the basis of a proposal from the Commission on the TAC for the following year for the herring stock in the area West of Scotland.
2. When, according to the opinion of the Scientific, Technical and Economic Committee for Fisheries (STECF), the spawning biomass of the stock will exceed 75 000 tonnes in the year for which the TAC is to be fixed, the TAC shall be set at a level which, according to the advice of STECF, will result in a fishing mortality rate of 0,25 per year. If appropriate that level shall be adjusted in accordance with Article 5.
3. When, according to the opinion of STECF, the spawning biomass of the stock will be less than 75 000 tonnes but greater than 50 000 tonnes in the year for which the TAC is to be fixed, the TAC shall be set at a level which, according to the advice of the STECF, will result in a fishing mortality rate of 0,2 per year.
4. When, according to the opinion of STECF, the spawning biomass of the stock will be less than 50 000 tonnes in the year for which the TAC is to be fixed, the TAC shall be set to 0 tonnes.
5. For the purpose of the calculation to be carried out in accordance with paragraphs 2 and 3, the STECF shall assume that the stock experiences a fishing mortality rate of 0,25 in the prior to the year for which the TAC is to be fixed.

Article 5

Stability in fishing possibilities

1. Where the application of the first sentence of Article 4(2) would result in a TAC level that exceeds the TAC for the preceding year by more than 15%, the Council shall adopt a TAC level which is 15% greater than the TAC of that year.
2. Where the application of the first sentence of Article 4(2) would result in a TAC level that is more than 15% below the TAC of the preceding year, the Council shall adopt a TAC level which is 15% less the TAC of that year.

Article 6

Special fishing permit

1. In order to fish for herring in the area West of Scotland, vessels shall hold a special fishing permit issued in accordance with Article 7 of Regulation (EC) No 1627/94.
2. It shall be prohibited for any fishing vessel not holding a fishing permit as referred to in paragraph 1 to fish for, or retain on board, any quantity of herring while the vessel is engaged on a fishing trip that has included the presence of that vessel in the area West of Scotland.
3. Vessels to which the special fishing permit referred to in paragraph 1 has been issued shall not be permitted to fish outside the area West of Scotland during the same fishing trip.
4. Paragraph 3 shall not apply to vessels which transmit their catch report on a daily basis to the Fisheries Monitoring centre of the flag Member State, provided for in Article 3(7) of Regulation (EEC) No 2847/93, for inclusion in its computerised data base.
5. Each Member State shall establish and maintain a list of vessels holding the special permit referred to in paragraph 1 and make it available on its official website to the Commission and other Member States. The vessels to which the provisions of paragraph 4 apply shall be clearly identified on the list.

Article 7

Cross-checks

In addition to the obligations laid down in Article 19 of Regulation (EEC) No 2847/93, Member States shall carry out administrative cross-checks between landing declarations, the fishing areas and catches recorded in the logbook, catch reports submitted in accordance with Article 6(4) and VMS data. Such cross-checks shall be recorded and made available to the Commission on request.

CHAPTER IV FOLLOW-UP

Article 8

Revision of minimum fishing mortality rates

Where the Commission, on the basis of advice from STECF, finds that the fishing mortality rates and associated spawning stock biomass levels specified in Article 3(2) are not appropriate to achieving the objective specified in Article 3(1), the Council shall on the basis of a Commission proposal decide by qualified majority on a revision to those quantities.

Article 9

Evaluation and review of the plan

1. The Commission shall seek advice each year from STECF and the Pelagic Regional Advisory Council on the achievement of the targets of the multi-annual plan. Where the advice indicates that the targets are not being met, the Council shall decide by a qualified majority on a proposal from the Commission on either or both additional and alternative measures to ensure that the targets are met.
2. The Commission shall review the performance and operation of the multi-annual plan at intervals of not less than four years from the date of adoption of this Regulation. The Commission shall seek the advice of STECF and of the Pelagic Regional Advisory Council concerning the review. If appropriate the Council shall decide by a qualified majority on a proposal from the Commission on appropriate adaptations to the multi-annual plan.

CHAPTER V FINAL PROVISIONS

Article 10

European Fisheries Fund

The multi-annual plan shall be deemed to be a management plan within the meaning of Article 6 of Regulation (EC) No 2371/2002, and for the purposes of Article 21(a)(iv) of Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund⁹.

Article 11

Entry into force

This Regulation shall enter into force on the third 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,

For the Council
The President

⁹ OJ L 223, 15.8.2006, p. 1.