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**PROPOSAL OF THE COMMISSION FOR MODIFICATION OF THE  
DEEP-SEA FISHERIES ACCESS REGIME IN THE NORTH-EAST  
ATLANTIC:**

**Position of the European Association of Fish Producers Organisations (EAPO)**

The European Commission has adopted and submitted to the European Parliament and the Council a proposal for a regulation establishing new conditions to fishing for deep-sea stocks in the North-East Atlantic (COM(2012) 371 final).

This document contains the reaction of EAPO to this proposal.

**SUMMARY**

The Commission's proposal has all characteristics of a project that, before being completed, was influenced by a political agenda dictated by motives that have nothing to do with genuine concern for sound fishery management. If its current version were adopted, this proposal would be highly likely to cause serious harm, directly to the production and fishery sector and indirectly to the communities depending on their activities (suppliers, fish trading and processing enterprises, etc.).

The proposal does not take into account the principle of good governance and proportionality. As such, it constitutes an unfortunate and detrimental precedent aiming at the implementation of a reformed CFP for which the Commission demands extensive managerial powers and competencies.

Experience has taught us that the universal and un-nuanced approach suggested by the Commission usually has unforeseen and detrimental consequences.

The proposal is based on an impact assessment counting 55 pages. However, this assessment often lacks detail or is incomplete, all the more because it is not corroborated by any scientific advice, neither where the biological foundation for the recommended measures is concerned, nor with respect to the true economic and social impact of these measures.

From the very start and without any justification, it rejects the only viable management option: an approach based on a cautious risk analysis, ensuring the adequate protection that is needed by means of targeted, specific measures that are differentiated in space if necessary.

If the proposal were to be adopted, it is very likely that its legitimate objectives would not be attained.

## **ABOUT THE PROPOSAL**

### **Firstly, we want to point out that:**

- No advice of the STECF has been requested on the advantages and disadvantages and on the rationality of the different management options considered by the Commission when drafting its proposal (and mentioned in the impact analysis document). However, the provisions of article 4.2 and 33 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy stipulate that the Commission is to seek this advice in order to corroborate its proposals for specific management measures.
- The outright ban on bottom trawling and on the use of gillnets for deep-sea fishery, as suggested by the Commission, is contradictory to the proportionate measures recommended by the General Assembly of the United Nations for deep-sea fishery (cf. UNGA resolutions 61/105 and 64/72), even though the adoption of these resolutions was strongly supported by the Commission.

It is also contradictory to that which the Commission defends and has repeatedly defended in the meetings of the RFMOs discussing this matter, in particular in the most recent meetings of the NEAFC and the NAFO with regard to fisheries in the North Atlantic Ocean.

Finally, it is also contradictory to the arrangements negotiated by the Commission when concluding fisheries agreements for the access by European vessels to the waters of third parties where there are deep-sea fishing opportunities, in particular the arrangements negotiated during the recent renewal of the fisheries protocol with Greenland.

Taking into account in particular the importance of European deep-sea trawling in Greenland for the North-East Atlantic and in the waters of the NAFO for the North-West Atlantic, we fear that the Commission proposes, by putting forward the need for coherence in the European fisheries policy, an extension of the ban on deep-sea trawling decided upon for the Community waters to these waters and to the European vessels fishing there. The Commission already does so in the proposal, for the high seas waters that fall within the scope of competence of the NEAFC.

- The Commission's proposal would relate to the Icelandic waters, where the most important deep-sea fisheries in the North-East Atlantic take place (more important than the Norwegian and Russian fisheries in the Barents Sea), as Iceland would become a member of the European Union.

We already insist on the significance of the fact that during the accession process, the Commission has not negotiated on the derogations from the measures that will finally be adopted for the European vessels.

- The impact analysis document is not based on recent available information on the gap in the conservation of deep-sea stocks and on the distribution of vulnerable marine ecosystems. It also significantly underestimates the economic and social importance of the fishing fleets and the fish trading and processing enterprises, which would be directly affected by the consequences of the proposal.

**We do share the opinion and the considerations of the Commission with regard to certain elements of its proposal or resulting from the accompanying press release:**

- The deep-sea stocks are mainly caught on the continental slopes (but certainly not up to 4,000 metres deep, as stated in the Commission's press release).
- Certain deep-sea marine ecosystems are particularly vulnerable to human activities, regardless of their nature, as well as certain deep-sea species.
- Deep-sea species are caught both within the context of directed fisheries and as a by-catch of numerous other types of fishery, including some that cannot reasonably be described as deep-sea fisheries.
- Fishermen are already working closely together with scientists in order to gain a better insight into the deep-sea ecosystems and the dynamics of the deep-sea population.
- The general objective of the future regulation should be to ensure as much as possible the sustainable exploitation of deep-sea stocks while reducing the environmental impact of these fisheries, and to improve the information base for scientific assessment.
- The existence of a specific licensing system governing the access to deep-sea fisheries is an adequate tool to monitor access to these fisheries.
- Any new bathymetric extension of the range of deep-sea fishing should be managed carefully through a two-fold mechanism: a freeze on the current and recent limit of this bathymetric extension and the obligation to carry out impact analyses before any fishing activity outside this current and recent limit can be authorised.

**However, we challenge many other arguments:**

- That the Commission's proposal provides a balanced solution for the sustainable exploitation and management of deep-sea species, for the protection of the most vulnerable of these species and for the protection of vulnerable habitats.
- That the approach consisting of the outright ban on bottom trawling and on the use of gillnets for deep-sea fishery is a proportionate solution, even when taking into account the precautionary principle, for the protection of the species on the one hand and the vulnerable habitats on the other hand.

As the location of the fishing activities and the distribution of vulnerable habitats do not coincide, the management and protection of the species and the habitats require differentiated and different measures: the proposed universal and undifferentiated ban on fishing activities is obviously not one of them.

- That it is possible to come to the conclusion, on the basis of scientific opinions, that the current fishing intensity to which all deep-sea species are subjected is excessive.

The management advice given in 2012 by the ICES and confirmed by the STCEF for an important number of deep-sea species (in particular the stocks of blue ling, roundnose grenadiers and black scabbardfish caught mainly by trawling in the European waters) is very positive and encouraging and contains recommendations for the increase of the TACs while maintaining an exploitation level corresponding to the MSY.

The Commission accepts this opinion, as it suggests an increase of the TACs for these main commercial species for the 2013/2014 period.

- That trawling of deep-sea species causes the large-scale and uncontrolled destruction of the ecosystems to which they belong, and should therefore be banned.

According to the most recent scientific opinions, the exploitation of the main target species of this type of fisheries has already achieved MSY: How can fishing activities that allegedly lead to such a large-scale destruction of the ecosystems at the same time enable the exploited species belonging to these ecosystems to grow and multiply?

- That it is necessary to change the conditions restricting the use of gillnets for deep-sea fishing, which were implemented in 2006, to such an extent that the use of these nets will become forbidden, as the current restrictive measures have appeared to be inadequate.
- That it is reasonable and good policy to propose or adopt new fishing regulations for deep-sea fishing before the publication (planned for late 2012) of the conclusions of the scientific project DEEPFISHMAN, financed by the European Union.

One of the main objectives of the scientific project DEEPFISHMAN is to propose “robust guidelines for deepwater fisheries management suitable for adoption within the CFP”. At the very least, the adoption of the Commission’s proposal can be regarded as premature.

- That the impact on other species targeted by the fishing effort that would be forbidden, or other unexpected consequences of the proposed ban have been evaluated in detail and taken into account.
- That the detailed measures proposed for the freeze of the spatial footprint of deep-sea fishing activities (cf. articles 6 and 7 of the proposal) correspond to a reasonable, proportionate and non-discriminatory approach to careful management of any new expansion of deep-sea fishing in order not to jeopardise the protection of vulnerable habitats.

The proposed measures would lead to the creation of rights of geographic access to fishing grounds that are different for each of the vessels specifically fishing for deep-sea species (given the past individual spatial footprint of their activities) without considering the footprint of other vessels that may be active in the same fishing grounds.

In addition, these measures would encourage the continued existence of a fishing effort that may be inadequate, as in order to maintain these individual access rights, it would be necessary to continue the fishing activities in the same manner.

- That the different thresholds defined in the proposal in order to authorise the catching or landing of deep-sea species are coherent.

One of these thresholds refers to an annual landing limit (in order to define the vessels entitled to catch deep-sea species), another refers to a daily catch limit, on the understanding that not all catches can be landed (in order to define the vessels that conduct directed fisheries), and a third threshold refers to a catch limit per tide (in order to define a derogation from the obligation to have a specific license for deep-sea fisheries).

Nothing shows that these different thresholds complement each other; everything seems to indicate the contrary. This may lead to major implementation problems.

- That the proposal, if adopted and implemented, would result in a reduction of discards.

Even taking into account the “de minimis” threshold of 100 kg catch per tide (that may be landed by the vessels without being considered to be deep-sea fishing vessels), given the fact that certain species that would be regarded as deep-sea species (ling, conger) constitute a large part of the catches of many vessels that do not conduct deep-sea fisheries, the risk for trawlers and gillnetters to fall within the scope of a banned fishing activity (directed deep-sea trawling and gillnetting) would undoubtedly lead to an increase of discards. This result contradicts the Commission’s general objective.

- That the criterion of 10% to define directed deep-sea fisheries is a useful and objective criterion.

A vessel of which the log indicates at a given moment that its catch includes 11% deep-sea species will definitely be regarded as conducting directed fisheries, but a vessel recording 9% will not. This will lead to the creation of an artificial restriction that will be a source of bias for the rational management of fishing activities.

The proposal also stipulates that the type of licence (directed fisheries or by-catch) will be granted on the basis of the inventory of the landings of deep-sea species in the year with the highest number of landings of the two years preceding the entry into force of the regulation. This will almost certainly lead to an artificial adjustment of the data relating to the actual activity of the vessel, depending on whether the fishing undertakings feel that reporting more landings is an advantage or a disadvantage in any particular case.

- That bottom trawling activities targeting deep-sea species lead to a very high level of unwanted by-catches, i.e. higher than in other fisheries.

The example of directed deep-sea trawling is often highlighted. The most recent available data on these fisheries (French fisheries) show that discards of species that are not subject to quota restrictions represent 8.50% of the total catch, whereas in Norway they represent on average more than 15%, and that the discards of species that are subject to quota restrictions mainly consist of greater silver smelt and are insignificant compared to the total catches of this species.

- That the only fisheries that would disappear would be the trawling and gillnetting fisheries, which are currently regarded as directed deep-sea fisheries.

Many more vessels would in the future be regarded as conducting directed fisheries than is the case now (in particular vessels currently fishing for species such as monkfish, hake, megrim and langoustine), as directed fisheries would be defined on the basis of the weight of the daily catches of a longer list of species.

- That it is not the Commission's intention to involve commercial fisheries other than those that take place on the continental slopes.

In this respect, the fact that conger, which can be caught from the shore, and forkbeard, which is found in the catches landed by small coastal trawlers, are also included in the list of deep-sea species is symbolic.

- That it is advisable to propose, *a priori* and without any prior analysis, a general derogation from the obligation to have a licence for deep-sea fisheries for "vessels of less than 10 metres that exclusively fish in the territorial waters of their flag State."

The cumulated catches of a relatively limited number of small vessels can prove to be significant and the documents relating to their fishing activities, if they are not subject to a licensing system, will most likely be incomplete.

- That it is advisable to exclude from the scope of application of the proposal the vessels of third countries fishing for deep-sea species in the waters of the European Union, for instance the Norwegian longliners targeting cusk in the Community waters to the west of Scotland on account of their quota (that are much higher than those of European vessels).

## **PROPOSALS BY PROFESSIONALS**

As a matter of principle, we cannot accept that a proposal that should be proportionate and based on good governance takes the form of a proposal to ban a specific activity, with possibly serious socio-economic consequences, without being preceded by a fair analysis of its consequences, which shows that no alternative can reasonably be considered.

However, the Commission has not seriously examined any alternative management solutions based on an approach that makes a distinction between management measures relating to species on the one hand and management measures relating to vulnerable ecosystems on the other hand.

Its impact analysis is limited to the rejection from the very start of any attempt to find such an alternative solution on the grounds of excessive management complexity.

Given the major management difficulties to which the current proposal would lead, some of which we pointed out above, we wonder about the real reason for this argument, all the more because this alternative management option would mainly be based on the consolidation of the different measures that are already applicable to European vessels operating on high sea waters on the one hand and on Community waters on the other hand.

## **The elements of a rational alternative proposal that would respect the precautionary principle.**

The elements that would be necessary and sufficient for a careful and rational alternative approach, as opposed to those of the Commission's arbitrary approach, would be the following:

- The continued existence of a licensing system that would control the access to deep-sea fisheries but, contrary to the Commission's proposal, would be based on reliable criteria that are consistent with the criteria defined at the same time in order to limit catches and regulate landings, avoiding deadweight effects and eliminating possible illegitimate derogations.
- Targeted measures based on the available scientific evidence, which make a distinction between the management and protection of species and that of vulnerable habitats.
- The management of commercial catches of deep-sea species, which constitute the larger part of the catches, through the establishment of scientifically defined TACs.
- The protection of deep-sea species caught as by-catch, the importance of the conservation of which has been shown in a true risk analysis, by means of a precautionary TAC.
- The consolidation of the observer deployment programmes at sea [and the propagation of their consolidated results].
- The protection of vulnerable ecosystems by means of protected marine areas correctly delimited and managed, and monitored by VMS. (An extensive inventory effort has been started and is progressing under the auspices of the NEAFC and the national environmental organisations, in order to identify the vulnerable habitats on the continental slopes).
- The freeze of the current bathymetric expansion of deep-sea fisheries on the basis of the accumulated footprint of all vessels concerned, regardless of their flag, as is already the case in the high sea waters falling under the scope of competence of certain RFMOs such as the NEAFC or the NAFO.

And the obligation to carry out impact studies before any fishing operations take place outside the existing fishing grounds.

- [The implementation of appropriate avoidance rules in case of indications of the presence of vulnerable marine ecosystems found during fishing operations, which are already applicable to European vessels in high sea waters.]

## **Delegated acts**

It may be reasonable to delegate the responsibility for management to the Commission, but only under strictly defined conditions. The delegation of management provided for in the proposal does not meet these requirements.

We do not believe that conferring the possibility and the responsibility to act unilaterally to the Member States, while at the same time stipulating that the Commission can intervene, under badly defined conditions, if the actions undertaken by the Member States are deemed inadequate is an appropriate and useful way to apply the subsidiarity principle and consider a delegation of powers.

For fisheries relating to stocks present in the waters of several Member States, as is the case for deep-sea fisheries, the individual Member States will probably not be very inclined to impose restrictions on their own vessels. This can eventually only lead to a major lack of fairness and efficiency in the supervision of the activities of all vessels concerned. We do not feel that justifying the full delegation of powers to the Commission by referring to this probable or possible evolution is a sound course of action in terms of good governance.

We are of the opinion that the regionalised management model described in the general approach adopted by the Council and providing for a CFP reform offers a suitable framework for taking management decisions with respect to deep-sea stocks.

## **CONCLUSION**

For the reasons stated above, we do not think that the proposal of the Commission provides a proportionate, justified and adequate answer to the economic, social and environmental requirements to be met by the management of deep-sea fisheries on the continental slopes.

The fate of deep-sea fisheries and of the people and enterprises that make their living out of these activities cannot continue to depend on ideological confrontations, the outcome of which mainly depends on the financial resources spent on assertions made without being substantiated.

The depoliticisation of this matter and the implementation of management measures based on a joint, impartial and objective study are needed now more than ever: An alternative approach to that of the Commission, on the basis of proportionate measures and based on the available scientific evidence, which make a distinction between the management and protection of species and that of vulnerable habitats, is highly recommended.

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