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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.6.2008
COM(2008) 324 final

2008/0112 (CNS)

Proposal for a

COUNCIL REGULATION

concerning the conservation of fisheries resources through technical measures

(presented by the Commission)

{SEC(2008)1977}

{SEC(2008)1978}

EXPLANATORY MEMORANDUM

1) Context of the proposal

- Grounds for and objectives of the proposal

This proposal intends to simplify the current regulatory framework concerning the conservation of fisheries resources through technical measures by replacing:

- Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms¹.
- Council Regulation (EC) No 2549/2000 of 17 November 2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)².

Council Regulation (EC) No 850/98 embodies the current conditions for Community waters outside the Baltic Sea, the Black Sea and the Mediterranean Sea relating to technical measures for the conservation of fish stocks by protection of juveniles of marine organisms. The technical measures define mesh sizes and other aspects of the structure of fishing gears, time periods and geographical areas within which defined types of fishing are prohibited or restricted and minimum landing sizes of marine organisms.

During the 2002 reform of the Common Fisheries Policy, the Commission and Council agreed to implement progressively recovery, management and long-term plans concerning fisheries resources of interest to the Community. Such plans have been established concerning most stocks of cod in Community waters, two stocks of hake, two stocks of nephrops, two stocks of sole as well as stocks of plaice and sole in the North Sea, whereby the conditions laid down in Regulation (EC) No 850/98 have been amended and/or augmented.

In addition, Regulation (EC) No 850/98 has been the subject of 10 amending Regulations not necessarily related to long-term plans.

It is necessary to incorporate all of these revised conditions in a comprehensive package of technical measures. This package of technical measures is intended to achieve a broad range of objectives. A key objective is the protection of juvenile fish and an important part of these measures is designed to limit their capture, for example, by measures to improve the selectivity of fishing gear or fixing certain closed seasons/areas. Other measures are intended to protect certain species or ecosystems by limiting fishing effort, for example, by the adoption of closures. The need to reduce discards is also reflected in the adoption of appropriate technical measures.

Furthermore, technical measures should be adapted to the context of the establishment of Regional Advisory Councils (RACs) by Council Decision of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy³. A balance needs to be established between measures which are generally

¹ OJ L 125, 27.4.1998, p. 1

² OJ L 292, 21.11.2000, p. 5. Regulation as last amended by Regulation (EC) No 1456/2001 of 16 July 2001

³ OJ L 256, 3.8.2004, p. 17. Decision as last amended by Council Decision of 11 June 2007(2007/409/EC)

applicable in all areas and measures which are applicable specifically on a regional basis as defined by the Regional Advisory Council (RAC) Areas or in the waters off the coasts of the French departments of Guyana, Martinique, Guadelupe and Reunion that come under the sovereignty or jurisdiction of France.

Therefore the structure of the proposed Regulation provides for a Council Regulation based on Article 37 of the EC Treaty, which includes all common permanent measures for all areas, i.e. the guiding principles. The measures applicable in each of the RAC areas or in the waters off the coasts of the French departments of Guyana, Martinique, Guadelupe and Reunion that come under the sovereignty or jurisdiction of France, i.e. purely technical aspects of a regional nature, should then be implemented through separate Commission Regulations by Management Committee procedure, on the basis of the Council Regulation.

As a matter of procedure and timing, this approach requires that the Council Regulation is adopted before the regional Commission Regulations can be adopted.

General context

In June 2004, under the initiative of the Irish Presidency, the Commission presented a Communication to the Council and the European Parliament: “Promoting more environmentally-friendly fishing methods: the role of technical conservation measures”⁴. Subsequently, the Council adopted conclusions on 21 June 2004, in which the Council invited the Commission to present a new proposal on technical measures in the Atlantic, to replace Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms⁵.

The 2006 – 2008 Action Plan for simplifying and improving the Common Fisheries Policy⁶ (the Action Plan), sets out that priority is to be given to simplifying legislation concerning measures for the conservation of fish stocks through technical measures for the protection of juveniles of marine organisms, currently set out in Regulation (EC) No 850/98 after consulting the Member States and the industry.

Simplification is one of the key objectives of the proposed regulation, taking into account the reactions from the Council, European Parliament, the Economic and Social Committee and the stakeholders (the Committee for Fisheries and Aquaculture (ACFA) and the RACs) to the Action Plan.

On the basis of a non-paper on future technical measures in the Atlantic, the Commission has consulted the RACs concerned⁷ during 2006, as well as ACFA in September 2005.

The objective of this proposal is not to change the level of ambition of the technical conservation measures, for instance by a major shift towards larger mesh sizes. Although the Commission considers that sustainable fishing, particularly for demersal fisheries, calls for a substantial increase in the selectivity of fishing gear, the priority is to establish a new set of simpler, clearer rules. Improvements in selectivity will then be brought about gradually through future amendments of these rules, in parallel with the general improvement in the conservation status of

⁴ COM(2004) 438 final

⁵ OJ L 125, 27.4.1998, p. 1

⁶ COM(2005)647 final

⁷ NS RAC, NWW RAC, SWW RAC

Community fish stocks to be achieved through other elements of conservation policy, such as multi-annual plans.

All provisions must be simple, understandable, and controllable and must have a positive effect on the conservation of the species, on the protection of the marine habitats or on the reduction of discards.

The proposal applies to commercial and recreational fishing in all European waters except for the Mediterranean Sea, the Baltic Sea, the Black Sea, and in fisheries for highly migratory fish stocks in all waters, for which specific rules apply. It will bring together most of the existing technical measures in various Community regulations for the Atlantic and the North Sea, although a few measures that are currently in separate regulations will remain separate⁸.

Harmonisation / regionalisation

The Commission believes that a regional approach should be favoured, since this would be more amenable to the involvement of the stakeholders in the process. The involvement of stakeholders is essential because it leads to commitment to the measures and ensure a greater likelihood of compliance of the adopted measures. Such regionalisation would not mean re-nationalisation of the technical measures.

The regulation will not alter the balance of competences between the Community and Member States as laid down in Council Regulation (EC) No 2371/2002.

Guiding principles vs. technical or regional rules

The proposed Council Regulation concentrates on measures that would be expected to be permanent. It would also, however, lay down the procedures to be applied when dealing with measures that would be expected to evolve rather quickly and with measures that are very technical. For the latter, the Regulation should favour the application of a procedure for adoption of new rules through comitology procedure. This approach is intended to meet the concern of Member States to reduce or eliminate interim technical measures from the annual TAC and quota regulation, while taking account of the fact that the application of technical measures is very often a matter of urgency.

Evaluation

A common priority for the Member States, the European Parliament and stakeholders is the need to evaluate, before and after their implementation, the consequences of technical measures. The effectiveness of many of the provisions under Regulation (EC) No 850/98 has never been evaluated, and those measures have remained in force regardless of their value for conservation.

A fundamental principle will be that the measures provided for in this Regulation should be evaluated after a certain time to reassess the need for them. Another guiding principle will be that when new and substantial measures are proposed (such as significant increases in mesh sizes), the Commission will carry out, if the data available allow it, a prior evaluation of their likely effects.

⁸ Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental by-catches of cetaceans in fisheries and amending Regulation (EC) No 88/98. This Regulation not only covers the North Sea, but also the Mediterranean Sea and the Baltic Sea and will therefore remain separate

- Existing provisions in the area of the proposal
Council Regulation (EC) No 850/98 and subsequent amendments.
Council Regulation (EC) No 2549/2000.

- Consistency with the other policies and objectives of the Union
The proposal will serve the objectives of the CFP.

2) Consultation of interested parties and impact assessments

- Consultation of interested parties

Two non-papers which set out the intentions of the Commission in relation to the revision, codification and simplification of Regulation (EC) No 850/98 were prepared by the Commission services for the consultation of interested parties. The proposal is based on several consultations with Member States as well as representatives for stakeholders in the North Sea RAC, the North Western Waters RAC and the South Western Waters RAC.

Among the consulted parties there was a general agreement on the need for simplification and harmonisation but also on the need to take into account the regional characteristics of the fisheries and a fisheries based approach as well as to put together in one regulation all technical measures. Furthermore there was a strong request for clarification as well as for the need of an improvement of selectivity of fishing gears for bottom trawling. All of these comments have been taken into account in the proposal.

Collection and use of expertise

The Scientific, Technical and Economic Committee for Fisheries (STECF) has provided advice on the closed areas⁹ and on the influence of the main factors affecting the codend selectivity¹⁰. Gear technology experts have met in the framework of the bilateral fisheries Agreement between the EU and Norway to discuss the selectivity in the North Sea¹¹.

The report of the ICES-FAO Working Group on Fish Technology and Fish Behaviour (WGFTFB) on EU Regulations on technical measures has been taken into account¹².

An expert meeting with netmakers on technical measures was held in Brussels on 3 July 2007.

Impact assessment

The Commission carried out an Impact assessment of the Proposal, resulting in a report which will be accessible on the web site of DG Fisheries and Maritime Affairs within the European Commission.

Simplification is a key objective of the new proposed regulation. The specific operational aims are as follows:

⁹ Meetings of the STECF Working Group 19 -23 March 2007 and 15 – 19 March 2007

¹⁰ Meeting of the STECF Working Group 11 -15 June 2007

¹¹ 4 -6 June 2007, Aalesund, Norway

¹² ICES WGFTFB Report 2005 (ICES CM 2005/B:04)

- to incorporate all revised conditions and amendments in a comprehensive package of technical measures which is easy to understand, control and enforce;
- to establish a balance between measures which are generally applicable in all areas and measures which are applicable specifically on a regional basis as defined by the Regional Advisory Council (RAC) Areas.

The scope of the proposal is not to change the substance of related legislation extensively, but to change the legislative approach and therefore the likely environmental, social and economic impacts are modest.

In the Impact Assessment report the following options were considered, and the proposal corresponds to the option set out under the third indent:

- 'Status quo' option: this approach means taking no specific steps to simplify or modify the technical measures legislation for Atlantic and the North Sea at this stage and continuing with fisheries management in its current form. This option had already been debated in the Council, which concluded that a new proposal was necessary and called on the Commission to propose, after consultation with the stakeholders, a new regulation for technical conservation measures.

- 'Simplification only' option: this option would simplify technical measures and harmonise them across the board, without taking into account the regional or other specific considerations. Not adapting the measures to the specific local needs and the bottom-up approach, would achieve no improvement of effectiveness of the technical measures. By not promoting more environmentally-friendly fishing methods i.e. discards policy, such a proposal would go against the Commission action plan 2006-2008 for improvement of the CFP. This is the reason why this option was discarded from the outset and not been analysed further.

- 'Simplification and regionalisation' option: this option proposes a new legislative package, which not only simplifies current complex rules but also introduces specific provisions for each 'RAC area', reflecting regional differences. Such a legislative proposal is a reply to the request from the Council to review the technical measures rules with a view to their simplification and adopting a more regionalised approach in order to improve their effectiveness. A comprehensive and coherent package with the right balance between measures generally applicable in all areas and those specific to the localised RAC areas will be proposed, namely one framework Council Regulation with general principles and provisions, and the complementary Commission Regulations with specific technical rules for each 'RAC area'. Such a revision of technical measures will comply with the Commission action plan 2006-08 for simplification and improvement of the CFP.

3) Legal elements of the proposal

- Summary of the proposed action

Replacement and repeal of Council Regulation (EC) No 850/98 and repeal of Council Regulation (EC) No 2549/2000 .

- Legal basis

Article 37 of the EC Treaty.

- Subsidiarity principle

This proposal falls within the scope of the CFP, which is the exclusive competence of the Community. The subsidiarity principle does not apply.

- Proportionality principle

Pursuant to Article 2(1) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹³, the CFP shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine-ecosystems.

According to Article 4(1) of Regulation (EC) No 2371/2002, to achieve this objective, the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities.

Article 4(2)(g) of Regulation (EC) No 2371/2002 further establishes that these measures may, in particular, include measures for each stock or group of stocks to limit fishing mortality and the environmental impact of fishing activities by adopting technical measures.

As the proposal will serve the objectives of the CFP it is found to comply with the principle of proportionality.

- Choice of instruments

Proposed instrument: Council Regulation

Other means would not be adequate, for the following reasons: the proposal concerns replacement and repeal of a Council Regulation.

4) Budgetary implication

The proposal has no implications for the Community budget.

¹³ OJ L 358, 31.12.2002, p. 59

Proposal for a

COUNCIL REGULATION

concerning the conservation of fisheries resources through technical measures

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 Commission¹⁴,

Having regard to the opinion of the European Parliament¹⁵,

Having regard to the opinion of the European Economic and Social Committee¹⁶,

Having regard to the opinion of the Committee of the Regions¹⁷,

Whereas:

- (1) Regulation (EC) No 850/98¹⁸ lays down certain technical measures for the conservation of fishery resources.
- (2) The Council, in its conclusions of June 2004 to promote more environmentally friendly fishing methods, recommended that the technical measures for the Atlantic and the North Sea be revised with the aim of simplification and taking into consideration regional characteristics. The Council called on the Commission to propose, after consultation with the sector, a simplified proposal for technical measures.
- (3) In its Communication from June 2004¹⁹, the Commission proposed ways in which the Community can further promote the use of environmentally-friendly fishing methods, particularly through technical conservation measures, while taking account of the need to find a balance between environmental and economic objectives. The use of such fishing methods should be taken into account.
- (4) In April 2006 the Council endorsed a Commission Action Plan on simplification of Community legislation. In light of the conclusions of this Action Plan, all technical measures disseminated in various Regulations, including the annual Regulation on fishing opportunities and recovery plans for certain stocks, and should be integrated in one Regulation.
- (5) This Regulation should establish technical measures for the North East Atlantic, the Eastern Central Atlantic and the waters off the coasts of French departments of

¹⁴ OJ C , , p. .

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ OJ C , , p. .

¹⁸ OJ L 125, 27.4.1998, p. 1. Regulation as last amended by Regulation (EC) No 2166/2005.

¹⁹ COM(2004)438 final

Guyana, Martinique, Guadalupe and Reunion that come under the sovereignty or jurisdiction of France only, as technical measures for the Baltic Sea and the Mediterranean are established in Council Regulation (EC) No 2187/2005 of 21 December 2005 concerning the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98²⁰ and in Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94²¹, respectively.

- (6) Technical measures should be adapted to the context of the new Common Fisheries Policy adopted in 2002, in particular regarding the establishment of Regional Advisory Councils (RACs) by Council Decision of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy²², and the consideration of environmental aspects, such as the protection of marine habitats and the reduction of discards.
- (7) A balance needs to be established between adapting technical conservation measures to the diversity of the fisheries and the need for homogenous rules which are easy to apply as well as between measures which are generally applicable in all areas and measures which applicable specifically on a regional basis as defined by the Regional Advisory Council (RAC) Areas.
- (8) Article 174 of the Treaty establishes the principle that all Community measures must integrate environmental protection requirements notably in the light of the precautionary principle.
- (9) The implementation of the commitment to develop non-destructive fishing practises, as recommended by the World Summit on Sustainable Development in Johannesburg in 2002, should be continued.
- (10) The measures provided for in this Regulation should be evaluated after a certain time to reassess their effectiveness and justification.
- (11) In Directive 92/43/EC, the Council laid down measures for conservation of natural habitats and of wildlife and fauna. Some of the species of marine organisms that fall within the scope of this Regulation are protected by the requirements of that Directive.
- (12) To ensure the protection of marine biological resources and the balanced exploitation of fishery resources in the interests of both fishermen and consumers, technical conservation measures should be laid down, specifying the *inter alia* the mesh sizes and combinations thereof appropriate for the capture of certain species and other characteristics of fishing gear, and the minimum sizes of marine organisms, as well as limitations of fishing within certain areas and with certain gear and equipment.
- (13) The manner in which the size of marine organisms is to be measured should be defined.

²⁰ OJ L 349, 31.12.2005, p. 1. Regulation as last amended by Regulation (EC) No 809/2007.

²¹ OJ L 409, 30.12.2006. 11.

²² OJ L 256, 3.8.2004, 17. Decision as last amended by Decision 2007/409/EC (OJ L 155, 15.6.2007, p. 68)

- (14) In order not to hinder scientific research, artificial restocking or transplantation, this Regulation should not apply to operations which may be needed for the conduct of such activities.
- (15) A vessel must immediately move to another area when maximum by-catches are exceeded.
- (16) The dimensions and immersion time and depth of certain passive gears should be fixed.
- (17) Where conservation is seriously threatened, the Commission and Member States should be authorised to take appropriate provisional measures to be implemented in real time.
- (18) Additional national measures of a strictly local character may be maintained or adopted in conformity with the Common Fisheries Policy.
- (19) The measures necessary for the implementation of this Regulation, including specific provisions for each area covered by a Regional Advisory Council, should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission²³.
- (20) In view of the number and scope of the changes to be made to the rules, Regulation (EC) No 850/98 should be repealed and replaced by a new text,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

This Regulation, shall apply:

- (a) to the fishing for, the retention on board, the transshipment, and the landing of fishery resources where such activities are pursued:
 - (i) in Community waters of the fishing zones and waters referred to in Article 2;
 - (ii) by Community fishing vessels in non Community waters of the fishing zones referred to in Article 2(1);
 - (iii) by nationals of Member States in non Community waters of the fishing zones referred to in Article 2(1) without prejudice to the primary responsibility of the flag State;
- (b) to the storage, sale, display or offer for sale of fishery products caught in the fishing zones and waters referred to Article 2;

²³ OJ L 191, 7.7.1998, p. 10

- (c) to the import of fishery products caught outside the fishing zones and waters referred to in Article 2 or caught anywhere by a third-country fishing vessel as regards the provisions set out in Article 4.

Article 2

Definitions of fishing zones

1. This Regulation shall apply to the following fishing zones, where they are included in one of the areas specified in Article 2(1)(c) to (f) of Decision 585/2004/EC:
 - (a) the ICES (International Council for the Exploration of the Sea) zones as defined in Regulation (EEC) No 3880/91²⁴;
 - (b) the CECAF (Eastern Central Atlantic or FAO major fishing zone 34) zones 34.1.1, 34.1.2 and 34.2.0 (waters around Madeira and Canary Islands), as defined in Council Regulation (EC) No 2597/95²⁵.
2. This Regulation shall apply to the waters off the coasts of the French departments of Guyana, Martinique, Guadelupe and Reunion that come under the sovereignty or jurisdiction of France.

Article 3

Other definitions

For the purpose of this Regulation, in addition to the definitions laid down in Article 3 of Regulation (EC) No 2371/2002, the following definitions shall apply:

- (a) 'trawl' means gear which is actively towed by one or more fishing vessels and consisting of a net having a cone- or pyramid-shaped body (as trawl body) closed at the back by a codend;
- (b) 'beam trawl' means a bottom trawl in which the horizontal opening of the net is provided by a beam;
- (c) 'Danish seine' means an encircling and towed gear, operated from a boat by means of two long ropes (seine ropes) designed to herd the fish towards the opening of the seine. The gear made up of net, which is similar to a bottom trawl in design and size, comprises two long wings, a body and a bag (codend);
- (d) 'towed gear' means trawls, Danish seines and similar gear with a cone- or pyramid shaped body closed at the back by a bag (codend) or comprising two long wings, a body and a bag (codend) and which are actively moved in the water;
- (e) 'codend' means the last 8 m of the towed gear measured from the codline when the mesh size is equal or more than 80 mm and means the last 20 m of the towed gear measured from the codline when mesh size is less than 80 mm;
- (f) 'strengthening bag' means a cylindrical piece of netting completely surrounding the codend of a trawl and which may be attached to the codend at intervals. It shall have at least the same dimensions (length and width) as that part of the codend to which it is attached;

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- (g) 'round strap' means a piece of rope encircling the circumference of the codend or the strengthening bag and which is attached to it;
- (h) 'lifting strap' means a piece of rope encircling the circumference of the codend or the strengthening bag, if any, and attached to it by means of loops or rings;
- (i) 'gillnet' means a net made up of a single piece of net and held vertically in the water by floats and weights. It catches living aquatic resources by entangling or enmeshing;
- (j) 'trammel net' means a net made up of two or more pieces of net hung jointly in parallel on a single headline;
- (k) 'immersion time' means the period from the point of time when the nets are first put in the water until the point of time when the nets are fully recovered on board the fishing vessel;
- (l) 'coastal Member State' means the Member State having sovereignty or jurisdiction over the waters in which the fishing operations are carried out.

CHAPTER II

COMMON PERMANENT MEASURES FOR ALL AREAS

SECTION 1

MINIMUM LANDING SIZE

Article 4

Minimum landing size of living aquatic resources

1. A living aquatic resource shall be considered as undersized if it is smaller than the minimum landing size specified in Annex I for the relevant species.
2. Undersized living aquatic resources shall not be retained on board or be transhipped, landed, transported, stored, sold, displayed or offered for sale but shall be returned immediately to the sea.
3. By way of derogation from paragraph 2, undersized sardine, anchovy, horse mackerel or mackerel caught for use as live bait may be retained on board, provided they are retained alive.
4. The measurement of the size of a marine organism shall take place in accordance with the provisions laid down in Annex II.

SECTION 2

FISHING GEAR

Article 5

One net rule

It shall be prohibited to carry on board, during any fishing voyage, any combination of nets of more than one range of mesh size.

Article 6

Towed gear

1. No device shall be used which obstructs or otherwise diminishes the mesh in the upper half of the codend.
2. By way of derogation from paragraph 1, it shall be permitted to:
 - (a) attach, when fishing with towed gear with a mesh size less than 80 mm, to the outside of the codend a strengthening bag. The mesh size of the strengthening bag shall be at least twice as large as that of the codend;
 - (b) attach to the outside of any part of the codend a sensor dedicated to the measurement of the volume of the catches;
 - (c) attach round straps and a lifting strap to the outside of the codend;
 - (d) attach floats on the two lateral selvages of the codend.
3. It shall be prohibited to use:
 - (a) any codend in which the number of equal sized meshes around any circumference of the codend increases from the front end to the rear end. That prohibition shall not apply to the part of the codend where an authorized selective device is inserted;
 - (b) any codend of mesh size equal to or greater than 80 mm in which any mesh is not quadrilateral and in which the bars of the mesh are not approximately equal length;
 - (c) any codend where the stretched length of the top half is not approximately equal to the stretched length of the bottom half;
 - (d) any towed gear with a mesh size equal to or larger than 80 mm having more than 100 open meshes and less than 40 open meshes in any circumference of the codend, excluding the joining or the selvages;
 - (e) any codend of mesh size equal or more than 80 mm which is not constructed of:
 - (i) single twine netting material in which no twine is of thickness greater than 8 mm; or
 - (ii) double twine netting material in which no twine is of thickness greater than 5 mm;
4. By way of derogation from paragraphs (2)(a), (3)(b), (3)(d) and (3)(e), the mesh size of 80 mm shall be replaced by 60 mm when fishing in ICES zones VIII, IX and X.

Article 7

Beam trawls

1. It shall be prohibited to use or retain on board any beam trawl of mesh size less than 120 mm and equal or more than 80 mm unless the entire upper half of the anterior part of such a net consists of a panel of netting material of which no individual mesh is of mesh size less than 180 mm. The length of the panel shall be equal to or greater than half the length of the beam. The panel shall be attached directly to the headline

or to no more than three rows of netting material of any mesh size attached directly to the headline.

2. It shall be prohibited to use or retain on board any beam trawl of which the beam length, or any beam trawls of which the aggregate beam length measured as the sum of the length of each beam, is greater than 24 meters or can be extended to a length greater than 24 meters. The length of a beam shall be measured between its extremities including all attachments thereto.

Article 8

Gillnets and trammel nets

1. Community vessels shall not deploy gillnets and trammel nets at any position where the charted depth is greater than 200 metres.
2. The immersion time of gillnets and trammel nets shall not exceed 48 hours.
3. Where fishing is conducted using gillnets and trammel nets, the use of more than 50 km of nets shall be prohibited.

Article 9

Specific provisions on certain gillnets

1. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 120 mm and less than 150 mm north of 48°N or with a mesh size equal to or greater than 100 mm and less than 130 mm south of 48°N, in waters of less than 600 metres charted depth, provided that they are no more than 100 meshes deep, have a hanging ratio of not less than 0.5, and are rigged with floats or equivalent floatation. The nets shall each be of a maximum of 5 nautical miles in length, and the total length of all nets deployed at any one time shall not exceed 25km per vessel. The maximum immersion time shall be 24 hours.
2. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 250 mm, in waters of less than 600 metres charted depth, provided that they are no more than 15 meshes deep, have a hanging ratio of not less than 0.33, and are not rigged with floats or other means of floatation. The nets shall each be of a maximum of 10km in length. The total length of all nets deployed at any one time shall not exceed 100km per vessel. The maximum immersion time shall be 72 hours.
3. The quantity of sharks retained on board by any vessel using the gillnets as referred to in paragraph 2 shall be no more than 5% by live-weight of the total quantity of marine organisms retained on board.

SECTION 3

MEASURES TO REDUCE DISCARDS

Article 10

Real time moving to another area when maximum by-catches are exceeded

1. Where the quantity of undersized fish caught exceeds 10% of the total quantity of the catches in any one haul, the vessel shall move away to a distance of at least five nautical miles from any position of the previous haul before continuing fishing.

2. If the minimum and/or maximum percentages of target species, excluding undersized fish of the target species, allowed to be caught with the mesh size range admissible for that species and retained on board, in any one haul have not been in agreement with the percentages laid down in detailed rules adopted in accordance with Article 22, the vessel must immediately move a minimum of 10 nautical miles from any position of the previous haul and throughout the next haul keep a minimum distance of 10 nautical miles from any position of the previous haul.

Article 11

Restrictions on the use of automatic grading equipment

1. The carrying or use on board a fishing vessel of equipment which is capable of automatically grading by size herring (*Clupea harengus*) or mackerel (*Scomber scombrus*) or horse mackerel (*Trachurus spp.*) shall be prohibited.
2. By way of derogation from paragraph 1, the carrying and use of such equipment shall be permitted where:
 - (a) the whole of the catch which may be lawfully retained on board is stored in a frozen state, the graded fish are frozen immediately after grading and no graded fish are returned to the sea; and
 - (b) the equipment is installed and located on the vessel in such a way as to ensure immediate freezing and not to allow the return of marine organisms to the sea.
3. By way of derogation from paragraph 1, any vessel authorised to fish in the Baltic, Belts or Sound may carry in the Kattegat automatic grading equipment as referred to in paragraph 1, provided that a special fishing permit has been issued to that effect. The special fishing permit shall define the species, areas, time periods and any other required conditions applicable to the use and carriage on board of the grading equipment.

SECTION 4

MEASURES FOR THE PROTECTION OF THE ENVIRONMENT

Article 12

Destructive fishing practices

The catching, retention on board, the transshipment, storage, landing, sale, display or offer for sale of marine organisms caught using methods incorporating the use of explosives, poisonous or stupefying substances, electric current or any kind of projectile shall be prohibited.

SECTION 5

ON-BOARD OPERATIONS

Article 13

Processing operations

1. The carrying out on board a fishing vessel of any physical or chemical processing of fish to produce fish-meal or fish-oil, or to tranship catches of fish for such purposes shall be prohibited.
2. The prohibition set out in paragraph 1 shall not apply to the following activities:
 - (a) the processing or transshipment of offal;

- (b) the production on board a fishing vessel of surimi and fish pulp.

SECTION 6

SPECIFIC MEASURES FOR CERTAIN SPECIES

Article 14

Restrictions on fishing for shrimps to protect flatfish

1. It shall be prohibited to retain on board any quantity of common shrimps (*Crangon spp.*) and Aesop shrimps (*Pandalus montagui*) caught with demersal towed nets having any mesh size between 16 and 31 millimetres shall be prohibited, unless such quantity does not exceed 5% of the total live weight of the marine organisms on board.
2. The prohibition set out in paragraph 1 shall not apply if:
 - (a) the vessel has installed on board a functioning device designed to separate flatfish from common shrimps and Aesop shrimps following capture; and
 - (b) a separator trawl or a trawl with a sorting grid is being used to catch common shrimps and Aesop shrimps in conformity with detailed rules which Member States shall establish. Such rules may be applicable only to nets towed by fishing vessels.

Article 15

Restrictions on fishing for salmon and sea trout

In Community waters of the fishing zone referred to in Article 2(1)(a), where this fishing zone is included in the areas specified in Article 2(1)(c) to (e) of Decision 585/2004/EC, salmon and sea trout shall not be retained on board or be transhipped, landed, transported, stored, sold, displayed or offered for sale, but shall be returned immediately to the sea when caught:

- (a) within the waters situated outside the 6-mile limit measured from Member States' baselines except in the Skagerrak and Kattegat;
- (b) within any part of the Skagerrak and Kattegat situated outside the 4-mile-limit measured from Member States' baselines;
- (c) when fishing with any towed gear.

CHAPTER III

NATIONAL AND REGIONAL MEASURES

Article 16

Emergency conservation measures taken by Member States

1. Where the conservation of certain species or fishing grounds is seriously threatened, including where a high congestion of juvenile fish is detected, and where any delay would result in damage which would be difficult to repair, a Member State may take appropriate conservation measures in respect of the waters under its sovereignty or jurisdiction. The Member State concerned shall ensure that such measures do not discriminate against fishing vessels from other Member States.

2. The measures referred to in paragraph 1 shall be of a maximum duration of 10 days, the geographical extension of the affected fishing grounds shall be clearly defined and the measures may only affect fishing vessels that are equipped to catch the species concerned and/or which have an authorisation to fish in the fishing grounds concerned.
3. The measures referred to in paragraph 1, together with an explanatory memorandum, shall be communicated simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils as soon as they are adopted.

Article 17

Measures taken by Member States applying solely to fishing vessels flying their flag

1. A Member State may, for the conservation and management of stocks or to reduce the effect of fishing on the marine eco-system, take technical measures for the conservation of fisheries resources applying only to the vessels flying its flag. Those measures may:
 - (a) supplement measures set out in Community fisheries Regulations;
 - or
 - (b) go beyond minimum requirements set out in Community fisheries Regulations.
2. Measures referred to in paragraph 1 shall be compatible with Community law.
3. The Member State concerned shall communicate such measures without delay to the other Member States and the Commission.
4. Member States shall supply the Commission, on its request, with all information needed for the assessment of whether the measures comply with paragraph 1.
5. If the Commission concludes that the measures do not comply with paragraph 1 it shall adopt a decision requiring the Member State to withdraw or modify the measures.

Article 18

National and/or regional plans to reduce or eliminate discards

1. Member States and/or a Regional Advisory Council may submit proposals to the Commission on matters relating to the establishment of plans to reduce or eliminate discards at sea and improve selectivity of fishing gears. The Commission shall evaluate such proposals and present its observations thereto to the Member State and/or Regional Advisory Council, especially as regards how the plans will contribute to the reduction or elimination of discards, within three months of the date of receipt.
2. Where any delay in reducing or eliminating discards would result in damage which would be difficult to repair, a Member State may take appropriate non-discriminatory conservation measures in respect of the waters under its sovereignty or jurisdiction in accordance with Article 16.

CHAPTER IV

EXCLUDED ACTIVITIES

Article 19

Scientific research

1. This Regulation shall not apply to fishing operations conducted solely for the purpose of scientific investigations subject to the following conditions:
 - (a) the fishing operations must be carried out with the permission and under the authority of the flag Member State;
 - (b) if appropriate the coastal Member State must have been informed in advance of the fishing operations;
 - (c) the vessel conducting the fishing operations must carry on board an authorisation issued by the flag Member State;
 - (d) if requested by the coastal Member State to the flag Member State, the master of the vessel shall take on board an observer from the coastal Member State during the fishing operations.
2. Marine organisms caught for the purposes specified in paragraph 1 may be sold, stored, displayed or offered for sale, provided that:
 - (a) they meet the standards laid down in Annex I to this Regulation and the marketing standards adopted pursuant to Article 2 of Regulation (EC) No 104/2000²⁶, or
 - (b) they are sold directly for purposes other than human consumption.

Article 20

Artificial restocking and transplantation

This Regulation shall not apply to fishing operations conducted solely for the purpose of artificial restocking or transplantation of marine organisms which are carried out with the permission and under the authority of a Member State. Where those fishing operations are carried out in the waters of another Member State, the Commission and all the Member States concerned shall be informed in advance.

CHAPTER V

FINAL PROVISIONS

Article 21

Evaluation of the efficiency of technical measures

Each five years, starting five years after the entry into force of this Regulation, the Commission shall, on the basis of advice from the Scientific, Technical and Economic Council for Fisheries (STECF) and after consultation of the relevant Regional Advisory

²⁶ OJ L 17, 21.1.2000, p. 22

Councils submit to the European Parliament and to the Council a report on the implementation of this Regulation including an assessment of the impact of technical measures on the conservation of fisheries resources. On the basis of that report, the Commission will propose to the Council any necessary amendments.

Article 22

Detailed rules

Detailed rules for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 30(2) of Regulation No 2371/2002. These rules shall lie down in particular:

- (a) the minimum and maximum percentages of the target species among the living aquatic resources retained on board;
- (b) the mesh size ranges admissible for each target species;
- (c) provisions for the reduction or elimination of discards and the improvement of the selectivity of fishing gear;
- (d) measures concerning the restriction of fishing activities in specific periods and/or specific areas referred to in Article 2 on the basis of the best scientific information available in order to protect marine habitats in those areas;
- (e) other technical measures to protect marine habitats or fishery resources.

Article 23

Procedure for amendments to the Annexes

Amendments to the Annexes to this Regulation shall be adopted in accordance with the procedure referred to in Article 30(3) of Regulation (EC) No 2371/2002.

Article 24

Repeal

1. Regulations (EC) No 850/98 and (EC) No 2549/2000 are hereby repealed.
2. References to the provisions of the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 25

Entry into force

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

It shall apply from xx xx 2009.

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

Minimum landing sizes

Fish

Cod (<i>Gadus morhua</i>)	35 cm
Saithe (<i>pollachius virens</i>)	35 cm
Hake (<i>Merluccius merluccius</i>)	27 cm
Megrim (<i>Lepidorhombus</i> spp.)	20 cm
Sole (<i>Solea</i> spp.)	24 cm
Bass (<i>Dicentrarchus labrax</i>)	36 cm
Mackerel (<i>Scomber</i> spp.)	20 cm
Horse mackerel (<i>Trachurus</i> spp.)	15 cm
Herring (<i>Clupea harengus</i>)	20 cm
Sardine (<i>sardina pilchardus</i>)	11 cm
Anchovy (<i>Engraulis encrasicolus</i>)	12 cm

Crustaceans

Norway lobster (<i>Nephrops norvegicus</i>)	85 mm (total length) 25 mm (carapace length)
Norway lobster tails	46 mm
Spinous spider crab (<i>Maia squinado</i>)	120 mm
Edible crab (<i>Cancer pagurus</i>)	140 mm

Molluscs

Octopus (<i>Octopus vulgaris</i>)	450 grammes (gutted)
Scallop (<i>Pecten maximus</i>)	100 mm

Annex II

Measurement of the size of marine organism

1. The size of any fish shall be measured from the tip of the snout to the end of the tail fin.
2. The size of a Norway lobster shall be measured as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace, and/or, as the total length, from the tip of the rostrum to the rear end of the telson, not including the setae, and/or, in the case of detached Norway lobster tails: from the front edge of the first tail segment present to the rear end of the telson, not including the setae. The tail shall be measured flat, unstretched and on the dorsal side.
3. The size of a spinous spider crab or an edible crab shall be measured respectively, as the minimum width of the carapace measured perpendicular to the antero-posterior midline of the carapace.
4. The size of any bivalve mollusc shall be measured across the longest part of the shell.

Annex III

Correlation table

Regulation (EC) No 850/98	Present Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4(1)	
Article 4(2)	
Article 4(3)	
Article 4(4)	
Article 4(5)	
Article 4(6)	
Article 5	
Article 6(1)	Article 6(3)(d)
Article 6(2)	Article 6(3)(a)
Article 6(3)	
Article 7	
Article 8	Article 6(3)(e)
Article 9	Article 6(3)(b)
Article 10	
Article 11	
Article 12	
Article 13	
Article 14	
Article 15	
Article 16	Article 6(1)
Article 17	Article 4(1)
Article 18(1)	Article 4(4)
Article 18(2)	
Article 18(3)	
Article 18(4)	
Article 19(1)	Article 4(2)
Article 19(2)	
Article 19(3)	Article 4(3)
Article 20	
Article 21	
Article 22	
Article 23	
Article 25	Article 14
Article 26	Article 15
Article 27	
Article 28	
Article 29	
Article 29a	
Article 29b	
Article 30(1)	Article 7(2)
Article 30(2)	

Article 30(3)	
Article 30(4)	
Article 30(5)	
Article 31	Article 12
Article 32	Article 11
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Article 36	
Article 37	
Article 38	
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Article 40	
Article 42	Article 13
Article 43	Article 19
Article 44	Article 20
Article 45	Article 16
Article 46	Article 17
Article 47	
Article 48	Article 22
Article 49	
Article 50	Article 25
Annex I	
Annex II	
Annex III	
Annex IV	
Annex V	
Annex VI	
Annex VII	
Annex VIII	
Annex IX	
Annex X	
Annex XI	
Annex XII	Annex I
Annex XIII	Annex II
Annex XIV	
Annex XV	Annex III