



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.12.2003  
COM(2003) 819 final

2003/0327 (CNS)

Proposal for a

**COUNCIL REGULATION**

**establishing measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

This proposal establishes measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay following the statement by the Commission and the Council on multi-annual plans at the December Council 2002. (SN 107/02, p. 6). The proposal also originates from Article 5 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, relating to recovery plans for fisheries exploiting stocks outside safe biological limits.

There are two sole stocks covered by this proposal, namely the stock in the western Channel (ICES Division VIIe) and the stock in the Bay of Biscay (ICES Divisions VIII a and b). Although they cover different areas they have features in common that make it logical to include them in the same text. The objective of this recovery plan will be to ensure the recovery of the stocks to within safe biological limits within a time frame of five to ten years.

This proposal is written in five chapters:

**Chapter I** sets out which stocks are covered by this proposal and lays down the criteria for reaching the objectives of the plan, such that when, based on advice from the Scientific Technical and Economic Committee for Fisheries the stocks may be considered within safe biological limits the Council will decide to cancel the plan, on a proposal from the Commission.

**Chapter II** sets out for each sole stock what the maximum fishing mortality rate should be to ensure their recovery within the chosen time frame. Total allowable catches will then be calculated based on these.

The Bay of Biscay stock is probably around 10000 tonnes, having declined by approximately one third since 1995. Fishing mortality has been above  $F_{lim}$ , the fishing mortality at which it is thought that the stock could collapse, since 1997. The western Channel stock has been declining since 1980 and is in 2003 estimated to be at its historically lowest level, probably around 2000 tonnes. Fishing mortality has been mostly above  $F_{lim}$  since 1982.

Scientists have indicated that while the estimated relative developments in stock sizes are very accurate the estimates of the absolute sizes of the stocks are very uncertain. The scientists have therefore advised that biomass reference points should not be used as targets for recovery and instead suggested to express the recovery targets in terms of fishing mortality rates. The fishing mortality reference point  $F_{0.1}$ , which is based on yield-per-recruit criteria and therefore robust to changes in absolute estimates of stock size, has been chosen as the recovery limit.  $F_{0.1}$  is sufficiently low to give, if achieved, a high probability of recovery. The target mortality rates are planned to be achieved by reducing the fishing mortality rates gradually over time and setting TACs consistent with them such that recovery is likely to be achieved within the same time scale as that proposed for the cod recovery plans, namely around five to ten years. In any case,  $F_{0.1}$  is a limit, not a target. This means that recovery can be achieved, and the recovery plan replaced by a management plan, when the concerned stocks are considered to be within safe biological limits, regardless of whether the limit of  $F_{0.1}$  has been reached.

The long term yield per recruit when fishing at  $F_{0.1}$  is close to the maximum yield, and although the reduction in the fishing mortality towards  $F_{0.1}$  will result in a short term decline in yield, the yield is expected to increase in the medium to long term.

The chapter also sets out the details of the principle that the largest annual change, upwards or downwards, in any TAC from one year to the next should not be greater than 15% after the first year of implementation of a recovery plan. In the first year, these limits are increased to 25% to allow for a possible higher first recovery step.

**Chapter III** contains the Commission's proposals for the management of a fishing effort limitation scheme - i.e. restricting the time that the fishing vessels concerned may spend fishing to correspond with the TAC's. The system is the same as proposed in the cod recovery plan, giving flexibility to Member States in management and allocation of fishing effort to individual fishing vessels.

These sole stocks are, however, also found within the area covered by the proposal on the recovery of northern hake and the effort limitation measures proposed for the hake may therefore contribute to sole recovery. To avoid making the management systems too complicated, the effort management for sole will include only those vessels fishing for sole and having landed more sole than hake. Vessels having landed more hake than sole will be covered by the effort scheme for hake.

In simple terms the system works as follows:

- first, the overall fishing effort over a three-year reference period of all vessels catching sole not covered by the northern hake plan is calculated;
- then the reduction in fishing effort, relative to the effort in the reference period, required to match the selected TAC is calculated and allocated to Member States in proportion to each Member State's share of the total landings of sole and taking into account differences in catchability.

These effort limits, expressed in kilowatt-days, will be distributed among their vessels by Member States, within - but not between - the geographical areas occupied by the respective sole stocks. They will be fully transferable between these vessels and usable at any time throughout the year.

**Chapter IV** provides for measures in relation to improved monitoring, inspection and control for the vessels covered by the effort management system. These measures include details of prior notification, the requirement to land sole in designated ports and stowage and transport conditions.

Technical conservation measures have not been included in this regulation. A number of technical measures aimed at assisting the recovery of sole stocks have already been implemented by Council Regulation 850/98. Further evaluation of technical conservation measures in relation to the recovery of sole is currently underway and further measures may be proposed at a later date.

## **Chapter V** final provisions

The socio-economic impact of the implementation of this proposal will be addressed in the framework of the Action plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry (COM (2002) 600 final). The Action Plan acknowledges the difficulty of assessing the likely impacts of the multi-annual management plans, and that further data should be collected by the Member States to this end.

The Council is requested to adopt this proposal as soon as possible in order to allow fishermen to plan their activities for the next fishing season.

Proposal for a

**COUNCIL REGULATION**

**establishing measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay**

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 Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas:

- (1) Recent scientific advice from the International Council for the Exploration of the Sea (ICES) has indicated that the sole stocks in ICES Divisions VIIe and VIIIa,b have been subjected to levels of mortality by fishing which have eroded the quantities of mature fish in the sea to the point at which the stocks may not be able to replenish themselves by reproduction and that the stocks are therefore threatened with collapse.
- (2) Measures need to be taken to establish multi-annual plans for the recovery of these stocks in conformity with Article 5 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<sup>3</sup>.
- (3) The objectives of the plans should be to rebuild these stocks to safe biological limits within five to ten years.
- (4) The objective should be considered to be achieved when the stocks concerned are assessed, based on advice from the Scientific Technical and Economic Committee for Fisheries (STECF), to be within safe biological limits.
- (5) The absolute sizes of the stocks concerned as estimated by STECF and ICES are too uncertain to be used as targets for the recovery and the targets should be expressed in terms of fishing mortality rates.
- (6) In order to achieve that objective, the levels of fishing mortality rates need to be controlled so that it is highly likely that those rates are reduced from year to year.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 358, 31.12.2002, p. 59.

- (7) Such control of the fishing mortality rates can be achieved by establishing an appropriate method for the establishment of the level of Total Allowable Catches (TACs) for the stocks concerned, and a system whereby fishing efforts on these stocks are restricted to levels at which the TACs are unlikely to be exceeded.
- (8) Once recovery has been achieved the Council should decide on a proposal from the Commission on follow-up measures in accordance with Article 6 of Regulation (EC) No 2371/2002.
- (9) Control measures in addition to those laid down in Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>4</sup>, need to be included in order to ensure compliance with the measures laid down in this Regulation,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **SUBJECT- MATTER AND OBJECTIVES**

#### *Article 1*

##### **Subject-matter**

This Regulation establishes a recovery plan for the following sole stocks (hereinafter referred to as 'sole stocks concerned'):

- (a) sole which inhabits Division VIIe, as delineated by the International Council for the Exploration of the Sea (ICES);
- (b) sole which inhabits Divisions VIIIa and b, as delineated by ICES.

#### *Article 2*

##### **Objective of the recovery plan**

The recovery plan shall aim to rebuild the sole stocks concerned to within safe biological limits.

#### *Article 3*

##### **Evaluation of recovery measures**

1. The Commission shall, on the basis of advice from ICES and the Scientific Technical and Economic Committee for Fisheries (STECF), evaluate the impact of the recovery

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<sup>4</sup> 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).

measures on the sole stocks concerned and the fisheries on those stocks, in the second year of application of this Regulation and in each of the following years.

2. Where the Commission finds, on the basis of the annual evaluation, that any of the sole stocks concerned has reached the objective set out in Article 2, the Council shall decide by qualified majority on a proposal from the Commission to replace, for that stock, the recovery plan provided for in this Regulation by a management plan in accordance with Article 6 of Regulation (EC) No 2371/2002.
3. Where the Commission finds, on the basis of the annual evaluation, that any of the sole stocks concerned do not show proper sign of recovery, the Council shall decide by qualified majority on a proposal from the Commission on additional and/or alternative measures to ensure recovery of the stock concerned.

## **CHAPTER II**

### **Total Allowable Catches**

#### *Article 4*

#### **Setting of Total Allowable Catches (TACs)**

1. Each year, the Council shall decide by qualified majority on the basis of a proposal from the Commission on a TAC for the following year.
2. The TAC for the sole stocks concerned shall be set in accordance with Article 5.

#### *Article 5*

#### **Procedure for setting the TACs for the sole stocks concerned**

1. Where the fishing mortality rate for one of the sole stocks concerned has been estimated by the STECF in the light of the most recent report of ICES to be above 0.14 per year, the TAC for that stock shall not exceed a level of catches which, according to a scientific evaluation carried out by the STECF in the light of the most recent report of ICES, will result in a reduction of:
  - (a) 20% in the fishing mortality rate in its year of application, compared to the fishing mortality rate estimated for the preceding year with regard to the sole stock in Division VIIe;
  - (b) 35% in the fishing mortality rate in its year of application, compared to the fishing mortality rate estimated for the preceding year with regard to the sole stock in Divisions VIIIa and b.
2. Where the fishing mortality rate for one of the sole stocks concerned has been estimated by the STECF, in the light of the most recent report of ICES, to be equal to or below 0.14 per year, the TAC for that stock shall be set at a level of catches which, according to a scientific evaluation carried out by the STECF in the light of the most recent report of ICES will result in a fishing mortality rate of:

- (a) 0.11 per year in the year of its application with regard to the sole stock in Division VIIe;
- (b) 0.09 per year in the year of its application with regard to the sole stock in Divisions VIIIa and b.

#### *Article 6*

#### **Constraints on variation in TACs**

1. In the first year of application of this Regulation, the following rules shall apply:
  - (a) where application of Article 5 would result in a TAC which exceeds the TAC of the preceding year by more than 25%, the Council shall adopt a TAC which shall not be more than 25% greater than the TAC of that year;
  - (b) where application of Article 5 would result in a TAC which is more than 25% less than the TAC of the preceding year, the Council shall adopt a TAC which is not more than 25% less than the TAC of that year.
2. Starting with the second year of application of this Regulation, the following rules shall apply:
  - (a) where application of Article 5 would result in a TAC which exceeds the TAC of the preceding year by more than 15%, the Council shall adopt a TAC which shall not be more than 15% greater than the TAC of that year;
  - (b) where application of Article 5 would result in a TAC which is more than 15% less than the TAC of the preceding year, the Council shall adopt a TAC which is not more than 15% less than the TAC of that year.

### **CHAPTER III**

#### **Fishing effort limitation**

#### *Article 7*

#### **Setting of maximum permissible kilowatt-days**

The Council shall decide by qualified majority on a proposal from the Commission on the maximum permissible level of kilowatt-days not in excess of a quantity calculated in accordance with the conditions laid down in the Annex for groups of fishing vessels from each Member State fishing for the sole stocks concerned in the forthcoming year.



## *Article 8*

### **Establishment and composition of a database**

1. Each Member State shall establish a database containing for each of the geographical areas referred to in Article 1, for each year of the reference period referred to in paragraph 2 and for each vessel flying its flag and registered within the Community which has landed any quantity of sole and hake in that period, the following information :
  - (a) the name and internal registration number of the vessel;
  - (b) the installed engine power of the vessel in kilowatts measured in accordance with Council Regulation (EEC) No 2930/865;
  - (c) the number of days absent from port as defined in Article 12;
  - (d) the quantity of sole landed in tonnes;
  - (e) the quantity of hake landed in tonnes;
  - (f) the kilowatt-days as the product of the number of days absent from port and the installed engine power in kilowatts.
2. The database shall be established by no later than the following dates :
  - (a) 31 January 2004, in respect of the three-year reference period 2001, 2002 and 2003;
  - (b) 15 July of each year subsequent to 2004 in respect of the preceding three-year reference period.
3. The database shall be communicated to the Commission in written form and in computer-accessible form by 15 February 2004 at the latest in respect of the reference period provided for in paragraph 2(a) and by 31 July of the year concerned in respect of the period provided for in paragraph 2(b).

## *Article 9*

### **Calculations to be carried out by Member States**

1. The following quantities shall be calculated by each Member State:
  - (a) the average number of kilowatt- days for the reference period for each vessel included in the database referred to in Article 8;
  - (b) the total of the average number of kilowatt-days for vessels included in the database referred to in Article 8 as the sum of the average number of kilowatt-days calculated in point (a) for those vessels which during the reference period

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<sup>5</sup> OJ L 274, 25.09.1986, p. 1.

and according to that data included in the database have landed in weight more sole than hake.

2. Member States shall ensure that the calculation under paragraph 1(a) is adjusted where necessary to take into account any limits on fishing effort provided for under Council Decision 97/413/EC.<sup>6</sup>
3. The results of the calculations shall be communicated to the Commission within the same deadlines as those indicated in Article 8(3).

#### *Article 10*

##### **Allocation of kilowatt-days**

1. For each geographical area referred to in Article 1 each Member State shall decide each year on the distribution of the maximum permissible number of kilowatt-days among vessels flying its flag and registered in the Community.
2. The transfer of kilowatt-days shall be prohibited between the geographical areas referred to in Article 1.

#### *Article 11*

##### **List of vessels**

1. Within two months of the Council decision referred to in Article 7, each Member State shall communicate to the Commission, for each of the geographical areas referred to in Article 1, a list with the name and internal registration number of vessels to which kilowatt-days have been allocated.
2. Vessels already included in the list provided for in Article 11 of Regulation (EC) No XXXX/2003 [recovery plan for northern hake] shall not be included in the list referred to in paragraph 1.
3. Until a Member State communicates lists to the Commission under paragraph 1, the lists most recently communicated to the Commission shall continue to apply.

Where no such lists have previously been communicated to the Commission, the list shall be deemed to include the vessels whose names and internal registration number are included in the database referred to in Article 8 for the most recent reference period and which have landed more sole than hake during the reference period.

#### *Article 12*

##### **Days absent from port**

1. The kilowatt-days allocated to an individual vessel shall be converted into an equivalent number of days absent from port by dividing the kilowatt-days by the

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<sup>6</sup> OJ L 175, 3.7.1997, p. 27.

vessel's installed engine power in kilowatts, adding 0.5 to the result of this calculation and ignoring any decimal or other fraction in the resultant value.

2. A day absent from port shall be any continuous period of 24 hours from the time of entry into a geographical area referred to in Article 1 or any part of such a period.

#### *Article 13*

### **Obligations of Member States**

Member States shall ensure that each vessel included in the list referred to in Article 11 is not absent from port and is present within any of the geographical areas referred to in Article 1 for more than the number of days calculated under Article 12.

#### *Article 14*

### **Prohibitions on landing and transshipping**

1. A vessel which has not been included in the list referred to in Article 11 or in the list defined in Article [X] of Regulation (EC) No XXXX/2003 [recovery plan for northern hake] shall be prohibited from landing or transshipping hake, megrim, anglerfish, plaice or sole caught in any of the geographical areas referred to in Article 1 and shall also be prohibited from landing or transshipping Norway lobsters caught in those areas unless the latter have been caught using creels.
2. Until a Member State establishes a database and communicates it to the Commission in accordance with Article 8, all vessels of that Member State shall be prohibited from landing hake, plaice, Norway lobsters or sole caught in any of the geographical areas referred to in Article 1.

## **CHAPTER IV Monitoring, inspection and surveillance**

#### *Article 15*

### **Effort messages**

Notwithstanding Article 19a of Regulation (EEC) No 2847/93, Articles 19b, 19c, 19d and 19e and 19j of that Regulation shall apply to vessels included in the database provided for in Article 8 operating in the geographical areas referred to in Article 1.

#### *Article 16*

### **Margin of tolerance**

By way of derogation from Article 5(2) of Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States'

catches of fish<sup>7</sup>, the permitted margin of tolerance, in estimation of quantities, in kilograms retained on board of vessels shall be 5% of the logbook figure.

#### *Article 17*

### **Weighing of landings**

The competent authorities of a Member State shall ensure that any quantity of common sole exceeding 50 Kg caught in any of the areas referred to in Article 1 shall be weighed using auction room scales before sale.

#### *Article 18*

### **Separate stowage of common sole**

1. It shall be prohibited to retain on board a Community fishing vessel in any individual container any quantity of common sole mixed with any other species of marine organisms.
2. The masters of Community fishing vessels shall give inspectors of Member States such assistance as will enable the quantities declared in the logbook and the catches of common sole retained on board to be cross-checked Article 19

#### *Article 19*

### **Transport of common sole**

1. The competent authorities of a Member State may require that any quantity of common sole exceeding 50 Kg caught in any of the geographical areas referred to in Article 1 and first landed in that Member State is weighed before being transported elsewhere from the port of first landing.
2. By way of derogation from Article 13 of Regulation (EEC) No 2847/93, quantities bigger than 50 Kg of common sole which are transported to a place other than that of landing or import shall be accompanied by a copy of one of the declarations provided for in Article 8(1) of Regulation (EEC) No 2847/93 pertaining to the quantities of the sole transported. The exemption provided for in Article 13(4)(b) of Regulation (EEC) No 2847/93 shall not apply. Article 20

#### *Article 20*

### **Specific monitoring programme**

By way of derogation from Article 34c(1) of Regulation (EEC) No 2847/93, the specific monitoring programme for the sole stocks concerned may last for more than two years.

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<sup>7</sup> O.J. L276, 10.10.1983, p.1.

## **CHAPTER V**

### **Final provisions**

#### *Article 21*

#### **Entry into force**

This Regulation shall enter into force on the twentieth 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*

## Annex

The Commission will be responsible for carrying out the calculations described in this Annex.

### **Calculation of maximum permissible kilowatt-days for each Member State in each geographical area.**

#### **Part 1: Expected fishing mortality rate associated with a TAC**

The expected fishing mortality rate associated with a TAC for the forthcoming year shall be the value of fishing mortality rate which is consistent with the uptake of that TAC as stated in or derived from the most recent report of ICES. This value will be referred to hereinafter as “ $F_{tac}$ ”.

#### **Part 2: Calculation of the average fishing mortality rate during the reference period**

The values of the total international fishing mortality rate provided in the most recent report of ICES in each of the three years of the reference period shall be added together and the result of this calculation shall be divided by three. This value will be referred to herein after as “ $F_{ref}$ ”.

### Part 3: Calculation of the maximum permissible kilowatt-days for each Member State<sup>8</sup>

(a) The proportion of the landings of sole generated by each Member State during the reference period shall be calculated as follows:

(i) For each of the three years of the reference period and using the data on landings provided in the most recent report of ICES or, if the latter quantities are not available, data provided by the database of a Member State under Article 8, the total quantity of sole landed by each Member State shall be divided by the total quantity of sole landed by all Member States.

(ii) For each Member State, the quantities calculated in paragraph (i) shall be added together and the resultant quantity divided by three.

(b) The squared values of each of the values calculated in paragraph (a)(ii) shall be calculated

(c) Each of the values calculated in paragraph (b) shall be multiplied by  $F_{ref}$  as calculated in Part 2.

(d) The values calculated for each Member State in paragraph (c) shall be divided by the kilowatt days for that Member State as calculated under Article 9(1)(b).

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<sup>8</sup> The computations defined in Part 3 of this Annex result in values of maximum permissible kilowatt-days for each Member State in relation to the proportion of sole landed by each Member State during the reference period.

The first move in these calculations is to evaluate the total adjustment to kilowatt-days across all Member States during the reference period, which is required to ensure that the kilowatt-days associated with the uptake of the TAC and hence the fishing mortality rate associated with the TAC are not exceeded.

This total adjustment (K) is calculated from the following equation:

$$K = (F_{tac} - F_{ref}) / \sum_{ms} (F_{ref} \times P_{ref,ms}^2 / D_{ref,ms})$$

Where:

$F_{tac}$  is the fishing mortality rate required to take the TAC as obtained in Part 1

$F_{ref}$  is the fishing mortality rate during the reference period as calculated in Part 2

$P_{ref,ms}$  is the proportion of the landings of sole by all Member States taken by an individual Member State during the reference period.

$P_{ref,ms}^2$  is the squared value of  $P_{ref,ms}$ .

$D_{ref,ms}$  is the average number of kilowatt-days expended per year by a Member State during the reference period as calculated by Member States in Article 10(1)(b)

K is the total reduction in kilowatt-days across all Member States

Paragraph (a) calculates for each Member State the value of  $P_{ref,ms}$

Paragraph (b) calculates for each Member State the value of  $P_{ref,ms}^2$

Paragraph (c) calculates for each Member State the value of  $F_{ref} \times P_{ref,ms}^2$

Paragraph (d) calculates for each Member State the value of  $F_{ref} \times P_{ref,ms}^2 / D_{ref,ms}$

Paragraph (e) adds together the values for each Member State obtained in paragraph (d) as indicated by the summation operator ( $\sum_{ms}$ ) in the equation above

Paragraph (f) divides the difference between  $F_{tac}$  and  $F_{ref}$  by the result obtained in paragraph (e). The resultant value is K in the equation above which is the total adjustment of kilowatt-days compared to those of the reference period required to ensure that  $F_{tac}$  will not be exceeded.

The next move is to distribute the total adjustment among Member States according to the proportion of the total landings of sole by all Member States which was taken by each Member State during the reference period.

Paragraph (g) distributes this total adjustment among Member States by the proportion of the total sole landings taken by each Member State during the reference period (these proportions were calculated in paragraph (a))

Paragraph (h) adjusts the kilowatt-days of each Member State by the appropriate quantity calculated in paragraph (g) to give the maximum permissible kilowatt-days for each Member State and ensure that  $F_{tac}$  and hence the TAC itself is not exceeded.

(e) The values calculated in paragraph (d) shall be added together.

(f) The value of  $F_{tac}$ , as obtained in Part 1, minus  $F_{ref}$ , as calculated in Part 2, shall be divided by the value calculated in paragraph (e)

(g) The value calculated in paragraph (f) shall be multiplied by the value for each Member State calculated in paragraph (a)(ii).

(h) Each of the values calculated in paragraph (g) shall be added to the kilo-watt days calculated by each Member State under Article 9(1)(b).

**Part 4: Comparison of effort allocation with previous effort limits set out under the Multi-Annual Guidance Programmes (MAGPs)**

For Member States managing certain fleet segments with effort limits under the MAGPs , these limits and the vessels covered by them will be compared to the new limitations and vessels covered by this Regulation. These new limitations must be less than or equal to those previously set.