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Europêche/EAPO Discussion Paper

Cod Recovery Plan: The way ahead in light of the Court of Justice annulment of Council Regulation 1243/2012

1. The Problem

- 1.1 In December 2012, Council Regulation 1243/2012 amended the Cod Recovery Plan (Council Regulation 1342/2008). This amendment enabled a freeze of effort levels required by the CRP and a more flexible approach for the management of the cod stock in the Kattegat.
- 1.2 On 1 December 2015, the Court of Justice annulled the amendment but allowed the benefits outlined above to remain in place until December 2016. At that point, under the current legislative environment, the original regulation would be applied, not only taking away these facilities, but potentially requiring the effort reductions that should have been applied between 2013 and 2016 to be accounted for in addition to any relevant reduction for 2017.
- 1.3 The annulment of the amendment was based on the process that was undertaken, rather than the actual amendments themselves. The nature of the legislation was such that the co-decision process should have been undertaken and, as it hadn't, the view of the Parliament had been excluded from the process. The irony of this situation is that a proposal for the formal amendment of the CRP had already been published by the Commission and the Parliament had, in its first reading in June 2013, agreed amendments with almost the same outcome as 1243/2012.
- 1.4 The full legislative process is cumbersome and takes time, leaving very little time in which to achieve agreement on the way ahead.

2. Potential Solutions

- 2.1 The scenario outlined in 1.2 above is clearly unacceptable and, although any action could be viewed as interim due to the introduction of Article 15 of the CFP, there are, in effect two options: amendment of 1342/2008 or full repeal.
 - 2.1.1 The preferred option from the industry perspective would be to repeal the CRP in its entirety. The result of this would be that the cod stocks, formerly managed to excess, would only be managed through the TAC system, with discarding required. This is unlikely to meet with support from all parties, particularly in the short time available.
 - 2.1.2 A second option would be to repeal the CRP in its entirety but to apply Article 15 of the CFP to cod from 1 January 2017. This would provide some protection to the stock as, although it

would only be managed through the TAC system as in 2.1.1, discarding would not be allowed. This is not really an option for industry (or others for that matter) as, while it might be possible for the North Sea, it would be at the expense of the Irish Sea and West of Scotland fisheries where the tiny quotas would result in an immediate choke.

- 2.1.3 The third option is amendment with a thorough cleanse of the damaging Articles, particularly those dealt with in 1243/2012. There are, of course, a number of variations on this theme but, as a process to achieve agreement on an amendment to the regulation has already been initiated, it would seem that, in the light of the restrictive timescales, the Parliament amendments are a good place to start.

3. Proposed Amendments from First Tabling at Parliament (relevant to 1243/2012)

- 3.1 The combined amendments from the initial Commission proposal and the amendments to that by the Parliament provide almost the same changes to Articles 9 (stopping automatic TAC decreases in data poor stocks) and 12 (enabling the effort freeze) that are effected by 1243/2012.

- 3.1.1 The first area of material difference is that while paragraph 2 of Article 9 of 1243/2012 reads:

'2. By way of derogation from paragraph 1, where scientific advice indicates that there should be no directed fisheries and that:

- a) by-catch should be minimised reduced to the lowest possible level and/or*
- b) the catches of cod should be reduced to the lowest possible level*

the Council may decide not to apply an annual adjustment to the TAC in the subsequent year or in subsequent years on condition that the TAC set is for bycatch only.'

The amended version reads:

'2. By way of derogation from paragraph 1, where scientific advice indicates that there should be no directed fisheries and that:

- a) by-catch should be minimised reduced **to the level advised by STECF or ICES** and/or*
- b) the catches of cod should be reduced **to the level advised by STECF or ICES***

the Council may decide not to apply an annual adjustment to the TAC in the subsequent year or in subsequent years on condition that the TAC set is for bycatch only.'

- 3.1.2 In addition to this Article 9 paragraph 4 of 1243/2012 is deleted. It reads:

'Where scientific advice indicates that the application of the rules set out in Article 8 (1) to (4) is not appropriate to meet the objectives of the plan, the Council may, notwithstanding the above mentioned provisions, decide on an alternative TAC level'

This appears to give the Council more scope for change but could be seen to be making changes to the plan that should not be done unilaterally.

- 3.2 Article 12 remains unchanged from 1243/2012 but as paragraph 6 of the Article allows effort to be frozen if there have been cuts for four consecutive years, the wording must ensure that this is not from the date that any new regulations enters into force.

4. Other Amendments

- 4.1 Depending on the context in which this regulation is set, there are a number of attempts to require additional selectivity and reductions in discarding. To a certain extent these will be superfluous as the landings obligation will be in force in 2019 at the latest, and most of the vessels subject to the CRP will also be subject to at least one species under the LO, reducing risk to those other species. Examples of this are Parliament amendments 2, 3, 8 and 18.
- 4.2 Article 10 has not been amended. This Article requires the Council to set TACs and effort lower than required in other Articles if STECF advises that any of the cod stocks are failing to recover properly.
- 4.3 Article 11, which describes the fishing effort regime. The Parliament proposal now reads:

'Article 11

Fishing Effort Regime

1. *The TAC set out in Articles 7, 8 and 9 shall be complemented by a fishing effort regime whereby fishing opportunities in terms of fishing effort are allocated to Member States on an annual basis*

Article 11a

Exclusion of fishing effort deployed in certain areas, depth or by certain gears

1. *Fishing effort deployed by a vessel during a trip may be excluded by the Member State when counting the deployed effort against the maximum allowable fishing effort if:*
 - (a) *The entire fishing activity of that trip by the vessel concerned is carried out outside cod-distribution areas as listed in accordance with paragraph 2*
or
 - (b) *The entire fishing activity of that trip by the vessel concerned is carried out at a depth greater than 300m*
or
 - (c) *during that trip the fishing vessel concerned uses one type of regulated gear on board and that gear is listed in accordance with paragraph 2; if the vessel carries other gear on board during the fishing trip, it shall be stowed in accordance with Article 47 of Regulation (EC) No 1224/2009*
2. *Based on the information provided by Member States pursuant to paragraph 3, and in accordance with scientific advice, the Council shall establish a list of areas outside cod-distribution and a list of gears the technical attributes of which result in cod catches of less than 1.5% of the total catches measured by weight. Once a gear or area, submitted by a Member State is approved, it shall be possible for other Member States to use it.*
3. *Member States shall provided appropriate information to allow the Commission to assess whether and area or a gear shall be on the list of gears referred to in paragraph 2.*

4. *Detailed rules concerning the format and procedure for the transmission to the Commission of the information referred to in paragraph 3 may be adopted by means of implementing acts in accordance with the procedure referred to in Article 32.*

Article 11b

Adjustment of the baseline for the calculation of the maximum allowable fishing effort

1. *Fishing effort referred to in Article 11a(1) that contributed to the establishment of the baseline referred to in Article 12(2)(a) shall be deducted from the baseline pursuant to this Article.*
2. *Requests for the adjustment of the baseline referred to in paragraph 1 shall be submitted by Member States to the Commission by the 31 December of each year.*
3. *The adjusted baseline shall be used to recalculate the maximum allowable fishing effort level for the group concerned by applying the annual percentage adjustments applied since entry into force of the plan.*
4. *The exclusion of fishing effort referred to in Article 11a may be applied to the relevant effort group only after the maximum allowable fishing effort has been recalculated in accordance with this Article.*
5. *Detailed rules concerning the format and procedure for transmission to the Commission of the requests referred to in paragraph 2 may be adopted by means of implementing acts in accordance with the procedure referred to in Article 32.*

Article 11c

Exclusion of vessel participating in trials of a fully documented fishery

1. *Fishing effort deployed by a vessel when participating in trials of a fully documented whereby all cod catches including discards are counted against the quota may be excluded by the Member States from the fishing effort regime.*
2. *When paragraph 1 is applied, Member States shall adjust the maximum allowable fishing effort set pursuant to Article 12(1) for the effort group concerned by deducting an amount of effort deployed by the participating vessel in the year before its exclusion from the fishing effort regime.*
3. *Member States shall notify the Commission any adjustment of the maximum allowable fishing effort made pursuant to paragraph 2. The notification shall include details of the vessels excluded and the amount of fishing effort deducted both at aggregated and at vessel level.*
4. *Detailed rules concerning the format and procedure for the notification referred to in paragraph 3 may be adopted by the Commission by way of implementing acts in accordance with the procedure referred to in Article 32.*

Article 11d

Measures on exclusions previously obtained

Exclusions from the fishing effort regime that were already in force prior to ... shall continue to apply for as long as the conditions under which those exclusions were granted remain fulfilled. Member States shall provide annually to the Commission any relevant information enabling it to establish that those conditions remain fulfilled.'*

- 4.2 Article 13 covers the allocation of additional fishing effort for cod avoidance and paragraph (2) b is amended to include the discard element under the 5% threshold.
- 4.4 The proposal adds paragraph 5 to Article 14 to require Member States to take immediate action to minimise cod discards '*where the scientific data indicates that, for a particular gear, large volumes of cod are discarded through the management period*'. The Commission proposal had inserted the paragraph but that required action immediately '*where ...more than 10% of the cod catches for a particular effort group consist of discards or where the quota allocation does not correspond to the catches....*'. Whilst the Parliament proposal may require some interpretation, the sector very much supports the EP wording and may be less of a risk as it is over a management period.
- 4.5 Article 16 is amended to enable the transfer of fishing effort between fishing areas for vessels catching less than 5% cod.
- 4.6 Article 17 is amended to enable transfer of effort between gear categories without penalty in some circumstances.

Proposed amendments

In the light of the very short timetable to get agreement on amendment of the CRP and the consequences of not securing a political agreement, the following amendments take into account only the key issues for Européche/EAPO members; the potential effort and TAC reductions. As a result, these amendments deal almost exclusively with Article 12 (effort reductions) as the EP amendments to the other Articles, including Article 9, appear to be acceptable.

Amendment 1

Article 8 – paragraph 5a (new)

Test proposed by the Commission

Amendment

In Article 8, the following paragraph 5a is inserted:

' 5a. Notwithstanding paragraphs 2, 3, 4 and 5, the Council may decide on an alternative TAC level when scientific advice indicates that that level would be more appropriate to meet the objectives of the plan or when

consultations with Norway result in agreement on a different level of the TAC'

Justification

This enables the Council to set a different TAC from the management plan in instances where the Management Plan would move recovery away from the objectives of the plan or where it had been agreed in bilateral negotiations. It also enables the suggested amendment 2 within this document (Article 12(6)) to be applied to the North Sea.

Amendment 2

Article 12

Text proposed by the Commission

(b) The following paragraph 6 is added:

Amendment

(b) The following paragraph 6 is added:

6. By way of derogation from paragraph 4, the Council may, where the maximum allowable fishing effort has been reduced for four consecutive years, decide not to apply an

annual adjustment to the maximum allowable fishing effort in the subsequent year or in subsequent years.

6. By way of derogation from paragraph 4, **where TACs have been set in accordance with Articles 7, 8 or 9, annual adjustments to the maximum allowable fishing effort may not be applied in the subsequent year or in subsequent years.**

Justification

Effort cuts have not been applied to the fisheries for the last three years due to 1243/2012. It must be ensured that effort cuts can be frozen from the date that this amendment enters into force.

Amendment 3

Article 34

Text proposed by the Commission

Amendment

Review

The Commission shall, after consultation with STECF and the relevant Advisory Councils, undertake a review of the application of this Regulation by 1 January 2019 at the latest.

Justification

Article 15 of 1280/2013 will apply to all cod stocks in European waters by 1 January 2019 at the latest. Effort regulation through an amendment version of 1342/2008 is not compatible with a landings obligation.