Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002

REGULATION (EU) 2016/2336 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2016

establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(3)] requires that fishing activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. The common fisheries policy (CFP) should apply both the precautionary and the ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised and to endeavour to ensure that fisheries activities avoid the degradation of the marine environment. In that context, Article 2(2) and Articles 7, 20 and 22 of that Regulation are also of particular relevance.

(2) The Union is committed to implementing the Resolutions adopted by the General Assembly of the United Nations, in particular Resolutions 61/105 and 64/72, which call on States and Regional Fisheries Management Organisations to ensure the protection of vulnerable deep-sea marine ecosystems from the impact of bottom fishing gears, as well as the sustainable exploitation of deep-sea fish stocks.

(3) The Commission evaluated Council Regulation (EC) No 2347/2002[(4)] and found, in particular, that the scope of the fleet concerned was too large, that there was a lack of guidance on control in designated ports and on sampling programmes, and that the quality of Member States' reporting of effort levels was too variable. Furthermore, the Commission evaluation concluded that the capacity ceiling, applicable since 2002 and

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consisting of the aggregate capacity of all the vessels that caught more than 10 tonnes of any mixture of deep-sea species in any of the years between 1998 and 2000, had no substantial positive effect. The capacity ceiling regime should therefore be updated as part of the measures to remedy the shortcomings identified in that Regulation.

(4) For the purpose of maintaining necessary reductions in fishing capacity in deep-sea fisheries and in order to obtain more comprehensive information about deep-sea fishing activities and their impact on the marine environment, fishing for deep-sea species should be made subject to a fishing authorisation. Each application for a fishing authorisation should be accompanied by a detailed description of the intended fishing area, including International Council for the Exploration of the Sea (ICES) and Fishery Committee for the Eastern Central Atlantic (CECAF) subareas, divisions and subdivisions, as well as the type of gears, the intended depth range, the intended frequency and duration of the fishing activity and the names of deep-sea species concerned.

The system of fishing authorisations should also contribute to the limitation of the capacity of vessels eligible to fish for deep-sea species. With a view to focusing management measures on the part of the fleet that is the most relevant for deep-sea fisheries, fishing authorisations should be issued according to whether they relate to target or by-catch fishery. The application of the landing obligation established in Regulation (EU) No 1380/2013 should, however, not prevent vessels that catch a small quantity of deep-sea species and that are not currently subject to a deep-sea fishing permit from continuing their traditional fishing activities.

(5) Holders of a fishing authorisation allowing the catch of deep-sea species should cooperate in scientific research activities in order to improve the assessment of deep-sea stocks and research into deep-sea ecosystems.

(6) In order to further enhance the protection of the marine environment, it is appropriate to allow targeted fishing activities only in those areas where deep-sea fishing activity has occurred during the reference period 2009-2011. However, for the purpose of exploratory fisheries, it should be possible for vessels targeting deep-sea species to fish beyond the existing fishing area provided that, according to an impact assessment carried out in accordance with Food and Agriculture Organisation (FAO) guidelines, the extension of the fishing area does not pose a significant risk of a negative impact on vulnerable marine ecosystems (VMEs).

(7) Deep-sea fishing with bottom trawls carries a higher risk for VMEs among the different gears used and reports the highest rates of unintended catch of deep-sea species. In order to minimise negative impacts of such deep-sea fishing activities on the marine ecosystem, fishing with bottom trawls should be limited to waters above a particular depth and fishing with bottom gears should be subject to specific requirements for the protection of VMEs. The use of bottom gears should furthermore be subject to an evaluation after 13 January 2021. In addition, bottom-set gillnets are currently restricted in entering deep-sea fisheries by Council Regulation (EC) No 1288/2009[(5)].

(8) In order to mitigate the potential damaging impacts of bottom trawling, it is appropriate to permit fishing with bottom trawls only at, or above, a depth of 800 metres. That limit

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builds on existing industry-led voluntary measures that are applied in Union waters and takes into account the specificities of deep-sea fisheries in Union waters.

(9) In order to minimise the impact of fishing activities occurring in deep-sea waters on VMEs, it is appropriate to provide for a set of measures aiming at reducing encounters with VMEs. In particular, a move-on rule and a reporting obligation should apply where an encounter with a VME occurs. Furthermore, a list of areas where VMEs occur or are likely to occur should be established where fishing with bottom gear is prohibited.

(10) Given that biological information can best be collected by means of harmonised data collection standards, it is appropriate to integrate data collection on deep-sea métiers into the general framework of scientific data collection, while ensuring the provision of additional information necessary to understand the dynamics of fisheries. Funding for the collection of data under this Regulation is available under the terms and principles of the data collection framework provided for in Council Regulation (EC) No 199/2008[(6)].

(11) Council Regulation (EC) No 1224/2009[(7)] lays down more stringent control and enforcement requirements that apply in specific circumstances. Fishing for deep-sea species, which are by nature vulnerable to fishing, should thus be subject to higher levels of control. It is also appropriate to provide for specific cases of infringement of CFP rules, which should lead to the withdrawal of a fishing authorisation.

(12) The Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries was approved by Council Decision 81/608/EEC[(8)] and entered into force on 17 March 1982. That Convention provides for an appropriate framework for multilateral cooperation on the rational conservation and management of fishery resources in international waters of the north-east Atlantic. Management measures adopted in the North-East Atlantic Fisheries Commission (NEAFC) comprise a specific system of measures for the protection of VMEs in the Regulatory Area of the NEAFC. However, in order to ensure continuity of the current modus operandi by Union fishing vessels in NEAFC waters, the currently applicable rules provided for in Regulation (EC) No 2347/2002 concerning the deep-sea fishing permit, designated ports, and communication of information by Member States should continue to apply to deep-sea fishing activities in the Regulatory Area of the NEAFC. Moreover, in order to continue improving the scientific knowledge about those stocks, and as the applicable NEAFC measures do not include observer coverage, it is appropriate to apply the same observer coverage in all areas in the North Sea and CECAF where fishing for deep-sea species occurs.

(13) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the list of VME indicators set out in Annex III for the purpose of adapting that list to the latest scientific advice. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(9)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts,

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and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(14) In order to ensure uniform conditions for the implementation of this Regulation in respect of the determination of the existing fishing areas and the establishment and adaptation of the list of areas where VMEs are known to occur or are likely to occur, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10].

(15) In order to ensure uniform conditions for the implementation of this Regulation in respect of the approval of exploratory deep-sea fisheries, and in respect of the adjustment of the determination of the existing deep-sea fishing area in order to include the locations of the fishing activities conducted under a fishing authorisation issued in accordance with this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised without applying Regulation (EU) No 182/2011.

(16) It is therefore necessary to establish new rules to regulate fishing for deep-sea stocks in the Union waters of the north-east Atlantic and in the international waters within the area of competence of the CECAF,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

This Regulation shall contribute to the achievement of the objectives listed in Article 2 of Regulation (EU) No 1380/2013 as far as deep-sea species and habitats are concerned. In addition, it shall aim at:

(a) improving scientific knowledge on deep-sea species and their habitats;

(b) preventing significant adverse impacts on VMEs within the framework of deep-sea fishing and ensuring the long-term conservation of deep-sea fish stocks;

(c) ensuring that Union measures for the purpose of sustainable management of deep-sea fish stocks are consistent with the Resolutions adopted by the General Assembly of the United Nations, in particular Resolutions 61/105 and 64/72.

Article 2

Scope

1 This Regulation applies to fishing activities or intended fishing activities in the following waters:

a by Union fishing vessels and third-country fishing vessels in Union waters of the North Sea, of the north-western waters and of the south-western waters as well as Union waters of ICES zone IIa;

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b by Union fishing vessels in international waters of CECAF areas 34.1.1, 34.1.2 and 34.2.

2 Paragraph 1 of this Article is without prejudice to Article 16(5).

Article 3

Subject matter

1 This Regulation applies to species that occur in deep-sea waters and that are characterised by a combination of the following biological factors: maturation at relatively old ages, slow growth, long life expectancies, low natural mortality rates, intermittent recruitment of successful year classes and spawning that may not occur every year ('deep-sea species').

2 For the purposes of this Regulation, deep-sea species and, among them, most vulnerable species are listed in Annex I.

Article 4

Definitions

1 For the purposes of this Regulation, the definitions provided for in Article 4 of Regulation (EU) No 1380/2013 and Article 2 of Council Regulation (EC) No 734/2008[(11)] apply.

2 In addition, the following definitions apply:

a 'ICES zones' means the zones defined in Regulation (EC) No 218/2009 of the European Parliament and of the Council[(12)];

b 'CECAF areas' means the areas defined in Regulation (EC) No 216/2009 of the European Parliament and of the Council[(13)];

c 'Regulatory Area of the NEAFC' means the waters subject to the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries which lie beyond the waters under the fisheries jurisdiction of the contracting parties to that Convention;

d 'most vulnerable species' means the deep-sea species that are indicated in the third column 'Most vulnerable (x)' of the table in Annex I;

e 'métier' means fishing activities targeting certain species by a certain gear in a certain area;

f 'deep-sea métier' means a métier that targets deep-sea species in accordance with the indications laid down in Article 5(2);

g 'fisheries monitoring centre' means an operational centre established by a flag Member State and equipped with computer hardware and software enabling automatic data reception, processing and electronic data transmission;

h 'encounters' means catches of such quantities of VME indicator species that are above the threshold levels set out in Annex IV;

i 'unintended catches' means incidental catches of marine organisms which, under Article 15 of Regulation (EU) No 1380/2013, must be landed and counted against quotas either because they are below the minimum conservation reference size or because they exceed the quantities permitted under the catch composition and by-catch rules;

j 'VME indicators' means those included in Annex III;