Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears

COUNCIL REGULATION (EC) No 734/2008

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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,

Having regard to the opinion of the European Parliament[(1)],

Whereas:

(1) The Community is a Contracting Party to the United Nations Convention on the Law of the Sea and to the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. These international instruments lay down the duty of States to cooperate on conserving the living resources of the high seas, and prescribe that such cooperation shall be pursued directly by States or through appropriate subregional or regional fisheries management organisations or arrangements.

(2) The absence of a regional fisheries management organisation or arrangement does not exempt States from their obligation under the law of the Sea to adopt with respect to their nationals such measures as may be necessary for the conservation of the living resources of the high seas, including the protection of vulnerable marine ecosystems against the harmful effects of fishing activities.

(3) Article 2 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[(2)] provides that the common fisheries policy is to apply the precautionary approach in taking measures to minimise the impact of fishing activities on marine ecosystems. Article 7 of the same Regulation provides that the Commission may decide on emergency measures at the substantiated request of a Member State or on its own initiative if there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action.

(4) The Community is committed to the conservation of marine ecosystems such as reefs, seamounts, deep water corals, hydrothermal vents and sponge beds. There is abundant scientific information showing that the integrity of these ecosystems is threatened by

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fishing activities using bottom gears. The Community has already adopted measures to close to bottom fishing areas within Community waters where such ecosystems are found. It has also been instrumental in the adoption of similar measures in the high seas within the areas of competence of all existing regional fisheries management organisations empowered to regulate bottom fisheries. It has also actively contributed to the establishment of new organisations or arrangements with a view to achieving global coverage of the world's ocean by appropriate regional fisheries conservation and management regimes. There are, however, certain areas of the high seas for which the establishment of such a body encounters significant difficulties.

(5) By Resolution 61/105 of the General Assembly of the United Nations, adopted on 8 December 2006, the international community has agreed on the pressing need to adopt measures to protect vulnerable marine ecosystems from the destructive effects of bottom fishing activities through strict regulation of those activities by regional fisheries management organisations or arrangements or by States in respect of their flagged vessels operating in areas where no such organisations or arrangements are in place.
The General Assembly has provided guidance as to the kind of measures that should be adopted to this end. The work undertaken within the FAO to develop international guidelines on the management of these fishing activities in the framework of the Code of Conduct for Responsible Fisheries is also of high relevance for the design and adoption of such measures, as well as for their implementation by Member States.

(6) The Community has a sizeable fleet conducting bottom fishing in areas not regulated by a regional fisheries management organisation or arrangement with competence to regulate such fishing activities and for which the establishment of such organisation or arrangement cannot be expected in the short term. Without prejudice to continued efforts to remedy these remaining spatial gaps in the international fisheries governance system, the Community must discharge its obligations under the law of the sea with regard to the conservation of the marine living resources in these areas and must therefore adopt appropriate measures in respect of these fleets. In doing so, the Community must act in accordance with the guidance provided by the General Assembly in Resolution 61/105.

(7) A key component of the recommendations made by the General Assembly is measures '… to assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorised to proceed'.

(8) The implementation of that recommendation requires that the fishing vessels concerned are authorised to fish under a special fishing permit issued in accordance with Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits[(3)] and Commission Regulation (EC) No 2943/95 of 20 December 1995 setting out detailed rules for applying Council Regulation (EC) No 1627/94[(4)]. In addition, the issuance and validity of such permits must be subject to specific conditions ensuring that the impact of the authorised fishing activities has

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been properly assessed and that the conduct of fishing operations complies with such assessment.

(9) The implementation of the Recommendations made by the General Assembly also requires relevant monitoring measures to ensure compliance with the conditions under which the permits are issued. These include on-board observers and specific provisions regarding the operation of satellite-based Vessel Monitoring Systems to address events of technical failure or non-functioning of the system, beyond those set forth by Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems[(5)].

(10) The identification of vulnerable marine ecosystems in areas not regulated by a regional fisheries management organisation is a work in progress and there is relatively limited scientific information in this respect. For this reason, it is imperative to prohibit the use of bottom gears in areas that have not undergone an appropriate scientific assessment as to the risks of significant adverse impacts that such fishing activities might have on vulnerable marine ecosystems.

(11) The violation of specific conditions such as those relating to unassessed areas, the operation of the Vessel Monitoring System and the relocation of activities in case of unforeseen encounter with a vulnerable marine ecosystem may result in irreparable damage to such ecosystems and deserves therefore to be included among the list of serious infringements contained in Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy[(6)].

(12) The protection of individuals with regard to the processing of personal data is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(7)], which is fully applicable to the processing of personal data for the purposes of this Regulation, in particular as regards the rights of data subjects to access, rectification, blocking and erasure of data and notification to third parties, which have not in consequence been further particularised in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1 This Regulation shall apply to Community fishing vessels carrying out fishing activities with bottom gears in the high seas.

2 This Regulation shall not apply to Community fishing vessels whose areas of operation lie within areas:

a under the responsibility of a regional fisheries management organisation or arrangement with competence to regulate such fishing activities;

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b for which a process for the establishment of a regional fisheries management organisation is under way; where the participants in such process have agreed on interim measures to protect vulnerable marine ecosystems from destructive impacts resulting from the use of bottom gears.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) 'marine ecosystem' means a dynamic complex of plant, animal and microorganism communities and their non-living environment interacting as a functional unit;

(b) 'vulnerable marine ecosystem' means any marine ecosystem whose integrity (i.e. ecosystem structure or function) is, according to the best scientific information available and to the principle of precaution, threatened by significant adverse impacts resulting from physical contact with bottom gears in the normal course of fishing operations, including, inter alia, reefs, seamounts, hydrothermal vents, cold water corals or cold water sponge beds. The most vulnerable ecosystems are those that are easily disturbed and in addition are very slow to recover, or may never recover;

(c) 'significant adverse impacts' means impacts (evaluated individually, in combination or cumulatively) which compromise ecosystem integrity in a manner that impairs the ability of affected populations to replace themselves and that degrades the long-term natural productivity of habitats, or causes on more than a temporary basis significant loss of species richness, habitat or community types;

(d) 'bottom gears' means gears deployed in the normal course of fishing operations in contact with the seabed, including bottom trawls, dredges, bottom-set gill nets, bottom-set longlines, pots and traps.

Article 3

Special fishing permit

1 In order to conduct the fishing activities referred to in Article 1(1), Community fishing vessels shall have a special fishing permit.

2 The special fishing permit shall be issued in accordance with Regulation (EC) No 1627/94 and subject to the conditions established in this Regulation.

Article 4

Conditions for issuance

1 Applications for a special fishing permit provided for in Article 3(1) shall be accompanied by a detailed fishing plan specifying in particular:

a the intended location of the activities;

b the targeted species;

c the type of gears and the depth at which they will be deployed, and

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d the configuration of the bathymetric profile of the seabed in the intended fishing grounds, where this information is not already available to the competent authorities of the Flag State concerned.

2 The competent authorities shall issue a special fishing permit after having carried out an assessment on the potential impacts of the vessel's intended fishing activities and concluded that such activities are not likely to have significant adverse impacts on vulnerable marine ecosystems.

3 For the purposes of the implementation of the assessment referred to in paragraph 2, the competent authorities shall rely on the best scientific and technical information available concerning the location of vulnerable marine ecosystems in the areas in which the fishing vessels concerned intend to operate. That information shall include, where available, scientific data on the basis of which the likelihood of occurrence of such ecosystems can be estimated. The assessment process shall include appropriate elements of independent scientific peer review.

4 The evaluation of the risk of significant adverse impacts on vulnerable marine ecosystems carried out under the assessment referred to in paragraph 2 shall take into account, as appropriate, differing conditions prevailing in areas where fishing activities with bottom gears are well established and in areas where fishing such activities have not taken place or only occur occasionally.

5 The competent authorities shall apply precautionary criteria in the conduct of the assessment referred to in paragraph 2. In case of doubt as to whether the adverse impacts are significant or not, they shall consider that the likely adverse impacts resulting from the scientific advice provided are significant.

6 Where the assessment concludes that activities carried out in accordance with the submitted fishing plan might result in significant adverse impacts to vulnerable marine ecosystems, the competent authorities shall specify the assessed risks and allow applicants to amend the fishing plan to avoid them. In the absence of such amendments, the competent authorities shall refrain from issuing the requested special fishing permit.

Article 5

Conditions for validity

1 The special fishing permit provided for in Article 3(1) shall make it explicit that fishing activities carried out under it must conform to the fishing plan submitted in accordance with Article 4(1) at all times.

2 Where circumstances beyond the control of the person responsible for the vessel operations necessitate an alteration of the submitted plans, the person responsible for the vessel's operations shall inform the competent authorities without delay, indicating the modifications intended to the original plan. The competent authorities shall examine such alterations and shall not authorise them if they entail a relocation of the activities to areas where vulnerable marine ecosystems occur or are likely to occur.

3 Failure to conform to the fishing plan provided for in Article 4(1) in circumstances other than those specified in paragraph 2 of this Article shall entail the withdrawal by the flag State of the special fishing permit issued to the fishing vessel concerned.