Council Regulation (EU) No 44/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements

COUNCIL REGULATION (EU) No 44/2012

of 17 January 2012

fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.

(2) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy[(1)] requires that Union measures governing access to waters and resources and the sustainable pursuit of fishing activities be established taking into account available scientific, technical and economic advice and in particular reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF), as well as in the light of any advice received from Regional Advisory Councils.

(3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities by fishery or by group of fisheries, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery and having due regard to the objectives of the common fisheries policy established in Regulation (EC) No 2371/2002.

(4) In order to ensure uniform conditions for the implementation of this Regulation relating to revising quotas for capelin available to the Union in Greenland waters of ICES subareas V and XIV under the Fisheries Partnership Agreement with Greenland, powers should be conferred on the Commission.

(5) In order to ensure uniform conditions for the implementation of catch limits for certain stocks of short-lived species, implementing powers should be conferred on the Commission relating to revising the TAC in the light of scientific information collected during the first half of 2012. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16

February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[(2)].

(6) The Commission should adopt immediately applicable implementing acts relating to revising the TAC of these stocks of short-lived species where, in duly justified cases relating to the need for the Union to comply with its international obligations, imperative grounds of urgency so require.

(7) Certain TACs allow Member States to grant additional allocations for vessels participating in trials on fully documented fisheries. The aim of those trials is to test a catch-quota system to avoid discards and the waste of otherwise usable fish resources it entails. Uncontrolled discards of fish are a threat to the long term sustainability of fish as a public good and thus to the common fisheries policy objectives. By contrast, catch-quota systems inherently present the fishers with an incentive to optimise the catch selectivity of their operations. In order to achieve a rational management of discards, a fully documented fishery should cover every operation at sea, rather than what is landed at port. The conditions for Member States to grant such additional allocations should therefore include an obligation to ensure the use of close circuit television cameras (CCTV) associated to a system of sensors. This should enable to record in detail all retained and discarded parts of catches. A system based on human observers operating in real time on board would be less efficient, more costly, and less reliable. Consequently, the use of CCTV is at this time a prerequisite for the achievement of discard reduction schemes such as fully documented fisheries, provided that the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(3)] are complied with.

(8) The TACs should be established on the basis of available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, in particular at the meetings with the Advisory Committee for Fisheries and Aquaculture and the Regional Advisory Councils concerned.

(9) For stocks subject to specific multiannual plans, the TACs should be established in accordance with the rules laid down in those plans. Consequently, the TACs for stocks of sole in the North Sea, of plaice in the North Sea, of cod in the North Sea, Skagerrak and the eastern Channel, and of bluefin tuna in the eastern Atlantic and the Mediterranean should be established in accordance with the rules laid down in Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea[(4)]; Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks[(5)] (the ‘Cod Plan’); and Council Regulation (EC) No 302/2009 of 6 April 2009 concerning a multiannual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean[(6)].

(10) For stocks for which there is no sufficient or reliable data in order to provide size estimates, management measures and TAC levels should follow the precautionary approach to fisheries management as defined in point (i) of Article 3 of Council

Regulation (EC) No 2371/2002, while taking into account stock-specific factors, including, in particular, available information on stock trends and mixed fisheries considerations.

(11) In accordance with Article 2 of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas[7], the stocks that are subject to the various measures referred to therein should be identified.

(12) It is necessary to establish the fishing effort ceilings for 2012 in accordance with Articles 11 and 12 of Regulation (EC) No 1342/2008, Article 9 of Regulation (EC) No 676/2007 and Articles 5 and 9 of Regulation (EC) No 302/2009, while taking into account Council Regulation (EC) No 754/2009 of 27 July 2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008[8].

(13) It is appropriate, following advice from the International Council for the Exploration of the Sea (ICES), to maintain and revise a system to manage sandeel in EU waters of ICES divisions IIa and IIIa and ICES subarea IV.

(14) For certain species, such as certain species of sharks, even a limited fishing activity could result in a serious risk to their conservation. Fishing opportunities for such species should therefore be fully restricted through a general prohibition on fishing those species.

(15) Norway lobster is caught in mixed demersal fisheries together with various other species. In a zone to the west of Ireland, known as the Porcupine Bank, scientific advice has recommended that catches of this species do not increase in 2012. In order to help continue the recovery of the stock, it is appropriate to keep fishing opportunities confined, in a certain part of that zone and in certain periods, to the catching of pelagic species with which Norway lobster is not caught.

(16) In accordance with the procedure provided for in the agreements or protocols on fisheries relations with Norway[9], the Faroe Islands[10], Greenland[11] and Iceland[12], the Union has held consultations on fishing rights with those partners. The consultations with the Faroe Islands have not been finalised and the arrangements for 2012 with that partner are expected to be concluded in early 2012. Similarly, consultations with Iceland will continue in 2012. In order to avoid interruption of Union fishing activities whilst allowing for the necessary flexibility for the conclusion of those arrangements in 2012, it is appropriate for the Union to establish on a provisional basis the fishing opportunities for stocks subject to the agreements with Iceland and/or the Faroe Islands.

(17) In accordance with the consultations between coastal states on the management of mackerel, blue whiting, Atlanto-Scandian herring and North Sea haddock, the Union may authorise fishing by EU vessels of up to 10 % beyond the quota available to the Union, provided that any quantities fished beyond the quota available to the Union would be deducted from its quota in 2013. Similarly, the Union may use in 2013 any unused quantities up to 10 % of the quota available to it in 2012. It is appropriate to enable such flexibility in the management of those fishing opportunities to the Member

States concerned, in particular by allowing the Member States concerned to opt for the use of a flexibility quota.

(18) The Union fisheries for cod in EU and international waters of ICES zones I and IIB have traditionally entailed by-catches of haddock. It is therefore necessary to fix haddock by-catch limits for those fisheries that are in line with historical levels.

(19) The Union is a contracting party to several fisheries organisations and participates in other organisations as a cooperating non-party. Moreover, by virtue of the 2003 Act of Accession, fisheries agreements previously concluded by the Republic of Poland, such as the Convention on the Conservation and Management of Pollock resources in the central Bering Sea, are as from the date of accession of Poland managed by the Union. Those fisheries organisations have recommended the introduction for 2012 of a number of measures, including fishing opportunities for EU vessels. Those fishing opportunities should be implemented in the law of the Union.

(20) At its 33rd Annual Meeting in 2011, the Northwest Atlantic Fisheries Organisation (NAFO) adopted a number of fishing opportunities for 2012 of certain stocks in Subareas 1-4 of the NAFO Convention Area. Those fishing opportunities, which consist of certain TACs and, in the case of shrimp in fishery Division 3M, an effort allocation scheme, should be implemented in the law of the Union.

(21) At its 82nd Annual Meeting in 2011, the Inter-American Tropical Tuna Commission (IATTC) adopted conservation measures for yellowfin tuna, bigeye tuna and skipjack tuna. IATTC also adopted a resolution on the conservation of oceanic whitetip sharks. Those measures should be implemented in the law of the Union.

(22) At its Annual Meeting in 2011, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted the compliance tables fixing the adjusted quotas and indicating the under-utilisation and over-utilisation of the fishing opportunities of the ICCAT contracting parties. In that context, ICCAT recognised that, during the year 2010, the Union had under-exploited its quota for Northern and Southern swordfish, bigeye tuna and Northern albacore. In order to respect the adjustments to the Union quotas established by ICCAT, it is necessary to carry out the distribution of the fishing opportunities arising from this under-utilisation on the basis of the respective contribution of each Member State towards the under-utilisation without any modification of the distribution key established in this Regulation concerning the annual allocation of TACs. Furthermore, as a result of the same annual meeting, the rebuilding plan for blue and white marlins was amended, the Union quota for blue marlin decreased, the Union quota for white marlin slightly increased, and an ICCAT recommendation was adopted on the conservation of silky sharks. Those measures should be implemented in the law of the Union.

(23) At its Annual Meeting in 2011, the Indian Ocean Tuna Commission (IOTC) did not modify its measures regarding fishing opportunities as currently implemented in the law of the Union. The currently applicable measures adopted by the IOTC should be implemented in the law of the Union.

(24) During the Third International Meeting, held in May 2007, for the creation of a Regional Fisheries Management Organisation (RFMO) in the high seas of the South Pacific (SPRFMO), the participants adopted interim measures, including fishing opportunities, in order to regulate pelagic fishing activities as well as bottom fisheries in that area until the establishment of such RFMO. Those interim measures were revised at the 2nd Preparatory Conference for the SPRFMO Commission held in January 2011 and will be revised again at the 3rd Preparatory Conference for the SPRFMO Commission to be held from 30 January to 3 February 2012. Those interim measures are voluntary and not legally binding under international law. It is however appropriate, in accordance with the cooperation and conservation obligations enshrined in the International Law of the Sea, to implement those measures in the law of the Union by establishing an overall quota for the Union and an allocation among the Member States concerned.

(25) At its Annual Meeting in 2011, the South East Atlantic Fisheries Organisation (SEAFO) did not modify the total allowable catches for Patagonian toothfish, orange roughy, alfonsinos and deep-sea red crab agreed for 2011 and 2012 at its Annual Meeting in 2010. The currently applicable measures adopted by the SEAFO should be implemented in the law of the Union.

(26) In the light of the most recent scientific advice from ICES and in accordance with the international commitments in the context of the North East Atlantic Fisheries Convention (NEAFC), it is necessary to limit the fishing effort on certain deep-sea species.

(27) The 8th Annual Meeting of the Western and Central Pacific Fisheries Commission (WCPFC) in 2011 has been postponed until 2012. However, it is appropriate that the currently applicable conservation and management measures remain in place until that Annual Meeting is held.

(28) At its Annual Meeting in 2011, the Parties to the Convention on the Conservation and Management of Pollock resources in the central Bering Sea did not modify its measures regarding fishing opportunities. The currently applicable measures should be implemented in the law of the Union.

(29) Certain international measures which create or restrict fishing opportunities for the Union are adopted by the relevant RFMOs at the end of the year and become applicable before the entry into force of this Regulation. It is therefore necessary for the provisions that implement such measures in the law of the Union to apply retroactively. In particular, since the fishing season in CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources) Convention Area runs from 1 December to 30 November, and thus certain fishing opportunities or prohibitions in the CCAMLR Convention Area are laid down for a period of time starting from 1 December 2011, it is appropriate that the relevant provisions of this Regulation apply from that date. Such retroactive application will be without prejudice to the principle of legitimate expectations as CCAMLR members are forbidden to fish in the CCAMLR Convention Area without authorisation.