Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required

COUNCIL REGULATION (EC) No 40/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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)], and in particular Article 20 thereof,

Having regard to Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas[(2)], and in particular Article 2 thereof,

Having regard to Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks[(3)], and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 811/2004 of 21 April 2004 establishing measures for the recovery of the Northern hake stock[(4)], and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula[(5)], and in particular Articles 4 and 8 thereof,

Having regard to Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay[(6)], and in particular Article 4 thereof,

Having regard to Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel[(7)], and in particular Articles 3 and 5 thereof,

Having regard to Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multi-annual plan for fisheries exploiting stocks of plaice and sole in the North Sea[(8)], and in particular Articles 6 and 9 thereof,

Having regard to the proposal from the Commission,

Whereas:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 40/2008. (See end of Document for details)*

(1) Article 4 of Regulation (EC) No 2371/2002 requires the Council to adopt the measures necessary to ensure access to waters and resources and the sustainable pursuit of fishing activities taking account of available scientific advice and, in particular, the report prepared by the Scientific, Technical and Economic Committee for Fisheries (STECF).

(2) Under Article 20 of Regulation (EC) No 2371/2002, it is incumbent upon the Council to establish the total allowable catches (TAC) by fishery or group of fisheries. Fishing opportunities should be allocated to Member States and third countries in accordance with the criteria laid down in Article 20 of that Regulation.

(3) In order to ensure effective management of the TACs and quotas, the specific conditions under which fishing operations occur should be established.

(4) The principles and certain procedures for fishery management need to be laid down at Community level, so that Member States can ensure the management of the vessels flying their flag.

(5) Article 3 of Regulation (EC) No 2371/2002 lays down definitions of relevance for the allocation of fishing opportunities.

(6) Fishing opportunities should be used in accordance with the Community legislation on the subject, and in particular with Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish[9], Council Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels[10], Commission Regulation (EEC) No 1381/87 of 20 May 1987 establishing detailed rules concerning the marking and documentation of fishing vessels[11], Council Regulation (EEC) No 3880/91 of 17 December 1991 on the submission of nominal catch statistics by Member States in the north-east Atlantic[12], Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy[13], Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits[14], Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms[15], Council Regulation (EC) No 1434/98 of 29 June 1998 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption[16], Council Regulation (EC) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks[17], Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources[18], Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems[19], Regulation (EC) No 423/2004, Council Regulation (EC) No 601/2004 of 22 March 2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources[20], Regulation (EC) No 811/2004, Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation[21], Regulation (EC) No 2166/2005, Regulation (EC)

No 388/2006, Council Regulation (EC) No 2015/2006 of 19 December 2006 fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks[(22)], Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea[(23)], Regulation (EC) No 509/2007 , Council Regulation (EC) No 520/2007 of 7 May 2007 laying down technical measures for the conservation of certain stocks of highly migratory species[(24)], Regulation (EC) No 676/2007[(25)] and Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation[(26)].

(7) It should be clarified that if marine organisms caught during fishing operations conducted solely for the purpose of scientific investigations are sold, the provisions of this Regulation should apply also to such fishing operations. It is necessary, following the advice from the International Council for the Exploration of the Sea (ICES), to maintain the application of a system to manage the catch limits of anchovy in ICES zone VIII. The Commission should fix the catch limits for the stock of anchovy in ICES zone VIII in the light of scientific information collected during the first half of 2008 and of discussions taking place in the context of a multi-annual plan for anchovy.

(8) It is necessary, following the advice from the ICES, to maintain and revise a system to manage the fishing effort on sandeel in ICES zones IIIa and IV and EC waters of zone IIa.

(9) As a transitional measure in the light of the most recent scientific advice from the ICES, the fishing effort on certain deep-sea species should be further reduced.

(10) Under Article 20 of Regulation (EC) No 2371/2002 it is incumbent upon the Council to decide on the conditions associated with the limits on catches and/or fishing effort limits. Scientific advice indicates that substantial catches in excess of agreed TACs result in the sustainability of fishing operations being prejudiced. It is therefore appropriate to introduce associated conditions that will result in improved implementation of the agreed fishing possibilities.

(11) At its Annual Meeting in 2007, the Northwest Atlantic Fisheries Organisation (NAFO) adopted a number of technical and control measures. It is necessary to implement these measures.

(12) At its XXVIth annual meeting in 2007, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted relevant catch limits for the stocks open to established fisheries by any CCAMLR Member. CCAMLR also approved the participation of Community vessels in exploratory fisheries for *Dissostichus* spp. in Subareas FAO 88.1 and 88.2 as well as in Divisions 58.4.1, 58.4.2, 58.4.3a) and 58.4.3b) and made the relevant fishing activities subject to catch and by-catch limits, as well as to certain specific technical measures. Those limits and technical measures should also be applied.

(13) In order to comply with international obligations assumed by the Community as a Contracting Party to the CCAMLR, including the obligation to apply the measures

adopted by the CCAMLR Commission, the TACs adopted by that Commission for the 2007-2008 season and the corresponding season limit dates should be applied.

(14) In accordance with Article 2 of Regulation (EC) No 847/96[(27)], the stocks that are subject to the various measures referred to therein must be identified.

(15) In accordance with the procedure provided for in the agreements or protocols on fisheries relations, the Community has held consultations on fishing rights with Norway[(28)], the Faroe Islands[(29)] and Greenland[(30)].

(16) The Community is a contracting party to several regional fisheries organisations. Those fisheries organisations have recommended the setting of catch limitations and/or effort limitations and other conservation rules for certain species. Such recommendations should therefore be implemented by the Community.

(17) Discussions on an alternative system for effort management based on kilowatt-day ceilings 2008 that have taken place in 2007 have revealed that it will be necessary to have a longer timeframe to adapt the national administrative procedures to the requirements of such an effort management system. The current effort management system based on days at sea will be maintained in 2008, with the intention of continuing discussions on an effort management based on kilowatt-days in 2008 for the purpose of implementing such a system in 2009.

(18) For the adjustment of fishing effort limitations on cod as laid down in Regulation (EC) No 423/2004, alternative arrangements are maintained in order to manage fishing effort consistently with the TAC, as laid down in Article 8(3) of that Regulation.

(19) Certain temporary provisions should be maintained on the use of VMS data in order to provide for greater efficiency and effectiveness in the monitoring, control and surveillance of effort management.

(20) For the adjustment of fishing effort limitations on sole as laid down in Regulation (EC) No 509/2007 alternative arrangements should be established in order to manage fishing effort consistently with the TAC, as laid down in Article 5(2) of that Regulation.

(21) For the adjustment of fishing effort limitations on plaice and sole as laid down in Regulation (EC) No 676/2007, alternative arrangements should be established in order to manage fishing effort consistently with the TAC, as laid down in Article 9(2) of that Regulation.

(22) For the cod stocks in the North Sea, the Skagerrak and the Western channel, in the Irish Sea and in the west of Scotland, and the stocks of hake and of Norway lobster in ICES zones VIIIc and IXa, the levels of permissible effort within the management scheme need to be adapted.

(23) In order to contribute to the conservation of fish stocks, certain supplementary measures on control and technical conditions of fishing should be implemented in 2008.

(24) Following scientific advice from ICES, measures to protect the spawning aggregations of blue ling in ICES zones VI and VII are needed in addition to catch limitations in order to ensure their protection.

(25) Scientific investigations have demonstrated that the fishing practices when fishing with gillnets and entangling nets in ICES zones VIa, VIb, VIIb, VIIc, VIIj, VIIk, VIII, IX, X and XII constitute a serious threat to deep-sea species. However, transitional measures to allow these fisheries to take place under certain conditions should be implemented until more permanent measures are adopted.

(26) In accordance with the Agreed Record of conclusions between the European Community and Norway of 26 November 2007, technical measures to increase selectivity of towed gears in order to reduce discards of whiting in the North Sea should be tested during the first part of 2008.

(27) In order to ensure sustainable exploitation of the hake and Norway lobster stock and to reduce discards, the use of the latest developments as regards selective gears should be permitted in ICES zones VIIIa, VIIIb and VIIId.

(28) The use of gears that do not catch Norway lobster should be permitted in certain areas dedicated to the protection of the species, where fishing is prohibited.

(29) In the light of advice from STECF, certain herring spawning ground closures are not necessary to ensure sustainable exploitation of that species in ICES zone VIa.

(30) The control of landings and transhipments of frozen fish by third country fishing vessels landed in Community ports, as recommended by the North-East Atlantic Fisheries Commission (NEAFC), should be maintained. In November 2007 the NEAFC recommended replacing a number of vessels on the list of vessels that have been confirmed as having engaged in illegal, unreported and unregulated fisheries. Implementation of the recommendations in the Community legal order should be ensured.

(31) In order to contribute to the conservation of octopus and in particular to protect juveniles, it is necessary to maintain, in 2008, a minimum size of octopus from the maritime waters under the sovereignty or jurisdiction of third countries and situated in the region of Fishery Committee for the Eastern Central Atlantic (CECAF) pending the adoption of a regulation amending Regulation (EC) No 850/98.

(32) In the light of advice from STECF, fishing with beam trawl using electrical pulse current should be allowed in 2008 in ICES zones IVc and IVb south under certain conditions.

(33) The Inter-American Tropical Tuna Commission (IATTC) failed to adopt catch limitations for yellowfin tuna, bigeye tuna and skipjack tuna at its Annual Meeting in 2007, and although the Community is not a member of the IATTC, it is necessary to adopt measures to ensure sustainable management of the resource under the jurisdiction of that Organisation.

(34) At its Third Annual Meeting, the Western and Central Pacific Fisheries Commission (WCPFC) adopted effort limitations for yellowfin tuna, bigeye tuna, skipjack tuna, swordfish and south pacific albacore, as well as technical measures as regards the treatment of by-catches. The Community has been a member of the WCPFC since January 2005. It is there fore necessary to incorporate those measures into Community