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**COUNCIL REGULATION (EC) No 1342/2008
of 18 December 2008**

**establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing
Regulation (EC) No 423/2004**

(OJ L 348, 24.12.2008, p. 20)

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**COUNCIL REGULATION (EC) No 1342/2008
of 18 December 2008**

**establishing a long-term plan for cod stocks and the fisheries
exploiting those stocks and repealing Regulation (EC) No 423/2004**

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:

- **CI** (1) Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks ⁽²⁾ intends to ensure the safe recovery of the cod stocks in the Kattegat, the North Sea including the Skagerrak and the eastern Channel, the west of Scotland ◀ and the Irish Sea, to the precautionary stock sizes advised by scientists within a time-frame of five to ten years.
- (2) Recent scientific advice from the International Council for the Exploration of the Sea (ICES) has indicated that the reductions in cod catches arising from the collective effect of total allowable catches (TACs), technical measures and complementary effort management measures, including monitoring and control to prevent the catching and landing of cod caught by illegal, unreported and unregulated fishing, have been far from sufficient to reduce fishing mortalities to levels required to allow the cod stocks to rebuild and none of the four cod stocks covered by Regulation (EC) No 423/2004 show clear signs of recovery, although the stocks in the North Sea are showing some signs of improvement.
- (3) It appears necessary to reinforce the regime and to introduce a long-term plan in order to achieve sustainable exploitation of cod stocks on the basis of maximum sustainable yield.
- (4) According to recent scientific submissions, in particular on long-term trends of marine ecosystems, desirable long-term levels of biomass cannot be determined with accuracy. As a consequence, the objective of the long-term plan should be changed from a biomass-based target to a fishing mortality-based target, which should also be applied to permitted levels of fishing effort.
- (5) The North Sea cod stock is shared with Norway and is jointly managed. The measures provided for in this Regulation should take due account of consultations with Norway pursuant to the Agreement on fisheries between the European Economic Community and the Kingdom of Norway ⁽³⁾.

⁽¹⁾ Opinion of 21 October 2008 (not yet published in the Official Journal).

⁽²⁾ OJ L 70, 9.3.2004, p. 8.

⁽³⁾ OJ L 226, 29.8.1980, p. 48.

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- (6) In the event that the Scientific, Technical and Economic Committee for Fisheries (STECF) is not able to advise on a TAC due to lack of sufficiently accurate and representative information, provisions should be established to ensure that a TAC can be set in a consistent manner even under poor data conditions.
- (7) In order to ensure the attainment of fishing mortality targets, and to contribute to minimising discards, fishing opportunities in terms of fishing effort need also to be fixed at levels which are consistent with the multiannual strategy. Such fishing opportunities should, as far as possible, be defined by types of fishing gear on the basis of current fishing practices. It is appropriate to provide for a periodical review of the effectiveness of the management system and to ensure, in particular, that when cod stocks reach levels that allow for exploitation rendering maximum sustainable yield, the system of regulating fishing effort is reviewed.
- (8) New mechanisms should be introduced to encourage fishermen to engage in cod-avoidance programmes. Any such cod-avoidance or discard reduction programmes are more likely to succeed if they are developed in cooperation with the fishing industry. Accordingly, such programmes developed with Member States should be considered an effective means of promoting sustainability and their development should be encouraged. Moreover, Member States should exercise their power to allocate access to fishing for cod stocks so as to encourage their fishermen to fish in ways that result in more selective fishing and are less harmful to the environment.
- (9) The establishment and allocation of catch limits, the fixing of the minimum and precautionary levels of stocks and of the level of fishing mortality rates, as well as the maximum allowable fishing effort for each effort group by Member State and the exclusion of certain groups of vessels from the effort regime laid down in this Regulation are measures of prime importance in the common fisheries policy (CFP). It is appropriate that the Council should reserve for itself the right to exercise implementing powers directly in relation to these specific matters.
- (10) The measures necessary for the implementation of certain provisions of this Regulation, in particular, those related to the adaptations of fishing effort limits within the maximum allowable fishing effort established by the Council should be adopted ►**CI** in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾. ◀
- (11) Control measures in addition to those laid down in Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽²⁾ should be introduced to ensure compliance with the measures laid down in this Regulation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

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- (12) Rules should be established to qualify the long-term plan introduced by this Regulation taking into account the situation of the relevant stocks as a recovery plan within the meaning of Article 5 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 ⁽¹⁾, and for the purposes of Article 21(a)(i) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund ⁽²⁾ or, in the alternative, as a management plan within the meaning of Article 6 of Regulation (EC) No 2371/2002, and for the purposes of Article 1(a)(iv) of Regulation (EC) No 1198/2006.
- (13) Regulation (EC) No 423/2004 should be repealed and replaced by this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes a plan for four cod stocks corresponding to the following geographical areas:

- (a) the Kattegat;
- (b) the North Sea, the Skagerrak and the eastern Channel;
- (c) the west of Scotland;
- (d) the Irish Sea.

Article 2

Definitions

For the purposes of this Regulation, in addition to the definitions laid down in Article 3 of Regulation (EC) No 2371/2002, the following definitions shall apply:

- (a) ‘effort group’ means a management unit of a Member State for which a maximum allowable fishing effort is set. It is defined by a gear grouping and an area as set out in Annex I;
- (b) ‘aggregated effort group’ means the combination of all Member States’ effort groups having the same gear grouping and area;
- (c) ‘catch per unit effort’ means the quantity of cod caught and expressed in live weight by one unit of fishing effort expressed in kW-days during one year;
- (d) ‘appropriate age groups’ means ages 3, 4 and 5 for cod in the Kattegat; ages 2, 3 and 4 for cod in the Irish Sea, in the North Sea, Skagerrak and the eastern Channel; ages 2, 3, 4 and 5 for cod in the west of Scotland; or other age groups as advised as appropriate by STECF.

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 223, 15.8.2006, p. 1.

▼B*Article 3***Geographical definitions**

For the purposes of this Regulation, the following geographical definitions of geographical areas shall apply:

- (a) ‘Kattegat’ means that part of Division IIIa, as delineated by ICES, that is bounded on the north by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from this point to the nearest point on the Swedish coast and on the south by a line drawn from Hasenore to Gnibens Spids, from Korshage to Spodsbjerg and from Gilbjerg Hoved to Kullen;
- (b) ‘North Sea’ means ICES Subarea IV and that part of ICES Division IIIa not covered by the Skagerrak and Kattegat and that part of ICES Division IIa which lies within waters under the sovereignty or jurisdiction of Member States;
- (c) ‘Skagerrak’ means that part of ICES Division IIIa bounded on the west by a line drawn from the Hanstholm lighthouse to the Lindesnes lighthouse and on the south by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from that point to the nearest point on the Swedish coast;
- (d) ‘eastern Channel’ means ICES Division VIId;
- (e) ‘Irish Sea’ means ICES Division VIIa;
- (f) ‘west of Scotland’ means ICES Division VIa and that part of ICES Division Vb which lies within waters under the sovereignty or jurisdiction of Member States.

*Article 4***Calculation of fishing effort**

For the purposes of this Regulation, the fishing effort deployed by a group of vessels shall be calculated as the sum of the products of capacity-values in kW for each vessel and the number of days each vessel has been present within an area set out in Annex I. A day present within an area shall be any continuous period of 24 hours (or part thereof) during which a vessel is present within the area and absent from port.

*Article 5***Objective of the plan**

1. The plan referred to in Article 1 shall ensure the sustainable exploitation of the cod stocks on the basis of maximum sustainable yield.
2. The objective set out in paragraph 1 shall be attained while maintaining the following fishing mortality on cod on appropriate age groups:

Stock	Fishing mortality
Cod in the Kattegat	0,4
Cod to the west of Scotland	0,4
Cod in the Irish Sea	0,4

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3. For the cod stock in the North Sea, the Skagerrak and the eastern Channel, the objective set out in paragraph 1 shall be attained while maintaining the fishing mortality on cod on appropriate age groups referred to in Article 8.

CHAPTER II

TOTAL ALLOWABLE CATCHES

*Article 6***Minimum and precautionary levels**

The minimum spawning biomass level and the precautionary spawning biomass level for each of the cod stocks shall be as follows:

Stock	Minimum spawning biomass Levels in tonnes	Precautionary spawning biomass Levels in tonnes
Cod in the Kattegat	6 400	10 500
Cod in the North Sea, Skagerrak and eastern Channel	70 000	150 000
Cod to the west of Scotland	14 000	22 000
Cod in the Irish Sea	6 000	10 000

*Article 7***Procedure for setting TACs for cod stocks in the Kattegat the west of Scotland and the Irish Sea**

1. Each year, the Council shall decide on the TAC for the following year for each of the cod stocks in the Kattegat, the west of Scotland and the Irish Sea. The TAC shall be calculated by deducting the following quantities from the total removals of cod that are forecast by STECF as corresponding to the fishing mortality rates referred to in paragraphs 2 and 3:

- (a) a quantity of fish equivalent to the expected discards of cod from the stock concerned;
- (b) as appropriate a quantity corresponding to other sources of cod mortality caused by fishing to be fixed on the basis of a proposal from the Commission.

2. The TAC shall, based on the advice of STECF, satisfy all of the following conditions:

- (a) if the size of the stock on 1 January of the year of application of the TAC is predicted by STECF to be below the minimum spawning biomass level established in Article 6, the fishing mortality rate shall be reduced by 25 % in the year of application of the TAC as compared with the fishing mortality rate in the previous year;
- (b) if the size of the stock on 1 January of the year of application of the TAC is predicted by STECF to be below the precautionary spawning biomass level set out in Article 6 and above or equal to the minimum spawning biomass level established in Article 6, the fishing mortality rate shall be reduced by 15 % in the year of application of the TAC as compared with the fishing mortality rate in the previous year; and

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- (c) if the size of the stock on 1 January of the year of application of the TAC is predicted by STECF to be above or equal to the precautionary spawning biomass level set out in Article 6, the fishing mortality rate shall be reduced by 10 % in the year of application of the TAC as compared with the fishing mortality rate in the previous year.
3. If the application of paragraph 2(b) and (c) would, based on the advice of STECF, result in a fishing mortality rate lower than the fishing mortality rate specified in Article 5(2), the Council shall set the TAC at a level resulting in a fishing mortality rate as specified in that Article.
4. When giving its advice in accordance with paragraphs 2 and 3, STECF shall assume that in the year prior to the year of application of the TAC the stock is fished with an adjustment in fishing mortality equal to the reduction in maximum allowable fishing effort that applies in that year.
5. Notwithstanding paragraph 2(a), (b) and (c) and paragraph 3, the Council shall not set the TAC at a level that is more than 20 % below or above the TAC established in the previous year.

*Article 8***Procedure for setting TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel**

1. Each year, the Council shall decide on the TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel. The TACs shall be calculated by applying the reduction rules set out in Article 7 paragraph 1(a) and (b).
2. The TACs shall initially be calculated in accordance with paragraphs 3 and 5. From the year where the TACs resulting from the application of paragraphs 3 and 5 would be lower than the TACs resulting from the application of paragraphs 4 and 5, the TACs shall be calculated according to the paragraphs 4 and 5.
3. Initially, the TACs shall not exceed a level corresponding to a fishing mortality which is a fraction of the estimate of fishing mortality on appropriate age groups in 2008 as follows: 75 % for the TACs in 2009, 65 % for the TACs in 2010, and applying successive decrements of 10 % for the following years.
4. Subsequently, if the size of the stock on 1 January of the year prior to the year of application of the TACs is:
- (a) above the precautionary spawning biomass level, the TACs shall correspond to a fishing mortality rate of 0,4 on appropriate age groups;
- (b) between the minimum spawning biomass level and the precautionary spawning biomass level, the TACs shall not exceed a level corresponding to a fishing mortality rate on appropriate age groups equal to the following formula:
- $$0,4 - (0,2 * (\text{Precautionary spawning biomass level} - \text{spawning biomass}) / (\text{Precautionary spawning biomass level} - \text{minimum spawning biomass level}))$$
- (c) at or below the limit spawning biomass level, the TACs shall not exceed a level corresponding to a fishing mortality rate of 0,2 on appropriate age groups.

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5. Notwithstanding paragraphs 3 and 4, the Council shall not set the TACs for 2010 and subsequent years at a level that is more than 20 % below or above the TACs established in the previous year.

6. Where the cod stock referred to in paragraph 1 has been exploited at a fishing mortality rate close to 0,4 during three successive years, the Commission shall evaluate the application of this Article and, where appropriate, propose relevant measures to amend it in order to ensure exploitation at maximum sustainable yield.

▼M2*Article 9***Special procedure for setting TACs**

1. Where there is insufficient information to set the TACs in accordance with Article 7, the TACs for cod stocks in the Kattegat, the west of Scotland and the Irish Sea shall be set at a level indicated by scientific advice. However, if the level indicated by scientific advice is more than 20 % greater than the TACs in the previous year, they shall be set at a level 20 % greater than the TACs in the previous year, or if the level indicated by scientific advice is more than 20 % less than the TACs in the previous year they shall be set at a level 20 % less than the TACs in the previous year.

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

- (a) bycatch should be minimised or 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.

3. Where there is insufficient information to set the TACs in accordance with Article 8, the TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel shall be set by applying paragraphs 1 and 2 of this Article *mutatis mutandis*, unless consultations with Norway result in a different level of the TAC.

4. When 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.

▼B*Article 10***Adaptation of measures**

1. When the target fishing mortality rate in Article 5(2) has been reached or in the event that STECF advises that this target, or the minimum and precautionary spawning biomass levels in Article 6 or the levels of fishing mortality rates given in Article 7(2) are no longer appropriate in order to maintain a low risk of stock depletion and a maximum sustainable yield, the Council shall decide on new values for these levels.

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2. In the event that STECF advises that any of the cod stocks is failing to recover properly, the Council shall take a decision which:
- (a) sets the TAC for the relevant stock at a level lower than that provided for in Articles 7, 8 and 9;
 - (b) sets the maximum allowable fishing effort at a level lower than that provided for in Article 12;
 - (c) establishes associated conditions as appropriate.

CHAPTER III

FISHING EFFORT LIMITATION*Article 11***Fishing effort regime**

1. The TACs 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.
2. The Council may, acting on a Commission proposal and on the basis of the information provided by Member States and the advice of STECF referred to in paragraph 3, exclude certain groups of vessels from the application of the effort regime provided that:
 - (a) appropriate data on cod catches and discards are available to allow STECF to assess the percentage of cod catches made by each group of vessels concerned;
 - (b) the percentage of cod catches as assessed by STECF does not exceed 1,5 % of the total catches for each group of vessels concerned; and
 - (c) the inclusion of these groups of vessels in the effort regime would constitute an administrative burden disproportionate to their overall impact on cod stocks.

If STECF is not in position to assess that these conditions remain fulfilled, the Council shall include each group of vessels concerned in the effort regime.

3. Member States shall provide annually appropriate information to the Commission and STECF to establish that the above conditions are and remain fulfilled in accordance with detailed rules to be adopted by the Commission.

*Article 12***Fishing effort allocations**

1. Each year, the Council shall decide on the maximum allowable fishing effort for each effort group by Member State.
2. The maximum allowable fishing effort shall be calculated by means of a baseline established as follows:
 - (a) for the first year of application of this Regulation the baseline shall be established for each effort group as the average effort in kW-days spent during the years 2004-2006 or 2005-2007, according to the preference of the Member State concerned, based on the advice of STECF;

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(b) for the subsequent years of application of this Regulation the baseline shall be equal to the maximum allowable fishing effort of the previous year.

3. The effort groups for which an annual adjustment in the maximum allowable fishing effort shall be applied shall be decided on the following basis:

- (a) the catches of cod taken by vessels in each of the effort groups shall be evaluated on the basis of data submitted by Member States in accordance with Articles 18, 19 and 20 of Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy ⁽¹⁾;
- (b) a list shall be compiled for each of the areas defined in Annex I to this Regulation of the aggregated effort groups and their corresponding cod catches, including discards. This list shall be arranged in ascending order of cod catch in each effort group;
- (c) the cumulative catches of cod in the lists established according to point (b) shall be calculated in following way. For each aggregated effort group, the sum shall be calculated of the cod catch by that effort group and the cod catches made by all aggregated effort groups in the preceding entries in the list;
- (d) the cumulative catches calculated according to point (c) shall be calculated as a percentage of the total cod catch by all aggregated effort groups in the same area.

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4. For aggregated effort groups where the percentage cumulative catch calculated according to paragraph 3(d) is equal to or exceeds 20 %, annual adjustments shall apply. The maximum allowable fishing effort of the groups concerned shall be calculated as follows:

- (a) where Articles 7 or 8 apply, by applying to the baseline the same percentage adjustment as that set out in those Articles for fishing mortality;
- (b) where Article 9 applies, by applying the same percentage adjustment in fishing effort as the adjustment of the TAC compared with the previous year.

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5. For effort groups other than those referred to in paragraph 4, the maximum allowable fishing effort shall be maintained at the level of the baseline.

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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.

⁽¹⁾ OJ L 60, 5.2.2008, p. 1.

▼B*Article 13***Allocation of additional fishing effort for highly selective gear and cod-avoiding fishing trips**

1. Member States may increase the maximum allowable fishing effort for effort groups for which the effort has been adjusted in accordance with Article 12(4) and subject to the conditions set out in paragraphs 2 to 7.

2. The maximum allowable fishing effort may be increased within effort groups in which the fishing activity of one or more vessels:

- (a) is carried out having on board only one regulated gear the technical attributes of which result, according to a scientific study evaluated by STECF, in catching less than 1 % cod (highly selective gear);
- (b) results in a catch composition of less than 5 % cod per fishing trip (cod-avoiding fishing trips);
- (c) is conducted in accordance with a cod avoidance or discard reduction plan which reduces fishing mortality for cod among participating vessels by at least as much as the effort adjustment referred to in Article 12(4); or
- (d) is carried out in the west of Scotland area to the west of a line drawn by sequentially joining with rhumb lines the positions laid down in Annex IV measured according to the WGS84 coordinate system, provided that the participating vessels are equipped with satellite-based vessel monitoring systems (VMS).

3. Vessels referred to in paragraph 2 shall be subject to increased frequency of monitoring, concerning in particular:

- (a) the exclusive use of the highly selective gear during the fishing trips concerned in accordance with paragraph 2(a);
- (b) the amount of discards in compliance with paragraph 2(b);
- (c) the reduction in fishing mortality in accordance with paragraph 2(c);
- (d) the amount of catches and discards occurring to the west of the line specified in paragraph 2(d);

and subject to arrangements for the regular provision of data to the Member State concerning the respect of the special conditions laid down in those points.

4. The increase of fishing effort under this Article shall be calculated for each of the vessels in the effort groups concerned that operate under special conditions referred to in paragraph 2, points (a), (b), (c) and (d), and shall be no more than the amount needed to compensate the effort adjustment referred to in Article 12(4) for the gears involved in those actions.

5. Any increases of the fishing effort allocation carried out by the Member States shall be notified to the Commission, by April 30 of the year during which the compensation for the effort adjustment shall take place. The notification shall include details of the vessels operating under the special conditions referred to in points (a), (b), (c) and (d)

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of paragraph 2, the fishing effort per effort group that the Member State expects to be carried out by those vessels during that year, and the conditions under which the effort of the vessels is being monitored, including control arrangements.

6. Member States shall report to the Commission by 1 March each year at the latest about the amounts of effort used within the actions during the previous year.

7. The Commission shall request STECF to compare annually the reduction in cod mortality which would result from the application of point (c) of paragraph 2 with the reduction it would have expected to occur as a result of the effort adjustment referred to in Article 12(4). In light of this advice the Commission may propose adjustments in effort that may be applied for the relevant gear grouping the following year.

*Article 14***Member States' obligations**

1. For the vessels flying its flag, each Member State shall decide on a method for allocating the maximum allowable fishing effort to individual vessels or a group of vessels, in the light of a number of criteria, including, for example:

- (a) promotion of good fishing practices, including data collection enhancement, discard reduction and minimisation of the impact on juvenile fish;
- (b) participation in cooperative programmes to avoid unnecessary by-catches of cod;
- (c) low impact on the environment, including fuel consumption and greenhouse gas emissions;
- (d) proportionality with respect to allocation of fishing opportunities in terms of fish quota.

2. For each of the areas set out in Annex I to this Regulation, each Member State shall issue special fishing permits in accordance with Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits⁽¹⁾ for vessels flying its flag which engage in fishing activities in that area and using a gear belonging to one of the gear groupings set out in Annex I to this Regulation.

3. For each of the areas set out in Annex I, the total capacity expressed in kW of the vessels having special fishing permits issued in accordance with paragraph 2 shall not be greater than the maximum capacity of the vessels that have been active in 2006 or 2007 using a regulated gear and fishing in the geographical area concerned.

4. Each Member State shall establish and maintain a list of vessels holding the special permit referred to in paragraph 2 and make it available on its official website to the Commission and other Member States.

⁽¹⁾ OJ L 171, 6.7.1994, p. 7.

*Article 15***Regulation of fishing effort**

Member States shall monitor the capacity and activity of their fleet by effort groups and shall take appropriate action if the maximum allowable fishing effort established in accordance with Article 12 is about to be reached, in order to ensure that the effort will not exceed the set limits.

*Article 16***Exchange of maximum allowable fishing effort between Member States and reconstitution of effort**

1. The maximum allowable fishing effort established in accordance with Article 11 may be adapted by the Member States concerned in view of:

- (a) the exchange of quotas carried out pursuant to Article 20(5) of Regulation (EC) No 2371/2002; and
- (b) reallocations and/or deductions made pursuant to Article 23(4) of Regulation (EC) No 2371/2002 and Articles 21(4), 23(1) and 32(2) of Regulation (EEC) No 2847/93.

2. The maximum allowable fishing effort established in accordance with Article 12 may be adapted by a Member State which discontinues the exchange of quotas in any of the areas mentioned in Article 3, to the extent that this Member State used to execute these exchanges during the reference period for establishing the baselines as specified in Article 12(2), and needs to exert additional effort in any of the effort groups concerned in order to use the quota recovered. This reconstitution of effort shall be accompanied by a reduction in total allowable fishing effort by the Member State that has returned the quota to the quota recovering Member State, reflecting the extent to which its effort groups have less quota available for fishing, unless the Member State returning the quota did not use the corresponding effort for establishing the abovementioned baselines.

3. Notwithstanding Article 17(2), in 2009, Member States may modify their effort allocations by transferring fishing effort and capacity between the geographical areas referred to in Article 3, provided that this transfer involves fishing activities referred to in Article 13(2)(a) and (b). Such transfers shall be notified to the Commission. The maximum allowable fishing effort referred to in Article 12(2)(a) shall be modified accordingly.

*Article 17***Exchange of maximum allowable fishing effort across effort groups**

1. A Member State may amend its effort allocations by transferring fishing capacity across effort groups, under the conditions set out in paragraphs 2 to 5.

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2. The transfer shall be allowed between gear groupings but not between geographical areas, provided that the Member State concerned provides the Commission with information on the catch per unit effort (cpue) of its donor and receiving gear group, averaged over the last three years.
3. Where the cpue of the donor gear group is higher than the cpue of the receiving gear group, the transfer shall in general be made on a 1 kW-day to 1 kW-day basis.
4. Where the cpue of the donor gear group is lower than the cpue of the receiving gear group, the Member State shall apply a correction factor to the amount of effort in the receiving gear group so that the latter's higher cpue is compensated for.
5. The Commission shall request STECF to develop standard correction factors that might be used to facilitate the transfer of effort across gear groups with different cpue.

CHAPTER IV

MONITORING, INSPECTION AND SURVEILLANCE**▼ M1****▼ B***Article 25***Designated ports**

1. Where more than two tonnes of cod are to be landed in the Community from a Community fishing vessel, the master of the vessel shall ensure that such landings are made only at designated ports.
2. Each Member State shall designate ports into which any landing of cod in excess of two tonnes shall take place.
3. Each Member State shall make available on their public website the list of designated ports and associated inspection and surveillance procedures for those ports, including the terms and conditions for recording and reporting the quantities of cod within each landing.

The Commission shall transmit this information to all Member States.

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CHAPTER V

DECISION-MAKING AND FINAL PROVISIONS*Article 30***Decision-making procedure**

Where this Regulation provides for decisions to be taken by the Council, the Council shall act by qualified majority on the basis of a proposal from the Commission.

*Article 31***Amendments to Annex I**

Based on the advice of STECF, the Commission may amend the Annex I to this Regulation in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002 and on the basis of the following principles:

- (a) effort groups shall be laid down as homogeneously as possible with respect to the biological stocks captured, the sizes of fish captured either as target or as by-catch and the effects on the environment of the fishing activities associated to the effort groups;
- (b) the number and size of effort groups shall be cost-efficient in terms of management burden relative to conservation needs.

*Article 32***Detailed rules**

Detailed rules for the application of Articles 11(3), 14, 16 and 17 of this Regulation may be adopted in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.

*Article 33***Assistance under the European Fisheries Fund**

1. For each of the four cod stocks referred to in Article 1, for those years in which the stock is situated below the relevant precautionary spawning biomass level set out in Article 6, the long-term plan shall be deemed to be a recovery plan within the meaning of Article 5 of Regulation (EC) No 2371/2002, and for the purposes of Article 21(a)(i) of Regulation (EC) No 1198/2006.

2. For each of the four cod stocks referred to in Article 1, for those years other than those referred to in paragraph 1, the long-term plan shall be deemed to be a management plan within the meaning of Article 6 of Regulation (EC) No 2371/2002, and for the purposes of Article 21(a)(iv) of Regulation (EC) No 1198/2006.

*Article 34***Review**

The Commission shall, on the basis of advice from STECF and after consultation of the relevant Regional Advisory Council, evaluate the impact of the management measures on the cod stocks concerned and the fisheries on those stocks, at the latest in the third year of application of this Regulation and then each third successive year of application of this Regulation and, where appropriate, propose relevant measures to amend it.

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Article 35

Repeal

▼ C1

Regulation (EC) No 423/2004 is hereby repealed. References to the provisions of Regulation (EC) No 423/2004 shall be construed as references to the provisions of this Regulation.

▼ B

Article 36

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼B*ANNEX I*

Effort groups are defined by one of the gear groupings set out in point 1 and one of the geographical areas set out in point 2.

1. Gear groupings

(a) Bottom trawls and seines (OTB, OTT, PTB, SDN, SSC, SPR) of mesh:

TR1 equal to or larger than 100 mm,

TR2 equal to or larger than 70 mm and less than 100 mm,

TR3 equal to or larger than 16 mm and less than 32 mm;

(b) Beam trawls (TBB) of mesh:

BT1 equal to or larger than 120 mm

BT2 equal to or larger than 80 mm and less than 120 mm;

(c) Gill nets, entangling nets (GN);

(d) Trammel nets (GT);

(e) Longlines (LL).

2. Groupings of geographical areas:

For the purposes of this Annex, the following geographical groupings shall apply:

(a) Kattegat;

(b) (i) Skagerrak;

(ii) that part of ICES zone IIIa not covered by the Skagerrak and the Kattegat;

ICES zone IV and EC waters of ICES zone IIa;

(iii) ICES zone VIIId;

(c) ICES zone VIIa;

▼C1

(d) ICES zone VIa and EC waters of ICES zone Vb.

▼M3

3. By way of derogation from point 1, for the fishing effort management in the area referred to in point 2(b), gear groupings TR2 and TR1 shall be considered as a single gear grouping with a mesh size equal to or larger than 70 mm. Member States shall continue to report effort usage separately for TR1 and TR2 gear groupings as required by Articles 33 and 34 of Council Regulation (EC) No 1224/2009 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

*ANNEX II***SPECIFIC INSPECTION BENCHMARKS**

Objective

1. Each Member State shall set specific inspection benchmarks in accordance with this Annex.

Strategy

2. Inspection and surveillance of fishing activities shall concentrate on vessels likely to catch cod. Random inspections of transport and marketing of cod shall be used as a complementary cross-checking mechanism to test the effectiveness of inspection and surveillance.

Priorities

3. Different gear types shall be subject to different levels of prioritisation, depending on the extent to which the fleets are affected by fishing opportunity limits. For that reason, each Member State shall set specific priorities.

Target benchmarks

4. Not later than one month from the date of entry into force of this Regulation, Member States shall implement their inspection schedules taking account of the targets set out below.

Member States shall specify and describe which sampling strategy will be applied.

The Commission can have access on request to the sampling plan used by the Member State.

(a) Level of inspection in ports

As a general rule, the accuracy to be achieved should be at least equivalent to what would be obtained by a simple random sampling method, where inspections shall cover 20 % in number of all cod landings in a Member State.

(b) Level of inspection of marketing

Inspection of 5 % of the quantities of cod offered for sale at auction.

(c) Level of inspection at sea

Flexible benchmark: to be set after a detailed analysis of the fishing activity in each area. Benchmarks at sea shall refer to the number of patrol days at sea in the cod management areas, possibly with a separate benchmark for days patrolling specific areas.

(d) Level of aerial surveillance

Flexible benchmark: to be set after a detailed analysis of the fishing activity conducted in each area and taking the available resources at the Member State's disposal into consideration.

*ANNEX III***CONTENTS OF NATIONAL CONTROL ACTION PROGRAMMES**

National control action programmes shall aim, *inter alia*, to specify the following:

1. Means of control

Human resources

- (a) The numbers of shore-based and seagoing inspectors and the periods and zones where they are to be deployed.

Technical resources

- (b) The numbers of patrol vessels and aircraft and the periods and zones where these are to be deployed.

Financial resources

- (c) The budgetary allocation for deployment of human resources, patrol vessels and aircraft.

2. Electronic recording and reporting of information relating to fishing activities

Description of the systems implemented to ensure compliance with Articles 19, 23, 24 and 25.

3. Designation of ports

Where relevant, a list of ports designated for cod landings in accordance with Article 25.

4. Notification prior to landing

Description of the systems implemented to ensure compliance with Article 24.

5. Landings control

Description of any facilities and or systems implemented to ensure compliance with the provisions in Articles 19, 20, 21 and 28.

6. Inspection procedures

The national control action programmes shall specify the procedures that will be followed:

- (a) when conducting inspections at sea and on land;
- (b) for communicating with the competent authorities designated by other Member States as responsible for the national control action programme for cod;
- (c) for joint surveillance and exchange of inspectors, including specification of powers and authority of inspectors operating in other Member States' waters.

▼B*ANNEX IV*

Line referred to in Article 13 paragraph 2(d)

The line referred to in Article 13 paragraph 2(d) is defined by sequentially joining with rhumb lines the following positions according to the WGS84 coordinate system:

54 °30'N, 10 °35'W

55 °20'N, 9 °50'W

55 °30'N, 9 °20'W

56 °40'N, 8 °55'W

57 °0'N, 9 °0'W

57 °20'N, 9 °20'W

57 °50'N, 9 °20'W

58 °10'N, 9 °0'W

58 °40'N, 7 °40'W

59 °0'N, 7 °30'W

59 °20'N, 6 °30'W

59 °40'N, 6 °5'W

59 °40'N, 5 °30'W

60 °0'N, 4 °50'W

60 °15'N, 4 °0'W.