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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013, as regards restrictions to the access to Union waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 5(2) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy[1] establishes a derogation for the 12 nautical mile zone of Member States (territorial waters) from the general equal access rule for Union fishing vessels to Union waters and resources set out in Article 5(1) of that regulation. The derogation authorises Member States to restrict fishing in the 12 nautical mile zone to certain vessels. The restrictions put in place by Member States on the basis of the derogation have reduced fishing pressure in the most biologically sensitive areas and have contributed to economic stability for small-scale coastal activities.

Article 5(3) of Regulation (EU) No 1380/2013 establishes a similar derogation for waters up to 100 nautical miles from the baselines of the Union's outermost regions referred to in the first paragraph of Article 349 of the Treaty. The derogation allows the Member States concerned to restrict fishing to vessels registered in the ports of those territories.

The derogations are in place until 31 December 2022, and the proposal aims to avoid a discontinuation of the specific access regime set out in Articles 5(2) and 5(3) of the Regulation. It proposes an amendment to the relevant provisions of the Regulation to extend the period during which Member States can restrict access to their waters under these provisions.

The objectives for the specific regime remain as valid as they were in previous decades. This is due to the current conservation state of many stocks, the continued sensitivity of coastal waters for conservation and ongoing difficulties in coastal areas that are highly dependent on fisheries and unlikely to benefit from other economic development. Modifying the current arrangements carries a high risk of disrupting the balance that has developed since the introduction of this special regime.

The proposal therefore aims to extend the current derogations for another 10 years.

Furthermore, an amendment is proposed to Annex I of Regulation (EU) No 1380/2013. Annex I fixes, for each Member State, the geographical zones within the coastal bands of other Member States where it may pursue fishing activities and which species it may fish. This amendment reflects the United Kingdom's exit from the European Union, as well as a joint communication from Italy and Greece to the Commission of 9 June 2020 regarding the access of Italian fishing vessels to Greek territorial waters as reflected in the bilateral agreement between the Member States concerned. Finally, following the judgment in Case C-457/18[2], the footnotes referring to the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009, should be removed from Annex I for lack of EU competence in border matters.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The legal basis for this proposal is Article 43(2) of the Treaty on the Functioning of the European Union (TFEU).

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[1] OJ L 354 28.12.2013, p. 22

[2] Judgment of 31 January 2020, Republic of Slovenia v Republic of Croatia, C-457/18, EU:C:2020:65, paragraphs 102-104.

According to Article 3(1)(d) of the TFEU, the EU has exclusive competence in the conservation of marine biological resources under the Common Fisheries Policy (CFP). The proposal falls under this exclusive competence, and therefore the subsidiarity principle does not apply.Since the proposal primarily concerns a time-limited extension of the validity of a measure which already exists in Regulation (EU) No 1380/2013, there are no concerns regarding the proportionality principle.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Collection and use of expertise**

During the second half of 2020, Member States were invited to provide information on the restrictions they apply under Articles 5(2) and 5(3) of Regulation (EU) No 1380/2013. Contributions were received from 16 Member States and confirmed the need to continue the current derogation regime without modifications. The only exception was an amendment to Annex I of Regulation (EU) No 1380/2013 requested by Italy and Greece to reflect the access to Greek territorial waters in the Aegean, Ionian and Libyan Seas.

In December 2020, the Scientific, Technical and Economic Committee for Fisheries (STECF) delivered a report on the social dimension of the CFP[3]. The report discussed, among other things, whether the restrictions put in place by Member States under Article 5(2) of the Regulation may have helped preserve coastal fleets' traditional fishing activities to maintain the social and economic infrastructure of these areas.

The STECF noted that it was not possible to assess the contribution made by these restrictions, since further analysis was required and many other contributing factors needed to be taken into account. However, the experts concluded that no Member State reported any conflicts regarding Article 5(2) of Regulation (EU) No 1380/2013. The STECF observed that this rule, which has been in place since the early 1970s and was included in the first basic regulation of the CFP in 1982 and in every revision of the CFP basic regulation since then (1992, 2002, 2013), is well accepted and avoids conflicts between Member States.

- **Impact assessment**

As indicated in the roadmap for this initiative[4], the proposal extends the duration of the current regime, as was done in 2012 with an amendment to the previous CFP Regulation[5]. The amendments to Annex I limit themselves to reflecting recent developments in the governance of territorial waters. Therefore, no impact assessment was necessary.

4. BUDGETARY IMPLICATIONS

This measure does not involve any additional Union expenditure.

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3 https://stecf.jrc.ec.europa.eu/documents/43805/2672864/STECF+20-14+-+Social+dimension+CFP.pdf/a68c6c42-6b64-41fc-b5a0-b724c71aa78e

4 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12533-Extension-of-the-access-to-waters-regime-under-the-Common-Fisheries-Policy

5 Regulation (EU) No 1152/2012 of the European Parliament and of the Council of 21 November 2012 amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy

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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[6],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Union fishing vessels have equal access to Union waters and resources subject to the rules of the Common Fisheries Policy.

(2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[7] provides for derogations from the equal access rule in the following circumstances.

(3) Member States are authorised to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast in waters up to 12 nautical miles from their baselines.

(4) Member States are also authorised to restrict access to waters up to 100 nautical miles from the baselines of the Union outermost regions referred to in the first paragraph of Article 349 of the Treaty to vessels registered in the ports of those territories.

(5) Existing rules restricting access to resources within the 12 nautical mile zones of Member States have benefitted conservation by restricting fishing effort in the most sensitive part of Union waters. Those rules have also preserved traditional fishing activities on which the social and economic development of certain coastal communities is highly dependent.

(6) Existing restrictions limiting access to marine biological resources around the Union outermost regions referred to in the first paragraph of Article 349, first paragraph, of the Treaty have contributed to the preservation of the local economy of those territories, having regard to their structural, social and economic situation.

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6 OJ C , , p. .

7 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, (OJ L 354 28.12.2013, p. 22)

(7) The existing derogations concerning restrictions to access to Union waters will expire on 31 December 2022. Those derogations should, however, be extended for another period of ten years, in order to ensure continuity of the current protection measures and to avoid disrupting the balance that has developed since the introduction of this special regime.

(8) Annex I of Regulation (EU) No 1380/2013 should be amended following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and following a joint request by Italy and Greece regarding the access of Italian vessels to the Ionian, Aegean and Libyan Seas.

(9) Regulation (EU) No 1380/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1380/2013 is amended as follows:

(1) In Article 5, paragraphs 2, 3 and 4, the terms '31 December 2022' are replaced by the terms '31 December 2032'.

(2) Annex I is replaced by text set out in the Annex to this Regulation.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States from 1 January 2023.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*