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THE EUROPEAN UNION**

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NOTE

from : United Kingdom delegation

to : Working Party on Internal Fisheries Policy

No. Cion prop. : 13139/05 PECHE 203 - COM(2005) 472 final

Subject : Proposal for a Council Regulation establishing measures for the recovery of the stock of European eel

Delegations will find attached written comments from the United Kingdom delegation on the subject mentioned above.

**WRITTEN COMMENTS BY THE UK ON THE PROPOSAL FOR A COUNCIL
REGULATION ESTABLISHING MEASURES FOR THE RECOVERY OF THE STOCK
OF EUROPEAN EEL**

Please find below a number of drafting and substantive points with regard to the latest text (7069/07) of a proposal for a Council Regulation establishing measures for the recovery of the stock of European Eel.

In general, we are pleased with the progress that has been made and believe the proposal is moving forwards. However, at this stage we felt it would be useful to bring to your attention two substantive issues (in articles 2 and 9) that we would wish to see addressed.

******* At a cursory glance the recently circulated document (7300/07) seems to take account of our concerns relating to article 9. However, as we will need to properly assess there implications of these changes, we thought it would still be helpful to circulate this note in advance of the meeting anyway.**

Current Art.2 – Establishment of reference criteria

Art.2, as currently drafted, is a significant improvement on previous drafts in that it allows Member States the flexibility to draft Eel Management Plans as appropriate for the specific conditions in their River Basin Districts. Paragraph 7 allows for, but does not dictate, a number of measures which can be used to achieve attainment of the escapement target whilst paragraph 9 ensures that some immediate measures (at the discretion of MSs) are implemented, recognising the parlous state of the stock.

However, there are a number of points that are ill defined in the article that will, if left unclarified, not only lead to confusion as to what is required of Member States but will also dramatically alter the objectives, and thereby the feasibility of reaching the management target (the ‘40% escapement of silver eel’).

The term ‘*high probability of escapement*’ as contained in paragraph 3 of article 2 currently has no qualification as to what that high probability will be.

Whilst *'high probability'* is not a new term, we understand that it may be applied in a number of ways, the choice as to which will dramatically affect the chances of Member States achieving the escapement target. For example, the difference between a 0.75 statistical probability and 0.90 probability is large enough to put some River Basin Districts out of the range of possible attainment. We believe this term needs to be more precisely defined in order that Member States can draw up appropriate management targets.

The choice of definition is vital in ensuring that the objectives of the proposal are both biologically meaningful (in stock conservation terms) and achievable. It is also important that the attainment of this target is not required in every year in order to take account of natural variability. The determination of an appropriate management target might best be expressed (as with Salmon Conservation targets in England and Wales) by saying that the escapement target must be met with a probability of 80%, in four years out of every rolling five-year period. Extending this example, if the reporting period is to be three years, at least initially, then the escapement target must be met with a probability of 67%, that is in 2 out of every 3 years.

Similarly, the central focus of management plans is on achieving, in the long term, *'the escapement to the sea of at least 40% of the biomass of adult eel relative to the best estimate of escapement that would have existed in the absence of anthropogenic activities'* (underscored section changes to reflect recent discussions).

However, it is evident from working group discussions that Member States are still unclear as to what the reference period in this article refers to. Again, there needs to be a balance between a challenging target, and one that is achievable, and to that end we are grateful that the Commission has reflected on the wording of *'anthropogenic mortalities'* and agreed to change to *'anthropogenic influences'* so that areas upstream of man-made barriers to migration are not automatically excluded, as these may be very important areas of potentially productive eel habitat.

However, it is similarly important that we do not set the reference period such that the achievement of 40% escapement will be impossible. An unrealistic target set against a period when eel production was at a theoretical maximum may actually be counterproductive as Member States

will not have sufficient means at their disposal to reach the 40% escapement target, and may therefore take the reduction in fishing effort as a lesser option with which they can comply, thereby relieving themselves of the burden of producing management plans. If fishing mortality is low, because stocks are low, then a 50% reduction in catch levels will do little or nothing to restore the eel stocks.

We believe that the reference period should be set to a historical period, prior to when eel stocks crashed in the 1980s but when available and potentially productive habitat (in the absence of anthropogenic influences, including water quality) was sufficient to achieve biological sustainability. In that context, it may be appropriate to exclude habitat that was cut off by manmade obstructions prior to the 1960s, since those barriers appear to have had no appreciable effect on recruitment levels for eel.

Current Art. 9 – application of CFP measures

The new Art. 9 text combines (1) specific measures, mainly about notification to COM; (2) measures applied from Reg. 2847/93; (3) measures applied from Reg. 2371/02.

To a large extent, then, the enforcement of this Regulation relies on applying measures from Regs 2847/93 and 2371/02 *mutatis mutandis* to the eel fishery. As such, apart from the text which FR has proposed for Art. 9, there are no enforcement provisions which have been drafted with eel fisheries in mind.

We think this is far from ideal. In our view *all* the enforcement provisions in this Regulation should be drafted with eels specifically in mind; in particular we think it is unsatisfactory simply to apply CFP enforcement provisions to the eel fishery without more consideration of their impact and effectiveness. The eel fishery is generally quite different in operation, scale and market from maritime vessel fishing. Moreover, if uncertainty is to be minimised, careful thought needs to be given to the application of these provisions.

We therefore urge that specific enforcement provisions be drafted. However our draft (see Annex) does not go this far, and instead applies CFP provisions to the maritime vessel fishery, albeit in a rather more detailed way than does the current draft.

On the detail:

we agree that Reg. 2371/02, Art. 22(1)(b) should not apply to this Regulation;
we think that Art. 23(1) to (3) are effectively replicated in our draft Art. 9(1);
Article 23(4) to (5) cannot sensibly apply;

Principled difference between maritime vessel fishing and non-vessel and inland fishing

There is a difference in principle between (1) maritime vessel fishing for eels and (2) non-vessel or non-maritime fishing for eels.

The Commission's new Art. 9 text tries to capture this distinction, and seems to reflect that the CFP systems make more sense for maritime vessel fishing than non-vessel or inland fishing. We support the notion that a greater deal of discretion should be given to MSs to design appropriate enforcement measures for non-vessel or inland fishing. This recognises that fishing in inland waters is already regulated by sophisticated and diverse regimes across the different MSs, and that to superimpose a rigid framework of EC enforcement provisions onto them is not workable.

Proposal

The UK position is therefore that the enforcement provisions should do the following:

- (1) oblige each MS to do what is necessary to achieve the target of each EMP;
- (2) set out specific measures which each MS must take;
- (3) state clearly that MSs may take stricter measures;
- (4) as to maritime vessel fishing, apply certain CFP provisions (but making clear that their application is confined to those types of fishing);
- (5) set out notification provisions.

Conclusion

We hope that the attached text is a suitable and constructive compromise which reflects the difference between the maritime vessel fishery for eel, where more rigid provisions are appropriate, and non-vessel and inland eel fisheries, where more flexible systems are required.

We also hope that at the least the proposed text applies CFP provisions in a somewhat clearer way than proposed thus far.

ANNEX – PROPOSED TEXT FOR ART. 9

Article 9

Control and Enforcement

1. Member States shall take all measures necessary to ensure effective control, inspection and enforcement of this Regulation. As a minimum Member States shall:
 - operate a system of licensing in respect of eel fisheries and the types of gear used;
 - register traders in eels; and
 - establish a national register of catches of eels, which specifies at least the location, time, quantity and description of eels caught, and the effort and gear-type employed.
2. Member States may take non-discriminatory measures which go beyond the requirements set out in this Article, but any Member State choosing to make use of this paragraph shall notify the Commission in cases where such measures are liable to affect intra-Community trade.
3. Member States shall take all measures necessary to identify the origin of eels imported into or exported from their territories, and to determine whether eels harvested from Community waters were caught in a manner consistent with Community conservation measures.
4. The following provisions shall apply *mutatis mutandis* to the provisions of this Regulation insofar as they concern vessel fishing for eels in maritime waters, irrespective of the overall length of the vessel:
 - Chapter V of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹ (but not Article 22(1)(b) or 23);

¹ OJ L 358, 31.12.2002, p. 59.

- Articles 6 to 13 of Council Regulation (EC) No 2847/93 of 12 October 1993;

5. Member States shall regulate vessel fishing for eels in maritime waters in ICES areas III, IV, VI, VII, VIII, IX, the Mediterranean Sea and the Black Sea by means of special fishing permits issued in accordance with Article 7 of Regulation (EC) No 1627/1994. For this purpose that Article of that Regulation shall apply irrespective of the overall length of the vessel.
6. Each Member State shall on or before 1 January 2009 (and before 1 January of every subsequent year) transmit the following information to the Commission electronically:
 - a list containing details of every fishing vessel issued with a permit under paragraph 5 above, and;
 - a list containing details of every person registered as a trader in eel under paragraph 1 above.
