



Brussels,

FAX

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Subject: Clarification on the Porcupine Closed Area

Message:

Thank you for your letter dated the 1st June 2010 in relation to the conditions as to which vessels would be allowed to transit across the area defined in article 11 of the Council Regulation (EC) No. 53/2010.

Article 11 of the Council Regulation (EC) No. 53/2010 actually prohibits as from the 1st May until the 31st July 2010, to fish or retain on board any marine organism other than those listed in the Regulation in the area specifically named as Porcupine Bank. Your letter states that articles 47 and 50 of the new Control Regulation (Council Regulation (EC) No. 1224/2009) should be applicable and it would mean to allow fishing vessels to transit across the area concerned. It implicitly appears as for your arguments, that fishing vessels would be entitled to transit across the said area even though prohibited species are retained on board.

In relation to the question on the transit across the area concerned, it is worth to mention that in article 11 of the Council Regulation (EC) No. 53/2010 there is no implicit prohibition for the purpose. This means that transit is apparently authorized. However, based on the said article 11, freedom to transit is only possible if the provisions set out in article 11 are complied with, ie, having no prohibited species on board regardless of whether they were caught in a different area, where appropriate. In this respect, there is no doubt in accordance with the conditions of the aforementioned article 11 and its objective and purpose involved. It clearly shows that the prohibition of retaining prohibited species on board is only a add-up to the restriction of fishing within the area in question.

On the contrary, the implementation of transit conditions set out in article 50 of the Council Regulation (EC) No 1224/2009 within the area in question, does not imply any revision or correction of the specific restrictions in this specific area which were provided for by the

Council by means of article 11 of the Regulation No. 53/2010. Actually, this regulation contains specific rules taking as precedent those included in article 50 of the Council Regulation (EC No. 1224/2009).

As regards the possible implementation of article 47 of Council Regulation (EC) No. 1224/2009 in the issue herein, it should be taken into account that this provision refers to fishing activities where more than one type of fishing gear is allowed. This has no relation with the prohibitions as set out in the current version of article 11 of the Council Regulation (EC) No. 53/2010. Consequently, the application of article 47 above is irrelevant within the context of this question.

In summary, the answer to your questions is that transit the area in question during 2010 fishing season is allowed only for fishing vessels retaining on board no demersal species, or even more, no marine organisms other than the pelagic species listed in article 11 of the Council Regulation (EC) No. 53/2010.

The Commission's service may resume this issue during the preparation of the Regulation on fishing opportunities for 2011.

Yours faithfully

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Maria de la Fuensanta CANDELA CASTILLO