



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.02.1999
COM(1999)70 final

99/0050 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

**establishing a list of types of behaviour which seriously infringe the rules of the
common fisheries policy**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, as last amended by Regulation (EC) No 2846/98, provides for a list to be drawn up of the types of behaviour which seriously infringe the rules of the common fisheries policy and for the Commission to be provided with the relevant information with a view to ensuring greater transparency regarding action taken in respect of such behaviour.

The failures to comply set out on the list of types of behaviour which seriously infringe the rules of the common fisheries policy relate to obligations laid down by the Community regulations on fisheries. Accordingly:

- Obstructing Commission fisheries inspectors and national fisheries inspectors in their duties constitutes a failure to comply with Title VII of Council Regulation (EEC) No 2847/93 and Commission Regulation (EEC) No 3561/85 respectively. Furthermore, obstructing observers in their duties constitutes a failure to comply with Article 2 of, and point 3 of Annex I to, Council Regulation (EC) No 3069/95 of 21 December 1995 establishing a European Community observer scheme applicable to Community fishing vessels operating in the Regulatory Area of the Northwest Atlantic Fisheries Organization (NAFO).
- Falsifying or destroying evidence which could be used in enquiries or judicial proceedings constitutes a failure to abide by the general spirit of the Regulation establishing a control system.
- Fishing without a licence or under cover of a licence the content of which has been deliberately falsified or does not tally with the data in the fishing vessel register of the Community constitutes a failure to comply with Council Regulation (EC) No 3690/93 of 20 December 1993 establishing a Community system laying down rules for the minimum information to be contained in fishing licences. Furthermore, fishing without a permit or under cover of a permit that has been deliberately falsified or that does not tally with the data in the fishing vessel register of the Community constitutes a failure to comply with Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits.
- Falsifying, deleting or concealing the name, registration or markings of a fishing vessels constitutes a failure to comply with Commission Regulation (EEC) No 1381/87 of 20 May 1987 establishing detailed rules concerning the marking and documentation of fishing vessels.

- Using prohibited fishing gear or fishing methods, or devices affecting the selectiveness of gear constitutes a failure to comply with Titles II, IV and V of 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.
- Directed fishing for a species stocks of which are subject to a moratorium or fishing of which is prohibited constitutes a failure to comply with Title IV of the Regulation establishing a control system. Unauthorised fishing in a given zone and/or during a specific period involves a failure to comply with the rules on access to zones, resources and limits on time spent at sea, adopted pursuant to Article 4 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, and with the rules adopted pursuant to the recommendations of the regional fisheries organisations of which the European Community is a member.
- Failure to comply with the rules on holding or preserving fishery products on board a vessel constitutes a failure to comply with Titles III and IV of 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.
- Failure to comply with the rules and procedures on transshipment and fishing operations involving joint action by two or more vessels constitutes a failure to comply with Article 11 of the Regulation establishing a control system and with the rules adopted pursuant to the recommendations of the regional fisheries organisations of which the European Community is a member.
- Falsifying data in documents as referred to in Articles 6, 8, 9 and 13 and Title VIa of Council Regulation (EEC) No 2847 /93 constitutes a failure to comply with the Articles and Title in question.
- Tampering with the satellite-tracking system for determining the position of fishing vessels constitutes a failure to comply with Article 3 of the Regulation establishing a control system and with Article 3 of Commission Regulation (EC) No 1489/97 of 29 July 1997 laying down detailed rules for the application of that Article.
- A deliberate failure to comply with the rules on remote transmission of the movements of fishing vessels and the data on fishery products held on board constitutes a failure to comply with Articles 19b and 19c of the Regulation establishing a control system.
- A failure by the master of a fishing vessel of a third country or his representative to comply with the rules on the procedure for landing or transshipping catches constitutes a failure to comply with Articles 28b, 28e, 28f and 28g of the Regulation establishing a control system.

- Landing, putting on sale and transporting fishery products which do not meet the marketing standards in force and those relating to minimum sizes constitutes a failure to comply with Title VI of the Regulation establishing a control system, Title I of Council Regulation (EEC) No 3759/92 and Titles III and IV of Council Regulation (EC) No 850/98 ("technical measures").

The fact of drawing up a list of types of behaviour which seriously infringe the rules of the common fisheries policy does not imply any harmonisation of penalties at Community level. However, the establishment of such a list and the obligation imposed on the Member States to notify the Commission of action taken in respect of illegal behaviour discovered will contribute to greater transparency in the application of the rules of the Common Fisheries Policy. Moreover, this proposal will enable fishermen, quantitatively and objectively, to compare action taken by the various Member States in respect of the behaviour in question.

The Commission therefore proposes that the Council adopt this proposal at the earliest opportunity.

Proposal for a
COUNCIL REGULATION (EC)

**establishing a list of types of behaviour which seriously infringe the rules of the
common fisheries policy**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas, in order to ensure equality between fishery operators, similar infringements should be penalised with comparable severity in all the Member States; whereas this requirement is especially important as regards types of behaviour which seriously infringe the rules of the common fisheries policy; whereas Article 31(2a) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy³, as last amended by Regulation (EC) No 2846/98⁴, provides for such a list to be drawn up;

Whereas that list is to include behaviour appearing on a similar list in point 9 of the Annex to Council Regulation (EEC) No 1956/88 of 9 June 1988 adopting provisions for the application of the scheme of joint international inspection adopted by the Northwest Atlantic Fisheries Organization⁵;

Whereas the Member States should provide the Commission with pertinent information in order to ensure greater transparency regarding action taken in respect of such behaviour, in accordance with the provisions adopted pursuant to Article 35(3) of Regulation (EEC) No 2847/93,

HAS ADOPTED THIS REGULATION:

¹ O J C

² O J C

³ O J L 261, 20.10.1993, p.1.

⁴ O J L 358, 31.12.1998, p.5.

⁵ O J L 175, 6.7.1988, p. 1.

Article 1

The types of behaviour which seriously infringe the rules of the common fisheries policy as referred to in Article 1 of Regulation (EEC) No 2847/93 shall be as listed in the Annex hereto.

Article 2

1. The Member States shall notify the Commission forthwith of any case of behaviour as referred to in Article 1 that has been discovered and shall provide it with all information regarding action taken by the administrative and/or judicial authorities, in accordance with the detailed rules provided for in Article 35(3) of Regulation (EEC) No 2847/93.
2. The Commission shall make the information it receives pursuant to paragraph 1 available to the Member States, the European Parliament and the Advisory Committee of Fisheries.

Article 3

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

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

Done at Brussels,

For the Council
The President

ANNEX

LIST OF TYPES OF BEHAVIOUR WHICH SERIOUSLY INFRINGE THE RULES OF THE COMMON FISHERIES POLICY

A. FAILURE TO COOPERATE WITH THE AUTHORITIES RESPONSIBLE FOR MONITORING

- Obstructing the work of fisheries inspectors, including Commission inspectors, in the exercise of their duties in inspecting, and of observers in the exercise of their duties in observing, compliance with the applicable Community rules;
- Falsifying or destroying evidence which could be used in the course of inquiries or judicial proceedings.

B. FAILURE TO OBSERVE THE CONDITIONS TO BE MET WHEN FISHING

- Fishing without a fishing licence, a fishing permit or any other authorisation required for fishing and issued by the Member State of the flag flown or by the Commission; fishing under cover of one of the abovementioned documents the content of which has been deliberately falsified or which does not tally with the data in the fishing vessel register of the Community established by Commission Regulation (EC) No 2090/98⁶;
- Falsifying, deleting or concealing the name, registration or markings of the fishing vessel.

C. FAILURE TO COMPLY DURING FISHING OPERATIONS

- Using prohibited fishing gear or fishing methods, or devices affecting the selectiveness of gear;
- Directed fishing for a species stocks of which are subject to a moratorium or fishing of which is prohibited; unauthorised fishing in a given zone and/or during a specific period;
- Failure to comply with the rules on holding or preserving fishery products on board a vessel;

⁶ OJ L 266, 1.10.1998, p 27.

- Failure to comply with the rules and procedures relating to transshipment and fisheries operations involving joint action by two or more vessels.

D. FAILURE TO COMPLY IN RESPECT OF RESOURCES FOR MONITORING

- Falsifying data in documents as referred to in Articles 6, 8, 9 and 13 and Title VIa of Regulation (EEC) No 2847/93;
- Tampering with the satellite-tracking system for determining the position of fishing vessels;
- Deliberate failure to comply with the Community rules on remote transmission of movements of fishing vessels and of data of fishery products held on board;
- Failure of the master of the fishing vessel of a third country or his representative to comply with the rules on the procedure for landing catches.

E. FAILURE TO COMPLY IN CONNECTION WITH THE MARKETING OF FISHERY PRODUCTS

- Landing, placing on sale and transporting fishery products not meeting the marketing standards in force and in particular those concerning minimum sizes.

ISSN 0254-1475

COM(99) 70 final

DOCUMENTS

EN

03 06 08 09

Catalogue number : CB-CO-99-073-EN-C

Office for Official Publications of the European Communities

L-2985 Luxembourg