



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**laying down certain control measures in respect of vessels flying the flag of non-Contracting Parties to the Northwest Atlantic Fisheries Organisation (NAFO)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

The Northwest Atlantic Fisheries Organisation (NAFO), of which the European Community is a Contracting Party, has established very severe measures for the conservation of the fish stocks within its purview. Key fish stocks have even been put under moratoria.

Fisheries in the Regulatory Area of NAFO are for the most part multi-species fisheries such that it is not possible to target one species without a by-catch of other species. NAFO conservation measures, therefore, comprise specific by-catch rules, gear restrictions and a series of other technical measures designed to take into account of this inter-relationship between the fish stocks concerned.

NAFO has witnessed a continued massive influx of vessels flying the flags of non-Contracting Parties and fishing in disregard of established conservation measures in the Regulatory Area of NAFO. These vessels targeted mainly cod (which has been under a moratorium already since the early 1990s) and redfish (for which ever stricter catch limitations had to be imposed in recent years).

Following the creation of a Standing Committee on Fishing Activities of non-Contracting Parties (STACFAC) in 1990, NAFO has consistently pursued a policy of informing non-Contracting Parties where their vessels have been sighted active in the Regulatory Area of NAFO. For a number of years, it has extended invitations to those States to either adhere to NAFO or agree to apply the conservation measures established by that organisation. Despite these démarches, fishing activities by non-Contracting Party vessels have never ceased.

In this situation, Contracting Parties agreed that it was necessary to counteract these activities which risked undermining the effectiveness of established conservation measures. Possible counter-measures were debated within STACFAC over a number of years. At inter-sessional meetings in 1997, it was generally agreed to conceive measures directed at vessels. However, two issues remained highly controversial until the very last stage of the negotiations: One pertained to the question as to how mixed fisheries should best be dealt with. The other pertained to attempts of some Contracting Parties who sought endorsement by NAFO of their domestic systems of direct port closures. The result of this was to provide for the possibility of prohibiting, in cases of doubt, the landing of all fish on board, on the one side, and to introduce a neutral non-prejudice clause pertaining to the exercise by States of their sovereignty over ports in their territory in accordance with international law, on the other.

On this basis, the General Council of NAFO adopted at its 19<sup>th</sup> Annual Meeting in 1997 a "*Scheme to Promote Compliance by Non-Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO*". This Scheme is directed at non-Contracting Party vessels and foresees that, in the event that such a vessel is sighted active in the Regulatory Area of NAFO, a mandatory inspection will be carried out on that vessel when it is voluntarily in the ports of Contracting Parties. There will be a prohibition of landings and transshipments from this vessel if, in the course of such inspection, it is established that the catch has been taken in contravention of conservation and enforcement measures established by NAFO.

At the 20<sup>th</sup> Annual Meeting of NAFO in 1998, a number of specifications have been made to the provisions of the Scheme relating to at-sea transshipments and relevant sightings. At the 21<sup>st</sup> Annual Meeting in 1999, additional specifications for stateless vessels have been made.

These NAFO measures have been adopted with the Community's full support. It is, therefore, in the interest of the Community that they be implemented at Community level by way of the proposed regulation.

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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<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas:

- (1) The European Community is a Contracting Party to the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, hereafter referred to as the “NAFO Convention”<sup>3</sup>;
- (2) The NAFO Convention provides a suitable framework for regional co-operation in the conservation and management of fishery resources through, *inter alia*, the setting up of an international organisation known as the Northwest Atlantic Fisheries Organisation, hereafter referred to as “NAFO” and the adoption of proposals for conservation and enforcement measures for the fishery resources of the NAFO Regulatory Area, which become binding upon the Contracting Parties;
- (3) The practice of operating fishing vessels under the flag of non-Contracting Parties to NAFO as a means of avoiding compliance with conservation and enforcement measures established by NAFO remains one of the factors which seriously undermines the effectiveness of such measures and should, therefore, be discouraged;
- (4) NAFO has consistently invited the non-Contracting Parties concerned to either become a member of NAFO or to agree to apply the conservation and enforcement measures established by NAFO with a view to fulfilling their responsibilities with regard to fishing vessels entitled to fly their flag;

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<sup>1</sup>

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<sup>3</sup> OJ L 378, 30.12.1978, p. 1

- (5) At its 19th Annual Meeting in September 1997, NAFO resolved to adopt a “Scheme to Promote Compliance by Non-Contracting Party vessels with the Conservation and Enforcement Measures Established by NAFO”, the objective of which is to ensure that the effectiveness of conservation and enforcement measures established by NAFO is not undermined by non-Contracting vessels;
- (6) This Scheme provides, *inter alia*, for the mandatory inspection of non-Contracting Party vessels when such vessels are voluntarily in the ports of Contracting Parties and, with due regard to the multi-species fisheries in the Regulatory Area of NAFO, a prohibition of landings and transshipments if, in the course of such inspection, it is established that the catch has been taken in contravention of conservation and enforcement measures established by NAFO as well as certain other collateral measures to be taken by Contracting Parties;
- (7) At the 20<sup>th</sup> Annual Meeting of NAFO in September 1998, certain specifications have been made to the provisions of the Scheme relating to at-sea transshipments and relevant sightings;
- (8) At the 21<sup>st</sup> Annual Meeting of NAFO in September 1999, additional specifications for stateless vessels have been made;
- (9) Under the EC Treaty, the authority over internal waters and ports is exercised by the Member States; whereas, however, as regards access to port facilities in the Community by non-Contracting Party vessels which have been sighted engaging in fishing activities in the NAFO Regulatory Area, it is necessary to enact additional uniform measures at Community level, which supplement the measures provided for in Regulation (EEC) No 2847/93<sup>4</sup> and ensure that the operations of such vessels in Community ports do not undermine the effectiveness of the conservation and enforcement measures established by NAFO,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

- (a) “*fishing activities*”: fishing, fish processing operations, the transshipment of fish or fish products, and any other activity in preparation for or related to fishing in the NAFO Regulatory Area;
- (b) “*NAFO Regulatory Area*”: the area referred to in Article I, paragraph 2, of the NAFO Convention;

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<sup>4</sup> OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2846/98 (OJ L 358, 31.12.1998, p.5)

- (c) “*non-Contracting Party vessel*”: a vessel which has been sighted and reported as having engaged in fishing activities in the NAFO Regulatory Area and
- (i) which flies the flag of a State which is not a Contracting Party to the NAFO Convention; or
  - (ii) for which there are clear grounds for suspecting it to be without nationality

#### *Article 2*

Upon receipt of a report on a sighting of a non-Contracting Party vessel by a Community inspector assigned to the NAFO Scheme of Joint International Inspection and Surveillance, the Commission shall transmit this information without delay to the Secretariat of NAFO and, where possible, to the non-Contracting Party vessel, informing it that the information will be transmitted to all the Contracting Parties to the NAFO Convention and to its flag State.

#### *Article 3*

The Commission shall communicate to all the Member States without delay each report on a sighting, which it has received pursuant to Article 2 or by way of a notification from the Secretariat of NAFO or another Contracting Party.

#### *Article 4*

Community fishing vessels shall be prohibited from receiving transshipments of fish from non-Contracting Party vessels.

#### *Article 5*

1. Member States shall ensure that each non-Contracting Party vessel, which enters a designated port within the meaning of Article 28e of Regulation (EEC) No 2847/93, is inspected by their competent authorities. The vessel may not land or transship any catch until this inspection has been completed.
2. If, on completion of inspection, the competent authorities find that the non-Contracting Party vessel holds on board any of the species listed in Annexes I and II, the Member State concerned shall prohibit any landing and/or transshipment.
3. However, no such prohibition shall apply if the master of the inspected vessel or his representative proves to the satisfaction of the competent authorities of the Member State concerned that:
  - species held on board were caught outside the NAFO Regulatory Area;  
or

- species held on board and listed in Annex II were caught in accordance with the conservation and enforcement measures established by NAFO.

*Article 6*

1. Member States shall communicate without delay to the Commission the results of each inspection and, where appropriate, any subsequent prohibition of landing and/or transshipment, which was applied as a result of the inspection. This information shall include, inter alia, the name of the inspected non-Contracting Party vessel and its flag State, the date and the port of inspection, the grounds for a subsequent prohibition of landing and/or transshipment or, where no such prohibition was applied, the evidence presented pursuant to Article 5, paragraph 3.
2. The Commission shall transmit this information without delay to the Secretariat of NAFO and as soon as possible to the flag State of the inspected non-Contracting Party vessel.

*Article 7*

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

Done at,

*For the Council  
The President*

**ANNEX I**

**List of regulated species**

Common English Name	Scientific Name
1. Atlantic cod.....	( <i>Gadus morhua</i> )
2. Atlantic redfishes.....	( <i>Sebastes sp.</i> )
3. American plaice .....	( <i>Hippoglossoides platessoides</i> )
4. Yellowtail flounder.....	( <i>Limanda ferruginea</i> )
5. Witch flounder .....	( <i>Glyptocephalus cynoglossus</i> )
6. Capelin.....	( <i>Mallotus villosus</i> )
7. Greenland halibut .....	( <i>Reinhardtius hippoglossoides</i> )
8. Short-finned squid (Illex) .....	( <i>Illex illecebrosus</i> )
9. Shrimps.....	( <i>Pandalus sp.</i> )



## ANNEX II

### List of non-regulated species

Common English Name	Scientific Name
1. Haddock.....	( <i>Melanogrammus aeglefinus</i> )
2. Silver hake .....	( <i>Merluccius bilinearis</i> )
5. Red hake .....	( <i>Urophycis chuss</i> )
6. Pollock .....	( <i>Pollachius virens</i> )
3. Roundnose grenadier .....	( <i>Macrourus rupestris</i> )
4. Atlantic herring .....	( <i>Clupea harengus</i> )
5. Atlantic mackerel .....	( <i>Scomber scombrus</i> )
6. Atlantic butterfish.....	( <i>Peprilus triacanthus</i> )
7. River herring .....	( <i>Alosa pseudoharengus</i> )
8. Atlantic argentine .....	( <i>Argentina silus</i> )
9. Long-finned squid (Loligo) .....	( <i>Loligo pealei</i> )
10. Wolffishes (NS) .....	( <i>Anarchichas sp.</i> )
11. Skates (NS) .....	( <i>Raja sp.</i> )