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# European Communities

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EUROPEAN PARLIAMENT

## Working Documents

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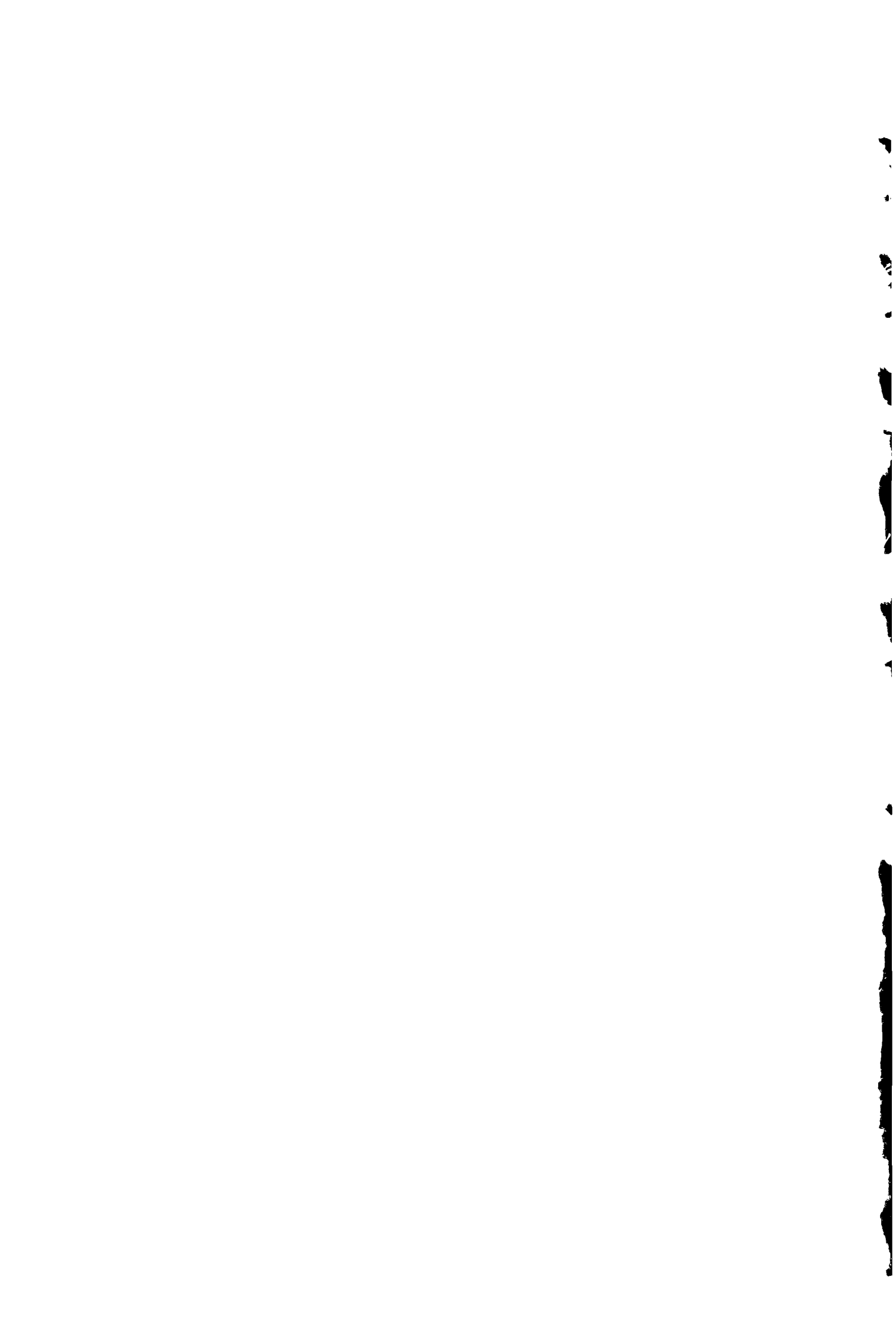
### Report

drawn up on behalf of the Committee on Agriculture

on a proposal from the Commission of the European Communities to the Council  
(Doc. 52/77) for a regulation concerning the conclusion of an Agreement between  
the European Economic Community and the United States of America  
concerning fisheries off the coasts of the United States, and establishing the  
provisions for its application

Rapporteur: Mr M. HUGHES

PE 48.830/fin.



By letter of 7 April 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 43 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation concerning the conclusion of an Agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States, and establishing the provisions for its application.

The President of the European Parliament referred this proposal to the Committee on Agriculture as the committee responsible and to the Committee on Legal Affairs for its opinion.

On 26 April 1977 the Committee on Agriculture appointed Mr Hughes rapporteur.

It considered this proposal at its meeting of 11 May 1977.

At the same meeting the committee adopted the motion for a resolution and the explanatory statement by 14 votes to 1, with 1 abstention.

The following were present: Mr Laban, acting-chairman and vice-chairman; Mr Liogier, vice-chairman; Mr Ligios, vice-chairman; Mr Hughes, rapporteur; Mr Albertini, Mr Corrie, Mrs Dunwoody, Mr F. Hansen, Mr Guerlin, Mr Hoffman, Mr Howell, Mr Klinker, Mr de Koning, Mr Martens, Mr Mitchell and Mr Pisoni.

The opinion of the Legal Affairs Committee is attached to this report.

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The Committee on Agriculture hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement :

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on a proposal from the Commission of the European Communities to the Council for a regulation concerning the conclusion of an Agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States, and establishing the provisions for its application

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (COM(77) 119 final),
- having been consulted by the Council pursuant to Article 43 of the EEC Treaty (Doc. 52/77),
- having regard to the report of the Committee on Agriculture and the opinion of the Committee on Legal Affairs (Doc. 110 /77),
- having regard to the communication from the Commission of the European Communities to the Council on a future external fisheries policy and an internal fisheries system (COM(76) 500 final),
- having regard to the proposal from the Commission of the European Communities to the Council for a regulation establishing a Community system for the conservation and management of fishery resources<sup>1</sup>, and the report by Mr Kofoed (Doc. 474/76),
- having regard to the United Nations Third Conference on the Law of the Sea,
- having regard to the serious depletion of fish stocks and the need to encourage the rational use of the biological resources of the sea,
- having regard to the fact that the basis of fishing policy must be the establishment of scientifically derived quotas and controlled fishing zones managed by the coastal state or states,

1. Approves the Commission's proposal subject to the following reservations and comments;
2. Insists that this agreement in no way be considered as a model for future agreements on fishing concluded between the Community and Third States;

<sup>1</sup> O.J. No C 255, 28.10.1976, p. 3

3. Expresses deepest concern at the manner in which the United States Congress seeks to impose a pre-established agreement upon the Community without consideration to the Community's special interest and its contribution to the improvement of fishing resources;

4. Believes that the Community should seek as soon as possible or at the latest at the time of the re-examination provided for two years after the entry into force of the Agreement, to include provisions for:

- closer consultation between the Community and the United States, particularly with regard to levels of quotas and by species and their allocation between Member States;

- and the examination and settlement of disputes;

And insists furthermore that the overall trade relationships with the United States should be taken into account at the time of such a re-examination of the Agreement.

5. Expresses concern at the size of the fee required by the United States Government for permits, i.e. 3.5% of the value of the catch on the American market plus a fixed sum, which is equivalent to about 5% for each vessel.

6. Considers that the Agreement should in no way prejudice the position to be adopted by the Community at the United Nations Law of the Sea Conference, and notes that the Agreement shall be re-examined at the time of the conclusion of a multi-lateral treaty resulting from that Conference;

7. Urges once more the Council to adopt measures to establish an effective structural policy for the deep-sea fishing sector;

8. Requests the Commission to incorporate the proposed amendments in its proposals to the Council, pursuant to Article 149, second paragraph, of the EEC Treaty.

Proposal from the Commission of the European Communities to the Council for a regulation concerning the conclusion of an Agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States, and establishing the provisions for its application

Preamble, recitals and Articles 1 to 6 unchanged

Article 7

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion on such measures within a time limit to be set by the chairman according to the urgency of the questions under consideration. An opinion shall be adopted by a majority of 41 votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month.

Article 7

Unchanged

Unchanged

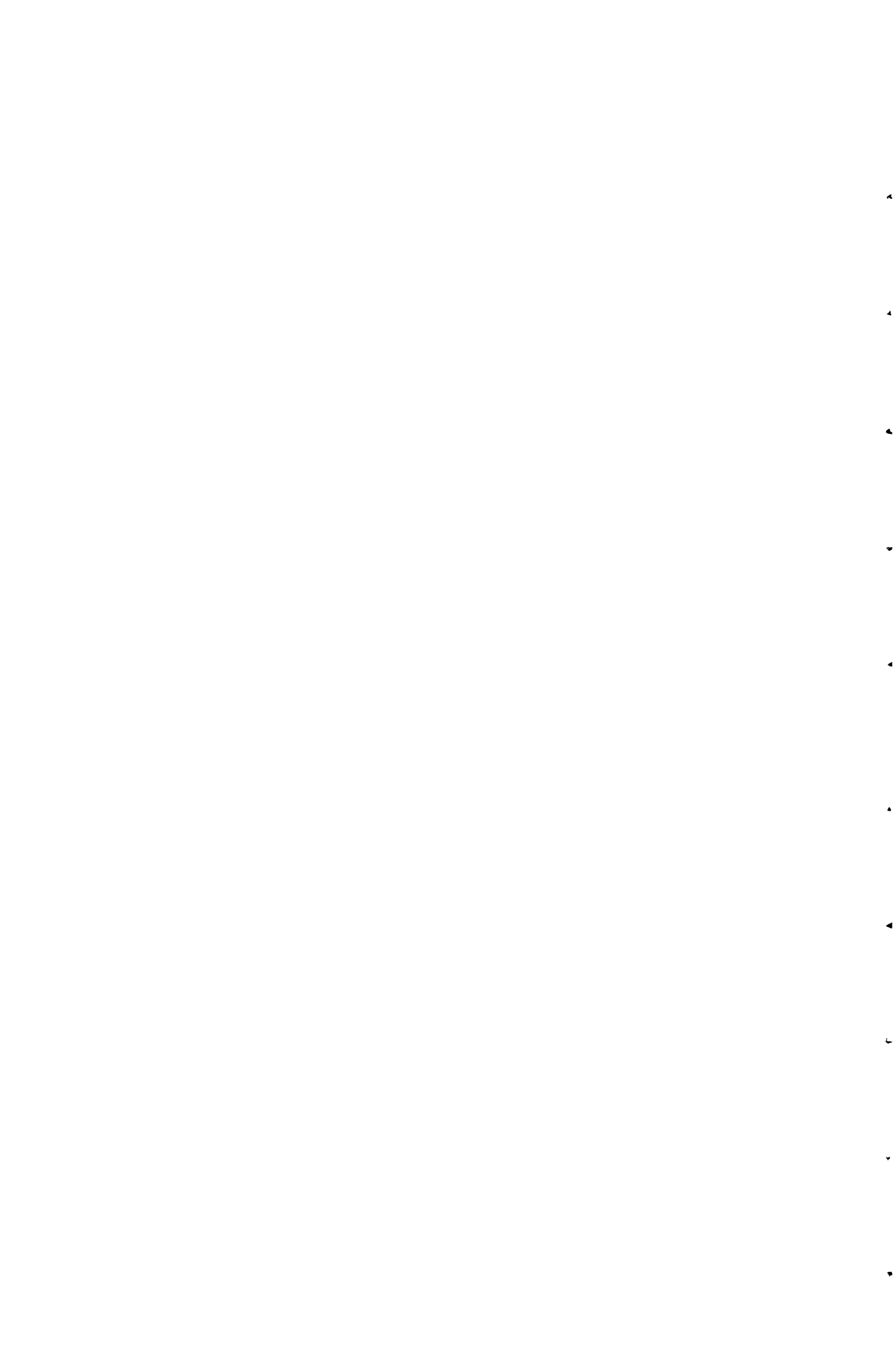
3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month, after consulting the European Parliament.

4. The Commission shall present an annual report to the European Parliament and to the Council on the implementation of the Agreement with the United States.

Articles 8 and 9 unchanged

<sup>1</sup> For full text see COM (77) 119 final





EXPLANATORY STATEMENTThe purpose of the Commission's proposal

1. The purpose of the Commission's proposal is to provide for the conclusion and the implementation of an agreement between the Community and the United States of America, concerning fisheries off the coast of the United States, which was signed on 15 February 1977 and for which the United States completed its internal procedures on 4 March 1977.

200 mile economic zones and their implications for the Community's external fisheries policies

2. The Third Session of the Law of the Sea Conference gave extensive recognition to the concept of a 200 mile economic zone in which, according to Article 44 of the Single Negotiating Text, the coastal state would have :

- i) sovereign rights for the exploration and exploitation of natural resources;
- ii) exclusive jurisdiction over scientific research;
- iii) jurisdiction over the preservation of the marine environment;
- iv) and a special interest and responsibility beyond 200 miles off the coastal state of origin for anadromous species of fish (such as salmon).

Following the failure of the Fourth and Fifth Sessions of the Third Conference to reach final agreement, despite an emerging consensus, a number of states began to take unilateral decisions to create 200 mile economic zones (United States, Canada, Mexico, Morocco, Iceland, Norway, Russia, China and Japan) and more than a hundred nations have expressed their support for the concept.

Consequently, the Council agreed that Member States should take concerted action to establish, from 1 January 1977, Community fishing zone of 200 miles in the North Sea and the Atlantic.

The Commission was instructed to open negotiations with Third Countries affected by this decision with a view to concluding framework agreements on the general conditions governing access to Community fish resources, and to govern the access of Community fishermen to the zones of Third Countries.

3. Clearly the course of negotiations will be greatly influenced by the fish resources in the jurisdiction of each state and the pattern of fishing within and between the respective fishing zones.

There are three main groups of states with which the Community must negotiate :

- (a) those with whom the balance of interest is equal:

Norway  
Faeroes  
Canada  
Sweden  
Yugoslavia

With these countries it should be possible to reach rapid agreement on reciprocal fishing quotas, and joint stock conservation measures;

- (b) those countries which are the interested parties:

USSR  
East Germany  
Poland  
Spain  
Portugal

Negotiations will concentrate mainly on ensuring that the Community zone is respected;

- (c) those countries with whom the Community is the interested partner:

USA

In negotiations the Community must seek to maintain fishing access. The Community has substantial fishing interests along the American coasts, concentrated on the Atlantic. A substantial proportion of the Community high seas fleet has been constructed and equipped for the type of fishing practised in these zones;

The Community's negotiating position is clearly a weak one, since there is virtually no American fishing in the European waters, though there is an American interest in shrimp fishing off Guyana. Clearly there is a limited base for reciprocity, apart from the Community's declared intention to establish an effective fishing conservation policy.

4. The agreement with the United States is the first of a series of framework agreements on which the European Parliament is to be consulted , and has particular features which have been accentuated by the position adopted by the United States in negotiating with Third Countries.

#### The U.S. 200 mile zone and Community fishing

5. In view of this situation it is likely that in American waters the Community must accept a considerable reduction in its fishing activities, which will be confined to the exploitation of surpluses whose allocation to each state signatory to agreements is to be determined periodically, on the basis of criteria set forth in the Fishing Conservation and Management Act signed by the President of the United States on 13 April 1976.

The Fishery Conservation and Management Act gives control over fishing in the American 200 mile zone to the Federal Government and to eight regional fishery management councils. The councils are charged with the responsibility for drawing up fishery management plans, to include both conservation and management measures applicable to both U.S. and foreign fishing vessels, and the determination of any surplus to be available for foreign fishing. The Secretary of State, in cooperation with the Secretary of Commerce, will determine the allocation among foreign countries of any surpluses available for foreign fishing, by fish stock, zone and type of vessel. The factors to be taken into account in the allocation of surpluses will include traditional fishing patterns and previous cooperation with the United States in fishery research and conservation.

The American Government has presented to each state wishing to reach an arrangement for fishing in American waters a standard set of provisions determined by the US Congress. The Community is in the position of being required to accept or to refuse these provisions. There is no room for negotiation.

Clearly the Community must express serious reservations for the procedure imposed by the United States.

6. There are, however, two points which should be made.

Firstly, the Community itself is negotiating agreements to grant access to Community waters to the fleets of Third Countries. Community waters present one of the richest fishing grounds in the Northern Hemisphere. It follows, consequently, that it is in the Community's interest to uphold the principle that the coastal state shall determine the conditions for management of its marine resources and access to Third Countries. The Community itself wishes to completely exclude the fleets of certain countries, such as Roumania and Bulgaria, and to severely limit entry of other Third Countries, such as Poland, and East Germany. If the Community were to refuse the provisions established by the United States, this might be interpreted as a denial of the right of the coastal state to determine exclusively policies for the management of marine resources within its 200 mile zone. This would be contrary to the policy the Community wishes to adopt and to the Community's own interest.

Secondly, the United States has applied this particular procedure to all Third Countries so that there is no discrimination between the Community and other states in the American waters.

7. While accepting the principle of the integrity of the management authority of the coastal state, your rapporteur wishes to point out that the Community has entered into negotiations worthy of the name with Third Countries wishing to fish Community waters and has not simply presented future parties with the choice of accepting or leaving a pre-established formula.

8. The Community is simply asked to accept the management authority of the United States over its coastal marine resources. There is no guarantee given in return that Community fishermen will be able to maintain fishing at a particular level for a fixed period, or even that they will be allowed to fish at all. This is made more evident when one examines the permit system envisaged.

#### The permit system

9. The framework agreement, to remain in force until July 1984, states (Article III, 2) that the United States Government shall determine each year, subject to adjustments to fish stock, situations, allocation between Member States' vessels of a portion of the total allowable catches not harvested by the United States fishing vessels. Further conditions may also be imposed, including closed zones, restrictions on species, number and types of vessels, gear and identification equipment.

Each year the Community shall accept or reject these conditions. In the event that the Community informs the United States of objections to specific conditions and restrictions, the two parties may consult and the Community may submit a revised application (Annex I, 6).

Consultation, limited to specific points rather than the overall American offer, appears to be limited in scope, without any institutionalisation through common bodies to settle differences or even examine specific problems at the technical level. Arbitration procedures have been excluded.

10. Your rapporteur has a particular comment on the manner in which the Community is to reach a decision on the conditions and restrictions determined by the United States for the issue of permits. Article 5 of the proposal states that the Commission shall inform the United States Government of the Community's decision according to the Management Committee procedure. Your rapporteur believes that such decisions should be made following consultation of the European Parliament.

11. Upon acceptance of conditions, the United States Government will grant non-transferable permits for individual vessels. The Commission shall submit applications from Member States and permits will be granted to Member States rather than to the Community as such. The Commission will have no say in the allocation between Member States. The allocation will be made largely on the basis of past performance, i.e. Germany, France and Italy will be the principal beneficiaries.

12. Due to the detailed obligations laid down in the Agreement, it is left largely to the Member States to ensure that vessels comply with the conditions laid down by the United States, and ensuring that the total allocation in respect of any fishery is not exceeded by its vessels. The Member States shall also be responsible for the collection of the necessary data on fishing activities authorized in American waters. Member States shall also be responsible for the investigation of alleged failure to comply with the provisions of the permits.

13. Your rapporteur wonders whether the preponderant role of the Member States in ensuring compliance with the conditions laid down for the issue of permits, in an agreement drawn up with the Community, will be sufficient to ensure that future fishing rights of certain Member States are not endangered by failures on the part of other Member States to meet these obligations.

14. Furthermore, according to Article 4(1), Member States shall penalise infringements by their nationals and vessels. This opens the possibility for a double penalisation, by the United States and by the Member State, and for discrepancies in penalties imposed by Member States.

15. It is clearly imperative that the Community seek to modify the Agreement, or its operation so as to provide for a greater role by the Commission in the allocation of permits, for consultation of the Community in decisions on the Community's part of the 'surplus', and for means for the settlement of disputes. In the short term it appears that progress can only be made on an informal basis of contacts between the Commission and responsible American authorities. In the medium term, the Agreement (Article XVI.2) provides for its review two years after entry into force.

#### Fees for permits

16. Article VI of the Agreement provides for the payment of fees for the granting of the annual permits. Your rapporteur understands that these have been established at a level of around 5% of the catch as valued on the American market.<sup>1</sup> This fee appears excessive and more in the nature of a deterrent to future Community fishing in American waters when taken in conjunction with the distance of these fishing grounds and the restrictions on catches.

#### Limits to the American jurisdiction

17. The agreement between the United States and the Community provides for an authority for the United States in matters of fishing management. There is, however, no geographical limit given to this authority. The proposal refers (Article 3(4)) to 'living resources subject to the fishing management authority

<sup>1</sup> This figure is composed of a 3.5% of the value of the catch, plus a fixed sum, which leads to a final figure of slightly less than 5%.

of the United States'. In addition, the Agreement refers, in Article II, to the United States fishery conservation zone, to all anadromous species, and to all living resources of the Continental shelf appertaining to the United States.

This particular phraseology provides for a jurisdiction for the United States which goes beyond the normally accepted 200 mile limit.

It should be noted, however, that the United Nations Law of the Sea Conference does provide for (under Article 44 of the Single Negotiating Text) a special interest and responsibility on the high seas of the coastal state or region of anadromous species of fish. There are other states who have claimed a special responsibility for fish stocks off their coasts no matter where they might be found.

There is a general principle at stake here which goes far beyond the proposed agreement, and which it can be argued is in the general Community interest.

#### Structural policy

18. Implications of the agreement with the United States and other countries such as Canada, Iceland and the Faroe Islands, in whose waters Community fishermen have traditionally fished, is that the deep sea fleets will have to be considerably reduced in number and the Community fishing fleet as a whole reconverted to middle and inshore fishing zones.

It is therefore essential that the Council adopt the Commission's proposal for a regulation establishing a Community system for the conservation and management of fishery resources<sup>1</sup>.

#### The proposed agreement and the United Nations Conference on the Law of the Sea

19. Your rapporteur welcomes the fact that the proposed agreement states that it shall be subject to review upon conclusion of a multi-lateral treaty resulting from the United Nations Conference on the Law of the Sea (Article XVI) and that nothing contained in the agreement shall affect or prejudice the views of either party on questions of the law of the sea (Article XV), though there is a rider "for purposes other than the conservation and management of fisheries as provided for in this Agreement", against which your rapporteur would place a question mark.

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<sup>1</sup> Doc. 373/76

## Conclusions

20. The Third Conference on the Law of the Sea has given recognition to the concept of a 200 mile economic zone, including sovereign rights for the exploitation of natural resources. Following the failure of the Fourth and Fifth Sessions of the Conference to reach a final agreement, a number of states began to take unilateral decisions to create 200 mile zones, including the United States, Canada, Mexico, Morocco, Iceland, Norway, Russia and China.

Consequently, the Council agreed that Member States should take concerted action to establish, from 1 January 1977, a Community fishing zone of 200 miles in the North Sea and the Atlantic.

The Commission was instructed to open negotiations with Third Countries affected by this decision. The Commission is now holding negotiations with a number of countries in order to arrive at framework agreements to govern the right of entry of Third Countries' fishing fleets into Community waters, and to obtain reciprocal fishing rights, where appropriate, for Community fishermen.

The Community's action is based on the principle that within the Community 200 mile fishing zone, the Community has exclusive management authority, which implies that it is for the Community to decide the conditions for the entry of Third Countries, even while taking into account the need to minimise economic dislocation in cases where vessels have habitually fished Community waters. This principle of the exclusive management authority of the Community is clearly in the interests of Community fishermen.

21. The European Parliament is now called upon to give its opinion on a regulation for the conclusion of an agreement with the United States to establish the conditions governing the access of Community fishermen to United States waters. This is the first of a number of agreements which the Community must conclude.

It is unfortunate in a number of ways that this is the first agreement to come before the European Parliament, since it contains a number of very particular features which result partially from the fact that the Community has very limited reciprocal fishing rights to grant to the Americans, but mainly due to the terms laid down by the US Congress.

Negotiating with Third Countries wishing to fish in Community waters, the Community has taken into account the particular interest of each country, their traditional fishing patterns, and their past willingness to cooperate in conservation measures. Each agreement reflects the long and detailed negotiations undertaken by the Commission with each future partner.

In the case of the agreement with the United States, however, the American Government has sought to impose a pre-established 'model' agreement on each country requesting access to American waters, including the Community. There has been little margin of manoeuvre for negotiation. The Community must accept or reject the American offer as laid down by the United States Fishery Conservation and Management Act of 1976.

In these conditions, the Committee on Agriculture believes there is no alternative to accepting the proposed agreement, while expressing the deepest concern at the American position and insisting that this agreement shall not be taken as a model for future agreements concluded with Third Countries.

22. The Committee on Agriculture would like to point out at the same time a number of points of particular concern.

There is no express provision included in the agreement for consultation on the catch allocation to be granted to the Community each year, nor for a Community voice in the final allocation, between Member States, of the permits required for each vessel wishing to fish in American waters. It is the American Government in the last analysis alone which will be responsible for the allocation of those permits.

23. Furthermore, the Committee is concerned at the level of the fee required for the permit, which, at 5% of the value of the catch in American terms, appears to be excessive.

24. The Committee on Agriculture requests that as soon as possible or at the latest at the time laid down for the re-examination of the agreement, i.e. two years after its entry into force, the agreement be modified so as to allow for greater consultation between the Community and the United States on the level of the Community's allocation, the allocation of permits between Member States, and on the settlement of disputes.

It is important that the overall trade relations with the United States should be taken fully into account in the course of such negotiations with the responsible American authority.

25. The agreement is to remain in force until 1984. Each year, however, the United States shall present the conditions under which Community fishermen may be granted access. The Commission shall then, by the Management Committee procedure, inform the United States Government of its acceptance or rejection of those conditions. The Committee on Agriculture believes that it would be appropriate, on this particularly important point, for the European Parliament to be consulted.

26. Finally, your rapporteur would like to insist that the proposed agreement should in no way prejudice the Community's position at the United Nations Conference on the Law of the Sea.



ALLOCATIONS<sup>1</sup> ESTABLISHED FEBRUARY 1977 UNDER FISHERY  
CONSERVATION AND MANAGEMENT ACT  
ATLANTIC COAST

(metric tonnes)

Poland	36,560
Japan	21,460
GDR	22,230
Soviet Union	167,880
EEC	
Germany	3,325
France	1,500
Italy	2,620

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<sup>1</sup> Figures are given for a number of countries only. Other states granted allocations include Bulgaria, Romania, Spain, ROK and Taiwan. Allocations granted in the Pacific are substantially higher.

Catches taken during January and February 1977 will be subtracted from these allocations.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr M. BANGEMANN

By letter of 7 April 1977 the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal for a Council regulation concerning the conclusion of an agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States, and establishing the provisions for its application.

By decision of 13 April 1977 the Bureau referred this proposal for a regulation to the Committee on Agriculture as the committee responsible and to the Legal Affairs Committee for its opinion.

At its meeting of 25 April 1977 the Legal Affairs Committee appointed Mr Bangemann draftsman.

The Legal Affairs Committee considered this opinion at its meeting of 9 May 1977 and adopted it unanimously.

Present: Sir Derek Walker-Smith, chairman; Mr Bangemann, draftsman; Mr Ajello (deputizing for Mr Zagari), Mr Broeksz, Mr Calewaert, Mr Fletcher-Cooke, Mr Hoffman (deputizing for Lord Ardwick), Mr Hougardy (deputizing for Mr Pianta), Mr Kunz, Mr Lezzi (deputizing for Sir Geoffrey de Freitas), Lord Murray of Gravesend, Mr K. Nielsen (deputizing for Mr Bayerl) and Mr Schwabe (deputizing for Mr Schmidt).

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## I. INTRODUCTION

1. On 1 March 1977 the United States of America unilaterally extended its inshore fishing limit from 12 to 200 miles<sup>1</sup>.

In its communication to the Council of 23 September 1976<sup>2</sup>, the Commission pointed out that:

- 'the Community has substantial fishing interests along the American coasts, until now concentrated on the Atlantic. It seems important to maintain the fishing activities of a substantial proportion of the Community high seas fleet, which was constructed and equipped for the type of fishing practised in these zones;
- since the Community is not in a position to offer any concrete reciprocal terms, it must therefore without delay seek to conclude a long-term outline arrangement similar to those concluded by other non-member countries in the same situation.'

2. As from 1 March 1977 fishing by foreign vessels within the 200-mile limit established on that date has been made subject by the American authorities to the issue of a permit, the conditions of which are to be laid down in an outline agreement previously concluded at governmental level with the state concerned.

Under the new regulations, activities will essentially be confined to the exploitation of surpluses whose allocation to each state signatory to an agreement will be determined periodically on the basis of criteria set forth in the Act for the Conservation and Management of Resources of 13 April 1976.

3. The present proposal for a Council regulation concerns the conclusion between the European Economic Community and the United States of America of an agreement designed to regulate fishing activities in the United States's fisheries conservation zone by vessels belonging to the Member States of the Communities. This agreement will enter into force once the requisite internal procedures have been adopted by the two parties concerned.

It is worth pointing out that the agreement in question is the first to be concluded between the Community as such and the United States and that it is the first bilateral fisheries agreement between the Community and a third country.

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<sup>1</sup> This unilateral measure dates from the signing of the '200-mile Bill' by President Ford on 13 April 1976

<sup>2</sup> Doc. COM(76) 500 final, pp. 9 and 10

## II. LEGAL BASIS

4. The Commission considers that an adequate legal basis for the proposal in question is provided by Article 43 of the EEC Treaty, i.e. in a clause which specifically relates to the common agricultural policy.

5. The Court of Justice of the European Communities explicitly ruled in one of its judgments<sup>1</sup> that the Community had the authority to enter into and discharge commitments towards third countries whenever, for the purpose of implementing a common policy envisaged by the Treaty - as in the case of the common agricultural policy - it adopted provisions laying down common rules, irrespective of the form which these might take.

This legal ruling has been confirmed by a recent judgment of the Court<sup>2</sup>, to which the Commission itself expressly refers. Point 10 of this judgment reads:

'To establish in a particular case whether the Community has authority to enter into international commitments, regard must be had to the whole scheme of Community law no less than to its substantive provisions. Such authority arises not only from an express conferment by the Treaty, but may equally flow implicitly from other provisions of the Treaty, from the Act of Accession and from measures adopted, within the framework of those provisions, by the Community Institutions.'

6. Since, pursuant to Article 38 of the EEC Treaty, fishery products form an integral part of the common agricultural market, Article 43 may be considered an adequate legal basis even without reference to other Treaty provisions empowering the Community to enter into commitments governed by international law.

## III. PROPOSAL FOR A REGULATION

7. For the purposes of the present opinion, the key provisions of the proposal for a regulation are those which relate to the implementation of the agreement between the European Economic Community and the United States of America.

8. Particular importance attaches to Article 3, under which nationals and fishing vessels of the Member States are prohibited from engaging in fishing activities in the special zones over which the United States exercises management authority, except where they are specifically authorized to do so. Vessels obtaining the necessary authorization must comply with the regulations governing the permits issued under the terms of the agreement and with the relevant US legislation.

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<sup>1</sup> See Case 22/70 (AETR), (1971) ECR, p. 274

<sup>2</sup> See Joined Cases 3, 4 and 6/76, (1976) ECR, p. 1310

9. Under Article 3(2) the pursuit of fishing activities by nationals and vessels of the Member States off the United States coast is further made subject to the observance of a number of special conditions. These include an obligation on all fishing vessels to display prominently their fishing permits, the procedures to be followed by the United States authorities for the purpose of identifying and inspecting fishing vessels and an obligation on all vessels to compile data and transmit them to their Member States in sufficiently good time to enable them to submit to the United States authorities, on behalf of the Community, the reports prescribed by the agreement.

As the committee responsible, the Committee on Agriculture will have to decide whether or not the conditions governing the authorization to fish in the waters subject to United States jurisdiction are unduly harsh on Community fishermen. The provisions of Article 3 would suggest that the Community lacked sufficient bargaining power in the negotiations, for it has in practice adhered to a standard agreement drawn up in advance by the United States Government for all third countries without exception.

10. Under Article 4(2) each Member State concerned is to be responsible for data collection and statistical reporting in respect of those of its vessels authorized to fish off the coast of the United States. Furthermore, each Member State is to be responsible, on behalf of the Community, for ensuring that the authorized catch quotas are not exceeded by its vessels.

Article 4(3) provides that if the United States authorities report that a vessel has failed to comply with the provisions of the permit issued or with the regulations in force in the United States, the Member State concerned must carry out the necessary investigations and inform the Commission of the results thereof and of any other action taken.

11. In addition to being responsible for the activities carried out by their respective fishing fleets in the waters to which the agreement relates, the Member States are required, under Article 4(1) of the proposal for a regulation, to take 'any appropriate measures' to penalize infringements of the provisions of Article 3. In accordance with Community procedures, each Member State must notify the Commission of the measures it has taken to this effect within one month of their implementation.

12. This provision is similar to Article 7 of Council Regulation (EEC) No. 350/77, with the difference that, while the said Article 7 stipulates that Member States are to take, as far as is possible, all necessary 'steps' to ensure compliance with the provisions of the Regulation, within the maritime waters under their sovereignty or jurisdiction, Article 4 of the proposal under consideration requires the Member States to take 'any appropriate measures' to penalize infringements of Article 3, i.e. events taking place outside their territorial waters.

Since it will be up to the Member States to impose the necessary penalties for breaches of Article 3, the possibility cannot be ruled out of different treatment being applied to vessels belonging to different Member States, even though guilty of the same infringement<sup>1</sup>. In accordance with customary international practice, Member States can use warships to carry out this control function.

13. Article 5 covers the administrative and, to some extent, the legal aspects of the issue of permits to vessels wishing to engage in fishing activities in the waters covered by the agreement.

The Commission is required to act on two levels: on the Community level, it must notify the Member States of the procedures to be followed for obtaining permits; on the level of relations with a third country, it must submit completed application forms to the United States Government.

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<sup>1</sup> Article 11 of the proposal for a Council regulation (EEC) of 8 October 1976 establishing a Community system for the conservation and management of fishery resources, empowers the Council to establish a system of sanctions to be applied in the event of an infringement of the regulation's provisions. See OJ No. C 255, 28.10.76, p.6

The Commission is also required to notify the United States Government of the acceptance or the rejection by the Community of the conditions and restrictions determined by the US Government in connection with the issue of permits.

14. The proposal nowhere specifies the procedures to be followed for settling disputes that may arise in connection with the conditions laid down for the issue of permits. The absence of appropriate provisions in this respect suggests that the Community has no means at its disposal, at least on the legal level, of appealing against the imposition of unreasonably harsh conditions on its own fishing fleets. Only two courses of action are open to it: it can either accept the conditions and restrictions imposed by the US Government, or else it can reject them.

15. The Committee on Agriculture should pay particularly close attention to this aspect of the proposed regulation, with a view to establishing whether additional provisions are necessary to compensate for the prejudice Community fishermen are liable to suffer if the Community finds it necessary to reject the conditions imposed.

16. Articles 6, 7 and 8 contain provisions which normally appear in Community regulations governing economic sectors relevant to agriculture, i.e. they relate to the management committee procedure, which is also to be applied in connection with the implementation of this first agreement between the Community and a third country on the protection of fishery resources<sup>1</sup>.

17. The management committee procedure, which excludes consultation of Parliament, is to be applied in particular in respect of the decisions to submit to the United States Government applications completed in accordance with the procedures communicated to the Member States, and in respect of the decisions taken by the Community to accept or reject the conditions or restrictions imposed by the US Government in connection with the issue of permits.

The provisions for the implementation of the agreement contained in Article 5(2) and (3) of the proposal are not sufficiently clear as to the procedures to be followed by the Commission and the criteria on which it is to base the decisions referred to above.

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<sup>1</sup> Articles 6, 7 and 8 of the proposal correspond to Articles 14, 15 and 16 of the proposal for a Council Regulation (EEC) establishing a Community system for the conservation and management of fishery resources. See OJ No. C 255, 28.10.76, p. 6 et seq.



#### IV. CONCLUSIONS

18. From the legal point of view, the following comments may be made on the proposal for a Council regulation concerning the conclusion of an agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States, and establishing the provisions for its application:

- (a) the legal basis is sufficient, having regard to the ruling of the Court of Justice of the European Communities on the authority of the Community to enter into international commitments notwithstanding the absence in the Treaty of provisions conferring such authority upon it<sup>1</sup>;
- (b) the provisions relating to the implementation of the agreement between the Community and the United States show that in practice the Community has adhered to a standard agreement drawn up in advance by the US Government for all countries;
- (c) the Member States of the Community, in addition to being responsible for the activities of their respective fishing vessels in the waters covered by the agreement, are required to take 'any appropriate measures' to penalize infringements of the agreement or of the relevant laws in force in the United States, i.e. they are required to penalize events occurring outside their territorial waters;
- (d) the proposal contains no provision designed to compensate for the prejudice which Community fishermen would suffer if the Community found it necessary to reject the conditions imposed for the issue of permits;
- (e) the management committee procedure, which excludes consultation of Parliament, applies in particular to the implementing provisions referred to in Article 5, which need to be more clearly defined.

19. As regards the management committee procedure the Legal Affairs Committee proposes, in order to ensure the participation of the European Parliament, that Article 7(2) and (3) be worded as follows:

- '1. Unchanged
2. After consulting the European Parliament, the representative of the Commission shall submit a draft of the measures to be taken. (Rest unchanged).
3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

After consulting the European Parliament, the Council, acting by a qualified majority may take a different decision within one month.<sup>2</sup>

<sup>1</sup> See also Opinion 1/76 of the Court of Justice of the European Communities of 26 April 1977

<sup>2</sup> Changes underlined.

20. The Legal Affairs Committee, having considered the abovementioned aspects of the proposal for a regulation and having regard to the importance attaching to the early conclusion of an agreement between the Community and the United States which regulates the activities of the Community's deep-sea fleet in the 200-mile zone established by the United States on 1 March 1977, hereby delivers a favourable opinion on the proposed regulation.