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European Union

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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2018) 454 final ANNEX

Subject: ANNEX to the Proposal for a COUNCIL DECISION on the signing, on
behalf of the European Union, of the Agreement to prevent unregulated
high seas Fisheries in the Central Arctic Ocean

Delegations will find attached document COM(2018) 454 final ANNEX.

Encl.: COM(2018) 454 final ANNEX



Brussels, 12.6.2018
COM(2018) 454 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

**on the signing, on behalf of the European Union, of the Agreement to prevent
unregulated high seas Fisheries in the Central Arctic Ocean**

ANNEX

AGREEMENT TO PREVENT UNREGULATED HIGH SEAS FISHERIES IN THE CENTRAL ARCTIC OCEAN

The Parties to this Agreement,

Recognizing that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-round basis, which has made fishing in those waters impossible, but that ice coverage in that area has diminished in recent years;

Acknowledging that, while the central Arctic Ocean ecosystems have been relatively unexposed to human activities, those ecosystems are changing due to climate change and other phenomena, and that the effects of these changes are not well understood;

Recognizing the crucial role of healthy and sustainable marine ecosystems and fisheries for food and nutrition;

Recognizing the special responsibilities and special interests of the central Arctic Ocean coastal States in relation to the conservation and sustainable management of fish stocks in the central Arctic Ocean;

Noting in this regard the initiative of the central Arctic Ocean coastal States as reflected in the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean signed on 16 July 2015;

Recalling the principles and provisions of treaties and other international instruments relating to marine fisheries that already apply to the high seas portion of the central Arctic Ocean, including those contained in:

the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”);

the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (“the 1995 Agreement”); and

the 1995 Code of Conduct for Responsible Fisheries and other relevant instruments adopted by the Food and Agriculture Organization of the United Nations;

Underlining the importance of ensuring cooperation and coordination between the Parties and the North-East Atlantic Fisheries Commission, which has competence to adopt conservation and management measures in part of the high seas portion of the central Arctic Ocean, and other relevant mechanisms for fisheries management that are established and operated in accordance with international law, as well as with relevant international bodies and programs;

Believing that commercial fishing is unlikely to become viable in the high seas portion of the central Arctic Ocean in the near future and that it is therefore premature under current circumstances to establish any additional regional or subregional fisheries management organizations or arrangements for the high seas portion of the central Arctic Ocean;

Desiring, consistent with the precautionary approach, to prevent the start of unregulated fishing in the high seas portion of the central Arctic Ocean while keeping under regular review the need for additional conservation and management measures;

Recalling the 2007 United Nations Declaration on the Rights of Indigenous Peoples;

Recognizing the interests of Arctic residents, including Arctic indigenous peoples, in the long-term conservation and sustainable use of living marine resources and in healthy marine ecosystems in the Arctic Ocean and underlining the importance of involving them and their communities; and

Desiring to promote the use of both scientific knowledge and indigenous and local knowledge of the living marine resources of the Arctic Ocean and the ecosystems in which they occur as a basis for fisheries conservation and management in the high seas portion of the central Arctic Ocean,

Have agreed as follows:

Article 1

Use of Terms

For the purposes of this Agreement:

- (a) “Agreement Area” means the single high seas portion of the central Arctic Ocean that is surrounded by waters within which Canada, the Kingdom of

Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America exercise fisheries jurisdiction;

- (b) “fish” means species of fish, molluscs and crustaceans except those belonging to sedentary species as defined in Article 77 of the Convention;
- (c) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity that can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (d) “commercial fishing” means fishing for commercial purposes;
- (e) “exploratory fishing” means fishing for the purpose of assessing the sustainability and feasibility of future commercial fisheries by contributing to scientific data relating to such fisheries;
- (f) “vessel” means any vessel used for, equipped to be used for, or intended to be used for fishing.

Article 2

Objective of this Agreement

The objective of this Agreement is to prevent unregulated fishing in the high seas portion of the central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks.

Article 3

Interim Conservation and Management Measures Concerning Fishing

1. Each Party shall authorize vessels entitled to fly its flag to conduct commercial fishing in the Agreement Area only pursuant to:
 - (a) conservation and management measures for the sustainable management of fish stocks adopted by one or more regional or subregional fisheries management organizations or arrangements, that have been or may be established and are operated in accordance with international law to manage such fishing in accordance with recognized international standards, or

- (b) interim conservation and management measures that may be established by the Parties pursuant to Article 5, paragraph 1(c)(ii).
2. The Parties are encouraged to conduct scientific research under the framework of the Joint Program of Scientific Research and Monitoring established pursuant to Article 4 and under their respective national scientific programs.
 3. A Party may authorize vessels entitled to fly its flag to carry out exploratory fishing in the Agreement Area only pursuant to conservation and management measures established by the Parties on the basis of Article 5, paragraph 1(d).
 4. The Parties shall ensure that their scientific research activities involving the catching of fish in the Agreement Area do not undermine the prevention of unregulated commercial and exploratory fishing and the protection of healthy marine ecosystems. The Parties are encouraged to inform each other about their plans for authorizing such scientific research activities.
 5. The Parties shall ensure compliance with the interim measures established by this Article, and with any additional or different interim measures they may establish pursuant to Article 5, paragraph 1(c).
 6. Consistent with Article 7 of the 1995 Agreement, coastal States Parties and other Parties shall cooperate to ensure the compatibility of conservation and management measures for fish stocks that occur in areas both within and beyond national jurisdiction in the central Arctic Ocean in order to ensure conservation and management of those stocks in their entirety.
 7. Other than as provided in paragraph 4 above, nothing in this Agreement shall be interpreted to restrict the entitlements of Parties in relation to marine scientific research as reflected in the Convention.

Article 4

Joint Program of Scientific Research and Monitoring

1. The Parties shall facilitate cooperation in scientific activities with the goal of increasing knowledge of the living marine resources of the central Arctic Ocean and the ecosystems in which they occur.
2. The Parties agree to establish, within two years of the entry into force of this Agreement, a Joint Program of Scientific Research and Monitoring with the aim of improving their understanding of the ecosystems of the Agreement Area and, in particular, of determining whether fish stocks might exist in the Agreement Area now or in the future that could be harvested on a sustainable basis and the possible impacts of such fisheries on the ecosystems of the Agreement Area.

3. The Parties shall guide the development, coordination and implementation of the Joint Program of Scientific Research and Monitoring.
4. The Parties shall ensure that the Joint Program of Scientific Research and Monitoring takes into account the work of relevant scientific and technical organizations, bodies and programs, as well as indigenous and local knowledge.
5. As part of the Joint Program of Scientific Research and Monitoring, the Parties shall adopt, within two years of the entry into force of this Agreement, a data sharing protocol and shall share relevant data, directly or through relevant scientific and technical organizations, bodies and programs, in accordance with that protocol.
6. The Parties shall hold joint scientific meetings, in person or otherwise, at least every two years and at least two months in advance of the meetings of the Parties that take place pursuant to Article 5 to present the results of their research, to review the best available scientific information, and to provide timely scientific advice to meetings of the Parties. The Parties shall adopt, within two years of the entry into force of this Agreement, terms of reference and other procedures for the functioning of the joint scientific meetings.

Article 5

Review and Further Implementation

1. The Parties shall meet every two years or more frequently if they so decide. During their meetings, the Parties shall, *inter alia*:
 - (a) review implementation of this Agreement and, when appropriate, consider any issues relating to the duration of this Agreement in accordance with Article 13, paragraph 2;
 - (b) review all available scientific information developed through the Joint Program of Scientific Research and Monitoring, from the national scientific programs, and from any other relevant sources, including indigenous and local knowledge;
 - (c) on the basis of the scientific information derived from the Joint Program of Scientific Research and Monitoring, from the national scientific programs, and from other relevant sources, and taking into account relevant fisheries management and ecosystem considerations, including the precautionary approach and potential adverse impacts of fishing on the ecosystems, consider, *inter alia*, whether the distribution, migration and abundance of fish in the Agreement Area would support a sustainable commercial fishery and, on that basis, determine:
 - (i) whether to commence negotiations to establish one or more additional regional or subregional fisheries management organizations or arrangements for managing fishing in the Agreement Area; and

- (ii) whether, once negotiations have commenced pursuant to subparagraph (i) above and once the Parties have agreed on mechanisms to ensure the sustainability of fish stocks, to establish additional or different interim conservation and management measures in respect of those stocks in the Agreement Area.
- (d) establish, within three years of the entry into force of this Agreement, conservation and management measures for exploratory fishing in the Agreement Area. The Parties may amend such measures from time to time. These measures shall provide, *inter alia*, that:
- (i) exploratory fishing shall not undermine the objective of this Agreement;
 - (ii) exploratory fishing shall be limited in duration, scope and scale to minimize impacts on fish stocks and ecosystems and shall be subject to standard requirements set forth in the data sharing protocol adopted in accordance with Article 4, paragraph 5;
 - (iii) a Party may authorize exploratory fishing only on the basis of sound scientific research and when it is consistent with the Joint Program of Scientific Research and Monitoring and its own national scientific program(s);
 - (iv) a Party may authorize exploratory fishing only after it has notified the other Parties of its plans for such fishing and it has provided other Parties an opportunity to comment on those plans; and
 - (v) a Party must adequately monitor any exploratory fishing that it has authorized and report the results of such fishing to the other Parties.
2. To promote implementation of this Agreement, including with respect to the Joint Program of Scientific Research and Monitoring and other activities undertaken pursuant to Article 4, the Parties may form committees or similar bodies in which representatives of Arctic communities, including Arctic indigenous peoples, may participate.

Article 6

Decision-Making

1. Decisions of the Parties on questions of procedure shall be taken by a majority of the Parties casting affirmative or negative votes.
2. Decisions of the Parties on questions of substance shall be taken by consensus. For the purpose of this Agreement, “consensus” means the absence of any formal objection made at the time the decision was taken.

3. A question shall be deemed to be of substance if any Party considers it to be of substance.

Article 7

Dispute Settlement

The provisions relating to the settlement of disputes set forth in Part VIII of the 1995 Agreement apply, *mutatis mutandis*, to any dispute between Parties relating to the interpretation or application of this Agreement, whether or not they are also Parties to the 1995 Agreement.

Article 8

Non-Parties

1. The Parties shall encourage non-parties to this Agreement to take measures that are consistent with the provisions of this Agreement.
2. The Parties shall take measures consistent with international law to deter the activities of vessels entitled to fly the flags of non-parties that undermine the effective implementation of this Agreement.

Article 9

Signature

1. This Agreement shall be open for signature at [location] from [date] by Canada, the People's Republic of China, the Kingdom of Denmark in respect of the Faroe Islands and Greenland, Iceland, Japan, the Republic of Korea, the Kingdom of Norway, the Russian Federation, the United States of America and the European Union and shall remain open for signature for 12 months following that date.
2. For signatories to this Agreement, this Agreement shall remain open for ratification, acceptance or approval at any time.

Article 10

Accession

1. For the States listed in Article 9, paragraph 1 that have not signed this Agreement, and for the European Union if it has not signed this Agreement, this Agreement shall remain open for accession at any time.
2. After the entry into force of this Agreement, the Parties may invite other States with a real interest to accede to this Agreement.

Article 11

Entry into Force

1. This Agreement shall enter into force 30 days after the date of receipt by the depositary of all instruments of ratification, acceptance, or approval of, or accession to, this Agreement by those States and the European Union listed in Article 9, paragraph 1.
2. After entry into force of this Agreement, it shall enter into force for each State invited to accede pursuant to Article 10, paragraph 2 that has deposited an instrument of accession 30 days after the date of deposit of that instrument.

Article 12

Withdrawal

A Party may withdraw from this Agreement at any time by sending written notification of its withdrawal to the depositary through diplomatic channels, specifying the effective date of its withdrawal, which shall be at least six months after the date of notification. Withdrawal from this Agreement shall not affect its application among the remaining Parties or the duty of the withdrawing Party to fulfill any obligation in this Agreement to which it otherwise would be subject under international law independently of this Agreement.

Article 13

Duration of this Agreement

1. This Agreement shall remain in force for an initial period of 16 years following its entry into force.
2. Following the expiration of the initial period specified in paragraph 1 above, this Agreement shall remain in force for successive five-year extension period(s) unless any Party:

- (a) presents a formal objection to an extension of this Agreement at the last meeting of the Parties that takes place prior to expiration of the initial period or any subsequent extension period; or
 - (b) sends a formal objection to an extension to the depositary in writing no later than six months prior to the expiration of the respective period.
3. The Parties shall provide for an effective transition between this Agreement and any potential new agreement establishing an additional regional or subregional fisheries management organization or arrangement for managing fishing in the Agreement Area so as to safeguard healthy marine ecosystems and ensure the conservation and sustainable use of fish stocks in the Agreement Area.

Article 14

Relation to Other Agreements

1. The Parties recognize that they are and will continue to be bound by their obligations under relevant provisions of international law, including those reflected in the Convention and the 1995 Agreement, and recognize the importance of continuing to cooperate in fulfilling those obligations even in the event that this Agreement expires or is terminated in the absence of any agreement establishing an additional regional or subregional fisheries management organization or arrangement for managing fishing in the Agreement Area.
2. Nothing in this Agreement shall prejudice the positions of any Party with respect to its rights and obligations under international agreements and its positions with respect to any question relating to the law of the sea, including with respect to any position relating to the exercise of rights and jurisdiction in the Arctic Ocean.
3. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of any Party under relevant provisions of international law as reflected in the Convention or the 1995 Agreement, including the right to propose the commencement of negotiations on the establishment of one or more additional regional or subregional fisheries management organizations or arrangements for the Agreement Area.
4. This Agreement shall not alter the rights and obligations of any Party that arise from other agreements compatible with this Agreement and that do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement. This Agreement shall neither undermine nor conflict with the role and mandate of any existing international mechanism relating to fisheries management.

Article 15

Depositary

1. The Government of Canada shall be the depositary for this Agreement.
2. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.
3. The depositary shall inform all signatories and all Parties of the deposit of all instruments of ratification, acceptance, approval or accession and perform such other functions as are provided for in the 1969 Vienna Convention on the Law of Treaties.

Done at _____ on this _____ day of _____, 201X, in a single original, in the Chinese, English, French and Russian languages, each text being equally authentic.