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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 108 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2019/833 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation

Delegations will find attached document COM(2023) 108 final.

Encl.: COM(2023) 108 final



EUROPEAN
COMMISSION

Brussels, 3.3.2023
COM(2023) 108 final

2023/0056 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU) 2019/833 laying down conservation and enforcement
measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries
Organisation**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The main purpose of the proposal is to implement into Union law the conservation and enforcement measures adopted by the Northwest Atlantic Fisheries Organisation (NAFO) at its annual meeting in September 2022. NAFO is the regional fisheries management organisation responsible for managing fishery resources in the Northwest Atlantic under its purview. NAFO's conservation and management measures apply exclusively to the NAFO Regulatory Area, the high seas, defined as the area that lies beyond the area where coastal states exercise fisheries jurisdiction. The EU has been a Contracting Party to NAFO since 1979.

The NAFO Convention states that the conservation measures adopted by the NAFO Commission are binding (Articles XIV, VI.8 and VI.9) and that the Contracting Parties are required to implement them.

Regulation (EU) 2019/833 implemented into Union law the NAFO conservation and enforcement measures and was amended in 2021 and 2022 to implement the measures adopted by NAFO in 2019, 2020 and 2021. This proposal covers the amendments adopted by NAFO at its annual meeting in September 2022. Those amendments entered into force on 1 December 2022 and apply from that date.

• Consistency with existing provisions in the policy area

The proposal is consistent with Regulation (EU) 2019/833.

The proposal is in line with Part VI (external policy) of Regulation (EU) No 1380/2013 on the common fisheries policy, which provides that the Union conducts its external fisheries in accordance with its international obligations and bases the EU fishing activities on regional fisheries cooperation.

The proposal complements both Regulation (EU) 2017/2403 concerning the external fleet management, which provides that Union fishing vessels are subject to Regional Fisheries Management Organisations fishing authorisations, and Council Regulation (EC) No 1005/2008 concerning illegal unreported and unregulated fishing, which provides for the inclusion of the NAFO Illegal, Unreported and Unregulated (IUU) list into the Union IUU vessels list.

This proposal does not cover the EU's fishing opportunities decided by NAFO. Under Article 43(3) of the Treaty on the Functioning of the European Union (TFEU), it is the Council's prerogative to adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

• Consistency with other Union policies

The proposal is consistent with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 43(2) TFEU, as it sets out the provisions needed to pursue the objectives of the common fisheries policy.

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the exclusive competence of the Union (Article 3(1)(d) TFEU). The subsidiarity principle, therefore does not apply.

- **Proportionality**

The proposal will ensure that the EU's NAFO obligations are met, without going beyond what is necessary to achieve this objective.

- **Choice of the instrument**

The instrument chosen amends Regulation (EU) 2019/833.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not relevant.

- **Stakeholder consultations**

The purpose of this proposal is to amend Regulation (EU) 2019/833 by implementing into Union law the conservation and enforcement measures adopted at the NAFO annual meeting of September 2022. EU Member States national experts and industry representatives were consulted both during the run-up to the NAFO annual meeting at which these measures were adopted and during the NAFO negotiations.

- **Collection and use of expertise**

This proposal implements into Union law NAFO the conservation and enforcement measures that were adopted in accordance with the NAFO standing committees on scientific and control advice.

- **Impact assessment**

Not relevant. This proposal implements into Union law the NAFO conservation and enforcement measures that are binding on Contracting Parties directly applicable to Member States.

- **Regulatory fitness and simplification**

This proposal is not linked to regulatory fitness and simplification (REFIT).

- **Fundamental rights**

This proposal has no impact on the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal implements the conservation and enforcement measures adopted at the NAFO annual meeting of September 2022 concerning: (i) new duties of flag Member States related to the submission of research plans and vessels requirements for the participation in research activities; (ii) regulation of trial tow upon first entry into a Division on a fishing trip; (iii) adjustments for redfish 3M closures; (iv) the prohibition of landing, transshipment and retention on board of Greenland shark; and (v) the cross-listing of IUU vessels from other regional fisheries management organisations.

The proposal also delegates to the Commission powers to amend Regulation (EU) 2019/833 concerning the duties of Member States related to the submission of research plans and vessel requirements to carry out research activities, if NAFO amends such measures in the future. The prompt implementation of these provisions in Union law is necessary to put Union vessels on the same footing as vessels of other NAFO Contracting Parties in future fishing seasons.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2019/833 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) 2019/833 of the European Parliament and of the Council² implemented into Union law the most updated rules for conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (NAFO). This Regulation was subsequently amended in order to implement the NAFO measures adopted at its annual meetings in 2019, 2020 and 2021³.
- (2) The NAFO subsequently adopted at its 44th Annual Meeting in September 2022 a number of legally binding measures for the conservation of fishery resources under its purview as regards new duties of flag Member States related to the submission of research plans and vessel requirements to carry out research activities, the regulation of trial tow upon first entry into a Division on a fishing trip, adjustments for redfish 3M closures, prohibition of landing, transshipment and retention on board of Greenland shark and the cross-listing of illegal, unreported and unregulated (IUU) vessels from other regional fisheries management organisations.

¹ OJ C , , p. .

² Regulation (EU) 2019/833 of the European Parliament and of the Council of 20 May 2019 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation, amending Regulation (EU) 2016/1627, and repealing Council Regulations (EC) No 2115/2005 and (EC) 1386/2007 (OJ L 141, 28.5.2019, p. 1).

³ Regulation (EU) 2021/1231 of the European Parliament and of the Council 14 July 2021 amending Regulation (EU) 2019/833 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (OJ L 274, 30.7.2021, p. 32), Regulation (EU) 2022/2037 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) 2019/833 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (OJ L 275, 25.10.2022 p.11).

- (3) Those measures are addressed to the NAFO Contracting Parties and also contain obligations for operators. Following their entry into force on 1 December 2022, NAFO Conservation and Enforcement Measures (CEM) are binding on all NAFO Contracting Parties. As regards the European Union, they are to be implemented into Union law to the extent they are not already provided for by Union law.
- (4) Regulation (EU) 2019/833 should therefore be amended in order to implement these new NAFO measures.
- (5) Certain provisions of the CEM are likely to be amended at future NAFO Annual Meetings following the introduction of new measures in relation to fisheries research plans. In order to implement swiftly into Union law such future amendments to the CEM, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Member State duties related to the submission of research plans and vessel requirements to carry out research activities.
- (6) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (7) Regulation (EU) 2019/833 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2019/833

Regulation (EU) 2019/833 is hereby amended as follows:

- (1) In Article 4, paragraph (2) is replaced by the following:

“2. The flag Member State shall:

 - (a) by electronic transmission in the format prescribed in Annex II.C to the CEM referred to in point 5 of the Annex to this Regulation, and prior to the commencement of the research, notify the Commission of all research vessels entitled to fly its flag that are authorised to conduct research activities in the Regulatory Area;
 - (b) provide the Commission with a research plan for all vessels entitled to fly its flag that are authorised to conduct research activities in the Regulatory Area, no less than forty days in advance of the June NAFO Scientific Council meeting, in the cases of non-recurrent new surveys and research activities and where catches retained on board during research activities are intended for marketing. In other cases a research plan shall be provided no less than ten days prior to the commencement of the research;

⁴

OJ L 123, 12.5.2016, p. 1.

(c) ensure that a research plan of surveys conducted in the Regulatory Area targeting stocks subject to fishing opportunities shall contain at a minimum the following information:

- (i) vessel identification,
- (ii) purpose,
- (iii) summary of scientific methods or procedures,
- (iv) location and dates of the research activity,
- (v) the name of the principal investigator,
- (vi) whether any catches retained on board will be marketed,
- (vii) total estimated research catch of the survey target species and whether an observer with sufficient scientific expertise will be on board,
- (viii) information on when the research results will be presented to the NAFO Scientific Council,
- (ix) where relevant, any requests to derogate from the provisions in this point, and
- (x) where relevant, indication that the activity constitutes a non-recurrent new survey or research; and

(d) notify the Commission immediately of the commencement and termination of research activities by vessels temporarily employed in research, including during fishing trips in which both commercial and research activities take place.”

(2) In Article 4, paragraph (3) is replaced by the following:

“3. Vessels engaged in research shall:

- (a) keep on board a copy of the research plan and any changes thereof in the English language at all times, and
- (b) for surveys conducted in the Regulatory Area targeting stocks subject to fishing opportunities, stow catches taken in research activities separately with netting, plywood, boxes or other means from all other catches taken in fishing trips in which both commercial and research activities are carried out, and the location of the catches taken in research activities shall be indicated in the stowage plan.”

(3) In Article 4, paragraph (4) is replaced by the following:

“4. Unless otherwise supported by the opinion of the NAFO Scientific Council, research vessels conducting surveys conducted in the Regulatory Area targeting stocks subject to fishing opportunities and retaining on board catches obtained during such research activities with the purpose of marketing these catches shall:

- (a) comply with the recording and reporting requirements in Chapter V of this Regulation,
- (b) have an observer with sufficient expertise on board,
- (c) count these catches against the Member State’s relevant quota and fishing effort limitations set out in fishing opportunities.”

(4) In Article 4, paragraph (5) is replaced by the following:

“5. Unless otherwise provided in this Regulation or CEM, research vessels shall not be restricted by conservation and management measures pertaining to the taking of fish in the Regulatory Area, in particular, mesh size, size limits, closed areas and seasons.”

- (5) In Article 4, paragraph (6) is replaced by the following:

“6. The Commission shall forward the information notified by flag Member States in accordance with paragraph 2 to the NAFO Executive Secretary without delay.”

- (6) In Article 6, paragraph (1), point (e) is replaced by the following:

“(e) close its redfish fishery in Division 3M at 24:00 UTC of the day the accumulated reported catch is estimated to reach 100% of the TAC of redfish in Division 3M, as notified in accordance with paragraph 3;”

- (7) In Article 8, paragraph (5) is added:

“5. Upon its first entrance into a Division on a fishing trip, a vessel may undertake one trial tow for up to a maximum duration of 3 hours. If the stocks subjected to bycatch limits form the largest percentage, by weight, of the total resultant catch in the haul, this shall not be considered as a directed fishery for those stocks, and the vessel must immediately change position in accordance with provisions of paragraph 1(b). Vessels must identify any trial tow conducted in accordance with this paragraph and record in the fishing logbook the coordinates pertaining to the start and end locations of any trial tow conducted.”

- (8) In Article 12, paragraph (9) is replaced by the following:

“9. It shall be prohibited to conduct directed fishing for, retaining, transshipping, or landing part or whole of a Greenland shark (*Somniosus microcephalus*) in the Regulatory Area.”

- (9) In Article 44, point (c) is replaced by the following:

“(c) included in the IUU list of the Commission for the Conservation of Antarctic Marine Living Resources⁵, the Commission for the Conservation of Southern Bluefin Tuna,⁶ the Inter-American Tropical Tuna Commission⁷, the International Commission for the Conservation of Atlantic Tunas⁸, the Indian Ocean Tuna Commission,⁹ the General Fisheries Commission for the Mediterranean¹⁰, the North

⁵ The Convention on the Conservation of Antarctic Marine Living Resources drawn up in Canberra 20 May 1980 and entered into force on 7 April 1982 (OJ L 252, 5.9.1981, p. 26).

⁶ The Convention for the Conservation of Southern Bluefin Tuna done in Canberra on 10 May 1993 and entered into force on 20 May 1994 (OJ L 336, 23.12.2015, p. 27).

⁷ The Convention for the strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention) done in Washington 14 November 2003 and entered into force on 27 August 2010 (OJ L 224, 16.8.2006, p. 22).

⁸ The International Convention for the Conservation of Atlantic Tunas signed in Paris on 10 July 1984 and entered into force on 9 January 1997 (OJ L 162, 18.6.1986, p. 34).

⁹ The Agreement for the establishment of the Indian Ocean Tuna Commission signed in Rome 25 November 1993 and entered into force on 27 March 1996 (OJ L 236, 5.10.1995, p. 25).

¹⁰ Agreement establishing the General Fisheries Commission for the Mediterranean originally formulated at Rome 24 September 1949 and entered into force on 20 February 1952 (OJ L 190, 4.7.98, p. 37).

East Atlantic Fisheries Commission¹¹, the North Pacific Fisheries Commission¹², the South East Atlantic Fisheries Organisation¹³, the Southern Indian Ocean Fisheries Agreement¹⁴, the South Pacific Regional Fisheries Management Organisation¹⁵ and the Western and Central Pacific Fisheries Commission¹⁶.”

(10) In Article 50, paragraph 2, point (m) is added:

“(m) flag Member State duties in relation to research plans of Article 4(2);”

(11) In Article 50, paragraph 2, point (n) is added:

“(n) requirements for vessels engaged in the research of Article 4(3), (4), and (5).”

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹¹ The Convention on future multilateral cooperation in the North-East Atlantic Fisheries signed in London on 18 November 1980 and entered into force on 17 March 1982 to which European Community acceded on 13 July 1981 (OJ L227, 12.8.1981, p.22).

¹² The Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean done at Tokyo 24 February 2012 and entered into force on 19 July 2015 (OJ L 55, 28.2.2022, p. 14).

¹³ The Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean done at Windhoek, Namibia, 20 April 2001 and entered into force on 13 April 2003 (OJ L 234, 31.8.2002, p. 40).

¹⁴ The Southern Indian Ocean Fisheries Agreement (SIOFA) signed in Rome the 7 July 2016 and entered into force on 21 June 2012 (OJ L 196, 18.7.2006, p. 5 and OJ L 76 M, 16.3.2007, p. 78).

¹⁵ The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean done at Auckland on 14 November 2009 and entered into force on 24 August 2012 (OJ L 67, 6.3.2012, p. 1).

¹⁶ The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean done at Honolulu on 5 September 2000 and entered into force on 19 June 2004 (OJ L 32, 4.2.2005, p. 1).