



EUROPEAN
COMMISSION

Brussels, 16.2.2022
COM(2022) 51 final

2022/0035 (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 amendments to the conservation and enforcement measures adopted by the Northwest Atlantic Fisheries Organisation (NAFO) at its annual meeting in September 2021. The proposal also includes the NAFO editorial improvements and adapts the wording to the EU legal context. 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. This proposal covers the amendments adopted by NAFO at its annual meeting in September 2021. Those amendments entered into force on 2 December 2021 and apply from that date.

- **Consistency with existing policy 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 providing that the Union conducts its external fisheries in accordance with its international obligations, basing EU fishing activities on regional fisheries cooperation.

The proposal complements Regulation (EU) 2017/2403 concerning the external fleet management, providing 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 providing for 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 amendments to conservation and enforcement measures adopted at the NAFO annual meeting of September 2021. EU Member States national experts and industry representatives were consulted both during the run-up to the NAFO annual meeting at which these recommendations were adopted and during the NAFO negotiations.

- **Collection and use of expertise**

This proposal implements into Union law amendments to NAFO conservation 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 amendments to NAFO conservation 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 amendments adopted at the NAFO annual meeting of September 2021 concerning the calculation of “Others” quota, introducing flanking measures for Cod in Division 3M in relation to inspection of landings, as well as Greenland halibut. The amendments also include revised provisions concerning additional procedures, serious infringements in relation to use of mesh sizes, grid or grate, and reinforced measures relating follow-up for infringements, as well as transmission of documents to NAFO and European Fisheries Control Agency.

The proposal also delegates to the Commission powers to amend the Regulation (EU) 2019/833 concerning landing, inspection for Greenland halibut of Article 10(1)(e), and control measures for Cod in Division 3M of Article 9a, if NAFO amends its measures in the future. The prompt amendment of these provisions is necessary to allow Union vessels to fish on the same footing as vessels of other NAFO Contracting Parties for every future fishing seasons.

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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 was adopted in order to implement 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 with the NAFO measures adopted at its annual meetings in 2019 and 2020³.
- (2) The NAFO subsequently adopted at its 43rd Annual Meeting in September 2021 a number of legally binding decisions for the conservation of fishery resources under its purview as regards catch retention of 'Others' quota, port inspection of landings of Cod in Division 3M and of Greenland halibut, monitoring and reinforced provisions concerning infringements and their enforcement.
- (3) Those decisions are addressed to the NAFO Contracting Parties and also contain obligations for the operators. Following their entry into force on 2 December 2021, 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 apply these new NAFO measures to the Union fishing vessels.

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).

- (5) Certain provisions of the CEM are likely to be amended at future NAFO Annual Meetings following the introduction of new technical measures in relation to changing stocks biomass and review of area restrictions for bottom fishing activities. Therefore, in order to implement swiftly into Union law such future amendments to the CEM, before start of fishing season, 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 the landing and inspection measures for Greenland halibut and control measures for Cod in Division 3M.
- (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 7(3) point (d) is replaced by the following:
- “(d) where a ban on fishing applies (moratoria) or, when the “Others” quota opened for that stock has been fully taken: 1 250 kg or 5 %, whichever is greater, in regard to those Contracting Parties following their notification of the use of the “Others” quota in accordance with Article 6 of this Regulation;”
- (2) In Article 9a(1), point (c), the first sentence is replaced by the following:
- “each Member State shall inspect in its ports at least 50% of the landings or transshipment of cod catches from Division 3M and prepare an inspection report in the format prescribed in Annex IV.C to the CEM referred to in point 9 of the Annex to this Regulation, and send it to the NAFO Executive Secretary, with the Commission and EFCA in copy, within 12 working days from the date on which the inspection was completed.”
- (3) In Article 10(1), point (e), the first sentence is replaced by the following:
- “(e) each Member State shall inspect in its ports each landing of Greenland halibut, if the quantity of this stock on board represents either more than 5% of the total catch or more than 2 500 kg and prepare an inspection report in the format prescribed in Annex IV.C to the CEM referred to in point 9 of the Annex to this Regulation, and send it to the NAFO Executive Secretary with the Commission and EFCA in copy, within 14 working days from the date on which the inspection was completed.”
- (4) In Article 29, paragraph 1 is replaced by the following:

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OJ L 123, 12.5.2016, p. 1.

“Each Member State shall, not later than 1 November each year, send the following information to EFCA (with the Commission in copy), which shall ensure that this information is transmitted to the NAFO Executive Secretary:

(a) the contact information of the competent authority which shall act as the contact point for the purpose of immediate notification of infringements in the Regulatory Area, and any subsequent changes to this information, not less than 15 days before the change comes into effect;

(b) the names of inspectors and inspector trainees and the name, radio call sign and communication contact information of each inspection platform it has assigned to the Scheme. It shall notify changes to the particulars so notified, whenever possible, not less than 60 days in advance.”

(5) In Article 35(1), point (g) is replaced by the following:

“(g) fishing with an unauthorized mesh size, grid or grate bar spacing, or without the use of sorting grids or grates contrary to Article 13 or Article 14;”.

(6) In Article 36(1) point (d) is replaced by the following:

“ensure that sanctions applicable in respect of infringements, and to the extent possible within domestic legislation for repeated serious infringements, particularly those identified under Article 35(3)(c) (iii) and (iv) are adequate in severity to be effective in securing compliance, deterring further infringements or their repetition and depriving the offenders of the benefits accruing from the infringement.”

(7) In Article 36(2), points (e) and (f) are added:

“(e) increased or additional reporting requirements; inter alia, enhanced reporting frequency or additional data to be reported; and

(f) increased or additional monitoring requirements inter alia, deployment of an observer or an inspector on board or remote electronic monitoring implemented in accordance with relevant technical specifications for fishing vessels operating in NAFO.”

(8) In Article 40(3), the second sentence is replaced by the following:

“The Commission shall transmit this information to the NAFO Executive Secretary.”

(9) Article 50, paragraph 2 is amended as follows:

(a) point (c) is replaced by the following:

“(c) procedures concerning vessels with more than 50 tonnes live weight total catch on board, entering the Regulatory Area to fish for Greenland halibut concerning the content of notifications provided for in points (a) and (b) of Article 10(2), and conditions for commencement of fishing provided for in point (d) of Article 10(2); as well as landing, inspection provisions concerning Greenland halibut of Article 10(1), point (e);”;

(b) the following point (l) is added:

“(l) control measures for cod in Division 3M of Article 9a.”

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