



EUROPEAN PARLIAMENT

2009 - 2014

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*Plenary sitting*

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**A7-0260/2010**

30.9.2010

**\*\*\*I**  
**REPORT**

on the proposal for a regulation of the European Parliament and of the Council laying down a Scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries  
(COM(2009)0151 – C7-0009/2009 – 2009/0051(COD))

Committee on Fisheries

Rapporteur: Carmen Fraga Estévez

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council laying down a Scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries (COM(2009)0151 – C7-00009/2009 – 2009/0051(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the Parliament and the Council (COM(2009)0151),
  - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C7-00009/2009),
  - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
  - having regard to Article 294(3) and Article 43(2) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 17 March 2010<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries (A7-0260/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Approves the joint statements by Parliament, the Council and the Commission annexed to this resolution;
  3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### POSITION OF THE EUROPEAN PARLIAMENT

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<sup>1</sup> Not yet published in the Official Journal.

AT FIRST READING\*

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to the Commission proposal for a  
REGULATION (EU) No .../2010  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down a Scheme of control and enforcement applicable in the area covered by the  
Convention on future multilateral cooperation in the North-East Atlantic fisheries

(Text with EEA relevance)

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,

■

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

Whereas:

- (1) The Convention on future multilateral cooperation in the North-East Atlantic fisheries, hereinafter referred to as the NEAFC Convention, was approved by Decision 81/608/EEC<sup>3</sup> and entered into force on 17 March 1982.
- (2) The NEAFC Convention provides for an appropriate framework for multilateral cooperation on the rational conservation and management of fishery resources in the Area defined by the Convention.
- (3) The North-East Atlantic Fisheries Commission at its Annual Meeting on 15 November 2006 adopted a recommendation establishing a scheme of control and enforcement (hereinafter called "the Scheme") applicable to fishing vessels operating in areas beyond the limits of the national jurisdiction of the Contracting Parties in the Convention Area. The Scheme was amended by several recommendations at the Annual Meetings in

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

<sup>1</sup> Opinion of 17 March 2010 (not yet published in the Official Journal).

<sup>2</sup> Position of the European Parliament of ... October 2010.

<sup>3</sup> OJ L 227, 12.8.1981, p. 21.

November 2007 and 2008.

- (4) Under Articles 12 and 15 of the NEAFC Convention, these recommendations came into force on 1 May 2007, on 9 February 2008 and 6 and 8 January 2009 respectively.
- (5) The Scheme provides for control measures applicable to vessels flying the flag of the Contracting Parties and operating in the NEAFC Area, and arrangements for inspection at sea which include inspection and surveillance procedures and infringement procedures which must be implemented by the Contracting Parties.
- (6) The Scheme provides for a new Port State Control system which will effectively close European ports to landings and transshipments of frozen fish which have not been verified to be legal by the flag State of fishing vessels flying the flag of another Contracting Party.
- (7) Certain provisions adopted by NEAFC have been implemented into Community Law by way of the yearly TAC and quotas Regulation, most recently by Council Regulation (EC) No 43/2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required<sup>1</sup>. For the sake of legal clarity provisions of that kind which are not of a temporary nature should be transferred into a new separate regulation.
- (8) The Scheme also incorporates provisions to promote compliance by Non Contracting Party vessels with the conservation and enforcement measures in order to ensure full respect for conservation and management measures adopted by NEAFC; The NEAFC recommended replacing a number of vessels on the list of vessels that have been confirmed as having engaged in illegal, unreported and unregulated fisheries. Implementation of those recommendations in the Community legal order should be ensured.
- (9) ***Article 5(2) of Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy<sup>2</sup> provides that Member States shall control access to waters and resources and control activities outside the Union waters carried out by vessels flying their flag.*** Provision should therefore be made that Member States whose vessels are authorised to fish in the NEAFC Regulatory Area assign inspectors to the Scheme to undertake monitoring and surveillance, together with adequate resources for inspection.
- (10) In order to ensure the monitoring of fishing activities in the NEAFC Convention Area, it is necessary that Member States cooperate with one another and with the Commission and the body designated by it in applying the Scheme.
- (11) It is the responsibility of Member States to ensure that their inspectors comply with the inspection procedures laid down by the NEAFC.

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<sup>1</sup> OJ L22, 26.1.2009, p.1.

<sup>2</sup> ***OJ L 343, 22.12.2009, p. 1.***

- (12) *The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of detailed rules on lists of fishery resources to be notified, notification and cancellation procedures for prior notice of entry into port as well as authorisation to land or tranship. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at experts' level.*
- (13) The Measures necessary for the implementation of this Regulation should be adopted *by means of implementing acts in accordance with Article 291 of the Treaty. According to that Article, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of its implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup> continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.*
- (13a) *The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of the incorporation into EU law of future amendments of those measures of the NEAFC Scheme of Control and Enforcement, which form the subject matter of certain explicitly defined non-essential elements of this Regulation and which become binding upon the European Union in accordance with the terms of the Convention on Future Multilateral Co-operation in North-East Atlantic Fisheries (the NEAFC Convention). It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at experts' level.*
- (14) As this Regulation will establish new rules concerning control and enforcement in the NEAFC Convention Area, Regulation (EC) No 2791/1999 of 16 December 1999 laying down certain control measures applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic Fisheries should be repealed.

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### General provisions

#### Article 1

#### Subject matter

This Regulation lays down the general rules and conditions for the application by the *Union*

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23.



of the Scheme of control and enforcement (hereinafter, "the Scheme") adopted by the North-East Atlantic Fisheries Commission.

## Article 2

### Scope

Unless otherwise stated, this Regulation shall apply to all **EU** vessels used or intended for use for fishing activities conducted on fishery resources in the Regulatory Area of the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries.

## Article 3

### Definitions

For the purpose of this Regulation the following definitions shall apply:

- (1) "Convention" means the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, as amended.
- (2) "Convention Area" means the waters of the Convention Area as defined in Article 1(1) of the Convention;
- (3) "Regulatory Area" means the waters of the Convention Area, which lie beyond the waters under the fisheries jurisdiction of Contracting Parties;
- (4) "Contracting Parties" means the Contracting Parties to the Convention;
- (5) "NEAFC" means the North-East Atlantic Fisheries Commission;
- (6) "fishing activities" means fishing, including joint fishing operations, fish processing operations, the transshipment or landing of fish or fish products and any other commercial activity in preparation for or related to fishing;
- (7) "fishery resources" are those referred to in Article 1(2) of the Convention;
- (8) "regulated resources" are those fishery resources which are subject to recommendations under the Convention and are listed in the Annex;
- (9) "fishing vessel" means any vessel used or intended for use for the purposes of the commercial exploitation of fishery resources, including fish processing vessels and vessels engaged in transshipment;
- (10) "non-Contracting Party vessel" means any fishing vessel not flagged in a Contracting Party of NEAFC, including vessels for which there are reasonable grounds for suspecting them to be without nationality;

- (11) "joint fishing operation " means any operations between two or more vessels where catch is taken from the fishing gear of one fishing vessel to another;
- (12) "transshipment operation" means the *unloading* of *all or* any fishery products on board a fishing vessel to another *fishing vessel*;
- (13) "port" means any place used for landing or a place close to the shore designated by a Contracting Party for transshipping of fishery resources.

## Article 4

### Contact points

1. Member States shall designate the competent authority which shall act as the contact point for the purposes of receiving surveillance and inspection reports in accordance with Articles 12, 19, 20 and 27 and for receiving notifications and issuing authorisations in accordance with Articles 24 and 25.
2. Contact points for receiving notifications and issuing authorisations in accordance with Articles 24 and 25 shall be available 24 hours a day.
3. Member States shall send to the Commission or to a body designated by it and to the NEAFC Secretary the telephone number, e-mail address and fax number of the designated contact point.
4. Any subsequent changes to the information concerning contacts points referred to in paragraphs 1 and 3 shall be notified to the Commission or a body designated by it and to the NEAFC Secretary at least fifteen days before the change shall come into force.
5. The format for transmission of the information referred to in paragraphs 1 and 3 shall be established in accordance with the procedure referred to in Article 47(2).

## CHAPTER II

### Monitoring Measures

## Article 5

### *Union* participation

1. Member States shall send to the Commission, in a computer-readable form, a list of all vessels flying their flag and registered in the *Union* which are authorised to fish in the Regulatory Area, in particular the vessels authorised to fish directly for one or more

regulated resources together with any amendments to the list. This information shall be sent no later than 15 December each year or at least 5 days before the vessel enters the Regulatory Area. The Commission shall forward the information promptly to the NEAFC Secretary.

2. The format for transmission of the list referred to in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 47(2).

## Article 6

### Marking of gear

1. Member States shall ensure that gear used by its fishing vessels in the Regulatory Area is marked in accordance with Commission Regulation (EC) No 356/2005 of 1 March 2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls<sup>1</sup>.
2. Member states may remove and dispose of fixed gear that is not marked in accordance with **Regulation (EC) No 356/2005** or *in* any other way contravenes recommendations adopted by NEAFC as well as fish that is found in the gear.

## Article 7

### Retrieval of lost gear

4. The competent authority *of the flag Member State* shall without delay send information given pursuant to **Article 48(3) of Regulation (EC) No 1224/2009 as well as call sign of the vessel to the NEAFC Secretariat**.
5. Member States shall on a regular basis undertake to retrieve lost gears belonging to vessels flying their flag. ■

## Article 8

### Recording of catches ■

1. In addition to the information specified in Article 6 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>2</sup>, the masters of **EU** fishing vessels shall **record either in** a bound paginated fishing logbook **or by electronic means** the following:

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<sup>1</sup> OJ L 56, 2.3.2005, p.8

<sup>2</sup> OJ L 261, 20.10.1993, p. 1.

- (a) each entry into and exit from the Regulatory Area;
  - (b) on a daily basis and/or for each haul the estimated cumulative catches retained on board since the last entry into the Regulatory Area;
  - (c) on a daily basis and/or for each haul the amount of fish discarded
- (ca) *after each communication pursuant to Article 9 the following details are to be immediately entered in the logbook:*
- *date and time of transmission (UTC) of a report, unless this is recorded by electronic means*
  - *in case of radio transmission, name of radio station through which the report is transmitted;*
- (cb) *the fishing depth (where appropriate).*
2. The masters of *EU* fishing vessels engaged in fishing activities conducted on regulated resources which process and/or freeze their catch shall:
- (a) record their cumulative production by species and product form in a production logbook, and
  - (b) stow in the hold all processed catch in such a way that the location of each species can be identified from a stowage plan maintained on board the fishing vessel.
3. By way of derogation from paragraph 1, Member States may exempt from keeping a fishing logbook a vessel engaged in transshipment operations which on-loads quantities on board. Vessels benefiting from this derogation shall specify in *a* stowage plan the location in the hold of frozen fish referred to in Article 14(1) and record in a production logbook:
- (a) the date and time according to the Universal Time Coordinated (UTC) of transmission of a report referred to in Article 9;
  - (b) in case of radio transmission, the name of the radio station through which the report is transmitted;
  - (c) the date and time (UTC) of transshipment operation;
  - (d) the location (latitude/longitude) of the transshipment operation;
  - (e) the quantities of each species on-loaded;
  - (f) the name and international radio call sign of the fishing vessel from which the catch has been off-loaded.

4. Detailed rules for the **implementation** of this Article shall be adopted in accordance with the procedure referred to in Article 47(2).

## Article 9

### Reporting of catches of regulated resources

1. The masters of **EU** fishing vessels engaged in fishing activities conducted on regulated resources shall communicate catch reports by electronic means to their Fisheries Monitoring Centre. These data shall be accessible to the Commission on request. Reports shall include the following:
  - (a) reports on the quantities held on board when entering the Regulatory Area. Such reports shall be transmitted no earlier than 12 hours and no later than 2 hours in advance of each entry into the Regulatory Area;
  - (b) reports on weekly catches. Such reports shall be transmitted for the first time no later than the end of the seventh day following the entry of the vessel into the Regulatory Area or, when fishing trips take more than 7 days, at least on Monday noon for catches taken in the Regulatory Area during the preceding week ending at midnight on Sunday. This report shall include the number of fishing days since the commencement of fishing, or since the last catch report;
  - (c) reports on catches on board when exiting the Regulatory Area. Such reports shall be transmitted no earlier than 8 hours and no later than 2 hours in advance of each departure from the Regulatory Area. It shall include, where appropriate, the number of fishing days and the catch taken in the Regulatory Area since the commencement of fishing, or since the last catch report;
  - (d) reports on the quantities on-loaded and off-loaded for each transshipment of fish **■** during the vessel's stay in the Regulatory Area. ***Donor vessels shall make this report at least 24 hours in advance, and concerning receiving vessels this report shall be made no later than one hour after transshipment. The report shall include date, time, geographical position of the planned transshipment and total round weight by species to be offloaded or which have been onloaded in kilograms and the call signs of vessels transhipped to or from respectively. Without prejudice to chapter IV, the receiving vessel shall report total catch on board, total weight to be landed, name of the port and date and time of landing at least 24 hours in advance of any landing.***
2. ***The reports on catches referred to in this Article shall be given in kilograms (rounded to the nearest 100 Kg) total round weight by species using the FAO codes. The total quantity of species for which the total round weight by species is less than one tonne may be reported under the 3-alpha code MZZ (marine fish not specified).***
3. Member States shall record the data contained in the catch reports in the database

referred to in **Article 109(1) of Regulation (EC) No 1224/2009**.

4. The detailed rules for the **implementation** of this Article and in particular the format and the specifications for the transmissions shall be determined under the procedure referred to in Article 47(2).

## Article 10

### Global reporting of catches and fishing effort

1. Member States shall inform the Commission, by computer transmission before the fifteenth day of each month, of the quantities of **fishery** resources taken in the Regulatory Area by vessels flying their flag, which have been landed or transhipped during the preceding month.
2. Without prejudice to **Article 33(2) of Regulation (EC) No 1224/2009**, Member States shall also inform the Commission, by computer transmission before the fifteenth day of each month, of the quantities of regulated resources taken in **areas under the national fisheries jurisdiction of third countries and in EU waters** of the Convention Area by vessels flying their flag, which have been landed or transhipped during the preceding month.
3. ■ The format for transmission of the data in accordance with paragraphs 1 and 2 shall be adopted in accordance with the procedure referred to in Article 47(2).

***The list of resources referred to in paragraph 1 shall be adopted in accordance with the procedure laid down in Articles 46 to 46c.***

4. The Commission shall compile the data referred to in paragraphs 1 and 2 for all Member States and forward those data to the NEAFC Secretary within 30 days following the calendar month in which the catches were landed or transhipped.

## Article 11

### Vessel Monitoring System

Member States shall ensure the automatic and electronic transmission to the NEAFC Secretary of information obtained by the vessel monitoring system (VMS) concerning vessels flying their flag which fish in the Regulatory Area, in the format and in compliance with the specifications adopted in accordance with the procedure referred to in Article 47(2).

## Article 12

### Communication of information

1. Member states shall communicate the reports and the information referred to in Articles 9 and 11 without delay *to the NEAFC Secretary*. However in the event of technical malfunction, such reports and information shall be transmitted to the NEAFC Secretary within 24 hours of receipt. Member States shall ensure that all reports and messages forwarded by them are sequentially numbered.
2. Member States shall ensure that the reports and information transmitted to the NEAFC Secretary are in accordance with the data exchange formats and protocols set out in accordance with the procedure referred to in Article 47(2).

## Article 13

### Transhipments and joint fishing operations

1. *EU* fishing vessels shall engage in transhipment activities in the Regulatory Area only if they have received prior authorisation from the competent authorities in their flag Member State.
2. *EU* fishing vessels may only engage in transhipment operations or joint fishing operations with vessels flying the flag of a Contracting Party and vessels of a non-Contracting Party granted the status of co-operating non Contracting Party by NEAFC.
3. *EU* fishing vessels engaged in transhipment operations which on-load quantities on board shall not engage in other fishing activities, including joint fishing operations, during the same trip, with the exception of fish processing operations and landings.

## Article 14

### Separate stowage

1. *EU* fishing vessels, which carry onboard frozen fishery resources caught in the Convention Area by more than one fishing vessel, may stow the fish from each of those vessels in more than one part of the hold but shall keep it clearly separate, in particular by plastic, plywood or netting, from fish caught by other vessels.
2. All catches taken inside the Convention Area shall be stowed separately from all catches taken outside the area.

## Article 15

### Labelling of frozen fish

When frozen all fish caught in the Convention Area shall be identified with a clearly legible label or stamp. The label or stamp, which shall be placed at time of stowage on each box or block of frozen fish, shall indicate the species, production date, the ICES sub-area and

division where the catch was taken and the name of the vessel which caught the fish.

## CHAPTER III

### Inspections at sea

#### Article 16

##### NEAFC inspectors

1. Member States whose fishing vessels are authorised to fish in the Regulatory Area shall assign inspectors to the Scheme to carry out surveillance and inspection.
2. Member States shall issue a special identity document to each inspector. The form of this document shall be determined in accordance with the procedure referred to in Article 47(2).
3. Each inspector shall carry and produce the special identity document when boarding a fishing vessel.

#### Article 17

##### General provisions for inspection and surveillance

1. The Commission or a body designated by it shall coordinate the surveillance and inspection activities for the *Union* and shall draw up each year, in concert with the Member States concerned, a joint deployment plan for *Union* participation in the Scheme in the following year. ***This deployment plan shall, inter alia, determine the number of inspections to be carried out.***

Where at any time more than 10 *EU* fishing vessels are engaged in fishing activities ***conducted on*** regulated resources in the Regulatory Area, the Commission or a body designated by it shall, during that time, ensure that an inspection vessel from a Member State is present in the Area or that an agreement has been concluded with another Contracting Party to ensure the presence of an inspection vessel.

2. ***Member States shall ensure that inspections carried out by their inspectors shall be carried out in a non-discriminatory manner and in accordance with the Scheme.*** The number of inspections ***shall be*** based upon ■ fleet size, taking into account the time spent by ■ fishing vessels in the Regulatory Area.
3. The Commission or a body designated by it shall aim at ensuring equal treatment between all Contracting Parties with fishing vessels operating in the Regulatory Area through an equitable distribution of inspections.

■



5. Member States shall take steps to ensure that NEAFC inspectors from another Contracting Party shall be allowed to carry out inspections on board vessels flying their flag.
6. Inspectors shall avoid the use of force except *in cases of legitimate self-defence*. When carrying out inspections on board fishing vessels, inspectors shall not carry any fire-arms. *These measures shall be without prejudice to national provisions concerning the prohibition of the use of force.*
7. Inspectors shall avoid any interference with or inconvenience to the fishing vessel, its activities and the catch retained on board, except when and to the degree necessary to carry out their mandates.

## Article 18

### Means of inspection

1. Member States shall make available to their inspectors adequate means to enable them to carry out their surveillance and inspection tasks. To that end they shall assign inspection vessels and aircrafts to the Scheme.
2. The Commission or a body designated by it shall send to NEAFC Secretary before 1 January each year details of the plan, the names of the NEAFC inspectors and special inspection vessels as well as the types of aircraft and the details of their identification (registration number, name, radio call-sign) which Member States are assigning to the Scheme during that year. *Where appropriate*, this information shall be extracted from the list referred to in *Article 79 of Regulation (EC) No 1224/2009*. Member States shall send modifications of this list to the Commission or a body designated by it which shall forward information giving one month's notice before the change come into force to the NEAFC Secretary and the other Member States.
3. Any vessel assigned to the Scheme and carrying NEAFC inspectors, as well as the boarding craft deployed by that vessel shall display the NEAFC inspection special signal to indicate that inspectors on board may carry out inspection duties in accordance with the Scheme. Aircraft assigned to the Scheme shall have their international radio call sign clearly displayed. The form of the special signal shall be determined in accordance with the procedure referred to in Article 47(2).
4. The Commission or a body designated by it shall keep a record for the assigned *Union* inspection vessels and aircraft of the date and hour of the start and termination of their duties under the Scheme as set out in the form determined in accordance with the procedure referred to in Article 47(2). ■

## Article 19

## Surveillance procedure

1. Surveillance shall be based on sightings of fishing vessels by NEAFC inspectors from a vessel or aircraft assigned to the Scheme. NEAFC inspectors shall forward a copy of each sighting report per vessel without delay by electronic transmission, in the form set out in accordance with the procedure referred to in Article 47(2) to the flag State of the vessel concerned, to the Commission or a body designated by it and to NEAFC Secretary. A hard copy of each sighting report and any photographs shall be forwarded on request to the flag State of the vessel concerned.
2. *NEAFC inspectors* shall record their sightings in a surveillance report using a form established in accordance with the procedure referred to in Article 47(2).

## Article 20

### Inspection procedure

1. Inspectors shall not conduct boarding without prior notice by radio being sent to the fishing vessel or without the fishing vessel being given the appropriate signal using the International Code of Signals, including the identity of the inspection platform, whether or not such notice is acknowledged as received.
2. Inspectors shall have the authority to examine all relevant areas, decks and rooms of the fishing vessels, catch (whether processed or not), nets or other gear, equipment, and any relevant documents which they deem necessary to verify the compliance with the measures established by NEAFC and to question the master or a person designated by the master.
3. The fishing vessel to be boarded shall not be required to stop or manoeuvre when fishing, shooting or hauling. The inspectors may order the interruption or delay in the hauling of the fishing gear until they have boarded the fishing vessel and in any event no more than 30 minutes after receiving the signal referred to in paragraph 1.
4. Masters of inspection platforms shall ensure that they manoeuvre at a safe distance from the fishing vessels according to good seamanship.
5. Inspectors may instruct a fishing vessel to delay its entry into or exit from the Regulatory Area for up to 6 hours from the time of transmission by the fishing vessel of the reports referred to in Article 9(1)(a) and (c).
6. The duration of an inspection shall not exceed 4 hours, or until the net is hauled in and the net and catch are inspected, whichever is longer. In the case of an infringement being detected the inspectors may stay on board for the time necessary for the completion of measures provided for in Article 29(1)(b).
7. In special circumstances relating to the size of a fishing vessel, and the quantities of fish retained on board, the duration of the inspection may exceed the limits laid down in

paragraph 6. In such a situation, inspectors shall in no case stay longer on board the fishing vessel than the time required to complete the inspection. The reasons for exceeding the limit laid down in paragraph 6 shall be recorded in the inspection report referred to in paragraph 9.

8. No more than two inspectors as assigned by Member States shall board a fishing vessel of another Contracting Party. In carrying out their inspection, the inspectors may request of the master any assistance required. Inspectors shall not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection.
9. Each inspection shall be documented by completing an inspection report in the format established in accordance with the procedure referred to Article 47(2). The inspection report may be commented upon by the master and shall be signed by the inspectors at the end of the inspection. A copy of the inspection report shall be given to the master of the fishing vessel. A copy of each inspection report shall be transmitted without delay **to the flag State of the inspected vessel and** to the Commission or a body designated by it. The Commission or a body designated by it shall forward it promptly **■** to the NEAFC Secretary. The original or a certified copy of each inspection report shall be forwarded on request to the flag State of the inspected vessel.

## Article 21

### Obligation of the vessel master during the inspection procedure

The master of a fishing vessel shall:

- (a) facilitate prompt and safe boarding and disembarkation pursuant to specifications adopted in accordance with the procedure referred to in Article 47(2);
- (b) co-operate with and assist in the inspection of the fishing vessel conducted pursuant to this Regulation, and shall not obstruct, intimidate or interfere with the inspectors in the performance of their duties and shall ensure their safety;
- (c) allow the inspectors to communicate with the authorities of the flag State and the inspecting State;
- (d) provide access to any areas, decks and rooms of the fishing vessel, catch (whether processed or not), nets or other gear, equipment, and any relevant information or documents which the inspector deems necessary in accordance with Article 20(2);
- (e) provide copies of documents as required by the inspector ; and
- (f) provide inspectors with reasonable facilities, including, where appropriate, food and accommodation where they remain on board the vessel in accordance with Article 32(3).

## CHAPTER IV

### Port State Control of fishing vessels flying the flag of another Contracting Party

#### Article 22

##### Scope

Without prejudice to **Regulation (EC) No 1224/2009** and to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing<sup>1</sup> establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the "IUU Regulation"), the provisions set out in this Chapter shall apply to landing or transhipping in ports of Member States of fishery resources frozen after being caught in the Convention Area by fishing vessels flying the flag of another Contracting Party.

#### Article 23

##### Designated ports

Member States shall designate, and notify the Commission of, ports or places close to the shore where **the landing** or transhipment **of fishery resources frozen after being caught in the Convention Area by fishing vessels flying the flag of another Contracting Party** are permitted. The Commission shall notify the NEAFC Secretary of these places and of any changes to the list of ports designated at least fifteen days before the change shall come into force.

Landings and transhipments of fish frozen after being caught in the Convention Area by fishing vessels flying the flag of another Contracting Party shall only be allowed in designated ports.

#### Article 24

##### Prior notice of entry into port

1. **In accordance with Article 6 of Regulation (EC) No 1005/2008**, the masters of all fishing vessels or their representative, carrying fish referred to in Article 22 of this Regulation, intending to call into a port to land or tranship shall notify the competent authorities of the Member State of the port they wish to use at least three working days before the estimated time of arrival.

However a Member State may make provision for another notification period, taking into account, in particular, the distance between the fishing grounds and its ports. In

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<sup>1</sup> OJ L 286, 29.10.2008, p. 1.

such a case, the Member State shall inform without delay the Commission or a body designated by it and the NEAFC Secretary.

2. Masters or their representative may cancel a prior notification by notifying the competent authorities of the port they wish to use no later than 24 hours before the notified estimated time of arrival in the port.

However, a Member State may make provision for another notification period for cancellation. In such a case, the Member State shall inform without delay the Commission or a body designated by it and the NEAFC Secretary. The notification shall be accompanied by a copy of the original notification form with the word "CANCELLED" written across it.

3. The competent authorities of the port Member State shall forward a copy of the notification referred to in paragraphs 1 and 2 without delay to the flag State of the fishing vessel and to the flag State or States of donor vessels when the vessel has engaged in transshipment operations. A copy of the notification referred to in *paragraph 2* shall also be *forwarded* to the NEAFC Secretary without delay.

5. The format and the specifications for the notification shall be determined in accordance with the procedure referred to in Article 47(2).

***As far as necessary, further detailed rules on the notification and cancellation procedures under this Article, including periods, shall be adopted in accordance with the procedure laid down in Articles 46 to 46c.***

## Article 25

### Authorisation to land or tranship

1. The flag State of the fishing vessel intending to land or tranship or, where the vessel has engaged in transshipment operations outside *Union* waters, the flag State or States of donor vessels, shall, by returning a copy of the prior notification referred to in Article 24 ***to the competent authorities in the port Member State***, confirm that:
  - (a) the fishing vessels which declared to have caught the fish had sufficient quota for the species declared;
  - (b) the quantities of fish on board have been duly reported and taken into account for the calculation of any catch or effort limitations that may be applicable;
  - (c) the fishing vessels declared to have caught the fish had authorisation to fish in the areas declared;
  - (d) the presence of the vessels in the area of catch declared has been verified

according to VMS data.

2. Landing or transshipment operations may only commence after authorisation has been given by the competent authorities of the port Member State. Such authorisation shall only be given if the confirmation from the flag State referred to in paragraph 1 has been received.
3. By way of derogation from paragraph 2 the competent authorities of the port Member State may authorise all or part of a landing in the absence of the confirmation referred to in paragraph 1 but in such cases shall keep the fish concerned in storage under their control. The fish shall only be released to be sold, taken over or transported once the confirmation referred to in paragraph 1 has been received. If the confirmation has not been received within 14 days of the landing the competent authorities of the port Member State may confiscate and dispose of the fish in accordance with national rules.
4. The competent authorities of the port Member State shall notify without delay to the master their decision on whether or not to authorise the landing or transshipment and inform ■ the NEAFC Secretary.
5. Detailed rules *on the authorisation to land or tranship under* this Article shall be *adopted* in accordance with the procedure *laid down in Articles 46 to 46c*.

## Article 26

### Port inspections

1. Member States shall carry out inspections of at least 15% of landings or transshipments in its ports during each reporting year.
2. Inspections shall involve the monitoring of the entire discharge or transshipment and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped. When the landing or transshipment is completed, the inspector shall verify and note the quantities by species of fish remaining on board.
3. National inspectors shall make all possible efforts to avoid unduly delaying a vessel and ensure that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.
4. The port Member State may invite inspectors of other Contracting Parties to accompany their own inspectors and observe the inspection of landings or transshipment operations of fishery resources caught by fishing vessels flying the flag of another Contracting Party.

## Article 27

## Inspection reports

1. Each inspection shall be documented by completing an inspection report using the form established in accordance with the procedure referred to in Article 47(2).
2. The inspection report may be commented upon by the master and shall be signed by the inspector and the master at the end of the inspection. A copy of the inspection report shall be given to the master of the fishing vessel.
3. A copy of each inspection report shall be transmitted without delay to the flag State of the inspected fishing vessel and to the flag State or States of donor vessels where the vessel has engaged in transshipment operations, to the Commission or a body designated by it and to the NEAFC Secretary. The original or a certified copy of each inspection report shall be forwarded on request to the Flag State of the inspected vessel.

## CHAPTER V

### Infringements

#### Article 28

##### Scope

Without prejudice to **Regulation (EC) No 1224/2009** and to Regulation (EC) No 1005/2008 the provisions set out in this Chapter shall apply to **Union** fishing vessels and to fishing vessels flying the flag of another Contracting Party used or intended for use for fishing activities conducted on fishery resources in the Regulatory Area.

#### Article 29

##### Infringement procedures

1. Where inspectors find that there are clear grounds for believing that a fishing vessel has engaged in any activity contrary to the measures adopted by NEAFC they shall:
  - (a) note the infringement in the report referred to in articles 19(2), 20(8) or 27;
  - (b) take all necessary measures to ensure security and continuity of the evidence. An identification mark may be affixed securely to any part of the fishing gear which appears to the inspector to have been in contravention of applicable measures;
  - (c) immediately attempt to communicate with an inspector or designated authority of the flag State of the inspected fishing vessel;
  - (d) transmit the inspection report promptly to the Commission or a body designated by it.

2. The Member State carrying out the inspection shall communicate in writing the details of the infringement to the designated authorities of the flag State of the inspected vessel and to the Commission or a body designated by it **■** during the working day following the start of the inspection *whenever possible*.
3. The Member State carrying out the inspection shall send without delay the original of the surveillance or inspection report with any supporting documents to the competent authorities of the flag State of the inspected fishing vessel as well as a copy to the Commission or a body designated by it which shall forward a copy to the NEAFC Secretary.

## Article 30

### Follow up in the case of infringement

1. Where a Member State is notified by another Contracting Party or another Member State of an infringement committed by a fishing vessel flying its flag, it shall take prompt action in conformity with its national law to receive and consider the evidence of the infringement and conduct any further investigation necessary for the follow up to the infringement and, whenever possible, inspect the fishing vessel concerned.
2. Member States shall designate the appropriate authorities appointed to receive evidence of infringement and shall inform the Commission or a body designated by it of the address of those authorities and of any change in these information. The Commission or a body designated by it shall subsequently forward the information to the NEAFC Secretary.

## Article 31

### Serious infringements

For the purpose of this Regulation, the following infringements shall be considered as serious:

- (a) fishing without a valid authorisation issued by the flag State;
- (b) fishing without or after attainment of a quota;
- (c) use of prohibited fishing gear;
- (d) serious mis-recording of catches;
- (e) repeated failure to comply with the provisions of Articles 9 and 11;
- (f) landing or transhipping in a port not designated in accordance with the provisions of Article 23;



- (g) failure to comply with the provisions of Article 24;
- (h) landing or transshipment without authorisation of the port State as referred to in Article 25;
- (i) preventing an inspector from carrying out his duties;
- (j) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (k) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (l) concealing, tampering with or disposing of evidence relating to an investigation;
- (m) multiple violations which together constitute a serious disregard of conservation and management measures;
- (n) engaging in transshipment or joint fishing operations with vessels of a non-Contracting Party which has not been accorded the status of a co-operating non-Contracting Party by NEAFC;
- (o) supplying any provisions, fuel or other services to vessels that have been placed on the lists referred to in Article 44.

## Article 32

### Follow up in the case of serious infringements

1. If an inspector considers that there are clear grounds for believing that a fishing vessel has committed a serious infringement under Article 31, that inspector shall promptly notify that infringement to the Commission or a body designated by it, the appropriate authorities of the flag State of the inspected fishing vessel and the flag State or States of donor vessels where the inspected vessel has engaged in transshipment operations, in accordance with Article 29(3) with a copy to the NEAFC Secretary.
2. In order to preserve the evidence, the inspector shall take all necessary measures to ensure the security and continuity of the evidence whilst minimising interference with and inconvenience to the operation of the vessel.
3. The inspector is entitled to remain on board the fishing vessel for the period necessary to provide information on the infringement to the duly authorised inspector referred to in Article 33, or until receiving a reply from the flag State requesting the inspector to leave the fishing vessel.

## Article 33

#### Follow up in the case of serious infringements by *an EU* fishing vessel

1. Flag Member States shall respond to the notification referred to in Article 32(1) without delay and shall ensure that the fishing vessel concerned is inspected within 72 hours by an inspector duly authorised in relation to the infringement. The duly authorised inspector shall board the fishing vessel concerned and examine the evidence of the suspected infringement, established by the NEAFC inspector, and forward the results of the examination as quickly as possible to the competent authority in the flag Member State and the Commission or a body designated by it.
2. Following notification of the results, Flag Member States shall, if evidence so warrants, require the fishing vessel to proceed immediately and in any case within 24 hours to a port designated by that flag Member State for a thorough inspection under its authority.
3. The flag Member State may authorise the inspecting State to bring the fishing vessel without delay to a port designated by the flag Member State.
4. If the fishing vessel is not called to port, flag Member States must provide due justification in a timely manner to the Commission or a body designated by it and to the inspecting State. The Commission or a body designated by it shall forward such justification to the NEAFC Secretary.
5. Where a fishing vessel is required to proceed to port for a thorough inspection pursuant to paragraphs 2 or 3, a NEAFC inspector from another Contracting Party may, subject to the consent of the flag Member State of the fishing vessel, board and remain on board the fishing vessel as it is proceeding to port, and may be present during the inspection of the fishing vessel in port.
6. Flag Member States shall inform the Commission or a body designated by it promptly of the outcome of the thorough inspection and of the measures it has adopted as a result of the infringement.
7. The detailed rules for the *implementation* of this Article shall be determined under the procedure referred to in Article 47(2).

#### Article 34

##### Reporting and follow up of infringements

1. Member States shall report to the Commission or a body designated by it by 15 February of each year the status of the proceedings concerning infringements of NEAFC measures committed during the previous calendar year. The infringements shall continue to be listed on each subsequent report until the proceeding is concluded in accordance with the relevant provisions of national laws. The Commission or a body designated by it shall forward the reports to the NEAFC Secretary before 1 March.

2. The report required in paragraph 1 shall indicate the current status of the proceedings and in particular whether the case is pending, under appeal or still under investigation. The report shall describe any sanctions imposed in specific terms, stating in particular the level of fines, the value of forfeited fish and/or gear and any written warning given, and shall include an explanation if no action has been taken.

## Article 35

### Treatment of inspection reports

***In addition to Article 77 of Regulation (EC) No 1224/2009***, Member States shall ***collaborate*** with each other and with other Contracting Parties in order to facilitate judicial or other proceedings arising from a report submitted by an inspector under the Scheme, ***subject to the rules governing the admissibility of evidence in domestic, judicial or other systems***.

## Article 36

### Reports on surveillance and inspection activities

1. Member States shall report to the Commission or a body designated by it by 15 February each year for the previous calendar year:
  - (a) the number of inspections it has carried out under Articles 19, 20 and 26 specifying the number of inspections on the vessels of each Contracting Party and, where an infringement has been committed, the date and position of the inspection of the individual vessel concerned and the nature of infringement;
  - (b) the number of hours flown and the number of days at sea on NEAFC patrols, the number of sightings, including both Contracting Party vessels and non Contracting Party vessels, and the list of individual vessels for which a surveillance report has been completed .
2. The Commission or a body designated by it shall compile a Community report on the basis of the reports of the Member States. It shall send the Community report to the NEAFC Secretary by 1 March each year.

## CHAPTER VI

### Measures to promote compliance by non-Contracting Party fishing vessels

## Article 37

### Scope

1. This Chapter shall apply to Non Contracting Parties' fishing vessels used or intended

for use for fishing activities conducted on fishery resources in the Convention Area.

2. This Chapter shall be without prejudice to *Regulation (EC) No 1224/2009* and to Regulation (EC) No 1005/2008.

## Article 38

### Sightings and identifications of non-Contracting Party vessels

1. Member States shall transmit to the Commission or a body designated by it without delay any information regarding non-Contracting Party vessels sighted or by other means identified as engaging in fishing activities in the Convention Area. The Commission or a body designated by it shall inform promptly the NEAFC Secretary and all Member States of each sighting report it receives.
2. The Member State which sighted the non-Contracting Party vessel shall attempt to inform such a vessel without delay that it has been sighted or by other means identified as engaging in fishing activities in the Convention Area and unless its flag state has been accorded the status of co-operating non-Contracting Party by NEAFC, is consequently presumed to be undermining the NEAFC conservation recommendations established under the Convention.
3. In the case of a non-Contracting Party vessel sighted or by other means identified as engaging in transshipment activities, the presumption of undermining conservation and enforcement measures applies to any other non-Contracting Party vessel that has been identified as having engaged in such activities with that vessel.

## Article 39

### Inspections at sea

1. NEAFC inspectors shall request permission to board and inspect non-Contracting Party vessels sighted or by other means identified by a Contracting Party as engaging in fishing activities in the Convention Area. If the vessel consents to be boarded the inspection shall be documented by completing an inspection report as referred to Article 20(9).
2. NEAFC inspectors shall transmit a copy of the inspection report without delay to the Commission or a body designated by it, to the NEAFC Secretary and to the master of the non-Contracting Party vessel. Where evidence so warrants, a Member State may take such action as may be appropriate in accordance with international law. Member States are encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels.
3. If the master does not consent to the boarding and inspection of his vessel or does not fulfil any one of the obligations laid down in Article 21(1) to (4), the vessel shall be

presumed to have engaged in IUU activities. The NEAFC Inspector shall inform the Commission or a body designated by it of this without delay, which shall promptly inform the NEAFC Secretary.

#### Article 40

##### Entry into port

1. The master of a non Contracting Party fishing vessel may only call into a port designated in accordance with Article 23. The master intending to call into a port of a Member State shall notify the competent authorities of the port Member State in accordance with the provisions of Article 24. The port Member State concerned shall forward this information without delay to the flag State of the vessel and to the Commission or a body designated by it which shall subsequently forward this information to the NEAFC Secretary.
2. The port Member State shall prohibit the entry into its ports of vessels that have not given the required prior notice of entry into port as referred to in Article 24.

#### Article 41

##### Inspections in port

1. Member States shall ensure that all non-Contracting Party vessels entering one of its ports are inspected. The vessel shall not be allowed to land or tranship any fish until this inspection has been completed. Each inspection shall be documented by completing an inspection report as provided for in Article 27. Where the master of the vessel has failed to fulfil any one of the obligations laid down in Article 21(1) to (4), the vessel shall be presumed to have engaged in IUU activities.
2. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Member States, and subsequent action, shall immediately be transmitted to the Commission or a body designated by it which shall forward such information to the NEAFC Secretary.

#### Article 42

##### Landings *and* transhipments ■

1. Landings and transhipments may only commence after authorisation has been given by the competent authorities of the port State
2. Landings and transhipments of all fish products from a non-Contracting Party vessel which has been inspected pursuant to Article 41, shall be prohibited in the ports and waters of all Member States if such an inspection reveals that the vessel has species

onboard which are subject to recommendations established under the Convention unless the master of the vessel provides satisfactory evidence to the competent authorities proving that the fish were caught outside the Regulatory Area or in compliance with all relevant recommendations established under the Convention.

3. The vessel shall not be authorised to land or engage in a transshipment operation if the flag State of the vessel, or the flag State or States of donor vessels where the vessel has engaged in transshipment operations, does not provide the confirmation referred to in Article 25.
4. Furthermore, landings and transshipments shall be prohibited where the master of the vessel has failed to fulfil any one of the obligations laid down in Article 21(1) to (4).

#### Article 43

##### Reports on non Contracting Parties activities

1. Member States shall report to the Commission or a body designated by it by 15 February each year for the previous calendar year:
  - (a) the number of inspections of non-Contracting Party vessels it conducted under this Scheme at sea or in its ports, the names of the vessels inspected and their respective flag state, the dates and as appropriate, the ports where the inspection was conducted, and the results of such inspections; and
  - (b) where fish are landed or transhipped following an inspection pursuant to this Scheme, the report shall also include the evidence presented pursuant to Article 42.
2. In addition to surveillance report and information on inspections, Member States may at any time submit to the Commission or a body designated by it any further information which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.
3. On the basis of this information, the Commission or a body designated by it shall send a global report on non Contracting Parties activities to the NEAFC Secretary by 1 March each year.

#### Article 44

##### Vessels engaged in illegal, unreported and unregulated fishing activities

1. Member States shall ensure that vessels appearing in the provisional list of IUU vessels established by NEAFC ("A" list):
  - (a) are inspected in accordance with the provisions of Article 41 when they enter their ports;

- (b) are not authorised to land or tranship in their ports or in the waters under their jurisdiction;
  - (c) are not given assistance by fishing vessels, support vessels, refuel vessels, the mother-ship and cargo vessels flying their flag or permitted to participate in any transhipment or joint fishing operation with such vessels;
  - (d) are not supplied with provisions, fuel or other services.
2. ***The provisions laid down in paragraph 1(b) and (d) shall not be applied to any vessel appearing on the 'A' list where it has been recommended to the NEAFC that the vessel in question should be removed from the 'A' list.***

## CHAPTER VII

### Final provisions

#### Article 45

#### Confidentiality

1. In addition to the obligations laid down in *Articles 112 and 113 of Regulation (EC) No 1224/2009*, Member States shall ensure confidential treatment of electronic reports and messages transmitted to and received from the NEAFC Secretariat pursuant to *Article 9(2), Article 11, Article 12 and Article 19(1)*.
2. ***The detailed rules for the implementation of this Article shall be determined*** in accordance with the procedure referred to in *Article 47(2)*.

#### Article 46

#### *Delegation of powers*

1. ***The Commission may adopt, by means of delegated acts in accordance with Article 46a and subject to the conditions of Articles 46b and 46c the detailed rules for the application of Article 25, as well as the list of resources referred to in Article 10(1) and detailed rules on the notification and cancellation procedures, including periods, as referred to in the second subparagraph of Article 24(5).***
2. ***When adopting such delegated acts, the Commission shall act in accordance with the provisions of this Regulation.***

#### *Article 46a*

### *Exercise of the delegation*

- 1. The powers to adopt delegated acts referred to in Article 46 shall be conferred on the Commission for a period of three years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the three year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament and the Council revokes it in accordance with Article 46b.*
- 2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 46b and 46c.*

### *Article 46b*

#### *Revocation of the delegation*

- 1. The delegation of powers referred to in Article 46 may be revoked at any time by the European Parliament or by the Council.*
- 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.*
- 3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

### *Article 46c*

#### *Objections to delegated acts*

- 1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.*

*At the initiative of the European Parliament or the Council this period shall be extended by two months.*

- 2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*



*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.*

3. *If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.*

## Article 47

### **Implementation**

1. The Commission shall be assisted by a Management Committee for Fisheries and Aquaculture (hereinafter referred to as "the Committee").
2. Where reference is made to this paragraph, Article 4 and 7 of Decision 1999/468/EC shall apply. The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at *three months*.



## Article 48

### Procedure for amendments

*As far as necessary, in order to transpose into EU law amendments to the existing provisions of the Scheme which become obligatory for the Union, the Commission may amend the provisions of this Regulation, by means of delegated acts in accordance with Article 46a and subject to the conditions set out in Articles 46b and 46c, concerning:*

- *participation of Contracting parties in the fishery in the Regulatory area set out in Article 5;*
- *removal and disposal of fixed gear and the retrieval of lost gear set out in Articles 6 and 7;*
- *use of VMS set out in Article 11;*
- *cooperation and communication of information to the NEAFC Secretary set out in Article 12;*
- *requirements for separate stowage and labelling of frozen fishery resources set out in Articles 14 and 15;*

- *assignment of NEAFC inspectors set out in Article 16;*
- *measures to promote compliance by non-Contracting Party fishing vessels set out in Chapter VI;*
- *the list of regulated resources set out in the Annex.*

*When adopting such delegated acts, the Commission shall act in accordance with the provisions of this Regulation.*

#### Article 49

#### Repeal

Regulation (EC) N° 2791/1999 *is* hereby repealed.

#### Article 50

#### Entry into force

This Regulation shall enter into force on the 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

*For the European Parliament*

*The President*

*For the Council*

*The President*

## ANNEX

### Regulated resources

#### A) Pelagic and oceanic species

Stock (common name)	FAO code	Scientific Name	ICES subareas and divisions
Redfish	REB	<i>Sebastes mentella</i>	<b>I, II</b> , V, XII, XIV
Norwegian Spring Spawning Herring (Atlanto Scandian)	HER	<i>Clupea harengus</i>	I, II
Blue whiting	WHB	<i>Micromesistius poutassou</i>	IIa, IVa, Vb, VI, VII, XII, XIV
Mackerel	MAC	<i>Scomber scombrus</i>	IIa, IV, V, VI, VII, XII
Haddock	HAD	<i>Melanogrammus aeglefinus</i>	VIb

#### B) Deep-Sea Species

Stock (common name)	FAO code	Scientific Name	ICES subareas
Baird's smoothhead	ALC	<i>Alepocephalus bairdii</i>	I to XIV
Risso's smoothhead	PHO	<i>Alepocephalus rostratus</i>	I to XIV
Blue antimora (Blue hake)	ANT	<i>Antimora rostrata</i>	I to XIV
Black scabbardfish	BSF	<i>Aphanopus carbo</i>	I to XIV
Iceland catshark	API	<i>Apristuris spp</i>	I to XIV
Greater silver smelt	ARG	<i>Argentina silus</i>	I to XIV
Alfonsinos	ALF	<i>Beryx spp.</i>	I to XIV
Tusk	USK	<i>Brosme brosme</i>	I to XIV
Gulper shark	GUP	<i>Centrophorus granulosus</i>	I to XIV
Leafscale gulper shark	GUQ	<i>Centrophorus squamosus</i>	I to XIV
Black dogfish	CFB	<i>Centroscyllium fabricii</i>	I to XIV
Portuguese dogfish	CYO	<i>Centroscymnus coelolepis</i>	I to XIV

Stock (common name)	FAO code	Scientific Name	ICES subareas
Longnose velvet dogfish	CYP	<i>Centroscymnus crepidater</i>	I to XIV
Deep-water red crab	KEF	<i>Chaceon (Geryon) affinis</i>	I to XIV
Rabbit fish (Rattail)	CMO	<i>Chimaera monstrosa</i>	I to XIV
Friiled shark	HXC	<i>Chlamydoselachus anguineus</i>	I to XIV
Conger eel	COE	<i>Conger conger</i>	I to XIV
Roundnose grenadier	RNG	<i>Coryphaenoides rupestris</i>	I to XIV
Kitefin shark	SCK	<i>Dalatias licha</i>	I to XIV
Birdbeak dogfish	DCA	<i>Deania calceus</i>	I to XIV
Black (Deep-water) cardinal fish	EPI	<i>Epigonus telescopus</i>	I to XIV
Greater lanternshark	SHL	<i>Etmopterus princeps</i>	I to XIV
Velvet belly	SHL	<i>Etmopterus spinax</i>	I to XIV
Blackmouth dogfish	SHO	<i>Galeus melastomus</i>	I to XIV

Stock (common name)	FAO code	Scientific Name	ICES subareas
Mouse catshark	GAM	<i>Galeus murinus</i>	I to XIV
Bluemouth (Blue mouth redfish)	BRF	<i>Helicolenus dactylopterus</i>	I to XIV
Blondnose six-gilled shark	SBL	<i>Hexanchus griseus</i>	I to XIV
Orange roughy	ORY	<i>Hoplostethus atlanticus</i>	I to XIV
Silver roughy (Pink)	HPR	<i>Hoplostethus mediterraneus</i>	I to XIV
Large-eyed rabbit fish (Ratfish)	CYH	<i>Hydrolagus mirabilis</i>	I to XIV
Silver scabbard fish (Cutless fish)	SFS	<i>Lepidopus caudatus</i>	I to XIV
Eelpout	ELP	<i>Lycodes esmarkii</i>	I to XIV
Roughhead grenadier (Rough rattail)	RHG	<i>Marcrourus berglax</i>	I to XIV
Blue ling	BLI	<i>Molva dypterigia</i>	I to XIV

Stock (common name)	FAO code	Scientific Name	ICES subareas
Ling	LIN	<i>Molva molva</i>	I to XIV
Common mora	RIB	<i>Mora moro</i>	I to XIV
Sailfin roughshark (Sharpback shark)	OXN	<i>Oxynotus paradoxus</i>	I to XIV
Red (blackspot) seabream	SBR	<i>Pagellus bogaraveo</i>	I to XIV
Forkbeards	GFB	<i>Phycis spp.</i>	I to XIV
Wreckfish	WRF	<i>Polyprion americanus</i>	I to XIV
Round skate	RJY	<i>Raja fyllae</i>	I to XIV
Arctic skate	RJG	<i>Raja hyperborea</i>	I to XIV
Norwegian skate	JAD	<i>Raja nidarosiensis</i>	I to XIV
Greenland halibut	GHL	<i>Rheinhardtius hippoglossoides</i>	I to XIV
Straightnose rabbitfish	RCT	<i>Rhinochimaera atlantica</i>	I to XIV
Knifetooth dogfish	SYR	<i>Scymnodon ringens</i>	I to XIV
Small redfish (Norway haddock)	SFV	<i>Sebastes viviparus</i>	I to XIV
Greenland shark	GSK	<i>Somniosus microcephalus</i>	I to XIV
Spiny (Deep-sea) Scorpionfish	TJX	<i>Trachyscorpia cristulata</i>	I to XIV

## Appendix

### Statements on Article 48

"The European Parliament, Council and Commission note that any of the provisions of a non-essential character of the basic legislative act, which now are listed under Article 48 of the Regulation (delegation of powers), can become at any time in the future an significant element of the existing NEAFC control scheme from a political point of view, in which case the European Parliament, Council and Commission recall that both legislators, the Council or the European Parliament, can immediately exercise either the right to objection to a draft Commission delegated act or the right to revocation of the delegated powers as provided under Article 46/ b-c of the Regulation."

"The Council and the Parliament agree that the inclusion of any provision of the NEAFC control scheme Regulation as a non-essential element, now listed under Article 48, does not imply per se that such provisions will automatically be considered by the legislators being of a non-essential character in any future Regulations other than the present one."

"The European Parliament, Council and Commission declare that the provisions of this Regulation shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions."

## EXPLANATORY STATEMENT

### 1. Background

The Convention on future multilateral cooperation in the North East Atlantic fisheries, to which the EU is a contracting party, was approved by Council Decision 81/608/EEC and entered into force on 17 March 1982.

Control and enforcement measures can be adopted to ensure that this Convention and the recommendations adopted by the North East Atlantic Fisheries Commission (the 'NEAFC') are implemented. These are applicable to all fishing vessels used or intended for use for fishing activities conducted on fishery resources in areas defined in the Convention.

The aim of this proposal is to update EU legislation transposing NEAFC's control and enforcement scheme. To allow the new NEAFC scheme to be implemented, the proposal envisages the subsequent repeal of Council Regulation (EC) No 2791/1999 of 16 December 1999, which implemented the first scheme adopted by NEAFC in 1998.

NEAFC adopted a new scheme to improve the control and enforcement of its recommendations during its 25th annual meeting in 2006. The main change is the merging of the former scheme with the programme promoting compliance by non-contracting party vessels. The other change is the inclusion of a new Port State Control system which effectively closes European ports to any landings of frozen fish, which the flag State of the foreign vessel has not confirmed are legal. It establishes new measures concerning the control of vessels engaged in illegal, unreported and unregulated (IUU) fishing. The Scheme was further amended by several NEAFC recommendations at its annual meetings of 2007, 2008 and 2009.

These recommendations came into force on 1 May 2007, 9 February 2008, 6 and 8 January 2009 and 6 February 2010 respectively. Under the terms of the NEAFC Convention, they are binding on all the contracting parties. The Community, as a contracting party, should therefore apply them.

Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the 'IUU Regulation') entered into force on 1 January 2010. Under Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, EU fishing vessels are obliged to obtain authorisation for fishing activities outside EU waters. Furthermore, Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy was adopted on 20 November 2009.

After the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, this proposal was moved to the ordinary legislative procedure. It was thus necessary to adapt the Commission's proposal accordingly, including by aligning the "comitology" provisions to the provisions of Articles 290 and 291 of the TFEU pertaining

respectively to delegated powers and to implementing powers.

Some of the NEAFC provisions have been incorporated in EU legislation through the yearly TAC and quota regulations. These provisions, which are not of a temporary nature, should be transferred into a new and separate regulation for the sake of legal clarity.

## **2. Rapporteur's position**

The NEAFC recommendations were adopted with the full support of the EU. The European Parliament has reiterated on several occasions that the highest priority must be granted to measures to combat IUU fishing implemented by the Regional Fisheries Management Organisations (RFMOs). Consequently, the rapporteur considers that NEAFC's control and enforcement scheme must be transposed without delay into EU law.

In this regard, the rapporteur must express her disagreement with the method repeatedly used in the past by the Commission, namely transposing RFMO recommendations through the regulations setting TACs and quotas. Furthermore, this legislative technique cannot be carried on as such under the TFEU, as measures arising out of the pursuit of the objectives of the CFP have to be kept in the joint powers of the co-legislators under TFEU 43(2).

In the case in point, the measures were adopted by NEAFC in 2006, and the Commission's attempt to justify these delays by citing a lack of human resources is no longer sustainable. The transposition of RFMO recommendations is an extremely important instrument both in the fight against illegal fishing and in order to prevent a legal vacuum for EU fleets, and these delays, even though the recommendations are provisionally incorporated through other regulations, mean that the legislation is confusing and damages the EU's credibility.

The Commission must therefore assign sufficient resources to work connected with RFMOs as soon as possible.

In this case, an additional delay arose from the fact of the Commission's proposal being submitted after the entry into force of the new Treaty, but still under the consultation procedure. It was therefore necessary to adapt it. The negotiations were complicated by the fact that the proposal contained numerous provisions relating to the old 'comitology' procedure, as well as one concerning the transposition into Community law, via that procedure, of all future NEAFC recommendations.

The consolidated amendment put to the vote in the Committee on Fisheries reflects the global compromise reached in the triilogue held on 15 September 2010 with a view to securing an agreement at first reading.

The rapporteur takes the view that the text agreed safeguards Parliament's new prerogatives in the context of the ordinary legislative procedure, and notes that it includes the necessary adaptations arising from TFEU 290 and 291 concerning delegated acts and implementing acts, as well as a series of technical amendments intended to update and clarify the Commission proposal.



On the matter of the transposition into Community law of any future modifications to the NEAFC control and enforcement scheme, it will be necessary to compare the compromise solutions now resorted to with the practical imperatives of the transposition procedure and make any adjustments that may be required in the future and are considered appropriate and permitted under the Treaty.

The rapporteur also wishes to stress, once again, the need for Parliament to be informed fully and in good time concerning all phases of the negotiation procedure relating to the decisions taken by the regional fisheries organisations (including the determination of negotiating mandates), as well as the importance of the participation of representatives of Parliament as observers at those negotiations. This is a sine qua non if there is to be a swift and effective transposition of these recommendations into Community law which in no way jeopardises the prerogatives of the co-legislators or the institutional balance under the Treaty.

## PROCEDURE

<b>Title</b>	Scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries			
<b>References</b>	COM(2009)0151 – C7-0009/2009 – 2009/0051(COD)			
<b>Date submitted to Parliament</b>	2.4.2009			
<b>Committee responsible</b> Date announced in plenary	PECH 14.7.2009			
<b>Rapporteur(s)</b> Date appointed	Carmen Fraga Estévez 1.9.2009			
<b>Discussed in committee</b>	21.7.2009	1.9.2009	3.11.2009	1.12.2009
<b>Date adopted</b>	29.9.2010			
<b>Result of final vote</b>	+: 20	–: 0	0: 0	
<b>Members present for the final vote</b>	Antonello Antinoro, Kriton Arsenis, Alain Cadec, Marek Józef Gróbarczyk, Iliana Malinova Iotova, Isabella Lövin, Guido Milana, Maria do Céu Patrão Neves, Britta Reimers, Crescenzo Rivellini, Ulrike Rodust, Struan Stevenson, Catherine Trautmann, Jarosław Leszek Wałęsa			
<b>Substitute(s) present for the final vote</b>	Jean-Paul Basset, Ole Christensen, Chris Davies			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Pilar Ayuso, Elisabetta Gardini, Potito Salatto			
<b>Date tabled</b>	30.9.2010			