Council of the European Union

Brussels, 10 December 2021
(OR. en)

14940/21

Interinstitutional File: 2021/0413(NLE)

PECHE 497

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	10 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 785 final
Subject:	Proposal for a COUNCIL DECISION concerning the position to be taken on behalf of the European Union in the North Pacific Fisheries Commission

Delegations will find attached document COM(2021) 785 final.

Encl.: COM(2021) 785 final

EUROPEAN
COMMISSION

Brussels, 10.12.2021
COM(2021) 785 final

2021/0413 (NLE)

Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the North Pacific Fisheries Commission

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf at meetings of the North Pacific Fisheries Commission (NPFC) between 2022 and 2027 to adopt conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean

The Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean (NPFC Convention) aims, by establishing the NPFC, to ensure the long-term conservation and sustainable use of fishery resources in the Convention area. The Convention entered into force on 19 July 2015.

The Union is a party to the NPFC, having ratified the Convention pursuant to Council Decision 2022/XX/EU[1].

2.2. NPFC

The NPFC Convention set up the NPFC to manage and conserve fishery resources in the Convention area. The NPFC adopts measures to ensure the long-term conservation and sustainable use of fishery resources under its purview.

As a member of the NPFC, the Union has participation and voting rights. The NPFC usually takes its decisions by consensus; however, it may take decisions by a three-quarters majority of its members, except where the NPFC Convention expressly provides for consensus.

2.3. NPFC decisions

The NPFC has the authority to adopt conservation and enforcement measures for the fisheries under its purview, which are binding on the contracting parties.

In accordance with Article 9(1)(b) of the NPFC Convention, the measures enter into force 90 days after the date on which the contracting parties are notified of them by the NPFC.

If any member of the NPFC presents an objection to a decision at least two weeks in advance of the date that the decision becomes binding, the decision will not become binding on that member to the extent of the objection. Objections may be based solely on the grounds that the decision is inconsistent with the provisions of the NPFC Convention, the 1982 UN Law of the Sea Convention or the UN Fish Stocks 1995 Agreement, or that the decision unjustifiably discriminates in form or in fact against the objecting member.

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[1] Council Decision 2022/XX/EU of February 2022 on the approval, on behalf of the European Union, of the Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean (OJ L , ,). [accession decision expected by mid Feb 2022; this mandate will be adopted following the accession]

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be adopted on behalf of the Union at the annual meetings of regional fisheries management organisations (RFMOs) will be established according to a two-tier approach.

A Council Decision sets out the guiding principles and orientations of the Union's position on a multiannual basis and will subsequently be adjusted for each annual meeting by Commission non-papers to be discussed in the Council Working Party.

The Decision contains general principles and orientations, but also takes the specificities of the NPFC into account as far as possible. In addition, it sets out the standard process for establishing the Union's position year by year, as requested by Member States.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

'Acts having legal effects' include acts that have legal effects by virtue of the rules of international law governing the body in question, and instruments that do not have a binding effect under international law, but which are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[2].

4.1.2. Application to the present case

The NPFC is a body set up by an agreement, namely the NPFC Convention.

The acts that the NPFC is called upon to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law, in accordance with Article 8 of the NPFC Convention, and are capable of decisively influencing the content of EU legislation, including:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[3];
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy[4]; and
- Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets[5].

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2 Judgment of the Court of Justice of 7 October 2014, *Germany* v *Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

3 OJ L 286, 29.10.2008, p. 1.

4 OJ L 343, 22.12.2009, p. 1.

5 OJ L 347, 28.12.2017, p. 81.

The envisaged acts do not supplement or amend the institutional framework of the NPFC Convention.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a Decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If that act pursues two aims or has two components, and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the Decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to fisheries. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision is to replace Decision 9784/17.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 43(2) TFEU, in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 2022/XX/EU of February 2022[6], the Union concluded the Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean (NPFC Convention), which established the North Pacific Fisheries Commission (NPFC).

(2) The NPFC is responsible for the adoption of conservation and management measures to achieve the objectives of the NPFC Convention. Such measures may become binding upon the Union.

(3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[7] provides that the Union is to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. It also provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels, which can produce the maximum sustainable yield. It further provides that the Union is to take management and conservation measures based on best available scientific advice, to support the development of scientific knowledge and advice, to gradually eliminate discards and to promote fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fishing with low impact on marine ecosystem and fishery resources. Besides, Regulation (EU) No 1380/2013

[6] Council Decision 2022/XX/EU of February 2022 on the approval, on behalf of the European Union, of the Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean (OJ L ,, p.).[accession decision expected Feb 2022]

[7] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

(4) As stated in the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on *International ocean governance: an agenda for the future of oceans*[8], and the Council conclusions on that Joint communication[9], the promotion of measures to support and enhance the effectiveness of regional fisheries management organisations (RFMOs) and, where relevant, improve their governance is central to the Union's action in these fora.

(5) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European Strategy for Plastics in a Circular Economy*[10], refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the NPFC for the period 2022-2027, as the NPFC conservation and enforcement measures will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008[11]; Council Regulation (EC) No 1224/2009[12]; and Regulation (EU) 2017/2403 of the European Parliament and of the Council[13].

(7) In view of the evolving nature of fishery resources in the NPFC Convention area and the consequent need for the position of the Union to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the NPFC, procedures should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union (TEU), for the year-to-year specification of the Union position for the period 2022-2027.

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8 JOIN(2016) 49 final of 10.11.2016.

9 7348/1/17 REV 1 of 24.3.2017.

10 COM(2018) 28 final, 16.1.2018.

11 Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

12 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

13 Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the North Pacific Fisheries Commission (NPFC) is set out in Annex I.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the NPFC shall be conducted in accordance with Annex II.

Article 3

The Union's position set out in Annex I shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the annual meeting of the NPFC in 2028.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President