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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 103 final
Subject:	Proposal for a COUNCIL DECISION concerning the position to be taken on behalf of the European Union in the North Atlantic Salmon Conservation Organisation (NASCO) and repealing Decision 9450/1/14 REV 1

Delegations will find attached document COM(2019) 103 final.

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2019/0052 (NLE)

Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the North Atlantic Salmon Conservation Organisation (NASCO) and repealing Decision 9450/1/14 REV 1

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 Atlantic Salmon Conservation Organisation (NASCO) for the period 2019-2023 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention for the Conservation of Salmon in the North Atlantic Ocean

The Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO Convention) aims, by establishing the NASCO, to conserve, restore, enhance and rationally manage wild Atlantic salmon. The Convention entered into force on 1 October 1983.

The Union is a party to the NASCO Convention, having approved it pursuant to Council Decision 82/886/EEC[1].

2.2. Council of the North Atlantic Salmon Conservation Organisation

The NASCO Council, supported by the three NASCO Commissions (the North American Commission, the North-East Atlantic Commission and the West Greenland Commission), is the body established by the NASCO Convention to conserve, restore, enhance and rationally manage Atlantic salmon through international cooperation. It adopts conservation and management measures to manage the fishery resources under its purview.

As a member of the NASCO Council and two of its Commissions (the North-East Atlantic Commission and the West Greenland Commission), the Union has participation and voting rights. The NASCO Council takes its decisions by unanimity.

2.3. NASCO Council decisions

The NASCO Council has the authority to adopt conservation and enforcement measures for the fisheries under its purview and these are binding on the contracting parties.

In accordance with Article 13(2) of the NASCO Convention, the measures enter into force 60 days after the date on which the contracting parties are notified of them by the NASCO.

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) is currently 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 it is subsequently adjusted for each annual meeting by Commission non-papers to be discussed in the Council Working Party.

For the NASCO, this approach is implemented by Council Decision 9450/1/14 REV 1 of 19 May 2014, which sets out the Union's position in the NASCO for the period 2014-2018. The Decision contains general principles and orientations, but also takes into account to the extent possible the specificities of the NASCO. In addition, it sets out the standard process for establishing the Union's position year by year, as requested by Member States.

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[1] Council Decision 82/886/EEC of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean (OJ L 378, 31.12.1982, p. 24).

Decision 9450/1/14 REV 1 provides for a review of the Union's position before the 2019 annual meeting. Therefore, this proposal sets out the Union's position in the NASCO for the period 2019-2023, thereby replacing Decision 9450/1/14 REV 1.

Decision 9450/1/14 REV 1 incorporated the principles and orientations of the new common fisheries policy (CFP), as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[2], also taking into account the objectives set in the Commission Communication on the external dimension of the CFP[3]. Moreover, it adjusted the Union's position to the Lisbon Treaty.

The current revision takes into consideration, in connection with impact of fishing, of 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*[4], 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*[5] and the Council conclusions on that Joint Communication[6].

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 are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[7].

4.1.2. Application to the present case

The NASCO Council, supported by its Commissions, is the body set up by an agreement, namely the NASCO Convention.

The acts that the NASCO Council is called upon to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law in accordance with Article 13 of the NASCO Convention and are capable of decisively influencing the content of Union legislation, including:

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2 Regulation (EU) No 1380/2013 of the European Parliament and of the Council 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).

3 COM(2011) 424, 13.7.2011.

4 COM(2018) 28 final, 16.1.2018.

5 JOIN(2016) 49 final, 10.11.2016.

6 7348/1/17 REV 1, 24.3.2017.

7 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.

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[8];
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy[9]; 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[10].

The envisaged acts do not supplement or amend the institutional framework of the NASCO 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 9450/1/14 REV 1, which covers the period 2014-2018.

4.3. Conclusion

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

[8] OJ L 286, 29.10.2008, p. 1.
[9] OJ L 343, 22.12.2009, p. 1.
[10] OJ L 347, 28.12.2017, p. 81.

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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 (EC) No 886/82[11], the European Community concluded the Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO Convention), which established the North Atlantic Salmon Conservation Organisation (NASCO).

(2) The NASCO Council, supported by the three Commissions (the North American Commission, the North-East Atlantic Commission and the West Greenland Commission), is the body established by the NASCO Convention to conserve, restore, enhance and rationally manage Atlantic salmon through international cooperation. The NASCO Council adopts conservation and management measures to manage of the fishery resources under their purview. Such measures may become binding upon the Union.

(3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[12] 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

[11] Council Decision of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean (OJ L 378, 31.12.1982, p. 24).

[12] 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*[13], and the Council conclusions on that Joint communication[14], 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*[15], 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 meetings of the NASCO Council, as the NASCO 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[16]; Council Regulation (EC) No 1224/2009[17]; and Regulation (EU) 2017/2403 of the European Parliament and of the Council[18].

(7) Currently the position to be taken on the Union's behalf in the meetings of the NASCO Council is established by Council Decision 9450/1/14 REV 1[19]. It is appropriate to repeal 9450/1/14 REV 1 and to replace it by a new Decision for the period 2019-2023

(8) In view of the evolving nature of fishery resources in the NASCO 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 NASCO, procedures must 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's position for the period 2019-2023.

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13 JOIN(2016) 49 final of 10.11.2016.

14 7348/1/17 REV 1 of 24.3.2017.

15 COM(2018) 28 final, 16.1.2018.

16 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).

17 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).

18 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).

19 Council Decision of 19 May 2014 on the position to be adopted, on behalf of the Union, in the North Atlantic Salmon Conservation Organisation (NASCO).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union in the meetings of the North Atlantic Salmon Conservation Organisation (NASCO) Council 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 NASCO Council 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 NASCO Council in 2024.

Article 4

Decision 9450/1/14 REV 1 of 19 May 2014 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President