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

REGULATION (EU) 2019/833 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2019

laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation, amending Regulation (EU) 2016/1627 and repealing Council Regulations (EC) No 2115/2005 and (EC) No 1386/2007

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[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) One of the objectives of the Common Fisheries Policy, as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(3)], is to ensure exploitation of marine biological resources that provides sustainable economic, environmental and social conditions.

(2) By means of Council Decision 98/392/EC[(4)], the Union approved the United Nations Convention on the Law of the Sea and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, which contain principles and rules with regard to the conservation and management of the living resources of the sea. In the framework of its wider international obligations, the Union takes part in efforts made in international waters to conserve fish stocks.

(3) The Union is party to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (‘the Convention’), approved by Council Regulation (EEC) No 3179/78[(5)]. An amendment to the Convention was adopted on 28 September 2007 and approved by Council Decision 2010/717/EU[(6)].

(4) The Northwest Atlantic Fisheries Organisation (NAFO) has the authority to adopt legally binding decisions for the conservation of fishery resources under its purview.

Those decisions are essentially addressed to the NAFO Contracting Parties, but also contain obligations for the operators (for example the master of the vessel). Upon their entry into force, the NAFO conservation and enforcement measures (CEM) are binding on all NAFO Contracting Parties and, in the case of the Union, are to be incorporated into Union law to the extent to which they are not already covered by Union law.

(5) Council Regulation (EC) No 1386/2007[(7)] transposed the CEM into Union law.

(6) Council Regulation (EC) No 2115/2005[(8)] established a recovery plan for the Greenland halibut stock in NAFO Subarea 2 and Divisions 3KLMNO.

(7) The CEM have been amended by every annual meeting of NAFO Contracting Parties since 2008. The new provisions need to be incorporated into Union law, including conservation measures for certain species, protection of vulnerable marine ecosystems, inspection procedures at sea and in port, vessel requirements, monitoring of fishing activities and additional port State measures.

(8) Taking into consideration that certain provisions of the CEM are being amended more frequently by NAFO Contracting Parties and are likely to be amended further in the future, in order to swiftly incorporate into Union law future amendments to the CEM, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the following aspects: list of activities of research vessels; measures relating to Northern prawn fishing; change of fishery depths and references to restricted or closed areas; procedures concerning authorised vessels with more than 50 tonnes live weight total catch on board taken outside the Regulatory Area entering the area to fish for Greenland halibut and preconditions for beginning to fish for Greenland halibut; content of the electronic transmission, list of valid documents to be carried on board the vessels and the content of capacity plans; documentation to be carried on board vessels on chartering arrangements; the vessel monitoring system (VMS) data; provisions on electronic reporting and on the content of notifications; and obligations of the master of the vessel during inspection. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(9)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(9) The Commission, representing the Union at NAFO meetings, agrees annually to a number of purely technical provisions of the CEM, in particular concerning format and content of information exchange, scientific terminology or closures of vulnerable areas. The Commission should also adopt a delegated act supplementing this Regulation with those provisions of, and Annexes to, the CEM, and should be empowered to amend it.

(10) Regulations (EC) No 2115/2005 and (EC) No 1386/2007 should therefore be repealed.

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) 2019/833 of the European Parliament and of the Council. (See end of Document for details)*

(11) In November 2018, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted Recommendation 18-02 establishing a management plan for bluefin tuna that will enter into force on 21 June 2019. Recommendation 18-02 repeals Recommendation 17-07, which amended Recommendation 14-04 establishing a recovery plan for bluefin tuna that was implemented in Union law by means of Regulation (EU) 2016/1627 of the European Parliament and of the Council[(10)]. Recommendation 18-02 contains more flexible provisions than those implemented in Regulation (EU) 2016/1627.

(12) The Commission plans to adopt a proposal for a Regulation for the purpose of implementing Recommendation 18-02 during the first quarter of 2019. It is unlikely that the co-legislators will adopt that Regulation before the entry into of force of Recommendation 18-02.

(13) During a technical meeting on ICCAT issues on 11 December 2018, Member States expressed their wish to implement at least certain provisions of Recommendation 18-02 relating to by-catches, farming and fishing capacity and open seasons from 21 June 2019, to ensure a level playing field between all operators catching bluefin tuna. In addition, there are new reinforced control provisions, including for intra-farming random controls, live trade and farming practices, that Member States are also to implement from 21 June 2019, on the basis of shared competence on that policy.

(14) In order to ensure a level playing field between Union fishing vessels and other fleets fishing for bluefin tuna, the ICCAT measures laid down in Recommendation 18-02 relating to by-catches, farming and fishing capacity and open seasons should be included in Regulation (EU) 2016/1627.

(15) Regulation (EU) 2016/1627 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation, unless otherwise provided, applies to Union fishing vessels used or intended for use for the purposes of commercial fishing activities conducted on fishery resources in the NAFO Regulatory Area, as defined in Annex I to the Convention, as well as activities by third country vessels under the Convention in Union waters or territory.

2 This Regulation applies without prejudice to the obligations in existing regulations in the fisheries sector, in particular Regulation (EU) 2017/2403 of the European Parliament and of the Council[(11)] and Council Regulations (EC) No 1005/2008[(12)] and (EC) No 1224/2009[(13)].

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/833 of the European Parliament and of the Council. (See end of Document for details)*

3 Unless otherwise provided in this Regulation, Union research vessels shall not be restricted by conservation and management measures pertaining to the catching of fish, in particular concerning mesh size, size limits, closed areas and seasons.

Article 2

Subject matter

1 This Regulation lays down the rules for the application by the Union of the CEM for their uniform and effective implementation within the Union.

2 Furthermore, this Regulation amends certain provisions of Regulation (EU) 2016/1627.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘the Convention’ means the 1979 Convention on Cooperation in the Northwest Atlantic Fisheries, as amended from time to time;

(2) ‘the Convention Area’ means the area to which the Convention applies as described in Article IV, paragraph 1 thereof. The Convention Area is divided into scientific and statistical Subareas, Divisions and Subdivisions listed in Annex I to the Convention;

(3) ‘the Regulatory Area’ means that part of the Convention Area which is beyond national jurisdiction;

(4) ‘fishery resources’ means all fish, molluscs and crustaceans within the Convention Area excluding:

  (a) sedentary species over which coastal States may exercise sovereign rights in accordance with Article 77 of the United Nations Convention on the Law of the Sea; and

  (b) in so far as they are managed under other international treaties, anadromous and catadromous stocks and highly migratory species listed in Annex I to the United Nations Convention on the Law of the Sea;

(5) ‘fishing activities’ means harvesting or processing fishery resources, landing or transhipping of fishery resources or products derived from fishery resources, or any other activity in preparation for, in support of, or relating to the harvesting of fishery resources in the Regulatory Area, including:

  (a) the actual or attempted searching for or catching of fishery resources;

  (b) any activity that can reasonably be expected to result in locating, catching or harvesting of fishery resources for any purpose; and

  (c) any operation at sea in support of, or in preparation for, any activity described in this definition but not including any operations relating to emergencies involving the health and safety of the crew members or the safety of a vessel;

(6) 'fishing vessel' means any Union vessel that is or has been engaged in fishing activities, and includes fish processing vessels, and vessels engaged in transhipment or any other activity in preparation for or relating to fishing activities, or in experimental or exploratory fishing activities;

(7) 'research vessel' means a vessel permanently used for research or a vessel normally used for fishing activities or fisheries support activity that is temporarily used for fisheries research;

(8) 'CEM' means conservation and enforcement measures in force as adopted by the NAFO Commission;

(9) 'fishing opportunities' means fishing quotas allocated to a Member State by a Union act in force for the Regulatory Area;

(10) 'EFCA' means the European Fisheries Control Agency as established by Regulation (EU) 2019/473 of the European Parliament and of the Council[(14)];

(11) 'fishing day' means any calendar day or any fraction of a calendar day in which a fishing vessel is present in any Division in the Regulatory Area;

(12) 'port' means, inter alia, offshore terminals and other installations for landing, transhipping, packaging, processing, refuelling or resupplying;

(13) 'non-Contracting Party vessel' means a vessel flying the flag of a State that is not a Contracting Party to NAFO or is not a Member State, or a vessel suspected to be without nationality;

(14) 'transhipment' means transfer, over the side, from one fishing vessel to another, of fishery resources or products;

(15) 'mid-water trawl' means trawl gear that is designed to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear shall not include discs, bobbins or rollers on its footrope or any other attachments designed to make contact with the bottom, but it may have chafing gear attached;

(16) 'vulnerable marine ecosystems' or 'VMEs' means the VMEs referred to in paragraphs 42 and 43 of the Food and Agriculture Organisation (FAO) International Guidelines for the Management of Deep-Sea Fisheries in the High Seas;

(17) 'footprint', otherwise known as 'existing bottom fishing areas', means that portion of the Regulatory Area where bottom fishing has historically occurred, and is defined by the coordinates shown in Table 4 and illustrated in Figure 2 of the CEM referred to in points 1 and 2 of the Annex to this Regulation;

(18) 'bottom fishing activities' means any activity where the fishing gear is in contact with or is likely to be in contact with the seafloor during the normal course of fishing operations;

(19) 'processed fish' means any marine organism that has been physically altered since capture, including fish that has been filleted, gutted, packaged, canned, frozen, smoked, salted, cooked, pickled, dried or prepared for market in any other manner;

(20) 'exploratory bottom fishing activities' means bottom fishing activities conducted outside the footprint, or within the footprint with significant changes to the conduct or in the technology used in the fishery;