Council Regulation (EC) No 679/2009 of 7 July 2009 amending Regulation (EC) No 1386/2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation

COUNCIL REGULATION (EC) No 679/2009

of 7 July 2009

amending Regulation (EC) No 1386/2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1386/2007of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation[(1)], and in particular Article 70 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Regulation (EC) No 1386/2007 implements certain conservation and enforcement measures adopted by the Northwest Atlantic Fisheries Organisation ('NAFO'). This Regulation has subsequently been amended by Council Regulation (EC) No 538/2008[(2)]. Furthermore, inconsistencies between Regulation (EC) No 1386/2007 and NAFO rules on conservation and enforcement have been identified.

(2) At its 30th annual meeting held in September 2008, NAFO adopted a number of amendments to its conservation and enforcement measures. Those amendments relate to provisions on bottom fishing, closed areas to ensure seamount protection, labelling requirements and additional port state measures.

(3) Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[(3)], will start to apply on 1 January 2010.

(4) Regulation (EC) No 1386/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1386/2007 is hereby amended as follows:

1. in Article 3, the following points shall be added:

   21. "Bottom fishing activities" means any fishing activity involving gear that contacts or is likely to contact the ocean bottom during the normal course of fishing operations.

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22. "Existing bottom fishing areas" means areas where, as indicated by VMS and/or other geo-reference data, bottom fishing activities have been conducted at least in two years within a reference period of 1987 to 2007.

23. "New bottom fishing areas" means any area, other than existing bottom fishing areas, in which bottom fishing activities are conducted.;

2. in Article 6, the following paragraph shall be added:

4. Masters of Community vessels shall record coordinates pertaining to the start and end locations of any trial tow conducted in accordance with paragraph 3.;

3. in Article 7, the following paragraph shall be added:

5. Vessels conducting a directed fishery for species other than those specified in paragraphs 1, 2 and 3 of this Article are permitted to take regulated species with nets having a mesh size less than specified in those paragraphs, provided that the by-catch requirements in Article 4 are complied with.;

4. in Article 8, paragraph 2 shall be replaced by the following:

2. However, Community vessels fishing in areas outside the NAFO Regulatory Area may retain on board nets with a mesh size smaller than that prescribed in Article 7, provided that these nets are securely lashed and stowed and are not available for immediate use.;

5. Article 11 shall be replaced by the following:

Article 11

Special provisions for shrimp fishery in Division 3L

Fishing for shrimp in Division 3L shall take place in depths greater than 200 metres.;

6. Article 12 shall be replaced by the following:

Article 12

Fisheries restricted areas

1 The conduct of bottom fishing activities shall be prohibited in the following areas:

Area	Coordinate 1	Coordinate 2	Coordinate 3	Coordinate 4
Orphan Knoll	50.00.30 N 45.00.30 W	51.00.30 N 45.00.30 W	51.00.30 N 47.00.30 W	50.00.30 N 47.00.30 W
Corner Seamounts	35.00.00 N 48.00.00 W	36.00.00 N 48.00.00 W	36.00.00 N 52.00.00 W	35.00.00 N 52.00.00 W
Newfoundland Seamounts	43.29.00 N 43.20.00 W	44.00.00 N 43.20.00 W	44.00.00 N 46.40.00 W	43.29.00 N 46.40.00 W
New England Seamounts	35.00.00 N 57.00.00 W	39.00.00 N 57.00.00 W	39.00.00 N 64.00.00 W	35.00.00 N 64.00.00 W

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Fogo Seamount 1	42.31.33 N 53.23.17 W	42.31.33 N 52.33.37 W	41.55.48 N 53.23.17 W	41.55.48 N 52.33.37 W
Fogo Seamount 2	41.07.22 N 52.27.49 W	41.07.22 N 51.38.10 W	40.31.37 N 52.27.49 W	40.31.37 N 51.38.10 W

2 The area in NAFO Division 3O defined by connecting the following coordinates (in numerical order and back to coordinate 1) shall be closed to all bottom fishing activities:

Coordinate No	**Latitude**	**Longitude**
1	42°53′00″N	51°00′00″W
2	42°52′04″N	51°31′44″W
3	43°24′13″N	51°58′12″W
4	43°24′20″N	51°58′18″W
5	43°39′38″N	52°13′10″W
6	43°40′59″N	52°27′52″W
7	43°56′19″N	52°39′48″W
8	44°04′53″N	52°58′12″W
9	44°18′38″N	53°06′00″W
10	44°18′36″N	53°24′07″W
11	44°49′59″N	54°30′00″W
12	44°29′55″N	54°30′00″W
13	43°26′59″N	52°55′59″W
14	42°48′00″N	51°41′06″W
15	42°33′02″N	51°00′00″W

7. the following shall be inserted:

CHAPTER IIa

PROTECTION OF VULNERABLE MARINE ECOSYSTEMS

Article 12a

Definition of vulnerable marine ecosystems

For the purposes of this Chapter, “vulnerable marine ecosystems” means:

(a) marine ecosystems that are unique or that contain rare species whose loss could not be compensated for by similar areas or ecosystems. These include:

(i) habitats that contain endemic species;

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(ii) habitats of rare, threatened or endangered species that occur only in discrete areas;

(iii) nurseries or discrete feeding, breeding, or spawning areas;

(b) marine ecosystems that are necessary for the survival, function, spawning/ reproduction or recovery of fish stocks, particular life-history stages (e.g. nursery grounds or rearing areas), or of rare, threatened or endangered marine species;

(c) marine ecosystems that are highly susceptible to degradation by anthropogenic activities;

(d) marine ecosystems that are characterised by populations or assemblages of species with one or more of the following characteristics:

(i) slow growth rates;

(ii) late age of maturity;

(iii) low or unpredictable recruitment; or

(iv) long-lived;

(e) marine ecosystems that are characterised by complex physical structures created by significant concentrations of biotic and abiotic features. In these ecosystems, ecological processes are usually highly dependent on these structured systems. Further, such ecosystems often have high diversity, which is dependent on the structuring organisms.

Article 12b

Definition of significant adverse impacts

For the purposes of this Chapter "significant adverse impacts" means impacts that compromise ecosystem structure or function in a manner that:

(a) impairs the ability of affected populations to replace themselves;

(b) degrades the long-term natural productivity of habitats; or

(c) causes, on more than a temporary basis, significant loss of species richness, habitat or community types.

Article 12c

Definition of vulnerable marine ecosystem indicator species

For the purposes of this Chapter, "vulnerable marine ecosystem indicator species" means antipatharians, gorgonians, cerianthid anemone fields, lophelia, and sea penfields.

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Article 12d

Definition of an encounter with vulnerable marine ecosystems

For the purposes of this Chapter, an "encounter with vulnerable marine ecosystems" means a catch, per gear set, of vulnerable marine ecosystem indicator species exceeding 100 kg of live coral and/or 1 000 kg of live sponge.

Article 12e

Assessment of bottom fishing

1 Member States whose vessels intend to conduct bottom fishing activities in the NAFO Regulatory Area shall carry out in 2009 an assessment of the known and anticipated impacts of those activities on vulnerable marine ecosystems. Member States shall only authorise bottom fishing activities in cases where the assessment concludes that such activities are not likely to have significant adverse impacts on vulnerable marine ecosystems.

2 For the purposes of the implementation of the assessment referred to in paragraph 1, Member States shall rely on the best scientific and technical information available concerning the location of vulnerable marine ecosystems in the areas in which their fishing vessels intend to operate. That information shall include, where available, scientific data on the basis of which the likelihood of occurrence of such ecosystems can be estimated.

3 The evaluation of the risk of significant adverse impacts on vulnerable marine ecosystems carried out under the assessment referred to in paragraph 1 shall take into account, as appropriate, differing conditions prevailing in new bottom fishing areas and existing bottom fishing areas.

4 Member States shall submit their assessment referred to in paragraph 1 to the Commission as soon as possible but not later than 30 June 2009. That submission shall also include a description of the mitigation measures intended to prevent significant adverse impacts on vulnerable marine ecosystems. The Commission shall promptly forward this information to the NAFO Secretariat.

Article 12f

Bottom fishing activities in new bottom fishing areas

1 All fishing activities in new bottom fishing areas, or with bottom gear not previously used in the area concerned, shall be considered as exploratory fisheries and shall be conducted in accordance with an Exploratory Fishery Protocol referred to in paragraph 2.

2 Member States, whose vessels intend to conduct fishing activities in new bottom fishing areas, or with bottom gear not previously used in the area concerned, shall set up an Exploratory Fishery Protocol using the templates in Annex XVI.

3 The Exploratory Fishery Protocol shall include the following information: