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Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the European Union, of the Agreement to prevent
unregulated high seas Fisheries in the Central Arctic Ocean**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On the basis of the relevant negotiating directives¹, the Commission conducted negotiations with the delegations from Canada, the People's Republic of China, the Kingdom of Denmark in respect of the Faroe Islands and Greenland, Iceland, Japan, the Republic of Korea, the Kingdom of Norway, the Russian Federation and the United States of America with a view to concluding a binding Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean ("the Agreement").

The Agreement will prevent unregulated commercial fishing in the high seas portion of the central Arctic Ocean, an area that is roughly 2.8 million square kilometres in size. Commercial fishing has never been known to occur in this area, nor is it likely to occur in the near future. However, given the changing conditions of the Arctic Ocean, the governments in question developed this Agreement in accordance with the precautionary approach to fisheries management.

The Agreement will establish and operate a Joint Program of Scientific Research and Monitoring with the aim of improving the understanding of the ecosystem(s) of this area and, in particular, of determining whether fish stocks might exist in this area that could be harvested on a sustainable basis. The Agreement envisions the possibility that one or more additional regional fisheries management organizations or arrangements may be established for this area in the future.

- **Consistency with existing policy provisions in the policy area**

In its 2009 conclusions on the EU Arctic policy², the Council expressed its readiness to consider a proposal to put in place a regulatory framework for the part of the high seas not yet covered by an international conservation system by extending the mandate of relevant regional fisheries management organisations or any other proposal to that effect agreed by the relevant parties.

The Council also noted that until such framework was in place, it favoured a temporary ban on new fisheries in those waters.

In its 2012 conclusions on the Communication from the Commission on the External dimension of the Common Fisheries Policy³, the Council emphasised, inter alia, the need for joint management initiatives where stocks are shared with third countries to ensure a level playing field and reaffirmed the fundamental role of regional fisheries management organisations in the sustainable management of fisheries resources at international level.

The Agreement, once entered into force, will close an important regulatory gap in the current International ocean governance framework.

¹ Adopted by the Council on 31.03.2016

² Doc. 16857/09 +CORI

³ Doc. 7087/12 REV 1 ADD 1 COR 1

- **Consistency with other Union policies**

The proposal is consistent with the European Union's Common Fisheries Policy and International Ocean Governance, including the EU's Arctic policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 43 (2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(6) second subparagraph, point (a)(v).

- **Proportionality**

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely the EU to conclude the Agreement.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

On 31 March 2016, the Council adopted negotiating directives which authorized the Commission to open negotiations on behalf of the European Union, an international agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean. Member States were informed of the progress of negotiations on meetings.

- **Collection and use of expertise**

The Commission drew on expertise from Member States in the preparations for, as well as during, each round of the negotiations. An external legal expert was also a member of the EU delegation during the last two negotiation rounds.

4. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

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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(6) second subparagraph, point (a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁴,

Whereas:

- (1) The Union is exclusively competent to adopt measures for the conservation of marine biological resources and to enter into agreements with third countries and international organisations,
- (2) Pursuant to Council Decision 98/392/EC⁵ and Council Decision 98/414/EC, the Union is respectively a Contracting Party to the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention") and to the Agreement on 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 stocks⁶ ("the Fish Stocks Agreement"). Both the Convention and the Fish Stocks Agreement require all States to cooperate in conserving and managing the living resources of the sea. The Agreement to prevent unregulated high seas Fisheries in the Central Arctic Ocean ("the Agreement") fulfils this obligation,
- (3) Regulation (EU) N° 1380/2013 of the European Parliament and of the Council⁷ provides that the Union shall conduct its external fisheries relations in accordance with its international obligations and policy objectives, as well as the objectives and principles set out in Articles 2 and 3 of that Regulation, in order to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment. The Agreement is consistent with these objectives,

⁴ OJ C [...], [...], p. [...]

⁵ Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1.).

⁶ Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 14.).

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).

- (4) On 31 March 2016, the Council⁸ authorised the European Commission to negotiate on behalf of the European Union, an international agreement to prevent unregulated high seas fisheries in the central Arctic Ocean. These negotiations were successfully concluded on 30 November 2017. In accordance with Council Decision [xxx] of [...], the Agreement to prevent unregulated high seas Fisheries in the Central Arctic Ocean was signed on [...], subject to its conclusion at a later date
- (5) Becoming a Party to the Agreement will promote consistency in the Union's conservation approach across oceans and reinforce its commitment to the long term conservation and sustainable use of marine biological resources globally,
- (6) It is therefore in the Union's interest to conclude the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean ("the Agreement") is hereby approved on behalf of the Union.

The text of the Agreement is in Annex to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification referred to in Article 15 of the Agreement, in order to express the consent of the Union to be bound by the Agreement

Article 3

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

⁸ Adopted by the Council on 31.03.2016 with document number ST 7411 2016 ADD 1.