

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 119 final.

Brussels, 30 March 1977.

Proposal for a  
Council Regulation concerning the conclusion  
of an Agreement between the European Economic  
Community and the United States of America  
concerning fisheries off the coasts of the  
United States, and establishing the provisions  
for its application

---

(submitted to the Council by the Commission)

COM(77) 119 final.



COMMUNICATION CONCERNING THE APPROVAL OF AN AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES AND ESTABLISHING THE PROVISIONS FOR ITS APPLICATION

---

(Submitted to the Council by the Commission)

1. The Agreement between the European Economic Community and the United States concerning fisheries off the coasts of the United States was signed on 15 February 1977, in accordance with the Commission's recommendation (COM (77) 29 final) and a decision taken by the Council on 14 February 1977.

In a note dated 4 March 1977 the State Department informed the delegation of the Commission in Washington that the United States had completed the internal procedures necessary to bring the Agreement into force for the United States.

Pursuant to Article XVI of the Agreement, the Community is required to complete its internal procedures for the entry into force of the Agreement, and to so notify the United States, in order that the Agreement may enter into force between the Parties.

2. The proposed Council Regulation which is attached is based on Article 43 of the EEC Treaty, in accordance with the views expressed by the Court of Justice in the Kramer case (cases 3, 4 and 6/76 of 14 July 1976) <sup>(1)</sup>. In its judgment the Court, after examining the whole scheme of Community law and the provisions involved (article 43, regulation 2141/70, article 102 of the Act of Accession), declared that "... it follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea" <sup>(2)</sup>.

Applying this conclusion to the Agreement with the United States, article 43, and the development of the common fisheries policy based on that article, provides the necessary authority for the Community to enter into the Agreement and to establish the provisions for its application.

---

(1) 1976 E.C.R. 1279.  
(2) 1976, E.C.R. 1309.

3. As regards the contents of the Regulation, articles 1 and 2 provide for the formal approval of the Agreement and the notification to be made to the United States. Article 3 sets out the obligation to be observed by Community fishermen with respect to living resources over which the United States exercises fishery management authority. The fees required by the United States are to be paid by the person to whom the permit is to be issued (article 3(5)). Member States are required to take appropriate measures to penalize infringements of the provisions of article 3, to make, on behalf of the Community, the required reports to the United States, and to ensure that the total allocation is not exceeded (article 4).

Article 5 deals with the procedures for the submission of permit applications and for the acceptance or rejection by the Community of the conditions and restrictions determined by the United States under the Agreement. Articles 6 to 8 provide for the establishment and procedures of a Committee, consisting of representatives of Member States under the chairmanship of a representative of the Commission, which would be required to give its opinion on measures proposed by the Commission.

4. As regards the administration of the Agreement, the Commission will, at the appropriate time, consider and report to the Council on additional staff requirements.

**Proposal for a  
Council Regulation concerning the conclusion  
of an Agreement between the European Economic  
Community and the United States of America  
concerning fisheries off the coasts of the  
United States, and establishing the provisions  
for its application**

---

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the common fisheries policy includes the determination of conditions for fishing with a view to ensuring the conservation of the biological resources of the sea, as is indicated, in particular, in Article 102 of the Act of Accession, and to be effective the measures taken must be applied by all the parties concerned;

Whereas by its Resolution of 3 November 1976 on certain external aspects of the creation of a 200 mile fisheries zone in the Community with effect from 1 January 1977, the Council agreed that fishing rights for Community fishermen in the waters of third countries must be obtained and preserved by appropriate Community agreements;

Whereas the Agreement between the Community and the United States of America concerning fisheries off the coasts of the United States which was signed on 15 February 1977 should now be concluded;

Whereas it is necessary to provide for the implementation of the Agreement,

**HAS ADOPTED THIS REGULATION :**

./.

Article 1

The Agreement between the European Economic Community and the United States of America concerning fisheries off the coasts of the United States is approved in the name of the Community.

The text of the Agreement referred to in the paragraph above is annexed to the present regulation.

Article 2

The President of the Council shall make the notification referred to in article XVI of the Agreement.

Article 3

1. Nationals and vessels of Member States shall refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to the Agreement. All such vessels so authorized shall comply with the provisions of permits issued pursuant to the Agreement and applicable law of the United States, and with the following paragraphs of this Article.

2. The conduct of fishing activities by nationals and vessels of Member States under the Agreement shall be subject to observance of the following conditions :

- (i) the authorizing permit for each vessel shall be prominently displayed in the wheelhouse;
- (ii) appropriate position-fixing and identification equipment, as determined by the Government of the United States, shall be installed and maintained in working order on each vessel;
- (iii) designated United States observers shall be permitted to board, upon request, any such fishing vessel, and shall be accorded the equivalent rank of ship's officer while aboard such vessel, and, further, the Government of the United States shall be reimbursed by the natural or legal person to whom the permit has been issued for the costs incurred in the utilization of observers;
- (iv) agents shall be appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to a vessel owner or operator for any cause arising out of the conduct of fishing activities under the Agreement;
- (v) prompt and adequate compensation shall be made to United States citizens for any loss of, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of a Member State, as determined by applicable United States procedures; and

(v) vessels shall maintain records and collect data, in accordance with the provisions of Annex II of the Agreement and of the pertinent United States regulations, and shall transmit to the Member State concerned, in sufficient time, the necessary information to enable the Member State to make, on behalf of the Community, the required reports to the United States authorities.

3. Nationals and vessels of Member States shall refrain from harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

4. Vessels of Member States authorized to fish pursuant to the Agreement, and any other fishing vessel of a Member State that engages in fishing for living resources subject to the fishery management authority of the United States, shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement official of the United States and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

5. The fees required by the Government of the United States for a permit shall be paid by the natural or legal person to whom the permit is to be issued. The Commission shall notify the persons concerned of the arrangements to be made to ensure the prompt payment of such fees.

#### Article 4

1. Member States shall take any appropriate measures to penalize infringements by their nationals and vessels of the provisions of Article 3.

They shall notify the Commission of the measures provided for in the preceding paragraph not later than one month after their disposition.

2. When a vessel or vessels of a Member State have been authorized to engage in fishing activities pursuant to the Agreement, the Member State concerned shall be responsible for the data collection and statistical reporting requirements set out in Annex II of the Agreement and in the pertinent United States regulations, other than those to be observed by the owner or operator, and shall submit, on behalf of the Community, the reports required under Annex II and the pertinent United States regulations to the United States authorities. The Member State concerned shall transmit to the Commission a copy of all such reports made to the United States authorities and shall inform the Commission when the total allocation in respect of any fishery has been reached. The Member State concerned shall be responsible, on behalf of the Community, for ensuring that the total allocation in respect of any fishery is not exceeded by its vessels.

3. In the event that the United States authorities supply information that a vessel has failed to comply with the provisions of the permit issued and the applicable laws of the United States, the Member State concerned shall investigate the matter without delay and shall inform the Commission of the results of the investigation and of any action taken.

#### Article 5

1. The Commission shall notify the Member States of the procedures to be followed as regards the completion of applications for permits in respect of vessels that wish to engage in fishing pursuant to the Agreement.

2. The Commission shall submit completed applications to the Government of the United States.

3. The Commission shall notify the Government of the United States, pursuant to Annex I of the Agreement, of the acceptance or rejection by the Community of the conditions and restrictions determined by the Government of the United States in connection with the issue of permits.

4. Measures for the application of paragraphs 2 and 3 above shall be adopted in accordance with the procedure laid down in Article 7.

#### Article 6

1. There is hereby established a Committee consisting of representatives of the Member States under the chairmanship of a representative of the Commission.

2. Within the Committee the votes of the Member States shall be weighted in accordance with Article 148(2) of the Treaty. The chairman shall not vote.

#### Article 7

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion on such measures within a time limit to be set by the chairman according to the urgency of the questions under consideration. An opinion shall be adopted by a majority of 41 votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.



The Council, acting by a qualified majority, may take a different decision within one month.

Article 8

The Committee may consider any other question referred to it by its chairman either on his own initiative or at the request of a representative of a Member State.

Article 9

This Regulation shall enter into force the day following its publication in the Official Journal of the European Communities.

The date of entry into force of the Agreement will be published in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels the

By the Council

The President

