

Agreement constituted in the form of an Agreed Minute, an Exchange of Letters, an Exchange of Notes and the Annexes thereto between the European Community and Canada on fisheries in the context of the NAFO Convention

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AGREED MINUTE

The European Community and Canada have agreed as follows:

A. CONTROL AND ENFORCEMENT

1. The European Community and Canada, in recognition of their commitment to enhanced cooperation in the conservation and rational management of fish stocks, and the pivotal role of control and enforcement in ensuring such conservation, agree that the proposals set out in Annex I shall constitute the basis for a submission to be jointly prepared and made to the NAFO Fisheries Commission, for its consideration and approval, to establish a Protocol to strengthen the NAFO conservation and enforcement measures.
2. The European Community and Canada shall implement immediately on a provisional basis the control and enforcement measures contained in points II.1, II.2, II.3, II.4, II.7, II.8, II.9 (the proposed list of infringements and paragraphs (i), (iii) and (v) only), II.10 and II.11 of Annex I. In respect of point II.11.A, the Parties shall deploy observers on the vessels not later than 15 days following the signature of the Agreed Minute. Regarding point II.11.B, the satellite tracking devices on 35 % of the vessels shall be installed as rapidly as realistically possible when the vessels concerned make a port call or depart for fishing in the NAFO Regulatory Area.
3. The European Community and Canada commit themselves to seeking on an urgent basis the support of other NAFO Contracting Parties for the adoption of, and subsequent adherence to, the said Protocol in advance of special meetings of the NAFO Standing Committee on International Control (Stactic) starting in April 1995 and of the NAFO Fisheries Commission to be convened as early as possible thereafter in May 1995 at the request of the European Community and Canada. The Protocol shall enter into force on the signature of a majority of NAFO Contracting Parties in the form agreed to. The European Community and Canada are convinced that by September 1995 a majority of the NAFO Contracting Parties will have subscribed to the measures. The European Community and Canada shall make great efforts to obtain the signature to the Protocol of the other NAFO Contracting Parties.
4. Canada shall submit to the NAFO Executive Secretary, in advance of each annual NAFO meeting, a report on the conservation and enforcement measures in effect in its 200-mile zone for NAFO-managed stocks. The report shall deal with the range of matters dealt with in the NAFO conservation and enforcement measures.
5. The European Community and Canada shall cooperate to improve conservation and enforcement measures. Toward this end, Canada shall invite experts from the European Commission to exchange information and to brief them on Canadian conservation and enforcement measures in effect in the Canadian 200-mile zone for NAFO-managed stocks.
6. Under the pilot project for observers and satellite tracking described in Annex I, observers will act under the authority of the European Commission for the European Community and the Government of Canada for Canada, and will be placed on vessels as soon as possible in accordance with the provisions set out under point 2 above. Except in the case of force majeure, vessels without an observer will not be allowed to continue fishing in the NAFO Regulatory Area beyond the period referred to in point 2 above. The European Community and Canada will both monitor on a regular basis the effectiveness and efficiency of the observer scheme as part of the evaluation of the said Pilot Project.

B. TOTAL ALLOWABLE CATCH AND CATCH LIMITS

In light of their mutual interest in conservation, the European Community and Canada reaffirm their commitment to the level of 27 000 tonnes as the total allowable catch of Greenland halibut for 1995 in NAFO sub-areas 2 and 3. Bearing this in mind, and in the light of the particular circumstances associated with the management of the Greenland halibut resource in the NAFO Convention Area, the European Community and Canada agree to the management arrangements for Greenland halibut as set out in Annex II.

C. OTHER RELATED ISSUES

1. Canada shall repeal the provisions of the Regulation of 3 March 1995 pursuant to the Coastal Fisheries Protection Act which subjected vessels from Spain and Portugal to certain provisions of the Act and prohibited these vessels from fishing for Greenland halibut in the NAFO Regulatory Area. For the European Community, any re-insertion by Canada of vessels from any European Community Member State into its legislation which subjects vessels on the high seas to Canadian jurisdiction will be considered as a breach of this Agreed Minute.
2. For Canada, any systematic and sustained failure of the European Community to control its fishing vessels in the NAFO Regulatory Area which clearly has resulted in violations of a serious nature of NAFO conservation and enforcement measures may be considered as a breach of this Agreed Minute. The European Community and Canada shall consult before taking any action on the foregoing.

D. GENERAL PROVISIONS

1. The European Community and Canada maintain their respective positions on the conformity of the amendment of 25 May 1994 to Canada's Coastal Fisheries Protection Act, and subsequent regulations, with customary international law and the NAFO Convention. Nothing in this Agreed Minute shall prejudice any multilateral convention to which the European Community and Canada, or any Member State of the European Community and Canada, are parties, or their ability to preserve and defend their rights in conformity with international law, and the views of either Party with respect to any question relating to the Law of the Sea.
2. Any limitation to the NAFO Regulatory Area or any parts thereof of the measures referred to in this Agreed Minute shall not be deemed to affect or prejudice the position of the European Community with regard to the status of the areas within which coastal States exercise their fisheries jurisdiction.

E. IMPLEMENTATION

The provisions of this Agreed Minute, with its annexes as an integral part of it, shall be provisional implemented by the European Community and Canada upon signature, pending its final approval through an exchange of notes.

This Agreed Minute shall cease to apply on 31 December 1995 or when the measures described in this Agreed Minute are adopted by NAFO, if this is earlier.

Brussels, 20 April 1995

On behalf of the European Community

Gianluigi GIOLA For the Canadian Government

Jacques S. ROY

ANNEX I

PROPOSAL FOR IMPROVING FISHERIES CONTROL AND ENFORCEMENT

I. BASIS FOR CONSERVATION AND ENFORCEMENT STRATEGY

The strategy underlying this proposal comprises the following elements:

- (a) simplification and strengthening of existing rules, making them more enforceable;
- (b) establishment and enforcement of minimum fish size compatible with meshes in use in order to minimize discarding;
- (c) encouragement of the practice of selective fisheries, with minimal by-catch;
- (d) improvement of hail system;
- (e) increased inspection on fishing grounds and on landings;
- (f) increased transparency;
- (g) pilot project for observers and satellite tracking system;
- (h) a system for immediate response to alleged major infringements;
- (i) reporting rules;
- (j) use of legal process;
- (k) penalties;
- (l) effort control.

Any proposals to be adopted by NAFO shall take into account cost/benefit analysis and existing legal systems of Contracting Parties, including the principles of non-discrimination, proportionality and the right of appeal by fishermen.

II. PROPOSALS TO AMEND THE NAFO CONSERVATION AND ENFORCEMENT MEASURES

II.1. Inspections

Inspections of vessels shall be carried out in a non-discriminatory way. The number of inspections shall be based upon fleet size, taking also into account their compliance records. Contracting Parties shall ensure that their inspectorates take special care to avoid damage to the cargo or the gear being inspected. Interference with fishing activities and normal activities on board shall be minimized. Crews and vessels operating in conformity with the NAFO conservation and enforcement measures shall not be harassed. Inspections shall only aim to ascertain that NAFO rules are respected and not unduly hinder the activities of specific vessels, while at the same time not limiting the capability of NAFO inspectors to carry out their mandate.

II.2. Transmission of information from inspections

Any information on suspected illegal practices and any evidence of apparent infringements shall be transmitted swiftly to the inspection authorities of the Contracting Party of the vessel and to the NAFO Executive Secretary.

II.3. Increase of the inspection presence

Each Contracting Party having 10 or more vessels operating in the NAFO Regulatory Area (NRA) shall deploy at least one inspection vessel. Contracting Parties with fewer than 10 vessels shall cooperate in the deployment of inspection vessels.

Every Contracting Party shall have at least one inspector present in the NAFO Convention Area (NCA) when vessels of that Contracting Party are operating in the NRA.

II.4. Improved hail system

A system of reporting of catch on board upon entry into and exit from the NRA will be associated with the hail system currently in practice.

Vessels with a satellite-based system of position reporting shall not be required to hail but shall submit catch reports to the NAFO Executive Secretary. Contracting Parties remain responsible for transmitting the hail information to the NAFO Executive Secretary. Contracting Parties whose vessels are so equipped shall notify the NAFO Executive Secretary of the names of such vessels.

II.5. Additional enforcement measures

In order to improve conservation and rationalize enforcement, the next Static meeting will study the issues of the protection of juvenile fish and the by-catch of regulated species and will make recommendations thereon to the next NAFO Fisheries Commission meeting.

In particular, the following issues shall be addressed:

- the addition of Greenland halibut to the list of species subject to a minimum fish size, with a length of (X) cm;
- the applicability of current discard rules in the NRA;
- the development of special rules for fish products, e.g. processed length equivalents;
- the problem of on-board production of fish meal and similar products;
- further measures to protect juvenile fish, e.g. area/seasonal closures;
- amendments to incidental by-catch limit measures so that where an 'others' quota or an individual Contracting Party quota has been taken or, on a case-by-case basis, a directed fishery has been prohibited, the incidental by-catch for that stock is not retained on board.

II.6. Mesh size

The derogation of 120 mm when using polyamide-type fibres shall be phased out in a period to be fixed by the Fisheries Commission.

II.7. Dockside inspection

Each Contracting Party shall ensure that all vessels engaged in fishing in the NRA for stocks subject to NAFO conservation and enforcement measures undergo a dockside inspection at each port call. Results of these inspections shall be provided to other Contracting Parties on request. Results of these inspections shall also be cross-checked with log books and results reported to the NAFO Executive Secretary on an annual basis.

Annual checks shall be made of the fish holds in order to certify the correctness of the fish hold plans.

II.8. Effort plans and catch reporting

For 1995, each Contracting Party shall inform the NAFO Executive Secretary of the fishing plan for the Greenland halibut fishery in the NRA and shall, at the end of the year, report on its implementation. If this system proves useful, it shall be extended to other fisheries.

For 1995, catches of Greenland halibut in the NRA shall be reported to the NAFO Executive Secretary no less frequently than every 48 hours, in accordance with the NAFO conservation and enforcement measures.

II.9. Major infringements

NAFO should establish a class of major infringements, to include:

(a) refusal to cooperate with an inspector or an observer;

(b) misreporting of catches;

(c) mesh size violations;

(d) hail system violations;

(e) interference with the satellite tracking system.

(i) If a NAFO inspector cites a vessel for having committed, to a serious extent, a major apparent infringement, the Contracting Party of this vessel shall ensure that the vessel concerned is inspected by a duly authorized inspector of that Contracting Party within 48 hours. In order to preserve the evidence, the NAFO inspector shall take all necessary measures to ensure security and continuity of the evidence, including, as appropriate, sealing the vessel's hold, and may remain on board the vessel until the duly authorized inspector arrives.

(ii) Where justified, the inspector of the Contracting Party of the vessel concerned shall, where duly authorized to do so, require the vessel to proceed immediately to a nearby port, chosen by the master, which should be either St Pierre, St John's, the Azores or the home port of the vessel, for a thorough inspection under the authority of the flag State and in the presence of a NAFO inspector from any other Contracting Party that wishes to participate. If the vessel is not called to port, the Contracting Party must provide due justification to the NAFO Executive Secretary in a timely manner.

(iii) Where a NAFO inspector cites a vessel for having committed a major apparent infringement, the inspector shall immediately report this to the NAFO Executive Secretary, who shall in turn immediately report, for information purposes, to the other NAFO Contracting Parties with an inspection vessel in the NCA.

(iv) Where a vessel is required to proceed to port for a thorough inspection pursuant to paragraph (ii), a NAFO inspector from another Contracting Party may, subject to the consent of the Contracting Party of the vessel, board the vessel as it is proceeding to port, may remain on board the vessel as it proceeds to port and may be present during the inspection of the vessel in port.

(v) If an apparent infringement of the NAFO conservation and enforcement measures has been detected which in the view of the duly authorized inspector is sufficiently serious, the inspector shall take all necessary measures to ensure security and continuity of the evidence including, as appropriate, sealing the vessel's hold for eventual dockside inspection.

II.10. Follow up on apparent infringements

There shall be a transparent and effective legal process to follow up apparent infringements using all necessary evidence available from all sources, including evidence from other Contracting Parties as required

for effective prosecution. The Parties shall make a semi-annual report to the NAFO Executive Secretary on the status of legal proceedings on a case-by-case basis, in sufficient detail for transparency, subject to domestic law, particularly, when convictions are imposed, regarding level of fines, value of forfeited fish and/or gear, and including an explanation if no action is taken.

The penalties provided in legislation shall be such as to provide an effective deterrent. Such penalties may include refusal, suspension or withdrawal of the authorization to fish in the NRA.

II.11. Pilot project for observers and satellite tracking

In order to improve compliance with NAFO conservation and enforcement measures for their vessels fishing under the NAFO Convention, the Contracting Parties agree to implement a pilot project to provide for properly trained and qualified observers on all vessels fishing in the NRA and satellite-tracking devices on 35 % of their respective vessels fishing in the NRA. Contracting Parties shall take all necessary measures to ensure that observers are able to carry out their duties and that the master and crew of the Contracting Party vessels extend all necessary cooperation to observers. Contracting Parties shall provide to the NAFO Executive Secretary lists of the observers they will be placing on vessels in the NRA.

A. Observers

1. Each Contracting Party shall require its vessels operating under the NAFO Convention to accept observers on the basis of the following:

(a) each Contracting Party shall have the primary responsibility to obtain, for placement on its vessels, independent and impartial observers;

(b) in cases where a Contracting Party has not placed an observer on a vessel, any other Contracting Party may, subject to the consent of the Contracting Party of the vessel, place an observer on board until that Contracting Party provides a replacement in accordance with paragraph (a);

(c) no vessel shall be required to carry more than one observer pursuant to this pilot project at any time.

2. Observers shall monitor a vessel's compliance with the relevant NAFO conservation and enforcement measures. In particular the observers shall:

(a) record and report upon the fishing activities of the vessel and shall verify the position of the vessel when engaged in fishing;

(b) observe and estimate catches taken with a view to identifying catch composition, monitor discarding, by-catches and the taking of undersized species;

(c) record the gear, mesh sizes and attachments employed by the master;

(d) verify entries made to the logbooks (species composition quantities, round and processed weight, and hail reports).

3. Observers shall collect catch and effort data on a set-by-set basis. This data shall include location (latitude/longitude), depth, time of net on the bottom, catch composition and discards.

4. Observers shall carry out such scientific work, for example, collecting samples, as requested by the Fisheries Commission based on the advice of the Scientific Council.

5. In the case where the observer is deployed on a vessel equipped with devices for automatic remote position recording facilities, the observer shall monitor the functioning of, and report upon any interference with, the satellite system. In order better to distinguish fishing operations from steaming and to contribute to

an a posteriori calibration of the signals registered by the receiving station, the observer shall maintain detailed reports on the daily activity of the vessel.

6. When an apparent infringement is identified by an observer, the observer shall, within 24 hours, report it both to a NAFO inspection vessel, using an established code, and to the NAFO Executive Secretary.

7. Within 30 days following completion of an observer's assignment on a vessel, the observer shall provide a report to the Contracting Party of the vessel and to the NAFO Executive Secretary who shall make it available to any Contracting Party that requests it.

8. Subject to any other arrangements between the Parties, the salary of an observer shall be covered by the sending Contracting Party. The vessel on which an observer is placed shall provide suitable food and lodging during his deployment.

B. Satellite tracking

1. Contracting Parties agree that 35 % of their respective vessels fishing in the NRA shall be equipped with an autonomous system able to transmit automatically satellite signals to a land-based receiving station permitting a continuous tracking of the position of the vessel by the Contracting Party of the vessel. Contracting Parties shall endeavour to test several systems of satellite tracking.

2. Contracting parties whose vessels fish a minimum of 300 days in the NRA are subject to satellite-based position monitoring (1).

3. Each Contracting Party shall install at least one receiving station associated to the satellite tracking system.

4. Each Contracting Party shall transmit, on a real-time basis, entry and exit messages for its vessels equipped with satellite devices to the NAFO Executive Secretary, who in turn shall transmit such information to Contracting Parties with an inspection vessel in the NCA. Contracting Parties shall cooperate with other Contracting Parties which have a NAFO inspection vessel or aircraft in the NCA in order to exchange information on a real-time basis on the geographical distribution of fishing vessels equipped with satellite devices and, on specific request, information related to the identification of a vessel.

5. Subject to any other arrangements between Contracting Parties, each Contracting Party shall pay all costs associated with the satellite tracking system.

C. Analysis

1. Each Contracting Party shall prepare a report on the results of the pilot project from the perspective of efficiency and effectiveness, including:

(a) overall effectiveness of the project in improving compliance with NAFO conservation and enforcement measures;

(b) the effectiveness of the different components of the project;

(c) costs associated with observers and satellite tracking;

(d) a summary of observers' reports, specifying type and number of observed infractions or important events;

(e) estimations of fishing effort from observers as compared to initial estimation by satellite monitoring;

(f) analysis of the efficiency in terms of cost/benefit, the latter being expressed in terms of compliance with rules and volume of data received for fisheries management.

2. The reports shall be submitted to the NAFO Executive Secretary in time for their consideration at the NAFO Annual Meeting of September 1997 and, based on these reports, the Parties agree to establish a permanent scheme that will ensure that the degree of control and enforcement in the NRA provided by the project, as indicated above, is maintained.

(1) Canada will, in any case, apply the scheme on its vessels fishing in the NRA.

ANNEX II

QUOTAS FOR GREENLAND HALIBUT

I. NAFO DECISIONS FOR 1995

The European Community and Canada will jointly propose to NAFO for 1995:

(a) the TAC for 2+3 Greenland halibut shall be divided as follows:

- 2+3K (Canadian 200 miles): 7 000 tonnes,

- 3LMNO: 20 000 tonnes;

(b) the 7 000 t allocation for 2+3K (within Canadian 200 miles) for Greenland halibut shall be allocated to Canada.

II. VOLUNTARY ARRANGEMENTS FOR 1995

(a) Canada's catches by its vessels for Greenland halibut will not exceed 10 000 tonnes, subject to any more stringent conservation decisions that Canada may take in light of further scientific advice.

(b) The European Community's further catches by its vessels for Greenland halibut will not exceed 5 013 tonnes from 16 April 1995

(c) The European Community and Canada will not permit their vessels to fish for species covered by the NAFO Convention in the NAFO Regulatory Area beyond the 15-day period referred to under point A.2 of the Agreed Minute until the improved fisheries control and enforcement measures set out therein are being implemented.

Beyond agreed catch limits, no by-catches of Greenland halibut shall be retained on board.

III. 1996 AND THEREAFTER

The European Community and Canada will jointly propose to NAFO for 1996 and thereafter:

(a) NAFO will manage Greenland halibut in 3LMNO. The allocations will be in the ratio of 10 : 3 for the European Community and Canada (aside from allocations to other Contracting Parties).

(b) On the basis of NAFO Scientific Council advice, Canada will manage Greenland halibut in Canadian waters in 2+3K.

(c) NAFO Scientific Council will provide scientific advice on Greenland halibut for units 0+1, 2+3K and 3LMNO.

Letter from Canada

Brussels, 16 April 1995

Sir,

With reference to the 16 April 1995 Agreed Minute between the European Community and Canada, I can confirm that the posting of a bond for the release of the vessel 'Estai' and the payment of bail for the release of its master cannot be interpreted as meaning that the European Community or its Member States recognize the legality of the arrest or the jurisdiction of Canada beyond the Canadian 200-mile zone against fishing vessels flying the flag of another State.

I can also confirm that, expeditiously, the Attorney General of Canada will consider the public interest in his decision on staying the prosecution against the vessel 'Estai' and its master; in such case, the bond, bail and catch or its proceeds will be returned to the master.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Canada
Jacques S. ROY

Letter from the European Community
Brussels, 16 April 1995

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'With reference to the 16 April 1995 Agreed Minute between the European Community and Canada, I can confirm that the posting of a bond for the release of the vessel "Estai" and the payment of bail for the release of its master cannot be interpreted as meaning that the European Community or its Member states recognize the legality of the arrest or the jurisdiction of Canada beyond the Canadian 200-miles zone against fishing vessels flying the flag of another State.

I can also confirm that, expeditiously, the Attorney General of Canada will consider the public interest in his decision on staying the prosecution against the vessel "Estai" and its master; in such case, the bond, bail and catch or its proceeds will be returned to the master.'

In reference to the second paragraph of your letter, I should point out that, for the European Community, the stay of prosecution against the 'Estai' and its master is essential for the application of the said Agreed Minute, and therefore the bond, bail and the catch or its proceeds must be returned to the master on the date of the signature of the Agreed Minute.

I have the further honour to inform you that, with this understanding, the European Community is in agreement with the contents of your letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Community
Gianluigi GIOLA

NOTE FROM CANADA
Brussels, 16 April 1995

Sir,

To facilitate adoption by other NAFO Contracting Parties of the measures set out in Annex I to the Agreed Minute, where necessary, Canada is ready to pay the cost, other than room and board, of observers on board

the vessels of such NAFO Contracting Parties. With reference to Annex I, point II.11 to the Agreed Minute, Canada will facilitate the deployment of the observers on the European Community vessels.

For the Government of Canada
Jacques S. ROY

NOTE FROM THE EUROPEAN COMMUNITY

Sir,

I have the honour to acknowledge receipt of your note of today's date which reads as follows:

'To facilitate adoption by other NAFO Contracting Parties of the measures set out in Annex I to the Agreed Minute, where necessary, Canada is ready to pay the cost, other than room and board, of observers on board the vessels of such NAFO Contracting Parties. With reference to Annex I, point II.11, to the Agreed Minute, Canada will facilitate the deployment of the observers on the European Community vessels.'

Furthermore, I would like to inform you that in respect of Annex I, point II.11, the European Community, under point A.2 of the Agreed Minute, will make every effort to install the said satellite tracking devices within the next two months. If, for technical reasons, this is not possible, it is agreed that the European Community and Canada will discuss the matter further.

I have the honour to inform you that the European Community, with this understanding, is in agreement with the contents of your note.

On behalf of the European Community
Gianluigi GIOLA

Letter from the European Union to the Government of Canada
Brussels, 19 April 1995

Sir,

I have the honour to inform you that, for the European Community, the Agreed Minute of 16 April 1995, and in particular paragraph III (a) of Annex II, implies that the Community quota for Greenland halibut for 1996 and for ensuing years in zone 3LMNO will in any event be fixed at 55,35 %.

The European Community hopes that, owing to joint efforts, additional quotas may be obtained, in full compliance with the historic and legitimate rights of all the NAFO States.

On behalf of the European Community
Leon BRITTAN

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