

### Prohibition on driftnet fisheries

*Impact Assessment (SWD (2014) 153, SWD (2014) 154 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council laying down a prohibition on driftnet fisheries, amending Council Regulation (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and (EC) No 1967/2006 and repealing Council regulation (EC) No 894/97 (COM (2014) 265)*

#### Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal, submitted on 14 May 2014.

In Council Regulation (EC) No 809/2007 a driftnet is defined as a gillnet 'held on the sea surface or at a certain distance below it by floating devices, drifting with the current, either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilise the net or to limit its drift<sup>1</sup>. Large-scale driftnets (longer than 2.5 km, up to 50 km in extreme cases) for highly-migratory species in the EU are already prohibited by Council Regulation (EEC) No 345/92, 'following the United Nations General Assembly (UNGA) Resolutions [adopted in 1989, 1990, and 1991], which called for a moratorium on large-scale pelagic driftnet fishing<sup>2</sup> on the High Seas' (Annex I, p. 50).

Since 2002 all driftnets are prohibited when intended for the capture of species listed in Annex VIII of Council Regulation (EC) No 894/97<sup>3</sup>. Since January 2008 it is forbidden to keep on board or use any kind of driftnets in the Baltic Sea, the Belts and the Sound.

An international Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) serves as a cooperative tool for the conservation of marine biodiversity in the Mediterranean and Black Seas.<sup>4</sup> The signatory states have agreed on 'prohibiting to take on board or to use any driftnets in the Convention Area' (IA, p. 35). Although the EU is not a signatory to this agreement, individual EU Member States are.

The proposal under consideration concerns small-scale driftnet fisheries (2.5 km maximum length). Driftnet fisheries carried out exclusively in freshwater are not part of the initiative (IA, p. 34).

'Currently EU vessels are allowed to keep on board and use small-scale driftnets, except in the Baltic, provided that: a) their individual or total length is equal to or smaller than 2.5 km b) their use is not intended for the capture of species listed in Annex VIII of Regulation No 894/97<sup>3</sup> as amended by Regulation (EC) No 1239/985, and c) species listed in Annex VIII which have been caught in driftnets cannot be landed.' (IA, p. 13).

---

<sup>1</sup> Council Regulation (EC) No 809/2007 Article 1, amending Article 11 of Council Regulation (EC) No 894/97

<sup>2</sup> Pelagic species are 'fish species that swim in the upper part of the water column' (IA Executive Summary, p. 3).

<sup>3</sup> Annex VIII of Regulation No 894/97 (repealed by this proposal) lists endangered species.

<sup>4</sup> <http://www.accobams.org/>

However, according to the Driftnets Roadmap<sup>5</sup>, 'implementation of the 2.5 km rule presented many practical implementation and control problems (e.g. using driftnets under the pretence of them being bottom set gillnets; high economic incentives to use long driftnet for large pelagic stocks with an associated low risk to be detected; cooperative behaviour among vessels, etc.) and did not stop the expansion of large-scale pelagic driftnets. Use of illegal driftnets and incidental taking of protected species continued to be reported in different EU regions particularly in the Mediterranean.' The IA refers to rulings by the European Court of Justice against France and Italy concerning compliance problems for lack of control and enforcement of EU rules on driftnets and outlines the measures taken by those Member States as a result (IA, p. 15).

Table 1 of the IA gives an overview from the EU fleet register of the countries whose vessels are carrying driftnets as main or second gear, namely: Bulgaria, Denmark, Finland, France (including its overseas territories), Greece, Ireland, Italy, Lithuania, the Netherlands, Portugal, Romania, Sweden, Slovenia and the UK (IA, pp. 18-19). Countries in which driftnet fishing is prohibited by national legislation are Spain, Greece, Malta, Cyprus and Croatia (IA, p. 23), whereas the countries reported to have small-scale driftnet fishing are: France, UK, Italy, Ireland, Portugal and Slovenia (IA, p. 9).

## Problem definition

According to the IA, the main problem regarding driftnet fisheries is that there are difficulties in implementing the EU rules already in force 'for highly migratory pelagic species, particularly in the Mediterranean for French and Italian vessels' (IA, p. 14). '[C]ontrol and enforcement efforts are not producing the necessary results since the small scale nature of the activity makes it easy to adapt and find strategies to escape controls. Small scale driftnets are still allowed and the loopholes in the EU legislation facilitate their illegal use. This makes it extremely difficult for control authorities to have robust evidences of illegal activities and to finally enforce the rules.' (Explanatory Memorandum, p. 2).

The IA describes two main groups of problems:

1. **Control and monitoring issues.** These include the following aspects: lack of compulsory fishing authorisation; unclear language of Article 11a of Regulation (EC) No 894/97; and lack of specifications of the maximum mesh size for small-scale driftnets. (IA, pp. 30-31).
2. **Environmental issues.** These include the following aspects: unintended by-catch of endangered and protected species (especially of harbour porpoise<sup>6</sup>), and misuse by Member States and fishermen of the definition of driftnets, thus permitting the use of similar fishing gear that still endangers protected species, but does not strictly fall under the definition of driftnets. (IA, pp. 32-33).

More specifically, the IA states that environmental problems include: 'fisheries with a high-risk of incidental takings of strictly protected species', 'lack of common standardized technical specifications for gear', 'no specific obligations to ensure a proper control and scientific monitoring', 'high-demanding costs to control small-scale customised and seasonal fisheries' for using driftnets, 'high-risk of resurgence of problems of non-compliance with UNGA Resolutions' as they can be easily circumvented by using other similar types of fishing gear, and 'the current definition of driftnet does not include' new types of fishing gear. (IA, pp. 33-34).

These problems are not clearly articulated in the IA. Their description is general and the underlying causes are intermingled with the problems that the proposal seeks to address. The priority ranking of problems is not clear. The distinction between the two categories of problems is also rather blurred: the issues described under control and monitoring actually seem to be *technical problems* (such as, for example, mesh size), whereas problems described under environmental issues would appear to fit better under *control and monitoring problems* (such as, for example, misuse of the definition of driftnets).

---

<sup>5</sup> Driftnets Roadmap, p. 1

<sup>6</sup> *Phocoena phocoena*.

It is not clear from the IA why only driftnets are considered as the main gear which threatens already endangered species of fish, marine animals or birds, as no description or comparison is given with other types of fishing gear, for example, fixed nets or trawls, or driftnets with different (smaller) mesh size. For example, the IA says that ‘unintended by-catch of the harbour porpoise in gillnet fisheries is believed to have a growing impact on the Baltic Sea population’ (IA, p. 32). Consequently, as driftnets are already banned in that area, the question might arise as to why the options analysed specifically target driftnets.

The IA explains that there is a lack of comparable data. For example, the different ways that Member States classify various types of fishing vessels make it impossible to estimate the overall fleet size of driftnet fisheries in the EU. This difficulty is reflected in the confusing variety of figures quoted in the IA. Lack of adequate information is also making it difficult to determine the real extent of impacts on endangered species by driftnet fisheries (IA, p. 33). This seemingly rather fundamental difficulty with regard to inadequate data might perhaps have merited attention as a separate problem to be discussed in the IA.

## Objectives of the legislative proposal

With regard to the *general objectives* of the initiative, the IA refers to the reformed CFP objectives, i.e. ‘to provide long-term sustainable environmental, economic and social conditions and contribute to the availability of food supplies’ by applying ‘the precautionary approach’ and implementing ‘the ecosystem-based approach to fisheries management to ensure that negative impacts of fishing activities on the marine ecosystems are limited’ (IA, p. 35).

It lists the following *specific policy objectives*, although these might have been better categorised as ‘general’:

- To address and eliminate any possible persisting environmental and conservation problems related to the use of small-scale driftnets in relation in particular to marine mammals, marine reptiles and seabirds.
- To address and eliminate shortcomings in the EU legal framework that may undermine implementation and weaken control and enforcement, putting at risk proper implementation by Member States (e.g., scope, including the newly described trammel-driftnets) and EU compliance with international obligations.
- To contribute to the objectives and targets for ‘good environmental status’ as established under the Marine Strategy Framework Directive (MSFD) as well as other conservation legislation, such as the Habitats Directive.’ (IA, p. 36)

No *operational objectives* are listed.

## Range of options considered

To address the objectives described in the IA, four policy options have been considered:

- **Option 1:** maintenance of the status quo (baseline scenario);
- **Option 2:** introduction of technical and control measures;
- **Option 3:** selected ban of some driftnet fisheries;
- **Option 4:** total ban on driftnets. (IA, p. 36).

Under the *baseline scenario*, which is presented as a separate policy option, the IA considers that ‘the implementation weaknesses of the EU framework which have been detected will not be addressed’ (IA, p. 36).

*Option 2* concerns the introduction of a specific provision on additional technical measures for the fishing gear and control and monitoring aspects (IA, p. 37). The IA warns that the control system would be costly and complicated, but does not seem to explore this in great depth. Under *option 3*, ‘only the driftnet fisheries identified as being the most harmful to strictly protected species and/or not able to avoid unwanted by-catches of unauthorised species (Annex VIII species) would be discontinued’ (IA, p. 38). The IA considers that this approach could be challenged as controversial, because of insufficient information about the real

degree of harmfulness of driftnet fisheries (IA, p. 38). Again, this option is not offered as a seriously envisageable solution to the problems.

*Option 4* introduces a total ban on keeping on board and/or using driftnets as fishing gear. The IA suggests that this option would simplify the EU driftnet regime by simply prohibiting all activities of driftnet fishing. This approach is supported by Member States which do not practise driftnet fisheries, or which have banned them in their national legislation, or signed an international treaty, such as ACCOBAMS (IA, p. 38-39).

It is not clear why no combination of options, or parts of options, has been considered. For example, the identified misinterpretation and implementation problems seem to be directly addressed in only one option (option 2), which at the same time does not seem to address the eradication of environmental problems or the problem of inadequate data.

The IA concludes that '**Policy option 4 concerning a total ban on all kind of driftnet fisheries** seems to be **the preferred option**', pointing out that this option is also 'supported by 52.5 per cent of the respondents to the public consultation, including fishermen associations and NGOs' (IA, p. 46). It should be noted that only eight of the 40 replies considered came from the fishing sector (either as associations or individual fishermen), while 23 were from NGOs.

## Scope of the Impact Assessment

The IA analyses the social, economic and environmental impacts, as well as administrative burden. It provides a largely qualitative analysis, explaining that 'due to the lack of sound specific data for most fisheries, no concrete estimates on quantitative impacts are available' (IA, p. 39). Some detailed quantitative data is nevertheless provided for the UK and Italy (IA, pp. 27-29). The IA considers that the 'overall socio-economic impact of the total ban' would be 'irrelevant at national and sub-regional level', because 'during past years numbers of vessels as well as the number of employees have been substantially decreasing' (IA, p. 39). Given the lack of quantitative data referred to, this statement is surprisingly assured. The IA explains that driftnet fisheries are mostly seasonal, and most vessels are polyvalent, which will enable the fishermen to continue fishing with other types of authorised fishing gear (IA, p. 39). A table on page 40 shows that none of the options is expected to have a positive socio-economic impact. The IA suggests that the European Maritime Fisheries Fund (EMFF) could be used at each Member State's discretion for the fishing vessels concerned to ease 'the transition toward a total ban of the small-scale driftnet fisheries' (IA, p. 46). One of the main problems with determining the real impact on the environment of the accidental capture of protected species of fish, seabirds and sea mammals, is the scarcity of information available (IA, p. 33). A table on page 41 provides a qualitative comparison of the environmental impacts for each option, where option 3 and option 4 are judged to be likely to have a positive impact on the environment – in that by simply prohibiting driftnets, the risk of by-catch would cease to exist (IA, p. 41).

## Subsidiarity / proportionality

The proposal is based on Article 43(2) of the TFEU (establishment of provisions for the pursuit of the objectives of the CAP and CFP). According to Article 3 (1d) of the TFEU, conservation of marine resources and integration of environmental aspects into the fisheries policy fall under exclusive competence of the EU, and therefore the subsidiarity principle does not apply (IA, p. 34).

## Budgetary or public finance implications

The IA claims that due to the lack of data it is not possible to make estimations of administrative costs for the Member States (IA, p. 42), although presumably individual Member States might be able to provide some indicative estimates of their own. Options 1 to 3 are estimated to involve a comparatively high administrative burden, for example, for adaptation and implementation of control measures in case of option 2, and for collection of information in case of option 3 (IA, p. 43). Option 4 is rated as having a positive impact in the long term, as the 'simplified regime would require a less demanding control and monitoring targeting the driftnets and less fishing gears to administer' (IA, p. 43).

## **SME test / Competitiveness**

There is no SME test provided in the IA, nor any detailed indication of the number of SMEs or micro companies affected. It does touch briefly upon the competition problems among fishermen regarding options 2 and 3, (IA, pp. 44-45): 'Under option 2 fishermen will badly accept micromanagement on technical characteristics of the gear including an accrued use of logbook and of vessel positioning systems though simpler than satellite Vessel Monitoring Systems'. 'The same explanations would apply also for option 3 for the authorised vessels while those banned would perceive it as unfair treatment.' The IA suggests that option 4 'will be more acceptable by the fishermen because there will be no discrimination among them and could entail accompanying measures for the transition'.

## **Simplification and other regulatory implications**

The proposal would amend three related regulations<sup>7</sup> and repeal Council Regulation (EC) No 894/97. The Driftnets Roadmap did suggest a stand-alone piece of legislation as a possible option 'which gathers all rules concerning driftnets in one act and repeals the existing instruments' (Roadmap, p. 5), but this idea is not explored in the IA or offered by the new proposal.

## **Relations with third countries**

The signatory EU Member States should comply with the international ACCOBAMS Agreement, and the IA mentions that the image of the EU would be affected if the EU Member States should breach this international agreement on fisheries by continuing illegal driftnet fishing (IA, p. 35). In this regard '[T]he USA has threatened commercial sanctions against EU Member States not complying with the rules (e.g. Italy)' (IA, p. 14). The IA does not analyse the aspects of non-Union boats fishing in the EU waters, although the Proposal mentions that 'the full prohibition to take on board or use any kind of driftnets in all Union waters by all Union vessels whether they operate within Union waters or beyond, as well as by non-Union vessels in Union waters' is necessary (Recital 16).

## **Quality of data, research and analysis**

The Commission requested two external studies to be carried out on driftnet fisheries as a basis for the IA: a Study on Mediterranean driftnets dated 14 April, 2014<sup>8</sup>, and a Study on Small-Scale Driftnet Fisheries, dated 8 May, 2014<sup>9</sup>. The draft IA considered by the IAB was dated 25 October 2013. This raises a question as to how far it was possible to integrate the findings of the studies into the IA. The IA does point out that the final meeting of the IA steering group of 16 October discussed the 'final draft report of a study in support of the review of existing EU legislation on regulating driftnet fisheries' and that 'this study provided substantive information for [the] impact assessment' (IA, p. 5), but it does not specify which study is referred to. The IA openly acknowledges the limitations of the information available, explaining that 'full assessment of the potential impacts could not be done given that complete and comprehensive data sets are often not available or are inconsistent between Member States and over time' (IA, p. 36). The explanatory memorandum of the proposal blames 'the limited sampling effort by the two studies' for the difficulty in obtaining a comprehensive view on current fishing activities and their environmental impact (Exp. Mem., p. 3), which would seem to suggest that some further work might have been justified in this respect. The language of the IA is rather imprecise in places, with words such as 'might' or 'seems to' being used, not only to describe the possible impacts of the options, but also the background to the problems themselves.

---

<sup>7</sup> Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, and (EC) No 2187/2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98.

<sup>8</sup> Driftnet Study.

<sup>9</sup> Small-scale Driftnet Study.

Nor is the IA always very clear as to whether the information provided concerns large or small scale driftnet fisheries, as the background description also gives a history of large-scale driftnet fisheries. The structural presentation itself could have been improved in places. Some pages contain references to scientific literature as if directly copied from the original studies without any further analysis (for example, see IA pp. 21-22). It is sometimes very difficult to follow, as references to the various Annexes mentioned are missing (it is unclear if the annexes referred to are to the IA, to the legislation to protect endangered species, or to the amended or repealed Regulations). No list of abbreviations or glossary is provided, although the IAB explicitly called for the latter, some footnotes are wrongly marked, and abbreviations are sometimes used without being explained in full.

## **Stakeholder consultation**

According to the Driftnets Roadmap, the sector affected by the new proposal will be owners, operators, and crews of all EU small-scale fishing vessels carrying out driftnet fisheries. The IA itself gives a good overview of the results of the stakeholder consultation. The main stakeholders are not clearly listed, but it can be concluded from the IA that they include fishermen, processing companies, environmental protection organisations and consumer organisations. Annex 1 (IA, p. 48) provides a summary report of the questionnaire and the answers to the public consultation.

The IA recognizes that the participation rate in the public consultation, which initially ran from 27 March 2013 to 28 June 2013, was low. The deadline was therefore prolonged to 15 September 2013 in an attempt to allow for increased participation. The IA explains that the Regional Advisory Councils (RACs)<sup>10</sup> were formally informed of the public consultation in order to spread the information among their members (IA, p. 6). Despite these efforts, the total number of answers received was just 41, with most answers coming from Italy (27.5 per cent) (IA, p. 6). As mentioned earlier, the majority of replies were received from NGOs (57.5 per cent), and the fishing sector was represented by just 20 per cent of respondents (eight replies) (IA, p. 7). The IA nevertheless considers that the public consultation can be deemed acceptable in terms of 'sectorial and environmental interests', even though 'the number of industry responses is relatively low' (IA, p. 8).

As far as dialogue with Member States is concerned, the IA provides a clear explanation of the various contacts made and responses received, in particular with regard to support given for permanent cessation and/or reconversion of vessels involved in driftnet fisheries, and on specific control, monitoring and surveillance activities (IA, p. 9).

## **Monitoring and evaluation**

The IA explains that enforcement of the proposed regulation can be done via the existing evaluation systems under the Common Fisheries policy by making them function more efficiently (IA, p. 47). This is a little confusing, as option 2 of the IA was also intended to provide for removal of 'poor implementation of the existing rules on driftnets' (IA, p. 37). Some other frameworks of improved monitoring and control, as well as better data collection, are mentioned, however, namely the new European Maritime and Fisheries Fund (EMFF) and the Marine Strategy Framework Directive (MSFD) (IA, p. 47). The Commission also undertakes to create an expert group on compliance, which will 'assess, facilitate and strengthen the implementation of, and compliance with, the obligations under the Union fisheries control system' (IA, p. 47). There is no mention in the IA - or indeed the proposal - of any deadlines for evaluating the implementation and success of the proposed legislation.

---

<sup>10</sup> RACs are consisting of representatives of the fisheries sector, like fishermen and producers, as well as other stakeholders, like NGOs involving environmentalists and consumers.

## Commission Impact Assessment Board

The Commission's Impact Assessment Board (IAB) delivered a positive opinion on a draft version of the IA dated 25 October 2013<sup>11</sup>. In its opinion, the IAB highlighted several shortcomings, calling for it to:

- Provide further evidence in support of the identified problems, including a clarification of the policy context and the dimension and scale of driftnet activities in the EU, as well as a better structuring of the problems;
- Clarify the content of the policy options and provide further detail on each of them. In particular it called for a discussion of the proportionality of option 4 with clear reference to the views of the different stakeholder groups and in particular the views of operators and Member States concerned;
- Better assess the impacts by providing a more in-depth assessment of the impacts across all policy options, including further substantiating of the economic and financial impacts on fishermen and other operators, including on jobs and local communities, and the environment.

The IA provides a very clear summary of the recommendations and its efforts to take account of them in the revised report 'where the information was available' (IA, p. 10). Even so, some of the issues identified in this appraisal would suggest that more could perhaps have been done to respond to some of the points made by the IAB.

## Coherence between the Commission's legislative proposal and IA

The proposal seems to reflect the preferred option, in that it provides for a total ban on all driftnets. It does not, however, seem to address the problems identified in the IA with regard to the current lack of data or the uneven implementation of bans already in place. Nor is there any explicit provision for ex-post evaluation.

## Conclusions

The overall impression is of an impact assessment prepared in some haste. Even if elements of the draft version of at least one of the two external studies commissioned were apparently used in its preparation, the timing of their completion seems to have been far from ideal. The IA is clearly hampered by the acknowledged lack of adequate data regarding the core problems. Although a genuine attempt has evidently been made to describe the current situation, and in particular to establish how many driftnet fisheries and vessels are concerned, the presentation of the various figures coming from different sources is confusing and does not provide a clear overview. Finally, other issues identified, such as, for example, the monitoring and control difficulties, some of which would presumably persist in case of a total ban, might have deserved further consideration in the context of the preferred option.

---

*This note, prepared by the Ex-Ante Impact Assessment Unit for the Committee on Fisheries (PECH) of the European Parliament, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.*

This document is also available on the internet at: [www.europarl.europa.eu/committees/en/studies.html](http://www.europarl.europa.eu/committees/en/studies.html)

To contact the Ex-Ante Impact Assessment Unit, please e-mail: [impa-secretariat@ep.europa.eu](mailto:impa-secretariat@ep.europa.eu)

Manuscript completed in January 2015. Brussels © European Union, 2015.

The opinions expressed in this document are the sole responsibility of the author(s) and do not represent an official position of the European Parliament. Reproduction and translation of this document for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

---

<sup>11</sup> IAB Opinion on Impact Assessment on a proposal for a Regulation of the European Parliament and of the Council prohibiting the use of driftnets.