



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.9.2006
COM(2006) 511 final

2006/0169 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as
concerns drift nets**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

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

For the sake of clarity as regards a number of legal provisions regulating the same type of fishing gear, but inserted in three different Community Regulations, and in order to facilitate uniformity in the practice of monitoring between Member States while favouring a common understanding between stakeholders operating in different Regional Advisory Councils, it is considered necessary to amend those Regulations by introducing a uniform definition of drift nets in all three acts.

- **General context**

With the adoption of Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources, a prohibition to use drift nets intended for the capture of certain species was introduced from 2002 onwards, in all waters falling within the sovereignty or jurisdiction of the Members States with the exception of the Baltic Sea, the Belts and the Sound and outside those waters the restrictions applied to all Community vessels.

With the adoption of Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, the prohibition to keep on board or to use drift nets, irrespective of their length and target species, was extended to the Baltic Sea, the Belts and the Sound and applied from 2008 onwards. Furthermore, Council Regulation (EC) No 812/2004 lays down measures aimed at mitigating incidental catches of cetaceans by prohibiting for vessels of 12 metres or over in overall length to use certain types of fishing gear, including drift nets, in certain areas and periods, without the simultaneous use of active acoustic deterrent devices. Member States are required to implement monitoring schemes for incidental catches of cetaceans.

The prohibition to be applied from 2008 onwards introduced by Council Regulation (EC) No 812/2004, as well as amended interim modalities of the application of this prohibition, were included in Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation 1434/98 and repealing Regulation (EC) No 88/98.

The provisions on restrictions in the use of drift nets introduced in the above Regulations are similar but not identical and are furthermore applied in different areas. The introduction of a uniform definition of drift nets in the three Regulations should facilitate the control and enforcement of the restrictions on the use of drift nets implemented via these Regulations.

- **Existing provisions in the area of the proposal**

There are no existing provisions as regards a definition of drift nets, but the following

Regulations restrict the use of drift nets:

-Council Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources, as amended by Council Regulation (EC) No 1239/98 of 8 June 1998.

-Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98.

-Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation 1434/98 and repealing Regulation (EC) No 88/98.

- **Consistency with the other policies and objectives of the Union**

The reform of existing legislation for technical measures¹ will require clarification of certain existing provisions to avoid counterproductive misunderstandings and to facilitate uniformity in the practice of monitoring between Member States.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Definitions of drift nets have already been widely discussed with both Member States and stakeholders during the consultation and negotiation process of the proposal for the Council Regulation laying down technical measures for the conservation of fishery resources in the Baltic Sea, the Belts and the Sound² as well as the proposal for a Council Regulation concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea³

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The introduction of a uniform definition of drift nets should facilitate the control and enforcement of the restrictions on the use of driftnets implemented via the existing provisions in the area of the proposal. It will furthermore clarify certain existing provisions to avoid counterproductive misunderstandings as well as facilitate uniformity in the practice of monitoring between Member States.

¹ COM (2005) 647 of 8 December 2005 (Action Plan for simplification and improvement of the CFP).

² OJ L L 349, 31.12.2005, p. 1

³ COM(2003) 589 final of 9 October 2003

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

For the sake of clarity as regards a number of legal provisions regulating the same type of fishing gear, but inserted in three different Community Regulations, and in order to facilitate uniformity in the practice of monitoring between Member States, it is considered necessary to amend those Regulations by introducing a uniform definition of drift nets in all three acts.

- **Legal basis**

Article 37 of the EC Treaty.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The use of this type of fishing gear is already regulated in Community Regulations, the field of application of which is not extended. The proposal concerns a clarification as regards the definition of this type of fishing gear.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The proposal concerns amendments to existing Regulations concerning clarification as regards the definition of a type of fishing gear, the use of which is already regulated in existing Regulations which cover different areas.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Whereas:

- (1) Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources⁶ establishes a management framework for the conservation of fishery resources through technical measures in the form of a general overall length limitation of drift nets to maximum 2.5 km, as well as a prohibition to use or keep on board drift nets intended for the capture of certain species that applies to all Community fishing vessels with the exception of those operating in the Baltic Sea, the Belts and the Sound;
- (2) Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98⁷ sets out requirements concerning the use of acoustic deterrents devices and the monitoring of incidental catches of cetaceans in certain drift net fisheries;
- (3) Council Regulation (EC) No 2187/2005 of 21 December 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 88/98⁸ sets out the restrictions and conditions on the use drift nets in this regulated area;

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ L 132, 23.5.1997, p. 1. Regulation as last amended by Regulation (EC) No 1239/98 (OJ...)

⁷ OJ L 150, 30.4.2004, p. 12

⁸ OJ L 349, 31.12.2005, p. 1

- (4) Those Regulations do however not contain a definition of drift nets. For reasons of clarity and in order to facilitate uniformity in the practice of monitoring between Member States, it is necessary to introduce a uniform definition of drift nets in all those three acts;
- (5) The establishment of a definition of drift nets does not expand the field of application of the restrictions and conditions on the use of drift nets implemented in Community law;
- (6) Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 894/97, in Article 11 the following paragraph is added:

“Drift net means any 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 and/or to limit its drifting.”

Article 2

In Regulation (EC) No 812/2004 the following Article 1a is inserted:

Article 1a
Definitions

“Drift net means any 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 and/or to limit its drifting.”

Article 3

In Regulation (EC) No 2187/2005, in Article 2 the following point (o) is added:

“(o) “Drift net means any 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 and/or to limit its drifting.”

Article 4

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

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

Done at Brussels,

*For the Council
The President*