

# EUROPEAN PARLIAMENT

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FINAL  
**A5-0020/2004**

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## **REPORT**

on the proposal for a Council regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98  
(COM(2003) 451 – C5-0358/2003 – 2003/0163(CNS))

Committee on Fisheries

Rapporteur: Heinz Kindermann

PE 327.854

**EN**

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### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 1 August 2003 the Council consulted Parliament, pursuant to Article 37 of the EC Treaty, on the proposal for a Council regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (COM(2003) 451 – 2003/0163(CNS)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on Fisheries as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy for its opinion (C5-0358/2003).

The committee appointed Heinz Kindermann rapporteur at its meeting of 2 October 2003.

It considered the Commission proposal and draft report at its meetings of 25 November, 2 December 2003 and 20 January 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Struan Stevenson (chairman), Rosa Miguélez Ramos (vice-chairwoman), Heinz Kindermann (rapporteur), Elspeth Attwooll, Niels Busk, Salvador Jové Peres, Carlos Lage, Giorgio Lisi, Ioannis Marinou, John Joseph McCartin, Patricia McKenna, Neil Parish (for Brigitte Langenhagen), Manuel Pérez Álvarez, Joaquim Píscarreta, Dominique F.C. Souchet, Catherine Stihler, Margie Sudre (for Hugues Martin) and Daniel Varela Suanzes-Carpegna.

The Committee on the Environment, Public Health and Consumer Policy decided on 9 September 2003 not to deliver an opinion.

The report was tabled on 26 January 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (COM(2003) 451 – C5-0358/2003 – 2003/0163(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2003) 451)<sup>1</sup>,
  - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0358/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries (A5-0020/2004),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

#### Amendment 1 RECITAL 1

(1) The objective of the common fisheries policy, as defined in Article 2 of Council Regulation (EC) No 2371/2002, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. To this end, the Community shall, ***among other things, minimise the impact of fishing activities on marine***

(1) The objective of the common fisheries policy, as defined in Article 2 of Council Regulation (EC) No 2371/2002, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. To this end, the Community shall ***apply the precautionary approach in taking measures designed to protect and***

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<sup>1</sup> Not yet published in OJ.

*ecosystems, and* the Common Fisheries Policy shall be consistent with other Community policies, ***in particular*** with environmental policy.

***conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems.***

*Moreover*, the common fisheries policy shall be consistent with other Community policies, ***including*** with environmental policy.

#### *Justification*

*Article 2 of Council Regulation (EC) No 2371/2002 states that the precautionary approach shall be applied to measures implementing the common fisheries policy. It is imperative that this principle is recalled in the text of the Regulation on the incidental catches of cetaceans. Furthermore, Article 2(d) of Council Regulation 2371/2002 states that the CFP must be consistent with a number of other Community policies, including environmental policy, rather than environmental policy ‘in particular’.*

#### Amendment 2 RECITAL 4

(4) Some acoustic devices have been developed to deter cetaceans from fishing gear, and have proven successful in reducing by-catch of cetacean species in static net fisheries. The use of such devices should therefore be required in areas and fisheries with known or foreseeable high levels of by-catch of small cetaceans. It is also necessary to establish the technical specifications for the efficiency of the acoustic deterrent devices to be used in such fisheries.

(4) Some acoustic devices have been developed to deter cetaceans from fishing gear, and have proven successful in reducing by-catch of cetacean species in static net fisheries ***in the short term***. The use of such devices should therefore be required in areas and fisheries with known or foreseeable high levels of by-catch of small cetaceans. It is also necessary to establish the technical specifications for the efficiency of the acoustic deterrent devices to be used in such fisheries. ***In the long term, alternative methods to prevent the incidental killing of small cetaceans have to be developed, taking into consideration the outcomes of the monitoring and assessment.***

#### *Justification*

*Up to now, acoustic deterrent devices (pingers) have only proved successful during a short-term period and in certain circumstances. Long-term use could have negative consequences such as habituation to the devices and exclusion of the animals from their habitats. For the aforementioned reasons, the use of acoustic deterrent devices should not be considered as a solution to the incidental killing of small cetaceans and alternative methods will have to be developed.*

Amendment 3  
RECITAL 4 A (new)

***(4a). For the investment required to purchase acoustic deterrent devices, fishermen and vessel owners may obtain grants from the Community under the Financial instrument for fisheries guidance (FIFG).***

*Justification*

*Since the acquisition of acoustic deterrents is a considerable financial burden for fishermen, the fishermen concerned must be assisted from public funds with the investment needed to purchase them. Some of the cost can be supported from FIFG grants for the introduction of more selective fishing methods. The regulation text should make this clear.*

Amendment 4  
RECITAL 5 A (new)

***(5a) Research is already under way into alternative gears aimed at reducing the incidental catches of cetaceans, such as separator grids, and it is essential that the Commission both encourages and reacts expediently to the outcome of such research.***

*Justification*

*Research on alternative gears, such as separator grids, that may be used to avoid the incidental catches of cetaceans is already at an advanced stage in the United Kingdom. It is essential that, once the results of such research are available, action is taken swiftly by the Commission to consider the research and to table any relevant proposals.*

Amendment 5  
RECITAL 6 A (new)

***(6a). In addition to this observer scheme, EU research projects should be commissioned as soon as possible to provide scientific support for the measures laid down in this Regulation, and in particular to investigate the impact of the acoustic deterrent devices on the cetacean population and the marine ecosystem, the development of alternative fishing gear and fishing methods and any***

***other reasons for the decline in the cetacean population.***

*Justification*

*To develop long-term measures to conserve cetacean stocks as soon as possible, it is essential to commission more detailed research projects without delay. The right framework for this is the thematic priority 'Sustainable development, global change and ecosystems' in the Sixth research framework programme.*

Amendment 6

RECITAL 7 A (new)

***(7a) In the light of the information in the Member States' reports and the results of the research projects commissioned, this Regulation should be reviewed in June 2007 at the latest. As part of the review a framework regulation should lay down a long-term strategy for counteracting cetacean by-catches which, if the data available at that stage allow, should be based on minimum population size for the respective cetacean species.***

Amendment 7

RECITAL 8 A (new)

***(8a). For the costs of technical adaptation resulting from the ban on the use of drift-nets, fishermen and vessel owners may obtain grants under the Financial instrument for fisheries guidance (FIFG).***

*Justification*

*The regulation text should specify that grants can be made from FIFG funds for the costs of technical adaptation.*

Amendment 8

RECITAL 8 B (new)

***(8b). To enable the ban on the use of drift-nets in the Baltic to show its full effect, there is a need to incorporate the ban in the framework of bilateral agreements with Russia as well.***



### *Justification*

*After EU enlargement on 1 May 2004 Russia will be the only remaining state on the Baltic coast that is not an EU member. In order not to jeopardise the ban's effectiveness there is a need to include Russia in the ban. This should be dealt with in a bilateral agreement between the EU and Russia.*

#### Amendment 9 ARTICLE 2, PARAGRAPH 3

3. By way of derogation, paragraph 1 shall not apply to fishing operations conducted solely for the purpose of scientific investigation which are carried out with the authorisation and under the authority of the Member States or Member States concerned and which aim at developing new technical measures to reduce the incidental capture or killing of cetaceans.

3. By way of derogation, paragraph 1 shall not apply to fishing operations conducted solely for the purpose of scientific investigation which are carried out with the authorisation and under the authority of the Member States or Member States concerned and which aim at developing new technical measures to reduce the incidental capture or killing of cetaceans.  
***Any fish caught in such operations for investigation purposes may not be traded commercially.***

### *Justification*

*There is a need to ensure that fishing for research purposes is not used as an excuse to continue fishing with unauthorised nets for commercial purposes.*

#### Amendment 10 ARTICLE 6, PARAGRAPH 2

2. On the basis of the observers' reports provided according to Article 5(3) and all other appropriate data, including those on fishing effort collected in application of Regulation (EC) No 1543/2000, the annual report shall include estimates of the overall incidental catches of cetaceans in each of the fisheries concerned. This report shall include an assessment of the conclusions of the observers' reports and any other appropriate information, including any research conducted within the Member States to reduce the incidental capture of cetaceans in fisheries.

2. On the basis of the observers' reports provided according to Article 5(3) and all other appropriate data, including those on fishing effort collected in application of Regulation (EC) No 1543/2000, the annual report shall include estimates of the overall incidental catches of cetaceans in each of the fisheries concerned. This report shall include an assessment of the conclusions of the observers' reports and any other appropriate information, including any research conducted within the Member States to reduce the incidental capture of cetaceans in fisheries, ***particularly into the use of alternative gear such as separator grids, and an assessment of the effect of using acoustic deterrent devices. In the***

***annual reports the Member States shall also indicate what measures they have taken in application of Article 4(2).***

*Justification*

*The first correction concerns only the German version. Scientific trials using separator grids have already been undertaken and have produced extremely encouraging indications such as significantly reduced mortality rate of cetaceans. This type of research in particular should therefore be encouraged. As scientific research results on the effect of acoustic deterrents are not unanimous and there are even fears in some cases of an adverse impact on cetacean stocks, it is important to include information on this aspect in the annual reports. The Member States should also indicate what measures they have taken to ensure observation of cetacean by-catches on small fisheries vessels, for which observation on board is not feasible for reasons of space or safety (application of Article 4(2)).*

Amendment 11  
ARTICLE 7

***One year*** at the latest ***after the submission by Member States of their second annual report***, the Commission shall report to the European Parliament and the Council on the operation of this Regulation in the light of the assessment by the Scientific, Technical and Economic Committee for Fisheries of the reports of the Member States.

***In June 2007*** at the latest the Commission shall report to the European Parliament and the Council on the operation of this Regulation in the light of the assessment by the Scientific, Technical and Economic Committee for Fisheries of the reports of the Member States ***and, on the basis of information from the annual reports and other sources, put forward proposals to adapt this Regulation with a view to drawing up a framework regulation with a long-term conservation strategy. If the scientific data are sufficient for the purpose, as the basis of this strategy minimum population sizes in particular should be defined for the cetacean species concerned.***

*Justification*

*The amendment does not change the deadline for submission of the Commission report, but merely aims to specify the date more transparently.*

*In point 6 of the assessment questionnaire accompanying the Commission proposal, the Commission acknowledges the need for a management framework with a long-term strategy to deal with cetacean by-catches. But it says the information required for this is not at present available. When this regulation enters into force, however, comprehensive data collection on cetacean by-catches will be mandatory. We can assume that the data needed for a long-term strategy will be available at the latest by 2007, in the light of the Member States' annual*

*reports and other research results. So provision should be made now for appropriate adjustment of the regulation by that time at the latest. It also needs to be made clear that the measures now being proposed are only a first step towards a more comprehensive framework regulation.*

Amendment 12  
ARTICLE 7, PARAGRAPH 1 A (NEW)

***If, however, an annual report from a Member State makes references to any research conducted within the Member States to reduce the incidental capture of cetaceans in fisheries, the Commission shall communicate this information to the European Parliament and Council, followed within one month by an initial assessment of the research. The Commission shall proceed expediently to table any new proposals that it deems appropriate in the light of the research.***

*Justification*

*Research on alternative gears, such as separator grids, that may be used to avoid the incidental catches of cetaceans is already at an advanced stage in the United Kingdom. It is essential that, once the results of such information are available, action is taken swiftly by the Commission to consider the research and to table any relevant proposals. In the interests of transparency it is also essential that the Commission informs the European Parliament and Council of any research developments in this field and of the action that it is taking to follow up on such research.*

Amendment 13  
ARTICLE 9  
Article 8a, paragraph 1 (Regulation (EC) No 88/98)

1. From 1 January 2007, it shall be prohibited to keep on board, or use for fishing, drift-nets.

1. From 1 January 2007, it shall be prohibited to keep on board, or use for fishing, drift-nets. ***From the entry into force of Council Regulation (EC) No .../...<sup>1</sup> laying down measures concerning incidental catches of cetaceans in fisheries, the selling or trade of drift-nets to third countries is prohibited. Competent authorities shall manage the destruction of these nets starting from January 2007 and shall put in place adequate compensation measures.***

<sup>1</sup> ***OJ L***

### *Justification*

*The proposal does not provide any indication relating to the disposal of drift-nets. Drift-nets have been banned in the Mediterranean and Atlantic sea since 2002 and once the full ban is implemented in the Baltic Sea, they will be banned in all EU waters. It is therefore highly desirable that these nets should be destroyed in order to avoid any further use by third countries vessels in Community or non-Community waters. Competent authorities will have to ensure that adequate financial compensation will be given to fishermen for their loss of investments.*

### Amendment 14

ANNEX III, POINT (b), TABLE, LINE 3, COLUMN 3  
Minimum % of the fishing effort covered by on-board observers

**5 %** (at least 3 vessels) (from April to November)

**10 %** (at least 3 vessels) (from April to November)

**10 %** (at least 3 vessels) (from December to March)

**15 %** (at least 3 vessels) (from December to March)

### *Justification*

*The report by the Subgroup on Fishery and Environment (SEC(2002) 1134) recommends closer surveillance for fishery of this type – particularly in the months of December to March – in view of the incidence of dolphin beachings. A higher surveillance rate would be appropriate for this type of fishery as it shows a particularly high risk of interaction with cetaceans.*

## EXPLANATORY STATEMENT

### I. Introduction

The proposed regulation makes provision for introducing measures to reduce incidental catches of cetaceans under the common fisheries policy. The reason for the proposal is the fact that, although cetaceans are protected under EU environmental provisions, especially the Habitat directive, the measures contained in the relevant provisions have not so far been enough to provide an adequate level of protection for cetaceans.

The Commission is therefore now proposing specific measures to counteract incidental catches of cetaceans when fishing.

#### I.1. The Commission proposal

Essentially, the proposal contains three new measures:

1. general restriction of the length of drift-nets in the Baltic to 2.5 km from 1 July 2004, and further phasing out of drift-net fishing by 1 January 2007; Member States must reduce the number of vessels using drift-nets by at least 40 percent in 2005 and 2006;
2. mandatory use of acoustic deterrent devices, known as 'pingers', in certain fisheries where the risk of by-catches is particularly great, especially for drift-nets until they are banned and also for gill nets;
3. introduction of a comprehensive system for monitoring small cetacean by-catch, particularly by means of an observer system to obtain sufficient information on catches as the basis for long-term strategic measures.

##### I.1.1. Assessment of the proposal, and the rapporteur's proposed amendments

The rapporteur generally supports the measures proposed by the Commission. But he takes the view that the regulation text should already include a deadline for review of the present regulation. He is also proposing some other amendments, which are described below.

##### *Scientific data and long-term measures*

Scientific reports by ICES and others show that measures to protect cetacean stocks are urgently needed. However, as the Commission itself points out in the proposal, a problem arises in the lack of data on cetacean stocks and by-catches. So there is a need first to obtain comprehensive and reliable data on cetacean stocks and by-catches in various fisheries, to prepare for more extensive conservation measures at a later stage. The data should be collected with the help of a comprehensive observer system. The Subgroup on Fisheries and Environment of the Scientific, Technical and Economic Committee for Fisheries (STECF) called in its final report for the creation of a framework regulation for by-catches at EU level as soon as possible. The rapporteur therefore proposes in Amendments 3 and 7 to make provision now for review of the regulation by 2007, so as to bring in a framework regulation based on the data that will then be available.

A start has been made on such a framework regulation in connection with the Agreement on the conservation of small cetaceans in the North Sea and Baltic (Ascobans). The Jastarnia Plan it has drawn up for the recovery of harbour porpoise stocks in the Baltic points out that

the stock target defined (80 percent of the natural stock level, as also proposed by ICES) can only be achieved if by-catches are reduced to fewer than two per year (instead of seven at present). These by-catch figures are – as the fisheries associations concerned have also pointed out – indeed very small. But stocks have declined so much that even small by-catches pose a serious risk to stocks in the medium term.

Cetacean by-catches are of course not the only reason for the decline in cetacean stocks in some geographical regions: environmental effects (for instance, shipping, emissions of noise, vibrations and electro-magnetic fields, and the direct dumping of various substances hazardous to cetaceans) and climatic conditions (such as the icing up of the Baltic) certainly contribute. The Commission should therefore give extra support, until the regulation is reviewed, to research projects that also investigate other possible reasons for the decline in the cetacean population and devise appropriate measures for their protection, as provided for under the flora, fauna and habitat directive. Merely taking measures in the field of fisheries policy will not do justice to the scale of the problem. Here it is of crucial importance that the environmental and fisheries authorities in the Member States, and also the relevant departments of the Commission, properly coordinate their activities.

#### *Acoustic deterrent devices ('pingers')*

On the use of acoustic deterrent devices, it should be noted that although they have proved effective in various fisheries, there are also fears among scientists that they may have adverse effects on cetaceans. One fear is that the noise of the pingers drives the cetaceans from their traditional grounds and this adversely affects their stocks. Secondly, the possibility cannot be ruled out that the cetaceans get used to the noises or even associate the pingers' sound with the presence of food in the deployed nets and deliberately swim into them.

It is therefore particularly important to ensure that the use of these devices and their effects are carefully monitored through the observer system. To ensure that the Commission receives the appropriate information from the observers and can draw any conclusions from it the Member States must include the relevant data in their annual reports. This is the purpose of Amendment 6 by the rapporteur. In any event the period leading up to a possible review in 2007 should be used to stimulate research in this area – particularly by EU funding of appropriate research projects – and develop alternatives to the proposed pingers. This might conceivably involve interactive pingers that reflect the sonar signals from small cetaceans, or suitably designed nets, perhaps using metallic thread to enable small cetaceans to recognise them.

#### *Banning drift-nets in the Baltic, the Belts and the Øresund*

Drift-nets have been banned in the Mediterranean and Atlantic since 2002. The Commission is now proposing to phase in a ban on drift-nets in the Baltic as well. The ban is justified not only in view of the problems surrounding the by-catch of harbour porpoises but also because it means that the ban on drift-nets will then be applied consistently throughout the EU. It is important to ensure that Russia, which after the EU enlargement on 1 May 2004 will be the only remaining Baltic coastal state that is not a member of the EU, is also included in the ban. This should be settled through bilateral negotiations between the EU and Russia, as otherwise the effectiveness of the ban will be at risk.

But the essential point here, as far as the fishermen are concerned, is to ensure that efforts to research the development of alternative fishing methods and fishing gear are stepped up and are supported financially by the EU, so as to be able to maintain fishing activities in the future.

### *Social and economic impact*

The requirement to use acoustic deterrent devices will involve fishermen in additional investment. The Commission estimates that the investment per vessel will be between €2 500 and €10 000, depending on the length of the nets. Some of this cost can be supported with grants from the FIFG for the introduction of more selective fishing methods. But there will still be a considerable financial burden for the fishermen to bear.

The social and economic effects of the proposal are particularly relevant to those still using drift-nets in the Baltic at present. In its estimate of the consequences the Commission assumes that restricting net length to 2.5 km is enough to make drift-net fishing for salmon unprofitable. Here too grants from FIFG funds are possible for fishermen or vessel owners on whom these technical restrictions are imposed.

In both cases the Member States should as far as possible offset from national funds any costs not covered by the FIFG grants, to compensate for any social hardships experienced by fishermen.