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**A7-0042/2013**

22.2.2013

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# **REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98  
(COM(2012)0447– C7-0213/2012 – 2012/0216(COD))

Committee on Fisheries

Rapporteur: Raül Romeva i Rueda

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

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (COM(2012)0447– C7-0213/2012 – 2012/0216(COD))

(Ordinary legislative procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0447),
  - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0213/2012),
  - having regard to the opinion of the European Economic and Social Committee of 14 November 2012<sup>1</sup>,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries (A7-0042/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

#### Proposal for a regulation - amending act

##### Recital 3

*Text proposed by the Commission*

(3) In order to ***apply certain provisions of Regulation (EC) No 812/2004***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the

*Amendment*

(3) In order to ***ensure the efficient adaptation of certain provisions to reflect technical and scientific progress***, the power to adopt acts in accordance with

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<sup>1</sup> OJ 0 C, 0.0.0000, p. 0.

European Union should be delegated to the Commission in respect of technical specifications and conditions of use of acoustic deterrent devices.

Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical specifications and conditions of use of acoustic deterrent devices.

## **Amendment 2**

### **Proposal for a regulation - amending act**

#### **Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) In view of the requirement by Member States to take the requisite measures to establish a system of strict protection for cetaceans, the shortcomings of Regulation (EC) No 812/2004 and its implementation, as indicated in COM(2009)0368 and the related 2010 ICES scientific advice, and the lack of integration of the Habitats Directive 92/43/EEC, the Commission should before the end of 2015 submit a legislative proposal for a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats.***

#### *Justification*

*Cetacean populations have dramatically decreased, while tens of thousands of cetaceans die every year in EU waters. EC 812/2004, which has serious shortcomings, mainly focuses on the use of acoustic devices to deter the incidental catching of cetaceans despite the fact that cetaceans face various threats such as habitat degradation, collisions with vessels and underwater noise pollution. There is a need to establish an overarching legislative framework for the protection of cetaceans similar to the US Marine Mammal protection Act.*

## **Amendment 3**

### **Proposal for a regulation**

#### **Article 1 – point 1 a (new)**

Regulation (EC) No 812/2004

Article 7 – paragraph 3 (new)

*Text proposed by the Commission*

*Amendment*

***(1a) In Article 7, the following paragraph is added:***

***"3. The Commission shall no later than 31 December 2015 review the effectiveness of the measures laid down in this Regulation and accompany this review with an overarching legislative proposal for ensuring the effective protection of cetaceans."***

*Justification*

*Cetacean populations have dramatically decreased, while tens of thousands of cetaceans die every year in EU waters. EC 812/2004, which has serious shortcomings, mainly focuses on the use of acoustic devices to deter the incidental catching of cetaceans despite the fact that cetaceans face various threats such as habitat degradation, collisions with vessels and underwater noise pollution. There is a need to establish an overarching legislative framework for the protection of cetaceans similar to the US Marine Mammal protection Act.*

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Article 1 - point 3**

Regulation (EC) No 812/2004

Article 8a - paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The ***delegation of*** power referred to in Article 3(1) shall be conferred for ***an indeterminate*** period of ***time***.

2. The power ***to adopt delegated acts referred to in*** Article 3(1) shall be conferred ***on the Commission*** for a period of ***three years from ...\****. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

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***\* OJ Please insert the date of entry into force of this Regulation.***

*Justification*

*It seems more appropriate to limit the delegation in time and to oblige the Commission to report on its exercise in order to have a regular evaluation and questioning of the use of the delegation.*



## EXPLANATORY STATEMENT

### General background

The Treaty on the Functioning of the European Union (TFEU) has introduced a new hierarchy of norms comprising three levels:

- At the first level are the legislative acts which are adopted by the legislators (the European Parliament and the Council) in accordance with the ordinary legislative procedure, where the Parliament and the Council decide as equal co-legislators (Article 294 of the TFEU), or in accordance with special legislative procedures;
- Furthermore, the legislators may delegate to the Commission the power to adopt non-legislative acts of general application to supplement and amend certain non-essential elements of the legislative act (so called delegated acts, defined in Article 290(1) of the TFEU), which forms a certain level of norms;
- Legally binding Union acts may also confer implementing powers on the Commission where uniform conditions for implementing these Union acts are needed. On that basis the Commission adopts so-called implementing acts (Article 291 of the TFEU), constituting the third level.

The choice of which type of act to use is not always clear cut. Delegated acts and implementing acts, compared to legislative acts, have the advantage of providing the possibility to react swiftly to a new situation. It is the ordinary legislative procedure and delegated acts that guarantee the participation of the Parliament in the decision making process on an equal footing with the Council.

### The Commission proposal

Council Regulation (EC) No 812/2004 of 24 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 currently confers to the Commission certain powers that have to be reclassified into measures of delegated nature and measures of implementing nature.

### The rapporteur's view

It is very important to find legally well founded solution safeguarding Parliament's rights created by the TFEU.

The rapporteur globally agrees with the Commission's proposal to the extent that it suggests the use of:

- delegated acts to adapt conditions and technical specifications for the use of acoustic deterrent devices;
- implementing acts concerning the procedure and format for reporting obligations for

Member States.

However, rapporteur suggests some amendments to the Commission's proposal, i.e. stricter definition of the circumstances under which the Commission may adopt delegated acts.

## PROCEDURE

<b>Title</b>	Amendment to Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98		
<b>References</b>	COM(2012)0447 – C7-0213/2012 – 2012/0216(COD)		
<b>Date submitted to Parliament</b>	8.8.2012		
<b>Committee responsible</b> Date announced in plenary	PECH 11.9.2012		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ENVI 11.9.2012		
<b>Not delivering opinions</b> Date of decision	ENVI 12.9.2012		
<b>Rapporteur(s)</b> Date appointed	Raül Romeva i Rueda 6.9.2012		
<b>Discussed in committee</b>	9.10.2012	28.11.2012	21.1.2013
<b>Date adopted</b>	19.2.2013		
<b>Result of final vote</b>	+: 21 -: 0 0: 1		
<b>Members present for the final vote</b>	John Stuart Agnew, Kriton Arsenis, Alain Cadec, Chris Davies, Carmen Fraga Estévez, Pat the Cope Gallagher, Dolores García-Hierro Caraballo, Iliana Malinova Iotova, Werner Kuhn, Isabella Lövin, Gabriel Mato Adrover, Maria do Céu Patrão Neves, Crescenzo Rivellini, Ulrike Rodust, Raül Romeva i Rueda, Struan Stevenson, Isabelle Thomas, Nils Torvalds, Jarosław Leszek Wałęsa		
<b>Substitute(s) present for the final vote</b>	Jean-Paul Besset, Ole Christensen, Diane Dodds, Julie Girling		
<b>Date tabled</b>	22.2.2013		