

Basic information	
2003/0163(CNS) CNS - Consultation procedure Regulation	Procedure completed
Conservation of fish resources: reduction of the quantity of by-catches of cetaceans	
Amending Regulation (EC) No 88/98 1997/0013(CNS) Repealed by 2016/0074(COD) Amended by 2006/0169(CNS) Amended by 2012/0216(COD)	
Subject 3.15.01 Fish stocks, conservation of fishery resources 3.15.04 Management of fisheries, fisheries, fishing grounds 3.70.01 Protection of natural resources: fauna, flora, nature, wildlife, countryside; biodiversity	

Key players			
European Parliament	Committee responsible PECH Fisheries	Rapporteur KINDERMANN Heinz (PSE)	Appointed 02/10/2003
	Committee for opinion ENVI Environment, Public Health, Consumer Policy	Rapporteur for opinion	Appointed
		The committee decided not to give an opinion.	
Council of the European Union	Council configuration Agriculture and Fisheries	Meetings 2573	Date 2004-03-22
	Agriculture and Fisheries	2578	2004-04-26
European Commission	Commission DG Maritime Affairs and Fisheries	Commissioner	

Key events			
Date	Event	Reference	Summary
24/07/2003	Legislative proposal published	COM(2003)0451 	Summary
01/09/2003	Committee referral announced in Parliament		

20/01/2004	Vote in committee		Summary
20/01/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0020/2004	
10/02/2004	Decision by Parliament	T5-0069/2004	Summary
26/04/2004	Act adopted by Council after consultation of Parliament		
26/04/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		

Technical information	
Procedure reference	2003/0163(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 88/98 1997/0013(CNS) Repealed by 2016/0074(COD) Amended by 2006/0169(CNS) Amended by 2012/0216(COD)
Legal basis	EC Treaty (after Amsterdam) EC 037
Stage reached in procedure	Procedure completed
Committee dossier	PECH/5/19929

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0020/2004	20/01/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0069/2004 OJ C 972 22.04.2004, p. 0030-0074 E	10/02/2004	Summary

European Commission				
Document type	Reference	Date	Summary	
Legislative proposal	COM(2003)0451 	24/07/2003	Summary	
Follow-up document	COM(2009)0368 	16/07/2009	Summary	
Follow-up document	COM(2011)0578 	21/09/2011	Summary	

National parliaments				
	Parliament			

Document type	/Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0578	20/04/2012	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2004/0812
OJ L 185 27.05.2004, p. 0004-0013

[Summary](#)

Conservation of fish resources: reduction of the quantity of by-catches of cetaceans

2003/0163(CNS) - 16/07/2009

This communication concerns cetacean incidental catches in fisheries. It is the follow-up report to the implementation of 2 regulations: (i) Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98; (ii) [Council Regulation \(EC\) No 2187/2005](#) relating to 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.

- **Council Regulation (EC) No 812/2004:** Council Regulation (EC) No 812/2004 lays down measures aimed at mitigating incidental catches of cetaceans by fishing vessels. The Regulation identifies the fisheries where the use of acoustic deterrent devices, also known as pingers, is mandatory, the technical specifications and conditions of use of these instruments, and the fisheries where at-sea observer schemes have to be conducted. Member States are responsible for the implementation of the acoustic devices, for monitoring its efficiency, and implementing monitoring schemes according to the guidelines under this Regulation. According to Article 6 (EC) Regulation 812/2004, Member States must send to the Commission a comprehensive annual report on the implementation of certain provisions of the Regulation including "estimates of the overall incidental catches of cetaceans in each of the fisheries concerned". In accordance with Article 7 of that Regulation the Commission, after receiving Member States second annual report, has the obligation to report to the European Parliament and the Council on the operation of this Regulation. The report should be based on an assessment carried out by ICES and STECF of the Member States reports.
- **Council Regulation (EC) No 2187/2005:** Council Regulation (EC) No 2187/2005 contains technical measures for the conservation of fisheries resources in the Baltic Sea. According to Article 27, the Commission shall by 1 January 2008 ensure that a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans is conducted and its findings presented to the European Parliament and Council.
- **Merging of the two reports:** the information required for the scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans under Regulation (EC) No 2187/2005 is very similar to information on incidental catches derived from the "At-sea observer schemes" and collected by Member States according to Regulation (EC) 812/2004. Both reports would hence cover partly the same information on incidental catches of cetaceans from fishing gears. Therefore, the Commission has decided to merge the two requested reports to the European Council and Parliament.

Conclusions and way forward: this report concludes that, although most Member States have reported low or no incidental catches in EU waters, scientific evidences from at-sea monitoring schemes or from post-mortem analysis of stranded animals **continue to show existing conflicts between cetacean and fisheries.** Information on cetacean populations is fragmented and population status remains unclear.

The Commission recognises that some Member States have made considerable efforts to correctly implement [\(EC\) Regulation 812/2004](#) but also acknowledges that some Members States are lagging behind. Although it recognises that there could be reasons to amend the Regulation at a later stage, full implementation across Member States has not been achieved so far and, therefore, it has **not been possible to assess the impact of the existing measures to mitigate incidental catches of cetaceans.** Best practices presented in the workshop show that it is possible to achieve good results under the present circumstances. The Regulation provides for flexibility which must be used to the full.

Considering the need to reduce the impact of fisheries on cetacean populations in EU waters, the Commission urges Member States to take all the necessary measures to **improve the implementation of the Regulation.** It would also like to emphasise Member States' obligations under the Habitats

Directive to monitor the incidental capture and killing of all whales and cetaceans and ensure that incidental capture or killing do not have a significant impact on the populations. In this regard, for other fishing activities and for other areas where incidental catches are problematic and not covered by the Regulation, Member States have the responsibility to take appropriate measures to safeguard cetacean populations.

As a follow-up to the workshop on the implementation of the Regulation, the Commission will carefully consider the following main points:

- the full use of the **flexibility** in (EC) Regulation 812/2004, in reply to problems concerning monitoring schemes, gears and areas;
- including the **Black Sea** in (EC) Regulation 812/2004;
- encouraging Member States to **widen current monitoring schemes**, to integrate observations on incidental catches of cetaceans;
- encouraging the **debate on mitigation measures** with industry within the RACs;
- identifying **measurable objectives** for maximum acceptable incidental-catch levels for different cetacean populations.

The Commission will also, in order to **harmonise information reported by Member States**, revise the format for reporting received from ICES and revised by STECF, and make it available to Member States. As from next year, the Commission would hence expect to receive complete National Reports from all Member States concerned with all the information required in the Regulation as well as any other appropriate information as requested.

Lastly, the **critical state of the Baltic harbour porpoise population** also needs to be further addressed by the Community and consequent actions need to be considered. According to ICES latest advice on cetaceans, the best conservation efforts are likely to include stakeholder involvement. The Commission agrees with this approach and would like to encourage Member States and stakeholder organisations to investigate ways of minimising incidental catches of harbour porpoises in the Baltic. In order to improve the current knowledge base, the Commission launched recently a call for tenders to carry out a study on cetacean by-catch data collection in the Baltic, Kattegat and the Sounds.

Conservation of fish resources: reduction of the quantity of by-catches of cetaceans

2003/0163(CNS) - 21/09/2011 - Follow-up document

The Commission presents a Communication on the implementation of certain provisions of Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries. It is recalled that the Regulation identifies fisheries where the use of acoustic deterrent devices (ADDs) is mandatory, the technical specifications and conditions of use of these devices, and fisheries where observer schemes to obtain representative data have to be conducted in order to assess the extent of by-catch of cetaceans. Member States are responsible for enforcing the use of ADDs and monitoring their efficacy over time, as well as implementing monitoring schemes according to the guidelines under this Regulation.

This Communication contains a summary of the information collected during 2007-2009 and submitted by Member States to the Commission. ICES and STECF were also requested to analyse the scientific content of the national reports, the implementation of the Regulation and any additional scientific reports provided by Member States. The conclusions from this analysis by ICES and STECF are reflected.

The Regulation has been in place for 6 years, and despite these improvements **it is still not fully meeting its objective of preventing the accidental capture of cetaceans in fishing gears**. By-catch is still evident in a number of fisheries in the North Atlantic, North Sea and the Baltic and according to ICES several sub-populations of harbour porpoise and common dolphin in these areas are considered as endangered. For the Mediterranean and the Black Sea it is apparent that estimates of cetacean abundance are inadequate making any assessment of population or by-catch impossible for these regions but there is enough evidence to conclude that by-catch remains high in these sea basins.

The report makes the following points:

Lack of information for cetacean by-catch: there has been insufficient sampling in the right fisheries or areas to enabling sound management decisions to be made with respect to cetacean by-catch. Of the Member States that actually did report to the Commission most reported low or no by-catch in EU waters but scientific evidence from at-sea observer schemes or from post-mortem analysis of stranded animals continues to indicate significant interactions between fisheries and cetaceans. Information on cetacean populations is fragmented and population status remains unclear so the actual impact of fishing on populations is poorly understood. Absolute estimates that might be useful to inform management actions exist only for a few species in the North Sea, the Baltic Sea and parts of the NE Atlantic.

ADDs: currently there appears to be an over emphasis on mitigation measures (i.e. ADDs) where such measures are only proven to work in reducing bycatch of harbour porpoise in static net fisheries and not for other cetacean species (e.g. common and striped dolphin) or with other fishing methods (e.g. pelagic trawls). This has resulted in Article 2 of the Regulation, on the obligation to use ADDs, being ineffective. There is a general reluctance by fishermen to use the devices currently available due to practical and economic reasons. All Member State using ADDs have concluded that further work is needed to improve the reliability, effectiveness and practical handling of the current devices, and the annual cost of deploying ADDs also remains an issue.

Inadequate reporting by Member States: many Member States have made a considerable effort to meet the reporting requirements of the Regulation. The improvements to the reporting format advised by ICES and STECF and accepted by the Member States will further improve this. However, the quality and content of the reports from some Member States submitted remains inconsistent, making analysis difficult. Reporting by Member States should be at a fleet segmentation level that follows the classification set out in the Data Collection Framework (DCF) and also with a monthly rather than a quarterly resolution.

Monitoring targets: targets specified in the Regulation appear over ambitious and these targets could be rethought. Adherence to the monitoring scheme mandated under the Regulation in fisheries where by-catch rates are known to be low is not the most effective use of resources, especially when bycatch is known to be occurring more frequently in fisheries or areas where there is currently no requirement for monitoring under the

Regulation. According to ICES, a more general approach whereby Member States would be required to demonstrate their fisheries were not exceeding some agreed level of cetacean bycatch would be more appropriate without overburdening Member States with excessive monitoring requirements. Greater flexibility and co-ordination is required in allocating monitoring effort.

Research: cetacean distribution and interactions with fisheries are not constant through time. The development of dedicated research on mitigation measures and improvement of monitoring interactions between cetaceans and fisheries in parallel with the full implementation of the Regulation will contribute to a better understanding of those shifts and support the enhancement of sound management tools. Data collection under the Habitats Directive (Directive 92/43/EEC) and also the linkage with the Regulation needs to be clarified so the utility of the data collected is maximised and there is no duplication. Member States have obligations under the Habitats Directive to monitor the incidental capture and killing of all cetaceans and ensure that incidental capture or killing does not have a significant impact on the populations. In this regard, for other fishing activities and for other areas where incidental catches are problematic and not covered by the Regulation, Member States have the responsibility to take appropriate measures to safeguard cetacean populations. In particular incidental cetacean by-catch in the Black Sea and the incidental catches of pinnipeds, seabirds and turtles in fishing gears in all areas are highlighted as specific cases which are currently outside the scope of the Regulation but require monitoring.

Way forward: although monitoring targets, data formats and other issues are subjects of ongoing debate, the Regulation has, according to ICES, succeeded in providing a much more comprehensive picture of cetacean by-catch in European fisheries. Some Member States have become more knowledgeable about the impacts that their fisheries have on cetaceans, allowing them to streamline the needs for research and protection of cetaceans and improve the implementation of the Regulation.

There is a need to ensure that monitoring and mitigation are targeted in the areas and for the species most under threat. Improved mitigation measures could be incorporated under the new technical measures framework that will be developed as part of the reform of the Common Fisheries Policy. This would set out the scope, objectives and targets to be met in relation to cetacean by-catch, with the option for Member States to take specific mitigation measures for specific areas and fisheries. The monitoring requirements could be incorporated into the DCF, in line with a move to a wider ecosystem approach to fisheries monitoring which would include bycatch of non-target species such as cetaceans, seabirds and benthic organisms. Once this is achieved, Regulation (EC) 812/2004 could be repealed.

Conservation of fish resources: reduction of the quantity of by-catches of cetaceans

2003/0163(CNS) - 10/02/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Heinz KINDERMANN (PES, D), making several amendments to the proposal. (Please see the summary of 20/01/04.) Parliament stated that, 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. Research is already under way into alternative fishing gear aimed at reducing the incidental catches of cetaceans, such as separator grids. The Commission must encourage and react expediently to the outcome of such research. EU research projects should be commissioned as soon as possible to provide scientific support for the measures laid down in the Regulation. They should 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. Lastly, the minimum percentage of the fishing effort covered by on-board observers must be 10 % (at least 3 vessels) from April to November and 15 % (at least 3 vessels) from December to March. These figures are increased from the Commission's figures of 5% and 10% respectively.

Conservation of fish resources: reduction of the quantity of by-catches of cetaceans

2003/0163(CNS) - 26/04/2004 - Final act

PURPOSE : to curb the accidental capture of cetaceans such as dolphins and harbour porpoises in fishing gear, as this is threatening the conservation of these species. **LEGISLATIVE ACT :** Council Regulation 812/2004/EC laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation 88/98/EC. **CONTENT :** the Council reached political agreement by qualified majority on the Presidency compromise on this proposal. The Commission endorsed the compromise. The Italian and Spanish delegations voted against. The main elements of the compromise tabled by the Presidency with regard to the initial proposal of the Commission are as follows: 1) Concerning the mandatory use of acoustic deterrent devices ("pingers") : - vessels below 12 meters shall not be subject to the use of pingers (vessels of all sizes were initially included in the proposal); - fisheries using pingers shall not be subject to the on-board observer scheme; - the dates for implementing the mandatory use of acoustic deterrent devices have changed, depending on the fishing areas and the gear used; the new dates are 1 June 2005, 1 January 2006 and 1 January 2007 (initially 1 July 2004 was proposed for all areas and fisheries). Different dates apply within area VII, and an additional fishing area (Baltic Sea subdivision 24) will be covered by the mandatory use of pingers from 1 January 2007; - in a statement the Commission declared that, in the framework of its proposal on the amendment of the FIFG Regulation, it would consider providing for a possibility for Member States to support the purchase of acoustic deterrent devices for commitments made in the years 2005 and 2006. 2) as regards the on-board observer scheme for the fisheries: - vessels below 15 meters shall not be subject to an on-board observer scheme for fisheries (vessels of all sizes were initially included in the proposal); - monitoring schemes will be based either on a sampling strategy designed to allow the estimation of the by-catch rates for cetaceans to achieve an accuracy rate of 30%, or on pilot monitoring schemes when there is a lack of information on the variability of by-catch. The sampling strategy will be based on existing information concerning previous by-catch observations. The pilot schemes will cover a minimum fishing effort mostly expressed in percentages; - the implementation date will vary from 1 January 2005 to 1 January 2006 (instead of 1 July 2004 in the initial proposal), depending on the scientific advice for the areas and fisheries concerned. 3) Concerning the initial proposal to phase out drift-nets in the Baltic Sea from 1 January 2007, after an immediate length limitation of drift-nets to 2.5 km: - the date set for completion of the phasing-out of drift-nets in the Baltic Sea is now 1

January 2008; - the phasing-out of drift-nets will start on 1 January 2005 (1 July 2004 in the initial proposal); - instead of the length limitation of drift-nets planned for the phasing-out, drift-nets will be subject to a fishing effort limitation scheme and will be gradually reduced from 40% of the fleet in 2005, 60% in 2006, 80% in 2007 and 100% on 1 January 2008. ENTRY INTO FORCE : 01/07/04.

Conservation of fish resources: reduction of the quantity of by-catches of cetaceans

2003/0163(CNS) - 24/07/2003 - Legislative proposal

PURPOSE : to lay down measures concerning incidental catches of cetaceans in fisheries and amending Regulation 88/98/EC. **CONTENT** : the proposed Regulation aims to curb the accidental capture of cetaceans such as dolphins and harbour porpoises in fishing gear, as this is threatening the conservation of these species. The measures taken by Member States under Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the so-called "Habitats" Directive), has been insufficient to adequately protect these animals. There are insufficient data to allow a precise estimation of the number of accidental catches of cetaceans in fishing gear, their distribution and their impact on populations. However, available scientific advice shows that most of the fishing gears commonly used in European fisheries are responsible for some cetacean by-catch. The most serious problems appear to be caused by gillnets and pelagic (mid-water) trawls. An overall reduction of fishing pressure is expected as a result of other Community measures aimed at ensuring the sustainability of fisheries. This proposal for a Regulation completes the response to scientific advice by providing additional measures to address the incidental catches of cetaceans in fisheries. More specifically, the proposed measures aim at : a) for the Baltic sea, restricting and further phasing out the use of drift-nets. Comparable measures are already established by Community law in all other waters. The proposed restrictions in the Baltic consist in limiting immediately the length of drift-nets to maximum 2.5 km, associated with a phasing out process with a view to a total ban on this gear in the Baltic Sea as from 1 January 2007. b) requiring the use of acoustic deterrent devices, better known as 'pingers', in fisheries where the effectiveness of such devices has been confirmed in reducing incidental catches of cetaceans. c) establishing monitoring programmes, using independent observers, for gathering extended information on by-catch of cetaceans for numerous fisheries with a potentially high risk of incidental catches of cetaceans.