

# Procedure file

Basic information	
CNS - Consultation procedure Regulation	2003/0163(CNS)  Procedure completed
Conservation of fish resources: reduction of the quantity of by-catches of cetaceans	
Amending Regulation (EC) No 88/98 <a href="#">1997/0013(CNS)</a>	
Amended by <a href="#">2006/0169(CNS)</a>	
Amended by <a href="#">2012/0216(COD)</a>	
Repealed by <a href="#">2016/0074(COD)</a>	
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	Rapporteur	Appointed
	<b>PECH</b> Fisheries		02/10/2003
		PSE <a href="#">KINDERMANN Heinz</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ENVI</b> Environment, Public Health, Consumer Policy	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2578</a>	26/04/2004
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2573</a>	22/03/2004
European Commission	Commission DG	Commissioner	
	<a href="#">Maritime Affairs and Fisheries</a>		

Key events			
24/07/2003	Legislative proposal published	<a href="#">COM(2003)0451</a>	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	<a href="#">A5-0020/2004</a>	
10/02/2004	Decision by Parliament	<a href="#">T5-0069/2004</a>	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
	Amending Regulation (EC) No 88/98 <a href="#">1997/0013(CNS)</a> Amended by <a href="#">2006/0169(CNS)</a> Amended by <a href="#">2012/0216(COD)</a> Repealed by <a href="#">2016/0074(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 037
Stage reached in procedure	Procedure completed
Committee dossier	PECH/5/19929

### Documentation gateway

Legislative proposal	<a href="#">COM(2003)0451</a>	24/07/2003	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0020/2004</a>	20/01/2004	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0069/2004</a> OJ C 972 22.04.2004, p. 0030-0074 E	10/02/2004	EP	Summary
Follow-up document	COM(2009)0368	16/07/2009	EC	Summary
Follow-up document	<a href="#">COM(2011)0578</a>	21/09/2011	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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### Final act

<a href="#">Regulation 2004/812</a> <a href="#">OJ L 185 27.05.2004, p. 0004-0013</a> Summary
Final legislative act with provisions for delegated acts

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

**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. ?

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

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The committee adopted the report by Heinz KINDERMANN (PES, D) amending the proposal under the consultation procedure: - any fish caught in fishing operations conducted for the purpose of scientific investigation may not be traded commercially; - to enable the ban on the use of drift-nets in the Baltic to show its full effect, the ban should be incorporated in the framework of bilateral agreements with Russia as well; - following implementation of the full ban in all EU waters, drift-nets should be destroyed in order to avoid any further use by third country vessels in EU or non-EU waters. The relevant authorities should ensure that fishermen are adequately compensated for the loss of their investments; - in their annual reports, Member States should 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)); - provision should be made for the regulation to be reviewed in June 2007 with a view to drawing up a framework regulation with a long-term conservation strategy, including the definition of minimum population sizes for the cetacean species concerned; - in the interests of transparency, the Commission should inform Parliament and Council of any research developments in this field and the action being taken to follow up on such research; - since the acquisition of acoustic deterrents is a considerable financial burden, the fishermen concerned should be assisted from public funds with the investment needed to purchase them. Some of the cost could be supported from FIGG grants for the introduction of more selective fishing methods. ?

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

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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

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**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 FIGG 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

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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.