



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**laying down measures concerning incidental catches of cetaceans in fisheries and
amending Regulation (EC) No 88/98**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The incidental capture and killing of small cetaceans in fishing activities is considered as a major threat to the conservation of their populations.

Cetaceans are granted strict protection under Community environmental legislation, namely the Habitats Directive (92/43/EEC), with a view to maintaining those species at or restoring them to favourable conservation status. Article 11 of this Directive requires that Member States shall undertake surveillance of their conservation status, and Article 12 further stipulates that Member States shall take the requisite measures to establish a system of strict protection for these animals, including a system to monitor their incidental capture or killing with a view to further research and conservation measures as required.

As far as fisheries legislation is concerned, the Council adopted in 1997 and further amended in 1998 the so called "drift-net limitations" (Regulations (EC) No 894/97 and No 1239/98), on the basis, *inter alia*, that such gear might endanger populations of some species caught as by-catch.

On the basis of the scientific information now available to it, however, the Commission has come to the conclusion that the measures taken so far are insufficient or lacking in coordination. Additional Community action is needed in the fisheries sector to improve, in a consistent and cooperative manner, measures aimed at the conservation of small cetaceans. This is also fully consistent with the obligation under the Common Fisheries Policy to minimise the impact of fishing activities on marine ecosystems, as provided for in particular in Article 2 of Regulation (EC) 2371/2002.

The Commission asked the International Council for the Exploration of the Sea (ICES) to provide an overview of fisheries that have a significant impact on small cetaceans, an assessment of the risks created by fisheries on identified populations and, finally, advice on possible remedial action to reduce the impact of fishing. It also requested the Scientific, Technical and Economic Committee for Fisheries (STECF), in particular through its Subgroup on Fisheries and Environment (SGFEN), to review the information provided by ICES, to add any additional information on cetacean by-catch in European fisheries (in particular for fisheries not covered by ICES) and to provide the Commission with possible management advice¹.

According to the reports from these scientific bodies, most of the fishing gears commonly used in Europe result in some cetacean by-catch, although gill nets and pelagic trawls appear to contribute most. By way of example of the extent of cetacean by-catches, it is estimated that each year several thousand harbour porpoises are caught in bottom-set gillnets in the North Sea. Although data on by-catches of other cetaceans, such as dolphins, is patchy, it is clear from fishing trials conducted by some Member States that from time to time by-catches of these species can reach high levels (details can be found in the reports cited above).

Scientists consider that mitigation of cetacean by-catch can be primarily addressed through an overall reduction in fishing pressure together with some additional measures of a technical

¹ Advisory Committee on Ecosystems 2002 report (available at <http://www.ices.dk/committe/ace/2002/Section-2.pdf>), and the report on incidental catches of small cetaceans from the Subgroup on Fishery and Environment (SEC(2002)1134), as reviewed and commented by the Scientific, Technical and Economic Committee for Fisheries (STCEF) in November 2002 (SEC(2003)550).

nature. In order to obtain better advice on further mitigation measures, a comprehensive monitoring scheme with a good geographical and temporal coverage is also needed. Only occasional, uncoordinated monitoring has so far been carried out and it is, therefore, not possible to ascertain the spatial and temporal patterns of by-catch distribution.

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. These measures include:

- (1) restrictions on the use of drift-nets in the Baltic Sea (length limitation to maximum 2.5 km, and further phasing out before 1 January 2007),
- (2) the mandatory use of acoustic deterrent devices in certain fisheries, and
- (3) coordinated monitoring of cetacean by-catch through compulsory on board observers for given fisheries.

Restrictions on the use of drift-nets in the Baltic Sea

The use of drift-nets has been severely restricted in Community law, *inter alia* because of its impact on small cetaceans, but such restrictions do not apply to the Baltic Sea².

According to the SGFEN recommendation, the maximum length of salmon drift-nets should be brought in line with that for other Community drift-net fisheries that are still permitted, i.e. 2.5km. A timetable for banning the use of these drift-nets should also be drawn up.

This is based on the fact that the harbour porpoise (*Phocoena phocoena*), the only cetacean for which there are records of capture in drift-nets in the Baltic, is the most critically endangered population of small cetaceans in Europe. The very low remaining population make incidental catches a rare event but one of real significance for the conservation of this population.

A general length limitation of drift-nets to 2.5 km should, therefore, be immediately applied in the Baltic Sea, followed by a progressive phasing out of their use in this area until they are completely prohibited as from 1 January 2007. Although these measures will adversely affect the profitability of the salmon fishery concerned, the fact that the Community is committed to preserving biological diversity and to preventing the possible extinction of the harbour porpoise population in the Baltic area in the short to medium term overrides these considerations.

This commitment also implies that other gear known to carry the risk of incidental catching of harbour porpoises, in particular bottom-set gill nets, will also require particular surveillance (see below).

Mandatory use of acoustic deterrent devices

Acoustic deterrent devices (or pingers) have been widely tested and implemented in several gillnet fisheries around the world, where they have been successful in reducing by-catches of

² See Regulation (EC) No 894/97, as amended by Regulation (EC) No 1239/98

some small cetaceans, in particular common dolphins (*Delphinus delphis*), striped dolphins (*Stenella coeruleoalba*) and harbour porpoises.

The mandatory use of acoustic deterrent devices should, therefore, be required in all fisheries that could produce significant by-catch and in which an important reduction of incidental catches of cetaceans is expected. This is particularly valid for fisheries using bottom-set gillnets in areas of distribution of harbour porpoises (in particular the North Sea, the English Channel and the Celtic shelf).

Given the significant contribution of small fishing vessels to the total fishing effort with bottom-set gillnets in these areas, and the distribution of porpoises near the shore, the Commission proposes that pingers should be deployed by all vessels, independently of their size or of the total length of set nets they use.

However, in view of concerns raised that there has been insufficient research into measuring any possible negative impact such devices might have, at a population level, on the animals that they are designed to deter, this large-scale use of pingers should be carefully monitored.

In addition, in order to ensure proper compliance by means of reliable monitoring of such measures, it is of the utmost importance to adopt Community rules on the marking and identification of static gear. The Commission intends to proceed in the near future with the adoption of detailed rules, pursuant to Articles 5 (c) and 20a (3) of Council Regulation (EEC) No 2847/93 and in accordance with the procedure laid down in Article 36 of this Regulation.

By-catch monitoring

The above-mentioned mitigation measures are considered as a first, short-term step towards addressing the by-catch problem. The Commission is conscious of the need to develop wider and more strategic measures. However, the design of such a strategy requires a better knowledge of the problem by means of appropriate monitoring of fishing activities and improved assessment and surveillance of cetacean populations.

The effective design of mitigation measures is highly dependent on a comprehensive monitoring scheme with sufficient geographical and temporal coverage. Independent and representative observations of fishing activities are essential to provide adequate by-catch estimates.

The Commission therefore proposes that Member States set up, as a matter of priority, on-board observer schemes to monitor the incidental capture and killing of cetaceans in several "high risk" fisheries where pelagic trawls or gillnets are used.

The SGFEN has identified a number of fisheries which would require the establishment of monitoring schemes and most of those are covered by the scope of the proposed Regulation. Generally speaking, the appropriate level of observer coverage should depend on the desired level of precision in the estimate of by-catch and on the statistical properties of by-catch events within a particular fishery. In the absence of sufficient data to define a statistically-robust level of coverage, the SGFEN has recommended that 5-10 % of the total effort should be monitored; the Commission has, in most cases, chosen to propose the lower figure. Wherever possible, programmes to monitor incidental catches of cetaceans should benefit from existing observer programmes established for other purposes (e.g. data collection on discards).

For vessels that are unable to allow an additional person on board as observer (e.g. because of lack of space or for safety reasons), the Member States should establish other appropriate method of independent monitoring at sea.

Follow-up and review of these measures

The proposed measures concerning pinger use and on-board observer programmes will be carefully monitored and assessed to enable them to be adapted within a few years if necessary. There should be regular reporting at Community level to allow an overall assessment of the progress made and possible new recommendations by the STECF.

The information gathered when monitoring the use of pingers and data collected through the independent observer schemes should be supplemented with other relevant information, including research on new mitigation measures (e.g. trials of acoustic deterrent devices in pelagic trawls or of possible alternative netting materials for gillnets).

The burden placed on the fishery sector by some of the proposed measures will, however, be difficult to justify in the long term if they are not properly complemented by action to improve the general information and knowledge on the conservation of cetaceans. This follow-up needs to be accompanied by full and proper surveillance by the Member States of the conservation status of cetaceans as provided for in the Habitats Directive. The design of a long-term, comprehensive and reliable strategy for the conservation of these species will only be possible if all these conditions are fulfilled.

Proposal for a

COUNCIL REGULATION

laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

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 Commission³,

Having regard to the opinion of the European Parliament⁴,

Whereas:

- (1) The objective of the common fisheries policy, as defined in Article 2 of Council Regulation (EC) No 2371/2002⁵, 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 ecosystems, and the Common Fisheries Policy shall be consistent with other Community policies, in particular with environmental policy.
- (2) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora⁶ gives strict protection status to cetaceans and requires Member States to undertake surveillance of the conservation status of these species. Member States shall also establish a system to monitor the incidental capture and killing of these species, to take further research and conservation measures as required to ensure that incidental capture or killing does not have a significant impact on the species concerned.
- (3) The scientific information available and the techniques developed to reduce incidental capture and killing of cetaceans in fisheries justify additional measures being taken to further the conservation of small cetaceans in a consistent and cooperative manner at Community level.
- (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

³ OJ C [...] du [...], p.[...]

⁴ OJ C [...] du [...], p.[...]

⁵ OJ L 358, 31.12.2002, p. 59.

⁶ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Directive 97/62/CE, OJ L 305, 8.11.1997, p. 42.

establish the technical specifications for the efficiency of the acoustic deterrent devices to be used in such fisheries.

- (5) Scientific and technical research, in particular on new forms of active deterrent devices, should not be hindered by this Regulation. While Member States should, therefore, be allowed, for the purpose of this Regulation, to authorise the use of newly developed and efficient types of acoustic deterrent devices not in conformity with the technical specifications laid down in this Regulation on a temporary basis, it is also necessary to provide for technical specifications of acoustic deterrent devices to be brought up to date as soon as possible in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission⁷.
- (6) Independent observations of fishing activities are essential to provide reliable estimates of the incidental catch of cetaceans, and to increase knowledge about the effects of the use of acoustic deterrent devices when used on a large scale. It is therefore necessary for monitoring schemes with independent on-board observers to be set up and for the designation of the fisheries where such monitoring should be given priority to be coordinated. In order to provide representative data on the fisheries concerned, the Member States should design and implement appropriate monitoring programmes for vessels flying their flag and engaged in these fisheries. For small-sized fishing vessels, other suitable ways of monitoring at sea should be set up. Common monitoring and reporting tasks also need to be set.
- (7) To enable regular evaluation at Community level and thorough assessment in the medium term to take place, the Member States should report annually on the use of pingers and the implementation of the on-board observer programmes and include all information collected on the incidental capture and killing of cetaceans in fisheries.
- (8) The risk created by drift-net fishing to the critically endangered population of harbour porpoise in the Baltic area requires the use of drift-nets in this area to be stopped. The length of drift-nets kept on board or used by a vessel should be reduced immediately. Community vessels which fish with drift-nets in this area will be subject to economic and technical constraints necessitating a phasing-out period before a total ban on this gear by 1 January 2007. Regulation (EC) No 88/98 laying down technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound⁸ should be amended to incorporate these measures,

HAS ADOPTED THIS REGULATION:

Article 1
Subject-matter

This Regulation lays down measures aimed at mitigating incidental catches of cetaceans by fishing vessels in the areas indicated in Annexes I and III.

⁷ OJ L 184, 17.7.1999, p. 23.

⁸ OJ L 9, 15.1.1998 p.1. Regulation as last amended by Regulation (EC) No 48/99, OJ L 103, 18.1. 1999, p. 1.

Article 2
Use of acoustic deterrent devices

1. Without prejudice to other Community provisions, it shall be prohibited to use the fishing gear defined in Annex I in the areas and for the periods indicated therein without the simultaneous use of active acoustic deterrent devices.
2. The masters of the Community fishing vessels shall ensure that the acoustic deterrent devices are fully operational when setting the gear.
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.

Article 3
Technical specifications of acoustic devices and conditions of use

1. Acoustic deterrent devices used in application of Article 2(1) shall comply with one set of the technical specifications and conditions of use defined in Annex II.
2. By way of derogation to paragraph 1, Member States may authorise the temporary use of acoustic deterrent devices which do not fulfil the technical specifications or conditions of use defined in Annex II, provided that their effect on the reduction of incidental catches of cetaceans has been sufficiently documented. An authorisation shall be valid for no more than two years.
3. Member States shall inform the Commission of the authorisations in accordance with paragraph 2 within two months of the date of issue. They shall provide the Commission with technical and scientific information on the acoustic deterrent device authorised and its effects on incidental catches of cetaceans.

Article 4
Requirement for at-sea observer schemes

1. Member States shall design and implement monitoring schemes for incidental catches of cetaceans using observers on board the vessels flying their flag for the fisheries and under the conditions defined in Annex III. The monitoring schemes shall be designed to provide representative data of the fisheries concerned.
2. If, in order to provide representative data of the fishery concerned, the monitoring scheme involves small-sized fishing vessels where technical or safety considerations would prevent the presence of an observer on board the fishing vessel, Member States shall take the necessary steps to establish independent observations at sea by other means, such as accompanying vessels or specific monitoring of nets in operation by inspection vessels.

Article 5
Observers

1. In order to discharge their obligation to provide observers, Member States shall appoint independent and properly-qualified and experienced personnel. In order to carry out their tasks the personnel selected must have the following qualifications:
 - (a) sufficient experience to identify cetacean species and fishing practices;
 - (b) basic maritime navigation skills and appropriate safety instruction;
 - (c) the capacity to accomplish elementary scientific tasks, for example taking of samples where necessary and making accurate observations and records in that connection;
 - (d) a satisfactory knowledge of the language of the flag Member State of the vessel being observed.

2. The main task of observers is to monitor incidental catches of cetaceans and to collect the data necessary to extrapolate the by-catch observed to the whole fishery concerned. In particular, designated observers shall:
 - (a) monitor the fishing operations of the vessels concerned and record the appropriate data on fishing effort (gear, location and timing of beginning and end of effective fishing operation...);
 - (b) monitor incidental catches of cetaceans;
 - (c) monitor the use of acoustic deterrent devices, when observers are on board a fishing vessel subject to the provisions established under Article 2 and 3 of this Regulation.

3. The observer shall send a report containing all the data collected on the fishing effort and observations on incidental catches of cetaceans, including a summary of his main findings, to the competent authorities of the flag Member State concerned.

The report shall contain in particular the following information for the period in question:

 - (a) the vessel's identity;
 - (b) the name of the observer and the period during which the observer was on board;
 - (c) the type of fishery concerned (including gear characteristics, areas with reference to the Annexes I and III and target species);
 - (d) the duration of the fishing trip and the corresponding fishing effort (expressed as total net length x fishing hours for passive gear and numbers of fishing hours for towed gear);
 - (e) the number of incidentally-caught cetaceans, including species and where possible additional information on size or weight, sex, age, and, where

appropriate, indications on animals lost during hauling the gear or released alive;

- (f) any additional information the observer deems useful to the objectives of this Regulation, including any failure of acoustic deterrent device during a fishing operation, or any additional observation on cetacean biology (such as sightings of cetaceans or particular behaviour in relation with the fishing operation).

The master of the vessel may request a copy of the observer's report.

4. The flag Member State shall keep the observer's reports for at least five years after the end of the relevant reporting period.

Article 6 *Annual reports*

1. Each year, Member States shall send the Commission, by 1 June at the latest, a comprehensive annual report on the implementation of the Articles 2, 3, 4 and 5 during the previous year. The first report shall cover both the remaining part of the year following the entry into force of this Regulation and the entire year that follows.
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 1543/2000⁹, 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.

Article 7 *Overall assessment and review*

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.

Article 8 *Adaptation to technical progress and additional technical guidance*

1. The following shall be adopted in accordance with the management procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002:
 - (a) operational and technical guidance on the tasks of the observers as set out in Article 6;
 - (b) detailed rules on reporting requirements as set out in Article 6.

⁹ OJ L 176, 15.7.2000, p. 1.

2. Amendments to Annex II which are necessary in order to adapt it to technical and scientific progress shall be adopted in accordance with the regulatory procedure laid down in Article 30(3) of Regulation (EC) No 2371/2002.

Article 9

Amendment of Regulation (EC) No 88/98

The following Articles 8a and 8b are inserted in Regulation (EC) No 88/98:

"Article 8a

Restrictions on drift-nets

1. From 1 January 2007, it shall be prohibited to keep on board, or use for fishing, drift-nets.
2. Until 31 December 2006, a vessel may keep on board, or use for fishing drift-nets whose individual or total length is not more than 2.5 kilometres if authorised to do so by the competent authorities of the flag Member State.
3. In 2005 and 2006, the maximum number of vessels which may be authorised by a Member State to keep on board, or use for fishing, drift-nets shall not exceed 60 % of the fishing vessels which used drift-nets during the period 2001 to 2003.
4. Member States shall communicate to the Commission by 30 April of each year, the list of vessels authorised to carry out fishing activities using drift-nets; for 2004, the information shall be sent not later than 31 August 2004.

Article 8b

Conditions for drift-nets

1. All fishing vessels using drift-nets shall operate under the following conditions:
 - (a) during fishing activity, the vessel must keep the net under constant visual observation;
 - (b) floating buoys, with radar reflectors, must be moored to each end of the netting, so that its position can be determined at any time. The buoys must be permanently marked with the registration letter(s) and number of the vessel to which they belong.
2. The master of a fishing vessel using drift-nets shall keep a logbook in which he must record the following information on a day-to-day basis:
 - (a) the total length of the nets on board;
 - (b) the total length of the nets used in each fishing operation;
 - (c) the quantity of by-catches of cetaceans;
 - (d) the date and position of such catches.

3. All fishing vessels using drift-nets shall keep on board the authorisation referred to in Article 8a (2).

Article 10
Entry into force

This Regulation shall enter into force on 1 July 2004.

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

Done at Brussels,

For the Council
The President

ANNEX I

Fisheries in which the use of acoustic deterrent devices is mandatory.

Area	Gear	Period
<p>A. <u>Baltic sea</u> : Area delimited by a line running from the Swedish coast at the point at longitude 13° E, thence due south to latitude 55° N, thence due east to longitude 14 °E, thence due north to the coast of Sweden; and, Area delimited by a line running from the western coast of Sweden at the point at latitude 55° 30' N, thence due east to longitude 15° E, thence due north to latitude 56° N, thence due east to longitude 16° E thence due north to the coast of Sweden</p>	a) Any bottom-set gillnet or entangling net	All year
	b) Any drift-net	All year
<p>B. ICES sub area IV and division III a</p>	a) Any bottom-set gillnet or entangling net, or combination of these nets, the total length of which does not exceed 400 metres	a) 1 August - 31 October
	b) Any bottom-set gillnet or entangling net with mesh sizes \geq 220 mm	b) All year
<p>C. ICES divisions VII d, e, f, g, h, and j</p>	a) Any bottom-set gillnet or entangling net	a) All year

ANNEX II

Technical specifications and conditions of use of acoustic deterrent devices

Any acoustic deterrent devices used in application of Article 2(1) shall meet one of the following sets of signal and implementation characteristics:

	Set 1	Set 2
	SIGNAL CHARACTERISTICS	
* Signal synthesis	Digital	Analogue
* Tonal/wide band	Wide band / tonal	Tonal
* Source levels (max - min) re 1 µPa@1m	145 dB	130-150 dB
* Fundamental frequency	a) 20 - 160 KHz wide band sweeps b) 10 KHz tonal	10 KHz
* High-frequency harmonics	Yes	Yes
* Pulse duration (nominal)	300 ms	300ms
* Interpulse interval	a) 4 - 30 seconds randomised; b) 4 seconds	4 seconds
	IMPLEMENTATION CHARACTERISTICS	
* Maximum spacing between two acoustic deterrent devices along nets	200 m, with one acoustic device fixed at each end of the net (or combination of nets attached together)	100 m, with one acoustic device fixed at each end of the net (or combination of nets attached together)

ANNEX III

Fisheries to be monitored and minimum level of fishing effort subject to on-board observers.

Monitoring schemes shall be designed and established to monitor, in a representative manner:

- a) at least 5 % of the total fishing effort of each fishery subject to Article 2(1) and defined in Annex I,
- and,
- b) the minimum percentage of fishing effort for each fishery defined in the following table:

Area	Gear	Minimum % of the fishing effort covered by on-board observers
A. Baltic sea : all waters covered by Regulation (EC) No 88/98	Drift-nets	10 %
B. ICES sub area IV, division VI a, and sub area VII with the exception of divisions VII c and VII k	Drift-nets	5 % (at least 3 vessels)
C. ICES sub areas VI, VII and VIII.	Pelagic trawls (single and pair)	5 % (at least 3 vessels) (from April to November)
		10 % (at least 3 vessels) (from December to March)
D. ICES sub areas III IV, and IX	Pelagic trawls (single or pair)	5 % (at least 3 vessels)
E. ICES sub areas VI, VII and VIII and IX	High-opening trawls	5 % (at least 3 vessels)
F. Mediterranean Sea (of the east of line 5° 36' west)	Pelagic trawls (single and pair)	5 % (at least 3 vessels)
G. ICES sub area III, divisions VI a, VII a, b, d, e, f, g, h, and j, VIII a, b and c, and IX a	Bottom-set gillnet or entangling nets	5 %

IMPACT ASSESSMENT FORM

TITLE OF PROPOSAL

Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

DOCUMENT REFERENCE NUMBER

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

Community legislation, namely Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the so-called "Habitats" Directive), already requires the Member States to establish a system to monitor the incidental capture and killing of cetaceans, and to take further research or conservation measures, in the light of the information gathered, to ensure that such incidental capture or killing does not have a significant negative impact on the species concerned. In addition, there is a clear political and legal commitment to integrate environmental concerns in the Common Fisheries Policy (cf. Council Regulation (EC) No 2371/2002, and in particular its Article 2).

Several surveys or pilot surveys on incidental catches or research on mitigation measures in some fisheries have been undertaken, but generally in a separate and non co-originated manner between Member States. One Member State has adopted additional legislative measures (applicable to vessels flying its flag) to reduce incidental by-catches of harbour porpoises in the North Sea. However, as far as incidental catches of cetaceans by fisheries in waters surrounding the Community are concerned, **there is a need to increase conservation measures of these species in a consistent and cooperative manner at Community level.**

In order to have a good scientific and technical basis for its action, the Commission asked the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) to provide information and advice on a number of issues. These issues include an overview of fisheries that have a significant impact on small cetaceans, an assessment of the risks created by fisheries on identified populations and finally, advice on possible remedial action to reduce the impact of fishing.

Fishing effort reductions already in place or to be further envisaged as part of the management and sustainable exploitation of commercial fish stock are likely to reduce by-catch of cetaceans and therefore be an effective mitigation measure. However, this is insufficient to give cetacean populations the protection required. Consequently, the proposed regulation puts forward a number of additional measures that could be taken in the short term to address the problem of incidental catches of cetaceans in fisheries.

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. Such measures are recommended because of the extremely poor state of the Baltic harbour porpoise population and the fact that even low levels of incidental catches of these cetaceans within this type of gear are not compatible with a favourable state of conservation of this population.

b) requiring the use of acoustic deterrent devices (pingers) in fisheries where the effectiveness of such devices has been confirmed in reducing incidental catches of cetaceans. In view of the present state of development of pingers, these provisions focus only on their use in passive gear, primarily to reduce by-catches of harbour porpoises. The particular behaviour of porpoises renders bottom-set gillnets particularly at risk of entanglement, but drifting gillnets are also of concern. Requiring the use of such pingers also entails establishing general provisions on the technical characteristics concerning the pingers that may be used, as well as general provisions concerning their use and monitoring.

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. The fisheries concerned are essentially those using pelagic trawls or similar towed nets, but the use of drift-nets is also of concern. In addition, given that the effectiveness of pingers and their effects on the behaviour and distribution of cetaceans are still uncertain, pinger application must be monitored and evaluated. Requirements for placing observers on board need to be accompanied by general provisions defining the tasks and responsibilities of both vessels (or masters of vessels) and observers.

The above-mentioned set of measures also needs **general provisions for reporting and overall assessment** to allow for possible revision of the proposed measures.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

– *which sectors of business*

The proposed measures primarily concern the fisheries sector, essentially its extractive branch (fishermen and vessel owners). There is no reason to believe that the processing sector and fish markets will be affected, except perhaps in a very marginal manner for Baltic salmon, depending on how fishermen react to the restrictions on drift-nets (reconverting to other fishing techniques, targeting other fish, etc).

They could also affect the manufacturers and providers of acoustic deterrent devices or pingers. At present, only a few types of pingers with proven records in reducing cetacean by-catches exist on the market. They are manufactured on a small scale by a limited number of firms. These firms have already indicated that they can increase

production capacity, as making the pinger use mandatory would expand the present market.

– *which sizes of business (proportion of small and medium-sized firms)*

The proposed measures are essentially based on the type of gear in use, rather than the size of the firm involved as measured by the size or the number of crew members of the fishing vessels concerned. In the fisheries sector, most of the business relies on small and medium sized firms.

– *are there particular geographical areas of the Community where these businesses are found*

The proposed measures should be implemented within particular areas of Community waters or adjacent waters. The proposals concerning the use of drift-nets in the Baltic Sea (and the Belts and the Sound) can be seen as an extension to this area of restrictive measures already applied to the use of this gear in all other waters. The mandatory use of pingers is applicable mainly along the western coasts of Europe on the North East Atlantic (including the North Sea and a small southern part of the Baltic). The proposed observer schemes cover the majority of waters bordering European coasts (North East Atlantic, including the North Sea and the southern part of the Baltic, and the Mediterranean).

3. What will need to be done to comply with the Regulation?

– *What will business have to do to comply with the proposal?*

In order to comply with the proposed new technical measures, the fishing vessels concerned will have to adapt their fishing practices. In the Baltic, salmon drift-netters in particular will have to reduce the maximum length of their gear from up to 21 km down to a maximum of 2.5 km and stop using this gear completely by the end of 2006.

The number of pingers fishermen will have to acquire will depend on the total length of nets they use and the kind of fishing in which they are engaged.

If it is involved in a mandatory on-board observers scheme, the fishery sector should ideally coordinate and cooperate with the competent national authorities to establish the most appropriate way for proper implementation of the scheme since observers will be placed on board only some of the vessels engaged in a given fishery.

– *What will national (or subnational) administrations have to do to comply with the proposal?*

Notwithstanding their role in ensuring proper implementation and control of these measures, including setting appropriate sanctions in case of contravention, the essential task of the competent authorities of the Member States will consist in designing and establishing monitoring schemes based on on-board observers, with a representative coverage of the fisheries concerned by this proposal. Where it is not possible to put observers on board (e.g. on small vessels), Member States will have to introduce other means of monitoring at sea (e.g. using accompanying vessels). To do this, and in accordance with the principle of subsidiarity, Member States will be given complete freedom for set up these schemes according to what is considered at

a national, or sub-national level, to be the most appropriate way to achieve the required results. The criteria on which they may base such schemes include their detailed knowledge of the relevant fisheries, existing structures and fisheries organisations, observer programmes already available, cost, efficiency, etc.

This proposal identifies the fisheries for which data on incidental catches of cetaceans need to be collected in a coordinated manner at Community level as a matter of priority, using at-sea observations. It does not restrict the ways in which Member States implement their general obligations to monitor the incidental capture and killing of cetaceans or to undertake surveillance of the conservation status of these species as provided for by the Habitats Directive (32/43/EEC) on a larger scale.

Finally, the competent authorities will have to organise the collection of data, their analysis and the relevant reporting to the Commission.

4. What economic effect is the proposal likely to have?

a) Limitation of drift-nets to 2.5 km per boat in the Baltic Sea and subsequent ban on their use

Drift-nets in the Baltic Sea are primarily used to catch salmon. Salmon drift-netting is a seasonal activity, with peaks in September-October and April-May.

According to data available from ICES¹⁰, half the total effort in salmon offshore fishing in the recent years has, very approximately, been by drift-net and half by longlines¹¹.

In 2001, the number of boats engaged in offshore salmon fishing (233 EU and no EU drift-netters and longliners) decreased by 24 % compared to 2000. Of these, 131 vessels fished for less than 20 days (Finland: 35; Sweden: 33; Denmark: 11) and 59 for more than 40 days (Denmark: 9 ; Finland: 8; Sweden: 7; Poland: 34). It seems likely that only vessels fishing more than 40 days per annum may get more than 50 % of their annual income from this kind of fishing.

The ICES data also indicate that there has been a decline in the total salmon fishing effort in the main Baltic basin from the early 1990s up to 1997, and some stabilisation in drift-net effort as from 1998, although there was an 11% decrease in drift-net fishing in 2001, and a simultaneous increase in longline fishing effort by 25%.

The Scientific, Technical, and Economic Committee on Fisheries had already considered the consequences of a possible limitation on drift-nets in the Baltic some years ago¹². Although the detailed figures on drift-net fisheries have changed somewhat since then, the general trends documented by ICES and referred to above strongly suggest that the following STECF comments and general conclusions remain valid today.

¹⁰ In Particular the 2002 report of the Baltic Salmon and Trout assessment Working group of ACFM (Riga, 3-12 April 2002).

¹¹ See in particular Chapter 3.3, and tables 3.3.1 and 3.3.2 thereof.

¹² STECF subgroup on drift-net fisheries for salmonids and other species, doc. SEC(95)550, 31.3.1995.

In the Baltic, most professional fishermen use nets with a total length up to 15 - 21 km. A restriction to 2.5 km per boat would make the salmon drift-net fishery uneconomic, simply because if catches were reduced by the same proportion as the length of the nets (i.e. up to 88%), they would be insufficient to cover operating costs and, for those vessels most dependent on offshore salmon drift-netting, fixed costs as well. This would probably cause some reduction in fishing activities for all these vessels and possibly in employment, in particular for vessels critically dependent on offshore drift-netting. However, its main effect would probably be to cause a redistribution of fishing effort either towards alternative fish stocks (already fully- or over-exploited) or to alternative salmon fishing activities such as salmon longline fishery (which is of restricted seasonal duration) or, where possible, inshore salmon fishing (e.g. using trap nets).

The cost of the technical adjustment related to the proposed restrictions on the use of the drift-nets in the Baltic may benefit from Community support, as under the EU Fisheries Instrument for Fisheries Guidance (FIFG) (Article 16(2) of Regulation (EC) No 2792/99), the Member States may grant financial compensation to fishermen and owners of vessels where a Council Decision imposes technical restrictions on the use of certain gear or fishing methods.

The net economic effect of the proposed restriction on drift-netting could be positive or negative, depending on :

- the benefits resulting directly from the proposed limitation on drift-net length which could make for an increased value in salmon fishing for sport and increased profitability of commercial salmon fishing activities using fishing gear other than drift-nets (e.g. longlines and trap nets). In addition there might also be indirect social benefits, in particular those resulting from the expected reduction in the incidental mortality of small cetaceans;
- costs, including the lost profits in drift-netting, and possibly employment, at least for vessels not able to convert to alternative fishing gear, and the lower profitability in fisheries for other species (by shifting fishing effort towards other fish species).

However, a more in-depth assessment of all these factors and their relative importance cannot be done in a reliable manner at present, as it would require some knowledge, or at least some indications, of how the individual economic operators, including skippers and shipowners, will adapt or react to the proposed measures, as well as estimates of the indirect benefits or costs related to other activities (e.g. sport fishing for salmon, protection of small cetaceans and related tourism...).

b) Mandatory use of pingers

According to the evidence available, the use of pingers does not affect the fishing efficiency of gear, although some concerns have been raised with regard to the additional manipulation needed to equip the nets, and some possible practical consequences when setting or hauling the nets. However, the design of such devices generally takes into account these technical aspects.

The cost of equipping nets with pingers has often been identified as possibly the major burden on the fisheries sector. It is largely dependent on the purchasing price

of a pingers, the total number of pingers needed per vessel (which is directly related to the total length of nets in use) and on the lifetime of the pinger battery (itself dependent on technological development and type of signal emitted). While manufacturers will have to adapt their production capacity to increased demand from fishermen having to comply with the proposed measures, increased competition, technological development and reduction of manufacturing costs per unit could reduce the overall cost of equipping nets. The reduction of gear damage due to incidental catches of cetaceans has also been pointed out as a possible benefit of the measure.

Some of the initial cost of purchasing pingers could be met by funding under the EU Fisheries Instrument for Fisheries Guidance (FIFG) as such funding is available to adopt more selective fishing method.

Among the various types of pingers available and considered suitable for use (i.e. at this stage primarily to reduce by-catches of harbour porpoises in gillnets), the most expensive device costs about €100, but it does have the best lifetime (operating time of around 10 000 hours, i.e. app. 18 months to 2 years of use before renewal)¹³. The recommended spacing between two pingers is 200 m.

On this basis equipping a vessel using between 5 to 20 km of nets would theoretically represent an initial cost of around 2500 to 10000 € (or an additional fishing cost of 0.05 € per km of nets and hour of fishing). While this would represent an additional variable cost of 1250 to 6700 € per vessel per year, this needs to be compared to total variable costs per vessel per year. As an indication, some economic indicators for Finnish gill-netters targeting salmon and cod in 2000 and 2001 are given below¹⁴:

	2000	2001
Value of landings (M€)	1.2	1.3
Fuel costs (M€)	0.2	0.1
Other running costs (M€)	0.4	0.8
Total variable costs (M€) (excluding crew salaries)	0.6	0.9

c) On-board observers

As mentioned above, it is proposed that appropriate observer schemes be introduced and designed by the competent authorities of Member States on the basis of the criteria they would consider most appropriate. It is therefore not possible for Commission services to assess the different scenarios which the competent authorities, be it at national or sub-national level, may envisage and their impact when optimising the design of observer schemes to reach the targets proposed within the proposed regulation.

¹³ Cf. the report on incidental catches of small cetaceans from the Subgroup on Fishery and Environment (SEC(2002)1134), 22.10.2002, and the report 2002 of ICES Advisory Committee on Ecosystems.

¹⁴ Extract from the annual report 2002 of project CA-2001-01502: Economic performance of selected European fishing fleets.

It should nevertheless be underlined that existing on-board observer programmes have generally not been considered as having a direct economic impact on the fisheries sector. In addition, it is likely that whenever possible, observation schemes on incidental catches of cetaceans would benefit from existing observer programmes, in particular those established on the basis of Regulation (EC) No 1543/2000 establishing a Community framework for the collection and management of the data needed to conduct the Common Fisheries Policy. This would allow also the use of Community funding available in support of the implementation of this Regulation.

It seems unlikely that the establishment of observer schemes by the Member States could have any direct impact on employment in the harvesting sector, or any significant impact on fishing profitability or on competition within the fishery sector. Indeed, such schemes might well have a positive impact on employment, as they would generate at least some job opportunities for on-board observers.

As for assessing the total financial costs involved in such observer programmes, the information available at Community level on fleets and their activities makes it impossible for the Commission services to produce reliable estimates, since the database on the European fishing fleet does not contain data on effort levels, their geographical or seasonal distribution and the gear in use. However, some illustrative figures have been made available by the STECF subgroup¹⁵. As an example, assuming a cost of € 500 per observer per day at sea, it estimated that monitoring 10 % of French pelagic trawlers operating in ICES areas VII, VIII and IX (fisheries targeting either sea bass, albacore or anchovy) would cost around € 462.000. Monitoring 10 % of the British fleet using trawls in these areas (mainly ICES areas VIII) would have a notional cost of € 75.000. Given the number of fisheries that are considered in need of priority monitoring at this stage, the total cost for some Member States could be of an order of magnitude of from 1 to several million € a year.

It should be pointed out that this economic burden does not appear "*ex novo*" as a consequence of this Regulation proposal, since the requirement to monitor incidental catches of cetaceans is already laid down in the "Habitats" Directive 92/43/EEC.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The risk of incidental catches of cetaceans is not related to the size of fishing enterprises, but depends on the fishery concerned (area, gear, seasons, target species...). The proposal does not, therefore, contain specific measures for small and medium-sized firms.

On average, the Baltic drift-netters have a crew of 2-3 people, with larger vessels sometimes carrying 5 crew¹⁶. The bottom-set gillnet fisheries in which it is proposed to make the use of pingers mandatory consists for a significant part in a large fleet of small-sized vessels. These vessels may represent an important proportion of the fishing effort in some areas, in particular coastal areas where harbour porpoise densities are usually high. However, placing an observer on board a small fishing

¹⁵ SEC(2002)1134

¹⁶ Cf. SEC(95)550

vessel is usually impossible in practice, these vessels having neither the capacity nor the safety levels to accept additional people on board. The proposal therefore lays down specific provisions requiring Member States to establish different at-sea monitoring systems to tackle the problem of putting additional persons on small-sized vessels.

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

This proposal is based on the most recent scientific advice and recommendations from the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF)¹⁷ concerning the impact of fisheries on small cetaceans.

These recommendations, and particularly those that are part of this legislative proposal, have been discussed several times with the interested stakeholders. A first consultation / expert meeting was held on 11 December 2002 to discuss such possible measures with representatives of the fishery sector, of Non-Governmental Organisations (NGOs), of competent authorities of Member States and in association with some scientists involved in the advice. These proposals were further discussed in February 2003 within the Advisory Committee for Fisheries and Aquaculture (ACFA).

The views of the different stakeholders, including amongst the different organisations representing the fishery sector, did not provide a consensus. While certain professional organisations recognised the need to take additional action on cetacean by-catch, in particular to collect more precise information on the issue, and recognised the positive effects of using pingers in view of what is already in place, they all expressed concerns with regard to the possible impact and the costs of these measures on the sector.

While generally welcoming such proposals, the NGOs usually considered that additional steps were needed, in particular the setting up of a long term strategy to cope with immediate and tailored responses to by-catch problems when these occur. The Commission acknowledges the need for a management framework, but considers that it is not possible to put together a solid, comprehensive strategy at this stage, given the absence of precise information on by-catch patterns and of proper assessment and surveillance of the conservation status of cetacean populations. The Commission believes that the measures proposed in this Regulation will serve to provide appropriate information for the design of such a strategy in the future.

¹⁷ Advisory Committee on Ecosystems 2002 report (available at <http://www.ices.dk/committe/ace/2002/Section-2.pdf>), and the report on incidental catches of small cetaceans from the Subgroup on Fishery and Environment (SEC(2002)1134), as reviewed and commented by the Scientific, Technical and Economic Committee for Fisheries (STECF) in November 2002 (SEC(2003)550).