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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**Cetacean incidental catches in Fisheries: Report on the implementation of certain provisions of Council Regulation (EC) No 812/2004 and on a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea as requested through Council Regulation (EC) No 2187/2005**

# COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Cetacean incidental catches in Fisheries: Report on the implementation of certain provisions of Council Regulation (EC) No 812/2004 and on a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea as requested through Council Regulation (EC) No 2187/2005

## 1. BACKGROUND

### 1.1. Council Regulation (EC) No 812/2004

Council Regulation (EC) No 812/2004<sup>1</sup> 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.

#### 1.1.1. Reporting obligations

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.

### 1.2. Council Regulation (EC) No 2187/2005

Council Regulation (EC) No 2187/2005<sup>2</sup> contains technical measures for the conservation of fisheries resources in the Baltic Sea.

#### 1.2.1. Reporting obligations

According to Article 27 of (EC) Regulation 2187/2005, the Commission shall "by 1 January 2008, (...) ensure that a scientific assessment of the effects of using in particular gillnets,

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<sup>1</sup> Council Regulation (EC) No 812/2004 adopted in April 2004 lays down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

<sup>2</sup> Council Regulation (EC) No 2187/2005 of 21 December 2005, for 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

trammel nets and entangling nets on cetaceans is conducted and its findings presented to the European Parliament and Council".

### **1.3. 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. In particular, the report of the Commission under Article 7 of the latter Regulation shall be based on reports from Member States, which shall include, among other, estimates of the overall incidental catches of cetaceans in each of the fisheries concerned. Moreover, reports from Member States shall include an assessment of the conclusions of the observers' reports and any other appropriate information including any research conducted within Member States to reduce the incidental capture of cetaceans in fisheries. 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.

Following a preliminary assessment of the Member States' reports by the Commission, and in an interest to improve the application of the Regulation, the Commission proposed to organise a workshop on incidental catches of cetaceans (24-25 March 2009, Brussels). It was agreed that conclusions of the workshop should be included in the merged report to make it as complete as possible on the basis of all available information. Due to this circumstance and the delayed reception of some Member States reports it was not possible to deliver the required report as requested by (EC) Regulation 2187/2005 in due time.

## **2. CONTENT AND METHODOLOGY OF CURRENT REPORT**

The Commission has received the national reports for the years 2004-2005 and 2006 submitted by the Member States according to Article 6 of (EC) Regulation 812/2004. The International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) have been asked to analyse these national reports with regard to their scientific content and the implementation of (EC) Regulation 812/2004. Their conclusions are reflected in this report.

ICES was also asked to conduct a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea. This report contains the results of this assessment as well as other available data on incidental catches of cetaceans in the Baltic Sea.

As part of the process of assessing the implementation of (EC) No 812/2004, the Commission organised a workshop in Brussels 24-25 March 2009. The main outcomes of the workshop as well as a proposed way forward are also presented in the report.

### **3. ANALYSIS OF MEMBER STATES REPORTS ON (EC) REGULATION 812/2004**

ICES<sup>3</sup> and STECF<sup>4</sup> review of the national annual reports found "considerable variation in the format and content. There is little evidence of cooperation between Member States, and most of the work reported has been the result of independent national efforts." As regards incidental catches information, "few recent estimates of total by-catch of small cetaceans in individual fisheries are available from European waters"<sup>3</sup>.

The Commission concludes that the received national annual reports rarely offer a clear image of the actions carried out by Member States in accordance with (EC) Regulation 812/2004. Only a few Member States have been able to prioritise the mitigation of cetacean incidental catches. France and U.K. are the only Member States providing information on estimated total annual incidental catches.

It has become evident to the Commission that most Member States appear to have difficulties with the implementation of (EC) Regulation 812/2004 and in particular with the following requirements:

#### **3.1. Obligation to use acoustic deterrent devices. Technical specifications and conditions of use**

Those Member States who have reported on the use of acoustic deterrent devices, also known as pingers, concluded that these instruments are highly costly and that they do not always prove to be effective, *i.e.* what could act as a deterrent device for some cetacean species, could also offer an attractive signal to other animals. The handling of the instruments is reported to be problematic and to represent a safety hazard for fisherman. However, a few Member States are undertaking research projects aiming at the development of more effective acoustic deterrents.

The Commission is aware of the difficulties in the use of pingers and recognises the effort undertaken by some Member States in their research on pingers, including those which are not obliged to use pingers. Research on the effectiveness of these devices and other mitigation measures is still ongoing, at national and international level. Research and dissemination of best-practices among the different Member States should be a priority.

Considering Member States incomplete and inconclusive reporting on pingers use and the insufficient available information, the Commission can not draw a clear conclusion from the Member States reports on the effectiveness of the use of pingers to reduce cetacean incidental catches.

#### **3.2. Obligation to design and implement at-sea observer schemes, and monitor cetaceans' incidental catches**

Concerning the set up of at-sea observer schemes, this measure seems to have a weak application. Some Member States claim not to have enough resources (financial or human) to implement these programmes and/or are not able to cover all areas and information on the

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<sup>3</sup> ICES advise 2008. 1.5.1.2 Status of small cetaceans and by-catch in European waters (document available on-line)

<sup>4</sup> 28<sup>th</sup> PLENARY MEETING REPORT OF THE SCIENTIFIC, TECHNICAL AND ECONOMIC COMMITTEE FOR FISHERIES (PLEN-08-02) (Document available on request)

schemes adopted and observers' reports are often incomplete. Six of the twenty-two Member States reported that their fishing activity did not fall under the scope of the Regulation. Some Member States presented information based on research studies being developed at national level or through international partnerships. Other Member States collect information from their national port authorities or in interviews with fishermen. Only a few Member States reported cetaceans' incidental catches and the Commission hence concludes that the scarce information does not provide a clear picture of the interaction between fisheries and cetacean populations and the Commission is therefore not in a position to carry out a comprehensive and objective analysis of cetacean incidental catches in EU Waters.

### **3.3. Discussion**

The reporting on the measures implemented under (EC) Regulation 812/2004 shows that only a few Member States are making sufficient efforts to enforce this Regulation. It is clear that its implementation requires a great commitment and effort from Member States, and most of them have not been able to comply with it for the reasons explained above. The Commission can conclude that the reduction of cetacean-fisheries conflicts is still in an early stage of commitment.

The disparity in the results can be explained by the fact that Member States had to apply this Regulation at different times for different areas. Additionally, due to the problems inherent to the use of pingers, some Member States have delayed its application and instead coordinated/participated in different national and international research projects aimed at the improvement of mitigation devices and techniques.

The Commission co-finances several projects through LIFE, the EU's financial instrument supporting environmental and nature conservation projects, and some of these projects contribute to the implementation of Natura 2000 in the marine environment. Ways of avoiding, reducing, or otherwise mitigating incidental catches of marine mammals are frequently addressed in these LIFE projects.

Whilst (EC) Regulation 812/2004 indicates the fisheries to which Member States should pay extra attention as regards the impact on the incidental capture and killing of cetacean, it should also be highlighted that measures to reduce the impacts of fisheries on cetacean species are not exclusive to this Regulation. Member States already have an obligation under Article 12 of Council Directive 92/43/EEC, the Habitats Directive, to take research or conservation measures to ensure that incidental capture of cetaceans does not have a significant negative impact on the species. Under the Habitats Directive, all cetacean species benefit from a system of strict protection in their natural range. Member States shall undertake surveillance of the conservation status of cetaceans, as well as establish a system to monitor their incidental capture and killing. Furthermore, in accordance with Article 6, Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of the habitats of the species, as well as the significant disturbance of the species for which those areas have been designated. A number of such areas have been designated for the species *Phocoena phocoena* and *Tursiops truncatus*.

#### 4. SCIENTIFIC ASSESSMENT ON THE EFFECT OF GILLNETS, TRAMMEL NETS AND ENTANGLING NETS ON CETACEANS IN THE BALTIC SEA

The cetacean usually present in the Baltic Sea is the harbour porpoise (*Phocoena phocoena*). The population is estimated at less than 1000 individuals<sup>5</sup>. According to Member States reports no cetaceans were incidentally caught in the Baltic Sea by the observed fisheries during 2005 and 2006. In April 2008 ICES reported to the Commission that the data supplied by Member States were insufficient to make a scientific assessment on the effect of gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea.

There is also an obvious lack of other information on incidental catches of cetaceans in fishing gear in the Baltic Sea. Available sources are mainly on stranded animals with markings suggesting that the animals have died in nets. A recent German study reports on more than 150 stranded harbour porpoises in 2007 along the German Baltic shores with 47% regarded incidental catches or suspected incidental catches<sup>6</sup>. In order to make a full assessment of the effect of gillnets, trammel nets and entangling nets on incidental catches of Baltic cetaceans, data on strandings is however not enough because it does not give information on where and in which gear the animals were trapped. Consequently, at this stage, no precise conclusions on the effect of gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea can be drawn.

##### 4.1. Discussion

The current Baltic harbour porpoise population is alarmingly low with less than 1000 individuals remaining<sup>5</sup>. Historical accounts both on population and by-catch levels show that the species has been both more numerous and spread further north in the Baltic not that long ago<sup>7,8</sup>. Except for the risk of depleted genetic diversity which limits the possibility for the population to adjust to changes in the environment, depleted populations are also more vulnerable to incidental catches than healthy populations.

As regards, the lack of data on incidental catches of harbour porpoise in the Baltic Sea, it is probably linked to the following reasons:

- (1) The small population of the Baltic harbour porpoises.
- (2) The non-reporting of fishermen when cetaceans are caught. Indications of by-caught harbour porpoises being dumped overboard are reports of stranded cetaceans with net marks on the Baltic coast<sup>9,10</sup>.

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<sup>5</sup> ASCOBAN, Recovery plan for Baltic Harbour Porpoises. Draft, 8 April 2009

<sup>6</sup> ICES WKFMPA Report 2008 ICES CM 2008/MHC:11 Report of the Workshop on Fisheries Management in Marine protected areas

<sup>7</sup> Koschinski, S (2002) Current knowledge on harbour porpoises (*Phocoena phocoena*) in the Baltic Sea. *Ophelia*.

<sup>8</sup> Lindroth, A (1962) Baltic salmon fluctuations 2: porpoise and salmon. Reports of the institute of the Swedish Freshwater Research Drottningholm

<sup>9</sup> Siebert U. et al (2006) A decade of harbour porpoise occurrence in German waters – analyses of aerial surveys, incidental sightings and strandings. *Journal of Sea research*.

<sup>10</sup> Swedish Federal Agency for Nature conservation and the Swedish board of Fisheries (2008) Action plan for the conservation of harbour porpoise 2008-2013

The conclusions in the latest Recovery plan for Baltic Harbour Porpoises from ASCOBAN<sup>5</sup> (Conservation of Small Cetaceans of the Baltic and North Seas), confirm these assumptions: "With an extremely low density of porpoises, the animals are rarely seen or caught by fishermen ... and (fishermen) are reluctant to accept any claims by scientists or conservationist that by-catch is a serious threat to the porpoise's population. Therefore, without by-catch mitigation, porpoises will remain scarce (making it difficult to obtain better abundance estimates), the by-catch will remain small (making it difficult to quantify removals) and fishermen will remain incredulous towards the idea that fishery by-catch is a problem for porpoise conservation". In the light of this, it would be quite hazardous to conclude that no reporting of by-catch means that there is no problem with by-catch.

## **5. WORKSHOP ON THE IMPLEMENTATION OF (EC) REGULATION 812/2004**

The Commission is aware of the difficulties inherent to the implementation of the (EC) Regulation 812/2004 and aims to improve the situation. It therefore organised a workshop on this subject in Brussels, 24-25 March 2009. The workshop aimed to collect information and to set a basis for reflection and define a follow-up of (EC) Regulation 812/2004. The programme covered the following points:

- Presentation from the Commission on the assessment of four years of implementation of (EC) Regulation 812/2004;
- Status of cetaceans populations in EU waters;
- An overview of the implementation of the Regulation in the different EU marine regions;
- The most recent scientific and technical developments on acoustic deterrent devices and other mitigation measures.

The workshop participants included national administrations, RACs and ACFA representatives, scientists and the two relevant Commission services for this subject.

Some main outcomes of the workshop:

- There is a need for improved knowledge on cetacean abundance and distribution in all EU waters. The workshop also showed that occurrence of cetaceans is variable.
- Participants agreed that pingers are effective deterrents for harbour porpoise. However, further developments are needed to improve their technical and practical applications, without jeopardizing the safety of fishermen. Fishermen should be involved from the testing trials to the practical application of those devices. There is also on going research considering other mitigation devices and techniques. In case these prove to be efficient, alternatives to pingers should be considered.
- The use of mitigating devices and observations schemes for smaller vessels than 12 m and 15 m should be considered.

- Some Member States managed to implement at-sea monitoring schemes according to the specifications required in (EC) Regulation 812/2004. Results showed that the level of data precision required in the Regulation is very ambitious and sometimes impossible to achieve for rare by-caught species.
- Monitoring schemes should be made more efficient i.e. through cross-regulation monitoring and by aggregating national datasets. Areas where the use of pingers is mandatory should also be considered for monitoring.
- Cooperation with fishing industry needs to be improved, namely to increase information on the use of mitigation measures to reduce the incidental catches of cetaceans, or any other group of animals with no commercial interest.

## 6. CONCLUSIONS AND WAY FORWARD

The conclusions are based on the analysis of the national reports, on the outcome of the workshop on the implementation of (EC) Regulation 812/2004 (see point 5) and the conclusions from the scientific assessment of the effects of using gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea. 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 recognizes that some Member States have made considerable efforts to correctly implement (EC) Regulation 812/2004 but also acknowledges that some Member States are lagging behind. Although the Commission recognizes 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 (EC) Regulation 812/2004. The Commission would also like to emphasize 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 (EC) Regulation 812/2004, Member States have the responsibility to take appropriate measures to safeguard cetacean populations.

As a follow-up to the workshop the Commission will however carefully consider these 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, following the example of some Member States.;
- 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<sup>11</sup> and revised by STECF<sup>12</sup>, 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 in article 6(2).

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"<sup>3</sup>. The Commission agrees with this approach and would like to encourage Member States and stakeholder organisation 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".

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<sup>11</sup> ICES proposal is available in ICES website.

<sup>12</sup> Available under point 3.6.6. of the 28<sup>th</sup> plenary meeting report of the Scientific, Technical and Economic Committee for Fisheries (PLEN-08-02).