

CFP Developments

ANALYSIS OF EU FISHERIES POLICY PROPOSALS AND COMMUNICATIONS



IEEP LONDON

Briefing No. 14
8 August 2003

Commission proposal to address cetacean bycatch (COM (2003) 451)

Introduction

The bycatch of small cetaceans – dolphins and porpoises – continues to be a problem in a number of EU fisheries. There is particular concern over the bycatch of the critically endangered harbour porpoise (*Phocoena phocoena*) in the Baltic and North Sea. The Commission requested the ICES Advisory Committee on Ecosystems to assess the extent of cetacean bycatch and to advise on mitigation measures. On the basis of this assessment and advice from the subgroup on fishery and environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF), the Commission concluded that existing measures are insufficient or insufficiently coordinated to address the high cetacean bycatch in certain EU fisheries. On 24 June the Commission subsequently proposed a Council regulation designed to reduce the bycatch of dolphins and porpoises in selected EU fisheries (COM(2003)451).

Current measures

The EU has a legal and political obligation to protect cetaceans. The habitats Directive (92/43/EEC) grants strict protection to all species of cetacean, with Article 12 requiring Member States to monitor the incidental capture and killing and take further research or conservation measures as necessary. In parallel, Article 2 of the basic CFP Regulation 2371/2002 further sets out obligations to minimise the impacts of fishing on marine ecosystems.

Two EU measures are already in place to protect cetaceans in EU fisheries. It is currently prohibited to use non-selective purse seines in certain fisheries where high cetacean bycatch is encountered (Regulation 973/2001). It is also prohibited to use drift-nets intended for the capture of specific fish species, including tuna, marlin, swordfish, cephalopods and some species of shark (Article 11 of Regulation 894/97, as amended by Regulation 1239/98). However, in addition to not covering all large pelagic fish species targeted by EU vessels, this ban does not currently apply to the Baltic Sea. This is despite Baltic drift-net fisheries being implicated in the bycatch of the critically endangered harbour porpoise.

The current proposal seeks to build on these existing provisions, not least by extending the existing drift-net restrictions to the Baltic Sea.

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Proposed measures

The proposal contains three specific technical measures, designed to address bycatch in EU waters and by EU vessels. The three measures are as follows:

1) *Restrictions on Baltic Sea drift-net fisheries*

It is proposed that the overall length of drift-nets in the Baltic immediately be limited to a maximum 2.5 km. This is in line with international agreements and recommendations concerning 'large-scale' drift-nets (eg UN Resolution 46/215 and UNCED). Furthermore, under the proposal, the use of drift nets is to be prohibited altogether in the Baltic from 1 January 2007. This ban would be phased in, with the number of vessels using drift-nets during 2005 and 2006 not exceeding 60 per cent of the number operating during the 2001 to 2003 period.

Despite proposing this phasing in period, the Commission believes that most Baltic drift-nets are between 15 – 21 km in length, and that nets at or below 2.5 km in length would no longer be economically viable. While noting the effect this would have on fishermen's incomes, the Commission believes EU commitments to preserving biodiversity and avoiding extinction of the harbour porpoise override these considerations.

The specific measures would be enacted through the amendment of Regulation 88/98, which lays down technical measures for the conservation of fisheries resources in the Baltic Sea, the Belts and the Sound. Consequently, these measures will apply to all vessels in EU Baltic waters and EU vessels outside these waters. Note that all Baltic coastal States, with the exception of Russia, are to join the EU in May 2004.

2) *Mandatory use of acoustic deterrent devices ('pingers')*

The use of pingers would become compulsory in bottom-set gillnet, entangling net and gillnet fisheries in the Baltic Sea, North Sea and south western approaches. The technical specifications of the required pingers are detailed in the proposal. This measure is based on their use in successfully reducing the bycatch of common dolphins, striped dolphins and harbour porpoises in other fisheries, notably in the USA. Their use in pelagic trawls is not proposed, reflecting the ICES report opinion that more research first needs to be done on their effectiveness as a mitigation measure in this type of fishery.

To ensure reliable monitoring of the use of pingers, and hence compliance, the Commission states its intention to develop detailed rules on the marking and identification of static gear at a later date.

While pingers have been demonstrated to be effective in the short-term, there is concern that as cetaceans become used to pingers, they venture closer to the nets and so bycatch numbers may begin to rise back towards their original levels. In

order to monitor this, the employment of onboard observers forms part of the proposal. However, further measures to assess the overall impact of pingers on cetacean populations as a whole do not appear to be addressed. This is despite a reference to the requirement for monitoring of population level impacts in the proposal preamble.

3) Use of on board observers

The Commission considers the phasing out of drift-nets and the use of pingers to be first step, short-term measures. In order to develop more strategic long-term measures, an on-board observer scheme is proposed. Observers would monitor fishing operations, incidental catches of cetaceans and the use of acoustic devices.

The scheme would apply to several 'high risk' fisheries in the North Sea, Baltic Sea, Mediterranean Sea, and in waters west of the British Isles, France and Spain. The fisheries include high opening, and single and pair pelagic trawl fisheries, as well as drift-nets, gillnets and entangling nets. The requirement for observers to be in place on the trawl fisheries would suggest that additional measures could be expected in this fishery in the future, should a high incidence of bycatch be confirmed.

A minimum percentage of observer coverage for each fishery is specified in the proposal, being either five or ten per cent. The proposed coverage in most cases is at the lower end of the levels proposed by the SGFEN. In particular, the SGFEN considered that the pelagic pair trawl and some of the single trawl fisheries require as high a coverage as possible between December and March when mass strandings of dolphin bycatch occur.

It will be the Member States' responsibility to design and implement a monitoring scheme and appoint 'independent, properly-qualified and experienced' observers. Member States are required to take the necessary measures to ensure that vessels too small to accommodate on board observers are still covered, such as employing an inspection vessel to accompany fishing vessels. The burden of funding and administering such an observer programme could well prove to be a point of objection from some Member States.

Based on the observer programme, Member States would have to report annually on implementation of the regulation, including estimates of the overall incidental catches of cetaceans and national research conducted to reduce bycatch.

Expected impact of the proposal

The proposed regulation is accompanied by an impact assessment covering social and economic impacts and compliance requirements of the proposal. This is one, if not the first such impact assessment to have been carried out by DG Fisheries, reflecting a change in the process of EU policy development. It provides an overview of who will be affected by the proposal in terms of business sectors, sizes and geographical impacts, particularly the number of vessels involved in the Baltic salmon fishery and cost projections of use of pingers and observers.



In the Baltic, drift-nets are primarily used to target salmon on a seasonal basis, peaking in September-October and April-May. The assessment reports that the number of boats engaged in the offshore salmon fishery (EU and non EU drift-netters and longliners) declined by 24 per cent to 233 in 2001 compared to 2000. Approximately half of the salmon fishery is considered to be comprised of drift-netters and half of longliners, although there appears to have been a shift from drift-netting to longlining in recent years. Only those vessels fishing over 40 days per year are considered to derive 50 per cent of their income from this form of fishing. The following breakdown in data is given, although there is no differentiation between drift-netters and longliners:

Country	Fishing < 20 days	Fishing > 40 days
Finland	35	8
Sweden	33	7
Denmark	11	9
Poland	not specified	34
Other	52	1
TOTAL	131	59

This analysis only provides details of 190 of the 233 reportedly operating vessels. There is also little indication of the degree of dependency of the different groups, as fishing part-time as opposed to full-time is not necessarily an indicator of the importance to people's livelihoods.

As illustrated in these figures, the main EU Member States involved in the salmon fishery are the Nordic countries. Poland also has a significant number of vessels operating in the fishery. As one of the ten accession countries due to join the EU in May 2004, any opinion that Poland may have on the proposal will need to be taken into account together with those of the existing Member States.

The most expensive pingers, with the longest life of 18 to 24 months, cost around €100 each. They should be attached to the nets at 200m intervals. Based on this, an initial cost for a 2.5 km net would be €1,250. This would be an additional cost on top of the fact that nets of 2.5 km are considered to be uneconomical. The cost of technical restructuring of the Baltic fleet and the initial cost of purchasing pingers may be met by Community funding under the Financial Instrument for Fisheries Guidance (FIFG).

It is not believed that the processing sector will be affected by the proposal, except perhaps marginally for Baltic salmon. This will depend on whether different gears, such as traps or longlines, are used to continue catching salmon or if alternative stocks are targeted.

Proposal shortcomings

Although it is formally the responsibility of Member States to address bycatch issues under the habitats Directive, the Commission has been heavily criticised for its unwillingness to step in sooner, and propose EU-wide bycatch mitigation

measures. While the proposed regulation is now welcome, and in particular the banning of drift-netting in the Baltic, there are areas in which the proposal falls short of a comprehensive package.

Time and geographical limitations

Although the Commission itself states the proposed measures as being short-term, it is not clear what time frame they would actually run for, and what long-term measures may be developed to take their place.

One of the ICES report recommendations was that an overall reduction in fishing effort would be an effective measure in reducing bycatch. Despite this, the Commission has decided not to include effort reduction in the current proposal on the basis that it expects this to result from other Community measures. This could be viewed as a rather fundamental assumption to achieving effective reduction of bycatch given the historical reluctance of the Council to adopt effort controls. Indeed, this gap has been criticised by NGOs, as acknowledged in the Commissions own impact assessment.

A further criticism from NGOs concerns the general lack of long-term strategy. This was a specific area discussed and agreed as being important by the SGFEN. There is a need for a bycatch management framework, in which management goals are set, and a clear and transparent management plan developed. Without an overall plan and associated monitoring, it is difficult to identify and target critical areas or fisheries, or to evaluate the true effectiveness of bycatch and wider management measures.

In addition to being non-committal in terms of long-term measures and setting time specific objectives, the proposal could go further in tackling bycatch in waters outside the EU. In particular, the SGFEN highlights the fact that the trawl fishery carried out by Member State vessels in Mauritanian waters, which are important to cetaceans and the highly endangered monk seal, also requires monitoring.

Application of the precautionary approach?

It is explicitly stated in the objectives (Article 2) of the CFP basic Regulation 2371/2002 that the Community shall apply the precautionary approach in taking measures designed to minimise the impact of fishing activities on marine ecosystems. While this bycatch proposal is significant in potentially adding to the few measures designed solely for the purpose of conserving the wider marine environment, it arguably fails to apply the precautionary approach.

Firstly, the phasing out of drift-nets, as opposed to introducing an immediate ban, is open to criticism given that the fishery is known to result in the bycatch of the critically endangered harbour porpoise. Secondly, the ICES report provides empirical evidence of the incidence of cetacean bycatch in the English Channel bass fishery based on observer coverage in the period 1999 to 2001. This is further substantiated by the dolphin carcasses washed ashore along the English and French coasts. The Commission itself classifies the pair-trawl fisheries as 'high-risk' in justifying the observer programme. Despite this, the Commission has still chosen



not to propose any immediate mitigation measures on the basis of a lack of information being available.

Conclusions

It is proposed that this regulation will come into force on 1 July 2004. If Italy, as the current holder of Presidency of the Council, were to place a high priority on the proposal, agreement could in theory be reached by December. In the rather unlikely event of the regulation being adopted this quickly, it would still be too late to introduce an observer scheme in the 2003/4 English Channel bream and bass trawl fisheries, which operate in the winter and spring, respectively. Any subsequent proposals based on the results of the observer programme would therefore be somewhat off.

It is perhaps also worth reminding that the existing ban on the use of drift nets in other EU fisheries (Regulation 1239/98, amending Regulation 894/97) was originally proposed by the Commission in April 1994, but was not agreed until June 1998, and entered fully into force only in January 2002. While the current proposal is not expected to be as controversial as this, some objections can be expected. In particular, these may come from the countries directly affected by the Baltic drift-net ban and some of the several countries that would be required to implement large observer schemes, and deal with the consequences thereof.

Given the timetable for adopting the proposal and the potential delays that may be encountered, the Commission could choose to use its powers under Article 7 of Regulation 2371/2002 to introduce a 6-month emergency measure, with immediate effect. The Commission could also commission further research in the meantime and consider developing a long-term strategy for the reduction of cetacean bycatch by EU vessels and in EU waters.