

Agenda Item 3.1

Review of New Information on Threats to Small
Cetaceans

Bycatch

Document 3.1.d

**Draft European Parliament
Legislative Resolution on the
proposal for a regulation of the
European Parliament and of the
Council Amending Council
Regulation (EC) No 812/2004**

Action Requested

- Take note
- Comment

Submitted by

Secretariat



**NOTE:
DELEGATES ARE KINDLY REMINDED TO BRING THEIR OWN COPIES OF DOCUMENTS
TO THE MEETING**

Secretariat's Note

In 2012, the European Commission tabled a proposal for the alignment of Regulation 812/2004, to ensure legislation refers to the appropriate legal bases and decision-making procedures, as now established under the Treaty on the Functioning of the European Union (Lisbon Treaty). According to information received from the Commission, this is part of a mainly procedural exercise to bring existing legislation in line with the provisions established under the Treaty of Lisbon. The exercise has been particularly substantial as regards the Common Fisheries Policy, which is now subject to co-decision by both the Council of Ministers and the European Parliament. These procedures are not meant to change the substance of the legal acts being aligned. They are not intended as exercises of review or revision of the legal acts being aligned.

Substance of the Proposals

The **Commission Proposal**¹ (enclosed with this document) **amends Regulation (EC) No 812/2004**² which lays down measures aiming at mitigating incidental catches of cetaceans by fishing in vessels in the areas indicated in Annexes I and II (which itself amends Regulation (EC) No 88/98 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound). The amendments proposed by the Commission are strictly **formal**; their purpose is a change of terminology to be consistent with the Lisbon Treaty.

The Commission's proposal then went to the **European Parliament** for a first reading, at which the Parliament Fisheries Committee proposed two other amendments³, which were this time **substantial**:

- Recital 6a): In view of the requirement by Member States to take the requisite measures to establish a system of strict protection for cetaceans, the shortcomings of Regulation (EC) No 812/2004 and its implementation, as indicated in COM(2009)0368 and the related 2010 ICES scientific advice, and the lack of integration of the Habitats Directive 92/43/EEC, the Commission should before the end of 2015 submit a legislative proposal for a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats.
- Article 7.3: The Commission **shall no later than 31 December 2015 review the effectiveness of the measures** laid down in this Regulation and **accompany this review with an overarching legislative proposal for ensuring the effective protection of cetaceans.**

Article 7.3 is written in a strict way. If the text was adopted with the same wording, before the 31 December 2015 the Commission would have the obligation to:

- Review the effectiveness of the measures laid down in Council Regulation (EC) No 812/2004;
- Propose a legislative act for ensuring the effective protection of cetaceans.

¹ Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0447:FIN:EN:PDF>

² Regulation (EC) No 812/2004 : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:150:0012:0031:EN:PDF>

³ Report of the European Parliament on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0042+0+DOC+PDF+V0//EN>

This legislative act could be either a regulation, a directive or a decision, all three of which are legally binding, but do not have the same implications for the countries: a Directive sets only goals and countries are free to decide about the means to implement them, while a Regulation establishes both goals and means.

The legislative proposal should establish **a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats**. This legislation would be more comprehensive than the Council Regulation (EC) No 812/2004, which only deals with incidental catches of cetaceans by fishing in vessels, while cetaceans face many other threats.

Next Steps in the Process

The proposal of the Commission falls under the ordinary legislative procedure (article 294 of the TFEU). Under this procedure, the Commission first proposes a legislative act (regulation, directive or decision) and then the “co-legislators”, the Parliament and the Council, must vote for it and can propose amendments, on an equal footing. The text goes to the Parliament for a first reading, and then the position of the Parliament goes to the Council for a first reading. The text goes back and forth from the Parliament to the Council until they reach a common position, but if after a third reading the act is not adopted, the proposal is abandoned.

The decision-making procedure on this proposal is underway. After the Parliament's first reading vote, it is now for the Council to adopt its position.



EUROPEAN COMMISSION

Brussels, 8.8.2012
COM(2012) 447 final

2012/0216 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the TFEU (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the TFEU (implementing acts).

In relation to the adoption of Regulation (EU) No 182/2011, the Commission made the following statement:

"The Commission will proceed to an examination of all legislative acts in force which were not adapted to the regulatory procedure with scrutiny before the entry into force of the Lisbon Treaty, in order to assess if those instruments need to be adapted to the regime of delegated acts introduced by Article 290 of the Treaty on the Functioning of the European Union. The Commission will make the appropriate proposals as soon as possible and no later than the dates mentioned in the indicative calendar annexed to this declaration."¹

In the context of the alignment of Regulation (EC) No 812/2004 to the new rules of the TFEU, powers currently conferred to the Commission by that Regulation have been reclassified into measures of delegated nature and measures of implementing nature.

The Commission should therefore be empowered to adopt delegated acts to adapt conditions and technical specifications for the use of acoustic deterrent devices. Likewise the Commission should be empowered to adopt implementing acts concerning the procedure and format for reporting obligations for Member States.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

There was no need for consultation of interested parties or for impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

To identify the powers conferred upon the Commission in Council Regulation (EC) No 812/2004 and to classify these as delegated or implementing powers.

• Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

¹ OJ L 55, 28.02.2011, p.19

- **Subsidiarity principle**

The proposal falls under exclusive competence of the European Union.

- **Proportionality principle**

The proposal is amending measures which already exist in Council Regulation (EC) No 182/2004, therefore no concern on the proportionality principle arises.

- **Choice of instrument**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee, after transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 812/2004² confers powers upon the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of the entry into force of the Lisbon Treaty, the Commission powers conferred for the implementation of Regulation (EC) No 812/2004 need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (3) In order to apply certain provisions of Regulation (EC) No 812/2004, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical specifications and conditions of use of acoustic deterrent devices.
- (4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for the adoption of delegated acts, including at expert level.
- (5) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (6) In order to ensure uniform conditions for the implementation of the provisions of Regulation (EC) No 812/2004 concerning rules on the procedure and format for reporting obligations for Member States, implementing powers should be conferred

² OJ L 150, 30.4.2004, p. 12.

upon the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers³.

(7) Regulation (EC) No 812/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 812/2004 is amended as follows:

(1) In Article 3, paragraph 1 is replaced by the following:

"1. Acoustic deterrent devices used in application of Article 2(1) shall comply with technical specifications and conditions of use. The conditions and specifications are defined in Annex II. The Commission shall be empowered to amend Annex II by means of delegated acts adopted in accordance with Article 8a, in order to adapt that Annex to technical and scientific progress."

(2) Article 8, is replaced by the following:

"Article 8 Implementation

Detailed rules on the procedure and format for reporting, as set out in Article 6 may be established by means of implementing acts adopted in accordance with the examination procedure referred to in Article 8b(2)."

(3) The following Articles 8a and 8b are inserted:

"Article 8a Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 3(1) shall be conferred for an indeterminate period of time.
3. The delegation of powers referred to in Article 3(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

³ OJ L 55, 28.2.2011, p.13

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 3(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 8b
Committee procedure

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established by Article 30 of Regulation (EC) No 2371/2002. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

Article 2

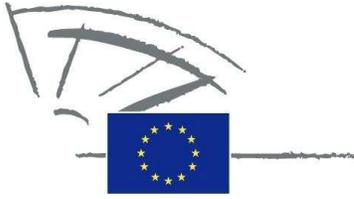
This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0042/2013

22.2.2013

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (COM(2012)0447– C7-0213/2012 – 2012/0216(COD))

Committee on Fisheries

Rapporteur: Raül Romeva i Rueda

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (COM(2012)0447– C7-0213/2012 – 2012/0216(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0447),
 - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0213/2012),
 - having regard to the opinion of the European Economic and Social Committee of 14 November 2012¹,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A7-0042/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation - amending act

Recital 3

Text proposed by the Commission

(3) In order to ***apply certain provisions of Regulation (EC) No 812/2004***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the

Amendment

(3) In order to ***ensure the efficient adaptation of certain provisions to reflect technical and scientific progress***, the power to adopt acts in accordance with

¹ OJ O C, 0.0.0000, p. 0.

European Union should be delegated to the Commission in respect of technical specifications and conditions of use of acoustic deterrent devices.

Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical specifications and conditions of use of acoustic deterrent devices.

Amendment 2
Proposal for a regulation - amending act
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In view of the requirement by Member States to take the requisite measures to establish a system of strict protection for cetaceans, the shortcomings of Regulation (EC) No 812/2004 and its implementation, as indicated in COM(2009)0368 and the related 2010 ICES scientific advice, and the lack of integration of the Habitats Directive 92/43/EEC, the Commission should before the end of 2015 submit a legislative proposal for a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats.

Justification

Cetacean populations have dramatically decreased, while tens of thousands of cetaceans die every year in EU waters. EC 812/2004, which has serious shortcomings, mainly focuses on the use of acoustic devices to deter the incidental catching of cetaceans despite the fact that cetaceans face various threats such as habitat degradation, collisions with vessels and underwater noise pollution. There is a need to establish an overarching legislative framework for the protection of cetaceans similar to the US Marine Mammal protection Act.

Amendment 3

Proposal for a regulation
Article 1 – point 1 a (new)
Regulation (EC) No 812/2004
Article 7 – paragraph 3 (new)

Text proposed by the Commission

Amendment

(1a) In Article 7, the following paragraph is added:

"3. The Commission shall no later than 31 December 2015 review the effectiveness of the measures laid down in this Regulation and accompany this review with an overarching legislative proposal for ensuring the effective protection of cetaceans."

Justification

Cetacean populations have dramatically decreased, while tens of thousands of cetaceans die every year in EU waters. EC 812/2004, which has serious shortcomings, mainly focuses on the use of acoustic devices to deter the incidental catching of cetaceans despite the fact that cetaceans face various threats such as habitat degradation, collisions with vessels and underwater noise pollution. There is a need to establish an overarching legislative framework for the protection of cetaceans similar to the US Marine Mammal protection Act.

Amendment 4

Proposal for a regulation

Article 1 - point 3

Regulation (EC) No 812/2004

Article 8a - paragraph 2

Text proposed by the Commission

Amendment

2. The ***delegation of*** power referred to in Article 3(1) shall be conferred for ***an indeterminate*** period of ***time***.

2. The power ***to adopt delegated acts referred to in*** Article 3(1) shall be conferred ***on the Commission*** for a period of ***three years from ...****. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

**** OJ Please insert the date of entry into force of this Regulation.***

Justification

It seems more appropriate to limit the delegation in time and to oblige the Commission to report on its exercise in order to have a regular evaluation and questioning of the use of the delegation.

EXPLANATORY STATEMENT

General background

The Treaty on the Functioning of the European Union (TFEU) has introduced a new hierarchy of norms comprising three levels:

- At the first level are the legislative acts which are adopted by the legislators (the European Parliament and the Council) in accordance with the ordinary legislative procedure, where the Parliament and the Council decide as equal co-legislators (Article 294 of the TFEU), or in accordance with special legislative procedures;
- Furthermore, the legislators may delegate to the Commission the power to adopt non-legislative acts of general application to supplement and amend certain non-essential elements of the legislative act (so called delegated acts, defined in Article 290(1) of the TFEU), which forms a certain level of norms;
- Legally binding Union acts may also confer implementing powers on the Commission where uniform conditions for implementing these Union acts are needed. On that basis the Commission adopts so-called implementing acts (Article 291 of the TFEU), constituting the third level.

The choice of which type of act to use is not always clear cut. Delegated acts and implementing acts, compared to legislative acts, have the advantage of providing the possibility to react swiftly to a new situation. It is the ordinary legislative procedure and delegated acts that guarantee the participation of the Parliament in the decision making process on an equal footing with the Council.

The Commission proposal

Council Regulation (EC) No 812/2004 of 24 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 currently confers to the Commission certain powers that have to be reclassified into measures of delegated nature and measures of implementing nature.

The rapporteur's view

It is very important to find legally well founded solution safeguarding Parliament's rights created by the TFEU.

The rapporteur globally agrees with the Commission's proposal to the extent that it suggests the use of:

- delegated acts to adapt conditions and technical specifications for the use of acoustic deterrent devices;
- implementing acts concerning the procedure and format for reporting obligations for

Member States.

However, rapporteur suggests some amendments to the Commission's proposal, i.e. stricter definition of the circumstances under which the Commission may adopt delegated acts.

PROCEDURE

Title	Amendment to Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98		
References	COM(2012)0447 – C7-0213/2012 – 2012/0216(COD)		
Date submitted to Parliament	8.8.2012		
Committee responsible Date announced in plenary	PECH 11.9.2012		
Committee(s) asked for opinion(s) Date announced in plenary	ENVI 11.9.2012		
Not delivering opinions Date of decision	ENVI 12.9.2012		
Rapporteur(s) Date appointed	Raül Romeva i Rueda 6.9.2012		
Discussed in committee	9.10.2012	28.11.2012	21.1.2013
Date adopted	19.2.2013		
Result of final vote	+: -: 0:	21 0 1	
Members present for the final vote	John Stuart Agnew, Kriton Arsenis, Alain Cadec, Chris Davies, Carmen Fraga Estévez, Pat the Cope Gallagher, Dolores García-Hierro Caraballo, Iliana Malinova Iotova, Werner Kuhn, Isabella Lövin, Gabriel Mato Adrover, Maria do Céu Patrão Neves, Crescenzo Rivellini, Ulrike Rodust, Raül Romeva i Rueda, Struan Stevenson, Isabelle Thomas, Nils Torvalds, Jarosław Leszek Wałęsa		
Substitute(s) present for the final vote	Jean-Paul Bisset, Ole Christensen, Diane Dodds, Julie Girling		
Date tabled	22.2.2013		