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COUNCIL REGULATION (EC) No 812/2004

of 26 April 2004

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

(OJ L 185, 24.5.2004, p. 4)

Corrected by:

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**COUNCIL REGULATION (EC) No 812/2004****of 26 April 2004****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 Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The objective of the common fisheries policy, as defined in Article 2 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽²⁾, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. To this end, the Community should, among other things, minimise the impact of fishing activities on marine ecosystems, and the common fisheries policy should be consistent with other Community policies, in particular with environmental policy.
- (2) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽³⁾ gives strict protection status to cetaceans and requires Member States to undertake surveillance of the conservation status of these species. Member States should 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, taking into account the cost/efficiency of such requirement. It is also necessary to establish the technical specifications for the efficiency of the acoustic deterrent devices to be used in such fisheries. Scientific studies or pilot projects are needed to increase knowledge about the effects over time of the use of acoustic deterrent devices.
- (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

⁽¹⁾ Opinion delivered on 10 February 2004.

⁽²⁾ OJ L 358, 31.12.2002, p. 59.

⁽³⁾ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

▼**B**

Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

- (6) Independent observations of fishing activities are essential to provide reliable estimates of the incidental catch of cetaceans. 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 engaged in these fisheries. For small-sized fishing vessels less than 15 m overall length, which sometimes are unable to allow an additional person permanently on board as an observer, data on incidental catches of cetaceans should be collected through scientific studies or pilot projects. 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 driftnet fishing to the critically endangered population of harbour porpoise in the Baltic Sea area requires the use of driftnets in this area to be stopped. Community vessels which fish with driftnets 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 2008. Council Regulation (EC) No 88/98 of 18 December 1997 laying down technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound ⁽²⁾ 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.

Article 2

Use of acoustic deterrent devices

1. Without prejudice to other Community provisions, it shall be prohibited for vessels of 12 m or over in overall length to use the fishing gear defined in Annex I in the areas, for the periods, and as from the dates 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.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 9, 15.1.1998 p. 1. Regulation as last amended by Regulation (EC) No 48/1999 (OJ L 13, 18.1.1999, p. 1).

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4. Member States shall take necessary steps to monitor and assess, by means of scientific studies or pilot projects, the effects of pinger use over time in the fisheries and areas concerned.

*Article 3***Technical specifications 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 from 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***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 and with an overall length of 15 m or over, 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. Member States shall take the necessary steps to collect scientific data on incidental catches of cetaceans for vessels with an overall length less than 15 m and involved in fisheries defined in Annex III point 3 by means of appropriate scientific studies or pilot projects.

*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 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, the observers shall:

- (a) monitor the fishing operations of the vessels concerned and record the appropriate data on fishing effort (gear characteristics, location and timing of beginning and end of effective fishing operation);
- (b) monitor incidental catches of cetaceans.

Observers may also carry out such other observations, as may be determined by Member States, for the purposes of contributing to the scientific understanding of the catch composition of the vessels concerned and the biological status of fishery stocks.

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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/her 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 Annexes I and III and target species);
- (d) the duration of the fishing trip and the corresponding fishing effort (expressed as total net length × 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, 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 information contained in 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, a comprehensive annual report on the implementation of 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 Council Regulation (EC) No 1543/2000 of 29 June 2000 establishing a Community framework for the collection and management of the data needed to conduct the common fisheries policy ⁽¹⁾, 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. When reporting on the results of scientific studies or pilot projects as provided for in Articles 2(4) and 4 (2), Member States shall ensure that sufficiently high quality standards are reached in their design and implementation and shall provide detailed information concerning those standards to the Commission.

Article 7

Overall assessment and review

1. 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 information available as a result of the application of Article 6 and of the assessment by the Scientific, Technical and Economic Committee for Fisheries of the reports of the Member States. The report shall consider in particular the application of this Regulation

⁽¹⁾ OJ L 176, 15.7.2000, p. 1.

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to types of vessel and areas, the quality of information derived from observer schemes and the quality of pilot projects and may be accompanied by appropriate proposals.

2. This report shall be updated following the submission of the fourth annual report by 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.

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 are hereby inserted:

*'Article 8a***Restrictions on drift-nets****▼C1**

1. From 1 January 2008, it shall be prohibited to keep on board, or use for fishing, driftnets.

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2. Until 31 December 2007, a vessel may keep on board, or use for fishing, driftnets if authorised to do so by the competent authorities of the flag Member State.

3. In 2005, the maximum number of vessels which may be authorised by a Member State to keep on board, or use for fishing, driftnets shall not exceed 60 % of the fishing vessels which used drift-nets during the period 2001 to 2003.

In 2006 and 2007, the maximum number of vessels shall not exceed 40 % and 20 % respectively of the fishing vessels which used driftnets 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 driftnets; for 2004, the information shall be sent not later than 31 August 2004.

*Article 8b***Conditions for drift-nets**

1. 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 driftnets 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.

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3. All fishing vessels using driftnets 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.



ANNEX I

Fisheries in which the use of acoustic deterrent devices is mandatory

Area	Gear	Period	Starting date
A. Baltic Sea 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 eastern 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	(a) Any bottom-set gillnet or entangling net	All year	1 June 2005
	(b) Any drift-net	All year	1 June 2005
B. ICES subarea IV and division III a	(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	1 August 2005
	(b) Any bottom-set gillnet or entangling net with mesh sizes > 220 mm	(b) All year	1 June 2005
C. ICES divisions VII e, f, g, h, and j	(a) Any bottom-set gillnet or entangling net	(a) All year	1 January 2006
D. ICES division VII d	(a) Any bottom-set gillnet or entangling net	(a) All year	1 January 2007
E. Baltic Sea subdivision 24 (except for the area covered under A)	(a) Any bottom-set gillnet or entangling net	(a) All year	1 January 2007
	(b) Any drift-net	(b) All year	1 January 2007



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 mPa@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	300 ms
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**1. General monitoring obligations**

Monitoring schemes shall be designed on an annual basis and established to monitor cetacean by-catch, in a representative manner, in the fisheries defined in the table in paragraph 3.

Monitoring schemes shall be made sufficiently representative by adequately spreading observer coverage over the fleets, time and fishing areas.

As a general rule, monitoring schemes shall be based on a sampling strategy designed to allow the estimation of the by-catch rates of cetaceans, for the most frequent species in the by-catch per unit effort by a given fleet to achieve a coefficient of variation not exceeding 0,30. The sampling strategy shall be designed on the basis of existing information on the variability of previous by-catch observations.

2. Pilot monitoring schemes

Where, due to absence of information on variability of by-catch, the sampling strategies cannot be designed to achieve the coefficient of variation within the limit set in paragraph 1, Member States shall implement pilot on-board observer schemes for two consecutive years, starting at the dates in paragraph 3 for the concerned fisheries.

These pilot observer schemes shall be based on a sampling strategy aimed at determining the variability of by-catch which will provide the basis for the design of subsequent sampling strategies under the conditions of the paragraph 1, and shall also provide estimates of by-catch of cetaceans per unit effort, broken down by species.

The pilot schemes shall cover, at least, the following minimum value of fishing effort:

- (a) for all fisheries defined in point 3, with the exception of pelagic trawls (single and pair) from 1 December to 31 March in ICES subareas VI, VII and VIII:

	Fleets of more than 400 vessels	Fleets of more than 60 and less than 400 vessels	Fleets of less than 60 vessels
Minimum effort covered by the pilot schemes	The fishing effort of 20 vessels	5 % of the fishing effort	5 %, covering at least three different vessels

- (b) for pelagic trawls (single and pair) from 1 December to 31 March in ICES subareas VI, VII and VIII:

	Fleets of more than 60 vessels	Fleets of less than 60 vessels
Minimum effort covered by the pilot schemes	10 % of the fishing effort	10 %, covering at least three different vessels

3. Fisheries to be monitored and monitoring starting dates

Area	Gear	Starting date
A. ICES subareas VI, VII and VIII.	Pelagic trawls (single and pair)	1 January 2005
B. Mediterranean Sea (of the east of line 5°36' west)	Pelagic trawls (single and pair)	1 January 2005
C. ICES divisions VI a, VII a and b, VIII a, b and c, and IX a	Bottom-set gillnet or entangling nets using mesh sizes equal to or greater than 80 mm	1 January 2005
D. ICES subarea IV, division VI a, and subarea VII with the exception of divisions VII c and VII k	Driftnets	1 January 2006

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Area	Gear	Starting date
E. ICES subareas III a, b, c, III d south of 59° N, III d north of 59° N (only from 1 June to 30 September), IV and IX	Pelagic trawls (single and pair)	1 January 2006
F. ICES subareas VI, VII and VIII and IX	High-opening trawls	1 January 2006
G. ICES sub area III b, c, d, excluding the areas referred to in rows A and E of Annex I	Bottom-set gillnet or entangling nets using mesh sizes equal to or greater than 80 mm	1 January 2006