

Proposed regulation of driftnet fisheries

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Introduction

On 14 May 2014, the European Commission published a **draft regulation on prohibition of driftnets COM(2014)265**, which is a technical measure as part of the legal framework for implementation of the reform of Common Fisheries Policy agreed in 2013.

The proposals follow a web-based consultation (launched March 2013 and closed on 15 September 2013) and the publication of a 'roadmap' in April 2013, which reviewed current EU regulation of driftnet fisheries and the impacts they have on the marine ecosystem.

In broad terms, the proposals would apply a blanket-ban on driftnet fisheries in EU waters irrespective of the size of net used. The proposals repeal **Council regulation (EC) No 894/97**, which allowed for the use of driftnets under 2.5 km in length.

The Commission cites difficulties in enforcing international moratorium on large-scale pelagic driftnet fisheries due to on-going non-compliance of existing EC regulation by some Member States as the rationale behind the proposal.

Summary of the proposal

The aim of the Regulation is to address enforcement difficulties by closing loopholes in the current legislation. The Commission considers the Regulation necessary for the EU to comply with its international obligations to sustainably regulate driftnet fisheries and address environmental and

conservation concerns.

The proposed Regulation would enter into force on 1 January 2015 and would introduce a full prohibition of the capture of any marine biological resource using driftnets. It also prohibits the keeping of any kind of driftnet on board fishing vessels.

A revised definition of driftnets is also provided. According to the Regulation, the term 'driftnet' refers to:

a net made up of one or more walls of netting, hung jointly in parallel on the headline(s), held on the water surface or at a certain distance below it by floating devices and drifting with the current, either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilise the net or to limit its drift such as a sea-anchor or an anchor on the bottom attached at one single end of the net. (Article 2.2)

The Commission states that the proposals are based on a precautionary approach towards the management of fisheries, which could have a high risk of incidental takings of protected species and which are being poorly monitored by Member States¹.

The Commission undertook an Impact Assessment that explored four policy options:

- 01.** maintain the status quo
- 02.** actions on technical and/or control measures to enhance controllability and environmental compatibility
- 03.** a selected ban of driftnet fisheries identified as the most harmful to protected species
- 04.** a total ban of driftnet fisheries

¹ COM (2014) 0265



The Commission notes that a lack of adequate monitoring of driftnet fisheries, and limited sampling in two previous studies, prevented an indicator led analysis of the fisheries' environmental impacts being taken².

The Commission, therefore, adopted option 4 as its preferred option as it 'satisfies to the largest extent the relevance, effectiveness, efficiency and coherence criteria while providing the best result in terms of environmental impact and less administrative burden'. Option 4 was supported by 52% of respondents to the public consultation³.

Potential impact

The Commission estimates around 840 vessels operating in EU waters (excluding the Baltic Sea) will be affected by the Regulation. Of these vessels, the majority are believed to use driftnets seasonally and operate in mixed-gear fisheries⁴. The importance of driftnet gears to each fishery is said to be highly variable.

The Commission estimates that the total value of small scale driftnets for the estimated 250 vessels in the UK (of which approximately 70 operate in Welsh waters) represents approximately 0.14% of the total value of UK landings in 2011⁵. In Italy, where there are around 100 vessels using driftnets, the importance of driftnets is low at national level but the value ranges from 20 to 55% of the turnover for some vessels and the profit generated by the use of driftnets averages 22% across all Italian driftnet fisheries⁶. Similar arguments to those made about Italy have been made by the UK Government and Welsh Government about driftnet fisheries in Wales and the UK.

² *Ibid*

³ **COM (2014) 0265**

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

The Commission states:

While it cannot be excluded that the ban may affect some of the vessels carrying out these fisheries, the overall social-economic impact of the total ban is therefore considered irrelevant at national and sub-regional level.

Background context to proposal

Legislative framework

A framework for the management of fisheries and the conservation of marine biological resources in EU waters is established under the Common Fisheries Policy (CFP)⁷. This requires Member States to contribute to the protection of the marine environment and sustainably manage commercially exploited species. It is a further requirement that the negative impacts of fishing activities are minimised and the unwanted by-catch of protected species, such as turtles, sea birds and dolphins, be reduced as far as possible.

Member States are also obliged to implement precautionary approaches towards the exploitation of fish stocks due to the EU's international agreements, as reflected in the United Nations Fish Stocks Agreement⁸.

Following concerns regarding the incidental by-catch in driftnet fisheries of highly migratory pelagic species such as tuna and swordfish, several United Nations General Assembly (UNGA) Resolutions called for a moratorium on large-scale (defined as over 2.5km in length) pelagic driftnets⁹. Accordingly, in the 1990s the EU developed a series of provisions to implement a ban on driftnets above 2.5km in length.

Subsequently, since 2002 the use of or keeping on board of driftnets, no matter their size, intended for the capture of protected species such as tuna and

⁷ **OJ L 354/22, 28.12.2013**

⁸ **OJ L 189, 03.07.1998**

⁹ **COM (2014) 0265**



swordfish listed in Annex VIII of **EC No 894/97** is prohibited¹⁰. Additionally, **EC No 2187/2005** prohibited the use or keeping on board of any kind of driftnets in the Baltic Sea, the Belts and the Sound from 1 January 2008¹¹.

Closing loopholes

According to the Commission, weaknesses and loopholes in existing regulation and the small-scale, well-dispersed nature of driftnet fishing makes it easy for vessels to circumvent rules and escape controls¹². By allowing vessels to keep on board different gears it is possible for non-compliant operators to illegally use driftnets to catch protected species like tuna, swordfish and sharks whilst declaring that they had been caught with other gear (e.g. longlines). This also provided challenges for control authorities to enforce rules.

The illegal use of driftnets to target protected species has led to two rulings of the European Court of Justice against both France and Italy¹³.

Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, said¹⁴:

Fishing with driftnets destroys marine habitats, endangers marine wildlife and threatens sustainable fisheries. I am convinced that the only way to eradicate this once and for all is to have clear rules which leave no room for interpretation. We need to close any possible loopholes and simplify control and enforcement by national authorities. This will in the end also save the livelihood of those fishermen which have applied the rules over the past years. The ban sends out a clear message that we no longer tolerate any irresponsible practices.

¹⁰ *ibid*

¹¹ *ibid*

¹² *ibid*

¹³ **COM (2014) 0265**

¹⁴ European Commission, **European Commission proposes full ban on driftnets**. (website) [accessed 19 June 2014]

UK Government position

The UK Government has outlined its stance on the proposal in an **Explanatory memorandum (EM)**.

The UK Government rejects a full ban on driftnets, describing it as a 'blunt instrument', and has instead called for a risk-based regional approach so that monitoring and mitigation is targeted at only non-compliant fisheries. They consider better enforcement of existing legislation on the prohibition of the use of some driftnets as a more appropriate measure, citing regionalisation provisions in the CFP as a means by which mitigation approaches can be targeted at regional or local levels.

In the EM, the UK Government states that the proposal does not readily relate to UK driftnet fisheries because they typically use short nets of around 200 metres in length and are used to target schooling fish for a short period of time. They also state that by-catch in driftnets in UK fisheries has not been a problem relative to that associated with other types of gears (e.g. bottom set gill and entanglement nets) and, consequently, questions whether a shift to alternative gears would result in better by-catch rates.

The UK Government suggests that UK driftnet fisheries are not representative of the problems that the Commission is trying to address, as these problems may be largely restricted to the Mediterranean Sea

Welsh Government position

The Welsh Government has called the proposal 'very blunt and inappropriate'. It states that the small-scale driftnet fisheries in operation in Wales bear no resemblance to the large-scale driftnet fisheries in operation in the Mediterranean and Baltic seas where the problems identified by the Commission exist.

The Welsh Government estimates that there are approximately 70 vessels using driftnets for herring, bass, mullet and various other demersal species operating in Welsh waters. Whilst these fisheries largely operate seasonally, the Welsh Government stated that landings from driftnet fishing does form a valuable part of fishermen's livelihoods in Wales. The Welsh Government has also added that the driftnets used in Welsh waters are no longer than 200 metres in length due to the legislation in place to manage these fisheries.

The Welsh Government has stated that it was unaware that the Commission intended to publish proposals to ban all driftnet fisheries. The Welsh Government is working with other UK Fisheries Administrations to provide an appropriate response.

Response of stakeholders

UK fishing organisations have expressed concern over the proposals. The **National Federation of Fisherman's Organisations (NFFO)** has suggested that the proposals would close all of the UK small-scale driftnet fisheries for herring, mackerel, sole, bass, salmon, sardine and mullet, including some certificated by the Marine Stewardship Council (MSC). They have described the proposal as a **'throwback to the unreformed CFP'**, referring to previous criticisms of EU blanket measures which led to the reform of the CFP and the introduction of regionalisation provisions.

In a letter to **Maria Damanaki**, Jerry Percy, chairman of the New Under Ten Fishermen's Association (NUTFA), said that whilst the NUTFA share the Commission's concerns regarding the application of driftnets in the Mediterranean:

This form of drift netting is distant, both geographically and metaphorically from the far smaller scale and environmentally acceptable use of drift nets in UK and adjacent waters.

The proposal has also received criticism from some

organisations in the conservation sector. **Oceana stated** that despite the proposal's 'sound intentions' the approach of the Commission is mistaken. In particular, Oceana is concerned that the blanket-ban will penalise thousands of sustainable artisanal fishing boats rather than targeting the few vessels that have continued illegal fishing activities and that should have been officially blacklisted years ago.

Maria Jose Cornax, fisheries campaign manager for Oceana in Europe, said:

The same boats and same operators have been illegally fishing for decades. The time for ambiguous measures is over – now it's time to take action by blacklisting infractors.

However, other conservation organisations have welcomed the proposals and Amanda Nickson, director of Global Tuna Conservation, said:

The Commission's proposed regulation to ban outright the use of driftnets demonstrates a clear determination to end this environmentally damaging practice and to address illegal fishing of bluefin tuna in the Mediterranean Sea.

Progress of dossier in European institutions

This section will be updated as the negotiations take place in Brussels and the official positions of the EU Institutions become clear.

European Parliament

The Fisheries (PECH) Committee is the responsible Committee within the European Parliament with Renata Brianco appointed as Rapporteur. The Rapporteur suggested amendments to the proposal in a Draft Report published on 30 January 2015.¹⁵

¹⁵ European Parliament, **Draft Report on the proposal for a regulation of the European Parliament and of the Council on the prohibition on driftnet fisheries**, 30 January 2015 [accessed 29 May 2015]



This included amendments such as:

- prohibiting all driftnets over 2,500 meters but allowing the continued use of smaller driftnets provided they do not target a list of species included in a new Annex.
- where smaller driftnets are used it requires that they are supervised at all times, that they have markers or buoys to denote their position and that masters of fishing vessels are required to record when they are used and whether there was any unintended by-catch.

A vote was expected to take place within the PECH Committee on 7 May 2015 on the draft regulation. However, due to calls for the outright rejection of the draft proposal, it was announced that the proposal would be sent to the Committee on Constitutional Affairs in the European Parliament for an opinion. No new date has been set for a discussion or a vote.

The Council

The Council are yet to reach a negotiation position.

Further information

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