

**EU Report on the implementation of measures concerning activities or conduct inconsistent with the terms of the UNGA Resolution 46/215, dated 20 December 1991, on large-scale pelagic drift-net fishing**

The European Union welcomes the opportunity to inform the Secretary-General about the actions undertaken in the European Union to implement paragraph 6 of UNGA Resolution 46/215.

The European Union would like to declare its full support for this exercise which will allow the UNGA to establish what has been achieved and what is still required in order to realize the objectives of the above mentioned Resolution with respect to the reduction of fishing effort in existing large-scale pelagic drift-net fisheries and the identification of impacts of these gears on living marine resources.

### ***1. General regulatory context***

The Basic Regulation on the Common Fisheries Policy<sup>1</sup> establishes the legal framework for the conservation, management and exploitation of 'living aquatic resources' where such activities are practised on the territory of Member States or in EU waters or by EU fishing vessels or nationals. It is part of the objectives of the Common Fisheries Policy that the precautionary approach shall be applied in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing on the marine eco-system including through a progressive implementation of an ecosystem approach to fisheries management. These basic objectives are highly relevant for managing pelagic fisheries and their impacts on the ecosystem, particularly those involving drift-net fishing. The reform of the Common Fisheries Policy is currently ongoing: a new basic regulation is foreseen for adoption by the Council and the European Parliament by the end of 2012 for the purpose of entering into force on 1 January 2013.

### ***2. Drift-net legislation***

Specific EU legislation on drift-nets was adopted following the UN Resolution 46/215 of 20 December 1991, which established a moratorium on the use of all large-scale pelagic drift-nets on the high seas.

The use of drift-nets whose individual or total size is more than 2,5 Km was prohibited<sup>2</sup> in June 1992 in EU waters (except in the Baltic Sea, the Belts and the Øresund) and, outside these waters, to all fishing vessels flying the flag of a member State or registered in a member State<sup>3</sup>.

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<sup>1</sup> Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy; OJ L 358, 31.12.2002, p. 59.

<sup>2</sup> The first international legal reference to 2,5 km length appeared in the context of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, "The Wellington Convention" (Wellington, 24 November 1989) which entered into force on the 17th May 1991. In its article 1 (Definitions set for the purposes of this Convention and its Protocols) is established: "(b) "driftnet" means a gillnet or other net or a combination of nets which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water".

<sup>3</sup> Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources; OJ L 42, 18.2.1992, p. 15.

Council Regulation (EC) No 894/97<sup>4</sup> established a management framework for the conservation of fishery resources through technical measures in the form of a general overall length limitation of drift-nets to a maximum of 2,5 km, as well as, a prohibition to use or keep on board, drift-nets of any size intended for the capture of certain species<sup>5</sup>.

Moreover, since 2002 all drift-nets, no matter their size, have been prohibited when intended for the capture of species listed in Annex VIII<sup>6</sup> of Council Regulation (EC) No 894/97, as amended by Council Regulation (EC) No 1239/98 (including bluefin tuna and swordfish)<sup>7</sup>. This prohibition applies to all EU Member States' fishing vessels fishing in maritime waters under the sovereignty or jurisdiction of the Member States and, outside those waters, to all EU fishing vessels, with the exception of those operating in the Baltic Sea, the Belts and the Øresund.

Specific provisions for the Baltic Sea, the Belts and the Øresund were adopted following the accession of the Baltic States by way of Council Regulation (EC) No 2187/2005<sup>8</sup>. In line with Article 9 of this Regulation, a large-scale drift-net ban has been in force in the Baltic Sea since 1<sup>st</sup> January 2008. The Commission reported on this ban, as well as on the implementation of broader measures to reduce incidental catches of cetaceans in EU fisheries, in a Communication to the European Parliament and the Council adopted on 16 July 2009<sup>9</sup>.

Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries<sup>10</sup> sets out requirements concerning the use of acoustic deterrent devices and the monitoring of incidental catches of cetaceans in certain

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<sup>4</sup> Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources; OJ L 132, 23.5.1997, p. 1.

<sup>5</sup> No vessels shall use driftnets for catching tuna in waters under the sovereignty or jurisdiction of Spain or Portugal in ICES sub-areas VIII, IX or X or, notwithstanding Article 1, in waters under the sovereignty or jurisdiction of Spain in Cefac areas off the Canary Islands (Art.12 Regulation 894/97).

<sup>6</sup> Albacore: *Thunnus alalunga*; Bluefin tuna: *Thunnus thynnus*; Bigeye tuna: *Thunnus obesus*; Skipjack: *Katsuwonus pelamis*; Atlantic Bonito: *Sarda sarda*; Yellowfin tuna: *Thunnus albacares*; Blackfin tuna: *Thunnus atlanticus*; Little tuna: *Euthynnus spp.*; Southern bluefin tuna: *Thunnus maccoyii*; Frigate tuna: *Auxis spp.*; Oceanic sea breams: *Brama rayi*; Marlins: *Tetrapturus spp.*; *Makaira spp.*; Sailfishes: *Istiophorus spp.*; Swordfishes: *Xiphias gladius*; Sauries: *Scomberesox spp.*; *Cololabis spp.*; Dolphinfishes: *Coryphina spp.*; Sharks: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Carcharhinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*; Cephalopods: all species.

<sup>7</sup> Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources; OJ L 171, 17.6.1998, p. 1. Whereas EU vessels which had fished with large-scale drift-nets for those species were subject to economic constraints necessitating a phasing-out period, the continuation of fishing with large-scale drift-nets by these vessels was authorised until 31 December 2001.

<sup>8</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; OJ L 349, 31.12.2005, p. 1. Provisions included in this Regulation were based on the previous Council Regulation (EC) No 812/2004 of 26.4.2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98; OJ L 150, 30.4.2004, p. 12.

<sup>9</sup> COM/2009/0368; 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; 16/07/2009.

<sup>10</sup> Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries; OJ L 150, 30.04.2004, p.12.

drift-net fisheries.

For reasons of clarity and, in order to facilitate uniform application of the above rules in Member States, a uniform definition of drift-nets was introduced through Council Regulation (EC) No 809/2007<sup>11</sup>. Accordingly, "drift-net" has been defined as "*any gillnet held on the sea surface or at a certain distance below it by floating devices, 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*".

To sum up, the regime currently in force, prohibits the use of drift-nets whose individual or total size is more than 2,5 Km in EU waters and, outside these waters, to all fishing vessels flying the flag of a member State or registered in a member State. In addition, it is prohibited to use or keep on board, drift-nets of any size in the Baltic Sea, the Belts and the Øresund and, also, in all waters, if these gears are intended for the capture of certain species<sup>12</sup>.

### **3. Implementation by the Member States**

The legal framework related to large scale drift-net fisheries adopted by the European Union is generally fully respected and implemented correctly by the EU Member States.

However, it is pertinent to note that the Commission took two Member States (France and Italy) to the European Court of Justice for lack of effective control and enforcement of the large-scale drift-net ban in 2007 and 2008, respectively. Following this, France strengthened its national regulatory framework on large-scale drift-nets and stepped-up control and enforcement actions and thereby complied with its obligations. Therefore, this case has been closed. With regard to Italy, the infringement procedure is still on-going (C-249/08).

The European Union remains fully committed to the proper implementation of the objectives of UNGA Resolution 46/215 and will continue to pay great attention to the full implementation of the respective EU legislative framework.

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<sup>11</sup> Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets; OJ L 182, 12.7.2007, p. 1.

<sup>12</sup> Albacore: *Thunnus alalunga*; Bluefin tuna: *Thunnus thynnus*; Bigeye tuna: *Thunnus obesus*; Skipjack: *Katsuwonus pelamis*; Atlantic Bonito: *Sarda sarda*; Yellowfin tuna: *Thunnus albacares*; Blackfin tuna: *Thunnus atlanticus*; Little tuna: *Euthynnus spp.*; Southern bluefin tuna: *Thunnus maccoyii*; Frigate tuna: *Auxis spp.*; Oceanic sea breams: *Brama rayi*; Marlin: *Tetrapturus spp.*; *Makaira spp.*; Sailfishes: *Istiophorus spp.*; Swordfishes: *Xiphias gladius*; Sauries: *Scomberesox spp.*; *Cololabis spp.*; Dolphinfishes: *Coryphina spp.*; Sharks: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Carcharhinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*; Cephalopods: all species.

