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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Proposal for a Regulation of the European Parliament and of the Council laying
down a prohibition on driftnet fisheries, amending Council Regulations (EC)
No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and (EC) No 1967/2006
and repealing Council Regulation (EC) No 894/97

Delegations will find attached document COM(2014) 265 final.

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EUROPEAN
COMMISSION

Brussels, 14.5.2014
COM(2014) 265 final

2014/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and (EC) No 1967/2006 and repealing Council Regulation (EC) No 894/97

{SWD(2014) 153 final}

{SWD(2014) 154 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Driftnet fishing has traditionally been carried out with nets of limited lengths and relatively small mesh size to catch different small/medium size pelagic species mostly living in or migrating through coastal areas. More substantial problems began in the late 1970s and 1980s, when driftnets with large mesh sizes and net lengths of tens of kilometres began to be used. These large-scale driftnets resulted in significantly increased amounts of incidental mortality of protected species including, in particular, cetaceans, sea turtles and sharks and lead to international concerns about their environmental impacts.

In the early 90s, following specific United Nations General Assembly (UNGA) Resolutions¹, which called for a moratorium on large-scale pelagic driftnet² fishing on the High Seas, the EU developed legislation on driftnets fisheries.

Consequently the keeping on board or use of driftnets longer than 2,5 Km is prohibited in the EU since June 1992 (except in the Baltic Sea, the Belts and the Sound). Since 2002 all driftnets, no matter their size, are prohibited when intended for the capture of species listed in Annex VIII of Council Regulation (EC) No 894/97 (unauthorized species). It is also prohibited to land species listed in Annex VIII which have been caught in driftnets. Additionally, since 1 January 2008 it is prohibited to keep on board or use any kind of driftnets in the Baltic Sea, the Belts and the Sound.

The current EU legislative framework on driftnets has however shown weaknesses since existing rules are easy to circumvent. The absence of EU rules on gear characteristics (e.g. maximum mesh size, maximum twine thickness, hanging ratio, etc.) and gear use (e.g. maximum distance from the coast, soaking time, fishing season etc) combined with the possibility to keep on board other fishing gears, made it possible for fishermen to illegally use driftnets to catch species prohibited to be caught with this fishing gear, while declaring that they have been caught for example with another gear (e.g. longlines, etc).

Furthermore despite these provisions on driftnets, the illegal use of driftnets continues to be reported in EU waters. Serious non-compliance by some Member States has also been addressed by two rulings of the European Court of Justice against France (C-556/07; C-479/07) and Italy (C-249/08).

Control and enforcement efforts are not producing the necessary results since the small scale nature of the activity makes it easy to adapt and find strategies to escape controls. Small scale driftnets are still allowed and the loopholes in the EU legislation facilitate their illegal use. This makes it extremely difficult for control authorities to have robust evidences of illegal activities and to finally enforce the rules.

¹ United Nations General Assembly Resolutions: 44/225 of 22 December 1989; 45/197 of 21 December 1990; 46/215 of 20 December 1991

² Large-scale driftnets were defined as nets over 2.5 Km in length under the Convention for the prohibition of fishing with long driftnets in the South Pacific (Wellington Convention); Wellington, 24 November 1989) which entered into force on the 17th May 1991.
<http://www.mfe.govt.nz/laws/meas/wellington.html>;
<http://www.jus.uio.no/english/services/library/treaties/08/8-02/large-driftnets.xml>.

Against this background, it is clear that serious environmental and conservation concerns linked to the use of these fishing gears still persist.

In order to address this situation and to comply with EU international obligations to properly regulate driftnet fisheries, the proposed Regulation, on the basis of a precautionary approach, stipulates a full prohibition to take on board or use any kind of driftnets as off 1 January 2015 in all EU waters. It also introduces a revised and more comprehensive definition of this fishing gear, to close any possible existing loophole.

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

An Impact Assessment (IA) has been conducted, taking into account information from different sources: a web-based public consultation, two coordinated studies³, information provided by Member States and comments from the IA Steering Group (IASG).

The IA has explored the following policy options: 1) status quo; 2) actions on technical and/or control measures to enhance controllability and environmental compatibility; 3) selected ban of driftnet fisheries identified as being still most harmful to the strictly protected species and/or not able to avoid by-catches of unauthorised species; 4) total ban of driftnet fisheries.

However, the lack or poor monitoring of these fisheries by Member States, both for control and scientific purposes, together with the limited sampling effort by the two studies made it extremely difficult to have a comprehensive view on current fishing activities and their actual environmental impact and it was therefore not possible to assess impacts of the different policy options through an indicator led analysis.

Options 4 has been preferred over the options 1, 2 and 3, 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. It is supported by more than 52% of the respondents to the public consultation including fishermen associations and NGOs. Thus option 4 has been retained as the most adequate, based on the application of the precautionary principle towards fisheries which might have a high risk of incidental takings of strictly protected species while being poorly or not at all monitored by Member States.

³ - MAREA-Specific contract 8 (SI2.646130). "Identification and characterization of the small scale driftnet fisheries in the Mediterranean (DriftMed)
- Specific contract 5 (SI2.650655). "Study in support of the review of the EU regime on the small-scale driftnet fisheries".

The majority of the driftnet fisheries identified are seasonal and the participating active fleets are comprised of polyvalent vessels, totalling at least 840 vessels (excluding the Baltic Sea), dispersed over a wide area. For most of the fishers driftnetting represent only a few months of fishing activity in any year with some fishers using driftnets for less than half a month per year. Thus the total prohibition to use driftnets is not expected to result in a corresponding reduction of fishers which will continue to operate with other gears as already authorised in their fishing licence. On the basis of the information collected for the impact assessment the economic performance and importance of the gear for the vessels and fleets is highly variable though limited at national level. For the fleets where the data are available such as the UK vessels the total value of small scale driftnets, for around 250 vessels, represent 0.14% of the total value of UK landings in 2011. For Italy, where a smaller number of around 100 active vessels has been detected, the economic importance of driftnets is low at national level (0.8% in value and 1.3 % in weight of landing) though the value landed ranges from around 20% to 55% (up to 90% in one fishery) of the turnover generated by these vessels; however the profit generated by the use of driftnets is highly variable ranging from 1 % to 54% of the turnover generated by the vessels, with an average of 22% across all Italian driftnet fisheries. While it cannot be excluded that the ban may affect some of the vessels carrying out these fisheries, the overall socio-economic impact of the total ban is therefore considered irrelevant at national and sub-regional level.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

Introduce a full prohibition to take on board or use any kind of driftnets as off 1 January 2015, in all EU waters and by all EU vessels. Introduce a revised and more comprehensive definition of driftnets, to close any possible loophole in existing legislation.

• Legal basis

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

• Subsidiarity principle

The proposal falls under exclusive competence of the European Union.

• Proportionality principle

The proposal is necessary and appropriate for the implementation of the ecosystem-based approach to fisheries management. The proposal does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

• Choice of instrument

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

Other means would not be adequate for the following reason: the act is repealing and amending existing Regulations, which must be amended by another 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

laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and (EC) No 1967/2006 and repealing Council Regulation (EC) No 894/97

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,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁵ establishes a management framework for the conservation of marine biological resources and the management of fisheries targeting them.
- (2) Sustainable exploitation of marine biological resources should be based on the precautionary approach, which derives not only from the precautionary principle referred to in the first subparagraph of Article 191(2) of the Treaty on the Functioning of the European Union but also from the Union's international undertakings as reflected in the United Nations Fish Stocks Agreement⁶, and in particular its Article 6, and on the best scientific evidence available.
- (3) The Common Fisheries Policy should contribute to the protection of the marine environment, to the sustainable management of all commercially exploited species, and in particular to the achievement of good environmental status by 2020, as set out in Article 1(1) of Directive 2008/56/EC of the European Parliament and of the Council⁷.

⁴ OJ C , , p. .

⁵ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision (EC) No 2004/585 (OJ L 354, 28.12.2013), p. 22.

⁶ OJ L 189, 03.07.1998, p. 16

⁷ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

- (4) Following concerns about the environmental impact of large-scale driftnets bigger than 2,5 km, that resulted in significant amounts of incidental mortality of protected species, several United Nations General Assembly (UNGA) Resolutions 44/225 of 22 December 1989, 45/197 of 21 December 1990 and 46/215 of 20 December 1991⁸ called for a moratorium for these fishing gears.
- (5) Accordingly, Council Regulation (EC) No 894/97⁹ establishes a management framework for the conservation of fishery resources through technical measures in the form of a general overall length limitation of driftnets to maximum 2,5 km, as well as a prohibition to use or keep on board driftnets intended for the capture of certain species.
- (6) Moreover, Council Regulation (EC) No 2187/2005¹⁰ prohibits using or keeping on board driftnets from 1 January 2008 in the Baltic Sea, the Belts and the Sound.
- (7) The conservation objectives, regarding incidental mortality of protected species, pursued by the abovementioned Union rules on driftnets are still valid and should be strengthened.
- (8) The definition of driftnets should be refined for reasons of clarity and in order to ensure uniformity in the understanding and implementation by Member States of rules on driftnets.
- (9) Moreover it is necessary to extend the scope of this definition so as to cover any newly identified types of drifting fishing nets other than drifting gillnets developed in certain fisheries. It is particularly important to cover by this definition gears that unlike drifting gillnets are made up of two or more walls of netting hung jointly in parallel on the headline(s) yet they operate close to the water surface in the same manner as drifting gillnets do and have similar impact on marine resources, hence should be coherently regulated.
- (10) The current Union legislative framework on driftnets has shown weaknesses and loopholes in that rules proved easy to circumvent and ineffective in terms of addressing the conservation concerns linked to this fishing gear.

⁸ United Nations General Assembly Resolutions A/RES/44/225 of 22 December 1989 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p. 147. United Nations General Assembly Resolution A/RES/45/197 of 21 December 1990 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p.123. United Nations General Assembly Resolution A/RES/46/215 of 20 December 1991 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p. 147.

⁹ 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) as amended by Regulation (EC) No 1239/98.

¹⁰ 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 (OJ L 349, 31.12.2005, p. 1).

- (11) The driftnet fishing is carried out by an undefinable number of small-scale multipurpose fishing vessels, the vast majority of which operating without any regular scientific and control monitoring. Due to the small scale nature of these fishing activities, which makes it easy to escape monitoring, the control and enforcement efforts have not produced the necessary results in terms of conservation of marine resources, in particular with regard to certain protected species.
- (12) Illegal driftnet activities carried out by Union fishing vessels, in particular for the purpose of targeting species listed in Annex VIII of Regulation (EC) No 847/97, continue to be reported and have been cause of criticism regarding the Union compliance with applicable international obligations in this respect.
- (13) Moreover, the driftnet fishing by operating close to or at the water surface continues to be cause of high concern for incidental takings of air-breathing animals such as marine mammals, sea turtles and sea birds, which are mostly classified as species to be strictly protected under Union legislation.
- (14) Additionally, monitoring and reporting systems established under Council Directive 92/43/EEC (Habitats Directive)¹¹ have proven to be not effective for the identification and recording of the anthropogenic causes of death of strictly protected species due to fishing activities.
- (15) The ecosystem-based approach to fisheries management makes it a requirement that negative impacts of fishing activities on the marine ecosystems be minimised and unwanted catches be avoided and reduced to the extent possible.
- (16) In view of the reasons stated above and in order to properly address the conservation concerns that this fishing gear continues to cause, as well as to achieve the environmental and enforcement objectives in an effective and efficient manner, while taking into account the minimal socio-economic impacts, it is necessary to introduce a full prohibition to take on board or use any kind of driftnets in all Union waters and by all Union vessels whether they operate within Union waters or beyond, as well as by non-Union vessels in Union waters.
- (17) For reasons of clarity of Union legislation, it is also necessary to delete all other provisions related to driftnets by amending Council Regulation (EC) No 850/98¹², Regulation (EC) No 812/2004, Regulation (EC) No 2187/2005 and Council Regulation (EC) No 1967/2006¹³, and repealing Regulation (EC) No 894/97.
- (18) Vessels carrying out fisheries with small-scale driftnets may need some time to adjust to the new situation and necessitate a phasing-out period. This Regulation should therefore enter into force on 1 January 2015.

¹¹ COUNCIL DIRECTIVE 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7)

¹² Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125, 27.4.1998, p. 1).

¹³ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 409, 30.12.2006, p. 11);

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to all fishing activities within the scope of the Common Fisheries Policy as set out in Article 1(2) of Regulation (EU) No 1380/2013.

Article 2

Definition

1. For the purpose of this Regulation the definitions set out in Article 4(1) of Regulation (EU) No 1380/2013 shall apply.
2. In addition, a 'driftnet' means 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 3

Prohibition of driftnets

It shall be prohibited:

- (a) to catch any marine biological resource with driftnets; and
- (b) to keep any kind of driftnet on board of fishing vessels

Article 4

Amendments of related Regulations

1. In Article 20 of Regulation (EC) No 850/98, paragraph 3 is deleted.
2. Regulation (EC) No 812/2004 is amended as follows:
 - (a) Article 1a is deleted;
 - (b) in Annex I, points A (b) and E (b) are deleted;
 - (c) in Annex III, point D is deleted.
3. Article 2(o), Article 9 and Article 10 of Regulation (EC) No 2187/2005 are deleted.
4. In Annex II (a) of Regulation (EC) No 1967/2006, the words "and drifting nets" are deleted.

Article 5

Repeal

Regulation (EC) No 894/97 is repealed.

Article 6

Entry into force

This Regulation shall enter into force on 1 January 2015.

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