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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Action envisaged by the Commission following the identification by the USA of the EU and eight Member States in relation to sea turtles bycatch in longline fisheries in ICCAT - Draft Note Verbale

Delegations will find attached a revised draft Note Verbale to the United States regarding the identification of the EU and eight of its Member States under the U.S. High Seas Driftnet Fishing Moratorium Protection Act in relation to sea turtle bycatch in longline fisheries in ICCAT convention waters.

Changes compared to the draft submitted by the Commission (doc. 14037/21) are indicated in **bold underline** (new text) and ~~striketrough~~ (deleted text).

These changes reflect suggestions made by the Council Legal Service, and are purely presentational in nature.

**Draft Note Verbale to the United States of America regarding the identification of the European Union EU and eight of its Member States under the United States High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act)**

**DRAFT NOTE VERBALE  
TO THE DEPARTMENT OF STATE OF THE UNITED STATES OF AMERICA**

**The Delegation of the European Union presents its compliments to the Department of State of the United States of America and has the honour to refer to** ~~The European Union (EU)~~ addresses the Department of State of the United States of America (USA) on the identification of the European Union EU and eight of its Member States, under the ~~USA~~ United States High Seas Driftnet Fishing Moratorium Protection Act.

On 12 August, the National Oceanic and Atmospheric Administration (NOAA) NOAA<sup>1</sup> informed the European Commission that the European Union EU and eight of its Member States<sup>2</sup> were identified under the United States U.S. High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act, ~~MPA~~) for failure to adopt management measures to end or reduce bycatch of protected living marine resources (PLMRs). More specifically, the notification letter sent to the European Commission by NOAA, indicates that the European Union EU was identified for failure to adopt management measures to end or reduce bycatch of sea turtles, a PLMR, by vessels flagged to European Union EU Member States in longline fisheries in the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention waters beyond national jurisdiction. It appears that the basis<sup>3</sup> for this identification is that “ICCAT has failed to implement effective measures to end or reduce such bycatch, and that the European Union EU has not adopted a regulatory program to end or reduce such bycatch comparable in effectiveness to that of the United States”.

The European Union EU wishes to express its regret and concern in relation to the process and the way this “identification” was communicated to it, especially considering the relationship our respective services have built up over the years. Despite the willingness of the European Commission to provide the information requested, the United States USA did not inform the European Commission about the conclusions of its analysis, nor did it request or offer the European Union EU the opportunity to provide any additional or clarifying information before deciding on the identification. The European Commission was only informed about the 2021

<sup>1</sup> ~~USA National Oceanic and Atmospheric Administration.~~

<sup>2</sup> Croatia, Cyprus, France, Greece, Italy, Malta, Portugal, Spain.

<sup>3</sup> Section 1826k(a) of the ~~USA~~ Moratorium Protection Act.

Biennial Report<sup>4</sup> and its conclusions the day before its release, which did not allow for an appropriate and meaningful engagement with the competent United States ~~USA~~ authorities before its publication.

Second, the European Union ~~EU~~ considers that this “identification” without consulting and coordinating with the relevant ICCAT Members, including the European Union ~~EU~~, undermines the mandate and work of regional fisheries management organisations ~~RFMOs~~, such as ICCAT where collaborative scientific work is currently ongoing to assess the impact of pelagic longline fleet on sea turtles in the Atlantic Ocean and determine appropriate mitigation options. It thus runs counter to Article IX(3) of the ICCAT Convention, but also Article 118 of the United Nations Convention on the Law of the Sea ~~UNCLOS~~ as well as Article 8 and Part VIII of ~~UNFSA~~ the UN Fish Stocks Agreement, to cooperate within regional fisheries management organisations for ensuring the conservation and sustainable management of marine living resources. As also noted by the WTO law and practice, prior consistent recourse to diplomacy as an instrument of environmental protection policy is important. Measures having as their objective the protection and conservation of species demand “concerted and cooperative efforts on the part of the many countries” involved. “The need for, and the appropriateness of, such efforts have been recognized in the WTO itself as well as in a significant number of other international instruments and declarations.” (~~Report of the Appellate Body, United States – Import Prohibition of Certain Shrimp and Shrimp Products~~, para. 168).

Third, the European Union ~~EU~~, who is among the frontrunners in promoting the conservation and sustainable use of marine living resources, would strongly prefer to work together with the United States ~~USA~~ with the aim of securing that appropriate mitigation options are agreed in ICCAT. It is important to note that the impact of the pelagic longline fleet on sea turtles in the Atlantic Ocean is currently assessed by the scientific body of ICCAT, with the view to further strengthening the existing recommendation on the bycatch of sea turtles in ICCAT fisheries (ICCAT Recommendations ~~EC~~ 10-09 and 13-11) and providing an appropriate level of protection to these vulnerable species, while ensuring that any possible negative trade-offs for other species, such as shortfin mako, which is at this moment a priority species to protect, are duly identified, taken into account and minimised. The European Union ~~EU~~ and its Member States will continue to engage constructively in discussions on such measures once the scientific work has been completed and the ICCAT Commission has an informed basis upon which to take such decisions.

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<sup>4</sup> ‘2021 Biennial Report to Congress on Improving International Fisheries Management’ issued by NOAA.

Finally, the **European Union** ~~EU~~ would like to reiterate that it remains fully committed to pursue its efforts at all levels in protecting the oceans, ensuring sustainable fisheries and fighting against IUU fishing in accordance with its internal obligations and international commitments. In this context, the **European Union** ~~EU~~ is open to actively and constructively engage with the **United States** ~~USA~~ to ensure that together we uphold the rules-based international order with the United Nations at its core and promote multilateral cooperation, including in organisations with the mandate to adopt conservation and management measures for fish stocks under their purview, such as ICCAT. These measures have proven their effectiveness and should prevail over unilateral measures taken by individual countries. The **European Union** ~~EU~~ calls upon the **United States** ~~USA~~ to suspend this unilateral identification process and join forces within ICCAT in view of achieving the common objective of ensuring an appropriate level of protection for vulnerable species, such as sea turtles, caught as bycatch in ICCAT fisheries based on the best available scientific advice.

The **Delegation of the** European Union avails itself of this opportunity to renew to the Department of State of the United States of America the assurances of its highest consideration.

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