

ROADMAP

Title of the initiative: **Proposal for a Council Regulation amending Council Regulation (EC) 1185/2003 on the removal of fins of sharks on board vessels (2010/MARE/005)**

Lead DG: DG MARE

Expected date of adoption of the initiative (month/year): 1st quarter 2011

Date of modification: 15 March 2010

Version No: 1

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Finning is the practice of severing and retaining the fins of sharks while discarding the rest of the carcass at overboard. Finning is a wasteful and unsustainable practice. Fins from the most desirable species can fetch up to 500€/kg. The value of fins is generally much higher than the value of shark meat and given that on-board storage space is usually limited, there is a strong incentive to fin (i.e. to discard carcasses). Finning, which involves discarding, is not to be confused with regulated on-board processing, which may also involve the severing of fins on board, but does not involve discarding.

In 2003 the Council adopted Council Regulation (EC) No. 1185/2003¹ on the removal of fins of sharks on board vessels. This Regulation aims to contribute to shark conservation, but its scope is limited to banning the practice of finning. Recognizing that sharks, skates and rays are especially vulnerable to overexploitation, that many shark stocks are under serious threat, and that the practice of shark finning contributes to excessive mortality of sharks and to stock depletion, the said Regulation aims to eliminate finning by prohibiting the removal of fins from sharks on board vessels.

(ii) The proposed amendment of this Regulation would be carried out in fulfilment of the commitments made within the International Plan of Action on sharks (IPOA) approved by the European Commission in February 2009, in fulfilment of the commitments made by the EU to the FAO². The proper implementation of the amended Regulation will contribute to the conservation of shark stocks.

What are the main problems identified?

Even though the current Regulation prohibits the removal of shark fins on board vessels, special permits for on-board processing may be issued by exemption. Such permits may be issued to fishing vessels where a capacity to use all parts of sharks has been demonstrated and where the need for the separate processing on board of shark fins and of the remaining parts of sharks has been justified. In such cases, the flag Member State may issue and manage, with associated conditions, special permits for on-board processing. The current Regulation allows for landings of fins and carcasses in separate ports, at separate times. In order to ensure that no finning has occurred, a fin-to-carcass weight ratio has been established. Permit holders must record in a logbook the amounts (weights) of shark fins and shark carcasses. The weight of the fins kept from the catch shall never exceed the theoretical weight of the fins that would correspond to the remaining parts of sharks retained on board, transhipped or landed. In no case shall the theoretical weight of the fins exceed 5 % of the live weight of the shark catch. Live weight is the weight of the

¹ Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels.

² EU Plan of Action on Sharks (COM(2009)40 final):

http://ec.europa.eu/fisheries/publications/factsheets/legal_texts/com_09_040_en.pdf

shark before any processing has occurred. Dressed weight is the weight after processing, i.e. after beheading, evisceration and sometimes skinning. Due to the relatively large weight of sharks' heads and internal organs, the dressed weight may be 30 to 50% less than the live weight.

It has become clear, via information received from the sector, NGOs and Regional Fisheries Management Organisations (RFMOs), that the current system of weight ratios has various flaws and should therefore be amended or replaced by another approach. Developments in ICCAT³ and IOTC in 2009 support such a move⁴.

The main problem is that, under the current system, special permits for on-board processing are issued to many vessels, and that processed shark carcasses and fins are landed in separate ports, at separate times. As mentioned in the EU Plan of Actions on Sharks⁵ an important possible loophole in the implementation of the "finning" Regulation by EU Member States is the risk that they issue on-board processing permits based on justifications, for the need for on board processing, which are too general and/or insufficient. Therefore, it appears appropriate that the elements for the justification provided for by Article 4(2) of Council Regulation (EC) No 1185/2003 are strengthened and clarified. Separate landings of processed sharks make it impossible to ensure that no finning has occurred. Separate landings occur worldwide and the level of control in the various ports is not homogeneous. The value per kg of fins is much higher than that of the flesh. Given that on-board cargo space is usually limited, there is a strong incentive to discard carcasses to make room for fins. According to NGOs, under the current weight ratio system, finning and high-grading are taking place. DG MARE recognizes that this is possible.

Furthermore, on-board processing precludes the collection and or verification, by inspectors, of data such as species identification, catch composition, age/size population structure etc., which are vital to the development of effective management and conservation measures.

The sector is also dissatisfied with the current 5% ratio, but for a different reason than NGOs. The bulk of the shark catch of the EU fleet consists of two species, namely blue shark (*Prionace glauca* – 87%) and shortfin mako (*Isurus oxyrinchus* – 10%). Taking into account the average fin-to-carcass ratio for these two species, the sector states that the current fin-to-carcass weight ratio is too low. According to scientific literature, the fin-to-live-weight ratio for blue shark is 6-6.5%^{6,7} whereas for shortfin mako, around 4%⁵.

An additional problem associated with the use of the weight ratio system is that the various fleets use different fin cutting techniques and sever different fin sets from carcasses. These practices may cause significant variations in the weight ratio.

During the IOTC meeting in Bali in April-May 2009³, the EU and Australia jointly proposed an alternative approach whereby the fins could be severed and placed in a plastic bag which would be

3 Recommendations by ICCAT concerning the removal of fins of sharks caught in the Convention area – Presented in November 2009 at ICCAT annual meeting, <http://www.iccat.int/en/meetings.asp>

4 Report of the 13th Session of IOTC, Bali, Indonesia, 2009: <http://www.iotc.org/files/proceedings/2009/s/IOTC-2009-S13-R%5BE%5D.pdf#30>
5 COM(2009)40 final

6 Mejuto, J. and Garcia-Cortes, B. 2004. Preliminary relationships between the wet fin weight and the body weight of some large pelagic sharks caught by the Spanish surface longline fleet. Col. Vol. Sci. Pap. ICCAT, 56(1): 243-253.

7 Santos, M.N. and Garcia, A. 2008. New data on the ratio between fin and body weights for shark species caught by the Portuguese surface longline fleet. Collect. Vol. Sci. Pap. ICCAT, 62(5): 1592-1601.

8 Letter to Rondolf Payet, Chair of IOTC, dated 30 March 2009, signed by 70 NGOs.

9 Hareide, N.R., J. Carlson, M. Clarke, S. Clarke, J. Ellis, S. Fordham, S. Fowler, M. Pinho, C. Raymakers, F. Serena, B. Seret, and S. Polti. 2007. European Shark Fisheries: a preliminary investigation into fisheries, conversion factors, trade products, markets and management measures. European Elasmobranch Association.

10 Hong Kong Foreign Trade Statistics for Sharkfin Imports and Exports, 2005.

11 Clarke, S., McAllister, M.K. & Michielsens, C.G.J. 2004. Estimates of shark species composition and numbers associated with the shark fin trade based on Hong Kong auction data. J. Northw. Atl. Fish., 35.

12 The weight of sharks landed annually by Spanish vessels holding on-board processing permits is significantly smaller than the weight of sharks caught by these vessels.

13 The figures are in scientific notation. Therefore 8,077 tons equals eight thousand and seventy-seven tons.

14 COM/2005/700 final: Report from the Commission to the Council and the European Parliament on the operation of Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels.

physically attached to the body. This approach was heavily criticized by NGOs⁸ due to the fact that it would promote the use of plastic bags at sea. It was also rejected by the sector as impractical. The EU then proposed an alternative solution whereby fins would be severed and stored separately; the fins and corresponding carcass would be marked with a serial number allowing any fin to be matched to the carcass from which it was severed. This approach was also heavily criticized by NGOs and the sector as impractical and difficult to implement.

If fins were to remain attached to the body, and therefore landed simultaneously in the same port, finning would become impossible and data collection would be greatly enhanced.

Scale of the problem:

The extent to which finning may be occurring is difficult to determine under the current weight ratio system. As mentioned above the prevention of data collection due to on-board processing, which is allowed on vessels holding special processing permits, constitutes an extensive problem.

European shark fisheries operate in all of the world's oceans and are very much larger than is generally understood. Taking into account significant under-reporting of shark catches by several of its pelagic fleets, and the catches made by EU vessels flagged in other States, the EU is possibly the world's largest shark fishing entity⁷. European fleets accounted for more than 13% of global shark landings according to the FAO in 2004. The largest European shark fisheries, undertaken on the high seas by pelagic fleets from Spain, France and Portugal in the Atlantic, Pacific and Indian Oceans, are very poorly documented. Though these fisheries historically targeted primarily tunas and swordfish, longline catches of oceanic sharks are as large as or larger than the catch of target species, and most longliners now also target sharks⁹.

Information concerning the involvement of EU Member States in international trade of sharks and shark fins varies according to the source. Trade statistics¹⁰ indicate that in 2005, Spain, France and the Netherlands were involved in the shark fin trade in the Hong Kong market, which is the largest shark fin market in the world, representing 50% of the worldwide sharkfin trade¹¹. After China, Spain is the second largest exporter of shark fins to the Hong Kong market and is responsible for around 10% of the shark fins traded there⁸. The Galician port of Vigo and the port of Las Palmas in the Canary Islands are the European centres for the shark fin trade. In Las Palmas, both Spanish vessels and the Japanese Atlantic longliners land shark fins.

According to the annual reports submitted to the Commission by the Spanish authorities in accordance with Article 6(1) of Regulation (EC) No 1185/2003, between 2004 and 2008, Spanish vessels holding on-board processing permits have landed¹² fins and carcasses (processed in various ways) in non-EU ports in Australia, Brazil, Cape Verde, Chile, Ecuador, Fiji, French Polynesia, Indonesia, Kenya, Mauritius, Namibia, New Caledonia, Panama, Peru, Senegal, South Africa, Trinidad and Tobago, and Uruguay. The annual shark landings, in non-EU ports, by Spanish vessels holding on-board processing permits were 8,077 tons¹³ in 2005, 9,003 tons in 2006, 8,295 tons in 2007 and 9,119 tons in 2008. The annual shark landings (EU ports + non-EU ports) by Spanish vessels holding on-board processing permits were 20,447 tons in 2003, 21,417 tons in 2004, and 18,936 tons in 2005. Of the 18,936 tons landed in 2005, 10,859 tons were landed in EU ports (i.e. 57%) and 8,077 tons were landed in non-EU ports (i.e. 43%). In 2003, 2004 and 2005, vessels with on-board processing permits caught an average of 87% of the total shark catch of the Spanish fleet.

In 2003, four EU Member States ranked in the top 20 shark catching countries of the world: Spain, France, UK and Portugal. As a percentage of the world shark catch, Spain caught 7.2%, France 2.6%, UK 2.3% and Portugal 2.0% (N.B. France has never issued on-board processing permits, the UK has stopped issuing permits as of 2010, and only Spain and Portugal continue to issue such permits).

Given the significant role that EU Member States have in global shark fisheries, and given that the majority of vessels catching sharks hold permits for on-board processing, it is imperative that these fisheries are subject to rules which ensure that no finning can occur.

Main underlying causes of the problem:

1. Allowing separate landings of fins and carcasses makes it impossible to ensure that the finning

ban is respected.

2. Once fins have been severed from the body it becomes impossible to ensure beyond doubt that the finning ban is respected.

Evolution of the problem:

The current Regulation (Council Regulation (EC) No 1185/2003) has been in place since 2003. In accordance with Article 6(2) of this Regulation, the Commission produced, in December 2005, a report¹⁴ addressed to the European Parliament and to the Council, on the operation of Council Regulation (EC) No 1185/2003 and on international developments in that field. The report stated that the Regulation had been implemented successfully and that it was achieving its general objectives. It also stated that Member States provided no information to suggest that the sector had any significant difficulties in coping with the Regulation.

As a result, it was concluded that the Regulation was not in need of amendment at that time. The obligation to produce such a report was a one-time obligation, and therefore no such reports have been produced by the Commission since 2005. However, in view of developments in ICCAT and IOTC, in 2009, regarding fin-to-body-weight ratios and the fins-attached approach, it has become clear that the current Regulation allows room for discarding carcasses, impedes control and is not fully compatible with the reality of the fishing sector. The 2005 report of the Commission¹⁰ concluded that Regulation (EC) No 1185/2003 was adequately implemented and was not in need of amendment. However, the Spanish authorities have communicated to the Commission, in their annual reports, submitted in accordance to Article 6(1) of the aforementioned Regulation that the 5% ratio does not correspond to the reality of the Spanish commercial fleet. The Spanish authorities requested that a distinct percentage be applied to each fishery/fleet [in order to reflect the fact that the fin-to-carcass ratio varies according to the species and that different species are caught in each fishery, depending on location]. This position has been repeated by Spain in their annual reports for the reference years 2004 to 2008. The Portuguese authorities communicated to the Commission, in their reports for the reference years 2004 to 2006 (the 2007 and 2008 reports have not been received yet), that given the species caught and the traditional fin-cutting method used by the Portuguese fleet, the fin-to-carcass ratio is between 5 and 6% of the live weight. N.B. The deadline to submit reports for each reference year is the 1st of May of the year n+2, i.e. for the reference year 2004, the deadline is the 1st of May 2006. Consequently, the Spanish and Portuguese positions could not be taken into account in the preparation of the Commission's 2005 report¹⁰.

Who is affected?

EU vessels which have received or will receive special permits, from their flag Member State, allowing them to remove the fins of sharks on board. According to the reports submitted annually to the Commission, in compliance with Council Regulation (EC) No 1185/2003, there are only five Member States which, up to date, have been issuing special permits for on-board processing of sharks. These are ES, PT, UK, DE and LT. ES issues the largest number of permits by far (average of 185/year), followed by PT (17/yr) and UK (17/yr), DE (5/yr) and LT (1/yr). As of 2010 the UK no longer issues such permits to vessels flying its flag and has prohibited on-board processing on all vessels in its territorial waters. In February 2010 CY communicated to the Commission its intention to begin issuing such licenses.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

According to Article 3 (1) (d) of TFEU the EU has exclusive competence in the area of the conservation of marine biological resources under the common fisheries policy; therefore the subsidiarity principle does not apply.

B. Objectives of EU initiative

What are the main policy objectives?

The first general objective of the Finning Regulation corresponds to the general objective of the EU Shark Action Plan which is to enhance shark conservation. Given the strong financial incentive to fin, the main policy objective is to ensure that there is no margin for shark finning to occur.

In order to contribute to this goal more specific objectives are set:

- Improve the implementation of the ban on shark finning;
- Facilitate the relevant control.
- Enhance the collection of data such as species identification, catch composition, age/size population structure etc., which are vital to the development of effective management and conservation measures.

The second general objective is to ensure coherence of EU legislation with international rules, which the EU must abide by.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No. The objective is to simply modify an existing Regulation. No development of new EU policy is foreseen.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

(i) The policy options are:

Option 1: No policy change - Maintaining the current use of fin-to-carcass weight ratios

Option 2: Fins-severed-and-reattached approach

Option 3: Fins-remain-attached approach.

These options are further described and broken down as follows:

Option 1: No policy change

(i) The use of fin-to-carcass weight ratios, combined with the requirement to land processed carcasses and fins simultaneously, at the same port.

(ii) The use of fin-to-carcass weight ratios, without the requirement to land processed carcasses and fins simultaneously, at the same port.

Option 1 (ii) would amount to proceeding in a "business-as-usual" manner, i.e. on-board processing would still be permitted to vessels holding processing permits. Where fins and carcasses are landed simultaneously they would have to be weighed at port to check whether the fin weight exceeds 5% of the live weight of the sharks, in order to determine whether or not finning has occurred. Where fins and carcasses are landed separately, the inspector must rely on the information recorded in the logbook.

Option 2: Fins-severed-and-re-attached approach

The processed carcasses and fins are inevitably landed simultaneously at the same port. This would involve on-board processing on vessels holding processing permits. The fins would be removed under the pretext of facilitating storage by making the most efficient use of cargo space. The fins would have to be physically re-attached to the carcass in some sort of container or by a cable or string. Alternatively, the carcass and corresponding fin set would be marked with a matching serial number allowing the controller to match each fin set to a particular carcass.

Option 3: Fins-remain-attached approach

Processed carcasses and fins are inevitably landed simultaneously at the same port. This

approach entails the landing of fins and carcasses simultaneously in the same port. The fact that the fins remain attached to the carcass makes it impossible for finning to be carried out. In order to facilitate on-board storage, the fins could be sliced halfway or three-quarter-way through and folded against the carcass, as is practiced in some fisheries in Central and South America.

(iii) Depending on the outcome of the evaluation, the proposed amendment could go beyond a routine update of the existing legislation.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

This issue will be dealt with in an inter-service steering group for fisheries conservation initiatives.

Explain how the options respect the proportionality principle

The present action does not go beyond what is necessary to achieve satisfactorily the objectives that have been set. The objective, prevention of finning, remains the same. Depending on the choice of policy option, two difficulties could arise for the sector:

- a) The obligation to land sharks with their fins un-severed could create difficulties in storage. However such difficulties can easily be overcome by partly slicing through the fins, without severing them from the body, so that they can be folded against the body. This allows for easy storage and optimal use of cargo space.
- b) The obligation to land the entire shark carcasses simultaneously at the same port might provoke opposition from the sector. It is possible that some vessels would prefer, for market reasons, to land fins at one port and shark carcasses at another.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Impacts of each policy option:

Option 1: No policy change - Maintaining the current use of fin-to-carcass weight ratios

- Under option 1 (i) control is facilitated and the possibility to fin is reduced, though not eliminated. Control becomes more effective as fins and carcasses can be weighed during an inspection, rather than relying on information recorded in a logbook. However, once carcasses have been processed it's extremely difficult to be sure that the fins landed all correspond to the carcasses landed. The relative value of fins and of flesh varies by species, and less valuable flesh could still be discarded, though the margin for this is restricted by the enforcement of the weight ratio.
- Under option 1) (ii) control remains less effective and it remains difficult to ensure that finning has not occurred. This applies in particular where fins and carcasses are landed separately and the inspector must rely on the logbook.
- The sector states that the current ratio (fins must not exceed 5% of the live weight of the catch) is too low, given that the two primary species caught have a fin: carcass ratio higher than 5%.
- Under option 1 (i) and (ii), data collection (catch composition, species identification etc.) is very limited due to the fact that various types of information such as species, sex, sexual maturity, live weight, total length etc. cannot be collected once carcasses have been processed. The collection of such data would be essential in enhancing future conservation actions.

Option 2: Fins-severed-and-re-attached approach

- Practical difficulties exist, especially regarding the means of re-attachment of fins to carcasses. The use of bags (plastic or biodegradable), wire or string to re-attach fins to the carcass does not appear to be a practical option for the sector. NGOs are strongly opposed to the use of bags at sea.

- Data collection is very limited.

Option 3: Fins-remain-attached approach

- Control is greatly facilitated. Finning becomes impossible.

- Data collection is greatly enhanced.

- NGOs strongly advocate this option.

- The sector states that storing sharks with the fins naturally attached is not practical as cargo space would be wasted. However, the partial slicing and folding of fins against the body could solve the storage problem.

Under option 1 the achievement of this objective would be very difficult. This also applies for option 2. Under option 3 it can be ensured that no finning occurs. Option 3 abolishes the use of ratios, thereby closing the debate on whether these should be raised and whether species-specific ratios should be developed and used, something which would be virtually impossible to apply to processed carcasses.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No. No financial compensation is foreseen. Therefore no ex ante evaluation is required.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

(i) Control would be greatly simplified under Option 3 as finning would become impossible and the use of weight ratios which in reality vary by species, fishing location and cutting technique would be abolished.

(ii) Depending on the option selected, the administrative burden would either remain the same or be reduced.

(iii) Relations with third countries will not be affected.

E. Planning of further impact assessment work

When will the impact assessment work start?

In December 2009.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

(i) Much information is already available on the fins-to-carcass weight ratio of the two species which together comprise more than 90% of the catches of the EU fleet.

The most relevant and available documents planned to use:

- Hareide, N.R., J. Carlson, M. Clarke, S. Clarke, J. Ellis, S. Fordham, S. Fowler, M. Pinho, C. Raymakers, F. Serena, B. Seret, and S. Polti. 2007. *European Shark Fisheries: a preliminary investigation into fisheries, conversion factors, trade products, markets and management measures*. European Elasmobranch Association.

<http://www.eulasmo.org/v.asp?level2id=6465&rootid=6465&depth=1>

- Lack, M. and Sant, G. 2008. Illegal, unreported and unregulated shark catch: A review of current knowledge and action: www.traffic.org/species-reports/traffic_species_fish30.pdf
 - Debra A. Rose. 1996. [An Overview of World Trade in Sharks and Other Cartilaginous Fishes](http://www.traffic.org/species-reports/traffic_species_fish36.pdf) http://www.traffic.org/species-reports/traffic_species_fish36.pdf
 - Lack, M. and Sant, G. 2009. *Trends in Global Shark Catch and Recent Developments in Management*. TRAFFIC International.
 - Lack, M. and Sant, G. 2006. *Confronting Shark Conservation Head On!* TRAFFIC International: www.traffic.org/species-reports/traffic_species_fish4.pdf
 - Clarke, S. C., M. K. McAllister, and C. G. J. Michielsens. 2005. Estimates of Shark Species Composition and Numbers Associated with the Shark Fin Trade Based on Hong Kong Auction Data. *J. Northw. Atl. Fish. Sci.*, 35: 453-465. doi:10.2960/J.v36.m488:
<http://journal.nafo.int/35/clarke/14-clarke.html>
 - Oceana. 2008. From Head to Tail: how European nations commercialise shark products: http://na.oceana.org/sites/default/files/o/fileadmin/oceana/uploads/europe/reports/From_Head_To_Tail.pdf
 - Cortes, E. and Neer, J. 2006. Col. Vol. Sci. Pap. ICCAT, 59(3): 1025-1036. Preliminary reassessment of the validity of the 5% fin-to-carcass weight ratio for sharks.
- (ii) The Impact Assessment will build on the Impact Assessment carried out during the preparation of the International Plan of Action for Sharks in 2008. Relevant results from the 2008 Impact Assessment will be considered.
- (iii) Other relevant information can be collected by the relevant desk officer(s). Further information regarding the activities of the fleets, such as fishing and landing locations, trade data, catch composition, species characteristics and ecological status, as well as the feasibility and the effects of the various policy options will be gathered.
- (iv) The information gathering will be done internally. No external contractor will be involved.

Which stakeholders & experts have been/will be consulted, how and at what stage?

In general, the sector, scientific bodies and NGOs alike will be consulted.

Given that the vessels holding special permits carry out their activities worldwide, all Regional Advisory Councils (RACs) as well as ACFA should be consulted. STECF's, ICES's, ICCAT's and IOTC's scientific expertises will be also used. Finally, the major relevant NGOs such as Shark Alliance, Pew Charitable Trusts etc are also planned to be involved in the consultation.

The consultation will be public, via internet. However, the RACs and ACFA will also be consulted directly.