

ROADMAP

Title of the initiative: **Proposal for a European Union Plan of Action for Reducing Incidental Catches of Seabirds in Fishing Gears** (2009/MARE/071)

Type of initiative (CWP/Catalogue/Comitology): 2010 CWP

Lead DG/contact person/details: DGMARE/Unit A2

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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?

In the framework of the Code of Conduct for responsible fisheries (in particular Articles 7.6.9 and 8.5), the FAO Committee on Fisheries (COFI) adopted in 1999 the International Plan of Action (IPOA) for reducing the incidental catches of seabirds in longline fisheries (IPOA-Seabirds). The IPOA-Seabirds is voluntary and all concerned States (Members and Non-members of FAO) are encouraged to implement it.

This international plan foresees the implementation by States of national plans of action to reduce the incidental catches of seabirds in longline fisheries where this occurs. This plan applies "to States in the waters of which longline fisheries are being conducted by their own or foreign vessels and to States that conduct fisheries on the high seas and in the exclusive economic zones of other States" (point 9 of the FAO Plan).

The European Commission (EC), in fulfilment of its responsibilities as a signatory of the IPOA, promoted measures to reduce the incidental mortality of seabirds in international waters. Regarding Union waters, the Commission is committed to examine the problem of incidental catches of seabirds more thoroughly and to collect the necessary amount of representative data, which will help to understand better the extent of the problem and to tackle it more effectively.

Further context to the EU Plan of Action is given by Council Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (Council Regulation (EC) No 2371/2002¹) objectives include minimising the impacts of fishing activities on the marine environment, in ways to integrate environmental protection requirements, in agreement with Article 11 of the Treaty on the Functioning of the European Union. Furthermore, the improvement of fishing methods with a view to reducing discards, incidental catches and impact on habitats is one of the priority measures in the 2002 "EC Action Plan to Integrate Environmental Protection Requirements into the Common Fisheries Policy (CFP)" (COM(2002)186 final). Such priorities have been reiterated by the Commission in its Communication to the Council and the European Parliament on the role of the CFP in implementing an ecosystem approach to marine management (COM(2008)187 final).

The need for an EU plan of action for reducing incidental catches of seabirds was reiterated in the EU Biodiversity Action Plan, in annex to the Commission Biodiversity Communication "Halting the loss of biodiversity by 2010 and beyond" (COM(2006)216 final) adopted by the Commission in May

¹ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

2006.

The Birds Directive (79/409²) which relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States is the main reference as it covers the protection, management and control of the bird species.

In its preamble, the Directive calls for measures that must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and inter alia their capture and killing by man. More concretely, it proposes the banning of the various means, devices or methods of large-scale or non-selective capture or killing and hunting because of the excessive pressure which they exert or may exert on the numbers of the species concerned.

The Habitat Directive (92/43³) will also have to be taken into account as another way to reduce seabird mortality will be to protect their nesting areas. It has to be reminded that of the many seabird species not all of them are migratory species. Many species live in the coastal areas and can be subject either of incidental catches or of mortality due to habitat deterioration. Member States have to designate Special Areas of Conservation (SAC) to contribute to a sustainable development of seabirds. At international level, the EU is a Contracting party of the Convention on the conservation of migratory species of wild animals (Bonn Convention). This Convention acknowledges the importance of protecting migratory species being endangered. Species are included in Appendix I (for an immediate protection) or Appendix II (to conclude international agreement), as for example Southern Hemisphere albatrosses and several petrels' species on Appendix II.

The EU also cooperates closely with Regional Fisheries Organisations which also address the problem of incidental catches of seabirds and has over the past years consistently promoted the adoption of measures for the protection of seabirds within these organisations. The EU will continue to promote the adoption of new measures or the improvements to current measures for the protection of seabirds within Regional Fisheries Management Organisations (RFMOs) in order to address the problems caused by fishing gear.

What are the main problems identified?

Seabirds are often seen as indicators of a productive fishing ground and fishermen profit from such presence. In turn, seabirds also learned to take advantage from the fishing operations providing them with an easy meal. Unfortunately, this exposes seabirds to new dangers, as they get caught in the fishing gear and often die. This has been the subject of great concern both at EU and at global level. High mortality rates of seabirds are mainly attributed to longline gears and gillnets.

From the fisheries side, the interactions with seabirds have also an impact on fishing productivity and profitability. It is understood that fishermen experience losses of bait and fishing opportunities, when a bird competes for bait or gets caught in the fishing gear. In addition, fishermen do not have interest in catching birds instead of valuable fish. The reduction of interactions between seabirds and fishing gears should be able to solve both environmental conservation and economic problems.

In EU waters and in the Mediterranean Sea, the following problems concerning incidental catches have so far been identified:

² Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

- There is sufficient qualitative information to identify the main species of seabirds that are usually caught in longlines. However, quantitative information on incidental catches is very localised and insufficient to assess the magnitude of seabird mortality in fishing gears and how the mortality rate induced by incidental catches affects the relevant seabird populations.
- The present available data indicate that substantial incidental catches of seabirds are occurring in EU longline fisheries in the Mediterranean, in particular for Cory's shearwater (species listed in Annex I of Birds Directive), and at the Grand Sol fishing grounds southwest of Ireland.
- According to recent estimates, the Balearic shearwater and the Yelkouan shearwater may be under severe threat as a result of their interaction with fishing operations in the Mediterranean. These species have been classified as Critically Endangered and Near Threatened and both are listed in Annex I of Birds Directive, meaning that these species are subject to special conservation measures concerning their habitat, especially through the establishment of a coherent network of Special Protection Areas (SPAs).
- Diving seabirds are abundant in coastal waters and shallow offshore banks of the Baltic and the North Sea in Northern Europe. These are the most common species caught in gillnets. The actual magnitude and significance of the mortality caused by entangling nets remains largely unknown. These are widely used in small-scale coastal fisheries in the Baltic Sea and the North Sea, but are poorly monitored.

Clearly, lack of information is a major constraint to clearly understand the effects that fishing mortality has in seabird population. Nevertheless, by virtue of the precautionary principle, and considering the information above, action is needed to reduce the interaction between seabirds and fishing gear.

Who is affected?

Fishermen operating with longlines and gillnets are affected by the measures adopted since they may have to adapt fishing gear or change their fishing behaviour to achieve a reduction in interactions with seabirds.

(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)?

Under the Treaty, the EU has exclusive competence to manage fishing activities for conservation purposes. Article 3, 1 (d) of the Treaty on the Functioning of the European Union says the following: "The Union shall have exclusive competence in the following areas (...) d) the conservation of marine biological resources under the common fisheries policy".) Thus, the principle of subsidiarity does not apply.

B. Objectives of EU initiative

What are the main policy objectives?

The proposed initiative aims to reduce the incidental catches of seabirds by reducing as much as possible the interaction between seabirds and fishing gear, namely longlines and gillnets. This general objective will be reached in a gradual way, starting by taking action in the problematic areas already identified: the Gran Sol fishing grounds southwest of Ireland, Mediterranean waters, North Sea and Baltic waters. In addition, to target this main aim, it can be expected the improvement in knowledge of this problematic.

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

No. The basis for this action plan, namely the environmental and fisheries policies, are kept unchanged and no new policy needs to be developed.

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) A first policy option would be taking no further action that would go beyond what already exists in EU environmental and fisheries policies. Fishing industry by itself could support actions voluntarily to mitigate the problem of interactions between seabirds and fisheries.

A second option could consider the adoption of strictly binding ad-hoc legislation.

As a third option, the development of a package of measures adapting current CFP instruments where necessary (e.g. Inclusion of mitigation measures in the Technical Measures Regulations) and the gradual introduction of management tools in fishing areas beyond the ones already identified could be considered.

(ii) Both binding and non binding instruments should be implemented through a Plan of Action.

(iii) The initiative does not plan to go beyond the routine up-date of existing legislation.

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

The action proposed will support existing environmental policies addressing nature protection and conservation, namely Birds Directive (79/409), Habitat Directive (92/43) and the Marine Strategy Framework Directive (2008/56).

Explain how the options respect the proportionality principle

The proportionality principle states that when various forms of intervention are available to the EU, it must, where the effect is the same, opt for the approach which leaves the greatest freedom for the Member States and individuals. As the options are still more concretely to be defined, the proportionality of the content of each option will be addressed in the planned impact assessment.

See also under D.

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?

If the first option – no policy change - was chosen, the existing problems described above may improve but are likely to continue to subsist: high mortality of seabirds will persist in fishing gear, and fishing productivity and profitability will continue to be affected. For the specific case of seabird species already under severe threat, fishing mortality will continue to represent an important factor that may lead to the extinction of the species. In addition, the credibility of the EU would be at stake since it would not honour the international compromise with FAO.

The second option - implementing restrictive rules in fisheries - may be effective in mitigating incidental catches, but it entails the rise of micro-management leading to very complicated rules and high enforcement costs. From the application of such actions it could be expected significant opposition from Member States and industry. The implementation of the regulation by itself will not prevent seabirds from being caught and killed by fishing gear.

As mentioned before, the third option - the proposed action plan - would aim for the reduction of incidental catches of seabirds achieved by gradual application of mitigation measures. This third option foresees the application of such measures in the Grand Sol fishing grounds southwest of Ireland, western Mediterranean waters, concerning longline fisheries, and North Sea and Baltic waters, for gill net fisheries. In the case of the first two areas, this will allow to tackle the already known problem and promote the use of mitigation measures by the industry. These mitigation

measures are foreseen to be applied in current Regulations. However, due to the heavy administrative procedure, it will not be possible to address immediately the critical situations. On the other hand, the regulated application of management measures to minimise the problem of incidental catches combined with other actions aimed to promote best practices among the industry will benefit both seabirds and industry. There are a number of general mitigation measures proven to reduce significantly the incidental catches of seabirds. These are relatively low cost measures, which are easy to implement. The application of mitigation measures for gillnet fisheries may be a slower process, as the available mitigation measures incur bigger costs and some of the available management options, such as closure of fishing grounds, may arise problems with the industry.

The nature of this proposal is to mitigate both environmental conservation and economic problems. In this sense, the social impacts of this initiative are indirect and, concerning their magnitude, we can assume that they are marginal.

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?

The options do not directly affect on the EU-budget. However, where the cost of the technical adaptations for mitigation, which is usually low, can not be borne easily by the fishing industry, Member States should make use of the possibilities offered by axis I of the European Fisheries Fund (EFF) or any other financing mechanisms in order to actively promote the use of mitigation devices. For pilot projects which may be outside the scope of the EFF and for which the protection of habitats and/or species is the main objective, financial support is available under LIFE+. In any case, it is expected that the Impact Assessment will deliver more information on the expenditures foreseen and alternative funding sources.

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

(i) and (ii): Yes. As it was already referred above, it could be expected that the no-policy-change option would represent less or no simplification/administrative burden, whereas implementing ad-hoc legislation under option 2 would represent the opposite situation. The third option would represent a balanced situation, the most cost-effective.

(iii) The promotion of actions through RFMO's may contribute to the improvement of activities carried out by third countries. In any case, the impacts are expected to be insignificant.

E. Planning of further impact assessment work

When will the impact assessment work start?

The impact assessment has started with the preparation of the Roadmap and the Terms of Reference of the study mentioned beforehand 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) In ways to improve the knowledge of interactions between seabirds and fishing gears in these waters, the Commission requested to International Council for the Exploration of the Sea (ICES) to provide a general assessment of the situation in EU waters, identifying the main areas affected, as well as the main type of fisheries responsible for seabirds' mortality. According to ICES the present available data indicate that seabird mortality is substantial in the Northeast Atlantic and Mediterranean longline fisheries.

(ii) Being a new initiative, this impact assessment does not build on already existing impact assessments or evaluations. However, it will be based in the results of a consultation to experts/stakeholders, an impact assessment study and further scientific documentation available.

(iii) and (iv) There are few data to indicate the true extent of incidental catches of seabirds in EU waters. Ideally, the Plan of Action should be based in a better knowledge on the impacts that fishing gears have on seabird populations. Nevertheless, by virtue of the precautionary principle, available information identifies critic areas were management action must be developed. In this sense, we will require the assistance of an external consultant to deliver an assessment on the appropriateness of mitigation measures to be applied in the pelagic and demersal longline fisheries at Gran Sol area and Mediterranean Sea, and in gillnet fisheries taking place in the Baltic and North Sea. The study should be based on direct consultation with the fishing fleets/fishermen operating in these areas.

(v) Please see section A (i). The consultation will address the question of proportionality.

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

A non-paper on "EU action for Reducing Incidental Catches of Seabirds in Fishing Gears" will be available for consultation on Commission's dedicated internet tools ("Your Voice in Europe"). The consultation should be available to all stakeholders, particularly the relevant Regional Advisory Councils (RACs), the Advisory Committee for Fisheries and Aquaculture (ACFA), NGO's (e.g.: Birdlife International), Member States, etc. This action is foreseen to start in April 2010. It is expected to have further consultation opportunities through Commission's participation in ACFA and RACs' meetings.