



2024/3089

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COMMISSION DELEGATED REGULATION (EU) 2024/3089

of 30 September 2024

amending Regulation (EU) 2019/1241 as regards measures to reduce incidental catches of common dolphin (*Delphinus delphis*) and other small cetaceans in the Bay of Biscay

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) No 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) NO 2187/2005 ⁽¹⁾, and in particular Article 15(2) thereof,

Whereas:

- (1) According to Article 3(2)(b) of Regulation (EU) 2019/1241, technical measures are to contribute to minimise and where possible eliminate catches of sensitive marine species, including those listed under Council Directive 92/43/EEC ⁽²⁾ and Directive 2009/147/EC of the European Parliament and of the Council ⁽³⁾, that are a result of fishing.
- (2) According to Article 21 of Regulation (EU) 2019/1241, a joint recommendation submitted for the purpose of adopting the measures referred to in Article 15(2), in relation to the protection of sensitive species and habitats, may in particular specify the use of additional or alternative measures to those referred to in Annex XIII to minimise the incidental catches of the species referred to in Article 11, provide information on the effectiveness of existing mitigation measures and monitoring arrangements and specify restrictions on the operation of certain gear or introduce a total prohibition on the use of certain fishing gear within an area where such gear represent a threat to the conservation status of species in that area as referred to in Articles 10 and 11 or other sensitive habitats. Article 11(1) refers to marine mammals or marine reptiles listed in Annexes II and IV to Directive 92/43/EEC and species of seabirds covered by Directive 2009/147/EC.
- (3) The common dolphin (*Delphinus delphis*) is a strictly protected species according to Annex IV to Directive 92/43/EEC, which lists all cetaceans as species of Community interest in need of strict protection. According to ICES, the abundance of common dolphin in the Bay of Biscay is 634 286 individuals ⁽⁴⁾. Incidental catches are considered a high threat and is estimated from at-sea observations at 5 938 common dolphins per year between 2019 and 2021. This value is above the Potential Biological Removal (PBR) ⁽⁵⁾ limit, estimated at 4 926 individuals per year ⁽⁶⁾.

⁽¹⁾ OJ L 198, 25.7.2019, p. 105.

⁽²⁾ 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).

⁽³⁾ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

⁽⁴⁾ ICES(2020). EU request on emergency measures to prevent bycatch of common dolphin (*Delphinus delphis*) and Baltic Proper harbour porpoise (*Phocoena phocoena*) in the Northeast Atlantic, <https://doi.org/10.17895/ices.advice.6023>.

⁽⁵⁾ Limit estimated by ICES to ensure that a population will remain at, or recover to, its maximum net productivity level (typically 50 % of the populations carrying capacity), with 95 % probability, within a 100-year period.

⁽⁶⁾ ICES(2023). Workshop on mitigation measures to reduce bycatch of short-beaked common dolphins in the Bay of Biscay (WKEMBYC2), <https://doi.org/10.17895/ices.pub.21940337.v1>.

- (4) The distribution of small delphinids (common dolphins, striped dolphins and unidentified common or striped dolphins) was more dispersed in 2021 than in the past and sightings of small delphinids over the shelf area of the Bay of Biscay were numerous ⁽⁷⁾. A series of large-scale surveys started 30 years ago with the aim of monitoring whales, dolphins and porpoises on the shelf and offshore waters of the Northeast Atlantic. Part of the overall aim is to assess the impact of direct mortality caused by human activities and to feed into the information that will be the basis to identify any conservation action necessary to increase the conservation status of cetaceans ⁽⁸⁾.
- (5) Annex XIII to Regulation (EU) 2019/1241 lays down rules at regional level regarding mitigation measures to reduce incidental catches of sensitive species including cetaceans, by detailing restricted areas, periods and gear limitations. Member States should take the necessary steps to collect scientific data on incidental catches of sensitive species and monitor and assess the effectiveness of the mitigation measures established under Annex XIII.
- (6) According to point 3 of that Annex, Member States are to submit joint recommendations for additional mitigation measures for the reduction of incidental catches of sensitive species, based on Article 15 of that Regulation, where scientific evidence, validated by the International Council for the Exploration of the Sea (ICES) or by the Scientific, Technical and Economic Committee for Fisheries (STECF), shows negative impacts of the fishing gears on the species concerned.
- (7) In its advice of 29 June 2023 ⁽⁹⁾, ICES reassessed the fifteen mitigation scenarios that it had tested in its advice of 26 May 2020 ⁽¹⁰⁾ and advised that six of those scenarios are likely to reduce incidental catches of the common dolphin in fisheries in the Bay of Biscay below the potential biological removal (PBR) limit, but only for mortality estimates derived from at-sea sampling. Moreover, ICES considered that none of the mitigation scenarios would result in a reduction in annual common dolphin mortality below the PBR for mortality estimates derived from both at-sea sampling and strandings. ICES also advised that: (i) temporal closures in Subarea 8 in certain métiers are likely to be the most effective management measures for reducing incidental catch mortality in the short term; and (ii) that the performance of pingers is conditional upon the pingers performing optimally in certain gears.
- (8) On 17 January 2024, France adopted spatio-temporal measures for foreign-flagged vessels, aimed at reducing incidental catches of small cetaceans in the Bay of Biscay for the year 2024 ⁽¹¹⁾, which supplemented the measures already in force for French vessels by the Decree of 24 October 2023, amended by the order of the Conseil d'Etat of 22 December 2023. France established a four-week closure where fishing with vessels over 8 meters using pelagic trawls (OTM, PTM), demersal pair trawls (PTB), gillnets (GNS), trammel nets (GTR) and purse seines (PS) was prohibited from 22 January 2024 to 20 February 2024 within French waters of ICES subareas 8 a, b, c, and e. On 18 January 2024, Spain also adopted a national regulation to implement the same closure in French waters of ICES area 8 for the Spanish fleet ⁽¹²⁾.

⁽⁷⁾ ICES. 2023. Workshop on mitigation measures to reduce bycatch of short-beaked common dolphins in the Bay of Biscay.

⁽⁸⁾ ASCOBANS. Small Cetaceans in European Atlantic waters and the North Sea (SCANS-III): Project Introduction. 20th ASCOBANS Advisory Committee Meeting https://www.ascobans.org/sites/default/files/document/AC20_4.1.a_SCANSIII.pdf.

⁽⁹⁾ ICES(2023). EU request on mitigation measures to reduce bycatches of common dolphin (*Delphinus delphis*) in the Bay of Biscay (ICES Subarea 8), <https://doi.org/10.17895/ices.advice.23515176>.

⁽¹⁰⁾ ICES (2020). EU request on emergency measures to prevent bycatch of common dolphin (*Delphinus delphis*) and Baltic Proper harbour porpoise (*Phocoena phocoena*) in the Northeast Atlantic, <https://doi.org/10.17895/ices.advice.6023>.

⁽¹¹⁾ Arrêté du 17 janvier 2024 établissant des mesures spatio-temporelles pour les navires battant pavillon étranger, visant la réduction des captures accidentelles de petits cétacés dans le golfe de Gascogne pour l'année 2024.

⁽¹²⁾ Orden APA/24/2024, de 18 de enero, por la que se modifica la Orden APA/1200/2020, de 16 de diciembre, por la que se establecen medidas de mitigación y mejora del conocimiento científico para reducir las capturas accidentales de cetáceos durante las actividades pesqueras.

- (9) On 20 June 2024, the regional group of the South Western Waters (Belgium, Spain, France, the Netherlands and Portugal) submitted a joint recommendation proposing specific measures to reduce incidental catches of small cetaceans in the Bay of Biscay (ICES Subarea 8). The Member States proposed two management measures for the reduction of incidental catches, as well as ancillary monitoring measures to improve the knowledge on the interactions between cetaceans and fishing activities. The management measures consist in the use of acoustic deterrent devices for all mid-water pelagic trawls and demersal twin trawls, and a fishing closure from 22 January to 20 February. The monitoring measures to collect scientific data consist in recordings of incidental catches of small cetaceans in the logbook, as well as recordings made by covering certain percentages of the fishing effort with observers or electronic monitoring systems incorporating cameras on board.
- (10) The joint recommendation also proposed that: (i) trammel and gillnetters, pelagic trawlers and demersal pair trawlers are encouraged to experiment with new gears and devices to exclude cetaceans; and (ii) Member States collect and share data on incidental catches with ICES and between themselves.
- (11) While developing the joint recommendation, the South Western Waters Advisory Council and the Pelagic Advisory Council were invited to attend, in part, meetings of the South Western Waters High Level Group and the Technical Group.
- (12) In its plenary meeting on 12-16 July 2024, the STECF considered the measures proposed in the joint recommendation and concluded that while they remain less stringent than the measures advised by ICES as likely to reduce incidental catches of the common dolphin in fisheries in the Bay of Biscay below the PBR level, they represent a step forward in attempting to reduce such catches ⁽¹³⁾. The STECF also considered that while there is not yet enough data to evaluate the performance of the closure in relation to PBR limit, as a result of the measures adopted by France on 17 January 2024, the total number of strandings of common dolphin has decreased compared to 2023.
- (13) The Member States updated the joint recommendation on 19 September 2024 to clarify the measurement of the fishing effort that applies to gillnets and trammel nets and add combined gillnets and trammel nets (GTN) to the list of gears to which the closure applies.
- (14) The Expert Group on Fisheries and Aquaculture was consulted on 20 September 2024.
- (15) The Commission considers that while the measures proposed in the joint recommendation are less stringent than the measures advised by ICES in the six mitigation scenarios that are likely to reduce incidental catches below the PBR limit, they will contribute to reducing incidental catches of common dolphin in the Bay of Biscay in 2025.
- (16) The Commission also notes that: (i) while the STECF highlights that the use of pingers is less conclusive for dolphins than for other species, it also refers to recent studies showing a lower proportion of incidental catches when dolphin deterrent devices are deployed; (ii) the STECF considers that ongoing research efforts, notably regarding the effectiveness of acoustic deterrent devices, should soon deliver results; and (iii) regarding interactions between dolphins and other small cetaceans and fisheries, the STECF is of the view that electronic monitoring is effective for monitoring incidental catch events and collecting data that will inform the incidental catch rates.
- (17) Regulation (EU) 2019/1241 should therefore be amended accordingly, except for the measures summarised in recital 10, given that: (i) Regulation (EU) 2019/1241 already allows trammel and gillnetters, pelagic trawlers and demersal pair trawlers to experiment with new gears and devices to exclude cetaceans; and (ii) Member States are already under a legal obligation to collect and share the data on incidental catches with ICES and between themselves.

⁽¹³⁾ Scientific, Technical and Economic Committee for Fisheries (STECF) – 76th Plenary report (STECF-PLN-24-02), Publications Office of the European Union, Luxembourg, 2024.

- (18) Member States should ensure that the use of cameras on board complies with the rules on data protection in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁴⁾. Therefore, recorded video material obtained from cameras on board should only concern the gear and the parts of the vessels where catches are brought on board, handled, stored and all areas where incidental catches of small cetaceans can occur, and should not, to the extent possible, allow the identification of natural persons. The competent authorities should also ensure anonymisation of personal data as soon as possible.
- (19) This Delegated Regulation is without prejudice to additional measures for the protection of the common dolphin and other small cetaceans that the Commission may adopt under Union law, including in relation to the enforcement of Council Directive 92/43/EEC ⁽¹⁵⁾ or, in case of duly justified imperative grounds of urgency relating to a serious threat to the conservation of marine biological resources or to the marine ecosystem pursuant to Article 12 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽¹⁶⁾, and more stringent national measures that Member States may adopt for that purpose in their waters in accordance with Regulation (EU) No 1380/2013 and Regulation (EU) 2019/1241.
- (20) As the measures provided for in this Regulation have a direct impact on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force as soon as possible,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XIII to Regulation (EU) 2019/1241 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 September 2024.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁴⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹⁵⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) (OJ L 206, 22.7.1992, p. 7).

⁽¹⁶⁾ 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 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

ANNEX

Part A of Annex XIII to Regulation (EU) 2019/1241 is amended as follows:

(1) the following entry is added to the table in point 1.1(b) of point 1:

'Area	Gear
ICES Subarea 8	Mid-water pelagic trawls (OTM, PTM, TM) and demersal twin trawls (PTB) (*)
(*) This measure shall apply until 31 December 2025.;	

(2) the following point is added:

‘4. **Special measures in the Bay of Biscay (ICES Subarea 8)**

4.1. Fishing prohibition:

Fishing shall be prohibited in French waters up to the outer limit of the exclusive economic zone of France within ICES Subarea 8 between 22 January and 20 February 2025 for vessels above 8 metres carrying on board pelagic trawls (PTM, OTM), demersal pair trawls (PTB), purse seines (PS), set gillnets (GNS), trammel nets (GTR) or combined gillnets and trammel nets (GTN).

4.2. Monitoring measures:

4.2.1. The following monitoring measures shall apply until 31 December 2025.

4.2.2. Masters of all Union fishing vessels shall record separately in the fishing logbook incidental catches of common dolphins and other small cetaceans*, regardless of quantities and weight;

4.2.3. Member States shall collect data on catches of common dolphins and other small cetaceans through on-board observers or electronic monitoring systems incorporating cameras, by covering:

- at least 1 % of the total fishing effort measured in number of days at sea for pelagic pair trawls (PTM), bottom pair trawls (PTB), midwater otter trawls (OTM), trammel nets (GTR), set gillnets (GNS) and purse seine (PS) fishing all year long, and
- at least 5 % of the total fishing effort measured in number of days at sea for pelagic pair trawls (PTM), bottom pair trawls (PTB) and midwater otter trawls (OTM) fishing from January to March 2025;

4.2.4. during the high-risk period of incidental catches:

- Member States may increase monitoring coverage on trammel nets (GTR) and set anchored gillnets (GNS) between 2 % and 5 % of the total fishing effort measured in days at sea;
- vessels may be equipped with electronic monitoring systems incorporating cameras.

* Species of the family *Delphinidae* and the family *Phocoenidae* that are present (permanently or temporally) in ICES subarea 8.’