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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.10.2009
COM(2009) 585 final

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Community with regard to proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) at the sixteenth meeting of the Contracting Parties

EXPLANATORY MEMORANDUM

- (1) The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) aims to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that area so as to contribute towards its sustainable development. It is an intergovernmental treaty adopted as a Regional Seas Programme under the aegis of the United Nations Environment Programme. Since 1977 the European Community has been a Party to the Barcelona Convention¹ and in 1999 approved the Protocol concerning specially protected areas and biological diversity in the Mediterranean and the annexes thereto².
- (2) The meeting of the Contracting Parties is the decision-making body of the Convention with powers to adopt, review and amend as required the annexes to the Convention or to its protocols, on the basis of amendments proposed by Contracting Parties. A number of proposals have been made to amend Annexes II and III to the above-mentioned Protocol. These proposals were submitted for evaluation to the meeting of the National Focal Points held in Floriana (Malta) from 3 to 6 June 2009, with a view to being adopted at the sixteenth meeting of the Contracting Parties to the Barcelona Convention, which will take place in Marrakesh (Morocco) from 3 to 5 November 2009.
- (3) In accordance with Article 23 of the Convention, an amendment to the Annexes will become effective for all Contracting Parties on expiry of a period determined by the Contracting Parties concerned when adopting the amendment, except for those Contracting Parties which make a reservation. It is therefore necessary for the Council to take a decision based on Article 300(2), second subparagraph, of the EC Treaty, for the purpose of establishing the positions to be adopted on behalf of the Community at the sixteenth meeting of the Contracting Parties.
- (4) The proposals for amendments that have been tabled would not require any change in Community law. They do not conflict with the Birds³ and the Habitats⁴ Directives or the Common Fisheries Policy (CFP)⁵. The Community should support these proposals on the basis of the following considerations: (1) they are scientifically sound; (2) for reasons of consistency between its internal and external action; and (3) the EC is committed to international cooperation for the protection of biodiversity, in accordance with both Article 5 of the UN Convention on Biological Diversity and the target agreed at the World Summit on Sustainable Development “to significantly reduce the current rate of biodiversity loss by 2010”.

¹ Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft, OJ L 240, 19.9.1977, p. 1.

² Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention), OJ L 322, 14.12.1999, p. 1.

³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.4.1979, p. 1.

⁴ 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.

⁵ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, OJ L 358, 31.12.2002, p. 59.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with the second subparagraph of Article 300(2), thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community is a Contracting Party to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention)⁶ and has approved the Protocol concerning specially protected areas and biological diversity in the Mediterranean and the annexes thereto⁷.
- (2) The meeting of the Contracting Parties is the decision-making body of the Convention, and the powers conferred upon it include the capacity to amend as required the annexes to the Convention and to its protocols.
- (3) For the sixteenth meeting of the Contracting Parties, which will take place in Marrakesh (Morocco) from 3 to 5 November 2009, Contracting Parties have presented proposals to change the taxonomic name of certain species and to give protection to several additional species by amending Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) of the Convention.
- (4) In accordance with Article 23 of the Convention, an amendment to the Annexes of the Protocol shall become effective for all Contracting Parties on expiry of a period determined by the Contracting Parties concerned when adopting the amendment, except for those Contracting Parties which notify in writing the Depository.
- (5) The proposals for amendments tabled would not require any change in Community law.

⁶ Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft, OJ L 240, 19.9.1977, p. 1.

⁷ Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention), OJ L 322, 14.12.1999, p. 1.

- (6) The Community should support these proposals because they are scientifically sound, tie in with Community legislation and with the Community's commitment to international cooperation for the protection of biodiversity, and are in accordance with both Article 5 of the UN Convention on Biological Diversity⁸ and the target agreed at the World Summit on Sustainable Development in 2002 to significantly reduce the current rate of biodiversity loss by 2010,

HAS DECIDED AS FOLLOWS:

Sole Article

At the sixteenth meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), the Commission shall present the following position of the Community at the voting on the proposals for giving protection to several species by amending Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) of that Convention:

- (1) the Commission is hereby authorised to support the modification of the denomination of certain species on the list of species of Annexes II and III to the Protocol, in accordance with the Annex to this Decision⁹;
- (2) the Commission is hereby authorised to support the addition of the following species to Annex II:
- (a) *Cymodocea nodosa* (Ucria) Ascherson;
 - (b) *Cystoseira* genus, except *Cystoseira compressa*
 - (c) *Fucus virsoides* J. Agardh;
 - (d) *Gymnogongrus crenulatus* (Turner) J. Agardh 1851;
 - (e) *Kallymenia spathulata* (J. Agardh) Codomier ex P.G. Parkinson;
 - (f) *Sargassum acinarium* (Linnaeus) Setchell;
 - (g) *Sargassum flavifolium* Kützing;
 - (h) *Sargassum hornschuchii* C. Agardh;
 - (i) *Sargassum trichocarpum* J. Agardh;
 - (j) *Sphaerococcus rhizophylloides* J.J. Rodríguez 1895;
 - (k) *Tenarea tortuosa* (Esper) Lemoine 1910;

⁸ Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity, OJ L 309, 13.12.1993, p. 1.

⁹ Considering the relative uncertainty on the population structure and conservation status of the species *Lamna nasus*, *Isurus oxyrinchus* and *Leucoraja melitensis*, a close monitoring of these species is recommended and if updated scientific assessment so requires, the Commission will consider which additional protection measures for these species would be required. The Commission also endeavours to strengthen further the protection of these species in the context of Regional Fisheries Management Organisations.

- (l) *Titanoderma trochanter* (Bory) Benhissoune, Boudouresque, Perret-Boudouresque et Verlaque;
 - (m) *Ceryle r. rudis* (Linnaeus, 1758);
 - (n) *Charadrius alexandrinus* (Linnaeus, 1758);
 - (o) *Charadrius leschenaultii columbines* (Lesson, 1826);
 - (p) *Halcyons. smyrnensis* (Linnaeus, 1758);
 - (q) *Larus armenicus* (Buturlin, 1934);
 - (r) *Larus genei* (Breme, 1839);
 - (s) *Larus melanocephalus* (Temminck, 1820);
 - (t) *Sterna caspia* (Pallas, 1770);
 - (u) *Sterna nilotica* (Gmelin, JF, 1789);
 - (v) *Squatina* spp: *Squatina aculeata* (Dumeril, in Cuvier, 1817), *Squatina oculata* (Bonaparte, 1840) *Squatina squatina* (Linnaeus, 1758);
 - (w) *Pristis* spp - *Pristis pectinata* (Latham, 1794); *Pristis pristis* (Linnaeus, 1758);
 - (x) *Oxynotus centrina* (Linnaeus, 1758);
 - (y) *Carcharias taurus* (Rafinesque, 1810);
 - (z) *Gymnura altavela* (Linnaeus, 1758);
 - (aa) *Dipturus batis* (Linnaeus, 1758);
 - (bb) *Rostroraja alba* (Lacepède, 1803);
 - (cc) *Odontaspis ferox* (Risso, 1810);
 - (dd) *Rhinobatos* spp - *Rhinobatos cemiculus* (E. Geoffroy Saint-Hilaire, 1817); *Rhinobatos rhinobatos* (Linnaeus, 1758).
- (3) the Commission is hereby authorised to support the addition of the following species to Annex III:
- (a) *Carcharhinus plumbeus* (Nardo, 1827);
 - (b) *Squalus acanthias* (Linnaeus, 1758);
 - (c) *Mustelus* spp: *Mustelus asterias* (Cloquet, 1821), *Mustelus mustelus* (Linnaeus, 1758) *Mustelus punctulatus* (Risso, 1826);
 - (d) *Galeorhinus galeus* (Linnaeus, 1758);
 - (e) *Alopias vulpinus* (Bonnaterre, 1788);
 - (f) *Heptranchias perlo* (Bonnaterre, 1788);
 - (g) *Centrophorus granulosus* (Bloch & Schneider, 1801);
 - (h) *Leucoraja circularis* (Couch, 1838);
 - (i) *Leucoraja melitensis* (Clark, 1926);
 - (j) *Sphyrna* spp: *Sphyrna lewini* (Griffith & Smith, 1834). *Sphyrna mokarran* (Rüppell, 1837) *Sphyrna zygaena* (Linnaeus 1758).

Done at Brussels, [...]

For the Council
The President
[...]

Annex

Table I: Changes proposed to Annex II

Present name in the Annexe II	Proposed changes
Magnoliophyta	Magnoliophyta
<i>Posidonia oceanica</i>	<i>Posidonia oceanica</i> (L.) Delille
<i>Zostera marina</i>	<i>Zostera marina</i> Linnaeus
<i>Zostera noltii</i>	<i>Zostera noltii</i> Hornemann
Chlorophyta	Chlorophyta
<i>Caulerpa ollivieri</i>	<i>Caulerpa ollivieri</i> Dostál
Phaeophyta	Heterokontophyta
<i>Cystoseira amentacea</i> (var. <i>stricta</i> & var. <i>spicata</i>)	<i>Cystoseira amentacea</i> (C. Agardh) Bory de Saint-Vincent (including var. <i>stricta</i> Montagne and var. <i>spicata</i> (Ercegovic) G. Giaccone)
<i>Cystoseira mediterranea</i>	<i>Cystoseira mediterranea</i> Sauvageau
<i>Cystoseira sedoides</i>	<i>Cystoseira sedoides</i> (Desfontaines) C. Agardh
<i>Cystoseira spinosa</i> (inclu <i>C. adriatica</i>)	<i>Cystoseira spinosa</i> Sauvageau (including <i>C. adriatica</i> Sauvageau)
<i>Cystoseira zosteroides</i>	<i>Cystoseira zosteroides</i> C. Agardh
<i>Laminaria rodriguezii</i>	<i>Laminaria rodriguezii</i> Bornet
Rhodophyta	Rhodophyta
<i>Goniolithon byssoides</i>	<i>Titanoderma ramosissimum</i> (Heydrich) Bressan & Cabioc'h (ex. <i>Goniolithon byssoides</i>)
<i>Lithophyllum lichenoides</i>	<i>Lithophyllum byssoides</i> (Lamarck) Foslie (ex. <i>Lithophyllum lichenoides</i>)
<i>Ptilophora mediterranea</i>	<i>Ptilophora mediterranea</i> (H. Huvé) R.E. Norris
<i>Schimmelmanna schousboei</i>	<i>Schimmelmanna schousboei</i> (J. Agardh) J. Agardh
Porifera	Porifera
<i>Asbestopluma hypogea</i>	<i>Asbestopluma hypogea</i> Vacelet and Boury-Esnault 1995
<i>Aplysina sp. plur.</i>	<i>Aplysina cavernicola</i> Vacelet, 1959 & <i>Aplysina aerophoba</i> Schmidt, 1862
<i>Axinella cannabina</i>	<i>Axinella cannabina</i> (Esper, 1794)
<i>Axinella polypoides</i>	<i>Axinella polypoides</i> Schmidt, 1862
<i>Geodia cydonium</i>	<i>Geodia cydonium</i> (Jameson, 1811)
<i>Ircinia foetida</i>	<i>Sarcotragus foetidus</i> Schmidt, 1862 (ex- <i>Ircinia foetida</i>)

Ircinia pipetta

Petrobiona massiliana

Tethya sp. plur.

Cnidaria

Astroides calycularis

Errina aspera

Gerardia savaglia

Bryozoa

Hornera lichenoides

Mollusca

Charonia lampas (= *Ch. rubicunda* = *Ch. nodifera*)

Charonia tritonis (= *Ch. Seguenziae*)

Dendropoma petraeum

Erosaria spurca

Gibbula nivosa

Lithophaga lithophaga

Luria lurida (= *Cypraea lurida*)

Mitra zonata

Patella ferruginea

Patella nigra

Pholas dactylus

Pinna nobilis

Pinna rudis (= *P. pernula*)

Ranella olearia (= *Argobuccinum olearium* = *A. giganteum*)

Schilderia achatidea

Tonna galea

Zonaria pyrum

Crustacea

Ocypode cursor

Pachylasma giganteum

Sarcotragus pipetta (Schmidt, 1868) (ex- *Ircinia pipetta*)

Petrobiona massiliana Vacelet & Lévi, 1958

Tethya aurantium (Pallas, 1766) & *Tethya citrina* Sarà e Melone, 1965

Cnidaria

Astroides calycularis (Pallas, 1766)

Errina aspera (Linnaeus, 1767)

Savalia savaglia Nardo, 1844 (ex *Gerardia savaglia*)

Bryozoa

Hornera lichenoides (Linnaeus, 1758)

Mollusca

Charonia lampas lampas (Linnaeus, 1758)

Charonia tritonis variegata (Lamarck, 1816)

Dendropoma petraeum (Monterosato, 1884)

Erosaria spurca (Linnaeus, 1758)

Gibbula nivosa A.Adams, 1851

Lithophaga lithophaga (Linnaeus, 1758)

Luria lurida (Linnaeus, 1758)

Mitra zonata Marryat, 1818

Patella ferruginea Gmelin, 1791

Patella nigra (da Costa, 1771)

Pholas dactylus Linnaeus, 1758

Pinna nobilis Linnaeus, 1758

Pinna rudis (= *pernula*) Linnaeus, 1758

Ranella olearia (Linnaeus, 1758)

Schilderia achatidea (Gray in G.B. Sowerby II, 1837)

Tonna galea (Linnaeus, 1758)

Zonaria pyrum (Gmelin, 1791)

Crustacea

Ocypode cursor (Linnaeus, 1758)

Pachylasmus giganteum (Philippi, 1836)

Echinodermata

Asterina pancerii

Centrostephanus longispinus

Ophidiaster ophidianus

Pisces

Acipenser naccarii

Acipenser sturio

Aphanius fasciatus

Aphanius iberus

Cetorhinus maximus

Carcharodon carcharias

Hippocampus hippocampus

Hippocampus ramulosus

Huso huso

Lethenteron zanandreae

Mobula mobular

Pomatoschistus canestrinii

Pomatoschistus tortonesei

Valencia hispanica

Valencia letourneuxi

Reptiles

Caretta caretta

Chelonia mydas

Dermodochelys coriacea

Eretmodochelys imbricata

Lepidochelys kempii

Trionyx triunguis

Aves

Calonectris diomedea

Falco eleonora

Echinodermata

Asterina pancerii (Gasco, 1870)

Centrostephanus longispinus (Philippi, 1845)

Ophidiaster ophidianus (Lamarck, 1816)

Pisces

Acipenser naccarii Bonaparte, 1836

Acipenser sturio Linnaeus, 1758

Aphanius fasciatus (Valenciennes, 1821)

Aphanius iberus (Valenciennes, 1846)

Cetorhinus maximus (Gunnerus, 1765)

Carcharodon carcharias (Linnaeus, 1758)

Hippocampus hippocampus (Linnaeus 1758)

Hippocampus guttulatus Cuvier, 1829 (ex *Hippocampus ramulosus*)

Huso huso (Linnaeus, 1758)

Lethenteron zanandreae (Vladykov, 1955)

Mobula mobular (Bonnaterre, 1788)

Pomatoschistus canestrini (Ninni, 1883)

Pomatoschistus tortonesei Miller, 1969

Valencia hispanica (Valenciennes, 1846)

Valencia letourneuxi (Sauvage, 1880)

Reptiles

Caretta caretta (Linnaeus, 1758)

Chelonia mydas (Linnaeus, 1758)

Dermodochelys coriacea (Vandelli, 1761)

Eretmodochelys imbricata (Linnaeus, 1766)

Lepidochelys kempii (Garman, 1880)

Trionyx triunguis (Forskål, 1775)

Aves

Calonectris diomedea (Scopoli, 1769)

Falco eleonora Gén , 1834

Hydrobates pelagicus

Larus audouinii

Numenius tenuirostris

Pandion haliaetus

Pelecanus crispus

Pelecanus onocrotalus

Phalacrocorax aristotelis

Phalacrocorax pygmaeus

Phoenicopterus ruber

Puffinus yelkouan

Sterna albifrons

Sterna bengalensis

Sterna sandvicensis

Mammalia

Balaenoptera acutorostrata

Balaenoptera borealis

Balaenoptera physalus

Delphinus delphis

Eubalaena glacialis

Globicephala melas

Grampus griseus

Kogia simus

Megaptera novaeangliae

Mesoplodon densirostris

Monachus monachus

Orcinus orca

Phocoena phocoena

Physeter macrocephalus

Pseudorca crassidens

Stenella coeruleoalba

Hydrobates pelagicus (Linnaeus, 1758)

Larus audouinii Payraudeau, 1826

Numenius tenuirostris Vieillot, 1817

Pandion haliaetus (Linnaeus, 1758)

Pelecanus crispus Bruch, 1832

Pelecanus onocrotalus Linnaeus, 1758

Phalacrocorax aristotelis (Linnaeus, 1761)

Phalacrocorax pygmaeus (Pallas, 1773)

Phoenicopterus ruber Linnaeus, 1758

Puffinus yelkouan (Brünnich, 1764)

Puffinus mauretanicus (Lowe, PR, 1921)

Sterna albifrons Pallas, 1764

Sterna bengalensis Lesson, 1831

Sterna sandvicensis Latham, 1878

Mammalia

Balaenoptera acutorostrata Lacépède, 1804

Balaenoptera borealis Lesson, 1828

Balaenoptera physalus (Linnaeus, 1758)

Delphinus delphis Linnaeus, 1758

Eubalaena glacialis (Müller, 1776)

Globicephala melas (Trail, 1809)

Grampus griseus (Cuvier G. 1812)

Kogia simus (Owen, 1866)

Megaptera novaeangliae (Borowski, 1781)

Mesoplodon densirostris (de Blainville, 1817)

Monachus monachus (Hermann, 1779)

Orcinus orca (Linnaeus, 1758)

Phocoena phocoena (Linnaeus, 1758)

Physeter catodon Linnaeus, 1758 (ex- *Physeter macrocephalus*)

Pseudorca crassidens (Owen, 1846)

Stenella coeruleoalba (Meyen, 1833)

Steno bredanensis

Steno bredanensis (Cuvier in Lesson, 1828)

Tursiops truncatus

Tursiops truncatus (Montagu, 1821)

Ziphius cavirostris

Ziphius cavirostris Cuvier G., 1832

Table II: Changes proposed to Annex III

Present name in Annexe III	Proposed changes
Porifera	Porifera
<i>Hippospongia communis</i>	<i>Hippospongia communis</i> (Lamarck, 1813)
<i>Spongia agaricina</i>	<i>Spongia (Spongia) lamella</i> (Schulze, 1872) (ex <i>Spongia agaricina</i>)
<i>Spongia officinalis</i>	<i>Spongia (Spongia) officinalis officinalis</i> Linnaeus, 1759) & <i>Spongia (Spongia) officinalis adriatica</i> (Schmidt, 1862)
<i>Spongia zimocca</i>	<i>Spongia (Spongia) zimocca</i> Schmidt, 1862
Cnidaria	Cnidaria
<i>Corallium rubrum</i> (Linnaeus, 1758)	<i>Corallium rubrum</i> (Linnaeus, 1758)
<i>Antipathes sp.plur</i>	<i>Antipathes dichotoma</i> Pallas, 1766 & <i>Antipathes fragilis</i> Gravier, 1918
Crustacea	Crustacea
<i>Homarus gammarus</i>	<i>Homarus gammarus</i> (Linnaeus, 1758)
<i>Maja squinado</i>	<i>Maja squinado</i> (Herbst, 1788)
<i>Palinurus elephas</i>	<i>Palinurus elephas</i> (Fabricius, 1787)
<i>Scyllarides latus</i>	<i>Scyllarides latus</i> (Latreille, 1803)
<i>Scyllarus arctus</i>	<i>Scyllarus arctus</i> (Linnaeus, 1758)
<i>Scyllarus pygmaeus</i>	<i>Scyllarus pygmaeus</i> (Bate, 1888)
Echinodermata	Echinodermata
<i>Paracentrotus lividus</i>	<i>Paracentrotus lividus</i> (Lamarck, 1816)
Pisces	Pisces
<i>Alosa alosa</i>	<i>Alosa alosa</i> (Linnaeus, 1758)
<i>Alosa fallax</i>	<i>Alosa fallax</i> (Lacépède, 1803)
<i>Anguilla anguilla</i>	<i>Anguilla anguilla</i> (Linnaeus, 1758)
<i>Epinephelus marginatus</i>	<i>Epinephelus marginatus</i> (Lowe, 1834)
<i>Isurus oxyrinchus</i>	<i>Isurus oxyrinchus</i> Rafinesque, 1810
<i>Lamma nasus</i>	<i>Lamma nasus</i> (Bonnaterre, 1788)

<i>Lampetra fluviatilis</i>	<i>Lampetra fluviatilis</i> (Linnaeus, 1758)
<i>Petromyzon marinus</i>	<i>Petromyzon marinus</i> Linnaeus, 1758
<i>Prionace glauca</i>	<i>Prionace glauca</i> (Linnaeus, 1758)
<i>Raja alba</i>	<i>Raja alba</i> Lacépède, 1803
<i>Sciaena umbra</i>	<i>Sciaena umbra</i> Linnaeus, 1758
<i>Squatina squatina</i>	<i>Squatina squatina</i> (Linnaeus, 1758)
<i>Thunnus thynnus</i>	<i>Thunnus thynnus</i> (Linnaeus, 1758)
<i>Umbrina cirrosa</i>	<i>Umbrina cirrosa</i> (Linnaeus, 1758)
<i>Xiphias gladius</i>	<i>Xiphias gladius</i> Linnaeus, 1758