



EUROPEAN COMMISSION

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COM(2011) 798 final

2011/0364 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1185/2003 on the removal of fins of sharks on board
vessels**

{SEC(2011) 1391 final}

{SEC(2011) 1392 final}

EXPLANATORY MEMORANDUM

1. CONTENT OF THE PROPOSAL

Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels¹ establishes a general prohibition to the practice of 'shark finning', whereby the fins are removed from sharks, with the remainder of the shark being discarded at sea.

Regulation (EC) No 1185/2003 allows Member States to issue special fishing permits allowing processing on board, whereby shark fins can be removed from the bodies. In order to ensure the correspondence between the weight of fins and bodies, a 'fin-to-carcass' weight ratio is established. However, given that such processing takes place on board vessels, fins and bodies can be landed in different ports. Inspectors must rely on logbook records to determine whether or not the fin allowance has been respected. In such cases, and given the varying levels of control and enforcement in ports around the world where such landings take place, 'shark finning' can and does occur, and is often difficult to detect, let alone prove in legal proceedings. Under these circumstances, the collection of data (e.g. species identification, population structure) underpinning scientific advice for the establishment of fisheries management and conservation measures is hampered.

The EU has made several international commitments to protect sharks, in line with the Organisation of the United Nations (FAO) Code of Conduct for Responsible Fisheries, and in particular under the International Plan of Action on Sharks (IPOA-Sharks) adopted by the FAO in 1999. The FAO IPOA was the basis for the 2009 Commission Communication on a European Community Action Plan for the Conservation and Management of Sharks², whereby the Union committed itself to adopt all necessary measures for the conservation of sharks and to minimize waste and discards from shark catches. The Council endorsed the overall approach and specific objectives of the Union as set out in that Communication³. Shark finning is also being addressed by some Regional Fisheries Management Organisations, e.g. the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Indian Ocean Tuna Commission (IOTC) where the use of ratios as an instrument to prove that finning does not occur is considered problematic in terms of control and efficiency. Many scientists of these organisations clearly favour the landing of sharks with their fins naturally attached to the body.

The Scientific, Technical, and Economic Committee for Fisheries (STECF), acknowledging the problem of shark finning, advises that all elasmobranch species should be landed with fins /wings attached.

Therefore, in order to ensure proper management and conservation of shark stocks, it is appropriate to amend this Regulation.

¹ OJ L 167, 4.7.2003, p. 2

² COM(2009)40

³ EU CO 7723/09 of 17 March 2009

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The European Commission held a public consultation of stakeholders and the general public, between 15.11.2010 and 21.02.2011, in order to gather information on the most appropriate manner in which Council Regulation (EC) No 1185/2003 should be amended. The results of the consultation show that the 'fins-remain-attached' approach is regarded as the preferred option. An impact assessment has been carried out.

3. LEGAL ELEMENTS OF THE PROPOSAL

The main action is to amend Council Regulation (EC) No 1185/2003, on the legal basis of Article 43(2) of the Treaty on the Functioning of the European Union.

The proposal falls under the exclusive competence of the European Union and the principle of proportionality is respected.

The proposed instrument is a Regulation of the European Parliament and of the Council given that other means would not be adequate, on the basis that a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATIONS

This measure does not involve any additional Union expenditure

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels⁴ establishes a general prohibition of the practice of shark finning, whereby the fins are removed from sharks, with the remainder of the shark being discarded at sea.
- (2) Fish belonging to the taxon *Elasmobranchii*, including sharks, skates and rays are generally very vulnerable to overexploitation due to their life cycle characteristics of slow growth, late maturity and small number of young. In recent years, some shark populations have been severely targeted and put under serious threat as a result of a dramatic increase in demand for shark products, fins in particular.
- (3) Regulation (EC) No 1185/2003 allows Member States to issue special fishing permits allowing processing on board, whereby shark fins can be removed from the bodies. In order to ensure the correspondence between the weight of fins and bodies, a 'fin-to-carcass' ratio is established, however, following processing operations, fins and bodies can be landed in different ports. In such cases the use of the ratio becomes ineffective and gives scope for shark finning to occur. Under these circumstances, the collection of data, e.g.; species identification, populations structure, underpinning scientific advice for the establishment of fisheries conservation measures, is hampered.
- (4) In 1999 the Food and Agriculture Organisation of the United Nations (FAO) adopted the International Action Plan for the Conservation and Management of Sharks, which

⁴ OJ L 167, 4.7.2003, p. 2

was the basis for the 2009 Commission Communication on a European Community Action Plan for the Conservation and Management of Sharks⁵, whereby the Union committed itself to adopt all necessary measures for the conservation of sharks and to minimize waste and discards from shark catches. The Council endorsed the overall approach and specific objectives of the Union as set out in that Communication⁶.

- (5) The Scientific, Technical, and Economic Committee for Fisheries (STECF) acknowledges the problem of shark finning and calls for its eradication without exemption, and advises that all elasmobranch species should be landed with fins /wings attached.
- (6) Regional Fisheries Management Organisations are increasingly addressing the issue of shark finning and their scientific bodies are showing preference for the landing of sharks with their fins naturally attached to the body.
- (7) In 2010-2011, as part of the required impact assessment exercise, the European Commission held a public consultation in order to gather information on the most appropriate manner in which Regulation (EC) No 1185/2003 should be amended. The conclusion of the impact assessment is that the Regulation should be amended so that all sharks must be landed with their fins still attached. It is necessary and appropriate for the achievement of the basic objective of the conservation of shark stocks, and in view of the outcome of the public consultation, to amend Regulation (EC) No 1185/2003 accordingly;

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1185/2003 is amended as follows:

- (1) Point 3 of Article 2 is deleted.
- (2) The following paragraph 1a is inserted after paragraph 1 of Article 3:

"1a. Without prejudice to paragraph 1, and in order to facilitate on board storage, shark fins may be partially sliced through and folded against the carcass."

- (3) Article 4 is deleted.
- (4) Article 5 is deleted.
- (5) Article 6 is replaced by the following:

⁵ COM(2009)40

⁶ EU CO 7723/09 of 17 March 2009

"Articled 6
Reports

1. Where fishing vessels flying the flag of a Member State catch, retain on board, tranship or land sharks, the flag Member State shall send to the Commission, by 1 May at the latest, a comprehensive annual report on the implementation of this Regulation during the previous year. The report shall describe the monitoring of compliance of vessels with the Regulation, and the enforcement measures taken by Member States in cases of non-compliance. In particular, the following information shall be provided:
 - The number of landings of sharks;
 - The number of inspections carried out;
 - The number and nature of cases of non-compliance detected, including a full identification of the vessel(s) involved.
2. After the submission by Member States of their second annual report in accordance with paragraph 1, the Commission shall no later than 1 January 2016 report to the European Parliament and the Council on the operation of this Regulation and the international developments in this field."

Article 2
Entry into force

This Regulation shall enter into force on seventh day following 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,

For the European Parliament
The President

For the Council
The President