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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.

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Introduction

The strong international market for shark fins, but the often relatively low value for shark meat and the practical constraints for conserving it on board, has led to the practice whereby fins are removed from any shark caught by a fishing vessel and retained on board while the remainder of the shark is discarded at sea.

This practice, known as "shark finning", has raised increasing concerns, at international and at Community level, due to the killing of large quantities of sharks, with devastating and unsustainable effects on shark populations.

On the basis of a Commission proposal[1], the Council adopted Regulation (EC) No 1185/2003[2] to prohibit the practice of finning within all Community waters and for all Community vessels around the world, while recognising the possibility for a legitimate shark fishery when full use is made of the catch.

The Commission is presenting this general report on the operation of Regulation 1185/2003 in compliance with Article 6 thereof.

1. BACKGROUND: MAIN PROVISIONS ESTABLISHED BY REGULATION NO 1185/2003

The most effective and practical means to implement a prohibition of finning and to render by-catches of sharks less attractive in fisheries is to prohibit the removal of fins on board. As a logical consequence, the keeping on board, transhipping or landing of shark fins which have been removed from the fish body is also prohibited. These general prohibitions are established under Article 3 of the Regulation.

Notwithstanding possible gutting or heading of sharks, for certain fisheries there could be a practical need to remove shark fins on board and for separate on-board processing of fins and bodies, even when the carcass is retained (e.g. for freezer vessels that stay for a long period at sea). In those circumstances, the Regulation (Article 4) allows competent authorities of a Member State to derogate from the general prohibitions mentioned above by issuing a special fishing permit under which on-board removal would be allowed. The issuing of a special permit is however subject to the conditions that such processing is duly justified and that all parts of the sharks are used.

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1 COM (2002)449 final of 5.8.2002

2 Council Regulation (EC) No 1185/2003 of 26.6.2003 on the removal of fins of sharks on board vessels, OJ EU L 167, 4.7.2003, p. 1.

In those circumstances also, the weight of fins kept from the catch are not to exceed a reference weight that would correspond to the remaining parts of the retained shark. The value of the correspondence between the weight of fins and the weight of remaining parts of sharks kept from the catch shall by established by Member States taking into account the type of fishery, processing and storage and species catch composition. However, to limit possible abuses, the theoretical proportion of the weight of fins shall never exceed 5% of the live weight of shark catch.

Moreover, to facilitate enforcement, Article 5 of the Regulation foresees a number of provisions on traceability and reinforced recordings of catch, landings transhipments and sales, especially when the shark catch might not be landed as a whole. In such a case the Member State shall also define the type of documentation that is deemed valid for this purpose. Furthermore, controls on landing outside Community port is reinforced by a system of prior notification (at least 72 hours before landings).

Finally, Article 6 of the Regulation requires Members states to send annually the Commission, by 1st May at the latest, a comprehensive annual report on the implementation of the Regulation during the previous year. This report is to describe the monitoring of compliance of vessels with the requirements of the Regulation, and to detail in particular the number of special permits issued, the technical basis for setting the theoretical correspondence between weights of fins and bodies and the documentation considered valid for the purposes of monitoring separate landings of fins and bodies. The Commission is required to report on the operation of the Regulation and the international developments in this field to the European Parliament and the Council after the submission by Member States of their second annual report.

2. PERIODS OF INTEREST AND COMPLIANCE WITH NATIONAL REPORTING REQUIREMENTS

Regulation 1185/2003 entered into force on 2 September 2003. The first report from Member States concerning the 2003 implementation period (which only covers the last part of 2003) was due on 1 May 2004. The second annual report covering the whole year 2004 (from 1 May 2004 for the new Member States concerned) was due by 1 May 2005.

Generally, Member States did not respect the reporting deadlines and the Commission services issued reminder letters to most of the "fishing" Member States. Moreover, although the scope of this Regulation is very specific and the information on its implementation to be provided to the Commission can be rather concise, further correspondence was necessary with a number of Member States to ask for some information (see annex for further details on reception of national reports and on exchange of correspondence with Member States on this issue).

Considering that Article 6 of regulation 1185/2006 requires the Commission to report not later than 1 January 2006, the present report has been prepared on the basis of information that has been received from Member States by 30 September 2005 at the latest.

By this date, national reports were still missing for the year 2004 from 5 Member States (Ireland, Italy, Malta, the Netherlands and Slovenia). Additional information on some points was also awaited from 7 other Member States.

3. GENERAL STATE OF PLAY AS REGARD TO THE USE OR NOT BY MEMBER STATES OF THE POSSIBILITY TO ALLOCATE SPECIAL FISHING PERMITS TO REMOVE FINS ON-BOARD

For the concerned period in 2003, two Member States (out of the 13 concerned), namely Germany and Spain**,** allocated special fishing permits allowing removal of shark fins on board. Spain also indicated that an information note was sent to the representatives of the concerned fisheries in September 2003 to inform them about the requirements of Regulation 1885/2003. Similarly, immediately after the publication of the Regulation, the Portuguese authorities informed the concerned fisheries of the need to ask for special permits. Portugal also prepared and put into place the necessary administrative measures to frame the allocation of such permits, but no permit could in practice be issued by the national authorities before the end of 2003. In its report, this Member State already announced its intention to deliver special permits for the year 2004.

The other Member States did not issue any special fishing permit to allow the removal of shark fins on board vessels[3]. Most of them also reported that there was no need for such permits, or that their national shark fisheries were limited or that fishermen land sharks whole. None of these Member States provided any indication on a possibility of issuing special permits in the future.

In 2004, the situation reported for the EUR 15 concerned Member States was comparable to the one reported for 2003, except one noticeable change in the general situation concerning the United Kingdom which allocated special fishing permits in that year.

As far as new Member States are concerned, no report was available for 2004 from Malta and Slovenia by 30 September 2005. The Polish authorities indicated that they did not issue special permits to remove shark fins on board. Information provided by Cyprus, Estonia and Latvia implied that these Member States had not given such permits either, but confirmation replies were still awaited by the Commission services. The main elements referred to by all these Member States were either the absence of catch or the fact that sharks are usually a by-catch and landed whole. Lithuania mentioned that 2004 was a transitional year after accession and that no special permit was issued for this year. The Lithuanian 2004 report indicated however already that the only vessel engaged in targeted shark fisheries and usually landing in Vigo, was given a special permit in 2005.

[3] Information provided by Italy for 2003 implies that such permits were not needed. No reply is however yet available to a Commission request for confirmation of the non allocation of special permits.

4. INFORMATION RELATED TO THE ALLOCATION OF SPECIAL FISHING PERMITS TO REMOVE FINS OF SHARKS ON BOARD AND THE ASSOCIATED CONDITIONS.

This chapter provides more details of the information given by the Member States having made use of the possibility provided by Regulation 185/2003 to allocate special fishing permits to some of their vessels to allow the removal of shark fins on board in 2003-2004.

4.1. Number of special fishing permits and justification

In 2003, the German authorities issued special permits for three vessels, on the basis of a declaration from the vessel-owner that on-board processing is necessary and that all parts of sharks will be used. According to their indications, these vessels operated mainly in Irish waters and usually landed in Spain. In their 2004 report, Germany indicated that the same procedure was used in 2004 to issue special fishing permits to the same three vessels. However, in a later reply to a request for some additional information, Germany indicated that two other vessels were also given a special permit in 2004, bringing the total number of vessels concerned to 5.

Spain issued 182 special permits in 2003, all of them being given to surface longliners. A total of 90 permits were allocated for fisheries in Spanish waters and 86 for fisheries in international waters. Six permits were given to vessels engaged in experimental fisheries (in areas VIII a, b, c and d). In 2004, 198 special permits were issued and they concerned surface longliners in Spanish waters (99), surface longliners in international waters (91), deep sea long liner in Spanish water (1), and experimental fisheries (7). No indication was available on the justification of the needs for special permits.

Portugal did not issue any permit before the end of 2003, but allocated 11 special permits in 2004 to vessels using longlines (and catching swordfish and pelagic shark species). These permits were issued only under the following conditions: declaration from the vessel regarding the capacity to use all parts of sharks, justification for the need for on-board processing (for trading or storage reasons) and control of the existence of proper sanitary authorisation for on board processing.

The United Kingdom authorities allocated 20 special fishing permits to derogate from the general prohibition on removing shark fins on board vessels in 2004. However, the national report did not include any further indication on this aspect, in particular on the justification for such needs.

4.2. Correspondence between weights of fins and shark bodies

In the four Member States which allocated special permits in 2003 and/or 2004, the theoretical maximum ratio of 5% (weight of fins vs. live weight of sharks) was applicable.

Both Spain and Portugal considered, however, that the maximum 5% live weight ratio was not a perfect fit with the reality of their national fisheries. In their report, the Spanish

authorities referred to some results presented in an ICES working group[4] and mentioned that that it would be appropriate to set different levels according to the fisheries. Portugal provided some results that were also presented in the ICCAT meeting in 2004) concerning fin weight /live weight ratios for blue sharks caught on longliners in the Centre East Atlantic (Azores Waters), on the basis of which they indicated that a 6.6 % ratio would represent a value adapted to the Portuguese case.

A part from Portugal which provided also some indication on the ratio used in practice for control purposes in 2003 (12 % of dressed weight), Member States did not provide other indication on the relationship between weights of fins and bodies (in particular the conversion factor available to their control authorities to assess in practice whether the proportion of fins and processed parts of carcasses kept on board complies with the theoretical 5% ratio, based on live weight of sharks).

The UK considered that there was insufficient data to vary this ratio from the maximum allowed under Regulation 1185/2003. Considering the importance of their shark fisheries and the way national vessels operate, Germany referred to proportionality and cost limitation reasons for not having engaged in scientific research to provide a technical basis for setting the theoretical correspondence between fins and bodies of sharks.

4.3. Documentation considered valid by the Member States for the purpose of monitoring separate landing of fins and bodies - Landings outside Community ports.

Documents required to Spanish (or Community) vessels for controls in case of separate landings in Spain included logbooks, landing/transhipping declaration, sale documentation and the special permit. In the case of non-EU vessels, the documentation required by Spanish control authorities refers to the cargo manifest and all fishing and sale documentation. In their 2004 report, Spanish authorities also mentioned that a ministerial decree was under preparation to establish a special catch register for vessels under ten meters that might benefit from a special fishing permit (and which are not subject to the general logbook requirements). This new decree would also give details concerning such controls. The annual reports provided no indication of the possible extent of the practice of separate landings of fins and bodies in different harbours compared to the practice of landing the entire catch at once.

Portugal indicated in 2003 that they considered that additional specific documentation was not needed as the fleet concerned did not make separate landings. They confirmed for 2004 the absence of separate landing or transhipment of shark fins and bodies.

Separate landings of fins and remaining parts of carcasses were not allowed by the UK authorities (as the special fishing permits to remove sharks on board issued in 2004 required fins and bodies to be landed at the same time).

Germany did not provide a clear indication on whether separate landings of fins and shark bodies would occur or not. However, as practically the total shark catch by vessels under the German flag was landed in other member States, the German authorities

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[4] Working Group on Elasmobranches Fisheries 2003 of the International Council for the Exploration of the Sea (ICES)

insisted in their reports on the need to rely on controls performed by the other Member States.

As far as possible landings of sharks outside the Community by vessels holding a special fishing permit are concerned, Portugal reported that a small proportion of the shark catch was landed in Cape Town, but did not comment further on this issue (in particular on the compliance or functioning of the pre-notification system established by Regulation 1185/2003 in such a case). According to some additional indication provided by Germany, German vessels holding a special fishing permits to remove fins of sharks on board would not land shark outside Community ports. More indications on this subject were still awaited from Spain and the UK on 30 September 2005.

5. CONTROLS AND MONITORING OF COMPLIANCE OF VESSELS HOLDING SPECIAL FISHING PERMITS.

In their initial annual reports, most of Member States provided only few or even no indications on the monitoring of compliance of vessels with this Regulation and on the outcome of controls, triggering thereby the need for requests for additional information from the Commission services.

Controls appear to have been usually performed as part of the normal inspections and according to usual control procedures and practices in the fisheries sector (i.e. on landings, on-board or on the basis of the required documentation, depending also on the practical possibilities).

A part from one at-sea control on one vessel, the German authorities indicated that vessels with a special fishing permit to remove fins of sharks usually fished outside waters under German jurisdiction (mainly Irish waters with no access to German inspectors) and landed directly in Spain. Their controls could therefore be performed on the basis of documentation only. Germany insisted also on the fact that in such case, controls (during fishing operations or at landings) would rely on actions taken by competent authorities of other Member States.

In terms of outcome of controls, Member States not issuing special fishing permits did not identify any breach of Regulation 1185/2003 during the period 2003-2004. There were in particular no clear cases of finning practices (e.g. by detection of boxes of sharks fins without some corresponding part of carcass). A few infringements have been reported for 2004 concerning vessels holding special fishing permits. These infringements related to failure of compliance with the recording requirements or the maximum ratio of correspondence between the weight of fins and the weight of carcasses kept on board.

More precisely, Germany indicated having opened one administrative infringement procedure for non recording of the weight of shark fins removed. Portugal mentioned that some difficulties were noticed concerning the differentiated recording procedure for shark fins, in particular from owners of freezer vessels, and warning notifications had been issued to ask them to remedy this situation. No illegal situation was detected in the documentation of fishing vessels controlled at landing. Spain reported that, in 2004, 119 inspections performed on longliners and freezer vessels with shark catch on board

allowed the identification of three breaches (among 33 infringements) for non compliance with the maximum 5% live weight ratio set by Regulation 1185/2003.

6. INTERNATIONAL DEVELOPMENTS ON SHARK FINNING PROHIBITIONS

The prohibition of shark finning practices established by Regulation 1185/2003 applies to all types of fishing in Community waters, and to all Community vessels fishing in non-Community waters. As the Community policy is to show equal commitment towards conservation in all waters where its fishing vessels operate, the Community also took a proactive attitude to facilitate the promotion of measures prohibiting finning practices for adoption in operational international fora, namely Regional Fisheries Organisations (RFOs).

Therefore, in the last two years, the prohibition of finning practices was agreed within several RFOs on the basis of a Community proposal (with joint support from other parties). By the 30 September 2005, these RFOs were namely:

- the International Commission for the Conservation of Atlantic Tunas (ICCAT)[5],

- the Inter-American Tropical Tuna Commission (IATTC)[6],

- the Indian Ocean Tuna Commission (IOTC) [7] and

- the North Atlantic Fisheries Organisation (NAFO)[8].

7. CONCLUSIONS

The information made available by the Member States to the Commission on the operation of this Regulation, although not always complete, amounts to a confirmation that the Regulation appears to be achieving its general objectives.

Finning, i.e. the practice which consists in keeping only the fins of sharks and discarding the carcass at sea, did not appear to be significantly in use in Community fisheries before the Regulation entered into force (Some Member States had already prohibited such practices) and this Regulation aimed primarily at preventing any possible development of such a practice.

As envisaged, the practical consequences arising from this Regulation for European fleets remain rather limited and are primarily of an administrative nature (allocation of special permits by competent authorities and additional documentation required from

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5 Recommendation 04/10 concerning the conservation of sharks caught in association with fisheries managed by ICCAT(available at http://www.iccat.es)

6 Resolution C-50-03 on the conservation of sharks caught in association with fisheries in the Eastern Pacific Ocean (available at http://www.iattc.org)

7 Resolution 05-05 concerning the conservation of sharks caught in association with fisheries managed by IOTC (available at http://www.iotc.org)

8 Conservation and enforcement measures of NAFO agreed at its 2005 Annual Meeting (19-23 September 2005) – See http://www.nafo.int

some fishermen for reinforced traceability). Such consequences concern mainly surface long-line fishing fleets of some Member States, and with limited impact on the fishing operations themselves.

Although a couple of Member States consider that the present maximum 5% ratio between the weight of fins and the total live weight of the shark catch does not reflect the reality in specific cases for which scientific data are available, Member States did not provide information to suggest that the sector is having significant difficulties in coping with the present legislation, as also indicated by the outcome of controls. It does not seem either that this Regulation - when properly implemented and enforced - would present loopholes allowing for significant "legal" finning to take place within this 5% limit. In view of the need for proportional and enforceable rules, the present Regulation does not appear to need an amendment at this stage. Improved implementation of some aspects by some Member States is certainly desirable, in particular in terms of the criteria for allocation of special fishing permits or reporting.

The Commission will continue to monitor this Regulation, on the basis of the annual reports from the Member States or of any other relevant information.

Annex
Reception of national reports

2003 reports

By the deadline of 1 May 2004, the Commission had not received any national report for the 2003 period of implementation of this Regulation. A first reminder letter was send on 19 May 2005 to all 13 concerned Member States (i.e. EUR 15 with the exception of AT and LU). A second reminder was sent on 6 October 2004 to 5 Member States (FR, ES, NL, SW, FI). The latest 2003 report was provided to the Commission on 15 March 2005 (SE, which used this opportunity to inform the Commission about the situation for both 2003 and 2004). While some national reports, even not very developed, could be considered as sufficient (especially when no special fishing permits had been given), other national reports could not be considered as providing the minimum information needed with respect to relevant provisions of Regulation 1185/2003.

2004 reports

On 1 May 2005, the Commission had not received any national report for the 2004 period, except from SE. Letters were sent out on 19 May 2005 to 19 Member States[9] to remind them about their obligation to report in a comprehensive manner and/or where necessary to ask for some additional information that was not provided as far as year 2003 was concerned. A second reminder was sent at the beginning of August 2005 to 6 Member States (FI, IE, IT, MT, NL and SI) which had not provided the Commission with any indication for year 2004 at that time. Further correspondence was also necessary to request additional information from 12 Member States when considering the information they initially provided for 2004.

State of play by 30 September 2005

2004 national report were not available from Ireland, Italy, Malta, the Netherlands and Slovenia.

Replies to request for additional information were also awaited from Cyprus, Estonia, Greece, Spain, Latvia, Portugal and United Kingdom.

The table below provides a detailed situation for each Member State

[9] EUR 25, with the exception of non coastal states (i.e. AT, LU, SK, CZE, HU) and SE and ES the report of which was transmitted in the meanwhile.

Member State	Dates of 2003 report*	Dates of 2004 report*	Comments (by 30.9.2005)
BE	7.6.2004	9.6.2005 (29.8.2005 : additional information)	Information available with main points addressed
CY	/	28.6.2005	Additional information requested on 16.8.2005
DK	3.9.2004	4.7.2005	Information available with main points addressed
DE	22.7.2004	13.6.2005 (29.9.2005: additional information)	Information generally available – need for clarification on a few points.
EE	/	8.6.2005	Additional information requested on 16.8.2005
EL	14.6.2004	22.7.2005	Additional information requested on 8.9.2005
ES	16.11.2004	18.5.2005	Additional information requested on 16.8.2005
FI	4.11.20047	20.9.2005	Information available with main points addressed
FR	2.2.2005	1.7.2005	Information available with main points addressed
IE	6.8.2004		Second reminder sent on 4.8.2005
IT	28.7.2004		Second reminder sent on 4.8.2005
LT	/	16.6.2005 (2.9.2005 : additional information)	Information available with main points addressed
LV	/	6.6.2005	Additional information requested on 16.8.2005
MT	/		Second reminder sent on 4.8.2005
NL	22.10.2004		Second reminder sent on 4.8.2005
PL	/	6.6.2005 (29.8.2005 : additional information)	Information available with main points addressed
PT	19.7.2004	18.7.2005	Additional information requested on 8.9.2005
SE	15.3.2005	15.3.2005 (21.7.2005 : additional information)	Information available with main points addressed
SI	/		Second reminder sent on 4.8.2005
UK	30.7.2004	26.5.2005	Additional information requested on 16.8.2005

* These dates might differ slightly from the dates of reception of the reports, depending notably on the procedure used to transmit those reports and their reception within Commission services.

As a reminder, the following Member States: AT, CZ, HU, LU and SK are not concerned by Regulation 1185/2003.