



EUROPEAN COMMISSION

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2012/0020 (NLE)

Proposal for a

COUNCIL DECISION

**on the submission by the European Union of an amendment of Appendix III to the
Convention on International Trade in Endangered Species of Wild Fauna and Flora
(CITES)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Porbeagle (*Lamna nasus*) is distributed throughout the North Atlantic Ocean and in a broad circumglobal band in the Southern hemisphere. *Lamna nasus* is an active, warm-blooded, relatively slow growing and late maturing, long-lived species, which bears only small numbers of young. It falls into FAO's lowest productivity category of most vulnerable aquatic species. Atlantic stock assessments describe marked historic and recent declines. Exploitation of stocks in other oceans of the Southern Hemisphere is largely unmanaged and unlikely to be sustainable. The species is particularly vulnerable to overfishing. It is very vulnerable to fishing pressure due to its low productivity. It has been experiencing steep decline in the North Atlantic over the last decades, especially in the North East Atlantic, which led the EU to prohibit fishing for this species. This prohibition applies to EU vessels as well as to foreign-flagged vessels carrying out their activities in EU waters. Fishing for porbeagle is also prohibited in the North East Atlantic Ocean through a decision by the North East Atlantic Fisheries Commission (NEAFC). Fishing continues to occur in the North West Atlantic as well as in the Southern Hemisphere. Apart from NEAFC, there are currently no or very few measures adopted within Regional Fisheries Management Organisations (RFMOs) on the management and conservation of porbeagle, and there is limited information on the domestic legislation in place in other range States. It is also believed that a large number of catches for porbeagle remains unreported.

Against this background, the EU proposed in 2007 and 2010 that porbeagle be included in Appendix II of the CITES Convention. Those proposals were endorsed by a majority of CITES Parties but did not reach the 2/3 threshold required for their adoption. A proposal was also made by the EU to prohibit fishing within the International Commission for the Conservation of Atlantic Tunas (ICCAT) in 2009 and 2010 but was rejected.

Available data on the extent of international trade in porbeagle and its impact on the status of the species are scarce. There is indeed currently no internationally-agreed specific data for porbeagle specimens, which would allow quantifying the volume of international trade in that species. There are however clear indications that porbeagle parts or derivatives enter international trade and that there is an important international market for products like meat or fins. The EU is thought to be one of the main markets for porbeagle specimens and has therefore a key responsibility in ensuring that such trade is sustainable.

Data on international trade in porbeagle are necessary to assess the impact of international trade on the conservation of the species. Gathering data on international trade requires international cooperation. The best way to ensure such cooperation is for the EU Member States to include the species in CITES Appendix III. This is also fully in line with the European Community Plan of Action for sharks adopted by the Commission in 2009.

According to Article XVI of the Convention any Party may at any time submit to the Secretariat a list of species for inclusion in Appendix III. An amendment to Appendix III takes effect automatically 90 days after the submission is communicated to the Parties by the Secretariat.

The effect of the inclusion of a species in Appendix III is that any export of porbeagle from the EU would have to be accompanied by an export permit attesting the legality of the catch.

Other types of trade (export into the EU, or trade between non-EU Parties) would require that a certificate of origin be produced by the exporting country.

An Appendix III listing would provide all CITES Parties with (as a minimum) data on the origin and quantity of the specimens traded; this will improve the knowledge base on the factors affecting porbeagle conservation in view of any possible conservation and/or trade measures that States or international organisations might want to take in the future.

An Appendix III listing would make sure that CITES Parties pay special attention to the conditions under which porbeagle specimens are harvested and traded and might foster the adoption of conservation measures, where they are not yet in place, to ensure its sustainable exploitation.

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

The proposal to include porbeagle into CITES Appendix III has been discussed at numerous occasions with the EU Member States at meetings of the EU wildlife trade Committee on 11 June 2010, 15 September 2010, 6 December 2010, 22 March 2011 and 26 July 2011. Broad support was expressed at this Committee in favour of the inclusion of porbeagle into CITES Appendix III.

CITES Parties were also informed about the possible intention by the EU to include porbeagle into CITES Appendix III through a letter sent on 27 May 2011. Apart from Japan and China (which contest that marine species be dealt with in the CITES framework), the observations transmitted to the European Commission were rather supportive (especially from the USA, New Zealand, Turkey, Croatia, Montenegro, while Australia indicated that this inclusion could jeopardise the chance of success of a future proposal for inclusion into CITES Appendix II).

The consequences of the inclusion would be limited in terms of socio-economic and administrative costs: it would require that the EU Member States exporting porbeagle provide an export permit attesting that they have been harvested legally. Given that porbeagle fishing is prohibited in the vast majority of the EU waters, the volume concerned is likely to be limited. Other countries trading porbeagle would have to issue a certificate of origin.

3. LEGAL ELEMENTS OF THE PROPOSAL

The CITES Convention is implemented within the EU through Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein¹. The inclusion of porbeagle into CITES Appendix III will result in the inclusion of the species into Annex C of Council Regulation (EC) No 338/97, which shall apply as soon as the inclusion in Appendix III to the Convention takes effect. As this will impact both the EU environmental and trade policies, the substantive legal basis for the Council decision should be Article 192, paragraph 1, and Article 207 of the Treaty on the Functioning of the European Union. The procedural legal basis should be Article 218, paragraph 9, as this

¹ OJ L 61, 3.3.1997, p. 1

Decision relates to the establishment of an EU position in view of the modification of an Annex of the CITES Convention which have legal effects.

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on the submission by the European Union of an amendment of Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192, paragraph 1 and Article 207, in conjunction with Article 218, paragraph 9,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is implemented in the European Union (hereinafter: EU) by Council Regulation (EC) No 338/97 of 9 December 1996².
- (2) The species *Lamna nasus* is very vulnerable to fishing pressure due to its low productivity. It has been experiencing steep decline in the North Atlantic over the last decades, especially in the North East Atlantic, which led the Union to prohibit fishing for this species. This prohibition applies to Union vessels as well as to foreign-flagged vessels carrying out their activities in Union waters. Exploitation of stocks in other oceans of the Southern Hemisphere is largely unmanaged and unlikely to be sustainable.
- (3) As the Union considered that the species may become threatened globally with extinction unless international trade is subject to strict regulation in order to avoid utilisation incompatible with its survival, it proposed its inclusion into CITES Appendix II at CITES CoP14 (2007) and CoP15 (2010). Those proposals did not reach the 2/3 thresholds of the Parties required under the CITES Convention for their adoption. As there is no evidence of a recovery of the species, and in the absence of international regime designed to ensure its management and conservation in all its area of repartition, further action by the Union is needed to protect the species.
- (4) It is believed that international trade has been playing a considerable role in driving the overexploitation of porbeagle. There are currently no internationally-agreed specific data on trade in porbeagle specimens and gathering such trade data is necessary to assess the impact of international trade on the conservation of the species. With a view to fostering international cooperation for the control of trade in specimens

² OJ L 61, 3.3.1997, p. 1.

of the *Lamna nasus* species and a better protection of the species, it should be included in Appendix III to the CITES Convention by all Member States.

- (5) According to Article XVI of the CITES Convention, an amendment to Appendix III takes effect automatically 90 days after the submission is communicated to the Parties by the Secretariat. This amendment to the Appendices of the Convention will affect the Union legislation concerned, as any export of porbeagle from the Union would have to be accompanied by an export permit attesting the legality of the catch. Other types of trade (export into the Union, or trade between non-Union Parties) would require that a certificate of origin be produced by the exporting country.
- (6) As the so-called "Gaborone" amendment to the CITES Convention has not entered into force, the Union is not yet a party to the Convention.
- (7) In such circumstances a Union decision to include *Lamna nasus* in Appendix III to the CITES Convention should be expressed by the Member States acting jointly in the interest of the Union in a manner consistent with the requirement of unity in the external representation of the Union.
- (8) The joint submission for inclusion of *Lamna nasus* in Appendix III to the CITES Convention should therefore be sent to the CITES Secretariat by the Member State holding the Presidency of the Council of the European Union acting as a representative of the Member States.

HAS ADOPTED THIS DECISION:

Article 1

The Member States, acting in the interest of the European Union, shall jointly submit to the CITES Secretariat a request to include in Appendix III of the CITES Convention the species *Lamna nasus*. The joint submission shall be sent to the CITES Secretariat by the Member State holding the Presidency of the Council of the European Union, as outlined in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

Submission by [the Member State holding the Presidency of the Council of the European Union] on behalf of the EU Member States to the CITES Secretariat in view of the inclusion of *Lamna nasus* into Appendix III of the CITES Convention.

In accordance with Article XVI(1) of the Convention, and after consultation with other interested CITES Parties, [the Member State holding the Presidency of the Council of the European Union] submits the inclusion of *Lamna nasus* into Appendix III of the Convention.

The Secretariat is therefore requested to include in Appendix III of the CITES Convention for the 27 EU Member States (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, United Kingdom) the species indicated below:

FAUNA

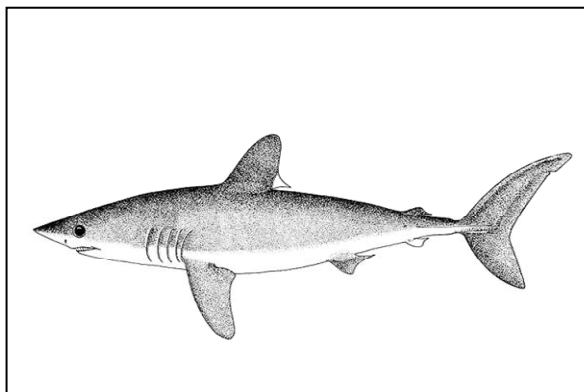
Chondrichthyes (Subclass: Elasmobranchii)

Lamniformes

Lamnidae

Lamna nasus (Bonnaterre, 1788)

Figure 1. Porbeagle *Lamna nasus*
(Source: FAO Species Identification Sheet)



Please find enclosed in Annex 1 an overview of the measures taken by the European Union to implement the recommendations contained in Resolution Conf. 9.25 (Rev. CoP15).

Yours sincerely,

Annex 1

Measures taken by European Union to implement the recommendations contained in Resolution Conf. 9.25 (Rev. CoP15)

– **EU domestic regulations applying to porbeagle management, conservation and trade**

The EU domestic regulations to prevent or restrict exploitation of porbeagle and to control trade for the conservation of this species are as follows:

- **Council Regulation (EU) No 57/2011 of 18 January 2011** prohibits fishing for porbeagle³. This applies to EU vessels as well as to foreign-flagged vessels carrying out their activities in EU waters;
- **Council Regulation (EC) No 1224/2009 of 20 November 2009** sets out the measures for control, enforcement and sanction against infringements to the rules of the EU Common Fisheries Policy⁴. It applies in case to porbeagle as for all other species subject to the EU Common fisheries policy;
- **Council Regulation (EC) No 1005/2008 of 29 September 2008**⁵ sets out the rules applying to imports of fishing products into the EU.

In addition, the North East Atlantic Fisheries Commission (NEAFC) agreed at its annual meeting in November 2010 to ban all directed fisheries for porbeagle in 2011 in its regulatory area.

European Union regulations are directly applicable in all the Member States of the European Union.

³ see attached link to access the Regulation <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:024:0001:0125:EN:PDF> porbeagle is covered by Article 5(1), in conjunction with Annex IA, page 29, and Article 8(1)(e)).

⁴ see attached link to access the Regulation <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:343:0001:0050:EN:PDF>

⁵ see attached link to access the Regulation <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>