



28.2.2014

NOTICE TO MEMBERS

Subject: **Petition 0422/2013, by Martin Rother (German) concerning protection of the spiny dogfish**

1. Summary of petition

The petitioner calls for a ban on trade in 'sea eel' (in Dutch 'zeepaling'; in Germany known as 'Schillerlocke') and a change to the name 'zeepaling' (sea eel). The petitioner observes that 'sea eel' is made from the meat of the spiny dogfish (*Squalus acanthias*). This means that it is not a type of eel. The petitioner states that the spiny dogfish is an endangered species and that a ban on the sale of products made from its meat could be a first step towards protection of this species of shark. The petitioner also considers that the misleading name 'sea eel' ought to be altered so that consumers realise that the product consists of sharkmeat.

2. Admissibility

Declared admissible on 11 November 2013. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 28 February 2014

The petition was submitted to the European Parliament via the Petitions Committee of the German Bundestag. In the petition, the petitioner calls for a trade ban on spiny dogfish (*Squalus acanthias*), arguing that this member of the shark family is an endangered species and that a cessation of sales would be a first step towards its preservation.

Referring to the situation in Germany, the petitioner requests that the popular designation of products made from spiny dogfish as *Seeaal* and *Schillerlocke* (literally: "sea eel" and "curl of Schiller") be changed in case no trade ban is implemented. The petitioner argues that because

spiny dogfish is not an eel, products made thereof should be labelled as shark. The petitioner suggests further that almost nobody knows that *Seeaal* or *Schillerlocke* is actually shark – with industry and retailers claiming it to be a kind of eel.

In its comments on the petition, the German Bundestag confirms that the International Union for Conservation of Nature (IUCN) put spiny dogfish on its red list of endangered species.¹ However, the Bundestag points out that the stocks in Oceania and South Africa are not threatened and that only the stocks in the Northeast Atlantic are considered endangered – where no fisheries target spiny dogfish any longer and where the Council has set the permitted catch to zero. The Bundestag considered that an EU-wide trade and sales ban would not be constructive. Furthermore, given the fishing ban and the zero by-catch set by the EU, the Bundestag sees no need for further action.

Regarding the naming issue, the Bundestag finds that both popular designations (*Seeaal* and *Schillerlocke*) are commonly used and established names and it suggests that a change of name would be difficult to implement; it also states that it is not uncommon that processed parts of an animal have their own product names. However, given its support for the inclusion of spiny dogfish in the Appendix II of the Washington Convention,² the Bundestag suggested that the petition be transferred to the European Parliament to support EU efforts in this regard.

Conservation status of spiny dogfish in the EU and beyond

The current advice by the International Council for the Exploration of the Sea (ICES) for spiny dogfish (or "spurdog") in the Northeast Atlantic reads: "ICES advises on the basis of the precautionary approach that there should be no target fishery and that by-catch in mixed fisheries should be reduced to the lowest possible level." Since 2006, the advised instantaneous rate of fishing mortality (F) for spiny dogfish has been zero; since 2011 the agreed total allowable catch (TAC) has been zero.³ However, there is an unquantified amount of spiny dogfish taken as a by-catch in mixed demersal trawl and gillnet fisheries, which is currently discarded. Discard mortality is unknown, although in some fisheries is assumed to be high, which is a cause for concern.

According to Article 11 of the Council Regulation (EU) No 43/2014 of 20 January 2014 fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, "It shall be prohibited to fish or retain on board any of the following species in the Porcupine Bank during the period from 1 May to 31 May 2014: ... spurdog." And in Annex IA the TAC for spurdog is set to zero for Union waters of IIIa as well as IIa and IV, and for Union and international waters of I, V, VI, VII, VIII, XII and XIV.⁴

In the past, at CITES meetings in 2007 and 2010, the EU supported two proposals to include spiny dogfish in the CITES Appendix II (thereby also following the views of conservation groups and scientists). These proposals were rejected at both meetings and spiny dogfish was

¹ Also see: <http://www.iucnredlist.org/details/39326/0>.

² That is, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), <http://www.cites.org/>.

³ See <http://www.ices.dk/community/advisory-process/Pages/Latest-advice.aspx>.

⁴ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:024:FULL:EN:PDF>.

not covered by any of the proposals to amend Appendices I and II that have been discussed at the 2013 CITES meeting, either.¹

More generally, the situation of some stocks of spiny dogfish appears to have improved over the recent years, though: For instance, in June 2010 the US National Oceanic and Atmospheric Administration (NOAA) announced the recovery of the spiny dogfish stock in the Northwest Atlantic,² in September 2011 the British Columbia spiny dogfish fishery on the Pacific Northwest in Canada was certified as sustainable by the Marine Stewardship Council (MSC), even if the certification has been self-suspended in October 2013,³ in June 2012 the spiny dogfish stock in EU waters was assessed as not overfished,⁴ in August 2012 the first US Atlantic spiny dogfish fishery was also certified as sustainable by the MSC with additional states preparing for certification,⁵ and in its 2013 stock assessment the US Atlantic States Marine Fisheries Commission estimated that spiny dogfish are not overfished and, in response to increases in spawning stock biomass, it increases the related quotas for 2014/15 and 2015/16.⁶

International trade in spiny dogfish

In terms of relevance relative to the EU's overall imports of fisheries products, imports of spiny dogfish are relatively small (small volumes being imported mostly from the United States, Norway, Morocco, Canada and New Zealand) and almost no exports are registered

¹ See <http://www.cites.org/eng/cop/15/prop/E-15-Prop-18.pdf> and <http://sharkyear.com/2012/cites-meeting-2013-greater-international-protection-proposed-for-10-shark-and-ray-species.html>.

² "Spiny dogfish (*Squalus acanthias*) were declared overfished by NMFS [National Marine Fisheries Service] in 1998. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to implement measures to end overfishing and rebuild the spiny dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP) that was implemented in 2000. As a result of the conservation measures in the FMP, the spiny dogfish stock was declared to be successfully rebuilt in 2010." See <https://www.federalregister.gov/articles/2013/05/03/2013-10461/fisheries-of-the-northeastern-united-states-final-2013-2015-spiny-dogfish-fishery-specifications>.

³ See <http://www.msc.org/track-a-fishery/fisheries-in-the-program/certified/pacific/british-columbia-spiny-dogfish>.

⁴ See http://europa.eu/rapid/press-release_IP-12-584_en.htm.

⁵ See <http://www.msc.org/newsroom/news/u.s.-atlantic-spiny-dogfish-fishery-successfully-expands-scope-of-msc-certification> and http://www.msc.org/track-a-fishery/fisheries-in-the-program/certified/north-west-atlantic/us_atlantic_spiny_dogfish/assessment-downloads-1/20130212_FR_DOG215.pdf.

⁶ See http://www.asmfc.org/uploads/file/pr54DogfishSpecs_2014-16.pdf.

Table 1. EU trade in spiny dogfish

	2010	2011	2012	2013*
Imports EU28 (tons, rounded)				
Spiny dogfish (fresh, chilled or frozen)	3,800	3,500	2,500	2,800
Spiny dogfish (frozen fillets) [§]	125	130	260	255
All fisheries products	5.5 m	5.4 m	5.4 m	5.3 m
Spiny dogfish of all fisheries products	0.07%	0.07%	0.05%	0.06%
Imports EU28 (Euro, rounded)				
Spiny dogfish (fresh, chilled or frozen)	11 m	10 m	7 m	8 m
Spiny dogfish (frozen fillets) [§]	0.3 m	0.3 m	0.6 m	0.7 m
All fisheries products	17,300 m	18,600 m	18,800 m	18,800 m
Spiny dogfish of all fisheries products	0,06%	0,06%	0,04%	0,05%
Exports EU28 (tons, rounded)				
Spiny dogfish (fresh, chilled or frozen)	4	14	33	12
Spiny dogfish (frozen fillets) [§]	16	160	0	12
All fisheries products	1.7 m	1.6 m	1.8 m	1.7 m
Spiny dogfish of all fisheries products	0,00%	0,01%	0,00%	0,00%
Exports EU28 (Euro, rounded)				
Spiny dogfish (fresh, chilled or frozen)	6,000	70,000	75,000	24,000
Spiny dogfish (frozen fillets) [§]	40.000	1.3 m	0	20

All fisheries products	2.8 m	3.3 m	3.8 m	3.7 m
Spiny dogfish of all fisheries products	0,00%	0,00%	0,00%	0,00%

Source: EUROSTAT COMEXT 14.01.2013, SQUALUS ACANTHIASimpexp01.

Notes: "m" denotes millions. * Data only available until October, extrapolated to the full year.

§ Data for frozen fillets also includes catsharks (*Scyliorhinus spp.*).

Labelling of spiny dogfish

According to Art. 35(1) of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products,¹ fishery and aquaculture products falling within Chapter 3 of the Combined Nomenclature as well as seaweeds and algae "may be offered for sale to the final consumer or to a mass caterer only if appropriate marking or labelling indicates... the commercial designation of the species and its scientific name." Art. 37(1) of the above Regulation provides that "Member States shall draw up and publish a list of the commercial designations accepted in their territory, together with their scientific names." Art. 37(1) specifies that the the commercial designation consists of "the name of the species in the official language or languages of the Member State concerned" and, "where applicable, any other name or names that are accepted or permitted locally or regionally." And Art. 37(3) stipulates that Member States shall notify the Commission of any changes to their lists of commercial designations.

According to Art. 2.1 of the Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs , "the labelling and methods used must not... be such as could mislead the purchaser to a material degree, particularly: (i) as to the characteristics of the foodstuff and, in particular as to its nature, identity, properties, composition..."² Regulation (EC) 1169/2011 on the provision of food information to consumers will enter into force on 13 December 2014; it keeps the same approach, though, as its Art. 7.1 says that "Food information shall not be misleading, particularly: (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition..."³

In Germany the Federal Office for Agriculture and Food (BLE) maintains a register with the commercial designations of fishery and aquaculture products, which it publishes online.

¹ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0001:0021:EN:PDF>.

² See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:109:0029:0042:EN:PDF>.

³ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>.

According to this information, for *Squalus acanthias* the only listed commercial designation in German is *Dornhai* (literally "spine shark" or "thorn shark").¹

Conclusions

Where stocks of spiny dogfish (*Squalus acanthias*) in Union waters are threatened, rigorous conservation measures (TAC = 0) in line with the latest scientific advice are already in place to help rebuild stocks and preserve spiny dogfish, although concerns exist about the mortality of spiny dogfish caught as a by-catch and subsequently discarded. Elsewhere in the world there are stocks of spiny dogfish that are not threatened and can be fished sustainably. A unilateral trade ban on spiny dogfish would not only be ineffective in increasing the protection of related stocks in Union waters (as it would not address the issue of unintended by-catch), but may be questioned within World Trade Organization (WTO) rules. The Commission therefore cannot support the petition in this respect; this does not mean that the EU will not support also future proposals to include spiny dogfish in the CITES Appendix II.

Regarding the labelling of spiny dogfish as *Seeaal* or *Schillerlocke*, as the petitioner claims is done in Germany, these are not names that appear on the list of commercial designations that is drawn up and published by the Germany authorities in accordance with Art. 37(1) of Regulation (EU) 1379/2013 on the common organisation of the markets in fishery and aquaculture products. Hence, for the names *Seeaal* and *Schillerlocke* to become permitted designations in Germany so they can continue to be used, Germany would have to add those names to its list of commercial designations. It is the responsibility of Member States to check and control the correct implementation of the commercial designations of products that are placed on the market.

¹ See

http://www.ble.de/DE/02_Kontrolle/02_Fischerei/05_Fischetikettierung/fischetikettierung_no_de.html, 63rd modification of the register, dated January 6, 2014, and preliminary list, dated December 17, 2013.