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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## Implementation of the Technical Measures Regulation (Article 31 of Regulation (EU) 2019/1241)

{SWD(2021) 268 final}

## 1. Introduction

On 14 August 2019, Regulation (EU) 2019/1241 of the European Parliament and of the Council[1] ('the Regulation') entered into force. It sets out the EU's technical conservation measures that govern how, where and when fishing may take place.

The purpose of these technical measures is to contribute to achieving the objectives of the common fisheries policy ('CFP') [as defined in Regulation 1380/2013[2] ('CFP Regulation')] and to contribute to achieving good environmental status as set out in the Marine Strategy Framework Directive ('MSFD')[3] and the relevant provisions of the Birds[4] and Habitats Directives[5]. Fishing at maximum sustainable yield with appropriate technical measures serves to increase yield from targeted fish stocks while reducing unwanted (by-)catches and impacts on sensitive habitats, either through size selectivity (avoiding small fish) or species selectivity (avoiding certain species). The measures are central to effectively implementing the EU's discard policy and the landing obligation. Member States and operators[6] should prioritise selecting better fishing gear and techniques to avoid and reduce, as much as possible, unwanted catches.

The Regulation introduced results-based approaches supported by 'regionalisation.' It set out the general rules that apply to all EU waters and provided for the adoption of technical measures that respond to the regional specificities of fisheries. This results-based regionalisation approach is conceived under the CFP in order to bring decision-making closer to the fishers. It also provides Member States and the fishing sector with an incentive to play an active role in its creation and implementation.

[1] Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.7.2019, p. 105).

[2] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC OJ L 354, 28.12.2013, p. 22–61

[3] Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

4 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7–25).

5 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. 7–50).

[6] As defined in Article 4(1)30 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22–61)

In line with Article 31(1) of the Regulation, this report reviews how the Regulation is currently being implemented. This first report was due by 31 December 2020, but was postponed due to the COVID-19 pandemic. The report includes the latest available scientific advice.

This report is published only two years following the entry into force of the Regulation. Due to the short period of time that has lapsed between adoption, implementation and monitoring, data collection and scientific and technical assessment, it has not been possible to fully assess if the Regulation has met its objectives at regional or EU level. Therefore, this first report focuses on analysing:

- the impact of previous technical measures;
- the current situation; and
- the actions planned for the near future to implement the Regulation.

The current report while responding to the mandate of Article 31(1) of the Regulation, also presents the basis under which the CFP will contribute to the "Action Plan to conserve fisheries resources and protect marine ecosystems" (hereafter "action plan") as announced in the EU Biodiversity Strategy for 2030[7]. It will indicate those areas in which more efforts are needed.

## 2. Sources of information

This report builds upon scientific assessments and contributions from the Scientific, Technical and Economic Committee for Fisheries ('STECF')[8] and the International Council for the Exploration of the Sea ('ICES')[9]. It takes full account of the views and opinions received from 23 Member States, 8 Advisory councils[10] and 37 stakeholders by means of a targeted online consultation[11]. A detailed description of the scientific contributions and consultation outcomes is provided in the staff working document accompanying this report.

[7] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU Biodiversity Strategy for 2030 Bringing nature back into our lives. COM/2020/380 final

[8] https://stecf.jrc.ec.europa.eu/web/stecf/ewg2002

[9] https://www.ices.dk/news-and-events/news-archive/news/Pages/InnovativeFishingGear.aspx

[10] https://ec.europa.eu/fisheries/partners/advisory-councils_en

[11] https://ec.europa.eu/info/consultations/targeted-stakeholder-consultation-technical-measures-regulation-fisheries_en

## 3. Measuring progress

Results-based management combined with active stakeholders and Member States participation requires results to be monitored, measured and followed up with revised technical measures developed over time. Previous regulations did not include metrics to measure the impact and success of implementing the technical measures[12]. This means that it was not possible to determine in detail how the technical measures have contributed to the above-mentioned objectives.

The latest scientific analysis carried out by STECF[13] indicates that there has been a slow and very gradual trend towards catching a bigger proportion of larger fish .–While experimental studies have shown that improved selectivity can be achieved using particular fishing gears under controlled conditions, it has proven difficult to establish direct causal links between the application of particular fishing gear regulations, changes in fishing gear used, and the overall size selectivity of fishing fleets. Sufficiently fine-scale data are not available that could identify such links. In addition, it is believed that operational factors (choice of where and when to fish, and fine details of gear rigging) also have major effects on selectivity that are not governed by regulatory obligations.

The Regulation, looking at more results-based approaches to the definition of measures, includes targets for technical measures to:

- reduce unwanted catches (especially of sensitive species);
- optimise exploitation patterns;
- contribute to improved yields; and
- ensure impacts of fishing on seabed habitats are in line with EU environmental legislation.

The need for improved methods to measure selectivity and its effects becomes more obvious and urgent. Effectiveness can only be assessed through visible results: better protection of juveniles, of spawning grounds, lower incidental catches of sensitive marine species, lower negative environmental impacts and positive contributions to the environmental legislation. Such measurement methods serve two purposes: (i) the preliminary evaluation of the potential results from the measures proposed and developed, and (ii) the assessment of the measures in terms of the results obtained from such measures.

[12] COM(2016)134final of 11.3.2016.
[13] STECF 20-02. (https://stecf.jrc.ec.europa.eu/web/stecf/ewg2002)

Selectivity is determined by both the type of fishing gear being used and by the way it is deployed by the fishing masters and fishers with respect to place, season, time of day, speed and other operational choices. Improving selectivity depends not only on using legislation to change the structure of fishing gear but also on using legislation to create incentives for the fishers to operate the gears with better practices. This means that improved methods of monitoring selectivity are needed, by measuring more accurately the quantities of small fish or of sensitive species that are caught. Current monitoring methods only provided data adequate for STECF to evaluate broad trends in size selectivity in large fleet segments. In its forthcoming action plan the Commission will consider recommendations to Member States additional means for gathering the information necessary to make this policy work.

## 4. Contribution to achieving the EU's environmental objectives

Technical measures also need to contribute to achieving good environmental status set out in the MSFD. Measures aimed at the conservation of marine biological resources within the framework of the CFP, that also contribute to marine environment protection, fall under the EU's exclusive competence. Coherence with EU environmental legislation is required in the CFP and the Regulation builds on the targets established therein.

Quantitative environmental targets are being developed under the MSFD, but most environmental objectives are still qualitative, for example the "favourable conservation status" referred to in Article 1( e) and Article 2 of the Habitats Directive.

Feedback from the consultations confirm that time is needed to adapt to the Regulation (which consolidates and replaces more than 30 prior regulations) and to move from prescriptive rules to regionally adapted measures through the regionalisation process. Most Member States, Advisory Councils, stakeholders and STECF confirmed that it is too soon to measure the effect of the Regulation. Most NGOs consider that the Regulation so far has not contributed to the objectives and targets of the Regulation and has failed to prevent the negative environmental impacts of fishing. These stakeholders also advocate a result-based approach here, further aligned with the ambitions of the European Green Deal and the EU Biodiversity strategy for 2030.

Fishing is a key pressure affecting ecosystems, sensitive species and impacts on seabeds. A recent review by the European Court of Auditors[14] concluded that the loss of habitat and of marine diversity remains a challenge. The Commission agrees with the Court of Auditors that further action is needed, and considers the development of appropriate technical measures under the Regulation as being key to achieve this.

In this report, **sensitive species** include those protected under EU legislation and international agreements binding on the EU such as dolphins, porpoises, seabirds, sharks and some fish and turtle species that are under immediate threat of extinction. Many large-bodied, slow-growing fish and other animals are now extinct in large parts of their previous range, and others are critically endangered[15]. Fishing can be a major threat to these species, and in some

[14] European Court of Auditors (2020). Marine environment: EU protection is wide but not deep. Special report.
[15] For example, Mediterranean monk seal, Baltic proper harbour porpoise, Balearic shearwater, porbeagle, Angel shark, manta and mobula rays, large skate and butterfly ray.

cases, technical measures can help mitigate this threat. There is large evidence of incidental catches of the following species. For example, seabirds can be caught and drowned in longlining operations or in coastal gillnets. Harbour porpoises and dolphins can also be caught in gillnets and also in (pelagic) trawl gear. Turtles are caught in gillnets and they can be hooked on surface longlines, deep-sea sharks are caught in longlines and gillnets, large pelagic sharks are caught in longline fishery for tunas. Juvenile large sharks, rays and skates are caught in bottom trawl gear due to their large body size.

Some obvious cases that are at risk of extinction are known, but general knowledge on incidental catches of sensitive species is not sufficient to estimate the impacts of such catches accurately. STECF[16] identified coastal static nets (gillnets and trammel nets) as having the largest and most widespread impact on sensitive species, reviewed methods to reduce these incidental catches and identified an array of possible measures such as seasonal closures, use of acoustic deterrent devices and bird-scaring lines. The Regulation continues to ban drift nets and restricts the use of other types of gear with known negative impact on the environment, and builds on the measures formerly provided in the repealed Cetaceans Regulation[17], including the monitoring obligations that were intended to complement the more comprehensive data collection under the past data collection framework[18] (where by-catch data are part of a much larger comprehensive data collection exercise). This targeted cetacean monitoring has proven difficult and there are clear concerns about its effectiveness[19]. The amount of by-catches remains largely unknown.

The Regulation also provides the framework to implement the action plan for reducing incidental catches of seabirds in fishing gear[20] and provides possibilities for Member States to adopt measures for their waters or in regional context, as a means to effectively contribute to the Regulation's objective and targets.

The Commission adopted on 3 July 2020 an implementing regulation on acoustic deterrent devices[21]. Two Member State regional groups are working on measures to protect the critically endangered Baltic Proper harbour porpoise and the common dolphin in the Bay of Biscay based on the advice by ICES in May 2020[22]. Some Member States have used the possibility under the Regulation to establish national measures, for example increased monitoring or moving on provisions.

[16] STECF 20-02, https://stecf.jrc.ec.europa.eu/web/stecf/ewg2002, page 151 *et seq.*

[17] Council Regulation (EC) No 812/2004 of 26.4.2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12).

[18] https://datacollection.jrc.ec.europa.eu/

[19] ICES. (2020). Bycatch of protected and potentially vulnerable marine vertebrates – review of national reports under Council Regulation (EC) No. 812/2004 and other information. In Report of the ICES Advisory Committee, 2020. ICES Advice 2020, byc.eu, https://doi.org/10.17895/ices.advice.7474

[20] COM(2012) 0665 final.

[21] Commission Implementing Regulation (EU) 2020/967 of 3 July 2020 laying down the detailed rules on the signal and implementation characteristics of acoustic deterrent devices as referred to in Part A of Annex XIII of Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures (OJ L 213, 6.7.2020, p. 4).

[22] https://www.ices.dk/sites/pub/Publication%20Reports/Advice/2020/Special_Requests/eu.2020.04.pdf

Stakeholders[23] identified shortcomings in the mitigation measures laid down in Article 11(4) of the Regulation and in the list of prohibited species set out in Annex I. Stakeholders expressed more concerns over the lack of action and development of further measures including absence of electronic monitoring[24], rather than on the content of currently applicable provisions of the Regulation. Member States did not express major concerns over the legal provisions. A number of Member States recognised the need for further monitoring to inform the preparation of measures.

To support Member States' in implementing the Regulation, the Commission, in its action plan will identify actions to increase selectivity and reduce by-catch of sensitive species, focusing on those threatened with extinction and in unfavourable conservation status.

Fishing can have an impact on ecosystems and habitats beyond the extraction of fished species and sensitive species. The extent of this impact varies with the fishing intensity, the habitats where the fishing takes place, and the target species in question. The CFP seeks to reduce such impacts as much as possible. Impacts also vary by gear type: bottom trawling can affect sea-floor sediments, their vertical porosity and geochemical content, reducing habitat complexity and changing species composition. Longlining (notably in outermost regions) can snag and fracture corals.

Article 12 of the Regulation also aims to protect **sensitive habitats** by specifying areas where certain fishing gears are banned. This can be amended through regionalisation in accordance with the procedure laid down in Article 11(2) and (3) of CFP Regulation. Member States may also establish closed areas or other conservation measures through national measures, or regionalisation in accordance with Article 15(2) of the Regulation.

Certain bans on fishing gear are already in place to protect sensitive habitats, such as the use of explosives, percussive instruments, coral-harvesting dredges and grabs, trawl gear used deeper than 800 m[25]. Further rules exist under the Mediterranean Regulation[26], which bans fishing with mobile gear above seagrass beds, coralligenous habitats and maerl beds. In addition, the use of sponge dredges, towed gears and purse seines is banned in coastal zones (specific conditions and derogations may apply). Restrictions also apply to the gear that may be used in Mediterranean recreational fisheries, where the use of towed nets, surrounding nets, seine nets, dredges, and static nets are banned.

Scientific work is in progress to map the distribution of different seabed habitat types and the impacts of fishing activities on or above them. This will enable an assessment of the areas where biodiversity is at greatest risk and where protective measures are most needed to be

[23] Based on the replies received to the online consultation. See Annex I of the accompanying SWD.
[24] E.g. Closed circuit television ('CCTV'), Remote Electronic Monitoring (REM)
[25] Article 8(4) of Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002 (OJ L 354, 23.12.2016, p. 1–19).
[26] Council Regulation (EC) No 1967/2006of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11).

carried out. STECF[27] has highlighted alternative fishing gear with the potential to reduce impacts on the seabed: electric pulse-trawl, semi-pelagic trawl doors, benthos release panels, raised-footrope trawls, soft brush ground gear and electric dredges for razor clams.

The consultation provided information on actions already taken or being developed by Member States and work ongoing in the regional groups to develop habitat protection measures, complementing the measures being taken by Member States individually to comply with their obligations under EU environmental legislation.

In line with the commitment in the EU Biodiversity strategy for 2030, the Commission, in its action plan, will identify measures to limit the use of fishing gear most harmful to biodiversity, including on the seabed and explore ways to improve the implementation of fisheries management measures in particular in Natura 2000 sites and other marine protected areas.

## 5. Scientific research, innovation and pilot projects

The Regulation facilitates scientific research and the fisheries' sectors participation in scientific activities. Member States can be granted derogations for fishing operations scientific research when the necessary conditions provided for by Article 25(1), points (a) to (f) of the Regulation are met. Since the entry into force of the Regulation, 17 Member States informed the Commission of 67 fishing operations conducted for scientific investigations. Two applications were received for scientific research involving more than six commercial vessels and therefore subject to specific scrutiny. The Commission, upon advice by the STECF[28], concluded that in both cases the level of participation was not justified on scientific grounds requiring the Member States to amend the conditions of the scientific research accordingly.

Article 20 of the Regulation also includes the possibility for Member States, through regionalisation, to allow the use of innovative fishing gear. To help in this process, ICES produced an assessment of innovative gear. While preliminary conclusions could be presented on this basis[29], both ICES and STECF underlined the need to further develop the assessment, in particular to better take account of socioeconomic factors that play an important role when it comes to the uptake of the innovative gear by the fisheries' sector.

While Article 23 of the Regulation provides for the possibility to define pilot projects to develop a system of full documentation of catches and discards based on measurable objectives, none of the regional groups have put forward joint recommendations to this end.

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[27] See page 189 of STECF – Review of technical measures (part 1) (STECF-20-02). EUR 28359 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-27161-1, doi:10.2760/734593, JRC123092.

[28] Croatia request for scientific fishing authorisation of more than 6 volantina vessels in Western Istria waters (2019), STECF 20-03, and Italy request for scientific fishing authorization of more than 6 vessels beach seines in Italy territorial waters targeting (Italy request of scientific research on "SARDELLA" (*S. pilchardus*) in Liguria (GSA 9), STECF 20-02

[29] https://www.ices.dk/news-and-events/news-archive/news/Pages/InnovativeFishingGear.aspx

The Regulation also requires in Annex XIII point 2 that Member States take the necessary steps to collect scientific data on incidental catches of sensitive species which is not yet sufficiently done.

Bearing in mind that innovative techniques can contribute to the European Green Deal and the EU Biodiversity strategy for 2030 objectives, the Commission, in its action plan, will identify ways to encourage stakeholders and Member States to explore possibilities to maximum extent possible and make use of all opportunities available.

## 6. Implementation of the Regulation

Although it is too early to carry out a comprehensive assessment of the implementation of the Regulation, evidence shows that some concerns arose due to the new regionalised set-up and the absence of detailed definitions. Work is ongoing to guide Member States in their implementation and further specification through the regionalised approach and through the future implementing regulation.

Apart from the national implementation, the main method for implementation is the development of joint recommendations by regional groups with the advice of stakeholders setting out the necessary regional technical measures. In accordance with Article 15(2) of the Regulation, the measures proposed in such joint recommendations, when compatible with the relevant objectives and obligations, may be adopted by the Commission by means of delegated acts.

The work carried out so far gives an impression of the process and demonstrates that Member States are indeed working together to complement and adapt measures to their regional needs. And that they usually manage to agree on measures relatively swiftly where such measures are aimed to refine rules in line with previously applicable regulations. Member States' cooperation in regionalisation also seems to be effective when it concerns joint recommendations aiming to provide for derogations from the landing obligation as provided for under Article 15 of the CFP Regulation and regional specific multiannual plans. However, there are concerns in terms of the level of speed and ambition when it comes to developing and agreeing joint recommendations on measures aimed at improving selectivity or restricting fisheries with a view to contributing to EU environmental legislation. The Regulation indeed requires Member States[30] to submit joint recommendations for additional mitigation measures as a result of scientific evidence of negative impacts of fishing gears on sensitive species. For example, to date, only two joint recommendations have been put forward by Member States for additional mitigation measures as a result of scientific evidence of negative impacts of fishing gears on sensitive species as required by the Regulation

As highlighted in the recent Commission Communication 'Towards more sustainable fishing in the EU: state of play and orientations for 2022'[31], the COVID-19 pandemic has had an effect on the timing and preparation of some of the joint recommendations. Since the entry

[30] Annex XIII, point 3.

[31] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Towards more sustainable fishing in the EU: state of play and orientations for 2022. COM/2021/279 final.

into force of the Regulation, 17 joint recommendations[32] have been proposed by Member States' regional groups of which 6 have been implemented into legislation by way of a Commission delegated act. Others are pending adoption, under assessment by STECF, or being reconsidered for improvement in view of the scientific advice obtained. In terms of the regional specificity, the joint recommendations put forward a wide variety of measures, needs and approaches. Some aim to include technical measures in new discard plans, others include technical measures only.

Article 7 of the Regulation bans activities with especially damaging effects on the environment including, as from 1 July 2021, fishing with electric pulse gear. ICES, at the request of the Netherlands, advised in May 2020 that there were several positive effects for the ecosystem and environment from using this gear, although some uncertainties remain[33]. The Netherlands brought an action before the European Court of Justice for the annulment of the provisions of the Regulation prohibiting electric pulse fishing. This request was dismissed by the Court on 15 April 2021[34]. The Regulation allows for and encourages scientific investigations as a possible means to develop knowledge and to inform future assessments.

## 7. Conclusion

The Regulation provides the framework needed to implement the CFP and effectively contribute to EU environmental legislation, through direct application but mostly by providing Member States with the tools needed to adopt fisheries measures.

There are however shortcomings in the implementation of the Regulation for what concerns its contribution to the protection of sensitive species and sensitive habitats, with some species close to extinction. Efforts to monitor effects of fishing on ecosystems need substantial improvements. The Regulation provides the legislative instruments for Member States to address these issues and complement their implementation of EU environmental legislation with fisheries measures adopted under regionalisation and it is now incumbent on them to do so. Although Member States have begun to put forward joint recommendations, more needs to be done. Stakeholders should also be encouraged to participate in this process.

The variety of joint recommendations already put forward demonstrates that regionalisation is effective and most suitable to provide targeted and tailor-made technical measures. Member States have demonstrated that the regional cooperation can be swift and efficient. However, improvements need to be made in terms of the level of speed and ambition when it comes to developing and agreeing joint recommendations on measures aimed at improving selectivity or restricting fisheries with a view to contributing to EU environmental legislation, and the Commission will continue to provide all the necessary support and guidance to ensure that environmental objectives are appropriately addressed in joint recommendations.

[32] Final figure to be updated before the adoption.
[33] ICES, 2020. https://www.ices.dk/news-and-events/news-archive/news/Pages/PulseTrawlAdvice.aspx
[34] Judgment of 15 April 2021, *The Netherlands v Council and Parliament*, C-733/19, ECLI:EU:C:2021:272

Bearing in mind the European Green Deal and the EU Biodiversity strategy for 2030, the Commission will complement the current report as part of the action plan to conserve fisheries resources and protect marine ecosystems to further improve the implementation of the Regulation and fully exploit the links between fisheries and environmental policies.