

**Mr Joao AGUIAR MACHADO**  
Director General  
Directorate General Maritime Affairs  
and Fisheries  
Rue de la Loi 200  
1049 Brussels  
BELGIUM

Pelagic AC  
Louis Braillelaan 80  
2719 EK Zoetermeer  
The Netherlands

Tel: +31 (0)63 375 6324  
E-mail: [info@pelagic-ac.org](mailto:info@pelagic-ac.org)  
<http://www.pelagic-ac.org>

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Our reference: 1617/PAC 34  
Subject: Revision of the Technical Measures Regulation

Dear Mr Aguiar Machado,

I am pleased to submit to you the Pelagic AC's response to the Commission's proposal on the conservation of fishery resources and the protection of marine ecosystems through technical measures as found in annex I. This recommendation has been unanimously endorsed by the Executive Committee.

In case you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Ohms', is written in a cursive style.

Verena Ohms  
Executive Secretary Pelagic AC



## Annex I:

# Pelagic AC response to the Commission's proposal on the conservation of fishery resources and the protection of marine ecosystems through technical measures COM (2016) 134 final

## General Comments

The Pelagic Advisory Council (PELAC) appreciates a move away from the current complicated system to a comprehensive system where technical measures are encompassed in one single and easy to understand regulation.

The PELAC finds setting overall objectives in terms of stock sustainability and sea bed habitats by the Commission a positive move, as is the proposal to deal with detailed measures at regional level.

The PELAC hence supports a number of proposed key changes as set out in the explanatory memorandum. These are:

- a. The principle of a new technical conservation measures framework regulation containing general provisions and common rules and technical provisions;
- b. The simplification of rules;
- c. The setting down of regional baseline standards which would function as default measures in the context of regionalisation or in the absence of agreement at regional level;
- d. That the structure would be recast into one single regulation instead of numerous regulations in place at present.

Unfortunately, these changes are not fully reflected, particularly in the framework part of the proposal, where more detail than necessary is incorporated and thus requiring time consuming co-decision in the future if changes are needed.

In addition, it may take many years before the new legislation is adopted and therefore a mechanism is needed to amend current technical measures that need to be changed now.

The current regulation dates back to 1998, and only very few and minor changes have been implemented in the last 19 years. It is crucial that a new regulation on technical measures can stand the test of time. How will EU fisheries develop over the coming 19 years, and can the new technical measures facilitate and guide that development in a sustainable direction without jeopardizing efficiency and the implementation of modern technology?

For the PELAC it is crucial that the work on the technical measures regulation is not rushed and that it is secured that the agreed measures can provide a legislative base for EU fisheries securing sustainability in conformity with the CFP while allowing for necessary developments.

## Definitions of terms

It is clear that overarching definitions valid across all fisheries should be included in the technical measures regulation. Nonetheless, some of the definitions included in the framework part should be moved to the regional annexes, as fisheries vary depending on regions. Having all definitions in the framework part may cause problems in the future as co-decision will be required to change any of

these definitions. A good example of this is the definition of Article 6.1.4 “*directed fishing means fishing for a defined species or combination of species where the total catch of that/those species makes up more than 50% of the economic value of the catch;*” which is a definition that may be suitable for some mixed fisheries, but does not fit most pelagic fisheries. Having to await co-decision to make changes to such definitions does not make sense.

## Separate annex for widely distributed stocks

The nature of pelagic stocks and fisheries is inherently different from demersal stocks and fisheries. Unlike demersal fish pelagic fish are migratory and often distributed over vast areas. An example is blue whiting whose distribution reaches from the waters off the coast of Spain and Portugal to the Norwegian Sea. The management of a pelagic stock in one area therefore strongly impacts the overall status of that stock. Hence it is crucial that management measures are applied equally across regions and fisheries where pelagic stocks are concerned.

A current example outlining a mismatch in the management of a pelagic stock is the sandeel anomaly. A mesh size of less than 16 mm for sandeel is included in the North Sea annex, but not in the annex for the North Western Waters. However, in the past there has been a fishery for sandeel in the North Western Waters. If that fishery was to be prosecuted again, it would have to be done with a mesh size of 120 mm, which is entirely inappropriate, because sandeel is not included in the annex for the North Western Waters.

Therefore, the PELAC strongly recommends including an annex that deals exclusively with widely distributed stocks which occur in more than one region.

## Gross Tonnage (GT) limitations

### Introduction

In the 1980s, after an initial stage of the Common Fisheries Policy notably concerning the sharing of quotas between Member States, the European decision-making bodies laid down the principle of limiting overall fishing capacity with the aim to achieve a balance between each Member State’s fishing opportunities, i.e. its quotas, and the fishing capacity of its fleet.

However, measuring fishing capacity has always been, and still is, very elusive and difficult to quantify, because a vessel’s capacity strongly depends on non-numeric factors, such as electronic equipment and knowledge of the fishing grounds (Penas Lado, 2016<sup>1</sup>). Nevertheless, policy makers agreed on two easily quantifiable criteria to determine a fleet’s fishing capacity: vessel engine power in kW and gross tonnage (GT).

In this regard the Common Fisheries Policy sets a capacity ceiling for each Member State, both in regards to kW and GT in Annex II of Regulation (EU) 1380/2013 which must not be exceeded at any time (Article 22.7 of Regulation (EU) 1380/2013).

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<sup>1</sup> Ernesto Penas Lado: The Common Fisheries Policy: The Quest for Sustainability (2016). Wiley-Blackwell.

### *Entry/Exit scheme*

Article 23 of Regulation (EU) 1380/2013 stipulates that each Member State is under the obligation to introduce an entry/exit scheme which ensures that new capacity joining its fleet must be compensated by the prior withdrawal of at least the equivalent amount of capacity or more from that fleet. Furthermore, the Commission may adopt implementing acts laying down implementing rules for this Article.

### *Commission Implementing Regulation 1013/2010*

The most recent Commission Implementing Regulation based on Article 11.5 of Council Regulation (EC) 2371/2002 dealing with the subject of capacity was Regulation 1013/2010 which granted Member States a certain degree of flexibility in regards to GT increases related to improved safety and comfort of the crew. According to this Regulation GT limits per vessel and per Member State were allowed to increase by the corresponding volume where, for example, covered decks were introduced for reasons of crew safety, or where more spacious cabins were provided for the sake of crew comfort. With the entering into force of the new Common Fisheries Policy, however, this Regulation has been repealed, providing no more flexibility for GT increases, even if not related to fishing capacity.

### *Recommendation*

Following the argumentation above it is strongly recommended to re-instate and extend the safety tonnage provisions in Article 11.5 (see below) of Council Regulation (EC) 2371/2002.

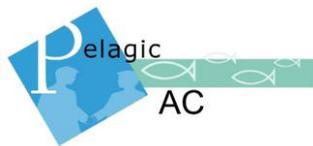
*11.5. On new and existing fishing vessels, modernisation over the main deck to improve safety on board, working conditions, hygiene and product quality may increase the tonnage of the vessel, provided that such modernisation does not increase the ability of the vessel to catch fish. The corresponding capacity need not be taken into account for the establishment of the balance of entries and exits by Member States under Article 13, but should be entered into a separate register.*

*The detailed rules and conditions for such measures may be adopted in accordance with the procedure laid down in Article 30(2).*

Even though this recommendation might not classify as a technical measure the PELAC considers this an excellent opportunity to correct a serious flaw in the current CFP. Many lives are lost at sea and fishing is still one of the most dangerous professions there is. For years the members of the PELAC have emphasized the importance of crew safety and once again we urge policy-makers to adopt a holistic approach to fisheries management taking into account not only the sustainable exploitation of our stocks, but also a safe working environment for our fishermen.

### *Mesh size restrictions*

In light of the landing obligation mesh size restrictions for pelagic fisheries are redundant, hinder developments in more selective catch practices and should therefore be removed for pelagic fisheries from the general annexes. Instead, it must be ensured that the landing obligation is rigorously implemented, monitored and enforced.



## Minimum Conservation Reference Sizes (MCRS)

The Pelagic AC calls for a fundamental and science based discussion on the relevance of applying MCRS in the fisheries for small pelagics. In early 2017 the Pelagic AC will host a workshop on the issue of MCRS for small pelagics. The workshop is expected to provide solid scientific guidance to stakeholders and decision makers on best practices and recommendations in relations to the Technical Measures Regulation.

## Processing on-board

Under the current provisions on technical measures it is forbidden to carry out on board a fishing vessel any physical or chemical processing of fish to produce fishmeal, fish oil, or similar products. This prohibition provides an incentive for illegal discarding as it reduces the options for economic use of unwanted catches. Under the condition that a fishery is fully documented, the Pelagic AC recommends lifting the current prohibition to produce fishmeal, fish oil or similar products on-board fishing vessels. The decision to make use of this option should be left to the vessel owner. At the same time the Commission should ensure a level-playing field for the production of fishmeal, fish oil and similar products, between the land-based industry and processing on board vessels.

## Stakeholder consultation

Well-intended regulations often fail due to poor implementation. Revising a regulation as complex as the technical measures regulation therefore requires continuous input from stakeholders. In this regard the Advisory Councils are the single most important fishery stakeholder bodies in the EU and provide expertise from the fishing industry as well as other interest groups. The PELAC in particular looks forward to further consultation throughout each step of the process. We are aware of ongoing discussions between Member States, the Commission and the Parliament and we urge all policy-makers to invite the Advisory Councils to become parties to the process, so that together we can ensure a new technical measures regulation that is environmentally, economically and socially sustainable.