



Ms. Charlina Vitcheva
Director General
Directorate General Maritime Affairs & 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
<http://www.pelagic-ac.org>

Date : 15th February 2021
Our reference : 2021PAC13
Subject : Technical Measures Regulation – preparation of the implementation report

Dear Ms. Charlina Vitcheva,

On behalf of its members, the Pelagic AC welcomes the opportunity to share responses to the Commission's questionnaire on the implementation of Regulation (EU) 2019/1241 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures.

In addition to the answers provided to the questionnaire, which can be found below, we would like to emphasize that fishing is not the only human activity occurring in the marine environment or, in this specific case, the only human activity that impacts sensitive species and cetaceans in particular. While we agree that there is a need to put in place research projects, data collection frameworks and technical measures that adequately identify, monitor and minimize fishing impacts, we believe that there is also the urgent need to rigorously assess and mitigate the impacts that other activities have on these populations. And we would like to highlight the need to engage all the relevant stakeholders in these processes, in a timely, continuous and transparent way.

Please find herewith our considered commentary on each of the 21 questions provided.

Yours sincerely,

A handwritten signature in blue ink that reads 'Jesper Raakjaer'.

Jesper Raakjaer
Pelagic AC Chairman

Question 1: Even though the Regulation on Technical Measures has only entered into force recently, the Advisory Council's views are welcome on whether technical measures both at regional level and at Union level have contributed to achieving the objectives set out in Article 3 and reaching the targets set out in Article 4 of that Regulation.

The Pelagic Advisory Council considers that it would be premature to comment on the implementation of the Regulation at this early stage. The PelAC urges the Commission to ensure rigorous data collection in all areas necessary to effectively monitor the impact of the Regulation, including for the objectives and targets set out in Articles 3 and 4.

Question 2: Does the Advisory Council consider that the list in Annex I (Prohibited species) is adequate? If not, what should be amended?

The Pelagic Advisory Council considers that there would be merit in undertaking an analysis of what species are on the list, and the rationale behind the inclusion of each species. The PelAC has not undertaken any such analysis for the species targeted or otherwise accidentally caught in pelagic fisheries, but will consider this for future work within the Ecosystem Focus Group.

Question 3: Does the Advisory Council consider that the measures in place are adequate to ensure that species referred to in Art 11 are not harmed and promptly released?

The Pelagic Advisory Council recommends further studies to ascertain the effectiveness of the measures referenced.

Furthermore, the PelAC would like to comment on the COMMISSION IMPLEMENTING REGULATION (EU) 2020/967, of 3 July 2020, laying down detailed rules on the signal and implementation characteristics of acoustic deterrent devices as referred to in Part A of Annex XIII of the Technical Measures Regulation. This implementing regulation repeats and older Council Regulation (EC) No. 812/2004, which specifies the technical characteristics of pingers as bycatch mitigation measures. Whilst it is acknowledged that this previous Council Regulation established the possibility of a two-year derogation to allow the temporary use of acoustic deterrent devices that do not fulfil the specifications as outlined in Annex II of the Regulation, provided that they have been proven successful in reducing incidental catches of cetaceans, the PelAC believes that this implementing regulation should be updated.

Updating the implementing regulation would allow for the consideration and inclusion of technical progress in the area of acoustic deterrent design and implementation.

The PELAC also suggests that specifications for acoustic deterrents may be included in separate tables for bottom-set gillnets, entangling gears, pelagic trawl gears and any other relevant gears.

Question 4: Has the Advisory Council been involved in any scientific research envisaging the use of accidentally caught marine mammals, seabirds?

The application of the term 'use' within this question lacks clarity - therefore the overall meaning of the question is unclear. Based on our understanding of the question, no research of this nature has been undertaken by the PelAC.

Question 5: Is the Advisory Council aware of any mitigation measures or restrictions on the use of certain gear that Member States have put in place aimed at minimising or where possible eliminating the catches of mammals, seabirds and marine turtles?

The Pelagic Advisory Council was made aware of the combined Joint Recommendation prepared by the North and South Western Waters Member States Groups for cetaceans' bycatch in ICES area VIII, the Bay of Biscay. This establishes mitigation measures and improvement of scientific knowledge to reduce accidental capture of cetaceans during fishing activity. An on-board observer programme is in place alongside a CCTV pilot project, to assess the level of interactions between cetacean populations and fisheries.

In order to discourage the presence of cetaceans during fishing activity, acoustic devices are required to be installed in fishing gear. In addition, a 'good practice guide' has been developed, covering the accidental capture of these cetacean species. Other measures, such as a 'five-mile displacement rule' – which comes into effect when a vessel captures more than three cetaceans in one set – are also in force.

The PELAC was also made aware that some Member States' pelagic vessels are using acoustic deterrent devices ('pingers') in their fisheries in ICES areas 6,7 and 8 in depths not lower than 200 meters. This use of pingers is done on a voluntary basis.

The PelAC was also made aware by members that fleets such as longline vessels operating in the Atlantic (including in NEAFC waters), have adopted measures to avoid bycatch of seabirds and turtles. Avoiding use of exterior lights during night-setting, use of tori-lines, live release of captured specimens, data capture and other actions are in place.

Question 6: Is the Advisory Council involved in any proposal to amend Annex II (closed areas for protection of sensitive habitats)? If so, please provide a brief explanation.

There is no work underway currently within the Pelagic Advisory Council on this topic.

Question 7: Is the Advisory Council involved in any pilot projects for the avoidance of unwanted catches? If so, please provide a brief explanation.

The Pelagic Advisory Council as a collective is not engaged in any pilot projects of this nature, however we are aware that members of the PelAC are.

Question 8: Does the Advisory Council consider there is a need for additional closed or restricted areas, other than in Part C or Annexes V to VIII and X and Part B of Annex XI to protect juveniles and spawning aggregations? If so, provide a brief explanation.

The Pelagic Advisory Council has previously expressed concerns regarding the impact of extractive and other non-fishing activities on spawning habitats, and believes these impacts should be researched thoroughly and taken into consideration when implementing closed or restricted areas. For example, the PelAC has submitted advice in conjunction with the North Western Waters AC and the North Sea AC on the impact of marine wind energy developments on commercial fish stocks and their biology. The advice noted that the impacts of these developments on fish, shellfish, **spawning grounds and larval development**, both in the long- and short-term, remain poorly understood by the scientific community. In light of the rapid growth of this industry, the PelAC firmly believes that independent scientific research on the impacts of marine wind energy developments is necessary and urgent. Depending on the outcomes of such research, the role of closed or restricted areas could become increasingly important.

In summary – and evidenced by the PelAC’s previous commentary on wind energy developments – it is members’ position that restricted areas should be thoroughly investigated and should go beyond simply restricting fishing activities, to consider closing-off areas to all activities that may impact juveniles and spawning behaviour.

Question 9: Does the Advisory Council consider the current Minimum Conservation Reference Sizes for commercial species as in Part A of Annexes V to X adequate? If not, please provide a brief explanation why not and whether the Advisory Council sees a need to amend established sizes or introduce additional ones.

The Pelagic Advisory Council held a workshop specifically on Minimum Conservation Reference Sizes (MCRS) in 2017. The full report of this workshop can be found at: <https://www.pelagic-ac.org/02129/>. The PelAC believes that MCRS – and any changes made to these sizes – should be based on sound science. Overall, the PelAC believes there may be merit to analyzing and confirming MCRSs – a case-by-case approach should be adopted in reviewing MCRS for different species, basing all decisions firmly on the scientific evidence.

Specifically, the difference in MCRS between mackerel caught in area 4 (30 cm) and area 6, 7 or (20 cm) is a matter that needs to be analyzed and solved.

Question 10: Does the Advisory Council consider there is a need to align the MCRS between recreational fisheries and commercial fisheries? If so, please provide a brief explanation.

This does not present a concern to species under the Pelagic Advisory Council remit.

Question 11: Does the Advisory Council consider there is a need for real-time closures and moving-on provisions? If so, please provide a brief explanation.

The Pelagic Advisory Council considers that this may well be a relevant area for exploration and consideration, but the PelAC is not currently in a position to provide a consensus commentary or proposals on real-time closures and moving on provisions. Furthermore, members recognise that practical application of these measures is highly complex.

Question 12: Does the Advisory Council consider there is a need to adopt measures regarding innovative fishing gear, taking into account the recent ICES advice on innovative gear? If so, please provide a brief explanation.

The applicability of gears listed within the ICES advice is of limited within relevance to fisheries under the remit of the Pelagic Advisory Council. The PelAC is not in a position to provide further detailed comments at this stage. Nevertheless, in principle the PELAC endorses procedures that allow for extended and rapid adoption into EU legislation and of innovative and selective fishing gear providing scientific justification.

Question 13: Does the Advisory Council consider there is a need for additional technical nature conservation measures for the protection of sensitive habitats? If so, which measures for which habitats?

The Pelagic Advisory Council will be undertaking an exercise to create an overview of existing protections relevant to pelagic fisheries for sensitive habitats under all relevant legislation – eg. Technical Measures Regulation, Habitats Directive, Marine Strategy Framework Directive.

Question 14: Does the Advisory Council consider there is a need for additional technical nature conservation measures for the protection of sensitive species? If so, which measures for which species?

The Pelagic Advisory Council believes that more monitoring and evaluation of existing measures is required, in order to achieve sound science upon which to base any conclusions in this area. Additionally, if new measures are trialled, the effectiveness of those new measures should be rigorously monitored and resulting data used to inform the roll-out of any measures.

The Pelagic Advisory Council will be undertaking an exercise to create an overview of existing protections relevant to pelagic fisheries for sensitive species under all relevant legislation – eg. Technical Measures Regulation, Habitats Directive, Marine Strategy Framework Directive, Birds Directive.

Question 15: Does the Advisory Council consider there is a need for the establishment of pilot projects to develop a system of full documentation of catches and discards based on measurable objectives and targets, for the purpose of results-based management of fisheries?

In principle, the PelAC finds that development of such pilot projects is valuable.

Question 16: Does the Advisory Council consider there is a need for additional measures in relation to species and size selectivity of fishing gear and mesh size specifications? If so, why and how?

As with the Pelagic Advisory Council position on MCRS, measures relating to selectivity of fishing gear and mesh size specifications should be based on sound science, and should be harmonised and pragmatic.

Question 17: Is the Advisory Council involved in the preparation of a Joint Recommendation in order to further define the term ‘directed fishing’ for relevant species in Part B of Annexes V to X and Part A of Annex XI? If so, please describe.

The Pelagic Advisory Council is not involved in the preparation of a Joint Recommendation on this subject.

Question 18: Does the Advisory Council consider that additional regional mitigation measures are needed for the reduction of incidental catches of sensitive species? If so, what measures?

The PelAC would like to emphasize the ICES 2020 advice for emergency measures for (inter alia) the protection of common dolphins in the Bay of Biscay. This advice proposes spatio-temporal closures for all fisheries of concern during peaks of mortality and the use of pingers as acoustic deterrents applied to pair trawls to help prevent bycatch of dolphins. The PelAC agrees with the principle of taking a long-term, strategic approach to tackling the issue of bycatch of dolphins. However, the PELAC also notes that some mitigation measures (e.g. pingers, CCTV camera pilot projects, displacement rules and on-board observer programs) have already been implemented by some member states and industry groups. The Pelagic Advisory Council considers that existing measures should be fully monitored and evaluated for their effectiveness before additional measures are implemented.

Question 19: Does the Advisory Council consider there is a need for additional steps to collect scientific data on incidental catches of sensitive species as set out in Annex XIII? If so, why and what steps?

The Pelagic Advisory Council believes that existing data should be evaluated to see if it is adequate in this area, and that additional steps should then be considered if the need is clearly shown by the data.

Question 20: Does the Advisory Council consider there is a need for additional steps to sufficiently monitor and assess the effectiveness of mitigation measures as set out in Annex XIII? If so, why and what steps?

The Pelagic Advisory Council considers that there is a need to determine what data on these points is actually being collected, currently.

Question 21: Has the Advisory Council identified difficulties in the implementation of the Technical Measures Regulation? If so, please indicate the relevant Article(s) and the difficulties encountered?

Similar to the response to question 1 of this questionnaire, the Pelagic Advisory Council considers that it is too early to comment on this, given the very recent adoption and implementation of the Regulation.