

European Commission
Directorate-General Fisheries
c/o Mr Fokion Fotiadis
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Our reference: 0809PRAC12/AC
Subject: Recommendation on Technical Conservation Measures regulation

Dear Mr Fotiadis,

The Pelagic RAC is pleased to present its unanimous recommendations in response to the Commission's proposal for a new regulation on Technical Conservation Measures and in addition its views on the non-paper for pelagic fisheries. Please find our comments attached in annex 1 to this letter in three parts:

- Introductory remarks;
- Comments in relation to the proposal for Council Regulation concerning the conservation of fisheries resources through technical measures (COM(2009) 324 final);
- Comments in relation to EC non-paper Specific technical measures for the pelagic stocks.

Please note that the Pelagic RAC was made aware that the Commission is considering the use of this regulation as a tool for future management of the Natura 2000 areas. In the light of this, we hope that the Commission would again consult stakeholders at that point.

For any questions, please contact the secretariat. Looking forward to your response,

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Aukje Coers', written over a horizontal line.

Aukje Coers
Pelagic RAC secretariat

Annex 1: Pelagic RAC comments in response to proposal on the new Technical Measures rules

(1) Introductory remarks

1. There are no major negative experiences with the technical measures which are currently in force.
2. The Commission should have undertaken a thorough evaluation (biological, socio-economic) of the existing regulations on technical measures, before new regulations on technical measures were proposed.
3. Pelagic stocks are generally highly mobile. Many pelagic stocks undergo long-term variations in abundance independently of fisheries. The distribution and abundance is strongly influenced by environmental factors such as water temperature, food abundance, current direction and turbulence.
4. Pelagic fishing is generally a clean fishery as it is commonly catching schooling pelagic fish that tend to occur in single-species aggregations.
5. Most pelagic species grow rapidly when they are young (until 3 years of age) and mature early. The life span in pelagic species varies considerably; from one or two years in the case of some anchovies to up to twenty years in the case of the Atlanto-Scandian herring. It makes sense to distinguish between these two types; short lifespan – anchovies, sardines, sprat, capelin – and long lifespan, such as herrings and mackerels.
Because of the lifespan, it is important to take measures to protect young pelagic fish (juveniles) and improve the spawning stock. Mesh selection is not effective to protect young pelagic species, because the catch itself blocks and blinds the meshes of the nets. Moreover, many pelagic fish seem to suffer high mortality after being released from the fishing gear – which is caused by the loss of scales leading to secondary infections and osmotic imbalance.
6. Closed areas and seasons, preferably in the form of real time closures, may be a good method for reducing fishing mortality on pelagic juveniles. Many pelagic species have a marked degree of geographical separation of the young age class at certain time of the year.
The potential areas should be based on sound scientific advice. The exact timing and location however should be based on observations on the fishing grounds. For example: if X% of fish which have been caught is smaller than the fixed minimum landing size, this area could be closed for pelagic vessels for a short period.
It also has to be absolutely clear that areas can only be closed for a certain period and that this period has to be specified at the start of the closure. An extension – if need be- therefore requires a new decision.

7. Closed areas for pelagic fisheries can only be based on the need to protect juveniles. Furthermore, closed areas should not only relate to fishing activities, but to all human activities (marine aggregate extraction, dredging, gas and oil exploration, marine wind farms etc.).
Moreover, pelagic species are especially sensitive to the consequences of water pollution (PCBs, dioxins, etc.), as these chemicals are stored in the fat layer of pelagic species. This issue requires full attention.

8. It was hoped that the review of the Technical Measures Regulation would lead to a simplified approach to this subject and that the outcome would be one reference document for the use of fishermen which consolidated all technical measures legislation. If some Commission Regulations remain outside the new document (e.g. (EEC) 3440/84) then an opportunity to simply this very complex and confusing subject will have been missed.

(2) Comments in relation to the proposal for Council Regulation concerning the conservation of fisheries resources through technical measures (COM(2009) 324 final)

Art. 1 and 2

No comments.

Art. 3: (Other definitions)

- (e) 'codend' means the last 8 m of the towed gear measured from the codline when the mesh size is equal or more than 80 mm and means the last 20 m of the towed gear measured from the codline when mesh size is less than 80 mm;

Comments:

- *The proposed definition changes the definition of the codend of Reg. 3440/84 (art 6, 10) saying that strengthening bag can not extend forward of the codend. The new regulation should be consistent with the changes brought about to Reg. 3440/84 by the Pelagic RAC.*
- *The 'codend' definition limits the codend size to 20 m. In the pelagic fisheries codends tend to be longer than 20 m. A determination of codend length is unnecessary. Regulation should concern the rear part of the trawl without naming of specific parts.*
- *Simplest definition of codend could be the one of the Fishing Gear Terms of UK Glossary:
'Codend' terminal part of net where catch collects.*

- (f) 'strengthening bag' means a cylindrical piece of netting completely surrounding the codend of a trawl and which may be attached to the codend at intervals. It shall have at least the same dimensions (length and width) as that part of the codend to which it is attached;

Comments:

- *This definition in combination with article 6 will not work. In the old rules (article 6, 13) it is stated that the strengthening bag can have a smaller circumference than the inside net. That rule is also absolutely necessary in the future rules. Otherwise the inner net will 'split open'.*
- *The second sentence should be removed, because very often a strenghtening bag is a little bit longer and a little bit narrower than the codend. It is necessary for filling up the codend (e.g. construction very often in use in Denmark).*

- (g) 'round strap' means a piece of rope encircling the circumference of the codend or the

strengthening bag and which is attached to it;

Comment:

The old rule – in article 10 – must be maintained.

- (h) 'lifting strap' means a piece of rope encircling the circumference of the codend or the strengthening bag, if any, and attached to it by means of loops or rings;

Comment:

- *Change in: 'lifting strap' means a piece of rope **or steel wire** encircling.....etc.*
- *For the rest: the old rule – in article 9 – must be maintained.*

Art.4: (Minimum landing size of living aquatic resources)

1. A living aquatic resource shall be considered as undersized if it is smaller than the minimum landing size specified in Annex I for the relevant species.
2. Undersized living aquatic resources shall not be retained on board or be transhipped, landed, transported, stored, sold, displayed or offered for sale but shall be returned immediately to the sea.
3. By way of derogation from paragraph 2, undersized sardine, anchovy, horse mackerel or mackerel caught for use as live bait may be retained on board, provided they are retained alive.
4. The measurement of the size of a marine organism shall take place in accordance with the provisions laid down in Annex II.

Comments:

- *A strong argumentation supporting this introduction is not given. Why then introduce MLS for additional species? There is no incentive to catch and land juvenile pelagic species as there is in general a price premium on larger fish.*
- *The 10% derogations by weight for undersized herring and mackerel in the catch (at Article 19 (2) of 850/98) should be re-instated.*

Art. 5. (One net rule)

It shall be prohibited to carry on board, during any fishing voyage, any combination of nets of more than one range of mesh size.

Comments:

- *The one net rule of this article is imported from the cod recovery regulations. There is no argumentation given for the introduction of the one net rule as a general rule for all fisheries. No rules should be introduced without proper and proven motivation. A one net rule could increase the costs of fishing operations –and*

exacerbate the carbon footprint– without necessarily give more protection to the fish stocks.

For pelagic fisheries a one net rule seems to be out of place. Why introduce this rule even when a mesh size for pelagic fisheries of less than 80 mm appears not to pose problems?

- *What is the range of mesh size meant in this article?*
- *If this article were to be maintained, it should be added that the 'strengthening bag' (see Art. 3, f) may have a mesh size of more than 80 mm.*

Art. 6, 2, b: (Towed gear)

1. No device shall be used which obstructs or otherwise diminishes the mesh in the upper half of the codend.
2. By way of derogation from paragraph 1, it shall be permitted to:
 - (b) attach to the outside of any part of the codend a sensor dedicated to the measurement of the volume of the catches;

Comment:

- *Change to: 'Attach to ~~the outside of any part of the codend~~ a **one or more** sensors dedicated to the measurement of the volume of the catches.'*

Art. 6, 2, c: (Towed gear)

attach round straps and a lifting strap to the outside of the codend;

Comment:

- *Change in: 'Attach round straps and lifting strap to the outside of the codend **and/or strengthening bag.**'*

Art. 6, 2, e: adding new paragraph

The regulation does not allow to use a flapper. Therefore the following paragraph should be added:

Art. 6, 2, e) 'use in active gear a non-return net or flapper. The flapper may be attached either inside the codend or in front of the codend. The provisions on minimum mesh sizes laid down in Annex II shall not apply to the flapper. The distance from the point of forward attachment of the flapper to the rear end of the codend shall be at least three times the length of the flapper;'

Art. 6, 2, f: adding new paragraph

The regulation does not say anything about the possibility of the use of a buoy line attached to the codline. Many vessels use such line equipped with buoy (sometimes called 'pilot').

Therefore the following paragraph should be added:

Art. 6, 2, f) 'attach codend buoy which shall be fastened through the buoy rope to the codline.'

Art. 7 to 9:

No comments.

Art. 10: (Real time moving to another area when maximum by-catches are exceeded)

1. Where the quantity of undersized fish caught exceeds 10% of the total quantity of the catches in any one haul, the vessel shall move away to a distance of at least five nautical miles from any position of the previous haul before continuing fishing.
2. If the minimum and/or maximum percentages of target species, excluding undersized fish of the target species, allowed to be caught with the mesh size range admissible for that species and retained on board, in any one haul have not been in agreement with the percentages laid down in detailed rules adopted in accordance with Article 22, the vessel must immediately move a minimum of 10 nautical miles from any position of the previous haul and throughout the next haul keep a minimum distance of 10 nautical miles from any position of the previous haul.

Comment:

- *We do not believe that it is necessary to move far away, maybe it could be 1 nm if that is to another depth.*
- *The question of how the measures to reduce discards would be policed needs to be addressed. There is also a need to clarify that it is the weight of undersized fish rather than the number that would necessitate moving on.*
- *This section requires further thought because with migrating pelagic species a vessel moving on could end up fishing the same school as it migrates.*

Art. 11: (Restrictions on the use of automatic grading equipment)

1. The carrying or use on board a fishing vessel of equipment which is capable of automatically grading by size herring (*Clupea harengus*) or mackerel (*Scomber scombrus*) or horse mackerel (*Trachurus spp.*) shall be prohibited.
2. By way of derogation from paragraph 1, the carrying and use of such equipment shall

be permitted where:

- (a) the whole of the catch which may be lawfully retained on board is stored in a frozen state, the graded fish are frozen immediately after grading and no graded fish are returned to the sea; and
 - (b) the equipment is installed and located on the vessel in such a way as to ensure immediate freezing and not to allow the return of marine organisms to the sea.
3. By way of derogation from paragraph 1, any vessel authorised to fish in the Baltic, Belts or Sound may carry in the Kattegat automatic grading equipment as referred to in paragraph 1, provided that a special fishing permit has been issued to that effect.

The special fishing permit shall define the species, areas, time periods and any other required conditions applicable to the use and carriage on board of the grading equipment.

Comment:

- *This article is almost entirely a copy of art. 32 of Reg. 850/98.*
- *The possibility for freezer-trawlers to return to the sea undersized and/or damaged fish must be maintained, but should better not be based on a derogation of a general prohibition. The more so now MLS for more species are proposed (although the P-RAC questions this).*
It would be simpler to change the article as follows:
*'The carrying on board of equipment which is capable of automatically grading by size herring (*Clupea harengus*) or mackerel (*Scombers combrus*) or horse mackerel (*Trachurus spp.*) shall be permitted on the condition that:*
 - a. the whole of the catch which may be lawfully retained on board is stored in a frozen state, the graded fish are frozen immediately after grading and no graded fish are returned to the sea; and*
 - b. the equipment is installed and located on the vessel in such a way as to ensure immediate freezing and not to allow the return of marine organisms to the sea. if etc. under a. and b.*
- *The same approach should be applied to current paragraph 3.*

Art. 12 to 25:

No comments.

(3) Comments in relation to EC non-paper Specific technical measures for the pelagic stocks

Art. 1: (Subject-matter and scope)

Comment:

Why not include sardines and silversmelt in this scoping article?

Art. 2: (Target species and minimum mesh size)

1. For the Pelagic Stock RAC Area the mesh size ranges admissible for each target species shall be as defined in part 1 of the Annex to this Regulation.
2. The minimum and the maximum percentages of the target species among the living aquatic resources retained on board or landed in the Pelagic Stock RAC Area for the minimum mesh size range is set out in part 1 of the Annex to this Regulation.

Annex: List of target species: Blue whiting (*Micromesistius poutassou*), mackerel (*Scomber* spp., *Scomber scombrus*), horse mackerel (*Trachurus* spp.), herring (*Clupea harengus*).

Mesh Size (MS)	MS < 80
Max % cod	2
Max % hake	2
Min % blue whiting, mackerel, horse mackerel, herring	95

Comments:

- *In general terms the P-RAC believes that the majority of the current should be maintained in the new regulation. However if changes are to be made, we must -in consultation with the individual, affected fisheries- go through the rules species by species and area by area in order to assure that our fisheries are not made impossible.
For example a requirement of 95% in the horse mackerel and blue whiting fisheries in the North Sea may be impossible to comply with. The same problem will occur in our view in the pelagic fisheries with a (by-)catch of sardines, sprat, anchovy and/or argentines.*
- *In this context it is noted that the P-RAC will take a look at the other TM non-papers (for other regions or fisheries) to verify that the catch of species like*

sardines, anchovy, sprat and argentines by pelagic vessels will not be prohibited/complicated.

The P-RAC may come back to this item at a later stage.

Art. 3 to 6:

No comments.

Part I, Annex A. (Mesh size ranges, target species, and required percentages applicable to the use of a single mesh size range)

Comment:

- *Include silversmelt and sardines in the target species.*

Part II: (Closed areas)

Under A: (Restrictions on fishing for herring)

1. The retention on board of herring which are caught within the geographical areas and during the periods mentioned below shall be prohibited:.....
 - (e) from 21 September to 15 November, within the part of ICES zone VIIa bounded by the coast of the Isle of Man and straight lines sequentially joining the following geographical coordinates:
 - Latitude 54° 20' 00" N, longitude 4° 25' 05" W
 - Latitude 54° 20' 00" N, longitude 3° 57' 02" W
 - Latitude 54° 17' 05" N, longitude 3° 56' 08" W
 - Latitude 54° 14' 06" N, longitude 3° 57' 05" W
 - Latitude 54° 00' 00" N, longitude 4° 07' 05" W
 - Latitude 53° 51' 05" N, longitude 4° 27' 08" W
 - Latitude 53° 48' 00" N, longitude 4° 50' 00" W
 - Latitude 54° 04' 05" N, longitude 4° 50' 00" W;

Comments:

In a letter of 20 October 2008 the P-RAC has proposed an argued removal of the Douglas Bank herring closure. In a written answer of 25 November 2008 the EC stated that it wished to conduct the discussion on the future of the Douglas Bank closure in the context of this draft regulation. The arguments brought forward by the P-RAC and the European Commission will be the basis for the discussion on the Douglas Bank closure. The correspondence between the P-RAC and the EC is annexed to this recommendation.

Under B: (Sprat)

no comments

Under C: (Mackerel)

No comment.

General comments:

- *The specific conditions defined for pelagic vessels fishing in NATURA 2000 areas off the coast of Ireland (protection of deep sea habitats) have not been included in this proposal. The P-RAC wonders why this is.*
- *Furthermore the P-RAC is of the opinion that any measures linked to NATURA 2000 should be included in the Council Regulation on TM and not in the Commission Regulations on TM.*