



## Joint NGO position paper on the European Commission's proposal for a new Technical Measures Framework

August 2016

### Introduction

Technical measures are rules for where, when and how fishing may take place and are fundamental for regulating the impact of fishing on stocks and the wider marine ecosystem. The new Technical Measures Framework (TMF) proposed by the Commission<sup>1</sup> ("the proposal") will be one of the crucial instruments for European fisheries management and the implementation of the Common Fisheries Policy (CFP). In particular, it will play a key role in reaching the following objectives of the CFP, laid out in Article 2 of the CFP Basic Regulation<sup>2</sup>:

- applying the precautionary approach to fisheries management and restoring and maintaining fish stocks above biomass levels capable of producing maximum sustainable yield (MSY) (Article 2.2);
- implementing the ecosystem-based approach to fisheries management and minimising the impacts of fisheries on the wider environment (Article 2.3);
- avoiding unwanted catches and gradually eliminating discards (Article 2.5.a);
- ensuring coherence with Union environmental legislation (Article 2.5.j).

These objectives mean that the new technical measures regulation must contribute to managing fish stocks sustainably and to achieving the objectives of the Birds, Habitats and Marine Strategy Framework Directives<sup>3</sup>.

This paper presents some general recommendations regarding the Commission's proposal, and then some more issue-specific recommendations, some of which will be further developed into more detailed position papers.

### General recommendations

The NGO signatories to this position paper welcome the European Commission's proposal for a new framework of technical measures and its ambition to maintain an adequate and consistent level of ecosystem protection across Union waters. We welcome that the proposal provides scope for the development of regional measures within the framework of common objectives. We consider the proposal (and annexes) to be a good step forward, particularly in its strong linkages to the objectives of the CFP and to EU environmental legislation.

<sup>1</sup> COM(2016) 134 final, Proposal for a Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures

<sup>2</sup> Regulation (EU) 1380/2013

<sup>3</sup> Directive 2009/147/EC, Council Directive 92/43/EEC and Directive 2008/56/EC

We support the proposal in its intent to provide a framework of common objectives, and, where possible, quantitative targets. These are essential to ensure that baseline measures and any subsequent regional proposals deliver what the framework sets out to achieve.

We therefore welcome the explicit requirement that any amendment, supplement or new regional technical measures must be at least as effective at achieving the objectives they are designed to fulfil as the baseline measures stipulated in the framework – or better. Ensuring that such equivalence is delivered by regionalised measures must be given high priority by Member States and the European Commission. This is important to maintain or improve standards and ensure the objectives and targets in the TMF will be met across EU waters. In this respect, the wording of the proposal must be strengthened so that appropriate evidence demonstrating such equivalence is provided and adequately considered in decision-making. It is also important to ensure that any changes to existing rules as part of the new framework are in line with the best available scientific advice, in terms of both fisheries management and environmental protection.

We believe that the overarching focus of the new technical measures should be placed on improving fishing selectivity to avoid and reduce unwanted catch, and on minimising environmental impacts of fishing. We also note that control and enforcement measures, and a system for monitoring the effectiveness of technical measures at achieving their objectives, will become even more important as the new framework moves towards more results-based management. To ensure that the new rules are followed and to maintain a level playing field for vessels operating in EU waters, Member States must help to develop a “culture of compliance” through effective control and monitoring measures.

In conclusion, we urge the European Parliament and the Council of the EU to agree on a TMF which is coherent, consistent and ambitious in helping achieve the CFP’s objectives.

## **Specific provisions of the proposal**

The following comments on specific provisions of the proposal are intended to give a broad overview of aspects of the new TMF that should be given particular consideration. They will be supported and further elaborated on in dedicated briefings and position papers.

### **1. Landing obligation implementation**

The reformed CFP aims to minimise and where possible eliminate unwanted catches through the introduction of an obligation to land all catches of stocks subject to catch limits or size restrictions. Technical measures will play a major role in allowing for the implementation of this policy and contributing to its success.

#### **1.1 Minimum Conservation Reference Sizes (MCRS) and other options for protection of juveniles**

MCRS are meant to be a conservation measure to protect juvenile marine organisms and favour spawning of individuals before capture, hence contributing to a healthy population structure and size. The CFP incentivises avoidance of juveniles by stipulating that catches below MCRS cannot be sold for human consumption. MCRS will be a particularly important management tool for the protection of Mediterranean species due to the lack of Total Allowable Catches (TACs).

Unfortunately, despite this key role, there is a growing pressure to eliminate or reduce MCRS as a means to cushion the implementation of the landing obligation. We highlight that multiple

derogations and flexibility measures are already provided for in the CFP to facilitate the implementation of the landing obligation; decreasing the MCRS of stocks through the TMF for economic reasons is inappropriate and not in line with the purpose of MCRS – which is to incentivise the avoidance of juveniles (CFP Article 4.1.17).

While the proposed MCRS largely correspond to current regulations, several key commercial species are missing, and in many cases the given MCRS are below the corresponding size at first maturity. Therefore, we recommend that MCRS are added to the proposal based on size at first maturity for stocks currently not covered, and that MCRS that are lower than the size at first maturity are increased to this threshold.

Whenever possible, MCRS should be kept consistent across sea basins in accordance with the most precautionary size (not altered to adapt to regional market preferences) in order to prevent enforcement problems.

In addition to MCRS, other measures will be necessary to ensure the protection of juveniles and the successful recruitment of fish populations. We therefore stress the necessity of adjusting exploitation patterns to avoid catches of immature individuals, in accordance with the best available scientific advice and subject to review by STECF.

## **1.2 High grading and slipping**

The exception from the prohibition on high grading and slipping in Article 16.2 should not apply to catches of species which are exempt from the landing obligation for reasons of high survival. Allowing high grading for stocks under this exemption will increase fishing mortality, and this mortality will be unaccounted for. This article must be amended so that the high grading prohibition continues to apply to species subject to a high survival exemption.

## **2. Protection of sensitive species and habitats**

Technical measures are necessary not only for improving the management of fished stocks, but also for eliminating adverse impacts of fishing on other components of the marine environment, including non-target species, habitats and ecosystems. All technical measures established under this regulation, both at the EU and the regional level, must systematically ensure that such impacts are minimised and where possible eliminated, in accordance with the objectives of the CFP and relevant EU environmental legislation.

The TMF proposal makes a good step towards aligning the objectives of the technical measures with the objectives of the Birds and Habitats Directives and the MSFD, recognising that technical measures must be in accordance with the requirements of these directives. However, the references to the MSFD should be strengthened to take better account of the overarching scope and requirements of the MSFD in terms of regionalisation and the contribution to achieving GES for descriptors that may be affected by fisheries<sup>4</sup>. The TMF should also reflect the contribution that it will make to the sustainable fishing target of the EU 2020 Biodiversity Strategy<sup>5</sup>.

While the proposal acknowledges the impacts that fishing activities can have on sensitive species and habitats (Article 6.6 and 6.7), it fails to establish sufficiently clear targets, obligations or appropriate measures to reduce such impacts, and it does not explicitly cover all relevant species. For instance the scope of Article 12 on “*by-catch of marine mammals, seabirds and marine reptiles*”

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<sup>4</sup> In particular Descriptors 1, 3, 4 and 6

<sup>5</sup> COM(2011) 244 final, Target 4

is too restrictive as it only applies to species listed under the Habitats and Birds Directives, thus excluding other sensitive species. In particular, important groups of sensitive species protected by Regional Seas Conventions, such as certain species of sharks, rays, bony fish, mammals, crustaceans and other invertebrates, need to be properly covered both in the common technical measures (chapter 2) and the regional measures (chapter 3).

In addition to empowering the Commission to take immediate action to protect marine species, the scope of Article 31 on “*safeguard measures*” should be expanded to allow the Commission to adopt measures to protect sensitive habitats where there is evidence that fishing activities pose a serious threat.

## 2.1 Reducing impacts on marine habitats

Article 13 on “*Protection for sensitive habitats including vulnerable marine ecosystems*” only refers to habitat protection through closed areas while ignoring the possibility of other measures that may also be necessary to protect sensitive habitats. This should include management measures (e.g. gear restrictions or mitigation measures) that would apply outside of closed areas to 1) minimise and eliminate adverse fishing impacts on sensitive habitats, and 2) prevent the deliberate disturbance or destruction of sensitive habitats, breeding sites and resting places of sensitive species.

Finally, the proposal does not adequately address the protection of Vulnerable Marine Ecosystems (VMEs). While the EU has rules in place for the protection of VMEs from fishing impacts in the high-seas for its fleet<sup>6</sup>, it lacks similar protection in EU waters. The new TMF regulation should therefore extend the existing VME protection rules in Areas Beyond National Jurisdiction to EU waters to offer minimum standards applicable in the Mediterranean Sea and the Atlantic. While new measures are currently being finalised for the North East Atlantic<sup>7</sup>, equivalent measures are still lacking in the Mediterranean Sea, apart from a restriction on trawling below 1000 m, and the new TMF should address these gaps.

## 2.2 Bycatch of sensitive species

The proposal does not sufficiently contribute to the improvement of monitoring and mitigation requirements to help safeguard sensitive species in European waters. Given the considerable data gaps regarding bycatch rates and the status of sensitive species in European waters, precautionary and effective mitigation measures must be applied in all fisheries irrespective of vessel size, gear type or geographic area. The effectiveness of these mitigation measures must be monitored and the measures adapted if they are not achieving their purpose. However, exemptions should be available for fisheries with demonstrated negligible bycatch.

We welcome the “*minimise and where possible eliminate*” target in Article 3.2.b for bycatch of threatened and sensitive species, as this language repeats that of the EU Action Plan for reducing catches of seabirds in fishing gears<sup>8</sup> and is in line with the zero bycatch aim in ASCOBANS<sup>9</sup> and the “*strict protection*” afforded to species listed in Annex IV of the Habitats Directive, for example cetaceans. However, the stipulation that bycatches of sensitive marine species “*do not represent a threat to the conservation status of these species*” in Article 3.2.b should be deleted. This is

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<sup>6</sup> Council Regulation (EC) 734/2008

<sup>7</sup> Proposal COM(2012) 371 final, compromise agreement reached in trilogue negotiations in July 2016

<sup>8</sup> COM(2012) 665 final

<sup>9</sup> ASCOBANS. 2000. Resolution 3.3 on Incidental Take of Small Cetaceans. Presented at the 3rd Session of the Meeting of Parties, Bristol, United Kingdom.

because “a threat to the conservation status” is too low of a threshold to be in line with Union environmental objectives and would allow for inaction if monitoring is not robust enough to demonstrate the link between bycatch and conservation status.

Furthermore, some bycatch mitigation measures in the regional annexes do not apply to all areas. Similarly, mitigation measures are not specified for all gear types which are likely to incur incidental catches (such as gillnets and purse seines). Therefore, the regional annexes need to be amended so that all regions are fully covered, and mitigation measures for all relevant gear types are included.

### **2.3 Marine protected areas, restricted and closed areas**

Closed or restricted areas, including marine protected areas (MPAs)<sup>10</sup>, can serve a range of different purposes, such as protection of juveniles, spawning aggregations<sup>11</sup>, sensitive species or habitats. It is essential that management measures are applied and monitored so that restricted/closed areas deliver their objectives.

For MPAs designated under the Birds and Habitats Directives, potentially damaging fishing activities must be managed to comply with Article 6 of the Habitats Directive. Processes for developing such management measures are clearly outlined in Articles 11 and 20 of the CFP Basic Regulation, to help Member States fulfil their obligation to only permit activities in these MPAs once the appropriate tests have been met. The TMF’s targets and baselines must be amended so that it is ensured it will contribute to meeting these requirements.

Additionally, many of the existing restrictions and closed areas relate to wider protection regimes (such as MPAs established for the purpose of other Union environmental legislation or Regional Seas Conventions). Monitoring, control and enforcement has been poor for many MPAs in the past, but these are essential for area closures and restrictions to fulfil their purpose and for their effects to be assessed. The TMF regulation should specifically address this assessment need in its reporting provision in Article 34.

In addition to permanent restricted or closed areas for the purpose of complying with environmental legislation, real-time closures/restrictions and moving-on provisions can offer temporary, responsive adaptations to fishing practices to reduce unwanted catches and mitigate threats to sensitive species and habitats. The proposal contains a provision related to the creation of real-time closures and moving-on provisions with the aim of ensuring the protection of aggregations of juveniles or spawning fish (Article 23), but it should also include similar provisions for the protection of sensitive species.

The objective of each closure or restriction should be clearly indicated, so that its effectiveness in achieving its purpose can be reliably assessed. Not indicating the respective objective of a closure or restriction poses the risk of it being removed without adequate replacement by an alternative measure aiming to serve the same purpose. This information needs to be better reflected in the regulation, including in the annexes.

### **2.4 Conditions for use of innovative fishing gears**

The proposal allows for the increased use of electric pulse trawling in the absence of adequate scientific knowledge about its impacts on target and non-target species and seabed habitats. The

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<sup>10</sup> This refers to areas designated for conservation purposes, e.g. under the Birds and Habitats Directives (“*Natura 2000 site*”), Regional Seas Conventions, Marine Strategy Framework Directive, etc.

<sup>11</sup> See Article 8 of the CFP Basic Regulation on fish stock recovery areas

current rules provide for derogation from the ban on electric fishing, allowing up to 5% of each Member State's beam trawl fleet to use the pulse trawling technique. It is essential that the framework does not allow for the use or extension of pulse trawling and other "*innovative fishing gears*" unless independent scientific assessments demonstrate, with a high degree of certainty, that they do not cause more harm to the marine environment than conventional methods, or introduce new types of harm.

The proposal should therefore be amended to ensure that there is appropriate knowledge about the impacts of innovative fishing gears such as pulse trawl, including cumulative effects, before use of the gear is widely adopted. Additionally, a system for monitoring, control and evaluation must be in place, serving for enforcement and research as well as evaluation purposes. Finally, current licences should be made subject to scientific (re-) assessment, before being given a permanently "non-prohibited" status.

## 2.5 Deep-sea

We stress that the TMF needs to be coherent with and support measures that are taken to also meet the objectives within the recently agreed Deep Sea Regulation<sup>12</sup>. Furthermore, Article 28 in the proposal needs to be expanded to allow for transposing all applicable technical measures agreed by the North East Atlantic Fisheries Commission (NEAFC) into Union law, and not limiting this empowerment to blue ling and redfish fisheries only.

## 3. Recreational fisheries

We recognize that recreational fisheries can impact fish stocks, marine mammals, seabirds and marine reptiles. When recreational fishing poses a threat to the conservation of a species or the ecosystem, intervention is necessary. Under current legislation individual Member States are responsible for the management of recreational fisheries including all types of intervention. However, recognizing that recreational fishing in one Member State may impact ecosystem conservation or fishery access in other Member States, it is important that communication about recreational fisheries not be restricted within individual Member States alone. As such, the current proposal's language is satisfactory to ensure that impacts of recreational fisheries can be discussed at a regional level, while preserving the authority of Member States to manage recreational fisheries within the existing framework.

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<sup>12</sup> Proposal COM(2012) 371 final, compromise agreement reached in trilogue negotiations in July 2016