

**Draft Regulation on technical conservation measures in
the English Channel, North Sea and North-East Atlantic (including the waters
of the French West Indies and Reunion)**
Comments

The draft regulation is based on the implementation of two decision-making levels for technical conservation measures:

- a framework regulation (which is the subject of this Draft) adopted by the Council of European Fisheries Ministers
- application regulations covering major zones, corresponding to the areas of competence of the various CCR, which are themselves adopted by a comitology procedure (Art. 30 § 2 of Regulation 2371/2002)

General remarks

The Commission has taken account of the industry's desire to see a simplified general regulation of technical measures, to be completed by regional regulations. This approach corresponds to the demands of fishermen for simplification of this regulation, which has become difficult to apply and therefore encourages a regionalized approach. However, the comitology procedure proposed for the adoption of regional regulations seems unclear in terms of the involvement of the industry in decision-making. This decision-making seriously worries fishermen. The two main demands for modification of Regulation 850/98 consisted of simplification (combined with regionalization), and above all a bottom-up approach to involve professionals in decision-making. This makes it essential to define the key role that CCR should play in adoption by a comitology procedure. The draft regulation would have to be submitted to the CCR for approval before being adopted. In addition, waters under French jurisdiction in overseas territories are also concerned by the proposed framework regulation and the comitology procedure. Is this method appropriate for overseas territories? The principles specified in the regulation correspond to fishing activities in the temperate waters of the North-East Atlantic, with minimum sizes, an obligation to move the fleet when the percentages of target species are not respected, etc.

In addition, many of the transitional measures adopted (e.g. regulations concerning bottom nets in the TAC and Quotas regulation) appear in the technical measures regulation, although such measures have never been subjected to precise analysis. In its explanation of reasons, however, the Commission emphasizes this problem of the presence of measures in the technical measures regulation which have never been the subject of an evaluation. In this particular case the Commission continues to incorporate non-evaluated measures, and even proposes to extend them to other zones. Similarly, with respect to the supervision of nets, the draft regulation proposes restrictions on length and immersion time. While supervision seems indeed to be necessary, this type of regulation should preferably be decided in the regional application rules. To do otherwise would require derogations to be introduced from the outset in the framework regulation.

The CNPMEM underlines the importance of, and appreciates the Commission's effort to add to this regulation, an article concerning the implementation of experimental research programmes involving the participation of fishing vessels under real fishing conditions.

French fishermen approve of the initiative to impose the regulation on recreational fishing.

With regard to the link between technical measures and the restoration/management plans, consideration needs to be given to incorporating certain specific technical measures, presently

contained in the “technical measures” regulation, which could be integrated into the long-term management plan.

We can only regret, finally, that the suggested simplification does not go far enough, since the rule on pingers (which is nevertheless considered to be a technical measure) remains in a separate regulation because it covers larger zones. Its incorporation would enable it be subjected to review in the same way as other technical measures.

Comments on individual Articles

Article 3

We should note the inclusion of a definition of the cod end as “the last 8 metres of a towed device, measured from the cod line, when the mesh is equal to or greater than 80 mm, and the last 20 metres of a towed device, measured from the cod line, when the mesh is less than 80 mm”.

Article 4

The principle of throwing back undersized fish is retained in the draft regulation. Does the Commission intend eventually to incorporate its proposals for limiting wastage into the technical measures regulation (or in fact in the regional application rules)? Or will this remain in separate regulations?

This article refers to Annexes I and II specifying the regulatory size of marine organisms, together with the method of measurement. The diagrams which were present in Regulation 850/98 should be reintroduced in order to show how organisms are measured.

Article 5

This single-net rule can become restrictive, depending on the mesh categories that the Commission will propose in the regional regulations. An analysis of the “North Sea” regional regulation shows that the rule will indeed be problematic for the French fishing fleet (cf. remarks on regional regulations).

What does the Commission mean by “fishing campaign”? Is it a period spent at sea, or a period of the year, as for example the tuna campaign?

Article 6

It is astonishing to note that, in a context of simplification, the strand thickness reappears in the proposed regulation. The modification of strand thickness for double-stranded nets (5 mm instead of a total of 12 mm in Regulation 850/98) is difficult to understand. The North-Eastern Waters CCR has already alerted the Commission on the problems posed by strand thickness.

In 3.c), if we are to compare the two halves of a cod end in terms of length, it would be useful to know what is meant by a “half”: is it in numbers of meshes?

Instead of already incorporating the particular points of § 4 “By derogation from paragraph 2, point a) and from paragraph 3, points b), d) and e), the 80 mm mesh is reduced to 60 mm when the activity takes place in zones CIEM VIII, IX and X.”, it would without doubt be more appropriate and more comprehensible to move these provisions into the regional regulations.. Rather than referring to derogations in this article, it might be preferable to allow the modalities of application to be less restrictive than the framework regulation on certain subjects, such as the mesh size, if the demands are properly justified. The other possibility would be not to specify the mesh size under point 2.a).

Article 8

This article takes up, and extends to zones VIII, IX and X, the regulation adopted for the TAC and Quotas regulation for nets in zones CIEM VIab, VIIbcjk and XII east of 27° W (with derogation taken from Article 9 for monkfish and hake nets). This ban had been adopted without any precise scientific analysis. It is therefore astonishing to find it here, accompanied by special supervisory measures on net lengths and immersion times. Although the Industry does not dispute the necessity of supervising net fishing activities, the rules should be adapted in line with fishing practice as exercised in each specified zone in the regional regulations. This would avoid introducing derogations (necessary for the regulation proposed by the EU!) as early as the regulation stage, which interferes with the legibility of the regulation.

Furthermore, the proposed wording does not include the provision concerning “the replacement of lost or damaged equipment which allows a vessel to keep on board nets of which the total length is greater by 20% than the maximum length of fleets that can be deployed simultaneously” (Regulation 40/2007, Annex III, Part A, § 8.5). *[After an analysis of the regional regulations for “North and South Eastern waters”, the provision was adopted, but why not in the framework regulation?]*.

Article 10

This Article introduces measures requiring vessels to change zone if their catches include more than 10% of undersized fish (does this apply only to fish?); they must then move by 5 miles. If the catch percentages are not in accordance with the rules, vessels must move by 20 miles. These percentages are calculated on a per-trawl basis. In certain zones, such as the English Channel, it would be impossible to comply with the proposed separation distances. This also seems unrealistic for small coastal vessels. What, furthermore, could be the means of verifying such a measure?

It is also excessive to require a vessel to change position after a single trawl. It would be more logical, as is the case for closures in real time, for a move to be recommended if several trawls (e.g. 3) result in excessive wastage or if the percentages of target species are not respected. The skipper of a vessel can not in any event know, before starting the next trawl, whether or not he has complied with the percentages (sorting time + entry time + time to calculate the %). The provision would therefore require compliance with the percentages of target species at every instant in a period at sea, whereas the industry has already told the Commission that it would be impossible to comply with the rule. Compliance is only possible per voyage or per period of 24 hours for voyages of more than 24 h.

Article 15

The wording makes very unclear the application zones of the regulation. For reasons of legibility, the application zones should be clearly specified.

Article 16

In these emergency measures, the Commission explicitly introduces closures in real time. Member States are authorised to take conservation measures in the zones under their jurisdiction, taking care to avoid discriminating against vessels of other Member States. Member States must inform the Commission. Closures can only be applied for a period of 10 days, which is much shorter than is currently the case in Scotland (closures of 21 days). Is it appropriate to specify a period in the framework regulation. Is there any scientific or political justification for the choice of 10 days?

The Commission has, on the other hand, withdrawn the possibility of reacting in the 10 days (as at present for the application of emergency measures) after notification by the Member State in order to obtain the right to prohibit the emergency measure. What does this mean? Are measures taken by Member States not open to debate, and are there no channels of appeal? How is non-discrimination

to be verified when neither the Commission, the CCR nor Member States have the ability to react to or comment upon a decision?

Article 18

What is the connection between this Article and the regulation of wastage? Will the obligations concerning wastage eventually be truly integrated into the application regulations?

Article 19

This Article on scientific research clarifies how experimental campaigns can be conducted. The CNPMM approves of this initiative. It should however be specified that “a) fishing operations are carried out with the permission and under the authority of the Member State of the flag concerned”. Does this mean that the campaign must be undertaken by the Member State Directly? Could a professional organisation not carry out experiments in partnership with scientists, even if it possessed an authorisation?

Article 21

The industry supports the proposal for regular assessment of all the technical measures implemented, after consulting the CCR and obtained the opinion of the CSTEP.

Article 22

Point e) clearly establishes a link with environmental regulations (although the link is not explicit, it will undoubtedly include the Natura 2000 regulations, as is confirmed by the proposed application rules). It would indeed be much more appropriate to regulate fishing through regional application rules, rather than in the TAC and Quota regulations as at present. There should, however, be a guarantee of a key role in the process for adopting these regional rules.

Annex 1: minimum size

The Commission has abandoned numerous minimum sizes (mostly shellfish and crustaceans) and regional disparities (there are no longer any differences between regions). This appears to be logical in certain cases, such as mackerel (with 20 cm everywhere except for 30 cm in the North Sea), although the Commission’s criteria for elimination are sometimes unclear, bearing in mind that in any event commercial categories exist. It might be more logical to keep both (minimum size + commercial categories) or to remove one of them, rather than arbitrarily eliminating certain minimum sizes while retaining others. The minimum size is generally clearer to a fisherman than the commercial category. What reasoning led to the retention or elimination of minimum sizes? In the case of shellfish, the argument between local stocks and shared stocks is understandable, although the link to markets risks creating a distortion in competition between States who do or do not apply commercial categories. With regard to fish, why are the sizes for haddock, plaice, whiting, ling and blue ling disappearing? There would no longer be minimum sizes for whiting in this new regulation, whereas in the North Sea in 2008 Member States have to set up measures for selection in order to reduce wastage and facilitate escape, particularly for juveniles. In the case of scallops, it would be prejudicial to reduce the minimum size to 100 mm when in Zone VII it was previously controlled with a size of 110 mm.

With regard to the proposals for modifying the sizes of fish, shellfish and crustaceans, French professionals in general wish to keep the previous sizes from Regulation 850/98 (except for mackerel, where the proposed 20 centimetres seems acceptable). Although these sizes are being abandoned at Community level, France is considering at least keeping them in French regulations. In the specific case of langoustines, French fishermen are already unloading only those which are larger than the size proposed in the draft regulation.