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2016/0074 (COD)

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, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005**

{SWD(2016) 56 final}  
{SWD(2016) 57 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Technical measures are rules governing how and where fishermen may fish. They aim to control the catch that can be taken with a given amount of fishing effort and also to minimise the impacts of fishing on the ecosystem. They form an integral part of the regulatory framework of most fisheries management systems including within Union waters.

Technical measures can be grouped into:

- measures that regulate the operation of the gear;
- measures that regulate the design characteristics of the gears that are deployed;
- minimum sizes below which fish must be returned to the sea;
- measures that set spatial and temporal controls (e.g. closed/limited entry areas and seasonal closures) to protect aggregations of juvenile or spawning fish; and
- measures that mitigate the impacts of fishing gears on sensitive species (e.g. marine mammals, seabirds and turtles) or closed areas to protect sensitive habitats (e.g. coldwater coral reefs).

The history of technical measures applying in European fisheries legislation within the framework of the Common Fisheries Policy (CFP) is one of numerous regulations, amendments, implementing rules and temporary technical measures introduced as stop-gaps to resolve emerging problems. Across all Union sea basins and non-Union waters in which Union vessels operate there are more than 30 regulations which contain technical measures.

Currently there are three detailed technical measures regulations enacted under the ordinary legislative procedure covering the main sea basins in Union waters – Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms covering the North-east Atlantic (and the Black Sea since 2012); Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94; and Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98.

In addition to those regulations there are a number of Commission acts which contain detailed rules on the construction of gears (e.g. Commission Regulation (EEC) No 3440/84 of 6 December 1984 on the attachment of devices to trawls, Danish seines and similar nets) or relating to specific area closures (e.g. Commission Regulation (EC) No 1922/1999 of 8 September 1999 laying down detailed rules for the application of Council Regulation (EC) No 850/98 as regards conditions under which vessels exceeding eight metres length overall shall be permitted to use beam trawls within certain waters of the Community) as well as technical measures introduced to alleviate immediate threats to conservation following from depletion of certain stocks (e.g. Commission Regulation (EC) No 2056/2001 of 19 October 2001 establishing additional technical measures for the recovery of the stocks of cod in the North Sea and to the west of Scotland). These regulations generally emanate from empowerments contained in the main regulations.

There are also a number of other standalone regulations which contain technical measures. These include Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning bycatches of cetaceans in fisheries and amending Regulation (EC) No 88/98 and Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels.

There are several co-decided regulations that transpose technical measures agreed for third-country waters covered under Regional Fisheries Management Organisations (RFMOs) such as the Convention on Conservation on Antarctic Living Marine Resources (CCALMR) and the International Convention for the Conservation of Atlantic Tunas (ICCAT) among others. These regulations are not covered under the scope of this proposal.

Before the entry into force of the Treaty on the Functioning of the European Union (TFEU) technical measures were also included in Fishing Opportunities Regulations setting annual TACs and quotas in the Northeast Atlantic, Baltic, and the Black Sea as well as for deep-sea species. These were a mixture of supposedly temporary technical measures with a mixture of regionally specific measures and derogations from general provisions contained in other regulations. Following the adoption of the TFEU such measures could no longer be included in the Fishing Opportunities Regulations except for those measures with a direct functional link to the catch limits for a particular stock or stocks. Therefore only a limited number of such measures are now contained in the Fishing Opportunities Regulations. For example there is a closed area off the west coast of Ireland to protect Norway lobster (*Nephrops norvegicus*) relating to the TAC for this species in this area. Measures emanating from other RFMOs such as Northeast Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO) are also still included in the Fishing Opportunities Regulation for the North-east Atlantic as temporary measures.

As this illustrates the regulatory structure for technical measures has become highly complex and somewhat dis-jointed. A retrospective evaluation<sup>1</sup> carried out to support this proposal has shown that the current technical measures have largely not delivered on the objectives of the previous CFP – Council Regulation (EC) 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. This is more evident in some sea basins than others (e.g. North-east Atlantic) but the general perception is one of multiple complex and ineffective rules contained in an inflexible governance structure.

With the new challenges of the new CFP<sup>2</sup>, which came into force on 1 January 2014, the retrospective evaluation concluded that the current regulatory structure for technical measures will continue to be sub-optimal. This is because of five identifiable problems:

- (1) Sub-optimal performance: Technical measures provide little incentive to fish selectively where there is no cost to discarding, or of catching sensitive species or impacting adversely on the seabed. This has resulted in a failure to control fishing pressure leading to overfishing of a number of stocks and to high levels of discards in some fisheries and limited protection afforded to sensitive habitats and species.

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<sup>1</sup> MRAG et al. (2014). A study in support of the development of a new Technical conservation measures framework within a reformed CFP. Lot 2: retrospective and prospective evaluation on the Common fisheries policy, excluding its international Dimension. Brussels. 265pp

<sup>2</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC OJ L354, 28.12.2013, p. 22.

Additionally some measures have created legal obstacles or discouraged innovation for the development of more selective fishing practices with the result that circumvention, both legally and illegally, to minimise the economic impacts of measures has been common.

- (2) Difficult to measure effectiveness: The current regulations do not contain any defined metrics on which to measure success. This has made it difficult to measure the effectiveness of technical measures in contributing to the achievement of the conservation objectives of the CFP.
- (3) Prescriptive and complex rules: Technical measures have become more numerous and complex over time and attempted to control too many technical aspects of fishing operations. Some are difficult for control authorities to enforce, and for fishermen to comply with. They impose high administrative burden and costs on Member States and stakeholders. This has undermined the catching sector's confidence and provided a strong incentive to negate the regulations resulting in the adoption of more legislation to counter negation of the rules.
- (4) Lack of flexibility: Technical measures are mostly decided following a complex, inflexible and lengthy politically-driven process which is not well suited to defining detailed technical rules that need frequent updating and periodic review. This has restricted the ability to adjust or revise technical measures to react to changes in fisheries or to take advantage of innovation in gear technology or to react to unexpected events. In addition temporary rules or derogations have remained in place unchanged for long periods further undermining the confidence of the catching sector.
- (5) Insufficient involvement of key stakeholders in the decision-making process: Technical measures are based on negative, mostly coercive incentives in a hierarchical governance system (i.e. top-down rather than bottom-up). This has led to the perception by fishermen and stakeholders that they are not part of a participatory process. Fishermen perceive that technical measures are impractical, do not represent current fishing practice and are sometimes contradictory.

During the negotiations of the new CFP there was a general consensus amongst Member States, stakeholders and the European Parliament confirming this rather negative perception of the current technical measures. This was despite the fact that no political agreement for a new package of measures had been reached in the last ten years, previous Commission proposals in 2002<sup>3</sup> and in 2008<sup>4</sup> having failed for a number of reasons. Member States argued that the text had grown too complicated and difficult to interpret and that those proposals did not address the underlying problems sufficiently. Stakeholders argued that they were not properly consulted and the rules went further than simple consolidations of existing measures. Even attempts to align the technical measures regulations in the Northeast Atlantic, Baltic and Mediterranean with the Treaty on the Functioning of the European Union (TFEU) have failed because negotiations have tended to move away from alignment to the detailed substance of these regulations.

These repeated failures to reach agreement on a new technical measures regulation clearly highlight the need for a new approach. This should be based on simplification, adaptation of

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<sup>3</sup> COM(2002)672 final Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures for the protection of juveniles of marine organisms.

<sup>4</sup> COM(2008)324 final Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures.

decision-making to the Lisbon Treaty, strengthening the long-term approach to conservation and resource management including tackling the discards problem, regionalisation, further stakeholder involvement and more industry responsibility (i.e. a culture of compliance).

In addressing these problems and recognising these institutional difficulties this proposal aims to:

- Optimise the contribution of technical measures to achieving the key objectives of the new CFP.
- Create the flexibility required to adjust technical measures by facilitating regionalised approaches (consistent with the objectives in Union law).
- Simplify the current rules in line with the Commission's REFIT programme<sup>5</sup>.

While this proposal principally changes the governance structure of technical measures rather than making wholesale changes to the measures themselves, the improved flexibility and incentives for fishing selectivity it introduces will deliver improvements in the effectiveness of technical measures. Over time yields will be optimised through the catching of larger fish and the impacts of fishing on the marine ecosystem will be reduced through the adoption of responsible fishing practices.

- **Consistency with existing policy provisions in the policy area**

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 204/585/EC sets the general framework for the CFP. Technical measures sit within this framework as tools for contributing to the achievement of the overall objectives of the CFP as follows:

- (1) The attainment of maximum sustainable yield (MSY) will be facilitated by the application of technical measures which regulate *exploitation pattern* (i.e. how fishing pressure is distributed across the age profile of a stock). Obtaining MSY from a given stock will require that the exploitation pattern avoids fishing on younger age groups. To achieve this will require a combination of effective technical measures (i.e. measures that regulate the operation and design of the gear, minimum conservation reference sizes (mcrs) and spatial/temporal closures) that lead to improvements in exploitation patterns in an adaptive regulatory structure.
- (2) The gradual elimination of discards and minimisation of unwanted catches will require the application of technical (gear operation and design) as well as tactical changes (closed or restricted areas) to drive increased selectivity and avoidance of unwanted catches (i.e. fish below mcrs). The landing obligation introduced to achieve this objective will require a rethink on the current governance structure of technical measures to allow for more flexibility to achieve this goal.
- (3) Ensuring fishing activities are consistent with wider ecological considerations will depend on the application of technical measures that minimise the impacts of fishing gears on the ecosystem (e.g. mitigation measures or closed areas). Specifically technical measures must contribute to the attainment of good environmental status with respect to 4 out of the 11 descriptors included under Directive 2008/56/EC of

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<sup>5</sup> COM(2013) 685 final Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions Regulatory Fitness and Performance (REFIT): Results and Next Steps.

the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)- Maintaining biological diversity (Descriptor 1); Maintaining commercially-exploited populations of fish and shellfish within safe biological limits and with a healthy age and size distribution (Descriptor 3); Maintaining all elements of marine food webs at normal abundance and diversity (Descriptor 4); and Maintaining sea-floor integrity (Descriptor 6). The key challenge will be creating a framework for implementing such measures in such a way as they most effectively protect the species most at risk and sensitive habitats and areas in need of protection.

In addition to these objectives the new CFP promotes regionalisation as a new governance approach. Regionalisation provides an important opportunity to introduce simplification of the rules set by the legislator and particularly relevant for the future use of technical measures as management tools, since part of the problem of the effectiveness of the technical measures is related to the governance structure they operate in. Regionalisation will allow the development of technical measures at regional level (i.e. ultimately under the umbrella of multiannual plans or in the short-term through other Union measures). Regionalisation also gives scope to limit the need for detailed technical measures adopted by the European Parliament and the Council of Ministers under co-decision. Within a simplified legal framework defined by the legislator, measures can be regionally devised and tailor-made to the specificities of different fisheries. Regionalisation also provides an opportunity to utilise technical measures much more as a driver for the achievement of sustainable fisheries rather than simply as restrictive and coercive measures complementing fishing opportunities and effort restrictions. Regionalised decision-making also avoids having to make frequent changes to the substance of technical measures contained in co-decided acts.

- **Consistency with other Union policies**

The proposal and its objectives are consistent with Union policy. In particular with legal obligations contained in the Marine Strategy Framework Directive (MSFD), Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive). The full implementation of these Directives is part of the EU's response to its commitments under the UN Convention on Biological Diversity and is reinforced by the commitment made by EU Heads of State "*to halt the loss of biodiversity [in the EU] by 2010*"; it is further reiterated in the EU Biodiversity Strategy to 2020<sup>6</sup>.

Technical measures have also the potential to contribute to the Europe 2020 strategy<sup>7</sup>, in particular its resource efficiency flagship initiative through better use of fish stocks. In addition, the reform of technical measures will contribute to the REFIT programme through the simplification and deletion of a number of existing regulations and specific measures.

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<sup>6</sup> COM(2011) 244 final Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions Our life insurance, our natural capital: an EU biodiversity strategy to 2020

<sup>7</sup> COM(2014) 130 final/2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis is Article 43(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

The provisions of this proposal relate to the conservation of marine biological resources that falls under the exclusive competence of the Union. Consequently the subsidiarity principle does not apply.

- **Proportionality**

This proposal is amending measures which already exist; therefore no concern on the proportionality principle arises. The proposed measures comply with the proportionality principle as they are appropriate and necessary. No other less restrictive measures are available to obtain the desired policy objectives.

- **Choice of the instrument**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: Regulations must be amended by a Regulation.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

In December 2012, an evaluation of technical measures was carried out. This consisted of a retrospective evaluation<sup>1</sup> of the existing technical measures regulations in place in terms of their relevance, effectiveness, efficiency, coherence and acceptance. During the course of this evaluation extensive consultations were held with representatives of the fishing industry, national administrations and the research agencies of Member States. This was completed in June 2013. It was followed by a prospective evaluation<sup>1</sup> of the likely economic, social and environmental impacts as well as the effectiveness, efficiency, coherence and acceptability of different defined policy options. This study was completed in July 2014.

The retrospective evaluation confirmed that the current technical measures are overly complex and have been largely ineffective. They do not have clear, well-defined objectives and targets nor do they provide positive incentives which reward responsible practices and incentivise compliance. Control of the measures is costly and the governance structure they operate in currently is inflexible and very much top-down with limited consultation with stakeholders.

The prospective evaluation concluded that results-based management may be the best approach for future technical measures if control and enforcement problems can be solved. In such an approach, there should be less of a need for multiple prescriptive technical measures regulations.

- **Stakeholder consultations**

An internet-based public consultation was held from January to May 2014<sup>8</sup>. Detailed contributions were received from the key stakeholders ((i.e. Member States, the European

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<sup>8</sup> [http://ec.europa.eu/dgs/maritimeaffairs\\_fisheries/consultations/technical-measures/index\\_en.htm](http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/technical-measures/index_en.htm)

Parliament, Advisory Councils, the catching sector and NGOs)<sup>9</sup>. The main conclusions, which largely concurred with the findings of the retrospective and prospective evaluation were as follows:

- (1) Any new technical measures regulation(s) should move away from micro-management towards a results-based management approach.
- (2) Fishermen should become more accountable for what they catch rather than the construction and operation of the fishing gears they deploy.
- (3) Simplification of the rules is a fundamental objective but simplification should not create inequalities in the management systems across Member States (“maintaining a level playing field”).
- (4) Regionalisation is seen as an important opportunity to introduce simplification of technical measures regulations.
- (5) A framework approach is preferred. This should contain overarching objectives and minimum common standards to be applied across the EU. It should also contain safeguards to ensure action can be taken if problems in fisheries emerge.
- (6) Improvements in selectivity have been achieved in the past when incentive structures have been aligned with management objectives. Such structures need to be built-in to any new regulatory framework for technical measures.

Apart from the public consultation, numerous workshops, consultations and meetings were held during the period from 2011 to early 2015 with the key stakeholders. The combination of the public consultation and the extensive follow-up dialogue with the key stakeholders (i.e. the catching sector, NGOs and Member States) have ensured that the views expressed fully represent the different stakeholder groups.

- **Collection and use of expertise**

Three meetings of an Expert Working Group (EWG) of the Scientific, Technical and Economic Committee for Fisheries (STECF) were convened in October 2012<sup>10</sup>, March 2013<sup>11</sup> and March 2015<sup>12</sup>. These meetings explored the potential of technical measures as a management tool in the context of the CFP. The findings of these reports helped to define the options that were considered in the prospective evaluation carried out as well as providing information for the development of the proposal.

In addition to these meetings, several ad-hoc requests were made to STECF and also the International Council for the Exploration of the Sea (ICES) on specific issues relating to fishing gear selectivity; replacing mesh size and catch composition rules; bycatch of marine mammals and other protected species; and on existing closed and restricted areas. These also provided guidance in the drafting of the proposal.

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<sup>9</sup> [http://ec.europa.eu/dgs/maritimeaffairs\\_fisheries/consultations/technical-measures/contributions/index\\_en.htm](http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/technical-measures/contributions/index_en.htm)

<sup>10</sup> STECF. (2012) Expert Working Group on different principles for defining selectivity under the future TM regulation (EWG-12-14). 61pp

<sup>11</sup> STECF (2013). Expert Working Group on different principles for defining selectivity under the future TM regulation (EWG-13-04). 38pp.

<sup>12</sup> STECF (2015) – Technical Measures part III (STECF-15-05). 2015. Publications Office of the European Union, Luxembourg, EUR 27223 EN, JRC 95832, 59 pp.

- **Impact assessment**

An Impact Assessment (IA) has been conducted, taking account of the information from the public and follow-up targeted consultations, retrospective and prospective evaluations, expert advice, comments from the Impact Assessment Steering Group (IASG) set up to support this initiative and the Regulatory Scrutiny Board (RSB).

For the IA, three policy options and one sub-option were considered against the baseline scenario as those most likely to achieve the objectives and address the problems identified.

- **Baseline situation:** The current regulations with the CFP as the central element remain in place, elaborated in a series of technical and other conservation regulations surrounding the CFP. The baseline would take account of recent adjustments that remove legal contradictions with new obligations under the CFP (the landing obligation, and alignment with the TFEU concerning establishment of current Commission empowerments). Regionalisation of technical measures would take place through discard plans or multiannual plans, expanding the 'web' of regulations further and adding on new rules that derogate from or amend existing technical rules.
- **Consolidation:** A new regulation with a limited scope consolidating in one Regulation the common rules for all fisheries in all areas (e.g. generic prohibitions on certain fishing methods). Common rules (under co-decision) would be separated from rules with potential for regionalisation. The latter technical rules would remain in place in the existing regulations (co-decision and Commission acts). Any recent amendments or changes to the regulations and alignment of the regulations with the TFEU would be included. Regionalisation of technical measures would be through discard plans adopted by the Commission as Delegated Acts, and through Delegated Acts adopted by the Commission on the basis of the new, co-decided multiannual plans. These Delegated Acts would introduce (temporary) derogations from and amendments to the existing rules. Regionalisation would happen if and where the Member States submit joint recommendations for discard plans on a temporary basis for a maximum duration of 3 years. After that period, maintaining these derogations in place would require the adoption of Delegated Acts that are adopted by virtue of an empowerment in an EU multiannual plan.
- **Framework Approach:** A new framework Regulation containing a) general provisions (scope, objectives, guiding principles) and definition of the expected results and corresponding standards; b) common rules and technical provisions (as in option 1); and c) baseline standards (by region) corresponding to identified results which would function as default measures in the context of regionalisation. The baseline standards would be based on the substance of the existing rules and would principally replace the current mesh size and catch composition rules, convert the current minimum sizes into minimum conservation reference sizes, maintain closures needed to protect aggregations of juveniles and spawning fish as well as any other regionally specific technical rules. The structure would be recast (one single regulation instead of the numerous regulations in place). Many existing regulations would be repealed and integrated and/or rationalized in the new framework. The baselines and default technical measures that correspond to these objectives would be applicable unless and until regionalised measures are designed and introduced into Union law (through Delegated Acts). Where no regionalised action is developed, the baselines would continue to function as default rules. Member States would have options to move further away from more rigid technical rules (the default measures)

towards a more flexible, results-based management approach under regionalisation to meet the projected results and objectives of a plan.

- Framework without baselines: The main elements of the framework would be maintained except for the baseline measures. An empowerment would be included for the development of specific measures under regionalisation. This empowerment would allow for the establishment of measures required regionally to meet the objective of the CFP through Delegated Acts as part of the discard and multiannual plans.
- Elimination of the existing rules: Most of the existing technical measures regulations would be repealed immediately, with an exception for essential nature conservation measures which would remain in place. Any technical measures necessary in the longer term would be developed regionally under multiannual plans (with the possibility of temporarily incorporating technical measures into discard plans in the short term). There would be no framework regulation under this option.

### Comparison of options

*The framework approach* with baseline standards was evaluated to best meet the objectives set and provide a level of security that conservation objectives will continue to be met while regionalisation develops. In the longer-term (at the latest by 2022) it aims to have any technical measures required included under regional plans. It is best geared to managing this transition to regionalisation in the period up to 2022.

*The framework without baselines* and *the elimination of technical measures* would bring about simplification of technical measures immediately which would find favour with the catching sector but are both riskier options. They represent a drastic change in governance implying a shift in the burden of proof to all fishermen (and Member States). They would rely on fishermen documenting and demonstrating transparently that they are meeting the general objectives and agreed results (under the CFP) and the specific objectives and results identified in multiannual plans. They rely on immediate behavioural change of fishermen and on peer-pressure and self-regulation to ensure unselective fishing practices do not prevail. Member States, some sections of the catching sector and NGOs seem reluctant to move in this direction at least in the short-term.

*Consolidation of technical measures* was the least favoured option. It essentially maintains the current complex regulatory structure in place and does not provide any clear incentives for stakeholders over and above the baseline scenario. It is also not fully coherent with the spirit of regionalisation as envisaged under the CFP.

### Summary of Impacts

The preferred option largely presents changes to the regulatory structure and governance of technical measures. Few new measures are introduced and any changes to the substance are very much about deletion of rules in order to simplify and lessen administrative burden, improve controllability or consolidate nature conservation measures. Therefore the analysis of impacts in the IA was based on a qualitative assessment supported with specific examples or case studies. The main impacts are as follows:

#### Economic

The economic impacts of *the framework approach* would be positive. The framework approach would drive regionalisation. The increased flexibility and greater stakeholder participation in developing technical measures afforded by regionalisation should incentivise the adoption of selective gears more rapidly than other policy options. This will help to

deliver MSY and reductions in unwanted catches with corresponding benefits in economic terms from increased fishing opportunities. This would steadily improve over time, particularly if selective fishing is rewarded by Member States with increased fishing opportunities allowed for under the CFP.

### Social

Employment in the catching sector is likely to reduce in the short-term as the catching sector adjusts to the challenges of moving to MSY and the landing obligation. However, assuming that regionalisation is accelerated and the most concerned fleet segments notably those targeting mixed demersal species would strive to improve selectivity quickly, any negative impacts would be counteracted more quickly. Employment levels would stabilise. In the longer-term once sustainable fishing is achieved, fishing opportunities will increase (by at least 20% by 2020). Such significant increase has the potential to create new jobs in the catching sector. Fishing sustainably will lead to increase income and wages and therefore job attractiveness.

### Environmental

Any negative, short-term impacts are likely to be negated quicker than under the other options considered. The framework would manage the transition to regionalisation and, through the inclusion of baseline standards and retention of existing technical measures that are still necessary, ensure that the environmental sustainability objectives of the CFP are not jeopardised. In the longer-term regionalisation should lead to the development of measures within an adaptive governance framework that will be more responsive and anticipatory to threats to marine ecosystems and allow the taking of protective measures expediently.

- **Regulatory fitness and simplification**

#### Simplification

Simplification of the existing regulations is a primary objective of this proposal. The new framework will replace 6 co-decided regulations by one regulation with 3 other Regulations being partially repealed or amended. It also will lead to the repealing of up to 10 supporting Commission Regulations. Certain elements of these regulations will be brought under the framework proposal pending regionalisation. This allows for a second level of simplification in two main areas. Firstly almost half of the 40 existing closed or restricted areas relating to the protection of juveniles and spawning aggregations are deleted or simplified. This is based on advice from STECF, taking account of comments received by Member States and stakeholders. The second area of simplification is in the complex mesh size and catch composition tables in the existing regulations for the northeast Atlantic and Baltic. In each region these have been simplified into a default baseline mesh size for towed and static gears based on existing exploitation patterns with several derogations allowing the use of smaller mesh size gears to maintain important fisheries.

#### SMEs

The catching sector comprising around 82,000 vessels and employing 98,500 Full-time equivalents (FTE) is the most affected by potential changes to the technical measures regulations. Of these approximate 82,000 fishing vessels, almost 98% of them would be classified as micro-enterprises employing fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million. With such a high proportion of the sector being micro-enterprises exempting them from this proposal would undermine the conservation objectives of the CFP as few fishing enterprises would be governed by the general rules.

The impacts on SMEs in terms of administrative costs and burden would be positive in that there would be immediate simplification of the current regulations and a greater role for the catching sector through the Advisory Councils in the development of technical measures going forward. In addition the potential move to a results-based system in the longer-term would lead to further simplification of the technical rules. This implies a shift in the burden of proof onto the catching sector and put onus on them to demonstrate and document catches accurately. Potentially this may increase costs associated with documentation of catches although the costs incurred would depend on the approach of the Member States to “regionalised control” and offset against the greater flexibility such an approach would afford.

- **Fundamental rights**

This proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

This measure does not involve any additional Union expenditure.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

##### Monitoring

Under the preferred option clear targets would be established for the reduction and as far as possible elimination of unwanted catches by 2019 and fishing at MSY for all stocks by 2020. Targets for the reduction of the negative impacts of fishing on marine ecosystems would also be established to contribute to the achievement of good environmental status by 2020. In order to measure achievement of these targets the following environmental, economic, social and compliance indicators for monitoring technical measures are proposed:

*Environmental:* evolution of catch profiles, number of stocks at MSY and evolution of bycatches of sensitive species and protection of sensitive habitats

*Economic:* income, Gross Value Added (GVA), revenue/breakeven revenue and net profit margins

*Social:* employment and crew wages

*Compliance:* number of infringements related to technical rules and at-sea patrol days.

Data for monitoring would be available under the existing Data Collection Framework (DCF)<sup>13</sup>, from advice from the STECF and ICES as well as from annual reports from the European Fisheries Control Agency (EFCA).

##### Evaluation

An ex-post evaluation discussing the key evaluation questions of technical measures should be carried out before 2022 when the landing obligation should be fully operational, MSY achieved for all stocks and good environmental status achieved for marine ecosystems. This evaluation would directly feed into the retrospective evaluation of the CFP scheduled to begin in 2022.

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<sup>13</sup> COUNCIL REGULATION (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy OJ L 60, 5.3.2008, p.1.

The new multiannual plans will periodically be assessed by STECF and ICES to measure whether sustainability objectives are being achieved. These evaluations will provide indications of whether technical measures included as part of these plans are effective.

Reporting requirements under Articles 49 (functioning of the CFP) and Article 50 (progress on achieving MSY) of the CFP, while not directly related to technical measures, will also provide insight into the effectiveness of technical measures.

Measures developed regionally will also have to be evaluated on a regular basis by STECF or ICES to ensure such measures are consistent with objectives of the CFP.

Annual Reports of the EFCA in relation to Joint Deployment Programmes (JDPs) document the number and reasons for infringements detected compared to the number and nature of inspections carried out. These provide an indication of the level of compliance with the technical measures regulations.

### Reporting

By the end of 2020 and every third year thereafter, the Commission will report to the European Parliament and to the Council on the implementation of this Regulation including an assessment of the impact of technical measures on the conservation of fisheries resources and on the environmental impacts of fisheries on marine ecosystems. On the basis of that report, the Commission will propose any necessary amendments.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal has the following structure:

**General Provisions** – contains the scope, overarching and specific objectives, targets linked to the general and specific objectives expressed in terms of levels of unwanted catches; thresholds for bycatches of sensitive species; and reduction in the extent of the seabed significantly affected by fishing; principles of good governance and definitions. The definitions relate primarily to the definition of fishing gears and fishing operations and are common to all regions. They consolidate and update the existing definitions contained in the existing Regulations.

**Common Technical Measures** – contains *common rules* currently contained in all of the primary technical measures regulations but applicable to all sea basins and considered as de facto permanent as there is no need or justification for changing them. The provisions included under this part are

- prohibited gears and practices including prohibition on the sale of marine species caught using certain gear types,
- measures to protect sensitive species (e.g. marine mammals, reptiles and seabirds) and habitats (e.g. coldwater corals) including those listed in the Habitats and Birds Directives;
- general restrictions on the use of towed gears and conditions for their use (covers basic codend construction and permissible attachments to fishing gears);

- restrictions on the use of static nets. This includes the consolidation of the existing restrictions on the use of driftnets (i.e. prohibition to use drift nets above 2.5km, prohibition on using such gears to target highly migratory species and the total prohibition on the use of driftnets in the Baltic). Under regionalisation Member States should strengthen these provisions up to and including the introduction of a total prohibition on the use of such gears where there is scientific evidence that shows the continued use of driftnets constitutes a threat to the conservation status of sensitive species in that region;
- minimum conservation reference sizes (definition, measurement, use of fish below mcrs);
- common measures to reduce discarding (highgrading, slipping, protection for species not under catch limits).

**Regionalisation** – sets the general principles for regionalisation with reference to baseline measures which will apply where no regional measures are in places and establishes the empowerments needed for regionalisation of technical measures through multiannual plans, temporary discard plans and conservation measures necessary for compliance with obligations under environmental legislation. The empowerments allow the development of regional measures based on joint recommendations submitted by regional groups of Member States that amend/derogate from the existing baseline measures, establish new measures or derogate measures provided that it can be demonstrated such measures have no conservation benefit or that alternative measures have been put in place. These empowerments emanate from the CFP. The regional measures that can be taken under temporary discard plans are also defined, as well as safeguards that will be taken if scientific evidence shows that the conservation objectives are not being met by the regional measures. To this effect, a safeguard clause is included that allows the Commission to act where available scientific advice indicates that immediate action is required to protect marine species. This allows the Commission to establish technical measures to alleviate such threats, in addition to or by way of derogation to this Regulation or technical measures otherwise fixed in accordance with Union law. Such measures could include restrictions on the use fishing gears or on fishing activities in certain areas or during certain periods.

**Technical Measures in non-Union waters:** contains an empowerment for the Commission to adopt delegated acts in respect of existing detailed rules concerning lists of vulnerable marine ecosystems and also specific technical measures related to defined fisheries for blue ling and redfish agreed by the North East Atlantic Fisheries Commission (NEAFC). It further allows, through amendment of the corresponding Regulation, the Commission to adopt delegated acts in respect of existing technical measures in Regulation (EU) No 1343/2011<sup>14</sup> on the General Fisheries Commission for the Mediterranean (GFCM). It also allows the Commission to incorporate into Union law future amendments of those measures adopted by NEAFC and also measures adopted by the GFCM. Currently no such empowerments exist.

**Technical Provisions** - contains common provisions for conducting scientific research and also for the artificial restocking and transplantation of marine species.

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<sup>14</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fisheries resources in the Mediterranean Sea, OJ L 347 30.12.2011, p. 44

**Procedural Provisions** - contains the exercise of delegation with respect to the delegated acts contained in the proposal and also the committee procedure in respect of implementing acts.

**Final Provisions** – contains the repeals and amendments to the relevant regulations as well as the review and reporting process.

**Annexes** – The Annexes contain baseline measures by sea basin (i.e. North Sea, Baltic, Northwestern waters, Southwestern waters, Mediterranean, Black Sea and the outermost regions). These baseline measures will apply in the absence of measures being put in place regionally. They include baseline mesh sizes, minimum conservation reference sizes, closed or restricted areas to protect juveniles and spawning fish and any other regionally specific measures. There are also annexes containing a list of prohibited species that if caught as bycatches must be returned immediately to the sea; closed areas established for the protection of sensitive habitats and a list of species that are prohibited for capture with driftnets.

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, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council<sup>17</sup> establishes a Common Fisheries Policy (CFP) for the conservation and sustainable exploitation of fisheries resources.
- (2) Technical measures are tools to support the implementation of the CFP. However, a retrospective evaluation has shown that their current regulatory structure is unlikely to deliver on the objectives of the CFP and a new approach should be taken to increase their effectiveness focusing on adapting the governance structure.
- (3) There is a need to develop a framework for the regulation of technical measures. That framework should establish general rules to apply across all Union waters and provide for the creation of technical measures that take account of the regional specificities of fisheries through the process of regionalisation introduced by the CFP.
- (4) The framework should cover the taking and landing of fisheries resources as well as the operation of fishing gears and the interaction of fishing activities with marine ecosystems.
- (5) It should apply to fishing operations conducted in Union waters by Union and non-Union vessels and nationals of Member States (without prejudice to the primary responsibility of the flag State) as well as to Union vessels operating in the outermost

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> OJ L354, 28.12.2013, p.22.

regions referred to in the first paragraph of Article 349 of the Treaty. It should also apply in non-Union waters to technical measures adopted for the North East Atlantic Fisheries Commission (NEAFC) Regulatory area and in the General Fisheries Commission for the Mediterranean (GFCM) Agreement area.

- (6) Technical measures where relevant should apply to recreational fisheries which can have a significant impact on the stocks of fish and shellfish species.
- (7) Technical measures should contribute to achieving the CFP objectives to fish at maximum sustainable yield levels, reduce unwanted catches and eliminate discards and to contribute to the achievement of good environmental status (GES) as set out in Directive 2008/56/EC of the European Parliament and of the Council<sup>18</sup>.
- (8) Technical measures should specifically provide protection for juveniles and spawning aggregations of fish through the use of selective fishing gears and avoidance measures. Technical measures should also minimise and eliminate where possible, the impacts of fishing gears on the marine ecosystem and in particular on sensitive species and habitats. They should also contribute to having in place management measures for the purposes of complying with obligations under Council Directive 92/43/EEC<sup>19</sup>, Directive 2009/147/EC of the European Parliament and of the Council<sup>20</sup> and Directive 2008/56/EC.
- (9) To evaluate the effectiveness of technical measures, targets relating to the levels of unwanted catches; to the level of bycatches of sensitive species and to the extent of seabed habitats adversely affected by fishing; should be established that reflect the objectives of the CFP, Union environmental legislation (in particular Council Directive 92/43 and Directive 2000/60/EC of the European Parliament and of the Council<sup>21</sup>), and international best practice.
- (10) In order to ensure uniformity in the understanding and implementation of technical rules, definitions of fishing gears and operations contained in existing technical measures regulations should be updated and consolidated.
- (11) Certain destructive fishing gears or methods which use explosives, poisons, stupefying substances, electric current, pneumatic hammers or other percussive instruments; towed devices and grabs for harvesting red coral or other type of corals and coral-like species and certain spear-guns should be prohibited except in the specific case of the electric pulse trawl which may be used under certain strict conditions.
- (12) In light of advice from the Scientific, Technical and Economic Committee for Fisheries (STECF), certain common rules defining restrictions on the use of towed gears and on the construction of codends should be established to prevent bad practice that leads to unselective fishing.

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<sup>18</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (OJ L 164, 25.6.2008, p.19).

<sup>19</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 206, 22.7.1992, p.7.

<sup>20</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds OJ L 20, 26.1.2010, p..

<sup>21</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy OJ L 327, 22.12.2000, p.1.

- (13) In order to restrict the use of driftnets which can fish over large areas and result in significant catches of sensitive species the existing restrictions on using such gears should be consolidated.
- (14) In light of advice from STECF, fishing with static nets in ICES divisions IIIa, VIa, VIb, VIIb, VIIc, VIIj and VIIk and ICES sub-areas VIII, IX, X and XII east of 27° W in waters with a charted depth of more than 600 metres should continue to be prohibited to provide protection for sensitive deep-sea species.
- (15) For certain rare fish species, such as species of sharks and rays, even limited fishing activity could result in a serious risk to their conservation. To protect such species a general prohibition on fishing for them should be introduced.
- (16) To afford the strict protection for sensitive marine species such as marine mammals, seabirds and marine reptiles provided for in Directives 92/43/EEC and 2009/147/EC, Member States should put in place mitigation measures to minimise and where possible eliminate the catches of those species from fishing gears.
- (17) In order to provide continued protection for sensitive marine habitats located off the coasts of Ireland, the United Kingdom and around the Azores, Madeira and the Canary Islands existing restrictions on the use of demersal fishing gears should be maintained.
- (18) Where scientific advice and technical information identifies other such areas, then similar restrictions should be introduced to protect these habitats.
- (19) In accordance with the CFP, minimum conservation reference sizes should be established to ensure the protection of juveniles of marine species and in establishing fish stock recovery areas.
- (20) The manner in which the size of marine species is to be measured should be defined.
- (21) In order to assist the catching sector implement the landing obligation, Member States should put in place measures to facilitate the storage and the finding of outlets for marine species which are below the minimum conservation reference size. These measures should include support for investment in the construction and adaptation of landing sites and shelters or support for investment to add value to fishery products.
- (22) The practises of highgrading and slipping should be prohibited except in cases where exemptions are introduced under the landing obligation.
- (23) In cases where scientific advice indicates that there are significant unwanted catches of species which are not subject to catch limits and therefore not subject to the application of the landing obligation, Member States should carry out pilot projects with the aim of exploring ways to reduce such catches and with a view to introducing appropriate technical measures to achieve this aim.
- (24) Where no technical measures are in place at regional level then defined baseline standards should apply. Those baseline standards should be derived from existing technical measures, taking account of STECF advice and the opinions of stakeholders. They should consist of baseline mesh sizes for towed gears and static nets, minimum conservation reference sizes, closed or restricted areas, nature conservation measures to mitigate against bycatches of marine mammals and seabirds in certain areas and any other regionally specific measures currently in existence that are still required to ensure conservation objectives continue to be met until such times measures are put in place under regionalisation.

- (25) Member States in conjunction with stakeholders can develop joint recommendations for appropriate technical measures that deviate from the baselines in accordance with the regionalisation process set out in the CFP.
- (26) Such regional technical measures should as a minimum be equivalent in terms of exploitation patterns and protection for sensitive species and habitats as the baseline standards.
- (27) The main instrument for establishing regional technical measures should be through multiannual plans as defined in the CFP. Under such multiannual plans the baseline standards may be amended, new measures established to supplement or replace the baseline standards or derogate from these measures where it can be demonstrated they have no conservation benefit or that alternative measures have been put in place that ensure the objectives and targets continue to be met. In accordance with Article 10 of Regulation (EU) No 1380/2013, multiannual plans may also contain other nature conservation measures to minimise the negative impact of fishing on the ecosystem, such as the ones necessary for the purpose of complying with the obligations under Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC.
- (28) In developing joint recommendations to adopt alternative size and species selective gears to the baseline mesh sizes in multiannual plans regional groups of Member States should ensure that such gears result in, as a minimum, similar or improved selectivity patterns as the baseline gears.
- (29) In developing joint recommendations to amend or establish new closed or restricted areas in multiannual plans to protect juveniles and spawning aggregations, regional groups of Member States should define the specifications, extent, duration, gear restrictions and control and monitoring arrangements in their joint recommendations.
- (30) In developing joint recommendations to amend or establish minimum conservation reference sizes in multiannual plans, regional groups of Member States should ensure the objectives of the CFP are not jeopardised by ensuring that the protection of juveniles of marine species should be respected while ensuring that no distortion is introduced into the market and that no market for fish below minimum conservation reference sizes is created.
- (31) The creation of real-time closures in conjunction with moving-on provisions as an additional measure for the protection of juveniles or spawning aggregations should be allowed as an option to be developed under joint recommendations. The conditions for the establishment and lifting of such areas as well as the control and monitoring arrangements should be defined in the relevant joint recommendations.
- (32) On the basis of scientific assessment of the impacts of innovative gears, duly evaluated by the STECF, the use of such or extension to the use of novel gears, such as the electric pulse trawl could be included as an option in joint recommendations from regional groups of Member States. The use of innovative fishing gears should not be permitted where scientific assessment indicates that their use will lead to negative impacts on sensitive habitats and non-target species.
- (33) In order to minimise the bycatches of sensitive species and impacts of fishing gears on sensitive habitats, regional groups of Member States should develop additional mitigation measures to reduce the impacts of fishing on sensitive species and habitats. Where scientific evidence shows that there is a serious threat to the conservation status of such species and habitats then Member States should introduce additional

restrictions on the construction and operation of certain fishing gears or even the introduction of a total prohibition on their use in that region. In particular such provisions could be applied to the use of driftnets which in certain areas has resulted in significant catches of cetaceans and seabirds.

- (34) Where no multiannual plan is in place Regulation (EU) No 1380/2013 allows for the establishment of temporary discard plans for the implementation of the landing obligation. As part of such plans it should be allowed to establish technical measures which are strictly linked to the implementation of the landing obligation and which aim to increase selectivity and reduce unwanted catches as much as possible.
- (35) In order to maintain existing detailed recommendations agreed by the North East Atlantic Fisheries Commission (NEAFC) the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of lists of vulnerable marine ecosystems and also specific technical measures related to defined measures to protect blue ling and redfish. The Commission should also be empowered to adopt delegated acts in respect of the incorporation into Union law of future amendments of those measures adopted by NEAFC which form the subject matter of certain expressly defined non-essential elements of this Regulation and which become binding upon the Union in accordance with the terms of this Convention. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (36) In order not to hinder scientific research, artificial restocking and transplantation, the provisions of this Regulation should not apply to operations which may be necessary for the conducting of such activities.
- (37) Where available scientific advice indicates that immediate action is required to protect marine species, the Commission should be able in duly justified cases to adopt immediately applicable delegated acts establishing technical measures to alleviate such threats, in addition to or by way of derogation to this Regulation or technical measures otherwise fixed in accordance with Union law. Those measures should be designed in particular to address unexpected changes in stock patterns as a result of high or low levels of recruitment of juveniles into a stock, to provide protection for spawning fish or shellfish when stocks are at very low levels or other changes in the conservation status of fish stocks which may threaten the status of a stock. They could include restrictions on the use of towed or static gears or on fishing activities in certain areas or during certain periods.
- (38) The power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to update the list of fish and shellfish for which directed fishing is prohibited; to update the list of sensitive areas where fishing should be restricted; to adopt technical measures as part of multiannual plans; and to adopt technical measures as part of temporary discard plans. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (39) In order to ensure uniform conditions for the implementation of the provisions of this Regulation in respect of the establishment of the specification of devices to reduce wear and tear, to strengthen or to limit the escape of catches in the forward part of towed gears; to define the specification of the selection devices attached to defined

baseline gears; to define the specifications of the pulse trawl; restrictions on construction and the control and monitoring measures to be adopted by the flag Member State; to define rules on: the control and monitoring measures to be adopted by the flag Member State when using static gears in depths between 200-600 metres, to define detailed rules on the control and monitoring measures to be adopted for certain closed or restricted areas; and to define detailed rules on the signal and implementation characteristics of devices used to deter cetaceans from static nets and methods used to minimise bycatches of seabirds and marine reptiles, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>22</sup>.

- (40) By the end of 2020 and every third year thereafter the Commission should report to the European Parliament and to the Council on the implementation of this Regulation, on the basis of information supplied by Member States and the relevant Advisory Councils and following evaluation by the STECF. This report should assess the extent to which technical measures both regionally and at Union level have contributed to achieving the objectives and in reaching the targets of this Regulation. On the basis of that report, where at regional level there is evidence that the objectives and targets have not been met, Member States within that region should submit a plan setting out the corrective actions to be taken to ensure those objectives and targets can be met. The Commission should also propose to the European Parliament and to the Council any necessary amendments to this Regulation on the basis of that report.
- (41) By reason of the number and importance of the amendments to be made, Council Regulations (EC) (EC) 894/97<sup>23</sup>, 850/98<sup>24</sup>, (EC) No 2549/2000<sup>25</sup>, (EC) No 254/2002<sup>26</sup>, (EC) No 812/2004<sup>27</sup> and (EC) No 2187/2005<sup>28</sup> should be repealed.
- (42) Council Regulations (EC) 1967/2006<sup>29</sup>, (EC) No 1098/2007<sup>30</sup>, (EC) 1224/2009<sup>31</sup> and Regulations (EU) No 1343/2011<sup>32</sup> and (EU) No 1380/2013<sup>33</sup> of the European Parliament and of the Council should be amended accordingly.

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<sup>22</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

<sup>23</sup> Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (PB L 171, 17.6.98).

<sup>24</sup> Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L125, 27.4.1998, p.1).

<sup>25</sup> Council Regulation (EC) No 2549/2000 of 17 November 2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa OJ L 292, 21.11.2000, p.5

<sup>26</sup> Council Regulation (EC) No 254/2002 of 12 February 2002 establishing measures to be applicable in 2002 for the recovery of the stock of cod in the Irish Sea (ICES division VIIa) (OJ L41, 13.2.2002, p.1).

<sup>27</sup> Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning bycatches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12).

<sup>28</sup> Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98 (OJ L 349, 31.12.2005, p.1).

<sup>29</sup> Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409 30.12.2006 p.11).

<sup>30</sup> Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97 (OJ L 248, 22.9.2007, p.1).

- (43) In order to supplement or amend existing detailed rules transposing recommendations agreed by the General Fisheries Commission for the Mediterranean (GFCM) the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical measures in Regulation (EU) No 1343/2011. The Commission should also be empowered to adopt delegated acts in respect of the incorporation into Union law of future amendments of those measures adopted by GFCM which form the subject matter of certain expressly defined non-essential elements of this Regulation and which become binding upon the Union in accordance with the terms of the GFCM Agreement. Regulation (EU) No 1343/2011 should be amended accordingly. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

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<sup>31</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 OJ L 343, 22.12.2009, p.1.

<sup>32</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, OJ L 347, 30.12.2011, p.44.

<sup>33</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p.22.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Subject matter*

This Regulation lays down technical measures concerning:

- (a) the taking and landing of fisheries resources; and
- (b) the operation of fishing gears and the interaction of fishing activities with marine ecosystems.

#### *Article 2*

##### *Scope*

- 1. This Regulation shall apply to activities pursued by Union fishing vessels and nationals of Member States, without prejudice to the primary responsibility of the flag State, in the fishing zones referred to in Article 5 as well as by fishing vessels flying the flag of, and registered in, third countries when fishing in Union waters.
- 2. Articles 7 and 14 and Part A of Annexes V to X shall also apply to recreational fisheries.
- 3. Subject to the conditions set out in Articles 29 and 30, the technical measures set out in this Regulation shall not apply to fishing operations conducted solely for the purpose of:
  - (a) scientific investigations, and
  - (b) artificial restocking or transplantation of marine species.

#### *Article 3*

##### *General and specific objectives*

- 1. As tools to support the implementation of the Common Fisheries Policy (CFP), technical measures shall contribute to the objectives of the CFP set out in Article 2 of Regulation (EU) No 1380/2013 and in particular in paragraphs 2, 3 and 5(a) and (j) of that Article.
- 2. In addition, technical measures shall in particular:
  - (a) optimise exploitation patterns to provide protection for juveniles and spawning aggregations of marine species;

- (b) ensure that bycatches of marine species listed under Directives 92/43/EEC and 2009/147/EC and other sensitive species that result from fishing are minimised and where possible eliminated such that they do not represent a threat to the conservation status of these species;
- (c) ensure that the environmental impacts of fishing on marine habitats are minimised and where possible eliminated such that they do not represent a threat to the conservation status of those habitats;
- (d) contribute to having in place fisheries management measures for the purposes of complying with the obligations under Directives 92/43/EEC, 2009/147/EC, 2008/56/EC and 2000/60/EC.

#### *Article 4*

##### *Targets*

1. Technical measures shall aim to achieve the following targets:
  - (a) ensure that catches of marine species below minimum conservation reference sizes do not exceed 5% by volume in accordance with Article 2(2) and Article 15 of Regulation (EU) No 1380/2013.
  - (b) ensure that bycatches of marine mammals, marine reptiles, seabirds and other non-commercially exploited species do not exceed levels provided for in Union legislation and international agreements.
  - (c) ensure that the environmental impacts of fishing activities on seabed habitats do not exceed the levels needed to achieve good environmental status for each habitat type assessed in the framework of Directive 2008/56/EC in each marine region or subregion in relation to both habitat quality and the spatial extent over which the required levels need to be achieved.
2. The extent to which these targets have been achieved shall be reviewed as part of the reporting process set out in Article 34.

#### *Article 5*

##### *Definition of fishing zones*

For the purposes of this Regulation, the following geographical definitions of fishing zones shall apply:

- (a) 'North Sea' means ICES divisions<sup>34</sup> IIa, IIIa and IV;
- (b) 'Baltic Sea' means ICES divisions IIIb, IIIc and IIId;
- (c) 'North Western waters' means ICES sub-areas V (excluding Va and non-Union waters of Vb), VI and VII;
- (d) 'South Western waters' means ICES sub-areas VIII, IX and X (Union waters) and CECAF zones<sup>35</sup> 34.1.1, 34.1.2 and 34.2.0 (Union waters);

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<sup>34</sup> ICES (International Council for the Exploration of the Sea) divisions are as defined in Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic OJ L 87, 31.3.2009, p. 70.

- (e) 'Mediterranean Sea' means the maritime waters of the Mediterranean to the East of line 5°36' West;
- (f) 'Black Sea' means waters in the General Fisheries Commission for the Mediterranean (GFCM) geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011<sup>36</sup> (Resolution GFCM/33/2009/2);
- (g) 'Outermost Regions' means waters around the outermost regions as referred to in the first paragraph of Article 349 of the Treaty divided into three sea basins: West Atlantic, East Atlantic and Indian Ocean;
- (h) 'NEAFC Regulatory Area' means the waters of the NEAFC Convention Area which lie beyond the waters under the fisheries jurisdiction of the Contracting Parties' as defined in Regulation (EU) No 1236/2010 of the European Parliament and of the Council<sup>37</sup>;
- (i) 'GFCM Agreement area' means the Mediterranean and the Black Sea and connecting waters, as defined in Regulation (EU) No 1343/2011 of the European Parliament and of the Council<sup>38</sup>.

## *Article 6*

### *Definitions of terms*

1. For the purposes of this Regulation, in addition to the definitions set out in Article 4 of Regulation (EU) 1380/2013, the following definitions shall apply:

- (1) 'exploitation pattern' means how fishing pressure is distributed across the age profile of a stock;
- (2) 'selectivity' means a quantitative expression represented as a probability of capture of a certain size of fish in a certain size of mesh (or hook);
- (3) 'selective fishing' means a fishing method's ability to target and capture fish or shellfish by size and species type during the fishing operation allowing non-target species to be avoided or released unharmed;

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<sup>35</sup> CECAF (Eastern Central Atlantic or FAO major fishing zone 34) zones are as defined in Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic OJ L 87, 31.3.2009, p. 1.

<sup>36</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea OJ L 347, 30.12.2011, p.44.

<sup>37</sup> Regulation (EU) No 1236/2010 of the European Parliament and of the Council of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries and repealing Council Regulation (EC) No 2791/1999 (OJ L 348, 31.12.2010, p. 17).

<sup>38</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 347, 30.12.2011, p. 44).

- (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;
- (5) 'good environmental status' means the environmental status of marine waters as defined by Article 3(5) of Directive 2008/56/EC;
- (6) 'sensitive habitat' means a habitat whose conservation status, including its extent and the condition (structure and function) of its biotic and abiotic components, is adversely affected by pressures arising from human activities, including fishing activities. Sensitive habitats, in particular, include habitat types listed in Annex I and habitats of species listed in Annex II of Directive 92/43 EEC, habitats of species listed in Annex I of Directive 2009/147/EC, habitats whose protection is necessary to achieve good environmental status under Directive 2008/56/EC and vulnerable marine ecosystems as defined by Art. 2(b) of Council Regulation 734/2008<sup>39</sup>;
- (7) 'sensitive species' means a species whose conservation status, including its habitat, distribution, population size and population condition is adversely affected by pressures arising from human activities, including fishing activities. Sensitive species, in particular, include species listed in Annexes II and IV of Directive 92/43/EEC, species covered by Directive 2009/147/EC and species whose protection is necessary to achieve good environmental status under Directive 2008/56/EC;
- (8) 'small pelagic species' means mackerel, herring, horse mackerel, anchovy, sardine, blue whiting, argentine, sprat, boarfish;
- (9) 'recreational fisheries' means non-commercial fishing activities exploiting marine living aquatic resources for recreation, tourism or sport;
- (10) 'Advisory Councils' means stakeholder groups established under the CFP to promote a balanced representation of all stakeholders and to contribute to the achievement of the objectives of the CFP;
- (11) 'trawl' means fishing gear which is actively towed by one or more fishing vessels and consisting of a net having a cone- or pyramid-shaped body (as trawl body) closed at the back by a codend; 'towed gear' means any trawls, Danish seines and similar gear with a cone- or pyramid shaped body closed at the back by a bag (codend) or comprising two long wings, a body and a bag (codend) and which are actively moved in the water;
- (12) 'demersal trawl' means a trawl designed and rigged to operate on or near the seabed;
- (13) 'demersal pair trawl' means a demersal trawl towed by two boats simultaneously, one towing each side of the trawl. The horizontal opening of the trawl is maintained by the distance between the two vessels as they tow the gear;
- (14) 'pelagic trawl' means a trawl designed and rigged to operate in midwater;
- (15) 'beam trawl' means gear with a trawl net open horizontally by a steel or wooden tube, the beam, and netting with ground chains, chain mats or tickler chains actively towed on the bottom;

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<sup>39</sup> Council Regulation (EC) 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears. OJ L 201, 15.7.2008, p.8.

- (16) 'electric pulse trawl' means a fishing technique which uses an electric field to catch fish. The pulse trawl gear consists of a number of electrodes, attached to the gear in the towing direction, that emit short electric pulses;
- (17) 'Danish seine' means an encircling and towed gear, operated from a boat by means of two long ropes (seine ropes) designed to herd the fish towards the opening of the seine. The gear made up of net, which is similar to a bottom trawl in design and size, comprises two long wings, a body and a bag (codend);
- (18) 'purse seine' means encircling gear made up of a net where the bottom is drawn together by means of a purse line at the bottom of the net, which passes through a series of rings along the groundrope, enabling the net to be pursed and closed;
- (19) 'dredges' means gears which are either actively towed by the main boat engine (boat dredge) or hauled by a motorised winch from an anchored vessel (mechanised dredge) to catch bivalves, gastropods or sponges and which consist of a net bag or metal basket mounted on a rigid frame or rod of variable size and shape whose lower part may carry a scraper blade that can be either rounded, sharp or toothed, and may or may not be equipped with skids and diving boards. Some dredges are equipped with hydraulic equipment (hydraulic dredges). Dredges pulled by hand or by manual winches in shallow waters with or without a boat to catch bivalves, gastropods or sponges (hand dredges) shall not be considered towed gears for the purpose of this Regulation;
- (20) 'static nets' means any type of gillnet, entangling net or trammel net that is either anchored to the seabed (gill nets or set nets) or allowed to drift with the tide (drift nets) for fish to swim into and become entangled or enmeshed in the netting;
- (21) 'driftnet' means a net made up of one or more walls of netting, hung jointly in parallel on the headline(s), held on the water surface or at a certain distance below it by floating devices and drifting with the current, either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilise the net or to limit its drift such as a sea-anchor or an anchor on the bottom attached at one single end of the net;
- (22) 'bottom-set gillnet' means a net made up of a single piece of net and held vertically in the water by floats and weights. It catches living aquatic resources by enmeshing them and is fixed, or capable of being fixed by any means to the seabed;
- (23) 'bottom-set entangling net' means a single wall of netting rigged so that the netting is hung onto the ropes to create a greater amount of slack netting than a gillnet. Entangling nets usually have less floatation on the head rope and do not stand as high when fishing, as the average bottom set gill net and are fixed, or capable of being fixed by any means to the seabed;
- (24) 'bottom set trammel net' means a net made up of two or more layers of netting with two outer layers of a large mesh size with a sheet of fine small mesh sandwiched between them and is fixed, or capable of being fixed by any means to the seabed;
- (25) 'combined gillnet and trammel net' means any bottom-set gillnet combined with a trammel net which constitutes the lower part;
- (26) 'longline' means a fishing gear consisting of a main line, sometimes of considerable length, to which snoods with baited or unbaited hooks are fixed at regular intervals. The main line is anchored either horizontally on or near the bottom, vertically or can be allowed to drift on the surface;

- (27) 'pots and creels' means traps in the form of cages or baskets made with various materials designed to catch crustaceans or fish that are set on the seabed either singly or in rows connected by ropes (buoy-lines) to buoys on the surface showing their position and having one or more openings or entrances;
- (28) 'handline' means a fishing technique where a single fishing line is held in the hands. One or more lures or baited hooks are attached to the line;
- (29) 'St Andrews cross' means a grab which employs a scissor-like action to harvest for example bivalve molluscs or red coral from the seabed;
- (30) 'codend' means the rearmost part of the trawl, having either a cylindrical shape, i.e. the same circumference throughout, or a tapering shape. Made up of one or more panels (pieces of netting) of the same mesh size attached to one another along their sides in the axis of the trawl by a seam where a side rope may be attached. For regulatory purposes this shall be taken as the last 50 meshes of the net;
- (31) 'mesh size' means the mesh size of any codend of a towed gear as measured in accordance with the procedure set out in Commission Regulation (EC) No 517/2008<sup>40</sup>;
- (32) 'square mesh' means the mesh shape originating from mounting netting with 45° deviation from the N-direction such that the bars run parallel and at 90° to the trawl axis;
- (33) 'diamond mesh' means normal rhomboid shape of meshes in sheet netting;
- (34) 'T90' means trawls, Danish seines or similar towed gears having a codend and extension piece produced from knotted diamond mesh netting turned 90° so that the main direction of run of the netting is parallel to the towing direction;
- (35) 'Bacoma exit window' means an escape panel constructed in knotless square mesh netting fitted into the top panel of a codend with its lower edge no more than four meshes from the codline;
- (36) 'sieve net' means a device attached to the full circumference of the shrimp trawl near the beam, and tapering to an apex where it is attached to the bottom sheet of the shrimp trawl. An exit hole is cut where the sieve net and codend join, allowing species or individuals too large to pass through the sieve to escape, whereas the shrimp can pass through the sieve and into the codend;
- (37) 'the drop' of a purse seine means the sum of the height of the meshes (including knots) when wet and stretched perpendicular to the float line;
- (38) 'immersion time' means the period from the point of time when the nets are first put in the water until the point of time when the nets are fully recovered on board the fishing vessel;
- (39) 'gear monitoring sensors' means remote electronic sensors that can be placed on trawls or purse seine to monitor key performance parameters such as the distance between trawl doors or size of the catch;

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<sup>40</sup> Commission Regulation (EC) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets (OJ L 151, 11.6.2008, p.5).

- (40) 'acoustic deterrent device' means remote devices used to make species such as marine mammals aware and warn them of the presence of fishing gears by emitting acoustic signals;
- (41) 'bird scaring lines' (also called a tori line) means lines (with streamers that are towed from a high point near the stern of fishing vessels as baited hooks are deployed with the aim of scaring seabirds away from the hooks);
- (42) 'high grading' means the practice of discarding low priced fish that are subject to catch limits, even though they could have been legally landed, so as to maximise the total economic or monetary value of the fish brought back to harbour.
- (43) 'slipping' means the practice of intentionally releasing fish from fishing gear before that gear is fully brought on board a fishing vessel resulting in the loss of dead or dying fish;
- (44) 'direct restocking' means the activity of releasing live wild animals of selected species into waters where they occur naturally, in order to use the natural production of the aquatic environment to increase the number of individuals available for fisheries and/or to increase natural recruitment;
- (45) 'transplantation' means the process by which a species is intentionally transported and released by humans within areas of established populations.

## **CHAPTER II**

### **COMMON TECHNICAL MEASURES**

#### **SECTION 1**

##### **PROHIBITED FISHING GEARS AND USES**

###### *Article 7*

###### *Prohibited fishing gears and methods*

It shall be prohibited to catch or harvest marine species using the following methods:

- (a) toxic, stupefying or corrosive substances;
- (b) electric current except for the use of the electric pulse trawl as set out in Article 24 and Part E of Annex V;
- (c) explosives;
- (d) pneumatic hammers or other percussive instruments;
- (e) towed devices for harvesting red coral or other type of corals or coral-like organisms;
- (f) St Andrew's cross and similar grabs for harvesting, in particular, red coral or other type of corals and coral-like species;
- (g) any type of projectile;

- (h) spear-guns if used in conjunction with underwater breathing apparatus (aqualung) or at night from sunset to dawn.

#### *Article 8*

##### *Prohibited uses*

It shall be prohibited to sell, display or offer for sale any marine species caught using any of the methods listed in Article 7.

## **SECTION 2**

### **GENERAL RESTRICTIONS ON GEARS AND CONDITIONS FOR THEIR USE**

#### *Article 9*

##### *General restrictions on the use of towed gears*

1. No part of any towed gear shall be constructed of a mesh size smaller than the codend mesh size. This provision shall not apply to netting devices used for the attachment of gear monitoring sensors.
2. Whenever more than one net is towed simultaneously by a fishing vessel or by more than one fishing vessel, each net shall have the same mesh size.
3. It shall be prohibited to construct any codend or attach any device that obstructs or otherwise effectively diminishes the mesh size of the codend or any part of a towed gear. This provision shall not exclude the use of specified devices used to reduce wear and tear, to strengthen or to limit the escape of catches in the forward part of towed gears.
4. The Commission may adopt implementing acts establishing detailed rules for the specification of codends and the devices referred to in paragraph 3. Those implementing acts shall be based on the best available scientific and technical advice and may define:
  - restrictions on twine thickness;
  - restrictions on the circumference of codends;
  - restrictions on the use of netting materials;
  - structure and attachment of codends;
  - permitted devices to reduce wear and tear; and
  - permitted devices to limit the escape of catches.
5. The implementing acts referred to in paragraph 4 of this Article shall be adopted in accordance with the examination procedure referred to in Article 33(2).

#### *Article 10*

##### *General restrictions on the use of static nets*

1. It shall be prohibited to have on board or deploy one or more driftnets whose individual or total length is more than 2.5 kilometres.
2. It shall be prohibited to use driftnets to fish for the species listed in Annex III.

3. Notwithstanding paragraph 1 it shall be prohibited to have on board or deploy any driftnet in the Baltic Sea.
4. It shall be prohibited to use bottom-set gillnets, entangling nets and trammel nets to catch the following species:
  - Albacore (*Thunnus alalunga*),
  - Bluefin tuna (*Thunnus thynnus*),
  - Rays breams (*Brama brama*),
  - Swordfish (*Xiphias gladius*),
  - Sharks belonging to the following species or families *Hexanchus griseus*; *Cetorhinus maximus*; all species of *Alopiidae*; *Carcharhinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*.
5. It shall be prohibited to deploy any bottom set gillnet, entangling net and trammel nets at any position where the charted depth is greater than 600 metres.

### **SECTION 3**

#### **PROTECTION OF SENSITIVE SPECIES AND HABITATS**

##### *Article 11*

###### *Prohibited fish and shellfish species*

1. The deliberate catching, retention on board, transshipment or landing of fish or shellfish species referred to in Annex IV to Directive 92/43/EEC shall be prohibited except when a derogation has been granted according to Article 16 of that Directive.
2. In addition to the species referred to in paragraph 1, it shall be prohibited for Union vessels to fish for, retain on board, tranship, land, store, sell, display or offer for sale the species listed in Annex I.
3. When caught as bycatches, species referred to in paragraph 1 and 2 shall not be harmed and specimens shall be promptly released back into the sea.
4. Where the best available scientific advice indicates that an amendment of the list in Annex I is necessary through the addition of new species which require protection, the Commission shall be empowered to adopt such amendments by means of delegated acts in accordance with Article 32.
5. Measures adopted pursuant to paragraph 4 of this Article shall aim at achieving the target set out in Article 4(1)(b).

##### *Article 12*

###### *Bycatches of marine mammals, seabirds and marine reptiles*

1. The deliberate catching, retention on board, transshipment or landing of marine mammals or marine reptiles referred to in Annexes II and IV to Directive 92/43/EEC and of species of seabirds covered by Directive 2009/147/EC shall be prohibited.

2. When caught as bycatch, species referred to in paragraph 1 shall not be harmed and specimens shall be promptly released.
3. Notwithstanding paragraphs 1 and 2, the retention on board, transshipment or landing of specimens of marine species referred to in paragraph 1 which have been caught as bycatch, shall be authorised as far as this activity is necessary to secure assistance for the recovery of the individual animals and provided that the competent national authorities concerned have been fully informed in advance.
4. On the basis of the best available scientific advice a Member State may put in place for vessels flying its flag, mitigation measures or restrictions on the use of certain gears pursuant to the procedure laid down in Article 19 of Regulation (EU) No 1380/2013. Such measures shall minimise and where possible eliminate the catches of the species referred to in paragraph 1 and shall be compatible with the objectives set out in Article 2 of Regulation (EU) 1380/2013 and be at least as stringent as technical measures applicable under Union law.
5. Measures adopted pursuant to in paragraph 4 of this Article shall aim at achieving the target set out in Article 4(1)(b).

### *Article 13*

#### *Protection for sensitive habitats including vulnerable marine ecosystems*

1. It shall be prohibited to deploy the fishing gears specified in Annex II within the relevant areas set out in that Annex.
2. Where the best available scientific advice recommends an amendment of the list of areas in Annex II, including the addition of new areas, the Commission shall be empowered to adopt such amendments by means of delegated acts, pursuant to the procedure laid down in Article 11(2) and 11(3) of Regulation (EU) 1380/2013. When adopting such amendments, the Commission shall give particular attention to the mitigation of negative effects of the displacement of fishing activity to other sensitive areas.
3. Where such habitats occur in waters under the sovereignty or jurisdiction of a Member State, that Member State is empowered to establish closed areas or other conservation measures to protect such habitats, pursuant to the procedure laid down in Article 11 of Regulation (EU) No 1380/2013. Such measures shall be compatible with the objectives of Article 2 of Regulation (EU) 1380/2013 and be at least as stringent as measures under Union law.
4. Measures adopted pursuant to paragraphs 2 and 3 of this Article shall aim at achieving the target set out in Article 4(1)(c).

## **SECTION 4**

### **MINIMUM CONSERVATION REFERENCE SIZES**

#### *Article 14*

##### *Minimum conservation reference sizes*

1. The minimum conservation reference sizes of marine species specified in Part A of Annexes V to X of this Regulation shall apply for the purpose of:

- (a) ensuring the protection of juveniles of marine species pursuant to Article 15(11) and 15(12) of Regulation (EU) No 1380/2013;
  - (b) establishing fish stock recovery areas in pursuant to Article 8 of Regulation (EU) 1380/2013.
2. The measurement of the size of a marine species shall be made in accordance with the provisions set out in Annex IV.
3. Where more than one method of measuring the size of a marine species is provided for, the specimen shall not be considered below the minimum conservation reference size if the size measured by any one of those methods is equal to, or greater than, the minimum conservation reference size.

### *Article 15*

#### *Provisions for marine species below minimum conservation reference sizes*

Member States shall have in place measures to facilitate the storage of or find outlets for catches below minimum conservation reference sizes landed in accordance with Article 15(1) of Regulation (EU) No 1380/2013. Those measures may include support for investment in the construction and adaptation of landing sites and shelters, or support for investments to add value to fishery products.

## **SECTION 5**

### **MEASURES TO REDUCE DISCARDING**

#### *Article 16*

##### *Prohibition of high grading and slipping*

1. The practices of high grading and slipping shall be prohibited.
2. Paragraph 1 shall not apply to catches of species which are exempted from the application of the landing obligation in accordance with Article 15(4) of Regulation (EU) No 1380/2013.

#### *Article 17*

##### *Species not subject to catch limits*

1. Member States may conduct pilot projects with the aim of exploring methods for the avoidance, minimisation and elimination of unwanted catches of the species not subject to catch limits. Those pilot projects shall take account of the opinions of the relevant Advisory Councils and be based on best available scientific advice.
2. Where the results of those pilot studies or other scientific advice indicate that unwanted catches of species which are not subject to catch limits are significant, Member States may establish technical measures to reduce those unwanted catches in accordance with the procedure set out in Article 19 of Regulation (EU) 1380/2013. Those technical measures shall apply solely to fishing vessels flying the flag of that Member State.

## **CHAPTER III**

### **REGIONALISATION**

#### *Article 18*

##### *Guiding principles*

1. Technical measures established at the regional level are set out in the following Annexes:
  - (a) in Annex V for the North Sea;
  - (b) in Annex VI for North Western Waters;
  - (c) in Annex VII for South Western Waters;
  - (d) in Annex VIII for the Baltic Sea;
  - (e) in Annex IX for the Mediterranean;
  - (f) in Annex X for the Black Sea;
  - (g) in Annex XI for the Outermost Regions.
2. In accordance with the procedure set out in Article 18 of Regulation (EU) No 1380/2013 Member States may submit joint recommendations defining appropriate technical measures at the regional level that deviate from the measures set out in paragraph 1.
3. Technical measures recommended in accordance with paragraph 2 shall as a minimum be equivalent in terms of exploitation patterns and level of protection provided for sensitive species and habitats as those measures referred to in paragraph 1.

#### *Article 19*

##### *Regional measures under multiannual plans*

1. The Commission shall be empowered to establish technical measures at regional level with the aim of achieving objectives of multiannual plans referred to in Articles 9 and 10 of Regulation (EU) No 1380/2013. Such measures shall be established by means of delegated acts adopted in accordance with Article 32 of this Regulation and Article 18 of Regulation (EU) No 1380/2013.
2. Measures established in accordance with paragraph 1 may:
  - (a) amend or supplement the measures set out in Annexes V to XI;
  - (b) derogate from the measures set out in Annexes V to XI for a specific area or time period, provided it can be demonstrated that those measures have no conservation benefit in that area or period or that the alternative measures achieve the same objectives.
3. A multiannual plan may define the kind of technical measures that may be adopted pursuant to paragraphs 1 and 2 for the relevant region.
4. The measures adopted pursuant to paragraphs 1 and 2 shall

- (a) aim at achieving the objectives and targets set out in Articles 3 and 4 of this Regulation;
- (b) be guided by the principles of good governance set out in Article 3 of Regulation (EU) No 1380/2013; and
- (c) provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact through the allocation of fishing opportunities.

5. Where Member States submit joint recommendations for the establishment of technical measures as referred to in paragraph 1, they shall provide scientific evidence to support the adoption of those measures.

6. The Commission may require the STECF to assess the joint recommendations referred to in paragraph 5.

## *Article 20*

### *Species and size selectivity of fishing gears*

1. When Member States submit joint recommendations in accordance with Article 19 to define size selective and species selective gears, they shall provide evidence demonstrating that those gears meet at least one of the following criteria:
  - (a) result in at least equivalent selectivity characteristics for specific species or combination of species as the gears set out in Part B of Annexes V to X and in Part A of Annex XI; or
  - (b) result in unwanted catches of a defined species or combination of species below a threshold level.
2. The selectivity characteristics referred to in paragraph 1(a) and the threshold level and species referred to in paragraph 1(b) shall be defined in the relevant multiannual plan.

## *Article 21*

### *Closed or restricted areas to protect juveniles and spawning aggregations*

When Member States submit joint recommendations in accordance with Article 19 to amend the closed or restricted areas listed in Part C of Annexes V to VIII and X and Part B of Annex XI or establish new closed or restricted areas they shall include the following elements in respect of such closed or restricted areas in those joint recommendations:

- the objective of the closure;
- the extent and duration of the closure;
- restrictions on specific gears; and
- control and monitoring arrangements.

## *Article 22*

### *Minimum conservation reference sizes*

When Member States submit joint recommendations in accordance with Article 19 to amend or establish minimum conservation reference sizes listed in Part A of Annexes V to X they shall respect the objective of ensuring the protection of juveniles of marine species.

## *Article 23*

### *Real-time closures and moving-on provisions*

When Member States submit joint recommendations in accordance with Article 19 to allow for the creation of real-time closures and moving on provisions with the aim of ensuring the protection of aggregations of juveniles or spawning fish or shellfish species, they shall include the following elements:

- the extent and duration of the closures;
- the species and threshold levels that trigger the closure;
- the distance a vessel should move away from the closed area once established;
- the use of highly selective gears to allow access to otherwise closed areas; and
- control and monitoring arrangements.

## *Article 24*

### *Innovative fishing gears*

1. When Member States submit joint recommendations in accordance with Article 19 to allow for the use or extend the use of innovative fishing gears including the pulse trawl as described in Part E of Annex V within a specific sea basin, they shall provide an assessment of the likely impacts of using such gears on the targeted species and on sensitive species and habitats.
2. Those assessments shall be evaluated by the STECF.
3. The use of innovative fishing gears shall not be permitted where those assessments indicate that their use will lead to negative impacts on sensitive habitats and non-target species.

## *Article 25*

### *Nature conservation measures*

Joint recommendations submitted by Member States in accordance with Article 19 to allow for the use of nature conservation measures to protect sensitive species and habitats may in particular:

- develop lists of sensitive species and habitats most at risk from fishing activities within the relevant region based on best available scientific advice;

- specify the use of additional mitigation measures to those referred to in Part D of Annexes V to X to minimise the bycatches of the species referred to in Article 12;
- specify measures to minimise the impacts of fishing gears on the habitats referred to in Article 13 or other sensitive habitats outside NATURA 2000 sites;
- specify restrictions on the construction and operation of specified gears or introduce a total prohibition on the use of certain fishing gears within a region where such gears represent a threat to the conservation status of species referred to in Articles 11 and 12 or to the habitats referred to in Article 13 or other sensitive habitats outside NATURA 2000 sites.

## *Article 26*

### *Regional measures under temporary discard plans*

1. When Member States submit joint recommendations for the establishment of technical measures in temporary discard plans referred to in Article 15(6) of Regulation (EU) No 1380/2013, they may contain the following elements:

- (a) specifications of fishing gears and the rules governing their use;
- (b) specifications of modifications to fishing gears or use of selectivity devices to improve size or species selectivity;
- (c) restrictions or prohibitions on the use of certain fishing gears and on fishing activities in certain areas or periods;
- (d) minimum conservation reference sizes.

2. The measures referred to in paragraph 1 shall aim at achieving the objectives set out in Article 3 and in particular for the protection of aggregations of juveniles or spawning fish or shellfish species.

## *Article 27*

### *Implementing Acts*

1. The Commission may adopt implementing acts, establishing the following:

- the specifications of the selection devices attached to the gears set out in Part B of Annexes V to VIII;
- detailed rules on the specifications of the fishing gear described in Part E of Annex V relating to restrictions on gear construction and the control and monitoring measures to be adopted by the flag Member State;
- detailed rules on the control and monitoring measures to be adopted by the flag Member State when using the gears referred to in Annex V Part C point 6, Annex VI Part C point 9, and Annex VII part C point 4;
- detailed rules on the control and monitoring measures to be adopted for the closed or restricted areas described in Annex V Part C point 2, Annex VI Part C points 6 and 7;

- detailed rules on the signal and implementation characteristics of acoustic deterrent devices as referred to in Part D of Annexes V to X;
- detailed rules of the design and deployment of bird scaring lines and weighted lines as referred to in Part D of Annexes VI, VII and IX.

2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

## **CHAPTER IV**

### **REGIONAL FISHERIES MANAGEMENT ORGANISATIONS**

#### *Article 28*

##### *North East Atlantic Fisheries Commission (NEAFC)*

The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to

- (a) transpose into Union law certain technical measures agreed by the North East Atlantic Fisheries Commission (NEAFC), including lists of vulnerable marine ecosystems and specific technical measures related to fisheries for blue ling and redfish defined in NEAFC Recommendations 05:2013, 19:2014, 01:2015, 02:2015; and
- (b) adopt other technical measures supplementing or amending certain non-essential elements of legislative acts which transpose NEAFC recommendations.

## **CHAPTER V**

### **SCIENTIFIC RESEARCH, RESTOCKING AND TRANSPLANTATION**

#### *Article 29*

##### *Scientific research*

1. The technical measures provided for in this Regulation shall not apply to fishing operations conducted solely for the purpose of scientific investigations subject to the following conditions:

- (a) the fishing operations shall be carried out with the permission and under the authority of the flag Member State;
- (b) the Commission and the Member State in the waters under the sovereignty or jurisdiction of which the fishing operations take place ('the coastal Member State'), shall be informed at least one month in advance of the intention to conduct such fishing operations detailing the vessels involved and the scientific investigations to be undertaken;

- (c) the vessel or vessels conducting the fishing operations shall have a valid fishing authorisation in accordance with Article 7 of Regulation (EC) 1224/2009;
  - (d) if requested by the coastal Member State to the flag Member State, the master of the vessel shall take on board an observer from the coastal Member State during the fishing operations.
2. Marine species caught for the purposes specified in paragraph 1 may be sold, stored, displayed or offered for sale, provided that they are counted against quotas in accordance with 33(6) of Regulation (EC) 1224/2009 and:
- (a) they meet the standards set out in Annexes IV to VII of this Regulation; or
  - (b) they are sold for purposes other than direct human consumption.

### *Article 30*

#### *Artificial restocking and transplantation*

1. The technical measures provided for in this Regulation shall not apply to fishing operations conducted solely for the purpose of artificial restocking or transplantation of marine species, provided that those operations are carried out with the permission and under the authority of the Member State or Member States having a direct management interest.
2. Where the artificial restocking or transplantation is carried out in the waters of another Member State or Member States, the Commission and all those Member States shall be informed at least one month in advance of the intention to conduct such fishing operations.

## **CHAPTER VI**

### **SAFEGUARD MEASURES**

#### *Article 31*

#### *Safeguard Measures*

1. Where available scientific advice indicates that immediate action is required to protect marine species, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to alleviate such threats. Those acts may concern, in particular, restrictions on the use of fishing gears or on fishing activities in certain areas or during certain periods.
2. Delegated acts referred to in paragraph 1 shall be designed in particular to:
- (a) address unexpected changes in stock patterns as a result of high or low levels of recruitment of juveniles into a stock;
  - (b) provide protection for spawning fish or shellfish when stocks are at very low levels or where other environmental factors threaten the status of a stock.
3. Delegated acts referred to in paragraph 1 shall apply for a period of no more than three years without prejudice to paragraph 6 of Article 32.

# CHAPTER VII

## PROCEDURAL PROVISIONS

### *Article 32*

#### *Exercise of delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 11, 13, 19, 28 and 31 shall be conferred on the Commission for a period of five years from [----]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 11, 13, 19, 28 and 31 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 11, 13, 19 and 28 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.
6. Delegated acts adopted under Article 31 shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 7. The notification of such delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
7. Either the European Parliament or the Council may object to a delegated act adopted under Article 31 in accordance with the procedure referred to in paragraph 5. In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

### *Article 33*

#### *Committee Procedure*

1. The Commission shall be assisted by the Committee for fisheries and aquaculture established by Article 47 of Regulation (EU) No 1380/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Council Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Council Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

## **CHAPTER VIII**

### **FINAL PROVISIONS**

### *Article 34*

#### *Review and reporting*

1. By the end of 2020 and every third year thereafter, and on the basis of information supplied by Member States and the relevant Advisory Councils and following evaluation by the STECF, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Regulation. This report shall assess the extent to which technical measures both regionally and at Union level have contributed to achieving the objectives set out in Article 3 and in reaching the targets set out in Article 4.
2. On the basis of that report, where at regional level there is evidence that the objectives and targets have not been met, within six months after the submission of the report as referred to in paragraph 1 Member States within that region shall submit a plan setting out the corrective actions to be taken to ensure those objectives and targets can be met.
3. The Commission may also propose to the European Parliament and to the Council any necessary amendments to this Regulation on the basis of that report.

### *Article 35*

#### *Amendments to Regulation (EC) No 1967/2006*

Regulation (EC) No 1967/2006 is amended as follows:

- (a) Articles 3, 8, 9, 10, 11, 12, 14, 15, 16 and 25 are deleted;
- (b) Annexes I, II, III and IV are deleted.

### *Article 36*

#### *Amendments to Regulation (EC) 1098/2007*

In Regulation (EC) No 1098/2007, Articles 8 and 9 are deleted.

*Article 37*

*Amendments to Regulation (EC) No 1224/2009*

In Regulation (EC) No 1224/2009, Chapter IV of Title IV is amended as follows:

- (a) Section 3 deleted;
- (b) the following Section 4 is added:

**'SECTION 4**

**'ON BOARD PROCESSING AND PELAGIC FISHERIES'**

*Article 54a*

On board processing

1. The carrying out on board a fishing vessel of any physical or chemical process of fish to produce fish-meal, fish-oil, or similar products or to tranship catches of fish for such purposes shall be prohibited.
2. Paragraph 1 shall not apply to:
  - (a) the processing or transhipment of offal; or
  - (b) the production on board a fishing vessel of surimi.

*Article 54b*

*Catch handling and discharge restrictions on pelagic vessels*

1. The maximum space between bars in the water separator on board pelagic fishing vessels targeting mackerel, herring and horse mackerel operating in the NEAFC Convention Area as defined in Article 3(2) of Regulation (EU) No 1236/2010 shall be 10 millimetres.  
The bars shall be welded in place. If holes are used in the water separator instead of bars, the maximum diameter of the holes shall not exceed 10 millimetres. Holes in the chutes before the water separator shall not exceed 15 millimetres in diameter.
2. Pelagic vessels operating in the NEAFC Convention Area shall be prohibited from discharging fish under their water line from buffer tanks or Refrigerated seawater (RSW) tanks.
3. Drawings related to the catch handling and discharge capabilities of pelagic vessels targeting mackerel, herring and horse mackerel in the NEAFC Convention Area which are certified by the competent authorities of the flag Member States, as well as any modifications thereto, shall be sent by the master of the vessel to the competent fisheries authorities of the flag Member State. The competent authorities of the flag Member State of the vessels shall carry out periodic verifications of the accuracy of the drawings submitted. Copies shall be carried on board the vessel at all times.

## Article 54c

### 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 or by sex herring or mackerel or horse mackerel shall be prohibited.
2. However, the carrying and use of such equipment shall be permitted provided that:
  - (a) the vessel does not simultaneously carry or use on board either towed gear of mesh size less than 80 mm or one or more purse seines or similar fishing gears; or
  - (b) 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
    - (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 species to the sea.
3. By way of derogation from paragraphs 1 and 2, any vessel authorised to fish in the Baltic, Belts or Sound may carry automatic grading equipment in the Kattegat provided that a fishing authorisation has been issued in accordance with Article 7. The fishing authorisation shall define the species, areas, time periods and any other required conditions applicable to the use and carriage on board of the grading equipment.'

## Article 38

### *Amendment to Regulation (EU) No 1343/2011*

Article 26 of Regulation (EC) No 1343/2011, is amended as follows:

(1) the following point is added:

- ´ (h) technical measures in Articles 4, 10, 12, 15, 15a, 16, 16b, 16c, 16d, 16f, 16g, 16h, 16i, 16j and 16k.´;

(2) the following paragraph is added:

´The Commission shall also be empowered to adopt delegated acts, in accordance with Article 27, in order to transpose into Union law other technical measures established by the GFCM that become obligatory for the Union and to supplement or amend certain non-essential elements of legislative acts which transpose GFCM recommendations on technical measures.´

## Article 39

### *Amendment to Regulation (EU) No 1380/2013*

In Regulation (EU) No 1380/2013, Article 15(12) is replaced by the following:

'For the species that are not subject to the landing obligation as specified in paragraph 1, the catches of species below the minimum conservation reference size shall not be retained on board, but shall be returned immediately to the sea, except when they are used as live bait.'

#### *Article 40*

##### *Repeals*

Regulations (EC) No 894/97, (EC) No 850/98, ((EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation.

#### *Article 41*

##### *Entry into Force*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*