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## **NSAC Advice Ref. 10-2021**

### **NSAC Advice on the evaluation of Technical Measures**

*This advice paper was approved with consensus by the NSAC Executive Committee via written procedure on 19 February 2021.*

#### **1. Background**

On 10 December 2020 the NSAC received from the Commission a letter with enclosed questionnaire on the evaluation of technical measures for the purpose of the first tri-annual reporting on the implementation of the Technical Measures Regulation (EC Reg 1241/2019).

Due to Covid-19 pandemic, the delay in the scientific report (STECF-20-02 Review of Technical Measures<sup>1</sup>) affected the delivery of the Commission's report pursuant to Article 31 of the Regulation<sup>2</sup>, which is now due in the second quarter of 2021.

The NSAC thanks the Commission for ensuring the time and space for the Advisory Councils' input to this important evaluation. Before we provide a response to the said questionnaire, we would like to offer some general and specific remarks.

While we recognize and acknowledge the importance of technical measures for increased sustainability of the North Sea fisheries, the NSAC believes that the regulation in its current form is rigid and as a result, inhibits innovation. The NSAC industry representatives noticed that, contrary to their expectation, the questionnaire focuses on environmental impacts of fisheries rather than on the limitations the measures impose on the fisheries. The Other Interest Group members of the NSAC are content with the scope of the questionnaire. Finally, as you rightly noted in your questionnaire, the new Technical Measures Regulation has only entered into force recently (2019), which at times renders it difficult to assess its effectiveness.

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<sup>1</sup> <file:///C:/Users/admin/Downloads/STECF%2020-02%20-%20Review%20TM%20-%20part%201.pdf>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1241&from=EN>



Another recurring issue we would like to address is a number of rules that appear to have been lost in the transition from the old (1998) to the new (2019) regulation. Specifically, there was a discrepancy spotted between the old and the new regulation pertaining to beam trawl length.

When transferring the technical measures from EC Reg 850/1998 to EC Reg 1241/2019, the intention was that the existing provisions would be stay in force. The NSAC noticed that this was not the case with Article 30 on Restrictions on the use of demersal towed gears.

Paragraph 1 of Article 30 of the 1998 Regulation<sup>3</sup> stipulates:

*1. Vessels shall be prohibited from having on board or using any beam trawl of which the beam length, or any beam trawls of which the aggregate beam length measured as the sum of the length of each beam, is greater than 24 metres or can be extended to a length greater than 24 metres. The length of a beam shall be measured between its extremities including all attachments thereto.*

This provision, however, cannot be found in the new regulation 1241/2019<sup>4</sup> on the conservation of fisheries resources and the protection of marine ecosystems through technical measures. To this end, the NSAC urges the European Commission and the Member States to correct this omission as soon as possible, as this could jeopardise the level playing field among beam trawlers of the different Member States. We propose the rule on beam length to be reinstated in the new regulation.

Our last general comment would be on the fact that technical measures are being increasingly intertwined with the quota regulation, for instance on specific stock protection rules. On the one hand it would be more effective if all technical measures were contained within a single regulation. However, when it comes to the list of protected species or stocks with annually changing/specific needs of protective measures it is beneficial to have a two-step approach to maintain flexibility, not least in making changes to species lists, as will be explained below. It is important that the regulation is adaptive to its circumstances. Having certain aspects of it included in the TAC and Quota regulation that can be more readily amended is therefore considered beneficial by the NSAC. Both points of view were detailed in our 2014 Advice concerning the development of a Technical Measures Regulation framework<sup>5</sup>.

In chapter two we provide further thoughts in response to your request in a form of answers to the proposed questions.

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01998R0850-20140101&from=EN>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1241&from=EN>

<sup>5</sup> <https://www.nsrac.org/wp-content/uploads/2020/11/7-1314-2014-05-05-NSAC-response-to-Tech-measures-cons.pdf>



## 2. Advice

**Q1. Even though the Regulation on Technical Measures has only entered into force recently, the Advisory Council's views are welcome on whether technical measures both at regional level and at Union level have contributed to achieving the objectives set out in Article 3 and reaching the targets set out in Article 4 of that Regulation.**

Articles 3 and 4 relate to sustainable exploitation and protection of habitats and species. The NSAC is of the opinion that the new Technical Measures Regulation has not made a significant difference compared to the previous legislation. We further note that in Article 4.1c, which covers the environmental impacts of fishing activities on seabed habitats, there is emphasis on the latest scientific data. However, this is not the case for fishing techniques. We would like to see such a review of fishing techniques based on the latest scientific data being performed. The new Regulation should also be aligned with the EU Biodiversity Strategy for consistency reasons.

**Q2. Does the Advisory Council consider that the list in Annex I (Prohibited species) is adequate? If not, what should be amended? (please provide a brief explanation)**

The NSAC would like to underline that a division in two parts where the Technical Measures Regulation gives a fixed part to the prohibited species list and the section in the TAC and Quota Regulation updated on an annual basis, is constructive as it maintains flexibility. However, we feel it would be logical for the TMR to be the instrument used to outline the mechanism by which species are added or subtracted from the list and the actual list to be incorporated in the TAC & Quota regulation.

Since 2017 NSAC has repeatedly requested the Commission to draft criteria for including of species on the Prohibited Species list (to be based on advice by ICES), last one sent in cooperation with the North Western Waters AC. You can find these below.

- [NSAC Advice Ref. 15-1617 on Prohibited Species Listing](#)
- [NSAC Advice Ref. 09-1718 Letter on Prohibited Species List](#)
- [NSAC Advice Ref. 07-1920 Letter on Prohibited Species List](#)
- [NSAC/MWWAC Advice Ref. 06-2021 Non-recurrent request to ICES on criteria for listing on Prohibited Species List](#)

Generally, the NSAC accepts the list in Annex I (prohibited species) with no immediate amendments deemed necessary. The OIG of the NSAC suggest to include species listed in appendix I and II of the Convention on Migratory Species (example: porbeagle (*Lamna nasus*) and spurdog (*Squalus acanthias*), and those that are assessed as Endangered or Critically Endangered on the regional Red List of the International Union for Conservation of Nature and Natural Resources (IUCN), example: common skate species complex (*Dipturus intermedia* & *Dipturus flossada*, formerly *Dipturus* sp.).



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**Q3. Does the Advisory Council consider that the measures in place are adequate to ensure that species referred to in Art 11 are not harmed and promptly released?**

The NSAC members unanimously agreed that when a protected species is caught, fishermen will usually do their utmost to ensure it is not harmed. While the current regulation gives Member States deeds to implement such measures, the NSAC believes that such deeds would be better enacted at a regional level to be more specific and adequate for local groups of fisheries.

**Q4. Has the Advisory Council been involved in any scientific research envisaging the use of accidentally caught marine mammals, seabirds?**

The NSAC notes that the wording of the question, particularly the word 'use', is unclear. The NSAC does support certain scientific initiatives, however, we have not been engaged in this issue directly.

**Q5. Is the Advisory Council aware of any mitigation measures or restrictions on the use of certain gear that Member States have put in place aimed at minimising or where possible eliminating the catches of mammals, seabirds and marine turtles?**

The NSAC is not aware of any Member State level mitigation measures on this issue. Some members are aware of some measures banning gill netting in parts of the North Sea region to protect harbour porpoise, however these are not yet in place. A Dutch study<sup>6</sup> is investigating harbour porpoise bycatch in gill net fisheries - the results had shown a low incidence of bycatch.

The OIG of the NSAC note that even though it is possible within the remit of Art. 11 to implement measures that would help prevent interactions between fisheries and sensitive and protected species (i.e. spatial measures), there are at this time no measures within the North Sea linked to this article.

**Q6. Is the Advisory Council involved in any proposal to amend Annex II (Closed areas for protection of sensitive habitats)? If so, please provide a brief explanation.**

The NSAC is not involved in any proposal to amend Annex II.

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<sup>6</sup> [https://www.wur.nl/upload\\_mm/6/5/b/bedc6850-8078-4597-933d-63f8f0b469e6\\_Onbedoelde%20bijvangst%20in%20beeld.pdf](https://www.wur.nl/upload_mm/6/5/b/bedc6850-8078-4597-933d-63f8f0b469e6_Onbedoelde%20bijvangst%20in%20beeld.pdf)



**Q7. Is the Advisory Council involved in any pilot project for the avoidance of unwanted catches? If so, please provide a brief explanation.**

The NSAC notes that all fishermen actively work within the scope of the Technical Measures Regulation to contribute to the avoidance of unwanted catches on a vessel-by-vessel basis. The NSAC is not involved in any pilot project for the avoidance of unwanted catches, but several member organisations are.

**Q8. Does the Advisory Council consider there is a need for additional closed or restricted areas other than in Part C of Annexes V to VIII and X and Part B of Annex XI to protect juveniles and spawning aggregations? If so, provide a brief explanation.**

The industry representatives of the NSAC are of the opinion that there is no need for additional area restrictions at the present time. On the contrary, fewer closures would be preferable until such time where strong scientific documentation of the positive effects of closures is available. The OIG are of the opinion that closures can benefit stock development. We appreciate the option to amend the annexes through the process of regionalisation, which gives Member States a useful and flexible tool for any adaptations. Within this context, the NSAC has given advice to the Commission and Member States on the plaice box<sup>78</sup>.

**Q9. Does the Advisory Council consider the current minimum conservation reference sizes for commercial species as in Part A of Annexes V to X adequate? If not, please provide a brief explanation why not and whether the Advisory Council sees a need to amend established sizes or introduce additional ones.**

The NSAC agrees that the current minimum conservation reference sizes for commercial species are adequate. While the minimum conservation reference size often works against the Landing Obligation, and vice versa, the NSAC appreciates the value in having both regulations.

**Q10. Does the Advisory Council consider there is a need to align the minimum conservation reference size between recreational fisheries and commercial fisheries? If so, please provide a brief explanation.**

Given the different rules and considerations that apply to recreational and commercial fisheries, the industry representatives of the NSAC believe that there is no need to align the minimum conservation reference size between both sectors. The OIG of the NSAC would like

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<sup>7</sup> <https://www.nsrac.org/wp-content/uploads/2019/11/01-1920-NSAC-Letter-to-the-Commission-on-Plaice-box.pdf>

<sup>8</sup> <https://www.nsrac.org/wp-content/uploads/2020/10/16-1920-NSAC-Advice-on-Scheveningen-JR-on-plaice-box-1.pdf>



to underline that all conservation reference sizes should be above the size of first reproduction, both in recreational and commercial fisheries.

**Q11. Does the Advisory Council consider there is a need for real-time closures and moving-on provisions? If so, please provide a brief explanation.**

The NSAC believes that real-time closures and moving-on provisions are useful to serve a single objective – e.g, rebuilding of a stock (e.g. cod<sup>910</sup>), and that the measures should not be applied in general terms but rather used on a case-by-case basis, with the objective to avoid unwanted catches.

**Q12. Does the Advisory Council consider there is a need to adopt measures regarding innovative fishing gear, taking into account the recent ICES advice on innovative gear? If so, please provide a brief explanation.**

The NSAC recommends including a principle of conditionality on scientific reviews innovation processes, resulting in advice by ICES and STECF. The NSAC strongly believes that there should be no measures limiting innovation in fishing gears that are scientifically demonstrated to reduce environmental impact and minimise bycatch. Any further technical regulations on innovation would be counterproductive and limit innovation.

**Q13. Does the Advisory Council consider there is a need for additional technical nature conservation measures for the protection of sensitive habitats? If so, which measures for which habitats?**

**Q14. Does the Advisory Council consider there is a need for additional technical nature conservation measures for the protection of sensitive species? If so, which measures for which species?**

Questions 13 and 14 will be answered together. The NSAC thinks that these questions are not aligned with the ecosystem approach in the way they segment habitats and species. Instead, a balance should be struck between the two. The NSAC members generally agree that nature conservation measures should focus holistically on the ecosystem approach, and that any additional measures should be dealt with on a case-by-case basis.

**Q15. Does the Advisory Council consider there is a need for the establishment of pilot projects to develop a system of full documentation of catches and discards based on**

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<sup>9</sup> <https://www.nsrac.org/wp-content/uploads/2020/05/08-1920-NSAC-Advice-on-North-Sea-cod-management.pdf>

<sup>10</sup> <https://www.nsrac.org/wp-content/uploads/2020/12/03-2021-NSAC-Advice-Cod-TAC-2021-1.pdf>



**measurable objectives and targets, for the purpose of a results-based management of fisheries?**

The NSAC believes that this is a control issue with little relevance to the Technical Measures Regulation.

**Q16. Does the Advisory Council consider there is a need for additional measures in relation to species and size selectivity of fishing gear and mesh size specifications? If so, why and how?**

The NSAC holds a belief that within the enforcement of the Landing Obligation, it is already necessary to focus on selectivity hence there is no need to implement additional measures in the Technical Measures Regulation to avoid unwanted catches and prevent choke species.

**Q17. Is the Advisory Council involved in the preparation of a Joint Recommendation in order to further define the term 'directed fishing' for relevant species in Part B of Annexes V to X and Part A of Annex XI? If so, please describe.**

Yes, the NSAC has recently initiated a joint advice process to further define the term 'directed fishing'. The advice is in progress and will be sent to the Commission within the next few weeks.

**Q18. Does the Advisory Council consider that additional regional mitigation measures are needed for the reduction of incidental catches for sensitive species? If so, what measures?**

The NSAC notes that any new measures would need to be fully evaluated prior to inclusion in the regulation. Currently, additional regional mitigation measures are not required, but the NSAC wishes to be involved in the consultation process should they become necessary in future. Again, these measures should be implemented on a case-by-case basis where necessary.

**Q19. Does the Advisory Council consider there is a need for additional steps to collect scientific data on incidental catches of sensitive species as set out in Annex XIII? If so, why and what steps?**

With regard to the scientific data the NSAC notes that the industry is willing to contribute to the collection of scientific data, and in cases where it may contradict existing rules, there may be a need to make amendments. However, the NSAC was not aware of any such rules.



**Q20. Does the Advisory Council consider there is a need for additional steps to sufficiently monitor and assess the effectiveness of mitigation measures as set out in Annex XIII? If so, why and what steps?**

The industry representatives of the NSAC believe that the measures set out in Annex XIII are adequate and no additional steps are necessary. The OIG would like to note that STECF has repeatedly noted the lack of information on bycatch of sensitive species, thereby impeding effective management.

**Q21. Has the Advisory Council identified difficulties in the implementation of the Technical Measures Regulation? If so, please indicate the relevant Article(s) and the difficulties encountered.**

The NSAC is not aware of any challenges associated with the new regulation in comparison to the former. However, some members of the industry believe that there could be a benefit to further reducing mesh sizes at a fleet level, which would enable fishers to catch their quota in fewer hauls, lessening the environmental impact. There is also a sentiment that the technical measures have not moved with the development of fisheries sector, which has historically led to implementation issues. While the NSAC is not against the Technical Measures Regulation, it believes the regulation is in danger of becoming too prescriptive and thus preventing innovation.

