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Impact Assessment regarding the Commission's proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures in the Atlantic and the North Sea

Lead DG: DG FISH

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Executive summary

The Impact Assessment regards a draft proposal for the Regulation concerning the conservation of fisheries resources through technical measures in the Atlantic and the North Sea.

The proposal for a new regulation on technical conservation measures in the Atlantic and the North Sea was identified in the Commission Action Plan 2006-2008 on simplification of the Common Fisheries Policy (CFP)¹ legislation as a fundamental test case of simplification. The proposal is also part of the Commission's Rolling Simplification Programme.

Recognising that the technical measures legislation for the Atlantic and the North Sea grew too complex and difficult to interpret, control and enforce, the Council invited the Commission to submit a simplified proposal. In its conclusions on promoting more environmentally-friendly fishing methods, the Council also recommended a localised approach where measures are adapted to regional conditions, when appropriate.

¹ OJ L 256, 3.8.2004, p. 17. Decision as last amended by Council Decision of 11 June 2007(2007/409/EC)

Simplification is therefore a key objective of the new proposed regulation. The specific operational aims are as follows:

- to incorporate all revised conditions and amendments in a comprehensive and easy to understand, control and enforce package of technical measures;
- to establish a balance between measures which are generally applicable in all areas and measures which are applicable specifically on a regional basis as defined by the Regional Advisory Council (RAC) Areas.

The scope of the proposal is relatively small as it does not change the substance of related legislation but only the legislative approach and therefore the likely environmental, social and economic impacts are modest. This is a proportionate impact assessment, for which no inter-service steering group was set up. Scientific and Stakeholder Committees have been consulted.

Details of consultation processes, options and impacts are provided.

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Additional information

Following on the recommendations made by the Impact Assessment Board in their Quality Checklist, regarding its opinion on the final draft report, the following amendments have been made to the final version of this IA report:

- the link between problem definition and the objectives of the new proposal was further discussed, as well as more explanation was given on why simplification of current measures with a strong regional dimension was required;
- the main options were analysed and their possible environmental, social and economic impacts were explained;
- more information on the consultation process and the involvement of stakeholders was added;
- the nature and drivers of the existing problem were discussed in detail and examples of the specific simplification gains was given;
- key technical terms were added as Annex 4.

1.2. Organisation and timing

This impact assessment regards a proposal for a Council regulation recasting Council regulation (EC) N° 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms in the Atlantic and the North Sea waters.

Its development is foreseen in Agenda Planning (2006/FISH/004) and in the 2007 Annual Management Plan of the Directorate-General of Fisheries and Maritime Affairs under the specific objective "Conservation and Management of Fish Resources" (to propose and negotiate measures, including multi-annual management plans, for the conservation and management of Community fish stocks, joint stocks and stocks partly occurring in international waters, with a view to ensuring the exploitation of fish stocks at maximum sustainable yield levels, taking into account broader environmental, economic and social concerns and making the best use of harvested fish resources, especially by avoiding wasteful discard practices).

The proposal for a new regulation on technical conservation measures in the Atlantic and the North Sea was identified in the Commission Action Plan 2006-2008² on simplification of the Common Fisheries Policy (CFP) legislation as a fundamental test case of simplification. The proposal is also part of the Commission's Rolling Simplification Programme.

²

COM (2005) 647 final Communication from the Commission to the Council and the European Parliament 2006-08 Action Plan for Simplifying and Improving the Common Fisheries Policy

The Council, in its conclusions of June 2004 on the promotion of more environmentally friendly fishing methods³, recommended that the technical measures for the Atlantic and the North Sea be revised with the aim of simplification and taking into consideration regional characteristics. The Council called on the Commission to propose, after consultation with the sector, a simplified proposal for technical measures for the area.

In the light of these discussions, which took place during the rest of 2006, the Commission prepared its formal proposal to replace Council Regulation No 850/98.

The adoption of the proposal is foreseen in the first quarter of 2008.

This is a proportionate impact assessment and no inter-service steering group was set up. The scope of the proposal is limited in terms of new regulations and therefore the impact in social, economic and environmental terms, is likely to be modest.

1.3. Consultation and expertise

1.3.1. Consultation

The Commission asked stakeholders for comments on the basis of non-papers.

The Commission presented its first non-paper on the new technical measures for the Atlantic and the North Sea to the Member States and to the sector, through the relevant Regional Advisory Councils (RACs), in 2005. Three RACs; the North Sea RAC, the North Western Waters RAC and the Pelagic RAC, were contacted and asked to comment. The South Western Waters RAC, which also covers part of the discussed area, was not yet operational and therefore could not be consulted.

Generally, Member States and the sector wish to see an end to the current dispersion of measures in different pieces of legislation. They would like to see technical measures organised in a more clear and consistent set of rules. They expect the regulation to apply as widely as possible, to ensure harmonisation, but accept that it will have to take account of regional characteristics on a scale which has yet to be defined and provided that effective control is put in place in these regions. They would like to have a considerable involvement of stakeholders in the development of the regulation, in particular through the Regional Advisory Councils (RACs) set up under the CFP. Lastly, Member States and the sector stress the importance of discards at sea which should be eliminated or greatly decreased in Europe and ask that this subject be addressed in these new measures.

Due to the limited number of replies from the sector, in 2006 the Commission presented a second non-paper, which was more precise and presented specific and more detailed questions and possible options.

³

INI/2004/2199 : 21/06/2004 - Council: resolution, conclusions

The Commission received opinions from the Pelagic Stock Regional Advisory Council (PSRAC) and the North Western Waters Regional Advisory Council (NWWRAC).

Generally, RACs welcome the initiative for a revision of the technical measures. They agree, in principle, to increase selectivity in order to reduce discards and wish a "fishery" approach to take into account the regional characteristics of those fisheries.

The PSRAC provided specific comments on the closed areas and on selectivity of fishing gears. There is a general opinion that closures are an effective way to protect pelagic species but they have a special request to remove specific closures for the protection of herring. The RAC considers that minimum mesh size is not an appropriate tool for the conservation of small pelagic species but explains that the minimum landing size of fish must stay in the regulations as an incentive for the fishermen to move to other fishing areas when catching juveniles. All those comments have been taken into account by the Commission when preparing the new technical measures.

The NWWRAC is in general agreement with the Commission's approach but their general request is a 'fisheries-based' approach. They are in favour of increasing selectivity but without giving details about fisheries that should be subject to those improvements. The Commission has taken into account those comments and, considering that a fishery is characterized by a combination of target species, fishing areas and specific fishing gears, has prepared new tables for the definition of mesh sizes required for a list of target species established for each RACs area. The Commission has also proposed some improvements of the selectivity in specific cases.

The Commission also attended a Workshop in Dublin in September 2007⁴ and presented to stakeholders how the new technical measures had been prepared. In general, comments from stakeholders were in agreement with the Commission's approach for the new technical measures but they are waiting for the final documents and the specific figures before delivering their final comments.

1.3.2. *Expertise*

In addition to the non-papers, the Commission organised two specific Scientific, Technical and Economic Committee for Fisheries (STECF) working groups. The first one was dedicated to the evaluation of the efficiency of existing closed areas in the current Regulations. The second had the objective to identify the main factors, in gear construction, which affect selectivity.

An expert meeting has been organized with net makers to identify problems encountered by them with respect to EU regulations and possible ways to improve simplification of the rules.

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http://www.profetpolicy.info/index.php?option=com_content&task=view&id=73&Itemid=161

- *STECF working group on the respective influence of the main factors⁵ which affect codend selectivity, June 2007.*

In order to simplify the technical measures the Commission wishes to focus the new technical rules on the main parameters which affect codend selectivity and to give less attention to the others. As part of this exercise, an evaluation of certain technical provisions established to improve codend selectivity is required, especially those on mesh size, codend circumference and twine diameter.

To achieve this objective, an assessment of the respective influence on codend selectivity of the mesh size, mesh shape (diamond and square), the circumference (number of meshes round) and twine diameter used in the codend in relation to the volume or the weight of the catches is necessary.

The meeting was convened to assess the respective influence on codend selectivity of mesh size, mesh shape, circumference and twine diameter in relation with the weight of catches (using the predictive model PRESEMO)⁶.

- *STECF working group on the evaluation of closed areas⁷, March and October 2007.*

As a part of the exercise of simplification of the technical measures, an evaluation of closed areas laid down in the current Regulation was required. A considerable body of material and evaluations has been compiled through a number of research projects and study groups. A two step approach has been therefore applied: first an overview was made of the existing closed areas within the EU waters and of the existing material and evaluations and secondly, an evaluation of specific sets of closed areas using the existing information was provided.

A first STECF meeting held in March 2007, prepared an inventory of closed areas and identified a process and the data requirements for an evaluation of the closed areas in the inventory, considering maximum use of existing evaluations and information. A second meeting was organized in October 2007, being the second step in this process and it is expected that the outcome will be an evaluation of closed areas in the Atlantic and the North Sea. The intention is to determine for each of them its value for conservation, for the Commission to decide if the closed areas have to be renewed, modified or deleted in the new regulation. If no advice is possible due to a lack of data the group was requested to identify material required for evaluate the considered closed areas in the short term.

- *Expert meeting with net makers, July 2007.*

The Commission organised on 3rd July 2007 a day-long meeting in Brussels with manufacturers of fishing gears from Europe, together with one of their

⁵ Meeting with the STECF Working Group 11-15 June 2007

⁶ <http://www.ifremer.fr/premecs/pages/packages/task6-1.htm>

⁷ Meetings with the STECF Working Group 19-23 March 2007 and 15-19 October 2007

Norwegian counterparts, and a scientific representative from the working group on fishing technology from the International Council for the Exploration of the Seas (ICES). When revising the regulation on technical measures in the Atlantic and the North Sea, the intention of the Commission is to simplify and clarify the rules and to focus on the main factors which affect selectivity. The Commission is aware that sometimes provisions can create practical problems to fishermen and net makers. One of the intentions of this meeting was to solve those problems before finalizing the legislative proposal which must take into account the fishing practices.

The discussion focused on problems encountered by net makers with respect to EU regulations when manufacturing towed gear, and in particular the codend (that part of a trawl where the fish accumulate). Topics covered included the definition of the codend, its circumference, acceptable criteria for twine thickness, and the use of strengthening bags. Participants also shared their views on the problems they encountered in following technical measures laid down by the EU when introducing selective devices such as square mesh windows or grids, which are designed to improve selectivity and reduce discarding.

- *Other expertise*

Available scientific material has been also used for preparing the technical measures especially the "report on the review of technical measures"⁸ produced by the ICES working group FTFB (Fishing Technology and Fish behaviour) in 2005.

2. PROBLEM DEFINITION: THE CURRENT SITUATION

One of the main goals of the Common Fisheries Policy (CFP) is to take conservation measures to prevent fish stocks from being overexploited. These measures aim to ensure that the pressure of fishing activities targeting certain stocks is not jeopardising the reproductive capacity of the stocks concerned or putting them at risk of collapse.

To promote the sustainability of fishing activities in EU waters and protect a specific stock or a group of stocks the EU may use a number of conservation measures. These measures include:

- Total Allowable Catches (TACs) to limit the maximum amount of fish that can be caught from a specific stock over a given period of time;
- Limiting fishing effort by reducing the number of fishing days at sea of fishing vessels;
- Fixing the number and type of fishing vessels authorised to fish.

However, reducing fishing effort and controlling the volume of catches cannot prevent the capture of small fish and fish which have no commercial value.

⁸ ICES WGFTFB Report 2005 (ICES CM 2005/B:04)

Additional measures are needed to ensure the selectivity of fishing gear in order to leave these fish in the sea. This is the role of technical measures.

The basic aim of technical measures is to avoid or limit the capture of:

- immature fish to allow them to contribute to stock renewal as adults;
- unwanted fish because of their lack of commercial value or fish for which fishermen have no more quotas;
- marine mammals, birds and other species such as turtles.

Main technical measures are generally defined by geographical areas and include (examples presented in Annexes of Commission Regulations. See in Annex 5):

- minimum net mesh sizes;
- the use of selective fishing gear;
- closed areas and seasons;
- minimum landing sizes for fish and shellfish;
- limits on by- or incidental catches.

Technical measures currently in force are too complex and difficult to understand, control and enforce. The regulations include a mixture of general rules and detailed implementation rules and amendments, which adds to their complexity. Moreover, technical measures have not been adapted to the context of the establishment, since 2004, of the RACs under the Common Fisheries Policy.

Fisheries in Community waters and by Community vessels in international waters are covered by different technical Regulations, one for each of the following areas: the Mediterranean, the North Sea (including Kattegat and Skagerrak) and the North-East Atlantic, the Baltic Sea, and the Antarctic. Another Regulation covers technical measures in fisheries for highly migratory fish around the world.

The new proposal concerns the technical measures for the Atlantic and the North Sea waters.

Council Regulation (EC) 850/1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms for the North Sea and the Atlantic was adopted by the Council on 30 March 1998. It has since been amended eight times⁹.

⁹ Council Regulations (EC) No 308/1999, 1459/1999, 2723/1999, 812/2000, 1298/2000 724/2001, 973/2001, and 602/2004.

In addition to Regulation 850/1998 technical measures of relevance for the North Sea and the Atlantic are also found in a number of other regulations as listed in Annex 1.

The technical measures regulations do not serve a single objective but a large range of objectives. A key objective is the protection of juveniles and a significant part of the measures is introduced to limit catches of juvenile fish. Examples are the minimum landing size, rules for gear construction, target species percentages and some of the closed areas/seasons. Other objectives are aiming at protecting the ecosystem, protecting certain species by limiting fishing mortality in certain areas/seasons and reducing discards.

The approach taken in the Regulation is what could be characterised as a “negative list” approach, i.e. specifying which fishing activities are not allowed and implying that all activities not prohibited are allowed.

A proposal for new technical measures for the Atlantic and the North Sea was adopted by the Commission on 3 December 2002. After two meetings in the Council Working Party it became clear that the proposal could not form the basis for a revision of the current Regulation and it was withdrawn by the Commission in 2004.

The withdrawn proposal for the North Sea and Atlantic was basically a consolidation of Regulation 850/98¹⁰ incorporating all amendments plus some changes reflecting harmonisation between areas.

The main reasons why this proposal was withdrawn were:

- The text had grown too complicated and too difficult to interpret.
- The proposal did not reflect regional differences and the advantages of harmonising measures across different areas were questioned.
- Stakeholders were not consulted.

In June 2004 the Council recommended the revision of the technical measures for the Atlantic and the North Sea. The Council asked the Commission to propose a simplified proposal for technical measures, which takes into consideration regional characteristics.

In that context, the Commission, recognising it was one of the main regulations to be simplified urgently, decided to introduce that revision of the technical measures in the action plan 2006-2008 for simplification of the Common Fisheries Policy, and in the Commission's Rolling Simplification Programme.

¹⁰ Council Regulation (EC) No 850/1998 of 30 March 1998 for the conservation of fishery through technical measures for the protection of juveniles of marine organisms.

2.1. Underlying driving forces

Simplification of the existing technical measures legislation is the main driving force for the proposed regulation. The revised proposal will combine most of the technical measures, currently in various Community regulations, into one comprehensive and simplified package. Annex I identifies the regulations that would be incorporated into the new text, as well as those that would remain as separate legal texts.

Consistency with the other policies and objectives of the Union is also an important factor. Stakeholders must play a key role in defining technical measures. Beyond the targeted consultation process, notably through RACs, it is important to favour the direct involvement of the industry in preparing alternative or improved methods to conduct their fisheries with a better selectivity of fishing gear and lower incidental catches., .

2.2. Identification of the sectors affected

Fisheries in Community waters and by Community vessels in international waters are covered by different technical Regulations and the principal sectors affected are the owners, operators and crews of fishing vessels operating in these waters. They include:

- Community waters in the North East Atlantic;
- international waters of the North East Atlantic;
- waters of the French departments of Guyana, Martinique and Guadeloupe.

When 850/1998 was adopted fishing activities conducted by Member States in the North East Atlantic Fisheries Commission (NEAFC) regulatory area were limited. Since then Member States have expanded their fisheries in international waters mainly for deep-sea species and small pelagic species. There is therefore a need to ensure that appropriate technical measures are in place for the fisheries in the regulatory area of NEAFC.

2.3. Legal basis for Community action

The structure of the proposed Regulation provides for a Council Regulation based on Article 37 of the EC Treaty, which includes all common permanent measures for all areas, i.e. the guiding principles.

The measures applicable in each of the RAC areas, i.e. purely technical aspects of a regional nature, should then be implemented through separate Commission Regulations by Management Committee procedure, on the basis of the Council Regulation.

2.4. Necessity and subsidiarity

The proposal forms part of the CFP legislation and, as such, concerns all Member States. Management in Community Waters must affect Member States in exactly equal terms in order to ensure a level-playing field across the

European Union. It is not possible for Member States to achieve this by independent or devolved action. It is, therefore necessary that technical conservation measures are implemented through Community legislation.

3. OBJECTIVES

The general objective of the proposed regulation is to simplify legislation concerning measures for the conservation of fish stocks through technical measures for the protection of juveniles of marine organisms in the Atlantic and the North Sea. This takes into account the recommendations of the Council, European Parliament, the European Economic and Social Committee and the stakeholders like the Advisory Committee for Fisheries and Aquaculture (ACFA) and the RACs.

The operational objectives of this exercise are as follows:

- to simplify and bring together but also, where appropriate, improve the effectiveness of existing technical measures, in particular those laid down in Regulation 850/98 and its different amendments, in Regulation 51/2006 and in the regulations for the recovery of the stocks of cod and hake;
- to adapt the technical measures to the context of the reformed Common Fisheries Policy, in particular regarding the establishment of the Regional Advisory Councils and the consideration of environmental aspects, such as the protection of marine habitats and the reduction of discards;
- to implement the commitment to develop non-destructive fishing practices, as recommended by the World Summit on Sustainable Development (Johannesburg, 2002).

4. POLICY OPTIONS

4.1. Status quo' option

This approach means taking no specific steps to simplify or modify the technical measures legislation for Atlantic and the North Sea at this stage and continuing with fisheries management in its current form. The option had already been debated in the Council, which concluded that a new proposal was necessary and called on the Commission to propose, after consultation with the stakeholders, a new regulation for technical conservation measures.

4.2. 'Simplification only' option

By doing this we would simplify technical measures and harmonise them across the board, without taking into account the regional or other specific considerations. By not adapting the measures to the specific local needs and the bottom-up approach, we would achieve no improvement of effectiveness of the technical measures. By not promoting more environmentally-friendly fishing methods i.e. discards policy, the proposal would go against the Commission

action plan 2006-2008 for improvement of the CFP. This is the reason why this option has been discarded from the outset and has not been analysed further.

4.3. 'Simplification and regionalisation' option

This option proposes a new legislative package, which not only simplifies current complex rules but also introduces specific provisions for each 'RAC area', reflecting regional differences. Such legislative proposal is a reply to the request from the Council to review the technical measures rules with a view to their simplification and adopting a more regionalised approach in order to improve their effectiveness. We propose a comprehensive and coherent package with the right balance between measures generally applicable in all areas and those specific to the localised RAC areas, namely one "mother" Council Regulation with general principles and provisions, and the "daughter" Commission Regulations with specific technical rules for each 'RAC area' as described in Annex 5. Such a revision of technical measures will comply with the Commission action plan 2006-08 for simplification and improvement of the CFP.

The main tools used for technical measures are the minimum landing size of species, the minimum mesh size of fishing gears in relation to percentage of target species and the closed areas for the protection of juveniles, spawners and marine habitats. These rules are simplified and adapted to the specific regional needs.

5. ANALYSIS OF IMPACTS

In April 2006, the Council endorsed a Commission Action Plan on Simplification of Community legislation. The proposal for a new regulation on technical conservation measures in the Atlantic was identified in the Plan as a fundamental test case of simplification.

The objective here is not, for the time being, to change the level of ambition of these conservation measures. Although the Commission considers that sustainable fishing, particularly for demersal fisheries, calls for a substantial increase in the selectivity of fishing gear, the priority is to establish a new set of simpler, clearer rules. Improvements in selectivity will then be brought about gradually through future amendments of these rules, in parallel with the general improvement in the conservation status of Community fish stocks to be achieved through other elements of conservation policy, such as long-term recovery and management plans.

In the future regulation to replace Regulation 850/98, all rules must be simple, understandable, and controllable and must have a positive effect on the conservation of the species, on the protection of the marine habitats or on the reduction of discards.

The regulation will apply to commercial and recreational fishing in all European waters except for the Mediterranean Sea, the Baltic Sea and in fisheries for highly migratory fish stocks, which have specific regulations. It will bring

together most of the existing technical measures in various Community regulations for the Atlantic and the North Sea, although a few measures that are currently in separate regulations will remain separate.

The '*simplification and regionalisation*' option is not proposing a general increase in mesh sizes at this stage. However, the possibilities of improving selectivity and reducing discards through mesh size increases should be explored to the full. The Council and RACs have also indicated clearly that measures to improve selectivity should be evaluated first and then applied after a certain transitional period. Consequently, this option will not plan to introduce large changes in mesh sizes but will establish the conditions for the discussion and adoption of possible improvements in selectivity over the coming years.

On the other hand, some of the existing provisions under Regulation 850/98 and its different amendments, in Regulation 41/2007 and in the regulations for the recovery of the stocks of cod and hake can be considered as an asset to be consolidated for clarification purpose. In such cases, the proposal is simply to include these provisions to ensure the consistency of the package, but it is clear that such measures will not be open for discussion.

To sum up, the new proposal will introduce changes to a regulatory approach but not to its substance and therefore the socio-economic impact will remain greatly unchanged.

5.1. Environmental impacts

Technical measures are one of the tools contributing to the conservation of stocks. Whilst simplification and clarification of that Regulation will have no substantial economic impact, the few improvements proposed will greatly contribute towards increasing the level of stocks by reducing the catches of juvenile fish as well as the harmful discards practices.

Currently many species have to respect a minimum landing size and if the fish are smaller than that size they have to be discarded immediately at sea. In order to reduce discards, the list of species subject to a minimum size should be reduced from 36 to 16 by focussing only on the main target species, according to the '*simplification and regionalisation*' option.

The new regulation will also improve the dialogue with the RACs for the future adaptations and modifications of the technical measures. Such a dialogue will indirectly improve the efficiency of the technical measures on conservation of marine resources, since it will increase ownership by stakeholders.

Another element is the introduction of closed areas dedicated to the protection of sensitive marine habitats, which are currently in separate regulations. That new position will improve the future developments of such areas.

Going with the status quo option would retain the high amounts of discards and as such go against the CFP conservation rules. The dialogue with RACs will not improve either, giving stakeholders a limited involvement in technical measures decision-making process resulting in a top-down management of fisheries.

5.2. Economic impacts

The new simplified proposal will generally not change the economic impact. A few improvements will not require substantial direct investments, such as new and expensive type of netting of devices like grids, etc.

The new regulation may initially have a low short-term negative economic impact in certain fisheries but this will be compensated by significant positive impact in the medium/long term due to the recovery of stocks. Harmonisation is an advantage from the perspective of fishermen, who will not have to change gear when changing fishing grounds.

On the other hand, a greater degree of regionalisation of measures in the RACs competence areas will benefit the natural resources there and also encourage stakeholders to get involved in fisheries management in their area by devising and proposing adequate measures to the Commission through RACs. When technical measures are more efficient, they contribute to the recovery of stocks and therefore, indirectly, such improvements will increase the profitability for the sector.

A status quo option would contribute to the decline of stocks, which would negatively affect the profitability of the sector.

5.3. Social impacts

The new simplified proposal will not have significant social impacts on the sector. The only new element will be an increased dialogue and exchange of views with the RACs for the future improvements of the technical measures, and therefore, an increased involvement of the industry in the decision making process.

Moreover, the administrative burden for both Member States and the Commission will be reduced due to simplification of provisions, especially as regards controls. The new proposal will make certain controls by fisheries inspectors less necessary, which will make inspections less complex and time-consuming, with less paperwork and reporting required. A proposed 'one-gear rule' i.e. will remove the need to calculate the catch composition, making the vessel crew's and the inspectors' work much easier. Simpler and much clearer rules will also ensure legal clarity.

The quantitative gains of the new proposal will be as follows:

- Reducing the overall complexity of the technical measures regulation will result in rules that are easier to understand and grasp immediately;
- Less time required for the minimum landing size controls (a reduced list of species subject to a minimum landing size; down from 36 to 16 species);
- Less time for checking the legality of gear (thanks to the 'one-gear' rule);

- Less work for the vessel crew members thanks to much simpler catch composition rules and less time for inspectors to calculate the catch composition.

Moreover, the closed areas can in the future be controlled via Vessel Monitoring System (VMS) and therefore fewer controls will be required as a result.

A status quo option would, by contributing to the decline of stocks, affect the profitability of the fishing sector and, as a result, have adverse impact on employment.

5.4. Impacts on international relations

The international impact concerns the minimum landing size of species. Minimum sizes will apply to all the European market. They will apply to marketing and to imports, for the species concerned, in order to avoid non-Community fishermen undermining the conservation efforts of Community fishermen.

6. COMPARING THE OPTIONS

The following table summarizes the comparison of the impacts of the two options.

Comparison table

Impacts	'Status quo' option	'Simplification and regionalisation' option
Positive impacts	No change, the rules stay complex but are known by administrations and stakeholders.	Simplification, clarification, better understanding for MSs and stakeholders, reduction of administrative burden and costs, harmonization; Regionalization; Involvement of RACs, bottom-up management approach; Easier and better implementation and control; Much improved efficiency for fisheries conservation and reducing discards; Short list of species subject to a minimum landing size (16 species).
Negative impacts	Too complex; Too difficult to adapt for evolutions; No improvement of stocks; No involvement of RACs; No reply to the Council; No respect of the Commission's Action Plan on simplification and	Some changes, an adaptation to the revised measures will be needed for Administrations and stakeholders.

	improvement of the CFP; Long list of species subject to a minimum landing size (36 species) No decrease of discards.	
Direct impacts	Technical measures not clear and not efficient enough for the protection of juveniles and reduction of discarding.	Technical measures more clear and efficient for improving conservation and reducing discards.
Indirect impacts	Negative economic, social and environmental impacts due to the non efficiency of current technical measures and the large amount of discards.	Positive economic, social and environmental impacts due to improved efficiency of technical measures.
Economic impacts	Negative impact on the conservation of species resulting in decrease of profitability for the sector	Positive impact due to faster procedure to increase conservation and so profitability for the sector; Generally no negative impact in the short term, few low impacts in specific fisheries. Significant positive impact in medium/long term.
Social impacts	Indirect negative impact on conservation resulting in decline of employment in the fishing sector	Low negative impact in the short term, positive impact in medium/long term; Better integration of RACs in the future evolution/adaptations of technical measures.
Environmental impacts	Negative impact on the conservation of species resulting in increase in catch of juveniles and amount of discarding	Improvement on the conservation of stocks, decrease of catch of juveniles, reduction of discards; Easier and faster evolution of Regulations, decrease in time needed to improve the measures dedicated to conservation of species.

6.1. Benefits of the preferred option

6.1.1. Harmonisation and regionalisation

Certain measures must clearly be common for all areas concerned: for example, minimum landing sizes or the prohibition of certain fishing methods. Others would be clearly area-specific, such as closed areas/seasons. With respect to other measures, such as mesh sizes, a balance will have to be struck between harmonisation and the need to take account of regional differences, particularly in the combination of species in mixed fisheries.

Harmonisation is an advantage in terms of simplification, both in terms of the complexity of the regulation and from the perspective of fishermen, who would not have to change gear when changing fishing grounds. On the other hand, a greater degree of regionalisation (primarily based on the three areas covered by

the North Atlantic RACs: the North Sea, North Western Waters and South Western Waters) is better adapted to specific local conditions and would also encourage RACs to devise and propose to the Commission measures in their own areas of competence.

Overall, and subject to the above constraints, the Commission believes that a regional approach should be favoured, since this would be more amenable to the involvement of the stakeholders in the process. Such regionalisation is not meant to mean re-nationalisation of the technical measures. The involvement of stakeholders is essential because it leads to commitment to the measures and ensure a greater likelihood of compliance of the adopted measures.

The regulation will not alter the balance of competences between the Community and Member States as laid down in Regulation 2371/2002.

The option retained is a harmonisation of the main rules such as the mesh size for fisheries targeting cod, hake, sole or nephrops but taking into account the regional characteristics especially when establishing the list of target species and bycatch allowed for each RAC area. The proposal has also been prepared to easily take into account the future RACs opinion for the future evolutions of that Regulation.

6.1.2. Simplification of decision-making

The regulation concentrates on measures that would be expected to be permanent. It also, however, lays down the procedures to be applied when dealing with measures that would be expected to evolve rather quickly and with measures that are very technical. For the latter, the regulation is favouring the application of a fast-track procedure for adoption of new rules (through Management Committee). This seems to be the only way to meet the concern of Member States to reduce or eliminate interim technical measures from the annual TAC and quota regulation.

6.2. Options for the implementation of the preferred option

In order to contribute to the conservation of species, the rules defined for fishing gear will concern their selectivity. They will only deal with those fishing practices where the selectivity of the fishing gear contributes to a significant degree to the management of resources. To this end, only trawls, Danish seines, and similar gears for the active gears and gill nets, tangling nets, and trammel nets for the passive gears will be regulated.

The main tools used for technical measures are the minimum landing size of species (which have to be discarded if undersized), the minimum mesh size of fishing gears in relation with percentages of target species and the closed areas for the protection of juveniles or spawners.

It is proposed to review the current regulations and adapt to the new CFP and the new Discards Policy¹¹.

6.2.1. *Minimum size of marine organisms*

For the purpose of simplification, an option would be to eliminate from this technical regulation minimum landing sizes altogether, on the assumption that only selective gear is used. This would simplify the rules, reduce control costs and reduce discards.

This radical option would have drawbacks, such as giving rise to the possible development of certain fisheries directed at juvenile fish. However, it must be borne in mind that the main species in Community fisheries are subject to rules applicable to the marketing of fishery products, which ban the marketing of those species (both from Community production and from imports) outside the size categories regulated. If properly applied this rule could prevent the development of fisheries targeting small individuals even in the absence of conservation minimum landing sizes.

The Commission would prefer to follow the “no rule” approach in the new technical measures. In the short term, if this proves to be unrealistic and against the RACs opinions, then the Commission will propose to reduce their number, according to the following criteria:

- Only the principal target species of fish (i.e., those related to the different categories of mesh sizes) should have a minimum landing size. For other species the minimum landing size contributes little to conservation, makes the regulation more complex and increases discards.
- For molluscs and crustaceans, minimum landing sizes are more effective for conservation since many species survive discarding. However, on grounds of simplification, it is desirable to reduce the number of species subject to minimum landing size to those species caught all around the Atlantic or those subject to intensive trade in the Community, with a view to ensuring a level playing field for Community fishermen. For species of only local interest, Member States should be left to legislate.
- Minimum landing sizes must be harmonised for the whole Atlantic area, for reasons of simplification and controllability. However, harmonisation with the Baltic and Mediterranean, although desirable, does not seem realistic, because of differences in growth rates for the same species and differences in selectivity of trawl gear used in these areas, particularly in the case of the Mediterranean.

The approachability of those criteria must be studied case-by-case. Some shellfish, such as nephrops, show a low rate of survival when discarded and some fish like spurdog can survive discarding.

¹¹ COM(2007)136

This approach is not coinciding with that being promoted in the context of the regulation on technical and management measures for the Mediterranean. The reason is that Mediterranean fisheries are conducted with much smaller mesh sizes, particularly for trawling, and therefore the issue of avoiding catches of juvenile fish has a much more relevant dimension than in the Atlantic.

The need for these minimum sizes has been re-examined because they have to be included in this regulation only if they contribute to the conservation of the species. Aiming to reduce discards would argue for the suppression of these minimum sizes. But conservation policy can justify their existence when such rules make it possible to influence the fishermen's strategy, by, for instance, moving away from areas where the concentration of non-marketable juveniles is too important. They may also be important if the species concerned can survive being discarded.

In the proposal, the number of species which have to respect a minimum size will be reduced from 36 to 16.

To be consistent with the new discard policy, provisions are proposed for a prohibition of catching undersized fish by an obligation of moving to another fishing area when significant small fish are caught during fishing operations.

6.2.2. *Minimum mesh sizes and target species*

One objective of simplification is to reduce the complexity of current definitions of target species and/or the number of target species. The ideal option would be to suppress the list of target species and to define the mesh size by fishery, i.e. by type of vessel, by area or by referring to a target species. Under this approach, vessels would be licensed by the Member State to use one given mesh size as a function of the main target species. That would make it possible to simplify legislation considerably.

However, it may not be possible to eliminate the existence of a list of target species at Community level. In this case, the alternative retained is to focus, by area, on one or two major target species for that area. In other words, mesh sizes would be defined by the principal target species, and no longer by a complex mix of species. That should simplify considerably the tables of Annexes I to VII in Regulation 850/98 and would also make it possible to reduce discards. In any case, the old formula of vessels "fishing for..." has been avoided: references to the main target species will inevitably have to be expressed in terms that can be controlled, such as minimum and or maximum percentages of the concerned target species in the catch.

For simplification, the number of target species will be reduced from 51 to 7, 9 or 11 (depending on the RACs areas)

To be consistent with the new discard policy provisions are proposed for a prohibition of catching fish which are not in agreement with the minimum or maximum percentages of target species required for the gear used by an obligation of moving to another fishing area when significant differences with

those percentages appear during fishing operations. This part you add to the description of your preferred option

6.2.3. *Closed areas*

In the framework of technical measures, the closed areas are generally intended to protect juvenile concentrations or spawning areas.

A closure has to be justified from a conservation point-of-view; otherwise, it should be suppressed with a view to simplification. STECF have carried out an evaluation, in 2007, on the value of maintaining many closures which appear in the current regulation.

In respect of the Plaice Box in the North Sea, although this issue is dealt with in Article 19 of the basic Regulation, the Commission will seek to simplify it, in particular by removing exemptions. However, it will be taken into account of the North Sea RAC proposition, which is to maintain this Box as it is until a complete evaluation is carried out in 2009.

The Commission has collated the complementary technical measures in this section, which concern closures, existing in other regulations like, for example, the management and/or recovery plans and the annual TAC and quota regulation.

The complete list of closures have been established on the understanding that each closure has to have a clear and simple objective (i.e. protection of the juveniles, protection of spawners, etc) described in the title of the Article.

It must be avoided that closures adopted under certain conditions remain in force independently of their conservation value. The regulation will, therefore, provide for the periodic evaluation of the effects of each closure, in order to allow the need for it to be reviewed and to avoid an accumulation of measures making the regulation complex and for which the conservation value would be questionable.

7. **MONITORING AND EVALUATION**

A common priority for the Member States, the European Parliament and stakeholders is the need to evaluate, before and after their implementation, the consequences of technical measures. The effectiveness of many of the provisions under Regulation 850/98 has never been evaluated, and those measures have remained in force regardless of their value for conservation.

A fundamental principle for that proposal is that all measures that are not clearly of a permanent nature (such as certain closed areas to protect juveniles or spawners) have to be evaluated after a certain time to reassess the need for them. Another guiding principle is that, when new and substantial measures are proposed (such as significant increases in mesh sizes), the Commission will carry out, if the data available allow it, a previous evaluation of their likely effects.

In the proposal, the Commission is establishing an obligation of periodic scientific evaluation of technical measures every 5 years, in order to avoid the accumulation of measures whose effectiveness is uncertain. These evaluations will cover the effectiveness of closures and of rules on fishing gears, in particular as regards selectivity.

Complementary evaluations will be carried out to measure the degree of attainment of the objectives laid down for the reduction of discards.

For this purpose it would be useful to identify simple indicators of the apparent survival of the regulated species by size categories. STECF will be requested to identify those indicators for the main fisheries. Scientists should produce in the short term those indicators regularly during surveys and sampling of the commercial catches. However, it would be necessary to involve the stakeholders in the choice of the indicators and in their production during commercial fishing trips. Once identified, those indicators could be used, for example, to follow and measure the efficiency of pilot projects.

Annex 1

**Regulations including technical measures concerning
the North Sea and the North Atlantic.**

- Council Regulation (EC) No 850/1998 of 30 March 1998 for the conservation of fishery through technical measures for the protection of juveniles of marine organisms.
- Council Regulation (EC) 1434/1998 of 29 June 1998 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption.
- Council Regulation (EC) 2549/2000 of 17 November 2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea.
- Council Regulation (EC) 973/2001 of 14 May 2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species.
- Council Regulation (EC) 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.
- Council Regulation (EC) 494/2002 of 19 March 2002 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIIIa,b,d,e.
- Council Regulation (EC) 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels.
- Council Regulation (EC) 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks
- Council Regulation (EC) 811/2004 of 21 April 2004 establishing measures for the recovery of the Northern hake stock.
- Council Regulation (EC) 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/1998.
- Council Regulation (EC) 41/2007 of 21 December 2006 fixing opportunities and associated conditions for certain stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required.

Subject	Type of technical measures included in Council Regulation (EC) 850/1998	Technical measures for the North Sea and Atlantic established in regulations other than Council Regulation (EC) 850/1998
Provisions for active gears	<p>Restrictions on use of certain combination of mesh sizes.</p> <p>Restrictions on use of gears with small mesh sizes.</p> <p>Rules on minimum percentage of target species by mesh size range (Annexes I-V).</p> <p>Technical specification of towed nets.</p>	<p>Council Regulation (EC) 494/2002:</p> <p>By-catch rules when fishing with mesh sizes <99 mm.</p> <p>Rules for construction of towed nets.</p> <p>Specific rules for construction of beam trawls.</p> <p>Council Regulation (EC) 2549/2000:</p> <p>Technical specification of towed nets in the Irish Sea.</p> <p>Council Regulation (EC) 2056/2001:</p> <p>Rules on minimum percentages of target species and maximum percentages of by-catch species.</p> <p>Technical specification of towed nets.</p>
Provisions for passive gears	Rules on minimum percentage of target species by mesh size range.	

Subject	Type of technical measures included in Council Regulation (EC) 850/1998	Technical measures for the North Sea and Atlantic established in regulations other than Council Regulation (EC) 850/1998
General provisions on nets and their use	<p>Discard rule covering all organisms caught in excess of permitted percentages.</p> <p>Provision prohibiting measures that diminish mesh size.</p>	
Minimum sizes	<p>Minimum landings sizes.</p> <p>Discard rule covering organisms below minimum landing size.</p>	<p>Council Regulation (EC) 973/2001:</p> <p>Minimum landing size swordfish, bluefin tuna, yellowfin tuna and bigeye tuna</p> <p>Council Regulation (EC) 41/2007:</p> <p>Minimum size for bluefin tuna and bigeye tuna.</p>

Subject	Type of technical measures included in Council Regulation (EC) 850/1998	Technical measures for the North Sea and Atlantic established in regulations other than Council Regulation (EC) 850/1998
Restrictions on fishing for certain species	Restrictions on fishing for: <ul style="list-style-type: none"> – herring, – sprat – mackerel – anchovy – common shrimp – salmon and sea trout – Norway pout – hake – plaice – sandeel 	<p>Council Regulation (EC) 973/2001:</p> Restrictions on fishing for: <ul style="list-style-type: none"> – skipjack tuna, – bigeye tuna, – yellowfin tuna, – tuna <p>Council Regulation (EC) 1185/2003:</p> Restrictions on handling of sharks on board vessels. <p>Council Regulation (EC) 1434/1998:</p> Restrictions on by-catch of herring when fishing with small-meshed gears. <p>Council Regulation (EC) 41/2007:</p> Restrictions on fishing for: <ul style="list-style-type: none"> – herring in IIa. – cod west of Scotland – cod in Celtic Sea – sandeel in the North Sea

Subject	Type of technical measures included in Council Regulation (EC) 850/1998	Technical measures for the North Sea and Atlantic established in regulations other than Council Regulation (EC) 850/1998
Restrictions on use of certain types of fishing	<p>Restrictions on use of:</p> <ul style="list-style-type: none"> – demersal towed gears – unconventional methods – automatic grading equipment – anchovy – common shrimp – bottom trawl – driftnets <p>Restrictions on fishing activities in the 12-mile zone of UK and Ireland</p>	<p>Council Regulation (EC) 494/2002:</p> <p>Areas closed to certain towed net.</p> <p>Council Regulation (EC) 973/2001:</p> <p>Restrictions on use of fish aggregating devices.</p> <p>Council Regulation (EC) 812/2004:</p> <p>Restrictions on use of gillnets and entangling nets</p> <p>Council Regulation (EC) 41/2007:</p> <p>Ban on all fishing at Rockall except longliners.</p> <p>Closed season in the Irish Sea</p> <p>Trawling ban in waters around the Azores, The Canary Islands and Madeira.</p> <p>Restrictions on use of purse seiners and baitboats to protect bigeye tuna.</p> <p>Restrictions on fishing with bottom gears to protect deep-water habitats.</p>

Subject	Type of technical measures included in Council Regulation (EC) 850/1998	Technical measures for the North Sea and Atlantic established in regulations other than Council Regulation (EC) 850/1998
Specific provisions for Skagerrak and Kattegat.	<p>Undersized organisms up to 10% can be landed.</p> <p>Restrictions on landings of salmon and sea trout.</p> <p>Seasonal restriction on use of <32 mm mesh size</p> <p>Restrictions on fishing for herring, mackerel or sprat.</p> <p>Ban on beam trawl in Kattegat</p>	<p>Council Regulation (EC) 41/2007:</p> <p>Rules on minimum percentage of target species by mesh size range.</p> <p>Technical specification of towed nets.</p>
Other provisions	<p>Ban on producing fish meal and oil on board a fishing vessel.</p> <p>Scientific research, restocking and transplantation not covered by the regulation.</p> <p>Member States may take conservation measures under certain conditions.</p>	<p>Council Regulation (EC) 811/2004:</p> <p>Rule for separate stowage of hake.</p> <p>Council Regulation (EC) 423/2004:</p> <p>Rule for separate stowage of cod.</p> <p>Council Regulation (EC) 1434/1998:</p> <p>Restriction on use of herring caught with towed nets with mesh sizes above a certain size.</p> <p>Council Regulation (EC) 41/2007:</p> <p>Conditions for landing target species and by-catches.</p>

Annex 2

Letter from the PSRAC to the Commission Non-Paper

Annex 3

Letter from the NWWRAC to the Commission Non-Paper

Annex 4

Technical terminology

Landing size

The EU minimum landing sizes are set out in Annex XII of Regulation 850/98). For both finfish and shellfish undersized animals are not to be retained on board, transhipped, landed, transported, stored, sold, displayed or offered for sale. Undersized animals must be returned immediately to the sea.

Mesh size

According to the desired size of fish, the mesh size is varied. Fish with a smaller girth than that of the mesh opening are able to swim through. A large mesh size can be used for larger fish, such as sharks or tuna, and a small mesh size can be used for smaller fish. The size of the mesh opening determines the size and species of fish captured.

Annex 5

Proposed Regulation for new technical measures