

BSAC reply to the Commission's questionnaire about the functioning of the EU Technical Measures Framework Regulation

Background

The EU's Technical Measures Regulation 2019/1241 was adopted on 20th June 2019.¹ In 2017, the BSAC sent recommendations on technical measures in connection with the Commission's proposal for a new technical measures regulation.² Article 31 of the Regulation states that the Commission must do an evaluation of the Regulation by 31st December 2020. The Commission's report has been delayed until the second quarter of 2021. The Commission has written to all Advisory Councils to inform about this and to invite them to reply to **a set of 21 questions** which are contained in the letter.³ The deadline for replies to the Commission is 15th February 2021.

After the Commission has received input from the Advisory Councils, from the Member States, and an evaluation by the STECF, the Commission will prepare its report.

General comments to the Technical Measures Regulation

The BSAC technical measures working group to **deal with the Commission questionnaire on the Technical Measures Regulation** met on 18th January 2021. It was chaired by the Demersal WG chair Michael Andersen.

The Chair referred to the BSAC recommendations on technical measures which had been sent to the European Commission⁴ and expressed disappointment that the amendments proposed by the BSAC in 2015 and 2017 were not included in the revised Regulation. Now the European Commission is asking to present the experience with the existing Regulation on technical measures.

¹ Regulation here: http://www.bsac.dk/getattachment/BSAC-Resources/Documents-section/European-Parliament-and-Council/Techmeasures2019_1241ENG.pdf.aspx?lang=en-GB

² BSAC recommendations here: http://www.bsac.dk/getattachment/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-recommendations-on-technical-measures/BSACRecommendationsonTMFExc25_31FINAL.pdf.aspx?lang=en-GB

³ http://www.bsac.dk/getattachment/f85dba8e-6ce5-4c10-b483-279d7dc71b5f/letter_AC101220.pdf.aspx?lang=en-GB

⁴ The BSAC made recommendations in both 2015 and 2017: ⁴ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/2015-01-01-BSAC-recommendations-on-technical-measures>
http://www.bsac.dk/getattachment/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-recommendations-on-technical-measures/BSACRecommendationsonTMFExc25_31FINAL.pdf.aspx?lang=en-GB

He also pointed out that input from two organisations had been received prior to the meeting, and invited other BSAC members to give their input at the meeting or afterwards, in order to include different interests in the BSAC reply to the Commission's questionnaire. Input received from 3 member organisations will be attached to the BSAC reply⁵.

Fisheries representatives pointed out that most of the statements and amendments to the previous Baltic Regulation 2187, presented in the BSAC recommendations from 2015 and 2017 are still valid and should be implemented. They referred specifically to the BSAC recommendation to merge and delete specific mesh sizes for the pelagic fishery because of poor selectivity and high mortality of pelagic fish after being released from the gear.

A representative of small scale fisheries was of the opinion that such non-selective fishery should to be stopped.

In line with this advice, a representative of Swedish fishermen referred to the input provided by the Swedish Pelagic Federation PO to the questionnaire, asking to delete the 32 mm mesh size for herring and delete the footnote referring to the catch composition, demanding minimum 55% sprat when fishing with 16 mm mesh. She asked for this input to the BSAC reply to the questionnaire to be attached at the end.

A representative of the OIG pointed out that some technical rules in the Framework Regulation are not working, but the main problem is the procedure needed to change them. This is a difficult and lengthy process. Moreover, the technical rules should be better adapted to the changing environment. Some **fisheries representatives** agreed.

A representative of the small scale fisheries was of the opinion that selectivity is not dependent on changing environmental conditions.

The BSAC Honorary Chair underlined that fishing is a very dynamic activity, and the amendments to technical rules should be done quickly. At present, this process is too slow. The Regulation on technical measures should be part of the regionalisation process, and major decisions should be taken by BALTFISH. Referring to the lengthy legislative process, he stated that the work on developing selective gears in the flatfish fishery to avoid bycatch of cod should be speeded up. The goal should be to implement the new gears as soon as possible.

A representative of Polish fishermen referred to the problem of misinterpretation of the existing technical rules. According to the Polish control authorities, a 115 mm mesh size in the codend used in the flatfish fishery is not allowed. The same mesh size is accepted by inspectors in Denmark and Germany. Different interpretation of the same rules by inspectors from different Member States creates a serious problem.

⁵ Contributions received from Swedish Pelagic PO, Association of Fisheries Protection, National Chamber of Fish Producers

He also noted that the misinterpretation of the rule on a 115 mm mesh size in the codend is caused by an editorial mistake which has not yet been solved.

The Regulation on technical measures should be very clear and easy to interpret in order to avoid such problems. Since 2018, the BSAC has raised concern about that.

The representative of DG MARE referred to the editorial mistake with reference to a 115 mm mesh size in the Commission Delegated Regulation 2018/47⁶. A Joint Recommendation submitted by BALTFISH to change a technical mistake contained in this act has not yet been adopted.

A representative of German fisheries agreed that some rules are difficult to interpret by fishermen and relevant authorities, and the rules sometimes interfere with each other. He underlined that democratic legitimation and control of the rules by the European Parliament and BALTFISH are important. He noted that the Commission should have mechanisms allowing a faster impact assessment of the rules, and flexible changes are needed.

The OIG representative pointed out that more flexibility should be given to fishermen in choosing the gear and deciding on gear modifications, which should not necessarily be limited to changing the mesh size.

Some fisheries representatives noted that the existing Regulation on technical measures is too detailed, and sometimes the rules are counterproductive, and should be simplified.

The BSAC reiterates its proposal from 2015⁷ to delete the specifications of the Bacoma and T90 gears. The detailed description was in fact taken out of the Regulation, but members of the BSAC have been told that they are likely to be reinstated through a Commission Implementing Act. Whilst recognising that there may be a need for some description of the gear design, the BSAC finds that this should not be done at the level of detail that was seen in the Regulation 2187/2005.

The BSAC also reiterates its previous advice of merging mesh sizes in the pelagic fisheries with the caveat that some representatives of the OIG proposed a maximum mesh for pelagics rather than a minimum; but the main point was that the OIGs did not oppose using a smaller mesh.

⁶ [COMMISSION DELEGATED REGULATION \(EU\) 2018/ 47 - of 30 October 2017 - authorising the use of alternative T90 trawls in Baltic Sea fisheries, by way of derogation from Council Regulation \(EC\) No 2187 / 2005 \(europa.eu\)](#)

⁷ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/2015-01-01-BSAC-recommendations-on-technical-measures>

The BSAC recommends to:

- Include the definitions of a cover and a chafer in the Framework Regulation
- Make all possible efforts to speed up the legislative procedures applied when dealing with the technical measures, so they can be adapted to the changing circumstances at sea. The BSAC asks the Commission to consider the possibility to take decisions on technical measures at regional level.

Referring to the questionnaire, **the BSAC points out** that the questions mainly refer to the impact of technical rules on the environment and do not take into account the economic impact on the performance of the fisheries. **The BSAC is of the opinion** that the Technical Measures Regulation should have both an environmental and an economic dimension. The economic dimension is not reflected in the existing Regulation.

In the view of the BSAC, the existing Regulation is too detailed. Some rules, such as MCRS and bycatch provisions are already covered by the Landing Obligation and there is no need to repeat them in the Regulation on technical measures.

The BSAC welcomes the fact that rules were gathered together in one Framework Regulation, but there are many rules/provisions that are not made use of or properly controlled. It is still work in progress, and the BSAC welcomes this exercise.

The Working Group dealt with the questionnaire on the Technical Measures Regulation from the Commission, question by question.

1. **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 3⁸ and reaching the targets set out in Article 4⁹ of that Regulation.**

With respect to Article 3, **fisheries representatives** consider that the existing measures do not contribute to reaching the goals mentioned. They referred to the BSAC recommendations sent to the Commission in 2015 and repeated 2017 to merge or delete specific mesh sizes for pelagic fishery in view of poor selectivity and high mortality of pelagic fish after being released from the gear. This was not included in the existing Framework Regulation.

As for Article 4, **a representative** of the OIG notes that the existing Regulation has not contributed to achieving the objectives mentioned, when focusing on the bycatch of cetaceans and marine birds. The objective should be results-based with respect to the environment, rather than having focus on specific gears.

⁸ Article 3 is about the objectives of the Regulation

⁹ Article 4 is about the targets of the Regulation

- 2. 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)**

An OIG representative proposes to add the European eel to the list of prohibited species in Annex I. This was not supported by the representatives of the fishing industry, who see the need to regulate eel as a fish species, not as an endangered one.

- 3. Does the Advisory Council consider that the measures in place are adequate to ensure that species referred to in Article 11 [mammals, seabirds, marine reptiles] are not harmed and promptly released?**

An OIG representative is of the view that the measures in place are not adequate for the protection of species referred to in Article 11. He refers to the discussions and work on the protection measures for harbour porpoise, and the OIG position that measures such as the deterrent devices should be applied in the entire Baltic.

A representative of small-scale expresses the view that there is space for improvement in the use of electronic devices such as pingers and PAL. Not all Member States use such devices.

The BSAC is aware of the requirements with respect to the measures required by Member States to protect cetacean populations and to avoid accidental catches. Provided they do not hinder fishing operations, they have the full support of fishermen.

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

The BSAC has not been involved in specific research. It is engaged in discussions about bycatch of mammals and birds, follows all relevant research, and facilitates it by inviting scientists to its meetings to present the results of scientific research on bycatch of mammals and seabirds.

- 5. 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 minimizing or where possible eliminating the catches of mammals, seabirds and marine turtles?**

The BSAC is aware of these mitigation measures and restrictions aimed at minimizing the bycatches of mammals and seabirds. The BSAC has contributed with recommendations on mitigation measures to avoid accidental bycatch of harbour porpoise.¹⁰

¹⁰ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-recommendations-concerning-mitigation-measure>

6. 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 BSAC has ongoing discussions on closed areas and measures to regulate fisheries in closed and protected areas, dealt with under the Ecosystem Based Management Working Group. However, the areas referred to in Annex II are not relevant for the BSAC.

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

The BSAC has on different occasions dealt with the avoidance of unwanted catches, and discussed different methods aimed at minimizing bycatch. It has worked intensively with measures to ensure cod avoidance and related issues on selectivity.

Some fisheries representatives highlight that they are concerned to avoid unwanted catches, have ideas and solutions, but are not able to use them due to the existing regulations.

8. 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.

In the view of **the OIG representatives**, there is scope for improving the protection of juveniles (fish) by adding restricted or closed areas. In their view, Article 8 of the Basic Regulation, referring to the establishment of fish stock recovery areas should be applied¹¹ in this case, rather than the Technical Measures Regulation. For example, there is scope for improving the protection of the spawning aggregations of pelagic species in coastal areas. Restricted or closed areas should be part of the Technical Measures Regulation, rather than inserted into the TACs and quota Regulation, in order to ensure stability in protecting juvenile and spawning fish.

The fisheries representatives are of the opinion that, given a general lack of knowledge on the impact of restricted and closed areas, further scientific investigations are needed before any additional protection areas are established. They underline that without proven effectiveness, closed areas only bring substantial losses to fishermen.

¹¹ [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 \(europa.eu\)](#)

A representative of the small scale fisheries is of the view that sufficient time to prove the effectiveness of spawning closures is necessary (for example, a minimum 5 years period for cod). Interrupting this measure in the past was counterproductive.

The fisheries representatives do not support the inclusion of restricted and closed areas in the technical measures. In their view, such measures should be flexible and adapt to the dynamic changes in the environment. Some fisheries representatives agree that spawning closures may be beneficial if stocks are too low. However, they become redundant when stocks go above the reference points. In their opinion, establishment of restricted and closed areas should be considered on a case-by-case basis, taking into account the consequences for the fishing industry. Whilst not in favour of insertions in the TACs and quota Regulation concerning closures or restricted areas, this does provide more flexibility than a more rigid approach in the Technical Measures Regulation.

9. **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.**

A representative of small scale fisheries proposes to increase the minimum conservation reference size (MCRS) for cod, plaice and flounder. In his view, catching small fish is harmful for the stock, and they are only marketable at very low prices.

The majority of the fisheries representatives do not see any benefit of having MCRS for any stock, given the fact that there is a landing obligation. Nevertheless, they are in favour of retaining the current MCRS for commercial species.

The OIG representatives are of the opinion that MCRS for sea trout and salmon should be harmonised. In their view, the MCRS for cod is not the key issue as there is no targeted cod fishery in the eastern Baltic stock. Protection of juvenile cod is a much wider issue than simply applying a MCRS, and it is also linked to the need for monitoring and control.

According to **some fisheries representatives**, the MCRS should even be decreased because the fisheries are operating on a too narrow part of the fish population. In their view, scientists from ICES should be asked to advise on the MCRS.

10. **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.**

A representative of recreational fishermen refers to the discussions held in the European Parliament and the Commission in the last two years. According to these discussions, it is possible to have different MCRS in recreational and commercial fisheries, also depending on different catching methods.

A representative of German fisheries is of the opinion that the survival rate of cod is higher in angling. In his view, there is no need to align the MCRS. He also refers to the fact that the anglers take voluntary measures for the protection of large fish living in the shipwrecks by avoiding angling in these places.

An OIG representative is of the opinion that if the MCRS are established for biological reasons (spawning age/size), then in his opinion, the MCRS in commercial and recreational fisheries should be harmonised.

The BSAC supports the use of differentiated MCRS in commercial and recreational fisheries, as long as these MCRS are based on scientific knowledge and information on fish survival.

11. 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 BSAC does not consider the immediate need to establish real-time closures and moving-on provisions. The Baltic is not a sea appropriate for such form of regulation. Such regulations are complex and not immediately beneficial. The BSAC is open to discuss this matter on another occasion, not within the context of the technical measures.

12. 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 BSAC is of the opinion that it is crucial to have the possibility to introduce innovative gear. The legal possibilities are appropriate, but the speed of introducing these gears is not. In the view of the BSAC, the STECF slows down the implementation of such gears. It is not reasonable to demand more research for minor changes to a gear to improve selectivity. A concrete example is the current work to develop a more selective gear in the flatfish fishery in SD 24 to avoid cod. This was referred to at a recent Workshop on technical solutions to avoid unwanted catches of cod in the Baltic Sea¹²: a Joint Recommendation has not yet been tabled. Another example concerns the lengthy procedure to amend the specifications of the T90 trawl codend¹³. This is still unresolved, and the codend cannot be used.

¹² <http://www.bsac.dk/Meetings/BSAC-meetings/Workshop-on-Technical-solutions-to-reduce-unwanted>

¹³ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/Letter-from-BALTFISH-about-the-draft-joint-recomme>

13. 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?

14. 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?

The two questions are answered under one heading, because the BSAC finds the separation between impacts on habitats and impacts on species to be somewhat artificial.

Some representatives of the OIG state that there is still scope for improving the protection of sensitive habitats. In their view, not only habitats, but also several elements of the ecosystem, such as sensitive species, need protection. There is a need to link technical measures with efforts to protect and restore habitats and species. The effects of a measure are sometimes difficult to evaluate. Weak salmon stocks are one example of a species that needs further protection and technical measures in line with ICES recommendations, such as moving the fishery closer to rivers of origin.

Considering the fact that fisheries is an integral part of the ecosystem, **the BSAC** is in agreement that there is a need for a much more holistic approach to fisheries management, taking into account ecological considerations. This includes not only the impact of a fishery, but also the contribution of fishing to providing food and securing jobs.

One fisheries representative highlights legislation relating to Natura 2000 as the relevant legal instrument for nature conservation.

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

The BSAC considers that pilot projects could be established. However, full documentation of catches is a control issue and does not need to be dealt with in the technical measures regulation.

16. 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 majority of the BSAC considers that there is no need for additional measures in relation to species and size selectivity of fishing gear and mesh size specifications. There is a need for fewer measures in order to allow fishermen to adapt to current conditions such as natural variations, climatic as well as distributional changes, and management decisions on TACs and bycatch rules.

The fisheries representatives recall the need to delete or merge specific mesh sizes in pelagic fisheries in view of poor selectivity and high mortality of pelagic fish after being released from the gear. They ask not to apply a one size fits all solution to the selectivity of the gears because selectivity does not always take place in the cod end. There is a need to apply a flexible approach. In their view, it is possible to develop a gear for cod and flatfish which can minimise of bycatch.

A representative of small-scale fisheries is of the opinion that selectivity in the trawl fishery depends on the engine power. Often, the approved engine power does not correspond to reality. To rectify this, the engine power has to be controlled by means of energy balance (fuel consumption per hour) in the fishery with towed gears.

Fisheries representatives oppose the above statement, since it is the gear design, not engine power, that affects selectivity. Higher towing speed will only benefit the fishing power if it is combined with gear changes. Other fisheries representatives underline that it is the gear and trawl speed that relate to fish species and behaviour.

17. 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.

The BSAC is not involved in the preparation of a Joint Recommendation in order to further define the term ‘directed fishing’ for relevant species. Such a Joint Recommendation is not as relevant for the Baltic, as it is for the North Sea.

18. 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 BSAC is directly involved in the work on the mitigation measures for harbour porpoise and refers to its recommendation on this matter sent to BALTFISH in October 2020.¹⁴

19. 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?

The BSAC considers that this question is not directly relevant to the implementation of the Technical Measures Regulation. However, fishermen are willing to collect data on incidental catches of sensitive species, provided such an obligation does not create an additional workload for them.

¹⁴ [BSAC - BSAC recommendations concerning mitigation measures for harbour porpoise](#)

20. 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 BSAC considers that monitoring and assessing the effectiveness of mitigation measures set out in Annex XIII is a control issue, outside the scope of technical measures. Monitoring and assessment of the effectiveness should not be subject to legal regulations.

21. 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 BSAC expresses widespread disappointment that all efforts to produce a Framework Technical Measures Regulation have resulted in the same mistakes of the past, such as detailed technical specifications of the gears and their use (Articles 8 and 9). The BSAC recommends removing these counterproductive elements from a future or amended Regulation in order to make it more workable. **The BSAC** would like to underline that the core purpose of technical measures is to regulate the fisheries, whilst at the same time having as little impact as possible on the environment.

The BSAC is in agreement that the main problem is the lack of flexibility in Annex VIII for the Baltic. Designing a faster way to adapt the rules in order to avoid unwanted effects in fisheries should be prioritised.

The definition of codend means the rearmost part of the trawl (Article 6.33), should be corrected to 'codend' means the last 8 m of the trawl, (Ref 2187/2005 (f)).

Whilst **the protection elements** that can be attached to the codend are detailed in the Commission Regulation 3440/1984, this, including all relevant definitions, needs to be brought together into one legal act for clarity and transparency.