

## BSAC reply to the Commission questionnaire on implementation of the Technical Measures Regulation

Ref: BSAC 2023-2024/34  
24.11.2023

### Background and general comments

The first report on the implementation of the Technical Measures Regulation (TMR) has been adopted in September 2021<sup>1</sup>. This report was based on the scientific information provided by STECF and ICES, and on the results of the consultation. The BSAC provided the Commission with a reply to its questionnaire about the functioning of the EU Technical Measures Framework Regulation on 15<sup>th</sup> February 2021<sup>2</sup>. With a view to contributing to the 2024 evaluation report<sup>3</sup>, the Commission invited the Advisory Councils to provide their general views on the implementation, and concrete views regarding specific aspects of the Regulation through a new questionnaire.

The BSAC members were invited to provide written input. The BSAC set up a Focus Group<sup>4</sup> to deal with the Commission questionnaire on implementation of the Technical Measures Regulation. The final answer was validated by the Executive Committee on the 24<sup>th</sup> November 2023 (also the deadline for replies to the Commission).

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.

**The BSAC would like to get more precise feedback from the Commission on how the 2021 BSAC input was taken into account in the report. Such feedback should also be provided when the 2024 report is published.**

### I. GENERAL IMPLEMENTATION OF TECHNICAL MEASURES.

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

The BSAC has raised the issue of the implementation of Technical Measures Regulation on several occasions.

This is in particular the case of an Implementing Act regarding the introduction of a new bottom fishing gear in the Baltic. Disappointment and frustration were expressed as the

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:583:FIN>

<sup>2</sup> [\[Modtagerfelt\] \(bsac.dk\)](#)

<sup>3</sup> Article 31(1) of the TMR requires the Commission to report on the implementation every three years.

<sup>4</sup> The Focus group met on 13<sup>th</sup> November 2023 (online). It was chaired by the BSAC ExCom Chair.

BSAC<sup>5</sup> had **called on the European Commission and BALTFISH to provide a platform for discussion of and finalisation of the draft Implementing Act, making it available to a BSAC Focus Group.** Following the 4-week consultation period, the BSAC provided comments with regard to the operationality of the proposed gear. The BSAC firmly underlined that fishers who use the gear should be consulted at an early stage of drafting the legislative acts to avoid any misinterpretations, which could have serious consequences. The BSAC requests the Commission to engage with experts and share with the BSAC the documents at an early stage.

The BSAC would like to ask the Commission to inform its members on the timing of the publication of the Implementing Act to the Technical Measures Regulation and when the actual provisions of the Implementing Act will enter into force.

In the course of the discussions in the Focus Group, **a fisheries representative from Poland** underlined that a transition period should be given to fishers before implementing the new, more selective gears in the Baltic fisheries, in order for fishers to test the effectiveness of the proposed solutions before they become compulsory.

**More generally, in the recommendations for the fishery in the Baltic Sea in 2022<sup>6</sup>,** the BSAC drew attention that the **current procedure under the Technical Measures Regulation is slow, cumbersome and not fit for purpose.** The BSAC encourages the Commission to investigate every possibility to find options to replace or complement the procedure of Delegated Regulations.

## II. MEASURES TAKEN TO IMPROVE FISHING PATTERNS.

***Since the 2021 report on the implementation of the TMR, has your AC recommended additional technical measures aimed at improving the size/species selectivity of commercially exploited species?***

**The BSAC has provided several recommendations and comments on innovative gears limiting bycatch of cod in other fisheries.**

**In the recommendations for the fishery in the Baltic Sea in 2022<sup>7</sup>, in 2023<sup>8</sup>, and in 2024<sup>9</sup>,** the BSAC advised that the new gears with selective entities developed to avoid the capture of cod are approved, adopted and implemented as soon as possible. The BSAC underlined that it is imperative that new gears are not made compulsory until they have been tested under commercial conditions, and the introduction of a new gear does not

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<sup>5</sup> <https://www.bsac.dk/wp-content/uploads/2023/07/BSACImplementingActfishinggear2023-2024-13.pdf>

<sup>6</sup> <https://www.bsac.dk/wp-content/uploads/2023/08/BSACrecommendations2021for2022FINALSENDREV-2.pdf>

<sup>7</sup> <https://www.bsac.dk/wp-content/uploads/2023/08/BSACrecommendations2021for2022FINALSENDREV-2.pdf>

<sup>8</sup> <https://www.bsac.dk/wp-content/uploads/2023/08/BSACrecommendationsfinal13072022-corrected14072022.pdf>

<sup>9</sup> <https://www.bsac.dk/wp-content/uploads/2023/05/BSACrecommendationsTAC2024revised10072023.pdf>

exclude the later introduction of another gear with similar or better selection. The final decision on which option(s) to choose as compulsory gear, should only be taken after trials have been carried out in the commercial fishery. Once tried, tested and recommended, the gears can be implemented by means of a fast-track legislative procedure, and then replace the current gears. This was also thoroughly explained in a letter to the Commission in July 2023<sup>10</sup>.

In addition, in the recommendations for the fisheries in 2024, the BSAC recommended evaluating the effectiveness of all the measures to protect cod spawning areas. Allowing for a thorough evaluation will require specifically to look at cod spawning areas and depth at which the measures are applied in the Baltic. The BSAC has agreed on a specific letter to the Commission on this topic<sup>11</sup>. **The BSAC** also recommended measures when reviewing BALTFISH Joint Recommendation proposals<sup>12</sup>.

**Regarding pelagic fisheries**, there were some recommendations about selectivity (in BSAC response to the consultation of the Action Plan<sup>13</sup>). In the context of pelagic fisheries, the BSAC underlines that changing size selectivity by increasing mesh size may be detrimental, due to potentially higher hidden underwater mortality. The BSAC referred to the innovations in the pelagic fisheries that are not put to use in the Baltic Sea that could have a positive effect on reducing bycatch. There are several examples of sorting grids placed in large or very large trawls that can select out larger non-target fish (even mammals) such as cod or salmon etc.

**Some comments by some BSAC members** on the draft Joint Recommendations on salmon also included remarks on selectivity for this species<sup>14</sup>.

See summary table in Annex I.

### III. MEASURES TAKEN TO MINIMISE THE IMPACT ON SENSITIVE SPECIES

***Since the 2021 report, has your AC recommended additional mitigation measures or set up training, capacity building and collaborative support activities engaging fishers?***

**The BSAC** has recommended additional mitigation measures with reference to the bycatch of harbour porpoise, eel and additional measures in MPAs, even though sometimes only as a minority view:

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<sup>10</sup> <https://www.bsac.dk/wp-content/uploads/2023/07/BSACImplementingActfishinggear2023-2024-13.pdf>

<sup>11</sup> <https://www.bsac.dk/wp-content/uploads/2023/07/BSACCOMMeasurescodspawning2023-2024-11.pdf>

<sup>12</sup> [https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplyJRselectivity270921\\_21\\_22\\_17-1.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplyJRselectivity270921_21_22_17-1.pdf) and in specific letters : [https://www.bsac.dk/wp-content/uploads/2023/08/BSACnote-on-technical-measuresOK\\_toCOM21-22-41.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACnote-on-technical-measuresOK_toCOM21-22-41.pdf)

<sup>13</sup> [https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21\\_22\\_30.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21_22_30.pdf)

<sup>14</sup> In June 2023 ([letter](#), [full input](#)), in February 2023 ([letter](#), [full input](#)), in October 2022 ([letter](#), [full input](#)),

- Answers to **Joint Recommendations on harbour porpoise** bycatch mitigation measures: 2021<sup>15</sup>, 2022<sup>16</sup>.
- But also about **harbour porpoise and diving sea ducks** in the **BSAC answer to the Action Plan consultation**<sup>17</sup>.
- *on eel* in a **specific letter on the matter**<sup>18</sup>.
- and on harbour porpoise bycatch in MPAs, in the BSAC comments to the BALTFISH draft **Joint Recommendation regarding on fisheries conservation measures in 5 marine protected areas** in the Baltic Sea<sup>19</sup>.

**Some BSAC members** have taken voluntary measures to limit impact on sensitive measures and some are presented in the table in Annex I.

***Have you found any difficulties in implementing the prohibition of catching, retention, transshipment or landing of the species referred to in Article 11?***

**In 2021, the BSAC members had divergent views on the topic:**

An OIG representative was of the view that the measures in place were not adequate for the protection of species referred to in Article 11. The deterrent devices to avoid bycatch of harbour porpoise should be applied in the entire Baltic.

A representative of small-scale expressed the view that there was space for improvement in the use of electronic devices such as pingers and PAL.

The BSAC was aware of the obligations 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 had the full support of fishermen.

***Does your AC consider that the list provided for in Annex I (Prohibited species) is adequate?***

**In 2021, the BSAC members had divergent views on the topic:**

An OIG representative proposed 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.

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<sup>15</sup> [https://www.bsac.dk/wp-content/uploads/2023/08/BSACChairlettertoBALTFISHHP2\\_21\\_22\\_11OK.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACChairlettertoBALTFISHHP2_21_22_11OK.pdf)

<sup>16</sup> [https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplyHarbourPorpoiseJR\\_2022-2023-40.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplyHarbourPorpoiseJR_2022-2023-40.pdf)

<sup>17</sup> Page 12 [https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21\\_22\\_30.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21_22_30.pdf)

<sup>18</sup> [https://www.bsac.dk/wp-content/uploads/2023/08/BSACChairLetterandrecseel22-23\\_5Complete.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACChairLetterandrecseel22-23_5Complete.pdf)

<sup>19</sup> [\[Modtagerfelt\] \(bsac.dk\)](#)

#### **IV. MEASURES TAKEN TO MINIMISE THE IMPACT OF FISHING ACTIVITY ON THE ECOSYSTEM**

***Since the 2021 report, has your AC recommended additional measures to minimise the impact on the environment?***

There was no specific BSAC recommendations on the topic. However, **the BSAC** has repetitively linked the implementation of the MSFD and the Technical Measures Regulation, lately in the reply to the Commission's consultation on the Action Plan<sup>20</sup> as well as the BSAC White Paper on implementation and revision of the CFP with a Baltic Perspective<sup>21</sup>.

**In the BSAC reply to the questionnaire on technical measures in 2021, the BSAC** pointed out that the questionnaire mainly referred 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 was 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.

**Some BSAC members** recommended additional measures to minimize the impact on the environment in the BSAC comments to the BALTFISH draft **Joint Recommendation regarding on fisheries conservation measures in 5 marine protected areas** in the Baltic Sea<sup>22</sup>.

See summary table in Annex I.

#### **V. MEASURES TAKEN IN THE CONTEXT OF SCIENTIFIC RESEARCH**

***Since the 2021 report on the implementation of the TMR, are your members participating in scientific research programmes for the objective of increasing the size/species selectivity of commercially exploited species?***

In the BSAC reply to the questionnaire on technical measures in 2021, **the BSAC** said that it had 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.

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.

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<sup>20</sup>[https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21\\_22\\_30.pdf](https://www.bsac.dk/wp-content/uploads/2023/08/BSACreplytoActionPlanConsultation21_22_30.pdf)

<sup>21</sup> <https://www.bsac.dk/wp-content/uploads/2023/08/White-paper-02-05-2022forprintandweb.pdf>

<sup>22</sup> [\[Modtagerfelt\] \(bsac.dk\)](#)

***Since the 2021 report, are you planning or participating in scientific research programmes or engagement activities for fishers, for the objective of minimising the impact on sensitive species?***

The BSAC is not 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.

Some BSAC members individually take part in research projects. Some are indicated in the table in Annex I.

***Since the last reporting obligation, are you planning or participating in scientific research programmes for the objective of minimizing the impact on the habitat?***

The BSAC is not involved in specific research. The BSAC 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.

***Based on the projects of questions 7, 8 and 9, are you intended to propose to regional groups with joint recommendations?***

There is no such plan at the moment. The BSAC continues to send relevant recommendation to the Commission and Baltfish Member States and to comment on the draft Joint Recommendations submitted by BALTFISH.

## Annex I

**Under point II: Technical measures aimed at improving the size/species selectivity of commercially exploited species.**

<i>Measure</i>	<i>Area (1)</i>	<i>Fleets involved (2)</i>	<i>Additional comments (3)</i>
<i>Gear modifications: use of new and innovative gear techniques and selectivity devices (0)</i>	Baltic	Demersal trawl fleet	<a href="https://www.bsac.dk/wp-content/uploads/2023/07/BSACImplementingActfishinggear2023-2024-13.pdf">https://www.bsac.dk/wp-content/uploads/2023/07/BSACImplementingActfishinggear2023-2024-13.pdf</a>
<i>Spatial-temporal measures to protect juveniles and spawning aggregations (New closure/Modification of existing)</i>	Baltic, SDs 22-23 and SD 24-26	Flatfish fisheries	<a href="https://www.bsac.dk/wp-content/uploads/2023/07/BSACCOMMeasurescodspawning2023-2024-11.pdf">https://www.bsac.dk/wp-content/uploads/2023/07/BSACCOMMeasurescodspawning2023-2024-11.pdf</a>
<i>Moving on rules and real time closures</i>			
<i>Increase the current MCRS</i>		Pelagic fleet	See above comments on size selectivity in the pelagic fisheries
<i>Others (please, specify)</i>			

- (0) Including, but not limited to, DISCARDLESS, ICES advice on innovative gears...  
 (1) (ICES division/sub, GFCM GSAs). If relevant, please indicate the name and code of MPAs  
 (2) Gear code(s) and if possible, approximate number of vessels affected.  
 (3) Free field to share any relevant information

**Under point III: some BSAC members have taken voluntary measures to limit impact on sensitive measures and some are presented in the table.**

<i>General measure</i>	<i>Specific possible measure</i>	<i>Target group of species</i>				<i>Area concerned (1)</i>	<i>Fleet concerned (2)</i>	<i>Link to published measure</i>	<i>Additional remarks</i>
		<i>Cetaceans</i>	<i>Reptiles</i>	<i>Birds</i>	<i>Fishes</i>				
<i>Mitigation</i>	<i>Spatial-temporal measures</i>								
	<i>ADD</i>	Harbour porpoises				Baltic SD 22	GNS	<a href="https://ostseeinfocenter.de/mitmachen/freiwillige-vereinbarung/">https://ostseeinfocenter.de/mitmachen/freiwillige-vereinbarung/</a> ; Stand	From Fischereischutzverband

		e						19.04.2023.	
	Bird scaring lines								
	Hook-protecting devices								
	Frangible hooks and snoods								
	Large animal excluder devices (LAEDs) in trawls								
	Raised panels in static nets								
	Frangible nets								
	Other (please specify)								
<b>Monitoring</b>	Observer coverage								
	REM/ CCTV								
	e-DNA surveys								
	Passive acoustic monitoring								
	Citizen science monitoring								
	Beach stranding surveys								
	Other (please specify)								
<b>Additional research (knowledge)</b>	Test LAED effectiveness								
	Develop automated e-DNA sampling methods								
	Other (please specify)								
<b>Stakeholder</b>	Trainings to fishers,								



<b>engagement</b>	<b>capacity building...</b>								
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(1) (ICES division/sub, GFCM GSAs). When relevant, please indicate the name and code of MPAs.  
 (2) Gear code(s) and if possible, approximate number of vessels affected.

**Under point IV: Measures to minimise the impact on the environment.**

Measure	Purpose	Area (1)	Affected fleet	Other MS involved, where relevant (2)	Additional comments
	Seabed protection	Sensitive species protection	Other		
Designation of new protected areas					
Effort limitation or restriction of certain gears					BSAC responses to draft Joint Recommendations on Salmon: In June 2023 ( <a href="#">letter</a> , <a href="#">full input</a> ), in February 2023 ( <a href="#">letter</a> , <a href="#">full input</a> ), in October 2022 ( <a href="#">letter</a> , <a href="#">full input</a> ),  Restriction of gears see minority positions in: <a href="https://www.bsac.dk/wp-content/uploads/2023/08/BSACRecommendationsTAC2024revised10072023-2.pdf">https://www.bsac.dk/wp-content/uploads/2023/08/BSACRecommendationsTAC2024revised10072023-2.pdf</a>
Special conditions to operate in protected areas Others...		Harbour Porpoise protection		Marine protected areas Finngrundén (Norra, Östra and Västra banken), Svenska Högarna, Norra, Midsjöbanken, Ottenby rev and Havet kring Ven	<a href="https://www.bsac.dk/wp-content/uploads/2023/11/BSACreplyMPA-JR3_2023-2024_30rev.pdf">https://www.bsac.dk/wp-content/uploads/2023/11/BSACreplyMPA-JR3_2023-2024_30rev.pdf</a>

(1) (ICES division/sub, GFCM GSAs). When relevant, please indicate the name and code of MPAs.  
 (2) Gear code(s) and if possible, approximate number of vessels affected.

**Under point V: Some BSAC members individually take part in research projects. Some are indicated in the table.**

General measure	Specific possible measure	Target group of species				Area concerned	Fleet concerned	Link to published research	Additional comments
		Cetaceans	Reptiles	Birds	Fish				
Mitigation	Spatial-temporal measures								
	<b>ADD</b>	Harbour				Baltic, SD	GNS	Voluntary agreement to	Communicated by

		porpoise				22  AND  ICES Subdivisions 3.a.21 and 3.a.23		<p>protect harbor porpoises and diving sea ducks <a href="https://ostseeinfocenter.de/mitmachen/freiwillige-vereinbarung/">https://ostseeinfocenter.de/mitmachen/freiwillige-vereinbarung/</a> ; 19.04.2023-2026. - ongoing-</p> <p><u>Porpoise ALert</u> This project investigates whether the effect of the PAL devices, which fishermen in Schleswig-Holstein have voluntarily attached to their gillnets since 2017 to avoid porpoise by-catches, persists over long periods of time. <a href="https://www.thuenen.de/de/fachinstitute/ostseefischerei/projekte/fischerei-umwelt-ostsee/verringern-die-pal-geraete-immer-noch-die-beifaenge-von-schweinswalen-pal-ce">https://www.thuenen.de/de/fachinstitute/ostseefischerei/projekte/fischerei-umwelt-ostsee/verringern-die-pal-geraete-immer-noch-die-beifaenge-von-schweinswalen-pal-ce</a> ; 10.2021 - 10.2024. - ongoing-</p> <p><u>Assessing the Impact of Pingers and Fishery-related Factors on Seal and Porpoise Bycatch</u> Introduction and test of pinger effectiveness in commercial fisheries. 2020-2023 by SLU <a href="https://figshare.com/articles/poster/Assessing_the_Impact_of_Pingers_and_Fishery-related_Factors_on_Seal_and_Porpoise_Bycatch_A_study_on_marine_mammal_bycatch_in_Swedish_gillnet_fisheries/24147228">https://figshare.com/articles/poster/Assessing_the_Impact_of_Pingers_and_Fishery-related_Factors_on_Seal_and_Porpoise_Bycatch_A_study_on_marine_mammal_bycatch_in_Swedish_gillnet_fisheries/24147228</a></p>	Fischereischutzverband  And by SLU AQUA
	<i>Bird scaring lines</i>								
	<i>Hook-protecting devices</i>								
	<i>Frangible hooks and snoods</i>								
	<i>Large animal excluder devices (LAEDs) in trawls</i>								
	<i>Raised panels in static nets</i>								
	<i>Frangible nets</i>								

	<i>Other (please specify)</i>								Stella project von Thunen Institute: passive reflector for gillnets. <a href="https://www.thuenen.de/de/fachinstitute/ostseefischerei/projekte/fischerei-umwelt-ostsee/stellnetzfisherei-loesungsansaetze-stella">https://www.thuenen.de/de/fachinstitute/ostseefischerei/projekte/fischerei-umwelt-ostsee/stellnetzfisherei-loesungsansaetze-stella</a>	From Fischereischutzverband
	<i>Other (please specify)</i>	Harbour porpoise						Baltic see, German EEZ		
	<i>Other (please specify)</i>	Fish pots instead of lines or gillnets to reduce seal inflicted damage Seal exclusion device in pot fishery Modified seal-safe trap net, the pontoon trap							Sara Königson, Johan Lövgren, Joakim Hjelm, Mikael Ovegård, Fredrik Ljunghager, Sven-Gunnar Lunneryd, Seal exclusion devices in cod pots prevent seal bycatch and affect their catchability of cod, Fisheries Research, Volume 167, 2015, Pages 114-122, ISSN 0165-7836, <a href="https://doi.org/10.1016/j.fishres.2015.01.013">https://doi.org/10.1016/j.fishres.2015.01.013</a> .  Königson S, Naddafi R, Lunneryd S-G, Bryhn AC, Macleod K and Ljungberg P (2022) Effects of fishery and environmental factors on a novel multispecies pot targeting European lobster ( <i>Homarus gammarus</i> ), Atlantic cod ( <i>Gadus morhua</i> ) and edible crab ( <i>Cancer pagurus</i> ). <i>Front. Mar. Sci.</i> 9:985431. doi: 10.3389/fmars.2022.985431  Ljungberg P, Königson S and Lunneryd S-G (2022) An evolution of pontoon traps for cod fishing ( <i>Gadus morhua</i> ) in the southern Baltic Sea. <i>Front. Mar. Sci.</i> 9:981822. doi: 10.3389/fmars.2022.981822	Communicated by SLU AQUA
<b>Monitoring</b>	<i>Observer coverage</i>									
	<i>REM/CCTV</i>									
	<i>e-DNA surveys</i>									
	<i>Passive acoustic monitoring</i>									
	<i>Citizen science monitoring</i>									
	<i>Beach stranding surveys</i>									
	<i>Other</i>									

	<i>(please specify)</i>								
<b>Additional research (knowledge)</b>	<i>Test LAED effectiveness</i>								
	<i>Develop automated e-DNA sampling methods</i>								
	<i>Other (please specify)</i>								
<b>Stakeholder engagement</b>	<i>Trainings to fishers, capacity building...</i>								

(1) (ICES division/sub, GFCM GSAs). When relevant, please indicate the name and code of MPAs.  
 (2) Gear code(s) and if possible, approximate number of vessels affected.