



## **Article 27 of the Technical Measures regulation: catch composition, mesh sizes and the Landing Obligation**

**Joint meeting with EFCA, DG MARE and the NWW MS and Control Expert Group**

Virtual meeting on Zoom

Wednesday 29 September 2021, 10:00 – 12:00 CET

### **MINUTES**

#### **1. Welcome from the NWWAC Chair**

The NWWAC Chair, Emiel Brouckaert, welcomed all participants to the meeting, including DG MARE, EFCA and Member States representatives.

The meeting aimed at discussing and clarifying the control issue relating to article 27 of the Technical Measures regulation ((EU) 2019/1241), which deals with catch composition and mesh sizes as against the obligation to land catches from Article 15 of the Common Fisheries Policy (CFP). As catch composition rules are also related to the definition of “directed fishing”, a state of play of the work ongoing in the Member States (MS) regional groups on the matter was also provided (see paragraph 4 on this document).

#### **2. Introduction of the issue: art 27 vs Landing Obligation (Sean O’Donoghue, NWWAC)**

**Sean O’Donoghue:** Article 27 applies conditions in relation to mesh size specifications. In particular, the article has to be looked at in conjunction with Annex VI in the same regulation (for the North Western Waters) as it gives catch composition rules. According to these rules, if a fisherman has a certain percentage of a particular species in your catches, he can use a smaller mesh size than what is allowed as the general mesh size. Article 27 makes it clear that these mesh size and catch composition rules are without prejudice to the landing obligation (LO). Hence, a number of operational and enforcement issues arise:

- Given that article 27 is without prejudice to the LO, what happens if a fisher targeting Nephrops with the appropriate mesh size (80mm) and finds that the catch composition doesn’t meet the requirements, he is duty bound to land the catch according to the LO, but he would then be in contravention of the Technical Measures Regulation (TMR). Which regulation will the fishers actually have to abide in this case?
- Article 27 does also say that its provisions are without prejudice to the control regulation. However, it is virtually impossible to comply with all these regulations.
- Another major issue relates to paragraph 7 of article 27, stating that the definition of “directed fishing” is to be settled in a delegated act following the proposals of the MS regional groups. If directed fisheries are not defined, as the situation currently is, we have again an operational issue. Does that mean that the catch composition rules in the TMR Annexes do not apply as directed fisheries have not been sorted out?

We need DG MARE, EFCA and MS experts to clarify these very technical issues and to find workable and timely solutions. This isn't just a NWW issue, the Pelagic Advisory Council has also been very concerned and active on this topic.

### 3. State of play article 27 Technical Measures Regulation: catch composition, mesh sizes and the landing obligation by DG MARE ([presentation available here](#))

**Maria Moset:** As you know, the main features of the TMR are simplification of the applicable rules, emphasis on regionalisation, the use of quantified targets enabling a result-based approach, and review and reporting to check progress and implementation. The first report was published on 23 September 2021, after two years of implementation, following the mandate of article 31 for Commission to inform on how the implementation of this regulation is going, and based on that, discuss whether objectives and targets have not been met. Measuring the progress is essential to see if we are on the good path, or rather, we can identify areas in which efforts are needed. This report also presents the basis under which the CFP will contribute to the Action Plan to conserve fisheries resources and protect marine ecosystems (BDS 2030).

STECF, ICES and GFCM contributed to the preparation of this report with their advice. Relevant stakeholders were also consulted in this process: 23 Member States, from all sea basins, 8 Advisory Councils and 37 stakeholders replied to the questionnaires sent, including supporting information. All receptors of the consultation were informed on the launching of similar procedure to gather all opinions. Replies have been summarised and not specifically mentioned (only public legislation is explicitly mentioned). After these two years of implementation, considering the replies received and the Joint Recommendations submitted by the MS regional groups, some important conclusions were identified:

- The TMR is a good tool to be used to implement the CFP and to contribute to environmental objectives.
- Regionalisation seems to work, but improvements needs to be done to increase the ambition to improve selectivity and the protection of sensitive species and habitats.
- There are some areas of special concerns that needs to be addressed, including the definition of directed fishing.
- Certain adaptations of fishing practices will be needed to reduce catches of sensitive species , unwanted species , juveniles , and reduce impacts on sensitive habitats. More work is needed to identify these adaptations.
- Urgent action is needed to limit the impact on certain sensitive species and habitats.
- Regionalisation is the tool: this is an opportunity for all stakeholders to step up and continue working.

We invite you all to read the conclusions and especially the regional chapters, and we will be happy to take any specific questions and participate in a dedicated meeting, if this Advisory Council so considers.

From the consultation, it seems to be a widely held view that the definition of a directed fishery is necessary in order not to undermine current standards, and also to grant a harmonised implementation of this provisions by all MS. Having clear rules in place for (small) mesh sizes remain important. The definitions and parameters agreed by the co-legislators would be insufficiently robust to prevent deteriorations in selectivity, and flexibility to amend the definition would be useful to allow MS to strengthen the conditions. The

definition of directed fishing is therefore necessary in the majority of cases to prevent gaming of the system, providing legal certainty and a level playing field for the operator and the control authorities for enforcement purposes.

**Evelien Ranshuysen:** As Maria stated, the TMR emphasizes the importance of technical measures contributing to selective fishing. I wanted to reiterate that since the 2013 reform, the LO has been a cornerstone of the CFP with its objective to reduce discarding by first and foremost increase selectivity and avoid unwanted catches as much as possible. This key objective of the CFP was also highlighted by the letter sent last year by the NWWAC to the MS on the subject of directed fishing and the LO. In discussions on implementing the LO with various stakeholders, it is often emphasized that there is no one size fits all solution, it should definitely not be seen in isolation, but as a regional package of combined measures existing in the EU legislation. Here you could think of the quota management system in place, aiming to provide annual flexibility, but also the multiannual plans which provide the possibility to contain specific conservation objectives and measures based on the ecosystem approach in order to address the specific problems of mixed fisheries. Then, the exemptions to the LO described in the various delegated regulations and, of course, spatial and temporal measures and also other technical measures, play a huge role.

We want to stress and emphasize that regionalisation and discussions on a regional level is vital to work towards workable and controllable fisheries. There have been intense collaboration and exchanges in the past years on the LO between MS, ACs, scientists, the Parliament and the Commission, which helped us to reach a better understanding of the implementation of the LO, including its challenges, again highlighting the need of such regional packages of combined measures.

I wanted to inform you of a [recent publication on the LO](#) which builds upon the established knowledge and collaboration with stakeholders throughout the transition phase (the NWWAC and the MS also participated in this study). It was set up by DG MARE to contribute to an improved understanding of the various management measures that have been put in place by fisheries managers and to facilitate the implementation of the LO to understand whether the specific management measures were indeed effective to reduce the levels of unwanted catches. One of the conclusions from this study was that, at a voluntary level, all MS have conducted selectivity improvement trials. However, the potential benefits in terms of reducing unwanted catches are still not fully utilised. Two major reasons for the slow uptake were mentioned: the lengthy and non-transparent process for getting new gear approved and the lack of uptake of approved gear in the fishery. This issue of slow uptake is another example of an important matter that should be discussed further in a regionalisation setting, as it would also help to alleviate other challenges that, for example, will be discussed today.

Another conclusion of the study confirms that the control and enforcement of the LO remains challenging. MS have not adopted the necessary measures to ensure proper control and enforcement and significant undocumented discarding of catches by operators occur. Here the study refers to certain innovative control tools such as remote electronic monitoring.

This brings me to the issue of control which also is one of the main discussions points today where I will give the floor to my colleague Killian who works in the control.

**Killian Chute:** Catch composition rules constitute associated conditions to the authorisation to use mesh size smaller than the baseline. If bycatches are exceeded this constitutes a violation of the TMR conditions. Catch



composition rules apply at landing. Catch composition rules and the landing obligation both apply and must be adhered to. With regards to control and enforcement, fishing vessels using mesh size that deviate from the baseline resources are to be authorised. MS will authorise as per article 7 of the Control Regulation. The list of authorised vessels is to be available in the secure part of the website as per article 116 of the Control Regulation. MS shall ensure control, inspection and enforcement of activities carried out within the scope of the CFP rules.

**Maria Moset:** With the European Green Deal and the Biodiversity Strategy for 2030, the present TMR report will be complemented as part of the Action Plan to conserve fisheries resources and protect marine ecosystems to improve the implementation of the TMR and strengthen the links between the fisheries and environmental policies. The intention is to present this Action Plan in Spring next year. In the preparation of this Action Plan, all stakeholders (including this AC) will soon be consulted and, following the mandate of article 31(1), the next TMR report will be presented in three years.

#### **4. State of play on “directed fishing” definition (NWW, SWW and Scheveningen Member States Groups, to be confirmed)**

**Mandy Doddema (Scheveningen Group presidency):** In 2020, under the Belgian presidency, the group started discussions on how to define directed fisheries, but at that point difficulties were already identified. Thus, that year we submitted a joint recommendation indicating that the Scheveningen Group would set out to monitor directed fisheries or the deviations from the baseline as set in the TMR and that we had already identified a set of fisheries, where directed fishing definition would be necessary. In April this year, we came back on this point to discuss whether further definition was necessary and to ensure that we were monitoring in an effective way. We've now initiated a process where we're going to work on a set of templates to all gather the same information to monitor this in a structured way. These are still preliminary ideas, we haven't agreed on the level of detail yet, but we're going to monitor changes in the species landed per gear and mesh size category. We are also looking at changes in the average mesh sizes that are being deployed in these fisheries and the incidence of catches of certain species. We will take this further in our next technical meeting in October.

**Pauline Joyeux (NWW Group presidency):** We've also started our work last year under the Irish presidency. The MS thought of composition per catching thresholds, but work wasn't concluded, and we could not resume it this year. The STECF report that has been published for the South Western Waters and the work carried out in the North Sea can be of great inspiration for us.

**Juan Antonio Espejo Lena (SWW Group presidency):** The SWW Group started working two years ago and we tabled a joint recommendation at the end of 2020. We considered that the most feasible way to studying directed fishing was by using a definition based on catch composition and percentage ranges associated with those catch compositions. Following delivery of our recommendation, we received comments from STECF, pointing out that it was necessary to provide data to justify those specific catch compositions associated with directed fishing. Thus, we have been collecting this data since the beginning of this year and in May 2021 we submitted a joint recommendation including all the information. In their last report, STECF recognises the significant progress made in the SWW but identifies issues when it comes to approving this definition for SWW fisheries. The main issue relates to control, but also to the great data variability associated to a vessel's catch compositions per year and per trip. At the Technical Group meeting we had in July, DG MARE reported



that in the second semester of 2021 there would be a proposal for possible mechanisms to enable further work and progress in defining directed fishing.

## 5. Questions and answers

**Luis Francisco Marin:** I had some expectations regarding this meeting to shed light and clarify the issue of compliance with article 27 and the LO. However, the presentation says we need to comply with both regulations, and I wonder how this can be done. We are in a very difficult situation as fishers, it is impossible to meet both provisions.

**Jacinto Insunza:** The president of the PECH Committee asked the MEPs at the beginning of a session where they were analysing the report on this measure, if it makes sense to maintain this regulation in order not to lose credibility vis a vis the fisheries sector. Contrary to the other technical measures, which brought progress and modernisation, this one seems a provision prepared in a lab which is imposed to fishers. I believe it is important to open the window to greater flexibility. We should maintain this measure, but it needs to be applied rationally.

**Sean O'Donoghue:** I note what the COM have said, but fisheries is an operational activity and it is not possible to comply with both regulations. We need a pragmatic solution that fits to reality, an amendment to the regulation should be considered. As the classic example, we take a Nephrops fisher in the Celtic Sea using a 80mm mesh as authorised. He has to have a certain Nephrops percentage in its catch to be able to use that mesh size. The catch composition rules will only apply when he lands the catch. He has been compliant during all the fishing trip, but during the last tow he gets more cod, haddock or whiting and that Nephrops percentage changes. Since he cannot discard anything because of the LO, he then comes ashore with 18% of Nephrops in his catch, thus not in conformity with the TMR. In that scenario, is the fisher going to be prosecuted?

**Evelien Ranshuysen:** The EU recognise the difficulties in implementing the LO, especially in mixed fisheries. The existing tools should be used and further exploited, in particular the gears to increase selectivity as indicated in the TMR. The uptake of these gears is a priority for everybody. Then of course quota management and the multiannual plans have specific provisions and there are also exemptions to the LO. With regard to the TMR and directed fisheries definition, I understand that you see the conflict from a practical point of you, but the regulation actually aims to bring more clarity on the operational situation to give room to discuss it on a regional level. It is vital to continue this discussion, especially with the MS regional groups, and highlight the specific cases where there is conflict, so the MS can further develop their joint recommendations.

**Emiel Brouckaert:** Thank you Evelien, it is clear that these conflicts need to be identified and further work can be carried out with the MS groups. At the same time, the situation can arise where you have an issue like Sean was pointing out: would there be a prosecution in that case?

**Franck Le Barzic:** I fully understand that the current regulation is an incentive to use the reference gears, but real fisheries need to be secured because at the moment we have no clarification on directed fishing. What would happen if a vessel has to come back to the port for an issue of force majeure and be in infringement of the regulation?

**John Lynch:** I am just going to give more details to Sean's example for clarity of the discussion. In the Celtic Sea, in order to use an 80mm mesh size, a Nephrops vessel must have 30% Nephrops on board according to catch composition rules, so that the remaining 70% can be other species. If the catch of cod, haddock and



saithe exceeds 20% of that 70%, the vessel should have been using a larger mesh size. What happens to a Nephrops vessel that is on its way to land and happens to catch a lot of haddock, so the 20% limit is exceeded, would the vessel owner be prosecuted?

**Anais Mourtada:** I have a question to the Scheveningen Group about the data analysis and the model constructed. I would like to have more clarification about this model. Is this model demonstrating that the group is moving towards the definition of percentages or is the model designed to confirm this definition through the use of percentages?

**Emiel Brouckaert:** Unfortunately, Mandy had to leave the meeting. We will submit this question in writing to the Scheveningen Group.

**Maria Moset Martinez:** The catch composition based on percentages was eliminated as regard to the previous regulation. We agree that we need to have guidelines on how to use smaller mesh sizes and we need to analyse where the specific problems are and take them into account. There are many other tools to manage the LO and be able to avoid unwanted catches (modifying fishing techniques) and we need to find the right formula to decrease the catches of juveniles. On behalf of DG MARE, we are willing to help as much as necessary and to convey that it is all about finding the best alternatives and to be more selective.

**Pauline Joyeux:** On the question from Anais, the Scheveningen Group is trying to finalise the table to analyse the data. We are trying to achieve better understanding of the situation and we'll see which conclusions we can draw to make progress on directed fishing, but at the moment we have no final definition on the basis of catches percentages. I have a question to DG MARE: the UK kept in its legislation the issue of directed fishing; is there any information on the work carried out by the UK so far? Which elements have they considered for the definition and what methodology have they favoured? We are sharing the same waters and we need to have consistent definitions.

**Killian Chute:** The matter of UK technical measures is to be discussed under the remit of the Specialised Committee on Fisheries (SCF). There was no discussion yet on directed fishing. We hope that the SCF and the working groups associated with control issues will be up and running in the next month or two.

**Emiel Brouckaert:** It is clear that operationally fishers are facing unavoidable infringements. Isn't there the need to review the current legislation or at least suspend it in some form until it is clear how to comply with one regulation without infringing another one?

**Johnny Woodlock:** I understand the practical problem for the industry, but fishers are the experts on the ground. If they are monitoring their catches they would know when they are close to the limit of the catch composition.

**Sean O'Donoghue:** We got the answer that if we don't comply with both regulations we have an infringement. The issue is the way the legislation is drafted. This infringement can happen with no fault of the fishers. There needs to be a pragmatic solution, a suspension of the regulation for example, to avoid this unfairness. I agree that selectivity has to be the main criteria, but it does not solve the problem. We just made real examples that prove that even with selectivity measures in place, this would still happen. In the Celtic Sea we have mixed fisheries and we have specific catch composition rules. As John Lynch was explaining, there is another condition that you cannot exceed 20% of haddock, even if you have 30% Nephrops. You may have complied for Nephrops, but not with the haddock rule, and it only happened in the last tow. This is not fair nor equitable.



**Emiel Brouckaert:** I fully understand that this meeting won't give an ad hoc solution to what is clearly identified as a problem. How can the AC contribute to finding a solution to this problem? Or is there another way to solve this issue?

**Evelien Ranshuysen:** The regulation cannot be suspended. When the co-legislators adopted the TMR in 2019, it was emphasised the need to progress the work and discuss this in the MS regional groups. We really encourage the ACs to bring their practical experience to the table. The AC's recommendations including these specific cases are very important and should be included in those discussions on further defining directed fisheries by the MS. And here the Commission aims to facilitate as much as possible and also to try to develop further the discussions with the STECF to clarify on specific questions that were raised, but the regionalisation approach should be used fully.

**Miguel Nuevo:** EFCA met in 2020 with the control experts of the different MS organising a series of workshops to discuss issues related to the implementation of the TMR. We sent a letter to DG MARE outlining the main points identified and the reply we got back from their legal services is the understanding we are now promoting in our training plan for inspectors.

**David Curtis:** Depending on how you approach the directed fishing definition, there could be no conflict with the LO. If you were to define directed fishing looking over a number of capture events, this conflict can really be sorted relatively easily.

**Emiel Brouckaert:** What you are saying is not in line with what DG MARE confirmed, that catch composition rules apply at landing.

**Sean O'Donoghue:** Paragraph 2 of article 27 makes it very clear that the catch percentages are calculated on landing and the COM presentation made that clear too. On the directed fisheries, if I am hearing the DG MARE correctly, the regional approach is very emphasised. Given that we have some of the MSGs representatives, do they consider that the problems identified could be addressed under paragraph 7 of article 27 where you are defining directed fisheries? If this is possible, then we need to put a huge effort into progressing that.

**Pauline Joyeux:** I don't have an accurate answer at this stage, but I believe this is a question we can look into once we make progress on the directed fishing definition. It would be interesting to collect examples, they would be important contributions to the discussion.

**Emiel Brouckaert:** Thank you Pauline, I note that this is a possible advice from the AC and we could also try to contribute to the analysis in progress at the Scheveningen group. We already have specific examples brought forward by members during this meeting.

**David Curtis:** Coming back to Sean's point, it seems to me that there is an ambiguity in the legislation: the text says that the catch percentages should be calculated as proportion by live weight of all marine biological resources landed after each fishing trip. What does "after" mean? Does it mean the live weight from that trip or is it the live weight of all biological resources landed after each fishing trip? Would you have the possibility of recalculating a total percentage as an average across a number of trips?

**Maria Moset:** We understand the problem, but we would like to receive inputs and suggestions. While preparing the report on the TMR, which concluded that regionalisation is working and can be further emphasised as a tool to address these issues. Prior to suspend a regulation, we have the possibility to bring in the inputs coming from regionalisation. In order to prepare the report, stakeholders were consulted with specific questions, including on this matter, and we received input from the NWWAC. This report is a first step, you will also have the opportunity to contribute to the Action Plan with your suggestions. It is important to leverage the regionalisation process and we encourage you to continue working on that line.



**Luis Francisco Marin:** I would like to mention something which is a source of concern related to article 27 and in particular to the fact that catch percentages are in proportion by weight of resources landed at the end of a fishing trip. The control regulation allows us to use a combination of mesh sizes during the same trip, meaning that a vessel could use the baseline mesh on some days and a derogatory mesh size on other days. If a vessel has used different mesh sizes on the same trip, the catch composition should be calculated at the end of each day and not at the end of the trip.

**Mathieu Vimard:** We have to take UK measures into consideration to achieve more harmonious management. The technical measure proposal put forward two years ago could be different from the proposals that we would make today. We're no longer in line with the UK timeframe and this is a real problem. We see new mesh sizes in being implemented by the UK in the Celtic Sea, which means that past contributions are not in line anymore with what is requested today.

## 6. Conclusions and closing of the meeting (NWWAC Chair)

**Emiel Brouckaert:** To briefly recap this meeting, we started with the three questions put forward by Sean. Then DG MARE presented a recap of the recently published TMR report. The NWWAC will have a closer look at the report and consider the possibility to provide comments on it. We will get in touch with DG MARE asking for their timing expectation for receiving feedbacks from the AC. Certainly, regionalisation came forward as an important tool of the CFP also in addressing the issues mentioned today. DG MARE confirmed that fishers have to comply both with catch composition rules and with the LO. The COM also mentioned the action plan to conserve marine resources and ecosystems, for which the TMR report will be used. The first draft is expected by Spring 2022 and there will be opportunity for this AC to provide advice.

We then heard the state of play on defining directed fishing in the three MS groups, to which the AC can contribute by pointing out the specific issues raised today and proposing possible solutions.

The round of question recapped other examples of issues with compliance with art 27. Mixed fisheries issues are noted by DG MARE, who recommends using the available tools (LO exemptions, multiannual plans, technical measures) to find solutions. Coordination with the UK through the SCF was also mentioned as an important aspect to keep into account.

EFCA informed us about the work session with the control experts in the different MS on the TMR implementation and of the questions sent to DG MARE legal services to provide training to control authorities on this specific topic.

To conclude, it was not possible to find immediate solution for the regulatory conflicts faced at sea by fishers. There is work to be done in the NWWAC (a common approach with other interested ACs is possible as well) to take all these comments on board and prepare a quick recommendation to address the issues identified today.

## 7. Participants

### NWWAC members

Name	Organisation
José Beltran	OPP-07 Lugo
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#### DG MARE:

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#### Member States:

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Pauline Joyeux	Direction des pêches maritimes et de l'aquaculture
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**Observers:**

<b>Name</b>	<b>Organisation</b>
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