

CFP Developments

ANALYSIS OF EU FISHERIES POLICY PROPOSALS AND COMMUNICATIONS



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Proposed Mediterranean Sea Regulation (COM(2003)589)

Introduction

On 9 October the Commission proposed a Regulation for the sustainable exploitation of Mediterranean Sea fishery resources (COM(2003)589). The Regulation would replace existing technical provisions (Regulation 1626/94), which are considered technically inadequate and lack a comprehensive management framework. While the objectives of the basic CFP Regulation (2371/2002) are equally applicable to the Mediterranean as they are to other EU waters, the Commission recognises the need for regionally tailored measures for the Mediterranean due to its specific biological, social and economic context. The proposed Regulation does this by introducing new management measures, such as technical controls, area closures, and provisions for management plans, and building upon those measures already in place.

A notable characteristic of the Mediterranean region is that jurisdiction has generally not been extended out to fisheries or exclusive economic zones (EEZ) as in much of the rest of the EU. Only Spain has extended its management of fisheries resources beyond coastal waters by declaring a Fisheries Protection Zone. As the Mediterranean (excluding the Adriatic Sea) also has a narrow continental shelf, about 90 per cent of fishing in the region is coastal. In effect this means that although the majority of the surface area of the Mediterranean falls within international waters, most fishing activities take place within territorial waters.

Background to the Proposal

The proposed Regulation follows the Commission 'Community Action Plan for the conservation and sustainable exploitation of fishery resources in the Mediterranean Sea under the Common Fisheries Policy' (COM(2002)535) (see IEEP Briefing No. 7). The Action Plan gave an overview of the special characteristics of Mediterranean fisheries and set out actions to be taken over the next few years to strengthen fisheries management in the region.

There are two main elements of the Action Plan. Firstly, the updating of technical management measures, which the current proposal aims to do. Secondly, exploring the idea of extending national fisheries jurisdictions. This second element is due to be the subject of a diplomatic conference in Venice in November. Since adopting the Action Plan, the Commission has consulted industry and other stakeholders on two occasions in order to inform management of the region, and in particular the proposed Regulation.

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New and Strengthened Technical Measures

Protected species, habitats and areas

The protection afforded to specific marine habitats and species under the habitats Directive (92/43/EEC) is reinforced by the proposal. While restrictions on fishing gear use above sea grass beds (*Posidonia oceanica*) (contained in Regulation 1262/93) are widened to include dredges and traps, the opportunity to extend immediate protection to other valuable habitats has not been taken. Provisions are however proposed for the establishment of Community and national protected areas, with the objectives to conserve and manage living aquatic resources, or maintain or improve the conservation status of marine ecosystems.

For Community protected areas, Member States would be required to provide by 30 June 2004 the Commission with information relevant to establishing protected areas within and beyond their territorial seas. The Council would subsequently designate protected areas, specifying banned fishing activities, by 31 December 2004. Member States would also be required to designate national protected areas within their territorial seas by 31 December 2004. Where national protected areas impact on vessels of other Member States, they are to be consulted together with the Commission, and the relevant Regional Advisory Councils (RACs).

Further protected areas can be designated after these dates. If the Commission considers national measures to be insufficient to protect resources and the environment in the national areas, then it may ask the Member State concerned to amend the measures, or propose that the Council introduce suitable measures.

Fishing gear restrictions and minimum species size

As in the existing Regulation (1262/93), destructive fishing methods such as the use of explosives are prohibited. Minimum mesh and hook sizes are detailed for some gear types and fisheries, together with minimum capture and landing sizes for some species. There are also limits on how close to the shore towed gears and purse seines may be used. Despite the basic need for such measures, this area of the proposal has serious shortcomings.

Minimum hook sizes apply only to vessels using longlines landing red sea bream or swordfish, where these species constitute more than 20 per cent of live weight 'after sorting or landing'. Similarly, a minimum mesh size for pelagic trawls only applies when targeting sardine and anchovy and the catch of these species accounts for at least 85 per cent of live weight 'after sorting or landing'. The implication of this is that there will be an incentive to fish in areas of high bycatch or to simply discard catches of these species to below the required limits before landing, in order to legitimise the use of under size gear.

Further to this, there is an explicit lowering of the legal minimum landing size for hake from the current 20cm to 15cm, until January 2009. Despite the fact that this commercially important species is overexploited, the proposal would bring the size

limit below the size at first maturity. In the case of sardine fries, where Member States decide in management plans, the minimum mesh size does not apply at all if they are caught for human consumption using boat or shore seines and the target stock is within safe biological limits. This cut off point suggests that fishing stocks to safe biological limits is the management objective, rather than maximising catch, income or employment; mesh size controls do not come into effect until the target stock is at an extremely low level.

In addition to failing to protect those stocks being directly targeted, technical measures for the benefit of the wider ecosystem seem to be overlooked. There is a distinct absence of requirements for bycatch reduction measures, such as minimising turtle bycatch in longline fisheries and using square mesh and grid panels in trawl gears.

Recreational fisheries

For one of the first times under the CFP, controls are proposed for recreational fishing. Marketing of caught fish is prohibited while data collection systems are to be put in place. The EU driftnet ban (Regulation 1239/98) for highly migratory species would also be extended to recreational fisheries, together with other prohibitions on the use of longlines, gillnets, trammel nets, purse seines, encircling nets and towed gears.

Member States will have the freedom to regulate their leisure fisheries so long as this is done 'in a manner compatible with the objectives and rules of this regulation'. However, the proposal has no explicit objectives, and under the preamble states that because leisure fishing is 'so important', limits need to be set to ensure it does not significantly interfere with commercial fishing or undermine stock sustainability. While it may be necessary to control the level of leisure fishing effort for conservation purposes, it may be more socially and economically beneficial to ensure that commercial fishing does not significantly interfere with leisure fishing. Without clear objectives however, it is difficult to assess the proposed direction of this element of the proposal. Certainly, the proposal seems not to balance conflicting interests, instead giving priority to commercial fishing.

Management plans

Perhaps the most significant elements of the proposed Regulation are the provisions for developing management plans, both at Community level and within Member State territorial waters. They provide the framework that has been lacking to date for the long-term and strategic development of management systems and measures.

Community management plans

The proposal would allow the Council to adopt Community management plans for fisheries in areas totally or partially beyond the territorial waters of Member States. Such plans could include fishing effort management measures, extension of vessel monitoring systems (VMS) to vessels between 10 and 15 meters in length, area closures and technical measures. Member States and/or a Mediterranean RAC could submit suggestions to the Commission on matters relating to these plans and

the Commission would have to reply within three months of receipt. As it is not specified that these plans must be initiated by the Member States, it appears that the Commission would propose Community plans to the Council for adoption.

Member State management plans

Member States would be obliged to adopt management plans for fisheries exploited by boat seines, encircling nets and dredges within their territorial waters by 31 December 2004. Other management plans could subsequently be adopted on the basis of new scientific advice. Monitoring systems would need to be established and, in the case of species with a 'short-life', plans would be revised annually.

Management measures within these plans can go beyond the provisions of the proposed Regulation and may include improving gear selectivity, reducing discards and limiting fishing effort. The plans should also provide for the issuing of special fishing permits, although it is not compulsory to include vessels less than ten meters under this, as they are also exempt under Community fishing permit provisions (Regulation 1672/94).

Before adoption, Member States would be required to present their draft plans to the Commission. If the plan is likely to affect vessels of another Member State, the Member State would have to be consulted together with the RAC concerned. If the Commission considered that the plan did not provide sufficient protection of 'resources and the environment', it could ask the Member State to amend the plan or could itself propose appropriate measures for the protection of the resources or the environment.

Derogations to the main Regulation

While provisions for developing management plans at a Member State level are initially welcomed on the basis that they allow more specific, strategic and appropriate management within the standards and controls set by the Regulation, the plans actually have the potential to *lower* management standards. There are several provisions for Member States to introduce derogations to the main Regulation. At the request of Member States, the Commission can allow derogations from mesh sizes for shore and boat seines under national management plans, provided that the fisheries concerned are 'highly selective and have negligible effect on the marine environment'. Similarly, the Commission can allow a derogation to limits on how near to the shore towed gears and purse seines may be used. For all these derogations, Member States are required to provide 'up to date scientific and technical justifications for such derogations'. It is not specified whether this will be a one off justification for their establishment or whether it will be a routine requirement, and if so how often. Perhaps more significantly, there is no requirement for advice to be independent.

Control measures and highly migratory species

More stringent logbook requirements are proposed for the capture and transshipment of catch. Bottom trawlers, pelagic trawlers, purse seiners, pelagic longliners and hydraulic dredgers would only be allowed to land and market their catch at

designated ports, which would be selected by Member States by 31 December 2004. To provide protection for highly migratory species, it would be prohibited to target these species using pelagic longlining between October and January each year. Bottom set nets would be prohibited in order to tackle the continued use of illegal driftnets.

Measures specific to Malta

Measures agreed for Malta under the Treaty of Accession 2003 are to be implemented through a Chapter of the Regulation. Access in the 25 mile management zone is limited to vessels less than 12 meters in length, except for a specified number of larger vessels up to 24 meters length that may fish in designated areas. In both cases, vessel numbers and capacity are limited in terms of both engine power and tonnage. Provisions are also included to regulate the fishing of Fish Aggregating Devices (FADs) for dolphin fish (*Coriphaena spp.*), including limits on the number of vessels, seasonal closures and procedures for allocating access for other Member States. The provisions concerned with Malta shall apply from the date of her accession ie 1 May 2004.

A Hollow Regulation?

While the proposed Regulation builds on existing measures (Regulation 1626/94), examination of the detail and the potential for introducing derogations raises questions over the real efficacy of the Regulation.

Poor effort control

EU catch quotas are not applicable to the Mediterranean, and are arguably less suitable given the fact that many fisheries are multi-species and lie outside of territorial waters. Given this, effort management would be a more suitable management tool for Mediterranean fisheries. Indeed, in the Preamble of the proposed Regulation, it is stated that management of fishing effort should be the main tool for delivering sustainable fisheries in the region. Yet, the only measures proposed to achieve this are restrictions on gear sizes. Other than the provisions specific to Malta, there are no limits or controls on fleet capacity. Furthermore, while effort management is suggested as an element of management plans, there are no requirements for what measures should be put in place.

Limited management of deep sea fisheries

In the Explanatory Memorandum to the proposal, the Commission identifies the fact that deep-sea fisheries are vulnerable to fishing due to their low productivity levels, and therefore require a particularly cautious approach to management. Despite this, the only measure to manage deep-sea fisheries is a limit on the length of pot lines for deep-water crustaceans.

Enforcement and implementation

In many respects the proposal goes beyond measures currently in place, as one



would hope. While this is an important policy development, it is equally important that the measures are both realistic and enforceable. Member States are already required to identify 'protected zones' in which fishing is restricted, but none have been notified to the Commission in compliance with provisions under Regulation 1262/94. There is also concern over the application of existing conservation measures by Member States and individuals. If the current proposed Regulation is to have a significant impact, it will be important for it to be accompanied by measures such as appropriate penalties, support for capacity building for enforcement agencies, and accountability of Member States. There will also need to be proper reporting on implementation of the Regulation.

Absence of economic measures

The proposed measures are largely technical in nature, with a lack of economic and market based instruments. Discarding is a significant problem as a result of the multi-species nature of the fisheries. This, and fishing effort, could be managed using market based instruments to create incentives to land a greater proportion of catch and to reduce effort through taxation, for example. Financial incentives could also be used to encourage or discourage certain fishing practices. Well placed market based instruments can also be easier to enforce than technical command and control measures, a particular challenge in large and diverse fleets.

Conclusions

The proposed Regulation goes beyond existing technical measures and introduces a framework for developing management plans. A dual approach is taken in the development of management plans and protected areas, with provisions to develop them both within and outside Member State waters. The emphasis is on the management of inshore fisheries, which dominate the Mediterranean yet have not received adequate attention from the Member States.

One of the biggest disappointments with the proposal is that while the introduction of management plans should be welcomed, they can potentially be used to develop derogations to the EU Mediterranean wide standards set in the Regulation. If the proposal is adopted in its current form, the role of local NGOs in monitoring and influencing the development of management plans will be particularly important, in an area where the number and capacity of NGOs is often limited. Such a development illustrates the potential drawbacks of regionalisation of management at a time when the CFP is being devolved through RACs.

Finally, the proposal does not respond to the emerging issue in the Mediterranean of the practice of tuna ranching. This will be a disappointment to many, especially as it was flagged up in the Commission Communication on the Mediterranean in 2002. It should be noted that this and other issues may be more easily tackled if the community succeeds in its desire to extend fisheries jurisdictions in the Mediterranean.