

## **Annex 1. On a Council Regulation concerning the conservation of fisheries resources through technical measures (COM(2008)324)**

The proposal for a Regulation on Technical Conservation Measures<sup>1</sup> is an attempt to consolidate and simplify existing technical measures, which are currently spread over numerous EC legislations and drafted in a highly complex and technical manner<sup>2</sup>. The aim is to clarify and harmonise the legal framework, while also rendering it more coherent, avoiding duplications of rules and inconsistencies with existing general environmental legislation such as implementation of the Birds and Habitat directives<sup>3</sup>.

It is expected that the simplification of the framework will make technical measures more easily understandable, enforceable and controllable, and thus result in a higher level of implementation and compliance. However, it must be noted at this stage, that the proposed Regulation does not merely simplify and unify but also amends existing measures and even introduces new ones.

In addition to the simplification process, the proposal introduces a new regulatory approach, which will simplify and speed up the decision-making process for technical measures by avoiding micro-management at Council level. Only the most general measures are to be covered by the Council Regulation. In the future, it is proposed that more detailed, temporary and technical measures are to be dealt with through Commission Regulations. Again, however, it should be noted that the proposed Regulation does not quite live up to this division, but still contains a large number of quite detailed measures of a technical nature.

During the transition period (the period between the adoption of this proposal and the resulting repeal of existing technical measures, and the adoption of Commission Regulations), a large number of presently existing technical matters will be unregulated. This is a great problem that needs to be addressed.

*The Fisheries Secretariat (FISH) and Seas At Risk (SAR) are generally supportive of the efforts to consolidate and simplify the technical Regulations, including the proposed simplification of the decision-making system. The latter is, however, highly complex and closely linked to the current debate on CFP reform and should be considered in this context.*

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<sup>1</sup>Working Document of 28 September 2009, discussed in the Working Group of the Council on 30 September–1 October 2009 and COM(2008)234..

<sup>2</sup>In particular Council regulations (EC) No 1434/98, (EC) No 850/98, (EC) No 2549/2000, (EC) No 2056/2001, (EC) No 2602/2001, (EC) No 254/2002, (EC) No 494/2002, (EC) No 2166/2005 and Article 7 from (EC) No 1359/2008.

<sup>3</sup>For example, Article 22a explains the interplay between the proposed Technical Measures Regulation and implementation of Council Directive 79/207/EEC Article 4(4) (Birds Directive) and Council Directive 92/43/EEC Article 6(2) (Habitat Directive).

## SUMMARY OF RECOMMENDATIONS

Our recommendations are divided into two parts. Part 1 addresses the simplification efforts as well as the new regulatory approach, whereas Part 2 deals with the proposed provisions on technical measures.

### *Part 1: Simplification and the new regulatory approach*

- *We generally support the introduction of the Comitology procedure, but the lack of accountability of the Commission for the adoption of technical measures in the current proposal needs to be rectified.*
- *Moreover, the powers which have been delegated to the Commission should be extended to cover what we believe are also detailed technical measures, such as minimum landing sizes, percentages of species and mesh size ranges.*
- *In the longer term, however, we would like to see the technical implementation of objectives, targets and principles agreed on the highest political level happen at the regional or even local level. Ideally, many of these measures should be part of comprehensive, ecosystem-based Long-term Management Plans covering all of the EU commercial fish stocks.*
- *We call on you to address the lack of regulation during the transition period between the adoption of this proposal, repealing several Regulations and the adoption of new technical measures through the Comitology procedure, before you approve the proposal.*
- *Finally, it would be appropriate to review the Technical Measures Regulation and the Comitology procedure in the context of the new CFP in 2013.*

### *Part 2: Technical measures*

- *We encourage you to support the expansion of the scope for technical conservation measures, as the greater geographical coverage in combination with the activities and subjects included will ensure that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place, thereby addressing existing loopholes in the current framework.*
- *We urge you to a) not approve the proposed decreases in minimum landing sizes (MLS) and b) to gradually increase the coverage of MLS for more species, as well as the sizes themselves until they are at least in line with the size for 50 % maturity. Technical Regulations such as mesh sizes will need to be amended accordingly. As Member States (MS) are, according to Article 17 in the proposal, allowed to take unilateral action to go beyond the minimum requirements set out in Community Fisheries Regulations, we encourage you to show foresight and do so.*
- *It is our view, that detailed measures such as MLS should gradually be decentralised and included in Long-term management plans (LTMPs) for specific stocks, while the overarching Technical Conservation*

*Measures Regulation will contain more general policy guidance. In the future, one could consider a text such as this in the overarching Council Regulation on MLS:*

*Article 4*

**Minimum landing size of living aquatic resources**

1. A living aquatic resource shall be considered as undersized if it is smaller than the mean size at maturity (has reached reproductive age and size) and the minimum landing size should be agreed accordingly for the relevant stocks/species.

- *We encourage you to support the one mesh size rule (Article 5), as it will facilitate control and enforcement procedures, whilst ensuring that the Regulation is drafted in such a manner so as to promote compliance and prevent discarding.*
- *We urge you to support the measures to ban high grading (Article 9), as well as the inclusion of real-time closures and moving-on measures to protect spawners and juveniles among other things (Articles 10 and 10a).*
- *We ask you to ensure that the currently protected species will continue to be protected in the future and to ensure that there is no duplication of rules in the Species Specific Provisions (Articles 12, 14 and 15).*
- *We urge you to support the proposed discard plans, which will allow a more regionalized, bottom-up approach towards discard reduction and improved gear selectivity, with technical measures better adapted to the local realities (Article 18).*
- *We welcome the establishment of a procedure to deal with fisheries management in Natura 2000 sites (Article 22a) and ask you to support the application of the Comitology procedure in the case where fisheries of several MS are involved; however we urge you to ensure that in cases where only one MS is involved, the power is delegated to the concerned MS.*

**DETAILED COMMENTS**

We have divided our comments and recommendations into two parts. Part 1 will address the simplification efforts as well as the new regulatory approach – i.e. the move from Council Decisions to Commission Regulations through Comitology procedures set out in Comitology Decision 1999/468/EC – whereas Part 2 will deal with the proposed provisions on technical measures.

## **PART 1: SIMPLIFICATION AND THE NEW REGULATORY APPROACH**

### ***1. Simplification***

The underlying objective of the proposal is to simplify, clarify and harmonise the current legal framework on technical measures in fisheries, and to remove any existing inconsistencies and duplications. Unfortunately, through the numerous deletions, additions and amendments made to the proposal, the working document from September 2009 has become more and more complex, unclear and inconsistent in comparison with the original proposal adopted by the Commission in June 2008 (COM(2008)324).

Thus, although the original intention was to limit the provisions in the Regulation to technical measures applicable to all areas and species (excluding the Mediterranean, the Baltic and the Black seas), the proposal now includes an increasing number of area and species specific measures. For example, Article 4 on Minimum Landing Sizes (MLS), Article 4a and Annex III on Percentages of Species and Mesh Size Ranges, and articles 14-15 on restrictions on fishing for shrimps and salmon to protect flatfish and sea trout. Moreover, the proposed Regulation affects a number of existing provisions on technical measures (for example in Regulation (EC) No 254/2002, No 2015/2006 and No 40/2008), which are not explicitly repealed in the proposal<sup>4</sup>. In addition, some provisions of this proposal, such as Article 12 on the protection of elasmobranchs, are also included in the draft Proposal for Fishing Opportunities 2010 (Article 28).<sup>5</sup>

*While we support the simplification and unification process, we urge you to remove the above listed inconsistencies in the proposal.*

### ***2. Commission Regulation – Comitology Procedure***

The proposal distinguishes between general principles and provisions applicable in all areas<sup>6</sup> and purely technical, often temporary and area specific measures<sup>7</sup>. It is suggested that the former type of measures continue to be dealt with at Council level and they are covered in the proposal. For the adoption of detailed fisheries conservation measures relating to specific fisheries areas, it is proposed that the Management Comitology Procedure<sup>8</sup> be used, allowing the Commission to adopt Commission Regulations on purely technical matters.

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<sup>4</sup>Economic and Social Committee in its report on COM(2008)324.

<sup>5</sup>Proposal for a Council Regulation fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (COM(2009)553).

<sup>6</sup>For example, one mesh size rule and minimum landing sizes.

<sup>7</sup>For example, closed areas and seasons.

<sup>8</sup>The power to take decisions and make amendments and derogations on technical matters is conferred from the Council to the Commission. In taking those decisions, the Commission is assisted by a management committee, consisting of representatives from MS. The committee is chaired by the Commission and provides a forum for discussion, enabling a dialogue with national administrations before implementing measures. The Commission must submit a draft of the measure to the committee, on which it must deliver its opinion within the time-limit set by the Chair. The opinion is taken by qualified majority vote. If the Commission decides to adopt a measure which

More specifically, the Commission may adopt measures on the reduction or elimination of discards and the improvement of the selectivity of fishing gear (Article 22); closed seasons and areas (Article 22); real time closures (Article 10); discard plans (Article 18); technical descriptions of devices that may be attached to nets (Article 22); and other technical measures on the basis of proposals submitted by MS and/or RACs to protect living aquatic resources and marine ecosystems (Article 22). In addition, the Commission may adopt derogations to certain technical measures (Article 5 on one mesh size rule; Article 8 on gillnets and trammelnets; Article 12 on destructive fishing practices). The Commission may also make amendments to the annexes of the proposed Regulation<sup>9</sup>.

*We believe that the more detailed and species-specific measures that according to the proposal will remain with the Council, such as MLS and mesh sizes, should be delegated – at the first instance to the Commission through Comitology but in the long-term to a lower level (see below).*

Adopting a new decision-making approach for the regulation of technical measures is essential to keep the CFP workable, especially after the coming into force of the Lisbon Treaty. Taking measures of such a highly technical nature at the Council level is inappropriate, due to time constraints as well as limitations in technical knowledge. Once the Lisbon Treaty enters in to force and introduces co-decision for most fisheries matters, the expected timespan between the publication of a proposal and the moment of adoption is two years. The Comitology procedure will permit the moving away from micro-management at the highest political level and render the adoption of technical measures easier, faster and more flexible, thereby ensuring the more rapid adaptation to changing circumstances. Moreover, it is intended that technical measures will relate to RAC areas, which will allow the tailoring of technical measures to regional realities and features of specific fisheries.

Ideally, we believe that such matters should not be regulated by the Commission but delegated to a regional level or even local level. Whilst we consider Comitology more workable than a status quo, we hope that the future CFP will accommodate for greater regionalization of the technical implementation of targets and objectives set by the Council [and the European Parliament]. In particular, we believe measures such as selectivity, MLS, mesh sizes and closed areas should ideally be contained within long-term management plans for all commercial species.

Nonetheless, we would like to draw your attention to several shortcomings we see in the proposed Comitology procedure. First and foremost, the proposal holds the Commission insufficiently accountable for the adoption of technical measures, despite the important delegation of powers to it. The proposed Management Comitology Procedure will thus supply the Commission with a high degree of discretion and lead to a loss of democratic scrutiny.

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is not in accordance with the Committee's opinion, the Commission must refer it to the Council, which may take a different decision by qualified majority.

<sup>9</sup>N.B.: subject to a different Comitology procedure

Secondly, and this may sound contradictory, insufficient powers would be delegated to the Commission to truly achieve the proposal's aim that only the most general principles and provisions applicable in all areas and species should be regulated by the Council. Inevitably, this also means that the proposal's objective of simplification cannot be achieved. More specifically, the powers to set MLS, percentages of species and mesh size ranges have not been delegated. Nevertheless, we believe that the potential benefits of the Management Comitology Procedure outweigh its drawbacks.

*We generally support the introduction of the Comitology procedure, but the lack of accountability of the Commission for the adoption of technical measures in the current proposal needs to be addressed.*

*Moreover, the powers which have been delegated to the Commission should be extended to cover what we believe are also detailed technical measures, such as MLS, percentages of species and mesh size ranges.*

*In the longer term, we would like to see the technical implementation of objectives, targets and principles agreed on the highest political level happen at the regional or even local level. Ideally, many of these measures should be part of comprehensive, ecosystem-based Long-term Management Plans covering all of the EU commercial fish stocks.*

*Finally, we call for a review of the Technical Measures Regulation and the Comitology procedure in the context of the new CFP in 2013.*

### **3. Preventing a “regulation gap” in the transition phase**

An obvious shortcoming in the proposal, is that the transition period after its adoption is not appropriately addressed. The proposal provides for the repeal of several Regulations and only takes over the key provisions from the existing legislation, arguing that the detailed provisions, which are not included in the Council Regulation, will be regulated by technical measures adopted by the Commission through the Comitology procedure. It appears that in between the coming into force of the proposed Technical Measures Regulation and the adoption of the individual Commission Regulations, many matters which are currently governed by existing legislation will be unregulated. The situation is aggravated by the fact that the Commission does not possess unlimited powers under the Management Comitology procedure but can be vetoed by the Council. This means that, in theory, the adoption of new measures can prove to be impossible or very difficult after the currently existing rules have already been repealed.

*We therefore call on you to address this lack of regulation during the transition period between the adoption of this proposal repealing several Regulations and the adoption of new technical measures through the Comitology procedure, before you approve the proposal.*

## **PART 2: TECHNICAL MEASURES**

The main purpose of the proposed Regulation is to simplify and consolidate existing technical measures, whilst also aiming to achieve the environmental objectives of discard reduction and the protection of juveniles, as well as the protection of specific species and ecosystems.

Although the Commission argues that its proposal merely represents a simplification process and that improvements to existing technical measures are only to be introduced in the future, the proposal contains several new or modified provisions.

Having one Regulation for all technical measures can be considered a simplification of the current system, making it easier for everyone to keep track of the up-to-date rules. However, we are concerned about some of the revisions, for example, that the MLS for some species have been adjusted downwards.

### ***Articles 1–2 Scope and definitions***

In comparison with Council Regulation 850/98, arguably currently the key Regulation on technical measures, the proposal's scope is wider in terms of activities<sup>10</sup> and subjects<sup>11</sup> covered, as well as in terms of geographical scope<sup>12</sup>. By expanding the geographical scope and the activities and subjects covered, it is ensured that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place.

*We encourage you to support the expansion of the scope for technical conservation measures, as the greater geographical coverage in combination with the activities and subjects included will ensure that technical measures are in place, controllable and enforceable in all areas where fishing activities linked to the EC fishing fleet are taking place, thereby addressing existing loopholes in the current framework.*

### ***Chapter II: Article 4 and Annex I on Minimum Landing Sizes (MLS)***

Currently, Minimum Landing Sizes (MLS) are specified for 36 species in EC legislation. In its September 2009 version of the proposal, the Commission has transferred the MLS sizes for all species except for plaice and pollack, and introduced MLS for several species which are not yet regulated.

We would like to take this opportunity to stress the importance of sound MLS for fisheries management: MLS is a fundamental measure to avoid targeting juveniles and thus prevent the development of fisheries targeted at juveniles. But in order to effectively contribute to more sustainable fisheries management, they need to be set above average age of maturity (ie size and age at reproduction). Indeed, there is scientific support for this. We would like to highlight two examples:

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<sup>10</sup>This proposal covers catching, retention on board, transshipment, and landing of fishery resources, as well as storage, sale, display and offer for sale; as opposed to Regulation 850/98, which just covers the taking and landing in maritime waters.

<sup>11</sup>It includes activities pursued in fishing zones of EC waters, as well as by EC vessels and nationals of MS in fishing zones in non-EC waters. By way of contrast, Regulation 850/98 only covers activities taking place in the maritime waters under the sovereignty or jurisdiction of MS and in the fishing zones.

<sup>12</sup>The proposal applies to commercial and recreational fishing in all European waters, with the exception of the Mediterranean Sea, the Baltic Sea, the Black Sea, and highly migratory fish stocks in all waters, for which specific rules apply.

1) A study by P. Serafim, A.S.T. Aubyn & M. Castro of spiny lobster (*Palinurus elephas*) in Portugal indicates that with increasing fishing mortality, larger MLS are required in order for the stock to remain within safe biological levels.<sup>13</sup>

2) In a paper by B. Ernande, U. Dieckmann and M. Heino, the authors link low MLS to fisheries-induced evolutionary changes that a) will result in maturation at lower ages and sizes, which in turn will result in a decrease of stock biomass, and b) can induce so-called frequency-dependent selection, which may lead to self-extinction by natural selection.<sup>14</sup>

The results of both studies support the need for MLS to be above average reproductive size in order to contribute to long-term stock management. This is not the case today – one example is North Sea cod, which currently has a MLS of 35 cm, and for which the size at which 50 % of individuals is estimated to have reached maturity is almost 70 cm (69.7 according to INCOFISH<sup>15</sup>). Cod is a species for which age and size at maturity varies considerably between different stocks, with coastal cod reaching maturity much earlier – another factor that reinforces the need for MLS to be stock-specific and included in LTMPs – rather than a general measure based on lowest common denominator.

Ideally, species-specific provisions such as MLS should not be governed by a Regulation meant to be of a general and non-technical nature, but should instead be included together with other relevant, species-specific technical measures in long-term management plans (LTMPs). However, until the general content of LTMPs is increased and they cover a much wider range of stocks, we believe it is important to extend and improve the use of MLS within the EU. As other Regulations will be repealed when this COM(2008)234 is approved, it is better to include current MLS here than to deregulate.

*We therefore urge you to a) not approve the proposed decreases in MLS in the Regulation and to gradually increase the coverage of MLS for more species, as well as the sizes themselves until they are at least in line with the size for 50 % maturity. Technical Regulations such as mesh sizes will need to be amended accordingly. As MS are, according to Article 17 in the proposal, allowed to take unilateral action to go beyond the minimum requirements set out in Community Fisheries Regulations, we encourage you to show foresight and do so. Indeed, countries such as the UK and Belgium have already gone beyond in their national measures.*

*Also, it is our view, that detailed measures such as MLS should gradually be decentralised and included in Long-term management plans (LTMPs) for specific stocks, while the overarching Technical Conservation Measures Regulation will contain more general policy guidance. In the future, one could consider a text such as this in the overarching Council Regulation on MLS:*

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<sup>13</sup>In *Biodiversity Crisis and Crustacea: Vol 2: Proceedings of the Fourth International Crustacean Congress* by F. Schram & J. Carel von Vaupel Klein (eds). Taylor & Francis, 2000.

<sup>14</sup>B. Ernande, U. Dieckmann & M. Heino (2002). Fisheries-induced changes in age and size at maturation and understanding the potential for selection-induced stock collapse. Theme Session Y : The effects of fishing on the genetic composition of living marine resources. CM2002/Y:06

<sup>15</sup>[http://www.incofish.org/Workpackages/WP7/FishGuide/ScientificNameSearchList.php?Crit1\\_FieldName=SPECIES.Genus&Crit2\\_FieldName=SPECIES.Species&Crit1\\_FieldType=CHAR&Crit2\\_FieldType=CHAR&Crit1\\_Operator=EQUAL&Crit1\\_Value=Gadus+&Crit2\\_Operator=CONTAINS&Crit2\\_Value=morhua](http://www.incofish.org/Workpackages/WP7/FishGuide/ScientificNameSearchList.php?Crit1_FieldName=SPECIES.Genus&Crit2_FieldName=SPECIES.Species&Crit1_FieldType=CHAR&Crit2_FieldType=CHAR&Crit1_Operator=EQUAL&Crit1_Value=Gadus+&Crit2_Operator=CONTAINS&Crit2_Value=morhua)

#### *Article 4*

##### **Minimum landing size of living aquatic resources**

1. A living aquatic resource shall be considered as undersized if it is smaller than the mean size at maturity (has reached reproductive age and size) and the minimum landing size should be agreed accordingly for the relevant stocks/species.

#### *Article 5 One mesh size rule*

The Commission's proposal pioneers a "one mesh size rule" according to which a fishing vessel is only allowed to carry one gear of one mesh size range during any single fishing voyage.

The "one mesh size rule" reduces the numerous existing and complex mesh size/net rules to one single, easily understandable technical measure. The resulting simplification and clarification makes the carrying out of inspections simpler and cheaper, as this technical measure becomes more easily enforceable. On the other hand, the measure illustrates a perfect example of where the Commission's proposal merely simplifies from the point of view of the legislators and inspectors, whilst rendering the activities of fishermen more difficult. From the perspective of fishermen, the rule potentially removes an important flexibility and leads to higher operational costs and difficulties, and may force vessels to fish with inappropriate gears. Consequently, there is an elevated risk of non-compliance and increased discarding. Despite the social and technical problems this provision may create, we are convinced that the benefits outweigh the difficulties.

*We encourage you to support the one mesh size rule, as it will facilitate control and enforcement procedures, whilst ensuring that the Regulation is drafted in such a manner so as to promote compliance and prevent discarding.*

#### *Article 9a Prohibition of Highgrading*

Where a species is caught during fishing operations which is subject to a quota scheme, it must be brought aboard the vessel and subsequently landed unless this would be contrary to EC fisheries legislation.

This provision will reduce discarding of valuable fish and lead to a more correct estimation of caught species, as the throwing overboard and non declaration of that specie, as allowed under current rules, falsifies the estimated number. This could encourage fishermen to use and adapt more appropriate gears so as to avoid bycatch and discarding.

*We therefore encourage you to adopt the measure.*

#### *Articles 10 and 10 a: Moving-on Measures and Real Time Closures*

When a trigger catch level of a particular species or group of species, or of spawning fish or juvenile, has been reached the area concerned shall be temporarily closed to the relevant fisheries in accordance with the Management Comitology Procedure.

On the basis of the information demonstrating that a catch level has been reached MS may determine an area to be temporarily closed in accordance with the provisions laid down in the Control Regulation (721/2009). The Commission may also determine an area to become temporarily closed in line with the provisions laid down in the Control Regulation (721/2009) and in accordance with the Management Comitology Procedure.

This measure will lead to a higher protection of juveniles and specific species and consequently result in limited discarding. Moreover, the provision is in line with the new discard policy. However, we would like to draw your attention to the fact that there needs to be a clear provision for setting these trigger catch levels in the near future.

*We urge you to support this measure, due to the environmental benefits associated with this rule.*

### ***Article 18 Discard plans***

MS and/or RACs may submit plans on discard reduction/elimination and/or fishing gear selectivity to the Commission. The Commission must present its observations to the MS and/or RACs within three months of the date of receipt. The Commission may adopt, on the basis of the proposals and after the consideration of the STECF advice, such plans in line with the Management Comitology Procedure.

*We urge you to support this measure, which will allow a more regionalize, bottom-up approach towards discard reduction and improved gear selectivity, with technical measures better adapted to the local realities.*

### ***Article 22a Natura 2000***

According to the Birds and Habitats directives, Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant<sup>16</sup>. This article describes procedures for presenting proposals concerning the restrictions of fisheries in above mentioned areas (Natura 2000 areas).

The proposal suggests a “fast track” for decision-making on fisheries measures in marine Natura 2000 sites, by enabling the Commission to take decisions through the Comitology procedure<sup>7</sup>. Currently, there is no established procedure to deal with fisheries management in Natura 2000 sites, and in the past the emergency measures procedure set out in EC 2371/1002 has been used to ensure rapid implementation of protection measures. The proposed legislation fills a procedural gap, and provides a simpler and faster path for establishing fisheries management measures in Natura 2000 sites.

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<sup>16</sup> Council Directives 79/297/EEC and 92/43/EEC

We are concerned, however, that these increased powers of the Commission, involving STECF and possibly the RACs, could be misused to question necessary restrictions in fishing proposed by a MS. In this context, the information required from the MS (Article 22A), under point 2 a), b) and c) seems excessive and irrelevant, as it concerns information necessary for a decision on the designation of a Natura 2000 site rather than for a decision on restriction of fisheries activities.

It would be preferable if the increased delegated powers were given to the MS instead of the Commission, as MS would be able to implement their site protection obligations under the Directives more directly and with more certainty. The proposed Comitology procedure would be best limited to only those cases where fisheries measures for the site would have implications for several MS.

*We welcome the establishment of a procedure to deal with fisheries management in Natura 2000 sites and ask you to support the application of the Comitology procedure in the case where fisheries of several MS are involved; however we urge you to ensure that in cases where only one MS is involved, the power is delegated to the concerned MS.*