

Agenda Item 6

Relevant EU Policy matters

Information Document 6c

**Update on the Implementation of the
EU Nature, Marine and Fisheries
Policies relevant for ASCOBANS
Activities**

Action Requested

Take note

Submitted by

European Commission



Note:

Delegates are kindly reminded to bring their own document copies to the meeting, if needed.

Update on the implementation of the EU nature, marine and fisheries policies relevant for ASCOBANS activities

Prepared by the European Commission's Directorate General for Environment and Directorate General for Maritime Affairs and Fisheries

1. State of play with the implementation of the Habitats Directive and the Action plan for nature, people and the economy (relevant issues)

Following a thorough evaluation of the **Birds and Habitats¹ Directives**, the European Commission has adopted the **Action plan for nature, people and the economy²** (hereafter AP) to improve their implementation and boost their contribution towards reaching the EU's biodiversity targets for 2020. The AP focuses on four priority areas and comprises 15 actions and over 100 measures rolled out until 2019, many of those being relevant for cetacean conservation.

Strict protection of species

The Habitats Directive affords **strict legal protection** to all cetaceans (Cetacea are listed in Annex IV). Member States are under the obligation to take the necessary measures to establish a system of strict protection in their entire natural range, prohibiting their deliberate capture or killing, disturbance and deterioration or destruction of their breeding sites or resting places. They should also establish a system to monitor the incidental capture or killing and take the necessary measures to ensure that it does not have a significant negative impact on the species concerned.

The Commission is currently updating **the guidance on species protection rules under the Habitats Directive** as foreseen in the AP. The draft document was discussed during the ad-hoc meeting on the revision of guidance documents in October 2018³. An updated draft of the guidance document will be available for discussion in late 2019 with a view to having a formal adoption by the Commission soon thereafter.

Links with the common fisheries policy – bycatch of protected species

The system of strict protection of species under the Habitats Directive requires effective measures to prevent the negative impact of fishing activities on cetaceans, the most important one being **bycatch**, i.e. incidental catch in fishing gear.

An essential condition for ensuring compliance with the Directive is the systematic **monitoring** of the level of incidental capture and killing in order to assess if there is a significant impact on the species concerned and to implement the necessary preventive measures. Such monitoring should also assess the effectiveness of the implemented measures with a view to reinforce them if needed.

In order to facilitate the implementation of strict species protection rules under the Habitats Directive in relation to fishing activities, those rules are also reflected in the EU fisheries legislation. The revised **EU framework for data collection** or “DCF” (Regulation (EU) 2017/1004) establishes requirements for the collection, management and use of biological, environmental, technical and socio-economic data concerning the fisheries sector, contributing to the objectives of the common fisheries policy and coherent with environmental legislation.

¹ Council Directive 92/43/EEC of 21. May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ. L 206, 22. July 1992, p. 2).

² http://ec.europa.eu/environment/nature/legislation/fitness_check/action_plan/index_en.htm

³ <https://circabc.europa.eu/w/browse/23b12a11-851e-43fe-91e4-4631e91699ff>

Member States are required to establish related **multi-annual national programmes** in accordance with the multi-annual Union programme for data collection. Such a programme was adopted for the period 2017-2019 by the Commission Implementing Decision 2016/1251, and rolled over for the period 2020-2021, including an obligation to collect data on incidental by-catch of **all birds, mammals, reptiles, and fishes protected under European Union legislation** and international agreements. Data must be collected for **all types of fisheries**, during scientific observer trips on fishing ships, or by the fishermen themselves through logbooks. Where the data collected during observer trips are not providing sufficient insights regarding incidental by-catch for end-user needs, other methodologies need to be implemented by Member States. **Data collection methods and quality** need to be appropriate for the intended purposes defined in Article 25 of Regulation (EU) No 1380/2013 and should follow the **best practices and relevant methodologies** advised by the relevant scientific bodies.

Bycatch monitoring programmes should enable the assessment of the impact of bycatch on the conservation status of protected species. Member States also need to establish **thresholds** of significant impact for each species which will effectively enable them to decide if and what kind of mitigation measures are necessary. In case of uncertainty, **the precautionary principle** should apply and stricter measures would need to be implemented.

Concerning the implementation of the necessary mitigation measures, the recently adopted **“Technical Measures Regulation”** (Regulation (EU) 2019/1241⁴) prescribes the use of acoustic deterrent devices (ADDs) in certain fisheries (Annex XIII, Part A). In addition, in the framework of regionalisation process, introduced for the technical measures by the new regulation, Member States are enabled to submit joint recommendations to the Commission to adopt delegated acts containing additional mitigation measures. Technical measures should contribute to reducing unwanted catches and eliminate discards but also contribute to having in place management measures for the purposes of complying with their obligations of the Birds and Habitats Directives. When developing joint recommendations in relation to the protection of sensitive species and habitats, regional groups of Member States should be allowed to develop additional mitigation measures to reduce the impacts of fishing on such species and habitats. Where scientific evidence shows that there is a serious threat to the conservation status of sensitive species and habitats, Member States should introduce additional restrictions on the construction and operation of certain fishing gear or even the introduction of total prohibition on their use in a given area.

Concerning the necessary **measures in Natura 2000 sites** pursuant to obligations under Article 6 of the Habitats Directive, the provisions of **Article 11 of Regulation 1380/2013 applies** and the Commission has adopted a Staff Working Document describing good practices on the elements to be considered by Member States when preparing joint recommendations for the adoption of conservation measures under the common fisheries policy (CFP) to comply with their obligations pertaining to Article 6 of the Habitats Directive, Article 4 of the Birds Directive and Article 13(4) of the Marine Strategy Framework Directive (MSFD)⁵.

The data collection and implementation of measures aiming to reduce or eliminate bycatch requires **close inter-sectoral and inter-institutional cooperation**, enforcement of rules and adequate support for and by fishers. For wide ranging species like cetaceans, the cooperation

⁴ Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, of 20 June 2019.

⁵ <https://ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf>, also available in other EU languages

with other countries in the species range is essential, as well as the support of scientific organisations.

The Commission is currently looking into the compliance of Member States with the legal requirements under the Directive related to bycatch of protected species.

Links with the maritime transport – the impact of ship strikes

The system of strict protection of species established under the Habitats Directive also requires effective measures to prevent the negative impact of shipping on cetaceans. This means that data should be collected on their killing or disturbance, mostly by ship strikes and underwater noise, and appropriate measures need to be taken to ensure that such an impact does not have a negative impact on the species concerned.

Member States could consider a wide range of measures, including reducing the speed of vessels or rerouting. These measures will usually need to be implemented under the rules of the International Maritime Organisation (IMO) and could for example include the designation of PSSAs⁶.

Depending on the scope of the measures proposed and their impact on the normal maritime traffic, pursuant to Directive 2002/59/EC⁷ this might need to be done through the EU submission to the IMO. The Commission will soon provide additional guidance on this matter.

Establishment and management of Natura 2000 sites

More than **3200 marine Natura 2000 sites** currently cover **551 899 km²** or more than **9.5%** of EU seas⁸. This largest coordinated network of protected areas in the world contributes most significantly to the marine protected areas' coverage in Europe and to reaching the international targets.

For two cetaceans listed in Annex II of the Habitats Directive, **the bottlenose dolphin** *Tursiops truncatus* and **the harbour porpoise** *Phocoena phocoena*, special areas of conservation (Natura 2000 sites) need to be designated and managed according to the ecological needs of these species. This means that appropriate **conservation measures** should be established and implemented to reach site-specific **conservation objectives**. The conservation measures in Natura 2000 sites, together with measures taken under strict protection regime in the entire natural range, should aim to achieve or maintain the favourable conservation status of these species.

In the Atlantic there are **76** sites designated for the protection of the **bottlenose dolphin** (total surface 141 508 km²) and **89** sites designated for the protection of the **harbour porpoise** (total surface 195 101 km²). In the Baltic Sea, there are **36** sites for the harbour porpoise covering 23 501 km². Although the designation of sites for these two species has advanced in recent years, there are still some gaps, mainly offshore. There are multiple challenges with identifying Natura 2000 sites for such mobile and wide-ranging species as Member States should propose sites where there exists a “*clearly identifiable area representing the physical and biological factors essential to their life and reproduction*”. These species are usually difficult to observe,

⁶ Particularly sensitive sea areas

⁷ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system

⁸ <https://www.eea.europa.eu/data-and-maps/dashboards/natura-2000-barometer>

data concerning their distribution patterns at sea are sparse and research is expensive and needs to be conducted over long time periods. Significant efforts were made in the past to collect the data on distribution and population sizes with many projects co-financed by EU funds (for example SCANS II or SAMBAH). **The completion of the Natura 2000 network**, especially its marine part and including the establishment of the **appropriate conservation measures**, is one of the main actions of the AP. Concerning the implementation of conservation measures and site management plans, for these two species the progress is not entirely satisfactory. The efforts should be increased to establish and implement the necessary conservation measures so that the sites can contribute to reaching the favourable conservation status of these species.

The Commission is taking opportunity of the bilateral dialogues with Member States under the AP to highlight these obligations. These “**nature dialogues**” have taken place with fourteen Member States⁹ and are planned for additional seven Member States¹⁰ by the end of 2019. They have been set up to promote structured and tailored discussions on key challenges of implementation of the Nature Directives. They involve the nature authorities as well as other relevant authorities, such as those responsible for fisheries, as well as stakeholders. The meetings are being followed up through agreed implementation roadmaps, with agreed milestones and actions to be delivered.

The Commission is also using the powers conferred to it by the Treaty to **enforce legislation**, whenever various compliance promotion actions are not followed up by implementation efforts in Member States. In particular, several legal (infringement) procedures are currently open on the two key obligations of the Habitats Directive for Natura 2000 sites. Regarding the obligation to **complete the designation of Natura 2000** at sea in the area relevant to ASCOBANS, infringement cases are currently open against Lithuania, Poland and Portugal. Investigations are open for many other Member States. Regarding the obligation to **establish and implement the necessary conservation objectives and measures** for all Natura 2000 sites, in the area relevant to ASCOBANS, infringement cases are currently open against Belgium, Germany, Ireland, Portugal, Spain and the United Kingdom. Investigations are open for many other Member States.

Reporting

Article 11 of the Habitats Directive requires Member States to monitor the habitats and species listed in the annexes and Article 17 requires a report to be sent to the European Commission every 6 years following an agreed format. The core of this report is the assessment of the **conservation status** of each habitat type and species and the data underpinning such assessment. The **national reports** covering the period 2013-2018 and using an updated report format¹¹ were all delivered by **May 2019**. The draft national reports from all Member States are uploaded in the Central Data Repository (CDR) of Reportnet¹².

The AP indicated that Member States would **enhance monitoring and fill the gaps in knowledge** on the Natura 2000 network, the conservation status and trends of species and habitats, the effectiveness of the Natura 2000 network and its contribution to achieving the Directives’ objectives. The assessment of how much has been delivered in this respect is on-going through the analysis of the national reports.

⁹ Relevant for ASCOBANS area: Finland (14-15 May 2018 and follow up meeting on 5 April 2019), the Netherlands (3-4 October 2018), Lithuania (16-17 October 2018), Estonia (6-7 February 2019).

¹⁰ Relevant for ASCOBANS area: Latvia (17-18 September 2019), Denmark (23-24 October 2019), Sweden (4-5 November 2019), France (12 November 2019), Spain (21-22 November 2019) and Belgium (27-28 November 2019).

¹¹ https://bd.eionet.europa.eu/activities/Reporting/Article_17/reference_portal

¹² <http://cdr.eionet.europa.eu>

The European Environment Agency will now analyse the national reports, make an **EU level assessment** and publish the “**State of Nature**” report followed by Commission’s report, which will be a major contribution to the **final evaluation** of the EU Biodiversity Strategy to be published in 2020 and feed into the development of proposals for the post-2020 targets.

Supporting the cooperation in Natura 2000 management

The implementation of marine Natura 2000 is supported by the **Marine Expert Group** (MEG) set up by the Commission to promote the exchange of experience, information and best practices in site designation and management, including addressing pressures from fisheries and other activities, and to promote synergies with the Marine Strategy Framework Directive (MSFD). The last meeting of the MEG took place in February 2019¹³ and the topics discussed included fisheries management measures in Natura 2000 sites, application of Article 6(2) and 6(3) of the Habitats Directive (92/43/EEC) to fishing activities in marine Natura 2000 sites, the marine biogeographical process and financing issues.

Natura 2000 seminars under the biogeographical process and follow-up activities are another way of fostering cooperation between Member States on the management of marine sites. The first marine biogeographical seminar was held in St. Malo in France in May 2015¹⁴. **The second marine Natura 2000 seminar** took place in Palma de Mallorca, Spain, **13-15 November 2018**. It was focused on setting the conservation objectives and measures, including the FRVs for selected habitats and species, among them for two cetaceans that require site designation. The seminar report, the main presentations, the draft roadmap and other relevant information on the biogeographical process can be found on the Natura 2000 communication platform¹⁵. The marine process will continue in various forms, including that of workshops and events. Further information on the management of marine Natura 2000 sites can be found on the dedicated webpage¹⁶.

Financing

The role of EU co-financing is significant for cetacean conservation. The EU has supported projects to collect data on their distribution, map the main threats and resolve conflicts. The most important EU funds for marine conservation are the **LIFE programme**¹⁷ and the **European Maritime and Fisheries Fund** but other EU funds are also used.

Under the AP, the opportunities for EU co-financing have been further promoted. The current use of financial allocations for biodiversity protection and Natura 2000 from the **European Maritime and Fisheries Fund** (EMFF) has been assessed in a report¹⁸.

In 2018, the Commission adopted its proposal for the **new multiannual financing framework** for the period 2012-2027¹⁹ and the inter-institutional negotiations are ongoing. The LIFE Climate and Environment budget was proposed to be **increased** significantly to €5.45 billion²⁰. The new LIFE programme will support projects that promote best practices in relation to nature

¹³ https://circabc.europa.eu/ui/group/00564ca7-9d16-4b81-bac5-b35fcb84aa33/library/00e934f8-26e8-4c4c-8936-82de70dc362f?p=1&n=10&sort=modified_DESC

¹⁴ http://ec.europa.eu/environment/nature/natura2000/platform/events/157_first_marine_biogeographical_process_seminar_en.htm

¹⁵ https://ec.europa.eu/environment/nature/natura2000/platform/knowledge_exchange/28_document_library_en.htm#Marine, under “Marine process”

¹⁶ http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm

¹⁷ See the latest brochure for details on the LIFE and the marine environment

http://ec.europa.eu/environment/life/publications/lifepublications/lifefocus/documents/marine_environment_web_2018.pdf

¹⁸ https://circabc.europa.eu/ui/group/00564ca7-9d16-4b81-bac5-b35fcb84aa33/library/00e934f8-26e8-4c4c-8936-82de70dc362f?p=1&n=10&sort=modified_DESC, Document 3.2

¹⁹ https://ec.europa.eu/commission/publications/factsheets-long-term-budget-proposals_en

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A385%3AFIN>

and biodiversity, as well as new, dedicated ‘**strategic nature projects**’ (SnaPs) for all Member States to help mainstream nature and biodiversity policy objectives into other policies and financing programmes, ensuring a more coherent approach across sectors. This would require a robust strategic planning of investments in nature through **prioritised action frameworks (PAFs)**. PAFs are strategic multiannual planning tools, aimed at providing a comprehensive overview of the measures that are needed to implement the Natura 2000 network and the nature directives, specifying the financing needs for the necessary measures and linking them to the corresponding EU funding programmes. PAFs shall focus on the identification of those financing needs and priorities that are directly linked to the specific conservation measures established for Natura 2000 sites, in view of achieving the site-level conservation objectives for those species and habitat types for which the sites have been designated. Considering the significant funding shortage for the management of the network, the update of the PAFs is an opportunity to make better use of the funding opportunities in the new MFF for Natura 2000. The AP committed to ensure that Member States provide more reliable and harmonised estimates of their **financing needs** for Natura 2000. The Commission has signed a new contract on “Strengthening investments in Natura 2000 and improving synergies with EU funding instruments” which assists Member States in understanding and making the most out of the new funding programmes as regards Natura 2000. Workshops are organised in Member States to facilitate the drafting of PAFs and this allows appropriate stakeholder input.

2. State of play with the implementation of the Marine Strategy Framework Directive (relevant issues)

Determination and achievement of the good environmental status

The Marine Strategy Framework Directive (MSFD; Directive 2008/56/EC) aims to achieve the good environmental status of the EU’s marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend. The seas in GES are clean, healthy and productive. The Directive enshrines in a legislative framework the ecosystem approach to the management of human activities having an impact on the marine environment, integrating the concepts of environmental protection and sustainable use. According to the Directive, each Member State must implement a marine strategy for its marine waters, in cooperation with other Member States sharing the same marine region, reviewed every 6 years. Those strategies include 5 steps:

1. an initial assessment of their marine waters,
2. the determination of the good environmental status of their marine waters,
3. the setting of environmental targets,
4. the establishment and implementation of coordinated monitoring programmes, and
5. the identification of measures or actions that need to be taken in order to achieve or maintain good environmental status.

Within the context of the MSFD, Member States sharing a marine region or sub-region are also encouraged to cooperate to deliver on the objectives of the Directive. The Commission, through DG Environment, is ensuring that Member States continue in their collaborative efforts to implement the MSFD, including through the work of regional sea conventions and through the common implementation strategy. The Commission is also committed to the implementation of the MSFD through funding opportunities as appropriate and with the collaboration of all Member States.

Commission report on the implementation of the MSFD

Towards the end of 2019, the Commission will publish a review of the implementation of the MSFD to date, in accordance with Articles 20(1) and 20(3). Given the wealth of information produced under the MSFD by Member States, the Commission, external observers and experts, the report will focus on the key policy messages and lessons learnt from the first cycle of implementation. It will highlight the main achievements of the MSFD, reflect upon the major challenges and provide some suggestions for improvement. The report will also include an overview of the status of EU marine environment, with more extensive accompanying Staff Working Documents to provide further details and assessments.

Kick off of the second MSFD cycle of implementation

Article 17 of the directive required Member States to review and update the initial assessment of their marine waters, determination of GES and set of environmental targets by 15 October 2018. Compared with previous rounds of reporting, there has been more delays in reporting. As of 09/07/2019, 13 Member States have provided paper-based reports and among them seven have also reported digitally. All these countries are riverine of the Baltic Sea and the Greater North Sea.

The process for updating Articles 8, 9 and 10 in 2018 benefitted from three important developments since the reporting in 2012:

- Significant progress in regional or sub-regional cooperation. Through the enhanced activities of the RSCs, there was significant development of indicators and integrated assessments to assess the state of the marine environment in MSFD-compatible ways; three RSCs prepared quality status reports in time for use by Member States in their 2018 reporting.
- Adoption of the revised GES Decision and Annex III. These instruments aimed to provide a much clearer basis for the determination of GES and assessment of the extent to which it has been achieved. They were adopted in 2017 and it was acknowledged that Member States would not be able to fully reflect their requirements in their 2018 reporting; nevertheless, they are expected to provide a more structured and more clearly specified determination of GES that can underpin future assessments.
- Simplification of the 2018 electronic reporting. The reporting requirements were significantly simplified and aligned with the 2017 GES Decision to ensure that the extent to which GES has been achieved could be more clearly reported. The reporting by Member States has been coupled with developments in the WISE-Marine portal to disseminate the MSFD reported information so that the outputs of the MSFD process become more visible.

The official assessment of this reporting is still ongoing, but a preliminary analysis of the information received in electronic format about mammals points out:

- In the case of mammals, most of the criteria have been assessed at a large extent, except the by-catch (D1C1) and the habitats condition for the species (D1C5), for which there are few assessments (on top of this, the by-catch has been reported as 'Not assessed' in 48% of the cases and as 'Unknown' in 40% of the cases). In the case of the population abundance (D1C2) and the population distribution (D1C4), they have achieved the 'Good' status in 50% or more

of the assessments, although also a big number of assessments result in the criteria being ‘Not good’ (42.55% and 42.22% respectively). On the other hand, the assessments on the demographic characteristics (D1C3) have been reported only 14.81% as ‘Good’ and 74% as ‘Not good’.

- There are only GES assessments for seals and small toothed cetaceans. For seals, GES is achieved only in 11.11% of the assessments, but 55.56% of the assessments report that GES will be achieved by 2020. However, the situation of the small toothed cetaceans is more concerning. None of the reported assessments has resulted in an achievement of the GES, and in 80% of the cases the GES will be achieved only later than 2020, without any exception having been reported under Article 14. The top three reported pressures are:

- Extraction of, or mortality/injury to, wild species

- Disturbance of species due to human presence

- Input of anthropogenic sound

Following the first (2014) assessment of Member State's reports on the state of their marine waters, determination of Good Environmental Status and associated targets, the Commission concluded to the need to improve the implementation of the MSFD. In particular, more efforts are urgently needed to reach the GES by 2020 and coherence with other EU legislation and regional approaches should be strengthened. In this regard, the new Commission Decision (EU) 2017/848 adopted in May 2017 should help ensuring an effective implementation of the directive for the next cycle.

With the new GES decision, we have now entered the second implementation cycle and Member States are presently updating the information about steps 1-3 above. The Commission has just released its assessment of Member States' programmes of measures for the first cycle, checking for example whether the right pressures are being tackled in the region and whether these measures are consistent. This enables us to have a better understanding of our marine waters. The outcomes of this first assessment indicate that MS have made considerable efforts to develop their programmes of measures, by integrating different national, EU and international policies and processes for the purpose of protecting the environment. They have also established new measures to specifically target pressures on the marine environment, thus showing the added value of the MSFD. However, not all pressures on the marine environment are covered properly and there is a lack of regional or EU coordination which leads to a fragmented approach for certain pressures of transboundary nature.

Last but not least, Member States still have to implement fully their monitoring programmes to be efficient and operational as soon as possible. Global efforts are necessary in particular for the descriptor on non-indigenous species, marine litter and underwater noise.

3. State of play with the implementation of the common fisheries policy (CFP) and integrated maritime policy (relevant issues)

The EU's **common fisheries policy (CFP)** aims to ensure that fishing and aquaculture are **environmentally, economically and socially sustainable**. This also means ensuring that the impact of fishing on protected species and habitats is minimised and in line with the obligations set under the EU's environmental legislation. There are important links in particular between the Birds and Habitats Directives, the MSFD and the CFP tools related to data collection, fisheries management and financing. These links **have recently been strengthened** and their

success will depend on the effective implementation of existing and new rules. Below is the outline of the main relevant developments under the CFP.

Data collection

The EU fisheries management relies on the data collected and supplied by Member States under the **data collection framework** (DCF). The DCF is the main source of data collection regarding fisheries, including the collection of data on the impact of fisheries on the environment. The revised DCF²¹ that came into force in 2017 establishes rules on the collection, management and use of biological, environmental, technical and socio-economic data concerning the fisheries sector, contributing to the objectives of the CFP. **It has new requirements on the collection of data to assess the impact of EU fisheries on marine ecosystems in Union waters and outside Union waters, and in particular on incidental bycatch of birds, mammals, reptiles and fish protected under Union legislation and international agreements.** Currently, the data are collected under the **multiannual Union programme** for the collection, management and use of data in the fisheries and aquaculture sectors for the period 2017-2019²². A new multiannual Union programme has recently being published²³. Data collection methods and quality need to be appropriate for the intended purposes follow the best practices and relevant methodologies advised by the relevant scientific bodies.

For all types of fisheries and vessels, incidental bycatch of all birds, mammals and reptiles and fish protected under Union legislation and international agreements, including absence in the catch, needs to be collected during scientific observer trips on fishing ships or by the fishers themselves through logbooks. Where data collected during observer trips are not considered to provide sufficient data on incidental bycatch for end-user needs, other methodologies need to be implemented by Member States. The selection of these methodologies shall be coordinated at marine region level and be based on end-user needs. The **Regional Coordination Groups** (RCGs) have been established under Article 9 of Regulation (EU) 2017/1004 per each marine region to facilitate a regional cooperation in the collection of relevant data. RCGs are composed of Member States of each marine region and the Commission and in 2017 RCGs met for the first time, replacing previous regional coordination meetings. All outcomes of the RCGs and the liaison meeting, that follows them and coordinates regional work on a horizontal level, can be found online²⁴ in order to ensure transparency. The RCGs have agreed on their rules of procedures that are meant to define how they work, how decisions are taken and who can be invited. all RCG rules of procedures are published on the DCF website. Interested parties can contact the chair of the relevant RCG. More details on 2019-2020 meetings schedule and RCG chair contacts can be provided upon request.

Annex IIA in the grant agreement for 2019 between the EU and the International Council for the Exploration of the Sea (ICES) requests ICES, under Fisheries and Ecosystem overviews to: *Provide information regarding the impact of fisheries on the ecosystem including marine*

²¹ New DCF: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1004>
and EU-MAP: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2016.207.01.0113.01.ENG

²² https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.207.01.0113.01.ENG

²³ Commission Implementing Decision (EU) 2019/909 of 18 February 2019 : establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors (applies from 1 January 2020).

Commission Delegated Decision (EU) 2019/910 of 13 March 2019 : establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors (applies from 1 January 2020).

²⁴ <https://datacollection.jrc.ec.europa.eu/docs/rcm>

mammals, seabirds and habitats impacts (including incidental catches). This should include information on the location of habitats sensitive to particular fishing activities". On the basis of the work undertaken by the ICES Working Group on Bycatch of Protected Species (WGBYC)²⁵, ICES issues advice on an annual basis.

In 2018, ICES reported in its advice²⁶ that only the bycatch risk to harbour porpoises (*Phocoena phocoena*) and common dolphins (*Delphinus delphis*) in the southern part of the Celtic Seas and to common dolphins in the Bay of Biscay was evaluated, finding that these may exceed internationally adopted thresholds of acceptability. ICES has advised on other areas in previous years. Some other major fishing countries failed to provide any information. ICES evaluation and external assessments of the numbers of bycaught dolphins recorded on the shores of the Bay of Biscay indicate that a dedicated bycatch observer programme and bycatch mitigation is required for relevant fisheries in this area. Mitigation is required under Regulation 812/2004 in some fisheries in the southern Celtic Seas and this mitigation may not be adequate. The impact of fisheries on seabirds and other vertebrates have not been evaluated due to insufficient available information.

The latest ICES advice issued on 30 August 2019²⁷ highlights inter alia that the bycatch risk for harbour porpoise in the Celtic Sea, including eastern Bay of Biscay shelf, might exceed internationally adopted thresholds of 1.7% set by ASCOBANS. The 2019 ICES WGBYC report²⁸ notes a high number of strandings of cetaceans, mainly common dolphins, in 2017 on the French Atlantic coast. ICES reiterates that the Regional Coordination Groups (RCGs) coordinating the implementation of EU MAP should continue to adapt the at-sea sampling designs required to include data on frequency of protected species bycatch events in all relevant fisheries.

ICES notes that the EU multiannual programme (MAP) for data collection aims to improve consistency of bycatch data at a regional scale and should improve the ability of ICES to advise on the impact of fisheries.

In 2019, the Commission requested the Scientific, Technical and Economic Committee for Fisheries (STECF)²⁹ to review cetacean data collection. This review has identified a number of issues both in data collection and in by-catch mitigation that need to be addressed in the transition from sampling under the 812/2004 Regulation to the new legislative arrangements.

The entry into force of the new Technical Measures regulation (Regulation 1241/2019) has introduced more wide-ranging commitments which now require Member States to take the necessary steps to collect scientific data on incidental catches of sensitive species, as well as allowing Member States to submit joint recommendations on a regional basis for additional by-catch mitigation measures on the basis of scientific advice. Here, "sensitive species" includes cetaceans but also marine turtles and many seabird species as set out in the Habitats and Birds Directives.

²⁵The report from the latest meeting is available here:

http://ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2018/WGBYC/wgbyc_2018.pdf

²⁶ <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2018/2018/byc.eu.pdf>

²⁷ <http://ices.dk/sites/pub/Publication%20Reports/Advice/2019/2019/byc.eu.pdf>

²⁸ <http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/HAPISG/2019/ICES%20WGBYC%20Report%202019.pdf>

²⁹ <https://stecf.jrc.ec.europa.eu/documents/43805/2489016/STECF+19-07+-+Incid+catches+cetaceans.pdf/3485bafd-4350-40af-8d72-0226a68cb86e>

Management tools

Multiannual plans

Multi-annual plans (MAPs) are one of the main instruments to achieve CFP objectives. They provide, among other aspects, the timeline for the implementation of the MSY objective and some flexibility tools for managing the fisheries. The Baltic MAP and the North Sea MAP are already in force for few years. This year the Commission will report on the implementation of the Baltic MAP. The recent adoption of the MAP for demersal stocks in Western Waters³⁰ is a key development in the implementation of the CFP as a central tool for fisheries management. It will help ensure sustainable fisheries in the long term, and completes the series of MAPs for the North Sea and the Baltic Sea. Another achievement is the adoption, in 2019, of the first Mediterranean Sea MAP³¹. It applies to fisheries exploiting demersal stocks in the western Mediterranean and establishes a mandatory reduction of 10% of the fishing effort, which will apply from 1 January 2020, and provides that Fmsy should be achieved in the area by 2025 at the latest.

Measures to comply with the obligations under the environmental legislation

The 2013 reform of the CFP introduced regionalisation whereby Member States concerned may submit **joint recommendations** for the adoption of Commission delegated acts. The new generation of MAPs also contains provisions on regionalisation, which allow Member States and stakeholders to work together on tailor-made management measures that suit their sea basins. Regionalisation can also apply when it is necessary to fulfil the obligations under the environmental legislation, *i.e.* to establish conservation measures in Natura 2000 sites or to comply with the obligations under the MSFD.

Following the consultation of Member States and stakeholders, the Commission has recently adopted a **Staff working document on the establishment of conservation measures under the common fisheries policy for Natura 2000 sites and for Marine Strategy Framework Directive purposes**³². This staff working document has been elaborated by Commission services after consultation with the Member States' experts and the relevant stakeholders. The aim of this document is to describe good practices on the elements to be considered by the Member States when preparing joint recommendations for the adoption of conservation measures under the common fisheries policy (CFP) to comply with their obligations pertaining to Article 6 of the Habitats Directive, Article 4 of the Birds Directive, and Article 13(4) of the Marine Strategy Framework Directive (MSFD). It aims to recall the rules and procedures relating to the submission of a joint recommendation by the Member States, in order for the Commission to adopt conservation measures by means of a delegated act pursuant to Articles 11(2) and 11(3) of the CFP. It takes into account the new regionalisation model, according to which Member States may submit joint recommendations under Article 11 of the CFP for the adoption of conservation measures through Commission delegated acts. A review of commonly used approaches for managing fisheries in marine Natura 2000 sites, with some illustrative examples, was prepared in 2018 under the Marine Expert Group³³.

³⁰ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008

³¹ Regulation (EU) 2019/1022 of the European Parliament and of the Council of 20 June 2019 establishing a multiannual plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea and amending Regulation (EU) No 508/2014.

³² <http://ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf>, available in all relevant languages here http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm

³³ <http://ec.europa.eu/environment/nature/natura2000/marine/docs/Review%20of%20fisheries%20management%20measures%20in%20Natura%202000%20sites.pdf>

Technical measures

Technical measures are a broad set of rules which govern how, where and when fishermen may fish. The numerous regulations on the technical measures in the EU needed to be modernized in light of the reformed common fisheries policy and therefore in 2016 the European Commission had put forward a **new framework proposal** for the conservation of fishery resources and the protection of marine ecosystems through technical measures³⁴. It contained targets and obligations to implement measures to minimise and where possible eliminate the incidental bycatch of species protected under the Birds and Habitats Directives, along with some baseline measures for certain sea basins, mostly those measures contained in the current technical measures regulations. The newly adopted regulation (Regulation (EU) 2019/1241³⁵) will complete the framework for the implementation of horizontal conservation measures required under Article 12 of the Habitats Directive, therefore also outside Natura 2000 sites and other MPAs.

It enables Member States to submit joint recommendations to the Commission to adopt delegated acts containing such measures. Technical measures should contribute to reducing unwanted catches and eliminate discards but also contribute to having in place management measures for the purposes of complying with their obligations of the Birds and Habitats Directive. When developing joint recommendations in relation to the protection of sensitive species and habitats, regional groups of Member States should be allowed to develop additional mitigation measures to reduce the impacts of fishing on such species and habitats. Where scientific evidence shows that there is a serious threat to the conservation status of sensitive species and habitats, Member States should introduce additional restrictions on the construction and operation of certain fishing gear or even the introduction of total prohibition on their use in a given area.

Fisheries control

A recent Commission REFIT evaluation, a special report of the European Court of Auditors and a resolution by the European Parliament have all shown that the fisheries control system dating back to 2009 had its deficiencies and was overall not fit for purpose. The Commission's proposal to **revise the fisheries control system** was adopted on 30 May 2018. The Commission decided to propose a number of changes to the Control Regulation, as well as targeted amendments to the Regulation on illegal, unregulated and unreported fishing and to the EFCA founding Regulation. The overall objective of the revision is to **modernise, strengthen and simplify** the EU fisheries control system and to increase the level playing field in fisheries controls.

The proposed rules on **fishing restricted areas** are more exhaustive as they apply to any marine area where fishing activities are temporary or permanently restricted or prohibited. In line with the EU plastics strategy, the Commission is proposing to reinforce rules on lost fishing gears, and to make the reporting of lost gears easier and systematic. In addition, under the proposed rules, fishing in fishing restricted areas is considered a serious infringement. The proposal is currently being discussed by the co-legislators.

Financing (European Maritime and Fisheries Fund, EMFF)

³⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:134:FIN>

³⁵ Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, of 20 June 2019.

Within the AP, the Commission undertook to facilitate **full and effective use** of the financial resources allocated for biodiversity protection and Natura 2000 under the EMFF for the period 2014-2020. The Commission has assessed the current use and intends to facilitate better spending through expert group meetings or bilateral dialogues with the managing authorities.

The Commission has also proposed €6.14 billion for the post 2020 European Maritime and Fisheries Fund (EMFF)³⁶. Under shared management, the Commission's proposal for the post 2020 EMFF will contribute to support the protection and restoration of marine and coastal biodiversity through support for the collection by fishers of lost fishing gears and marine litter from the sea and for investments in ports to provide adequate reception facilities for lost fishing gears and marine litter. It will also support actions to achieve or maintain a good environmental status in the marine environment as set out in the Maritime Strategy Framework Directive, for the implementation of spatial protection measures established pursuant to that Directive, for the management, restoration and monitoring of Natura 2000 areas and for the protection of species under the Birds and Habitats Directives.

Other relevant information

The Commission published the results of the study³⁷ on **identifying the drivers of successful implementation of the Birds and Habitats Directives** that investigated the genuine improvements in the conservation status of habitats and species detected in the last “State of Nature” report. Key factors for conservation success include good governance, sufficient resources, highly motivated individuals in authorities or NGOs, good cooperation between dedicated individuals and stakeholder involvement.

The Commission also published the results of **the study on the economic benefits of marine protected areas (MPAs)** and other spatial protection measures³⁸.

The updated **guidance on Article 6 of the Habitats Directive** has been published and is available in all languages³⁹.

For updated information on all our activities, please visit our web pages⁴⁰.

³⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A390%3AFIN>

³⁷ <https://circabc.europa.eu/sd/a/17c2b4a1-bf9c-4b7f-83d1-78734cc87943/Birds%20and%20Habitats%20Directives%20Success%20Drivers%20-%20Final%20Report.pdf>

³⁸ <https://publications.europa.eu/en/publication-detail/-/publication/dbe3d250-b0b5-11e8-99ee-01aa75ed71a1/language-en/format-PDF/source-search>

³⁹ http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

⁴⁰ <http://ec.europa.eu/environment/>, <https://ec.europa.eu/fisheries/>