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Review of fishing effort management in western waters

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Review of fishing effort management in western waters

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Review of fishing effort management in western waters

1. INTRODUCTION

1.1. Purpose and basis of the review

The Commission is held to assess the western waters¹ fishing effort regime of 2003² under three aspects: its implementation by Member States; the access conditions to outermost regions in the North-East Atlantic; and the effectiveness of the specific effort rules for an area west and south of Ireland, the so-called Biologically Sensitive Area (BSA).³

This review is based primarily on the Commission's monitoring of the effort regime and changes that took place in the policy context, on Member State contributions to a technical questionnaire, on an evaluation carried out by the STECF⁴, and on scientific advice given by ICES with regard to the BSA⁵.

The results of this review will be used when deciding on future avenues for the regime, which will depend on the political orientations for the reform 2012 of the Common Fisheries Policy.

1.2. Effort regulation in western waters

The western waters regime was established in 1995 with the objective to safeguard balances that existed at the time of full integration of Spain and Portugal into the common fisheries policy, and to avoid an increase in fishing effort compared to levels observed before such integration⁶. The 1995 Regulation was subsequently replaced by Regulation (EC) No 1954/2003. The main features of these consecutive regimes are as follows:

¹ The western waters comprise the North-East Atlantic west of the North Sea and Norwegian Sea, including the Exclusive Economic zones of Portuguese and Spanish outermost regions.

² Council Regulation (EC) No 1954/2003, OJ L 289, 7.11.2003 p. 1; Council Regulation (EC) No 1415/2004, OJ L 258, 5.8.2004, p. 1.

³ See Articles 3(4), 5(2) and 6(3) of Council Regulation (EC) No 1954/2003.

⁴ STECF, Report of the SGMOS 09-05 Working Group on Fishing Effort Regimes, part 3 July 2010.

⁵ International Council for the Exploration of the Sea, ICES Advice 2009, book 5, point 5.3.3.1.

⁶ See Recitals 4 and 5 of Regulation (EC) No 685/95, OJ L 71, 31.3.1995, p. 5.

	Parameter limited	Area and fishery disaggregation	Method for initial allocation
Conditions of accession for Spain and Portugal	number of vessels, and of their simultaneous presence	Irish box: zone around Ireland where access is denied; EC waters of ICES zones VI, VII, VIIIabd, Spanish waters of ICES zones VIIIc and IXa, Portuguese waters around Azores and Madeira, Spanish waters around Canary Islands; demersal vessels, specialized fishing (several meters)	accession negotiation aiming at replacing the licensing system for foreign vessels by a successor formula to avoid disturbance in fishing patterns
1995 effort regime	annual kW-days; number of vessels only for Spain with regard to two subareas around Ireland; exhaustive allocation of effort to Member States	16 areas at the level of ICES division/CECAF area ⁷ ; demersal, deep-water, scallops and edible crab/spider crab; fixed gear and towed gear, vessel length above 15m	effort, as declared by Member States, which is necessary to take up fishing opportunities, including non-limited species, without disturbing existing balances in exploitation and relative stability.
2003 effort regime	annual kW-days; exhaustive allocation of effort to Member States	nine areas at the level of ICES area/CECAF area; demersal except deep-water, scallops and edible crab/spider crab; vessel length above 15m and, for an area to the South and West of Ireland, above 10m	average effort declared for the five-year period 1998-2002

Table 1. Overview of consecutive effort regimes in western waters

2. THE CURRENT REGIME AND RELATED POLICIES

2.1. Characteristics of the current regime

The 2003 effort regime showed overall significant decreases in the allocation of maximum allowable effort to Member States. This was due *inter alia* to a more rigid criterion for establishing the effort ceiling: it was fixed at the level of the average annual effort expended between 1998 and 2002, a decision that Spain challenged without success⁸. The regime was also characterised by simplification, as the areas

⁷ CECAF: Committee for the Eastern Central Atlantic Fisheries. The western waters lie in ICES areas (North-East Atlantic) and, with regard to (parts of) the Exclusive Economic Zones around the Portuguese and Spanish outermost regions, in CECAF areas (Eastern Central Atlantic).

⁸ See Court cases C-36/04 and C-442/04.

and metiers⁹ were less detailed. In addition, the fisheries related to deep-sea species were excluded and forthwith regulated by a specific regime that did not contain regional restrictions.¹⁰ The 2003 effort regime shares with its predecessors the main feature that distinguishes it from effort regimes under multi-annual management plans: the effort allocation is fixed and does not evolve year-by-year with management targets or quota allocations for underlying stocks.

The regime's reference to fleet characteristics consists only of defining the minimum length of the vessel (15m; BSA: 10m). This has two major consequences: Firstly, small-scale vessels which rely on daily trips are excluded from management except in the BSA, where in practice, because of the low reach of small vessels, only smaller vessels from Ireland are included in the management. Secondly, control can be based on real-time electronic support, as vessels over 15m have to be connected to a satellite-based vessel monitoring system (VMS) and will, from July 2011, have to report their catches via electronic logbooks on a daily basis.

Given the large areas into which the 2003 effort regime is subdivided, each area comprises a large variety of fishing grounds. Likewise, the differentiation of fishing operations is limited to distinguishing three "target species": demersal resources excluding deep-sea species; scallops; and edible crab/spider crab. This has four major consequences: Firstly, for demersal fisheries, no distinction is made between in reality very variable catch compositions (cod/haddock/whiting; saithe; hake/monkfish/megrim; Norway lobster). Secondly, a management line has to be established between deep-sea fisheries and the general demersal fisheries; this aspect will be further evaluated with the ongoing review of Regulation (EC) No 2347/2002. Thirdly, management does not take account of the effect of different fishing techniques on exploited stocks. Finally, pelagic fisheries like mackerel, herring, horse mackerel, albacore or swordfish are not touched upon by the regime.

The parameter to which the activity restriction refers is the number of days at sea multiplied by the power of the vessel concerned. This has two major consequences: Firstly, the parameter is linked to the real activity of the vessel, but remains a "nominal" activity parameter in the sense that no distinction is made between steaming time and fishing time. Secondly, it takes account of the vessel's capacity, but only in the sense that a stronger engine means more effort.

The regime does not relate to third country fishing vessels, which are thus not bound by it.

2.2. Related monitoring and control rules

Member States keep updated lists of vessels that are entitled to fish under the 2003 effort regime. With the future implementing rules to the new control regulation¹¹,

⁹ A metier is a group of fishing operations targeting a similar (assemblage of) species, using similar gear, during the same period of the year and/or within the same area and which are characterised by a similar exploitation pattern.

¹⁰ Council Regulation (EC) No 2347/2002, OJ L 351, 28.12.2002, p. 6.

¹¹ Council Regulation (EC) No 1224/2009, OJ L 343, 22.12.2009, p. 1 (see in particular Articles 7 to 15, 26 to 32, 39 to 41, 106, 114 to 116, 124); see also Council Regulation (EC) No 2103/2004, OJ L 365, 10.12.2004, p. 12.

these vessels will need a fishing authorisation, and the corresponding list will be stored on centralised official websites of Member States. An additional fishing authorisation is needed for fishing in international waters.¹²

The calculation of the amount of effort used by vessels per area absent from port is detailed in the control regulation. Data sourcing can be linked to logbooks and identification of positions via VMS. The Commission can operate deductions from future allocations of maximum allowable effort when a Member State has exceeded the effort limit. The engine power of the vessel will be subject to certification and control.

2.3. Related management of fishing opportunities and stocks

The effort allocations to Member States are not directly related to fish stock management. However, two mechanisms are foreseen: When Member States exchange fishing opportunities, they may also exchange corresponding effort; no further guidance is given on how to calculate the effort transferred. In addition, the Commission may increase the effort allocation or allow effort transfer across areas so that the Member State can fully use its quotas or explore non-quota fisheries if backed by scientific stock assessment. No such Commission decisions have so far been taken.

The demersal fisheries subject to the 2003 effort regime are to a large extent subject to a parallel management by total allowable catches (TACs). This is in particular true for hake, monkfish, megrims, cod, haddock, whiting, pollack, saithe, ling, sole, plaice, skates and rays, and Norway lobster. While the TACs for many of these stocks have decreased during the application of the regime, the maximum effort levels did not change. Several other species of supplementary commercial value in the fisheries are not subject to TACs, e.g. squid, cuttlefish, witch, lemon sole, dab, red mullet, pout, sea bass, brill, turbot, gurnards.

The benthic species that are managed by specific effort allocations, namely scallops and edible crab/spider crab, are not subject to TACs either. They are managed complementarily at national, regional and local level. The valuable scallop fisheries are more intensely regulated in terms of seasons and gear use, in particular in the Atlantic regions of France and in Wales. Very often, self-management arrangements of inshore fisheries are in place which aim at avoiding market oversupply or organise restocking of the resource beds. Large parts of both these benthic fisheries fall out of the scope of the 2003 effort regime as they are pursued by small vessels.

Effort allocations under the 2003 effort regime are without prejudice to the more restrictive effort rules under management plans. In the western waters, three management plans are currently in force which provide for effort limitations that evolve with the stock status: the cod plan concerning waters west of Scotland and in the Irish Sea, the sole plan for the western Channel, and the southern hake and Norway lobster plan for the Iberian waters.¹³

¹² See Article 3 of Council Regulation (EC) No 1006/2008, OJ L 286, 29.10.2008, p. 33.

¹³ Council Regulations (EC) No 1342/2008, OJ L 348, 24.12.2008, p. 20, (EC) No 2166/2005, OJ L 345, 28.12.2005, p. 5, and (EC) No 509/2007, OJ L 122, 11.5.2007, p. 7.

3. IMPLEMENTATION OF EFFORT MANAGEMENT BY MEMBER STATES

All Member States concerned have developed data sourcing, monitoring and reporting tools for effort management under the 2003 effort regime. Mostly logbook sheets together with VMS data (except for the Irish vessels below 15m in the BSA) are used to determine effort consumption. The Commission receives the monthly reports on effort consumption mostly on time. Member States close the fisheries when effort allocations are exhausted, and sometimes try to avoid or protract such closures by acquiring additional effort from other Member States. Belgium, the Netherlands and Ireland have been most active in these exchanges.

Calculation of fishing effort is not fully harmonised in practice. The more consistent the method, the more easy will it also be to exploit scientific analysis of effort development, as the latter is based on harmonised methods under the data collection framework¹⁴ of the Common Fisheries Policy.

4. ASSESSMENT

In its current set-up, the effort regime has the advantage that it works as a safeguard against effort dislocation from one area to another and against exploring new fisheries without scientific advice. The restricted application to larger vessels only is driven by the principle of proportionality and feasibility of control. Control rules have evolved: From 2012, vessels from 12 meter length will have to carry VMS on board. The exclusion of smaller vessels has a factual impact on the spatial reach of the regime, as smaller vessels will presumably operate within the 12 nautical miles most of the year. Within these spatial limits, the coastal state can regulate the fisheries in principle on its own¹⁵, but no clear spatial delimitation between the international and local regimes exists.

The spatial approach has merits in its simplicity and in its consistence with the concept of ecoregions, except for the eastern Channel, which nowadays is considered belonging to the North Sea ecoregion rather than to the Celtic Sea region.

Due to its static nature, the 2003 effort regime cannot be used for stock management or management of multi-species fisheries; it was not conceived for that purpose. The definition of only one unique demersal fishery, together with the broad spatial granulation, makes the current regime too bulky for developing a direct link to stock management or management by metiers. Neither do the effort management areas always coincide with the most important TAC management areas.¹⁶ However, a general effort regime might have a potential to be linked to biological parameters and thus to future management considerations, provided that those parameters will be able to reflect the status of a variety of stocks at the same time.

¹⁴ Council Regulation (EC) No 199/2008, OJ L 60, 5.3.2008, p. 1.

¹⁵ See Articles 9 and 17 of Council Regulation (EC) No 2371/2002, OJ L 358, 31.12.2002, p. 59.

¹⁶ In particular, the effort management area ICES VIII includes the Cantabrian waters, while these are managed together with Portuguese coastal waters concerning the TACs for hake, anglerfish and megrims.

The regime could be more significant for managing scallop and crab fisheries, given that those are not subject to TACs. However, for the management of crabs, the management parameter "kW-days" is not meaningful enough, as the fishing pressure largely depends on the number of pots hauled¹⁷, and this parameter does not correlate significantly with engine power. Furthermore, the regime does not take advantage of local and regional management approaches that might relate to both smaller and larger vessels. Local policy development, in turn, is sometimes frustrated if it depends on cooperation with neighbouring fleets which exploit the same stocks.

The availability of VMS data and of daily catch records through electronic logbooks should guarantee an increase in transparency to the application of the regime. The sourcing of VMS-data per management area is an operation that can now also be achieved by coastal states with regard to vessels from other Member States operating in their waters, and a similar mechanism is planned for logbook information with the implementation of the control reform.

Checking of effort data is less obvious than monitoring of catches, as there is no cross-checking with market-data possible. This argues for taking VMS-information, which becomes more reliable and precise with evolving technical standards, as a starting point of management, and providing for a mechanism of transparency with regard to national calculation of fishing effort thereafter.

Improving the transparency in effort calculation is also a side-effect of scientific analysis of effort data collected under the data collection framework, which is being undertaken for the western waters since 2009.

With the certification and control of engine power, misreporting of engine power will be reduced in the future and thus the parameter kW made more reliable.

5. EFFORT REGIME IN NORTH-WESTERN WATERS AND SOUTH-WESTERN WATERS

5.1. North-western waters

France and the United Kingdom receive by far the largest effort allocation for demersal fisheries in ICES areas V-VI (West of Scotland) and VII (Celtic Sea), followed by Spain and Ireland (see *table 1a* of the Commission staff working document accompanying this Communication). When it comes to effort consumption notified by Member States, only Germany, Spain and the Netherlands seem to use more than half of the yearly allocation, whereby Spain (West of Scotland) and the Netherlands (Celtic Sea) have come to full use of the maximum amount in some years.

As an example, the following figures show the development of effort in demersal fisheries and catches of related key species under quota by Spanish vessels in areas V-VI and VII, and by British vessels in area V-VI. While the relation between effort and quota catches is quite different from one Member State to the other, it can be

¹⁷ Other gears of some importance: netters and trawlers for edible crabs in France (by-catch), netters targeting spider crab in France and the United Kingdom.

seen that effort use has been stable since years, in the case of Spain even when available quota species show a downward trend.

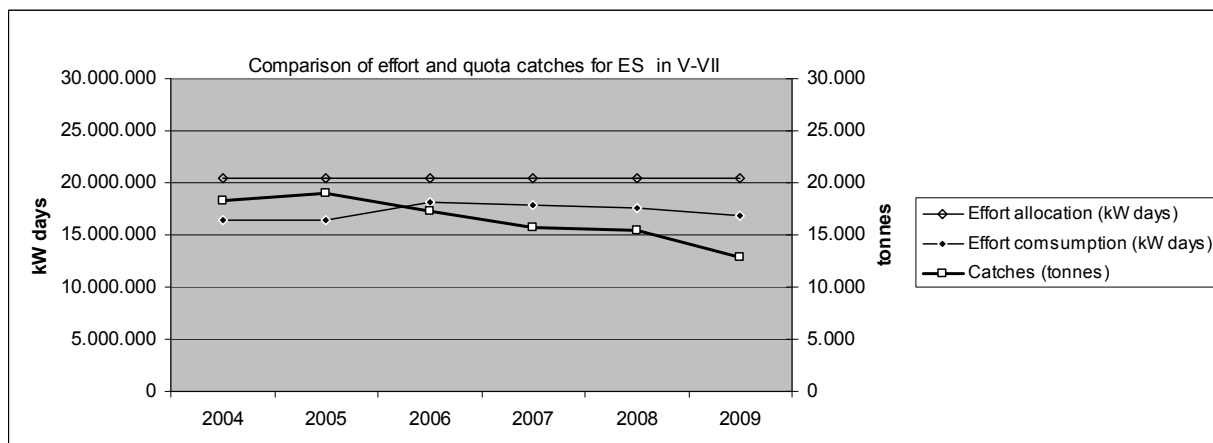


Figure 1. Comparison of reported effort and quota catches¹⁸ for Spain in V-VI and VII combined

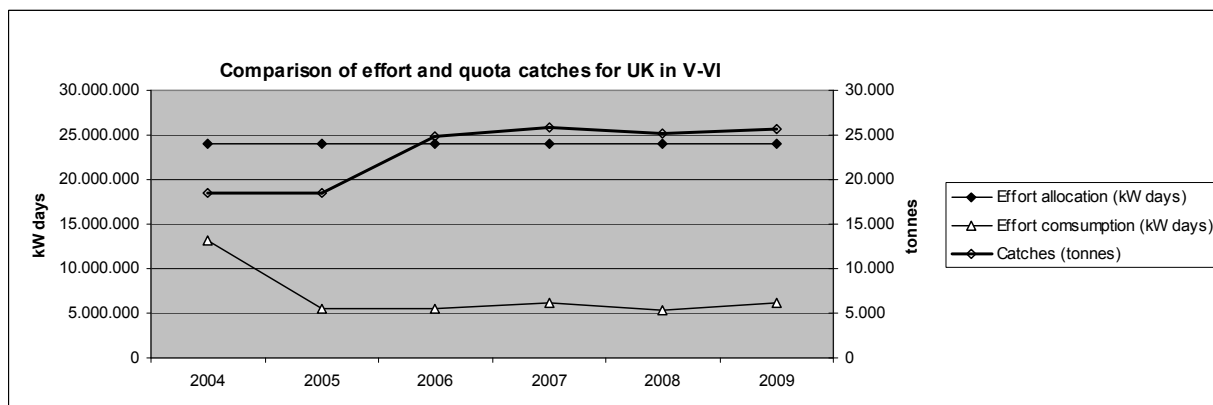


Figure 2. Comparison of reported effort and quota catches¹⁹ for the United Kingdom in V-VI

Vessels operating in the west of Scotland on demersal species are currently much more affected by the cod plan. This is particularly the case for Ireland and the United Kingdom. The following table compares, as an example, the respective effort regimes for these Member States. It should be noted that the spatial scope and fleet scope of both regimes are not identical, but do largely overlap:

Entity	western waters' effort allocation	western waters' effort use notified	cod plan's initial effort allocation ²⁰	cod plan's effort use notified
Ireland, kW-days in year 2009 west of Scotland	2.324.932	818.595 (35%)	826.543	636.462 (77%)

¹⁸ Taken into account: Hake, anglerfish, megrim, Norway lobster. The likewise important species ling and rays could not be taken into account due to area mismatch or absence of time series.

¹⁹ Taken into account: Cod, haddock, whiting, saithe, anglerfish, Norway lobster.

²⁰ This initial allocation is subject to in-year adjustments, in particular effort increases in return for cod avoidance measures.

United Kingdom, kW-days in year 2009 west of Scotland	24.017.229	6.209.268 (26%)	7.140.713	8.208.153 (115%)
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Table 2: Effort regimes in the west of Scotland for the United Kingdom and Ireland demersal fisheries.

Inasmuch as the cod plan allows for the exclusion from its effort regime of vessel groups that do not catch cod, the western waters regime keeps having a function as a general framework.

For the scallop and crab fisheries (see *table 1b* of the Commission staff working document), Ireland decommissioned vessels in order to guarantee the continuous observance of the scallop effort ceiling.

5.2. South-western waters except outermost regions

Spain and France receive by far the largest effort allocation for demersal fisheries in ICES areas VIII and IX, followed by Belgium (see *table 2* of the Commission staff working document). When it comes to effort consumption notified by Member States, Spanish and Belgian vessels seem to operate at their limits, while the French effort would appear to have decreased remarkably. In ICES area IX, from Southern Galicia to the Gulf of Cádiz, only Spanish and Portuguese vessels are allowed to fish for demersal species. Spanish vessels appear to operate close to the limit, while Portuguese vessels seem to have decreased their effort.

Effort towards scallops and crabs in these areas is reserved for France (area VIII) and Spain (areas VIII and IX). Again, only Spanish vessels would appear to operate in the vicinity of the limits.

6. EFFORT AND CONDITIONS FOR FISHING ACTIVITIES AROUND THE AZORES, CANARY ISLANDS AND MADEIRA

6.1. Background

The 1985 Treaty of Accession of Spain and Portugal introduced a mechanism of yearly Council decisions for regulating reciprocal access to the exclusive economic zones around Azores, Madeira and Canary Islands. The ensuing Council decisions preserved an exclusive access of national vessels to each area, with a few exceptions concerning certain tuna fisheries. The succeeding effort regime of 1995, by prohibiting the access of modern tuna vessels and by fixing exhaustively the allowable effort at the level of the outermost region, worked in practice as a continuation of that regime. The 2003 effort regime reduced the level of exclusivity in view of the principle of free access to Community waters: first, by creating a specific access regime in favour of local fleets within the islands' waters up to 100 nautical miles, and second by taking out the deep-sea fisheries from the island-related effort regulation. These decisions were later challenged without success by the Azorean government.²¹

²¹ See Court cases T-37/04 and C-444/08.

The 2003 regime stipulates that, in the waters up to 100 nautical miles from the baselines of the Azores, Madeira and Canary Islands, the Member States concerned may restrict fishing to vessels registered in the ports of these islands, except for vessels that traditionally fished in these waters. The Commission is not aware of any national legislation implementing this limitation of access for non-local vessels. However, it appears that the said limitation is acknowledged as a fact. Moreover, Spain and Portugal signed, in 2008, a bilateral agreement²² that limits the reciprocal access of island fleets to a total of 38 vessels, with a number of technical specifications.

6.2. Effort management

The effort allocations under the 2003 effort regime for demersal fisheries are reserved for Portugal in the Azorean areas and for Spain and Portugal in the management areas that concern both Madeira and the Canary Islands. Only the demersal fishery around the Canary Islands is of continuous significance. Scallop fishing is not possible in neither of those areas, and a crab fishery is only allowed for Spain around the Canary Islands (see *table 4* of the Commission staff working document). Given that the most important fisheries are deep-sea species and highly migratory large pelagic species, both of which are no longer concerned by this regime, the effort regime is of very limited effect and importance. Both the Azorean and the government of the Canary Island have highlighted their interest to revisit the content of the access regime including its spatial scope in the context of the CFP reform.

7. EFFORT REGIME IN THE BIOLOGICALLY SENSITIVE AREA

7.1. Background

The BSA is a sub-area of the Celtic Sea within the exclusive economic zones of Ireland and the United Kingdom, designed uniquely for a separate effort management since 2004. The borders of this area were identified following scientific information on high concentration of juvenile hake. The BSA overlaps with a technical measures area that requests using larger mesh sizes in the context of recovery measures²³ for the northern hake stock; the Commission staff working document illustrates the boundaries. The creation of this box was challenged by Spain without success.²⁴

7.2. Effort management

France receives the largest effort allocation for demersal fisheries in the BSA, followed by Ireland, Spain and the United Kingdom (see *table 3* of the Commission staff working document). When it comes to effort consumption notified by Member States, Spanish vessels appear to be most active in this area, followed by Ireland. Accordingly, only Spain operates close to the effort limits.

²² Agreement on the operations of the traditional fishing fleet of the Azores, Madeira and the Canary Islands, signed in Braga on 21.1.2008.

²³ Commission Regulation (EC) No 494/2002, OJ L 77, 20.3.2002, p. 8.

²⁴ See Court cases C-36/04 and C-442/04.

The scallop fishery is currently only pursued by Irish vessels, although France also has an effort allowance. Concerning the crab fishery, Ireland appears to be most active and operating close to its effort limits, while France appears to maintain a huge effort reserve.

7.3. Biological assessment

The Commission has asked ICES for scientific advice on the impact of effort regulation in the BSA in the context of other conservation measures. ICES advised that the boundaries of the BSA coincide with the main nursery area of hake and anglerfish, and with the spawning area of megrim, and of hake to a lesser extent. In addition, the boundaries overlap with important spawning and nursery areas for haddock and whiting, although this concerns more coastal areas and thus less the international fleets which operate more in the southern and western part of the BSA. ICES considers the impact of the BSA on the improving status of hake as unclear, but opines that, seen in conjunction with the technical measures, megrim and anglerfish may have benefited from the presence of the BSA. ICES stresses that the effort limitations seem not to be restrictive for most countries, but is in favour of maintaining the measure in order to avoid undesired changes in fishing patterns; in doing so, the Union should set clear conservation objectives for the BSA which should receive a close and transparent follow-up.

8. CONCLUSIONS

The 2003 effort regime has succeeded in creating the conditions for a full integration of Spain and Portugal into the main CFP rules. In view of its static character, it is no longer constraining the fleet activity for most Member States in a considerable number of areas, given the continuous contraction of overall fleet capacity²⁵ and the decrease in fishing opportunities for quota species. By contrast, fishery-specific effort regimes that are connected to yearly stock advice were subsequently developed in several of the areas. A future link of a large-scale effort regime to recurrent stock advice in mixed fisheries might be possible; this would nevertheless require increasing the detail of the fishery definitions. With regard to the BSA, the regime is embedded in a context of technical measures which together have shown to be conducive to the improved status of some important stocks. Scientific advice suggests that future restrictions should be more clearly linked to resource management objectives.

The management by fishing effort could represent an important tool in the scallop and crab fisheries, as those are not limited by TACs. However, the parameter currently used for management is not precise enough, especially for crab fisheries, and the regime should be able to react to management initiatives of stakeholders, which is currently not the case.

For the outermost regions of the eastern Atlantic, the regime presents a broad framework, which has only partly been complemented by national legislation. The

²⁵ See the Commission's annual report on Member States' efforts during 2008 to achieve a sustainable balance between fishing capacity and fishing opportunities, COM(2010)60 final.

most important fisheries (large pelagic species and deep-sea species) are not regulated down to the regional level.