



Birdlife position on Technical Conservation Measures

Submission on behalf of BirdLife Europe in respect of revision of the Technical Conservation Measures Regulation (EC) No 850/98 for the North Atlantic and North Sea

1. Introduction

1.1 Legislative context and geographical scope

The existing Regulation (as amended) of 30 Mar 1998 is a set of measures aimed at ensuring the protection of fisheries resources by technical means, including fishing gear specifications, minimum landing sizes, catch composition rules, and establishing restricted fishing areas. Transitional measures for 1 Jan 2010 – 30 June 2011 were set out in Council Regulation (EC) No 1288/2009. This ensured that the technical conservation measures (hereafter TCMs) contained in Regulation (EC) No 43/2009 fixing fishing opportunities for 2009 would remain in place.

The Commission adopted a proposal (COM(2012) 298 final) on 21 June 2012 for a Regulation amending Council Regulation (EC) No 850/98 and repealing Council Regulation (EC) No 1288/2009.

The new proposal will be faithful to 850/98 in applying to the North Atlantic and North Sea, and will not address the Mediterranean and Baltic (which have their own regulations) although *'it is important that existing measures within these sea basins are compatible with the new measures proposed'*. The Commission's Roadmap (no 1, June 2011) also asserts that *'The new measures will be applied in the North Atlantic and North Sea but the intention is to ensure that the basic principles contained in within the new framework have linkage with the Mediterranean, Baltic and Black Seas, as well as non-EU waters [alluding to necessary linkage with activities of EU vessels in relevant RFMOs] allowing possible integration over time'*.

1.2 Environmental integration

BirdLife welcomes the intent to fully integrate TCMs with environmental legislation and needs.

Com(2012)298 Final notes (p. 2) that even temporary discontinuation of the technical measures contained in Regulation (EC) No 43/2009 *'would have negative consequences for the conservation of the stocks they concern as well as for ecosystem of vulnerable deep-sea*

habitats and seabirds – including in a number of Natura 2000 sites established by Directive 92/43/EEC in the European territory...’. BirdLife strongly endorses this reasoning (see e.g. 2.5.2, below).

Further, the Commission’s Roadmap for what is intended to be a simplification of the existing framework notes that, in compliance with CFP reform, the proposal must *‘ensure the protection of marine biological resources and the reduction of the impact of fishing activities on fish stocks and on marine eco-systems. It must also be clearly aligned with other elements of the CFP regulation, e.g. multiannual plans and the discard policy as well as environmental conservation legislation including the Habitats Directive, the Birds Directive and the Marine Strategy Framework Directive...’* .

In this regard, the scope of the technical measures framework set out in the CFP reform proposal shall, inter alia, *‘reduce catches of unwanted marine organisms’ and ‘mitigate the impact of fishing gear on the ecosystem and the environment, with particular regard to the protection of biologically sensitive stocks and habitats’*.

Addressing the question *‘What are the main problems which this initiative will address’*, the Road Map highlights three inherent problems in the current legislation, including *‘the underlying deficiencies in the selectivity of fishing gears and their impact on the ecosystem’*. In this context, it is stated that *‘Under current regulations it is apparent that many legal gears being used are unselective, leading to high discarding as well as incidental catches of biologically sensitive species’* (BirdLife underlining), and that *‘Without species-selective fishing technology, these problems cannot be solved effectively’*.

2. Environmental considerations in relation to seabird bycatch

2.1 EU Seabird Plan of Action

The Commission has proposed a Plan of Action (EU-POA) for reducing incidental catches of seabirds in fishing gears (COM(2012)665final) in response to the recognition by ICES that there is a significant problem of seabird bycatch in EU waters, with an estimate of at least 200,000 seabirds killed each year across the entire region. This toll includes a number of endangered, threatened and protected species, including the Critically Endangered Balearic shearwater *Puffinus mauretanicus*. This species and indeed all the other victims of bycatch in fishing gears are protected by the EU Birds Directive.

The EU-POA breaks new ground in being the first POA under the FAO’s IPOA-Seabirds to follow the FAO’s Best Practice Technical Guidelines¹ for reducing seabird bycatch in fishing gears. In so doing, the EU-POA addresses all fishing gears (not just longlines) which incur seabird bycatch, and is also notable in addressing not only EU waters but also external waters wherever EU-flagged vessels operate.

¹ <http://ftp.fao.org/docrep/fao/011/i0459e/i0459e00.pdf>

The Objective of the EU-POA goes further than ‘reducing’, rather it requires ‘*to minimize and, where possible, eliminate the incidental catches of seabirds, with priority action focussing on individuals belonging to at least 49 threatened species of seabird populations by EU vessels operating in EU and non-EU waters, as well as by non-EU vessels operating in EU waters. For other seabirds where the populations are stable but bycatch is at levels that are cause for concern, bycatch should be reduced as a first step towards bycatch elimination*’.

The strength and ambition of this objective is in keeping with the Art 5 of the Birds Directive which requires protection for all wild birds by prohibiting various acts including, most relevant to fisheries, deliberate killing or capture by any method. Legal guidance sought by BirdLife indicates that Art 5 encompasses not only an intention to capture or kill but also an acceptance of the *possibility* of capture or killing. This then invokes an obligation on fishing vessels to eliminate seabird bycatch to the maximum extent possible.

Specific Objective 3 of the EU-POA is Implementation of mitigation measures where information indicates occurrence of seabird bycatch. This recommends a number of actions, including for the Commission the overarching action to: ‘*Propose the incorporation of relevant mitigation measures under the technical measures regulation being developed in the context of the reform of the CFP and also ensure the inclusion of specific measures under multiannual plans, as a matter of priority where appropriate and urgently required*’.

The first action in Specific Objective 3 also specifies that ‘*Mitigation measures should comply with minimum technical standards as set out in BirdLife and ACAP guidelines.*’ (Globally, 13 countries have ratified the Agreement on the Conservation of Albatrosses- ACAP), including Spain, France and UK).

In the case of TCMs for mitigating incidental catch of seabirds, it is widely understood (e.g. CCAMLR, FAO) that a combination of measures and practices is generally most effective at mitigation. This is also the experience of BirdLife International’s Albatross Task Force (ATF²) which currently works with fishermen on land and at sea in 8 countries in Southern Africa and Latin America to develop and tailor the optimum combination of measures for reducing seabird bycatch while maintaining fishing efficiency and safety. In our recommendations (below), therefore, a suite of measures may be proposed, as appropriate to a particular fishery.

2.2 Impact Assessment

In 2011, the UK Marine Resources Assessment Group (MRAG Ltd) in collaboration with Lamans and Poseidon, completed a study³ to assess existing mitigation measures and their effectiveness in key areas where incidental catches of seabirds have been identified as occurring, based on a study by the ICES Working Group on Seabird Ecology (WGSE 2008⁴,

² http://www.rspb.org.uk/Images/atf_annual_report_2011_tcm9-319048.pdf

³ http://ec.europa.eu/fisheries/documentation/studies/seabirds_2011_en.pdf

⁴ <http://www.ices.dk/reports/LRC/2008/WGSE/WGSE2008.pdf>

2010⁵). Six case study fisheries were used to explore the scale and extent of seabird bycatch, assess fishers' perception of the issue, identify existing and potential mitigation measures, and assess their cost-effectiveness.

The study concluded (§7.2.1, p. 142) that:

'Mitigation measures should be introduced and enforced as soon as possible in fisheries in which there is a likelihood that incidental catches of seabird populations are at unsustainable levels, particularly when the species caught are threatened or are being impacted by a number of different fisheries.'

As indicated above, however, the Birds Directive requires that mitigation measures should be introduced even if these incidental catches are not occurring at levels which are unsustainable for the relevant seabird populations. In addition, the precautionary approach should apply as required by the Common Fisheries Policy.

2.3 Policy Options

The TCMs Road Map Option 3 ('Consolidation and Harmonisation') proposes a new legislative framework which would simplify the current complex rules but also empower Member States to adopt national rules reflecting local/additional regional specificities of fisheries.

This Option envisages a 3-tiered approach: (i) a new basic regulation setting objectives for the new EU TCM framework; (ii) a new Council and Parliament regulation setting out the general principles and 'toolbox' approach to TCMs and their implementing strategies; (iii) the empowerment of Member States to adopt national technical measures in the context of regionalization.

BirdLife favours Option 3, which – as the Road Map points out, allows for the provision (by Member States) of incentives to reward responsible practices.

This in turn is in keeping with the Impact Assessment (§7.2.1) for the EU Seabird Plan of Action:

'Some flexibility in the selection of measures might be warranted due to differing fishery-specific characteristics. Selection of which measures should be introduced in these areas could be based on a combination of those which have been proven to be most effective elsewhere with measures assessed by the fishers as likely to be most cost effective. In the long-term, the requirement for mitigation measures could be waived if the industry can prove that seabird bycatch is not a problem, either through the collection of independent bycatch data, or on onboard monitoring such as camera systems'.

And §7.2.2:

⁵ <http://www.ices.dk/reports/SSGEF/2010/WGSE10.pdf>

'Whilst there are some similarities across regions, such as the small-scale longline fisheries in the Mediterranean, and the coastal gillnet fisheries in the Baltic, each fishery has its own specificities, and measures would be best adapted for each.

In order to avoid top-down definition of detailed and specific mitigation measures for individual fisheries, a results based approach is recommended, that can be implemented on a case-by-case basis. The results-based management approach would enable individual fisheries to assess and test the available mitigation measures and determine the combination that is most appropriate, cost-effective and acceptable'.

2.4 Recital and Horizontal measures

BirdLife supports the approach of an overarching horizontal framework which sets the context and principles under which specific TCMs apply.

We propose that the recital to this framework should include reference to, inter alia:

- COM(2012)665final. *Action plan for reducing incidental catches of seabirds in fishing gears.*
- FAO (2008) *Report of the expert consultation on best practice technical guidelines for IPOA/NPOA-Seabirds*, Bergen, Norway, 2-5 September 2008. FAO Fisheries and Aquaculture Report No. 880 (FIIT/R880(En)). Rome.
- ICCAT 2007 Commission Rec. 07-07. *Recommendation by ICCAT on reducing incidental by-catch of seabirds in longline fisheries* [entered into force June 2008].
- ICCAT 2010 Commission Rec. 10-10. *Recommendation by ICCAT to establish minimum standards for fishing vessel scientific observer programs.* [entered into force Aug 2011].
- ICCAT 2011 Commission Rec. 11-09. *Supplemental Recommendation by ICCAT on reducing incidental by-catch of seabirds in ICCAT longline fisheries* [entered into force June 2012]⁶.

We propose that the revised TCM framework should include, inter alia, the following horizontal elements:

⁶ Up until the 2009 Regulation (EC No 43/2009) establishing fishing opportunities for Community vessels, ICCAT seabird mitigation measures for pelagic fisheries were transposed into the annual EC regulation (see Ch XIV, Art 88 of 43/2009), as indeed were the seabird measures for other RFMOs. However, subsequent to 2009, such seabird measures have not been transposed into these Fishing Opportunities Regulations. This coincides with entry of the Lisbon Treaty which only allows quantitative limitations and related measures to be part of the Fishing Opportunities Regulation adopted by the Council each year (see article 43(3) TFEU). Nevertheless, these RFMO measures are still legally binding on EU vessels.

- i. **As Regulation 850/98 does not currently include any measures for mitigating seabird bycatch, neither does it include definitions of such measures. Terms such as bird-scaring/tori line, line weighting/integrated weight longlines and night-setting need to be defined. It may also be desirable to define variations in longline fishing associated with such measures, especially bottom-set (or demersal) longline and pelagic longline.**

- ii. **Ensure under multiannual plans the inclusion of specific technical measures to assist the achievement of maximum sustainable yield of the relevant fisheries by 2015, and to minimize adverse impacts on the wider marine ecosystem.**

Justification: Art 10 of the Commission's proposal for CFP reform (COM(2011)425 final), 'Multiannual plans shall provide for adaptations of the fishing mortality rate, resulting in a fishing mortality rate that restores and maintains all stocks above levels capable of producing maximum sustainable yield by 2015'. In Art 11 addressing 'Content of multiannual plans', (e) specifies that they shall include 'technical measures including measures concerning the elimination of unwanted catches'; Art 11(h) further specifies the inclusion in multiannual plans of 'minimisation of impacts of fishing on the eco-system'.

As noted above, the EU Seabird Plan of Action also advocates to 'ensure the inclusion of specific measures under multiannual plans, as a matter of priority where appropriate and urgently required'.

- iii. **Application of technical measures should be in accordance with, respectively, a precautionary approach and an ecosystem-based approach to fisheries management, in keeping with relevant environmental legislation, namely the Birds and Habitats Directives and the Marine Strategy Framework Directive.**

Justification: Art 2 of the Commission's proposal for CFP reform specifies that the CFP shall apply the precautionary approach to fisheries management, shall implement the ecosystem-based approach to ensure that the impacts of fishing activities on the marine ecosystem are limited, and shall integrate the Union environmental legislation requirements.

- iv. **Subject to risk analysis for seabird bycatch, pelagic longline fisheries in the region covered by this Regulation shall apply ICCAT measures for seabird bycatch reduction (as in 2.4, above)**

- v. **Appropriate technical measures contributing to the achievement of the conservation objectives of designated Natura 2000 sites shall be adopted as a condition of access to fishing opportunities in those areas.**

Justification:

The Commission has provided guidance⁷ on fisheries measures for Natura 2000 sites, which includes the following: *'In order to maintain or restore the conservation status of relevant habitats or species, Member States should assess if there is a need for fisheries management measures. Whenever a Member State requests regulatory fisheries management measures in order to fulfil conservation objectives, the Commission will evaluate the request and as appropriate take the necessary measures under the Common Fisheries Policy, based on scientific advice and after broad consultation with stakeholders, especially through the (R)ACs.'*

The IA for the EU Seabird Plan of Action states *'A number of marine Natura2000 sites exist in the case study fisheries and throughout the EU. However, fishery management measures have not yet been adopted for all sites. The introduction of mitigation measures, gear restrictions, seasonal and temporal closures, should also concentrate on these sites.'*

The EU Seabird Plan of Action states that the Plan *'will be supported by the increased establishment of fishery management measures in Special Protection Areas created under the Birds Directive (Article 4).'*

Reflecting this, the Actions of the Plan include: *'Progress the development and implementation of fisheries management measures to protect seabirds in designated SPAs under the Birds Directive....'*

The Plan further states that *'Demonstrable use of seabird friendly gear should be a pre-condition for access to fishing opportunities in such areas where seabirds are a qualifying feature and where bycatch threatens their favourable conservation status.'*

- vi. Appropriate technical measures contributing to maintaining or restoring the favourable conservation status of other MPAs (e.g. OSPAR) and Important Bird Areas (IBAs) shall be adopted as a condition of access to fishing opportunities in those areas.**

Justification:

The IA for the EU Seabird Plan of Action states that *'Implementation of measures within Important Bird Areas should also be considered.'*

The EU Seabird Action Plan states that in addition to the need to establish measures for SPAs, *'Member States will be encouraged to adopt similar measures within the network of Important Bird Areas (IBA).'*

Reflecting this, the Actions of the EU Seabird Plan of Action include: *'Progress the development and implementation of fisheries management measures to protect seabirds in designated SPAs under the Birds Directive, in other MPAs, including those established in*

⁷ http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf

overseas countries and territories as well as in IBAs and extend these to the wider seas where required.' (BirdLife's underlining).

There is therefore clear intent here to apply fisheries management measures, including technical conservation measures as appropriate, for protection of MPA networks in the sense of the Marine Strategy Framework Directive, i.e. comprising not just Natura 2000 sites but also other areas contributing to the networks of individual Member States and of regional sea basins. As for Natura 2000 sites, the introduction of mitigation measures, gear restrictions, and seasonal and other temporal closures, should also be considered on these sites.

- vii. Bottom trawls and others gears with potentially adverse impact should be excluded from SACs commensurate with the sensitivity of the qualifying feature(s), risk assessment and the conservation objectives of the site.**

- viii. Bottom trawls and others gears with adverse impact should be excluded from all reef SACs.**

Justification

The final 'EMPAS' Report⁸ (p.97) concludes that '*Full exclusion of bottom trawling from all reefs has the greatest potential to achieve favourable conservation status for the habitat and its typical species. The report continues that 'If this is not practical, priority for exclusion of bottom trawling should be given to areas with high ecological importance and to those areas that have been identified as having low and/or no fishing activities.'*

- ix. Where there is significant bycatch conflict with seabirds, gill-nets should be excluded in the season of highest risk or there should be transition to alternative fishing gears, e.g. fish-traps.**

Justification

See EMPAS Study pp. 111-112.

⁸ <http://www.ices.dk/projects/empas/WKFMMPA08.pdf>

- x. **Implement adequate levels of observer coverage or remote monitoring technology for monitoring seabird bycatch in order to provide representative data, to verify efficacy of prescribed mitigation measures and to inform further development of such measures.**

Justification

The EU PoA has an action to: *'Adopt a precautionary approach where information is lacking or uncertain on seabird bycatch and undertake more extensive monitoring of fisheries falling into this category (A minimum 10% observer coverage in the short term should be aimed for).'*

In 2011, ICCAT recommendation (10-10) entered into force requiring each CPC to ensure with respect to its domestic observer programmes a minimum 5% observer coverage of fishing effort in each of the pelagic longline, purse seine, and bait-boat fisheries. It was further specified that for vessels <15m, where *'an extraordinary safety concern may exist that precludes deployment of an onboard observer, a CPC may employ an alternative scientific monitoring approach that will collect data equivalent to that specified in this recommendation in a manner that ensures comparable coverage.'*

The FAO's Best Practice Technical Guideline No. 7 addresses Observer Programmes in which States and RFMOs/As are encouraged to undertake six related actions. For an example of data collected by fishery observers at sea in relation to seabird incidental catch, see Table 5 in the FAO Guidelines.

Large offshore longline vessels, in particular, should be in scope for national observer programmes and data collection protocols. In keeping with ICCAT Rec 10-10 (see above), in the case of smaller vessels (<15m) remote monitoring technology capable of the same level of monitoring should be applied.

To BirdLife's knowledge, only one fishery in EU waters in which a significant seabird bycatch risk is suspected or known has established a national observer programme: since 2008, the Spanish Institute of Oceanography (IEO) has run an observer programme aboard pelagic longline vessels in the Spanish Mediterranean and Alboran Seas, covering about 5% of fishing effort.

2.5 Specific Technical Conservation Measures

2.5.1 Maintenance of the closed box for sandeel fishing in the North Sea

The proposal (COM(2012) 298 final) to amend 850/98 argues (p. 6, §8) that *'In the light of advice from STECF linking low sandeel availability to the poor breeding success of kittiwakes, an area closure in ICES Subarea IV should be maintained.'*

BirdLife Rec: We strongly support maintenance of the current area closure to sandeel fishing.

Justification

According to the UK Joint Nature Conservation Committee (JNCC)⁹, the black-legged kittiwake, whose changing status is most closely linked to sandeel abundance and which triggered the establishment of the closed area in the North Sea in 2000, experienced a 41% decline in abundance in the UK between 2000 and 2011. Most of this was driven by declines on the North Sea coast of Scotland where the index of abundance has declined steadily since the late 1980s, reaching the lowest point yet recorded in 2011. JNCC concludes that '*It seems likely, given the declining trend in productivity [of kittiwake] recorded in Scotland since 1986, coupled with falling [adult] survival rate, that the decline will continue*'.

2.5.2 Gill-net fishery on SPA Frisian Front

BirdLife Rec: We support the Dutch Government's proposal (and endorsing advice from ICES¹⁰) for a ban on gill-netting on the Frisian Front from June-Nov (inclusive).

Justification

The SPA Frisian Front (awaiting designation) in the North Sea is an area of high productivity, lying roughly 75 km to the north of Den Helder and occupying ~ 2,880 km². The Front lies in the transition area between the shallow sandy grounds of the Southern North Sea and the deeper muddy bottoms of the Oystergrounds. Here, the sea floor drops 10 – 15m in a relatively short distance and there is separation between various water masses, generating significant nutrient loads and plankton production. This supports high abundance of small pelagic fish in late summer, in turn attracting large numbers of seabirds, some of which meet criteria which qualify for SPA designation under the Birds Directive.

In terms of fisheries interactions on the Frisian Front, the key species is common guillemot *Uria aalge*. More than 20,000 guillemots reside regularly, especially in the post-breeding months when birds of UK origin swim to the Front with their young to feed and moult. Adult guillemots and their flightless young enter the area July-Aug from a NW direction (mainly Scottish breeding colonies) but it is regarded as precautionary to consider protection from June (inclusive) as sea warming may advance the risk period in future years. Moulting adult guillemots additionally occupy the Frisian Front in Aug-Nov, after which winter storms start to break down the front. The total vulnerable period is therefore June-Nov.

The main fishing effort in the Frisian Front is beam-trawling (Neths, UK, Germany), followed by otter trawl and gill-net fisheries (mostly non-Dutch) for flatfish. Gill-netting effort is low but, on evidence from similar fisheries, and considering the age spectrum of the guillemot assemblage, the bycatch risk was classified as 'high' by the Dutch FIMPAS (Fisheries Measures in Protected Areas¹¹) process.

⁹ <http://jncc.defra.gov.uk/page-2889>

¹⁰ http://www.ices.dk/committe/acom/comwork/report/2012/Special%20Requests/NL_Frisian_Front.pdf

¹¹ ICES 2012. Report of the FIMPAS Workshop 3 – Management proposals for Dogger Bank, Cleaver Bank and Frisian Front, 24-26 Jan 2011. Den Helder, The Netherlands. ICES Advisory Committee, 32pp.

The Dutch proposal for fisheries measures for SPA Frisian Front is therefore a seasonal ban on gill-netting from 1 June – 30 Nov each year. On the basis of the FIMPAS analysis, In September 2012 the Dutch Government submitted a request to ICES seeking advice on the degree to which the implementation of the proposed fisheries measures will progress the Frisian Front SPA towards the achievement of the conservation objectives. In their response (Nov 2012: see footnote 10), ICES, though they judged gill-net effort to be negligible, concurred that gill-netting should be banned on a precautionary basis from June-Nov.

BirdLife considers that in the present state of knowledge, it is not possible to differentiate between potentially different gill-net configurations on the Frisian Front so the ban should initially apply to any gill-net or trammel net used there. It may be possible to exempt some configurations in the future if evidence can be provided to establish that they incur no/negligible bycatch. It is possible that potential mitigation measures such as high-visibility netting panels may influence this but for gill-nets such approaches are as yet little advanced in comparison with mitigation for longlines and trawls.

For all types of gill-nets it will be important to collect data on bycatch rates to validate the need for a seasonal ban and to develop tailored mitigation solutions.

2.5.3 The Gran Sol demersal longline fishery for hake (ICES areas VI, VII, VIII a,b,d,e)

2.5.3.1 Description of fishery and impact on seabirds

In 2006-07, an independent onboard survey¹² was made of the spatial and temporal interaction between the Gran Sol fishery (W Ireland, ICES VII) and seabirds. At that time, the fleet consisted of about 35 Galician demersal longline vessels operating on average ~165 days per year in the area and targeting mainly hake and black bream. At any one time, 16 vessels were estimated to be fishing, though actual fishing effort needs further revision. Lines were set mostly at night and at dawn.

Three surveys were undertaken, representing the entire seasonal spread of the fishery, during which the number of hooks set, the proportion monitored, and the seabird bycatch was recorded, along with any influencing conditions – notably the use or otherwise of deck lighting at the stern of the vessel. During the course of the study, a total of 238,025 hooks were set on the observed vessels using deck lighting.

An average rate of 1.008 birds per 1000 hooks was estimated, which would equate to a total of 56,307 seabirds of six species captured per year by the Spanish fleet activity, given the fishing effort reported above. This rate is *very high* by global standards, at the time representing the highest estimated average annual mortality of seabirds in any single global fishery¹³. By far the

¹² Barros, A. 2007. Embarcados en Gran Sol. La Garcilla, 130: 15-17 . The study was conducted by SEO/BirdLife, through an agreement with the port authority of Celeiro (Lugo Province, Galicia) that was endorsed by the Dept of Environment of the Government of Galicia aiming to promote sustainable fisheries for seabirds in the Gran Sol fishing grounds. The data given here in §2.4.1 are a combination of Barros 2007 and SEO/BirdLife unpubl, summarized in http://www.birdlife.org/eu/pdfs/Shadow_Community_Plan_of_Action_Sep_FINAL.pdf

¹³ http://www.int-res.com/articles/esr_oa/n014p091.pdf

most heavily impacted species was Great shearwater *Puffinus gravis* (annual estimated total bycatch > 39,000), a species not currently believed to have a declining global population (though few, if any, relevant data exist). Nevertheless, the sheer scale of the numbers caught is cause for concern. Further study is required to verify that the bycatch rate is routinely of this magnitude, and total figures should be reassessed after properly scaling up fishing effort.

Of particular concern are ICES VIII a and b areas. No bycatch data have been available until recently but the first qualitative survey results have been obtained through the Interreg FAME project (Future of the Atlantic Marine Environment¹⁴). Preliminary results suggest that the potential impact of fishing gears on seabirds could be particularly high, given that these areas are part of the main non-breeding grounds (especially July-October) of Balearic shearwater, Europe's most threatened seabird, for which demersal longline has been identified as one of the two main threats¹⁵. Areas VIII a and b include a wider variety of seabirds species than the more pelagic areas, including several ETP species.

2.5.3.2 BirdLife recommendations for amending Gran Sol regulations

In the case of TCMs for mitigating incidental catch of seabirds, it is widely understood (e.g. CCAMLR, FAO) that a combination of measures and practices is generally most effective at mitigation. This is also the experience of BirdLife International's Albatross Task Force (ATF¹⁶) which currently works with fishermen on land and at sea in 8 countries in Southern Africa and Latin America to develop and tailor the optimum combination of measures for reducing seabird bycatch while maintaining fishing efficiency and safety.

Under Specific Objective 3 of the EU Seabird Plan of Action, responsible parties (a combination of the Commission, Member States and RFMOs) are asked, by the end of 2013 at latest, to:

Implement proven mitigation measures in the Gran Sol, Mediterranean and non-EU waters (where not already required to do so). In these fisheries at least two of the following mitigation measures should be used:

- *Night setting with minimum deck lighting*
- *Bird scaring lines (Tori lines)*
- *Line weighting*

¹⁴ <http://www.fameproject.eu/en/>

¹⁵ http://ec.europa.eu/environment/nature/conservation/wildbirds/action_plans/docs/puffinus_puffinus_mauretanicus.pdf

¹⁶ http://www.rspb.org.uk/Images/atf_annual_report_2011_tcm9-319048.pdf

Mitigation measures should comply with minimum technical standards as set out in BirdLife and ACAP guidelines¹⁷.

As a suite of measures is generally optimum, we can agree with the recommendation of the EU Seabird Plan of Action to use 2 out of 3 listed mitigation measures; this 'menu' approach follows that used in ICCAT and other tuna RFMOs for pelagic longlining. Given that on the Gran Sol the main species at risk – great shearwater – is probably a quite deep diver, line weighting is likely to be particularly effective. If night-setting is adhered to, then line weighting should take priority over a bird-scaring line. If day-setting is unavoidable¹⁸, then a bird-scaring line should be used in conjunction with line weighting.

To the extent possible, the TCM Regulation should specify these individual options as follows:

BirdLife Rec: *Setting and hauling shall be done between dusk and dawn; vessel external lights must be reduced to those strictly necessary for navigation and fishing purposes.*

Justification

High visibility of baited hooks to seabirds is the principal driver of seabird bycatch in this fishery. There is therefore a strong onus on the fishery to constrain operations to the lowest levels of ambient and artificial light. BirdLife therefore proposes a measure to make night-setting a requirement.

Based on interviews with skippers under evaluation, the Public Comment Draft Report¹⁹ (June 2011) for the MSC certification of the Grupo Regal vessels longlining for hake on Gran Sol states that:

The main mitigation measure in terms of determining the scale of likely bycatch is simply whether deck lights are on, during night time hours at the time of shooting and hauling gear. The Grupo Regal Code of Conduct states that lights will be off, and the design of the vessel, with a substantial shelter deck means that light loss is low.

BirdLife's recommendation is therefore to go beyond this Code of Conduct (= voluntary measure) and instead make the specification of setting time and vessel lighting mandatory for all demersal longline vessels on the Gran Sol, not just those seeking or under MSC certification.

A similar requirement should be legally binding on demersal longlining for hake elsewhere in EU waters (e.g. the Gran Sol vessels are understood to fish for hake further north in the summer).

¹⁷ <http://www.rspb.org.uk/ourwork/policy/marine/international/publications.aspx>

These Factsheets have been widely distributed (in variety of languages) to and accepted by practitioners around the world.

¹⁸ Fishermen try to set at night, but the whole process can extend beyond sunrise, particularly in the summer months.

¹⁹ <http://www.msc.org/track-a-fishery/in-assessment/north-east-atlantic/grupo-regal-spain-hake-longline>

BirdLife Rec: *Where daylight setting cannot be avoided, a bird-scaring line (to specified design) should be deployed.*

Justification

In the exception that daylight setting is inevitable, then experience from equivalent demersal longline hake fisheries elsewhere in the world shows that a bird-scaring ('tori' or 'streamer') line needs to be deployed during setting to minimise seabird bycatch. A bird-scaring line consists of a length of rope with brightly coloured streamers attached at intervals, and towed behind the vessel during line setting so deter seabirds from attacking baited hooks.

Bird-scaring lines are the most commonly prescribed mitigation measures for longline fisheries and regarded as one of the most effective. Trials with Norwegian demersal longliners deploying bird-scaring lines showed a 98% reduction in seabird bycatch. BirdLife Albatross Task Force demonstration projects have demonstrated that using a single bird-scaring line reduced seabird bycatch by ~85%.

Bird-scaring lines are inexpensive, simple to use (especially in demersal longline fisheries where entanglement risk with the longline is much reduced compared with pelagic longlines) and do not require modification of the fishing gear. However, to be most effective, it is important that the bird scaring line is well designed and complies with a specified configuration. Currently the design most commonly recommended for demersal longline fisheries is that prescribed by CCAMLR (SC-CCAMLR 2006²⁰) and detailed in the Birdlife/ACAP Factsheets. BirdLife considers that this specification would be appropriate for the Gran Sol fishery.

In the Public Comment Draft Report for the Grupo Regal vessels seeking MSC certification (see Rec 1, above), the Code of Conduct specifies using a bird-scaring line:

BirdLife Rec: Line weighting: Given that the specification for line weighting in the Gran Sol fishery cannot be prescriptive in the revision of the TCM Regulation, we suggest that the optimum configuration should be subject to evaluation by results-based research and development in collaboration with the fishermen. In particular, it is necessary to identify the line-weighting configuration needed to achieve a sink rate compatible with minimising seabird bycatch.

Justification

Experience by BirdLife's ATF elsewhere in the world shows that in demersal longline fisheries where hake is the target species, line weighting is an alternative to a bird-scaring line but is not universally favoured because the fishermen like to leave intermittent lengths of line unweighted so that they can fish above the seabed. In the Mediterranean, demersal longliners (mainly targeting hake) are reluctant to use traditional line weighting for this reason. In Namibia, however, the ATF has shown a ~60% reduction in seabird bycatch using evenly spaced 5kg steel weights (and no bird-scaring line) instead of traditional use of stones (2-6kg) to weight the line. ATF experience shows that weight mass is critical for this mitigation measure to be effective.

²⁰ This and other mitigation measures are detailed in BirdLife/ACAP Factsheets – see footnote 15.

BirdLife Rec: *Discharge of offal and unwanted catch shall be prohibited during setting and hauling.*

Justification

Especially in demersal (as distinct from pelagic) longline fisheries, discharge of offal and unwanted catch during setting and (to a lesser extent) hauling greatly increases the risk of seabird bycatch by attracting birds to demersal longline setting.

The EU Seabird Plan of Action, under Specific Objective 3, '*Recommends that all vessels implement on-board management of offal/discards to best practice guidelines*', and refers to the BirdLife/ACAP factsheets.

BirdLife therefore recommends, following these and the FAO Best Practice Technical Guidelines 2008 (Tables 2-4), prohibition of offal discharge from any part of the vessel during setting and hauling (or at least from the side of the longline vessel where hauling occurs, as in CCAMLR regulations).

BirdLife Rec: *All mitigation measures should equally apply to hauling longlines.*

Justification

This is a precaution on the assumption that some hooks will still retain bait and that seabirds may still be attracted to this and/or the catch of hake, black bream and other non-target species.

2.5.3.3 Monitoring of bycatch mitigation (etc) on the Gran Sol

As indicated above (2.4.1(vi)), BirdLife considers that the Gran Sol fishery is in need of national observer coverage.

According to the MSC Public Comment Draft Report for the Grupo Regal vessels which form part of the Gran Sol fleet, '*the vessels under assessment have implemented detailed and comprehensive onboard reporting protocols for unintended bycatch, which lists all potential bird species and is supported by a species identification fact sheet*'.

So the need for monitoring is recognised. However, little is known about the implementation and effectiveness of the Grupo Regal approach which is part of a voluntary Code of Conduct, relying on the rigour of skippers. BirdLife considers that the potential scale of seabird bycatch on the Gran Sol fishery warrants going beyond a Code of Conduct to require the use of national onboard observers as the preferred option or, failing that, fit-for-purpose remote monitoring technology. The duration of such a programme could be dependent on the meeting objectives for seabird bycatch reduction and sustaining low bycatch rates.

2.6 Data-poor areas in need of investigation and mitigation

In certain areas and fisheries, BirdLife is aware of a significant bycatch problem but is unable to recommend commensurate TCMs in the current state of knowledge. Generally, this is due

either to lack of development of the necessary mitigation measures, or – even if they are available – insufficient knowledge on how to apply them proportionately. In some cases further risk assessment is required.

In such cases, revision of 850/98 should flag and ‘map’ ways of establishing tailored solutions to a specified timeline.

Priorities in this category are as follows:

2.6.1 Bycatch of Balearic Shearwaters in purse seine nets (Portugal, ICES Area IX)

Evidence is emerging that purse seines can take significant bycatch of Balearic shearwaters in this region. Balearic shearwater is a Critically Endangered species. A questionnaire survey (2008-09, unpubl) by SPEA (BirdLife Partner) in Portuguese ports showed that purse seines took the highest proportion of Balearic shearwaters, followed by longlines (demersal), trawls, longlines (surface), and gillnets.

No mitigation is currently known for purse seine nets.

BirdLife Rec: Subject to research and development, the use of purse seine nets in ICES Area IX will be subject to mitigation measures by 2017 such that the bycatch of Balearic shearwaters and other seabirds is minimized.

2.6.2 Bycatch of Iberian guillemot (etc) in gill-nets (NW Spain, ICES Area IX)

Significant mortality of European shags and auks has been reported from gill-nets in NW Spain. This coast represents the most southern extremity of the breeding range of the common guillemot *Uria aalge*, making it specially significant. According to Catry *et al* (2010)²¹ local fishermen at Berlengas have always linked the continuous decline of this species with a steady increase of the local gillnet fisheries (introduced in the 1960s), also highlighted as causing the observed large-scale decline in Iberian guillemot populations by Munilla *et al.* (2007)²². The Iberian population declined from about 20 000 pairs in the first half of the 20th century to fewer than 10 pairs at the end of that century. There have been no confirmed records of breeding in the region since 2007 although it is presumed there is still potential for immigration and population restoration if the threats are addressed, of which mitigation bycatch in gill-nets is considered a priority.

²¹ Catry, P., Costa, H., Elias, G, Matias, R., 2010. Aves de Portugal: Ornitologia do território continental. Assírio e Alvim. 944pp.

²² Munilla, I., Díez, C., Velando, A., 2007. Are edge bird populations doomed to extinction? A retrospective analysis of the common guillemot collapse in Iberia. BIOLOGICAL CONSERVATION 137, 359–371.

BirdLife Rec: Subject to research and development, the use of gill-nets in ICES Area IX will be subject to mitigation measures by 2017 such that the bycatch of common guillemots and other seabirds is minimized.

2.6.3 Bycatch of Common guillemot (etc) (W France, ICES areas VIII a and b)

A recent case (April 2012) was described in western France concerning several sites located near fishing ports. A massive bird stranding event occurred (around 100 individuals over a very short period) and the investigations and analyses carried out by the French Government identified fishing nets as the cause of the death. Most of birds were common guillemots *Uria aalge*, the rest common scoters *Melanitta nigra* and razorbills *Alca torda*. Stranded or injured birds are detected all year round on the west coast of France, but no quantitative data are currently available to elucidate possible links with fishing gear.

BirdLife Rec: Quantitative bycatch data should be collected in this region in order to gain a better understanding of interactions with fisheries and potential mitigation.

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