

Copenhagen Friday 25th March 2022

Ref: BSAC/2021-2022/41

Technical conservation measures

This relates to status on the Commission's Implementing Act¹ for the Framework Technical Measures Regulation 2019/1241.

THIS NOTE WAS PROVIDED TO THE BSAC WORKING GROUP CHAIRS

It is now forwarded to DG Mare

During 2015 and 2016 BSAC met to discuss and propose amendments to provisions in the Baltic Technical Measures Regulation 2187/2005² (now repealed) which were redundant and in urgent need of revision. It also discussed the Commission's proposal for the new Framework Technical Measures Regulation.

Some key BSAC recommendations from 2015 ³ were:

- Remove specifications of the BACOMA and T90 gears. (in the Appendices 1 & 2)
- Delete those footnotes which referred to catch composition (in the Annex II)
- Merge columns on specification of gears used in the pelagic fishery (mesh size range from 0 to 90 mm) (in the Annex II) (there wasn't consensus on this)

BSAC Working Group 15th December 2016 proposed a 110 mm mesh size for BACOMA and T90 gears, and to reword the specification of the window netting material, deleting reference to the netting material other than that it must be square mesh. The WG also proposed one column in the TM for mesh sizes above 105 mm with BACOMA (with a new definition excluding the obligation to use knotless netting) or T90 with 110 mm and no further restrictions on catch composition.

¹ See this in relation to Framework Technical Measures Regulation 2019/1241

Article 8.5: The Commission may adopt implementing acts establishing detailed rules for the specification of codends and the devices referred to in paragraph 4: It shall be prohibited to use any device that obstructs or otherwise effectively diminishes the mesh size of the codend or any part of a towed gear, as well as to carry on board any such device that is specifically designed for that purpose. This paragraph shall not exclude the use of specified devices used to reduce wear and tear of and strengthen the towed gear, or to limit the escape of catches in the forward part of towed gear.

http://www.bsac.dk/getattachment/BSAC-Resources/Documents-section/European-Parliament-and-Council/Techmeasures2019_1241ENG.pdf.aspx?lang=en-GB

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R2187&from=EN>

³ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/2015-01-01-BSAC-recommendations-on-technical-measures>

The BSAC recommended in 2017⁴ to abolish the mandatory use of knotless netting in the BACOMA window, and to allow the use of mesh sizes from 110 mm in both BACOMA and T-90 (knots in a square mesh have little, if any, effect on the selectivity of fish species that have an elliptic shape in cross-section. Added benefit was the reduced cost of shifting to larger meshes.

March and April 2018 the BSAC proposed an amendment to Commission Delegated Regulation 2018/47 on technical specifications of T90.⁵ It proposed to change the number of meshes in the codend, but not in the tapered end of the trawl. (BSAC hadn't been consulted on specifications of the proposed gear). Two letters and a technical note sent to the Commission.⁶

Sweden (BALTFISH Presidency) consulted the BSAC September 2018 about modifying the T90 and BACOMA codends, BSAC recommended to delete technical specifications in all regulations regarding construction of cod trawl, except rules on mesh size).⁷

Was this ever amended???????

The Framework Technical Measures Regulation (FTMR) was adopted 20th June 2019.⁸

In 2021 Commission ran a questionnaire on the experience with FTMR. In its reply, the BSAC referred to its proposals from 2015 and 2017 that weren't included in the new Regulation. It reiterated the 2015 proposal **to delete the specifications of the BACOMA and T90 gears**. Actually, the detailed specification had been taken out of the Regulation; members of the BSAC had been told that they were likely to be reinstated through a Commission Implementing Act. The BSAC did not want this done at the level of detail that was seen in the Regulation 2187/2005.

⁴ <http://www.bsac.dk/getattachment/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-recommendations-on-technical-measures-for-the/BSACRecommendationstechmeasuresFINAL070717.pdf.aspx?lang=en-GB>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0047&from=EN>

⁶ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-proposes-amendment-to-Commission-Regulation-o>

⁷ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/Letter-from-the-BSAC-to-BALTFISH-Presidency-about>

⁸ http://www.bsac.dk/getattachment/BSAC-Resources/Documents-section/European-Parliament-and-Council/Techmeasures2019_1241ENG.pdf.aspx?lang=en-GB

The BSAC also reiterated its previous advice of merging mesh sizes in the pelagic fisheries, with the caveat that some representatives of the OIG proposed a maximum mesh for pelagics, rather than a minimum; (main point being that OIG did not oppose using a smaller mesh).

BSAC Executive Committee met 29th January 2021

A fisheries representative raised the problem of misinterpretation of the existing rules on technical measures, and asked the EFCA representative to explain:

- which rules should be used by control inspectors in the Baltic with regard to the mesh size in the codend used in the flatfish fishery, and
- the right interpretation of the rules concerning the design of the BACOMA window.

Detailed questions (Krzysztof's) were sent to EFCA:

Is the legal basis for control and inspection work currently carried out Regulation 2019/1241? What regulation (number) and concrete articles do the control authorities use during the control of fishing gears on Baltic vessels? Eg. during control of codends?

Does the change of codend from BACOMA to codend T90 mean that the whole trawl must be changed from 105 to 120mm? If so, fishers have to use different trawls depending on the type of codend. Care must be taken not to confuse the word codend with trawl.

- **Can the shape and the size of BACOMA window be freely designed?**
According to the FTMR, this is the case.
- **Does the mesh size apply to the whole trawl or the selective part (codend) and what length?**
If so, a fishing trawl for sandeel, for example has to be constructed over its entire length from netting smaller than 16mm. In the previous regulation 2185/2005 the selective part applied to the last 8 m.
- **Can the codend T90 be of any length and circumference?**
According to the FTMR it can.
- **Can rhomboidal and T90 meshes be merged in any way?**
According to the FTMR they can.
- **Article 8 p.4 forbids the use of devices that obstruct the mesh size, but does not exclude devices used to reduce wear and tear. Which ones are they?**
- **Article 8 p. 5 the Commission has not adopted any Implementing Acts. Why is this, if the FTMR is being used by the industry?**
- **Annex VIII part B Art. 1.2.** How do you understand the smaller meshes than those listed in the table, if they have to meet the conditions in the table? It is not clear, even though there are two subpoints (i) and (ii).
- **With respect to sandeel, are fishers not allowed to use bigger meshes than 15 mm (smaller than 16 mm)?**
Question for clarification.

- **What is the status of the Commission report due to be issued on 31st December 2020 (Article 31)?**
The current exercise gives us the chance to point out gaps and make corrections.
- **Article 39 repeals several Regulations.** What is the status of the Regulation 2018/47 which is still on EURLEX?
https://eur-lex.europa.eu/eli/reg_del/2018/47/oj?locale=en

No answers were given to these questions. They were sent to EFCA and to the Commission.

The ExCom met EFCA on 6th May 2021.

All the technical measures questions also came up again. EFCA explained that the many of the implementing rules on configuration of gears and attachments had been revoked in the FTMR. This should be rectified by the Commission with a Delegated Act. Commission representative explained the legal void with respect to interpretation of the technical specifications of BACOMA and T90 codends. This void will be filled in by the implementing rules, which will be published in the near future. He stated that any gears built in conformity with the technical specifications laid down in the Annex (VIII) to the FTMR are legal to use. At present, the FTMR allows the use of a 120 mm T90 codend or of 105 mm fitted with a 120 mm BACOMA exit window. As a principle, the gear stated in Annex VIII must be used. There are two types of derogations provided under Part B, points 1.2 (i) (the associated conditions set out in that table are complied with, and by-catches of cod do not exceed 10 % of the total catch in live weight of all marine biological resources landed after each fishing trip) and (ii) (other selectivity modifications are used which have been assessed by STECF upon request of one or more Member States and approved by the Commission. Those selectivity modifications shall result in the same or better selectivity characteristics for cod as that of 120 mm T90, or of 105 mm fitted with a 120 mm Bacoma exit window, respectively). The conditions under (ii) require a Joint Recommendation and a Delegated Act.

The Commission has also run a consultation on the Action plan to conserve fisheries resources and protect marine ecosystems (i.e. on the technical measures)

The BSAC reply⁹ referred to outstanding issues in earlier advice on proposed amendments to the codend. It also referred to the outstanding need for an Implementing Act to adopt detailed rules for technical specifications of gears.

Meanwhile, the Commission has produced its draft Implementing Act.....

⁹ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-reply-to-Commission-consultation-on-Action-PI>

BSAC Executive Committee, 17th January 2022

A fisheries representative referred to the FTMR and that there are new provisions that the BSAC has not been consulted on. In its present format, the provisions lead to several misinterpretations of the existing technical rules. Different interpretations of the same rules during inspections at sea create a serious problem for inspectors and fishermen. The Regulation should be very clear and easy to interpret, in order to avoid such problems. Since 2018, the BSAC has raised concerns about this. Consultation of the BSAC on the implementing provisions¹⁰ has not been sufficient and they should be discussed by the BSAC in the Demersal Working Group.

Another fisheries representative agreed that implementation of the FTMR creates problems. The fisheries sector should be duly consulted on the implementing provisions in order to avoid measures which force the entire fleet to change its fishing gear.

It was referred to the Pelagic WG 24.1.22. The Pelagic WG agreed to send this to the Demersal WG 8.3.22.

From Demersal WG meeting report (8th March 2022)

The representative of DG Mare informed that the draft Implementing Act is still under consultation: sent by the Commission to Member States in December 2021; 2/3 of the Member States not yet replied. He explained the procedure whereby the Commission can consult Member States, but not sure to what extent the Commission can discuss detailed rules (with BSAC).

A fisheries representative referred to the importance of discussing the technical measures in the context of FTMR, as well as the draft Implementing Act. Some draft provisions may lead to several misinterpretations of the existing technical rules and therefore should be discussed by the BSAC. He also referred to the problem of misinterpretation of existing technical rules.

The Working Group decided to discuss the implementation of the Technical Measures Regulation at the next meeting of the Pelagic WG on 14th March 2022.

From the Pelagic Working Group 15th March 2022

The WG decided that the BSAC will take further steps with respect to the technical measures after receiving a positive answer from the European Commission on whether BALTFISH can be used as a platform for the discussion of the Implementing Act and after consulting the Member States on whether they agree to such a consultation procedure. The BSAC Management Team will have a discussion about addressing a statement from the BSAC to the Commission and BALTFISH

¹⁰ Again stated, the Commission's Implementing Act is still in the pipeline. The BSAC referred to it in its reply to Commission Consultation on the Action Plan: http://www.bsac.dk/getattachment/c88907a6-bfa4-429b-8443-5b699d7f4eeb/BSACreplytoActionPlanConsultation21_22_30.pdf.aspx?lang=en-GB

The following questions/comments were put to the Demersal and Pelagic Working Group Chairs:

1. Are the issues from the BSAC 2015 advice on the BACOMA and T90 codend still relevant, now the FTMR is in place?
2. All the questions raised by BSAC member Krzysztof Stanuch (back in January 2021) not yet answered.
3. The draft Commission Implementing Act: It seems the Commission intends to put back into the FTMR Annex VIII technical details that were removed from Regulation 2187/2005 (One example: reintroduction of knotless graded twine). What is the problem for the BSAC?
4. If the Commission doesn't have to consult the BSAC on its Implementing Act, the BSAC can still send advice.
5. In its present form, the FTMR seems to contain provisions that can be misinterpreted – which are they?
6. What is relevant for the pelagic fisheries? The mesh sizes in Annex VIII?
7. Denmark proposed the use of a 115mm T90 codend. According to the FTMR it should be possible to use this solution. The Commission highlighted technical problem. A simple solution would be to add the words “..at least ...”. We understand this solution was approved by BALTFISH. Has it been approved by the Commission?

One final question concerns the 2023 TAC quota regulation for the Baltic:

8. Will the introduction of the use of the roofless gear (for flatfish fishery and to allow cod to escape) require investments in new gears?